

NC COASTAL RESOURCES COMMISSION
October 26-27, 2011
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.

Wednesday, October 26th

1:00 Coastal Resources Advisory Council Meeting (Auditorium) Ray Sturza, Chair

3:00 COMMISSION CALL TO ORDER (Auditorium) Bob Emory, Chair
• Roll Call

VARIANCES

- Holland (*CRC-VR-11-07*) Pender County, 30' buffer Amanda Little
- Highland Shores Community Assoc. (*CRC-VR-11-08*) Belville, ¼ width rule Christine Goebel
- Carolina Marina & Yacht Club, LLC (*CRC-VR-11-09*) New Hanover Co., ¼ width rule Christine Goebel
- Casey (*CRC-VR-11-10*) Carolina Beach, 30' buffer Amanda Little

6:00 EXECUTIVE COMMITTEE MEETING (Auditorium) Bob Emory, Chair

RECESS

Thursday, October 27th

9:00 COMMISSION CALL TO ORDER (Auditorium) Bob Emory, Chair
• Roll Call
• Approval of August 24-25, 2011 Meeting Minutes
• Executive Secretary's Report Ted Tyndall
• Chairman's Comments Bob Emory
• CRAC Report Ray Sturza

PRESENTATIONS

- Hurricane Irene Impacts and DCM Response DCM Staff
- NC 12 Update NC DOT
- Science Panel Discussion of Assessing Terminal Groin Adverse Impacts Doug Huggett
- Impact of Hurricane Irene on Pivers Island Natural and Stabilized Marsh Shorelines Dr. Carolyn Currin, NOAA
- Geographic Assessment and Change Analysis of NC Maritime Forests (*CRC-11-24*) Graham Jones, UNC-W

11:45 PUBLIC INPUT AND COMMENT Bob Emory, Chair

12:00 LUNCH

1:15 PRESENTATIONS
• Amendments to 15A NCAC 7H.0308(a)(2) and 15A NCAC 7H .1705 Temporary Erosion Control Structures (*CRC-11-22*) Mike Lopazanski
• Consideration of Public Comments on Draft Sea Level Rise Policy 15A NCAC 7M .1301 (*CRC-11-23*) Tancred Miller

ACTION ITEMS

- Fiscal Analysis Approval – 15A NCAC 7H .0308(a)(2) & 15A NCAC 7H .1705 Mike Lopazanski

OLD/NEW BUSINESS

Bob Emory, Chair

5:00 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.



N.C. Division of Coastal Management
www.nccoastalmanagement.net

Next Meeting:
February 8-9, 2012
NOAA/NCNERR Administration Building
Beaufort, NC

NC COASTAL RESOURCES COMMISSION (CRC)

August 24-25, 2011

NOAA/NCNERR Auditorium

Beaufort, NC

Present CRC Members

Bob Emory, Chairman

Joan Weld, Vice-Chair

David Webster (absent 8/25)

Jerry Old

Bill Peele (present at 9:10 a.m. 8/25)

Veronica Carter

Melvin Shepard

Ed Mitchell

Lee Wynns

Pat Joyce (present at 11:00 a.m. 8/25)

Present Attorney General's Office Members

Mary Lucasse

Christine Goebel

Ward Zimmerman

CALL TO ORDER/ROLL CALL

Chairman Emory called the meeting to order and reminded Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. Chairman Emory stated 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. Veronica Carter stated she had dealt with the planner on the Brunswick County Land Use Plan and would abstain from voting and discussion. No other conflicts were reported. James Leutze, Renee Cahoon, Charles Elam, and Jamin Simmons were absent. Based upon this roll call, Chairman Emory declared a quorum.

CONTESTED CASES

Busik v. DCM and 1118 Longwood Avenue Realty Corporation (10 EHR 8355)

Mary Lucasse of the Attorney General's Office stated this matter arises from a contested case petition that was filed by a third party petitioner, Kevan Busik, objecting to the issuance of a Minor CAMA Permit that was issued to the respondent-intervenor. The ALJ issued an order and decision and granted Petitioner's motion for summary judgment on July 1, 2011. The decision by the ALJ indicated that the decision by the Respondent, DCM, should be reversed and found that the CAMA Permit should be revoked and modified accordingly. The CRC should make a final agency decision based on the official record. The CRC shall adopt each finding of fact contained in the ALJ's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the CRC and each finding of fact made by the CRC, the agency shall set forth the reasons for not adopting the findings of fact and where in the record the CRC has found the foundation for making the decision.

Christine Goebel of the Attorney General's Office represented the Respondent, Division of Coastal Management. William Raney, Jr. of Wessell & Raney represented the Respondent-Intervenor, 1118 Longwood Avenue Realty Corporation. Kenneth Shanklin and Cynthia Baldwin of Shanklin & Nichols represented the Petitioner, Kevan Busik.

Ms. Goebel stated the disagreement in this case is the interpretation of CRC rule 7H .0306. This case deals with two adjacent oceanfront lots on Bald Head Island. The Petitioner's house is next door to the building site and the Petitioner's house was built pursuant to the old setback rules. In their case all residential structures were subject to the 30-times the erosion rate setback. The erosion rate at this location is two feet per year. The Petitioner's home was subject to a 60-foot erosion setback from the first line of vegetation. The permittee in this case under the new setback rules is trying to build essentially the same house design, but it is building it after this rule was updated. In this case, petitioners challenged the interpretation of the new rule. Our position is the items on a lot should be looked at structure by structure and building by building. These should not be added up cumulatively in order to come up with the floor area for the setback. This interpretation is supported by affidavits of both Director Jim Gregson and Major Permit Manager Doug Huggett. We interpret it this way because of the language of the setback rule which is singular, disjunctive language. Staff concluded that read it its entirety evaluates total floor area separate structure by separate structure. In this case the four separate structures are each separately subject to a 60-foot setback and should be allowed pursuant to the CAMA Minor Permit that was issued by the Bald Head Island Local Permit Officer. We would ask you to adopt the Respondent and Intervenor-Respondent's exceptions which overturn the ALJ's decision because the ALJ's decision is contrary to the evidence in this case.

Mr. Raney stated the lot was purchased in 2003. In 2009, plans began to develop for permitting. This boils down to a question of the interpretation of the rule 7H .0306. Both parties believe the language in this rule supports their position. We believe that it supports the position that DCM has taken on this rule and that the Local Permit Officer based their decision. The first part of the rule establishes generalities. The second part of the rule provides the specific guidance for the setback. The rule says the setback is determined for a building or a structure and does not say that you are establishing a setback for the development. The courts have held that the construction of a rule by those who execute and administer the rule is highly relevant. We believe that the CRC should pay a lot of attention to the position of DCM in connection with the interpretation of this rule. The Staff is integral in the rule making process. They draft the rule and bring it to the CRC and discuss them in committee meetings, hear and analyze public comments, and follow the rule to adoption. The ALJ decided that he did not like the interpretation, but could not figure out a way to interpret the rule using just the language of the rule to reach his conclusion. He created some additional definitions that he applied to the rule, which we do not think are relevant. He has rewritten the rule and has not interpreted it as it was adopted. We would request that the Commission accept the exceptions that we have filed and adopt the rationale for those as the CRC's position on this case.

Ms. Baldwin stated she would like the CRC to review the Order, particularly the signature page. Please note who signed the Order and who wrote the Order. This Senior ALJ is well known for considering the facts and considering the effect of his Orders. I don't believe he is known for rewriting rules. The plain language of the rule is something that needs to be looked at. This is a lengthy rule. Setbacks have a purpose to protect life and property. Over the course of the last decade, North Carolina has become progressively more strict with their setbacks. Our policy is relocation, but it is also retreat. We don't want massive buildings on the oceanfront. This is one of the most risky zones you can build in. This rule addresses it and limits the mass on the oceanfront.

Development size is defined by total floor area for structures and buildings. What is total floor area? It is different than square footage. Total floor area is defined as the total square footage of heated or air conditioned living space, total square footage of parking elevated above ground level, and 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. The exclusions are listed. Every word in a rule is important. Every word has meaning. The word “and” is pretty important. Petitioner feels that the rule reads that the permittee falls under the total floor area definition of over 5,000 square feet. The permittee and DCM believe that it falls under structure by structure. In the Order, the ALJ explains why building is more than the primary residence. This is an example of cooperation of State and local government. Other parts would not exist without a primary residence. That’s when you look to the Village of Bald Head. There is an overlay concept when you have a local jurisdiction. If anything has a gap in a rule or a statute then you look to how things are with the local jurisdiction. With the Village of Bald Head they have a definition for building and structure. In their protective covenants they explain that a building includes its accessory structures. In the old setback rules of 2007, commercial structures were limited by size and single family residences could have mega mansions. This was found inappropriate. In the written arguments and exceptions, the Respondent references past coastal development and how things were interpreted in the past under the old setback rules. In a 2010 Court of Appeals opinion, the issue was the routine application of a particular CAMA regulation. It was deemed that DCM is not afforded the deference that we were trying to encourage. Instead it is the Agency, the CRC, that is entitled the deference. The CRC’s decision will have far-reaching effects. Respondent list in their arguments other rules that they say proves that things should be looked at structure by structure, but no provision cited by Respondent say that buildings and structures must be analyzed separately. We argue that if the structures are supposed to be looked at individually then it should be stated in the rule. As you are considering these final thoughts, please look at Conclusion of Law #5 and Conclusion of Law #8.

Ms. Goebel stated Petitioner’s Counsel pointed out that Judge Morrison did not take this decision lightly and we agree. Staff believes that Judge Morrison got it wrong. He didn’t just read the unambiguous rule; instead he created ambiguity into the rule and then went outside of the rule in order to solve the problem in the Petitioner’s favor. He shouldn’t have done this. CAMA is cooperation between State and local government; however it does this through the process of local Land Use Plans and the participation of the Coastal Resources Advisory Council as well as other things. It does not require the CRC’s rules to be incorporating local ordinances in order to define the CRC’s rules.

Joan Weld made a motion to reject the ALJ’s decision as clearly contrary to the preponderance of the admissible evidence in the record and to amend the Findings of Fact and Conclusions of Law for the specific reasons set forth in the Respondent and Respondent-Intervenor’s exceptions and arguments. Melvin Shepard seconded the motion.

Melvin Shepard made a motion to strike Finding of Fact 11. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion to strike Finding of Fact 12. Bill Peele seconded the motion. The motion passed with eight votes in favor (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Old) and one opposed (Webster).

Melvin Shepard made a motion that the last sentence of Finding of Fact 13 should be stricken. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion that Finding of Fact 18 is incomplete where it describes that the new setback rules use total floor area as the sole determining factor when determining the setback. This Finding of Fact ignores the second part of 15A NCAC 07H .0306(a)(1) which uses total area of footprint in determining the size of development other than structures and buildings. This additional information should be added to ensure a complete characterization of this relevant rule. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Jerry Old made a motion to correct a typographical error in Finding of Fact 29 which incorrectly lists the Administrative Code quoted. This Finding of Fact should cite 15A instead of ISA. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Jerry Old made a motion to correct a typographical error in Finding of Fact 30 which incorrectly quotes the rule cited as “a building or structure” and should read “a building or other structure”. Joan Weld seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Veronica Carter made a motion to change Conclusion of Law 6 to read: The New Setback Rules require a building or other structure less than 5,000 square feet to be located 30 times the 2-foot erosion rate, or 60 feet, from the line of vegetation as set by the LPO. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Jerry Old made a motion to change Conclusion of Law 7 to read: The New Setback Rules require a building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet to be located 60 times the 2-foot erosion rate, or 120 feet, from the line of vegetation, as set by the LPO. Melvin Shepard seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Veronica Carter made a motion to change the use of the term “development” in Conclusion of Law 8 to the use of the actual rule language of “a building or other structure”. Joan Weld seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion to remove Conclusion of Law 9. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion to change Conclusion of Law 10 to read: The LPO acted correctly in calculating the total floor area for each building or other structure and correctly applied the appropriate setback of 60 feet (30 x 2 feet per year) for each building or other structure proposed. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Bill Peele made a motion to change Conclusion of Law 11 to read: The total floor area of the single family residence totals less than 5,000 square feet, and respondent DCM, through the Village's CAMA LPO, correctly determined the setback to be 60 feet (30 x 2 feet per year). Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion to change Conclusion of Law 12 to read: Pursuant to 15A NCAC 07H .0306(a)(2)(A), the appropriate setback for each building or other structure in the proposed project is 60 feet from the first line of stable and natural vegetation determined by the LPO. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion to change Conclusion of Law 13 to read: CAMA Minor Permit 2010-05 properly allows each of the structurally separate buildings or other structures to be place 60 feet or more from the vegetation line. The motion was seconded by Veronica Carter. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Veronica Carter made a motion to strike Conclusion of Law 15. Melvin Shepard seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard made a motion that portions of the Decision section should be changed to reflect a Decision and Order in favor of Respondent DCM's Motion for Summary Judgment, in opposition to Petitioner's Motion for Summary Judgment, and affirm the issuance of CAMA Minor Permit 2010-05 to the Intervenor-Respondent. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

VARIANCES

Sugar Creek II (CRC VR 11-03)
Dare County, Buffer

Ward Zimmerman of the Attorney General's Office represented Staff. Mr. Zimmerman stated E. Crouse Gray, Jr. is present to represent Petitioners. Mr. Zimmerman stated Petitioner is Mr. Ervin Bateman, the owner of Sugar Creek Restaurant in Nags Head. This is a restaurant on the waterfront in the estuarine shoreline. Petitioner proposes to construct a pergola over tables on a grassy area adjacent to the restaurant. The proposed development is inconsistent with 15A NCAC 7H .0209(d)(10).

Mr. Zimmerman reviewed the stipulated facts of this variance request. Mr. Zimmerman stated Staff and Petitioner agree on the first criteria. Staff agrees that the strict application to applicable development rules would cause the Petitioner unnecessary hardship. Staff and Petitioner disagree on the second and third statutory criteria. Staff do not believe that any hardship is a result of conditions peculiar to the Petitioner's property. This property is similar to other pieces of property up and down the coast. Staff believes any hardship is a result of actions taken by the Petitioner. Petitioner purchased this property in 2005 and these rules were in place at that time. Staff and Petitioner agree on the fourth criteria and Staff agrees that the granting of this variance request

would be consistent with the spirit, purpose and intent of the rules; would secure public safety; and would preserve substantial justice.

Crouse Gray, attorney for Petitioner, stated the CRC has rules for water quality and Petitioner does not believe the proposed development will degrade the water quality. This is the core concept before the CRC. There is nothing in the CRC's exceptions that specifically exempts pergolas. But the CRC could not think of everything that would need to be listed as an exception. This is why there is a variance process. The first criteria is the hardship issue and Staff agrees that adherence to the applicable development rules would cause Petitioner hardship. The Staff disagrees with the Petitioner on the second criteria. Staff doesn't believe the property is peculiar enough. This is a subjective standard. Peculiar means that something is different. Staff disagrees with Petitioner on the third criteria because when we bought the property in 2005 the rules were the same. However, this has been a restaurant since 1984. The logic you are being asked to accept is that there should be no variance for any piece of property since these rules were in place. The rule says that if Petitioner can come before the CRC and show that the actions that we are taking are actions that do not degrade the water then the CRC has the authority to grant a variance. Staff and Petitioner agree on the fourth criteria.

Veronica Carter made a motion that strict application of the applicable development rules, standards, or orders issued by the Commission cause the Petitioner unnecessary hardship. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Jerry Old made a motion that hardships result from conditions peculiar to Petitioner's property. Veronica Carter seconded the motion. This motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Veronica Carter made a motion that hardships do not result from actions taken by the Petitioner. Jerry Old seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Jerry Old made a motion that the variance requested by the Petitioner will be consistent with the spirit, purpose and intent of the rules; secure the public safety and welfare; and preserve substantial justice. Bill Peele seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Melvin Shepard offered an amendment to the motion to include a condition on the permit that prohibits a covered roof or floor on the pergola. Joan Weld seconded the amendment. Jerry Old agreed to the amendment. David Webster further amended the motion to include allowing native vegetation to cover the pergola. Melvin Shepard accepted the friendly amendment. The amendment passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

This variance request was granted with conditions.

PUBLIC INPUT AND COMMENT

Steve Powers, waterfront property owner, stated I am a professional land surveyor in Carteret County. I have been surveying in North Carolina for about 31 years. I have subcontracted work for the Army Corps of Engineers' beach erosion studies. I have walked shorelines in South Carolina to

Virginia and I know erosion. I have surveyed wetlands in coastal counties from private land owners to be reviewed and approved by the Corps of Engineers. I know about wetlands. I have surveyed the layout and performed as-built surveys for the rock sill and I may have been the first in the state back in 1997 at Silver Lake in Ocracoke. The ferries were prop-washing and destroying private properties as they were turning into the terminal. I know about sills. I have lived on Harkers Island for 22 years. I know about Back Sound. Sand is pushed and pulled to and from the shore depending on the seasons and the storm events. The high water mark on bulkheads on uplands and rock sills on wetlands have worked very well for decades. A couple of years ago a rock sill was installed to the west of my property. We opposed this sill from the very beginning. After two years, this sill has drawn all of the sand off of my sister's beach which is adjacent to me. There are numerous e-mails and letters and photographs documenting what this sill has done to the shoreline all of these years. This offshore sill and the right application works well. In the wrong application, it has a tendency to rob all of the sand off of our beaches. The measures that we were permitted to put in to protect our wetlands that were identified and documented with the Corps of Engineers are now falling into Back Sound. A couple of weeks ago I called Ted Tyndall and Ted said that maybe it would be a good idea if the CRC heard about this type of application and what it is doing to adjacent property owners on Back Sound. Ted said the CRC probably needed to hear some of the emotion that I have about this. The email pretty well explains what has happened over three years. I have left contact information. I think there was a study that was made in the past six, seven or eight months about this particular case and we haven't heard anything. I don't pay that much attention to it because it hasn't affected me that much to this point, but I went out to the shore the other day and a concrete monument that normally sticks out of the sand is about to fall over. They were allowed to go 30 feet out in to ORW waters. I know for a fact if you look at one photograph, you will see the SAV out there. That rock sill was installed in SAV. The wetlands were never identified on this piece of property. I know wetlands. I know what constitutes wetlands. Now the sand has dammed up the mouth of the wetlands on that property and there are other drainage problems. CAMA has all of the permits on our properties and on this subject property where the rock sill is. I would appreciate somebody looking in to this and see what kind of remedies that we can have because this isn't the end of it. I don't know what kind of situation we are going to have when this storm rolls through if it does. I have a feeling that all of this sand is going to settle out and that their shoreline is going to erode and fall back behind this sill. Then they are going to come back to the CRC and ask for a permit to protect their property. I told them that I didn't think that a rock sill was going to afford them the protection that they wanted. When the tide is four to five feet over the top of this sill and lapping at their shoreline it is going to eat out and erode their shoreline again. It breaks my heart to work all over the state of North Carolina and abide by every rule and regulation and have somebody come in my backyard and break every rule in the book. From a professional standpoint, I have watched this construction of the house and seawall and had numerous conversations with them and conversations with the CAMA office before this was ever put in and told them that this would happen. Now here we are. No one will listen. I am asking for somebody to listen.

MINUTES

Lee Wynns made a motion to approve the minutes of the May 2 and July 29, 2011 CRC meetings. Veronica Carter seconded the motion. The motion passed unanimously (Weld, Old, Peele, Carter, Shepard, Mitchell, Wynns).

EXECUTIVE SECRETARY'S REPORT

DCM Director Jim Gregson gave the following report.

Hurricane Irene

Hurricane Irene, the first hurricane of the 2011 Atlantic storm season, is currently expected to impact most of the East Coast from Florida to New York. It looks like it will be a Category 4 as it passes Florida and projected to be a Category 2 or 3 as it makes landfall in North Carolina. The latest projections are for landfall somewhere near Cape Hatteras late Saturday or early Sunday morning. The Division will be closely monitoring Hurricane Irene and preparing for any needed post-storm recovery. One of the biggest responsibilities we have following a hurricane is with roads and Highway 12. We have not had a significant hurricane make landfall in North Carolina since Isabel in 2003.

Clean Boater Program

The N.C. Clean Marina program implemented the new North Carolina Clean Boater program this spring. The Clean Boater program is an important part of the North Carolina Clean Marina program, which is designed to assist marinas and boatyards in protecting our environment through the use of best management and operation practices. Both programs are strictly voluntary, but they show that marinas and boaters care about the environment. Interested boaters can learn about the program through DCM's website or through brochures at local marinas. Boaters commit to clean boating by signing a pledge to protect North Carolina's coastal waters, and receive a Clean Boater sticker from DCM to place on their vessel. So far, 19 boaters have signed the pledge.

Clean Marina

The Washington Waterfront Docks in Washington, N.C., is the newest facility to be certified as a North Carolina Clean Marina, a designation given to marinas that exceed minimum regulatory requirements.

Estuaries Outreach

DCM's Coastal Reserve-National Estuarine Research Reserve Program was recently awarded a \$27,000 grant from the Albemarle-Pamlico National Estuary Program to conduct an estuarine shoreline outreach and education campaign within the APNEP region. As part of the campaign, DCM is conducting a Did You Know (DYK) campaign using Facebook and Twitter to raise awareness of issues related to N.C. estuaries, shoreline stabilization, and sea-level rise.

Staff News

Wilmington District Manager Steve Everhart retired from DCM on June 1. Debbie Wilson is the new district manager in the Wilmington office. Raleigh office policy analyst Scott Geis has left DCM to move with his family to Boston, Massachusetts. Reserve education coordinator Scott Kucera left DCM last month. Steve Underwood, formerly assistant director for Policy and Planning, is now DCM's coastal hazards analyst. His former position was eliminated in the budget bill. Jason Dail has moved from the Wilmington Reserve office staff to a position as a field representative in the Wilmington district office. Claudia Jones' position, field representative in the Elizabeth City office, was also eliminated. She is currently in a temporary position as the Northern Sites Manager for the Coastal Reserve Program. Two DCM staff and one UNCW contract staff person were impacted by the budget reductions this year, and are no longer working for the division: Morehead City receptionist Lowana Barrett, major permits clerk Robin Beveridge and Wilmington Reserve GIS analyst Jacqui Ott. Finally, it is with very mixed feelings that I will be leaving my position as

DCM Director effective September 6. I have accepted a position as the Regional Water Quality Supervisor for the Division of Water Quality in the Wilmington Regional Office.

CHAIRMAN'S COMMENTS

Bob Emory stated Jim Gregson has been a wonderful director for the Division of Coastal Management. If we get this hurricane then there may be times that we may have to get the Commission together for quick action. We have some standing emergency permits that can be exercised, but there may be a situation that arises that we have not anticipated so be prepared to meet by phone on short notice. Robin Smith is here from DENR.

DENR ASSISTANT SECRETARY COMMENTS

Robin Smith stated there are a number of things that have happened during the Legislative session in terms of budget and Jim just mentioned some of the impacts on DCM staff. There were also a number of substantive pieces of legislation that will affect the Commission and you will be hearing today about the terminal groin legislation. You have heard about some of the changes under the amendments to the Administrative Procedures Act and how it will affect rulemaking. It will add a number of additional steps to the rulemaking process. It won't be a significant new burden on the rulemaking side. One of the changes that may generate a lot of interest is how fiscal impact statements are handled and making the fiscal analysis part of the public notice and comment process. The other half of the APA Bill had to do with contested cases. This gives the ALJ the final decision making authority in contested cases. The CRC can look forward to fewer large hearing records, but it will be a learning experience for everyone as far as how well this will work. It will put the Division and Commission in the position of making a decision to appeal administrative ruling. There is a new exemption from SEPA from CAMA development permits. I expect there will be some interpretation questions about this that we will be dealing with the Division and the Attorney General's office. We will try to discern and follow the intent of the legislation. On the Department level, overall reductions in the Department's budget were about 12.5%. In the grand scheme of things, compared to some other agencies in State government, it was in the middle of the cuts. Since January 2009, the Department has taken a cut of about 30% which is a significant reduction in State appropriations. One of the things to know about that is because we have to protect the core functions in the Department, and in particular with the federally delegated programs such as Coastal Management that operate under federal grants and guidelines, we have to protect these functions first. What happens, unfortunately, is the programs that are easiest to find State dollar cuts to tend to be the conservation programs. We have seen over the last several years cuts to these programs and essentially a freeze to land acquisitions. This hurts us on the regulatory side because it takes away a non-regulatory tool to help us meet some of our environmental protection and conservation goals.

COMMITTEE REPORTS

Estuarine and Ocean Systems Subcommittee
Bill Peele, Chair

Bill Peele stated the subcommittee discussed marsh sills. There was a panel discussion and the subcommittee wanted to come up with some ideas of what we could do to better facilitate the attractiveness of the marsh sill in the permitting process. The subcommittee discussed the fact that we may need to go to a Major Permit because it could be conducted in a shorter time line. We agreed some disincentives for the other options may be a place to go but there is a complication with dealing with the legalities involved and liabilities of taking away choices. The estuarine

shoreline is diverse and it gives us an opportunity to study the best things to use for shoreline stabilization in different areas. We need to give property owners a choice.

Ocean Hazards Subcommittee
Lee Wynns, Chair

Lee Wynns stated the subcommittee looked at the sandbag stakeholder recommendations. We reviewed the comments from the meetings. We all agree that there are updates needed in our sandbag rules, but there was not a consensus on exactly what should be done. We learned a lot from the stakeholder meetings. Veronica Carter stated that staff provided some recommendations on rule language changes that would extend the time limit to eight years while a community is actively pursuing beach nourishment.

Veronica Carter made a motion to direct staff to come back to the CRC with rule language that would address extending the time limit for sandbags to eight years for communities actively pursuing beach nourishment while maintaining the spirit of public access to the beach. Lee Wynns seconded the motion. The motion passed unanimously (Mitchell, Wynns, Peele, Weld, Shepard, Carter, Old).

Veronica Carter will be Vice-Chair of this subcommittee.

Science Panel Update
Margery Overton, Chair

Margery Overton stated the Science Panel just met this week. There were a number of things on the agenda and one of them was the terminal groin question from DCM. We have created a set of by-laws and will be better poised in the future to deal with things coming from DCM and reporting back to the CRC.

ACTION ITEMS

Fiscal Analysis Approval – 15A NCAC 07K .0214

Fiscal Analysis Approval – 15A NCAC 07H .0312

Tancred Miller stated this is a new requirement for the CRC following Session Law 2011-398. We are now required to present the CRC the fiscal analysis of any rule changes or rule adoptions. The Law now requires the CRC to approve these before the rule can be published for public comment in the State Register. Fiscal notes are required if there is any increase in expenditure of state budget funds, if there is an impact on the budget of the local government, or if there is a substantial economic impact which is defined as \$500,000 or more cumulatively in a 12 month period. Analysis is also required for the D.O.T. and whether there is an impact on their permitting and budgeting as a result of a rule change. The fiscal analysis is provided in the CRC meeting packet for review before the meeting.

7K .0214 is a straight forward, simple rule. The CRC has already approved the rule language. This rule would exempt certain regulatory signs from permitting requirements. The net impact of this rule change is a minor savings. We looked at how many signs we permit per year and what is the cost. If the permit costs \$100 and we do ten or less per year. This would be a cost savings to the local government. 7H .0312 Technical Standards for Beachfill Projects is a little more involved. There is a large potential cost savings to local governments. We used the example of Carteret

County wanting to do sampling of a borrow area and the inlet. The cost is substantial for sampling these areas. This would not be a substantial impact since this is not a once per year activity.

Jerry Old made a motion to approve the fiscal analysis for 7K .0214 and 7H .0312 for public hearing. David Webster seconded the motion. The motion passed unanimously (Mitchell, Joyce, Wynns, Peele, Weld, Shepard, Carter, Webster, Old).

Fiscal Analysis Approval – 15A NCAC 07H .0304

Mike Lopazanski stated there are assumptions that have to be made when looking at private property owners and development in ocean hazard areas that need minor permits. The minor permit fee is \$100.00 but an exemption fee is \$50.00. More people would qualify for the exemption for a single family residence. We have averaged a little more than 1,000 minor permits per year. The total number of lots in the OEA now versus the change of this rule will be about 16.5% reduction in the number of properties coast-wide. The savings in permit fees as well as ancillary costs will be about \$1000.00 in addition to the permit fee. It turns out to be \$178,000.00 savings to property owners. On top of that will be the 1,500 or so properties that fall out of permitting jurisdiction and will not need a permit will be \$156,000.00 in potential savings. We are getting a net savings from this action of about \$344,000.00 to property owners. This factors in removing the 100-year storm recession line. When removing the unvegetated beach designation it will affect the folks in the vicinity of Hatteras Village. Looking at aerial photography we've determined that the vegetation line in many of the areas has returned to their pre-Isabel conditions so the measurement line is more restrictive now than if the calculation for the setbacks would be based on the existing stable, natural vegetation. Since those determinations are made in the field, we cannot estimate the number of properties that will benefit by this. The real benefit to the property owners will depend on the square footage of development that is being proposed. The vegetation line in most cases is less restrictive than the measurement line. The benefit to the property owners will be increased building envelopes as the vegetation continues to recover. That will present more opportunities for development. Removing the inlet hazard designation for the area formerly known as Mad Inlet will affect the properties that were in the inlet hazard area. They will get relief from the density restrictions that accompany the use standards in the inlet hazard areas. There are 126 properties or so located in this area. Less than 10 are currently undeveloped. Without the inlet hazard designation they won't be required to adhere to the density and size restrictions. They will be treated as the rest of the property is in the ocean hazard areas. The primary benefit would be to any large, undeveloped and unsubdivided properties. D.O.T. will not be affected by the maximum setback factors. The State reimburses local governments for participating in the Minor Permit program. The cost is \$115.00 per permit for counties, \$95.00 for municipalities, and \$25.00 for every exemption they issue. Based on the number of permits that are issued by LPOs on the coast, the estimated savings to the Division is about \$13,000.00 from reimbursements. Local governments will save on the public notices and will see a reduction in permit receipts as well as the reimbursement from the Division equal to our savings. The benefits of all three of these actions is the decreased regulatory burden in the ocean hazard area, more properties would be eligible for a CAMA permit exemption, a slight decrease in the number of properties needing permits, reduces overlapping jurisdiction within the ocean hazard area, not duplicating federal efforts, and responding to natural changes on the coast to limit development restrictions where it no longer applies.

Veronica Carter made a motion to approve the fiscal analysis for 7H .0304 for public hearing. Joan Weld seconded the motion. The motion passed unanimously (Mitchell, Wynns, Peele, Weld, Shepard, Carter, Old).

Brunswick County LUP Amendment (CRC 11-17)

John Thayer stated the Brunswick County land use plan was certified by the Commission in November 2007. They have previously amended their plan and this is the second amendment that needs certification. The amendment has four components. The most notable one is they made about 17 adjustments to their future land use plan map, they made some policy and implementation statement adjustments, and the other adjustments to the plan are principally background and support information. There are no issues that Staff sees with this amendment. Staff believes they have met the substantive requirements for the amendment. Staff recommends certification.

Melvin Shepard made a motion to certify the Brunswick County Land Use Plan amendment. Jerry Old seconded the motion. The motion passed with six votes in favor (Mitchell, Wynns, Peele, Weld, Shepard, Old) and one abstention (Carter).

City of Jacksonville LUP Certification (CRC 11-21)

John Thayer stated per the 2002 updated land use plan rules; the City of Jacksonville has updated their land use plan in total. We have received no comments regarding the local adoption of the plan. Staff has determined that they have met all of the substantive requirements for certification and staff recommends certification.

Lee Wynns made a motion to certify the City of Jacksonville Land Use Plan amendment. Veronica Carter seconded the motion. The motion passed unanimously (Mitchell, Wynns, Peele, Weld, Shepard, Carter, Old).

PRESENTATIONS

Amendments to 15A NCAC 07H .0304(1)(b)

100 Year Storm Recession Line and Extent of Ocean Erodible AEC (CRC 11-19)

Mike Lopazanski

Mike Lopazanski stated this rule has already been approved for public hearing. There are three components of it. We looked at changing the calculation of the ocean erodible area AEC, we removed the unvegetated beach designation for Hatteras Village, and we removed the inlet hazard area designation for the area that was formerly Mad Inlet in Brunswick County. In the course of doing the fiscal analysis we were looking at what the results of the calculation of the ocean erodible area was going to mean and it turned out that it was going to be a substantial increase in the permitting jurisdiction of the Commission. Upon further review of the factors that go into the calculating of the AEC, we are proposing an additional change to the calculation having to do with the 100-year storm recession line. There will also be one more change in not allowing the unvegetated beach designation to be used in inlet hazard areas.

The ocean erodible area AEC is defined by the oceanward end by the mean low water and landward by the distance measured from the first line of stable vegetation equal to sixty times the long-term annual erosion rate. The landward extent of the OEA also includes the distance of the shoreline recession that would be generated from a 100- year storm event. The shoreline recession model has

a minimum and maximum value for our coast of 25 and 330 feet depending on where you are. It is greater in the south and less toward the north. The inlet hazard areas, the ocean erodible areas and the high hazard flood areas make up the ocean hazard AEC. Since 2009, when the CRC adopted a graduated setback, it substantially increased the ocean erodible area. There are cases, because of the 100-year storm recession line; it substantially increases the permitting jurisdiction of the Commission. The 100-year storm recession line was originally completed in 1979. It was done prior to the establishment of the erosion rates. The idea was modeling that was done to predict a 100-year storm after 30 years of erosion. It was a dune protection idea. By changing the maximum setback factor from 60 to 90, we have substantially increased the ocean erodible area by about 30% geographically. It results in a 15% increase in areas that don't have AECs. According to a GIS analysis, it results in an increase of about 3,600 properties in the ocean hazard AEC. These are properties that did not need a permit prior to this action. If we remove the 100-year storm recession line it will decrease the width of the OEA in the south. There will be a slight increase in the north. This will also increase the number of properties that will be eligible for the single family exemption. Single family residences that are outside of the OEA are eligible for this exemption provided that they meet certain construction standards and that they sign the ocean hazard notice. This will not have an impact on the setbacks. The maximum setback factor will still be 90 times the erosion rate for structures greater than 100,000 square feet.

Veronica Carter made a motion to send 15A NCAC 07H .0304 to public hearing. Melvin Shepard seconded the motion. The motion passed unanimously (Mitchell, Wynns, Peele, Weld, Shepard, Carter, Old).

2011-2013 CHPP Implementation Plan
Mike Lopazanski

Mike Lopazanski stated this relates to the 1997 action by the General Assembly and the passing of the Fisheries Reform Act which created a program to focus on improvement of fisheries through the protection and enhancement of habitats. The CHPP is divided into six important habitats. The Act requires the three regulatory commissions to work together to prepare and adopt a Coastal Habitat Protection Plan that is aimed at protecting and restoring habitats vital to the state's fisheries. DENR is charged with developing the CHPP and Marine Fisheries is the lead in that activity. Over the last year we have worked with the CHPP Steering Committee. The CHPP was updated in 2010. That was presented in November 2010 and was approved. The recommendations remained essentially unchanged so the focus will continue to be actions to address the recommendations.

Melvin Shepard made a motion to approve the 2011-2013 CHPP Implementation Plan. Veronica Carter seconded the motion. The motion passed with six votes in favor (Mitchell, Peele, Weld, Shepard, Carter, Old) and one opposed (Wynns).

Terminal Groins – CRC Study & Recommendations, Legislation and Permit Process
Jim Gregson and Doug Huggett

Jim Gregson stated the General Assembly mandated through House Bill 709 that the CRC study the feasibility and the advisability of the construction of terminal groins in North Carolina. The Bill said that the CRC would coordinate with DCM and the Division of Land Resources. We decided early on that the Science Panel needed to be intimately involved early on in the process. Moffatt and Nichol was already working on the Beach and Inlet Management Plan so we extended that

contract. The total project was seven months and the report was due to the ERC and the General Assembly April 1, 2010. The Bill required three public hearings but we held five. A subcommittee of the CRC met twice to come up with the final recommendations to be presented on March 25, 2010. The CRC found that the study determined that terminal groins in combination with beach nourishment can be effective at controlling erosion. Since all of the inlets are different, the analysis for terminal groins needs to be done on a site specific basis. The findings were mixed regarding the effects on wildlife and marine resources. The CRC determined if it was the desire of the General Assembly to lift the limitations then there were several things that needed to be looked at when drafting a Bill. The first was that terminal groins should only be allowed after all other non-structural measures including relocation of threatened structures are found to be impracticable. The effect on a terminal groin should include the citing and construction that avoid interruption of the sand movement to the downdrift beaches. Any proposal should be accompanied by an environmental impact statement. There should be third party review of the environmental impact statement. And recognizing that terminal groins could affect properties a long way from the structure and all the property owners that could potentially be affected by a terminal groin should be notified during the permitting process. Because the effects were unknown and some of the effects could be expensive with the construction of the terminal groin as well as removal of it, the CRC recommended that there be some financial assurance in the form of a bond or insurance policy for the removal of the structure and restoring any affected properties or beaches. The CRC said that the use of a terminal groin should have an adequate monitoring plan to ensure that the effects on resources and adjacent properties don't exceed what was anticipated in the environmental document. The monitoring should be done by a third party and not by the applicant. Finally, the CRC recommended that any terminal groin project in North Carolina should be part of a beach nourishment project that had no less than a 25 year design life. This year there was a Bill introduced that became law, Senate Bill 110, which authorized the permitting and construction of up to four terminal groins as a pilot program. The Bill has six sections. One of the big changes to some of the earlier proposed legislation was the definition of a terminal groin. Senate Bill 110 limited terminal groins to those structures that were on the side of an inlet at the terminus of an island. Senate Bill 110 mandates that the applicant has demonstrated that there are threatened structures and that non-structural approaches are found to be impractical. SB110 says that the construction won't result in significant adverse impact to private property or to public recreational beach and in making this finding the CRC should take into account all the mitigation measures that are in place as well as the accompanied beach fill project. There are also sections in the amendment to CAMA. One of those is the things that have to be included in a permit application and then there is a list of things that the Commission has to find before a permit is granted. The CRC recommended that there be a third party review of the environmental documents that are required. SB110 does not address a third party review of the environmental document. The CRC recommended that all property owners that could potentially be affected by notified. SB110 says that the applicant shall provide proof that the property owners and local governments have been notified of the application for construction of the terminal groin. The CRC requested that there be some financial assurance for the removal or restoration of the site. SB110 says the Commission has to find the proof of financial assurance in the form of a bond, insurance policy or escrow that is adequate to cover long-term maintenance and monitoring, modification or removal of the structure and restoration of public or private property if it is determined that it has an adverse impact. The CRC recommended that there be an adequate monitoring program to ensure that the effects on coastal resources don't exceed what was in the environmental document. SB110 requires that there be a plan for the management of the inlet and that the inlet management plan is adequate for the purposes of monitoring the impacts of the groin and then mitigating any adverse impacts. The CRC recommended that the groin be part of a large-scale nourishment project that would achieve a

design life of no more than 25 years. SB110 says that the applicant shall submit a plan for the construction and maintenance and an accompanying beach fill project. It doesn't specify that it be a large-scale project or a project with a 25 year design life, the only stipulation is that it be accompanied by a beach fill project to pre-fill the groin. We may ask the Science Panel for some clarification and guidance on this part. The assumption is that pre-filling the groin will put enough sand there to immediately start to bypass. That is very different than the CRC's recommendation. Section 3 of the Bill says the Commission shall adopt any rules necessary to implement the Act. Currently, staff is not recommending any rule changes. We feel like there is enough information in SB110 to begin to process a permit application if we should receive one. Besides the pre-fill of the groin, we are going to talk with the Science Panel about defining what adverse impacts along the shoreline are or what triggers significant impacts. Section 4 is a statement that no state funds can be spent for any of the activities related to the terminal groin or its beach fill project. Section 5 is the restrictions on where the money has to come from.

Doug Huggett stated the CRC's permit processing rules that are in Subchapter 7J are already robust enough to allow us to process an application for a dock, sulfur smelter, or concrete plant. We think the robustness that is already built into the review process for CAMA Major Permits is sufficient to allow us to fit this unique project into it. While there are certainly some unique components to this process for terminal groins, the process as we envision is not dissimilar from the template we have used successfully used for some of our beach nourishment projects and projects that involved inlet relocation. An application for a terminal groin will fit into this process. There are requirements in the groin legislation that can be folded into this process to help us get to a permit decision. The first thing the applicant would do is have a scoping meeting with members of the public and resource agencies. The process that we have in place to develop these beach nourishment projects or terminal groin projects is something that starts with a project delivery team. This is predicated on the fact that the first step in this process has to be the preparation of an environmental impact statement to satisfy the groin legislation at the state level and to satisfy federal permitting requirements. A study area is looked at where you are likely to get direct impacts from the proposed project. The second part is a study area where you are likely to get indirect impacts from the projects. We have to identify the property owners and governments that may be impacted by the terminal groin. We will do this in coordination with the consultants and the engineers. The project delivery team will come up with alternatives to study and then narrow the alternatives down and setup mitigation and monitoring. The alternatives analysis is going to include several things. The first is a no action requirement. There will be alternatives for buy-out, relocation, or abandonment, beach nourishment without inlet relocation, beach nourishment with inlet relocation, and structural response alternatives that would be studied. You also have to look at borrow site selections and do alternatives for those. As we are choosing an alternative to go forward with, there is going to have to be information provided in the environmental assessment that demonstrates that structures or infrastructure are imminently threatened. Secondly, non-structural approaches to erosion control including relocation have to be shown to be impractical. You will try to make a determination that a terminal groin or a project that involves the construction of a terminal groin is the preferred alternative. At that point in time you start developing the plan. The plan is going to have to involve the construction and maintenance of the groin and its accompanying beach fill project. This will have to be prepared by a professional engineer. The plan has to include post construction activities that the applicant is going to undertake to monitor the impacts. Methodology for determining the baseline for assessing impacts has to be included as well as thresholds for when these adverse impacts must be mitigated. If the adverse impacts cannot be mitigated then the plan must provide for modification or removal. After the environmental document comes up with a preferred plan, it must look at post and pre-project monitoring. The groin legislation requires

certain things to be included in the monitoring aspect and the mitigation aspect and some financial assurance requirements. The environmental impact statement will satisfy both State and National Environmental Policy Acts. This begins the permit application process. During the permit application process, there are already a lot of findings that we have to make under our program before a permit for any activity can be issued. The project cannot have more than minimal adverse impact on the biological integrity of a lot of coastal resources. You cannot violate water quality standards. The project can't represent significant damage or threat to historical or cultural resources. The project has to be timed to have minimal adverse impacts on fish movement, turtles, and birds. Navigational impacts are always something we have to look at. We cannot issue a permit that would be in violation of any other law of the state of North Carolina or the local government where the project takes place. The groin legislation sets up some additional findings that we have to make before we can issue a permit. First, if the applicants have complied with all of the requirements of the permit application. Second, the applicant must have demonstrated that structures are imminently threatened and that non-structural approaches to erosion, including relocation, are impractical. The terminal groin has to be accompanied by a concurrent beach fill project to pre-fill the groin. The construction and maintenance of the groin will not result in significant adverse impact to private property or the public recreational beach. Mitigation efforts can be factored into this decision. If there is a potential adverse impact to the public beach then mitigation measures can downgrade the potential impact to a point where it would be permissible. We have to make a determination that the inlet management plan is adequate for monitoring the impacts of the terminal groin and mitigate any adverse impacts. The project also has to comply with all of the other rules of the Coastal Resources Commission. There are some funding issues. We have to make a finding of this before we can issue a permit. We don't have much expertise in this area. We will be looking for some additional legal help in terms of making sure that these requirements are satisfied. The Commission may issue no more than four permits for the construction of a groin. There is a lot of concern with this requirement. The legal opinion that we have gotten is that it will be whichever four projects get to the point of getting a permit issued then these are the four that will be issued. DCM does not recommend any changes to 7J of the CRC rules that deal with processing permit applications. The development of the environmental impact statement is not a short term process. From the time the applicant makes the decision to begin the EIS until the time of actually getting the permit it will be about a two year process.

Estuarine Shoreline Mapping – Preliminary Results (CRC 11-18) Lisa Cowart

Lisa Cowart stated estuaries are significant due to their ecological significance with absorbing wave energy and habitat for fisheries and shellfish. They are also heavily populated areas. The goal of the estuarine shoreline mapping project was to delineate an accurate estuarine shoreline for the 20 CAMA counties in North Carolina, to quantify the mileage of various shoreline types, and to count the number of shoreline structures. The objectives of the project were to understand the effects of development on estuarine shoreline and to further understand how permitting activities affect coastal residents in an estuarine environment. The project began in December 2006 and from December 2006 until June 2007 a pilot project was conducted to try to see if they could automate the project of delineating the shoreline. This was not fruitful. In December 2007, the estuarine shoreline mapping summit was held which gathered various members of people that were interested and also advisors to try to hash out a methodology and approach to conduct the project another way. From the summit, in August 2008, a methodology was drafted and circulated throughout the estuarine shoreline mapping group. Once the methodology was defined, ECU was contracted to digitize the shorelines on a county by county basis. We are anticipating this will be completed by

December 2011. Aerial photography was used to digitize the shorelines. From that, three GIS layers are created. These layers are the estuarine shoreline, shoreline stabilization structures, and structures over water. The estuarine shoreline is delineated as the land/water interface. The shoreline stabilization structures are composed of boat ramps, breakwaters, groins, sills, riprap, unknown and bulkhead. The structures over water were digitized as polygons because we wanted to calculate the area. Of the 20 CAMA counties 17 have been digitized. Once the counties are digitized, they are brought in house and checked for quality accuracy and quality control by DCM staff. Except for Tyrrell County, the four other counties are dominantly bulkhead along the estuarine shoreline with riprap being second. If we look at all of the structures that were digitized we can see that the dominant amount has bulkheads. The sills, breakwaters and boat ramps are minimal. Once the summaries were completed then we wanted to go into more depth into the data to see what we could find. For Washington County less than 5% of the shoreline is marsh and there are no modification structures near the marsh areas. There was no bulkhead or riprap present. We also looked at shading within Washington County. In total there was 15.62 acres of water shaded by structures within Washington County. There is only one acre of structures that are landward of the water. There are 23 boat ramps within Washington County that average around 20 feet in width. There are 58 groins within Washington County with a mean length of 25 feet. There were no breakwaters present within Washington County, but there were six sills present. The sills had an average length of 80 feet. This additional analysis will be done on the other counties as they are finalized. We are also collaborating with Shellfish Sanitation to field check some of the data. We have also discussed doing some spatial analysis. There has also been talk about trying to perform some shoreline change analysis.

With no further business, the CRC adjourned.

Respectfully submitted,



Ted Tyndall, DEM Assistant Director



Angela Willis, Recording Secretary



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

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TO: The Coastal Resources Commission

FROM: Amanda P. Little, Assistant Attorney General *APL*

DATE: October 12, 2011 (for the October 26-27, 2011 CRC Meeting)

RE: **Variance Request by Stephen C. Holland**

Petitioner proposes to construct additions to an existing restaurant to include a 28-foot by 28-foot covered and elevated porch; a 20-foot by 28-foot uncovered, elevated, wood-slatted deck; and a 6-foot by 24-foot elevated, wood slatted walkway on his property located on Highway 53 in Burgaw, North Carolina. The Pender County Local Permit Officer denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10). Petitioner seeks a variance from this rule, specifically to allow construction of the proposed development within the 30-foot buffer of the Public Trust Shoreline Area of Environmental Concern.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rule (15A NCAC 7H .0209(d)(10))
Attachment B: Stipulated Facts and Exhibit 1
Attachment C: Petitioner's Position and Staff's Responses to Criteria
Attachment D: Petitioner's Variance Request Materials

cc: Stephen C. Holland, Petitioner
Kenneth E. Vafier, Pender County LPO, electronically
Debbie Wilson, DCM Wilmington District Manager, electronically
Heather Coats, DCM Field Representative, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0209 Coastal Shorelines

(d) Use 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:
- (A) Water-dependent uses as described in Rule 7H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - [C] Post-or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters and,
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible.
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (I) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

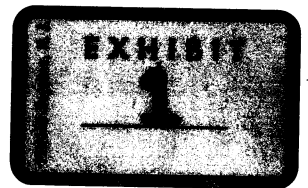
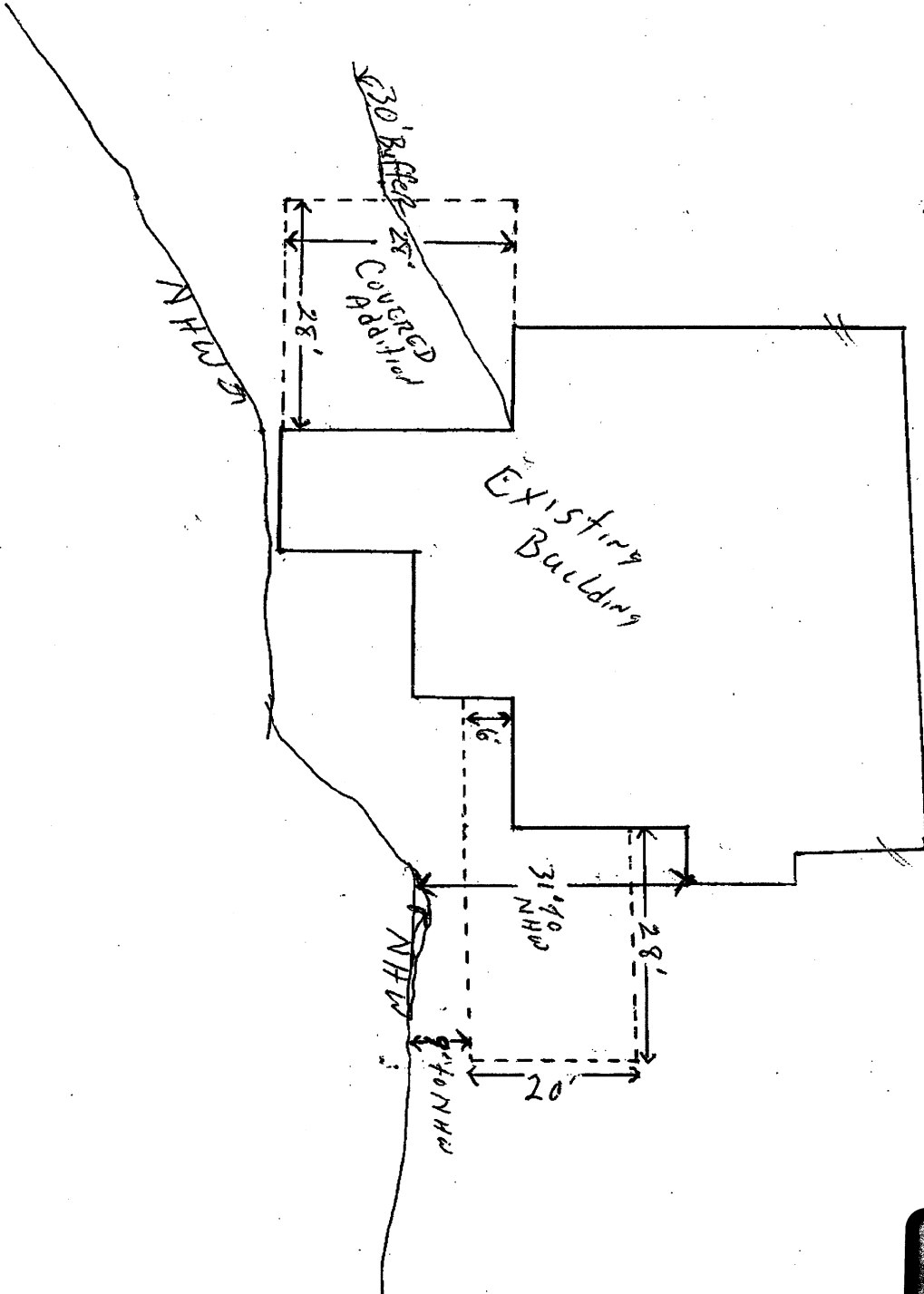
- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (I) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner, Stephen C. Holland, owns property located at 8315 Hwy 53 E in Burgaw, Pender County, NC. Petitioner leased this .73-acre lot for twenty-eight years prior to purchasing it in 2009.
2. Since 1981, Petitioner has operated Holland's Shelter Creek Restaurant (hereinafter "restaurant") on the property.
3. The existing restaurant is 4,636 total square feet and is situated along the shoreline of Holly Shelter Creek, which is a Public Trust Area as defined by 15A NCAC 7H .0207.
4. Petitioner's proposed development is located within 30 feet of normal high water level within the Public Trust Shoreline Area of Environmental Concern (AEC), created August 1, 2000, as described in 15A NCAC 7H. 0209.
5. Since August 1, 2000, 15A NCAC 7H .0209 has provided that new development within the Public Trust Shoreline AEC be located a distance of 30 feet landward of the normal water level or normal high water level (hereinafter "30-foot buffer"), unless it meets an exception currently listed in subsection (d)(10)(A)-(J) of that rule.
6. The entire property is located in the AE flood zone (100-year flood plain) within a non-encroachment area which currently requires a No-Rise Certification for the proposed development to comply with FEMA (Federal Emergency Management Agency) regulations and Pender County's Unified Development Ordinance. Petitioner received this certification for the proposed development on August 23, 1998, and it was revised on May 22, 2000. However, this certification has no bearing on the required 30-foot buffer or the issuance of a permit under the Coastal Area Management Act (CAMA).
7. In September 1999, Hurricane Floyd made landfall in the Cape Fear region and caused significant flooding inside of the restaurant.
8. On May 2, 2011, Petitioner applied for a CAMA minor permit to construct additions to the existing restaurant. The proposed additions consisted of a 28' by 28' covered and elevated porch totaling 784 square feet; a 20' by 28' uncovered, elevated, wood-slatted deck totaling 560 square feet; and a 6' by 24' elevated, wood slatted walkway totaling 144 square feet. *See* Exhibit 1 and attached site diagram in Attachment D marked "Exhibit F revised 5/22/00".
9. Notice was given to the adjacent owners and to the general public of the proposed additions. No objections to the proposed development were received.
10. On May 23, 2011, the Pender County Local Permit Officer (LPO) denied Petitioners' application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10).

11. On September 29, 2011, DCM staff conducted a site visit on Petitioner's property. DCM staff determined that the 30-foot buffer line as shown on the site plan submitted by Petitioner ("Exhibit F" in Attachment D) was mismarked; therefore some of the square footage measurements in the LPO's denial letter are incorrect. DCM staff determined that 553 square feet of the 28' by 28' (784 square feet) covered, elevated porch is located within the 30-foot buffer and that the entire 20' by 28' uncovered, elevated deck (560 square feet) is located within the 30-foot buffer. *See attached Exhibit 1.*
12. The portion of the 28' by 28' covered, elevated porch located within the 30-foot buffer does not meet any of the exception criteria for development set forth in 15A NCAC 7H .0209(d)(10). Even though the 20' by 28' elevated deck meets part of the exception under criteria (F) because it is an uncovered deck, it exceeds the allowable area of 200 square feet. The LPO in his denial letter stated that approximately 280 square feet of opening decking was within the 30-foot buffer, however, the entire 20' x 28' (560 square feet) uncovered deck is located within the 30-foot buffer.
13. On July 12, 2011, Petitioner submitted his variance request to construct the proposed additions to the Division of Coastal Management (DCM). *See Attachment D.* Specifically, Petitioner, as verified by DCM staff during the September 29 site visit, is requesting a variance to construct the 553 square feet portion of the 28' by 28' covered, elevated porch located within the 30-foot buffer and for an additional 360 square feet of open decking that exceeds the excepted size limit of 200 square feet within the 30-foot buffer.

NC 53



ATTACHMENT C

Petitioner and Staff Positions

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

Petitioners' Position: Yes.

Hardship will be caused because restaurant additions that were planned prior to the effective date of the applicable rules will not be allowed under the applicable rules. The restaurant depends upon its character and location on the Creek as a main attraction for customers. The additions were planned on the Creek frontage of the restaurant because they would not benefit the business if constructed otherwise.

Staff's Position: Yes.

Staff acknowledges that Petitioner, who has run a restaurant at this location since 1981, began the process to expand the existing restaurant waterward in 1998 as evidenced by the site plan he provided as well as the no-rise certification issued to Petitioner for this proposed development. At that time, Petitioner's proposed development did not require a CAMA permit because his property was outside of this Commission's jurisdiction in that the Public Trust Shoreline AEC did not exist until August 1, 2000. Petitioner's expansion plans were stalled due to the substantial flooding of the restaurant when Hurricane Floyd made landfall in eastern North Carolina in September 1999. This unanticipated hardship led to unexpected financial obligations in repairing the flood damage to the restaurant. Without such hardship, Petitioner would have been able to pursue construction of the proposed development without any consideration of an AEC because it had not been established by rule at this time. Therefore, the strict application of the 30-foot buffer rule causes Petitioner an unnecessary hardship because absent the hurricane damage, Petitioner would have been able to construct the proposed development without any oversight under CAMA. Furthermore, to strictly apply standards that were not in effect when the proposed project began constitutes an undue and unnecessary hardship on Petitioner.

- 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 property flooded as a result of Hurricane Floyd on September 16, 1999. The property had never flooded before, including Hurricane Fran. The water level was five and one-half feet inside the restaurant (see attached photos). After repairs were made and the business was operating again, it was not economically feasible to construct additions for some time. (The last note for the flood damage repairs and equipment replacement was paid in April 2011.) The

thirty foot setback rule became effective August 1, 2000. So the flooding conditions at the property location caused the additions not to be made before the rule went into effect.

Staff's Position: Yes.

Staff contends that Petitioner's hardship is caused by conditions somewhat peculiar to this property. Its location was not in an AEC when planned, but was encompassed when the Public Trust Shoreline was established in 2000. Even though the existing restaurant abuts the neighboring creek, Petitioner received a no-rise certification prior to Hurricane Floyd in 1998, stating that the proposed development would not cause a rise in the water surface elevation upstream of the site. The substantial flooding caused by Hurricane Floyd was unique given the location of the property and existing restaurant actually on the banks of Holly Shelter Creek in that the hurricane made landfall within this region of the Cape Fear River Basin. Staff also notes that the location of this property is distinctive because of its rural character and limited development of neighboring properties thus there would be negligible impact to the vistas of neighboring properties due to the proposed development.

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

Petitioners' Position: No.

The flood and timing of circumstances were beyond the control of the petitioner.

Staff's Position: No.

Staff agrees that a combination of factors beyond Petitioner's control unfortunately delayed the proposed development project that began in 1998 prior to any CAMA jurisdiction over the applicable high ground area. Therefore, events unforeseen by Petitioner created the hardship in that he did not immediately proceed with the expansion of the existing restaurant in 1999 due the substantial damage caused by the hurricane. Consequently, the CAMA rules were amended in August of 2000 creating the Public Trust Shoreline AEC and implementing a required 30-foot buffer essentially encompassing all of Petitioner's proposed development.

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 rules, standards and orders issued by the Commission. Forty-seven percent of the addition will be uncovered, slatted walkway or deck that will allow stormwater to pass through (i.e. not impervious). All of the structures except for the support pilings will be above the 100 year flood elevation. None of

the addition will be beyond the normal water line of Shelter Creek. The first 1.5” of the stormwater from the impervious section of the addition will be retained on-site. Therefore, the additions will have minimal if any impact on water quality in Shelter Creek.

The variance will secure public safety and welfare. None of the addition will extend over or into Shelter Creek. And, the attached engineer’s No-Rise certification shows that the addition will not cause a rise in water levels in the Creek in the event of a 100-year flood. Even the flooding of Hurricane Floyd did not cause any portion of the existing restaurant to break away and enter Shelter Creek. It is not expected that the variance will result in any detrimental environmental impact.

The variance will preserve substantial justice. The additions could have been made prior to the effective date of the applicable rules if not for flooding caused by Hurricane Floyd, which caused more than 19” of rainfall in the area in three days, with a record 24-hour rainfall in Wilmington of over 15 inches. This was far beyond any normal event and beyond the control of the petitioner.

Staff’s Position: Yes with conditions.

Staff agrees that the variance requested by Petitioner would be consistent with the spirit, purpose and intent of the rules; secure the public safety and welfare; and preserve substantial justice provided that the following conditions regarding a stormwater management plan be addressed in the variance order. Staff proposes that Petitioner be required to retrofit the site for an innovative engineer-designed stormwater management system meeting all applicable CAMA requirements to reduce the impacts of stormwater from impervious surfaces on the adjacent creek. Furthermore, Petitioner shall provide the proper operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and insure that such obligation becomes a permanent obligation of future property owners. Also, any proposed grading with the 30-foot buffer from the normal high water must be contoured to prevent additional stormwater runoff to the adjacent creek. This area shall be immediately vegetatively stabilized, and must remain in a vegetated state.

Staff feels with these conditions that the project meets the spirit, purpose, and intent of the buffer rule, and secures public safety and welfare by reducing runoff pollution into the marine environment. Substantial justice will be preserved by allowing Petitioner to construct the proposed development to his existing restaurant, which was the expectation when he received his no-rise certification in 1998 before Hurricane Floyd and the creation of the Public Trust Shoreline AEC and the 30-foot buffer within that AEC.

Attachment D

Petitioners' Variance Request Petition and Attachments

RECEIVED

JUL 15 2011

DCM-MHD CITY

RECEIVED

JUL 13 2011

N.C. ATTORNEY GENERAL
Environmental Division

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Stephen C. Holland
COUNTY WHERE THE DEVELOPMENT IS PROPOSED Pender

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.

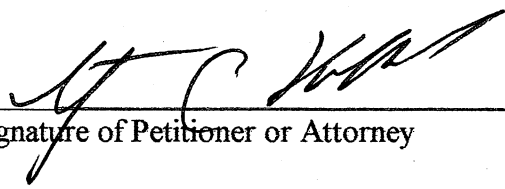
Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. 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);
- NA 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.

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



Signature of Petitioner or Attorney

7-12-11

Date

Stephen C. Holland

Printed Name of Petitioner or Attorney

Email address of Petitioner or Attorney

8315 Hwy 53 E

Mailing Address

910-259-4195

Telephone Number of Petitioner or Attorney

Burgaw NC 28425

City State Zip

910-259-3399

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

The following is an itemized list of responses to the checklist items from the CAMA Variance Request Form.

Name and Location of Development as Identified on Permit Application: Steven C. Holland, 8315 NC Highway 53 East, Burgaw, NC 28425.

A copy of the permit decision for the development in question: Attached.

A copy of the deed to the property on which the proposed development would be located: Attached

Description of Proposed Development: Proposed construction of an addition to an existing restaurant on Shelter Creek in Pender County. The addition includes a 28' x 28' (784 square feet) covered, elevated porch, a 6' x 24' (144square feet) elevated, wood slatted walkway, and a 20' x 28' (560 square feet) uncovered, elevated, wood slatted deck. Site plan is attached.

Stipulation: The proposed development is inconsistent with the rule at issue (15 NCAC 7H .0209 (d)(10)).

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

Reasons why the Petitioner meets the four variance 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.

Hardship will be caused because restaurant additions that were planned prior to the effective date of the applicable rules will not be allowed under the applicable rules. The restaurant depends upon its character and location on the Creek as a main attraction for customers. The additions were planned on the Creek frontage of the restaurant because they would not benefit the business if constructed otherwise.

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

Yes. The property flooded as a result of Hurricane Floyd on September 16, 1999. The property had never flooded before, including Hurricane Fran. The water level was five and one-half feet inside the restaurant (see attached photos). After repairs were made and the business was operating again, it was not economically feasible to construct the additions for some time. (The last note for the flood damage repairs and equipment replacement was paid in April 2011.) The thirty foot setback rule became effective August 1, 2000. So

the flooding conditions at the property location caused the additions not to be made before the rule went into effect.

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

No. The flood and timing of circumstances were beyond the control of the petitioner.

- (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.

The variance will be consistent with the spirit, purpose and intent of the rules, standards and orders issued by the Commission. Forty-seven percent of the addition will be uncovered, slatted walkway or deck that will allow stormwater to pass through (i.e. not impervious). All of the structures except for the support pilings will be above the 100 year flood elevation. None of the addition will be beyond the normal water line of Shelter Creek. The first 1.5" of stormwater from the impervious section of the addition will be retained on-site. Therefore, the additions will have minimal if any impact on water quality in Shelter Creek.

The variance will secure public safety and welfare. None of the addition will extend over or into Shelter Creek. And, the attached engineer's No-Rise certification shows that the addition will not cause a rise in water levels in the Creek in the event of a 100-year flood. Even the flooding of Hurricane Floyd did not cause any portion of the existing restaurant to break away and enter Shelter Creek. It is not expected that the variance will result in any detrimental environmental impact.

The variance will preserve substantial justice. The additions could have been made prior to the effective date of the applicable rules if not for flooding caused by Hurricane Floyd, which caused more than 19" of rainfall in the area in three days, with a record 24-hour rainfall in Wilmington of over 15 inches. This was far beyond any normal event and beyond the control of the petitioner.

Draft set of proposed stipulated facts and stipulated exhibits:

- (a) The original No-Rise Certification for the proposed additions was dated August 23, 1998.
- (b) Hurricane Floyd made landfall at Cape Fear on September 16, 1999.

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425



Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

May 23, 2011

HAND DELIVERED *S.C.H.*

Stephen C. Holland
8315 NC Highway 53 East
Burgaw, NC 28425

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- PC 2011-03
PROJECT ADDRESS- 8315 NC Highway 53 East, Burgaw, NC 28425**

Dear Mr. Holland:

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 construct an addition to an existing restaurant consisting of a 28' x 28' (784 square feet) covered, elevated porch, a 6' x 24' (144 square feet) elevated, wood slatted walkway, and a 20' x 28' (560 square feet) uncovered, elevated, wood-slatted deck, which is inconsistent with 15 NCAC 7H .0209 (d)(10), which states that:

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

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

June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

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

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

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

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

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

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

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

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

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

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

As proposed, the 28' x 28' covered, elevated porch is located within 30' of normal water level and does not meet the above criteria for an exception to development within the Public Trust Shoreline AEC buffer.

In addition, though slatted, elevated, wooden and uncovered deck/observation decks meet the exception criteria detailed in provision (F), the area of your proposed 20' x 28' deck exceeds 200 square feet. The site drawing provided indicates that approximately 280 square feet of decking is proposed within 30' of Normal Water Level, exceeding the allowable area.

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 central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,



Kenneth E. Vafer, LPO
Pender County
PO Box 1519
Burgaw, NC 28425

cc: Heather Coats, DCM Field Representative

The office of the Register of Deeds for Pender County hereby **DISCLAIMS**, and the user hereby **WAIVES** any warranty, implied or otherwise, as to the correctness of the information contained herein.

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Faye Teachey Prevatte
11-10-2009 15:57:34.003 Register of Deeds
NC REVENUE STAMP: \$750.00 Pender County, NC
(#5354)

 3705 P0024 11-10-2009
Faye Teachey Prevatte
Pender County, NC Register of Deeds page 1 of 4

FIN # See Below

11/10/09

INT

Excise Tax \$750.00
Parcel Number 3351-77-4658-000L & 3351-67-9794-0000
Mail after recording to

This instrument was prepared by Robert C. Kenan, Jr.: Moore & Kenan Attorneys at Law; P.O. Box 957; Burgaw, NC 28425

Brief Description for the index

0.50 and 6 Acre Tracts in Holly Township

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made on the 4th day of November, 2009, by and between

GRANTOR

GRANTEE

GENE O. WALLACE and wife,
SANDRA A. WALLACE

STEPHEN CARROLL HOLLAND (Divorced)

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, 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 Holly Township, Pender County, North Carolina and more particularly described as follows:

TRACT NO. 1:

Beginning at a point on the Northern Edge of Shelter Creek, said point being the third corner of the tract of land containing 35 acres, described in a deed by J. I. Chadwick to Mrs. D. V. Learned (Mrs. Laura A. Learned) in Book 167, at Page 112, and running with the third line in said referred to deed North 15 degrees East to the present recognized Southern right-of-way line of U.S. Highway No. 53, and running thence with the Southern right-of-way line of said highway westwardly to the Northeast corner of Lot No. 1 as shown on a map of the subdivision of Laura A. Learned, dated July 15, 1959, recorded in Map Book 7, at Page 12 running thence with the Eastern line of said Lot No. 1 to the edge of Shelter Creek; thence Eastwardly with the Creek to the Beginning.

N. C. Bar Assoc. Form No. 3 © 1977
Printed by Agreement with the N.C. Bar Assoc.#003

4

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And being all of "TRACT NO. 2" as described in deed dated 3 July 1962 from Laura A. Learned (Widow) to Oliver L. Wallace and wife, Isabelle M. Wallace (Deceased), recorded in Deed Book 371, at Page 371 Pender County Registry.

TRACT NO. 2:

Located in Holly Township, Pender County, North Carolina adjacent to the Southern right-of-way of N.C. Highway No. 53's 100 foot right-of-way approximately 8 miles East of the Town of Burgaw and being more fully described as follows, to wit:

BEGINNING at a point on Shelter Creek (or river) opposite the mouth of a large ditch, said Beginning point is a corner of Gene O. Wallace's Oliver L. Wallace and wife tract or lot that was heretofore conveyed to him by deed on September 1, 1964, said deed being duly recorded in Deed Book 381, at Page 425 in the Pender County Register of Deeds Office; running thence from said beginning point with the center of said large ditch, it forming the Eastern line of said Gene O. Wallace tract North 15 degrees 00 minutes East (as heretofore surveyed) to a point in the South right-of-way line of N.C. Highway 53's 100' right-of-way; thence with said right-of-way line North 78 degrees 57 minutes East 645.00 feet to an iron pipe located in said right-of-way line at a point South 05 degrees 00 minutes West 52.10 feet from a steel nail in the centerline of the highway that marks a corner of a 46.88 acres tract of land surveyed for Oliver L. Wallace in November 1963 by M. R. Walton; said steel nail is located in said centerline at a point South 5 degrees 00 minutes West 52.93 feet from an iron pipe in the Eastern line of said 46.88 acre tract on the North side of the highway; thence South 05 degrees 00 minutes West 818.15 feet, more or less, (passing over an inline iron pipe at 803.15 feet) to a point at the water line of Shelter Creek; thence down and with said water line as it meanders to the BEGINNING, containing 6 acres more or less.

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:

1. Pender County and ad valorem taxes for the year 2010 and subsequent years.
2. Restrictions of record, if any.
3. Pender County zoning and subdivision ordinances.
4. Utility, roadway and other easements of record, if any.

IN WITNESS WHEREOF, the Grantors have hereunto set their respective hands and seals on the day and year first above written.

The office of the Register of Deeds for Pender County hereby **DISCLAIMS**, and the user hereby **WAIVES** any warranty, implied or otherwise, as to the correctness of the information contained herein.

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Gene O Wallace (SEAL)
Gene O. Wallace

STATE OF Maine
COUNTY OF Somerset

I, Alieta Belanger, a Notary Public of the aforesaid County and State do hereby certify that Gene O. Wallace (the "Signatory") personally appeared before me this day and acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day and (check one of the following and mark through all blank lines or spaces in the certificate)

- I have personal knowledge of the identity of the Signatory; or
- I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: (check one of the following):
 - a driver's license; or
 - in the form of _____; or
 - a credible witness has sworn to the identity of the Signatory.

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this the 9 day of ~~October~~, 2009.
November

Alieta Belanger
Notary Public
ALIETA BELANGER
Notary Public, Maine
My Commission Expires April 4, 2016

(Notary Public must sign exactly as on notary seal)

My Commission Expires: _____

(NOTARY SEAL)



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Pender County, NC Register of Deeds page 4 of 4
Faye Teachey Prevatte

Sandra A. Wallace (SEAL)
Sandra A Wallace

STATE OF Maine

COUNTY OF Somerset

I, Alita Belanger, a Notary Public of the aforesaid County and State do hereby certify that Sandra A. Wallace (the "Signatory") personally appeared before me this day and acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day and (check one of the following and mark through all blank lines or spaces in the certificate)

I have personal knowledge of the identity of the Signatory; or
 I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: (check one of the following):

a driver's license; or
 in the form of _____; or
 a credible witness has sworn to the identity of the Signatory.

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this the 9 day of ~~October~~, 2009.
November

Alita Belanger
Notary Public

ALITA BELANGER
Notary Public, Maine
Print Name: Alita Belanger
(Notary Public must sign exactly as on notary seal)

My Commission Expires: _____

(NOTARY SEAL)



Locality PENDER COUNTY Permit Number 2011-03
Ocean Hazard _____ Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline Other _____
(For official use only)

GENERAL INFORMATION

RECEIVED

LAND OWNER

MAY 02 2011

Name Stephen C. Holland
Address 8315 Hwy 53 East
City Burgaw State N.C. Zip 28425 Phone 910-259-5743
Email _____

PENDER COUNTY PLANNING

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.) 8315 Hwy 53 E Burgaw N.C. 28425 Holly Shelter Creek

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) _____

SIZE OF LOT/PARCEL: _____ square feet 1/2 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):
Add on 20x28 28x28
6x27

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

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 1400 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 Paula, see Deed Book 167
page 112 in the Paula 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>BARBARA COOK</u> | <u>213 N Crestwood Dr Wilm, N.C. 28405</u> |
| (2) <u>Wanda Washington</u> | <u>Highway 53 E Burgaw N.C. 28425</u> |
| (3) _____ | _____ |
| (4) _____ | _____ |

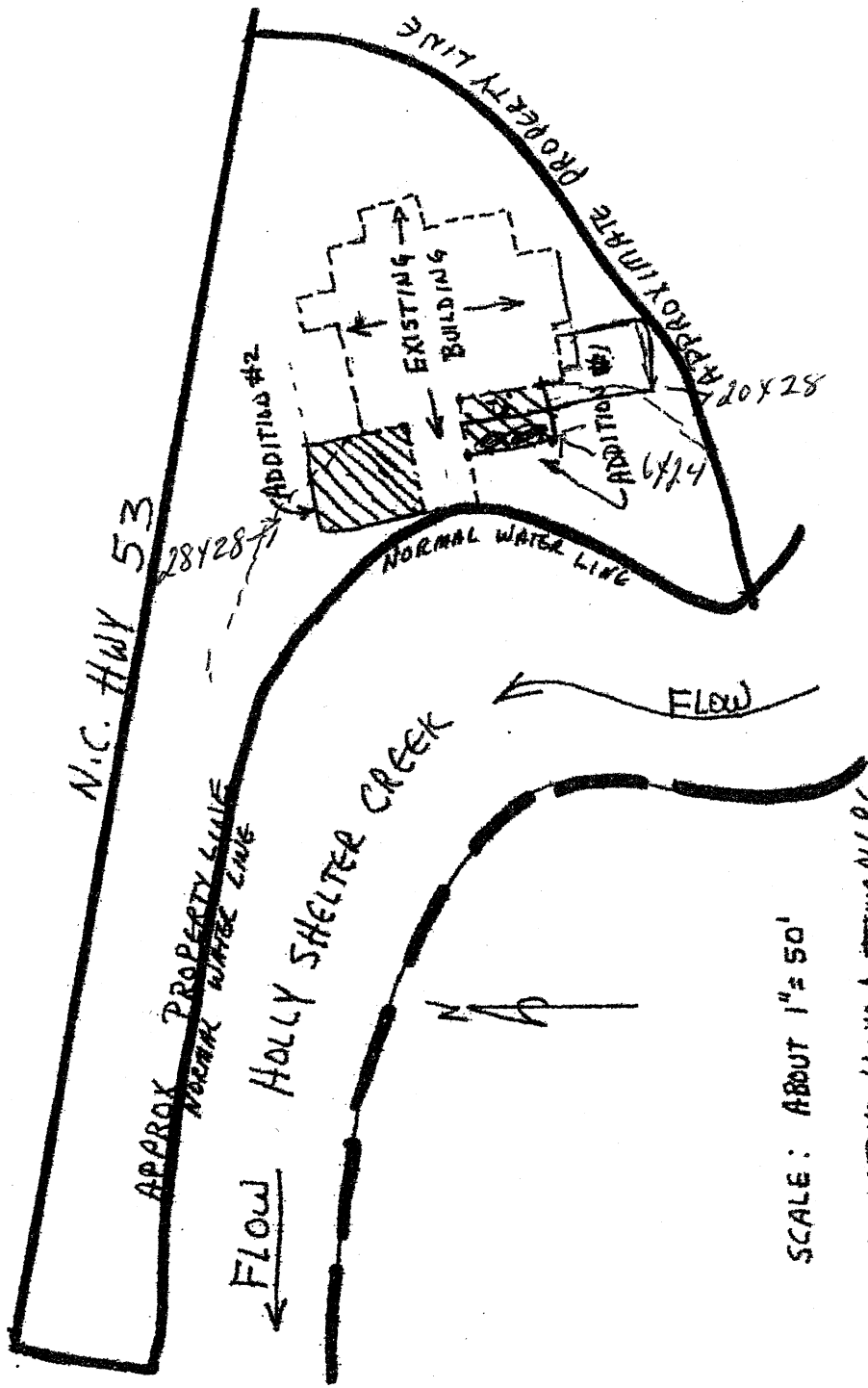
ACKNOWLEDGEMENTS:

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.

[Signature] This the May day of 2, 2011
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.



SCALE: ABOUT 1" = 50'

SKETCH BY: LLOYD A. TYNO ALP6.
8/22/98 & 5/22/00

PROPOSED ADDITIONS

HOLLAND'S SHELTER CREEK FISH CAMP

RELATIVE TO PROPERTY LINES

EXHIBIT F

REVISED 5/22/00

1

2

3

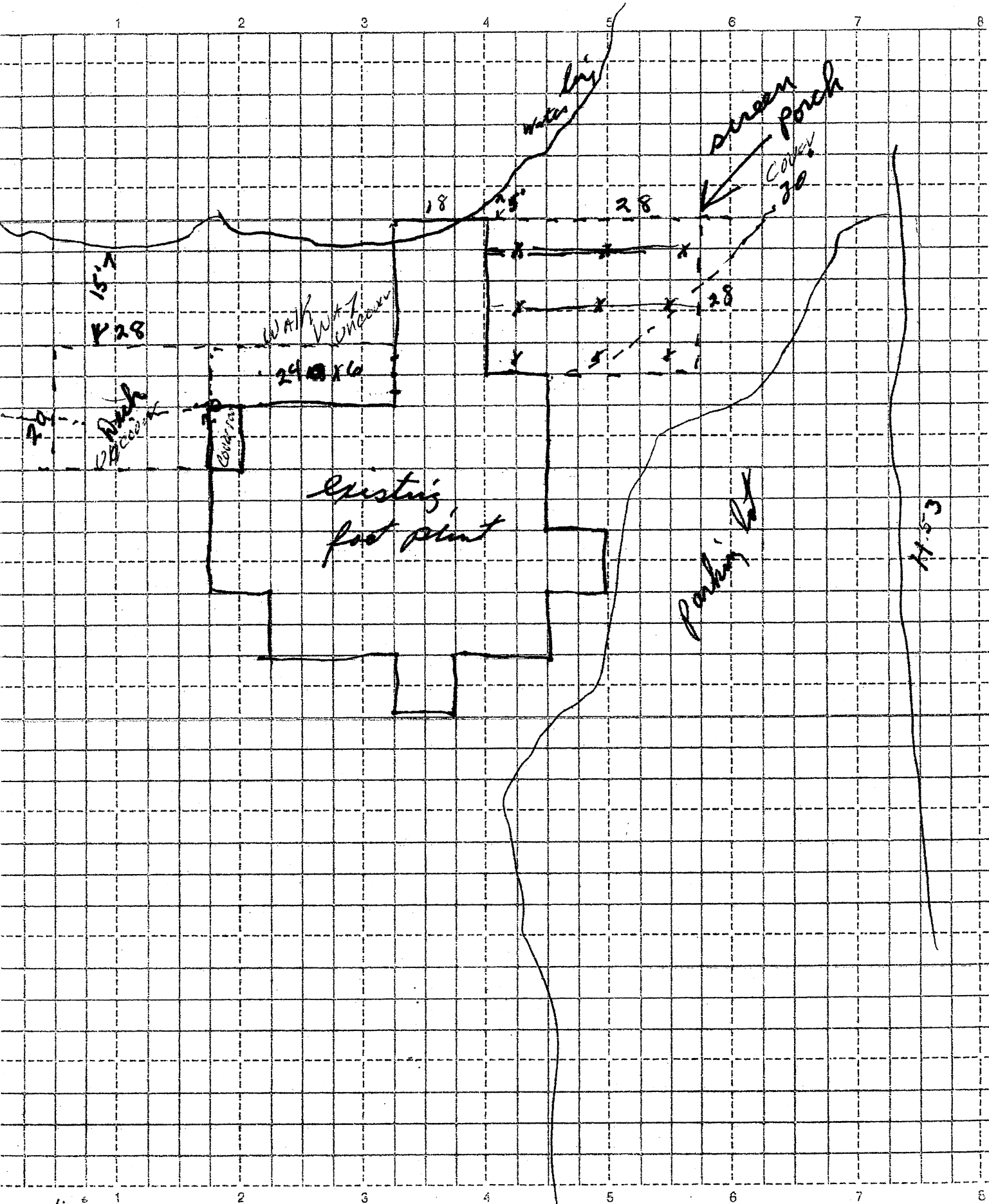
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1

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8

LLOYD A. TYNDALL, P.E.
234 WINDEMERE ROAD
WILMINGTON, NORTH CAROLINA 28405-4026
N.C.# P.E. 4848 -- P.L.S. 871

May 28, 2011

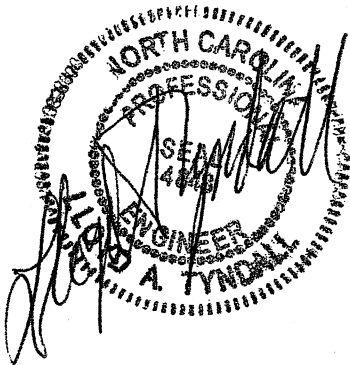
Mr. Stephen Holland
Holland's Shelter Creek Fish Camp
8315 NC HWY 53 East
Burgaw, N.C. 28425

TO IT MAY CONCERN:

This is to certify that I did make a hydraulic analysis of proposed additions to Holland's Shelter Creek Fish Camp as shown in the NO-RISE CERTIFICATION STUDY "ADDITIONS TO HOLLAND'S SHELTER CREEK FISH CAMP" Dated 23 August 1998 and REVISED 22 May 2000 and found that the proposed additions along with the proposed mitigation would not increase the flood stages upstream of the "Fish Camp". Please note that one of the additions included a 4 foot projection out over the water--it was known then and now that the projection was a "worst case scenario" for the "next to the road" addition and the other addition was also a "worst case scenario" to put Mr. Holland's additions under the worst reasonable test from a "hydraulic standpoint". The additions plus the mitigation to offset the additions did not cause a rise in the water surface upstream of the "Fish Camp".

This proposal has been reviewed and I find no reason to alter the findings of that original Certification. Hydraulically, those additions can be substituted for other additions/changes at the "Fish Camp" on a square foot for square foot basis anywhere on the "Fish Camp" premises without invalidating the previous findings.

SEAL



Thanks,

Lloyd A. Tyndall
LLOYD A. TYNDALL, P.E.

Phone: 910-791-0164
Cell: 910-540-3608

Pender County
Copy #1

REVISED

NO-RISE CERTIFICATION STUDY
PENDER COUNTY, NORTH CAROLINA
ADDITIONS TO HOLLAND'S SHELTER CREEK FISH CAMP
8315 NC HWY 53 EAST, BURGAW, N.C. 28425

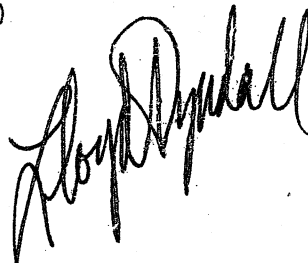
MR. STEPHEN HOLLAND
HOLLAND'S SHELTER CREEK FISH CAMP
8315 NC HWY 53 EAST
BURGAW, N.C. 28425

STUDY AND HYDRAULIC ANALYSES PERFORMED BY: LLOYD A. TYNDALL, P.E.

LLOYD A. TYNDALL, PROFESSIONAL ENGINEER,
NORTH CAROLINA LICENSE -- P.E. 4848 -- R.L.S. 871
234 WINDEMERE ROAD
WILMINGTON, NORTH CAROLINA 28405-4026

23 AUGUST 1998

REVISED 22 MAY 2000



ENGINEERING "MANUAL" NO-RISE CERTIFICATION

THIS IS TO CERTIFY THAT I AM A DULY QUALIFIED ENGINEER LICENSED TO PRACTICE PROFESSIONAL ENGINEERING IN THE STATE OF NORTH CAROLINA.

IT IS TO FURTHER CERTIFY THAT THE ATTACHED TECHNICAL DATA SUPPORTS THE FACT THAT THE CONSTRUCTION OF PROPOSED ADDITIONS TO AN EXISTING BUILDING AND THE CLEARING WITH OPTIONAL GRASSING WILL NOT CAUSE A RISE IN THE WATER SURFACE ELEVATION UPSTREAM OF THE SITE. THE PROPOSED CONSTRUCTION CONSISTS OF TWO ADDITIONS -- #1. A 20' X 28' ADDITION AND #2. A 28' X 30' ADDITION AND THE DESIGNATED CLEARING OF BRUSH AND LOW LIMBS AT HOLLAND'S SHELTER CREEK FISH CAMP LOCATED ON NC HIGHWAY 53 EAST AS SHOWN ON EXHIBIT H. THE CONSTRUCTION IS SITUATED BETWEEN NC HIGHWAY 53 AND THE NORMAL WATER LINE OF HOLLY SHELTER CREEK. THE CLEARING WITH OPTIONAL GRASSING TO MITIGATE THE REDUCED CONVEYANCE IN THE FLOODPLAIN CONSISTS OF FOUR TRACTS CONTAINING 3188 SQUARE FEET, SEE EXHIBIT H.

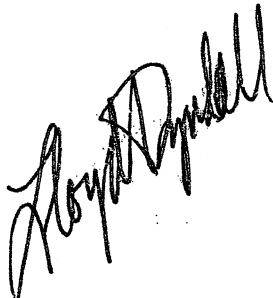
THIS HYDRAULIC ANALYSIS WAS REQUESTED BY STEPHEN HOLLAND TO PUT THE CONSTRUCTION OF THE PROPOSED ADDITIONS TO HOLLAND'S SHELTER CREEK FISH CAMP IN COMPLIANCE WITH THE PENDER COUNTY FLOOD DAMAGE PREVENTION ORDINANCE,

BASED ON THE PENDER COUNTY FLOOD INSURANCE STUDY, THE 100-YEAR OR BASE FLOOD ELEVATION HAS NOT BEEN ESTABLISHED FOR THIS SITE. THE SITE IS IN AN UN-NUMBERED ZONE A. RECENT CHANGES IN THE PENDER COUNTY FLOOD DAMAGE PREVENTION ORDINANCE REQUIRE THAT THE BUILDING FLOOR IN AN UNNUMBERED ZONE A BE NO LESS THAN 2 FEET ABOVE THE HIGH WATER MARK OF HURRICANE FRAN--SEPTEMBER 1996. THE HYDRAULIC ANALYSES IN THIS STUDY USED AN ASSUMED DATUM.

23 AUGUST 1998

REVISED 22 MAY 2000

SEAL:



LLOYD A. TYNDALL, P.E.

PROFESSIONAL ENGINEER

234 WINDEMERE ROAD
WILMINGTON, N.C. 28405-4026

July 11, 2011

Barry and Wanda Washington
8274 NC Hwy 53 E
Burgaw, NC 28425

re: CAMA Minor Permit Variance Request

Dear Mr. And Mrs. Washington,

I am writing to notify you that Steve Holland is submitting a Petition requesting a Variance for a CAMA Minor Development Permit for Holland's Shelter Creek Restaurant. You are being notified because you are an adjacent property owner.

This notification is required by Title 15A of the North Carolina Administrative Code Chapter 7, Subchapter 07J .0701(c) (7). You are not required to respond. If you do wish to respond, please contact Heather Coats, NCDENR, 127 Cardinal Drive Extension, Wilmington, NC 28405 (tel: 910-796-7424).

The Variance is being requested to allow additions and improvements to the existing restaurant.

If you have any questions, please call me at 910-259-4800

Sincerely,



Mark Walton
N.C. Professional Engineer
Registration No. 16879

7009 0820 0000 9465 4444

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BURGAW NC 28425

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Return Receipt Fee (Endorsement Required)	\$2.30		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

Barry & Wanda Washington
8274 NC Hwy 53 E
Burgaw, NC 28425

7009 0820 0000 9465 4833

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(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

WILMINGTON NC 28405

Postage	\$ 01.44	0425	Postmark Here
Certified Fee	\$2.85	01	
Return Receipt Fee (Endorsement Required)	\$2.30		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

Barbara Cook
213 N Crestwood Dr.
Wilmington, NC 28405

7009 0820 0000 9465 4826

U.S. Postal Service™
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STATESVILLE NC 28687

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Return Receipt Fee (Endorsement Required)	\$2.30		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

Linda Lavinder
PO Box 1705
Statesville, NC 28687

7009 0820 0000 9465 4840

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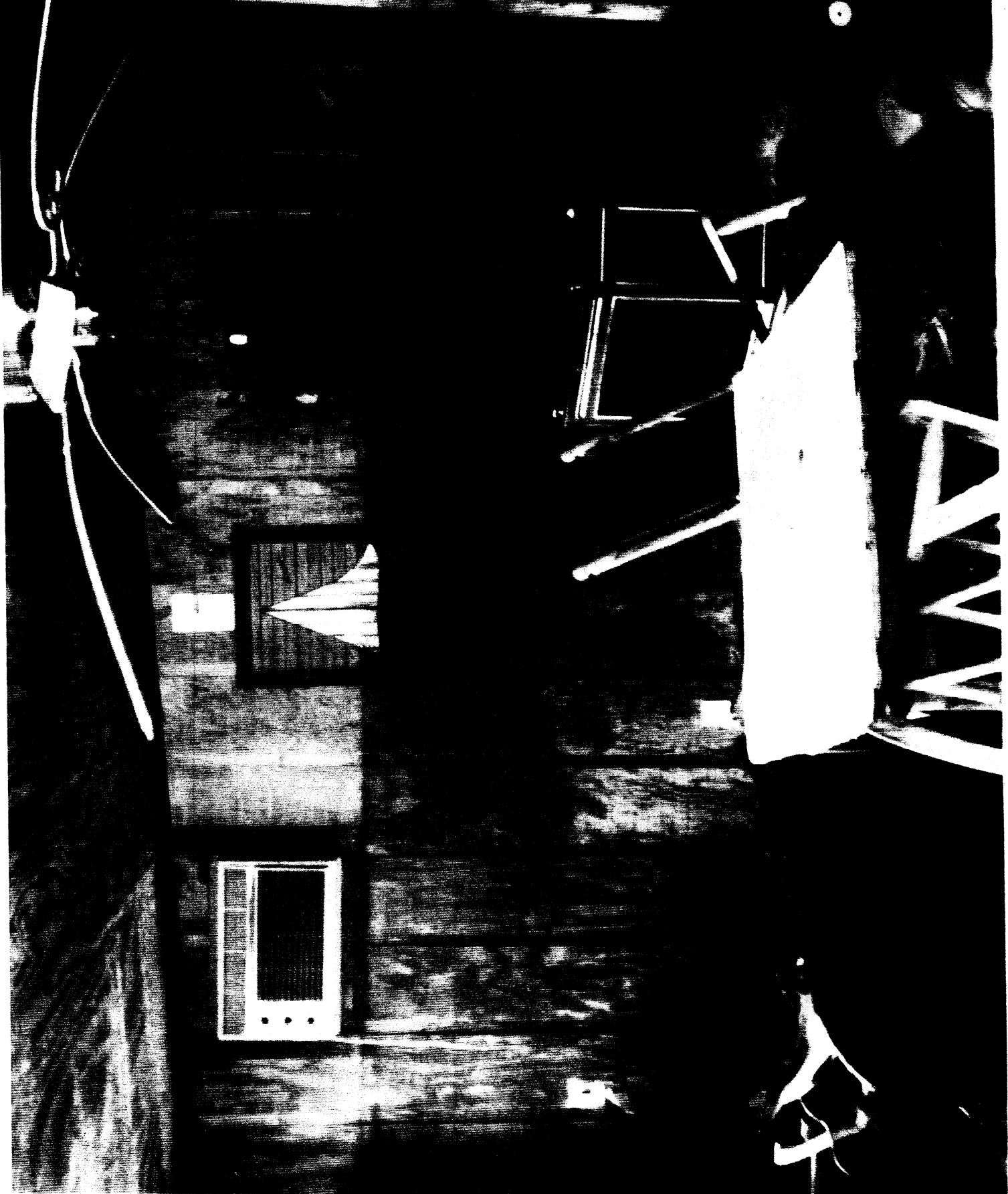
For delivery information visit our website at www.usps.com

WILMINGTON NC 28405

Postage	\$ 01.44	0425	Postmark Here
Certified Fee	\$2.85	01	
Return Receipt Fee (Endorsement Required)	\$2.30		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

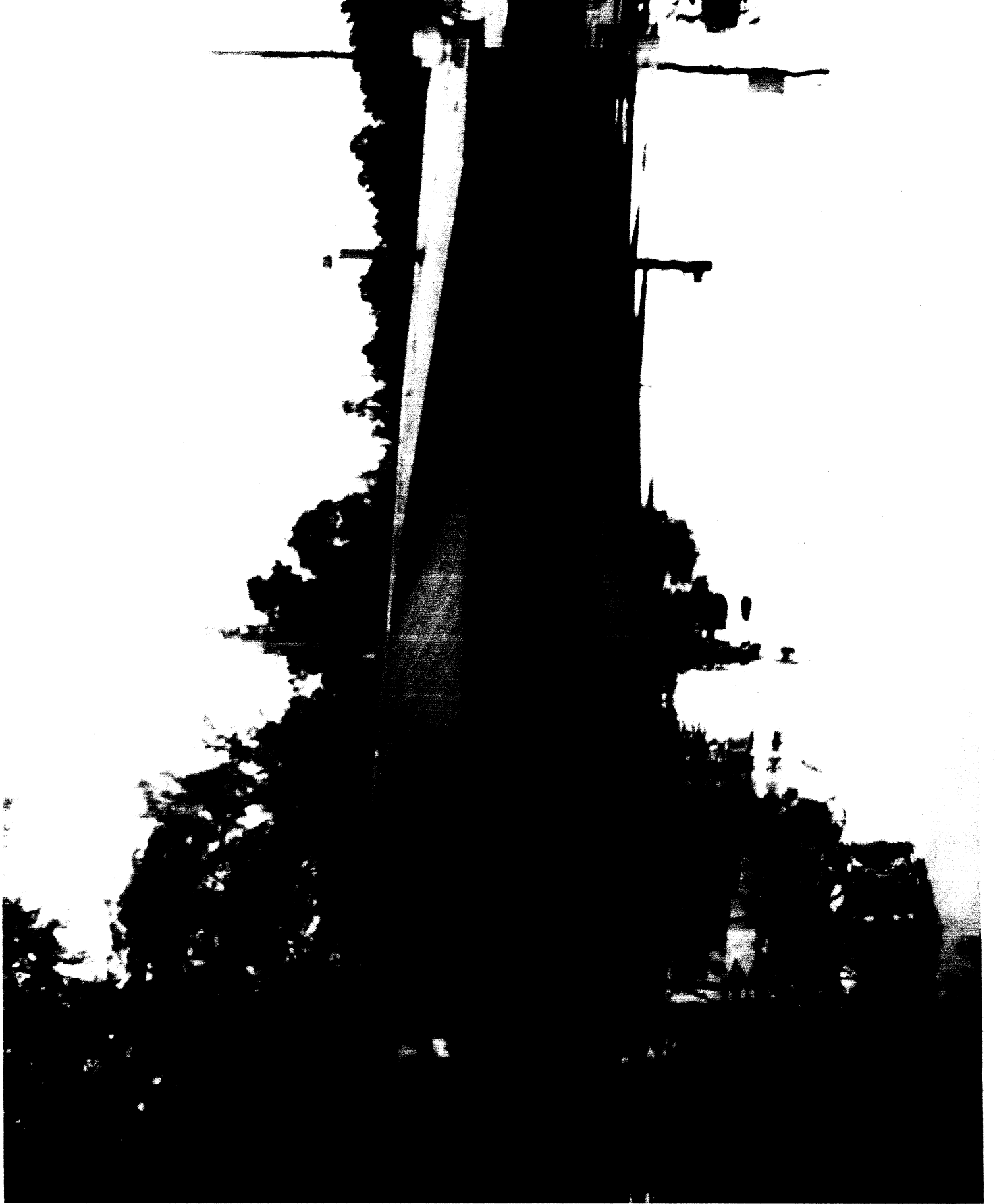
Wayne Ray Lanier
8485 E NC Hwy 53
Burgaw, NC 28425





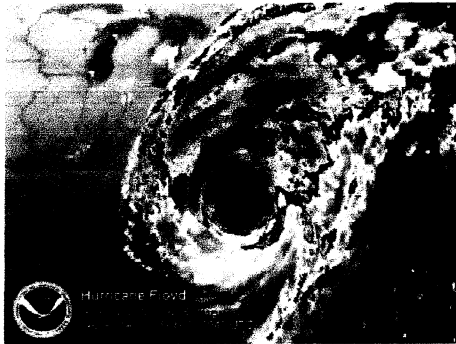
YOU ARE HERE NOW!







Hurricane Floyd, September 1999



(Click the image to enlarge.)

Overview

Hurricane Floyd impacted the East Coast of the United States from September 14 to 18, 1999. The greatest damages were along the eastern Carolinas northeast into New Jersey, and adjacent areas northeastward along the east coast into Maine. Hurricane Floyd produced more human misery and environmental impact in North Carolina than any disaster in memory. The 15-20 inches of rain that fell across the eastern half of the state caused every river and stream to flood. There were 57 deaths in the United States directly attributed to Floyd, and flood damage estimates range near \$6 billion. Many rivers set new flood records. Whole communities were underwater for days, even weeks in some areas. Thousand's of homes were lost. Crop damage was extensive. The infrastructure of the eastern counties, mainly roads, bridges, water plants, etc., was heavily damaged.

Tropical Summary

Floyd's origin can be traced to a tropical wave that emerged from western Africa on September 2, 1999. Tropical Depression Eight formed September 7 about 1000 miles east of the Lesser Antilles). The system was upgraded to Tropical Storm Floyd on September 8. Floyd became a hurricane at 8 a.m. Eastern Daylight Time (EDT) on September 10. Early on September 12, Floyd turned west and began a major strengthening episode. Hurricane Floyd reached its peak intensity on September 13 when sustained winds reached 156 miles per hour (mph) and the central pressure dropped to 27.20 inches of mercury. This was at the top end of Category 4 intensity on the Saffir-Simpson Hurricane Scale.

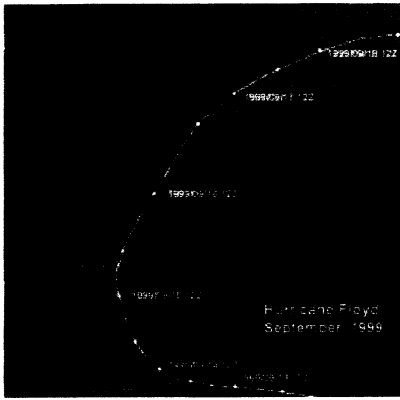
Satellite Imagery of Hurricane Floyd on 1999/09/15 at 2018Z



(Click the image to enlarge.)

Floyd came within 110 miles of Cape Canaveral as it paralleled the Florida coast on September 15. Floyd then moved slightly east of north and increased in forward speed, coming ashore near Cape Fear, North Carolina, at 2:30 a.m. on September 16. At the time of landfall, Floyd was a Category 2 hurricane with maximum winds of 104 mph. Floyd continued to accelerate north-northeast after landfall. Its center passed over extreme eastern North Carolina and over Norfolk, Virginia. Floyd then weakened to a tropical storm and moved swiftly along the coasts of the Delmarva Peninsula and New Jersey, reaching Long Island by 8 p.m. September 16. The system was extratropical by the time it reached the coast of Maine at 8 a.m. September 17.

Hurricane Floyd Track



(Click the image to enlarge.)

Sustained tropical storm force winds and gusts close to hurricane strength were recorded at many locations from the Florida Keys to New York. Sustained winds of 96 mph with gusts to 122 mph were measured by a University of Oklahoma portable anemometer (10-meter height) near Topsail Beach, North Carolina, around 3 a.m. on September 16. Storm surge values as high as 10 feet were reported along the North Carolina coast.

Heavy Rains and Flooding

Much of Floyd's impact was due to extreme rainfall. Although Floyd was moving quickly, its large circulation interacted with a pre-existing frontal zone extending from central North Carolina through the mid-Atlantic states. This caused the heaviest rainfall to fall along and left of Floyd's track. Rainfall totals of 4 to 12 inches were common from northeast South Carolina through eastern North Carolina, eastern Virginia, eastern Maryland, Delaware, eastern Pennsylvania, New Jersey, eastern New York into the Northeast. Within this region, two areas of extreme rainfall occurred with totals as high as 15 to 20 inches recorded in portions of eastern North Carolina and southeast Virginia. At Wilmington, North Carolina, the storm total of 19.06 inches included a 24-hour record of 15.06 inches. In Yorktown, Virginia, the storm total was 18.13 inches. The second region of extreme rainfall totaled 10 to 14 inches in parts of Maryland, Delaware, New Jersey, southeast Pennsylvania and southeast New York.

Total Precipitation from Hurricane Floyd

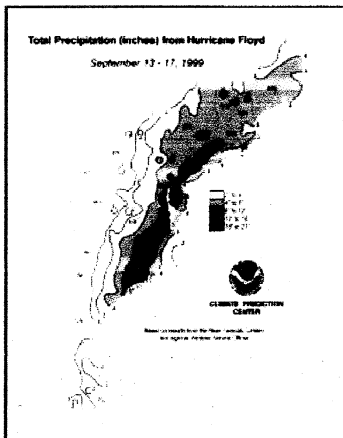
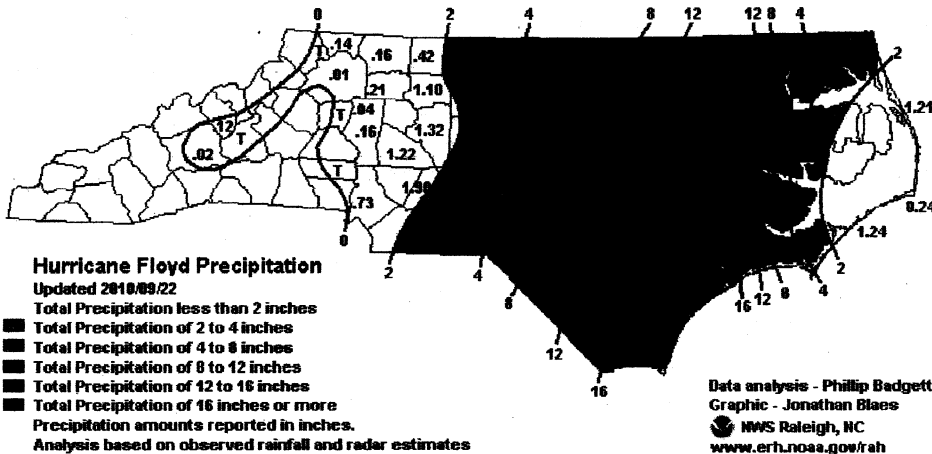
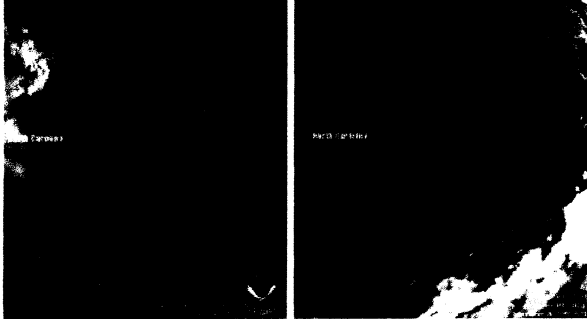


Figure 5. Total precipitation (inches) from Hurricane Floyd, September 12-17, 1999.

(Click the image to enlarge.)

This heavy rainfall caused widespread flooding and flash flooding from northeast South Carolina to southern New England. The flooding in North Carolina was the most damaging in the State's history. Some rivers in eastern North Carolina were already in flood due to 5 to 10 inches of rainfall from Hurricane Dennis which occurred about a week prior to Floyd. The extreme rainfall produced by Floyd across the Carolinas and Virginia caused widespread flooding on larger rivers and tributaries as well as flash flooding on smaller streams and creeks. Nine record floods occurred on rivers in North Carolina and one in Virginia.

Satellite Image of Flooding across Eastern North Carolina



(Click the image to enlarge.)

There were 57 deaths directly attributed to Floyd, 56 in the United States and one in Grand Bahama Island. North Carolina reported 35 deaths directly attributed to Floyd. Of the 56 deaths, 48 were due to drowning in inland, freshwater flooding. Vehicle related deaths accounted for 55 percent of casualties, and of these, about 80 percent were male. Floyd was the deadliest hurricane in the United States since Agnes of 1972. Damage estimates as a result of Floyd range around \$6 billion. Portions of ten states were declared major disaster areas, from Florida north to Connecticut. Whole towns were under water; roads flooded, including portions of Interstate highways; bridges washed out; dams failed; livestock drowned; water treatment plants failed and water supplies were cut off. North Carolina alone had damage over \$3 billion, with over 7000 homes destroyed, 56,000 homes damaged, 1500 people rescued from flooded areas, and more than 500,000 customers without electricity.

Specifically in North Carolina, there were 35 deaths; 7000 homes destroyed; 17,000 homes uninhabitable; 56,000 homes damaged; most roads east of I-95 flooded; Tar River crests 24 feet above flood stage; over 1500 people rescued from flooded areas; over 500,000 customers without electricity at some point; 10,000 people housed in temporary shelters; much of Duplin and Greene Counties under water; severe agricultural damage throughout eastern NC; "Nothing since the Civil War has been as destructive to families here," says H. David Bruton, the state's Secretary of Health and Human Services... "The recovery process will be much longer than the water-going-down process"; Wilmington reports new 24-hour station rainfall record (128 year record) with 13.38 inches and over 19 inches for the event.

For questions regarding the web site, please contact [Jonathan Blaes](#).

[Disclaimer](#).



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH, NC 27602

REPLY TO: CHRISTINE A. GOEBEL
ENVIRONMENTAL DIVISION
TEL: (919) 716-6600
FAX: (919) 716-6767
cgoebel@ncdoj.gov

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant Attorney General

Handwritten signature of Christine A. Goebel in black ink.

DATE: October 12, 2011 (for the October 26-27, 2011 CRC Meeting)

RE: **Variance Request by Highland Shores Community Services Association, Inc.
(11-08)**

Petitioner is a homeowners association which owns common-area property adjacent to the Brunswick River in Bellville, Brunswick County, North Carolina. On June 22, 2011, DCM denied Petitioner's CAMA major permit application for an extension to, and reconfiguration of Petitioner's existing 30-slip docking facility. The proposed extension and reconfiguration of the facility into deeper water does not comply with the Commission's one-fourth width limitation to pier lengths found in 15A NCAC 7H.0208(b)(6)(J)(iii). On September 13, 2011, Petitioner filed this variance petition to allow the increased pier length as proposed in its permit application.

The following additional information is attached to this memorandum:

- Attachment A: Relevant Rules
 - Attachment B: Stipulated Facts & List of Stipulated Exhibits
 - Attachment C: Petitioner's Position and Staff's Responses to Criteria
 - Attachment D: Petitioner's Variance Request Materials
 - Attachment E: Stipulated Exhibits
- cc(w/attachments): William A. Raney, Jr., Counsel for Petitioner, electronically
Mary L. Lucasse, CRC Counsel, electronically

RELEVANT STATUTES OR RULES

ATTACHMENT A

15A NCAC 07H .0207 PUBLIC TRUST AREAS

(a) Description. Public trust areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

- (1) the use of the body of water by the public;
- (2) the length of time the public has used the area;
- (3) the value of public resources in the body of water;
- (4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water;
- (5) whether the creation of the artificial body of water required permission from the state; and
- (6) the value of the body of water to the public for navigation from one public area to another public area.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used by the public for navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water quality standards, or

cause degradation of shellfish waters are considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas.

15A NCAC 07H .0208 USE STANDARDS

(6) Piers and Docking Facilities.

(G) Pier and docking facility length shall be limited by:

- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
- (ii) not extending into the channel portion of the water body; and
- (iii) not extending more than one-fourth the width of a natural water body, or humanmade canal or basin.**

Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.

STIPULATED FACTS

ATTACHMENT B

1. The Applicant is the Highland Shores Community Services Association, Inc., a North Carolina corporation (“Highland Shores”). This body, incorporated in 1999, is the Homeowner’s Association for a subdivision, which is located in the town of Belville, Brunswick County.
2. Highland Shores subdivision consists of 52 single family residential lots and common areas. A copy of the recorded subdivision map is attached as Stipulated Exhibit A.
3. The subdivision includes water frontage on the west side of the Brunswick River approximately 1.85 miles south of the Highways 17, 74, 76 bridge to Wilmington, and approximately 2 miles north of the confluence of the Brunswick River with the Cape Fear River in the vicinity of the North Carolina State Port in Wilmington. See Exhibit A and attached site photographs.
4. A Declaration of Protective Covenants for Highland Shores (Declaration) was recorded on January 21, 1999.
5. A 30-slip community marina was constructed by the developer in the spring of 1999 pursuant to CAMA Major Permit 42-99.
6. A map of the marina was recorded in the Brunswick County Registry on June 25, 1999 and is attached as Exhibit B.
7. The Declaration states that the marina is a common area and is to be owned and maintained by Highland Shores.
8. The Declaration established that lot owners could purchase rights to a boat slip and that such rights could be held only by lot owners in the subdivision.
9. The marina is located in the Brunswick River adjacent to a common area owned by Highland Shores, and so the proposed development is located within the Public Trust Areas and Estuarine Waters Areas of Environmental Concern (AECs). While there are coastal wetlands on the site, no development is proposed in the Coastal Wetlands AEC.
10. By Deed recorded on December 28, 2000 the developer conveyed to Highland Shores the common areas of the subdivision, including the common area and amenities parcel to which the marina facility is attached.
11. The Brunswick River in this location is designated as a Primary Nursery Area by the Marine Fisheries Commission and is classified as SC waters by the Environmental Management Commission. The Brunswick River in this location is closed to the harvest of shellfish.

12. CRC Rule 15A NCAC 711.0208(b)(1) prohibits excavation of new canals, channels, and boat basins within Primary Nursery Areas. No excavation is proposed by Highland Shores.
13. The width of the Brunswick River at the marina has been calculated at 1,494 feet.
14. The existing docking facility extends approximately 378 feet into the Brunswick River as measured from the waterward edge of the coastal wetlands fronting the property. While the existing pier is now somewhat longer than $\frac{1}{4}$ of the width of the Brunswick River at this time, it did meet the $\frac{1}{4}$ width at the time the pier was permitted in 1999.
15. The proposed project would extend the existing docking facility an additional 114 feet into the waters of the Brunswick River for a total distance of 492 feet. This would extend the docks to slightly less than $\frac{1}{3}$ the width of the Brunswick River ($\frac{1}{3}$ the width would be 498 feet).
16. CRC Rule 15A NCAC 7H.0208(b)(6)(J)(iii) states in relevant part, that pier length shall be limited by: "Not extending more than $\frac{1}{4}$ of the width of a natural waterbody, or human-made canal or basin. Measurements to determine widths of the waterbody, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the waterbody..."
17. When the permit was issued in 1999, the permit application had indicated that the docking facility was constructed in at least -2' depths, and was adequate enough to ensure that significant damage to the shallow bottom PNA habitat would not result from the types of vessels that were to be used by the docking facility.
18. Over the last 12 years sedimentation in the area closest to the shoreline has made the slips nearest to the shore inaccessible during much of the tidal cycle.
19. The development proposed by Highland Shores is to extend the structure an additional 114' and to increase the width of the existing 30 slips so that boat lifts could be placed in the newly configured slips which currently are not wide enough for lifts.
20. A hydrographic survey completed in July 2010 by Registered Land Surveyor Arnold Carson was the basis for the depths shown on the permit application drawings, and shows that there are currently 8 slips and 6 finger piers located between the mean low water contour and the -1' mean low water contour.
21. These 8 slips and 6 floating finger piers below the -1' mean low contour are inaccessible at low tide and boats in these slips and the associated floating finger docks sit on the bottom at low tide.
22. There are an additional 4 slips and 2 floating finger piers located between the -1' mean low water contour and the -2' mean low water contour.
23. Twelve of the 30 slips and 8 of the 16 floating finger piers are now located in less than 2 feet of water at low tide. This represents 40% of the slips and 50% of the finger piers.

24. Allowing the boat docks to be extended to 1/3 of the width of the water body will enable the owners to relocate the slips so that all slips have a minimum of approximately -1.5' of water at normal low water.
25. The number of slips would remain at 30.
26. The slips would remain 30' long, although the "clear water width" between finger piers would be expanded from 22' to 24' to allow for the installation of 12' by 12' boat lifts.
27. Extending the floating dock system to deeper water will prevent the floating docks and boats from sitting on and disturbing the intertidal mud flat and the shallow water area during portions of the tidal cycle.
28. Under the proposed relocation water depths would be approximately -1.5' normal low water in the landward most slips and would be -12' mean low water in the outer slips.
29. The depth survey shows a 280' wide natural channel within the river with water depths between -15' and -18'. The proposed extension would end at about the -12' contour and would not encroach into the channel. The proposed pier would end approximately 47 feet landward of the -15' contour as shown on the plans.
30. The shoreline of the Brunswick River opposite Highland Shores is a portion of Eagle Island.
31. The portion of Eagle Island opposite Highland Shores is owned by the United States and is managed by the U.S. Army Corps of Engineers as a dredged material disposal site for placement of dredged material from maintenance of the Cape Fear River Ship Channel.
32. The width of the riparian corridor is approximately 144' and, after subtracting the 15' riparian area setbacks, the useable width of the riparian corridor is 114'.
33. The proposed project would constitute a capital improvement and would require a special assessment to be approved by a vote of the members of Highland Shores in accordance with Article 6, Section 4 of the Declaration.
34. During the major permit review process, the Wildlife Resources Commission commented that they appreciated that no dredging was proposed and that the shoaling problem was being resolved by a longer pier, but noted that shoaling is "highly likely" to continue at this site. No other relevant comments or objections were received.
35. The proposed location for the relocated slips remains within the PNA, and under current Commission rules, future dredging could not be permitted should future shoaling render these slips unusable if this variance is granted and the slips are relocated.

STIPULATED EXHIBITS

- A. Subdivision Map
- B. Site plan including depths from 2010 hydro survey
- C. DCM's Field Report
- D. Powerpoint with site photos and Petitioner's Aerial photo of Brunswick River with overlays for river depth, river width and proposed docking facility.

Petitioner and Staff 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 strict application of the ¼ water body width limit for piers and docks results in a loss of use of 40% of the slips in the existing marina and creates damage to shallow water primary nursery area habitat. The homeowners association is the owner of the community marina facility and has the right and duty to maintain the facility for those who have exclusive rights to use of the various boat slips. It is an unnecessary hardship for the Petitioner and its members to lose the ability to use their boat slips during a significant portion of the tidal cycle due to the application of the ¼ water body width limit on piers and docks. The persons with exclusive rights to the slips purchased those rights from the developer when there was adequate water for use of the slips at all stages of the tidal cycle. The loss of the value of this investment due to unanticipated siltation is an unnecessary hardship.

Staff's Position: Yes.

Staff agrees that the strict application of the one-fourth width rule for piers results in an unnecessary hardship to Petitioner. This area is classified as a Primary Nursery Area (PNA), and was so classified at the time Petitioner constructed the existing docking facility. The Commission's rules prohibit new dredging in PNAs. At the time of construction in 1999, there was adequate depth to permit the facility, but the area has since experienced shoaling. While DCM staff believes that siltation at marinas and docking facilities is a common and predictable occurrence, Staff notes that Petitioner has attempted to minimize the facility's current impacts to the PNA through reconfiguration and extension, instead of proposing dredging in the PNA. Further, Petitioner limits its design to reclaiming the initially permitted and constructed 30 slips, and does not propose additional slips, but instead moves the facility from essentially the one-fourth width to the one-third width line. It should also be noted that this site is across from Eagle Island which is less likely to be developed and is along a less-developed shoreline in an area without heavy boat traffic. Therefore, strict application of the one-fourth rule is not essential to protect navigation in this area. As Petitioner's approach to reclaiming the use of its 30 slips will have fewer overall negative impacts than are occurring at present, Staff agrees that the one-fourth width rule for piers results in an unnecessary hardship to Petitioner.

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

Petitioner's Position: Yes.

The unexplained rapid siltation along the shoreline of the Brunswick River at the location of the Petitioner's property is a peculiar unanticipated occurrence. The loss of use of the slips is caused by this unanticipated and unexplained rapid siltation.

Staff's Position: Yes.

Staff agrees that any unnecessary hardships the Commission might find result from conditions peculiar to the Petitioner's property. While staff believes that siltation at marinas or docking facilities is quite common, Staff also notes that Petitioner's property is located along the less developed shoreline of the Brunswick River, adjacent to an area which does not typically have heavy boating traffic. Petitioner's property is also located across from a portion of Eagle Island used by the U.S. Army Corps of Engineers for spoil deposition, which makes it less likely that there will be future development across from Petitioner's property, which might necessitate the one-fourth rule be applied strictly. Accordingly, there is less likelihood that piers or docks will be proposed across from Petitioner's property. Staff believes these characteristics of Petitioner's property and its location make future navigation issues resulting from Petitioner's proposed longer docking facility unlikely, and so agree that any hardships result from the location of Petitioner's property.

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

Petitioner's Position: No.

The hardships are due to unexplained and unanticipated processes and not to any actions taken by the Petitioner.

Staff's Position: No.

Staff agrees with Petitioner that hardships do not result from actions taken by the Petitioner. When this facility was permitted in 1999, there was adequate water depth for the slips. Since that time, there has been shoaling in the slips which causes the floating docks to rest on the bottom for part of the tidal cycle. However, Petitioner has worked toward resolving the problem of its too-shallow slips and the resulting impacts to the PNA by reconfiguring the existing 30-slip facility to deeper water, and by not increasing the total slips or by dredging. Accordingly, any hardships, on balance, do not result from actions taken by the Petitioner.

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

Petitioners's Position: Yes.

The management objectives for estuarine waters and public trust areas as set forth in the CAMA Rules recognize the benefits of shallow water areas as nursery areas for marine resources. Estuaries are also recognized as important elements of economic resources such as marinas and other tourist related industries. (See 15A NCAC 7H.0206(c) and .0207(c)). Use standards for estuarine water and public trust areas recognize that boat docks, piers and wharfs are acceptable uses provided they are not detrimental to public trust rights and biological and physical functions. (See 15A NCAC 0206(d) and .0207(d)). Specific use standards for estuarine waters and public trust areas specify that marinas be located in deep waters not requiring dredging. 15A NCAC 7H.0208(b)(5)(A). This standard was followed for the original construction of the Highland Shores Marina but subsequent events have resulted in many of the boat slips being in shallow water. The extension of the pier and docks to deeper water will restore compliance with this standard. Docking facilities are generally not allowed in primary nursery areas with less than 2' of water at normal low water. (See 15A NCAC 7H.1205(g)). The proposed extension of the docks would allow all slips to once again meet this standard. The ¼ rule is designed to avoid undue obstruction of navigable water and public trust areas by private structures. The rule is intended to insure that the middle one-half of the body of water remains open and free for navigation and other public uses. For the foreseeable future, it is unlikely that any structures will be extended into the Brunswick River from the opposite shoreline due to its ownership by the United States and its use as a dredged material disposal site. Thus, for the foreseeable future, at least two thirds of the width of the Brunswick River at this point would remain open for public use. This includes the entirety of a 280' wide channel and additional area about 50' wide deep water area between the end of the pier and the edge of the channel.

The proposed project will mitigate current adverse effects on primary nursery areas while having little or no adverse effect on the public's use of public trust areas.

Secure the public safety and welfare: The public safety and welfare will be secured for the reasons stated in (1) above. In addition, maintaining the slips in an orientation parallel with the tidal currents makes for safer ingress and egress at the slips. Moving the inner slips into an adequate water depth also eliminates much of the danger of going aground when trying to enter the slips at low tide.

Preserve substantial justice: The variance will allow the persons who invested in good faith in a boat slip that met their needs at the time of the purchase to continue to realize value from their investment.

The unanticipated siltation has created an unnecessary hardship on these innocent purchasers and the relocation of the pier and associated boat slips at their expense will allow them to preserve their investment while alleviating damage to primary nursery areas and having only an insignificant effect on public trust rights.

Staff's Position: Yes.

Staff agrees that Petitioner's reconfigured and extended design is within the spirit, purpose and intent of the Commission's rules for public trust areas regarding the protection of navigation by the boating public and the unnecessary usurpation of public trust waters. Petitioner is correct that 15A NCAC 7H.0208(a)(2)(B) requires an applicant to minimize impacts to PNAs (among other important habitats). Petitioner is also correct that one purpose of the one-fourth width pier rule is to protect the ability to safely navigate these public trust waters. By proposing its reconfiguration and extension plan, Petitioner aims to reduce impacts to the PNA by moving the floating piers and boats, which may now sit on the bottom during parts of the tidal cycle, to deeper water, while keeping the existing channel and most of the waterbody width navigable. This proposal improves public safety and welfare by reducing the current impacts on the PNA by the existing floating docks and slips. This proposal preserves substantial justice because Petitioner is not seeking additional slips while trying to address their now too-shallow slips by asking for this proposed solution. That said, DCM staff caution that if further shoaling takes place as staff believe is common in marinas and docking facilities, further extensions of the pier length past those now proposed may not preserve substantial justice. While one variance from one-fourth to one-third width might preserve substantial justice, a second, even longer extension, in an area Petitioner now knows can shoal and may block the existing channel, may well not.

WESSELL & RANEY, L.L.P.
ATTORNEYS AT LAW
POST OFFICE BOX 1049
WILMINGTON, NORTH CAROLINA 28402-1049

RECEIVED

SEP 14 2011

N.C. ATTORNEY GENERAL
Environmental Division

JOHN C. WESSELL, III
WESSELL@BELLSOUTH.NET

WILLIAM A. RANEY, JR.
WARANEY@BELLSOUTH.NET

STREET ADDRESS:
107-B NORTH 2ND STREET
WILMINGTON, NC 28401

TELEPHONE: 910-762-7475
FACSIMILE: 910-762-7557

September 13, 2011

VIA FAX AND U.S. MAIL (252-247-3330)

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

open a file
CRC-VR-11-08
for Christy

Re: **Variance Request – Highland Shores Community Association,
Brunswick County**

Dear Director:

Enclosed is a variance request sent on behalf of the Highland Shores Community Services Association, Inc. An original of the variance request is being sent by mail.

Sincerely,

WESSELL & RANEY, L.L.P.

W. A. Raney, Jr.
W. A. Raney, Jr.

WAR:ktw
Enclosure

WAR\ENVIRON\RI11-092-C01

cc: North Carolina Attorney General's Office,
Environmental Division
(via fax 919-716-6767 and U.S. mail)

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.: 11-00

PETITIONER'S NAME Highland Shores Community Services Association, Inc.
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:

- X The name and location of the development as identified on the permit application;
- X A copy of the permit decision for the development in question; - Ex. A
- X A copy of the deed to the property on which the proposed development would be located; Ex. B
- X A complete description of the proposed development including a site plan; Ex. C
- X A stipulation that the proposed development is inconsistent with the rule at issue; Ex. D
- X Proof that notice was sent to adjacent owners and objectors, as required by 15A N.C.A.C. 07J .0701(c)(7); Ex. E
- N/A Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- X Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above; Ex. F
- X 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. Ex. G
- X This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

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

<u>W. A. Raney, Jr.</u> Signature of Petitioner or Attorney	<u>9-13-11</u> Date
<u>W. A. Raney, Jr.</u> Printed Name of Petitioner or Attorney	<u>waraney@bellsouth.net</u> Email address of Petitioner or Attorney
<u>PO Box 1049</u> Mailing Address	<u>(910)762-7475</u> Telephone Number of Petitioner or Attorney
<u>Wilmington, NC 28402-1049</u> City State Zip	<u>(910)762-7557</u> Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

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

By Fax:
(252) 247-3330

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

Contact Information for Attorney General's Office:

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

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

By Fax:
(919) 716-6767

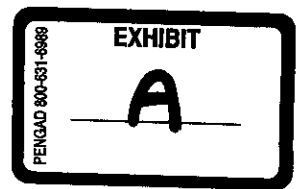


North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary



June 22, 2011

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Mr. John Lister
Highland Shores HOA
1002 Club Court
Belville, NC 28451

Dear Mr. Lister:

This letter is in response to your application for a Major Permit under the Coastal Area Management Act (CAMA), in which authorization was requested to reconfigure/extend the length of the existing 30-slip docking facility and to install a boatlift within each of the slips adjacent to the Brunswick River in Belville, Brunswick County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Office on March 25, 2011 is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The existing docking facility, which received a CAMA Major Permit on May 14, 1999, extends approximately 378 feet into the Brunswick River, as measured from the waterward edge of the Coastal Wetlands fronting the property.
- 2) Water depths in the vicinity of the existing slips are approximately -1 foot relative to the normal low water elevation.
- 3) The waters of the Brunswick River at this location are designated as a Primary Nursery Area by the N.C. Marine Fisheries Commission. Primary Nursery Areas are those areas in the estuarine and ocean system where initial postlarval development of finfish and crustaceans takes place.
- 4) 15A NCAC 07H. 0208(b)(1) of The Rules of the Coastal Resources Commission prohibit excavation of new canals, channels, and boat basins within Primary Nursery Areas.

- 5) The proposed project would extend the existing docking facility an additional 114 feet into the waters of the Brunswick River for a total distance of 492 feet. The width of the Brunswick River at the proposed project location has been calculated at 1,494 feet. Therefore, the proposed project would extend approximately 119 feet beyond one-fourth the width of the waterbody. Water depths in the area of the proposed slips range from -2 to -12 feet relative to the normal low water elevation.
- 6) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following rules of the Coastal Resources Commission:
 - a) 15A NCAC 07H.0208(b)(6)(J)(iii), which states that pier length shall be limited by: "not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body..."

Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit under the Coastal Area Management Act be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the state guidelines for Areas of Environmental Concern or local land use plans.

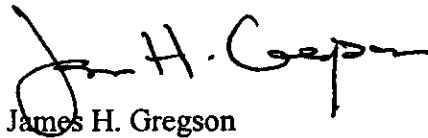
If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties and then makes a recommendation to the Coastal Resources Commission. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the 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. A copy of this petition should be filed with this office.

Also, you are advised that as long as this state permit denial stands, your project must be deemed inconsistent with the N.C. Coastal Management Program, thereby precluding the issuance of federal permits for this project. The Federal Coastal Zone Management Act (CZMA) gives you the right to appeal this finding to the U.S. Secretary of Commerce within thirty days of receipt of this letter. Your appeal must be on the grounds that the proposed activity is (1) consistent with the objectives or purposes of the CZMA, or (2) is necessary in the interest of national security, and thus, may be federally approved.

Mr. John Lister
Highland Shores HOA
June 22, 2011
Page 3

Members of my staff are available to assist you should you desire to modify your proposal in the future. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, extension 212.

Sincerely,

A handwritten signature in black ink, appearing to read "James H. Gregson". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

James H. Gregson

cc: Colonel Jefferson Ryscavage – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD
David Timpy, ACOE

NO TITLE SEARCH HAS BEEN REQUESTED AND NO SEARCH HAS BEEN PERFORMED.

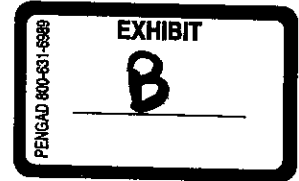
Prepared by: **MURCHISON, TAYLOR & GIBSON, LLP**
 16 North Fifth Avenue, Wilmington, NC 28401

NORTH CAROLINA

Tax Parcel No. _____

BRUNSWICK COUNTY

WARRANTY DEED



THIS DEED, made this 21 day of December, 2000, by and between **Southern Lifestyles, LLC**, a North Carolina limited liability company, herein called GRANTOR, and **Highland Shores Community Services Association, Inc.**, a North Carolina nonprofit corporation, whose mailing address is P.O. Box 10476, Wilmington, NC 28411-0476, herein called GRANTEE.

WITNESSETH THAT:

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

Common Area and Facilities Highland Shores Subdivision

Tract 1: BEING all of those certain parcels of land identified as (1) "OPEN SPACE" COMMON AREA adjoining the northern line of Highland Shores Subdivision; (2) "OPEN SPACE" COMMON AREA adjoining the eastern line of Highland Shores Subdivision"; (3) "AMENITIES AREA (OPEN SPACE)" adjoining (2) above and the eastern line of Highland Shores Subdivision; (4) all streets and road rights of way located within the Highland Shores Subdivision excepting therefrom that parcel identified as "Future 70' right of way" all as shown on a map entitled Final Plat Highland Shores recorded in Map Cabinet 20, Page 323 of the Brunswick County Registry, reference to said map is hereby made for a more particular description.

Tract 2: BEING all of that certain parcel of land identified as open space common area and open space amenities area on map entitled Map of Mooring Facilities Including Piers, Docks & Boat Slips Highland Shores Subdivision recorded in Map Cabinet 21, Page 301 of the Brunswick County Registry, reference to said map is hereby made for a more particular description.

Tracts 1 and 2 are conveyed subject to all rights of all persons and entities named in all existing and future (including all assignments and transfers) Highland Shores Boat Slip Assignments. Specifically, Grantor retains all rights related to all unassigned boat slips which rights are excepted from this conveyance.

Subject to Brunswick County ad valorem taxes, all easements, rights of way, access rights, rights of use of others, encumbrances, restrictions of record, all governmental permits, land use statutes, ordinances and regulations, including zoning, subdivision and building regulations and further subject to the Bylaws and Rules and Regulations established by Highland Shores Community Services Association, Inc.

Grantor reserves a nonexclusive easement and right of use over the streets and road rights of way located within Highland Shores Subdivision as described herein.

Orange Simon
 RET _____
 TOTAL \$10.00
 RECD 01 REV _____
 CASH _____
 CK AMT 10.00
 TOY _____
 CK# 498
 BY _____

TR-2 openspace
 23255
 210 048FF 001 0300 KB TR 1

TS	AUX	CON	INT	FOL	SPL	BY
2	0	048FF	F	001	0100	KB (Open Space)
2	0	048FF	F	001	0200	KB (Open Space)
2	0	048FF	F	001	0400	KB Amenities Area

Grantor makes no warranty as to any portion of the property conveyed herein which is located below the mean high water mark of any adjoining or abutting waters.

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 GRANTEE, its successors and assigns, in fee simple, forever.

And the GRANTOR, for itself, its successors and assigns, does covenant to and with the said GRANTEE, its successors and assigns, that it is seized in fee of the above granted and described property; that it has 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 encumbrances, except those mentioned above; and except as set forth above, that it will and its successors and assigns shall warrant and defend the title to the same against the lawful claims and demands of any and all persons whomsoever.

IN TESTIMONY WHEREOF, the said GRANTOR has caused this instrument to be executed the day and year first above written.

SOUTHERN LIFESTYLES, LLC

By: [Signature] (SEAL)
Manager

By: [Signature] (SEAL)
Manager

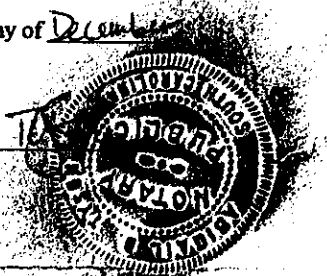
STATE OF NORTH CAROLINA

COUNTY OF Charleston

I, Abigail D. Tyson, a Notary Public for said County and State, do hereby certify that Steve Lewis and Loren Dickey, Managers of Southern Lifestyles, LLC, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official stamp or seal, this 21 day of December, 2002.

Abigail D. Tyson
Notary Public



My Commission Expires:

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires June 8, 2010

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of ABIGAIL D TYSON

Notary(ies) Public is (are) Certified to be Correct.
This Instrument was filed for Registration on this 28th Day of December, 2000
in the Book and Page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON, Register of Deeds

BRUNSWICK COUNTY
REGISTER OF DEEDS

ADMINISTRATIVE
CORRECTION NOTICE

Recording Document Maintenance
Indexing Entry Maintenance

Recorded in the Brunswick County Registry on the 28 day of Dec, 2000
in Book 1425 at page 773 (original recording date)

Pin.# 20000048FF0010100 Inst. type Deed Corrected by VJg
20000048FF0010300

Names of all parties to the original instrument:

Grantors: Southern Lifestyles LLC

Trustee:

Grantees: Highland Shores Community Services Assn Inc
STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I/we, the undersigned, hereby certify that the following correction(s) are made in the above named recorded instrument in accordance with the General Statutes of North Carolina.

Description of correction(s):

When originally recorded, this document was assigned
four parcel numbers & should have had only three
assigned. Parcel number 20000048FF0010400 should
have been omitted.

this the 10 day of January, 2001

Robert J. Robinson
Robert J. Robinson
Register of Deeds

This explanation statement, together with the attached instrument (only if a recording error) duly recorded at date, time in the book and page shown on the first page hereof.

Register of Deeds _____ by _____ Assistance/Dep.

Nickie Anderson
TOTAL 0 REV. 43
REC# _____ CK AMT _____ CK# _____
CASH _____ REF. _____ BY 20

UNCERTIFIED

UNCERTIFIED

UNCERTIFIED

UNCERTIFIED

UNCERTIFIED

UNCERTIFIED

PREPARED BY: MURCHISON, TAYLOR, KENDRICK, & GIBSON, L.L.P.
16 N. FIFTH AVENUE, WILMINGTON, NC 28401

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS OF HIGHLAND
SHORES SUBDIVISION

KNOW ALL THESE MEN BY THESE PRESENTS THAT:

Southern Lifestyle, LLC, a North Carolina limited liability company (herein "DECLARANT"), heretofore executed the Declaration of Protective Covenants of HIGHLAND SHORES SUBDIVISION and caused the same to be recorded in Book 1275, Page 923 of the Brunswick County Register of Deeds (herein "Protective Covenants") and

WHEREAS, in accordance with Article 12, Section 2 of said Declaration of Protective Covenants, the DECLARANT has the right to amend the Protective Covenants with the intent that all properties in Highland Shores Subdivision as described in the Declaration of Protective covenants shall be subject to this Amendment; and

WHEREAS, the DECLARANT desires to amend the Declaration of Protective Covenants of Highland Shores Subdivision and set out hereinafter:

NOW, THEREFORE, the DECLARANT does hereby amend the Protective Covenants as follows:

Article 8 is hereby amended by deleting the second sentence in its entirety and replacing it with the following sentence:

"The DECLARANT shall assign a boat slip to each owner (member) who acquires a boat slip from DECLARANT by an Assignment of Boat Slip letter at the time of sale of each lot or a reasonable time thereafter"

Except as amended, the aforesaid Protective Covenants shall be and remain in full force and effect.

This the 20th day of August, 1999.

BRUNSWICK COUNTY REGISTER OF DEEDS
Robert J. Robinson
Inst #23306 Book 1325 Page 1240
08/24/1999 02:13pm Rec'd 2840

ACT MTK G. Lynn
TOTAL 10.00 REV. TCH
REC 38 CK AMT 10.00
REF BY

UNCERTIFIED

UNCERTIFIED

UNCERTIFIED

Inst # 23306 Book 1325 Page: 1241

SOUTHERN LIFESTYLES, L.L.C.

BY:

[Signature]
Manager
[Signature]
Manager

STATE OF ~~NORTH~~ ^{SOUTH} CAROLINA
COUNTY OF ~~BRUNSWICK~~ ^{BERKELEY}

I, *Patricia A. Glenn*, a Notary Public for said County and State, do hereby certify that Loren E. Dickey and Stephen Lewis, Managers of Southern Lifestyles, L.L.C., a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official stamp or seal, this 20th day of August, 1999.

Patricia A. Glenn
Notary Public



My Commission Expires:
NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires July 27, 2005

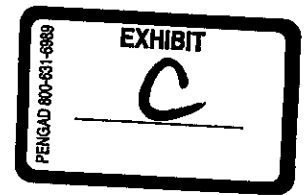
STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

The Foregoing (or annexed) Certificate(s) of PATRICIA A. GLENN

Notary(ies) Public is (are) Certified to be Correct.
This instrument was filed for Registration on this 24th Day of August, 1999
in the Book and Page shown on the First Page hereof.

Robert J. Robinson
ROBERT J. ROBINSON, Register of Deeds

UNCERTIFIED BY: *[Signature]*
Derivative



Project Narrative
Highland Shores Community Marina
Belville, NC, Brunswick County
Revised February 2011

Existing Conditions.

Highland Shores is an existing 52-lot, single family subdivision located within the Town of Belville, Brunswick County, NC. The western edge of the subdivision abuts Hwy 133, along which the entrance is located, and the eastern edge of the subdivision abuts the Brunswick River. A thirty (30) slip, open water marina exists on the Brunswick River and is accessed by a common area lot. The community marina was authorized by CAMA Permit # 42-99 issued on May 14, 1999.

The existing dock system consists of a single floating dock spine which extends perpendicular from the shore to the ¼-width of the waterbody limit. Slips are located on the northern and southern sides of the dock spine and are accessed by floating finger docks. All slips are 30' in length. All of the boat slips are owned by homeowners within the community. The Highland Shores Homeowners Association (HOA) owns common area access to the marina and maintains the dock system.

The Brunswick River is designated as Primary Nursery Area (PNA) by the Marine Fisheries Commission and is designated as SC Waters by the Environmental Management Commission.

Proposed Project.

When the permit was issued in 1999, all slips had adequate water depths. Over time, apparent sedimentation near the intertidal area has made slips nearest the shore inaccessible during much of the tidal cycle. A hydrographic survey was completed in July 2010 by registered land surveyor Arnold Carson. The survey shows that there are currently eight (8) slips located between the mean low water (MLW) contour and the -1' MLW contour. Not only are these slips inaccessible at low tide, boats in those slips and the associated floating finger docks sit on the bottom at low tide. The landward most finger docks have been damaged due to torque created by the lack of proper flotation. The HOA is currently in the process of replacing some of these fingers under the CAMA maintenance and repair standards. There are an additional four (4) slips located between the -1' MLW contour and the -2' MLW contour. With less than two feet of water at low tide, access into these slips is restricted as well. Twelve of the thirty slips, or 40% of the slips, are now located in less than two feet of water at low tide.

The HOA is currently requesting to extend the floating system to 1/3-width of the waterbody in order to regain full use of all slips. No new slips would be added, and thirty slips would remain. The slips would remain 30' long, although the "clear water width" of the double loaded slips would be expanded to 24' to allow for the installation of boat lifts which are not possible to install now due to a more narrow width. The addition of boat lifts and extending the floating dock system to deeper water will prevent the floating dock and boats from sitting on the intertidal mud flat during portions of the tidal cycle.

This modification should be beneficial in the PNA waters by eliminating unintended bottom disturbance. Water depths inside the landward most slips would be at least -3' MLW and would exceed -10 MLW at the waterward end with the proposed extension. The depth survey also shows the natural channel within the river, and the proposed extension would not encroach on the channel. It is also noted that Eagle Island is located on the opposite side of the river, and no development or docks are anticipated on that side of the river. Navigation should not be significantly impacted by the proposed extension. It is assumed the dock length would meet conditions of the US Army Corps of Engineer's Section 10 General Permit 56, which specifies docks should not exceed 1/3 the width of the waterbody.

The HOA has assessed several other project alternatives which included the addition of boat lifts in the existing slips, dredging, use of the adjacent riparian corridors which are associated with lots under different ownership, and the applicability of existing CAMA exemptions for exceeding the 1/4-waterbody width. Dredging in PNA waters was deemed a less desirable alternative than extending the marina beyond the 1/4-width of the waterbody since an extension of the marina would prevent any impact to resources and is not thought to impact navigation. The applicants investigated adding boat lifts to the existing configuration but were told by their contractor the slips were too narrow to accommodate lifts without extending the dock system to allow for wider berths. The two adjacent riparian corridors are owned by individual lot owners and use of a portion of these corridors was not possible. Alternative designs which kept the marina within the common area's riparian corridor but placed some slips parallel to the shoreline were also assessed. Due to the relatively narrow riparian corridor and the need to maintain the 30 existing slips, this type of configuration did not substantially reduce the need to extend the dock system to the 1/3-waterbody limit. The enclosed figures labeled "Alternative #1- #4" show several of these marina reconfigurations that were considered but found to be impracticable. These alternatives are not part of the requested work, and have been enclosed as an supplement to this narrative only.

The fixed pier which provides access to the dock system would not be changed. The wooden walkway which provides access from the subdivision street to the fixed pier will not be changed. Therefore, there is no upland work associated with this application. All changes involve the floating, wooden dock system to be located over open water of the river. No additional stormwater management features are needed and no new land disturbance is proposed.

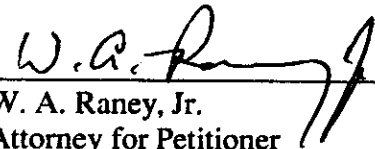


CAMA VARIANCE PETITION
HIGHLAND SHORES COMMUNITY SERVICES ASSOCIATION, INC.

Petitioner, Highland Shores Community Services Association, Inc. through its attorney, W. A. Raney, Jr., stipulates that the proposed development that is the subject of the variance petition is inconsistent with Coastal Resources Commission Rule 15A NCAC 07H.0208(b)(6)(J)(iii).

WESSELL & RANEY, L.L.P.

By:

A handwritten signature in cursive script, appearing to read "W.A. Raney, Jr.", written over a horizontal line.

W. A. Raney, Jr.
Attorney for Petitioner
107-B N. 2nd Street
PO Box 1049
Wilmington, NC 28402-1049
(910) 762-7475
NC Bar No. 5805

WESSELL & RANEY, L.L.P.
ATTORNEYS AT LAW
POST OFFICE BOX 1049
WILMINGTON, NORTH CAROLINA 28402-1049



JOHN C. WESSELL, III
WESSELL@BELLSOUTH.NET

WILLIAM A. RANEY, JR.
WARANEY@BELLSOUTH.NET

STREET ADDRESS:
107-B NORTH 9TH STREET
WILMINGTON, NC 28401

TELEPHONE: 910-762-7475
FACSIMILE: 910-762-7557

August 16, 2011

VIA CERTIFIED MAIL, RRR 7008 1830 0002 0312 4207

Alice and Richard Hayden
24 Edinburgh Drive
Easton, PA 18045

Re: Variance Request by Highland Shores Community Services Association, Inc.
Extension of community pier

Dear Property Owner:

This is to notify you that the Highland Shores Community Services Association, Inc. is applying for a variance from the North Carolina Coastal Resources Commission to enable the Association to extend its existing pier an additional 118 feet into the Brunswick River. The variance is projected to be heard at the October 26/27, 2011 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, 127 Cardinal Drive Extension, Wilmington, North Carolina, 28405-3845. You may also contact a Division of Coastal Management representative at (910) 796-7215.

Sincerely,

WESSELL & RANEY, L.L.P.

A handwritten signature in black ink, appearing to read "W.A. Raney, Jr." with a stylized flourish at the end.

William A. Raney, Jr.
Attorney for Highland Shores Community
Services Association, Inc.

WAR:dc

WAR\enviro\RI11-032-C02

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS AND AT BOTTOM LEFT

COASTAL CAROLINA AREA

SENDER: COMPLETE THIS SECTION

- 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.

1. Article addressed to:

Alice and Richard Hayden
24 Edinburgh Dr.
Easton, PA 18045

2. Article Number

7008 1830 0002 0312 4207

(Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature: 15 AUG 2011 PM
 Agent
 Addressee

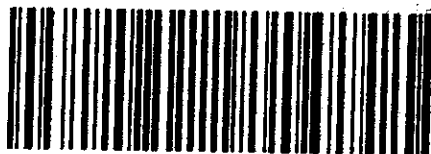
B. Received by (Printed Name) C. Date of Delivery

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

3. Service Type:
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

CERTIFIED MAIL



7008 1830 0002 0312 4207

SELL & RANEY, L.L.P.
ATTORNEYS AT LAW
107-B NORTH SECOND STREET
POST OFFICE BOX 1049
INGTON, NORTH CAROLINA 28402



017H15530698
HASLER
\$5.590
08/16/2011
Mailed From 28401

US POSTAGE

HOLD
TIL 8/27

Alice and Richard Hayden
24 Edinburgh Drive
Easton, PA 18045

NAME
1st Notice 9-7-11
2nd Notice
Return

NIXIE 178 DE 1 00 09/09/11

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

BC: 28402104949 *0254-00838-15-45

18045+2186 F011
284021049



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. 	A. Signature: <input checked="" type="checkbox"/> Agent, <input type="checkbox"/> Addressee <i>X [Signature]</i>	
1. Article Addressed to: Baker NC Properties LLC 209 Dixie Ave. Wilmington, NC 28403	B. Received by (Printed Name): <i>[Signature]</i>	C. Date of Delivery: 8-17-11
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
2. Article Number: (Transfer from service label)	7008 1830 0002 0312 4221	
	PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1546	

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. 	A. Signature: <input checked="" type="checkbox"/> Agent, <input type="checkbox"/> Addressee <i>[Signature]</i>	
1. Article Addressed to: Tommy Sullivan et al 10163 Creekside Dr. SE Unit 5 Leland, NC 28451	B. Received by (Printed Name): <i>S. Sullivan</i>	C. Date of Delivery:
	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No NORTH CAROLINA 28451 AUG 18 2011 SERVICE	
2. Article Number: (Transfer from service label)	7008 1830 0002 0312 4191	
	PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1546	

COASTAL CAROLINA AREA

SENDER: COMPLETE THIS SECTION

- 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.

1. Article Addressed to:

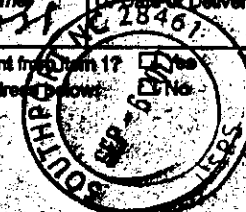
Jeffery Guss
 Dany Minshew
 117 SE 67th St.
 Oak Island, NC
 28465

COMPLETE THIS SECTION ON DELIVERY

A. Signature: *[Signature]* 15 AUG 2011 PM
 Agent Addressee

B. Received by (Printed Name): *[Signature]* C. Post Office of Delivery: 28465

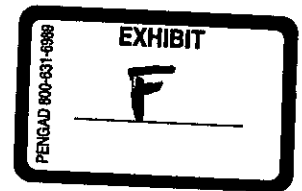
D. Is delivery address different from item 1? Yes No
 If YES, enter delivery address below:



3. Service Type:
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number: 7008 1830 0002 0312 4214
 (Transfer from service label)



PETITIONER'S POSITION
ON
VARIANCE CRITERIA

- (1) **Will unnecessary hardships result from strict application of the rules, standards, or orders?**

Petitioner's position: Yes.

Petitioner's argument: The strict application of the ¼ water body width limit for piers and docks results in a loss of use of 40% of the slips in the existing marina and creates damage to shallow water primary nursery area habitat. The homeowners association is the owner of the community marina facility and has the right and duty to maintain the facility for those who have exclusive rights to use of the various boat slips. It is an unnecessary hardship for the Petitioner and its members to lose the ability to use their boat slips during a significant portion of the tidal cycle due to the application of the ¼ water body width limit on piers and docks. The persons with exclusive rights to the slips purchased those rights from the developer when there was adequate water for use of the slips at all stages of the tidal cycle. The loss of the value of this investment due to unanticipated siltation is an unnecessary hardship.

- (2) **Do such hardships result from conditions peculiar to Petitioner's property such as the location, size, or topography of the property?**

Petitioner's position: Yes.

Petitioner's argument: The unexplained rapid siltation along the shoreline of the Brunswick River at the location of the Petitioner's property is a peculiar unanticipated occurrence. The loss of use of the slips is caused by this unanticipated and unexplained rapid siltation.

- (3) **Do the hardships result from actions taken by the Petitioner?**

Petitioner's position: No.

Petitioner's argument: The hardships are due to unexplained and unanticipated processes and not to any actions taken by the Petitioner.

- (4) **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?**

Petitioner's position: Yes.

Petitioner's argument:

- **Consistent with the spirit, purpose and intent of rules.**

The management objectives for estuarine waters and public trust areas as set forth in the CAMA Rules recognize the benefits of shallow water areas as nursery areas for marine resources. Estuaries are also recognized as important elements of economic resources such as marinas and other tourist related industries. (See 15A NCAC 7H.0206(c) and .0207(c)). Use standards for estuarine water and public trust areas recognize that boat docks, piers and wharfs are acceptable uses provided they are not detrimental to public trust rights and biological and physical functions. (See 15A NCAC 0206(d) and .0207(d)). Specific use standards for estuarine waters and public trust areas specify that marinas be located in deep waters not requiring dredging. 15A NCAC 7H.0208(b)(5)(A). This standard was followed for the original construction of the Highland Shores Marina but subsequent events have resulted in many of the boat slips being in shallow water. The extension of the pier and docks to deeper water will restore compliance with this standard. Docking facilities are generally not allowed in primary nursery areas with less than 2' of water at normal low water. (See 15A NCAC 7H.1205(g)). The proposed extension of the docks would allow all slips to once again meet this standard. The ¼ rule is designed to avoid undue obstruction of navigable water and public trust areas by private structures. The rule is intended to insure that the middle one-half of the body of water remains open and free for navigation and other public uses. For the foreseeable future, it is unlikely that any structures will be extended into the Brunswick River from the opposite shoreline due to its ownership by the United States and its use as a dredged material disposal site. Thus, for the foreseeable future, at least two thirds of the width of the Brunswick River at this point would remain open for public use. This includes the entirety of a 280' wide channel and additional area about 50' wide deep water area between the end of the pier and the edge of the channel.

The proposed project will mitigate current adverse effects on primary nursery areas while having little or no adverse effect on the public's use of public trust areas.

- **Secure the public safety and welfare.**

The public safety and welfare will be secured for the reasons stated in (1) above. In addition, maintaining the slips in an orientation parallel with the tidal currents makes for safer ingress and egress at the slips. Moving the inner slips into an adequate water depth also eliminates much of the danger of going aground when trying to enter the slips at low tide.

- **Preserve substantial justice.**

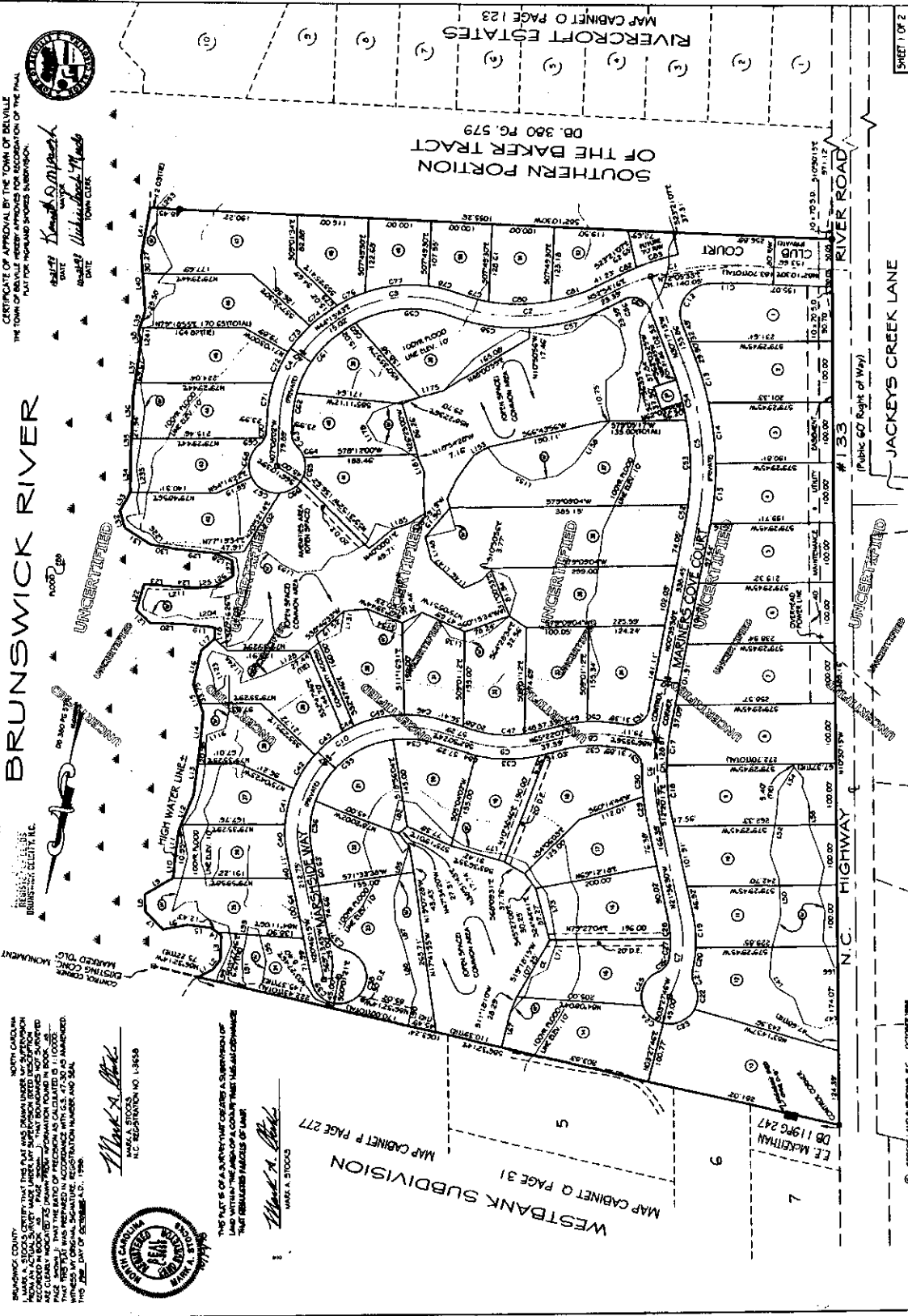
The variance will allow the persons who invested in good faith in a boat slip that met their needs at the time of the purchase to continue to realize value from their investment.

The unanticipated siltation has created an unnecessary hardship on these innocent purchasers and the relocation of the pier and associated boat slips at their expense will allow them to preserve their investment while alleviating damage to primary nursery areas and having only an insignificant effect on public trust rights.

WAR\R1-092-002

STIPULATED EXHIBITS

20/323



CERTIFICATE OF APPROVAL BY THE TOWN OF BEVILLE
 THE TOWN OF BEVILLE HAS REVIEWED THIS MAP AND APPROVES THE FINAL
 MAP FOR RECORDING AND SUBSEQUENT SURVEYING.

DATE: *10/28/98*
 BY: *Thomas S. [unclear]*
 TOWN CLERK

REGISTERED LAND SURVEYOR
 BUSINESS CLIENTS, INC.

NORTH CAROLINA
 I, MARK A. STOCKS, COUNTY CLERK, HEREBY CERTIFY THAT THIS MAP AND DRAWING UNDER MY SUPERVISION
 WAS FILED FOR RECORD IN THE PUBLIC RECORDS OF THE COUNTY OF BRUNSWICK, NORTH CAROLINA, ON
 OCTOBER 28, 1998, AT 3:59 PM. THIS MAP AND DRAWING IS CLEARLY MARKED BY THE DRAWING FROM INFORMATION FOUND IN BOOK
 20, PAGE 323, AND THE ORIGINAL SURVEYING RECORDS. THIS MAP AND DRAWING WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED,
 AND THE ORIGINAL SURVEYING RECORDS, REGISTRATION NUMBER AND SEAL
 OF THE SURVEYOR, MARK A. STOCKS, ARE FILED WITH THIS MAP AND DRAWING.
 PRO. JUNE 1ST OF SEPTEMBER 1971, 1976.

Mark A. Stocks
 MARK A. STOCKS
 N.C. REGISTRATION NO. 13929



THIS PLAT IS A SURVEY OF THE SOUTHERN PORTION OF
 LAND WITHIN THE AREA OF A COUNTY TRACT MAP CHANGE
 THAT REMAINS PART OF MAP

Mark A. Stocks
 MARK A. STOCKS

WESTBANK SUBDIVISION
 MAP CABINET Q PAGE 31
 MAP CABINET P PAGE 277

SOUTHERN PORTION
 OF THE BAKER TRACT
 DB. 360 PG. 579

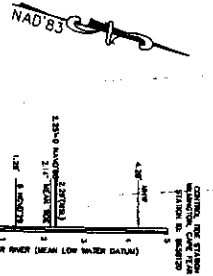
RIVERCROFT ESTATES
 MAP CABINET O PAGE 123

TOWN OF BEVILLE TOWN CREEKS TOWNSHIP BRUNSWICK COUNTY NORTH CAROLINA
 SCALE: 1" = 100'
 100 0 50 100 200
 OCTOBER 1998
 OWNED BY: SOUTHERN LUMBER, L.L.C. WILMINGTON, N.C.

FINAL PLAT
HIGHLAND SHORES

STOCKS LAND SURVEYING, P.C.
 LAND SURVEYING AND PLANNING
 214 S.W. 4TH AVENUE
 WILMINGTON, N.C. 28401
 PH: 910-253-8800
 FAX: 910-253-8803
 WWW.STOCKSLANDSURVEYING.COM

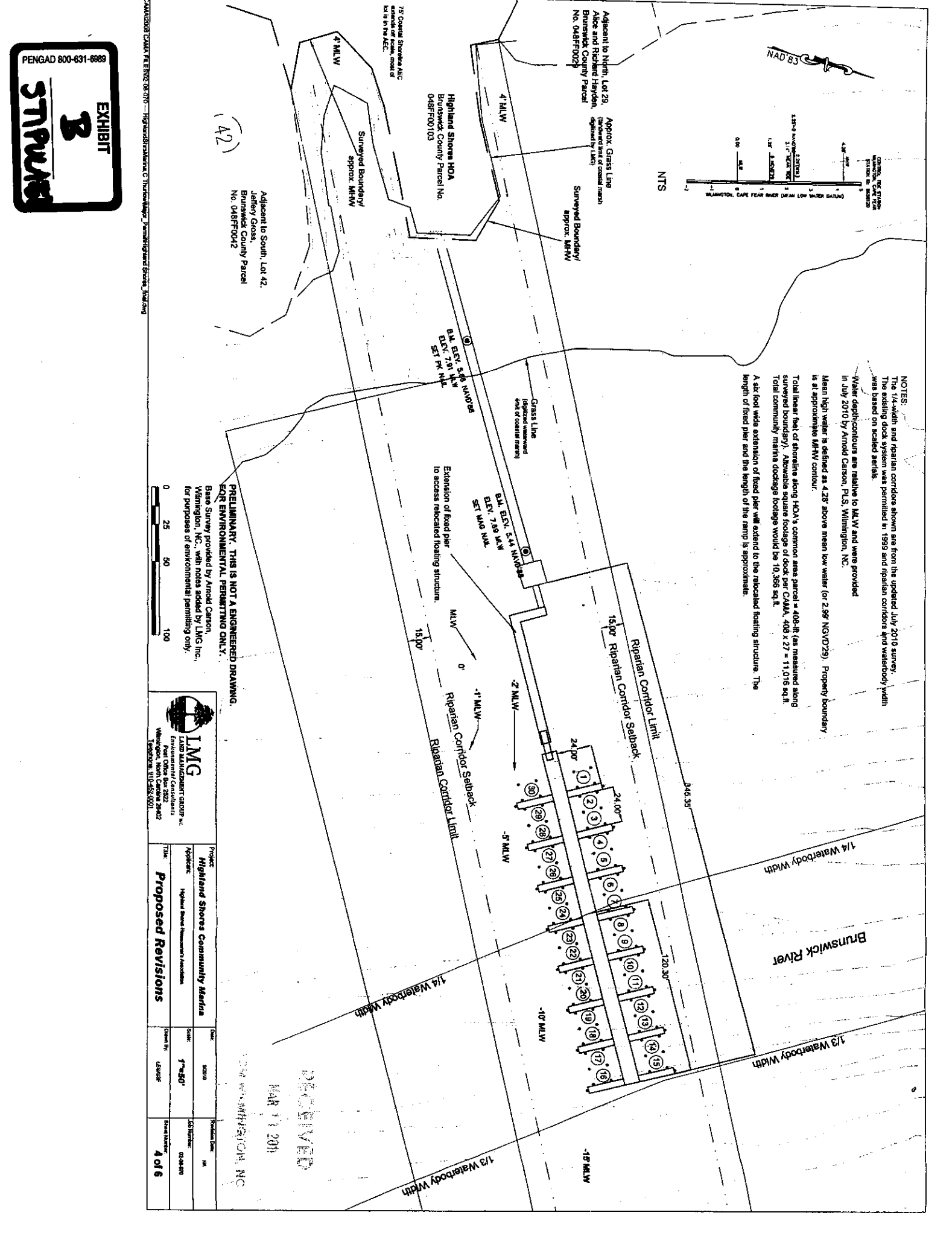
Map Cabinet 20 Page 323 10/28/98 3:59 PM \$21.00 Cj 1982



NTS

NOTES:
 The 1/4-width and riparian corridors shown are from the updated July 2010 survey.
 The existing dock system was permitted in 1999 and riparian corridors and waterbody width was based on scaled aerials.
 Water depth contours are relative to MLLW and were provided in July 2010 by Arnold Carson, P.E.S., Wilmington, NC.

Mean high water is defined as 4.28' above mean low water (or 2.98' NGVD29). Property boundary is at approximately MHW contour.
 Total linear feet of shoreline along HOA's common area parcel = 408-ft (as measured along surveyed boundary). Allowable square footage of dock per CMAA, 408 x 27 = 11,016 sq.ft.
 Total community marina dockage footage would be 10,366 sq.ft.
 A six foot wide extension of fixed pier will extend to the relocated floating structure. The length of fixed pier and the length of the ramp is approximately.



Grass Line
 (Original and
 level of coastal marsh)

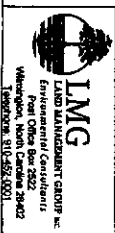
B.M. ELEV. 5.44 NAVD83
 ELEV. 7.89 M.L.W.
 SET MFG NUB.

B.M. ELEV. 5.49 NAVD83
 ELEV. 7.91 M.L.W.
 SET FM NUB.

Extension of fixed pier
 to access relocated floating structure.

**PRELIMINARY. THIS IS NOT AN ENGINEERED DRAWING.
 FOR ENVIRONMENTAL PERMITTING ONLY.**

Base Survey provided by Arnold Carson,
 Wilmington, NC., with notes added by LMG Inc.
 for purposes of environmental permitting only.



Project:	Highland Shores Community Marina	Date:	02/10	Revision Date:	M
Applicant:	Highland Shores Homeowners' Association	Scale:	1"=50'	Job Number:	02-44-00
Title:	Proposed Revisions	Drawn By:	LSB/BJE	Sheet Number:	4 of 6

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**DIVISION OF COASTAL MANAGEMENT
FIELD INVESTIGATION REPORT**



1. **APPLICANT'S NAME:** Highland Shores HOA, c/o John Lister
2. **LOCATION OF PROJECT SITE:** The project site is located off Club Court, in the Highland Shores Development, adjacent to the Brunswick River, in Belville, Brunswick County.

Photo Index - 2006: 15-7364: L-N, 11 **2000:** 15-151: J-L, 15 **1995:** 15-163: I-L, 11
State Plane Coordinates - X: 2309161 **Y:** 168550 **GPS - Q121713A**
Latitude: 34°12'31.40536"N **Longitude:** 77°58'39.09483"W

3. **INVESTIGATION TYPE:** CAMA
4. **INVESTIGATIVE PROCEDURE:** Dates of Site Visit - 12/17/10
Was Applicant Present - Yes
5. **PROCESSING PROCEDURE:** Application Received - 3/25/11 (complete)
Office - Wilmington

6. **SITE DESCRIPTION:**

- (A) **Local Land Use Plan** - Brunswick County
Land Classification from LUP - Residential, Conservation
- (B) **AEC(s) Involved:** EW, PTA
Water Dependent: Yes
- (D) **Intended Use:** Community
- (E) **Wastewater Treatment:** Existing - Community Planned- N/A
- (F) **Type of Structures:**
Existing - 52-lot subdivision with clubhouse and 30-slip docking facility.
Planned - Extension of existing 30-slip docking facility and installation of 30 boatlifts.
- (G) **Estimated Annual Rate of Erosion:** N/A
Source - N/A

7. **HABITAT DESCRIPTION:** [AREA]

DREDGED FILLED OTHER

	DREDGED	FILLED	OTHER
(A) Vegetated Wetlands- § 404-type			
(B) Non-Vegetated Wetlands (Open water)			~15,238 sq. ft. (total incorporated area) Net increase of ~518 sq. ft. of incorporated area
(C) Other - Highground			

- (D) **Total Area Disturbed:** ~518 sq. ft. total (0.011 acres)
- (E) **Primary Nursery Area:** Yes
- (F) **Water Classification:** SC Open: No

PROJECT SUMMARY: The applicant is proposing to reconfigure/extend the length of the existing 30-slip docking facility and to install a boatlift within each of the slips (for a total of 30 lifts).

The unanticipated siltation has created an unnecessary hardship on these innocent purchasers and the relocation of the pier and associated boat slips at their expense will allow them to preserve their investment while alleviating damage to primary nursery areas and having only an insignificant effect on public trust rights.

WAR\R1-092-002

9. PROJECT DESCRIPTION

The project is located within the Highland Shores development off NC Highway 133, adjacent to the Brunswick River, in Belville, Brunswick County. To find the project site, travel west on US Highway 74/76 out of Wilmington to NC Highway 133 in Leland. Travel south on NC 133 approximately 2 miles to Club Court. Travel to cul-de-sac at the end of Club Court Road. The access to the docking facility is located to the right of the clubhouse. **Access to the docking facility requires notification of the applicant, as the dock is gated and kept locked.**

Highland Shores is an existing 35.3 acre subdivision consisting of 52- single family lots, a club house and a 30-slip community dock, located within the planning jurisdiction of Belville. The subdivision is bordered by NC Highway 133 to the south and the Brunswick River to the north. The subdivision and community dock were authorized under State Permit 42-99, issued to Southern Lifestyles, LLC on May 14, 1999. The subdivision spans more than 1700 linear feet of shoreline along the Brunswick River. Waterfront lots within the community were platted to the high water line, thus granting property owners riparian rights. Two community areas were deeded to the subdivision HOA; the club house is located on one parcel and the community docking facility is located on a second separate parcel along the shoreline between lots 29 and 42. This second parcel consists of a small wooded highground finger bordered to the south by wetlands. The highground finger and adjacent wetlands were likely created from excavation and spoil deposition resulting from the dredging of one of the many the Liberty Ship berths commonly located along this part of the Brunswick River. Vegetation consists primarily of Common Reed (*Phragmites australis*) and Smooth Cordgrass (*Spartina alterniflora*). The shoreline of the parcel measures approximately 460 feet in length. A six foot wide wooden boardwalk/pier access originates on high ground near the club house and crosses the highground portion of the property leading to the Brunswick River. The pier crosses the marsh extending into the river where it leads to a 16' in length by 16' in width covered gazebo. The main spine of the floating 30-slip dock measures 10' in length and approximately 216' in length and is accessed by a ramp leading from the gazebo onto the dock. A total of fourteen finger piers, each measuring approximately 18' in length by 5' in width, extend from both sides of the main dock spine, with a T-head on the end of the dock. The T-head measures approximately 58' in length by 8' in width. Ties pilings are located between the two slips created within each of the finger piers, for a total of 30 slips. The pier and dock currently extend approximately 378' into the Brunswick River, as measured from the waterward edge of marsh. The width of the waterbody measures approximately 1494' from marsh to marsh. According to the water depths provided on the plans, the deepest (or channel) portion of the waterbody is located approximately 570' from the edge of marsh. The water depth taken during the site visit conducted at low tide on December 17, 2010 (at approximately 1:30pm) was -7' at the waterward end of the current docking facility. The low water line fell approximately 70' from the landward end of the floating dock, between slips 5 & 6 and 25 & 26, as shown on the existing site plan numbered 3 of 10. **Water depths were consistently 1' less than water depth shown relative to Mean Low Water on the plans provided.** According to the applicant, Mr. John Lister, who was also on site, the average low water line generally extends an additional 20', more or less, waterward, or between slips 6& 7 and 24& 25, as shown Sheet 3 of '10. **Considering this account, and due to the difference in water depths observed at these two locations, it is estimated that the actual Normal Low Water (NLW) line may in fact fall at the -1.5' depth shown on plans relative to Mean Low Water.** A signed, sealed survey was not provided with the permit application, but plans state water depths shown are based on a survey conducted by Arnold Carson in July 2010. It is speculated that the elevation difference may be due to changes in current conditions relative to long-term averages or seasonal variations, or possibly due to unintentional penetration of the soft, silty substrate with the surveying equipment.

The waters of the Cape Fear River, adjacent to the project site, are classified as SC by the North Carolina Division of Water Quality. They **ARE** designated as a Primary Nursery Area (PNA) by the N.C. Division of Marine Fisheries, and they are closed to the harvest of shellfish.

PROPOSED PROJECT

The applicant is proposing to extend the fixed pier a distance of approximately 105 linear feet to relocate the 30 slips into deeper water. A four foot wide pier extension would extend approximately 15' east from the gazebo, The pier would then turn 90 degrees to the south and would run approximately 20' to the south, at a width of 6', before turning again toward the Brunswick River and extending another 84 feet into the waterbody (which would also be constructed at a 6' width). The intent of this "dogleg" is to relocate the docking facility towards the south, so it is no longer encroaching into the northern 15' riparian setback. The fixed portion of the pier would then lead to a ramp, which would lead onto the main spine of the floating dock. The proposed floating dock spine would measure 233' in length by 10' in width. Sixteen finger piers, each measuring 24' in length by 4.5' in width would be installed perpendicular to the dock spine, re-creating the 30 boatslips, essentially as they are currently configured, but slightly wider to so as to accommodate lifts within the slips. Thirty boatlifts, measuring 12' in length by 12' in width, would be installed within each of the slips. The docking facility would extend approximately 492' into the waterbody, as measured from the edge of marsh.

The water depth on the landward side of the floating dock is shown to fall between the -1' and -2' contour line relative to MLW (or what may be the normal low water line, as calculated based on site conditions). The water depth at the waterward end of the structure is shown to extend just beyond the -12' contour relative to MLW.

10. ANTICIPATED IMPACTS

The docking facility would incorporate approximately 10,368 square feet of Public Trust Area and Estuarine Waters. The entire facility, including the existing and proposed pier access and gazebo (whose areas are specifically excluded from the 27 square foot calculation), would incorporate a total area of approximately 15,238 square feet of Public Trust Area and Estuarine Waters. The shaded/incorporated area for the existing pier and docking facility was originally calculated at approximately 14,000 square feet of open water impacts and 720 square feet of coastal wetland shading impacts. As such, the proposed facility would result in a net increase of approximately 518 square feet of incorporated Public Trust Area and Estuarine Waters.

The proposed dock would extend approximately 492' from the edge of marsh, which measures approximately 1494' across from marsh to marsh. As proposed, it does not appear the docking facility would encroach into the channel portion of the waterbody, nor would it exceed 1/3 the width of the waterbody, **although it does exceed the ¼ width**. The docking facility, as proposed, would not extend into either 15' riparian setback.

Due to shallow water depths on the landward edge of the floating dock, it is possible that under current conditions, at least part of the floating dock could sit on the bottom occasionally at low tide. This is of some concern, as shoaling is known to occur at this site. Further siltation could feasibly result in a reoccurrence of the current problem, with many slips becoming dry at low tide and floating structures sitting on the substrate regularly. As the applicant is aware, and as stated on the original State Permit 42-99 issued for the dock, dredging is not permissible under current rules, as this site is located within a PNA. With this in mind, the applicant does appear to have designed the proposed facility to reach the deepest water possible, while meeting the 15' riparian setbacks, while also attempting to limit the pier length to the greatest extent practicable without reducing the size and slip count of the facility. However, considering this is an existing facility, the proposed project would significantly reduce the length of dock currently sitting on the substrate at low water. Increases in turbidity should also be expected to result from construction.



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH, NC 27602

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ENVIRONMENTAL DIVISION
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TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant Attorney General *CAG*

DATE: October 12, 2011 (for the October 26-27, 2011 CRC Meeting)

RE: **Variance Request by Carolina Marina & Yacht Club, LLC (11-09)**

Petitioner is an LLC which owns property adjacent to Myrtle Grove Sound and the Atlantic Intracoastal Waterway (AIWW), and across from Carolina Beach Inlet in New Hanover County, North Carolina. On September 21, 2011, DCM denied Petitioner's modification request of CAMA major permit No. 02-07, for the extension of three piers by approximately 32-feet, the addition of five transient slips, and other modifications to Petitioner's currently-permitted but largely not constructed marina. The proposed design does not comply with the Commission's one-fourth width limitation to pier lengths found in 15A NCAC 7H.0208(b)(6)(J)(iii). On September 14, 2011, Petitioner filed an incomplete variance petition to allow the increased pier length, five new slips, and other changes as proposed in its permit modification application. On September 27, 2011, Chairman Emory allowed Petitioner's request to be heard at this October Commission meeting despite their petition being incomplete until the denial was issued seven days after the variance filing deadline of 7J.0701 and 7J.0702, allowing Petitioner to complete its petition.

The following additional information is attached to this memorandum:

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

cc(w/attachments): Kenneth A. Shanklin, Counsel for Petitioner, electronically
Mary L. Lucasse, CRC Counsel, electronically

RELEVANT STATUTES OR RULES

ATTACHMENT A

15A NCAC 07H .0207 PUBLIC TRUST AREAS

(a) Description. Public trust areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

- (1) the use of the body of water by the public;
- (2) the length of time the public has used the area;
- (3) the value of public resources in the body of water;
- (4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water;
- (5) whether the creation of the artificial body of water required permission from the state; and
- (6) the value of the body of water to the public for navigation from one public area to another public area.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used by the public for navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water quality standards, or

cause degradation of shellfish waters are considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas.

15A NCAC 07H .0208 USE STANDARDS

(6) Piers and Docking Facilities.

(G) Pier and docking facility length shall be limited by:

- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
- (ii) not extending into the channel portion of the water body; and
- (iii) not extending more than one-fourth the width of a natural water body, or humanmade canal or basin.**

Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.

STIPULATED FACTS

ATTACHMENT B

1. Petitioner is Carolina Marina and Yacht Club, LLC (“Carolina Marina” or “Petitioner”) and is a North Carolina limited liability company of which Timothy H. Ward is the only principal member.
2. The subject property is owned by Petitioner and consists of Lots 1, 2, 3, and 4 of Block 3 of the Tucker Burnett Subdivision. The project site is located at 1512 Burnett Road in southern New Hanover County (“Marina Property”). The Marina Property is located just south of and across from Carolina Beach Inlet. An aerial photograph dated October 22, 2010 is attached as Stipulated Exhibit 1. The Marina Property is also shown on the power point slides which are a Stipulated Exhibit.
3. Petitioner acquired the Marina Property in 2005 from Timothy H. Ward and his brother, Donnie H. Ward—sons of Homer H. Ward and Frances Elizabeth Ward. Homer and Frances Ward acquired the Marina Property in 1966, and Homer Ward was the owner until his death in 2000. Homer Ward moved his family to the Marina Property around 1968.
4. The Marina Property is 2.87 acres in size with the front property line abutting Burnett Road and the rear property line abutting Myrtle Grove Sound.
5. Myrtle Grove Sound is part of the Atlantic Intracoastal Waterway (“AIWW”). The waters of the AIWW at this location are open to the harvest of shellfish and the area is classified by the North Carolina Marine Fisheries Commission as a Primary Nursery Area (“PNA”). The waters of Myrtle Grove Sound are classified as “SA” waters by the North Carolina Environmental Management Commission.
6. Development on the site within designated Areas of Environmental Concern (AECs) is subject to the Coastal Area Management Act (CAMA) (N.C.G.S. § 113A-100 et seq.). Portions of the project are proposed within or adjacent to the Coastal Shorelines, Coastal Wetlands, Public Trust Area, and Estuarine Waters AECs.
7. An area of undeveloped beachfront property, known as Freeman Park, is located at the north end of Carolina Beach, lying directly across the AIWW from the Marina Property. The Town of Carolina Beach allows public vehicular access to the Park by permit only, which is available for a fee. Pursuant to Carolina Beach Ordinances, the public may drive permitted four-wheel drive vehicles, camp, picnic, and otherwise enjoy the Public Trust beaches at Freeman Park.

8. Between 1968 and 1971, Homer H. Ward started a family-owned marina and started the process to operate a commercial marina. In 1971, the New Hanover County Board of Commissioners issued Special Use Permit No. 13 on or about June 7, 1971, to Homer H. Ward.

9. Development of the commercial marina pursuant to the Special Use Permit included construction of a fixed pier and dock, twenty wet slips, a concrete ramp, dredge and fill activities, shoreline stabilization, and commercial sale of fuel from the terminal dock.

10. Homer H. Ward conducted the marina operations for several years in the 1970s and some in the 1980s. An improved boat ramp was constructed sometime between 1984 and 1989.

11. In October 2002, Tim Ward obtained a ruling from the New Hanover County Zoning Code Enforcement Officer that the 1971 Special Use Permit issued to Homer Ward was still valid and that Homer Ward had secured common law vested rights by engaging in certain marina activities at his property.

12. In January 2006, the Petitioner began coordination in preparation for applying for a CAMA Major Permit to develop the clubhouse and parking, new piers and docks, and to dredge a boat basin and channel ("Original 2006 Permit Plans"). This plan would have been subject to the requirements of the State Environmental Policy Act, and the proposed new dredging in a PNA would not have been consistent with the Commission's rules. Accordingly, Carolina Marina revised its plans by scaling down its proposed development and removing any proposed dredging.

13. On January 22, 2007, DCM issued Major Permit No. 02-07 to the Applicant for the "Revised 2006 Permit Plan." This permit is the basis of the current modification. The Revised 2006 Permit Plans change the existing docking facility by adding a 70' by 10' floating dock, a covered fuel attendant platform, a reconfiguration of the existing boathouse into a dock office building, and high-ground improvements including a clubhouse, parking and a stormwater system. The existing boat ramp would remain.

14. On February 9, 2007 adjacent riparian owner Violet Ward, and her son David Ward ("The Third Parties") sought to appeal the issuance of this permit through the Third-Party Hearing process. Chairman Hackney granted their request, and on July 11-13, 2007, a hearing on DCM's issuance of this permit was held by the Office of Administrative Hearings. On October 26, 2007, Administrative Law Judge Elkins issued a decision upholding DCM's issuance of this permit. On April 4, 2008, the Commission reviewed the ALJ's decision, and made a final agency decision unanimously upholding the ALJ's decision which held DCM's permit issuance was proper. The Third Parties did not appeal this final agency decision. A copy of the Commission's decision is attached as Stipulated Exhibit 2.

15. Special Use Permit No. 13 was amended by New Hanover County on December 16, 2009 (“Revised SUP No. 13”) following litigation between the County and the Petitioner. On August 6, 2009, the Honorable Superior Court Judge Gary L. Locklear issued an Order directing the County to revise the permit to authorize the construction of a 200’ dry stack storage boat facility with related boat lifting dockage and pier. The Third Parties filed an appeal of this Order in the Court of Appeals, but lost on the basis that because the County had already issued the permit in late-2009, the appeal of the Order was moot.

16. Following the Court of Appeals decision on Revised SUP No. 13, Petitioner sought the first modification of CAMA Permit No. 02-07, so that the CAMA permit plan matched the 200’ dry stack plan authorized by Revised SUP No. 13. This modification was issued by DCM on December 17, 2010. The Third Parties again challenged DCM’s issuance of this permit modification, and sought another hearing in OAH. This request was denied by Chairman Emory through an Order dated January 21, 2011. This final agency decision of the Commission was appealed by the Third Parties to New Hanover Superior Court on Judicial Review. This matter is still pending, and is likely to be heard in December of this year.

17. On November 18, 2010, Alan M. Solana, Substitute Trustee, commenced foreclosure on the Marina Property (New Hanover County File No. 10 SP 2045) on behalf of First Bank as successor in interest to Cooperative Bank.

18. On June 13, 2011, Carolina Marina commenced a Chapter 11 proceeding in the United States Bankruptcy Court, Eastern District of North Carolina (Case No. 11-04559-8-RDD), which is still pending. Section 362 of the U.S. Bankruptcy Code has stopped the foreclosure of the property.

19. In working with a potential investor in connection with the bankruptcy, Petitioner submitted a second revision to CAMA Permit No. 02-07 (the “2011 Revised Site Plan,” attached as Stipulated Exhibit 3. The primary changes proposed in this modification request include a 32’ waterward extension of the two finger docks located at the waterward end of the forklift pier, a 32’ extension of the “L” head platform which would add 5 transient slips to the already permitted 5 slips for a total of 10 slips, the removal of the “L” head platform on the north side of the forklift platform, the enlargement by 72 square feet of the fuel attendant platform, and the extension by 13’ of the public access ramp. A copy of DCM’s field report for this modification request is attached as Stipulated Exhibit 4.

20. On September 6, 2011, New Hanover County approved the 2011 Revised Site Plan as a minor Special Use Permit modification. David and Violet Ward appealed the County’s approval of the 2011 Revised Site Plan to the County Board of Adjustment (New Hanover County Case No. ZBA-861). At its September 27, 2011 Hearing, the Board of Adjustment unanimously upheld the County’s approval of the 2011 Revised Site Plan and dismissed David and Violet Ward’s appeal.

21. During the review of the 2011 Revised Site Plan, both adjacent riparian neighbors objected to the modification request. The Third Parties made similar objections to the proposal as they had in the past. By letter dated August 28, 2011 and received on September 8, 2011, Violet P. Ward, David N. Ward, Cecil R. Ward, Donnie W. Ward and Lisa W. Canady filed written objections to the 2011 Revised Site Plan to CAMA Permit No. 02-07. These objections are: (a) water depths in the area are shallower due to shoaling; (b) the modification could impede navigation, especially for tugs and barges using the Intracoastal Waterway; and (c) the modification would increase hazards for pleasure boating within the vicinity of the project.

22. The 2011 Revised Site Plan places the proposed development waterward of the ¼ width of the water body limit by 32 feet for the longest dock. At this site, DCM determined that the waterbody width is approximately 728-feet across. The proposed pier length is 210-feet, resulting in a pier 29% across the width of the waterbody, which is between the one-quarter distance and the one-third distance. The proposed pier would not encroach into the AIWW federal channel setback.

23. The Army Corps of Engineers reviewed the modification request and its Navigation Branch and the Coast Guard had no objections to the proposed modification.

24. During the review of the 2011 Revised Site Plan, DCM received comments from Shellfish Sanitation indicating that a shellfish closure would not be necessary if Petitioner's proposed slips are used by only one boat each, and, due to the proximity of the neighboring one-slip permitted docking facility, that the dock and one slip is only used by one slip. Otherwise, a closure will be recommended by Shellfish Sanitation. See the attached comments from Shellfish Sanitation, attached as Stipulated Exhibit 5. The Division of Marine Fisheries commented on this project on September 6, 2011, supporting Shellfish Sanitation's concerns about shellfish closures if additional boats use the slips. A copy of their comments is attached as Stipulated Exhibit 6.

25. During the review of the 2011 Revised Site Plan, both adjacent riparian neighbors objected to the modification request. The Third Parties made similar objections to the proposal as they had in the past, a copy of which, dated September 25, 2011, is attached as Stipulated Exhibit 7. Chatham Towing also objected to the proposed dock, raising concerns that the extension could impede navigation and challenge safe transit in the already challenging Carolina Beach inlet area. A copy of this objection is attached as Stipulated Exhibit 8.

26. DCM denied the 2011 Revised Site Plan request based on the proposed development's inconsistency with 15A NCAC 07H.0208(b)(6)(J)(iii), which states that pier length shall be limited by: "not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body ..." A copy of this denial letter is attached as Stipulated Exhibit 9.

27. On September 28, 2011, DCM's Morehead City office received objections from the Third Parties, who had received the required notice from Petitioner about this variance request, and wished to object to this request. A copy of their objections, dated September 25, 2011 is attached as Stipulated Exhibit 10.

Petitioner and Staff 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 rear property line of the Marina Property abuts Myrtle Grove Sound, which is part the Atlantic Intracoastal Waterway. In this area, waters of Myrtle Grove Sound are classified by the North Carolina Environmental Management Commission as SA and are open to the harvest of shellfish. The waters are classified by the North Carolina Marine Fisheries Commission as Primary Nursery Area ("PNA"). This site was developed as a commercial marina in the late 1960s and early 1970s. This development included construction of a fixed pier and dock, twenty wet slips, a concrete ramp, shoreline stabilization, and dredge and fill under a federal permit.

The waters surrounding the current approved pier and dock are shallower than desired. Furthermore, the location of the subject property is unique in that it is directly across from a spoil island—a human made sand depository—near the Carolina Beach inlet. Strict application of the One-quarter Rule would limit Petitioner's business to the shallower water area. Allowing the requested extension in this unique situation will provide better distance for the wave-attenuating docks and better protect the launch and retrieval area at the marina. Also, the proposed extension will provide better protection from passing boat wakes when loading and unloading persons and gear to vessels at the marina.

Staff's Position: No.

Staff contends that a strict application of the Commission's rules, in this case the one-fourth width pier length limitation rule, will not cause Petitioner an unnecessary hardship. Petitioner already has CAMA Permit No. 02-07 (as modified on December 17, 2010), which has permitted the 200-boat dry-stack marina project, and which mirrors the project permitted by New Hanover County on December 16, 2009. While Petitioner currently has some facilities built on the site, the December 17, 2010 modification expanded and updated the existing marina facility. Petitioner's 2011 Revised Site Plan now seeks to further expand the facility by extending the three piers further into the waterbody, by adding five additional slips, and increasing the platform area, apparently to entice a potential investor to the project. However, in order to make these changes, Petitioner's proposal exceeds the one-fourth width pier length rule, where, under the existing permit, it met the one-fourth limitation rule. While Petitioner alleges being in a difficult financial position facing bankruptcy, the strict application of the one-fourth rule is not the cause of Petitioner's financial hardships. Also, Staff notes that since this area has not been dredged in decades, and because the water depth at the end of the 2010 proposal were apparently sufficient for Petitioner's marina

operations, any allegations about new siltation of the site does not appear to be the cause of any unnecessary hardships. Additionally, if these piers were extended past the one-fourth width limitations on this portion of the highly developed shoreline, in a well-traveled area of the AIWW across from Carolina Beach Inlet, navigation impacts may result. For these reasons, Staff believes Petitioner does not suffer any unnecessary hardships due to the strict application of the one-fourth pier rule.

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

Petitioner's Position: Yes.

The hardships for Petitioner result from the buildup of sand and sediment below the Petitioner's pier and docking facility. As noted above, the subject property is unique in that it is directly across from a human made spoil island in the vicinity of the Carolina Beach Inlet. The Carolina Beach Inlet is maintained through sand relocation measures by the Army Corp of Engineers by dredging. The maintenance dredging and natural dynamics of the inlet cause fluctuations in the water-body width of the AIWW. Yards beyond Petitioner's current dock and pier facility is the deeper water of the AIWW, as shown on the attached map entitled "Proposed Revisions Water Dependent Structures" by Stroud Engineering.

Staff's Position: No.

Staff disagrees that any unnecessary hardships the Commission might find, result from conditions peculiar to the Petitioner's property. While Staff notes that Petitioner's property is located across from Freeman Park which may be less likely to be developed in the future, Petitioner's property is already located on a well-developed stretch of shoreline, along a busy portion of the AIWW which gets both inlet traffic as well as AIWW-traversing traffic, as noted in objections received during permit modification review. Having property at this location is not what causes any hardships that Petitioner may claim, and in fact, granting this variance may increase hardships to the boating public in this area with these marina docks closer to the AIWW than those currently permitted at the one-fourth limit.

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

Petitioner's Position: No.

Sediment and sand buildup and the growth of the PNA under Petitioner's current pier and docking facility were not the result of Petitioner's actions. These situations occurred mainly because of the proximity of the Carolina Beach Inlet to the Marina Property and because of the regular Army Corp of Engineers' dredging activity to keep the inlet stabilized.

The subject property has been in Petitioner's family (Ward family) for over forty years, which predates CAMA and its related rules. The Ward family obtained all the permits required at the marina's inception and development over the years, and the Ward family has been able to keep the marina operational. Allowing watercraft to be staged in deeper water will enhance safety and efficiency at the marina and enhance the viability of the marina by providing greater service and facilities to customers.

Staff's Position: Yes.

Staff believes any hardships the Commission might find result from the actions of the Petitioner. As noted in Section I above, Petitioner already has an active CAMA permit to build the 200-boat dry-stack marina, without being in conflict with the one-fourth rule. Petitioner is now seeking the variance of the one-fourth rule to allow the 2011 Revised Site Plan changes to expand the marina facility by extending the piers, adding five slips to the existing five permitted slips, and increasing the platform area. By seeking these changes to increase the potential revenue of the marina with the additional slips to attract investors, Petitioner can no longer meet the Commission's one-fourth rule. Petitioner claims that the increased length is a response to siltation caused by the Corps inlet dredging and inlet processes, and since this is a PNA, they are not allowed to undertake new dredging. However, Petitioner's existing plan is apparently at depths sufficient for its marina to operate safely as evidenced by the December 17, 2010 modification to their permit. Additionally, Staff notes that since this area has not been dredged (or allowed to be dredged) in decades, and because the depth was sufficient in 2010 for Petitioner's planned marina operations, any alleged "new" siltation is not a cause of Petitioner's hardships. Therefore, in requesting these new changes for purely financial reasons resulting in a conflict with the Commission's rules, Petitioner is causing its own hardships.

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's Position: Yes.

The purpose of the "One-quarter Rule" is to prevent impacts on navigation in navigable waterways. If riparian owners on both sides of a waterway build piers out to 1/4 width of the waterway, then 1/2 of the waterway width is blocked for use in navigation. Allowing one of those piers to extend further than 1/4 width has the potential to imperil navigation on that waterway even further; however, the property opposite the Marina Property is Freeman Park. Freeman Park consists of 180 acres of undeveloped land located at the north end of Carolina Beach. Carolina Beach has a series of ordinances governing the use of Freeman Park for the public. It is highly unlikely that this

area will ever be developed, and particularly not any time in the foreseeable future. Though owned by the descendants of Alexander Freeman, Freeman Park has remained undeveloped for over 150 years. This consistent ownership and use as an undeveloped area for the public to enjoy makes it unlikely that a pier will ever be built from it, particularly in the area across from Petitioner's property. Furthermore, it is Petitioner's understanding that the actual private ownership of Freeman Park is contested. The Army Corps of Engineers maintains Carolina Beach Inlet, which adjoins Freeman Park, through dredging and depositing the spoil onto Freeman Park. According to N.C. Gen. Stat. § 146-6, "if any land is, by act of man, raised above the high watermark of any navigable water by filling ... title thereto shall vest in the State...." It is arguable that the State owns most of Freeman Park, and because of that, it is highly unlikely that the State will commission a pier or other structure to be built at that site across from Petitioner's property on the AIWW.

The goals of CAMA and the CRC's rules are listed in N.C. Gen. Stat. § 113A-102(b):

- 1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
- (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
- (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
- (4) To establish policies, guidelines and standards for:
 - a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
 - b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
 - c. Recreation and tourist facilities and parklands;
 - d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
 - e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
 - f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
 - g. Any other purposes deemed necessary or appropriate to effectuate the policy of this

Article.

As stated above, allowing Petitioner to extend its pier and docking facility into deeper waters as requested further protects the persons using the marina as well as the boating public in general in the vicinity of the marina, all of which is consistent with the foregoing goals.

Staff's Position: No.

Staff disagrees that Petitioner's expansion of its currently permitted plan is within the spirit, purpose and intent of the Commission's rules for public trust areas regarding the protection of safe navigation by the boating public and limiting usurpation of the public trust waters. Petitioner's request is not a case of an existing facility silting in and needing to go farther out into deeper water instead of dredging in a PNA in order to mitigate current impacts to the PNA. Instead, Petitioner has a current permit to make significant improvements, not yet constructed, to the existing marina facilities. Its current modified permit is apparently within sufficient depths to allow its proposed marina operations, and it appears the only apparent reason for the current modification is financial, not safety or environmental impacts, and as such, not from "new" siltation issues. Petitioner has no unnecessary hardships, and so there is no reason to increase possible impacts to navigation in this highly-developed, well-traveled area when the purpose for the modification is only financial. This proposal does not secure public safety and welfare by extending the currently-permitted piers closer to the AIWW and the inlet. This proposal does not preserve substantial justice because it increases impacts to navigation for what Staff believes are purely financial reasons, when Petitioner has an existing permit which satisfies its proposed marina operations.

SHANKLIN & NICHOLS, LLP

ATTORNEYS AT LAW
214 MARKET STREET
POST OFFICE BOX 1347
WILMINGTON, NORTH CAROLINA 28402-1347
TELEPHONE (910) 762-9400 • TELEFAX (910) 251-1773
E-MAIL: SHANKLAW@EARTHLINK.NET

RECEIVED

SEP 15 2011

N.C. ATTORNEY GENERAL
Environmental Division

KENNETH A. SHANKLIN*
MATTHEW A. NICHOLS**

*BOARD CERTIFIED SPECIALIST IN
REAL PROPERTY LAW - RESIDENTIAL, BUSINESS,
COMMERCIAL AND INDUSTRIAL TRANSACTIONS

CYNTHIA W. BALDWIN

**ALSO ADMITTED IN NEW YORK

September 14, 2011

VIA TELEFAX #(252) 247-3330
and U.S. MAIL

Director
Division of Coastal Management
400 Commerce Avenue
New Bern, NC 28557

VIA TELEFAX #(919) 716-6767
and U.S. MAIL

N.C. Attorney General
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

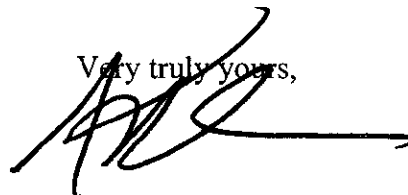
Re: Carolina Marina and Yacht Club, LLC
CAMA Variance Request
Our File No. 2011077.1

Ladies and Gentlemen:

Please find enclosed Carolina Marina and Yacht Club, LLC's CAMA Variance Request Form being forwarded to you via telefax and mail.

With best regards, I remain

Very truly yours,



Kenneth A. Shanklin

KAS/pcc
Enclosures
cc: Carolina Marina and Yacht Club, LLC

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.: 11-09

PETITIONER'S NAME Carolina Marina and Yacht Club, LLC
COUNTY WHERE THE
DEVELOPMENT IS PROPOSED New Hanover County

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.

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


Signature of Petitioner or Attorney

9/14/11
Date

Kenneth A. Shanklin
Printed Name of Petitioner or Attorney

shanklaw@earthlink.net
Email address of Petitioner or Attorney

P.O. Box 1347
214 Market Street
Mailing Address

(910) 762-9400
Telephone Number of Petitioner or Attorney

Wilmington, NC 28402
City State Zip

(910) 251-1773
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

**ATTACHMENT C
SUMMARY OF PETITIONER'S POSITION**

I. What did you seek a permit to do?

RESPONSE:

The permittee requests (1) to modify the existing floating docks by extending the docks eastward to improve use of the drop zones and to allow for use of both sides of the transient staging dock, and (2) to reduce the area for the dock attendants' station and pedestrian ramp and ramp landing area. The eastward extension amounts to 32 linear feet added to each of the three approved docks. Benefits from the addition of the dockage are (1) increased protection for the launch and retrieval area from passing boat wakes, (2) increased safety for customers utilizing the docks with a protected mooring area established on the western side of the pedestrian dock, and (3) further protection of the submerged bottom from the operation of vessels by placing the dock in deeper water than previously permitted. The staging dock is currently authorized for dockage on the eastern side only and allows for the equivalent of four transient slips if every 25 linear feet is considered a slip. Relocation of this dock by 32 feet would provide depths in excess of -3' MLW on the western side and would allow for dockage on the western side without disturbance to the submerged bottom. The equivalent of an additional five transient slips would be added, for a total of nine transient slips or 283 linear feet of dockage.

The dock extension places the structures waterward of the 1/4-width of the water body limit by 32 feet. This proposed extension, however, is still *less* than 1/3-width of the water body. The water body width is defined as normal high water at the bulkhead on the subject property and by elevation on the eastern side of the AIWW (determined by registered land surveyors at Stroud Engineering, Wilmington, NC). The water body width used is consistent with the current approved permit; however, the width is to be re-surveyed during the review period of this request. The proposed extension increases the area where customers can dock their vessels during the loading and unloading process, thereby further enhancing safety at the facility and in the waterway generally. Petitioner has limited this request to the additional amount of dockage that would further enhance the safe and efficient use of the currently permitted dock design. Again, the proposed extension is still less than 1/3-width of the water body.

The area across the channel from this site is a dredge spoil island and is highly unlikely to ever be developed. The request for the extension is well outside of the USACE 120-foot channel setback.

Water depths within the drop zone range between -3.3' MLW and -4.3' MLW. No dredging is proposed. The transient docks will be constructed with wave attenuating baffles for more safe and stable use. A typical cross section of flotation showing the planned 18" draft is provided. Bulkheading exists along the shoreline, and replacement bulkheading is currently authorized. No changes in upland development are proposed.

II. What Coastal Resources Commission rule(s) prohibit this type of development?

RESPONSE:

The proposed development violates the "One-quarter Rule" governing pier and docking facility length—15A NCAC 07H .0208(b)(6)(G)(i) and (ii)—and the rule entitled "No Violation of Any Rule"—15A NCAC 07H .0601.

III. Can you redesign your proposed development to comply with this rule? If your answer is no, explain why you cannot redesign to comply with the rule.

RESPONSE:

The proposed extension of the pier length to reach deeper water cannot comply with the rule. The currently approved and permitted design is essentially at the limit of the One-quarter Rule. Allowing this extension will further enhance safety and efficiency at the marina, and it will also provide additional distance from the neighboring dock to the south, which pre-existing dock actually encroaches into petitioner's riparian area.

IV. Can you obtain a permit for a portion of what you wish to do? If so, please state what the permit would allow.

RESPONSE:

CAMA Major Permit #02-07 and a December 2010 modification of that permit authorized redevelopment of a marina on the Marina Property. Currently authorized water dependent structures, some of which are not yet constructed on site, include: (1) an elevated, wooden forklift pier with adjacent pedestrian pier which also includes a covered, unenclosed platform for dock attendants, (2) four transient slips and additional floating docks in support of the launch and retrieval operation, and (3) launch and retrieval at the end of the wooden forklift pier. Currently authorized upland development, some of which is not yet constructed, includes: (1) improved parking, (2) one clubhouse containing two finished floors and four bathrooms, ships store and offices, and (3) an enclosed boat storage building. Installation of state-approved stormwater management features are approved under SW8 040103.

V. State with specificity what you are NOT allowed to do as a result of the denial of your permit application. It will be assumed that you can make full use of your property, except for the uses that are prohibited as a result of the denial of your permit application.

RESPONSE:

Without the requested variance, Petitioner will not be able to extend the pier and docking facility to reach deeper water. The submerged area adjacent to the subject property has been dredged in the past; however, Petitioner wants to prevent the need for dredging to protect the Primary Nursery Area in this vicinity. Extending the pier and docking facility to the requested length will greatly lessen the need for potential re-dredging, thereby helping to minimize

potential damage to the PNA. Also, the requested extension to deeper water will help further minimize the potential for inadvertent prop-dredging and PNA disturbance by boats in this area.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

- I. **Identify the hardship(s) you will experience if you are not granted a variance and explain why you contend that the application of this rule to your property constitutes an unnecessary hardship.** [The North Carolina Court of Appeals has ruled that this factor depends upon the unique nature of the property rather than the personal situation of the landowner. It has also ruled that financial impact alone is not sufficient to establish unnecessary hardship, although it is a factor to be considered. The most important consideration is whether you can make reasonable use of your property if the variance is not granted. *Williams v. NCDENR, DCM, and CRC*, 144 N.C. App. 479, 548 S.E.2d 793 (2001)].

RESPONSE:

The rear property line of the Marina Property abuts Myrtle Grove Sound, which is part the Atlantic Intracoastal Waterway. In this area, waters of Myrtle Grove Sound are classified by the North Carolina Environmental Management Commission as SA and are open to the harvest of shellfish. The waters are classified by the North Carolina Marine Fisheries Commission as Primary Nursery Area ("PNA"). This site was developed as a commercial marina in the late 1960s and early 1970s. This development included construction of a fixed pier and dock, twenty wet slips, a concrete ramp, shoreline stabilization, and dredge and fill under a federal permit.

The waters surrounding the current approved pier and dock are shallower than desired. Furthermore, the location of the subject property is unique in that it is directly across from a spoil island—a human made sand depository—near the Carolina Beach inlet. Strict application of the One-quarter Rule would limit Petitioner's business to the shallower water area. Allowing the requested extension in this unique situation will provide better distance for the wave-attenuating docks and better protect the launch and retrieval area at the marina. Also, the proposed extension will provide better protection from passing boat wakes when loading and unloading persons and gear to vessels at the marina.

- II. **Describe the conditions that are peculiar to your property (such as location, size, and topography), and cause your hardship.**

RESPONSE:

The hardships for Petitioner result from the buildup of sand and sediment below the Petitioner's pier and docking facility. As noted above, the subject property is unique in that it is directly across from a human made spoil island in the vicinity of the Carolina Beach Inlet. The Carolina Beach Inlet is maintained through sand relocation measures by the Army Corp of Engineers by dredging. The maintenance dredging and natural dynamics of the inlet cause

fluctuations in the water-body width of the AIWW. Yards beyond Petitioner's current dock and pier facility is the deeper water of the AIWW, as shown on the attached map entitled "Proposed Revisions Water Dependent Structures" by Stroud Engineering.

III. Explain why your hardship does not result from actions that you have taken.

RESPONSE:

Sediment and sand buildup and the growth of the PNA under Petitioner's current pier and docking facility were not the result of Petitioner's actions. These situations occurred mainly because of the proximity of the Carolina Beach Inlet to the Marina Property and because of the regular Army Corp of Engineers' dredging activity to keep the inlet stabilized.

The subject property has been in Petitioner's family (Ward family) for over forty years, which predates CAMA and its related rules. The Ward family obtained all the permits required at the marina's inception and development over the years, and the Ward family has been able to keep the marina operational. Allowing watercraft to be staged in deeper water will enhance safety and efficiency at the marina and enhance the viability of the marina by providing greater service and facilities to customers.

IV. Explain why the granting of the variance you seek will be consistent with the spirit, purpose, and intent of the CRC's rules, standards, or orders; preserve substantial justice; and secure public safety.

RESPONSE:

The purpose of the "One-quarter Rule" is to prevent impacts on navigation in navigable waterways. If riparian owners on both sides of a waterway build piers out to 1/4 width of the waterway, then 1/2 of the waterway width is blocked for use in navigation. Allowing one of those piers to extend further than 1/4 width has the potential to imperil navigation on that waterway even further; however, the property opposite the Marina Property is Freeman Park. Freeman Park consists of 180 acres of undeveloped land located at the north end of Carolina Beach. Carolina Beach has a series of ordinances governing the use of Freeman Park for the public. It is highly unlikely that this area will ever be developed, and particularly not any time in the foreseeable future. Though owned by the descendants of Alexander Freeman, Freeman Park has remained undeveloped for over 150 years. This consistent ownership and use as an undeveloped area for the public to enjoy makes it unlikely that a pier will ever be built from it, particularly in the area across from Petitioner's property. Furthermore, it is Petitioner's understanding that the actual private ownership of Freeman Park is contested. The Army Corps of Engineers maintains Carolina Beach Inlet, which adjoins Freeman Park, through dredging and depositing the spoil onto Freeman Park. According to N.C. Gen. Stat. § 146-6, "if any land is, by act of man, raised above the high watermark of any navigable water by filling ... title thereto shall vest in the State..." It is arguable that the State owns most of Freeman Park, and because of that, it is highly unlikely that the State will commission a pier or other structure to be built at that site across from Petitioner's property on the AIWW.

The goals of CAMA and the CRC's rules are listed in N.C. Gen. Stat. § 113A-102(b):

- 1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;
- (2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;
- (3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;
- (4) To establish policies, guidelines and standards for:
 - a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
 - b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
 - c. Recreation and tourist facilities and parklands;
 - d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
 - e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
 - f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
 - g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

As stated above, allowing Petitioner to extend its pier and docking facility into deeper waters as requested further protects the persons using the marina as well as the boating public in general in the vicinity of the marina, all of which is consistent with the foregoing goals.

Please attach copies of the following:

Permit Application and Denial documents

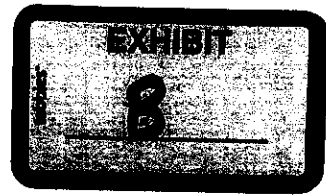
Site Drawing and Survey and Topographical Information

Any letters filed with DCM or the LPO commenting on or objecting to your project.

Provide a numbered list of all true facts that you are relying upon in your explanation as to why you meet the four criteria for a variance. Please list the variance criterion, ex. unnecessary hardship, and then list the relevant facts under each criterion. [The DCM attorney will also propose facts and will attempt to verify your proposed facts. Together you will arrive at a set of facts that both parties agree upon. Those facts will be the only facts that the Commission will consider in determining whether to grant your variance request.]

Attach all documents you wish the Commission to consider in ruling upon your variance request. [The DCM attorney will also propose documents and discuss with you whether he or she agrees with the documents you propose. Together you will arrive at a set of documents that both parties agree upon. Those documents will be the only documents that the Commission will consider in determining whether to grant your variance request.]

(3) 1500/15



FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2005 MAY 13 04:14:43 PM
BK: 4805 PG: 535-538 FEE: \$20.00
NC REV STAMP: \$1,500.00
INSTRUMENT # 2005025580

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.

Prepared by
and Return to: Kenneth A. Shanklin, Esq.
SHANKLIN & NICHOLS, LLP
214 Market Street
P.O. Box 1347
Wilmington, NC 28402
Telephone: (910) 762-9400
Telefax: (910) 251-1773

Revenue Stamps: \$ 1500.00

Brief Description for Index: Lots 1, 2, 3 and 4, Block 3, Tucker Burnett

Tax Parcel I.D. #: R08511-003-001-000

STATE OF NORTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF NEW HANOVER

THIS DEED made this 9th day of May, 2005, by and between DONALD HOMER WARD, and wife, GLENDA DIANE MCDONALD WARD, parties of the first part, hereinafter referred to as the "GRANTORS," and CAROLINA MARINA AND YACHT CLUB, LLC, a North Carolina limited liability company, whose mailing address is 1512 Burnett Road, Wilmington, NC 28409, party of the second part, hereinafter referred to as the "GRANTEE".

[The designation *Grantors* 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.]

Return to
Shanklin & Nichols

WITNESSETH:

THAT the Grantors, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the Grantee, its successor and assigns, in fee simple forever, all of the Grantors' one-half undivided interest in those certain lots or parcels of land situated in New Hanover County, North Carolina, and being more particularly described as follows:

BEING all of Lots 1, 2, 3 and 4 of Block 3, of the Tucker Burnett subdivision, as the same appears on a map prepared by M.H. Lander, C.E., dated May 10, 1947, and recorded in Map Book 4, Page 72 of the Registry of New Hanover County, together with all of that land, marsh land, or water lying to the East of the above described lots, and extending Eastwardly to the Western edge of the inland waterway, bounded on the North by the dividing line between Lot 8 in Block 2 and Lot 2 in Block 3 in said subdivision, if same were extended Eastwardly, and bounded on the South by the dividing line between Lots 4 and 5 in Block 3 in said subdivision, if same were extended Eastwardly, together with that certain Special Use Permit issued to Homer H. Ward, deceased, by New Hanover County on or about June 7, 1971, Special Use Permit No. 13, to operate a commercial marina on the above described property.

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges, easements and appurtenances thereto belonging to the Grantee, its successors and assigns, in fee simple FOREVER.

And the Grantors covenant with the Grantee that the Grantors are seized of a one-half undivided interest in the premises in fee simple, have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, except as set forth herein, and the Grantors 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:

1. Ad valorem taxes for the current year and thereafter;
2. Restrictive Covenants of record;
3. Easements to public utilities of record; and
4. Zoning and/or subdivision ordinances and regulations.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals the day and year first above written.

 (SEAL)
DONALD HOMER WARD

 (SEAL)
GLENDIA DIANE MCDONALD WARD

STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, AS Martin, a Notary Public of the County and State aforesaid, do hereby certify that **DONALD HOMER WARD** and wife, **GLENDIA DIANE MCDONALD WARD**, Grantors, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal, this the 9 day of May, 2005.

[Stamp-Seal]



AS Martin

Notary Public

My Commission Expires:

10 October 2006



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

Filed For Registration: 05/13/2005 04:14:43 PM

Book: RE 4805 Page: 535-538

Document No.: 2005025580

DEED 4 PGS \$20.00

NC REAL ESTATE EXCISE TAX: \$1,500.00

Recorder: MICAH PHELPS

State of North Carolina, County of New Hanover

The foregoing certificate of A S MARTIN Notary is certified to be correct. This 13TH of May 2005

REBECCA P. SMITH , REGISTER OF DEEDS

By: 
Deputy/Assistant Register of Deeds

YELLOW PROBATE SHEET IS A VITAL PART OF YOUR RECORDED DOCUMENT.
PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2005025580

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2005025581

FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2005 MAY 13 04:14:43 PM
BK: 4805 PG: 539-542 FEE: \$20.00
NC REV STAMP: \$500.00
INSTRUMENT # 2005025581

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.

Prepared by
and Return to: Kenneth A. Shanklin, Esq.
SHANKLIN & NICHOLS, LLP
214 Market Street
P.O. Box 1347
Wilmington, NC 28402
Telephone: (910) 762-9400
Telefax: (910) 251-1773

Revenue Stamps: \$ 500.00

Brief Description for Index: Lots 1, 2, 3 and 4, Block 3, Tucker Burnett

Tax Parcel I.D. #: R08511-003-001-000

STATE OF NORTH CAROLINA

GENERAL WARRANTY DEED

COUNTY OF NEW HANOVER

THIS DEED made this 9th day of May, 2005, by and between **TIMOTHY HARLEY WARD** and wife, **DIXIE T. WARD**, parties of the first part, hereinafter referred to as the "GRANTORS", and **CAROLINA MARINA AND YACHT CLUB, LLC**, a North Carolina Limited Liability Company, whose mailing address is 1512 Burnett Road, Wilmington, NC 28409, party of the second part, hereinafter referred to as the "GRANTEE".

[The designation *Grantors* 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.]

Rebecca
Shanklin &
Nichols

WITNESSETH:

THAT the Grantors, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the Grantee, its successor and assigns, in fee simple forever, all the Grantors' one-half undivided interest in those certain lots or parcels of land situated in New Hanover County, North Carolina, and being more particularly described as follows:

BEING all of Lots 1, 2, 3 and 4 of Block 3, of the Tucker Burnett Subdivision, as the same appears on a map prepared by M.H. Lander, C.E., dated May 10, 1947, and recorded in Map Book 4, Page 72 of the Registry of New Hanover County, together with all of that land, marsh land, or water lying to the East of the above described lots, and extending Eastwardly to the Western edge of the inland waterway, bounded on the North by the dividing line between Lot 8 in Block 2 and Lot 2 in Block 3 in said subdivision, if same were extended Eastwardly, and bounded on the South by the dividing line between Lots 4 and 5 in Block 3 in said subdivision, if same were extended Eastwardly, together with that certain Special Use Permit issued to Homer H. Ward, deceased, by New Hanover County on or about June 7, 1971, Special Use Permit No. 13, to operate a commercial marina on the above described property.

TO HAVE AND TO HOLD the aforesaid lots or parcels of land and all privileges, easements and appurtenances thereto belonging to the Grantee, its successors and assigns, in fee simple FOREVER.


And the Grantors covenant with the Grantee that the Grantors are seized of a one-half undivided interest in the premises in fee simple, have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, except as set forth herein, and the Grantors 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:

1. Ad valorem taxes for the current year and thereafter;
2. Restrictive Covenants of record;
3. Easements to public utilities of record; and
4. Zoning and/or subdivision ordinances and regulations.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals the day and year first above written.


TIMOTHY HARLEY WARD (SEAL)


DIXIE T. WARD (SEAL)

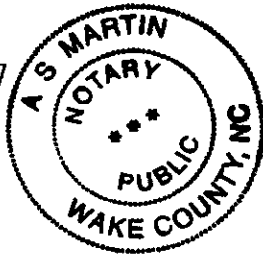
STATE OF NORTH CAROLINA

COUNTY OF NEW HANOVER

I, A S Martin, a Notary Public of the County and State aforesaid, do hereby certify that **TIMOTHY HARLEY WARD** and wife, **DIXIE T. WARD**, Grantors, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and notarial stamp or seal, this the 9 day of May, 2005.

[Stamp-Seal]



A S Martin
Notary Public

My Commission Expires:
10 October 2006



REBECCA P. SMITH
REGISTER OF DEEDS, NEW HANOVER
216 NORTH SECOND STREET

WILMINGTON, NC 28401

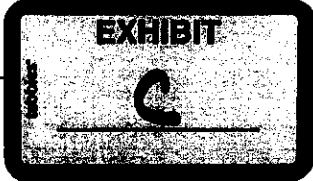
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State of North Carolina, County of New Hanover
The foregoing certificate of A S MARTIN Notary is certified to be correct. This 13TH of May 2005
REBECCA P. SMITH , REGISTER OF DEEDS

By: 
Deputy/Assistant Register of Deeds

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PLEASE RETAIN WITH ORIGINAL DOCUMENT AND SUBMIT FOR RE-RECORDING.

2005025581
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STATE OF NORTH CAROLINA }

S.S.—WARRANTY DEED

NEW HANOVER COUNTY

THIS INDENTURE, Made this 6th day of May, A.D., 1966 by and between Walter L. Burnett et ux, Hannie I. Burnett

of County of New Hanover and State of North Carolina, of the first part, and Homer H. Ward et ux, Frances Elizabeth Ward of in the County of New Hanover and State of North Carolina of the second part.

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of TEN DOLLARS AND NO/100 Dollars and other valuable considerations to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have given, granted, bargained and sold, aliened and conveyed, and by these presents do hereby give, grant, bargain and sell, alien, convey and confirm unto the said parties of the second part and to their heirs and assigns forever, all that certain lot of land situated, lying and being in County of New Hanover and State of North Carolina, bounded and described as follows, to-wit:

BEING all of Lots 1, 2, 3 and 4 of Block 3, of the Tucker Burnett Subdivision as the same appears on a map prepared by M. H. Lander, C. E. dated May 10, 1947, and recorded in Map Book 4, Page 72 of the Registry of New Hanover County, together with all of that land, marsh land, or water lying to the East of the above described lots, and extending Eastwardly to the Western edge of the inland waterway, bounded on the North by the dividing line between lot 8 in Block 2, and Lot 2 in Block 3 in said subdivision if same were extended Eastwardly, and bounded on the South by the dividing line between lots 4 & 5 in Block 3 in said subdivision if same were extended Eastwardly.

000025



SPECIAL USE PERMIT

NEW HANOVER COUNTY

Permit No.	<u>13</u>
Application No.	<u>14</u>
Zone	<u>R-15</u>

A Special Use Permit is hereby granted by the Board of County Commissioners after consideration by the Wilmington-New Hanover Planning Commission to

Homer H. Ward

to use the land located at Route 2, Box 241-DD, Burnette Ave. (S. R. 1527)

or Marina

based on the following conditions: (1) That 50% of the off-street parking spaces be at least 32 feet in length.

Proposed sign not to be larger than 32 square feet in size - non-illuminated.

That no construction of boats be permitted on the lot.

When proposed club house is constructed additional off-street parking spaces be provided in accordance with the Zoning Ordinance.

All sales and services connected with the operation of the club facility shall be incidental to the marina operations.

Sale of boating and fishing supplies except sale of gasoline and oil shall be from an enclosed structure.

No smoking signs shall be posted at each gasoline point.

This Special Use Permit shall be subject to the conditions listed above and the Zoning Ordinance of New Hanover County. If any of the conditions so specified or any part thereof shall be held void or invalid, or if any such conditions are not complied with, this Special Use Permit shall be void and of no effect. The Special Use Permit is authorization for the Building Inspector to issue a building permit for the use listed above.



NEW HANOVER COUNTY
INSPECTIONS DEPARTMENT

MICHAEL ALLEN

James Lawrence
Chairman of County Commissioners

June 7, 1971

A - 004



COUNTY OF NEW HANOVER
STATE OF NORTH CAROLINA

ORDER GRANTING A SPECIAL USE PERMIT

Amendment to S-13 (County Planning File No.S-582, 6/08)

SUP Book _____ Page _____

A commercial marina with a forklift pier and dry stack storage of 200 boats

In an R-15 Residential Zoning District
(1512 Burnett Road)

Exhibit
Book XXX/11 Page 1.2

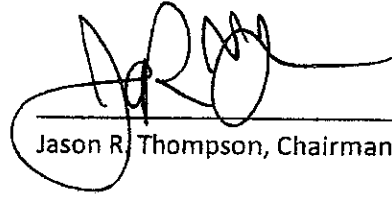
The applicant is Shanklin and Nichols, LLP for Carolina Marina and Yacht Club (Tim Ward) for an amendment to Special Use Permit No. 13 (S-13) to allow dry stack storage for up to 200 boats and forklift pier and other accessory structures pursuant to a proposed site plan. Based upon the Board of County Commissioners hearing and the decision rendered on July 7, 2008 and the Order of Superior Court Judge Gary Locklear dated August 6, 2009, the Board hereby grants the applicants request for an amendment to Special Use Permit No. 13. In doing so the Board makes the following FINDINGS OF FACT and renders the following CONCLUSIONS:

1. The Board finds pursuant to Judge Locklear's Order that the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved. Aqua NC cannot provide adequate water pressure so alternate methods will be required.
2. The Board finds that the proposed site plan meets all required conditions and specifications of the zoning ordinance.
3. The Board finds pursuant to Judge Locklear's Order that the use will not substantially injure the value of adjoining or abutting property. Conflicting testimony was presented by licensed real estate appraisers as to the detrimental or injurious nature of this type of use on the value of adjoining or abutting property.
4. The Board finds pursuant to Judge Locklear's Order that the use if developed according to the plan as submitted and approved will be in harmony with the area in which it is to be located and in general conformity with the plan of development for New Hanover County. Judge Locklear determined there was not sufficient competent, material or substantial evidence to counter the prima facie showing made by Applicant that its proposal was in harmony with the area.
5. Therefore, pursuant to these findings the Board of County Commissioners conclude that the specific and general requirements necessary for an amendment to a special use permit have been satisfied and it is HEREBY ORDERED that the application for an amendment to SPECIAL USE PERMIT NO. 13 is GRANTED subject to the following conditions.
 - a. That the applicant shall fully comply with all the specific requirements stated in the ordinance for the proposed use as well as all the conditions on the proposed site plan presented for case S-582, here attached, as well as the following conditions expressly stated by the Applicant during the hearing of this matter before the Board of County Commissioners:
 1. No fuel sales on site.
 2. No alcohol sales on site.

CERTIFIED TO BE A TRUE COPY
[Signature], Clerk
New Hanover County Commissioners
11/25/2010


A- 005

Ordered this the 16th day of December, 2009.




Jason R. Thompson, Chairman

ATTEST:



Clerk to the Board




CERTIFIED TO BE A TRUE COPY

Clerk
New Hanover County Commissioners
11/25/2010

Permit Class
NEW

Permit Number
2-07

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

Issued to Carolina Marina & Yacht Club, LLC., c/o Tim Ward, 1512 Burnett Road, Wilmington, NC 28409

Authorizing development in New Hanover County at AIWW and Myrtle Grove Sound, 1512

Burnett Rd., Wilmington, as requested in the permittee's application dated 8/24/06, incl. workplan

drawings (10), 5, 7-9 of 14 dtd. 8/15/06, 6 of 14 dtd. 7/28/06, 11 of 14 dtd. 8/11/06, 12-13 of 14 dtd. 6/14/06 and 2 dtd. 12/21/06

This permit, issued on January 22, 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.

Docking Facility

- 1) Unless specifically altered herein, this permit authorizes only the docks, piers, and other structures and uses located in or over the water that are expressly and specifically set forth in the permit application. No other structure, whether floating or stationary, shall become a permanent part of this marina/docking facility without permit modification. No non-water dependent uses of structures shall be conducted on, in or over public trust waters without permit modification.
- 2) No sewage, whether treated or untreated, shall be discharged at any time from any boats using the docking facility. Any sewage discharge at the docking facility shall be considered a violation of this permit for which the permittee is responsible. This prohibition shall be applied and enforced throughout the entire existence of the permitted structure.

(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 must be accessible on-site to Department personnel when the project is inspected for compliance.

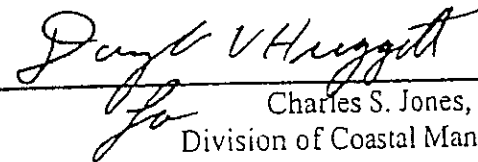
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must 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.



Charles S. Jones, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

677

Signature of Permittee

ADDITIONAL CONDITIONS

- 3) The pier and associated 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, which 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.
- 4) No portion of the permitted structure shall extend more than one fourth (1/4) of the width of the waterbody. Measurements to determine the width of the water body shall be made from the normal high water line or from the waterward edge of any coastal wetland vegetation which borders the water body, whichever is more restrictive.
- 5) In order to ensure compliance with Conditions 4 and 5 of this permit, an as-built survey shall be performed on the authorized docking facility. At a minimum, the as-built survey shall show the existing and newly constructed docking facilities, the adjacent riparian corridors and 15' setback lines, the opposite shoreline, and the distance across the water body. A copy of the survey shall be provided to the Division of Coastal Management within 60 days of completion of construction of the docking facility.
- 6) The roof of the unenclosed, covered fuel attendant platform shall not be designed for second story use.

NOTE: Failure to comply with the survey requirements of Condition No. 6 of this permit may result in a violation of this permit.

- 7) No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.
- 8) The permittee shall maintain the authorized work in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if he abandons the permitted activity without having it transferred to a third party.
- 9) This permit authorizes a maximum of five boat slips.
- 10) The permittee must install and maintain at his expense any signal lights or signals prescribed by the U.S. Coast Guard, through regulation or otherwise, on the authorized facilities. At a minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.
- 11) The permittee shall exercise all available precautions in the day-to-day operation of the facility, including the fueling facility, to prevent facility pollutants or waste from entering the adjacent waters. Such discharge, either directly or indirectly, to adjacent waters could contravene state water quality standards, thereby violating state law.

NOTE: The permittee is cautioned that this permit does not authorize the placement of tie piles in association with the docking facility without permit modification.

ADDITIONAL CONDITIONS

NOTE: Due to the proximity of the AIWW, boats utilizing the docking facility will be subject to frequent wavewash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure and the safety of moored boats. The permittee shall not hold the State of North Carolina or the United States liable for any damage to the structure or moored boats.

Shoreline Stabilization

- 12) The alignment of the authorized bulkhead shall be staked by the permittee and approved onsite by a representative of the Division of Coastal Management prior to the initiation of any shoreline stabilization activities authorized by this permit.
- 13) The bulkhead shall be constructed prior to any backfilling activities.
- 14) The bulkhead shall be structurally tight so as to prevent seepage of backfill materials through the structure.
- 15) The bulkhead shall be solid and constructed of treated wood, concrete slabs, sheet pile or other suitable materials approved by department personnel. No excavation or other land disturbing activities is permitted except for that which may be required for the construction of the bulkhead wall, riprap, deadmen cables, etc. This permit does not authorize any excavation waterward of the approved alignment.
- 16) The fill material shall be clean and free of any pollutants except in trace quantities.
- 17) All backfill material shall be obtained from a high ground source and confined behind the permitted bulkhead.
- 18) No backfill material shall be placed within 30 feet of the normal high water line, except that which will be used to backfill the area behind the permitted bulkhead.

Upland Development

- 19) Unless specifically altered herein, this permit authorizes only the highground development activities associated with the redevelopment of the Carolina Marina property located adjacent to the AIWW and Myrtle Grove Sound, all as depicted in the attached permit application and workplan drawings.
- 20) No new impervious surfaces are allowed within 30 feet of the normal high water line.

ADDITIONAL CONDITIONS

Stormwater Management

- 21) The Division of Water Quality approval of this project under stormwater management rules of the Environmental Management Commission is covered by way of Stormwater Permit No. SW8040103, which was issued on 9/30/05. Any violation of the permit approved by the DWQ shall be considered a violation of this CAMA permit.

Sedimentation and Erosion Control

NOTE: An Erosion and Sedimentation Control Plan will be required for this project. This plan must be filed at least thirty (30) days prior to the beginning of any land disturbing activity. Submit this plan to the Department of Environment and Natural Resources, Land Quality Section, 127 Cardinal Drive Extension, Wilmington, NC 28405.

- 22) In order to protect water quality, runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters.
- 23) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses or properties (e.g. silt fence, diversion swales or berms, etc.).

General

- 24) 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.
- 25) No vegetated wetlands shall be excavated or filled, even temporarily.

ADDITIONAL CONDITIONS

- 26) The authorized project is located within a primary nursery area (PNA). Therefore, in accordance with T15A:07H.0208 of the Rules of the Coastal Resources Commission, no new dredging or excavation within the PNA shall be permitted. Dredging in any manner, including "kicking" with boat propellers, is not authorized. This prohibition shall be applied and enforced throughout the entire existence of the permitted structure.
- 27) The construction and/or operation of the authorized facilities shall not directly result in any closure of any waters that are open to the taking of shellfish. Any such closure directly attributable to the authorized development shall require that the permittee undertake remedial actions to remedy the situation.
- 28) The permittee and/or his contractor shall meet on site with a representative of the Division prior to project initiation.

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required, including but not limited to an Individual Permit from the U.S. Army Corps of Engineers.

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 authorized the proposed project under General Water Quality Certification No. 3400 (DWQ Project No. 20060137), which was issued on 1/4/07.

Permit Class
MODIFICATION/MAJOR

Permit Number
2-07

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

Issued to Carolina Marina & Yacht Club, LLC., c/o Tim Ward, 1512 Burnett Road, Wilmington, NC 28409

Authorizing development in New Hanover County at AIWW and Myrtle Grove Sound, 1512

Burnett Rd., Wilmington, as requested in the permittee's application dated 5/27/10 (MP-1, MP-3) &

6/3/10 (MP-4), incl. attached workplan drawings (11), all as referenced in Condition No. 1 of this Permit

This permit, issued on December 17, 2010, 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.

- 1) Unless specifically altered herein, all work authorized by this permit shall be done in compliance with the following list of attached workplan drawings:

Sheet 3 of 11 dated 1/12/10

Sheets 4, 7 and 11 of 11 all dated revised by DCM 12/13/10

Sheets 5, 6 and 10 of 11 dated revised 3/1/10

Sheets 8 and 9 of 11 dated revised 5/26/10

Sheet 11A dated 7/12/10

Drawing dated received by Morehead City DCM on 10/25/10

(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 must 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 must cease when the permit expires on

January 14, 2015

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.

A handwritten signature in black ink, appearing to read "Doug V. Huggins".
James H. Gregson, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

Upland Development

- 2) Unless specifically altered herein, this permit authorizes only the land disturbing activities associated with the construction of the 200-slip dry-stack storage facility, clubhouse, driveways, parking lots, stormwater and septic systems and associated grading and filling activities, all as expressly and specifically set forth in the permit application and depicted on the attached work-plat drawings. Any additional land disturbing activities and/or construction shall be evaluated on a case-by-case basis by a representative of the Division of Coastal Management (DCM) to determine additional permit requirements. Contact a representative of the Division at (910) 796-7215 prior to the commencement of any such activity for this determination.

Dry Stack Launching Facility

- 3) The alignment and configuration of the approved dry stack launching structures shall strictly adhere to the alignment and configuration depicted on the attached workplan drawing dated received by Morehead City DCM on 10/25/10. Any other alignment or configuration depicted on the attached permit application or workplan drawings is considered null and void.
- 4) Unless specifically altered herein, this permit authorizes only the docks, piers, and other structures and uses located in or over the water that are expressly and specifically set forth in the permit application. No other structure, whether floating or stationary, shall become a permanent part of this launching facility without permit modification. No non-water dependent uses of structures shall be conducted on, in or over public trust waters without permit modification.
- 5) In accordance with commitments made by the permittee, and in order to satisfy resource agency concerns, the originally proposed "wave wall" is hereby deleted from the authorized project, and any and all reference to the wave wall in the attached permit application forms or workplan drawings is hereby considered null and void.
- 6) In accordance with commitments made by the permittee, and in order to satisfy resource agency concerns, handrails shall be placed along the western side of the authorized transient dock and the northern and western sides of the authorized employee access dock to prevent vessel dockage along these areas.
- 7) No sewage, whether treated or untreated, shall be discharged at any time from any boats using the launching facility. Any sewage discharge at the launching facility shall be considered a violation of this permit for which the permittee is responsible. This prohibition shall be applied and enforced throughout the entire existence of the permitted structure.
- 8) The piers and associated 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, which 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.

ADDITIONAL CONDITIONS

- 9) No portion of the permitted structure shall extend more than one fourth (1/4) of the width of the waterbody. Measurements to determine the width of the water body shall be made from the normal high water line or from the waterward edge of any coastal wetland vegetation which borders the water body, whichever is more restrictive.
- 10) In order to ensure compliance with Conditions 8 and 9 of this permit, an as-built survey shall be performed on the authorized docking facility. At a minimum, the as-built survey shall show the existing and newly constructed launch facilities, the adjacent riparian corridors and 15' setback lines, the opposite shoreline, and the distance across the water body. A copy of the survey shall be provided to the Division of Coastal Management within 60 days of completion of construction of the launch facility.

NOTE: Failure to comply with the survey requirements of Condition No. 10 of this permit shall result in a violation of this permit.

- 11) The roof of the unenclosed, covered fuel attendant platform shall not be designed for second story use.
- 12) No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.
- 13) The permittee shall maintain the authorized work in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if he abandons the permitted activity without having it transferred to a third party.
- 14) This permit does not authorize the creation of any permanent formalized boat slips.
- 15) The permittee must install and maintain at his expense any signal lights or signals prescribed by the U.S. Coast Guard, through regulation or otherwise, on the authorized facilities. At a minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.
- 16) The permittee shall exercise all available precautions in the day-to-day operation of the facility to prevent facility pollutants or waste from entering the adjacent waters. Such discharge, either directly or indirectly, to adjacent waters could contravene state water quality standards, thereby violating state law.

NOTE: The permittee is cautioned that this permit does not authorize the placement of tie piles in association with the docking facility without permit modification.

NOTE: Due to the proximity of the AIWW, boats utilizing the docking facility will be subject to frequent wavewash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure and the safety of moored boats. The permittee shall not hold the State of North Carolina or the United States liable for any damage to the structure or moored boats.

ADDITIONAL CONDITIONS

Shoreline Stabilization

- 17) The alignment of the authorized bulkhead shall conform with the alignment depicted on the attached workplan drawings.
- 18) The bulkhead shall be constructed prior to any backfilling activities.
- 19) The bulkhead shall be structurally tight so as to prevent seepage of backfill materials through the structure.
- 20) The bulkhead shall be solid and constructed of treated wood, concrete slabs, sheet pile or other suitable materials approved by department personnel. No excavation or other land disturbing activities is permitted except for that which may be required for the construction of the bulkhead wall, riprap, deadmen cables, etc. This permit does not authorize any excavation waterward of the approved alignment.
- 21) The fill material shall be clean and free of any pollutants except in trace quantities.
- 22) All backfill material shall be obtained from a high ground source and confined behind the permitted bulkhead.
- 23) No backfill material shall be placed within 30 feet of the normal high water line, except that which will be used to backfill the area behind the permitted bulkhead.

Stormwater Management

- 24) The Division of Water Quality approval of this project under stormwater management rules of the Environmental Management Commission is covered by way of Stormwater Permit No. SW8040103 MOD, which was issued on 11/17/10. Any violation of the permit approved by the DWQ shall be considered a violation of this CAMA permit.

Sedimentation and Erosion Control

NOTE: An Erosion and Sedimentation Control Plan will be required for this project. This plan must be filed at least thirty (30) days prior to the beginning of any land disturbing activity. Submit this plan to the Department of Environment and Natural Resources, Land Quality Section, 127 Cardinal Drive Extension, Wilmington, NC 28405.

- 25) In order to protect water quality, runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters.
- 26) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses or properties (e.g. silt fence, diversion swales or berms, etc.).

ADDITIONAL CONDITIONS

General

- 27) No vegetated wetlands shall be excavated or filled, even temporarily.
- 28) The authorized project is located within a primary nursery area (PNA). Therefore, in accordance with T15A:07H.0208 of the Rules of the Coastal Resources Commission, no new dredging or excavation within the PNA shall be permitted. Dredging in any manner, including "kicking" with boat propellers, is not authorized. This prohibition shall be applied and enforced throughout the entire existence of the permitted structures.
- 29) The construction and/or operation of the authorized facilities shall not directly result in any closure of any waters that are open to the taking of shellfish. Any such closure directly attributable to the authorized development shall require that the permittee undertake remedial actions to remedy the situation.
- 30) The permittee and/or his contractor shall meet on site with a representative of the Division prior to project initiation.
- 31) This Major Modification shall be attached to the original of Permit No. 2-07, which was issued on 1/22/07, and copies of both documents shall be readily available on site when a Division representative inspects the project for compliance.
- 32) All conditions and stipulations of the original permit remain in force under this Major Modification unless specifically altered herein.
- 33) This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required, including but not limited to an Individual Permit from the U.S. Army Corps of Engineers.

NOTE The expiration date of this permit has been extended in accordance with Session Law 2009-406, as amended by Session Law 2010-177.

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 authorized the proposed project under Water Quality Certification No. 3844 (DWQ Project No. 20060137 Ver. 2), which was issued on 12/10/07.

LEGEND

- PROPERTY LINE
- BOUNDARY LINE
- 1/2 IN. DIAMETER
- 1/4 IN. DIAMETER
- 1/8 IN. DIAMETER
- 1/16 IN. DIAMETER
- 3/32 IN. DIAMETER
- 1/8 IN. DIAMETER
- 1/4 IN. DIAMETER
- 1/2 IN. DIAMETER
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NOTES:

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE FOLLOWING CODES AND SPECIFICATIONS UNLESS OTHERWISE SPECIFIED:
 - a. THE INTERNATIONAL BUILDING CODE (IBC) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - b. THE INTERNATIONAL PLUMBING AND MECHANICAL CODE (IMC) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - c. THE INTERNATIONAL FIRE AND SAFETY CODE (IFSC) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - d. THE INTERNATIONAL MECHANICAL ELECTRICAL PLUMBING CONTRACTORS ASSOCIATION (I-M-E-P) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - e. THE INTERNATIONAL FIRE MARSHALS ASSOCIATION (IFMA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - f. THE INTERNATIONAL ASSOCIATION OF FIRE ENGINEERS (IAFE) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - g. THE NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - h. THE NATIONAL FIRE MARSHALS ASSOCIATION (NFMA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - i. THE NATIONAL FIRE ENGINEERS ASSOCIATION (NFPA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - j. THE NATIONAL FIRE MARSHALS ASSOCIATION (NFMA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - k. THE NATIONAL FIRE ENGINEERS ASSOCIATION (NFPA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - l. THE NATIONAL FIRE MARSHALS ASSOCIATION (NFMA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - m. THE NATIONAL FIRE ENGINEERS ASSOCIATION (NFPA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
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 - y. THE NATIONAL FIRE ENGINEERS ASSOCIATION (NFPA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
 - z. THE NATIONAL FIRE MARSHALS ASSOCIATION (NFMA) AS ADOPTED BY THE STATE OF NORTH CAROLINA.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS FROM THE LOCAL AND STATE AUTHORITIES.
3. ALL UTILITIES SHALL BE UNDERGROUND.
4. NO OFFSITE TRUCK ENTRIES SHALL BE ALLOWED ON ADJACENT PROPERTIES.
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CLUBHOUSE DATA

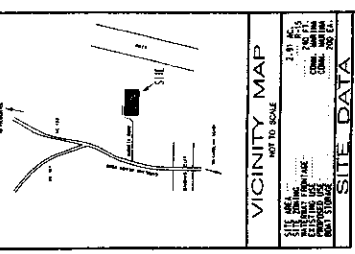
CLUBHOUSE	20,000 SQ FT
OFFICE	1,000 SQ FT
STORAGE	1,000 SQ FT
LAUNDRY	1,000 SQ FT
MECHANICAL	1,000 SQ FT
ELECTRICAL	1,000 SQ FT
PLUMBING	1,000 SQ FT
PAVING	1,000 SQ FT
LANDSCAPING	1,000 SQ FT
GRASS	1,000 SQ FT
TOTAL	24,000 SQ FT

PARKING DATA

STANDARD	100
COMPACT	50
VEHICLE	10
BIKE	2
TOTAL	162

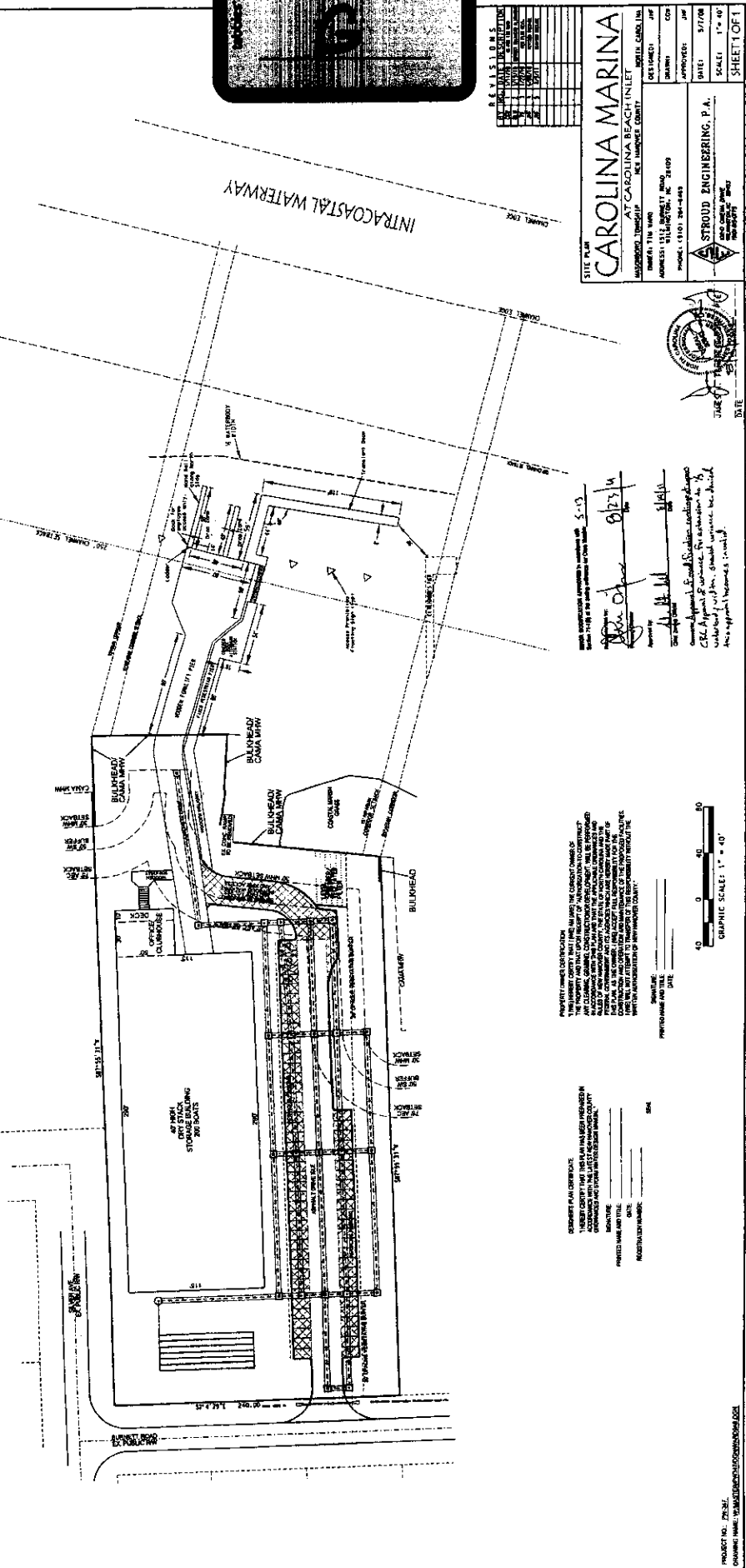
IMPERVIOUS DATA

PAVED	10,000
ASPHALT	5,000
CONCRETE	5,000
TOTAL	15,000



SITE DATA

AREA	100,000
PERMITS	5
APPROVALS	2
CONTRACT	1
TOTAL	8



CAROLINA MARINA
 AT CAROLINA BEACH INLET
 WASHINGTON COUNTY, N.C. 28589

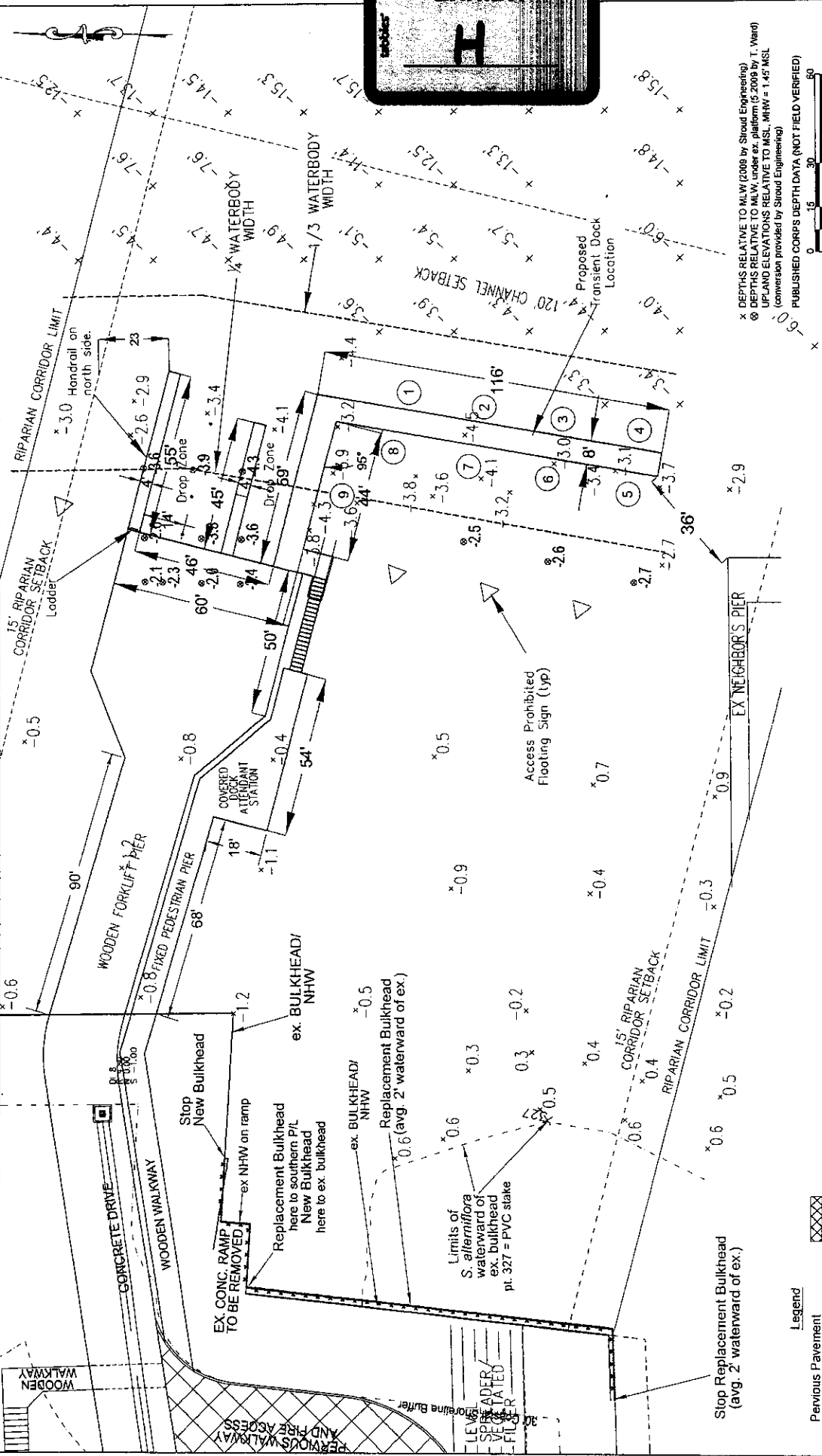
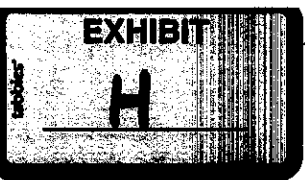
DESIGNED BY: [Signature]
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APPROVED BY: [Signature]
 DATE: 5/17/09

SCALE: 1" = 40'
 SHEET: 1 OF 1

DATE: 5-13-09
 [Signature]
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PROPERTY OWNER: [Name]
 ARCHITECT: [Name]
 ENGINEER: [Name]
 SCALE: 1" = 40'
 GRAPHIC SCALE



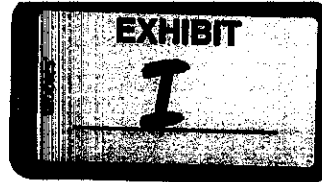
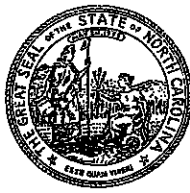
x DEPTHS RELATIVE TO MLW (2008 by Stroud Engineering)
 x DEPTHS RELATIVE TO MLW, under ex. platform (5.2008 by T. Ward)
 UPLAND ELEVATIONS RELATIVE TO MSL, MHW = 1.45 MSL
 (conversion provided by Stroud Engineering)
 PUBLISHED CORPS DEPTH DATA (NOT FIELD VERIFIED)

PRELIMINARY
 REFERENCE FOR CAMA PERMIT ONLY, NOT FOR CONSTRUCTION

STROUD ENGINEERING, P.A.
 102-D CINEMA DRIVE
 WILMINGTON, NC 28403
 (910) 815-0775

Legend
 Pervious Pavement
 30' Buffer
 75' AEC
 Existing Bulkhead
 Proposed Bulkhead

Project: Modification CAMA Permit #02-07	Date: August 15, 2011	Revision Date:
Applicant: Carolina Marina and Yacht Club, LLC	Scale: 1" = 30'	File Number: 02-07-02A
Title: Proposed revisions water dependent structures	Drawn By: SJK	Sheet Number: 2 of 3



State of North Carolina
 Department of
 Conservation and Development

Raleigh 27611

January 12, 1971

ROBERT W. SCOTT
 GOVERNOR

ROY G. SOWERS, JR.
 DIRECTOR

JAN 13 1971
 DIV. OF COMMERCIAL AND SPORTS FISHERIES
 TELEPHONE 829-3767

MEMORANDUM TO - T. L. Linton (Ed Wade)
 From Jim Brown
 Subject App. for C&D Permit - H. H. Ward - dated 1-12-71

While flying with Pilot Arthur Rose January 11, we observed a dredging operation in Myrtle Sound on the west side of the IWW approximately 1/2 mile south of the Carolina Beach Inlet. Mr. Ward was having the dredging done by Harrelson & Thomas (co-owners of dredge DWAR #1001). I stopped and talked with the dredge owners and with Mr. Ward. No C&D permit had been applied for. A federal permit was obtained for construction of the bulkhead and to fill within the bulkhead, but not for excavation of fill materials from submerged bottoms. The federal permit is No. W-661 dated December 2, 1968.

I informed Mr. Ward that he must obtain a State permit for any dredge and fill work begun after January 1, 1970, in addition to his federal permit, and also that the federal permit obtained did not cover dredging which is presently being done. I also mentioned to Mr. Harrelson that this is the second case in which his dredge had been involved in unauthorized dredging.

I assisted Mr. Ward in completing application forms, maps, etc. to apply for the State permit. These should reach your office at about the same time as this memorandum.

From being on site, it was quite obvious that the dredging in progress was having little effect on fisheries resources of the area, and that all spoil materials were being adequately confined behind existing bulkhead. Had an application been filed, it is my opinion that there would have been no objections voiced against issuance of a permit.

Since the operation was approximately 2/3 completed, Mr. Ward and the dredge owners were quite concerned about the stoppage of this project. I informed them that I had no authority to allow continuance, but I would relay the circumstance to the Fisheries Commissioner for his consideration in allowing continuation of the project.

Jim Brown

Dept. of Natural and Economic Resources
Coastal Management Office
Major Permits File, 1970-1972
Box 30
Homer Harley Ward, 1971

CERTIFIED TO BE AN ACCURATE
COPY FROM RECORDS IN THE OFFICIAL
CUSTODY OF THE NORTH CAROLINA
STATE ARCHIVES.

RALEIGH, NORTH CAROLINA CHIEF, ARCHIVES AND RECORDS SECTION

December 2, 2005 Jane R. Burkford

APPLICATION FOR PERMIT TO DREDGE OR FILL

STATE OF NORTH CAROLINA

DEPARTMENT OF CONSERVATION AND DEVELOPMENT

Please type or print

(1) Name of Applicant: Ward Homer Harley
Last First Middle

Address of Applicant Route 2 Box 241-DD 791-1787
Street, P. O. Box, Route No. Phone No.

Wilmington NC 28401
City or Town State Zip Code

(2) Location of Intended Operations:

(a) State Name of County New Hanover

(b) State Name of City Wilmington

(i) Proposed Work Within City Limits _____ Yes No

(c) State Name of River, Sound, Bay, Stream, or State-Owned Lake or nearest tributary to the involved waters. Myrtle Sound

(d) Is the Area Subject to Regular or Periodic Flooding by High Tides
 Yes _____ No

If so, Name of Nearest Navigable River, Sound, Bay, Stream, or State-Owned Lake. Inter-coastal waterway

(3) Indicate Width 240, Depth 5 ft, and Length 285
of Proposed Channel or other excavations.

(4) Does the area to be dredged include any marshland? _____ Yes No
(Please check one)

(5) (a) Purpose of Excavation and/or Fill Operations To obtain fill and to provide boat access to private property

(b) State Contemplated Use of Property after excavation and/or Filling Operations
Marina Development

(6) (a) State Approximate Cubic Yards of Sand or Dredge Material to be Removed

10000

(b) Location of Disposal Area in Bulkhead area on my property

(c) Does the disposal area contain any marshland? Yes No
(please check one)

(If yes, state whether the disposal area contains marshland above the high tide mark, below the high tide mark or both)

(d) State how spoil will be entrapped or encased in compliance with 113-229 (i) (page 6 of this booklet) as above

(7) State type of equipment to be used: dredge dragline _____
(check one, or both, if applicable)

(8) Attach a Copy of the Deed or Other Instrument under Which Applicant Claims Title to the Tidelands, Marshlands, or Other Properties Adjoining the Waters in Question.

OR

If Applicant is not Claiming to be the Owner of Said Property, then a Copy of the Deed or Other Instrument under Which the Owner Claims Title Plus Written permission from the Owner to carry out the Project on His Land.

(9) In the case where filling below high water is involved, the applicant must request an easement to fill from the Department of Administration by checking this block. Easement obtained by March 6, 1969 letter from Porters Lane

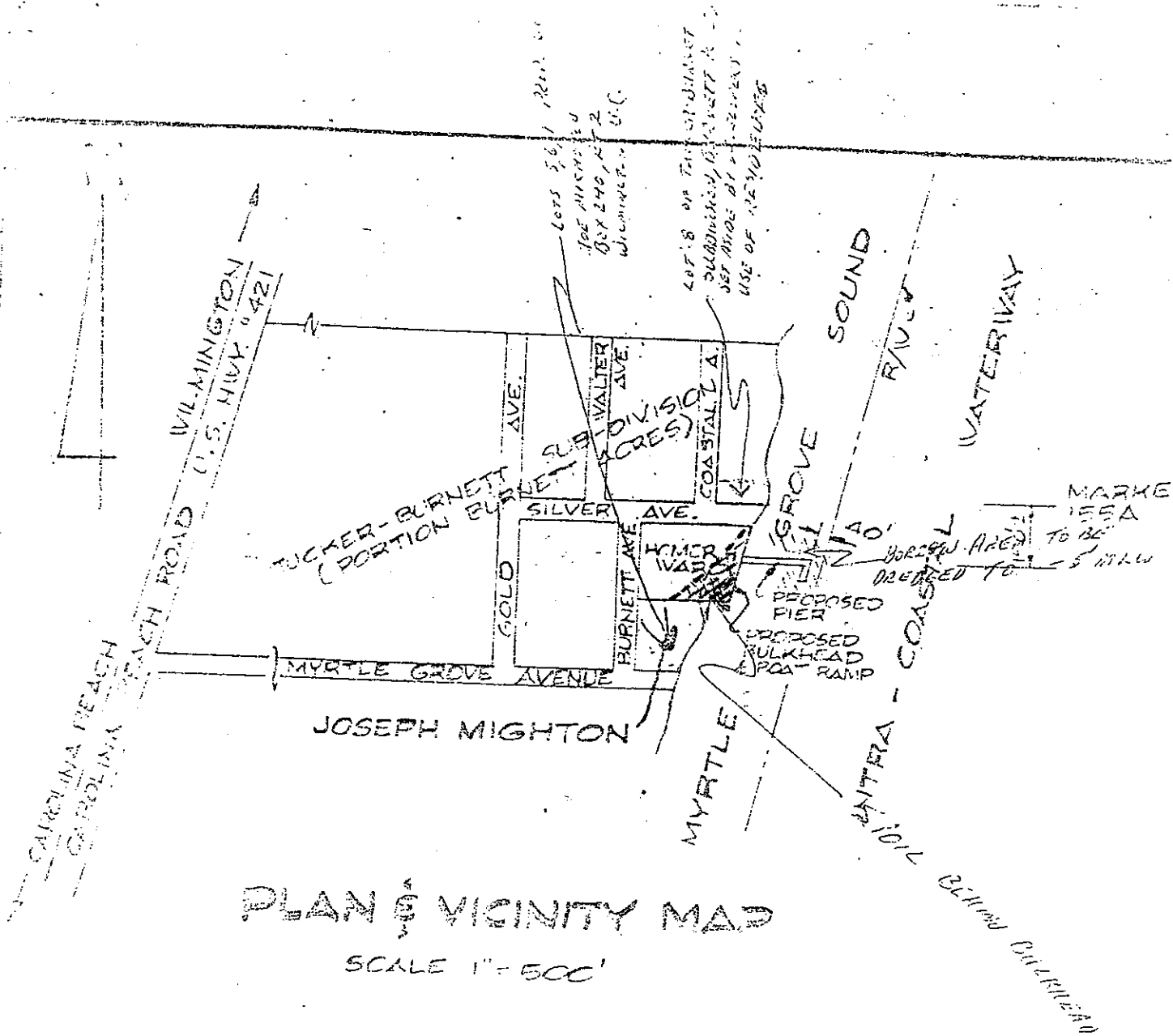
(10) Attach a copy of a Plat of the Areas in Which the Proposed Work will take Place and on which the proposed work, Spoil Disposal Area, etc. is Shown. (See instruction Booklet)

(11) (a) Has a copy of the Application Been Served upon the Riparian Landowners Adjoining the Applicant's Tract in the Manner Provided by G. S. 113-229 (g) (9) or (10)? (See Instruction Booklet) yes

(b) List the Names and Complete Addresses of the Riparian Landowners adjacent to the applicant's tract.

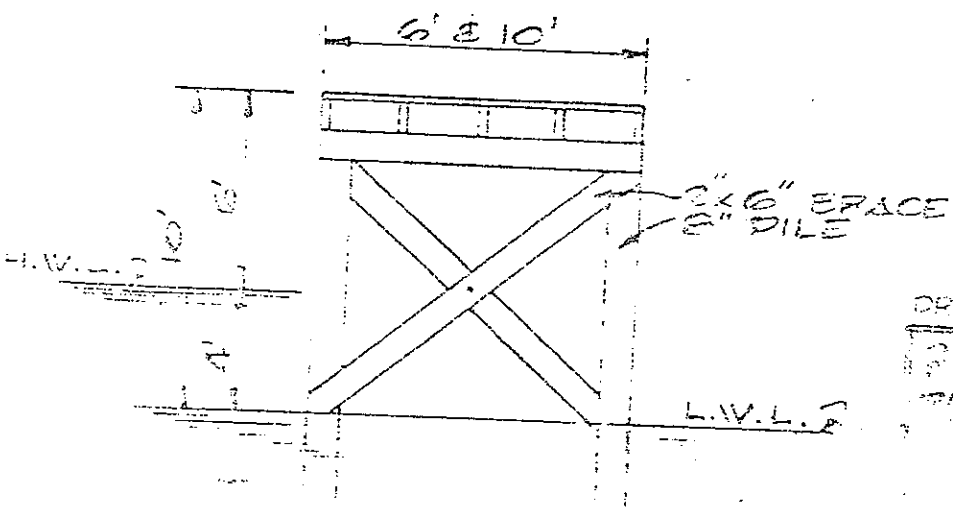
Joe Dighton - Route 2 Box 239, Wilton N.C.
Lot # 8 Public use of residents set aside

Joseph Dighton - Have seen + have no objections to prop work
1/11/71 Date
Thomas H. Ward Applicant's Signature



PLAN & VICINITY MAP

SCALE 1" = 500'



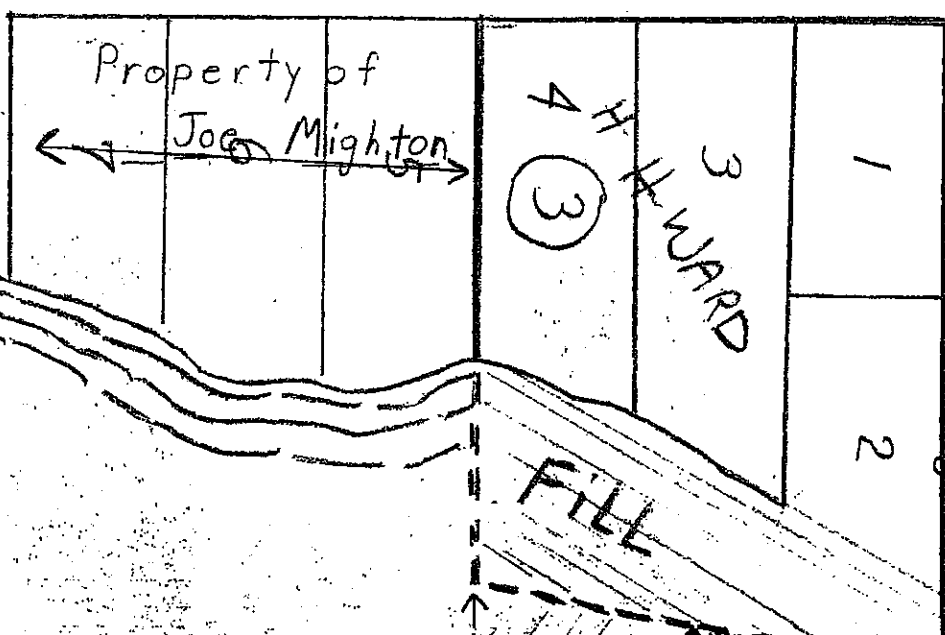
DRAWN BY A. W. POWELL
 PROPOSED PIER
 TUCKER-BURNETT
 MYRTLE GROVE SOUND
 APPLICATION NO.

CROSS SECTION OF PIER

NOVEMBER 9 1940

SILVER AVENUE

BURNETT AVENUE



Property of Joe Mighton

4
3
HILLWARD

1

2

Property Owners Landing

8

FILL

Dredging MYRTLE

Permit Area

Area

GROVE Sound

WESTERN EDGE INTRA COASTAL WA

Dept. of Natural and Economic Resources
Coastal Management Office
Major Permits File, 1970-1972
Box 30
Homer Harley Ward, 1971

CERTIFIED TO BE AN ACCURATE
COPY FROM RECORDS IN THE OFFICIAL
CUSTODY OF THE NORTH CAROLINA
STATE ARCHIVES.

RALEIGH, NORTH CAROLINA CHIEF, ARCHIVES AND RECORDS SECTION

December 2, 2005 James L. Landford, Jr.

SHANKLIN & NICHOLS, LLP

ATTORNEYS AT LAW

214 MARKET STREET

POST OFFICE BOX 1347

WILMINGTON, NORTH CAROLINA 28402-1347

TELEPHONE (910) 762-9400 • TELEFAX (910) 251-1773

E-MAIL: SHANKLAW@EARTHLINK.NET

KENNETH A. SHANKLIN*
MATTHEW A. NICHOLS**

* BOARD CERTIFIED SPECIALIST IN
REAL PROPERTY LAW - RESIDENTIAL, BUSINESS,
COMMERCIAL AND INDUSTRIAL TRANSACTIONS

CYNTHIA W. BALDWIN

** ALSO ADMITTED IN NEW YORK

September 14, 2011

VIA CERTIFIED MAIL, RETURN
RECEIPT NO. 9414 8159 6900 8442 6881 10

Ms. Violet P. Ward
1508 Burnett Road
Wilmington, NC 28409

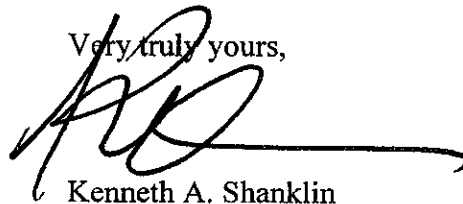
Re: Carolina Marina and Yacht Club, LLC
CAMA Variance Application
Our File No. 02071.001

Dear Ms. Ward:

Your property adjoins the property of Carolina Marina and Yacht Club, LLC, which is filing an application for a CAMA Variance. Please find enclosed your neighbor's plans for this variance. Please also find enclosed a neighbor notification and waiver form for you to sign and to return to the Applicant in the enclosed stamped envelope.

With best regards, I remain

Very truly yours,



Kenneth A. Shanklin

KAS/cwb
enclosures

cc: Carolina Marina and Yacht Club, LLC

Shanklin & Nichols, LLP
P.O. Box 1347
WILMINGTON NC 28402-1347

US POSTAGE AND FEES PAID

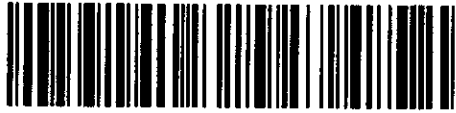
Sep 14 2011
Mailed from ZIP 28402
2 oz First Class Mail
Letter Rate (No surcharge)



endicia.com

071S00534813

USPS CERTIFIED MAIL



9414 8159 6900 8442 6881 10

Violet Ward
1508 BURNETT RD
WILMINGTON NC 28409-4906



FOLD ALONG THIS LINE

SHANKLIN & NICHOLS, LLP

ATTORNEYS AT LAW

214 MARKET STREET

POST OFFICE BOX 1347

WILMINGTON, NORTH CAROLINA 28402-1347

TELEPHONE (910) 762-9400 • TELEFAX (910) 251-1773

E-MAIL: SHANKLAW@EARTHLINK.NET

KENNETH A. SHANKLIN*
MATTHEW A. NICHOLS**

CYNTHIA W. BALDWIN

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COMMERCIAL AND INDUSTRIAL TRANSACTIONS

**ALSO ADMITTED IN NEW YORK

September 14, 2011

VIA CERTIFIED MAIL, RETURN

RECEIPT NO. 9414 8159 6900 8442 6881 27

Ms. Lynda Altman
520 Silver Lake Rd.
Wilmington, NC 28412-2432

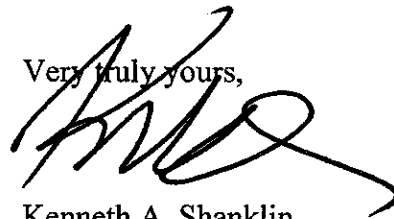
Re: Carolina Marina and Yacht Club, LLC
CAMA Variance Application
Our File No. 02071.001

Dear Ms. Altman:

According to the Division of Coastal Management, your property adjoins the property of Carolina Marina and Yacht Club, LLC, which is filing an application for a CAMA Variance. Please find enclosed your neighbor's plans for this variance. Please also find enclosed a neighbor notification and waiver form for you to sign and to return to the Applicant in the enclosed stamped envelope.

With best regards, I remain

Very truly yours,



Kenneth A. Shanklin

KAS/cwb
enclosures

cc: Carolina Marina and Yacht Club, LLC

Shanklin & Nichols, LLP
P.O. Box 1347
WILMINGTON NC 28402-1347

US POSTAGE AND FEES PAID

Sep 14 2011
Mailed from ZIP 28402
2 oz First Class Mail
Letter Rate (No surcharge)



endicia.com

071S00534813

USPS CERTIFIED MAIL



9414 8159 6900 8442 6881 27

Lynda Altman
520 SILVER LAKE RD
WILMINGTON NC 28412-2432



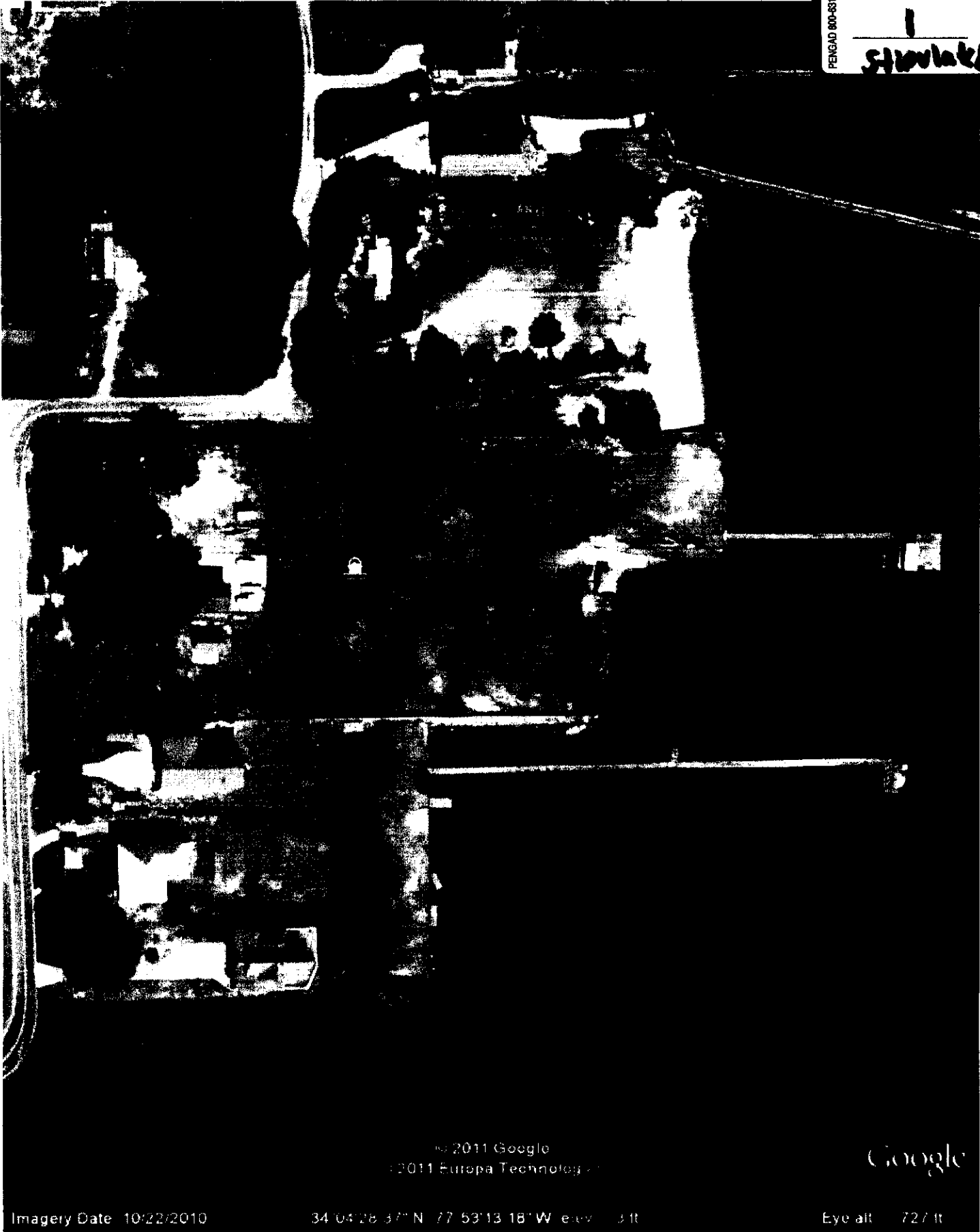
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STIPULATED EXHIBITS

- 1. Aerial Photograph**
- 2. CRC's Order adopting ALJ's decision in 2007 case**
- 3. New Revised Site Plan (2011)**
- 4. DCM's Field Report on the current modification**
- 5. Shellfish Sanitation's comments**
- 6. DMF comments**
- 7. Third Parties' objections of 8/28/2011**
- 8. Chatham Towing's objections**
- 9. Denial Letter dated 9/21/2011**
- 10. Third Parties' objections to variance dated 9/25/2011**

In addition, the powerpoint is stipulated to by the parties.

PENGAD 800-831-6989
EXHIBIT
1
Sipulaki



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© 2011 Europa Technology

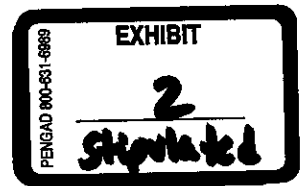
Google

Imagery Date 10/22/2010

34°04'26.37" N 77°53'13.18" W elev 3 ft

Eye alt 727 ft





STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

BEFORE THE COASTAL
RESOURCES COMMISSION
07 EHR 0406

VIOLET WARD,)
DAVID WARD,)
 Petitioners,)
))
 vs.)
))
NC DEPARTMENT OF ENVIRONMENT)
AND NATURAL RESOURCES,)
DIVISION OF COASTAL)
MANAGEMENT,)
 Respondent,)
))
 and)
))
CAROLINA MARINA AND YACHT)
CLUB, LLC,)
 Intervenor-Respondent.)

FINAL AGENCY DECISION

This matter came before the North Carolina Coastal Resources Commission (hereinafter CRC) for final decision pursuant to N.C.G.S. § 150B-36 at its regularly scheduled meeting on March 28, 2008, in Kill Devil Hills, North Carolina. The CRC, pursuant to N.C.G.S. §§113A-121.1 and 150B-36, has jurisdiction over the subject matter and the parties herein.

This is a case arising under the CRC's authority to administer the State's authority under N.C.G.S. §§ 113A-118 and 113A-120 and to make the Final Agency Decision in contested cases arising from CAMA Major Development Permits issued pursuant to 15A NCAC Chapter 7. The issue is whether the Respondent erred in issuing CAMA Major Development Permit No. 02-07 for the modification of an existing docking facility and for high-ground improvements at the Carolina Marina and Yacht Club, LLC located on Burnett Road, Wilmington, N.C. This Final Agency Decision concludes that the Respondent acted appropriately and in accordance with the General

Statutes and rules in issuing CAMA Major Development Permit No. 02-07. Accordingly, the Decision by the Administrative Law Judge is adopted in full and incorporated herein by reference.

The contested case was heard by Administrative Law Judge (ALJ) Augustus B. Elkins II on July 11-13, 2007, in Bolivia, North Carolina. The ALJ issued his Decision on December 3, 2007. The Official Record was received by counsel to the CRC on December 10, 2007. The meeting of the CRC following the receipt of the Record was on January 17, 2007. The parties were provided an opportunity to submit exceptions to the ALJ's Decision and to provide written arguments to the CRC.

The CRC considered the whole Official Record including the Decision of the ALJ as well as Petitioners' Exceptions and written argument and Respondent-Intervenor's written argument to the ALJ's Decision. The Respondent did not file exceptions to the ALJ's Decision. The CRC also heard oral arguments presented by the named Petitioners and by Matthew Nichols, Esq. for the Respondent-Intervenor and Assistant Attorney General Christine A. Goebel for the Respondent.

Final Agency Decision

Upon consideration of the whole record and arguments by the parties and by duly made motion and unanimous vote, the Coastal Resources Commission affirms CAMA Major Development Permit No. 02-07 issued by the Division of Coastal Management and adopts as the Final Agency Decision the attached ALJ's Decision on which is incorporated herein as if fully set forth in this Final Agency Decision.

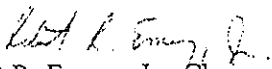
WHEREFORE, IT IS ORDERED that:

1. CAMA Major Development Permit 02-07 issued to Carolina Marina and Yacht Club, LLC on January 22, 2007 is **AFFIRMED**; and

2. this final agency decision be served upon the parties personally or by certified mail.

This the 4th day of April, 2008.

N. C. COASTAL RESOURCES COMMISSION


Robert R. Emory, Jr., Chairman

CERTIFICATE OF SERVICE

This is to certify that this day I have served the foregoing FINAL AGENCY DECISION upon the parties and their counsel by placing copies in the United States Mail with postage prepaid for CERTIFIED MAIL-RETURN RECEIPT or US MAIL, and also by HAND DELIVERY as indicated and addressed as follows:

Ms. Violet Ward
Mr. David Ward
1508 Burnett Road
Wilmington, N.C.

CERTIFIED MAIL
RETURN RECEIPT

W. A. Raney, Jr., Esq.
Wessell & Raney, LLP
P. O. Box 1049
Wilmington, N. C. 28402

US MAIL

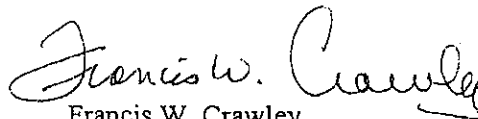
Kenneth A. Shanklin, Esq.
Matthew A. Nichols, Esq.
Carolina Marina and Yacht Club, LLC
P. O. Box 1347
Wilmington, N. C. 28402-1347

CERTIFIED MAIL
RETURN RECEIPT

Christine A. Goebel, Esq.
Assistant Attorney General
P.O. Box 629
Raleigh, N.C. 27602-0629

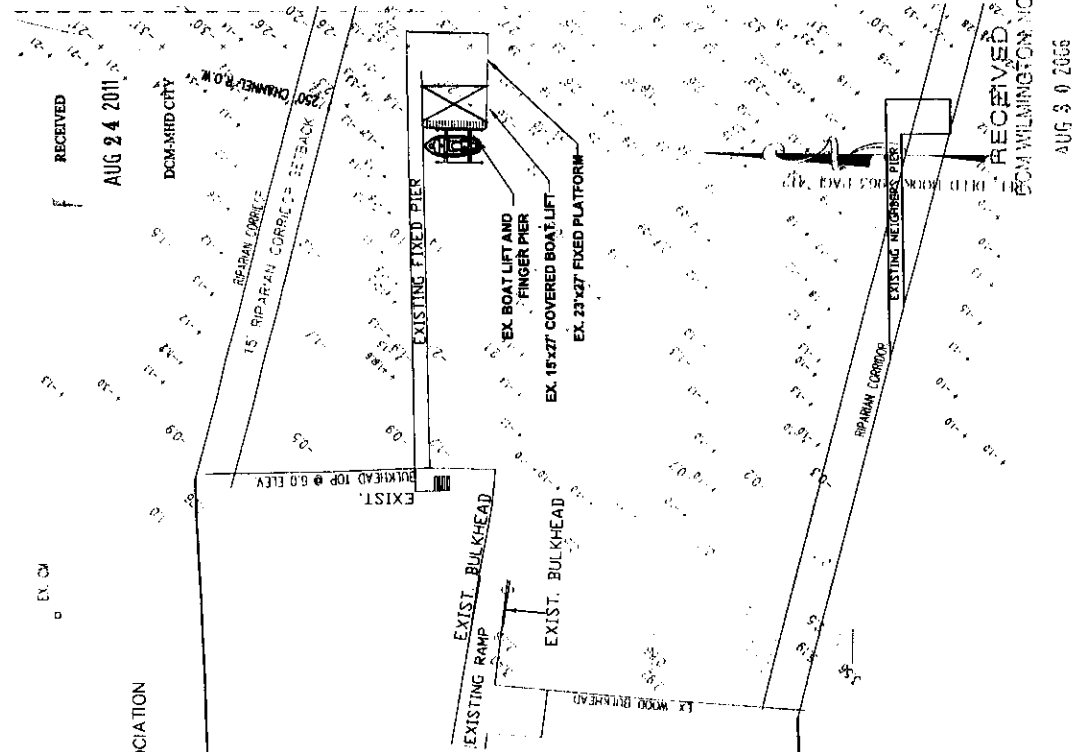
HAND DELIVERY

This the 4th day of April, 2008.



Francis W. Crawley
Special Deputy Attorney General
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602-0629
Counsel to the Commission

EXIST. WATER DEPENDENT STRUCTURES



RECEIVED
AUG 24 2011
DOM-4RD CRTY

RECEIVED
AUG 30 2006
FROM WILMINGTON, NC

TUCKER-BURNETT H/O ASSOCIATION
7329 COASTAL AVE
WILMINGTON NC 28403

(PROPOSED UPLAND
DEVELOPMENT NOT SHOWN)

CECIL AND VIOLET WARD
341 WILLOW WOODS DRIVE
WILMINGTON, NC 28403

20' BUFFER (TYP)



DEPTHS RELATIVE TO MLW
DRAWN RIPARIAN LINES HAVE NOT
BEEN ESTABLISHED BY A SURVYOR
REFERENCE FOR CAMA PERMIT ONLY,
NOT FOR CONSTRUCTION

ORIGINAL DRAWING AND SURVEY BY:



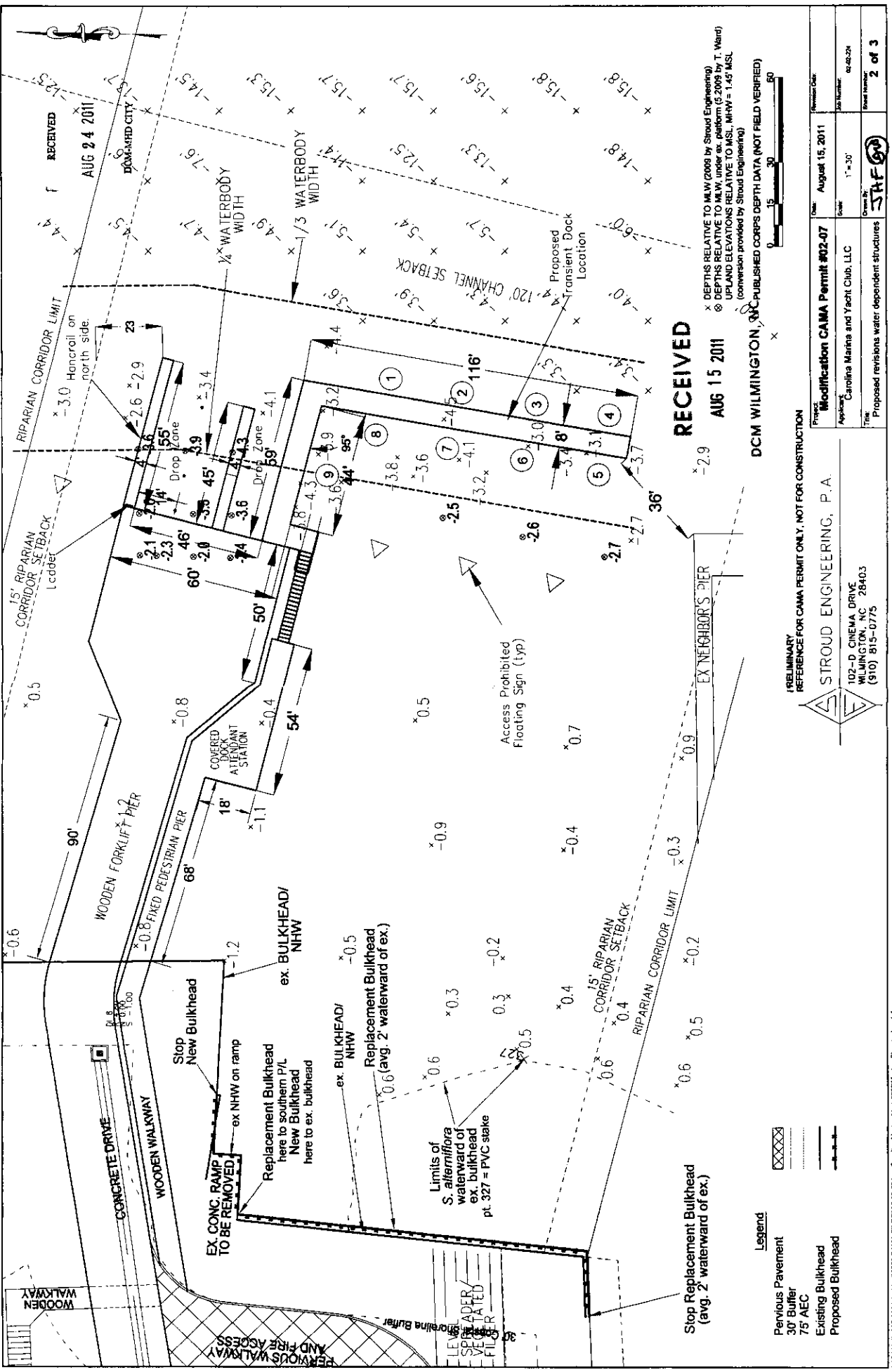
STROUD ENGINEERING, P.A.
102-D CINEMA DRIVE
WILMINGTON, NC 28403
(910) 815-0775

Land Management Group, Inc.
Environmental Consultants
PO Box 2522
Wilmington, North Carolina 28403
Telephone: 910-452-0001

Project: CAROLINA MARINA
Applicant: TINA WARD
Title: EXIST WATER DEPENDENT STRUCTURES

Date	Revision	Date
4/19/06	1/19/06	8/15/06
1/19/06	1/19/06	82-82-024
1/19/06	1/19/06	1A OF 3

9-22-013



RECEIVED
AUG 24 2011
DCM WILMINGTON, NC

RECEIVED
AUG 15 2011
DCM WILMINGTON, NC

Project: Modification CAMA Permit #02-07
 Applicant: Carolina Marina and Yacht Club, LLC
 Title: Proposed revisions water dependent structures

DATE: August 15, 2011
 SCALE: 1" = 30'
 DRAWN BY: SHF
 SHEET: 2 OF 3

PRELIMINARY
 REFERENCE FOR CAMA PERMIT ONLY. NOT FOR CONSTRUCTION

STROUD ENGINEERING, P.A.
 102-D CINEMA DRIVE
 WILMINGTON, NC 28403
 (910) 815-0775

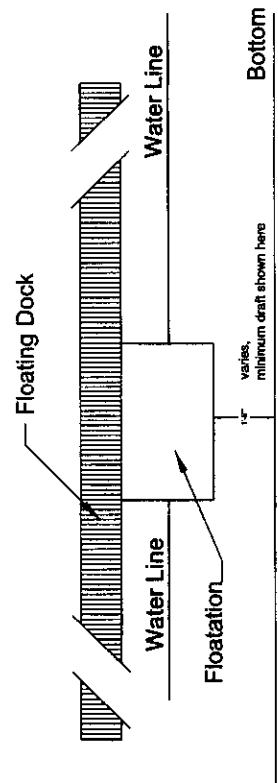
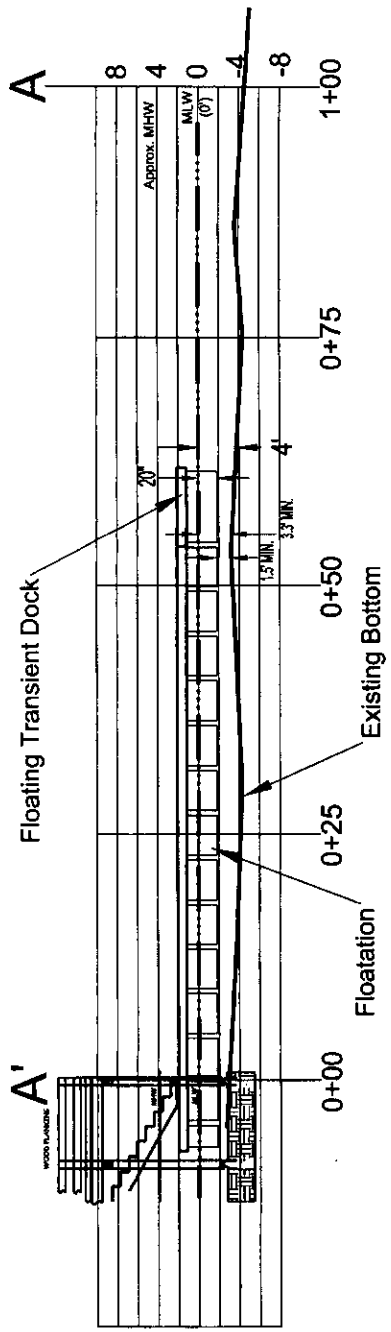
LEGEND

- Pervious Pavement
- 30' Buffer
- 75' AEC
- Existing Bulkhead
- Proposed Bulkhead

DEPTHS RELATIVE TO MLW (2009) by Stroud Engineering
 DEPTHS RELATIVE TO MLW, under ex. platform (5-2009 by T. Ward)
 UPLAND ELEVATIONS RELATIVE TO MSL, MHW = 1.45' MSL
 (conversion provided by Stroud Engineering)

Limits of
S. alterniflora
 watershed of
 ex. bulkhead
 pt. 327 = PVC stake

WOODEN WALKWAY
 CONCRETE DRIVE
 WOODEN WALKWAY
 WOODEN FORKLIFT PIER
 WOODEN PEDESTRIAN PIER
 WOODEN RAMP TO BE REMOVED
 EX. CONC. RAMP TO BE REMOVED
 NEW BULKHEAD
 REPLACEMENT BULKHEAD
 EX. BULKHEAD/NHW
 COVERED TRUCK ALIQUANT STATION
 PROPOSED TRANSIENT DOCK LOCATION
 RIPARIAN CORRIDOR LIMIT
 RIPARIAN CORRIDOR SETBACK
 120' CHANNEL SETBACK
 15' RIPARIAN CORRIDOR SETBACK
 EX. NEIGHBOR'S PIER
 EX. BULKHEAD/NHW
 REPLACEMENT BULKHEAD (avg. 2' waterfront of ex.)
 STOP REPLACEMENT BULKHEAD (avg. 2' waterfront of ex.)



RECEIVED
 AUG 15 2011
 ENVIRONMENTAL ENGINEERING, INC.

TYPICAL CROSS-SECTION, NOT FOR CONSTRUCTION
 FOR ENVIRONMENTAL PERMITTING ONLY

Project: Carolina Marina and Yacht Club	Date: revised 5-11-2011	Revision No.: rev 5-26-2010
Applicant: Tim Ward	Scale: See Display	DS Number: 02-00-24
Title: Profile of Extended Floating Dock	Drawn By: JAF	Sheet Number: 3 of 3

Post Office Box 2502
 Waveland, NC 28587
 Telephone: 315-552-2001

AUG 24 2011

DCM-MHD CITY

9. PROJECT DESCRIPTION:

The project site is located at 1512 Burnett Road, adjacent to the Atlantic Intracoastal Waterway (AIWW)/Myrtle Grove Sound, just south of Carolina Beach Inlet, in New Hanover County. To locate the property from Carolina Beach Road (NC Highway 421), turn left onto Burnett Road and travel east approximately 0.5 miles. Continue around the bend and the subject property will be located on the right. The property encompasses approximately 2.87 acres and averages 7 feet above normal high water (NHW). The project site is bordered by Burnett Road to the west, a single family residence to the south, community water access area to the north and the Myrtle Grove Sound to the east. The property has approximately 390 linear feet of shoreline adjacent to Myrtle Grove Sound that is currently stabilized by a wooden bulkhead. Existing highground structures include a garage/workshop building with an associated driveway and a gazebo located next to the boatramp. A chain linked fence and concrete/cinder-block wall surround the perimeter of the property. Water dependent structures that currently exist at the property include a private boat ramp, a fixed pier with an "L-head" platform, and one (1) boatlift. Upland vegetation consists of live oak, ornamental landscaping and lawn grasses. Waterward of the existing bulkhead on the southern side of the property is an area of low marsh consisting primarily of smooth cordgrass (*Spartina alterniflora*), which extends approximately 60 feet towards the AIWW/Myrtle Grove Sound (See Sheet 1A of 3).

U.S. Army Corps of Engineers (USACE) file records indicate that in 1969 Mr. Homer Ward received a federal permit authorizing the construction of a private bulkhead, boat ramp, fixed pier and platform. On January 14, 1971, a memorandum by Mr. Thomas L. Linton from the N.C. Department of Conservation and Development states that Mr. Homer Ward submitted a State Dredge and Fill Permit application on January 11, 1971. However, there is no record that a State Dredge and Fill Permit was ever issued. New Hanover County issued Mr. Homer Ward a Special Use Permit in 1971 for a commercial marina at this location. The permit application indicates that the commercial sale of fuel from the terminal end of the dock occurred during the late 1960's and early 1970's. The application also indicates that the boat slips were utilized until approximately 1990 and that the boat ramp has continued to be used, although has not been used commercially in several years. On October 20, 1992, Mr. Homer Ward received CAMA General Permit No. 10616-D authorizing a boathouse, catwalk and installation of a boatlift. On September 9, 2004, the applicant, Mr. Tim Ward received CAMA General Permit No. 36899-D authorizing the construction a new bulkhead two (2) feet waterward of the existing bulkhead at this location.

On January 22, 2007, CAMA Major Development Permit #02-07 was issued to Carolina Marina and Yacht Club, LLC c/o of Tim Ward for modifications to the existing pier structure including a boatlift, covered platform and "T-head" floating dock with fuel services, the construction of a bulkhead, upland facilities including parking lot, clubhouse and storm water features. On December 17, 2010, CAMA Major Development Permit #02-07 was issued a modification, which authorized changes to the water dependant structures by removing the existing fixed pier and boat ramp, eliminating the authorized fuel dock, and constructing an elevated, wooden forklift pier with adjacent pedestrian pier, and associated platforms. CAMA Major Development Permit #02-07 is due to expire on January 14, 2015.

Authorized dimensions under this modification to CAMA Major Development Permit #02-07 for the forklift pier that extends southeast of the existing bulkhead toward the AIWW were approximately 24 feet in width and would extend into the waterbody, approximately 84 feet, where the pier would flare at a 45 degree angle to a platform, measuring approximately 50 -70 feet in length and 71 feet in width. The pier terminates to a platform, which would accommodate a turn-around area for a forklift that would be used to transport vessels from the dry-storage facility to the drop zone. The drop zone would be located at the terminal end of the forklift platform and would be equipped with two finger piers and a dockside lift. The dock side lift would be affixed to the terminal end of the forklift platform and would be utilized in combination with the forklift to lower vessels into the drop zone.

AUG 24 2011

**Major Modification to CAMA Major Permit #02-07
Carolina Marina and Yacht Club, LLC c/o Tim Ward
Page 3**

DCM-MHD CITY

The authorized modification also included a pedestrian pier, extending from the bulkhead, on the south side of the wooden forklift pier. The pedestrian pier would be constructed independently, designed with a 2-foot separation for safety and would parallel the proposed wooden forklift pier and platform. The pedestrian pier would be 8 feet in width and approximately 67 feet in length. The pedestrian pier would extend toward the platform, would combine with and cross over the forklift pier to create pedestrian access piers on both the northern and southern sides of the forklift platform. The pedestrian access pier on the northern side of the wooden forklift platform would connect via ramp to an "L-head" floating dock which would extend eastward approximately 18 feet and to the north approximately 18 feet and would measure 8 feet in width.

The pedestrian access pier on the southern side would connect to a triangular shaped covered attendant station and continue to parallel the forklift platform for approximately 25 feet. The pedestrian access pier on the south side of the wooden forklift platform would connect via ramp to a proposed "L-head" floating dock that would extend to the east approximately 28 feet in length by 8 feet in width and then turn 90° south a distance of approximately 98 feet by 8 feet in width. Based on the application, water depth on the western side of this floating dock were approximately -2.5 feet at MLW. Based on concerns on the limited water depth from some of the review agencies during the review process of this application, the western side of this floating dock was restricted from allowing dockage. The eastern portion of this floating dock was authorized to allow for four (4) transient slips only without formalized slips. The proposed floating docks would be used for temporary tie up for boats awaiting transport to and from the dry storage facility. The floating docks have been designed with standard foam filled floats beneath the dock and with additional hollow wave attenuating floatation (Please see project narrative and sheet 1 of 3).

The 2006 City of Wilmington-New Hanover County CAMA Land Use Plan classifies the adjacent waters as Conservation, and the adjacent high ground of the project area as Resource Protection. The waters of the AIWW/Myrtle Grove Sound are classified SA by the N.C. Division of Water Quality and are designated as a **Primary Nursery Area (PNA)** by the N.C. Division of Marine Fisheries and are **OPEN** to the harvest of shellfish.

10. PROPOSED PROJECT:

The applicant proposes to modify CAMA Major Permit #02-07 by extending these authorized docks into deeper water to improve use of the drop zones and to allow for an increase of transient docking spaces. The application proposes to extend the authorized floating docks an additional 32 feet eastward into waterbody. The authorized "L-head" floating docks on the northern side of the wooden forklift platform would be removed and not included into this proposal. The proposal would also reduce the triangular shaped covered attendant station to allow for the extension. This would locate the floating docks approximately 210 feet into a waterbody that measures approximately 728 feet across. This would locate the facility in a area between the 1/4 and the 1/3 distance of the adjacent waterbody; however, the applicant's proposal would not encroach into the USACE 120-foot setback from the AIWW in this location. The application states that the waterbody width was defined as NHW at the bulkhead on the subject property and by elevation on the eastern side of the AIWW (determined by a registered land surveyor at Stroud Engineering, Inc., Wilmington, N.C.). The waterbody width used is consistent with the current approved permit; however the application states that this width would be re-surveyed during the review process of this request. The equivalent of an additional five (5) transient slips would be added due to the extension, for a total of nine (9) transient slips or 233 linear feet of dockage. According to the application, relocation of the floating docks would provide water depths in excess of -3.0 feet @ MLW on the western side without damage to the substrate bottom to address some of the previous concerns and increase safety for customers utilizing the docks with a protected mooring area. The application states that floating signs would be anchored, similar to a buoy on the landward side of the proposed dockage where boating access is not available due to shallow water depth (Please see project narrative and sheets 1 of 3 through 3 of 3).

AUG 24 2011

The applicant states that the authorized upland development would remain unchanged as previously authorized. This includes the 200-slip dry-stack storage facility with associated marina clubhouse, driveways, parking lots, septic system and the associated stormwater treatment system authorized under the NC Division of Water Quality (**SW8 040103**). Further, the construction of a new bulkhead waterward of the existing bulkheads and a new bulkhead in the location of the existing boat ramp would remain as previously authorized.

10. ANTICIPATED IMPACTS:

The proposed extension of the floating docks would incorporate an additional approximately 384 sq. ft. to the recently authorized 10,100 sq. ft. of Estuarine Waters and Pubic Trust Area under CAMA Major Development Permit #02-07. Removal of the "L-head" floating dock on the northern end of the forklift platform and a section of the triangular shaped covered attendant station would be a reduction of approximately 368 sq. ft. from this total. The proposed 32 foot extension would locate the floating docks approximately 210 feet into a waterbody that measures approximately 728 feet wide, as measured from the NHW line on the opposite shoreline and the waterward extent of the existing bulkhead. The opposite shoreline is located on the west side of the North End of Carolina Beach and the south side of Carolina Beach Inlet. This distance would not conform with the 1/4 width rule and appears to extend beyond the established pier lengths. As proposed, the applicant's proposal would not encroach into the USACE 120-foot setback from the AIWW. The floating docks would potentially provide docking space for up to 10 vessels; however, the application indicates that only nine (9) temporary tie ups are proposed as indicated by numbering on the submitted plans. Minor increases in turbidity should be expected during construction.



North Carolina Department of Environment and Natural Resources
 Division of Coastal Management
 James H. Gregson
 Director

EXHIBIT
 5
 Stipulated
 FENGAD 800-651-9989

RECEIVED

SEP 07 2011

DCM-MHD CITY
 Dee Freeman
 Secretary

Beverly Eaves Perdue
 Governor

August 22, 2011

MEMORANDUM:

RECEIVED
 AUG 24 2011
 Shellfish Sanitation & Recreational
 Water Quality Section

TO: Shannon Jenkins
 NC DEH
 Shellfish Sanitation Section

FROM: Doug Huggett, NC DENR-DCM Major Permits Coordinator
 400 Commerce Ave., Morehead City, NC 28557 (*Courier 11-12-09*)

SUBJECT: CAMA Major Permit Application Review

Applicant: Carolina Marina & Yacht Club, LLC / Tim Ward

Project Location: 1512 Burnett Road, adjacent to Myrtle Grove Sound / AIWW

Proposed Project: Modify existing permit #02-07 to extend docks

Please indicate below your agency's position or viewpoint on the proposed project and return this form by **September 14, 2011**. If you have any questions regarding the proposed project, contact Robb Mairs at (910) 796-7423, when appropriate, in-depth comments with supporting data is requested.

REPLY: _____ This agency has no objection to the project as proposed.

_____ This agency has no comment on the proposed project.

_____ This agency approves of the project only if the recommended changes are incorporated. See attached.

_____ This agency objects to the project for reasons described in the attached comments.

SIGNED Shirley for Patti Fuller **DATE** 9/2/11

✓
 See attached comments



North Carolina Department of Environment and Natural Resources

Division of Marine Fisheries

Dr. Louis B. Daniel III

Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

RECEIVED

SEP 07 2011

DCM-MHD CITY

MEMORANDUM September 2, 2011

TO: Doug Huggett
Major Permits Processing Coordinator

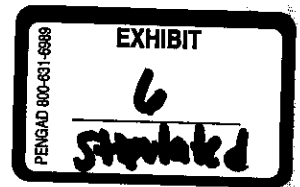
FROM: Shannon Jenkins
Environmental Senior Specialist

THROUGH: Patti Fowler
Shellfish Sanitation & Recreational Water Quality Section Chief

SUBJECT: Carolina Marina & Yacht Club, LLC / Tim Ward
New Hanover County

The proposed facility would not cause a change in shellfish classification provided that the number of boat slips, combined with any neighboring boat slips within 100 feet of the proposed facility, does not exceed ten. We would like to request that as a condition of the permit, no more than one boat be docked per designated slip at any one time as it could result in a shellfish closure.

A neighboring dock is shown 36 feet to the southwest of the proposed facility. The number of permitted boat slip(s) at this dock would be included in the total slip count of the proposed facility when evaluating for a shellfish closure due to proximity. If there is only one boat slip at the neighboring dock, a shellfish closure would not be necessary. If there are two or more boat slips at the neighboring dock, the proposed facility would need to reduce the slips accordingly in order to avoid a shellfish closure.



North Carolina Department of Environment and Natural Resources
Division of Marine Fisheries

Beverly Eaves Perdue
Governor

Dr. Louis B. Daniel III
Director

Dee Freeman
Secretary

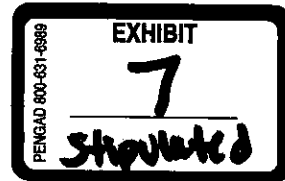
MEMORANDUM:

TO: Doug Huggett, DCM Major Permits Coordinator
THROUGH: Anne Deaton, DMF Habitat Section Chief *AD*
FROM: Jessi Baker, DMF Marine Biologist *JB*
SUBJECT: Carolina Marina and Yacht Club, LLC, Wilmington, NC
DATE: September 6, 2011

The North Carolina Division of Marine Fisheries (DMF) submits the following comments pursuant to General Statute 113-131. DMF has reviewed the application from Tim Ward to modify an existing permit to extend docks into Myrtle Grove Sound and the addition of slips.

It has been determined by Shellfish Sanitation and Recreational Water Quality that this project will cause an additional area of shellfish closure if more than one boat is docked per slip or if the total number of slips at the applicant's dock and the dock to the south are greater than ten. Shellfish closures represent a significant adverse impact to the shellfish fishery and DMF objects to any project that would result in additional shellfish closures. DMF will remove our objection if the requirements of Shellfish Sanitation, as outlined in their September 2, 2011 letter (attached), are met.

Please feel free to contact Jessi Baker at (252) 808-8064 or jessi.baker@ncdenr.gov if you have any further questions or concerns.



August 28, 2011

REC'D SEP 08 2011

Violet P. Ward David N. Ward
Cecil R. Ward Donnie W. Ward
Lisa W. Canady
1508 Burnett Road
Wilmington, N.C. 28409

Mr. Robb Mairs
N.C. Division of Coastal Management
127 N Cardinal Drive
Wilmington, N.C. 28405

RE: Request for Modification of CAMA Permit # 02-07 made by Carolina Marina and Yacht Club, 1512 Burnett Road

Dear Robb,

We have reviewed the request made by Carolina Marina for a Major Modification of CAMA Permit # 02-07 and would like to comment on this request. It is first of all very apparent to us that the modification is not environmentally friendly. The Applicant has stated that moving the floating dock will have a less negative effect upon the natural resources. We contend that the project will have a far more negative impact on the natural resources and upon the safety of the public. The Modification as submitted will cause more harm to the shellfish than the current approved plan.

Since the last application for a modification this area has gone through some changes. The recent storm has caused shoaling in this area, and the water depth has become shallower during times of lower tides in the area of the floating dock. The Applicant as you are aware has showed deeper water depths on previous site plans submitted to DENR and then Marine Fisheries came out to do a site visit and confirmed that the depth of the water was much shallower than depicted. This is the case now where the dock and launching area are proposed to be located. We own the home adjacent to this project, and have lived at 1508 Burnett Road since 1994. What we have observed is that the water depths during lower tides are less than two feet where the floating dock is proposed. The recent hurricane and because of the Carolina Beach Inlet being so close in proximity has caused considerate shoaling within this area. The water depths have changed and are shallower than when Stroud Engineering indicated that they measured the water depths for the marina project in 2009. A site visit could confirm this.

The first and far most negative impact that the proposed project would create will be to the shellfish in the vicinity of the floating transient dock. The Applicant previously was

approved for 4 transient boat spaces on the eastern side of the floating dock. Now the Applicant is asking for 9 transient spaces, or more than double than what was previously permitted. The Applicant wants to place 5 more spaces along the dock and wants to place these spaces on the western side of the dock in very shallow water. The proposed floating dock would be built in a vital PNA that has a vast abundance of clams. We have observed that the entire western side of the floating dock will have less than 2 feet of water during periods of lower tides. The dock as proposed will sit on the bottom during low tide and cause shoaling within this area. The shoaling will impede navigation for passing vessels and it will cause harm to the shellfish. The water depth here is already too shallow to navigate boats at low tide and it will not be very long with the shoaling that the floating dock sitting on the bottom will cause that no boats at any time will be able to use the dock. The shoaling will spread to our dock only 35 feet away and our dock will become unusable. The floating dock will cause navigation problems for boaters that travel through this area.

Numerous pictures have been submitted over the years showing low water depths in the area of the proposed floating dock and over fifty feet past the end Violet Ward's pier between her pier and the existing pier at Carolina Marina. This project has been seeking permits from DENR since 2006, and a vast amount of evidence has been presented to show that this area is experiencing shoaling. The water body here has narrowed in just the past couple of years by a substantial amount. It will not be beneficial to place a 175 foot long dock in a shallow area and have it sit on the bottom and cause even more shoaling here. The New Hanover County Planning Board said it best when they stated that this was a nice project, but it was a not a good area to build it in. This project as it is planned now was denied a Special Use Permit by the Planning Board and County Commissioners from 2002 to 2009 seven times. They knew that this project would only harm this area.

If you take note of the site plan submitted for the modification you can see that the Applicant describes that he will place floating signs that will say ACCESS PROHIBITED on the western side of the floating dock. These signs will be placed quite some distance west of the previously permitted dock and will allow boats to travel in water that will be less than 1 foot deep during low tide. N.C. Marine fisheries would not approve the previous Major Permit Modification unless there was a hand rail placed along the entire western side of the dock to keep boats from traveling in this very shallow water and to keep from harming the shellfish here. Now the Applicant wants to have boats traveling constantly in this area.

The second adverse impact that this Modification would cause would be to boating safety and to the tugboat and barge traffic within this area. In 2009 the Army Corps of Engineers increased the setback from the Navigation Channel to 200 feet in this area because barges have hit several piers on the northern and southern side of this proposed project. The Carolina Beach Inlet is located directly across from this project and has a large impact upon the barges that travel through this area. In the last few years we have observed that the tugboat companies have been running aground behind our pier and have numerous times had to back up and go forward several times to navigate past our pier. We have observed on several occasions that the tugboats would turn around behind our

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pier and then go back south to turn around again to try to navigate past our pier. The barges have almost hit our pier on several occasions. Some years ago a barge struck the existing pier located at Carolina Marina, and caused a lot of damage to the pier. The proposed Modification the Applicant seeks to the finger piers and floating dock will place them farther into the waterway than the existing pier, and this will cause a hazard for the commercial traffic for barges here.

The Applicant would like to exceed the established pier head in this area by almost 40 feet and place 9 boats, well actually who knows how many more than 9 boats out along a 175-foot long floating dock in a busy barge shipping area. Commercial vessels traveling through this area have a tough enough time making it past the piers now. The 175 feet of floating dock can accommodate far more than 9 vessels. It's a given if you build it they will come. The marina will sell bait, drinks, snacks, and just about anything you would need for a day on the water. This will mean a lot more than 9 boats will be using the pier. Several tugboat companies that we spoke with did not want this project to be allowed to exceed the ¼ rule and create a hazard for the commercial traffic moving through this vicinity.

The Modification as proposed will increase hazards to pleasure boating within the vicinity of the project. The Applicant proposes to increase the length of the finger piers located at the eastern end of the forklift pier. This means that the boats will have to back out farther into the path of oncoming boats here. The boats coming and going from the marina will be navigating around the launch area and floating dock area and will be within immediate contact of numerous boats traveling at a high rate of speed in these waters during the warmer months. The floating dock with the boats tied on both sides will impede visibility as well as the finger piers and this will greatly increase the risk of boat collisions. The New Hanover County Planning Board and The County Commissioners denied a Special Use Permit for the project before you now in 2008 because it was their opinion that the project would create a hazard to the public. They thought that launching boats into all the boating traffic here was a dangerous idea.

If allowed the Modification will increase hazards to shipping traffic, and pedestrian boating traffic. The Modification will have an adverse effect upon the shellfish resources within this area and the project will violate several of the Use Standards established in N.C. 15A NCAC 07H .0208. The Modification as proposed will violate the following Standards.

(A) 15A NCAC 07H .0208 (2)(A) - The location, and design of the Modification will have an adverse impact upon the shellfish beds located in the immediate vicinity of the proposed project.

(B) 15A NCAC 07H .0208 (2)(G) - The Modification will jeopardize the use of the waters for navigation in the vicinity of the launching area and floating dock.

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(C) 15A NCAC 07H .0208 (6)(A) - The pier will exceed six feet in width and the Modification is not necessary for safe use, or to improve public access nor does the extra width support a water dependant use that cannot otherwise occur.

(D) 15A NCAC 07H .0208 (6)(B) - The total amount of square footage of shaded impact will be almost 10,000 square feet. The length of the shoreline is 240 linear feet. At the rate of eight square feet per linear foot of shoreline the amount of square footage allowed should be 1920 square feet and not 10,000 square feet. The Applicant claims to have 320 linear feet of shoreline and that would allow 2560 square foot of dock. The greater dimensions are not necessary for safe use, and will increase hazards for the public. The greater dimension will not increase public access. This project will be for a private membership, dry stack marina that is not open to the public as noted by the Applicant on the CAMA Permit Modification application. The water dependant use can other wise occur without the Modification. The Applicant has stated that he could operate the marina with the current approved site plan.

(E) 15A NCAC 07H .0208 (6)(C) - The width of the pier and docking facility will be wider than six feet in width.

(F) 15A NCAC 07H .0208 (6)(G)(i) - The pier will far exceed the length of the adjacent piers from the shoreline.

(H) 15A NCAC 07H .0208 (6)(G)(iii) - The pier will far exceed one-fourth the width of the water body. The Applicant claims that the pier to the north of his project is farther out than the previously approved pier and dock. This is not so and can be verified by the Corps Of Engineers Navigation Channel setback lines. The floating dock on the currently approved site plan is in line with the adjacent piers.

(I) 15A NCAC 07h .0208 (6)(I) - The floating dock will cause severe shoaling within close proximity of our pier and will cause an interference of our riparian rights to our property.

Currently we are before the Courts with the last Modification of this project to decide if the Forklift Pier is a pier or not. The Use Standards of 15A NCAC 07H .0208 (I) (a) States: Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. And goes on to describe the uses that are water dependent. Uses that are water dependent include: utility crossings, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches. There is not a provision for a forklift launching apparatus. If we prevail in the Court we will have an Administrative Law Judge hold a Hearing to decide if the current Modification of Permit # 02-07 is valid.

The Applicant was granted a Major CAMA Permit Modification to CAMA Permit 02-07 only a few months ago. Marine Fisheries gave negative comments on the project until the Applicant proposed to construct a hand- rail along the floating dock and not allow

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vessels to use the western side of the floating dock. The current proposed Modification as submitted would invite vessels to navigate in the very area that Marine Fisheries had objected to boats operating in before. This will cause far more harm to the PNA open to the harvest of shellfish located here than the previous plan. If boats are allowed to navigate on the western side of the floating dock the shellfish resources will be destroyed in this vicinity.

The Applicant has not demonstrated that the changes are necessary for safe use or to improve public access or that the changes will support a water dependant use that cannot otherwise occur. The Applicant has not demonstrated a need for this Major Modification and in fact has demonstrated that it is not necessary. The Applicant stated to DENR officials that he could operate the proposed dry stack marina without any problems using the previously approved site plan. If a project is allowed to exceed the rules like this project wishes, you will have many others seeking to do the same. Thank you for allowing us to voice our concerns. We are Christians and will pray that God will protect our home and this area for the thousands that enjoy it.

God's Grace,

Violet P. Ward
David N. Ward
Cecil R. Ward
Donnie W. Ward
Lisa W. Canady

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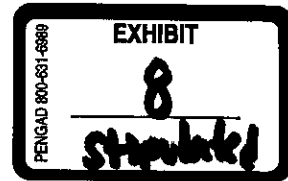
DCM WILMINGTON, NC

CHATHAM TOWING COMPANY, INC.

101 NORTH LATHROP AVENUE (31415)
POST OFFICE BOX 576
SAVANNAH, GEORGIA 31402-0576

PHONE 912-236-1331

FAX 912-235-3873



September 19, 2011

Fax No. 252-247-3330

NORTH CAROLINA COASTAL MANAGEMENT
Attn: Doug Huggett

Re: Proposed Pier for Carolina Marina/Yacht Club

Dear Mr. Huggett:

It is our understanding that a proposed dock and pier system in the immediate vicinity of Carolina Beach Inlet on the Atlantic Intracoastal Waterway is to be permitted soon. The new dock has been described as extending at least forty (40') feet channelward beyond any other docks in this area.

Our company operates tugs and barges which transit this area frequently. Chatham Towing Company opposes this pier and any similar impediment to navigation or added challenge to the safe transit of our barges near this Inlet since it presents enough challenges on its own.

I am available for further discussion at (912) 443-6602.

Sincerely,

A handwritten signature in cursive, appearing to read 'Arthur A. McDougal'.

Arthur A. McDougal
Assistant Vice President

AAM/rbf



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



Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

September 21, 2011

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Carolina Marina and Yacht Club, LLC
c/o Tim Ward
1512 Burnett Road
Wilmington, NC 28409

Dear Mr. Ward:

This letter is in response to your application for a Major Modification to Permit No. 02-07 under the Coastal Area Management Act (CAMA), in which authorization was requested to replace an existing bulkhead, construct a new bulkhead, extend a previously permitted pier (Dock A) to accommodate 9 transient boat slips, and extend two previously permitted piers to be used to support the forklift/drystack operation, in Myrtle Grove Sound at the Atlantic Intracoastal Waterway (AIWW), in New Hanover County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Office on August 22, 2011 is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The proposed project is a modification to CAMA Major Permit No. 02-07. Permit No. 02-07, which was issued on January 22, 2007 and modified on December 17, 2010, allows for the construction of a drystack facility, clubhouse, parking lot, pedestrian walkway and pier, bulkhead, floating 4-slip transient dock, and a wooden forklift pier with two docks to support the forklift/drystack operations. The floating dock and northern forklift support piers were permitted to extend one-fourth of the width of the waterbody of Myrtle Grove Sound. The southern forklift support pier was permitted to be constructed to within six feet of the one-fourth waterbody distance.
- 2) The width of the waterbody at the location of the proposed project has been determined to be 728 feet.
- 3) The proposed project would extend the previously authorized floating dock an additional 32 feet (214 feet total) into the waterbody, the northern forklift support pier would extend an additional 35 feet (217 feet total) into the waterbody, and the southern forklift support pier would extend an additional 25 feet (201 feet total) into the waterbody. Therefore, the proposed project would extend approximately 32 feet (floating dock), 35 feet (northern forklift support pier), and 19 feet (southern forklift pier) beyond the one-fourth width of waterbody limit.

- 4) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following Rules of the Coastal Resources Commission:
- a) 15A NCAC 07H.0208(b)(6)(J)(iii), which states that pier length shall be limited by: “not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body...”

Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit under the Coastal Area Management Act be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the state guidelines for Areas of Environmental Concern or local land use plans.

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. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the 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. A copy of this petition should be filed with this office.

Also, you are advised that as long as this state permit denial stands, your project must be deemed inconsistent with the N.C. Coastal Management Program, thereby precluding the issuance of federal permits for this project. The Federal Coastal Zone Management Act (CZMA) gives you the right to appeal this finding to the U.S. Secretary of Commerce within thirty days of receipt of this letter. Your appeal must be on the grounds that the proposed activity is (1) consistent with the objectives or purposes of the CZMA, or (2) is necessary in the interest of national security, and thus, may be federally approved.

Members of my staff are available to assist you should you desire to modify your proposal in the future. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, extension 212.

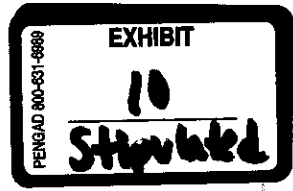
Sincerely,

COPY

M. Ted Tyndall
Assistant Director

cc: Colonel Steven Baker – U.S. Army Corps of Engineers, Wilmington, NC
David Kennedy, Director – OCRM/NOAA, Silver Spring, MD
David Timpy, USACE

WPC



September 25, 2011

REC'D SEP 26 2011

Mr. Doug Huggett
DCM Major Permits Coordinator
400 commerce Avenue
Morehead City N.C.

Violet P. Ward
David N. Ward
1508 Burnett Road
Wilmington, N.C.

Doug,

We received a notice from Mr. Shanklin attorney for Tim Ward advising us that Tim Ward is seeking a variance from the CRC. We understand that what they are seeking is for the CRC to allow the changes to the forklift pier and floating dock that DCM is about to deny for the Carolina Marina project. Tim Ward and his attorney have not received a Denial letter and yet they have sent a notification to us seeking a variance. We thought that the correct procedure was first to have a notification of a denial before seeking a variance. In a conversation with you Thursday September 22, 2011 you informed us that you would be sending out a letter soon to Tim Ward stating that the Major Permit Modification would be denied, but until a letter was sent that officially the permit application was on-going. You also informed us on Thursday that we would receive a copy of the denial letter when it was sent out. We don't understand how Tim Ward can ask to be placed on the October agenda for the CRC meeting when as of yet he has not received the official notification that the application for a Major Modification of CAMA Permit 02- 07 has been denied.

To protect our interest we are notifying you that we do object to a variance being granted to Carolina Marina. The variance that they seek to attain would lengthen the floating dock and finger piers associated with the forklift pier, and would ask for 5 more additional boat spaces along the floating dock. The applicant is asking for a variance to lengthen the finger piers out from the forklift pier and to place the floating dock out past the one quarter width rule of the waterway here. This would far exceed the existing pier head alignment of the adjacent piers. It was only a few months ago that DCM measured the width of the water body here and established that the current placement allowed for the forklift pier and the floating dock was accurate. The recent storm has narrowed the water body here and it is very apparent by looking at the Freeman Park across the waterway. We object to the proposal for granting a variance for many reasons.

In a conversation with Shannon Jenkins with N.C. Shellfish Sanitation a couple of days ago he informed us that if the number of spaces associated with the Carolina Marina

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project were to exceed ten, counting the slips for our pier 36 feet away; he would ask for a shellfish closure. Our pier to the south has three boat spaces and has had three boat spaces since 1996. We have a boatlift and a set of four pilings for another space directly beside the boatlift at the eastern end of our pier and we also have a floating dock at the bulkhead wall placed there in the early 1970's to tie a boat to. The adjacent neighbor to our south does have a boat slip which would be less than 120 feet from the Carolina Marina project. Lynda Altman's property directly north of the proposed project is only 60 feet away has two pilings in the waterway to tie boats to and the pilings have existed behind her property since the early 1970's. We have photos of the boats being tied to the pilings at the Altman property back in the early 1970's and they are still being used today. This would give a total of 15 boat spaces within a very close radius of the Carolina Marina project. Shannon Jenkins commented on this project and his concern was forwarded on a comment made by Jessi Baker with the Division of Marine Fisheries that you e-mailed to us a couple of days ago. The comment made by Jessi Baker with N.C. DMF concerning this project states: It has been determined by Shellfish Sanitation and Recreational Water Quality that this project will cause an additional area of shellfish closure if more than one boat is docked per slip or if the total of slips at the applicant's dock and the dock to the south are greater than ten. The project will exceed more than ten boats and will cause a shellfish closure.

If a variance is allowed this project would have 175 linear feet of floating dock or 350 feet of dock counting both sides. On the application submitted for a variance both sides of the floating dock would now be used. That would be enough space to have fourteen 25-foot boats tied to the dock at any given time not including the finger piers. Boaters that would try to use the western side of the floating dock will have less than 2 feet of water during low tide to navigate their vessels. This fact has been shown in numerous pictures and on a hydrographic survey that we had performed here in 2007. This activity will ruin the shellfish here. We have a vast amount of shellfish here and it would be a shame to have this area closed. Allowing the western side of the floating dock will cause too much of an increase in the number of boats using the facility and will cause a significant impact to the existing shellfish.

In 2008 Tim Ward went before the New Hanover County Planning Board, and County Commissioners to seek a Special Use Permit for this very project. The New Hanover County Planning Board and County Commissioners unanimously denied a Special Use Permit for this project. This project was denied a Special Use Permit 7 times from 2002 until 2009 until finally a permit was awarded through court proceedings. The reason that so many different County officials denied this project was because in their opinion this project would endanger public safety by launching boats from the forklift pier in such a close proximity to passing boaters, and because it was not in harmony with the area. Everyone looking at this project thought that because the Carolina Beach Inlet was so close to this project that the current would make it too difficult to launch boats safely into the oncoming boat traffic. They also thought that the forklift pier with the floating dock would create a blind spot here for passing boaters to see the boats coming from the marina. There are no wake controls to slow down passing vessels here and we all know that a boat can't slam on the brakes and stop quickly. It was best said in 2002 when the

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Planning Board stated that this was a good project but it was a bad area to try to build it in.

Tim Ward is asking you for a variance to exceed farther out into the waterway than before and out beyond the ¼ rule placing the floating dock and finger piers even closer to the passing boaters. Only a few months ago this project would have encroached into the set back area from the navigation channel set by the Army Corps of Engineers. The ACOE changed the setback from the navigation channel here in 2010 from 80 feet to 200 feet. The setback was changed because there have been several piers north and south of the proposed Carolina Marina forklift pier struck by barges. The ACOE recently changed the setback to 120 feet in April of this year, and stated to that they may have to change it back because of the Carolina Beach Inlet constantly causing shoaling problems here.

We spoke with a few of the tug boat companies that travel through this area and they were very upset to find out that this project was seeking to extend farther out into the waterway than the existing piers. They told us that the Carolina Beach Inlet was constantly causing shoaling in the waterway here and that the strong currents here make it difficult to navigate this area and hard to avoid the existing piers here. Placing an over than sixty foot wide forklift pier and a 175 foot long floating dock out past the existing piers here will make it a lot more difficult for the tug boat companies to pass through here.

The Carolina Beach Inlet just across the waterway from us has caused the area around our pier and behind Tim Ward's property to shoal significantly. If Carolina Marina builds a 175 foot long dock without anything to keep it off the bottom during low tide it will cause the shoaling to spread farther out into the waterway. It already costs millions of dollars to keep this area open for navigation and if the project is allowed to extend out into the waterway it will increase the need for dredging here. We are concerned that the project being so close to our pier will cause shoaling around our pier and take away the use of our boat slips.

We built our pier 1996 so that we could fish from our pier and so we could keep a couple of boats out there to enjoy. Our family loves to go out on the pier and enjoy the good fishing here. We can't fish from our pier with the floating dock extending out in front of where we always cast out to fish. The floating dock will only be 36 feet from our pier and boats trying to navigate on the back side of the floating dock will have a difficult time staying off of our pier with the strong current here. Just picture how the floating dock so close to our pier and out in front of it will ruin the use of our pier

Tim Ward is currently trying to sell this property, and wants this variance to make it more appealing to sell. The bank has foreclosed on this property and is trying to get a decision in bankruptcy court to take possession of this property. The applicant has not demonstrated a need for a variance. In fact he has just recently demonstrated through the permit process that he could operate with his pier and dock as they are now approved. The applicant does not have an unnecessary hardship because of the rules. The applicant knew well in advance the rules and procedures and was well advised by consultants what

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the limitations were to try to build here. The applicant did not demonstrate that he had a hardship just a few months ago and the conditions have not changed except for the economy. The project as proposed is described to be private and for the sole use of members of the yacht club. A 200 boat dry stack marina would not need more than 4 spaces on the floating dock and the use of the finger piers already approved to operate. Allowing the variance to utilize the other side of the floating dock in very shallow waters is not necessary for the operation of the marina. The increase in the number of spaces for the floating dock with the adjacent spaces already in place will cause a closure to the shellfish here. It is not in the best interest of the environment and the safety of the public to grant a variance for this project. Once you allow one person to exceed the pier limit then the others near by will ask to do the same.

The current approved CAMA Permit allows a forklift pier to be constructed out into a PNA open to the harvest of shellfish. The forklift pier and floating dock as now approved will shade over 10,000 square feet of the substrate bottom. This far exceeds the amount of square footage allowed per the linear feet of shoreline that this 240 foot wide parcel of land has. We challenged this fact with the last CAMA Permit application and DCM attorneys informed us that that the rule did not apply to this project. The forklift pier was described to not be a pier and that it was allowed to be built in this enormous capacity because it was as described by DCM to be a forklift launching device. The CAMA Permit application for the currently approved plan describes the forklift pier on the application to be a pier. The rules state that only water dependant uses are allowed in coastal wetlands, estuarine waters, and public trust areas. These types of uses are described to be water dependant uses utility crossings, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches. The forklift pier as so described is neither of these uses and would best fit the description of a bridge since it is nothing near the size of a pier. We have hired an attorney and we have submitted papers with the N.C. Superior Court to have a hearing to decide if we have the right to challenge the interpretation of the forklift pier and the legality of the current CAMA Permit for this project. The Court proceeding however has been Stayed by the Court because of the Bankruptcy proceedings.

This whole concept of allowing forklift piers is new for our state, and we have done some research and found that there is only one other forklift pier in our state. The other forklift pier is owned by Water Mark Marina and was built just a few years ago on the Cape Fear River a few miles from where we live. Enormous Docks and bridges are common where it was built and it was built in an Industrial Zoned area and it is not located in a PNA open to the harvest of shellfish. It is just beyond comprehension that a bridge could be allowed in a heavily used area for recreation on the intra-coastal waterway and allowed in a PNA open to the harvest of shellfish. We would love for the CRC to hear whether the forklift pier should be allowed. If not then we ask that the variance be put on hold until the matter of whether or not the forklift pier is legal can be heard.

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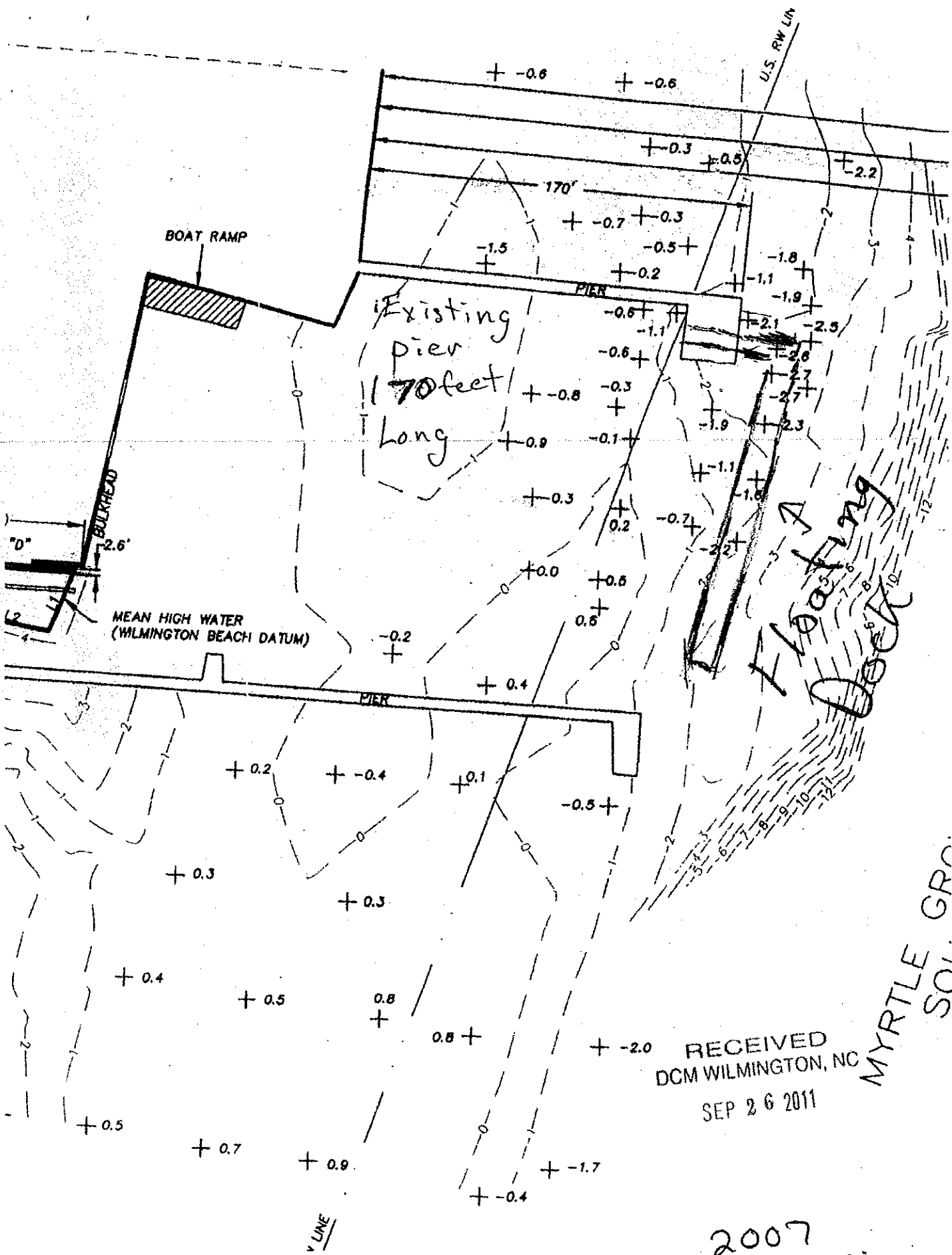
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We are Christians and we have been in much prayer about this situation. There have been a lot of prayers from numerous clergy and others asking that God preserve this area. A lot of the local ministers here in Wilmington come down to our pier to fish. We had a baptism at the Tucker Burnett Home Owners Beach and Park Lot adjacent to the Carolina Marina property a few weeks ago. It would be dangerous to swim or to baptize someone out in the waterway with boats coming and going from this project so near to us. With respect for the authority of the CRC we do plead with the Coastal Resource Commission to please deny this variance for the safety of the public and for the good of the habitat in which it would be built. This area is enjoyed by thousands of citizens and tourist alike. It is a great fishing and shellfish area. Please preserve it so that it will continue to be as it is now

Yours Truly,

Violet P. Ward
David N. Ward

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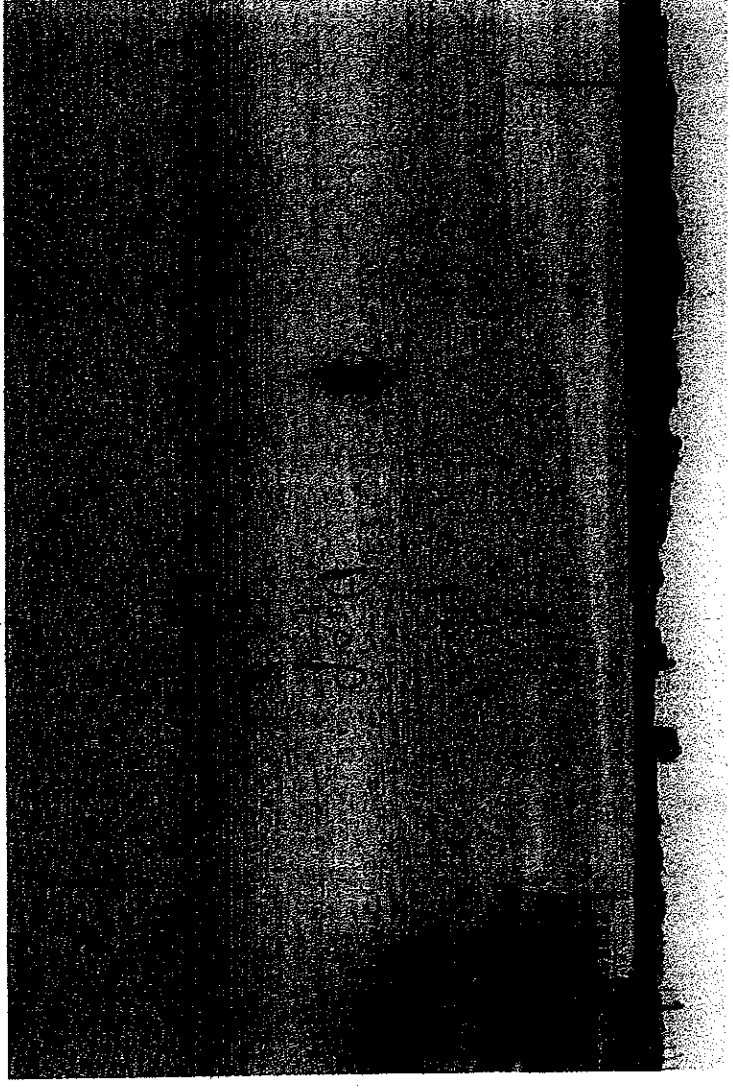
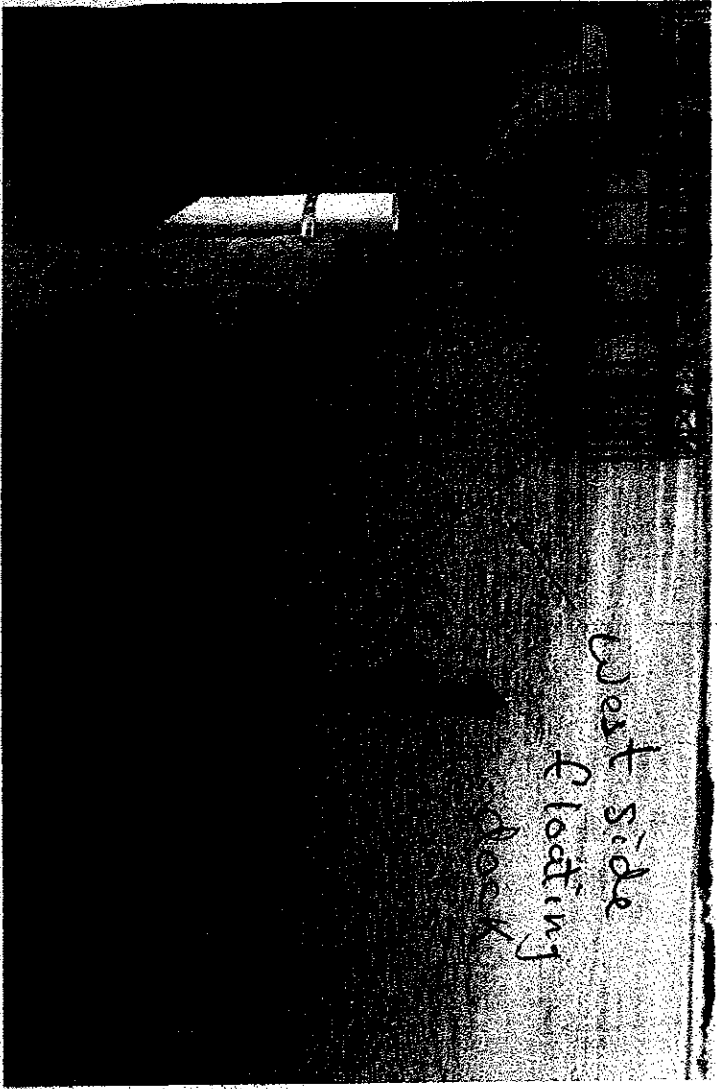
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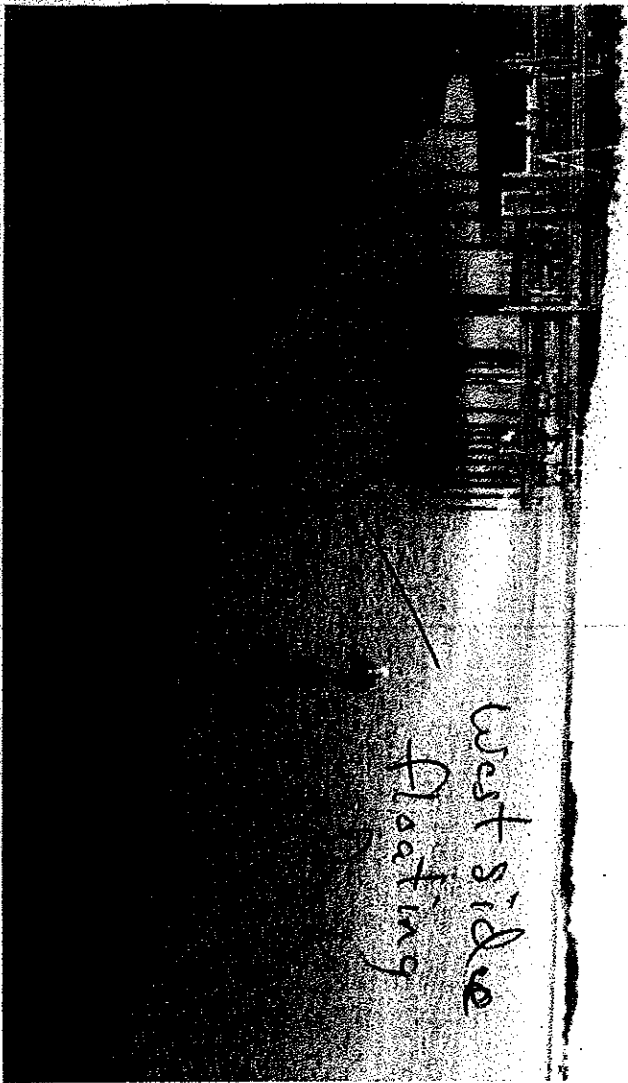
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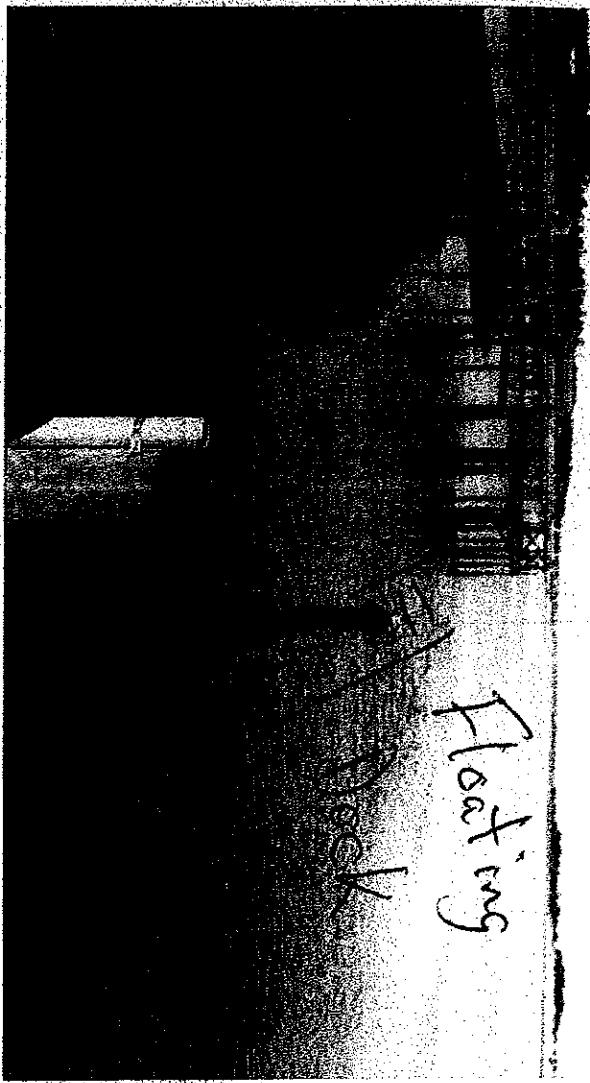
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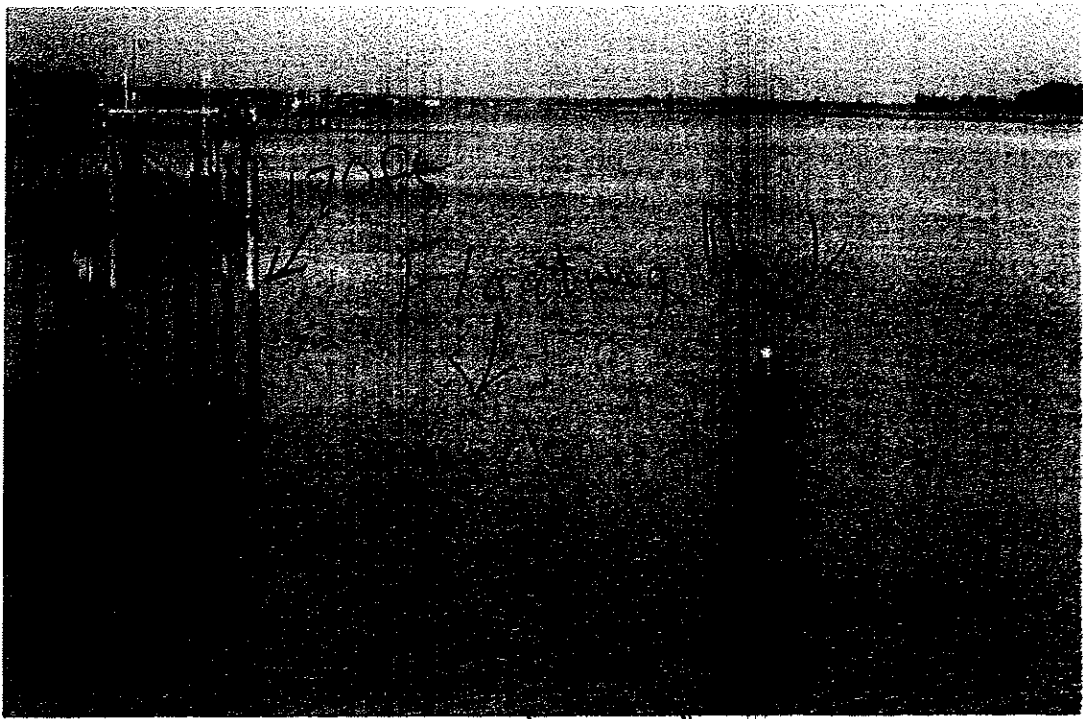


west side
floating



floating
dock

Carolina Marina Pier



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STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

400 COMMERCE AVENUE
MOREHEAD CITY, NC 28557

REPLY TO: AMANDA P. LITTLE
ENVIRONMENTAL DIVISION
TEL: (252) 808-2808
FAX: (252) 247-3330
amanda.little@ncdenr.gov

TO: The Coastal Resources Commission

FROM: Amanda P. Little, Assistant Attorney General 

DATE: October 12, 2011 (for the October 26-27, 2011 CRC Meeting)

RE: **Variance Request by Steven and Cathy Casey**

Petitioners propose to build a 2,366 square foot single-family residence on their property located at 819 Canal Drive in the Town of Carolina Beach. The Local Permit Officer for the Town denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10). Petitioners seek a variance from this rule, specifically to allow construction of the proposed development within the 30-foot buffer of the Coastal Shoreline Area of Environmental Concern.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rule (15A NCAC 7H .0209(d)(10))
Attachment B: Stipulated Facts and Attachments 1-8
Attachment C: Petitioner's Position and Staff's Responses to Criteria
Attachment D: Petitioner's Variance Request Materials

cc: I. Clark Wright, Attorney for Petitioners, electronically
Jeremy Hardison, Carolina Beach LPO, electronically
Robb Mairs, DCM Field Representative, electronically
Debbie Wilson, DCM Wilmington District Manager, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0209 Coastal Shorelines

(d) Use 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:
- (A) Water-dependent uses as described in Rule 7H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - [C] Post-or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters and,
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible.
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (I) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (I) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioners are Steven M. and Cathy L. Casey. I. Clark Wright, Jr., Davis Hartman Wright PLLC, New Bern, NC is Petitioners' legal counsel.
2. Petitioners purchased their lot, located at 819 Canal Drive in the Town of Carolina Beach in December of 2010.
3. Petitioners' lot is located adjacent to Myrtle Grove Sound at 819 Canal Drive, in the Town of Carolina Beach. The entire lot is located within the Coastal Shoreline Area of Environmental Concern (AEC), which extends 75 feet landward of the normal water level or normal high water level.
4. New development within the Coastal Shoreline Area of Environmental Concern (AEC) shall be located a distance of 30 feet landward of the normal water level or normal high water level ("30-foot buffer") unless it meets an exception listed in 15A NCAC 7H .0209(d)(10)(A)-(J).
5. CAMA Minor Development Permit No. CB 2006-20 was issued to Robert G. Collins on March 1, 2006 authorizing demolition of a structure and construction of a three-unit residential building ("triplex"). This permit was set to expire December 31, 2009, however, the Permit Extension Act of 2009 (S.L. 2009-406 and 2010-177) provided that any development approval that was current and valid beginning on January 1, 2008, and ending December 31, 2010, the running of the period of development approval and any associated vested right is suspended during the period of January 1, 2008, and ending December 31, 2011. In December 2010, Petitioners purchased property from the holder of this permit. This permit has not been transferred to Petitioners. Copies of the CAMA permit No. CB 2006-20, related site plan, and survey documenting the prior single family home are contained in **Attachment 1**.
6. Prior to being purchased by the Petitioner, the property was permitted for development as a higher density, multi-family triplex. See **Attachment 1**, containing documents from the Town of Carolina Beach LPO and Building Inspector Office files, including a copy of the prior site layout plan, and issued Minor Development CAMA Permit No. CB2006-20.
7. Minor Development CAMA Permit No. CB2006-20 authorized construction of a triplex, with 2,566 square feet of impervious surface area.
8. The proposed triplex was never constructed.
9. On February 7, 2011, during a site visit with Petitioners, DCM staff and the LPO reverified the normal high water line as the same as in 2006. See 2006 survey and 3/29/11 survey contained in **Attachments 1 and 8**.

10. Previously, a single family residence existed on the lot. See 2006 survey contained in **Attachment 1**.
11. The subject lot contains approximately 12,500 square feet and consists of a former re-combination of the northern half of lot 19 and all of lot 20.
12. Petitioners applied in March of 2011 for a CAMA minor development permit to construct a single family house on their property. The application was signed and submitted by Level Best Builders, acting as Petitioners' agent. **Attachment 2** contains a copy of this application.
13. Notice was provided to adjacent riparian property owners and no adverse comments were received.
14. There is a vacant lot to the south of Petitioner's lot that is 25.17 feet width. This is Lot 19A.
15. There is a single family residence located adjacent to and south of Lot 19A. This single family residence is currently located less than 30 feet from the normal high water line.
16. To the north of Petitioners' lot is the waterward terminus of Sandpiper Lane, owned by the Town of Carolina Beach.
17. Immediately adjacent to the north of Sandpiper Lane is a single family residence currently located less than 30 feet from the current normal high water line.
18. **Attachment 3** contains a current aerial photograph depicting existing residences in the area with Petitioners' proposed building footprint, and two photographs depicting the current condition of the waterward area of the side property lines of Petitioners' lot.
19. Petitioners' lot contains a three-sided bulkhead that extends landward on each property line side. Attached to the bulkhead is an existing pier and gazebo.
20. The waters of Myrtle Grove Sound at this location are closed to the harvest of shellfish.
21. Petitioner's proposed residence footprint, driveways and walkways yield a total proposed impervious surface area of 2,366 square feet.
22. Petitioners' site plan currently includes the construction of a storm water capture system consisting of 2 storm water drain beds. Should this variance be granted, Petitioners will submit an engineered plan allowing for the capture of at least the first 1.5" of rainfall.

23. Petitioner's proposed development does not meet the 30-foot buffer rule in those areas closest to the side property lines of the lot. Petitioners' proposed building footprint encroaches approximately 22 feet into the buffer relative to the southern side property line and approximately 18 feet relative to the northern side property line. See **Attachment 8** (3/29/11 survey).
24. The applicable street setback for this development is 20 feet. Petitioners' request for a variance from this local setback requirement recently was denied at the Town staff level. See September 2, 2011 letter - **Attachment 4**. Petitioners then appealed this denial in the form of a local variance request from the Town Board of Adjustment; on September 20, 2011, the Town Board of Adjustment denied that request. See **Attachment 7**.
25. The applicable setback from the termination of Sandpiper Lane is 12.5 feet.
26. The applicable setback from lot 19A is 7.5 feet.
27. The local permit officer denied Petitioners' CAMA permit application on April 12th, 2011, based solely on inconsistency with 15A NCAC 7H.0209(d)(10), and thus also NCGS 113A-120(a)(8). A copy of the LPO's denial letter is attached as **Attachment 5**.
28. As stated in their letter, the Town of Carolina Beach supports Petitioners' variance request because the proposed development will create a reduction in density, is in keeping with all the Town's development regulations, and is consistent with the 2007 CAMA Land Use Plan. In addition, should their variance request be granted, Petitioners have agreed for the Town of Carolina Beach to install a public access dinghy dock within Petitioner's 15-foot riparian line setback on the property owned by the Town immediately to the north of Petitioners' lot. A copy of the Town's letter in support of Petitioners' variance request is attached as **Attachment 6**.
29. Petitioners stipulate that the LPO properly denied their minor development CAMA permit application for non-compliance with 15A NCAC 7H.0209(d)(10). No other issues of non-compliance with CAMA requirements are associated with Petitioners' proposal.

Attachment 1**Clark Wright**

From: Jeremy Hardison [jeremy.hardison@carolinabeach.org]
Sent: Thursday, June 23, 2011 2:42 PM
To: icw@dhwlegal.com
Subject: RE: Steven Casey - Minor CAMA Permit Denial - 819 Canal Drive, Carolina Beach
Attachments: previous survey.pdf; Collins CAMA permit.pdf; house moving permit.pdf; address change.pdf; collins proposal.pdf; _Certification_.htm

Mr. Wright,

Please find the following attached:

1. Survey of the lot with the original structure.
2. Prior CAMA permit for Collins
3. Town moving permit issued
4. Collins proposed plan
5. Address change (note that the Town readdressed the property on 8/11/08)

The property was purchased by the Collins for redevelopment, they were approved for a triplex from Town Council on 2/14/06.. The original single-family house was built in 1966 according to New Hanover County records. The Town originally issued a DEMO permit, the owners (Collins) then decided to move the structure instead. Not sure of exact date that the house was moved off the lot, the Town issued a house moving permit on 8/16/06 and the DOT permit authorized 8/11/01 thru 09/09/06 to move the home.

Not sure what you were asking for on the "calculations regarding existing impervious surface area on the lot" as the lot is vacant. According to the plan the project was exceeding the allowable CAMA 30% impervious coverage, although you can exceed that with an engineered retention plan to handle the stormwater runoff.

The CAMA permit was denied based off not meeting the 30' setback requirements. Hope this answers your questions. Please to not hesitate to contact me if you need further information.

Jeremy Hardison
 Zoning Administrator
 Town of Carolina Beach
 1121 N. Lake Park Blvd.
 Carolina Beach, NC 28428
 Ph. (910) 458 2991
 Fax. (910) 458 2997
Jeremy.Hardison@carolinabeach.org
www.carolinabeach.org

From: Clark Wright [mailto:icw@dhwlegal.com]
Sent: Wednesday, June 22, 2011 6:55 PM
To: Jeremy Hardison
Subject: Steven Casey - Minor CAMA Permit Denial - 819 Canal Drive, Carolina Beach

Hello Jeremy – I believe I communicated with you once before re the CAMA issues for this lot. In preparing to seek a variance from the CRC, I wanted to ask whether you have anything in your files regarding the prior residence that once occupied this lot? I am looking for any prior CAMA permits, Town permits, and if you have any idea of the time period that the prior home existed, or when and why it

9/14/2011

was demolished. Also, do you know whether anyone has made any calculations regarding existing impervious surface area on the lot?

Also, am I correct in determining that the sole basis for Minor CAMA Permit Denial was the setback rule in 7H.0209? If there are other issues, either at the CAMA level or the Town level that might prevent building the proposed residence, please let me know.

Thanks much for any information you can provide.

Best regards,

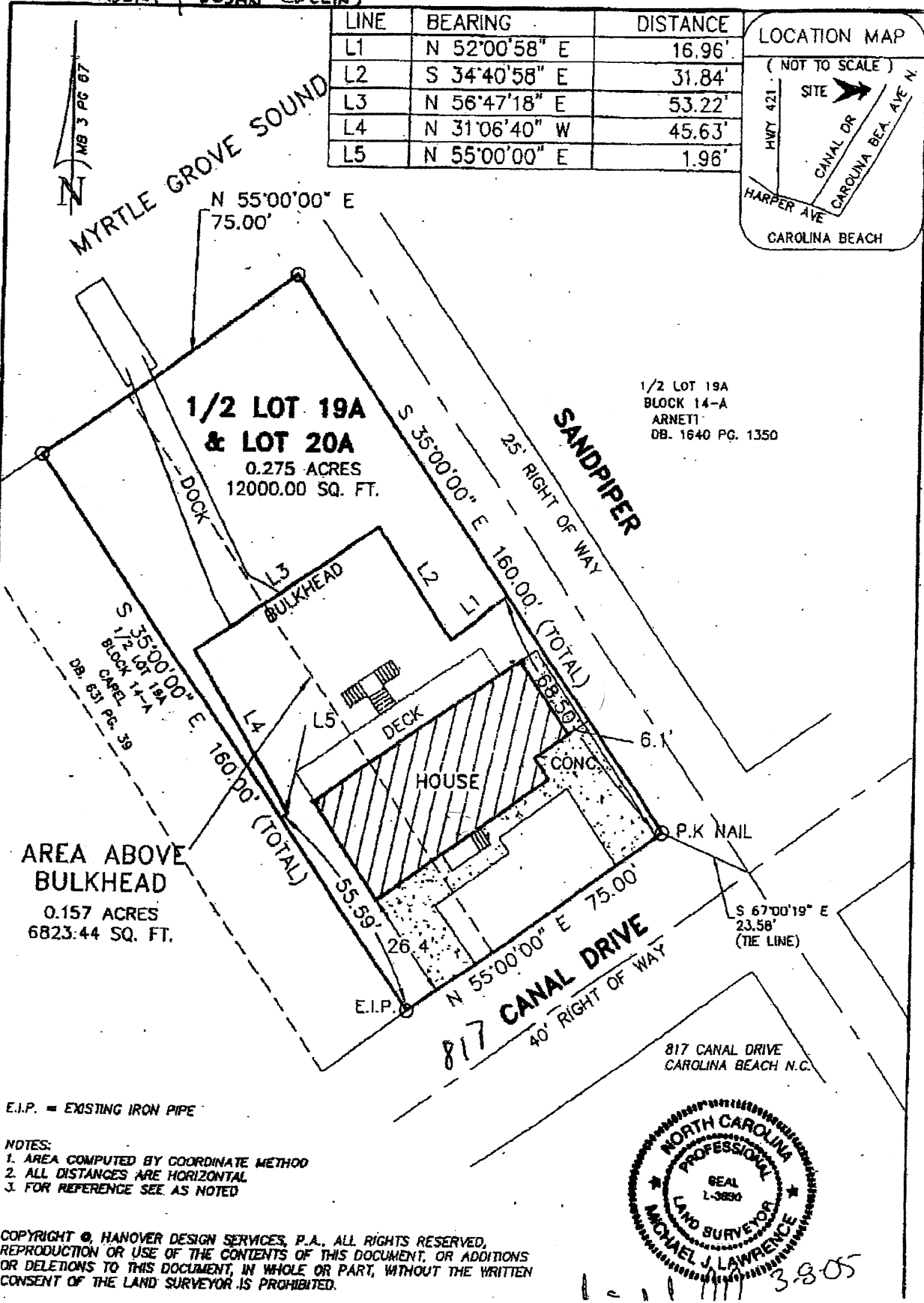
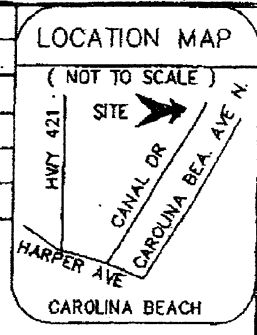
Clark Wright
[attorney for the Caseys for seeking a variance from the CRC]

I. Clark Wright, Jr.
DAVIS HARTMAN WRIGHT PLLC
209 Pollock Street
New Bern, NC 28560
252-514-2828 (office)
252-514-9878 (fax)
252-229-5900 (cell)
icw@dhwlegal.com

Mr. Wright has been selected by his peers for inclusion in Best Lawyers in America for over a decade. For more information regarding selection criteria, see:
<http://www.bestlawyers.com/aboutus/selectionprocess.aspx>

3-29-05
ROBERT & SUSAN COLLINS

LINE	BEARING	DISTANCE
L1	N 52°00'58" E	16.96'
L2	S 34°40'58" E	31.84'
L3	N 56°47'18" E	53.22'
L4	N 31°06'40" W	45.63'
L5	N 55°00'00" E	1.96'



1/2 LOT 19A
BLOCK 14-A
ARNETT
DB. 1640 PG. 1350

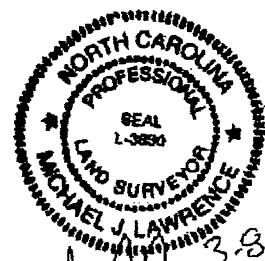
AREA ABOVE
BULKHEAD
0.157 ACRES
6823.44 SQ. FT.

TO: JEREMY HARDISON

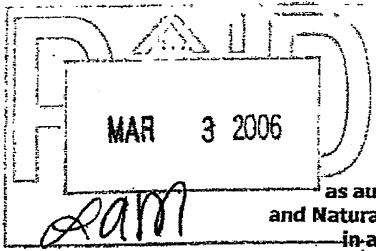
FC

- E.I.P. = EXISTING IRON PIPE
- NOTES:
1. AREA COMPUTED BY COORDINATE METHOD
2. ALL DISTANCES ARE HORIZONTAL
3. FOR REFERENCE SEE AS NOTED

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REPRODUCTION OR USE OF THE CONTENTS OF THIS DOCUMENT, OR ADDITIONS
OR DELETIONS TO THIS DOCUMENT, IN WHOLE OR PART, WITHOUT THE WRITTEN
CONSENT OF THE LAND SURVEYOR IS PROHIBITED.



3-8-05



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 Robert G. Collins, authorizing development in the Coastal Shoreline (AEC) at 817 Canal Drive, in Carolina Beach, as requested in the permittee's application, dated 2/9/06. This permit, issued on 3/1/06, 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 demolition of a structure and construction of a three-unit residential building

- (1) All proposed development and associated construction must be done in accordance with the permitted work plat drawings(s) dated received on 2/23/06.
- (2) All construction must conform to the N.C. Building Code requirements and all other local, State and Federal regulations, applicable local ordinances and FEMA Flood Regulations.
- (3) Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
- (4) A copy of this permit shall be posted or available on site. Contact this office at 458-7947 for a final inspection at completion of work. The issuance of a Certificate of Occupancy is dependent upon satisfactory completion of a final inspection.

(Additional Permit Conditions on Page 2)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. 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.

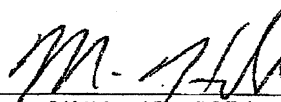
Any maintenance work or project modification not covered under this permit, require further written permit approval.

All work must cease when this permit expires on

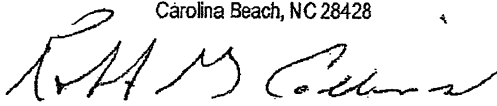
December 31, 2009

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.


CAMA Local Permit Official

Mike Hoffer
Local Permit Officer
Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428


Permittee (signature required if conditions above apply to permit)

Name: Robert G. Collins

Minor Permit # CB2006-20

Date: 3/1/06

- (5) The amount of impervious surface within the 75' AEC shall not exceed 2,566 sf.
- (6) Unless specifically allowed in 15A NCAC 07H. 0209(d)(10), and shown on the permitted plan drawing, all development/construction shall be located a distance of 30 feet landward of **normal high water**. No portion of the roof overhang shall encroach into the 30 ft. buffer.
- (7) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures. Prior to any land-disturbing activities, a barrier line of filter cloth must be installed between the land disturbing activity and the adjacent marsh or water areas, until such time as the area has been properly stabilized with a vegetative cover.
- (8) All other disturbed areas shall be vegetatively stabilized (planted and mulched) within 14 days of construction completion.
- (9) The applicant has effectively demonstrated, through innovative construction design, that the amount of impervious surface areas may be exceeded in a way that runoff water will be managed and the AEC protected, so as to allow xx percent of impervious areas within the 75' Coastal Shoreline AEC. All proposed development and associated construction must be done in accordance with the design specifications of the permitted innovative design, sealed by the design professional, Christopher A. Holmes on 2/15/06.
- (10) Upon completion of construction and prior to the issuance of a Certificate of Occupancy (CO), a letter of certification must be received from the designer of the innovative system installed, certifying that the permitted system has been installed in accordance with this permit, the approved plans and his design specifications. Any deviations from the approved plans and specifications must be noted on the Certification and a permit modification may be required prior to receiving a CO.
- (11) The landowner or permittee shall at all times provide the operation and maintenance necessary to assure the permitted stormwater system functions at optimum efficiency. The landowner or permittee shall maintain the permitted stormwater system for the life of the project.

Signature



Date

3-3-06



PERMIT TYPE (check one)

- Demolition Residential Fee \$50.00
- Demolition Commercial Fee \$200.00- State Health & Hazard Control Unit has to be notified before demolition (919-707-5970). Takes 10 days for inspection.
- House Moving Fee \$200.00

[Handwritten signature]

Complete both sides of application and do not leave any blanks. Illegible or incomplete applications will not be processed.

I. This is to request discontinuance of water and/or sewer service at:

STREET ADDRESS 1817 Canal Drive

PROPERTY OWNER INFORMATION

Name: Allen Deaton

Address: 817 Canal Drive

Phone: (910) 538-2897

AGENT FOR OWNER INFORMATION

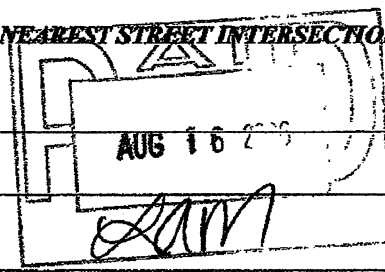
Name: C. S. Inc.

Address: 102 Five Points Farm Ln; Washington NC 27889

Phone: (252) 927-4111

Moving Contractor License #: HM-080

INCLUDE PLAN OF PROPERTY SHOWING ITS LOCATION TO THE NEAREST STREET INTERSECTION, ETC.



II. Property Information

TYPE OF STRUCTURE _____

NUMBER OF UNITS _____
(to be verified by building inspector)

ASBESTOS Asbestos
(to be verified by building inspector)

YES NO

III. Approved By:

	NEED DOT PERMIT BEFORE RELEASE HOUSE TO BE MOVED OFF THE ISLAND	DATE
ZONING	<u>Scott King</u>	<u>04AUG2006</u>
CAMA	<u>N.A. M. Mike Hobbs</u>	<u>8-3-06</u>
BUILDING INSPECTOR	<u>John Payton</u>	<u>8/10/06</u>
OPERATION'S DIRECTOR	<u>Sheila Hall for Steve Taylor</u>	<u>8/10/06</u>
POLICE CHIEF	<u>H. G. Mancini</u>	<u>8/10/06</u>
DIRECTOR, PLANNING/DEVELOPMENT	<u>S. D. Hand</u>	<u>8/14/06</u>

MYRTLE GROVE SOUND

HANOVER DESIGN SERVICES, P.A.
 LAND SURVEYORS ENGINEERS & LAND PLANNERS
 319 WALNUT STREET
 WILMINGTON, N.C. 28401
 PHONE: (910) 343-8002
 FAX: (910) 343-9941
 JOB #11225 SWB

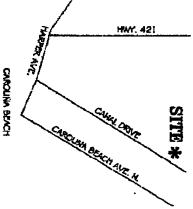


1/2 LOT 19A
 BLOCK 14-A
 ARNETT
 DB. 1640 PG. 1350

NORTH PER
 M.B.3, PG.67



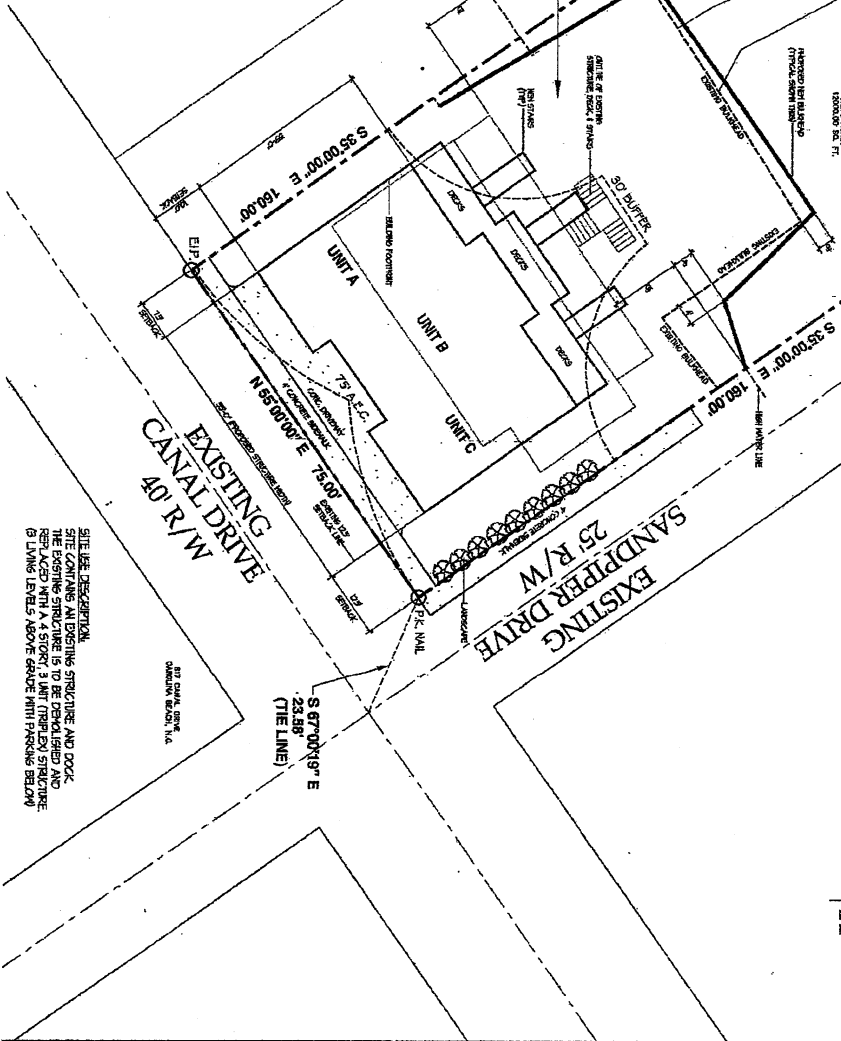
LOCATION MAP
 (NOT TO SCALE)



AREA ABOVE
 BULKHEAD

1/2 LOT 19A
 BLOCK 14-A
 CAPEL
 DB. 631 PG. 34

1/2 LOT 19A
 & LOT 20A



SITE PLAN
 1" = 10'-0"

- GENERAL SITE NOTES:
1. INFORMATION ON THIS SITE PLAN FROM RECENT SURVEY PROVIDED BY [Name Redacted].
 2. DESIGNER HAS REVIEWED ALL SETBACKS AND BUILDING LIMITATIONS BEFORE CONSTRUCTION.
 3. VERIFY ALL DIMENSIONS AND NOTES ON THIS SITE PLAN WITH ORIGINAL SURVEY RECORDS.
 4. EXISTING UTILITIES AND LANDSCAPING TO BE DETERMINED BY OTHER PROFESSIONALS.
 5. THE CONTRACTOR IS RESPONSIBLE FOR THE LOCATION AND PROTECTION OF EXISTING UTILITIES DURING CONSTRUCTION.
 6. THE CONTRACTOR IS RESPONSIBLE FOR THE DESIGN AND INSTALLATION OF DRAINAGE CONSTRUCTION. ALL DRAINAGE ITEMS SHALL BE DESIGNED TO FIT AT LEAST THE QUALITY OF "MINIMUMS" FOUND IN THE ORIGINAL PLAN.

SITE USE DESCRIPTION:
 SITE CONTAINS AN EXISTING STRUCTURE AND DOCK
 WHICH WILL BE DEMOLISHED AND REPLACED WITH A 2 STORY 3 UNIT TRIPLEX DUPLEX AND
 6 LIVING LEVELS ABOVE GRADE WITH PARKING BELOW

<p>DESIGN & DRAFTING SERVICES HANOVER DESIGN SERVICES, P.A. WILMINGTON, N.C.</p>		<p>SITE #1</p>	
<p>OWNER: COLLINS FAMILY 10720A TIZIA CANAL DRIVE ZAROVINA BEACH, VA</p>		<p>DATE: 07/11/2011</p>	
<p>PROJECT NO.: 11225</p>		<p>SCALE: 1" = 10'-0"</p>	

Joel Macon
Mayor

Alan Gilbert
Councilman

Jerry Johnson
Councilman



Dan Wilcox
Mayor Pro Tem

Pat Eford
Councilwoman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2991
FAX 910 458-2997

NOTICE OF ADDRESS CORRECTION

TO: Carolina Beach Public Utilities (Attn: Denise McVickers)
NHC Planning Department
NHC 911 (Attn: Brenda Hewlett)
NHC Land Records (Attn: Billy Oakes)
NHC GIS
NHC Inspections
Postmaster, Carolina Beach (Attn: Donna Watson)
Property Owner of Record

FROM: Brenda Butler
GIS Operator

DATE: August 11, 2008

Let your records show that the street address in the Town of Carolina Beach listed below is incorrect:

CURRENT LISTED ADDRESS: 817 CANAL DR

PROPERTY PIN# 313007,69.5263.000

PROPERTY PID# R08815-007-010-000

PROPERTY OWNER: COLLINS ROBERT G SR SUSAN ETAL

This serves as official verification that the address of your property has been corrected and changed to:

819 CANAL DR DR

as designated on the Town's official address map.

Property Owner, you are instructed to post the correct address immediately and remove any erroneous numbering from existing buildings.

Attachment 2



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

GENERAL INFORMATION

LAND OWNER

Name Steven Casey
Address 9417 Collingdale Way
City Raleigh State NC Zip 27617 Phone 919 760 3759
Email _____

AUTHORIZED AGENT

Name Paul Devereaux
Address PO Box 2232
City Carolina Beach State NC Zip 28428 Phone 910 617 0692
Email pdeve@charter.net

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 819 Canal Drive, Myrtle Grove Sound

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Residence

SIZE OF LOT/PARCEL: 7,500 square feet .172 acres

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

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

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

(2) **COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES:** 2,666 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 _____, see Deed Book 5532 page 1462 in the New Hanover 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.

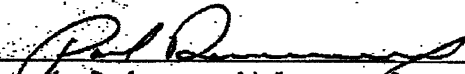
(Name)	(Address)
(1) <u>Town of Carolina Beach</u>	<u>1121 N. Lake Park Blvd. CB NC 28428</u>
(2) <u>Mattie Capel</u>	<u>9 Aurora CT Durham NC 27713</u>
(3) _____	_____
(4) _____	_____

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.

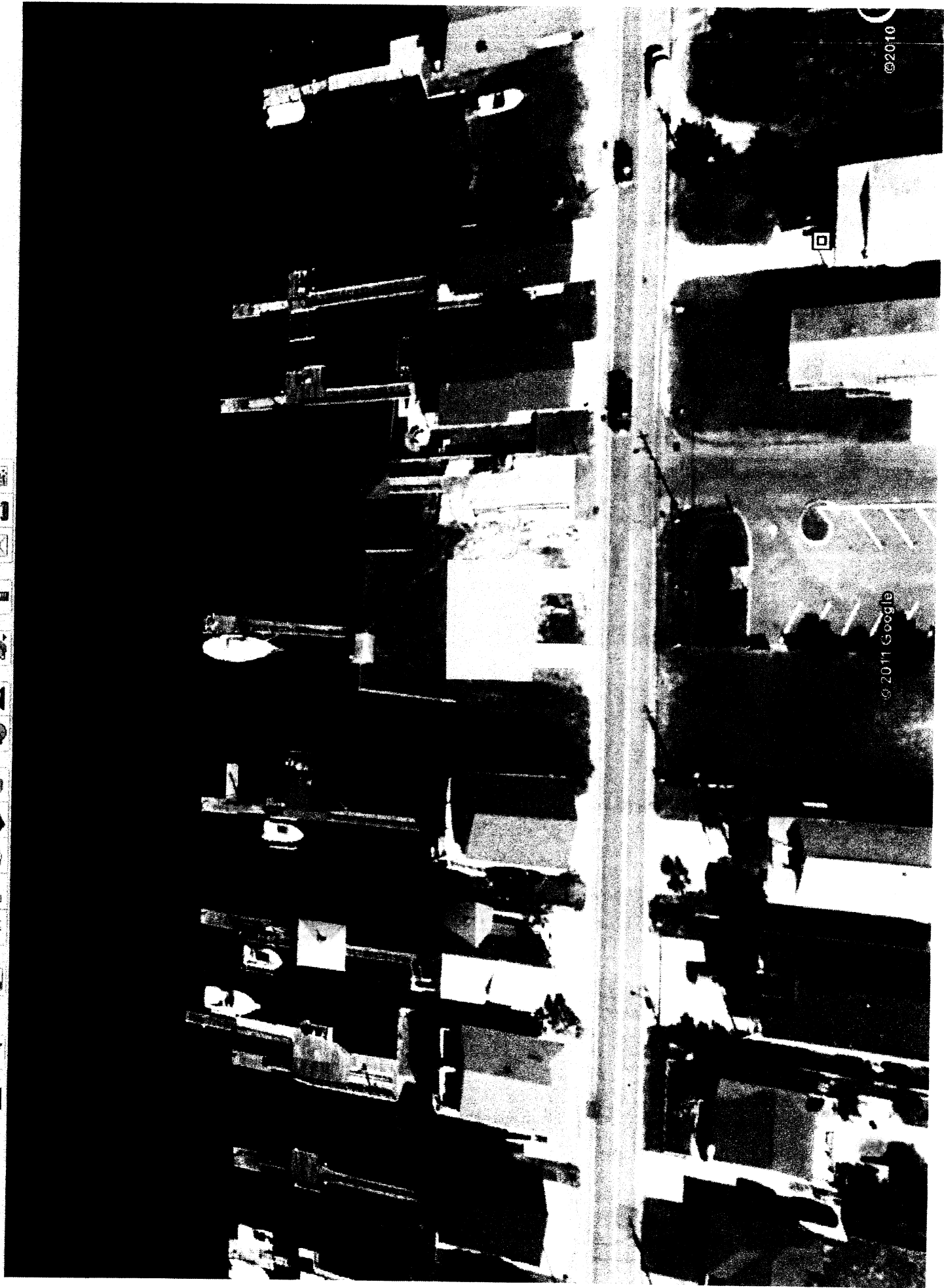
This the 16th day of March, 2011



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.

Attachment 3

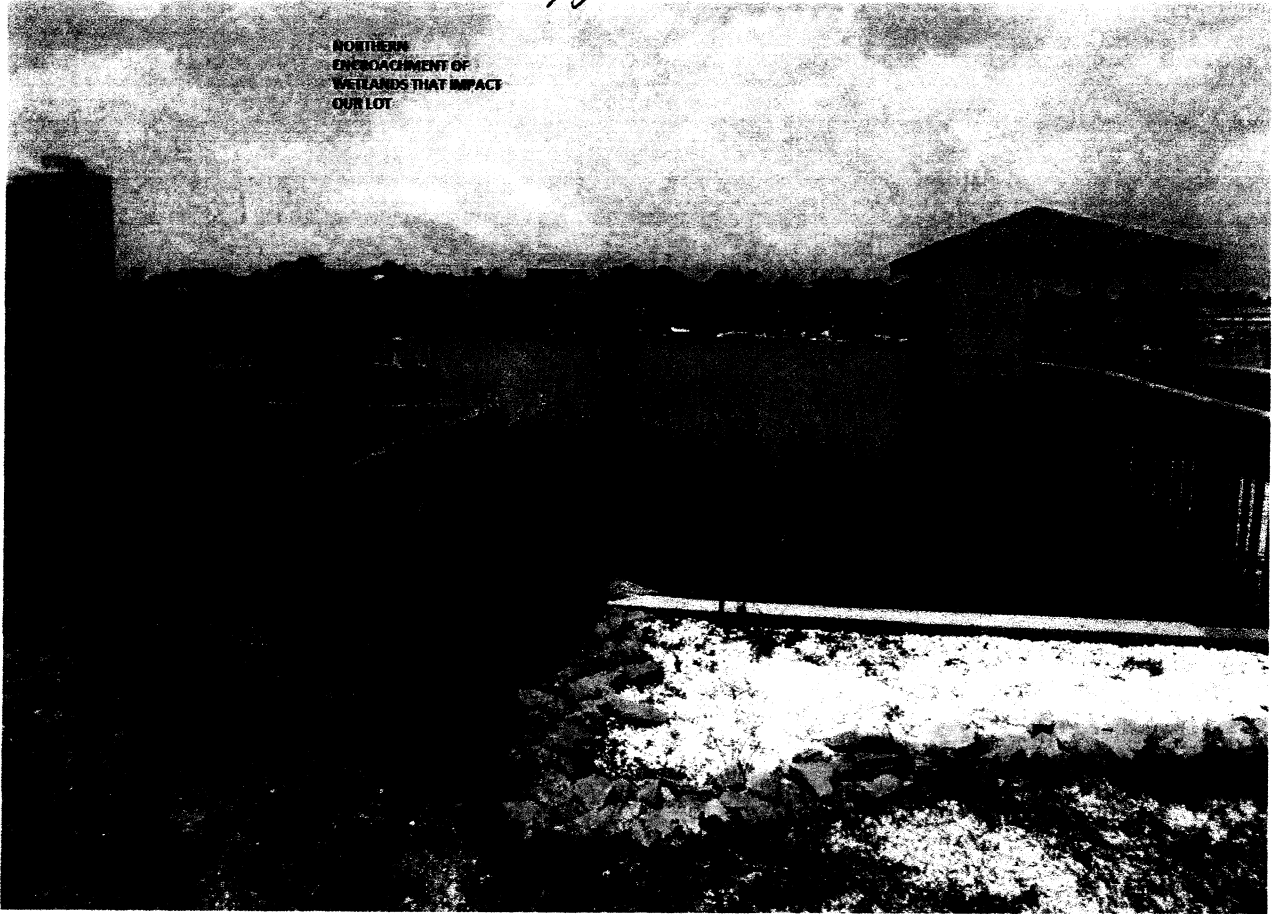


© 2011 Google

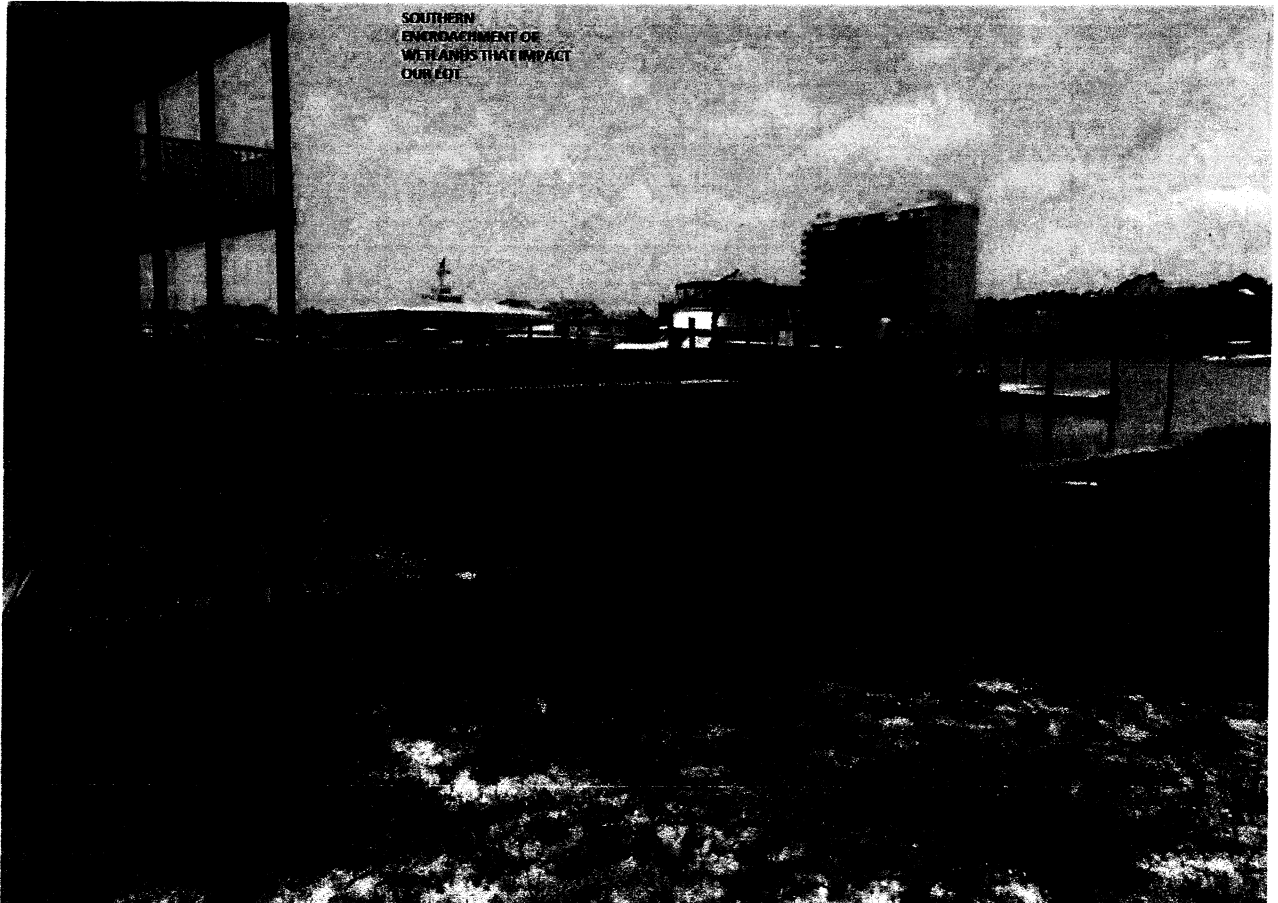
© 2010

Attachment 3 - Page Two

NORTHERN
ENCROACHMENT OF
WETLANDS THAT IMPACT
OUR LOT



SOUTHERN
ENCROACHMENT OF
WETLANDS THAT IMPACT
OUR LOT



Joel Macon
Mayor

Lonnie Lashley
Councilman

Bob Lewis
Councilman

Attachment 4



Pat Efrid
Mayor Pro Tem

Dan Wilcox
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2996
FAX 910 458 2997

9/2/11

Mr. Steven Casey
9417 Collingdale Way
Raleigh NC 27617

**RE: DENIAL OF ZONING DEVELOPMENT PERMIT
APPLICATION NUMBER- 12-37
PROJECT ADDRESS- 819 Canal Dr**

Dear Mr. Casey,

After reviewing your application with the development standards required by the Town of Carolina Beach, it is my determination that no permit may be granted for the project for which you have proposed. This decision is based on the findings that your request violates Article 3 Sec. 3.9-1. Dimensional standards for lots and principal structures, which requires a 20' front yard setback within the R-1 zoning district, which your property is located in.

Should you wish to appeal my decision to the Board of Adjustment 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.

Respectfully yours,

Jeremy Hardison, Zoning Administrator
Town of Carolina Beach
1121 N Lake Park Blvd
Carolina Beach, NC, 28428

cc: Steve Coggins

Attachment 5

Joel Macon
Mayor

Lonnie Lashley
Councilman

Bob Lewis
Councilman



Pat Eford
Mayor Pro Tem

Dan Wilcox
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2996
FAX 910 458 2997

4/12/11

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. Steven Casey
9417 Collingdale Way
Raleigh NC 27617

*RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- CB2011-05
PROJECT ADDRESS- 819 Canal Dr*

Dear Mr. Casey,

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 for 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. Specifically, you have applied to construct a single-family dwelling which is inconsistent with 15 NCAC 7H .0209(d)(10), which states that:

15 NCAC 7H .0209(d)(10): Within the Coastal Shoreline 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, 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.

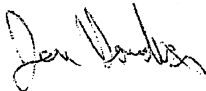
I have concluded that your request also violates NCGS 113A-120(a)(8), which requires that all applications be denied which are inconsistent with our Local Land Use Plan. On page 79 of the 2005 Town of Carolina Beach Land Use Plan, you will find that The Town supports CAMA regulations pertaining to Areas of Environmental Concern, Sections 404 and 401 of the Clean Water Act, the Sedimentation Pollution Control Act, and local development ordinances intended to protect environmentally sensitive areas.

Steven Casey CB-2011-05
April 12, 2011

Also, on page 79 of the 2005 Town of Carolina Beach Land Use Plan, you will find that The Town shall support and enforce, through its CAMA permitting capacity, the State policies and permitted uses in the Areas of Environmental Concern (AEC's). Such uses shall be in accord with the general use standards for coastal wetlands, estuarine waters, public trust areas and ocean hazard areas as stated in 15A NCAC Subchapter 7H.

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,



Jeremy Hardison, LPO
Town of Carolina Beach
1121 N Lake Park Blvd
Carolina Beach, NC, 28428

cc: Robb Mairs, DCM Field Rep
Paul Devereaux, Agent

Attachment 6

Joel Macon
Mayor

Dan Wilcox
Councilman

Lonnie Lashley
Councilman



Pat Efird
Mayor Pro Tem

Bob Lewis
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2526

September 13, 2011

Mr. Ted Tyndall, Asst. Director, Permits & Enforcement
Morehead City 400 Commerce Ave.
Morehead City, NC 28557

Dear Mr. Tyndall,

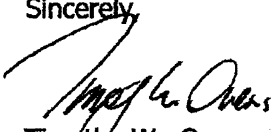
The purpose of this letter is to support a variance request for Mr. Steven and Cathy Casey who own property located at 819 Canal Drive in Carolina Beach. The property is currently vacant and the new owners would like to build a single family house in alignment with the neighbor's houses that are located on each side of their sound front property. The issue with their plan is the 30 foot CAMA setback requirement which is impacting the property not only on the water frontage of Myrtle Grove Sound but also on each side of the lot as these areas have not been bulkheaded thereby causing extraordinary setbacks on three (3) sides of the property.

More specifically the Town supports this variance for the following reason:

1. The proposed plan will create a reduction in density. The previous owner has approval (which is still valid) to construct a triplex with a larger footprint than what Mr. Casey's single family house will likely be. This translates into less impervious surfaces and therefore less stormwater runoff without considering any engineered solution in managing this runoff.
2. The proposed house is in keeping with all the Towns development regulations and is consistent with the 2007 CAMA Land Use Plan.
3. The owner, Mr. Casey, will agree to the encroachment of a public access dinghy dock by the Town into the riparian buffer if such variance is granted. This dinghy dock will support the Towns effort to complete the DCM approved mooring field in the immediate vicinity of this dockage.

Given these direct benefits, the Town hopes you will agree that the circumstances surrounding the Casey's property create a unique hardship that warrants a variance. Thank you for your consideration in this matter and should you have any questions please don't hesitate to contact me at 910-458-2994.

Sincerely,


Timothy W. Owens
Town Manager

Joel Macon
Mayor

Dan Wilcox
Councilman

Lonnie Lashley
Councilman



Pat Efird
Mayor Pro Tem

Bob Lewis
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2526
FAX 910 458 2997

TOWN OF CAROLINA BEACH

Order Denying a Variance

The Board of Adjustment of the Town of Carolina Beach having held a public hearing on September, 2011 to consider application number 11-01 submitted by Steven Casey. The request was for a Variance from Article 3 Sec.3.9-1 Dimensional standards for lots and principal structures located at 819 Canal Dr, Carolina Beach, NC. The variance request was for the allowance of 12' into the required 20' setback.

Having heard all the evidence and arguments presented at the hearing. The BOA makes the following **FINDINGS OF FACT** and draws the following **CONCLUSIONS**:

There was substantial evidence in the record to show the following **FACTS**:

1. The property is zoned R-1.
2. Front yard setback is 20'
3. Asking for a variance of 12'
4. The lot is adjacent to Myrtle Grove Sound
5. State regulates the rear setback off of the sound, which is 30' setback from the Mean High Water
6. Applied and denied for a CAMA permit to encroach into the 30' rear setback.
7. Applicant intends to apply for a variance from CAMA to encroach into the 30' rear setback.

A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of such actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. A variance is authorized only for height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. (Town of Carolina Beach Zoning Ordinance, Section 23.3 Definitions, Variance). The Board of Adjustment is authorized upon appeal in specific cases to grant such variance from the terms of the ordinance as will preserve the spirit and intent of the ordinance, secure public safety and welfare, and provide substantial justice, when, owing to special conditions, literal enforcement of the strict letter of this ordinance would result in practical difficulties or unnecessary hardships. The Board may issue a variance only when all the terms and conditions set forth in this subsection have been met." (Section 21.3, i (2) *To Authorize Variances*)

Based upon the foregoing **FACTS**, The Board of Adjustment hereby makes the following **CONCLUSIONS OF LAW**: for a Variance from Article 3 Sec.3.9-1 Dimensional standards for lots and principal structures

- 1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

Finding fails. (1 aye to 4 nays)

- 2) That the special conditions and circumstances do not result from actions of the applicant.

Finding fails. (0 ayes to 5 nays)

- 3) That because of such special conditions and circumstances, the applicant can secure no reasonable return from, or make no reasonable use of, his property, if he complies with the literal provisions of the ordinance.

Finding fails. (0 ayes to 5 nays)

- 4) That the hardship suffered is hardship that would affect any owner or occupant of the property in question and is not personal to the applicant.

Finding passes. (4 ayes to 1 nays)

- 5) That the variance requested is a variance from dimensional requirements and does not allow a use of the property which is prohibited expressly or by implication, in the regulations applying to the property.

Finding passes. (5 ayes to 0 nays)

- 6) That granting a variance will be in harmony with the general spirit and intent of the ordinance and will not be injurious to the neighborhood or the public safety or welfare.

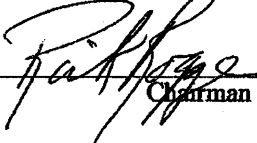
Finding fails. (0 ayes to 5 nays)

Variance Request is denied.

THEREFORE, based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED that a variance from Article 3 Sec.3.9-1 Dimensional standards for lots and principal structures hereby is denied

MOTION FOR ACTION BY THE BOARD: Motion made to deny the variance based upon the applicant not meeting all 6 Findings of Fact

The variance was denied by a vote 5 to 0.



Chairman

9/20/11

Date



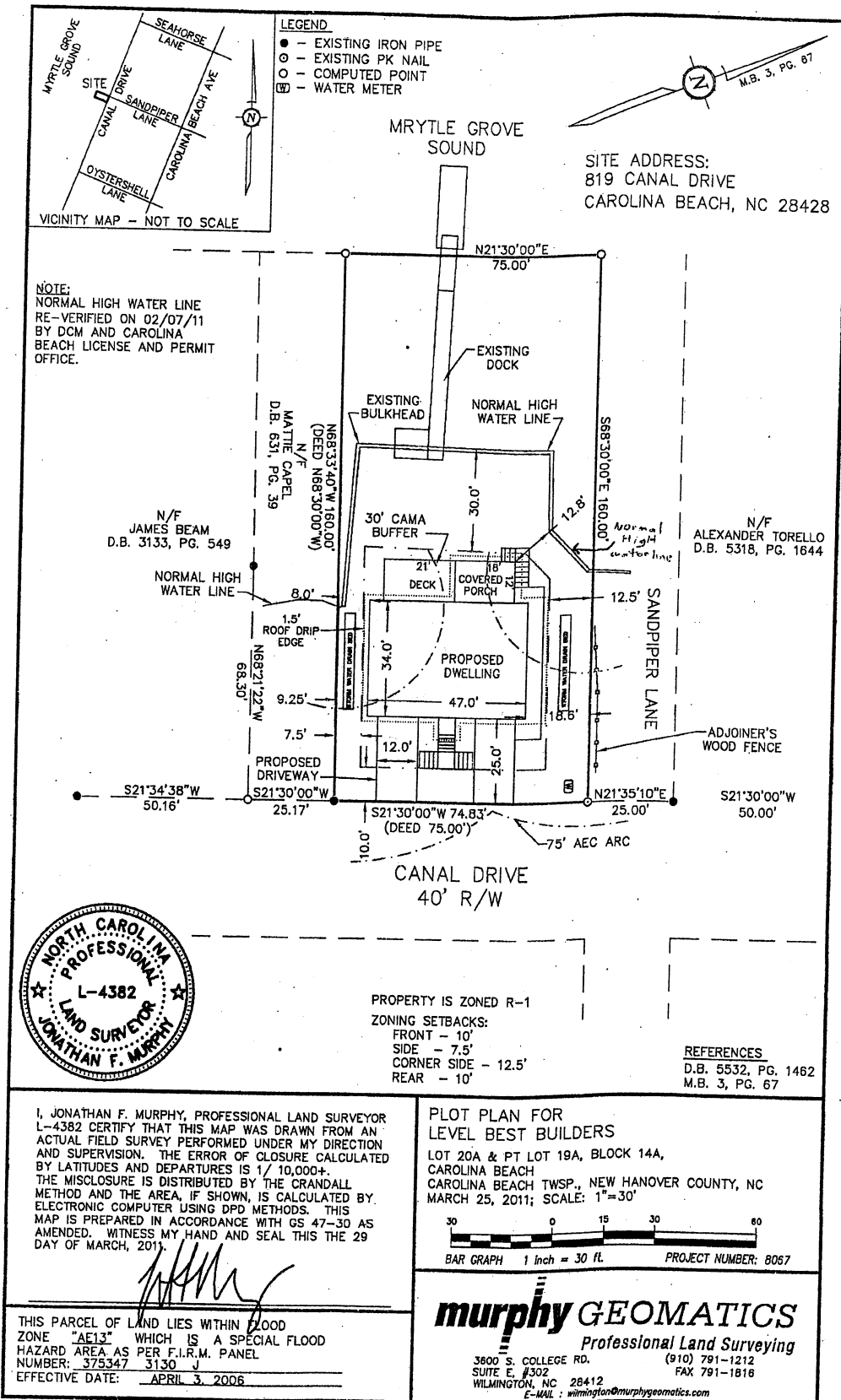
Zoning Administrator

9/20/11

Date

The applicant/owner is hereby given notice that: "Any person aggrieved by any decision of the Board of Adjustment shall have standing for purposes of seeking further review by New Hanover County Superior Court; provided, such review shall be subject to proceedings in the nature of certiorari. For purposes of this section, "person aggrieved" shall mean any person, firm, corporation or group of persons of common interest, including the Town, its officials, agents and employees, and any town departments, boards or agencies, that are directly or indirectly affected substantially by a decision as set out herein. Any petition for review by the superior court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the Planning Department, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the planning department at the time of the hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Attachment 8



ATTACHMENT C

Petitioner and Staff Positions

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

Petitioners' Position: Yes.

Strict adherence to the applicable new development setback rule relative to the recently located normal high water lines on each side of the lot renders Petitioners' lot almost unbuildable [see attached survey depicting all applicable setbacks], and completely prevents development of a less intensive, lower impact single family home located in line with adjacent residential structures and within the footprint previously permitted in March 2006 for construction of a large triplex structure per the terms of Minor Development CAMA Permit No. CB2006-20. [2006 CAMA Permit and site plan documents contained in **Attachment I to Proposed Stipulated Facts.**] A residential dwelling previously existed on the lot, located in essentially the same footprint now proposed by Petitioners. [See 2006 survey document contained in **Attachment 1 to Proposed Stipulated Facts.**]

In addition, Petitioners also wish to make the Commission aware of Petitioner Steve Casey's disabled veteran status and the fact that Petitioners soon will be taking care of Petitioner Cathy Casey's elderly mother. Both of these more personal factors require a larger first level building footprint that can accommodate a person with limited mobility on the first living space level, with wheelchair access to the residence from the outside. The proposed residence is intended to be Petitioners' permanent, full time residence. The residence needs to be designed and constructed to meet ADA standards, which generally require a larger footprint. Petitioners purchased the lot on or about December 12, 2010. Petitioners purchased the property with the understanding that the prior owners had already been granted permit approval to construct a multi-unit, high density triplex on the lot. Petitioners assumed that their lower density proposal for a single residence would be a more desirable, harmonious and permissible development proposal. **Attachment 1 to Proposed Stipulated Facts** contains documents regarding the previously issued CAMA permit and site plan, as well as a survey of the single family residence that previously existed on the lot until the prior owner's hail it moved in preparation for construction of their triplex project.

Strict adherence to the setbacks specified in 15A NCAC 07H.0209(d)(10) plan would require Petitioners to build a house that is not suitable for their and their elderly parents, and which is not appropriately located or scaled to the lot relative to adjacent homes. The lot is unique in that it is one of only a few lots on Canal Drive that is greater than 5,000 sq. ft. At some point (it remains unclear when and how), lot 20A was combined with the northern half of lot 19, resulting in a larger lot. However, this unique configuration has become both a blessing and a curse. For the blessing, it allows for a single family house to be built that can accommodate Petitioner Steven Casey's disabled veteran needs and Petitioner Cathy Casey's elderly mother's care needs, and which can have a more reasonable first floor layout, consistent with the

waterward line for adjacent residences and less intrusive relative to Canal Drive. For the curse, it makes Petitioners ineligible for the “exception” criteria contained in the CAMA rules for previously platted lots of 5,000 sq. ft. or less. Strict adherence to the setback rule will restrict Petitioners’ ability to align their proposed residential dwelling in line with the neighboring houses. Strict adherence to the setback rule fails to account for the unique nature of the three-sided bulkheading on Petitioners’ lot and the fact that only five years earlier, a CAMA permit was issued for a larger building footprint on this same lot — at that time, the normal high water line call on the southern side property line was made further out. By enforcing the setback requirements on the sides of the lot, the “useable” buildable space is less than 8’ wide in the location consistent with adjacent houses. Without a variance, the building footprint will be too small to accommodate disabled or elderly residents, will force a location that is like a “missing tooth” scenario relative to adjacent, existing homes, will create greater traffic hazards by forcing a footprint right up on the street, and will likely force Petitioners to revert to a non-owner, high density project in order to cost-justify the price paid for the lot. Petitioners do not seek to locate their building footprint any closer to the water than that used in adjacent properties.

Staff’s Position: Yes.

Staff concurs that strict application of the buffer rule in this case will cause an unnecessary hardship for Petitioners. When Petitioners purchased this property in December 2010, CAMA Minor Development Permit No. 2006-20, which was issued to the previous landowner was still in effect and authorized the construction of a three-unit residential building with 2,566 square feet of impervious area. The proposed triplex was never built. Currently, Petitioners propose to construct a single-family home with less impervious area than the permitted triplex, however, due to the Town’s denial of their variance request from the required 20-foot street setback their proposed single-family home encroaches into the 30-foot buffer, based on the same normal high water line as in 2006, on both the northern and southern portions of the lot. Even though the footprint submitted by Petitioners for their single-family home differs from that of the triplex, Petitioners propose to use this property without increasing the previous permitted impervious square footage. Therefore, strict application of the buffer rule to this lot will cause an unnecessary hardship for the Petitioners given their reasonable reliance on a CAMA permit issued to the previous landowner authorizing development consisting of a larger impervious area than Petitioner’s proposed 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.

See response to criteria one above. See also proposed stipulated facts and attached documents. The three-sided bulkheading on Petitioners’ lot is unique. The prior CAMA permit issuance for a larger triplex footprint based on a different high water line call along the southern property line is unique to the property. The prior existence of a single family home on the lot,

which was only moved by the prior owner in preparation for building the permitted triplex creates a unique property situation where that home footprint no longer can be used. The prior recombination of a full lot and the northern half of the neighboring lot, thereby eliminating the availability of the 5,000 sq. prior platted lot exception is unique to this lot. In addition, at some point in the past, the lot was extended waterward with a three-sided bulkhead into Myrtle Grove Sound creating marsh areas on the sides of the lot. It is this marsh on the sides of the lot that is pushing the house into a smaller footprint perilously close to the street, and completely out of alignment with adjacent homes. [See Attachment 3 to Proposed Stipulated Facts.] The lot to the north is the termination of a road (Sandpiper Lane). The property belongs to the Town of Carolina Beach and is used for public access to the Sound and has a gazebo in place for public use. The property to the south is the remaining 1/2 of lot 19 which is now only 2,500 sq. ft. and considered unbuildable. These additional facts are unique to Petitioners' lot and help explain why those lots were not bulk headed at a similar distance relative to the waters of the sound, thereby creating a unique "surrounded on three sides" situation for Petitioners' lot, which Petitioners now seek help from the Commission to remedy this unique hardship.

Staff's Position: Yes.

Staff contends that the hardships are caused by conditions peculiar to this property. Petitioner's lot consists of a three-sided bulkhead that extends landward on each property line side. The existence of a previous single family home at this location, which was moved in 2006 to allow for construction of the permitted triplex that was not built, offers a unique situation peculiar to this property in that if the permitted triplex was built it would create more impervious surface area than Petitioner's proposed development.

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

Petitioners' Position: No.

See responses to criteria one and two above. See also proposed stipulated facts and attached documents. Simply put, Petitioners played no role in the prior bulkheading of this lot, or the prior permitting on this lot, or the construction and location of the prior home on this lot. Nor did Petitioners play any role in location of adjacent homes, or the fact that on either side of Petitioners' lot there is an unusual narrow piece of land that has not been bulkheaded due to the unbuildable nature of the property on one side, and the other side being the terminus of a public street. In addition, when Petitioners acquired the lot in December of 2010, Petitioners reasonably relied on the fact that the prior owner had obtained a CAMA permit for an even larger building footprint with higher proposed density and higher impervious surface square footage. The build-out of the lot into the Sound that has created the side marsh issues was accomplished many years ago. Petitioners' lot also is situated on the corner of two public roads (Canal Drive and Sandpiper Lane), creating in itself an additional unique setback problem due to town setback requirements, which the Town rightly has refused to waive for public safety reasons. Further, Petitioners

played no role in the prior lot recombination process which eliminated the potential use of the 5,000 square foot prior platted lot exemption. Finally, a prior home of comparable size and location existed on the lot as recently as 2006. Ironically, that home was removed in preparation for implementing the prior owner's permitted triplex development proposal.

Staff's Position: No.

Staff agrees that the hardships did not result from actions taken by Petitioners. CAMA Minor Development Permit No. CB 2006-20 was issued previous to Petitioners' purchase of this property and was still a valid permit at the time of sale. The CAMA permit allowed a larger footprint with a higher proposed density and more impervious square footage. Petitioners' proposed single-family residence would decrease the impervious square footage on the lot, however, given the Town's requirement of a 20-foot street setback, Petitioner's smaller footprint encroaches into the 30-foot 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.

Petitioners' Position: Yes.

See responses to criteria one through three above. See also proposed stipulated facts and attached documents. The granting of the requested variance is consistent with all applicable CAMA rules and local requirements other than the setback use standard. That setback standard was met in a prior CAMA permit on the same lot for a larger, denser development proposal covering more impervious surface area. The Town of Carolina Beach supports issuance of the requested variance. [**Attachment 6 to Proposed Stipulated Facts.**] As noted in the Town's support letter, issuance of the requested variance also will resolve the Town's ability to move forward with its desired canoe and kayak dock project. Petitioners have committed to construct engineered storm water management systems that will capture the first 1.5 inches of rainwater caused by the proposed impervious surfaces. The bulkheads that are in place will help ensure the protection of the marshlands as well. Additionally, this lot was scheduled to house a multi-family triplex development (built narrow and tall and 10' from the street due to local commercial structure setback differences). Petitioners believe that allowing them to develop this lot for lower impact single family residential use will have a significantly lower impact on water and coastal resources. The granting of this variance will also help to secure Petitioners' safety and welfare relative to their personal disable veteran and elder care needs. The granting of this variance will also help to secure public safety and welfare by allowing Petitioners to build a lower traffic volume home that is far enough off of Canal Drive as to not cause an unsafe condition when backing into the bike lane established along Canal Drive. The granting of this variance will preserve substantial justice as Petitioners would be able to align their home with those of their northern and southern neighbors, but not encroach on theft public views, and to build a home of scale and location more appropriate to the lot and neighborhood.

Staff's Position: Yes with conditions.

Petitioners have proposed a smaller single-family residence consisting of less impervious square footage than the previously permitted triplex, however, Petitioners have not provided a detailed stormwater management plan for their proposed development. Staff proposes, as part of the variance order, that Petitioners be required to submit an innovative engineer-designed stormwater system to reduce the impacts of stormwater from impervious surfaces on the adjacent sound. Furthermore, Petitioners shall provide the proper operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and insure that such obligation becomes a permanent obligation of future property owners.

Staff feels that with these conditions the proposed development meets the spirit, purpose, and intent of the buffer rule, and secures public safety and welfare by reducing the impervious surface area of a permitted project and reducing runoff pollution into the marine environment. Substantial justice will be preserved by Petitioners' construction of a smaller footprint than what had been previously permitted on this site.

Attachment D

Petitioners' Variance Request Petition

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Steven and Cathy Casey

COUNTY WHERE THE DEVELOPMENT IS PROPOSED New Hanover

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. **See Attachment re all Four Criteria.**
- (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.

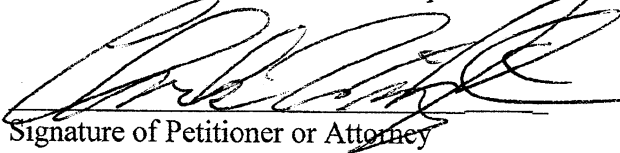
Please make your written arguments that Petitioner meets these criteria on a separate piece of paper.

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.

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



Signature of Petitioner or Attorney

September 14, 2011

Date

I. Clark Wright, Jr.
Printed Name of Petitioner or Attorney

icw@dhwlegal.com
Email address of Petitioner or Attorney

209 Pollock Street
Mailing Address

(252) 514-2828
Telephone Number of Petitioner or Attorney

New Bern NC 28560
City State Zip

(252) 514-9878
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

VARIANCE CRITERIA – CASEY REQUEST
September 14, 2011

Introduction

In December 2010, Petitioners Steven and Cathy Casey purchased their sound front lot located at 819 Canal Street in the Town of Carolina Beach. [See attached Deed.] Their subsequent minor development CAMA Permit application seeking approval to construct a single family dwelling designed to accommodate Petitioner Steve Casey's veteran disability and Petitioner Cathy Casey's elderly grandmother's growing needs for home care was denied on April 12, 2011 due to non-compliance with the Coastal Estuarine Shoreline 30-foot setback, found at 15A NCAC O7H.0209(d)(10). No other grounds for permit denial were identified. [Attachment 5 – Proposed Stipulated Facts.] Petitioners now request that the Commission grant them a variance from the 30-foot setback requirement for a number of reasons, including: (i) the unique configuration of their bulkheaded lot, with coastal wetlands intruding landward down both side property lines; (ii) the unique factual situation where the normal high water line as located by LPO and DCM officials has moved significantly landward into one side property line, even though the existing bulkhead location has not changed; (iii) the fact that their proposed development is less intensive and will result in lesser impacts than associated with a previously permitted (2006) triplex development proposed for the same property; (iv) the fact that the Town of Carolina Beach supports Petitioners' variance request; (v) the fact that their proposed development footprint is consistent with existing residence footprints on both sides; and (vi) the fact that Petitioners relied on an existing 2006 Minor Development CAMA Permit authorizing development of a larger, more intensive triplex structure on the same lot, and reasonably believed that they would be able to construct a smaller, less dense single family residence to accommodate Petitioner Steve Casey's disabled veteran status and Petitioner Cathy Casey's elderly mother's personal care needs.

Petitioners provide the following information to the CRC addressing each of the four statutory criteria in support of their variance request:

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

YES. Strict adherence to the applicable new development setback rule relative to the recently located normal high water lines on each side of the lot renders Petitioners' lot almost unbuildable [see attached survey depicting all applicable setbacks], and completely prevents development of a less intensive, lower impact single family home located in line with adjacent residential structures and within the footprint previously permitted in March 2006 for construction of a large triplex structure per the terms of Minor Development CAMA Permit No. CB2006-20. [2006 CAMA Permit and site plan

documents contained in **Attachment 1 to Proposed Stipulated Facts.**] A residential dwelling previously existed on the lot, located in essentially the same footprint now proposed by Petitioners. [See 2006 survey document contained in **Attachment 1 to proposed Stipulated Facts.**]

In addition, Petitioners also wish to make the Commission aware of Petitioner Steve Casey's disabled veteran status and the fact that Petitioners soon will be taking care of Petitioner Cathy Casey's elderly mother. Both of these more personal factors require a larger first level building footprint that can accommodate a person with limited mobility on the first living space level, with wheelchair access to the residence from the outside. The proposed residence is intended to be Petitioners' permanent, full time residence. The residence needs to be designed and constructed to meet ADA standards, which generally require a larger footprint. Petitioners purchased the lot on or about December 12, 2010. Petitioners purchased the property with the understanding that the prior owners had already been granted permit approval to construct a multi-unit, high density triplex on the lot. Petitioners assumed that their lower density proposal for a single residence would be a more desirable, harmonious and permissible development proposal. **Attachment 1 to Proposed Stipulated Facts** contains documents regarding the previously issued CAMA permit and site plan, as well as a survey of the single family residence that previously existed on the lot until the prior owners had it moved in preparation for construction of their triplex project.

Strict adherence to the setbacks specified in 15A NCAC 07H.0209(d)(10) plan would require Petitioners to build a house that is not suitable for their and their elderly parents, and which is not appropriately located or scaled to the lot relative to adjacent homes. The lot is unique in that it is one of only a few lots on Canal Drive that is greater than 5,000 sq. ft. At some point (it remains unclear when and how), lot 20A was combined with the northern half of lot 19, resulting in a larger lot. However, this unique configuration has become both a blessing and a curse. For the blessing, it allows for a single family house to be built that can accommodate Petitioner Steven Casey's disabled veteran needs and Petitioner Cathy Casey's elderly mother's care needs, and which can have a more reasonable first floor layout, consistent with the waterward line for adjacent residences and less intrusive relative to Canal Drive. For the curse, it makes Petitioners ineligible for the "exception" criteria contained in the CAMA rules for previously platted lots of 5,000 sq. ft. or less. Strict adherence to the setback rule will restrict Petitioners' ability to align their proposed residential dwelling in line with the neighboring houses. Strict adherence to the setback rule fails to account for the unique nature of the three-sided bulkheading on Petitioners' lot and the fact that only five years earlier, a CAMA permit was issued for a larger building footprint on this same lot – at that time, the normal high water line call on the southern side property line was made further out. By enforcing the setback requirements on the sides of the lot, the "useable" buildable space is less than 8' wide in the location consistent with adjacent houses. Without a variance, the building footprint will be too small to accommodate disabled or elderly residents, will force a location that is like a "missing tooth" scenario relative to adjacent, existing homes, will create greater traffic hazards by forcing a footprint right up on the street, and will likely force Petitioners to revert to a non-owner, high density project in order to cost-justify the

price paid for the lot. Petitioners do not seek to locate their building footprint any closer to the water than that used in adjacent properties.

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

YES. See response to criteria one above. See also proposed stipulated facts and attached documents. The three-sided bulkheading on Petitioners' lot is unique. The prior CAMA permit issuance for a larger triplex footprint based on a different high water line call along the southern property line is unique to the property. The prior existence of a single family home on the lot, which was only moved by the prior owner in preparation for building the permitted triplex creates a unique property situation where that home footprint no longer can be used. The prior recombination of a full lot and the northern half of the neighboring lot, thereby eliminating the availability of the 5,000 sq. ft. prior platted lot exception is unique to this lot. In addition, at some point in the past, the lot was extended waterward with a three-sided bulkhead into Myrtle Grove Sound creating marsh areas on the sides of the lot. It is this marsh on the sides of the lot that is pushing the house into a smaller footprint perilously close to the street, and completely out of alignment with adjacent homes. [See **Attachment 3 to Proposed Stipulated Facts.**] The lot to the north is the termination of a road (Sandpiper Lane). The property belongs to the Town of Carolina Beach and is used for public access to the Sound and has a gazebo in place for public use. The property to the south is the remaining ½ of lot 19 which is now only 2,500 sq. ft. and considered unbuildable. These additional facts are unique to Petitioners' lot and help explain why those lots were not bulk headed at a similar distance relative to the waters of the sound, thereby creating a unique "surrounded on three sides" situation for Petitioners' lot, which Petitioners now seek help from the Commission to remedy this unique hardship.

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

NO. See responses to criteria one and two above. See also proposed stipulated facts and attached documents. Simply put, Petitioners played no role in the prior bulkheading of this lot, or the prior permitting on this lot, or the construction and location of the prior home on this lot. Nor did Petitioners play any role in location of adjacent homes, or the fact that on either side of Petitioners' lot there is an unusual narrow piece of land that has not been bulkheaded due to the unbuildable nature of the property on one side, and the other side being the terminus of a public street. In addition, when Petitioners acquired the lot in December of 2010, Petitioners reasonably relied on the fact that the prior owner had obtained a CAMA permit for an even larger building footprint with higher proposed density and higher impervious surface square footage. The build-out of the lot into the Sound that has created the side marsh issues was accomplished many years ago. Petitioners' lot also is situated on the corner of two public roads (Canal Drive and Sandpiper Lane), creating in itself an additional unique setback problem due to town setback requirements, which the Town rightly has refused to waive for public safety

reasons. Further, Petitioners played no role in the prior lot recombination process which eliminated the potential use of the 5,000 square foot prior platted lot exemption. Finally, a prior home of comparable size and location existed on the lot as recently as 2006. Ironically, that home was removed in preparation for implementing the prior owner's permitted triplex development proposal.

(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.

YES. See responses to criteria one through three above. See also proposed stipulated facts and attached documents. The granting of the requested variance is consistent with all applicable CAMA rules and local requirements other than the setback use standard. That setback standard was met in a prior CAMA permit on the same lot for a larger, denser development proposal covering more impervious surface area. The Town of Carolina Beach supports issuance of the requested variance. [**Attachment 6 to Proposed Stipulated Facts.**] As noted in the Town's support letter, issuance of the requested variance also will resolve the Town's ability to move forward with its desired canoe and kayak dock project. Petitioners have committed to construct engineered storm water management systems that will capture the first 1.5 inches of rainwater caused by the proposed impervious surfaces. The bulkheads that are in place will help ensure the protection of the marshlands as well. Additionally, this lot was scheduled to house a multi-family triplex development (built narrow and tall and 10' from the street due to local commercial structure setback differences). Petitioners believe that allowing them to develop this lot for lower impact single family residential use will have a significantly lower impact on water and coastal resources. The granting of this variance will also help to secure Petitioners' safety and welfare relative to their personal disable veteran and elder care needs. The granting of this variance will also help to secure public safety and welfare by allowing Petitioners to build a lower traffic volume home that is far enough off of Canal Drive as to not cause an unsafe condition when backing into the bike lane established along Canal Drive. The granting of this variance will preserve substantial justice as Petitioners would be able to align their home with those of their northern and southern neighbors, but not encroach on their public views, and to build a home of scale and location more appropriate to the lot and neighborhood.

3
25
900-45

fyj cju D

Attachment - Deed



FOR REGISTRATION REGISTER OF DEED:
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2010 DEC 13 04:15:07 PM
BK:5532 PG:1462-1465 FEE:\$25.00
NC REV STAMP:\$300.00
INSTRUMENT # 2010035794

GENERAL WARRANTY DEED

REVENUE: ⁴⁷⁵ 900. -

MAIL AFTER RECORDING TO: Collins & Collins Law Office, PLLC, 215 Racine Drive, Suite 101, Wilmington, NC 28403

THIS INSTRUMENT WAS PREPARED BY:

Return to Ned Barnes Andrew W. Collins

DRAWN BY

NORTH CAROLINA COUNTY OF NEW HANOVER

Parcel - R08815-007-010-000

THIS DEED made this 18 day of December 2010, by and between Robert G. Collins, Sr., aka Robert G. Collins and wife, Susan H. Collins, Robert G. Collins, Jr., unmarried, John E. Russ, III and wife, Jolie C. Russ, and Andrew W. Collins and wife, Erin T. Collins, hereinafter called Grantors, and STEVEN CASEY and wife, CATHY CASEY, hereinafter called Grantee; of 9417 Collingsdale Way, Raleigh NC 27617

The designation of 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 New Hanover County, North Carolina and more particularly described as follows:

All of Lot 20A and the Northern one-half of Lot 19A in Block 14A in the Town of Carolina Beach as the same is shown on map recorded in Map Book 3 Page 67 in the New Hanover County Registry, and being the same lands described in instrument recorded in Book 1393 Page 1361 in said Registry.

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

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

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

Restrictive covenants, easements and rights of way as may appear of record in the aforesaid Registry, and all applicable zoning and land use ordinances.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in the 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.

Robert G. Collins Sr

Robert G. Collins, Sr.

Susan H Collins

Susan H. Collins

Robert G. Collins Jr

Robert G. Collins, Jr.

John E. Russ III

John E. Russ, III

Jolie G. Russ

Jolie G. Russ

Andrew W. Collins

Andrew W. Collins

Erin T. Collins

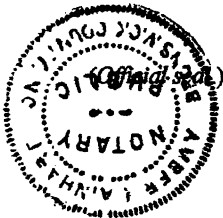
Erin T. Collins

STATE OF North Carolina
COUNTY OF New Hanover

I, Amber Lainhart, Notary Public, certify that Robert G. Collins, Sr., and wife Susan H. Collins, personally came before me this day and acknowledged the due execution of the foregoing instrument.

My commission expires 4.24.2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)



STATE OF North Carolina
COUNTY OF New Hanover

I, Amber Lainhart, Notary Public, certify that Robert G. Collins, Jr., personally came before me this day and acknowledged the due execution of the foregoing instrument.



My commission expires 4-24-2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)

STATE OF North Carolina
COUNTY OF New Hanover

I, Amber Lainhart, Notary Public, certify that John E. Russ, III and wife, Jolie C. Russ, personally came before me this day and acknowledged the due execution of the foregoing instrument.



My commission expires 4-24-2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)

STATE OF North Carolina
COUNTY OF New Hanover

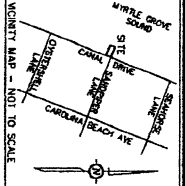
I, Amber Lainhart, Notary Public, certify that Andrew W. Collins and wife, Erin T. Collins, personally came before me this day and acknowledged the due execution of the foregoing instrument.



My commission expires 4-24-2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)

Attachment - Survey of Setbacks



LEGEND
 EP - EXISTING IRON ROD
 ER - EXISTING IRON ROD WITH COMPUTED POINT
 MW - WATER METER

VICINITY MAP - NOT TO SCALE

REFERENCES:
 DEED 5253, PG. 1462
 M.B. 3, PG. 87

SITE ADDRESS:
 619 CANAL DRIVE
 CAROLINA BEACH, NC 28428

UNUSUAL HIGH WATER LINE RECORDED ON 02/27/11 BY OCM AND CAROLINA BEACH LICENSE AND PERMIT OFFICE.

2. UNUSUAL CALCULATIONS BASED ON MEASUREMENTS ALONG WATER LINE PER VERTICAL ROSS MARKS AT DIVISION COASTAL MANAGEMENT 08/18/11.

AREAS:
 LOT 1: 9,000 SQ. FT.
 UNPLANS: 4,983 SQ. FT.

LOT 2: 4,000 SQ. FT.
 UNPLANS: 2,178 SQ. FT.

TOTAL: 12,000 SQ. FT.
 UNPLANS: 0.29 ACRES FT.

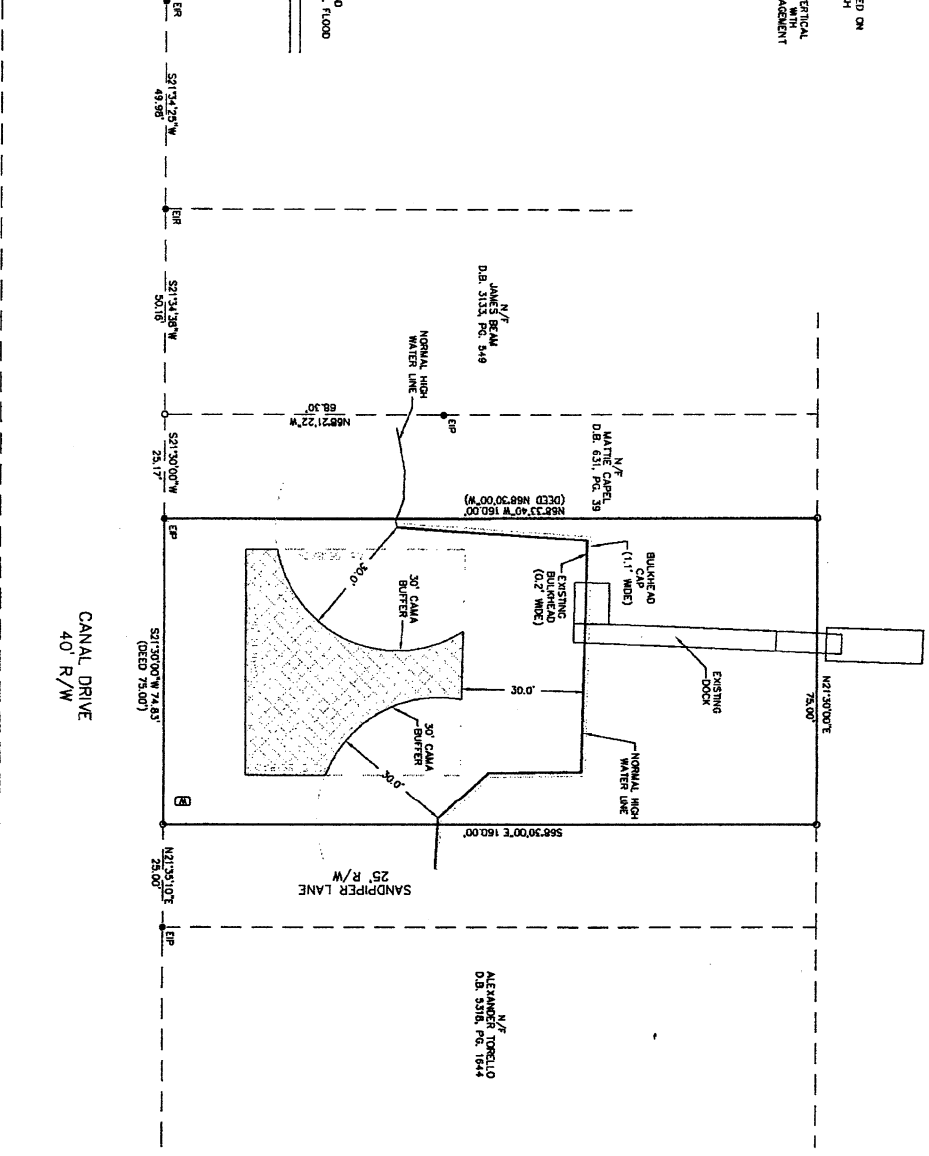
URPLANS: 0.16 ACRES

PROPERTY IS ZONED R-1
 ZONING REGULATIONS:
 REAR - 10'
 SIDE - 7.5'
 CORNER 50' - 12.5'

THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE AS SHOWN ON THE SPECIAL FLOOD NUMBER: 172847 3/1/00 EFFECTIVE DATE: 05/01/2000

murphy GEOMATICS
 Professional Land Surveying
 200 E. COLLIER RD.
 WILMINGTON, NC 28413
 (910) 781-1112
 FAX: (910) 781-1418
 E-MAIL: info@murphygeomatics.com

I, JOHNTAVAN E. MURPHY, PROFESSIONAL LAND SURVEYOR L-4382 CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL FIELD SURVEY PERFORMED UNDER MY DIRECTION BY LICENSED SURVEYORS AND TECHNICIANS WHOSE NAMES AND DEPARTMENTS ARE CALCULATED BY ME AND THE AREA OF STATION IS CALCULATED BY ME AND THE AREA OF STATION IS CALCULATED BY ME. THIS MAP IS PREPARED IN ACCORDANCE WITH GS 4-20 AS AIDED, WITNESS MY HAND AND SEAL THIS 25 DAY OF MARCH, 2011.



THIS PROPERTY IS IN A PREVIOUSLY RECORDED SUBDIVISION MAP AND HAS BEEN IDENTIFIED AS (a) (4) (b) (5) OF THE STATUTES OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA, EXISTING BEARING MONUMENTS DESERVE THE HONORABLE TITLE TO NORTH CAROLINA GRID.

BY SEA, AND SONAR, TELEMETRY, AND/OR OTHER MEANS:
 1. THAT THE SURVEY PROVIDES A REPRESENTATION OF THE LOCATION OF A POINT OR MONUMENT THAT IS NOT RECORDED IN THE PUBLIC RECORDS OF A COUNTY OR STATE.
 2. THAT THE SURVEY PROVIDES A REPRESENTATION OF THE LOCATION OF A POINT OR MONUMENT THAT IS NOT RECORDED IN THE PUBLIC RECORDS OF A COUNTY OR STATE.
 3. THAT THE SURVEY PROVIDES A REPRESENTATION OF THE LOCATION OF A POINT OR MONUMENT THAT IS NOT RECORDED IN THE PUBLIC RECORDS OF A COUNTY OR STATE.
 4. THAT THE SURVEY PROVIDES A REPRESENTATION OF THE LOCATION OF A POINT OR MONUMENT THAT IS NOT RECORDED IN THE PUBLIC RECORDS OF A COUNTY OR STATE.
 5. THAT THE SURVEY PROVIDES A REPRESENTATION OF THE LOCATION OF A POINT OR MONUMENT THAT IS NOT RECORDED IN THE PUBLIC RECORDS OF A COUNTY OR STATE.
 6. THAT THE SURVEY PROVIDES A REPRESENTATION OF THE LOCATION OF A POINT OR MONUMENT THAT IS NOT RECORDED IN THE PUBLIC RECORDS OF A COUNTY OR STATE.

**ISSUED FOR REVIEW ONLY
 PRELIMINARY PLAT
 NOT FOR RECORDING,
 SALES OR CONVEYANCE**

SUBDIVISION FOR STEVEN CASEY
 LOT 20A & PT LOT 19A, BLOCK 14A,
 CAROLINA BEACH
 CAROLINA BEACH TWP., NEW HANOVER COUNTY, NC
 AUGUST 17, 2011; SCALE: 1" = 20'

DATE DRAWN: 1/20/11 PROJECT NUMBER: 0027

7-15-2011

Eddie Capel
9 Aurora Court
Durham NC 27713

Dear adjacent property owner,

This letter is to inform you that I, Steven Casey, have applied for a variance from the 30' setback rules for my property located at 819 Canal Drive, Carolina Beach, NC 28428 in New Hanover County.

As required by CAMA I have enclosed a copy of my permit application and project drawings as notification of my proposed project.

If you have any questions or comments regarding my project please contact me at 919-760-3759 or by mail at the address below. If you wish to file written comments or objections with the Carolina Beach Minor CAMA office you may submit them to Jeremy Hardison, Town of Carolina Beach, 1121 N Lake Park Blvd, Carolina Beach, NC 28428.

Sincerely,
Steven Casey

A handwritten signature in black ink, appearing to read 'Steven Casey', with a long horizontal flourish extending to the right.

9417 Collingdale Way
Raleigh, NC 28428

The UPS Store - #4346
8311 Briar Creek Pkwy
Raleigh, NC 27617
(919) 544-4546

09/19/11 12:37 PM

We are the one stop for all your shipping, postal and business needs.

Please note USPS is not trackable.
No Refunds on Books & Rolls of Stamps



001 000097 (022) TO \$ 9.08
First Class Letter

SubTotal \$ 9.08
Total \$ 9.08

American Express \$ 9.08

ACCOUNT NUMBER * *****1014
Appr Code: (S) Sale

Receipt ID 82090132122701888380 001 Items
CSH: YAQIZA Tran: 2546 Reg: 002

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www.theupsstore.com

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Survey link

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CERTIFIED MAIL - RECEIPT
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OFFICIAL USE

Postage	\$.50
Certified Fee	4.75
Return Receipt Fee (Endorsement Required)	3.85
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 9.08

SEP 19 2011
RALEIGH, NC 27617
Postmark Here

TS80 5622 2000 0T10 T102

Sent To: GOODE CONCI
Street Address: 9 CANTON CT
or PO Box No.:
City/State/Zip+4: RALEIGH NC 27613
Post Form 3826, August 2008

- 1. Complete name, I, F, and S. Also designate item as Registered Delivery to delivery.
- 2. Print your name and address on the reverse so that we can return the card to you.
- 3. Attach this card to the back of the postcard or up the front if space permits.

Recd Addressed to:
 Eddie Cape
 Aurora, Ct.
 Durham, NC
 27719

3. Signature Agent Addressee

4. Recipient to (Print) _____ Date of Delivery 1/2/70

5. Is delivery address different from back of card? Yes No

If YES, write delivery address below Yes No

6. Register Type

Certified Mail Express Mail

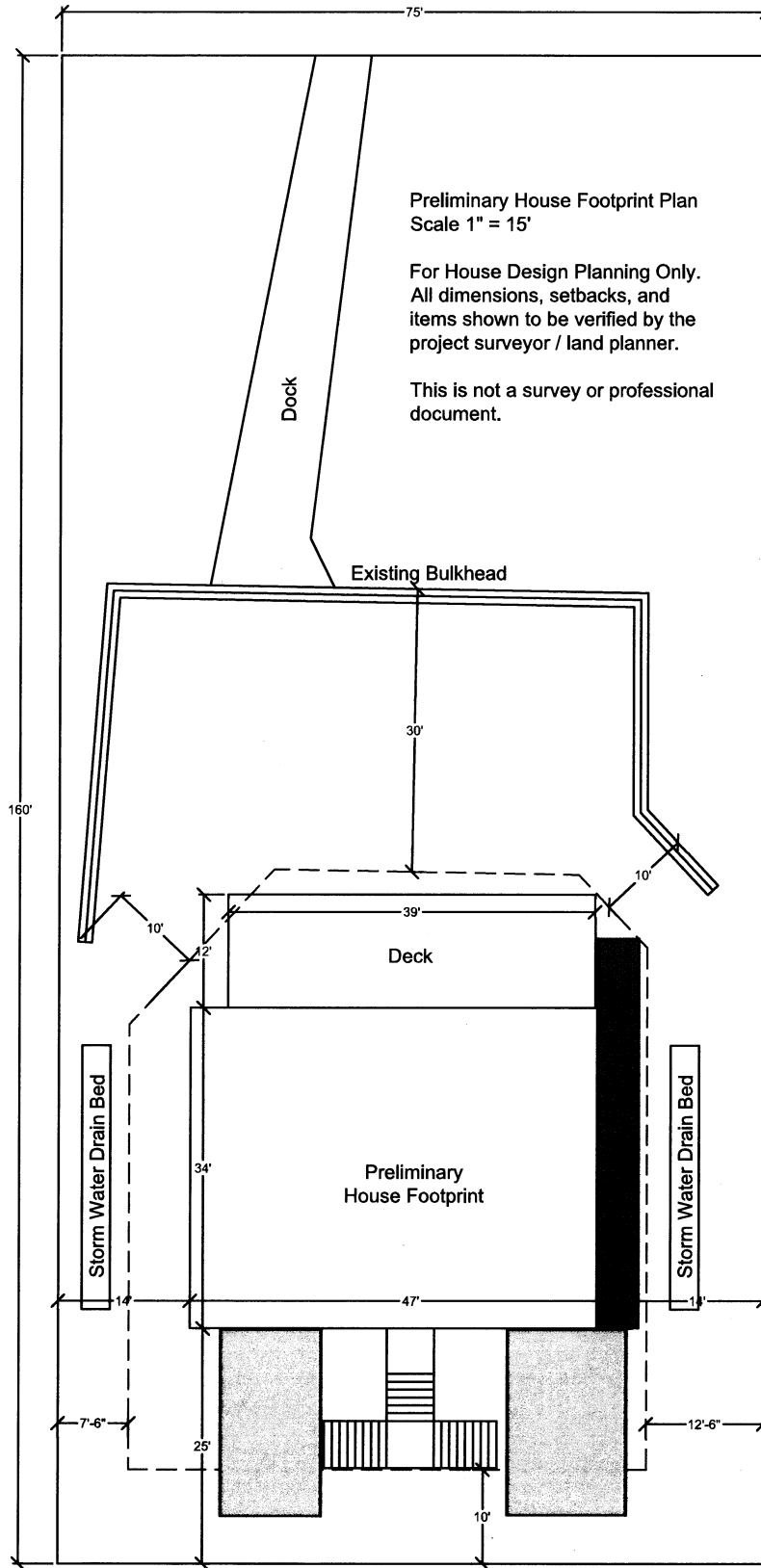
Registered Return Receipt for Merchandise

Insured Mail COD

7. Registered Delivery? (Rate Paid) No

PS Form 3800

COVANCE





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

Beverly Eaves Perdue, Governor

Dee Freeman, Secretary

October 9, 2011

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Amendments to 15A NCAC 7H .0308(a)(2) & 7H .1705

At the August CRC meeting, the Ocean Hazard AEC Subcommittee considered the suggestions generated through a series of meetings with sandbag stakeholders for the future management of temporary erosion control structures. These ideas ranged from a return to a community based management approach, tax credits and agreement to remove the structure, to linking the use of sandbags and condemnation of the structure, as well as financial assistance to communities and homeowners. The Subcommittee discussed the merits of the proposals as well as a Staff proposal to extend the time limits for the use of sandbags in a manner similar to amendments made in 2009 for Inlet Hazard Areas. While no consensus was reached in the Subcommittee meeting, a motion was made during the Subcommittee report and full Commission discussion to move ahead with the Staff recommended changes.

Attached are amendments to 7H .0308(a)(2) General Use Standards and 7H .1705 Specific Use Standards for Emergency General Permits regulating the use of sandbags as temporary erosion control measures. These amendments are similar to those made in 2009 relative to the management of sandbags in Inlet Hazard Areas. The time limit for the use of sandbags is proposed for extension from five years to eight years if located in a community actively pursuing a beach fill or inlet relocation project. The one time per structure limitation is also proposed to be removed provided that the structure once again becomes imminently threatened and is located in a community that is actively pursuing a beach fill or inlet relocation project. The proposed amendments also include an expansion of the activities a community could be actively pursuing that would warrant an extended permit time limit to include an inlet stabilization project in accordance with G.S. 113A-115.1 (CAMA amendment associated with terminal groin legislation). No changes are proposed for structures located outside of areas seeking beach fill, inlet relocation or inlet stabilization project where the two and five-year timeframes would remain. No changes are proposed for the provisions under which sandbags would need to be removed (i.e., the structure is not imminently threatened due to beach fill, inlet relocation or stabilization project).

400 Commerce Avenue, Morehead City, North Carolina 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

Staff looks forward to discussion of these proposed amendments at the upcoming meeting in Beaufort.

Proposed Amendments to 15A NCAC 7H .0308(a)(2) Specific Use Standards for Ocean Hazard Areas

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(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 be~~ used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure ~~shall be~~ 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.
- (C) 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 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 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 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 designee.
- (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 years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (G) Temporary sandbag erosion control structures may remain in place for up to ~~five~~ eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, ~~and for up to eight years from the date of approval~~ 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. ~~project.~~ For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment~~ nourishment, or inlet relocation or stabilization project if it has:
 - (i) 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 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 that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been 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 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.

- (H) 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, 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, 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.
 - (I) Removal of temporary erosion control structures ~~shall~~ is not be required if they are covered by dunes with stable and natural vegetation.
 - (J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
 - (K) 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) 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 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 (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas 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 Subchapter and the community in which it is located is actively pursuing 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 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 section of sandbags shall begin at the time that 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.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type, in accordance with 15A NCAC 7H .0312. ~~Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.~~

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124;
Eff. June 1, 1979;
Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*

Proposed Amendments to 7H .1705 Specific Conditions

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 be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure ~~shall be~~ 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.
- (3) 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 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 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 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 designee.
- (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 5000 square feet or less and its associated septic system, or for up to five years for a building with a total floor area of more than 5000 square feet and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (7) Temporary sandbag erosion control structures may remain in place for up to ~~five~~ eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, ~~and up to eight years from the date of approval~~ 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 project. For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment~~ nourishment, or 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 that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been 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~~ 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 Subparagraph (6) of this Paragraph.

- (8) 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, 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, 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) Removal of temporary erosion control structures shall is not be required if they are covered by dunes with stable and natural vegetation.
 - (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
 - (11) 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) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
 - (14) An imminently threatened structure may be protected only once regardless of ownership 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 located in Inlet Hazard Areas 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 and the community in which it is located is actively pursuing 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 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 section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Rule.
 - (15) 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.
- (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 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 designee.
 - (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 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 designee;
- (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;
 - (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(c1); 113A-107(a),(b); 113A-113(b); 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, 2010; August 1, 2002. Temporary Amendment Eff. July 3, 2000; May 22, 2000;*

SANDBAG POLICY OPTIONS CONSIDERED BY THE OCEAN HAZARD AEC SUBCOMMITTEE

- Enforce current rules with no changes.
- Modify rules based on staff recommendations
- Eliminate all timeframes associated with use of sandbags allowing maintenance of structures.
- Eliminate all timeframes associated with use of sandbags not allowing maintenance.
- Allow communities to manage sandbags.
- Provide a tax credit in exchange for conservation easement and agreement to remove the structure.
- Require a bond to ensure removal of sandbags.
- Allow sandbags to remain when there is a pending beach fill or inlet relocation project.
- Only allow sandbags prior to removing or relocating a structure.
- Allow sandbags to remain and be covered during nourishment projects.
- Allow sandbags to remain provided the property maintains a certificate of occupancy.
- Limit the size and number of sandbags to prevent the creation of "seawalls".
- Require daily financial penalties for expired sandbag permits.
- Financial responsibility for sandbags should be incorporated into the deed.
- Reconsider dimensional requirements after installation (timeframe to address exceedance of permitted dimensions)
- Require property owners to keep sandbags covered.
- Allow contractors to experiment with sandbag dimensions, placement and anchoring.
- Disallow the use of sandbags as a method of temporary erosion control.



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

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

October 12, 2011

MEMORANDUM

TO: CRC
FROM: Tancred Miller
SUBJECT: Consideration of Sea-Level Rise Comments

Chairman Emory sent a letter to local officials on March 1st, describing the changes that the Commission made to the draft policy in February, and offering to have staff meet with communities to address any concerns they might have with the amended draft. Staff has received only one request in response to this offer. By the October 27th CRC meeting staff will have completed eight stakeholder meetings to discuss the draft sea-level rise policy with local officials, staff, and interested citizens.

1. Carteret County, January 12th.
2. Nags Head Planning Board, January 18th.
3. Pender County, February 21st.
4. North Topsail Beach, March 3rd.
5. City of Southport, April 14th.
6. Kitty Hawk (regional), April 19th.
7. Wilmington (regional), October 11th.
8. Columbia (regional), October 13th.

Discussions of the draft policy at these meetings have shown very limited objection to the current language. The majority of negative feedback has been directed towards the Science Panel's 2010 Assessment Report, and the Panel is preparing a formal response to those critiques that should be complete by your February 2012 meeting. Most of the discussion on the current draft has been to explain why the Commission is contemplating this action, and the changes the Commission made to the draft in February. Some stakeholders have remarked that the draft has been overly weakened by the changes and would like a stronger mandate from the State.

After reviewing the written and verbal comments, staff does not have unresolved requests for additional amendments to the draft policy. All written comments on the draft policy and Science Panel's report are enclosed. Since the Columbia meeting has not occurred at time of this writing, there may be additional comments presented at the October meeting. No other stakeholder meetings are scheduled, and staff does not plan to hold more of these meetings unless requested by stakeholder group.

Staff is not requesting CRC action on the draft policy at the October meeting, but anticipates doing so at the February 2012 meeting. In February 2012 it will be a full year that the revised draft has been available for stakeholder feedback.

Attachments:

1. Memo from Carteret County Shore Protection Office to Duncan Ballantyne on Proposed SLR Policy, January 12, 2011
Author: Greg "Rudi" Rudolph, Carteret County Shore Protection Manager.
2. Letter from Carteret County to Bob Emory, February 17, 2011.
Author: Doug Harris, Chairman, Carteret County Board of Commissioners.
3. Letter from NC-20 to Bob Emory, February 28, 2011.
Author: Tommy Thompson, Chairman, NC-20.
4. "A Critique of the 2010 North Carolina Sea-Level Rise Assessment Report," March 29, 2011.
Author: Dave Burton, Member, North Carolina Sea Level Rise Risk Management Study Advisory Committee.
5. "A Different Perspective, Part One, A Scientific Critique of the 2010 NC Sea-Level Rise Assessment Report" March 10, 2011.
Author: John Droz Jr., Science Advisor to NC-20.
6. A Different Perspective, Part Two, A Scientific Critique of the 2010 NC Sea-Level Rise Assessment Report" April 25, 2011.
Author: John Droz Jr., Science Advisor to NC-20.
7. "Questions regarding AGW forced SLR," June 16, 2011.
Author: Bill Price, Land Alliance of North Carolina.

A Critique of the [2010 North Carolina Sea-Level Rise Assessment Report](#)

By Dave Burton

Cary, NC

<http://www.burtonsys.com/email/>

M: 919-244-3316

March 29, 2011

"Future generations will wonder in bemused amazement that the early twenty-first century's developed world went into hysterical panic over a globally averaged temperature increase of a few tenths of a degree and, on the basis of gross exaggerations of highly uncertain computer projections combined into implausible chains of inference, proceeded to contemplate a roll back of the industrial age."

- Dr. Richard Lindzen (Alfred P. Sloan Professor of Meteorology, Department of Earth, Atmospheric and Planetary Sciences, MIT)

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<u>Claim #6 (p.7): "The 2007 IPCC report estimates that for the period 1961-2003, approximately 60 percent of the SLR was due to an addition of freshwater to the oceans from melting glaciers, while 40 percent was due to thermal expansion. For the period 1993-2003, the ratio reversed, with thermal expansion accounting for 60 percent of the rise.".....</u>	<u>11</u>

Claim #7 (p.7): “The IPCC Fourth Assessment Report (IPCC, 2007) contains forecasts for global average SLR ranging from 0.18 meters to 0.59 meters (7 to 23 inches) by the year 2100 AD. ... IPCC estimates are conservative because contributions to SLR from melting Greenland and Antarctic ice sheets are uncertain and this uncertainty was not included when calculating estimates...”..... 11

Claim #8 (p.7): “In summary, there is consensus that the rate of SLR will increase during the 21st century and beyond (IPCC, 2007; CCSP, 2008, 2009).”..... 11

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Claim #11 (p.10): “Over the course of 90 years (to 2100 A.D.), ... local differences [in rate of sea level rise] are likely to be overwhelmed by the global effects of accelerating ice melting and thermal expansion.”..... 16

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Claim #15 (p.11): “Figure 2. ... The most likely scenario for 2100 AD is a rise of 0.4 meter to 1.4 meters (15 inches to 55 inches) above present.”..... 17

Claim #16 (p.11): “the Science Panel believes that the Rahmstorf method is robust and 1.4 meters a reasonable upper limit for projected rise.”..... 17

Claim #17 (p. 12): “A one meter (39 inch rise) is considered likely in that it only requires that the linear relationship between temperature and sea level that was noted in the 20th century remains valid for the 21st century”..... 19

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APPENDIX: NC TIDE STATION DATA.....20

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Background

[The Report](#) was prepared by the N.C. [Coastal Resources Commission](#)'s ("CRC") Science Panel on Coastal Hazards ("the Science Panel") for the N.C. Department of Environment and Natural Resources, Division of Coastal Management ("DCM").

The key question they attempt to answer is, *"how much SLR (sea level rise) the CRC should be planning for by 2100."* (p.3)

Summary

Unfortunately, the Report is riddled with errors. It is strikingly unscientific in its approach, and its conclusion is wildly wrong:

- It began by cherry-picking a single, outlier NC tide station as representative of the State, obviously chosen for its atypically large rate of recorded sea level rise.
- It used **just 26 years** of sea level data from that tide station, despite the fact that 34 years of data were available, and other NC tide stations had **over 75 years** of data available.
- Then it applied a discredited methodology from a fringe alarmist researcher, to justify predicting a wildly accelerated rate of sea level rise, far beyond even the IPCC's alarmist predictions.
- Then it exaggerated even his implausible projections.
- Worst of all, it never even mentioned the fact that **the actual historical record of sea level has shown no sustained acceleration in rate of rise for over 80 years**, neither globally, nor here in North Carolina. That is the single most important thing to know about sea level rise, but you can't learn it from this Report.

The Report recommended planning for one meter (39 inches) of sea level rise by 2100, for all of North Carolina.

That is absurd. The best science indicates that **most of the NC coast will see only 3-14 inches of sea level rise by 2100**, though in northeastern NC 12-20 inches is likely due to land subsidence.

Trickle-down Errors

Unfortunately, the erroneous information in this report is corrupting other reports, with great potential to cause misguided public policy decisions. Here are examples of two other reports which have drawn upon this one, uncritically incorporating its erroneous conclusion, and sometimes adding errors of their own. **Google [finds many others](#), as well.**

The [2010 DCM Assessment and Strategy draft document](#) says

p. 12 (p.14 in Adobe Reader): *“For the past 30 years, our **policies and strategies** have been based on a SLR rate of 1-foot to 1 1/2-feet per century. However, based on the recommendation from the CRC’s Science Panel on Coastal Hazards (March 2010), **the NC Coastal Resources Commission has adopted a rise of 1 meter by 2100 for planning purposes.** This accounts for an accelerated rise.”*

Here you can see the uncritical acceptance of the Report’s wildly exaggerated projection causing misguided policies and strategies.

p. 14 (p.16 in Adobe Reader): *“Sea level Rise: Rising sea level is a threat to coastal and riparian wetlands in North Carolina... **[Tide] gauge data specific to North Carolina are available only for 20 years**, but suggest a... rate of approximately 4.57 mm per year (1.5 ft per 100 years). ... Rising sea levels will inundate large areas of the Albemarl-Pamlico Peninsula...”*

Here you can also see that the Assessment & Strategy authors assumed (quite reasonably) that if the Science Panel used only 26 years of data (which the A&S authors apparently misread as 20 years) it must be because that’s all the data that was available. You’d think so, wouldn’t you?

In fact, three NC tide stations have more than 50 years of data available, and the [GLOSS-LTT](#) tide station at Wilmington has 75.8 years of nearly continuous high quality tide gauge data, which the Science Panel ignored. Wilmington’s sea level has risen at an average rate of only 7.8" per century, with no sign of acceleration, and no rise in sea level at all in the last 20 years.

Additionally, the A&S authors assume that the tide gauge highlighted in the Report is typical for NC. You’d think so, wouldn’t you? Otherwise, why would the Science Panel choose it?

In fact, Duck is an outlier, which records a much higher rate of sea level rise than other NC sites.

pp. 105-106 (107-108 in Adobe Reader): *“The Science Panel’s report... goes on to recommend that the CRC adopt a rise of one meter by 2100 as a planning level. The report represents a secure foundation upon which the CRC can proceed to pursue program changes... The Science Panel’s report is ready to be translated into policy... for changes to the regulatory program.”*

In fact, the Report is a very inaccurate, and a terrible basis for policy-making.

The [draft NC Coastal Habitat Protection Plan](#) says

p. v (p. 7 in Adobe Reader): *“Completion of several studies indicates that sea level rise is expected to increase in North Carolina at least 1 m per 100 yr.”*

Notice how the errors grow in retelling: “1 meter” becomes “at least 1 meter,” and one botched report becomes “several studies.”

Problems I found in the Report

Claim #1 (p.3): “This report synthesizes the best available science on SLR as it relates specifically to North Carolina.”

In fact, it is wildly at variance with the best available science on sea level rise.

Claim #2 (p.6): “Sea level is the average height of the sea with respect to a conceptual reference surface called the geoid.”

First, I should mention a minor issue with terminology.

The terminology used in the Report is slightly unusual. Most commonly, “local mean sea level” or “LMSL” is used to refer to sea level measured at a particular location, but the Report calls this “RSL.” Most commonly, “global mean sea level” or GMSL refers to any of several kinds of global averages of LMSLs, but the Report calls this “MSL” or just “sea level.”

That could cause confusion, because “MSL” is often used to refer to LMSL (which the Report calls RSL). For example, if you download data for a tide station from NOAA’s web site, the local mean sea level is called “MSL.”

In this critique, I’ve used the terms GMSL and LMSL, except within quotes.

A much worse problem is that the definition given on page 6 of the Report is the wrong one. This is not the definition of global mean sea level which has historically been used, nor is it the definition which is useful for coastal planning.

The Science Panel is using a new definition for sea level which is mainly applicable to sea level in the open ocean. But, for coastal planning, it doesn’t matter whether the sea level goes up or down in mid-ocean. All that matters is whether sea level goes up or down at the coasts, which is not the same thing at all.

Until a little over 15 years ago, all measurements of sea level were done at the coasts, by tide gauges. Global mean sea level was estimated by averaging coastal sea level measurements (using various weighting strategies, since we don’t have enough tide gauges to monitor sea level at all the world’s seacoasts). But in 1992 the first satellite was launched which was capable of measuring sea level over the mid-ocean, giving us the ability to measure a new sort of global mean sea level.

It is a fundamental error to use this new definition for coastal planning, because it isn’t a measure of coastal sea level. The two definitions of global mean sea level have different meanings and result in different rates of sea level change.

To understand one of the reasons why this is so, consider what happens when there is a density change in the top layer of seawater in the open ocean (perhaps due to temperature change). If the density decreases (the water expands) then the sea level rises, in place, in the open ocean, without affecting coastal sea levels at all. (Mariners call this concept “displacement” – it is measured in units of mass, not volume.)

Examples of this are icebergs and sea ice. When frozen, water has reduced density, so an iceberg (or Arctic icecap) rises above the surrounding liquid water. Its top surface is a locally elevated sea level. When the ice melts, that locally elevated sea level falls, but it has no effect at all on

coastal sea level, because the iceberg's water has the same mass (displacement) regardless of its varying density and solidity.

The same thing happens when surface water warms in the open ocean. Sea level goes up locally, in the open ocean, due to thermal expansion of the water, but it has no effect at all on coastal sea levels.

(Note: density changes in seawater in lower layers of the ocean do affect coastal sea levels, but it takes hundreds of years for surface heat to find its way to way down to the lower layers of the ocean, so anthropogenic global warming cannot have much affected it yet.)

Claim #3 (p.6): “Currently, MSL is rising at a rate of approximately 2mm per year (0.08 inches/yr) if averaged over the last hundred years, and around 3mm per year (0.12 inches/yr) over the last fifteen years. The rate of MSL rise has increased in response to global warming.”

That is wrong. Actually, global mean coastal sea level has been rising at only about 1.1 mm/year over the last hundred years or so, and the rate is not accelerating. Only if satellite (non-coastal) sea levels are being discussed, or computer model-based “corrections” added, can such high rates of global mean sea level rise be found.

Sea level is rising, but very slowly. The rise in sea level seems to be in response to warming, in the sense that it commenced at roughly the end of the Little Ice Age (LIA), in the late 1800s. However, it certainly is **not** due to anthropogenic (human-induced) global warming, because **the rate of sea level rise ceased to increase 80+ years ago**, which was before most human-produced greenhouse gases were released into the atmosphere. Even the IPCC's Third Assessment Report (2001) noted the “*observational finding of no acceleration in sea level rise during the 20th century.*”

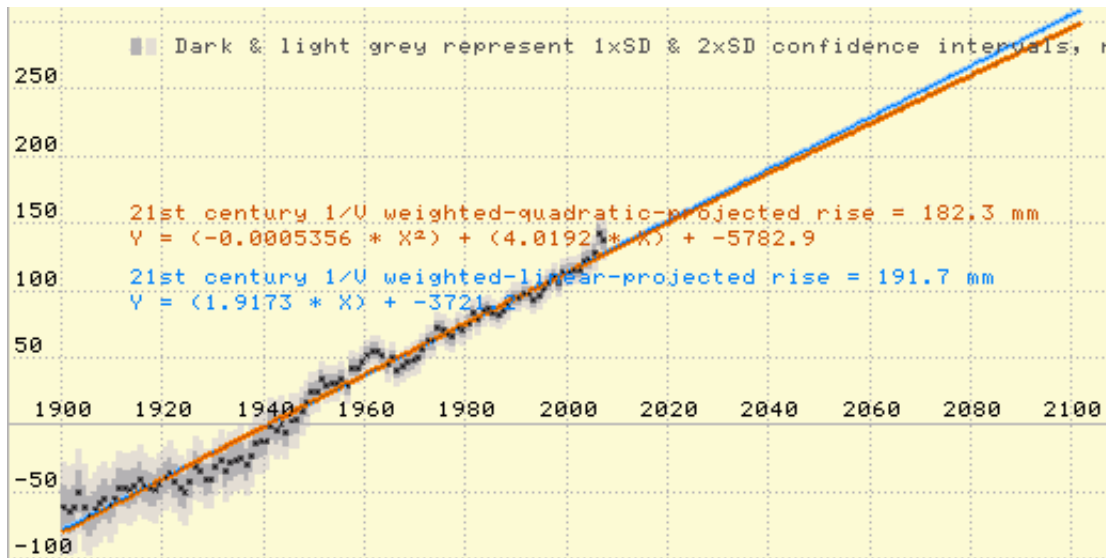
The finding of no acceleration in rate of sea level rise was more recently confirmed by Houston & Dean (2011). They wrote in their conclusion, “*Our analyses do not indicate acceleration in sea level in U.S. tide gauge records during the 20th century. Instead, for each time period we consider, the records show small decelerations that are consistent with a number of earlier studies of worldwide-gauge records.*”

Note #1: Most of the NC coast is slowly subsiding, so NC's average coastal rate of increase for Local Mean Sea Level (LMSL, which the Report calls “RSL”) is above the global average, and is, coincidentally, a little over 2mm/year. But that's not what the Science Panel was talking about.

Note #2: There was a paper produced in 2006 by Church & White, which claimed to have detected a slight “20th century acceleration in sea level rise” (while admitting that no previous researchers had found such an acceleration). However, the 20th century acceleration in sea level rise disappeared when they later updated their data (with sea levels through 2007 instead of 2001).

Here's a graph which I made by applying Church & White's 2006 paper's methodology to their more recent sea level data (called “2009” but really just through 2007), for years 1900 and later. As you can see, the acceleration in rate of sea level rise following the end of the LIA had ceased by 1930, and despite all of humanity's greenhouse gas emissions there's been no sustained acceleration in global mean sea level rise since then. (The orange line is a minimum-variance

unbiased estimator quadratic fit to the data, and the negative quadratic coefficient and slight downward curve indicate deceleration in rate of sea level rise.):



A [simple average](#) of the sea level trends measured by the [159 GLOSS-LTT tide gauges](#) around the world (which is the very best data we have on coastal sea levels) yields an average rate of sea level rise of only about 0.6 mm/year. (Note: 1/4 of the GLOSS-LTT coastal tide gauges show sea levels falling, rather than rising!) [More sophisticated averaging](#), which takes into account the uneven geographical distribution of the tide gauges, yields a global average mean sea level rise of just over 1.1 mm/year.

The widely bandied about 1.7 - 1.8 mm/year figure for global coastal mean sea level rise over the last century (which the Science Panel has apparently rounded up to 2 mm/year) is the result of “correcting” actual data by adding adjustment factors calculated from computer models. The late John Daly [explained](#) it well:

"The impression has been conveyed to the world's public, media, and policymakers, that the sea level rise of 18 cm in the past century is an observed quantity and therefore not open to much dispute. What is not widely known is that this quantity is largely the product of modeling, not observation, and thus very much open to dispute, especially as sea level data in many parts of the world fails to live up to the IPCC claims."

The disparity between the measured rate of sea level rise and the alarmists’ claimed rate is partially due to the computer model-based “corrections” which the alarmists routinely add to measured rates of coastal sea level rise, to account for land movement. Their adjustments “correct” primarily in one direction: up. They correct for Glacial Isostatic Rebound (which, for most locations, increases the reported rate of sea level rise), but they do not correct for land subsidence due to water, oil & gas wells.

AR4 admits this (though without mentioning how it biases the result) in [the final paragraph of AR4 section 5.5.2.1](#) (or [here](#)). Unfortunately, the Science Panel seems to have overlooked it. The key sentence is, “Trends in tide gauge records are corrected for GIA using models, but not for other land motions.”

Correcting only for factors that reduce the average rate of sea level rise, and not for factors that increase it, inflates the reported rate of global mean sea level rise.

Actual global mean coastal sea level, as measured by tide gauges, has exhibited no acceleration in the last 80+ years.

So, you might wonder, if global mean sea level rise hasn't accelerated, and it used to be 1.1 to 1.2 mm/year ("corrected" to 1.7 or 1.8 mm/year), then where does that 3 mm/year claim for the last 15 years come from?

I know of two sources for this error:

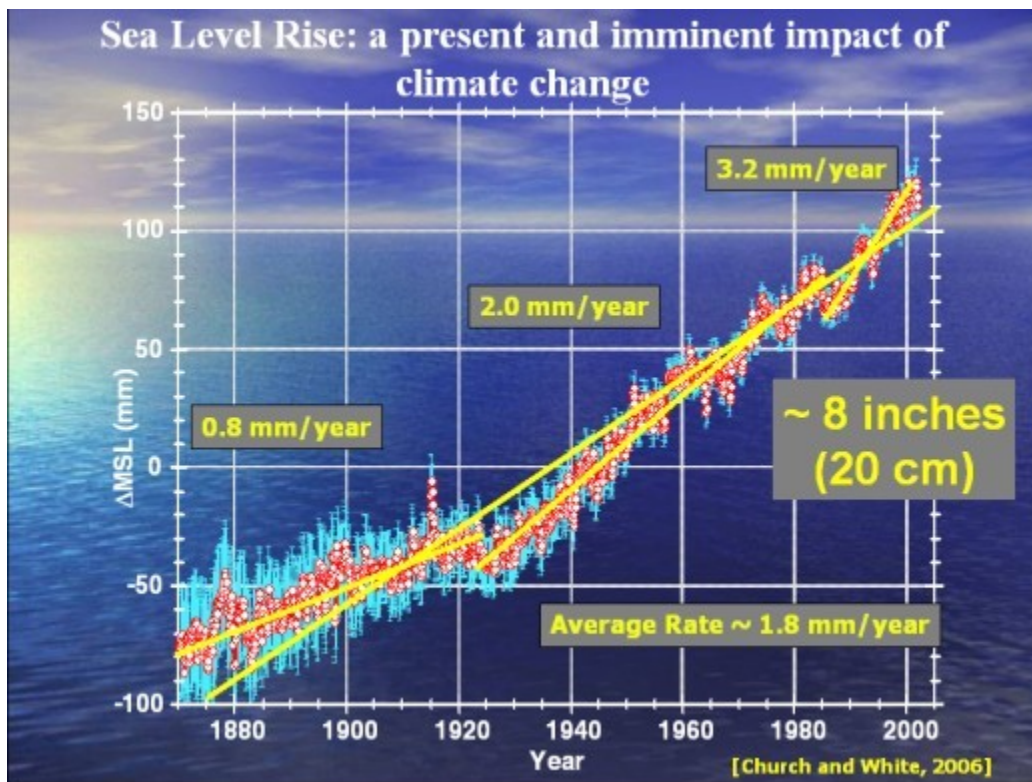
1. Confusion about the difference between satellite-measured sea level and coastal sea levels measured by tide gauges. We have just over 15 years of satellite data. The satellites are measuring a higher rate of sea level rise than are the tide gauges (though neither the satellites nor the tide gauges are detecting an acceleration in rate of sea level rise). If you draw a graph that uses tide gauge data until 15 years ago, but then switches to using satellite data, you'll create an apparent acceleration for the last 15 years.

Equating the two different kinds of sea level measurement is simply wrong, but climate alarmists often do it anyhow, creating an illusion of acceleration in rate of sea level rise. This is explained well by Dr. Willem de Lange, of New Zealand's University of Waikato, [here](#).

2. Deliberate deception. Some global warming alarmists simply don't care about the truth. Their blatant and intentional manipulation and misinterpretation of data is sometimes just amazing.

Consider NASA's James Hansen (infamous from Climategate). Hansen's team is one of the main sources for the claim that the rate of sea level rise has accelerated from 1.7 or 1.8 mm/yr (which is already an exaggeration) to over 3 mm/year.

Let me show you how they try to justify that false claim. Take a look at this slide, from [a NASA presentation](#) at a [symposium](#) in Fall, 2009:



On the basis of “23 Annual Tide Gauge Records” the presenter claimed that the rate of sea level rise increased around approximately 1910 (in an earlier slide) or 1925 (in this slide) to 2.0 mm/year, a rate which his first tide gauge line shows holding steady through the end of the 20th century, but which this slide purports to show increasing to 3.2 mm/year around 1985.

Now, look closely at this graph. ***Do you see the chicanery?*** They reset the starting points downward for the trend lines! For both the 2.0mm/yr and 3.2 mm/yr line segments, they intentionally skewed the slopes higher by starting with a negative noise spike. Plus, for the 3.2 mm/yr segment they also ended it on a positive noise spike (and had to stop the segment prematurely to find the highest spike)!

That is obvious, shameless, intentional distortion of the data.

Also, why do you suppose that they chose to look at just 23 tide gauges? There are 159 tide gauges in the [GLOSS-LTT](#) set, chosen specifically for monitoring long-term sea level trends, because of the quality of their records and their good geographical distribution. 70% of them have recorded local MSL trends of less than NASA's claimed 2.0 mm/yr. 44 of the 159 GLOSS-LTT tide stations have tide records dating from the 1800s, though two ceased operation in the 1930s, leaving 42. Of the 42, 36 (86%) show MSL trends of less than 2.0 mm/yr.

Also, note the credit at the bottom of the NASA graph: “[Church and White, 2006].” That’s the same paper that I mentioned earlier. (Church and White’s newer data shows no 20th century acceleration in sea level, after all.)

What’s more, in that same 2006 paper Church & White admit adding a fudge factor which increased the reported rate of global mean sea level rise! Here's the remarkable admission [quoted](#) from their paper:

“An additional spatially uniform field is included in the reconstruction to represent changes in GMSL. Omitting this field results in a much smaller rate of GMSL rise...”

That, along with GIA, is apparently why their reported rate of sea level rise was so much greater than the ~1.1 mm/year value which results from geographically weighted averaging of the best actual tide gauge data.

I asked Church & White why they used the adjective “spatially.” Surely, I assumed, since they were reporting acceleration trends, the “additional field” must at least have been *temporally* uniform. Wrong! I’ve yet to figure out what that “field” is, but Dr. Church told me that it was not temporally uniform!

Claim #4 (p.6): “SLR can be directly measured in a straightforward way. The longest record of direct measurement of sea level comes from tide gauges.”

That’s true for traditional coastal sea levels, but the Science Panel defined Sea Level in a way that can only be measured by satellites. They seem not to have understood the difference.

Claim #5 (p.6): “A drawback to tide gauges in North Carolina, in addition to their small number, is that most of them don’t extend back in time more than 50 years, making it difficult to resolve changes in the rate of rise over the decades.”

Actually, NC has three different tide gauge records which extend back in time more than 50 years: Wilmington, Southport, and Beaufort.

Wilmington has 75.8 years of near-continuous data, Southport 75 years (with gaps), and Beaufort 58 years (with gaps). However, the Science Panel ignored those long records to focus instead on an inferior 26-year tide record from Duck, *which they admit is too short to resolve changes in rate of sea level rise*. (In fact, even Duck had eight more years of data available, which the Science Panel did not examine.)

So why did they pick Duck? That seems obvious:

Station Number	Station Name	Mean Sea-Level Trend mm/yr	Mean Sea-Level Trend inches/century	Period of Data
8651370	Duck	4.27 ± 0.74	16.8 ± 2.9	1978-2002
8652587	Oregon Inlet Marina	2.55 ± 1.21	10.1 ± 4.8	1977-1980, 1994-2002
8654400	Cape Hatteras	3.46 ± 0.75	13.6 ± 3	1978-2002
8656483	Beaufort	3.20 ± 0.54	12.6 ± 2.2	1973 -2002
8656590	Atlantic Beach	2.48 ± 1.99	9.7 ± 7.8	1977-1983, 1998-2000
8658120	Wilmington	2.12 ± 0.23	8.4 ± 0.8	1935-2002
8659084	Southport	2.04 ± 0.25	8 ± 1	1933-1954, 1976-1988
8659182	Yaupon Beach	2.92 ± 0.77	11.5 ± 3	1977-1978, 1996-1997

(Note that Beaufort actually has data starting in January, 1953, not 1973.)

But could there be another explanation?

I’ve attempted (at least twice) to contact each of the members of the Science Panel, to ask this question (and others). Most haven’t responded, but member one did, and he said that the Science Panel was concerned that dredging near the tide gauges with longer records might have distorted the results, and that one of the reasons they chose Duck was that it was unaffected by dredging.

However, I think that concern is misplaced. From what I've read, channel dredging is usually expected to have only a small effect on mean sea level measurements. It is, however, expected that dredging may sometimes have an effect on the range of tide levels – that is, the mean high water (MHW) minus mean low water (MLW).

So if local MSL was affected by dredging, then MHW-MLW should have been affected even more. Conversely, if there was no noticeable effect on the MHW-MLW from a particular dredging project, then we can be confident that the effect on MSL was inconsequential.

So, I graphed the MHW-MLW for Duck and for the three NC tide stations with long MSL records, over the 1978-2002 period that the Report used, looking for "signals" from dredging. I couldn’t see any. In fact, the two graphs which were most similar were the graphs for Duck and Beaufort.

Claim #6 (p.7): “The 2007 IPCC report estimates that for the period 1961-2003, approximately 60 percent of the SLR was due to an addition of freshwater to the oceans from melting glaciers, while 40 percent was due to thermal expansion. For the period 1993-2003, the ratio reversed, with thermal expansion accounting for 60 percent of the rise.”

That claim is one of the (many) problems in AR4. Note that sea level rise due to thermal expansion of the top layer of the ocean does not affect coastal sea levels. It does affect satellite-measured sea level, but for coastal planning purposes that doesn't matter.

Only thermal expansion in the lower layers of the ocean affects coastal sea level. Quantifying that is problematic, at present. The Argo Buoys are attempting to measure deep ocean temperatures, but they aren't finding much warming in the ocean depths. In fact, early [reports](#) (now [disputed](#)) were that the Argo Buoys were detecting a [slight cooling](#), rather than warming.

Claim #7 (p.7): “The IPCC Fourth Assessment Report (IPCC, 2007) contains forecasts for global average SLR ranging from 0.18 meters to 0.59 meters (7 to 23 inches) by the year 2100 AD. ... IPCC estimates are conservative because contributions to SLR from melting Greenland and Antarctic ice sheets are uncertain and this uncertainty was not included when calculating estimates...”

This claim doesn't even pass the “laugh test!” Anyone who thinks the IPCC's alarmist predictions are “conservative” hasn't been paying attention.

Anyone who thinks that the Antarctic ice sheets are in danger of melting *really* hasn't been paying attention. As even the IPCC's 2001 Third Assessment Report [noted](#), “*It is now widely agreed that major loss of grounded ice and accelerated sea level rise [from the West Antarctic Ice Sheet] are very unlikely during the 21st century.*” (The larger [East Antarctic Ice Sheet](#) is the coldest place on earth, and hasn't melted in millions of years.)

Nor is Greenland a cause for worry. Greenland is colder now than it was in the 1930s and 1940s, and much colder than during the Medieval Warm Period (~800-1100 yrs ago), neither of which saw catastrophic sea level rise from any Greenland ice sheet “tipping point.”[\[1\]](#)[\[2\]](#)[\[3\]](#)[\[4\]](#)[\[5\]](#)[\[6\]](#)

The IPCC's climate alarmism gets diminishing respect in the scientific community, outside of those who have a vested interest in climate alarmism, and it certainly isn't because they're too conservative.

Consider, for example, meteorologists. Like climatologists, meteorologists are especially well equipped to distinguish climate from mere weather, and to assess the claims of the IPCC. But, unlike the best-known climatologists, most professional meteorologists have no conflict of interest, because, unlike those climatologists, most meteorologists don't depend on climate alarmism for their livelihoods. So it is particularly telling that [polls of professional meteorologists show that most of them distrust the IPCC and its alarmist conclusions.](#)

Claim #8 (p.7): “In summary, there is consensus that the rate of SLR will increase during the 21st century and beyond (IPCC, 2007; CCSP, 2008, 2009).”

That's complete nonsense. After over half a century of accelerating greenhouse gas emissions, there has been no acceleration at all in the rate of sea level rise. It is irrational to expect that sea

level will suddenly start rising at an accelerated rate in the next 80 years, when it hasn't done so in the last 80.

In fact, there's no consensus that significant anthropogenic global warming is occurring, either. Anyone who thinks that there is obviously hasn't read the [U.S. Senate Minority Report](#), or leading experts like [Dr. Fred Singer](#) and [Dr. Richard S. Lindzen](#), or even [the BBC](#).

Famed aviation engineer Burt Rutan has an [excellent presentation](#) which can bring you up to speed on the issue fast.

Harris polled 500 leading American Meteorological and Geophysical scientists in early 2007, and even back then, before Climategate, there was no consensus. Harris found that:

"97% agree that 'global average temperatures have increased' during the past century. But not everyone attributes that rise to human activity. A slight majority (52%) believe this warming was human-induced, 30% see it as the result of natural temperature fluctuations and the rest are unsure."

52%-to-30% was obviously no "consensus." Since then, Climategate has revealed that leading IPCC-associated climatologists were manipulating & withholding data, hiding evidence, and blackballing skeptics to promote anthropogenic global warming alarmism, so there has almost certainly been a further weakening of trust among leading scientists for the IPCC's conclusions. (The recent series of progressively harsher winters has probably cut into support for global warming theories, as well.)

Even so, the weak and disputed evidence for significant anthropogenic global warming is at least stronger than the completely nonexistent evidence for anthropogenically-triggered catastrophic sea level rise.

Claim #9 (p.7): "RSL change will, for most coastal locations, be different from globally predicted MSL changes. It is for this reason that management plans should consider rates of RSL rise specifically pertinent to North Carolina rather than rates from other regions or global averages."

That is correct, but we have over 75 years of good tide gauge records for the NC coast (at Wilmington), and by comparison with other locations which have even longer tide gauge records we can extrapolate back further, with much greater confidence than by using questionable "proxies" from sediment deposits.

Claim #10 (p.9): Table 1. MSL trends for N.C. water-level stations in mm/year (adapted from Zervas, 2004):

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8659182	Yaupon Beach	2.92 ± 0.77	11.5 ± 3	1977-1978, 1996-1997

That table is very strange.

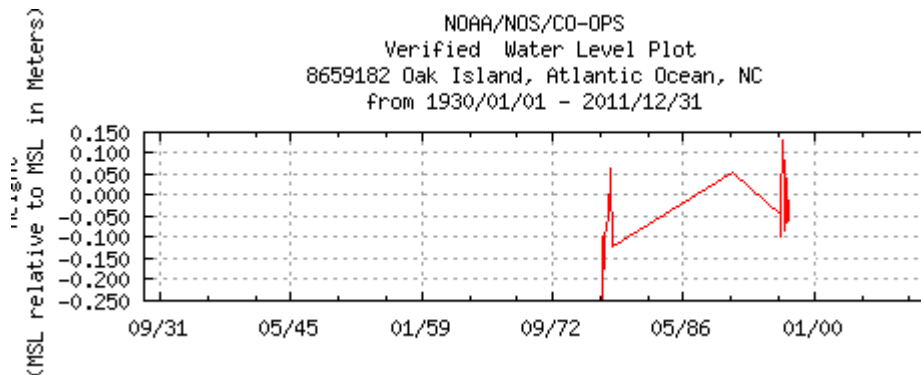
The newest data in that table is from 2002! But current (February 2011) data from the best NC tide stations is already online at noaa.gov. So why does this 2010 report rely on such severely outdated data?

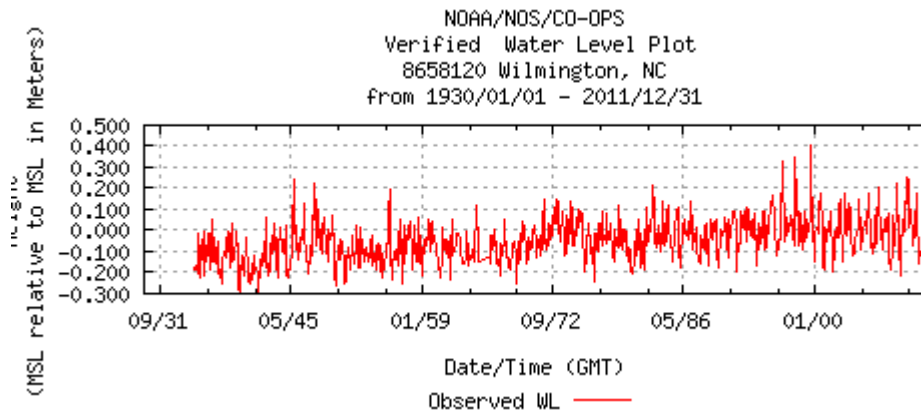
At the end of this critique, I've reported and graphed the latest data and LMSL trend calculations for those eight tide stations.

The best data is from Wilmington: 75.8 years of nearly continuous measurements, starting in 1935. Southport's data starts in 1933, but has gaps in the measurement record. Beaufort's data starts in 1953 (not 1973 – the table is wrong).

The other NC tide gauge records are much shorter, and some of those eight tide stations have so little data that to purport to extract trends from them is foolishness. Consider Yaupon Beach (Oak Island), which the table reports as having “2.92 + 0.77” (probably a typo for “2.92 ± 0.77”) rise. The Yaupon Beach tide gauge has only 27 months of LMSL data, compared to 883 months of LMSL data for Wilmington.

Compare NOAA's graphs for the two locations:





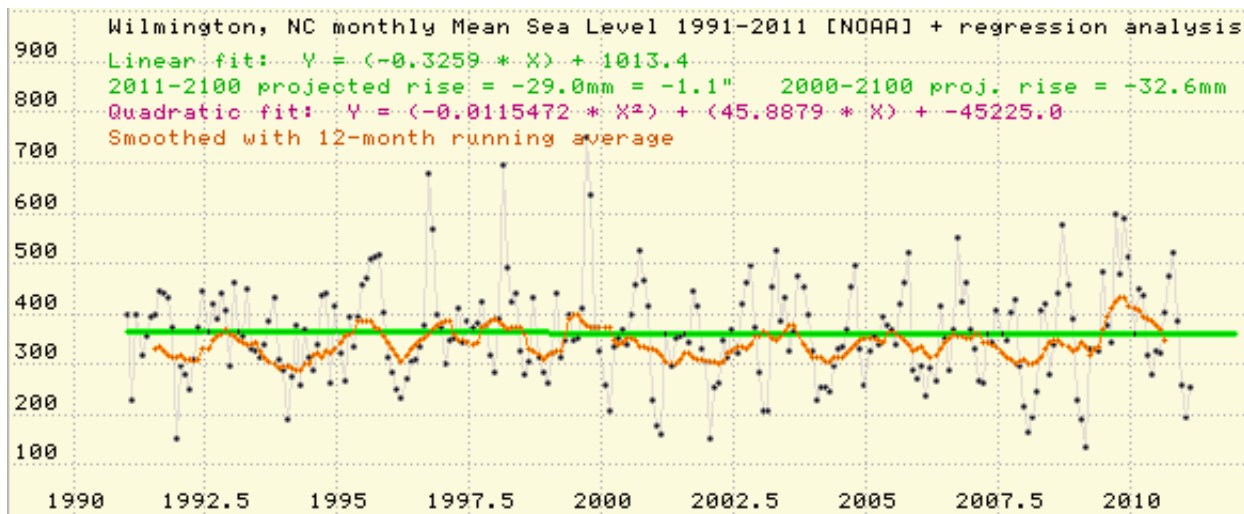
The report speaks approvingly of averaging data from multiple NC tide stations, which makes me wonder why anyone would adulterate real, solid data (from Wilmington) by combining it with randomness (from Yaupon Beach, Oak Island)?

And why would they ignore the most recent 8 years of measurements?

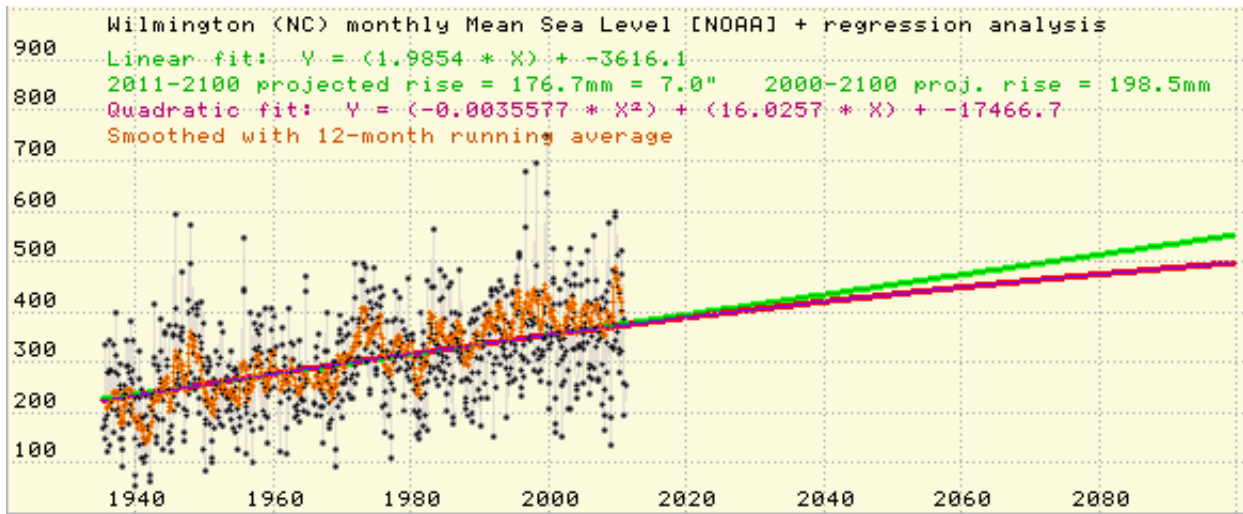
The problem for the alarmists is that Wilmington's tide station (like nearly all other long term tide stations) has seen no sustained acceleration in rate of sea level rise over its 75.8-year history. **In fact, Wilmington has seen no sea level rise at all in the last 20 years.** But if you delete the last decade of data, you can see what *appeared* to have been a slight upward trend, in the late 20th century.

With the latest data included, it is clear that the uptick was a transient change, like many other upticks and downticks before it, but it is understandable that it could be mistaken for a trend if (like the Science Panel) you didn't bother to examine recent data.

Here's my plot of the last 20 years of Wilmington sea level data, with regression analysis:

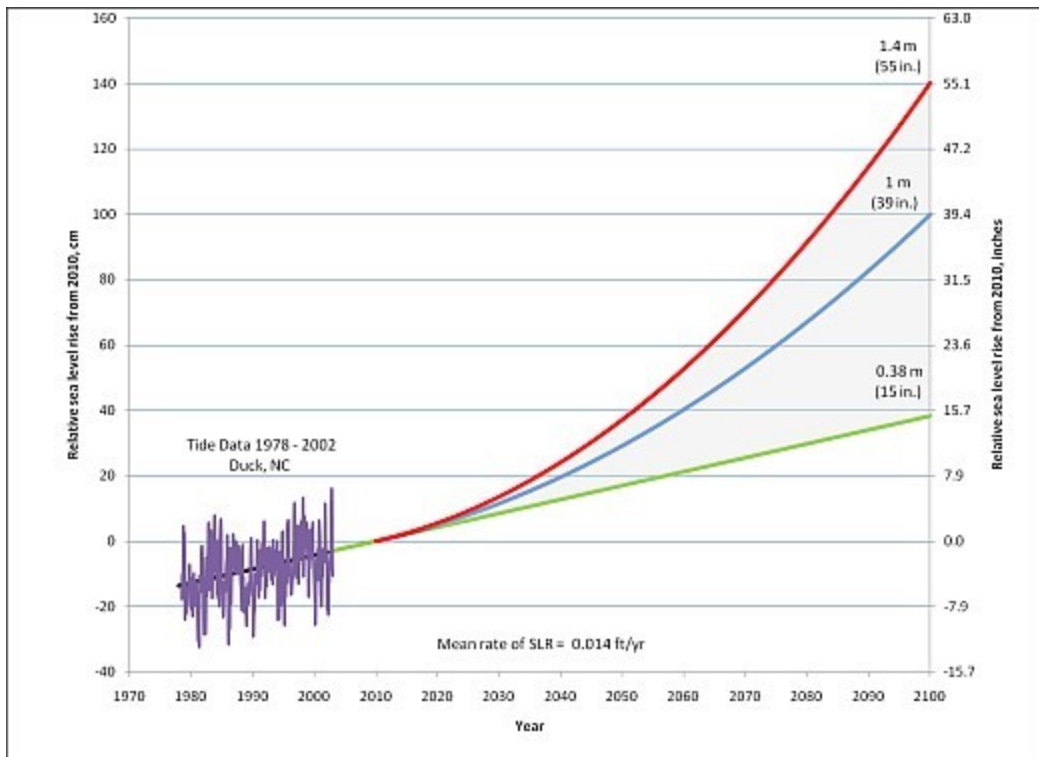


Here's my plot of all the Wilmington sea level data, 1933-2011, with linear and quadratic trend lines fitted by regression analysis, and extrapolated to 2100:

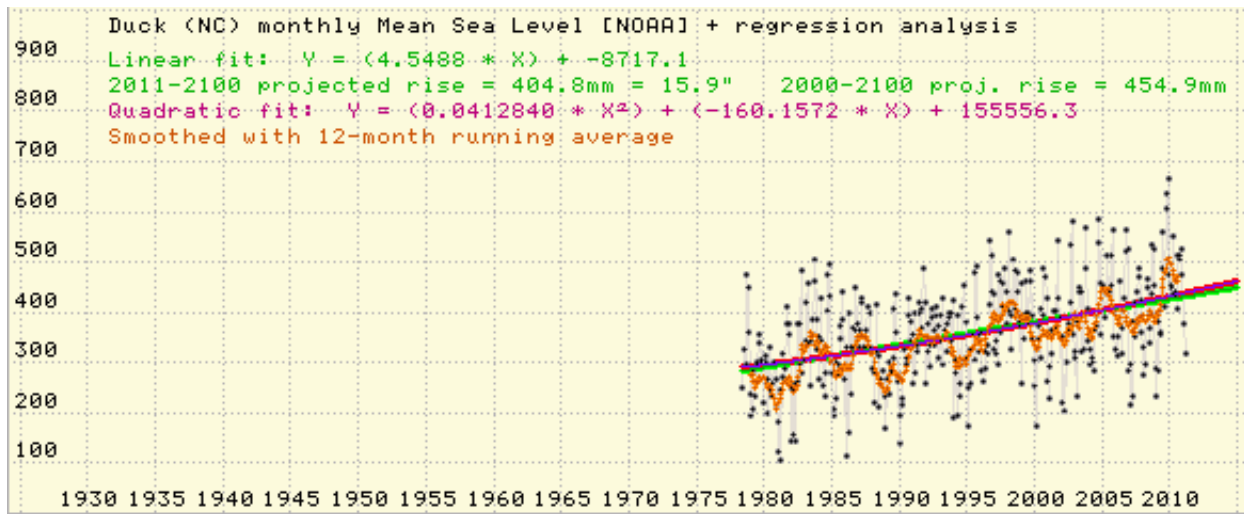


That graph represents 75.8 years of the best available NC tide gauge data, from the only GLOSS-LTT tide station in NC. The projections are from regression analysis of the real data. The linear projection is for just 7 inches of sea level rise by 2100. (The quadratic fit shows slight deceleration, so the quadratic projection is even lower, but the deceleration is statistically insignificant so I don't recommend using the quadratic projection for predictive purposes.)

Contrast that with "Figure 2" of the NC 2010 SLR AR, which is based on just 26 years of data from Duck, a cherry-picked, non-GLOSS-LTT tide station, obviously chosen, in part, because it records the highest rate of LMSL rise in NC. Except for the green linear extrapolation line, the graph's extrapolations have nothing to do with the data being extrapolated! NC's actual tide gauge record shows no sign of sustained acceleration in rate of sea level rise. But the Science Panel's Report predicts massive acceleration anyhow:



Here's my plot of the sea level data from Duck, with linear and quadratic projections derived by regression analysis of the data:



The slight upward curve for the quadratic curve indicates a slight acceleration in rate of sea level rise over the period 1978-2011, but (like the slight deceleration at Wilmington) it is statistically insignificant.

Claim #11 (p.10): “Over the course of 90 years (to 2100 A.D.), ... local differences [in rate of sea level rise] are likely to be overwhelmed by the global effects of accelerating ice melting and thermal expansion.”

That is completely wrong. Historically, on average, [about half of the sea level change seen at coastal tide gauges has been due to local effects](#), rather than global effects. Even a doubling of the global average rate of sea level rise (from 1.1 mm/yr to 2.2 mm/yr) would result in only about a 50% increase in the long term average rate of local sea level rise at Wilmington, and a 24% increase at Duck.

There is no reason to expect this to change, either. There's no evidence to support the prediction that ice melting and thermal expansion will accelerate or cause *any* acceleration in rate of sea level rise over the next 89 years.

Claim #12 (p.10): “A rise of 0.4 meter (15 inches) is considered a minimum, since this is the amount of rise that will occur given a linear projection with zero acceleration.”

That's complete nonsense. Even a doubling of the global average rate of mean sea level rise (from the current 1.1 mm/yr to 2.2 mm/yr) would result in only a total of 11 inches of rise in sea level by 2100 at Wilmington, and 20 inches at Duck.

Claim #13 (p.10): “Various models and observations indicate that accelerated rates of SLR in the future are likely”

Untrue. Only models support that prediction. The observational data contradicts it.

Claim #14 (p.10): “various investigations indicate a two- to four-fold increase in rates of rise over the last century (Church and White, 2006...)”

As I mentioned previously, Church and White’s later (2009) data shows that there was **no acceleration** in global average mean coastal sea level during the 20th century, and even their earlier data showed that most of the detectable historical acceleration in sea level rise occurred in the 19th century, and all of it occurred before 1930.

There has been no sustained increase in rate of sea level rise during the last 80 years.

Claim #15 (p.11): “Figure 2. ... The most likely scenario for 2100 AD is a rise of 0.4 meter to 1.4 meters (15 inches to 55 inches) above present.”

That’s complete nonsense. The most likely scenario for 2100 AD is a global average rise in coastal mean sea level of 0-200 mm (0-8 inches) relative to 2011.

Locations which have higher than typical rates of local mean sea level rise due to local land subsidence can expect a somewhat greater sea level increases. E.g., Wilmington can expect 80-280 mm (3-11 inches), and Duck can expect 300-500 mm (12-20 inches).

Claim #16 (p.11): “the Science Panel believes that the Rahmstorf method is robust and 1.4 meters a reasonable upper limit for projected rise.”

This is very, very wrong.

The “[Rahmstorf method](#)” is an *ad hoc* heuristic that predicts *rate* of sea level rise as a linear multiple of predicted surface air temperature *level* relative to an arbitrary point in history. It doesn’t even pretend to be derived from analysis of any physical mechanism that could cause such a relationship, and it is contradicted by the historical record.

According the Rahmstorf method, the rate of sea level rise is directly proportional to the temperature level.

But there has been **no acceleration at all** in the rate of coastal sea level rise for at least 80 years, neither here in NC nor elsewhere in the world (a period of time which, BTW, includes the vast majority of anthropogenic greenhouse gas emissions). That means one of two possible conclusions is inescapable:

1. Either global average temperature has not risen, in which case not merely the whole AGW theory comes crashing down, but also the surface temperature measurement record, and the Report's prediction with them; or,
2. Rahmstorf is all wet, in which case the Report's prediction is still baseless.

Global average surface temperatures peaked around 1998, and have plateaued since then, but remain near that high. (By most accounts, 2010 was one of the 3 or 4 hottest years on record, despite ending with a particularly harsh winter.) So, if temperatures increased, why didn't the rate of sea level rise also increase?

According to the Rahmstorf method, the rate of coastal sea level rise should be much higher now than it was during, for example, the chilly 1950s - 1970s.

But look at that Wilmington sea level graph, from NOAA, above. (Or look at [any other](#) good quality long-term sea level graph.)

You can easily see that the rate of coastal sea level rise during the (hot) last 30 years was no higher than during the previous (cold) 30 years.

Obviously, the Rahmstorf method doesn't work.

What's more, the Rahmstorf method depends entirely on some other source for temperature predictions, and both Rahmstorf and the Science Panel credulously use the IPCC as their source for those predictions.

Now think about that.

Rahmstorf's method depends on the temperature predictions of the IPCC – yet he (and the Science Panel) rejected the IPCC's predictions about sea level. If you believe in the “best science” claims of the IPCC, then how can you simultaneously disbelieve their claims about sea level?

For Rahmstorf to be right, the IPCC must be wrong about sea level, but it must also be right about temperature.

And, as if that weren't enough, the Report exaggerated even Rahmstorf's prediction, because his prediction was actually [for a 110-year period](#), but the Science Panel used it for a 90-year prediction.

The Report called the Rahmstorf method “robust.” But when confronted with criticism of his paper, Rahmstorf eventually [admitted](#) (on RealClimate) that his method was flawed. He wrote:

"In hindsight, the averaging period of 11 years that we used in the 2007 Science paper was too short to determine a robust climate trend. The 2-sigma error of an 11-year trend is about +/- 0.2°C, i.e. as large as the trend itself. Therefore, an 11-year trend is still strongly affected by interannual variability (i.e. weather)"

The Science Panel could have read about Rahmstorf's *mea culpa*, and much more about what's wrong with his method, [back in mid-2009](#), if they'd bothered to.

So, the Science Panel's claim is:

- an exaggeration of...
- the result of applying a falsified *ad hoc* extrapolation method to...
- highly dubious temperature predictions.

It's hard to imagine how a less trustworthy claim could be derived!

Claim #17 (p. 12): “A one meter (39 inch rise) is considered likely in that it only requires that the linear relationship between temperature and sea level that was noted in the 20th century remains valid for the 21st century”

That claim (misquoted without attribution from an erroneous assertion in the second-to-last paragraph of [Rahmstorf’s paper](#)) is pure nonsense. Apparently the Science Panel understood neither Rahmstorf’s method nor the historical record of sea level rise.

In the first place, Rahmstorf didn’t claim to have found “a linear relationship between temperature and sea level.” He claimed that there’s a linear relationship between temperature level and rate of sea level rise (i.e., the first derivative).

In the second place, it is absurd to claim that the prediction “only requires” that Rahmstorf’s method be correct. The prediction is also completely dependent on the accuracy of the IPCC’s dubious global temperature predictions.

(What’s more, according to Rahmstorf’s method, if temperature does not go up then the rate of sea level rise won’t go up either – and, as everyone paying attention knows, global [temperatures have plateaued](#).)

Claim #18/Conclusion (p.12): “the Science Panel recommends that a rise of 1 meter (39 inches) be adopted as the amount of anticipated rise by 2100, for policy development and planning purposes.”

That recommendation is contrary to the best scientific evidence. 7-10 inches is more likely, for most of the North Carolina coast.

Appendix: NC Tide Station data

NOAA lists four tide stations in NC with sufficient quantity and quality of sea level data to calculate meaningful local mean sea level trends: Wilmington, Beaufort, Oregon Inlet Marina, and Southport:

http://tidesandcurrents.noaa.gov/sltrends/sltrends_states.shtml?region=nc

All four of them have sea level data available on NOAA's web site which is much more recent than the data used in the 2010 NC SLR Assessment Report. (Some of the older Southport & Beaufort data is not available on NOAA's web site, but at my request they sent it to me, and I've put copies of the files on my web site.)

Wilmington has by far the best data: a nearly continuous 75.8-year history of local mean sea level (LMSL), from May 1935 to February 2011.

NOAA calculated rates of sea level rise by regression analysis for those four NC tides stations, using data through 2006. I've recalculated the rates of sea level rise using the latest data (through February 2011 except for Southport, which seems to have ceased operation in 2008).

The four other NC tide stations in the Report's "Table 1" also have downloadable sea level data on NOAA's web site: Duck, Atlantic Beach, Cape Hatteras, and Yaupon Beach / Oak Island. The data from these tide gauges does not approach the quality of Wilmington's data, which is presumably why NOAA did not calculate rates of sea level rise for them, but I did the calculations anyhow.

In addition, I fit quadratics to the latest data from all eight tide stations, looking for signs of acceleration in rate of sea level rise. Three of the eight tide stations showed a slight acceleration in rate of sea level rise. The other five tide stations showed slight deceleration in rate of sea level rise. In no case was the acceleration or deceleration statistically significant. Wilmington (with by far the best data) measured a very slight deceleration in rate of sea level rise, so slight that it is barely visible when graphed.

Only Wilmington is a GLOSS-LTT designated station for monitoring long-term sea level trends. It has much more sea level data available than does any other NC tide station.

I downloaded the latest data from NOAA's web site for each tide station, and analyzed it. (For Beaufort and Southport, the data on NOAA's web site is incomplete, but at my request NOAA sent me the missing data.)

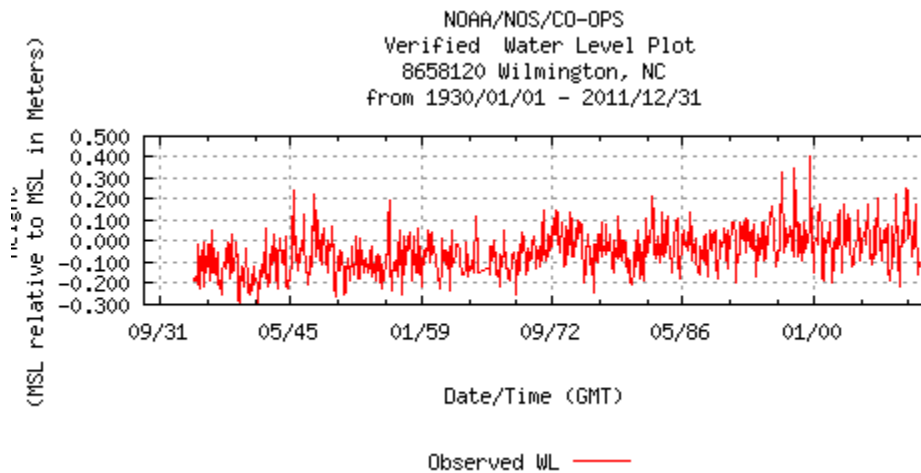
For each tide station, I calculated both linear and quadratic regressions. The small red graphs are downloaded from NOAA's web site, at the URLs given. The larger graphs are mine, with the monthly and smoothed data, and trend line/curve plots.

8658120 - Wilmington -- the only GLOSS-LTT station in NC

http://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?stnid=8658120

http://tidesandcurrents.noaa.gov/data_menu.shtml?

[type=Historic+Tide+Data&mstn=8658120&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0](http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8658120&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0)

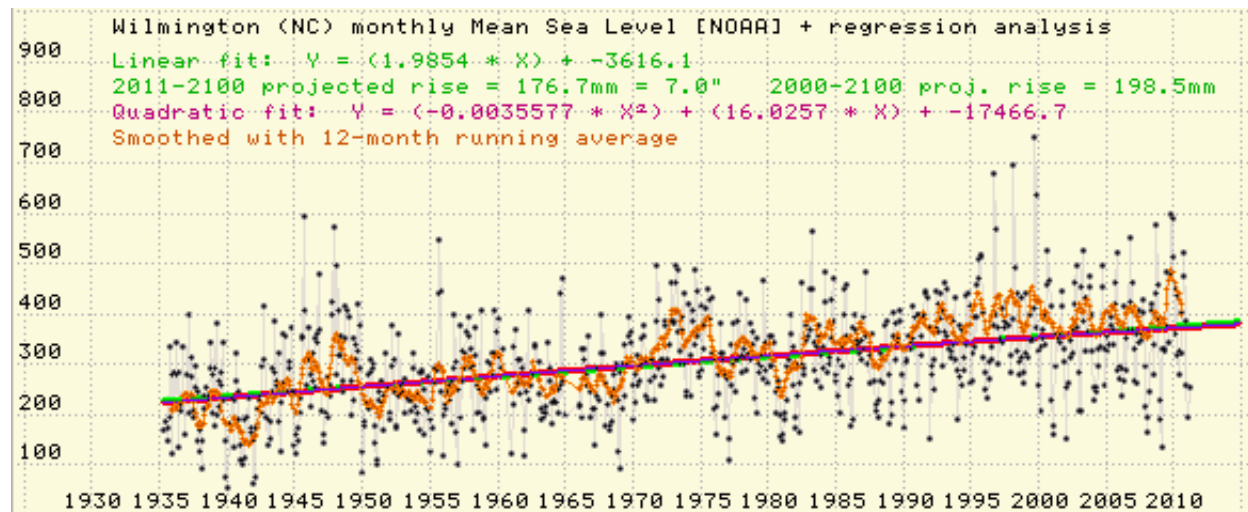


Data from 1935 to 2011, 97% continuous. (76-year record, 883 monthly average data points.)

NOAA-calculated trend (based on data through 2006): 2.07 +/- 0.40 mm/yr

Using the latest data, I calculated a trend of 1.99 mm/yr (7.0 inches by 2100).

Fitting a quadratic, I found a very slight (statistically insignificant) deceleration in rate of sea level rise (though, as previously noted, there has been no sea level rise at all in Wilmington in the last 20 years).

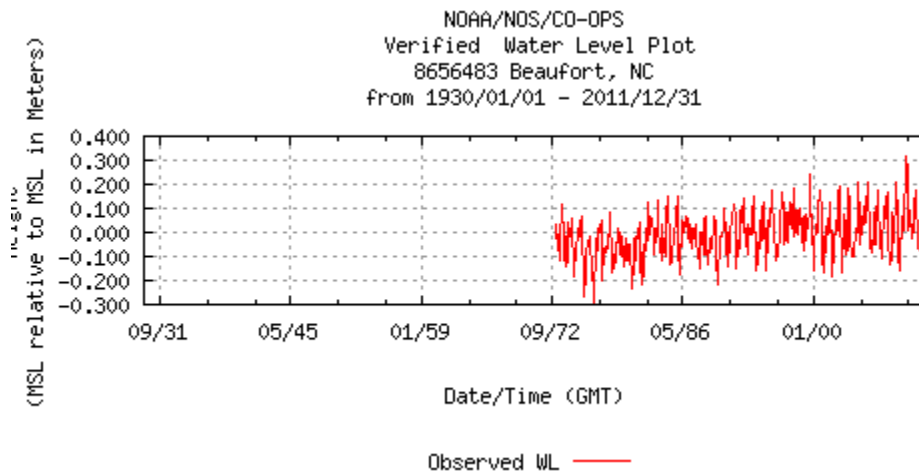


8656483 – Beaufort

http://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?stnid=8656483

http://tidesandcurrents.noaa.gov/data_menu.shtml?

[type=Historic+Tide+Data&mstn=8656483&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0](http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8656483&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0)

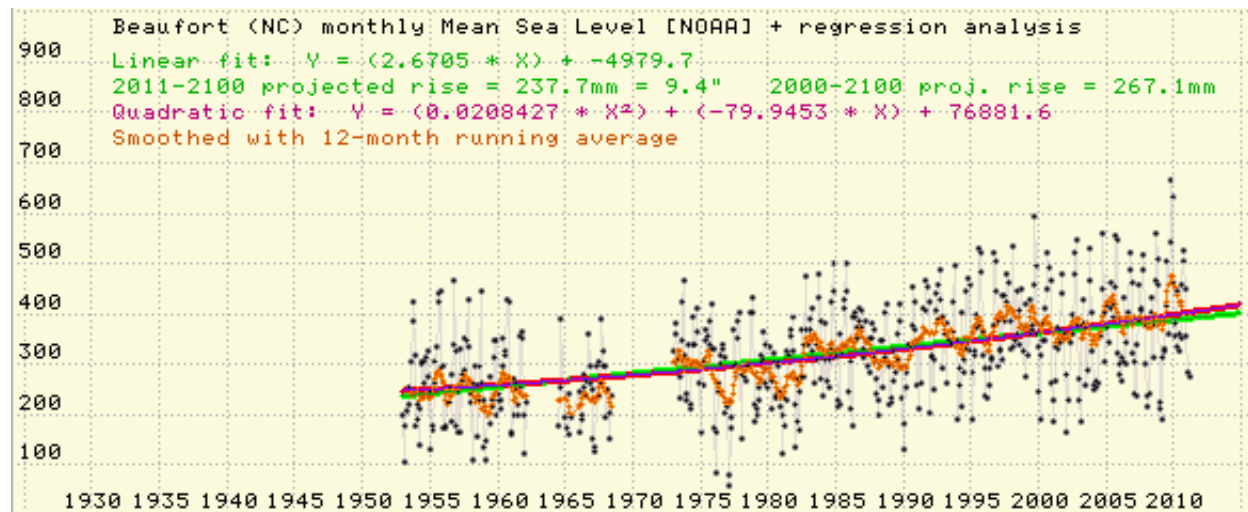


*** The 1953-68 data is missing from NOAA's web site, but at my request they sent it to me (58-year record, 605 monthly data points; the data from 1973 to 2011 is 100% continuous.)

NOAA-calculated trend (based on 1953-2006 data): 2.57 +/- 0.44 mm/yr

Using the latest data, I calculated a trend of 2.67 mm/yr (9.4 inches by 2100).

Fitting a quadratic, I found a slight (statistically insignificant) acceleration in rate of sea level.

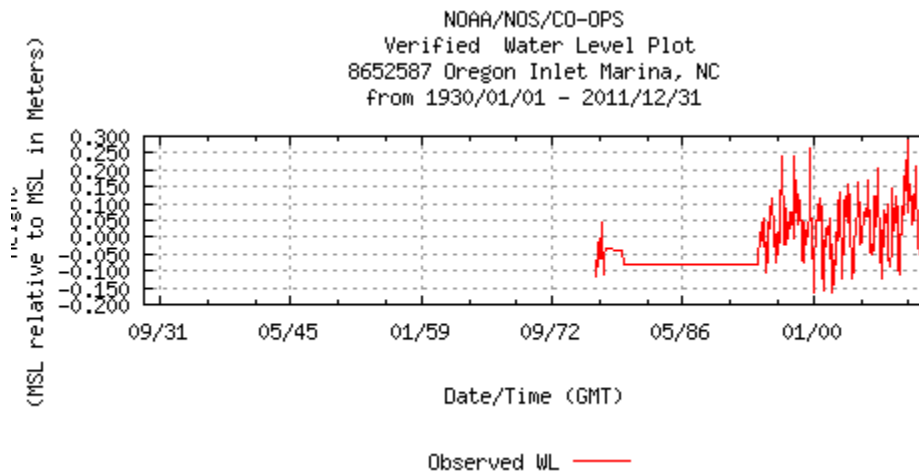


8652587 - Oregon Inlet Marina

http://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?stnid=8652587

http://tidesandcurrents.noaa.gov/data_menu.shtml?

[type=Historic+Tide+Data&mstn=8652587&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0](http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8652587&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0)



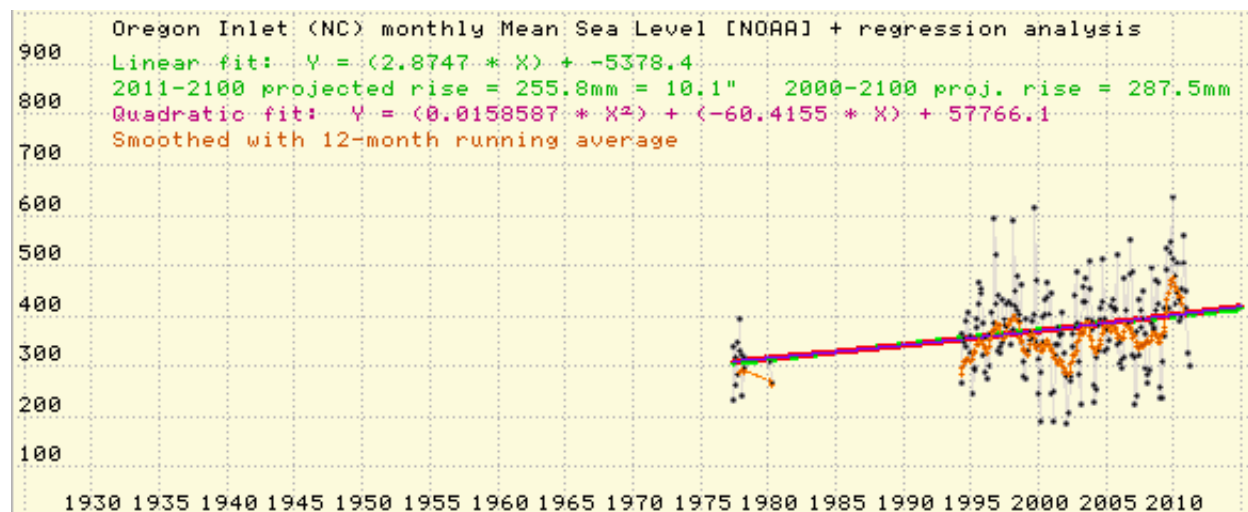
Data from 1977-2011, with a 14-year gap, 53% continuous.

(34-year span, with about 18 years of actual data, 217 monthly data points.)

NOAA-calculated trend (based on data through 2006): 2.82 +/- 1.76 mm/yr

Using the latest data, I calculated a trend of 2.87 mm/yr (10.1 inches by 2100).

Fitting a quadratic, I found a slight (statistically insignificant) acceleration in rate of sea level.

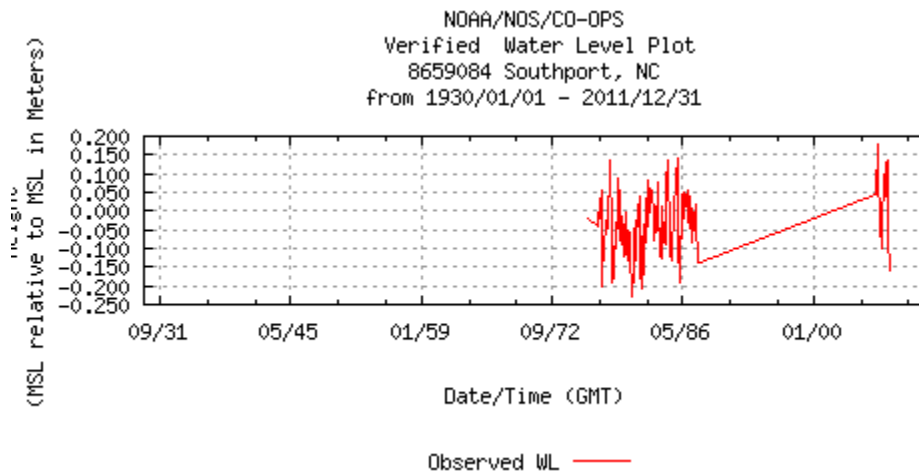


8659084 – Southport

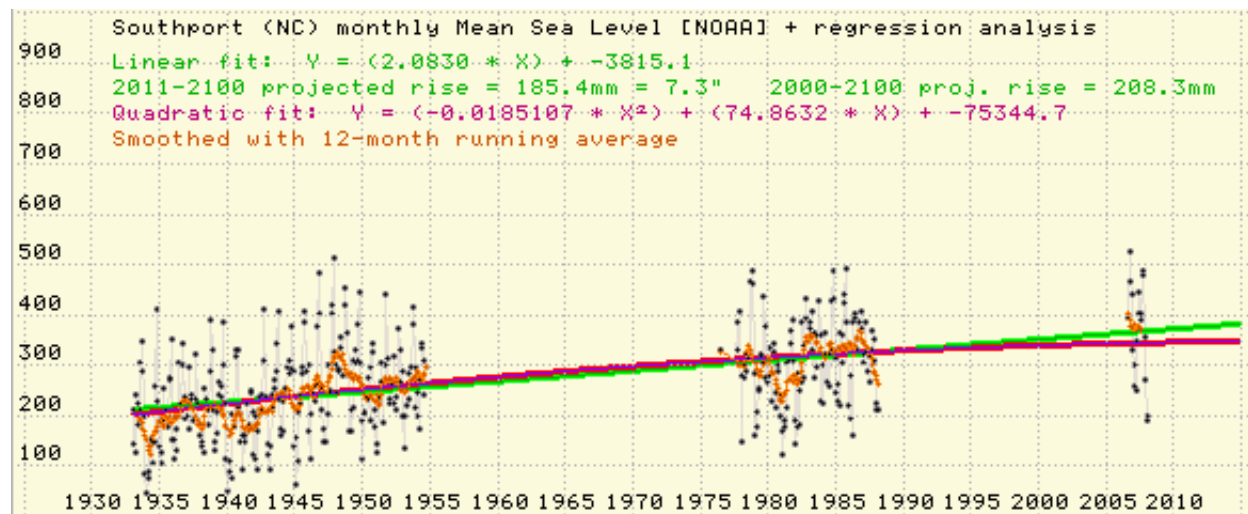
http://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?stnid=8659084

http://tidesandcurrents.noaa.gov/data_menu.shtml?

[type=Historic+Tide+Data&mstn=8659084&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0](http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8659084&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0)



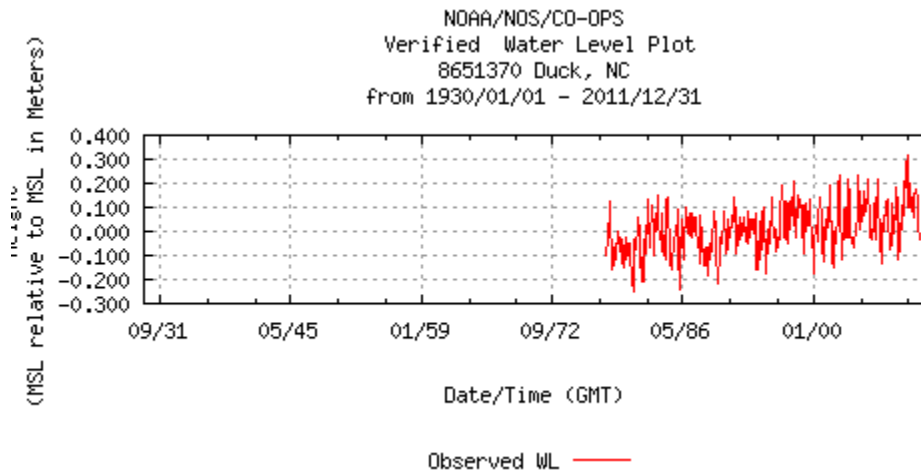
*** **The 1933-54 data is missing from NOAA's web site, but at my request they sent it to me**
Data is present from 1933 to 2008, with two long gaps, 43% continuous.
(78-year span, with about 34 years of actual data, 407 monthly data points.)
NOAA-calculated trend (based 1933-2006 data): 2.08 +/- 0.46 mm/yr.
Using the latest data I calculated an identical trend of 2.08 mm/yr (7.3 inches by 2100).
Fitting a quadratic, I found a slight (statistically insignificant) deceleration in rate of sea level rise.



NOAA didn't calculate trends for the other four tide stations, but they do have data for them. None go back further than 1978, and only Duck has any recent data.

8651370 – Duck

http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8651370&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0

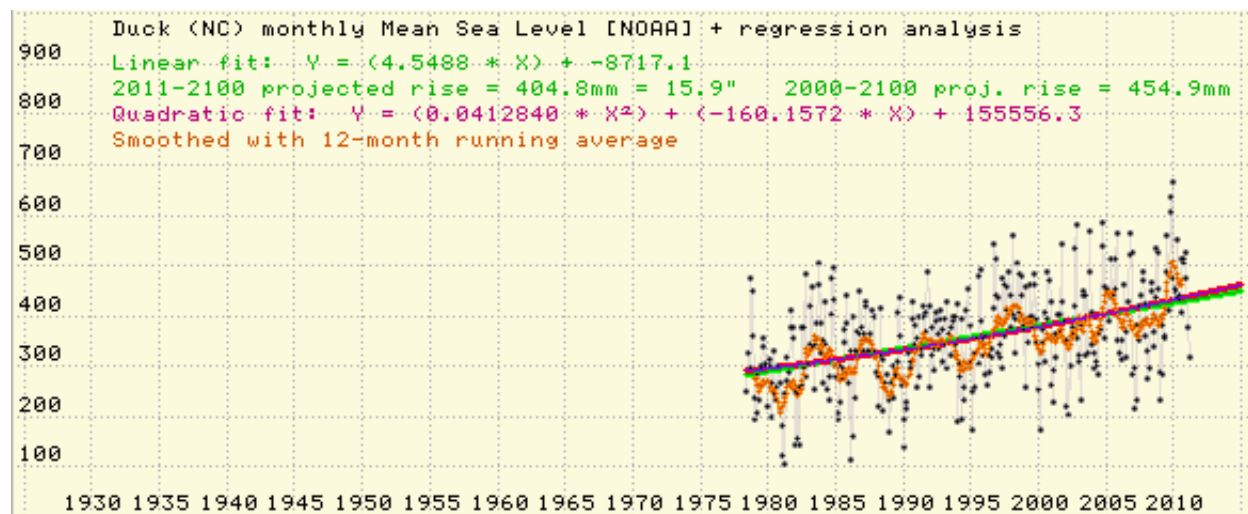


394 monthly data points (1978-2011), a 32.5-year span.

NOAA didn't calculate a trend, but NC 2010 SLR AR / Zervas (2004) says rate was 4.27 +/- 0.74 mm/yr for 1978-2002.

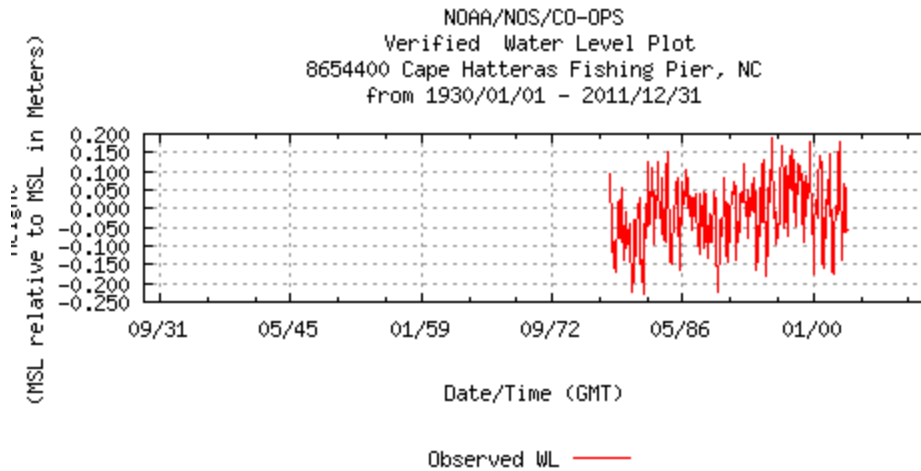
Using the latest data, I calculated a trend of 4.55 mm/yr (15.9 inches by 2100).

Fitting a quadratic, I found a slight (statistically insignificant) acceleration in rate of sea level rise.



8654400 - Cape Hatteras

http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8654400&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0

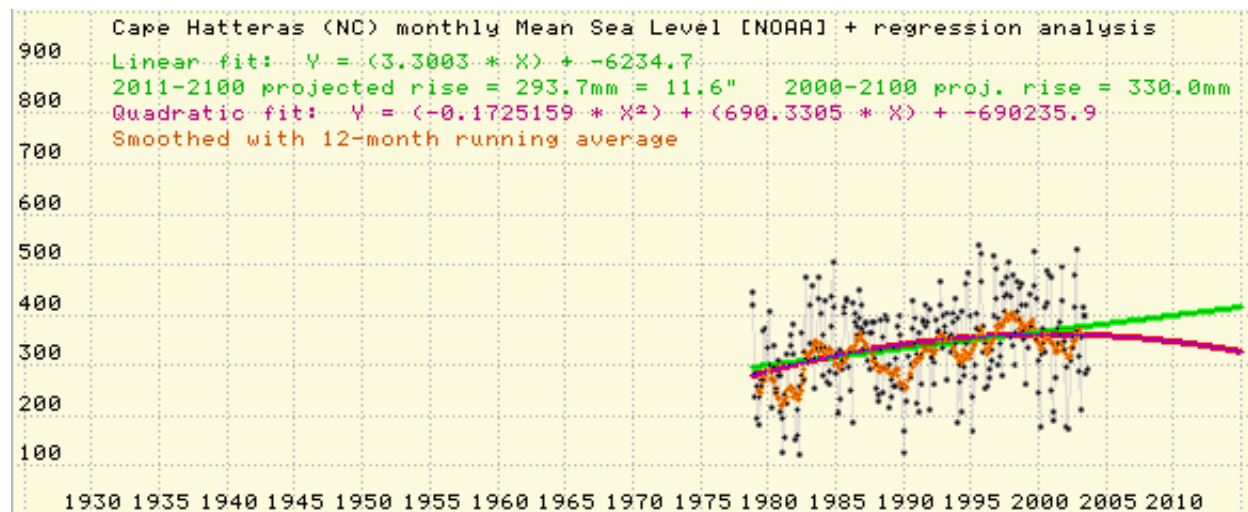


299 monthly data points from 1978 to 2003, a 25-year span. This station is apparently no longer in operation.

NOAA didn't calculate a trend, but NC 2010 SLR AR / Zervas (2004) says rate was 3.46 +/- 0.75 for 1978-2002.

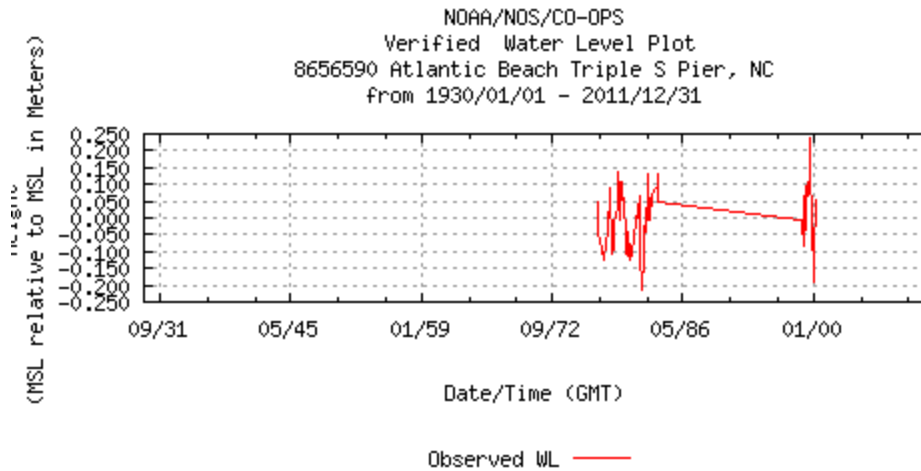
Using all available data, I calculated a trend of 3.30 mm/yr (11.6 inches by 2100).

Fitting a quadratic, I found a slight (statistically insignificant) deceleration in rate of sea level rise.

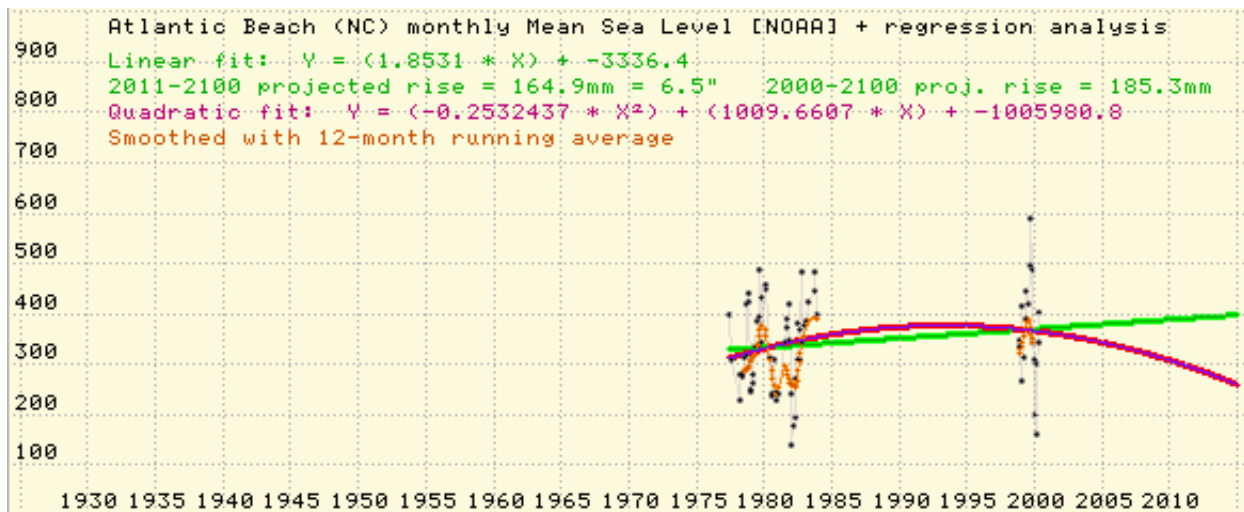


8656590 - Atlantic Beach

http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8656590&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0

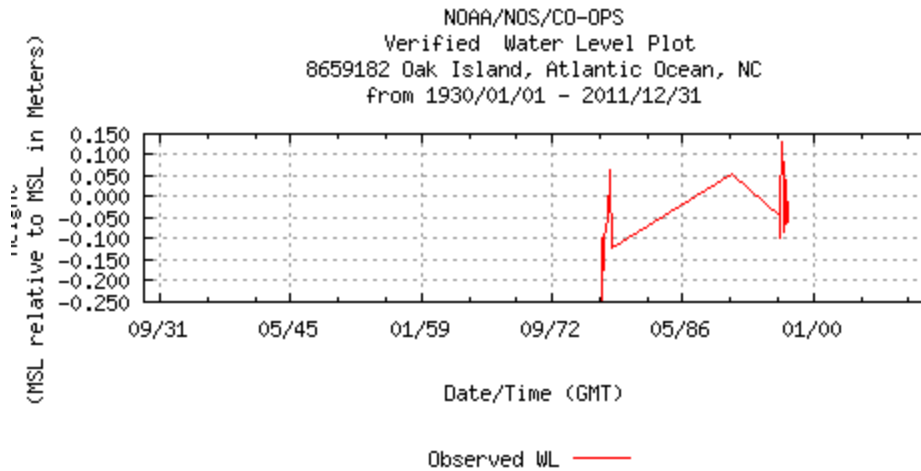


71 monthly data points (1977-2000). This station is apparently no longer in operation. NOAA didn't calculate a trend, but NC 2010 SLR AR / Zervas (2004) said the rate was 2.48 +/- 1.99 mm/yr for 1977-1983 & 1998-2000. I calculated a trend of only 1.85 mm/yr (6.5 inches by 2100). Fitting a quadratic, I found a slight (statistically insignificant) deceleration in rate of sea level rise.

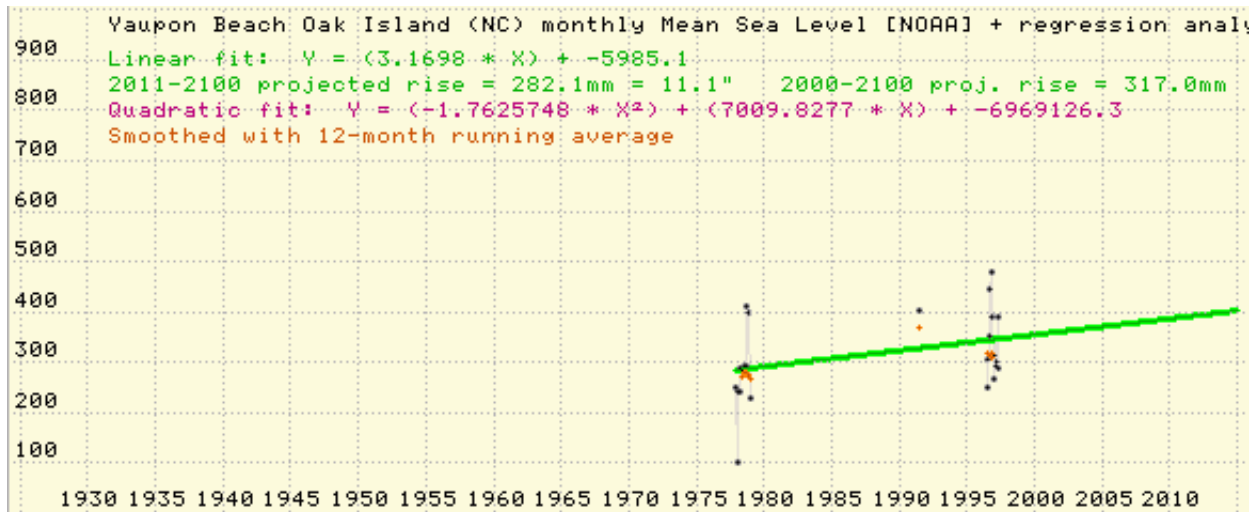


8659182 - Yaupon Beach (Oak Island)

http://tidesandcurrents.noaa.gov/data_menu.shtml?type=Historic+Tide+Data&mstn=8659182&bdate=19300101&edate=20111231&datum=4&wl_sensor_hist=W5&format=View+Plot&data_type=wl&unit=0



26 monthly data points (1977-1997). This station is apparently no longer in operation. NOAA didn't calculate a trend, but NC 2010 SLR AR / Zervas (2004) said the rate was 2.92 + 0.77 mm/yr for 1977-1978 & 1996-1997. I calculated a trend of 3.17 mm/yr (11.1 inches by 2100). Fitting a quadratic, I found a slight (statistically insignificant) deceleration in rate of sea level rise.



Shore Protection Manager

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Memorandum

To: Duncan Ballantyne, County Manager
From: Greg "rudi" Rudolph
Date: January 12, 2011
Re: **Proposed Sea-Level Rise State Policy - addition to the N.C. Administrative Code**

The N.C. Division of Coastal Management (NCDCM) has generated sea-level rise rule language, which if subsequently approved by the governor-appointed Coastal Resources Commission (CRC), would add a new section to the State's Administrative Code governing coastal management within the 20 CAMA (Coastal Area Management Act) counties. The purpose of this memorandum is to; **(I)** review the sea-level rise issue as a whole, **(II)** the State's approach concerning sea level in the 20 CAMA counties, and **(III)** summarize the key elements of the proposed rule language.

(I) Causes of Sea-Level Movement/Rise

The mechanisms governing "global warming" or "global cooling" are complex and multifaceted, however the root cause is often correlated to greenhouse gases that allow the sun's radiation to penetrate the Earth's atmosphere but trap this same radiation near the Earth's surface. The higher the concentrations of greenhouse gases in the atmosphere – the warmer the climate; and vice-versa (i.e.; less greenhouse gases – the cooler the climate). The extremes of cool and warm phases are signified by periods of glaciation and interglaciation, respectively with the last interglacial cresting at roughly 125,000 years ago and the last glacial episode climaxing at roughly 18,000 year ago. Thus the Earth has been warming since this 18,000 year ago glacial peak. Sea level has been rising as well since this time because of two main factors; **(1)** increasing atmospheric temperature causes the melting of continental ice packs (or glaciers) and thereby contribute "new" water to the world's oceans, and **(2)** the water itself expands (i.e., thermal expansion). Scientists estimate the average air temperature and sea level has increased by approximately 7° Celsius (13° Fahrenheit) and 400 feet, respectively in the past 18,000 years. There was rapid warming and sea-level rise that occurred at first, which stabilized (relatively speaking) at roughly 10,000 years ago, which marks the beginning of the Holocene Epoch – this is the time frame and interglacial we are currently living within.

Recent emissions of greenhouse gases such as carbon dioxide from industrial processes, fossil fuel combustion, and changes in land use have been cited as exacerbating the "greenhouse effect". However, although greenhouse gases are considered as the main vehicle behind warming climate and sea-level rise, the forces shaping climate and sea-level oscillations can be many and are complexly related. Factors such as dust from volcanic eruptions and air pollution, oceanic currents, solar activity, water evaporation from oceans, tectonic activity, land subsidence, isostatic rebound of land, and a host of other variables can impact climate and/or sea-level response.

This leads us to two important terms regarding sea level – relative vs. glacio-eustatic. **Glacio-eustatic sea level** is the portion of sea level movement (rise or fall) only attributable to the melting or uptake of water in the world's glaciers. **Relative Sea Level**

on the other hand, is the measurement of the sea surface incorporating glacial melt/uptake and other dynamics such as land movements and sediment supply. So for instance, in an area where mountain building is occurring, the land may be rising at a rate close to that of glacio-eustatic sea level. Thus the relative sea-level surface is balanced and the rate of movement is close to zero. Conversely, in areas where land is subsiding (sinking), sea level may be considered “rising” at an enhanced rate because glacio-eustatic sea level is rising **and** the land is sinking – New Orleans is a good example.

The relative sea-level rise topic is nicely evidenced in the North Carolina tide gauge data presented below (Table 1). In general, the rate of relative sea-level rise increases north to south because the land is subsiding in the northern province of the State. The reason for this is two-fold and briefly; (1) There are more unconsolidated sediments underlying the barrier islands, estuaries, and mainland compartments north of Cape Lookout. Accordingly there is a greater tendency for these sediments to compact and subside/sink. And (2), there are land movements that continue to transpire related to the retreat of the glacier that once blanketed the northern U.S., which also has caused the land in northern North Carolina to sink (known as forebulge collapse).

Station Number	Station Name	Rel. Sea-Level Trend (mm/yr)	Rel. Sea-Level Trend (inches/century)	Period of Data
8651370	Duck	4.27 +/- 0.74	16.8 +/- 2.9	1978-2002
8652587	Oregon Inlet Marina	2.55 +/- 1.21	10.1 +/- 4.8	1977-1980, 1994-2002
8654400	Cape Hatteras	3.46 +/- 0.75	13.6 +/- 3	1978-2002
8656483	Beaufort	3.20 +/- 0.54	12.6 +/- 2.2	1973-2002
8656590	Atlantic Beach	2.48 +/- 1.99	9.7 +/- 7.8	1977-1983, 1998-2000
8658120	Wilmington	2.12 +/- 0.23	8.4 +/- 0.8	1935-2002
8659084	Southport	2.04 +/- 0.25	8 +/- 1	1933-1954, 1976-1988
8659182	Yaupon Beach	2.92 +/- 0.77	11.5 +/- 3	1977-1978, 1996-1997

Table 1 – Relative sea-level trends for N.C. water-level stations (adapted from Zervas, 2004).

We introduced these aforementioned technical terms and data for the main purpose;

- (1) To underscore the proposed rules being considered by the CRC **only** pertain to sea-level rise – they do not address climate change, carbon dioxide emissions, the causes of sea-level rise, etc. While indeed many of these climate factors are incorporated by *de facto* into the sea-level subject, the proposed rules truly constitute a sea-level rise policy. Controversial issues such as carbon credits, emission reductions, etc. are not directly part of the proposed rules.
- (2) To also highlight the CRC is operating under the premise that sea level is going to continue to rise throughout the remainder of this century. Moreover, because there are no expected reductions in greenhouse gases to occur, the rate of sea-level rise could increase as more and more glacial meltwater is donated to the ocean.
- (3) To de-mystify the issues associated with relative sea-level rise. Questions to the effect of “Why are there different sea-level rise numbers?” are often the first to surface when discussing sea level, and a fundamental understanding of this subject provides a basis to understand and comment coherently on the proposed rules.

(II) **The CRC Approach to Sea-Level Rise (The Science Panel Report)**

The CRC and the entire N.C. Department of Environment & Natural Resources (NCDENR) for that matter has been under pressure to do “something” about sea level. For

the CRC, this has been predicated by two factors in my opinion; (1) Inherently, sea-level rise is an important phenomenon impacting the gentle-sloping southeast coastal plains of the U.S., such as those that exist in North Carolina. A “small” rise in sea level can cover potentially huge areas (square miles) of land bordering estuaries and barrier islands. As the rule-making organization charged with protection, preservation, development, and management within the 20 CAMA Counties, the CRC feels obligated and believes it’s primary function is to address coastal hazards such as sea-level rise – again operating under the premise that sea-level will continue to rise. (2) Reports from International and National Organizations including the U.N.’s Intergovernmental Panel on Climate Change (IPCC) and the U.S. Global Change Research Program have developed a host of climate models and sea-level rise scenarios, and furthermore have suggested and discussed the impacts of sea-level rise at rates greater than those we have experienced the past several decades/century. With most of the scientific community in consensus agreement, the CRC again has felt obligated to do “something”.

In the mid 1990s the CRC developed the [Science Panel on Coastal Hazards](#), a group populated by geology, engineering, and biology researchers and practitioners that has provided guidance and recommendations when tasked. Issues pertaining to beach nourishment sediment criteria, scientific analysis of inlet hazard zones boundaries, and other more science-intense topics have been under the purview of the Science Panel in the past. Usually the CRC will take the Science Panel’s information to help create policy via their administrative wing, NCDCM. In January of 2010, NCDENR hosted a Science Forum on Sea-Level Rise in North Carolina showcasing a series of expert climate and sea-level scientists, and more importantly for this discussion, the forum was used as a platform to release a report prepared by the Science Panel concerning current and projected rates of sea-level rise in North Carolina. Most notably, the report projected sea-level rise ranges in 25-year intervals through 2100 that were envisioned to provide a foundation for future policy development and adaptation planning.

Specifically, the [16-page report](#) includes three sea-level rise scenarios based on the best available science;

- (1) 0.38 m (1.26 ft. or 15 inches) by 2100, or a rate of 4.27 mm/year (“low”)
- (2) 1.00 m (3.28 ft. or 39 inches) by 2100, or a rate of 11 mm/year (“middle”)
- (3) 1.4 m (4.59 ft. or 55 inches) by 2100, or a rate of 15 mm/year (“high”)

However, the blanket rate is 4.27 mm/year (the “low” range) until the year 2030 when the scenarios begin to diverge – i.e., the rate of sea-level rise in each scenario is the same until 2030. This concept is neatly presented in the accompanying graphic (Figure 1). Note the “low” range scenario simply takes the highest historical rate in North Carolina (Duck) and extrapolates the line to 2100. The “low”, “middle”, and “high” range scenarios were presented because as mentioned above, key indicators such as the volume of greenhouse gases in the atmosphere and physical evidence such as increases in the acidification of sea water, increasing rates of glacial melt, etc. indicate the rate of sea-level rise we can expect to see for the remainder of this century should increase from its present universal rate of roughly 3 mm/year. How much more of an increase is the big question, hence why there are three scenarios.

The Science Panel recommended that a rise of 1 meter (39 inches/3.28 ft.) be adopted as the amount of anticipated rise by 2100 for policy development and planning purposes. This constitutes the “middle” range scenario. The Science Panel also recommended a more robust tidal gauge network and a reassessment of sea-level rise predictions on a five-year basis. All of these recommendations were incorporated into the proposed rule language.

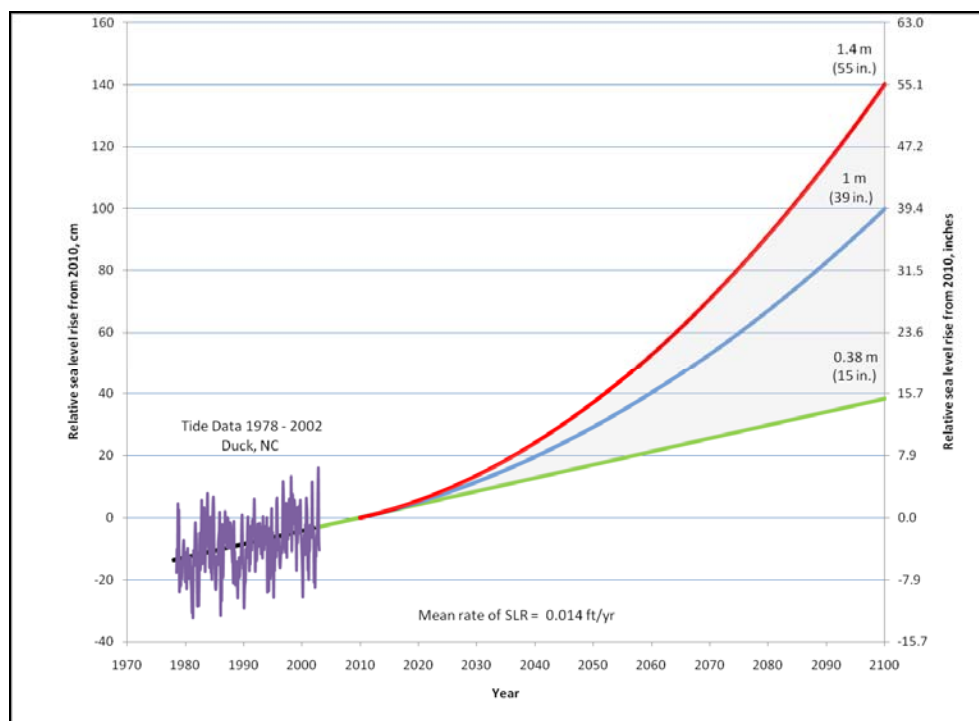


Fig.1 – Graphic depiction of the Science Panel’s three sea-level rise scenarios presented in their 2010 report. The CRC adopted the “1 meter solution” as their planning benchmark (blue line).

(III) **Proposed Rule**

Attached is a draft of the proposed rule that would be added to the State’s Administrative Code governing Coastal Management. It has been marked up by the Shore Protection Office. The CRC has reviewed the language twice in September and November 2010, and NCDCM has held two small stakeholder meetings as well. The CRC recently directed NCDCM to solicit more local government input and it wouldn’t be surprising to see a new version of the rules submitted to the CRC in April 2011 in an effort to gain approval to officially initiate the rule-making process. Thus the County is recommended to submit formal written comments as soon as possible. The rules have three sections summarized with commentary below.

Declaration of General Policy (15A NCAC 07M .1301) – this section articulates the role of the CRC, recognizes sea-level rise is occurring and will likely accelerate, identifies the coastal resources at risk, and the threats to those resources. The section concludes by summarizing the need for the policy (establish a need for planned adaptation to sea level).

Commentary – If the Planning Commission and/or County Board of Commissioners (CBOC) have any misgivings concerning the general premise that sea level is rising and will continue to rise at possibly an increased rate, then this section would be the proper place to levy these types of arguments. The Shore Protection Office does not recommend this however – NCDENR is very entrenched with this thinking and there are other elements of the rules that bear attention and have a higher likelihood of being modified.

Definitions (15A NCAC 07M .1302) – This section is self explanatory as it defines terms such as “planning benchmark”, “relative sea-level rise”, and other vocabulary that are used in the following section.

Commentary – None, except a small technical suggestion that is highlighted in the attached. Otherwise a hyphen is used throughout this memorandum when referring to “sea-level rise” and should be used in the proposed rules because sea level is describing something as a compound adjective (in this case “rise”). If we say sea level is rising, then the hyphen should not be used.

Policy Statements (15A NCAC 07M .1303) – This is the most important section of the proposed rules as it articulates what is expected of local governments. There are nine components (a – i). Component **(b)** formally adopts the Science Panel recommendation for a planning benchmark of a 1 meter (39 inches) by 2100, and states this benchmark will be used in land use planning. Many of the other components essentially reserve the right of the CRC to develop future rules that pertain to possibly implementing regional benchmarks, allow habitats to migrate, and incorporate specific guidance and planning requirements into Land Use Plans. However components **(g)** and **(h)** mandate that private development and public infrastructure should be designed and constructed to avoid sea-level rise impacts for the structure’s design life.

Commentary – The impacts of a 39 inch sea-level rise to Carteret County (component **(b)** in the rules) could be very dramatic for health and human safety concerns, let alone for building requirements and possibly even flood insurance participation, especially “Down East”. Moreover, there is no certainty pertaining to the benchmark - the rate of rise in the three Science Panel scenarios don't diverge until 2030 (i.e., they are the same until 2030), so it would be prudent to not pick any single rate until the data indicates one scenario is indeed coming to fruition. The current rate (the “low” scenario) can be used until 2030 for planning purposes and this benchmark can be changed to 1 meter once the data start reflecting this (either before or after 2030). As mentioned previously, the “low” scenario is actually the highest current rate of sea-level rise in the State (Duck). Sea-level rise rates are lower *per se* here in Carteret County, so an argument can be made that even the “low” rate of 4.27 mm/yr is conservative compared to the Carteret County rates (see Table 1 – Beaufort and Atlantic Beach).

Components **(g)** and **(h)** of the proposed rules are also problematic, perhaps because they lack specificity. If private property and public infrastructure need to be designed to avoid sea-level rise impacts and the planning benchmark is 1 meter, then the impacts could be far reaching. If this needs to be codified in the County’s next Land Use Plan (LUP), then as mentioned above, there will be huge impacts. Moreover, will there be someone in State government who will determine whether or not LUPs specifically or the County in general are adequately addressing sea-level rise in terms of private development and public infrastructure? If this is the case, then the level of subjectivity that can be utilized for these decisions is probably unacceptable.

In closing and to reiterate, it is recommended the County submit formal written comments subsequent to gaining input from the Planning Commission and CBOC. It would be advantageous to address some of the items highlighted above in the “Policy Statement” section of the rule only. Possible alternative language could include a LUP provision for local governments to identify the most vulnerable areas within their jurisdiction. Obviously this is just a suggestion and it would be advantageous for the Planning Commission and the CBOC to take a close look at the other components of the Policy Statement that were not highlighted above.

Cc: Jim Jennings, Director, County Planning and Development

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15A NCAC 07M .1301 DECLARATION OF GENERAL POLICY

The Coastal Resources Commission (hereafter referred to as the “Commission”) is charged under the Coastal Area Management Act (CAMA) with the protection, preservation, orderly development, and management of the coastal area of North Carolina. To that end, the Commission is specifically charged with the protection of certain rights and values, which include ensuring the protection of public trust resources and access to those resources, preserving the quality and optimum use of water resources, managing land use and development to minimize environmental damage, and preserving private property rights.

The Commission recognizes ~~that~~ global sea level rise is occurring as a natural hazard, and is predicted to continue and possibly accelerate during the next century. Sea^l level rise will intensify the challenges ~~that~~ the Commission faces in preserving and managing the natural ecological conditions of the estuarine system, barrier dune system and beaches, while perpetuating their natural productivity as well biological, economic and aesthetic values.

beach

Sea^l level rise is a coastal threat that magnifies other coastal hazards such as flooding, storm surge, ~~shoreline~~ erosion, and shoreline recession. Sea^l level rise is also a threat to the use of and access to public trust resources, water resources and quality, private property and development, and public property and infrastructure.

The Commission recognizes ~~that~~ sea^l level rise is a pervasive and persistent hazard that must be incorporated into all aspects of the coastal program. Incorporation is necessary in order to address the implications of the expected continuing rise in water levels, along with the resulting magnification of hazards, disruption and losses that such increases will bring.

The goal of this policy is to establish a framework for planned adaptation to rising sea levels. Planned adaptation will help to minimize economic, property and natural resource losses, minimize social disruption and losses to public trust areas and access, and minimize disaster recovery spending.

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15A NCAC 07M .1302 DEFINITIONS

As used in this Section:

1. "Accommodate" means designing development and property uses such that their function is not eliminated as sea level rises.
2. "Conservation measures" are non-regulatory tools that can include easements, land acquisition, low impact development, and similar measures.
2. "Planned adaptation" means taking a proactive and deliberate approach to designing and implementing measures to either live with, or retreat from, rising seas.
3. "Planning benchmark" means a scientifically-based amount of sea level rise that is expected to occur by a specified time.
4. "Relative sea level rise" means an increase in the average surface height of the oceans over a long period of time that may be caused by an absolute increase in the water level, by sinking of the land at the water's edge, or by a combination of the two.
5. "Sea level rise" means an increase in the average surface height of the oceans over a 19-year tidal epoch.
6. ~~"Shoreline erosion"~~ refers to the chronic or episodic landward migration of a shoreline caused by the loss or displacement of sediment.
7. "Shoreline recession" means the long-term landward migration of the average position of a shoreline.

BEACH EROSION is a better word, the shoreline really doesn't "erode" - it recedes or advances. Beach erosion also connotes volume losses, which I think is what the policy is implying here.

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15A NCAC 07M .1303 POLICY STATEMENTS

(a) The Commission will promote public education of the impacts associated with rising sea levels and measures to cope with changing shorelines.

(b) The Commission shall adopt planning benchmarks pursuant to the best available scientific information, recognizing that there is a measure of uncertainty involved in any projection of future conditions. The Commission's Science Panel on Coastal Hazards prepared a North Carolina Sea-Level Rise Assessment Report (March 2010) which projects a relative sea level rise range of 0.38 meters (15 inches) to 1.4 meters (55 inches) above present levels by the year 2100. This report, and any future updates, will be available from the Division of Coastal Management and posted on its website.

Consistent with this report, the Commission adopts a planning benchmark of one meter (39 inches) of relative sea level rise above present by 2100, for the twenty coastal counties. The benchmark will be used for land use planning, and to assist in designing development and conservation projects. The planning benchmark shall be reviewed at least every five years, and adjusted if necessary.

(c) Relative sea level rise is not uniform across the State's coastal zone, and the differences are amplified by topographical variations. As a result, specific adaptation measures might not be appropriate for all communities in the coastal zone, or at the same time. Pursuant to available scientific data and justification, the Commission may apply regional benchmarks and adaptation measures as appropriate for different parts of the coast.


(d) CAMA directs the ~~Coastal Resources~~ Commission to protect coastal resources and their productivity. Sea level rise is altering the physical and chemical aspects of the coastal area, and increasing the susceptibility of upland areas to inundation, storm surge, and accelerated erosion. Intertidal areas are being flooded at greater frequency and to greater depths, spurring landward migration of coastal habitats. In order to maintain their ecological function, fisheries habitats such as nursery areas may need to migrate landward, keeping pace with rising waters. The Commission may consider appropriate conservation and regulatory measures that can enable resources and habitats to migrate and persevere.

(e) The Commission has the responsibility to assist local governments with land use planning guidance and support. Due to the technical nature of sea level rise science and the need for a coordinated adaptation strategy, the Commission shall, to the best of its

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ability, provide local governments with scientific data and technical assistance with regard to adaptation planning and specific adaptation measures. Specific guidance and planning requirements will be incorporated into the Commission's Subchapter 7B Land Use Planning Guidelines. The Commission may provide financial assistance for local adaptation planning and implementation as available.

(f) It is in the State's interest to invest in long-term sea-level rise research and monitoring, as such investments will contribute to lowered future economic losses and disruption. The Commission will actively support efforts by the State to fund data collection, research, and monitoring.

 In order to minimize the magnification of hazards, disruption and losses associated with water levels, private development should be designed and constructed to avoid sea level rise impacts within the structure's design life to the maximum extent practicable, except in instances where the structure is built to serve an adaptation purpose. Water dependent structures should be designed to accommodate projected sea-level rise within their design life. The Commission may require additional development standards for new and replacement structures built within areas subject to sea-level rise impacts.

(h) In order to minimize the magnification of hazards, disruption and losses associated with water levels, public infrastructure should be designed and constructed to avoid sea level rise impacts within the infrastructure's design life to the maximum extent practicable, except in instances where the infrastructure is built to serve an adaptation purpose. Water dependent structures should be designed to accommodate projected sea level rise within their design life. The Commission may require additional development standards for new and replacement structures built within areas subject to sea level rise impacts.

(i) The Commission shall, on an ongoing basis, review and revise its Subchapter 7H State Guidelines for Areas of Environmental Concern to ensure ~~that~~ these rules account for the additive effects of sea level rise. The Commission shall also ensure ~~that~~ Procedures for Handling Major Development Permits; Variance Requests; Appeals from Minor Development Permit Decisions; and Declaratory Rulings account for the exacerbating effects of sea level rise.

Board of Commissioners

Douglas W. Harris, Chair
John Gregory Lewis, Vice-Chair
Robin Comer
William Holt Faircloth
Patrick "Pat" Joyce
Jonathan Robinson
Bill Smith



Interim County Manager

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Clerk to the Board
Jeanette S. Deese, CMC, NCCCC

February 17, 2011

Mr. Robert R. Emory, Jr., Chairman
North Carolina Coastal Resources Commission
400 Commerce Ave.
Morehead City, North Carolina 28557

Dear Mr. Emory:

Thank you for your response dated February 7th concerning the State's draft sea-level rise policy. We are cognizant of the balance the CRC is trying to strike in fulfilling your coastal management objectives while not causing undue economic hardships for coastal communities. Likewise, we're also appreciative of the emphasis the CRC is placing on stakeholder input during the formulation of policy statements that could be incorporated into the State's Administrative code.

To these effects, the draft sea-level rise language including the 1 meter sea-level rise planning benchmark has been the only version presented to the CAMA Counties. There have been no other alternatives provided, and no one is certain to what extent the CRC is committed to the 1 meter planning benchmark, let alone the incorporation of the 1 meter benchmark into Land Use Plans and the provision that private and public development have to utilize this benchmark in all future projects. The scale of economics involved with this proposal is so ubiquitous, that it becomes difficult for local governments to essentially tell our constituency "Not to worry. It's only a draft, and trust us, the CRC is in no rush to adopt anything without additional input. Also, the end outcome will likely be different." Justifying why the CRC is proposing a meter sea-level rise is even more challenging, especially after reviewing the Science Panel Report. As mentioned in my letter to the CAMA Counties, the justification for the 1 meter sea-level rise is almost entirely predicated on a single paper (Rahmstorf, 2007) that utilizes a proportional relationship between near-surface air temperature and mean sea level.

Regarding the subject of policy statements; despite the benign characterization of policy statements provided in your letter, there's simply no conceivable means that subsequent rules will say anything contradicting an Administrative Code that formally codifies a 1 meter planning benchmark. Likewise, even though many provisions of Land Use Plans are at the discretion of local governments; we find it hard to believe that Land Use Plans including anything less than a 1 meter sea-level rise would be consistent with the guidance provided in the Administrative Code, and thereby would have to be rejected/requested to be modified. This then becomes very much a State decision, not a local one.

I hope this letter is not perceived as defensive or antagonistic, but rather characterizes the perspective many of the local governments have concerning the draft sea-level rise policy and its practical implementation. We look forward to working with the CRC and NCDCCM staff concerning this important issue.

Sincerely,

Douglas W. Harris, Chairman
Carteret County Board of Commissioners

cc: CAMA County Governments
Governor Beverly Perdue
Senator Jean Preston
Representative Pat McElraft
Carteret County Municipalities
Mike Wagoner, President, Carteret County Chamber of Commerce
Myles Stempin, Director, Carteret County EDC
Carol Lohr, Executive Director, Tourism Development Authority (TDA)



February 28, 2011

Mr. Bob Emory, Chairman of the Coastal Resources Commission
17 Batts Hill Road
New Bern, NC 2856

Dear Chairman Emory:

I would like to thank you profusely for your extremely professional and sensitive manner in handling issue of sea-level rise in North Carolina, at the meeting in Beaufort, NC on Thursday, February 24th. Your ability to wade through the statistical noise and make sense of the data served North Carolina well. I think the end result, which will put the Coastal Resources Commission in the very important role of advising local governments, both municipal and county, on the issue of sea-level rise will pay dividends for many years.

As Chairman of NC-20, I spend a considerable amount of time engaged in debate with staff members and policy makers who lack of sensitivity to variation in data. Several years ago we lost a battle with another regulatory agency in which soil conditions were highly variable and played a critical role in the determination of the regulatory effect. Consequently, a "one size fits all" regulation was issued that severely compromised what could have been a valuable ruling.

It is a credit to the State of North Carolina that you are serving as Chairman of the Coastal Resources Commission and I am copying this letter to appropriate officials to make them aware of our appreciation in regard to your handling of the sea-level rise issue.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Tom'.

Tommy G. Thompson, Chairman, NC-20

cc: Governor Beverly Perdue, Secretary Dee Freeman DEHNR, NC-20 Senators and Representatives

Questions regarding AGW forced SLR .



Following an EPA / NOAA '09 report proposing 39" SLR by 2100, the NC Coastal Resources Commission (Land Use Regulators of 20 Coastal Counties) hired a Science Panel to evaluate SLR.

The CRC Science Panel found highest current rate of SLR at Duck NC (questionable short term station now abandoned) and projected 15" SLR by 2100 due to Rise of Sea and Subsidence of OBX Islands. From that, the CRC -SP cited UN-IPCC report, and projected 39" SLR by 2100 as a " Conservative Projection".

(http://www.climatechange.nc.gov/PDFs/NC_Sea_Level_Rise_Assessment_Report_2010_CRC_Science_Panel.pdf)

NOAA has established and funded a multimillion dollar PR office in Charleston SC to promote " No Regrets " SLR policy .

NC State U has become Federally Funded research center to prove AGW.

However, Spencer Rogers (NC Sea Grant) said that NOAA had thus far been unable to isolate a signal of increased rate of SLR for NC .

In March CRC Meeting, the Land Alliance of North Carolina observed:

1) If SL is rising at a more rapid rate by any cause, we need to know it, so property owners can plan for it.

However,

2) The CRC -SP ignored tide gauge data beginning with US Coast Survey stations in 1850's

3) The CRC -SP failed to compare US Coast Survey Charts from 1850's with Current Charts.

(If Duck data of 15" / 100y. SLR historical trend is accurate, that is nearly 24" over 150 yrs..

We think that should show up on Charts.)

Aside from the appallingly sloppy faux science (FoSi) noted above, we commented,

4) Heartland Report (A. Watts -

<http://www.heartland.org/books/SurfaceStations.html>)

questions validity of NOAA Temperature Record due to:

a) Excessive Urban Warming of NOAA Temp. Gauge Station locations

b) Invalid Computer Adjustment intended to correct for above, actually raises Temp Record.

Although we can not check validity of Science in Greenland, we should be able to validate accuracy or error of Temp Stations in Eastern NC.

(No response from the CRC.)

The CRC stopped short of their intended imposition of mandatory planning for 39" SLR by 2100, instead, requiring all Local Coastal Governments to "consider" SLR in planning "somehow".

Subsequently, the Dept. of Coastal Management (DCM- Staff for theCRC), went around the CRC and published a document to educate school children and Coastal Leaders, on the dangers of SLR, citing the CRC -SP projection of 39" by 2100, and depicting past Beach Erosion (perhaps implying Past Beach Erosion was caused by future Sea Level Rise?). No mention was made of NC Beach Erosion possibly caused by CRC approved dredging.

(<http://dcm2.enr.state.nc.us/Hazards/slr.html>)

It appears that State agencies, CRC and DCM care less about hard facts, like the Tide Gauge Record or Historical Charts, and more about fuzzy FoSi of AGW, which, apparently they believe will obviate any past trends with eventual rapid warming forcing rapid SLR in the future; consequently, the discussion will focus on the NOAA temp. record.

We recently recvd. Menne et.al. Rebuttal to Watts from Shore Protection Officer of Carteret County.

(<http://www1.ncdc.noaa.gov/pub/data/ushcn/v2/monthly/menne-et-al2010.pdf>)

Thru the heavy jargon, it seems that Menne says -- although records of relocation of stations is incomplete and confusing, some data from poorly located stations (subject to heat influence), were actually cooler than data from pared well located (non heated) stations, and the record from some pared well located stations (without warming sources) were warmer than the poorly located (heated) stations,, and it's getting warmer.

(?? Surely, I must have misunderstood.)

We have contacted A. Watts. He indicates an evaluation of Menne et.al. will be available soon.

QUESTIONS:

1) Is there verification of proper Location of NOAA Temperature Stations in Eastern NC, and what is the Temperature record?

2) Is there any research that evaluates NOAA Computer Adjustments of Temperature Data ?

Bill Price LA-NC 336-214-2676

June 16, 2011

A Different Perspective

Part One

A Scientific Critique of the 2010
“NC Sea-Level Rise Assessment Report”

3/19/11





wish I could be the bearer of good news, but that's not going to happen here. In fact, I will measure the success of my comments by how concerned you are when I'm done: *the more the better*.

Who am I to be saying anything? Quite frankly it doesn't really matter who I am, as I'm just the messenger, the lowly canary in the mine. If you must have more: I'm a physicist who has worked for some thirty years trying to improve our environment, using real science. I haven't been paid by anyone for this.

Let's start with the big picture and work our way down to a specific example of interest: the 2010 *North Carolina Sea-Level Rise Assessment Report*.

Today, *real Science* is under an intense assault. The simple reason is that those with political agendas or financial gain at stake, fully understand that **genuine Science is a major obstacle in their path to achieving their ends**.

Science is about **real world facts** and **truth**. Needless to say, facts and truth are anathema to propaganda promoters. But as much as they would like to, these evangelists realize that they can't simply discard Science. It is too imbedded in our history.

So they have taken a different, more subtle attack on this impediment. *Their strategy is to sway individual scientists into becoming advocates*. When enough of these attenuated individuals speak out in their favor, the public can be fooled into believing that what they are hearing is actually "science."

Let's take my home state (NC) as an example. North Carolina has an extraordinary amount of coastline, so a key agency set up by our legislators is the NC CRC (Coastal Resource Commission) <<<http://tinyurl.com/6h4gqon>>>.

The paid staff of NC CRC is DCM (Division of Coastal Management). It's stated objective is: "to protect, conserve and manage NC's coastal resources... through a model program using ... best science to shape publicly supported policies and decisions." *Sounds good, right?* (See <<<http://tinyurl.com/4szmwm>>>.)

As I understand it, the NC DCM chose a 13 member "Science Advisory Panel". These selected people are a driving force behind the stated "best science" guarantee — so we would expect that they would be the *crème de la crème*. You can draw your own conclusions about that after finishing this critique.

But why is this agency emphasizing the concept of "best science" anyway? Clearly, the audience for this message is politicians and citizens.

Such agencies not only want to keep their job, but they would also like to be in an expanding position of influence.

What that translates to is that when they generate a report, they want us to not only accept it as legitimate, but also to ask them for additional help and advice.

To attain that end, they are using a well-established marketing technique: tying their credibility to something they know we already believe in — in this case, “best science.” After all, who can argue with “best science”? And in dealing with technical matters, who can ask for more than “best science”?

With that said, please consider two things:

- 1) do citizens even know what “best science” is, and
 - 2) are NC citizens actually getting “best science” from these NC agencies?
-

To answer that we need to know what “Science” really is. At its core, science is a *process*. The process is about evaluating actual evidence to come to conclusions about how our world works right now. The better we understand today’s reality, the better we can guess as to what we can expect in the future.

The fundamental time-tested process of science is called the **Scientific Method**. In layman’s terms this means that when a hypothesis is proposed, that we subject it to a *comprehensive, objective, transparent* and *empirical* assessment. The methodology and results are available for all to see, and can be replicated.

Note that at no time is there is any “consensus” in this process. In fact, many of the famous scientists who have gotten us where we are today, made discoveries that were the exact opposite of what the consensus was in their time. History is replete with examples where the consensus of experts was wrong.

True scientists are people who **continually** ask “how?” and “why?”. One thing is for certain: the proper answer to any *how* or *why* question is NEVER “because Dr. Expert said so.” For example, we don’t say that gravity is real because Newton said so — but rather because Newton **proved** it to be so (using the Scientific Method).

So that is what we should look for when a claim of “best science” is made: **that all assertions made are subjected to a comprehensive, objective, transparent and empirical assessment.**

So now on to question #2: are NC citizens getting “best science” from the NC DCM — especially their “Science Advisory Panel”?

A pertinent case in point is the 2010 “NC Sea-Level Rise Assessment Report” (<<<http://tinyurl.com/4a24my9>>>). Just to make sure that citizens were onboard with DCM’s marketing strategy, the official release of this paper stated: “The report synthesizes the best available science on sea level rise...” <<<http://dcm2.enr.state.nc.us/News/2010%20Releases/slrreport.html>>>.

NC citizens not only have a right, but they have an obligation to ascertain whether in fact they are **getting what they are paying for**. So let’s look closer as to what we are being asked to accept as “best science” here.

Question 1: is the Scientific Method used in arriving at the main conclusions of this report?

Answer: The term “Scientific Method” does not appear in this report, and there is no evidence that it has been utilized in reaching the panel’s conclusions. On the other hand the word “consensus” appears twice, and “best science” is NOT about consensus. This is a red flag that the methodology used in this report is seriously flawed.

Question 2: how comprehensive is this report. One way to evaluate that would be to examine how detailed is the data they have that they are basing their conclusions on.

Answer: The primary data set is from one location (Duck), using some twenty five years of scientifically crude tidal gauge measurements, and stopping in 2002 (!). This does **not** pass muster as being scientifically sufficient data — either in *accuracy* or *quantity*. (We’ll go into this matter in detail, in Part 2 of this critique. Just one tidbit is that the NOAA site doesn’t even list Duck as a sea level measuring location. See <<<http://tinyurl.com/66bbn9z>>>.)

Question 3: how objective is this report — i.e. how many factors affecting sea level rise are genuinely explored?

Answer: The entire focus appears to be based on one possible cause: Anthropogenic (manmade) Global Warming (AGW). There is no evidence that AGW is questioned, or that other influences are given serious consideration. It seems that the panel started with the key assumption that AGW will consequentially affect NC sea level rise, and then went about finding sources that supported that belief. *If so, this is absolutely not how “best science” works.*

Question 4: how transparent is this report — i.e. how available is the data to be publicly examined?

Answer: The Duck data is available (see: <<<http://tinyurl.com/69dfqno>>>). However, the projections in the report (e.g. 39 inch NC sea level by 2100) are based on other studies, where the data and models are not always transparent.

Question 5: how empirical is this report — i.e. are the conclusions based on real-world measurements?

Answer: The key reports referenced (IPCC & Rahmstorf) are **not** empirical-based assessments. Both use computer models that are based on several unidentified and scientifically unproven assumptions. *No matter how fancy the ultimate facade is, when the foundation is built on sand, it will collapse.*

So the bottom line here is that this report fails on all five **real science** questions used as a template. As such, the conclusions are not only very suspect, but they are definitely **not** based on using “best science.” When we read this report we are entering into the realm of opinions and unscientific beliefs.

Part 2 of this critique is a 25± page addendum that looks at the validity of the primary technical statements made in the 2010 *NC Sea-Level Rise Assessment Report*. Based on what we have just seen here, it should be no surprise that essentially all the significant assertions of this report are **not** supported by real science. Before we get into that, though, here are two general observations.

First, I'd like to address the frequently used term “skeptical.” Remember what was the hallmark of a real scientist? It's an individual who **continually** asks “**How?**” and “**Why?**”. In other words, *skepticism is a requirement of being a true scientist!* The eye-opening revelation here is that the people who are calling the other side “skeptical,” have unambiguously identified themselves as those who are *against real science!*

To take the skepticism out of science would be akin to taking the eyesight away from a painter. Yet some evangelists (in their attempt to undermine real science) have aggressively tried to convey to the public that skepticism is a bad thing. Let me unequivocally state: *to be a skeptic is a scientific badge of honor.*

Secondly, please consider the inconsistency of what is going on here. Basically what the 2010 *NC Sea-Level Rise Assessment Report* says is that they consider the IPCC's sea level projection (of 15”± by 2100) to be inadequate. Instead they favor the opinions of a researcher named Stefan Rahmstorf, who projected the sea level rise to be some three times what the IPCC did (55”±). (See figure.)

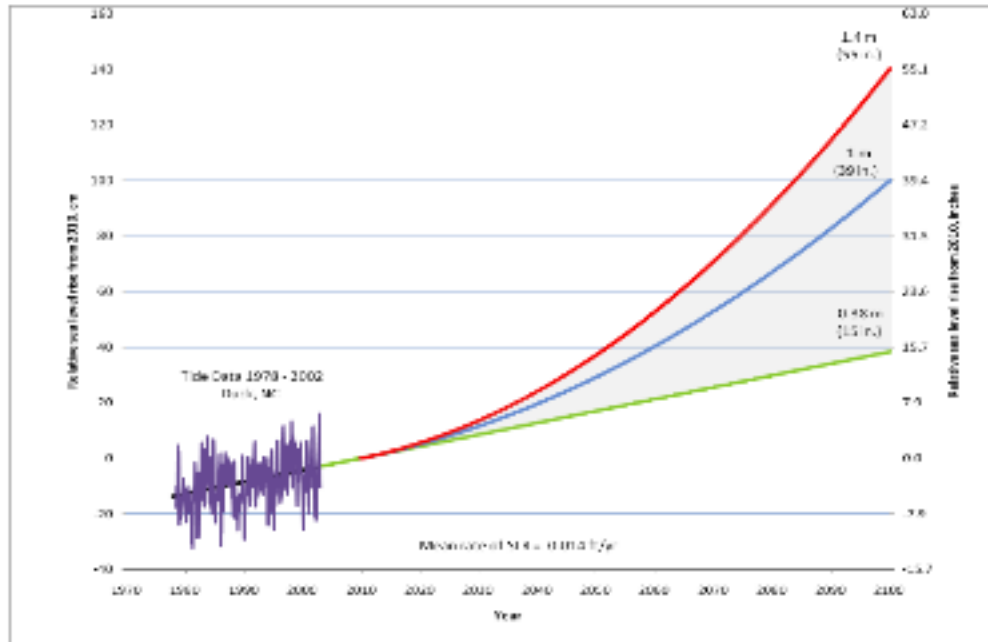


Figure 2. This chart illustrates the magnitude of SLR resulting from differing rates of acceleration. The most likely scenario for 2100 AD is a rise of 0.4 meter to 1.4 meters (15 inches to 55 inches) above present.

The authors of this report appear to have tried to make their position look “moderate” by picking a number in the middle of these two predictions: 39”. In Part 2 you will see how unscientific *both* predictions are — but that’s not the point here.

As mentioned earlier, the thirteen members of the CRC Science Panel apparently all subscribe to the theory of manmade global warming. Put another way, they all have the same ideology. It brings to mind that famous quote by William Wrigley: “When two people always agree, one of them is unnecessary.”

In any case, if someone stood up and questioned their global warming beliefs it would be like someone saying that they doubt that Moses parted the sea. There would likely be a displeased response that this individual has the impudence to question the stated consensus of some of the world’s leading scientists.

That is what the IPCC is: a UN organization that got together selected experts and hammered out a document that puts forward their case for manmade global warming.

So, when this Science Panel was asked to look into the sea-level rise for North Carolina, why didn’t they just say: *the IPCC experts have essentially already done all the work here, so let’s go with their projection* (with small tweaks for local conditions like subsidence)???

You can make your own conclusions but it appears that they felt that they had to come up with something *to get people’s attention*. In the unscientific society we currently find ourselves in, it was an easy matter for them to find other like-minded researchers who had constructed computer models that projected wildly speculative outcomes.

BUT, in doing so, **they had to throw the IPCC conclusions under the bus!** That’s right. The same people who are offended when someone questions the IPCC, now tell us that the IPCC’s figures for future sea level rise are dead wrong. But these are the same individuals who say: “the IPCC’s projections are the stated consensus of the world’s leading scientists”!

Think about this: **if the IPCC consensus of experts can be seriously wrong about sea level rise, why can’t they be just as wrong about other things?**

This whole matter shines an unflattering light on today’s standards. That some will swear by the IPCC when it supports their agenda, but then will quickly ditch the IPCC when it doesn’t, should tell you all you need to know.

What is their agenda? Well that will have to be the subject of another paper, but it clearly has *nothing* to do with science, or the environment.

Here’s another question that should be asked: is this 2010 *NC Sea Level Rise Assessment Report* an aberration or is it the norm? Unfortunately, the evidence says that this level of unscientificness has become routine. Another recently released report “Coastal Wind: Energy for North Carolina’s Future” is a similar propaganda piece, where the important parts are based on political correctness, not on real science (see <<<http://tinyurl.com/62s98uh>>>).

There will undoubtedly be people who don't like this message, and the instinctive reaction of some of them will be to disparage the canary. Just keep in mind that no matter what they say to change the focus, it does not alter the fact that the emperor has no clothes.

So what's the solution? Here's an outline of a suggestion:

- a) Have state agencies make it a **requirement** that all of their technical reports be firmly rooted in the Scientific Method.
- b) Closely examine the commitment to real science by the staff at NC DCM. Any that are not fully onboard with using real science should be downsized.
- c) Thank the Science Panel for their efforts, and then get a new panel of scientists who are committed to science based on the Scientific Method.
- d) Scrap all unscientific reports done in the last two years by NC agencies and generate new studies, this time based on Scientific Method science.

Let me make one final point perfectly clear: I am **not** saying the projected rise of 39 inches is wrong (although it is very likely way too high).

What I **am** saying is that this projection is **not** based on a comprehensive, objective, transparent and empirical based assessment — i.e. it is **not** based on real science *aka* “best science.” In other words, *the methodology was wrong*.

We can and should do much better.

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For Part 2 of this critique go to <<<http://tinyurl.com/65vo4z9>>>.

[BTW, if you don't have the time to read all of the technical critiques of Part 2, then to get a more balanced perspective it is strongly recommended that you read this one recent paper by world renowned sea level expert, Nils-Axel Mörner “The Great Sea-Level Humbug” (<<<http://tinyurl.com/4ojme2f>>>).]

A Different Perspective

Part Two

**A Scientific Critique of the 2010
“NC Sea-Level Rise Assessment Report”**

4/25/11



{A Different Perspective, Part 1 (an overview) is at: <<<http://tinyurl.com/65788r4>>>. Consider the information below when deciding how genuinely scientific the 2010 NC Sea-Level Rise Assessment Report is, see <<<http://tinyurl.com/6cqd54>>> (which has been marked up to correspond to the following comments).}

#1 - On Page #3 of the NC Sea-Level Rise Assessment Report it says:

“The Science Panel offered to prepare a report, based on a review of the published literature, of the known state of SLR for North Carolina.

It will be very apparent from the comments below, that a considerable volume of published literature was **not** chosen to be referenced by the Science Panel. The appearance is that the Science Panel decided that they wanted a report that projected a large increase in NC sea-level rise, and that any published study that concluded otherwise was dismissed. Furthermore, why would the Science panel restrict themselves to “published” reports. Does “published” somehow imply more credibility? [No it does not.] Lastly, they should have added that they would write their report also “based on consultations with scientists representing a broad range of views.” There is no evidence that happened either.

#2 - On Page #3 it says:

“This report synthesizes the best available science on SLR as it relates specifically to North Carolina... The intent of this report is to provide North Carolina’s planners and policy makers with a scientific assessment of the amount of SLR likely to occur in this century.”

See Part 1 for a discussion of these “best science” claims. Additionally, the evidence contained in this Part 2 does not support these assertions.

#3 - On Page #3 it says:

“The report does not attempt to predict a specific future rate or amount of rise because that level of accuracy is not considered to be attainable at this time. Rather, the report constrains the likely range of rise and recommends an amount of rise that should be adopted for policy development and planning purposes.”

Not sure what this is saying, but it appears like the authors want to have it both ways: **1)** they rightfully acknowledge that an accurate future prediction is unattainable, yet despite that **2)** they make a future prediction that they expect NC to use for development and planning purposes.

#4 - On Page #6 it says:

“Determining the average height of the sea involves isolating the long-term Sea Level Rise (SLR) associated with global warming from a variety of regular water level fluctuations including those driven by waves, tides, currents, storm surge, atmospheric pressure differences, and ocean surface topography resulting from large-scale ocean circulation. Such an assessment is possible given our understanding of the mechanics of these fluctuations.”

Embedded in this fundamental opening position statement, are some profound assumptions:

- A) That *we understand what they mean by “global warming”*. Nowhere is this term defined. Does it mean “Anthropogenic Global Warming” (AGW)? The omission of a definition of a key factor that the authors are using as a basis to justify their projection for a high sea-level rise, is mystifying and unscientific.
- B) That *“global warming” is a scientifically proven matter*. Again this is hard to discuss since no definition is given. If, in fact, it IS AGW that they are referring to, then this is a scientifically unsettled matter and should be so noted. Here is one of thousands of studies that disagree <<<http://tinyurl.com/4khm7vf>>>.
- C) That *many other factors (mostly natural) which have been proven to affect sea level measurements can simply be discarded*. These include: long term weather patterns (e.g. El Niño), Atlantic multidecadal oscillation, subsidence, plate tectonics, isostatic rebound, artificial reservoir water impoundment, etc. Even though some of these (not all) are mentioned in the next paragraph, why weren't they also in this list?
- D) That *we adequately understand the mechanics of all these items*. Where is the proof for such an **enormously** significant statement? None is provided.
- E) That *the “global warming” component can be separated out from all other influences*. That they can make a definitive statement that an unscientifically proven item can be accurately separated from all naturally occurring contributors, simply strains credulity. This is not a science-based position.

What would have been more helpful would have been a table listing ALL know influences on sea level in column #1. Column #2: whether the item is manmade or natural. Column #3: RSL or MSL. In column four list the range of influence each factor is known to have. In the last column indicate the degree of confidence we have in our understanding of each factor.

The bottom line here is that until we can do **all** of the following, that coming up with a future sea level rise prediction is nothing short of reading tea leaves:

- 1) scientifically prove AGW, and
- 2) scientifically prove the exact effects of each of the numerous other factors identified to influence sea-level rise, and
- 3) scientifically prove the additional AGW component, if any.

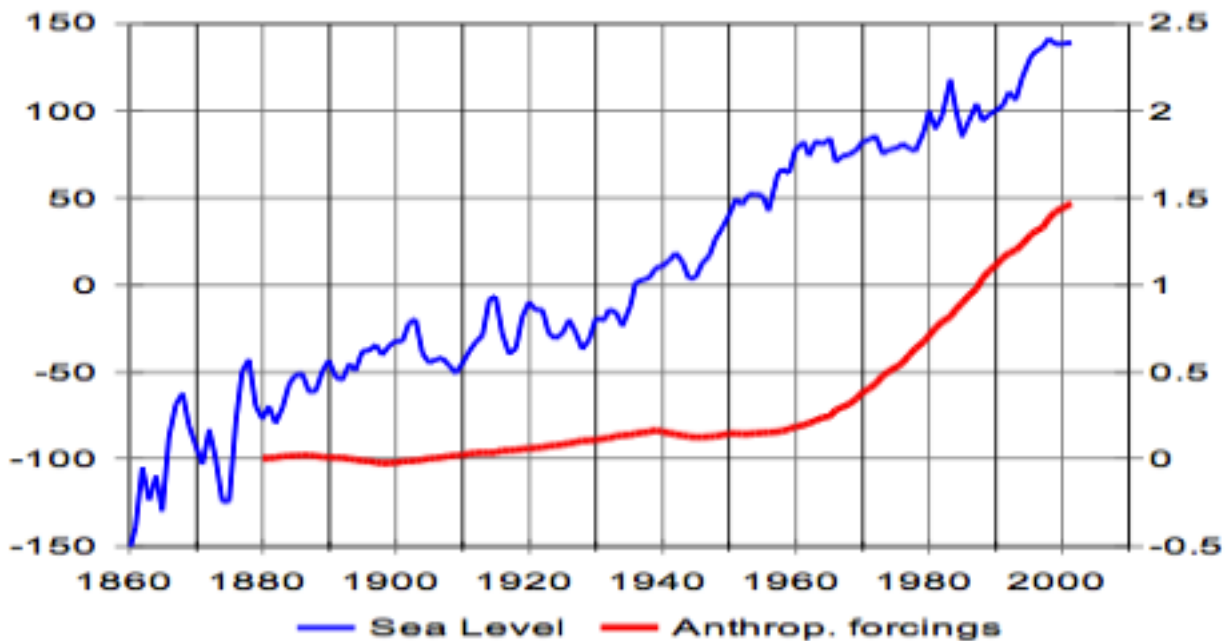
#5 - On Page #6 it says:

“Currently, MSL (global Mean Sea Level) is rising at a rate of approximately 2mm per year (0.08 inches/yr) if averaged over the last hundred years, and around 3mm per year (0.12 inches/yr) over the last fifteen years. The rate of MSL rise has increased in response to global warming.”

This talk of MSL is confusing as the report says “it is RSL that is more relevant for coastal management.” (P7) and “RSL change will, for most coastal locations, be different from globally predicted MSL changes” (P8). So what’s the point of this MSL information — which is questionable besides??

There are multiple embedded disputable assertions in these two sentences, which are based on selectively chosen studies. For instance the authors *assume* that **rising global CO2 will result in rising global temperatures**. There is considerable evidence to dispute this belief, but supplying hundreds of studies that show otherwise is beyond the scope of this critique. For a simple example see <<<http://tinyurl.com/3l2gc6>>>.

Another assumption of the authors is that the **rising CO2 will result in higher sea levels** (again assuming that by “global warming” they mean AGW). An expert wrote me: “I attach a simple graphic (see below) that you might find informative. It shows that sea levels have been rising at a fairly constant rate since at least 1860 but that greenhouse gases didn’t begin to have a significant impact on climate until at least 1960, which makes it difficult to attribute sea level rise over the last 150 years to anthropogenic global warming. The links to the data sources are there, so you can reconstruct the graph if you want to.”



Blue line, left scale, mm: Jeverejeva et al. sea level rise reconstruction (select annual data at http://climexp.knmi.nl/getindices.cgi?PSMSLData/gsl+global_sea_level+i+someone@somewhere)

Red line: NASA-GISS total anthropogenic forcings at the top of the atmosphere, right scale, watts/sq m. These provide a direct measure of the total human impact on climate. (add columns 1, 2, 3, 8, 9 and 10 on the table at <http://data.giss.nasa.gov/modelforce/RadE.txt> to get total anthropogenic forcings.)

Still another questionable part of this statement is when they say “Currently, MSL is rising at a rate of approximately 2mm per year if averaged over the last hundred years.” The reader should be aware that *conclusions can easily be manipulated just by carefully picking the beginning and end points of the period examined*. A report based on “best science” would be extremely careful about this, and show how such arbitrary period selections can skew the results.

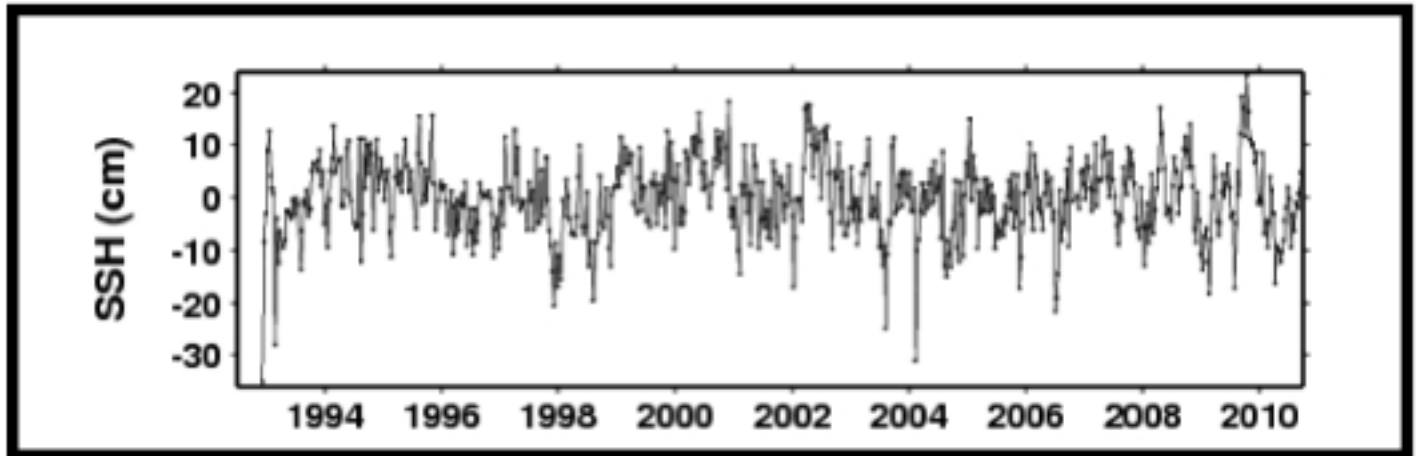
For example the University of Colorado researched eight different long range studies, each with many stations. They show a mean increase of **1.65mm/yr** since 1860 <<<http://sealevel.colorado.edu/tidegauges.php>>>. To scientists, this is statistically quite a bit less than “approximately 2mm”.

There is nothing the matter with the authors expressing their considered opinions. However, in a “best science” report, opinions should be identified as such *and* carefully segregated from empirically proved facts. One way of doing that is for the authors to acknowledge that there are other studies from qualified experts that disagree with their opinions. For example, regarding their very significant assertion that **there is recently an accelerated sea level rise**, see:

- A) As far as recent (satellite) measurements, a researcher plotted a few NC coastal points (e.g. Pamlico Sound) using the Topex Poseidon satellite data, and the results ranged from -1.5 mm/yr to +1.1 mm/yr. (See <<<http://tinyurl.com/yzrauxe>>>.)
- B) Regarding accelerated sea level rising, Dr. Willem de Lange (Coastal Oceanographer, and IPCC expert reviewer) wrote: “The IPCC Assessment Report 4 report emphasizes a single paper (which was not available when I conducted my review), which spliced the satellite data onto the tide gauge data to ‘find’ acceleration in sea level rise over the period of satellite measurement. This is being used to imply that global sea level rise is accelerating due to global warming (now renamed Climate Change). The satellite data only covered the period of increasing sea level associated with decadal cycles, and the known discrepancy between satellite trends and tide gauge trends was not corrected for. This is poor science comparable to the splicing of proxy and instrument data in the infamous Hockey Stick graph, and the splicing of ice core and instrumental CO2 measurements to exaggerate the changes.” (See <<<http://tinyurl.com/pmk98g>>>)
- C) “Linear Rate of Sea Level Rise is Detected, with No Acceleration” is the conclusion of this 2010 *Journal of Geophysical Research* paper <<<http://www.nipccreport.org/articles/2010/sep/03sep2010a7.html>>>
- D) A PhD with experience in this area wrote: “The satellite sea level measurements and tide gage sea level measurements are almost incompatible for comparison, and until there is at least 50 years of satellite data, the satellite data can't be used for any meaningful analysis of the long term

changes. And from what I have read about the vertical accuracy of satellite measurements, (on the order of plus or minus 6 cm), the data is essentially useless for looking at changes of a few mm per year.”

- E) Putting in the Latitude (36.169608) and Longitude (-75.7551854) of Duck NC into the University of Colorado’s Interactive sea level map (<<<http://tinyurl.com/4f49mo6>>>) results in the following graph — which does **not** evidence any consequential acceleration.



- F) In the article "Rise of Sea Levels is 'the Greatest Lie Ever Told'" (<<<http://tinyurl.com/d4zayx>>>) it says:

“There is one scientist who knows more about sea levels than anyone else in the world it is the Swedish geologist and physicist Nils-Axel Mörner, formerly chairman of the INQUA International Commission on Sea Level Change. And the uncompromising verdict of Dr Mörner, who for 35 years has been using every known scientific method to study sea levels all over the globe, is that all this talk about the sea rising is nothing but a colossal scare story.

“Despite fluctuations down as well as up, ‘the sea is not rising,’ he says. “It hasn't risen in 50 years.’ If there is any rise this century it will ‘not be more than 10cm (four inches), with an uncertainty of plus or minus 10cm’. And quite apart from examining the hard evidence, he says, the elementary laws of physics (latent heat needed to melt ice) tell us that the apocalypse conjured up by Al Gore and Co could not possibly come about.

“The reason why Dr. Mörner, formerly a Stockholm professor, is so certain that these claims about sea level rise are 100 per cent wrong is that they are all based on computer model predictions, whereas his findings are based on ‘going into the field to observe what is actually happening in the real world.’”

- G) “Sea Level Rise: An Update Shows a Slowdown”. This points out **scientific evidence that sea level changes are cyclical, not just increasing**. (See <<<http://tinyurl.com/ydy5bo4>>>.)

“So rather than evidence of accelerating sea level rise in recent years, what we have is nothing more than the same type of variation that has been going on for at least 100 years. It was merely a coincidence that the satellites began observing the sea level rise during a natural upswing in the rate of sea level rise, that has now turned into a downswing — a behavior that has repeated itself a good half-dozen times during the past century.”

H) George H. Taylor is a Certified Consulting Meteorologist and was Director of the Oregon Climate Service, Oregon State University. One pertinent paper he wrote is "Holocene Temperatures and Sea Level Changes" <<<http://tinyurl.com/6cbbm5y>>>. Among other things he concludes:

“Sea level rise does not show the same type of behavior as the air and sea temperatures. Rather, there has been a continuous rise in sea level since the last glacial maximum ended. However, the rate of rise had dropped steadily over the last several thousand years, and shows signs of continued decline over the last hundred.”

I) "2010 Sea Level: Largest Drop Ever Recorded?" is an interesting commentary: <<<http://tinyurl.com/63ujvsr>>>. Again this shows the speculativeness of computer projections based on numerous unknown assumptions.

#6 - On Page #6 it says:

“Sea Level Rise can be directly measured in a straightforward way.... A tide gauge can be as simple as a long ruler nailed to a post on a dock. .. Tide gauges were not built with the intention of measuring changes in sea level.”

This seems to say that NC future coastal policies will be based on measurements that are scientifically crude — i.e. that they are not all that accurate, are not all that well controlled, and that there are many influencing factors (mostly natural, but some manmade) that we do not really know the exact consequences of.

#7 - On Page #6 it says:

“When looking at a tide gauge record, the data is representative only of RSL (as discussed above), **so areas that are experiencing tectonic or sediment compaction change will bias any attempt to determine the global, MSL signal.** However, it is RSL that is more relevant for coastal management.”

The bold part is confusing. Although it is correct, the question is “So what? We are not trying to determine MSL. It is unclear how this part adds any value to the report and probably should be deleted.

#8 - On Page #6 it says:

“A drawback to tide gauges in North Carolina, in addition to their small number, is that most of them don’t extend back in time more than 50 years, making it difficult to resolve changes in the rate of rise over the decades. The RSL rise record for northern NC was recently extended back in time to AD 1500 using organisms, which are sensitive to the level of the sea and preserved in thick peat deposits, as a proxy for sea level (Kemp et al., 2009). This record resolves an increase in the rate of SLR from 0.8 mm per year to 3.8 mm per year that occurred AD 1879-1915, which corresponds well with nearby tide gauges.”

This seems to say that NC future coastal policies will be based on empirical measurements which cover a miniscule amount of geological time (the DUCK data used here only goes back about 25 years). This is “augmented” by a single study using organisms to purportedly determine Relative Sea Level Rise. How *peat* data from **1879-1915** can “correspond well” with *tide* data from **1985-2010** is not explained.

For some reason the report authors (who, by all indications, seem to subscribe to the theory that “global warming” is the main driver here — i.e. that CO₂ increases will increase temperature, and thus the sea level) failed to discuss how a pre 1915 sea level rise was caused by CO₂. It would appear obvious that there are other mechanisms (both plus and minus) at work, but these do not get any meaningful consideration in this report.

#9 - On Page #7 it says:

That “more accurate” (Jason-1) satellite measurements have only been available since 2001, and that these measure MSL.

Accurate measurements for ten years is clearly insufficient in determining things like hundred year trends. Additionally the report repeatedly states that RSL is the important factor, yet satellites do not measure RSL.

#10 - On Page #7 it says:

“The IPCC Fourth Assessment Report (IPCC, 2007) contains forecasts for global average SLR ranging from 0.18 meters to 0.59 meters (7 to 23 inches) by the year 2100 AD.”

The IPCC is notoriously aggressive in their climate related predictions. This is because they are basing their projections on: **a)** a scientifically unproven AGW hypothesis, and **b)** computer models that are skewed to show a problem.

#11 - On Page #7 it says:

"IPCC estimates are conservative because contributions to SLR from melting Greenland and Antarctic ice sheets are uncertain and this uncertainty was not included when calculating estimates".

These ice sheet projections were excluded for good reason: they are entirely speculative. (Note above where we identified a study that indicated that Ice Sheet losses were enormously over-estimated. The authors here evidently believe otherwise, but offer no scientific proof to support their opinion.)

More importantly, the implication here is that the IPCC's figures (which project a mean of 15" by 2100: see 2007 Fourth Assessment Report [AR4]) are at the low end. The reality is that there is evidence that they are actually high. For instance:

A) Carefully note here that the authors of this NC Report are saying that **they do not accept the conclusions by the consensus of IPCC science experts...**

These are the same people that are telling us that AGW is a resolved matter due to "**the consensus of IPCC science experts**". What this seems to say is that when you agree with the IPCC that "consensus of the experts" is the main justification — but when you don't agree with the IPCC that "consensus of the experts" is not that important. Hmmm.

B) One expert wrote me: "The fact that they are uncertain doesn't necessarily mean that they are conservative. And the fact that the IPCC predicts that the Antarctic Ice sheet is going to grow, not shrink, isn't even mentioned. (See: <<<http://tinyurl.com/4bq93q5>>> and <<<http://tinyurl.com/47npcnm>>>.)

C) "The Greenland Ice Cap did not melt during the postglacial hypsithermal (some 5000 to 8000 years ago), when temperature was about 2.5 degrees C higher than today. Nor did it melt during the last Interglacial when temperature was about 4 degrees C higher than today. As to time, it would take more than a millennium (with full thermal forcing) to melt the ice masses stored there." <<<http://tinyurl.com/62bczgj>>> (Dr. Nils-Axel Mörner: Swedish Sea level expert; Paleogeophysics & Geodynamics)

D) A geophysicist wrote me: "Estimates of ice loss from Greenland and Antarctica have now been shown to be inaccurate due to incorrectly determining the glacial isostatic adjustment. The isostatic adjustment is made by estimating the rate of rebound of the rock beneath the ice. Only recently have enough GPS data points been available to accurately map the adjustments, and to many scientists' surprise it turns out that the basin below the Greenland ice sheet is actually sinking rather than rising. Estimates of ice loss for Greenland have been reduced by 1/3 and I think when more points are obtained the rate will even be lowered more." (See "Ice Sheet Loss Cut in Half" <<<http://tinyurl.com/6feo7ku>>>.)

E) Another expert commented on the Pfeffer paper cited in the NC Report: “Pfeffer calculated a range of possible sea level rises, from 0.8 meters to 2 meters for the 21st century. But even his lower limit requires the velocity of Greenland glaciers to increase to ridiculously high levels. They would have to have average velocities about 9 times their current velocities. Assuming a linear increase in velocity, then they would be moving along at about 20 times their current velocity by the end of the 21st century. These great velocity leaps rely on the lubricating effect of surface melt water making its way to the bottom of the glacier. Since the 2008 Pfeffer paper the theory of this lubricating effect has been discredited. (For example, see: <<<http://tinyurl.com/4slysu4>>>, which says "...channelization and glacier deceleration rather than acceleration occur above a critical rate of water flow. Higher rates of steady water supply can therefore suppress rather than enhance dynamic thinning."

F) “The **science** of climate change must provide testable, that is *falsifiable*, propositions to be science. Those propositions are found in the projections of the IPCC models of temperature trends after 2000. Now Lucia Liljegren has succeeded in showing that those projections are *wrong* for the period 2001-2008, denting the credibility of the IPCC models and, *a fortiori*, the Rahmstorf conclusion (adopted by the Garnaut Interim Report) that observed temperatures are "at the upper end" of the A1F1 projected range.”

“Using statistical methods that ensure robust regression analysis of the temperature data time-series, Liljegren has shown that trends in the *observed temperature data from 2001 to 2008 diverge significantly* from the IPCC projected trends, revealing a **decline** in temperatures at a rate of ~1.1C/century (as opposed to the IPCC's 'mid-range' projections of more than 2.0C/century). Her careful analysis does not, as Liljegren observes, show that the global warming has gone away (she is convinced that anthropogenic warming is happening). Rather, they show that the IPCC projections don't come even close to projecting the temperature trends for the last seven years: that is for the period since 2001 when IPCC projections began. If there is another upturn in temperature trends following this recent period of shallow decline, then concerns about warming trends will look more credible again. But the IPCC projections won't be *repaired* by an upturn in temperature. *Whatever* happens next, the IPCC's projections — and hence, their models — seem to need revision.” (See <<<http://tinyurl.com/4j8uj5f>>>.)

G) There are many other experts who dispute the IPCC's sea level conclusions, saying that it is too high. Here is just one more example, where the conclusion is that the **high end** by 2100 would be more like 9 inches. The author is Madhav Khandekar who was an expert reviewer for the IPCC 2007 Climate Change documents. (See <<<http://tinyurl.com/6gggdu3>>>.)

H) “Successive IPCC reports have reduced their estimates of projected sea-level rise, as shown in the figure below, and are coming closer to a value of 18 cm (7”) per century. Since this is also close to the ongoing rate of rise, this is equivalent to saying there will be no acceleration by AGW, i.e., no additional sea-level rise due to warming.” (See <<<http://tinyurl.com/4cqnlr>>>.)

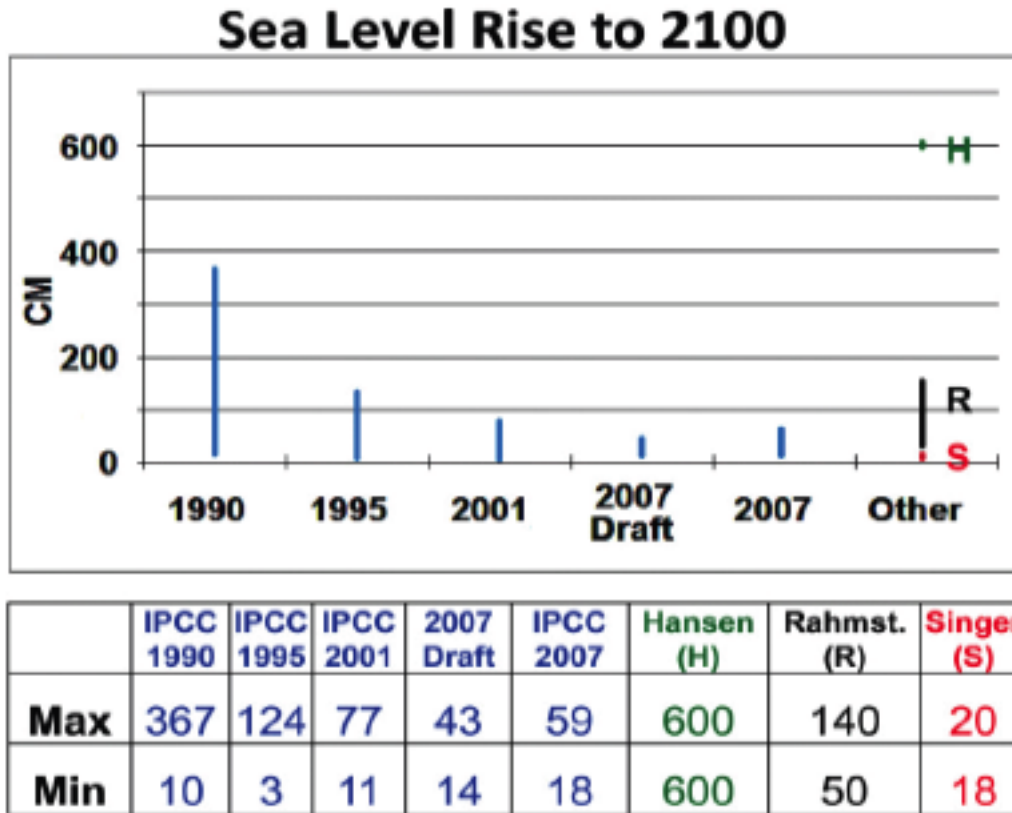


Figure 19: Estimates of sea-level rise to Year 2100 from IPCC reports of 1990, 1995, 2001, and 2007. Note the strong reduction in estimated maximum rise, presumably based on better data and understanding. Also shown are the published seal level rise values of Hansen (H) [2006], Rahmstorf (R) [2007], and Singer (S) [1997]. Both H and R are well outside of the maximum IPCC values. The ongoing rate of rise in recent centuries has been 18 cm per century; therefore, the incremental rate of rise for IPCC 2007 would be 0 to 41 cm, and about 0 to 2 cm for Singer.

#12 - On Page #7 it says:

“Several studies that use semi-empirical relationships between sea level and climate have predicted up to 1.4 meters (55 inches) of sea-level rise by AD 2100 when ice sheet contributions are included.”

The term “semi-empirical” can mean a lot of things, but usually it is code for “selected real world data was massaged by a computer program and plugged into a model that the author made up because it produced results that he had hoped to show.”

A careful reader of the *NC Sea Level Assessment Report* will come to the inescapable conclusion that Rahmstorf's 2007 paper is the key pillar supporting the authors' opinion that the IPCC's sea-level projections are too conservative. Rahmstorf 2007 is referred to some nine times in this report, using such terms as “robust” and that “Rahmstorf's ‘method’ for projecting future SLR has been adopted by several states and municipalities. The method has produced highly accurate hindcast results ...”.

Since this report relies so heavily on Rahmstorf's 2007 paper (see <<<http://tinyurl.com/3bhuzd>>> and <<<http://tinyurl.com/456arxg>>>) it is appropriate to investigate the credibility of his methodology and conclusions:

- A) One expert wrote: “Stefan Rahmstorf is regarded as being outside the mainstream of current thinking, to put it charitably. Here is a rebuttal to his sea level rise estimates written by four prominent oceanographers: <<<http://tinyurl.com/67qbv2y>>.” Their conclusion is that Rahmstorf's work is “simplistic”. In an interview with London's *Sunday Times*, one of the authors, Dr Simon Holgate, said: “Rahmstorf's real skill seems to be in publishing extreme papers just before big conferences like Copenhagen, when they are guaranteed attention.”
- B) There is a very detailed critique of Rahmstorf's 2007 paper at this website: <<<http://tinyurl.com/4z3wxjo>>>. This analysis concludes that:
 - 1) Sea level rise rate *vs.* temperature is displayed in a way that erroneously implies that it is well fit to a line, as expressed in his equation.
 - 2) The assumption that the time required to arrive at the new equilibrium is "on the order or millennia" is not borne out by the data.
 - 3) Rahmstorf extrapolates out more than five times the measured temperature domain.
- C) In a highly unusual move, Dr. Eduardo Zorita publicly called for Rahmstorf to be barred from the IPCC process <<<http://tinyurl.com/4w382sn>>>. Dr. Zorita is a leading Paleoclimatologist (headed the Department of Paleoclimate at the GKSS Research Center) and physicist who has written numerous scientific papers on climate related matters (<<<http://tinyurl.com/48f5l87>>>).
- D) Dr. Roger Pielke, Sr. (<<<http://tinyurl.com/6cbj26>>>: a well respected meteorologist) wrote that there was “Blatant Cherry Picking By Stefan Rahmstorf And Colleagues In Science Magazine”. This article is very similar to the 2007 Rahmstorf report cited by the NC Sea Level Assessment, so the criticism is pertinent here. (See <<<http://tinyurl.com/5stq9ap>>>.)

- E) “The studies (2007, etc.), led by Stefan Rahmstorf, ... have caused growing concern among other experts. They say his methods are flawed and that the real increase in sea levels by 2100 is likely to be far lower than he predicts. Jason Lowe, a leading Met Office climate researcher, said: ‘We think such a big rise by 2100 is actually incredibly unlikely. The mathematical approach used to calculate the rise is completely unsatisfactory.’” (See <<<http://tinyurl.com/y9hh6lv>>>.)
- F) Since the 2007 Rahmstorf paper is rather technical, here is a technical expert analyzing it, and concluding that some of its key technical claims aren’t what they are asserted to be:
 “At the end of the day, the secret of Rahm-smoothing is that it’s a triangular filter with linear padding. All the high-falutin’ talk about ‘embedding dimension’ and ‘nonlinear ... lines’ is simply fluff. All the claims about doing something ‘new’ are untrue, as are Rahmstorf’s claims that he did not use ‘padding’. Rahmstorf’s shift from M=11 to M=15 is merely a shift from one triangular filter to a wider triangular filter – it is not unreasonable to speculate on the motive for the shift, given that there was a material change in the rhetorical appearance of the smoothed series.” (See <<<http://tinyurl.com/34qa2zf>>>.)
- G) **Rahmstorf subsequently publicly acknowledged a significant error in his 2007 paper.** [Note that it had been signed off by his “peers,” and none were the wiser.] “In hindsight, the averaging period of 11 years that we used in the 2007 Science paper was too short to determine a robust climate trend. The 2-sigma error of an 11-year trend is about +/- 0.2 °C, i.e. as large as the trend itself. Therefore, an 11-year trend is still strongly affected by interannual variability (i.e. weather)” (<<<http://tinyurl.com/6z5nmpy>>>). This shows how the curves change when he makes new assumptions <<<http://tinyurl.com/nz26s9>>>.
- H) Dr. David Stockwell has a lengthy critique of Rahmstorf 2007 and concludes: “It is apparent from these discussions that Prof. Rahmstorf had little understanding of the methodology he employed, and that the view expressed in Rahmstorf et al. (2007) that: ‘The data available for the period since 1990 raise concerns that the climate system, in particular sea level, may be responding more quickly to climate change than our current generation of models indicates.’ is based in flawed and biased research.” <<<http://tinyurl.com/4662alj>>>. And more from Stockwell is here <<<http://tinyurl.com/485yuaa>>>.
- I) Another analyst weighs in “The non-linear trend in Rahmstorf et al. [2007] is updated with recent global temperature data. The evidence does not support the basis for their claim that the sensitivity of the climate system has been underestimated.” <<<http://tinyurl.com/4cyjmbv>>>.

J) World famous meteorologist, Dr. William Gray, (Emeritus Professor of Atmospheric Science, Head of the Tropical Meteorology Project, etc.) wrote me saying: "I have interacted with Stefan Rahmstorf a little bit over the last decade. I've been to a few meetings with him and he has visited and given talks at our ATS Department in Fort Collins. He is a 'far-out' global warming modeler... I do not judge Rahmstorf's model assessments of 2100 sea levels as being objective or reliable. He is very biased in his AGW views and has grossly exaggerated the warming threat to his own betterment, in my view. I've seen his 2007 Science paper. His Figure 4 graph indicating a 60-140 cm rise in sea levels by 2100 is not at all credible. North Carolina should not use this long period forecast. It is grossly exaggerated. I would anticipate a value more like 20-30 cm (8"-12")."

K) Experts subjected Rahmstorf's theories to testing, and they came up short <<<http://www.nipccreport.org/articles/2010/dec/1dec2010a1.html>>>.

L) I received this commentary from a closely involved scientist "The question of future sea-level rise is a complex one, and one where the uncertainties are very deep indeed. Let me try to summarize the problem. Within the mainstream IPCC interpretation sea level rise would be affected by different contributions: the expansion of the water column due to rising water temperatures, melting of land ice (glaciers and polar ice sheets), the gravitational effect of the disappearance of the latter, changes in ocean circulation that do not affect global mean but would do so at regional scales."

"The IPCC climate models cannot represent all these processes, which means that there are processes that are not included at all in the climate models. One is the dynamics of polar ice sheets, the other is the gravitational effects of these ice sheets. The dynamics of polar ice sheets under rising temperatures is largely unknown. This is why the last IPCC report bolted an 'overhead' of roughly 20 cm to the contribution of the expansion of the water column simulated by climate models. This amount is however just a guess-estimate. Some researchers, like Rahmstorf have been trying to implement ad-hoc semi-empirical methods to estimate the contribution of the polar ice sheets to future sea-level rise. Basically he set up a statistical model linking the rate of sea level rise and global temperatures. The model would be calibrated with observations and then applied to the simulated global temperature rise from climate model simulations. This type of study, though much touted in certain circles, is **not part of any consensus among scientist close to the IPCC, and I would even say that Rahmstorf represents a minority view here.**"

For those in the know, Rahmstorf did come out with a 2009 paper that changed some things from his 2007 version. *Why didn't the 2010 NC report use the later 2009 paper?* Probably because it was even more unsupportable. See this twelve (!) part critique: "Rahmstorf (2009): Off the Mark Again (Part 12) — A Mathematical Comedy" <<<http://tinyurl.com/4vyuk3b>>>... And here is criticism from a scientist with statistical modeling expertise who found Rahmstorf's "method to be unreliable." (See: <<<http://tinyurl.com/4mfhgoz>>>.)

In summary, for those who still advocate Rahmstorf's approach, I put forward this observation sent to me: "I read that there is a possibility that a tremor could knock one of the cliffs off a Canary Island, which in turn could create a tsunami that would sweep across the Atlantic and inundate the entire east coast of the United States. The plausibility of this is unknown, just like the 1 meter projection of NC sea level rise by 2100. Accordingly I would argue that North Carolinians should built a gigantic sea wall to prevent being swamped by such an event. Hey, you can't be too careful, right?"

Both Rahmstorf 2007 and the NC sea-level report reference the Church & White 2006 study (<<<http://tinyurl.com/4uuoxdv>>>) to support their high sea-level rise contentions. The obvious question is: how reliable is *that* report?

A) A top sea level researcher wrote me in a personal correspondence: "C&W 2006 used a different technique to effectively scale the tide gauge record by the satellite altimeter data. See the CSIRO_GMSL_figure which shows the good agreement between tide gauge and satellite data. C&W is the ONLY study to achieve this agreement, and as they acknowledge in the paper, their findings are **not consistent** with all the other studies. This should raise red flags."

B) Another sea level expert wrote me: "In reading and re-reading the C&W 2006 abstract and introduction, I come away with a sense that the authors approached the subject with the intent of discovering an acceleration in the rate of sea level rise. In the 1990s, global warming aficionados paid great attention to tide gauge-based sea level data as a proxy for measuring climate. However, mathematical calculations of that data could not produce a rate of rise as significant as the computer modeled scenarios featured in the early IPCC reports. The IPCC wanted/needed confirmation of the models from various approaches to measuring climate. For the tide-gauge data to produce results similar to the IPCC models a century out (and thus confirm the models), it would be necessary to find late-period acceleration in the most recent data. The C&W 2006 paper apparently intended to produce that acceleration and confirm the works cited in the IPCC's first three assessments. The C&W paper completely falls apart on the logical fallacy contained in their conclusion and is simply not *"an important confirmation of climate simulations."* I can say with confidence that the Church/White paper is corrupt and deserving of ridicule. Such patently bad science disappoints me. **No public policy decision should be based on that paper.**"

C) A recent paper (Wada, et. al. [2010]) estimates that up to .8 mm a year of sea level rise may be attributed to pumping ground water. Church et al. have not accounted for this. (See <<<http://tinyurl.com/4azbchs>>>.)

D) Church & White speculate on a mathematical model — which is not accurate. The point is that minor changes in curve-fitting methods can cause large changes in projected sea-level rise. (See <<<http://tinyurl.com/4sr79mj>>>.)

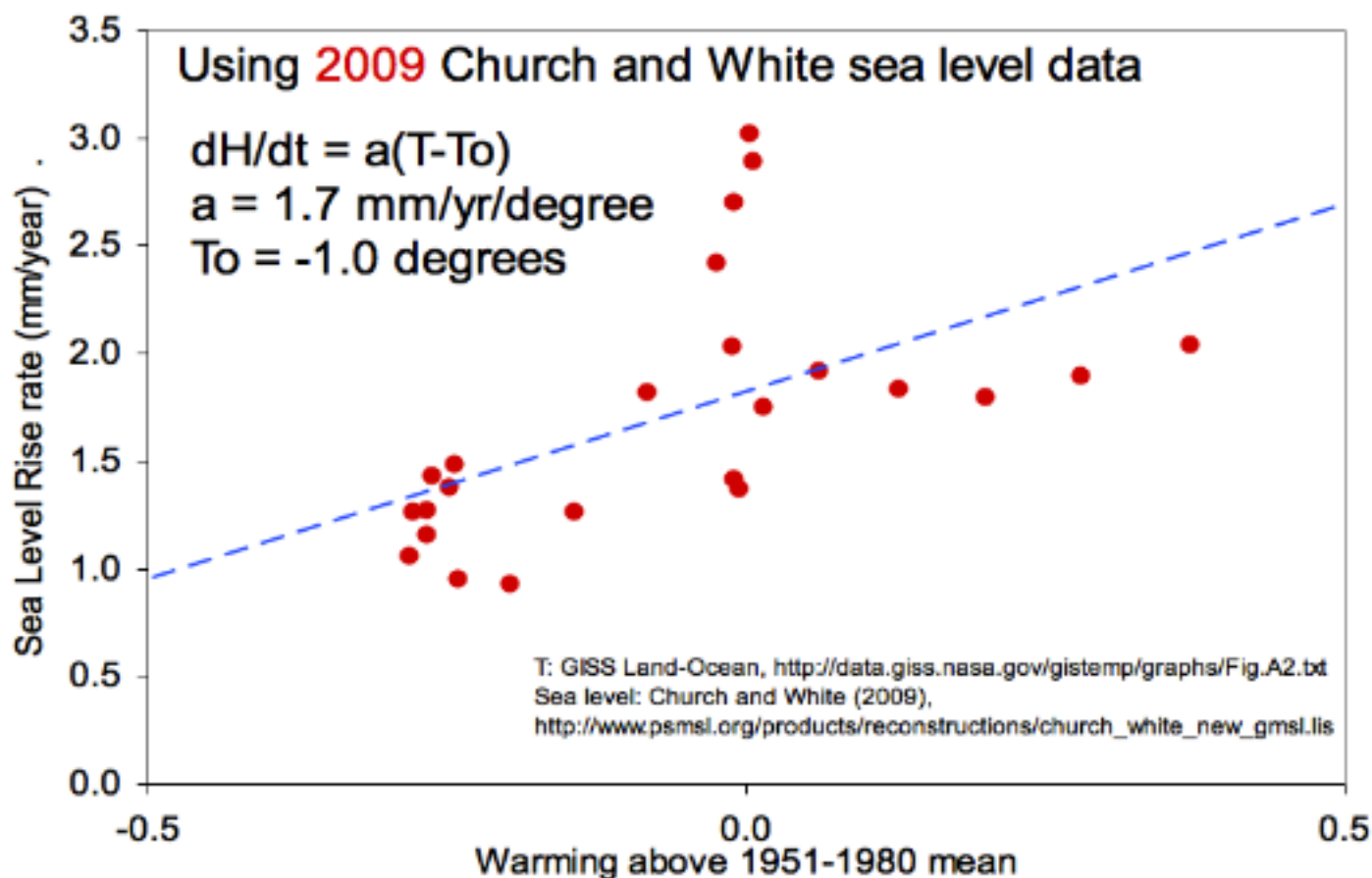
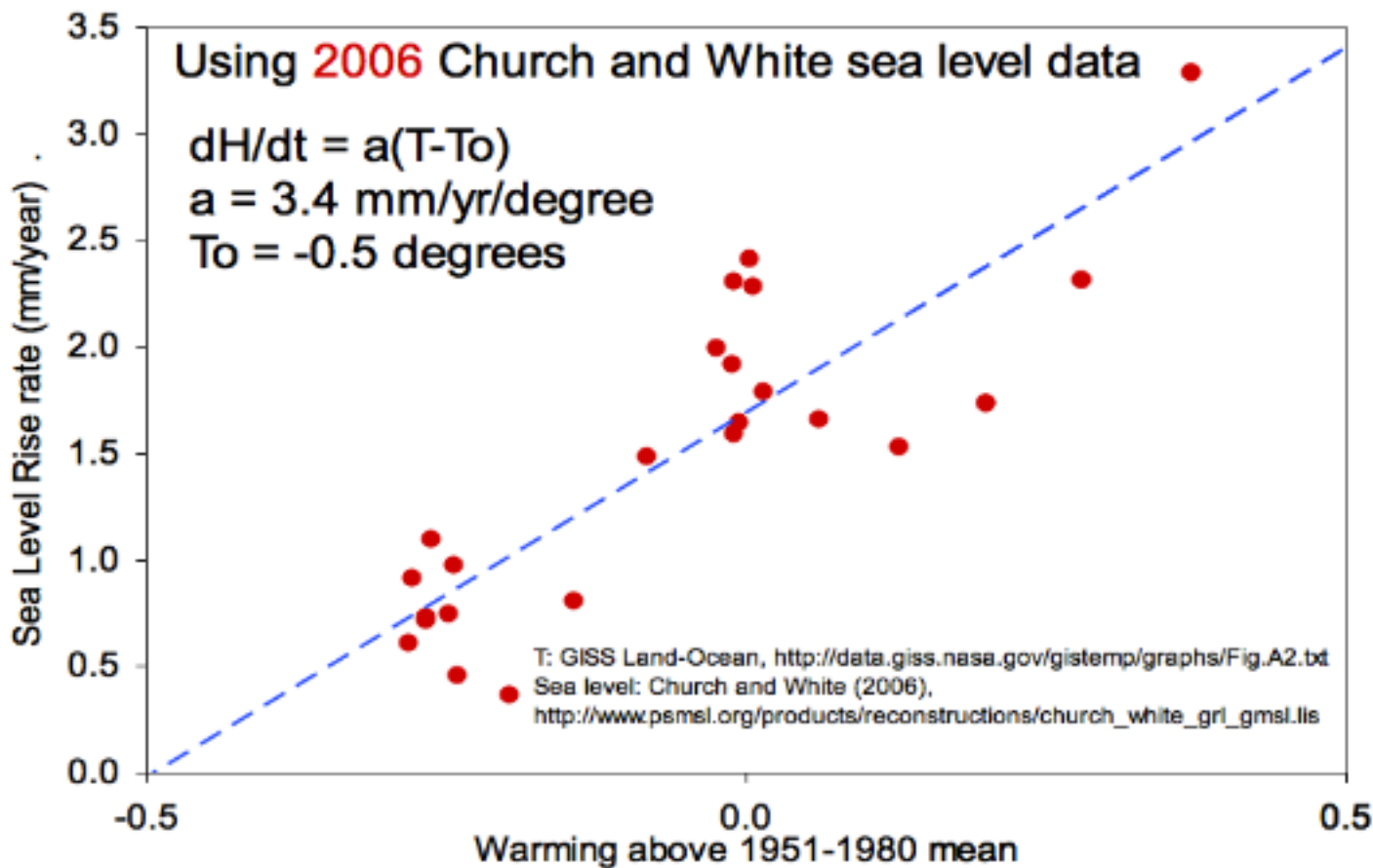
- E) Church & White's conclusions depend a lot on satellite data. This 2010 study shows that there are potentially many very large "errors and biases" of such information. (See <<<http://tinyurl.com/4nv75m8>>>.)
- F) Maybe the most convincing evidence that Church & White 2006 is seriously flawed, comes from Church and White. Well aware of the criticisms to its methodology, Church & White issued corrected data in 2009. **The sea level rise projections using the 2009 data are about 50% of what results from using their 2006 data.**

An expert in these matters kindly plugged in the C&W 2006 data into the Rahmstorf 2007 report. He then plugged in the C&W 2009 data into the Rahmstorf 2007 report. **See the next page for these two graphs.** It should be abundantly clear that the projected sea level rise is considerably less in using the 2009 data. A good question would be: *why didn't the 2010 NC Sea Level Assessment Report reference and use the later 2009 C&W data?*

This same expert commented: "Another important point that is revealed when the 2009 Church and White data is used is that the baseline or equilibrium temperature 'To' drops from -0.5 degrees to -1.0 degrees. The baseline or equilibrium temperature is the temperature, presumably in the 19th century, when the sea level was unchanging. This implies that for the Rahmstorf's model to be correct and for Church's and White's sea level data to be correct, then the equilibrium temperature must be half a degree lower than Rahmstorf calculated. This is huge."

This is a private correspondence that I received from a qualified sea level person: "C&W 2009 extended the data set out five more years (end of 2001 to mid 2007), and also corrected data for the previous 100 years. **If Rahmstorf used C&W 2009 instead of C&W 2006, the results would have been predictions of sea level rise half as great.** The C&W 2009 'improved' their earlier paper and came close to removing any apparent acceleration in rate of rise. But they did something Dr. Hansen is famous for: *correcting the older historical data downward to make the modern observations appear more severe.*"

This is a private email that I received from a different top sea level expert: "The difference between C&W 2006 and C&W 2009 was the addition of extra data. The bizarre aspect is that it results in the lowering of tide gauge values before 1930, *and* the straightening of the sea level curve. This indicates a problem with their methodology, because I have been working on the key long term tide gauge records for that period, and they do not behave that way. A consequence of the adjustment for the C&W 2009 data, is that the **Rahmstorf methods now predict much lower values (the same as IPCC) because the acceleration is gone.**"



#13 - On Page #7 it says:

“In summary, there is consensus that the rate of SLR will increase during the 21st century and beyond.”

The references just listed here should make it very clear that there is no “consensus that the rate of SLR will increase during the 21st century and beyond.” Even if there was, Science is **never** about “consensus.” As was spelled out in Part 1, “best science” is rather about comprehensive, objective, transparent and empirical assessments. This study is not burdened with these scientific obligations. Nowhere is this document is the gold standard of science, the Scientific Method, even mentioned in passing.

#14 - On Page #10 it says:

“It is clear that the SLR rates have varied in the past (the rate of rise appears to have doubled at c. AD 1900) and will likely change again in the future (Fig. 2).”

It is indisputable that SLR rates have changed in the past. It is also certain that there will be sea-level changes in the future. However, the two critical questions: **1)** exactly which influences caused how much NC sea-level change in the past, and **2)** which influences will cause how much NC sea-level change in the future, are entirely unanswered by this report.

#15 - On Page #10 it says:

“Over the course of 90 years (to 2100 A.D.), the differences in RSL rise are not substantial enough to warrant detailed determinations of RSL curves for all areas, as these local differences are likely to be overwhelmed by the global effects of accelerating ice melting and thermal expansion.”

This is another major built-in assumption: that there will be **consequential** “global effects of accelerating ice melting and thermal expansion.” This assumption is not scientifically proven. An additional unproven assumption is that these speculated “global warming” affects will “overwhelm” all other influences. Where is the scientific proof of that assertion? None is given.

#16 - On Page #10 it says:

“The sea-level curves should utilize maximum modern relative sea level rise rates and best estimates from the scientific literature”

This statement is used to try to justify the panel’s conclusions about NC sea level rise, graphically shown on Page 11, Figure 2. There are two assertions here that need to be examined. The first is: what does “maximum modern” SLR rates mean? For instance, does “modern” mean satellite data only? Is this an admission that the three studies on Page 8 are of little pertinence? Not clear.

The second assertion is that what they have presented are the “best estimates from the scientific literature”. This statement is a close relative to their frequently utilized “best science” claim, and has the same genetic deficiencies. There is no evidence in this report that they relied on “best estimates from the scientific literature,” as they repeatedly only selected studies that supported their opinions about AGW and a supposed acceleration of sea-level rise. Real science is **objective** about assessing a situation, which is not the case here.

#17 - On Page #10 it says:

“For the purposes of this report, the Science Panel feels most confident in the data retrieved from the Duck gauge, given its installation, continuous length of service and lack of influence by maritime navigation projects.”

So how appropriate is the selection of the Duck, NC station as the sole data source? Consider the following:

- A) NOAA lists four sea level stations for NC — and Duck is not one of them. (See <<<http://tinyurl.com/66bbn9z>>>.) The NC report even acknowledges that NOAA “uses more sophisticated instruments” to measure sea level. The NC report is silent about why it ignored the NOAA sites, but says that one of the main reasons the Duck location was chosen was due to the “continuous length of service” of its measurement station. Note that the NOAA NC mid-coastal Beaufort station data starts in 1952 and has **30 years** more data than the Duck site.
- B) So what does the data from Beaufort say? The NOAA Beaufort graph says: “The mean sea level trend is 2.57 millimeters/year with a 95% confidence interval of ± 0.44 mm/yr based on monthly mean sea level data from 1953 to 2006 which is equivalent to a change of 10 inches in 100 years.” In other words, the sea level rise there is only **60%** of the Duck site.
- C) "Subsidence is a lowering of the land level. In North Carolina subsidence occurs naturally along the coastal plain because the soft rocks there are compressing under their own weight. It can also occur in areas around water wells, because removing water from the ground also causes the rock to compress. Where the coast is subsiding sea levels will seem to be rising faster than they really are." Although Subsidence was mentioned in passing in the NC Report, there is no evidence that any adjustments to the Duck readings were made to account for it. For more information about subsidence, see: <<<http://tinyurl.com/6hqmjk6>>>.
- D) The Duck proximity to the Chesapeake Bay region would likely result in distorted readings. Dr. John Boon, a professor emeritus with the Virginia Institute of Marine Science, says that subsidence is a particularly significant factor throughout this region, and that some parts have it quite bad. "We have relative sea-level rise rates that are the highest on the US East Coast." (See <<<http://tinyurl.com/4nrdr9>>>.)

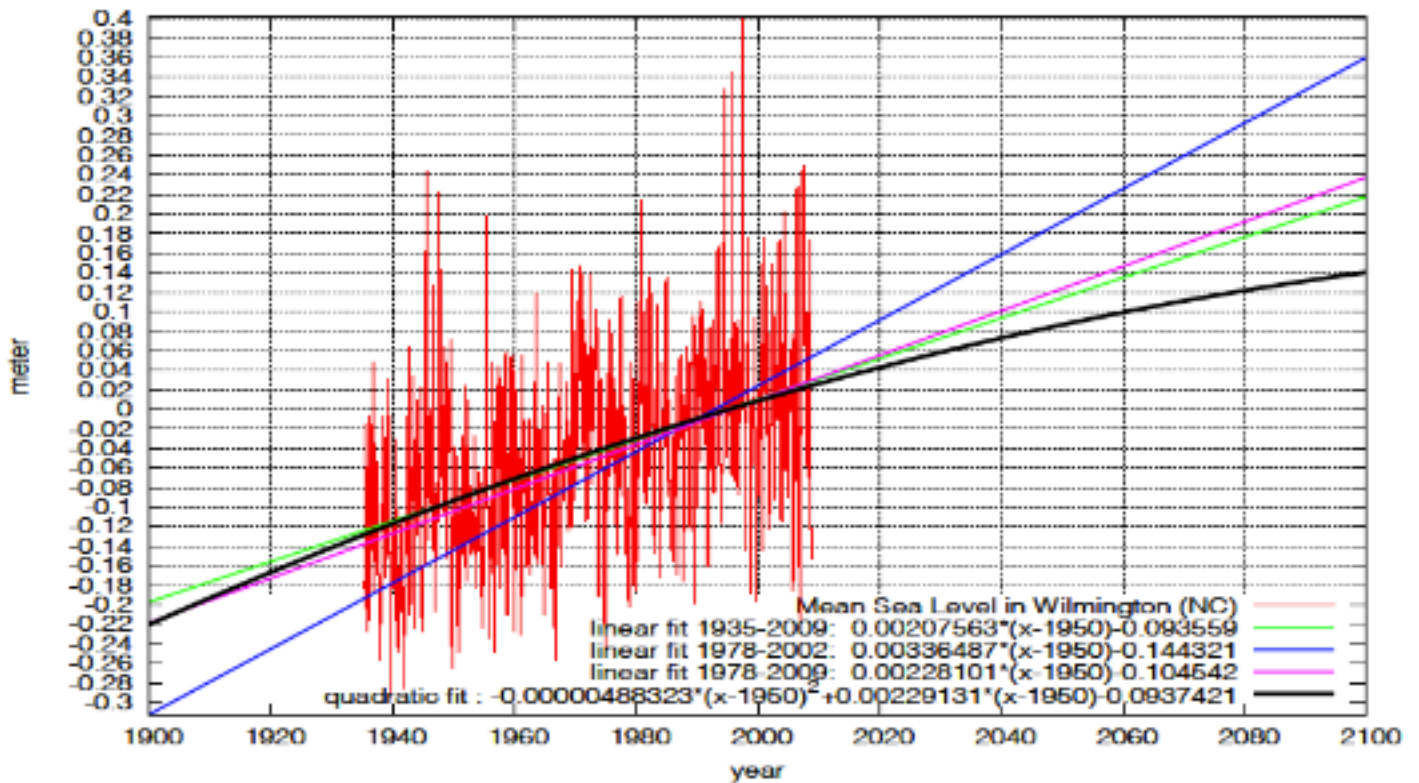
- E) The effects of hurricanes may have skewed the Duck results. Look at the Duck monthly data <<<http://tinyurl.com/46kmyo7>>>. For example, Hurricane Fran struck in September of 1996. That monthly reading (7232) is among the highest recorded over the 25 years of data they have. Clearly this is a temporary aberration, and is not indicative of a general “sea level rise.” Yet it appears that such readings are used in calculating the average sea level, which would appear to make the result artificially higher. Add to this the unknown effects of some of the previously mentioned influencing factors (Gulf Stream, Jet Stream, El Niño, tidal variations, plate tectonics, isostatic rebound, Atlantic multidecadal oscillation, subsidence, artificial reservoir water impoundment, etc.). The position of the report authors appears to be that the effects of these numerous items (for the most part) can be ignored as they all balance out. Again, there is little real science to support such significant assumptions, so that the net result is that we have a questionably unreliable set of numbers.
- F) According to the Report’s own research (Page 9: Table 1) the Duck data showed the highest sea level rise of all the NC station points. What this says is that the Duck results are **not** representative of the NC coast, so should not be used as such. What this also says is that the Duck results may not be an accurate indicator of actual seal level rise, as their higher readings may well be caused by some other local phenomena (e.g. Chesapeake subsidence).
- G) There are two unexplained matters that arise from looking at the graph [Figure 2] on Page 11, which shows it using Duck data from “1978 - 2002”:
1) Why would a 2010 report have only 2002 data? and **2)** where does the 1978 to 1985 data come from (as the PSMSL site for Duck says their data begins in 1985 <<<http://tinyurl.com/69dfqno>>>)?

#18 - On Page #10 it says:

“A rise of 0.4 meter (15 inches) is considered a minimum, since this is the amount of rise that will occur given a linear projection with zero acceleration.”

This line they chose as a “minimum” is the **midpoint** of the IPCC projection range. A linear increase is not necessarily the minimum, as sea level rises can also be cyclical. Furthermore, the linear rate of rise (i.e. the slope of the line), is speculative as well. See the above comments about the IPCC’s figures being high that are part of the critique of Page 7 of the report.

Dr. Nicola Scafetta (Duke physicist <<<http://tinyurl.com/4v3wt6b>>>) was kind enough to do a plot of some NC tide data for us (**see next page**). What it shows is the the slope of the line going forward is extremely dependent on: **1)** the duration of time considered [the more the better], and **2)** the dataset chosen [he picked Wilmington due to its lesser subsidence, etc.]. The net result is that doing this results in a projected rise that is LESS than the report’s stated “minimum.”



Mean Sea Level record in Wilmington (red) that has data from 1935 to 2009 and are plotted in the above figure. The data are fit in 4 different ways and indicate the forecast based on the fit functions:

- 1) linear trend from 1935 to 2009: 20 cm rise by 2100 relative to the 2009 value
- 2) linear trend from 1978 to 2002: 34 cm rise by 2100 relative to the 2009 value
- 3) linear trend from 1978 to 2009: 22 cm rise by 2100 relative to the 2009 value
- 4) quadratic trend from 1935 to 2009: 12 cm rise by 2100 relative to the 2009 value

Now note that Figure 2 in the NC Sea-Level Rise Assessment Report fit the data from 1978 to 2002 and claim a linear increase of the sea-level of about 38 cm in 2100 relative to the 2010 value. That linear forecast is compatible with the linear forecast #2 (blue line) made in the above figure.

However, the linear fit from 1935 to 2009 (fit #1, green line) gives a significant lower increasing rate by 40%. The claim made in the report is that the sea-level rise is accelerating. However, if the fit is repeated from 1978 to 2009 (fit #3, purple line) I get again a significant lower rate.

Thus, the linear value fit in Figure 2 in the report is misleading. The data clearly present a multidecadal cycle, and from 1978 to 2002 this cycle was in its increasing phase. By fitting only the period 1978-2002 it is given the impression of a very fast linear increase, while fitting the period 1978-2009 the increasing rate is significantly lower by 40%.

Indeed, the existence of a multidecadal cycle in the sea-level rise that was in its rising trend from 1970 to 2000 is well known in the literature. For example, in this paper Jevrejeva, S., Moore, J. C., Grinsted, A., and Woodworth, P. L.: Recent global sea level acceleration started over 200 years ago?, *Geophys. Res. Lett.*, 35, L08715, 2008. <<<http://www.psmsl.org/products/reconstructions/2008GL033611.pdf>>>.

#19 - On Page #10 it says:

“Various models and observations indicate that accelerated rates of SLR in the future are likely”

The fact is that there are also various models and observations that indicate **no** accelerated rates of SLR in the future are likely (some cited above). The authors chose to ignore all of those. The main studies that this report relies on (IPCC, Rahmstorf 2007, and Church & White 2006) have been shown (above) to be speculative and certainly not “best science.”

#20 - On Page #11 it shows Figure 2 as the authors' projected scenarios

The takeaway from this critique is that (based on what we know now) the bottom line is more likely to be the **high end** result by 2100, than is the authors' projected “mid-range” line of 39”. See comments from some experts at the end of this critique, which all support this position.

#21 - On Page #12 it says:

“A one meter (39 inch rise) is considered likely in that it only requires that the linear relationship between temperature and sea level that was noted in the 20th century remains valid for the 21st century (Rahmstorf, 2007). This level of rise is consistently encapsulated within all of the projections reviewed, and is not located at the upper or lower extremes of the projections.”

Again the authors of this report rest their case on Rahmstorf 2007. We have clearly shown that Rahmstorf 2007, plus the data he used (Church & White 2006) do **not** hold up under scientific scrutiny. The revealing fact is that both Rahmstorf AND Church & White have abandoned their own reports. Even more interesting is the fact that these abdications were done PRIOR to this 2010 NC Report. *By what stretch of the imagination does this NC Sea-Level Assessment Report then represent “best science”?*

#22 - On Page #12 it says:

“Given the range of possible rise scenarios and their associated levels of plausibility, the Science Panel recommends that a rise of 1 meter (39 inches) be adopted as the amount of anticipated rise by 2100, for policy development and planning purposes.”

Since the foundation of their 1 meter claim (R2007/C&W2006) has been proven to be wrong, the Science Panel's conclusion is likewise. As some oceanographers wrote me: “garbage in, garbage out.” This is exactly the type of problem that occurs when policy-makers start with a belief and then focus on finding other like-minded parties to support it. With the debunking of R2007/C&W2006, the entire NC Report collapses like a house of cards. The fact that this NC Report is being marketed to the public as “best science” is not only a serious misrepresentation, but an affront to true scientists everywhere.

#23 - On Page #12 it says:

“The Science Panel does not believe, based on the data available at this time, that it is appropriate to attempt to quantify confidence intervals or margins of error beyond those inherent in the chosen scenarios, as informed by the published literature. Nevertheless, the Science Panel is confident that the curves presented constrain the plausible range of sea level by 2100 as accurately as is possible at this time.”

This seems like still another contradiction. How does the science panel say:

1) we cannot assess a quantifiable confidence level (e.g. 90% certainty) of our speculations, but **2)** we are confident that this range is as accurate as possible? Again, since the projections of R2007/C&W2006 had already been substantially reduced by their own authors *prior* to 2010, how does this jibe with “as accurate as possible”? This marketing phrase is intended to be a synonym for “best science” which we already know (for this NC Report) is simply not true.

#24 - On Page #12 it says:

“...and based on multiple indicators **suggesting** that global climate is warming, the Panel **believes** that an acceleration in the rate of SLR **is likely.**”

Note the three qualifiers: “suggesting”, “believes” and “is likely.” The cumulative effect of these hedges (plus the prior mentioned nonscientific methodology used in this report) is that **the conclusions of this report are wildly speculative.**

As such it is entirely inappropriate to be using any such material as a basis for the coastal policies of the North Carolina government. This report should be retired, and a new science-based assessment undertaken.

Here is a very small **sample** of some other quotes received from experts:

A) Dr. Willem de Lange (Department of Earth and Ocean Sciences, School of Science and Engineering, The University of Waikato): “The appropriate assumption for the expected NC sea level increase, would be to use the IPCC's figures as a guideline, remembering that they are projections based on scenarios that do not correspond to the actual economic activity since 1990 (and over-estimate the concentrations of greenhouse gases).”

B) Dr. Nils-Axel Mörner (former head of the Paleogeophysics and Geodynamics department at Stockholm University <<http://en.wikipedia.org/wiki/Nils-Axel_Mörner>>) looked at the NC report and wrote about their 1 m projection: “Sorry, simply physically impossible. It is, for sure, not rising by 1 m by year 2100. Our best estimate (for 2100) is +5 cm ±15 cm, and that is nothing to worry about.”

- C) Dr. Vincent Gray (a climate expert and an Expert Reviewer for the IPCC since 1992): “The 2010 NC Sea Level Assessment Report is all about models and is entirely theoretical. It does not seem to be interested in actual measurements.” Here is an example of the sea level research done by Dr. Gray <<<http://nzclimatescience.net/images/PDFs/spsl3.pdf>>>.
- D) Dr. Bob Carter (paleontologist, marine geologist <<<http://members.iinet.net.au/~glrmc/>>>) wrote: “What this data says is: planning should proceed on the basis of the continuation of the long-term average rate of local rise of about 30 cm (12”±) in 90 years...” Here is a sample paper he has written on Sea Level rise <<<http://tinyurl.com/4clhmm2>>>.
- E) Dr. Pieter Folkens (marine expert, with paleontology background <<<http://www.alaskawhalefoundation.org/volunteers/volunteerPage>>>) “There is a strong tendency to exaggerate evidence of global warming... Every effort is made, no stone unturned, in a quest to wring out as much sea level rise as the most gullible audience will believe. There is quite a bit of bias in these studies, most designed to confirm the IPCC's scenarios/predictions or lead to what has become a cliché of ridicule — ‘It's worse than we thought.’ Even still, the bottom line for me is that when all this is put into the context of the historical Late Holocene climate variation, the worst case scenarios — whether they be from Church, Rahmstorf, (etc.) or the IPCC — fall within normal climate variation and are not that remarkable in the big picture.”
- F) Dr. Nicola Scafetta (Duke physicist <<<http://tinyurl.com/4v3wt6b>>>) said: “I do not believe that the *North Carolina Sea-Level Rise Assessment Report* is accurate or credible. The data present clear geometrical patterns that contradict the data modeling presented in the report to reach its conclusions. By 2100 only a reasonable MSL rise of no more than 10-20 cm (8”-12”) may be expected in NC, which is 5-10 times lower than what the report claims.”

[Note: after writing this critique, I sent it to over thirty people with expertise in the sea-level rise issue (including those quoted herein). Corrections were made (and will continue to be if necessary) based on their inputs.]

Respectfully Submitted by:

John Droz, jr.
Physicist & Environmental Advocate
NC-20 Scientific Advisor
Morehead City, NC aaprjohn@northnet.org

PS — See next page for an important Postscript.

PPS — See Addendum for additions after initial release.

PPPS — for an unmarked up version of the 2010 “North Carolina Sea Level Rise Assessment Report” see <<<http://tinyurl.com/4a24my9>>>.

— POSTSCRIPT —

At the time of this critique, the state agency behind the “NC Sea-Level Rise Assessment Report” has (due to a backlash) backed off somewhat. It’s to their credit that they are listening. What citizens and coastal communities should be aware of is that another similar, but larger effort is already in the pipeline and is scheduled to be released in June of 2011. It is called the “North Carolina Sea Level Rise Risk Management Study” (see <<<http://www.ncsealevelrise.com/>>>).

What is of concern is that this Study is being overseen by a NC agency (Emergency Management, NC Office of Geospatial and Technology Management) that appears to have the same philosophy as the agency that oversaw the 2010 *NC Sea-Level Rise Assessment Report*.

Their web page again tries to assure NC citizens that the “Sea Level Rise Risk Management Study” is being done scientifically, i.e. by:

"An advisory committee, **representing a broad range of viewpoints**, is overseeing the study efforts helping build consensus, and ensuring that the quality of the study meets community standards and fulfills stakeholder needs."

This is a variation of the “best science” theme, so we’ve heard this before. The questions are:

- 1) does this "broad range of viewpoints" include several scientists skeptical of the IPCC's findings?
- 2) is the committee primarily made up of scientists who advocate the **Scientific Method** being used to solve our technical problems?

I was going to ask the “Executive Study Director” those questions, and left a phone message for him on February 22, 2011. I am awaiting his callback.

Note that the “Study Manager” (the person running things) is employed by a company named Dewberry. It is interesting to see that Dewberry proudly identifies themselves as being a leader in providing solutions for global warming related matters (<<<http://www.dewberry.com/climatechange.asp>>>).

Once you understand this basis for Dewberry’s business, what criteria would you expect these people to use in selecting scientists to participate in this Study? How likely is it that these people will seriously entertain inputs from scientists who dispute the validity of AGW?

This Study has indications that it is another example of “best science” simply being a stick-on smiley-face label.

If for nothing other than variety, the citizens of NC would be most pleased to see a real science product come from a NC agency. Hopefully the failings of the “NC Sea-Level Rise Assessment Report” will not be repeated in the “NC Sea Level Rise Risk Management Study”.

— ADDENDUM —

[Below is information that I became aware of too late to incorporate into the above critique. Since they are relevant, I am adding them here.]

Add this to the comments regarding #5:

This is a **very** important new paper, which is a critical evaluation of the claim *that there will be an accelerating sea level rise between now and 2100*:
<<<http://tinyurl.com/496kxps>>>.

It is published in an independent journal (<<<http://tinyurl.com/4r6glyh>>>) and the credentials of the authors are top notch (e.g. both are PhD's and Emeritus Professors).

What is also of interest is that I subsequently heard from one of the authors the following:

"I personally believe the earth is warming primarily due to the actions of man, but **we should be using science properly to determine what is happening.**"

This is a refreshing perspective from an AGW proponent, and I couldn't agree more!

These two experts also have a worthwhile Powerpoint presentation that goes along with their study. Download this here: <<<http://tinyurl.com/4d96g48>>>.

Add this to the comments regarding #10:

This is an exceptionally well-documented critique about the IPCC's claims — with the focus on how well the IPCC has followed scientific standards <<<http://tinyurl.com/3co8jbl>>>. "Research to date on Forecasting for the Manmade Global Warming Alarm. Testimony to Subcommittee on Energy and Environment Committee on Science, Space and Technology – March 31, 2011" -

Add this to the comments regarding #11:

Since some of the projected acceleration is based on the theory of melting glaciers, here is an article which further disputes the Greenland concerns: <<<http://tinyurl.com/4lzcaut>>>. Dr. Cliff Ollier (Emeritus Professor) is a geologist and geomorphologists. He is the author of ten books and over 300 scientific papers.

Add this to the comments regarding #12:

"A look back at 'A Semi-Empirical Approach to Sea-Level Rise'" is a further analysis of the changes between Rahmstorf 2007 and 2009:
<<<http://tinyurl.com/44uhgkf>>>



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

Beverly Eaves Perdue, Governor

Dee Freeman, Secretary

October 12, 2011

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Geographic and Change Analysis of NC Maritime Forests

In the mid-1980's, the Coastal Resources Commission (CRC) became concerned about the gradual loss of maritime forest natural areas. Certain unmanaged lands use activities, such as widespread clearing of forest vegetation, wetland alteration, leveling of dune ridges and drawdown of the water table destroy valuable components of the maritime forest ecosystem.

In 1986 the CRC received a nomination for Buxton Woods as an Area of Environmental Concern (AEC) which would require the CRC to develop specific use standards to protect the area. Over the next year and a half, the CRC worked on a management strategy to protect the state's largest maritime forest. The result of that effort was a protection package that included increased protection for the public water supply, a maritime forest protection ordinance adopted by Dare County in 1988 and an acquisition initiative for the undeveloped center of the forest.

The Division of Coastal Management then conducted an inventory of the remaining maritime forests on the other barrier islands in 1988 in which 24 forest areas were identified comprised of approximately 12,000 acres on 16 islands. The CRC created a Maritime Forest Working Group to study various options for the protection of North Carolina's remaining maritime forests, and to prioritize the most important areas for protection. The Maritime Forest Working Group concluded that land acquisition for conservation purposes in combination with local protection efforts was the most effective method of preserving the natural functions and values of a maritime forest ecosystem. The CRC recommended that the few remaining high quality tracts of maritime forest be acquired and managed for conservation purposes. Kitty Hawk Woods, Nags Head Woods, Buxton Woods, and Bald Head Island were identified as the top four areas for acquisition.

DCM staff worked with local governments to develop land use planning policies and local ordinances regarding maritime forest protection. In addition to these local actions, in 1992 the Army Corps of Engineers Wilmington District placed regional conditions on nationwide "404"

400 Commerce Avenue, Morehead City, North Carolina 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

permits that in effect prohibit the issuance of nationwide permits in the maritime forest sites that were nominated for AEC designation.

Graham Jones, a student at UNC-W has been working with Dr. Anthony Snider (former Southern Sites Manager with the Division's Coastal Reserve Program) to update the 1988 assessment. The project offers an opportunity to assess the effectiveness of the Commission's strategy for protecting maritime forests and provides an updated inventory of the state's maritime forest resources.



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

400 COMMERCE AVENUE
MOREHEAD CITY, NC 28557

REPLY TO: AMANDA P. LITTLE
ENVIRONMENTAL DIVISION
TEL: (252) 808-2808
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amanda.little@ncdenr.gov

TO: The Coastal Resources Commission

FROM: Amanda P. Little, Assistant Attorney General *APL*

DATE: October 12, 2011 (for the October 26-27, 2011 CRC Meeting)

RE: **Variance Request by Stephen C. Holland**

Petitioner proposes to construct additions to an existing restaurant to include a 28-foot by 28-foot covered and elevated porch; a 20-foot by 28-foot uncovered, elevated, wood-slatted deck; and a 6-foot by 24-foot elevated, wood slatted walkway on his property located on Highway 53 in Burgaw, North Carolina. The Pender County Local Permit Officer denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10). Petitioner seeks a variance from this rule, specifically to allow construction of the proposed development within the 30-foot buffer of the Public Trust Shoreline Area of Environmental Concern.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rule (15A NCAC 7H .0209(d)(10))
Attachment B: Stipulated Facts and Exhibit 1
Attachment C: Petitioner's Position and Staff's Responses to Criteria
Attachment D: Petitioner's Variance Request Materials

cc: Stephen C. Holland, Petitioner
Kenneth E. Vafier, Pender County LPO, electronically
Debbie Wilson, DCM Wilmington District Manager, electronically
Heather Coats, DCM Field Representative, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0209 Coastal Shorelines

(d) Use 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:
- (A) Water-dependent uses as described in Rule 7H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - [C] Post-or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters and,
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible.
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (I) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

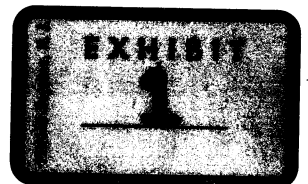
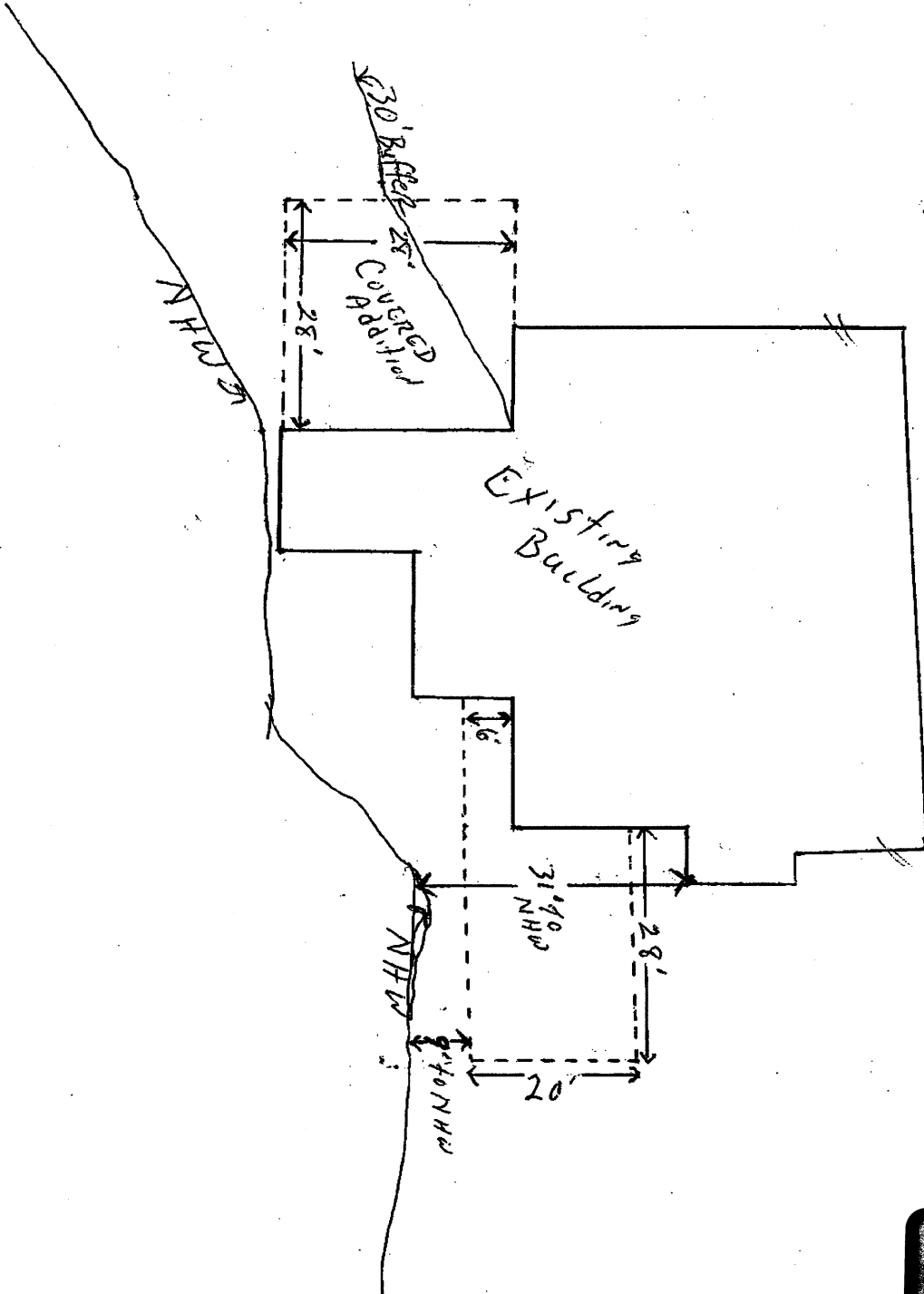
- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (I) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner, Stephen C. Holland, owns property located at 8315 Hwy 53 E in Burgaw, Pender County, NC. Petitioner leased this .73-acre lot for twenty-eight years prior to purchasing it in 2009.
2. Since 1981, Petitioner has operated Holland's Shelter Creek Restaurant (hereinafter "restaurant") on the property.
3. The existing restaurant is 4,636 total square feet and is situated along the shoreline of Holly Shelter Creek, which is a Public Trust Area as defined by 15A NCAC 7H .0207.
4. Petitioner's proposed development is located within 30 feet of normal high water level within the Public Trust Shoreline Area of Environmental Concern (AEC), created August 1, 2000, as described in 15A NCAC 7H. 0209.
5. Since August 1, 2000, 15A NCAC 7H .0209 has provided that new development within the Public Trust Shoreline AEC be located a distance of 30 feet landward of the normal water level or normal high water level (hereinafter "30-foot buffer"), unless it meets an exception currently listed in subsection (d)(10)(A)-(J) of that rule.
6. The entire property is located in the AE flood zone (100-year flood plain) within a non-encroachment area which currently requires a No-Rise Certification for the proposed development to comply with FEMA (Federal Emergency Management Agency) regulations and Pender County's Unified Development Ordinance. Petitioner received this certification for the proposed development on August 23, 1998, and it was revised on May 22, 2000. However, this certification has no bearing on the required 30-foot buffer or the issuance of a permit under the Coastal Area Management Act (CAMA).
7. In September 1999, Hurricane Floyd made landfall in the Cape Fear region and caused significant flooding inside of the restaurant.
8. On May 2, 2011, Petitioner applied for a CAMA minor permit to construct additions to the existing restaurant. The proposed additions consisted of a 28' by 28' covered and elevated porch totaling 784 square feet; a 20' by 28' uncovered, elevated, wood-slatted deck totaling 560 square feet; and a 6' by 24' elevated, wood slatted walkway totaling 144 square feet. *See* Exhibit 1 and attached site diagram in Attachment D marked "Exhibit F revised 5/22/00".
9. Notice was given to the adjacent owners and to the general public of the proposed additions. No objections to the proposed development were received.
10. On May 23, 2011, the Pender County Local Permit Officer (LPO) denied Petitioners' application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10).

11. On September 29, 2011, DCM staff conducted a site visit on Petitioner's property. DCM staff determined that the 30-foot buffer line as shown on the site plan submitted by Petitioner ("Exhibit F" in Attachment D) was mismarked; therefore some of the square footage measurements in the LPO's denial letter are incorrect. DCM staff determined that 553 square feet of the 28' by 28' (784 square feet) covered, elevated porch is located within the 30-foot buffer and that the entire 20' by 28' uncovered, elevated deck (560 square feet) is located within the 30-foot buffer. *See attached Exhibit 1.*
12. The portion of the 28' by 28' covered, elevated porch located within the 30-foot buffer does not meet any of the exception criteria for development set forth in 15A NCAC 7H .0209(d)(10). Even though the 20' by 28' elevated deck meets part of the exception under criteria (F) because it is an uncovered deck, it exceeds the allowable area of 200 square feet. The LPO in his denial letter stated that approximately 280 square feet of opening decking was within the 30-foot buffer, however, the entire 20' x 28' (560 square feet) uncovered deck is located within the 30-foot buffer.
13. On July 12, 2011, Petitioner submitted his variance request to construct the proposed additions to the Division of Coastal Management (DCM). *See Attachment D.* Specifically, Petitioner, as verified by DCM staff during the September 29 site visit, is requesting a variance to construct the 553 square feet portion of the 28' by 28' covered, elevated porch located within the 30-foot buffer and for an additional 360 square feet of open decking that exceeds the excepted size limit of 200 square feet within the 30-foot buffer.

NC 53



ATTACHMENT C

Petitioner and Staff Positions

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

Petitioners' Position: Yes.

Hardship will be caused because restaurant additions that were planned prior to the effective date of the applicable rules will not be allowed under the applicable rules. The restaurant depends upon its character and location on the Creek as a main attraction for customers. The additions were planned on the Creek frontage of the restaurant because they would not benefit the business if constructed otherwise.

Staff's Position: Yes.

Staff acknowledges that Petitioner, who has run a restaurant at this location since 1981, began the process to expand the existing restaurant waterward in 1998 as evidenced by the site plan he provided as well as the no-rise certification issued to Petitioner for this proposed development. At that time, Petitioner's proposed development did not require a CAMA permit because his property was outside of this Commission's jurisdiction in that the Public Trust Shoreline AEC did not exist until August 1, 2000. Petitioner's expansion plans were stalled due to the substantial flooding of the restaurant when Hurricane Floyd made landfall in eastern North Carolina in September 1999. This unanticipated hardship led to unexpected financial obligations in repairing the flood damage to the restaurant. Without such hardship, Petitioner would have been able to pursue construction of the proposed development without any consideration of an AEC because it had not been established by rule at this time. Therefore, the strict application of the 30-foot buffer rule causes Petitioner an unnecessary hardship because absent the hurricane damage, Petitioner would have been able to construct the proposed development without any oversight under CAMA. Furthermore, to strictly apply standards that were not in effect when the proposed project began constitutes an undue and unnecessary hardship on Petitioner.

- 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 property flooded as a result of Hurricane Floyd on September 16, 1999. The property had never flooded before, including Hurricane Fran. The water level was five and one-half feet inside the restaurant (see attached photos). After repairs were made and the business was operating again, it was not economically feasible to construct additions for some time. (The last note for the flood damage repairs and equipment replacement was paid in April 2011.) The

thirty foot setback rule became effective August 1, 2000. So the flooding conditions at the property location caused the additions not to be made before the rule went into effect.

Staff's Position: Yes.

Staff contends that Petitioner's hardship is caused by conditions somewhat peculiar to this property. Its location was not in an AEC when planned, but was encompassed when the Public Trust Shoreline was established in 2000. Even though the existing restaurant abuts the neighboring creek, Petitioner received a no-rise certification prior to Hurricane Floyd in 1998, stating that the proposed development would not cause a rise in the water surface elevation upstream of the site. The substantial flooding caused by Hurricane Floyd was unique given the location of the property and existing restaurant actually on the banks of Holly Shelter Creek in that the hurricane made landfall within this region of the Cape Fear River Basin. Staff also notes that the location of this property is distinctive because of its rural character and limited development of neighboring properties thus there would be negligible impact to the vistas of neighboring properties due to the proposed development.

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

Petitioners' Position: No.

The flood and timing of circumstances were beyond the control of the petitioner.

Staff's Position: No.

Staff agrees that a combination of factors beyond Petitioner's control unfortunately delayed the proposed development project that began in 1998 prior to any CAMA jurisdiction over the applicable high ground area. Therefore, events unforeseen by Petitioner created the hardship in that he did not immediately proceed with the expansion of the existing restaurant in 1999 due the substantial damage caused by the hurricane. Consequently, the CAMA rules were amended in August of 2000 creating the Public Trust Shoreline AEC and implementing a required 30-foot buffer essentially encompassing all of Petitioner's proposed development.

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 rules, standards and orders issued by the Commission. Forty-seven percent of the addition will be uncovered, slatted walkway or deck that will allow stormwater to pass through (i.e. not impervious). All of the structures except for the support pilings will be above the 100 year flood elevation. None of

the addition will be beyond the normal water line of Shelter Creek. The first 1.5” of the stormwater from the impervious section of the addition will be retained on-site. Therefore, the additions will have minimal if any impact on water quality in Shelter Creek.

The variance will secure public safety and welfare. None of the addition will extend over or into Shelter Creek. And, the attached engineer’s No-Rise certification shows that the addition will not cause a rise in water levels in the Creek in the event of a 100-year flood. Even the flooding of Hurricane Floyd did not cause any portion of the existing restaurant to break away and enter Shelter Creek. It is not expected that the variance will result in any detrimental environmental impact.

The variance will preserve substantial justice. The additions could have been made prior to the effective date of the applicable rules if not for flooding caused by Hurricane Floyd, which caused more than 19” of rainfall in the area in three days, with a record 24-hour rainfall in Wilmington of over 15 inches. This was far beyond any normal event and beyond the control of the petitioner.

Staff’s Position: Yes with conditions.

Staff agrees that the variance requested by Petitioner would be consistent with the spirit, purpose and intent of the rules; secure the public safety and welfare; and preserve substantial justice provided that the following conditions regarding a stormwater management plan be addressed in the variance order. Staff proposes that Petitioner be required to retrofit the site for an innovative engineer-designed stormwater management system meeting all applicable CAMA requirements to reduce the impacts of stormwater from impervious surfaces on the adjacent creek. Furthermore, Petitioner shall provide the proper operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and insure that such obligation becomes a permanent obligation of future property owners. Also, any proposed grading with the 30-foot buffer from the normal high water must be contoured to prevent additional stormwater runoff to the adjacent creek. This area shall be immediately vegetatively stabilized, and must remain in a vegetated state.

Staff feels with these conditions that the project meets the spirit, purpose, and intent of the buffer rule, and secures public safety and welfare by reducing runoff pollution into the marine environment. Substantial justice will be preserved by allowing Petitioner to construct the proposed development to his existing restaurant, which was the expectation when he received his no-rise certification in 1998 before Hurricane Floyd and the creation of the Public Trust Shoreline AEC and the 30-foot buffer within that AEC.

Attachment D

Petitioners' Variance Request Petition and Attachments

RECEIVED

JUL 15 2011

DCM-MHD CITY

RECEIVED

JUL 13 2011

N.C. ATTORNEY GENERAL
Environmental Division

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Stephen C. Holland
COUNTY WHERE THE DEVELOPMENT IS PROPOSED Pender

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.

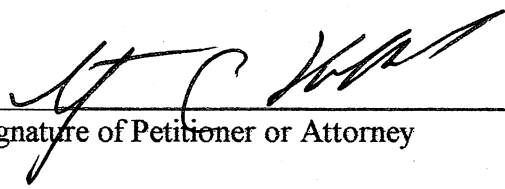
Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. 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);
- NA 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.

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



Signature of Petitioner or Attorney

7-12-11

Date

Stephen C. Holland

Printed Name of Petitioner or Attorney

Email address of Petitioner or Attorney

8315 Hwy 53 E

Mailing Address

910-259-4195

Telephone Number of Petitioner or Attorney

Burgaw NC 28425

City State Zip

910-259-3399

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

The following is an itemized list of responses to the checklist items from the CAMA Variance Request Form.

Name and Location of Development as Identified on Permit Application: Steven C. Holland, 8315 NC Highway 53 East, Burgaw, NC 28425.

A copy of the permit decision for the development in question: Attached.

A copy of the deed to the property on which the proposed development would be located: Attached

Description of Proposed Development: Proposed construction of an addition to an existing restaurant on Shelter Creek in Pender County. The addition includes a 28' x 28' (784 square feet) covered, elevated porch, a 6' x 24' (144square feet) elevated, wood slatted walkway, and a 20' x 28' (560 square feet) uncovered, elevated, wood slatted deck. Site plan is attached.

Stipulation: The proposed development is inconsistent with the rule at issue (15 NCAC 7H .0209 (d)(10)).

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

Reasons why the Petitioner meets the four variance 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.

Hardship will be caused because restaurant additions that were planned prior to the effective date of the applicable rules will not be allowed under the applicable rules. The restaurant depends upon its character and location on the Creek as a main attraction for customers. The additions were planned on the Creek frontage of the restaurant because they would not benefit the business if constructed otherwise.

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

Yes. The property flooded as a result of Hurricane Floyd on September 16, 1999. The property had never flooded before, including Hurricane Fran. The water level was five and one-half feet inside the restaurant (see attached photos). After repairs were made and the business was operating again, it was not economically feasible to construct the additions for some time. (The last note for the flood damage repairs and equipment replacement was paid in April 2011.) The thirty foot setback rule became effective August 1, 2000. So

the flooding conditions at the property location caused the additions not to be made before the rule went into effect.

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

No. The flood and timing of circumstances were beyond the control of the petitioner.

- (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.

The variance will be consistent with the spirit, purpose and intent of the rules, standards and orders issued by the Commission. Forty-seven percent of the addition will be uncovered, slatted walkway or deck that will allow stormwater to pass through (i.e. not impervious). All of the structures except for the support pilings will be above the 100 year flood elevation. None of the addition will be beyond the normal water line of Shelter Creek. The first 1.5" of stormwater from the impervious section of the addition will be retained on-site. Therefore, the additions will have minimal if any impact on water quality in Shelter Creek.

The variance will secure public safety and welfare. None of the addition will extend over or into Shelter Creek. And, the attached engineer's No-Rise certification shows that the addition will not cause a rise in water levels in the Creek in the event of a 100-year flood. Even the flooding of Hurricane Floyd did not cause any portion of the existing restaurant to break away and enter Shelter Creek. It is not expected that the variance will result in any detrimental environmental impact.

The variance will preserve substantial justice. The additions could have been made prior to the effective date of the applicable rules if not for flooding caused by Hurricane Floyd, which caused more than 19" of rainfall in the area in three days, with a record 24-hour rainfall in Wilmington of over 15 inches. This was far beyond any normal event and beyond the control of the petitioner.

Draft set of proposed stipulated facts and stipulated exhibits:

- (a) The original No-Rise Certification for the proposed additions was dated August 23, 1998.
- (b) Hurricane Floyd made landfall at Cape Fear on September 16, 1999.

Pender County Planning and Community Development

Planning Division

805 S. Walker Street
PO Box 1519
Burgaw, NC 28425



Phone: 910-259-1202
Fax: 910-259-1295
www.pendercountync.gov

May 23, 2011

HAND DELIVERED *S.C.H.*

Stephen C. Holland
8315 NC Highway 53 East
Burgaw, NC 28425

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- PC 2011-03
PROJECT ADDRESS- 8315 NC Highway 53 East, Burgaw, NC 28425**

Dear Mr. Holland:

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 construct an addition to an existing restaurant consisting of a 28' x 28' (784 square feet) covered, elevated porch, a 6' x 24' (144 square feet) elevated, wood slatted walkway, and a 20' x 28' (560 square feet) uncovered, elevated, wood-slatted deck, which is inconsistent with 15 NCAC 7H .0209 (d)(10), which states that:

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

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

June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

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

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

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

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

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

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

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

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

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

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

As proposed, the 28' x 28' covered, elevated porch is located within 30' of normal water level and does not meet the above criteria for an exception to development within the Public Trust Shoreline AEC buffer.

In addition, though slatted, elevated, wooden and uncovered deck/observation decks meet the exception criteria detailed in provision (F), the area of your proposed 20' x 28' deck exceeds 200 square feet. The site drawing provided indicates that approximately 280 square feet of decking is proposed within 30' of Normal Water Level, exceeding the allowable area.

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 central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,



Kenneth E. Vafer, LPO
Pender County
PO Box 1519
Burgaw, NC 28425

cc: Heather Coats, DCM Field Representative

The office of the Register of Deeds for Pender County hereby **DISCLAIMS**, and the user hereby **WAIVES** any warranty, implied or otherwise, as to the correctness of the information contained herein.

Deed Book: 3705

Page: 0024.jpg

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Faye Teachey Prevatte
11-10-2009 15:57:34.003 Register of Deeds
NC REVENUE STAMP: \$750.00 Pender County, NC
(#5354)

 3705 P0024 11-10-2009
Faye Teachey Prevatte
Pender County, NC Register of Deeds page 1 of 4

FIN # See Below

11/10/09

INT

Excise Tax \$750.00
Parcel Number 3351-77-4658-000L & 3351-67-9794-0000
Mail after recording to

This instrument was prepared by Robert C. Kenan, Jr.: Moore & Kenan Attorneys at Law; P.O. Box 957; Burgaw, NC 28425

Brief Description for the index

0.50 and 6 Acre Tracts in Holly Township

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made on the 4th day of November, 2009, by and between

GRANTOR

GRANTEE

GENE O. WALLACE and wife,
SANDRA A. WALLACE

STEPHEN CARROLL HOLLAND (Divorced)

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, 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 Holly Township, Pender County, North Carolina and more particularly described as follows:

TRACT NO. 1:

Beginning at a point on the Northern Edge of Shelter Creek, said point being the third corner of the tract of land containing 35 acres, described in a deed by J. I. Chadwick to Mrs. D. V. Learned (Mrs. Laura A. Learned) in Book 167, at Page 112, and running with the third line in said referred to deed North 15 degrees East to the present recognized Southern right-of-way line of U.S. Highway No. 53, and running thence with the Southern right-of-way line of said highway westwardly to the Northeast corner of Lot No. 1 as shown on a map of the subdivision of Laura A. Learned, dated July 15, 1959, recorded in Map Book 7, at Page 12 running thence with the Eastern line of said Lot No. 1 to the edge of Shelter Creek; thence Eastwardly with the Creek to the Beginning.

N. C. Bar Assoc. Form No. 3 © 1977
Printed by Agreement with the N.C. Bar Assoc.#003

4

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Deed Book: 3705

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B3705 P0025 11-18-2009
16:57:34.603
Faye Teachey Pruvette
Pender County, NC Register of Deeds page 2 of 4

And being all of "TRACT NO. 2" as described in deed dated 3 July 1962 from Laura A. Learned (Widow) to Oliver L. Wallace and wife, Isabelle M. Wallace (Deceased), recorded in Deed Book 371, at Page 371 Pender County Registry.

TRACT NO. 2:

Located in Holly Township, Pender County, North Carolina adjacent to the Southern right-of-way of N.C. Highway No. 53's 100 foot right-of-way approximately 8 miles East of the Town of Burgaw and being more fully described as follows, to wit:

BEGINNING at a point on Shelter Creek (or river) opposite the mouth of a large ditch, said Beginning point is a corner of Gene O. Wallace's Oliver L. Wallace and wife tract or lot that was heretofore conveyed to him by deed on September 1, 1964, said deed being duly recorded in Deed Book 381, at Page 425 in the Pender County Register of Deeds Office; running thence from said beginning point with the center of said large ditch, it forming the Eastern line of said Gene O. Wallace tract North 15 degrees 00 minutes East (as heretofore surveyed) to a point in the South right-of-way line of N.C. Highway 53's 100' right-of-way; thence with said right-of-way line North 78 degrees 57 minutes East 645.00 feet to an iron pipe located in said right-of-way line at a point South 05 degrees 00 minutes West 52.10 feet from a steel nail in the centerline of the highway that marks a corner of a 46.88 acres tract of land surveyed for Oliver L. Wallace in November 1963 by M. R. Walton; said steel nail is located in said centerline at a point South 5 degrees 00 minutes West 52.93 feet from an iron pipe in the Eastern line of said 46.88 acre tract on the North side of the highway; thence South 05 degrees 00 minutes West 818.15 feet, more or less, (passing over an inline iron pipe at 803.15 feet) to a point at the water line of Shelter Creek; thence down and with said water line as it meanders to the BEGINNING, containing 6 acres more or less.

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:

1. Pender County and ad valorem taxes for the year 2010 and subsequent years.
2. Restrictions of record, if any.
3. Pender County zoning and subdivision ordinances.
4. Utility, roadway and other easements of record, if any.

IN WITNESS WHEREOF, the Grantors have hereunto set their respective hands and seals on the day and year first above written.

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Deed Book: 3705

Page: 0026.jpg

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Gene O Wallace (SEAL)
Gene O. Wallace

STATE OF Maine
COUNTY OF Somerset

I, Alieta Belanger, a Notary Public of the aforesaid County and State do hereby certify that Gene O. Wallace (the "Signatory") personally appeared before me this day and acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day and (check one of the following and mark through all blank lines or spaces in the certificate)

- I have personal knowledge of the identity of the Signatory; or
- I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: (check one of the following):
 - a driver's license; or
 - in the form of _____; or
 - a credible witness has sworn to the identity of the Signatory.

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this the 9 day of ~~October~~, 2009.
November

Alieta Belanger
Notary Public

ALIETA BELANGER
Notary Public, Maine
Print Name: Alieta Belanger
My Commission Expires April 4, 2016
(Notary Public must sign exactly as on notary seal)

My Commission Expires: _____

(NOTARY SEAL)



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Deed Book: 3705

Page: 0027.jpg

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B3705 P0027 11-10-2009 15:57:34.003
Pender County, NC Register of Deeds page 4 of 4
Faye Teachey Prevatte

Sandra A. Wallace (SEAL)
Sandra A Wallace

STATE OF Mass

COUNTY OF Somerset

I, Alita Belanger, a Notary Public of the aforesaid County and State do hereby certify that Sandra A. Wallace (the "Signatory") personally appeared before me this day and acknowledged the execution of the foregoing instrument.

I certify that the Signatory personally appeared before me this day and (check one of the following and mark through all blank lines or spaces in the certificate)

I have personal knowledge of the identity of the Signatory; or
 I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: (check one of the following):

a driver's license; or
 in the form of _____; or
 a credible witness has sworn to the identity of the Signatory.

The Signatory acknowledged to me that he/she voluntarily signed the foregoing instrument for the purpose stated and in the capacity indicated.

Witness my hand and official stamp or seal this the 9 day of ~~October~~, 2009.
November

Alita Belanger
Notary Public

ALITA BELANGER
Notary Public, Maine
Print Name: Alita Belanger
(Notary Public must sign exactly as on notary seal)

My Commission Expires: _____

(NOTARY SEAL)



Locality PENDER COUNTY Permit Number 2011-03
Ocean Hazard _____ Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline Other _____
(For official use only)

GENERAL INFORMATION

RECEIVED

LAND OWNER
Name Stephen C. Holland
Address 8315 Hwy 53 East
City Burgaw State N.C. Zip 28425 Phone 910-259-5743
Email _____

MAY 02 2011
PENDER COUNTY PLANNING

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.) 8315 Hwy 53 E Burgaw N.C. 28425 Holly Shelter Creek

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) _____

SIZE OF LOT/PARCEL: _____ square feet 1/2 acres 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):
Add on 20x28 28x28
6x27

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

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 1400 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 Paula, see Deed Book 167
page 112 in the Paula 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:

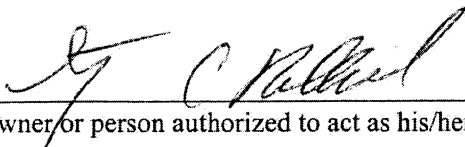
I furthermore certify that the following persons are owners of properties adjoining this property. I affirm that I have given **ACTUAL NOTICE** to each of them concerning my intent to develop this property and to apply for a CAMA permit.

- | (Name) | (Address) |
|-----------------------------|--|
| (1) <u>BARBARA COOK</u> | <u>213 N Crestwood Dr Wilm, N.C. 28405</u> |
| (2) <u>Wanda Washington</u> | <u>Hwy 53 E Burgaw N.C. 28425</u> |
| (3) _____ | _____ |
| (4) _____ | _____ |

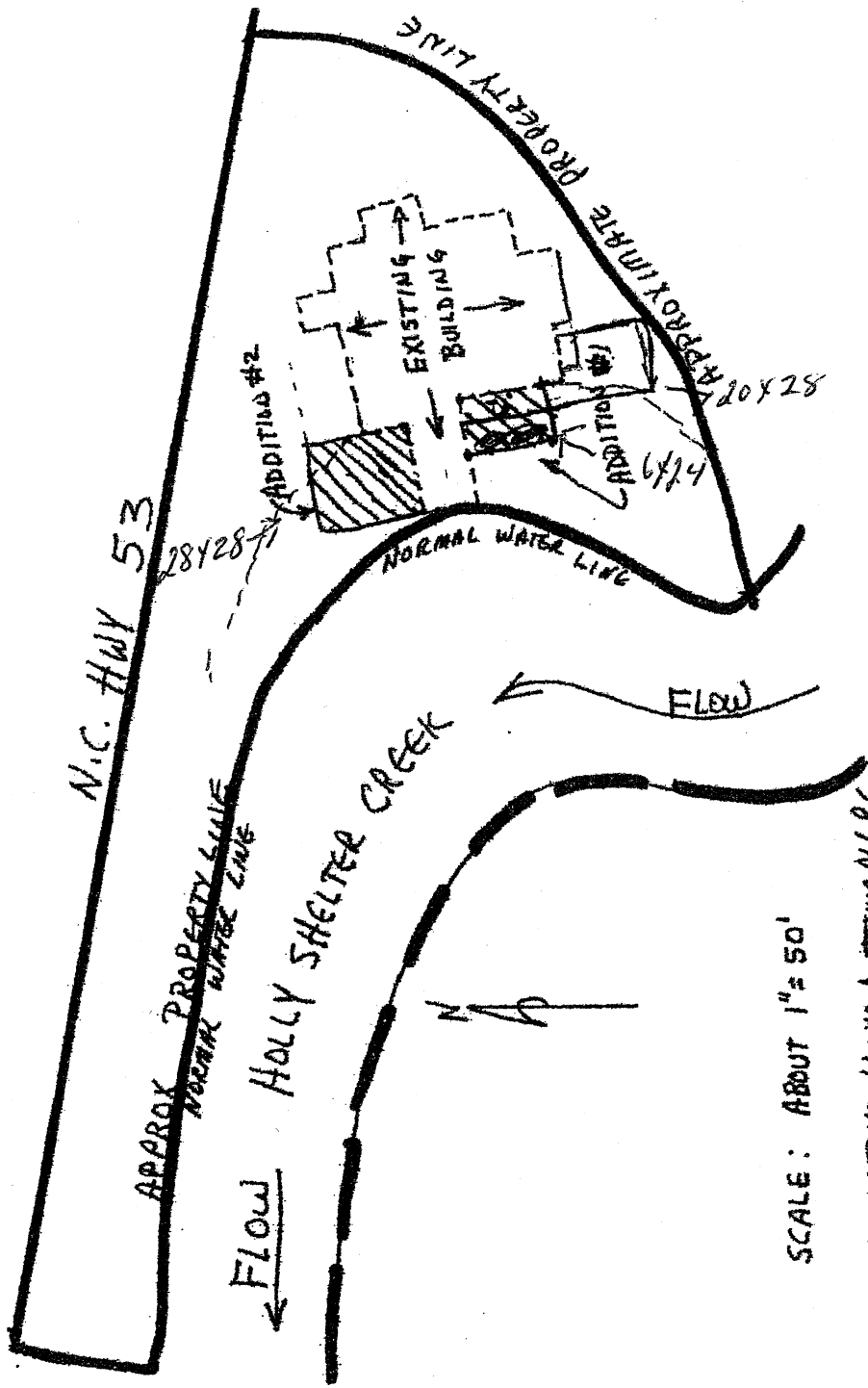
ACKNOWLEDGEMENTS:

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.

 This the May day of 2, 20 11
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.



SCALE: ABOUT 1" = 50'

SKETCH BY: LLOYD A. TYNO ALP6.
8/22/98 & 5/22/00

PROPOSED ADDITIONS

HOLLAND'S SHELTER CREEK FISH CAMP

RELATIVE TO PROPERTY LINES

EXHIBIT F

REVISED 5/22/00

1

2

3

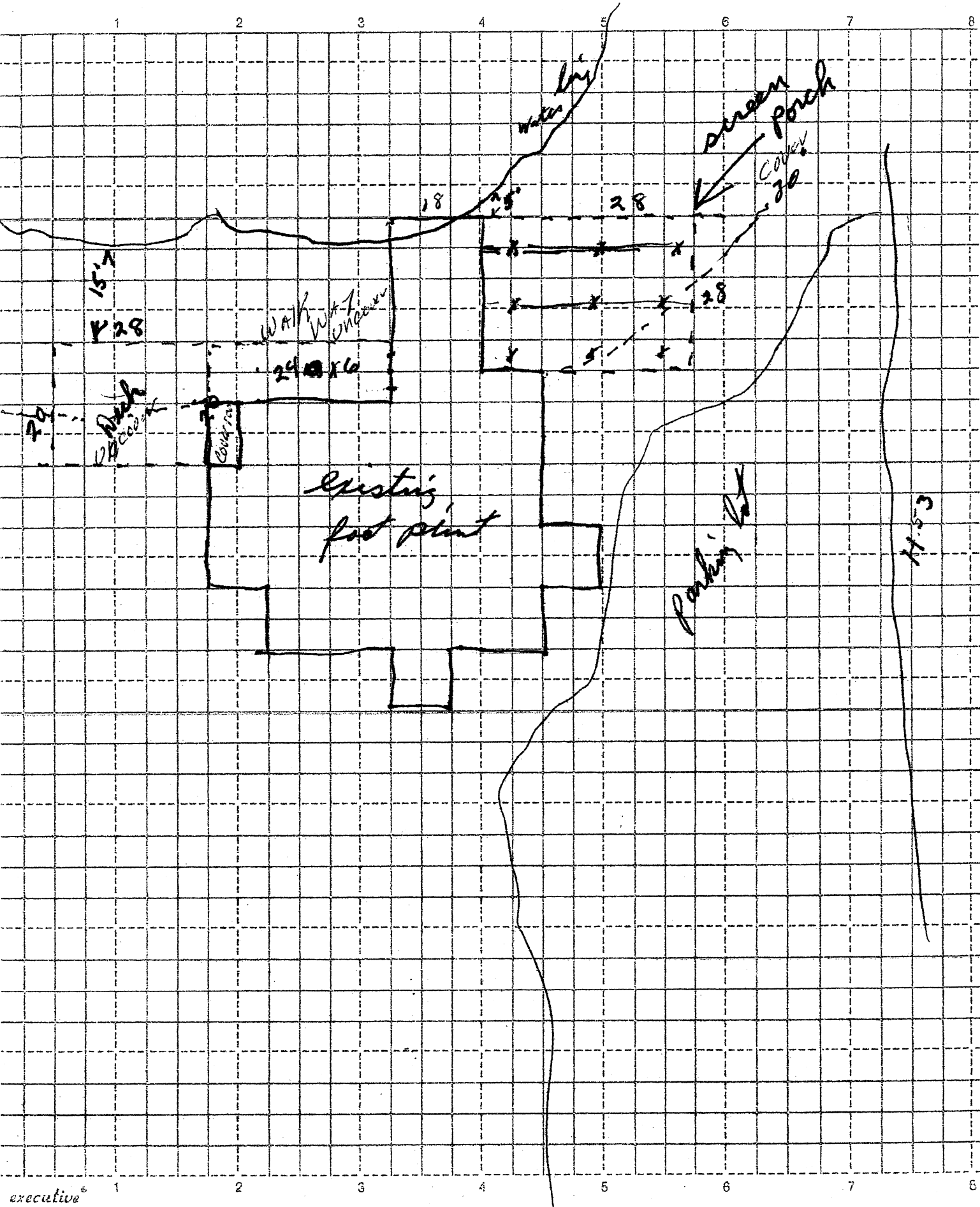
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LLOYD A. TYNDALL, P.E.
234 WINDEMERE ROAD
WILMINGTON, NORTH CAROLINA 28405-4026
N.C.# P.E. 4848 -- P.L.S. 871

May 28, 2011

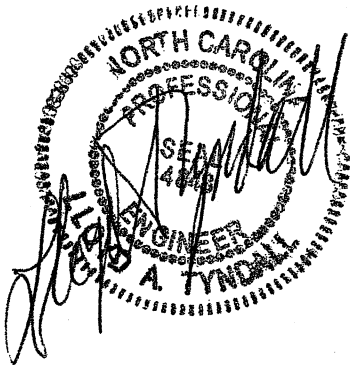
Mr. Stephen Holland
Holland's Shelter Creek Fish Camp
8315 NC HWY 53 East
Burgaw, N.C. 28425

TO IT MAY CONCERN:

This is to certify that I did make a hydraulic analysis of proposed additions to Holland's Shelter Creek Fish Camp as shown in the NO-RISE CERTIFICATION STUDY "ADDITIONS TO HOLLAND'S SHELTER CREEK FISH CAMP" Dated 23 August 1998 and REVISED 22 May 2000 and found that the proposed additions along with the proposed mitigation would not increase the flood stages upstream of the "Fish Camp". Please note that one of the additions included a 4 foot projection out over the water--it was known then and now that the projection was a "worst case scenario" for the "next to the road" addition and the other addition was also a "worst case scenario" to put Mr. Holland's additions under the worst reasonable test from a "hydraulic standpoint". The additions plus the mitigation to offset the additions did not cause a rise in the water surface upstream of the "Fish Camp".

This proposal has been reviewed and I find no reason to alter the findings of that original Certification. Hydraulically, those additions can be substituted for other additions/changes at the "Fish Camp" on a square foot for square foot basis anywhere on the "Fish Camp" premises without invalidating the previous findings.

SEAL



Thanks,

Lloyd A. Tyndall
LLOYD A. TYNDALL, P.E.

Phone: 910-791-0164
Cell: 910-540-3608

Pender County
Copy #1

REVISED

NO-RISE CERTIFICATION STUDY
PENDER COUNTY, NORTH CAROLINA
ADDITIONS TO HOLLAND'S SHELTER CREEK FISH CAMP
8315 NC HWY 53 EAST, BURGAW, N.C. 28425

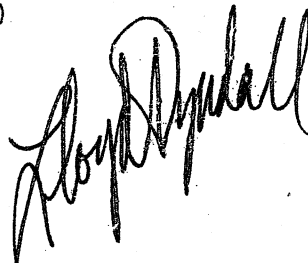
MR. STEPHEN HOLLAND
HOLLAND'S SHELTER CREEK FISH CAMP
8315 NC HWY 53 EAST
BURGAW, N.C. 28425

STUDY AND HYDRAULIC ANALYSES PERFORMED BY: LLOYD A. TYNDALL, P.E.

LLOYD A. TYNDALL, PROFESSIONAL ENGINEER,
NORTH CAROLINA LICENSE -- P.E. 4848 -- R.L.S. 871
234 WINDEMERE ROAD
WILMINGTON, NORTH CAROLINA 28405-4026

23 AUGUST 1998

REVISED 22 MAY 2000



ENGINEERING "MANUAL" NO-RISE CERTIFICATION

THIS IS TO CERTIFY THAT I AM A DULY QUALIFIED ENGINEER LICENSED TO PRACTICE PROFESSIONAL ENGINEERING IN THE STATE OF NORTH CAROLINA.

IT IS TO FURTHER CERTIFY THAT THE ATTACHED TECHNICAL DATA SUPPORTS THE FACT THAT THE CONSTRUCTION OF PROPOSED ADDITIONS TO AN EXISTING BUILDING AND THE CLEARING WITH OPTIONAL GRASSING WILL NOT CAUSE A RISE IN THE WATER SURFACE ELEVATION UPSTREAM OF THE SITE. THE PROPOSED CONSTRUCTION CONSISTS OF TWO ADDITIONS -- #1. A 20' X 28' ADDITION AND #2. A 28' X 30' ADDITION AND THE DESIGNATED CLEARING OF BRUSH AND LOW LIMBS AT HOLLAND'S SHELTER CREEK FISH CAMP LOCATED ON NC HIGHWAY 53 EAST AS SHOWN ON EXHIBIT H. THE CONSTRUCTION IS SITUATED BETWEEN NC HIGHWAY 53 AND THE NORMAL WATER LINE OF HOLLY SHELTER CREEK. THE CLEARING WITH OPTIONAL GRASSING TO MITIGATE THE REDUCED CONVEYANCE IN THE FLOODPLAIN CONSISTS OF FOUR TRACTS CONTAINING 3188 SQUARE FEET, SEE EXHIBIT H.

THIS HYDRAULIC ANALYSIS WAS REQUESTED BY STEPHEN HOLLAND TO PUT THE CONSTRUCTION OF THE PROPOSED ADDITIONS TO HOLLAND'S SHELTER CREEK FISH CAMP IN COMPLIANCE WITH THE PENDER COUNTY FLOOD DAMAGE PREVENTION ORDINANCE,

BASED ON THE PENDER COUNTY FLOOD INSURANCE STUDY, THE 100-YEAR OR BASE FLOOD ELEVATION HAS NOT BEEN ESTABLISHED FOR THIS SITE. THE SITE IS IN AN UN-NUMBERED ZONE A. RECENT CHANGES IN THE PENDER COUNTY FLOOD DAMAGE PREVENTION ORDINANCE REQUIRE THAT THE BUILDING FLOOR IN AN UNNUMBERED ZONE A BE NO LESS THAN 2 FEET ABOVE THE HIGH WATER MARK OF HURRICANE FRAN--SEPTEMBER 1996. THE HYDRAULIC ANALYSES IN THIS STUDY USED AN ASSUMED DATUM.

23 AUGUST 1998

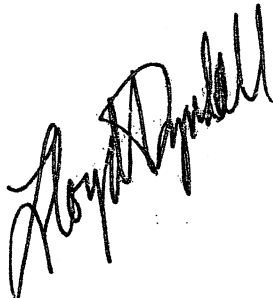
REVISED 22 MAY 2000

SEAL:


LLOYD A. TYNDALL, P.E.

PROFESSIONAL ENGINEER

234 WINDEMERE ROAD
WILMINGTON, N.C. 28405-4026



July 11, 2011

Barry and Wanda Washington
8274 NC Hwy 53 E
Burgaw, NC 28425

re: CAMA Minor Permit Variance Request

Dear Mr. And Mrs. Washington,


I am writing to notify you that Steve Holland is submitting a Petition requesting a Variance for a CAMA Minor Development Permit for Holland's Shelter Creek Restaurant. You are being notified because you are an adjacent property owner.

This notification is required by Title 15A of the North Carolina Administrative Code Chapter 7, Subchapter 07J .0701(c) (7). You are not required to respond. If you do wish to respond, please contact Heather Coats, NCDENR, 127 Cardinal Drive Extension, Wilmington, NC 28405 (tel: 910-796-7424).

The Variance is being requested to allow additions and improvements to the existing restaurant.

If you have any questions, please call me at 910-259-4800

Sincerely,



Mark Walton
N.C. Professional Engineer
Registration No. 16879

7009 0820 0000 9465 4444

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Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

Barry & Wanda Washington
8274 NC Hwy 53 E
Burgaw, NC 28425

7009 0820 0000 9465 4833

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Certified Fee	\$2.85	01	
Return Receipt Fee (Endorsement Required)	\$2.30		
Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

Barbara Cook
213 N Crestwood Dr.
Wilmington, NC 28405

7009 0820 0000 9465 4826

U.S. Postal Service™
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Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

Linda Lavinder
PO Box 1705
Statesville, NC 28687

7009 0820 0000 9465 4840

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

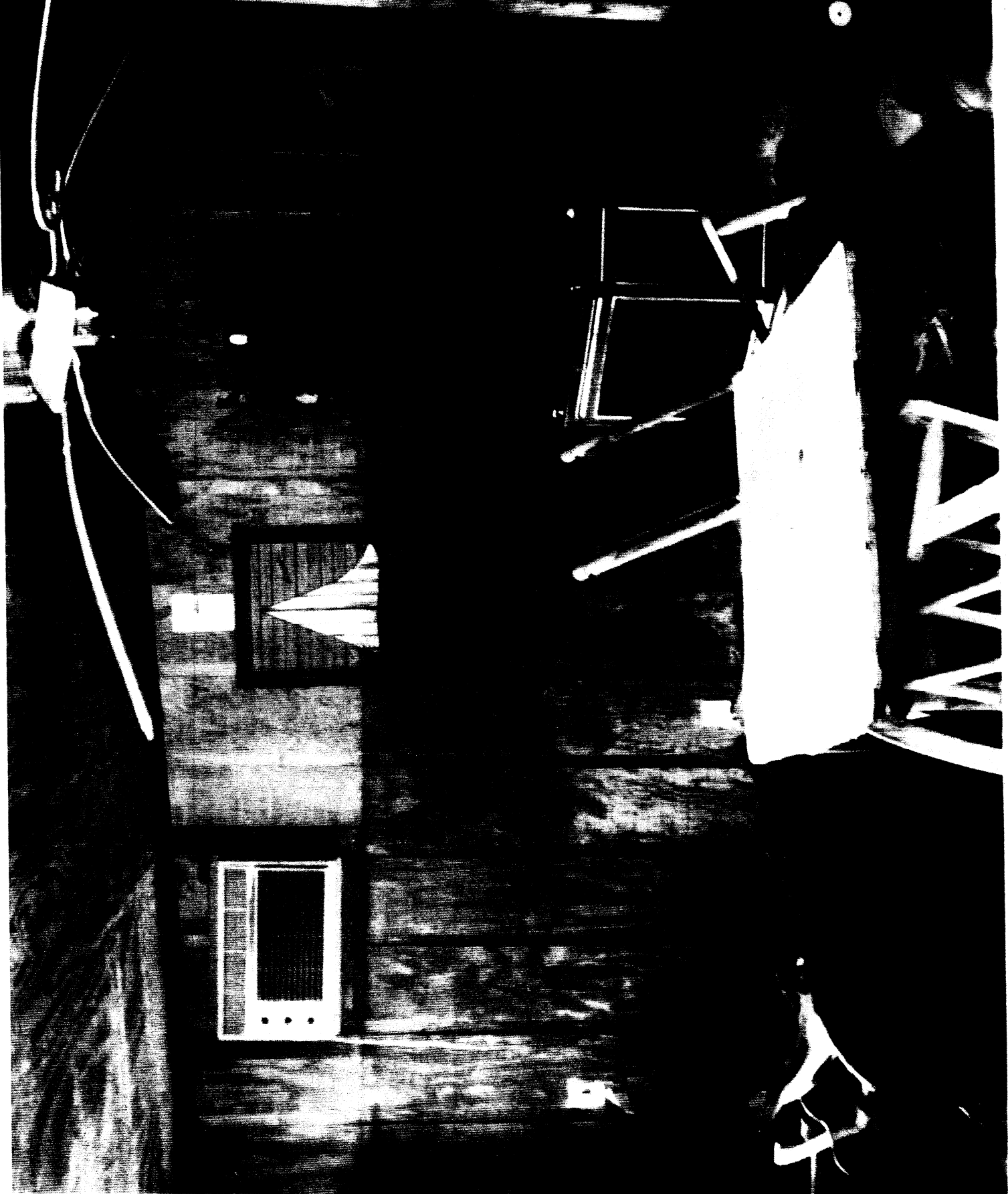
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WILMINGTON NC 28405

Postage	\$ 01.44	0425	Postmark Here
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Restricted Delivery Fee (Endorsement Required)	\$0.00		
	\$5.59	07/12/2011	

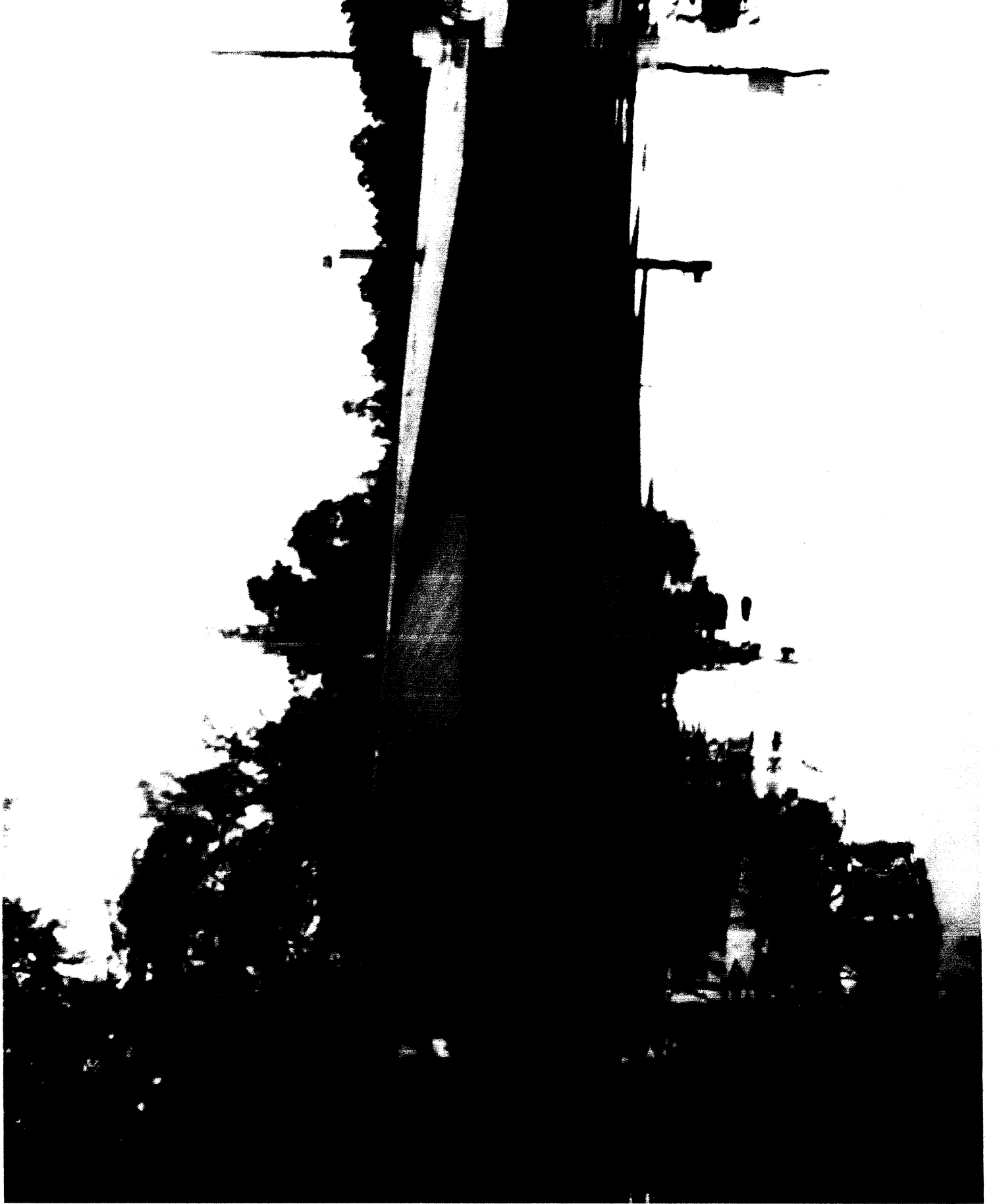
Wayne Ray Lanier
8485 E NC Hwy 53
Burgaw, NC 28425





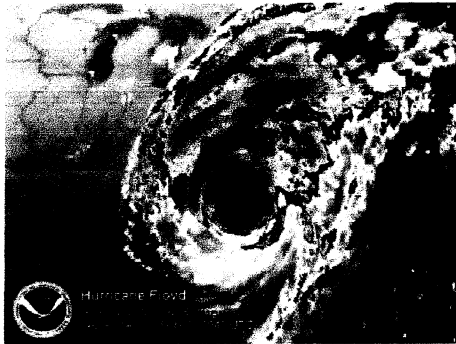
YOU ARE HERE NOW!







Hurricane Floyd, September 1999



(Click the image to enlarge.)

Overview

Hurricane Floyd impacted the East Coast of the United States from September 14 to 18, 1999. The greatest damages were along the eastern Carolinas northeast into New Jersey, and adjacent areas northeastward along the east coast into Maine. Hurricane Floyd produced more human misery and environmental impact in North Carolina than any disaster in memory. The 15-20 inches of rain that fell across the eastern half of the state caused every river and stream to flood. There were 57 deaths in the United States directly attributed to Floyd, and flood damage estimates range near \$6 billion. Many rivers set new flood records. Whole communities were underwater for days, even weeks in some areas. Thousand's of homes were lost. Crop damage was extensive. The infrastructure of the eastern counties, mainly roads, bridges, water plants, etc., was heavily damaged.

Tropical Summary

Floyd's origin can be traced to a tropical wave that emerged from western Africa on September 2, 1999. Tropical Depression Eight formed September 7 about 1000 miles east of the Lesser Antilles). The system was upgraded to Tropical Storm Floyd on September 8. Floyd became a hurricane at 8 a.m. Eastern Daylight Time (EDT) on September 10. Early on September 12, Floyd turned west and began a major strengthening episode. Hurricane Floyd reached its peak intensity on September 13 when sustained winds reached 156 miles per hour (mph) and the central pressure dropped to 27.20 inches of mercury. This was at the top end of Category 4 intensity on the Saffir-Simpson Hurricane Scale.

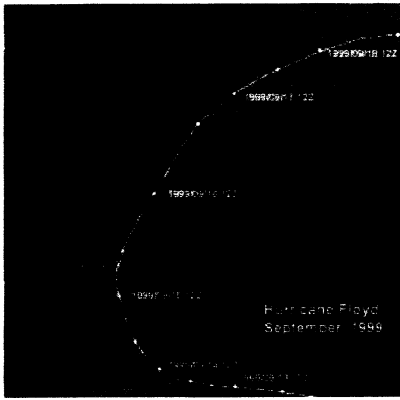
Satellite Imagery of Hurricane Floyd on 1999/09/15 at 2018Z



(Click the image to enlarge.)

Floyd came within 110 miles of Cape Canaveral as it paralleled the Florida coast on September 15. Floyd then moved slightly east of north and increased in forward speed, coming ashore near Cape Fear, North Carolina, at 2:30 a.m. on September 16. At the time of landfall, Floyd was a Category 2 hurricane with maximum winds of 104 mph. Floyd continued to accelerate north-northeast after landfall. Its center passed over extreme eastern North Carolina and over Norfolk, Virginia. Floyd then weakened to a tropical storm and moved swiftly along the coasts of the Delmarva Peninsula and New Jersey, reaching Long Island by 8 p.m. September 16. The system was extratropical by the time it reached the coast of Maine at 8 a.m. September 17.

Hurricane Floyd Track



(Click the image to enlarge.)

Sustained tropical storm force winds and gusts close to hurricane strength were recorded at many locations from the Florida Keys to New York. Sustained winds of 96 mph with gusts to 122 mph were measured by a University of Oklahoma portable anemometer (10-meter height) near Topsail Beach, North Carolina, around 3 a.m. on September 16. Storm surge values as high as 10 feet were reported along the North Carolina coast.

Heavy Rains and Flooding

Much of Floyd's impact was due to extreme rainfall. Although Floyd was moving quickly, its large circulation interacted with a pre-existing frontal zone extending from central North Carolina through the mid-Atlantic states. This caused the heaviest rainfall to fall along and left of Floyd's track. Rainfall totals of 4 to 12 inches were common from northeast South Carolina through eastern North Carolina, eastern Virginia, eastern Maryland, Delaware, eastern Pennsylvania, New Jersey, eastern New York into the Northeast. Within this region, two areas of extreme rainfall occurred with totals as high as 15 to 20 inches recorded in portions of eastern North Carolina and southeast Virginia. At Wilmington, North Carolina, the storm total of 19.06 inches included a 24-hour record of 15.06 inches. In Yorktown, Virginia, the storm total was 18.13 inches. The second region of extreme rainfall totaled 10 to 14 inches in parts of Maryland, Delaware, New Jersey, southeast Pennsylvania and southeast New York.

Total Precipitation from Hurricane Floyd

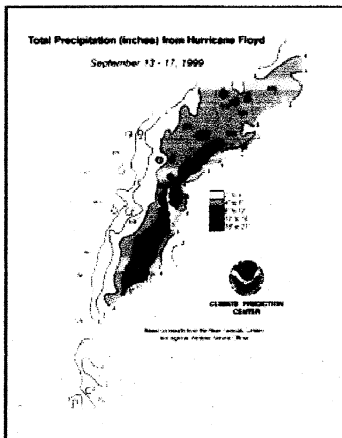
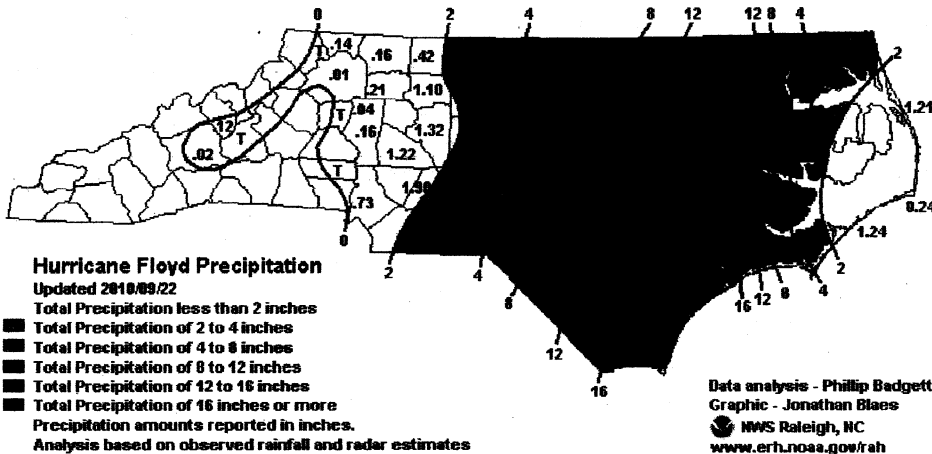
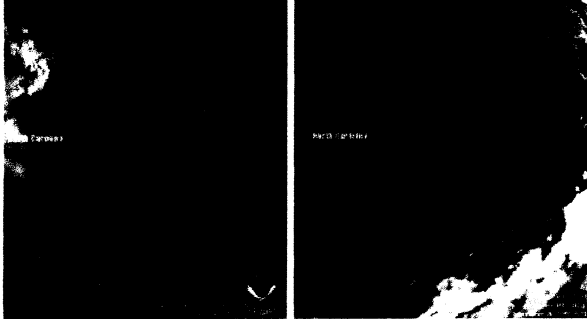


Figure 5. Total precipitation (inches) from Hurricane Floyd, September 12-17, 1999.

(Click the image to enlarge.)

This heavy rainfall caused widespread flooding and flash flooding from northeast South Carolina to southern New England. The flooding in North Carolina was the most damaging in the State's history. Some rivers in eastern North Carolina were already in flood due to 5 to 10 inches of rainfall from Hurricane Dennis which occurred about a week prior to Floyd. The extreme rainfall produced by Floyd across the Carolinas and Virginia caused widespread flooding on larger rivers and tributaries as well as flash flooding on smaller streams and creeks. Nine record floods occurred on rivers in North Carolina and one in Virginia.

Satellite Image of Flooding across Eastern North Carolina



(Click the image to enlarge.)

There were 57 deaths directly attributed to Floyd, 56 in the United States and one in Grand Bahama Island. North Carolina reported 35 deaths directly attributed to Floyd. Of the 56 deaths, 48 were due to drowning in inland, freshwater flooding. Vehicle related deaths accounted for 55 percent of casualties, and of these, about 80 percent were male. Floyd was the deadliest hurricane in the United States since Agnes of 1972. Damage estimates as a result of Floyd range around \$6 billion. Portions of ten states were declared major disaster areas, from Florida north to Connecticut. Whole towns were under water; roads flooded, including portions of Interstate highways; bridges washed out; dams failed; livestock drowned; water treatment plants failed and water supplies were cut off. North Carolina alone had damage over \$3 billion, with over 7000 homes destroyed, 56,000 homes damaged, 1500 people rescued from flooded areas, and more than 500,000 customers without electricity.

Specifically in North Carolina, there were 35 deaths; 7000 homes destroyed; 17,000 homes uninhabitable; 56,000 homes damaged; most roads east of I-95 flooded; Tar River crests 24 feet above flood stage; over 1500 people rescued from flooded areas; over 500,000 customers without electricity at some point; 10,000 people housed in temporary shelters; much of Duplin and Greene Counties under water; severe agricultural damage throughout eastern NC; "Nothing since the Civil War has been as destructive to families here," says H. David Bruton, the state's Secretary of Health and Human Services... "The recovery process will be much longer than the water-going-down process"; Wilmington reports new 24-hour station rainfall record (128 year record) with 13.38 inches and over 19 inches for the event.

For questions regarding the web site, please contact [Jonathan Blaes](#).

[Disclaimer](#).




STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

400 COMMERCE AVENUE
MOREHEAD CITY, NC 28557

REPLY TO: AMANDA P. LITTLE
ENVIRONMENTAL DIVISION
TEL: (252) 808-2808
FAX: (252) 247-3330
amanda.little@ncdenr.gov

TO: The Coastal Resources Commission

FROM: Amanda P. Little, Assistant Attorney General 

DATE: October 12, 2011 (for the October 26-27, 2011 CRC Meeting)

RE: **Variance Request by Steven and Cathy Casey**

Petitioners propose to build a 2,366 square foot single-family residence on their property located at 819 Canal Drive in the Town of Carolina Beach. The Local Permit Officer for the Town denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10). Petitioners seek a variance from this rule, specifically to allow construction of the proposed development within the 30-foot buffer of the Coastal Shoreline Area of Environmental Concern.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rule (15A NCAC 7H .0209(d)(10))
Attachment B: Stipulated Facts and Attachments 1-8
Attachment C: Petitioner's Position and Staff's Responses to Criteria
Attachment D: Petitioner's Variance Request Materials

cc: I. Clark Wright, Attorney for Petitioners, electronically
Jeremy Hardison, Carolina Beach LPO, electronically
Robb Mairs, DCM Field Representative, electronically
Debbie Wilson, DCM Wilmington District Manager, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0209 Coastal Shorelines

(d) Use 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:
- (A) Water-dependent uses as described in Rule 7H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - [C] Post-or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters and,
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible.
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (I) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and

- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
 - (I) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioners are Steven M. and Cathy L. Casey. I. Clark Wright, Jr., Davis Hartman Wright PLLC, New Bern, NC is Petitioners' legal counsel.
2. Petitioners purchased their lot, located at 819 Canal Drive in the Town of Carolina Beach in December of 2010.
3. Petitioners' lot is located adjacent to Myrtle Grove Sound at 819 Canal Drive, in the Town of Carolina Beach. The entire lot is located within the Coastal Shoreline Area of Environmental Concern (AEC), which extends 75 feet landward of the normal water level or normal high water level.
4. New development within the Coastal Shoreline Area of Environmental Concern (AEC) shall be located a distance of 30 feet landward of the normal water level or normal high water level ("30-foot buffer") unless it meets an exception listed in 15A NCAC 7H .0209(d)(10)(A)-(J).
5. CAMA Minor Development Permit No. CB 2006-20 was issued to Robert G. Collins on March 1, 2006 authorizing demolition of a structure and construction of a three-unit residential building ("triplex"). This permit was set to expire December 31, 2009, however, the Permit Extension Act of 2009 (S.L. 2009-406 and 2010-177) provided that any development approval that was current and valid beginning on January 1, 2008, and ending December 31, 2010, the running of the period of development approval and any associated vested right is suspended during the period of January 1, 2008, and ending December 31, 2011. In December 2010, Petitioners purchased property from the holder of this permit. This permit has not been transferred to Petitioners. Copies of the CAMA permit No. CB 2006-20, related site plan, and survey documenting the prior single family home are contained in **Attachment 1**.
6. Prior to being purchased by the Petitioner, the property was permitted for development as a higher density, multi-family triplex. See **Attachment 1**, containing documents from the Town of Carolina Beach LPO and Building Inspector Office files, including a copy of the prior site layout plan, and issued Minor Development CAMA Permit No. CB2006-20.
7. Minor Development CAMA Permit No. CB2006-20 authorized construction of a triplex, with 2,566 square feet of impervious surface area.
8. The proposed triplex was never constructed.
9. On February 7, 2011, during a site visit with Petitioners, DCM staff and the LPO reverified the normal high water line as the same as in 2006. See 2006 survey and 3/29/11 survey contained in **Attachments 1 and 8**.

10. Previously, a single family residence existed on the lot. See 2006 survey contained in **Attachment 1**.
11. The subject lot contains approximately 12,500 square feet and consists of a former re-combination of the northern half of lot 19 and all of lot 20.
12. Petitioners applied in March of 2011 for a CAMA minor development permit to construct a single family house on their property. The application was signed and submitted by Level Best Builders, acting as Petitioners' agent. **Attachment 2** contains a copy of this application.
13. Notice was provided to adjacent riparian property owners and no adverse comments were received.
14. There is a vacant lot to the south of Petitioner's lot that is 25.17 feet width. This is Lot 19A.
15. There is a single family residence located adjacent to and south of Lot 19A. This single family residence is currently located less than 30 feet from the normal high water line.
16. To the north of Petitioners' lot is the waterward terminus of Sandpiper Lane, owned by the Town of Carolina Beach.
17. Immediately adjacent to the north of Sandpiper Lane is a single family residence currently located less than 30 feet from the current normal high water line.
18. **Attachment 3** contains a current aerial photograph depicting existing residences in the area with Petitioners' proposed building footprint, and two photographs depicting the current condition of the waterward area of the side property lines of Petitioners' lot.
19. Petitioners' lot contains a three-sided bulkhead that extends landward on each property line side. Attached to the bulkhead is an existing pier and gazebo.
20. The waters of Myrtle Grove Sound at this location are closed to the harvest of shellfish.
21. Petitioner's proposed residence footprint, driveways and walkways yield a total proposed impervious surface area of 2,366 square feet.
22. Petitioners' site plan currently includes the construction of a storm water capture system consisting of 2 storm water drain beds. Should this variance be granted, Petitioners will submit an engineered plan allowing for the capture of at least the first 1.5" of rainfall.

23. Petitioner's proposed development does not meet the 30-foot buffer rule in those areas closest to the side property lines of the lot. Petitioners' proposed building footprint encroaches approximately 22 feet into the buffer relative to the southern side property line and approximately 18 feet relative to the northern side property line. See **Attachment 8** (3/29/11 survey).
24. The applicable street setback for this development is 20 feet. Petitioners' request for a variance from this local setback requirement recently was denied at the Town staff level. See September 2, 2011 letter - **Attachment 4**. Petitioners then appealed this denial in the form of a local variance request from the Town Board of Adjustment; on September 20, 2011, the Town Board of Adjustment denied that request. See **Attachment 7**.
25. The applicable setback from the termination of Sandpiper Lane is 12.5 feet.
26. The applicable setback from lot 19A is 7.5 feet.
27. The local permit officer denied Petitioners' CAMA permit application on April 12th, 2011, based solely on inconsistency with 15A NCAC 7H.0209(d)(10), and thus also NCGS 113A-120(a)(8). A copy of the LPO's denial letter is attached as **Attachment 5**.
28. As stated in their letter, the Town of Carolina Beach supports Petitioners' variance request because the proposed development will create a reduction in density, is in keeping with all the Town's development regulations, and is consistent with the 2007 CAMA Land Use Plan. In addition, should their variance request be granted, Petitioners have agreed for the Town of Carolina Beach to install a public access dinghy dock within Petitioner's 15-foot riparian line setback on the property owned by the Town immediately to the north of Petitioners' lot. A copy of the Town's letter in support of Petitioners' variance request is attached as **Attachment 6**.
29. Petitioners stipulate that the LPO properly denied their minor development CAMA permit application for non-compliance with 15A NCAC 7H.0209(d)(10). No other issues of non-compliance with CAMA requirements are associated with Petitioners' proposal.

Attachment 1**Clark Wright**

From: Jeremy Hardison [jeremy.hardison@carolinabeach.org]
Sent: Thursday, June 23, 2011 2:42 PM
To: icw@dhwlegal.com
Subject: RE: Steven Casey - Minor CAMA Permit Denial - 819 Canal Drive, Carolina Beach
Attachments: previous survey.pdf; Collins CAMA permit.pdf; house moving permit.pdf; address change.pdf; collins proposal.pdf; _Certification_.htm

Mr. Wright,

Please find the following attached:

1. Survey of the lot with the original structure.
2. Prior CAMA permit for Collins
3. Town moving permit issued
4. Collins proposed plan
5. Address change (note that the Town readdressed the property on 8/11/08)

The property was purchased by the Collins for redevelopment, they were approved for a triplex from Town Council on 2/14/06.. The original single-family house was built in 1966 according to New Hanover County records. The Town originally issued a DEMO permit, the owners (Collins) then decided to move the structure instead. Not sure of exact date that the house was moved off the lot, the Town issued a house moving permit on 8/16/06 and the DOT permit authorized 8/11/01 thru 09/09/06 to move the home.

Not sure what you were asking for on the "calculations regarding existing impervious surface area on the lot" as the lot is vacant. According to the plan the project was exceeding the allowable CAMA 30% impervious coverage, although you can exceed that with an engineered retention plan to handle the stormwater runoff.

The CAMA permit was denied based off not meeting the 30' setback requirements. Hope this answers your questions. Please to not hesitate to contact me if you need further information.

Jeremy Hardison
 Zoning Administrator
 Town of Carolina Beach
 1121 N. Lake Park Blvd.
 Carolina Beach, NC 28428
 Ph. (910) 458 2991
 Fax. (910) 458 2997
Jeremy.Hardison@carolinabeach.org
www.carolinabeach.org

From: Clark Wright [mailto:icw@dhwlegal.com]
Sent: Wednesday, June 22, 2011 6:55 PM
To: Jeremy Hardison
Subject: Steven Casey - Minor CAMA Permit Denial - 819 Canal Drive, Carolina Beach

Hello Jeremy – I believe I communicated with you once before re the CAMA issues for this lot. In preparing to seek a variance from the CRC, I wanted to ask whether you have anything in your files regarding the prior residence that once occupied this lot? I am looking for any prior CAMA permits, Town permits, and if you have any idea of the time period that the prior home existed, or when and why it

9/14/2011

was demolished. Also, do you know whether anyone has made any calculations regarding existing impervious surface area on the lot?

Also, am I correct in determining that the sole basis for Minor CAMA Permit Denial was the setback rule in 7H.0209? If there are other issues, either at the CAMA level or the Town level that might prevent building the proposed residence, please let me know.

Thanks much for any information you can provide.

Best regards,

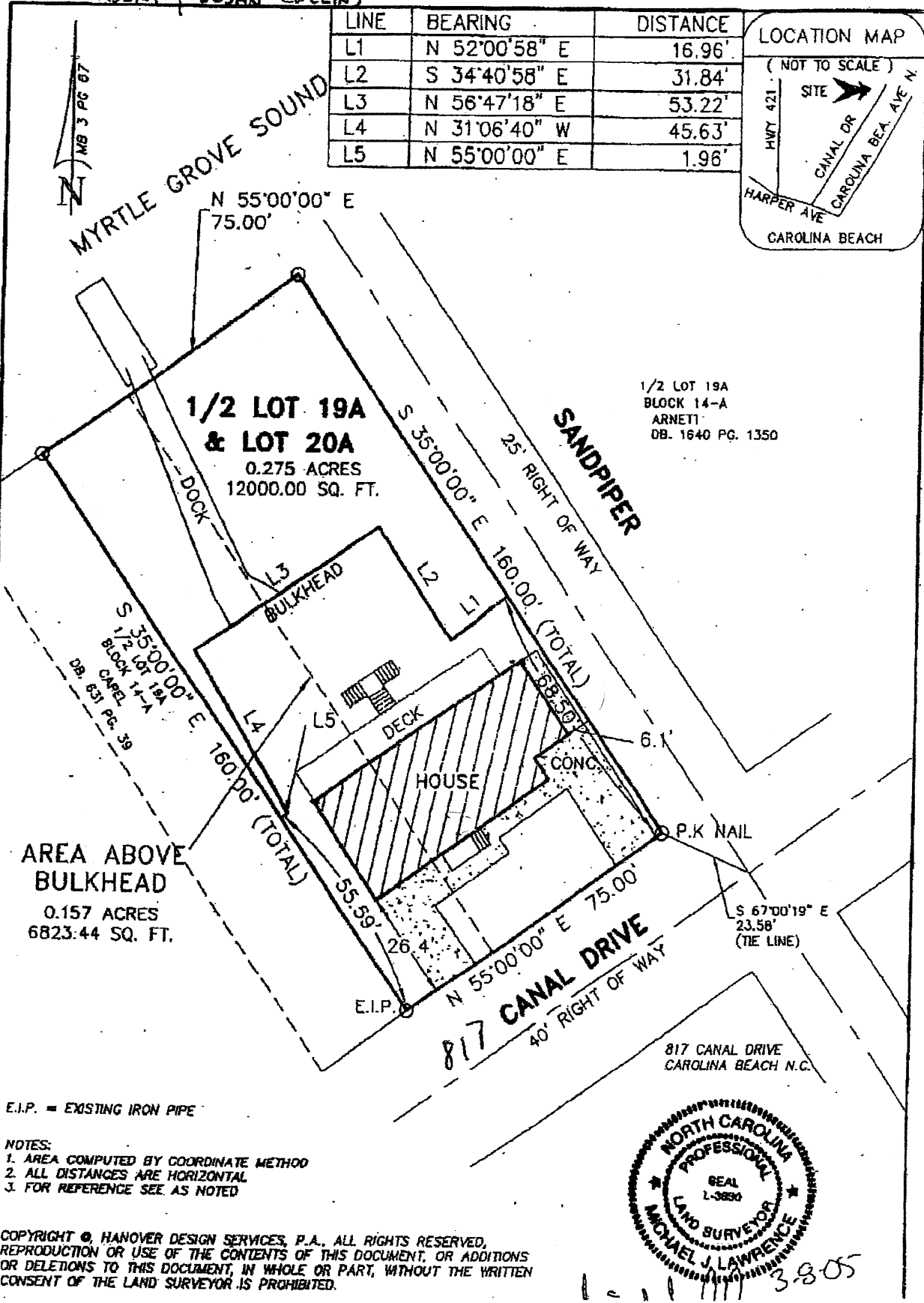
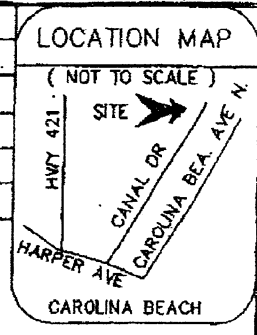
Clark Wright
[attorney for the Caseys for seeking a variance from the CRC]

I. Clark Wright, Jr.
DAVIS HARTMAN WRIGHT PLLC
209 Pollock Street
New Bern, NC 28560
252-514-2828 (office)
252-514-9878 (fax)
252-229-5900 (cell)
icw@dhwlegal.com

Mr. Wright has been selected by his peers for inclusion in Best Lawyers in America for over a decade. For more information regarding selection criteria, see:
<http://www.bestlawyers.com/aboutus/selectionprocess.aspx>

3-29-05
ROBERT & SUSAN COLLINS

LINE	BEARING	DISTANCE
L1	N 52°00'58" E	16.96'
L2	S 34°40'58" E	31.84'
L3	N 56°47'18" E	53.22'
L4	N 31°06'40" W	45.63'
L5	N 55°00'00" E	1.96'



1/2 LOT 19A
BLOCK 14-A
ARNETT
DB. 1640 PG. 1350

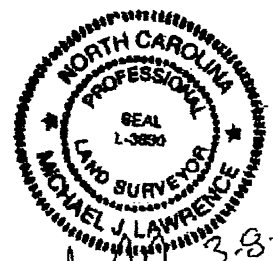
AREA ABOVE
BULKHEAD
0.157 ACRES
6823.44 SQ. FT.

TO: JEREMY HARDISON

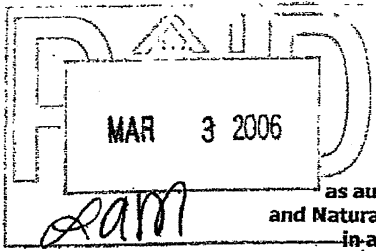
FC

- E.I.P. = EXISTING IRON PIPE
- NOTES:
1. AREA COMPUTED BY COORDINATE METHOD
2. ALL DISTANCES ARE HORIZONTAL
3. FOR REFERENCE SEE AS NOTED

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3-8-05



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 Robert G. Collins, authorizing development in the Coastal Shoreline (AEC) at 817 Canal Drive, in Carolina Beach, as requested in the permittee's application, dated 2/9/06. This permit, issued on 3/1/06, 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 demolition of a structure and construction of a three-unit residential building

- (1) All proposed development and associated construction must be done in accordance with the permitted work plat drawings(s) dated received on 2/23/06.
- (2) All construction must conform to the N.C. Building Code requirements and all other local, State and Federal regulations, applicable local ordinances and FEMA Flood Regulations.
- (3) Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
- (4) A copy of this permit shall be posted or available on site. Contact this office at 458-7947 for a final inspection at completion of work. The issuance of a Certificate of Occupancy is dependent upon satisfactory completion of a final inspection.

(Additional Permit Conditions on Page 2)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. 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.

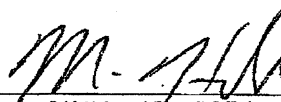
Any maintenance work or project modification not covered under this permit, require further written permit approval.

All work must cease when this permit expires on

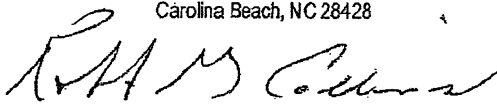
December 31, 2009

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.


CAMA Local Permit Official

Mike Hoffer
Local Permit Officer
Town of Carolina Beach
1121 N. Lake Park Blvd.
Carolina Beach, NC 28428


Permittee (signature required if conditions above apply to permit)

Name: Robert G. Collins

Minor Permit # CB2006-20

Date: 3/1/06

- (5) The amount of impervious surface within the 75' AEC shall not exceed 2,566 sf.
- (6) Unless specifically allowed in 15A NCAC 07H. 0209(d)(10), and shown on the permitted plan drawing, all development/construction shall be located a distance of 30 feet landward of **normal high water**. No portion of the roof overhang shall encroach into the 30 ft. buffer.
- (7) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures. Prior to any land-disturbing activities, a barrier line of filter cloth must be installed between the land disturbing activity and the adjacent marsh or water areas, until such time as the area has been properly stabilized with a vegetative cover.
- (8) All other disturbed areas shall be vegetatively stabilized (planted and mulched) within 14 days of construction completion.
- (9) The applicant has effectively demonstrated, through innovative construction design, that the amount of impervious surface areas may be exceeded in a way that runoff water will be managed and the AEC protected, so as to allow xx percent of impervious areas within the 75' Coastal Shoreline AEC. All proposed development and associated construction must be done in accordance with the design specifications of the permitted innovative design, sealed by the design professional, Christopher A. Holmes on 2/15/06.
- (10) Upon completion of construction and prior to the issuance of a Certificate of Occupancy (CO), a letter of certification must be received from the designer of the innovative system installed, certifying that the permitted system has been installed in accordance with this permit, the approved plans and his design specifications. Any deviations from the approved plans and specifications must be noted on the Certification and a permit modification may be required prior to receiving a CO.
- (11) The landowner or permittee shall at all times provide the operation and maintenance necessary to assure the permitted stormwater system functions at optimum efficiency. The landowner or permittee shall maintain the permitted stormwater system for the life of the project.

Signature



Date

3-3-06



PERMIT TYPE (check one)

- Demolition Residential Fee \$50.00
- Demolition Commercial Fee \$200.00- State Health & Hazard Control Unit has to be notified before demolition (919-707-5970). Takes 10 days for inspection.
- House Moving Fee \$200.00

[Handwritten signature]

Complete both sides of application and do not leave any blanks. Illegible or incomplete applications will not be processed.

I. This is to request discontinuance of water and/or sewer service at:

STREET ADDRESS 1817 Canal Drive

PROPERTY OWNER INFORMATION

Name: Allen Deaton

Address: 817 Canal Drive

Phone: (910) 538-2897

AGENT FOR OWNER INFORMATION

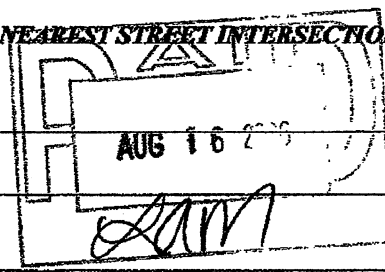
Name: C. S. Inc.

Address: 102 Five Points Farm Ln; Washington NC 27889

Phone: (252) 927-4111

Moving Contractor License #: HM-080

INCLUDE PLAN OF PROPERTY SHOWING ITS LOCATION TO THE NEAREST STREET INTERSECTION, ETC.



II. Property Information

TYPE OF STRUCTURE _____

NUMBER OF UNITS _____
(to be verified by building inspector)

ASBESTOS Asbestos
(to be verified by building inspector)

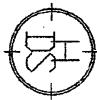
YES NO

III. Approved By:

	NEED DOT PERMIT BEFORE RELEASE HOUSE TO BE MOVED OFF THE ISLAND	DATE
ZONING	<u>Scott King</u>	<u>04AUG2006</u>
CAMA	<u>N.A. M. Mike Hobbs</u>	<u>8-3-06</u>
BUILDING INSPECTOR	<u>John Payton</u>	<u>8/10/06</u>
OPERATION'S DIRECTOR	<u>Sheila Hall for Steve Taylor</u>	<u>8/10/06</u>
POLICE CHIEF	<u>H. G. Mancini</u>	<u>8/10/06</u>
DIRECTOR, PLANNING/DEVELOPMENT	<u>S. D. Hand</u>	<u>8/14/06</u>

MYRTLE GROVE SOUND

HANOVER DESIGN SERVICES, P.A.
 LAND SURVEYORS ENGINEERS & LAND PLANNERS
 319 WALNUT STREET
 WILMINGTON, N.C. 28401
 PHONE: (910) 343-8002
 FAX: (910) 343-9941
 JOB #11225 SWB

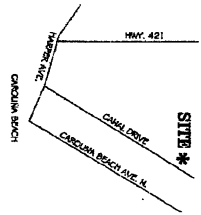


1/2 LOT 19A
 BLOCK 14-A
 ARNETT
 DB. 1640 PG. 1350

NORTH PER
 M.B.3, PG.67



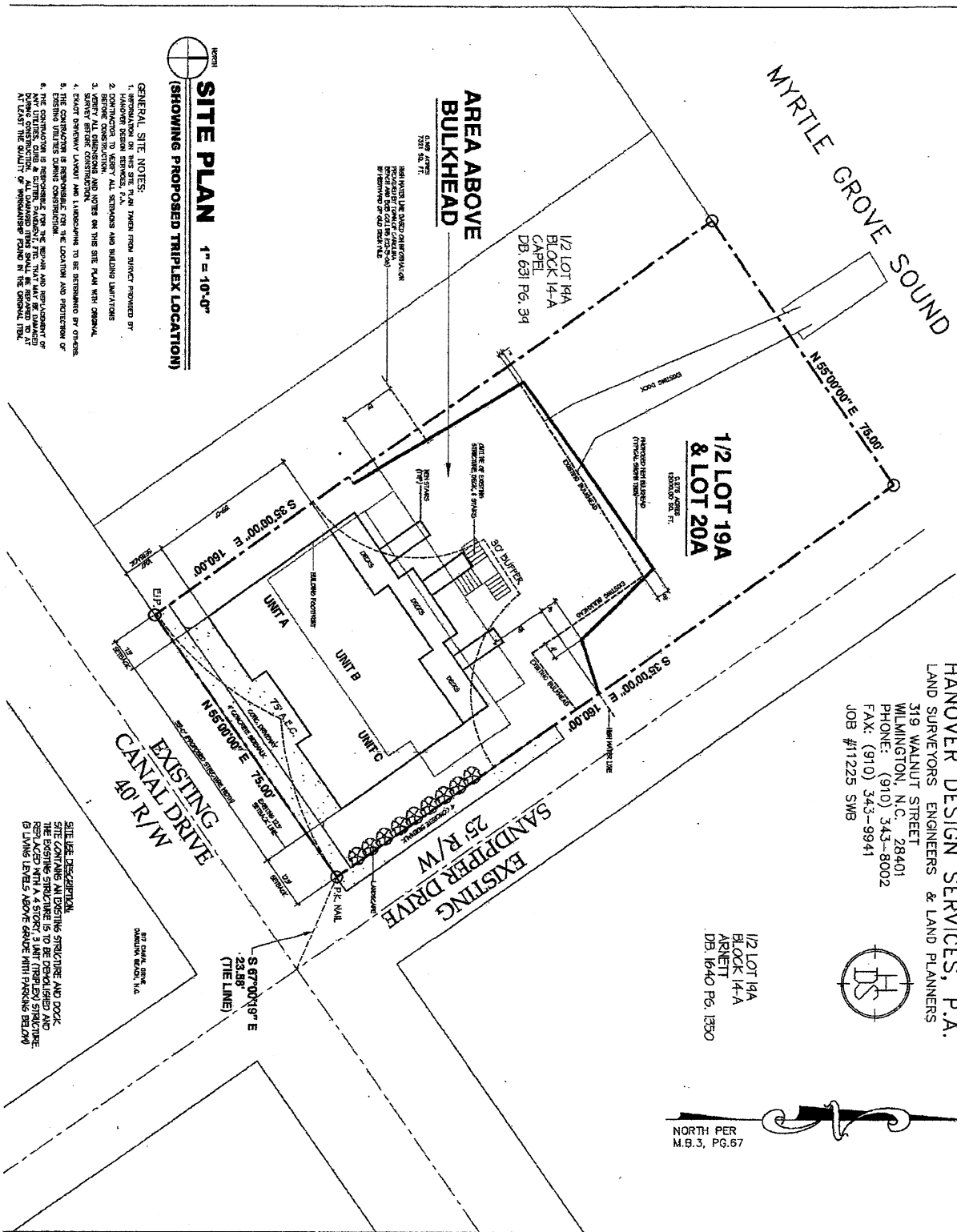
LOCATION MAP
 (NOT TO SCALE)



AREA ABOVE
 BULKHEAD

1/2 LOT 19A
 BLOCK 14-A
 CAPEL
 DB. 631 PG. 34

1/2 LOT 19A
 & LOT 20A



SITE PLAN
 1" = 10'-0"
 (SHOWING PROPOSED DUPLEX LOCATION)

- GENERAL SITE NOTES:
1. INFORMATION ON THIS SITE PLAN FROM RECENT SURVEY PROVIDED BY [Name Redacted].
 2. PROPERTY OWNER HAS REVIEWED THIS PLAN AND APPROVES THE PROPOSED CONSTRUCTION.
 3. VERIFY ALL DIMENSIONS AND NOTES ON THIS SITE PLAN WITH ORIGINAL SURVEY RECORDS.
 4. EXISTING UTILITIES AND EASEMENTS TO BE DETERMINED BY OTHER MEANS.
 5. THE CONSTRUCTION IS RESPONSIBLE FOR THE LOCATION AND PROTECTION OF EXISTING UTILITIES DURING CONSTRUCTION.
 6. THE CONSTRUCTION IS RESPONSIBLE FOR THE REMOVAL AND RELOCATION OF EXISTING UTILITIES AND EASEMENTS.
 7. ALL DIMENSIONS SHALL BE REFERRED TO THE ORIGINAL PLAN UNLESS THE QUALITY OF MEASUREMENTS FOUND IN THE ORIGINAL PLAN.

SITE USE DESCRIPTION:
 SITE CONTAINS AN EXISTING STRUCTURE AND DOCK
 WHICH WILL BE DEMOLISHED AND REPLACED WITH A 2-STORY 3 UNIT DUPLEX. ALL
 EXISTING UTILITIES SHALL BE RELOCATED TO
 BE LAIN LEVELS ABOVE GRADE WITH PARKING BELOW

<p>DESIGN & DRAFTING SERVICES HANOVER DESIGN SERVICES, P.A. WILMINGTON, N.C.</p>		<p>SITE #1</p>	
<p>OWNER: COLLINS FAMILY 10720A TIZIA CANAL DRIVE ZEPHYRUS BEACH, N.C.</p>		<p>DATE: 05/11/2011</p>	
<p>PROJECT NO.: 11225</p>		<p>SCALE: 1" = 10'-0"</p>	

Joel Macon
Mayor

Alan Gilbert
Councilman

Jerry Johnson
Councilman



Dan Wilcox
Mayor Pro Tem

Pat Eford
Councilwoman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2991
FAX 910 458-2997

NOTICE OF ADDRESS CORRECTION

TO: Carolina Beach Public Utilities (Attn: Denise McVickers)
NHC Planning Department
NHC 911 (Attn: Brenda Hewlett)
NHC Land Records (Attn: Billy Oakes)
NHC GIS
NHC Inspections
Postmaster, Carolina Beach (Attn: Donna Watson)
Property Owner of Record

FROM: Brenda Butler
GIS Operator

DATE: August 11, 2008

Let your records show that the street address in the Town of Carolina Beach listed below is incorrect:

CURRENT LISTED ADDRESS: 817 CANAL DR

PROPERTY PIN# 313007,69.5263.000

PROPERTY PID# R08815-007-010-000

PROPERTY OWNER: COLLINS ROBERT G SR SUSAN ETAL

This serves as official verification that the address of your property has been corrected and changed to:

819 CANAL DR DR

as designated on the Town's official address map.

Property Owner, you are instructed to post the correct address immediately and remove any erroneous numbering from existing buildings.

Attachment 2



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

GENERAL INFORMATION

LAND OWNER

Name Steven Casey
Address 9417 Collingdale Way
City Raleigh State NC Zip 27617 Phone 919 760 3759
Email _____

AUTHORIZED AGENT

Name Paul Devereaux
Address PO Box 2232
City Carolina Beach State NC Zip 28428 Phone 910 617 0692
Email pdeve@charter.net

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 819 Canal Drive, Myrtle Grove Sound

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Residence

SIZE OF LOT/PARCEL: 7,500 square feet .172 acres

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

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

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

(2) **COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES:** 2,666 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 _____, see Deed Book 5532 page 1462 in the New Hanover 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.

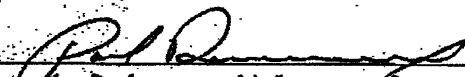
(Name)	(Address)
(1) <u>Town of Carolina Beach</u>	<u>1121 N. Lake Park Blvd. CB NC 28428</u>
(2) <u>Mattie Capel</u>	<u>9 Aurora CT Durham NC 27713</u>
(3) _____	_____
(4) _____	_____

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.

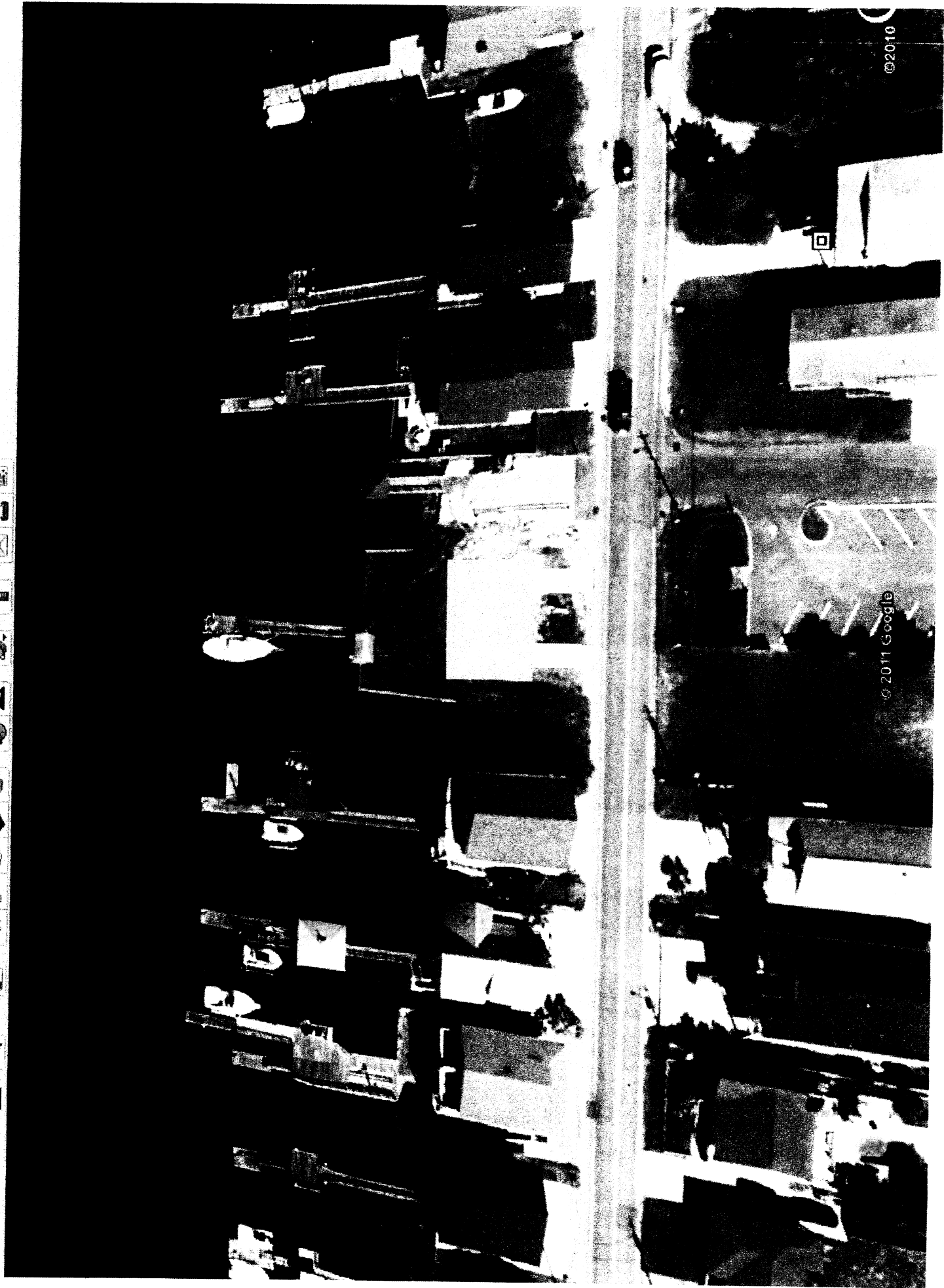
This the 16th day of March, 2011



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.

Attachment 3

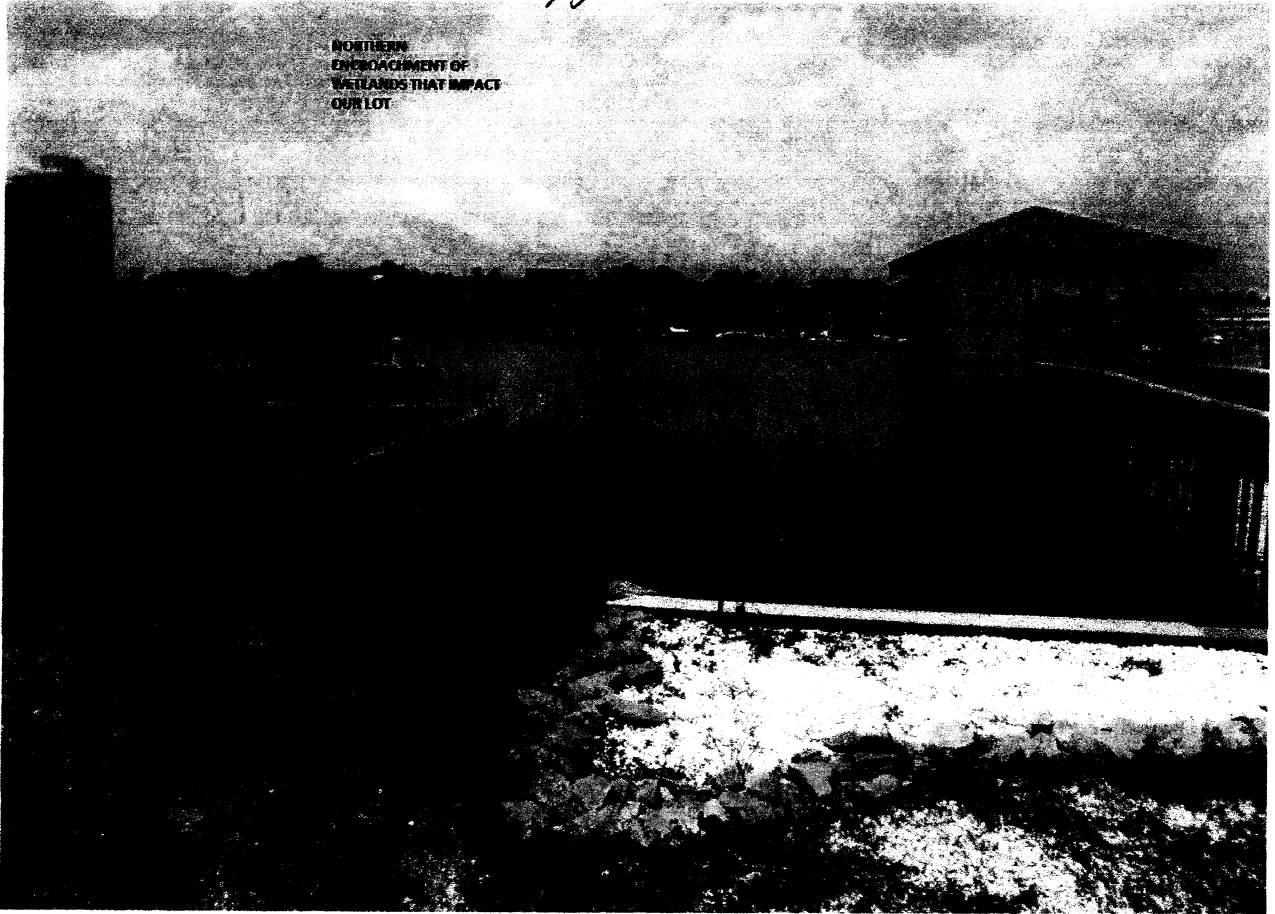


© 2011 Google

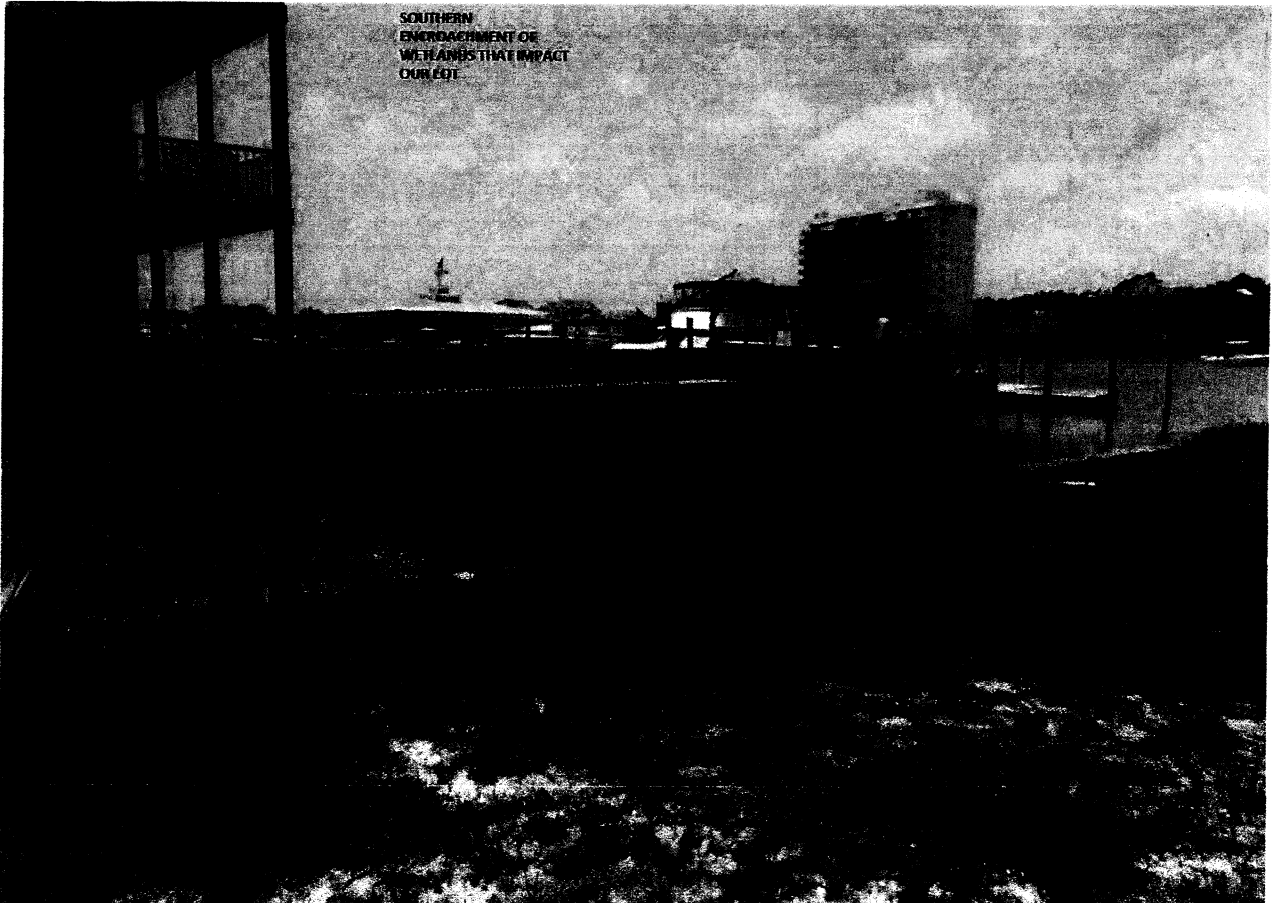
© 2010

Attachment 3 - Page Two

NORTHERN
ENCROACHMENT OF
WETLANDS THAT IMPACT
OUR LOT



SOUTHERN
ENCROACHMENT OF
WETLANDS THAT IMPACT
OUR LOT



Joel Macon
Mayor

Lonnie Lashley
Councilman

Bob Lewis
Councilman

Attachment 4



Pat Efrid
Mayor Pro Tem

Dan Wilcox
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2996
FAX 910 458 2997

9/2/11

Mr. Steven Casey
9417 Collingdale Way
Raleigh NC 27617

**RE: DENIAL OF ZONING DEVELOPMENT PERMIT
APPLICATION NUMBER- 12-37
PROJECT ADDRESS- 819 Canal Dr**

Dear Mr. Casey,

After reviewing your application with the development standards required by the Town of Carolina Beach, it is my determination that no permit may be granted for the project for which you have proposed. This decision is based on the findings that your request violates Article 3 Sec. 3.9-1. Dimensional standards for lots and principal structures, which requires a 20' front yard setback within the R-1 zoning district, which your property is located in.

Should you wish to appeal my decision to the Board of Adjustment 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.

Respectfully yours,

Jeremy Hardison, Zoning Administrator
Town of Carolina Beach
1121 N Lake Park Blvd
Carolina Beach, NC, 28428

cc: Steve Coggins

Attachment 5

Joel Macon
Mayor

Lonnie Lashley
Councilman

Bob Lewis
Councilman



Pat Efir
Mayor Pro Tem

Dan Wilcox
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2996
FAX 910 458 2997

4/12/11

CERTIFIED MAIL -
RETURN RECEIPT REQUESTED

Mr. Steven Casey
9417 Collingdale Way
Raleigh NC 27617

*RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- CB2011-05
PROJECT ADDRESS- 819 Canal Dr*

Dear Mr. Casey,

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 for 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. Specifically, you have applied to construct a single-family dwelling which is inconsistent with 15 NCAC 7H .0209(d)(10), which states that:

15 NCAC 7H .0209(d)(10): Within the Coastal Shoreline 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, 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.

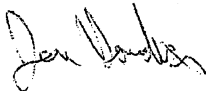
I have concluded that your request also violates NCGS 113A-120(a)(8), which requires that all applications be denied which are inconsistent with our Local Land Use Plan. On page 79 of the 2005 Town of Carolina Beach Land Use Plan, you will find that The Town supports CAMA regulations pertaining to Areas of Environmental Concern, Sections 404 and 401 of the Clean Water Act, the Sedimentation Pollution Control Act, and local development ordinances intended to protect environmentally sensitive areas.

Steven Casey CB-2011-05
April 12, 2011

Also, on page 79 of the 2005 Town of Carolina Beach Land Use Plan, you will find that The Town shall support and enforce, through its CAMA permitting capacity, the State policies and permitted uses in the Areas of Environmental Concern (AEC's). Such uses shall be in accord with the general use standards for coastal wetlands, estuarine waters, public trust areas and ocean hazard areas as stated in 15A NCAC Subchapter 7H.

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,



Jeremy Hardison, LPO
Town of Carolina Beach
1121 N Lake Park Blvd
Carolina Beach, NC, 28428

cc: Robb Mairs, DCM Field Rep
Paul Devereaux, Agent

Attachment 6

Joel Macon
Mayor

Dan Wilcox
Councilman

Lonnie Lashley
Councilman



Pat Efird
Mayor Pro Tem

Bob Lewis
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2526

September 13, 2011

Mr. Ted Tyndall, Asst. Director, Permits & Enforcement
Morehead City 400 Commerce Ave.
Morehead City, NC 28557

Dear Mr. Tyndall,

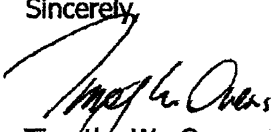
The purpose of this letter is to support a variance request for Mr. Steven and Cathy Casey who own property located at 819 Canal Drive in Carolina Beach. The property is currently vacant and the new owners would like to build a single family house in alignment with the neighbor's houses that are located on each side of their sound front property. The issue with their plan is the 30 foot CAMA setback requirement which is impacting the property not only on the water frontage of Myrtle Grove Sound but also on each side of the lot as these areas have not been bulkheaded thereby causing extraordinary setbacks on three (3) sides of the property.

More specifically the Town supports this variance for the following reason:

1. The proposed plan will create a reduction in density. The previous owner has approval (which is still valid) to construct a triplex with a larger footprint than what Mr. Casey's single family house will likely be. This translates into less impervious surfaces and therefore less stormwater runoff without considering any engineered solution in managing this runoff.
2. The proposed house is in keeping with all the Towns development regulations and is consistent with the 2007 CAMA Land Use Plan.
3. The owner, Mr. Casey, will agree to the encroachment of a public access dinghy dock by the Town into the riparian buffer if such variance is granted. This dinghy dock will support the Towns effort to complete the DCM approved mooring field in the immediate vicinity of this dockage.

Given these direct benefits, the Town hopes you will agree that the circumstances surrounding the Casey's property create a unique hardship that warrants a variance. Thank you for your consideration in this matter and should you have any questions please don't hesitate to contact me at 910-458-2994.

Sincerely,


Timothy W. Owens
Town Manager

Joel Macon
Mayor

Dan Wilcox
Councilman

Lonnie Lashley
Councilman



Pat Efird
Mayor Pro Tem

Bob Lewis
Councilman

Timothy Owens
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2526
FAX 910 458 2997

TOWN OF CAROLINA BEACH

Order Denying a Variance

The Board of Adjustment of the Town of Carolina Beach having held a public hearing on September, 2011 to consider application number 11-01 submitted by Steven Casey. The request was for a Variance from Article 3 Sec.3.9-1 Dimensional standards for lots and principal structures located at 819 Canal Dr, Carolina Beach, NC. The variance request was for the allowance of 12' into the required 20' setback.

Having heard all the evidence and arguments presented at the hearing. The BOA makes the following **FINDINGS OF FACT** and draws the following **CONCLUSIONS**:

There was substantial evidence in the record to show the following **FACTS**:

1. The property is zoned R-1.
2. Front yard setback is 20'
3. Asking for a variance of 12'
4. The lot is adjacent to Myrtle Grove Sound
5. State regulates the rear setback off of the sound, which is 30' setback from the Mean High Water
6. Applied and denied for a CAMA permit to encroach into the 30' rear setback.
7. Applicant intends to apply for a variance from CAMA to encroach into the 30' rear setback.

A variance is a relaxation of the terms of the zoning ordinance where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of such actions of the applicant, a literal enforcement of the ordinance would result in unnecessary and undue hardship. A variance is authorized only for height, area and size of structure or size of yards and open spaces. Establishment or expansion of a use otherwise prohibited shall not be allowed by variance, nor shall a variance be granted because of the presence of nonconformities in the zoning district or uses in an adjoining zoning district. (Town of Carolina Beach Zoning Ordinance, Section 23.3 Definitions, Variance). The Board of Adjustment is authorized upon appeal in specific cases to grant such variance from the terms of the ordinance as will preserve the spirit and intent of the ordinance, secure public safety and welfare, and provide substantial justice, when, owing to special conditions, literal enforcement of the strict letter of this ordinance would result in practical difficulties or unnecessary hardships. The Board may issue a variance only when all the terms and conditions set forth in this subsection have been met." (Section 21.3, i (2) *To Authorize Variances*)

Based upon the foregoing **FACTS**, The Board of Adjustment hereby makes the following **CONCLUSIONS OF LAW**: for a Variance from Article 3 Sec.3.9-1 Dimensional standards for lots and principal structures

- 1) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.

Finding fails. (1 aye to 4 nays)

- 2) That the special conditions and circumstances do not result from actions of the applicant.

Finding fails. (0 ayes to 5 nays)

- 3) That because of such special conditions and circumstances, the applicant can secure no reasonable return from, or make no reasonable use of, his property, if he complies with the literal provisions of the ordinance.

Finding fails. (0 ayes to 5 nays)

- 4) That the hardship suffered is hardship that would affect any owner or occupant of the property in question and is not personal to the applicant.

Finding passes. (4 ayes to 1 nays)

- 5) That the variance requested is a variance from dimensional requirements and does not allow a use of the property which is prohibited expressly or by implication, in the regulations applying to the property.

Finding passes. (5 ayes to 0 nays)

- 6) That granting a variance will be in harmony with the general spirit and intent of the ordinance and will not be injurious to the neighborhood or the public safety or welfare.

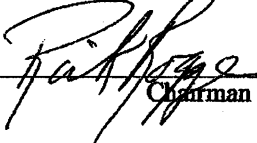
Finding fails. (0 ayes to 5 nays)

Variance Request is denied.

THEREFORE, based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, IT IS HEREBY ORDERED that a variance from Article 3 Sec.3.9-1 Dimensional standards for lots and principal structures hereby is denied

MOTION FOR ACTION BY THE BOARD: Motion made to deny the variance based upon the applicant not meeting all 6 Findings of Fact

The variance was denied by a vote 5 to 0.



Chairman

9/20/11

Date



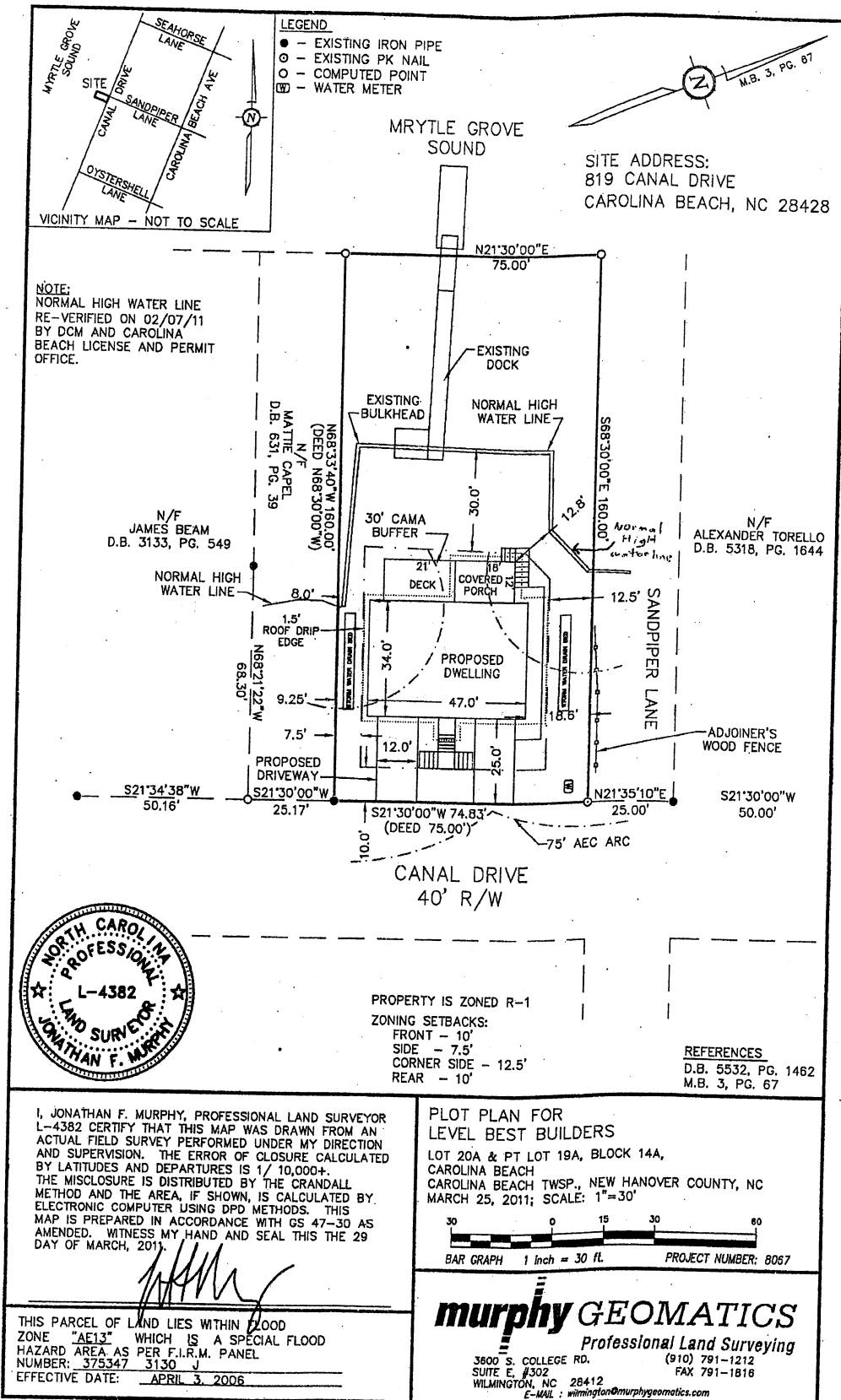
Zoning Administrator

9/20/11

Date

The applicant/owner is hereby given notice that: "Any person aggrieved by any decision of the Board of Adjustment shall have standing for purposes of seeking further review by New Hanover County Superior Court; provided, such review shall be subject to proceedings in the nature of certiorari. For purposes of this section, "person aggrieved" shall mean any person, firm, corporation or group of persons of common interest, including the Town, its officials, agents and employees, and any town departments, boards or agencies, that are directly or indirectly affected substantially by a decision as set out herein. Any petition for review by the superior court shall be filed with the Clerk of Superior Court within thirty (30) days after the decision of the Board is filed in the Planning Department, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the planning department at the time of the hearing of the case, whichever is later. The decision of the Board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Attachment 8



NOTE:
NORMAL HIGH WATER LINE
RE-VERIFIED ON 02/07/11
BY DCM AND CAROLINA
BEACH LICENSE AND PERMIT
OFFICE.

N/F
JAMES BEAM
D.B. 3133, PG. 549

N/F
ALEXANDER TORELLO
D.B. 5318, PG. 1644



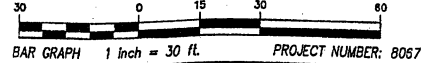
PROPERTY IS ZONED R-1
ZONING SETBACKS:
FRONT - 10'
SIDE - 7.5'
CORNER SIDE - 12.5'
REAR - 10'

REFERENCES
D.B. 5532, PG. 1462
M.B. 3, PG. 67

I, JONATHAN F. MURPHY, PROFESSIONAL LAND SURVEYOR L-4382 CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL FIELD SURVEY PERFORMED UNDER MY DIRECTION AND SUPERVISION. THE ERROR OF CLOSURE CALCULATED BY LATITUDES AND DEPARTURES IS 1/10,000+. THE MIS-CLOSURE IS DISTRIBUTED BY THE CRANDALL METHOD AND THE AREA, IF SHOWN, IS CALCULATED BY ELECTRONIC COMPUTER USING DPD METHODS. THIS MAP IS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED. WITNESS MY HAND AND SEAL THIS THE 29 DAY OF MARCH, 2011.

[Signature]

PLOT PLAN FOR
LEVEL BEST BUILDERS
LOT 20A & PT LOT 19A, BLOCK 14A,
CAROLINA BEACH
CAROLINA BEACH TOWNSHIP, NEW HANOVER COUNTY, NC
MARCH 25, 2011; SCALE: 1"=30'



THIS PARCEL OF LAND LIES WITHIN FLOOD
ZONE "AE13" WHICH IS A SPECIAL FLOOD
HAZARD AREA AS PER F.I.R.M. PANEL
NUMBER: 375347 3130 J
EFFECTIVE DATE: APRIL 3, 2006

murphy GEOMATICS
Professional Land Surveying
3600 S. COLLEGE RD. (910) 791-1212
SUITE E, #302 WILMINGTON, NC 28412 FAX 791-1818
E-MAIL: wilmingtan@murphygeomatics.com

ATTACHMENT C

Petitioner and Staff Positions

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

Petitioners' Position: Yes.

Strict adherence to the applicable new development setback rule relative to the recently located normal high water lines on each side of the lot renders Petitioners' lot almost unbuildable [see attached survey depicting all applicable setbacks], and completely prevents development of a less intensive, lower impact single family home located in line with adjacent residential structures and within the footprint previously permitted in March 2006 for construction of a large triplex structure per the terms of Minor Development CAMA Permit No. CB2006-20. [2006 CAMA Permit and site plan documents contained in **Attachment I to Proposed Stipulated Facts.**] A residential dwelling previously existed on the lot, located in essentially the same footprint now proposed by Petitioners. [See 2006 survey document contained in **Attachment 1 to Proposed Stipulated Facts.**]

In addition, Petitioners also wish to make the Commission aware of Petitioner Steve Casey's disabled veteran status and the fact that Petitioners soon will be taking care of Petitioner Cathy Casey's elderly mother. Both of these more personal factors require a larger first level building footprint that can accommodate a person with limited mobility on the first living space level, with wheelchair access to the residence from the outside. The proposed residence is intended to be Petitioners' permanent, full time residence. The residence needs to be designed and constructed to meet ADA standards, which generally require a larger footprint. Petitioners purchased the lot on or about December 12, 2010. Petitioners purchased the property with the understanding that the prior owners had already been granted permit approval to construct a multi-unit, high density triplex on the lot. Petitioners assumed that their lower density proposal for a single residence would be a more desirable, harmonious and permissible development proposal. **Attachment 1 to Proposed Stipulated Facts** contains documents regarding the previously issued CAMA permit and site plan, as well as a survey of the single family residence that previously existed on the lot until the prior owner's hail it moved in preparation for construction of their triplex project.

Strict adherence to the setbacks specified in 15A NCAC 07H.0209(d)(10) plan would require Petitioners to build a house that is not suitable for their and their elderly parents, and which is not appropriately located or scaled to the lot relative to adjacent homes. The lot is unique in that it is one of only a few lots on Canal Drive that is greater than 5,000 sq. ft. At some point (it remains unclear when and how), lot 20A was combined with the northern half of lot 19, resulting in a larger lot. However, this unique configuration has become both a blessing and a curse. For the blessing, it allows for a single family house to be built that can accommodate Petitioner Steven Casey's disabled veteran needs and Petitioner Cathy Casey's elderly mother's care needs, and which can have a more reasonable first floor layout, consistent with the

waterward line for adjacent residences and less intrusive relative to Canal Drive. For the curse, it makes Petitioners ineligible for the “exception” criteria contained in the CAMA rules for previously platted lots of 5,000 sq. ft. or less. Strict adherence to the setback rule will restrict Petitioners’ ability to align their proposed residential dwelling in line with the neighboring houses. Strict adherence to the setback rule fails to account for the unique nature of the three-sided bulkheading on Petitioners’ lot and the fact that only five years earlier, a CAMA permit was issued for a larger building footprint on this same lot — at that time, the normal high water line call on the southern side property line was made further out. By enforcing the setback requirements on the sides of the lot, the “useable” buildable space is less than 8’ wide in the location consistent with adjacent houses. Without a variance, the building footprint will be too small to accommodate disabled or elderly residents, will force a location that is like a “missing tooth” scenario relative to adjacent, existing homes, will create greater traffic hazards by forcing a footprint right up on the street, and will likely force Petitioners to revert to a non-owner, high density project in order to cost-justify the price paid for the lot. Petitioners do not seek to locate their building footprint any closer to the water than that used in adjacent properties.

Staff’s Position: Yes.

Staff concurs that strict application of the buffer rule in this case will cause an unnecessary hardship for Petitioners. When Petitioners purchased this property in December 2010, CAMA Minor Development Permit No. 2006-20, which was issued to the previous landowner was still in effect and authorized the construction of a three-unit residential building with 2,566 square feet of impervious area. The proposed triplex was never built. Currently, Petitioners propose to construct a single-family home with less impervious area than the permitted triplex, however, due to the Town’s denial of their variance request from the required 20-foot street setback their proposed single-family home encroaches into the 30-foot buffer, based on the same normal high water line as in 2006, on both the northern and southern portions of the lot. Even though the footprint submitted by Petitioners for their single-family home differs from that of the triplex, Petitioners propose to use this property without increasing the previous permitted impervious square footage. Therefore, strict application of the buffer rule to this lot will cause an unnecessary hardship for the Petitioners given their reasonable reliance on a CAMA permit issued to the previous landowner authorizing development consisting of a larger impervious area than Petitioner’s proposed 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.

See response to criteria one above. See also proposed stipulated facts and attached documents. The three-sided bulkheading on Petitioners’ lot is unique. The prior CAMA permit issuance for a larger triplex footprint based on a different high water line call along the southern property line is unique to the property. The prior existence of a single family home on the lot,

which was only moved by the prior owner in preparation for building the permitted triplex creates a unique property situation where that home footprint no longer can be used. The prior recombination of a full lot and the northern half of the neighboring lot, thereby eliminating the availability of the 5,000 sq. prior platted lot exception is unique to this lot. In addition, at some point in the past, the lot was extended waterward with a three-sided bulkhead into Myrtle Grove Sound creating marsh areas on the sides of the lot. It is this marsh on the sides of the lot that is pushing the house into a smaller footprint perilously close to the street, and completely out of alignment with adjacent homes. [See Attachment 3 to Proposed Stipulated Facts.] The lot to the north is the termination of a road (Sandpiper Lane). The property belongs to the Town of Carolina Beach and is used for public access to the Sound and has a gazebo in place for public use. The property to the south is the remaining 1/2 of lot 19 which is now only 2,500 sq. ft. and considered unbuildable. These additional facts are unique to Petitioners' lot and help explain why those lots were not bulk headed at a similar distance relative to the waters of the sound, thereby creating a unique "surrounded on three sides" situation for Petitioners' lot, which Petitioners now seek help from the Commission to remedy this unique hardship.

Staff's Position: Yes.

Staff contends that the hardships are caused by conditions peculiar to this property. Petitioner's lot consists of a three-sided bulkhead that extends landward on each property line side. The existence of a previous single family home at this location, which was moved in 2006 to allow for construction of the permitted triplex that was not built, offers a unique situation peculiar to this property in that if the permitted triplex was built it would create more impervious surface area than Petitioner's proposed development.

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

Petitioners' Position: No.

See responses to criteria one and two above. See also proposed stipulated facts and attached documents. Simply put, Petitioners played no role in the prior bulkheading of this lot, or the prior permitting on this lot, or the construction and location of the prior home on this lot. Nor did Petitioners play any role in location of adjacent homes, or the fact that on either side of Petitioners' lot there is an unusual narrow piece of land that has not been bulkheaded due to the unbuildable nature of the property on one side, and the other side being the terminus of a public street. In addition, when Petitioners acquired the lot in December of 2010, Petitioners reasonably relied on the fact that the prior owner had obtained a CAMA permit for an even larger building footprint with higher proposed density and higher impervious surface square footage. The build-out of the lot into the Sound that has created the side marsh issues was accomplished many years ago. Petitioners' lot also is situated on the corner of two public roads (Canal Drive and Sandpiper Lane), creating in itself an additional unique setback problem due to town setback requirements, which the Town rightly has refused to waive for public safety reasons. Further, Petitioners

played no role in the prior lot recombination process which eliminated the potential use of the 5,000 square foot prior platted lot exemption. Finally, a prior home of comparable size and location existed on the lot as recently as 2006. Ironically, that home was removed in preparation for implementing the prior owner's permitted triplex development proposal.

Staff's Position: No.

Staff agrees that the hardships did not result from actions taken by Petitioners. CAMA Minor Development Permit No. CB 2006-20 was issued previous to Petitioners' purchase of this property and was still a valid permit at the time of sale. The CAMA permit allowed a larger footprint with a higher proposed density and more impervious square footage. Petitioners' proposed single-family residence would decrease the impervious square footage on the lot, however, given the Town's requirement of a 20-foot street setback, Petitioner's smaller footprint encroaches into the 30-foot 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.

Petitioners' Position: Yes.

See responses to criteria one through three above. See also proposed stipulated facts and attached documents. The granting of the requested variance is consistent with all applicable CAMA rules and local requirements other than the setback use standard. That setback standard was met in a prior CAMA permit on the same lot for a larger, denser development proposal covering more impervious surface area. The Town of Carolina Beach supports issuance of the requested variance. [**Attachment 6 to Proposed Stipulated Facts.**] As noted in the Town's support letter, issuance of the requested variance also will resolve the Town's ability to move forward with its desired canoe and kayak dock project. Petitioners have committed to construct engineered storm water management systems that will capture the first 1.5 inches of rainwater caused by the proposed impervious surfaces. The bulkheads that are in place will help ensure the protection of the marshlands as well. Additionally, this lot was scheduled to house a multi-family triplex development (built narrow and tall and 10' from the street due to local commercial structure setback differences). Petitioners believe that allowing them to develop this lot for lower impact single family residential use will have a significantly lower impact on water and coastal resources. The granting of this variance will also help to secure Petitioners' safety and welfare relative to their personal disable veteran and elder care needs. The granting of this variance will also help to secure public safety and welfare by allowing Petitioners to build a lower traffic volume home that is far enough off of Canal Drive as to not cause an unsafe condition when backing into the bike lane established along Canal Drive. The granting of this variance will preserve substantial justice as Petitioners would be able to align their home with those of their northern and southern neighbors, but not encroach on theft public views, and to build a home of scale and location more appropriate to the lot and neighborhood.

Staff's Position: Yes with conditions.

Petitioners have proposed a smaller single-family residence consisting of less impervious square footage than the previously permitted triplex, however, Petitioners have not provided a detailed stormwater management plan for their proposed development. Staff proposes, as part of the variance order, that Petitioners be required to submit an innovative engineer-designed stormwater system to reduce the impacts of stormwater from impervious surfaces on the adjacent sound. Furthermore, Petitioners shall provide the proper operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and insure that such obligation becomes a permanent obligation of future property owners.

Staff feels that with these conditions the proposed development meets the spirit, purpose, and intent of the buffer rule, and secures public safety and welfare by reducing the impervious surface area of a permitted project and reducing runoff pollution into the marine environment. Substantial justice will be preserved by Petitioners' construction of a smaller footprint than what had been previously permitted on this site.

Attachment D

Petitioners' Variance Request Petition

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Steven and Cathy Casey

COUNTY WHERE THE DEVELOPMENT IS PROPOSED New Hanover

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. **See Attachment re all Four Criteria.**
- (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.

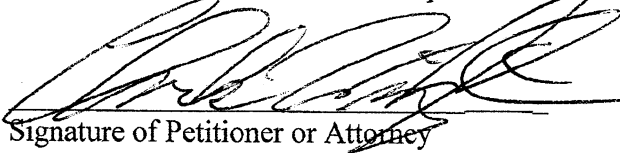
Please make your written arguments that Petitioner meets these criteria on a separate piece of paper.

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.

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



Signature of Petitioner or Attorney

September 14, 2011

Date

I. Clark Wright, Jr.
Printed Name of Petitioner or Attorney

icw@dhwlegal.com
Email address of Petitioner or Attorney

209 Pollock Street
Mailing Address

(252) 514-2828
Telephone Number of Petitioner or Attorney

New Bern NC 28560
City State Zip

(252) 514-9878
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

VARIANCE CRITERIA – CASEY REQUEST
September 14, 2011

Introduction

In December 2010, Petitioners Steven and Cathy Casey purchased their sound front lot located at 819 Canal Street in the Town of Carolina Beach. [See attached Deed.] Their subsequent minor development CAMA Permit application seeking approval to construct a single family dwelling designed to accommodate Petitioner Steve Casey's veteran disability and Petitioner Cathy Casey's elderly grandmother's growing needs for home care was denied on April 12, 2011 due to non-compliance with the Coastal Estuarine Shoreline 30-foot setback, found at 15A NCAC O7H.0209(d)(10). No other grounds for permit denial were identified. [Attachment 5 – Proposed Stipulated Facts.] Petitioners now request that the Commission grant them a variance from the 30-foot setback requirement for a number of reasons, including: (i) the unique configuration of their bulkheaded lot, with coastal wetlands intruding landward down both side property lines; (ii) the unique factual situation where the normal high water line as located by LPO and DCM officials has moved significantly landward into one side property line, even though the existing bulkhead location has not changed; (iii) the fact that their proposed development is less intensive and will result in lesser impacts than associated with a previously permitted (2006) triplex development proposed for the same property; (iv) the fact that the Town of Carolina Beach supports Petitioners' variance request; (v) the fact that their proposed development footprint is consistent with existing residence footprints on both sides; and (vi) the fact that Petitioners relied on an existing 2006 Minor Development CAMA Permit authorizing development of a larger, more intensive triplex structure on the same lot, and reasonably believed that they would be able to construct a smaller, less dense single family residence to accommodate Petitioner Steve Casey's disabled veteran status and Petitioner Cathy Casey's elderly mother's personal care needs.

Petitioners provide the following information to the CRC addressing each of the four statutory criteria in support of their variance request:

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

YES. Strict adherence to the applicable new development setback rule relative to the recently located normal high water lines on each side of the lot renders Petitioners' lot almost unbuildable [see attached survey depicting all applicable setbacks], and completely prevents development of a less intensive, lower impact single family home located in line with adjacent residential structures and within the footprint previously permitted in March 2006 for construction of a large triplex structure per the terms of Minor Development CAMA Permit No. CB2006-20. [2006 CAMA Permit and site plan

documents contained in **Attachment 1 to Proposed Stipulated Facts.**] A residential dwelling previously existed on the lot, located in essentially the same footprint now proposed by Petitioners. [See 2006 survey document contained in **Attachment 1 to proposed Stipulated Facts.**]

In addition, Petitioners also wish to make the Commission aware of Petitioner Steve Casey's disabled veteran status and the fact that Petitioners soon will be taking care of Petitioner Cathy Casey's elderly mother. Both of these more personal factors require a larger first level building footprint that can accommodate a person with limited mobility on the first living space level, with wheelchair access to the residence from the outside. The proposed residence is intended to be Petitioners' permanent, full time residence. The residence needs to be designed and constructed to meet ADA standards, which generally require a larger footprint. Petitioners purchased the lot on or about December 12, 2010. Petitioners purchased the property with the understanding that the prior owners had already been granted permit approval to construct a multi-unit, high density triplex on the lot. Petitioners assumed that their lower density proposal for a single residence would be a more desirable, harmonious and permissible development proposal. **Attachment 1 to Proposed Stipulated Facts** contains documents regarding the previously issued CAMA permit and site plan, as well as a survey of the single family residence that previously existed on the lot until the prior owners had it moved in preparation for construction of their triplex project.

Strict adherence to the setbacks specified in 15A NCAC 07H.0209(d)(10) plan would require Petitioners to build a house that is not suitable for their and their elderly parents, and which is not appropriately located or scaled to the lot relative to adjacent homes. The lot is unique in that it is one of only a few lots on Canal Drive that is greater than 5,000 sq. ft. At some point (it remains unclear when and how), lot 20A was combined with the northern half of lot 19, resulting in a larger lot. However, this unique configuration has become both a blessing and a curse. For the blessing, it allows for a single family house to be built that can accommodate Petitioner Steven Casey's disabled veteran needs and Petitioner Cathy Casey's elderly mother's care needs, and which can have a more reasonable first floor layout, consistent with the waterward line for adjacent residences and less intrusive relative to Canal Drive. For the curse, it makes Petitioners ineligible for the "exception" criteria contained in the CAMA rules for previously platted lots of 5,000 sq. ft. or less. Strict adherence to the setback rule will restrict Petitioners' ability to align their proposed residential dwelling in line with the neighboring houses. Strict adherence to the setback rule fails to account for the unique nature of the three-sided bulkheading on Petitioners' lot and the fact that only five years earlier, a CAMA permit was issued for a larger building footprint on this same lot – at that time, the normal high water line call on the southern side property line was made further out. By enforcing the setback requirements on the sides of the lot, the "useable" buildable space is less than 8' wide in the location consistent with adjacent houses. Without a variance, the building footprint will be too small to accommodate disabled or elderly residents, will force a location that is like a "missing tooth" scenario relative to adjacent, existing homes, will create greater traffic hazards by forcing a footprint right up on the street, and will likely force Petitioners to revert to a non-owner, high density project in order to cost-justify the

price paid for the lot. Petitioners do not seek to locate their building footprint any closer to the water than that used in adjacent properties.

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

YES. See response to criteria one above. See also proposed stipulated facts and attached documents. The three-sided bulkheading on Petitioners' lot is unique. The prior CAMA permit issuance for a larger triplex footprint based on a different high water line call along the southern property line is unique to the property. The prior existence of a single family home on the lot, which was only moved by the prior owner in preparation for building the permitted triplex creates a unique property situation where that home footprint no longer can be used. The prior recombination of a full lot and the northern half of the neighboring lot, thereby eliminating the availability of the 5,000 sq. ft. prior platted lot exception is unique to this lot. In addition, at some point in the past, the lot was extended waterward with a three-sided bulkhead into Myrtle Grove Sound creating marsh areas on the sides of the lot. It is this marsh on the sides of the lot that is pushing the house into a smaller footprint perilously close to the street, and completely out of alignment with adjacent homes. [See **Attachment 3 to Proposed Stipulated Facts.**] The lot to the north is the termination of a road (Sandpiper Lane). The property belongs to the Town of Carolina Beach and is used for public access to the Sound and has a gazebo in place for public use. The property to the south is the remaining ½ of lot 19 which is now only 2,500 sq. ft. and considered unbuildable. These additional facts are unique to Petitioners' lot and help explain why those lots were not bulk headed at a similar distance relative to the waters of the sound, thereby creating a unique "surrounded on three sides" situation for Petitioners' lot, which Petitioners now seek help from the Commission to remedy this unique hardship.

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

NO. See responses to criteria one and two above. See also proposed stipulated facts and attached documents. Simply put, Petitioners played no role in the prior bulkheading of this lot, or the prior permitting on this lot, or the construction and location of the prior home on this lot. Nor did Petitioners play any role in location of adjacent homes, or the fact that on either side of Petitioners' lot there is an unusual narrow piece of land that has not been bulkheaded due to the unbuildable nature of the property on one side, and the other side being the terminus of a public street. In addition, when Petitioners acquired the lot in December of 2010, Petitioners reasonably relied on the fact that the prior owner had obtained a CAMA permit for an even larger building footprint with higher proposed density and higher impervious surface square footage. The build-out of the lot into the Sound that has created the side marsh issues was accomplished many years ago. Petitioners' lot also is situated on the corner of two public roads (Canal Drive and Sandpiper Lane), creating in itself an additional unique setback problem due to town setback requirements, which the Town rightly has refused to waive for public safety

reasons. Further, Petitioners played no role in the prior lot recombination process which eliminated the potential use of the 5,000 square foot prior platted lot exemption. Finally, a prior home of comparable size and location existed on the lot as recently as 2006. Ironically, that home was removed in preparation for implementing the prior owner's permitted triplex development proposal.

(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.

YES. See responses to criteria one through three above. See also proposed stipulated facts and attached documents. The granting of the requested variance is consistent with all applicable CAMA rules and local requirements other than the setback use standard. That setback standard was met in a prior CAMA permit on the same lot for a larger, denser development proposal covering more impervious surface area. The Town of Carolina Beach supports issuance of the requested variance. [**Attachment 6 to Proposed Stipulated Facts.**] As noted in the Town's support letter, issuance of the requested variance also will resolve the Town's ability to move forward with its desired canoe and kayak dock project. Petitioners have committed to construct engineered storm water management systems that will capture the first 1.5 inches of rainwater caused by the proposed impervious surfaces. The bulkheads that are in place will help ensure the protection of the marshlands as well. Additionally, this lot was scheduled to house a multi-family triplex development (built narrow and tall and 10' from the street due to local commercial structure setback differences). Petitioners believe that allowing them to develop this lot for lower impact single family residential use will have a significantly lower impact on water and coastal resources. The granting of this variance will also help to secure Petitioners' safety and welfare relative to their personal disable veteran and elder care needs. The granting of this variance will also help to secure public safety and welfare by allowing Petitioners to build a lower traffic volume home that is far enough off of Canal Drive as to not cause an unsafe condition when backing into the bike lane established along Canal Drive. The granting of this variance will preserve substantial justice as Petitioners would be able to align their home with those of their northern and southern neighbors, but not encroach on their public views, and to build a home of scale and location more appropriate to the lot and neighborhood.

3
25
900-45

fyj cju D

Attachment - Deed



FOR REGISTRATION REGISTER OF DEED:
JENNIFER H. MACNEISH
NEW HANOVER COUNTY, NC
2010 DEC 13 04:15:07 PM
BK:5532 PG:1462-1465 FEE:\$25.00
NC REV STAMP:\$900.00
INSTRUMENT # 2010035794

GENERAL WARRANTY DEED

REVENUE: ⁴⁷⁵ 900. -

MAIL AFTER RECORDING TO: Collins & Collins Law Office, PLLC, 215 Racine Drive, Suite 101, Wilmington, NC 28403

THIS INSTRUMENT WAS PREPARED BY:

Return to Ned Barnes Andrew W. Collins

DRAWN BY

NORTH CAROLINA COUNTY OF NEW HANOVER

Parcel - R08815-007-010-000

THIS DEED made this 18 day of December 2010, by and between Robert G. Collins, Sr., aka Robert G. Collins and wife, Susan H. Collins, Robert G. Collins, Jr., unmarried, John E. Russ, III and wife, Jolie C. Russ, and Andrew W. Collins and wife, Erin T. Collins, hereinafter called Grantors, and STEVEN CASEY and wife, CATHY CASEY, hereinafter called Grantee; of 9417 Collingsdale Way, Raleigh NC 27617

The designation of 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 New Hanover County, North Carolina and more particularly described as follows:

All of Lot 20A and the Northern one-half of Lot 19A in Block 14A in the Town of Carolina Beach as the same is shown on map recorded in Map Book 3 Page 67 in the New Hanover County Registry, and being the same lands described in instrument recorded in Book 1393 Page 1361 in said Registry.

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

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

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

Restrictive covenants, easements and rights of way as may appear of record in the aforesaid Registry, and all applicable zoning and land use ordinances.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in the 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.

Robert G. Collins Sr

Robert G. Collins, Sr.

Susan H Collins

Susan H. Collins

Robert G. Collins Jr

Robert G. Collins, Jr.

John E. Russ III

John E. Russ, III

Jolie G. Russ

Jolie G. Russ

Andrew W. Collins

Andrew W. Collins

Erin T. Collins

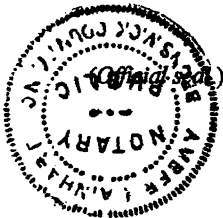
Erin T. Collins

STATE OF North Carolina
COUNTY OF New Hanover

I, Amber Lainhart, Notary Public, certify that Robert G. Collins, Sr., and wife Susan H. Collins, personally came before me this day and acknowledged the due execution of the foregoing instrument.

My commission expires 4.27.2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)



STATE OF North Carolina
COUNTY OF New Hanover

I, Amber Lainhart, Notary Public, certify that Robert G. Collins, Jr., personally came before me this day and acknowledged the due execution of the foregoing instrument.



My commission expires 4-24-2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)

STATE OF North Carolina
COUNTY OF New Hanover

I, Amber Lainhart, Notary Public, certify that John E. Russ, III and wife, Jolie C. Russ, personally came before me this day and acknowledged the due execution of the foregoing instrument.



My commission expires 4-24-2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)

STATE OF North Carolina
COUNTY OF New Hanover

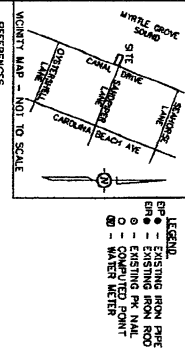
I, Amber Lainhart, Notary Public, certify that Andrew W. Collins and wife, Erin T. Collins, personally came before me this day and acknowledged the due execution of the foregoing instrument.



My commission expires 4-24-2015.
Witness my hand and official seal, this 13 day of December, 2010.

Amber Lainhart
(Notary Public)

Attachment - Survey of Setbacks



REFERENCES:
 DEED 1482, PG. 67
 M.B. 3, PG. 67
 DEED 1482, PG. 67
 M.B. 3, PG. 67

SITE ADDRESS:
 619 CANAL DRIVE
 CAROLINA BEACH, NC 28428

UNUSUAL HIGH WATER LINE RECORDED ON 02/27/11 BY OCM AND CAROLINA BEACH LICENSE AND PERMIT OFFICE.

2. UPLANDS CALCULATIONS BASED ON MEASUREMENTS ALONG WATER SIDE OF VERTICAL ROSS MARKS AT DIVISION COASTAL MANAGEMENT ON 9/19/11.

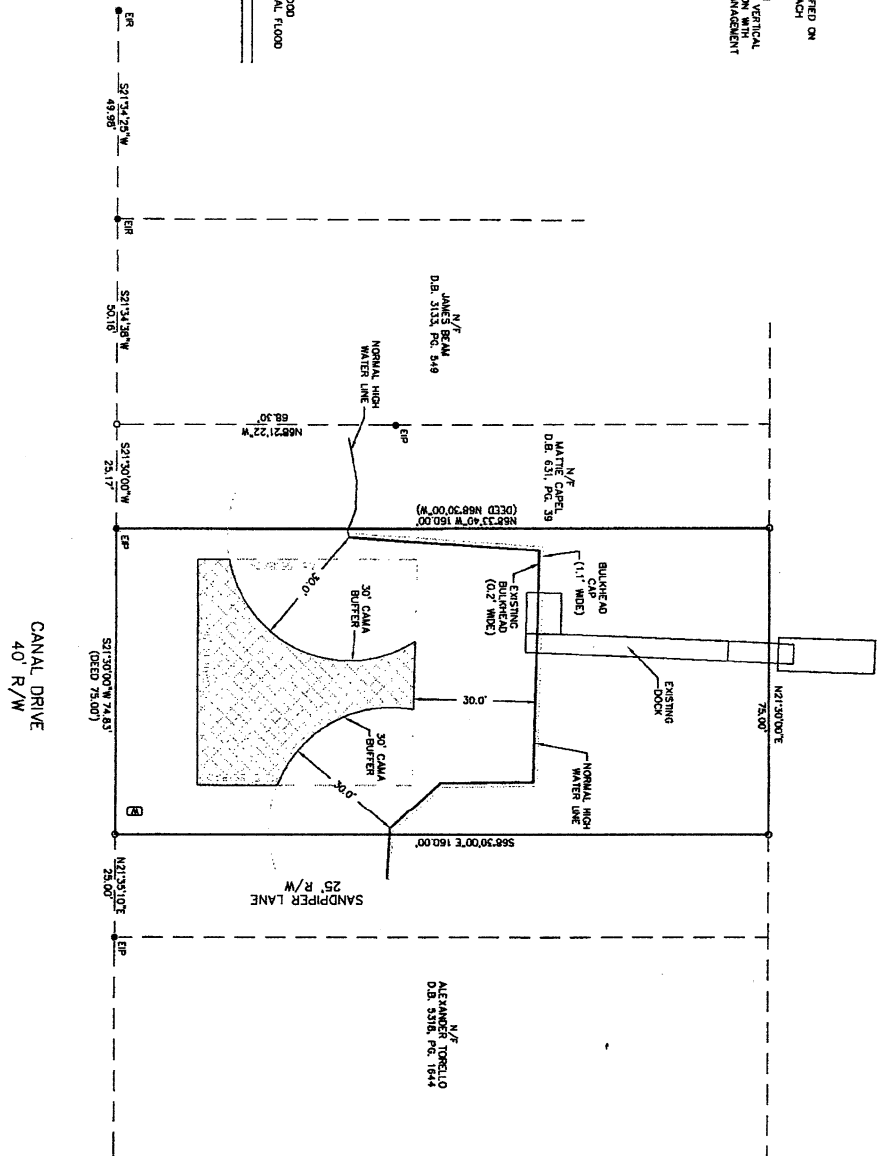
AREAS:
 LOT 1: 8,000 SQ. FT.
 UPLANDS: 4,983 SQ. FT.
 LOT 2: 4,000 SQ. FT.
 UPLANDS: 2,178 SQ. FT.
 TOTAL: 12,000 SQ. FT.
 UPLANDS: 7,161 SQ. FT.

PROPERTY IS ZONED R-1
 ZONING DISTRICTS:
 REAR - 10'
 SIDE - 7.5'
 CORNER 50' - 12.5'

THIS PARCEL OF LAND LIES WITHIN FLOOD ZONE AS SHOWN ON THE SPECIAL FLOOD NUMBER: 172417 11-20 EFFECTIVE DATE: 08/01/2008

MURPHY GEOMATICS
 Professional Land Surveying
 300 E. COLLIER RD.
 WILMINGTON, NC 28413
 (910) 781-1112
 FAX: (910) 781-1818
 E-MAIL: info@murphygeomatics.com

I, JONATHAN F. MURPHY, PROFESSIONAL LAND SURVEYOR L-4382 CERTIFY THAT THIS MAP WAS DRAWN FROM AN ACTUAL FIELD SURVEY PERFORMED UNDER MY DIRECTION BY LICENSED SURVEYORS AND DEPARTMENTS OF THE STATE OF NORTH CAROLINA. THE MEASUREMENTS AND CALCULATIONS WERE MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THE AREA IS SHOWN IS CALCULATED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION. THIS MAP IS PREPARED IN ACCORDANCE WITH GS 47-20 AS AIDED BY WITNESSES IN HAND AND SEAL THIS THE 28 DAY OF MARCH, 2011.



THIS PROPERTY IS IN A PREVIOUSLY RECORDED SUBDIVISION MAP AND IS SUBJECT TO THE RESTRICTIONS AND COVENANTS SET FORTH IN SAID MAP. THE SURVEYOR HAS BEEN ADVISED BY THE OWNER THAT THE PROPERTY IS NOT TO BE USED FOR ANY OTHER PURPOSES THAN AS SHOWN ON SAID MAP. THE SURVEYOR HAS BEEN ADVISED BY THE OWNER THAT THE PROPERTY IS NOT TO BE USED FOR ANY OTHER PURPOSES THAN AS SHOWN ON SAID MAP.

BY SEA, AND SOUTHER ELEVATOR BEHOLD I GIVE TO ME OF THE FOLLOWING:

1. THAT THE SAID TRACTS ARE SEVERAL LOTS OF LAND IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS THE RIGHT TO TAKE LAND IN A COUNTY OR MUNICIPALITY THAT IS INCORPORATED IN THE STATE OF NORTH CAROLINA, EXISTING BEARING MONUMENTS BEING THE MARKERS BETWEEN THE SAID TRACTS TO NORTH CAROLINA GRID.

2. THAT THE SAID TRACTS ARE SEVERAL LOTS OF LAND IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS THE RIGHT TO TAKE LAND IN A COUNTY OR MUNICIPALITY THAT IS INCORPORATED IN THE STATE OF NORTH CAROLINA, EXISTING BEARING MONUMENTS BEING THE MARKERS BETWEEN THE SAID TRACTS TO NORTH CAROLINA GRID.

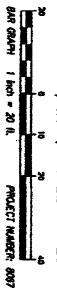
3. THAT THE SAID TRACTS ARE SEVERAL LOTS OF LAND IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS THE RIGHT TO TAKE LAND IN A COUNTY OR MUNICIPALITY THAT IS INCORPORATED IN THE STATE OF NORTH CAROLINA, EXISTING BEARING MONUMENTS BEING THE MARKERS BETWEEN THE SAID TRACTS TO NORTH CAROLINA GRID.

4. THAT THE SAID TRACTS ARE SEVERAL LOTS OF LAND IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS THE RIGHT TO TAKE LAND IN A COUNTY OR MUNICIPALITY THAT IS INCORPORATED IN THE STATE OF NORTH CAROLINA, EXISTING BEARING MONUMENTS BEING THE MARKERS BETWEEN THE SAID TRACTS TO NORTH CAROLINA GRID.

5. THAT THE SAID TRACTS ARE SEVERAL LOTS OF LAND IN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS THE RIGHT TO TAKE LAND IN A COUNTY OR MUNICIPALITY THAT IS INCORPORATED IN THE STATE OF NORTH CAROLINA, EXISTING BEARING MONUMENTS BEING THE MARKERS BETWEEN THE SAID TRACTS TO NORTH CAROLINA GRID.

ISSUED FOR REVIEW ONLY
 PRELIMINARY PLAT
 NOT FOR RECORDING,
 SALES OR CONVEYANCE

SUBDIVISION FOR
 STEVEN CASEY
 LOT 20A & PT LOT 19A, BLOCK 14A,
 CAROLINA BEACH
 CAROLINA BEACH TWP., NEW HANOVER COUNTY, NC
 AUGUST 17, 2011; SCALE: 1"=20'



7-15-2011

Eddie Capel
9 Aurora Court
Durham NC 27713

Dear adjacent property owner,

This letter is to inform you that I, Steven Casey, have applied for a variance from the 30' setback rules for my property located at 819 Canal Drive, Carolina Beach, NC 28428 in New Hanover County.

As required by CAMA I have enclosed a copy of my permit application and project drawings as notification of my proposed project.

If you have any questions or comments regarding my project please contact me at 919-760-3759 or by mail at the address below. If you wish to file written comments or objections with the Carolina Beach Minor CAMA office you may submit them to Jeremy Hardison, Town of Carolina Beach, 1121 N Lake Park Blvd, Carolina Beach, NC 28428.

Sincerely,
Steven Casey

A handwritten signature in black ink, appearing to read 'Steven Casey', with a long horizontal flourish extending to the right.

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Raleigh, NC 28428

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Certified Mail Express Mail

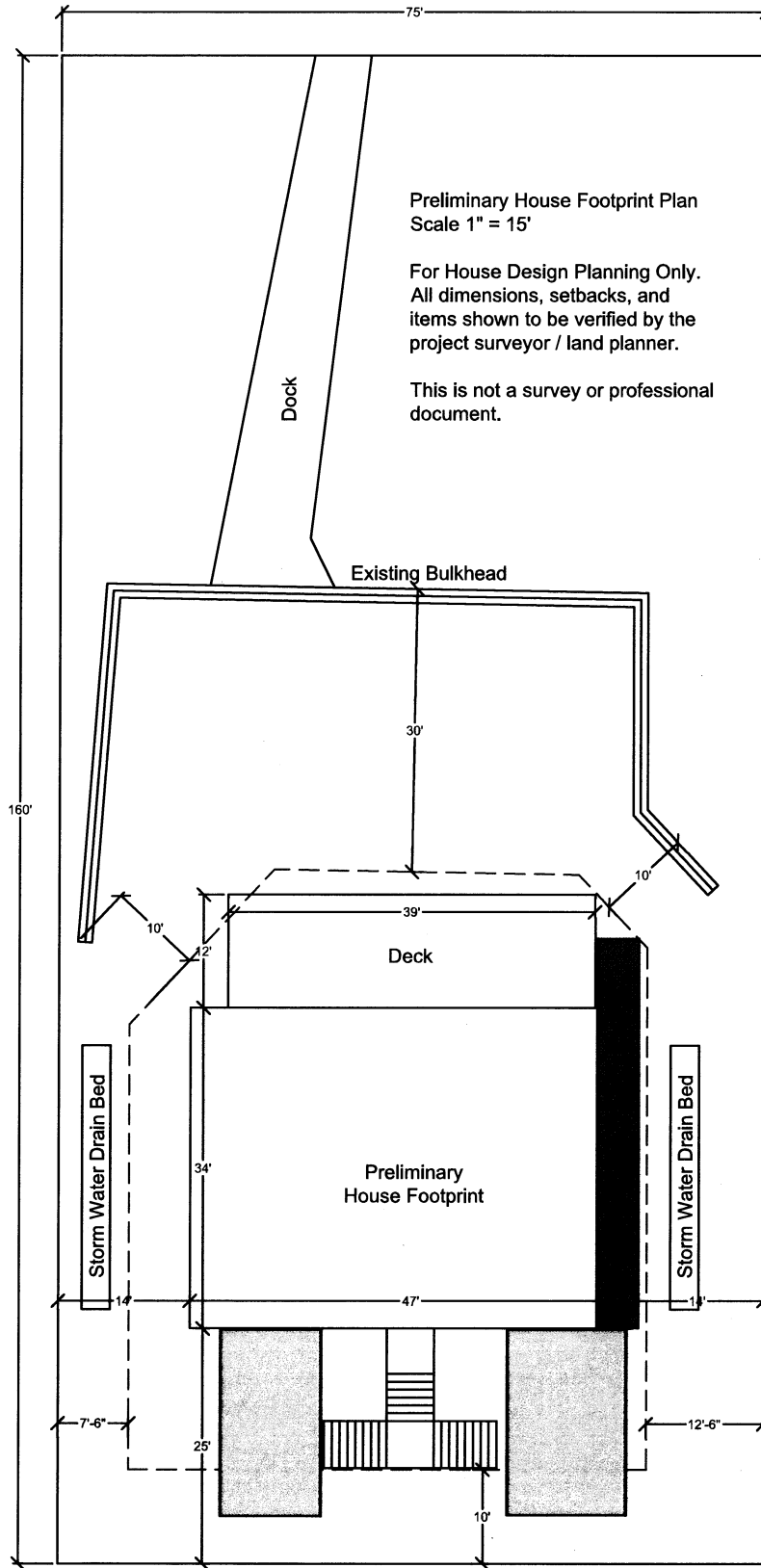
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8. Registered Delivery? (Print Yes) No

PS Form 3800, Rev. 10-20-90

COVANCE



Fiscal Analysis

Temporary Erosion Control Structures

T15A NCAC 07H.0308(a)(2)

T15A NCAC 07H.1704

Prepared by

Mike Lopazanski
Ocean and Coastal Policy Manager
Policy & Planning Section
NC Division of Coastal Management
(252) 808-2808, ext. 223

October 4, 2011

Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title of the Proposed Rule	AECs within Ocean Hazard Areas
Citation	T15A NCAC 07H.0308(a)(2) T15A NCAC 07H.1705
Description of the Proposed Rule	Subchapter 7H. Section .0308(a)(2) contain the Coastal Resources Commission’s guidelines for the use of sandbags as a Permittable temporary erosion control structure. T15A NCAC Subchapter 7H. Section .1700 rules comprise the general permit use standards for emergency work requiring a CAMA and/or a Dredge and Fill permit. 7H.1705 contains the Coastal Resources Commission’s general and specific conditions for the use of sandbags as a permittable temporary erosion control structure.
Agency Contact	Mike Lopazanski Coastal and Ocean Policy Analyst Mike.Lopazanski@ncdenr.gov (252) 808-2808
Authority	G.S. 113A-107; 113A-113; 113(b)(6)a.,b.,d.; 113A-124; 113(c); 113A-118.1
Necessity	The Coastal Resources Commission proposes to amend its administrative rules in order to uniformly manage temporary erosion control structures (sandbags) along oceanfront shorelines and to allow permit expirations that more accurately reflect timeframes necessary for local governments to pursue long-term solutions to chronic erosion issues. These changes will serve the public interest by allowing oceanfront property owners to protect their structures in manner coordinated with the efforts of local governments. The amendments will reflect the current realities of shoreline management in NC and provide uniformity in administration of the sandbag rules while still serving to protect life and property from the destructive forces indigenous to the Atlantic shoreline.
Impact Summary	State government: No Local government: No Substantial impact: No Federal government: No Small Business: No

Summary

The proposed rule language amends the Coastal Resources Commission temporary erosion control rules regarding the time limits and the number of times sandbags could be used on a property, as well as a broadening of the activities associated with “actively pursuing” beach fill or inlet relocation projects. The proposed amendments extend the maximum time period from five years to eight that sandbags can be utilized for temporary erosion control along oceanfront shorelines in communities actively pursuing beach

nourishment, inlet relocation or stabilization projects. The proposed amendments also remove the “one time per structure” limitation as well as incorporate the use of terminal groins as one of the activities undertaken by a community that would allow the maximum time limit for sandbags to remain in place. The change to the time limits more accurately reflects the timeframe for completing a beach nourishment, inlet relocation or stabilization project. Incorporation of terminal groins as an eligible activity connected with the maximum sandbag time limit is necessary due to recent (SL2011-0387) legislative action allowing the use of terminal groins for inlet stabilization.

The group most affected by these changes will be property owners located along oceanfront shorelines as well as property owners located within Inlet Hazard Areas. The Division of Coastal Management (DCM) estimates that there will be **cost savings** from this action of ranging from **\$14,192 – \$67,941**. These cost savings are derived from the delayed costs associated with the removal of sandbags. The costs and benefits from these proposed rule changes do not exceed \$500,000 annually.

The Division of Coastal Management anticipates the effective date of these rule amendments to be July 1, 2012.

Introduction and Purpose

The Coastal Resources Commission (CRC) is initiating rule making to amend its administrative rules governing the use of sandbags for temporary erosion control along oceanfront and inlet shorelines. The Division of Coastal Management (DCM) currently issues permits for temporary erosion control structures under 15A NCAC 7H .0308(a)(2) and 15A NCAC 7H .1705, which are limited to sandbags used to protect imminently threatened structures (buildings, roads and septic systems). Sandbag structures may remain in place for up to two years if protecting a structure that is less than 5,000 square feet or five years for larger structures. Sandbag structures may also remain in place for up to five years, regardless of structure size, if the structure is located in a community that is considered to be actively pursuing a beach nourishment or inlet relocation project. The use of sandbags for temporary erosion control is allowed once during the life of a structure on the oceanfront.

The Commission has been actively considering its policy for temporary erosion control since 2007 as a May 2008 deadline was approaching for the removal of many sandbag structures. The CRC modified the rules in 2009 to accommodate the need of property owners to temporarily protect imminently threatened oceanfront structures through the use of sandbags, while pursuing more permanent solutions, such as beach nourishment or relocation of the structure. These changes primarily affected the management of sandbags in Inlet Hazard Areas where they addressed the time period, number of times sandbags could be used on a property and broadened the activities associated with “actively pursuing” beach fill or inlet relocation projects. More recently the Commission has engaged stakeholders in an effort to pursue alternative sandbag structure management strategies, and is now proposing to manage sandbags along the oceanfront in the same manner as Inlet Hazard Areas. The maximum time limit for use of sandbags would be increased from five years to eight years, the one time per structure use of sandbags limitation would be removed, and the use of inlet stabilization in accordance with G.S. 113A-115.1 (SL2011-0387) will be added.

The anticipated effect of this proposed rule change will be consistent application of temporary erosion control measures along all oceanfront and inlet shorelines. The time limits associated with the use of sandbags will also more accurately reflect the planning and construction schedules of beach nourishment and inlet relocation or stabilization projects undertaken by oceanfront communities. Synchronizing the use of temporary erosion control measures with long-term actions to address chronic erosion will prevent property owners from prematurely exposing their structures to hazards associated with the Atlantic shoreline and endangering their structures. Allowing properties owners to use sandbags more than once may also increase compliance with removal criteria. Property owners may be less likely to contest the removal of sandbags if they are afforded the ability to once again use them should their structure become imminently threatened.

Description of the Proposed Rules

The Commission is proposing to use the same rationale for extending the time period for inlet relocation projects to beach fill projects on the oceanfront. In recent years, the state has had a great deal more experience with the timeframes involved in securing a beach fill project. In addition to the permitting aspects of these projects, there is a degree of effort involved on the part of the beach communities in securing the funding and easements that needs to be recognized. The CRC believes that extending the eight-year timeframe to the oceanfront in communities actively pursuing a beach nourishment project is a reasonable approach to addressing this issue. The two and five year timeframes were originally tied to the small and large structure setback provisions of the original oceanfront setback rules and do not necessarily relate to the time needed in securing a beach nourishment project. These timeframes were an assessment of how long it might take to physically relocate what were defined as large and small structures.

These amendments are similar to those made in 2009 relative to the management of sandbags in Inlet Hazard Areas. The time limit for the use of sandbags is proposed for extension from five years to eight years if located in a community actively pursuing a beach fill or inlet relocation project. The one time per structure limitation is also proposed to be removed provided that the structure once again becomes imminently threatened and is located in a community that is actively pursuing a beach fill or inlet relocation project. The proposed amendments also include an expansion of the activities a community could be actively pursuing that would warrant an extended permit time limit to include an inlet stabilization project in accordance with T15A 113A-115.1 (Coastal Area Management Act amendment associated with SL2011-0387). No changes are proposed for structures located outside of areas seeking beach fill, inlet relocation or inlet stabilization projects where the two and five-year timeframes would remain. No changes are proposed for the provisions under which sandbags would need to be removed (i.e., the structure is not imminently threatened due to beach fill, inlet relocation or stabilization project) and no changes are proposed for the definition of an imminently threatened structure.

COSTS OR NEUTRAL IMPACTS

Coastal Resources Commission rules do not allow the use of sandbags for temporary erosion control until the structure is imminently threatened. Imminently threatened is defined as the foundation or septic system being located less than 20 feet away from the erosion scarp (steep ridge). Over the past ten years, the Division of Coastal Management has issued an average of 17.9 sandbag permits per year. Since the Commission is not proposing any changes to the definition of imminently threatened, the Division does not anticipate any change in the number of permits applied for due to this proposed action, neither will the proposed action make sandbag permits any harder or easier to obtain. The proposed action will allow property owners located on the oceanfront more time to protect their structures as the community seeks a long-term solution to chronic erosion. The extended time period will not impart negative impacts on the tax base as structures may be saved if the community is successful in securing a beach nourishment or inlet relocation/stabilization project.

An inventory of sandbag structures performed in 2009 identified a total of 327 structures. In August 2010, the Division determined that there were 149 sandbag structures that had reached their permitted time limit and were being prioritized for removal based on their compliance with the Commission's standards regarding dimensions, maintenance, impedance of public access, and the degree to which they were covered with stable and natural vegetation. Of the 149 expired sandbag permits, 50 are located in the area of the Nags Beach Nourishment project scheduled for completion by the end of October 2011. Per the Commission's existing rules, these sandbags will be removed as they are no longer deemed necessary since their associated structures no longer meet the definition of imminently threatened. There are also 97 sandbag structures that do not need to be removed since they were covered and vegetated.

There are 56 sandbag structures with permit expiration dates that would benefit from a from a time extension.

Table 1. Sandbag Permits Issue 2001 - 2010

COUNTY	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Permitted Total
Brunswick	1	0	2	3	10	2	3	6	3	0	30
Carteret	6	3	1	0	0	0	5	3	0	0	18
Currituck	0	0	2	0	0	0	0	0	0	0	2
Dare	11	10	17	5	9	14	1	4	12	19	102
New Hanover	2	12	4	2	0	1	0	0	0	0	21
Onslow	4	0	0	1	0	1	0	0	0	0	6
Pender	0	0	0	0	0	0	0	0	0	0	0
TOTAL	24	25	26	11	19	18	9	13	15	19	179

The cost of sandbag installation ranges from \$400-\$425 per linear foot. Assuming the typical length of an oceanfront lot is 50 feet, the typical installation for a single family structure will range from \$20,000 - \$21,250. The cost of removing sandbags ranges from \$4,000 - \$8,000 depending upon the exposure of the bags and their total length.

Assumptions Used in Calculations

- DCM examined sandbag permit data from 2001-2010.
- A total of 327 sandbag structures exist.
- DCM determined that as of August 2010, 149 structures had expired sandbag permits and were prioritized for removal.
- Approximately 50 sandbag structures are located in the Nags Head beach nourishment project area and need to be removed as they are no longer necessary.
- There are 97 sandbag structures that do not need to be removed (covered and vegetated).
- NC DOT currently holds five sandbag permits.
- Six local governments currently hold nine sandbag permits.

NC Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 7H.0308(a)(2) and 7H.1705 will not affect environmental permitting for the NC Department of Transportation (NCDOT). The changes primarily lengthen the duration of a sandbag permit. The NCDOT currently holds five sandbag permits with one that would benefit from the proposed permit extension. However, the prioritization criteria utilized by DCM for the removal of sandbags ranks sandbags protecting infrastructure such as roads as a low priority due to the consideration of public benefit. The NCDOT therefore is not expected to experience any negative fiscal impacts associated with the proposed rule amendments.

Local Government

Six local governments currently hold a combined total of nine sandbag permits. As with the sandbag permits held by the NCDOT, these sandbags are protecting infrastructure such as roads and therefore not ranked by the Division as a high priority for removal due to the consideration of public benefit. Local

governments therefore are not expected to experience any negative fiscal impacts associated with the proposed rule amendments.

Division of Coastal Management

The extended time period for sandbags will result in some increased monitoring activities by Division staff to ensure that sandbag structures are maintained within permitted alignments. However, the Division does not anticipate that the proposed action will significantly affect operating cost over what is currently required. The adoption of a uniform approach to managing sandbags for temporary erosion control will increase the efficiency in which this activity is permitted as permit expiration dates will not be dependent upon the location of the structure other than being present in a community pursuing beach nourishment, inlet relocation or inlet stabilization. Extended time limits on sandbags will provide some relief to Division staff from the current situation as property owners have increasingly sought variances once sandbag permits expire. There will also be a decrease in the enforcement burden on the Division as property owners may be more likely not to contest the removal of sandbags after a beach nourishment, inlet relocation or inlet stabilization project if they know sandbags would once again be permitted should their structure become imminently threatened.

The Division does not anticipate any change in permitting receipts due to the proposed action. While the proposed amendments would allow multiple permits should a structure once again become imminently threatened, any increase in the number of permits will be offset by a decrease in the number of permits once a beach nourishment or an inlet has been relocated or stabilized.

BENEFITS

Private Property Owners

Extension of Sandbag Permit Expiration Dates

The Division has determined that there are 56 properties that would benefit from permit extensions associated with the proposed rule amendments. These properties would receive extensions ranging from one to three years (11 properties would receive a one-year extension; 30 properties a two-year extension; 15 properties a three-year extension). These benefits would be realized through the deferred cost from having to remove sandbags at a date earlier than what would be afforded by the permit extension being proposed by these amendments. The costs associated with the removal of sandbags varies from \$4,000 - \$8,000 depending on the length of the sandbag structure, the condition of the bags and the degree to which they are buried in the sand.

Instead of spending the money to remove sandbags in the current timeframe, homeowners would have an additional one to three years of time before incurring this expense. Benefits are calculated as the amount of investment income that a homeowner could earn during this period. Application of a seven percent and three percent investment rate of return to the \$4,000 - \$8,000 cost range associated with removal of sandbags is utilized to estimate the net benefits for delayed sandbag removal. For a seven percent investment return, the total benefit to property owners ranges from \$33,971 - \$67,94. For a three percent investment return rate, total benefit to property owners ranges from \$14,192 - \$28,383. Table 2. depicts the investment return afforded by the number of years of permit extension and number of properties.

Table 2. Estimate of Benefits for Delayed Sandbag Removal

Estimate of Net Benefits for Delayed Sandbag Removal with Seven Percent Investment Return and Unadjusted for Inflation									
Years	Number of Properties	Return on \$4,000 invested at 7 percent	Payment to Remove Sandbags	Investment Income Per Property	Total Property Investment Income	Return on \$8,000 invested at 7 percent	Payment to Remove Sandbags	Investment Income Per Property	Total Property Investment Income
1	11	\$ 4,280	\$ 4,000	\$ 280	\$ 3,080	\$ 8,560	\$ 8,000	\$ 560	\$ 6,160
2	30	\$ 4,580	\$ 4,000	\$ 580	\$ 17,388	\$ 9,159	\$ 8,000	\$ 1,159	\$ 34,776
3	15	\$ 4,900	\$ 4,000	\$ 900	\$ 13,503	\$ 9,800	\$ 8,000	\$ 1,800	\$ 27,005
				Low Estimate	\$ 33,971			High Estimate	\$ 67,941

Estimate of Net Benefits for Delayed Sandbag Removal with Three Percent Investment Return and Unadjusted for Inflation									
Years	Number of Property	Return on \$4,000 invested at 3 percent	Payment to Remove Sandbags	Investment Income Per Property	Total Investment Income	Return on \$8,000 invested at 3 percent	Payment to Remove Sandbags	Investment Income Per Property	Total Investment Income
1	11	\$ 4,120	\$ 4,000	\$ 120	\$ 1,320	\$ 8,240	\$ 8,000	\$ 240	\$ 2,640
2	30	\$ 4,244	\$ 4,000	\$ 244	\$ 7,308	\$ 8,487	\$ 8,000	\$ 487	\$ 14,616
3	15	\$ 4,371	\$ 4,000	\$ 371	\$ 5,564	\$ 8,742	\$ 8,000	\$ 742	\$ 11,127
				Low Estimate	\$ 14,192			High Estimate	\$ 28,383

While these properties will benefit from the ability to protect their structures for an increased time period, it is not possible to calculate the number that may become condemned, relocated, damaged/destroyed or otherwise unusable as these factors depend on unknown natural events and owner decisions. It is also not possible to predict whether or not a community will be successful in completing a beach nourishment, inlet relocation or stabilization project as financing of these projects involve the local, state and federal entities outside the Division’s control. The Division therefore can not say with any certainty the value these properties will be preserved at some future time even with the permit extension.

COST/BENEFIT SUMMARY

The greatest benefit of the proposed rule changes will be the ability of property owners to maintain sandbags structures for a period of time more closely aligned with the timeframes associated with a community completing a beach nourishment, inlet relocation or inlet stabilization project. In the near term, property owners will realize a benefit associated with the delayed removal of sandbags ranging from \$14,192 – \$67,941

There will also be a decrease in the enforcement burden on the Division of Coastal management as property owners may be more likely not to contest the removal of sandbags after a beach nourishment, inlet relocation or inlet stabilization project if they know sandbags would once again be permitted should their structure again become imminently threatened.

The costs and benefits from these proposed rule changes do not exceed \$500,000 annually.



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

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

October 11, 2011

MEMORANDUM

TO: CRC & Interested Parties
FROM: Tancred Miller
SUBJECT: Rulemaking Update

Along with this memo is a spreadsheet that contains all of the Commission's rules that are currently in the rulemaking process—from those being proposed for initial action to those reviewed by the N.C. Rules Review Commission (RRC) since the last CRC meeting. Listed below is a description and recent history of the CRC's action on each rule. Complete drafts of rules scheduled for public hearing at this meeting will be available on the DCM website.

RULE DESCRIPTIONS

1. 15A NCAC 7H.0304 AECs Within Ocean Hazard Areas

Status: Going to public hearing.

The amendments will change the formula used to calculate the Ocean Erodible AEC to make it consistent with the CRC's new oceanfront setbacks, and remove the "unvegetated beach" designation for Hatteras Island that was adopted in 2004. Additional changes were approved in May to update long-term annual erosion rates for the oceanfront. Under new amendments to the Administrative Procedures Act, the Commission must approve the fiscal analysis for the proposed changes prior to publication in the NC Register. The Commission did so in August.

2. 15A NCAC 7H.0308 Specific Use Standards for Ocean Hazard Areas

Status: For review and approval for public hearing

Staff will present requested changes to the sandbag rules for review and approval for public hearing.

3. 15A NCAC 7H.0310 Use Standards for Inlet Hazard Areas

Status: On hold.

The CRC directed staff to put further rule development on hold until after the oceanfront erosion rate update is complete.

4. 15A NCAC 7H.0312 Technical Standards for Beach Fill Projects

Status: Going to public hearing.

The Commission approved changes to sampling requirements be sent to public hearing. Under new amendments to the Administrative Procedures Act, the Commission must approve the fiscal analysis for the proposed changes prior to publication in the NC Register. The Commission did so in August.

5. 15A NCAC 7H.1705 General Permit for Emergency Work Requiring a CAMA and/or Dredge and Fill Permit: Specific Conditions

Status: For review and approval for public hearing.

Staff will present the requested changes to the sandbag rules for review and approval for public hearing.

6. 15A NCAC 7H.0214 Installation and Maintenance of Regulatory Signs Exempted

Status: Fiscal review.

The proposed adoption would exempt certain regulatory signs from permitting requirements. Under new amendments to the Administrative Procedures Act, the Commission must approve the fiscal analysis for the proposed changes prior to publication in the NC Register. The Commission did so in August.

7. 15A NCAC 7M.1300 Sea-Level Rise Policy

Status: In discussion/development.

A draft policy on sea-level rise is under development and will be on the Commission's October 2011 agenda as a discussion item. Staff has continued to present the draft to local governments and solicit their feedback, and will report to the Commission in October. Staff will also report on the Science Panel's October 6th meeting where sea-level rise was discussed.

COASTAL RESOURCES COMMISSION RULEMAKING STATUS - OCTOBER 2011

Item #	Rule Citation	Rule Title	October '11 Status	October Action Required?	Next Steps
1	15A NCAC 7H.0304	AECs Within Ocean Hazard Areas	Going to public hearing	No	Public hearings being scheduled.
2	15A NCAC 7H.0308	Specific Use Standards for Ocean Hazard Areas	For review and approval	Yes	Review and approve for public hearing.
3	15A NCAC 7H.0310	Use Standards for Inlet Hazard Areas	On hold	No	On hold until oceanfront erosion rates update is completed.
4	15A NCAC 7H.0312	Technical Standards for Beach Fill Projects	Going to public hearing	No	Public hearings being scheduled.
5	15A NCAC 7H.1705	General Permit for Emergency Work Requiring a CAMA and/or Dredge and Fill Permit: Specific Conditions	For review and approval	Yes	Review and approve for public hearing.
6	15A NCAC 7K.0214	Installation & Maintenance of Regulatory Signs Exempted	Approved for public hearing	No	Public hearings being scheduled.
7	15A NCAC 7M.1300	Sea-Level Rise Policy	In discussion	No	Continue to accept informal public comment.