

**JOSH STEIN**  
**ATTORNEY GENERAL**



REPLY TO:  
MARY L. LUCASSE  
(919) 716-6962  
[MLUCASSE@NCDOJ.GOV](mailto:MLUCASSE@NCDOJ.GOV)

### **Memorandum**

To: North Carolina Coastal Resource Commission  
Fr: Mary L Lucasse, Esq.  
Re: Legal Update for September Special Meeting  
Date: September 12, 2023

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#### **I. NORTH CAROLINA SUPREME COURT**

**Batson, Baldwin, and Batson/Baldwin Owners' Association v. CRC (Carteret Co.)**  
Docket No. 94A22. The Commission appealed the Court of Appeal's decision based on Judge Tyson's dissent that would have held that no fees should have been awarded because the Commission's decision denying the Petitioners' request for a hearing was substantially justified. The matter is fully briefed. Oral argument took place on September 20, 2023.

#### **II. PETITIONS FOR JUDICIAL REVIEW (PJR)**

**Petitioners Clifton et. al. (22 CVS 1074) – Carteret Co. Superior Court.** The Commission denied the request of several lot owners in the Beaufort Waterfront RV Park to appeal the permit issued to Collette Properties LLC & Beaufort Waterway RV Park to construct a dock on the waterfront by their lots. The Chair held that the property and contract claims raised were not within DCM, CRC, or OAH's jurisdiction. Petitioners filed a PJR in superior court. An order to stay was filed December 21, 2022 at Petitioner's request to allow time to explore settlement with the permit holder.

#### **III. OFFICE OF ADMINISTRATIVE HEARINGS (OAH) - None**

**IV. VARIANCES:** The Wetmore variance request was heard at your June meeting. Attached is the final agency decision that was served June 29, 2023. The Commission is scheduled to hear a variance request at its specially set September meeting.

**V. AEC NOMINATION:** At its June meeting, the Commission decided not to proceed with a more detailed analysis of the nomination of an Area of Environmental Concern at Gribbs Creek located on the North river Estuary. Attached is the final agency decision that was served June 27, 2023. Any petition for judicial review of the Commission's decision was required to be filed in Superior Court by July 27, 2023. Since no petition was filed, I will close my file.

## **VI. REQUESTS BY THIRD PARTIES TO FILE CONTESTED CASES IN OAH:**

Following is a review of the outstanding requests:

**Paul Mills (CMT23-04)** submitted a request for a contested case hearing to challenge GP 88221 authorizing a pier and slips at his neighbor's property based on a claim that it would interfere with his navigation. The Chair denied the request on May 17, 2023 based on Petitioner's failure to allege facts or make legal arguments to support his request. No appeal was filed by the June 16, 2023 deadline. I will close my file.

**Steve Johnson, Terry Kinslaw, Donald Harris, James Rector, Susan Stone, Daniel Sullivan, Cynthia Parrott, Kevin Lockamy, Kimberly Wheeler (CMT23-05 through CMT23-13)** have submitted separate requests for contested case hearings to challenge the issuance of CAMA Minor Permit OIB 23-17 authorizing construction of parking areas 13 feet by 138 feet on the east and west side of Columbia St. in Ocean Isle Beach based on claims that the proposed construction violates Town ordinances and the CAMA LUP. The Chair's denied the requests on July 20, 2023 based on some of the petitioners' failure to show they were directly affected and failure to allege facts or make legal arguments demonstrating that the request is not frivolous. No appeal was filed by the August 20, 2023. I will close my file.

**Gerald Juetter (CMT-23-14)** submitted a request for a contested case hearing to challenge the issuance of CAMA Minor Permit for development at 209 Ocean Drive Emerald Island. After the permit holder surrendered the permit, the third party hearing request was withdrawn because the challenge was moot. I will close my file.

**Adams, Stefanowicz, Sininger (CMT-23-15)** submitted a request for a contested case hearing to challenge the issuance of CAMA Minor Permit 07-23-CB for construction of a 2<sup>nd</sup> tier new deck at the property adjacent to Sun Skipper UOA in the Town of Carolina Beach on several grounds including lack of notice and the impacts to view. The Chair denied the request and found that the Petitioners had failed to allege facts or make legal arguments to demonstrate a hearing would not be frivolous. Any petition for judicial review must be filed in superior court by September 24, 2023.

**Brown (CMT\_23-16)** submitted a request for a contested case hearing to challenge the issuance of CAMA Minor permit M23-14 for construction of a fence on a boundary line at property located in Currituck County on the grounds that the permit is contrary to NCGS chapter 68. The Chair issued her decision denying the request for failure to identify any rules or statute. Any PDR is due October 9, 2023.

## **VII. Other materials provided with this update:**

- 2023-06-22 letter and final agency decision approving the Town of Oak Island's Beach Management Plan (CRC-23-16);
- 2023-06-27 letter and final agency decision denying a request for Gribbs Creek AEC,
- 2023-06-29 letter and final agency decision granting Wetmore Variance Request,
- 2023-06-29 letter to UIACE from CRC re use of sand;
- 2023-07-21 Letter to NCRE re comments on draft disclosure Statement



JOSH STEIN  
ATTORNEY GENERAL

STATE OF NORTH CAROLINA  
DEPARTMENT OF JUSTICE

REPLY TO:  
MARY L. LUCASSE  
ENVIRONMENTAL DIVISION  
(919)716-6962  
MLUCASSE@NCDOJ.GOV

June 22, 2023

**Via Email only:**

Elizabeth White, Mayor  
David Kelly, Town Manager  
Town of Oak Island  
4601 E. Oak Island Drive  
Oak Island, North Carolina 28465

E-mail: mayorwhite@oakislandnc.gov  
E-mail: dkelly@oakislandnc.gov

**Re: Petition for Approval of Beach Management Plan CRC-23-16**

Dear Mayor White and Mr. Kelly:

At its June 15, 2023 meeting, the North Carolina Coastal Resources Commission approved the Town's Beach Management Plan (BMP) dated April 19, 2023 prepared by Moffatt & Nichol. The BMP is available at <https://www.oakislandnc.gov/residents-visitors/beach-information/crc-beach-management-plan> (last checked June 16, 2023). Attached is a copy of the Final Agency Decision signed by the Acting Chair of the Coastal Resources Commission. To keep the regulatory benefits afforded by the Commission's approval of the Town's BMP under the Commission's rules, the Town must submit a progress report no later than five years from today to DCM. Should the Town choose not to seek a renewal of its BMP, or if upon review of the progress report the Commission determines the criteria in 15A NCAC 07J .1201(d)(1) through (4) are not being met, the regulatory benefits afforded by the Commission's approval of the Town's BMP, including the ability to measure setbacks from the vegetation line, will expire.

If for any reason, the Town disagrees with the decision, the Town has the right to appeal by filing a petition for judicial review in superior court as provided in N.C. Gen. Stat § 150B-45 within thirty days of receiving the Final Agency Decision. A copy of the judicial review petition must be served on the Commission's agent for service of process at the following address:

William F. Lane, General Counsel  
Dept. of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Elizabeth White, Mayor  
David Kelly, Town Manager  
June 21, 2023  
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If the Town files a petition for judicial review of the Commission's decision, I request that you provide a courtesy copy to me at the email address listed in the letterhead. If you have any questions, do not hesitate to contact me.

Sincerely,



Mary L. Lucasse  
Special Deputy Attorney General and  
Counsel for the Coastal Resources Commission

cc: Robert J. Emory, Jr. Acting Chair  
M. Renee Cahoon, Chair, electronically  
Christine A Goebel, Esq. electronically  
Braxton C. Davis, electronically  
Mike Lopazanski, electronically  
Angela Willis, electronically  
Sam Morrison, electronically  
Doug Huggett, electronically

STATE OF NORTH CAROLINA  
COUNTY OF BRUNSWICK

BEFORE THE  
COASTAL RESOURCES COMMISSION  
CRC-23-16

In re: REQUEST BY **TOWN OF OAK** )  
**ISLAND** FOR APPROVAL OF BEACH )  
MANAGEMENT PLAN )

**FINAL DECISION**

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## I. REQUEST

Petitioner, the Town of Oak Island (“Town”) has requested that the Coastal Resources Commission (“Commission”) approve its Beach Management Plan pursuant to 15A NCAC 07J .1200 *et seq.* In support of its request, on April 24, 2023 the Town submitted its Beach Management Plan dated April 19, 2023 and Appendices A–D prepared by Moffatt & Nichol (BMP). The Plan is available at <https://www.oakislandnc.gov/residents-visitors/beach-information/crc-beach-management-plan> (last checked June 16, 2023).

On June 5, 2023, the Department of Environmental Quality, Division of Coastal Management (DCM) submitted a memorandum to the Commission outlining the approval process required under the Commission’s rules and providing its recommendation on whether to approve the BMP (Staff Recommendation). The Division noted that after reviewing the Town’s BMP, staff determined that “all required elements are addressed.” However, DCM recommended delaying approval of the BMP on the grounds that “several state and federal agencies have expressed concerns about the use of [Frying Pan Shoals as] a sand source” and that the Town is currently in negotiation with the Bureau of Ocean Energy Management regarding another site to be used as a backup sand source.

This matter was heard at the regularly scheduled meeting of the Commission on June 15, 2023 in New Bern, North Carolina. Pursuant to the authority in the Commission’s Internal Operating Procedures, the Chair delegated authority to Commissioner Robert Emory to serve as

Acting Chair during the June 15, 2023 meeting of the North Carolina Coastal Resources Commission and for the action items addressed during that meeting. Pursuant to that authority, Acting Chair Robert Emory signed this final agency decision which reflects the action taken by the Commission during its meeting.

The BMP (including Appendices A-D) and the Staff Recommendation comprise the written record on which the Commission based its decision. The Commission considered the written record, including comments provided in the BMP, Appendix D, and information provided at the Commission meeting by Sam Morrison, Technical Director–Dredge Services, Moffatt & Nichols; Ken Richardson, DCM Shoreline Management Specialist; and Elizabeth White, Mayor of the Town of Oak Island.

## **II. STANDARD OF REVIEW**

Under the Coastal Area Management Act (CAMA), the Commission may designate as areas of environmental concern, natural hazard areas where uncontrolled or incompatible development could reasonably endanger life or property and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind, and water. N.C.G.S. § 113A-113(b)(6). The Commission has developed regulations to provide management policies and standards for ocean hazard areas that serve to minimize unreasonable danger to life and property and achieve a balance between the financial, safety, and social features that are involved in hazard area development. 15A NCAC 7H .0303(a). Under the Commission’s rules, “[a] petitioner subject to a pre-project vegetation line pursuant to 15A NCAC 7H .0305, may petition the Commission to approve a Beach Management Plan ” which applies to “all pre-project vegetation lines with the Ocean Hazard Area” within “petitioner’s jurisdiction.” 15A NCAC 07J .1201(a) and (c).

The Commission requires that a BMP include the following information:

- (1) A review of all beach fill projects in the area of the BMP including the initial large-scale beach fill project associated with the pre-project vegetation line, subsequent maintenance of the initial large-scale projects(s), and beach fill projects occurring prior to the initial large-scale projects(s).
- (2) A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over the project design life.

15A NCAC 7J .1201(d). In considering whether to approve the BMP, the Commission considered the information the Town provided on each of these requirements and the Commission “shall approve a [BMP] if the request contains the information required and meets the criteria.” 15A NCAC 07J .1203(b).

Once a complete request for BMP is received, the Commission must consider the request no later than its second scheduled meeting after DCM deems the request complete. 15A NCAC 7J .1201(f). The Commission’s final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which a decision on the request is reached. 15A NCAC 7J .1203(b).

### **III. FACTS**

1. On April 24, 2023, the Town of Oak Island (Town) filed with DCM a complete request for approval of its a BMP by the Commission. The BMP includes a review of Beach Fill Projects/Background, a review of the proposed design and monitoring, a review of sediment

sources, a review of the Town's financial plan, and a review of public comments received.

2. In the BMP, the Town discussed prior initiatives performed by itself or in cooperation with the USACE to maintain its beaches including the following projects:

- Brunswick County Beaches Coastal Storm Damage Reduction (50-year project)
- Wilmington Harbor Sand Management Plan
- 2001 Sea Turtle Habitat Restoration Project
- Lockwoods Folly Habitat Restoration Project
- FEMA Hurricane Matthew Emergency Dune Project
- Lockwoods Folly Inlet, AIWW Inlet Crossing
- 2020/2021 Beach Renourishment Project
- 2021/2022 Beach Renourishment Project

(BMP pp 1–20; Staff Recommendation p 1)

3. The BMP provided data on the Town's ongoing monitoring program using survey data collected on a yearly basis to compute the shoreline location change at +1.8 ft NAVD88 (which is designated as the Mean High Water elevation). (BMP, pp 20–23)

4. The BMP provided information on the Town's Beach and Inlet Management Plan (BIMP) which includes modeling to determine the volume of material required to protect infrastructure, triggers for renourishment, and the anticipated nourishment cycles necessary to provide equal protection to all portions of the Town's oceanfront over the next thirty years. (BMP, pp 23–27) In summary, assuming an extra thirty percent buffer "to account for material losses/compaction, overbuild on the beach, and general inefficiencies associated with the dredging process," the Town estimated that it will require 16,055,000 cubic yards over the next thirty years to maintain its beach. (BMP, p 27 at Table 4–4)

5. The Town performed "an extensive sediment sampling program in 2019 to identify the native beach sediment characteristics and verify the compatibility and quantity of the existing sediment sources adjacent to" the Town. (BMP, p 31) The town identified offshore sources for



sediment at Frying Pan Shoals, which lies both within and outside State waters, the Old and New Ocean Dredged Material Disposal Sites, Lockwoods Folly Inlet Complex, Jay Bird Shoals, and Yellow Banks. Together the total preliminary volume available from these sites over the thirty-year plan is 98,552,000 cubic yards. (BMP, pp 55 at Table 9–3) However, there are constraints on the use of material from the Lockwoods Folly Inlet Complex. (BMP, p 55). And, after reviewing the BMP, DCM alerted the Commission that “Frying Pan Shoals has not been previously used as a borrow area for beach nourishment and several state and federal agencies have expressed concerns about the use of this sand source.” (Staff Recommendation, pp 1-2) During the hearing, the Commission was informed of the Town’s ongoing discussions with the Bureau of Ocean Energy Management regarding another offshore borrow site which could be used as a backup sand source for the Town’s BMP. (*see also*, Staff Recommendation, p 2). In moving to approve the BMP, the Commission considered that the volume of material required for construction during the next 6-year renourishment cycle is 1.65 Mcy (BMP, pp 27–28) which is available to the Town without requiring the use of Frying Pan Shoals burrow site.

6. The BMP provides information on “the financial plan the Town . . . has developed to pay for and maintain the [BMP].” (BMP, pp 49– 53) This includes a total of \$40 million dollars from the following funding streams: State Grant, Accommodations Tax Fund, Sand Tax Fund, and the Town’s General Fund. (BMP, pp 52-53)

7. In Appendix D, the Town includes the public comments received through the Public Hearing process and provided its responses. (BMP, Appendix D pp 618-714) In summary, a total of 87 issues were raised by approximately thirteen individuals. (*Id.* pp 620-25)

8. In its Staff Recommendation, DCM stated that it had reviewed the Town’s BMP

“and determined that all required elements were addressed within the BMP.” (Staff Recommendation, p 1). However, because of the ongoing negotiations with BOEM, the Division recommended that the Commission’s approval of the BMP be delayed until negotiations are complete. (Staff Recommendation, p 2)

#### IV. CONCLUSIONS OF LAW

1. The Town provided the Commission with a complete request for a beach management plan and this request was considered by the Commission no later than the second scheduled meeting following receipt of the complete request as required by 15A NCAC 7J .1201(f). As summarized in the Fact section above, the Town’s BMP includes the detailed data and information required by 15A NCAC 7J .1201(d)(1) through (4) and .1203(b).

2. In order to maintain the benefits associated with its BMP, the Town is required to “provide a progress report to the Coastal Resource Commission every five years from the date the Beach Management Plan is approved.” 15A NCAC 07J .1204(a). The effective date the BMP was approval is **June 22, 2023**, the date of this final decision. If on review of the progress report, the Commission determines that any of the criteria under which the BMP was authorized are not being met or if a progress report is not timely received, then the BMP shall be automatically revoked. 15A NCAC 07J .1204(b).

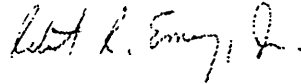
#### V. DECISION

For the reasons stated herein, Petitioner's request for approval of its Beach Management Plan is **GRANTED**. To keep the regulatory benefits afforded by the Commission’s approval of the Town’s BMP, the Town must provide a progress report no later than five years after the date of this decision. Should the Town choose not to seek a renewal of its BMP, or if upon review of

the progress report the Commission determines the criteria in 15A NCAC 07J .1201(d)(1) through (4) are not being met, the regulatory benefits afforded by the Commission's approval of the Town's BMP, including the ability to measure setbacks from the vegetation line, will expire.

This the 22<sup>nd</sup> day of June, 2023.

COASTAL RESOURCES COMMISSION



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Robert R. Emory, Jr., Acting Chair

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing FINAL DECISION upon the parties by the methods indicated below:

Elizabeth White, Mayor  
David Kelly, Town Manager  
Town of Oak Island  
4601 E. Oak Island Drive  
Oak Island, North Carolina 28465

E-mail: mayorwhite@oakislandnc.gov  
E-mail: dkelly@oakislannc.gov

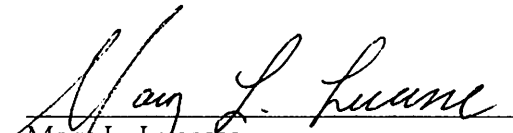
Braxton Davis, DCM Director  
Mike Lopazanski, DCM Deputy Director  
Ken Richardson, Shoreline Manag. Spec.  
Angela Willis, Assist. to DCM Director  
Division of Coastal Management  
400 Commerce St.  
Town of Morehead City, NC 28557

E-mail: Braxton.Davis@ncdeq.gov  
E-mail: Mike.Lopazanski@ncdeq.gov  
E-mail: Ken.Richardson@ncdeq.gov  
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Sam Morrison, Tech. Dir.-Dredge Services  
Doug Huggett, Senior Permit Specialist  
Moffatt & Nichol  
4700 Falls of Neuse Rd., No. 300  
Raleigh, NC 27609

E-mail: smorrison@moffattnichol.com  
E-mail: dhuggett@moffattnichol.com

This the 22<sup>nd</sup> day of June 2023.



Mary L. Lucasse  
Special Deputy Attorney General & Commission Counsel  
P.O. Box 629  
Raleigh, N. C. 27602



JOSH STEIN  
ATTORNEY GENERAL

STATE OF NORTH CAROLINA  
DEPARTMENT OF JUSTICE

REPLY TO:  
MARY L. LUCASSE  
ENVIRONMENTAL DIVISION  
(919)716-6962  
MLUCASSE@NCDOJ.GOV

June 27, 2023

Logan L. Jones, Petitioner individually  
and as Chair of the  
Beaufort Citizens Alliance  
900 Cedar St.  
Beaufort, NC 28516

**By US Mail, Return Receipt Requested**  
and  
E-mail: Logan@LoganLouis.com

**Re: Final Decision DENYING Request to Nominate Gribbs Creek AEC  
CRC 23-17**

Dear Mr. Jones:

At the regularly scheduled June 15, 2023 meeting of the Coastal Resources Commission, it denied your request to nominate a Gribbs Creek Area of Environmental Concern. Attached is a copy of the Final Agency Decision.

Any person seeking review of the Commission's decision must file a petition for judicial review in superior court as provided in N.C.G.S. § 150B-45 within thirty days of being served with the Final Agency Decision. Any person filing a petition for judicial review petition must also serve the Coastal Resources Commission's agent for service of process at the following address:

William F. Lane, General Counsel  
Dept. Of Environmental Quality  
1601 Mail Service Center  
Raleigh, N. C. 27699-1601

If you chose to file a petition for judicial review, I request that you serve a courtesy copy on me at the address included above. Thank you.

Very truly yours,

Mary L. Lucasse  
Special Deputy Attorney General

Mr. Logan L. Jones

June 27, 2023

Page 2

cc: M. Renee Cahoon, Chair of the Commission, electronically  
Robert R. Emory, Jr., Acting Chair of the Commission, electronically  
Dr. W. Judson Kenworthy, US Mail and electronically  
Todd Miller, NCCF Executive Director, US Mail and electronically  
Susan Schmidt, PhD, US Mail and electronically  
Riley Lewis, White Oak Waterkeeper, US Mail and electronically  
Beth Clifford, Director, Beaufort Agrihood Development, LLC, electronically  
Robert West, Trustee, US Mail and electronically  
Bertie and Jim Neely, electronically  
Ron and Sheila Shaw, electronically  
Braxton Davis, Director of DCM, electronically  
Mike Lopazanski, Deputy Director of DCM, electronically  
Angela Willis, Assistant to the Director of DCM, electronically  
Rachel Love-Adrick, DCM Planner, electronically

STATE OF NORTH CAROLINA	)	BEFORE THE NORTH CAROLINA
	)	COASTAL RESOURCES COMMISSION
COUNTY OF CARTERET	)	CRC-23-17
	)	
	)	
IN THE MATTER OF A PETITION	)	<b>FINAL AGENCY DECISION DENYING</b>
NOMINATING <i><b>GRIBBS CREEK AREA OF</b></i>	)	<b>PETITION</b>
<i><b>ENVIRONMENTAL CONCERN</b></i>	)	
	)	

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On March 13, 2023, Petitioner Logan Lewis (aka Logan L. Jones), individually and on behalf of the Beaufort Citizens Alliance, submitted a request nominating a site near the Town of Beaufort for designation as a Coastal Complex Natural Area of Environmental Concern (AEC) in accordance with the requirements in 15A NCAC 07H .0503 (Request).

During the regularly scheduled meeting of the North Carolina Coastal Resources Commission (Commission) on June 15, 2023, the issue before the Commission was whether to proceed with a more detailed analysis of the site pursuant to N.C.G.S. § 113A-115 and 15A NCAC 07H .0503(d). Pursuant to the authority in the Commission’s Internal Operating Procedures, the Chair delegated authority to Commissioner Robert R. Emory, Jr. to serve as Acting Chair during the meeting and for action items arising from that meeting. Pursuant to that authority, Acting Chair Emory signed this final agency decision denying the Request which reflects the action taken by the Commission during its meeting.

During the meeting, Rachel Love-Adrick, District Planner with the Division of Coastal Management (DCM) presented the issue to the Commission. During the public comment period of the Commission’s June 15, 2023 meeting, comments were received

from Petitioner Logan Louis and Dr. Jud Kenworthy from the Beaufort Citizens Alliance speaking in favor of the nomination and from property owner Beth Clifford speaking against the nomination.

In reaching its decision, the Commission considered the AEC Nomination Form submitted by Petitioner dated March 7, 2023 and received by DCM on March 13, 2023 (Request), the CRC-23-17 Memorandum dated May 30, 2023 to the Commission from Ms. Love-Adrick (Staff Recommendation) and documents linked to that memo such as the Comments and Stakeholder Presentations received during the May 8, 2023 public meeting DCM held to discuss the proposed nomination and the Town of Beaufort's Core Land Use Plan certified by the Commission on January 26, 2007. These documents comprise the written record on which the Commission based its decision.

### **STATUTORY AND PROCEDURAL BACKGROUND**

The North Carolina General Assembly has delegated authority to the Commission to designate by rule AECs in the twenty coastal counties and to specify their geographic boundaries. N.C.G.S. § 113A-113(a). The Commission's jurisdiction includes four major areas: Estuarine and Ocean Systems (Section .0200), Ocean Hazard Areas (Section .0300), Public Water Supplies (Section .0400), and Natural and Cultural Resources Areas (Section .0500). N.C.G.S. §113A-113(b) and 15A NCAC 07H .0500 *et seq.* The Commission has by rule defined AECs and established use standards and management objections for the AECs within these areas.

The fourth category, the Natural and Cultural Resources Areas, is a group of AECs "gathered under the heading of fragile coastal resource areas" and defined as "areas



containing environmental, natural or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities.” 15A NCAC 07H .0501. A unique feature of the Natural and Cultural Resources Areas is that for AECs within this category any person or group may at any time nominate a site and request that the Commission adopt a rule designating it as an AEC and establish applicable management strategies and/or use standards. N.C.G.S. § 113A-15; 15A NCAC 07H .0503. The nomination must be submitted to DCM and provide “information relating to the location, size, importance, ownership, and uniqueness of the proposed site.” 15A NCAC 07H .0503.

After receipt of a nomination, DCM is required to “conduct a preliminary evaluation of the proposed site” by convening representatives of the landowner(s), local government, and the Commission and CRAC members in whose jurisdiction the site is located to “discuss the proposed nomination” and “complete a preliminary evaluation” in which various protection methods will “be examined to determine if AEC designation is appropriate.” 15A NAC 07H .0503(c).

The preliminary evaluation is then presented to the Commission for a determination on “whether to endorse the [nomination].” 15A NAC 07H .0503(d). If the Commission endorses the nomination, a “detailed review of the proposed site shall be initiated under DCM supervision” and presented to the Commission. 15A NAC 07H .0503(e). If upon review of the report of the detailed review the Commission decides to consider “formal designation of the site as an AEC,” the matter proceeds to public hearing

on the “particular management plan or use standards [to be] developed” and following the public hearing, returns to the Commission for a final decision on whether to designate the site as an AEC. 15A NAC 07H .0503(f) & (g).

In short, this procedure allows a party to petition the Commission to begin rule-making to designate the site identified by petitioner as an AEC and establish a management plan or use standards for that AEC. After going through this entire process, if the Commission decides not to designate the proposed site as an AEC, its decision is not subject to judicial review. *See North Carolina Chiropractic Ass’n v. North Carolina State Board of Education*, 122 N.C. App. 122, 123, 468 S.E.2d 539, 541 (1996) (“[N.C.G.S. §] 150B-2(2) expressly excludes ‘rulemaking’ from its definition of a ‘contested case.’”).

Neither the Coastal Area Management Act of 1974 (CAMA) nor the Commission’s rules provide a process for a petitioner to appeal a decision by the Commission not to grant the petition, endorse the nomination, conduct a more detailed review of the site, or proceed with rulemaking to designate an AEC. However, the North Carolina Administrative Procedures Act (“Act”) provides that “[a] person may petition an agency to adopt a rule.” N.C.G.S. § 150B-20(a). The Act requires that an agency establish rules setting forth the procedure it “follows in considering a rule-making petition.” *Id.* In this case, the Commission did so by establishing the AEC nomination process in 15A NCAC 07H .0500.

Under the Act, the Commission is required to grant or deny a rule-making petition within 120 days of the date the petition is submitted. N.C.G.S. § 150B-20(b). The Commission received the Request (dated March 7, 2023) on March 13, 2023. Therefore, the

Commission must provide a written final agency decision granting or denying the petition on or before July 13, 2023. The written final agency decision denying the Request “must inform the person who submitted the rule-making petition of the reasons for denying the petition.” N.C.G.S. § 150B-20(c). A petitioner may request judicial review in the North Carolina superior court of a final agency decision denying the request to initiate rulemaking. N.C.G.S. § 150B-20(d).

### **PETITIONER’S REQUEST**

Petitioner identified the site of the proposed AEC as “the upland draining watershed of a tributary tidal creek, Gibbs Creek, located on the North River Estuary.” (Request, p 3) Petitioner explained, “[t]he Gibbs Creek watershed is the last remaining mostly undeveloped watershed and tidal creek in the territorial jurisdiction of Beaufort, NC classified as SA High Quality Waters . . . and open to shellfish harvest.” (*Id.*) Petitioner pointed out that the site has “salt marshes, 404 wetlands [as defined by the federal Clean Water Act], streams, small ponds, and elevated sub-surface water table” and the site connects “the local upland landscape and the North River estuary where freshwater from the land, tributary streams, and the soil water table mixes with saline tidal water from the estuary.” (Request, p 3-4) Petitioner provided information on “extensive native plant and animal communities and their vegetation and soil habitats which are mostly undisturbed and hydrologically and biologically connected to the tidal creek making the upland portion of the watershed a key physical and biological component of the natural coastal system.” (Request, p 4) Petitioner asserted that this “watershed is one of the last remaining relatively large tracks of undeveloped and forested

land in the territorial jurisdiction of the Town of Beaufort.” (*Id.*, p. 8) Petitioner identifies Gibbs Creek as holding the SA/HQW classification from the North Carolina Environmental Management Commission (EMC) and notes it is open to shellfish harvesting. (*Id.*, p. 22) In the Request, Petitioner suggests that in order to protect the site, the Commission should adopt a 575 foot buffer landward of normal high water and 100-foot setbacks from intermittent and/or perennial streams and 404 wetlands as the “existing 75 foot AEC buffer is insufficient for protecting the natural functions of the tidal creek watershed.” *Id.*, pp 9-10.

### **PRELIMINARY EVALUATION OF REQUEST**

#### **A. Notification of Nomination and May 8, 2023 Meeting.**

As required by 15A NCAC 07H.0503(c), on April 5, 2023 DCM alerted the relevant parties of the nomination and that a meeting had been scheduled to discuss the nomination and “various protection methods . . . to determine if AEC designation is appropriate.” E-mail notice was provided to the following persons:

- Landowner Bertie Eubanks Neely,
- Landowner Roberta West, Trustee of the Pearl G. West Trust,
- Landowner Beth Clifford, CEO of Beaufort Agrihood Development, LLC,
- Kyle Garner, AICP, Town Planning Director,
- Todd Clark, Town Manager,
- Commissioners Larry Baldwin and Lauren Salter,
- CRAC member Ryan Davenport.

(Staff Recommendation, p 2) On May 8, 2023, DCM staff conducted a meeting to discuss the proposed nomination. The following persons attended the meeting: Dr. Jud Kenworthy, on behalf of the Beaufort Citizens Alliance; Beth Clifford representing Beaufort Agrihood Development; Bertie and Jim Neely and Ron and Sheila Shaw

representing the Bertie Eubanks Neely Property; Roberta West, Trustee, representing the Pearl West Trust; Kyle Garner and Todd Clark, representing the Town of Beaufort; Commissioner Larry Baldwin; and CRAC member Ryan Davenport.

During the meeting, DCM Staff presented an overview of the AEC nomination and designation process and the North Carolina Coastal Management Program. DCM staff also explained the existing protections that would apply to any future development of the site under the NC Dredge and Fill Act, the CAMA, the Commission's rules, and other state and federal regulations. (Staff Recommendation, p 2)

Petitioner Beaufort Citizens Alliance, represented by Dr. Jud Kenworthy, presented an overview of the proposed Gibbs Creek Watershed AEC nomination. In his presentation, Dr. Kenworthy asserted that the Gibbs Creek watershed "qualifies for an AEC nomination as both a Natural and Cultural Resource Area AEC" under 15A NCAC 07H Section .0500 and as "a Coastal Complex Natural Area" AEC under 15A NCAC 07H .0506. (See Presentation included in the AEC Designation Comments and Presentations, pp 8-15) The presentation included aerial and lidar images and preliminary sketches prepared by Davey Resource Group showing the site with the Petitioner's proposed setbacks overlain on the images of the site. (*Id.*)

During the meeting the property owners spoke in opposition to the AEC designation. They described the historical uses of each property and asserted that the site does not meet the requirement of having "more than local significance" required for a Natural and Cultural Resource Area. Specifically, the Eubanks family stated that their property has been used over the years by several private businesses including a dairy

farm, family crop farm, family homeplace, tire store/service center and rental property, adding that most of the land was cleared due to these uses. Additionally, the Eubanks stated that they have no active purchase contract with Ms. Clifford. (Staff Recommendation, p 2; Presentation included in the AEC Designation Comments and Presentations, pp 38-44) Roberta West stated that her family property has also been used as a farm and family homeplace; and that the property was timbered in 1993. (Staff Recommendation, p 2; Presentation included in the AEC Designation Comments and Presentations, pp 45-53)

Ms. Clifford stated that her property has been used for commercial and residential uses, including a mobile home park, and on-site there are currently abandoned homes and septic tanks, fuel tanks, and a junk yard with derelict vehicles. In addition, Ms. Clifford, who has proposed a subdivision development within portions of the proposed AEC, provided information about her future plans including proposed deed restrictions for the proposed subdivision development (e.g., limiting stormwater retention on each lot, requiring natural areas be maintained, and requiring preservation of trees.). Ms. Clifford presented an overview of how offsite stormwater is currently entering the properties and the proposed installation of additional swales to handle the existing stormwater and the stormwater created by the proposed development. (Staff Recommendation, p 2; Presentation included in the AEC Designation Comments and Presentations, pp 16-37)

Todd Clark, Beaufort Town Manager, spoke on behalf of the Town at the May 8, 2023 meeting and provided clarifications regarding information contained in the nomination. Specifically, Mr. Clark stated:

- The property has not been annexed by the town. Annexation was predicated on Beaufort Agrihood Development LLC's purchase of the properties and that has not occurred.
- The planning and review process with the Town will need to restart as the previous approvals have lapsed.
- The Town has not conducted an Environmental Impact Study and it is not clear if one is required as the expenditure of public funds for such a study requires a public purpose and these are private properties.
- The Town's Land Use Plan Update referenced in the nomination is still under review by DCM and has not yet been certified by the CRC.
- The proposed AEC has not been on the Planning Board or Board of Commissioners agendas and is neither supported nor opposed by either board.

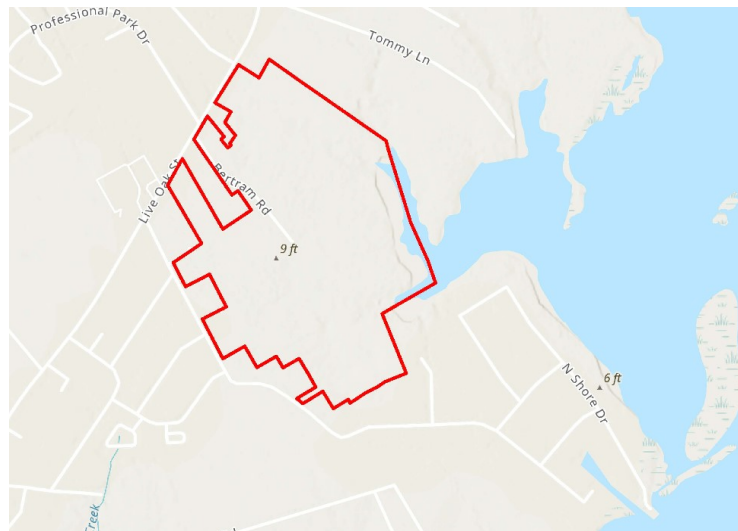
(Staff Recommendation, pp 2-3)

**B. Description of Proposed AEC site nominated by Petitioner.**

The site is within the Town's Extraterritorial Jurisdiction, two miles northwest of the Town in Carteret County, and is part of the Outlet North River HUC 12 sub watershed. See following illustration showing location. (Request, p 2, Staff Recommendation, p 3).



The nominated area is made up of four privately-owned parcels: Parcel 731609167703000 (42.39 acres) owned by Bertie Eubanks Neely; Parcel 731609161556000 owned by Beaufort Agrihood Development, LLC; Parcel 731609153648000 (25.84 acres) and Parcel 731609066438000 (7.92 acres) owned by the Pearl G. West Trust. (Request, p 2; Staff Recommendation, p 3)





The site made up of the combined parcels is outlined in red. (Staff Recommendation, p 3 and linked maps). There is a mix of residential and commercial development surrounding the properties as well as undeveloped parcels, Gibbs Creek, and several roads. (Staff Recommendation, p 3)

### **C. Existing Uses on the Proposed AEC Site.**

The site of the proposed AEC is zoned R-20 Residential Single-Family District under the Town's Zoning Map and Land Development Ordinance. (Request, p 3; Staff Recommendation, p 3) The current Town Core Land Use Plan certified by the Commission on January 26, 2007 classifies the site as Low Density Residential with predominant land use identified as "low density detached residences." (Town's LUP, p. 89) The Town's updated Comprehensive and CAMA Land Use Plan, which was locally adopted by the Town on December 12, 2022 and is currently under review by DCM staff before being presented for certification, classifies the site as "Traditional Residential Neighborhood." (Staff Recommendation, p 3)

The AEC nomination identifies the existing use as "vacant" and "Conservation, Open Space, Parks, Environmental and Recreational" and "Rural/Working Lands." (Request, p 3) On-site along Bertram Rd there is a business, mobile home park, and vacant residential properties. Additionally, the Pearl G West Trustee property includes a private residence with parts of the parcel appearing to be regularly mowed per Google Earth Pro historic imagery. (Staff Recommendation, p 3)

#### **D. Natural Resources on the Proposed AEC Site.**

The EMC and North Carolina Department of Environmental Quality, Division of Water Resources (DWR) are responsible for the classifications for all streams, rivers, lakes, and other surface waters in North Carolina which define the best uses to be protected within these waters. These classifications are one tool that state and federal agencies use to manage and protect surface waters in the state. Many of the classifications, especially those designed to protect drinking water supplies and certain high quality waters, have protection rules which regulate activities, such as development, that may impact surface water quality. (See <https://www.deq.nc.gov/about/divisions/water-resources/water-planning/classification-standards/classifications> (last checked June 22, 2023)). The public trust waters within or adjacent to the nominated area are classified as SA (tidal Salt Waters<sup>1</sup> used for shell fishing for marketing purposes. These waters are also protected for all Class SC and Class SB uses. All SA waters are also High Quality Waters (HQW) which is a “supplemental classification intended to protect waters which are rated excellent based on biological and physical/chemical characteristics through monitoring or special studies[.]” (Staff Recommendation, p 4)

Gibbs Creek is also classified by the NC Division of Marine Fisheries (DMF) as “Conditionally Approved-Open” for the harvesting of shellfish. According to Andy Haines, DMF Environmental Program Supervisor in the Shellfish Sanitation and Recreational Water Quality Section, “Gibbs Creek is managed, along with the main stem of North

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<sup>1</sup> Although the Request identifies Gibbs Creek as “Outstanding Resource Waters (ORW)” – another DWR classification, that is not the correct. (Staff Recommendation, p 4) Nor, despite Petitioner’s claim, has Gibbs Creek been designated as a Primary or Secondary fish nursery area by the NC Marine Fisheries Commission as stated in the nomination and letters of support. (*Id.*

River, to close after 1.5 inches of rain or more in a 24-hour period. The creek was last closed January 23, 2023, for three days. The creek and the lower part of the river have been temporarily closed on average 11 times/year for an average of 69 days/year.” (Staff Recommendation, p 4)

The Request states that the area has “extensive and ecologically important 404 and coastal wetlands” and describes the “upland portions of the watershed as a mixed pine-hardwood forest community dominated by; white oak (*Quercus alba*), eastern black oak (*Quercus velutina*), longleaf pine (*Pinus palustris*), American holly (*Hex opaca*), and Mountain laurel (*Kalmia latifolia*).” (Request, p 5) Petitioner recognizes that “[s]ome portions of the watershed were historically utilized for silviculture; however, since 1993 the forest has remained relatively undisturbed and has begun to ecologically succeed to a community of vegetation typical of the local soil properties and climate of the North Carolina coastal plain.” (*Id.*)

In support of Petitioner’s claim that there are “ecologically significant species” at the site, the nomination provides information regarding species observed in the Gibbs Creek watershed by Dr. W. Judson Kenworthy over a period of 22 years and relied on the 7 out of 10 rating in the Biodiversity/Wildlife Habitat calculated by the North Carolina Natural Heritage Program Conservation Planning Tool (CPT). (Request, p 6)

In its Recommendation, DCM explains that the CPT Report “rankings show relative significance of the areas but are not quantitative.” (Staff Recommendation, p 5) DCM cautions against reliance on this tool as it “was created for planning purposes” and no “on-site assessment” has “field verified” the rating. (*Id.*)

In order to assess the significance of the rating by the Natural Heritage Program for the Gibbs Creek watershed (admittedly an area larger than the proposed AEC), DCM considered the underlying rating of “Exceptional Significance” from the North Carolina Coastal Region Evaluation of Wetland Significance (NC-CREWS). Developed in 1999 by DCM, NC-CREWS was a watershed-based GIS wetland functional assessment model created to assess level of water quality, wildlife habitat, and hydrologic functions of individual wetlands. DCM reports that the tool and underlying data have not been updated since 1999. According to the NC CREWS report, “The primary objective of the NC-CREWS wetland functional assessment is to provide users with information about the relative ecological importance of wetlands for use in planning and management of wetlands. It is intended to be used as a planning and decision support tool rather than a decision making tool.” (Staff Recommendation, p 5) In the Staff Recommendation, DCM pointed out that “due to the age of the data, it is unknown what factors resulted in a rating of Exceptional functional significance and if this rating would still apply.” (*Id.*)

DCM provided information on whether the species identified in the nomination have “protected status” under state or federal programs. In North Carolina, all state status species (Endangered, Threatened, and Special Concern) are given state protection under the State Endangered Species Act. The Natural Heritage Program uses a designation of “significantly rare,” but this designation is not afforded official state protection. The following species listed in the nomination have “protected status” under the State Endangered Species Act and/or the Federal Endangered Species Act of 1973 (unless otherwise listed):

- State-listed endangered species: Common Tern.
- State-listed species of special concern: Diamondback Terrapin, Least Tern, Little Blue Heron, Great Blue Heron, Great Egret, Snowy Egret, Louisiana Heron, Tricolored Heron, Black-crowned Night Heron, Yellow-crowned Night Heron, Little Blue Heron, American oystercatcher, Glossy Ibis, Black skimmer.
- State and federally listed threatened species: Loggerhead sea turtle, Green sea turtle, and Bald eagle.
- Federally protected species under the U.S. Marine Mammal Protection Act of 1972: Atlantic Bottlenose Dolphin.

(Request, p 7-8; Staff Recommendation, pp 5-6)

#### **E. Current Protections for Natural Resources at Proposed AEC Site.**

The natural resources in the nominated area are currently managed under various state and federal regulatory programs. First, the waters and intertidal salt marshes of Gibbs Creek (and its navigable tributaries) are within the Estuarine Waters AEC, Public Trust Waters AEC, and/or Coastal Wetland AEC which are all part of the Estuarine and Ocean Systems defined by the Commission. 15A NCAC 07H .0200 *et seq.* The Commission's management objective for these areas is "to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources." 15A NCAC 07H .0203. To that end, the Commission has set use standards for these AECs. Specifically, the first priority of use for the Coastal Wetlands AEC is "to conserve the existing coastal wetlands." 15A NCAC 07H .0205(d). The second priority is for "development activities that require water access" such as piers, docks, wildlife habitat management activities, and

agricultural uses.” *Id.* Unacceptable uses include residences, parking lots, and private roads. *Id.*

The Commission has established the same priority of use for the Estuarine Waters AEC adjacent to the site: first priority is conservation with a secondary use allowing limited development of docks, marinas, piers, pilings, channels, and structures to prevent erosion. 15A NCAC 07H .0206(d).

Any “development” occurring in or over the waters or wetlands in these AECs may only be permitted if it complies with CAMA and Commission’s rules set out in 15A NCAC 07H .0208. These rules generally limit development to water dependent uses to conserve the important features and functions of estuarine waters and coastal wetlands and are in place providing protection for the natural resources at the site.

Second, the shoreline areas along Gibbs Creek and its tributaries are designated as Estuarine Shoreline AECs. These shorelines are “the intersection of the upland and aquatic elements of the estuarine and ocean system” and Commission has recognized that “[m]any land-based activities influence the quality and productivity of estuarine waters.” 15A NCAC 07H .0209(b). The Commission’s management objective for this AEC recognizes “the dynamic nature of coastal shorelines” and its “objectives are to conserve and manage the important natural features.” 15A NCAC 07H .0209(d) The Commission’s rules require that any development within 75 feet of the normal high water level or normal water level must be permitted and comply with CAMA use standards found in the Coastal Shorelines AEC. 15A NCAC 07H .0209(d) These rules include a buffer requirement locating all new, non-water dependent development 30 feet landward of the normal high

water level or normal water level. The requirements include limitations on impervious surfaces within the 75-foot zone, and additional restrictions on development within 30-feet of the shoreline. In addition, the Commission's rule alert the regulated public that development projects must also comply with other state standards include the NC Sedimentation Pollution Control Act of 1973 and any rules adopted by the Environmental Management Commission or the Marine Fisheries Commission for estuarine waters, public trust areas, or coastal wetlands. *See e.g.*, 15A NCAC 07H .0208(d)(3)( and (9). These existing rules currently provide protection for the natural resources at the site.

Third, the State provides ongoing protection to natural resources at or adjacent to the site through other state programs. Specifically, the EMC has adopted surface water classifications which define the best uses for SA and HQW on or adjacent to the site and have adopted water quality standards to protect those uses. The water quality antidegradation rules administered by DWR support water quality in SA and HQW waters. <https://www.deq.nc.gov/ncstdstable07262021> (last checked 06/23/2023) The DWR also protects water quality in North Carolina through the application of riparian buffer rules adopted by the EMC which are applicable to vegetated areas adjacent to intermittent and perennial streams, lakes, reservoirs, ponds, estuaries, and modified natural streams and by administering the 401 certification program pursuant to Section 401 of the Clean Water Act. 15A NCAC 02H .0501 and apply to the first fifty foot landward of normal high water or landward edge of coastal wetlands (I think) at this Site. Finally, DWR is responsible for regulating stormwater runoff impacts from new development in the coastal counties based on established standards (including for areas adjacent to SA

waters). 15A NCAC 02H .1019(6)(b). These provided existing protection for the natural resources at the site.

Fourth, the area's freshwater wetlands are subject to the permitting requirements in Section 404 of the federal Clean Water Act, administered by the U.S. Army Corps of Engineers, regulating the discharge of dredged or fill material into waters of the United States. An applicant for a 404 permit must show that steps have been taken to avoid impacts to wetlands, streams, and other aquatic resources; that potential impacts have been minimized, and that compensation will be provided for all remaining unavailable impacts. 33 U.S.C. 1251 *et seq.* and 40 CFR Part 230. (Staff Recommendation, p 6)

All of the existing state and federal programs, which include but are not limited to CAMA and the Commission's rules, are currently providing protection for the proposed AEC site.

**F. Petitioner's suggested protection for the proposed AEC site.**

Without addressing the protections already provided by the existing state and federal programs or explaining why the existing protections are inadequate, the Petitioner raises concerns that "the loss of the forested uplands, perennial and intermittent streams, and coastal/404 wetlands will have adverse cumulative impacts on water quality, wildlife and fisheries habitat, and the natural functions of the tidal creek." (Staff Recommendation, p 6) The petitioner proposes that the site designation be changed from the current AECs to establish the site as a Coastal Complex Natural Area AEC within the Natural or Cultural Resource Areas of Environmental Concern.



The Petitioner has also proposed expanded development buffers as part of the AEC nomination. (Request, pp 8-12) Specifically, Petitioner requests the buffer landward from normal high water be increased to 575 feet (as allowed for Outstanding Resource Waters (ORW) by 15A NCAC 7H .0209(a)(1)), and that the setbacks from intermittent and/or perennial streams, and coastal wetlands and 404 wetlands be increased to 100 feet. (*Id.*)

### **DCM RECOMMENDS THE COMMISSION DENY THE REQUEST**

DCM recommends that the Commission deny the request to adopt a new AEC designation for this site for the following reasons:

1. The nomination does not include the entire watershed area that drains into Gibbs Creek. The boundary of the AEC focuses solely on four parcels initially proposed for development of a single family residential subdivision. While the town stated neither support nor opposition to the AEC nomination, these properties have been classified as Low Density Residential on their plan's Future Land Use Map since January 26, 2007.
2. The properties have not "remained essentially unchanged by human activity". The properties were historically used as farmland and have been cleared for farming and logging over the years. Additionally, the properties have been and continue to be used by several commercial businesses and residences that may have resulted in impacts to the area.
3. While the proposed AEC contains many of the natural resources that make tidal creek systems some of our state's most valuable wildlife habitat, DCM Staff has not made a determination of whether the standard of "more than local significance" (as required by 15A NCAC 07H .0501) or that the natural features "distinguish the area designated from the vast majority of coastal landscape" [as required by (15A NCAC 07H .0502(a))] has been met by Petitioner, since the characteristics at this site are common to tidal creek systems found throughout Carteret County and coastal North Carolina. In this context, the designation of a single tidal creek system or watershed as an AEC with unique development standards would be precedent setting for all similar tidal creek systems along the coast.
4. During the public meeting, the Petitioner admitted that while Gibbs Creek has not been designated as Outstanding Resource Waters by the Environmental Management Commission through the Division of Water Resources, the Creek

deserves such recognition and subsequent protections because Petitioner believes the Creek meets the statutory and regulatory definitions and criteria. However, the Commission and DCM do not have the authority or expertise to consider requests to reclassify waters that are officially designated under the federal Clean Water Act. For Gibbs Creek to be reclassified as Outstanding Resource Waters, the Petitioner would need to submit a separate petition to the Environmental Management Commission. The procedures for assignment of water quality standards can be found in 15A NCAC 02B .0100.

(Staff Recommendation, pp 7-8) Based on its preliminary evaluation, DCM concluded that natural resources at the site have existing protections through state and federal programs and additional AEC designation is not necessary or appropriate. On this basis, DCM recommended the Commission not proceed with a more detailed analysis of the Site as allowed under 15A NCAC 07H .0503(d).

### COMMISSION'S DECISION

Upon consideration of all materials presented and the comments received during the Commission meeting, the Commission denied the Request and determined not proceed with a detailed review of the proposed AEC designation for the site. In support of that decision, the Commission hereby informs Petitioner of the basis for its decision:

**A. Existing Site Conditions are not Consistent with the Proposed AEC Designations.**

Under the Commission's rules, the Natural and Cultural Resource Areas generally include "areas containing environmental, natural or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities." 15A NCAC 07H .0501 (emphasis added) Within this designation there are several types of AECs. The Coastal Complex Natural Areas AEC

includes “lands that support native plant and animal communities and provide habitat qualities which have remained essentially unchanged by human activity.” 15A NCAC 07H .0506 The Commission’s rule further provides that “often these natural areas provide habitat suitable for threatened or endangered species or support plant and animal communities representative of pre-settlement conditions.” 15A NCAC 07H .0506(b).

In his Request, Petitioner alleges that “the site is the last remaining mostly undeveloped watershed and tidal creek in the territorial jurisdiction of Beaufort, NC classified as SA High Quality Waters . . . and open to shellfish harvest.” (Request, p 3) (Emphasis added) This description is qualified, and as a result, only compares the site nominated to other sites with similar characteristics in the Town of Beaufort. If for no other reason, the Commission finds that Petitioner has not provided information to support his claim that the proposed AEC site has more than local significance as required by the Commission’s rule. After considering the AEC requirements and the facts relating to this site, the Commission concludes that the site (which is a small subsection of the Gibbs Creek watershed) is primarily of local significance to other residents near the creek who would prefer that no additional development occur in their vicinity.

North Carolina has seventeen river basins (with numerous subbasins and watershed) and seven are in the coastal counties. <https://www.ncwildlife.org/Conserving/Habitats/North-Carolina-River-Basins/NCRiverBasinMap> (last checked 6/23/2023) In the Request, Petitioner has not identified why this limited site should be treated differently than other sites located within similar watersheds. In its Staff Recommendation, DCM points out that the site of the proposed AEC “contains many of the natural resources that

make tidal creek systems some of our state's most valuable wildlife habitat." (Staff Recommendation, p 7) However, the characteristics at this site are common to tidal creek systems found throughout Carteret County and coastal North Carolina and therefore do not support a finding that the site is of "more than local significance" (as required by 15A NCAC 07H .0501) or that the natural features "distinguish the area designated from the vast majority of coastal landscape" [as required by (15A NCAC 07H .0502(a)]." (*Id.*)

If as one of the commentors claims, the Commission's existing development standards for protecting Estuarine Waters, Coastal Wetlands, and Estuarine Shorelines AECs are inadequate (*See* Todd Miller Comments, in Comments and Presentations, p 3), then the solution is not to protect one small site in Carteret County, but to revise the Commission's existing rules to protect all similar tidal creek systems along the coast.

The designation of a single site within a single tidal creek system or watershed as an AEC with unique development standards would be precedent setting for all similar tidal creek systems along the coast. The intent of the Natural and Cultural Resource Areas AEC is to develop management standards that would apply to all "areas containing environmental, natural or cultural resources of more than local significance." 15A NCAC 07H .0501. This request does not meet that requirement.

Similarly, the Request fails to establish as required by the Commission's rule for the Coastal Complex Natural Areas AEC, that the site has "remained essentially unchanged by human activity." 15A NCAC 07H .0506. Specifically, in the Request, Petitioners acknowledges that "[s]ome portions of the watershed were historically utilized for silviculture." (Request, p 5) The landowners provided additional information

regarding the historical uses of the properties. The Eubanks' property was used as a dairy farm, family crop farm, family homeplace, tire store/service center and rental property. The West property has also been used as a farm and family homeplace and that the property was timbered in 1993. Most of the land was cleared due to these uses. Ms. Clifford stated that her property has been used for commercial and residential uses, including a mobile home park, and on-site there are currently abandoned homes and septic tanks, fuel tanks, and a junk yard with derelict vehicles. (Staff Recommendation, p 2) Given the historic and continuing uses at the site, the Commission has determined that the nomination is not consistent with the requirements in the Commission's rule for the Coastal Complex Natural Areas AEC, that the site has "remained essentially unchanged by human activity." 15A NCAC 07H .0506.

For these reasons, the Commission affirmatively finds that the Request fails to nominate a site that was consistent with the requirements for the proposed AECs and finds that a further detailed review of the site is unnecessary solely on this basis.

**B. Natural Resources on Site of Proposed AECs are currently protected under existing development standards.**

The waters and intertidal salt marshes of Gibbs Creek (and its navigable tributaries) are designated as Estuarine Waters and Public Trust Waters, and/or Coastal Wetland AECs by the Commission. Any "development" occurring in or over these waters or wetlands must be permitted and comply with CAMA, Dredge & Fill, and Commission's rules. *See e.g., 15A NCAC 07H .0208 et seq.* These rules generally restrict development to water dependent uses to conserve the important features and functions of estuarine waters and coastal wetlands. The shoreline areas along Gibbs Creek and its tributaries are

designated as an Estuarine Shoreline AEC, and any development within seventy-five feet of the normal high water level or normal water level must be permitted and comply with CAMA use standards found in the Coastal Shorelines AEC. 15A NCAC 07H .0209(d). These rules include a buffer requirement that all new, non-water dependent development shall be located a distance of thirty feet landward of the normal high water level or normal water level. Limitations on impervious surfaces within the seventy-five-foot zone, and additional restrictions on development within thirty feet of the shoreline, limit the impact of land based activities on the quality and productivity of estuarine waters.

Waters in the area classified as high quality waters are provided additional protection through other state and federal programs as described in more detail in section E above. Based on knowledge of its own rules and the existing protections provided for the natural resources at the site, the Commission affirmatively determined it is unnecessary to proceed with a detailed review of the proposed AEC nomination to consider additional management objectives or development standards.

**C. The protections provided for ORW are not applicable to waters classified as SA and HQW.**

Petitioner requests the buffer landward from normal high water be increased to 575 feet and that the setbacks from intermittent and/or perennial streams, and coastal wetlands and 404 wetlands be increased to 100 feet. (Request, p 8-12) In Figure 2 submitted with the Request, Petitioner provides an image with these proposed lines drawn on the site and a key identifying the basis for the requested buffers/setbacks. Petitioner alleges that the site meets the requirements to be designated as ORW and therefore the applicable setback provided in 15A NCAC 07H .0209(a)(1) for that

classification (575 feet landward from normal high water) should be applied. (Request, p 10) This argument is unfounded. Because the waters of Gibbs Creek are not designated as ORW by the Environmental Management Commission, the setback in the Commission's rules for that classification is not applicable here. If Petitioner seeks to have the site protected under this classification, he must petition the EMC for a reclassification of Gibbs Creek. Only if the site is reclassified would the Commission's rules for Coastal Shoreline AECs adjacent to ORW be applicable to this site.

Similarly, Petitioner requests additional setbacks for intermittent streams and coastal and 404 wetlands. However, the standards applicable for these programs are set and administered by other agencies. For example, 15A NCAC 02H .1019(6)(b) is a rule adopted by the EMC. DWR is the agency responsible for applying the protections provided by that rule. Similarly, 404 wetlands are managed by the US Army Corps of Engineers on the federal level and the Division of Water Resources at the state level. Both programs allow limited filling of wetlands based on purpose and need, typically in conjunction with mitigation requirements.

It appears from the Request that Petitioner seeks different classifications for the site. However, the Commission affirmatively finds that the current classification of the site provides protections through existing state and federal programs. Petitioner has failed to articulate any basis for asserting that these protections are inadequate. Moreover, the Commission has reviewed the preliminary evaluation provided by DCM and concluded that the existing protection provided to the site is appropriate. As a result, the Commission has decided that it is not necessary to conduct a further detailed review

“to determine if [the requested] AEC designation is appropriate” and to determine a new management plan or use standards for the site. 15A NAC 07H .0503(c).

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For the reasons set forth above, the Commission HEREBY DENIES the request to endorse the nomination of the proposed AEC for this site and proceed with a further detailed review of the site; and FURTHER DENIES Petitioner’s Request to establish Management Objections and Development Standards for the requested AEC designation through rulemaking.

This the 27<sup>th</sup> day of June, 2023.

/s/ Robert R. Emory, Jr.

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Robert R. Emory, Jr., Acting Chair  
COASTAL RESOURCES COMMISSION



CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing FINAL AGENCY

DECISION upon the parties by the methods indicated below:

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angela.willis@ncdenr.gov

This the 27<sup>th</sup> day of June, 2022



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Mary L. Lucasse  
Special Deputy Attorney General & CRC Counsel  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, N. C. 27602



**JOSH STEIN**  
**ATTORNEY GENERAL**

**STATE OF NORTH CAROLINA**  
DEPARTMENT OF JUSTICE

REPLY TO:  
MARY L. LUCASSE  
ENVIRONMENTAL DIVISION  
(919)716-6962  
MLUCASSE@NCDOJ.GOV

June 29, 2023

Louis S. Wetmore  
4152 1st St PL NW  
Hickory NC 28601

Certified Mail, return receipt requested and  
electronically: lou.wetmore@gmail.com.

**Re: Variance Request for Coastal Area Management Act (CAMA) Permit,  
CRC-VR-23-02**

Dear Mr. Wetmore:

At its June 15, 2023, meeting, the Coastal Resources Commission granted Petitioner Wetmore's request for a variance subject to conditions. Specifically, before undertaking the development for which a variance was sought, the location of the proposed development must be at least ninety feet from the existing vegetation line and the combined total of the existing deck and the development authorized by the variance must be less than or equal to 500 square feet. Attached is a copy of the final agency decision signed by the Acting Chair of the Coastal Resources Commission.

If for some reason you do not agree to the variance as issued, you have the right to appeal the Coastal Resources Commission's decision by filing a petition for judicial review in the superior court as provided in N.C.G.S. § 150B-45 within thirty days after receiving the final agency decision. A copy of the judicial review petition must be served on the Coastal Resources Commission's agent for service of process at the following address:

William F. Lane, General Counsel  
N.C. Dept. of Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1641

**Louis Wetmore**

**June 29, 2023**

**Page 2**

If you choose to file a petition for judicial review, I request that you also send me a copy of the petition for judicial review on me at the email address listed in the letterhead. If you have any questions, please feel free to contact me.

Sincerely,



Mary L. Lucasse  
Special Deputy Attorney General and  
Counsel for the Coastal Resources Commission

cc: Robert R. Emory, Commission Acting Chair, electronically  
M. Renee Cahoon, Commission Chair electronically  
Braxton C. Davis, DCM Director, electronically  
Mike Lopazanski, DCM Deputy Director, electronically  
Robb Mairs, electronically  
Angela Willis, electronically  
Christine A. Goebel, Esq. electronically  
Stephen Boyett, Village CAMA LPO, electronically

STATE OF NORTH CAROLINA	)	BEFORE THE NORTH CAROLINA
	)	COASTAL RESOURCES
COUNTY OF BRUNSWICK	)	COMMISSION
	)	<b>CRC-VR-23-02</b>
	)	
	)	
IN THE MATTER OF:	)	
PETITION FOR VARIANCE	)	<b>FINAL AGENCY DECISION</b>
BY: <i>LOUIS S. WETMORE</i>	)	

On March 10, 2023, Petitioner Louis S. Wetmore submitted a request for a variance from the North Carolina Coastal Resources Commission’s (“Commission”) rule set forth at 15A N.C. Admin. Code 7H.0306(a)(5) and 7H.0309(a) to construct a two-story deck waterward side of the pre-project vegetation line. This matter was heard pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A N.C. Admin. Code 07J .0700, *et seq.*, at the regularly scheduled meeting of the Commission held on June 15, 2023, in New Bern, North Carolina. Pursuant to the authority in the Commission’s Internal Operating Procedures, the Chair delegated authority to Commissioner Robert R. Emory, Jr. to serve as Acting Chair during the meeting and for action items arising from that meeting. Pursuant to that authority, Acting Chair Emory signed this final agency decision denying the Request which reflects the action taken by the Commission. During its meeting, Assistant General Counsel Christine A. Goebel, Esq. appeared for Respondent Department of Environmental Quality (“DEQ”), Division of Coastal Management (“DCM”). Petitioner Wetmore appeared on his own behalf.

When reviewing a petition for a variance, the Commission acts in a quasi-judicial capacity. *Riggings Homeowners, Inc. v. Coastal Resources Com’n*, 228 N.C. App. 630, 652, 747 S.E.2d 301, 314 (2013) (Commission has “judicial authority to rule on variance requests . . . ‘reasonably necessary’ to accomplish the Commission’s statutory purpose.”); *see also Application of Rea Const. Co.*, 272 N.C. 715, 718, 158 S.E.2d 887, 890 (1968) (discussing the Board of Adjustment’s

quasi-judicial role in allowing variances for permits not otherwise allowed by ordinance). In its role as judge, the Commission “balance[es] competing policy concerns under CAMA’s statutory framework.” *Riggings*, 228 N.C. App. at 649 n.6, 747 S.E.2d at 312.

Petitioner and Respondent DCM are the parties appearing before the Commission. The parties stipulated to facts and presented stipulated documents to the Commission for its consideration. *See*, N.C. Admin. Code 15A 07J .0702(a). If the parties had been unable to reach agreement on the facts considered necessary to address the variance request, the matter would have been forwarded to the North Carolina Office of Administrative Hearing for a full evidentiary hearing to determine the relevant facts before coming to the Commission. *Id.* 07J .0702(d). As in any court, the parties before the decision-maker are responsible for developing and presenting evidence on which a decision is made. If DCM and Petitioner had entered into other stipulated facts, it is possible that the Commission would have reached a different decision. In this case, the record on which the Commission’s final agency decision was made includes the parties’ stipulations of facts, the stipulated documents provided to the Commission, and the arguments of the parties.

#### **FACTS STIPULATED TO BY PETITIONER AND DCM**

1. The Petitioner is Louis S. Wetmore who is representing himself. DCM is represented by DEQ Assistant General Counsel, Christine Goebel.

2. Louis S. and Julia P. Wetmore own the dwelling and property at 230 South Bald Head Wynd in the Village of Bald Head Island, Brunswick County (“the Site”). They have owned the Site since October 17, 2000, according to a deed recorded at Book 1410 Page 261 of the

Brunswick County Registry, a copy of which was provided to the Commission. In 2010, the Wetmores recorded a deed to change their ownership. A copy was provided to the Commission.

3. The Site is also known as L-1247 BHI Stage 1 as shown on Plat M-84 which was recorded in 1981. The Site's platted dimensions at that time were 100 feet by 200 feet.

4. In 2004, the Commission denied the Wetmores a variance (CRC-VR-04-10) seeking a larger sandbag structure to add an additional three feet in height to the six feet height allowed by the Commission's rules. That request followed Hurricane Charley (2004) which caused erosion and the installation of a sandbag structure at the Site. A copy of the Commission's final order was provided to the Commission. Petitioner indicates that the sandbags were completely covered with sand during the 2004-05 nourishment project and remain covered with sand.

5. The Site is bordered by the Atlantic Ocean<sup>1</sup> to the west, West Bald Head Wynd to the east, 228 West Bald Head Wynd to the north (owned by the Morgans), and 232 West Bald Head Wynd to the south (owned by Daoud Holdings, LLC).

6. The Site and surrounding area are shown on the PowerPoint provided to the Commission which includes ground level and aerial (current and past) photos. Many of the ground level photos were taken by Stephen Boyett, the Local Permit Officer ("LPO") for the Village of Bald Head Island ("Village") on March 15 and May 16, 2023.

7. The Site is located within the Ocean Erodible and the State Ports Areas of Environmental Concern ("AEC"). Pursuant to the Coastal Area Management Act of 1974 ("CAMA") any development on the Site requires a CAMA permit. N.C. Gen. Stat. 113A-118.

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<sup>1</sup> There is an undeveloped lot platted waterward of the Site which is entirely on the public trust beach and is separated from the Site by Sandpiper Lane. That road is not paved or functional and is located within the dunes and on the beach,

8. The Site is within both an AE flood zone with a base flood elevation of nine feet and in a VE zone with a base flood elevation of eleven, according to the Covedo Survey described later in these facts. The survey indicates that the residence is in the area zoned AE with a base flood elevation of nine feet.

9. The Site is approximately 0.25 miles south of the Bald Head Island Terminal Groin, which was installed in 2015. The Site is located on the updrift side of the Terminal Groin within the fillet area where sand collects behind the groin and sediment transport moves towards the groin from the Site. The Site is also within the area of the smaller sand tube groin field which were installed before the Terminal Groin. These structures can be seen on the aerial photos provided to the Commission.

10. At the Site, the currently applicable long term average erosion rate (adopted in 2020) is three feet per year.

11. The erosion measured at the transects in the area of the Site, which were included in the 2020 erosion rate study, as shown on an exhibit provided to the Commission, indicate that the measured erosion (vs. the rate used for the setback block) is between 1.9 feet/year erosion to the south and 1.7 feet/year accretion to the north.

12. The area of the Site is subject to a pre-project vegetation line (formerly known as static vegetation line) based on the location of the vegetation line in 2007 before the large-scale nourishment in the area of the Site. The Village has not been approved by the Commission for a static line exception. Nor has the Village sought the Commission's approval of a beach management plan ("BMP"). Therefore, in the area of the Site, the setback is measured ninety feet landward from the pre-project vegetation line.



13. The location of the pre-project vegetation line is shown on an image from the DCM Shoreline Viewer overlain on aerial photographs which was provided to the Commission. The pre-project vegetation line transects the house, entering about halfway along the north wall and exiting in the southeast corner of the house. The deck is proposed to be developed on the waterward side of the house at the southwest corner, which is waterward of the pre-project vegetation line.

14. The location of the pre-project vegetation line (labeled as the static line) is also shown on the 2022 survey by Walter B. Cavedo, Professional Land Surveyor, a copy of which was provided to the Commission. The ninety-foot setback is also shown on that survey.

15. A stipulated exhibit provided to the Commission shows the shorelines in the area of the Site over time, based on the wet/dry line on historic aerial images determined and digitized by DCM.

16. Petitioner's consultant at Davey Resource Group provided an aerial photograph from April 13, 2023 overlain with tax parcels and a 2003 image. The Commission also reviewed background information from the consultant describing how the drone image was georectified. This is not a sealed survey. It identifies the consultant's estimation of normal low and normal high water and measures the distance from the location of the proposed deck to approximate normal high water at 346 feet.

17. Pursuant to the 2000 Sand Management Plan agreed to by the United States Army Corps of Engineers ("USACE"), the Village, the Town of Oak Island, the Town of Caswell Beach and the State of North Carolina, sand from maintenance dredging of the Wilmington Harbor Shipping Channel is to be placed on the beaches of Bald Head Island two out of three dredging cycles with the third cycle going to Oak Island and Caswell Beach.

18. Since the 2000 Sand Management Plan was agreed to, sand has been placed on Bald Head Island at the Site during the December 2022 USACE's Wilmington Harbor Project, during a 2019 Village project, as part of the 2015 project for the Terminal Groin fillet, during the USACE project in 2013, during a 2009-2010 Village project, and as part of the 2007 USACE project when the static/pre-project vegetation line was set. In 2009-2010 and 2018-2019, which were the third phases in the dredging cycle, the Village self-funded a sand placement project with a private contractor to maintain its beaches and its engineered beach template.

19. According to Mr. Boyett, as stated in his affidavit, the Village is committed to maintaining an engineered beach with periodic sand placements at Bald Head Island pursuant to the 2000 Sand Management Plan with the USACE and supplemental Village-funded sand placements.

20. Mr. Boyett states that the last USACE sand placement occurred in April of 2023 and the next planned sand placement is scheduled for 2025 to be funded by the Village. A copy of Mr. Boyett's affidavit was provided to the Commission.

21. On November 30, 2022, Mr. Boyett, CAMA LPO for the Village, received a CAMA minor permit application from Petitioner, through its authorized agent Coastal Express Building Co., Inc. (Steve Swain). A copy of the application (Permit Application No. 2022-09) was provided to the Commission. The application requested a permit authorizing construction of a deck addition on the southeast corner of the waterward side of the existing house with a platform over the new deck. A copy of these plans was provided to the Commission.

22. The drawing at A-1 shows a new deck ten feet six inches by fourteen feet (147 square feet) and a stairway to the second story platform with a total footprint of thirteen feet eleven

inches by fourteen feet eleven inches (206.6 square feet). The current deck is approximately fourteen feet above mean sea level. The second story platform would be approximately eight feet above the existing deck and would be twenty-two feet above mean sea level with the platform's railings at twenty-five feet above mean sea level.

23. On December 22, 2022, Mr. Boyett extended the CAMA minor permit processing time by an additional twenty-five days. A copy of this letter was provided to the Commission.

24. As part of the CAMA Minor permitting process, the Petitioner sent notice of the project to the two adjacent riparian owners through letters dated September 2, 2022. Certified mail receipts provided to the Commission and tracked on usps.gov indicate delivery of the notice letter to the Morgans on September 10, 2022, and to Daoud Holdings on September 7, 2022.

25. The applicable setback from the pre-project vegetation line for the proposed 147 square foot footprint deck addition with a three feet per year erosion rate is ninety feet (thirty by three feet). Based on the Site plan survey, the pre-project vegetation line bisects the house.

26. On February 16, 2023, Mr. Boyett, the CAMA LPO denied the CAMA Minor Permit as inconsistent with 15A North Carolina Administrative Code ("NCAC") 07H .0309(a) because the proposed deck is not landward of the pre-project vegetation line. The parties agree that the proposed deck is also inconsistent with 15A NCAC 7H .0306 which requires development (other than that allowed in the setback by 7H .0309) to be located landward of the setback measured from the pre-project vegetation line.

27. Petitioner stipulates that the permit application was properly denied based on 15A NCAC 7H .0306(a)(5) and .0309(a).

28. Mr. Boyett visited the Site on May 16, 2023, and confirmed that the existing first floor deck is attached to the house, and that there are approximately 290 square feet of covered oceanside deck, approximately 258 square feet of uncovered oceanside deck, approximately 50 square feet of front (street-side) deck, approximately 171 square feet of grade-level front (street-side) deck, and approximately 312 square feet of parking/driveway grade decking. Photographs provided to the Commission show the existing conditions of the Site.

29. As part of the variance process, Petitioner sent notice of the variance request to the adjacent riparian owners as required by 15A NCAC 07J.0701. Tracking information shows these letters were mailed on March 10, 2023, and were received by the Morgans on March 20, 2023, and by Daoud Holdings on March 13, 2023. DCM has not received any comments from either neighbor.

30. Petitioner is seeking a variance from the Commission from the Commission's rule at 15A NCAC 07H.0306(a)(5) (establishing the setback) and 07H.0309(a) (providing exceptions for certain development proposed waterward of the pre-project vegetation line).

31. Without a variance, a CAMA permit could be issued for "elevated decks not exceeding a footprint of 500 square feet" line per 15A NCAC 07H.0309(a)(3) seaward of the oceanfront setback requirements of NCAC 07H .0306(a) "if all other provisions of this Subchapter and other state and local regulations are met." 15A NCAC 07H.0309(a ).

**EXHIBITS PROVIDED TO THE COMMISSION BY PETITIONER AND DC**

1. 2000 Wetmore Deed 1410/261
2. 2010 Wetmore Deed
3. Plat Map M-84
4. 2004 Sandbag Variance Final Order
5. 2020 erosion rate study transect image
6. Pre-project vegetation line/Static line image

7. 2022 Cavedo Survey
8. Historic shorelines images
9. Petitioner's Exhibit created on 2023 photo with overlain lines
10. Boyett affidavit
11. Application materials
12. December 22, 2022 extension letter from LPO
13. Notice letters to adjacent riparian owners and tracking information
14. February 16, 2022 denial letter
15. Notice of variance provided to adjacent riparian property owners with tracking information
16. PowerPoint with ground and aerial photos of the Site including historic shoreline imagery

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and the subject matter.
2. All notices for the proceeding were adequate and proper.
3. As set forth in detail below, Petitioner has met the requirements in N.C. Gen. Stat. § 113A-120.1(a) and 15 NCAC 07J .0703(f) which must be found before a variance can be granted.

**a. Strict application of the rule will cause unnecessary hardships.**

The Commission affirmatively finds that strict application of the Commission's rules at 15A NCAC 07H.0306(a)(5) and 7H.0309(a) would cause unnecessary hardships. The purpose of both these rules is to protect life and property by limiting development based on erosion rates at a site and the vegetation line. Locating development away from shoreline erosion increases the likelihood of stability and decreases the likelihood of injury to persons or property.

Petitioner seeks a variance from the Commission's oceanfront setback rules, which prohibit development waterward of the pre-project vegetation line, unless the locality has a BMP (which measures the setback from an existing vegetation line). In this case, the pre-project vegetation line, which bisects the house, represents where the vegetation line was in 2007. Before the initial large-scale nourishment project at the Site in 2007, Petitioner used sandbags to protect his house when

it was imminently threatened around 2004. Erosion continued at the Site, as seen on historic aerial photos, until the 2015-16 development of the terminal groin. The Site is located within the fillet area updrift of the terminal groin. The terminal groin project, buried sandbags, and subsequent nourishment cycles have helped to grow the dune at the Site.

Since 2007, the Village has undergone regularly scheduled large-scale nourishment in the area of the Site and sand dunes between the Petitioner's house and the ocean have grown significantly. Because the Site conditions have changed considerable since the pre-project, static vegetation line was established in 2007, strict application of this rule will cause the Petitioner unnecessary hardship.

In addition, the Commission has recently adopted rules allowing approval of BMPs. 15A NCAC 07J .1200. These rules would allow the proposed development to be permitted under certain conditions. However, as of the date of this variance request, the Village has not requested the Commission's approval of a BMP. Consequently, any development proposed by the Petitioner must conform to the outdated 2007 pre-project vegetation line. As shown by the stipulated facts and exhibits, strict application of the rule would cause Petitioner hardship because the Village has not requested approval of a BMP based on current conditions at the Site even though it has an ongoing commitment to renourishing the beach. This hardship is unnecessary insofar as property and life can be protected by conditioning approval of any variance to conform to Commission requirements based on current conditions at the Site. For these reasons, the Commission affirmatively finds that Petitioner has met the first factor without which a variance cannot be granted.

**b. The hardship results from conditions peculiar to Petitioner's property.**

The Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the property. Specifically, the Village in which the proposed development is located has not requested approval of a BMP despite their long-standing commitment to maintaining the beach through nourishment projects. If approved, a BMP could provide an updated setback from an existing vegetation line instead of relying on the outdated 2007 pre-project vegetation line. The conditions at the Site include significant increases to the existing dune which is highly desirable for protection against high tides and/or hurricanes. The 2007 pre-project vegetation line in place does not reflect the dune accumulation.

In addition, the construction of the terminal groin after the 2007 pre-project vegetation line was established and the Site's location up-drift of the terminal groin within the fillet area has resulted in significant protective changes to conditions of the Site which have been maintained through renourishment and which are more protective than the 2007 pre-project vegetation line. Accordingly, the Commission affirmatively finds that Petitioner has demonstrated that any resulting hardship are from these conditions which are peculiar to the property and therefore, Petitioner has met the second factor required for the grant of his variance request.

**c. Petitioner has demonstrated that the hardship does not result from actions taken by Petitioner.**

The Commission affirmatively holds that Petitioner has demonstrated that the hardship does not result from his actions. Specifically, Petitioner has demonstrated that the hardship arose from significant growth of dunes following installation of the terminal groin by the Village. Furthermore, the local government, not the Petitioner, has the ability to seek the Commission's approval for a proposed BMP. Petitioner is not responsible for creating and maintaining a BMP

which, if approved, could result in an updated vegetation line from which to measure any setbacks. With an approved BMP, the Village could establish both an updated vegetation line and create a detailed program outlining shoreline maintenance to combat erosion and potentially allow approval of the proposed development based on current conditions at the Site.

For these reasons, the Commission affirmatively finds that Petitioner has demonstrated that he has met the third factor required for a variance.

**d. Petitioner has demonstrated that the requested variance is consistent with the spirit, purpose, and intent of the Commission's rules, will secure public safety and welfare, and will preserve substantial justice.**

The Petitioner has demonstrated (a) that the requested variance is consistent with the spirit, purpose, and intent of the Commission's rules, (b) that it will secure public safety and welfare, and (c) that it will preserve substantial justice. Again, the principal purpose of the Commission's rules from which a variance is sought is to protect life and property. *See* 15A NCAC 07H.0306(a)(5) and .0309(a). This purpose can be met by conditioning the proposed development to be at least ninety feet from an existing vegetation line, and by limiting the square footage of both the uncovered portion of the deck and the proposed new deck to a total of 500 square feet. The Commission has granted the request subject to these conditions.

The Commission's rules have provided an oceanfront erosion setback since 1979, and while most structures are required to meet a setback landward of the vegetation line (in this case, ninety feet), the Commission has made exceptions to allow limited development within the setback area (see 07H .0309(a)). However, where there has been large-scale nourishment and a pre-project vegetation line exists, the Commission only allows use of the vegetation line where the local government has made a commitment to maintaining the beach through a Beach Management Plan



(or formerly with a Static Line Exception approval from the Commission). In this case, the Village has been regularly funding nourishment projects in intervening years between USACE-funded projects and has made commitments for beach maintenance in connection with the terminal groin project. These commitments are a unique requirement under the terminal groin provisions in the Coastal Area Management Act at N.C. Gen. Stat. §113A-115.1. While the Village has not sought approval of a Town-wide BMP, it is currently under similar obligations associated with the terminal groin CAMA permit to maintain the beach fillet associated with the terminal groin in this location.

The terminal groin and fillet project and subsequent nourishment have allowed the dune and vegetation line at the Site to expand upward and waterward, and there appears to be at least ninety feet between the vegetation line and the location of the proposed deck. Under the Commission's rules, if the Village submitted a BMP and it were approved, it is likely that Petitioner would be allowed to build up to a 500 square feet footprint (allowing an upper deck) under the exceptions allowed by 7H .0309. Because the Village has demonstrated its commitment to maintaining the terminal groin project, allowing decking limited to 500 square feet located at least ninety feet from the vegetation line is consistent with the spirit, purpose, and intent of the Commission's setback rules. Thus, the Commission affirmatively holds that Petitioner's proposed development is consistent with the spirit, purpose, and intent of the Commission's rule as long as the conditions of this decision are met.

The second assessment is whether the variance proposed by the Petitioner will impact public safety and welfare. Petitioner submits, and the Commission agrees that the variance sought will secure public safety and welfare because the likelihood that the deck will become imminently

threatened remains low as long as the terminal groin and fillet are maintained. Granting a variance for up to a 500 square feet footprint deck located at least ninety feet from the vegetation line is consistent with protecting public safety and welfare.

Finally, the Commission agrees that granting the Town’s requested variance will preserve substantial justice because the likelihood of the deck (up to a 500 square feet of footprint) becoming threatened is low if the terminal groin and fillet are maintained.

\* \* \* \* \*

For these reasons, the Commission affirmatively finds that Petitioner has met the fourth factor required by N.C. Gen. Stat. § 113A-120.1(a) as conditioned by the variance.

**ORDER**

THEREFORE, the requested variance from 15A N.C. Admin. Code 7H.0306(a)(5) and 7H.0309(a) is GRANTED subject to the following CONDITIONS as allowed by N.C. Gen. Stat. § 113A-120.1(b):

- (1) The proposed structure must be located at least ninety feet landward of the existing vegetation line and;
- (2) The total combined square footage of the existing uncovered deck and the proposed structure authorized through this variance must not exceed 500 square feet.

The granting of this variance does not relieve Petitioner of the responsibility for obtaining any other required permits from the proper permitting authority.

This the 29<sup>th</sup> day of June 2023.

..  
/s/ Robert R. Emory, Jr.  
Robert R. Emory, Jr. Acting Chair  
Coastal Resources Commission

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the foregoing FINAL AGENCY DECISION upon the parties by the methods indicated below:

**Method of Service**

Louis S. Wetmore  
4152 1st St PL NW  
Hickory NC 28601

Certified Mail, return receipt requested and electronically:  
lou.wetmore@gmail.com.

Christine A. Goebel  
Assistant General Counsel  
NC Department of Environmental Quality  
217 West Jones Street  
Raleigh, NC 27603

Electronically:  
Christine.goebel@deq.nc.gov

Braxton C. Davis, DCM Director  
Mike Lopazanski, DCM Deputy Director  
Robb Mairs, DCM LPO Minor Permits Coordinator  
Angela Willis, Administrative Assistant  
Division of Coastal Management  
400 Commerce Ave.  
Morehead City, NC 28557

Electronically:  
Braxton.Davis@deq.nc.gov  
Mike.Lopazanski@deq.nc.gov  
Robb.Mairs@deq.nc.gov  
Angela.Willis@deq.nc.gov

Stephen Boyett, CAMA LPO  
Village of Bald Head Island  
106 Lighthouse Wynd  
PO Box 3009  
Bald Head Island, NC 28461

Electronically: sboyett@villagebhi.org

This the 29<sup>th</sup> day of June, 2023.



---

Mary L. Lucasse  
Special Deputy Attorney General and Commission Counsel  
N.C. Department of Justice  
P.O. Box 629  
Raleigh, N. C. 27602



# North Carolina Coastal Resources Commission

June 29, 2023

Ms. Jenny Owens  
Chief, Environmental Resources Section  
U.S. Army Corps of Engineers  
69 Darlington Ave.  
Wilmington, NC 28403

**Re: Consistency concurrence Concerning U.S. Army Corps of  
Engineers Proposed Wrightsville Beach, Coastal Storm Risk  
Management, Emergency Repair (DCM No 2023015)**

ROY COOPER  
GOVERNOR

M. RENEE CAHOON  
CHAIR

LARRY BALDWIN

NEAL W. ANDREW  
1<sup>ST</sup> VICE CHAIR

D.R. BRYAN, JR.

BOB EMORY

ROBERT HIGH

SHEILA HOLMAN  
2<sup>ND</sup> VICE CHAIR

DOUG MEDLIN

PHIL NORRIS

LAUREN SALTER

W. EARL SMITH

ALEXANDER D. TURNELL

ANGIE WILLS

BRAXTON C. DAVIS  
EXECUTIVE SECRETARY

Dear Ms. Owens:

At its April 26, 2023 meeting, the North Carolina Coastal Resources Commission authorized me to send this letter informing the U.S. Army Corps of Engineers (USACE) that the Commission fully supports the letter to you dated April 14, 2023 from Daniel Govoni, Federal Consistency Coordinator, NC Division of Coastal Management (DCM), NC Department of Environmental Quality. I have attached that letter for your convenience.

In short, the Commission fully supports the continued use of sand from within Masonboro Inlet and Carolina Beach Inlet (sources which have been used since the 1960s) for congressionally authorized beach renourishment and/or navigation dredging projects at Wrightsville Beach and Carolina Beach.

Thank you for your consideration of the Commission's position on this matter.

Sincerely,

M. Renee Cahoon  
Chair Coastal Resources Commission

cc: Braxton C. Davis, DCM Director  
Mike Lopazanski, DCM Deputy Director,  
Daniel Govoni, DCM Federal Consistency Coordinator  
Neal W. Andrew, Commissioner and 1<sup>st</sup> Vice Chair



Division of Coastal Management  
Department of Environmental Quality  
400 Commerce Ave., Morehead City, North Carolina 28557  
Phone 252-808-2808 FAX 919-733-1495

ROY COOPER

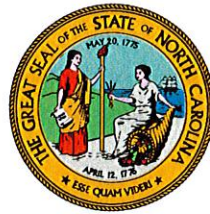
Governor

ELIZABETH S. BISER

Secretary

BRAXTON DAVIS

Director



NORTH CAROLINA  
Environmental Quality

April 14, 2023

Ms. Jenny Owens  
Chief, Environmental Resources Section  
U.S. Army Corps of Engineers  
69 Darlington Ave.  
Wilmington, NC 28403

SUBJECT: Consistency Concurrence Concerning U.S. Army Corps of Engineers (Corps)  
Proposed Wrightsville Beach, Coastal Storm Risk Management (CSRSM), Emergency  
Repair (DCM#2023015)

Dear Ms. Owens:

The Division of Coastal Management (DCM) received the consistency submission from the U.S. Army Corps of Engineers, Wilmington District (Corps) on January 31, 2023, regarding a one-time Coastal Storm Risk Management (CSRSM) emergency repair of Wrightsville Beach. The proposal includes placing beach quality sand on Wrightsville Beach from portions of the offshore borrow areas C and D. Subject to conditions outlined below, DCM finds that this one-time emergency proposal is consistent, to the maximum extent practicable, with the relevant enforceable polices of North Carolina's certified coastal management program. However, based on anticipated and potential environmental impacts associated with the proposed offshore borrow sites in comparison with the long-term utilization of inlet-based sand resources, DCM strongly encourages the Corps to work with Congress and the U.S. Department of Interior to find a solution to the current policy impasse over sand resources within Coastal Barrier Resource Units designated in accordance with the federal Coastal Barrier Resources Act (16 U.S.C. §3501 et seq).

The Corps has successfully utilized sand from within Masonboro Inlet since 1965 during congressionally authorized beach renourishment and navigation dredging projects at Wrightsville Beach. However, a 2021 interpretation by the U.S. Department of Interior Office of the Solicitor concluded that removal of sand from within a Coastal Barrier Resources Unit could not be used for sand placement projects outside of the same Unit. Both Masonboro and Carolina Beach Inlets are encompassed by Coastal Barrier Resource Units designated by the U.S. Fish and Wildlife Service. As a result, the Corps prepared a Draft Environmental Assessment (DEA) evaluating the use of offshore borrow areas (C and D) for the proposed project, which included surveys for potential cultural resources and hard bottom fisheries habitats. Geophysical surveys identified the potential for thousands of tires and other magnetic anomalies (~400,000 tires and 1700 magnetic anomalies) within borrow area C and D, which are the likely remnants of approximately 650,000



North Carolina Department of Environmental Quality | Division of Coastal Management  
Morehead City Office | 400 Commerce Avenue | Morehead City, North Carolina 28557  
252.808.2808

tires and other materials deployed in the area by the North Carolina Division of Marine Fisheries (NC DMF) in the 1970s and 1980s to create a system of artificial reefs in North Carolina's coastal waters.

The DEA evaluated three alternatives, including: 1) no action, 2) (proposed action) emergency repair using offshore borrow areas, and (3) emergency repair using the Masonboro Inlet borrow area. The Corps proposed action is to use borrow area C and D with various dredge types for the emergency repair. Dredge types include hopper dredges, hydraulic cutterhead dredges or mechanical dredges. Depending on the dredge plant employed, the Corps proposes several measures to avoid and minimize the placement of tires or other borrow area debris on the beach. However, Option 2 was only selected because of the recent policy interpretation and not because it was the least costly and least environmentally damaging alternative.

While the exclusion of CBRA units from dredging for federal beach nourishment projects may result in some limited habitat protection benefits for important shorebird species and inlet benthic fauna, there is no such restriction on navigation dredging in these same areas, and in fact all beach compatible sand from navigation dredging must be beneficially used within the beach and inlet complex under State law in North Carolina (see NC Dredge and Fill Act, N.C.G.S. 113-229(h1); and rules of the NC Coastal Resources Commission at 15A NCAC 07M.1101-1102). In contrast, the use of offshore borrow areas will increase the total area of bottom disturbances, risks of North Atlantic Right Whale, sturgeon, and sea turtle interactions, impacts to marine macroinvertebrates, and the number of dredging days (and likelihood of requests to work within seasonal moratoria for sea turtles, red knots and other species). The proposed offshore borrow sites will also increase risks of incompatible material introduction on Wrightsville Beach, including rocks, elevated shell content, and small tire debris or other materials. The rate of recharge of the proposed offshore borrow sites is also unknown. Finally, there are unknown implications for the introduction of 1,000,000 cubic yards of sand into this beach and inlet system, which includes the adjacent Masonboro Island National Estuarine Research Reserve (NERR). Masonboro Island NERR has periodically received sand during Corps dredging operations in Masonboro Inlet to offset impacts of the jetty system. If the Corps moves to offshore borrow sites in this area, there are unknown long-term implications for future sand placement on the Masonboro Island NERR and for the stability of the southern jetty if the inlet migrates in that direction following the discontinuation of dredging. In response to an early scoping call, DCM requested that the Corps address this concern in the draft EA, but the Corps has not provided any specific analysis on this issue. There are also unknown implications for recreationally and commercially important navigation through Masonboro Inlet if large volumes of sand migrate into this historically managed inlet channel and require more frequent navigation dredging (with associated environmental impacts).

North Carolina's coastal zone management program consists of, but is not limited to, the Coastal Area Management Act, the State's Dredge and Fill Law, Chapter 7 of Title 15A of North Carolina's Administrative Code, and the land use plan of the County and/or local municipality in which the proposed project is located. It is the objective of DCM to manage the State's coastal resources to ensure that proposed Federal activities would be compatible with safeguarding and perpetuating the biological, social, economic, and aesthetic values of the State's coastal waters.



DCM circulated this proposal to the NC DMF, the North Carolina Wildlife Resources Commission (NC WRC), New Hanover County, and published a public notice for comments. DMF, WRC and New Hanover County all expressed concerns regarding the use of borrow area C and D and the possibility of debris being placed on the beach (see attached comment letters).

DCM has reviewed the submitted information pursuant to the management objectives and enforceable policies of Subchapters 7H and 7M of Chapter 7 in Title 15A of the North Carolina Administrative Code and concurs the proposed one-time activity is consistent, to the maximum extent practicable, with the relevant enforceable policies of North Carolina's certified coastal management program, subject to the following conditions:

- 1) All mitigation and/or monitoring commitments made in the federal consistency determination and draft environmental assessment shall be implemented.
- 2) Only beach compatible fill shall be placed on the beach or dune system. Beach compatible fill must be sand that is similar to the native beach in the vicinity of the site that has not been affected by prior sand placement activity. Beach compatible fill shall consist of sand solely of natural sediment and shell material, containing no construction debris, toxic material, foreign matter, or large amounts of granular material, gravel, or rock. The beach fill must be similar grain size distribution (sand grain frequency, mean and median grain size and sorting coefficient) to the native material in the fill area per 15A NCAC 07H.0312.
- 3) The Corps shall ensure that an inspector is present during all beach fill activities and immediately report to the DCM in the event any non-compatible material is encountered, particularly artificial reef material smaller than can be sieved during screening operations. During fill operations, material placed on the beach shall be inspected daily to ensure compatibility. If during inspections non-beach compatible material, including tire debris, is placed on the beach, all work shall stop immediately and DCM shall be notified to assist in determining the appropriate plan of action.
- 4) The Corps shall grant access for DCM representatives to inspect the project daily.
- 5) The dredge should avoid areas of known debris in the borrow area and cease operations and move away from an area if large amounts of debris, rock or other non-compatible materials are found.
- 6) Records should be kept regarding when the debris containers are emptied. If debris, rock or other incompatible materials are found, a map showing the areas dredged and relative amounts of debris resulting from these areas should be developed and distributed to DCM.
- 7) In order to avoid and minimize interactions with sea turtles and Atlantic sturgeon, and because species observers may have difficulty identifying species due to the use of debris screens, relocation trawling shall be conducted along with dredging activity.



- 8) In order to protect threatened and endangered species and to minimize adverse impacts to offshore, nearshore, intertidal and beach resources, no excavation or beach nourishment activities, including mobilization and demobilization, remediation measures, or the use of any heavy equipment shall occur on or waterward of the frontal dune (on the beach) from April 1 to November 15 of any year without prior approval from the DCM, in consultation with the appropriate resource agencies.

Prior to the initiation of the activities described, the applicant should obtain any additional State approvals or authorizations. Should the proposed action be modified, a revised consistency determination shall be required. This might take the form of either a supplemental consistency determination pursuant to 15 CFR 930.46, or a new consistency determination pursuant to 15 CFR 930.36. Likewise, if further project assessments reveal environmental effects not previously considered by the proposed development, a supplemental consistency certification may be required. Please note, the proposed action is described as a one-time, emergency repair of Wrightsville Beach utilizing offshore borrow sites. DCM's consistency certification only applies to this single project - any future proposed use of offshore sand sources for Wrightsville Beach renourishment projects will require additional federal consistency review by the State.

If you have any questions, please contact me at (252) 808-2808. Thank you for your consideration of the North Carolina Coastal Management Program.

Sincerely,



Daniel Govoni  
Federal Consistency Coordinator

Cc: Braxton Davis, Director, NC Division of Coastal Management, NC DEQ  
Bill Lane, Deputy Secretary for Policy and Legal Affairs/General Counsel, NC DEQ  
James McClesley, Director, North Carolina Washington Office



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# North Carolina Coastal Resources Commission

July 21, 2023

By email to: [Public.Comment@ncrec.gov](mailto:Public.Comment@ncrec.gov)

North Carolina Real Estate Commission  
PO Box 17100  
Raleigh, NC 27619-7100

## Re: Comments regarding proposed changes to Disclosure Form

Dear Members of the North Carolina Real Estate Commission:

On behalf of the North Carolina Coastal Resources Commission (CRC), I am writing to comment on the proposed changes to the State of North Carolina Residential Property and Owners Association Disclosure Statement (Disclosure Statement).

As you may know, the CRC has responsibility for the Coastal Area Management Act of 1974 (CAMA) and adopts administrative rules to implement the state's coastal program in the twenty coastal counties. CAMA permits are required for development along our state's coast, and for properties on or near the Atlantic Ocean. The CRC has adopted oceanfront erosion setbacks designed to locate new development landward of ocean hazards including erosion and coastal flooding, both of which have been exacerbated by sea level rise.

At the CRC's April 25-26, 2023 meeting, we heard a presentation about the December 1, 2022 Petition for Rulemaking to the NC Real Estate Commission (Commission) from the Southern Environmental Law Center on behalf of five non-profit organization clients seeking to add five new questions to the disclosure statement regarding a property's flood history and flood risk. We were also presented information about past attempts of members of the General Assembly to add information to the disclosure statement regarding coastal hazards, and information about how other coastal states require disclosure of coastal hazards.

The CRC is aware that your commission and North Carolina Sea Grant have jointly created an educational brochure titled "Purchasing Coastal Real Estate in North Carolina" which includes information on both flooding and coastal hazards. See [CoastalBrochure.pdf](https://www.ncrec.gov/Publications/Pubs) at <https://www.ncrec.gov/Publications/Pubs> (last checked July 12, 2023) However, as neither the seller nor the real estate agent is required to provide the brochure to potential purchasers, and because the brochure provides general information but not information about coastal erosion and shoreline stabilization projects at a specific property address, the CRC considers the proposed changes to the Disclosure Statement an important next step in providing necessary information to allow potential buyers make educated decisions when purchasing property.

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July 21, 2023

Members of the NC Real Estate Commission

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In general, the CRC supports the recent rule amendment which requires the Disclosure Statement to include questions regarding the flooding history of the property, as well as your current effort to update the Disclosure Statement in light of the new rules. However, we suggest some additional revisions to the Disclosure Statement for clarity, and efficiency. In addition, to the extent allowed by the revised 21 NCAC 58A .0114, we also suggest broadening the required disclosures to address some issues specifically related to coastal property. Attached to this letter are the CRC's proposed revised questions F4 through F12 with deletions represented by striking through the language and additions shown by underlining the proposed new language. The reasons for these suggested revisions are described in the following paragraphs:

**Section F4:** The CRC requests that this section be changed to delete the three sentences included after the initial question. The first and last sentences are redundant as these questions are already included in the draft Disclosure Statement in sections F7 and F9. The CRC suggests that the Note be moved to section F7 which relates to the existing flood insurance policy.

**Section F5:** The CRC requests that this section be changed to add the words "shoreline erosion" and "a hurricane" in the first sentence as a coastal storm's surge or more generally a hurricane may cause erosion damaging the property's shoreline. The CRC notes that the second sentence relating to an insurance claim is redundant as it is also addressed in section F6 of the Disclosure Statement. Therefore, this sentence should be deleted from this section. In addition, the sentences regarding FEMA and federal disaster assistance (including the NOTE) are already covered in section F8 and should be deleted in this section as redundant.

**Section F6:** No proposed changes.

**Section F7:** The CRC suggests that the Note in Section F4 be moved to this section as it relates to flood insurance.

**Section F8:** The CRC suggests that the word "flood" be deleted from this section as assistance under FEMA and other federal programs may be available for other types of property damages (for example, to replace roofs blown off or destroyed during a hurricane).

**Section F9:** No proposed changes.

**Section F10:** The CRC proposes that the Commission add a new section to the Disclosure Statement to require disclosure of whether the existing structure conforms to the CRC's setback rules. A nonconforming structure cannot be replaced if destroyed and any new development on the property that does not meet the CRC's rules can only be permitted if a variance is granted by the CRC.

**Section F11:** The CRC proposes that the Commission add a new section to the Disclosure Statement to require disclosure of the long-term annual erosion rate for shoreline property. This information is found on the Division of Coastal Management's website: <https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=f5e463a929ed430095e0a17ff803e156> or by calling the DCM field representative assigned to the area in which the property is located. In addition, the CRC suggests that the Commission consider adding this statement to explain the significance of erosion on a coastal property: "NOTE: The Coastal Resources Commission's Rule 15A NCAC 7H .0306(g) addresses when a "structure threatened by erosion shall be relocated or dismantled." The Division of Coastal Management can be contacted for specific information on this issue.

The CRC also recommends adding the following note: "If the property is located in one of North Carolina's twenty coastal counties, it may be subject to the Coastal Area Management Act of 1974 (CAMA) and the Coastal Resources Commission's rules, and a CAMA permit may be required for repairs or improvements. Contact the Division of Coastal Management or the local government with permit authority over construction adjacent to the shoreline for more information."

**Section F12:** The CRC proposes that the Commission add a new section to the Disclosure Statement requiring a seller to provide information on any prior beach nourishment projects, dune construction, beach bulldozing supporting, protecting, or otherwise affecting the property, and any erosion control structures installed on the property (sandbags, geotubes, bulkheads, seawalls, groins, revetments, or similar structures) and the date any installed erosion control structure must be removed in accordance with any local, state, or federal permits.

\* \* \* \* \*

The CRC is aware that disclosure statements in South Carolina and Texas already include coastal hazard disclosure requirements. We are respectfully requesting that you consider making the revisions suggested above including adding the questions relating to coastal hazards.

Sincerely,



Renee Cahoon, Chair  
North Carolina Coastal Resources Commission

cc: Braxton Davis, Director of Division of Coastal Management  
Members of the North Carolina Coastal Resources Commission

## F. ENVIRONMENTAL / FLOODING

### Revised Questions F4 through F12

F4. Is the property located in a federally-designated flood hazard area?

~~If you answered yes, is there a current flood insurance policy covering the property?~~

~~[NOTE: An existing flood insurance policy may be assignable to a buyer at a lesser premium than a new policy.]~~

~~If you answered yes, is there a flood elevation certificate for the property?~~

F5. To your knowledge, has the property experienced any damage due to shoreline erosion, flooding, water seepage, or pooled water attributable to a natural event such as a hurricane, heavy rainfall, coastal storm surge, tidal inundation, or river overflow?

~~If you answered yes, have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program?~~

~~If you answered yes, have you received assistance from FEMA or any other federal disaster flood assistance for flood damage to the property?~~

~~[Note: For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance when required can result in an owner being ineligible for future assistance.]~~

F6. Have you ever filed a claim for flood damage to the property with any insurance provider, including the National Flood Insurance Program? If yes, provide the amount received: \_\_\_\_\_

F7. Is there current flood insurance on the property? If yes, provide the annual premium amount: \_\_\_\_\_

~~[NOTE: An existing flood insurance policy may be assignable to a buyer at a lesser premium than a new policy.]~~

F8. Have you or any previous owner received assistance from FEMA, the US Small Business Administration, or any other federal disaster flood assistance for flood damage to the property?

[NOTE: For properties that have received disaster assistance, the requirement to obtain flood insurance passes down to all future owners. Failure to obtain flood insurance can result in an owner being ineligible for future assistance.]

F9. Is there a FEMA elevation certificate for the property?

F10 Does the existing structure on the property conform to the setbacks established by the Coastal Area Management Act of 1974 and the rules of the Coastal Resources Commission?

NOTE: If the property is located in one of North Carolina's twenty coastal counties, it may be subject to the Coastal Area Management Act of 1974 (CAMA) and the Coastal

## F. ENVIRONMENTAL / FLOODING

### Revised Questions F4 through F12

Resources Commission's rules, and a CAMA permit may be required for repairs or improvements. Contact the Division of Coastal Management or the local government with permit authority over construction adjacent to the shoreline for more information. A nonconforming structure cannot be replaced if destroyed and any new development on the property that does not meet the CRC's setback rules can only be permitted if a variance is granted by the CRC.

F11 What is the current long-term annual erosion rate calculated by the North Carolina Division of Coastal Management for the property? \_\_\_\_\_ feet per year

NOTE: The Coastal Resources Commission's Rule 15A NCAC 7H .0306(g) addresses when a "structure threatened by erosion shall be relocated or dismantled." The Division of Coastal Management can be contacted for specific information on this issue.

F12 Are there any prior beach nourishment projects, dune construction, beach bulldozing supporting, protecting, or otherwise affecting the property, and any erosion control structures installed on the property (sandbags, geotubes, bulkheads, seawalls, groins, revetments, or similar structures)? If so, what is the date any installed erosion control structure must be removed in accordance with any local, state, or federal permits?