

NC COASTAL RESOURCES COMMISSION

December 11-12, 2013

Hilton Double Tree

Atlantic Beach, 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, December 11th

10:30 COMMISSION CALL TO ORDER* (Atlantic/Hatteras/Pamlico Room) Frank Gorham, Chair

- Roll Call
- Approval of November 4, 2013 Meeting Minutes
- Executive Secretary's Report
- Chairman's Comments

Braxton Davis

Frank Gorham

Commissioner Orientation – Part 1

11:00 Regulatory Program

Ted Tyndall

11:30 Major Permits

Doug Huggett

12:00 LUNCH

Commissioner Orientation – Part 2

1:15 Compliance and Enforcement

Roy Brownlow

1:45 CAMA Variance Procedures

Mary Lucasse

2:15 CAMA Land Use Plans – CRC Role

John Thayer

2:30 Press and Media Interactions

Michele Walker

2:45 BREAK

3:00 CRC Rule Development

- Amendments, Reviews and APA Requirements (*CRC-13-32*)

Tancred Miller

ACTION ITEMS

3:30 CRC Internal Operating Procedures – Review and Adoption (*CRC-13-33*)

Mary Lucasse

3:45 Cape Fear River AEC Feasibility Study Report (*CRC-13-34*)

Mike Lopazanski

4:15 Future Directions

Frank Gorham

5:00 RECESS

Thursday, December 12th

9:00 COMMISSION CALL TO ORDER* (Atlantic/Hatteras/Pamlico Room) Frank Gorham, Chair

- Roll Call

9:15 VARIANCES

- NNP IV - Cape Fear River LLC- (*CRC-VR-13-03*) New Hanover County, ¼ width pier rule
- City of Jacksonville – (*CRC-VR-13-06*), Dredging in PNA

Amanda Little

Christine Goebel

Jill Weese

10:30 BREAK

10:45 PUBLIC INPUT AND COMMENT

ACTION ITEMS

CRC Rule Development

- 11:00** Fiscal Analysis for 15A NCAC 7H .0312 Technical Standards for Beach Fill Projects (*CRC-13-35*) Matt Slagel
- 11:15** Fiscal Analysis for 15A NCAC 7H .1300 – Maintain, Repair and Construct Boat Ramps (*CRC-13-36*) Tancred Miller
- 11:30** Fiscal Analysis for 15A NCAC 7H .1200 GP for Construction of Piers and Docking Facilities (*CRC-13-37*) Mike Lopazanski
- 11:45** Public Comments on 15A NCAC 7H .0304 – Inlet Hazard Areas and Unvegetated Beach Designations (*CRC-13-38*) Mike Lopazanski

- 12:00 Land Use Plan Certifications, Amendments** John Thayer
Town of Swansboro Future Land Use Plan Map Amendment (*CRC-13-39*)
Town of Nags Head Land Use Plan Amendment (*CRC-13-40*)

- 12:15 Land Use Plan Implementation Status Reports (*CRC-13-41*)** John Thayer
- Town of Duck LUP Implementation Status Report
 - Town of Kitty Hawk LUP Implementation Status Report
 - Town of Southport Implementation Status Report

- 12:30 OLD/NEW BUSINESS** Frank Gorham, Chair

1:00 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.

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



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

Next Meeting:
February 26-27, 2014
Nags Head, NC

NC COASTAL RESOURCES COMMISSION (CRC)

November 4, 2013

NOAA/NCNERR Auditorium

Beaufort, NC

Present CRC Members

Frank Gorham, Chair

Neal Andrew

Renee Cahoon

Suzanne Dorsey

Bob Emory

Marc Hairston

Greg Lewis

Bill Naumann

Harry Simmons

Present Attorney General's Office Members

Mary Lucasse

Christine Goebel

Amanda Little

CALL TO ORDER/ROLL CALL

Frank Gorham called the meeting to order reminding the Commissioners of the need to state any conflicts due to Executive Order Number One and also the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

Angela Willis called the roll. Harry Simmons stated he had a conflict with the Cape Fear River AEC Study. Suzanne Dorsey and Neal Andrew stated they each had a potential conflict with the AEC study and Renee Cahoon stated she had a potential conflict with an item in the closed session. Commissioners Gorham, Andrew, Dorsey, Hairston, Lewis, Naumann and H. Simmons read into the record their Statement of Economic Interest evaluation letters received from the State Ethics Commission. Greg Lewis clarified that he owns a single parcel on or near the coast which is contrary to what his SEI evaluation letter stated. Lee Wynns and Jamin Simmons were absent. Based upon this roll call, Chairman Gorham declared a quorum.

CHAIRMAN'S COMMENTS

Frank Gorham publically thanked the previous Commissioners for their outstanding service. Bob Emory has offered guidance and help and Renee Cahoon has also been helpful. I have spoken with Lee Wynns and Jamin Simmons on the phone. The DCM staff have been working hard to get me up to speed and Mary Lucasse will serve us well. Today I will introduce some concepts to make some changes to our operating procedures. I want to continue to allow the public to have an open comment session.

PRESENTATIONS

Executive Secretary Briefing

Braxton Davis

Braxton Davis stated North Carolina has 320 miles of ocean beaches and the second largest estuarine system in the country. There are over two million acres of sounds, creek and marshes. We just finished a digital map of the non-beachfront shorelines for the first time in North Carolina, over 12,000 miles. There are 43 million annual visitors and coastal tourism supports over 15,000 jobs and generates \$1.4 billion in annual revenue. The Coastal Area Management Act which created this coastal program in 1974 has four key themes. The first is creating the Coastal Resources Commission and permitting program. The second is the cooperation between state and local programs. CAMA set this up through the Land Use Planning program, a delegated permitting program, and the Coastal Resources Advisory Council. A third piece of CAMA establishes the Coastal Reserve Program. Another big feature of CAMA is the focus on enhancing public access to our beaches and non-beachfront shorelines. As important as permitting and regulatory approaches are, the mission statement for the Division of Coastal Management is to protect, conserve and manage North Carolina's coastal resources through an integrated program of planning, permitting, education and research.

DCM has 56 full time employees. There are four district offices (Elizabeth City, Wilmington, Washington and Morehead City). DCM's headquarters are located in Morehead City. Under the Minor Permit program there are over 100 Local Permit Officers coast-wide that are issuing Minor Permits at the local level. DCM's annual receipts include \$500,000 in permit fees and about \$4 million per year in federal grant funds. We receive approximately \$1.5 million annually in state appropriations. Since fiscal year 2007-2008, there has been a reduction in state appropriations of about \$700,000 which is a 30 percent reduction. We have also had an 18 percent reduction in full time employees. We are facing sequester impacts as well as further state reductions next year.

The Coastal Resources Commission was established by CAMA. Before CAMA, the North Carolina Dredge and Fill Act governed a lot of the activities for which the Commission is now responsible. Members of the Commission are appointed by the Governor, Senate and House. One of your primary responsibilities is designating the Areas of Environmental Concern (AEC) which are the jurisdictional areas for DCM and the rules that happen within those areas. The Commission also adopts Land Use Planning guidelines and certifies Land Use Plans and amendments.

The Coastal Resources Advisory Council was a 45 member group, but recent legislation has reduced the Council to 20 members. Previous representation included coastal counties, councils of government, members of the coastal/marine science community and state agencies working with coastal issues. The Council advises the CRC on the local government's perspective on policy and rulemaking matters.

There are four categories of Areas of Environmental Concern: the Estuarine and Ocean System, Ocean Hazard Areas, Public Water Supplies, and Natural and Cultural Resource Areas. Each AEC has its own use standards which are applied within the boundaries of each AEC. There are

three CAMA Permits. The Minor Permit is used mostly by local governments consistent with CRC-established standards. Minor Permits account for about a third of all the permits issued annually. These are mainly single-family home activities. General Permits are issued by DCM staff and are streamlined for routine projects. These are an expedited form of a Major Permit. Over time we have identified key conditions and criteria that must be met for approval and there are 17 types of General Permits that can be issued on-site within a day or two. General Permits account for about 65 percent of the permits we issue annually. Major Permits are reviewed by multiple agencies. We handle about 165 Major Permits for large-scale developments each year. The Major Permit applications are reviewed by up to nine state agencies and four federal agencies. This is an umbrella permitting program. The benefit to the applicant is DCM works with the other agencies to get approval. This takes an average of about 75 days.

In the 2013 session there was legislation that affects the CRC and DCM. Specifically, House Bill 74, the Regulatory Reform Act, requires a ten-year review by each agency of all of their rules. The agency's report on their rules must be made available for public comment and requires the elimination of unnecessary rules. Re-adoption will be required and rules that receive comments will be required to go through the entire rulemaking process. HB74 also included a moratorium on local environmental ordinances. If there is an existing state rule, a local ordinance cannot exceed the state rule unless there is a unanimous vote at the local level. HB74 also amended the Dredge and Fill Act to expedite the Major Permit process by eliminating the requirement of providing notice by Certified Mail. Signed statements of no objection can now serve as notice from adjacent property owners. This Act also eliminates the public notice requirement in newspapers for Minor Permits which is consistent with the General Permit process. Senate Bill 151, the Coastal Policy Reform Act, changed the 2011 law on terminal groins. It allows different groin designs, maintains the cap of four terminal groins, amends requirements for financial assurances for the mitigation of impacts, removes the requirement to use nonstructural alternatives where possible, and removes the "imminently threatened" requirement. This Act also clarifies that local authorities can regulate certain beach activities. House Bill 819 (Session Law 2012-202) defined the coastal area. It also said that the Science Panel must create an updated assessment of the Sea Level Rise Report by 2015 and the CRC cannot pass any regulations based on sea level rise until after the report is done. HB819 provided for an ocean setback provision for structures greater than 5,000 square feet that could not meet the setbacks created in 2009. It also mandated a Cape Fear River AEC Study and an Inlet Hazard Areas Study. The Cape Fear River AEC study is due at the end of 2013. The Inlet Hazard Area Study is due in 2015 and requires us to look at the feasibility of eliminating the Inlet Hazard Area AEC.

Under Executive Order 70 DCM is required to review its rules annually and there have been a few rule changes related to this process. Last year I asked the staff to go above and beyond that and take an in depth look at our rules and identify things we could change to be more customer friendly. We came up with six different ideas to work on in 2013. We have proposed changes to the dock and pier General Permit, boat ramp General Permit, Wetland, Stream and Buffer mitigation permit to make all of them more user friendly. We are also taking another look at the technical standards for beach nourishment projects. All of these rule changes were approved by the CRC earlier this year for public hearing. We also proposed changes for inlet dredging issues to become part of the solution for our shallow draft inlet issues that we face in North Carolina.

The public notice requirements that we wanted to have changed were achieved through recent legislation. At the December meeting you will see the other four rule changes from this rule review.

We have been fortunate to dodge hurricanes this year and that is not always the case. We have the ability to do emergency permits under CAMA. With the Secretary's authority, these emergency permits are rapid, there is no fee associated with the permit and in many cases no site visit is required. This emergency permit allows people to put back what was there if it falls within the existing regulations. We have staff that do damage assessments right after a storm and we have opened up temporary offices when needed.

On the non-regulatory side of the program, we have staff working with Bogue Banks on a master plan with a long-range vision for beach management. We are developing a framework for regional planning and permitting of beach projects. We also have staff working on the Beach and Waterfront Access Grants program. This is five percent of the Parks and Recreation Trust Fund. We have awarded over \$37 million for 300 sites since 1987. Funds can be used for all kinds of activities to enhance public access. We get about \$4 million in requests every year. Based on the recurring appropriation, our cut of the PARTF fund will be about \$700,000 in FY 2013-14 and \$600,000 for FY 2014-15. This will be a fifty percent cut in what we have been funding traditionally. The land use planning program is covered under 7B of the CRC's rules. These were readopted in 2002 and all of the counties have updated their plans under the 2002 guidelines. We are taking a holistic look at the land use planning program. We just had a major regional workshop in Wilmington to hear from local governments on this. We plan to do that for the northern counties in the spring. We are getting some good feedback on where we can take this planning program in the future.

We have ten sites and over 42,000 acres that we manage in our Coastal Reserve Program. These are sites that are open to the public. Four of the ten sites are part of the National Estuarine Research Reserve. The focus of all of the Coastal Reserves is on research and education activities. The Reserve rules are Department rules as opposed to CRC rules. CAMA requires that we get advice from the CRC on the Reserve rules so we will keep you informed on what is going on at the Reserve sites.

In addition to annual rule reviews, we will consistently be working with the CRC on regulatory reform. We will have rule sessions on specific parts of the rules at regularly scheduled meetings. We also have staff working on research and policy analysis on behalf of the CRC. Our regulatory staff will provide feedback on the implementation of rules and any conflicts that may arise. The Administrative Procedures Act is a lengthy process to get through. We have a close working relationship with the Corps of Engineers and other agencies that have pre-approved our General Permits. As we tweak a rule we consult with the other agencies to receive their feedback on changes.

Mary Lucasse, CRC Counsel, stated as Commission Counsel I will help you to be consistent with state laws. We will be working on the CRC's internal operating procedures. The work that the CRC does is subject to statutes that say how the business of the CRC must be done. We are doing business for the people of the state of North Carolina and all the work that we do must be

accessible to the public and conducted openly. A meeting is any time you have a majority of the Commissioners together to conduct the business of the Commission. That includes work done in committees or study groups. You cannot evade open meeting laws by doing things by email. I would suggest that you have an email address that is designated for Commission business. This will protect your private emails from being sifted through when a public records request is received. The only exceptions to the Open Meetings Rules are set forth in the Statute. There are very limited reasons that allow the Commission to go into closed session. This most often happens when the attorneys need to brief the CRC on litigation or to get advice on litigation. The evaluations done by the State Ethics Commission identifies any actual or potential conflicts of interest. You can confer with Commission counsel ahead of time if you need to ask about a conflict. If we can't figure it out then we can ask for an opinion from the Ethics Commission. We will be working on the CRC's internal operating procedures to make some changes and bring them up to date. We conduct this meeting under the terms of the by-laws. The Bylaws incorporate Roberts Rules of Order. The Chair may vote as long as the vote does not cause a tie. If there is a tie then the motion fails. Each member's vote is recorded in the minutes. Some of the work the CRC does is quasi-judicial. In these cases, the CRC serves as a judge. For example, on occasion people can come before you for a decision for a variance request. In these cases, it is very important that you are impartial. You cannot do individual fact finding on your own, you shouldn't talk to the parties on your own or drive by the site on your own. We need to avoid bias or the perception of bias. For each issue on which you are asked to make a decision, materials will be provided to you. All discussions about these matters should happen during the meeting. Another thing required by the by-laws is that you have a duty to attend. The Governor's appointees have an additional requirement to attend and cannot miss three meetings. If you do, there is the possibility that you will lose your seat. There are a lot of rules and regulations regarding CAMA permits. There is a process by which the Commission can vary the statutory or regulatory requirements for a specific project. This is our variance process. When a variance is presented to the Commission, it is presented on stipulated facts. After you have heard arguments on the variance, the Commission then votes on each of the four variance factors which are set forth in our CAMA Statute. Lastly, I am a resource for the Commission. I provide advice, upon your request, about conflict of interests. I support the Chair as he works through third party hearing requests. (This responsibility has been delegated to the Chair under the CRC's rules. A copy of a recent third party decision was provided to you before the meeting.) I also work with DCM's attorneys on appeals. I write final agency decisions on variances and land use plans. I draft documents to reflect the actions taken by the Commission during its meetings for the Chairman's signature.

Cape Fear River AEC Study
Mike Lopazanski

****Commissioners Dorsey, Andrew and H. Simmons recused themselves from this agenda item.****

Frank Gorham stated this study made a lot of us uncomfortable because we, as a Commission, did not have the opportunity for input. The Statute that asked for this study said we have to have a report by December 31, 2013. I was hoping that we could be briefed on this today, get comments and then have a vote at the December meeting, but it wouldn't allow for meeting the deadlines. We are going to do this so we can release it for public comment, but has not been studied and is not endorsed by the CRC.

Mike Lopazanski stated House Bill 819 was passed as an Act to Study and Modify Certain Coastal Management Policies. This legislation directed the CRC to study a number of issues including the feasibility of creating a new AEC for the lands adjacent to the mouth of the Cape Fear River. Specifically, the CRC is to consider the unique coastal features of the region and take into consideration the regulatory concerns for the Village of Bald Head Island, the Town of Caswell Beach and other stakeholders in determining whether or not any action is necessary. If the Commission finds that a separate AEC is needed then the CRC is to eliminate any overlapping AECs and incorporate any appropriate development standards into this new area. The findings of the study and the Commission are due by the end of the year to the Governor, the Legislature and the Department. In order to gather information for this study, DCM held a scoping meeting with the Village of Bald Head Island, the Town of Caswell Beach, consultants and representatives of the North Carolina Baptist Assembly. We agreed to loosely follow the AEC nomination procedures that are already in the CRC's rules as a guideline for the Towns to provide Division staff with information that could be used to justify how their area is unique and why a new AEC would be needed. We held our first public meeting in June in which we presented an overview of the current management framework that exists in the area as well as to discuss the regulatory concerns of the interested parties. We held our second public meeting in August where we heard about the proposed strategies put forward for a Cape Fear River AEC. The report that was sent to the CRC was compiled by DCM staff primarily from information provided by the Village of Bald Head Island and the Town of Caswell Beach and their consultants. The draft report provides the background information on the reason for the study, describes the existing conditions in the area, and provides an overview of the existing regulatory framework as well as the regulatory concerns as described by the Towns. The report also includes the proposed strategies that have been proposed by Bald Head Island and Caswell Beach for the Cape Fear River AEC. At the end of the report are a number of appendices which contain the public meeting summaries, scoping meeting summaries, supporting information provided by consultants, and their comments on the initial draft of the report.

The Towns assert that the Cape Fear River navigation channel is the primary factor in beach erosion and that the US Army Corps of Engineers should be required to dredge the channel every two years and place sand on the adjoining beaches in accordance with the sand management plan that they adopted in 2000. The existing erosion control measures that are allowed by the CRC's rules are seen as limited and the process for permit review, variances and other remedies are viewed as being too slow and reactive rather than proactive. The Towns would like to have the Cape Fear River AEC replace the Inlet Hazard Area AEC as well as the Ocean Erodible Area AEC and corresponding development standards. Under the proposed strategies the Cape Fear River AEC would have its own development standards. The proposed standards would allow the use of engineered erosion control measures, expanded use of sandbags as well as reduced setbacks in advance of planned mitigation efforts such as beachfill projects. The new AEC would also include expedited authorizations to address erosion issues as they arise in emergency situations.

We have completed the public meetings and have drafted the report; however the postponement of the September CRC meeting delayed the release of the report for public comment. We recognize that the Commission has had little time to review this issue as well as the report and

have not had adequate time for input. Much of the material in the report represents information provided by the Towns as well as the proposals and positions. We have suggested that a note be included in the draft report when it is released for public comment indicating that the draft document is not a product of the CRC and it represents proposals by the communities located in the study area. This draft report is being distributed for public comment and does not convey the official findings or positions of the Department, Division or Commission. Staff is asking the CRC to release the draft report for a thirty day public comment period. DCM Staff will then collect the public input and summarize it for presentation at the December CRC meeting. The CRC is being asked to evaluate the report, supporting materials and public comments to determine if action is necessary to preserve, protect and balance the economic and natural resources of the region. These final recommendations will have to be made at the December meeting to meet the legislative deadline of December 31, 2013. If a favorable finding is determined we will need to begin delineation of the boundaries of the AEC, develop management objectives and corresponding development standards in 2014.

Bill Naumann made a motion to release the draft Cape Fear River AEC Study Report for public comment. Renee Cahoon seconded the motion. The motion passed unanimously (Hairston, Emory, Cahoon, Lewis, Naumann).

CRC BUSINESS

Minutes

Bob Emory made a motion to approve the minutes of the July 11 and August 26, 2013 Coastal Resources Commission meetings. Renee Cahoon seconded the motion. The motion passed unanimously (Cahoon, Emory, Hairston, Lewis, Naumann, H. Simmons) (Andrew, Dorsey did not vote).

Initial CRC Organization and Procedures

Frank Gorham recommended that amendments be made to the CRC's internal operating procedures. We can discuss the changes and put the review of this revised document on the December agenda for a Commission vote. The Vice-Chair is elected by the CRC every two years. I would like to recommend Renee Cahoon. Per the operating procedures, the Chair appoints committees as deemed necessary and then designates the Chairs for each committee. In the past there were two standing committees. I would recommend that we eliminate the standing committees and go to an ad hoc committee system. The Executive Committee is made up of the CRC Chair, Vice-Chair and the two Chairs of the standing committees. Braxton and the CRAC Chair are ex-officio members of the Executive Committee. I would propose that the Executive Committee not be made up of the Committee Chairs since there aren't any. Instead I would like to have regional members. The Executive Committee will be made of five members representing each area (north, south, and inland) as well as the CRC Chair and Vice-Chair. My recommendations for the Executive Committee would be Greg Lewis, Bill Naumann, and Harry Simmons. This will not reduce the decision making authority of the full Commission. The CRAC was reduced from 45 members to 20. Staff should send out a notice soliciting nominations to the CRAC. The CRC should send nominations to Braxton. I would recommend that one of the first jobs of the Executive Committee would be to screen the applicants and come up with a

recommendation for the 20 members. We will present a list of everyone nominated to the full Commission as well as the recommendations of the Executive Committee.

Harry Simmons made a motion to approve the changes to the Coastal Resources Commission's internal operating procedures as recommended by Chairman Gorham. Bill Naumann seconded the motion. The motion passed unanimously (Dorsey, Andrew, H. Simmons, Hairston, Emory, Cahoon, Lewis, Naumann).

Harry Simmons made a motion to nominate Renee Cahoon for Vice-Chair. Bill Naumann seconded the motion. The motion passed unanimously (Dorsey, Andrew, H. Simmons, Hairston, Emory, Cahoon, Lewis, Naumann).

Renee Cahoon made a motion to approve the Chairman's recommendation for changes to the Executive Committee. The Executive Committee will consist of Renee Cahoon, Greg Lewis, Bill Naumann, Harry Simmons, and Frank Gorham. Harry Simmons seconded the motion. The motion passed unanimously (Dorsey, Andrew, H. Simmons, Hairston, Emory, Cahoon, Lewis, Naumann).

Review and Discussion of December 2013 Agenda

Braxton Davis stated we are covering a lot of housekeeping items today. The APA process has a lot of timelines associated with it so we need to look at some rule development in December that is on-going. We can do more orientation in detail in December and review the variance procedures. We can talk more about CRAC and Science Panel and the next steps. We will also have variances that need to be heard on the agenda. We can review the APA requirements and schedule the action items for the afternoon session. We will work with the Executive Committee on finalizing the December agenda. In February we would like to see what the Commission's priorities are for the year and what kind of regulatory reform you would like to see. Renee Cahoon suggested moving the action items to the beginning of the day instead of waiting until late afternoon to avoid quorum issues. Frank Gorham requested that each member of the Commission turn in their top three priorities for discussion to him and Braxton. The Commission will then prioritize this list for future meetings. The Chair indicated that one of his priorities will be an informational meeting on flood/excess wind insurance.

PUBLIC INPUT AND COMMENT

Alexander Glass - My name is Alexander Glass. I am a geologist and science educator in the division of Earth and Ocean Sciences at Duke University. Today I represent the North Carolina Citizens for Science, a newly-formed group made up of scientists, educators, and science-minded citizens who believe that local and state policy, when applicable, should be based on the latest and most accurate science. We recognize the global scientific community as being the most qualified to judge the merits of scientific conclusions and levels of scientific certainty. In light of House Bill 819 and its mandate for the future sea level rise report, we are very interested in the make-up of the CRC Science Panel and ad hoc members, especially those who are nominated to fill the four current vacancies. Based on one list that was circulated in August, we are deeply concerned to find Nicolas Scafetta, David Burton, Robert Brown, and Stanley Young among the nominees. Of these, only Nicolas Scafetta has a history of publishing on climate-change related topics in the peer-reviewed scientific literature. However, his claims regarding a solar and

planetary influence on current climate change are viewed as highly dubious and have been heavily criticized by the scientific community. His latest pair of papers which touch upon sea level are receiving the same level of scientific skepticism and criticism. It is clear that much of Scafetta's work on climate change and sea level rise is not accepted by the scientific mainstream and is contrary to the conclusions of the global scientific community of experts on these subjects. It is puzzling that someone with such lack of credibility would be nominated to serve on any science panel especially when his scientific claims have been repeatedly shown to be greatly wanting by the scientific community. From a citizen's perspective it should seem odd that Scafetta, Burton, Brown, and Young would be asked to review and judge the current state of understanding on sea level rise in North Carolina for our policy makers. Burton, Brown, and Young might be able researchers in their respective fields (computer science, physics, and bioinformatics) but they have yet to demonstrate the necessary background, training, experience, and active involvement in the climate and oceanographic community that we ought to demand from an expert panel on coastal and oceanographic issues. A quick search through the peer-reviewed climate change and sea level rise literature reveals that all four nominees hold views that are completely contrarian to the nearly-absolute majority conclusion of expert scientists who work on climate change and sea level rise. The people of North Carolina deserve a science panel that consists of individuals who are recognized as respected experts, and whose scientific claims have withstood the rigorous test of scientific scrutiny by the global scientific community. Climate change skeptics often wrap themselves in a mantle of Galilean righteousness and are given public platforms in the name of so called fairness and balance. Although this appeals to our treasured ideals of equality and anti-elitism, we must not trade accepted scientific protocol for misplaced patriotism. Scientific contrarians must first convince the scientific community, the only body of individuals who has the training and expertise to judge the merits of their science, before they should be allowed to serve as representatives of the scientific community. Scafetta, Brown, Burton, and Young have so far failed to do this. The North Carolina Citizens for Science strongly urge the members of the CRC to decline the appointment of the aforementioned individuals to the science panel.

Bill Price –On the coast we see flood insurance rate rising dramatically, turtle rules to keep people off the beach, EPA proposed stormwater rules to restrict home building, wind insurance rates rising dramatically, and last week the President signed an executive order requiring federal environmental czars to plan for climate change theory or not. Unfortunately, the agencies and organizations that we thought would be protecting taxpayers rights and tax base from such actions, have not informed us of many of these actions until discovered by others. All this looks like is a coordinated attack intended to force evacuation of coastal property owners from their homes, and some local leaders seem to be on the other side. In fact, many continue to obstruct organization of any defense by saying it's not their job. Absolutely, the issues are important, but are they based on valid science? We absolutely believe the science should be clear and valid but in 2008 when we showed that the State's stormwater science was inaccurate, we were told by the moderator that we were dealing with political science, not real science. In 2011, we asked questions about the science supporting the CRC Science Panel proposals for sea level rise planning. To date we have had no response. In 1999 we suggested there might be an economical solution for beach erosion, but no studies have been done. In fact, the then chairman of the CRC went back, and CAMA passed rules to prevent it.

So, will North Carolina just accept all these attacks? Will we have a continuation of policy to force evacuation of the native coastal residents from the coast? For you new members of the CRC, CAMA mostly relates to erosion, accretion, water quality and land use along the coast. The questions may be why did the CRC Science Panel aggressively propose planning for 39" sea level rise when the DCM data shows accretion increasing and erosion decreasing and now according to a DCM official neither the coastal geologists nor the DCM staff have ever said sea level rise has been a significant cause of beach erosion. Certainly beach erosion is a great concern for property owners and is adverse to billions of dollars of coastal tax base. So, if sea level rise isn't a significant cause of erosion, why did the CRC pass rules to stop a possible economical solution and why have the CRC, DCM and other coastal organizations obstructed a comprehensive, empirical, in-the-water (ADCP) study to determine the cause of beach erosion? Hopefully this new CRC will see valid science from which to base responsible public policy. We need truth and facts and not one sided political science.

Greg "Rudi" Rudolph –I want to welcome the new CRC members and want to thank DCM and DENR Secretary for their letter to the US Fish and Wildlife Service regarding the critical habitat designation for loggerhead sea turtles. This would require special management considerations and the US Fish and Wildlife and National Marine Fisheries Service never said what these special considerations would be. In Carteret County, we are paying close attention to the Cape Fear River AEC study. It would be precedent setting.

OLD/NEW BUSINESS

The CRC will schedule five meetings per year. Three meetings will be in Carteret County and one scheduled in the north and one in the south. The 2014 schedule was set as February 26-27, May 14-15, July 30-31, October 22-23, and December 17-18. The next meeting (December 11-12, 2013) will be in Carteret County and the February 26-27, 2014 meeting will be in Nags Head.

Renee Cahoon made a motion that the Commission go into closed session pursuant to N.C. General Statute 143-318.11(a)(3) to consult with its attorneys on the three cases filed in the Office of Administrative Hearings (Page v. DCM, Sikorski, Sansotta/Tolozcko v. DCM, and Defenders of Wildlife & NWRA v. DCM and DOT); one case in the North Carolina Superior Court for Hyde County (NCDENR v. Pharr); one case in the North Carolina Court of Appeals (Busik v. CRC and 1118 Longwood); and one case in the North Carolina Supreme Court (Riggings HOA v. CRC). Greg Lewis seconded the motion. The motion passed unanimously (Dorsey, Andrew, H. Simmons, Hairston, Emory, Cahoon, Lewis, Naumann).

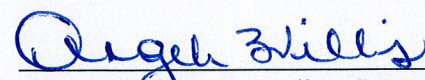
Greg Lewis made a motion that the Commission return to open session. Bill Naumann seconded the motion. The motion passed unanimously (Dorsey, Andrew, H. Simmons, Emory, Cahoon, Lewis, Naumann).

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

MEMORANDUM

CRC-13-32

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: CRC Rule Development: Amendments, Reviews, APA Requirements
DATE: November 25, 2013

The Coastal Resources Commission is the rulemaking agency for the Coastal Area Management Act (CAMA, NC G.S. 113A-100 through 134), and the NC Dredge and Fill Law (NC G.S. 113-229). The laws define the scope of the CRC's rulemaking authority, including the authority to require permits for different classes of coastal development. Like other regulatory agencies, the CRC must comply with the NC Administrative Procedures Act, or APA, (NC G.S. 150B) in all of its rulemaking activities.

The CRC's rules are located in Title 15A, Chapter 7 of the NC Administrative Code, Subchapters 7A through 7M.

- Subchapter 7A: Organization and Duties
- Subchapter 7B: Land Use Planning Guidelines
- Subchapters 7C through 7G: Repealed
- Subchapter 7H: State Guidelines for Areas of Environmental Concern
- Subchapter 7I: Secretary's Grant Criteria and Procedures for Local Implementation and Enforcement Programs under the Coastal Area Management Act
- Subchapter 7J: Procedures for Handling Major Development Permits: Variance Requests: Appeals from Minor Development Permit Decisions: and Declaratory Rulings
- Subchapter 7K: Activities in Areas of Environmental Concern Which Do Not Require a CAMA Permit
- Subchapter 7L: Local Planning and Management Grants
- Subchapter 7M: General Policy Guidelines for the Coastal Area

While CAMA establishes the NC Coastal Reserve System, the Reserve System's rules (Chapter 7, Subchapter O) are established and administered by DENR, with consultation and advice from the CRC.

In addition to their inclusion within the NC Administrative Code, the CRC's rules are also a part of the State's federally-approved coastal program under the Coastal Zone Management Act, administered by the National Oceanic and Atmospheric Administration. Any changes to the program, including legislative, regulatory, and local land use plan amendments, must go through a federal approval process to keep the program in good standing and to ensure that federal consistency determinations are based upon up to date program components.

The NC Administrative Procedures Act, NC G.S. 150B

The APA includes several rulemaking provisions to ensure that agencies adopt rules in a highly prescribed manner, with opportunities for public input. The APA also requires that rules are necessary, unambiguous, and that the agency analyzes the expected fiscal impacts prior to adoption. The APA is administered by the NC Rules Review Commission (RRC) within the Office of Administrative Hearings, which meets monthly to review new rules and rule changes proposed by the state's regulatory agencies.

The RRC has the authority to object to the adoption of a new or amended rule for lack of authority, ambiguity, or failure to comply with the APA. In the event of an RRC objection the rule remains suspended until the CRC satisfies the RRC's objection. The RRC may also request technical changes that have no impact on the substance of the rule. Technical changes are usually handled between the staff of the CRC and the RRC and most often concern points or clarification or formatting.

Only the CRC can initiate an action to adopt, amend, or repeal one of the CRC's rules. The CRC can decide on its own to initiate action, or may do so at the recommendation of staff, following a petition from the public, or as a legislative directive.

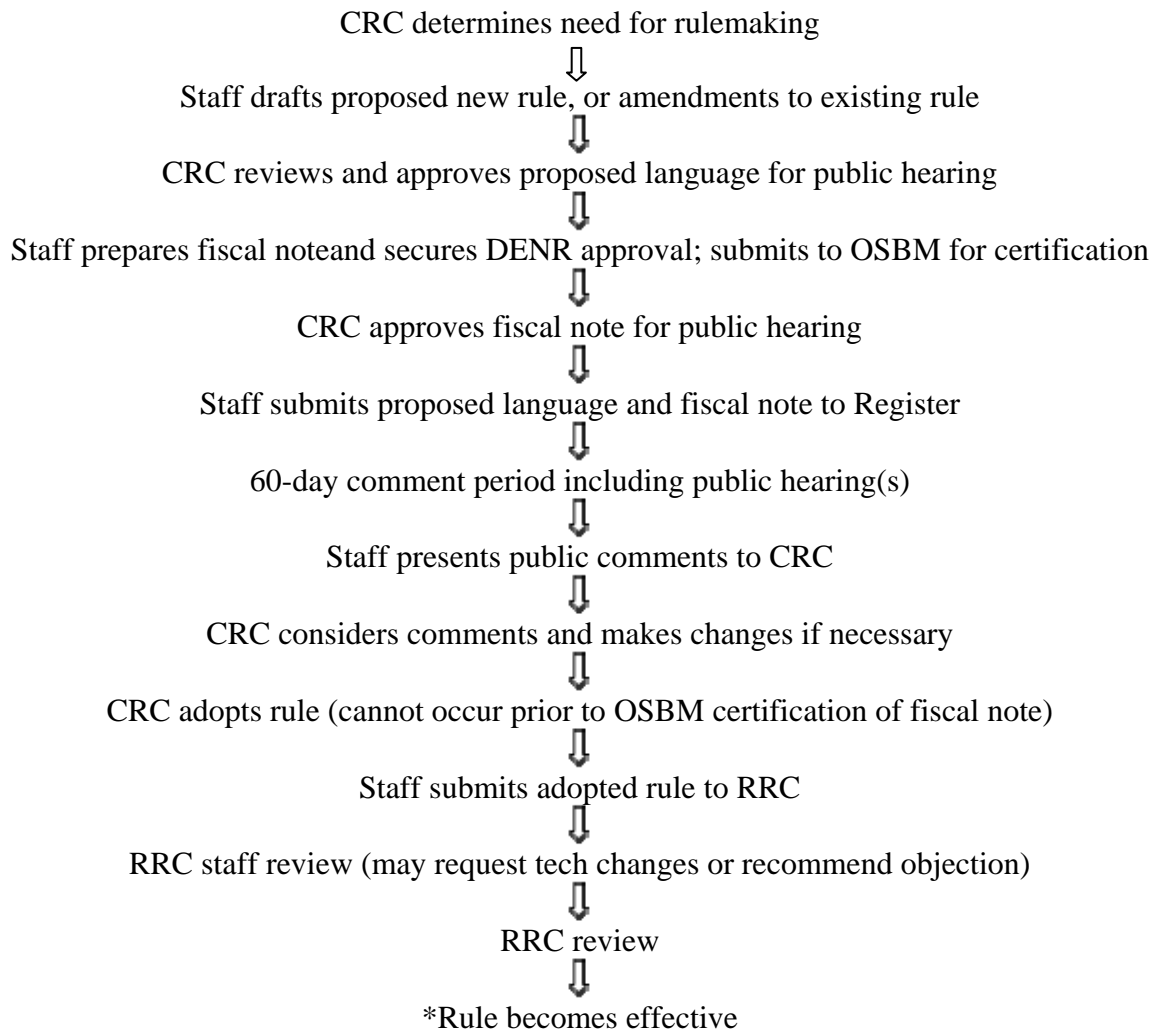
The APA describes three types of rules: permanent, temporary, and emergency, and has distinct rulemaking procedures for each type of rule. Adopting a permanent rule is considered the standard rulemaking procedure and requires the preparation of a fiscal analysis, publishing a notice of rulemaking in the NC Register, and accepting public comments on the proposed rule and fiscal analysis. Adopting a temporary rule can only be done under prescribed circumstances, such as a serious and unforeseen threat to the public health, safety, or welfare, being directed to do so by an act of the General Assembly, or other unusual circumstances. Temporary rulemaking is an abbreviated process compared permanent rulemaking, but temporary rules expire no more than 270 days following their effective date. If a rule needs to be in place beyond that time the Commission must also go through the permanent rulemaking process to adopt a permanent version of the rule. Emergency rules can be adopted upon the approved finding that the normal public notice and hearing requirements are "contrary to the public interest and that immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety." Emergency rules expire after 60 days unless the agency submits a proposed temporary rule to the RRC before that time. Most of the CRC's rulemaking activity has been in the permanent category.

The Rulemaking Process

The APA requires agencies to prepare fiscal notes (analyses) on proposed permanent rules to report the expected financial impacts of the action on affected parties and government budgets. Affected parties

include the private sector, local governments, the Department of Transportation, and other state agencies. Fiscal notes must state whether the agency anticipates a substantial economic impact, defined as an aggregate financial impact on all affected parties of at least one million dollars in a 12-month period. Proposed rules that have a substantial economic impact require additional fiscal analysis, including an analysis of at least two alternatives, an opportunity cost analysis, a net present value analysis, and other qualitative analyses.

DCM staff prepares fiscal notes for the CRC's rulemaking, utilizing internal data and drawing upon external expertise as necessary. After drafting fiscal notes DCM submits them to DENR for approval. After DENR approval the CRC is required to approve fiscal notes for public hearing along with the associated proposed rule language. Fiscal notes must also be certified by the Office of State Budget and Management (OSBM). Up until the Regulatory Reform Act of 2013 (S.L. 2013-413 or HB74) DCM was required to obtain OSBM certification prior to publishing the proposed rule and fiscal note in the Register. Under the new law OSBM certification may occur any time prior to final adoption of the rule. A simplified process for amending an existing rule or creating a new rule is as follows:



*If the RRC approves the rule it becomes effective on the first day of the following month. If the RRC objects to the rule the CRC must satisfy the RRC's objection or the amendment/adoption dies. The public is entitled under the APA to submit written letters of objection to the RRC. If the RRC receives 10 or more letters from the public requesting legislative review of a rule that the RRC has approved, the rule's effective date is delayed until the General Assembly either takes action on the rule or allows the legislative review period to expire without taking action. Depending on the complexity of the rule and level of public interest it can take over a year to go through the entire permanent rulemaking process.

Periodic Review and Expiration of Existing Rules

A new requirement under the APA is that each agency conduct an annual review of its rules to identify and address any rules that are unnecessary, unduly burdensome, or inconsistent with the APA. In the 2012 review DCM staff identified six items that the CRC approved for action. Three of those items are on your December agenda for further action, one was satisfied legislatively this year, and the remaining two are being actively pursued with input from external stakeholders and sister agencies. Staff is currently performing the 2013 review and will present those results to the CRC at an upcoming meeting.

The Regulatory Reform Act of 2013 created a new section in the APA titled "Periodic review and expiration of rules." Under the act the CRC must conduct a review of all of its existing rules and place each rule into one of three categories:

1. Necessary with substantive public interest
2. Necessary without substantive public interest, or
3. Unnecessary

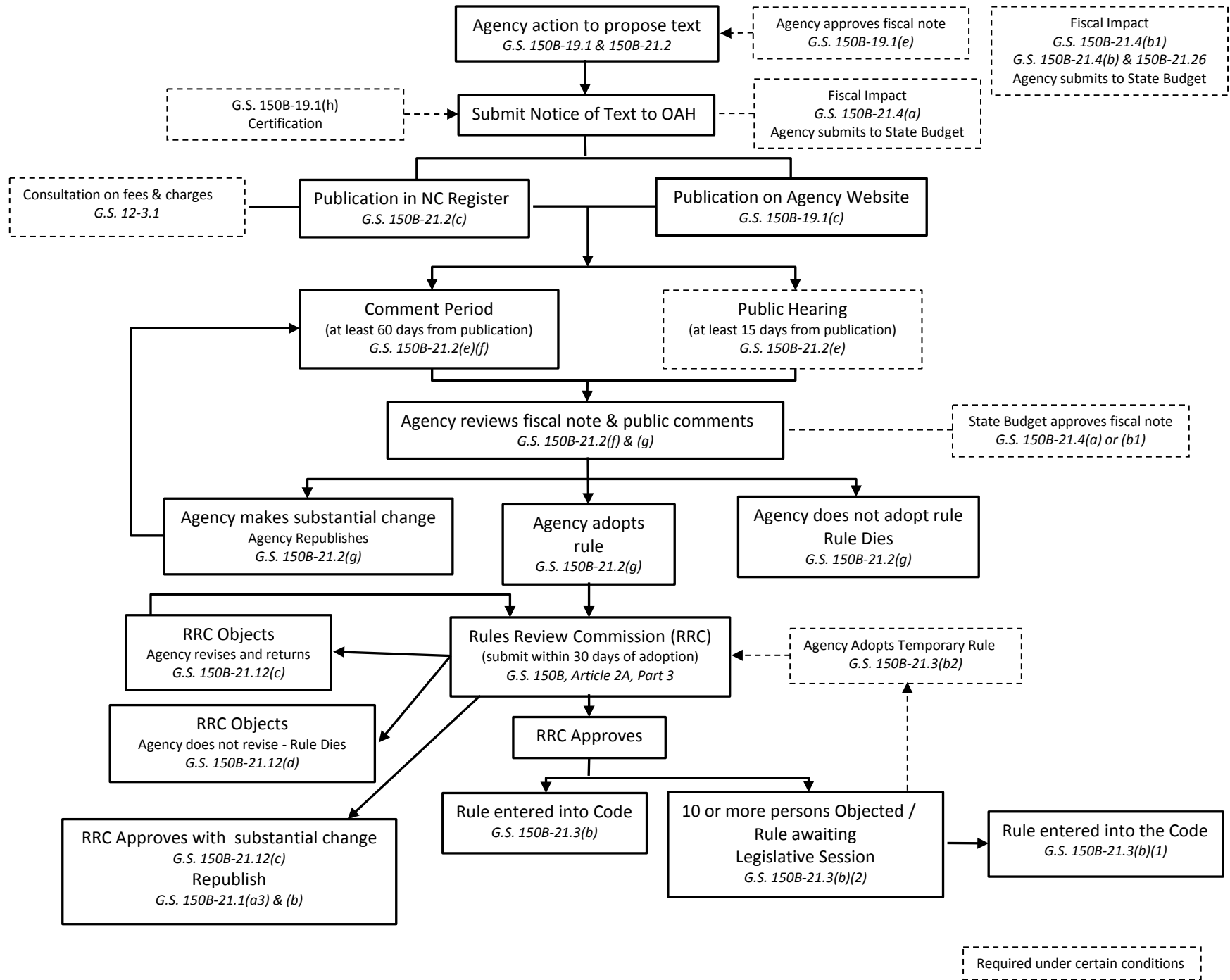
The CRC must post the results of this review on its website and invite public comment. The CRC must then respond to public comments and submit a final report to the RRC. The RRC will review the CRC's report and public comments and submit their own report to the Joint Legislative Administrative Procedure Oversight Committee (APO). Within 60 days the APO and CRC must consult based upon the RRC's report and produce a final determination on the rules, otherwise the RRC's report becomes final.

- Rules with a final determination of necessary with substantive public interest must be readopted through the permanent rulemaking process.
- Rules with a final determination of necessary without substantive public interest remain in effect without further action.
- Rules with a final determination of "unnecessary" expire on the first day of the following month.

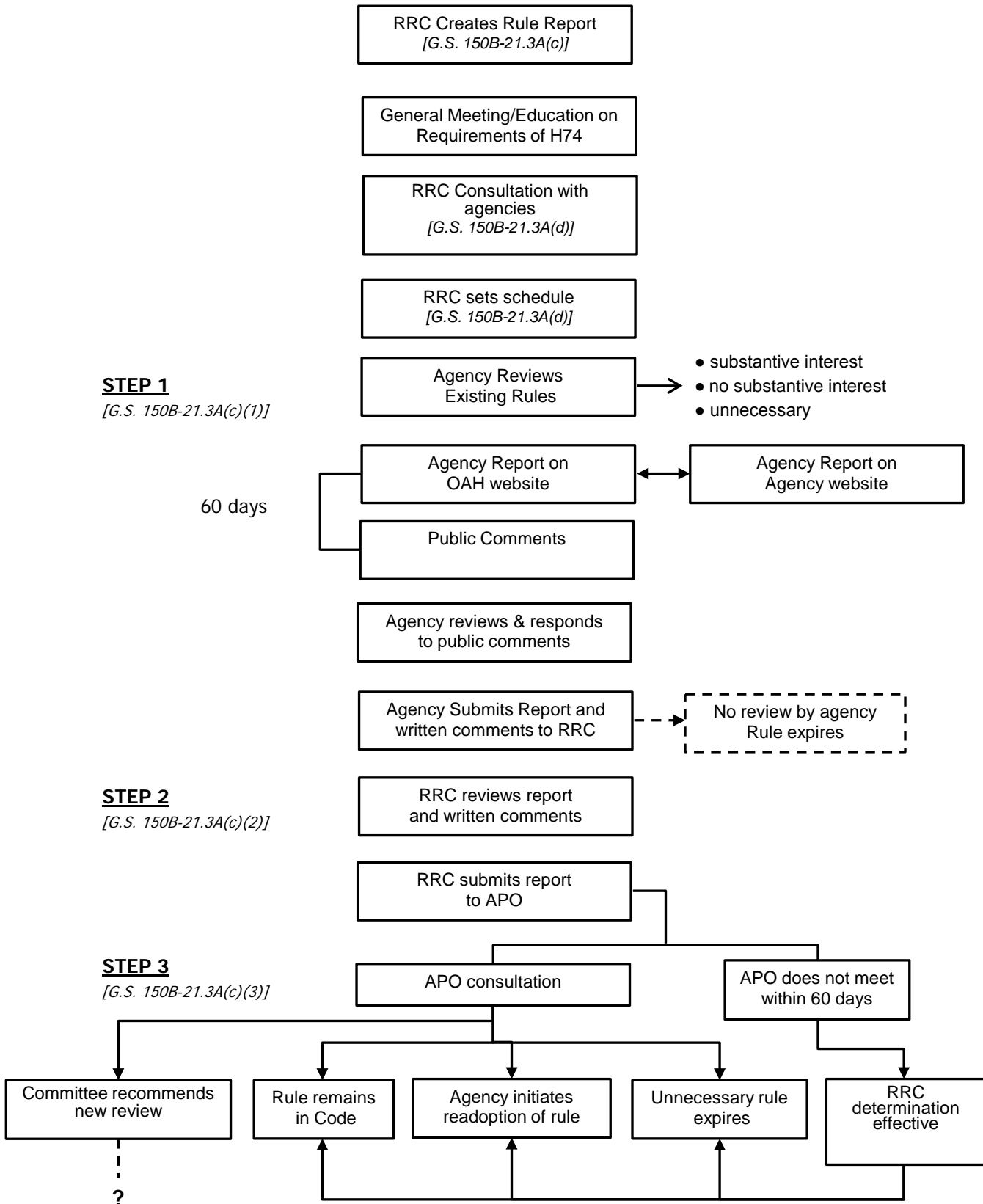
Under the Regulatory Reform Act of 2013's changes to the APA, the CRC must conduct this review at least once every 10 years. Under the RRC's proposed review schedule the CRC must review its Subchapter 7B rules in 2015, and all of its other rules in 2017. The CRC currently has 300 rules within the NC Administrative Code.

A discussion about rule development and reviews is on the agenda for your December meeting, and staff will address any questions you have about the procedures. The APA may be accessed online at <http://www.ncoah.com/150b.pdf>.

PERMANENT RULEMAKING PROCESS



H74 Periodic Review and Expiration of Rules



**INTERNAL OPERATING PROCEDURES
OF THE COASTAL RESOURCES COMMISSION OF
NORTH CAROLINA**

Article I

Authority

~~The procedures are adopted pursuant to the authority contained in North Carolina General Statute 113A-124(C).~~

Article II

The purpose of the Commission shall be to fulfill the duties prescribed for it in Article 7, Chapter 113A, of the General Statutes of North Carolina.

Article III

II

Membership

The membership of this Commission shall be as set forth in North Carolina General Statute 113A-104.

Article IV

III

Officers and Executive Secretary

Section 1. Statutory officers of this Commission shall be a Chairperson and Vice Chairperson.

(a). Pursuant to G.S. 113A-104(~~I~~), the Chairperson shall be designated by the Governor from among the members of the Commission.

(b). Pursuant to G.S. 113A-104(~~I~~), the Vice Chairperson shall be elected from and by members of the Commission. ~~The Commission and~~ shall ~~elect or re-elect~~serve for a ~~Vice~~

Draft November 22, 2013
Amended December , 2013

~~Chairperson every term of~~ two years ~~or until the expiration of the vice-chairperson's regularly appointed term.~~

Section 2. The Secretary of the Department of Environment and Natural Resources is hereby authorized to appoint a qualified employee of the State of North Carolina to serve as Executive Secretary for the Commission. Duties of the Executive Secretary shall include any services the Commission may deem necessary and proper; but in any case, such duties shall include the responsibility for secretarial and clerical functions incident to the proper and expeditious conduct of the Commission's business together with those duties prescribed by G.S. 113A-122(b). In addition, the Chairperson may designate as he or she sees fit, any member(s) of the Commission, or employee(s) of the Department of Environment and Natural Resources to serve as parliamentarian or in such other special capacity as may from time to time be required for the orderly conduct of the Commission's business.

Article V

IV

Meetings

Section 1. The Commission shall meet at such times and places as ~~may become~~ necessary to discharge its statutory duties as set forth in Chapter 113A, Article 7, North Carolina General Statutes. The ~~date~~ Chairperson shall set the dates and ~~location~~ locations of regular meetings. Notice shall be ~~set by the Chairperson and notice of same~~ provided to all members at least 20 days prior to ~~meeting~~ each regular meeting.

Section 2. The Commission Chairperson may call ~~such~~ special meetings as if he ~~deems~~ or she determines it is necessary; ~~provided, timely.~~ Timely notice in advance of all special meetings must be given to each ~~and every~~ member of the Commission: ~~further provided, said in accordance with the requirements of the North Carolina General Statutes.~~ This notice requirement ~~shall~~ may be adequately discharged by mailings to the members of the Commission at their last known places of residences or by forwarding notice to the designated email address for each member of the Commission.

Section 3. A majority of duly ~~appointed~~ qualified members of the Coastal Resources Commission shall constitute a quorum.

Section 4. Meetings of the Coastal Resources Commission shall be open to the public; provided, the Commission may hold executive sessions where allowed by G.S. 143-318.11.

Section 5. Official meetings of the Coastal Resources Commission may take place by conference telephone or other electronic means as allowed by G.S. 143-318 for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.

Article ~~VI~~

V

Record

Section 1. Minutes and other records of all Commission meetings shall be ~~kept, collected and maintained~~ under the direction of the Executive Secretary, ~~said record to~~ and be supplemented, where possible, by electronic recording.

~~**Section 2.** Minutes of all meetings shall be collected and maintained under the direction of the Executive Secretary.~~

Section 2. ~~Section 3.~~ The Executive Secretary shall be responsible for filing all rules of the Commission in proper form as required by Chapter 150B of the North Carolina General Statutes.

Article ~~VII~~

VI

Standard Order of Business

The Coastal Resources Commission adopts the following as its Standard Order of Business; provided, that the order of business may be altered by the Chairperson in his or her discretion, ~~at the~~ by request ~~off~~ from the Executive Committee, or ~~on his or her own~~ by motion, made by any member of the Commission in order to more efficiently carry out the Commission's business or for the convenience of the public:

1. Call to order by Chairperson.
2. Ethics statement and members' disclosure of conflicts of interest
3. Roll call of Commissioners in attendance.
4. Approval of minutes of previous meeting.
5. Opening remarks or ceremonies.
6. Reports from Executive Secretary.
7. Reports from Chairperson of the Commission and CRAC Chairperson.
- ~~7-8.~~ Discussion of matters relating to operation and procedures of the Commission.
- ~~8-9.~~ Consideration of appeals, variance and rulemaking petitions, and declaratory rulings.
- ~~9-10.~~ Comments from the public.
- ~~10-11.~~ Direction by Chairperson to break into working committees, standing or special, to pursue the business of the Commission.
- ~~11-12.~~ Action items~~Public hearings.~~
- ~~12-13.~~ Public presentations by special speakers.
- ~~13-14.~~ ~~Reports from a) the Chairperson of the Commission, b) the chairperson of each Committee to the Commission, and c) the chairperson of the CRAC.~~ Public hearings.
- ~~14.~~ Action items
15. Consideration of old and new business
16. Announcements.
17. Adjournment

Article ~~VIII~~

— VII Notice Requirements

Section 1. In accordance with G.S. 113A, Article 7, the Secretary of the Department of Environment and Natural Resources or an appropriate designee shall be responsible for the timely issuance to those parties upon which G.S. 113A, Article 7, confers the right of legal notice of Commission hearings, meetings, decisions, and official actions.

Section 2. The Commission may adopt special notice procedures as it deems necessary, subject to the requirements of G.S. Chapter 113A, Article 7.

Article IX

VIII

Committees

Section 1. The Chairperson of the Commission shall appoint such committees, standing or special, as the Chairperson and Commission shall from time to time deem necessary. The

Chairperson shall designate the Chairperson of each committee from among its members and shall be an ex officio member of all committees.

Section 2. Duly appointed committees may adopt at their discretion any internal procedures necessary to the discharge of their business; provided, no procedures adopted by any committee shall be inconsistent with these procedures or any other rules adopted by the Commission, or with any statutes applicable to the Commission.

Section 3. ~~An~~ The Commission shall have an Executive Committee composed of the Commission Chairperson, the Commission Vice Chairperson and ~~the Chairperson~~ three additional members of ~~each of the Commission. The three additional members appointed to the Commission's standing committees~~ Executive Committees shall be ~~appointed~~ selected by the ~~Commission Chairperson and shall represent the northern and southern CAMA counties as well as that area within the CAMA counties which includes inland waterways.~~ The Chairperson of the Commission shall be Chairperson of the Executive Committee and the Vice Chairperson of the Commission shall be Vice Chairperson of the Executive Committee. The Chairperson of the Coastal Resources Advisory Council and the Commission's Executive Secretary shall be ex officio members of the Executive Committee. The Executive Committee shall carry out such administrative functions as the Chairperson may direct or such other functions as the Commission may direct. The Executive Committee may make recommendations to the full Commission on any matters it deems relevant to the Commission's work.

Section 4. ~~The following committees are established as standing committees of the Commission:~~

~~The Planning and Special Issues Committee~~

~~The Implementation and Standards Committee~~

~~The Chairperson of the Commission shall appoint all members of each such committee and designate the Chairperson of each committee after consultation with the Executive Committee. A vice chairperson for each standing committee shall be elected by the members of that committee. The Chairperson and Vice Chairperson of the Commission and the Chairperson of the Coastal Resources Advisory Council shall serve as ex officio members of each committee and shall participate in any committee discussion as long as the ex officio member has no conflict of interest in the matter under discussion. Ex officio members shall not vote in standing committees except that the chairpersons of each standing committee shall vote to break tie votes.~~

Article X

IX

Parliamentary Authority

Draft November 22, 2013
Amended December , 2013

Section 1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these procedures and any special rules of order the Commission may adopt, or with any statutes or rules applicable to the Commission.

~~Article XI~~
~~Conflicts~~

Section 2. To the extent that ~~these procedures may~~ the rules contained in the current edition of *Robert's Rules of order Newly Revised* conflict with ~~such any~~ rules ~~and,~~ regulations ~~as the,~~ or quasi-judicial procedure adopted by the Commission ~~may subsequently adopt, pursuant to the express authority granted in G.S. 113A, Article 7, and establishing any~~ which establish special rules of procedure for certain meetings or types of meetings, the ~~latter rules and regulations~~ Commission's specifically adopted procedures shall ~~control~~ be controlling.

~~Article XII~~

X

~~Attendance~~

As directed by the General Assembly ~~(in G.S. 113A-104(1))~~, regular attendance at Commission meetings is a duty of each member. Pursuant to this legislation ~~direction,~~ the Commission ~~shall~~ may declare vacant any seat for which a member misses three consecutive meetings or fails to attend at least sixty percent of the meetings during any twelve-month period. Under extraordinary conditions the Chairperson has the authority to waive the attendance requirements ~~involving non-attendance of three consecutive meetings. This attendance requirement.~~ The Chairperson shall be instituted as of October 1, 1983. Notice provide notice of this policy shall be provided by the Chairperson to any member who misses two consecutive meetings or who appears likely to fail to attend at least sixty percent of the meetings during any twelve-month period.

~~Article XIII~~

~~XI~~
~~Hearings~~

Section 1. For any Commission ~~hearing, other than a contested case~~ hearing, including public hearings on state guideline adoption and amendments pursuant to G.S. 113A-107, hearings on designation of areas of environmental concern pursuant to G.S. 113A-115, hearings regarding local land use plans and local implementation and enforcement programs, and any other hearings conducted by the Commission in carrying out its duties under the Coastal Area Management Act, dredge and fill law, ~~beach access statute~~ and the Administrative Procedure Act, the Chairperson may at his or her discretion appoint any Commission member or members or appropriate qualified employees of the Department of Environment and Natural Resources to serve as hearing officer. The hearing officer shall report the record of the hearing to the Commission prior to action on the matter that was the subject of the hearing.

Section 2. In appointing hearing officers ~~or reporting members in the case of a contested case hearing~~, the Chairperson shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter and the necessity of impartiality on the part of the hearing officer or reporting member.

Section 3. Final decisions on all ~~contested cases, issues before the Commission, including but not limited to~~ variances, rule-making and declaratory rulings ~~before the Commission~~, shall be by majority vote ~~of all Commission members present. Any member may move adoption, modification or reversal of the Administrative Law Judge's Recommended Decision. The Chairperson shall vote on final decisions on contested cases, variances, rule-making and declaratory rulings when necessary to break a tie and may vote so long as the Chairperson's vote will not cause a tie vote to result.~~ In the event the Chairperson excuses himself or herself from participation in a final decision due to an actual or potential conflict of interest, the Vice-Chairperson shall serve as presiding officer.

Article **XIV**

XII

Conflict of Interest

The ~~provisions of the Governor's most recent Executive Order on the Board of State Government Ethics, as well as any Act, North Carolina General Statutes at Chapter 138A, sets forth the ethical standards applicable to the Coastal Resources Commission. In addition, any ethics opinions issued before the enactment of the State Government Ethics Opinions Act or advisory opinions issued by the Board, apply State Ethics Commission after 2006 may be applicable~~ to actions taken by the Coastal Resources Commission.

Article ~~XV~~**~~XIII~~
CRAC Appointments**

~~The Commission appointments to shall appoint the twenty (20) members of the Coastal Resources Advisory Council representing coastal cities and marine scientists or technologists shall be made (CRAC) by majority vote of the Commission. Appointments should be made for an initial term of two years. Four year reappointment terms should in accordance with § 113A-105 of the Coastal Area Management Act. Members may be made for those members that have regular attendance records reappointed at the discretion of the Commission.~~ The Executive Secretary shall, at least ~~30~~⁴⁵ days prior to the appointment ~~of city representatives~~, notify ~~by letter all the CAMA counties and coastal cities of that the appointments to Commission will be made making appointments to the CRAC and solicit their recommendations.~~ If any council member appointed by the Commission is unable to serve their full term, the Commission may ~~follow these same~~ ~~establish appropriate~~ procedures ~~in appointing to select~~ a person to serve the unexpired portion of that term; or may consider other ~~coastal city~~ nominations ~~that were~~ received within the preceding ~~twelve months~~ ~~nominating period~~. The Commission ~~should~~^{may} replace any CRAC member ~~it has appointed who has not attended CRAC and CRC meetings fails to regularly attend CRAC meetings.~~

Article ~~XVI~~**~~XIV~~
Amendments**

These procedures may be amended at any regular meeting of the Commission by a ~~three-fourths~~ vote of sixty percent of the entire duly qualified Commission members; provided that a written copy of the amendments has been mailed to each Commission member at least seven days prior to the adoption of the amendment or otherwise has been made available to each Commission member at least five days prior to the adoption of the amendment.

Article ~~XVII~~**XV****Voting**

Section 1. Except as otherwise specifically provided by other Articles of these Procedures, all Commission members shall be entitled to make motions, second, and vote on all matters coming before the Commission. The Chairperson may vote on all issues before the Commission.

Section 2. If there is a tie vote on a motion, the motion fails.

Section 3. The Executive Secretary shall record in the minutes each member's vote on all final decisions ~~on contested cases~~ including but not limited to final decisions on variances, rule adoption, repeals, and amendments. Votes shall be recorded on any other matter when so requested by any member.

Section 3.4. Motions to call the previous question or otherwise limit debate shall be considered extraordinary measures and shall require the affirmative vote of three-fourths of those members present and voting.

Article **XVIII**

XVI

Settlements and Other Decisions Related to CRC/CAMA Litigation

The Commission members of the Executive Committee are authorized to act on behalf of the full Commission to settle cases or decide whether to recommend an appeal in cases in which the Commission is a party pursuant to 15A NCAC 7J.0312(c).

Amended effective ~~May 17, 2007~~ December , 2013

Courtney T. Hackney, Chair

Frank D. Gorham, III, Chairperson
Coastal Resources Commission

Draft November 22, 2013
Amended December , 2013

**INTERNAL OPERATING PROCEDURES
OF THE COASTAL RESOURCES COMMISSION OF
NORTH CAROLINA**

**Article I
Purpose**

The purpose of the Commission shall be to fulfill the duties prescribed for it in Article 7, Chapter 113A, of the General Statutes of North Carolina.

**Article II
Membership**

The membership of this Commission shall be as set forth in North Carolina General Statute 113A-104.

**Article III
Officers and Executive Secretary**

Section 1. Statutory officers of this Commission shall be a Chairperson and Vice Chairperson.

(a). Pursuant to G.S. 113A-104(i), the Chairperson shall be designated by the Governor from among the members of the Commission.

(b). Pursuant to G.S. 113A-104(i), the Vice Chairperson shall be elected from and by members of the Commission and shall serve for a term of two years or until the expiration of the vice-chairperson's regularly appointed term.

Section 2. The Secretary of the Department of Environment and Natural Resources is hereby authorized to appoint a qualified employee of the State of North Carolina to serve as Executive Secretary for the Commission. Duties of the Executive Secretary shall include any services the Commission may deem necessary and proper; but in any case, such duties shall include the responsibility for secretarial and clerical functions incident to the proper and expeditious conduct of the Commission's business together with those duties prescribed by G.S. 113A-122(b). In addition, the Chairperson may designate as he or she sees fit, any member(s) of the Commission, or employee(s) of the Department of Environment and Natural Resources to serve as parliamentarian or in such other special capacity as may from time to time be required for the orderly conduct of the Commission's business.

**Article IV
Meetings**

Section 1. The Commission shall meet at such times and places as necessary to discharge its statutory duties as set forth in Chapter 113A, Article 7, North Carolina General Statutes. The Chairperson shall set the dates and locations of regular meetings. Notice shall be provided to all members at least 20 days prior to each regular meeting.

Section 2. The Commission Chairperson may call special meetings if he or she determines it is necessary. Timely notice in advance of all special meetings must be given to each member of the Commission in accordance with the requirements of the North Carolina General Statutes. This notice requirement may be adequately discharged by mailings to the members of the Commission at their last known places of residences or by forwarding notice to the designated email address for each member of the Commission.

Section 3. A majority of duly qualified members of the Coastal Resources Commission shall constitute a quorum.

Section 4. Meetings of the Coastal Resources Commission shall be open to the public; provided, the Commission may hold executive sessions where allowed by G.S. 143-318.11.

Section 5. Official meetings of the Coastal Resources Commission may take place by conference telephone or other electronic means as allowed by G.S. 143-318 for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.

Article V Record

Section 1. Minutes and other records of all Commission meetings shall be collected and maintained under the direction of the Executive Secretary, and be supplemented, where possible, by electronic recording.

Section 2. The Executive Secretary shall be responsible for filing all rules of the Commission in proper form as required by Chapter 150B of the North Carolina General Statutes.

Article VI Standard Order of Business

The Coastal Resources Commission adopts the following as its Standard Order of Business; provided, that the order of business may be altered by the Chairperson in his or her discretion, by request from the Executive Committee, or by motion made by any member of the Commission in order to more efficiently carry out the Commission's business or for the convenience of the public:

1. Call to order by Chairperson.
2. Ethics statement and members' disclosure of conflicts of interest
3. Roll call of Commissioners in attendance.
4. Approval of minutes of previous meeting.
5. Opening remarks or ceremonies.
6. Reports from Executive Secretary.
7. Reports from Chairperson of the Commission and CRAC Chairperson.
8. Discussion of matters relating to operation and procedures of the Commission.
9. Consideration of appeals, variance and rulemaking petitions, and declaratory rulings.
10. Comments from the public.
11. Direction by Chairperson to break into working committees, standing or special, to

- pursue the business of the Commission.
- 12. Action items
- 13. Public presentations by special speakers.
- 14. Public hearings.
- 15. Consideration of old and new business
- 16. Announcements.
- 17. Adjournment

**Article VII
Notice Requirements**

Section 1. In accordance with G.S. 113A, Article 7, the Secretary of the Department of Environment and Natural Resources or an appropriate designee shall be responsible for the timely issuance to those parties upon which G.S. 113A, Article 7, confers the right of legal notice of Commission hearings, meetings, decisions, and official actions.

Section 2. The Commission may adopt special notice procedures as it deems necessary, subject to the requirements of G.S. Chapter 113A, Article 7.

**Article VIII
Committees**

Section 1. The Chairperson of the Commission shall appoint such committees, standing or special, as the Chairperson and Commission shall from time to time deem necessary. The Chairperson shall designate the Chairperson of each committee from among its members and shall be an ex officio member of all committees.

Section 2. Duly appointed committees may adopt at their discretion any internal procedures necessary to the discharge of their business; provided, no procedures adopted by any committee shall be inconsistent with these procedures or any other rules adopted by the Commission, or with any statutes applicable to the Commission.

Section 3. The Commission shall have an Executive Committee composed of the Commission Chairperson, the Commission Vice Chairperson and three additional members of the Commission. The three additional members appointed to the Executive Committee shall be selected by the Chairperson and shall represent the northern and southern CAMA counties as well as that area within the CAMA counties which includes inland waterways. The Chairperson of the Commission shall be Chairperson of the Executive Committee and the Vice Chairperson of the Commission shall be Vice Chairperson of the Executive Committee. The Chairperson of the Coastal Resources Advisory Council and the Commission’s Executive Secretary shall be ex officio members of the Executive Committee. The Executive Committee shall carry out such administrative functions as the Chairperson may direct or such other functions as the Commission may direct. The Executive Committee may make recommendations to the full Commission on any matters it deems relevant to the Commission's work.

**Article IX
Parliamentary Authority**

Section 1. The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the Commission in all cases to which they are applicable and in which they are not inconsistent with these procedures and any special rules of order the Commission may adopt, or with any statutes or rules applicable to the Commission.

Section 2. To the extent that the rules contained in the current edition of *Robert's Rules of Order Newly Revised* conflict with any rules, regulations, or quasi-judicial procedure adopted by the Commission which establish special rules of procedure for certain meetings or types of meetings, the Commission's specifically adopted procedures shall be controlling.

Article X Attendance

As directed by the General Assembly in G.S. 113A-104(1), regular attendance at Commission meetings is a duty of each member. Pursuant to this legislation the Commission may declare vacant any seat for which a member misses three consecutive meetings or fails to attend at least sixty percent of the meetings during any twelve-month period. Under extraordinary conditions the Chairperson has the authority to waive the attendance requirements. The Chairperson shall provide notice of this policy to any member who misses two consecutive meetings or who appears likely to fail to attend at least sixty percent of the meetings during any twelve-month period.

Article XI Hearings

Section 1. For any Commission hearing, including public hearings on state guideline adoption and amendments pursuant to G.S. 113A-107, hearings on designation of areas of environmental concern pursuant to G.S. 113A-115, hearings regarding local land use plans and local implementation and enforcement programs, and any other hearings conducted by the Commission in carrying out its duties under the Coastal Area Management Act, dredge and fill law, and the Administrative Procedure Act, the Chairperson may at his or her discretion appoint any Commission member or members or appropriate qualified employees of the Department of Environment and Natural Resources to serve as hearing officer. The hearing officer shall report the record of the hearing to the Commission prior to action on the matter that was the subject of the hearing.

Section 2. In appointing hearing officers, the Chairperson shall consider the geographic location of the hearing, the technical complexity of the matter being considered, the public interest in the matter and the necessity of impartiality on the part of the hearing officer or reporting member.

Section 3. Final decisions on all issues before the Commission, including but not limited to variances, rule-making and declaratory rulings, shall be by majority vote. In the event the Chairperson excuses himself or herself from participation in a final decision due to an actual or potential conflict of interest, the Vice-Chairperson shall serve as presiding officer.

Article XII Conflict of Interest

The State Government Ethics Act, North Carolina General Statutes at Chapter 138A, sets forth the ethical standards applicable to the Coastal Resources Commission. In addition, any ethics opinions issued before the enactment of the State Government Ethics Act or advisory opinions issued by the State Ethics Commission after 2006 may be applicable to actions taken by the Coastal Resources Commission.

Article XIII CRAC Appointments

The Commission shall appoint the twenty (20) members of the Coastal Resources Advisory Council (CRAC) by majority vote of the Commission. Appointments should be made for an initial term in accordance with § 113A-105 of the Coastal Area Management Act. Members may be reappointed at the discretion of the Commission. The Executive Secretary shall, at least 45 days prior to the appointment, notify the CAMA counties and coastal cities that the Commission will be making appointments to the CRAC and solicit recommendations. If any council member appointed by the Commission is unable to serve their full term, the Commission may establish appropriate procedures to select a person to serve the unexpired portion of that term or may consider other nominations received within the preceding nominating period. The Commission may replace any CRAC member who fails to regularly attend CRAC meetings.

Article XIV Amendments

These procedures may be amended at any regular meeting of the Commission by a vote of sixty percent of the duly qualified Commission members; provided that a written copy of the amendments has been mailed to each Commission member at least seven days prior to the adoption of the amendment or otherwise has been made available to each Commission member at least five days prior to the adoption of the amendment.

Article XV Voting

Section 1. Except as otherwise specifically provided by other Articles of these Procedures, all Commission members shall be entitled to make motions, second, and vote on all matters coming before the Commission. The Chairperson may vote on all issues before the Commission.

Section 2. If there is a tie vote on a motion, the motion fails.

Section 3. The Executive Secretary shall record in the minutes each member's vote on all final decisions including but not limited to final decisions on variances, rule adoption, repeals, and amendments. Votes shall be recorded on any other matter when so requested by any member.

Section 4. Motions to call the previous question or otherwise limit debate shall be considered extraordinary measures and shall require the affirmative vote of three-fourths of those members present and voting.

Article XVI
Settlements and Other Decisions Related to CRC/CAMA Litigation

The Commission members of the Executive Committee are authorized to act on behalf of the full Commission to settle cases or decide whether to recommend an appeal in cases in which the Commission is a party pursuant to 15A NCAC 7J.0312(c).

Amended effective December __, 2013

Frank D. Gorham, III, Chairperson
Coastal Resources Commission



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@ncdcnr.gov

TO: The Coastal Resources Commission
FROM: Amanda P. Little, Assistant Attorney General *APL*
DATE: November 26, 2013 (for the December 11-12, 2013 CRC Meeting)
RE: **Variance Request by NNP IV – Cape Fear River, LLC**

Petitioner owns property located at 4410 River Road in Wilmington, New Hanover County, North Carolina. On 29 April 2013, Petitioner applied for a Major Modification to CAMA Major Permit No. 92-07 to relocate the footprint of the permitted community marina facility and commercial dry stack launch site into deeper water. On 15 July 2013, Petitioner’s application for a Major Modification was denied because the proposed relocation of the permitted development into deeper water was inconsistent with the Commission’s one-fourth width limitation to pier lengths as set forth in 15A NCAC 7H .0208(b)(6)(G)(iii). On 1 August 2013, Petitioner filed this variance request seeking relief from strict application of the one-fourth width limitation by allowing the increased pier length to one-third the width of the waterbody, as proposed in its permit application.

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: Stipulated Exhibits
- Attachment E: Petitioner’s Variance Request Materials

- cc: William A. Raney Jr., Counsel for Petitioner, electronically
- Mary Lucasse, CRC Counsel, electronically
- Doug Huggett, DCM Major Permits Coordinator, electronically
- Jonathan Howell, Assistant Major Permits Coordinator, electronically
- Debbie Wilson, DCM Wilmington District Manager, electronically
- Robb Mairs, DCM Field Representative, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0205 Coastal Wetlands

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this does not include hurricane or tropical storm tides.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere.

Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws.

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 described in Rule .0208 of this Section.

15A NCAC 7H .0206 Estuarine Waters

(a) Description. Estuarine waters are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

(c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system.

(d) Use Standards. Suitable land/water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.

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 described in Rule .0208 of this Section.

15A NCAC 7H .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.

(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 7H .0208 Use Standards

(a) General Use Standards

- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:

- (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(b) Specific 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 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 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.

(emphasis added)

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner, NNP IV-Cape Fear River, LLC is a limited liability company, organized and existing under the laws of the State of Delaware, authorized to transact business in the State of North Carolina.
2. Petitioner owns approximately 1,375 acres of property located at 4410 River Road in Wilmington, New Hanover County, NC ("site"), purchased in June 2006. The site is adjacent to the Cape Fear River between Barnards Creek and Mott Creek. The site has approximately 15,132 feet of shoreline along the Cape Fear River.
3. The northern boundary of the property is located about 5 miles south of the Cape Fear Memorial Bridge at Wilmington. The southern boundary of the property is about 18 miles north of the mouth of the Cape Fear River.
4. The site's highground is currently undeveloped, but the proposed development consists of a subdivision named RiverLights which will include approximately 2,790 residential units and a marina village with mixed uses along the site's waterfront.
5. The proposed development is located within the Public Trust Areas, Estuarine Waters, and Coastal Wetlands Areas of Environmental Concern (AECs) as described in 15A NCAC 7H .0207, .0206 and .0205, respectively.
6. The proposed marina development is within an area designated as a Primary Nursery Area (PNA) by the N.C. Marine Fisheries Commission and is closed to the harvest of shellfish. The waters of the Cape Fear River at this site are classified as SC by the N.C. Environmental Management Commission.
7. CAMA Major Permit No. 92-07 ("CAMA Permit No. 92-07") was issued to Petitioner on July 23, 2007, authorizing a 4-slip docking facility, crabbing pier with gazebo and a section of boardwalk and associated parking along the waterfront of the site. On March 3, 2009, a minor modification to CAMA Permit No. 92-07 was issued authorizing the realignment of both permitted piers, directional boring for utilities under Mott Creek, and for the relocation of a section of the permitted boardwalk. On April 23, 2010, a major modification to CAMA Permit No. 92-07 was issued authorizing construction of an 111-slip open water community marina, an 84-slip commercial dry stack facility, loading platform, transient docks, boatlifts and a kayak/scull launching pier and platform with associated utilities ("permitted development").

8. As proposed, the open water community marina and associated amenities would not be open to the general public; however, the dry stack storage facility and associated forklift pier and temporary docking are for commercial use and would be available to the general public.
9. To date, the only construction completed under CAMA Permit No. 92-07 is the aforementioned directional boring for utilities under Mott and Barnards Creeks.
10. On April 29, 2013, Petitioner, through its agent Virginia Sheridan with Land Management Group Inc., applied for a Major Modification to CAMA Permit No. 92-07 to relocate the footprint of the authorized community marina facility and commercial dry stack launch site from one-fourth to one-third the width of the waterbody (hereinafter “proposed modification”).
11. Petitioner’s proposed modification includes moving the permitted dimensions of the open water community marina and the fork lift drop pad and portions of the temporary tie-up floating docks associated with the 84-slip commercial dry stack facility out the distance of one-third width of the waterbody.
12. Petitioner also proposes to increase the authorized slips of the open water community marina from 111 slips to 112 permanent wet slips. The proposed wet slips would consist of 72 slips with boat lifts and 40 wet slips to serve typical boats of 30 feet to 50 feet in length.
13. The proposed modification will move the marina footprint into deeper water and will also allow the lengthening of finger piers on the south end of the marina to a 30-foot length to match the other finger piers.
14. CRC Rule 15A NCAC 7H .0208(b)(6)(G)(iii) provides that pier length shall be limited by “not extending more than one-fourth the width of a natural water body. . . 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. . .”.
15. Pursuant to CRC Rule 15A NCAC 7H .0208(b)(6)(G)(iii), the one-fourth length limitation shall not apply when the proposed pier is located between longer piers for 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 of docking facilities, nor longer than one-third the width of the water body. Petitioner’s proposal does not meet the necessary criteria to extend to the one-third width because the adjacent facilities along the shoreline for similar use are not located within 200 feet of the site.

16. The federally maintained Cape Fear River channel is over 2500 feet west of the site. The proposed modification would not encroach into the U.S. Army Corp of Engineers navigation channel setback. One large and several small undeveloped islands directly across from the site is known as Island 13, which was used as a mitigation site for impacts to PNA by the Wilmington Harbor deepening project.
17. The presence of these islands creates a back channel, on which the permitted development is sited, separated from the main navigation channel of the Cape Fear River by the disposal islands.
18. At this site, the width of the back channel from the edge of the marsh on the east bank of the river to the marsh on the west side of Island 13 ranges between approximately 1500 to 1800 feet. In the absence of the spoil islands, the width of the waterbody would be approximately 5,700 feet.
19. The proposed modification includes extending the open water community marina approximately 450 feet into a waterbody with a total width of approximately 1500 feet, and that the forklift pier associated with the dry stack building would extend approximately 540 feet into a waterbody with a total width of approximately 1800 feet.
20. The proposed modification to the open water community marina/main access pier and the dry stack launch pier would both extend approximately 130 feet beyond the one-fourth width of the waterbody to a point approximately one-third the width of the waterbody.
21. The proposed modification of moving the open water community marina from one-fourth to one-third the width of the waterbody would increase the water depth from a range of approximately -3 feet to -5 feet at mean low water to -5 feet to -6 feet at mean low water. In addition, moving the dry stack launch pier from one-fourth to one-third the width of the waterbody would increase the water depth at mean low water from approximately -3.5 feet to -5 feet.
22. The deepest part of the back channel begins approximately 300 feet to 400 feet beyond the outer edge of the proposed marina. The mean low water depths in this area are generally -7 feet to -8 feet.
23. The moving of the footprint of the permitted development will decrease the likelihood of bottom disturbance by boat hulls and propellers, especially for the slips closest to the shore.

24. The nearest pier to the north of the permitted development is the Watermark Marina dry storage marina, which is about .25 miles from the proposed marina development. The Watermark pier extends about 540 feet into the Back Channel, which at this location is about 2,600 feet wide and meets the one-fourth width rule.
25. Transient boat traffic between Wilmington and points north of the permitted development and the Atlantic Ocean and points south of the permitted development typically use the main shipping channel for navigation purposes.
26. Other than the objection from the DCM based on the one-fourth width rule, all of the commenting state and federal resource agencies either have approved, had no comment or no objection to the proposed modification.
27. On July 15, 2013, Petitioner's application for a major modification to CAMA Permit No. 92-07 was denied on the basis that the proposed modification is inconsistent with CRC Rule 15A NCAC 7H .0208(b)(6)(G)(iii) which states that pier length shall be limited "by not extending more than one-fourth the width of a natural water body. . .".
28. On August 1, 2013, Petitioner filed this variance request seeking relief from the application of the one-fourth width rule set forth at 15A NCAC 7H .0208(b)(6)(G)(iii). Petitioner seeks permission to construct the proposed modification to one-third width of the back channel at this site along the Cape Fear River.
29. The parties stipulate that the photographs and drawings submitted with the petition and at the hearing are admissible.

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.

The strict application of the ¼ waterbody width limit for piers and docks results in a significant reduction in utility of most of the slips in the currently permitted marina and creates the potential for damage to shallow water primary nursery area (PNA) habitat. It is an unnecessary hardship for the Petitioner to have to run the risk that siltation in the marina will cause a loss of use of slips for boats of reasonable size. The potential loss of use of slips can be avoided by moving the marina footprint into deeper water. The marina is to serve a very large residential development of more than 1,300 acres and 2,790 residential units. The development will create a need for wet slips and boat lift slips accommodating larger boats with deeper drafts that can't be safely operated in the shallower waters nearer the shoreline. Similarly, the extension of the forklift launch pier to deeper water will accommodate the safe operation of boats using the dry storage facility while reducing potential for damage to PNA habitat.

Staff's Position: Yes.

The limit on pier length provided in 15A NCAC 7H .0208(b)(6)(G)(iii) requires that Petitioner's pier not exceed one-fourth the width of the back channel waterbody. Staff agrees that the strict application of the one-fourth width limitation results in an unnecessary hardship to Petitioner. The low water depth at the one-fourth distance will certainly be problematic and inconvenient for Petitioner. This area is classified as a Primary Nursery Area (PNA) and the Commission's rules prohibit new dredging in PNAs. 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 relocating the permitted development to deeper water, instead of proposing dredging in the PNA. There are no deeper options landward, however, adequate access would be provided by allowing the Petitioner to move the permitted development from one-fourth width to the one-third width line. Staff agrees with Petitioner that relocating the permitted development the distance of one-third width of the water body will accommodate the use of boats with negligible damage to PNA habitat. The strict application of the one-fourth width rule in this case appears to rise to an unnecessary hardship on Petitioner given the issues of lower water depths at one-fourth width versus one-third width coupled with the fact that there would be minimal damage, if any, to PNA habitat by allowing the Petitioner to extend the permitted development beyond the one-fourth width to one-third width.

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.

This marina is to be located in the open water of a back channel of the Cape Fear River. The Back Channel is separated from the ship channel by one large island and several small islands. The Back Channel has a channel within it that is deep enough to accommodate large pleasure craft. The channel within the Back Channel is located closer to the west side of the Back Channel that is bounded by undevelopable islands and wetlands. This Back Channel area is one of only a few areas in New Hanover County that can accommodate a marina for larger vessels (i) without obstructing a maintained navigation channel; (ii) without obstructing the deepest area of the body of water on which it is located; (iii) without requiring dredging through or in primary nursery areas; and (iv) without disturbing existing navigation or recreational uses.

Staff's Position: Yes.

Staff agrees that any unnecessary hardships that the Commission might find result from conditions peculiar to the Petitioner's property. As stated above, 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 Cape Fear River, adjacent to an area which does not typically have heavy boating traffic. Petitioner's property is also located across from Island 13 used by the U.S. Army Corps of Engineers for spoil deposition, which makes it unlikely 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 relocation of the permitted development 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.

Petitioners' Position: No.

The hardships are a result of the natural condition of the riparian area of the Petitioner's property and the existence of the spoil islands created by the dredging of the Cape Fear River. Without the spoil islands, the width of the body of water would be sufficient for the Petitioner's marina to be located as proposed in compliance with the 1/4 waterbody width rule.

Staff's Position: No.

Staff agrees with Petitioner that the hardships do not result from actions taken by the Petitioner. Petitioner has worked toward resolving the problem of potential siltation by proposing to relocate the permitted development to deeper water and not by dredging which could result in potential damage to PNA habitat.

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.

- **Consistent with the spirit, purpose and intent of the 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). 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. It is unlikely that any structures will be extended into the Back Channel from the opposite shoreline due to its control by the United States and its use as a wetlands mitigation site. Thus, at least two-thirds of the width of the Back Channel at this point would remain open for public use. This includes the entirety of a 255' to 345' wide channel and the additional area about 320' wide area between the end of the pier and the edge of the channel.

The proposed project will mitigate potential adverse effects (both now and in the future) 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. 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. The existence of the marina and the aids to navigation will also provide a guide to keep transient traffic in the deepest part of the Back Channel.

- **Preserve substantial justice.**

The additional water depth for the marina will enable the current owner and future users of the marina and dry storage facility to avoid loss of use due to potential sedimentation that could decrease water depths to the inner slips since dredging to maintain adequate water depth is not permitted in PNAs.

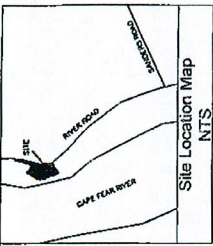
Staff's Position: Yes.

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. The Commission amended its pier length rule in 1998 to change the one-third standard to a one-fourth width requirement with certain exceptions (none of which apply in this case) to preserve traditional navigation by assuring that the middle one-half of any water body remained available for public use. In this case, however, staff agrees with Petitioner that the requested extension of the proposed pier will allow the Petitioner to gain access to deeper water without unduly infringing on the public's rights of navigation and use of public trust waters along this shoreline. Petitioner is correct that 15A NCAC 7H .0208(b)(5)(A) specifies that marinas shall be sited in deep waters not requiring dredging. By proposing its relocation, Petitioner seeks to mitigate any adverse effects to PNA habitat because the permitted development would span the shallow PNA minimizing any potential impacts. Furthermore, Petitioner's proposal allows the permitted development to move into deeper water while also preserving the navigability of the existing back channel. As for public safety and welfare, Staff agrees with Petitioner that allowing the additional requested pier length would prevent possible navigational hazards that would occur if the pier ended in the shallower waters at the one-fourth width location. In addition, even though DCM staff believes that shoaling is common in marinas and docking facilities, in this case Staff agrees that substantial justice will be preserved by allowing Petitioner to construct the proposed development in deeper water, as requested, because Petitioner is trying to address siltation and avoid dredging with this proposed solution.

Attachment D

Stipulated Exhibits

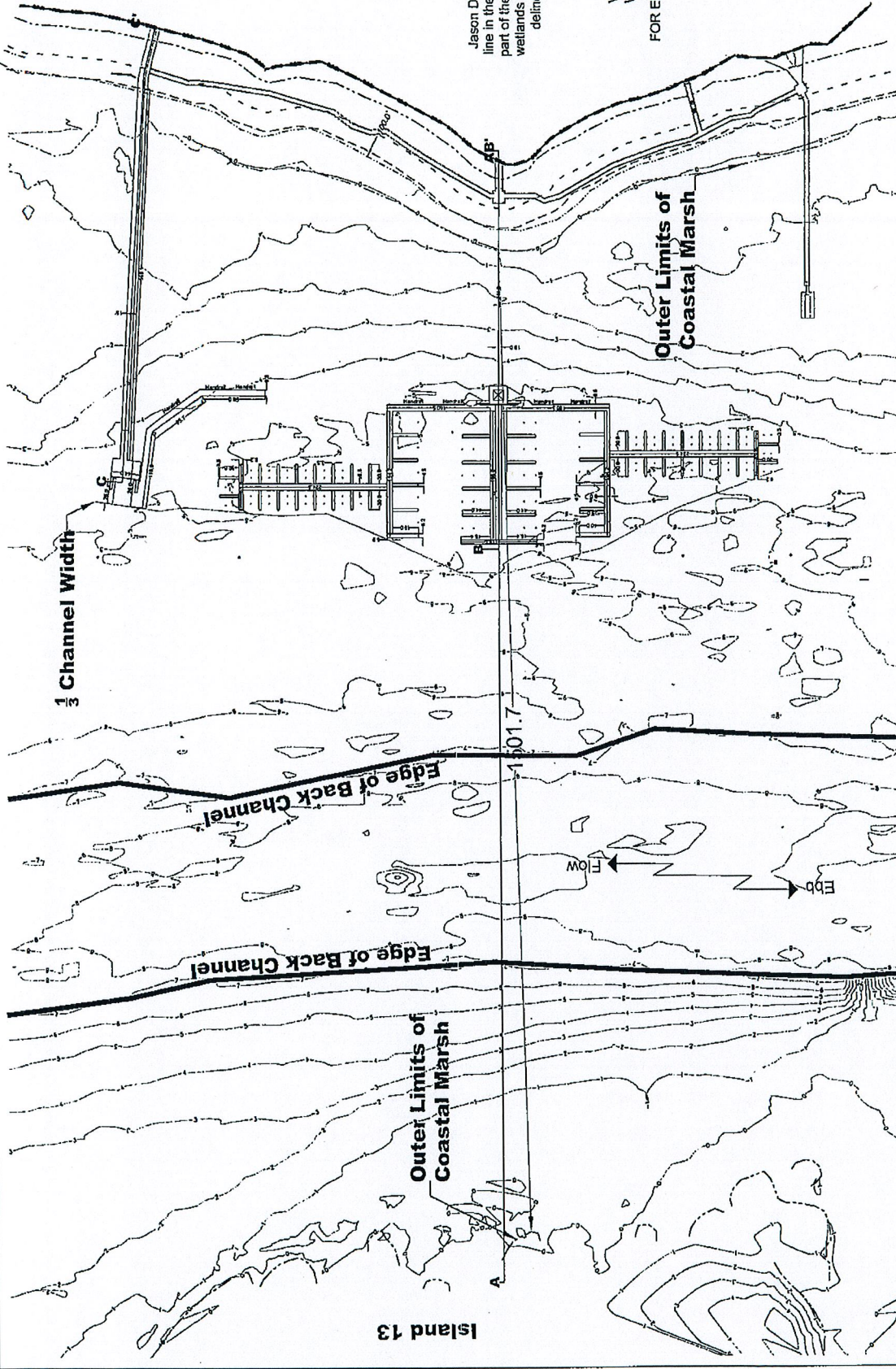
1. Drawing of the proposed modification (relocation to one-third the width of Back Channel) to the permitted development, dated April 22, 2013.
2. Powerpoint presentation (6 slides), dated December 12, 2013.



Jason Dall verified the coastal wetland line in the Marina Village in July 2007 as part of the CAMA Permit # 92-07 Coastal wetlands beyond the marina village were delineated by LMG in July 2007.

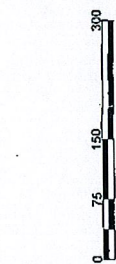
Vertical Datum is NAVD 88.
Water Depths Are Relative To MLW.
FOR ENVIRONMENTAL PERMITTING ONLY

THIS MAP IS BASED ON ORIGINAL DRAWINGS AND/OR SURVEY INFORMATION.
Address & Contact:
Wilmington, North Carolina 28402
Phone: 910-452-0001
www.lmgenv.com



Project:	RiverLights	Date:	04/22/13	Revision Date:	NA
Proposed Major Modification:	Permit # 29607	Scale:	1"=150'	JOB Number:	02-10-088
Applicant:	NMP IV Cape Fear River, LLC	Drawn By:	VJS	Sheet Number:	6 of 8
Title:	Waterbody Detail				

LMG
LAND MANAGEMENT GROUP INC.
Environmental Consultants
1000 South Carolina Blvd., Suite 200
Wilmington, North Carolina 28402
Telephone: 910-452-0001



Legend

---	30' Buffer
- - - -	75' AEC Line
- - - -	Joint Coastal/404
- - - -	Wetland Line

COD Line
MHW Line
404 Wetland

L:\CAMARIVTO\CAMA FILES\02-10-088 - River Lights Permit, Doug South\RiverLights.dwg

PENGAD-Bayonne, N. J.

EXHIBIT

**NNP IV Cape Fear River, LLC
River Lights
4410 River Road, Wilmington
New Hanover County**

**Variance Request
December 12, 2013**





Wilmington District

- Right-of-Way Vertices
- Right-of-Way Monuments
- Harbortline Points
- Navigation Channel Points
- Setback Points
- Right-of-Way
- Harborlines
- Disposal Areas
- Navigation Channels
- Setbacks

Last Update: 19 Aug 2011

Watermark Marina



Barnards Creek

**NNP IV Cape Fear River, LLC Property
4410 River Road, Wilmington, New Hanover
County, N.C.**



Island 13

River Road



Cape Fear River


© 2009 Google

© 2013 Google

34°09'14.35" N 77°56'36.95" W elev 0 ft

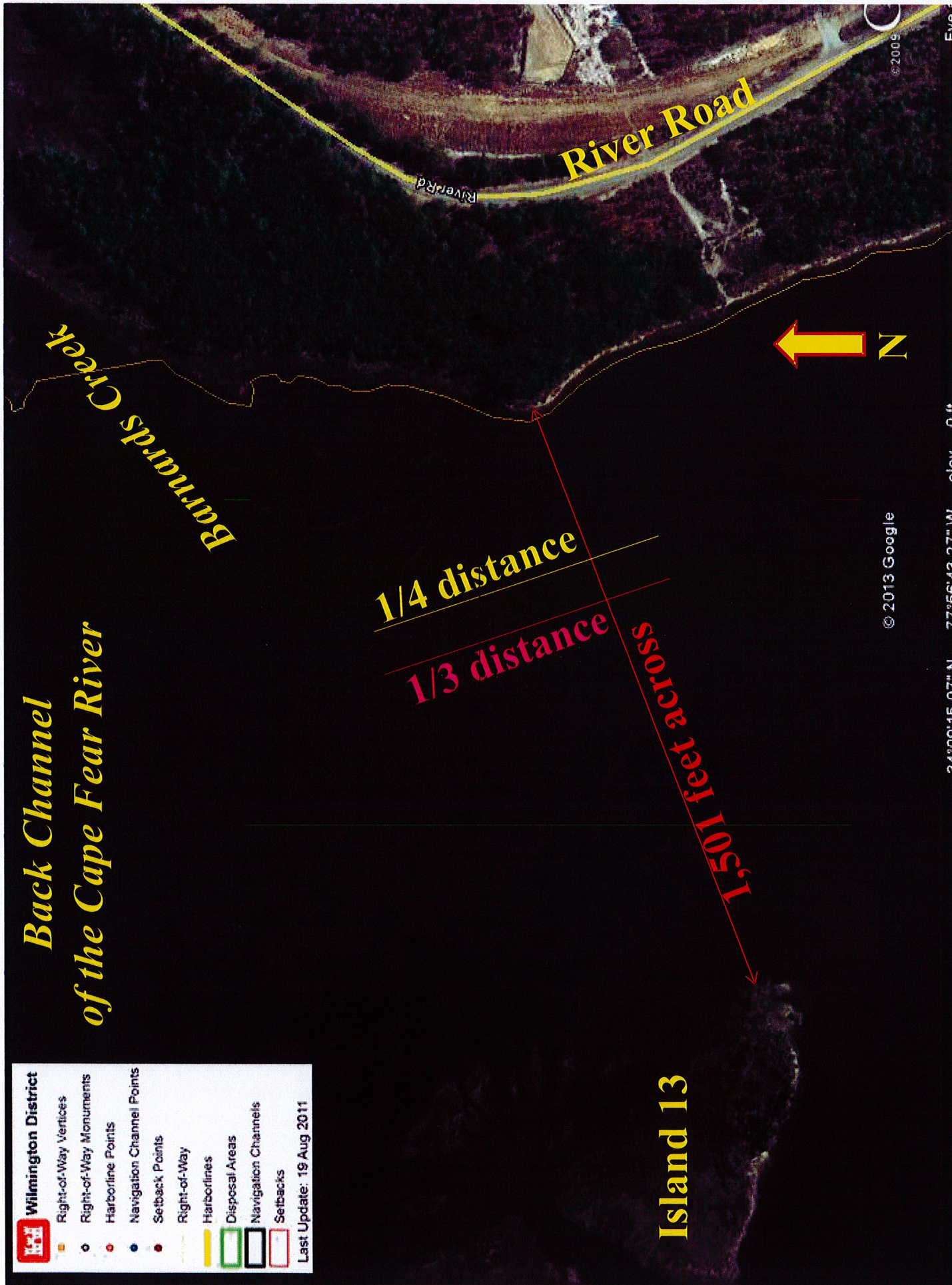
Eye alt 6841 ft

Back Channel of the Cape Fear River

 Wilmington District

- Right-of-Way Vertices
- Right-of-Way Monuments
- Harborline Points
- Navigation Channel Points
- Setback Points
- Right-of-Way
- Harborlines
- Disposal Areas
- Navigation Channels
- Setbacks

Last Update: 19 Aug 2011



© 2013 Google

34°09'15.07" N 77°56'43.27" W elev. 0 ft

© 2009

Barnards Creek

*NNPIV Cape Fear River, LLC
Approximate Project Location*



Back Channel of the Cape Fear River

Island 13

*View of Project Site Facing East
Photo: NC DCM Aerial
Photography dated 11.20.2013*



Island 13

**NNP IV Cape Fear River, LLC
Approximate Project Location**



Back Channel of the Cape Fear River

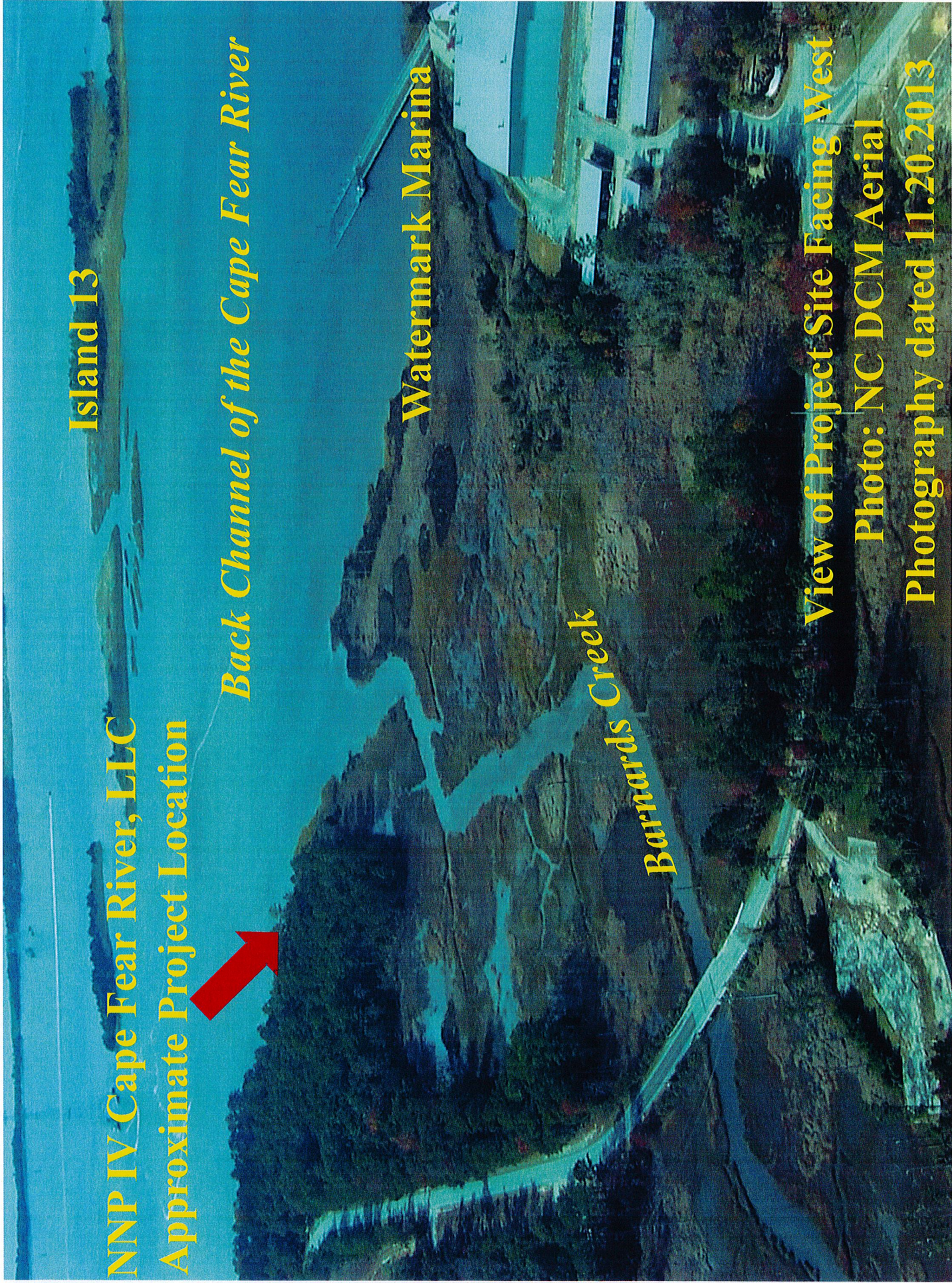
Watermark Marina

Barnards Creek

View of Project Site Facing West

Photo: NC DCM Aerial

Photography dated 11.20.2013



Attachment E

Petitioner's Variance Request Materials

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

RECEIVED

AUG 6 2013

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

August 1, 2013

VIA U.S. MAIL

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

RECEIVED

AUG 08 2013

DCM-MHD CITY

VIA E-MAIL

Braxton.Davis @ncdenr.gov

VIA FAX

252-247-3330

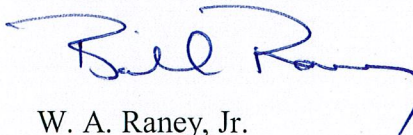
Re: **Variance Petition – NNP IV-Cape Fear River, LLC – New Hanover County**

Dear Mr. Davis:

Enclosed is a CAMA Variance Request Form regarding the above-referenced project. Please schedule this variance for the September, 2013 meeting of the Coastal Resources Commission. Thank you for your attention to this matter.

Sincerely,

WESSELL & RANEY, L.L.P.



W. A. Raney, Jr.

WAR:ktw

Enclosure

WAR\ENVIRON\R10-116-C07

✓ cc: Ms. Christy Goebel (via U.S. mail, e-mail and fax)

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME: NNP IV-Cape Fear River, LLC

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.
- (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;
- X A copy of the deed to the property on which the proposed development would be located;
- X A complete description of the proposed development including a site plan;
- X A stipulation that the proposed development is inconsistent with the rule at issue;
- X Proof that notice was sent to adjacent owners and objectors, as required by 15A N.C.A.C. 07J .0701(c)(7);
- 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;
- 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.
- 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>August 1, 2013</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>P.O. Box 1049</u> Mailing Address	<u>(910) 762-7475</u> Telephone Number of Petitioner or Attorney		
<u>Wilmington</u> City	<u>NC</u> State	<u>28402</u> 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:

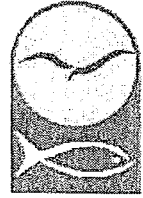
Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Fax:

(919) 716-6767

APPLICATION for Major Development Permit

(last revised 12/27/06)



North Carolina DIVISION OF COASTAL MANAGEMENT

1. Primary Applicant/ Landowner Information			
Business Name Nnp Iv Cape Fear River, Llc		Project Name (if applicable) RiverLights	
Applicant 1: First Name Bill	MI	Last Name Mumford	
Applicant 2: First Name NA	MI	Last Name	
<i>If additional applicants, please attach an additional page(s) with names listed.</i>			
Mailing Address 13777 Ballantyne Corporate Place		PO Box NA	City Charlotte
		State NC	
ZIP 28277	Country USA	Phone No. 704 - 887 - 5946 ext. NA	FAX No. 704 - 363 - 7195
Street Address (if different from above) NA		City	State
		ZIP -	
Email bmumford@newlandco.com			

2. Agent/Contractor Information			
Business Name Land Management Group, Inc.			
Agent/ Contractor 1: First Name Steve	MI	Last Name Morrison	
Agent/ Contractor 2: First Name Jenny	MI	Last Name Sheridan	
Mailing Address 3805 Wrightsville Avenue		PO Box NA	City Wilmington
		State NC	
ZIP 28403		Phone No. 1 910 - 452 - 0001 ext. NA	Phone No. 2 NA - - ext.
FAX No. 910 452 0060	Contractor # NA		
Street Address (if different from above) NA		City	State
		ZIP -	
Email smorrison@lmgroup.net; jsheridan@lmgroup.net			

<Form continues on back>



North Carolina Department of Environment and Natural Resources
Division of Coastal Management
Braxton C. Davis
Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

July 15, 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

NNP IV Cape Fear River, LLC
c/o Bill Mumford
13777 Ballantyne Corporate Place, Suite 550
Charlotte, NC 28277

Dear Mr. Mumford:

This letter is in response to your application for a Major Modification to Permit No. 92-07 under the Coastal Area Management Act (CAMA), in which authorization was requested to expand the footprint of an authorized community marina facility and commercial dry-stack launch site adjacent to the Cape Fear River, Wilmington, in New Hanover County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Office on April 29, 2013 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 Major Modification to CAMA Major Permit No. 92-07. Permit No. 92-07 which was issued on July 23, 2007, modified on March 3, 2009 and April 23, 2010 allows for the construction of a 111-slip open water community marina, 84-slip commercial drystack facility, loading platform, transient docks, direction boring, boatlifts and a kayak launching pier and platform with associated utilities. The original piers were permitted to extend to one-fourth the width of the waterbody.
- 2) The proposed project would extend the previously authorized main access pier to a total distance of 450 feet, and would extend the dry-stack launch pier to a total distance of 540 feet, into the Cape Fear River.
- 3) As proposed, the main access pier and dry-stack launch pier would exceed the one-quarter limitation by 130 feet.

- 4) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following Rule 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,



Braxton C. Davis
Director

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

108210 R/S
108210 R/S



FOR REGISTRATION REGISTER OF DEEDS
REBECCA P. SMITH
NEW HANOVER COUNTY, NC
2006 JUN 16 11:22:48 AM
BK:5038 PG:368-379 FEE:\$44.00
NC REV STAMP:\$108,210.00
INSTRUMENT # 2006034386

DRAWN BY
Stevens McGhee (RM)

STATE OF NORTH CAROLINA Tax parcel no.: R07000-006-009-000
COUNTY OF NEW HANOVER

THIS DEED, made and entered into as of the 12th day of June, 2006, by and between RIVER ROAD HOLDINGS, L.L.C. a North Carolina limited liability company, party of the first part; and NNP IV-CAPE FEAR RIVER, LLC, a Delaware limited liability company, whose mailing address is 9820 Towne Centre Drive, San Diego, CA 92121, party of the second part;

W I T N E S S E T H:

That the said party of the first part, in consideration of ONE HUNDRED DOLLARS (\$100.00) and other good and valuable considerations to it in hand paid, the receipt of which is hereby acknowledged, has given, granted, bargained, and sold, and by these presents does give, grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, an undivided seventy-four and 65/100ths percent interest (74.65%) in and to that certain tract, parcel, or lot of land in New Hanover County, North Carolina, bounded and described as follows, to-wit:

RETURNED TO
Smith Moore

Beginning at a point in the northern line of the tract described in a deed recorded in Book 1901, Page 480 of the New Hanover County Registry, said point being located the following bearings and distances from an existing concrete control monument in the center of the Bellwood Court cul-de-sac in Sunpointe Subdivision as shown on a map recorded in Map Book 26, Page 168 of the New Hanover County Registry: S 33-47-47 E 962.31 feet to the point of beginning.

Proceed from said point of beginning and with the northwestern line of the above mentioned Progress Energy tract S 39-01-09 W a distance of 756.59 ft. to an existing iron pipe, thence with the southwestern line of the above mentioned Progress Energy tract S 50-58-51 E a distance of 653.10 ft. to a point in the centerline of Motts Creek, thence with the centerline of Motts Creek the following bearings and distances S 55-29-53 W a distance of 23.30 ft. to a point, thence N 89-30-04 W a distance of 48.39 ft. to a point, thence N 84-36-58 W a distance of 44.90 ft. to a point, thence S 66-35-07 W a distance of 37.96 ft. to a point, thence S 12-04-36 W a distance of 44.93 ft. to a point, thence S 45-08-42 W a distance of 31.59 ft. to a point, thence S 74-38-31 W a distance of 25.12 ft. to a point, thence S 33-36-36 W a distance of 26.48 ft. to a point, thence S 36-05-23 E a distance of 27.39 ft. to a point, thence S 23-53-59 E a distance of 28.83 ft. to a point, thence S 29-55-09 W a distance of 21.63 ft. to a point, thence S 78-39-42 W a distance of 37.10 ft. to a point, thence S 58-58-40 W a distance of 30.46 ft. to a point, thence S 25-56-33 W a distance of 35.82 ft. to a point, thence S 11-39-16 W a distance of 35.25 ft. to a point, thence S 20-52-24 W a distance of 49.61 ft. to a point, thence S 36-24-40 W a distance of 117.89 ft. to a point, thence S 36-51-58 W a distance of 86.02 ft. to a point, thence S 49-16-47 W a distance of 58.61 ft. to a point, thence S 88-51-48 W a distance of 22.92 ft. to a point, thence N 53-47-14 W a distance of 35.66 ft. to a point, thence N 73-39-06 W a distance of 35.15 ft. to a point, thence S 83-36-50 W a distance of 40.80 ft. to a point, thence S 54-48-51 W a distance of 51.07 ft. to a point, thence S 21-55-38 W a distance of 83.53 ft. to a point, thence S 14-06-19 W a distance of 40.73 ft. to a point, thence S 02-18-39 E a distance of 36.50 ft. to a point, thence S 25-12-04 W a distance of 28.79 ft. to a point, thence S 64-53-30 W a distance of 36.27 ft. to a point, thence S 65-45-13 W a distance of 54.79 ft. to a point, thence S 20-43-35 W a distance of 32.16 ft. to a point, thence S 16-16-55 E a distance of 51.44 ft. to a point, thence S 12-03-09 W a distance of 26.79 ft. to a point, thence S 53-57-00 W a distance of 62.00 ft. to a point, thence S 64-04-05 W a distance of 29.83 ft. to a point, thence S 64-04-05 W a distance of 51.03 ft. to a point, thence S 43-46-25 W a distance of 50.88 ft. to a point, thence S 43-46-25 W a distance of 8.23 ft. to a point, thence S 21-33-32 W a distance of 79.73 ft. to a point, thence S 25-19-08

W a distance of 89.30 ft. to a point, thence S 63-05-19 W a distance of 67.02 ft. to a point, thence S 41-19-25 W a distance of 58.24 ft. to a point, thence S 15-11-08 W a distance of 96.68 ft. to a point, thence S 32-42-39 W a distance of 63.48 ft. to a point, thence S 08-38-25 W a distance of 45.01 ft. to a point, thence S 04-46-24 E a distance of 54.90 ft. to a point, thence S 51-50-21 W a distance of 44.53 ft. to a point, thence S 89-02-02 W a distance of 74.13 ft. to a point, thence S 31-09-48 W a distance of 56.55 ft. to a point, thence S 20-28-52 E a distance of 42.02 ft. to a point, thence S 09-29-30 E a distance of 35.61 ft. to a point, thence S 44-14-44 W a distance of 65.81 ft. to a point, thence S 23-12-03 W a distance of 76.11 ft. to a point, thence S 28-29-16 W a distance of 103.29 ft. to a point, thence S 66-49-00 W a distance of 67.84 ft. to a point, thence N 64-35-26 W a distance of 86.75 ft. to a point, thence N 79-06-30 W a distance of 63.41 ft. to a point, thence S 42-12-17 W a distance of 60.30 ft. to a point, thence S 26-10-58 W a distance of 85.36 ft. to a point, thence S 82-50-01 W a distance of 31.72 ft. to a point, thence S 67-21-49 W a distance of 99.31 ft. to a point, thence S 58-09-10 W a distance of 38.31 ft. to a point, thence S 75-41-43 W a distance of 95.77 ft. to a point, thence S 35-03-27 W a distance of 57.77 ft. to a point, thence S 29-07-49 W a distance of 56.40 ft. to a point, thence S 51-24-32 W a distance of 60.12 ft. to a point, thence N 51-22-31 W a distance of 41.30 ft. to a point, thence N 64-37-18 W a distance of 35.52 ft. to a point, thence S 57-17-33 W a distance of 104.69 ft. to a point, thence S 49-40-59 W a distance of 128.98 ft. to a point, thence N 87-39-30 W a distance of 150.48 ft. to a point, thence S 69-37-43 W a distance of 80.37 ft. to a point, thence S 16-16-40 W a distance of 74.45 ft. to a point, thence S 04-04-47 W a distance of 72.77 ft. to a point, thence S 09-26-45 W a distance of 50.85 ft. to a point, thence S 76-45-28 W a distance of 47.74 ft. to a point, thence N 70-29-16 W a distance of 44.60 ft. to a point, thence S 71-47-33 W a distance of 52.46 ft. to a point, thence S 44-39-23 W a distance of 80.73 ft. to a point, thence S 70-54-30 W a distance of 49.01 ft. to a point, thence N 54-37-54 W a distance of 41.57 ft. to a point, thence N 29-28-16 W a distance of 84.92 ft. to a point, thence N 83-14-17 W a distance of 48.29 ft. to a point, thence S 42-34-22 W a distance of 66.89 ft. to a point, thence N 79-10-21 W a distance of 47.86 ft. to a point, thence N 20-37-00 W a distance of 59.11 ft. to a point, thence N 25-25-49 W a distance of 48.05 ft. to a point, thence N 72-26-45 W a distance of 167.99 ft. to a point, thence S 58-09-05 W a distance of 51.44 ft. to a point, thence S 16-05-03 W a distance of 101.98 ft. to a point, thence S 52-13-13 W a distance of 58.00 ft. to a point, thence S 85-16-03 W a distance of 124.01 ft. to a point, thence S 70-17-53 W a distance of 74.26 ft. to a point, thence S 25-37-25 W a distance of 96.85 ft. to a point, thence S 58-17-10 W a distance of 55.49 ft. to a point, thence N 51-26-46 W a distance of 64.12 ft. to a point, thence N 20-18-12 W a

distance of 92.43 ft. to a point, thence N 57-09-40 W a distance of 92.91 ft. to a point, thence S 86-46-28 W a distance of 52.82 ft. to a point on the highwater line of the Cape Fear River, thence with the highwater line N 05-51-35 W a distance of 294.43 ft. to a point, thence N 29-22-45 E a distance of 127.71 ft. to a point, thence N 20-04-37 E a distance of 306.12 ft. to a point, thence N 55-37-00 E a distance of 115.62 ft. to a point, thence N 07-43-07 W a distance of 238.73 ft. to a point, thence N 44-54-50 W a distance of 122.88 ft. to a point, thence N 01-51-08 W a distance of 393.49 ft. to a point, thence N 22-53-20 W a distance of 193.73 ft. to a point, thence N 20-59-19 W a distance of 357.60 ft. to a point, thence N 25-00-02 W a distance of 341.18 ft. to a point, thence N 53-48-14 W a distance of 241.69 ft. to a point, thence N 34-44-43 W a distance of 299.58 ft. to a point, thence N 18-09-03 W a distance of 164.14 ft. to a point, thence N 00-44-28 E a distance of 227.14 ft. to a point, thence N 10-24-57 E a distance of 67.77 ft. to a point, thence N 33-13-46 W a distance of 38.23 ft. to a point, thence N 13-21-12 W a distance of 42.04 ft. to a point, thence N 15-56-10 W a distance of 47.85 ft. to a point, thence N 31-17-15 W a distance of 68.65 ft. to a point, thence N 17-12-22 W a distance of 38.31 ft. to a point, thence N 38-18-17 W a distance of 87.49 ft. to a point, thence N 40-52-03 W a distance of 81.26 ft. to a point, thence N 59-03-03 W a distance of 51.35 ft. to a point, thence N 48-47-08 W a distance of 80.34 ft. to a point, thence N 41-07-07 W a distance of 66.80 ft. to a point, thence N 41-22-54 W a distance of 80.04 ft. to a point, thence N 42-09-16 W a distance of 52.40 ft. to a point, thence N 46-06-06 W a distance of 75.58 ft. to a point, thence N 47-44-49 W a distance of 68.78 ft. to a point, thence N 50-17-23 W a distance of 137.37 ft. to a point, thence N 40-53-51 W a distance of 71.80 ft. to a point, thence N 44-23-55 W a distance of 53.51 ft. to a point, thence N 49-18-54 W a distance of 73.51 ft. to a point, thence N 52-13-00 W a distance of 67.42 ft. to a point, thence N 50-31-22 W a distance of 96.66 ft. to a point, thence N 57-00-17 W a distance of 57.50 ft. to a point, thence N 52-26-13 W a distance of 58.05 ft. to a point, thence N 45-28-57 W a distance of 24.44 ft. to a point, thence N 64-51-13 W a distance of 41.32 ft. to a point, thence N 52-23-17 W a distance of 48.74 ft. to a point, thence N 42-07-38 W a distance of 69.03 ft. to a point, thence N 24-19-22 W a distance of 32.03 ft. to a point, thence N 51-16-38 W a distance of 50.69 ft. to a point, thence N 42-07-20 W a distance of 23.16 ft. to a point, thence N 56-57-38 W a distance of 26.02 ft. to a point, thence N 35-01-14 W a distance of 68.60 ft. to a point, thence N 37-21-29 W a distance of 59.33 ft. to a point, thence N 46-32-41 W a distance of 101.25 ft. to a point, thence N 62-32-18 W a distance of 105.95 ft. to a point, thence N 08-05-59 W a distance of 57.15 ft. to a point, thence N 47-16-53 W a distance of 51.52 ft. to a point, thence N 45-52-51 W a distance of 51.76 ft. to a point, thence N 33-08-19 W a distance of 101.79 ft. to a point, thence N

42-15-33 W a distance of 73.81 ft. to a point, thence N 56-41-21 W a distance of 51.51 ft. to a point, thence N 14-09-16 W a distance of 78.77 ft. to a point, thence N 60-58-27 W a distance of 57.95 ft. to a point, thence N 73-58-46 W a distance of 70.94 ft. to a point, thence N 60-57-24 W a distance of 80.96 ft. to a point, thence N 64-29-14 W a distance of 72.14 ft. to a point, thence N 12-09-29 E a distance of 109.30 ft. to a point, thence N 13-35-10 W a distance of 67.85 ft. to a point, thence N 14-47-57 W a distance of 66.10 ft. to a point, thence N 01-24-40 W a distance of 54.94 ft. to a point, thence N 27-32-35 W a distance of 44.32 ft. to a point, thence N 38-37-02 W a distance of 50.27 ft. to a point, thence N 45-06-50 W a distance of 57.03 ft. to a point, thence N 71-03-14 W a distance of 58.27 ft. to a point, thence N 85-09-52 W a distance of 64.44 ft. to a point, thence N 49-12-10 W a distance of 69.41 ft. to a point, thence N 23-08-23 W a distance of 59.17 ft. to a point, thence N 64-26-52 W a distance of 57.43 ft. to a point, thence N 26-57-39 E a distance of 67.64 ft. to a point, thence N 65-12-35 E a distance of 99.58 ft. to a point, thence N 20-36-05 E a distance of 91.16 ft. to a point, thence N 44-51-13 W a distance of 106.65 ft. to a point, thence N 64-36-15 E a distance of 59.98 ft. to a point, thence N 85-52-31 E a distance of 85.01 ft. to a point, thence N 04-08-13 E a distance of 69.39 ft. to a point, thence N 03-06-48 W a distance of 58.61 ft. to a point, thence N 37-17-27 W a distance of 96.84 ft. to a point, thence N 60-36-34 W a distance of 122.24 ft. to a point, thence N 54-50-31 W a distance of 111.72 ft. to a point, thence N 45-55-14 W a distance of 187.96 ft. to a point, thence N 32-24-38 W a distance of 68.67 ft. to a point, thence N 40-16-30 W a distance of 144.40 ft. to a point, thence N 46-58-43 W a distance of 102.48 ft. to a point, thence N 55-01-34 W a distance of 115.11 ft. to a point, thence N 54-20-36 W a distance of 113.19 ft. to a point, thence N 51-17-31 W a distance of 96.41 ft. to a point, thence N 57-37-23 W a distance of 62.95 ft. to a point, thence N 46-31-47 W a distance of 55.89 ft. to a point, thence N 54-42-30 W a distance of 76.78 ft. to a point, thence N 79-07-50 W a distance of 84.10 ft. to a point, thence N 57-37-34 W a distance of 65.23 ft. to a point, thence N 40-40-05 E a distance of 59.47 ft. to a point, thence N 33-40-40 E a distance of 65.03 ft. to a point, thence N 02-19-30 E a distance of 55.93 ft. to a point, thence N 09-50-55 E a distance of 33.56 ft. to a point, thence N 35-26-35 W a distance of 67.78 ft. to a point, thence N 07-53-47 W a distance of 18.11 ft. to a point, thence N 03-15-48 E a distance of 25.40 ft. to a point, thence N 17-57-02 W a distance of 57.72 ft. to a point, thence N 03-48-12 W a distance of 63.43 ft. to a point, thence N 22-23-34 W a distance of 27.67 ft. to a point, thence N 44-49-41 W a distance of 42.89 ft. to a point, thence N 52-04-11 W a distance of 17.95 ft. to a point, thence N 05-57-28 E a distance of 52.11 ft. to a point, thence N 01-13-22 W a distance of 51.90 ft. to a point, thence N 10-52-35 W a distance of 36.29 ft. to a point, thence N 19-45-16

W a distance of 38.70 ft. to a point, thence N 20-25-32 E a distance of 45.29 ft. to a point, thence N 20-21-28 E a distance of 34.31 ft. to a point, thence N 06-30-23 E a distance of 31.23 ft. to a point, thence N 09-39-19 W a distance of 43.83 ft. to a point, thence N 00-04-27 E a distance of 23.42 ft. to a point, thence N 27-07-14 W a distance of 26.38 ft. to a point, thence N 02-55-56 W a distance of 37.02 ft. to a point, thence N 42-55-07 W a distance of 44.97 ft. to a point, thence N 72-30-34 W a distance of 46.78 ft. to a point, thence N 33-01-56 W a distance of 102.17 ft. to a point, thence N 17-01-21 W a distance of 47.22 ft. to a point, thence N 23-07-47 W a distance of 52.07 ft. to a point, thence N 12-56-37 W a distance of 65.26 ft. to a point, thence N 30-25-52 W a distance of 41.09 ft. to a point, thence N 33-13-38 W a distance of 83.10 ft. to a point, thence N 15-54-34 E a distance of 60.29 ft. to a point, thence N 07-09-12 W a distance of 68.25 ft. to a point, thence N 23-27-06 W a distance of 40.71 ft. to a point, thence N 19-48-38 W a distance of 70.39 ft. to a point, thence N 20-14-15 W a distance of 92.34 ft. to a point, thence N 24-14-32 W a distance of 100.02 ft. to a point, thence N 27-54-48 W a distance of 87.73 ft. to a point, thence N 34-05-43 W a distance of 93.62 ft. to a point, thence N 36-08-16 W a distance of 104.46 ft. to a point, thence N 34-15-48 W a distance of 107.25 ft. to a point, thence N 30-27-24 W a distance of 44.90 ft. to a point, thence N 22-20-44 W a distance of 47.93 ft. to a point, thence N 20-13-11 W a distance of 51.72 ft. to a point, thence N 22-27-42 E a distance of 58.47 ft. to a point, thence N 09-46-51 E a distance of 24.20 ft. to a point, thence N 10-42-23 E a distance of 135.73 ft. to a point, thence N 09-18-39 W a distance of 63.59 ft. to a point, thence N 05-29-04 E a distance of 45.94 ft. to a point, thence N 00-19-24 W a distance of 114.47 ft. to a point, thence N 04-57-37 W a distance of 84.27 ft. to a point, thence N 01-39-00 E a distance of 65.92 ft. to a point, thence N 16-33-09 W a distance of 70.84 ft. to a point, thence N 05-53-18 W a distance of 79.57 ft. to a point, thence N 07-34-08 W a distance of 65.20 ft. to a point, thence N 05-18-50 E a distance of 41.01 ft. to a point, thence N 04-24-51 W a distance of 68.69 ft. to a point, thence N 14-50-15 E a distance of 47.15 ft. to a point, thence N 09-29-34 W a distance of 89.12 ft. to a point, thence N 20-56-16 W a distance of 61.70 ft. to a point, thence N 09-26-38 E a distance of 49.60 ft. to a point, thence N 15-21-48 W a distance of 83.07 ft. to a point, thence N 01-52-50 W a distance of 37.63 ft. to a point, thence N 20-01-09 W a distance of 72.60 ft. to a point, thence N 14-21-04 W a distance of 80.31 ft. to a point, thence N 08-25-01 W a distance of 149.64 ft. to a point, thence N 13-37-39 W a distance of 75.11 ft. to a point, thence N 19-44-43 W a distance of 63.75 ft. to a point, thence N 08-05-31 W a distance of 79.17 ft. to a point, thence N 28-23-44 W a distance of 108.56 ft. to a point, thence N 20-28-13 E a distance of 54.99 ft. to a point, thence N 31-57-38 E a distance of 44.69 ft. to a point, thence N 34-51-51 E a

distance of 119.32 ft. to a point, thence N 22-58-06 E a distance of 73.66 ft. to a point, thence N 43-08-56 E a distance of 37.66 ft. to a point, thence N 21-04-22 E a distance of 98.71 ft. to a point, thence N 13-13-07 E a distance of 100.02 ft. to a point, thence N 05-02-18 E a distance of 32.82 ft. to a point, thence N 26-24-13 E a distance of 25.70 ft. to a point, thence N 16-59-27 E a distance of 36.72 ft. to a point, thence N 06-09-42 E a distance of 45.88 ft. to a point, thence N 37-14-55 E a distance of 34.11 ft. to a point, thence N 04-36-28 E a distance of 47.79 ft. to a point, thence N 14-00-15 E a distance of 68.47 ft. to a point, thence N 03-48-53 E a distance of 400.25 ft. to a point in the intersection of the highwater line of the Cape Fear River and the centerline of Barnards Creek, thence with the centerline of Barnards Creek the following bearings and distance N 72-00-51 E a distance of 105.56 ft. to a point, thence N 61-53-39 E a distance of 96.77 ft. to a point, thence N 51-50-02 E a distance of 128.65 ft. to a point, thence N 43-42-17 E a distance of 90.40 ft. to a point, thence N 72-44-04 E a distance of 82.52 ft. to a point, thence S 77-30-43 E a distance of 91.34 ft. to a point, thence S 66-42-09 E a distance of 116.93 ft. to a point, thence N 75-42-01 E a distance of 76.97 ft. to a point, thence N 44-29-45 E a distance of 167.94 ft. to a point, thence N 53-22-57 E a distance of 164.55 ft. to a point, thence N 46-07-02 E a distance of 174.40 ft. to a point, thence N 41-49-21 E a distance of 178.77 ft. to a point, thence N 68-06-28 E a distance of 61.00 ft. to a point, thence S 83-21-27 E a distance of 111.84 ft. to a point, thence S 68-00-52 E a distance of 121.92 ft. to a point, thence S 65-39-29 E a distance of 118.01 ft. to a point, thence S 53-36-49 E a distance of 32.15 ft. to a point, thence S 53-36-49 E a distance of 48.85 ft. to a point, thence S 48-17-46 E a distance of 53.55 ft. to a point, thence S 48-17-46 E a distance of 79.82 ft. to a point, thence S 64-53-32 E a distance of 49.87 ft. to a point, thence N 89-17-20 E a distance of 60.56 ft. to a point, thence N 78-21-47 E a distance of 180.56 ft. to a point, thence S 79-49-11 E a distance of 37.85 ft. to a point, thence S 53-39-26 E a distance of 55.13 ft. to a point, thence S 38-37-41 E a distance of 259.76 ft. to a point, thence S 33-29-33 E a distance of 44.15 ft. to a point, thence S 88-17-47 E a distance of 50.17 ft. to a point, thence N 58-54-46 E a distance of 103.84 ft. to a point, thence N 33-01-57 E a distance of 48.72 ft. to a point, thence N 04-38-05 E a distance of 52.93 ft. to a point, thence N 16-03-27 W a distance of 186.75 ft. to a point, thence N 10-30-16 E a distance of 79.51 ft. to a point, thence N 38-10-41 E a distance of 75.14 ft. to a point, thence N 59-38-06 E a distance of 83.72 ft. to a point, thence S 81-23-45 E a distance of 38.65 ft. to a point, thence S 38-30-36 E a distance of 137.89 ft. to a point, thence S 48-10-15 E a distance of 38.97 ft. to a point, thence N 71-29-19 E a distance of 34.13 ft. to a point, thence N 26-39-39 E a distance of 136.04 ft. to a point, thence N 37-38-40 E a distance of 74.96 ft. to a point, thence N 89-34-26 E a

distance of 110.64 ft. to a point, thence S 52-41-52 E a distance of 44.02 ft. to a point, thence S 06-48-57 E a distance of 95.82 ft. to a point, thence S 04-41-04 E a distance of 45.12 ft. to a point, thence S 28-14-35 E a distance of 66.74 ft. to a point, thence S 62-18-01 E a distance of 90.00 ft. to a point, thence S 64-57-30 E a distance of 124.31 ft. to a point, thence N 85-46-51 E a distance of 95.14 ft. to a point, thence N 82-44-31 E a distance of 163.54 ft. to a point, thence N 60-29-35 E a distance of 169.56 ft. to a point, thence N 74-07-14 E a distance of 113.41 ft. to a point, thence S 85-58-39 E a distance of 174.73 ft. to a point, thence S 89-27-50 E a distance of 87.04 ft. to a point, thence N 78-34-20 E a distance of 139.01 ft. to a point, thence S 74-50-07 E a distance of 163.44 ft. to a point, thence S 86-58-39 E a distance of 300.68 ft. to a point, thence S 29-44-02 E a distance of 72.23 ft. to a point, thence S 52-35-41 E a distance of 73.71 ft. to a point, thence S 75-45-16 E a distance of 112.54 ft. to a point, thence S 63-07-32 E a distance of 78.46 ft. to a point, thence S 38-09-57 E a distance of 69.15 ft. to a point, thence S 70-07-37 E a distance of 125.28 ft. to a point, thence S 47-22-50 E a distance of 139.11 ft. to a point, thence S 47-21-29 E a distance of 131.74 ft. to a point, thence S 56-53-51 E a distance of 239.34 ft. to a point, thence S 87-59-54 E a distance of 121.02 ft. to a point, thence S 39-11-42 E a distance of 140.66 ft. to a point, thence S 43-44-28 E a distance of 170.79 ft. to a point, thence S 43-44-28 E a distance of 241.36 ft. to a point, thence S 03-19-35 E a distance of 6258.84 ft. to a point, thence S 44-23-23 E a distance of 669.96 ft. to a point, thence S 44-14-30 E a distance of 1484.69 ft. to a point, thence S 44-23-24 E a distance of 179.66 ft. to a point, thence S 44-23-24 E a distance of 500.21 ft. to the point of beginning and containing 1306.737 acres of land, more or less, according to a survey and computations by Hanover Design Services in August of 2005.

Being the same property described in a deed to River Road Development, L.L.C., dated May 23, 1995, and recorded in Book 1901, Page 480 of the New Hanover County Registry.

Subject, however, to the following.

1. 2006 New Hanover County taxes.
2. Easements to Carolina Power and Light Company recorded in Book 938, Page 799, Book 952, Page 177, Book 989, Page 151, Book 989, Page 791, and Book 3574, Page 194 of the New Hanover County Registry.
3. Deed and easements to Carolina Power and Light Company recorded in Book 938, Page 796, of the New Hanover County Registry.

4. Contract with Carolina Power and Light Company recorded in Book 938, Page 805 of the New Hanover County Registry.
5. Deed to Carolina Power and Light Company recorded in Book 3574, Page 185 of the New Hanover County Registry.
6. Access and utility easements to Carolina Power and Light Company recorded in Book 3574, Page 188, of the New Hanover County Registry.
7. Temporary construction easements to Carolina Power and Light Company recorded in Book 4696, Page 166, of the New Hanover County Registry.
8. Deed to New Hanover County Water & Sewer District recorded in Book 1464, Page 879, of the New Hanover County Registry.
9. Easements to New Hanover County Water & Sewer District recorded in Book 1464, Page 928, of the New Hanover County Registry.
10. Rights of others in and to the continued and uninterrupted flow of Barnard's Creek, Mott's Creek, and any ditches, which affect the above property.
11. Easements as shown on map recorded in Map Book 43, Page 169, New Hanover County Registry.
12. The following matters that are shown on a survey dated May 27, 2005, by Michael J. Lawrence, Professional Land Surveyor:
 - (a) Carolina Power and Light Company easements crossing the northern and southern portions of the property, and along the eastern property line.
 - (b) Sanitary sewer easement crossing the northeastern part of the property.
 - (c) Right of way of S.R. 1100 (River Road).
 - (d) Access easements from S.R. 1100 (River Road) to the Carolina Power and Light 55.016 acre parcel, and from S.R. 1100 (River Road) to the Progress Energy 11.25 acre parcel.

Together with all and singular the lands, tenements, easements, and appurtenances thereunto belonging or in anywise appertaining.

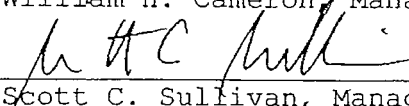
TO HAVE AND TO HOLD the aforesaid undivided interest in and to said tract or parcel of land and all privileges and appurtenances thereunto belonging to the said party of the second part, its successors and assigns, Forever.

And the said party of the first part does hereby covenant that it has not placed or suffered to be placed any presently existing lien or encumbrance on said premises, except as stated above, and that it will warrant and defend the title to the same against the lawful claims of all persons claiming by, through, under or on account of it, but no further.

IN WITNESS WHEREOF, the party of the first part has caused this instrument to be executed under seal, as of the day and year first above written.

RIVER ROAD HOLDINGS, L.L.C.

By  (SEAL)
William H. Cameron, Manager

By  (SEAL)
Scott C. Sullivan, Manager

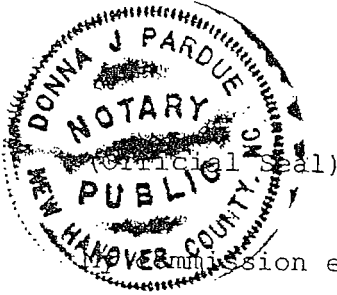
New Hanover County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: William H. Cameron and Scott C. Sullivan, as Managers of River Road Holdings, L.L.C., a North Carolina limited liability company.

Date: 6-14-06

Donna J. Pardue
Official Signature of Notary

Donna J. Pardue, Notary Public
Typed or printed name



Commission expires: 4-11-2011



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

WILMINGTON, NC 28401

Filed For Registration: 06/16/2006 11:22:48 AM

Book: RE 5038 Page: 368-379

Document No.: 2006034386

DEED 12 PGS \$44.00

NC REAL ESTATE EXCISE TAX: \$108,210.00

Recorder: STORER, MARVIS ANN

State of North Carolina, County of New Hanover

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

2006034386

2006034386

Variance Request

Project Narrative
Major Modification to CAMA Permit # 92-07
RiverLights
Wilmington, North Carolina
NNP IV-Cape Fear River LLC, Applicant
Revised 04-29-13

Introduction

A Major Modification is proposed to reconfigure a permitted 112-slip community residential marina and commercial dry storage forklift access pier with temporary tie-up slips. No other permitted structures or land-based development will be affected by the modification. All features of the marina will continue to be for the private use of residents and guests of RiverLights with the dry storage facility available to the public as a commercial use. Individuals who are not residents of RiverLights will have the opportunity to purchase/lease a dry storage space and access the temporary tie-up dockage along the waterfront. There will be approximately 416 linear feet of temporary tie-up dockage which will serve as a temporary staging area for the dry storage facility. The site is located on the Cape Fear River, in Wilmington, North Carolina.

Existing Conditions

Waters of the Cape Fear River in the vicinity of the subject property are classified as SC by DWQ and DMF has classified the marshes and bottom areas as Primary Nursery Area (PNA). The federally maintained Cape Fear River channel is over 2500 feet west of the proposed project. Several small undeveloped islands created from dredge disposal activities associated with river channel maintenance exist between the federally maintained navigation channel and the subject property. The largest of these islands known as Island 13 was used as a mitigation site for impacts to PNA by the Wilmington Harbor deepening project. Approximately 30 upland acres of the dredged material disposal site were excavated and graded to wetland and tidal elevations then planted with marsh plant species. The presence of these small islands creates a back channel (Back Channel), on which the marina is sited, separated from the main navigation channel of the Cape Fear River by the disposal islands.

The RiverLights development was voluntarily annexed by the City of Wilmington and a development agreement was entered into on 10 June 2009. Approximately 184.7-ac within the development, including the Marina Village, are zoned MX-CD. The remaining 1,155.6-ac, including Phase IA, are zoned R7-CD. The river itself is located in the MX and MX-CD zones, both of which allow for the shown marina facilities.

The marina facility will provide water access and low impact recreational opportunities to residents of the RiverLights community and also to individuals outside of the community who choose to

lease/purchase dry storage spaces. Water and sewer service for RiverLights will be provided by the Cape Fear Public Utility Authority. The pumpout facility located at the marina will tie into the Utility Authority system.

Project History

In 2007, NNP IV-Cape Fear River, LLC received an express CAMA Major Permit (#92-07) authorizing the construction of a 4-slip docking facility, one crabbing pier with a covered gazebo and associated boardwalk(s) along the waterfront of the RiverLights Community (formerly referred to as the River Road Development). A Minor Modification was requested in January 2008 to reflect changes to the alignment of the previously permitted piers and boardwalks as well as authorization for directional bores for installation of utilities under Barnards Creek and Mott Creek. Approval for this Minor Modification was received from DCM on 3 March 2009.

In August of 2007, Land Management Group, Inc (LMG) submitted an Environmental Assessment in accordance with the North Carolina Environmental Policy Act (SEPA) on behalf of the applicant which assessed the environmental impact of a 112 slip community boating facility, a kayak/scull launching dock, dry storage facility with 84 space capacity and associated temporary tie-up dockage and two crabbing docks. The project was issued a Finding of No Significant Impact (FONSI) in June of 2008 and completed the SEPA process in July of 2008. Upon completion of the SEPA process and on behalf of NNP IV-Cape Fear River, LLC, LMG submitted application materials for a Major Modification to CAMA Permit #92-07 which reflected the project proposed in the Environmental Assessment. The Major Modification to CAMA Major Permit (#92-07) was authorized in April of 2010, which included the approval of 112 wet slips, kayak/scull launching dock, dry storage facility and associated forklift pier and two crabbing docks.

Prior to issuance of the Major Modification in 2010, several state and federal regulatory agencies including the NC Division of Marine Fisheries, NC Wildlife Resources Commission, National Marine Fisheries Service and US Fish and Wildlife Service commented on their concerns about future shoaling in the vicinity of the marina and the resultant impacts to shallow PNA. As a result of comments received during the DCM CAMA Major Permit review process, the proposed project was re-designed within the confines of the rules (outer extent at 1/4 of the waterbody distance) to obtain deeper water in the footprint of the marina, forklift drop area and a majority of the temporary dockage. Slips at the southern end of the marina were shortened and one permanent slip was re-classified as temporary tie-up with the removal of its outside tie pilings. This reduced the number of proposed permanent slips to 111. While agency concerns were successfully satisfied and the Major Modification was issued shortly thereafter, comments received during the process coupled with the applicant's similar desire to avoid any potential PNA impacts associated with future potential shoaling resulted in another application for a Major Modification to move the marina farther from the shoreline. The modification was denied because the proposed docks extend more than one-fourth (1/4) the width of the waterbody.

An interagency meeting was held at the Wilmington Regional Office on December 8, 2010 to discuss the proposed re-design of the marina. Meeting attendees included Cameron Weaver (NCDENR), Jessi O'Neal (DMF), Robb Mairs (DCM), Steve Everhart (DCM), Molly Ellwood (WRC), Dave Timpy (USACE), Chad Coburn (DWQ-401), Jane Daughtridge (NHC), Linda Willis (DWQ-NPDES), Steve Morrison (LMG), Bill Raney (Wessell & Raney, LLP) and Doug South (Newland Communities). Ron Sechler (NOAA-NMF) participated via conference call.

Proposed Project

The proposed Major Modification to CAMA Permit #92-07 included in these materials proposes a means of maximizing water depths for the footprint of the marina and dry stack launch site and serves to alleviate potential future impacts to Primary Nursery Areas while limiting adverse effects on navigation. By extending the outer structure limit for the marina and dry stack launch site from 1/4 to 1/3 of the back channel waterbody distance, there is a significant water depth improvement. In general, depths for permanent boat slips would improve from a -3' to -5' MLW range to -5' to -6' MLW range while depths at the dry stack launch site would improve from -3.5' to near -5' MLW.

To extend to the 1/3 waterbody distance, the main access pier for the marina will be lengthened by approximately 128 feet. With the extension, the outside tie pilings for one of the slips that had been deleted based on depth limitations will be returned, designating that slip as permanent instead of temporary (re-establishing a proposed total of 112 permanent boat slips). The southernmost dock fingers will also be restored to their original 30' lengths based on their location in deeper water. The total of all slips (permanent plus temporary) will not change based on this modification. To reach the 1/3 waterbody distance, the dry stack launch pier will be lengthened by approximately 36 feet. In order to maintain a safe navigation distance between the northernmost marina slips and the inner temporary tie-up area for the launch pier, the outer floating dock segment for the launch pier will be extended by approximately 36 feet to align with the extended launch pier. In addition, four navigation aids in the form of pilings fitted with reflectors are proposed near the waterward extent of the marina.

Navigation

As stated, the marina is sited on a back channel of the river separated by small islands from the main channel of the river. The back channel rejoins the main run of the river in front of the development property south of the marina site. Approximately one mile to the north of the marina site, the back channel rejoins the main channel of the river. The next property to the north of the subject marina site and still located on the back channel is Watermark Marina. Watermark is entirely a dry stack facility with a forklift launch pier and four pairs of navigation aids (pilings) beyond the end of the pier. The outermost of these pilings is approximately 1,180' offshore from the outer marsh at the base of the pier and the waterbody width in that orientation is approximately 2,600'. The next significant structure to the north is beyond the point where the back channel rejoins the main river channel. This structure is an industrial offloading conveyor system for bulk

gypsum arriving by ship. The structure extends approximately 1,590' beyond the outer edge of the marsh, or over half the width of the river which is approximately 3,100' wide in that location.

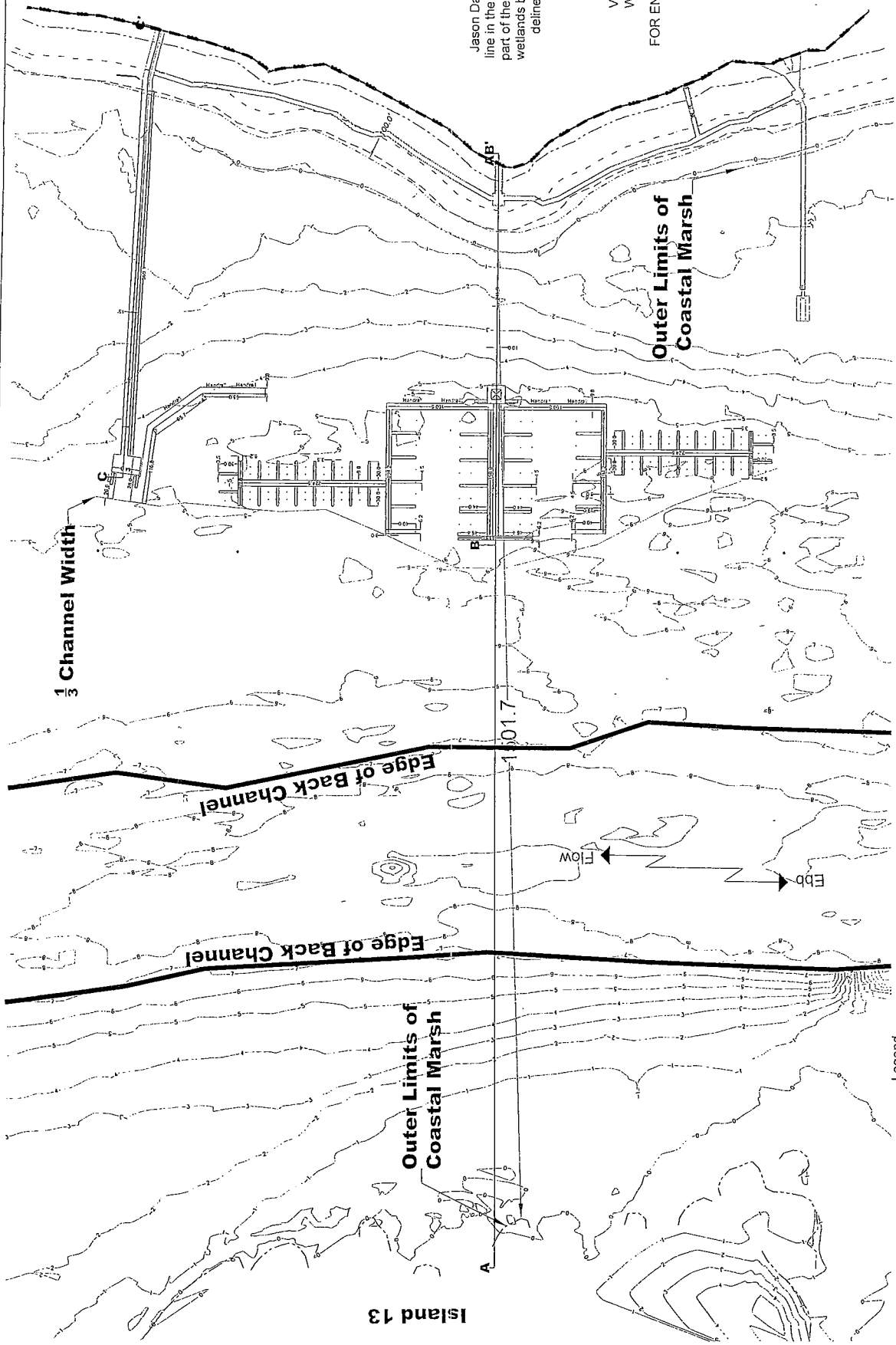
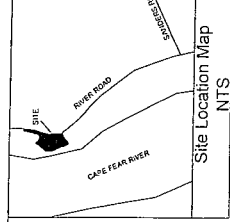
Virtually all of the river traffic between Wilmington and the Atlantic Intracoastal Waterway and the mouth of the Cape Fear at the Atlantic Ocean utilizes the main shipping channel. The primary navigation usage of the subject back channel is associated with boat launching and retrieval from Watermark Marina and an unknown amount of occasional fishermen and pleasure boaters that have local knowledge of navigable areas outside of the shipping channel. The navigation aid pilings at Watermark Marina serve to guide launched boats to the deeper water of the back channel over 1,100' offshore (more than 1/3 of the waterbody distance) before the boats turn north or south. The outer limit of the proposed relocated docks for Riverlights will be confined within the 1/3 of the waterbody distance ranging from approximately 500 feet to 570 feet offshore.

In general, the current Division of Coastal Management (DCM) rules limit the length of docks and piers such that they not extend beyond any established pier length, not extend into the channel portion of the waterbody and not extend more than 1/4 the width of the waterbody.

There is no established pier length for this area of shoreline on the river. The nearest pier to the south is approximately 2.75 miles from the marina site. The nearest pier to the north is the Watermark Marina launch pier approximately .25 miles from the marina site.

The "channel" portion of the waterbody is interpreted as the deepest (most navigable) part of the waterbody cross section. Water depths across the back channel near the marina site reach to more than -8' MLW. If the -7' MLW contour is used to define the channel portion of the waterbody, it is located approximately 300' beyond the end of the extended marina structure. The total width of the -7' MLW or deeper channel portion of the waterbody ranges from approximately 255' to 345' wide.

One of the primary justifications for the 1/4 width of the waterbody pier and dock limitation is to preserve a significant portion of the waterbody for public navigation purposes. The 1/4 rule assumes piers could extend to the full 1/4 distance from opposite shorelines, leaving 1/2 of the total waterbody width open to navigation. However, in this instance, the opposite shoreline as described above is made up of small islands having been created and controlled by the Corps of Engineers and not subject to development. Therefore, there is no likelihood that a pier will ever extend from the opposing shoreline. Thus if the applicant extends the marina docks to 1/3 the width of the waterbody, 2/3 of the waterbody will remain open to the public for navigation. Furthermore, to assist safe boating, the applicant is proposing the installation of four navigation aids (pilings with reflectors) just waterward of the marina footprint. The presence of the docks will also aid in navigation by directing boat traffic to deeper water.



Jason Daii verified the coastal wetland line in the Marina Village in July 2007 as part of the CAMA Permit # 92-07. Coastal wetlands beyond the marina village were delineated by LMG in July 2007.

Vertical Datum Is NAVD 88.
Water Depths Are Relative To MLW.
FOR ENVIRONMENTAL PERMITTING ONLY

THIS MAP IS BASED ON ORIGINAL SURVEYING AND/OR SURVEY INFORMATION FROM:
Adrian A. Crisp
243 North First Street
Wilmington, NC 28401
Phone: (910) 343-1400, Fax: (910) 351-8282
www.madstreet.com

1/3 Channel Width

Outer Limits of Coastal Marsh

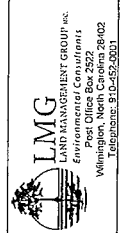
Outer Limits of Coastal Marsh

Island 13

- Legend**
- COD Line
 - MHW Line
 - 404 Wetland
 - 30' Buffer
 - 75' AEC Line
 - Joint Coastal/404
 - Wetland Line



Project: River Lights Proposed Major Modification Permit # 92-07	Date: 04/22/13	Revision Date: NA
Applicant: NNP IV Cape Fear River, LLC	Scale: 1"=150'	Job Number: 02-10-098
Title: Waterbody Detail	Drawn By: VJS	Sheet Number: 5 of 8

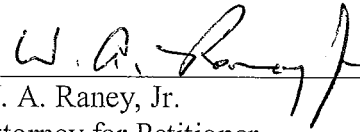


CAMA VARIANCE PETITION
NNP IV-Cape Fear River, LLC

Petitioner, NNP IV-Cape Fear River, LLC, 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 7H.0208(b)(6)(G).

WESSELL & RANEY, L.L.P.

By:



W. A. Raney, Jr.
Attorney for Petitioner
107-B N. 2nd Street
P.O. Box 1049
Wilmington, NC 28402-1049
Telephone: 910-762-7475
NC Bar No. 5805

WAR\ENVIRON\R10-116-004

KTW

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 2ND STREET
WILMINGTON, NC 28401

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

August 1, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

7009 1680 0000 3437 8349

Cape Fear Community College
411 N. Front Street
Wilmington, NC 28401

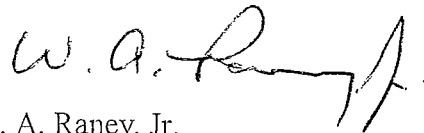
Re: **Variance Request by NNP IV-Cape Fear River, LLC**
4410 River Road, Wilmington, NC

Dear Property Owner:

This is to notify you that NNP IV-Cape Fear River, LLC is applying for a variance from the North Carolina Coastal Resources Commission to allow a previously permitted marina to be moved farther from shore into the deeper waters of the Cape Fear River. The variance is projected to be heard at the September 25-27, 2013 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.



W. A. Raney, Jr.
Attorney for NNP IV-Cape Fear River, LLC

WAR:ktw

WAR\ENVIRON\11-116-C06

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 2ND STREET
WILMINGTON, NC 28401

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

August 1, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

7009 1680 0000 3437 8332

CXA 10 Corporation
c/o Jennifer Chandler
6000 Legacy Drive 4E
Plano, TX 75024

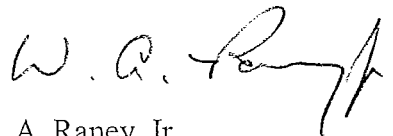
Re: **Variance Request by NNP IV-Cape Fear River, LLC**
4410 River Road, Wilmington, NC

Dear Property Owner:

This is to notify you that NNP IV-Cape Fear River, LLC is applying for a variance from the North Carolina Coastal Resources Commission to allow a previously permitted marina to be moved farther from shore into the deeper waters of the Cape Fear River. The variance is projected to be heard at the September 25-27, 2013 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.



W. A. Raney, Jr.
Attorney for NNP IV-Cape Fear River, LLC

WAR:ktw

WAR\ENVIRON\NR11-116-C05

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 2ND STREET
WILMINGTON, NC 28401

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

August 1, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

7009 1680 0000 3437 8325

NCDOT
300 Division Drive
Wilmington, NC 28401

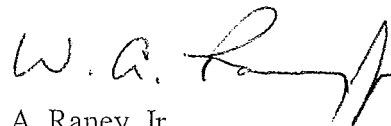
Re: **Variance Request by NNP IV-Cape Fear River, LLC**
4410 River Road, Wilmington, NC

Dear Property Owner:

This is to notify you that NNP IV-Cape Fear River, LLC is applying for a variance from the North Carolina Coastal Resources Commission to allow a previously permitted marina to be moved farther from shore into the deeper waters of the Cape Fear River. The variance is projected to be heard at the September 25-27, 2013 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.



W. A. Raney, Jr.
Attorney for NNP IV-Cape Fear River, LLC

WAR:ktw

WARENVIRONR11-116-C04

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 2ND STREET
WILMINGTON, NC 28401

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

August 1, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

7009 1680 0000 3437 8318

Carolina Power and Light Company
P.O. Box 1551
Raleigh, NC 27602

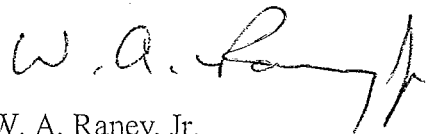
Re: **Variance Request by NNP IV-Cape Fear River, LLC**
4410 River Road, Wilmington, NC

Dear Property Owner:

This is to notify you that NNP IV-Cape Fear River, LLC is applying for a variance from the North Carolina Coastal Resources Commission to allow a previously permitted marina to be moved farther from shore into the deeper waters of the Cape Fear River. The variance is projected to be heard at the September 25-27, 2013 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.



W. A. Raney, Jr.
Attorney for NNP IV-Cape Fear River, LLC

WAR:ktw

WAR\ENVIRON\NR11-116-C03

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 $\frac{1}{4}$ waterbody width limit for piers and docks results in a significant reduction in utility of most of the slips in the currently permitted marina and creates the potential for damage to shallow water primary nursery area (PNA) habitat. It is an unnecessary hardship for the Petitioner to have to run the risk that siltation in the marina will cause a loss of use of slips for boats of reasonable size. The potential loss of use of slips can be avoided by moving the marina footprint into deeper water. The marina is to serve a very large residential development of more than 1,300 acres and 2,790 residential units. The development will create a need for wet slips and boat lift slips accommodating larger boats with deeper drafts that can't be safely operated in the shallower waters nearer the shoreline. Similarly, the extension of the forklift launch pier to deeper water will accommodate the safe operation of boats using the dry storage facility while reducing the potential for damage to PNA habitat.

- (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: This marina is to be located in the open water of a back channel of the Cape Fear River. The Back Channel is separated from the ship channel by one large island and several small islands. The Back Channel has a channel within it that is deep enough to accommodate large pleasure craft. The channel within the Back Channel is located closer to the west side of the Back Channel that is bounded by undevelopable islands and wetlands. This Back Channel area is one of only a few areas in New Hanover County that can accommodate a marina for larger vessels (i) without obstructing a maintained navigation channel; (ii) without obstructing the deepest area of the body of water on which it is located; (iii) without requiring dredging through or in primary nursery areas; and (iv) without disturbing existing navigation or recreational uses.

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

Petitioner's position: No.

Petitioner's argument: The hardships are a result of the natural condition of the riparian area of the Petitioner's property and the existence of the spoil islands created by the dredging of the Cape Fear River. Without the spoil islands, the width of the body of water would be sufficient for the Petitioner's marina to be located as proposed in compliance with the 1/4 waterbody width rule.

- (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). 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. It is unlikely that any structures will be extended into the Back Channel from the opposite shoreline due to its control by the United States and its use as a wetlands mitigation site. Thus, at least two-thirds of the width of the Back Channel at this point would remain open for public use. This includes the entirety of a 255' to 345' wide channel and the additional area about 320' wide area between the end of the pier and the edge of the channel.

The proposed project will mitigate potential adverse effects (both now and in the future) 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. 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. The existence of the marina and the aids to navigation will also provide a guide to keep transient traffic in the deepest part of the Back Channel.

- **Preserve substantial justice.**

The additional water depth for the marina will enable the current owner and future users of the marina and dry storage facility to avoid loss of use due to potential sedimentation that could decrease water depths to the inner slips since dredging to maintain adequate water depth is not permitted in PNAs.



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: Coastal Resources Commission

FROM: Christine A. Goebel and Elizabeth Jill Weese *CAG EW*
Assistant Attorneys General

DATE: November 26, 2013 (for the December 11-12, 2013 CRC Meeting)

RE: **Variance Request by the City of Jacksonville (CRC-VR-13-06)**

Petitioner owns property in Jacksonville, North Carolina, adjacent to the New River. In August of 2013, Petitioner, with assistance from the Wildlife Resources Commission acting as its agent, sought a CAMA major permit to construct a public boating access area with associated driveways, parking areas, boat ramps, breakwaters, access piers, boardwalk, and bulkhead, and proposed to excavate an access channel from the proposed boat ramp to the main navigation channel of the New River. This area is designated as a Primary Nursery Area (PNA) by the Marine Fisheries Commission (MFC), and per CRC rule 15A NCAC 7H.0208(b)((1), navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas. Based on this rule and other rules of the CRC cited in the denial letter, DCM denied Petitioner's permit application on November 8, 2013. Petitioner now seeks a variance to allow the proposed new dredging in the PNA.

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: John Carter, Town Attorney and Counsel for Petitioner, electronically
Preston Royster, Facilities Construction Engineer for WRC, electronically
Pat Donovan-Potts, CAMA LPO for Jacksonville, electronically
Mary L. Lucasee, CRC Counsel, electronically

RELEVANT STATUTES OR RULES**ATTACHMENT A****§ 113A-102. Legislative findings and goals.**

(a) Findings. -- It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. -- The goals of the coastal area management system to be created pursuant to this Article are as follows:

(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.

§ 113A-113. Areas of environmental concern; in general.

(b) The Commission **may designate** as areas of environmental concern any one or more of the following, singly or in combination:

(9) Primary Nursery Areas as designated by the Marine Fisheries Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary to protect the resource values identified in the designation including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare.

(NOTE: The Commission has not designated PNAs as a stand-alone AEC, but provides protection to PNAs through its rules, as seen below, as part of a larger portion of the Coastal Wetlands, Estuarine Waters, Public Trust Areas and Coastal Shorelines AECs.)

15A NCAC 7H.0203 Management Objective of the Estuarine and Ocean System

It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

15A NCAC 7H .0205 Coastal Wetlands

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource essential to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere.

Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws.

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 described in Rule .0208 of this Section.

15A NCAC 7H.0206 Estuarine Waters

(c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system.

15A NCAC 7H .0207 Public Trust Areas

(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 7H .0208 Use Standards

(a) General Use Standards

- (2) Before being granted a permit by the CRC or local permitting authority, there shall be a finding that the applicant has complied with the following standards:

(B) Before receiving approval for location of a use or development within these AECs, the permit-letting authority shall find that no suitable alternative site or location outside of the AEC exists for the use or development and, further, that the applicant has selected a combination of sites and design that will have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers (cypress fringes, marshes, clay soils).

- (C) Development shall not violate water and air quality standards.

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas** highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.

STIPULATED FACTS

ATTACHMENT B

1. The City of Jacksonville (Petitioner) and Onslow County together own a 5.15-acre parcel at 135 South Marine Boulevard in Jacksonville, Onslow County (the Site). A large portion of the Site was obtained by the City in 2012 through multiple deeds recorded in the Onslow County Registry with the remaining portion already owned by Onslow County. The Site can be seen in the photographs attached in the power point presentation.
2. The subject property is located adjacent to the New River which at this location is a Primary Nursery Area (PNA), as designated by the North Carolina Marine Fisheries Commission (in the coastal or estuarine waters at, and downstream of the Site). Immediately north of the Site the waters are “inland waters” and are designated by the NC Wildlife Resources Commission (WRC) as an Inland Nursery Area.
3. The Coastal Resource Commission’s rules at 15A NCAC 07H .0208(a)(4) define PNAs as “those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages.”
4. On May 3, 2012, Onslow County, the City of Jacksonville and the NC WRC entered into a three-party agreement to construct the Jacksonville Boating Access Area (BAA). The proposed BAA development would include 69 parking spaces for boats and trailers, and 28 additional car-only parking spaces, as well as other amenities.
5. In 2012, the WRC and the City were awarded a Boating Access Area (BAA) grant from the Coastal Recreational Fishing License (CRFL) grant funding program within the NC Division of Marine Fisheries. The City and WRC were notified of funding in January 2013 and the grant is for the 2013-14 fiscal year and has an expiration date of June 13, 2014. The grant was for \$650,000 and the WRC is required to pay matching funds in the amount of \$350,000. A copy of the grant application is attached.
6. The high ground portion of the property previously contained multiple commercial buildings including parking areas and driveways which have been demolished and the area graded. An old boat ramp and a concrete pier remain on the site and can be seen in the attached site photographs. The existing old boat ramp originates on high ground and extends below normal water level on the site. The nearshore bottom is littered with miscellaneous debris of concrete rubble, old pilings, bottles, etc. Historical photographs indicate the area was used previously for water dependent and recreational uses.

7. Water depths in the area range from -1.0' MWL near shore to -4.5' MWL near the end of the proposed dredging limits, according to the survey submitted with the CAMA permit application and which is attached.
8. In the summer of 2013, the City of Jacksonville applied for a CAMA Major Permit requesting to construct a public boating access area with associated driveways, parking areas, boat ramps, breakwaters, access piers, boardwalk, bulkhead, and to excavate an access channel from the proposed boat ramp to the main channel of the New River, in Onslow County. A copy of the proposed site drawings and DCM's field report describing the project are attached. The application was accepted as a complete major permit application by the Division of Coastal Management on August 16, 2013.
9. The WRC is acting as the City's authorized agent for the CAMA Permit Application for the BAA project.
10. The proposed development would take place in the Coastal Wetlands, Estuarine Waters, Public Trust Areas, and Coastal Shoreline Areas of Environmental Concern (AECs) as described in 15A NCAC 7H .0205, 0206, .0207, and .0208, respectively.
11. The proposed dredging, boat tramps, breakwaters and access piers would be located within an area designated as a PNA by the N.C. Marine Fisheries Commission and is closed to the harvest of shellfish. The waters of the New River at this site are classified as SB-HWQ (high quality waters)-NSW(nutrient-sensitive waters) by the N. C. Environmental Management Commission.
12. The proposed project consists of new dredging in a PNA (64' wide by 130' long), resulting in the loss of 8,320 square feet of PNA habitat. This proposal reduced the total dredging proposed compared to the initial plans proposed and discussed at a pre-application scoping meeting, based on comments from DCM, DMF and the Army Corps of Engineers (Corps).
13. According to the WRC, the only public water access to the New River within the City limits of Jacksonville is located on the eastern shore of the river directly across from the proposed project between US 17/Marine Boulevard and Old Bridge Street. Also according to the WRC, the small boat ramp across from the proposed Boating Access Area is undersized with only 10 trailer parking spaces. The proposal would create 69 spaces for vehicles with trailers and 28 spaces for individual cars.
14. Once the BAA is completed, the small boat ramp which is located across the river from the Site will be removed.

15. As part of the CAMA major permit process, this application was reviewed by state and federal resource agencies.
16. The WRC supported the project because of its public recreational use. A copy of their comments is attached.
17. The Corps and National Marine Fisheries Service (NMFS) commented on this project. The Corps recommended that the application be denied based on the potential to adversely affect shallow water habitats in the project area that are designated Essential Fish Habitat (EFH) for penaeid shrimp and gray snapper and Habitat Area of Particular Concern (HAPC). The NMFS recommended against the boat ramp because dredging within a HAPC would be necessary for boats to access the proposed ramps and because there is already a public boat ramp directly across the river. A copy of their comments is attached.
18. During internal review, DCM Staff found the project to be inconsistent with the Coastal Resources Commission's rule prohibiting new navigation channel dredging in PNAs and noted that the excavation will result in the dredging of approximately 8,320 square feet of PNA habitat area. A copy of those comments is attached.
19. Also during its internal review of the project's impacts on fisheries resources, DCM Staff determined that the project as proposed would likely result in significant adverse impacts to fisheries resources and would require denial based on 113A-120(a)(8). This project also proposed new dredging in a PNA which is prohibited by the Commission at 15A NCAC 07H .0208(b)(1). Staff also commented that if granted, that to minimize impacts to the PNA, any in-water work be done outside the moratorium period of April 1 to September 30.
20. Also as a part of the CAMA major permit process, notice of this application was advertised in the local paper and posted on site. No comments from the public or neighbors were received by DCM Staff.
21. The applicant has applied for and was approved for a Redevelopment Exclusion for stormwater from DEMLR. The DWR has not issued a 401 certificate for the proposal and the permit process is on hold at this time.
22. On November 8, 2013, DCM denied Petitioner's application for a CAMA major Permit due to the determination that the proposed project dredging footprint consisted of new dredging in a PNA and would likely result in significant adverse impacts to the PNA. A copy of the denial letter is attached.

23. On November 15, 2013, Petitioner filed this variance request with the Commission seeking a variance from the Commission's prohibition of dredging a navigational channel in a Primary Nursery Area per 15A NCAC 07H .0208(b)(1) and (a)(8).

24. As a condition of the variance, the City, in cooperation with the WRC, DCM and DMF, has agreed to install an educational kiosk on the site informing and educating the boating public about the value of Primary Nursery Areas and the potential for impacts to PNAs from boating. Also, the City and the WRC in cooperation with DCM and DMF will explore alternative stabilization measures (i.e. living shorelines, marsh sills, etc.) at the location of the small boat ramp once it is removed. Finally, the WRC has agreed to install channel markers, to clearly designate the navigational channel which should help minimize adverse impacts to the PNA bottom at this Site.

PETITIONER'S AND STAFF'S POSITIONS

ATTACHMENT C

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

Petitioner's Position: Yes.

The only access to the New River in the City of Jacksonville is located directly across from the proposed Jacksonville BAA site on the east side of the river. The closest public ramp is located approximately 19 miles downstream from Jacksonville in Sneads Ferry. Currently, there are no public ramps upstream of the site on the New River.

The current public access boat ramp offers limited trailer spaces (10) and shared/limited vehicle parking with the adjacent courthouse. With the growth of Jacksonville, this boat ramp is not adequate to serve the sportsmen using the New River. Currently, the NC Wildlife Resource Commission receives numerous complaints about the lack of parking at this site.

As a result, the proposed location for the Jacksonville BAA was selected, in part, due to its close proximity to the existing boat ramp. Although dredging was not necessary when this boat ramp was constructed, it is our intention of closing this public access upon completion of the new Jacksonville BAA. This could allow for other habitats in the Primary Nursery Area (PNA) and other shallow-water habitats to thrive.

In reviewing other boat ramps to include Wilmington, Morehead City and Emerald Isle, Jacksonville's existing boat ramp is significantly undersized. These public boating access sites offer an average of 40 trailer parking spaces per site and as well as additional vehicle parking. In addition, these waterfront communities have multiple places to access a public waterway in each community. Whereas, Jacksonville has one public boating access point.

The proposed BAA would significantly increase the amount of parking (69 trailer parking spaces and 60 single vehicle spaces) which will provide more opportunities for the public to access the New River.

By comparison, the existing ramp in Jacksonville does not meet the demands of the public for access to the New River. It is the policy of the State to promote public water access. In response to this policy, the City of Jacksonville, Onslow County and the NC Division of Wildlife Resources Commission entered into a three party agreement dated May 3, 2012 to construct the Jacksonville BAA. However, if this variance is not granted, then the proposed boat ramp and project could not be constructed.

Staff's Position: Yes.

Staff agrees that the strict application of the Commission's rule prohibiting new dredging in a PNA causes Petitioner unnecessary hardships.

Boating on the public trust waters in the coastal area, like the New River, was recognized by the legislature in its stated findings of the legislature in creating the Coastal Area Management Act (CAMA), and one of the stated goals of the CAMA is to establish policies, guidelines and standards for ...recreation and tourist facilities and parklands. See N.C.G.S. § 113A-102(b). The Commission's rules for the Estuarine and Ocean System (15A NCAC 07H .0200 et seq.) recognize the need to balance protecting the natural resources with existing common law and statutory rights to access the public trust waters for uses such as boating, recreation and fishing. This site has historically been used for boating access to the New River-both at the old ramp on the Site and currently at the small boat ramp across the river. While there has not been authorization for formal dredging at this site, historic use by boats has likely had some effect on the PNA resources in this area already. The construction of the proposed BAA at the Site will in large part, simply shift PNA impacts from the existing small boat ramp to the Site, and there may be some opportunity for the PNA resources by the existing small boat ramp to recover once that ramp is removed.

In the spirit of the Commission's rules which work to balance impacts with traditional use rights, Petitioner and its agent have worked with the resource agencies to limit the proposed dredging at the Site while providing the much needed accessibility for more of the public to be able to access, recreate, boat and fish in the New River. Strict application of the Commission's rule prohibiting new dredging in a PNA would cause Petitioner unnecessary hardships in that the proposed BAA and its significant increase in capacity for the boating public could not be authorized without a variance.

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 proposed Jacksonville BAA has approximately 350 feet of river frontage along the west bank of the New River. This parcel is bounded on both water front sides by bridges – The Buddy Phillips Bridge (S. Marine Blvd/U.S. 17 Business) and the Popkin Bridge (Old Bridge St). Therefore, the City is unable to acquire additional land to move the proposed boat ramp out of the PNA area. Furthermore, the entire portion of the New River within the City of Jacksonville is classified as PNA (both inland and coastal). The Buddy Phillips Bridge serves as the physical landmark separating the inland and coastal PNA. Jacksonville BAA is proposed to be constructed within approximately 100 feet of this bridge within the inland PNA.

The current state of parking at the existing ramp cannot be remedied because there is no room for expansion. Additional parking cannot be added to provide adequate access to the New River due to physical constraints of existing businesses and roads as well as the demand for parking at the adjacent courthouse.

Staff's Position: Yes.

Staff concludes that in this instance the hardship does result from conditions peculiar to Petitioner's site, specifically its location. There is no riverfront property within the city of Jacksonville outside the PNA area. Consequently, relocation of the proposed public BAA outside the PNA is not a viable option. The situation cannot be remedied by expanding the existing boat ramp - on the east side of the river across from the proposed BAA - because existing buildings, including the Onslow County courthouse, bound the area and the need for public parking is at a premium. Finally, this Site and the area across the river have historically been used for boating access, and while no formal dredging has been authorized, this site has existing impacts to the PNA from boats, and there are benefits to keeping boating access in an area with historic use and existing impacts instead of trying to move the impacts to a more pristine area with no existing use or impacts.

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

Petitioner's Position: No.

No, the hardships are not a result from action taken the petitioner. The physical constraints present at the current boat ramp; the need for additional parking on court days; and the demand for access to the New River is out of the petitioner's control.

Likewise, the petitioner is not at fault for the designation of the entire river as PNA within its jurisdiction. This is a natural occurrence outside of the petitioner's control.

Staff's Position: No.

While this section of the New River was designated as a PNA by the Marine Fisheries Commission long before the City of Jacksonville obtained deeds to the site in 2012, this Site has been used historically for boating access to the New River, both at the small boat ramp across from the Site and on the old ramp existing on Site now. While DCM staff is mindful of the concerns raised in-house during review and also by representatives of other state and federal agencies about the amount of dredging proposed for channel excavation, staff believes that the Jacksonville BAA meets the public water access goals of the Commission. Additionally, DCM agrees with the choice of redeveloping this Site with an existing boat ramp and closing the existing small boat ramp across the river upon completion of this project—essentially keeping and shifting PNA impacts in an area historically affected. In addition, in response to the concerns raised by DCM staff and other state and federal agencies during the pre-application process and concerning the amount of dredging, Petitioner reduced the amount of dredging proposed. This reduction in dredging impacts was part of the balance the CAMA tries to achieve between resource impacts and public access to public trust waters.

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

Petitioner's Position: Yes.

It is the petitioner's belief that a variance to construct the proposed Jacksonville BAA meets the public water access goals of the Coastal Area Management Act and the State of North Carolina.

15A NCAC 07H.0208(a)(3) states "When the proposed development is in conflict with the general or specific use standards...the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act...":

- "Public benefit outweighs the long range adverse effects of the project" – With the construction of the Jacksonville BAA, it would provide a larger parking area as well as a safer means of access to the New River.
- "No reasonable alternate site available for project" – Selecting an alternate site along the New River is not an option since the entire New River is designated as a PNA. Therefore, selecting another location would yield the same request for a variance.
- "All reasonable means and measures to mitigate the adverse impacts of the project have been incorporated in the design and implementation"- The original design showed a much larger proposed dredging area. Based on comments received from a scoping meeting with NCWRC, DCM, DMF, USACE, and DWR, the proposed dredging was reduced significantly.

15A NCAC 07H.0208(1)(b), which states that "Navigation channels, canals, and boat basins shall be aligned or located as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands." There is an existing navigation channel currently being used within the existing PNA. The construction of a new boat ramp across the river from the existing ramp will have no impact on the existing channel. Furthermore, it is the petitioner's intent to close the existing boat ramp once Jacksonville BAA has been constructed.

The public safety and welfare will be protected with the construction of the Jacksonville BAA. The additional parking will allow for safer ingress/egress of those desiring to utilize the boat ramp as well as those visiting the site. The community's welfare will be further enhanced by allow a larger number of people to obtain access to the New River and encourage economic growth since these boaters and visitors will remain in Jacksonville rather than visiting outlying communities.

Although the construction of the Jacksonville BAA is expected to impact the aquatic environment, the project does preserve the substantial justice of the rules and regulations of CAMA. This project might impact the PNA initially; however, upon its completion and the abandonment of the existing boat ramp, the aquatic life will prosper again.

Staff's Position: Yes.

Staff agrees that granting the requested variance would be consistent with the spirit, purpose and intent of the Commission's rules, specifically the Commission's rule prohibiting new dredging in a PNA. This Site has historically been used for boating access to the New River, as has the site currently used across the river. Accordingly, there have long been impacts from boating to this area, even though this area is not maintenance dredging which would be allowed within in PNA under the Commission's rules. In addition to this historic use, the Petitioner has agreed to place an educational kiosk on Site which will help educate the boating public about the importance of PNAs and how boats can impact shallow bottom PNAs. Additionally, the proposed dredging of a specific ramp area and connection to the existing navigation channel and the proposed marking of the navigation channel will hopefully direct boating traffic to the ramp and channel area, helping to reduce further impacts to the PNA in the area adjacent to the ramp and channel. Finally, the Petitioner will explore the option of alternative stabilization measures in the area of the small ramp across the river which can be more beneficial to PNA habitats and fisheries resources. Staff believes the combination of confining impacts to this historically used site, within the clearly marked navigation channel, the replacement of a hardened existing ramp possibly with a living shoreline and an educational kiosk meet the spirit of the Commission's rule prohibiting new dredging in a PNA. Finally, the proposed BAA also meets the goals of the CAMA which seek to protect rights to access, recreate, fish and boat in the public trust waters of the coastal area, specifically the New River.

Staff also agrees that granting the requested variance would secure the public safety and welfare, and preserve substantial justice. The proposed BAA facility is designed to increase capacity with better-designed facilities for the boating public and will enhance the community economically. Additionally, the newly marked navigation channel will encourage boaters to limit their impacts to the ramp and channel area and not further disturb the adjacent PNA habitat. Substantial Justice is preserved by preserving this area's long-standing use as boating access.

ATTACHMENT D:
PETITIONER'S VARIANCE PETITION



CAMA VARIANCE REQUEST FORM

**DCM FORM 11
DCM FILE No.:**

13-06

PETITIONER'S NAME CITY OF JACKSONVILLE

COUNTY WHERE THE DEVELOPMENT IS PROPOSED ONslow

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

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

- 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.

Ronald F. Massey
Signature of Petitioner or Attorney

11/15/13
Date

RONALD F. MASSEY, DEPUTY CITY MGR
Printed Name of Petitioner or Attorney

RMASSEY@JACKSONVILLE.NC.GOV
Email address of Petitioner or Attorney

PO BOX 128
Mailing Address

(910) 938-6559
Telephone Number of Petitioner or Attorney

JACKSONVILLE
City

NC
State

28541-0128
Zip

(910) 938-6513
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



North Carolina Wildlife Resources Commission

Gordon Myers, Executive Director

November 13, 2013

Braxton C. Davis
N.C. Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557-3421

Re: Jacksonville Boating Access Area – CAMA Variance Request
Onslow County

Mr. Davis,

This letter is in response to the denial of the CAMA Major Permit application for the Jacksonville Boating Access Area (BAA) project in the City of Jacksonville in Onslow County dated November 8, 2013. The City of Jacksonville is the petitioner for this variance request. However, the NC Wildlife Resources Commission is acting as the City's authorized agent for this project. The permit application has been denied due to the proposed dredging in a primary nursery area. In addition to this letter, please find the information listed below and attached as requested on the CAMA Variance Request Form.

- The name and location of the development as identified on the permit application
The project name is Jacksonville Boating Access Area, and the site is located at 135 South Marine Boulevard, in Jacksonville, in Onslow County. The coordinates of the site are latitude 34°45'08.535"N, longitude 77°26'07.210"W.
- A copy of the permit decision for the development in question
See Attachment A
- A copy of the deed to the property on which the proposed development would be located
See Attachment B
A recombination plat has also been included.
- A complete description of the proposed development including a site plan
See Attachment C
The project narrative along with the applicable plan sheets are attached.
- A stipulation that the proposed development is inconsistent with the rule at issue
See Attachment D
- Proof that notice was sent to adjacent owners and objectors, as required by 15A NCAC 07J .0701(c)(7)
See Attachment E
NCDOT is the only adjacent owner (US-17/Marine Boulevard to the north and Old Bridge Street to the south).
- Proof that a variance was sought from the local government per 15A NCAC 07J .0701(a), if applicable
See Attachment F
A variance was not required and not sought through the City of Jacksonville. The approval letter for the project from the City is attached.

Mailing Address: N.C. Wildlife Resources Commission • 1720 Mail Service Center • Raleigh NC 27699-1720

Telephone: (919) 707-0150

- Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria
See Attachment G
- A draft set of proposed stipulated facts and stipulated exhibits
See Attachment H
- The completed, signed, and dated Variance Request Form
The Variance Request Form precedes this letter and the subsequent attachments.

After reviewing this submittal, please let me know if you need any additional information. Once the request is accepted, please let me know when the project will be included on the CRC Meeting Agenda. If you have any questions or comments about this request, please do not hesitate to call me at (919) 707-0376.

Sincerely,
North Carolina Wildlife Resources Commission

A handwritten signature in blue ink, appearing to read "Preston Royster".

Preston Royster, PE
Facilities Construction Engineer

ATTACHMENT A



North Carolina Department of Environment and Natural Resources
Division of Coastal Management
Braxton C. Davis
Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

November 8, 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

City of Jacksonville
815 New Bridge St.
Jacksonville, NC 28540

Dear Sir:

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 construct a public boating access area with associated driveways, parking areas, boat ramps, breakwaters, access piers, boardwalk, bulkhead, and to excavate an access channel from the proposed boat ramp to the main channel of the New River, in Onslow County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Regional Office on August 16, 2013, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The subject property is located adjacent to the New River and is located within a Primary Nursery Area (PNA), as designated by the North Carolina Marine Fisheries Commission.
- 2) The proposed project consists of new dredging in a PNA (64' wide by 130' long), resulting in the loss of 8,320 square feet of PNA habitat.
- 3) During the course of the joint State and Federal application review of the proposed project, Division of Coastal Management staff determined that the proposed dredging footprint would likely result in significant adverse impacts to the PNA.
- 4) During the course of the joint State and Federal application review of the proposed project, the National Marine Fisheries Service recommended against the installation of the boat ramp, because dredging within a Habitat Area of Particular Concern would be necessary for boats to access the ramp and there is a public ramp directly across the river.

- 5) During the course of the joint State and Federal application review of the proposed project, the U.S. Army Corps of Engineers recommended the application be denied based on the potential of the proposed activity to adversely affect shallow-water habitats in the project area that are designated Essential Fish Habitat (EFH) for penaeid shrimp and gray snapper.
- 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)(1), which states that "Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands
 - b) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas

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 before making a final decision on the appeal. 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 wish to discuss further options related to this issue. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, extension 212.

Sincerely,



Braxton C. Davis
Director
Division of Coastal Management

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


ATTACHMENT B

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

Parcel Identification Number: 001452
This is not a certification that this Onslow County Parcel Identification Number matches this deed description.

Jenei Hernandez 5-30-12
Tax Collections Staff Signature Date

This deed presented to
The Onslow Co Tax Office
Date 5/30/12


Doc ID: 009788940003 Type: CRP
Recorded: 05/30/2012 at 03:05:53 PM
Fee Amt: \$496.00 Page 1 of 3
Revenue Tax: \$470.00
Onslow County, NC
Rebecca L. Pollard Reg. of Deeds
BK **3787** pg **21-23**

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax: 470.00

Parcel Identifier No. 001452 Verified by _____ County on the _____ day of _____, 20____
By: _____

Mail/Box to: City of Jacksonville, P.O. Box 128, Jacksonville, NC 28540

This instrument was prepared by: Dotson & Milsted, P.A., 320 New Bridge Street, Jacksonville, NC 28540

Brief description for the Index:

THIS DEED made this 8 day of March, 2012, by and between

GRANTOR	GRANTEE
CARL BEACHAM SR. TRUST 1820 Wilmington Highway Jacksonville, NC 28540	CITY OF JACKSONVILLE Post Office Box 128 Jacksonville, NC 28540

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

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

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

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

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

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

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

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

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

CARL BEACHAM SR TRUST _____ (SEAL)
(Entity Name)

By: [Signature] _____ (SEAL)
CARL J. BEACHAM, JR.
Title: Trustee

By: [Signature] _____ (SEAL)
FRED E. BEACHAM
Title: Trustee

By: [Signature] _____ (SEAL)
MONTE STEVEN BEACHAM
Title: Trustee

SEAL-STAMP State of North Carolina - County of Onslow

I, the undersigned Notary Public of the County and State aforesaid, certify that CARL J. BEACHAM, JR., FRED E. BEACHAM and MONTE STEVEN BEACHAM personally came before me this day and acknowledged that they are the Trustees of Carl Beach Sr. Trust, and that by authority duly given and as the act of such entity, they signed the foregoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal, this 8th day of March, 2012.

My Commission Expires: 8.1.14

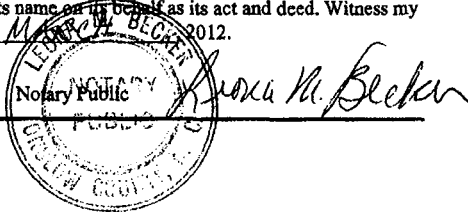


EXHIBIT "A"

Being all of Tract V as shown on Map entitled "Boundary Survey Showing Individual Tracts" prepared for the City of Jacksonville by John L. Pierce & Associates, P.A., dated April 23, 2012, and recorded in Map Book 64, Page 102, Cabinet N, in the Office of the Onslow County Register of Deeds and being identified as Onslow County Tax Parcels 001452 (341 E-6).

No Fee

BOOK 1594 PAGE 812

THIS DOCUMENT PRESENTED TO
THE ONSLOW COUNTY TAX OFFICE
DATE 12-8-99 CLERK *[Signature]*

12/08/1999

ONSLOW COUNTY

12/08/1999

\$570.00



Real Estate
Excise Tax

Excise Tax

H 570.00

Recording Time, Book and Page

Tax Lot No: _____ Parcel Identifier No: _____

Verified By: _____ County on the _____ day of _____, 19____
by _____

Mail after recording to: _____

This instrument prepared by THOMAS J. DIMMOCK, ATTORNEY AT LAW, P.O. Box 17665, Raleigh, N.C.

Brief Description for Index: *Ranger*

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this the 29 day of November, 1999, by and between:

GRANTOR

RUTH E. FAIRES (Widow); and
The NORTH CAROLINA BAPTIST
FOUNDATION, INC. as Trustee of
Direct Gifts for Peace Baptist Church
of Fayetteville, N.C. and as Trustee
of the Charitable Unitrust dated
May 5, 1994

GRANTEE

ONSLOW COUNTY
A Body Politic

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

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

BEING all of that 2.43 parcel of land shown on the Boundary Survey for "Onslow County New River Waterfront Park West, Individual lot as per DB 1182, Page 425, Onslow County Registry, Jacksonville Township, Onslow County, North Carolina" as prepared by Charles A. Rawls & Associates, dated 12/22/98 and revised 10/28/99 and recorded on 11/12/99 in Map Book 38, Page 181, Slide K-407, Onslow County Registry.

The property hereinabove described was acquired by Grantor by instrument recorded in _____
Book 1182, Page 422, Onslow County Registry

A map showing the above described property is recorded in Map Book 38, Page 181, Slide K-407

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:

Subject to all easements, restrictions, encumbrances, taxes, and other matters of record.

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

NORTH CAROLINA BAPTIST FOUNDATION, INC.
(Corporate Name)

Ruth E. Faies (SEAL)
RUTH E. FAIRES

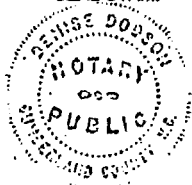
BY: Clifford W. Powell

_____ (SEAL)

ATTEST: M. Clay Wirt

_____ (SEAL)

SEAL-STAMP



NORTH CAROLINA Cumberland COUNTY

I, a Notary Public of the County and State aforesaid, certify that RUTH E. FAIRES Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the 1 day of December 1999.

My commission expires 10/29/2002 Denise Dodson Notary Public

SEAL-STAMP



NORTH CAROLINA Wake COUNTY

I, a Notary Public for the County and State aforesaid, certify that M. Clay Wirt personally came before me this day and acknowledged that he is Secretary of the NORTH CAROLINA BAPTIST FOUNDATION, INC., a North Carolina Corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Treasurer him as its Secretary. Witness my hand and official stamp or seal, this the 29 day of November, 1999.

My commission expires 10/11/2002 Dolly B. Pierce Notary Public

The foregoing Certificate(s) of DOLLY B. PIERCE & DENISE DODSON

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

Michael M. Thomas REGISTER OF DEEDS FOR ONSLOW COUNTY

BY: _____ Deputy/Assistant-Register of Deeds

ATTACHMENT C

Project Narrative

Project Information:
Jacksonville Boating Access Area
Onslow County

Date: 8/1/2013

Engineer:
Preston Royster, PE
North Carolina Wildlife Resources Commission
1718 NC Hwy 56 W
Creedmoor, NC 27522

Project Summary:

The Jacksonville Boating Access Area project is located between US-17 (Marine Blvd) and Old Bridge St on the west side of the New River in Jacksonville, NC. The existing property currently consists of two parcels owned by the City of Jacksonville (previously six separate parcels recombined into one) and Onslow County. The site recently was occupied by multiple old commercial buildings and a combination of gravel, asphalt, and concrete parking. The City of Jacksonville has recently demolished all of the existing buildings and parking on the site.

This project involves the construction of a new NCWRC boating access area. The BAA will consist of three single lane launch ramps, two floating docks, and a canoe/kayak launch area. Uphill from the ramps, we are going to install parking lots for 69 boat trailers and 60 single vehicles and the associated drive aisles. We are also planning to construct a restroom building, and the City is planning to construct a Welcome Center. We are also planning to permit a boardwalk and fishing pier, however this may be constructed at a later date due to floodplain permitting issues. The New River adjacent to the project is classified as SB; HQW, NSW. Permeable concrete is planned to be installed on the site to offset the additional impervious area proposed.

Impervious Surface Calculations:

The total site area above the normal water elevation is approximately 5.13 ac (224,640 sf). Prior to the demolition conducted by the City of Jacksonville, there was 118,113 sf (52.58%) of impervious surface on the site. All of the impervious surface existed on the site for many years based on aerial photos. Following development of the site, we are proposing to install 143,295 sf of impervious surface. In order to offset the additional impervious and fall under the redevelopment exemption, we are planning to install pervious pavement. We are proposing to install 34,149 sf of permeable pavement. Based on DWQ's rules, this results in a net impervious area of 117,683 sf, which is less than the existing amount.

Dredging:

Dredging will be required for this project in order to have adequate depth at the end of the ramps for launching and recovering boats and to provide a navigable channel out to deep water. We are proposing to dredge a total of 428 cy below normal water in order to meet these criteria.

Grading:

The total amount of earthwork for this project will be approximately 6,000 cubic yards. This includes rough and fine grading, preparing the subgrade of the drive aisles and parking lots, and importing fill that will be needed to bring the site up to the proposed grades and provide positive drainage. Spoil from the proposed dredging will either be used on site (if suitable) or hauled to an offsite spoil area. We are planning to use the Onslow County Landfill unless another site is found prior to the start of construction. If another site is found, we will inform DCM and submit the necessary information to obtain approval to use the site. The total disturbed area of this project is approximately 255,000 sf (5.85 acres).

Upland Excavation and Earthwork:

The upland excavation is to reach the proposed subgrade for the drive aisles, parking lot, and permeable concrete parking pavement structure. Additional excavation may be required due to unsuitable soils. However, this will not be known until construction begins. Approximately 1,100 cubic yards will need to be excavated. This soil will be used elsewhere on the site. In addition, off-site soil will need to be transported to the site to bring it up to the proposed grades and to provide positive drainage.

Existing Stormwater Conditions:

The existing site has no existing stormwater controls. The runoff currently enters storm drain networks that drain to existing pipe outfalls in the southeast corner of the site and on the north side of Marine Blvd. A portion of the site (the eastern half) sheet flows into the New River. There is an existing dry detention basin constructed by NCDOT within the public right-of-way in the southeast corner of the site. This was permitted and constructed as part of the US-17/Marine Blvd bridge replacement and widening project.

Proposed Stormwater Conditions:

The proposed project includes the construction of additional stormwater piping and permeable concrete pavement to offset the additional impervious surface proposed. The proposed pipe network will tie to the existing pipes on the site. They will discharge at the

existing outfall locations. Therefore, no new concentrated discharge points or pipe outlets are proposed as part of this project. A small portion of the proposed parking lot will drain into NCDOT's dry detention basin. NCDOT has been contacted about this, and they have no objections to this.

There is a large amount of impervious surface existing on the site. As such, we are proposing to install permeable concrete to reduce the amount of built upon area on the site to an amount lower than the amount that is currently on the site. In addition, sheet flow will be maintained on the eastern side of the site.

Ramps/Docks:

The proposed project includes the construction of three – single lane launch ramps. Each lane will be 15' wide, for a total of 45'. There will be 8'x100' floating docks between each ramp. A 6' wide boardwalk is proposed along the shoreline of the New River along the entire frontage of the site. In addition, a fishing pier that extends into the New River is proposed. The pier will be accessed by a 6' wide boardwalk, and the platform itself will be 8'x50'. As this pier extends into New River, reflectors will be installed for the safety of night time boat traffic.

Wetlands:

The CAMA/Coastal Wetlands and 404 wetlands were delineated by DCM staff and Corps of Engineers staff on July 28, 2010. There are minimal CAMA wetlands on the site, and they will be minimally impacted as a result of this project. The project also has a minor impact on the 404 wetlands. In order to install the ramps, the drive aisle, and remove an existing concrete slab, 3,869 sf of 404 wetlands will be filled.

ATTACHMENT D

Stipulation that the Proposed Development is Inconsistent with the Rule at Issue

The Jacksonville BAA project is inconsistent with Rule 15A NCAC 07H .0208(b)(1), which states that “Navigation channels, canals, and boat basins shall aligned or located so as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands.” In order to provide public water access to the New River, a dredged channel must be installed. The entire frontage of the project area and parcel along the New River is bounded by PNA. So, the project cannot be redesigned to eliminate disturbance in the PNA. The denial of the CAMA Major Permit application will not allow dredging or construction of a boat ramp to occur. A variance, and the subsequent approval of the permit, would allow the ramp to be constructed.

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
 - (B) Development shall comply with state and federal water and air quality
 - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural resources;
 - (D) Development shall not increase siltation;
 - (E) Development shall not create stagnant water bodies;
 - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
 - (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
 - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and
- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
- (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
 - (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
 - (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
 - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;
 - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
 - (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
 - (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
 - (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.
- This Part does not affect restrictions placed on permits issued after March 1, 1991.
- (2) Hydraulic Dredging
- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
 - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the rules in this Subchapter except as provided in Part (G) of this Subparagraph;

ATTACHMENT E



☒ North Carolina Wildlife Resources Commission ☒

Gordon Myers, Executive Director

July 30, 2013

CERTIFIED RETURN
RECEIPT REQUESTED

Robert Vause, PE
NCDOT District Engineer
295-A Wilmington Highway
Jacksonville, NC 28540

Mr. Vause,

The North Carolina Wildlife Resources Commission is preparing to file for a CAMA Major Permit for the development of a boating access area that includes a welcome center, restroom building, boat ramp, docks, and associated parking and infrastructure between US-17 (Marine Blvd) and old Bridge Street. Our records show that NCDOT owns the adjacent property on both the north (Marine Blvd right-of-way) and south side of the property. Under the provisions of General Statute 113-229, we are providing you with a copy of the drawings that illustrate the proposed development. The enclosed form may be used if you desire to provide comments.

Sincerely,
North Carolina Wildlife Resources Commission

Preston Royster, PE
Facilities Construction Engineer

SS
enclosures

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.

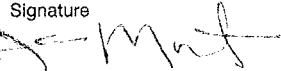
1. Article Addressed to:

ROBERT VAUSE
 NCDOT DISTRICT ENGINEER
 295-A WILMINGTON HIGHWAY
 JACKSONVILLE, NC 28540

2. Article Number
(Transfer from service label)**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X


 Agent Addressee

B. Received by (Printed Name)

Jan Martin

C. Date of Delivery

8-2-13

D. Is delivery address different from item 1? YesIf 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

ATTACHMENT F

City of Jacksonville



Development Services Department Planning Division

July 1, 2013

N.C. Wildlife Resources Commission
Division of Engineering and Land Management
C/O Preston Royster, PE
Facilities Construction Engineer
1718 NC Hwy 56 W
Creedmoor, NC 27522

Re: Jacksonville Boating Access Area – Type 1 Site Plan – 135 S. Marine Blvd.

Dear Mr. Royster:

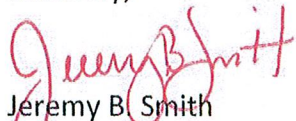
On June 28, 2013 the site plan for Jacksonville Boating Access Area was approved by the City of Jacksonville City Council. The location of the proposed project is at 135 S. Marine Blvd.

Approval is conditioned upon the facilities and infrastructure being constructed in accordance with the approved site plan. Any deviation from this site plan, without an approved modification, shall render the plan void and of no effect. No further permits for construction or Certificate of Occupancy will be issued and existing permits may be suspended or revoked by the Zoning/Codes Administrator.

This site plan approval will expire two years from the date of approval unless otherwise specified by Section 11.2 of the City of Jacksonville Zoning Ordinance or NC General Statutes. All improvements must be completed per the approved site plan prior to having a Certificate of Occupancy issued for any new construction.

Be advised you or a representative must pick up a set of the signed plans prior to any permits being released. One set of the plans may be obtained at the Building Inspections Office Monday through Friday between 8:00 A.M. and 5:00 P.M. If I can provide any additional information, please contact me at (910) 938-5394.

Sincerely,


Jeremy B. Smith
Senior Planner

Post Office Box 128 ♦ Jacksonville, North Carolina 28541 ♦ (910) 938-5236 TDD# (910) 455-8852 ♦ Fax (910) 938-5031

ATTACHMENT G

Reasons and Arguments about why the Petitioner meets the Four Variance Criteria

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

The only access to the New River in the City of Jacksonville is located directly across from the proposed Jacksonville BAA site on the east side of the river. The parking lot is undersized with only has 10 trailer parking spaces. The closest public ramp is located approximately 19 miles downstream from Jacksonville in Sneads Ferry. Currently, there are no public ramps upstream of the site on the New River. The current amount of parking (10 trailer spaces) is not adequate to serve the sportsmen using the New River. To further complicate matters, the current ramp parking lot serves as an overflow lot on days when the adjacent courthouse is in session. Currently, the NC Wildlife Resource Commission receives numerous complaints about the lack of parking at this lot.

Areas of the state that are similar in size to Jacksonville include Wilmington, Morehead City, and Emerald Isle. Wilmington has one boat ramp, Castle Street, on the Cape Fear River near its downtown area. This site has 36 trailer parking spaces and 8 single vehicle parking spaces. In addition to this site, there are four more public ramps (Castle Hayne, Wrightsville Beach, Trails End, and Snows Cut) within a 12 mile radius that range in size from 40-85 trailer parking spaces. Morehead City has one public ramp, Morehead City, located within its jurisdiction. This ramp contains 44 trailer parking spaces. In addition to this ramp, there are four more public ramps (Newport, West Beaufort, Beaufort, and Straits Landing) within a 10 mile radius that range in size from 9-48 trailer parking spaces. Last, a new ramp was just constructed in Emerald Isle in 2011 that contains 112 trailer parking spaces. In addition to this ramp, there are two more public ramps (Cedar Point and Shell Rock Landing) within 9 miles that contain 37 and 25 trailer spaces. By comparison, the existing ramp in Jacksonville does not have adequate parking capacity to meet the demands of the public for access to the New River.

The proposed BAA will greatly increase the amount of parking (69 trailer parking spaces and 60 single vehicle spaces) which will provide more opportunities for the public to access the New River. It is the policy of the State to promote public water access. Strictly enforcing this rule will not allow the proposed boat ramp to be constructed.

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

The current state of parking at the existing ramp cannot be remedied because there is no room for expansion. Additional parking cannot be added to provide adequate access to the New River due to physical constraints as well as the demand for parking at the adjacent courthouse. The entire portion of the New River within the City of Jacksonville is classified as PNA (both inland and coastal). As such, there are no opportunities to install a boat ramp if the rules are strictly enforced and a variance is not granted.

3. Do the hardships result from actions taken by the petitioner? Explain.

The hardships are a result of the limited space and adjacent uses on the east side of the river next to the existing ramp. These physical constraints and demand for parking on court days is out of the petitioner's control. In addition, the petitioner cannot control demand for access to the New River, and the inadequate size of the existing parking lot. Likewise, the petitioner is not at fault for the designation of the entire river as PNA within its jurisdiction. This is a natural occurrence outside of the petitioner's control.

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? Explain.

By granting a variance and allowing the Jacksonville BAA to be constructed, the public water access goals of the Coastal Area Management Act and the State of North Carolina will be achieved. Both CAMA and the State promote public water access. This project will achieve greater access than what is offered by the existing ramp while creating minimal impacts to the PNA. So, there is increased public benefit if a variance is granted. In addition, the existing ramp on the east side of the river will be closed following completion of the new ramp. So, this area will be allowed to naturalize.

ATTACHMENT H

Draft Set of Proposed Stipulated Facts and Stipulated Exhibits

1. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
 - a. *Rule 15A NCAC 07H.0208 (b)(1) states that boat basins shall be located so as to avoid Primary Nursery Areas (see attached Rule).*
 - b. *Both shorelines of the New River are bounded by Primary Nursery Area north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W (Rule 15A NCAC 03R.0103 (13)(c)(xv)) as shown on the attached Map 19 from the Division of Marine Fisheries website, Fishery Nursery Areas.*
 - c. *The only public water access within the City Limits of Jacksonville is located on the eastern shore of the river directly across from the proposed project between US-17/Marine Boulevard and Old Bridge Street.*
 - d. *No new boat ramps can be constructed in this area if the rule is strictly applied.*
 - e. *Boat ramp comparison information is based on North Carolina Wildlife Resources Commission boating access area database information and Google Earth distances and parking counts.*

2. Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
 - a. *The entire shoreline of the proposed Jacksonville BAA site is Primary Nursery Area.*
 - b. *No ramp can be installed on this property if the rule is strictly applied.*

3. Do the hardships result from actions taken by the petitioner? Explain.
 - a. *The property's entire shoreline is Primary Nursery Area, which is a natural occurrence. This is shown on the attached Map 19 from the Division of Marine Fisheries website, Fishery Nursery Areas.*

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? Explain.
 - a. *More and more waterfront property is being acquired by private interests resulting in fewer opportunities for the public to access our public trust waters. More public water access is needed by the citizens and residents of the State. This is supported by the Coastal Area Management Act (Article 7, Part 6, §113A-134.3), which is attached.*
 - b. *One of the goals of the Coastal Area Management Act is to increase the number of public water accesses in the State (CAMA Article 7, Part 1, §113A-102 (a) and Article 7, Part 6, §133A-134.3). This project would serve that purpose.*
 - c. *If the Variance is granted, the proposed ramp would increase parking to allow more access because the existing ramp has limited parking (10 spaces). The attached aerial images show the small size of the existing parking lot and the limited space for expansion.*
 - d. *Rule 15A NCAC 07H.0208 (a)(3) (see attached), General Use Standards, states that the CRC may approve the development if the applicant can demonstrate that the activity associated with the project will have public benefits that will clearly outweigh the long range adverse effects of the project.*

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

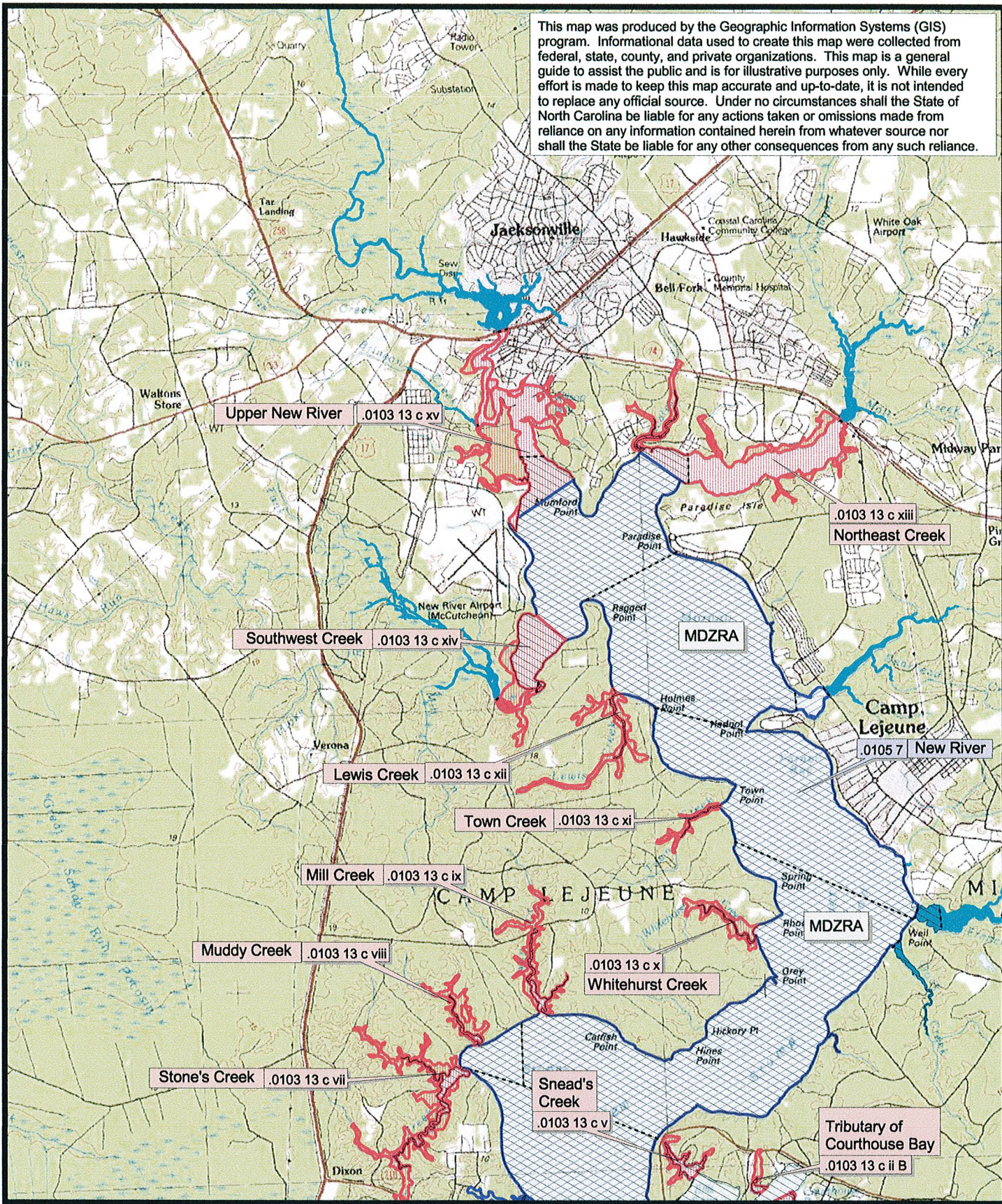
- (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
- (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
 - (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
 - (B) Development shall comply with state and federal water and air quality
 - (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural resources;
 - (D) Development shall not increase siltation;
 - (E) Development shall not create stagnant water bodies;
 - (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
 - (G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.
- (3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
 - (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
 - (B) restore the affected environment; or
 - (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and
- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

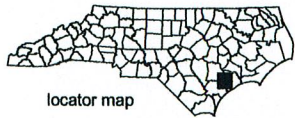
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
 - (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
 - (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
 - (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
 - (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
 - (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;
 - (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
 - (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
 - (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
 - (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
 - (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
 - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
 - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
 - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

This Part does not affect restrictions placed on permits issued after March 1, 1991.
- (2) Hydraulic Dredging
 - (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
 - (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the rules in this Subchapter except as provided in Part (G) of this Subparagraph;

This map was produced by the Geographic Information Systems (GIS) program. Informational data used to create this map were collected from federal, state, county, and private organizations. This map is a general guide to assist the public and is for illustrative purposes only. While every effort is made to keep this map accurate and up-to-date, it is not intended to replace any official source. Under no circumstances shall the State of North Carolina be liable for any actions taken or omissions made from reliance on any information contained herein from whatever source nor shall the State be liable for any other consequences from any such reliance.



Background imagery are U.S. Geological Survey 1:100,000-scale planimetric maps.



- Fishery Nursery Areas**
- Primary
 - Permanent Secondary
 - Special Secondary
 - Military Danger Zones and Restricted Areas
 - Inland waters (WRC jurisdiction)

Fishery Nursery Areas

Map 19

Map Datum: NAD83
 Map Projection: NC State Plane
 Map Date: March 2011

1000 0 1000 2000 Yards

0.7 0 0.7 1.4 Miles



- (x) Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to a point 34° 38.0720' N - 77° 22.6000' W;
- (xi) Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;
- (xii) Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W; running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W;
- (xiii) Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77° 24.1190' W; running southeasterly to the south shore to a point 34° 43.3950' N - 77° 23.5450' W;
- (xiv) Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W; and
- (xv) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W; and
- (d) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of origin;
 - (i) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to the south shore to a point 34° 32.0340' N - 77° 22.7160' W; and
 - (ii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W;
- (14) Stump Sound Area - Stump Sound - all waters north of the IWW from a point on the shoreline 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon "15" 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline 34° 31.0550' N - 77° 22.2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" 34° 28.0820' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals;
- (15) Topsail Sound Area:
 - (a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;
 - (b) Old Topsail Creek - all waters northwest of a line beginning on the northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point 34° 21.4930' N - 77° 40.6900' W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;
 - (c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin; and
 - (d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline 34° 24.0278' N - 77° 36.8498' W; running southerly to a point 34° 24.0167' N - 77° 36.7333' W near Beacon "93"; running southwesterly to a point 34° 23.8167' N - 77° 36.9667' W; running

Division of Coastal Management



CAMA Rules & Policies :: The Coastal Area Management Act

ARTICLE 7.

Coastal Area Management.

Part 1. Organization and Goals.

§ 113A-100. Short title:

This Article shall be known as the Coastal Area Management Act of 1974. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c.932, s. 2.1.)

§ 113A-101. Cooperative State-local program.

This Article establishes a cooperative program of coastal area management between local and State governments. Local government shall have the initiative for planning. State government shall establish areas of environmental concern. With

regard to planning, State government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative.

Enforcement shall be a concurrent State-local responsibility. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-102. Legislative findings and goals.

(a) Findings. -- It is hereby determined and declared as a matter of legislative finding that among North Carolina's most valuable resources are its coastal lands and waters. The coastal area, and in particular the estuaries, are among the most biologically productive regions of this State and of the nation. Coastal and estuarine waters and marshlands provide almost ninety percent (90%) of the most productive sport fisheries on the east coast of the United States. North Carolina's coastal area has an extremely high recreational and esthetic value which should be preserved and enhanced.

In recent years the coastal area has been subjected to increasing pressures which are the result of the often-conflicting needs of a society expanding in industrial development, in population, and in the recreational aspirations of its citizens. Unless these pressures are controlled by coordinated management, the very features of the coast which make it economically, esthetically, and ecologically rich will be destroyed. The General Assembly therefore finds that an immediate and pressing need exists to establish a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment; and private property rights shall be preserved in accord with the Constitution of this State and of the United States.

(b) Goals. -- The goals of the coastal area management system to be created pursuant to this Article are as follows:

- (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. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1.)

§ 113A-103. Definitions.

As used in this Article:

(1) "Advisory Council" means the Coastal Resources Advisory Council created by G.S. 113A-105.

(1a) "Boat" means a vessel or watercraft of any type or size specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water.

(2) "Coastal area" means the counties that (in whole or in part) are adjacent to, adjoining, intersected by or bounded by the Atlantic Ocean (extending offshore to the limits of State jurisdiction, as may be identified by rule of the Commission for purposes of this Article, but in no event less than three geographical miles offshore) or any coastal sound. The Governor, in accordance with the standards set forth in this subdivision and in subdivision (3) of this section, shall designate the counties that constitute the "coastal area," as defined by this section, and his designation shall be final and conclusive. On or before May 1, 1974, the Governor shall file copies of a list of said coastal-area counties with the chairmen of the boards of commissioners of each county in the coastal area, with the mayors of each incorporated city within the coastal area (as so defined) having a population of 2,000 or more and of each incorporated city having a population of less than 2,000 whose corporate boundaries are contiguous with the Atlantic Ocean, and with the Secretary of State. By way of illustration, the counties designated as coastal-area counties under this subdivision as of July 1, 2012, are Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington. The coastal-area counties and cities shall transmit nominations to the Governor of members of the Coastal Resources Commission as provided in G.S. 113A-104(d).

(3) "Coastal sound" means Albemarle, Bogue, Core, Croatan, Currituck, Pamlico and Roanoke Sounds. For purposes

(d) All acquisitions or dispositions of property for lands within this system shall be in accordance with the provisions of Chapter 146 of the General Statutes.

(e) All lands and waters within the system shall be used primarily for research and education. Other public uses, such as hunting, fishing, navigation, and recreation, shall be allowed to the extent consistent with these primary uses. Improvements and alterations to the lands shall be limited to those consistent with these uses. (1989, c. 344, s. 1; c. 727, s. 218(58); 1997- 443, s. 11A.119(a).)

§ 113A-129.3. Coordination.

(a) To the extent feasible, this system shall be carried out in coordination with the National Estuarine Reserve Research System established by 16 U.S.C. § 1461.

(b) To the extent feasible, lands and waters within this system shall be dedicated as components of the "State Nature and Historic Preserve" as provided in Article XIV, Section 5, of the Constitution and as nature reserves pursuant to G.S. 113A-164.1 to G.S. 113A-164.11. (1989, c. 344, s. 1, c. 770, s. 47.)

Part 6. Public Beach and Coastal Waterfront Access Program

§ 113A-134.1. Legislative findings.

(a) The General Assembly finds that there are many privately owned lots or tracts of land in close proximity to the Atlantic Ocean and the coastal waters in North Carolina that have been and will be adversely affected by hazards such as erosion, flooding, and storm damage. The sand dunes on many of these lots provide valuable protective functions for public and private property and serve as an integral part of the beach sand supply system. Placement of permanent substantial structures on these lots will lead to increased risks of loss of life and property, increased public costs, and potential eventual encroachment of structures onto the beach.

(b) The public has traditionally fully enjoyed the State's beaches and coastal waters and public access to and use of the beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State. Public access to beaches and coastal waters in North Carolina is, however, becoming severely limited in some areas. Also, the lack of public parking is increasingly making the use of existing public access difficult or impractical in some areas. The public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities. There is therefore, a pressing need in North Carolina to establish a comprehensive program for the identification, acquisition, improvement, and maintenance of public accessways to the beaches and coastal waters. (1981, c. 925, s. 1; 1983, c. 751, s. 13; 1989, c. 344; s. 2; 1995, c. 183, s. 2.)

§ 113A-134.2. Creation of program; administration; purpose; definitions.

(a) There is created the Public Beach and Coastal Waterfront Access Program, to be administered by the Commission and the Department, for the purpose of acquiring, improving, and maintaining property along the Atlantic Ocean and coastal waterways to which the public has rights-of-access or public trust rights as provided in this Part.

(b) As used in this Part:

(1) "Public trust resources" has the same meaning as in G.S. 113-131(e).

(2) "Public trust rights" has the same meaning as in G.S. 1-45.1. (1981, c. 925, s. 1; 1983, c. 757, s. 13; 1989, c. 344, s. 2; c. 727, s. 136; c. 751, s. 13; 1995, c. 183, s. 3.)

§ 113A-134.3. Standards for public access program.

(a) The Commission, with the support of the Department, shall establish and carry out a program to assure the acquisition, improvement, and maintenance of a system of public access to coastal beaches and public trust waters. This public access program shall include standards to be adopted by the Commission for the acquisition of property and the use and maintenance of the property. The standards shall be written to assure that land acquisition funds shall only be used to purchase interests in property that will be of benefit to the general public. Priority shall be given to acquisition of lands that due to adverse effects of natural hazards, such as past and potential erosion, flooding, and

storm damage, are unsuitable for the placement of permanent structures, including lands for which a permit for improvements has been denied under rules adopted pursuant to State law. The program shall be designed to provide and maintain reasonable public access and necessary parking, within the limitations of the resources available, to all coastal beaches and public trust waters where access is compatible with the natural resources involved and where reasonable access is not available.

(b) To the maximum extent possible, this program shall be coordinated with State and local beach and coastal water management and recreational programs and shall be carried out in cooperation with local governments. Prior to the purchase of any interests in property, the Secretary or his designee shall make a written finding of the public purpose to be served by the acquisition. Once property is purchased, the Department may allow property, without charge, to be controlled and operated by the county or municipality in which the property is located, subject to an agreement requiring that the local government use and maintain the property for its intended public purpose.

(c) Subject to any restrictions imposed by law, any funds appropriated or otherwise made available to the Public Beach and Coastal Waterfront Access Program may be used to meet matching requirements for federal or other funds. The Department shall make every effort to obtain funds from sources other than the General Fund to implement this program. Funds may be used to acquire or develop land for pedestrian access including parking and to make grants to local governments to accomplish the purposes of this Part. All acquisitions or dispositions of property made pursuant to this Part shall be in accordance with the provisions of Chapter 146 of the General Statutes. All grants to local governments pursuant to this Part for land acquisitions shall be made on the condition that the local government agrees to transfer title to any real property acquired with the grant funds to the State if the local government uses the property for a purpose other than beach or coastal waters access. (1981, c. 925, s. 1; 1983, c. 334; c. 757, s. 13; 1987, c. 827, s. 145; 1989, c. 344, s. 2; c. 727, s. 137; c. 751, s. 13; 1995, c. 183, s. 4.)

Last Modified: October 11, 2013

N.C. Division of Coastal Management • 400 Commerce Ave • Morehead City, NC 28557
1-888-4RCOAST • Email Us





I, JOHN L. PIERCE, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 66, PAGE 195 ETC.) (OTHER); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BOOK 66, PAGE 195. THAT THE RATIO OF PRECISION AS CALCULATED IS 1: 10000. THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 42-17.1 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, LICENSE NUMBER 12596 AND SEAL THIS 2 DAY OF July, 2013.

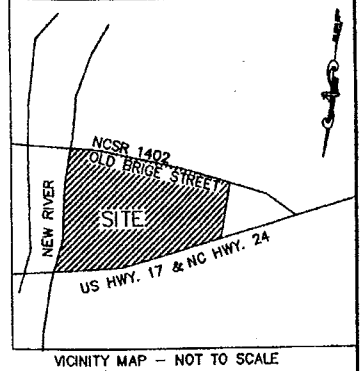
SEAL OF STATE OF NORTH CAROLINA
 SEAL OF STATE OF NORTH CAROLINA
 JOHN L. PIERCE
 SURVEYOR
 LICENSE NUMBER 12596

NORTH CAROLINA, ONSLOW COUNTY
 I, A NOTARY PUBLIC OF THE COUNTY AND STATE AFORESAID, CERTIFY THAT JOHN L. PIERCE, A PROFESSIONAL LAND SURVEYOR, PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE EXECUTION OF THE FOREGOING INSTRUMENT. WITNESS MY HAND AND OFFICIAL STAMP OR SEAL, THIS 2 DAY OF July, 2013.

SEAL OF STATE OF NORTH CAROLINA
 BETTIE TALLOCK
 NOTARY PUBLIC
 MY COMMISSION EXPIRES DECEMBER 28, 2013.

- I, JOHN L. PIERCE, PROFESSIONAL LAND SURVEYOR NO. 2596, CERTIFY TO ONE OR MORE OF THE FOLLOWING AS INDICATED:
- A. THAT THIS PLAT IS OF A SURVEY THAT CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF A COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCELS OF LAND;
 - B. THAT THIS PLAT IS OF A SURVEY THAT IS LOCATED IN SUCH PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN ORDINANCE THAT REGULATES PARCELS OF LAND;
 - C. ANY ONE OF THE FOLLOWING:
 1-THAT THIS PLAT IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET;
 2-THAT THIS PLAT IS OF AN EXISTING BUILDING OR OTHER STRUCTURE, OR NATURAL FEATURE, SUCH AS A WATERCOURSE; OR
 3-THAT THIS PLAT IS OF A CONTROL SURVEY.
 - D. THAT THIS PLAT IS OF A SURVEY OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS, A COURT-ORDERED SURVEY OR OTHER EXCEPTION TO THE DEFINITION OF SUBDIVISION;
 - E. THAT THE INFORMATION AVAILABLE TO THIS SURVEYOR IS SUCH THAT I AM UNABLE TO MAKE A DETERMINATION TO THE BEST OF MY PROFESSIONAL ABILITY AS TO PROVISIONS CONTAINED IN (A) THROUGH (D) ABOVE.

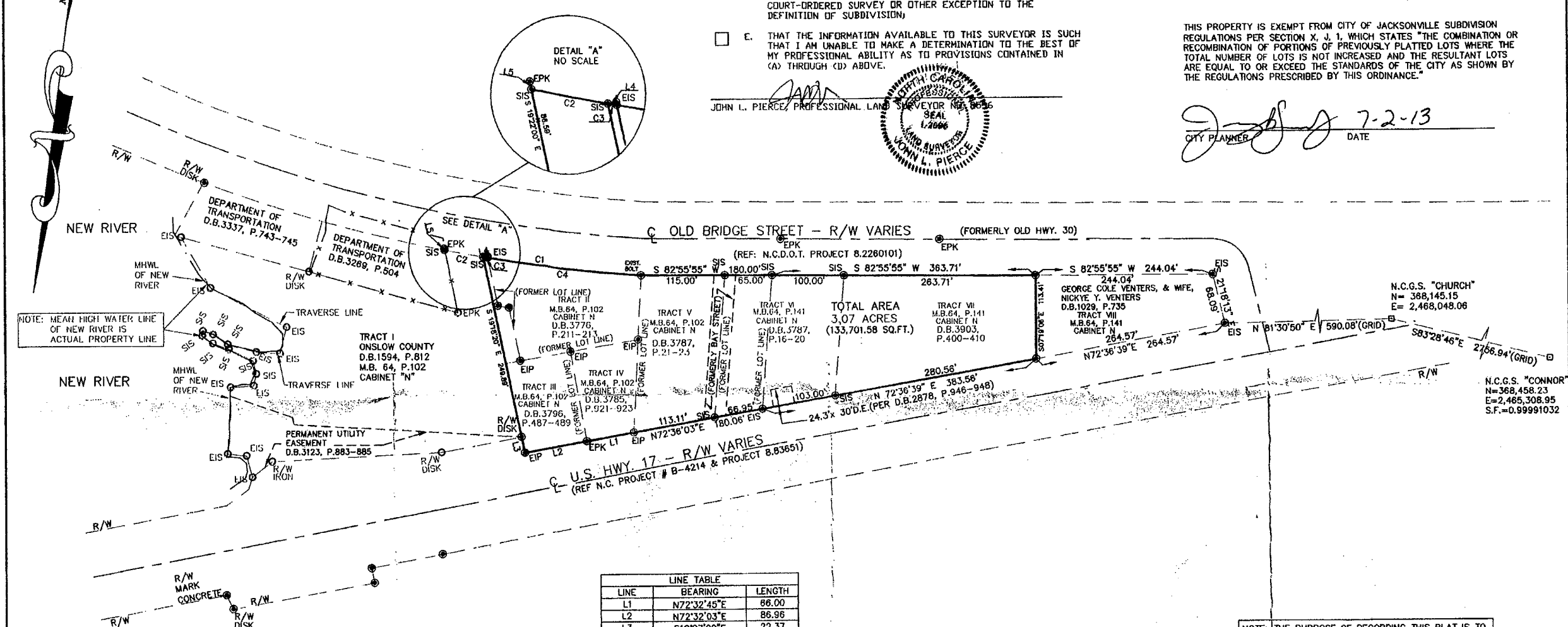
Doc ID: 01060240001 Type: CRP
 Recorded: 07/09/2013 at 12:39:58 PM
 Fee Amt: \$21.00 Page 1 of 1
 Onslow County, NC
 Rebecca L. Pollard Reg. of Deeds
 BK 66 pg 195
 Cabinet N
 Copy Box
 REGISTER OF DEEDS



THIS PROPERTY IS EXEMPT FROM CITY OF JACKSONVILLE SUBDIVISION REGULATIONS PER SECTION X, J. 1, WHICH STATES "THE COMBINATION OR RECOMBINATION OF PORTIONS OF PREVIOUSLY PLATTED LOTS WHERE THE TOTAL NUMBER OF LOTS IS NOT INCREASED AND THE RESULTANT LOTS ARE EQUAL TO OR EXCEED THE STANDARDS OF THE CITY AS SHOWN BY THE REGULATIONS PRESCRIBED BY THIS ORDINANCE."

JOHN L. PIERCE, PROFESSIONAL LAND SURVEYOR NO. 2596
 SEAL
 JOHN L. PIERCE

[Signature] 7-2-13
 CITY PLANNER DATE



NOTE: MEAN HIGH WATER LINE OF NEW RIVER IS ACTUAL PROPERTY LINE

LINE	BEARING	LENGTH
L1	N72°32'45"E	86.00
L2	N72°32'03"E	86.96
L3	S19°27'00"E	22.37
L4	S72°12'15"W	5.90
L5	S19°21'48"E	2.18

CURVE	CHORD	CHORD DELTA	RADIUS	ARC	TANGENT
C1	S89°56'09"W	273.53	721'03"	2133.48	273.72
C2	N87°06'40"W	53.79	128'41"	2133.48	53.80
C3	N87°55'16"W	6.53	0'10'31"	2133.48	6.53
C4	S89°07'33"W	213.30	543'51"	2133.48	213.39

TRACT DATA:
 TOTAL AREA - 3.07 ACRES (133,701.58 SQ.FT.)
 TOTAL NUMBER OF TRACTS - 1 TRACTS
 ZONED - OMU
 TAX MAP & PARCEL NUMBER: TRACT II - 341E-8
 TRACT III - 341E-5,1
 TRACT IV - 341E-5
 TRACT V - 341E-6
 TRACT VI - 341E-6,1
 TRACT VII - 341E-7,1

PIN NUMBERS - TRACT II - 436608985345
 TRACT III - 436608985475
 TRACT IV - 436608984463
 TRACT V - 436608983378
 TRACT VI - 436608982343
 TRACT VII - 436608980238

STATE OF NORTH CAROLINA
 COUNTY OF ONSLOW
 I, Jane Holland, REVIEW OFFICER OF ONSLOW COUNTY, CERTIFY THAT THE MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.
Jane Holland
 REVIEW OFFICER
 7/8/13
 DATE

REF: D.B.3776, P.211-213 (TRACT II)
 D.B.3796, P.487-489 (TRACT III)
 D.B.3785, P.921-923 (TRACT IV)
 D.B.3787, P.21-23 (TRACT V)
 D.B.3787, P.16 20 (TRACT VI)
 D.B.3903, P.400 410 (TRACT VII)
 M.B.64, P.102, CABINET N (TRACT II, III, IV, V)
 M.B.64, P.141, CABINET N (TRACT VI, VII)

LEGEND
 EIS = EXISTING IRON STAKE
 EIP = EXISTING IRON PIPE
 SIS = SET IRON STAKE
 EPK = EXISTING P.K. NAIL
 SPK = SET P.K. NAIL
 R/W = RIGHT OF WAY

NOTE: THE PURPOSE OF RECORDING THIS PLAT IS TO RECOMBINE TRACTS II, III, IV, V, VI & VII INTO ONE PARCEL.

RECOMBINATION MAP
 SHOWING
 TRACTS II, III, IV, V, VI, & VII
 PREPARED FOR
 CITY OF JACKSONVILLE (OWNER)
 JACKSONVILLE TOWNSHIP, ONSLOW COUNTY, NC
 PREPARED BY
 JOHN L. PIERCE & ASSOCIATES, P.A.
 NORTH CAROLINA LICENSE NO. C-1888
 405 JOHNSON BLVD. JACKSONVILLE, NC 28541
 PHONE: 910-346-9800 DATE: JUNE 14, 2013
 SCALE: 1" = 100' F.B. 743, P.57-62
 JOB #2013-19140
 GRAPHIC SCALE
 (IN FEET)
 1 inch = 100 ft.
 G:\Projects\img\deg. 7/5/2013 8:20:35 AM EST

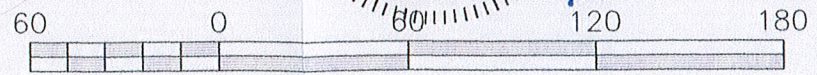
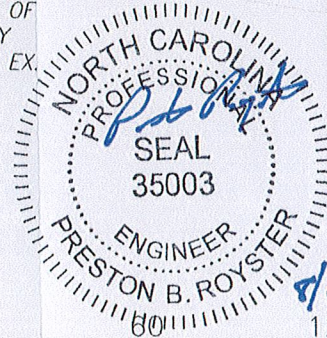
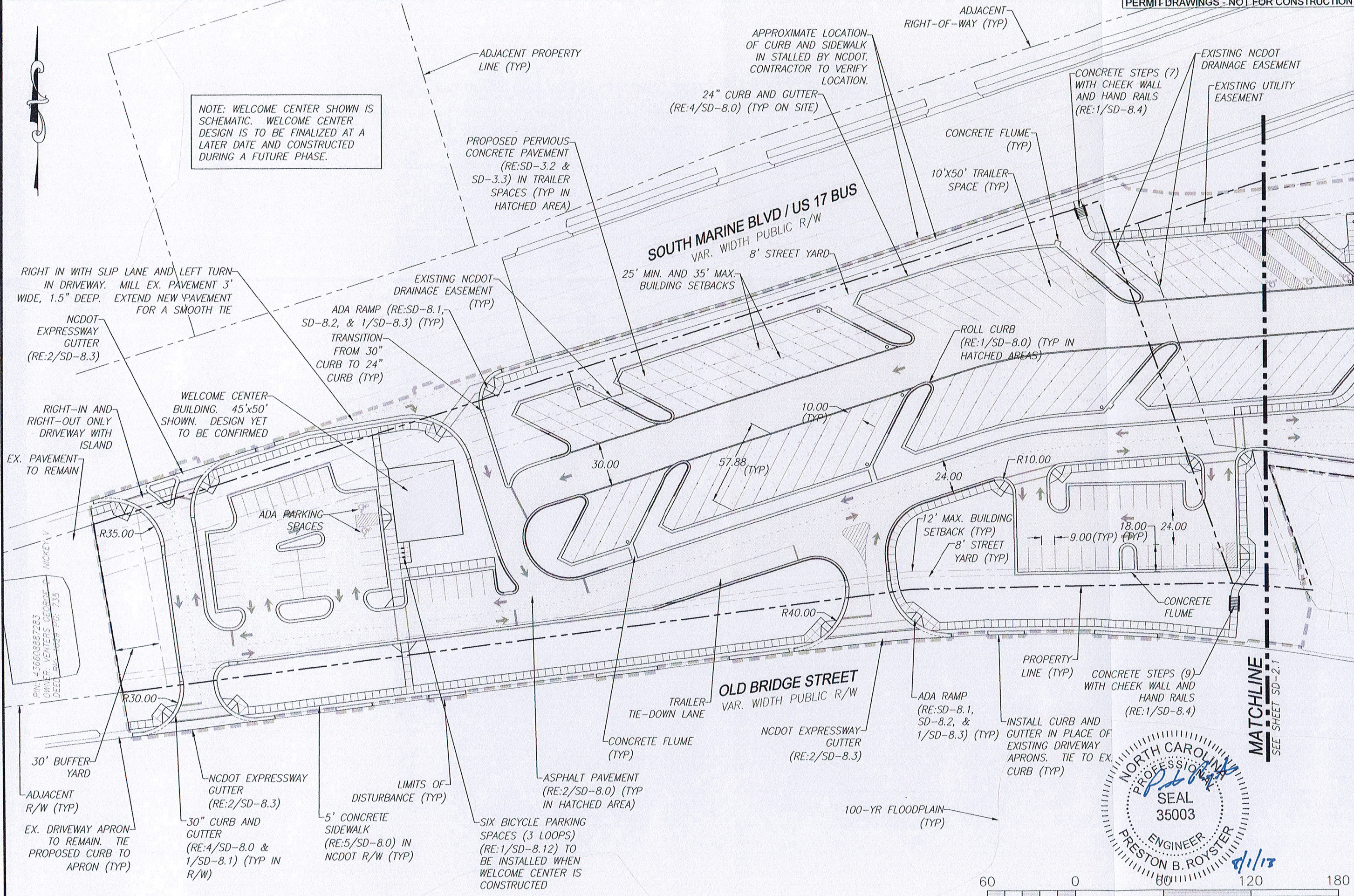
NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
DIVISION OF ENGINEERING SERVICES
MAIN OFFICE
LAKE ROGERS DEPOT
1718 NC HWY 56 W
CREEDMOOR, NC 27522
Phone: 919-707-0376
RALEIGH, NC 27699
Phone: 919-707-0150
Fax: 919-707-0162
www.ncwildlife.org



JACKSONVILLE BOATING ACCESS AREA
NEW RIVER
ONSLOW COUNTY, NC
SITE PLAN

Date: 07/30/2013
File Name: JACKSONVILLE BAALDWG
Surveyed: MRL
Designed: PBR
Drawn: PBR
Approved:
Sheet No. SD-2.0

NOTE: WELCOME CENTER SHOWN IS SCHEMATIC. WELCOME CENTER DESIGN IS TO BE FINALIZED AT A LATER DATE AND CONSTRUCTED DURING A FUTURE PHASE.



Scale 1" = 60'

SITE PLAN NOTES

1. ALL ANGLES ARE 90° UNLESS OTHERWISE NOTED.
2. PAVEMENT STRIPING ON ASPHALT SHALL BE WHITE TRAFFIC GRADE PAINT MANUFACTURED EXPRESSLY FOR MARKING PAVEMENTS INSTALLED ACCORDING TO THE CITY OF JACKSONVILLE'S STANDARDS AND SPECIFICATIONS. STRIPING ON CONCRETE SHALL BE BLUE TRAFFIC GRADE PAINT INSTALLED USING A SINGLE LAYER APPLICATION. STRIPING FOR ADA SPACES MAY BE EITHER WHITE OR BLUE ACCORDING TO THE CITY OF JACKSONVILLE.
3. ADA PARKING SPACES SHALL BE SIGNED WITH TYPE R7-8 OR R7-8A RESERVED PARKING SIGN AND R7-8D MAXIMUM FINE SIGN PER GS 20-37.6 OF THE NORTH CAROLINA HANDICAP CODE.
4. REFERENCE DEMOLITION PLAN SHEETS SD-1.1 AND SD-1.2 FOR EXTENT OF DEMOLITION AND REMOVAL OF CURB AND GUTTER, GRAVEL, PAVEMENT, DRIVEWAYS, WALKWAYS, ETC.
5. ALL DIMENSIONS ARE TO THE FACE OF CURB UNLESS OTHERWISE NOTED.

ASPHALT PAVEMENT (RE:2/SD-8.0) (TYP IN HATCHED AREA)

MATCHLINE
SEE SHEET SD-2.0

TRANSITION TO 24" C&G AT CROSSWALK (TYP)

MAKE READY LANE

24" CURB AND GUTTER (RE:4/SD-8.0) (TYP ON SITE)

ROLL CURB (RE:1/SD-8.0) (TYP IN HATCHED AREA)

CONCRETE SIDEWALK (RE:5/SD-8.0) (TYP)

CONCRETE EDGE PROTECTION (RE:5/SD-8.0)

PROPERTY LINE (TYP)

NCDOT DRAINAGE EASEMENT (TYP)

8' STREET YARD

12' MAX. BUILDING SETBACK

WOODEN BOARDWALK AND STEPS

CANOE/KAYAK ACCESS RAMP

EXISTING 404 WETLANDS (TYP IN HATCHED AREA)

CONCRETE SIDEWALK UNDER BRIDGE (RE:5/SD-8.0) TO BE CONSTRUCTED WHEN BOARDWALK IS BUILT

OLD BRIDGE STREET
VAR. WIDTH PUBLIC R/W

EXISTING BRIDGE

FISHING PIER AND WOODEN BOARDWALK (RE:1/SD-8.16)

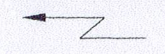
LOW WATER ELEVATION

30' DWQ STREAM BUFFER (TYP)

75' AEC BUFFER (TYP)

PORTION OF BOARDWALK, PIER, AND SIDEWALK INSIDE DASHED LINE IS TO BE CONSTRUCTED AT A LATER DATE WHEN EITHER A FLOOD STUDY AND LOMR IS COMPLETED OR THIS PORTION OF THE RIVER IS RECLASSIFIED

NEW RIVER



30.00

10.00

57.88

EDGE OF PAVEMENT (TYP)

3 - 15' WIDE REINFORCED CONCRETE RAMPS

WOODEN BOARDWALK

VINYL SHEET PILE BREAKWATER WALL (RE:2&3/SD-8.15) (TYP)

FLOATING DOCK (5 - 8'x20' SECTIONS) (TYP)

LIMITS OF DISTURBANCE (TYP)

EXISTING CAMA WETLANDS (TYP)

EXISTING 404 WETLANDS (TYP)

10'x50' TRAILER SPACES (TYP)

3 - ADA TRAILER SPACES

PERVIOUS CONCRETE IN TRAILER PARKING SPACES (RE:SD-3.2 & SD-3.3) (TYP IN HATCHED AREA)

EXISTING UTILITY EASEMENT

EIGHT BICYCLE PARKING SPACES (4 LOOPS) (RE:1/SD-8.12)

PROPERTY LINE (TYP)

RESTROOM BUILDING

CONCRETE RAMP WITH HANDRAILS (RE:2/SD-8.12) (TYP)

100-YR FLOODPLAIN (TYP)

EXISTING RIGHT-OF-WAY (TYP)

CONCRETE EDGE PROTECTION (RE:5/SD-8.0)

8' STREET YARD

25' MIN. AND 35' MAX. BUILDING SETBACKS

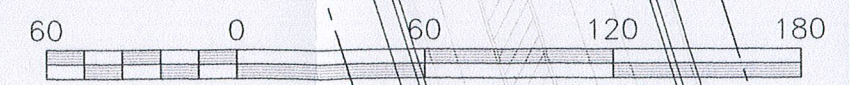
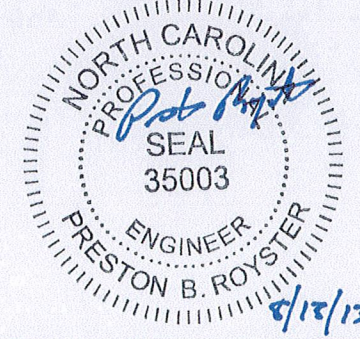
EXISTING 404 WETLANDS (TYP IN HATCHED AREA)

CONCRETE SIDEWALK (RE:5/SD-8.0) UNDER BRIDGE

EXISTING BRIDGE BENT

EXISTING BRIDGE

SOUTH MARINE BLVD / US 17 BUS
VAR. WIDTH PUBLIC R/W



Scale 1" = 60'

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
 DIVISION OF ENGINEERING SERVICES
 MAIN OFFICE
 LAKE ROGERS DEPOT
 1718 NC HWY 56 W
 CREEDMOOR, NC 27522
 Phone: 919-707-0376

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
 FIELD OFFICE
 1720 MAIL SERVICE CENTER
 RALEIGH, NC 27699
 Phone: 919.707.0150
 Fax: 919.707.0162
 www.ncwildlife.org



JACKSONVILLE BOATING ACCESS AREA
 NEW RIVER
 ONSLOW COUNTY, NC

SITE PLAN

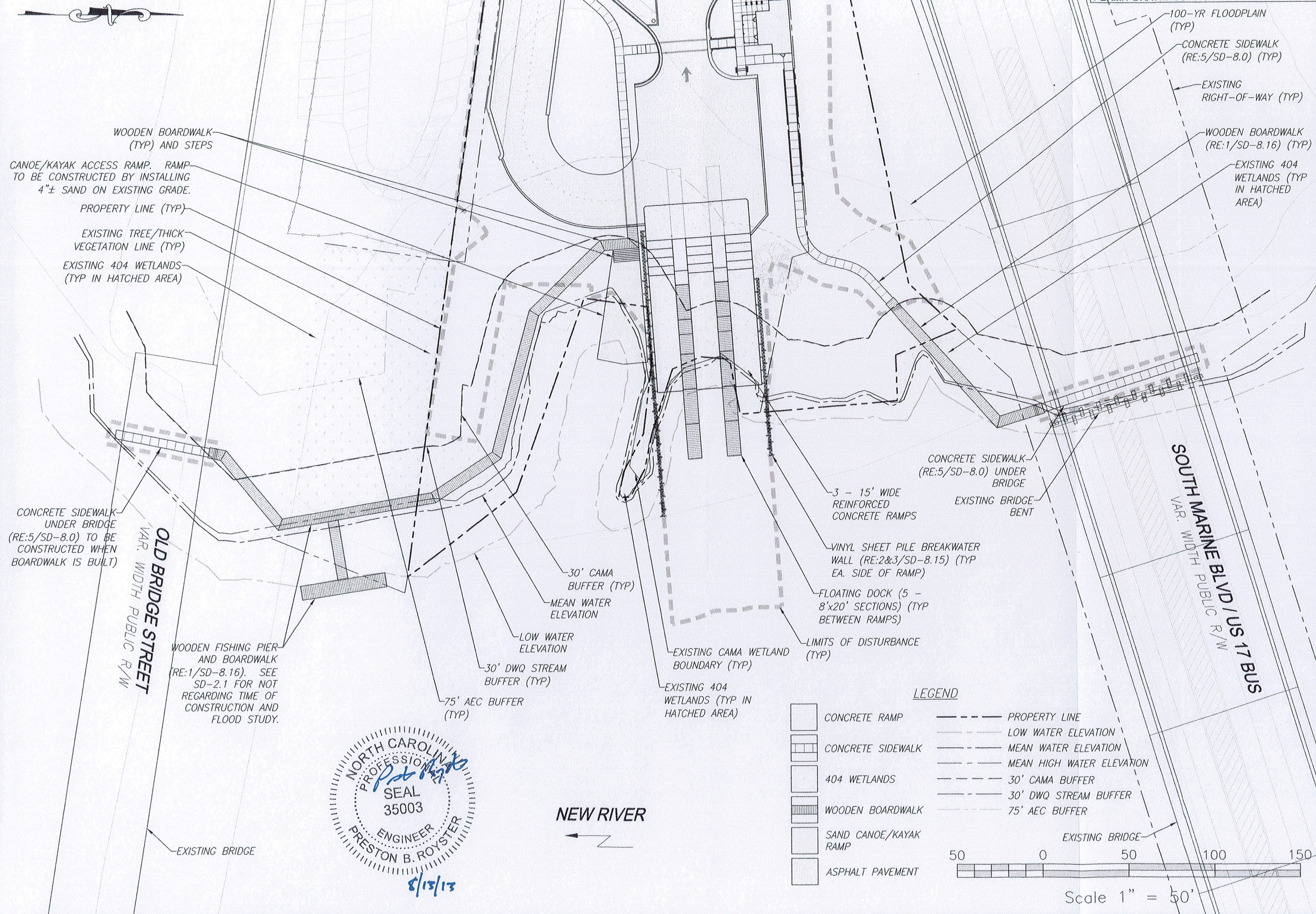
Date: 08/13/2013
 File Name: JACKSONVILLE BAA.DWG
 Surveyed: MRL
 Designed: PBR
 Drawn: PBR
 Approved:
 Sheet No. SD-2.1

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
 DIVISION OF ENGINEERING SERVICES
 MAIN OFFICE
 LAKE ROGERS DEPOT
 1718 NC HWY 56 W
 CREEDMOOR, NC 27522
 Phone: 919-707-0376
 www.ncwildlife.org



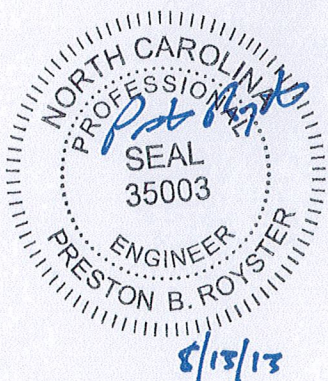
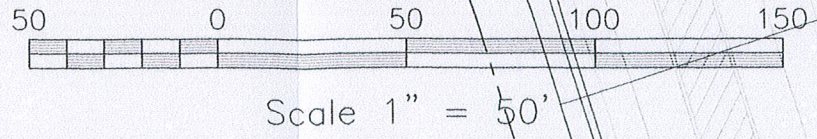
JACKSONVILLE BOATING ACCESS AREA
 NEW RIVER
 ONSLOW COUNTY, NC
SITE PLAN - BLOW UP OF WATER FEATURES

Date: 08/13/2013
 File Name: JACKSONVILLE BAA.DWG
 Surveyed: MRL
 Designed: PBR
 Drawn: PBR
 Approved:
 Sheet No. SD-2.3

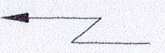


LEGEND

	CONCRETE RAMP		PROPERTY LINE
	CONCRETE SIDEWALK		LOW WATER ELEVATION
	404 WETLANDS		MEAN WATER ELEVATION
	WOODEN BOARDWALK		MEAN HIGH WATER ELEVATION
	SAND CANOE/KAYAK RAMP		30' CAMA BUFFER
	ASPHALT PAVEMENT		30' DWQ STREAM BUFFER
			75' AEC BUFFER



NEW RIVER



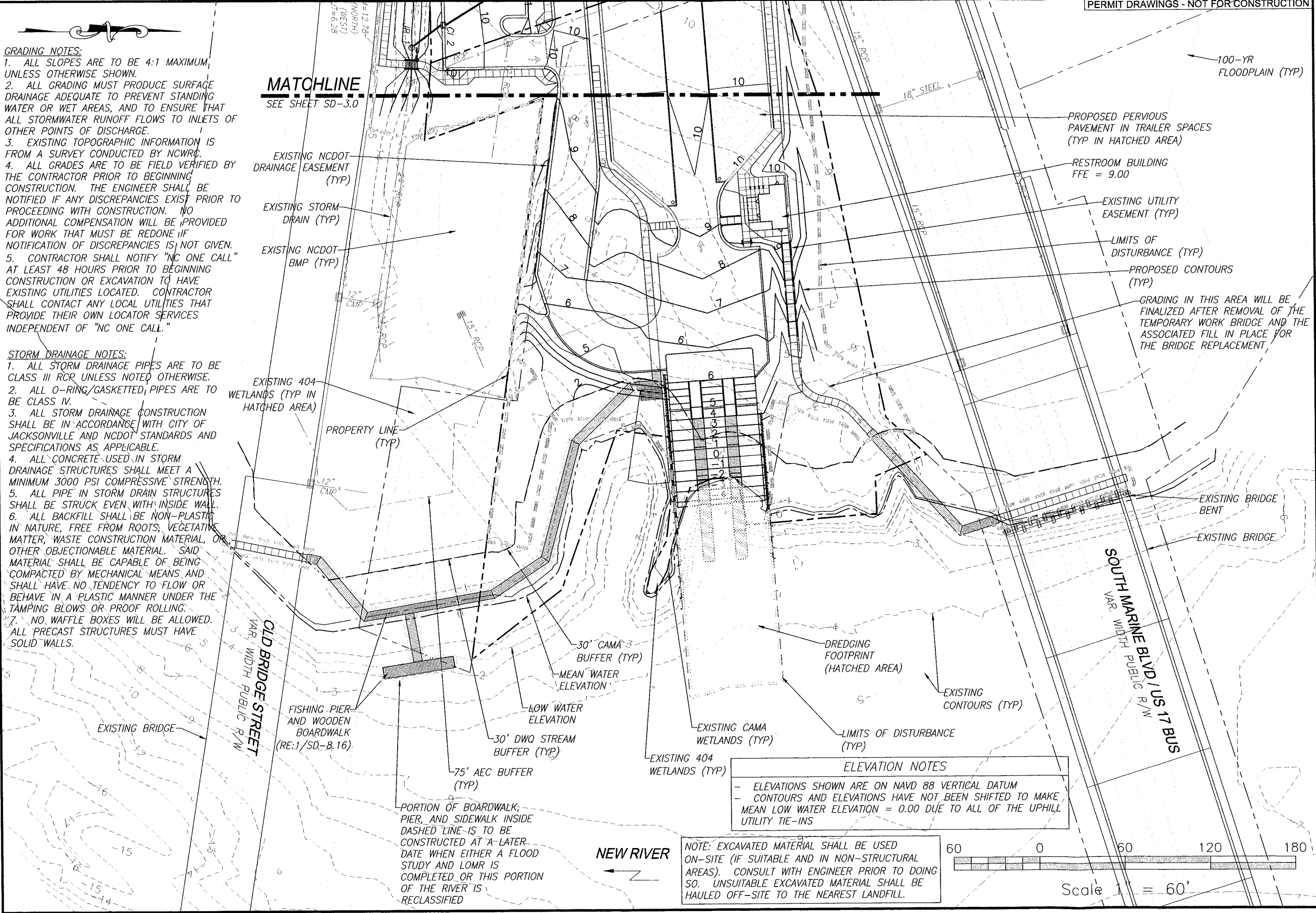
GRADING NOTES:

1. ALL SLOPES ARE TO BE 4:1 MAXIMUM, UNLESS OTHERWISE SHOWN.
2. ALL GRADING MUST PRODUCE SURFACE DRAINAGE ADEQUATE TO PREVENT STANDING WATER OR WET AREAS, AND TO ENSURE THAT ALL STORMWATER RUNOFF FLOWS TO INLETS OF OTHER POINTS OF DISCHARGE.
3. EXISTING TOPOGRAPHIC INFORMATION IS FROM A SURVEY CONDUCTED BY NCWRP.
4. ALL GRADES ARE TO BE FIELD VERIFIED BY THE CONTRACTOR PRIOR TO BEGINNING CONSTRUCTION. THE ENGINEER SHALL BE NOTIFIED IF ANY DISCREPANCIES EXIST PRIOR TO PROCEEDING WITH CONSTRUCTION. NO ADDITIONAL COMPENSATION WILL BE PROVIDED FOR WORK THAT MUST BE REDONE IF NOTIFICATION OF DISCREPANCIES IS NOT GIVEN.
5. CONTRACTOR SHALL NOTIFY "NC ONE CALL" AT LEAST 48 HOURS PRIOR TO BEGINNING CONSTRUCTION OR EXCAVATION TO HAVE EXISTING UTILITIES LOCATED. CONTRACTOR SHALL CONTACT ANY LOCAL UTILITIES THAT PROVIDE THEIR OWN LOCATOR SERVICES INDEPENDENT OF "NC ONE CALL."

STORM DRAINAGE NOTES:

1. ALL STORM DRAINAGE PIPES ARE TO BE CLASS III RCP UNLESS NOTED OTHERWISE.
2. ALL O-RING/GASKETTED PIPES ARE TO BE CLASS IV.
3. ALL STORM DRAINAGE CONSTRUCTION SHALL BE IN ACCORDANCE WITH CITY OF JACKSONVILLE AND NCDOT STANDARDS AND SPECIFICATIONS AS APPLICABLE.
4. ALL CONCRETE USED IN STORM DRAINAGE STRUCTURES SHALL MEET A MINIMUM 3000 PSI COMPRESSIVE STRENGTH.
5. ALL PIPE IN STORM DRAIN STRUCTURES SHALL BE STRUCK EVEN WITH INSIDE WALL.
6. ALL BACKFILL SHALL BE NON-PLASTIC IN NATURE, FREE FROM ROOTS, VEGETATIVE MATTER, WASTE CONSTRUCTION MATERIAL, OR OTHER OBJECTIONABLE MATERIAL. SAID MATERIAL SHALL BE CAPABLE OF BEING COMPACTED BY MECHANICAL MEANS AND SHALL HAVE NO TENDENCY TO FLOW OR BEHAVE IN A PLASTIC MANNER UNDER THE TAMPING BLOWS OR PROOF ROLLING.
7. NO WAFFLE BOXES WILL BE ALLOWED. ALL PRECAST STRUCTURES MUST HAVE SOLID WALLS.

MATCHLINE
SEE SHEET SD-3.0



100-YR FLOODPLAIN (TYP)

PROPOSED PERVIOUS PAVEMENT IN TRAILER SPACES (TYP IN HATCHED AREA)

RESTROOM BUILDING
FFE = 9.00

EXISTING UTILITY EASEMENT (TYP)

LIMITS OF DISTURBANCE (TYP)

PROPOSED CONTOURS (TYP)

GRADING IN THIS AREA WILL BE FINALIZED AFTER REMOVAL OF THE TEMPORARY WORK BRIDGE AND THE ASSOCIATED FILL IN PLACE FOR THE BRIDGE REPLACEMENT

EXISTING 404 WETLANDS (TYP IN HATCHED AREA)

PROPERTY LINE (TYP)

12" CMP

30' CAMA BUFFER (TYP)

MEAN WATER ELEVATION

LOW WATER ELEVATION

30' DWQ STREAM BUFFER (TYP)

75' AEC BUFFER (TYP)

FISHING PIER AND WOODEN BOARDWALK (RE:1/SD-8,16)

PORTION OF BOARDWALK, PIER, AND SIDEWALK INSIDE DASHED LINE IS TO BE CONSTRUCTED AT A LATER DATE WHEN EITHER A FLOOD STUDY AND LOMR IS COMPLETED OR THIS PORTION OF THE RIVER IS RECLASSIFIED

EXISTING CAMA WETLANDS (TYP)

EXISTING 404 WETLANDS (TYP)

DREDGING FOOTPRINT (HATCHED AREA)

EXISTING CONTOURS (TYP)

LIMITS OF DISTURBANCE (TYP)

ELEVATION NOTES

- ELEVATIONS SHOWN ARE ON NAVD 88 VERTICAL DATUM
- CONTOURS AND ELEVATIONS HAVE NOT BEEN SHIFTED TO MAKE MEAN LOW WATER ELEVATION = 0.00 DUE TO ALL OF THE UPHILL UTILITY TIE-INS

NEW RIVER

SOUTH MARINE BLVD / US 17 BUS
VAR. WIDTH PUBLIC R/W

OLD BRIDGE STREET
VAR. WIDTH PUBLIC R/W

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
DIVISION OF ENGINEERING SERVICES
LAKE ROGERS DEPOT
1718 NC HWY 56 W
CREEDMOOR, NC 27522
Phone: 919-707-0376

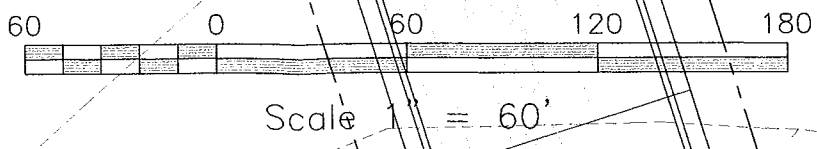
NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
MAIN OFFICE
1720 MAIL SERVICE CENTER
RALEIGH, NC 27699
Phone: 919.707.0150
Fax: 919.707.0162
www.ncwildlife.org



JACKSONVILLE BOATING ACCESS AREA
NEW RIVER
ONSLOW COUNTY, NC

GRADING PLAN

Date: 08/23/2013
File Name: JACKSONVILLE BAA.DWG
Surveyed: MRL
Designed: PBR
Drawn: PBR
Approved:
Sheet No. SD-3.1



NOTE: EXCAVATED MATERIAL SHALL BE USED ON-SITE (IF SUITABLE AND IN NON-STRUCTURAL AREAS). CONSULT WITH ENGINEER PRIOR TO DOING SO. UNSUITABLE EXCAVATED MATERIAL SHALL BE HAULED OFF-SITE TO THE NEAREST LANDFILL.

Amendment to Attachment "G" of the CAMA Variance Request Form

CRC-VR 13-06 submitted on November 15, 2013

Reasons and Arguments about why the Petitioner meets the Four Variance Criteria

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

The only access to the New River in the City of Jacksonville is located directly across from the proposed Jacksonville BAA site on the east side of the river. The closest public ramp is located approximately 19 miles downstream from Jacksonville in Sneads Ferry. Currently, there are no public ramps upstream of the site on the New River.

The current public access boat ramp offers limited trailer spaces (10) and shared/limited vehicle parking with the adjacent courthouse. With the growth of Jacksonville, this boat ramp is not adequate to serve the sportsmen using the New River. Currently, the NC Wildlife Resource Commission receives numerous complaints about the lack of parking at this site.

As a result, the proposed location for the Jacksonville BAA was selected, in part, due to its close proximity to the existing boat ramp. Although dredging was not necessary when this boat ramp was constructed, it is our intention of closing this public access upon completion of the new Jacksonville BAA. This could allow for other habitats in the Primary Nursery Area (PNA) and other shallow-water habitats to thrive.

In reviewing other boat ramps to include Wilmington, Morehead City and Emerald Isle, Jacksonville's existing boat ramp is significantly undersized. These public boating access sites offer an average of 40 trailer parking spaces per site and as well as additional vehicle parking. In addition, these waterfront communities have multiple places to access a public waterway in each community. Whereas, Jacksonville has one public boating access point.

The proposed BAA would significantly increase the amount of parking (69 trailer parking spaces and 60 single vehicle spaces) which will provide more opportunities for the public to access the New River.

By comparison, the existing ramp in Jacksonville does not meet the demands of the public for access to the New River. It is the policy of the State to promote public water access. In response to this policy, the City of Jacksonville, Onslow County and the NC Division of Wildlife Resources Commission entered into a three party agreement dated May 3, 2012 to construct the Jacksonville BAA. However, if this variance is not granted, then the proposed boat ramp and project could not be constructed.

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

The proposed Jacksonville BAA has approximately 350 feet of river frontage along the west bank of the New River. This parcel is bounded on both water front sides by bridges – The Buddy Phillips Bridge (S. Marine Blvd/U.S. 17 Business) and the Popkin Bridge (Old Bridge St). Therefore, the City is unable to acquire additional land to move the proposed boat ramp out of the PNA area. Furthermore, the entire portion of the New River within the City of Jacksonville is classified as PNA (both inland and coastal). The Buddy Phillips Bridge serves as the physical landmark separating the inland and coastal PNA. Jacksonville BAA is proposed to be constructed within approximately 100 feet of this bridge within the inland PNA.

The current state of parking at the existing ramp cannot be remedied because there is no room for expansion. Additional parking cannot be added to provide adequate access to the New River due to physical constraints of existing businesses and roads as well as the demand for parking at the adjacent courthouse.

3. Do the hardships result from actions taken by the petitioner? Explain.

No, the hardships are not a result from action taken the petitioner. The physical constraints present at the current boat ramp; the need for additional parking on court days; and the demand for access to the New River is out of the petitioner's control.

Likewise, the petitioner is not at fault for the designation of the entire river as PNA within its jurisdiction. This is a natural occurrence outside of the petitioner's control.

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? Explain.

It is the petitioner's belief that a variance to construct the proposed Jacksonville BAA meets the public water access goals of the Coastal Area Management Act and the State of North Carolina.

15A NCAC 07H.0208(a)(3) states "When the proposed development is in conflict with the general or specific use standards...the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act...":

- "Public benefit outweighs the long range adverse effects of the project" – With the construction of the Jacksonville BAA, it would provide a larger parking area as well as a safer means of access to the New River.
- "No reasonable alternate site available for project" – Selecting an alternate site along the New River is not an option since the entire New River is designated as a PNA. Therefore, selecting another location would yield the same request for a variance.
- "All reasonable means and measures to mitigate the adverse impacts of the project have been incorporated in the design and implementation"- The original design showed a much larger proposed dredging area. Based on comments received from a scoping meeting with NCWRC, DCM, DMF, USACE, and DWR, the proposed dredging was reduced significantly.

15A NCAC 07H.0208(1)(b), which states that "Navigation channels, canals, and boat basins shall be aligned or located as to avoid primary nursery areas, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands." There is an existing navigation channel currently being used within the existing PNA. The construction of a new boat ramp across the river from the existing ramp will have no impact on the existing channel. Furthermore, it is the petitioner's intent to close the existing boat ramp once Jacksonville BAA has been constructed.

The public safety and welfare will be protected with the construction of the Jacksonville BAA. The additional parking will allow for safer ingress/egress of those desiring to utilize the boat ramp as well as those visiting the site. The community's welfare will be further enhanced by allow a larger number of people to obtain access to the New River and encourage economic growth since these boaters and visitors will remain in Jacksonville rather than visiting outlying communities.

Although the construction of the Jacksonville BAA is expected to impact the aquatic environment, the project does preserve the substantial justice of the rules and regulations of CAMA. This project might impact the PNA initially; however, upon its completion and the abandonment of the existing boat ramp, the aquatic life will prosper again.

ATTACHMENT E:

STIPULATED EXHIBITS

- A copy of the CRFL Grant application by the City and WRC
- Project Narrative from applicant
- DCM's field report
- Site drawings from the CAMA permit application
- WRC Comments to DCM
- DCM Staff internal comments
- Federal agency comments from Corps & NMFS
- DCM's denial letter
- Power point presentation showing the Site

**WILDLIFE RESOURCES COMMISSION JACKSONVILLE - ONSLOW
BOATING ACCESS AREA**

ABSTRACT

APPLICANT: NC WILDLIFE RESOURCES COMMISSION

PROJECT ADMINISTRATOR: ERIK CHRISTOFFERSON

PROJECT TIMELINE- JANUARY 1, 2014 – MAY 30, 2014

ABSTRACT: The North Carolina Wildlife Resources Commission is requesting Coastal Recreation Fishing License funds in the amount of \$650,000.00 for the development of the Jacksonville – Onslow Boating Access Area located within the city limits of the City of Jacksonville on the New River in Onslow County. The North Carolina Wildlife Resources Commission has recently signed an agreement and formed partnerships with the City of Jacksonville and Onslow County to provide this much needed access area. The North Carolina Wildlife Resources Commission has been looking for an opportunity to increase water access in this region for many years. The Commission currently has a small boating access facility in Jacksonville and directly across the river from this site which only offers 10 parking spaces. The City of Jacksonville recently purchased several acres of land for the new site between Highway 17 and Old Bridge Street. The County has also agreed to donate their adjoining waterfront parcel of land to the project. The agreement requires the Commission to design, permit and construct the property as a Wildlife boating facility. The City has very kindly agreed to perform the routine maintenance of the site. The access area would include three new concrete ramps, floating docks, approximately 70 paved trailer parking spaces, 50 single vehicle spaces and ADA features. The City plans to design and build a small welcome center on site but it is not part of this request. Major construction of all new elements would begin in January 2014 and would be paid for with CRFL funds and motorboat registration receipts. This site would provide much needed boating and fishing access in this area.

CRFL STRATEGIC PLAN OBJECTIVES: Management Goal Objective 1 – Provide increased access to fisheries resources and enhancement structures.

SCOPE OF WORK: Demolish existing buildings and sewer connection systems on the property. Construct three new boat launch ramps, 70 paved trailered parking spaces, floating docks and ADA accessible features. The project will also conform to all necessary storm water treatment requirements.



WRC Jacksonville Boating Access Area - Proposed
New River, Onslow County



**Application for Funds from the
Coastal Recreational Fishing License Fund**

Applicant Name: North Carolina Wildlife Resources Commission

Project Title: Jacksonville-Onslow Boating Access Area - Construction

CRFL Strategic Plan Management Goal: People

Priority Listed in Request for Proposals: People P.1.1 - Provide increased access to both boat and pier anglers

Requested Amount: \$650,000.00

Project Period: January 1, 2014 – May 30, 2014

Need:

The North Carolina Wildlife Resources Commission currently manages a small boating access area within the City of Jacksonville that only contains 10 trailered parking spaces. The site is drastically undersized with respect to the need in the region for water access. The Commission has for many years been seeking a larger site to meet the demand for the boater and fisherman of this area. Unfortunately the property values in this area have been so high that it has been an obstacle for acquiring an appropriate amount of property. Recently, Onslow County and the City of Jacksonville have formed a partnership with the Commission to provide an ample amount of parking and water access in the heart of the city directly across the New River from the existing location. Under this partnership, The City and County will provide the property for the project and the City will also provide routine maintenance for the site after it has been completed. The Commission has agreed to design, permit and build the project and also maintain major infrastructure items for the duration of the agreement. The site will be managed by all parties as an official Wildlife Resources Commission access area with appropriate signage and enforcement. As stated earlier, this region of the state and specifically this city ranks very high in priority for the WRC to provide more boating and angling opportunity.

Objective:

Increase Boating Access, shoreline based fishing opportunities, and for anglers who own boats or anglers with limited mobility; improve access to the New River, Onslow Bay, and Atlantic Ocean.

Approach:

Several of the parcels have been purchased and are currently owned by Onslow County and the City of Jacksonville. The Commission is in the process of preparing a full set of design drawings and a CAMA Major permit will be applied for. The design and construction of this site will provide three launch lanes and 70 trailered parking spaces with an additional 50 single vehicle spaces. It will include paved parking areas, lighting, sidewalks, efficient traffic flow, with the ultimate goal of providing recreational users as well as anglers high quality fishing and boating opportunities. A concept of the access area has been completed and a site plan is attached to this

proposal. Detailed drawings, when complete, will show storm water runoff controls, natural shoreline objectives, and low impact development techniques. These drawing details will be forwarded to the Division of Marine Resources when completed. Initial design costs have been provided through boating funds from the Wildlife Resources Commission. This grant request is for a percentage of the cost for construction for the site. The WRC will provide the matching funds for construction with motor boat registration receipts. The construction will begin in January of 2014 and be completed on or before May 30, 2014.

Expected Results and Benefits:

The Engineering Services Division of the North Carolina Wildlife Resources Commission deployed traffic counters at the Wrightsville Beach Access Area several years ago. The traffic logger counted 1000 vehicles during a normal summer 24 hour period on a weekend. It is our assumption that with boaters and public access fisherman using this site, and due to the close proximity and highly populated nearby areas, we could expect to see this site full most days of the summer and a large portion of the winter months. We could see as many as 20,000 users per year once it is properly designed and built.

The construction of the boating access area will ensure the angling public a high quality and reliable access point. The project will incorporate the latest standards for safety and design. Based on current standards of design and construction, and with routine maintenance, the expected lifespan of the project is over 30 years.

Location:

Old Bridge Street
Jacksonville
Onslow County

The site is located between US 17 Business and Old Bridge Street within the city limits of Jacksonville. (See Attached vicinity maps)

Scope of Work:

1. **Access Area** - Construct three new launch lanes. Demolish existing structures, grade and pave parking lot with organized traffic flow approach. Install new bulkhead and floating docks adjacent to new ramp area. Build three launch lanes and ramp area, new storm water catch basins and inlet protection with landscaping. An informational kiosk and entrance sign will be provided for posting regulations and facility policies and recognizing funding cooperators.

Proposed Milestone (Construction) Schedule:

Construction timeline will be based on a 5 month period and will begin in January 1, 2014, and should be completed by May 30, 2014. However, the actual start date is contingent upon final regulatory permit approval/conditions as well as bid approval from OSBM and State Construction.

JACKSONVILLE - ONSLOW BOATING ACCESS AREA												
	2012											
PLANNING AND DESIGN	June	July	Aug.	Sept.	Oct.	Nov.	Dec.					
Land and Bathymetric Survey of Site												
Coordinate concept drawing with Town and County												
Prepare Permit Drawings for Submittal												
	2013											
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Prepare Permit Drawings for Submittal (cont.)												
Scoping Meeting w/Permitting Agencies												
Permit Review												
State Construction Review												
	2014											
	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
CONSTRUCTION												
Ramp/Marine Construction												
Bid Site Work												
Site Work (grading, parking lot)												
Completion Date - May 2013												

Project Administration:

NCWRC Engineers will administer the project and the major features of their work will be to:

1. Meet with regulatory agencies to confirm compliance with applicable rules, secure necessary permits;
2. Preparation of construction and bid documents for approval of State Construction and Office of Insurance;
3. Upon approval, advertise and bid the project (formal contract for construction process);
4. Perform special and final inspections;
5. Provide necessary close-out documents, record drawings, and final report.

Cost Summary:

Project Costs:	
Acquisition	1,480,000.00
Design	75,000.00
Parking and Site Work (includes storm water devices, paving, grading, dredging and demolition etc.)	600,000.00
Marine Based Improvements - (includes ramps, public fishing area, bulkhead and docks- docks provided by NCWRC)	250,000.00
Mobilization, Construction Contingency, insurance bonds	\$75,000.00
Project Cost Total:	\$2,480,000.00

Project Funding:	
CRFL Funding	\$650,000.00
NCWRC Funds - Approved	\$350,000.00
City Acquisition Funds	1,480,000.00
Project Funding Total:	\$2,480,000.00

Project Administrators/Key Contacts: Erik Christofferson, North Carolina Wildlife Resources Commission 919-707-0153 erik.christofferson@ncwildlife.org



APPLICATION FOR FUNDING FROM THE NORTH CAROLINA MARINE RESOURCES FUND



1. APPLICANT INFORMATION		2. PROJECT ADMINISTRATOR INFORMATION	
Applicant's Legal Name: North Carolina Wildlife Resources Commission		Name of Project Administrator: Erik D. Christofferson	
Street: 1720 Mail Service Center		Street: 1720 Mail Service Center	
Mail (PO Box):		Mail (PO Box):	
City, State and Zip Code: Raleigh NC 27699-1720		City, State and Zip Code: Raleigh NC 27699-1720	
EMPLOYER IDENTIFICATION NUMBER (EIN): 73-6502734		Project Administrator Phone number with area code: 919-707-0153	
		Project Administrator FAX number with area code: 919-707-0162	
3. TYPE OF APPLICANT: (x) State agency () County or Municipality () University () Other (specify)		Project Administrator Email Address: erik.christofferson@ncwildlife.org	
4. TYPE OF APPLICATION: (x) New () Continuation of previously funded CRFL Project () Award Revision (Explain):		5. PROJECT TITLE: Jacksonville – Onslow Boating Access Area - Construction	
6. PROPOSED PROJECT Start Date: January 1, 2014 Ending Date: May 30, 2014		7. STRATEGIC PLAN OBJECTIVE, STRATEGY AND PRIORITY: Management Goal (check one): ___ Fish ___ Habitat <u> x </u> People Objective (list number): <u> 1 </u> Strategy (e.g., F.1.1): <u> P.1.1 </u> Priority (list project priority): P.1.1 – Provide increased access to fisheries resources and enhancement structures.	
8. SOURCES OF FUNDING: a. CRFL funds requested : \$ <u> 650,000.00 </u> b. Applicant Match: \$ <u> 350,000.00 </u> d. Other Match: \$ <u> 1,480,000.00 </u> e. TOTAL: \$ <u> 2,480,000.00 </u>		9. AREA AFFECTED BY PROJECT (City, Counties, etc.): New River, City of Jacksonville, Onslow County, Onslow Bay and Atlantic Ocean	
11. LIST STATE AND FEDERAL PERMITS REQUIRED FOR THIS PROJECT: (Indicate completion date) CAMA Major Permits, Land Quality – Erosion Control Permit, DWQ – Storm water permits.			
12. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN FULLY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND WILL COMPLY WITH ALL RULES AND REGULATIONS IF THE ASSISTANCE IS AWARDED.			
Full Name of Authorized Representative: Erik Douglas Christofferson		Authorized Administrator Email Address: Erik.christofferson@ncwildlife.org	
Signature:		Date Signed: 7/23/12	Phone Number (with area code): 919-707-0153
DATE RECEIVED BY NCDMFR REVIEWERS:		Project Identifier: <u> 2013-P 004 </u>	
DATE ACCEPTED FOR REVIEW:		From Marine Resources Fund: \$ _____	



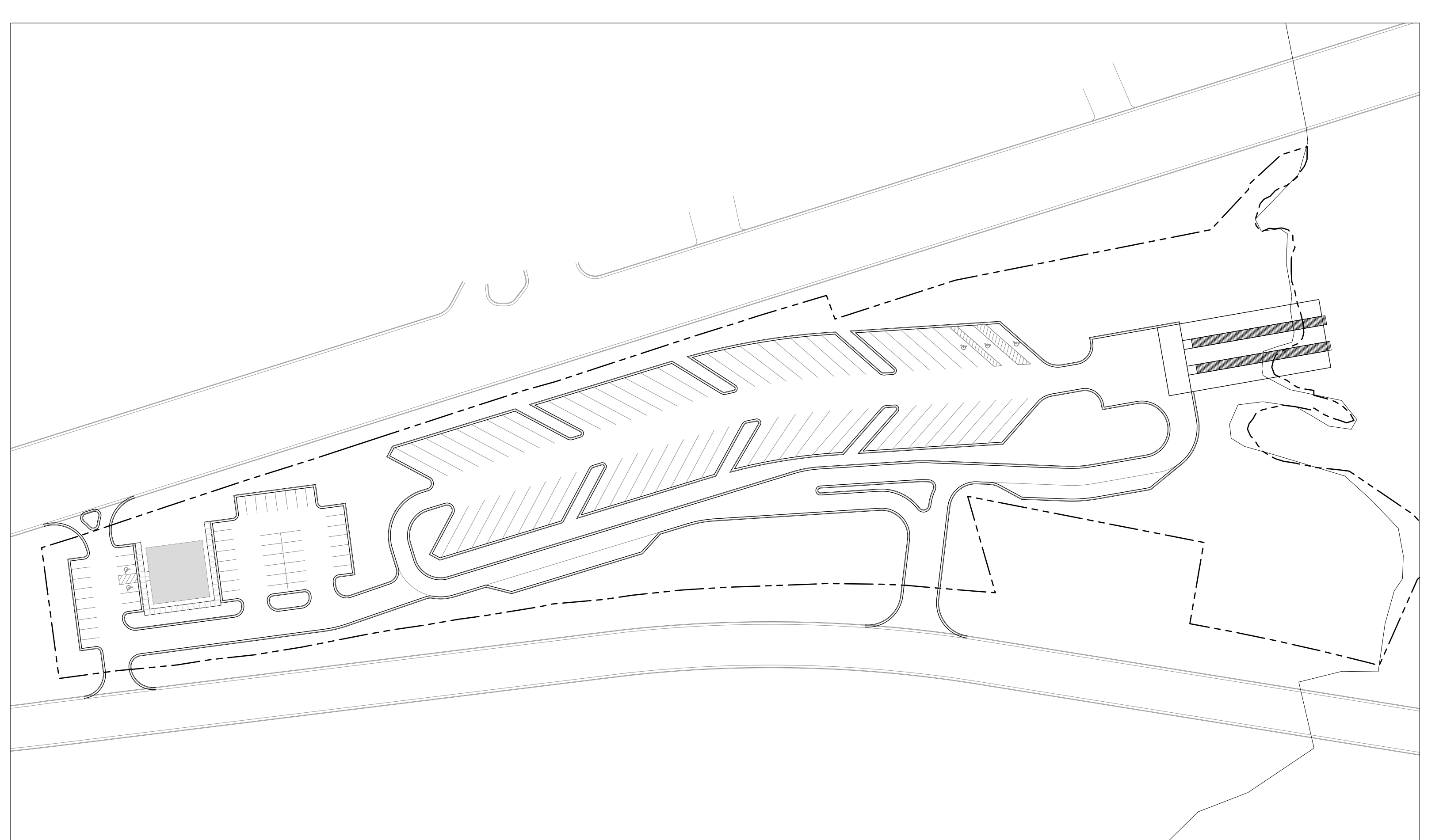
Appendix A.

Budget template to be used as a guide to help applicants provide an itemized budget per project proposal. Additional needed items may be added and items not necessary are to be deleted.

Expense	Year 1		Subsequent Years	
	No. FTE	Cost (\$)	No. FTE	Cost (\$)
Personnel by position title (biologist, technician, computer programmer)				
Fringe (social security, retirement, health)				
Indirect (Rate = ___% of salaries and fringe only)				
Travel (mileage, meals, lodging)				
Postage				
Printing/photocopying				
Vessels				
Vehicles				
Telephone				
Computer Equipment (PC, printer, etc.)				
Software				
Office Furniture				
Office Space				
Gas				
Uniforms/Clothing				
Safety Items				
Office Supplies				
Scientific Equipment				
Training				
Office Equipment (photocopier, fax, etc.)				
Maintenance Contracts				
Others				
TOTAL COST				

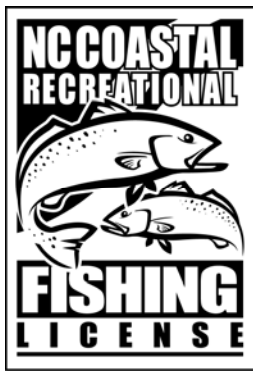
JACKSONVILLE – ONSLOW BOATING ACCESS AREA
RENDERING





JACKSONVILLE'S SLOW BOATING ACCESS AREA AND WELCOME CENTER

CONCEPTUAL SITE LAYOUT
MARCH 20, 2012



**North Carolina
Coastal Recreational Fishing License
Request for Proposals
Issued June, 2012 (for Funding Year 2013)**

The North Carolina Marine Fisheries Commission and the North Carolina Wildlife Resources Commission are issuing a Request for Proposals (RFP) for consideration of funding from the Marine Resources Fund. The Marine Resources Fund is composed of proceeds from the sale of the Coastal Recreational Fishing License (CRFL). The North Carolina General Assembly created the Fund to manage, protect, restore, develop, cultivate and enhance the marine resources of the state.

The North Carolina Division of Marine Fisheries is the state agency that provides liaison between projects and the Marine Fisheries Commission and Wildlife Resources Commission. The purpose of this document is to announce a Request for Proposals, to identify project areas and priorities eligible for funding by the Marine Resources Fund in accordance with the Strategic Plan for the Conservation and Improvement of North Carolina Marine Resources, and to assist you in preparing the proposal. Please read all of the enclosed information closely. Proposals and all supporting documents must be received by the director of the Division of Marine Fisheries by 5 p.m. on **July 31, 2012**.

The overall goal for the use of CRFL funds is to manage and enhance the marine resources of North Carolina based on sound science and strategies. The Strategic Plan for the Conservation and Improvement of North Carolina Marine Resources sets forth a framework of objectives and strategies to meet this goal. The framework provides the basis upon which to evaluate and select proposals seeking CRFL funds. Example priority research needs have been compiled based on priority needs in Fishery Management Plans approved by the Marine Fisheries Commission, issues identified in the Coastal Habitat Protection Plan, and research needs identified cooperatively with other agencies. The objectives and strategies listed below are topics of particular interest at this time and do not represent an inclusive list of all priority needs in Fishery Management Plans and the Coastal Habitat Protection Plan. Project activities that will be considered for this funding cycle include (no priority order is implied):

Eligibility

Only proposals from universities, local North Carolina governmental entities, the Division of Marine Fisheries, or Wildlife Resources Commission are eligible to receive funding. Individuals/groups desiring funding must partner with one of these eligible agencies. A letter from the partnering agency must be attached to your proposal.

Proposal Guidelines

All proposals must be submitted to the Division of Marine Fisheries director by 5 p.m. on July 31, 2012.

Proposals will be evaluated and applicants notified of acceptance or rejection by January 31, 2013.

Applicants are strongly encouraged to consult with species and/or program leads regarding potential projects. Consultation with the leads does not guarantee funding. For more information on the species/and program leads, contact Tiffany.Frazier@ncdenr.gov.

If your proposal is approved for funding, you will need to work with the Division of Marine Fisheries by supplying information for the preparation of a state contract to facilitate your receipt of funds. It is important for you to know that this program cannot reimburse you for work that has already begun or been completed. Even if your project is selected for funding, you cannot begin any work until there is a state contract in place or you will not be reimbursed. Should your proposal be selected for funding, a contract should be in place within 6 months following the date of your funding award letter. Disbursement of funds will be in agreement with your state contract and proposal budget.

If your project is selected for funding and a contract is in place, you will be required to provide semi-annual updates of progress. This report shall be formal and can be submitted via email. The information in each semi-annual update will only be work completed since the last semi-annual update. An annual, formal, written comprehensive final report will be required. You may be required to present the results of your project and/or research findings at a CRFL Project Conference. You are required to submit your reports to Tiffany Frazier, CRFL Project Coordinator, NC Division of Marine Fisheries. She can be reached by mail at PO Box 769, Morehead City, NC 28557-0769; by phone at 252-808-8004 or 800-682-2632 (in NC only); or via e-mail at Tiffany.Frazier@ncdenr.gov. CRFL funding proposals, reports, and research data are subject to the N. C. Public Records Act (N.C.G.S. § 132-1 et seq).

Proposal guidelines:

1. Applicants must submit one original and 10 hard copies of the proposal plus one electronic copy of the proposal in MS Word or Adobe PDF to the Project Coordinator. Please use Times New Roman, 12 point font and provide centered page numbers on the bottom of each page. The hard copies must be submitted on hole punched paper.
2. All proposals are to include a completed copy of the Application for Funding from the North Carolina Marine Resources Fund application cover sheet (attached).
3. Proposals are not to exceed 17 pages including figures, tables, drawings, vitae, etc.
4. Indirect costs cannot exceed the indirect rate established for the Division of Marine Fisheries (this rate is established annually). Please contact Tiffany Frazier, CRFL Project Coordinator by phone at 252-808-8004 or 800-682-2698 (in NC only); or via e-mail at Tiffany.Frazier@ncdenr.gov for the current rate.
5. All proposals must clearly state how this specific project will enhance or improve the recreational fishing experience for North Carolinians (directly or indirectly), or show how the project will educate anglers about saltwater fishing in NC. Proposals are to identify benefits expected from the proposed activities, including users served, economic benefits to local communities and the state, etc.
6. Proposals for public access must provide estimates on the usage of the facilities, including expected number of people who will use the access site.

7. The CRFL program will not fund land acquisition or construction projects that require other, not yet obtained parcels of land, or are contingent on receiving other grant money before site development can occur.
8. The CRFL program will not fund the design of potential projects, unless funding is already secured and the design portion is only a part of the current proposal.
9. Construction proposals must have minimal adverse habitat impacts, maximum stormwater runoff controls, and maintain natural shorelines where feasible. To demonstrate this, all construction proposals must provide a detailed design and description regarding plans for controlling storm water runoff, avoiding submerged habitat impacts, and protecting the wetland shorelines, prior to project approval. Final design plans (i.e. any engineered drawings, specific low-impact development techniques, materials, etc) must be submitted prior to receipt of funds. If dredging is to be a part of the project, detailed justification and information on area to be affected is required. A copy of all required permits must be sent to the CRFL Project Coordinator prior to beginning construction and any payment is rendered.
10. All projects that involve site acquisition/improvements must occur in coastal or joint waters.
11. Previously funded projects that were successful in requesting multi-year funding need not reapply unless the original project's funding request ends by June 30, 2013. Successful new multi-year projects will receive funding through a state contract that will obligate funds one year at a time. If selected for a first year of funding, the subsequent years funding of multi-year projects will be contingent upon the completion of satisfactory grant performance progress reports as required by grantor, approval by both the Marine Fisheries Commission and Wildlife Resources Commission for subsequent funding, and availability of funds. On multi-year proposals, separate budgets must be submitted for each year proposed with a scope of work and milestones reflecting each year's activities.
12. Projects that are currently being funded can be viewed on the NC Division of Marine Fisheries web site at <http://portal.ncdenr.org/web/mf/> under Recreational Fishing Reports/Grants, Programs and Reports.

Each proposal is to include the following:

Applicant Name: Identify the name of the applicant and/or applicant's organization.

Project Title: A brief statement to identify the project.

Project Abstract. Applicants must submit a **separate** abstract of the proposed project to be included with the proposal in no more than 300 words. Submit one abstract to the CRFL Project Coordinator in MS Word via e-mail to Tiffany.Frazier@ncdenr.gov.

CRFL Strategic Plan Management Goal, Strategy and Research Need Listed in RFP: Identify the [CRFL Strategic Plan](#) Management Goal, Strategy and Research Need listed in this RFP for which the proposal is being applied. Strategies listed in the CRFL Strategic Plan and **not** within the Funding Year 2013 RFP have been funded in the past and thus, successfully achieved.

Project Period: The total period of the project proposed for funding. The award period may be for one or multiple years. **All contracts for projects selected for funding will begin no sooner than July 1, 2013.** There are no exceptions to this policy. Please note this time period when developing project milestones.

Need: Demonstrate the need for assistance.

Objective: Address what is to be accomplished.

Approach: List all procedures necessary to attain each project objective.

Expected Results and Benefits: Identify and document the results or benefits expected from the proposed activities and how the project will help manage, protect, restore, develop, cultivate and enhance the marine resources of North Carolina.

Data Delivery Plan for Research Projects: Provide a written plan describing how all data, analyses, models, etc. generated from the project will be made available to the Division of Marine Fisheries. The plan must include the format in which data will be submitted and acknowledge the requirements contained in the CRFL Funding Data Delivery Specification document. The report and data will receive technical review from the contract technical monitor.

Geographic Location: The location where the project will be administered and where the project will be conducted.

Milestone Schedule: An activity schedule in table format for the duration of the project, starting with Month 1 and concluding at the end of the requested award period including a maximum three-month report writing period. On multi-year proposals, a separate budget, scope of work, and milestones must be submitted for each year of the proposal.

Match: CRFL proposals do not require matching funds but is encouraged as a way to leverage the CRFL funds. However, if match is offered in a proposal the source of the matching funds must be identified in the budget along with the amount of in kind, cash, etc.

The Division of Marine Fisheries reserves the right to use awarded project grant funds as match for any Division of Marine Fisheries-awarded federal grants. You may not use CRFL awarded project funds as match for any grant without explicit written permission to do so from the Division of Marine Fisheries.

Cost Summary: Detail all costs to be incurred in the project, including, but not limited to (see budget template) personnel, equipment, information technology needs (computers, staff, etc.), travel expenses, etc. Details are to include start-up versus long-term operational costs. Prepare your budget carefully and make it as detailed as possible. Changes to the budget after submission are highly discouraged.

Travel expenses must be broken down into two sections (no lump sum totals).

1. Travel related to carrying out the specific duties of the project. A breakdown of travel limited to state levels of allowable per diem showing expected amounts for hotels, meals, miles, etc. as separate lines.
2. Travel related to conference attendance. Applicants are allowed to budget for one conference attendance for each project over the course of the entire project. For example, if

the proposal is a 2-year proposal, you can budget for one conference attendance during a 2-year project. If it is a 3-year proposal, you can still only budget to attend one conference during a 3-year project. Allowable conference charges will be paid for the PI and one student, both of whom must have been integral to the project's success and one of whom will present project results at the conference. A poster or abstract of the presentation must be included in the semi-annual report along with the dates of the conference. All charges must be reasonable and fall within the state allowed travel and per diem charges. For per diem travel rates visit: http://www.ncdmf.net/insidefisheries/Travel/070111_TravelPolicy.pdf.

Principal Investigator: The principal investigator(s) is to be listed and vitae for each principal investigator must be attached. Limit each vita to two pages. If this is not a research or monitoring project identify a key contact.

Other Funded Research: Identify all other funding sources currently being received and other funding sources where applications have been submitted and in which project personnel are involved. Include funding title, funding source, funding objective, amount of funding, length of funding, and principle investigator. Include percentage of salary funds by investigator by project.

Other Information: Applications for facilities/access projects must provide estimates of the usage of the proposed facility including number of people and number of current fishing license holders within the area, and any other relevant demographic data and estimates that support the need for the project. A facilities/access projects shall post signage giving appropriate credit to the CRFL fund. A CRFL logo has been developed for your use.

Environmental Considerations: The Division of Marine Fisheries encourages low impact development that protects vegetated shorelines, wetlands, water quality, submerged aquatic vegetation, designated Primary Nursery Areas, and designated Anadromous Fish Spawning Areas. Proposals should avoid adverse impacts to these sensitive habitats. In the event that impacts cannot be avoided or minimized through alteration of the project configuration or design, the project may not be considered for funding even though it meets an RFP funding priority.

Applicants shall maintain the stated or intended use of the proposed facility/access project for a minimum period of 20 years. Projects over \$100,000 must maintain the intended use for 30 years. Any abandonment of the project, conversion of the project to another use, or allowance of uses prohibited by the contract shall automatically trigger repayment to the fund of an amortized portion of the total grant reflecting the remaining life of the project.

All projects shall specify dates and deliverables clearly in the proposal.

Incomplete applications and those that do not conform to the above format will not be considered.

Proposal Submission

The Division of Marine Fisheries office in Morehead City must receive one original and 10 hard copies of the proposal plus one electronic copy of the proposal in MS Word or Adobe PDF by 5:00 p.m. on July 31, 2012. E-mail proposals to Tiffany.Frazier@ncdenr.gov. Faxed proposals will not be considered. Mail or deliver hard copy applications to: **North Carolina Division of Marine Fisheries, Attention: CRFL Proposal, P.O. Box 769, 3441 Arendell Street, Morehead City, NC 28557**. By state law, late proposals cannot be considered.

Review Process

Only proposals supporting the purpose of the Marine Resources Fund as specified in N.C. General Statute 113-175.1 and meeting the guidelines established in this request for proposals will be considered. Proposals meeting these requirements will be evaluated based on their capability to enhance the marine resources of the state. Proposals being considered for funding but needing revisions, enhancements or clarification to improve the quality of the proposal will be returned to the applicant. The applicant will then have 30 days to make the changes and return to the NCDMF for consideration.

Voluntary amendments to proposals are not normally accepted. One may request an amendment, but a project requesting an amendment to the budget or scope of work will be considered **only** if determined to be meritorious.

Funding Year 2013 CRFL Grant Program Funding Strategies

Management Goal - Fish

Objective 1: Estimate fishing effort, catch, harvest, and mortality of important coastal fish species.

Strategy F.1.1 Increase current recreational sampling levels to obtain estimates with greater precision.

Example Priority Research Need:

Projects investigating the feasibility of using new technologies to gather timely and accurate recreational and for-hire recreational statistics catch and discard statistics, including the use of cellular and internet technologies.

Strategy F.1.2 Develop and expand statistically sound juvenile and adult fishery-independent sampling programs.

Example Priority Research Need:

Establish a juvenile abundance index to fill in gaps in the DMF biological database for all important species to evaluate and potentially expand all juvenile indices for use in coast wide assessments.

Tagging programs to verify estimates of natural and fishing mortality as well as mixing rates and migration patterns of important fish species.

Collect data to estimate population size and age structure of important species.

Strategy F.1.3 Identify and gather life history information needed for stock assessment models for recreationally important fish species.

Example Priority Research Need:

Mark-recapture (tagging) studies to estimate the fishing mortality rates, migration, and movement of managed species to develop stock identification techniques to improve understanding of stock definition.

Collect aging structures from recreational catches harvested by tournaments and for hire vessels.

Research projects designed to provide updated mortality studies of important fish species.

Update maturity schedules and fecundity estimates for important fish species.

Evaluation of otolith microchemistry or genetic marking to help determine unit stocks.

Identify spawning and nursery areas for important finfish.

Develop analytical modeling techniques to account for environmental variation (e.g. cold kills) in stock assessment models.

Strategy F.1.5 Develop methodologies and initiate sampling of important night fisheries (e.g., flounder gigging, adult red drum). Increase focus on released species (discards) and direct more effort toward rare event species.

Example Priority Research Need:

Assess size distribution of recreational discards from night fisheries such as red drum and flounder.

Characterize the release of trophy fisheries (tackle, geographic locations, time of day, bait, water temperature, seasonality, hook types, etc.).

Strategy F.1.6 Enhance upper estuarine recreational sampling programs to produce estimates of catch and angler participation directed at recreational anadromous species and other fishes occupying low salinity waters.

Example Priority Research Need:

Survey upper estuarine recreational anglers in the Albemarle Sound, Cape Fear River and their tributaries to obtain statistically valid estimates of angler catch and participation (fishing effort) along with estimates of the number of fish released (discards).

Collect biological data needed to meet the mandated requirements of the Fisheries Reform Act by providing information for stock assessment and Fishery Management Plan development.

Strategy F.1.8 Initiate surveys of recreational fishermen targeting shellfish, crustacea, and bait.

Example Priority Research Need:

Sample recreational fishermen to determine bait harvest of jumping mullet, gear(s) used, bait mullet species composition (white vs. striped mullet), and discard levels (alive and dead) of striped mullet used for bait.

Strategy F.1.9 Set up a carcass collection pilot program for recreationally important fish to expand age, reproductive and other life history sampling and analysis.

Example Priority Research Need:

Plan, implement, and establish a comprehensive carcass collection program for recreational fisheries.

Objective 2: Characterize socio-economic attributes of coastal fisheries.

Strategy F.2.1 Initiate a socio-economic survey of recreational fishermen.

Example Priority Research Need:

Conduct comprehensive socio-economic surveys of the for-hire fishery to assess the impact of this sector on coastal economies and how economic conditions affect this fishery.

Economic analysis of specific recreational fisheries.

Strategy F.2.2 Identify and enumerate different users groups within the recreational sector.

Example Priority Research Need:

Conduct a socio-economic analysis of the for-hire industry in North Carolina. Research needs include the estimated economic impact of the for-hire sector as well as social characteristics and perceptions of trends in the various fisheries and the industry itself.

*Conduct an economic impact analysis of public access sites to local communities and the state as a whole. Additionally, research should also include a social analysis identifying common user groups.

Conduct a socio-economic analysis of saltwater fishing tournaments in North Carolina. Research should include an economic and social analysis by tournament type (inshore or near-shore, king mackerel, and offshore/pelagic) as well as perceptions of tournament fishermen.

Objective 3: Characterize catch and release mortality in coastal fisheries.

Strategy F.3.1 Initiate bycatch and discard mortality studies of recreationally important fish and fisheries.

Example Priority Research Need:

Research projects that model and predict how regulations impact discard mortality in recreationally important fish species with emphasis on determining effectiveness of newly implemented fishing restrictions (such as gill net attendance and circle hook usage).

Research projects that estimate and describe discard release mortality.

Strategy F.3.2 Develop gear and methodology for reducing release mortality from recreational fishing.

Example Priority Research Need:

Develop gear and methodology for reducing release mortality from recreational fishing.

Management Goal - Habitat

Objective 1: Improve effectiveness of existing programs.

Strategy H.1.1 In cooperation with other Department of Environment and Natural Resources agencies and university scientists, conduct coastal habitat status assessments using standard indicators of estuarine and near shore ocean conditions.

Example Priority Research Need:

Analyze and interpret existing data to use in coastal habitat assessments.

Strategy H.1.4 Enhance education of fishermen and the public concerning fish habitats, how they function, and what people can do to protect them.

Example Priority Research Need:

Develop educational programs on habitat function, conservation and protection.

Develop educational displays at public boating access areas focusing on the ecological value of the surrounding fish habitats.

Encourage public/private partnerships to construct marsh sill projects to increase awareness of the benefits of living shorelines.

Strategy H.1.5 Expand and utilize the Oyster Shell Recycling Program and the Under Dock Oyster Culture Program to enhance public awareness and foster volunteer, government agency, and Non-governmental Organization partnerships.

Example Priority Research Need:

Expand the NC Oyster Shell Recycling through public outreach on the importance of protecting our estuary and restoration efforts through oyster recycling.

Pilot project to research standardized recycling containers that will meet sanitation standards and service of these containers for restaurants.

Objective 2: Identify, designate, and conserve fish habitat and Strategic Habitat Areas (SHAs).

Strategy H.2.1 Expand the mapping of important coastal fisheries habitat such as submerged aquatic vegetation (SAV), shell bottom and other bottom types.

Example Priority Research Need:

Conduct spawning area surveys where none currently exist (river herring, other anadromous fish, red drum, blue crab, etc.).

Strategy H.2.2 Identify and delineate candidate sites for designation as Strategic Habitat Areas.

Example priority research Need:

Conduct field research to evaluate and verify the habitat condition of identified Strategic Habitat Areas in the Albemarle and Pamlico Sound regions.

Strategy H.2.3 Inventory and conduct research and monitoring to determine status of and trends in the six basic fish habitats (SAV, shell bottom, wetlands, water column, hard bottom, soft bottom).

Example Priority Research Need:

Monitoring of submerged aquatic vegetation (SAV) habitats throughout the coastal area, including distribution and health of SAV habitats and functions of the associated fish communities.

Conduct research to evaluate environmental conditions that provide suitable submerged aquatic vegetation (SAV) habitat.

Develop and conduct fish usage patterns of nearshore (within state waters) hard bottom.

Conduct a condition assessment of nearshore (within state waters) high-relief and low-relief hard bottom.

Acquire updated bathymetry of shallow soft bottom habitat to assist in determination of potential nursery and SAV habitat.

Strategy H.2.4 Conduct research to clarify the linkages between coastal fish habitat and fish production and identify the key aspects of habitat function and how these functions are affected by human activities.

Example Priority Research Need:

Research on effects of alternative energy projects on fish habitats and stocks.

Develop field techniques and analytical modeling techniques to account for variation in habitat quality and variable spawning habitat types on spotted seatrout spawning success.

Strategy H.2.5 Coordinate mapping and monitoring of fish habitats to delineate causes of and effects of habitat disturbance and loss.

Example Priority Research Need:

Develop a mechanism and strategy that coordinates mapping and monitoring of fish habitats to delineate causes and effects of habitat disturbance and loss.

Objective 3: Enhance habitat and protect it from physical harm.

Strategy H.3.1 Identify degraded fish habitat and implement restoration measures.

Example Priority Research Need:

Develop a mechanism and strategy to identify degraded fish habitat and implement restoration measures.

Identify physical impediments to anadromous fish spawning migration routes outside the Albemarle Sound Management Area.

Improve fish passage for anadromous fish spawning migrations through dam removal, fish passage structures, or culvert replacements with fish friendly culverts or bridges.

Develop tools to quantitatively assess the impact of cumulative effects of land-use changes on fish habitats.

Encourage public/private partnerships to implement low impact development stormwater retrofit techniques to reduce stormwater runoff entering coastal waters. This excludes retrofits that are required as part of a regulatory permit. Priority will be given to those most directly benefiting coastal water quality.

Strategy H.3.2 Initiate monitoring programs to evaluate success of restoration and enhancement projects.

Example Priority Research Need:

Conduct fish and benthic monitoring at oyster restoration sites to quantify the level of success and ecosystem benefits.

Strategy H.3.3 Conduct research on restoration techniques in order to improve the quality and function of created or enhanced habitat.

Example Priority Research Need:

Develop a mechanism and strategy to conduct research on restoration techniques in order to improve the quality and function of created or enhanced habitat.

Strategy H.3.4 Refine materials and deployment techniques to maximize long-term ecological function and structural integrity of restoration efforts.

Example Priority Research Need:

Develop a mechanism and strategy to refine materials and techniques to maximize long-term ecological function and structural integrity of restoration efforts.

Strategy H.3.5 Enhance the ongoing oyster sanctuary program, including shell recycling

Example Priority Research Need:

Conduct research to maintain oyster recruitment, growth, and survival data on existing and newly constructed oyster sanctuary structures.

Conduct research to monitor environmental parameters and structural stability of oyster sanctuary structures.

Evaluate alternative materials for use in development of oyster sanctuaries including cost effectiveness, recruitment and survival rates of oysters, and structural integrity of materials.

Strategy H.3.6 Expand Oyster Shell Recycling Program outreach and public participation

Example Priority Research Need:

Develop a network of grassroots effort to encourage local participation in oyster shell recycling.

Conduct research and solicit cooperation in identifying and solving local and statewide oyster shell recycling issues.

Coordinate oyster shell recycling efforts regionally or conduct oyster shell recycling locally to maintain or enhance established program.

Strategy H.3.7 Solicit collaborative research on larval transport and dispersal patterns and incorporate results into siting oyster habitat restoration projects and no-take oyster sanctuaries.

Example Priority Research Need:

Conduct research to identify larval transport of finfish or crustacean species that utilize oyster reef habitat and incorporate into a habitat enhancement siting plan.

Conduct research to identify sites for oyster habitat enhancement based on larval transport and the proximity to key habitats such as SAV beds.

Management Goal – People

Objective 1: Provide fishermen increased access to fisheries resources and enhancement structures.

Strategy P.1.1 Collaborate with Department of Transportation, Wildlife Resources Commission, and Department of Environment and Natural Resources to site boat ramps and piers at highway bridges and State Parks and provide habitat enhancement such as artificial reefs or oyster cultch in conjunction with these facilities to provide increased access for both boat and pier fishermen.

Example Priority Research Need:

Improve and develop public fishing and boating access.

Develop a comprehensive siting management plan for public access, mapping current sites and prioritization of future sites in coastal fishing waters.

Strategy P.1.3 Utilize access structures and strategic land acquisitions for outreach, environmental education and community based environmental enhancement activities.

Example Priority Research Need:

Coordinate with other agencies and local governments to identify, enhance, conserve, and develop recreational fishing access.

Strategy P.1.4 Coordinate the siting of artificial fishing reefs and oyster reefs with the locations of access structures to increase utilization by the recreational fishing community.

Example Priority Research Need:

Build or enhance artificial reefs in state waters.

Strategy P.1.5 Increase the function of artificial reefs through refinement of materials and techniques based on research and monitoring.

Example Priority Research Need:

Conduct research on innovative artificial reef materials and monitor their success on NC Artificial Reef sites.

Conduct research on various artificial reef materials and their suitability for use on various conditions and substrates encountered on existing or potential artificial reef sites.

Strategy P.1.6 Develop a unique web page for artificial reef activities, reef locations, and material deployment locations.

Example Priority Research Need:

Enhance web page for artificial reef activities, reef locations, and material deployment locations.

Strategy P.1.7 Update, prints, and distributes the N.C. Artificial Reef Guide.

Example Priority Research Need:

Design coastal reef fishing guide for offshore and inshore waters, including fishing access to oyster sanctuaries. Printed on water proof paper and then made available to DMF for inclusion on their website.

Objective 2. Provide better products and programs aimed at improving public information, education, and enrichment.

Strategy P.2.1 Develop workshops, clinics and pamphlets on ethical fishing practices,

conservation methods and how-to seminars.

Example Priority Research Need:

Develop comprehensive public education program on recreational fishing practices, including information kiosks at fishing access points.

Develop information programs on catch and release, ethical angling, fishing techniques, reducing release mortality and by-catch.

Strategy P.2.3 Expand the scope and content of the DMF website.

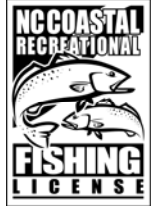
Example Priority Research Need:

Develop audiovisual educational materials such as an overview of the recreational fisheries statistics program that could be placed on the DMF website. Other ideas: de-hooking methods, safe handling of catch, ethical angling practices, and fisheries value of different habitats.

Take advantage of new technological tools to enhance information distribution and public understanding.



APPLICATION FOR FUNDING FROM THE NORTH CAROLINA COASTAL RECREATIONAL FISHING LICENSE FUND



1. APPLICANT INFORMATION:		2. PROJECT ADMINISTRATOR INFORMATION:	
Applicant's Legal Name:		Name of Project Administrator:	
Street:		Street:	
Mail (PO Box):		Mail (PO Box):	
City, State and Zip Code:		City, State and Zip Code:	
EMPLOYER IDENTIFICATION NUMBER (EIN):		Project Administrator Phone number with area code:	
		Project Administrator FAX number with area code:	
3. TYPE OF APPLICANT: <input type="checkbox"/> State agency <input type="checkbox"/> County or Municipality <input type="checkbox"/> University <input type="checkbox"/> Other (specify)		Project Administrator Email Address:	
4. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation of previously funded CRFL Project <input type="checkbox"/> Award Revision (<i>Explain</i>):		5. PROJECT TITLE:	
6. PROPOSED PROJECT: Start Date: Ending Date:		7. STRATEGIC PLAN OBJECTIVE, STRATEGY AND RESEARCH NEED: Management Goal (check one): <input type="checkbox"/> Fish <input type="checkbox"/> Habitat <input type="checkbox"/> People	
8. SOURCES OF FUNDING: a. CRFL Funds Requested : \$ _____ b. Applicant Match: \$ _____ d. Other Match: \$ _____ e. TOTAL: \$ _____		Objective (list number): _____ Strategy (e.g., F.1.1): _____ Research Need (list project need):	
		9. AREA AFFECTED BY PROJECT (City, Counties, etc.):	
11. LIST STATE AND FEDERAL PERMITS REQUIRED FOR THIS PROJECT: (Indicate completion date)			
12. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN FULLY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND WILL COMPLY WITH ALL RULES AND REGULATIONS IF THE ASSISTANCE IS AWARDED.			
Full Name of Authorized Representative:		Authorized Administrator Email Address:	
Signature:		Date Signed:	Phone Number (with area code):
Following Boxes are for CRFL Internal Office Use Only			
DATE RECEIVED BY NCDMF:		REVIEWERS:	Project Identifier:
DATE ACCEPTED FOR REVIEW:			From CRFL Fund: \$ _____

Budget template to be used as a guide to help applicants provide an itemized budget per project proposal. Additional needed items may be added and items not necessary are to be deleted.

Expense	Year 1		Subsequent Years	
	No. FTE	Cost (\$)	No. FTE	Cost (\$)
Personnel by position title (biologist, technician, computer programmer)		Include amount of project		Include amount of project
Fringe (social security, retirement, health)				
Indirect (Rate = ___% of salaries and fringe only)				
Travel (mileage, meals, lodging)	See page 4 Cost Summary			
Postage				
Printing/photocopying				
Vessels				
Vehicles				
Telephone				
Computer Equipment (PC, printer, etc.)				
Software				
Office Furniture				
Office Space				
Gas				
Uniforms/Clothing				
Safety Items				
Office Supplies				
Scientific Equipment				
Training				
Office Equipment (photocopier, fax, etc.)				
Maintenance Contracts				
Others				
TOTAL COST				

Project Narrative

**Project Information:
Jacksonville Boating Access Area
Onslow County**

Date: 8/1/2013

**Engineer:
Preston Royster, PE
North Carolina Wildlife Resources Commission
1718 NC Hwy 56 W
Creedmoor, NC 27522**

Project Summary:

The Jacksonville Boating Access Area project is located between US-17 (Marine Blvd) and Old Bridge St on the west side of the New River in Jacksonville, NC. The existing property currently consists of two parcels owned by the City of Jacksonville (previously six separate parcels recombined into one) and Onslow County. The site recently was occupied by multiple old commercial buildings and a combination of gravel, asphalt, and concrete parking. The City of Jacksonville has recently demolished all of the existing buildings and parking on the site.

This project involves the construction of a new NCWRC boating access area. The BAA will consist of three single lane launch ramps, two floating docks, and a canoe/kayak launch area. Uphill from the ramps, we are going to install parking lots for 69 boat trailers and 60 single vehicles and the associated drive aisles. We are also planning to construct a restroom building, and the City is planning to construct a Welcome Center. We are also planning to permit a boardwalk and fishing pier, however this may be constructed at a later date due to floodplain permitting issues. The New River adjacent to the project is classified as SB; HQW, NSW. Permeable concrete is planned to be installed on the site to offset the additional impervious area proposed.

RECEIVED

Impervious Surface Calculations:

AUG 29 2013

The total site area above the normal water elevation is approximately 5.13 ac (224,640 sf). Prior to the demolition conducted by the City of Jacksonville, there was 118,113 sf (52.58%) of impervious surface on the site. All of the impervious surface existed on the site for many years based on aerial photos. Following development of the site, we are proposing to install 143,295 sf of impervious surface. In order to offset the additional impervious and fall under the redevelopment exemption, we are planning to install pervious pavement. We are proposing to install 34,149 sf of permeable pavement. Based on DWQ's rules, this results in a net impervious area of 117,683 sf, which is less than the existing amount.

RECEIVED
DCM WILMINGTON, NC

AUG 05 2013

Dredging:

Dredging will be required for this project in order to have adequate depth at the end of the ramps for launching and recovering boats and to provide a navigable channel out to deep water. We are proposing to dredge a total of 428 cy below normal water in order to meet these criteria.

Grading:

The total amount of earthwork for this project will be approximately 6,000 cubic yards. This includes rough and fine grading, preparing the subgrade of the drive aisles and parking lots, and importing fill that will be needed to bring the site up to the proposed grades and provide positive drainage. Spoil from the proposed dredging will either be used on site (if suitable) or hauled to an offsite spoil area. We are planning to use the Onslow County Landfill unless another site is found prior to the start of construction. If another site is found, we will inform DCM and submit the necessary information to obtain approval to use the site. The total disturbed area of this project is approximately 255,000 sf (5.85 acres).

Upland Excavation and Earthwork:

The upland excavation is to reach the proposed subgrade for the drive aisles, parking lot, and permeable concrete parking pavement structure. Additional excavation may be required due to unsuitable soils. However, this will not be known until construction begins. Approximately 1,100 cubic yards will need to be excavated. This soil will be used elsewhere on the site. In addition, off-site soil will need to be transported to the site to bring it up to the proposed grades and to provide positive drainage.

RECEIVED

Existing Stormwater Conditions:

AUG 29 2013

The existing site has no existing stormwater controls. The runoff currently enters storm drain networks that drain to existing pipe outfalls in the southeast corner of the site and on the north side of Marine Blvd. A portion of the site (the eastern half) sheet flows into the New River. There is an existing dry detention basin constructed by NCDOT within the public right-of-way in the southeast corner of the site. This was permitted and constructed as part of the US-17/Marine Blvd bridge replacement and widening project.

DCM-MRD CITY

Proposed Stormwater Conditions:

The proposed project includes the construction of additional stormwater piping and permeable concrete pavement to offset the additional impervious surface proposed. The proposed pipe network will tie to the existing pipes on the site. They will discharge at the

RECEIVED
DCM WILMINGTON NC

AUG 05 2013

existing outfall locations. Therefore, no new concentrated discharge points or pipe outlets are proposed as part of this project. A small portion of the proposed parking lot will drain into NCDOT's dry detention basin. NCDOT has been contacted about this, and they have no objections to this.

There is a large amount of impervious surface existing on the site. As such, we are proposing to install permeable concrete to reduce the amount of built upon area on the site to an amount lower than the amount that is currently on the site. In addition, sheet flow will be maintained on the eastern side of the site.

Ramps/Docks:

The proposed project includes the construction of three – single lane launch ramps. Each lane will be 15' wide, for a total of 45'. There will be 8'x100' floating docks between each ramp. A 6' wide boardwalk is proposed along the shoreline of the New River along the entire frontage of the site. In addition, a fishing pier that extends into the New River is proposed. The pier will be accessed by a 6' wide boardwalk, and the platform itself will be 8'x50'. As this pier extends into New River, reflectors will be installed for the safety of night time boat traffic.

Wetlands:

The CAMA/Coastal Wetlands and 404 wetlands were delineated by DCM staff and Corps of Engineers staff on July 28, 2010. There are minimal CAMA wetlands on the site, and they will be minimally impacted as a result of this project. The project also has a minor impact on the 404 wetlands. In order to install the ramps, the drive aisle, and remove an existing concrete slab, 3,869 sf of 404 wetlands will be filled.

RECEIVED

AUG 29 2013

DCM-ADM CITY

RECEIVED
DCM WILMINGTON, NC

AUG 05 2013

**DIVISION OF COASTAL MANAGEMENT
FIELD INVESTIGATION REPORT**

1. **APPLICANT'S NAME:** City of Jacksonville - Jacksonville Boating Access Area
2. **LOCATION OF PROJECT SITE:** The project site located at 135 South Marine Boulevard, in Jacksonville, Onslow County.

Photo Index—2006: 32-6528, L-M, 14-16 2000: 32-418, I-M, 15-16 1995: 32-405, J-N, 6-8
State Plane Coordinates - X: 3025806 Y: 165296
Lat: 34°45'08.535" N **Long:** 77°26'07.210" W

3. **INVESTIGATION TYPE:** CAMA / Dredge & Fill **ROVER FILE #:** N-082010A

4. **INVESTIGATIVE PROCEDURE:** Dates of Site Visit – 5/22/12 & 8/20/13
Was Applicant Present – Yes, No

5. **PROCESSING PROCEDURE:** Application Received – Complete on 8/16/2013
Office – Wilmington

6. **SITE DESCRIPTION:**

- (A) **Local Land Use Plan** – Onslow County RECEIVED
Classification From LUP – Commercial
- (B) **AEC(s) Involved:** PTA, EW, ES AUG 29 2013
- (C) **Water Dependent:** Yes
- (D) **Intended Use:** Public
- (E) **Wastewater Treatment:** Existing – Municipal DOCKLAND CITY
Planned - None
- (F) **Type of Structures:** Existing – Deteriorated boat ramp and utility easement (Duke Energy)
Planned – Bulkhead, breakwater, three (3) boat ramps, kayak launch, floating docks, boardwalk, restroom building, welcome center, driveways and asphalt parking areas.
- (G) **Estimated Annual Rate of Erosion:** N/A **Source** – N/A

7. **HABITAT DESCRIPTION:**

	DREDGED	FILLED	OTHER
(A) Vegetated Wetlands		3,969 sq. ft. total. (3,869 sq. ft. of "404" & 100 sq. ft. of Coastal Wetlands)	
(B) Non-Vegetated Wetlands – (open water)	8,320 sq. ft. (Access Channel)	2,048 sq. ft. (Boat Ramp)	4,552 sq. ft.(Incorp.)
(C) Other- High ground		225,000 sq. ft. (Grading and Filling)	143,395 sq.ft. (Pervious & Impervious)

- (D) **Total Area Disturbed:** 243,889 sq. ft. (5.59 acres)
- (E) **Primary Nursery Area:** Yes and No (Project is located at the dividing line of PNA & SNA.)
- (F) **Water Classification:** SB **Open:** No

8. **PROJECT SUMMARY:** The applicant is proposing to construct a public boating access area with associated driveways, parking areas, boat ramps with stabilization walls, breakwaters, fixed and floating access piers, boardwalk, bulkhead, welcome center and restroom facility. The applicant is also proposing to excavate an access channel which would extend from the boat ramp to the main channel of New River.

9. PROJECT DESCRIPTION:

The applicant's property is located at 135 South Marine Boulevard, adjacent to New River, in Jacksonville, Onslow County. To find the property, take Highway 17 North from Wilmington into Jacksonville (+/- 42 miles). Upon entering Jacksonville, merge onto NC HWY 17 Business towards downtown Jacksonville and travel approximately 1.5 miles. Bear right onto Old Bridge Street and the subject property will be located on the left hand side of the road, between Old Bridge Street and South Marine Boulevard (Hwy 17 Bus.).

The project site consists of a single 5.15 acre parcel that borders the New River, Old Bridge Street and South Marine Boulevard (also includes the US Hwy 17 bridge that crosses New River). According to the applicant, the high ground portion of the property has an elevation of approximately 5-7 feet above the Normal Water Level (NWL). The property previously contained several commercial businesses, including parking areas and driveways; however, the site(s) was recently demolished and taken back down to grade. Vegetation on the high-ground portion of the project site consists primarily of lawn grasses, Cypress trees, Magnolias and Pecan trees. The project site has approximately 544 linear feet of natural shoreline frontage bordering New River. Within the boundaries of the property, a few coastal wetland species are present including: Bulrushes (*Scirpus spp.*), Cat-tails (*Typha spp.*) and Salt Reed Grass (*Spartina cynosuroides*). These Coastal Wetlands are isolated and predominantly located on the southeastern corner of the property.

The applicant states that water depths range from -1.0 foot (near shore) to - 4.5 feet near the end of the proposed dredge limit(s). These water depths were obtained via elevation shots (based on NAVD 88 datum) supplied by the applicant.

Immediately adjacent to and in front of the proposed water dependent development, exists the remnants of an old concrete pier and boat ramp. The submerged bottom is littered with old debris which includes concrete rubble, old pilings, bottles, etc., as well as an old concrete boat ramp. The old boat ramp originates on high ground and extends below the normal water level. It is suspected the entire shoreline of the subject property has historically been used for water dependent and recreational purposes.

The uplands portion of this property (far western limits) is void of vegetation due to all of the recent demolition activities; however, the lower portion of the property is covered with lawn grasses. Duke Energy maintains a utility easement just north of the proposed development (located between the US Hwy 17 Bridge and the proposed boat ramps), but it does not appear that any of the proposed development will impact the current utilities and/or transmissions.

Properties in the vicinity of the project site have mixed uses; a public boat ramp exists directly across the river from the proposed site, a restaurant exists along the western side of the US Hwy 17 Bridge, a commercial gas station border the property to the south and residential home sites are within a quarter mile of the project site. There are no known archaeological sites within the vicinity of the project site.

The waters of the New River, adjacent to the project site, are classified as SB by the North Carolina Division of Water Quality. The North Carolina Division of Marine Fisheries has classified the water in front of and downstream of the project site as a **Primary Nursery Area (PNA)**, while waters immediately north of the project site are designated as a **Secondary Nursery Area (SNA)**. Additionally, the waters are **CLOSED** to the harvest of shellfish.

RECEIVED

AUG 29 2013

DCM/JHD/CITY

AUG 29 2013

PROPOSED PROJECT:

The applicant is proposing to construct a public boating access area with associated driveways, parking areas, boat ramps with stabilization walls, breakwaters, fixed and floating access piers, boardwalk, bulkhead, welcome center and restroom facility. The applicant is also proposing to excavate an access channel which would extend from the boat ramp to the main channel of New River. The applicant is also proposing to maintenance excavate an access channel.

The proposed boating access area would require the entire project site to be disturbed and graded for construction. The proposed upland development would include paved drive isles and parking area, providing standard and vehicle with trailer parking spaces with associated storm water treatment (see Sheet SD3.0 and SD3.1). Beginning with proposed upland development and working waterward towards New River, the applicant is proposing to construct a series of entrance and exit driveways using a curb and gutter system. The driveways would be multidirectional and would direct traffic to and from the boat ramp itself. A single parking lot (providing 28 parking spaces) would be located along the central portion of the property near the western most property boundary and a 45' x 50' welcome center would be located adjacent to the parking lot, along the eastern side. Several additional parking spaces, including bike parking, would be located in and around the welcome center. Further east, the applicant proposes to install a "vehicles with trailer" parking lot, capable of accommodating approximately 69 boat trailers. The proposed "vehicles with trailers" parking area would be centrally located and would run parallel with the proposed ramps, or in an east to west orientation. A restroom building would be constructed just east of the proposed parking area, between the boat ramp and parking areas. For detailed information related to the parking areas, driveways, welcome center and restroom building. Please refer to Sheets SD2.0 and SD2.1 (Site Plan).

According to the application package, the proposed boat ramp would have a footprint measuring approximately 60 feet wide by 110 feet long. Approximately 20' of the boat ramp would extend below the elevation of the NW boundary as it exists today. Immediately north and south of the proposed boat ramp, the applicant is proposing to install a wooden boardwalk (approximately 6' x 400') that would span the length of the shoreline, and would extend beyond the applicant's property boundaries, stretching from beneath the Old Bridge Street bridge to the South Marine Boulevard bridge. According to the site drawings, the portion of development located within the NCDOT easement would not be undertaken at this time and would be reserved for future development. The boardwalk would be located predominately over high ground with the exception of one small area just north of the ramp where the boardwalk would extend beyond the mean water elevation (approximately 20'). Along the northern side of the ramp, the boardwalk would extend from the waters edge, back to the proposed restroom facility, a distance of approximately 240 linear feet. Along the southern side of the proposed boat ramp, the boardwalk would traverse the shoreline and would provide access to an 8' x 50' fishing/observation pier, as well as a canoe/kayak launch. According to the site plans, the proposed fishing/observation pier would be located just waterward of the low water elevation, and would be positioned about midway between the proposed ramp and the Old Bridge Street bridge. As proposed, the entire boardwalk would be located within the 30' Coastal Shoreline Buffer. The canoe/kayak launch would tie into the boardwalk and be located immediately south of the proposed boat ramp. The kayak launch would consist of an 8' x 15' wooden step down, located just within the buffer, that would lead to a 25' x 60' area of fill sand located above the mean water level. Fill sand would be trucked in and placed at this location (within the 30' Coastal Shoreline buffer) to help facilitate easier access to and from the water's edge.

Within the confines of the boat ramp proper, the applicant proposes to install a 60' wide by 110' long boat ramp. The ramp would consist of three, 15' wide travel lanes, each separated by an 8' wide x 100' long floating dock (two docks total). The floating docks would connect to two, 8' wide x 65' long concrete access piers.

Two vinyl breakwater walls would be located on each side of the proposed ramp, one measuring approximately 165' (southern side) and the other measuring approximately 100' (northern side). The breakwaters would extend a maximum distance of 51' waterward of the Normal Water Level (NWL), but would average approximately 41' waterward of the NWL.

With exception of the boat ramp proper, piers, docks and breakwaters, the remaining development would be located a distance greater than 75' from the Normal High Water (NHW) level.

Perhaps the most critical component of this project is the applicant's proposal for dredging, which includes a 64' wide x 207' long area within and immediately adjacent to the proposed boat ramp. The applicant is requesting approval to dredge from a depth of -1.0' NLW to a depth of -4.5', at NLW (total dredge volume of 431 cu. yds). Currently, water depths along the shoreline in the area of the proposed ramp average approximately 1.0' NLW and slowly taper to a depth of approximately -4.5' (@ NLW) near the outer edge of the dredge limits. A small area of both "404" type and Coastal Wetlands exists in this area and would also need to be excavated to accomplish this phase of the project. As stated by the applicant, approximately 100 sq. ft. of Coastal Wetlands and 3,869 sq. ft. of "404" type Wetlands would be impacted as a result of the ramp installation and/or dredging. The majority of this disturbance would be attributed to the placement of fill material at the water's edge for the construction/installation of the concrete boat ramps. Approximately 157 cu. yds. of material would be placed in this area to bring the site up to the proposed grades and to make positive drainage of the area. Considering the layout of the property, it appears the applicant has made an attempt to avoid and/or minimize any impacts to both "404" and Coastal Wetlands. Please refer to Sheet SD3.1 for detailed information on the dredging limits and the existing and proposed water depths.

RECEIVED

The applicant states that any suitable dredge material will be retained and used on-site, and any unsuitable material would be transported and disposed of at an approved waste disposal facility.

AUG 29 2013

10. ANTICIPATED IMPACTS

DCM-MUD CITY

The construction of the boating access area would result in the disturbance of the entire project site, approximately 225,000 square feet of high ground (approximately 5.16 acres). The proposed boating access area, including, but not limited to: the paved parking, access drives, turn around area, welcome center, restroom facility and boat ramp would result in a total of approximately 143,295 square feet of impervious surface (including pervious pavement totaling 63.79%) for the entire project site. Approximately 118,113 square feet of impervious surface existing previously without any stormwater treatment; however, the new plan calls for some collection and redistribution of stormwater runoff. The applicant has mentioned that a State Stormwater Permit application has been submitted to the DEMLR; however, their records do not indicate that a permit has been issued. The Stormwater project has been designated a working number of SW8130601. The proposed boat ramp and supporting structures would result in the disturbance of an area measuring approximately 64 feet wide by 207 feet long (approximately 13,248 square feet). As proposed, an area measuring approximately 64 feet wide by 100 feet long (approximately 6,400 square feet) would be excavated from the high ground to provide adequate slope for the proposed ramp, resulting in the removal of approximately 711 cubic yards of high ground material. The applicant is also proposing to place approximately 157 cubic yards of fill material below the NWL level for ramp construction. The proposed vinyl sheet pile retaining wall/breakwaters, located on each side of the proposed ramp, would result in the filling of approximately 264 square feet of Estuarine Waters. The placement of the fill material and constructed slope for the boat ramp would result in a landward shift of the NHW boundary approximately 25 feet. The proposed boat ramp would extend approximately 41 feet below the proposed NHW boundary and the toe of the ramp would terminate at approximately -3 feet below NLW.

The proposed floating docks would extend approximately 80 feet waterward of the proposed NHW boundary and would incorporate approximately 1,280 square feet of Estuarine Waters. The proposed floating dock would extend approximately 80 feet into a water body measuring approximately 700 feet in width. As proposed the floating docks would conform to the ¼ width limitation and it would not extend beyond the established pier head line. The proposed maintenance excavation of the channel would result in the removal of approximately 431 cubic yards of material from below NHW.

As proposed, the planned development would stop short of the Corp of Engineer's Federally maintained channel, which is located along the southern side of the Old Bridge Street bridge.

Lastly, the proposed dredging portion would be located within water's that are designated as a Primary Nursery Area by the NC Division of Marine Fisheries. Although historical documentation shows proof that a boat ramp existed in the immediate vicinity of the proposed dredging limits, a historical record of dredging cannot be defined. However, it should be noted that the PNA limit terminates along the northern property boundary and upland waters immediately adjacent to this site are classified as Secondary Nursery Areas. Minor increases in turbidity should be expected during construction; however, long term impacts are not anticipated.

Submitted by: J. Dail

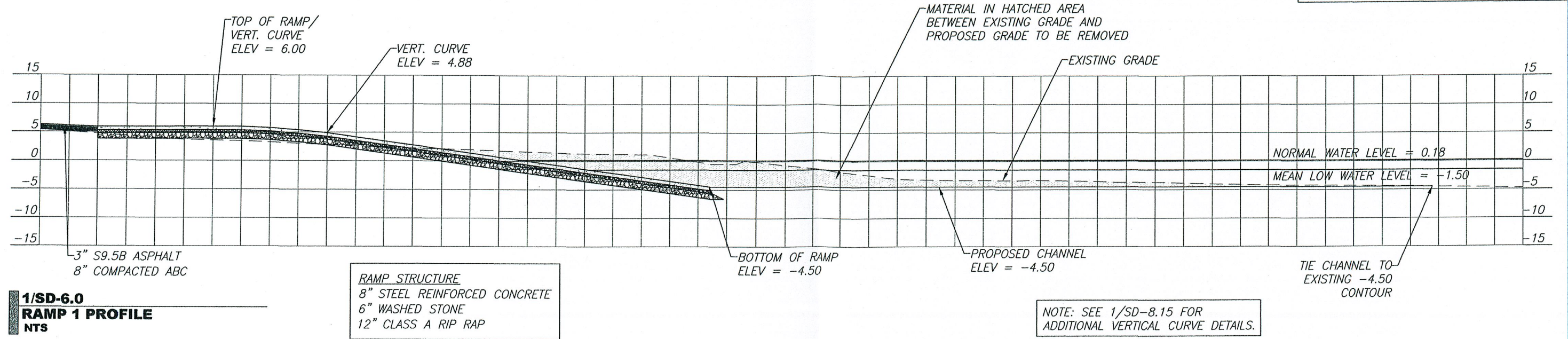
Date: August 26, 2013

Office: Wilmington

RECEIVED

AUG 29 2013

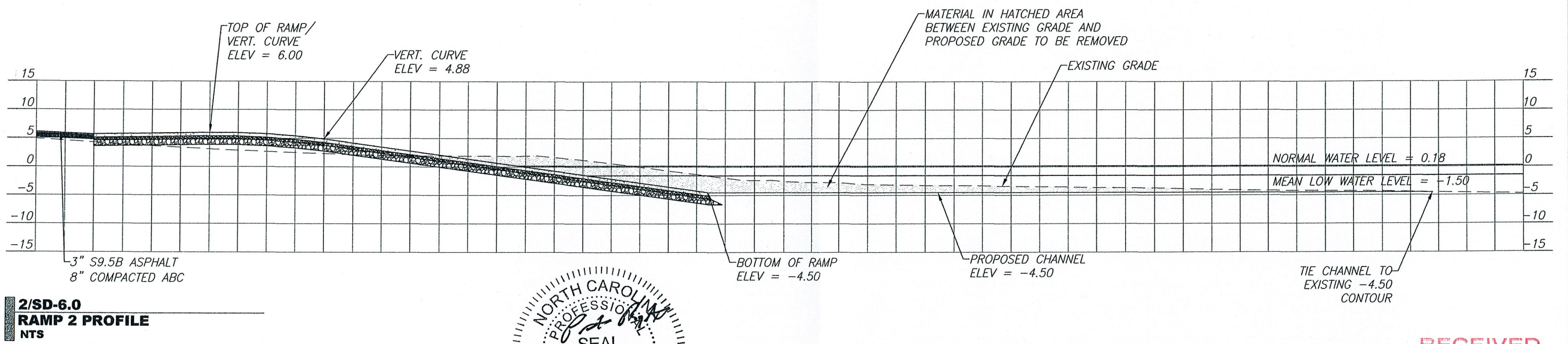
DOM-MOD CITY



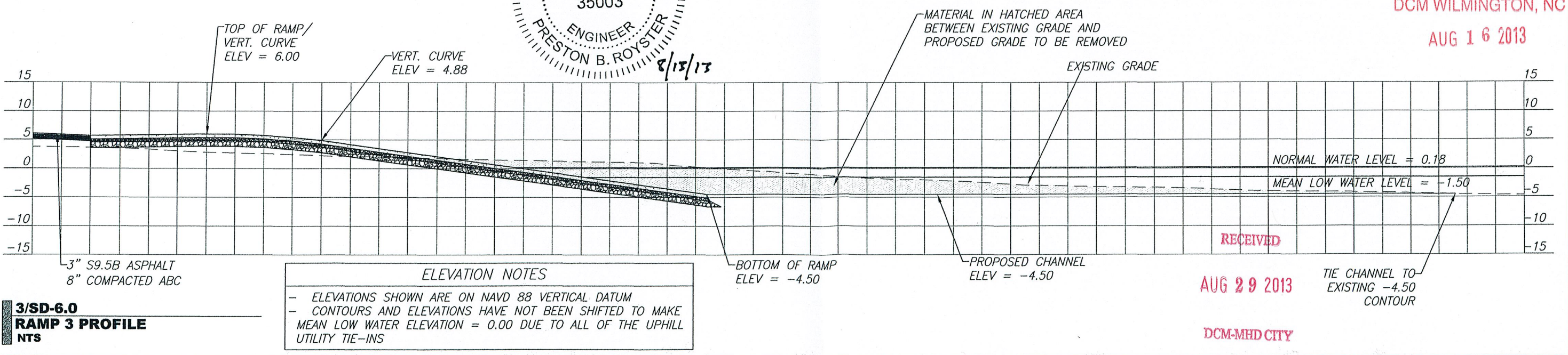
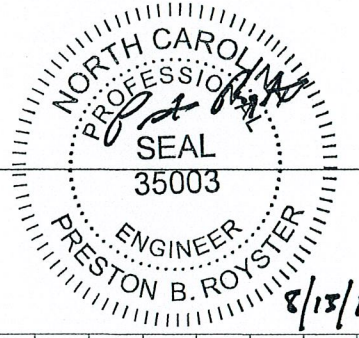
1/SD-6.0
RAMP 1 PROFILE
NTS

RAMP STRUCTURE
 8" STEEL REINFORCED CONCRETE
 6" WASHED STONE
 12" CLASS A RIP RAP

NOTE: SEE 1/SD-8.15 FOR
 ADDITIONAL VERTICAL CURVE DETAILS.



2/SD-6.0
RAMP 2 PROFILE
NTS



3/SD-6.0
RAMP 3 PROFILE
NTS

ELEVATION NOTES
 - ELEVATIONS SHOWN ARE ON NAVD 88 VERTICAL DATUM
 - CONTOURS AND ELEVATIONS HAVE NOT BEEN SHIFTED TO MAKE MEAN LOW WATER ELEVATION = 0.00 DUE TO ALL OF THE UPHILL UTILITY TIE-INS

RECEIVED
 DCM WILMINGTON, NC
 AUG 16 2013

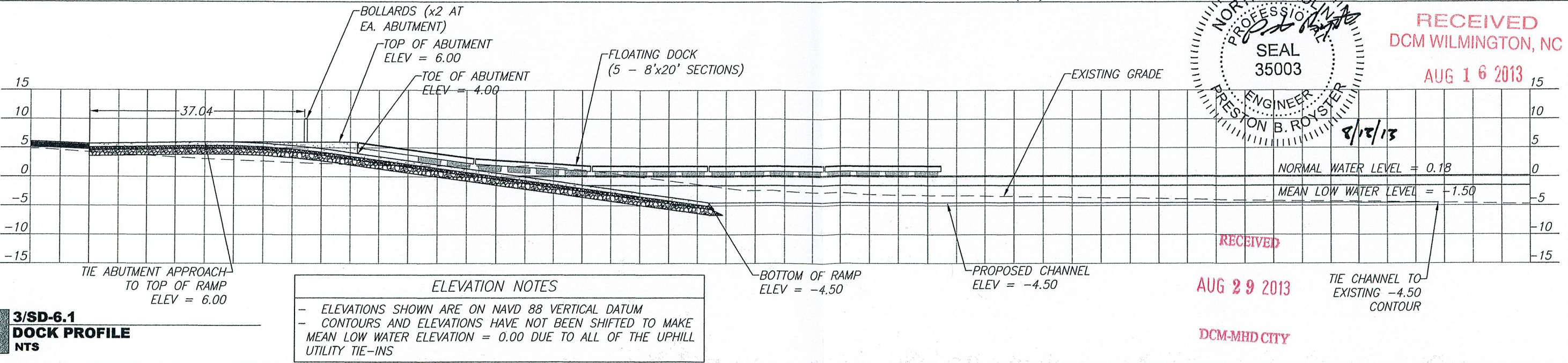
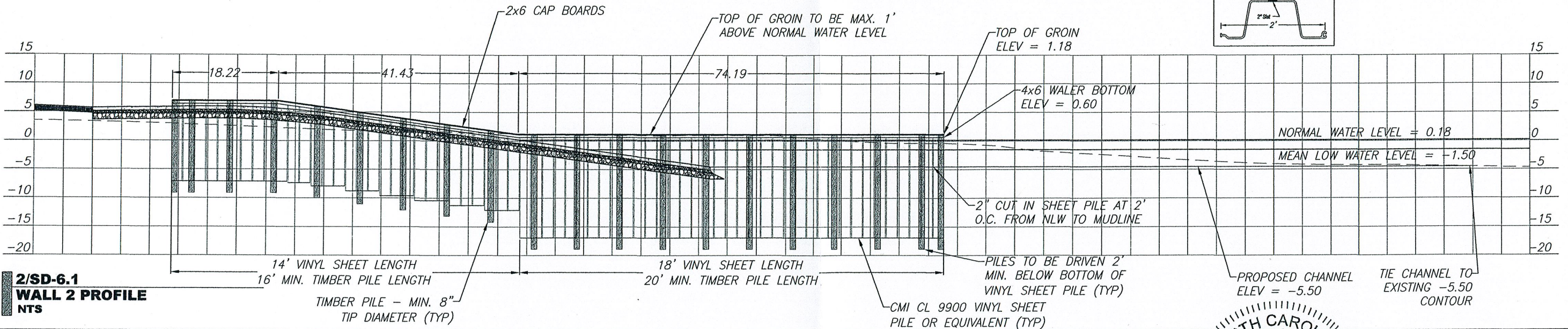
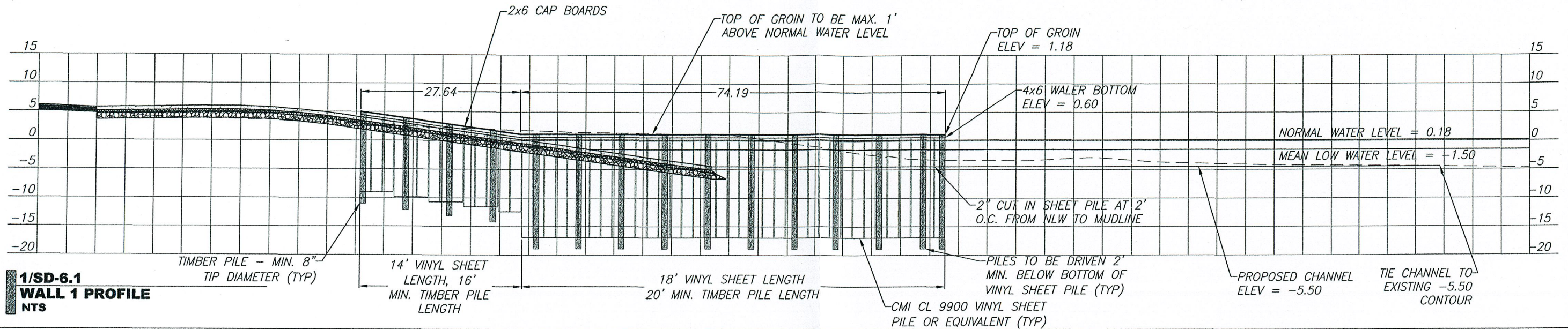
RECEIVED
 AUG 29 2013
 DCM-MHD CITY

TIE CHANNEL TO EXISTING -4.50 CONTOUR

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
 DIVISION OF ENGINEERING SERVICES
 LAKE ROGERS DEPOT
 1718 NC HWY 56 W
 CREEDMOOR, NC 27522
 Phone: 919-707-0150
 Fax: 919-707-0162
 www.ncwildlife.org

JACKSONVILLE BOATING ACCESS AREA
 NEW RIVER
 ONSLOW COUNTY, NC
RAMP PROFILE

Date: 08/13/2013
 File Name: JACKSONVILLE BAA.DWG
 Surveyed: MRL
 Designed: PBR
 Drawn: PBR
 Approved:
 Sheet No. SD-6.0

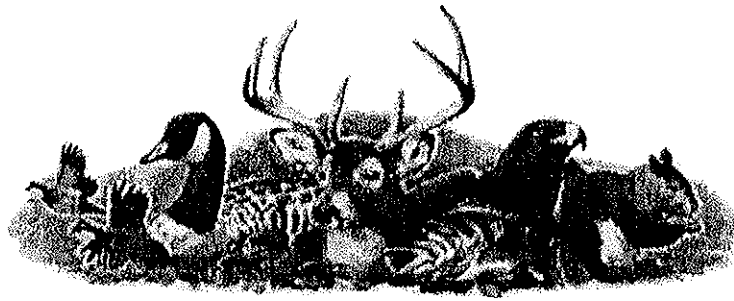


NORTH CAROLINA WILDLIFE RESOURCES COMMISSION
DIVISION OF ENGINEERING SERVICES
LAKE ROGERS DEPOT
1718 NC HWY 56 W
CREEDMOOR, NC 27522
Phone: 919-707-0376
www.ncwildlife.org

MAIN OFFICE
1720 MAIL SERVICE CENTER
RALEIGH, NC 27699
Phone: 919-707-0150
Fax: 919-707-0162

JACKSONVILLE BOATING ACCESS AREA
NEW RIVER
ONSLOW COUNTY, NC
RAMP PROFILE

Date: 08/13/2013
File Name: JACKSONVILLE BAA.DWG
Surveyed: MRL
Designed: PBR
Drawn: PBR
Approved:
Sheet No. SD-6.1



≡ North Carolina Wildlife Resources Commission ≡

Gordon Myers, Executive Director

MEMORANDUM

TO: Doug Huggett, Major Permits Processing Coordinator
Division of Coastal Management
North Carolina Department of Environment and Natural Resources

FROM: Shannon L. Deaton, Program Manager
Habitat Conservation Program *Shannon Deaton*

DATE: September 12, 2013

SUBJECT: CAMA Dredge/Fill Permit Application for City of Jacksonville, Onslow County, North Carolina.

The North Carolina Wildlife Resources Commission (NCWRC) was co-applicant on a recent a permit application and is submitting comments with regard to impacts on fish and wildlife resources. The project site is located at 135 S. Marine Boulevard adjacent to the New River in Jacksonville, NC. Our comments are provided in accordance with provisions of the Coastal Area Management Act (G.S. 113A-100 through 113A-128), as amended, Sections 401 and 404 of the Clean Water Act, as amended, and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

The City of Jacksonville along with NCWRC proposes to construct a public access area with boat ramp and access channel within the New River. This facility will be located between the Marine Boulevard and Old Bridge Street bridges, and will replace the existing NCWRC boating access area located across the river. The NCWRC has designed and will manage the new facility once completed. The entire 5.15 acre site will be disturbed to construct a welcome center, restrooms, boating access area with associated driveways, parking areas, boat ramps, access channel, stabilization walls, breakwaters, fixed and floating piers, boardwalk, and bulkhead. The proposed ramp system will be 60' wide by 110' long and extend 20' below the Normal High Water (NHW) boundary. There would be three 15' ramps each separated by an 8' by 100' floating access dock. To provide adequate water depths, a 64' by 207' long access channel is proposed to be excavated to a final water depth of -4.5' Normal Low Water (NLW). Material generated from excavation is proposed to be used on site to elevate grade and prep the area for construction. Two vinyl breakwaters will be constructed on either side of the ramp to add stabilization, extending a maximum 51' waterward of the Normal Water Level (NWL). Boardwalks will extend from the northern and southern side of the boat ramps. In addition to the boat ramp, a canoe / kayak launch will be located immediately south of the ramps and a fishing pier will extend into the New River. Approximately 3,969 ft² of wetlands will be filled and 10,368 ft² of open water will be excavated in association with construction.

Mailing Address: Division of Inland Fisheries • 1721 Mail Service Center • Raleigh, NC 27699-1721

Telephone: (919) 707-0220 • **Fax:** (919) 707-0028

The NCWRC agreed to work cooperatively with the City of Jacksonville in the design and management of this proposed access area. The NCWRC recognized the public benefit that a new, larger public boating access facility would bring to boaters, anglers and other recreational users. The existing facility, located across the river, is a double lane ramp with limited parking and grossly inadequate to meet current needs. This location on the New River provides a large river fishing experience for speckled trout, flounder, catfish, crappie, largemouth bass, and sunfish. The nearest public boating access area is in Sneads Ferry which is nearly 20 miles away via water. This proposed site would provide valuable water access to many active anglers, including fishing clubs and Camp Lejeune personnel. The expanded 69 space vehicle and trailer parking area accompanied with the three lane ramp system would increase boating opportunities significantly. An access channel, dredged to -4.5' NLW, is proposed to facilitate access for larger vessels that would utilize the facility. A new fishing pier, boardwalk, and kayak launch would increase non-motor boat opportunities for the public as well, benefiting all with improved water access.

We appreciate the opportunity to review and comment on this permit application. If you need further assistance or additional information, please contact me at 919-707-0222.

Cc: Jessi Baker, NCDCCM
Anne Deaton, NCDMF
Maria Dunn, David Cox, Mark Hamlett, Chris Dillon, NC Wildlife Resources Commission



North Carolina Department of Environment and Natural Resources

Division of Coastal Management

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

Pat McCrory
Governor

August 16, 2013

MEMORANDUM:

TO: Jessi Baker
Division of Coastal Management

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

SUBJECT: CAMA / Dredge & Fill Permit Application Review

Applicant: City of Jacksonville

Project Location: 135 S. Marine Blvd., adjacent to New River, in Jacksonville, Onslow County

Proposed Project: to construct a public boating access area and to excavate an access channel

Please indicate below your agency's position or viewpoint on the proposed project and **return this form to Doug Huggett** at the address above by **September 19, 2013**. If you have any questions regarding the proposed project, contact Jason Dail at (910) 796-7215, 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 _____

Jessi Baker

DATE _____

10/16/13

127 Cardinal Drive Ext., Wilmington, NC 28405
Phone: 910-796-7215 \ FAX: 910-395-3964 Internet: www.nccoastalmanagement.net

An Equal Opportunity \ Affirmative Action Employer

RECEIVED

AUG 29 2013

DCM-MIDCITY



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

MEMORANDUM:

TO: Doug Huggett, DCM Major Permits Coordinator *Doug Huggett*

FROM: Jessi Baker, DCM Fisheries Resource Specialist *JOB*

SUBJECT: Jacksonville Boating Access Area, Jacksonville, NC

DATE: October 16, 2013

A North Carolina Division of Coastal Management (DCM) Fisheries Resource Specialist has reviewed the subject permit application to identify proposed actions that impact fisheries and fish habitats. The CAMA Major permit application from the City of Jacksonville proposes to construct a boating access area on New River adjacent to Hwy 17 Business. The proposed ramp project includes an additional 8,320 square feet of dredging for an access channel to a depth of 4.5 feet totaling 431 cubic yards. This area is designated as Primary Nursery Area (PNA).

Primary Nursery Areas are essential for post-larval and juvenile species of finfish, crabs and shrimp because they afford food and protection during a vulnerable period of their life cycle. To protect such sensitive areas, Coastal Resources Commission rules prohibit new dredging in PNA. Operating boats in shallow water depths often results in bottom disturbance due to "prop dredging".

During a May 4, 2012 site visit by DMF and WRC staff, DMF observed that the site was previously disturbed and contains a small historic ramp inside the footprint of the proposed ramp. There did not appear to be any evidence of a channel leading to this area from the mainstem of the river. DMF has a juvenile fish sampling (Program 120) station immediately upstream of this location (NR1) that shows similar and often higher juvenile abundances (spot and croaker) than all other stations in the New River system. This indicates that the habitat in this location is not degraded due to the Hwy 17 Business bridge or any historic disturbance at this property. Based on these factors and the overriding public benefit of a ramp in this area, DMF agreed to a minimal amount of dredging in association with the construction of the boat ramp only.

In a May 11, 2012 email, DMF agreed to allow 100-300 cubic yards of dredging, assuming the footprint would extend approximately 20 feet from the ramp, based on approximations by WRC. Upon further inspection by WRC, existing depths are far shallower than originally estimated, which would require more extensive dredging to result in four feet of depth along the approach to the ramp. Although WRC has reduced the dredge volume and footprint from their original design presented in the pre-application meeting on June 5, 2013, the proposed dredged area still extends approximately 130 feet from the end of the ramp.

It is the opinion of the DCM Fisheries Resource Specialist that the increase in volume and, especially, footprint of the dredging required will be far greater than the minimal amount originally agreed upon by DMF and would likely result in significant adverse impacts to PNA. A reduced dredge footprint that results in minimal PNA impacts may be acceptable. If this project is permitted, an in-water work moratorium of April 1st to September 30th would be required. Please feel free to contact Jessi Baker at (252) 808-2808 ext. 213 or jessi.baker@ncdenr.gov if you have any further questions or concerns.

The total square footage of docks was calculated as follows:

Shoreline length = 544 ft. x 8 sq. ft = **2,000 sq. ft. allowed max.**

RECEIVED

Shoreside Fixed Dock = 50 ft. long x 8 ft. wide = 400 sq. ft.

Boat Ramp Floating Docks = Two @ 8 ft. wide x 100 ft. long = 1,600 sq. ft.

AUG 29 2013

Total = 2,000 sq. ft.

DCM-MHD CITY

It is the staff's recommendation that the proposal to construct a public boating access area with driveways, parking areas, welcome center, restroom facility, boat ramp with stabilization walls (breakwaters), fixed and floating access piers appears to be **CONSISTENT** with the Rules of 15 NCAC 7H.0206 (d) Use Standards for Estuarine Waters, and Rules of 15 NCAC 7H.0207 (d) Use Standards for Public Trust Areas, Rules of 15 NCAC 7H.0208 (b) Specific Use Standards.

It is staff's recommendation that the proposed access channel excavation is **INCONSISTENT** with the Rule in 15 NCAC 7H.0208 (b) (1) which states "Navigation channels, canals, and boat basins shall be aligned or located so as to avoid **primary nursery areas**, highly productive shellfish beds, beds of submerged aquatic vegetation, or significant areas of regularly or irregularly flooded coastal wetlands." The proposed channel excavation would result in the dredging of approximately 13,248 square feet of PNA habitat area.

However, if it's determined the area of proposed dredging has a historical record of being dredged, or has been used in a manner consistent with Rules of 15A NCAC 7H .0208 (b)(1)(I) Specific Use Standards, then it is staff's recommendation that the proposal to excavate the access channel is **CONSISTENT** with the Rules of 15A NCAC 7H .0208 (b)(1)(I) Specific Use Standards for navigation channels, canals, and boat basins which states Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:

- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
- (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
- (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
- (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel

It is the staff's recommendation that the proposal to construct a public boating access area with driveways, parking areas, welcome center, restroom facility, boat ramp with stabilization walls (breakwaters), fixed and floating access piers appears to be **CONSISTENT** with the Rules of 15 NCAC 7H.0208 (b) (6) (A) Specific Use Standards for Piers and Docking Facilities states "Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur." The applicant has stated that the need for piers wider than six feet is to aid both boaters with disabilities and the general public; the width of the piers is consistent with previously permitted boating access area improvements.

It is the staff's recommendation that the proposal to construct a public boating access area with driveways, parking areas, welcome center, restroom facility, boat ramp with stabilization walls (breakwaters), fixed and floating access piers appears to be **CONSISTENT** with the Rules of 15 NCAC 7H.0208 (b)(6)(B) Specific Use Standards for Piers and Docking Facilities states "the total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas." The proposed project is the development of a public boating access area and the applicant has stated that the proposed dimensions are necessary to provide access to both boaters with disabilities and the general public.

It is the staff's recommendation that the proposal to construct a public boating access area with driveways, parking areas, welcome center, restroom facility, boat ramp with stabilization walls (breakwaters), fixed and floating access piers appears to be **CONSISTENT** with the Rules of 15 NCAC 7H.0208 (b)(6)(G) Specific Use Standards for Piers and Docking Facilities states, "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 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 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." The proposed access pier would extend approximately 80 feet waterward of the proposed NHW boundary and does not appear to extend beyond the established pier head line of the piers immediately to the north.

It is the staff's recommendation that the proposal to construct a public boating access area with driveways, parking areas, welcome center, restroom facility, boat ramp with stabilization walls (breakwaters), fixed and floating access piers appears to be **CONSISTENT** with the Rules of 15 NCAC 7H.0209 (d)(2) which states "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." The proposed boat ramp approach is considered a water-dependant use and would be located within 30 feet of the NHW boundary.

With exception of the dredging portion of this project, this office has no objections to the proposal construct a public boating access area with driveways, parking areas, welcome center, restroom facility, boat ramp with stabilization walls (breakwaters), fixed and floating access piers. Any permit issued should include the following conditions:

RECEIVED

AUG 29 2013

DOM-MHD CITY

1. The alignment of the proposed breakwater and ramp shall be staked by a representative of the Division of Coastal Management (DCM) within a maximum of thirty (30) days prior to the start of construction. Failure to initiate construction within thirty (30) days, or erosion of the shoreline by adverse weather conditions, will require the alignment to be re-staked by DCM within a maximum of thirty (30) days prior to the new expected start of construction.
2. The Division of Environmental Management (DEM) approved this project under stormwater management rules of the Environmental Management Commission on . Any violation of or deviation from the plan approved by the DEM will be considered a violation of this CAMA permit. RECEIVED
3. The boat ramp stabilization walls must be constructed prior to any backfilling activities. AUG 29 2013
4. The boat ramp stabilization walls must be structurally tight so as to prevent seepage of backfill materials through the structure. JACKSONVILLE CITY
5. The boat ramp stabilization walls must be solid and constructed of treated wood, concrete slabs, metal sheet piles, or other suitable materials approved by Department personnel. No excavation is permitted, except for that which may be required for the construction of the boat ramp stabilization walls, boat ramp, piers, etc.
6. The fill material shall be clean and free of any pollutants, except in trace quantities. Metal products, organic materials, or unsightly debris will not be used.
7. All backfill material shall be obtained from a highground source and shall be confined behind a turbidity curtain and boat ramp stabilization walls.
8. The temporary placement or double-handling of excavated or fill materials within waters or vegetated wetlands is not authorized.
9. No excavated or fill material shall be placed at any time, in any marsh or surrounding waters, outside of the alignment of the fill area indicated on the work plat(s).
10. No sewage, whether treated or untreated, shall be discharged at any time from boats using the facility. Any sewage discharge at the 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.
11. 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 structures, whether floating or stationary, may become a permanent part of this facility without permit modification. No non-water dependent uses of structures may be conducted on, in, or over public trust waters without permit modification.
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 authorized structure and associated activity must not cause an unacceptable interference with navigation.

-
14. The permittee must install and maintain, at his expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities.
 15. This permit does not authorize the interference with any existing or proposed Federal project, and, the permittee will not be entitled to compensation for damage to the authorized structure or work, or injury which may be caused from existing or future operations undertaken by the United States in the public interest.
 16. In order to protect water quality, runoff from the construction must not visibly increase the amount of suspended sediments in adjacent waters.

NOTE: 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 project without having the permit transferred to a third-party.

NOTE: Future development on the permittee's property may require a modification of this permit. Contact a representative of this Division at (910) 796-7215 prior to commencement of any such activity for this determination.

NOTE: Permanent reflectors should be attached to the floating dock in order to make it more visible during hours of darkness or inclement weather.

RECEIVED

AUG 29 2013

DCM-MHD CITY

November 5, 2013

Regulatory Division

Action ID No. SAW-2010-01072

Mr. Doug Huggett
Division of Coastal Management
North Carolina Department of Environment
and Natural Resources
1638 Mail Service Center
Raleigh, North Carolina 27699-1638

Dear Mr. Huggett:

Reference the application of the Town of Jacksonville to construct a public boating access area and to excavate an access channel at 135 South Marine Boulevard, adjacent to the New River, in Jacksonville, Onslow County, North Carolina.

The Federal agencies have completed review of the proposal as presented by the application and your field investigation report. Based upon our review of this project, we recommend that the application be denied based on the potential of the proposed activity to adversely affect shallow-water habitats in the project area that are designated Essential Fish Habitat (EFH) for penaeid shrimp and gray snapper and Habitat Area of Particular Concern (HAPC).

The Federal agencies may reassess their position if the proposed project is redesigned to avoid impacts to important aquatic resources.

Questions or comments may be addressed to Mr. Dave Timpy, Wilmington Field Office, Regulatory Division, telephone (910) 251-4634.

Sincerely,

Dave Timpy, Project Manager
Wilmington Regulatory Field Office

Copy Furnished (without enclosure)

Ms. Karen Higgins
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
1650 Mail Service Center
Raleigh, North Carolina 27699-1650

Mr. Doug Huggett
Morehead City Regional Office
North Carolina Division of Coastal Management
400 Commerce Avenue
Morehead City, North Carolina 28557-3421

Mr. Pete Benjamin
U.S. Fish and Wildlife Service
Fish and Wildlife Enhancement
Post Office Box 33726
Raleigh, North Carolina 27636-3726

Mr. Fritz Rhode
National Marine Fisheries Service
Habitat Conservation Service
Pivers Island
Beaufort, North Carolina 28516

Mr. Pace Wilber
National Marine Fisheries Service
Habitat Conservation Division
219 Fort Johnson Road
Charleston, South Carolina 29412-9110

Todd Allen Bowers
US EPA Region 4 Life Scientist
Water Protection Division
61 Forsyth Street, SW
Atlanta, GA 30303-8960

BOSN3 Joseph M. Edge
United States Coast Guard
Sector North Carolina Waterways Management
2301 E. Fort Macon Rd
Atlantic Beach, NC 28512

Ms. Debra Wilson
Division of Coastal Management
North Carolina Department of Environment,
Health, and Natural Resources
127 Cardinal Drive Extension

Joanne Steenhuis
Division of Water Quality
North Carolina Department of Environment,
Health, and Natural Resources
127 Cardinal Drive Ext
Wilmington, NC 28405

CESAW-RG-L/TIMPY
CESAW-RG-L/SMITH



UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

October 30, 2013

F/SER47:FR/pw

(Sent via Electronic Mail)

Colonel Steven A. Baker, Commander
US Army Corps of Engineers Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403-1398

Attention: David Timpy

Dear Colonel Baker:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAW-2010-01072 forwarded to NMFS on September 11, 2013. The applicants, NC Wildlife Resources Commission (NCWRC) and City of Jacksonville, propose to construct a boating access area (BAA) on the New River in Jacksonville, Onslow County, downstream of the US 17 Business Bridge. The BAA would include boat ramps with stabilization walls, breakwaters, fixed and floating access piers, bulkhead, fishing pier, and supporting upland infrastructure. The applicants are also proposing to excavate an access channel extending from the boat ramp to the main channel of New River. The portion of New River below the US 17 Business Bridge is designated by the NC Marine Fisheries Commission as a Primary Nursery Area; waters above the bridge are designated by the NCWRC as an Inland Primary Nursery Area. The South Atlantic Fishery Management Council (SAFMC) designates Primary Nursery Areas as a Habitat Area of Particular Concern (HAPC). The Wilmington District's initial determination is the proposed BAA may adversely impact EFH or associated fisheries managed by SAFMC, Mid-Atlantic Fishery Management Council (MAFMC), or NMFS. As the nation's federal trustee for the conservation and management of marine, estuarine, and diadromous fishery resources, the following comments and recommendations are provided pursuant to the authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act).

Project Description

The applicants are proposing to excavate the shallow subtidal habitat for a boat ramp some 20 feet beyond the Normal High Water mark and an access channel 130 feet beyond the end of the boat ramp. The proposed dredged area is 64 feet wide by 207 feet long (13,248 square feet; 8,230 of which is shallow bottom habitat) and a total dredge volume of 431 cubic yards. The applicants state water depths range from -1.0 foot (near shore) to -4.5 feet near the waterward end of the proposed dredging. These water depths are based on NAVD 88. Immediately adjacent to and in front of the proposed BAA are the remnants of an old concrete pier and boat ramp.





UNITED STATES DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NATIONAL MARINE FISHERIES SERVICE

Southeast Regional Office

263 13th Avenue South

St. Petersburg, Florida 33701-5505

<http://sero.nmfs.noaa.gov>

October 30, 2013

F/SER47:FR/pw

(Sent via Electronic Mail)

Colonel Steven A. Baker, Commander
US Army Corps of Engineers Wilmington District
69 Darlington Avenue
Wilmington, North Carolina 28403-1398

Attention: David Timpy

Dear Colonel Baker:

NOAA's National Marine Fisheries Service (NMFS) reviewed public notice SAW-2010-01072 forwarded to NMFS on September 11, 2013. The applicants, NC Wildlife Resources Commission (NCWRC) and City of Jacksonville, propose to construct a boating access area (BAA) on the New River in Jacksonville, Onslow County, downstream of the US 17 Business Bridge. The BAA would include boat ramps with stabilization walls, breakwaters, fixed and floating access piers, bulkhead, fishing pier, and supporting upland infrastructure. The applicants are also proposing to excavate an access channel extending from the boat ramp to the main channel of New River. The portion of New River below the US 17 Business Bridge is designated by the NC Marine Fisheries Commission as a Primary Nursery Area; waters above the bridge are designated by the NCWRC as an Inland Primary Nursery Area. The South Atlantic Fishery Management Council (SAFMC) designates Primary Nursery Areas as a Habitat Area of Particular Concern (HAPC). The Wilmington District's initial determination is the proposed BAA may adversely impact EFH or associated fisheries managed by SAFMC, Mid-Atlantic Fishery Management Council (MAFMC), or NMFS. As the nation's federal trustee for the conservation and management of marine, estuarine, and diadromous fishery resources, the following comments and recommendations are provided pursuant to the authorities of the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act).

Project Description

The applicants are proposing to excavate the shallow subtidal habitat for a boat ramp some 20 feet beyond the Normal High Water mark and an access channel 130 feet beyond the end of the boat ramp. The proposed dredged area is 64 feet wide by 207 feet long (13,248 square feet; 8,230 of which is shallow bottom habitat) and a total dredge volume of 431 cubic yards. The applicants state water depths range from -1.0 foot (near shore) to -4.5 feet near the waterward end of the proposed dredging. These water depths are based on NAVD 88. Immediately adjacent to and in front of the proposed BAA are the remnants of an old concrete pier and boat ramp.



Impacts to Essential Fish Habitat

The SAFMC identifies shallow sub-tidal bottom and intertidal flats in estuarine waters as EFH for penaeid shrimp and gray snapper under their respective fishery management plans. SAFMC identifies these areas as EFH because shrimp and fish concentrate in these habitats for feeding and refuge and experience high growth and survival rates when located in these habitats. At the site of the proposed BAA, these habitats are of special ecological significance warranting the state designation of Primary Nursery Area and the SAFMC designation of HAPC. Detailed information on the EFH requirements of species managed by SAFMC is in *Fishery Ecosystem Plan of the South Atlantic Region* (available at www.safmc.net). The project area also likely includes bluefish and summer flounder. These species are managed by the MAFMC and that council designates estuarine areas as EFH for these species. Detailed information about the EFH requirements of species managed by MAFMC appears in individual fishery management plans and in technical reports available from the NMFS Northeast Fishery Science Center at www.nefsc.noaa.gov/nefsc/habitat/efh/.

The species listed above use nearshore shallow-water habitats to avoid predators, and estuarine areas such as New River are especially valuable as a refuge for young fishes and invertebrates. Shallow-water bottoms also provide habitat for benthic invertebrates that serve as prey for juvenile and adult fishes. Other species of commercial, recreational, or ecological importance found in the project area that may be indirectly impacted by a loss of habitat associated with this project include blue crab, Atlantic menhaden, spot, red drum, southern flounder, and Atlantic croaker. Several of these species serve as prey for fish (e.g., king mackerel, Spanish mackerel, and cobia) that are managed by the SAFMC or for highly migratory fish (e.g., billfishes and sharks) that are managed by NMFS.

EFH Conservation Recommendations

Section 305(b)(4)(A) of the Magnuson-Stevens Act requires NMFS to provide EFH conservation recommendations when an activity is expected to adversely impact EFH. Based on this requirement, NMFS provides the following:

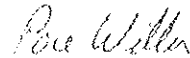
EFH Conservation Recommendation

NMFS recommends against the installation of the boat ramp because dredging within a HAPC would be necessary for boats to access the ramp and there is a public ramp directly across the river.

Section 305(b)(4)(B) of the Magnuson-Stevens Act and its implementing regulations at 50 CFR 600.920(k) requires the Wilmington District office to provide a written response to the EFH recommendations within 30 days of receipt. If it is not possible to provide a substantive response within 30 days, in accordance with the "findings" with the Wilmington District, an interim response should be provided to NMFS. A detailed response must then be provided prior to final approval of the action. The detailed response must include a description of measures proposed by the Wilmington District to avoid, mitigate, or offset the adverse impacts of the activity. If Wilmington District's response is inconsistent with the EFH conservation recommendations, the District must provide a substantive discussion justifying the reasons for not following the recommendation. The detailed response should be received by NMFS at least ten days prior to final approval of the action.

Thank you for the opportunity to provide these comments. Related questions or comments should be directed to the attention of Mr. Fritz Rohde at our Beaufort Field Office, 101 Pivers Island Road, Beaufort, North Carolina 28516-9722, or at (252) 838-0828.

Sincerely,



/ for

Virginia M. Fay
Assistant Regional Administrator
Habitat Conservation Division

cc:

COE, David.L.Timpy@usace.army.mil
USFWS, Pete_Benjamin@fws.gov
NCDCEM, Doug.Huggett@ncdenr.gov
EPA, Bowers.Todd@epa.gov
SAFMC, Roger.Pugliese@safmc.net
F/SER4, David.Dale@noaa.gov
F/SER47, Fritz.Rohde@noaa.gov



North Carolina Department of Environment and Natural Resources
Division of Coastal Management
Braxton C. Davis
Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

November 8, 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

City of Jacksonville
815 New Bridge St.
Jacksonville, NC 28540

Dear Sir:

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 construct a public boating access area with associated driveways, parking areas, boat ramps, breakwaters, access piers, boardwalk, bulkhead, and to excavate an access channel from the proposed boat ramp to the main channel of the New River, in Onslow County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Regional Office on August 16, 2013, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The subject property is located adjacent to the New River and is located within a Primary Nursery Area (PNA), as designated by the North Carolina Marine Fisheries Commission.
- 2) The proposed project consists of new dredging in a PNA (64' wide by 130' long), resulting in the loss of 8,320 square feet of PNA habitat.
- 3) During the course of the joint State and Federal application review of the proposed project, Division of Coastal Management staff determined that the proposed dredging footprint would likely result in significant adverse impacts to the PNA.
- 4) During the course of the joint State and Federal application review of the proposed project, the National Marine Fisheries Service recommended against the installation of the boat ramp, because dredging within a Habitat Area of Particular Concern would be necessary for boats to access the ramp and there is a public ramp directly across the river.

400 Commerce Ave., Morehead City, NC 28557-3421
Phone: 252-808-2808 \ FAX: 252-247-3330 Internet: www.nccoastalmanagement.net

An Equal Opportunity \ Affirmative Action Employer

City of Jacksonville
11/08/2013
Page 3

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 wish to discuss further options related to this issue. If you have any questions concerning this matter, please contact Mr. Doug Huggett at (252) 808-2808, extension 212.

Sincerely,



Braxton C. Davis
Director
Division of Coastal Management

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

City of Jacksonville,
Jacksonville Boating Access
Area

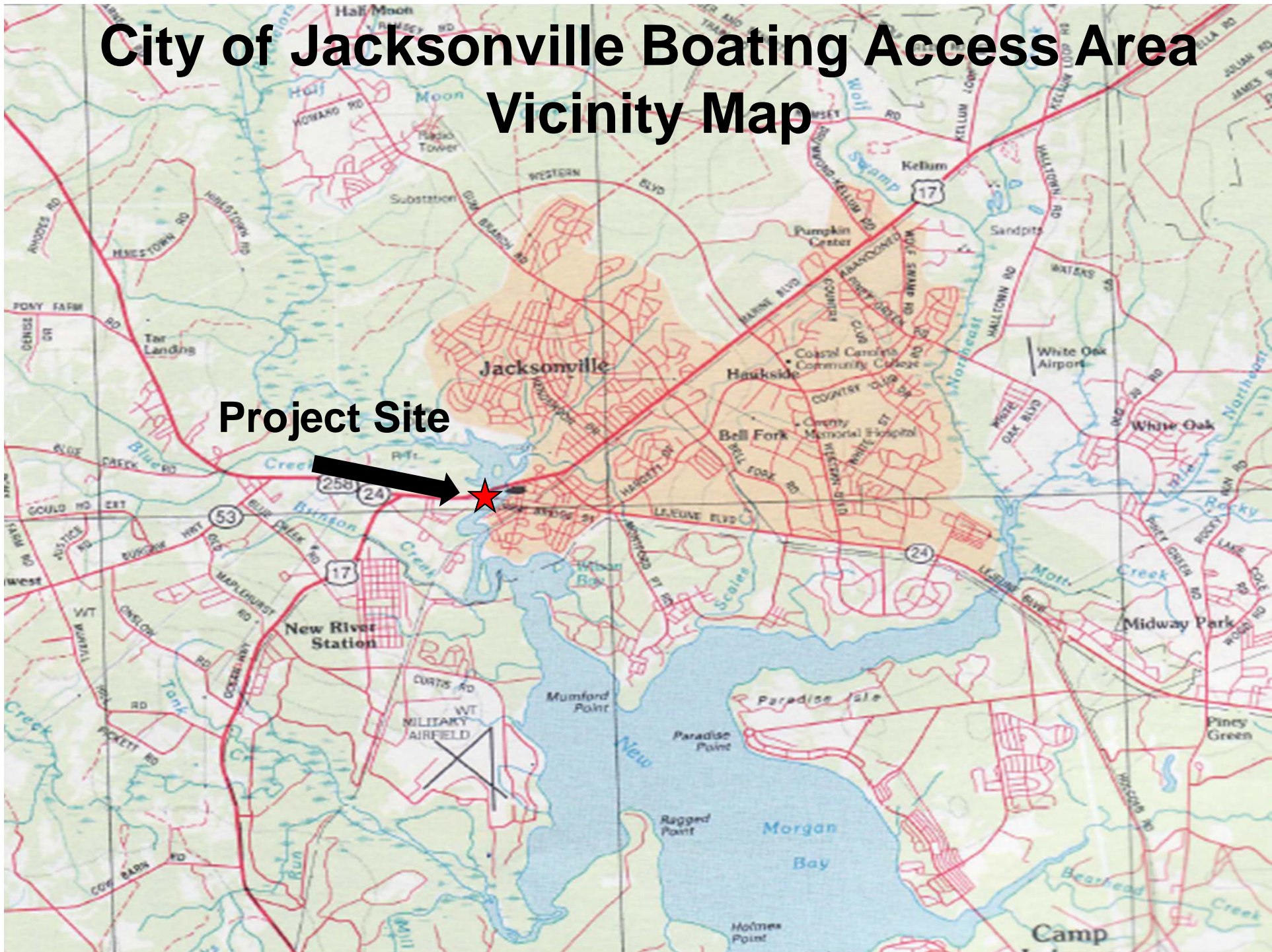
VARIANCE REQUEST

135 South Marine Boulevard,
Jacksonville, North Carolina

Onslow County

December 12, 2013

City of Jacksonville Boating Access Area Vicinity Map





City of Jacksonville Boating Access Area – Boat Ramp and Parking design shown in red.



Image courtesy of NC Wildlife Resources Commission

Image courtesy of Google Earth, December 2012.

Upstream

City of Jacksonville – Boating
Access Area

Coastal Primary and
Inland Nursery Area
dividing line. Coastal
Nursery downstream
and Inland Nursery
upstream.

Downstream

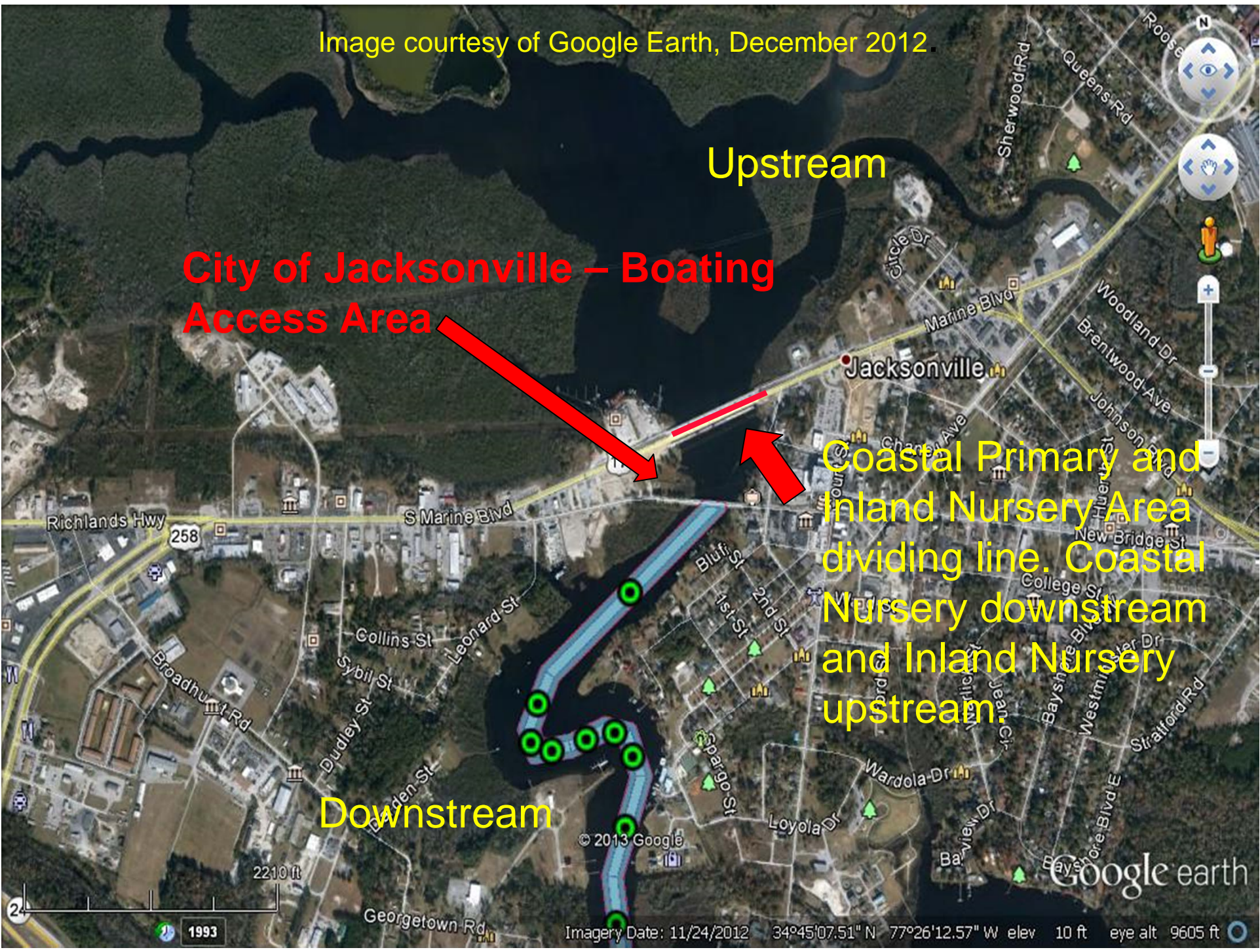


Image courtesy of Google Earth, December 2012

Inland Primary Nursery Area

Coastal Primary Nursery Area

Coastal And Inland Nursery Area
Dividing Line (shown in red)

New River

City of Jacksonville Boating Access Area



© 2013 Google

Old Bridge St

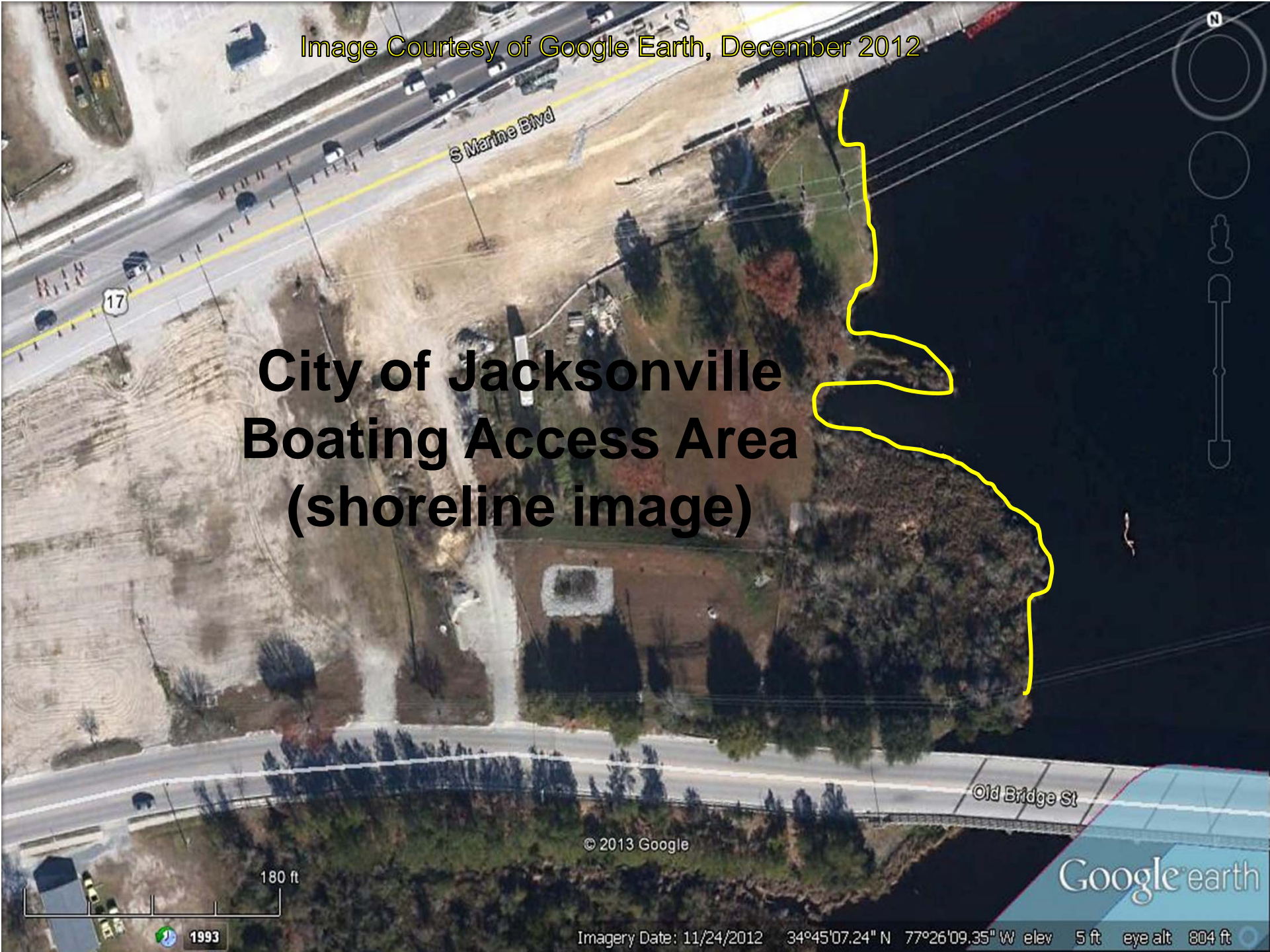
Google earth

Imagery Date: 11/24/2012 34°45'08.51" N 77°26'03.68" W elev 0 ft eye alt 1192 ft

1993

Image Courtesy of Google Earth, December 2012

City of Jacksonville Boating Access Area (shoreline image)



© 2013 Google

Old Bridge St

Google earth

Imagery Date: 11/24/2012 34°45'07.24" N 77°26'09.35" W elev 5 ft eye alt 804 ft

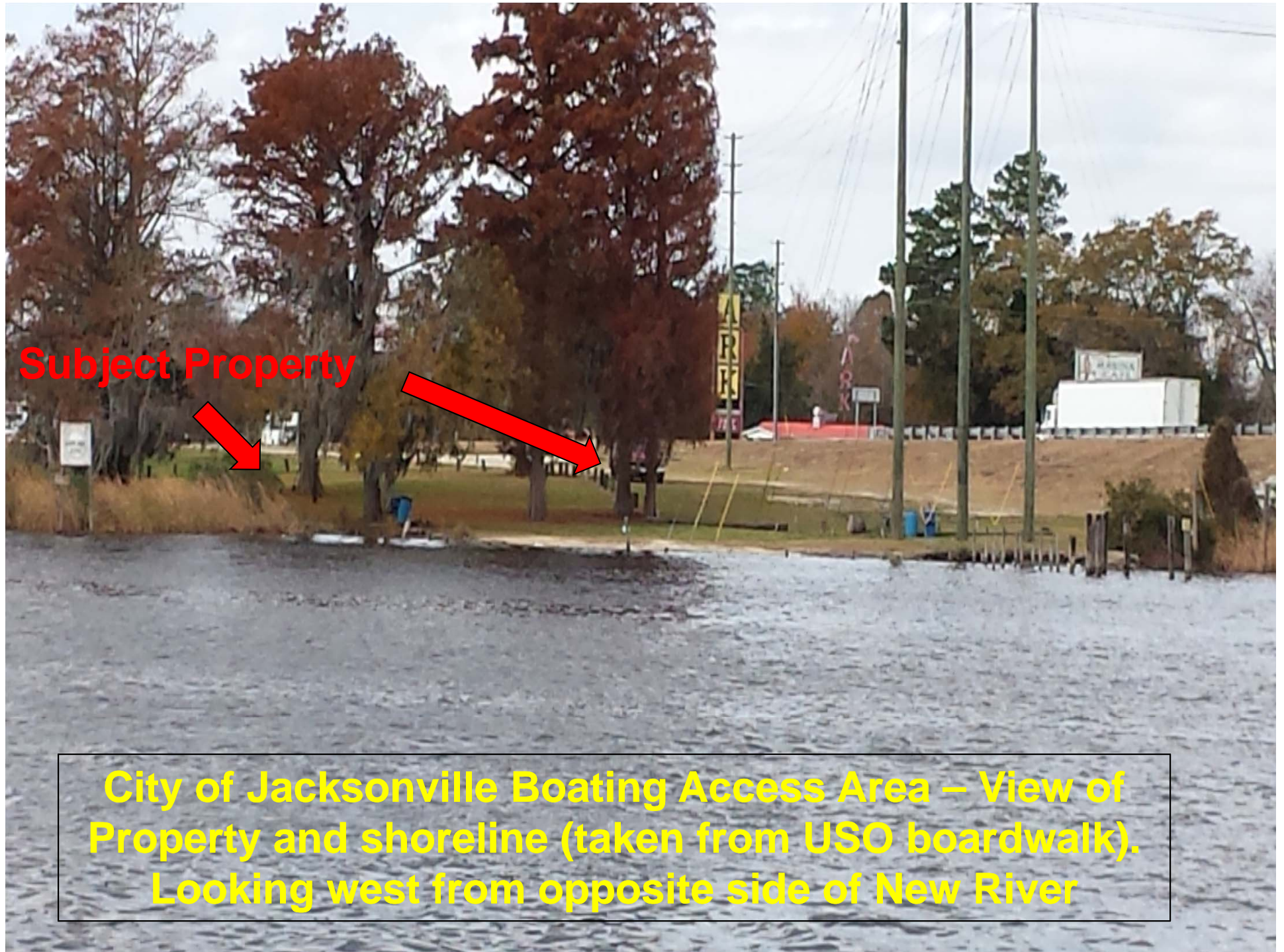
1993

180 ft



**View of Shoreline (looking north
from subject property)**

Image courtesy of NC Wildlife Resources Commission



Subject Property

City of Jacksonville Boating Access Area – View of Property and shoreline (taken from USO boardwalk). Looking west from opposite side of New River

City of Jacksonville Boating Access Area



View of high ground – looking east from western property boundary



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

MEMORANDUM

CRC-13-35

TO: Coastal Resources Commission

FROM: Matt Slagel, DCM Shoreline Management Specialist

SUBJECT: Fiscal Analysis for 15A NCAC 7H .0312 Technical Standards for Beach Fill Projects

DATE: November 25, 2013

Sediment Criteria Implementation

The Technical Standards for Beach Fill Projects (15A NCAC 7H .0312), also known as the Sediment Criteria rules, became effective in 2007 in response to concerns with beach nourishment projects and sediment compatibility. Beach sediment characteristics influence local erosion rates, biological communities, recreational activities, and aesthetics. The potential for negative impacts due to the addition of incompatible sediments during beach fill projects led the Commission to adopt standards for regulating beach fill and sediment compatibility in North Carolina. The Sediment Criteria rules require the native beach sediment and the fill (nourishment) sediment to be analyzed to ensure that the fill material is compatible with the beach where it is being placed. In addition to quantifying the percentage by weight of fine, sand, granular, and gravel grain sizes, as well as the percentage by weight of calcium carbonate for both beaches and borrow areas, the Sediment Criteria rules also specify how sediment samples and other geophysical data should be collected.

DCM staff have continued reviewing the Sediment Criteria rules to ensure they are not overly burdensome or expensive for permittees, while at the same time minimizing risks of incompatible sediments being placed on the beach. DCM staff has solicited input on the implementation of the rule from coastal engineers, geologists, and local beach project managers in the state. This has led to suggested changes based on lessons learned that could further reduce costs for permittees while maintaining the existing levels of sand compatibility.

At the July 11 Commission meeting, four proposed changes to the Sediment Criteria rules were presented and rule language was approved by the Commission for public hearing. Fiscal analysis based on the proposed language has been prepared by the Division and has been approved by DENR and the

Office of State Budget and Management (OSBM). In accordance with the Administrative Procedures Act, the fiscal analysis will also be sent to public hearing along with the proposed rule language. The proposed changes and their associated fiscal impacts are summarized below.

1) Multibeam (swath bathymetry) and Sidescan sonar

- In Sub-Item (2)(c), the rule should be clarified to indicate that “swath sonar” refers to multibeam or similar technologies, and that “seafloor imaging without an elevation component” refers to sidescan sonar or similar technologies. This change would clarify the types of technology that the rule language describes.

2) Vibracore Spacing in Smaller Borrow Sites

- In Sub-Item (2)(e) of the rule, the minimum number of vibracores in a borrow site should be reduced from 10 to 5, but the 1,000-ft grid spacing (1 core per 23 acres), whichever is greater, should remain. For small borrow sites, this change would require at least 5 cores instead of 10. For larger borrow sites, it would keep the existing required spacing (5 cores on up depending on size). Since each core costs about \$2,700, the change would result in a savings when sampling smaller borrow areas while ensuring adequate sample spacing.

3) Granular Fraction: “Native +5%”

- In Sub-Item (3)(c) of the rule, the allowable granular fraction should be expanded to native +10%. Gravel material should be kept at native +5%, and fine sediment should also be kept at native +5%. Expanding the allowable granular fraction to 10% above the native beach would provide flexibility for applicants to use sediment for nourishment that is close to the native composition but considered incompatible under the current rule. For example, if a beach has a native granular fraction of 10% and the proposed borrow area has a granular fraction of 17%, it would be considered incompatible under the current rule. Under this proposed change, and using the same example, the proposed borrow area could have a granular fraction up to 20%. This would allow slightly more coarse-sand sediment to be placed on the beach while continuing to limit fine sediment and gravel material to native +5%.

4) Excavation Exceeding the Permitted Dredge Depth of a Maintained Channel

- While reviewing the rule, DCM staff also discussed Sub-Item 4(a), which states that “Sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel.” This sub-item has led to confusion, and DCM recommends it be removed from the rule. For example, if an inlet’s federally authorized depth is 10 feet and an applicant wishes to dredge to 15 feet to maximize the use of beach compatible material, the current rule prevents the deeper dredging from occurring. A CAMA Major Permit and a USACE permit will both involve the review of proposed dredging depths and subsequently indicate the depth of dredging that may occur for a given project.

Summary of Fiscal Analysis

The proposed rule changes are intended to reduce sampling costs in smaller offshore borrow areas that are less than 230 acres in size by reducing the minimum number of required vertical samples in each borrow area from ten to five. Additionally, expanding the amount of granular sediment that may be placed on the beach will result in cost savings for applicants by not requiring them to explore and sample additional borrow areas to find beach-compatible sediment.

The cost savings of the proposed changes are directly related to the reduced number of vibracores and related analysis that would be required. The average cost of drilling, retrieving, and analyzing a single sediment core is approximately \$2,713 (based on cost estimates from three contractors and not including the costs of mobilization and demobilization). Conversations with the engineering firm Moffatt and Nichol, a Raleigh-based contractor for the proposed Bogue Banks nourishment project indicate that the proposed reduction in sampling would have resulted in a cost savings of approximately \$27,130. For that project, in addition to the inlets and Ocean Dredged Material Disposal Site (ODMDS), two small offshore borrow areas were sampled. Each of these areas was approximately 2,000 ft by 3,000 ft (about 140 acres), and current rules required 10 cores at each of these sites (20 cores total). The proposed changes would require 5 cores at each of these sites (10 cores total). The 10 cores that would no longer be required add up to a savings of \$27,130.

Costs are typically shared among the federal, state, and local government, although the cost-sharing ratio may vary. For this analysis, DCM assumes that federal funding will continue and that the federal funding will cover 65 percent of the total project costs with the state and local governments each contributing 17.5 percent. DCM also assumes that in any given year, there is an average of two sand search and/or beach nourishment projects, with one being federally sponsored and the other not. With these assumptions, annual cost savings to local governments and the State will range from zero to \$18,313 for each level of government each year. Cost savings to the federal government will range from zero to \$17,634 each year. Total cost savings will be between zero and \$54,260 each year.

The total cost savings will be influenced by the number of projects, the cost-splitting percentages between the governments and the amount of federal funding that is available. Over the past decade, DCM has permitted about two projects per year that would be affected by this proposed action. In the event of no federal funding for this program, the overall amount of cost savings would remain the same but be split between the state and local governments. With these assumptions, annual cost savings to local governments and the state will range from zero to \$27,130 for each level of government each year.

The attached document contains the fiscal analysis that was approved by DENR and OSBM. The proposed rule language changes are shown at the end of the document by highlighted strikethroughs and underlines.

Fiscal Analysis

TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

15A NCAC 07H.0312

Prepared by

Matt Slagel, Shoreline Management Specialist
NC Division of Coastal Management
(252) 808-2808

November 2013

Basic Information

Agency	DENR, Coastal Resources Commission (CRC), Division of Coastal Management (DCM)
Rule Title	Technical Standards for Beach Fill Projects
Citation	15A NCAC 07H .0312
Proposed Action	The Coastal Resources Commission (CRC) proposes to amend its rule that establishes standards for sediment that may be placed on public beaches in fill projects, including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control.
Agency Contact	Matt Slagel Matthew.Slagel@ncdenr.gov (252) 808-2808, ext. 233
Authority	G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-124
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Federal government: Yes Private Sector: No
Necessity	This action is being proposed to provide financial relief to applicants for permits for certain beach fill projects. The CRC has identified a limited set of conditions under which applicants can avoid some permit-related costs without violating the intent of the current rule or compromising environmental protection. The proposed rule changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.

Summary

The Coastal Resources Commission (CRC) adopted 15A NCAC 07H.0312 Technical Standards for Beach Fill Projects with an original effective date of February 1st 2007. The rule is often referred to informally as the sediment criteria rule. The CRC adopted the rule in order to ensure that sand used for beach nourishment closely matches the sand on the existing beach. Prior to 2007, some communities experienced negative environmental and aesthetic impacts from excessive amounts of mud, clay, and shells being placed on their beaches during nourishment projects. The rule requires that the sediment intended for use as well as the sand on the existing beach be analyzed for grain size and composition, and that they be within defined ranges of similarity before the project can begin.

The costs of performing sediment compatibility analyses can be substantial, although not prohibitive, in comparison to the typical cost of a nourishment project. Costs are typically shared among the federal, state, and local government, although the cost-sharing ratio may vary. For this analysis, the Division of Coastal Management (DCM) assumes that federal funding will continue and that the federal funding will cover 65 percent of the total project costs with the state and local governments each contributing 17.5 percent. DCM also assumes that in any given year, there is an average of two sand

search and/or beach nourishment projects, with one being federally sponsored and the other not. With these assumptions, annual cost savings to local governments and the State will range from zero to \$18,313 for each level of government each year. Cost savings to the federal government will range from zero to \$17,634 each year. Total cost savings will be between zero and \$54,260 each year. The 10-year net present value of the proposed rule changes is approximately \$381,000.

The total cost savings will be influenced by the number of projects, the cost-splitting percentages between the governments and the amount of federal funding that is available. Over the past decade, DCM has permitted about two projects per year that would be affected by this proposed action. In the event of no federal funding for this program, the overall amount of cost savings would remain the same but be split between the state and local governments. With these assumptions, annual cost savings to local governments and the state will range from zero to \$27,130 for each level of government each year.

The proposed effective date of these changes is February 1st, 2014.

Introduction and Purpose

The CRC seeks to amend its administrative rule that establishes sediment compatibility standards for beach fill projects. DCM recently identified certain locations and circumstances where a reduced sampling protocol should be implemented and where additional “granular” sediment should be allowed to be placed on the beach. “Granular” is defined in 15A NCAC 07H.0312(1)(e) as sediment with a grain size greater than or equal to 2 millimeters and less than 4.76 millimeters. Reduced sampling requirements and the ability to use slightly more granular sediment for nourishment will result in cost savings to permit applicants.

The proposed rule change is intended to reduce sampling costs in smaller offshore borrow areas that are less than or equal to 115 acres in size by reducing the minimum number of required vertical samples in each borrow area from ten to five. Additionally, expanding the amount of granular sediment that may be placed on the beach will result in cost savings for applicants by not requiring them to explore and sample additional borrow areas to find beach-compatible sediment.

Description of the Proposed Rule

The CRC’s Technical Standards for Beach Fill Projects rule, 15A NCAC 07H.0312, first took effect in February 2007. Beach fill is done primarily to replace sand lost to erosion. Wider beaches provide more wildlife habitat, better protection from storms, and more room for recreation. The proposed rule change does not impair the wildlife habitat, storm protection, or enhanced recreational benefits that wider beaches provide. The rule sets forth the protocols for characterizing the native beach sediments prior to a fill project, for sampling and characterizing potential borrow area sediments, and for ensuring that the two are compatible. Compatibility is important mostly to ensure that material placed on public beaches is not too fine (mud or clay), or coarse (rocks and large shells). The rule also establishes general criteria for excavation and placement of sediment. The rule was amended effective April 1, 2008 to change the requirements for seafloor surveys and geophysical imaging of the seafloor in areas with water depths of less than 10 feet due to the technical challenges and physical limitations at these shallow depths. Separate from the proposed changes described here, the rule was also revised to reduce the sampling intensity and costs in areas like Ocean Dredged Material Disposal Sites (ODMDSs) or maintained navigation channels and associated sediment basins that have historically held and been re-filled with beach-quality sand. Those amendments became effective September 1, 2013.

A brief summary of the proposed changes are as follows:

- Clarify the rule to indicate that “swath sonar” refers to multibeam bathymetry or similar technologies and that “seafloor imaging without an elevation component” refers to sidescan sonar or similar technologies.
- For small offshore borrow areas that are less than or equal to 115 acres in size, the minimum number of vertical samples required in each borrow area would be reduced from 10 to 5, but the 1,000-ft grid spacing (1 core per 23 acres) would remain, whichever is greater. For small borrow areas, this change would require 5 cores instead of 10. For larger borrow areas greater than 115 acres in size, it keeps the existing 1,000-ft grid spacing, and the total number of required cores is based on the size of the borrow area. A 1,000-ft by 1,000-ft box is equal to 23 acres, and one core is required at this 1,000-ft grid spacing. At this spacing, the minimum of five cores is reached when the borrow area is less than or equal to 115 acres:

Typical, unexplored offshore borrow area: $\frac{1 \text{ core}}{23 \text{ acres}} = \frac{5 \text{ cores}}{x \text{ acres}}$ Therefore, $x = 23 * 5 = 115 \text{ acres}$

As another example, if a proposed borrow area is 250 acres in size, 11 cores would be required:

$\frac{1 \text{ core}}{23 \text{ acres}} = \frac{x \text{ cores}}{250 \text{ acres}}$ Therefore, $x = 250 / 23 = 11 \text{ cores}$

The following figures show a theoretical project that includes sediment sampling at one large offshore borrow area and two small offshore borrow areas. Under the current rule, 38 vibracores would be required (Figure 1). At a cost of \$2,713 per vibracore, the total cost would be \$103,094. Under the proposed rule, 28 vibracores would be required (Figure 2) with a total cost of \$75,964. The savings for this project would be \$27,130.

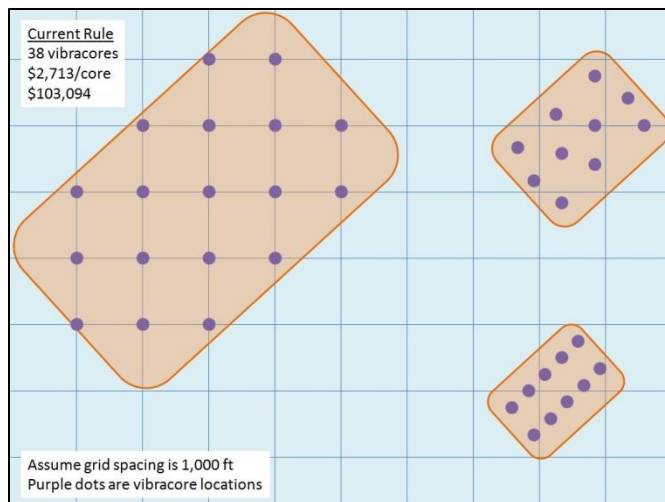


Figure 1. Current rule results in 38 vibracores.

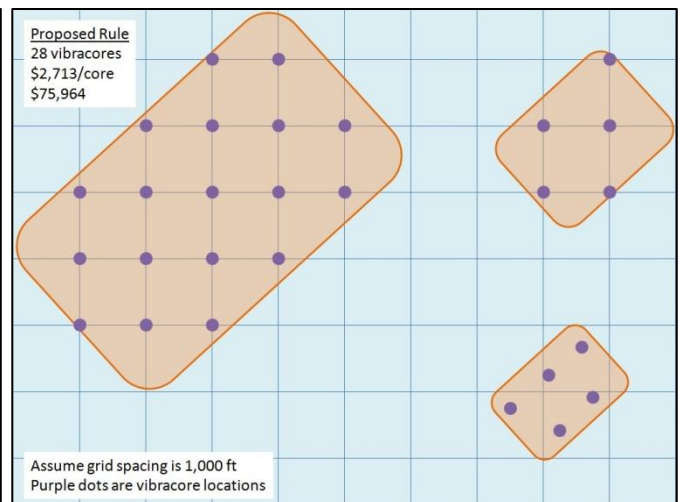


Figure 2. Proposed rule results in 28 vibracores.

- The allowable granular fraction of sediment added to the beach during a beach nourishment project would be expanded to 10% above the average percentage by weight of granular sediment of the native beach. The current rule limits borrow area granular sediment to 5% above the native beach’s average percentage by weight of granular sediment.
- Part 4(a) of the rule would be deleted because it is redundant. The current language states: “Sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel.”

The following is a description of the individual sections of the rule, along with a discussion of any proposed changes.

07H.0312(1) Characterization of the Recipient Beach

This section establishes the methodology that applicants must follow in order to determine the sediment composition of the recipient beach.

- No changes are proposed for this section.

07H.0312(2) Characterization of the Borrow Area Sediments

This section establishes the methodology that permittees must follow in order to determine the sediment composition of potential sediment sources.

- Part 2(c) is proposed for amendment to clarify that “swath sonar” refers to multibeam bathymetry or similar technologies and that “seafloor imaging without an elevation component” refers to sidescan sonar or similar technologies. These changes are intended to clarify the types of technology that the rule language describes.
- Part 2(e) is proposed for amendment to reduce the minimum number of cores required at each borrow site from 10 to 5, but the maximum grid spacing requirement would remain. For smaller borrow areas, this change would require a minimum of 5 cores instead of 10, but for larger borrow areas, the total number of required cores would continue to be based on the size of the borrow area and would exceed 10 cores in borrow areas that are larger than 230 acres.

07H.0312(3) Compatibility Determination

This section contains the criteria for determining whether recipient beach sediments and borrow area sediments are compatible.

- Part 3(c) is proposed for amendment to expand the allowable granular fraction of sediment that may be placed on the beach from 5% more than the granular content of the native pre-project beach to 10% more than the granular content of the native pre-project beach. Currently, the granular fraction of beach fill may only exceed the native beach by 5%. Expanding the allowable granular fraction to 10% above the native beach will provide flexibility for applicants to use sediment for beach fill that is close to the native composition but considered incompatible under the current rule. The “native +5%” rules for fine sediment and gravel would remain unchanged. This change would allow slightly more coarse-sand sediment to be placed on the beach while continuing to limit fine sediment and gravel material to within 5% of the composition of the native beach.

07H.0312(4) Excavation and Placement of Sediment

This section sets out general criteria for removing sediments from borrow areas and placing them on a recipient beach.

- Part 4(a) is proposed to be deleted because it is redundant and may lead to confusion. A Coastal Area Management Act (CAMA) Major Permit from DCM and a permit from the U.S. Army Corps of Engineers would both involve the review of proposed dredging depths and subsequently indicate the depth of dredging that may occur for a given project. Since the permits would specify the depth of dredging that may occur, it is unnecessary for this part of the rule to state that “sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel.”

Affected Parties

All parties that currently or may in the future undertake regular beach fill projects along the oceanfront could be affected by this rule change, including federal and state agencies, local governments, and any unincorporated communities. While federal projects are not permitted in the same way as non-federal projects, they still voluntarily comply with the sampling protocols set forth in the rule.

Pursuant to G.S. 150B-21.4(b) the agency reports that the proposed amendments may affect expenditures for communities that undertake beach fill projects from borrow areas that will be subject to reduced vibracore requirements and the ability to use slightly more coarse-sand material. The proposed changes could moderately lower the costs of sediment compatibility sampling.

Costs & Benefits

Costs

Division of Coastal Management

Costs associated with these proposed changes will be routine costs to DCM associated with periodic updates of printed materials and informing communities and contractors of the changes. The Division makes printed copies of its rules available to the public and provides copies of rule updates to contractors and local permit officers. This is a routine activity and the incremental costs associated with this action are negligible.

Private Citizens

The types of activities that would be impacted by the proposed rule changes are large beach fill or nourishment projects which are not undertaken by private property owners. Therefore, there should be no cost to private property owners as a result of the rule amendments.

Private Industry

Private industry would be unaffected by the proposed rule change under the typical full-employment assumption underlying most benefit-costs analyses. If the beach fill or nourishment projects occur during a time of excess capacity in the economy, some of the forgone income to the private contracting firms that perform deep water sediment sampling and analysis could be considered a cost to the contractors. However, the agency is unaware of any contractor in North Carolina that performs these specialized vibracoring services and would therefore be affected by this action.

Benefits

Estimate of Cost Savings and Model Assumptions

Costs are incurred to mobilize and demobilize equipment, and to drill, retrieve, and analyze sediment core samples (vibracores). These costs can be reduced by decreasing the amount of sampling required in smaller borrow areas and by allowing slightly more coarse-sand sediment to be used as fill. Expanding the allowable granular fraction to “native + 10%” could also reduce the need for permittees and contractors to explore additional offshore areas for beach-compatible material. The cost savings realized by reducing the minimum number of vibracores from 10 to 5 will vary according to the amount of material required for the project and the number and sizes of the borrow areas being sampled. In general, vibracoring costs for smaller borrow areas under the proposed changes will be about half the costs of the existing requirements, excluding mobilization and demobilization costs.

The reduced coring requirement only affects typical, unexplored offshore borrow areas \leq 115 acres in size. In DCM’s experience any given community that is regularly engaged in one of these types of projects might undertake a project every two to seven years. Coast-wide, there is an average of two sand search and/or nourishment projects each year using a previously unsampled offshore borrow area (not an inlet channel or Ocean Dredged Material Disposal Site (ODMDS)). ODMDS projects are less frequent because they are more expensive and it takes a longer period of time before those areas are refilled with sand. Since investigations for compatible sand sometimes focus on smaller, individual offshore borrow areas (based on geophysical subsurface data, multibeam bathymetry, and other data), reducing the minimum number of required cores at each borrow area could result in moderate cost savings for permittees.

With recent reductions in federal and state funding, it is not unreasonable to anticipate that the frequency of these types of projects might decrease in the future. At the same time, communities are beginning to consider ways they can work together to benefit from economies of scale through engaging in larger, multi-jurisdictional projects such as the proposed Bogue Banks (Carteret County) nourishment project that is used below to demonstrate the potential cost savings that can be achieved under this action. For the Bogue Banks example, in addition to sampling the sediment in Bogue Inlet, Beaufort Inlet, and the Morehead City ODMDS, permittees also sampled a number of smaller offshore borrow areas where the proposed reduction in the minimum number of required vibracores would have reduced costs.

Depending on the size of a vessel required to obtain vibracores, mobilization and demobilization costs can range from about \$15,000 to \$50,000. For the Bogue Banks project, which is larger than the average beach nourishment project, mobilization and demobilization costs for the vibracore vessel were \$45,000. For the purposes of this fiscal analysis, we assume that the mobilization and demobilization costs will not change since vibracores are still required, even though the minimum number per borrow area could be reduced from 10 to as few as 5.

The cost savings of the proposed changes are directly related to the reduced number of vibracores and related analysis that would be required. The average cost of drilling, retrieving, and analyzing a single sediment core is approximately \$2,713 (based on cost estimates from three contractors and not including the costs of mobilization and demobilization). Conversations with the engineering firm Moffatt and Nichol, a Raleigh-based contractor for the proposed Bogue Banks nourishment project indicate that the proposed reduction in sampling would have resulted in a cost savings of approximately \$27,130. For that project, in addition to the inlets and ODMDS, two small offshore borrow areas were sampled. Each of these areas was approximately 2,000 ft by 3,000 ft (about 140 acres), and current rules required 10 cores at each of these sites (20 cores total). The proposed changes would require 5 cores at each of these sites (10 cores total). The 10 cores that would no longer be required add up to a savings of \$27,130.

BOGUE BANKS POTENTIAL PROJECT COST SAVINGS

Vibracoring Cost Savings Under the Proposed Rule Change

Average costs based on 3 Contractors: Analysis cost per core = \$2,713

For two small offshore borrow areas, each about 140 acres in size:

Current rule: 20 cores required @ \$2,713 each:	\$54,260
Proposed rule: 10 cores required @ \$2,713 each:	<u>\$27,130</u>
One-Time Vibracore Cost Savings for this Project:	\$27,130

Another potential savings in the proposed amendment is the ability to use sediment for beach fill that has a percentage by weight of granular material that exceeds the native beach by 10% rather than 5%. This change has the potential to reduce costs but is difficult to quantify. For example, if a beach has a native granular fraction of 10% and the proposed borrow area has a granular fraction of 17%, it would be considered incompatible under the current rule. Under this proposed change, and using the same example, the proposed borrow area could have a granular fraction up to 20%. By allowing the additional granular material to be placed on the beach (assuming the fine fraction and gravel fraction are also compatible), a permittee may not need to explore and sample other areas. The cost savings could be significant when considering the costs of vessel time, fuel, crew, data collection, and analysis. However, it is difficult to speculate how frequently the ability to use additional granular sediment would lead to a permittee not needing to explore other borrow sites to meet the compatibility standard.

In no case can this proposed action result in an increased financial burden on the parties subject to this rule. To the contrary, the parties to whom these changes would apply will experience small to moderate cost savings.

The cost savings will be distributed among the funding entities at the prevailing cost-share arrangement at the time of the project. For this analysis, we assume that the current federal portion of funding will continue to be provided in the future.

DCM assumes an average of two sand-search studies and/or nourishment projects per year (statewide) during which two small offshore borrow areas are typically sampled for sediment composition in addition to other areas like inlet channels and ODMDSs. This will result in annual cost savings of \$54,260, proportionally distributed among the funding entities.

Division of Coastal Management and other state agencies

These amendments do not reflect significant changes in how various projects are reviewed or permitted by the Division of Coastal Management, nor do they affect permit application fees or the number of parties subject to permitting. The division does not anticipate any change in permitting receipts due to the proposed action.

North Carolina Department of Transportation

Pursuant to G.S. 150B-21.4(a1), the agency reports that the proposed amendments will not affect environmental permitting for the NC Department of Transportation (NCDOT). NCDOT does not perform beach fill projects, nor to the agency's knowledge, does it intend to begin doing so. Dredging, spoil disposal, transportation-related fill, and dune fortification are exempt activities under this rule.

Federal Government

The State makes funds available through Water Resources Development Project Grants that are administered by the Division of Water Resources. The North Carolina General Assembly capped the state share of project costs not paid by the federal government at 50 percent during the 2011 legislative session, which applies both to federal and non-federal projects. For federal projects, therefore, the cost share is typically 65 percent federal, 17.5 percent state, and 17.5 percent local funds. For non-federal projects the cost share is typically 50 percent state and 50 percent local funds, also due to the legislative cap on state matching funds.

When the federal government shares in project costs the standard federal contribution for general navigation (inlet dredging) and beach protection (nourishment) projects is 65 percent of the total project cost. About half of dredging and nourishment projects that would be affected by this action are federal projects; however, future federal funding for these types of projects is highly uncertain. Based on the assumption that federal funding continues and that one federal project occurs each year, the federal government would save approximately \$17,634 per year.

State Government General Fund

If federal funds are still available and the state match equals 17.5 percent of the total project costs, and if one federal project and one non-federal project occur each year, maximum potential impact (savings) to the state general fund would be \$18,313 per year.

Local Governments

The proposed rule changes could result in moderate cost savings to any community or group proposing a beach fill project utilizing material from smaller offshore borrow areas \leq 115 acres in size. These types of projects are usually undertaken by communities and county governments in order to widen beaches for tourism, wildlife habitat, and storm protection.

If federal funds are still available, if the state match equals 17.5 percent of the total project costs, and if one federal project and one non-federal project occur each year, maximum potential impact (savings) to local governments would be identical to state savings: \$18,313 per year.

15A NCAC 07H .0312 is proposed for amendment as follows:

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

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

- (1) The applicant shall characterize the recipient beach according to the following methodology:
 - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system;
 - (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular topographic and bathymetric surveying of the recipient beach shall be conducted to determine the beach profile. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the entire project area. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Elevation data for all transects shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
 - (d) No fewer than 13 sediment samples shall be taken along each beach profile transect. At least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;
 - (e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;
 - (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
 - (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples along each transect defined in Sub-Item (1)(d) of this Rule. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;
 - (h) The total number of sediments and shell material greater than or equal to three inches (76 millimeters) in diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area and referred to as the "background" value;
 - (i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and

- (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
 - (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites shall include sediment characterization data provided by the Division of Coastal Management where available;
 - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent of each submarine borrow site and use survey-grade swath sonar (e.g. multibeam or similar technologies) in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component (e.g. sidescan sonar or similar technologies) shall also cover 100 percent of each borrow site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and referenced to NAVD 88 and NAD 83. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth either by the US Army Corps of Engineers, the National Oceanic and Atmospheric Administration, or the International Hydrographic Organization. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system;
 - (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters). Subsurface geophysical imaging is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to NAD 83;
 - (e) Sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than ~~five~~10 evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are not required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule;

- (f) For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub-Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;
 - (g) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;
 - (h) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and
 - (i) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (3) The Division of Coastal Management shall determine sediment compatibility according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
 - (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
 - (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus ~~10~~five percent;
 - (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
 - (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- ~~(a)~~ Sediment excavation depth from a maintained navigation channel shall not exceed the permitted dredge depth of the channel;
 - ~~(a)(b)~~ Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
 - ~~(b)(e)~~ In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during times designated by the Division of Coastal Management in consultation with other State and Federal agencies; and
 - ~~(c)(d)~~ Sediment and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MLW and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 50,000-square-foot (4,645 square meter) section of beach.

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



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

MEMORANDUM

CRC-13-36

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Fiscal Analysis for 15A NCAC 7H .1300 – GP to Construct Boat Ramps
DATE: November 22, 2013

At its May 2013 meeting the CRC approved proposed amendments to General Permit 7H. 1300 that authorizes the construction of non-commercial boat ramps along estuarine and public trust shorelines. DCM staff proposed changes to the CRC following an internal rules review aimed at identifying rules that are unnecessary or overly burdensome.

Anyone wishing to construct a non-commercial boat ramp may currently apply for a GP under 7H. 1300, and pay a \$200 application fee. If they also wish to construct an access dock to facilitate safe and convenient use of the ramp they must currently apply for a GP under 7H. 1200 as well, and pay another \$200 application fee. Further, if they wish to construct a groin to protect the ramp from scour they must apply for a third GP under 7H. 1400, and pay a third \$200 application fee.

Since these activities are commonly associated with construction of boat ramps, the amendments to 7H. 1300 would authorize the construction a boat ramp with an associated access dock and protective groins under the same GP and permit application fee, simplify permitting for applicants and lowering their permitting costs. The amendments would not result in any additional environmental impacts since all of these activities are currently allowable under existing GPs. The amendments would also reduce the amount of staff time required since staff would be processing one permit application instead of two or three.

There were 110 projects over the last five years that included two structures and two GPs each. If the single GP were available applicants would have saved \$22,000, or an average of \$4,400 per year. Over the same time period there were three projects that included three structures and three GPs each. Under the combined GP applicants would have saved \$1,200, or an average of \$240 per year. The combined average annual impact, based upon the last five years of permitting data, is estimated to be \$4,640.

DENR and OSBM have reviewed and certified the attached fiscal note. The CRC is also required to approve the fiscal note before the proposed amendments can proceed to public hearing. The proposed rule amendments are also attached.

Fiscal Analysis

15A NCAC 07H.1305 SPECIFIC CONDITIONS

Prepared by

Tancred Miller, Coastal & Ocean Policy Manager
NC Division of Coastal Management
(252) 808-2808

September 10, 2013

Basic Information

Agency	DENR, Coastal Resources Commission, Division of Coastal Management
Rule Title	Specific Conditions
Citation	15A NCAC 07H .1305
Proposed Action	The Coastal Resources Commission proposes to amend its rule that establishes a general permit for the construction of non-commercial boat ramps along estuarine and public trust shorelines.
Agency Contact	Tancred Miller Tancred.Miller@ncdenr.gov (252) 808-2808, ext. 224
Authority	G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private Sector: Yes
Necessity	This action is being proposed to streamline, simplify and reduce costs to the public for permitting of non-commercial boat ramps under the Coastal Resources Commission's (CRC) general permit (GP). The Division of Coastal Management (DCM) has observed that it has become common practice to construct a launch access dock and protective groins in conjunction with a new boat ramp, and the CRC has determined that it is unnecessary to require three separate GP applications and three application fees for what is essentially a single project.

Summary

The CRC currently authorizes non-commercial boat ramps with no associated structures through GP in Section 7H .1300. The GP requires a \$200 application fee. However, when a property owner proposes to install a boat ramp, an increasingly common request is for a short, launch access dock adjacent the new boat ramp, and/or groins abutting one or both sides of the ramp to reduce scouring action along the newly installed ramp. Under current rules three different GPs are required, one for each component of the project (7H.1200 for the launch access dock, 7H.1300 for the boat ramp, and 7H.1400 for the groins). With application fees of \$200 for each GP, it currently costs applicants \$600 for what is essentially a single project. Since the additional structures are currently allowed under other GPs, there would not be any additional environmental impacts that are not already allowed. Allowing a launch access dock and protective groins as associated structures under the boat ramp GP would simplify permitting for the applicant and reduce their costs.

The total average annual cost savings to permit applicants as a result of the proposed amendments (see Appendix for proposed changes) would be approximately \$4,600. The anticipated effective date of these changes is May 1, 2014.

Introduction and Purpose

The CRC seeks to amend its administrative rule that authorizes the construction of non-commercial boat ramps along estuarine and public trust shorelines by allowing the construction of an associated access dock and protective groins under the same GP. The proposed change will simplify permitting for applicants, lower their permitting costs, and will not result in any additional environmental impacts. DCM staff proposed this change to the CRC following an internal review aimed at simplifying permitting for applicants.

Description of the Proposed Rule

The CRC's boat ramps GP, under Section 7H.1300, first took effect in March 1984. This Section includes rules that pertain to Purpose, Approval Procedures, a Permit Fee, as well as General and Specific Conditions related to boat ramp construction. Amendments are being proposed to the Section title as well as text changes to the Specific Conditions rule. The following is a description of the proposed changes.

Section 7H.1300 - General Permit to Maintain, Repair and Construct Boat Ramps Along Estuarine and Public Trust Shorelines and Into Estuarine and Public Trust Waters

This is the Section title. The CRC proposes to delete the words "Maintain, Repair and" since this Section does not specifically address these activities. The CRC's rules on maintenance and repair appear in Subchapter 7K.

15A NCAC 7H.1305 Specific Conditions

This rule establishes specific criteria that applicants must follow in any development activity authorized pursuant to this rule.

- Part (a) is proposed for amendment to specify that the boat ramp may extend no further than 20 feet waterward of the normal high water level (in tidal areas) or normal water level (in non-tidal areas). The CRC prefers to use the term "normal" instead of "mean". Normal high water and normal water level can be readily determined through field observations by trained personnel. Mean high water and mean water level are determined through standardized protocols and cannot be readily identified through simple field observations. The use of normal high water and normal water level allow for faster permit delivery but do not change what activities may be permitted under the GP.
- Part (b) is also proposed for amendment to replace "mean" with "normal" for the same reasons as stated above.
- Part (c) is also proposed for amendment to replace "mean" with "normal", and to allow for the placement of subsurface fill material should the applicant wish to construct an associated riprap groin under this GP. The phrase "and subsequent use of the proposed ramp." is being deleted because it is unnecessary; use of a boat ramp would not result in excavation or fill of coastal wetland vegetation.
- Part (d) is new and proposes to authorize the construction of a six-foot wide launch access dock immediately adjacent to the boat ramp. Launch access docks are used as temporary slips to allow for safe and convenient loading and unloading of vessels. The launch access dock would be limited to the same length as the ramp and would not include any permanent mooring slips.
- Part (e) is new and proposes to authorize the construction of sheetpile or riprap groins along one or both sides of the boat ramp. The groins can be installed as a method of reducing water-induced scour at the base of the boat ramp, and would be limited to the same length as the ramp. Groins can also produce the added benefit of reducing waves and currents across the boat ramps, increasing the ease of use and safety.
- Part (f) is new and proposes a maximum height above water level for sheetpile or riprap groins.
- Part (g) is new and limits the base width of riprap groins. Base width is limited in order to minimize impacts on the subsurface habitat.

- Part (h) is new and specifies that groin material must be clean and large enough to withstand waves and currents from being displaced.
- Part (i) is new and prohibits the construction of “L” or “T” heads at the end of any groins that are built pursuant to this GP. Similar to the CRC’s other rules governing groins these features are not allowed because they can adversely impact water quality by creating stagnant water.
- Part (j) is new and specifies the types of material that are appropriate for use in the construction of riprap groins.
- Part (k) is new and contains provisions for adjacent property setbacks and waivers of those setbacks.

Affected Parties

Any public or private party that seeks to construct a non-commercial boat ramp along with a launch access dock and/or one or more protective groins will be affected by this action. Applicants who wish to construct a boat ramp without one or more of these related structures will not be affected.

Pursuant to G.S. 150B-21.4(b) the agency reports that the proposed amendments may affect expenditures for local governments. DCM has records of a few local governments applying for GPs for boat ramp construction, but no records over the past five years of a local government applying to construct a boat ramp along with at least one of the other related structures. DCM cannot anticipate whether a local government may do so in the future.

DENR will experience a decrease in revenue as a result of consolidated permit applications, but the decrease is expected to be offset by the corresponding workload reduction.

Costs & Benefits

Costs

Division of Coastal Management

DCM will experience an annual reduction in revenue of approximately \$4,640 as a result of the reduced permit fees. This reduction will be offset by the reduced staff time needed to conduct site visits, and by the lower number of permits that will need to be processed. Other costs to DCM will be routine costs associated with periodic replenishment of printed materials and informing communities and contractors of the changes. DCM makes printed copies of its rules available to the public and provides copies of rule updates to contractors and local permit officers. This is a routine activity and the incremental costs associated with this action are negligible.

Private Citizens

DCM does not anticipate any increased costs to private property owners (including homeowners associations) as a result of the proposed rule amendments. On the contrary, private citizens will have the opportunity to reduce their permit-related costs by up to \$400 per application.

Private Industry

DCM does not anticipate any costs to private industry to result from this proposed rule change since the GP is limited to non-commercial boat ramps. DCM is not aware of any industry-provided boat ramps that are available to the public on a cost-free basis.

Benefits

Estimate of Cost Savings and Model Assumptions

DCM reviewed the permits that have been issued over the last five years for boat ramps with launch access docks, boat ramps with protective groins, and boat ramps with both ramps and groins.

Permits Issued	2008	2009	2010	2011	2012	TOTAL
Boat ramp and access dock, no groin(s) (2 permits issued/ project)	20	56	26	34	80	216
Boat ramp and groin(s), no access dock (2 permits issued/ project)	2	0	2	0	0	4
Boat ramp, access dock and groin(s) (3 permits issued/ project)	3	0	0	3	3	9
<i>TOTAL # OF STRUCTURES PERMITTED</i>	25	56	28	37	83	229

Applicants currently pay a permit application fee of \$200 for boat ramps, groins, and launch access docks each. With a total of 229 structures permitted (related to 113 different projects) over the last five years, applicants have paid a combined total of \$45,800 in permit application fees.

There were 220 permits issued for 110 projects that included two structures. The total application fees paid for those permits were \$44,000. Assuming that the number of permit requests in the following five years is close to the total in the last five years, if these projects are combined into one permit with a single \$200 application fee, only 110 permits would be required and applicants would save \$22,000 over a five-year period, or \$4,400 annually.

There were 9 permits total issued in the last five years for 3 projects that included three structures. The total application fees paid for those permits were \$1,800. Assuming the same number of permit requests in the following five years, allowing those projects to be combined into one permit with a single \$200 application fee, results in savings to the applicants of \$1,200 over a five-year period, or \$240 annually.

In total over the following five years, applicants would save an estimated \$4,640 annually.

Division of Coastal Management and other state agencies

Permit application fees are paid directly to DCM and are used to cover costs of running the Division. The reduction in permits issued will translate into a direct loss in revenue to DCM.

Other state agencies would only experience a fiscal impact in the form of a reduction in permit application fees if they wanted to undertake these types of projects. Over the past five years both the NC Wildlife Resources Commission and the NC Division of Marine Fisheries have undertaken projects that would have benefitted from the reduced permit application fees.

North Carolina Department of Transportation

Pursuant to G.S. 150B-21.4(a1), the agency reports that the proposed amendments will not affect environmental permitting for the NC Department of Transportation (NCDOT) except for the potential of lower permit application fees if NCDOT undertakes these types of projects. The proposed amendments do not change any development standards, it merely combines three separate authorizations into one general permit.

Federal Government

The proposed amendments will not affect environmental permitting for the federal government except for the potential of lower permit application fees if the federal government undertakes these types of projects.

State Government General Fund

The proposed amendments are not expected to affect the General Fund. Permit application fees are not paid into the General Fund and the loss in revenue to DCM will not require a corresponding increase in State appropriations to DCM.

Local Governments

The proposed amendments will not affect environmental permitting for local governments except for the potential of lower permit application fees if local governments undertake these types of projects.

Alternatives Considered

The proposed action does not result in a substantial economic impact as defined under G.S. 150B-21.4(b1), therefore DCM is not required to consider alternatives to the proposed action.

APPENDIX

15A NCAC 07H .1300 is proposed for amendment as follows:

SECTION .1300 – GENERAL PERMIT TO MAINTAIN, REPAIR AND CONSTRUCT BOAT RAMPS ALONG ESTUARINE AND PUBLIC TRUST SHORELINES AND INTO ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .1305 is proposed for amendment as follows:

15A NCAC 07H .1305 SPECIFIC CONDITIONS

(a) Boat ramps shall be no wider than 15 feet and ~~must not extend farther than 20 feet below the mean high water level contour in tidal areas, or the normal water level contour in nontidal areas.~~ shall not extend more than 20 feet waterward of the normal high water level or normal water level.

(b) Excavation and ground disturbing activities above and below the ~~mean-normal~~ high water level or normal water level will be limited to that absolutely necessary to establish adequate ramp slope and provide a ramp no greater in size than specified by this general permit.

(c) Placement of fill materials below the ~~mean-normal~~ high water level, or normal water level contour, will be limited to the ramp structure ~~itself and any associated riprap groins.~~ Boat ramps may be constructed of concrete, wood, steel, clean riprap, marl, or any other acceptable materials as approved by department personnel. No coastal wetland vegetation shall be excavated or filled at any time during ~~construction and subsequent use of the proposed ramp construction.~~

(d) This permit allows for up to a six-foot wide launch access dock (fixed or floating) immediately adjacent to a new or existing boat ramp. The length shall be limited to the length of the boat ramp (with a maximum length of 20 feet waterward of the normal high water level or normal water level). No permanent slips are authorized by this permit.

(e) Groins shall be allowed as a structural component on one or both sides of a new or existing boat ramp to reduce scouring. The groins shall be limited to the length of the boat ramp (with a maximum length of 20 feet waterward of the normal high water level or normal water level).

(f) The height of sheetpile groins shall not exceed one foot above normal high water level or normal water level and the height of riprap groins shall not exceed two feet above normal high water level or normal water level.

(g) Riprap groins shall not exceed a base width of 5 feet.

(h) Material used for groin construction shall be free from loose dirt or any other pollutant. Riprap material must be of sufficient size to prevent its movement from the approved alignment by wave action or currents.

(i) "L" and "T" sections shall not be allowed at the end of groins.

(j) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile or other suitable equivalent materials approved by the Division of Coastal Management.

(k) Boat ramps and their associated structures authorized under this permit shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the boat ramp or associated structures and the adjacent property owners' areas of riparian access. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the boat ramp or associated structures commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the boat ramp or associated structures authorized under this permit.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984-1984;
Amended Eff. June 1, 2014.*



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

CRC-13-37

November 25, 2013

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Fiscal Analysis for 15A NCAC 7H .1200 GP for Construction of Piers and Docking Facilities

Summary of Rule Change

Current CRC rules allow piers and docking facilities providing docking space for up to two boats on an individual pier and up to four boats on a shared pier to be permitted under the General Permit (GP). GPs are used for routine projects that have minimal impacts and can be issued in one or two days. Major Permits are necessary for larger projects that require other state or federal authorizations, are reviewed by up to nine state and four federal agencies, and can take up to 75 days before issuance.

Over the years, the Division of Coastal Management (DCM) has seen an increase in personal water craft (PWC) stored on platforms or docks and that has resulted in permits being elevated from a GP to the Major Permit review process for the inclusion of a third docking space for a PWC, canoe or kayak. Additionally, in the late 1990's the Commission directed DCM to count boats as slips whether they are in a wet slip, boat lift, boathouse, drive on jet dock, or simply placed on existing platform(s). Applying slip counts in this manner has resulted in counting both slip number and platform size/shading impact against the property owner.

At the July 2013 CRC meeting, the Commission approved for public hearing a modification of the pier and docking facilities GP, so that boats stored on platforms (floating or fixed) will not count as docking spaces when the platforms have already been accounted for in the shaded area impacts conditions of 15A NCAC 7H .1204 & 7H .1205. This change is accomplished by referencing the definition of a boat and stating that boats stored on floating or fixed platforms shall not count as docking spaces.

Summary of Fiscal Analysis

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for NCAC 7H .1204 & 7H .1205 has been prepared by the Division and approved by DENR.

The proposed amendments would apply to riparian property owners seeking a Coastal Area Management Act (CAMA) permit for the construction or replacement of a noncommercial pier or docking facility intending to store canoes, kayaks, PWC or boats on structures such as fixed or floating platforms that have already been included in the calculation of shading impacts allowed under the GP. In the past 10 years, there have been approximately 40 Major Permits that have involved PWCs and platforms. During that same time period approximately 160 Major Permits were issued for docking facilities of up to four slips. The average number of permit applications over this timeframe (20 per year) is considered to be typical and it is assumed that there will continue to be 20 permit applications per year of this type in the future. A GP for the construction of a pier or docking facility costs \$200 while a Major Permit involving these same facilities costs \$250. In order to estimate the potential cost savings to property owners, it is assumed that these property owners could have taken advantage of the exception for the storage of boats on floating or fixed platforms. The \$50 difference in permit fee is estimated to save property owners \$1,000 in permit fees per year. As many property owners utilize the services of consultant in the preparation of Major Permits, there could also be a potential savings of consultant fees. Assuming half of the applicants for a Major Permit utilize these professional services at an estimated cost of \$500 - \$1,500, the proposed amendments could save property owners an additional \$5,000 – \$15,000 per year for a total of \$16,000 per year coast-wide. In addition to the financial savings to property owners, and perhaps more significantly, they will also see time-savings benefit related to the review period for a Major Permit compared to a GP. A Major Permit is reviewed by 13 state and federal agencies and can take up to 75 days before issuance. A General Permit is can be issued by DCM Field Representatives in one or two days.

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .1204 and 7H .1205 will not affect environmental permitting for the NC Department of Transportation. Likewise, local governments are typically not involved in projects providing boat storage and will not be affected. While the \$1,000 decrease in permit receipts is not seen as significant, DCM will realize a time-savings benefit by not having to review applications for common private docking related projects under the more rigorous Major Permit process. This is consistent with the intent of the General Permit process.

If the Commission approves, the fiscal analysis as well as proposed amendments may be sent to public hearing with a proposed effective date of June 1, 2014.

**SECTION .1200 – GENERAL PERMIT FOR CONSTRUCTION OF PIERS AND DOCKING FACILITIES:
IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**

15A NCAC 07H .1201 PURPOSE

15A NCAC 07H .1204 GENERAL CONDITIONS

- (a) Piers and docking facilities authorized by this general permit shall be for the exclusive use of the land owner, or occupant and shall not be leased or rented or used for any commercial purpose. **Except in the cases of shared piers as Piers and docking facilities shall designed to provide docking space for no more than two boats, shall, Docking facilities providing docking space for more than two boats** because of their greater potential for adverse impacts, **shall** be reviewed through the major permitting process and, therefore, are not authorized by this general permit, **excluding the exceptions described in Section 7H .1205 of this Rule.**
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (c) There shall be no interference with navigation or use of the waters by the public by the existence of piers and docking facilities.
- (d) This permit shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).
- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994.*

15A NCAC 07H .1205 SPECIFIC CONDITIONS

- (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
- (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.
- (c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.
- (d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.
- (f) The maximum size of any individual component of the docking facility authorized by this General Permit shall not exceed 400 square feet.

(g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level (whichever is applicable) under this permit without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).

(h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable) if the following two conditions are met:

- (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level (whichever is applicable).
- (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure.

(i) Floating piers and floating docking facilities located in PNAs, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level, whichever is applicable.

(j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

(k) The width requirements established in Paragraphs (d), (e), (f), (g), (h), (i), and (j), of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.

(l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

(m) The area enclosed by a boat lift shall not exceed 400 square feet.

(n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

(o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act.

(p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

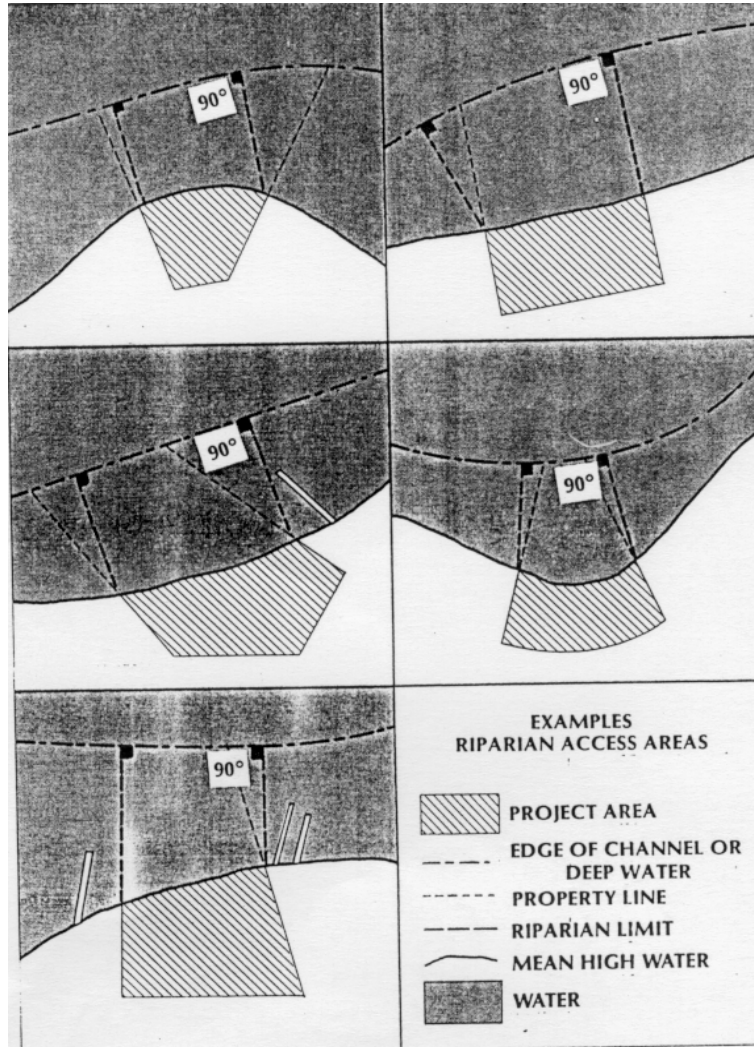
(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall ~~be designed to~~ provide docking space for no more than two boats (a boat is defined in 15A NCAC 07M.0602(a) as a vessel or watercraft of any size or type specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by

water) except when stored on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with (a) through (t) of this rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using (e) of this rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in subparagraph (q) of this rule as is applies to the shared riparian line for any

work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.

- (5) The construction of a second access pier or docking facility not associated with the shared pier shall require authorization through the CAMA Major full review permit process.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;
RRC Objection due to ambiguity Eff. March 18, 1993;
Amended Eff. August 1, 1998; April 23, 1993;
Temporary Amendment Eff. December 20, 2001;
Amended Eff. July 1, 2009; April 1, 2003.
Amended Eff. June 1, 2014*

Fiscal Analysis

Use of Floating Platforms and Docks

Amendments to 15A NCAC 7H .1204 &.1205

General Permit for Construction of Piers and Docking Facilities in Estuarine and Public Trust
Waters and Ocean Hazard Areas – General & Specific Conditions

Prepared by

Mike Lopazanski
NC Division of Coastal Management
(252) 808-2808 Ext. 223

November 26, 2013

Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	General Permit for Construction of Piers and Docking Facilities in Estuarine and Public Trust Waters and Ocean Hazard Areas - General & Specific Conditions
Citation	15A NCAC 7H .1204 & .1205
Description of the Proposed Rule	7H.1200 defines specific development requirements in Estuarine and Public Trust and Ocean Hazard Areas for the construction of piers and docking facilities. The proposed rule change amends language in sections 7H.1204 and 7H .1205 pertaining to the storage of boats on floating or fixed platforms not being counted as docking spaces.
Agency Contact	Mike Lopazanski Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext 223
Authority	113A-107(a); 113A-107(b); 113A-113(b)(6); 113A-118.1; 113A-124.
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules in order to alter how boat slips are counted so that boats stored on platforms (floating or fixed) shall not count as docking spaces. The changes will serve the public good by providing greater flexibility in the use of the General Permit for the construction of piers and docking facilities. Riparian property owners will be able to more fully utilize this expedited General Permit as opposed to more complex Major Permit process. The proposed rule changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private property owners: Yes

Summary

The Coastal Resources Commission (CRC) is modifying its General Permit for docks and piers to alter how the CRC defines the use of platforms so that boats stored on platforms (floating or fixed) shall not count as docking spaces. The proposed rule amendments (see proposed rule text in the Appendix) will provide greater flexibility to riparian property owners in the use of the non-commercial docking facilities.

Current CRC rules allow piers and docking facilities to be designed to provide docking space for no more than two boats on an individual pier and up to four boats on a shared pier. Over the years, the Division of Coastal Management has seen an increase in the use of personal water craft (PWC) stored on platforms or docks and that has resulted in permits being elevated from a GP to the Major permit review process for the inclusion of a third docking space for a PWC or canoe or kayak. In addition, based on direction from the CRC in the late 90's, boats have been counted as slips whether they are in a wet slip, boat lift, boathouse, drive on jet dock, or simply placed on the existing platform(s). Applying slip counts in this manner has resulted in counting both slip number and platform size/ shading impact against the property owner.

The Commission is therefore modifying the pier and docking facilities General Permit, so that boats stored on platforms (floating or fixed) shall not count as docking spaces. The amended pier and docking facilities rule would apply when riparian property owners are seeking a Coastal Area Management Act (CAMA) permit for the construction of docking facilities that also include the storage of boats on fixed or floating platforms that have been included in the shaded area impacts conditions of the General Permit 15A NCAC 7H .1204 & 7H .1205. Based on a review of CAMA Major Permits for the past 12 years, approximately 20 docking facility projects per year will be permissible under the General Permit process.

The economic impacts of this proposed rule change are potential benefits to property owners will be a \$50 savings (\$1,000 per year) in permit fee as well as a \$500 - \$1,500 saving in consultant fees (\$5,000 - \$15,000). Property owners will also receive a time-savings benefit as a General Permit can be issued in one to two days, whereas a Major Permit can take as long as 75 days. Total cost savings will be \$6,000 - \$16,000 each year. Assuming an annual maximum savings of \$16,000, the 10-year net present value of the proposed rule change is approximately \$112,400.

These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be an insignificant impact on Division of Coastal Management permit receipts.

The proposed effective date of these amendments is June 1, 2014.

Introduction and Purpose

With the increasing use of Personal Watercraft (PWC) and boat lifts, a growing number of property owners seeking small-scale docking facilities are no longer able to utilize this General Permit (GP) 15A NCAC 7H .1200 General Permit for Construction of Piers and Docking Facilities In Estuarine and Public Trust Waters and Ocean Hazard Areas; or, after obtaining the GP, owners sometimes decide to fit multiple PWCs into a single docking space, boat lift or stored on a floating platform. Docking more than two vessels creates a technical violation based on existing use standards and GP requirements. The proposed amendments alter how boat slips

are counted so that boats stored on platforms (floating or fixed) shall not count as docking spaces.

The Coastal Resources Commission amended CAMA General Permit 7H.1200 in 2009 to provide greater flexibility in the use of this GP for construction of individual docks and piers; and for the first time, to allow for shared piers and docking facilities. Based on direction from the CRC in the late 90's, boats have been counted as slips whether they are in a wet slip, boat lift, boathouse, drive on jet dock, or simply placed on the existing platform(s). Applying slip counts in this manner has resulted in counting both slip number and platform size/shading impact against the property owner. Over the years, staff has seen an increase in the use of personal water craft (PWC) and that has resulted in a number of permits elevated from a GP to the Major Permit review process for the inclusion of a third docking space for a PWC or canoe or kayak. In an effort to provide greater flexibility to the property owner in the use of the non-commercial docking facility, while continuing to adhere to the two boat docking space limit, the Commission is proposing a modification to the GP to alter how the definition of the use of platforms that have already been accounted for as shaded impact. Under the modified use definition, boats stored on platforms (floating or fixed) shall not count as docking spaces.

Description of Rule Amendment

15A NCAC 7H .1204 and 7H .1205 include the General and Specific Use Standards for the construction of new piers and docking facilities (including pile supported or floating) in the estuarine and public trust waters Areas of Environmental Concern (AECs) and construction of new piers and docks within coastal wetlands AECs. The proposed rule amendment to 15A NCAC 7H .1205 clarifies that piers and docking facilities shall provide docking space for no more than two boats excluding platforms that have already been accounted for within the shading impacts condition of the permit. The total square footage of shaded impact for docks and mooring facilities allowed under the GP is eight square feet per linear foot of shoreline with a maximum of 800 square feet. The proposed amendments also clarify that boats stored on floating or fixed platforms are not counted as docking spaces. The exceptions to the width requirements in 7H .1205(k) are being deleted (e through i) since they no longer reference width limitations after a 2003 change to the Commission's piers and docking facilities rules. The reference to (j) is being deleted as it refers to the width of docking facilities over coastal wetlands while the exception for structural modifications needed to prevent or minimize storm damage (k) applies to pier structures. These amendments are necessary for consistency within the rules.

The amendments to 7H .1204 create an exception to the two boat limitation for the provision of boat storage space on platforms. The reference to shared piers is being deleted as those provisions are already included in 7H .120(u) and the exception for boats stored on platforms would also be applicable in these situations.

Cost or Neutral Impacts

Private Property Owners:

The proposed rule amendments would apply to riparian property owners seeking a Coastal Area Management Act (CAMA) permit for the construction or replacement of a noncommercial pier or docking facility intending to store canoes, kayaks, PWC or boats on structures such as fixed or floating platforms that have already been included in the calculation of shading impacts allowed under the GP. In the past 10 years, there have been approximately 40 Major Permits that have involved PWCs and platforms. During that same time period approximately 160 Major Permits were issued for docking facilities of up to four slips. The average number of permit applications over this timeframe (20 per year) is considered to be typical and it is assumed that there will continue to be 20 permit applications of this type in the future. A GP for the construction of a pier or docking facility costs \$200 while a Major Permit involving these same facilities costs \$250. In order to estimate the potential cost savings to property owners, it is assumed that these property owners could have taken advantage of the exception for the storage of boats on floating or fixed platforms. The \$50 difference in permit fee is estimated to save property owners \$1,000 in permit fees per year. As many property owners utilize the services of consultant in the preparation of Major Permits, there could also be a potential savings of consultant fees. Assuming half of the applicants for a Major Permit utilize these profession services at an estimated cost of \$500 - \$1,500, the proposed amendments could save property owners an additional \$5,000 – \$15,000 per year for a total of \$6,000 - \$16,000 per year coast-wide. In addition to the financial savings to property owners, and perhaps more significantly, they will also see time-savings benefit related to the review period for a Major Permit compared to a General Permit. A Major Permit is reviewed by 13 state and federal agencies and can take up to 75 days before issuance. A General Permit is can be issued by DCM Field Representatives in one or two days.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .1204 and 7H .1205 will not affect environmental permitting for the NC Department of Transportation. While NCDOT would be eligible for the GP and its associated uses, it is unlikely that NCDOT will be involved in such a project. In the past 10 years, there have been no NCDOT Major Permit projects involving platforms and the storage of boats.

Local Government:

While local governments would be eligible for the GP and its associated uses, and are often involved in projects that provide PWC, boat, canoe or kayak launches, they are typically not involved in projects providing storage. In the past 10 years, there have been no local government Major Permit projects involving platforms and the storage of boats.

Division of Coastal Management:

The Division of Coastal Management's permit review process will not be changed by these amendments as property owners will still need to obtain a CAMA General Permit. While the \$1,000 decrease in permit receipts is not seen as significant, DCM will realize a time-savings benefit by not having to review applications for common private docking related projects under

the more rigorous Major Permit process. This is consistent with the intent of the General Permit process.

Cost/Benefits Summary

Private Citizens:

The amended pier and docking facilities rule would apply when riparian property owners are seeking a Coastal Area Management Act (CAMA) permit for the construction of docking facilities that also include the storage of boats on fixed or floating platforms that have already been included in the calculated shaded area impacts conditions of the General Permit 15A NCAC 7H .1204 & 7H .1205. Based on a review of CAMA Major Permits for the past 10 years, approximately 20 additional docking facility projects per year will be permissible under the General Permit process.

The economic impacts of this proposed rule change are potential benefits to property owners which will be a \$50 savings (\$1,000 per year) in permit fee as well as a \$500 - \$1,500 savings in consultant fees (\$5,000 - \$15,000). Property owners will also receive a time-savings benefit as a General Permit can be issued in one to two days, whereas a Major Permit can take as long as 75 days. Total cost savings will be \$6,000 - \$16,000 each year. Assuming an annual maximum savings of \$16,000, the 10-year net present value of the proposed rule change is approximately \$112,400.

APPENDIX A

SECTION .1200 – GENERAL PERMIT FOR CONSTRUCTION OF PIERS AND DOCKING FACILITIES: IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1201 PURPOSE

15A NCAC 07H .1204 GENERAL CONDITIONS

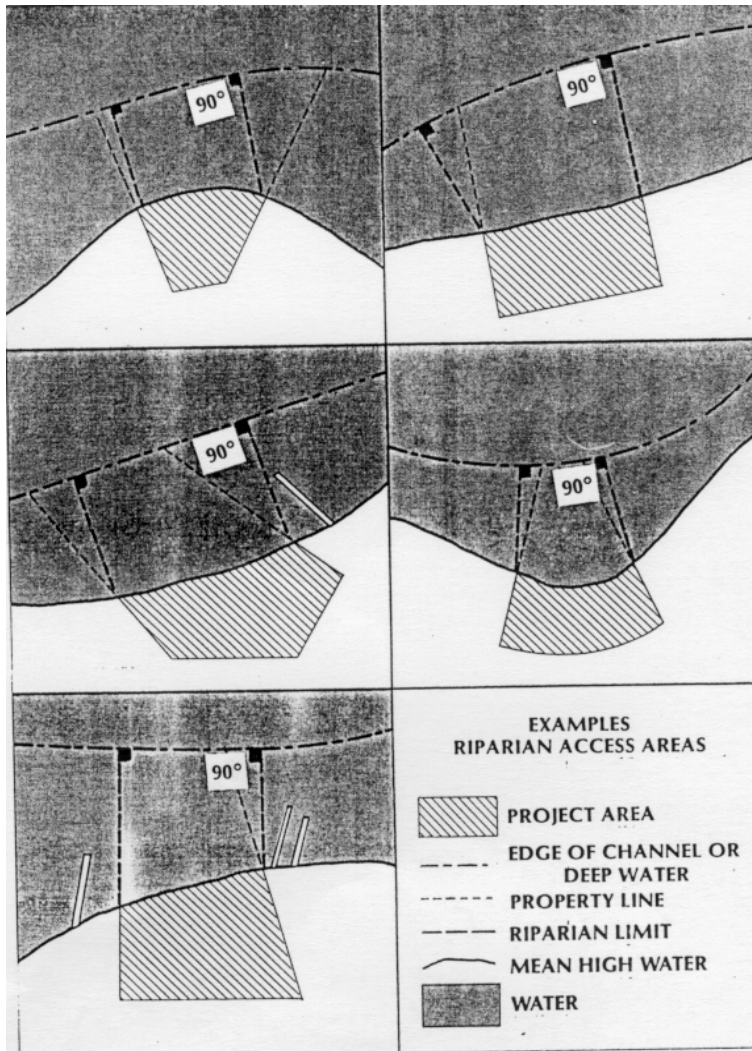
- (a) Piers and docking facilities authorized by this general permit shall be for the exclusive use of the land owner, or occupant and shall not be leased or rented or used for any commercial purpose. Except in the cases of shared piers as Ppiers and docking facilities shall designed to provide docking space for no more than two boats, shall, Docking facilities providing docking space for more than two boats because of their greater potential for adverse impacts, shall be reviewed through the major permitting process and, therefore, are not authorized by this general permit, excluding the exceptions described in Section 7H .1205 of this Rule.
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (c) There shall be no interference with navigation or use of the waters by the public by the existence of piers and docking facilities.
- (d) This permit shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).
- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

- (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
- (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.
- (c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.
- (d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.
- (f) The maximum size of any individual component of the docking facility authorized by this General Permit shall not exceed 400 square feet.

- (g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level (whichever is applicable) under this permit without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).
- (h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable) if the following two conditions are met:
- (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level (whichever is applicable).
 - (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure.
- (i) Floating piers and floating docking facilities located in PNAs, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level, whichever is applicable.
- (j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (k) The width requirements established in Paragraphs (d), (e), (f), (g), (h), (i), and (j), of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.
- (l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.
- (m) The area enclosed by a boat lift shall not exceed 400 square feet.
- (n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.
- (o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act.
- (p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.
- (q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.
- (r) Piers and docking facilities shall ~~be designed to~~ provide docking space for no more than two boats (a boat is defined in 15A NCAC 07M.0602(a) as a vessel or watercraft of any size or type specifically designed to be self-propelled, whether by engine, sail, oar, or paddle or other means, which is used to travel from place to place by water) except when stored on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.
- (s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with (a) through (t) of this rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using (e) of this rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in subparagraph (q) of this rule as it applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.
- (5) The construction of a second access pier or docking facility not associated with the shared pier shall require authorization through the CAMA Major full review permit process.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984;
 Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;
 RRC Objection due to ambiguity Eff. March 18, 1993;
 Amended Eff. August 1, 1998; April 23, 1993;
 Temporary Amendment Eff. December 20, 2001;
 Amended Eff. July 1, 2009; April 1, 2003.
 Amended Eff. March 1, 2014



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

CRC-13-38

November 26, 2013

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Public Comments on 15A NCAC 7H .0304 – Inlet Hazard Areas and Unvegetated Beach Designations

Summary of Rule Change

Rulemaking has been initiated to amend two separate sections within 15A NCAC 07H .0304 – Areas of Environmental Concern (AECs) within Ocean Hazard Areas. These rules define and establish AECs that are considered to be within the Ocean Hazard Areas along the state's ocean shoreline. Ocean Hazard Area AECs include the Ocean Erodible Area, High Hazard Flood Area, Inlet Hazard Area and the Unvegetated Beach Area.

The first change is to 07H .0304(4) related to the Unvegetated Beach (UB) AEC designation. The Commission may designate areas where no stable natural vegetation is present as an Unvegetated Beach AEC on either a temporary or permanent basis. Such a designation allows the establishment of a measurement line used to determine setbacks for oceanfront development. In May 2004, the CRC approved the UB designation as a temporary measurement line used in place of the actual first line of stable and natural vegetation after the loss of vegetation from Hurricane Isabel (September 2003). The only oceanfront community currently with an UB designation is Hatteras Village and this proposed rule change would remove the UB designation from the Village. The removal the UB designation near Hatteras Village is necessary as the vegetation line has exhibited recovery since 2004 and can once again be used for setback determinations.

The second change removes the Inlet Hazard Area designation for Mad Inlet. The Inlet Hazard Area (IHA) designations are based on a 1978 study (minor amendments in 1981) of areas that are subject to the dynamic influence of ocean inlets. Mad Inlet,

which closed in 1997, previously separated Sunset Beach and Bird Island (part of the North Carolina Coastal Reserve system). As part of the CRC Science Panel's ongoing review of the State's 12 developed inlets, the Panel opted not to review the boundary for the former Mad Inlet as it was generally accepted that the inlet would not reopen. Removal of the IHA designation will allow property owners to develop under the more common oceanfront development standards as opposed to the more restrictive IHA standards.

The public comment period for both these rule changes ends on December 12, 2013. As the Commission is meeting on this day, no action is recommended since the Division will still be taking comments. However, the removal of the IHA designation for Mad Inlet has generated some local interest. In an effort to bring Commissioners up to speed on the proposed changes, public comments to date will be summarized and further action can be discussed at the February 2014 meeting.

Summary of Public Comments – Mad Inlet IHA Designation

A public hearing was held in Sunset Beach on November 6, 2013. Approximately 48 people attended. Speakers at the hearing included local elected officials, citizens and an environmental advocacy organization. Eleven people spoke at the hearing with nine opposed to the action and two in favor. Those opposing the action questioned the scientific basis for the decision (4); believed that the inlet would open again (3); expressed concerns regarding insurance (3); that there have been no recent storms (3); it would be detrimental to sea turtles and wildlife (1); concerned about potential impacts of development on Bird Island Coastal Reserve (1); concerned with the potential impact of a terminal groin on Ocean Isle Beach (3); would only benefit a few property owners (5); and would change the character of Sunset Beach (1). The two speakers in favor of the action spoke of the years of accretion in the area, the stability afforded by jetties at Little River Inlet, and that it would be an asset to Sunset Beach.

To date, the Division has received 19 written comments. All 19 responses have been opposed to the action. The comments express concern that the inlet will re-open (8); concerns regarding insurance (3); the impact of future storms (5); it would be detrimental to sea turtles and wildlife (4); question the scientific basis for the decision (2); potential threat to Bird Island Coastal Reserve (6), potential impact of a terminal groin on Ocean Isle Beach (6); an interest in keeping the area pristine (6); the potential effects of sea-level rise (3); would only benefit a few property owners (6); detrimental impact of increased development (1).

Summary of Public Comments – Hatteras Village Unvegetated Beach Designation

A public hearing was held November 12, 2013 in Hatteras Village. One person spoke. Beth Midgett thanked the Commission and Division for establishing the measurement line. She also expressed support for allowing the vegetation line to re-establish.

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The ~~seaward~~ oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management; and
 - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.
- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the ~~normal~~ mean low water line a distance sufficient to encompass that area within which the inlet ~~shall~~, shall migrate, based on statistical analysis, ~~migrate~~, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference ~~without future changes~~ and are hereby designated as Inlet Hazard Areas except ~~that the Cape Fear Inlet Hazard Area as shown on~~

~~the map does not extend northeast of the Baldhead Island marina entrance channel. These areas are extensions for:~~

- (a) ~~the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and~~
- (b) ~~the former location of Mad Inlet, which closed in 1997.~~

~~In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be not be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.~~

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

- (a) An area appropriate for permanent designation as an ~~unvegetated beach area~~ Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the ~~Coastal Resources Commission~~ Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management.

- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

~~The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub Item 4(a) of this Rule.~~

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*

Temporary Amendment Eff. October 10, 1996;

Amended Eff. April 1, 1997;

Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;

Temporary Amendment Eff. October 22, 1997;

Amended Eff. February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004;

Amended Eff. June 1, 2014; April 1, 2004; August 1, 1998.

Proposed Amendments to 15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS
Public Comment Record as of November 26, 2013

Public Hearing
NCAC 07H .0304
Sunset Beach, NC
Wednesday, November 6, 2013 5:00 p.m.
Mike Lopazanski, Hearing Officer

Mike Lopazanski called the hearing to order and Mike Lopazanski reviewed the proposed rule amendment and fiscal analysis.

Mike Giles, NC Coastal Federation, stated the Coastal Federation is very familiar with this piece of property and Mad Inlet. We will also submit written comments. Mad Inlet has a very long history of migration and opening and closing. It migrates to the east very quickly and migrates east and west depending on storms. The Director of the Virginia Institute of Marine Science has provided us with documented historical data over 60 years that shows a regular opening and closing of Mad Inlet. The Science Panel opted not to review Mad Inlet due to the fact that it has not reopened since 1997. Is this a scientific analysis or just because of the fact that it hasn't opened since 1997? We would like to see the predicted effects of sea level rise on this proposal. Hurricane Sandy brushed our coast and we haven't seen a major hurricane in this area in years. Mad Inlet is a ticking time bomb. If the right storm comes in it has the potential to blow open and what does that do for the people that develop property there and the people that have to pay insurance and taxes? The federal government is redoing the flood zones. This is a VE area. If these lots are developed, who will pay the price for that flooding? Look at Hatteras Island and Smyrna or in the area of the S-Curves. We would like to see these things addressed in this proposal and look forward to seeing what evidence and what data was used to take Mad Inlet out of the Inlet Hazard zone.

Richard Hilderman of 407 37th Street Sunset Beach stated I have serious concerns about taking this off the endangered list. I am an avid kayaker and I spend a tremendous amount of time paddling in this area. You need to understand that there is a strong, deep tidal creek parallel to the dunes from 40th Street to Bird Island. If you are paddling out there you can see areas where the dunes are starting to break away. You can also see on the ocean side where the dunes are starting to break away. It is my opinion that all that it will take is on great big storm or several storms and then the dunes are going to disappear and Mad Inlet will reopen. I don't think you can see, understand or appreciate this from satellite imagery. If the people that are making this decision want to go back there, I would be happy to take them on a kayak tour so you can see it for yourself.

Bill Ducker stated he agreed with the comments that Mike Giles made and would like to ask the Commission what the basis is for making the decision to take this designation away. Is it

scientific or does it have to do with some other request by individuals. It says in the notice that the CRC is proceeding to remove the inlet hazard designation from this area. Are we to assume that this is a done deal? The notice also says that removal of this designation will allow property owners to develop under more common oceanfront development standards. Are we to assume that the CRC is promoting development in areas that anyone can look at and know that it is a hazard of various natures? This is all shifting sand that we are talking about and the assumption that the inlet will never open again is very broad and probably does not have the scientific explanation needed for making this conclusion.

Rich Cerrato stated I have a few concerns and one primarily is the government on one hand is trying to preserve the coast and on the other they are trying to over-develop the coast with all of the restrictions that we have faced because of Hurricane Sandy. Can you please help me understand who the architect of this is? How is this formulated and who are the parties that seem to have a financial interest in this? I recognize that this is Mad Inlet but this seems to be a mad decision. I think the citizens of Sunset Beach are so concerned about the preservation of their coast and we are now being faced with terminal groins and we seem to be overdeveloping the coastline. I can't speak for most of the citizens, I can only speak for myself but I am truly concerned about the invasion of our coastline and the dangers that we will face as a result of it. I wish you could provide with who is the architect of this idea and what is the purpose other than development.

Mark Benton of 409 40th Street said we are all tapping around the question. We all know Mr. Gore owns the property and wants to develop the property. Mr. Gore, it would fundamentally change the look of Sunset Beach forever. I have been here for fifty years. Why take the risk? I am from New Jersey originally and I Sandy opened places that have never been open. Mr. Gore doesn't need the money. Why are we changing the inlet?

Katie Hovermale of Bay Street Sunset Beach stated in the material I have read the CRC is amending this rule and it is considered highly unlikely by the Science Panel on Coastal Hazards that Mad Inlet will reopen under current conditions. It also says that it is generally accepted that the inlet will not reopen. Has the CRC's Science Panel visited the area or is it based on information from aerial photos?

Sammy Varnum stated you say that there are 120 something property owners that are in the shaded inlet hazard zone. Mr. Gore is one property owner. He does not own everything in the shaded area. We have storms. Hurricane Hazel opened up several inlets and we closed them. If we have a big rain event and it cuts the road in two then we fix it. Don't freak out. The inlet is not there. There are 120 some property owners in the area.

Mark Benton stated Mr. Gore has the largest, open piece of land. Most of the property owners have single-family home owners with established homes. If you allow this to be built on then there will be new structures oceanfront that will disturb the turtle nests and the flow of the inlet. It may never open again, but what if it does open again? If all of the homes are destroyed who is

going to pay for that? Whose insurance is going to go up again because we built on the oceanfront again and we didn't learn from Hazel and the other storms?

Bill Ducker stated as far as the inlet opening and some erosion taking place I think a good example for the CRC and Science Panel to look at is the end of Ocean Isle. The end of Ocean Isle has been eroding for a number of years and as far as repairing the area, all they have done is put up warning signs. There are obviously no funds available for that type of repair. I think the most important thing to consider is that this whole area is shifting sands. To make a conclusion that because there hasn't been an inlet there for 16 years is unfounded.

Edward M. Gore, Sr. stated I am a second generation developer of Sunset Beach. I have been here all my life and I am 81 years old. The inlet has never opened and shut in my lifetime but once and that was 17 years ago. The accretion of that area that caused it to close is not because it was a natural thing. It is because of the jetties at Little River Inlet to stabilize the navigation channel. It has benefited Bird Island and all of Sunset Beach. Sunset Beach is the only one on the coast that is accreting rather than eroding. Mr. Ducker referred to the end of Ocean Isle and he must have been referring to the east end of Ocean Isle because that is where the erosion is occurring. What will be done in the future is not foreseeable at this time, but I would image that not being a hydrologist that has credentials, but watching the shifting sands as we have heard expressed, I see it as gathering sand that will continue as long as the jetties exist and are maintained by the federal government. It is appropriate to change the designation from inlet hazard area to an asset area for the Town of Sunset Beach.

Lynn Strandquist of 414 Sailfish stated the erosion is occurring on the west end of Ocean Isle and there is a house in jeopardy of falling into the ocean as we speak. Ocean Isle is proposing terminal groins to prevent further erosion. If they do that, then any and all properties downstream from the terminal groins will cease to accrue sand and begin to erode. Why would we think about putting houses out there when the terminal groins may happen?

Public Hearing
NCAC 07H .0304
Hatteras Village, NC
Tuesday, November 12, 2013 5:00 p.m.
Renee Cahoon, Hearing Officer

Renee Cahoon called the hearing to order and Mike Lopazanski reviewed the proposed rule amendment and fiscal analysis.

Beth Midgett, replacethebridgenow.com, said she would like to thank the Commission and Division for doing this. When this designation happened it was an out of the box thing and showed that the coast is not a one size fits all case. There is not a high erosion rate in this area and we felt we had a strong case. We appreciate being given the opportunity to let the vegetation re-establish.

Proposed Amendment to 15A NCAC 7H .0304 AECs in Ocean Hazard Areas Written Comments

From: Martha Mullins [<mailto:mullinsmfm@gmail.com>]
Sent: Thursday, November 07, 2013 1:18 PM
To: Davis, Braxton C
Subject: FW: Public Hearing on Mad Inlet

Mr. Braxton, I am forwarding you a comment by a man who is very interested in the fate of Mad Inlet. I also am interested in that and the future of the entire island of Sunset Beach, NC. Please, with such instability on the coastal waters of NC that has deeply affected many of the island communities, do support leaving the (Mad) Inlet on the hazard list. Further development there would ruin the inlet and, in my opinion, Bird Island. And who knows what effect it might have on other coastal properties nearby? Thank you for your attention. Martha Mullins

From: Thomas Vincenz [<mailto:tvincenz@gmail.com>]
Sent: Thursday, November 07, 2013 3:52 PM
To: Davis, Braxton C
Cc: Noelle Kehrberg; rblevan@verizon.net; Jim Strandquist; Carol Scott
Subject: 11/6/2013 Madd Inlet Public Hearing

I was in attendance of the 11/6 meeting held at Sunset Beach, NC in regard to a proposed change, removing the inlet hazard designation from this area. I strongly object to this proposed change for several reasons:

1. Property owners in coastal areas are already facing insurance cost increases of some 28%, largely due to the tremendous financial losses suffered from Hurricanes Katrina and Sandy. I find it irresponsible for the NC Division of Coastal Management to take steps which facilitate further development of this already environmentally delicate area.
2. It appears likely that terminal groins will be constructed in the Ocean Isle Beach, NC area, which a number of scientists have said will likely create erosion problems in Sunset Beach. Does the Division of Coastal Management really want to promote development in an area which is likely to become even more delicate in coming years?
3. Many view the west end of Sunset Beach, a nesting area for various endangered sea turtles, and an area of pristine beaches, to be one of southeast coastal North Carolina's greatest assets. I cannot imagine a state agency taking action which could further endanger those animals, and destroy the beauty of this pristine area.
4. It was noted on several occasions during the public hearing that Madd Inlet closed in 1997, and is unlikely to reopen in the future. It was not made clear on what scientific study this conclusion was drawn. I would suggest, however, that we focus less on this, and more on the reality of a recent natural disaster (superstorm Sandy), and how a major storm would impact this area.

The only driving force that I can see behind this change is a financial one for a very few property owners. The certain negative impact this change would bring to the population at large far outweighs the positive financial benefit for a few. Please do NOT remove the current inlet hazard designation from Madd Inlet.

Thomas Vincenz
422 36th. Street
Sunset Beach, NC

From: Mary Louise Williamson [<mailto:mwillia502@aol.com>]
Sent: Thursday, November 07, 2013 5:14 PM
To: Davis, Braxton C
Subject: Mad Inlet

Please reconsider any plans to remove Mad Inlet from the North Carolina division of Coastal Management Hazard List. I have been visiting Sunset Beach, NC for more than 35 years and want to make sure that Bird Island and Mad Inlet remain undeveloped. The only way to insure this is by remaining on the hazard list. I am also concerned about any plans by Ocean Isle Beach to implement groins and the potential impact of erosion on Sunset Beach caused by these groins. Look at Folly Beach, SC as an example...

Best regards,

Mary Louise Williamson
948 Casseque Province
Mt Pleasant, SC 29464
843-412-2177

Ann Bokelman <gordon_annbokelman@hotmail.com> wrote:

Mr. Davis,

We are sending this email to express our opposition to taking Mad Inlet off of the Inlet Hazard List. Time, history, and aerial/satellite photos have shown that this inlet has moved many times over the years. In addition, the development that could take place would pose a serious threat to the Bird Island Reserve.

As residents of Sunset Beach and members of Bird Island Preservation Society, we thank you for reading our comments.

Gordon & Ann Bokelman
404 3rd Street
Sunset Beach, NC 28468

Subject: Mad Inlet Public Hearing
From: bonefish0204@sc.rr.com
To: "Davis, Braxton C" <Braxton.Davis@NCDENR.Gov>
CC:

Mr. Davis: Unfortunately we were out of town and were unable to attend the Public Hearing. I have seen articles regarding the meeting and what took place. While I don't pretend to understand the process of how this even became an issue it appears to me that it was done out of greed by the person wanting to develop the land and who has a history of getting what he wants done. It also seems like the developer wanted to get this issue out with a minimal amount of effort on his part and has successfully got the State and the residents of Sunset Beach to do the work of fighting it.

I knew Mad Inlet before it filled in and if nature can do that then it can open it again. Additionally I feel that the NCDENR should be doing everything in its power to protect the natural resources that we have and should not even consider building on land that has the potential to be destroyed by Mother Nature. This area should be treated with the same respect as Bird Island.

Needless to say we are opposed to this proposed development and would urge you, the State and the NCDENR to do everything in it's power to put this issue aside.
Respectfully.

Jim and Vicky Skiff
414 33rd Street
Sunset Beach, NC 28468

Subject: Mad Inlet/ Hazard List
From: Gail Powell <gspowell299@gmail.com>
To: "Davis, Braxton C" <Braxton.Davis@NCDENR.Gov>
CC:

Mr. Davis,
I have been vacationing at Sunset Beach for 40 years. I heard there is a plan to take Mad Inlet off the Hazard List. In this time of rising sea levels, I think this would be a foolish action. Clearly the land there is unstable and should not be developed.
Gail Powell, Ph.D
Raleigh, NC

Respectfully.

Jim and Vicky Skiff
414 33rd Street
Sunset Beach, NC 28468

From: Pete and Noreen Thompson <petenoreen@att.net>
To: "Braxton.Davis@ncdenr.gov" <Braxton.Davis@ncdenr.gov>
Sent: Monday, November 11, 2013 10:56 AM
Subject: Madd Inlet at Sunset Beach, NC

Dear Mr. Braxton:

Our comments below are in regard to the issue of the CRC's proposal of a rule change to the Madd Inlet designation (15A NCAC 07H.0304):

In our opinion, there is no reason to believe Madd Inlet will not one day re-open. We have read literature of Dr. Orrin Pilky (Emeritus -- Duke University) who talks much about the constant changing of our coastlines. This is certainly not the time to encourage more oceanfront building by changing the current designation, especially because of the severe storms that have recently caused extreme damage along the coast. A devastation in many ways -- one being financially to the homeowner and to the Local, State and Federal Government. When accessing Sunset Beach, one sees a sign stating it is a "Turtle Sanctuary." Many nests have been located in the area in question. Clearly construction would have a negative impact on the turtles. The area in question abuts Bird Island which is a bird sanctuary and a North Carolina State Park. There is simply no good reason for the CRC to consider re-labeling the area. How might terminal groins, if put in place, at Ocean Isle Beach, affect Sunset Beach? We may be the only beach that has had the luxury of accretion, but this may not always be the case. Of the 40-50 people at the Hearing on November 6, only two spoke remotely in favor of the proposition, and both of them have a potential financial interest. There are "hundreds" of visitors to the Sunset Beach area who each year very much enjoy the serene walk on the beaches in this undeveloped location. The bottom line: we are against changing the designation being proposed.

We appreciate you taking our comments into consideration.

Sincerely,

Pete and Noreen Thompson
Property owners at Sunset Beach, NC since 1996
Vacationing at Sunset Beach, NC since 1980
petenoreen@att.net
From: **John F Pagels** <jpagels@vcu.edu>
Date: Mon, Nov 11, 2013 at 11:13 AM
Subject: Mad Inlet/SB NC
To: braxton.davis@ncdenr.gov

Mr. Braxton Davis
Director, Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28577

Dear Mr. Davis,

As property owners on Sunset Beach Island and the mainland, it was with dismay that my wife and I heard about the public hearing concerning potential development in the Mad Inlet area. We were disappointed that we could not attend, but more importantly, that there was necessity for such a hearing in the first place. We cannot imagine there would be contemplation of development of the area which serves as a valuable natural resource, but also serves as a natural buffer to human impacts and as an aesthetically critical component of greater Sunset Beach and adjoining SC land. We suggest that nobody except a "few" who might personally benefit financially would be in favor of such development. The "few" mentioned above is likely one individual who has controlled so much in Sunset Beach, developed nearly every square inch of the Island, and now apparently wants to put his tentacles around whatever remains, regardless of natural heritage.

As a scientist I sometimes feel awkward when I tell folks we own property on a barrier island. As a person who witnessed Mad Inlet when it was open, one understands the name "Mad" and the impact the inlet had in the past. It could open again during an episodic weather event; bulldozers will not be the answer. For so many reasons, we hope this issue will not be pursued further.

Cordially,

John and Barb Pagels
4425 Morehouse Terrace
Chesterfield, VA 23832

John F. Pagels, PhD
Professor Emeritus of Biology
Virginia Commonwealth University

jpagels@vcu.edu

From: Debra Singer-Harter [debrasingerharter@gmail.com]
Sent: Sunday, November 17, 2013 11:32 AM

To: Davis, Braxton C
Subject: Mad Inlet Hazard designation should not be changed

Braxton,

As a 40th street home owner at Sunset Beach, I would like to comment on the proposed rule change that modifies the Mad Inlet designation from inlet hazard area to an asset area.

I am against it.

- 1) Other than for commercial property business profit, I do not understand the motivation for this proposed designation change.
- 2) Home Owner's property values will decrease. Sunset Island has the distinction of a wild area which promotes home values.
- 3) Wildlife populations are already greatly diminished, and to build more homes on remaining precious wild areas will continue to degrade the environment. How can the town claim to be a bird and turtle sanctuary if there are greatly reduced beach areas for them to live and thrive?
- 4) Greater numbers of people will degrade fishing populations and promote the decline of NC oceans. Ocean based jobs will be risked as less species are able to survive.
- 5) A long term plan should consider how this decision impacts future generations when global warming and rising waters are definitive science. What is the state and town plan for these future realities?

My conclusion is that to allow one of North Carolina's most beautiful coastal wild areas to become convenience stores and suburbia would be an unwise choice for the greater good of the state, town, and future generations.

Thank you for the opportunity to provide my comments.

Debra Singer-Harter.
1306 West Main Street
Sunset Beach 28468

From: Jean Smith [geematwo@gmail.com]
Sent: Friday, November 15, 2013 3:44 PM
To: Davis, Braxton C
Subject: Mad Inlet

Mr.Davis,

I am a very concerned resident of Sunset Beach. After listening to the environmental experts talk about the fragility of our coastline and beaches I cannot believe your agency is even considering removing an inlet hazard designation from a Sunset Beach island site previously occupied by Mad Inlet. It is all of our responsibility to preserve and protect our beautiful beaches and the coastal wildlife which inhabit them. I take great pride in working with the Bird Island Preservation Society to help maintain the integrity of our beautiful and ever changing beach. Please review all the information presented by the experts and choose to leave the present designation in place. I fear we are facing this action because of the greed of a few individuals who would want to develop this most magnificent peaceful place.

Thank you for your consideration,

Jean Smith, Sunset Beach resident

From: Greg [boomerjensen22@aol.com]
Sent: Monday, November 18, 2013 12:56 PM
To: Davis, Braxton C
Subject: Mad Inlet

Greetings,

We oppose removing the hazard designation from Mad Inlet. We have had a home on Sunset Beach since 1993 and have seen many changes as this is a barrier island that still moves.

If you visit the area today, you will see the high tide mark eating away at the dunes. Several years ago that was not happening. A super storm, northeaster or large hurricane will overwhelm the dunes in my opinion. As you walk down from 40th street you will see openings where the wind has worn down the dunes. We assume you did walk the area?

That inlet has opened and closed several times since 1938 as research has shown. This is not a good area to be developed.

Thank you.

Regards,

Gregory & Ann Jensen
1309 E. Main Street
Sunset Beach, NC 28468

From: Hugh Munday [hugh@sunsetrealty.com]
Sent: Monday, November 11, 2013 12:09 PM
To: Davis, Braxton C
Subject: Madd Inlet

Mr. Davis,

I hope you and the CRC will reconsider their proposal to change the designation of Madd Inlet from a Hazard Area to a Non-Hazard Area. The problems on the outer banks with Inlets moving from one location to another and cutting Hwy 12 into and the damage to the bridges should tell you something about trying to control mother nature.

I have aerial pictures that were taken by the US Army Corps of Engineers from 1938-1996 and I realize the migration has been to the west but we don't know what would happen if we had another storm such as the 1954 Hazel storm. You know and I know that if this change is made there would be a great effort made to build a bridge across the marsh at the west end of Main St. to gain access to the vacant end of Sunset and start construction of homes in that area.

Tubbs Inlet is shoaling and in our next big storm there is no telling what will happen there or at Madd Inlet.

Thanks for your work and I hope you will reconsider the current proposal to change the current designation.

Hugh S. Munday

From: Colette Worley [<mailto:interiorsbycolette@comcast.net>]
Sent: Saturday, November 23, 2013 10:40 AM
To: Davis, Braxton C
Subject: Mad Inlet

Mr. Davis,

Please do not remove the hazard designation from Mad Inlet.

As a part time resident of Sunset Beach we have explored all or most of the area on the west end of the island. Whether one favors the marsh that teems with life, the bird sanctuary, the sea turtle habitat, the miles of kayaking creeks, or simply the vast undeveloped beauty, it is an area that remains that way in part because of this designation. Please stand in support of this hazard designation remaining in place.

Thank you,

Jim and Colette Worley
1427 Bay Street
Sunset Beach, NC

From: The Seelands [<mailto:the.seelands@gmail.com>]
Sent: Tuesday, November 26, 2013 10:57 AM
To: Davis, Braxton C
Subject: Public Hearing on Mad Inlet

Dear Mr Davis,

we are part owners of the house on 312 East Main Street at Sunset Beach and wanted to voice our opposition to taking Mad Inlet off the hazard list by the North Carolina Division of Coastal Management.

We love the wonderful beach at Sunset and don't want anything done to endanger this.

Sincerely, Herbert and Gerda Seeland

November 7, 2013

I attended yesterday the North Carolina Division of Coastal Management public hearing on the proposed change to remove an inlet hazard designation from a site previously occupied by Mad Inlet at the west end of Sunset Beach Island. I have two main reasons why Mad Inlet shouldn't have its designation as an inlet hazard removed.

1. I spend a tremendous amount of time paddling my kayak in this area. There is a strong, deep tidal creek that runs parallel and close to the dunes from 40th Street on Sunset Beach out onto Bird Island. When paddling in this area it is easy to see places where the dunes are opening up. One can also see where the dunes are opening up when walking on the ocean side of the beach. It is simply a matter of time before a critical storm or series of storms reopens Mad Inlet. The only way to stop a potential reopening would be to block off and shut down the tidal creek and we don't want to do this because that creek feeds a large area of the marshes. One can't get an understanding or appreciation of what I am stating by simply viewing satellite images and looking at physical data. One must take a "hands on" approach and visit the area to see for his/herself. I would be willing to arrange a kayak tour for people who would like to view this area before making a decision.
2. As you are aware there are several beach towns looking into the possibility of using terminal groins to curb beach erosion. Ocean Isle Beach is one of the towns looking into placing terminal groins on their island. If this happens it will trigger beach erosion on Sunset Beach and make Sunset Beach Island very unstable. This instability will increase the probability that Mad Inlet will reopen. It seems to me a decision on whether to take Mad Inlet off the inlet hazard designation list should at least be delayed until we know how terminal groins on Ocean Isle Beach plays out.

Richard Hilderman, Ph.D.
407 37th Street
Sunset Beach
910-5752452

I have reviewed the following two documents that recommend removing Mad Inlet from the Inlet Hazard Area designation:

1. Inlet Hazard Areas: The Final Report and Recommendations to the Coastal Resources Commission. The only reference this document makes to Mad Inlet is---Mad Inlet: Minor, unstable inlet; wide excursion since 1938 (500 to 5000) makes statistical predictions weak.

By looking at the recent Mad Inlet closing/reopening data clearly indicates why the report states it is a weak statistical prediction.

Mad Inlet Closing/Reopening

1938-1958---closed and reopened at different location---20 years

1958-1987-closed and reopened at different location---29 years

1987-1992-closed and reopened at different location---5 years

1997-2013 closed---16 years

2. Inlet Hazard Area Boundaries Update: Recommendations to the North Carolina Coastal Resources Commission. The only reference to Mad Inlet in this report is on page 100 under recommendations--Adoption of this report by the CRC will also remove existing IHA boundaries from Mad Inlet because they have closed. DCM and the CRC Science Panel have determined that the threat of Mad Inlet reopening is no higher than the creation of new inlets through the breaching process associated with storms that historically have occurred along the State's barrier islands.

It should be noted this report presented data for other inlets in NC but no data pertaining to Mad Inlet was presented.

The question that needs to be addressed is why has Mad Inlet closed/opened five times since 1958? The answer lies in the topography around Mad Inlet. The west boundary of Mad Inlet starts at 40th Street of Sunset Beach and the east boundary is Bird Island. The dunes on both the west and east boundary are significantly higher and deeper than the dunes in the Mad Inlet area. Thus the Mad Inlet area is more unstable and prone to reopening following storms. Looking at the dunes in the Mad Inlet area on both the ocean and marsh sides clearly show areas where the dunes are starting to opening up.

In summary, all this data doesn't support the hypothesis that Mad Inlet won't reopen but this data clearly supports the hypothesis that Mad Inlet will reopen. Thus Mad Inlet should not be removed from the Inlet Hazard Area designation.

Richard Hilderman, Ph.D.

November 13, 2013

To: Director Braxton Davis

Fr: Robert D. Hoover

Ref: Mad Inlet – removal of Hazard Designation?

Dear Mr. Davis,

I have been an Island homeowner for 24 years on Sunset Beach. I distinctly remember not that long ago when Mad Inlet cut through to the Sea; gosh I have carried my bike thru it; jogged thru it, and remember in both cases you could only do this on low tide. It still had water in low tide and would have been risky to cut through it in high tide.

If my memory serves me correctly, Hurricane Floyd closed this in 1999; not even 15 years ago. If you kayak the back creek and marshes, and if you have experienced several hurricanes which we did when we lived in Wilmington, NC..... a hurricane tidal surge at high tide will likely reopen the inlet.

Thus, I am clueless why a government agency would even waste their time trying to consider removal of the Hazard status. Especially considering the political discussions going on at Ocean Isle to perhaps create a jetty on their east end, this could change the dynamics of Mad Inlet.

It makes sense to a layman like me that it isn't going to take much to reopen Mad Inlet – considering the distance from Tubbs to Little River – hurricane dynamics could reopen it. Also, please consider we have barely had a Level 1 hurricane since 1999, so nobody really knows. I truly expect some day to again carry my bike thru the inlet!

Leave this “sleeping dog” alone!

Thank you!

Robert D. Hoover
1509 Canal Drive
Sunset Beach, N.C. 28468 910-579-2591

Virginia home contact is 540-951-5228

Mary and Ted Jones
302 Rolling Knoll Drive
Bel Air, Maryland 21014-5656

RECEIVED

NOV 14 2013

DCM-MRD CITY

Braxton C. Davis
Director NC Division of Coastal Mgmt

12, November 2013

Dear Mr. Davis

For 40 years I have walked Sunset Beach Island and Bird Island. I have been a property owner at Sunset for 34 years. As a member of Nature Conservancy, a life member of The Sierra Club, and the Audubon Society I think I have a good eye for and understanding of the West end flats of Sunset Beach, the role the Little River jetty played in depositing sand at MAD Inlet, the changes I've seen in nesting bird sites at Mad Inlet, etc. A thousand times I arrived at MAD Inlet an hour before low tide to wade over to Bird Island. For years I sat on the beach and watched the Euclid Tanks deliver jetty rocks into the sea - sadly. Now I must wait to watch the folly of Ocean Ice put in "trial" terminal groins.

I am also aware of the 1.3 mm projected sea level rise per year for the US East Coast. We are working hard in the Chesapeake Bay marshes to prepare for this. Can anyone who seriously cares about planning for sea level rise consider for a moment the proposed change to remove an inlet hazard designation from the MAD Inlet site on the west end of Sunset Beach Island? I have not even mentioned the average MSL elevation at Mad Inlet or what a high tide, 30 foot wall of hurricane driven surge, will do

to all of the Sunset Beach Island and Bird
Island.

Mr. Davis I urge you to walk there and
see for yourself - as I have done for 40
years. It's not rocket science. I have
also kayaked the marsh waters.

Please, please use some vision and
some courage and do not remove the
inlet hazard designation at MAD Inlet.

Vision is seeing things not as they are, but as
they could be. Not protecting the flats of
MAD Inlet and the marsh waters within
would be a huge mistake in judgement.
Enough damage was done by the Little
River Jetty.

Respectfully,

Edwin W. JAMES
403 37th Street
Sunset Beach

ewjames@yahoo.com

410 638 1019

RECEIVED

NOV 14 2013

DCM-MHD CITY

Fiscal Analysis

Areas of Environmental Concern within Ocean Hazard Areas

15A NCAC 07H .0304

Prepared by

Mike Lopazanski
Policy & Planning Section Chief
NC Division of Coastal Management
(252) 808-2808, ext. 223

August 20, 2013

Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission	
Title of the Proposed Rule	Areas of Environmental Concern (AECs) within Ocean Hazard Areas	
Citation	15A NCAC 07H .0304	
Description of the Proposed Rule	07H .0304 defines and establishes AECs that are considered to be within the Ocean Hazard Areas along the State's Atlantic Ocean shoreline. Ocean Hazard Area AECs include the Ocean Erodible Area, High Hazard Flood Area, Inlet Hazard Area and the Unvegetated Beach Area.	
Agency Contact	Mike Lopazanski Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext. 223	
Authority	G.S. 113A-107; 113A-113; 113A-124	
Necessity	The Coastal Resources Commission is proposing to amend its administrative rules in order to reflect physical changes in the environment that influence how and where oceanfront development is permitted. These changes will serve the public interest by preventing confusion of the regulated community, protecting life and property from the destructive forces indigenous to the Atlantic shoreline and by removing overly restrictive development standards from areas where they are no longer necessary.	
Impact Summary	State government:	No
	Local government:	No
	Substantial impact:	No
	Federal government:	No
	Private property owners:	Yes

Summary

The proposed rule amendments (see proposed rule text in the Appendix) will remove the temporary Unvegetated Beach (UB) designation from the area in the vicinity of Hatteras Village. The existing vegetation line has exhibited recovery since 2004 and is deemed by the CRC to be no longer necessary for permitting purposes. The proposed changes will also remove the Inlet Hazard Area designation from the site formerly occupied by Mad Inlet, which closed in 1997 and is not expected to reopen.

The groups most affected by these changes will be 137 oceanfront property owners in the area of Hatteras Village designated as an unvegetated beach and 126 property owners within the Mad Inlet designated Inlet Hazard Area. The Division of Coastal Management (DCM) estimates that there will be potential benefits to property owners of increased development potential for parcels in the vicinity of Hatteras Village and Mad Inlet. However, any estimate by the Division of how many structures would be re-built or existing lots could be recombined to increase density would be highly speculative as it would depend upon the occurrence of storms, normal deterioration and other events such as structure fires, as well as

upon the individual willingness of landowners to redevelop properties or rebuild in locations where their prior home had been damaged or destroyed.

The Division of Coastal Management does not expect costs and benefits from these proposed rule changes to exceed \$500,000 annually.

The Division of Coastal Management anticipates the effective date of these rule amendments to be December 1, 2013.

Introduction and Purpose

The Coastal Resources Commission (CRC) is initiating rule making to amend its administrative rules governing two separate sections within 15A NCAC 07H .0304 (AECs within Ocean Hazard Areas). The first rule change is to 07H .0304(4) related to the Unvegetated Beach (UB) Area of Environmental Concern (AEC) designation. The CRC has approved rule language that will remove the current temporary UB designation for Hatteras Village (adopted in 2004). The removal the UB designation near Hatteras Village is necessary as the vegetation line has exhibited recovery since 2004 and can once again be used for setback determinations. The UB designation was a temporary designation connected with damage from Hurricane Isabel (2003) and with subsequent recovery of the vegetation line, this action is seen as being consistent with established CRC policy. The second rule change removes the Inlet Hazard Area designation for Mad Inlet, which closed in 1997. It is considered highly unlikely by the CRC's Science Panel on Coastal Hazards that Mad Inlet will reopen under current conditions.

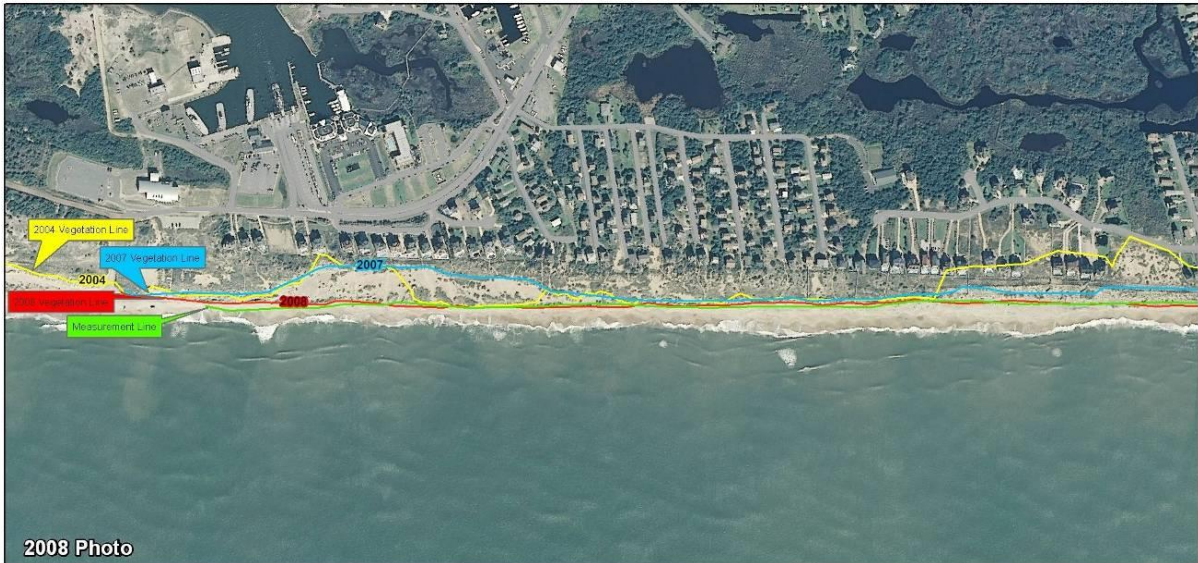
The removal of the temporary UB designation on Hatteras Village will have no significant effect as the stable and natural vegetation has re-established itself at or oceanward of the measurement line set forth in the UB designation (i.e., in some cases, the UB designation has been more restrictive for development setbacks). The removal of the Inlet Hazard Area designation for the former location of Mad Inlet removes all of the restrictions and use standards (15A NCAC 07H .0310) set forth by the CRC for development adjacent to active tidal inlets. Future development would then be subject to the use standards common along all oceanfront shorelines.

Description of the Proposed Rules

UNVEGETATED BEACH AREA

The first issue being addressed through this proposed rule change focuses on the Unvegetated Beach (UB) AEC designation and its application by the CRC on either a temporary or permanent basis to areas where no stable natural vegetation is present. In May 2004, the CRC approved the UB designation as a temporary measurement line used in place of the actual first line of stable and natural vegetation after the loss of vegetation from Hurricane Isabel (September 2003). The only oceanfront community currently with an UB designation is Hatteras Village and this proposed rule change would remove the UB designation from the Village.

After on-the-ground observations at Hatteras Village in February 2010 and a review of the vegetation line recovery since 2004, the temporary UB designation for Hatteras Village is recommended for removal. The photos below show how the vegetation line has reestablished itself since 2004. The result of this action will be an easing of the setback restrictions with a return in many areas to pre-storm conditions. The actual number of properties that will benefit is unknown as setback delineations (based on the first line of stable and natural vegetation) are determined on a lot-by-lot basis and dependent upon the size (square footage) of development proposed for the property.



2008 Photo

Hatteras Village

Oceanfront Vegetation Line

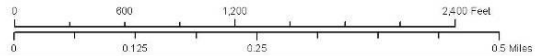
Legend

- Measurement Line (*Un-Veg. Beach*)
- Vegetation Line - 2007
- Vegetation Line - 2008
- Vegetation Line - 2004

NOTE: Vegetation Line represents "stable-natural" as interpreted from photography

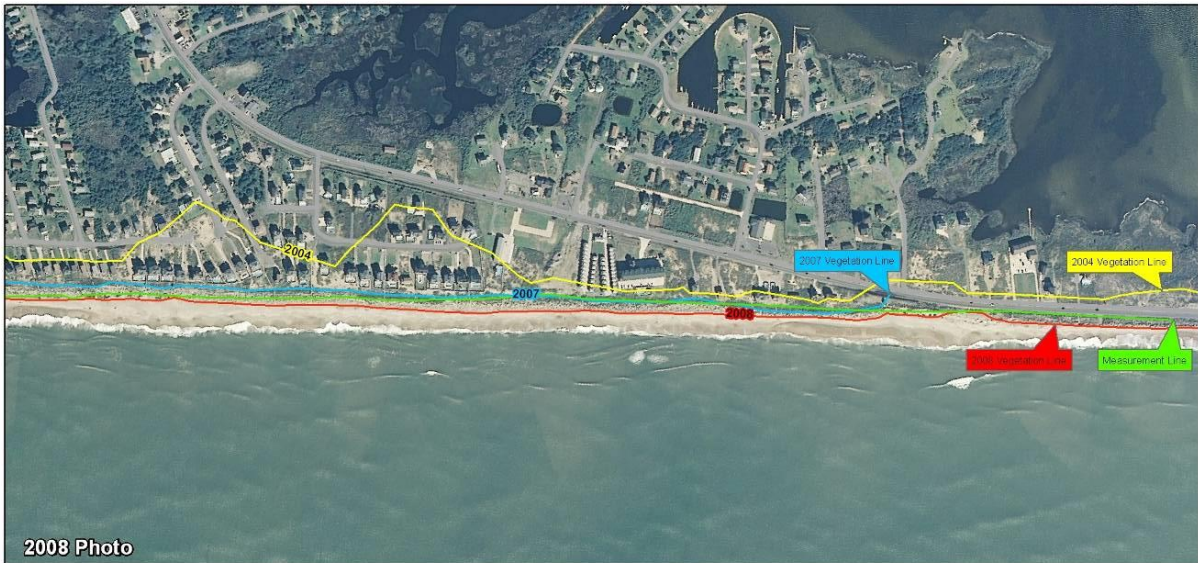


Datum: NAD 83
Projection: North Carolina State Plane
Units: Feet



2008 Photo
Map 1 of 2

NC DENR - Division of Coastal Management - 2010



2008 Photo

Hatteras Village

Oceanfront Vegetation Line

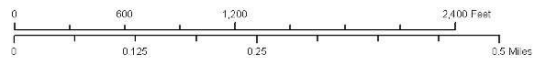
Legend

- Measurement Line (*Un-Veg. Beach*)
- Vegetation Line - 2007
- Vegetation Line - 2008
- Vegetation Line - 2004

NOTE: Vegetation Line represents "stable-natural" as interpreted from photography



Datum: NAD 83
Projection: North Carolina State Plane
Units: Feet

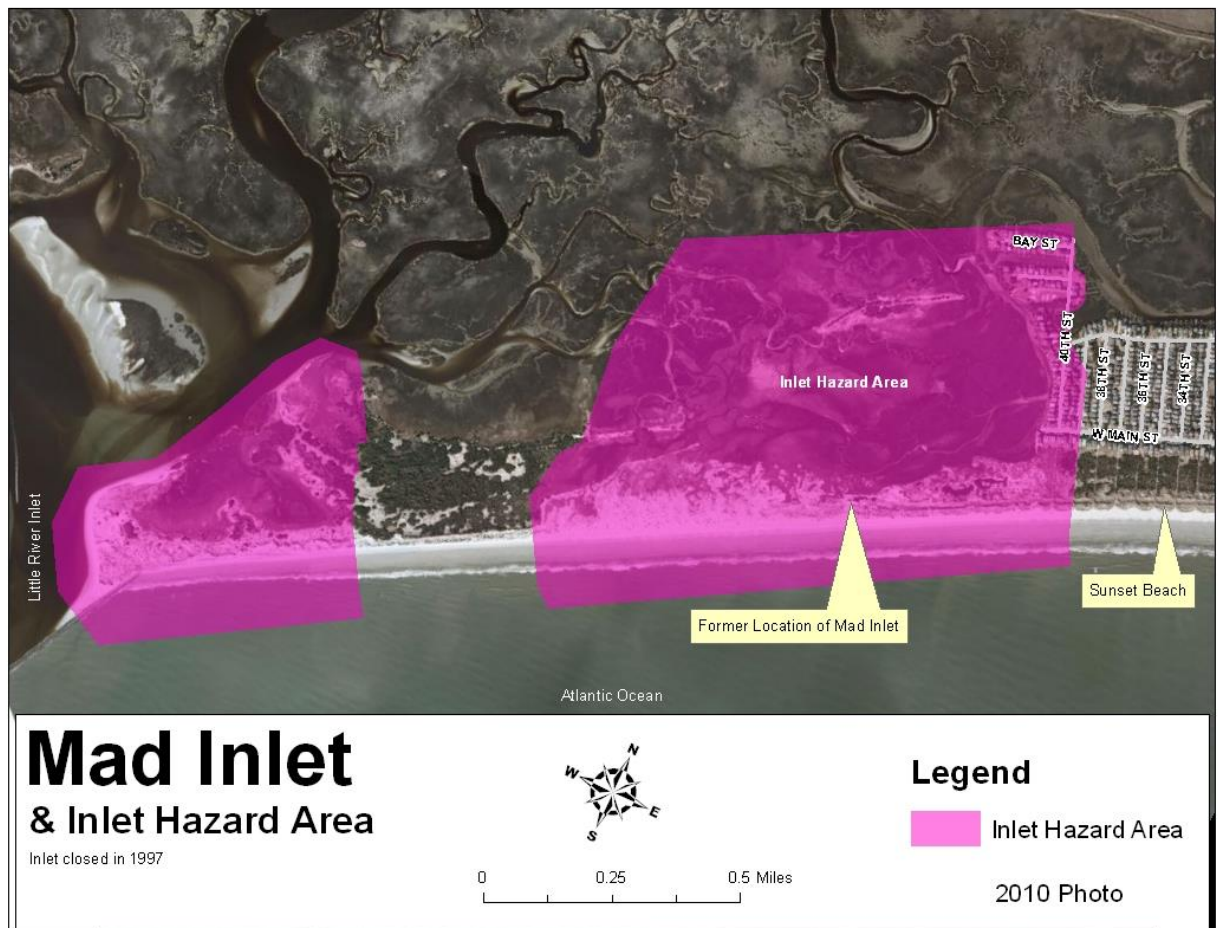


2008 Photo
Map 2 of 2

NC DENR - Division of Coastal Management - 2010

INLET HAZARD AREA

The Inlet Hazard Area (IHA) designations are based on a 1978 study (minor amendments in 1981) of areas that are subject to the dynamic influence of ocean inlets. Mad Inlet, which closed in 1997, previously separated Sunset Beach and Bird Island (part of the North Carolina Coastal Reserve system). As part of the CRC Science Panel's ongoing review of the State's 12 developed inlets, the Panel opted not to review the boundary for the former Mad Inlet as it was generally accepted that the inlet would not reopen. The CRC is therefore proceeding with removing the Inlet Hazard Area designation from the area formally known as Mad Inlet. Removal of the IHA designation will allow property owners to develop under the more common oceanfront development standards as opposed to the more restrictive IHA standards.



COSTS OR NEUTRAL IMPACTS

NC Department of Transportation

Removal of Unvegetated Beach Designation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 07H .0304 will not affect environmental permitting for the NC Department of Transportation (NCDOT). Roads are subject to setback requirements (development such as roads, parking lots, and other public infrastructure such as utilities have a minimum setback factor of 60 feet or 30 times the shoreline erosion rate, whichever is greater as defined by 07H .0306(a)(2)(I)). Since Hwy 12 already exists in this area, DCM has permitted the repair of the road in its existing location in the event the area is breached during storms. CRC

rule 15A NCAC 07H .0208(a)(3) also allow for the consideration of public benefits consistent with the findings and goals of the NC Coastal Area Management Act when the proposed development is in conflict with its rules. In the event that NCDOT needs to build or maintain a road located within the area currently designated as Unvegetated Beach, the proposed amendments will not change the CRC's approach to permitting that activity. For these reasons, DMC estimates no fiscal impact on DOT.

Removal of Inlet Hazard AEC Designation of Mad Inlet

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 07H .0304 will not affect environmental permitting for the NC Department of Transportation (NCDOT). Removal of the Inlet Hazard AEC designation will not affect the siting of access roads or the maintenance and replacement of existing bridges per 15A NCAC 07H .0310(a)(3). In the event that NCDOT needs to build or maintain a road located within the area currently designated as an Inlet Hazard AEC for Mad Inlet, the proposed amendments will not change the CRC's approach to permitting that activity. For these reasons, DCM estimates no fiscal impact on DOT.

Local Government

Removal of Unvegetated Beach Designation

Public infrastructure (roads, parking lots, & utilities) have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H .0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity per 15A NCAC 07H .0310(a)(3). While the amendment may have a positive impact on the local government's tax base by preserving the tax value (destroyed structures may be re-built due to the seaward movement of the vegetation line), any estimate of how many structures would be re-built would be highly speculative as it would depend upon the occurrence of storms, normal deterioration and other events such as structure fires, as well as upon the individual willingness of landowners to rebuild in locations where their prior home had been destroyed or damaged.

Removal of Inlet Hazard AEC Designation of Mad Inlet

Currently, the IHA designation limits the density of development to no more than one commercial or residential unit per 15,000 square feet of land area and only residential structures of four units or less or non-residential structures less than 5,000 square feet. There are approximately 126 properties located in this area. Less than 10 are undeveloped. These properties would no longer be required to adhere to the density and size restrictions should they be developed or redeveloped. However, they will still be subject to local zoning restrictions as well as designation under the federal Coastal Barriers Resources Act which may also restrict development potential.

BENEFITS

Private Property Owners

Removal of Hatteras Village Unvegetated Beach Designation

Property owners will benefit from recovery of the beachfront and the associated dunes that will allow natural conditions to dictate the siting of development as opposed to a measurement line imposed in the aftermath of a storm. The primary economic impact of this proposed rule change are potential benefits to 137 property owners of structures that may be damaged beyond 50 percent of their value and requiring a CAMA permit. Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development, requiring a CAMA permit and compliance with current CRC rules including oceanfront setback provisions. Should these property owners replace their structures, they will be able to re-build the structure based on the existing vegetation line with a possibly expanded building envelope.

Removal of Inlet Hazards Area Designation

This action will affect property owners in the vicinity of the area formally known as Mad Inlet. The result of the removal of the designation will lift the restrictions placed on development in the area. Currently, density of development is limited to no more than one commercial or residential unit per 15,000 square feet of land area and only residential structures of four units or less or non-residential structures less than 5,000 square feet. There are approximately 126 properties located in this area. Less than 10 are undeveloped. These properties would no longer be required to adhere to the density and size restrictions should they be developed or redeveloped. This action may be beneficial to any large, not previously subdivided parcel as it could be developed at a greater density than under the Inlet Hazard Area designation. The benefit to property owners is a greater development potential. The Division, however, does not expect this impact to be substantial since less than 10 properties are undeveloped and the largest parcel of affected land is a 104 acre site that comprises the Bird Island Coastal Reserve, which is managed by the Division for conservation purposes.

Local Government

This action may affect the tax base of the local government in the vicinity of the area formally known as Mad Inlet. The result of the removal of the designation will lift the Coastal Resources Commission restrictions placed on development in the area. However, local zoning and federal restrictions may affect overall development potential. The second largest property impacted, after the Bird Island Coastal reserve, is a 35 acre tract comprised of mostly open water and marshland with some high ground. This is a zone Conservation Reserve District by the Town of Sunset Beach. Development is restricted to habitat conservation and limited single family residential development. Minimum lot size is 1 acre with only half of that being buildable high ground. The entire area is also within the Waites Island Complex CBRA Unit (Coastal Barriers Resources Act) administered by the US Fish and Wildlife Service. Development in CBRA areas is ineligible for National Flood Insurance from FEMA. While some development is possible, there will still be substantial restrictions.

Division of Coastal Management

These amendments do not significantly change how various projects are reviewed or permitted by the Division of Coastal Management and the Division does not anticipate a change in permitting receipts due to the proposed action. Since the areas discussed are mostly built out, the Division does not foresee any significant increase in permit requests; therefore the Division does not expect staff to expend more time on permit activities.

COST/BENEFIT SUMMARY

There will be a return to the standard practice of utilizing the first line of stable and natural vegetation in the determination of oceanfront setbacks for the Hatteras Village area. This proposed rule change would ease the setback restrictions with a return in many areas to pre-storm conditions. While there are 137 parcels in the currently designated area, the actual number of property owners who will benefit is unknown as setback delineations (based on the first line of stable and natural vegetation) are determined on a lot-by-lot basis and dependent upon the size (square footage) of development proposed for the property. However, removal of the fix measurement line will allow the use of existing vegetation to determine setbacks. As the vegetation continues to recover, building envelopes within the area will likely increase offering more opportunities for development by property owners. The Division's estimate of how many structures will be re-built would be highly speculative as it would depend upon the occurrence of storms, normal deterioration and other events such as structure fires, as well as upon the individual willingness of landowners to rebuild in locations where their prior home had been damaged or destroyed.

With regard to the Inlet Hazard designation of Mad Inlet, the amendments respond to natural changes in the environment by removing the Inlet Hazard AEC designation and its associated development restrictions for properties in the vicinity of the now closed Mad Inlet. These 126 properties would no longer be required to adhere to the density and size restrictions should they be developed or redeveloped. This action will be particularly beneficial to any large, not previously subdivided parcel as it could be developed at a greater density than under the Inlet Hazard Area designation. However, there are other restrictions including local zoning and federal designation as a CBRA unit that may limit overall development potential. As with lifting the Unvegetated Beach designation, the Division's estimate of how many properties could take advantage of the lifting of density restriction would be highly speculative. The benefit to property owners in the area of Mad Inlet is a greater development potential. Given the reliance on decisions by individual property owners that would affect future development plans on their properties, the Division does not expect there to be a significant economic impact in a 12-month period.

APPENDIX

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The ~~seaward~~ oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management; and
 - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.
- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the ~~normal~~ mean low water line a distance sufficient to encompass that area within which the inlet ~~shall~~, shall migrate, based on statistical analysis, ~~migrate~~, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference ~~without future changes~~ and are hereby designated as Inlet Hazard Areas ~~except that the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Baldhead Island marina entrance channel. These areas are extensions for:~~
 - (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and

(b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area ~~are not be~~ less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.

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

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

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

~~The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub Item 4(a) of this Rule.~~

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



North Carolina Department of Environment and Natural Resources

Division of Coastal Management

Braxton C. Davis

Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

CRC – 13 – 39

MEMORANDUM

To: Coastal Resources Commission
From: Maureen Meehan, DCM Morehead City District Planner
Date: November 25, 2013 (December 11-12, 2013 CRC Meeting)
Subject: Amendment of the 2009 Town of Swansboro Core Land Use Plan

Recommendation:

Certification of the Town of Swansboro Core Land Use Plan Amendment with the determination that the Town has met the substantive requirements outlined in the 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State's Coastal Management Program.

Overview

The Town of Swansboro is requesting a future land use map amendment to their LUP, certified by the CRC on November 25, 2009. This will be the fourth amendment to the plan (amended May 9, 2013).

The subject property being considered for this amendment is changing a portion of a property, which currently has both a residential and commercial designation, from High Density Residential to Commercial. The property is located at 1121 W Corbett Avenue (Highway 24) and the portion of the property being changed is approximately 8.27 acres. The Swansboro Board of Commissioners held a duly advertised public hearing for the LUP amendment and voted unanimously, by resolution, to adopt the map amendment on October 15, 2013.

The adopted changes and proposed amendment to the LUP are outlined below:

1. FLUM Change – change of designation from High Density Residential to Commercial. The property is flagged on the map attached to this memo. The subject property originally had two classifications. This amendment will make the whole parcel one classification.
2. Text Changes – future land acreages (Table 45, pg. 153) have been updated to reflect the change of designation. The amount of land that is affected did not change the forecasted needs and therefore, those figures did not need to be updated.

The public had the opportunity to provide written comments on the LUP up to fifteen business days prior to the CRC meeting, which the amendments are being considered for certification (November 19, 2013). DCM did not receive any comments.

To view the full 2009 Swansboro Land Use Plan, go to the following link http://www.nccoastalmanagement.net/Planning/under_review.htm.

Attachments

Attachment 1 – Town Memo

Attachment 2 – Updated Future Land Use Map

Attachment 3 – Table 45 Town of Swansboro Future Land Use Acreages

Attachment 4 – Resolution adopting changes to the Land Use Plan

BOARD OF COMMISSIONERS

Scott Chadwick, Mayor
Jim Allen, Mayor Pro Tem
Junior Freeman, Commissioner
Larry Philpott, Commissioner
John Lister, Commissioner
Gery Boucher, Commissioner



OFFICE OF THE TOWN MANAGER

Dave M. Harvell, Town Manager
Paula W. Webb, Town Clerk

sm

Town of Swansboro

Friendly City by the Sea • Established 1783
www.swansboro-nc.org

September 17, 2013

Maureen Meehan Will
District Planner
NCDENR Division of Coastal Management
400 Commerce Ave.
Morehead City, NC 28557

Dear Ms. Will,

The Town of Swansboro is proposing an amendment to our 2009 CAMA Land Use Plan for an area of approximately 8.27 acres located at 1121 W. Corbett Ave (NC Hwy 24). The proposed amendment would affect the Future Land Use Map (Map 16), and the Town of Swansboro Future Land Use Acreages (Table 45).

The proposed amendment consists of converting a portion of the property from a High Density Residential land use designation to a Commercial land use designation and adjusting the acreages shown in Table 45 to reflect the change.

Enclosed please find the public hearing notice, proposed text change, and map depicting the change to the Future Land Use Map.

Sincerely,

A handwritten signature in dark ink, appearing to read "Jennifer Holland".

Jennifer Holland, CFM
Planner and Unified Development
Ordinance Administrator
910-326-4428 ext. 126
910-326-3101 fax
planner@ci.swansboro.nc.us

RECEIVED

SEP 19 2013

DCM-MHD CITY

SEP 19 2013

MAP 16

PROPOSED CHANGE

**Town of Swansboro
Land Use Plan
Future Land Use**

Legend

- ~ Urban_Waterfront
- Historic District
- Town Limits
- ETJ
- Planning Area
- Hydrology

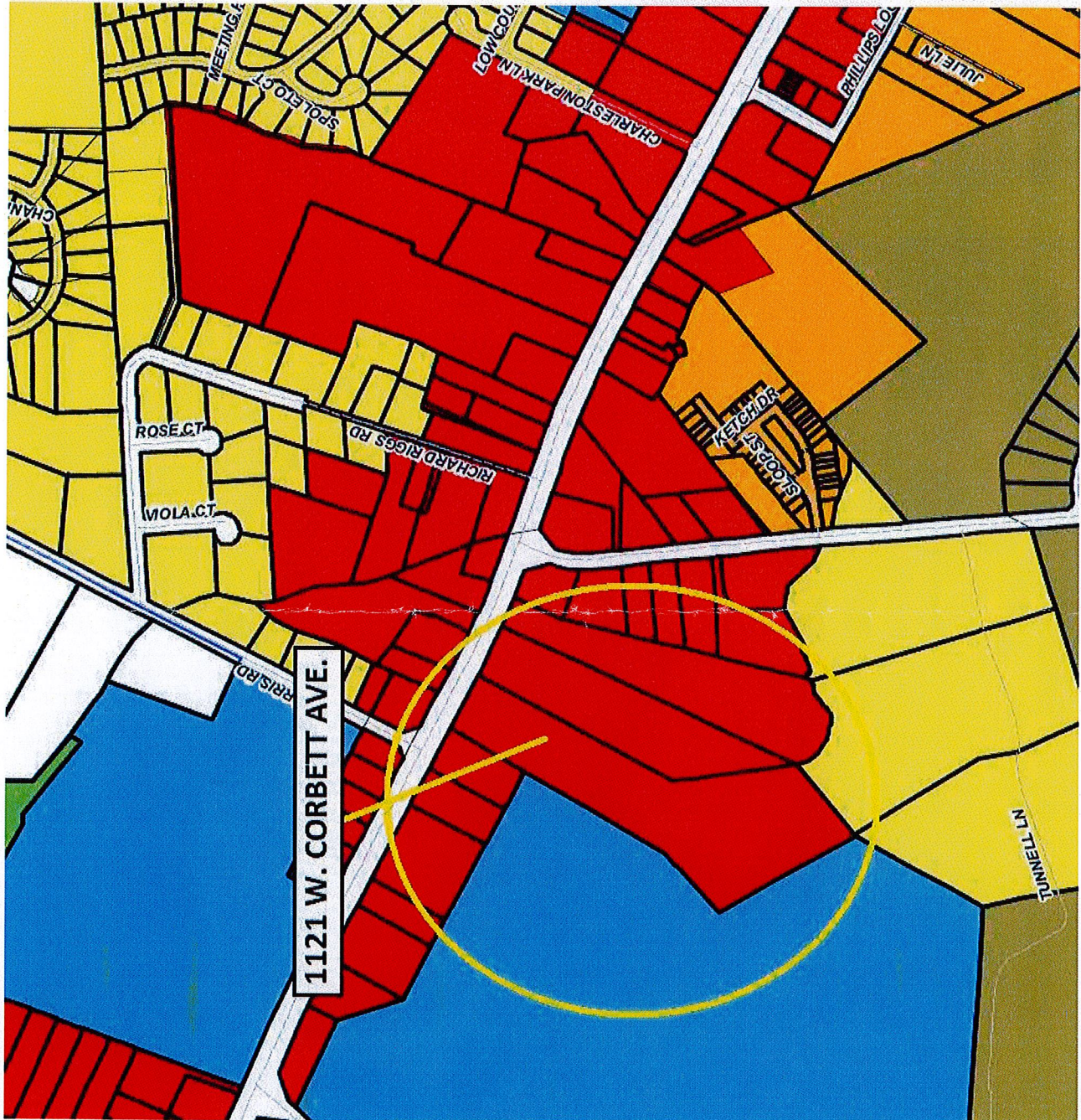
Future Land Use

- Commercial
- Commercial Central Business
- Office Institutional
- Light Industrial
- Low Density Residential
- Medium Density Residential
- High Density Residential
- Conservation

DCM-MHD CITY

1 inch = 500 feet

The preparation of this map was financed in part through a grant provided by the North Carolina Coastal Management Program, through funds provided by the Coastal Zone Management Act of 1972, as amended, which is administered by the Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric Administration.



1121 W. CORBETT AVE.

3. Future Land Use Acreages

The Town believes that the future land use map and associated goals and implementing actions are consistent with the land suitability analysis. Table 45 provides a summary of the estimated future land use acreages (as delineated on Map 16, Future Land Use Map).

Table 45. Town of Swansboro Future Land Use Acreages

Land Use	Corporate Limits	ETJ	Planning Area	Total
Commercial	216.21	123.77 145.50	0.00	339.98 331.71
Commercial Central Business	17.57	0.00	0.00	17.57
Conservation	86.93	202.96	0.00	289.89
High Density Residential	42.98	17.41 25.68	0.00	60.39 68.66
Medium Density Residential	365.36	358.43	0.00	723.79
Low Density Residential	123.05	1,010.21	0.00	1,133.26
Office & Institutional	38.37	146.91	0.00	185.28
Light Industrial	0.00	34.69	0.00	34.69
Undesignated Planning Area	0.00	0.00	2,881.37	2,881.37
Total	890.47	1,894.38	2,881.37	5,666.22

Source: Holland Consulting Planners, Inc.

4. Land Demand Forecast/Carrying Capacity Discussion

The following table provides a forecast of land use demand. The acreage forecasts are intended to provide anticipated land use acreages through the extent of the planning period (2030). The acreage forecast are based on the population forecast provided on page 25 of the plan. The forecasts have been calculated based on the persons per acre that existed in 2005.

In reviewing these forecasts, several factors should be taken into account. As noted earlier in the plan (see pages 87 to 99 - includes carrying capacity discussion) all water and sewer services are provided through the Onslow Water and Sewer Authority. The water and sewer facilities are owned by the Town but they are under long-term lease to ONWASA. However, the Town controls sewer capacity allocations for treatment at the Swansboro Wastewater Treatment Plant. The information outlined within the section noted outlines what the current system capacities are, and how these systems will be upgraded to address projected growth trends. Additionally, non-residential growth within the Town's planning area is projected to be fairly moderate. Swansboro lies in very close proximity to the City of Jacksonville, which provides citizens with a large number of retail outlets and professional services.

RECEIVED

SEP 19 2013

DCM-MHD CITY

RESOLUTION 2013-R15
RESOLUTION OF THE TOWN OF SWANSBORO NORTH CAROLINA
AUTHORIZING AN AMENDMENT TO THE CAMA CORE LAND USE PLAN

WHEREAS, the Town desires to amend its 2009 CAMA Core Land Use Plan, specifically the Future Land Use Map (Map 16), and the Town of Swansboro Future Land Use Acreages (Table 45) to show an area of approximately 8.27 acres at 1121 W. Corbett Ave. (tax parcel 1319-81) as Commercial; and

WHEREAS, the Town conducted a duly advertised public hearing on the draft amendment to the CAMA Core Land Use Plan at the Regular Meeting of the Board of Commissioners on October 15, 2013; and

WHEREAS, the amendment to the Future Land Use Map has been evaluated for its consistency with other existing policies and no internal inconsistencies exist; and

WHEREAS, the amendment is consistent with the currently approved North Carolina Coastal Management Program and the rules of the Coastal Resources Commission; and

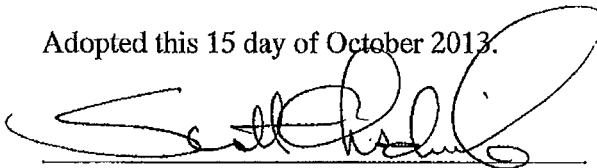
WHEREAS, the amendment is consistent with the six (6) management topics outlined in the Town's Land Use Plan; and

WHEREAS, the amendment does not violate any state or federal laws.

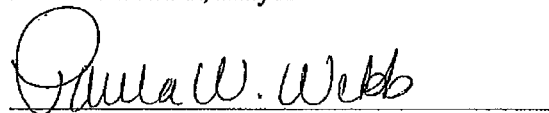
NOW, THEREFORE, BE IT RESOLVED THAT the Board of Commissioners of the Town of Swansboro, North Carolina, has unanimously adopted the draft CAMA Core Land Use Plan amendment; and

BE IT FURTHER RESOLVED that the Town Manger of Swansboro is hereby authorized to submit the adopted CAMA Core Land Use Plan amendment to the State for certification as described above.

Adopted this 15 day of October 2013.



Scott Chadwick, Mayor



Attest: Paula Webb, Town Clerk





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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

MEMORANDUM

CRC-13-40

To: Coastal Resources Commission (CRC)
From: Charlan Owens, AICP, Elizabeth City District Planner
Date: November 27, 2013
Subject: Amendments to the Town of Nags Head Core Land Use Plan (LUP)

Recommendation: Certification of the Text amendments for the Town of Nags Head Core Land Use Plan, based on the determination that the Town has met the substantive requirements outlined within the 2002 Land Use Plan Guidelines and that there are no conflicts evident with either state or federal law or the State's Coastal Management Program.

Overview

The Town of Nags Head is requesting background, policy, and implementation text amendments to address septic systems and sandbags on the oceanfront beach between the first line of stable natural vegetation (FLSNV) or static vegetation line and the Atlantic Ocean. The Town considers allowing for the repair, replacement, or installation of septic systems and/or sandbags in this area to be contrary to the public health, safety and welfare and opposes the permitting, construction, or placement of such septic systems and/or sandbags. As indicated in the Town's proposed amended vision statement, the Town desires a "healthy, well-maintained oceanfront beach that is accessible, safe and usable; not blocked or made unsafe by large structures, sandbags, and/or septic systems which negatively impact the recreational value and aesthetics of the beach and which create public health and safety hazards".

For more detailed information, see the attached Town Staff Report that includes a Draft Resolution with LUP amendments shown in **RED strikethrough** and **underline**. Proposed amendments can also be viewed in context with the entire LUP certified on February 24, 2011 by going to the following link, scrolling down to Nags Head, and selecting "Land Use Plan":

http://www.nccoastalmanagement.net/Planning/under_review.htm

The Town of Nags Head Board of Commissioners held a duly advertised public hearing on the amendments at their July 17, 2013 regular meeting and unanimously adopted the amendments at their regularly scheduled meeting on August 7, 2013.

The public was provided the opportunity to submit written comments on the LUP amendment up to fifteen (15) business days prior to the CRC meeting (November 18th). No written comments or objections were received.

Attachment 1 – Town Staff Report with Draft Resolution (as Adopted) to amend the LUP



Agenda Item Summary Sheet

Item No: H-1
Meeting Date: August 7, 2013

Item Title: Consideration of amendments to the 2010 Land Use Plan

Item Summary: At the direction of the Board of Commissioners, Staff brought forward an Amendment to the 2010 Land Use Plan which clarifies policies designed to protect public access, health and safety on the newly nourished beach and limit installation of sandbags and septic systems eastward of the static vegetation line or first line of stable natural vegetation. The Board held a public hearing on the proposed LUP amendments on July 17, and staff has incorporated Town Attorney, Planning Board, and CAMA staff comments into the attached. The resolution and amendments must be adopted and provided to CAMA staff prior to August 27, 2013 in order to be on the CRC agenda at the September 25-27, 2013 CRC Meeting.

Staff Recommendation: Planning Staff recommends adoption of the draft resolution, to amend the 2010 Land Use Plan, as presented.

Planning Board Recommendation: The Planning Board reviewed the proposed amendment at a special called meeting on June 26, 2013. At that time they recommended approval with proposed revisions from the Planning Board if the revisions were approved by the Town Attorney.

Number of Attachments: 2

Specific Action Requested:

Motion to adopt amendments to the 2010 Land Use Plan to protect the nourished beach and establish policies to limit the repair and/or replacement of sandbags and/or septic systems east of the static line of vegetation or first line of natural, stable vegetation, whichever may apply.

Submitted By: Planning and Development Date: July 29, 2013

Finance Officer Comment:

Insufficient information to determine precise fiscal impact.

Signature: Kim Kenny Date: July 29, 2013

Town Attorney Comment:

N/A

Signature: John Leidy Date: July 29, 2013

Town Manager Comment and/or Recommendation:

I concur with staff.

Signature: Cliff Ogburn

Date: July 29, 2103

STAFF REPORT

TO: Board of Commissioners
FROM: Angela Welsh, Planner
Elizabeth Teague, Planning Director
DATE: July 29, 2013
SUBJECT: Public hearing to consider amendments to the 2010 Land Use Plan.

SUBJECT OR MOTION(S):

Motion to adopt amendments to the 2010 Land Use Plan to protect the nourished beach and establish policies to limit the repair and/or replacement of sandbags and/or septic systems east of the static line of vegetation or first line of natural, stable vegetation, whichever may apply.

BACKGROUND:

With the completion of the recent beach nourishment project, the Town has carried out a major goal of the 2010 Land Use Plan as it was adopted. At the Board of Commissioners direction, Staff brought forward an Amendment to the 2010 Land Use Plan to establish policies designed to protect public access to the nourished beach, promote safety, prevent erosion and position the Town to pursue future re-nourishment efforts. In particular, the Board wanted to clarify policies regarding the repair and installation of sandbags and septic systems eastward of the static vegetation line or first line of natural, stable vegetation.

The attached draft resolution incorporates comments from the Planning Board, the Town Attorney, and the Division of Coastal Management staff. Clarifications to the amendment by the Town Attorney were made so the Town would have better footing if potential legal issues arise. The Attorney was also concerned about balancing property owners' rights with Town concerns regarding public safety, public access and erosion. DCM staff comments were incorporated with a focus on keeping the Land Use Plan document internally consistent. DCM District Planner, Charlan Owens, has been helpful throughout this process and has determined that even with the various revisions, no substantial changes have been made to the amendment as initially proposed and submitted to them for review back in June.

The Board of Commissioners held a public hearing, to consider the proposed amendment, on July 17th, 2013. At that time, Staff suggested the Board delay vote on the proposed Amendment to the August 7, 2013 regular meeting in order for Board members to have more time to review more recently incorporated DCM staff and Town Attorney comments.

Amendment materials and the resolution must be finalized, approved, and provided to CAMA prior to August 27, 2013 in order to be on the CRC agenda at the September 25-27, 2013 CRC Meeting which is scheduled to be held at Jennette's Pier.

STAFF RECOMMENDATION:

Staff recommends the Board of Commissioners adoption of the proposed Land Use Plan amendment as presented.

PLANNING BOARD RECOMMENDATION:

The proposed amendment was initially heard by the Planning Board of June 18th, 2013 and then at a Special Meeting on June 26, 2013 at 6:00 pm. During the June 26, 2013 meeting, the Planning Board made several recommendations which were also incorporated into the Draft amendment and again reviewed by the Town Attorney. Planning Board discussion as reflected in the minutes covered multiple issues, including:

- Definitions and meanings for the "ocean beach", mean high water mark, static vegetation line, and the ocean hazard area of environmental concern;
- Public trust rights on the ocean beach related to the mean high water mark, and concerns related to public and emergency personnel access along the beach;
- The use of sandbags on the beach, both pro and con, and the difficulty in removing sand bags in preparation for nourishment activities;
- The Town's commitment to re-nourishment activities in the future as the preferred hazard mitigation measure; and
- Point and nonpoint source pollution and concerns regarding the flooding of septic systems by the ocean; and
- The visual concerns related to exposed septic systems and infrastructure along the beach where the public has access.

ATTACHMENTS:

- A. Draft Resolution to amend the LUP

RESOLUTION

***LUP AMENDMENT RESOLUTION DRAFT FOR BOARD OF COMMISSIONERS
CONSIDERATION; August 7, 2013***

**RESOLUTION OF THE TOWN OF NAGS HEAD, NORTH CAROLINA,
AUTHORIZING AN AMENDMENT TO THE CAMA CORE LAND USE PLAN**

WHEREAS, the Town of Nags Head (herein "The Town") desires to amend its 2010 Land Use Plan, specifically the policies related to protection of the oceanfront Area of Environmental Concern; and

WHEREAS, in accordance with Article VII, Coastal Area Management 113A-110, Land Use Plans, the Town's Land Use Plan "shall give special attention to the protection and appropriate development of areas of environmental concern ... (and)... be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107"; and

WHEREAS, the Town has carried out the 2010 Land Use Plan goal of beach nourishment through a locally funded project of Major Development in an Area of Environmental Concern pursuant to NCGS 113A-118 and permitted through the State of North Carolina; and

WHEREAS, in accordance with CAMA Rules and Policies, Section 15A NCAC 7H .0305, the vegetation line that existed within one year prior to the onset of initial project construction was defined as the "static vegetation line" in coordination with the Division of Coastal Management and established on an aerial map that went into effect on August 18, 2011; and

WHEREAS, Beach fill is considered a "temporary response to coastal erosion and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach," and therefore "development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line;" and

WHEREAS, the Town desires to amend its 2010 Land Use Plan to ensure consistent use of the term "ocean beach" in a manner consistent with existing North Carolina General Statutes and case law; and

WHEREAS, the Planning Board identified concerns related to access, safety, public health, and the ability of the Town to pursue future re-nourishment where sandbags or septic systems are present on the ocean beaches; and

WHEREAS, the Town of Nags Head conducted a duly advertised public hearing on the draft amendment to the Land Use Plan at the Meeting of the Board of Commissioners on July 17, 2013; and

WHEREAS, the Town has evaluated the proposed amendments for their consistency with other existing policies within the 2010 Land Use Plan and no internal inconsistencies exist; and

WHEREAS, the amendment is consistent with the currently approved North Carolina Coastal Management Program and the rules of the Coastal Resources Commission;

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the 2010 Land Use Plan shall be amended as follows (amendments are underlined and in red):

PART I. That **Page 6 and 87 Vision Statement** be amended as follows:

* A healthy, well-maintained oceanfront beach that is accessible, safe and usable; not blocked or made unsafe by large structures, sandbags and/or septic systems which negatively impact the recreational value and aesthetics of the beach and which create public health and safety hazards.

PART II. That **Page 36 Coastal Erosion** be amended as follows:

In May of 2011, the Town began its first beach nourishment project. The project plan called for widening the beach an average of 50 feet to 150 feet depending on the erosion rate of the beach being nourished and entailed dredging and placement of about 4 million cubic yards of sand. The project stretched from Bonnett Street at mile Post 11 south to Mile Post 21 at the town line and was funded in part by: the Dare County Beach Nourishment Fund, property assessments, and a revenue bond for which Dare County gave the Town \$2 million per year for 5 years to pay down the debt on the bond. The total cost of the project was projected to be approximately \$36 million and came in under the projected budget at \$34.2 million.

Sandbags

In the early 1980's, the Coastal Resources Commission allowed property owners to temporarily protect imminently threatened structures on the oceanfront with sandbags. However, there were limits placed on how long they could be utilized because the Coastal Resources Commission was also charged with protecting access to the public beach area. Sandbags left in place for too long can block public access to the beach, be harmful to nesting habitats of sea turtles and can worsen erosion on neighboring properties. Additionally, sandbags can inhibit emergency and public works vehicle access.

In 2000, the Coastal Resources Commission passed a rule which allowed property owners in communities actively seeking beach nourishment to keep their sandbags for five years from the date they were installed or until May 1, 2008, whichever was later. However, sandbags which were covered with sand and stabilized with natural vegetation were allowed to remain in place until they were uncovered by a storm or other natural event. Despite continued efforts by the Division of Coastal Management, enforcement of sandbag removal requirements has been unsuccessful.

Essentially, sandbags which previously have been allowed by the Coastal Resources Commission as temporary erosion control structures, over time, become harmful permanent "hardened" structures which are not permitted by Coastal Resources Commission and have been banned by the State since 1985. Such sandbags reduce the width of the beach, deflect wave energy and increase erosion on adjacent properties. Such actions are a detriment to the Town's beaches and the completed nourishment project, as well as future re-nourishment efforts. With the completion of a locally funded beach nourishment project that must be monitored and maintained in the future, the Town opposes any new installation of sandbags seaward of the static vegetation line or the first line of stable natural vegetation.

PART III. That **Page 37 Sewage Treatment Plants and Septic Systems**, be amended as follows:

Septic systems

Septic systems located seaward of the static vegetation line or the first line of stable natural vegetation have a high likelihood and tendency to be destroyed, damaged or exposed during storm events and often restrict emergency vehicle and public works vehicle access as well as private access along the ocean beach. Storm damaged and improperly maintained septic systems located seaward of the vegetation line have long been suspected of being non-point sources of sewage pollution which degrade water quality of the Atlantic Ocean within the Town. Exposed septic tanks also act as permanent hardened structures which reduce the width of the beach, deflect wave energy and increase erosion on adjacent properties. Such actions are a detriment to the Town's beaches and completed nourishment project as well as future re-nourishment efforts. Therefore, septic systems located seaward of the static vegetation line or the first line of stable vegetation represent a public health and safety hazard and the Town opposes the permitting, construction or placement of such septic systems.

PART IV. That **Page 39 Beach**, be amended as follows:

As mentioned in the introduction, Nags Head has over 11 miles of oceanfront shoreline. The land area between the ocean and NC 12 or NC 1243 is composed of several distinct natural habitats. Pursuant to North Carolina law, the Town's "ocean beaches" are the area adjacent to the Atlantic Ocean that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach (the "wet sand beach") that is subject to regular flooding by tides and the dry sand area of the beach (the "dry sand beach") that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. The "ocean beach" is sometimes called the "public beach" or "public trust area."

The ocean beaches within the Town consist of a combination of State owned public land and privately owned property. Typically, the State owned public land is located seaward of the mean high water mark, and the privately owned portion of the ocean beach is located between the mean high water mark and the landward extent of the ocean beach. However, portions of the ocean beach in or immediately along the Atlantic Ocean which have been raised above the mean high water mark by a publicly financed beach nourishment project are public land owned by the State even though actually located landward of the mean high water mark following the beach nourishment project. In most cases, the location of the boundary between State owned lands and the private property following such a beach nourishment project will be delineated by the mean high water mark survey performed at the beginning of the nourishment project. The land which becomes State owned public land pursuant to such a nourishment project may return to private ownership if the actual mean high water mark erodes to an extent landward of the area that had been raised above the mean high water mark by the nourishment project.

The entirety of the ocean beach whether State owned public lands or privately owned property is subject to public trust rights. Such rights include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches. The Town opposes development upon the ocean beach. ~~The land area from the mean low water~~

~~mark to the mean high tide line (wet sand beach) is sometimes called the "public beach" where the public has a legal right to use that portion of the beach. The area between the high tide line to the base of the dune is often referred to as the "dry sand beach." While this area in many instances may be in private ownership with property boundary lines extending landward to the mean high water line, the courts have generally held that the public has the right to travel across this "dry sand beach" area. The "dry sand beach" areas will not be developed.~~

Depending upon the time of year and the occurrence of recent storms and hurricanes, the ocean beach (both wet and dry) ranges from 100 feet wide to several hundred feet wide. In areas where there has been extensive sandbagging, the portion of the ocean beach that can be traversed safely and without restriction can be non-existent during high tide.

During the spring and summer various species of sea turtles are found swimming in the area with some coming ashore to deposit their eggs in the sand near the toe of the frontal dunes. Turtle species known to be in the area include: Loggerhead sea turtle, Kemp's Ridley sea turtle, Green sea turtle, Hawksbill sea turtle and the Leatherneck sea turtle. Currently the turtle nesting period runs from May 1 to November 15. During this time period certain beach development or protection activities such as sand bagging and beach bulldozing are prohibited by the US Corps of Engineers and CAMA to avoid destroying the buried eggs.

PART V. That **Page 40 Public Property and Public Trust**, be amended as follows:

Pursuant to North Carolina law, Areas of Environmental Concern (AECs) are areas of natural importance and may be easily destroyed by erosion or flooding; or may have environmental, social, economic or aesthetic values that make it valuable to our state. The Ocean Hazard System AEC is made up of oceanfront lands and the inlets that connect the ocean to the sounds. The Ocean Erodible AEC is that part of the Ocean Hazard System that covers North Carolina's beaches and any other oceanfront lands that are subject to long-term erosion and significant shoreline changes. The seaward boundary of this AEC is the mean low water line. The landward limit of the AEC is measured from the first line of stable natural vegetation and is determined by adding a distance equal to 60 times the long-term, average annual erosion rate for that stretch of shoreline to the distance of erosion expected during a major storm.

The Town's "ocean beaches" are the area adjacent to the Atlantic Ocean that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach (the "wet sand beach") that is subject to regular flooding by tides and the dry sand area of the beach (the "dry sand beach") that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. The "ocean beach" is sometimes called the "public beach" or "public trust area."

The ocean beaches within the Town consist of a combination of State owned public land and privately owned property. Typically, the State owned public land is located seaward of the mean high water mark, and the privately owned portion of the ocean beach is located between the mean high water mark and the landward extent of the ocean beach. However, portions of the ocean beach in or immediately along the Atlantic Ocean which have been raised above the mean high water mark by a publicly financed beach nourishment project are public land owned by the State even though actually located landward of the mean high water mark following the beach nourishment project. In most cases, the location of the boundary between State owned lands and the private property following such a beach nourishment project will be delineated by the mean

high water mark survey performed at the beginning of the nourishment project. The land which becomes State owned public land pursuant to such a nourishment project may return to private ownership if the actual mean high water mark erodes to an extent landward of the area that had been raised above the mean high water mark by the nourishment project.

The entirety of the ocean beach whether State owned public lands or privately owned property is subject to public trust rights. Such rights include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches. On the ocean beach there is a generally "wet sand" area and a "dry sand" area. While subject to legal debate, the interface between the wet sand and dry sand is the mean high water line. The mean high water line (MHW) is expressed as an elevation above the 1988 baseline for mean sea level. While this 1929 surveyed MHW line represents an average of long term data, it does not fully reflect the influence of non-tidal factors such as sea level rise. The land area waterward of the MHW line, as well as the navigable waters to the east, is in trust for public use. "On many oceanfront properties, the easternmost private property line is the mean high water line, a line which can change over time to reflect the shift in the mean high water." There are a number of state statutes (and cases from other states) that indicate that the dry sand beach up to the vegetation line is also public area (David Owens, Beach Liability Report, 1988).

Local governments commonly exercise day-to-day control over the ocean beaches within and adjacent to their jurisdiction. Local governments typically exercise police power over the ocean beaches public trust areas and provide services such as police, fire, rescue and garbage collection. Under North Carolina law, local governments, such as Nags Head, are authorized to regulate (with special legislation) certain water activities such as swimming, surfing and personal water craft.

PART VI. That **Page 43 Ocean Hazard Areas of Environmental Concern (AEC's)**, be amended as follows:

The placement of new structures in this ocean hazard area requires that the structures be placed westward of the static line or the first line of stable natural vegetation whichever applies. The static line was established prior to beach nourishment and mapped. The distance of setback west from the first line of natural, stable vegetation or static line is based on regulations in place at the time of permit application. Annual erosion rates in Nags Head range from two feet near the northern Town limits to six feet in South Nags Head. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line or the first line of stable natural vegetation as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern.

PART VII. That **Page 44 Town Code Regulations**, be amended as follows:

Under general police power authority and other authority, the Town can regulate numerous activities and uses along the oceanfront and throughout the Town. For example, by local regulation the Town regulates the use of personal watercraft in waterways adjacent to the Town, prohibits surfing within 300 feet of fishing piers, and regulates driving on the beach and riding horses on the beach. The Town can also prohibit swimming during dangerous beach and weather conditions when the ocean conditions are unsafe for swimming. Additionally, the Town has

enacted and taken action to enforce nuisance ordinance provisions to address the effects of storm and erosion damaged structures.

~~In an attempt to keep the beaches free of debris, the Town can declare structures which are storm damaged and in danger of collapsing a public nuisance. In addition, any structure which is located in whole or part in the public trust area can be declared a public nuisance and abatement procedures can be initiated by the Town.~~

PART VIII. That **Page 47 Town Code Regulations**, be amended as follows:

- Town Code Regulations

Under general police power authority, the Town can regulate numerous activities and uses along the estuarine shoreline and throughout the Town. For example, by local regulation the Town regulates the use of personal watercraft in waterways adjacent to the Town. Additionally, the Town has enacted and taken action to enforce nuisance ordinance provisions to address the effects of storm and erosion damaged structures.

~~In an attempt to keep the beaches free of debris, the Town can declare structures which are storm damaged and in danger of collapsing a public nuisance. In addition, any structure which is located in whole or part in the public trust area can be declared a public nuisance and abatement procedures can be initiated by the Town.~~

PART IX. That **Page 89 Policies**, be amended as follows:

As required by CAMA, following are polices which may already exceed, or will if implemented, State and Federal requirements:

1. Land Use Capability #4c, #1b
2. Natural Hazard Areas #2
3. Local Areas of Concern #1b, #7c
4. Public Access #1e, #10d

PART X. That **Page 91 Public Access**, be amended as follows:

The Town of Nags Head wishes to maintain a viable beach and to provide substantial opportunity for public access to the beach. ~~Pursuant to North Carolina law, the Town considers The entirety of the ocean beach whether State owned public lands or privately owned property is subject to public trust rights to the extent allowed by law,~~ the Town considers the entirety of the ocean beach, whether State owned public lands or privately owned property, to be subject to public trust rights to the extent allowed by law. ~~both the wet sand beach and the dry sand beach east of the first line of vegetation to represent public land available for public and private access and~~ The Town will actively oppose any unreasonable restriction of those rights any action to restrict public access to and across the beach and will protect and promote public access of the ocean beach.

1. The Town recognizes that the ocean beaches are our single greatest asset. Fundamental elements important to the Town include, clean and safe beaches, public and private access,

ample recreational access opportunities, no commercialization, reasonable beach driving regulations and the prompt resolution of user conflicts as they arise.

Planning Objective:

A. The Town will not allow or permit any commercialization of the Town's ocean beaches (Highest Priority)

B. When the opportunity arises, the Town will acquire oceanfront property for access and open space. (Highest Priority)

C. The Town will make a financial commitment including additional personnel and equipment if needed to keep our ocean beaches clean of debris and litter. (Highest Priority)

D. The Town shall continue to require non-oceanfront hotels and motels to provide private oceanfront beach access facilities for their guests (Highest Priority)

E. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (Highest Priority)

PART XI. That **Page 94 under Land Use Plan Management Topics, Public Access** be amended as follows:

~~10. Pursuant to North Carolina law, the Town considers the entirety of the ocean beach to be subject to public trust use rights and to the extent allowed by law, the Town will actively oppose any unreasonable restriction of those rights. It is the position of the Town that both the wet sand beach and the dry sand beach east of the first line of vegetation represents public land available for public access and the Town will actively oppose any action to restrict public access to and across the ocean beach.~~

Planning Objective:

A. The Town will continue to apply for grants for ocean and sound access sites. (High Priority)

B. The Town will not allow or permit any commercialization of the Town's ocean beaches (Highest Priority)

C. The Town may acquire oceanfront property when the opportunity arises. (High priority)

D. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation, whichever applies, is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (High Priority)

E. The Town will strive to protect and promote public access to the ocean beach. (High Priority)

PART XII. That **Page 94 under Land Use Plan Management Topics, Land Use Capability** be amended as follows:

1. The Town views the preservation of dunes, vegetation and topography as an important component in the Nags Head image and shall strictly enforce the existing applicable rules and regulations and seek additional measures as needed to preserve these elements as much as possible.

Planning Objective:

A. The Town will consider applying rules and regulations in the commercial districts for the preservation of dunes, topography, and vegetation. (High Priority)

B. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation, whichever may apply, is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (High Priority)

C. The Town will strive to protect and promote public access to the ocean beach (High Priority).

PART XIII. That **Page 99 Natural Hazard Areas** be amended as follows:

2. The Town recognizes beach nourishment and re-nourishment as our preferred alternative for addressing the impacts from barrier island migration and ocean erosion. However, the Town also supports a variety of methods to abate the impacts to ocean erosion, these include, but are not limited to acquisition of threatened structures, relocation of threatened structures and the establishment of innovative technology or designs which may be considered experimental, which can be evaluated by the CRC to determine consistency with 15A NCAC 7M.0200 and the other general and specific use standards with the CAMA rules. The Town opposes the permitting or construction of permanent hardened structures, such as sea walls and bulkheads on the oceanfront and the permitting, construction or placement of septic systems and/or sandbags seaward of the static vegetation line or the first line of stable natural vegetation, whichever may apply. Such permitting, construction or placement is and always will remain inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. The Town, however, is opposed to and will not permit hard structures such as sea walls and bulkheads on the oceanfront regardless of federal or state policies. The Town fully supports the protection of North Carolina's shorelines and the construction of terminal groin and jetty pilot projects along the entire coast of North Carolina as proposed in Senate Bill 599 Session 2007. The proposed bill is currently not consistent with State rules.

PART XIV. That **Page 104 Local Areas of Concern** be amended as follows:

7. The Town recognizes that damaged homes and structures on the oceanfront represent a nuisance eyesore and visual blight and the Town may take appropriate measures to abate this

nuisance and will seek changes in NFIP regulations to establish regulations for declaration of destroyed structures.

Planning Objective:

A. The Town will take a more proactive approach to condemning these structures and taking prompt action including the issuance of civil citations to abate the nuisance. (Highest Priority)

B. The Town will petition FEMA through our state and regional FIP representatives to consider adopting regulations regarding the determination of destroyed structures. (Highest Priority)

C. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation, whichever may apply, is contrary to public health, safety and welfare. The Town opposes the permitting of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (Highest Priority)

BE IT FURTHER RESOLVED THAT the Board of Commissioners of The Town of Nags Head, in Dare County, North Carolina, has unanimously adopted the proposed Land Use Plan amendments; and

BE IT FURTHER RESOLVED that the Town Manger of the Town of Nags Head is hereby authorized to submit these adopted Land Use Plan amendments to the State for certification as described above.

Adopted this 7th day of August 2013.

Robert O. Oakes, Jr., Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

CRC-13-41

MEMORANDUM

To: Coastal Resources Commission

From: John A. Thayer Jr. AICP Manager, Local Planning & Public Access Programs

Date: November 25, 2013 (CRC mtg. 12/12/13)

Subject: Land Use Plan Implementation Status Reports Received:

- a. Town of Duck
- b. Town of Kitty Hawk
- c. Town of Southport

Background:

Local governments who received a Planning and Management grant to prepare a Land Use Plan (LUP), are required to submit an implementation status report every two (2) years following the date of LUP certification per the following:

15A NCAC 07L .0511 REQUIRED PERIODIC IMPLEMENTATION STATUS REPORTS

- (a) *To be eligible for future funding each local government engaged in CAMA land use planning shall complete a CAMA land use plan Implementation Status Report every two years as long as the current plan remains in effect. DCM shall provide a standard implementation report form to local governments. This report shall be based on the action plan and schedule provided in 15A NCAC 07B -Tools for Managing Development.*
- (b) *The Implementation Status Report shall identify:*
- (1) *All local, state, federal, and joint actions that have been undertaken successfully to implement its certified CAMA land use plan;*
 - (2) *Any actions that have been delayed and the reasons for the delays;*
 - (3) *Any unforeseen land use issues that have arisen since certification of the CAMA land use plan;*
 - (4) *Consistency of existing land use and development ordinances with current CAMA land use plan policies; and*
 - (5) *Current policies that create desired land use patterns and protection of natural systems.*
- (c) *Results shall be made available to the public and shall be forwarded to DCM.*

Implementation status reports for the three communities listed above are not included within the CRC's digital packet but are available separately on DCM's web page.

Discussion:

The implementation status report does not require approval by the CRC, but must be made available to the public and forwarded to DCM. The reason this is placed on your agenda is per the CRC's request to insure such submittals are available for the CRC's review to acquaint the Commission as to the progress of local LUP implementation efforts.

The implementation status report is based on the LUP Action Plan and identifies activities that the local government has undertaken in support of the LUP's policies and implementation actions. Staff has reviewed the reports and finds that the communities have met the minimum requirements.