

NC COASTAL RESOURCES COMMISSION

July 12-13, 2016

NOAA/NCNERR Administration Building

Beaufort, NC

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

Tuesday, July 12th

- 10:00 COASTAL RESOURCES ADVISORY COUNCIL MEETING (TBD)** Debbie Smith, Chair
- 1:15 COMMISSION CALL TO ORDER* (Auditorium)** Frank Gorham, Chair
- Roll Call
 - Chair's Comments
- 1:30 VARIANCES**
- Variance Procedures Overview Mary Lucasse
 - Engel - (*CRC-VR-16-01*), Oak Island, Development seaward of vegetation line Tara MacPherson, Christine Goebel
 - Davenport - (*CRC-VR-16-02*), Oak Island, Development seaward of vegetation line Tara MacPherson, Christine Goebel
 - Wade - (*CRC-VR-16-03*), Snead's Ferry, 30' buffer Tara MacPherson, Christine Goebel
 - Tentative - Picha - (*CRC-VR-16-04*), Ocean Isle Beach, Sandbags Sean Farrell, Christine Goebel
- 3:30 BREAK**
- 3:40 COASTAL RESERVE**
- 15A NCAC 70 NC Coastal Reserve – Legislative Periodic Review of Existing Rules (*CRC-16-27*) Rebecca Ellin
- 4:00 ACTION ITEMS** Frank Gorham, Chair
- Approve Fiscal Analysis 15A NCAC 7H .0306 Grandfathering Provisions for Multi-Family and Commercial Oceanfront Structures (*CRC-16-28*) Tancred Miller
 - Adopt 15A NCAC 7H .1801; 7H .1802; 7H .1804; 7H .1805 Beach Bulldozing General Permit and 15A NCAC 7H .2505; Emergency General Permit
 - Public Comments and Adoption of 15A NCAC 7H .2704; 7H .2705; 7H .2701 – Daniel Govoni Marsh Sill General Permit (*CRC-16-31*)
 - Adopt 15A NCAC 7H .0205 Coastal Wetlands
- 4:30 CLOSED SESSION**
- Nies v. Emerald Isle - (409PA15) Amicus Brief regarding public trust rights Mary Lucasse
Christine Goebel
- 5:00 RECESS**

Wednesday, July 13th

- 9:00 COMMISSION CALL TO ORDER* (TBD)** Frank Gorham, Chair
- Roll Call
 - Chair's Comments
 - Approval of May10-11, 2016 Meeting Minutes Frank Gorham, Chair
 - Executive Secretary's Report Braxton Davis
 - CRAC Report Debbie Smith, Chair
- 9:30 CRC SCIENCE PANEL**
- CRC Science Panel – Inlet Hazard Areas Scope of Work (*CRC-16-29*) Ken Richardson

- 10:00 COASTAL ENVIRONMENT**
- Groundwater Resources and Issues in Coastal NC: Challenges and Solutions
- Dr. Richard K. Spruill,
East Carolina University
- 11:00 BREAK**
- 11:15 NC PORTS**
- NC Ports Authority
- Paul Cozza,
Chief Executive Officer,
NC Ports Authority
- 12:15 LUNCH**
- 1:45 PUBLIC INPUT AND COMMENT**
- Frank Gorham, Chair
- 2:00 CRC RULE DEVELOPMENT**
- Proposed Amendments to Sandbag Rules (*CRC-16-30*)
 - Commission Discussion
- Mike Lopazanski
- 3:00 OLD/NEW BUSINESS**
- 2017 Meeting Schedule
- Frank Gorham, Chair
- 3:15 ADJOURN**

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

** Times indicated are only for guidance and will change. The Commission will proceed through the agenda until completed.*



N.C. Division of Coastal Management

www.nccoastalmanagement.net

Next Meeting: September 13-14, 2016; Wilmington



PAT McCrory
Governor

DONALD R. VAN DER VAART
Secretary

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant General Counsel

DATE: June 28, 2016 (for the July 12-13, 2016 CRC Meeting)

RE: **Variance Request by Mark and Kellyanne Engel (CRC-VR-16-01)**

Petitioners Mark and Kellyanne Engel (“Petitioners”) own an oceanfront lot on the west end of the Town of Oak Island. The property is located within the Commission’s Ocean Hazard Area of Environmental Concern (“AEC”). On January 21, 2016, Petitioners, through counsel, filed a CAMA Minor Permit application in order to deck over a hole in an oceanfront deck which used have a swimming pool in it until the pool was undermined and removed. On February 12, 2016, the Town of Oak Island’s Coastal Area Management Act (“CAMA”) Local Permitting Officer (“LPO”) denied Petitioner’s CAMA Minor Permit application as it was inconsistent with the applicable setback rules, where the remaining pool deck is currently waterward of the vegetation line. On March 10, 2016, Petitioners, though counsel, filed this variance petition in order to have the oceanfront setback rules varied so they could deck over the hole in the deck, as proposed in their permit application.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Gary Lawrence, Petitioners’ Attorney, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Donna Coleman, Town of Oak Island CAMA LPO, electronically

RELEVANT STATUTES OR RULES**APPENDIX A****15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. **Ocean hazard areas include beaches**, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, **the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them.** The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

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

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

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 60; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>; and (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

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

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

(3) In no case shall a development line be created or established below the mean high water line.

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

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

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

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

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

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

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

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

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

- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements

STIPULATED FACTS**ATTACHMENT B**

1. Petitioners Mark and Kellyanne Engel (“Petitioners”) are the owners of an oceanfront lot and home, located at 6601 West Beach Drive in Oak Island, Brunswick County, North Carolina (the “Site”). The deed for the sale of the Site was recorded on April 17, 2014 in the Brunswick County Registry, a copy of which is attached as a Stipulated Exhibit. This deed transferred Lot 5 and the eastern half of Lot 6, Block 135 of King’s Lynn of Long Beach (now Oak Is.), as shown on Map Book 3, Page 113.
2. Between 2014 when Petitioners purchased the Site and 1974, there are six deeds transferring the Site which all describe the property as Lot 5 and the eastern half of Lot 6, Block 135 of King’s Lynn of Long Beach as shown on Map Book 3, Page 113 of the Brunswick County registry. See deeds recorded at deed 3518/1382 in 2014, deed 1754/397 in 2003, deed 562/893 in 1984, deed 369/44 in 1977, and deed 317/514 in 1974. Copies of these deeds are attached. None of these deeds purport to transfer riparian rights.
3. In the deed dated July 1, 1960 and recorded at Deed Book 150, Page 737 of the Brunswick County Registry, a copy of which is attached, the Grantors Jetton King and wife Mary King, and L.P. McLendon Jr. and wife Mary I. McLendon transferred to the Grantees Melvin and Jane Anne Clanton, Lot 5 and the eastern half of Lot 6, Block 135 of King’s Lynn and also state “It is the intent and purpose of this deed to convey to the parties of the second part both riparian and accretive rights incident to the ownership of said lands.”
4. Map Book 3, Page 113 has no indications on it that riparian rights were being transferred with the individual lots, and shows the Site as having 150’ long side boundaries. A copy of this Map is attached.
5. The Site is located within the Ocean Erodible Area of Environmental Concern (AEC). The Site is NOT located within the Inlet Hazard AEC and the boundary of the Inlet Hazard AEC is approximately 0.15 miles to the west of the Site. N.C.G.S. 113A-118 requires that a CAMA permit be obtained before any development takes place in an AEC, on the Site or otherwise.
6. Current conditions on the Site include an existing two-story piling-supported residence with a heated area of 3,898 square feet, and a non-heated area of 1,010 square feet per the tax card, a copy of which is attached. The Site also has an existing beach accessway and deck at the waterward end of the walkway.
7. The Commission’s current Average Annual Erosion Rate for the Site is 2-feet per year.
8. This portion of Oak Island where the Site is located is NOT located within the bounds of a large-scale beach nourishment project and so is NOT subject to a static vegetation line (while other parts of Oak Is. are subject to a static vegetation line). The applicable measurement line is the first line of stable and natural vegetation (FLSNV) per 15A NCAC 07H .0305 (a)(5) and (a)(9).
9. Currently, the FLSNV is located landward of the deck, and an approximation of this line can be seen in the powerpoint. In the attached powerpoint, a 2014 aerial photograph shows the

deck landward of the FLSNV and a January 26, 2016 aerial photograph shows the deck waterward of the FLSNV. The applicable 60-foot setback currently bisects the house, based on the current location of the FLSNV.

10. Based on the applicable 2 feet per year erosion rate, the applicable Ocean Hazard Setback for development on this Site, being a structure less than 5,000 square feet is 60-feet landward of the FLSNV.

11. The Commission's rules at 15A NCAC 07H .0309 allow for some development within the setback, but all must be landward of the FLSNV, including elevated decks not exceeding a footprint of 500 square feet, beach accessways, and gazebos. Pursuant to 15A NCAC 07H .0306(a)(5) and .0309(a), no development is allowed waterward of the FLSNV.

12. On or about February 15, 2006, the prior owners of the Site, Fran & Paula Daily, applied for a CAMA Minor Permit through their agents Southland Construction Company, Inc., to develop the house, septic, driveway and a swimming pool. A copy of the application materials is attached. On March 8, 2006, the Oak Island LPO Ms. Coleman, responded with a letter identifying materials their application was lacking. On June 6, 2006, the LPO issued CAMA Minor Permit OI-06-18 authorizing, among other things, a deck, walkway and pool within the oceanward deck on the Site located landward of the FLSNV as located on November 11, 2005. A copy of this permit and the site plan are attached. The site plan shows the waterward property line bisecting the waterward deck with the pool in it.

13. Between its installation in 2006 and the present, sand underneath the pool washed away and the pool was left unsupported. Since their purchase in 2014, Petitioners had the pool removed and now there is an existing hole, approximately 8'8" by 20'4" in the deck where the pool used to be. This can be seen in attached site photos.

14. On or about January 21, 2016, Petitioners, through their attorney Gary Lawrence, applied for a CAMA Minor Permit in order to "board up the hole left when the pool moved." A copy of the application materials is attached. While there were references to a hot tub on the site plan, no hot tub is proposed as part of this variance.

15. On the site plan used for the 2016 permit application, the waterward property line is shown to bisect the deck where the pool was located. The site plan also shows that the "vegetation line" is located landward of the deck at issue. A copy of this site plan is attached.

16. When Petitioners purchased the Site, the realtor and closing attorney indicated that the property line bisected the existing deck, but that unless the deck was destroyed more than 50%, they could repair the structure.

17. DCM lacks jurisdiction to make determinations of property ownership and made no such determination by either processing the Petitioners' various permit applications or by proceeding with the variance process.

18. The deck at issue is 16' by 30' and the existing squared-off hole is approximately 8'8" by 20'4" or approximately 176 square feet.

19. The CAMA LPO for the Town of Oak Island received no objections or comments regarding Petitioners' CAMA Minor Permit application from the public or adjacent owners.

20. On February 12, 2016, the Town of Oak Island's CAMA LPO denied Petitioners' permit application as it was inconsistent with the Commission's rules at 15A NCAC 07H .0309(a)(3) as the site of the proposed development is located seaward of the 1998 static line. However, this Site is not located within an area subject to the static line. The static line's application ends approximately 0.25 miles west of the Site. The parties stipulate that the mention of the 1998 static line in the denial letter was incorrect, and the denial should have been based on .0309(a) and .0306(a) in that no development is authorized waterward of the FLSNV.

21. On March 10, 2016, Petitioners, through their counsel Gary Lawrence, filed this variance petition seeking a variance from the Commission's rules which prohibit development seaward of the "vegetation line" (in this case, the FLSNV).

22. In the spring of 2015, Petitioners planted dune vegetation seaward of their residence in an effort to stabilize the area, but these plantings are not yet considered stable or natural vegetation as those terms are used in the definition of a FLSNV. These plantings can be seen in the powerpoint slide.

23. There are houses with sandbags less than two years old and issued pursuant to a 2014 variance (to Golob, et al), approximately 125 feet to the west of the Site. These houses can be seen on the powerpoint slides.

24. Aerial and ground-level site photographs are attached as exhibits which depict the Site, Petitioners' home and deck, and the surrounding lots and homes.

25. In this matter, the Division of Coastal Management is represented by Christine Goebel, Assistant General Counsel for DEQ. The Petitioner is represented by Gary Lawrence, Esq. of Southport.

Stipulated Exhibits

1. 2014 Deed to Petitioners recorded at Book 3518, Page 1382
2. Map Book 3, Page 113 showing this site
3. Back deeds to the property including:
 - a. 2003 deed at 1754/397
 - b. 1984 deed at 562/893
 - c. 1977 deed at 369/44
 - d. 1974 deed at 317/514
4. 1960 Developer's deed at 150/737
5. Tax Card for Petitioner's Site
6. 2006 Daily CAMA minor permit application and Site Plan
7. CAMA Minor Permit OI-06-18 issued February 15, 2006 to Daily
8. 2016 CAMA Minor Permit application for Petitioners including Site Plan
9. February 12, 2016 CAMA Permit Denial Letter to Petitioners
10. Powerpoint with aerial and ground level site photographs

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

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

Petitioners' Position: Yes.

At the time Petitioners purchased the property, there existed a boardwalk from the house, over the dune ridge, to a deck with steps down to the beach. The deck had a prefabricated swimming pool in the middle of the deck. Over time, the sand underneath the pool washed away and the pool was left hanging from the deck. Petitioners removed the pool and are left with a deck with a sizeable hole in the middle. Petitioners desire to cover this hole with deck boards. If Petitioners cannot take this action, they are left with a real safety hazard. This is true not only for Petitioners and their guests, but anyone walking on the beach who might come on the deck to enjoy the view.

Staff's Position: No.

Petitioners seek a variance from the Commission's oceanfront setback rules, which prohibit development waterward of the First Line of Stable and Natural Vegetation (FLSNV) except in the limited cases of oceanfront piers providing public access and state-owned bridges. While there are some exceptions (15A NCAC 07H .0309) to the oceanfront erosion setback rules (60-foot landward from FLSNV in this case), that allow limited development within the setback area, the listed structures must be located landward of the FLSNV. Structures allowed within the setback area include swimming pools, beach accessways, and 500 square feet of decking. Those exceptions are how the existing swimming pool with decking and the beach accessway were permitted in 2006. However, the Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development" (15A NCAC 07H .0303(b)).

Staff contend that while Petitioners face a hardship by not being able to deck over the hole left by the undermined swimming pool and admittedly causing safety concerns, given the oceanfront erosion on the lot which undermined the pool and caused the vegetation to move landward so that the remaining pool deck is located waterward of the vegetation line and on the public beach, the strict application of the Commission's oceanfront setback rules does not cause Petitioners' unnecessary hardships. Additionally, Staff note that the remaining deck was intended to serve a swimming pool which no longer exists, and was not a stand-alone deck.

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

Petitioners' Position: Yes.

The existing deck was built prior to Petitioners purchasing the property. The previous owners obtained a CAMA permit to build the boardwalk and deck, containing the pool. The boardwalk goes up and over the dune and provides ingress and egress to and from the beach and the residence. Based on the size of the deck and the size and location of the current hole, the petitioners have a real safety hazard. The deck as currently exists it is not functional or safe.

Staff's Position: No.

Staff agrees that the deck was built by the prior owner who received a CAMA permit to construct the deck. Staff also notes that the portion of the existing boardwalk (or beach accessway) located landward of the FLSNV is a conforming structure allowed by rule, providing Petitioners access the beach while limiting impact to the protective dune system. The deck and portion of the walkway waterward of the FLSNV are non-conforming and not allowed by rule as they now lie on the public trust beach seaward of the FLSNV. Staff notes that hardship of the shoreline erosion on the lot, and specifically that which has occurred since Petitioners' purchase of the lot in 2014, is not atypical for an ocean shoreline, and is contemplated in the Commission's rules for the Ocean Hazard AECs. Staff identify no peculiar conditions on the property which cause Petitioners' hardship.

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

Petitioners' Position: No.

The hardship does not result from actions taken by the Petitioners. The deck (with swimming pool) was built by the Petitioners predecessor in title and was done with a valid CAMA Permit. The shifting sand caused the pool to become detached from the deck and created a safety issue. Petitioners seek to correct this situation. Petitioners contend that decking over the hole in the deck is the most reasonable and practical solution to this problem.

Staff's Position: No.

While Staff agree that Petitioners did not cause the erosion of the vegetation line and dune system on their lot and did not cause the deck to be located waterward of the FLSNV vegetation line, shoreline erosion, and specifically that erosion which has occurred since Petitioners' purchase of the lot in 2014, is not atypical for an ocean shoreline, and is contemplated in the Commission's rules for the Ocean Hazard AECs. Staff disagree that decking over the hole in a structure now located waterward of the FLSNV is the most practical solution.

Staff suggest that Petitioners could also address the safety concerns about the hole in the deck by removing the deck structure from the public trust beach waterward of the FLSNV, and retaining the dune accessway. Depending on how much decking Petitioners already have within the setback area (the first 60-feet of area landward of the FLSNV), Petitioners could construct up to 500 square feet of elevated decking to replace the use they now propose while meeting the rules, and not siting new development inappropriately where it is more at risk from long-term erosion and storm events.

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

Petitioners' Position: Yes.

The variance requested by petitioners will be consistent with the spirit, purpose and intent of the rules or orders of the Commission; will secure the public safety and welfare; and will preserve substantial justice. The boardwalk and deck were constructed prior to Petitioners purchasing the property; and was done under a valid CAMA permit. Due to the removal of the pool, there is a safety concern. Decking over this hole will eliminate this safety issue and help preserve the deck. It is the most logical solution to this issue; will not cause any harm to the surrounding area and is in keeping with the spirit, purpose and intent of the rules or orders of the Commission.

Petitioners have actively sought to further stabilize the beach dune by planting sea grass in the area.

Staff's Position: No.

Staff contends that granting a variance to Petitioners in order to vary the Commission's oceanfront erosion setback rules so that Petitioners can add approximately 176 square feet of new decking is not consistent with the spirit, purpose, and intent of the Commission's rules. 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 FLSNV (in this case, 60-feet), the Commission has made exceptions to allow limited development within the setback area (See the nine structures listed in 07H .0309, above). However, the Commission has strictly limited new development waterward of the FLSNV, allowing only oceanfront piers providing public access and state-owned bridges (See 07H. 0309(d)). While the additional decking proposed may seem an insignificant amount of square footage to allow in order to address the safety concerns of the hole in the existing deck, Staff believe the Commission should strictly enforce the near-ban on new development waterward of the FLSNV as the Petitioner has other options which include relocating the deck within the setback area where it is allowed by rule.

Staff contends that granting a variance will not secure public safety and welfare. While granting a variance in order to allow Petitioners will secure their own welfare and that of their guests, allowing new development waterward of the FLSNV will not secure public safety and welfare where the variance would be authorizing inappropriately sited development which can interfere with the public trust beach, be at greater risk for loss of property of Petitioners and their neighbors with more structure in harm's way, and may become a cost to the public if the public will have to pay to remove the deck as future post-storm debris.

Finally, Staff contends that granting a variance would not preserve substantial justice where the Commission's rules already make several exceptions for development which does not have to meet the oceanfront erosion setback rule, but this "exception to the exceptions" would go further and allow new development on the public trust beach waterward of the FLSNV.

**ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST MATERIALS**

GARY S. LAWRENCE
ATTORNEY AT LAW
1226 NORTH HOWE STREET
SOUTHPORT, NORTH CAROLINA 28461

TELEPHONE (910) 454-0606

FACSIMILE (910) 454-0663

February 24, 2016

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Re: Request for Variance

Dear Sir:

I am enclosing herewith a Request for Variance and all accompanying documents. I have also sent a copy of all documents to the Attorney General's Office. Should you need additional items, please advise.

Sincerely,



Gary S. Lawrence

cc: Attorney General

enclosures

CAMA VARIANCE REQUEST FORM**DCM FORM 11****DCM FILE No.:** 16-01

PETITIONER'S NAME MARK ENGEL and KELLYANNE ENGEL
COUNTY WHERE THE DEVELOPMENT IS PROPOSED BRUNSWICK

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper.

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

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

- _____ The name and location of the development as identified on the permit application;
- _____ A copy of the permit decision for the development in question;
- _____ A copy of the deed to the property on which the proposed development would be located;
- _____ A complete description of the proposed development including a site plan;
- _____ A stipulation that the proposed development is inconsistent with the rule at issue;
- _____ Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);
- _____ Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- _____ Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- _____ A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- _____ This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

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

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


Signature of Petitioner or Attorney

2-24-2016
Date

Gary s. Lawrence, Attorney for Petitioners
Printed Name of Petitioner or Attorney

gary@southportattorney.com
Email address of Petitioner or Attorney

P. O. Box 11369
Mailing Address

(910) 454-0606
Telephone Number of Petitioner or Attorney

Southport, NC 28461
City

State

Zip

(910) 454-0663
Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

Contact Information for Attorney General's Office:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By mail:

Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By Fax:

(252) 247-3330

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Email:

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

By Fax:

(919) 716-6767

RECEIVED

FEB 29 2016

GARY S. LAWRENCE
ATTORNEY AT LAW
1226 305 N. HOWE STREET
P.O. BOX 11369
SOUTHPORT, NORTH CAROLINA 28461

DCM- MHD CITY

TELEPHONE (910) 454-0606
FACSIMILE (910) 454-0663

E-MAIL ADDRESS:
GARY@SOUTHPORTATTORNEY.COM

February 26, 2016

Angela Willis
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Re: Request for Variance - Stipulation

Dear Ms. Willis:

Please consider this letter as a stipulation that our proposed development is inconsistent with one or more of the CRC's rules. I understand that you will be sending this letter to the Attorney General's office. Therefore I am not sending a copy to their office.

I am enclosing a copy of the certified mailing to the adjacent property owners. I will send a copy of the green cards once they are received.

Thanks for your assistance in this process.

Sincerely,



Gary S. Lawrence

enclosures

RECEIVED

FEB 29 2016

PM- MHD CITY

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website www.usps.com

OFFICIAL RECEIPT

Postage	\$ 6 ⁵⁰
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6⁵⁰

Sent To
BSB Resort Properties
 Street, Apt. No., or PO Box No. **945 Sugar Maple Lane**
 City, State, ZIP+4
Harrisonburg, VA 22801

PS Form 3800, August 2006 See Reverse for Instructions

02 1P
 000642817 FEB 29 2016
 UNITED STATES POSTAGE
 PITNEY BOWES
 \$300.00
 MAILED FROM ZIP CODE 22801

2014 0510 0001 1000 0150 4702

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website www.usps.com

OFFICIAL RECEIPT

Postage	\$ 6 ⁵⁰
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6⁵⁰

Sent To
Mary Watkins
 Street, Apt. No., or PO Box No. **12 Greenside Court**
 City, State, ZIP+4
Durham, NC 27707

PS Form 3800, August 2006 See Reverse for Instructions

02 1P
 000642817 FEB 26 2016
 UNITED STATES POSTAGE
 PITNEY BOWES
 \$300.00
 MAILED FROM ZIP CODE 27707

9026 1206 1000 0150 4702

GARY S. LAWRENCE
ATTORNEY AT LAW
1226 N. HOWE STREET
P.O. BOX 11369
SOUTHPORT, NORTH CAROLINA 28461

TELEPHONE (910) 454-0606
FACSIMILE (910) 454-0663

E-MAIL ADDRESS:
GARY@SOUTHPORTATTORNEY.COM

March 10, 2016

Angela Willis
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Re: Request for Variance
Affidavit of service

Dear Ms. Willis:

I am enclosing my affidavit of service on the adjoining property owners of my letter and notice of Mr. and Mrs. Engel's request for a variance. I have previously forwarded the certified mailing receipt and now have proof of service.

Should you need anything else, please advise. Thanks for your assistance in this process.

Sincerely,



Gary S. Lawrence

enclosures

RECEIVED

MAR 14 2016

DCM- MHD CITY

NORTH CAROLINA
BRUNSWICK COUNTY

AFFIDAVIT FOR SERVICE BY
CERTIFIED MAIL

Gary S. Lawrence, being first duly sworn, deposes and says:

1. Affiant is an attorney at law and maintains an office in Southport, North Carolina.
2. He represents the Petitioner in this action.
3. He served the adjacent property owners of the fact that Mr. and Mrs. Engel had filed a request for a variance
4. On February 26, 2016, Affiant caused to be deposited in the United States mail, a letter, addressed to the adjacent property Owners notifying them of the request and the nature of what was being requested, with sufficient postage and the same was mailed to BSR Resort Properties, LLC, 945 Sugar Maple Lane, Harrisonburg, Virginia, 22801 by certified mail, certified number 70140510000190213215 a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference.
5. The envelope containing the letter and notice was received by BSR Resort Properties, LLC on March 5, 2016, as shown by the attached USPS receipt which is attached hereto as Exhibit "B", and incorporated herein by reference.
6. . On February 26, 2016, Affiant caused to be deposited in the United States mail, a letter, addressed to the adjacent property Owners notifying them of the request and the nature of what was being requested, with sufficient postage and the same was mailed to Mary Watkins, 12 Greenside Court, Durham, North Carolina 27707 by certified mail, certified number 70140510000190213208 a copy of which is attached hereto as Exhibit "C" and incorporated herein by reference.

RECEIVED

MAR 14 2016

DCM- MHD CITY

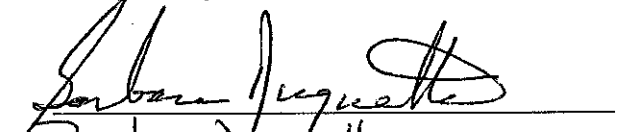
7. The envelope containing the letter and notice was received by Mary Watkins on March 5, 2016, as shown by the attached USPS receipt which is attached hereto as Exhibit "D", and incorporated herein by reference.

This the 10 day of March, 2016.



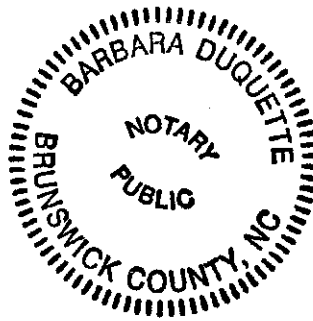
Gary S. Lawrence
Attorney for Petitioner
P.O. Box 11369
Southport, North Carolina 28461
Phone: (910) 454-0606

Sworn to and subscribed before me
this 10th day of March, 2016.


Barbara Duquette, Notary Public
(Notary's printed or typed name)

My Commission Expires:

6-22-19



RECEIVED

MAR 14 2016

DCM- MHD CITY

EXHIBIT A

7014 0510 0003 9201 3215

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website www.usps.com

OFFICIAL RECEIPT

Postage	\$ 0.50
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 10.50

02 1P
000642817 FEB 22 2016
MAILED FROM ZIP CODE 22801
\$000.00
UNITED STATES POSTAGE
Postmark
State

Sent To
BSB Resort Properties LLC
Street, Apt. No.,
or PO Box No. 945 Sugar Maple Lane
City, State, ZIP+4
Huntersburg, VA 22801

PS Form 3800, August 2006 See Reverse for Instructions

RECEIVED

MAR 14 2016

DCM- MHD CITY

EXHIBIT B

English

Customer Service

USPS Mobile

Register / Sign In



USPS Tracking®



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.

Tracking Number: 70140510000190213215

Updated Delivery Day: Tuesday, March 1, 2016

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
March 5, 2016 , 10:19 am	Delivered	HARRISONBURG, VA 22801
Your item was delivered at 10:19 am on March 5, 2016 in HARRISONBURG, VA 22801.		
March 1, 2016 , 3:43 pm	Notice Left (No Authorized Recipient Available)	HARRISONBURG, VA 22801
March 1, 2016 , 6:57 am	Arrived at Unit	HARRISONBURG, VA 22801
February 29, 2016 , 10:21 pm	Departed USPS Facility	SANDSTON, VA 23150
February 29, 2016 , 4:46 am	Arrived at USPS Facility	SANDSTON, VA 23150
February 27, 2016 , 10:31 pm	Departed USPS Facility	CHARLOTTE, NC 28228
February 27, 2016 , 10:07 pm	Arrived at USPS Facility	CHARLOTTE, NC 28228

RECEIVED

MAR 14 2016

DCM- MHD CITY

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard. No tracking numbers necessary.

Sign up for My USPS ›



EXHIBIT C

902E T206 T000 0150 4T02

U.S. Postal ServiceTM
CERTIFIED MAILSM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website www.usps.com

OFFICIAL RECEIPT

Postage	\$ 0.50
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 0.50

MAILED FROM ZIP CODE 27601
02 1P
0000642817 FEB 26 2016
\$000.00
PITNEY BOWERS
UNITED STATES POSTAGE
Postmaster
Pay Here

Sent To
Mary Watkins
Street, Apt. No.,
or PO Box No. **12 Greenside Court**
City, State, ZIP+4[®]
Durham, NC 27707

PS Form 3800, August 2006 See Reverse for Instructions

RECEIVED

MAR 14 2016

DCM- MHD CITY

EXHIBIT D

USPS.com® - USPS Tracking®

English Customer Service USPS Mobile

Register / Sign In



USPS Tracking®



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.

Tracking Number: 70140510000190213208

Updated Delivery Day: Monday, February 29, 2016

Product & Tracking Information

Postal Product:

Features:
Certified Mail™

Available Actions

Text Updates

Email Updates

DATE & TIME	STATUS OF ITEM	LOCATION
March 1, 2016 , 10:42 am	Delivered, Individual Picked Up at Post Office	DURHAM, NC 27717
Your item was picked up at the post office at 10:42 am on March 1, 2016 in DURHAM, NC 27717.		
February 29, 2016 , 4:19 pm	Notice Left (No Authorized Recipient Available)	DURHAM, NC 27707
February 29, 2016 , 6:49 am	Arrived at Unit	DURHAM, NC 27707
February 29, 2016 , 1:35 am	Departed USPS Facility	RALEIGH, NC 27676
February 28, 2016 , 10:48 am	Arrived at USPS Facility	RALEIGH, NC 27676
February 27, 2016 , 10:05 pm	Arrived at USPS Facility	CHARLOTTE, NC 28228

RECEIVED

MAR 14 2016

DCM- MHD CITY

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard. No tracking numbers necessary.

Sign up for My USPS ›



ATTACHMENT E:
STIPULATED EXHIBITS INCLUDING POWERPOINT



Geddings Ret: *Boo*
 H Total *216* Rev *2400* Int *240*
 Ck \$ *2510* Ck # *821* Cash \$ _____
 Refund: _____ Cash \$ _____ Finance _____
 Portions of document are illegible due to condition of original.
 Document content only verified for accuracy.
 Amendments: _____ ad.

Brenda M. Clemmons Register of Deeds
 04-17-2014 15:22:04.003 Brunswick County, NC
 NC REVENUE STAMP: \$2400.00 (#389987)

NORTH CAROLINA GENERAL WARRANTY DEED

This instrument prepared by Geddings, Kleva & Campbell, licensed North Carolina attorneys. Delinquent taxes, if any, to be paid by the closing attorney to the Brunswick County Tax Collector upon disbursement of closing proceeds.

Excise Tax: \$2,400.00 Parcel ID:
 Brief Description For The Index: L-5 & E 1/2 of 6 B-135 S-5B

THIS DEED made by and between,

GRANTOR

Francis W. Daily and wife, Paula M. Daily
 57 Long Meadow Drive
 Pittsburgh, PA 15238

GRANTEE

Mark A. Engel and wife, Kellyanne K. Engel
 PO Box 159
 Bryson City, NC 28713

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

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple all that certain lot or parcel of land situated in Brunswick County, North Carolina and more particularly described in EXHIBIT A, attached hereto and made a part hereof.

Geddings, Kleva & Campbell, PLLC
 8721 East Oak Island Drive, Oak Island, North Carolina 28465



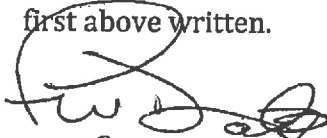
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

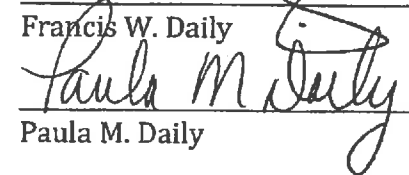
And the Grantor covenants with the Grantee that the Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons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

- 1- Ad valorem taxes for the current year;
- 2- Restrictions, easements and rights-of-way of record.

The property being conveyed is ___/ is not XX the seller's primary residence.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.


 _____ (SEAL)
 Francis W. Daily


 _____ (SEAL)
 Paula M. Daily



B3518 P1384 04-17-2014
15:22:04.003
Brenda M. Clemmons PROP
Brunswick County, NC Register of Deeds page 3 of 4

STATE OF PENNSYLVANIA
COUNTY OF ALLEGHENY

I, the undersigned Notary Public of the County and State aforesaid, certify that **Francis W. Daily and Paula M. Daily** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 24th day of MARCH, 2014.

Deborah A. Anker

Notary Public

My commission expires: 10/23/16

(Notary Stamp or Seal)

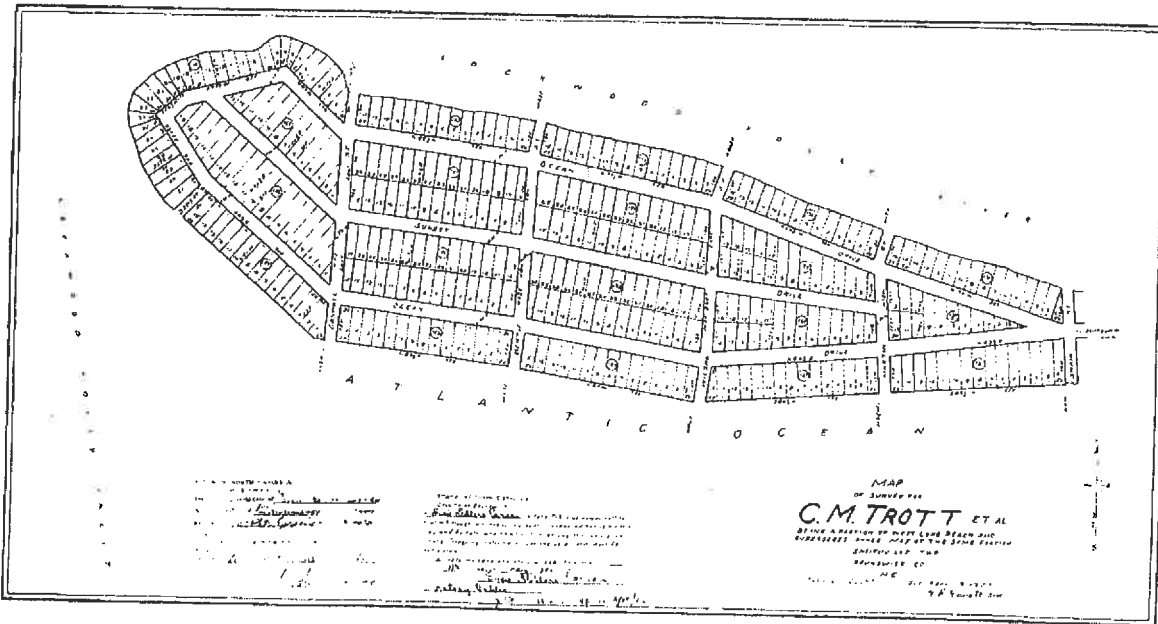
COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Deborah A. Anker, Notary Public
Sharpsburg Boro, Allegheny County
My Commission Expires Oct. 23, 2016
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES



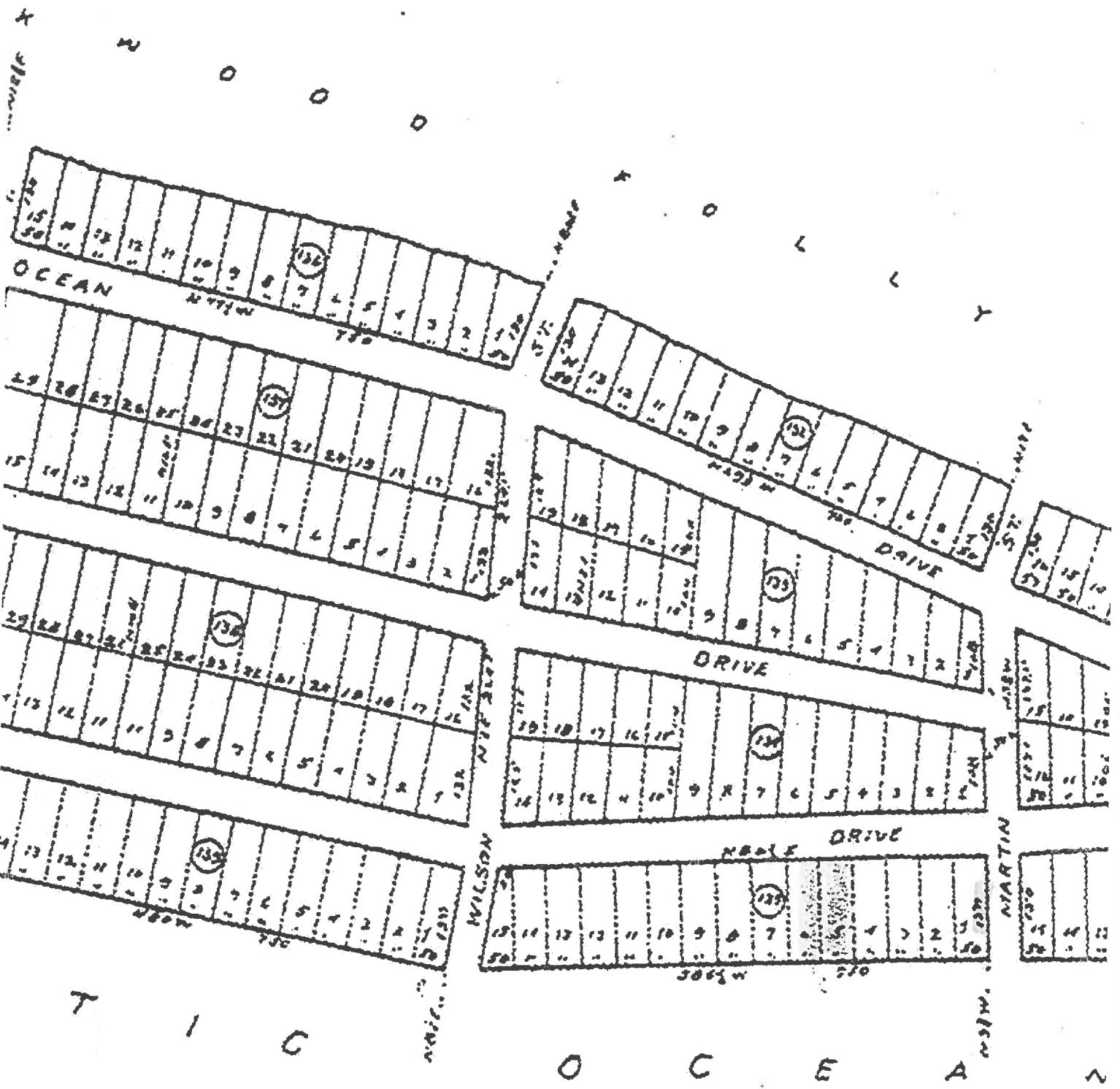
EXHIBIT A

BEING Lot 5 and the eastern half of Lot 6, Block 135, of King's Lynn of Long Beach (now Oak Island), as shown on map recorded in Map Book 3, Page 113, Brunswick County Registry. This property is also subject to an Agreement of Withdrawal from Dedication and Conveyance recorded in Book 158, Page 570 which withdrew from dedication all streets, roads and alleyways shown on plat recorded in Map Book 3, Page 113. The revised plat of Section 1, King's Lynn, is recorded in Map Book 7, Page 36, Brunswick County Registry.

For back reference see Deed recorded in Book 1775, Page 1379 of the Brunswick County Registry.



3/113



MAP
3/113

MAP
OF SURVEY ...

05/27/2003
\$500.00 41



Real Estate
Excise Tax

Brunswick County--Register of Deeds
Robert J. Robinson
Inst #159260 Book 1754 Page 397
05/23/2003 04:12:30pm Rec# 146054

Prepared by: Robert K. Serra, Attorney
Serra Law Firm, PLLC
File # 9160

RET Rob Serra
TOTAL 17 REV 500 TC# 50
REC# _____ CK AMT _____ CK# _____
CASH _____ REF _____ BY JS

Revenue Stamps \$ 500.00

Parcel # 233 NE 027

STATE OF NORTH CAROLINA :
COUNTY OF BRUNSWICK : WARRANTY DEED

This Deed made this 21 day of MAY, 2003, by and between
BONNIE J. SWAN (UNMARRIED), Grantor and MILTON C. DARR, Grantee; PO
Box 884, Oak Island, NC 28465.

TS	AUX	CON	GR	PCL	SPL
3	5	233N	E	027	5
WITN	ESS	IMP	BLK	PIN	SUF
					KB

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

BEING Lot 5 and the eastern half of Lot 6, Block 135, of King's Lynn of Long Beach (now Oak Island), NC as shown on map recorded in Map Book 3, Page 113, Brunswick County Registry. This property is also subject to an Agreement of Withdrawal from Dedication and Conveyance recorded in Book 158, Page 570 which withdrew from dedication all streets, roads and alleyways shown on plat recorded in Map Book 3, Page 113. The revised plat of Section 1, King's Lynn, is recorded in Map Book 7, Page 36, Brunswick County Registry.

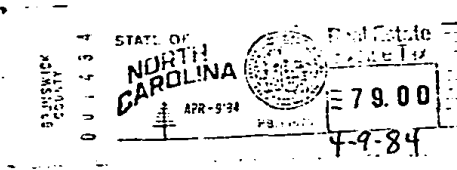
Grantor acquired sole title to this property through right of survivorship upon the death of her spouse, C.J. Swan, Jr., who died on February 6, 1996 in Brunswick County, NC.

Grantor acquired title to this property by Deed recorded in Book 562, Page 893, Brunswick County Registry.

BOOK PAGE

0562 0893

FILED FOR REGISTRATION
562 893
APR 9 1954
BRUNSWICK COUNTY, N.C.



Excise Tax

Recording Time, Book and Page

Tax Lot No. Parcel Identifier No.
Verified by County on the day of 19
by

Mail after recording to

This instrument was prepared by THOMAS P. HELLER

Brief description for the Index Lot 5 & eastern 1/2 of 6, Elk 135
King's Lynn Section

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 3rd day of April, 1954, by and between

GRANTOR

GRANTEE

SANDRA L. REGELBRUGGE
8316 Sardis Road
Matthews, NC 28105

C.J. SWAN, Jr. and wife,
BONNIE J. SWAN

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

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

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Long Beach Township,

Brunswick County, North Carolina and more particularly described as follows:

Lot 5 and the eastern half of Lot 6, Elock 135, of King's Lynn of Long Beach, as shown on a map recorded in Map Book 3, Page 113 of the Brunswick County Registry.

Being the same property conveyed to Roger R. Regelbrugge and wife, Sandra L. Regelbrugge by Deed recorded in Book 369 at Page 44 in the Brunswick County Public Registry.

10

AUX	COM	FR	TO	BY
	233	N	E	27
				emp

NORTH CAROLINA
BRUNSWICK COUNTY

WARRANTY DEED

THIS DEED, made this 7th day of March, 1977,
by and between WILLIAM F. COLLINS and wife, DOROTHY V. COLLINS,
herein, whether one or more, called GRANTORS, and ROGER R.
REGELBRUGGE and wife, SANDRA L. REGELBRUGGE, of Mecklenburg
County herein, whether one or more, called GRANTEES.

W I T N E S S E T H T H A T:

The GRANTORS, for and in consideration of the sum of
Ten Dollars (\$10.00) and other valuable considerations to them
in hand paid by the GRANTEES, the receipt whereof is hereby
acknowledged, have bargained and sold, and by these presents
do hereby bargain, sell and convey unto GRANTEES and their heirs,
successors and assigns forever, all that certain real property
located in Brunswick County, North Carolina, described as follows:

Lot 5 and the eastern half of Lot 6, Block 135, of King's
Lynn of Long Beach, as shown on a map recorded in Map
Book 3, Page 113 of the Brunswick County Registry.

Subject to restrictive covenants in the chain of
title and zoning ordinances for the Town of
Long Beach, North Carolina.

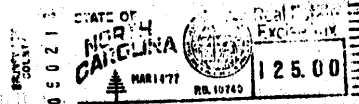
TO HAVE AND TO HOLD the above granted and described
property, together with all and singular, the rights, privileges,
easements, tenements and appurtenances thereunto belonging, or
in anywise appertaining unto the said GRANTEES, their heirs, suc-
cessors and assigns, in fee simple, forever.

And the GRANTORS, for themselves, their heirs, executors
and administrators, do covenant to and with the said GRANTEES,
their heirs, successors and assigns, that they are seized in fee
of the above granted and described property; that they have good
right to sell and convey the same in fee simple; that the same is
free and clear from any and all restrictions, easements or encum-
brances, except those mentioned above; and that they will and
their heirs, executors, administrators and successors shall

Parcel No. 16A

1 NCB Suit 2000
Chaf Loffe, N.C.

27



STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

THIS DEED, Made and entered into this the 14 day of August, 1974
by and between MELVIN CLANTON and wife, JANE ANNE CLANTON, of Guilford County
North Carolina, parties of the first part; and WILLIAM F. COLLINS and wife,
DOROTHY V. COLLINS, of P. O. Box 453, Siler City, North Carolina, parties
of the second part:

W I T N E S S E T H

THAT the said parties of the first part, for and in consideration
of the sum of TEN DOLLARS AND OTHER VALUABLE CONSIDERATIONS to them in hand
paid by the said parties of the second part, the receipt of which is hereby
acknowledged, have bargained and sold and by these presents do hereby bargain,
sell and convey unto the said parties of the second part, their heirs and
assigns, SUBJECT TO the reservations and restrictions hereinafter referred to
all those certain lots or parcels of land lying and being in Smithville
Township, Brunswick County, North Carolina, and more particularly described
as follows:

LOT FIVE (5) and the eastern one-half of LOT SIX (6)
BLOCK ONE HUNDRED AND THIRTY-FIVE (135) of the King's
Lynn Section of Long Beach, North Carolina, a map of
which is duly recorded in Map Book 3 at Page 113,
records of Brunswick County, North Carolina.

For a more particular description, reference is
hereby made to Deed Book 150 , Page 737, Brunswick
County Registry.

There is also conveyed any and all riparian rights
held by parties of the first part.

This conveyance is SUBJECT TO the WITHDRAWAL OF
DEDICATION AND RESTRICTIONS as recorded in Book
158 at Page 570 of the Brunswick County Registry.

TO HAVE AND TO HOLD the above described lots or parcels of land,
together with all privileges and appurtenances thereunto belonging, unto the
said parties of the second part, their heirs and assigns, to their only use
and behoof forever, SUBJECT TO the reservations and restrictions herein above
referred to.

TRANSFERRED,
TRANSFER RECORD
SEP 4 1974
BRUNSWICK COUNTY, N. C.
TAX SUPERVISOR
BY [Signature]

PREVATTE & PREVATTE
ATTORNEYS AT LAW
SOUTHPORT, N. C.

JETTON KING ET UX ET AL (
PRINCE O'BRIEN, TRUSTEE
TO DEED
MELVIN CLANTON ET UX

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

THIS DEED, Made and entered into this first day of July, 1960, by and between
JETTON KING AND WIFE, MARY KING, L. P. McLENDON JR, AND WIFE, MARY I. McLENDON, of Guilford
County, North Carolina, and PRINCE O'BRIEN, Trustee, of Brunswick County, North Carolina,
parties of the first part; and MELVIN CLANTON AND WIFE, JANE ANNE CLANTON, Guilford County,
North Carolina, parties of the second part;

WITNESSETH:

THAT said parties of the first part for and in consideration of the sum of TEN
DOLLARS AND OTHER VALUABLE CONSIDERATIONS, to them in hand paid by the said parties of the
second part, the receipt of which is hereby acknowledged, have bargained and sold, and by
these presents do hereby bargain, sell and convey unto the said parties of the second part,
their heirs and assigns, that certain tract or parcel of land in Smithville Township, Bruns-
wick County, North Carolina, and more particularly described as follows:

LOT Number 6 and the western one-half of Lot Number 5 (said portion
of Lot Number 5 being twenty-five feet in width) in Block 135, according
to a map of Long Beach made by H. R. Hewett, surveyor, which map is
duly recorded in the Office of the Register of Deeds of Brunswick County,
North Carolina, in Book of Maps 3 at Page 113. It is the intent and pur-
pose of this deed to convey to the parties of the second part both riparian
and accretive rights incident to the ownership of said lands.

PRINCE O'Brien trustee, join in the execution of this deed for the sole
purpose of releasing lien of deed of trust on one-half of Lot Number 5 herein described
and conveyed, said lien being created by the certain deed of trust from L. P. McLendon Jr.
and wife, Mary I. McLendon to PRINCE O'BRIEN, trustee, recorded in Book 114, at page 33,
in the Office of the Register of Deeds of Brunswick County, North Carolina.

IT IS COVENANTED AND AGREED by and between the parties hereto and made a part of the
consideration hereof that the above described property herein conveyed is sold subject
to the following limitations, conditions, restrictions and provisions:

(1) No lots in said subdivision shall be occupied, sold or owned by any Negro,
Mulatto, Japanese or Chinese person, or persons of such extraction or color. These
restrictions shall not prevent occupancy by domestic servants domiciled with an
owner or tenant

(2) There shall be no outside toilets in any section of this subdivision, nor
shall any sewage or refuse be deposited in either Davis Creek, Davis Creek Sound,
Lockwood's Polly River, Lockwood's Polly Sound or the Atlantic Ocean. All sewage
disposal shall at all times meet with the approval of the North Carolina State
Board of Health.

(3) Blocks, 130, 130A, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142,
and 143, according to said aforementioned map may not be used for any purpose other
than residential purposes.

(4) Blocks 144, 145, 146, 147, or any individual lot within said blocks may be
used for either residential or business purposes provided, however, that no
business establishment or building may be constructed within said area without
the express written consent of the grantors named in this deed or their duly
authorized agent or agents. Any person wishing to use any portion of said area
for business purposes must submit to the grantor, their agent or agents, a
written statement setting forth the purposes for which said lot is to be used
together with a complete set of plans and specifications for said proposed build-
ing or buildings. If the purchaser uses said lot for residential purposes then the
restrictions and conditions imposed on the blocks enumerated in Paragraph 3 above
shall apply to said lot or lots in the same manner as those enumerated for resi-
dential blocks aforesaid.

(5) All constructions within said subdivision shall be carried out according to
the following rules:

(a) No residence or building within the residential area as above designated
with the exception of garages as hereinafter provided, shall be smaller than
750 square feet of floor space on the ground floor and such space shall be
exclusive of porches, steps, walks, and other additions of such character.

(b) There shall be no more than one dwelling on any one lot in blocks, 130,
130A, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, as
shown on said plat of said subdivision, except that a person may have a
garage in addition to said dwelling, and may have living quarters within
said building, with no limitation as to the amount of floor space in said
garage.

(c) There shall be no temporary shacks built in the residential area of
this subdivision.

(d) All outside walls of all buildings shall be built either of concrete
blocks and/or stucco, cinder blocks, brick, asbestos shingles or wood.

(6) These covenants are to run with the land and shall be binding on all parties
claiming under them until January 1, 1977, at which time said covenants shall be
automatically extended for successive periods of 10 years unless by vote of the
majority of the then owners of the lots it is agreed to change said covenants
in whole or part.

738

(7) If the parties hereto, or any of them, or their heirs and assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any person or persons owning any real property situate in said development or subdivision to prosecute any proceeding at law or in equity against the person or persons violating or attempting to violate any such covenants, and to prevent him or them from doing so.

(8) Invalidation of any one of these restrictions shall not invalidate the others.

TO HAVE AND TO HOLD the herein above described tracts or parcels of land, together with all privileges and appurtenances thereunto belonging, unto the said parties of the second part, their heirs and assigns, to their only use and behoof forever, subject, however, to the above enumerated restrictions.

AND the said parties of the first part covenant to and with the said parties of the second part, their heirs and assigns, that they are seized of the said premises in fee subject only to the above enumerated restrictions and conditions, and that they have a right to convey the same in fee simple; that the same is free and clear of all encumbrances, and that they do hereby and will forever warrant and defend the title to the same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals as of the date first above written,

REVENUE STAMP: \$2.20

L. P. McLendon Jr. (Seal)
Mary I. McLendon (Seal)
Jetton King (Seal)
Mary King (Seal)
Prince O'Brien (Seal)

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

I, Frances M. Bridges, Notary Public, do hereby certify that JETTON KING AND WIFE, MARY KING, personally appeared before me this day and acknowledged the due execution of the foregoing Deed for the purposes therein set forth.
Witness my hand and notarial seal, this the first day of July, 1960.

My commission expires: 2-5-62
N. P. Seal
Frances M. Bridges
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

I, Frances M. Bridges Notary Public, do hereby certify that L.P. McLENDON JR, AND WIFE, MARY I. McLENDON, PERSONALLY appeared before me this day and acknowledged the due execution of the foregoing Deed for the purposes therein set forth.
Witness my hand and notarial seal, this the first day of July, 1960.

My commission expires: 2-5-62
N. P. Seal
Frances M. Bridges
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I, Neil Lewis, Notary Public do hereby certify that Prince O'Brien, trustee, appeared before me personally this day and acknowledged the due execution of the foregoing Deed for the purposes therein set forth.
Witness my hand and notarial seal this the 19th. day of July, 1960.

My commission expires: Jan. 25, 1962
N. P. Seal
Neil Lewis
Notary Public

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

THE Foregoing certificates of Frances M. Bridges, N. P. of Guilford County, N. C. and Neil Lewis, Notary Public of Brunswick County, State of North Carolina, are adjudged to be correct.

Let the instrument with the certificates be registered.
Witness my hand and official seal this 22 day of July, 1960.

J. E. Brown
Clerk Superior Court

Filed for registration on the 22 day of July, 1960, at 11:35 o'clock A. M. and duly recorded.

J. M. Hickman
Register of Deeds



Brunswick - Real Estate Search

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 [Real Estate Search](#)
 [Tax Bill Search](#)
 [Sales Search](#)
 [Help](#)

[Hide Details...](#)

Owner Last Name: engel Owner First Name: mark Account #:

CMAP GP PAR SPI IN PIN
 Parcel #: Tax Year: 2016 PIN:

House # Unit # Direction Street Name Type Suffix Municipality
 Property Address: Search Clear

[Advanced Search](#)

Search Results [click on a parcel number below to continue](#) [Hide Details...](#)

Parcel #	Buildings	Property Address	Account #	Owner Name	Owner Name2	Unit/Type	Legal Description	PIN
233NE027	1	6601 W. BEACH DR OAK ISLAND	80028058	ENGEL MARK A ETUX KELLYANNE K		1.500 LT	L-5&E 1/2 OF 6 B-135 S-I KL PL 7/36&3/113	203619508390

Selected Parcel Info

[Hide Details...](#)

Parcel #: 233NE027 PIN: 203619508390 Account #: 80028058 Owner Name: ENGEL MARK A ETUX KELLYANNE K Exempt: Exemptions:	Neighborhood: 306A - LONG BEACH WEST Legal Description: L-5&E 1/2 OF 6 B-135 S-I KL PL 7/36&3/113 Land Units: 1.500 LT	Building Value: 672,660 Outbuilding Value: 9,350 Land Value: 412,500 Parcel Value Total: 1,094,510 Deferred Value: 0 Taxable Value: 1,094,510
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[Land](#)
 [Building](#)
 [OBXF](#)
 [Sales](#)
 [Property Record Cards](#)
 [Owners](#)
 [Photos](#)
 [Tax Codes](#)

BLDG	AYB	EYB	Heated Area	Non-Heated Area	Total Area	Appraised Value	Building Name	Property Address	Use Model	%Good	Base Rate	Replacement Cost	New Strata	Exemptions
BLDG: 1	2007	2011	3,898	1,010	4,908	672,660		6601 W. BEACH DR OAK	07 01	98.0%	172.500	686,386		

USE	Building Use/Model Descriptions	Historic Indicator
07 - SFR RESORT	01 - SFR CONSTRUCTION	N/A

Category	Code	Description	Value
Quality	5	Custom	1,2500
Market/Design	3		1,0200
Size	Size	Size	0,9500

Sub Area Type	Description	Actual Area	% Of Base	Effective Area	Replacement Cost New
BAS	Base Living Area	2,025	100	2,025	349,313
WDD	Wood Deck	216	020	43	7,418
FOP	Porch, Open, Finished	533	030	160	27,600
FUS	Upper Story, Finished	1,873	090	1,686	290,835
UOP	Porch, Open, UnFinished	261	020	52	8,970

Element	Point Value	%
Air Conditioning Type	03-Central	
Bedrooms/Bathrooms/Half-Bathrooms	3/4/1	100
Exterior Walls	19-Hardy Plank	100
Fireplace	7-Prefab	100
Foundation	3-Piers>8ft w/Con	100
Heating Fuel	04-Electric	100
Heating Type	09-Heat Pump Only	100
Interior Floor Cover	12-Hardwood	100
Interior Floor Cover	14-Carpet	50
Interior Wall Construction	6-Custom Interior	100
Roofing Cover	03-Composition Shingle	100
Roofing Structure	03-Gable	100
Sub Floor System	4-Plywd/PLI bd	100

	Base Area	Upper Level	Lower Level
Bathrooms	4	0	0
Bedrooms	3	0	0
Half-Bathrooms	1	0	0

Bldg#	Code	Description	Length	Width	Units	Unit Price	Condition Factor	Actual		Effective Year Built	Annual Depreciation	Depreciation Override	Net % Good	Appraised Value	Exemptions
								L/B	Year Built						
1	72	PIER/DOCK (RESID)	6	42	252	16.00	0	A	2007	2007	16.0%		84	3,387	
1	72	PIER/DOCK (RESID)	10	20	200	16.00	0	A	2007	2007	16.0%		84	2,688	
1	72	PIER/DOCK (RESID)	4	40	160	16.00	0	A	2007	2007	16.0%		84	2,150	
1	72	PIER/DOCK (RESID)	6	14	84	16.00	0	A	2007	2007	16.0%		84	1,129	

Locality OAK ISLAND Permit Number OT-06-18

Ocean Hazard _____ Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other _____
(For official use only)

RECEIVED
DCM WILMINGTON, NC

MAR 01 2006

GENERAL INFORMATION

LAND OWNER

Name Frank & Paula Daily
Address 57 Long Meadow Dr
City Pittsburgh State PA Zip 15238 Phone 631-730-2578

AUTHORIZED AGENT

Name Southland Const. Co, Inc
Address PO Box 278
City Oak Is. State NC Zip 28465 Phone 278-3800

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody?) L5E East 1/2 of L6, W. Beach Dr.
Oak Is.

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Clear, fill, grade, const. house w/ decks and swimming pool, install septic system and driveway

SIZE OF LOT/PARCEL: 11,250 square feet .26 acres

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

TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): Approx 4,600 square feet (includes all floors and roof-covered decks)

SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT-UPON SURFACES IN THE COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN (AEC): 2,742 sq. ft.
(Calculations include the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

Choose the AEC area that applies to your property:

- (1) within 75 feet of Normal High Water for the Estuarine Shoreline AEC
 - (2) within 575 feet of Normal High Water for the Estuarine Shoreline AEC, adjacent to Outstanding Resource Waters
 - (3) within 30 feet of the Public Trust Shoreline AEC
- (Contact your Local Permit Officer if you are not sure which AEC applies to your property.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the N.C. Division of Water Quality?
YES _____ NO

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

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

STATEMENT OF OWNERSHIP:

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

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

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

- | (Name) | (Address) |
|-------------------|--|
| (1) Ruth Bamford | 2700 Lafayette Dr Greensboro, NC 27408 |
| (2) L.P. McLendon | 8114 Mabe Marshall Rd; Summerfield, NC 27358 |
| (3) | |
| (4) | |


FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

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

PERMISSION TO ENTER ON LAND:

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

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

This the 15 day of February, 2006


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

APPLICATION:

LOCALITY:



RECEIVED
DCM WILMINGTON, NC

MAR 09 2006

03/08/2006

Fran & Paula Daily
57 Long Meadow Dr.
Pittsburg, PA 15238

CERT # 7064 0550 0000 8260 9639

RE: INCOMPLETE APPLICATION ADDITIONAL INFORMATION REQUIRED
APPLICATION NUMBER- OI 06-18
PROJECT ADDRESS- 6601 W. Beach Dr.

Dear Fran & Paula:

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

1. Side view rendering with topographical view of house and pool placement.
2. Label toe of dune on both sides of dune ridge on survey.
3. Site plan to include location of septic system.

In accordance with the Department of Environment and Natural Resources regulations, we note that a certain time has passed while the application has remained in our office. Upon resubmission of a complete application, a local decision will be made in twenty-seven (27) days, provided this period is not extended as provided by law.

Please contact me at 910-278-5024 if you have any questions.

Respectfully yours,

Donna F. Coleman, LPO
Town of Oak Island

cc: Jim Gregson/ DCM-Wilmington
Jeff Gross/Agent



RECEIVED
DCM WILMINGTON, NC
MAR 01 2006

2/23/2006

Fran & Paula Daily
57 Long Meadow Dr.
Pittsburg, PA 15238

**RE: NOTICE TO EXTEND TIME TO GRANT OR DENY CAMA MINOR PERMIT
APPLICATION NUMBER - 01-06-18**

PROJECT ADDRESS/LOCATION - 6601 W. Beach Dr.

Dear Fran & Paula:

Pursuant to NCGS 113A-121(b), the undersigned hereby gives notice to the applicant that for good cause, and in order to properly consider all information necessary to making a decision on this permit application, the time period within which a final decision shall be made has been extended an additional twenty-five (25) days.

If you have any questions concerning this action, please contact me at 910-278-5024.

Sincerely,

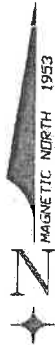
Donna F. Coleman, LPO
Development Services

Cc: Jim Gregson/DCM-Wilmington
Southland Construction/Agent

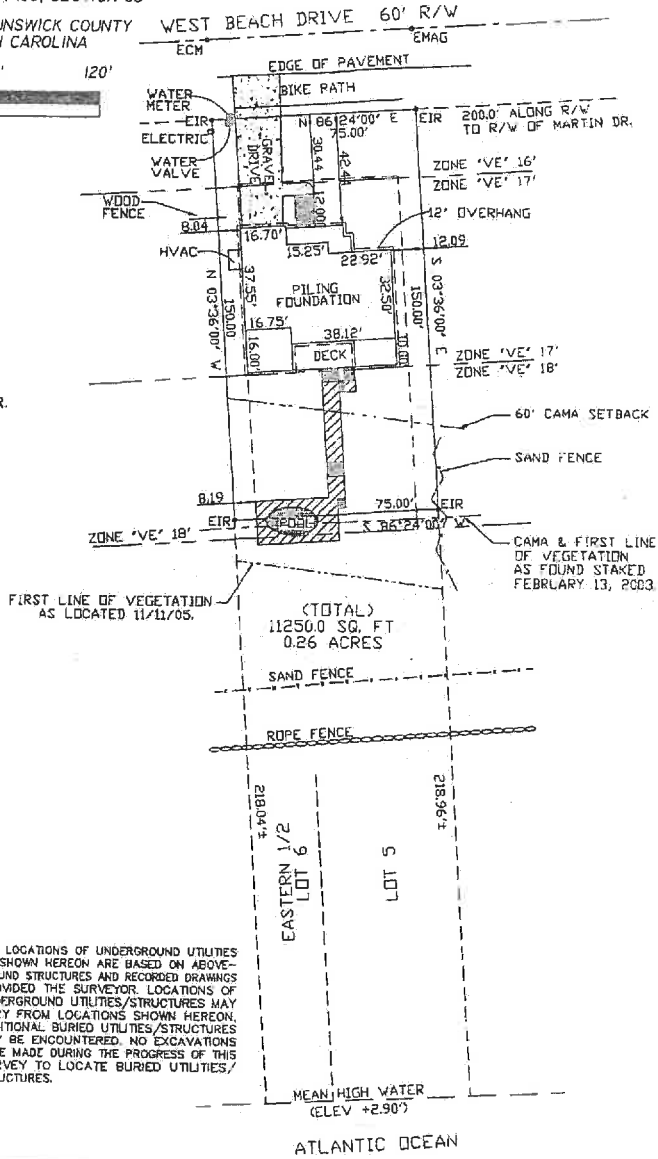
REDUCED COPY
SCALE NOT PRECISE

PLAT OF SURVEY FOR
FRAN AND PAULA DAILY

LOT 5 & EASTERN 1/2 OF 6, BLOCK 135, SECTION 5B
SMITHVILLE TOWNSHIP, BRUNSWICK COUNTY
OAK ISLAND, NORTH CAROLINA



BLOCK 135
SECTION 5B
KINGS LYNN
OAK ISLAND, N.C.
DB 562 PG 893 B.C.R.



IMPERVIOUS AREA CALCULATIONS
TOTAL AREA WITHIN LOT = 11250.0 SQ.FT.
USABLE AREA (30%) = 3375.0 SQ.FT.
IMPERVIOUS AREA IN HOUSE = 2754.7 SQ.FT.
(OVERHANG INCLUDED IN CALCULATION)

NOTE: THE PROPERTY SHOWN HEREON IS LOCATED IN FLOOD HAZARD ZONE 'VE' BASE ELEVATION VARIES. REF., F.I.R.M. COMMUNITY NO. 370523, PANEL 2036, SUFFIX 'J' DATED 6/2/06.

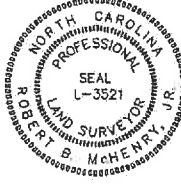
EXCEPT AS SPECIFICALLY STATED OR SHOWN ON THIS PLAT, THIS SURVEY DOES NOT PURPORT TO REFLECT ANY OF THE FOLLOWING WHICH MAY BE APPLICABLE TO THE SUBJECT REAL ESTATE: EASEMENTS, OTHER THAN POSSIBLE EASEMENTS THAT WERE VISIBLE AT THE TIME OF MAKING OF THIS SURVEY; BUILDING SETBACK LINES; RESTRICTIVE COVENANTS; SUBDIVISION RESTRICTIONS; ZONING OR OTHER LAND USE REGULATIONS AND ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.

THE LOCATIONS OF UNDERGROUND UTILITIES AS SHOWN HEREON ARE BASED ON ABOVE-GROUND STRUCTURES AND RECORDED DRAWINGS PROVIDED THE SURVEYOR. LOCATIONS OF UNDERGROUND UTILITIES/STRUCTURES MAY VARY FROM LOCATIONS SHOWN HEREON. ADDITIONAL BURIED UTILITIES/STRUCTURES MAY BE ENCOUNTERED. NO EXCAVATIONS WERE MADE DURING THE PROGRESS OF THIS SURVEY TO LOCATE BURIED UTILITIES/STRUCTURES.

MEAN HIGH WATER
(ELEV +2.90')
ATLANTIC OCEAN

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

I, ROBERT B McHENRY, JR. CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION; THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 10,000 +; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED.
WITNESS MY HAND AND SEAL THIS THE 20TH DAY OF JULY, A.D. 2007.
Robert B. McHenry, Jr.
LAND SURVEYOR REGIS. NO. 12521



DATE SURVEYED: JULY 17, 2007

SCALE: 1 INCH = 40 FEET

SURVEY BY: DW/SM/LH

JOB NUMBER: 07-0362

DRAWN BY: C.KENNEDY

FIELD BOOK: LB-07-3

LEGEND:
EIP = EXISTING IRON PIPE FOUND
NIP = NEW IRON PIPE SET
EIR = EXISTING IRON ROD FOUND
NIR = NEW IRON ROD SET
TBM = TEMPORARY BENCH MARK

McHENRY SURVEYING
PROFESSIONAL LAND SURVEYOR

P.O. BOX 433 - 8509 E. OAK ISLAND DR.
OAK ISLAND, N.C. 28465
TEL. 910-278-9874
FAX: 910-278-3799

REDUCED COPY
SCALE NOT PRECISE

PLAT OF SURVEY FOR
FRAN AND PAULA DAILY

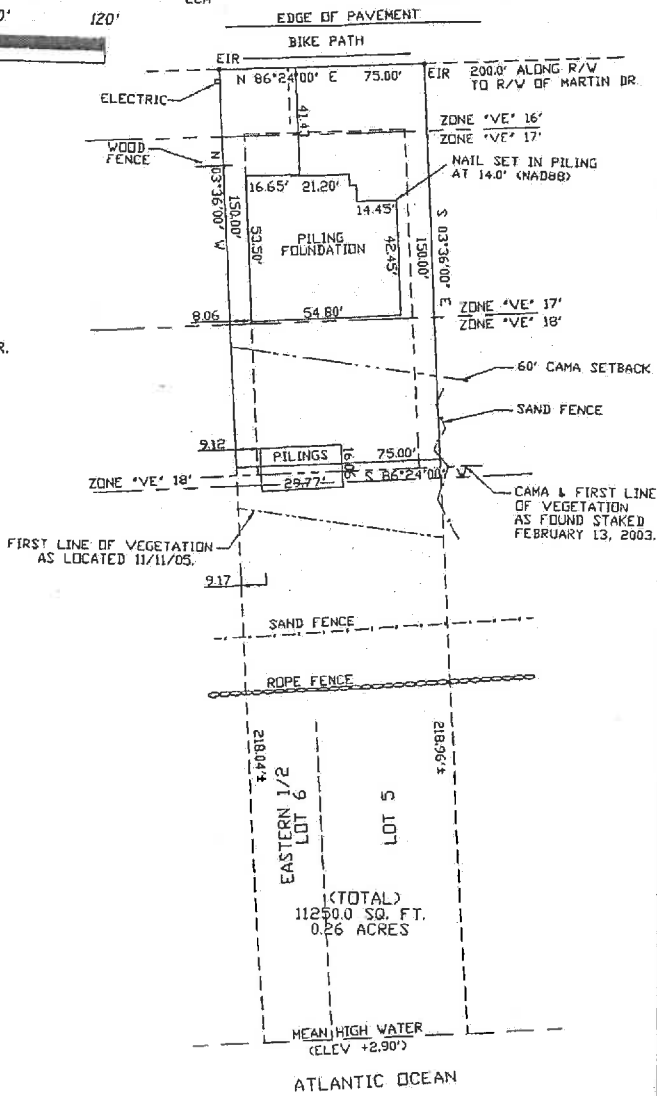
LOT 5 & EASTERN 1/2 OF 6, BLOCK 135, SECTION 5B

SMITHVILLE TOWNSHIP, BRUNSWICK COUNTY
OAK ISLAND, NORTH CAROLINA

WEST BEACH DRIVE 60' R/W
ECH EMAG



BLOCK 135
SECTION 5B
KINGS LYNN
OAK ISLAND, N.C.
DB 562 PG 893 B.C.R.



NOTE: THE PROPERTY SHOWN HEREON IS LOCATED IN FLOOD HAZARD ZONE 'VE'. BASE ELEVATION VARIES. REF. F.I.R.M. COMMUNITY NO. 370523, PANEL 2036, SUFFIX 'J' DATED 6/2/06.

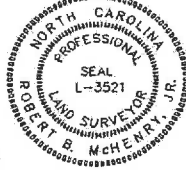
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STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

I, ROBERT B. McHENRY, JR. CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL FIELD SURVEY MADE UNDER MY SUPERVISION; THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 10,000 +/-; THAT THE BOUNDARIES NOT SURVEYED ARE SHOWN AS BROKEN LINES PLOTTED FROM INFORMATION FOUND IN BOOKS REFERENCED.

WITNESS MY HAND AND SEAL THIS THE 2ND DAY OF NOVEMBER, A.D. 2006.
Robert B. McHenry, Jr.
LAND SURVEYOR REG. NO. L-3521



DATE SURVEYED: NOVEMBER 1, 2006

SCALE: 1 INCH = 40 FEET

SURVEY BY: DW/SM

JOB NUMBER: 06-0808

DRAWN BY: C.KENNEDY

FIELD BOOK: LB-06-8

LEGEND:

- EIP = EXISTING IRON PIPE FOUND
- NIP = NEW IRON PIPE SET
- EIR = EXISTING IRON ROD FOUND
- NIR = NEW IRON ROD SET
- TBM = TEMPORARY BENCH MARK

McHENRY SURVEYING
PROFESSIONAL LAND SURVEYOR

P.O. BOX 433 - 8509 E. OAK ISLAND DR.
OAK ISLAND, N.C. 28465
TEL: 910-278-9874
FAX: 910-278-3799

CAMA
MINOR DEVELOPMENT
PERMIT



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

Issued to Frank & Paula Daily, authorizing development in OCEAN ERODIBLE at 6601 W. Beach Dr. as requested in the permittee's application, dated 2/15/2006. This permit, issued on 6/06/2006, is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

This permit authorizes single family residential dwelling and pool with associated development. Any other development will require additional permits or a modification of this permit. The following conditions shall apply:

- (1) All proposed development and associated construction must be done in accordance with the permitted work plat drawings(s) dated received 2/15/2006.
- (2) All construction must conform to the N.C. Building Code requirements and all other local, State and Federal regulations, applicable local ordinances and FEMA Flood Regulations.
- (3) Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
- (4) A copy of this permit shall be posted or available on site. Contact this office for a final inspection at completion of work: (910) 278-5024

Conditions continued on second page

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. From the date of an appeal, any work conducted under this permit must cease until the appeal is resolved.

This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance.

Any maintenance work or project modification not covered under this permit, require further written permit approval.

All work must cease when this permit expires on December 31, 2009.

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances.

This permit may not be transferred to another party without the written approval of the Division of Coastal Management.


Local Permit Official (signature)

CAMA Local Permit Official

Town of Oak Island
Donna F. Coleman
8500 Oak Island Dr.
Oak Island, NC 28465
(910) 278-5024

Permittee (signature required if conditions above apply to permit)

Name Daily

Minor Permit # OI-06-18

Date 3/10/2006

- (5) The structure must be set back a minimum of 60 feet from the first line of stable natural vegetation and no associated development is allowed beyond the first line of stable natural vegetation, as determined by DCM or the LPO.
- (6) The structure must be located entirely off of the frontal dune.
- (7) The structure must be elevated on pilings with a diameter of at least eight (8) inches and meet the elevation requirements of the designate flood zone.
- (8) All pilings shall have a tip penetration greater than eight (8) feet below the lowest ground elevation under the structure. For those structures so located on the primary dune or nearer to the ocean, the pilings must extend to five (5) feet below mean sea level or sixteen (16) feet which ever is least.
- (9) No impermeable surfaces shall be allowed over any functional part of the septic tank system.
- (10) Dune disturbances shall be allowed only to the extent necessary for development and if the dune's protective value is not weakened or reduced. Disturbed areas will be immediately stabilized vegetatively. No development shall involve the significant relocation or removal of primary or frontal dune sand or vegetation thereon.
- (11) The permittee is required to contact the Local Permit Officer shortly before he plans to begin construction to arrange a setback measurement that will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be re-established.
- (12) Any structure authorized by this permit shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration. The structure(s) shall be relocated or dismantled within two (2) years of the time when it becomes imminently threatened, and in any case, upon its collapse or subsidence. However, if natural shoreline recovery or beach re-nourishment takes place within two (2) years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under CRC Rules.

Signature

Date

Locality	Permit Number
Ocean Hazard	Estuarine Shoreline
ORW Shoreline	Public Trust Shoreline
Other	
(For official use only)	

GENERAL INFORMATION

LAND OWNER

Name: Mark A. Engel and Kellyanne K. Engel
 Address: P. O. Box 159
 City: Bryson City State: NC Zip: 28713 Phone: 828-507-4107

AUTHORIZED AGENT

Name: Gary S. Lawrence
 Address: P. O. Box 11369
 City: Southport State: NC Zip: 28461 Phone: 910-454-0606

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 6601 W. Beach Dr., Oak Island, NC 28465; Adjacent to Atlantic Ocean

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) There is a wooden deck South East of residence that contained a small pool. Plan to board up the hole left when pool moved.
SIZE OF LOT/PARCEL: 11,250 square feet acres

PROPOSED USE: Residential (Single-family Multi-family) Commerical/Industrial Other

TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)
COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN AECs :SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILTUPON SURFACES: 176 square feet (includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing .)

Choose the AEC area that applies to your property:
 (1) within 75 feet of Normal High Water for the Estuarine Shoreline AEC
 (2) within 575 feet of Normal High Water for the Estuarine Shoreline AEC, adjacent to Outstanding Resource Waters
 (3) within 30 feet of the Public Trust Shoreline AEC
 (Contact your Local Permit Officer if you are not sure which AEC applies to your property.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality? YES NO

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

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

STATEMENT OF OWNERSHIP:

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

Mark & Kellyanne Engel

an owner or record title, Title is vested in _____, see Deed Book 3518 page 1382 in the Brunswick County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

- | (Name) | (Address) |
|----------------------------------|--|
| (1) BSB Resort Properties, LLC; | 945 Sugar Maple Lane, Harrisonburg, VA 22801 |
| (2) Ruth Bamford & Mary Watkins; | 12 Greenside Court, Durham, NC 27707 |
| (3) | |
| (4) | |

FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

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

PERMISSION TO ENTER ON LAND:

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

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

This the 21st day of Jan., 20 16

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

Gary S. Lawrence
Attorney for Landowner
P.O. Box 11369, Southport, NC 28461
(910) 454-0606

SITE DRAWING/APPLICATION CHECKLIST

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

PHYSICAL DIMENSIONS

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

PHYSICAL CHARACTERISTICS

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

If you will be working in the ocean hazard area:

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

If you will be working in an estuarine shoreline area:

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

DEVELOPMENT PLANS

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

NOTE TO APPLICANT

Have you:

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

FOR STAFF USE

Site Notice Posted _____ Final Inspection _____ Fee Received _____

Site Inspections

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

AGENT AUTHORIZATION FOR CAMA PERMIT APPLICATION

Name of Property Owner Applying for Permit: Mark A. Engel and Kellyanne K. Engel

Mailing address: P. O. Box 159
Bryson City, NC 28461

Phone Number: 828-507-4107

I certify that I have authorized Gary S. Lawrence,
Agent / Contractor

to act on my behalf, for the purpose of applying and obtaining all CAMA permits
necessary for the proposed covering a hole in our existing deck where a swimming pool
was. The deck will not be increased; just decking over the hole.

at my property located at 6601 W. Beach Drive, Oak Island, NC 28465

Brunswick County.

This certification is valid through January 1, 2017
Date

(Property Owner Information)


Signature

Mark A. Engel
Print or Type Name

Landowner
Title

January 21, 2015
Date

828-507-4107
Phone Number

markengel@live.com
Email Address

AEC HAZARD NOTICE

Project Is In An: Ocean Erodeable Area High Hazard Flood Area Inlet Hazard Area

Property Owner: Mark & Kellyanne Engel

Property Address: 6601 W. Beach Drive, Oak Island, NC 28465

Date Lot Was Platted: _____

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and dune alterations are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development. Permits issued in the Ocean Hazard Area of Environmental Concern include the condition that structures be relocated or dismantled if they become imminently threatened by changes in shoreline configuration. The structure(s) must be relocated or dismantled within two (2) years of becoming imminently threatened, and in any case upon its collapse or subsidence.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual long-term average ocean erosion rate for the area where your property is located is 2 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 325 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 18 feet deep in this area.

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary sand bags may be authorized under certain conditions.

The applicant must acknowledge this information and requirements by signing this notice in the space below. Without the proper signature, the application will not be complete.

SPECIAL NOTE: This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer must be contacted to determine the vegetation line and setback distance at your site. If the property has seen little change since the time of permit issuance, and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. Substantial progress on the project must be made within 60 days of this setback determination, or the setback must be remeasured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate remeasurement of the setback. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal can be authorized. It is unlawful to continue work after permit expiration.

For more information, contact:

DONNA F. Coleman
Local Permit Officer
4601 E. Oak Island Dr
Address
Oak Island, NC 28465
Locality
(910) 201-8047
Phone Number
dcoleman@ci.oak-island.nc.us


Applicant Signature

1-21-2016
Date

Gary S. Lawrence, Attorney for landowner

Revised 8/09

BEFORE YOU BUILD

Setting Back for Safety: A Guide to Wise Development Along the Oceanfront

When you build along the oceanfront, you take a calculated risk. Natural forces of water and wind collide with tons of force, even on calm days.

Man-made structures cannot be guaranteed to survive the force of a hurricane. Long-term erosion (or barrier island migration) may take from two to ten feet of the beach each year, and, sooner or later, will threaten oceanfront structures. These are the facts of life for oceanfront property owners.

The Coastal Resources Commission (CRC) has adopted rules for building along the oceanfront. The rules are intended to avoid an unreasonable risk to life and property, and to limit public and private losses from storm and long-term erosion. These rules lessen but do not eliminate the element of risk in oceanfront development.

As you consider building along the oceanfront, the CRC wants you to understand the rules and the risks. With this knowledge, you can make a more informed decision about where and how to build in the coastal area.

The Rules

When you build along the oceanfront, coastal management rules require that the structure be sited to fit safely into the beach environment.

Structures along the oceanfront, less than 5,000 square feet in size, must be behind the frontal dune, landward of the crest of the primary dune, and set back from the first line of stable natural vegetation a distance equal to 30 times the annual erosion rate (a minimum of 60 feet). The setback calculation increases as the size of the structure increases [15A NCAC 7H.0306(a)(2)]. For example: A structure between 5,000 and 10,000 square feet would require a setback from the first line of stable, natural vegetation to a distance equal to 60 times the annual erosion rate (a minimum of 120 feet). The graduated setback continues to increase through structure sizes greater than 100,000 square feet.

The Reasons

The beachfront is an ever-changing landform. The beach and the dunes are natural "shock absorbers," taking the beating of the wind and waves and protecting the inland areas. By incorporating building setbacks into the regulations, you have a good chance of enjoying the full life of the structure. At first, it seems very inviting to build your dream house as close to the beach as possible, but in five years you could find the dream has become a nightmare as high tides and storm tides threaten your investment.

The Exception

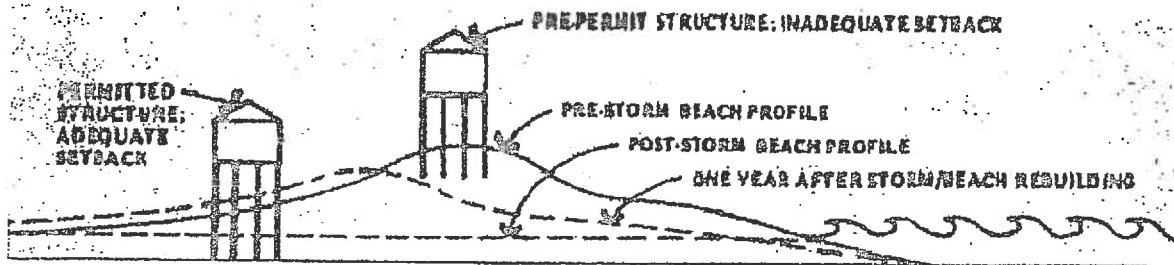
The Coastal Resources Commission recognized that these rules, initially passed in June 1979, might prove a hardship for some property owners. Therefore, they established an exception for lots that cannot meet the setback requirement. The exception allows buildings in front of the current setback, if the following conditions apply:

- (1) the lot must have been platted as of June 1, 1979, and is not capable of being enlarged by combining with adjoining land under the same ownership;
- (2) development must be constructed as far back on the property as possible and in no case less than 60 feet landward of the vegetation line;
- (3) no development can take place on the frontal dune;
- (4) special construction standards on piling depth and square footage must be met; and
- (5) all other CAMA, state and local regulations must be met.

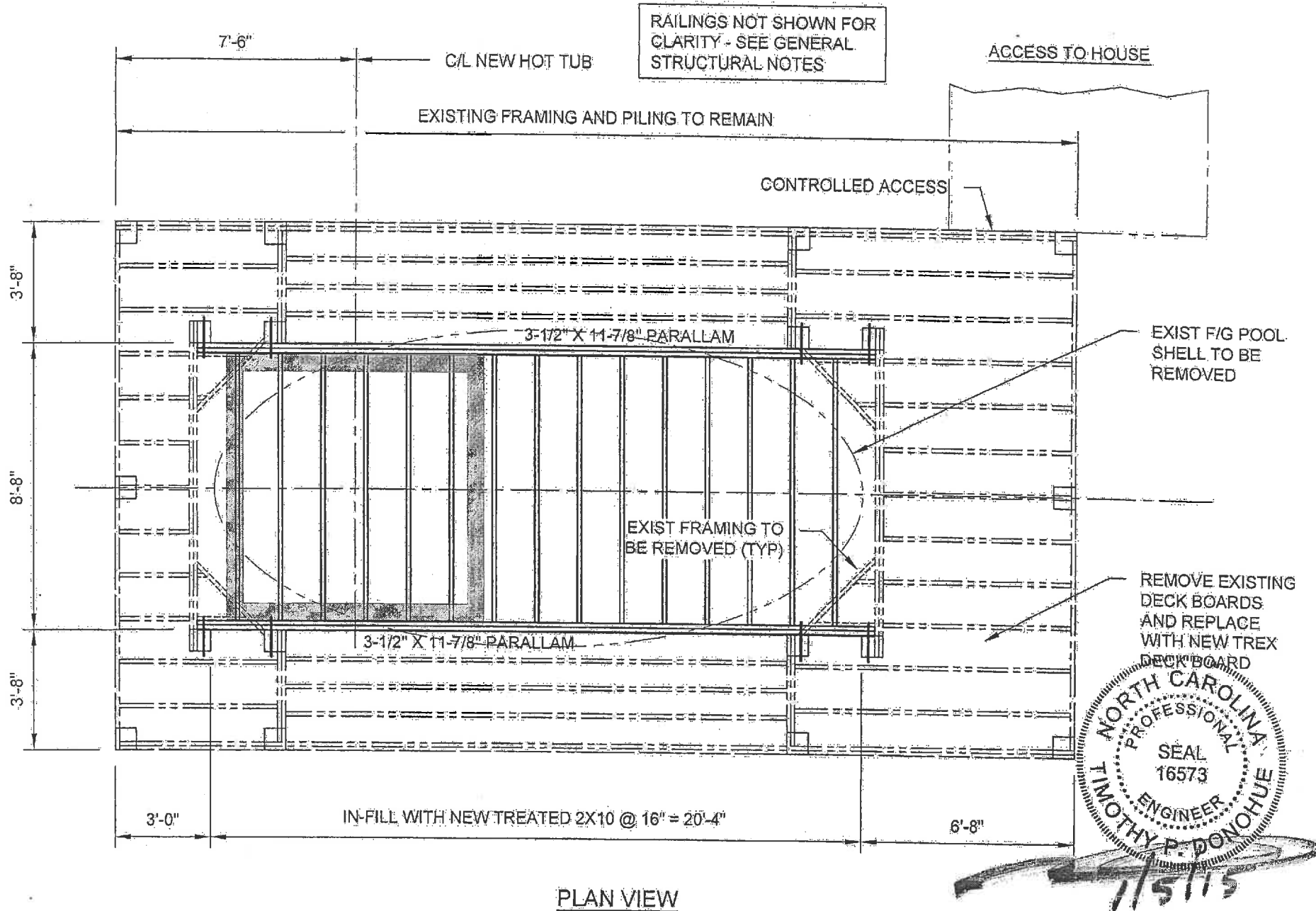
The exception is not available in the Inlet Hazard Area.

To determine eligibility for the exception the Local Permit Officer will make these measurements and observations:

- _____ required setback from vegetation line
- _____ exception setback (maximum feasible)
- _____ rear property line setback
- _____ max. allowable square footage on lowest floor
- _____ piling length needed to extend 4 feet below MSL



After the storm, the house on the dune will be gone. The other house has a much better chance of survival.



RAILINGS NOT SHOWN FOR CLARITY - SEE GENERAL STRUCTURAL NOTES

ACCESS TO HOUSE

C/L NEW HOT TUB

EXISTING FRAMING AND PILING TO REMAIN

CONTROLLED ACCESS

3-1/2" X 11-7/8" PARALLAM

EXIST F/G POOL SHELL TO BE REMOVED

EXIST FRAMING TO BE REMOVED (TYP)

REMOVE EXISTING DECK BOARDS AND REPLACE WITH NEW TREX DECK BOARD

3-1/2" X 11-7/8" PARALLAM



IN-FILL WITH NEW TREATED 2X10 @ 16" = 20'-4"

PLAN VIEW

GENERAL STRUCTURAL NOTES:

1. ALL WORK SHALL BE COMPLETED IN ACCORDANCE WITH THE 2012 NORTH CAROLINA RESIDENTIAL BUILDING CODE. REFER TO APPENDIX M - WOOD DECKS.
2. ALL EXISTING CONDITIONS TO BE VERIFIED PRIOR TO CONSTRUCTION.
3. DESIGN LOAD: LIVE - 40 PSF
 HOT TUB - 100 PSF (84" X 84" - 370 GAL)
4. ALL EXTERIOR MATERIALS SHALL BE SUITABLE FOR USE IN EXTERIOR ENVIRONMENT.
5. EXISTING JOIST, HEADER AND PILE FRAMING TO REMAIN, EXCEPT AS NOTED.
6. PROVIDE TEMPORARY SUPPORT OF EXISTING DECK FRAMING AS REQUIRED.
7. NEW/REPLACEMENT FRAMING TO BE TREATED #2 SYP OR BETTER.
8. RAILING FRAMING NOT SHOWN FOR CLARITY. ALL RAILINGS TO BE REMOVED FOR CONSTRUCTION, STORED, SALVAGED AND PUT BACK PRIOR TO COMPLETION.
9. PARALAM BEAMS TO BE CONTINUOUS (NO SPLICE). ATTACH PARALAM BEAMS TO ALL EXISTING PILES WITH A MINIMUM OF (2) 3/4" DIA GALVANIZED THROUGH BOLTS AT EACH PILE.
10. ATTACH ALL NEW 2X10 FRAMING WITH GALVANIZED JOIST HANGERS AND LEDGER BOARDS WITH STAINLESS STEEL FASTENERS.
11. REPAIR ANY ADJACENT DETERIORATED FRAMING AS REQUIRED.



PROPOSED POOL REMOVAL - DECK REPLACEMENT - 6601 WEST BEACH DRIVE

2 OF 2

Date _____
 BSB Resort Properties, LLC
 Adjacent Property Owner
 945 Sugar Maple Lane
 Mailing Address
 Harrisonburg, VA 22801
 City, State, Zip Code

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL RECEIPT

Postage \$ 0.50
 Certified Fee _____
 Return Receipt Fee (Endorsement Required) _____
 Restricted Delivery Fee (Endorsement Required) _____
 Total Postage & Fees \$ 0.50

7014 0510 0001 9021 2775

MAILED FROM ZIP CODE 0000642817 JAN 28 02 1P
 UNITED STATES POSTAGE
 PRIORITY MAIL
 \$300.00
 Postmark Here

Sent to BSB Resort Properties, LLC
 Street, Apt. No., or PO Box No. 945 Sugar Maple Lane
 City, State, ZIP+4 Harrisonburg, VA 22801

PS Form 3800, August 2006 See Reverse for Instructions

Dear Adjacent Property:

This letter is to inform you that I, Mark & Kellyanne Engel have applied for a CAMA Minor Property Owner

Permit on my property at 6601 W. Beach Drive, Oak Island, NC 28465, in Brunswick Property Address

County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 828-507-4107, or by mail at the address listed below. If you wish to Applicant's Telephone

file written comments or objections with the Town of Oak Island CAMA Minor Permit Program, you may submit them to:

Donna F. Coleman
 Local Permit Officer for the Town of Oak Island
 4601 E. Oak Island Dr.

Sincerely,

Mark & Kellyanne Engel
 Property Owner
 P. O. Box 1579
 Mailing Address
 Bryson City, NC 28713
 City, State, Zip Code

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <u>[Signature]</u> <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) _____ C. Date of Delivery <u>2/6/10</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: <u>BSB Resort Properties, LLC</u> <u>945 Sugar Maple Lane</u> <u>Harrisonburg, VA 22801</u></p>	<p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>2. Article Number (Transfer from service label) <u>7014 0510 0001 9021 2775</u></p>	<p>1 Restricted Delivery</p>



9590 9403 0293 5155 9090 98

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Mark & Kellyanne Engel's
(Name of Property Owner)
property located at 6601 W. Beach Drive, Oak Island, NC 28465,
(Address, Lot, Block, Road, etc.)
on Atlantic Ocean, in Oak Island, N.C.
(Waterbody) (Town and/or County)

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

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Signature

BSB Resort Properties, LLC
Print or Type Name

Telephone Number

Date _____

Date _____
Ruth Bamford & Mary Watkins
 Adjacent Property Owner
12 Greenside Court
 Mailing Address
Durham, NC 27707
 City, State, Zip Code

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

OFFICIAL

Postage \$ 6.50
 Certified Fee _____
 Return Receipt Fee (Endorsement Required) _____
 Restricted Delivery Fee (Endorsement Required) _____
 Total Postage & Fees \$ 6.50

02 1P
 0000642817 JAN 21 2011
 MAILED FROM ZIP CODE 27707
 \$000.00
 PITNEY BOWES
 UNITED STATES POSTAGE
 Postmark Here

Sent To
Ruth Bamford and Mary Watkins
 Street, Apt. No.,
 or PO Box No. 12 Greenside Court
 City, State, ZIP+4
Durham, NC 27707

PS Form 3800, August 2006 See Reverse for Instructions

Dear Adjacent Property:

This letter is to inform you that I, Mark & Kellyanne Engel have applied for a CAMA Minor Property Owner Permit on my property at 6601 W. Beach Drive, Oak Island, NC 28465, in Brunswick County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 828-507-4107, or by mail at the address listed below. If you wish to file written comments or objections with the Town of Oak Island CAMA Minor Permit Program, you may submit them to:

Donna F. Coleman
 Local Permit Officer for the Town of Oak Island
 4601 E. Oak Island Dr.
 Oak Island, NC 28465

Sincerely,

Mark & Kellyanne Engel
 Property Owner
P. O. Box 1579
 Mailing Address
Bryson City, NC 28713
 City, State, Zip Code

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <u>Mary Watkins</u> <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) <u>MARY WATKINS</u> C. Date of Delivery <u>2/6/11</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No</p>
<p>1. Article Addressed to: <u>Ruth Bamford and Mary Watkins</u> <u>6605 W Beach LLC</u> <u>12 Greenside Court</u> <u>Durham, NC 27707</u> <u>Mary Helen Watkins</u></p>	<p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Signature Confirmation Restricted Delivery</p>
<p>2. Article Number (Transfer from service label) <u>7014 0510 0001 9021 2751</u></p>	<p>9590 9403 0293 5155 9090 81</p>

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Mark & Kellyanne 's

(Name of Property Owner)

property located at 6601 W. Beach Drive, Oak Island, NC 28465,

Address, Lot, Block, Road, etc.)

on Atlantic Ocean, in Oak Island, N.C.
(Waterbody) (Town and/or County)

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

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Signature

Ruth Bamford

Signature

Mary Watkins

Print or Type Name

Telephone Number

Telephone Number

Date _____

Date _____





2/12/2016

CERTIFIED MAIL - INSERT CERTIFIED MAIL # VIA EMAIL
RETURN RECEIPT REQUESTED

Mark & Kellyanne Engel
PO Box 159
Bryson City, NC 28713

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- OI 16-12
PROJECT ADDRESS- 6601 W. Beach Dr.

Dear Mr. & Mrs. Engel:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed. This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to add decking to an existing pool deck which is seaward of the 1998 static vegetation line and is inconsistent with 15A NCAC 07H .0309(a)(3).

Your application is also inconsistent with 15A NCAC 07H .0601, which states that no development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations or laws of the State of North Carolina or of local government in which the development takes place. On page 88 of the local Land Use Plan, you will find that:

Policy 2.A.17: Ocean Hazard Areas: The Town supports State policies that do not conflict with the Town's development regulations, for ocean hazard areas as set forth in Chapter 15NCAC subchapter 7H of the State CAMA regulations. Suitable land uses in ocean hazard areas include ocean shoreline erosion control activities, dune establishment and stabilization. Residential, commercial and recreational land uses and parking lots for beach access are also acceptable uses in ocean hazard areas provided they meet all general and specific standards of 15 NCAC: 7H that do not conflict with the Town's development regulations.

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission (CRC). Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of General Statutes of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this letter. Please contact me so I can provide you with the proper forms and any other information you may require.

You may also petition for a variance from the CRC by means of the procedures described in 15A NCAC 07J .0700. I have enclosed a copy of the current rules as well as the CAMA Variance Request Form (DCM Form 11).

Respectfully yours,



Donna F. Coleman, LPO
Town of Oak Island

cc: Sean Ferrell Wilmington-DCM

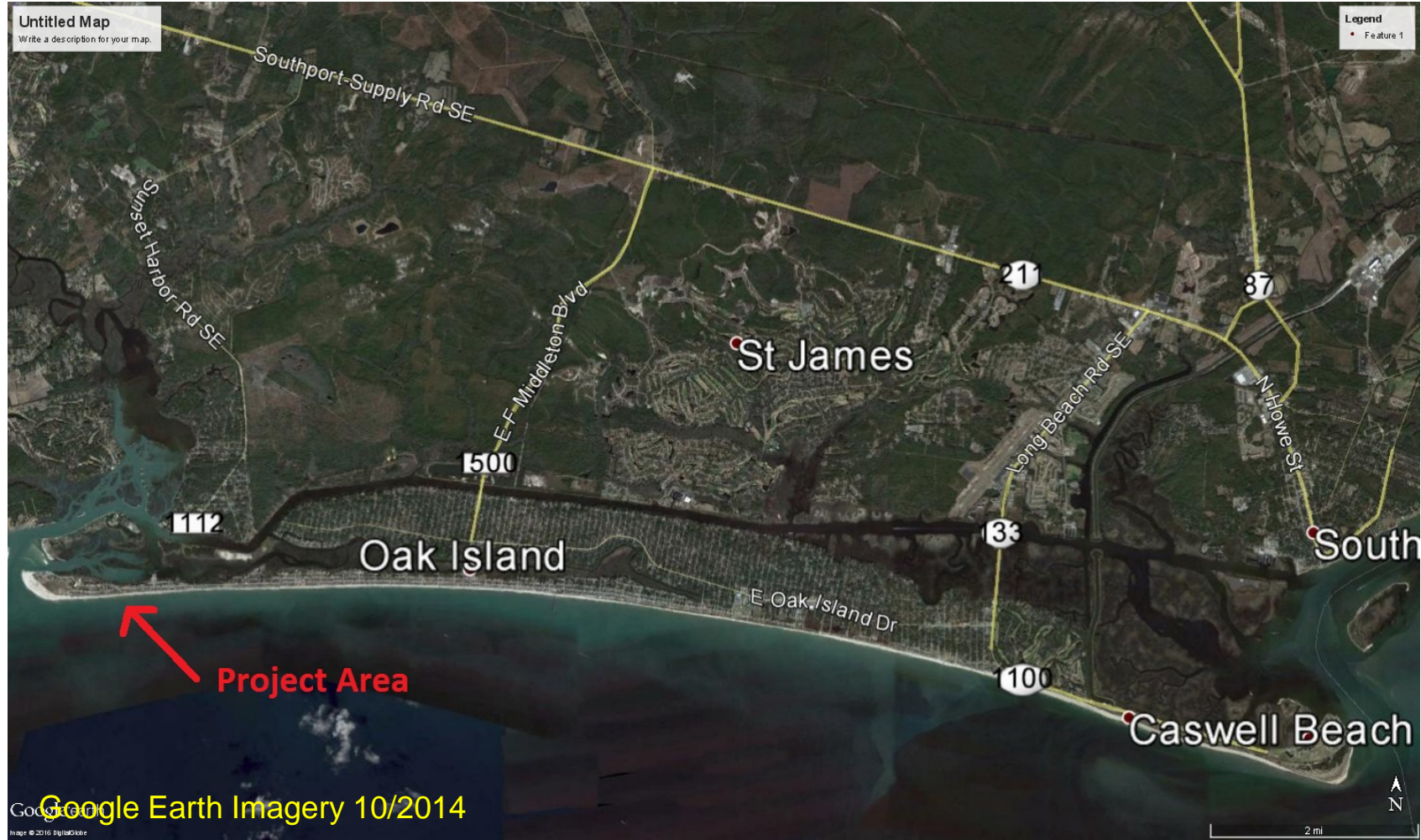


July 13, 2016

Department of Environmental Quality



Engel Variance Request



Engel Variance Request



Engel Variance Request



Engel Variance request



Engel Residence

DCM Aerial Reference Photo

January 29, 2016

Engel Variance Request



Existing Pool Deck

**Photo taken from rear
of house**

March 9, 2016

Engel Variance Request



**Approximate
First Line of Stable Natural Vegetation**



Existing Pool Deck

Photo taken facing West

April 7, 2016



Engel Variance Request

Existing Pool Deck

Photo taken facing East

April 7, 2016



Engel Variance Request



Existing Pool Deck

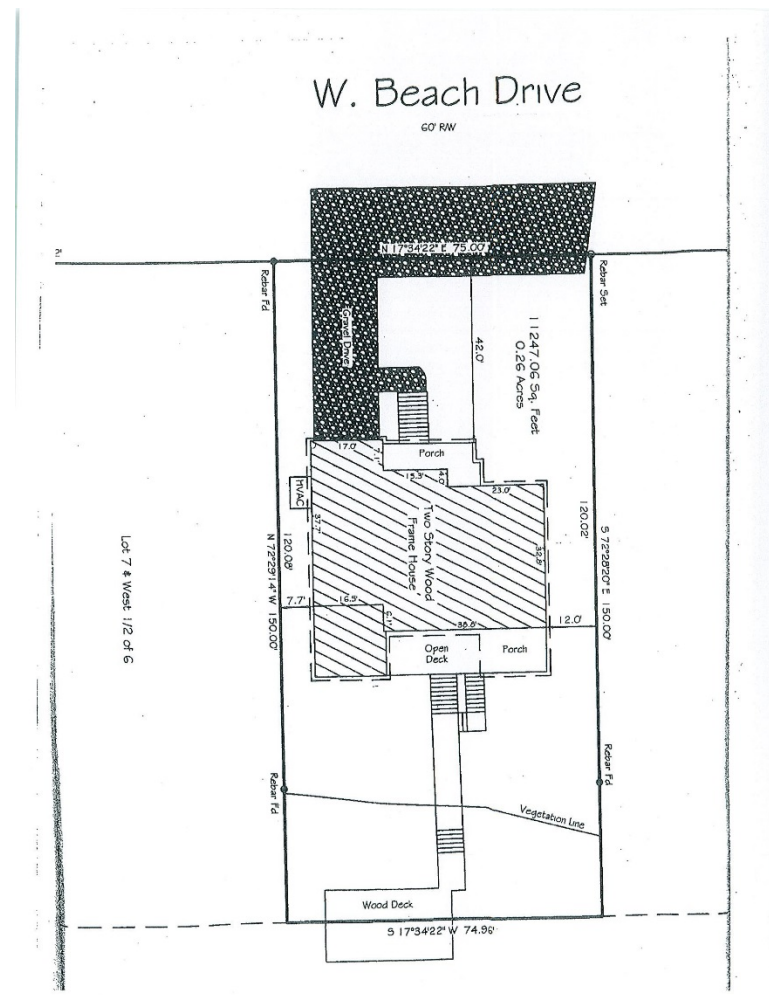
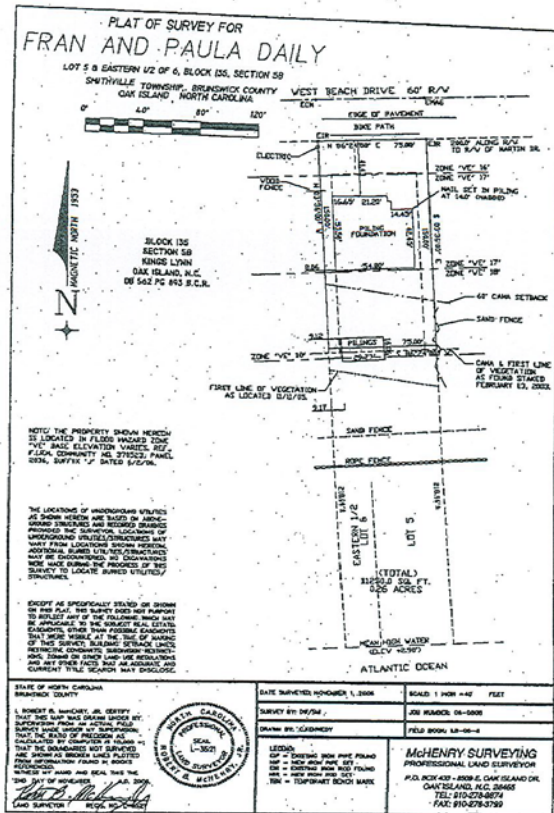
Photo taken facing North

April 7, 2016

Engel Variance Request



REDUCED COPY
SCALE NOT PRECISE



Engel Variance Request



VARIANCE CRITERIA 15A NCAC 07J.0703 (f)

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

- (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
- (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
- (C) that such hardships did not result from actions taken by the petitioner; and
- (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.





PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant General Counsel

DATE: June 28, 2016 (for the July 12-13, 2016 CRC Meeting)

RE: **Variance Request by Mark A. Davenport (CRC-VR-16-02)**

Petitioner Mark A. Davenport (“Petitioner”) owns a lot with his wife on the west end of the Town of Oak Island. The property is located within the Commission’s Ocean Hazard Area of Environmental Concern (“AEC”). Since Petitioner purchased the property in 2013, the lot experienced acceleration in 2014, which necessitated the placement of a “supersized” sandbag structure in late-2014 and early-2015, and then the existing 3,000 square foot home was destroyed by fire on October 31, 2015.

On February 16, 2016, Petitioner filed a CAMA Minor Permit application in order to reconstruct a home of the same size and in the same location as the home lost to the fire. On March 8, 2016, the Town of Oak Island’s Coastal Area Management Act (“CAMA”) Local Permitting Officer (“LPO”) denied Petitioner’s CAMA Minor Permit application as it was inconsistent with the applicable setback rules, where the home would be almost entirely waterward of the current vegetation line. On May 24, 2016, Petitioner, through counsel, filed this variance petition in order to have the oceanfront setback rules varied so he could build a new home of the same size, and in the same location as the one lost in the fire, as proposed in his permit application.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Meredith Jo Alcoke, Petitioner’s Attorney, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Donna Coleman, Town of Oak Island CAMA LPO, electronically

RELEVANT STATUTES OR RULES**APPENDIX A****15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. **Ocean hazard areas include beaches**, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, **the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them.** The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

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

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

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 60; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>; and (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

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

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

(3) In no case shall a development line be created or established below the mean high water line.

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

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

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

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

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

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

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

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

- (a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met: [none of these includes a residential structure]

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner Mark A. Davenport ("Petitioner") owned an oceanfront home and property at 6617 West Beach Drive (the "Lot") between 66th and 69th Place West in the Town of Oak Island ("Town"), Brunswick County, North Carolina. (Lot 13 and Part of 14, West Long Beach, Block 35, Brunswick County Registry). The Lot was platted in June of 1963.

2. Petitioner purchased the Lot on May 24, 2013, as evidenced by a deed recorded at Book 3410, Page 421 of the Brunswick County Registry, a copy of which is attached as a stipulated exhibit.

3. A photo provided by Petitioner and taken October 25, 2013, 5 months after Petitioner purchased the property, shows the beach in front of Petitioner's Lot and is attached as an exhibit. At the time Petitioner purchased the Lot, measurements were not taken or requested to locate the first line of stable and natural vegetation ("FLSNV") which existed at that time. However, measurements were taken in August of 2013 on the adjacent Golob property which showed that the waterward pilings supporting the Golob residence were located 68 feet from the FLSNV.

4. The Lot as platted is approximately 75 feet wide by 150 feet deep, for a total of 10,454 square feet (or .24 acres), as shown on a survey prepared by Licensed Professional Land Surveyor William W. Delaney II of Tide Water Land Surveying (the "Site Survey"), a copy of which is included as part of Petitioner's CAMA Minor Permit application. The topographical data was measured by the surveyor on December 29, 2015. The CAMA Minor Permit application including the Site Survey is attached as stipulated exhibits.

5. The elevation of the Lot in the area of the proposed residence is approximately 11-12 feet above MSL, as shown on the Site Survey.

6. The Lot is in Flood Zone VE (Elevations 17, 18, and 20) as shown on the Site Survey.

7. The Lot is in a developed area along the oceanfront, with existing residences on either side. The residence to the east was built in 2004, and the residence to the west was built in 2002.

8. The Lot is within the Ocean Erodible Area of Environmental Concern ("AEC"), a subcategory of the Ocean Hazard AEC designated by the Coastal Resources Commission ("CRC") in 15A NCAC 7H .0304. The Lot is not located within the Inlet Hazard AEC, but lies just east of the Inlet Hazard AEC for the Lockwood Folly Inlet.

9. N.C.G.S. § 113A-118 requires that a CAMA permit be obtained before any development takes place in an AEC.

Former Residence

10. Petitioner's 2-story home was built in 2005 and comprised approximately 3,000 square feet of heated residential space, 576 square feet of covered porch and 438 square feet of decking, based on the tax appraisal card, attached. The site also included a concrete driveway, a ground level storage room, and an outdoor shower. A photo of the former home is included in Petitioner's CAMA Minor Permit application, attached as a stipulated exhibit.

11. On October 31, 2015, the home was destroyed by fire and was considered a "total loss" by Petitioner's insurer. Photos of the fire and aftermath are attached as stipulated exhibits.

12. In November 2015, Petitioner demolished the remains of the home except for approximately 33 support pilings, which were cut down to approximately 1-2 feet in height.

Proposed Residence

13. Petitioner proposes to rebuild his home in the same footprint of the home destroyed. If Petitioner rebuilds in the same location, the oceanward side of the proposed residence will be located along the "average line of construction," which is the approximate line formed by the oceanward sides of the adjacent residences. Petitioner's enclosed area will be located almost exactly even with the enclosed area of the neighbor's house to the west (Lot 15 and P/O Lot 14 owned by Litz), and slightly landward of the enclosed area of the neighbor's house to the east (Lot 12 owned by Golob).

14. The proposed residence is a two story, 5-bedroom residence with a total floor area of 3,001 square feet as defined by 15A NCAC 7H .0306(a)(4). Petitioner also proposes 576 square feet of covered porches and 438 square feet of open decking- the same size as the former residence.

CAMA Permit Application

15. On February 16, 2016, Petitioner applied to the Town's CAMA Local Permit Officer (LPO) for a CAMA minor development permit to rebuild a single family residence as described above.

16. As required, Petitioner sent notice of the application to the two adjacent riparian property owners and to the public through onsite posting. Neither of the adjacent owners objected to the proposed project, and no public comments were received.

17. On March 8, 2016, the Town's CAMA LPO denied Petitioner's application as the proposed development does not comply with 15A NCAC 7H .0306(a) which prohibits construction of a single family residence seaward of the FLSNV. Petitioner's application was also denied under 15A NCAC 7H .0601 which states that no development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations or laws of the State of North Carolina or of local government in which the development takes place. The LPO found that the development would contravene the Town's Local Land Use Plan Policy 2.A.17 since it did not

meet the CRC's Ocean Hazard standards for development. A copy of the denial letter is attached as a stipulated exhibit.

Applicable Setback Rule

18. The CRC has adopted an erosion setback ("Erosion Setback") requirement that applies to development along the oceanfront. 15A NCAC 7H .0306(a).

19. The Erosion Setback is generally measured from the FLSNV. "This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and more stable upland areas. [It] is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment." 15A NCAC 7H .0305(a)(5).

20. The FLSNV on the Lot was staked by CAMA LPO Donna Coleman for this permit application. It is located diagonally across the back of the Lot, cutting across the driveway and back corners of where the former home was located. This FLSNV is depicted on Petitioner's Site Survey as "CAMA Line as Found Flagged on 12/29/2015."

21. Generally, structures measuring less than 5,000 square feet must be set back at a distance of 30 times the long-term annual erosion rate affecting the Lot from the FLSNV. 15A NCAC 07H .0306(a)(5)(A).

22. The average annual erosion rate for the Lot is 2 feet per year. Therefore, the Erosion Setback applicable to the Lot, for the 3,001 square foot total floor area, is 60 feet (30 years x 2 feet).

23. On Petitioner's Lot, the 60-foot setback from the FLSNV is located within the right-of-way of West Beach Drive.

24. There is no "building envelope" within the boundaries of the Lot once the Erosion Setback is applied to the lot, based on the December 2015 FLSNV call. Without a variance from the CRC, Petitioner's Lot is unbuildable for a residential structure based on the December 2015 FLSNV location.

Site Conditions

25. Beginning in early 2014, Petitioner's Lot was affected by accelerated erosion. DCM Field Representative Heather Coats visited the Lot on April 30, 2014, May 7, 2014 and May 16, 2014 during the accelerated erosion event. Over the span of those visits, her measurements from the escarpment to the two oceanward corner pilings were 40', 38' and 28' for the eastern corner and 35', 30', and 21' for the western corner. This demonstrates a rate of erosion of 12'-14' over this 16-day period. Ms. Coats took similar measurements for neighboring Golob property on April 17, 2014 and May 16, 2014, and found that the distance from the escarpment to the oceanward house pilings went from 47' to 30' and 42' to 25'. A copy of Ms. Coats' field notes is attached.

26. On May 21, 2014, Petitioner and three adjacent property owners were each issued a CAMA General Permit for the installation of sandbags measuring the standard 20 feet in width by 6 feet in height. The sandbags were installed by May 31, 2014.

27. The erosion continued and the sandbag structure was, at times, overtopped by the ocean. This overtopping caused scouring behind the sandbags and threatened the foundation piles of the homes.

28. On or about September 18, 2014, Petitioner and the adjacent neighbors jointly applied for a CAMA Major Permit seeking approval to install additional sandbags with a maximum width of 30 feet and a maximum elevation of 15.7 feet NAVD 88, protecting four homes for a distance of 250 linear feet. The permit was denied due to inconsistency with the CRC's rules governing size of sandbags in 15A NCAC 7H .0308.

29. Petitioner and the adjacent neighbors filed a variance petition and request for expedited hearing with the CRC and were heard during a November 12, 2014, special meeting of the CRC ("2014 Variance Request").

30. A key fact supporting the 2014 Variance Request was that the Town of Oak Island was pursuing a beach nourishment project on the west end of Oak Island that would place sand in front of the petitioners' lots.

31. The CRC granted the 2014 Variance Request with the condition that construction begin on the sandbags within 6 months. DCM issued the CAMA Major Permit November 21, 2014, and installation of the bags began soon thereafter. The larger sandbag structure was completed in January of 2015. A copy of the CRC's Variance Order is attached as a stipulated exhibit.

32. A photo taken December 6, 2014, shows the vegetation present in front of the last three houses by the inlet. An aerial photo taken by DCM on January 29, 2016, shows Petitioner's vacant Lot and other properties to the east and west. Copies of these photos are attached as stipulated exhibits.

33. The Town of Oak Island received CAMA Major Permit No. 21-15 for the Lockwood Folly River Habitat Restoration Project which authorized the disposal of approximately 229,000 cubic yards of beach compatible material from the Eastern Channel and the Lockwood Folly River on the western end of Oak Island, including in front of Petitioner's Lot. This project took place in March and April of 2015. Sand was placed just oceanward of the sandbags protecting Petitioner's Lot but not behind the bags.

34. Separately, Petitioner and his adjacent neighbors purchased 7,000 cubic yards of beach compatible sand to build up the dune over and behind the bags, and to distribute under the four houses. The work was done by the dredging contractor doing the Habitat Restoration Project.

35. As shown on the Site Survey, this man-made dune measures approximately 16 feet MSL height at its crest.

36. Coastal Transplants is a Brunswick County company that has specialized in dune building and vegetation for almost two decades. Beginning in July 2015, Coastal Transplants installed sand fences and a natural mix of native dune grasses along the newly formed dune utilizing a long-term approach to dune management. The plantings included Sea Oats, Seashore Elder, Bitter Panicum, and American beachgrass.

37. At the time of the fire in October of 2015, the vegetation in front of Petitioner's Lot had been planted but was not sufficient to qualify as a FLSNV for purposes of the Erosion Setback rules.

38. After the fire destroyed Petitioner's home, Coastal Transplants shifted to a more aggressive approach to help re-establish a FLSNV that would allow Petitioner to re-build in the same footprint.

39. Coastal Transplants planted native dune species in July and October of 2015, and in January and April of 2016. Petitioner and his neighbors share the cost of having these plants fertilized twice a month and watered as needed. Coastal Transplants has planted 10,788 individual plants on Petitioner's lot as shown on the invoices attached as stipulated exhibits.

40. At the time of this request, Coastal Transplants is under an open contract with Petitioner to do whatever is required to establish a FLSNV for CAMA permit approval. Petitioner continues to work aggressively with his neighbors to protect and enhance the vegetation. See the recent ground level photos in the powerpoint, attached.

41. Since completion of the nourishment project in the spring of 2015, high-tide events such as the rare super moon high tides September 27, 2015, the side effects of Hurricane Joaquin in early October 2015, and the typical occurrence of winter storms, the ocean has not been observed overtopping the man-made dune.

42. As recently as May 2016, the sand had built up sufficiently around the sand fences that Petitioner and his neighbors were allowed by the LPO to move the sand fences seaward and add new plantings to the dune.

43. A photo taken at low tide on April 9, 2016, shows the beach at low tide approximately one year after the nourishment project. This photo is attached as a stipulated exhibit.

44. The vegetation continues to grow but still does not qualify as a FLSNV as of a December 29, 2015 visit by the LPO and a May 17, 2016 visit by a DCM staff person.

45. Petitioner stipulates that the proposed development is inconsistent with the applicable Erosion Setback rule.

Local Variance from Front Yard/Street Setback

46. The CRC's rules governing variance procedures require that "[b]efore filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot." 15A NCAC 7J .0701(a).

47. The Town has a front yard/building setback of 15 feet ("Town Setback"). Petitioner has not sought relief from the Town's Setback because even with a variance from the Town Setback, there would be no building envelope within the boundaries of the Lot for a residential structure, based on a 60-foot setback from the December 2015 FLSNV call.

48. Petitioner could locate the proposed residence further landward without the need to obtain a variance from the Town's Setback, but this would not make the Lot buildable for a residential structure, based on a 60-foot setback from the December 2015 FLSNV call. Petitioner proposes to rebuild in the same footprint as the house that burned down so that the new home, like the old home, will be along the average line of construction.

49. Petitioner seeks a variance from the Commission to construct the 3,001 square foot residence as proposed in his CAMA minor permit application, along with 576 square feet of covered porches and 438 square feet of open decking- the same size as the former residence.

50. Aerial and ground-level photographs of the Lot and the surrounding properties are attached as exhibits and as part of the powerpoint exhibit.

51. In this matter, the Division of Coastal Management is represented by Christine Goebel, Assistant General Counsel for DEQ. The Petitioner is represented by Meredith Jo Alcoke, Esq. of the New Bern firm of Ward and Smith, P.A.

Stipulated Exhibits

1. Davenport Deed recorded at Book 3410, Page 421 of the Brunswick County Registry
2. Petitioner's October 25, 2013 photo of the Lot
3. CAMA Minor Permit Application, including Site Survey and photo of prior home
4. Appraisal Card from Brunswick County with as-built house sketch
5. Photos of the fire and of the destroyed residence
6. Notice of CAMA minor permit application and notice to adjacent riparian owners
7. March 8, 2016 CAMA permit denial letter
8. 2014 CRC Variance Order for larger sandbags
9. Petitioner's December 6, 2014 photo of the Lot
10. DCM's January 29, 2016 aerial photo of the area around the Lot
11. Invoices from Coastal Transplants to Petitioner
12. Petitioner's April 9, 2016 photo of the Lot
13. Ms. Coats' field notes for 2014 accelerated erosion
14. Powerpoint presentation

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

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

Petitioners' Position: Yes.

Petitioner purchased his oceanfront home in 2013. At that time, the beach in front of his Lot was wide and had plenty of vegetation. The home was set back at least 60 feet from the first line of stable natural vegetation, and the Lot was "buildable."

Petitioner expected to enjoy the home with his wife and young children for many years to come. There was no way of knowing what the near future held for the property. Within a year of purchase, the Lot experienced significant accelerated erosion, which Petitioner addressed by installing two sets of sandbags. Then, the Town received a beach nourishment project that reversed the pattern of erosion and allowed Petitioner to build up a substantial vegetated dune to protect his home. As this dune-building continued, Petitioner's home was lost to a devastating fire on Halloween night while Petitioner and his family were out trick-or-treating.

Without a variance, Petitioner's property cannot be developed with a single family residence or any other habitable or economically viable structure. Unless a variance is granted, Petitioner can make no reasonable and significant use of his property. Strict application of Rule 15A NCAC 7H .0306 causes Petitioner unnecessary hardship in this case.

Staff's Position: No.

Petitioners seek a variance from the Commission's oceanfront setback rules, which prohibit development waterward of the First Line of Stable and Natural Vegetation (FLSNV) except in the limited cases of oceanfront piers providing public access and state-owned bridges. While there are some exceptions (15A NCAC 07H .0309) to the oceanfront erosion setback rules (60-foot landward from FLSNV in this case) that allow limited development within the setback area, the listed structures must be located landward of the FLSNV. However, the Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development" (15A NCAC 07H .0303(b)).

Staff contend that while Petitioner faces a hardship by not being able to re-build a house similar to that lost in the fire, given the recent oceanfront erosion on the lot which caused the recent landward movement of the FLSNV and subsequently required the 2014-15 installation of "supersized sandbags through a variance from the CRC, the strict application of the Commission's oceanfront

setback rules does not cause Petitioner an *unnecessary* hardship. Petitioner has taken steps to address the erosion on his Lot, including receiving nourishment, paying to place additional sand on his lot, and planting vegetation. Barring additional erosion events at this location, the vegetation will have an opportunity to grow and may be sufficient to support a FLSNV determination that allows construction of a new house which meets a 60-foot setback on the lot. However, until the vegetation has time to recover enough to be part of a protective dune system, Staff contends that allowing Petitioner to build a new home waterward of the FLSNV would constitute inappropriately sited development.

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

Petitioners' Position: Yes.

The hardships result from the Lot's location along a limited stretch of beach that has experienced accelerated erosion that appears to be more severe than the erosion on properties to the east and west. The Lot is among approximately four lots that suffered disproportionately from the effects of storms and lunar tides beginning in early 2014. Petitioner recognizes that although his Lot is not within the Inlet Hazard AEC, it is still affected by nearby inlet forces. However, these forces appear to have affected Petitioner's Lot more severely than other properties on the west end of the island. Thus, the hardships result from the Lot's unique location within an area that experienced accelerated erosion greater than other properties on the west end of the island.

Staff's Position: No.

Staff agrees that the Lot is located in an area that experienced acceleration in 2014. However, it is the combination of the erosion event and the intervening event of the house fire which combine to cause Petitioner's hardship. This variance request is to waive oceanfront erosion setbacks on lot with a history of erosion in order to build a new house which is not only seaward of the setback, but also seaward of the FLSNV. Staff notes that the hardship of the shoreline erosion on the lot, and specifically that which has occurred since Petitioners' purchase of the lot in 2013, is not atypical for an ocean shoreline, especially those affected by nearby inlet forces, and is contemplated in the Commission's rules for the Ocean Hazard AECs. Staff identify no other peculiar conditions on the property which cause Petitioners' hardship.

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

Petitioners' Position: No.

Petitioner has taken no actions that caused the hardships. Petitioner has done everything possible to reverse the erosion that the Lot experienced after he purchased.

Staff's Position: No.

Staff agree that Petitioner did not cause the hardship of the erosion of the vegetation line and dune system on their lot.

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

Petitioners' Position: Yes.

The variance will be consistent with **the spirit, purpose and intent** of the Commission's rules. The primary purpose of the ocean hazard rules is to protect life and property. 15A NCAC 7H .0303(a). Here, life and property will be protected by the substantial frontal dune and the recently nourished beach in front of the property. Petitioner is not seeking to rebuild a home taken by the ocean. His home was destroyed by fire. At the time of the fire, Petitioner had already made significant investments in rebuilding the dune by installing large sandbags, pushing sand over the dune, and planting the dune regularly. This frontal dune has continued to stabilize and will protect life and property as contemplated by the Commission's rules.

Public safety and welfare will be secured by this variance because the proposed development will have no adverse impact on the public's safe use of this beach.

Substantial justice will be preserved by this variance. This is not a situation where a person bought an unbuildable lot and is now looking for a handout. Petitioner bought a buildable lot that experienced accelerated erosion. He then spent a tremendous amount of money to install two sets of sandbags, to bring in beach compatible sand and build up the dune, and to plant and maintain native dune vegetation. In the midst of these efforts, his house burned down through no fault of his own. Petitioner now seeks simply to build back exactly what he had before in line with his neighbors. Justice will be preserved if he is allowed to rebuild his home.

For the reasons stated above, granting Petitioner the requested variance will be consistent with all four (4) of the criteria stated in N.C. Gen Stat. § 113A 120.1 and in NCAC 7J .0700. Accordingly, Petitioner respectfully requests that the Commission issue a variance in accordance the permit application.

Staff's Position: No.

Staff contends that granting a variance to the Petitioner in order to vary the Commission's oceanfront erosion setback rules so that Petitioner can build a new home waterward of the current location of the FLSNV is not consistent with the spirit, purpose, and intent of the Commission's rules. The Commission's rules have provided an oceanfront erosion setback since 1979 and since that time, while most structures have to meet a setback landward of the vegetation line (in this case, 60-feet), the Commission has made limited exceptions for some development to be sited within the setback (See the nine structures listed in 07H .0309). However, the Commission has strictly limited development waterward of the vegetation line, allowing only oceanfront piers providing public access and state-owned bridges (See 07H. 0309(d)). While Staff are sympathetic to Petitioner's unfortunate circumstances, Staff believes the Commission should strictly enforce the near-ban on development waterward of the vegetation line. In time, if the planted vegetation continues to grow to the point it can be considered "stable and natural" as the Commission's rules contemplate in the definition of a vegetation line at 07H .0305(a)(5), Petitioner may be able to meet the setback and rebuild.

Staff contends that granting a variance will not secure public safety and welfare. Allowing a new 3,000 square foot home waterward of the FLSNV will not secure public safety and welfare since the variance would be authorizing inappropriately sited development which can interfere with the public trust beach, be at greater risk for loss of property of the Petitioner, may become a cost to local government should the structure need to be removed from the beachfront, and may become a cost to the public in the form of future post-storm debris removal.

Finally, Staff contends that granting a variance would not preserve substantial justice where the Commission's rules already make several exceptions for development that does not have to meet the oceanfront erosion setback rule, but this variance would go further as an exception and allow new development on the public trust beach waterward of the vegetation line. Petitioner has taken steps in order to help stabilize the dune, re-growing vegetation and rebuilding elevation. Given time the FLSNV may re-establish and if so, the proposed development may meet the oceanfront setback and receive a CAMA permit.

**ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST MATERIALS**

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

P: 252.672.5507
F: 252.572.5477
MJAlcoke@wardandsmith.com

May 24, 2016

Mr. Braxton Davis
Director, Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

RE: Petitioner Mark Adams Davenport
CAMA Variance Request Form
Our File 151381-00001

Dear Mr. Davis:

We represent Petitioner Mark Adams Davenport in his endeavor to obtain a variance to undertake the reconstruction of his home lost to fire in October 2015. In this regard and on his behalf, we are submitting the enclosed original Variance Petition together with supporting documents. We respectfully request that this variance request be scheduled for the July meeting of the Coastal Resources Commission in Beaufort, North Carolina. Petitioner has not sought relief from local setbacks restricting use of the property because doing so would be futile since there is no building envelope within the boundaries of the lot, and further because Petitioner proposes to rebuild his home in the exact same location. Please let us know if there is anything else you need from us to ensure this matter will be heard as requested.

Thank you for your consideration of this matter.

Yours truly,


Meredith Jo Alcoke

ND: 4820-7950-1361, v. 1

Enclosures

cc: Mr. Mark Adams Davenport (w/encs.)
Attorney General's Office (w/encs.)
Eric J. Remington, Esq.

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CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Mark Adams Davenport

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Brunswick

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

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

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

- The name and location of the development as identified on the permit application;
- A copy of the permit decision for the development in question;
- A copy of the deed to the property on which the proposed development would be located;
- A complete description of the proposed development including a site plan;
- A stipulation that the proposed development is inconsistent with the rule at issue;
- Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);
- Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

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

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MAY 26 2016

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

Meredith Jo Alcoke
Signature of Petitioner or Attorney

May 24, 2016
Date

Meredith Jo Alcoke
Printed Name of Petitioner or Attorney

mjalcoke@wardandsmith.com
Email address of Petitioner or Attorney

Post Office Box 867
Mailing Address

252.672.5400
Telephone Number of Petitioner or Attorney

New Bern, NC 28563-0867
City State Zip

252.672.5477
Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

Contact Information for Attorney General's Office:

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

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

By Fax:
(252) 247-3330

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

By Email:
Check DCM website for the email
address of the current DCM Director
www.nccoastalmanagement.net
Revised: July 2014

By Fax:
(919) 716-6767

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MAY 26 2016

DCM- MHD CITY

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing CAMA VARIANCE REQUEST FORM by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail addressed to the following persons at the following addresses which are the last addresses known to me:

Mr. Braxton Davis
Director, Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

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

This the 24th day of May, 2016.



Meredith Jo Alcock
N.C. State Bar I.D. No.: 24090
email: mjalcock@wardandsmith.com
For the firm of
Ward and Smith, P.A.
Post Office Box 867
New Bern, NC 28563-0867
Telephone: 252.672.5400
Facsimile: 252.672.5477
Attorneys for Petitioner Mark Adams Davenport

151381-00001
ND: 4832-8116-9201, v. 1

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MAY 26 2016

DCM- MHD CITY

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

P: 252.672.5507
F: 252.572.5477
mjalcoke@wardandsmith.com

May 24, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

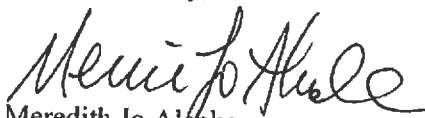
Mr. Barry Golob
10820 Hob Nail Court
Potomac, MD 20845

RE: CAMA Variance Request by Mark Davenport
Our File 151391-00001

Dear Mr. Golob:

This is to notify you that Mark Davenport is applying for a variance from the North Carolina Coastal Resources Commission to allow construction of a single family residence on his property located at 6617 West Beach Drive, Oak Island, North Carolina. He intends to build a home of the same size and in the same footprint as the home that burned down last fall. The variance is projected to be heard at the July 12-13, 2016 meeting of the Coastal Resources Commission. If you wish to receive further information concerning the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management headquarters at 400 Commerce Avenue, Morehead City, North Carolina 28557. You may also contact the Division of Coastal Management at 252-808-2808.

Yours very truly,


Meredith Jo Alcock
Attorney for Mark Davenport

ND: 4825-3981-3682, v. 1

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MAY 26 2016

DCM- MHD CITY

ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

WILMINGTON

www.wardandsmith.com



WARD AND SMITH, P.A.

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

UNITED STATES MAIL



7015 3010 0000 7528 2188

Mr. Barry Golob
10820 Hob Nail Court
Potomac, MD 20845

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED

RETURN RECEIPT REQUESTED

POSTAGE BY
05/24/2015

\$06.47

ZIP 28562
041L11225794

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

1684355

DCM-MHD CITY
RETURN RECEIPT REQUESTED

MAY 26 2015

RECEIVED
MR. BARRY GOLOB
10820 HOB NAIL COURT
POTOMAC, MD 20845

SENDER: COMPLETE THIS SECTION

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

Article Addressed to:



9590 9403 0166 5234 8435 57

Article Number (Transfer from service label)

7015 3010 0000 7528 2188

PS Form 3811, July 2015 PSN 7530-02-000-9053 151391.1 ToE/SL

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Agent
 Addressee

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

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

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

MAIL-199

Domestic Return Receipt

CERTIFIED

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

P: 252.672.5507
F: 252.572.5477
mjalcoke@wardandsmith.com

May 24, 2016

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

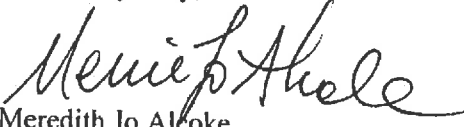
Mr. David Litz
10924 Sycamore Club Drive
Mint Hill, NC 28227

RE: CAMA Variance Request by Mark Davenport
Our File 151391-00001

Dear Mr. Litz:

This is to notify you that Mark Davenport is applying for a variance from the North Carolina Coastal Resources Commission to allow construction of a single family residence on his property located at 6617 West Beach Drive, Oak Island, North Carolina. He intends to build a home of the same size and in the same footprint as the home that burned down last fall. The variance is projected to be heard at the July 12-13, 2016 meeting of the Coastal Resources Commission. If you wish to receive further information concerning the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management headquarters at 400 Commerce Avenue, Morehead City, North Carolina 28557. You may also contact the Division of Coastal Management at 252-808-2808.

Yours very truly,


Meredith Jo Alcock
Attorney for Mark Davenport

ND: 4820-5615-8002, v. 1

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MAY 26 2016

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ASHEVILLE

GREENVILLE

NEW BERN

RALEIGH

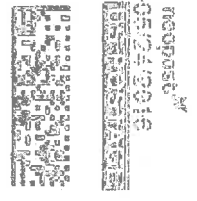
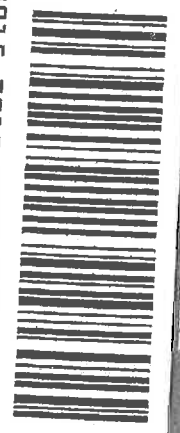
WILMINGTON

www.wardandsmith.com

WARD AND SMITH, P.A.

1001 College Court (28562)
Post Office Box 867
New Bern, NC 28563-0867

7015 3010 0000 7528 2171



POSTNET
041111225794
ZIP 28562

\$05.47

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MAY 26 2016

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

CERTIFIED

RETURN RECEIPT REQUESTED

CERTIFIED

RETURN RECEIPT REQUESTED

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:
 Mr. David Litz
 10924 Sycamore club drive
 Mint Hill, NC 28227

2. Article Number (Transfer from service label)
 49 548 4325 9910 1046 0656

3. Service Type
 Priority Mail Express®
 Registered Mail™
 Registered Mail Restricted Delivery
 Certified Mail®
 Collect on Delivery
 Collect on Delivery Restricted Delivery
 Mail
 Mail Restricted Delivery

4. Return Receipt for Merchandise
 Signature Confirmation™
 Restricted Delivery

5. Domestic Return Receipt
 T272 9252 0000 010E 5T02
 PS Form 3811, July 2015 PSN 7530-00-02-00-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 Agent
 Addressee

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

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

1684356

PETITIONER MEETS THE FOUR VARIANCE CRITERIA

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

Petitioner's Position: Yes.

Petitioner purchased his oceanfront home in 2013. At that time, the beach in front of his Lot was wide and had plenty of vegetation. The home was set back at least 60 feet from the first line of stable natural vegetation, and the Lot was "buildable."

Petitioner expected to enjoy the home with his wife and young children for many years to come. There was no way of knowing what the near future held for the property. Within a year of purchase, the Lot experienced significant accelerated erosion, which Petitioner addressed by installing two sets of sandbags. Then, the Town received a beach nourishment project that reversed the pattern of erosion and allowed Petitioner to build up a substantial vegetated dune to protect his home. As this dune-building continued, Petitioner's home was lost to a devastating fire on Halloween night while Petitioner and his family were out trick-or-treating.

Without a variance, Petitioner's property cannot be developed with a single family residence or any other habitable or economically viable structure. Unless a variance is granted, Petitioner can make no reasonable and significant use of his property. Strict application of Rule 15A NCAC 7H .0306 causes Petitioner unnecessary hardship in this case.

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

Petitioners' Position: Yes.

The hardships result from the Lot's location along a limited stretch of beach that has experienced accelerated erosion that appears to be more severe than the erosion on properties to the east and west. The Lot is among approximately four lots that suffered disproportionately from the effects of storms and lunar tides beginning in early 2014. Petitioner recognizes that although his Lot is not within the Inlet Hazard AEC, it is still affected by nearby inlet forces. However, these forces appear to have affected Petitioner's Lot more severely than other properties on the west end of the island. Thus, the hardships result from the Lot's unique location within an area that experienced accelerated erosion greater than other properties on the west end of the island.

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

Petitioner's Position: No.

Petitioner has taken no actions that caused the hardships. Petitioner has done everything possible to reverse the erosion that the Lot experienced after he purchased.

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MAY 26 2016

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IV. Will the variance requested by the petitioner

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

Petitioner's Position: Yes.

The variance will be consistent with **the spirit, purpose and intent** of the Commission's rules. The primary purpose of the ocean hazard rules is to protect life and property. 15A NCAC 7H .0303(a). Here, life and property will be protected by the substantial frontal dune and the recently nourished beach in front of the property. Petitioner is not seeking to rebuild a home taken by the ocean. His home was destroyed by fire. At the time of the fire, Petitioner had already made significant investments in rebuilding the dune by installing large sandbags, pushing sand over the dune, and planting the dune regularly. This frontal dune has continued to stabilize and will protect life and property as contemplated by the Commission's rules.

Public safety and welfare will be secured by this variance because the proposed development will have no adverse impact on the public's safe use of this beach.

Substantial justice will be preserved by this variance. This is not a situation where a person bought an unbuildable lot and is now looking for a handout. Petitioner bought a buildable lot that experienced accelerated erosion. He then spent a tremendous amount of money to install two sets of sandbags, to bring in beach compatible sand and build up the dune, and to plant and maintain native dune vegetation. In the midst of these efforts, his house burned down through no fault of his own. Petitioner now seeks simply to build back exactly what he had before in line with his neighbors. Justice will be preserved if he is allowed to rebuild his home.

For the reasons stated above, granting Petitioner the requested variance will be consistent with all four (4) of the criteria stated in N.C. Gen Stat. § 113A 120.1 and in NCAC 7J .0700. Accordingly, Petitioner respectfully requests that the Commission issue a variance in accordance the permit application.

ND: 4836-5657-1696, v. 4

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MAY 26 2016

DCM- MHD CITY

ATTACHMENT E:
STIPULATED EXHIBITS INCLUDING POWERPOINT



B3410 P0421 05-24-2013
 Brenda M. Clemmons 10:48:39.000
 Register of Deeds PROF
 Brunswick County, NC Register of Deeds page 1 of 3

This certifies that there are no delinquent ad valorem taxes, fees, assessments or other liens which the Brunswick County Tax Collector is charged with collecting, that are a lien on: Parcel Number 233NE033 as notated by the Brunswick County Assessor's Office. This is not a certification that the parcel number matches the deed description.

5-24-13 [Signature]
 Date (Asst) Tax Col. / Del. Tax Spec.

Brenda M. Clemmons Register of Deeds
 05-24-2013 10:48:39.000 Brunswick County, NC
 NC REVENUE STAMP: \$1550.00 (#348973)

Pollock Pollock
 Presenter _____ Ret LS
 ③ Total 200 Rev 1550.00 Cash 00
 Ck \$ 1050 Ck # 2700
 Refund _____ Cash \$ _____ Finance _____
 Portions of document are illegible due to condition of original
 Document contains seals verified by original instrument that cannot be reproduced or copied.

NORTH CAROLINA GENERAL WARRANTY DEED

The attorney preparing this instrument has made no record search or title examination as to the property herein described, unless the same is shown by his written and signed certificate.

Excise Tax: \$1,550.00

Parcel Identifier No. 233NE033 Verified by _____ County on the _____ day of _____, 20____
 By: _____

Mail/Box to: Pollock & Pollock, Attorneys at Law, PLLC, PO Drawer 999, Burgaw, NC 28425

This instrument was prepared by: Pollock & Pollock, Attorneys at Law, PLLC, PO Drawer 999, Burgaw, NC 28425
 Brief description for the Index: _____

THIS DEED made this 16th day of May, 2013, by and between

GRANTOR	GRANTEE
<p>Seth E. Barker and wife, Diane E. Barker 305 Winchester Creek Road Grasonville, MD 21638</p>	<p>Mark A. Davenport 300 Carbonton Road Sanford, NC 27332</p>

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

This property _____ is or X is not the primary residence of the Grantor.

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

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

Being all that certain tract or parcel of land located in the Town of Oak Island, Smithville Township, Brunswick County, North Carolina and being more fully described on Exhibit A attached hereto.

The property hereinabove described was acquired by Grantor by instrument recorded in Book _____, page _____.



A map showing the above described property is recorded in Map Book , Page .

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

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

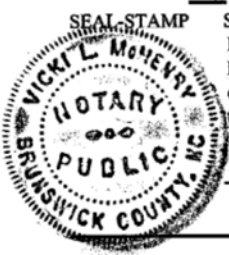
IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

(Entity Name) **Seth E. Barker** (SEAL)

By: *Seth E. Barker*
Title: **Diane E. Barker** (SEAL)

By: *Diane E. Barker*
Title: (SEAL)

By: _____ (SEAL)
Title: _____



SEAL STAMP State of North Carolina - County of Brunswick
I, Vicki L. McHenry, Notary Public of the County and State aforesaid, certify that Seth E. Barker and Diane E. Barker personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 20th day of May, 2013.
My Commission Expires: 3/29/15
Notary Public *Vicki L. McHenry*



Exhibit A

In Brunswick County: All that certain tract or parcel of land situated in the Town of Oak Island, North Carolina, consisting of a portion of Lots 13 and 14, Block 135, and more particularly described as follows:

Beginning at a point where the Eastern line a parcel now or formerly owned by Madry intersects with the line of vegetation fronting the Atlantic Ocean, said point being located the following courses and distance from the Northeast corner of Lot 13: South 86-24-00 West 68 feet, along and with the southern right of way line of West Beach Drive, to a common corner with the parcel now or formerly owned by Madry: thence South 00-55-32 East 60.36 feet, more or less, along and with the line of vegetation fronting the Atlantic Ocean. THENCE FROM SAID POINT OF BEGINNING, so located North 00-55-32 West 60.36 feet, more or less, along and with the eastern line of the parcel now or formerly owned by Madry, to the southern right of way line of West Beach Drive; thence North 86-24-00 East 68 feet, along and with the southern right of way line of West Beach Drive, to the northeast corner of Lot 13; thence South 03-36-00 East 66.57 feet, more or less, along and with the common boundary between Lot 13 and Lot 12 to the line of vegetation fronting the Atlantic Ocean, to the POINT OF BEGINNING.

Being a portion of Lots 13 and 14, Block 135, as more particularly shown on a plat of survey for Steve and Rose Marie Rennekamp prepared by Robert B. McHenry, Sr., Registered Land Surveyor, dated February 15, 1990 recorded as an attachment to deed recorded in Book 798 Page 105.

Together with all right, title and interest if any, of the party of the first in and to any property lying between the line of vegetation fronting the Atlantic Ocean and the mean high water mark of the Atlantic Ocean, bounded on the East and West by the Eastern and Western lines of the subject property extended to the mean high water mark of the Atlantic Ocean.

Reference is made to the original plat of King's Lynn Subdivision recorded in Map Book 3 Page 113 to assist in locating the property.

Title is subject to an appurtenant easement recorded in Deed Book 1700, Page 303 granting a perpetual pedestrian access easement over the westernmost 8 feet of the tract in favor of Lot 18, Block 136R King's Lynn Subdivision.



SITE DRAWING/APPLICATION CHECKLIST

Please make sure your site drawing includes the following information required for a CAMA minor development permit. The Local Permit Officer will help you, if requested.

PHYSICAL DIMENSIONS

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

PHYSICAL CHARACTERISTICS

- Draw and label normal high water line (contact LPO for assistance)
- Draw location of on-site wastewater system

If you will be working in the ocean hazard area:

- Draw and label dune ridges (include spot elevations)
- Draw and label toe of dunes
- Identify and locate first line of stable vegetation (contact LPO for assistance)
- Draw and label erosion setback line (contact LPO for assistance)
- Draw and label topographical features (optional)

If you will be working in a coastal shoreline area:

- Show the roof overhang as a dotted line around the structure
- Draw and label landward limit of AEC
- Draw and label all wetland lines (contact LPO for assistance)
- Draw and label the 30-foot buffer line

DEVELOPMENT PLANS

- Draw and label all proposed structures
- Draw and label areas that will be disturbed and/or landscaped
- Note size of piling and depth to be placed in ground
- Draw and label all areas to be paved or graveled
- Show all areas to be disturbed
- Show landscaping

NOTE TO APPLICANT

Have you:

- completed all blanks and/or indicated if not applicable?
- notified and listed adjacent property owners?
- included your site drawing?
- signed and dated the application?
- enclosed the \$100.00 fee?
- completed an AEC Hazard Notice, if necessary? (Must be signed by the property owner)

FOR STAFF USE

Site Notice Posted Final Inspection Fee Received

Site Inspections

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



APPLICATION FOR CAMA MINOR DEVELOPMENT PERMIT

In 1974, the North Carolina General Assembly passed the Coastal Area Management Act (CAMA) and set the stage for guiding development in fragile and productive areas that border the state's sounds and oceanfront. Along with requiring special care by those who build and develop, the General Assembly directed the Coastal Resources Commission (CRC) to implement clear regulations that minimize the burden on the applicant.

This application for a minor development permit under CAMA is part of the Commission's effort to meet the spirit and intent of the General Assembly. It has been designed to be straightforward and require no more time or effort than necessary from the applicant. Please go over this folder with the Local Permit Officer (LPO) for the locality in which you plan to build to be certain that you understand what information he or she needs before you apply.

Under CAMA regulations, the minor permit is to be issued within 25 days once a complete application is in hand. Often less time is needed if the project is simple. The process generally takes about 18 days. You can speed the approval process by making certain that your application is complete and signed, that your drawing meets the specifications given inside and that your application fee is attached.

Other permits are sometimes required for development in the coastal area. While these are not CAMA-related, we urge you to check with the Local Permit Officer to determine which of these you may need. A list is included on page two of this folder.

We appreciate your cooperation with the North Carolina Coastal Management Program and your willingness to build in a way that protects the resources of our beautiful and productive coast.

Coastal Resources Commission
Division of Coastal Management

APPLICATION: _____
 LOCALITY: _____
 PERMIT ISSUED USING
 STATIC LINE EXCEPTION? YES NO

Locality _____ Permit Number _____

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

(For official use only)

GENERAL INFORMATION

LAND OWNER

Name Mark Davenport

Address 300 Carbonton rd

City Sanford State nc Zip 27330 Phone 919-708-8814

Email markdavenport@windstream.net

AUTHORIZED AGENT

Name _____

Address _____

City _____ State _____ Zip _____ Phone _____

Email _____

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 6617 West Beach DR, Oak Island NC

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Rebuild home on same footprint

SIZE OF LOT/PARCEL: 10454 square feet .24 acres

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

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

(1) **OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE:** 3001 square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

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

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?
YES NO

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

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

STATEMENT OF OWNERSHIP:

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

an owner or record title, Title is vested in MARK DAVENPORT, see Deed Book 3410 page 0421 in the brunswick _____ County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

- | (Name) | (Address) |
|------------------------|--|
| (1) <u>Barry Golob</u> | <u>10820 Hob Nail court, Potomac, Maryland 20845</u> |
| (2) <u>David Litz</u> | <u>10924 Sycamore Club Dr, Mint Hill NC 28227</u> |
| (3) _____ | _____ |
| (4) _____ | _____ |

ACKNOWLEDGEMENTS:

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

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

Mark A. Davenport This the Feb day of 10, 2016
Landowner or person authorized to act as his/her agent for purpose of filing a CAMA permit application

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

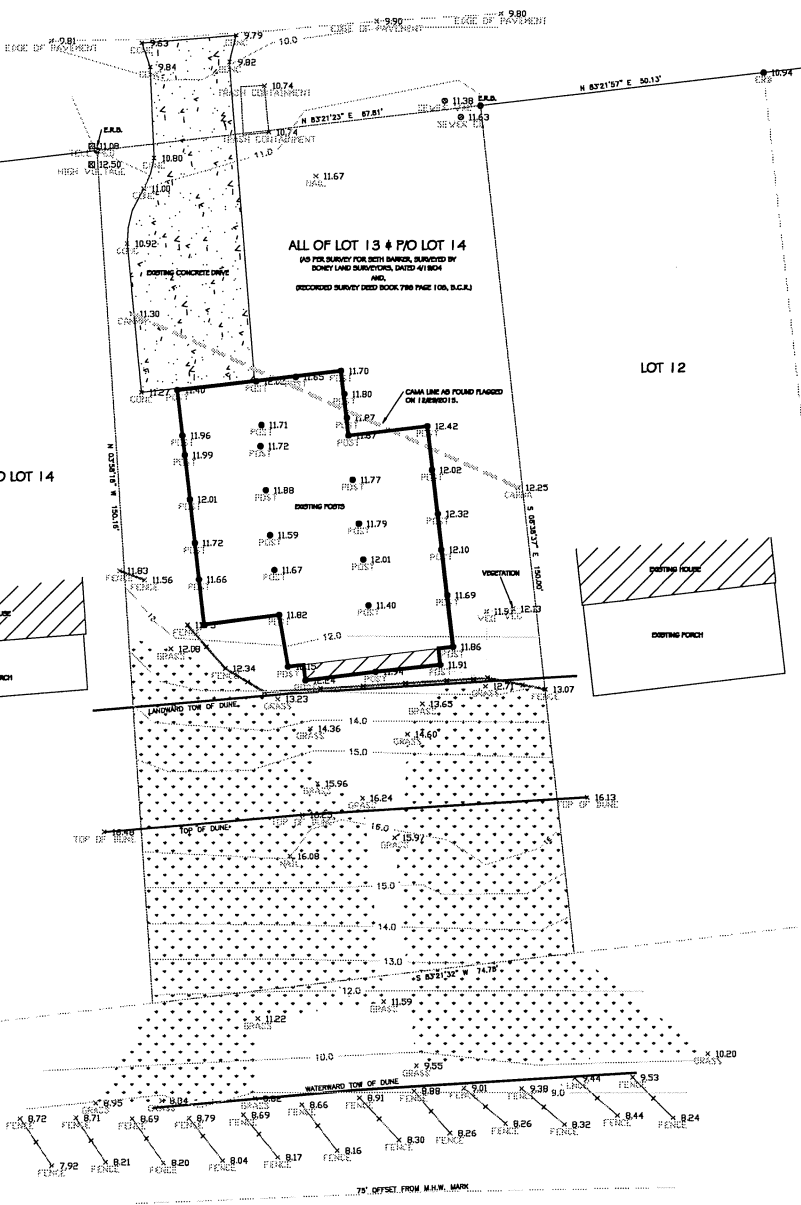
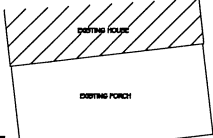
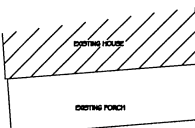


WEST BEACH DRIVE (60' RW)

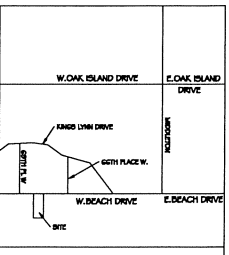
ALL OF LOT 15 + P/O LOT 14

ALL OF LOT 13 + P/O LOT 14
AS FOR SURVEY FOR BETH MARCEL, SURVEYED BY
ROBERT LANG SURVEYORS, L.L.C. IN 1984
AND
RECORDED SURVEY DEED BOOK 770 PAGE 108, S.C.A.

LOT 12



ATLANTIC OCEAN



VICINITY MAP - NOT TO SCALE

PLAT SCALE: 1" = 10'
0 10 20 30

NORTH CAROLINA
BRANWICK COUNTY
I, WILLIAM W. DELANEY II, CERTIFY THAT THIS PLAT
WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL
SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION
RECORDED IN DEED BOOK 8416 ON PAGE 227
IN THE BRANWICK COUNTY REGISTER OF DEEDS OFFICE);
THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY
INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED
BOOK 8416 ON PAGE 227 THAT THE BIRTH
PRECISION AS CALCULATED BY COMPUTER IS 1:10,000+
THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH
G.S. 47-30 AS AMENDED.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER
AND SEAL, THIS _____ DAY OF _____, 20____

PROFESSIONAL LAND SURVEYOR L-2973

NORTH CAROLINA
BRANWICK COUNTY
I, A NOTARY PUBLIC OF BRANWICK COUNTY, NORTH
CAROLINA, CERTIFY THAT WILLIAM W. DELANEY II, P.L.S.,
PERSONALLY APPEARED BEFORE ME THIS DAY AND
ACKNOWLEDGED THE EXECUTION OF THE FOREGOING
INSTRUMENT.

WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS
DAY OF _____, 20____

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

- NOTES:
- 1. THE LAND SHOWN ON THIS PLAT IS IN FLOOD ZONES VE (EL. 17'), VE (EL. 15), VE (EL. 10), VE (EL. 5), VE (EL. 0), VE (EL. -5), VE (EL. -10), VE (EL. -15), VE (EL. -20), VE (EL. -25), VE (EL. -30), VE (EL. -35), VE (EL. -40), VE (EL. -45), VE (EL. -50), VE (EL. -55), VE (EL. -60), VE (EL. -65), VE (EL. -70), VE (EL. -75), VE (EL. -80), VE (EL. -85), VE (EL. -90), VE (EL. -95), VE (EL. -100).
 - 2. TOPOGRAPHICAL SURVEY DATE: 12/29/2015.
 - 3. PLAT SCALE: 1" = 10'.
 - 4. C.E.S. = EXISTING ROAD.
 - 5. I.S.S. = IRON STAKE SET.
 - 6. E.O.P. = EDGE OF PAVEMENT.

- NOTES:
- 1. THE PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RESTRICTIONS, COVENANTS, RESTRICTIONS, AND CONDITIONS OF RECORD ATTACHED HERETO.
 - 2. A TITLE SEARCH HAS NOT BEEN CONDUCTED ON THE PARCEL SHOWN. THIS PLAT IS NOT A GUARANTEE OF TITLE.

Surveyed and Mapped By
**Tide Water
Land Surveying**

802 North Howe Street
P.O. Box 11506
Southport, North Carolina 28461
Phone: 910-457-9580

6617 W. BEACH DRIVE
PARCEL ID # 233NE033
WEST LONG BEACH
BLOCK 135
LOT 13 and P/O 14

TOPOGRAPHICAL SURVEY FOR:
**Mark
A.
Davenport**

TOWN OF OAK ISLAND
SOUTHVILLE TOWNSHIP
BRANWICK COUNTY
STATE OF NORTH CAROLINA
DRAWN BY: MARYDETH WATKINS
DWG: 6617WBEACHDR | CRD: 6617WBEACHELEVATION

Davenport, Mark

From: Davenport, Mark
Sent: Friday, February 05, 2016 4:13 PM
To: Davenport, Mark
Subject: picture



<http://www.neighborcity.com/property/6617-Beach-Dr-West-Oak-Island-NC-28465-656042-7824015/>

3,000 Heated Sq. feet



Water Side

*on pilings
elevated
to meet
flood
standard*



West Beach

AEC HAZARD NOTICE

Project Is In An: Ocean Erodeable Area High Hazard Flood Area Inlet Hazard Area

Property Owner: MARK DAUENPORT

Property Address: 6617 WEST BEACH DR. OAK ISLAND NC

Date Lot Was Platted: JUNE 1963

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and dune alterations are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development. Permits issued in the Ocean Hazard Area of Environmental Concern include the condition that structures be relocated or dismantled if they become imminently threatened by changes in shoreline configuration. The structure(s) must be relocated or dismantled within two (2) years of becoming imminently threatened, and in any case upon its collapse or subsidence.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual long-term average ocean erosion rate for the area where your property is located is 2 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 325 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 20 feet deep in this area.

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary sand bags may be authorized under certain conditions.

The applicant must acknowledge this information and requirements by signing this notice in the space below. Without the proper signature, the application will not be complete.

Mark Dauenport 2/5/2016
Applicant Signature Date

SPECIAL NOTE: This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer must be contacted to determine the vegetation line and setback distance at your site. If the property has seen little change since the time of permit issuance, and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. Substantial progress on the project must be made within 60 days of this setback determination, or the setback must be remeasured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate remeasurement of the setback. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal can be authorized. It is unlawful to continue work after permit expiration.

For more information, contact:

Donna Coleman
Local Permit Officer

4601 E. Oak Island Dr
Address

Oak Island, NC 28465
Locality

(910) 201-8047
Phone Number

BEFORE YOU BUILD

Setting Back for Safety: A Guide to Wise Development Along the Oceanfront

When you build along the oceanfront, you take a calculated risk. Natural forces of water and wind collide with tons of force, even on calm days.

Man-made structures cannot be guaranteed to survive the force of a hurricane. Long-term erosion (or barrier island migration) may take from two to ten feet of the beach each year, and, sooner or later, will threaten oceanfront structures. These are the facts of life for oceanfront property owners.

The Coastal Resources Commission (CRC) has adopted rules for building along the oceanfront. The rules are intended to avoid an unreasonable risk to life and property, and to limit public and private losses from storm and long-term erosion. These rules lessen but do not eliminate the element of risk in oceanfront development.

As you consider building along the oceanfront, the CRC wants you to understand the rules and the risks. With this knowledge, you can make a more informed decision about where and how to build in the coastal area.

The Rules

When you build along the oceanfront, coastal management rules require that the structure be sited to fit safely into the beach environment.

Structures along the oceanfront, less than 5,000 square feet in size, must be behind the frontal dune, landward of the crest of the primary dune, and set back from the first line of stable natural vegetation a distance equal to 30 times the annual erosion rate (a minimum of 60 feet). The setback calculation increases as the size of the structure increases [15A NCAC 7H.0306(a)(2)]. For example: A structure between 5,000 and 10,000 square feet would require a setback from the first line of stable, natural vegetation to a distance equal to 60 times the annual erosion rate (a minimum of 120 feet). The graduated setback continues to increase through structure sizes greater than 100,000 square feet.

The Reasons

The beachfront is an ever-changing landform. The beach and the dunes are natural "shock absorbers," taking the beating of the wind and waves and protecting the inland areas. By incorporating building setbacks into the regulations, you have a good chance of enjoying the full life of the structure. At first, it seems very inviting to build your dream house as close to the beach as possible, but in five years you could find the dream has become a nightmare as high tides and storm tides threaten your investment.

The Exception

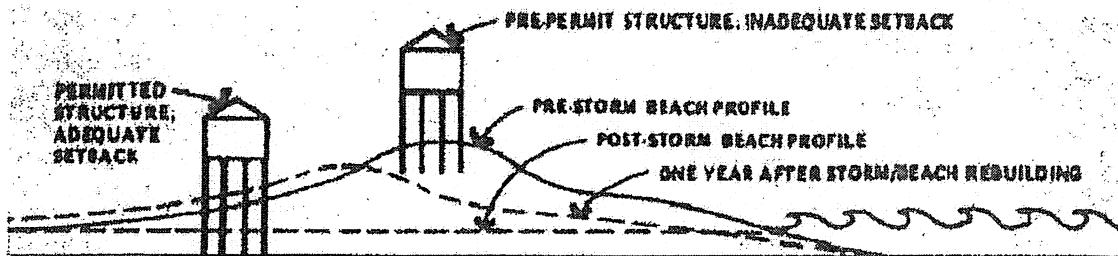
The Coastal Resources Commission recognized that these rules, initially passed in June 1979, might prove a hardship for some property owners. Therefore, they established an exception for lots that cannot meet the setback requirement. The exception allows buildings in front of the current setback, if the following conditions apply:

- (1) the lot must have been platted as of June 1, 1979, and is not capable of being enlarged by combining with adjoining land under the same ownership;
- (2) development must be constructed as far back on the property as possible and in no case less than 60 feet landward of the vegetation line;
- (3) no development can take place on the frontal dune;
- (4) special construction standards on piling depth and square footage must be met; and
- (5) all other CAMA, state and local regulations must be met.

The exception is not available in the Inlet Hazard Area.

To determine eligibility for the exception the Local Permit Officer will make these measurements and observations:

- _____ required setback from vegetation line
- _____ exception setback (maximum feasible)
- _____ rear property line setback
- _____ max. allowable square footage on lowest floor
- _____ piling length needed to extend 4 feet below MSL



After the storm, the house on the dune will be gone. The other house has a much better chance of survival.

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Mr. Barry Golob
10820 Hob Nail Court
Potomac, MD 20845



9590 9401 0166 5234 8435 57

2. Article Number (Transfer from service label)

7015 3010 0000 7528 2188

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Mail Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

WT-199

SENDER: COMPLETE THIS SECTION

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

1. Article Addressed to:

Mr. David Litz
 10924 Sycamore Club Drive
 Mint Hill, NC 28227



9590 9401 0166 5234 8435 64

2. Article Number (Transfer from service label)

7015 3010 0000 7528 2171

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]* Agent
 Addressee

B. Received by (Printed Name)

DAVID LITZ

C. Date of Delivery

5-27-16

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

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

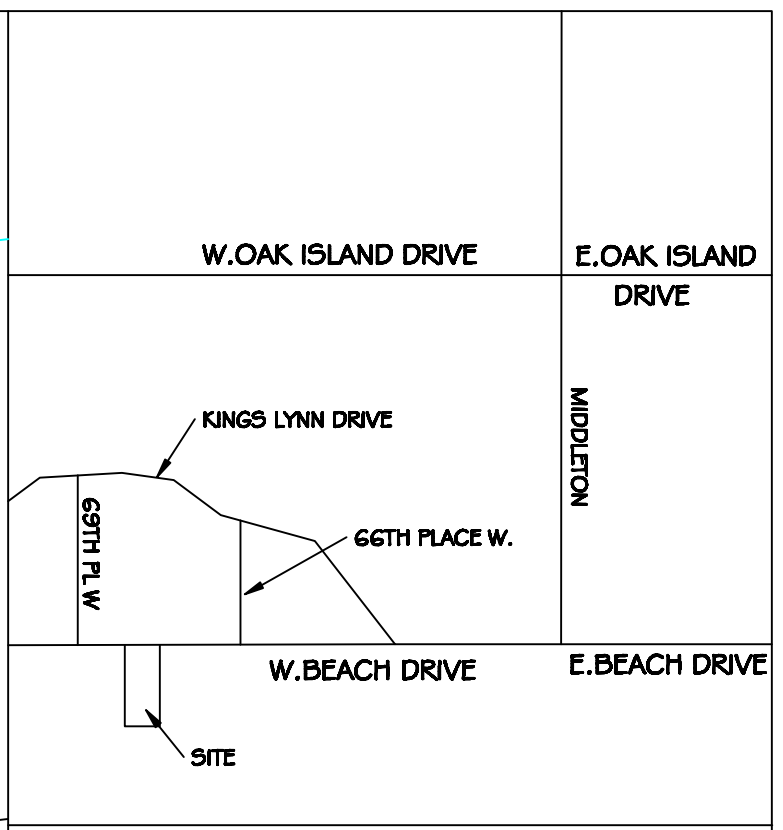
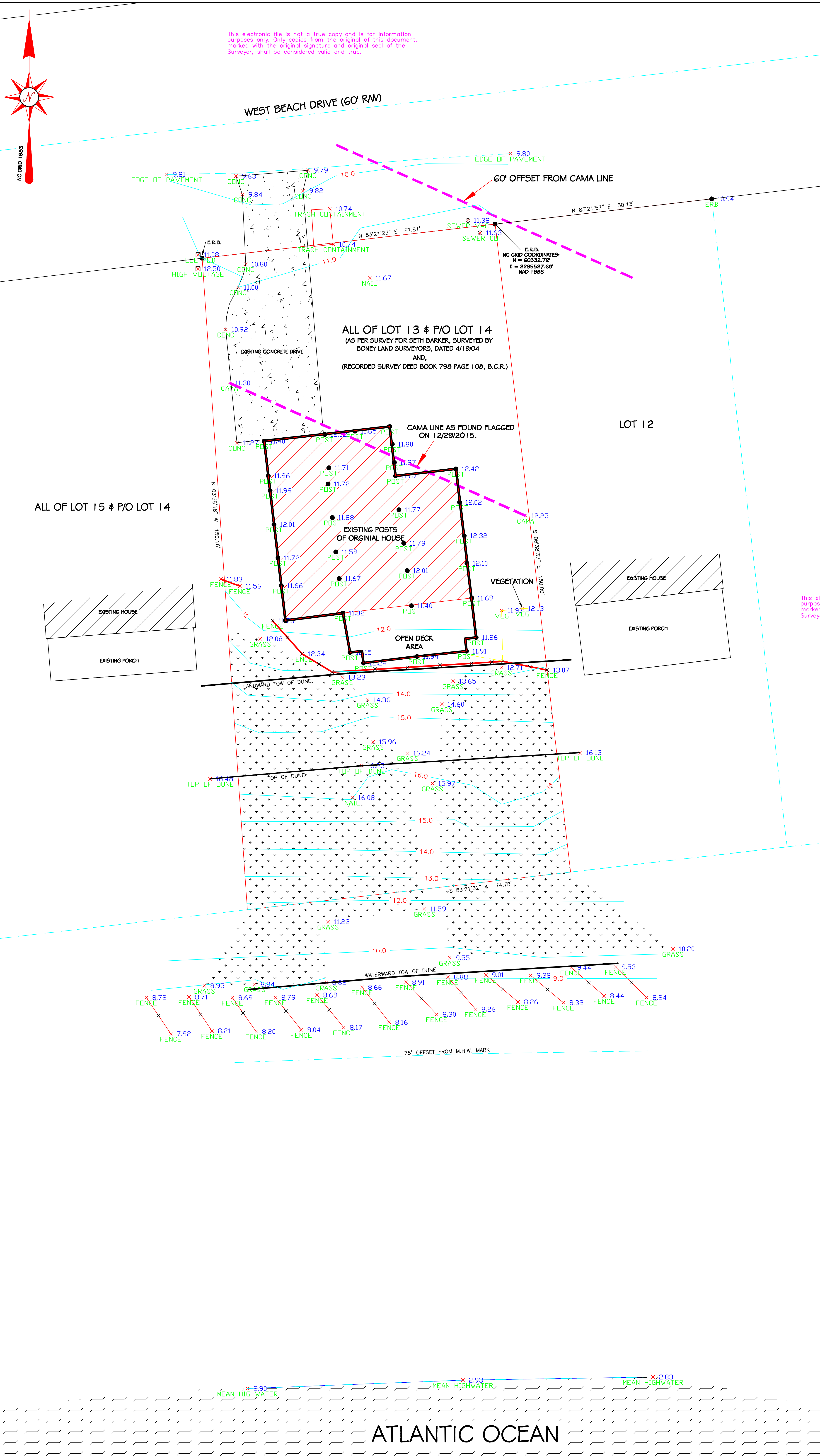
Mail
 Restricted Delivery
 00)

WT-200

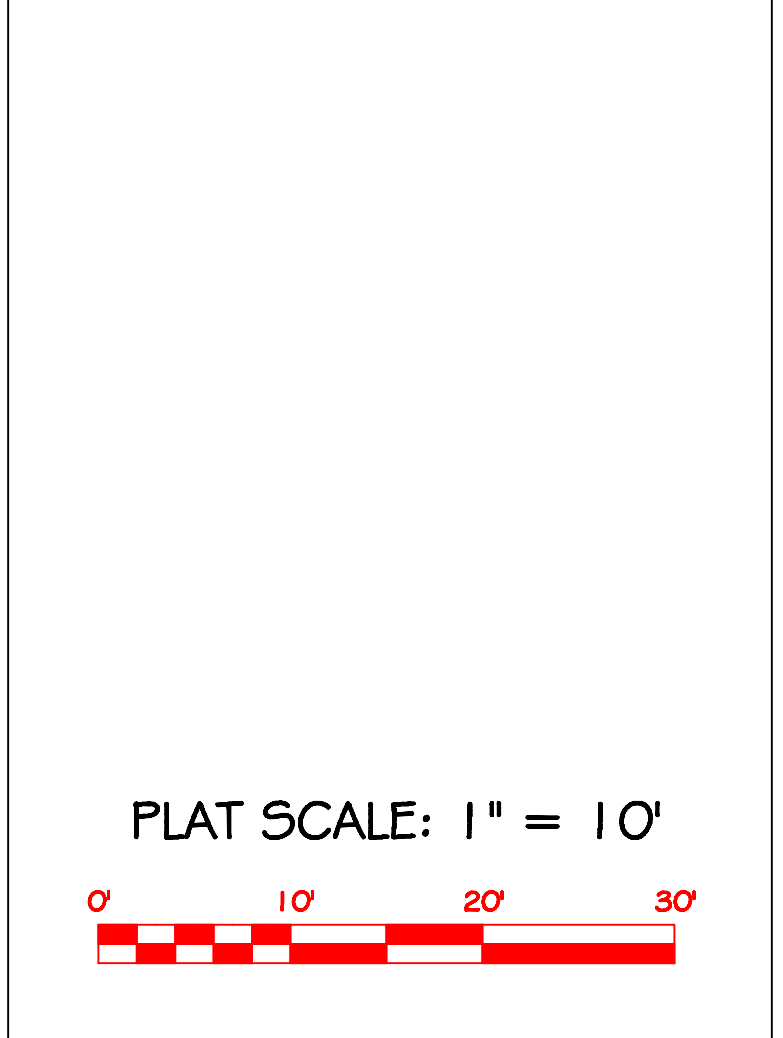
151391.1

TOE/SL

This electronic file is not a true copy and is for information purposes only. Only copies from the original of this document, marked with the original signature and original seal of the Surveyor, shall be considered valid and true.



VICINITY MAP - NOT TO SCALE



NORTH CAROLINA
BRUNSWICK COUNTY
I, WILLIAM W. DELANEY II, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN DEED BOOK 3410 ON PAGE 421 IN THE BRUNSWICK COUNTY REGISTER OF DEEDS OFFICE); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN DEED BOOK _____ ON PAGE _____ THAT THE RATIO OF PRECISION AS CALCULATED BY COMPUTER IS 1:10,000+ THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.
WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS _____ DAY OF _____ 20____

This electronic file is not a true copy and is for information purposes only. Only copies from the original of this document, marked with the original signature and original seal of the Surveyor, shall be considered valid and true.

PROFESSIONAL LAND SURVEYOR L-2973

NORTH CAROLINA
BRUNSWICK COUNTY
I, A NOTARY PUBLIC OF BRUNSWICK COUNTY, NORTH CAROLINA CERTIFY THAT WILLIAM W. DELANEY II, P.L.S. PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT.
WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS _____ DAY OF _____ 20____
MY COMMISSION EXPIRES _____
NOTARY PUBLIC _____

NOTES:
1. THE LAND SHOWN ON THIS PLAT IS IN FLOOD ZONES VE (EL 17), VE (EL 18), VE (EL 20), ACCORDING TO FIRM MAP #3720203600J, DATED 06/02/2006.
2. TOPOGRAPHICAL SURVEY DATE: 12/29/2015.
3. PLAT SCALE: 1" = 10'.
4. E.R.B. = EXISTING RE-BAR.
5. I.S.S. = IRON STAKE SET.
6. E.O.P. = EDGE OF PAVEMENT.
7. BUILDING SETBACKS: FRONT (STREET) = 15'; SIDES = 0'.

NOTES:
1. THIS PROPERTY IS SUBJECT TO ANY AND ALL EASEMENTS, RIGHT-OF-WAY, COVENANTS, RESTRICTIONS, AND CONDITIONS OF RECORD AFFECTING SAID PREMISES.
2. A TITLE SEARCH WAS NOT PERFORMED ON THE PARCELS SHOWN. THIS PLAT IS NOT A GUARANTEE OF TITLE.

Surveyed and Mapped By
Tide Water Land Surveying
802 North Howe Street
P.O. Box 11506
Southport, North Carolina 28461
Phone: 910-457-9580

6617 W. BEACH DRIVE
PARCEL ID # 233NE033
WEST LONG BEACH
BLOCK 135
LOT 13 and P/O 14

TOPOGRAPHICAL SURVEY FOR:
Mark A. Davenport
TOWN OF OAK ISLAND
SMITHVILLE TOWNSHIP
BRUNSWICK COUNTY
STATE OF NORTH CAROLINA
DRAWN BY: MARYBIETH WATKINS
DWG:6617WBEACHDR | CRD:6615WBEACHELEVATION

BRUNSWICK COUNTY

6/9/2016 10:52:26 AM

DAVENPORT MARK A

Return/Appeal Notes:

Parcel: 233N-E-033

6617 W. BEACH DR OK
80020307

PLAT: UNIQ ID / 96087

ID NO: 203619505205

BRUNSWICK COUNTY (100), DOSHER HOSP TAX (100), OAK ISLAND (100), OAK ISLAND FIRE (200)

CARD NO. 1 of 1

Reval Year: 2011 Tax Year: 2014

L-13 P/O 14 B-135 WLB PLAT 3/113 & 798-108

1.000 LT

SRC=

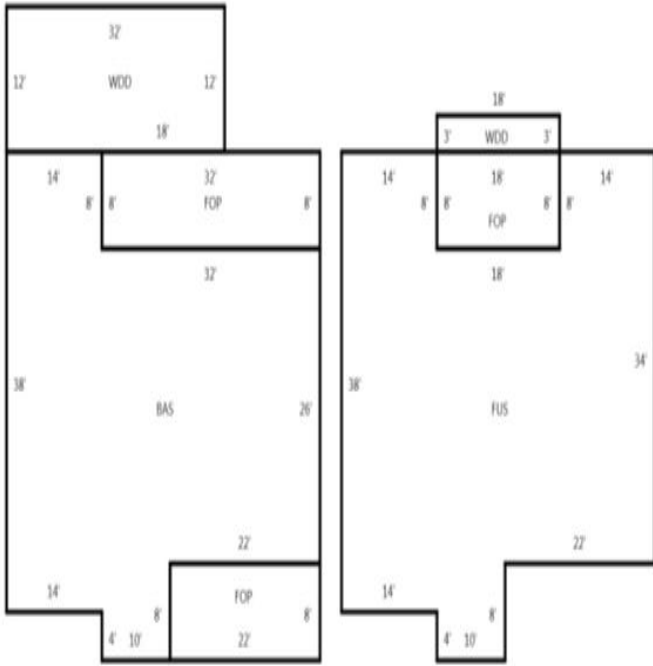
Appraised by A2 on 12/01/2011 306A LONG BEACH WEST

TW-03

CI- FR- EX- AT- 14 08

LAST ACTION 20130723

CONSTRUCTION DETAIL		MARKET VALUE								DEPRECIATION		CORRELATION OF VALUE	
Foundation - 3										Standard	0.07000		
Piers>8ft w/Con	4.00	USE	MOD	Eff. Area	QUAL	BASE RATE	RCN	EYB	AYB		% GOOD	93.0	
Sub Floor System - 4		07	01	3,139	104	88.40	277487	2004	2004				
Plywd/Ptl bd	8.00	TYPE: SFR RESORT								SFR CONSTRUCTION			
Exterior Walls - 16		STYLE: 3 - 2.0 Stories											
Wood/Vinyl Shingle	32.00												
Roofing Structure - 07													
Irregular Ceiling	13.00												
Roofing Cover - 06													
Arch Shingle	6.00												
Interior Wall Construction - 5													
Drywall/Sheetrock	21.00												
Interior Floor Cover - 12													
Hardwood	10.00												
Interior Floor Cover - 14													
Carpet	0.00												
Heating Fuel - 04													
Electric	1.00												
Heating Type - 09													
Heat Pump Only	4.00												
Air Conditioning Type - 03													
Central	4.00												
Bedrooms/Bathrooms/Half-Bathrooms													
4/3/1	17.000												
Bedrooms													
BAS - 4 FUS - 0 LL - 0													
Bathrooms													
BAS - 3 FUS - 0 LL - 0													
Half-Bathrooms													
BAS - 1 FUS - 0 LL - 0													
Office													
BAS - 0 FUS - 0 LL - 0	0												
TOTAL POINT VALUE	120.000												
BUILDING ADJUSTMENTS													
Market/Design	2	Rectangle	1.0000										
Quality	3	Average	1.0000										
Size	Size	Size	0.8700										
TOTAL ADJUSTMENT FACTOR	0.870												
TOTAL QUALITY INDEX	104												



Click on image to enlarge

CREDENCE TO	MARKET
DEPR. BUILDING VALUE - CARD	258,060
DEPR. OB/XF VALUE - CARD	3,300
MARKET LAND VALUE - CARD	600,000
TOTAL MARKET VALUE - CARD	861,360
TOTAL APPRAISED VALUE - CARD	861,360
TOTAL APPRAISED VALUE - PARCEL	861,362
TOTAL PRESENT USE VALUE - PARCEL	0
TOTAL VALUE DEFERRED - PARCEL	0
TOTAL TAXABLE VALUE - PARCEL \$	861,362
PRIOR	
BUILDING VALUE	344,220
OBXF VALUE	0
LAND VALUE	892,500
PRESENT USE VALUE	0
DEFERRED VALUE	0
TOTAL VALUE	1,236,720

PERMIT			
CODE	DATE	NOTE	AMOUNT
ROUT: WTRSHD:			

SALES DATA						
OFF. RECORD	DATE	DEED TYPE	Q/U/V/I	INDICATE SALES PRICE		
BOOK	PAGE	MO/YR				
03410	0421	5 2013	SL*	Q I	775000	
01796	0773	7 2003	WD	U V	420000	
01700	0305	2 2003	WD	Q V	230000	
01566	0513	3 2002	WD	U V	0	
00798	0105	3 1990	WD	U V	7000	

HEATED AREA 3,000

NOTES

07ST#49103

SUBAREA				CODE	DESCRIPTION	COUNT	LTH	WTH	UNITS	UNIT PRICE	ORIG % COND	BLDG#	AYB	EYB	ANN DEP RATE	OVR	% COND	OB/XF DEPR. VALUE	
				72	PIER/DOCK (RESID)		60	4	240	16.00	0	1	2004	2004		S2		86	3302
TOTAL OB/XF VALUE																			3,302
BAS	1,444	100	127650																
FOP	576	030	15293																
FUS	1,556	090	123760																
LLU	280	020	4950																
WDD	438	015	5834																
FIREPLACE	1 - None			0															
SUBAREA TOTALS	4,294		277,487																

BUILDING DIMENSIONS FOP=W32S8E32N8Area: 256; BAS=W32N8W14S38E14S4E10N8E22N26Area: 1444; WDD=E18N12W32S12E14Area: 384; FOP=E22N8W22S8Area: 176; FUS=S38E14S4E10N8E22N34W14S8W18N8W14Area: 1556; WDD=N3W18S3E18Area: 54; FOP=W18S8E18N8Area: 144; LLU=Area: 280; TotalArea: 4294

LAND INFORMATION																			
HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRON TAGE	DEPTH	DEPTH / SIZE	LND MOD	COND FACT	OTHER ADJUSTMENTS AND NOTES			ROAD TYPE	LAND UNIT PRICE	TOTAL LAND UNITS	UNT TYP	TOTAL ADJUST	ADJUSTED UNIT PRICE	LAND VALUE	OVERRIDE VALUE	LAND NOTES
SFR OCEAN	0107	R7	70	150	1.0000	0	1.0000				PS	400,000.00	1.500	LT	1.000	400,000.00	600000	0	
TOTAL MARKET LAND DATA																			
TOTAL PRESENT USE DATA																			







3/08/2016

SENT VIA E-MAIL
RETURN RECEIPT REQUESTED

Mark Davenport
300 Caribton Rd.
Sanford, NC 27330

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- OI 16-14
PROJECT ADDRESS- 6617 W. Beach Dr.

Dear Mr. Davenport:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed. This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to build a single family residence seaward of the first line of vegetation which is inconsistent with **15A NCAC 07H .0306(a)(2)**.

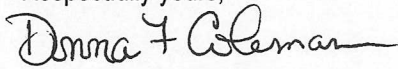
Your application is also inconsistent with 15A NCAC 07H .0601, which states that no development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations or laws of the State of North Carolina or of local government in which the development takes place. On page 88 of the local Land Use Plan, you will find that:

Policy 2.A.17: Ocean Hazard Areas: The Town supports State policies that do not conflict with the Town's development regulations, for ocean hazard areas as set forth in Chapter 15NCAC subchapter 7H of the State CAMA regulations. Suitable land uses in ocean hazard areas include ocean shoreline erosion control activities, dune establishment and stabilization. Residential, commercial and recreational land uses and parking lots for beach access are also acceptable uses in ocean hazard areas provided they meet all general and specific standards of 15 NCAC: 7H that do not conflict with the Town's development regulations.

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission (CRC). Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of General Statutes of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this letter. Please contact me so I can provide you with the proper forms and any other information you may require.

You may also petition for a variance from the CRC by means of the procedures described in 15A NCAC 07J .0700. I have enclosed a copy of the current rules as well as the CAMA Variance Request Form (DCM Form 11).

Respectfully yours,

A handwritten signature in cursive script that reads "Donna F. Coleman". The signature is written in black ink and is positioned above the typed name.

Donna F. Coleman, LPO
Town of Oak Island

cc: Holley Snider Wilmington-DCM

STATE OF NORTH CAROLINA)	BEFORE THE NORTH CAROLINA
)	COASTAL RESOURCES COMMISSION
COUNTY OF BRUNSWICK)	CRC-VR-14-15
)	
)	
IN THE MATTER OF:)	
PETITION FOR VARIANCE)	FINAL AGENCY DECISION
BY BARRY P. GOLOB,)	
MARK DAVENPORT,)	
DAVID and VONCILLE LITZ , and)	
CHRISTOPHER ATKINSON)	

This matter was heard on oral arguments and stipulated facts at a special meeting of the North Carolina Coastal Resources Commission (hereinafter Commission) on November 19, 2014 in Wilmington, North Carolina pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A NCAC 7J .0700, *et seq.* Assistant Attorney General Christine A. Goebel, Esq. appeared for the Department of Environment and Natural Resources, Division of Coastal Management. Barry P. Golob, Esq. appeared on his own behalf and was admitted *pro hac vice* to appear in this case on behalf of Petitioners Mark Davenport, David and Voncille Litz and Christopher Atkinson. Upon consideration of the Stipulated Facts and Exhibits, the record documents and the arguments of the parties, the Commission adopts the following:

STIPULATED FACTS

1. The Petitioners are Barry Golob, Mark Davenport, David and Voncille Litz and Christopher Atkinson (hereinafter referred to as Golob, Davenport, Litz, and Atkinson individually or Petitioners collectively).

2. Petitioners are represented by attorney Barry Golob who is licensed to practice law in Washington D.C., but is not licensed to practice law in North Carolina. Mr. Golob filed the necessary papers to comply with the requirements of N.C.G.S. 84-4.1 to be admitted to

represent Petitioners *pro hac vice* before the Commission in this case. His request was granted by Order dated November 6, 2014.

3. Petitioners each own one of four adjacent oceanfront properties located at 6615, 6617, 6621 and 6623 West Beach Drive, on the western end of Oak Island. Mr. Golob purchased his lot in October of 2013. Mr. Davenport purchased his lot in May of 2013. Mr. and Mrs. Litz purchased their lot in 1991. Mr. Atkinson purchased his lot in February of 2014. A copy of each deed was provided to the Commission in the stipulated exhibits attached to the DCM Staff Recommendation.

4. The Petitioners' lots (the Site) are within the Ocean Erodible and High-Hazard Flood sub-categories of the Ocean Hazard Area of Environmental Concern (AEC). The Site is just east of the existing Inlet Hazard AEC for Lockwood Folly Inlet. The Site is within the proposed updated Inlet Hazard AEC, which the Coastal Resources Commission (Commission) reviewed, but did not finalize during its November 2010 meeting, pending completion of all of the ocean shoreline erosion rate updates. An exhibit showing these areas and lines were provided to the Commission as a stipulated exhibit attached to the DCM Staff Recommendation.

5. The Site is not subject to a static vegetation line as it was not part of the 2001 large-scale nourishment project which took place on portions of Oak Island to the east of the Site.

6. The long-term average annual erosion rate at the Site is 2-feet per year.

7. Since the beginning of 2014, the Site has been affected by accelerated erosion, which can be seen in Site photographs provided to the Commission as attachments to the DCM Staff Recommendation.

8. Evidence of erosion at the Site was documented in the field notes of Heather Coats, DCM Field Representative, a copy of which was provided to the Commission as an attachment to the DCM Staff Recommendation. Those notes indicate that on April 17, 2014 the distances between the two waterward pilings and the erosion escarpment were 47 feet and 42 feet. By May 16, 2014, these distances were 30 feet and 25 feet (a loss of approximately 17 feet). Similar measurements were taken at the Litz property.

9. Further evidence of the erosion at this site is provided in an August 19, 2013 email from Donna Coleman, Town of Oak Island CAMA LPO to Golob. In this correspondence, Ms. Coleman indicates that she measured the distance from the First Line of Stable Natural Vegetation to “the house pile.” At that time, the distance was 68 feet. A copy of this email was provided to the Commission as a stipulated exhibit attached to the DCM Staff Recommendation.

10. On May 21, 2014, each of the four Petitioners was issued a CAMA General Permit for the installation of sandbag structures measuring six feet high and twenty feet wide as authorized by the Commission’s rules set forth in 15A NCAC 7H .1700. Installation of these structures was completed by May 31, 2014. Copies of these General Permits were provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation.

11. A condition included in each of the CAMA General Permits notified Petitioners that “Federal authorization is required prior to undertaking work, please contact Ronnie Smith, USACOE.”

12. At some time between the May 31, 2014 completion of the sandbag installation and the present, the sandbag structure has been overtopped by the ocean waves. Some scouring behind the sandbag structure has occurred, including scouring around the house foundation piles.

Evidence of this can be seen in photographs provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation.

13. On or about September 18, 2014, Petitioners jointly applied for a CAMA Major Permit seeking to install additional sandbags in order to create a sandbag structure with a maximum width of 30 feet and a maximum elevation of 15.7 feet NAVD 88, which is intended to be the same elevation as the current height of the escarpment. This application was deemed complete on September 24, 2014 by DCM Staff. Mr. Golob acted as agent for the other three lot owners on the permit application. Petitioners' CAMA permit application and supporting attachments were provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation. The application includes an elevation survey from on September 19, 2014.

14. As part of the CAMA Major Permit process, adjacent neighbors and the public were given notice of Petitioners' CAMA permit application. DCM Staff did not receive any objections to Petitioners' application. Copies of the notice to the adjacent riparian owners (Lovejoy and Powell) were provided to the Commission as attachments to the DCM Staff Recommendation.

15. Also as part of the CAMA Major Permit process, Petitioners' application, Staff's Field Report, and other materials were sent to state and federal resource agencies for comment. Upon receipt of these materials on September 24, 2014 Ronnie D. Smith, Project Manager for the US Army Corps of Engineers emailed Kathryn Matthews of the United States Fish and Wildlife Service (USFWS) regarding review of Petitioners' request to place additional sandbags in the same location as the May installation. Mr. Smith reported that the existing "revetment was installed sometime in mid-May without a permit from the Corps. The existing bags were

installed above MHW but the sand was pumped from the ocean.” Mr. Smith asked USFWS whether it would concur with a “May Affect, Not Likely to Adversely Affect” determination for sea turtles, piping plover, red knot and seabeach amaranth given that the “nesting habitat appears to be degraded and/or absent.” Ms. Matthews concurred on behalf of USFWS as long as certain conditions protective of these species were included in the permit. Thereafter, Mr. Smith, USACOE advised DCM that the proposed project to enlarge the sandbag revetment at the Site “qualifies for a GP 48 and the USFWS conditions [which include sand compatibility and timing issues] will be incorporated into our authorization.”

16. The Wildlife Resources Commission and DCM’s Fishery Resource Specialist raised concerns and proposed conditions about timing and working outside the construction moratorium designed to protect endangered species. Copies of the DCM Field Report and comments received by DCM from these resource agencies were provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation.

17. On October 24, 2014, DCM denied Petitioners’ permit application due to its inconsistency with the Commission’s rules limiting sandbag structure sizes in 15A NCAC 7H .0308. A copy of the denial letter was provided to the Commission as a stipulated exhibit attached to the DCM Staff Recommendation.

18. On October 29, 2014, DCM received Petitioners’ variance petition. At that time, the petition was incomplete as it lacked proof that notice of the variance had been sent to the adjacent riparian property owners as required by 15A NCAC 7J .0701(a). This notice was provided to DCM on November 6, 2014 and the Petition was deemed complete.

19. As part of the variance petition Petitioners stipulated that the proposed development is inconsistent with 15A NCAC 07H .0308.

20. In the variance petition, Petitioners request permission to install additional sandbags in order to construct a larger sandbag revetment with a base width no wider than 30 feet and a maximum elevation of 15.7 feet NAVD 88, as proposed in their CAMA permit application.

21. Given conditions at the Site, Petitioners requested that the hearing on the variance petition be expedited and that the matter be heard before the Commission's scheduled December meeting. A copy of the request and supporting documents, DCM's response, and the Chairman's decision were provided to the Commission in the stipulated exhibits attached to the DCM Staff Recommendation. The Chairman granted the request based on the requirements set forth in North Carolina General Statutes at § 143-318.12(f) which provide that an emergency meeting may be scheduled in situations where "generally unexpected circumstances" are present requiring "immediate consideration by the public body."

22. Petitioners and DCM agree that the Town of Oak Island ("Town") intends to submit a CAMA Major Permit Application for a town-funded beach nourishment project, but as of November 19, 2014 has not done so. Information provided indicates that the Town would like to implement a nourishment project, designed by Moffatt Nichol, in the winter and spring of 2015. A copy of the PowerPoint presentation shown by Moffatt Nichol to various resource agencies at a pre-application meeting on August 27, 2014 was provided to the Commission as an attachment to the DCM Staff Recommendation. The plan proposes dredging the Eastern Channel located on the back-side of the west end of Oak Island and depositing approximately 202,000

cubic yards of sand on the Oak Island oceanfront. According to the contractor's report, half of the estimated \$3.5 million project is anticipated to be funded by Division of Water Resources (who has funded \$1.1 million already) with the remaining funding anticipated to come from Brunswick County and the Town of Oak Island.

23. Town of Oak Island Town Council meeting minutes, provided to the Commission as stipulated exhibits attached to the DCM Staff Recommendation, reflect the Town's approval on July 8, 2014 of the initial \$274,925, matched by the Division of Water Resources, to Moffatt Nichol to fund the Eastern Channel project, following a June 2014 vote of the Council to approve pursuing this project. Draft minutes of the Town Council's September 9, 2014 meeting indicate that the Council voted to approve the grant contract with NCDENR-DWR for \$1.2 million to partially fund the Lockwood Folly Navigational and Habitat Restoration Project Phase I (Eastern Chanel).

24. All oceanfront property owners on the west beach area from 51st Place to 69th Place were requested to sign an easement for the beach nourishment project. On October 18, 2014, Golob signed an easement to the Town of Oak Island allowing entry and development of the Eastern Channel beach nourishment project on the oceanfront lot. The Commission was provided with a copy of the Golob easement and a letter from Steve Foster, Oak Island Town Manager to Golob explaining the nourishment project as attachments to the DCM Staff Recommendation.

STIPULATED EXHIBITS

Included for the Commission's review were the following Stipulated Exhibits:

- Motion for Admission *Pro Hac Vice* and supporting documents including letters from the parties requesting Barry Golob represent them in this proceeding;

- Petitioners' Deeds
 - Golob: Book 3465 Page 783;
 - Atkinson: Book 3498 Page 604;
 - Litz: Book 847 Page 639; and
 - Davenport: Book 3410 Page 421;
- DCM handwritten field notes from April 9, 2014 to May 13, 2014;
- August 19, 2013 email to Golob from Town of Oak Island CAMA LPO;
- CAMA General Permits:
 - Golob General Permit No. 63907 issued May 21, 2014;
 - Davenport General Permit No. 63906 issued May 21, 2014;
 - Litz General Permit No. 63905 issued May 21, 2014;
 - Atkinson General Permit No. 63904 issued May 21, 2014;
- Petitioners' CAMA Major Permit application dated September 16, 2014 with attachments including site plans;
- Notice to Riparian Owners of CAMA application;
- DCM Field Investigation Report dated September 24, 2014;
- NC Wildlife Resources Commission Comments, Maria Dunn Oct. 24, 2014;
- US Fish and Wildlife Service comments from Kathryn Matthews Sept. 29, 2014;
- DCM Fisheries Resource Comments, Jessi Baker October 24, 2014;
- CAMA Permit Denial Letter dated October 24, 2104;
- Letter requesting expedited hearing from Barry Golob dated October 31, 2014 with 5 color photos marked Exhibit A;
- Response from Frank Gorham, CRC granting request dated November 2, 2014;
- PowerPoint from Moffat Nichol used at pre-app meeting for Eastern Channel project titled "Lockwood Folly Habitat Restoration Project, Dredging Eastern Channel";
- Oak Island Town Council Minutes from July 8, 2014 and Sept. 9, 2014 meetings;
- Beach Nourishment Easement Agreement signed by Barry Golob Oct. 18, 2014;

- Letter to Golob from Town requesting easement dated Oct. 1, 2014;
- Various Site Photographs (21 photos) (PowerPoint format) and DCM GIS photograph showing Site, with static line and Inlet AEC boundaries.

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. Petitioners have met the requirements in N.C.G.S. § 113A-120.1(a) and 15 NCAC 07J .0703(f) which must be found before a variance can be granted as set forth below.

a. Strict application of Temporary Erosion Control Structures 15A NCAC 7H .0308 Rule will cause unnecessary hardships.

The Commission's Rules set forth in 15A NCAC 7H .0308 (Sandbag Rules) relate to temporary erosion control structures and prohibits sandbag structures more than twenty feet wide and six feet high. The Site has experienced accelerated shoreline erosion which Petitioners describe as between forty and sixty feet since January 2014. This is similar to that documented by DCM representative Heather Coates during a shorter time frame who noted that on April 17, 2014, the distances between the two waterward pilings and the erosion escarpment were 47 feet and 42 feet. A month later, by May 16, 2014, the distances from the two waterward pilings to the erosion escarpment were 30 feet and 25 feet. Similar measurements were taken at the Litz property. In May 2014, Petitioners received a permit to install a sandbag revetment six feet high and twenty feet wide in compliance with Sandbag Rules. Following installation of the sandbags, the ocean has washed over the sandbag structure. Petitioner noted in his application for an enlarged sandbag structure that the escarpment is more than five feet above the sandbags due to the bags settling and shifting. At high tide, the current sandbag structure does not protect the

dune form the wave action causing further erosion. Scouring behind the sandbag structure has occurred including around the house foundation piles. The waves and resulting erosion have destroyed stairs to houses on the Site.

Due to the accelerated erosion and resulting damage, the Town of Oak Island is moving forward with a beach nourishment project that may commence as early as the winter of 2015. The Town has already received significant funding for the project and has requested easements from homeowners who will be impacted by the project.

In its Recommendation, DCM acknowledged that in this case, a strict application of the Sandbag Rules issued by the Commission will cause the Petitioners unnecessary hardships in that there has been accelerated erosion at the site since the May 21, 2014 CAMA General Permits were issued. DCM notes that the existing sandbags installed pursuant to those permits have slowed the effects of erosion on these properties, but the sandbags are regularly overtopped by waves and erosion behind the sandbag structure continues. Given these Site conditions, DCM agreed that the existing sandbag revetment allowed by a strict application of the Commission's sandbag size limits may not be sufficient to protect these four structures until the planned nourishment takes place.

For these reasons, the Commission affirmatively finds that Petitioners have shown that the hardship caused by denying a permit for the proposed temporary enlarged sandbag structure is unnecessary insofar as by allowing a larger sandbag structure Petitioners may protect their residences and the adjacent shoreline while the Town's beach renourishment project is implemented. Once the Town's project is implemented, it is anticipated that the resulting beach nourishment should remediate recent erosion 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. Petitioners have demonstrated that any hardship results from conditions peculiar to Petitioners' property.

The Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the property. Specifically, the long term average annual erosion rate for the Site is two feet per year according to the DCM erosion rate maps which were last updated in 2011. The rate of erosion at the Site since January 2014 has been significantly higher and has been documented by DCM representative Heather Coates as more than 17 feet during a one-month period from April 2014 through May 2014.

Nevertheless, in its recommendation to the Commission, DCM argues that Petitioners' hardships were not caused by conditions peculiar to the property because shorelines adjacent to an inlet can be expected to experience volatile conditions including both significant erosion and accretion. For these reasons, DCM argues that accelerated erosion near an inlet should not be considered a condition peculiar to Petitioners' property.

However, while the Site is located *near* the inlet, the Site is not located *within* the currently applicable Inlet Hazard AEC for the Lockwood Folly Inlet. Accordingly, without prejudice to future consideration of conditions at the Site or any other property located in or near an Inlet Hazard AEC, the Commission affirmatively finds that insofar as the Site is not located within the currently applicable Inlet Hazard AEC for the Lockwood Folly Inlet, the accelerated erosion at the Site (which is significantly greater than the long term average annual erosion rate for the Site, i.e., two feet per year) is a condition peculiar to the Property. Thus, the Commission affirmatively finds Petitioners have met the second factor in N.C.G.S. §113A-120.1(a)(2).

c. Petitioners have demonstrated that the hardship does not result from actions taken by Petitioners.

The Commission affirmatively finds that Petitioners have demonstrated that the hardship does not result from any actions taken by the Petitioners. Specifically, Petitioners state that they have done nothing to accelerate or otherwise aggravate the erosion problem at the property. Furthermore, in its recommendation to the Commission, DCM agreed that Petitioners have done nothing to accelerate the erosion affecting the shoreline at the Site and have taken reasonable steps to address the problem. Given the agreement on this issue and based on the facts presented, the Commission affirmatively finds that Petitioners have demonstrated that they have met the third factor required for a variance pursuant to N.C.G.S. §113A-120.1(a)(2).

d. Petitioners have 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 Petitioners have 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. Specifically, the Commission's Sandbag Rules are, in effect, an exception to the General Assembly and the Commission's ban on permanent erosion control structures, and allow the temporary use of sandbags for "imminently threatened structures." While the Commission's Rules, including limitations on the use of sandbags, are sufficient in most cases, in some situations the permitted sandbag structures may not be of sufficient size to offer temporary protection as intended by the rules. In this case, Petitioners have demonstrated that the accelerated erosion has already undermined and destroyed structures on the Site and that structural elements supporting houses on the Site are in "imminent danger as a result of storms . . . or similar occurrence." Petitioners acknowledge that they are

seeking an enlargement of the existing sandbag revetment as a temporary solution to the erosion-related problems facing the Petitioners. Furthermore, Petitioners state that their goal “is to attempt to mitigate harm to the beach, the dune, wildlife and the Properties at the West End until such time as the Eastern Channel Project can be implemented. See 15A NCAC 07M .0202(e).”

In its recommendation to the Commission, DCM agreed the proposed expansion of the sandbag revetment in front of Petitioners’ lots is consistent with the spirit, purpose, and intent of the rules. DCM further acknowledge that Petitioners have tried using “regular” sandbags since May, 2014 to slow erosion, but the sandbags have been regularly overtopped and the escarpment is moving closer to the structural pilings of the residences. For this reason, DCM does not disagree with Petitioners’ conclusion that larger sandbags are needed as temporary protection while the Town of Oak Island’s efforts to implement its Eastern Channel relocation and nourishment project continues to move forward. Given the agreement on this issue and based on the facts presented, the Commission affirmatively finds that the requested variance is consistent with the spirit, purpose and intent of the Commission’s rules,

The second assessment to be made is whether the variance proposed by Petitioners will impact public safety and welfare. Petitioners submit that their properties have already suffered significant damage (i.e. the destruction of stairs affixed to one of the properties) and, without a variance, similar damage may impact at least two, and maybe more of the houses located on the Site.

In its recommendation to the Commission, DCM agrees that the variance would protect public safety and welfare since it appears that, despite Petitioners’ efforts to protect their structures with the existing sandbags, and the Town’s best efforts to address the erosion issue

through pursuit of its Eastern Channel relocation and nourishment plan, the existing sandbags may not be sufficient to protect Petitioners' structures until the Town's plan can be implemented. Given the agreement on this issue and based on the facts presented, the Commission affirmatively finds that the requested variance will serve to protect public safety and welfare.

The third assessment to be made as part of the analysis of the fourth variance factor is whether by granting the requested variance, the Commission will preserve substantial justice. Petitioners claim that by granting the variance substantial justice will be preserved by permitting the Petitioners to install and maintain a sandbag revetment to protect the structures on Site long enough for the Town to implement the proposed Eastern Channel project to place needed sand on this shoreline. DCM does not disagree that granting the variance will preserve substantial justice. In this case, the Commission agrees that a granting the variance will preserve substantial justice as the beach in front of Petitioners' property is already only marginally available for use by the public and as habitat. Therefore, allowing larger sandbags at this Site would not significantly harm public trust and habitat usage but would provide temporary erosion protection until the beach nourishment goes into effect.

For the above stated reasons, the Commission affirmatively finds that Petitioners have met the fourth factor required by N.C.G.S. § 113A-120.1(a) as long as the proposed development conforms to the conditions included in the variance granted below.

ORDER

THEREFORE, the requested variance from 15A NCAC 7H. 0308 is GRANTED with the following CONDITIONS:

- (1) All sandbags installed at the Site in conformance with a permit or permit modification issued pursuant to this variance are temporary and may only remain in place for eight years from the date of this final agency decision granting the variance.
- (2) Petitioners are required to begin construction on the proposed development at the Site within six (6) months of the date of this final agency decision granting the variance. If construction is not begun by May 21, 2014, the variance is null and void and Petitioners will not be allowed to construct the proposed development as it is inconsistent with the Commission's Sandbag Rules;
- (3) The granting of this variance does not relieve Petitioner of the responsibility for obtaining a CAMA permit from the proper permitting authority and all other required permits.

This variance is based upon the Stipulated Facts set forth above. The Commission reserves the right to reconsider the granting of this variance and to take any appropriate action should it be shown that any of the above Stipulated Facts is not true or has substantially changed.

This the 21st day of November 2014.

Frank D. Gorham III

Frank D. Gorham, III, Chairman
Coastal Resources Commission

CERTIFICATE OF SERVICE

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

Barry P. Golob
Cozen O'Connor
1627 I Street, NW, Suite 1100
Washington, DC 20006

Certified Mail/ Return Receipt Requested and
Electronically: bgolob@cozen.com

Mark Davenport
300 Carbondon Road
Sanford, NC 27332

Certified Mail/ Return Receipt Requested and
electronically at markdavenport@windstream.net

David and Voncille Litz
10924 Sycamore Club Drive
Mint Hill, NC 28227

Certified Mail/ Return Receipt Requested and
electronically at voncillel@gmail.com

Christopher Atkinson
8811 Fidelis Lane
Raleigh, NC 27613

Certified Mail/ Return Receipt Requested and
electronically at christoph34@gmail.com

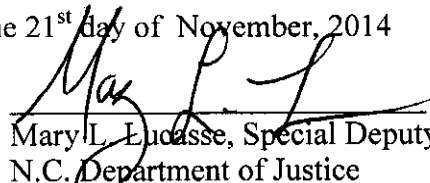
Christine A. Goebel, Esq.
Assistant Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602

Electronically at
cgoebel@ncdoj.gov

Braxton C. Davis and Angela Willis
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

Electronically at
braxton.davis@ncdenr.gov
angela.willis@ncdenr.gov

This the 21st day of November, 2014


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







Head Acres Farms Inc
1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.com

Invoice 1022

DATE 08/03/2015	PLEASE PAY \$1,728.20	DUE DATE 09/02/2015
--------------------	--------------------------	------------------------

BILL TO
Mark Davenport
6617 West Beach Drive
Oak Island, NC

Please detach top portion and return with your payment.

ACTIVITY	QTY	RATE	AMOUNT
Installed Plants Installed Plants	888	1.40	1,243.20
Installed Sand Fence Installed Sand Fence	6	45.00	270.00
Installed Sand Fence Installed Sand Fence linear across top	46	2.50	115.00
Maintenance Maintenance and Fertilization	4	25.00	100.00

Please make check payable to:

HEAD ACRES FARM

TOTAL DUE

\$1,728.20

THANK YOU.

Invoice 1117

1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.
com



BILL TO

Mark Davenport
6617 West Beach Drive
Oak Island, NC

DATE 10/18/2015	PLEASE PAY \$2,358.20	DUE DATE 11/17/2015
--------------------	---------------------------------	------------------------

DATE	ACCOUNT SUMMARY	AMOUNT
08/03/2015	Balance Forward	\$1,728.20
	Payments and credits between 08/03/2015 and 10/18/2015	0.00
	New charges (details below)	630.00
	Total Amount Due	\$2,358.20

ACTIVITY	QTY	RATE	AMOUNT
Installed Plants Installed Plants. ABG to replace fire damaged plants and to fill hole at deck area	3,000	0.21	630.00

Please make check payable to: TOTAL OF NEW CHARGES 630.00

COASTAL TRANSPLANTS, INC

TOTAL DUE **\$2,358.20**

THANK YOU.

Invoice 1118

1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.
com



BILL TO

Mark Davenport
6617 West Beach Drive
Oak Island, NC

DATE 01/19/2016	PLEASE PAY \$4,065.70	DUE DATE 02/18/2016
--------------------	---------------------------------	------------------------

DATE	ACCOUNT SUMMARY	AMOUNT
10/18/2015	Balance Forward	\$2,358.20
	Payments and credits between 10/18/2015 and 01/19/2016	0.00
	New charges (details below)	1,707.50
	Total Amount Due	\$4,065.70

ACTIVITY	QTY	RATE	AMOUNT
Installed Sand Fence Installed Sand Fence. Across front of property to prevent damage to vegetation.	100	5.00	500.00
Installed Plants Installed Plants. ABG to fill in spaces from toe of dune to toe of dune.	5,750	0.21	1,207.50

<i>Please make check payable to:</i>	TOTAL OF NEW CHARGES	1,707.50
COASTAL TRANSPLANTS, INC	TOTAL DUE	\$4,065.70

THANK YOU.

Invoice 1119

1509 George II Hwy SE
Bolivia, NC 28422-8535
(910)431-9814
smercer@coastaltransplants.
com



BILL TO

Mark Davenport
6617 West Beach Drive
Oak Island, NC

DATE 04/23/2016	PLEASE PAY \$6,000.70	DUE DATE 05/23/2016
--------------------	---------------------------------	------------------------

DATE	ACCOUNT SUMMARY	AMOUNT
10/18/2015	Balance Forward	\$4,065.70
	Payments and credits between 10/18/2015 and 04/23/2016	0.00
	New charges (details below)	1,935.00
	Total Amount Due	\$6,000.70

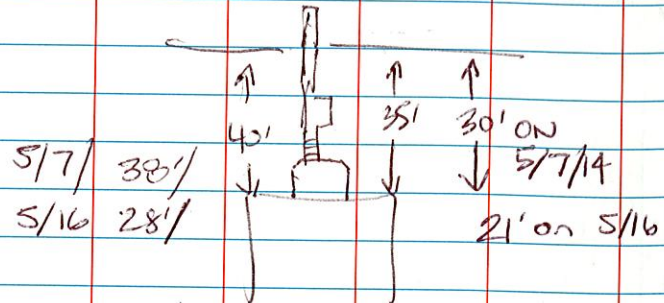
ACTIVITY	QTY	RATE	AMOUNT
Installed Plants Installed Plants. Sea Oats and Bitter Panicum and Elder. Top of dune to bottom of dune.	1,150	1.50	1,725.00
Installed Sand Fence Installed Sand Fence. Moved existing fence 15 feet toward ocean.	6	35.00	210.00

<i>Please make check payable to:</i>	TOTAL OF NEW CHARGES	1,935.00
<i>COASTAL TRANSPLANTS, INC</i>	TOTAL DUE	\$6,000.70

THANK YOU.



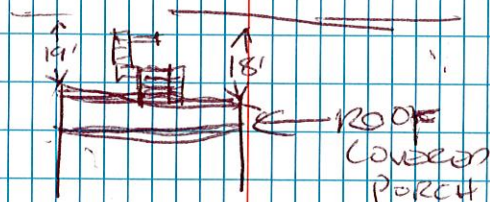
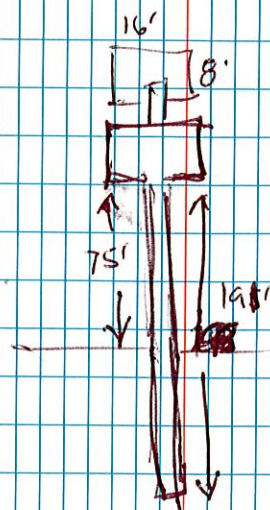
6617 W. BEACH



5/5/14

NEW INTERN 5/16

5/7/14 6014 W. BEACH
PAUL DAVENPORT





Davenport Variance Request

July 13, 2016

Department of Environmental Quality



Davenport Variance Request



Davenport Variance Request



Davenport Variance Request



Reference photo of Davenport access stairs taken from Golob rear deck.

Petitioner's photo dated 10/25/13

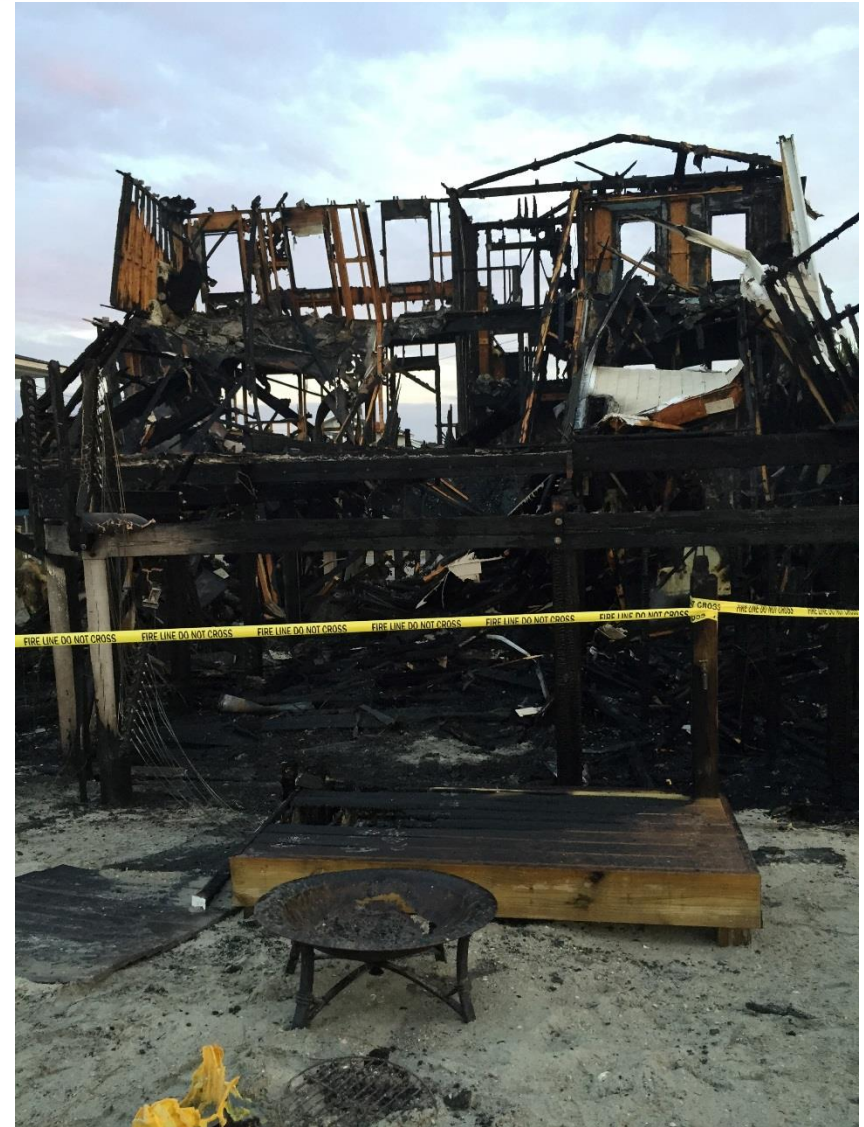
Davenport Variance Request



April 9, 2016
Photo provided by the Petitioner



Davenport Variance Request



Davenport residence destroyed by fire on October 31, 2015

Department of Environmental Quality



Davenport Variance Request

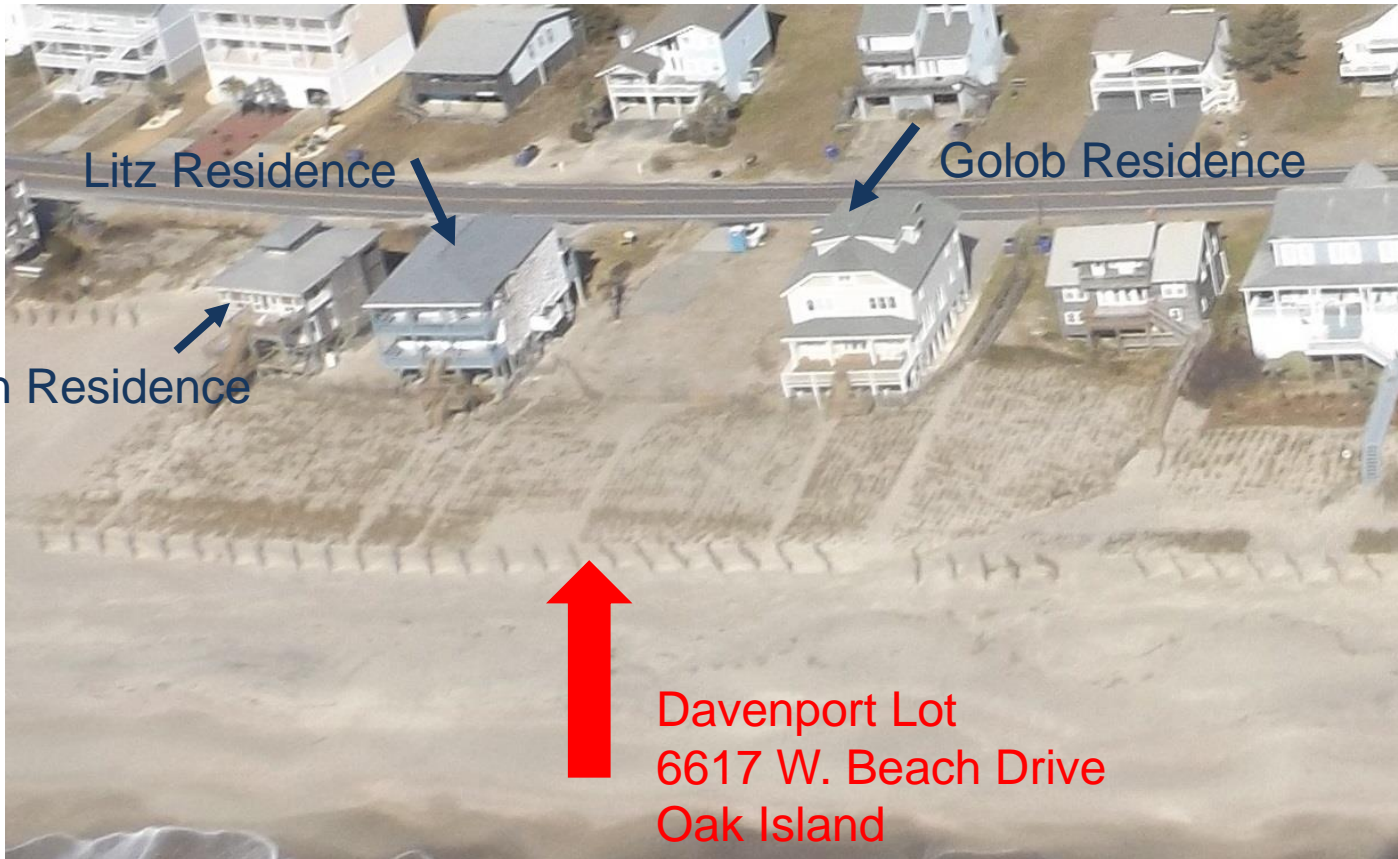


Davenport Lot
6617 W. Beach Drive
Oak Island

DCM Aerial Reference
Photo

January 29, 2016

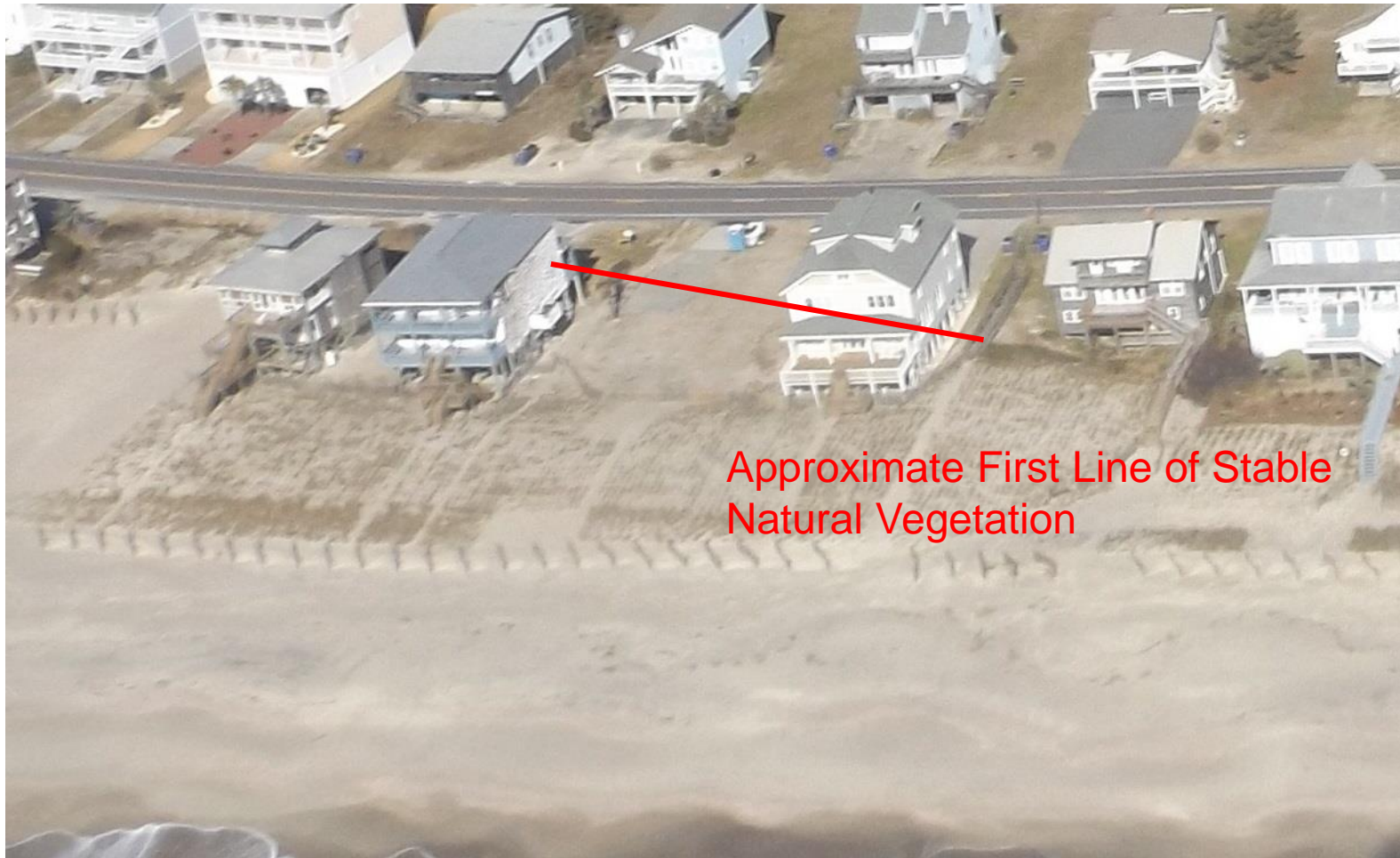
Davenport Variance request



**DCM Aerial
Reference Photo**

January 29, 2016

Davenport Variance Request



Labeled on survey as "CAMA
Line as found flagged on
12/29/15"

Located by Donna Coleman
Local Permit Officer
Oak Island



Davenport Variance Request



Litz Residence

Golob Residence



Photo taken facing north
near the toe of
the man-made dune

May 17, 2016

Davenport Variance Request



Photo taken facing east
near the toe of
the man-made dune

May 17, 2016

Davenport Variance Request



Photo taken facing east
from Litz Residence
rear deck of the man-made dune
and vegetation

May 17, 2016

Davenport Variance Request

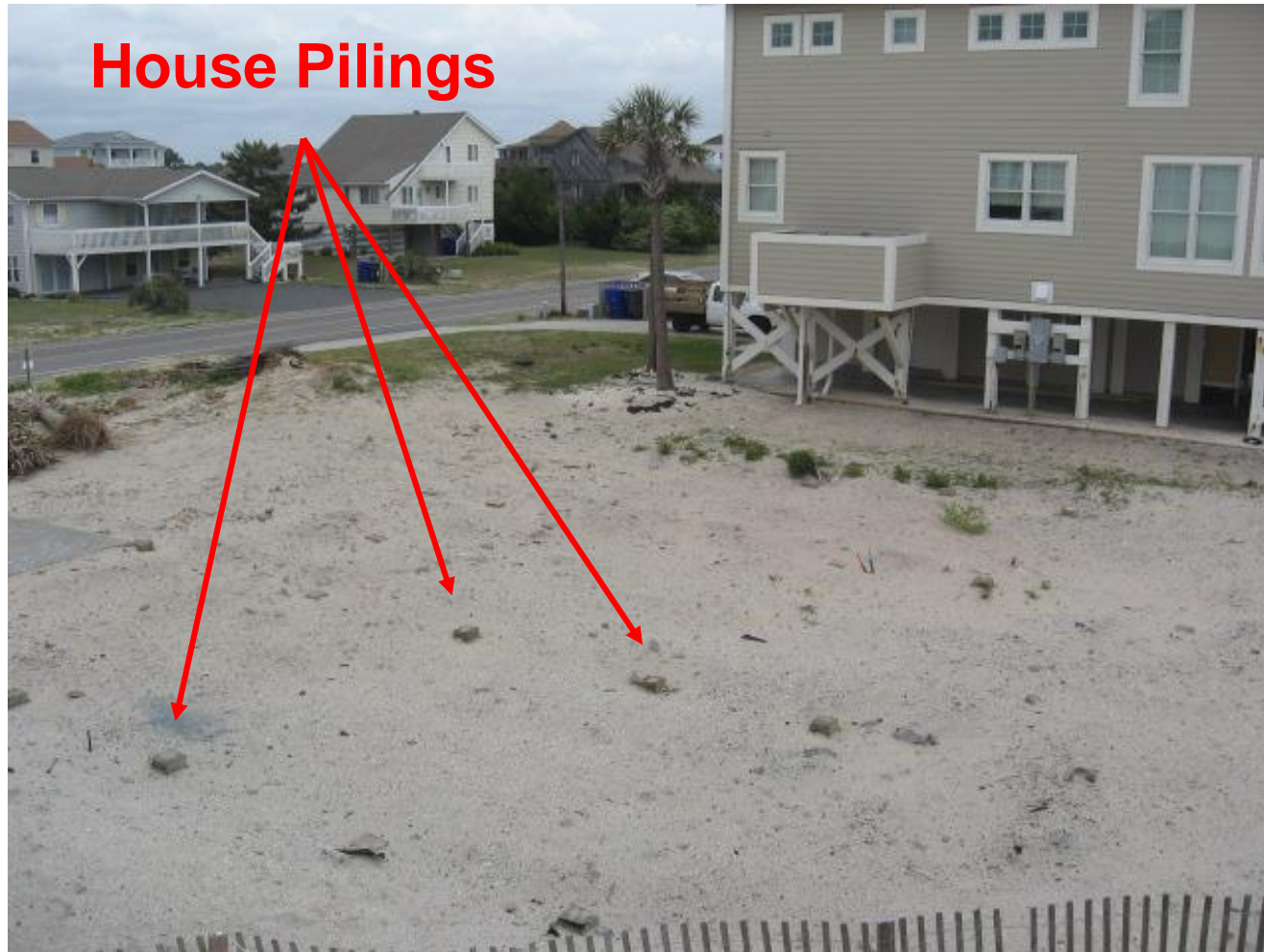
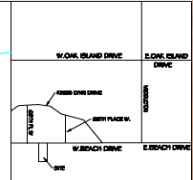
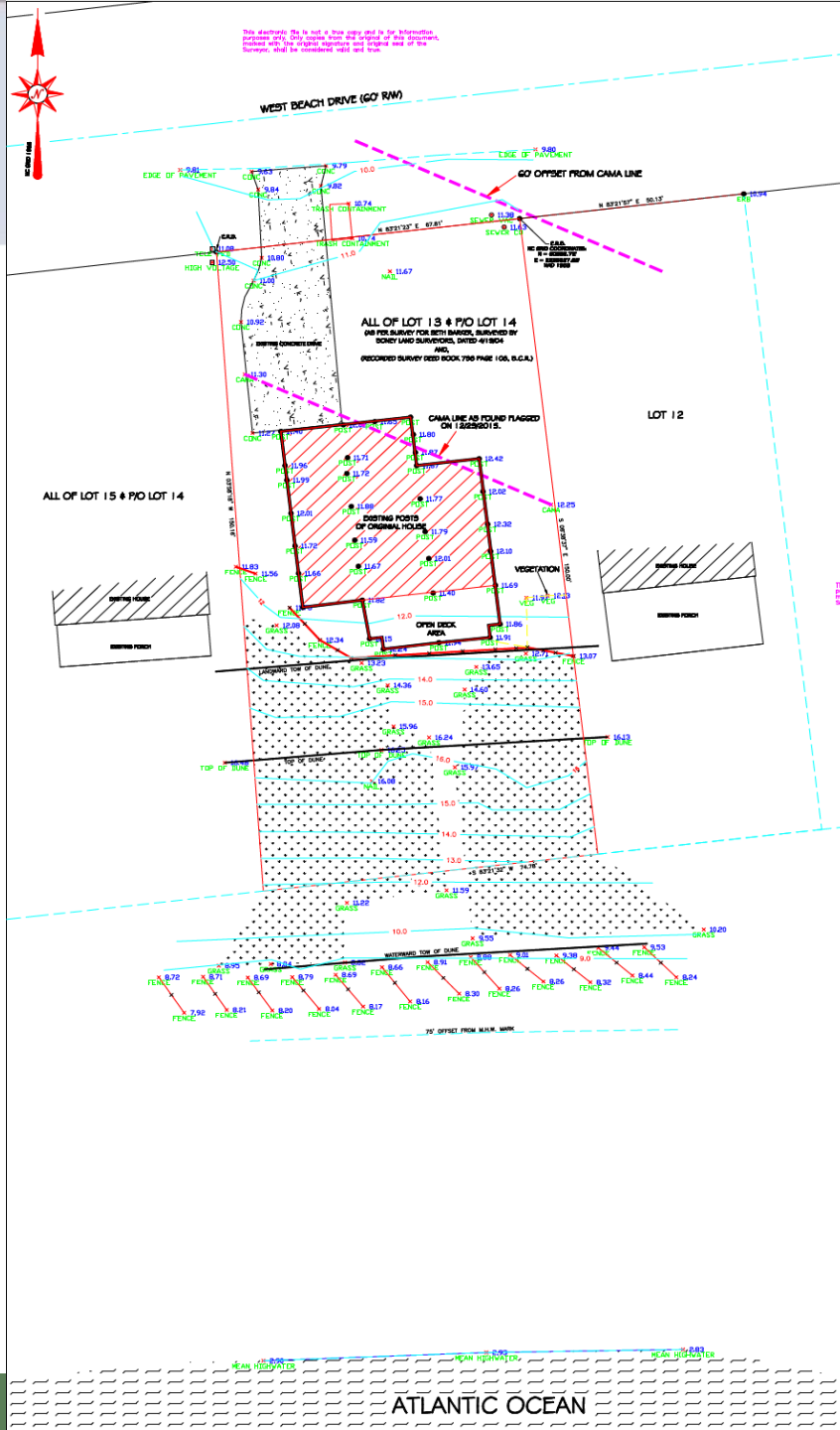


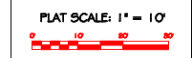
Photo taken facing northeast
from Litz Residence
rear deck of the remnant
house pilings

May 17, 2016





VICINITY MAP - NOT TO SCALE



NORTH CAROLINA
BRUNSWICK COUNTY
I, **MARK A. DAVENPORT**, SURVEYOR, being duly sworn, depose and say that I am the duly qualified and licensed professional land surveyor who prepared the foregoing plat. I am a resident of Brunswick County, North Carolina, and I am duly sworn to the truth of the foregoing. My commission expires on **12/31/2023**.
WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS **15** DAY OF **NOVEMBER**, 2023.
PROFESSIONAL LAND SURVEYOR - L-3873

NORTH CAROLINA
BRUNSWICK COUNTY
I, **MARK A. DAVENPORT**, SURVEYOR, being duly sworn, depose and say that I am the duly qualified and licensed professional land surveyor who prepared the foregoing plat. I am a resident of Brunswick County, North Carolina, and I am duly sworn to the truth of the foregoing. My commission expires on **12/31/2023**.
WITNESS MY HAND AND OFFICIAL STAMP OR SEAL THIS **15** DAY OF **NOVEMBER**, 2023.
PROFESSIONAL LAND SURVEYOR - L-3873

- NOTES:
1. THE LINES SHOWN ON THIS PLAT IS IN FLOOD ZONE AS PER 17A NC AC 158.16(a), ACCORDING TO THE MAP HYDROLOGICAL DATA (HSD).
 2. TOPOGRAPHICAL SURVEY DATE: 11/2023.
 3. PLAT SCALE: 1" = 10'
 4. E.A.S. = EXISTING AREA
 5. U.S.S. = U.S. SURVEY SET
 6. C.O.P. = STATE OF PENNSYLVANIA
 7. CHANNEL DISTANCE FROM (STREET) = 12', DEED = 0'

FLOOD ZONE: This property is subject to approval of the appropriate state or federal agencies. A title search of the appropriate records is required to determine the flood zone status of the property.

Surveyed and Mapped By
Tide Water Land Surveying
802 North Howe Street
P.O. Box 11508
Southport, North Carolina 28461
Phone: 910-627-8500

6617 W. BEACH DRIVE
PARCEL ID # 288NE033
WEST LONG BEACH
BLOCK 185
LOT 13 and PFO 14

TOPOGRAPHICAL SURVEY FOR
Mark A. Davenport

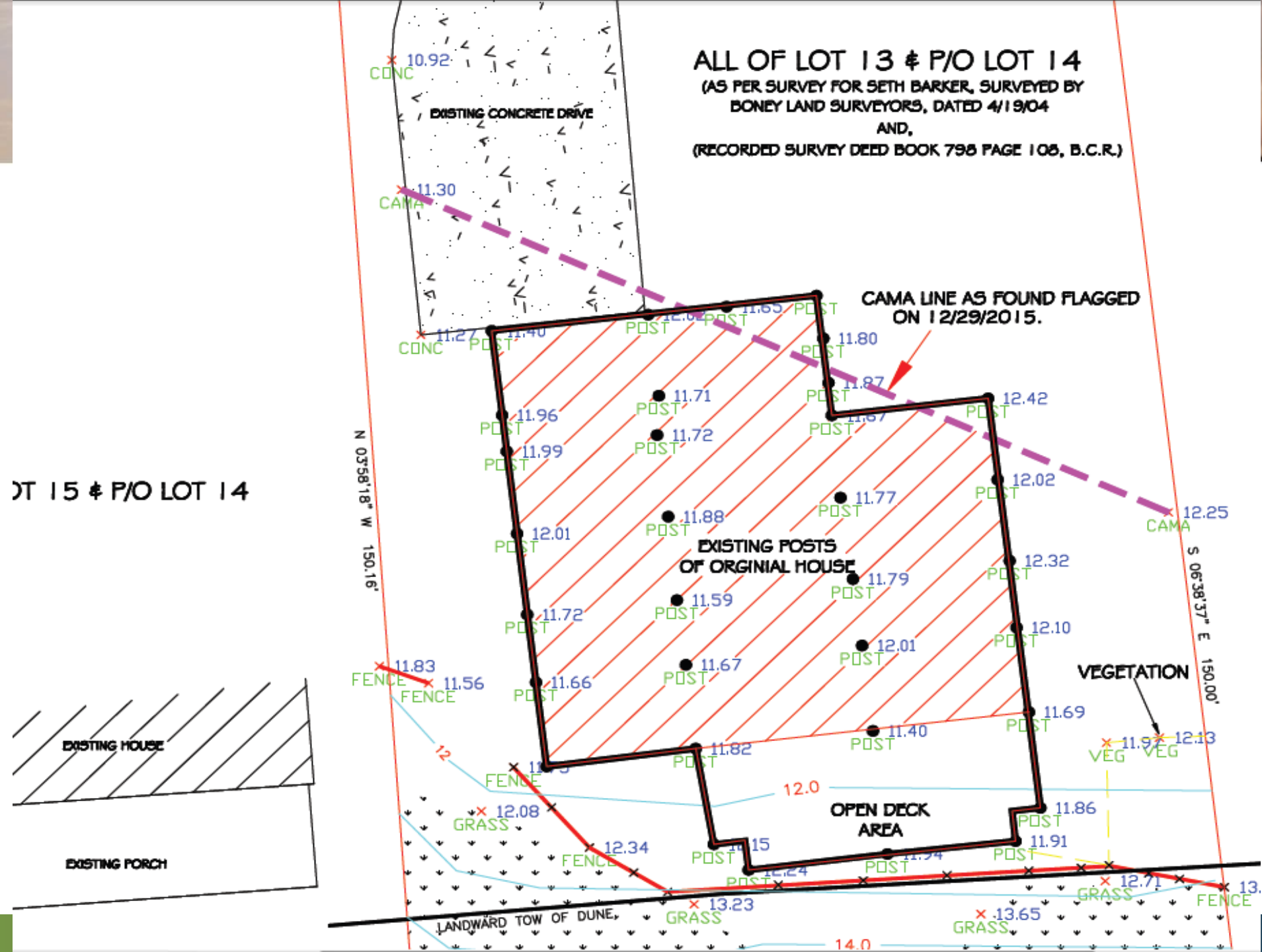
TOWN OF OAK ISLAND
SURVEYING TOWNSHIP
BRUNSWICK COUNTY
STATE OF NORTH CAROLINA
ORIGINAL SURVEY RECORD
DATE SET: 11/2023 BY: TOPOGRAPHICAL SURVEYING





ALL OF LOT 13 & P/O LOT 14
(AS PER SURVEY FOR SETH BARKER, SURVEYED BY
BONEY LAND SURVEYORS, DATED 4/19/04
AND,
(RECORDED SURVEY DEED BOOK 798 PAGE 105, B.C.R.)

LOT 15 & P/O LOT 14



Davenport Variance Request



VARIANCE CRITERIA 15A NCAC 07J.0703 (f)

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

- (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
- (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
- (C) that such hardships did not result from actions taken by the petitioner; and
- (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.





PAT McCrory
Governor

DONALD R. VAN DER VAART
Secretary

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant General Counsel

DATE: June 28, 2016 (for the July 12-13, 2016 CRC Meeting)

RE: **Variance Request by Sidney L. Wade (CRC-VR-16-03)**

Petitioner Sidney L. Wade (“Petitioner”) owns property in Sneads Ferry, Onslow County, North Carolina. The property is adjacent to an unnamed creek which is part of the New River. The property is within the Coastal Shorelines AEC, and so the first 30’ landward from normal high water is subject to the Commission’s 30-foot buffer rule, which limits impervious surfaces and development within the buffer. In September 2015, Petitioner applied for a CAMA minor permit to construct a larger sunroom on the waterward side of his home, where a smaller porch currently exists. On October 5, 2015, the Onslow County CAMA LPO denied Petitioner’s CAMA permit application as a portion of the proposed and expanded development extended into the 30-foot buffer contrary to 15A NCAC 7H .0209(f)(10). Petitioner now seeks a variance from the 30-foot buffer rule in order to develop the sunroom on his property as proposed.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Sidney L. Wade, Pro-se Petitioner, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Sammie Rogers, Onslow County CAMA LPO, electronically

RELEVANT STATUTES OR RULES**APPENDIX A****15A NCAC 07H .0209 COASTAL SHORELINES**

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

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

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

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

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

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

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

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

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

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner, Sidney L. Wade, Jr. (“Petitioner”), owns property with his wife located at 205 Swan Point Rd. in Sneads Ferry, Onslow County, North Carolina (the “Site”). Mr. Wade has owned the Site since 2002 according to a deed recorded at Book 1858, Page 465 in the Onslow County Registry, a copy of which is attached as a stipulated exhibit.
2. The Site is located adjacent to a man-made tributary of the New River, which at this location is part of the Atlantic Intracoastal Waterway. At this location, the New River is classified as SA waters by the Environmental Management Commission and is open to the harvest of shellfish.
3. The Site is located within the Coastal Shorelines Area of Environmental Concern (“AEC”) as it is located within 75’ of an estuarine water body. Pursuant to N.C.G.S. § 113A-118, any development on the Site required a CAMA permit.
4. The lot is approximately 110’ by 166’ or 18,260 square feet (0.42 acres) in area, according to the site plan submitted with the CAMA minor permit application, a copy of which is attached as a stipulated exhibit. As seen on the site plan submitted with the CAMA minor permit application, approximately half of the property within the meets and bound description of Petitioner’s deed is the creek and the marsh east of the creek.
5. Assuming that the creek and marsh cover 60% of the lot, this lot does not meet the Commission’s definition of a “small lot” defined as 5,000 square feet or less at 15A NCAC 7H .0209(d)(10)(J).
6. The current development on the Site includes an 864 square foot single-story home built in 1949 with a 6’ x 12’ rear porch and a 7’ by 20’ covered porch facing the creek per the tax card, a copy of which is attached as a stipulated exhibit. There is also a new bulkhead along the shoreline which was constructed in 2014 pursuant to CAMA Major Permit No. 180-07, issued to Petitioner by DCM on November 29, 2007, a copy of which is attached. In connection with the bulkhead installation, a shed which can be seen in historic photos, was removed.
7. On or about September 5, 2015, Petitioner, through his authorized agent Terry Gillette, applied for a CAMA Minor Permit with the Onslow County LPO. A copy of the permit application materials is attached as a stipulated exhibit, including a site plan.
8. Petitioner’s CAMA Minor Permit application proposed the replacement of the “poorly constructed” 7’ by 20’ screened in porch with a new 30’ by 16’ sunroom. The site plan indicates that the waterward corners of the proposed sunroom would be located 22’9” and 23’6” from the existing bulkhead and location of normal high water. This impervious area within the buffer is approximately 23’ by 30’ or 690 square feet.
9. Local setbacks applicable to the lot include a front setback of 40’, side setbacks of 8’ and a rear setback of 15’.

10. The existing home is serviced by a septic system. The drain field for the system is shown on the site plan as being south of the home.
11. Pursuant to the Commission's rules for minor permit applications, notice of the proposed development and CAMA minor permit application was posted on-site, and was sent to the two adjacent riparian owners, Mr. Fulcher and Ms. Lucas. Both acknowledged receiving notice and made written statements of no objection, copies of which are attached as stipulated exhibits.
12. On May 11, 2016, the Onslow County CAMA LPO denied Petitioner's CAMA Minor Permit application due to its inconsistency with the Commission's 30-foot buffer rule. While the LPO cited 15A NCAC 7H .0102(e), the parties stipulate that the correct cite for the 30-foot buffer rule is 15A NCAC 7H .0209(d)(10).
13. On May 25, 2016, Petitioner submitted this variance petition seeking a variance from the Commission's 30-foot buffer rule in order to construct the porch as proposed in the application.
14. Petitioners indicate that they are willing to construct a stormwater system which conforms to the specifications in 15A NCAC 07H .0209(d)(10)(J)(4).
15. Without a variance from the Commission, Petitioner could redevelop within the footprint of the existing covered porch pursuant to 15A NCAC 07H.0209(d)(10)(H), could build an addition approximately 9' deep which does not intrude into the buffer, or could construct an open slatted wooden deck up to 200 square feet within the 30-foot buffer.
16. In this matter, the Division of Coastal Management is represented by Christine Goebel, Assistant General Counsel for DEQ. The Petitioner is representing himself.

Stipulated Exhibits:

1. 2002 Deed to Petitioner recorded at 1858/465
2. Onslow County Property tax card
3. CAMA minor permit application materials, including site plan
4. No objection letters from adjacent riparian neighbors
5. May 11, 2016 denial letter
6. CAMA Major Permit No. 180-07 for bulkhead
7. Powerpoint presentation with aerial and ground level site photos

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

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

Petitioner's Position: Yes.

The 30ft rule poses a tremendous problem with the building of our sunroom. Our existing house is approximately 888 sq. ft. In order to accommodate comfortable living conditions it is imperative that we have at least a 30' by 16' addition. Without it we have no dining area. We only have 2 bedrooms which already leaves us with cramped quarters for any visiting family and friends. We hoped to at least acquire space for a table and chairs and extra seating and sleeping accommodations (example: a sleeper sofa). This has been our dream to make this our permanent retirement home where we would like guests to feel comfortable. We have already put in a \$40,000 seawall. We have invested in siding, replacement windows, metal roofing and electrical upgrades. With a house that we bought for the magnificent view, without the sunroom, we cannot even view the water.

Staff's Position: No.

Staff disagrees that Petitioner will suffer an unnecessary hardship from strict application of the Commission's 30-foot buffer rule to Petitioner's property. Staff acknowledges that finding space on the lot to accommodate an addition is limited because of the location of the existing structure, the existing septic field, the 30-foot buffer, and local setbacks. However, Staff notes that Petitioner purchased the lot in 2002, after the buffer rule was in place. Petitioner could modify his plans for an addition that would not require a buffer variance, as outlined in Stipulated Fact 15. Accordingly, Staff believe that the strict application of the 30-foot buffer rule would not cause Petitioner an unnecessary hardship.

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

Petitioner's Position: Yes.

Our lot is limited in space due to a considerable amount of it actually being in the water. We have no room to expand on the sides or street side of the house because of the septic tank and proximity to the street.

Staff's Position: No.

Staff doesn't believe any hardships alleged by Petitioner result from conditions peculiar to the property, such as location, size or topography. While part of the platted lot area is submerged creek and marsh, it has been so since Petitioner purchased the property in 2002 and so there would not have been any expectation to build on it. Staff agrees that the local setbacks, septic field placement, and the 30-foot buffer constrain the building envelope on this lot, but the upland portion of the lot still exceeds the definition of a "small lot" defined by the Commission's rules, as noted in Stipulated Fact 5. In addition, Petitioner could expand on each side of the home instead of into the buffer. Therefore, Staff concludes that there are no physical characteristics of the property which causes any alleged hardship.

III. Do the hardships result from the actions taken by the Petitioner? Explain.**Petitioner's Position: No.**

By no action of petitioners do we contribute to this dilemma. The house was on the lot as it now exists with the poorly constructed sun porch when we purchased it. The porch cannot be repaired.

Staff's Position: Yes.

Petitioner took title to this property in 2002 after the 30-foot buffer rules were in place as well as the existing structure size and layout/design. While Petitioner's proposed development is modest in size, it is Petitioner's design choice which fails to account for the 30-foot buffer limitations. Accordingly, any hardship alleged by Petitioner is a result of its design choice of layout for the proposed sunroom within the buffer.

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

Construction of said sun porch will be built to N.C. coastal building codes in compliance with all requirements for construction in order to protect our environment. We have researched our marsh area and it is not considered a hatchery. We are prepared if needed to provide for any water run off to be carried underground and distributed into a one ton water filtration bed that would keep it away from the 30ft buffer. We will do everything possible to ensure that our coastal waters are protected.

Staff’s Position: No.

Staff does not believe that the variance requested by Petitioner is consistent with the spirit, purpose, and intent of the Commission’s buffer rule, because Petitioner is able to put an addition on the existing house with minor design changes and without intruding into the buffer, as outlined in Stipulated Fact 15. Such alternative buffer-avoiding designs could be permitted. While the square foot area of the structure proposed by Petitioner to be enlarged beyond the existing porch footprint is relatively small, the fact that the same square footage can be designed to avoid the buffer is not in the spirit of protecting the buffer, which is intended to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic value. Additionally, it would not preserve public safety and welfare to have additional impervious surface and structures in the buffer without addressing the additional stormwater and impacts to the buffer. Substantial Justice will be preserved by requiring Petitioner to design around the buffer.

As requested by the Commission in the past for buffer variances, Staff includes the stormwater management-related conditions which have been placed on some prior variances issued by the Commission below.

(1) The permittee shall obtain a stormwater management plan meeting the requirements of 15A NCAC 7H .0209(d)(10)(J)(iv), which requires that the first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed and certified by an individual who meets applicable State occupational licensing requirements for the type of system proposed, and approved by the appropriate governmental authority during the permit application process.

(2) Prior to occupancy and use of the sunroom addition and the issuance of a final Certificate of Occupancy (CO) by the local permitting authority, the permittee shall provide a certification from the design professional that the stormwater system has been inspected and installed in accordance with this permit, the approved plans and specification and other supporting documentation.

(3) The permittee shall provide for the operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and within the design specifications for the life of the project.

(4) The permittee shall insure that the obligation for operation and maintenance of the stormwater management system becomes a permanent obligation of future property owners.

**ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST MATERIALS**

CAMA VARIANCE REQUEST

Sidney L Wade, Jr.

205 Swan Point Rd.

Snead's Ferry, N.C. 28460

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MAY 25 2016

DCM- MHD CITY

May 17, 2016

Director

Division of Coastal Management

400 Commerce Avenue

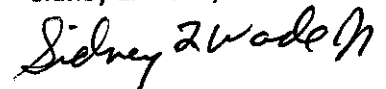
Morehead City, N.C. 28557

To Whom It May Concern,

This is a CAMA VARIANCE REQUEST FORM in response to a denial from the Onslow County Planning & Development Department. We are asking for a variance to construct a sun porch in place of a poorly constructed screened-in porch on our house. Thank you for your consideration to this matter.

Sincerely,

Sidney L. Wade, Jr.



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VARIANCE CRITERIA

- (a) The 30ft rule poses a tremendous problem with the building of our sunroom. Our existing house is approximately 888 sq ft. In order to accommodate comfortable living conditions it is imperative that we have at least a 30' x 16' addition. Without it we have no dining area. We only have 2 bedrooms which already leaves us with cramped quarters for any visiting family and friends. We hoped to at least acquire space for a table and chairs and extra seating and sleeping accommodations (example: a sleeper sofa). This has been our dream to make this our permanent retirement home where we would like guests to feel comfortable. We have already put in a \$40,000 seawall. We have invested in siding, replacement windows, metal roofing and electrical upgrades. With a house that we bought for the magnificent view, without the sunroom, we cannot even view the water.
- (b) Our lot is limited in space due to a considerable amount of it actually being in the water. We have no room to expand on the sides or street side of the house because of the septic tank and proximity to the street.
- (c) By no action of petitioners do we contribute to this dilemma. The house was on the lot as it now exists with the poorly constructed sun porch when we purchased it. The porch cannot be repaired.
- (d) Construction of said sun porch will be built to N.C. coastal building codes in compliance with all requirements for construction in order to protect our environment. We have researched our marsh area and it is not considered a hatchery. We are familiar with the N.C. Coast *A*Syst stormwater management for coastal homeowners. We are prepared if needed to provide for any water run off to be carried underground and distributed into a one ton water filtration bed that would keep it away from the 30ft buffer. We will do everything possible to ensure that our coastal waters are protected.

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DCM- MHD CITY

①

May 17, 2016

Environmental Division
9001 Mail Service Center
Raleigh, N.C. 27699-9001

To Whom It May Concern,

This is a CAMA VARIANCE REQUEST FORM in response to a denial from the Onslow County Planning & Development Department. We are asking for a variance to construct a sun porch in place of a poorly

stipulated facts

constructed screened-in porch on our house. Thank you for your consideration in this matter.

① I Sidney Wade stipulates that I agree with NCGS 113A-120.

Sincerely, Sidney Wade

② There is no other recourse to improve except for variance requested.

Sidney L. Wade, Jr.

③ We do live in the 30 ft Buffer but have stated our resolve to carry all water run off back beyond 30' ft Buffer.

④ This is our dream home not 2nd home we plan to move after work is completed.

⑤ Most of land is in MATSh. Cannot build either side because of Septic tank and lines. We will only have 2 bedrooms so less impact on septic system.

⑥ The little variance will help for a sofa bed for grand children

②

May 17, 2016

I thought this was stipulation we sent first

VARIANCE CRITERIA

- (a) The 30ft rule poses a tremendous problem with the building of our sunroom. Our existing house is approximately 888 sq ft. In order to accommodate comfortable living conditions it is imperative that we have at least a 30' x 16' addition. Without it we have no dining area. We only have 2 bedrooms which already leaves us with cramped quarters for any visiting family and friends. We hoped to at least acquire space for a table and chairs and extra seating and sleeping accommodations (example: a sleeper sofa). This has been our dream to make this our permanent retirement home where we would like guests to feel comfortable. We have already put in a \$40,000 seawall. We have invested in siding, replacement windows, metal roofing and electrical upgrades. With a house that we bought for the magnificent view, without the sunroom, we cannot even view the water.
- (b) Our lot is limited in space due to a considerable amount of it actually being in the water. We have no room to expand on the sides or street side of the house because of the septic tank and proximity to the street.
- (c) By no action of petitioners do we contribute to this dilemma. The house was on the lot as it now exists with the poorly constructed sun porch when we purchased it. The porch cannot be repaired.
- (d) Construction of said sun porch will be built to N.C. coastal building codes in compliance with all requirements for construction in order to protect our environment. We have researched our marsh area and it is not considered a hatchery. We are familiar with the N.C. Coast *A*Syst stormwater management for coastal homeowners. We are prepared if needed to provide for any water run off to be carried underground and distributed into a one ton water filtration bed that would keep it away from the 30ft buffer. We will do everything possible to ensure that our coastal waters are protected.

e property purchased 2002
f I agree with denial

Sids
wall

ATTACHMENT E:
STIPULATED EXHIBITS INCLUDING POWERPOINT

22
FOP

2002 JUN 13 PM 2:46

ONSLow COUNTY
10

06/13/2002

\$100.00



Real Estate
Excise Tax

Excise Tax \$ 100.00

THIS DOCUMENT PRESENTED TO
THE ONSLOW COUNTY TAX OFFICE
DATE 6-13-02 CLERK *[Signature]*

Tax Lot No. Parcel Identifier No. 778A 3
Verified by County on the day of
by

Mail after recording to Fuss and Fairley, Attorneys, Post Office Box 2550, Surf City, NC 28445

This instrument was prepared by Fuss and Fairley, Attorneys, Post Office Box 2550, Surf City, NC 28445

Brief description for the Index

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 13th day of June, 2002, by and between

GRANTOR

John Wilkins and wife, Carolyn Wilkins
Jesse Ray Wilkins and wife, Linda D. Wilkins
2439 Redwood Road
Durham, NC 27704

GRANTEE

Sidney Wade and wife,
Charlene Wade
2234 Robinson Road
Kinston, NC 28504

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

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

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Sneads Ferry, Township,

Onslow County, North Carolina and more particularly described as follows:

Please see Exhibit "A" attached hereto and incorporated herein by reference.

The property hereinabove described was acquired by Grantor by instrument recorded in 02 E 202

A map showing the above described property is recorded in Plat Book page

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

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

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

- 2002 Onslow County Ad Valorem taxes
- Restrictions of record
- Utility easements of record

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

.....
(Corporate Name)

By:
..... President

ATTEST:
.....
..... Secretary (Corporate Seal)

.....
(Corporate Name)

By:
..... President

ATTEST:
.....
..... Secretary (Corporate Seal)

USE BLACK INK ONLY

John Wilkins (SEAL)
John Wilkins

Carolyn Wilkins (SEAL)
Carolyn Wilkins

Jesse Ray Wilkins (SEAL)
Jesse Ray Wilkins

Linda D. Wilkins (SEAL)
Linda D. Wilkins

USE BLACK INK ONLY

..... (SEAL)

..... (SEAL)

..... (SEAL)

..... (SEAL)

SEAL - STAMP NORTH CAROLINA, Pender County.
 I, a Notary Public of the County and State aforesaid, certify that John Wilkins and wife, Carolyn Wilkins
 Grantor,
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my
 hand and official stamp or seal, this 13 day of June 2002
 My commission expires: 08/03/2003 Nanette F. Jones Notary Public

SEAL - STAMP NORTH CAROLINA, Pender County.
 I, a Notary Public of the County and State aforesaid, certify that Jesse Ray Wilkins and wife, Linda D. Wilkins
 Grantor,
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my
 hand and official stamp or seal, this 13 day of June 2002
 My commission expires: 08/03/2003 Nanette F. Jones Notary Public

SEAL - STAMP NORTH CAROLINA, _____ County.
 I, a Notary Public of the County and State aforesaid, certify that _____
 Grantor,
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my
 hand and official stamp or seal, this _____ day of _____
 My commission expires: _____ Notary Public

SEAL - STAMP NORTH CAROLINA, _____ County.
 I, a Notary Public of the County and State aforesaid, certify that _____
 Grantor,
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my
 hand and official stamp or seal, this _____ day of _____
 My commission expires: _____ Notary Public

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MAY 25 2016
DCM-MHD CITY

SEAL - STAMP NORTH CAROLINA, _____ County.
 I, a Notary Public of the County and State aforesaid, certify that _____
 Secretary of
 _____ a North Carolina corporation, and that by authority duly
 given and as the act of the corporation, the foregoing instrument was signed in its name by its
 President, sealed with its corporate seal and attested by _____ as its _____ Secretary.
 Witness my hand and official stamp or seal, this _____ day of _____
 My commission expires: _____ Notary Public

SEAL - STAMP NORTH CAROLINA, _____ County.
 I, a Notary Public of the County and State aforesaid, certify that _____
 Secretary of
 _____ a North Carolina corporation, and that by authority duly
 given and as the act of the corporation, the foregoing instrument was signed in its name by its
 President, sealed with its corporate seal and attested by _____ as its _____ Secretary.
 Witness my hand and official stamp or seal, this _____ day of _____
 My commission expires: _____ Notary Public

The foregoing Certificate(s) of Nanette F. Jones

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.
Mildred A. Thomas REGISTER OF DEEDS FOR Onslow COUNTY
 By _____ Deputy/Assistant-Register of Deeds.

Exhibit "A"

BEGINNING at an iron stake in the eastern right of way of State Road 1523 (Known as the Swanney Point Road), at Mary Fulcher's new corner, said iron stake being located north 74 degrees 35 minutes east 30.26 feet from a point in the center line of State Road 1523, said point in the center line being 547 feet from a 24-inch culvert when measured along the center line of State Road 1523 in a southwardly direction and said culvert being located approximately 0.4 miles southwardly from North Carolina State Road 1515; thence from the described beginning and with Mary Fulcher's new line north 74 degrees 35 minutes east 166.17 feet to an iron stake in the edge of marsh land; thence with the edge of marsh land south 22 degrees 59 minutes east 110.08 feet to an iron stake Joe Lucas northeast corner; thence with Lucas' line south 74 degrees 34 minutes west 165.78 feet to an iron stake in the aforementioned eastern right of way of North Carolina State Road 1523; thence with said right of way north 23 degrees 13 minutes west 110.00 feet to the point of beginning, containing 0.42 acres.

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WARNING: THIS IS NOT A SURVEY

Parcel Information

Map #:	778A-3	Assessed Value:	\$152,810.00
PARID:	028787	Total Taxable Value:	\$152,810.00
NC PIN:	429914236346	Building Value:	\$37,410.00
Owner Name:	WADE SIDNEY & CHARLENE	Land Value:	\$115,400.00
Property Address:	205 SWAN POINT RD	Heated Living Sq Ft:	864.00
Property Description:	SR 1523	Year Built:	1949.00
Subdivision:	NO SUBDIVISION RECORDED	Adjusted Acres:	0.42000000
Neighborhood Code:	3146	Legal Acres:	0.42
City Limit:	UNINCORPORATED ONslow	Improvement Code:	D
Township:	STUMP SOUND	Book:	1858
Mailing Address:	2234 ROBINSON RD	Page:	465
Mailing City, State, Zip:	KINSTON NC 28504	Deed Date:	13-JUN-02
Sale Code:	<u>00</u>	Deed Stamp Amount:	50000.00
Number of Bedrooms	3.00	Plat Book & Plat Page:	NO-SUBDIV



Onslow County
Geographic Information Systems
(GIS)
39 Tallman Street
Jacksonville, NC 28540

WARNING: THIS IS NOT A SURVEY.

This map is prepared for the inventory of real property found within this jurisdiction, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The County and mapping company assume no legal responsibility for the information contained on this map.



ON SLOW COUNTY

N O R T H C A R O L I N A

Pride in Service, People and Place™

Home Search Property Records County Website

Owner Address Parcel ID Advanced

- Profile**
- Sales
- Residential
- Commercial
- OBY
- Permits
- Land
- Sketch
- Full Legal
- Agricultural
- Photos
- Values
- Onslow County GIS

Parcel ID: 028787 Map #: 778A-3 Tax Year: 2016
 Luc: Waterfront ICW Class: Dwelling NBHD: LEWIS ACRES/SWAN POINT RD
 WADE SIDNEY & CHARLENE 205 SWAN POINT RD

1 of 1

Actions

- Printable Summary
- Printable Version

Reports

Property Record Card

Go

Parcel

Parcel	028787
Tax Year	2016
Property Address	205 SWAN POINT RD
Unit Desc	
Unit #	
NBHD	3146 - LEWIS ACRES/SWAN POINT RD
Class	Dwelling
Land Use Code	11 - Waterfront ICW
Living Units	
Mapping Acres	.42
CAMA Acres	.42
Location	
Fronting	
Zoning	R-8M-R-8M
Map #	778A-3
PIN Number	429914236346
Total Cards	1
Record Type	R

Legal

Legal Description	SR 1523
Township	114 - STUMP SOUND
City Code	00 - UNINCORPORATED ONSLOW
Jurisdiction	1400 - STUMP SOUND UNINCORPORATED
Plat Book-Page/Subd #	NO-SUBDIV

Owner Details

Owner 1	WADE SIDNEY & CHARLENE
Owner 2	
Customer ID	111524000
% Ownership	100
Nature of Ownership	-
Address	2234 ROBINSON RD KINSTON, NC 28504

Owner Mailing

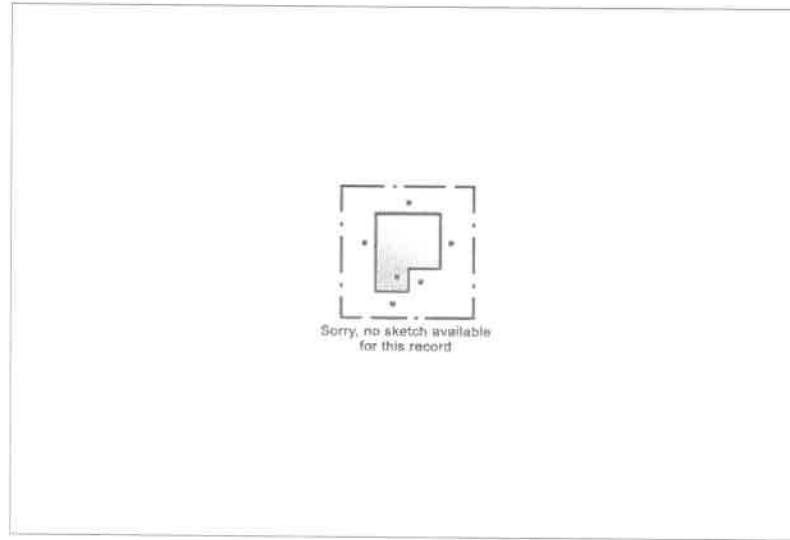
Owner 1	WADE SIDNEY & CHARLENE
---------	------------------------

Owner 2
Mailing Address

2234 ROBINSON RD
KINSTON NC 28504

Public Comments

Line #	Dept	Comment
1	CONV	SHED IS PP NV



Data Copyright Onslow Tax Office
Last Updated: 07/JUN/2016
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Locality Onslow Permit Number LCP 2015-00015

GENERAL INFORMATION

LAND OWNER

Name Sidney L. Wade Jr. swade2154@embarqmail.com
Address 2234 Robinson Road
City Kinston State NC Zip 28504 Phone 252-560-9643
FAX 252-527-8107

AUTHORIZED AGENT

Name Terry Gillette
Address 388 John Green Smith Road
City Kinston State NC Zip 28504 Phone 252-361-0781

LOCATION OF PROJECT 205 Swan Point Road
Sneads Ferry, NC

(If not oceanfront, is waterbody natural or manmade?) _____

DESCRIPTION OF PROJECT Replace poorly constructed screen
porch with new sunroom porch

AREAS OF ENVIRONMENTAL CONCERN (AEC) CLASSIFICATION

(To be filled in by the Local Permit Officer prior to completing application.)

____ Ocean Hazard Estuarine Shoreline ____ ORW Shoreline ____ Other

PROPOSED USE

Residential ____ Commercial/Industrial ____ Other ____

SIZE OF BUILDING IN SQUARE FEET 895 sf

Size of other impervious or built upon surfaces (such as driveways, etc.) within 75 feet of the shoreline (575 feet of an ORW shoreline) _____

SIZE OF SITE IN SQUARE FEET ~ 10,830 sf

OTHER PERMITS MAY BE REQUIRED . . .

The activity which you are planning may require permits other than the CAMA minor permit you are applying for here. As a service we have compiled a listing of the kinds of permits which might be required. We suggest that you check over this list with your Local Permit Officer to determine which, if any, of these may apply to your project. This is not a requirement of CAMA, only a suggestion to help you complete your project as quickly as possible.

Zoning, Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Burning, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, Others:

STATEMENT OF OWNERSHIP

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

an owner of record title, Title is vested in Sidney Lawson Wade Jr ~~himself~~ wife Charlene Wade, see Deed Book 1858, page 465 in the Onslow County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS

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

- | (Name) | (Address) |
|----------------------------------|--|
| (1) <u>William Dale Fulcher,</u> | <u>201 Swan Point Road, Sneads Ferry, NC</u> |
| (2) <u>Minnie F. Lucas,</u> | <u>213 Swan Point Road, Sneads Ferry, NC</u> |
| (3) _____ | _____ |
| (4) _____ | _____ |

FOR DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

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

PERMISSION TO ENTER ON LAND

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

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the AEC hazard notice where necessary, a check for \$50.00 made payable to the locality, and any information as may be provided orally by the applicant. The details of the application as described by these sources are incorporated without reference in any permit which may be issued. Deviation from these details will constitute a violation of any permit. Any person developing in an AEC without a permit is subject to civil, criminal and administrative action.

This the 29 day of September, 19 2015

Terry Gillette
Land owner or person authorized to act as his agent for purposes of filing a CAMA permit application.



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

N.C. Division of Coastal Management

AGENT AUTHORIZATION FORM

Date: 10/5/15

Name of Property Owner Applying for Permit:

Sidney L. Wade, Jr.

Name of Authorized Agent for this project:

Terry Gillette

Owner's *Mailing* Address:

2234 Robinson Road,
Kinston, NC 28504

Agent's *Mailing* Address:

388 John Green Smith Road,
Kinston, NC 28504

Email: swade2154@embarqmail.com

Phone (252) 560-9643

Email: gilletteterry@gmail.com

Phone (252) 361-0781

I certify that I have authorized the agent listed above to act on my behalf, for the purpose of applying for, and obtaining all CAMA Permits necessary to install or construct the following (activity):

To replace poorly constructed back screen porch with new sunroom porch.

For my property located at 205 Swan Point Road,

Sneads Ferry, NC 28460

This certification is valid 1 year from (date) _____

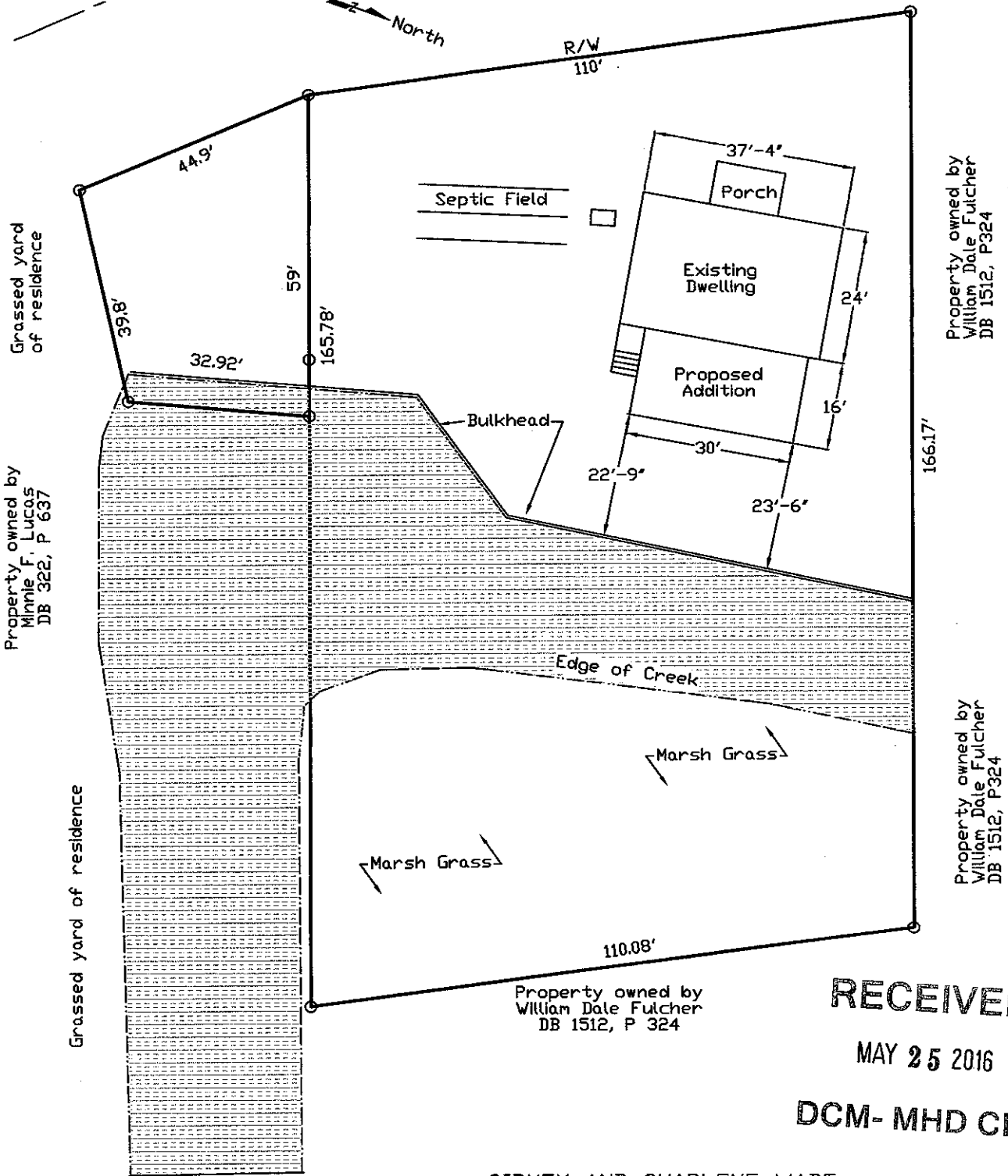
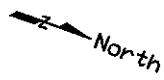
Sidney L. Wade, Jr.
Property Owner Signature

10/6/15
Date

17000000 Division of Coastal Management, PO Box 26105
Raleigh, NC 27602-0105 FAX: 919-396-3154 Internet: www.ncdenr.com

Approved for use by the Department of Environment and Natural Resources

CENTERLINE OF SWAN POINT ROAD NCSR 1523
60' R/W



Grassed yard of residence

Property owned by Minnie F. Lucas DB 322, P 637

Grassed yard of residence

Property owned by William Dale Fulcher DB 1512, P324

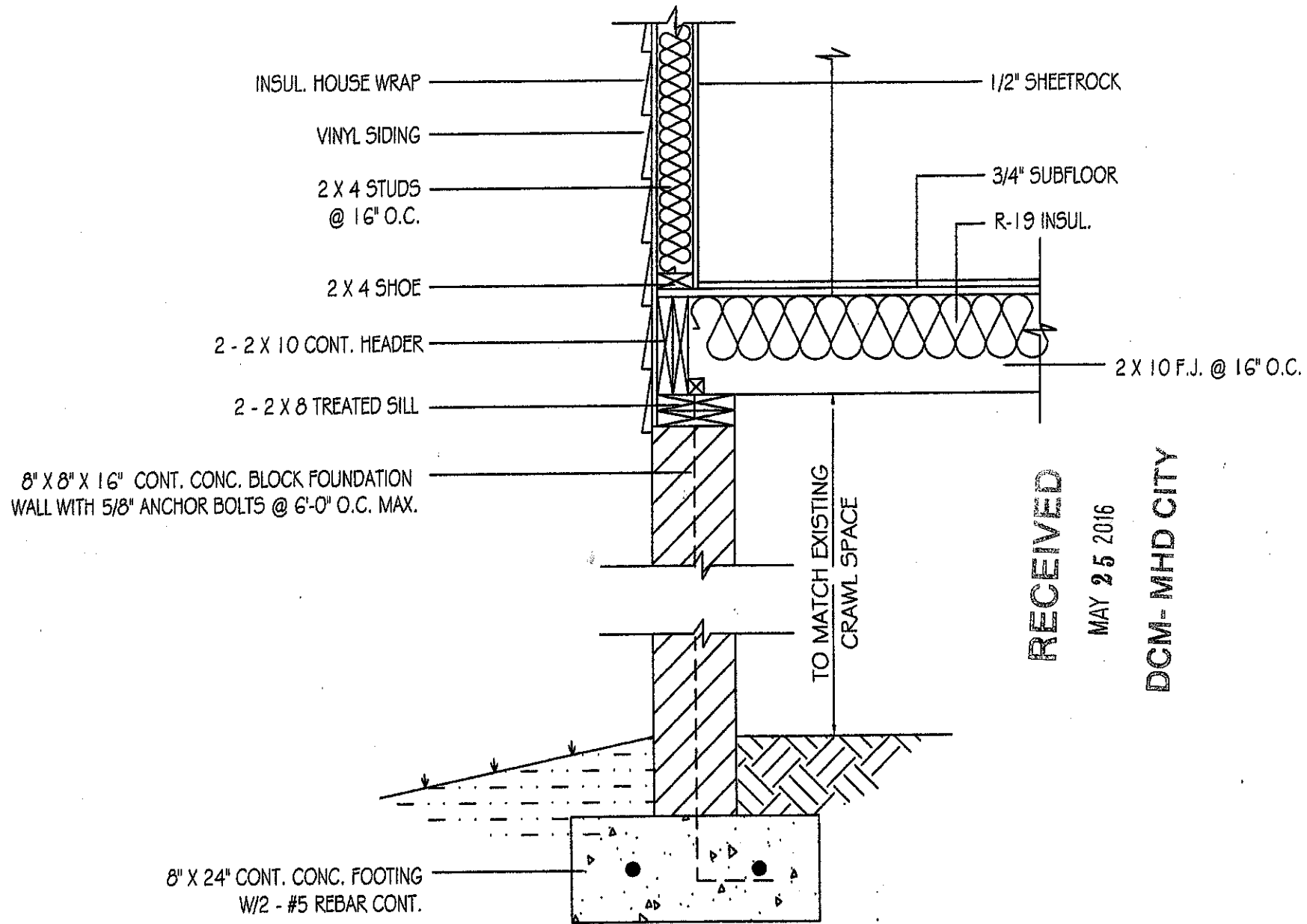
Property owned by William Dale Fulcher DB 1512, P324

Property owned by William Dale Fulcher DB 1512, P 324

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MAY 25 2016

DCM- MHD CITY

SIDNEY AND CHARLENE WADE
205 SWAN POINT ROAD,
SNEADS FERRY NC



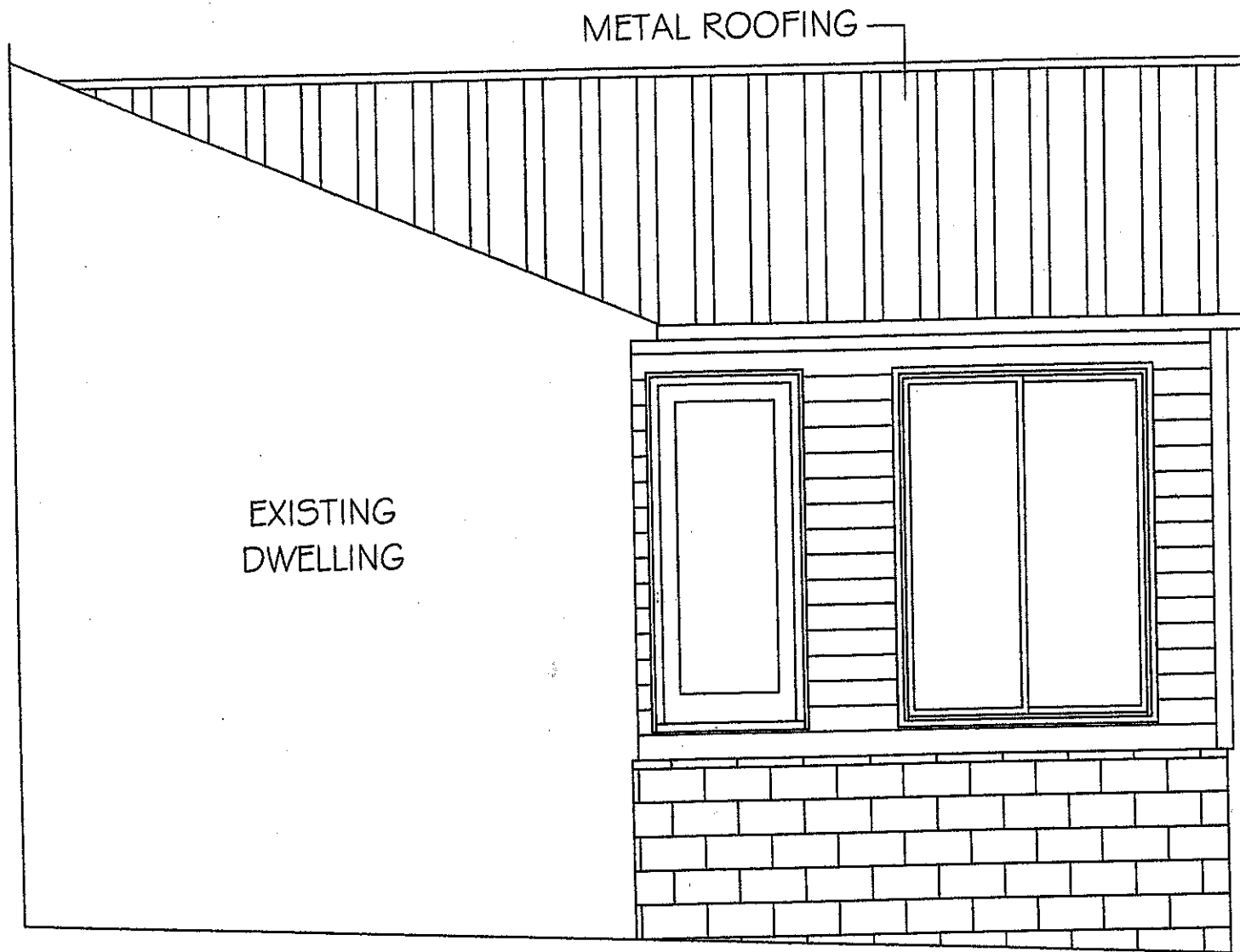
RECEIVED

MAY 25 2016

DCM-MHD CITY

FOUNDATION DETAIL

NO SCALE



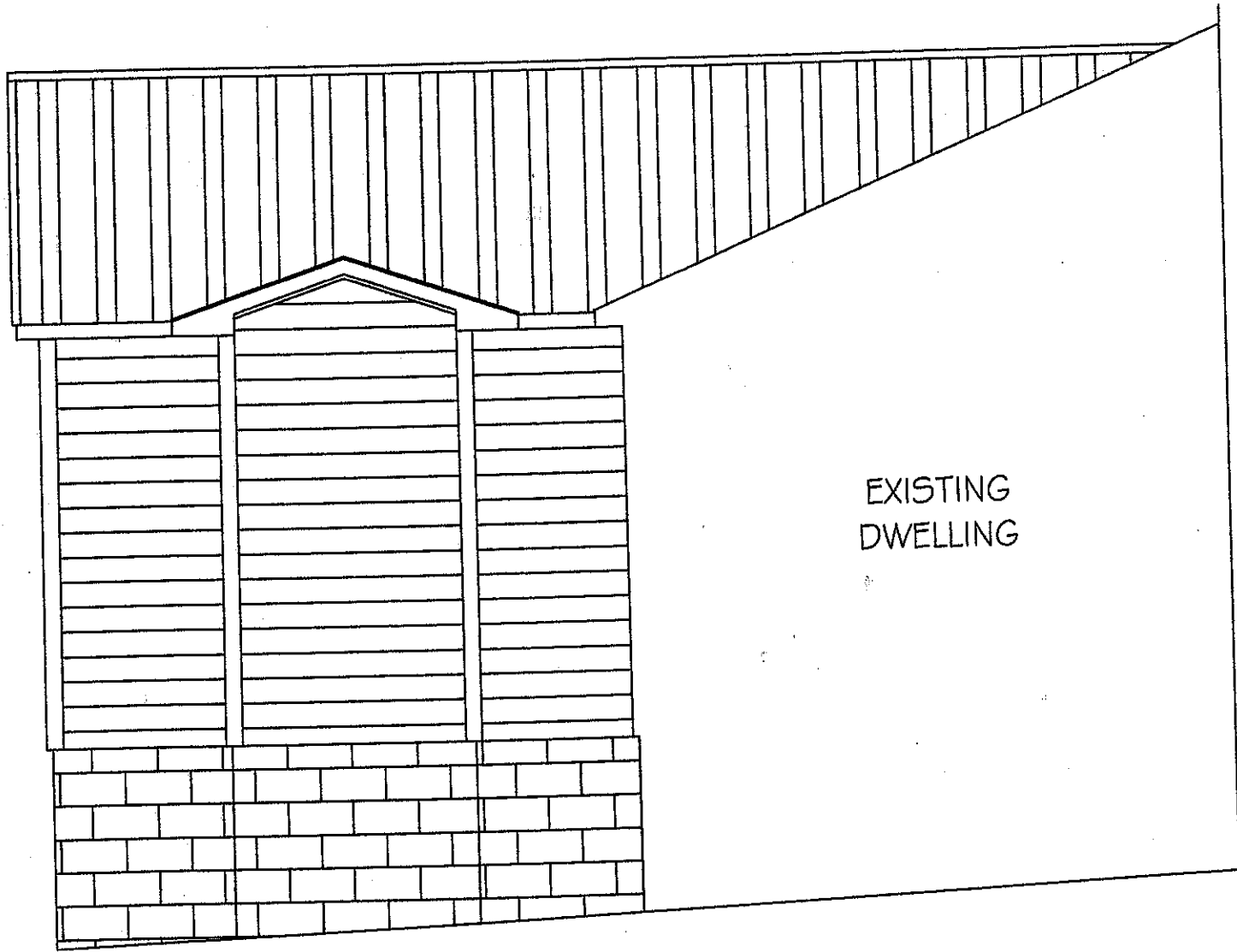
RECEIVED

MAY 25 2016

DCM- MHD CITY

RIGHT SIDE ELEV.

NO SCALE



RECEIVED

MAY 25 2016

DCM- MHD CITY

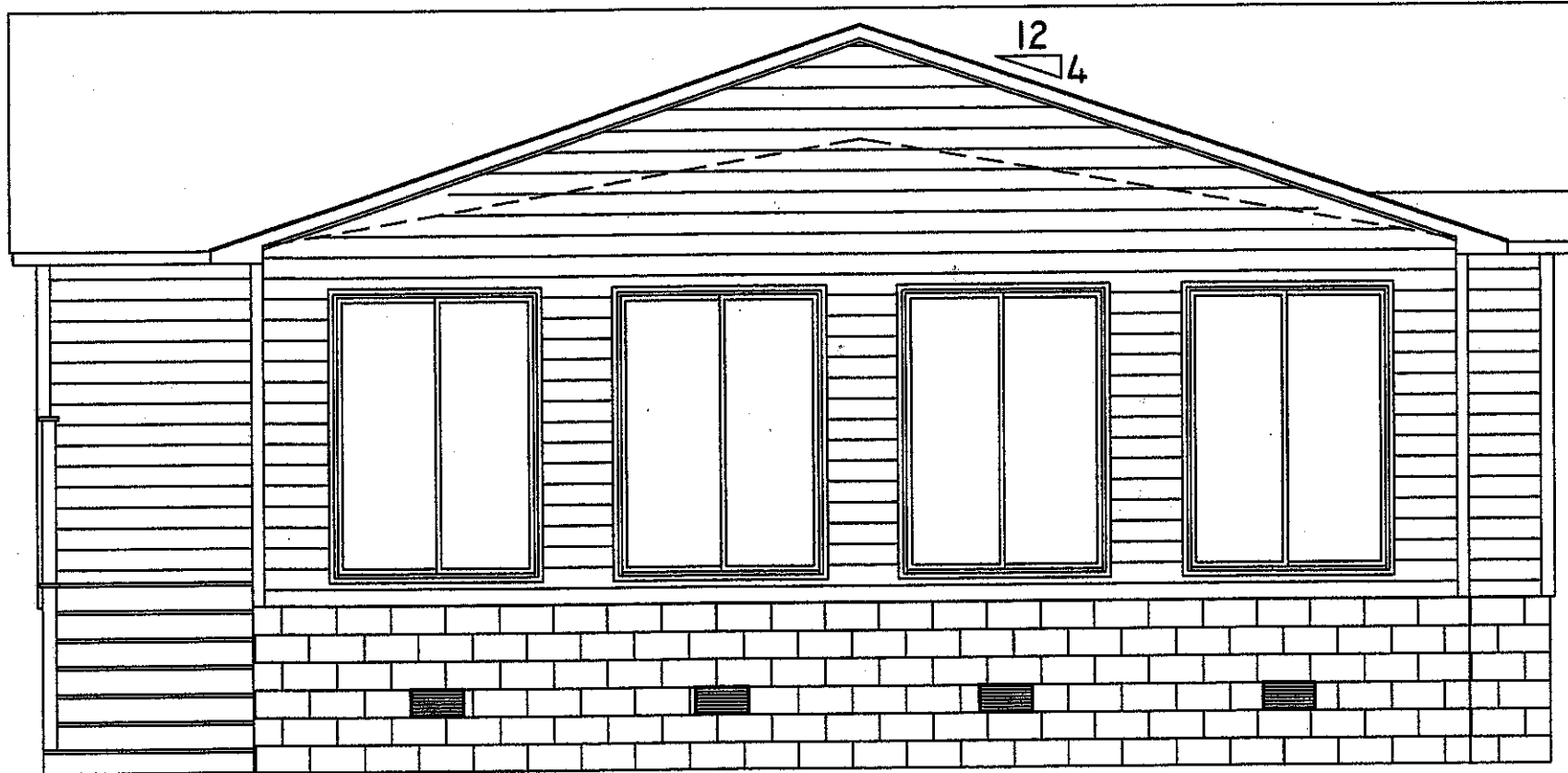
LEFT SIDE ELEV.

NO SCALE

RECEIVED

MAY 25 2016

DCM- MHD CITY



REAR ELEVATION

NO SCALE

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p>	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>X [Signature]</i></p> <p>B. Received by (Printed Name) <i>WDF</i></p> <p>C. Date of Delivery <i>5/18</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below.</p>
<p>1. Article Addressed to: <i>William Dale Fulcher Sr 201 Swan Pt Rd Sneads Ferry NC 28460</i></p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number <small>(Transfer from service label)</small> 7015 1520 0000 7229 6360</p>	
PS Form 3811, July 2013	Domestic Return Receipt

U.S. Postal Service CERTIFIED MAIL® RECEIPT <small>Domestic Mail Only</small>	
For delivery information, visit our website at www.usps.com	
OFFICIAL USE	
Certified Mail Fee \$ <i>3.30</i>	
Extra Services & Fees (check box, add fee as appropriate)	
<input type="checkbox"/> Return Receipt (hardcopy) \$ <i>2.70</i>	
<input type="checkbox"/> Return Receipt (electronic) \$	
<input type="checkbox"/> Certified Mail Restricted Delivery \$	
Postage \$ <i>68</i>	
Total Postage and Fees \$ <i>6.68</i>	
Sent To <i>Mr. William Dale Fulcher Sr</i> Street and Apt. No., or PO Box No. <i>201 Swan Pt. Rd.</i> City, State, ZIP+4® <i>SNEADS FERRY N.C. 28460</i>	

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 MAY 25 2016
 DCM-MHD CITY

May 14, 2016

I, William Dale Fulcher, Sr., neighbor of Mr. Sidney L. Wade, Jr. and Mrs. Charlene Wade, residing at 201 Swan Point Rd., do declare that I have been fully informed of their plans to improve their property at 205 Swan Point Rd., to build an enclosed sunroom on the waterfront side of their residence in place of existing dilapidated screened-in porch. I do declare that I have no objections to this construction as it will in no way compromise my property, but will add to the beautification of our neighborhood.

William Dale Fulcher, Sr.

William Dale Fulcher, Sr.

RECEIVED
MAY 25 2016
DCM- MHD CITY

May 14, 2016

I, Minnie F. Lucas, neighbor of Mr Sidney L. Wade, Jr. and Mrs. Charlene Wade, residing at 213 Swan Point Rd., do declare that I have been fully informed of their plans to improve their property at 205 Swan Point Rd. to build an enclosed sunroom on the waterfront side of his residence in place of existing dilapidated screened-in porch. I do declare that I have no objections to this construction as it will in no way compromise my property, but will add to the beautification of our neighborhood.

Minnie F. Lucas

7015 1520 0000 7229 6353

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

For delivery information visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee \$ 3.30

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ 2.70

Return Receipt (electronic) \$ _____

Certified Mail Restricted Delivery \$ _____

Adult Signature Required \$ _____

Adult Signature Restricted Delivery \$ _____

Postage \$ 68

Total Postage and Fees \$ 6.68

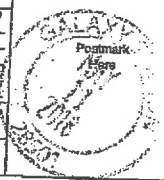
Post ID # _____

Sender's Name Mrs. Minnie Lucas

Street and Apt. No., or PO Box No. 213 Swan Pt Rd

City, State, ZIP+4® Swains Ferry NC 28460

PS Form 3811, April 2012 PSN 7530-02-000-9000 See Reverse for Instructions



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <u>Glenn Lucas</u></p> <p>C. Date of Delivery <u>5-13-16</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below: _____</p>
<p>1. Article Addressed to: <u>Minnie Lucas</u> <u>213 Swan Pt Rd</u> <u>Swains Ferry NC 28460</u></p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery</p>
<p>2. Article Number (Transfer from service label)</p> <p>7015 1520 0000 7229 6353</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

RECEIVED
 MAY 25 2016
 DCM-MHD CITY

I, Minnie F. Lucas, neighbor of Mr Sidney L. Wade, Jr. and Mrs. Charlene Wade, residing at 213 Swan Point Rd., do declare that I have been fully informed of their plans to improve their property at 205 Swan Point Rd. to build an enclosed sunroom on the waterfront side of his residence in place of existing dilapidated screened-in porch. I do declare that I have no objections to this construction as it will in no way compromise my property, but will add to the beautification of our neighborhood.

Minnie F. Lucas

Minnie F. Lucas

RECEIVED

MAY 25 2016

DCM- MHD CITY



October 5, 2015

CERTIFIED MAIL – 91 7199 9991 7032 1412 9009
RETURN RECEIPT REQUESTED

Sidney L. Wade Jr.
2234 Robinson Road
Kinston, NC 28504

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT

APPLICATION NUMBER- LCP2015-15
PROJECT ADDRESS- 205 Swan Point Road, Sneads Ferry, NC

Dear Mr. Wade:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. You have applied to replace a poorly constructed screen porch with a new sunroom porch which will expand into the thirty (30) foot buffer which is inconsistent with 15 NCAC 7H .0102 (e), which states that: To prevent this destruction, the act charges the Coastal Resources Commission with the responsibility for identifying types of areas – water as well as land – in which uncontrolled or incompatible development activities might result in irreversible damage. It further instructs the Commission to determine what types of development activities are appropriate within such areas, and it calls on local government to give special attention to these environmentally fragile and important areas in developing their land use plans. Also, the act provides that upon establishing the types of development activities appropriate within areas of environmental concern, the CRC should implement a permit program capable of controlling any inappropriate or damaging development activities with the AECs. The intent of this authority is not to stop development, but rather to ensure the compatibility of development with the continued productivity and value of certain critical land and water area. I have concluded that your request also violates NCGS 113A-120(a)(8), which requires that all applications be denied which are inconsistent with our Local Land Use Plan. On page 51 Section V. B(g) of the Onslow County CAMA Core Land Use Plan, you will find that Onslow County will abide by NCDENR rules.

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

Respectfully yours,

Sammie Rogers, LPO
Onslow County
234 NW Corridor Blvd.
Jacksonville, NC 28540

cc: DCM FIELD REP/FIELD OFFICE
Jason Dail

Permit Class
NEW

Permit Number
180-07

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

for

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

**COPY
RECEIVED**
DEC 10 2007

Morehead City DCM

Issued to Sidney Wade, Jr., 2234 Robinson Road, Kinston, NC 28504

Authorizing development in Onslow County at adj. to AIWW, 205 Swan Point Rd., Sneads Ferry, as requested in the permittee's application dated 6/6/07 (MP-1), and 9/17/07 (MP-2), including the attached workplan drawings (2), 1 of 2 dated 10/22/07, and 2 of 2 dated 6/4/07.

This permit, issued on November 28, 2007, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

Shoreline Stabilization

- 1) The alignment of the authorized bulkhead shall be staked by the permittee and approved by a representative of the Division of Coastal Management within a maximum of 30 days prior to the start of any construction. Failure to initiate construction within 30 days, or erosion of the shoreline by adverse weather conditions shall require the alignment to be restaked by the permittee or the permittee's authorized agent and re-approved by DCM within a maximum of 30 days prior to the new expected start of construction.
- 2) The authorized bulkhead shall be located landward of any Coastal Wetlands.

(See attached sheets for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

This permit shall be accessible on-site to Department personnel when the project is inspected for compliance.

Any maintenance work or project modification not covered hereunder requires further Division approval.

All work shall cease when the permit expires on

December 31, 2010

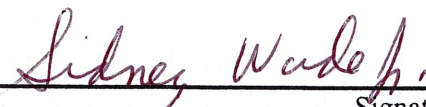
In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.



James H. Gregson, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.



Signature of Permittee

ADDITIONAL CONDITIONS

- 3) The bulkhead shall be constructed prior to any backfilling activities.
- 4) The bulkhead shall be structurally tight so as to prevent seepage of backfill materials through the structure.
- 5) The bulkhead shall be solid and constructed of treated wood, concrete slabs, metal or vinyl sheet piles or other suitable materials approved by Division personnel.
- 6) The backfill material shall be clean and free of any pollutants except in trace quantities.
- 7) All backfill material shall be obtained from a high ground source and confined behind the permitted bulkhead.

Excavation

- 8) Unless specifically altered herein, the dimensions of the area to be dredged shall not exceed the area that is expressly and specifically set forth in the attached permit application and workplan drawings. Any proposal to change the area to be dredged shall require permit modification.
- 9) Excavation shall not exceed -2 feet below the normal low water level. In no case shall the depth of excavation exceed the depth of connecting waters.
- 10) No excavation shall take place within 10 feet of any Coastal Wetlands.
- 11) No vegetated wetlands shall be excavated or filled.
- 12) The temporary placement or double handling of fill materials within waters or vegetated wetlands is not authorized.

Spoil Disposal

- 13) All excavated materials shall be confined to the area indicated on the attached workplan drawing behind adequate dikes or other retaining structures to prevent spillover of solids into any wetlands or surrounding waters.
- 14) No spoil material is to be placed within 30 feet of the normal high water line, except that which will be used to backfill the area behind the bulkhead.

Sedimentation and Erosion Control

- 15) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, etc.). At a minimum, a silt fence shall be properly installed immediately landward of the bulkhead cap immediately following completion of backfilling activities.
- 16) All disturbed areas shall be properly graded and provided a ground cover sufficient to restrain erosion within thirty days of project completion.

ADDITIONAL CONDITIONS

General

- 17) The permittee understands and agrees that, if future operations by the United States requires the removal, relocation, or other alteration of the structure or work authorized by this permit, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to free navigation of the navigable waters, the permittee shall be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States or the state of North Carolina. No claim shall be made against the United States or the state of North Carolina on account of any such removal or alteration.

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.

NOTE: Future development of the permittee's property may require a modification of this permit. Contact a representative of the Division at (910) 796-7215 prior to the commencement of any such activity for this determination. The permittee is further advised that many non-water dependent activities are not authorized within 30 feet of the normal high water level.

NOTE: The N.C. Division of Water Quality has assigned the proposed project DWQ Project No. 071745.

NOTE: The U.S. Army Corps of Engineers authorized the proposed project under General Permit Nos. 198200277 and 197800080 (COE Action Id. No. SAW-2007-03575-067) which was issued on 11/1/07.

VARIANCE REQUEST

Petitioner – Dowell T. Gray, Jr.



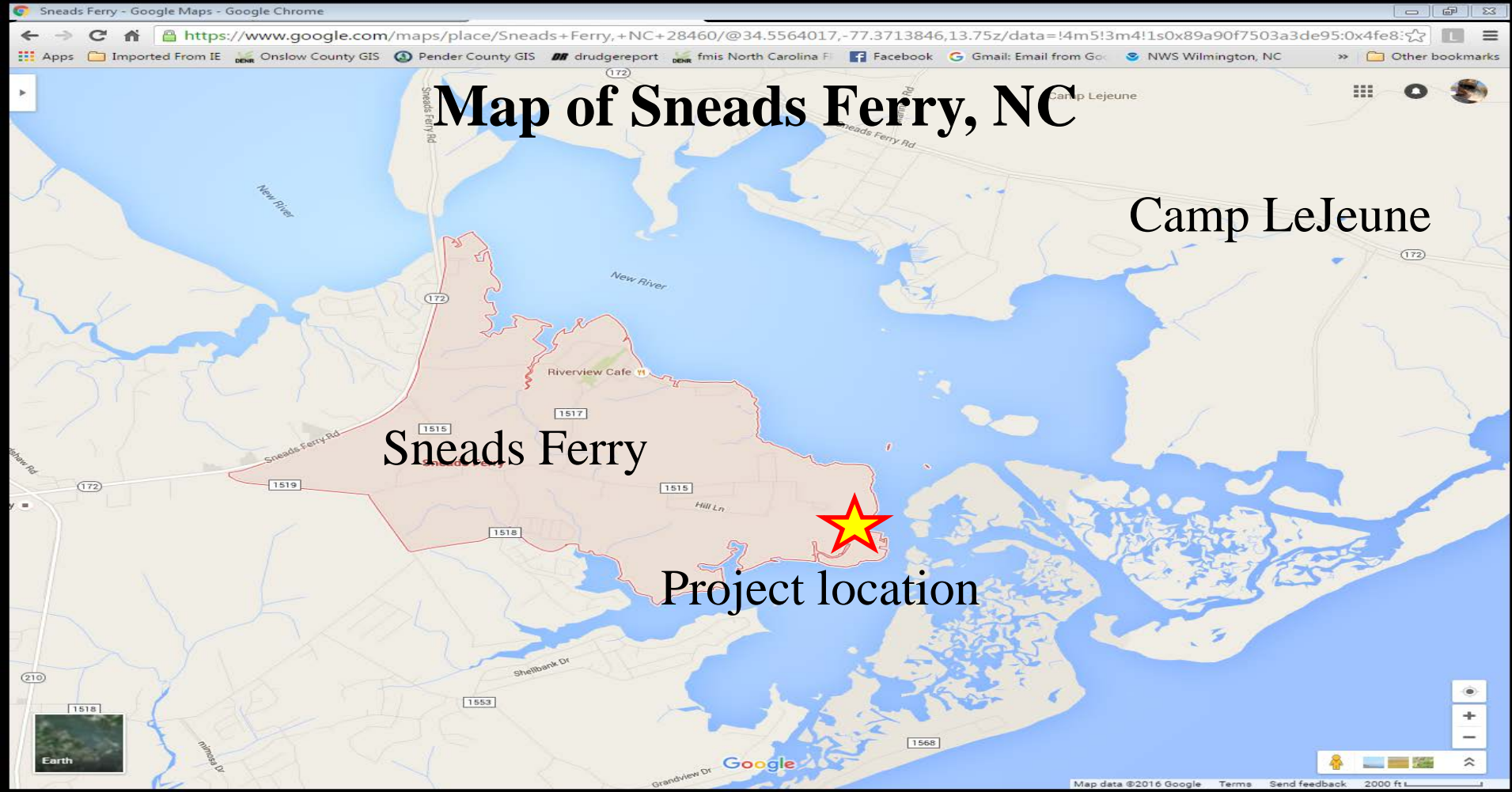
***Sydney L. Wade, Jr., 205 Swan Point Road, Sneads Ferry,
NC, Onslow County***

Presentation prepared and presented by: Debra Wilson

Date: July 12, 2016



*Petitioner – Sydney L. Wade, Jr. – Variance Request
July 12, 2016*



Map of Sneads Ferry, NC

Camp LeJeune

Sneads Ferry



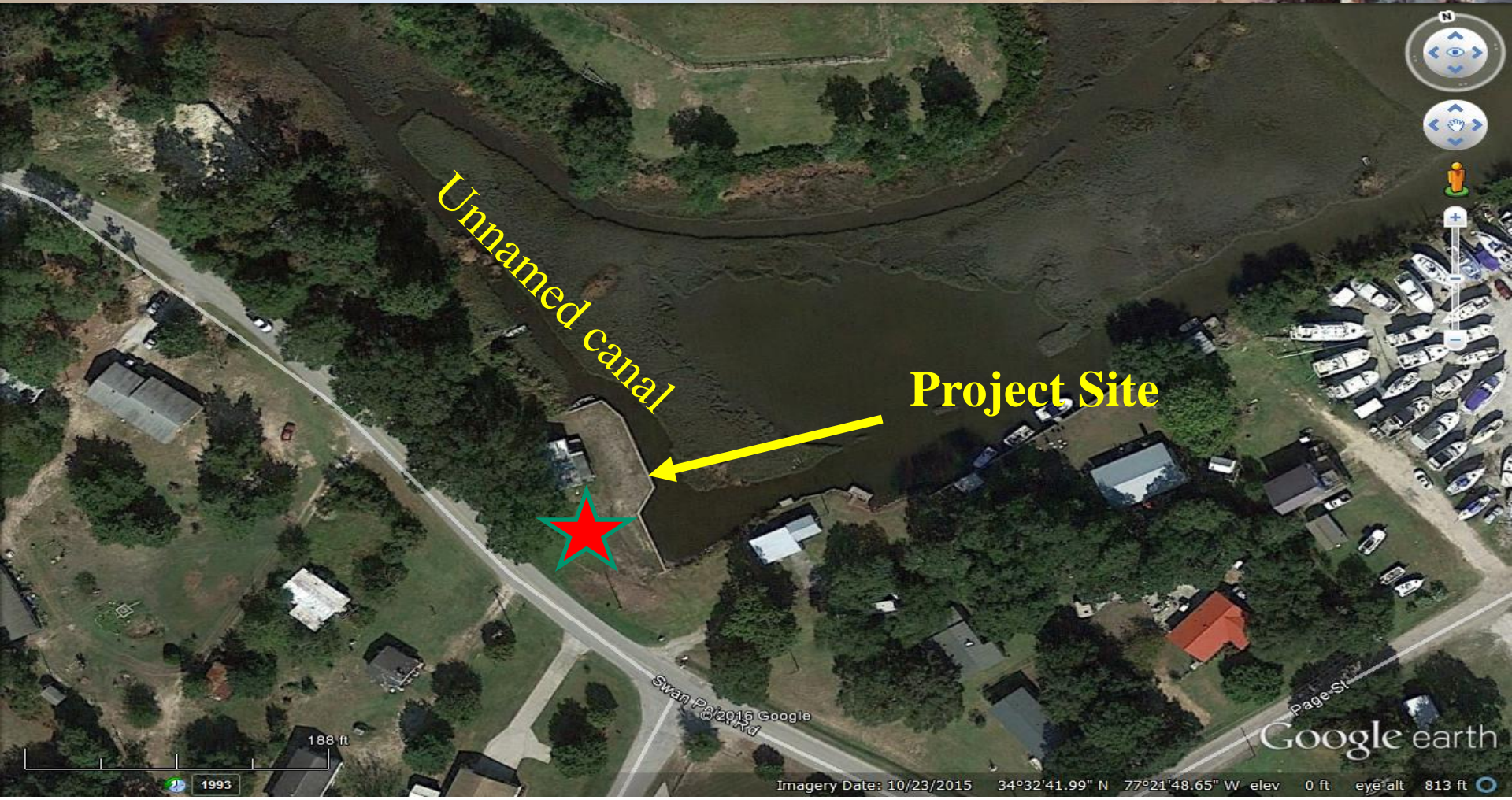
Project location



*Petitioner – Sydney L. Wade, Jr. – Variance Request
July 12, 2016*



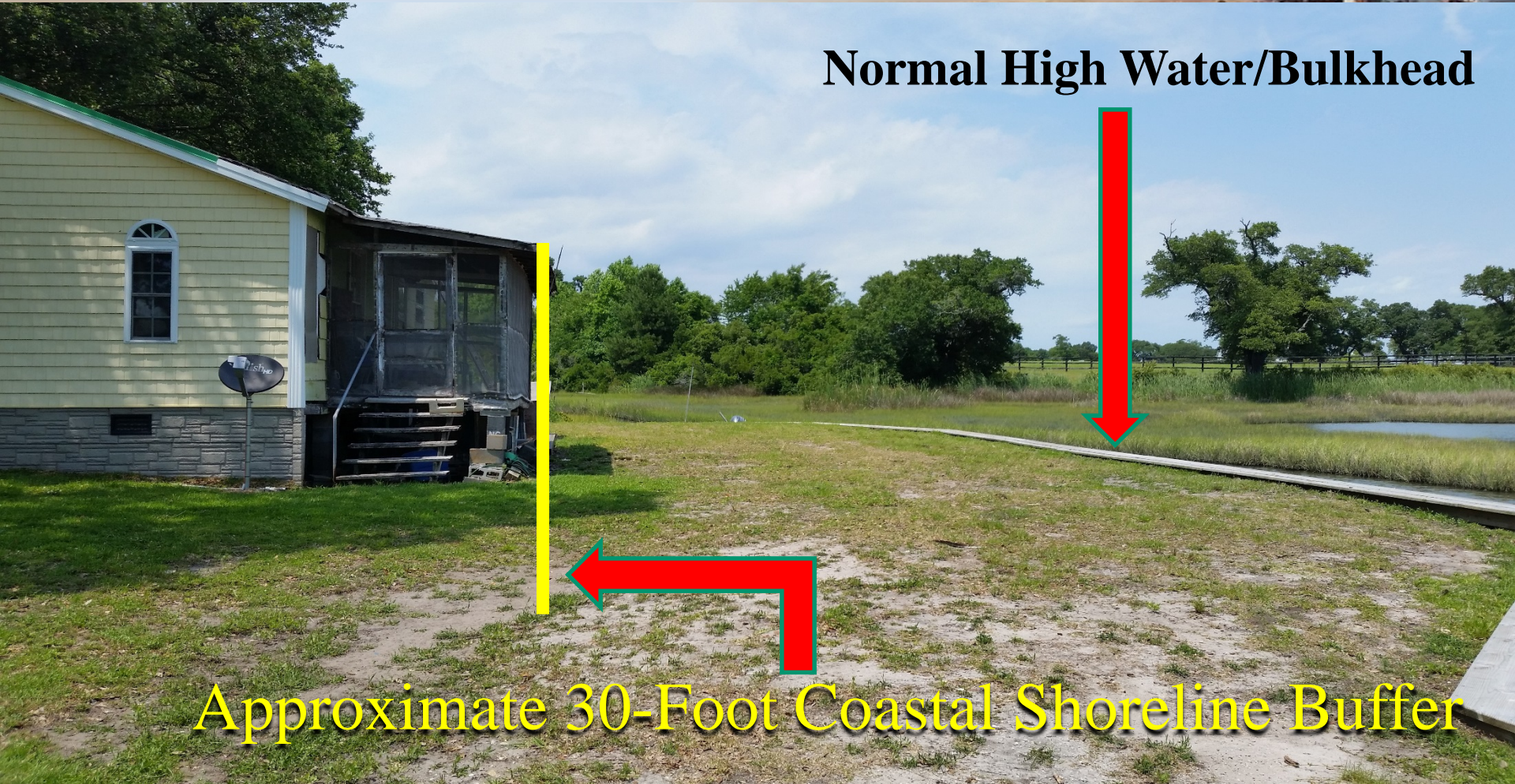
*Petitioner – Sydney L. Wade, Jr. – Variance Request
July 12, 2016*



*Petitioner – Sydney L. Wade, Jr. - Variance Request
July 12, 2016*



Petitioner – Sydney L. Wade, Jr. - Variance Request
July 12, 2016



Normal High Water/Bulkhead

Approximate 30-Foot Coastal Shoreline Buffer

Petitioner – Sydney L. Wade, Jr. - Variance Request
July 12, 2016



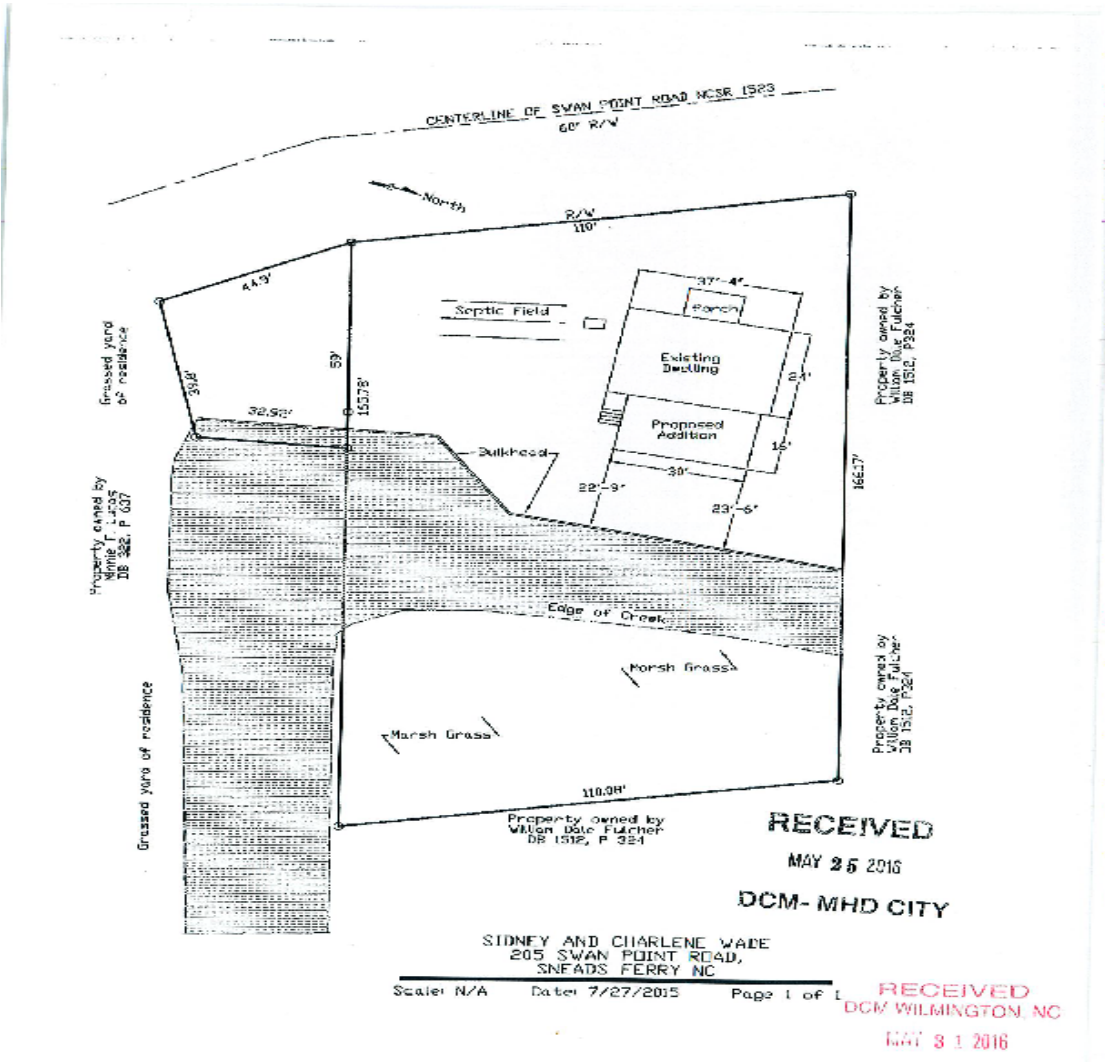
Petitioner – Sydney L. Wade, Jr. - Variance Request
July 12, 2016



Approximate location of 30' Coastal Shoreline Buffer

Petitioner – Sydney L. Wade, Jr. – Variance Request

July 12, 2016



Sydney L. Wade proposed development plan





VARIANCE CRITERIA

15A NCAC 07J.0703(f)

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

- (1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;**
- (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;**
- (3) that such hardships did not result from actions taken by the petitioner; and**
- (4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.**



Coastal Management
ENVIRONMENTAL QUALITY

PAT MCCRORY

Governor

DONALD R. VAN DER VAART

Secretary

BRAXTON DAVIS

Director

MEMORANDUM

CRC-16-27

TO: N.C. Coastal Resources Commission
FROM: Rebecca Ellin, Coastal Reserve Program Manager
DATE: June 27, 2016
SUBJECT: 15A NCAC 070 N.C. Coastal Reserve – Legislative Periodic Review of Existing Rules

The N.C. Coastal Reserve's rules, 15A NCAC 070, are scheduled to be reviewed by the Rules Review Commission in June 2017 as part of the Legislative Periodic Review and Expiration of Existing Rules process (G.S. 150B-21.3A).

This process requires that all rule citations are classified as necessary with substantive public interest, necessary without substantive public interest, or unnecessary per G.S. 150B-21.3A (c)(1). To inform the Division's recommendation to the Department of Environmental Quality regarding the classification of its Coastal Reserve rules in 15A NCAC 070, staff classified each rule citation and sought input from the Reserve's ten local advisory committees on the initial draft agency determinations. The initial draft agency determinations, along with revised determinations based on local advisory committee input are summarized in the attached table. Two initial draft agency determinations were changed from necessary without substantive public interest to necessary with substantive public interest based on input received from the local advisory committees (15A NCAC 070 .0104, State and Local Coastal Reserve Advisory Committees and 15A NCAC 070 .0201, Management Plan).

As the Coastal Area Management Act states that the Department will consult with and seek advice of the Coastal Resources Commission in its administration of the Coastal Reserve, **the Division is requesting the Commission's support of staff's revised initial draft agency determinations for 15A NCAC 070 to inform its recommendation to the Department.**

After review by the Department, the initial agency determinations will be published for the required 60-day public comment period on the Office of Administrative Hearings, Rules Review Commission, Department, Division, and Reserve websites. Staff will then compile a report for submittal to the Rules Review Commission that responds to comments received and amends the initial agency determinations if necessary. Any proposed amendments to the rule language will be considered during the readoption process.

Rule Section	Rule Citation	Rule Name	Initial Agency Draft Determination [150B-21.3A(c)(1)a]	Revised Initial Agency Draft Determination [150B-21.3A(c)(1)a] <i>Shaded cells reflect changes based on Local Advisory Committee Input</i>
SECTION .0100 - GENERAL PROVISIONS	15A NCAC 070 .0101	STATEMENT OF PURPOSE	Necessary with substantive public interest	Necessary with substantive public interest
	15A NCAC 070 .0102	DEFINITIONS AS USED IN THIS SUBCHAPTER	Necessary without substantive public interest	Necessary without substantive public interest
	15A NCAC 070 .0103	RESPONSIBILITIES: DUTIES OF THE COASTAL RESERVE PROGRAM	Necessary with substantive public interest	Necessary with substantive public interest
	15A NCAC 070 .0104	STATE AND LOCAL COASTAL RESERVE ADVISORY COMMITTEES	Necessary without substantive public interest	Necessary with substantive public interest
	15A NCAC 070 .0105	RESERVE COMPONENTS	Necessary without substantive public interest	Necessary without substantive public interest
SECTION .0200 - MANAGEMENT: USE AND PROTECTION OF THE NORTH CAROLINA COASTAL RESERVE	15A NCAC 070 .0201	MANAGEMENT PLAN	Necessary without substantive public interest	Necessary with substantive public interest
	15A NCAC 070 .0202	RESERVE USE REQUIREMENTS	Necessary with substantive public interest	Necessary with substantive public interest



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

CRC-16-28

June 29, 2016

MEMORANDUM

TO: Coastal Resources Commission

FROM: Tancred Miller

SUBJECT: Fiscal Analysis for amendments to 15A NCAC 7H .0306 General Use Standards for Ocean Hazard Areas, for replacement of commercial and multi-family residential structures on the oceanfront

At your February 2016 meeting, the Commission proposed amendments to 7H .0306. The proposed amendment would allow for the replacement of commercial and multi-family residential structures that are nonconforming with the applicable setback requirements, are between 5,000-10,000 square feet, and were originally constructed prior to August 11, 2009.

Staff is required to analyze the expected fiscal impacts of the proposed rule amendment before the rule can proceed to public hearing. Staff utilized the criteria in the proposed rule to determine the types of structures that would be affected by this rule change. Specifically, they would be buildings that are:

1. Directly on the oceanfront
2. Either commercial or multi-family (3 or more units) use
3. Between 5,000-10,000 square feet of total floor area
4. Originally constructed prior to August 11, 2009

Structures that are currently nonconforming with the applicable CAMA setback (60 x erosion rate), but able to meet the minimum CAMA setback (30 x erosion rate), would immediately benefit from the amendment.

Following an intensive process of analyzing county property data and performing GIS analyses of oceanfront development and conforming versus nonconforming status, staff was able to produce an inventory of coastal development, focusing of structures that would, or could in the future, be affected by this rule amendment.

There are currently 157 multi-family residential structures and 33 commercial structures on the oceanfront that are between 5,000-10,000 square feet, and were originally constructed prior to August 11, 2009. County tax data indicate that these 190 structures have a combined assessed value of over \$200 million. Of these 190 structures, 74 structures (50 residential and 24 commercial) are currently nonconforming at 60 times the erosion rate, but would be conforming at 30 times the erosion rate, meaning they could be rebuilt if destroyed and could benefit



immediately from the rule amendment. It is important to note that the multi-family residential structures contain multiple individual housing units in each structure, which means that the number of individual housing units immediately impacted by this rule is much higher than 74.

As part of the justification for this rule amendment, the CRC was told that failure to amend the rule could cause a significant drop in shorefront property values. Since no supporting documentation that could be used in a fiscal analysis was provided to the CRC, staff's initial approach to calculating the fiscal impact of the rule amendment was to attempt to quantify the average percentage loss in property value, and extend that over the number of affected properties. Following a literature search, and interviews with county tax assessors and professional real estate appraisers, staff was unable to find any documentary evidence of impacts to property value that could be used in a fiscal analysis.

Staff was therefore left with a number of unknowable factors, and was required to make several assumptions about the potential impacts of this rule amendment. In summary, staff determined that since the proposed amendment in fact allows a new voluntary action, but does not *require* any affected party to take any action (or prohibit them from doing so), the proposed amendment does not have any direct fiscal impact. Nevertheless, since the proposed amendment will allow rebuilding of high-value oceanfront structures that is currently prohibited, and might facilitate more real estate transactions, staff finds that the amendment can potentially have an indirect, and significant economic impact. The N.C. Administrative Procedure Act defines substantial economic impact as "an aggregate financial impact on all persons affected of at least one million dollars (\$1,000,000) in a 12-month period." Staff determined that indirect economic impacts could be felt by federal, state, and local governments, private property owners, and private sector businesses such as the real estate, finance, and insurance industries.

After staff drafts a fiscal analysis, we are required to submit it to the Department of Environmental Quality (DEQ), and to the Office of State Budget and Management (OSBM) for review and certification. The CRC must also approve the fiscal analysis before the rule can be published for public comment. DEQ has reviewed and approved the draft fiscal analysis, and OSBM has reviewed it and provided comments. Staff is working with OSBM on final edits to the draft fiscal analysis, and anticipates receiving OSBM certification prior to the July 12-13 CRC meeting.

Staff will recommend that the CRC approve the fiscal analysis at your July meeting. If the CRC approves the fiscal analysis in July, the proposed rule amendment and the fiscal analysis will both be published in the NC Register and made available for public review and comment. The CRC will be able to hold a public hearing on the rule change at your September meeting in Wilmington, and the rule could become effective on Feb. 1st, 2017.

SUBCHAPTER 7H – STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.
- (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.
- (3) In no case shall a development line be created or established below the mean high water line.
- (4) The setback distance shall be determined by both the size of development and the shoreline long-term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:
 - (A) The total square footage of heated or air-conditioned living space;
 - (B) The total square footage of parking elevated above ground level; and
 - (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.
- (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:
 - (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;

- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
 - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet; and commercial and multi-family residential structures with a total floor area no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements

established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Beach fill as defined in Rule .0305(a)(7) of this Section, represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront if the beach fill project is not maintained. A development setback measured from the vegetation line may provide less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section, unless a development line has been approved by the Coastal Resources Commission in accordance with 15A NCAC 07J .1300.
- (12) In order to allow for development landward of the large-scale beach fill project that cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this Rule, a local government, group of local governments involved in a regional beach fill project, or qualified owner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner, as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:
 - (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(5) of this Rule;
 - (B) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
 - (C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

- (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this Section is allowed oceanward of the static vegetation line; and
- (E) Development is not eligible for the exception defined in Rule .0309(b) of this Section.

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

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

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

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

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

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

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

- (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
- (2) restore the affected environment; or
- (3) compensate for the adverse impacts by replacing or providing substitute resources.

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

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

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

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;
Eff. September 9, 1977;*

*Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;*

Amended Eff. March 1, 1992;

RRC Objection due to ambiguity Eff. May 21, 1992;

Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;

*RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. April 1, 2016; September 1, 2013.*



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

CRC-16-31

June 28, 2016

MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Public Comment and Adoption of 15A NCAC .2700 GP for the Construction of Marsh Sills

The current general permit for the construction of marsh sills requires coordination with the Division of Marine Fisheries, the Division of Water Resources (DWR), and the U.S. Army Corps of Engineers (USACE) before issuance. This process can take more time than normally associated with other CAMA general permits. Since its inception, there has been an ongoing effort to modify the marsh sill general permit to remove unnecessary and time-consuming conditions. Since several marsh sill studies have been concluded and numerous sills have been constructed, DMF has agreed that there is no longer a need for DMF review of each potential marsh sill general permit. Also, DWR has revised and re-issued their General Water Quality Certification, which no longer requires written concurrence for marsh sill projects that receive a CAMA general permit. The currently-proposed amendments would remove these agency coordination requirements, and would also remove conditions pertaining to fill for wetland plantings and other redundant or unnecessary conditions.

One public comment (attached) was received from the North Carolina Coastal Federation (NCCF) regarding the proposed rule amendments. The comment primarily concerns 7H .2705 (b), which limits the landward edge of marsh sills to no more than five feet waterward of locally growing wetlands. NCCF states that numerous projects exist demonstrating the success of marsh restoration landward of existing sills, including those where the sills were constructed as much as 30 feet channelward of existing wetlands. NCCF recommends limiting the landward edge of sills to 30 feet waterward of normal or mean high water, or existing coastal wetlands, whichever is greater. NCCF also recommends clarifying terms with regard to minimum slopes and exceeding slope, and recommends amending the proposed language in .2705 (o) to read "...filling, other than that necessary for the proper design and construction of the sill structure and associated wetland plantings."

The USACE is currently in the process of reissuing their Nationwide Permits (NWP). Included in this process is a proposal to create a separate NWP to authorize the construction and maintenance of living shorelines, in order to provide an efficient mechanism for authorizing living shoreline structures such as marsh sills. The proposed living shoreline NWP could become effective by March 2017. Staff will soon be meeting with the USACE regarding this



proposed NWP, and intend to coordinate conditions so that your general permit for the construction of marsh sills is efficient and consistent with the proposed USACE NWP.

Staff recommends that the Commission adopt the current rule amendments. Additional rule amendments may be proposed at a later date after conclusion of the Division's discussions with the USACE on the construction and maintenance of living shorelines.

**SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF
MARSHRIPRAP SILLS FOR WETLAND ENHANCEMENT IN ESTUARINE AND
PUBLIC TRUST WATERS**

15A NCAC 7H .2701 PURPOSE

A general permit pursuant to this Section shall allow for the construction of ~~marshriprap~~ sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters as set out in Subchapter 7J .1100 and according to the rules in this Section. Marsh sills are generally shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

History Note: Authority G.S. 113A-107; 113A-118.1;

Temporary Eff. June 15, 2004;

Eff. April 1, 2005.

15A NCAC 7H .2704 GENERAL CONDITIONS

- (a) Structures authorized by a permit issued pursuant to this Section shall be ~~marshriprap or stone~~ sills conforming to the standards in these Rules.
- (b) Individuals shall allow authorized representatives of the Department of Environmental Quality (DEQ) to make periodic inspections at any time deemed necessary in order to insure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed in these Rules.
- (c) The placement of ~~marshriprap or stone~~ sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

(f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines as set out in Subchapter 7H. 0200, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107; 113A-118.1;

Temporary Eff. June 15, 2004;

Eff. April 1, 2005.

15A NCAC 7H .2705 SPECIFIC CONDITIONS

(a) A general permit issued pursuant to this Section shall be applicable only for the construction of ~~marsh~~ riprap or stone sill structures built in conjunction with existing, created or restored wetlands. Planted wetland vegetation shall consist only of native species.

~~(b) This general permit shall not apply within the Ocean Hazard System Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.~~

~~(e)~~(b) ~~On shorelines where no fill is proposed,~~ The landward edge of the sill shall be positioned no more than 5 feet waterward of the waterward depth contour of locally growing wetlands or to mid-tide depth contour, whichever is greater. Where no wetlands exist, in no case shall the landward edge of the sill be positioned greater than 30 feet waterward of the ~~mean high water or~~ normal high water or normal water line.

~~(d) On shorelines where fill is proposed, the landward edge of the sill shall be positioned no more than 30 feet waterward of the existing mean high water or normal high water line.~~

~~(e)~~ (c) The permittee shall maintain the authorized sill including wetlands and tidal inundation and existing or planted wetlands in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification from the Division of Coastal Management.

~~(f)~~(d) The height of sills shall not exceed ~~six~~ twelve inches above ~~normal~~ mean high water, normal water level, or the height of the adjacent wetland substrate, whichever is higher ~~greater~~.

~~(g)~~(e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.

~~(h) Sills shall be porous to allow water circulation through the structure.~~

~~(i)~~(f) The sills shall have at least one five-foot ~~drop-down or~~ opening every 100 feet and may be staggered or overlapped or left open as long as the five-foot ~~drop-down or~~ separation between

sections is maintained. Overlapping sections shall not overlap more than 10 feet. Deviation from these ~~drop-down~~ opening requirements shall be allowable following coordination with the N.C. Division of Coastal Management ~~the N.C. Division of Marine Fisheries and the National Marine Fisheries Service.~~

~~(j)~~ (g) The ~~sill~~ ~~riprap~~ structure shall not exceed a slope of a one and a half foot rise over a one ~~two~~ foot horizontal distance and a minimum slope of a one and a half foot rise over a one ~~two~~ foot horizontal distance. The width of the structure on the bottom shall be no wider than ~~15~~ 12 feet.

~~(k)~~ For the purpose of protection of public trust rights, ~~fill waterward of the existing mean high water line shall not be placed higher than the mean high water elevation.~~

~~(l)~~ The permittee shall not claim title to any lands raised above the mean high or normal water levels as a result of filling or accretion.

~~(m)~~ (h) For water bodies ~~more~~ narrower than 150 feet, no portion of the structures shall not be positioned offshore more than one sixth (1/6) the width of the waterbody.

~~(n)~~ (i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.

~~(o)~~ (j) The sill shall not interfere with leases or franchises for shellfish culture.

~~(p)~~ (k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the ~~normal~~ mean high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge. The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(q)~~ The sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.

~~(r)~~ (l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above ~~normal~~ mean high water or normal water level.

~~(s)~~ (m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed immediately upon completion of the construction of the ~~sill~~ ~~riprap~~ structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless fully contained in a containment structure supported by construction mats.

~~(t)~~ (n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.

~~(u) (o)~~ No excavation or filling other than that necessary for the construction and proper bedding of the sill structure, is authorized by this general permit. ~~of any native submerged aquatic vegetation is authorized by this general permit.~~

~~(v) (p)~~ No excavation of the shallow water bottom or any wetland is authorized by this general permit

~~(w)~~ No more than 100 square feet of wetlands may be filled as a result of the authorized activity.

~~(x)~~ Backfilling of sill structures may be utilized only for the purpose of creating a suitable substrate for the establishment or reestablishment of wetlands. Only clean sand fill material may be utilized.

~~(y) (q)~~ The sill riprap material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken concrete or other materials that are approved by the N.C. Division of Coastal Management. Sill Riprap material shall be free of loose sediment or any pollutant, including exposed rebar. The sill material structures shall be of sufficient size and slope to prevent its movement from the approved alignment site by wave or current action.

~~(z)~~ If one or more contiguous acre of property is to be graded, excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate government having jurisdiction. The plan must be approved prior to commencing the land-disturbing activity.

~~(aa)~~ In order to ensure that no adverse impacts occur to important fisheries resources, the Division of Marine Fisheries shall review and concur with the location and design of the proposed project prior to the issuance of this general permit.

~~(bb)~~ Prior to the issuance of this general permit, Division staff shall coordinate with the Department of Administration's State Property Office to determine whether or not an easement shall be required for the proposed activity.

~~(cc) (r)~~ Following issuance of this general permit, the permittee shall contact ~~the N.C. Division of Water Quality~~ and the U.S. Army Corps of Engineers to determine any additional permit requirements. Any such required permits, or a certification from the U.S. Army Corps of Engineers appropriate agency(s) that no additional permits are required, shall be obtained and copies provided to the Division of Coastal Management prior to the initiation of any development activities authorized by this permit.

History Note: Authority G.S. 113A-107; 113A-118.1;

Temporary Eff. June 15, 2004;

Eff. April 1, 2005;

Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)).



North Carolina
Coastal Federation
Working Together for a Healthy Coast

May 12, 2016

Braxton Davis, Director
N.C. Division of Coastal Management
400 Commerce Avenue
Morehead City, N.C. 28557

Frank Gorham, Chairman
Coastal Resources Commission
N.C. Division of Coastal Management
400 Commerce Avenue
Morehead City, N.C. 28557

**RE: North Carolina Coastal Federation Comments on Proposed Changes to 15A NCAC 07H .2700,
General Permit for the Construction of Marsh Sills**

Dear Mr. Davis and Mr. Gorham,

On behalf of the North Carolina Coastal Federation, please accept these comments on the proposed changes to the General Permit (GP) for the Construction of Marsh Sills (15A NCAC 07H .2700). The majority of the proposed changes to this general permit are favorable and will benefit those seeking to construct a sill project. We find the removal of a number of the arduous conditions that require consultations with the Division of Water Quality (DWQ) and the Division of Marine Fisheries (DMF), as well as other unnecessary restrictions, to be a very positive step in encouraging the selection of sill projects as alternatives to traditional hardening approaches.

Although we support the majority of changes to the sill GP, we have significant concerns about the proposed changes to Section .2705 (b), and offer the following recommendations and proposed edits to this and other specific conditions:

Section .2705 (b)- The proposed limitation of marsh sills to five feet channelward of locally growing wetlands unnecessarily prohibits the potential for significant restoration/enhancement of native coastal wetlands landward of a proposed sill. Numerous projects exist in N.C. to demonstrate the success of marsh restoration landward of existing sills, including those where the sills were constructed as much as 30' channelward of existing wetlands.



Without exception, constructing sill projects with wider restored marshes landward of the structure enhances the erosion control, long-term resiliency and habitat functions of the shoreline.

In addition, recent research focused on the impacts of sill projects conclude that sill projects with restored marsh plantings are superior to traditional hardening approaches in terms of erosion control performance, longevity of the structures, storm resiliency, and habitat functions. Finally, our experience working with university and NOAA researchers has shown that sill projects that maintain a non-vegetated zone of 5 to 20 feet landward of the proposed sill, combined with an existing or restored marsh zone, is superior for fish usage, and submerged aquatic vegetation (SAV) establishment, and does not sacrifice shoreline stabilization function.

It is very important that the abundance of scientific evidence drive the design process of these sill projects, and that the permit process encourage wetlands restoration as a critical component of the projects. As such, we recommend that the limitation for the landward edge of sills approvable by this GP be **30 feet waterward of normal or mean high water or existing coastal wetlands, whichever is greater.**

If the concern is for failure of the project, then an additional condition limiting the design to include no more than 20' of non-vegetated intertidal areas between existing/restored wetlands and the landward edge of the constructed sill would be preferable to the current proposed limitation. This will allow for designs to include both marsh restoration and open, non-vegetated areas landward of the sill.

Section .2705 (g)- We recommend clarifying terms here with regard to minimum slopes and exceeding slope. As written, it could be misinterpreted from the proposed intent.

Section .2705 (o)- We recommend that the proposed language read "...filling, other than that necessary for the proper design and construction of the sill structure and associated wetlands plantings."

We appreciate the opportunity to provide comments to the proposed sill general permit, and thank you in advance for your consideration of our recommendations. If you have any questions regarding our comments, please feel free to call me at (910) 231-6601 at any time.

Sincerely,

Tracy Skrabal, Coastal Scientist
North Carolina Coastal Federation

NC COASTAL RESOURCES COMMISSION (CRC)

May 10-11, 2016

**Dare County Administration Building
Manteo, NC**

Present CRC Members

Frank Gorham, Chair
Renee Cahoon, Vice-Chair
Neal Andrew, Second Vice-Chair

Gwen Baker
Larry Baldwin
Denise Gibbs
Greg Lewis
Phil Norris

Russell Rhodes
Jamin Simmons (absent 5/11/16)
John Snipes
Bill White

Present CRAC Members

Spencer Rogers, Vice-Chair
Rudi Rudolph, Vice-Chair
John Brodman
Jett Ferebee
Johnny Martin
David Moye
Kris Noble
Bobby Outten
Todd Roessler
Lee Wynns

Present Attorney General's Office Member

Mary Lucasse

CALL TO ORDER/ROLL CALL

Frank Gorham called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Marc Hairston was absent. No conflicts were reported. Based upon this roll call Chairman Gorham declared a quorum.

CHAIRMAN'S COMMENTS

Chairman Gorham requested that photos of Commissioners be added to the website. It would be helpful for the public to be able to recognize the Commissioners. Michele Walker will arrange for photos to be taken at the July meeting.

MINUTES

Renee Cahoon made a motion to approve the minutes of the February 2016 Coastal Resources Commission meeting. Larry Baldwin seconded the motion. The motion passed unanimously (Gorham, Andrew, Baldwin, Cahoon, Gibbs, Hairston, Lewis, Norris, Rhodes, Simmons, Snipes, White)(Baker abstained).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I will start with a report on the changes that have occurred with respect to my position since our last meeting. As you may have heard, DEQ Secretary van der Vaart recently asked me to serve as the Director of both the Division of Marine Fisheries and the Division of Coastal Management while evaluating opportunities for improvements and looking for efficiencies across the two programs. Obviously this is a major undertaking, and I sincerely appreciate the support I've received from members of both commissions, staff at both agencies, and the various interest groups that I've begun to meet with over the past two weeks. I have a great deal of respect for the people and the work of both agencies and commissions. I promise that I will listen to all of you, to the public, and to our staff; and that I will be objective and will carefully consider the implications of any decisions or recommendations that come out of this study. In coordination with senior staff at DMF and DCM, we are beginning to develop a six-month plan and process for a review of the operations, programs, procedures, and management frameworks of both agencies. I want to be clear that there is no predetermined outcome for this review. We will identify best practices at both organizations, look for possible efficiencies, and consider opportunities for enhanced cooperation across various program areas for the benefit of our staff, stakeholders, and resources. As this process begins, I hope you too will bring forward your ideas. All input is welcome. When I'm not traveling up and down the coast, I will be spending most of my time at the DMF headquarters in Morehead City. Especially in the early going, as I get up to speed on fisheries issues, I will need to spend considerably more time with DMF staff, stakeholders, and the Marine Fisheries Commission to learn as much as I can in the coming months. I am also keeping my office at DCM and plan to continue working closely with you, the staff, and coastal stakeholders on high priority issues. I'm trying to spend at least one full day per week in the DCM office and I'm continuing to attend our regular staff meetings. We are relying on Mike Lopazanski for managing the day-to-day operations of DCM as Acting Asst. Director. He is serving as the central point of contact for staff, and bringing high priority issues to me for review. I truly appreciate his willingness to step up during this review process and I know he will do a great job.

Legislative Update

The NC General Assembly short session began April 25. So far, only one bill has been filed that affects the division, Senate Bill 793 eliminates or consolidates several DEQ reports to the Environmental Review Commission. It would eliminate the bi-annual NC Beach and Inlet Management Plan implementation reports, consolidate reports associated with the Coastal Habitat Protection Plan, and decrease the reporting frequency of reports on the permitting of terminal groins. A legislative budget has not yet been released and the governor's budget has no changes to DCM's appropriated budget. This afternoon you'll hear an update on several legislative studies we've been working on from the 2015 Appropriations Act. These studies include the Cape Fear Estuarine Resource Restoration; Beach Erosion Study; and Oyster Restoration Permitting. While you have already had a preliminary introduction to these studies, Staff will provide more details now that they have been approved by the Department and delivered to the General Assembly.

In addition to these, you may recall that the Coastal Reserve program was one of six programs included in a study authorized by that same bill (section 14.31.(a-b)) to examine further efficiencies in the organization of the Department of Natural and Cultural Resources and the Department of Environmental Quality. The study considered whether the Coastal Reserve program should be transferred from DEQ to DNCR for potential efficiency, cost savings, and alignment of core mission and values. The efficiencies study report was submitted to the General Assembly in April and recommends not transferring the Coastal Reserve program from DEQ to DNCR at this time. The full report is located on the General Assembly's website and at this time, we are awaiting further direction from the General Assembly.

Regulatory

On the regulatory side, major permit applications are steady compared to the same period in 2015. 54 major permits have been issued so far this year, as opposed to 56 within the same time frame in 2015. However, General Permits are way up, with 550 so far this year in comparison with 500 last year at this point. Notable permit actions since your last meeting include the issuance of permits to five local governments that adjoin shallow draft inlets. These communities include Emerald Isle, Topsail Beach, New Hanover County (on behalf of Carolina Beach), Holden Beach and Ocean Isle Beach. These five communities now have permits allowing them to carry out the same maintenance excavation activities, beneficial sand placement, and other actions that are currently carried out by the USACE for the management of these shallow draft inlets. This is important due to uncertainties over future federal funding for such activities. The DEQ Division of Water Resources provided partial funding to hire a consultant who worked with the Corps of Engineers, State, and local governments to prepare the permit application packages and associated environmental documents for this effort. The Division of Coastal Management used innovative permitting procedures that further helped accommodate this unique set of projects. On March 30th, DCM received a draft BOEM federal consistency submission regarding a proposal to issue a commercial wind energy lease within the Kitty Hawk Wind Energy Area. The proposed lease involves site assessment activities, including the placement of meteorological towers and/or buoys that would determine whether the lease is suitable for, and would support, commercial-scale wind energy production. We anticipate a formal federal consistency submission will be submitted to DCM sometime this summer and at that time DCM will conduct a public notice, a public hearing, and will circulate the submission to other resource agencies including WRC and DMF.

Coastal Reserves

The Coastal Reserve Local Advisory Committees will be meeting throughout May and June, with the northern sites' committees meeting this week. The Committees will discuss site-specific business as well as Reserve-wide business such as the upcoming periodic rules review which you'll hear more about tomorrow from Jennifer Everett, the Department's Rulemaking Coordinator. Meeting dates and locations can be found on the Reserve's event calendar. The Reserve is hosting a free Getting to Know Wetlands workshop on May 17th in Beaufort for local government staff, land use planners, landscape architects, engineers, and other professionals who work in wetland environments. The workshop will focus on the environmental importance of wetlands and on development rules and permitting related to coastal and freshwater wetlands. The workshop provides continuing education credits for Certified Planners, Landscape Architects, and P.E.'s. Registration is required; visit the Coastal Reserve's website to view the agenda or register for the workshop. The Reserve is offering a number of summer programs in the coming months including summer camps for children, field trips to the Rachel Carson and Masonboro Island Reserves, and a

Teachers on the Estuary professional development workshop. More details are on the Reserve's event calendar.

Policy & Planning

We are pleased to announce that in response to our solicitation for Local Planning & Management Grant Program projects, the Division received 10 applications from local governments requesting \$150,000. The projects have been reviewed and we expect the recipients to receive official notification within the next two weeks. The Division has \$75,000 available for grants of up to \$15,000. The awarded projects will focus on assisting local governments in developing and implementing land use plans and management strategies for their coastal resources that are consistent with the state guidelines. In other grant news, DCM received 22 pre-applications from local governments requesting over three million dollars for Public Beach and Coastal Waterfront Access Program projects. The Division has approximately \$1.4M available and has invited 13 local governments to submit final applications, which are due August 15, 2016. The Division expects to make final awards by September.

Staffing News

Christy Goebel has accepted a position with DEQ's Office of General Counsel to continue her work in support of DCM and for partial support of DMF legal needs. We are very happy to have her back working with us, and to have her here at the meeting today. This is great news for DCM, for the Commission, and for our customers. I am also pleased to announce that Cynthia Rountree has joined the Elizabeth City office as a new Field Representative. Cynthia has worked for the last eight years with DMF in Elizabeth City in the river herring program and for four years with NCWRC at their fish hatchery. Scott Crocker, Northern Sites Manager for the Coastal Reserve, left the Division in March to take a position with NC State Parks as the State Trail Program Manager. Scott was with our program for three years and made significant progress in advancing the protection and management of the Currituck Banks, Kitty Hawk Woods, and Buxton Woods Coastal Reserves. We wish Scott well in his new endeavors. The vacant position will be posted in the near future.

CRAC REPORT

Rudi Rudolph stated the CRAC discussed the changes to the sandbag regulations that will be presented to the Commission at this meeting. We discussed the material used for sandbags and requested that staff come back to the CRAC with recommendations as to whether we should add requirements in the rules. The CRAC is requesting that more time, a minimum of two hours, be allotted for CRAC meetings.

LEGISLATIVE STUDIES

Cape Fear Estuarine Resource Restoration "The Rocks" Update (CRC 16-17)

Rebecca Ellin

Rebecca Ellin stated the Department submitted its report to the General Assembly on April 6, 2016, and is currently awaiting further direction from the General Assembly. The full report and all of the letters and responses to the request for information are included in the report. The Cape Fear Estuarine Resource Restoration as outlined in Section 14.6(h) of Session Law 2015-241 finds that the New Inlet Dam was constructed by the Army Corps of Engineers in the late nineteenth century and is comprised of two different components, the northern and southern component. The southern component is the focus of this piece of legislation. The southern component is also defined as the Swash Defense Dam by the Army Corps of Engineers. This section of the legislation also finds that the southern component of the dam impedes the natural flow of water between the Cape Fear River and the Atlantic Ocean that occurred prior to the placement of the dam. Lastly, the legislation finds

that it is necessary to consider removal of the southern component of the dam in order to re-establish the natural hydrodynamic flow between the Cape Fear River and the Atlantic Ocean. The Department was required to notify the Army Corps of Engineers of the State's intent to study the removal of the southern component of the New Inlet Dam, issue a request for information for a firm capable of conducting an analysis of the costs and benefits of removing the southern portion, and request approval from NOAA to adjust the boundary for the Zeke's Island component of the NC National Estuarine Research Reserve by moving the western boundary of the Zeke's Island Reserve 200 feet seaward and removing the area that lies between the current and new boundary of the Reserve from adjacent acreage at the Fort Fisher State Recreation Area. If NOAA approves the boundary adjustment, then the Coastal Resources Commission is required to amend the Reserve Component Rule as described in the Act. A letter was sent to the Army Corps of Engineers and the Division received a very thorough response from the Corps. The letter included a history of the construction of the New Inlet Dam and Swash Defense Dam. It also provided an overview of the Wilmington Harbor Project, the Corps' perspective on this section of the Appropriations Act, an overview of the regulatory processes that would be required for removal of the dam, and a list of unresolved issues that should be addressed including the identification of the purpose and need for such a project, shoaling and the need for maintenance of the navigation channel, financing of the project and project maintenance, consideration of project alternatives, evaluation of direct and indirect environmental impacts and cultural resource issues, and clarity with respect to which entities would be speaking on behalf of the State if this project moves forward. The request for information on a cost/benefit analysis was published by the Department in January 2016 and it was open for four weeks. Two responses were received. These responses provided information that should be considered if a cost benefit analysis moves forward including permits and approvals that would likely be needed at the local, state and federal levels and studies and surveys that would likely be needed in order to inform permitting and environmental review and assessment of navigation impacts. The Division sent a letter to NOAA requesting information on the process and specific submission requirements to request a boundary change to a component in the NC National Estuarine Research Reserve system. NOAA also provided a thorough letter in response indicating that considering a boundary change is a multi-step process that requires information on why lands and waters are proposed for addition or deletion, how the change will benefit the reserve either ecologically and/or programmatically, and the implications the change may have for buffer designations within the reserve. Detailed information is needed to meet these requirements and to evaluate the ecological, research, education and management implications that a proposed boundary change would have for the Zeke's Island Reserve. This information and evaluation is not currently available and a detailed study would be required in order to justify and request a boundary change to NOAA that meets these requirements. Given these requirements, the Department has not submitted a boundary change to NOAA. Although not required as part of the study, the Division also reached out to the Division of Parks and Recreation because of the connection to the Fort Fisher State Recreation Area and let them know that this legislation was in place. A response was received which requested additional information on how the proposed project may affect both the Fort Fisher State Recreation Area and also the Bald Head Island State Natural Area, specifically requesting more information on potential water quality impacts, possible extensive erosion impacts that may alter recreation and natural resource values, and potential impacts to habitats. The final step of the legislation was an action by the CRC to amend the reserve component rule, however since a request for a boundary change was not submitted to NOAA no action has been taken on this step. Additionally, the Reserve rules are departmental rules per the General Statutes in CAMA and the CRC would not have the authority to make that change.

Beach Erosion Study – Update (CRC 16-18)

Ken Richardson

Ken Richardson stated this report outlines the processes that effect erosion, both manmade and natural influences, and includes research efforts from past studies. The daily occurrences of wind, waves, current, and tides have a tremendous effect on the shoreline. Storms and their frequency also have a great impact on shoreline position on the beachfront. In addition, variations exist depending on whether you are on the northern end of the coast or the southern end. In the NC Beach and Inlet Management Plan (BIMP), the coast was divided into the southern and northern zones. The southern coast is characterized by relatively steep land slopes compared to the northern zone which has a gentler slope. The BIMP also established sub-regions along the coast to compare sediment transport and sediment budgets. Beach erosion is a natural process and not all places are eroding and all are not eroding at the same rate. The Division summarized possible mitigation strategies to address beach erosion issues. Current mitigative activities include beach nourishment, sandbag placement, terminal groins and jetties, inlet realignment, and relocation. These strategies are based on previous studies within the state, public comments, and lessons learned by the Division in administering the state's coastal program for over 30 years. The report acknowledges a need to data gaps in erosion hazard assessments and modeling and the potential effects of these gaps on policy and decision making. The report also supports additional data collection to establish sub-regional sediment budgets. The primary recommendation of the report is that beach management should be formalized at the local and sub-regional level and opportunities for regional collaboration with neighboring communities should be encouraged. Recommendations also include sensible construction setbacks to account for beach erosion and shoreline migration; regular evaluation of budgetary needs for erosion response projects, taking into consideration the prevailing and expected cost-share percentages among funding entities; establishment of stable and predictable funding sources sufficient to meet statewide needs; maximizing The amount of beach-compatible dredged material that is beneficially used in mitigating beach erosion;; continued streamlining of permitting for beach projects at the federal and state levels to decrease permit processing times, permitting costs, and emergency situations; And dedicated state agency staff support and technical assistance for local and regional beach management efforts. The draft report was submitted to the Department on January 15th and delivered to the General Assembly by the February 15, 2016 deadline.

Oyster Restoration Permitting (CRC 16-19)

Doug Huggett

Doug Huggett stated this report was a result of another legislatively mandated study in S.L. 2015-241 which looked at simplifying permitting oyster restoration projects. This study required DMF and DCM in consultation with representatives of non-governmental conservation organizations that work on oyster restoration projects to create a new permit process specifically designed for oyster restoration projects. The legislation directed DMF and DCM to develop a new permit type instead of a major permit under CAMA. There was also a requirement that the Department submit a report on these activities to the Environmental Review Commission by May 1st. By asking for a new permit type, this legislation eliminated the ability of the staff to implement any streamlining mechanisms or other tweaks to the permitting process to facilitate these projects and because General Permits are expedited forms of a CAMA Major Permit, the legislation, as written, does not allow for the development of a General Permit for oyster restoration projects. There were several meetings between Coastal Management staff and Marine Fisheries staff to brainstorm ideas that would meet the intent of the legislation while providing environmental oversight of oyster restoration projects. All of the ideas had one issue associated with them that could not be avoided which requires federal permitting of these activities. We have a joint permit process with the Army

Corps of Engineers that also includes multiple state resource agencies. If the CAMA major permit review process is eliminated, then the Corps will still need to review the application, which will result in a longer Corps review time. Agency Staff met with a stakeholder group which included the NC Coastal Federation, Nature Conservancy, researchers from UNCW, the Corps, National Marine Fisheries Service and DWR. The Corps expressed the same concern about the potential impact on federal permitting. The non-governmental conservation agencies also seemed to understand the complications and were in favor of an approach that would allow us to work on streamlining mechanisms within our major permit process. The best option is the development of a new regulatory exemption under Section 7K of the CRC's rules which will allow an oyster restoration project to move forward if it meets certain criteria. The primary purpose of the project needs to be to create habitat that over time resembles oyster habitat, both in structure and function. There would be limits on the types of material that can be used for oyster restoration. Shoreline stabilization projects, such as living shorelines and offshore sills, have an oyster restoration function associated with them but the main purpose of these projects is not for restoration but for shoreline stabilization and these projects would not be included in the exemption. To obtain the exemption from DCM, the applicant will have to provide the Division with the location of the proposed project, construction methodology, materials, maintenance of the site, and operational conditions. DCM would then coordinate with DMF to make sure the proposed location and design of the oyster restoration project has a reasonable expectation of success. At the same time, DCM will look at these projects from the perspective of navigation and public trust uses. After this review, the applicant can obtain an exemption that will allow them a minimum of three years to construct the project. However, if they do not obtain both of the certifications from DCM and DMF then these projects will need a more detailed environmental review through the CAMA major permit process. The report has been submitted to the Department for review so no action on the part of the Commission is needed at this time.

2015 COASTAL HABITAT PROTECTION PLAN (CHPP) UPDATE

EMC Requested Changes and Conditional Approval (CRC 16-20)

Mike Lopazanski

Mike Lopazanski stated that CRC adopted the CHPP update and recommendations at the February 2016 meeting. The Marine Fisheries Commission also adopted the update and recommendations. The Environmental Management Commission adopted the update, but conditionally endorsed the document based on some recommended changes. In the source document the EMC requested changes to distinguish dredging as a fishing activity versus a navigation activity, updating DENR to DEQ, and removing the word "voluntary" when it was incorrectly associated with certain stormwater best management practices. Because of these changes and the conditional approval, a conference committee was set up to review the requested changes. Chairman Gorham appointed commissioners Baldwin and Snipes to the conference committee which reviewed and approved the requested changes. The CHPP has been sent to the General Assembly. Commissioner Baldwin reiterated that the EMC's comments were minor and did not make any substantive changes in the document the CRC had previously adopted.

OCEANFRONT SHORELINE MANAGEMENT

Update on Amendments to 15A NCAC 7H .0306 Grandfathering Provisions for Multi-family and Commercial Oceanfront Structures (CRC 16-21)

Tancred Miller

Tancred Miller stated this has been a very complex fiscal analysis to prepare. This rule amendment will extend the grandfathering provision of oceanfront structures for commercial and multi-family residential oceanfront structures with a total floor area of no greater than 10,000 square feet. The

approach to the fiscal analysis was to determine how many structures this would affect and determine their monetary value. To find out the number of structures, we requested data from the county GIS and tax offices and pulled out all of the available oceanfront data. DCM determined if there was a structure on any of the parcels and the attributes for these structures including when the structure was built, the size of the structure and whether it is commercial or multi-family. Then we determined how many of these structures are currently non-conforming and the value based on how the industry accounts for the value of a non-conforming structure. We also identified some properties that cannot make the minimum setback and will not be able to utilize this provision. Staff is now in the process of contacting the Office of State Budget and Management (OSBM) to determine a reasonable way to quantify the differences between the way counties value or discount non-conforming structures. After consultation with OSBM, staff will submit the fiscal analysis to the Department for review and approval and then will submit to OSBM for approval. The Commission will be asked to review and approve the fiscal analysis at the July meeting and hold a public hearing at the September meeting. After considering any comments received, the amendment could be adopted by the Commission at the November 2016 meeting.

CRC SCIENCE PANEL

CRC Science Panel – Projects and Variances (CRC 16-24)

Ken Richardson

Ken Richardson stated the CRC's Science Panel's purpose is to provide the Commission with scientific data and recommendations regarding processes including erosion, accretion, sand transport, and interactions with wind, waves and currents on the shoreline. The Panel has been charged with reviewing the state of knowledge of coastal processes, ecological functions of the coast of North Carolina, assessing the current methodologies used by North Carolina and others to define and identify areas subject to adverse impacts as a result of coastal processes. They are also charged with reviewing the scientific basis of the CRC's rules as applied by the Division to development in coastal areas and to develop recommendations for the CRC on topics that include opportunities to incorporate current information on North Carolina coastal processes into the CRC rules for estuarine and ocean areas, new coastal engineering technologies and methods, and specific projects as assigned by the Commission. Currently there are ten members on the Panel and five vacancies. The members are required to be experts in the fields of coastal processes and engineering. As per the Charge to the Panel, nominations for new members and ad hoc members may be made by members of the CRC, current Science Panel members, DCM staff, or CRAC at any public meeting of the Commission. New members and ad hoc members are appointed by the Chair of the CRC based on review of the nominees' relevant expertise and credentials with respect to coastal hazards and processes. New and replacement members are appointed as needed. DCM staff can send a call for nominations to the Science Panel if the CRC wishes to fill any of the vacancies on the Panel. After some discussion, the CRC Chair decided not to fill the vacancies at this time. Vacancies could be re-visited should a need arise.

The CRC's 2014 Inlet Management Study had a list of priorities for the Science Panel that includes completing work to define and update the Inlet Hazard Areas. The areas that were proposed by the Panel in 2010 will be a good starting point for defining areas influenced by inlet processes. Another short term priority listed recommendation was calculating inlet erosion rates. The Panel is planning to meet in August to look at the data and discuss the boundaries. The current Inlet Hazard Areas expired just before 1990 and these areas were last defined in 1979-1980. The Panel will look at updating the Inlet Hazard Areas and will identify areas within these areas with higher risk so the Commission can consider what development standards need to be updated within these areas. Staff will work with the Science Panel to prepare a scope of work for the Panel to defining the measure of

risk within each boundary associated with inlet influence at each inlet. The Commission will have the opportunity to review the scope of work at the July 2016 CRC meeting.

CRC RULE DEVELOPMENT

NC APA Rulemaking Overview

Jennifer Everett

Jennifer Everett, DEQ Rulemaking Coordinator, in the General Counsel's office in Raleigh. She discussed the permanent and temporary rulemaking process, made a brief mention of the emergency rulemaking process and concluded by discussing the periodic review and expiration of rules process. She noted that if a Commission already has statutory authority, then rulemaking is conducted to accomplish a specific purpose. The General Assembly can give a Commission additional statutory authority to conduct specific rulemaking on a particular topic or area. When a federal law changes, it sometime necessary to amend our state rules to reflect that change. Court orders can also initiate the permanent rulemaking process. This has happened with a couple of our Air Quality rules. Lastly, the Commission may begin rulemaking in response to a petition for rulemaking under the Administrative Procedures Act (APA). Permanent rulemaking begins with drafting proposed changes and developing a fiscal analysis. If the aggregate annual impacts, both the costs and benefits, to all parties are equal to or greater than one million dollars the rule is placed in the substantial economic impact category. This category entails a more rigorous alternative analysis and goes through a higher level of approval with OSBM. All fiscal analyses need OSBM review and approval. The Commission then approves the proposed rule and fiscal analysis for publication in the North Carolina Register for a sixty-day comment period. During that sixty days, the Commission holds at least one public hearing on the rule and fiscal analysis. After the comment period ends the Commission can consider comments and adopt the rule. The rule then goes to the Rules Review Commission (RRC). The RRC's review and approval is based on whether we followed the rulemaking statutes in the APA. The RRC meets every third Thursday of the month. Once they approve the rule, the rule becomes effective on the first day of the next month and is entered into the NC Administrative Code. Temporary rulemaking requires the Commission to consider whether there is a serious and unforeseen threat to the public's health, safety or welfare. A recent act of the General Assembly or Congress can also initiate the temporary rule process. The CRC recently went through this process following the General Assembly's directive on sandbags. A recent change in federal or state budgetary policy or a federal regulation change or court order can also call for the Commission to begin the temporary rulemaking process. Temporary rulemaking has to have been completed and adopted by the CRC and submitted to the RRC within 210 days of when the recent act had become effective unless you have been instructed differently by the General Assembly. Temporary rules expire after 270 days. If you want the rule to remain in the Administrative Code, then you must complete the permanent rulemaking process before the temporary rule expires. The temporary rule process has a shortened comment period and no fiscal note is required. Under emergency rulemaking, an agency may adopt a rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical if the findings of need statement indicates why notice and hearing are not necessary and why this rule is required because of a serious and unforeseen threat to the public health and safety. Temporary rulemaking must begin at the same time that the emergency rulemaking process begins. In 2013, the General Assembly passed House Bill 74 establishing the Periodic Review and Expiration of Existing Rules (G.S. 150B-21.3A). The statute gave the RRC authority to implement a process to ensure that all agencies subject to the rulemaking requirements of Article 2A of G.S. 150B review their existing rules every ten years. The CRC's 7B land use planning rules have already gone through this process. Under this review process, rules are classified as necessary with substantive public interest, necessary without substantive public interest and unnecessary. The CRC approves these rule classifications and then

they are posted on the DCM and OAH's websites for a sixty-day comment period. Following the comment period, the staff provide responses to any comments received and complete the report with the final classifications. The CRC then approves the response document and report which is then submitted to RRC for their approval. Following the RRC approval, the report is submitted to the Joint Legislative Administrative Procedures Oversight Committee (APO). Typically, the APO does not meet when the General Assembly is in session. Rules that were classified as necessary with substantive public interest have to be readopted by the CRC. These rules go through the permanent rulemaking process either with or without proposed changes. Rules that were classified as necessary without substantive public interest will remain in the Administrative Code with no further action. Unnecessary rules are deleted from the Code as if they had been repealed. The CRC's rules are scheduled for this review at the January 2018 RRC meeting. The Coastal Reserve rules in 15A NCAC 70 are due next year and while they are Departmental rules, they will come before the CRC for recommendations.

Use of Geotextile Tubes for Temporary Erosion Control (CRC 16-22)

Tancred Miller

Tancred Miller stated there has been a longstanding conversation on the use of geotextile tubes for temporary erosion control. Most recently it came up in the context of the state port inlet management areas and whether there should be different standards on temporary erosion control structures in these areas. The Division has looked at research on performance of geotextile tubes in other areas and for this effort, reached out to other coastal states regarding their experiences with these tubes. We received nine responses to this request. The responses indicated that other states allow them on the oceanfront or lakefront beaches, but the results were mixed. New Jersey and Puerto Rico had the best success with them, while others states responded that they had not performed well in high energy environments. The bags tend to be exposed to a lot of damage and there were reports of failures. When these bags become damaged they are difficult to repair. Johnny Martin, Moffatt & Nichol, concurred and stated that his firm has found that these tubes do better in a low energy environment, and the smaller bags are easier to repair if they fail. The only benefit to using the large tubes is a slight economic savings because there is less material. Spencer Rogers stated the Science Panel has advised the CRC that size limits for temporary protection is the most critical factor in enforcing the temporary nature of sandbags.

Proposed Amendments to Sandbag Rules (CRC 16-23)

Mike Lopazanski

Mike Lopazanski stated last year the Legislature directed the CRC to amend the sandbag rules to incorporate certain provisions. We were to allow sandbags even when there is no imminently threatened structures as long as the sandbags are adjacent to an existing property with sandbags, to allow continuous sandbag structures from one property line to the other, to make all the termination dates for permits for continuous sandbag structures the same termination date based on the placement of the last bag, and to allow the replacement/repair/modification of damaged sandbag structures at were legally placed with a current or an expired permit provided that the permit is being litigated. The CRC was directed to adopt these provisions as temporary rules. This Act was enacted on September 18, 2015. The CRC met the following week and immediately discussed the provisions and how to incorporate them into the rule language. We discussed the concerns the staff and Commission had and the CRC directed staff to try to incorporate these provisions into the rules and to develop the temporary amendments. These amendments were brought back to the Commission at the November 2015 meeting where they were approved for public hearing. The public comment period ran through the month of December and a public hearing was held on December 10, 2015. The temporary rules and public comments received were brought before the

Commission at the next meeting in February 2016 with a proposed effective date of February 26, 2016. The rules were sent to the Rules Review Commission (RRC) and they interpreted the stipulation in the legislation that the rules were to be adopted by December 31, 2015 as an expiration of the CRC's authority to adopt temporary rules. Commission Counsel Mary Lucasse made a case to the RRC that the Commission meet the APA requirements for temporary rulemaking and that given the timing of the passing of the Act and scheduled CRC meetings it was difficult to meet the December 31st deadline. The RRC was not persuaded and denied the adoption of the temporary rules. At this meeting we will need to look at the temporary amendments as well as the other provisions that the CRAC and CRC have been working on. One of the concerns about the legislative provision of allowing sandbags on lots with no imminently threatened structure is that it could allow the sandbags to interfere with public trust and public use of the dry sand beach. Staff therefore added language that required that the sandbag structure be no further oceanward than the landward most bags of the adjacent structure. The legislature directed the CRC to allow the placement of sandbags from one lot line to another. To address this, the stipulation that the bags extend no further than 20 feet from either side of the threatened structure was removed. Currently, threatened structures are allowed to be incrementally protected by sandbags as parts of the structure or the associated septic system become threatened and the expiration of the later permit is tied to the placement of the first sandbag. The directive of the legislature now ties the expiration date to the placement of the last sandbags if it is incrementally protected. The final provision from the legislature was to allow the replacement, repair or modification of damaged bags if they are being litigated by the property owner. We added a caveat that it was allowable within the originally permitted dimensions and that the litigation must be filed in state, federal or administrative court. Outside of the legislatively directed provisions, the CRC and CRAC have been discussing several other changes to the sandbag rules including appropriate time limits, removal criteria, covered and vegetated requirements, provisions for beach nourishment, and the once per property provision. Staff has looked at the time limits and recommended removing the distinction for large and small structures and set the time limit at five years which is the maximum allowed under the current rules if you were not undertaking mitigative action such as beach nourishment or inlet relocation or stabilization. During the CRAC meeting there was discussion about allowing eight years regardless of structure size. For removal it was determined that we should just be concerned about the bags above grade. Language has been added to the rules to require that only exposed sandbags above grade be removed at the expiration of the permit, but retained the provision for the removal of all sandbags if the structure is demolished. The language was also modified for when sandbags are considered no longer necessary and will require removal of the sandbags exposed above grade upon completion of the beach nourishment or inlet relocation or stabilization project. The CRAC recommended an eight-year time limit for all bags. The eight-year time frame in the current rule was an incentive for communities to do something to address the erosion issue. Currently there is a one-time per property provision to address the intent that sandbags are a temporary protection measure. If a structure becomes threatened again, as long as a community is actively pursuing a project then another sandbag permit can be issued. Chairman Gorham asked why the one-time per property provision is necessary. Braxton Davis commented that staff has a firm position that there should be some provision in the rule that makes the sandbags temporary. Gwen Baker added that if we take out the one-time per property provision then we lose the incentive for a community to find a more permanent solution. The variance process is available to address the outliers.

Frank Gorham made a motion to remove the one-time per property provision from the sandbag rules. Bill White seconded the motion. The motion passed with six votes in favor (Rhodes, White, Gibbs, Baldwin, Andrew, Gorham) and five opposed (Cahoon, Lewis, Norris, Snipes, Baker).

Mike Lopazanski stated that the CRAC requested staff look at whether there had been a requirement that the bags be constructed from woven material. Mike stated there are no provisions for geotextile tubes included in the current amendments. Does the Commission want to include language allowing geotextile tubes? Frank Gorham stated there are two separate issues to consider with geotextile tubes; the sandbag rules and the State Port AEC.

John Snipes made a motion to not change the size limits on sandbags and not allow geotextile tubes as a temporary erosion control structure. Gwen Baker seconded the motion. The motion passed with nine votes in favor (Rhodes, Gibbs, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker) and two opposed (White, Baldwin).

Frank Gorham made a motion to reconsider the motion to remove the one-time per property provision from the sandbag rule language and to request the Staff bring back the additional rule language for further consideration in July. Bill White seconded the motion. This motion passed unanimously (Rhodes, White, Gibbs, Baldwin, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker).

Renee Cahoon made a motion to approve the temporary erosion control structure amendments in 15A NCACA 07H .0308, 07H .1704, and .07H .1705 as presented by staff for public hearing. John Snipes seconded the motion. The motion passed unanimously (Rhodes, White, Gibbs, Baldwin, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker).

PUBLIC INPUT AND COMMENT

No public comments were received.

BEACH MANAGEMENT

Beneficial Use/Generic MOU Study Group Update

Rudi Rudolph

Greg "Rudi" Rudolph, Carteret County Shore Protection Manager, stated Justin McCorcle is temporarily leaving the Wilmington District and has accepted a temporary detail in with the Middle East District in Virginia. The working group met with the Port Authority, and with some changes in the Appropriations Bill last year, the Authority was directed to do a long-term memorandum of agreement with the Corps. That will help us with sand management at deep draft inlets.

Update on State Ports Inlet Management AEC Development (CRC 16-25)

Heather Coats

Heather Coats stated this has been on hold awaiting changes to the sandbag rules. House Bill 819 passed in 2012 directed the Coastal Resources Commission to study the feasibility of creating a new AEC for the lands adjacent to the Cape Fear River. The final recommendation of that study was to roll it into a more comprehensive study of all of the inlets. The final recommendation from the inlet management study was to recognize that both of the State's deep draft inlets exert a unique influence on the lands adjacent due to the federally maintained shipping channel. This began the development of the State Ports Inlet Management Area of Environmental Concern (AEC). We met with the local governments in the development of this AEC and they focused on two objectives that they hoped to see implemented within the use standards. The first was beneficial use of dredged material and rule language was drafted requiring all beach compatible sand to be placed on the adjacent beaches or nearshore areas. We heard from the Corps objecting to this language, pointing

out unintended consequences that may result, as well as reduced flexibility. We also heard from NCDOT on behalf of the Ports also expressing some concerns about the language. The CRC has since struck that language from the draft rule as a working group has been established to work on an MOA on behalf of the local governments with the Corps. As the rules stand now, only imminently threatened primary structures, infrastructure and roads can be protected by sandbags. The definition of imminently threatened has been modified in the draft rule language to allow more flexibility in the use of sandbags by eliminating the individual sandbag size restrictions and allowing for the use of geotextile tubes. This would allow local governments to protect frontal and primary dunes. These draft rules allow sandbags to remain in place for eight years and they can remain if they are fully covered by sand and not interfering with the use of the public trust beach. Mike Lopazanski added that at a future meeting we will also need to settle the boundaries for the AEC.

Summary of Local Government Discussion of Development Line (CRC 16-26)

Ken Richardson

Ken Richardson stated as of April 1, 2016 the static line exception and development line rules went into effect. Since then I have had the opportunity to talk to communities that are considering the development line and have had some very open and informal discussions. A lot of good questions have come up about how to map a development line compared to the static vegetation line exception option. As a reminder, oceanfront setbacks are measured from the first line of stable and natural vegetation with the erosion rate and the size of the structure determining the size of the setback. If there has been a large-scale beach fill project, setbacks are measured from the static vegetation line. The static vegetation line exception, which went into effect in 2009, requires a 30-year beach plan be submitted by the community and approved by the CRC which allows the community to measure setbacks from the first line of stable and natural vegetation rather than from the static line. The recent amendments to the static line exception allow communities to immediately request a static line exception after a completion of a large-scale beach fill project. There is also no longer a cap on the structure size, no portion of the structure can be more oceanward than the landward most structure, and structures greater than 5,000 square feet must meet the minimum setback of 120 feet rather than the larger graduated setbacks. With the development line in no case shall new development be cited seaward of the development line and in no case can the development line be created or established below mean high water. The setback distance is determined by both the size of the development and the long term erosion rate. The procedures follow a similar concept to the static line exception in that it comes to the CRC for review and approval, however once the development line is approved then the Commission cannot require a change of the development line. While the static vegetation line exception uses the adjacent neighbor to limit oceanward movement of structures, the development line requires each town to determine what will best meet their management objectives.

ACTION ITEMS

Adopt 15A NCAC 7H .0304 Ocean Erodible AEC- OEA Calculation

Mike Lopazanski stated this amendment is a change in the calculation to the OEA. There was a public hearing scheduled for each of eight oceanfront counties. We had good attendance, but did not receive any comments about the amendments. Staff is recommending adoption of this amendment.

Renee Cahoon made a motion to adopt 15A NCAC 07H .0304. Phil Norris seconded the motion. The motion passed unanimously (Rhodes, White, Gibbs, Baldwin, Andrew, Cahoon, Gorham, Lewis, Norris, Snipes, Baker).

OLD/NEW BUSINESS

Neal Andrew requested an update on the process involved with the final draft for the strategic plan for the Coastal Reserve and an update on the draft for the new management plan for the Coastal Reserve sites and asked when the Commission will have an opportunity to review the strategic plan and management plans. He stated that he is on the Masonboro Island Local Advisory Committee and the original timing was for these draft plans to be available for review in the fall of 2015. Rebecca Ellin stated the original timeline had been extended because of current workload issues. The review process begins with an initial review by NOAA. A draft is then forwarded to the Local Advisory Committees (LACs), the CRC, DEQ, and when these reviews are complete, the draft document is return to NOAA for further review. At that point, the document will then be considered the final draft and will go out for a thirty-day public comment period listed in the Federal Register. There have been a number of new requirements that have been incorporated into the guidance that we have to address and there have a been a number of big projects taking longer than we anticipated that have caused some delays. NOAA's first internal review should be done this summer and the plan should go to the LACs in the fall. The LACs and the CRC have already weighed in on the strategic plan which is a portion of the management plan. Next the CRC will see the full management plan.

Braxton Davis stated that Michele Walker, Division Public Information Office, has been reassigned to the Division of Water Resources as their PIO. The Division and the Commission is appreciative of her work and wish her luck. Her counterpart at DWR, Sarah Young, will be coming to DCM.

PUBLIC HEARINGS

- 15A NCAC 07H .1801, 07H .1802, 07H .1804, 07H .1805, 07H .2505 Beach Bulldozing GP**
- 15A NCAC 07H .2701, .7H .2704, .7H .2705 Marsh Sill GP**
- 15A NCAC 07H .0205 Coastal Wetlands**

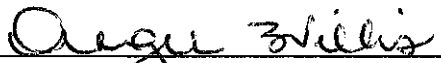
DCM staff gave an overview of the rule amendments and fiscal analyses. No comments were received.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

July 12, 2016

MEMORANDUM

CRC-16-29

TO: Coastal Resources Commission
FROM: Ken Richardson, *Shoreline Management Specialist*
SUBJECT: Science Panel Scope of Work: Inlet Shoreline Change Rate Methodology

The 2012 N.C. General Assembly directed the CRC to “study the feasibility of creating a new Area of Environmental Concern for the lands adjacent to the mouth of the Cape Fear River.” Session Law 2012-202 required the CRC to consider the unique coastal morphologies and hydrographic conditions of the Cape Fear River and to determine if action is necessary to preserve, protect, and balance the economic and natural resources of this region through the elimination of current overlapping AECs by incorporating appropriate development standards into one single AEC unique to this location.

During the course of this study, the CRC found that while the Cape Fear River Inlet did present a unique set of challenges, other inlets may have similar issues. The Commission therefore decided to undertake a comprehensive review of inlet-related issues, with the expectation of developing additional management tools that will allow the CRC to more proactively address the issues confronted by local governments in these dynamic areas.

Over the course of the study, the Commission reviewed existing shoreline management strategies, inlet dynamics, erosion rates and setback factors, as well as CRC development standards adjacent to inlets. The study also considered how historical and ongoing beach and inlet management techniques, including dredging, beach fill, beneficial use of dredged material, and engineered structures such as groins and jetties can be incorporated into a management strategy.

The Commission sought input on inlet management from a wide array of stakeholders that included sand managers, engineers, dredging industry representatives, the US Army Corps of Engineers and those with an interest in environmental impacts associated with inlet management. Stakeholders provided the Commission with an overview of their concerns and ideas regarding inlet management, including in-water issues (dredging), erosion control alternatives, and development standards on adjacent lands.

The Commission utilized the information gathered from the regional meetings, stakeholders and public comments to develop a list of short-term priorities, identifying erosion rate calculations for Inlet Hazard Areas as “number two” on the Commission’s short-term inlet management priority

list. The Science Panel was asked to develop a methodology for calculating shoreline erosion rates adjacent to inlets for the purpose of better understanding changes over time, in order to update and improve inlet management alternatives. However, the Science Panel's priority at that time was on finalizing the 2015 Sea-Level Rise Assessment Report, and the CRC did not issue a formal scope of work to the Panel. Now that the Sea-Level Rise Update report has been completed, staff recommend that the CRC consider developing a scope of work for the Science Panel to finalize their inlet shoreline change rate methodology, to include:

- 1) **Develop inlet shoreline change rate calculation methodology:** The Science Panel has considered inlet shoreline change rates throughout their inlet studies for the Commission. The Panel most recently utilized a linear regression method that incorporates multiple shorelines, versus the end-point method currently used to calculate rates on the oceanfront which only uses two shorelines (early and current). To date, inlet shoreline change rates have not been used for the purpose of determining construction setbacks at inlets.
- 2) **Re-evaluate points along the oceanfront shoreline where inlet processes no longer influence shoreline position:** When the Science Panel first started working on updating Inlet Hazard Area boundaries in 2005, the Panel evaluated changes in shoreline position over time to determine the location along the shoreline where inlet-related processes no longer have a dominant influence on the shoreline's position. Data collected after 2005 have not been included in this analysis, thus establishing a need to utilize newer data sets.
- 3) **Present results at a CRC Meeting:** The inlet shoreline change rate calculation methodology and study results will be presented at a late spring or early summer 2017 CRC meeting. At that time, and at the desire of the Commission, alternatives for updating and improving inlet management strategies can be pursued.

As recommended in the 2014 Inlet Management Issues Study, staff proposes to work with the Science Panel to utilize newer data and the Panel's methodology to re-analyze inlet shoreline change rates, and to re-evaluate the transition point along the oceanfront shoreline where inlet-related processes no longer have a dominant effect on the shoreline. Staff will present findings to the Commission at a late spring/early summer 2017 meeting.

**North Carolina
Coastal Resources Commission**

July 12, 2016



TO: Margery Overton, Chair, CRC Science Panel
FROM: Frank Gorham, Chairman, Coastal Resources Commission
SUBJECT: Scope of Work: Inlet Erosion Rate Calculation Methodology

PAT McCRORY
GOVERNOR

FRANK GORHAM
CHAIRMAN

RENEE CAHOON
VICE CHAIR

NEAL ANDREW

GWEN BAKER

LARRY BALDWIN

DENISE GIBBS

MARC HAIRSTON

GREG LEWIS

PHIL NORRIS

RUSSELL RHODES

BEN "JAMIN" SIMMONS

JOHN SNIPES

BILL WHITE

BRAXTON C. DAVIS
EXECUTIVE SECRETARY

At the Coastal Resources Commission meeting on May 14, 2014 in Atlantic Beach, the Commission noted that just as every inlet is different, so are shoreline change rates along their beaches. During that meeting, the Commission identified erosion rate calculations for Inlet Hazard Areas as the second-highest priority on the Commission's short-term inlet management priority list, and asked the Panel to develop a methodology for calculating shoreline erosion rates adjacent to inlets for the purpose of better understanding changes over time.

At that time, priority was placed on finalizing the 2015 Sea-Level Rise Assessment Report, and the CRC did not issue a formal scope of work to the Panel. Now that the Sea-Level Rise Update report has been completed, the CRC is asking the Science Panel to finalize your proposed inlet shoreline change rate methodology and provide the Commission with results listed under the following scope of work:

Scope of Work:

- 1) Develop inlet shoreline change rate calculation methodology;
- 2) Re-evaluate points along the oceanfront shoreline where inlet processes are no longer the dominant influence over shoreline position; and
- 3) Present results at late spring/early summer 2017 CRC meeting

The CRC is very appreciative of your dedication to helping decision-makers and the general public better understand coastal processes in North Carolina.



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

CRC-16-30

June 29, 2016

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Proposed Amendments to 7H .0308 Temporary Erosion Control Structures

The Commission has been considering amendments to your rules governing the use of sandbags as temporary erosion control structures (15A NCAC 7H .0308; 7H .1704 and 7H .1705) based on the legislative directive in S.L. 2015-241 as well as discussion of the CRC and CRAC. The proposed amendments address the time limits for permitted sandbag structures, provisions for removal when no longer necessary, and the allowance for structures to remain beyond permitted time limits when “covered and vegetated.”

The Commission has also been discussing the provision that an imminently threatened structure be permitted to utilize a temporary erosion control structure only once [7H .0308(2)(M)] unless it is located in a community that is actively pursuing a remedy to their erosion issue. At your May meeting, questions were raised as to how many properties would be in areas that would not be considered pursuing a remedy for their erosion issues. Staff have reviewed the sandbag permit data and determined there are 14 properties (located in Currituck County, Southern Shores, Rodanthe, Kure Beach and Ocean Isle) that would not be considered pursuing some mitigative activity. While the Commission approved amendments that include the one-time per structure provision, Staff was directed to remove this provision for further consideration at the July meeting.

Given the CRAC recommendation to allow an eight-year time limit for all structures and the CRC direction to remove the one-time per property provision, there is no longer a relevant distinction to be made between properties that are located in communities that are pursuing mitigative activities such as beach nourishment, and properties that are not located in such communities. Staff has therefore removed the portions of the rules associated with a community’s mitigative activities.

It should be noted that HB 593 Amend Environmental and Other Laws currently being considered by the Legislature includes:

COASTAL RESOURCES COMMISSION RULES ON TEMPORARY EROSION CONTROL STRUCTURES

SECTION 5.(a) Sections 14.6(p) and 14.6(q) of S.L. 2015-241 are repealed.

SECTION 5.(b) The Coastal Resources Commission shall adopt temporary rules for the use of temporary erosion control structures consistent with the amendments to the temporary erosion control structure rules adopted by the Commission as agenda item CRC-16-23 on May 11, 35 2016, with any further modifications in the Commission's discretion. The Commission shall also adopt permanent rules to implement this section.

Should HB 593 be enacted into law by your July 12-13, 2016 meeting, the CRC will be able to initiate the temporary rulemaking process. Unlike the previous legislative directive, the Commission's authority to adopt the temporary rules will not expire.

The attached draft rule language includes the legislative provisions discussed at the last two CRC meetings (**highlighted**) as well as the additional amendments discussed by the CRAC (**bold**). Also attached is a "clean" version of the rule for easier reading. The new draft amendments would be intended to:

- Remove the distinction between structures greater or less than 5,000 square feet, setting the time limit at eight years for all structures;
- Remove the "vegetated" requirement for sandbag structures to remain beyond their permitted time when covered by sand;
- Require that only sandbags exposed above grade be removed at the expiration of the permit;
- Modify the "no longer necessary" provisions to require the removal of sandbags that are exposed above grade upon completion of a beach nourishment or inlet relocation/stabilization project.
- Deletes the provisions for properties located in communities with a planned beach nourishment or inlet relocation/stabilization project.
- Clarifies that structures determined by the Division of Coastal Management to be imminently threatened upon the expiration date of permitted temporary erosion control structures may be permitted to remain in place for an additional eight years.

In summary, the revised language manages sandbags in the following manner:

Sandbags Permitted

- On properties with an imminently threatened structure or accelerated erosion.
- On properties with no imminently threatened structure, but adjacent to a property with an existing sandbag structure that is in compliance with the Commission's rules.

Time Limits

- Sandbag permits will be valid for eight years for all structures.
- Sandbags may be permitted for an additional eight-year period if the property qualifies (imminently threatened).
- Sandbag structures placed incrementally will have time limits corresponding to the latest installation.
- Sandbag structures may remain if they are being litigated in court.

Removal

- If the structure is demolished or relocated, all sandbags must be removed.
- Upon completion of beach fill/inlet relocation or stabilization project, sandbags exposed above grade must be removed.
- Upon expiration of the eight-year permit, sandbags exposed above grade must be removed.
- Sandbags covered by sand do not need to be removed.

We look forward to discussing these proposed amendments and further guidance at your upcoming meeting in Beaufort.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, **unless specifically authorized under the Coastal Area Management Act**, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
 - (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
 - (F) Project construction shall be timed to minimize adverse effects on biological activity.
 - (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the **short or long range significant** adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of **any unavoidable significant** adverse impacts on adjoining properties and on public access to and use of the beach.
 - (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not **adversely impact have significant adverse impacts on** fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the **short or long range significant** adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
 - (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the

replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
- (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph **shall may** be used to protect **only** imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and shall be no further waterward than the most landward adjacent temporary erosion control structure.**

(C) **Temporary Notwithstanding Part (2)(B) of this Subparagraph, temporary** erosion control structures shall be used to protect only the principal structure—and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed **seaward waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) **Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected.** The landward side of such temporary erosion control structures shall not be located more than 20 feet **seaward waterward** of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **their the Director's** designee in accordance with Part (2)(A) of this Subparagraph.

(F) Temporary erosion control structures may remain in place for up **to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five eight** years for a building with a total floor area of more than 5000 sq. ft. and its associated septic ~~system, system~~. **Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The termination date of all contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permitted temporary erosion control structures.** The property owner shall be responsible for removal of **any portion of the temporary erosion control structure exposed above grade** the temporary structure within 30 days of the end of the allowable time period. **Owners of structures determined by the Division of Coastal Management to be imminently threatened upon the expiration date of permitted**

temporary erosion control structures issued pursuant to this Section, may be eligible for a permit to remain in place for an additional eight years.

- (G) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 For purposes of this Rule, a community is considered to be actively pursuing a beach **nourishment, nourishment or an** inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it has:

- (i) ~~been issued an active CAMA permit, where necessary, approving such project; or~~
- (ii) ~~been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or~~
- (iii) ~~received a favorable economic evaluation report on a federal project; or~~
- (iv) ~~is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment, nourishment or the inlet relocation or stabilization project.~~

If beach nourishment, nourishment or inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph. The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.

- ~~(H)~~(G) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment **project, project, or** an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade** ~~it~~ shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

- ~~(H)~~(H) Removal of temporary erosion control structures is not required if they are covered by **dunes sand with stable and natural vegetation.**

- ~~(I)~~(I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

- ~~(K)~~(J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

- ~~(L)~~(K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

- (M) An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach_nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with **Part (G)(H)** of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional **eight year eight-year** permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this **Subchapter Subchapter.** and the community in which it is located is actively pursuing a beach

nourishment, nourishment or an inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the **initial most recent** erosion control structure is installed. For the purpose of this Rule:

- (i) a building and septic system shall be considered as separate structures.
- (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each **contiguous** section of sandbags shall begin at the time that **the most recent** section is installed in accordance with Part (F) or (G) of this Subparagraph.

- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph. **Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.**

15A NCAC 07H .1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

- (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.
- (2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
- (3) Any permitted erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case of **roads, roads, except as provided under 15A NCAC 07H .0308**. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee.
- (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (5) Structural work shall meet sound engineering practices.
- (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

(b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~ **Environmental Quality** to make inspections at any time deemed necessary to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions in these Rules.

(c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

(e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.

(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

History Note: Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-118.1;
Eff. November 1, 1985;
Amended Eff. December 1, 1991; May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. May 1, 2010; August 1, 1998; July 1, 1994;

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph **shall may** be used to protect **only** imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, **or, or** right-of-way in the case of **roads, roads** is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and shall be no farther waterward than the most landward adjacent temporary erosion control structure.**
- (3) **Temporary Notwithstanding Part (a)(2) of this Subparagraph, temporary** erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed **seaward waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) **Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected.** The landward side of such temporary erosion control structures shall not be located more than 20 feet **seaward waterward** of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (1) of this Paragraph.
- (6) Temporary erosion control structures may remain in place for up to **two years after the date of approval if they are protecting a building with a total floor area of 5,000 square feet or less and its associated septic system, or for up to five eight** years for a building **with a total floor area of more than 5,000 square feet** and its associated septic **system, system, Temporary erosion control structures may remain in place for up to five eight years if they are protecting** a bridge or a road. **The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.** The property owner shall be responsible for removal of **any portion of the temporary erosion control structure exposed above grade the temporary structure** within 30 days of the end of the allowable time period. **Owners of structures determined by the Division of Coastal Management to be imminently threatened upon the expiration of permitted temporary erosion control structures issued pursuant to this Section, may be eligible for a permit to remain in place for an additional eight years.**
- (7) **Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment, nourishment or an inlet relocation or stabilization project if it has:**
 - (A) **an active CAMA permit, where necessary, approving such project; or**
 - (B) **been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an**

~~ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or~~

~~(C) — received a favorable economic evaluation report on a federal project; or~~

~~(D) — is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment, nourishment or inlet relocation or stabilization project.~~

~~If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph. **The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.**~~

- ~~(8)~~**(7)** Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, **or** an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade** it shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management, regardless of the time limit placed on the temporary erosion control structure.
- ~~(9)~~**(8)** Removal of temporary erosion control structures is not required if they are covered by **dunes sand** with stable and natural vegetation.
- ~~(10)~~**(9)** The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- ~~(11)~~**(10)** Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed 6 feet.
- ~~(12)~~**(11)** Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- ~~(13)~~**(12)** Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- ~~(14)~~**(13)** **An imminently threatened structure may be protected only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph Subparagraph, and the community in which it is located is actively pursuing a beach nourishment, nourishment or an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph.** In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the **initial most recent** erosion control structure is installed. For the purpose of this Rule:
- (A) a building and septic system shall be considered as separate structures.
- (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each **contiguous** section of sandbags shall begin at the time that **the most recent** section is installed in accordance with Subparagraph (6) or (7) of this Rule.
- ~~(15)~~**(14)** Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule. **Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or**

modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
- (2) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure.**
- (3) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

- (1) Work permitted by this general permit shall be subject to the following limitations:
 - (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **seaward waterward** of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (a)(1) of this Rule. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure;**
 - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC **7H .0208; 7H .0208; and**
 - (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
- (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1; Eff. November 1, 1985;
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. May 1, 2013; May 1, 2010; August 1, 2002. Temporary Amendment Eff. July 3, 2000; May 22, 2000;

Clean Version

Proposed Amendments to 15 NCAC 7H .0308; 7H .1704; 7H .1705 Temporary Erosion Control Structures

**Legislatively Directed Amendments Highlighted in Yellow*

***Proposed Amendments in Bold*

June 29, 2016

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, **unless specifically authorized under the Coastal Area Management Act**, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
 - (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
 - (F) Project construction shall be timed to minimize adverse effects on biological activity.
 - (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the **significant** adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of **significant** adverse impacts on adjoining properties and on public access to and use of the beach.
 - (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not **have significant adverse impacts on** fisheries or other public trust resources; and
 - (vi) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the **significant** adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

- (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph **may** be used to protect imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and shall be no further waterward than the most landward adjacent temporary erosion control structure.**
- (C) **Temporary** ~~Notwithstanding Part (2)(B) of this Subparagraph,~~ **temporary** erosion control structures shall be used to protect only the principal structure-and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed **waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) The landward side of such temporary erosion control structures shall not be located more than 20 feet **waterward** of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Part (2)(A) of this Subparagraph.
- (F) Temporary erosion control structures may remain in place for up **eight** years for a building and its associated septic system, a bridge or a road. **The termination date of all contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permitted temporary erosion control structures.** The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade the temporary structure within 30 days of the end of the allowable time period. Owners of structures determined by the Division of Coastal Management to be imminently threatened upon the expiration date of permitted temporary erosion control structures issued pursuant to this Section, may be eligible for a permit to remain in place for an additional eight years.

- (G) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 For purposes of this Rule, a community is considered to be actively pursuing a beach, **nourishment or an** inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it has:
- (G) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of** a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment, **project, or** an inlet relocation or stabilization project, **any portion of the temporary erosion control structure exposed above grade** it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (H) Removal of temporary erosion control structures is not required if they are covered by **sand**.
- (I) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (J) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (K) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (L) An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with **Part (G)(H)** of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional **eight year eight-year** permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this **Subchapter Subchapter**, and the community in which it is located is actively pursuing a beach **nourishment, nourishment or an** inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the **initial most recent** erosion control structure is installed. For the purpose of this Rule:
- (i) a building and septic system shall be considered as separate structures.
- (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each **contiguous** section of sandbags shall begin at the time that **the most recent** section is installed in accordance with Part (F) or (G) of this Subparagraph.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph. **Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.**

15A NCAC 07H .1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

- (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.

- (2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
 - (3) Any permitted erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case of **roads, except as provided under 15A NCAC 07H .0308**. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee.
 - (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (5) Structural work shall meet sound engineering practices.
 - (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.
- (b) Individuals shall allow authorized representatives of the Department of **Environmental Quality** to make inspections at any time deemed necessary to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions in these Rules.
- (c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.
- (e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.
- (f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

History Note: Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-118.1;
Eff. November 1, 1985;
Amended Eff. December 1, 1991; May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. May 1, 2010; August 1, 1998; July 1, 1994;

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph **may** be used to protect imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, **or** right-of-way in the case of **roads** is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and shall be no farther waterward than the most landward adjacent temporary erosion control structure.**
- (3) **Notwithstanding Part (a)(2) of this Subparagraph, temporary** erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

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- (4) Temporary erosion control structures may be placed **waterward** of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (5) The landward side of such temporary erosion control structures shall not be located more than 20 feet **waterward** of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (1) of this Paragraph.
 - (6) Temporary erosion control structures may remain in place for up to **eight** years for a building and its associated septic **system**, a bridge or a road. **The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date of any of the permits.** The property owner shall be responsible for removal of **any portion of the temporary erosion control structure exposed above grade** within 30 days of the end of the allowable time period. **Owners of structures determined by the Division of Coastal Management to be imminently threatened upon the expiration of permitted temporary erosion control structures issued pursuant to this Section, may be eligible for a permit to remain in place for an additional eight years.**
 - (7) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, **it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade it shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management, regardless of the time limit placed on the temporary erosion control structure.**
 - (8) Removal of temporary erosion control structures is not required if they are covered by **sand**.
 - (9) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
 - (10) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed 6 feet.
 - (11) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (12) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (13) In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the **most recent** erosion control structure is installed. For the purpose of this Rule:
 - (A) a building and septic system shall be considered as separate structures.
 - (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each **contiguous** section of sandbags shall begin at the time that **the most recent** section is installed in accordance with Subparagraph (6) or (7) of this Rule.
 - (14) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule. **Existing sandbag structures that were legally placed pursuant to permits that have since expired may be replaced, repaired, or modified within their permit dimensions if the status of the permit is being litigated by the property owner in state, federal or administrative court.**
- (b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (2) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **waterward** of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure.**
 - (3) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.
- (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.
- (1) Work permitted by this general permit shall be subject to the following limitations:
 - (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
 - (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet **waterward** of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or **the Director's** designee in accordance with Subparagraph (a)(1) of this Rule. **Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission's rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further waterward than the most landward adjacent temporary erosion control structure;**
 - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC **7H .0208; and**
 - (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
 - (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1; Eff. November 1, 1985; Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. May 1, 2013; May 1, 2010; August 1, 2002. Temporary Amendment Eff. July 3, 2000; May 22, 2000;