NC COASTAL RESOURCES COMMISSION
February 6-7, 2013
UNC – Wilmington, Education Building (Room 162)
Wilmington, NC

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

Wednesday, February 6th

1:00 Coastal Resources Advisory Council Meeting (Room 162) — Ray Sturza, Chair

3:00 COMMISSION CALL TO ORDER (Room 162) — Bob Emory, Chair
- Roll Call

VARIANCES
- Review of CAMA Variance Procedures — Mary Lucase
- Entrust Freedom *(CRC-VR-12-07)* Holden Beach, buffer — Christine Goebel
- Gindes *(CRC-VR-12-10)* North Topsail Beach, oceanfront setback — Christine Goebel
- Allis Holdings LLC *(CRC-VR-12-11)* Duck, buffer — Amanda Little

5:00 PUBLIC HEARING — Bob Emory, Chair
- 15A NCAC 7I .0401 &7I .0406 and Fiscal Analysis – Minor Permit Program

5:30 RECESS

6:00 EXECUTIVE COMMITTEE MEETING (Room 162) — Bob Emory, Chair

Thursday, February 7th

9:00 COMMISSION CALL TO ORDER* (Room 162) — Bob Emory, Chair
- Roll Call
- Introduction of New Commissioners — Bob Emory, Chair
- Approval of November 14-16, 2012 Meeting Minutes
- Executive Secretary's Report *(CRC-13-01)* — Braxton Davis
- Chairman's Comments — Bob Emory

9:30 Local Issues Forum - Wilmington
- City of Wilmington - Welcome — Earl Sheridan, Mayor Pro Tem
- Riverfront Marina – CAMA Involvement — Adam Lisk, Vice pres Operations USA InvestCo
- Coastal Reserve Monitoring & Masonboro Island Fish Kill — John Fear

10:30 BREAK

10:45 Beach Management
- New Hanover County Beach Commission — Layton Bedsole, NH Co.
- Terminal Groins – Financial Instruments — Bob Emory, Chair
  - The "Local Government Test" — Sharon Edmunson, Dept of State Treasurer

12:00 PUBLIC INPUT AND COMMENT — Bob Emory, Chair

12:15 LUNCH

1:30 ACTION ITEMS

CRC Rule Development

- Approve for Public Hearing 15A NCAC 7H .0312 Sediment Criteria and Fiscal Analysis *(CRC-13-02)* — Tancred Miller
- Summary of Public Comments and Adoption - 15A NCAC 7H .0308(a)(2) & 15A NCAC 7H .1705 – Sandbags *(CRC-13-03)* — Mike Lopazanski
- Staff Review of CRC Rules – Exec Order 70 RMIP *(CRC-13-04)* — Braxton Davis

2:30 Land Use Plan Certifications and Amendments — John Thayer

- Town of Cedar Point Workbook Land Use Plan Certification *(CRC-13-05)* — John Thayer

3:00 BREAK

3:15 CRC Science Panel Updates

- Science Panel Origin *(CRC-13-06)* — Mike Lopazanski
- Draft Science Panel Charge from CRC *(CRC-13-07)* — Braxton Davis
- Draft Sea Level Rise Report Scope of Work *(CRC-13-08)* — Tancred Miller
- Draft Inlet Hazard Area Study Scope of Work *(CRC-13-09)* — Matt Slagel

OLD/NEW BUSINESS — Bob Emory, Chair

Follow Up From November 2012 Meeting

- Hyde County Drainage Issues Follow Up *(CRC-13-10)* — Steve Trowell

5:00 ADJOURN

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

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

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH, NC 27602

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

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant Attorney General CAG

DATE: January 23, 2013 (for the February 6-7, 2013 CRC Meeting)

RE: **Variance Request by Entrust Freedom, LLC (12-07)**

Petitioner is an LLC which owns property adjacent to a man-made canal in Holden Beach, Brunswick County, North Carolina. In June 2012, Petitioner applied for a CAMA minor permit with the Town of Holden Beach's LPO to construct a single family residence on this undeveloped lot. On July 25, 2012, the LPO denied Petitioner's CAMA permit application as part of the house and covered deck were located within the Commission's 30-foot buffer. As required by the Commission's rules, Petitioner first sought and was granted a variance from the Town's street-side setback. Following that variance, Petitioner now seeks a variance from the 30-foot buffer rule to allow the impervious surfaces within the buffer area as proposed in its revised site-plan.

The following additional information is attached to this memorandum:

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

cc(w/attachments): William A. Raney, Jr., Counsel for Petitioner, electronically
Mary L. Lucasse, CRC Counsel, electronically
Rhonda Wooten, Holden Beach CAMA LPO, electronically

RELEVANT STATUTES OR RULES **ATTACHMENT A**

15A NCAC 07H .0209 COASTAL SHORELINES

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

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

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

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

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

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

***

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

***

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

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

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

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

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

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

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

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

STIPULATED FACTS **ATTACHMENT B**

1. On January 13, 2011, Entrust Freedom, LLC purchased Lots 262 and 263 of Heritage Harbor Subdivision in Holden Beach, NC as depicted on a subdivision map recorded on October 1, 1968 in the Brunswick County Register of Deeds.

2. Entrust Freedom, LLC is a company established to hold property that is in an individual retirement account for William R. Shelton and Cynthia W. Shelton.

3. Entrust Freedom, LLC has contracted to sell the lots to a buyer.

4. The property is located on a manmade canal, and is bounded on the south by three vacant lots that are owned by the same owner. The bulkhead along the canal on these three vacant lots is located closer to the street than the bulkhead on Petitioner's property to the north and the bulkhead on the adjacent lots to the south.

5. The Petitioner's property is bounded on the north by a single family residence built on two 25' x 100' lots. This house is set back from the bulkhead a distance of 22.2 feet. This house was built before the Commission's 30-foot buffer rule was in effect.

6. The first house to the south of the Petitioner's lots is located on the lots south of the three vacant lots. This house is located 20.3 feet from the bulkhead. This house was built before the Commission's 30-foot buffer rule was in effect.

7. The distance from the center of Petitioner's lots to the first house south of Petitioner's lots is approximately 115 feet. The distance of the first house to the south of Petitioner's lots from the center of Petitioner's Lot 263 is approximately 103 feet.

8. The depth of the three vacant lots to the south of Petitioner's lots measured from the street to the bulkhead ranges from a maximum of about 87 feet on the 25'-wide lot farthest from the Petitioner's property to a minimum of about 77 feet on the 25'-wide lot nearest to the Petitioner's property.

9. The lots are in the Coastal Shorelines Area of Environmental Concern's (AEC), and therefore are subject to the Commission's Buffer Rule, 15A NCAC 7H.0209(d)(10), that requires development to be set back 30 feet from the normal high water level.

10. The waters of the canal are classified as SA waters by the Environmental Management Commission. The Marine Fisheries Commission has designated the canal as waters closed to shellfishing.

11. The normal high water level on the lots is located along the face of the bulkhead along the canal.

12. The CAMA permit application and stormwater permit application show the square footage of the lot as 5,002 square feet. This computation is based on the subdivision map dimensions of 50' x 100' with a slight adjustment of 0.02 feet of width resulting from an actual survey. The actual distance to the face of the bulkhead as determined by a professional survey is less than 100 feet thereby resulting in a total area of the two lots being 4,980 square feet.

13. On June 15, 2012, Petitioner applied for a CAMA minor permit from the Holden Beach CAMA LPO.

14. The Petitioner's application for a CAMA permit proposed a single family residence with a footprint based on the roof dripline that is 44.8' x 37', or for a total of 1,657.6 square feet. This design had a heated and cooled footprint of 35' x 34.8', or 1,218 square feet not including eaves. It also had an area under the roof dripline within the 30-foot buffer of approximately 528 square feet, of which approximately 317 square feet is a covered porch and 211 square feet is heated and cooled area. A copy of these plans and application are attached.

15. On July 25, 2012, the Town's CAMA LPO denied Petitioner's CAMA permit application based on the first design's non-compliance with the Commission's 30-foot buffer rule. A copy of this denial letter is attached.

16. Although the site is served by town sewer, and the lot size could meet that criteria of the Buffer Rule's "small lot exception" provision, the design doesn't meet the "distance to other houses" portion of that exception, and so this design could not be permitted under the "small lot exception" of 15A NCAC 07H.0209(d)(10)(J).

17. The Commission's rule at 15A NCAC 07J. 0701(a) requires that a variance petitioner "must seek relief from local requirements restricting use of the property." Petitioner was directed by DCM's counsel to seek a street-side setback variance from the Town of Holden Beach before its CAMA variance petition was complete.

18. At its November 19, 2012 meeting, the Town of Holden Beach's Board of Adjustment granted Petitioner's variance to vary the Town's 25-foot street-side setback by 8.6 feet. A letter dated November 28, 2012 which confirms this ruling is attached.

19. Following the Town's variance, the Petitioner redesigned the project and pulled the proposed house landward 8.6' as allowed. Instead of meeting the original 25' street-side setback, it now meets a 16.4' street-side setback as allowed by the Town's variance. Petitioner then modified its design with the following changes:

	First Design in the Original Application	Final Design after the Town's variance
Dripline Footprint:	44.8' x 37'	42.75' x 35'
Total Area of Footprint	1,657.6 sq. ft.	1,496.25 sq. ft.
Dripline area in the 30-foot buffer	528 sq. ft.	190 sq. ft.
Area within the 30-foot buffer that Is covered porch v. heated/cooled	317 sq. ft. vs. 211 sq. ft.	150 sq. ft vs. 40 sq. ft.

20. The Petitioner is willing to accept a condition on any variance that requires the roofed porch within the buffer to be converted to an unroofed deck. If this were done, the encroachment of the roofed area within the setback would be approximately 40 square feet, as well as an open unroofed deck of approximately 150 square feet. Up to 200 square feet of open unroofed deck is allowed as an exception to the 30-foot buffer rule per 15A NCAC 07H .0209(d)(10)(F).

21. A stormwater containment facility has been designed for the proposed house in accordance with the Town of Holden Beach stormwater ordinance. The system is designed to contain on-site the first 1.5 inches of rainfall. A copy of this design is attached.

22. Aerial and ground level photography provided to the CRC accurately illustrates the site and surrounding areas as of the date of the variance petition.

STIPULATED EXHIBITS:

a. Aerial photo of entire subdivision
b. Aerial photo of Petitioner's property and closest houses to north and south
c. Ground level photos
d. Heritage Harbor Subdivision plat
e. Site Plans, original and modified post-variance
f. Survey
g. Stormwater plan

Petitioner and Staff Positions **ATTACHMENT C**

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

Petitioner's Position: Yes.

The Petitioner is unable to build a house comparable to other houses in the subdivision if Petitioner complies with the 30-foot setback. The houses closest to Petitioner to the north and south are set back from normal high water a distance of 22.2 feet and 20.3 feet respectively. The Petitioner has been granted a variance by the Town of Holden Beach that allows it to build closer to the street and to add buildable area to the lot, but there is still one corner of the proposed house that is within the 30' shoreline buffer due to the irregularity in the alignment of the bulkhead immediately south of Petitioner's lot. Compliance with the shoreline buffer would result in an odd shaped house that loses square footage compared to surrounding houses. The hardship is unnecessary because the intent of the shoreline buffer rule is being met by the Petitioner by installation of an engineered storm water management system that captures the first 1.5 inches of rainfall.

Staff's Position: Yes.

Staff agrees that Petitioner will suffer an unnecessary hardship from strict application of the Commission's 30-foot buffer rule to Petitioner's property. Petitioner claims, and Staff agrees, that the application of the 30-foot buffer rule on Petitioner's lot is negatively affected by the irregularly shaped shoreline and resulting location of Normal High Water on the adjacent lots to the south. This causes an irregularly shaped building envelope on Petitioner's lot reduced in size to those on surrounding properties.

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 Petitioner's property is located on the west side of a man-made canal. A straight bulkhead is constructed along the west side of the canal except on the three undeveloped lots to the south of Petitioner's lot. On the lots to the south of Petitioner's lot, the bulkhead is located from 17 feet to 23 feet closer to the street (farther from the canal) than on Petitioner's lot and other lots along the canal. This creates a situation in which the southeast corner of Petitioner's lot is closer to the high water mark/bulkhead than if the bulkhead had continued in a straight line across the lots to the south of Petitioner's lot.

Staff's Position: Yes.

Staff agrees that any hardships of Petitioner result from conditions peculiar to the property, such as location, size or topography. As noted by Petitioner above, the bulkhead on the properties to the south doesn't continue in a straight line along this man-made canal, but instead, veers into these undeveloped lots. This creates an unusual Normal High Water line and resulting application of the Commission's 30-foot buffer to Petitioner's property.

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

Petitioner's Position: No.

The Petitioner had no ability to control the location of the bulkhead on the lots to the south of Petitioner's lot.

Staff's Position: No.

Staff agrees that Petitioner had no control of the location of the adjacent bulkhead and resulting Normal High Water and 30-foot buffer.

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

Petitioner's Position: Yes.

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

One purpose of the 30-foot shoreline buffer rule is to provide an undeveloped area that can absorb or filter stormwater runoff from upland areas. The Petitioner's proposed development includes an engineered stormwater management system that will capture the first 1.5 inches of stormwater falling on the impervious areas of Petitioner's property. The engineered stormwater system will allow the smaller buffer area to serve effectively to reduce stormwater runoff.

According to 15A NCAC 7H.0209(c), "the management objective [of the Coastal Shoreline AEC] is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system." In the present case, the shoreline is a well protected and very narrow body of water that is bulkheaded for its full length thereby providing adequate protection from the dynamic forces affecting unprotected shorelines.

The CRC rules recognize that building on small lots that were platted before the shoreline buffer rule was enacted could create a hardship and therefore created the small house (7H.0209(d)(10)(I)) and small lot (7H.0209(d)(10)(J)) exceptions for such situations. The Petitioner may not qualify for the exceptions because the size of the footprint of the building area of Petitioner's lot is larger than 1,200 square feet (small house) and one of the adjacent houses is more than 100 feet from the center of Petitioner's lot (small lot). However, the irregular shape of the building space on Petitioner's lot makes a design of a house problematic.

Secure the public safety and welfare.

The Petitioner's proposal does not raise public safety concerns. The protected nature of the shoreline eliminates erosion problems and the fully developed canals that are closed to shellfishing raise no water quality issues.

Preserve substantial justice.

The entire subdivision consists of 346 lots with dimensions of 25' x 100' according to the subdivision plat. Almost all of the lots have been combined into groups of two or three lots to provide adequate space for typical houses. Allowing the Petitioner to build a house comparable to other houses in the subdivision will preserve substantial justice.

Staff's Position: Yes.

Staff agrees that the variance requested by Petitioner is consistent with the spirit, purpose, and intent of the Commission's buffer rule. One of the management objectives for the Coastal Shorelines AEC is to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic value. Consistent with that management objective, all development proposals shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed.

Staff notes that a stormwater management plan is required by the Town of Holden Beach, and is included in the stipulated exhibits. This requirement that Petitioner install and maintain a stormwater management system which will collect the first 1.5 inches of rainfall for all impervious surfaces on the lot can safeguard the buffer ability of this Site. Accordingly, Staff agrees that a variance would be consistent with the spirit, purpose, and intent of the Commission's buffer rule, and would further safeguard public welfare by providing those benefits to water quality through use of a stormwater management system. Finally, Staff does not disagree with Petitioner's claims of substantial justice.

As requested by the Commission for buffer variances, staff includes the stormwater management-related conditions which have been placed on prior variances issued by the Commission below. However, the Town of Holden Beach already has an ordinance which requires a stormwater system on site.

(1) The permittee shall obtain a stormwater management plan meeting the requirements of 15A NCAC 7H .0209(d)(10)(J)(iv), which requires that the first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed and certified by an individual who meets applicable State occupational licensing requirements for the type of system proposed, and approved by the appropriate governmental authority during the permit application process.

(2) Prior to occupancy and use of the deck addition and the issuance of a final Certificate of Occupancy (CO) by the local permitting authority, the permittee shall provide a certification from the design professional that the stormwater system has been inspected and installed in accordance with this permit, the approved plans and specification and other supporting documentation.

(3) The permittee shall provide for the operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and within the design specifications for the life of the project.

(4) The permittee shall insure that the obligation for operation and maintenance of the stormwater management system becomes a permanent obligation of future property owners.

ATTACHMENT D

Petitioner's Petition
(without proposed attachments and draft facts)

WESSELL & RANEY, L.L.P.
ATTORNEYS AT LAW
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STREET ADDRESS:
107-B NORTH 2ND STREET
WILMINGTON, NC 28401

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

September 26, 2012

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

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

Re: **Variance Petition – Entrust Freedom, LLC – Brunswick County**

Dear Mr. Davis:

Enclosed is a Variance Petition regarding the above-referenced project. Please schedule this variance for the November 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
Enclosures
WAR\ENVIRON\R12-101-C01

cc: Ms. Christy Goebel (via fax, 919-716-6767)

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

PETITIONER'S NAME Entrust Freedom, LLC

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Brunswick

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

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

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

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

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

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

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

X A copy of the permit decision for the development in question;

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.

W. A. Raney, Jr. — Signature of Petitioner or Attorney

9-26-12 — Date

W. A. Raney, Jr. — Printed Name of Petitioner or Attorney

waraney@bellsouth.net — Email address of Petitioner or Attorney

P.O. Box 1049 — Mailing Address

910-762-7475 — Telephone Number of Petitioner or Attorney

Wilmington, NC 28402 — City State Zip

910-762-7557 — Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

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

By Fax:
(252) 247-3330

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

Contact Information for Attorney General's Office:

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

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

By Fax:
(919) 716-6767

Revised: February 2011

CAMA VARIANCE PETITION
ENTRUST FREEDOM, LLC

Petitioner, Entrust Freedom, 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.0209(d)(10).

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\R12-101-003
KTW

ALLC.

APPLICATION FOR

CAMA MINOR DEVELOPMENT PERMIT

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

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

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

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

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

Coastal Resources Commission
Division of Coastal Management

APPLICATION: _____

LOCALITY: _____

PERMIT ISSUED USING STATIC LINE EXCEPTION
YES ☐ NO ☐

Locality _____ Permit Number _____

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

(For official use only)

GENERAL INFORMATION

LAND OWNER

Name Entrust Freedom LLC, FBO WR and CW Shelton

Mailing Address: ~~170 Via Porta Vecchio Way~~ 316 W. Earle St.

City ~~Naples~~ Greenville State SC Zip ~~34110~~ 29609 Phone (864) 404-6119

Email randy1cindy@yahoo.com Fax #

AUTHORIZED AGENT

Name Coastal Construction

Address 131 Ocean Boulevard West

City Holden Beach State NC Zip 28462 Phone (910) 842-8200

Email ricknelson@marksaundershomes.com

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 132 Sand Dollar Drive

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Build new custom hom repair existing dock, add floating dock

SIZE OF LOT/PARCEL: 5,002 square feet _____ acres

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

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

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

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 1500 square feet (includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?

YES ____ NO ✓

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

blue

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

STATEMENT OF OWNERSHIP:

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

✓ an owner or record title, Title is vested in Entrust Freedom LLC, see Deed Book 3126 page 813 in the Brunswick County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

	(Name)	(Address)
(1)	Charles Stokes Jr & John Holden	128 OBW Holden Beach, NC 28462
(2)	Elsie Gentry Britt	1601 N Elm St. Lumberton, NC 28358
(3)		
(4)		

ACKNOWLEDGEMENTS:

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

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

This the 15th day of June, 2012

X: _____

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

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

blue

SITE DRAWING/APPLICATION CHECKLIST

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

PHYSICAL DIMENSIONS

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

PHYSICAL CHARACTERISTICS

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

If you will be working in the ocean hazard area:
_____ Draw and label dune ridges (include spot elevations)
_____ Draw and label toe of dunes
_____ Identify and locate first line of stable vegetation (contact LPO for assistance)
_____ Draw and label erosion setback line (contact LPO for assistance)
_____ Draw and label topographical features (optional)

If you will be working in a coastal shoreline area:
_____ Show the roof overhang as a dotted line around the structure
_____ Draw and label landward limit of AEC
_____ Draw and label all wetland lines (contact LPO for assistance)
_____ Draw and label the 30-foot buffer line

DEVELOPMENT PLANS

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

NOTE TO APPLICANT

Have you:

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

FOR STAFF USE

Site Notice Posted _____ Final Inspection _____ Fee Received _____

Site Inspections

_____ _____

_____

_____

Date of Action: Issued _____ Exempted _____ Denied _____ Appeal Deadline _____

Brunswick County, NC Register
B3126 P0813 01-13-2011 16:05:44.001
Brenda M. Clemmons of Deeds page 1 of 2

Brenda M. Clemmons
01-13-2011 16:05:44.001
NC REVENUE STAMP: $200.00

Register of Deeds
Brunswick County, NC
(#245379)

NORTH CAROLINA GENERAL WARRANTY DEED

STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK

THIS DEED, made this the 6th day of January, 2011, by and between **CAROL GORE-JORDAN (unmarried)** of 2213 Fox Hunt Lane, Wilmington, NC 28405, party of the first part, hereinafter referred to as Grantor, and **ENTRUST FREEDOM, LLC FBO WILLIAM R. SHELTON IRA #56000 as to an Undivided 80% and ENTRUST FREEDOM, LLC FBO CYNTHIA W. SHELTON IRA #56002 as to an Undivided 20%** of 26 Chatsworth Ct., Flat Rock, NC 28731, parties of the second part, hereinafter referred to as Grantees;

W I T N E S S E T H:

THAT the Grantor, for a valuable consideration paid by the Grantees, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantees, their successors and assigns, in fee simple, all those certain lots or parcels of land situated in Lockwood Folly Township, Brunswick County, North Carolina, and being more particularly described as follows:

> BEING Lot 262 and 263 of Heritage Harbor, at Holden Beach, Brunswick County, North Carolina, as surveyed October 1, 1968, by Harold Willis, which map is recorded in the office of the Register of Deeds of Brunswick County, North Carolina, in Map Book 9 at Page 87, to which map reference is hereby made for greater certainty of description.
>
> In accordance with NCGS Section 105-317.2, the mailing addresses of Grantor and Grantees are as stated above. The property herein conveyed does not include the primary residence of Grantor.

TO HAVE AND TO HOLD the aforesaid lots or parcels of land and all privileges and appurtenances thereunto belonging to the Grantees in fee simple.

AND the Grantor does hereby covenant with Grantees that Grantor is seized of the premises in fee simple, that she 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, subject to the following exceptions:

-Utility easements of record.
-2011 ad valorem property taxes.
-Restrictive covenants of record.

Prepared by: BAXLEYSMITHWICK PLLC, Attorneys at Law

Town of Holden Beach

PLANNING & INSPECTIONS DEPARTMENT

Building Inspector
Timothy Evans
inspections@hbtownhall.com

Zoning/CAMA Officer
Rhonda Wooten
rhonda@hbtownhall.com

Administrative Asst.
Pam Powell
PlanningInspections@hbtownhall.com

July 25, 2012

CERTIFIED MAIL - 7009 0080 0001 4221 2602
RETURN RECEIPT REQUESTED

Entrust Freedom LLC, FBO WR and CW Shelton
17046 Porta Vecchio Way
Naples Florida 34110

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT

APPLICATION NUMBER- 2012-026
PROJECT ADDRESS- 132 Sanddollar Drive

Dear Entrust Freedom LLC, FBO WR and CW Shelton:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to construct a single family residence with covered porches and open decks, gravel driveway and underground stormwater containments which is inconsistent with 15 NCAC 7H .0209 (d)(10), which states that: Winthin the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:

(A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
(B) Pile-supported signs (in accordance with local regulations);
(C) Post- or pile-supported fences;
(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
17
(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
(H) Development over existing impervious surfaces, provided that the existing impervious surface

is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
(I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
(i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
(ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and
(J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
(i) The lot on which the proposed residential structure is to be located, is located between:
(I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
(II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
(ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
(iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
(iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
(v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

Your proposed project does not meet the requirements of Town of Holden Beach Code of Ordinances chapter 157.060 (D)(1)(a), (D)(2), (D)(4), (D)(7).

Your application is also inconsistent with our Local Land Use Plan. On page xxvii, 80, and xx, 87 of the Land Use Plan, you will find that Policy 9.4.A.3. and Policy 9.1.A.1 *Estuarine Shorelines* and reads in part as follows: Residential land uses area appropriate types of use along the estuarine shoreline provided all standards of 15NCAC Subchapter 7H relevant to estuarine shoreline AECs are met.
New Development: All new development and redevelopment will adhere to the Town's building and development regulations and to the density requirements set forth in the Zoning Ordinance.

Based on my conversation with the Anthony Carr of Coastal Construction you do wish to request a variance from the Coastal Resource Commission. The proper forms are being enclosed for the variance request. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Rhonda Wooten

Rhonda Wooten - Local Permit Officer

cc: Holly Snyder - Division of Coastal Management

Petitioner's revised positions following the variance granted by the Town of Holden Beach

Petitioner's argument: The Petitioner is unable to build a house comparable to other houses in the subdivision if Petitioner complies with the 30-foot setback. The houses closest to Petitioner to the north and south are set back from normal high water a distance of 22.2 feet and 20.3 feet respectively. The irregularity in the alignment of the bulkhead immediately south of Petitioner's lot creates an irregular setback on Petitioner's lot that causes a large section of the southeast corner of the lot to be within the buffer area. This irregularity compounds the hardship to the Petitioner in not being able to construct a house comparable to other houses in the subdivision.

Petitioner's argument: The Petitioner's property is located on the west side of a man-made canal. A straight bulkhead is constructed along the west side of the canal except on the three undeveloped lots to the south of Petitioner's lot. On the lots to the south of Petitioner's lot, the bulkhead is located from 17 feet to 23 feet closer to the Street (farther from the canal) than on Petitioner's lot and other lots along the canal. This creates a situation in which the southeast corner of Petitioner's lot is closer to the high water mark/bulkhead than if the bulkhead had continued in a straight line across the lots to the south of Petitioner's lot.

Petitioner's argument: The Petitioner had no ability to control the location of the bulkhead on the lots to the south of Petitioner's lot.

Petitioner's argument:

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

  One purpose of the 30-foot shoreline buffer rule is to provide an undeveloped area that can absorb or filter stormwater runoff from upland areas. The Petitioner's proposed development includes an engineered stormwater management system that will capture the first 1.5 inches of stormwater falling on the impervious areas of Petitioner's property. The engineered stormwater system will allow the smaller buffer area to serve effectively to reduce stormwater runoff.

  According to 15A NCAC 7H.0209(c), "the management objective [of the Coastal Shoreline AEC] is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system." In the present case, the shoreline is a well protected and very narrow body of water that is bulkheaded for its full length thereby providing adequate protection from the dynamic forces affecting unprotected shorelines.

  The CRC rules recognize that building on small lots that were platted before the shoreline buffer rule was enacted could create a hardship and therefore created the small house (7H-0209(d)(10)(I)) and small lot (7H.0209(d)(l0)(J)) exceptions for such situations. The Petitioner may not qualify for the exceptions because the size of the footprint of the building area of Petitioner's lot is slightly larger than 1,200 square feet (small house) and one of the adjacent houses is more than 100 feet from the center of Petitioner's lot (small lot). However, the irregular shape of the building space on Petitioner's lot makes a design of a small house problematic. The Petitioner's proposed house would be set back the

average distance of the nearest houses to the north and south, thereby being consistent with the policy in the small lot exception. The Petitioner's proposed house would also be set back further than the 20% depth (20 feet) allowed if the Petitioner qualified for the small house exception.

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

  The Petitioner's proposal does not raise public safety concerns. The protected nature of the shoreline eliminates erosion problems and the fully developed canals that are closed to shellfishing raise no water quality issues.

- **Preserve substantial justice.**

  The entire subdivision consists of 346 lots with dimensions of 25' x 100' according to the subdivision plat. Almost all of the lots have been combined into groups of two or three lots to provide adequate space for typical houses. Allowing the Petitioner to build a house comparable to other houses in the subdivision will preserve substantial justice.

ATTACHMENT E

STIPULATED EXHIBITS:

included in the power-point

a. Aerial photo of entire subdivision
b. Aerial photo of Petitioner's property and closest houses to north and south
c. Ground level photos
d. Heritage Harbor Subdivision plat
e. Site Plans, original and modified post-variance
f. Survey
g. Stormwater plan

INTRACOASTAL WATERWAY

S87°56'E ± 1027.47'

CANAL

SAND DOLLAR DRIVE — S88°47'E → — SCOTCH BONNET DRIVE

CANAL

CANAL

#3 #2 #1

DRIVE DRIVE DRIVE

1785.0' ± to ↑ — 1696.0' ± to ↑

TRACT No. 2

SAND DOLLAR DRIVE — N01°13'E → — STARFISH DRIVE — S01°13'W → — LIONS PAW — S01°13'W → — SCOTCH BONNET BLVD.

CANAL

60'

7,210' to S.E. corner of Harbor Acres Division

old iron in concrete

30.08' 319.82' 50.13' S87°07'W 1030.00' 50.13' 320.18' old iron in concrete

OCEAN VIEW BLVD.

60'

ATLANTIC OCEAN

MAGNETIC

MAP OF HERITAGE HARBOR

HOLDENS BEACH, NORTH CAROLINA
LOCKWOOD FOLLY TWP. - BRUNSWICK CO, N.C.

October 1, 1968 Scale: 1" = 100'

H. L. Willis Jr.
Reg. Surveyor
Elizabethtown, N.C.

REFERENCE:
A portion of tract no. 1 of R. P. Robinson Beach as recorded in Map Book 4 at Page 12. H.L.W. Jr.

STATE OF NORTH CAROLINA
BRUNSWICK COUNTY

The foregoing or annexed certificate of Ruth S. Shaw, N.P. - ?
Brunswick County, N.C.
is/are certified to be correct. Presented for registration and
and recorded in this office at Book 9, Page 87 Map
This 9 day of April, 1969 at 11 o'clock A.M.
D. T. Clark By D. T. Clark
Register of Deeds Register of Deeds

9187

STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

I certify that this map was prepared from an actual field survey made by me; that the error of closure as calculated by latitudes and departures is 1:7500 ±; that it is in accordance with G.S. 47-30 as amended.

Witness my hand and seal this 15th day of October A.D., 1968

H. L. Willis Jr.
N.C. Reg. Surveyor L-1910.

Subscribed and sworn before me this 15 day of October A.D., 1968

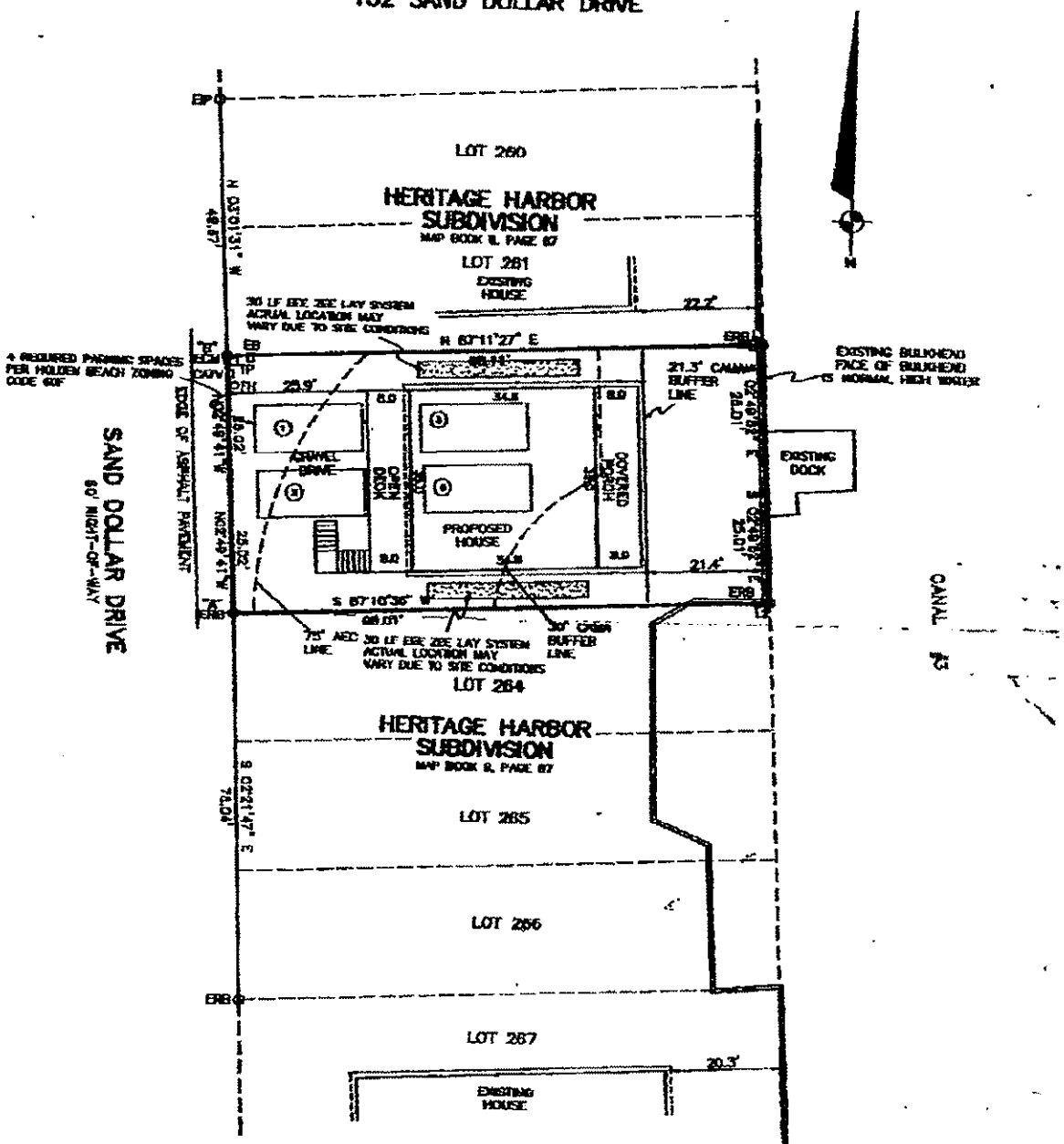
Ruth S. Shaw
Notary Public

My commission expires 3-31-1970.

NORTH CAROLINA REGISTERED LAND SURVEYOR HAROLD L. WILLIS JR. L-1910

NOTARY PUBLIC BRUNSWICK COUNTY, N.C. RUTH S. SHAW

COASTAL CONSTRUCTION
132 SAND DOLLAR DRIVE



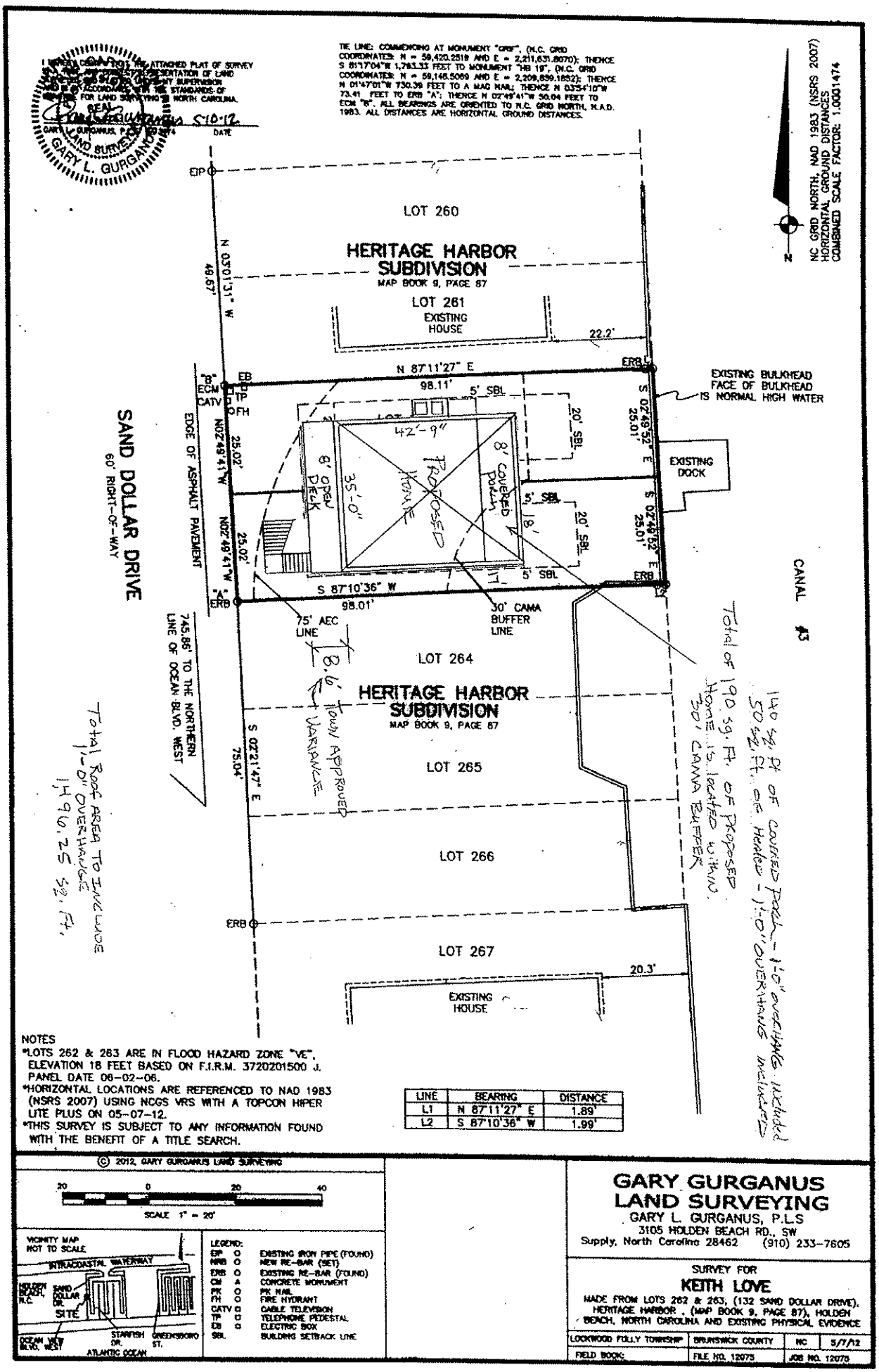
NOTES:
*INFORMATION FROM A SURVEY BY GARY GURGANUS.
*DO NOT DRIVE VEHICLES OR PLACE HEAVY EQUIPMENT OVER INFILTRATION TRENCHES.
*ALL SIDES OF THE INFILTERATION TRENCHES MUST BE LINED WITH FILTER FRABIC.

SCALE: 1" = 20'

LINE	BEARING	DISTANCE
L1	N 87°11'27" E	1.39'
L2	S 87°10'36" W	1.99'

4-20-2012

Original Site Plan



NOTES
*LOTS 262 & 263 ARE IN FLOOD HAZARD ZONE "VE", ELEVATION 18 FEET BASED ON F.I.R.M. 3720201500 J. PANEL DATE 06-02-06.
*HORIZONTAL LOCATIONS ARE REFERENCED TO NAD 1983 (NSRS 2007) USING NCGS VRS WITH A TOPCON HIPER LITE PLUS ON 05-07-12.
*THIS SURVEY IS SUBJECT TO ANY INFORMATION FOUND WITH THE BENEFIT OF A TITLE SEARCH.

LINE	BEARING	DISTANCE
L1	N 87°11'27" E	1.89'
L2	S 87°10'36" W	1.99'

SCALE 1" = 20'

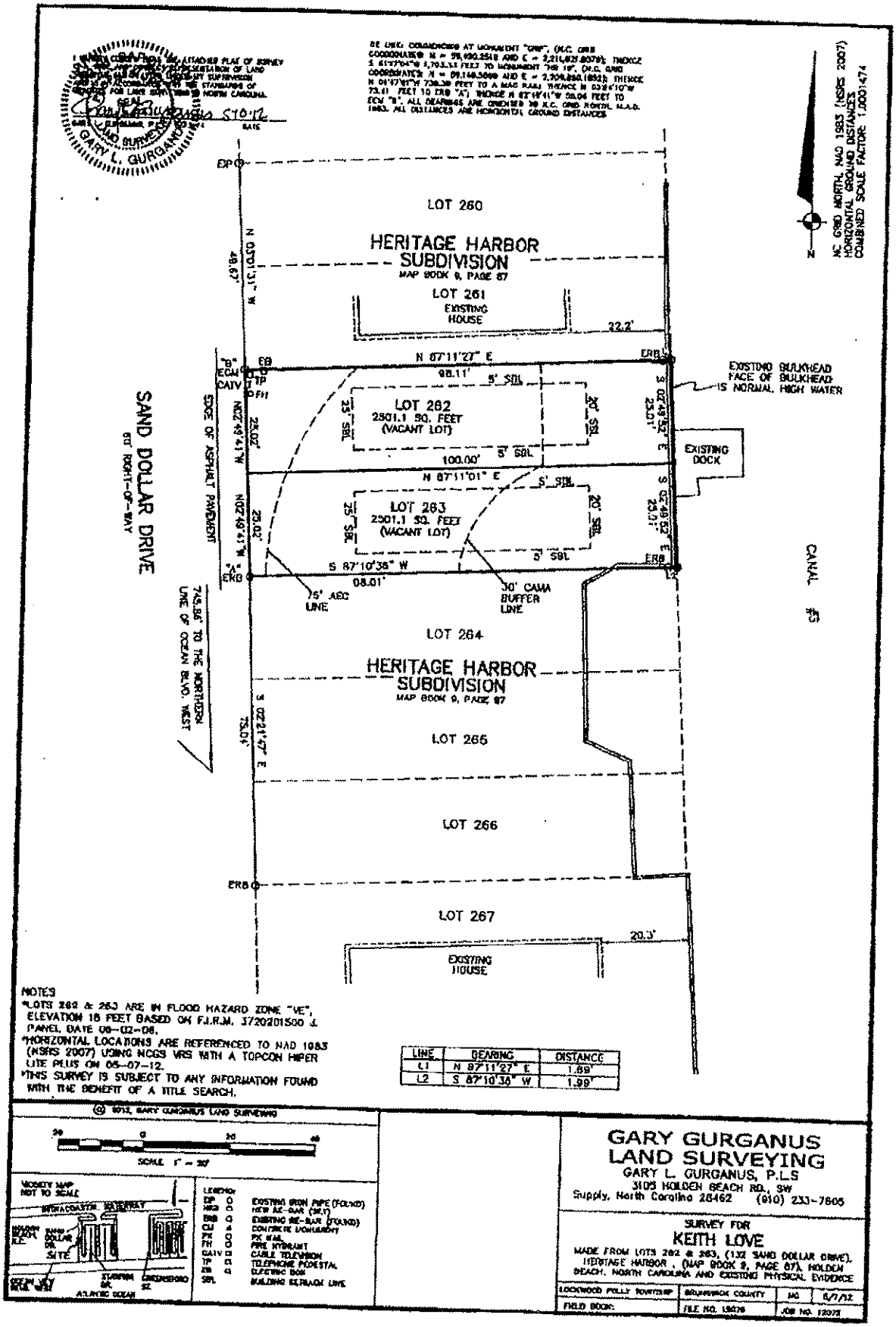
LEGEND:
EIP EXISTING IRON PIPE (FOUND)
NRB NEW RE-BAR (SET)
ERB EXISTING RE-BAR (FOUND)
CM CONCRETE MONUMENT
PK PK NAIL
FH FIRE HYDRANT
CATV CABLE TELEVISION
TP TELEPHONE PEDESTAL
EB ELECTRIC BOX
SBL BUILDING SETBACK LINE

GARY GURGANUS LAND SURVEYING
GARY L. GURGANUS, P.L.S
3105 HOLDEN BEACH RD., SW
Supply, North Carolina 28462 (910) 233-7605

SURVEY FOR
KEITH LOVE
MADE FROM LOTS 262 & 263, (132 SAND DOLLAR DRIVE), HERITAGE HARBOR, (MAP BOOK 9, PAGE 87), HOLDEN BEACH, NORTH CAROLINA AND EXISTING PHYSICAL EVIDENCE

LOCKWOOD FOLLY TOWNSHIP	BRUNSWICK COUNTY	NC	5/7/12
FIELD BOOK:	FILE NO. 12075		JOB NO. 12075

Post-variance Site Plan



NOTES
*LOTS 262 & 263 ARE IN FLOOD HAZARD ZONE "VE", ELEVATION 16 FEET BASED ON F.I.R.M. 3720201500 J, PANEL DATE 06-02-06.
*HORIZONTAL LOCATIONS ARE REFERENCED TO NAD 1983 (NSRS 2007) USING NCGS VRS WITH A TOPCON HIPER LITE PLUS ON 05-07-12.
*THIS SURVEY IS SUBJECT TO ANY INFORMATION FOUND WITH THE BENEFIT OF A TITLE SEARCH.

LINE	BEARING	DISTANCE
L1	N 87°11'27" E	1.89'
L2	S 87°10'38" W	1.99'

SCALE 1" = 30'

VICINITY MAP
NOT TO SCALE

LEGEND
EIP — EXISTING IRON PIPE (FOUND)
NIRB — NEW 1/2"-REBAR (SET)
ERB — EXISTING 1/2"-REBAR (FOUND)
CONCRETE MONUMENT
PK — PK NAIL
FH — FIRE HYDRANT
CATV — CABLE TELEVISION
TP — TELEPHONE PEDESTAL
EB — ELECTRIC BOX
SBL — BUILDING SETBACK LINE

GARY GURGANUS
LAND SURVEYING
GARY L. GURGANUS, P.L.S
3105 HOLDEN BEACH RD., SW
Supply, North Carolina 28462 (910) 233-7605

SURVEY FOR
KEITH LOVE
MADE FROM LOTS 262 & 263, (132 SAND DOLLAR DRIVE), HERITAGE HARBOR, (MAP BOOK 9, PAGE 87), HOLDEN BEACH, NORTH CAROLINA AND EXISTING PHYSICAL EVIDENCE

LOCKWOOD FOLLY TOWNSHIP	BRUNSWICK COUNTY	NC	5/7/12
FIELD BOOK:	FILE NO. 12076	JOB NO. 12076	

LOT SURVEY

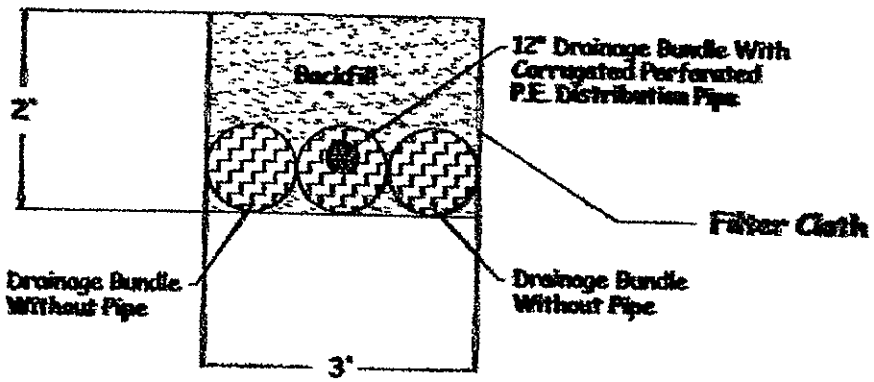
EVERETT G. GRAHAM, P.E.
821 CALICO CREEK DRIVE
GARNER, NC 27529
(919) 622-7776

COASTAL CONSTRUCTION
132 SAND DOLLAR DRIVE
HOLDEN BEACH, N.C.

TOTAL LOT AREA
5,002 SQ. FT.

TOTAL IMPERVIOUS AREA
HOUSE AND DECKS (INC. 12" O/H)..... 1,656 SQ. FT.
HOUSE AND DECKS (W/O EAVE)..... 1,496 SQ. FT.

- 1656 sq ft x 1.5 / 12 = 207 cu ft of stormwater containment required.
- Utilize gutters and downspouts draining to an EEE ZEE LAY drain system.
- Capacity of EEE ZEE LAY system = 3.75 cu ft / ft.
- Length of system required = 207 cu ft / 3.75 cu ft / ft = 56 ft.
- Round up to 60 ft.



EEE ZEE LAY DETAIL
nts

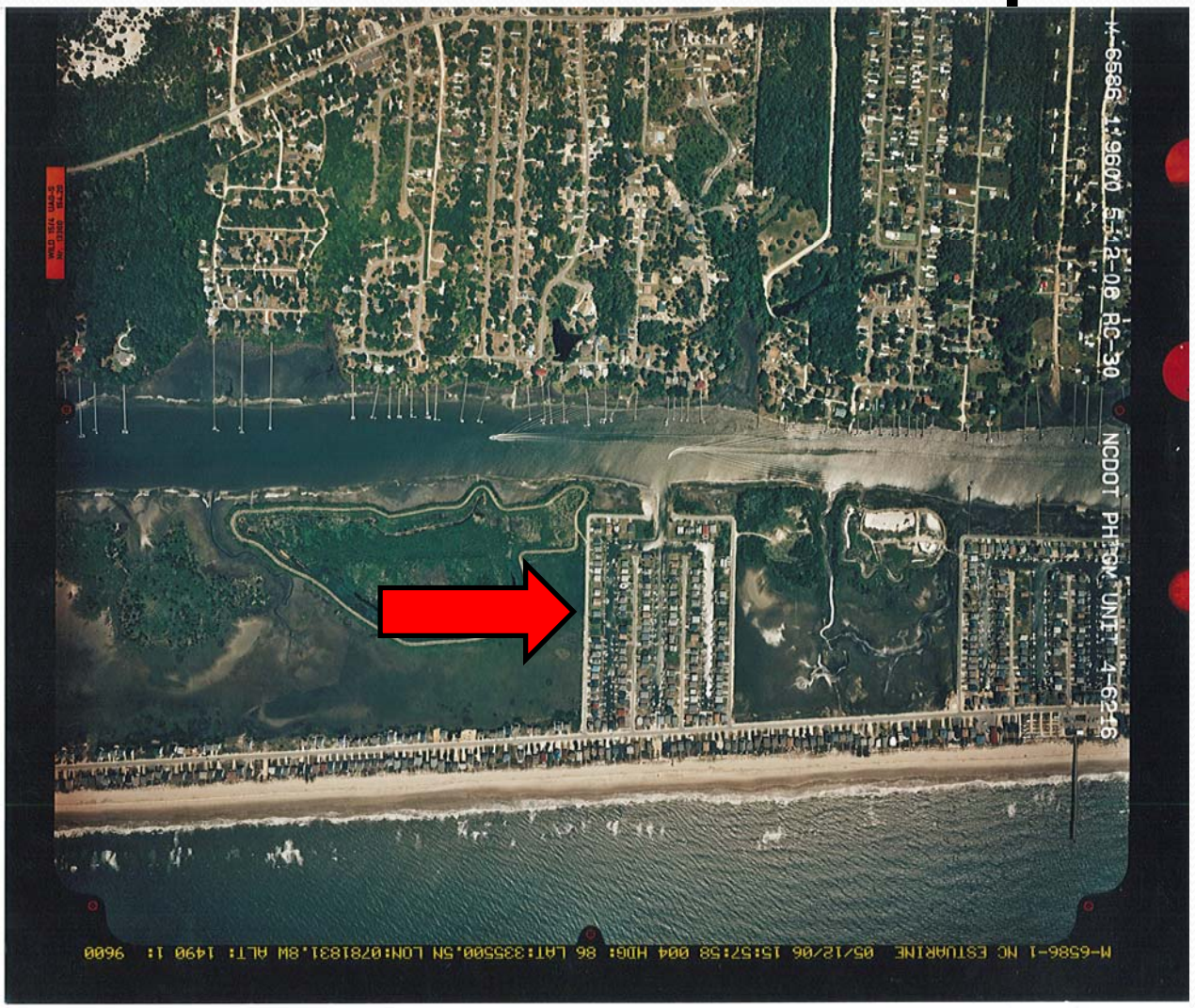
NORTH CAROLINA PROFESSIONAL SEAL 025971 ENGINEER EVERETT G. GRAHAM

6-24-2012

Variance Request
by
Entrust Freedom, LLC
CRC-VR 12-10

February 6, 2013

2006 NC DOT Aerial photo



2010 Google Earth Imagery

2010 Google Earth Imagery

View of property shoreline:
from northern property boundary looking south

Jan. 15, 2013

View of property shoreline:
from southern property boundary looking north

Jan. 15, 2013

Location of bulkhead and NHW along south facing shoreline

Approx. property line

Oct. 20, 2012

Street View of 132 Sand Dollar Drive

North property boundary

South property boundary

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH, NC 27602

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

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, Assistant Attorney General CAG

DATE: January 23, 2013 (for the February 6-7, 2013 CRC Meeting)

RE: **Variance Request by Jonathan Gindes (12-10)**

Petitioner and his wife purchased oceanfront property in North Topsail Beach, Onslow County, North Carolina early last year. An inspection revealed that portions of the house were not built to code, and the Engineer hired by Petitioner recommended installing a floor system in a two-story open area at the oceanward side of the home in order to provide better bracing for wind loads and to meet code. The project was completed last summer, and because it included a 144 square-foot increase in Total Floor Area oceanward of the oceanfront setback, DCM staff concluded it was development in an AEC undertaken without a CAMA permit and issued a Notice of Violation. Petitioner has since removed the floor to comply with the NOV restoration plan, and now seeks a variance to reinstall the Floor.

The following additional information is attached to this memorandum:

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

cc(w/attachments): Jonathan Gindes, Petitioner, electronically
Mary L. Lucasse, CRC Counsel, electronically
Debra Wilson, DCM Wilmington, electronically

RELEVANT STATUTES OR RULES **ATTACHMENT A**

15A NCAC 07H.0301 OCEAN HAZARD CATEGORIES

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

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

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

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

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

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

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term

erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

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

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

(1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. The setback distance is determined by both the size of development and the shoreline erosion rate as defined in 15A NCAC 07H .0304. Development size is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

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

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

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

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

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

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

***

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

STIPULATED FACTS **ATTACHMENT B**

1. Petitioner Jonathan Gindes and his wife Lauren ("Petitioner") are the owners of an oceanfront home located at 4172 Island Drive, North Topsail Beach, NC (the "Property"). The deed for the sale was recorded on February 2, 2012. The house and driveway were developed prior to the time of purchase. Following the purchase, Petitioner began to plan a renovation of the home.

2. Aerial and site photographs are attached as exhibits which depict the Property, Petitioner's home and the surrounding lots and homes.

3. The Property is located within the Ocean Erodible and High Hazard Flood Areas of Environmental Concern (AECs), and N.C.G.S. § 113A-118 requires that a CAMA permit be obtained before any development takes place in these AECs on the Property.

4. The Commission's current Average Annual Erosion Rate for this property is 2 feet per year, and this rate remains the same for the updated erosion rates, which are scheduled to go into effect on February 1, 2013.

5. Based on the applicable 2 feet per year erosion rate, the applicable Ocean Hazard Setback for development on this Property, being a structure less than 5,000 square feet, is 60-feet landward of the Vegetation Line as that term is defined by the Commission's rules.

6. North Topsail Beach is located on a barrier island that is susceptible to powerful coastal storms that expose properties to both wind damage and beach erosion.

7. The Property is located in a COBRA zone, and is in flood zone "VE". As such, there is no ability to purchase federal flood insurance.

8. The Property is located along a stretch of homes of similar size and orientation. The property is located farther seaward than neighboring houses. The Property is the only one in the Ocean Ridge development that has at least 4 empty lots on both sides. Please see the aerial photos attached hereto.

9. The shape and size of Petitioner's lot is depicted on the site map, survey and photographs attached hereto.

10. Petitioner hired Reece Engineering and Design ("Reece Engineering") to perform an engineering survey of the Property. Reece Engineering conducted the survey on February 14, 2012.

11. Reece Engineering's analysis, dated February 24, 2012, found that:

> The existing south facing dining room exterior wall is currently a 2x4 wall in excess of 20 ft. high. This wall does not meet code for 130 mph wind loads and did not meet code at the time of construction. This wall should be braced at the midspan with a floor system consisting of 2x12@16' oc running perpendicular to the ocean and decked with a ¾" subfloor nailed at 6" oc. The balloon framed tall wall should have a Simpson H2.5A strap connecting each wall stud to the floor deck. It is the opinion of Reece Engineering that this bracing must be done to ensure a safe habitable structure. A copy of Reece Engineering's analysis is attached hereto.

12. Based on Reece Engineering's conclusion that "this bracing must be done to ensure a safe habitable structure," Petitioner planned to build a 12' by 12' flooring system (the "Floor") above the dining room.

13. Reece Engineering's analysis states that the dining room wall "should be braced ... with a floor system" and that "this bracing must be done to ensure a safe habitable structure." See Reece Engineering's analysis attached hereto.

14. The flooring system recommended by Reece Engineering's analysis should consist of "2x12@16' oc running perpendicular to the ocean and decked with a ¾" subfloor nailed at 6" oc" together with "a Simpson H2.5A strap connecting each wall stud to the floor deck". See Reece Engineering's analysis attached hereto.

15. Reece Engineering's analysis states that "adding a new floor system above the dining room area as specified above is a structural requirement." See Reece Engineering's analysis attached hereto.

16. The conditions described by Reece Engineering existed prior to purchase of the Property by Petitioner in February 2012.

17. The 12' x 12' Floor represents an increase of 144 square feet in the "Total Floor Area" of the Property, as that term is defined by the Commission's rules. The Floor would be built entirely within the building envelope and would represent no increase in the footprint of the building on the Property.

18. Construction of the Floor requires no construction outside the exterior walls of the home.

19. On March 5, 2012, Petitioner's contractor, Orin O'Quin, applied for a building permit from the Town of North Topsail Beach to execute Petitioner's renovation plan. The Town's building and inspections staff informed Mr. O'Quin that some part of the renovation may need approval from Coastal Area Management Act staff, and issued a building permit for Petitioner's renovation plan. The Town of North Topsail Beach does not have a CAMA LPO program, and so DCM staff issue CAMA permits within the Town.

20. Before Mr. O'Quin's informed the project subcontractors that a Coastal Area Management Act ("CAMA") Minor Development Permit might be needed for the Floor, installation of the floor began. See affidavit of Orin O'Quin attached hereto.

21. On March 7, 2012, DCM Staff staked the first line of stable and natural vegetation on the Property.

22. On March 8, 2012, DCM Staff inspected the Property on the advice of the Town of North Topsail Beach's building and inspection department, and Staff concluded that the installation of the 12' x 12' floor was unpermitted "expansion" of the Total Floor Area, as that term is used in the CAMA and the Commission's rules. Based on the first line of stable and natural vegetation's location staked by DCM Staff on March 7, 2012, the 60' setback line bi-sects the house, as shown on the restoration site plan drawing, attached hereto. Staff also concluded that the Floor was installed waterward of the 60' ocean erosion setback line. DCM Staff then advised the crew to cease all development until further notice. Petitioner's contractors stopped work on the Floor at the time.

23. On March 9, 2012, DCM Staff met with Mr. O'Quin at the Property. DCM Staff informed Mr. O'Quin that DCM Staff considered installation of the Floor to be "expansion" of a structure involving an increase of Total Floor Area. Under CAMA regulations, "expansion" is development and would require a CAMA Minor Development Permit. DCM Staff advised that Petitioner could seek a variance from the Commission for the Floor.

24. Based on communications with DCM, it was Petitioner's understanding that in order to be eligible to apply for a variance, Petitioner first had to apply for a CAMA Minor Permit and have such permit denied. It was also Petitioner's belief from conversations with DCM Staff that a variance petition for construction of the Floor would be supported by DCM Staff. See attached affidavit of Jonathan Gindes. DCM Staff involved in this case recall making no such statements about supporting a variance petition.

25. On March 23, 2012, Mr. O'Quin applied for a CAMA Minor Development Permit to construct the Floor. A copy of the application and site plan are attached hereto.

26. On April 17, 2012, DCM Staff denied Petitioner's CAMA Minor Permit application for construction of the Floor and stated that "the development for which [Petitioner] applied consisted of increasing total floor area of a structure within the setback." A copy of the denial notice is attached hereto.

27. Mr. O'Quin prepared documentation to apply for a variance for the Floor, and submitted such documentation to DCM. See the affidavit of Orin O'Quin and the submittal attached hereto.

28. Based on the attempt by Petitioner's contractor to apply for a variance, the Floor was completed. See the affidavit of Jonathan Gindes attached hereto.

29. On May 18, 2012, DCM Staff made a follow-up visit to the Property and sent an e-mail message to Petitioner the same day regarding the completion of the Floor. A Photograph from this visit, attached hereto, shows that the Floor was completed. A copy of the email message is attached.

30. On June 1, 2012, DCM Staff issued Notice of Violation #12-05D (the "NOV"), which Petitioner received on June 5, 2012. The NOV requested that Petitioner sign a restoration agreement within 10 days of receipt. The NOV stated that daily fines or injunctive relief could be sought as part of the enforcement action initiated by the NOV. A copy of the NOV is attached hereto.

31. Petitioner retained counsel who requested, in letters dated June 11, 2012 and June 13, 2012, an additional twenty (20) days to investigate the matter and to respond to the NOV.

32. After subsequent discussion, DCM granted an additional fifteen (15) days in which to respond to the NOV, through and including June 30, 2012.

33. Through counsel, Petitioner responded as agreed on June 30, 2012. In that response, it was noted that (1) as Reece Engineering had found that construction of the Floor is important to the safety and structural integrity of the home, as well as to building code compliance, and (2) construction of the Floor did not enlarge the building envelope of the home on the Property or damage coastal resources. This response included an offer to pay a civil penalty and to perform a mitigation project acceptable to DCM. A copy of this response is attached hereto.

34. On July 11, 2012, DCM Staff and DCM counsel met with Petitioner's counsel to discuss the matter.

35. By letter dated July 18, 2012, DCM Staff stated that removal of the Floor was the only option acceptable to DCM Staff to resolve the NOV, and would be a prerequisite to seeking a variance. A copy of this letter is attached hereto.

36. In response to DCM's letter, Petitioner proposed a plan of restoration that would result in removal of the Floor within 90 days (through October 25, 2012) by letter dated July 25, 2012 (the "Restoration Plan"). A copy of this proposal is attached hereto.

37. In a letter dated July 30, 2012, DCM Staff accepted this Restoration Plan and new deadline. A copy of this letter is attached hereto.

38. On October 24, 2012, DCM Staff determined that the Restoration Plan was executed to their satisfaction as the sub-flooring had been removed, and a door providing access to the Floor was locked and taped off. A picture of the completed restoration is attached hereto.

39. On November 1, 2012, DCM assessed a civil penalty in the amount of $415 related to this matter. On November 5, 2012, Petitioner paid the full amount of the civil penalty to the State of North Carolina.

Petitioner and Staff Positions **ATTACHMENT C**

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

Petitioner's Position: Yes.

Yes, as discussed below, strict application of the applicable development rules will cause Petitioner unnecessary hardship. A variance in this case would allow the Petitioner to remedy an unsafe building condition. If applied strictly, the rules would force Petitioner to maintain a potentially hazardous condition on the subject property.

Petitioner Jonathan Gindes acquired a home on the subject property located at 4172 Island Drive, North Topsail Beach, NC (the "Property") in February 2012. Soon after closing, an engineering evaluation of the house structure showed that the house was not constructed to meet code requirements. In order to provide proper bracing for an ocean-facing wall that is likely to take the brunt of winds and coastal storm forces, Petitioner seeks to construct a flooring system at the mid-point of the ocean-facing wall. However, since the proposed floor system would increase the floor area of the home by a small amount (12'x12'), the North Carolina Department of Environment and Natural Resources, Division of Coastal Management ("DCM") considers this floor system to be "development" which requires a variance in order to be constructed within the oceanfront setback.

The Property is located along a stretch of homes of similar size and orientation. Neighboring homes on either side of the Property sit much farther back from the shoreline than the Property, such that the front walls of those homes are landward of the rear wall of the Property. Please see the aerial photo attached hereto as Exhibit 1. Because of the shape of Petitioner's lot, his home cannot be moved landward. As shown on the site map attached hereto as Exhibit 2, the property includes a narrow piece of land just wide enough for Petitioner's driveway, and his home I s located as far landward as local development regulations will allow.

As a consequence, the Property is uniquely exposed to ocean and wind forces. Unlike the neighboring properties on either side, which might buffer one another from high winds, the Property stands totally exposed and alone, closer to the ocean. This orientation puts the Property at a higher risk of wind and storm damage than most other shorefront coastal properties.

Shortly after acquiring the Property, Petitioner discovered that one wall of the Property was not built to code and thus presents a safety hazard. According to an engineering analysis performed by Reece Engineering and Design ("Reece Engineering"), the development requested by Petitioner is necessary to ensure that the home is "safe and habitable". Specifically, Reese Engineering found that:

> The existing south facing dining room exterior wall is currently a 2x4 wall in excess of 20 ft. high. This wall does not meet code for 130 mph wind loads and did not meet code at the time of construction. This wall should be braced at the midspan with a floor system consisting of 2x12@16' oc running perpendicular to the ocean and decked with a ¾" subfloor nailed at 6" oc. The balloon framed tall wall should have a Simpson H2.5A strap connecting each wall stud to the floor deck. It is the opinion of Reece Engineering that this bracing must be done to ensure a safe habitable structure.

A copy of Reece Engineering's analysis is attached hereto as Exhibit 3. The floor system recommended by Reece Engineering is twelve feet by twelve feet, or 144 square feet in total area. Without this floor system in place, including a subfloor, Petitioner's property will not meet building code safety standards. Even if only the joists were permitted to remain, these exposed joists would pose a potential hazard to anyone in the house and would not provide the level of bracing recommended to handle the required wind load. As a consequence, the floor system requested is important to ensuring that Petitioner's home does not present a hazard to the health of visitors, passersby, or the coastal environment.

Thus, strict application of the rules would require Petitioner to maintain a unique and potentially hazardous condition on the Property. Strict application of the rules would lead to an inadequately braced ocean-facing wall, which would compromise the safety of any person living on or visiting the Property. Such a hazard is not necessary, as the construction of a small floor system within the existing envelope and layout of the Property would brace the tall ocean-facing dining room wall and thus eliminate the unsafe condition.

Staff's Position: Yes.

Staff agrees that a strict application of causes Petitioner an unnecessary hardship in this case. Petitioner purchased an existing structure which he then discovered was not built to code. The engineer's recommended remedy would add a floor to the house, increasing the Total Floor Area by 144 square feet through the addition of a 12' x 12' floor to the structure, entirely within the existing footprint, walls and roofline of the home. The portion of the house where the Floor was recommended to be added in order to meet code is oceanward of the Ocean Erosion setback. The combination of these circumstances causes Petitioner an unnecessary hardship.

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

Petitioner's Position: Yes.

The risk Petitioner seeks to mitigate by seeking this variance results from the unique nature of the Property's location and of its construction. First, the Property is an oceanfront property in North Topsail Beach, an area that is routinely the site of powerful coastal storms that subject properties in North Topsail Beach to significant wind damage and beach erosion. However, unlike other beachfront homes in North Topsail Beach, the Property is situated well seaward of the three neighboring homes to the east and five homes to the west. Other structures along this stretch of Island Drive are not so isolated and exposed to the elements. This location leaves the Property fully exposed to storm winds and other coastal forces without any protection or buffer from neighboring properties. As such, it is in a uniquely high-risk location.

Second, in addition to being in a high-risk location, the Property was not built as most other homes in the area are likely to have been built. Specifically, the Property was built with a tall wall facing the ocean that is not property braced. One would expect most homes to be constructed in compliance with applicable building codes. Thus, the wall Petitioner seeks to brace represents an unusual condition. Without the floor system that Petitioner seeks to install, the unique location of the Property will increase the risk caused by the peculiar construction of the Property.

Thus, the hardship Petitioner faces – an unsafe ocean-facing wall – is a result of the peculiar construction of the dining room in his home, combined with the location and the unusual orientation of the Property. Other homes with tall walls would not present the kind of risk that the Property presents, and other homes located on the beachfront in North Topsail Beach do not carry the particular condition Petitioner seeks to remedy. Thus, the hardship Petitioner faces is a result of conditions peculiar to the Property.

Staff's Position: Yes.

While Staff disagrees with Petitioner's contentions that the home's location on North Topsail beach and being "situated well seaward of the ...neighboring homes" is a peculiarity which causes Petitioner's hardship, Staff does agree that the earlier construction of the home causes Petitioner's hardship in this case. Petitioner purchased an existing oceanfront home which was not built to code. Specifically, the two-story ocean-facing wall was built without bracing of some sort half-way between the bottom of the first story and the top of the second story. This creates a situation where Total Floor Area, as defined by the Commission's rules, could be added to a building without expanding the footprint, walls or roofline of the home. This condition of the house, combined with the fact that the 60-foot Ocean Erosion setback line currently transects the house landward of this area is a peculiarity of the property which causes Petitioner's hardship.

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

Petitioner's Position: No.

The need for the floor system Petitioner requests is a result of the location and construction of the Property, which was constructed before Petitioner purchased it. The need for a floor system to be installed arises from the condition of the Property when Petitioner acquired it, which was not to current building code standards. Because this condition arose before Petitioner acquired the Property and required an engineering analysis to identify, it did not result from any action taken by Petitioner. Further, the Property's location and orientation, where it is more exposed than other homes to the kind of forces that could cause personal injury and property damage, is a result of a construction process with which Petitioner was never involved.

Staff's Position: No.

While it would have been more prudent for Petitioner to obtain an engineering report *before* closing on the house, and to wait to complete construction of the Floor *after* obtaining a CAMA permit denial and a variance from the Commission, Staff believes that the hardship in this case is the combination of the setback line which bisects the existing house, and an existing house which was designed in such a way where Total Floor Area can be added (and apparently needs to be per the engineering report) within the existing four walls, roofline and footprint of the home.

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.

First , the requested variance will be consistent with the spirit, purpose, and intent of the rules because it preserves and improves the safety of the public without any disturbance or damage to coastal resources. The requested variance achieves the balance between preserving coastal habitat and resources and serving the broader public interest.

As Reece Engineering's analysis indicates, a floor system, including subfloor, is needed to ensure that Petitioner's house is adequately protected from very high winds and damaging coastal forces. At the same time, construction of the requested floor system does not conflict with the spirit of 15A N.C.A.C. 7H .0306(a)(6), because:

a. The project will occur entirely within the four walls of the existing building, thus requiring the increase in the building envelope;
b. There will be no change in the building footprint and no increase in built upon area;
c. There will be no construction outside the residence, and no disturbance of dunes, vegetation, wildlife, public access, or other coastal resource; and
d. The project is de minimis in scale –only involving a 12' x 12' floor area. Second, the requested variance secures the public safety and welfare by improving the safety and integrity of Petitioner's home without affecting neighboring landowners or public visitors to the coast and without damage to coastal resources.

The current dining room wall of Petitioner's property is a potential hazard, as it does not meet current building codes. The requested variance would allow Petitioner to correct this hazardous condition, thereby helping to protect human life and the coastal environment from the dangers of a destructive storm.

At the same time, construction of a 144-square foot floor system wall would require a minimum of construction work, all of which would take place entirely within the building envelope of the Property. As a consequence, this improvement would not create any condition that would interfere with the public's use of the beach, would cause no damage to coastal resources, and would not create a substantial increased risk of damage to coastal resources in the future. As such, the only effect that granting the requested variance would have on the public safety and welfare is that it would improve the safety and structural integrity of Petitioner's home.

Third, the requested variance preserves substantial justice by allowing Petitioner to connect a hazardous condition on the Property without any harm or danger to coastal resources. In addition, the small increase in floor area will increase rental income for the Property, as well as revenue for the Town of North Topsail Beach and Onslow County.

In summary, Petitioner, faces a hardship – specifically, an inadequately braced wall that creates a safety hazard—which results from the peculiarities of the Property's construction and location, attributes over which Petitioner had no control or input. The variance sought would allow Petitioner to construct a floor system to address this hardship, yet would involve a de minimis amount of development that would not result in any increased risk to the public and would cause no harm to coastal resources.

Staff's Position: Yes.

The applicant's proposal is to construct (and re-install) 144 square feet to an existing structure that is partially oceanward of the ocean erosion setback. This increase of structural living space to a non-conforming structure must be considered in light of the fact that the Floor is being added primarily to bring the house to code, specifically so that this wall will be more able to withstand wind loads. The intent of the Commission's Ocean Hazard rules is to avoid and minimize damage to life and property. On balance, DCM staff believes the addition of 144 square feet of Total Floor Area within an existing structure's footprint, walls and roofline is reasonable in order to bring the home up to building code for wind loads. It is staff's position that allowing Petitioner's proposed fix to the non-conforming house meets the spirit, purpose and intent of the Commission's rules. Similarly, granting the variance for the proposed development, whereby the Petitioner brings the home up to code through the installation of the Floor, will help secure public safety and welfare, and preserve substantial justice.

ATTACHMENT D

Petitioner's Petition
(without proposed exhibits and draft facts)

Jonathan Gindes
9406 Foxgrove Court
Raleigh NC 27617

December 18, 2012

To whom it may concern,

Enclosed please find a CAMA Variance Request form for my property located at 4172 Island Drive, North Topsail Beach NC 28460.

Please call or email me if you have any questions on the materials I have enclosed. Thanks in advance for you help.

Jonathan

Jonathan Gindes
919-433-2231
jgindes@affinergy.com

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.:_____

PETITIONER'S NAME: Jonathan Gindes

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.

(a) VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

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

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

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

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

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

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

_____ A copy of the permit decision for the development in question;

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

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

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

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

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

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

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

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

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

Signature of Petitioner or Attorney	Date: 12/14/12
Jonathan Gindes Printed Name of Petitioner or Attorney	jgindes@affinergy.com Email address of Petitioner or Attorney
9406 Foxgrove Court Mailing Address	(201) 951-5130 (cell) Telephone Number of Petitioner or Attorney
Raleigh, NC 27617 City State Zip	( ) Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

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

By Fax:
(252) 247-3330

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

Contact Information for Attorney General's Office:

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

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

By Fax:
(919) 716-6767

Revised: February 2011

PETITIONER'S STATEMENT REGARDING 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.*

Yes, as discussed below, strict application of the applicable development rules will cause Petitioner unnecessary hardship. A variance in this case would allow the Petitioner to remedy an unsafe building condition. If applied strictly, the rules would force Petitioner to maintain a potentially hazardous condition on the subject property.

Petitioner Jonathan Gindes acquired a home on the subject property located at 4172 Island Drive, North Topsail Beach, NC (the "Property") in February 2012. Soon after closing, an engineering evaluation of the house structure showed that the house was not constructed to meet code requirements. In order to provide proper bracing for an ocean-facing wall that is likely to take the brunt of winds and coastal storm forces, Petitioner seeks to construct a flooring system at the mid-point of the ocean-facing wall. However, since the proposed floor system would increase the floor area of the home by a small amount (12'x12'), the North Carolina Department of Environment and Natural Resources, Division of Coastal Management ("DCM") considers this floor system to be "development," which requires a variance in order to be constructed within the oceanfront setback.

The Property is located along a stretch of homes of similar size and orientation. Neighboring homes on either side of the Property sit much farther back from the shoreline than the Property, such that the front walls of those homes are landward of the rear wall of the Property. Please see the aerial photo attached hereto as **Exhibit 1**. Because of the shape of Petitioner's lot, his home can not be moved landward. As shown on the site map attached hereto as **Exhibit 2**, the Property includes a narrow piece of land just wide enough for Petitioner's driveway, and his home is located as far landward as local development regulations will allow.

As a consequence, the Property is uniquely exposed to ocean and wind forces. Unlike the neighboring properties on either side, which might buffet one another from high winds, the Property stands totally exposed and alone, closer to the ocean. This orientation puts the Property at a higher risk of wind and storm damage than most other shorefront coastal properties.

Shortly after acquiring the Property, Petitioner discovered that one wall of the Property was not built to code and thus presents a safety hazard. According to an engineering analysis performed by Reece Engineering and Design ("Reece Engineering"), the development requested by Petitioner is necessary to ensure that the home is "safe and habitable." Specifically, Reece Engineering found that

> The existing south facing dining room exterior wall is currently a 2x4 wall in excess of 20ft. high. This wall does not meet code for 130mph wind loads and did not meet code at the time of construction. This wall should be braced at the midspan with

with a floor system consisting of 2x12@16' oc running perpendicular to the ocean and decked with a 3/4" subfloor nailed at 6" oc. The balloon framed tall wall should have a Simpson H2.5A strap connecting each wall stud to the floor deck. It is the opinion of Reece Engineering that this bracing must be done to ensure a safe habitable structure.

A copy of Reece Engineering's analysis is attached hereto as **Exhibit 3**. The floor system recommended by Reece Engineering is twelve feet by twelve feet, or 144 square feet in total area. Without this floor system in place, including a subfloor, Petitioner's property will not meet building code safety standards. Even if only the joists were permitted to remain, these exposed joists would pose a potential hazard to anyone in the house and would not provide the level of bracing recommended to handle the required wind load. As a consequence, the floor system requested is important to ensuring that Petitioner's home does not present a hazard to the health of visitors, passersby, or the coastal environment.

Thus, strict application of the rules would require Petitioner to maintain a unique and potentially hazardous condition on the Property. Strict application of the rules would lead to an inadequately braced ocean-facing wall, which would compromise the safety of any person living on or visiting the Property. Such a hazard is not necessary, as the construction of a small floor system within the existing envelope and layout of the Property would brace the tall ocean-facing dining room wall and thus eliminate the unsafe condition.

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

Yes, the hardships result from conditions peculiar to Petitioner's property.

The risk Petitioner seeks to mitigate by seeking this variance results from the unique nature of the Property's location and of its construction. First, the Property is an oceanfront property in North Topsail Beach, an area that is routinely the site of powerful coastal storms that subject properties in North Topsail Beach to significant wind damage and beach erosion. However, unlike other beachfront homes in North Topsail Beach, the Property is situated well seaward of the three neighboring homes to the east and five homes to the west. Other structures along this stretch of Island Drive are not so isolated and exposed to the elements. This location leaves the Property fully exposed to storm winds and other coastal forces without any protection or buffer from neighboring properties. As such, it is in a uniquely high-risk location.

Second, in addition to being in a high-risk location, the Property was not built as most other homes in the area are likely to have been built. Specifically, the Property was built with a tall wall facing the ocean that is not properly braced. One would expect most homes to be constructed in compliance with applicable building codes. Thus, the wall Petitioner seeks to brace represents an unusual condition. Without the floor system that Petitioner seeks to install, the unique location of the Property will increase the risk caused by the peculiar construction of the Property.

Thus, the hardship Petitioner faces – an unsafe ocean-facing wall – is a result of the peculiar construction of the dining room in his home, combined with the location and the unusual orientation of the Property. Other homes with tall walls would not present the kind of risk that the Property presents, and other homes located on the beachfront in North Topsail Beach do not carry the particular condition Petitioner seeks to remedy. Thus, the hardship Petitioner faces is a result of conditions peculiar to the Property.

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

No, the hardship does not result from any action taken by Petitioner.

The need for the floor system Petitioner requests is a result of the location and construction of the Property, which was constructed before Petitioner purchased it. The need for a floor system to be installed arises from the condition of the Property when Petitioner acquired it, which was not to current building code standards. Because this condition arose before Petitioner acquired the Property and required an engineering analysis to identify, it did not result from any action taken by Petitioner. Further, the Property's location and orientation, where it is more exposed than other homes to the kind of forces that could cause personal injury and property damage, is a result of a construction process with which Petitioner was never involved.

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

Yes, the variance will (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.

First, the requested variance will be consistent with the spirit, purpose, and intent of the rules because it preserves and improves the safety of the public without any disturbance or damage to coastal resources. The requested variance achieves the balance between preserving coastal habitat and resources and serving the broader public interest.

As Reece Engineering's analysis indicates, a floor system, including subfloor, is needed to ensure that Petitioner's house is adequately protected from very high winds and damaging coastal forces. At the same time, construction of the requested floor system does not conflict with the spirit of 15A N.C.A.C. 7H.0306(a)(6), because:

a. The project will occur entirely within the four walls of the existing building, thus requiring no increase in the building envelope;

b. There will be no change in the building footprint and no increase in built upon area;

c. There will be no construction outside the residence, and no disturbance of dunes, vegetation, wildlife, public access, or other coastal resource; and

d. The project is *de minimis* in scale – only involving a 12' x 12' floor area.

Second, the requested variance secures the public safety and welfare by improving the safety and integrity of Petitioner's home without affecting neighboring landowners or public visitors to the coast and without damage to coastal resources.

The current dining room wall of Petitioner's property is a potential hazard, as it does not meet current building codes. The requested variance would allow Petitioner to correct this hazardous condition, thereby helping to protect human life and the coastal environment from the dangers of a destructive storm.

At the same time, construction of a 144-square-foot floor system wall would require a minimum of construction work, all of which would take place entirely within the building envelope of the Property. As a consequence, this improvement would not create any condition that would interfere with the public's use of the beach, would cause no damage to coastal resources, and would not create a substantial increased risk of damage to coastal resources in the future. As such, the only effect that granting the requested variance would have on the public safety and welfare is that it would improve the safety and structural integrity of Petitioner's home.

Third, the requested variance preserves substantial justice by allowing Petitioner to correct a hazardous condition on the Property without any harm or danger to coastal resources. In addition, the small increase in floor area will increase rental income for the Property, as well as revenue for the Town of North Topsail Beach and Onslow County.

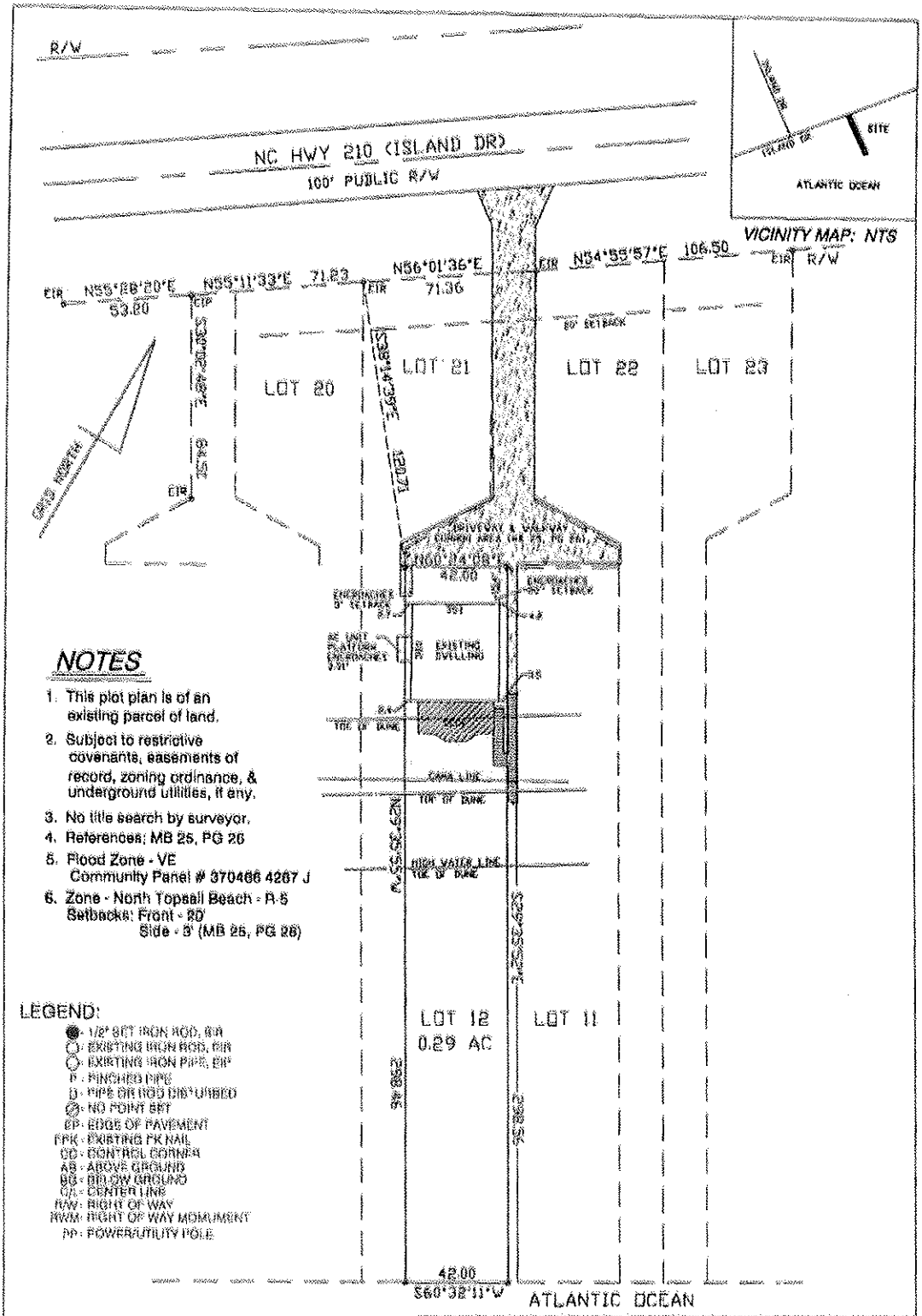
In summary, Petitioner faces a hardship—specifically, an inadequately braced wall that creates a safety hazard—which results from the peculiarities of the Property's construction and location, attributes over which Petitioner had no control or input. The variance sought would allow Petitioner to construct a floor system to address this hardship, yet would involve a *de minimis* amount of development that would not result in any increased risk to the public and would cause no harm to coastal resources.

ATTACHMENT E

STIPULATED EXHIBITS:

-Survey of the lot
-Reece Engineering report, dated February 24, 2012
-CAMA permit application
-April 17, 2012 CAMA permit denial letter
-Variance request from O'Quin
-May 18, 2012 email from DCM to Petitioner
-May 18, 2012 site photo of Floor
-June 1, 2012 NOV with FLSNV and setback shown on the survey
-June 30, 2012 Letter from Petitioner's Counsel to DCM
-July 18, 2012 Letter from DCM's Counsel to Petitioner's Counsel
-July 25, 2012 Letter from Petitioner's Counsel to DCM's Counsel
-July 30, 2012 Letter from DCM to Petitioner
-photo of the Floor post-restoration
-Affidavit of Petitioner
-Affidavit of O'Quin (Petitioner's agent)

-Powerpoint with aerial and ground photos of the site



NOTES

1. This plat plan is of an existing parcel of land.
2. Subject to restrictive covenants, easements of record, zoning ordinance, & underground utilities, if any.
3. No title search by surveyor.
4. References: MB 25, PG 26
5. Flood Zone - VE
   Community Panel # 370486 4267 J
6. Zone - North Topsail Beach - R-6
   Setbacks: Front - 20'
   Side - 5' (MB 25, PG 26)

LEGEND:

- ● - 1/2" SET IRON ROD, SIR
- ○ - EXISTING IRON ROD, EIR
- ○ - EXISTING IRON PIPE, EIP
- P - PINCHED PIPE
- D - PIPE OR ROD DISTURBED
- ⊘ - NO POINT SET
- EP - EDGE OF PAVEMENT
- PK - EXISTING PK NAIL
- CC - CONTROL CORNER
- AG - ABOVE GROUND
- BG - BELOW GROUND
- CL - CENTER LINE
- R/W - RIGHT OF WAY
- RWM - RIGHT OF WAY MONUMENT
- PP - POWER/UTILITY POLE

NORTH CAROLINA
ONSLOW COUNTY

I, WESTON LYALL, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY FOR DEED BOOK 3141 PAGE 708; THAT THIS PLAT WAS NOT PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 16TH DAY OF MARCH, A.D. 2012.

L-4438

WESTON LYALL
REGISTRATION NUMBER L-4438

PRELIMINARY PLOT PLAN FOR

JONATHAN & LAUREN GINDES

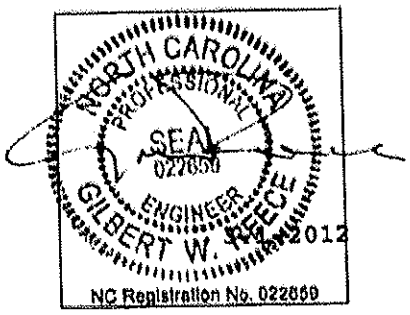
LOT 12 ISLAND DRIVE
OCEAN RIDGE VILLAGE I
NORTH TOPSAIL BEACH, NC

SCALE: 1" = 50'

MARCH 16, 2012

WESTON LYALL, PE, PLS
214 N. HIGHWAY 17 SUITE 1
HOLLY RIDGE, NC 28445
910-329-9961

reece ENGINEERING AND DESIGN



February 24, 2012

Orin Oquin
email: orinoquin@yahoo.com
910.330.3310

CONTRACT: Framing Analysis and Inspection
4172 Island Dr
North Topsail Beach, NC

To Whom It May Concern;

A framing analysis of the renovations at the above mentioned address was performed on February 14, 2012. This service was requested by the G.C., Orin Oquin and only applies to the removal of the ocean front kitchen/dining /living interior dividing walls and the adding of a section of floor system above the dining area to strengthen a "tall wall" as discussed at that time.

The existing south facing dining room exterior wall is currently a 2x4 wall in excess of 20ft high. This wall does not meet code for 130mph wind loads and did not meet code at the time of construction. This wall should be braced at the midspan with a floor system consisting of 2x12@16" oc running perpendicular to the ocean and decked with ¾" subfloor nailed at 6" oc. The balloon framed tall wall should have a Simpson H2.5A strap connecting each wall stud to the floor deck. It is the opinion of Reece Engineering that this bracing must be done to ensure a safe habitable structure.

With respect to the interior walls, existing was a (4) ply 11-1/4" LVL running parallel to the ocean and (2) ply 11-1/4 LVL's hung into the 4 ply at the kitchen to hallway divide and at the dining to hallway divide, both running perpendicular to the ocean. These beams were all located in the second level floor system. The walls supporting this framing can be removed with the exception of the 4 point load locations as discussed at the time of inspection. Two locations under the 4 ply must remain and two locations under the perpendicular beams must remain, again, discussed at the time of inspection. The beam at the dining to hallway divide should be verified that it is a (2) ply 11-1/4 LVL and that it has a hanger located at the (4) ply intersection. Adding a new floor system above the dining area as specified above is a structural requirement.

This analysis assumes that all construction not specified in this document is per the requirements of the NCSBC, the original contract documents, and good building practice. If there are any questions regarding this letter please contact Reece Engineering.

Sincerely,

Gilbert W. Reece, P.E.
Structural Engineer

402 NORTH TOPSAIL DR. • SURF CITY, NC • 28445
PHONE: 910-200-7616 • FAX: 910-221-5406
EMAIL: GWREECE@CHARTER.NET

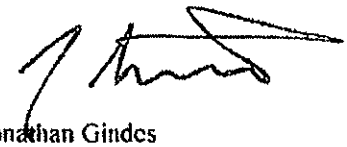
Jonathan Gindes
9406 Foxgrove Court
Raleigh NC 276[illegible]7

February 13, 2012

To whom it may concern,

I Jonathan Gindes authorize Orin O'Quin of O'Quin Construction to act as my agent in applying for a CAMA permit or any other permit required to perform work on my home located at 4172 Island Drive.

Jonathan



Jonathan Gindes
919-433-2231
jgindes@affinergy.com

OCEAN HAZARD AEC NOTICE

Project is in an: _____ **Ocean Erodible Area** _____ **High Hazard Flood Area** _____ **Inlet Hazard Area**

Property Owner: JONATHAN & LAUREN GINOES

Property Address: 4172 ISLAND DR. N.T. BEACH NC

Date Lot Was Platted: _____

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

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

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

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

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

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

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

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

_____ 2/13/12

Property Owner Signature *Date*

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

For more information, contact:

_____

Local Permit Officer

_____

Address

_____

Locality

_____

Phone Number

Receipts for
Certified Mail
(Staple Here)

2/14/12
Date

Donald Thompson
Adjacent Property Owner

445 Western Blvd
Mailing Address

Jack. NC. 28546
City, State, Zip Code

Dear Adjacent Property: ORIN O'Quin Agent For:

This letter is to inform you that I, Jonathan Gindes have applied for a CAMA Minor
Property Owner

Permit on my property at 4172 ISLAND DR N.T. BEACH in COUNTY ONSLOW
Property Address

County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910 330 3310 ,or by mail at the address listed below. If you wish to
Applicant's Telephone

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

LPO NAME
Local Permit Officer for LOCAL GOVERNMENT
LOCAL GOVERNMENT ADDRESS
CITY, STATE, ZIP CODE

Sincerely,

ORIN O'Quin - Agent For owners
Property Owner

1457 Old Folkstone Rd
Mailing Address

Sneads ferry NC 28460
City, State, Zip Code

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Jonathan & LAUREN COLANES
(Name of Property Owner)

property located at 4172 ISLAND DRIVE N. T. BEACH
Address, Lot, Block, Road, etc.)

on ATLANTIC OCEAN (Waterbody), in N. T. BEACH (Town and/or County), N.C.

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

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Signature

Print or Type Name

Telephone Number

Date

#1. MAINT. ON EXSISTING DECKS

#2. R & R EXSISTING EXT. DOORS & WINDOWS

#3. SPLIT A portion of the 20' CIELING IN LIVING ROOM OVER DINING AREA to CREATE A NEW FLOOR SPACE 12' X 12' IN AREA.

Thank you for Your Consideration with our Request.

If you have any ? Please call me at 910 330-3310

ORIN O'QUIN Agent for owners.

Receipts for
Certified Mail
(Staple Here)

2/14/12
Date

GBX LLC
Adjacent Property Owner

7269 MANOCOAKS Dr
Mailing Address

RALEIGH NC
City, State, Zip Code 27615

Dear Adjacent Property: ORIN O'Quin Agent For:

This letter is to inform you that I, Jonathan Grindes, have applied for a CAMA Minor
Property Owner

Permit on my property at 4172 ISLAND Dr N.T. BEACH, in COUNTY ONSLOW
Property Address

County. As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 910 330 3310, or by mail at the address listed below. If you wish to
Applicant's Telephone

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

LPO NAME
Local Permit Officer for LOCAL GOVERNMENT
LOCAL GOVERNMENT ADDRESS
CITY, STATE, ZIP CODE

Sincerely,

ORIN O'Quin - Agent For owners
Property Owner

1457 0.D folkstone rd
Mailing Address

Sneads ferry NC 28460
City, State, Zip Code

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

Beverly Eaves Perdue
Governor

Braxton C. Davis
Director

Dee Freeman
Secretary

April 17, 2012

CERTIFIED MAIL – 7007 0220 0000 8224 7212
RETURN RECEIPT REQUESTED

Jonathan and Lauren Gindes
9406 Foxgrove Court
Raleigh, NC 27617

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMITAPPLICATION NUMBER- NTB12-06

PROJECT ADDRESS- 4172 Island Drive, North Topsail Beach, Onslow County, NC

Dear Mr. and Mrs. Gindes:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. Specifically, the development for which you applied consisted of increasing the total floor area of a structure within the minimum setback (measured 60 feet from the First Line of Stable Natural Vegetation (FLSNV), or 30 times the shoreline erosion erosion rate of 2 feet/year, whichever is greater).

Your proposal is inconsistent with 15 NCAC 7H .0306(a)(6), which states that: ***"Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements".***

I have concluded that your request also violates NCGS 113A-120(a)(8), which requires that all applications be denied which are inconsistent with our Local Land Use Plan. On page 85 of the Land Use Plan, you will find that The North Topsail Beach Land Use Plan, Section VI: Plan for the Future (C)(2) states that ***"This plan contains some policies which exceed minimum 15A NCAC 7H use standards for AECs. Otherwise, the Town accepts State and Federal Law regarding land uses and development in AECs".***

127 Cardinal Drive Ext., Wilmington, NC 28405
Phone: 910-796-7215 \ FAX: 910-395-3964 Internet: www.nccoastalmanagement.net

One NorthCarolina *Naturally*

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

Respectfully yours,

Jason Dail, LPO
127 Cardinal Drive
Wilmington, NC 28405

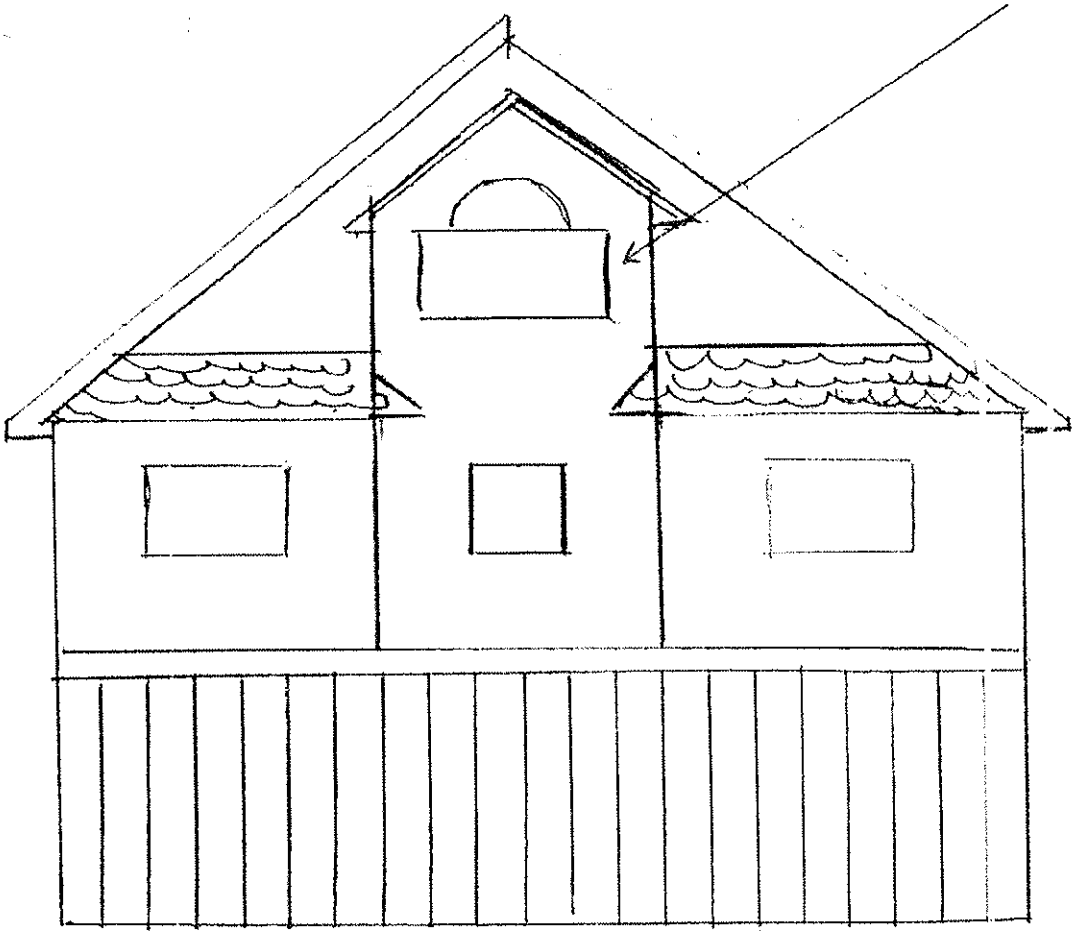
cc: Orin Oquin, Agent, 1457 Old Folkstone Road, Sneads Ferry, NC 28460
Jimmy Canady, Building Inspector, 2008 Loggerhead Court, North Topsail Beach, NC 28460

ORIN O'QUIN N.C. GEN. CONT. 34380

AGENT FOR: JONATHAN & LAUREN GINDES

DEAR SIRS: WE RESPECTFULLY REQUEST YOUR CONSIDERATION IN POSSIBALLY GRANTING US A CAMA VARIANCE ON THIS 140 S.F. OF FLOOR SPACE.

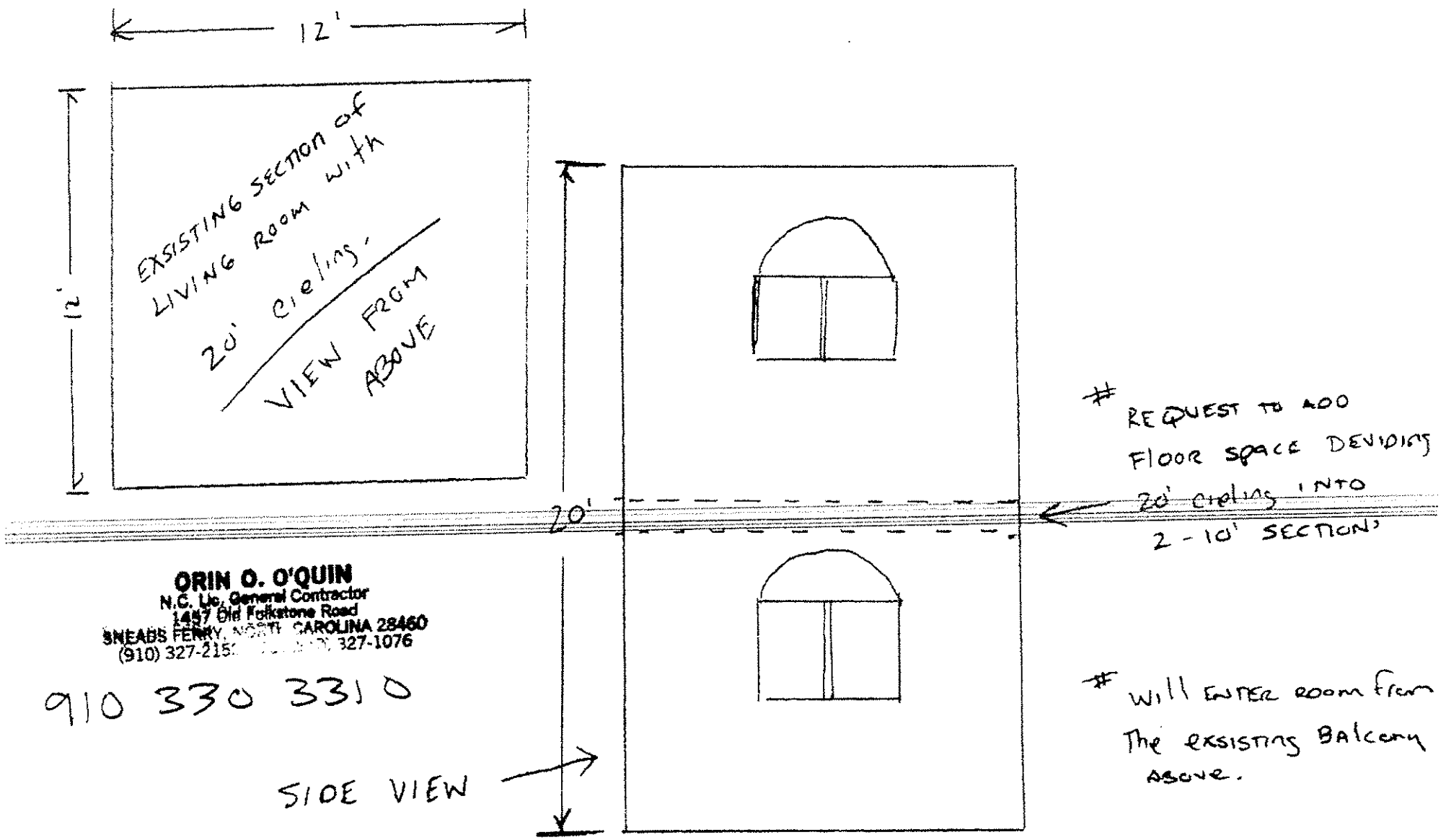
WE REQUEST TO SPLIT THIS 12'X12'X2.0' HIGH ROOM INTO 2 levels



417 ISLAND DR
N. TOP SAIL BEACH

4172 ISLAND DR N.T.B.

ATTN: MR. JASON DAIL



ORIN O. O'QUIN
N.C. Lic. General Contractor
1447 Old Folkstone Road
SNEADS FERRY, NORTH CAROLINA 28460
(910) 327-215[illegible] 327-1076

910 330 3310

Goebel, Christine

From: Dail, Jason [jason.dail@ncdenr.gov]
Sent: Wednesday, January 23, 2013 2:13 PM
To: Goebel, Christine
Subject: FW: time for a call

FYI

5/18/12 email

Please note that e-mail correspondence to and from this address may be subject to the North Carolina Public records Law and may be disclosed to third parties.

From: Dail, Jason
Sent: Friday, May 18, 2012 3:07 PM
To: 'Jonathan Gindes'
Cc: Wilson, Debra; 'Orin Oquin'
Subject: RE: time for a call

Mr. Gindes,

I'll follow up with a formalized letter on Monday, but for now, I wanted to let you know where we stand with this project.

As I indicated on the phone earlier today, staff with the Division of Coastal Management (DCM) initially met with your contractor (Orin Oquin) on March 9, 2012, to discussed the unauthorized development that had taken place on the property prior to our site visit on March 8, 2012. Initially, I was informed that Mr. Oquin's subcontractor had not performed any work associated with the violation in question, however, I was later informed that they did the work without having obtained the appropriate CAMA permits. During our meeting on March 9, 2012, when we met with Mr. Oquin and his subcontractor, we informed them that we would not pursue issuing a Notice of Violation (NOV) provided that either you, or him, remove the subfloor in the room in question and leave the space open as it was prior to commencement of the unauthorized construction. Mr. Oquin was amenable to our request and the plywood was removed leaving just the subfloor joist exposed.

On March 23, 2012, Mr. Oquin submitted a CAMA Minor Permit, on your behalf, requesting authorization to increase the total floor area inside the residence in question (previous violation). In short, the proposed work would result in the creation of a 12' x 12' room within the residence. However, because the proposed construction would have increased

the total floor area of a structure within the 60' setback, which is development that could not have been permitted, the Division generated a certified letter to you (dated April 17, 2012) indicating that your proposal was being denied. The reference number for this proposal is documented in our office as Permit Application Number NTB12-06. The April 17, 2012, letter advised you of your appeals process as well as your rights to request a variance with the Coastal Resources Commission (CRC).

On May 18, 2012, I revisited the property in question and was allowed access by one of your construction workers. Upon entry, I noticed that the area in question (12' x 12' addition), for which we had denied a permit, was completely finished and trimmed. This work has occurred without permit approval and without receipt of a variance from the CRC, therefore you are in violation of the Rule requirements established by the CRC.

At this time, I am requesting that you CEASE AND DESIST any/all development activities on, to, or within the residential structure located at 4172 Island Drive, in North Topsail Beach, North Carolina. Additionally, the DCM request that you RESTORE the affected area to the condition to which it existed prior to commencement of the unauthorized development, first documented by DCM on March 8, 2012, by removing any/all structure associated with the violation. This includes removing the entire floor system on the 12' x 12' room that was applied for in your March 23, 2012, CAMA permit application.

The DCM will be issuing you a Notice of Violation in the upcoming days for the unauthorized development. Also, because this violation occurred after you and your contractor had received instructions indicating that the development could not have been permitted, the DCM is considering this a Willful and Intentional Violation. The NOV will specify a timeline for restoration and will also inform you of the amount of your civil assessment.

As it stands, we cannot move forward with a variance request because you have an active violation that requires restoration. In order for you to move forward with the variance request, you are going to have to remove the unauthorized development.

Please feel free to call if you have any questions.

Jason

Please note that e-mail correspondence to and from this address may be subject to the North Carolina Public records Law and may be disclosed to third parties.

From: Jonathan Gindes [mailto:jgindes@affinergy.com]
Sent: Friday, May 18, 2012 1:18 PM
To: Dail, Jason
Subject: time for a call

Jason –I got a message second hand that there was a problem with my home at 4172 island drive, and as I live in Raleigh I'm not there often and want to make sure to be responsive to remedy what ever it is as quick as possible. I'm heading to the outer banks for a week of vacation tomorrow so if you have a few minutes and could call my cell at 201-951-5130 to let me know more info and what actions I should take?

Separately thanks for your help on staking the cama line at 4238 island. We were able to get a survey done based on your marks and it was helpful in our diligence of the lot which we are going to proceed to purchase. I appreciate the timeliness of your help.

jonathan

Jonathan Gindes
CFO & SVP Business Development
Affinergy LLC
(919) 433-2231 - work
(201) 951-5130 - mobile
www.affinergy.com

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

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

NOTICE OF VIOLATION
June 1, 2012

CERTIFIED MAIL 7010 0290 0003 0833 7591
RETURN RECEIPT REQUESTED

Mr. Jonathon Gindes
9406 Foxgrove Court
Raleigh, NC 27616

RE: NOTICE OF VIOLATION AND REQUEST TO CEASE UNAUTHORIZED DEVELOPMENT
CAMA VIOLATION #12-05D

Dear Mr. Gindes:

This letter confirms that on March 9, 2012, Debra Wilson, District Manager, Tara MacPherson, Compliance and Enforcement Representative and I met with your contractor (Mr. Orin Oquin) onsite at your property located at 4172 Island Drive adjacent to the Atlantic Ocean located in or near North Topsail Beach, Onslow County, North Carolina. The purpose of the visit was to investigate unauthorized development of an additional 12 ft. by 12 ft. room within a private residence adjacent to the Atlantic Ocean within the 60 ft. oceanfront setback. This letter also confirms the receipt of your March 23, 2012 CAMA Minor Permit application (submitted by your contractor Mr. Orin Oquin) for this development, the April 17, 2012 denial letter sent to you regarding this development my May 18, 2012 follow up site visit and the May 18, 2012 email I sent to you regarding this matter.

Information gathered by me for the Division of Coastal Management indicates that you have undertaken Minor Development in violation of the Coastal Area Management Act (CAMA). No person may undertake Minor Development in a designated Area of Environmental Concern (AEC) without first obtaining a permit from the North Carolina Department of Environment and Natural Resources. This requirement is imposed by North Carolina General Statute (N.C.G.S.) 113A-118.

I have information that indicates you have undertaken or are legally responsible for the unauthorized addition of 144 sq. ft. of floor area in a structure within the 60 ft. oceanfront setback on the aforementioned property. This development was completed after a denial letter was sent for this activity under Permit Application No. NTB12-06. This activity took place in the Ocean Hazard AEC that is contiguous with the Atlantic Ocean. Ocean Hazard areas are designated as Areas of Environmental Concern (AEC). No CAMA permit was issued to you for work in this Area. Based on these findings, I am initiating an enforcement action by issuing this ***Notice of Violation*** for violation of the Coastal Area Management Act.

I request that you immediately **CEASE AND DESIST** any further development and contact me about this matter. A civil assessment of up to $1,000 plus investigative costs may be assessed against any violator. Each day that the development described in this Notice is continued or repeated may constitute a separate violation that is subject to an additional assessment of $1,000. An injunction or criminal penalty may also be sought to enforce any violation in accordance with N.C.G.S. 113A-126.

It is the policy of the Coastal Resources Commission to assess a civil penalty plus investigative costs against all violations. This is done to recoup some of the costs of investigating the violation and/or to compensate the public for any damage to its natural resources. The amount assessed will depend upon several factors, including the nature and area of the resources that were affected and the extent of the damage to them.

Based upon the North Carolina Administrative Code, Title 15A, Subchapter 07H. State Guidelines for Areas of Environmental Concern, the activity you have undertaken by increasing the total floor area of a structure within the 60 ft. oceanfront setback in the Ocean Hazard AEC AEC(s), is not consistent with Section 15 NCAC 7H .0306(a)(6), which states that "Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirement established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with the current setback requirements". Therefore, I am requesting that the144 sq. ft. of new floor area be removed. Please refer to the enclosed Restoration Agreement.

If you intend to cooperate with my request, please sign one of the attached Restoration Agreements and return it to me in the enclosed, self-addressed envelope within ten (10) days of receipt of this letter. Failure to comply with this request or respond back to this office prior to the requested deadline with an acceptable schedule for compliance will be interpreted as a refusal to cooperate and will result in a Notice of Continuing Violation, as well as a court injunction being sought ordering compliance.

The relevant statutes and regulations are available from this office, and I am willing to assist you in complying with the requirements of these laws. A site inspection will be made in the near future to determine whether this **REQUEST TO CEASE AND DESIST** has been complied with. I request that you contact me immediately.

Thank you for your time and cooperation in resolving this important matter. If you have any questions about this or related matters, please call me at (910) 796-7215. Upon completion of the restoration as requested in the Restoration Plan Agreement to the satisfaction of the Division of Coastal Management, you will be notified as to the amount of the civil assessment for undertaking development without first obtaining the proper permit(s) and development that is inconsistent with Coastal Resources Commission rules.

Sincerely,

Jason Dail
Coastal Management Representative

Cc: M. Ted Tyndall, Assistant Director, DCM
Debra Wilson, District Manager, DCM
Roy Brownlow, Compliance Coordinator, DCM
Tara MacPherson, Compliance and Enforcement Representative

ENCLOSURE

Tm/Jd

RESTORATION PLAN

For
Mr. Jonathon Gindes Property
CAMA Violation No. 12-05D
Property located at 4172 Island Drive, Onslow County

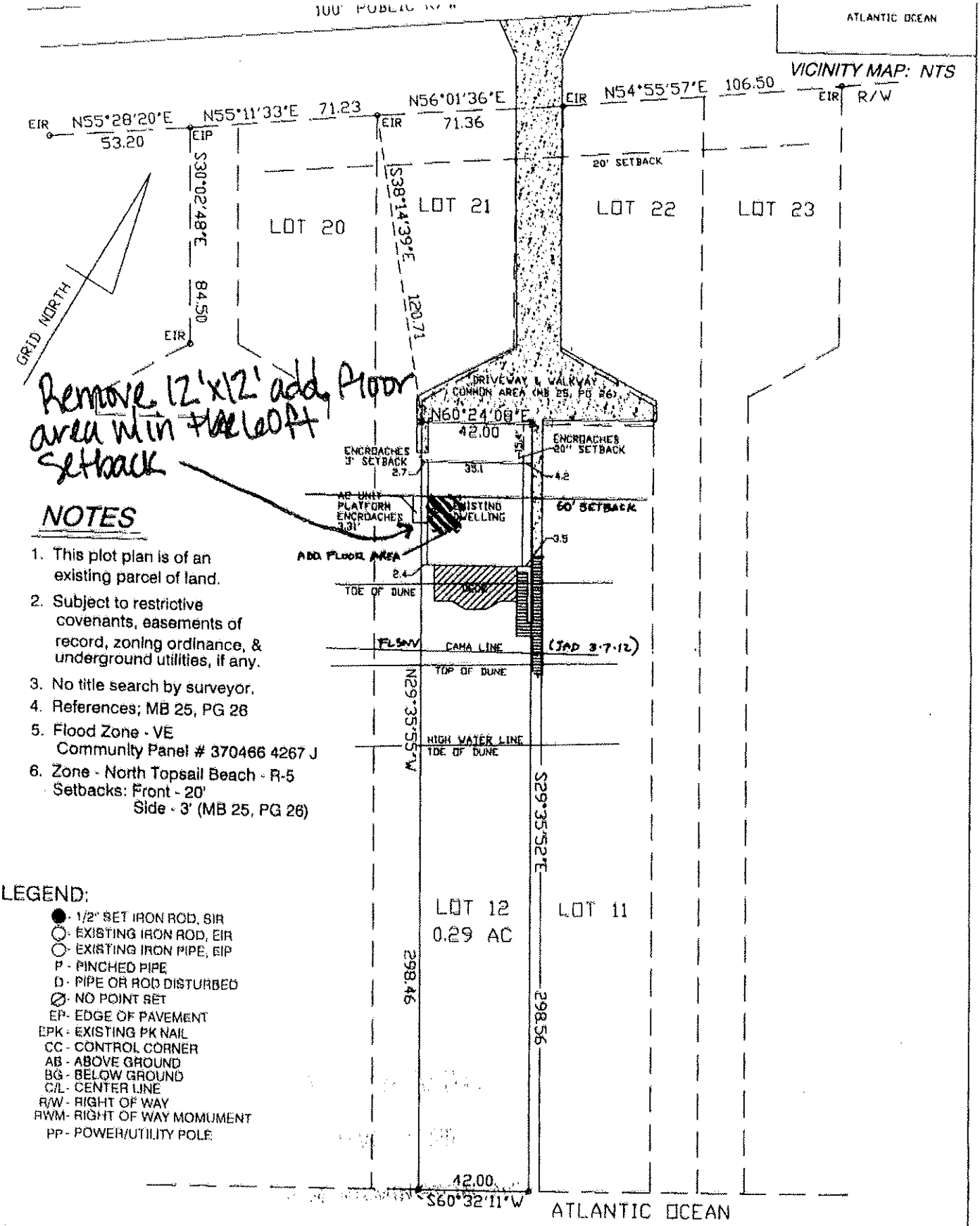
Please See Attached Drawing

I, Mr. Jonathon Gindes, agree to complete this restoration to the satisfaction of the Division of Coastal Management (DCM) by July 1, 2012, or provide an explanation for non-compliance and a reasonable request for time extension. When corrective actions are complete, I will notify the DCM so the work can be inspected.

SIGNATURE: _____

DATE: _____

It is the policy of the Coastal Resources Commission to assess a civil penalty plus investigative costs against all violations. The amount assessed will depend upon several factors, including the nature and area of the resources that were affected and the extent of the damage to them. If restoration is not undertaken or satisfactorily completed, a substantially higher civil assessment will be levied and an injunction sought to require restoration.



NOTES

1. This plat plan is of an existing parcel of land.
2. Subject to restrictive covenants, easements of record, zoning ordinance, & underground utilities, if any.
3. No title search by surveyor.
4. References; MB 25, PG 26
5. Flood Zone - VE
   Community Panel # 370466 4267 J
6. Zone - North Topsail Beach - R-5
   Setbacks: Front - 20'
   Side - 3' (MB 25, PG 26)

LEGEND:

- ● - 1/2" SET IRON ROD, SIR
- ○ - EXISTING IRON ROD, EIR
- ○ - EXISTING IRON PIPE, EIP
- P - PINCHED PIPE
- D - PIPE OR ROD DISTURBED
- Ø - NO POINT SET
- EP - EDGE OF PAVEMENT
- EPK - EXISTING PK NAIL
- CC - CONTROL CORNER
- AB - ABOVE GROUND
- BG - BELOW GROUND
- C/L - CENTER LINE
- R/W - RIGHT OF WAY
- RWM - RIGHT OF WAY MONUMENT
- PP - POWER/UTILITY POLE

50' 25' 0' 50' 100'

GRAPHIC SCALE

NORTH CAROLINA
ONSLOW COUNTY

I, WESTON LYALL, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED BOOK 3744 PAGE 706; THAT THIS PLAT WAS NOT PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS

NORTH CAROLINA

PRELIMINARY PLOT PLAN FOR

JONATHAN & LAUREN GINDES

LOT 12 ISLAND DRIVE
OCEAN RIDGE VILLAGE I
NORTH TOPSAIL BEACH, NC

SCALE: 1" = 50'

MARCH 19, 2012

K&L|GATES

K&L Gates LLP
4350 Lassiter at North Hills Avenue, Suite 300
Post Office Box 17047
Raleigh, NC 27619-7047

t 919.743.7300 www.klgates.com

June 30, 2012

Stanford D. Baird
D 919.743.7334
F 919.516.2034
stanford.baird@klgates.com

Via Electronic Mail and First Class Mail

Ms. Debra Wilson
District Manager, Wilmington District
North Carolina Department of Environment and Natural Resources,
Division of Coastal Management
127 Cardinal Drive Ext.
Wilmington, NC 28405-3845

Re: Notice of Violation #12-05D Issued to Jonathan Gindes
(Property Located at 4172 Island Drive, North Topsail Beach, NC)

Dear Ms. Wilson:

As we have discussed, our firm represents Jonathan Gindes, the homeowner in the above referenced matter. Thank you very much for your patience and consideration in this matter, as we continue with good-faith negotiations to resolve this issue.

As you will recall, the above-referenced notice of violation, dated June 1, 2012 and received by Mr. Gindes on June 5, 2012 (the "NOV") requested that Mr. Gindes respond to the NOV or sign a form restoration agreement within 10 days of receipt. We requested additional time to respond to the NOV in letters dated June 11, 2012 and June 13, 2012, and after subsequent discussion, the Division of Coastal Management ("DCM") granted an additional fifteen (15) days in which to respond to the NOV, through and including June 30, 2012. We appreciate this additional time in which to gather important information related to this matter and to respond to the NOV.

First and foremost, our client regrets the confusion that has arisen from his request to build a 12'x12' flooring system (the "Floor") within the building envelope of a home he owns at 4172 Island Drive, North Topsail Beach, NC (the "Property"). Mr. Gindes also regrets the misunderstandings regarding the completion of the Floor's construction. We seek a resolution of this matter that both recognizes the DCM's finding of a violation of CAMA development regulations and one that preserves the structural integrity and safety of the Property.

In addition to this background, there are several important mitigating factors to consider as DCM evaluates a potential resolution of this matter. First, it appears that the construction of the Floor was based on a misunderstanding of CAMA authorization

procedures. Based on our factual investigation, it was Mr. Gindes' understanding that the proper regulatory path for construction of the Floor was to obtain a variance from the CAMA development regulations. Based on communications with DCM, it was also his understanding that to be eligible to apply for a variance, he first had to apply for a CAMA Minor Permit and have such permit denied. It was also his understanding that DCM staff would support a variance petition for construction of the Floor. The CAMA Minor Permit was applied for and was denied on April 17, 2012. Our client's understanding was that, following the permit denial, the variance would be granted with the support of staff. It was in reliance on this understanding, and on the good-faith attempt by Mr. Gindes' contractor to apply for a variance, that work on the Floor was completed. In retrospect, it appears that the variance petition submitted to DCM did not meet the procedural requirements of 15A N.C.A.C. 7J.0701 and DCM staff may have interpreted the submittal as a permit application rather than a variance petition.

Second, based on an engineering review by a professional structural engineer, the Floor is important to the structural integrity of the Property and also required for building code compliance. Prior to construction of the Floor, an engineering survey of the Property revealed that the Floor is required to meet current building code standards. The engineering analysis prepared by Reece Engineering and Design, dated February 24, 2012, found that:

> The existing south facing dining room exterior wall is currently a 2x4 wall in excess of 20ft. high. This wall ***does not meet code*** for 130mph wind loads and did not meet code at the time of construction. This wall should be braced at the midspan with a floor system consisting of 2x12@16' oc running perpendicular to the ocean and decked with a 3/4" subfloor nailed at 6" oc. The balloon framed tall wall should have a Simpson H2.5A strap connecting each wall stud to the floor deck. ***It is the opinion of Reece Engineering that this bracing must be done to ensure a safe habitable structure.***

(See Reece Engineering letter dated 2/24/2012, a copy of which is enclosed.) As noted by the engineer, the Floor is important to the structural integrity of the home and to building code compliance. Of course, the Floor is important for safety reasons as well.

Third, while construction of the Floor may be technically inconsistent with the language of 15A N.C.A.C. 7H.0306(a)(6), this project did no damage to coastal resources and did not enlarge the home beyond its current footprint. This is not a case in which coastal resources have been compromised such as cases involving destruction of dunes, filling of coastal wetlands, or new development in an AEC. The Floor is a very small project - only 144 square feet - and is entirely within the existing building envelope of the Property. The

Floor has not damaged or impacted coastal resources in any way and has caused no loss of coastal resources. The fact that the Floor has not damaged coastal resources is a significant mitigating factor in this matter.

We propose a resolution of this matter that takes into account the mitigating factors noted above. Our client understands that the Floor does not comply with 15A N.C.A.C. 7H.0306(a)(6) as interpreted by DCM, and Mr. Gindes is prepared to accept his penalty. As part of a resolution of this matter as described below, Mr. Gindes would propose to pay a civil penalty of $2,500. However, due to the safety and code compliance concerns that would result if the Floor were to be removed, we humbly submit that human life and the coastal environment would be best protected if the Floor were to be left in place. This is particularly the case during the height of hurricane season, when the risk of wind damage to people and property is at its greatest. In lieu of removal of the Floor, we would propose appropriate mitigation pursuant to CAMA regulations as discussed below.

We recognize that DCM's preferred remedy for noncompliance is restoration. However, as the regulations note, restoration may be appropriate when "necessary to recover lost resources, or to prevent further resource damage." 15A N.C.A.C. 7J .0410. In this case, there has been no loss of or damage to coastal resources. For example, no dunes or oceanfront vegetation have been damaged, public access to the beach is not impeded, and no coastal wildlife has been harmed. Similarly, the Floor presents no danger of "further resource damage" as described in the rule. In cases such as this, where restoration will do nothing to repair or improve coastal resources, the rule requires mitigation. The Rule states that, when restoration will not recover lost coastal resources, such coastal resources "shall be replaced in compliance with the goals of the Commission's mitigation policy." 15A N.C.A.C. 7J .0410. Where, as in this case, concerns exist over the safety and integrity of the structure without the Floor and where the project was entirely within the four corners of the existing building, we would suggest that no resources can be recovered by restoring the affected site. In fact, restoration by removal of the Floor could *increase* rather than *prevent* resource damage. As such, rather than remove the Floor, we would propose that our client replace or preserve coastal resources "in compliance with the goals of the Commission's mitigation policy" as described in the Rule. A mitigation effort in North Topsail Beach, where beach erosion is severe, would be appropriate in this case. We look forward to discussing an appropriate mitigation project with DCM as part of a resolution of this matter.

We sincerely appreciate your patience and consideration, and earnestly look forward to resolving this matter. This communication is part of on-going good faith negotiations with the Division of Coastal Management toward resolution of this matter. The entirety of this letter is related to settlement negotiations and is not admissible as evidence in any

proceeding. We would request that we have an opportunity to discuss this matter with you and attorneys for DCM prior to any additional enforcement action in this case.

Very truly yours,

Stanford D. Baird

Enclosure

cc: M. Ted Tyndall, Assistant Director
Christy Goebel, Assistant Attorney General
Jason Dail, Coastal Management Representative
Jonathan Gindes
James L. Joyce, Esq.
(all via electronic mail only with enclosure)

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
CHRISTINE A. GOEBEL
cgoebel@ncdoj.gov

July 18, 2012

By Email to: Stanford.baird@klgates.com
Stanford D. Baird
K&L Gates LLP
PO Box 17047
Raleigh, NC 27619-7047

Re: Gindes Notice of Violation (NOV) restoration plan change request

Dear Mr. Baird,

It was a pleasure to meet you in person last Wednesday at your office, along with Mr. Joyce. During our meeting, you asked if the Division of Coastal Management (DCM) was willing to change its "remove the floor" restoration plan requirement with a "wall-in the door" option. I've had a chance to discuss this option with my client, and they cannot agree to that change. The reasoning for this choice is based on the fact that your client has enlarged his structure (which is "development" according to G.S. § 113A-103(5)a.) without a CAMA permit, following the April 17, 2012 permit denial for this same proposed work. The Coastal Resources Commission (CRC) defines its setbacks based on the "total floor area" within a structure, as that term is defined by 15A NCAC 07H .0306(a)(1). Total floor area includes "the total square footage of heated or air-conditioned living space."

In your client's case, DCM's restoration plan asked your client to remove only the flooring and sub-floor from the room so as to remove the "total floor area" from the house in order to lift the NOV and proceed with a variance. However, your proposal to sheet-rock the current door to the room shut so that it can't be used does not remove the "total floor area" from the home. While that "total floor area" may not be accessible if it is walled-off, it still remains as non-conforming heated or air-conditioned space not authorized by the CRC's rules. Accordingly, DCM staff stands behind their restoration plan dated June 1, 2012, which removes the total floor area square footage. If your client remains concerned about safety issues, he could lock the current door to the new room or wall-off that room so that it would be inaccessible to your client or his renters. That decision is certainly up to your client, although we would recommend that any such option be first discussed with the Town's building inspector.

Also, I wanted to make sure you got my email last week confirming that after the August 29-30, 2012 CRC meeting, the next meeting isn't until November 14-15, 2012. That meeting will have a variance filing deadline of Wednesday, October 3, 2012. As we discussed, the filing

deadline for the August meeting is today. I hope to receive your client's variance request. If your client chooses not to comply with the restoration plan and proceed with a variance, DCM staff will have to continue with further enforcement actions. Please let me know if you have any questions about the information relayed above.

Sincerely,

Christine A. Goebel
Assistant Attorney General

cc: Ted Tyndall, DCM Asst. Director
Doug Huggett, DCM Major Permits Manager
Debra Wilson, DCM Wilmington District Manager

K&L GATES

K&L Gates LLP
4350 Lassiter at North Hills Avenue, Suite 300
Post Office Box 17047
Raleigh, NC 27619-7047

t 919.743.7300 www.klgates.com

July 25, 2012

Stanford D. Baird
D 919.743.7334
F 919.516.2034
stanford.baird@klgates.com

Via Electronic Mail and First Class Mail

Christine A. Goebel
Assistant Attorney General
North Carolina Department of Justice
PO Box 629
Raleigh, NC 27602

Re: Notice of Violation #12-05D Issued to Jonathan Gindes
(Property Located at 4172 Island Drive, North Topsail Beach, NC)

Dear Ms. Goebel:

As we have discussed, our firm represents Jonathan Gindes, the homeowner in the above referenced matter. Thank you very much for meeting with us on Wednesday, July 11 to continue our good-faith negotiations to resolve this issue. We are in receipt of your letter dated July 18, 2012, regarding our client's options with regard to possible restoration actions to resolve the above-referenced notice of violation (the "NOV"). We appreciate your consideration of the alternative restoration method we discussed. Thank you also for your clarification regarding due dates for variance petitions. We were not able to pull together a complete variance petition prior to the July 18 filing deadline for the August meeting of the Coastal Resources Commission.

Mr. Gindes proposes to resolve the NOV by removing the floor covering and sub-flooring in the 12'x12' room that is the basis of the NOV (the "Restoration"). Upon review, it is our estimation that the Restoration could be complete and ready for inspection within ninety (90) days. This period of time will allow Mr. Gindes to take a number of important steps in order to properly prepare for and carry out the Restoration. First, per your suggestion in your letter of July 18, we intend to discuss the Restoration with the Town's building inspector to ensure that the Restoration is carried out in accordance with local building code and safety standards. Second, Mr. Gindes will have to obtain and review bids for the work called for in the Restoration plan and negotiate a contract for performance of the Restoration. Third, Mr. Gindes must consult with his homeowners' insurance provider to assess any potential liability and coverage issues related to the presence of a 144 square foot area with no flooring. Fourth, scheduling of the Restoration will depend on the availability of contractors during a period of time when some may be on vacation or already engaged on other projects.

Please let us know whether this proposal to resolve the NOV is acceptable. We appreciate your patience and consideration, and look forward to resolving this matter. This communication is part of ongoing good faith negotiations with the Division of Coastal Management toward resolution of this matter. The entirety of this letter is related to settlement negotiations and is not admissible as evidence in any proceeding.

Very truly yours,

Stanford D. Baird

cc: Jonathan Gindes
James L. Joyce, Esq.
(all via electronic mail only)

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

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

July 30, 2012

Mr. Jonathon Gindes
9406 Foxgrove Court
Raleigh, NC 27616

RE: CAMA VIOLATION CASE NO. 12-05D

Dear Mr. Gindes:

This letter confirms the receipt of your July 25, 2012 correspondence referencing your request for a 90 day restoration extension for restoring the unauthorized addition of 144 sq. ft. of floor area in a structure within the 60 ft. Oceanfront Setback that you are legally responsible for within the Ocean Hazard AEC. This unauthorized development took place at your property located at 4172 Island Drive in North Topsail Beach, Onslow County, North Carolina. Notice of Violation case number 12-05D was issued to you on June 1, 2012 for the unauthorized work and requested restoration.

Based on the July 25, 2012 letter from your attorney, Mr. Stanford D. Baird, and the circumstances described in that letter, your request to extend the restoration time limit is approved in order to allow you additional time to comply with the requested restoration. The restoration time limit is extended to **October 25, 2012,** which is ninety (90) days from the date of your letter. The requested restoration must be performed to the satisfaction of the Division of Coastal Management by this date.

Please sign the enclosed restoration agreement which reflects the proposed ninety (90) restoration time limit. Thank you for your cooperation in resolving this important matter. If you have any questions about this or related matters, please call me at (910) 796-7215.

Sincerely,

Debra D. Wilson
Coastal Management Representative

Cc: M. Ted Tyndall, Assistant Director, DCM
Roy Brownlow, Compliance Coordinator
Jason Dail, DCM
Mr. Stanford D. Baird, Esq
Christy Goebel, Asst. Attorney General

Tm/Dw

127 Cardinal Drive Ext., Wilmington, North Carolina 28405-3845
Phone: (910) 796-7215\ FAX: 910-395-3964 \ Internet: www.nccoastalmanagement.net

STATE OF NORTH CAROLINA

COUNTY OF Durham

IN THE MATTER OF THE VARIANCE PETITION OF JONATHAN GINDES BEFORE THE NC COASTAL RESOURCES COMMISSION; CRC-VR-12-10

AFFIDAVIT OF JONATHAN GINDES

I, Jonathan Gindes, being duly sworn, depose and say:

1. I am over the age of eighteen, have no legal disabilities, and have personal knowledge of the facts and information contained herein.

2. My wife, Lauren, and I purchased on February 2, 2012, and currently own a home located at 4172 Island Drive, North Topsail Beach, NC (the "Property").

3. At the time we purchased the Property, Lauren and I were not aware that any part of the Property did not meet current building codes or other safety regulations.

4. To my knowledge, in the entire subdivision where the Property is located, no other structure sits as far seaward as the Property does. The house on the Property is located as far landward as the lot will allow.

5. After purchasing the Property, planned some repairs and renovations on the Property.

6. As part of the plan of renovation, I hired Reece Engineering to conduct an engineering evaluation of the Property.

7. Based on Reece Engineering's evaluation, findings of safety hazards, and recommendations we had constructed a 12' by 12' floor system (the "Floor") above the dining room of the Property.

8. I was not aware of any need for a Coastal Area Management Act Minor Development Permit (the "CAMA Minor Permit") for construction of the Floor until Division of Coastal Management ("DCM") Staff visited the Property on March 8, 2012. Furthermore, I had interviewed 4 different general contractors before hiring Mr. O'Quin, and none of them mentioned the potential need for a CAMA minor permit for any of the interior renovations, although all mentioned that one would be needed for work performed on the deck. I naively interpreted their silence about a CAMA minor permit for interior work as meaning one would not be required.

9. It was my understanding, based on communications with DCM Staff, that I could not seek a variance unless and until I applied for a CAMA Minor Permit and such application was denied. It further was my understanding that DCM would support a variance petition for construction of the Floor.

10. Following DCM Staff's inspection of the Property on March 8, 2012, I asked my contractor, Orin O'Quin, to prepare the necessary applications for the CAMA Minor Permit and for a variance.

11. It is my understanding that Mr. O'Quin made a good faith effort to submit a valid variance petition to DCM Staff.

12. Following that submission, and based on my impression that the variance would be granted, I coordinated completion of work on the Floor. In hindsight I realize this was a poor choice.

Further your affiant says not.

This the 16 day of January, 2013.

Jonathan Gindes

Sworn to and subscribed before me this the 16th day of January, 2013.

Date: 1/16/13

Official Signature of Notary Public

Christopher Brasfield
Notary Public
Wake County
North Carolina
My Commission Expires 8/7/2013

Christopher Brasfield
Notary printed or typed name

My Commission Expires: 8/7/2013.

STATE OF NORTH CAROLINA

COUNTY OF Onslow

IN THE MATTER OF THE VARIANCE PETITION OF JONATHAN GINDES BEFORE THE NC COASTAL RESOURCES COMMISSION; CRC-VR-12-10

AFFIDAVIT OF ORIN O'QUIN

I, Orin O'Quin, being duly sworn, depose and say:

1. I am over the age of eighteen, have no legal disabilities, and have personal knowledge of the facts and information contained herein.

2. Petitioner Jonathan Gindes hired me to perform a number of minor renovations to his home located at 4172 Island Drive, North Topsail Beach, NC (the "Property") in February of 2012.

3. As part of Mr. Gindes's plan of renovation, Mr. Gindes hired Reece Engineering to perform an engineering survey of the Property.

4. Mr. Gindes sought to construct a 12' by 12' flooring system (the "Floor") above his dining room at the Property.

5. When I applied for a building permit from the Town of North Topsail Beach for the renovations I had been hired to perform, Town staff informed me that some part of the renovation may require a Coastal Area Management Act Minor Development Permit (the "CAMA Minor Permit").

6. Before I informed subcontractors for the project that Town staff had indicated that a Coastal Area Management Act ("CAMA") Minor Development Permit might be needed for the Floor, installation of the Floor was begun.

7. On March 8, 2012, DCM Staff visited and inspected the Property. They informed me that they would not issue a CAMA Minor Permit for the Floor, and that a variance would be required in order for the Floor to be installed.

8. Mr. Gindes requested that I prepare the necessary applications for a CAMA Minor Permit and also for a variance.

9. At that point in time, my impression was that our application for the CAMA Minor Permit would be denied, but that we would have the support of DCM Staff in seeking a variance for the Floor.

10. I completed what I believed at the time to be a valid variance petition and submitted that petition to DCM.

11. At no time did I instruct any of my subcontractors to complete work on the Floor or any other renovation project at the Property that I did not believe in good faith was in compliance with state and local regulations.

Further your affiant says not.

This the 16th day of January, 2013.

1-16-13

Orin O'Quin

Sworn to and subscribed before me this the 16th day of January, 2013.

Date: 01-16-2013

Official Signature of Notary Public

GLORIA V. CRADDOCK

Notary printed or typed name

My commission expires: 07-04-2016

South


Use mouse wheel or click and drag to view entire photo
4150
4158
5BR
4166
7BR
4176
4186
5BR
4190
4204
4BR
4216
4230
4BR
4246
4248
4256
6BR
0.1 Miles
From Pool
(distance
POOL
0.1 Miles
From Pool

North


4266
4268
4276
4294
6BR
4298
4306
4318
7BR
4324
4330
4BR
4334
4340
5BR
4348
5BR
4364
5BR
4366
6BR
4368
0.2 Ms
From
0.3 Miles
From Pool
0.4 M
From

Jonathan and Lauren Gindes
VARIANCE REQUEST

4172 Island Drive, North Topsail Beach, Onslow County

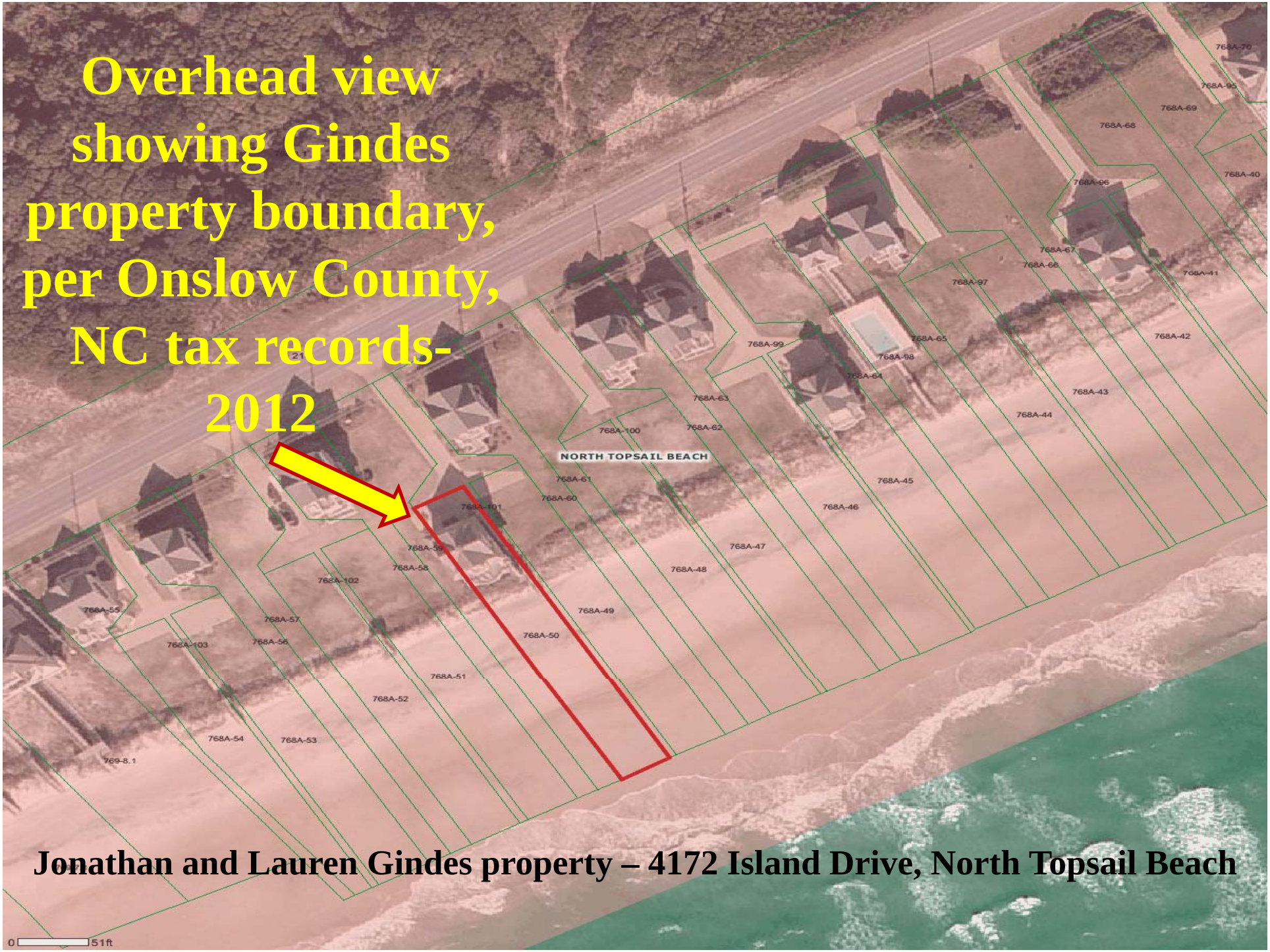
February 6, 2013


Jonathan and Lauren Gindes Property -
4172 Island Drive, North Topsail Beach, NC.
Photo: NCDOT Aerial Photography dated
5/19/2006
NCDOT PHTGM UNIT 28-6491
1:9600 5-19-06 RC-30
FS200 1/ 650 f/4.0 FF2.0 EC 0 SP- v/h.09822 00% dt014.5 ds022 26.9V -58mb ER00 CAM5317


Jonathan and Lauren Gindes
Residence – 4172 Island Drive,
North Topsail Beach, NC
210
Island Dr
Atlantic
Ocean
*Overhead View per Google Earth dated 12/31/2011
269 ft
© 2013 Google
Google earth
1993
34°28'55.42" N 77°26'28.99" W elev 11 ft
Eye alt 1186 ft

Jonathan and Lauren Gindes Residence (4172 Island Drive, North Topsail Beach, Onslow County, NC).

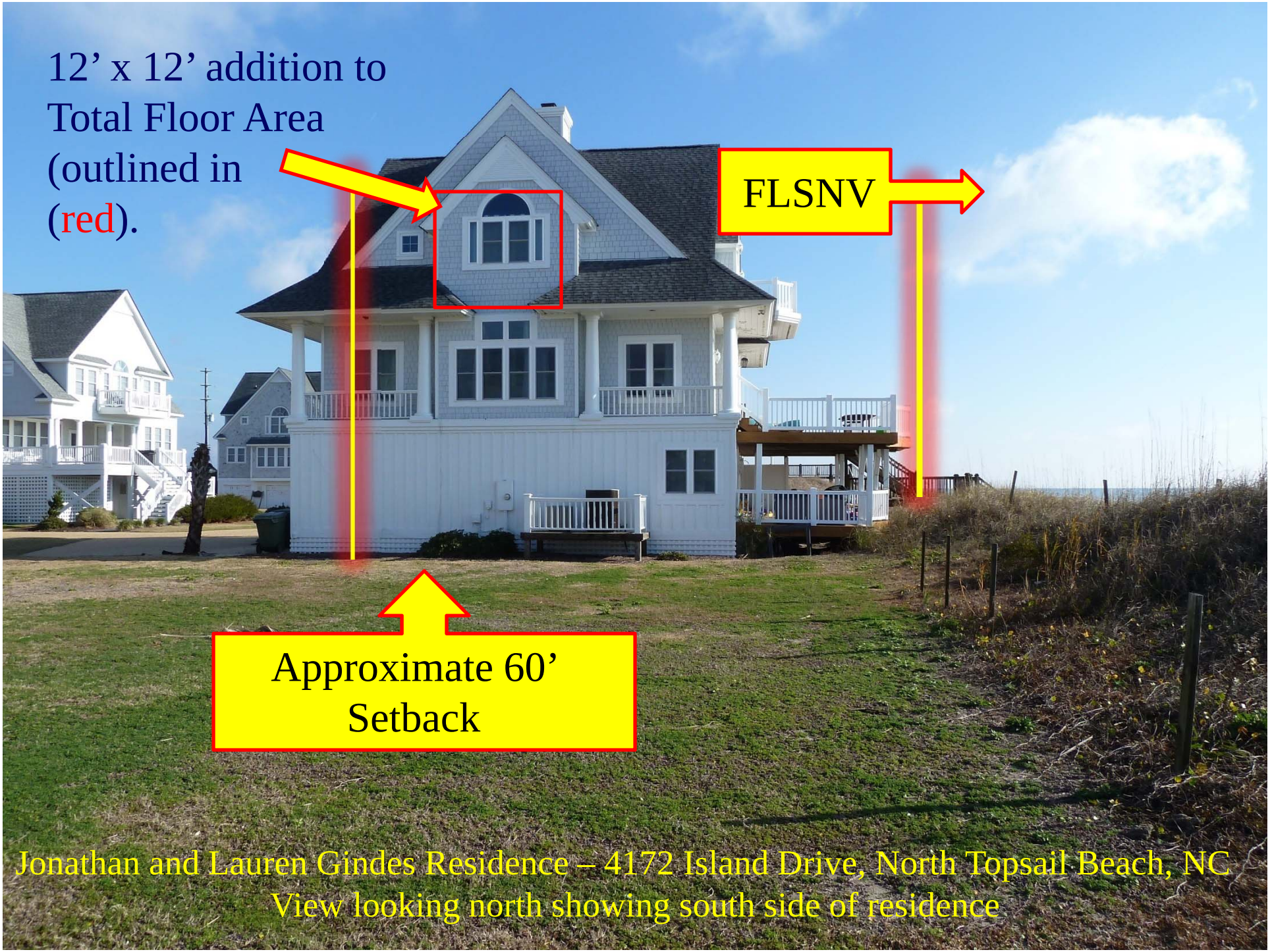
Overhead view per Google Earth dated 12/31/2011



Jonathan and Lauren Gindes property – 4172 Island Drive, North Topsail Beach


View looking west from wet sand beach showing ocean side of structure – 4172 Island Drive, North Topsail Beach, NC – Gindes Residence.
1/18/2013 8:45


View looking north (from south depicting residence and approximate First Line of Stable Natural Vegetation (FLSNV). Gindes residence – 4172 Island Drive, North Topsail Beach, NC.
FLSNV
1/18/2013 8:44



Jonathan and Lauren Gindes Residence – 4172 Island Drive, North Topsail Beach, NC
View looking north showing south side of residence


Interior view of un-permitted 12’ x 12’ floor.
Photo take by DCM staff on 5/18/2012.
Jonathan and Lauren Gindes Residence – 4172 Island Drive, North Topsail Beach

CRC-VR-12-11

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

400 COMMERCE AVENUE
MOREHEAD CITY, NC 28557

REPLY TO: AMANDA P. LITTLE
ENVIRONMENTAL DIVISION
TEL: (252) 808-2808
FAX: (252) 247-3330
amanda.little@ncdenr.gov

TO: The Coastal Resources Commission

FROM: Amanda P. Little, Assistant Attorney General

DATE: January 23, 2013 (for the February 6-7, 2013 CRC Meeting)

RE: **Variance Request by Allis Holdings, L.L.C.**

Petitioner proposes to construct additions to an existing restaurant to include a 20-foot by 26-foot wooden pergola over an elevated wood deck; a 4-foot by 4-foot elevated wood ramp and a second set of stairs on its property located in Duck, North Carolina. The Town of Duck Local Permit Officer denied Petitioner's application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10). Petitioner seeks a variance from this rule, specifically to allow construction of the proposed development within the 30-foot buffer of the Estuarine Shoreline Area of Environmental Concern.

The following additional information is attached to this memorandum:

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

cc: E. Crouse Gray, Jr., Esq., Attorney for Petitioner, electronically
Sandy Cross, Town of Duck LPO, electronically
Frank Jennings, DCM Elizabeth City District Manager, electronically
Ronald Renaldi, DCM Field Representative, electronically
Mary Lucasse, CRC Counsel, electronically

ATTACHMENT A

RELEVANT STATUTES OR RULES

15A NCAC 7H .0209 Coastal Shorelines

(d) Use Standards

***

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

(A) Water-dependent uses as described in Rule 7H .0208(a)(1) of this Section;

(B) Pile-supported signs (in accordance with local regulations);

[C] Post-or pile-supported fences;

(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;

(E) Crab shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters and,

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

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

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

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

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

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

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

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

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

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

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

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

STIPULATED FACTS **ATTACHMENT B**

1. Petitioner, Allis Holdings L.L.C. is a limited liability company, organized and existing under the laws of the Commonwealth of Virginia, authorized to transact business in the State of North Carolina, through a valid certificate of authority issued by the North Carolina Secretary of State's office, with James B. Braithwaite as its registered agent and a principal office address of 135 Bayberry Trail, Southern Shores, NC 27949. *See* Attachment D.

2. Petitioner has owned a 6.74 acre parcel located at 1240 Duck Road in Duck, Dare County, NC, since 1999. Currently located on the property is various commercial retail shops and The Blue Point Restaurant (hereinafter "restaurant") along with associated parking. *See* Attachment E.

3. The restaurant has operated on the property since 1989 and is situated along the shoreline adjacent to the estuarine waters of Currituck Sound.

4. The property lies within the Estuarine Shoreline Area of Environmental Concern (AEC) which extends 75 feet landward of the normal water level.

5. Since August 1, 2000, new development within the Estuarine Shoreline AEC shall be located a distance of 30 feet landward of the normal water level (hereinafter "30-foot buffer"), unless it meets an exception currently listed in 15A NCAC 07H .0209(d)(10)(A)-(J) of that rule.

6. The total length of the property's shoreline adjacent to Currituck Sound is approximately 1,440 linear feet. Of the total shoreline, approximately 950 linear feet has an existing bulkhead including approximately 150 feet in front of the restaurant and the remainder is natural shoreline.

7. There is an existing slatted, wooden and elevated boardwalk on the property running contiguous to the bulkhead, except in front of the restaurant which currently has no existing decking on the soundside. The existing boardwalk decking on the property is approximately 800 linear feet long and varies from 10 feet to 15 feet wide (approximately 8,000 square feet) which was constructed before the buffer rule was implemented.

8. Petitioner sent the Town of Duck a letter dated July 16, 2012, requesting that the Town consider researching an Urban Waterfront designation. On August 1, 2012, the Town Council directed Town staff to research the process for presentation at their 2013 Retreat scheduled for February 27 and 28, 2013.

9. On November 18, 2012, Petitioner, through its agent Doug Dorman of Atlantic Environmental Consultants, LLC, applied for a CAMA minor permit to construct a 20 foot by 26 foot (520 square feet) elevated wood deck with a wooden pergola overhead, an elevated 4 foot by 4 foot wood ramp and a second set of stairs. *See* Attachment D (CAMA Minor Permit survey dated 8/27/12, revised 11/18/12 and as-built survey from 2006).

10. As proposed, the 20 foot by 26 foot elevated wood deck with an overhead wooden pergola would extend out to the bulkhead (normal water) on the western side of the property adjacent to Currituck Sound. The proposed rear entry landing and stairs extend west and north from the rear of the building and the existing landing and stairs.

11. 15A NCAC 7H .0209(d)(10)(F) provides only a slatted, wooden, elevated and unroofed deck, *not to exceed 200 feet (singularly or collectively)*, can be built within the 30-foot buffer of the Estuarine Shoreline AEC. (emphasis added)

12. The proposed development does not meet any of the exception criteria set forth in 15A NCAC 7H .0209(d)(10) because it exceeds the allowable area of 200 square feet of slatted, wooden, elevated and unroofed decking within the 30-foot buffer and there is no exception to allow a pergola within the 30-foot buffer.

13. In 2006, improvements were made to the property including constructing an addition to the existing restaurant. According to Petitioner's agent, a state stormwater permit was not issued. However, Petitioner placed a pond at the south end of the property to act as a "best management practice" stormwater measure for the site, but has no engineered design. There are also stormwater infiltration areas at the northern end of the property near the restaurant.

14. Notice was given to the adjacent owners and to the general public of the proposed additions. No objections to the proposed development were received.

15. On December 10, 2012, the Town of Duck Local Permit Officer (LPO) denied Petitioners' application based on the proposed development being inconsistent with 15A NCAC 7H .0209(d)(10).

16. On December 17, 2012, Petitioner submitted his variance request to construct the proposed development to the Division of Coastal Management (DCM). *See* Attachment E.

Petitioner and Staff Positions **ATTACHMENT C**

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

Petitioners' Position: Yes.

The grass area adjacent to the Blue Point Restaurant and the Currituck Sound is a popular location for patrons to sit outside while they are waiting for a table in the restaurant. This area is located in a corner of the building that becomes very hot and a shade structure is needed. The applicant has previously utilized umbrellas. However, due to the high winds that this area frequently receives, the umbrellas were not capable of withstanding those winds and created more concerns or problems than benefits. Furthermore, umbrellas created potential issues preventing free passage of storm water to the grass below.

Staff's Position: Yes.

Staff agrees that the strict application of the 30-foot buffer rule would cause Petitioner an unnecessary hardship. Petitioner seeks to add an additional deck and pergola, both of which are essentially pervious surfaces. Rule 15A NCAC 07H .0209 is designed to protect the public trust rights and the biological and physical functions of the estuarine system. This is accomplished by limiting the acceptable uses to those types of development activities that will not be detrimental to the system. Subsection (d)(10) of this Rule sets forth a list of exceptions; however, the 200-square foot exception for decking in the buffer cannot be met in this case because this property contains approximately 8,000 square feet of existing decking/boardwalk that was constructed within the 30-foot buffer before the buffer rules were implemented in 2000. Furthermore, a pergola is not listed among the exceptions. Both the proposed decking and the pergola overhead are pervious structures that allow rainfall to pass through to the ground. As such, the proposed development would minimally alter the pattern of rainfall runoff on Petitioner's property. While strict application of the rules limits development to those specifically enumerated exceptions set forth in Rule 15A NCAC 07H .0209(d)(10), Staff agrees with Petitioner that denying this structure that has the benefit of simultaneously providing shade (similar to umbrellas), allowing rainfall to pass through to the ground, and withstanding high winds would produce unnecessary hardship.

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

Petitioners' Position: Yes.

This is currently the only location the shade structure could be placed and there is currently an entrance and set of stairs that provide access to this area. Prior attempts to provide shade in this area have not been successful. The time frame that this area is being used the most, is also the hottest time frame, being the summer time.

Staff's Position: No.

Staff does not agree with Petitioner that the hardship results from conditions peculiar to the property, such as location, size or topography. To the contrary, this property is typical of many properties located within and adjacent to the Estuarine Shoreline AEC up and down the coast of North Carolina.

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

Petitioners' Position: No.

The owner has attempted to use umbrellas to provide shade in this area. They are trying to provide a shaded outdoor area for patrons of the restaurant. Granting this variance will provide a much needed permeable shade structure since umbrellas concentrate water runoff.

Staff's Position: Yes.

Staff does not agree with Petitioner that the hardships are not the result of Petitioner's action. It appears that the Petitioner has an alternate upland grassy area to the north of the proposed location outside the buffer. In addition, although the property was purchased before the buffer rules went into effect, the Petitioner undertook an expansion of the restaurant in 2006 and could have designed the project at that time to accommodate the deck and pergola project such that it would be compliant with the Commission's rules.

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

Petitioners' Position: Yes.

The shade structure and elevated wood slatted decking are permeable and will allow stormwater runoff to pass directly to the soils below. Granting this variance will be consistent with the spirit, purpose, and intent of the CRC rules, standards or orders because the permeable structure will allow free passage of the stormwater to the soil below and not harm the protected waters of the North Carolina.

A pergola/trellis is not listed among the exceptions under rule 15 NCAC 07H 0209(d)(10). However, a pergola/trellis is a structure that will allow stormwater to pass through similarly to elevated slatted wood decks and unroofed decks which are currently exceptions to this rule.

Staff's Position: Yes with conditions.

Staff agrees that the variance requested by Petitioner would be consistent with the spirit, purpose and intent of the rules; secure the public safety and welfare; and preserve substantial justice provided that the conditions listed below regarding a stormwater management plan be addressed in the variance order. One of the management objectives for the Estuarine Shoreline AEC is to conserve and manage the important natural features of the estuarine system so as to safeguard, and perpetuate their biological, social aesthetic, and economic value. Consistent with that management objective, all development proposals shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as necessary to adequately service the major purpose or use for which the lot is to be developed.

Although the proposed development includes pervious structures, Staff notes that there is no existing engineered stormwater management system on this highly developed property. If the Commission finds that adding a condition to the variance that Petitioner install and maintain a stormwater management system for the proposed development would safeguard the functions of the buffer on this site, then Staff agrees that a variance would be consistent with the spirit, purpose, and intent of the Commission's buffer rule, and would further secure public welfare and preserve substantial justice by providing those benefits to water quality through use of a stormwater management systems. If the Commission adopts Staff's recommendation, then the Staff would include the following conditions[1]:

(1) The permittee shall obtain a stormwater management plan meeting the requirements of 15A NCAC 7H .0209(d)(10)(J)(iv), which requires that the first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed and certified by an individual who meets applicable State occupational licensing requirements for the type of system proposed, and approved by the appropriate governmental authority during the permit application process.

(2) Prior to occupancy and use of the deck addition and the issuance of a final Certificate of Occupancy (CO) by the local permitting authority, the permittee shall provide a certification from the design professional that the stormwater system has been inspected and installed in accordance with this permit, the approved plans and specification and other supporting documentation.

(3) The permittee shall provide for the operation and maintenance necessary to insure that the engineered stormwater management system functions at optimum efficiency and within the design specifications for the life of the project.

(4) The permittee shall insure that the obligation for operation and maintenance of the stormwater management system becomes a permanent obligation of future property owners.

[1] The Commission has approved these stormwater management-related conditions in previous variances, however, in this case Staff proposes a modification on condition #1 so that it only applies to the proposed development. More specifically, Staff recommends that "all impervious surfaces on the lot" be deleted in the first sentence and replaced with "the 20 foot by 26 foot elevated wood deck with a wooden pergola overhead".

Attachment D

Stipulated Exhibits

1. Copy of Secretary Of State's Website Page regarding Allis Holdings L.L.C., 1 page
2. CAMA Minor Permit survey dated 8/27/12, revised 11/18/12, 1 page
3. As-built site plan dated 9-17-06, 1 page
4. 2006 survey for proposed Blue Point Restaurant additions, 1 page
5. Site photos, 3 pages

Elaine F. Marshall
Secretary

North Carolina
DEPARTMENT OF THE SECRETARY OF STATE
PO Box 29622 Raleigh, NC 27626-0622 (919)807-2000

Date: 1/23/2013

Click here to:
View Document Filings | File an Annual Report |

Print a Pre-populated Annual Report Fillable PDF Form | Amended A Previous Annual Report |

Corporation Names

Name	Name Type
NC ALLIS HOLDINGS, L.L.C.	LEGAL

Limited Liability Company Information

SOSID:	1276683
Status:	Current-Active
Effective Date:	9/5/2012
Annual Report Due Date:	4/15/2013
Citizenship:	FOREIGN
State of Inc.:	VA
Duration:	PERPETUAL
Annual Report Status:	CURRENT

Registered Agent

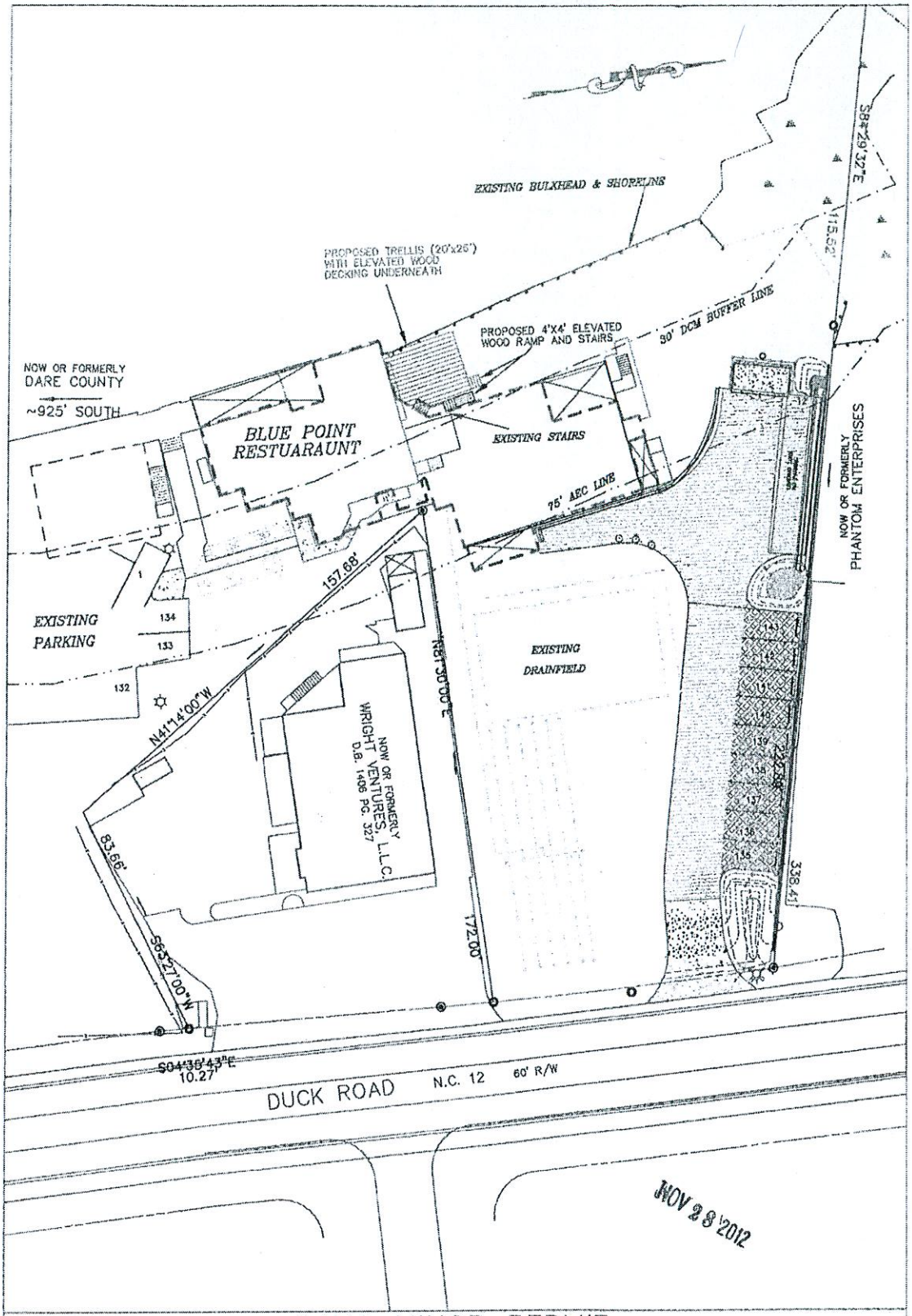
Agent Name:	BRAITHWAITE, JAMES B.
Office Address:	135 BAYBERRY TRAIL SOUTHERN SHORES NC 27949
Mailing Address:	135 BAYBERRY TRAIL SOUTHERN SHORES NC 27949

Principal Office

Office Address:	135 BAYBERRY TRAIL SOUTHERN SHORES NC 27949
Mailing Address:	135 BAYBERRY TRAIL SOUTHERN SHORES NC 27949

Officers

This website is provided to the public as a part of the Secretary of State Knowledge Base (SOSKB) system. Version: 4011



CAMA MINOR PERMIT
ALLIS HOLDINGS, LLC

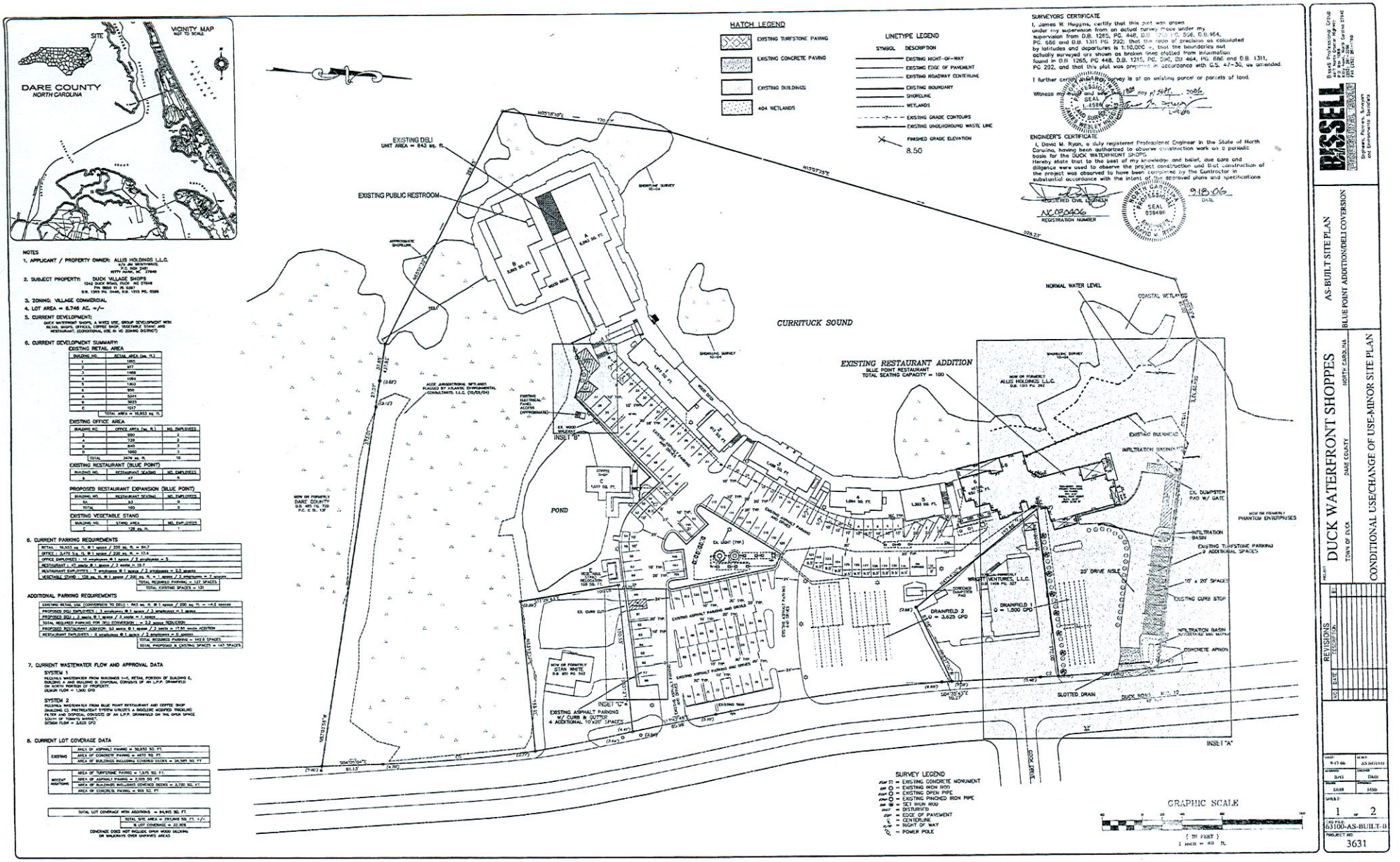
DUCK – DARE COUNTY – NORTH CAROLINA

20' 0' 40' 80' 120'

GRAPHIC SCALE 1"= 40'

FILE: 12-000 DATE: 8/27/12 REVISED: 11/18/12

ATLANTIC ENVIRONMENTAL CONSULTANTS, LLC
P.O. BOX 3266, KITTY HAWK, N.C. 27949
(252)261-7707, e-mail roxdorman@aol.com



BISSELL Professional Group
Coastal Engineering, Surveying and Environmental Specialists
P.O. Box 1967, Duck, North Carolina 27949
(252) 261-3267 FAX (252) 261-3760

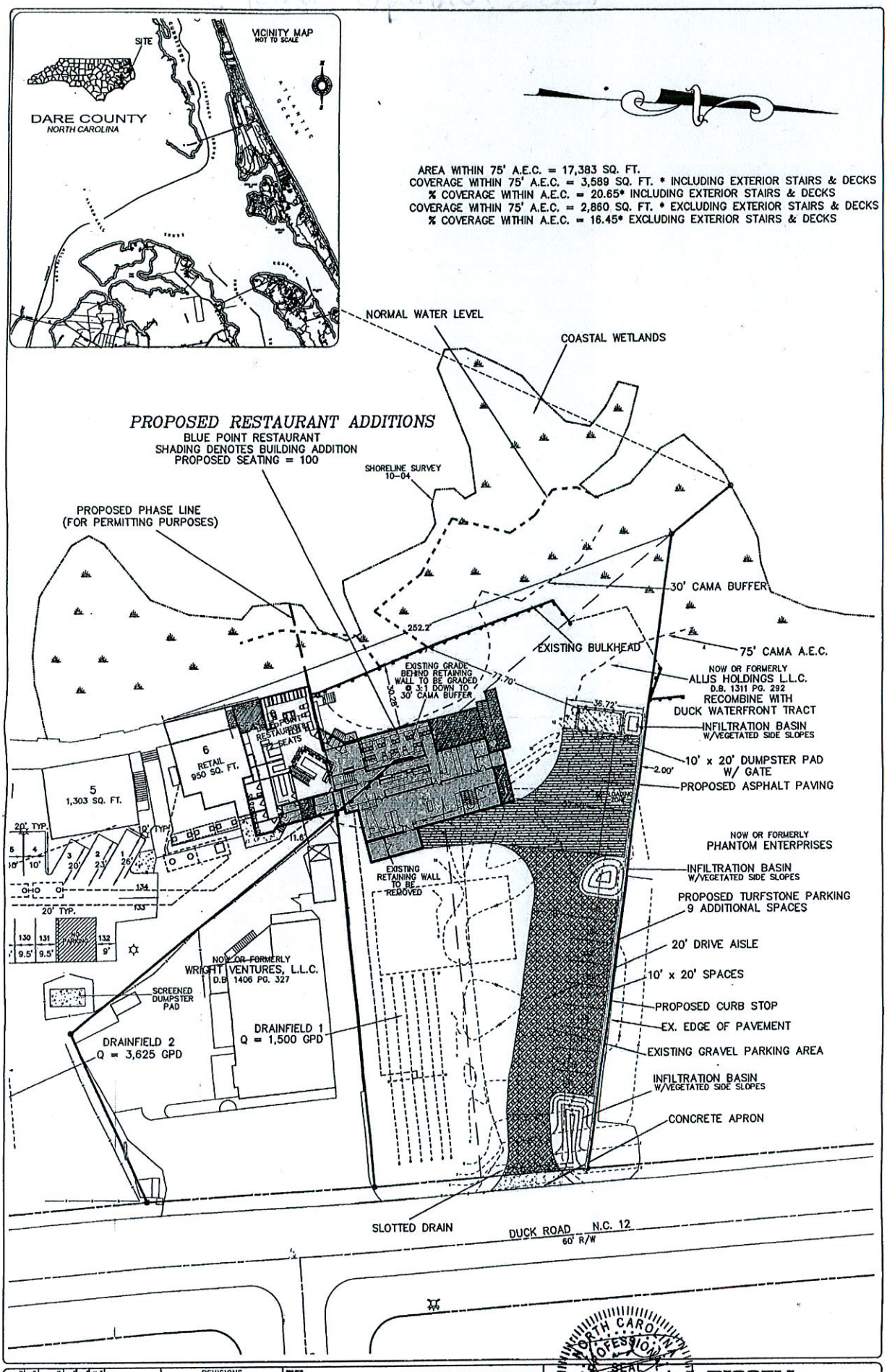
AS-BUILT SITE PLAN
BLUE POINT ADDITION/DELI CONVERSION

PROJECT: DUCK WATERFRONT SHOPPES
TOWN OF DUCK
DARE COUNTY
NORTH CAROLINA

CONDITIONAL USE/CHANGE OF USE-MINOR SITE PLAN

REVISIONS
NO. | DATE | DESCRIPTION

DATE: 9-17-06
SCALE: AS NOTED
DRAWN BY: DMR
DESIGN BY: DMR
CHECKED BY: DMR
APPROVED BY: MSB
SHEET: 1 OF 2
CAD FILE: 63100-AS-BUILT-D
PROJECT NO: 3631


VICINITY MAP
NOT TO SCALE
SITE
DARE COUNTY
NORTH CAROLINA
ATLANTIC OCEAN
AREA WITHIN 75' A.E.C. = 17,383 SQ. FT.
COVERAGE WITHIN 75' A.E.C. = 3,589 SQ. FT. * INCLUDING EXTERIOR STAIRS & DECKS
% COVERAGE WITHIN A.E.C. = 20.65* INCLUDING EXTERIOR STAIRS & DECKS
COVERAGE WITHIN 75' A.E.C. = 2,860 SQ. FT. * EXCLUDING EXTERIOR STAIRS & DECKS
% COVERAGE WITHIN A.E.C. = 16.45* EXCLUDING EXTERIOR STAIRS & DECKS
NORMAL WATER LEVEL
COASTAL WETLANDS
PROPOSED RESTAURANT ADDITIONS
BLUE POINT RESTAURANT
SHADING DENOTES BUILDING ADDITION
PROPOSED SEATING = 100
SHORELINE SURVEY 10-04
PROPOSED PHASE LINE (FOR PERMITTING PURPOSES)
30' CAMA BUFFER
252.2
EXISTING BULKHEAD
75' CAMA A.E.C.
EXISTING GRADE BEHIND RETAINING WALL TO BE GRADED @ 3:1 DOWN TO 30' CAMA BUFFER
77.70'
30.28'
NOW OR FORMERLY
ALLIS HOLDINGS L.L.C.
D.B. 1311 PG. 292
RECOMBINE WITH DUCK WATERFRONT TRACT
36.72'
INFILTRATION BASIN W/VEGETATED SIDE SLOPES
10' x 20' DUMPSTER PAD W/ GATE
2.00'
PROPOSED ASPHALT PAVING
RESTAURANT II 75 SEATS
6
RETAIL 950 SQ. FT.
5
1,303 SQ. FT.
20' TYP.
10' TYP.
11.6'
NOW OR FORMERLY
PHANTOM ENTERPRISES
INFILTRATION BASIN W/VEGETATED SIDE SLOPES
EXISTING RETAINING WALL TO BE REMOVED
PROPOSED TURFSTONE PARKING
9 ADDITIONAL SPACES
20' DRIVE AISLE
10' x 20' SPACES
PROPOSED CURB STOP
EX. EDGE OF PAVEMENT
EXISTING GRAVEL PARKING AREA
INFILTRATION BASIN W/VEGETATED SIDE SLOPES
CONCRETE APRON
NOW OR FORMERLY
WRIGHT VENTURES, L.L.C.
D.B. 1406 PG. 327
SCREENED DUMPSTER PAD
DRAINFIELD 1
Q = 1,500 GPD
DRAINFIELD 2
Q = 3,625 GPD
SLOTTED DRAIN
DUCK ROAD N.C. 12
60' R/W
NORTH CAROLINA PROFESSIONAL SEAL L-030498 ENGINEER DAVID M. RYAN
DUCK WATERFRONT SHOPPES
TOWN OF DUCK DARE COUNTY NORTH CAROLINA
BLUEPOINT RESTAURANT EXPANSION
REVISIONS
NO. DATE DESCRIPTION BY
BISSELL
Bissell Professional Group
Engineers, Planners, Surveyors and Environmental Specialists

Attachment E

Petitioners' Variance Request Petition and Attachments

ATLANTIC ENVIRONMENTAL CONSULTANTS, LLC

P.O. Box 3266, Kitty Hawk, NC 27949
(252) 261-7707 fax (252) 261-2965

December 17, 2012

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

RE: Request for Variance – Allis Holdings, LLC
1240 Duck Road, Blue Point Restaurant

Dear Mr. Davis,

On behalf of Allis Holding, LLC we are petitioning the Coastal Resources Commission (CRC) for a variance from15A NCAC 07H 0209(d)(10). The Town of Duck has denied the CAMA Minor Development Permit request to construct a 20 ft. by 26 ft. (520 sf) trellis/pergola with an elevated wood deck, elevated ramp, and a second set of stairs within the 30' CAMA Buffer.

Enclosed with this cover letter is the application and requested information. Mr. Braithwaite, one of the owners will be represented by his attorney, Mr. Crouse Gray, Jr. at the hearing. We request that this matter be included in the next available CRC meeting.

Sincerely,

Doug Dorman
Atlantic Environmental Consultants, LLC

Enc

cc: Jim Braithwaite
Crouse Gray, Jr.
Christy Goebel, Assistant AG

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.: 12-11

PETITIONER'S NAME Allis Holdings, LLC

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Dare

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

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

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

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

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

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

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

✓ A copy of the permit decision for the development in question;

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

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

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

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

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

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

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

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

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

Signature of Petitioner or Attorney	Date: 12/18/12
Printed Name of Petitioner or Attorney: Jim Braithwaite	Email address of Petitioner or Attorney: Bgblucheron@aol.com
Mailing Address: P.O. Box 2481	Telephone Number of Petitioner or Attorney: (252) 202-2107
City: Kitty Hawk State: NC Zip: 27949	Fax Number of Petitioner or Attorney: (252) 261-7707

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

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

By Fax:
(252) 247-3330

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

Contact Information for Attorney General's Office:

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

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

By Fax:
(919) 716-6767

Revised: February 2011

SITE DRAWING/APPLICATION CHECKLIST

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

PHYSICAL DIMENSIONS

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

PHYSICAL CHARACTERISTICS

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

If you will be working in the ocean hazard area:
_____ Draw and label dune ridges (include spot elevations)
_____ Draw and label toe of dunes
_____ Identify and locate first line of stable vegetation (contact LPO for assistance)
_____ Draw and label erosion setback line (contact LPO for assistance)
_____ Draw and label topographical features (optional)

If you will be working in a coastal shoreline area:
_____ Show the roof overhang as a dotted line around the structure
_____ Draw and label landward limit of AEC
_____ Draw and label all wetland lines (contact LPO for assistance)
_____ Draw and label the 30-foot buffer line

DEVELOPMENT PLANS

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

NOTE TO APPLICANT

Have you:

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

FOR STAFF USE

Site Notice Posted _____ Final Inspection _____ Fee Received _____

Site Inspections

_____ _____
_____ _____
_____ _____

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

APPLICATION: _____ LOCALITY: _____

PERMIT ISSUED USING STATIC LINE EXCEPTION?
YES ☐ NO ☐

APPLICATION FOR

CAMA MINOR DEVELOPMENT PERMIT

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

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

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

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

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

Coastal Resources Commission
Division of Coastal Management

Locality _____ Permit Number _____

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

(For official use only)

GENERAL INFORMATION

LAND OWNER

Name Allis Holdings, LLC

Address P.O. Box 1544

City Virginia Beach State VA Zip 23451 Phone 252-202-2107

Email bgblueheron@aol.com

AUTHORIZED AGENT

Name Doug Dorman - Atlantic Environmental Consultants

Address P.O. Box 3266

City Kitty Hawk State NC Zip 27949 Phone 252-261-7707

Email dougdorman@embarqmail.com

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 1240 Duck Road. The Water Front Shops, Blue Point Restaurant adjacent to the Currituck Sound.

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Construct a 20' x 26' Trellis

SIZE OF LOT/PARCEL: 294,030 square feet 6.74 acres

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

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

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

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

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?

YES ☑ NO ☐

If yes, list the total built upon area/impervious surface allowed for your lot or parcel: 88,209 square feet.

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

STATEMENT OF OWNERSHIP:

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

☑ an owner or record title, Title is vested in Allis Holdings, LLC, see Deed Book 1812 page 269 in the Dare County Registry of Deeds.

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

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

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

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

(Name) (Address)

(1) Phantom Enterprises, P.O. Box 308, Youngstown, PA 15696-0308

(2) Dare County, P.O. Box 1000, Manteo, NC 27954 c/o Bobby Outen, County Manager

(3) _____

(4) _____

ACKNOWLEDGEMENTS:

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

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

This the 18 day of November, 20 12

_____

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

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

LAND TRANSFER NUMBER: 6491-99
1% LAND TRANSFER FEE: $0.00
EXCISE TAX: $0.00
PARCEL NO.009809-000

6000307
Page: 1 of 3
12/16/1999 03:15PM

Prepared by and return to:
E. Crouse Gray, Jr., Attorney at Law
GRAY & LLOYD, L.L.P.
3120 North Croatan Highway, Ste. 101
Kill Devil Hills, North Carolina 27948
My File No. 7677-002

Filed Book: 1311 Page: 292 Doc Id: 6000307
12/16/1999 03:15PM Receipt #: 1221
Doc Code: DEED NC Excise Tax pd: $0.00
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC

NORTH CAROLINA, DARE COUNTY

THIS DEED made this the 16th day of December, 1999, by and between Otis Company, LLC, Grantor, and Allis Holdings, LLC of P.O. Box 2481, Kitty Hawk, NC 27949, Grantee:

The designation Grantor and Grantee as used herein shall include said parties, their heirs, and 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 Atlantic Township, Dare County, North Carolina, and more particularly described as follows:

A certain lot shown on plat attached to Deed recorded in Deed Book 256, Page 586, Dare County Registry, designated "Plat, Property Being Conveyed to James S. Gardiner and wife, Jacqueline R. Gardiner", said plat being dated September 1, 1976, prepared by Jasper W. Hassell, Registered Land Surveyor, and by reference made a part of this Deed to precisely identify the property hereby conveyed, and said lot being described by metes and bounds, as shown on said plat, as follows: Beginning at an iron pipe in the Westerly margin of the right of way of County Road No. 1200, said beginning point being the Northeasterly corner of the Martenson lot, and running thence from said beginning point South 81 deg. 30 min. West 207.31 feet along the Martenson lot to an iron pipe; thence North 41 deg. 14 min. West 143.91 feet to an iron pipe; thence South 84 deg. 30 min. East 293.71 feet along "Former Ruth Tate Property" to an iron pipe in the Westerly margin of the right of way of County

GRAY & LLOYD, L.L.P.
ATTORNEYS AT LAW
The Executive Center
3120 N. Croatan Hwy.
Suite 101
Kill Devil Hills, NC 27948
(252) 441-4338

Road No. 1200; thence South 8 deg. 40 min. East 50 feet along the Westerly margin of the right of way of County Road No. 1200 to an iron pipe, this being the point of beginning.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1247, Page 194, Dare County Public Registry.

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

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

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

1. Exception is taken to 1999 ad valorem taxes.
2. Exception is taken to any easements and restrictions of record.

IN WITNESS WHEREOF, the Grantor has hereunto set its 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.

OTIS COMPANY, LLC

BY: _____ (SEAL)
James B. Braithwaite, Manager

STATE OF NORTH CAROLINA
COUNTY OF DARE

I, Lisa A. Dean, a Notary Public of the aforesaid jurisdiction, do hereby certify that James B. Braithwaite, a Manager of Otis Company, LLC , a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution and sealing of the foregoing instrument as manager on behalf of and as the act of the company referred to in this acknowledgment.

Witness my hand and official seal this the 16th day of December, 1999.

LISA A. DEAN NOTARY PUBLIC DARE COUNTY N.C.

Lisa A Dean
Notary Public
My Commission Expires: 12-22-2002

GRAY & LLOYD, L.L.P.
ATTORNEYS AT LAW
The Executive Center
3120 N. Croatan Hwy.
Suite 101
Kill Devil Hills, NC 27948
(252) 441-4338

NORTH CAROLINA, DARE COUNTY

The foregoing Certificate(s) of Lisa A. Dean
Notary Public of Dare Co., NC

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.

Barbara M. Gray
REGISTER OF DEEDS

BY: Arduen L. Tillett
~~ASSISTANT~~ REGISTER OF DEEDS
Deputy

F:\WORD\CLIENTS\OTISCOMP\7708-002\DEED.REG

GRAY & LLOYD, L.L.P.
ATTORNEYS AT LAW
The Executive Center
3120 N. Croatan Hwy.
Suite 101
Kill Devil Hills, NC 27948
(252) 441-4338

TOWN OF DUCK, NORTH CAROLINA

December 10, 2012

CERTIFIED MAIL – 7010 0780 0001 2589 4619
RETURN RECEIPT REQUESTED

Allis Holdings, LLC
c/o James Braithwaite, Registered Agent
P.O. Box 2481
Kitty Hawk, NC 247949

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- D-2012-246
PROJECT ADDRESS- 1240 Duck Road, Blue Point Restaurant

Dear Mr. Braithwaite:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. You have applied to construct a 20x26 (520 square feet) elevated wood deck with a wooden trellis above, an elevated wood ramp and a second set of stairs within the 30' CAMA Buffer at 1240 Duck Road. A full site plan of the existing development at 1240 Duck Road has not been provided to verify the existing coverage within the 30' CAMA Buffer however several site visits have been conducted and a review of an as-built survey from 2006 has been completed. Your request to add additional decking would be inconsistent with 15 NCAC 7H 0209 (d)(10)(F), which states that *within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of decks/observation decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet.* Based upon an as-built survey from 2006, the decking located within the 30' CAMA Buffer at 1240 Duck Road already exceeds 200 square feet. *Furthermore, 15 NCAC 7H 0209 (d)(10) does not provide an exception to allow a trellis within the 30' CAMA buffer.*

As you know, you have the right to appeal my decision to the Coastal Resource Commission (CRC) or request a variance from that group. I am therefore, attaching the proper forms and other information you may require to pursue either option. You may also find information regarding these two options and the associated forms on the Division of Coastal Management website at http://www.nccoastalmanagement.net/Permits/forms.htm .

Please note that a petition for variance must be received six (6) weeks before the next scheduled CRC meeting for it to be eligible to be heard at that meeting. The next scheduled meeting that would allow you enough time to submit your request would be February 6-7, 2013, location to be announced. You can also follow the meeting schedule online at http://www.nccoastalmanagement.net/CRC/meetings.htm. If your plan is to appeal my decision, the Division of Coastal Management in Raleigh must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Sandy Cross, LPO

Encl.

cc: Christopher J. Layton, Town of Duck Town Manager
Andy Garman, Town of Duck Director of Community Development
Ron Renaldi, Field Representative DCM
1367 US 17 South, Elizabeth City, NC 27909
William Braithwaite, Co-owner
P.O. Box 1544, Virginia Beach, VA 23451
Doug Dorman, Atlantic Environmental Consultants, LLC
P.O. Box 3266, Kitty Hawk, NC 27949

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:

PHANTOM ENTERPRISES
PO BOX 308
YOUNGSTOWN, PA
15696-0308

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jill Jackson ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jill Jackson
C. Date of Delivery 11/23/12

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

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

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 0710 0002 9446 3194

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-154

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:

COUNTY MANAGER
BOBBY OUTTEN
PO BOX 1000
MANTEO, NC
27954

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Mary Lee
C. Date of Delivery 11/20/12

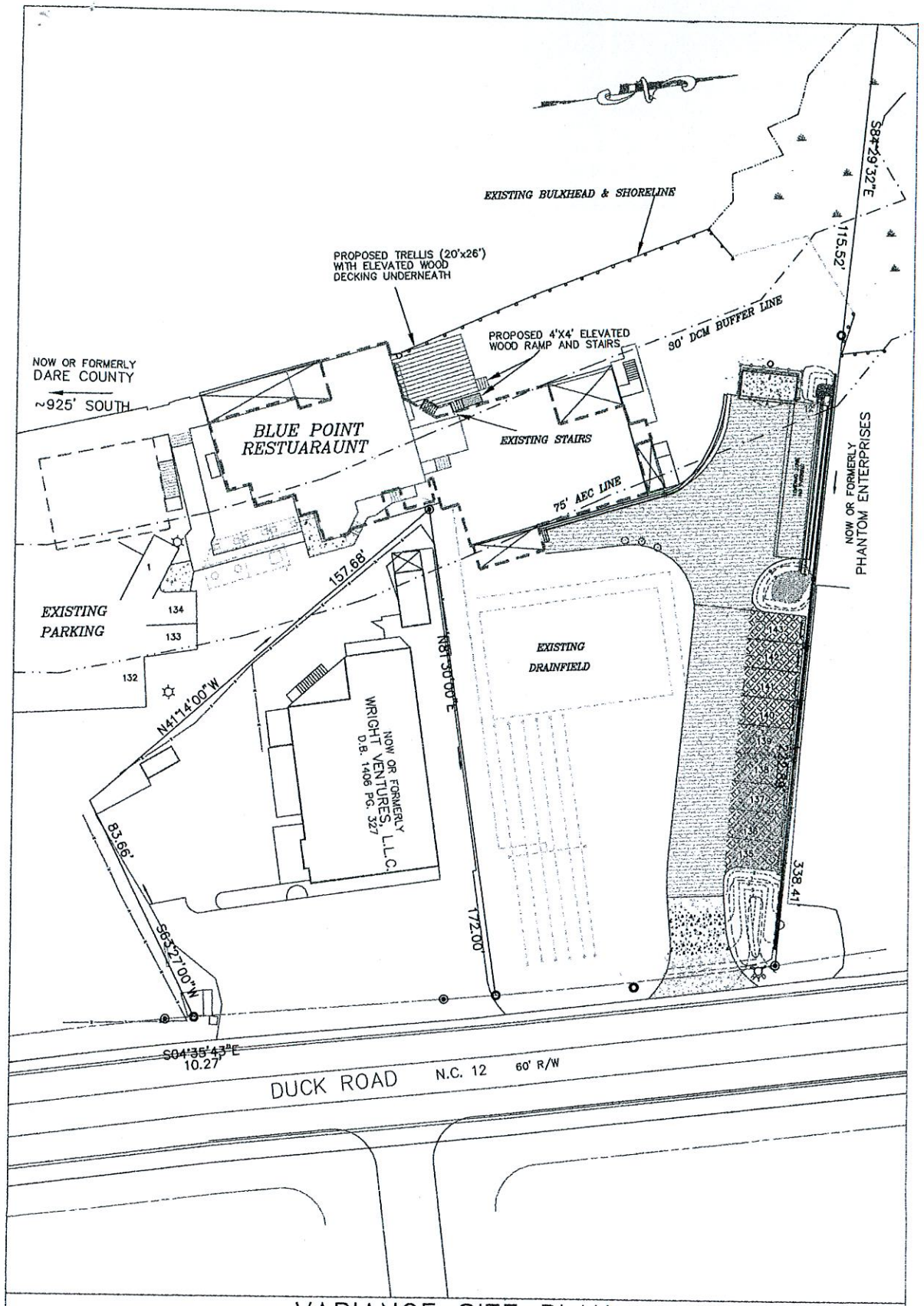
D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7007 0710 0002 9446 3200

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540



VARIANCE SITE PLAN
ALLIS HOLDINGS, LLC

BLUE POINT RESTAURANT

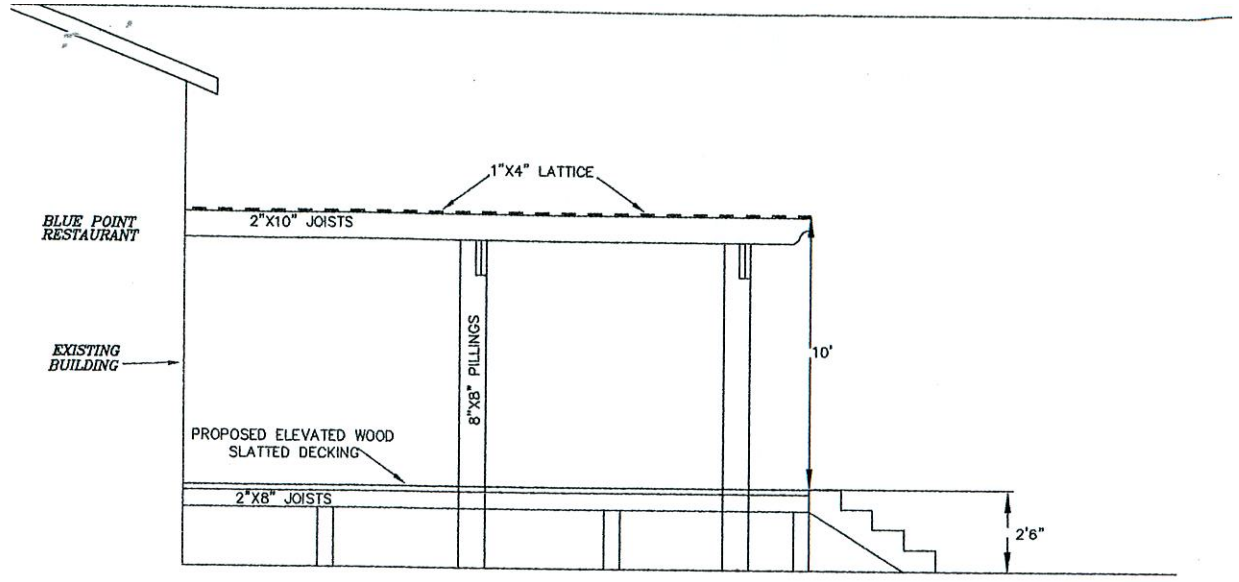
DUCK – DARE COUNTY – NORTH CAROLINA

20' 0' 40' 80' 120'

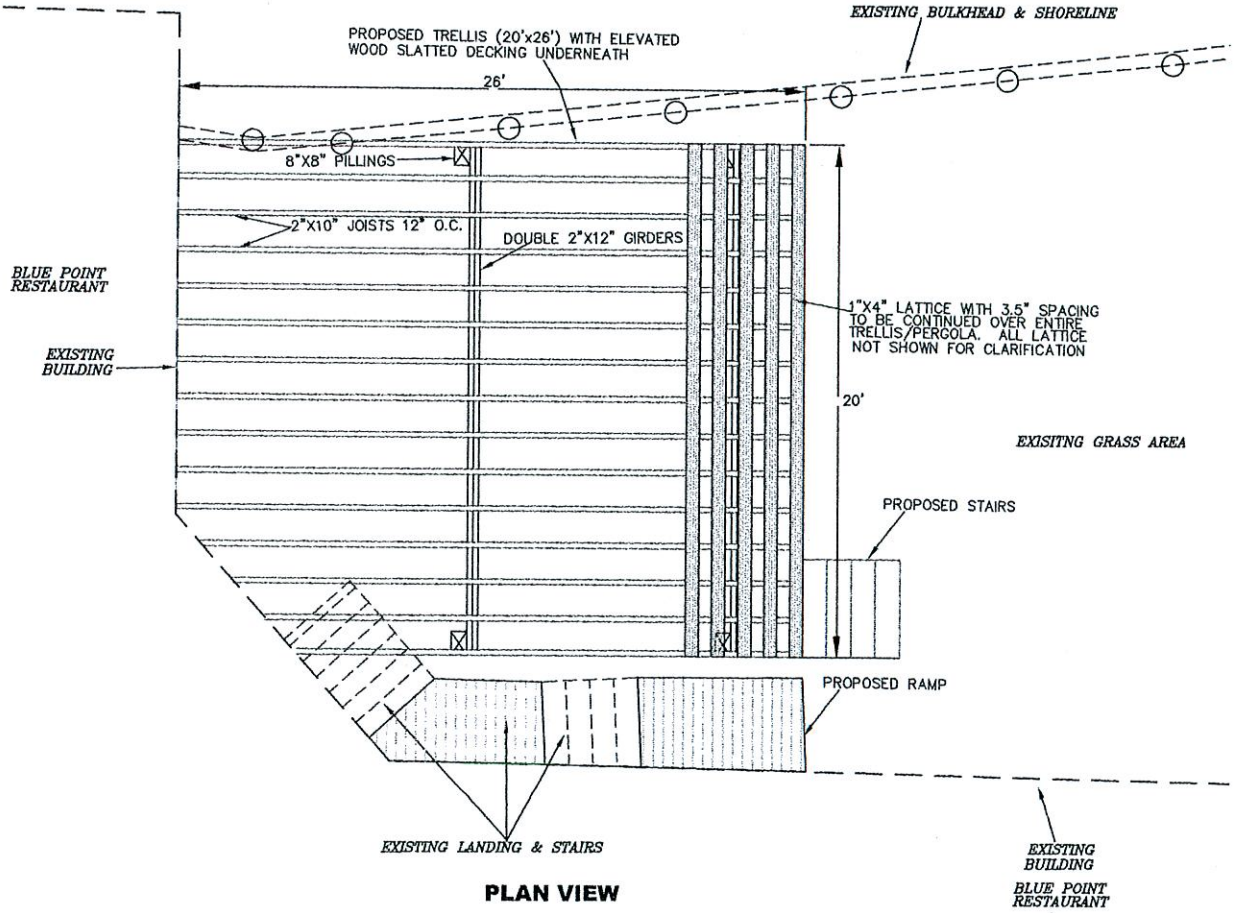
GRAPHIC SCALE 1"= 40'

FILE: 12-WFS DATE: 12/17/12 REVISED:

ATLANTIC ENVIRONMENTAL CONSULTANTS, LLC
P.O. BOX 3266, KITTY HAWK, N.C. 27949
(252)261-7707, e-mail roxdorman@aol.com



SIDE VIEW



PLAN VIEW

VARIANCE – DRAWING DETAILS
ALLIS HOLDINGS, LLC
BLUE POINT RESTAURANT
DUCK – DARE COUNTY – NORTH CAROLINA

0'

GRAPHIC SCALE 1"= NTS

ATLANTIC ENVIRONMENTAL CONSULTANTS, LLC
P.O. BOX 3266, KITTY HAWK, N.C. 27949
(252)261-7707, e-mail roxdorman@aol.com

15A NCAC 07I .0401 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

15A NCAC 07I .0401 PROGRAM COSTS

(a) Costs associated with the management of a local Implementation and Enforcement Program will be recovered on a per permit basis established by the Secretary unless specified elsewhere in this Rule.

(b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies, copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates are set as follows:

(1) All county permit-letting authorities are eligible to receive seventy-five dollars ($75.00) for each processed permit.

(2) All municipal permit-letting authorities are eligible to receive fifty-five dollars ($55.00) for each processed permit.

(3) For multi-unit programs involving a county and a municipality, the higher county rate applies, however, programs involving two or more municipalities will use the municipal rate.

(4) Mandatory follow-up inspections are required when the permitted activity is completed, and such inspections will be documented on a form specified by the Secretary; the follow-up inspection fee received by all local governments is set at forty dollars ($40.00).

~~(c) Funds for field and office equipment have been made available for the first four years of the permit program. Due to funding limitation, no further funds will be allocated for the purpose.~~

~~(d)~~ (c) Training costs for Local Permit Officers (LPOs) at the Department of ~~Environment, Health,~~ Environment and Natural Resources annual training session are limited to a maximum ~~of one hundred fifty dollars ($150.00)/LPO~~ two hundred dollars ($200.00/LPO) for up to three LPOs per local government upon submittal of proper receipts. No funds will be provided for attendance at ~~CRC~~ Coastal Resources Commission meetings.

History Note: *Authority G.S. 113A-112; 113A-124;*
Eff. December 10, 1977;
Amended Eff. July 1, 2013; May 1, 1990; October 1, 1982; May 20, 1980; August 1, 1978.

15A NCAC 07I .0406 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

15A NCAC 07I .0406 APPLICATION FEES

The application fees collected by the locality shall be used only to defray the administrative costs associated with processing of a CAMA minor permit development application. Deficits resulting from administrative costs exceeding amounts received from application fees shall be recovered from ~~per~~ permit reimbursements. The ~~current~~ application fee ~~is now twenty-five dollars ($25.00).~~ shall be consistent with NCAC 07J .0204(b)(6)(B).

History Note: *Authority G.S. 113A-112; 113A-119; 113A-124;*
Eff. December 10, 1977;
Amended Eff. July 1, 2013; October 1, 1982; May 20, 1980; August 1, 1978.

Fiscal Analysis

Minor Permit Program Costs and Application Fees

Amendments to 15A NCAC 7I .0401 and 7I .0406
General Applicability Standards

Prepared by

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October 25, 2012

Basic Information

Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission
Title	General Applicability Standards
Citation	15A NCAC 7I .401 & 7I .0406
Description of the Proposed Rule	15A NCAC 7H.0400 defines the reimbursement to be paid by the Division of Coastal Management to local governments for costs associated with administering Implementation and Enforcement Programs associated with Coastal Area Management Act (CAMA) Minor Development permits. Amendments to section 7I.0401(c) increase the reimbursement to local governments from $150 to $200 for attendance of up to three Local Permitting Officers at training sessions. Amendments to 7I .0406 corrects the citation for CAMA Minor Permit application fees.
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Authority	G.S. 113A-112; 113A-119; 113A-124
Necessity	The proposed amendments are in the public interest and consistent with the mandate of the Governor's Executive Order 70 Rules Modification and Improvement Program because they will alleviate confusion among the regulated community regarding the cost of CAMA permits.
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Federal government: No Private Property Owners: No

Summary

The Coastal Area Management Act (CAMA) allows the Coastal Resources Commission to develop Local Implementation and Enforcement programs for the expeditious processing of permit applications. Local governments review, issue and administer Minor Permits in accordance with standards adopted by the Coastal Resources Commission and under contract with the Division of Coastal Management. In order to promote participation, the Division of Coastal Management reimburses counties and municipal governments for the cost of training and allows the local governments to keep permit fees to cover administrative program costs. This rule package contains two amendments. The first will formally increase the amount of travel reimbursement paid to local governments for participation in annual training sessions. The second amendment will change a reference to the Minor Permit cost to make it consistent with the current fee structure. See the Appendix for proposed rule text changes.

The division trains county and municipal representatives, known as the CAMA local permit officers or LPO, to issue Minor Permits for their locality. The division conducts training workshops along the coast and the LPOs' attendance at this workshop is included as an eligible expense in the contract between the division and participating local governments. Since 1993, local governments have been reimbursed for LPO travel expenses at a rate of $200 per LPO for up to three LPOs from a single local government. During a review of Coastal Resources Commission rules, specifically the Minor Permit Program, in accordance with the Governor's Executive Order 70 (Rules Modification and Improvement Program), it was noted that the Commission's administrative rule had not been changed to reflect the increased amount for LPO reimbursement. This proposed rule amendment will increase the reimbursement rate from $150 to $200 per person. This update will bring the Commission's administrative rules into compliance with the reimbursement policies that the division has used for 19 years.

To ensure that no local government will have to forego the assumption of permit-letting authority because of inadequate local finances or to severely burden its local budget, the CRC allows local governments to recoup application fees for administration of local Implementation and Enforcement programs. The intent of the fee is to only cover the cost of administering the permit program. The Minor Permit application fee is currently $100.00 [15A NCAC 7J .0204(b)(6)(B)] as authorized by the CRC and approved by the Council of State in 2000. However, a reference in 15A NCAC 7I .0406 states that the fee is $25 and has not been changed since 1982. These amendments will correct this inconsistency by citing the more current reference to permit fees that has been in effect for the past 12 years.

These actions are based on a periodic evaluation and review of the Commission's rules in accordance with the procedures described in Executive Order 70 of the Governor's Rules Improvement and Modification Program. The results of this review uncovered the above inconsistencies, but it is important to note that these rule changes do not change any existing policies or procedures. As such, there is no actual economic impact associate with the rule change. However, because the reimbursing up to $200 per LPO for training has been a policy and not a rule, it cannot be considered part of the baseline for this fiscal note; therefore an impact estimate for that part of the rule change is provided below.

These amendments will have no impact on Department of Transportation projects or on DCM permit receipts.

The proposed effective date of these amendments is March 1, 2013.

Introduction and Purpose

In addition to the Major and General Permit programs administered by the Division of Coastal Management (DCM), the Coastal Area Management Act (CAMA) allows for the development of Local Implementation and Enforcement programs for the expeditious processing of permit applications. Projects, such as single-family homes, that do not require Major or General Permits are reviewed under the Minor Permit Program. Local governments review, issue and administer minor permits in accordance with standards adopted by the Coastal Resources Commission and under contract with the Division of Coastal Management. A county or municipal representative, known as the CAMA local permit officer or LPO, issues the permits. LPOs are trained by the Division of Coastal Management to administer Minor Permits for their locality.

The Division typically conducts two regional two-day-long training workshops along the coast. The Local Permit Officers' reimbursement for attendance at this workshop is included as an eligible expense in the contract between the division and local governments participating in the Local Implementation and Enforcement Program. Reimbursement to counties and/or municipalities for LPO travel includes both mileage as well as state per diems for motel and meal expenses.

There are currently 36 local governments (10 counties and 26 municipalities) participating in the Minor Permit Program. The LPO training session are held regionally in order to minimize travel costs to the local governments and the division. Due to budget cuts during fiscal years 2009-2010 and 2010-2011, one-day training sessions were held in order to minimize and in some cases, eliminate the need for overnight travel.

Table 1 below depicts the reimbursements paid to local governments in connection with LPO Training meetings during the last five years.

Table 1. LPO Training Reimbursements by Fiscal Year

Local Gov't	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12
Bertie	$400.00	$200.00		$104.00	$ 200.00
Brunswick		$59.40	$43.00	$43.00	$200.00
Carteret		$400.00	$200.00		$ 200.00
Chowan	$400.00	$200.00			
Craven		$446.26			
Currituck					
Dare					
Hertford	$200.00			$99.00	
New Hanover	$600.00				$600.00
Onslow					
Pamlico		$200.00			
Pender	$600.00				
Atlantic Beach					
Bald Head Island	$400.00	$66.00		$35.00	$200.00
Calabash					
Cape Carteret					
Carolina Beach	$400.00				$364.07
Duck					
Elizabeth City					
Emerald Isle	$200.00	$523.13			
Havelock					
Holden Beach					
Holly Ridge					
Jacksonville	$297.47	$110.00			
Kill Devil Hills					
Kitty Hawk					
Kure Beach	$400.00				
Morehead City		$215.00			
Nags Head					
New Bern		$354.90			
North Topsail	$298.91				
Oak Island	$600.00	$88.92			$ 400.00
Ocean Isle Beach		$107.80			$ 200.00
Pine Knoll Shores	$200.00	$395.01			
River Bend					
Southern Shores					
Southport	$200.00	$86.90			
Sunset Beach	$200.00	$116.60	$52.00	$52.00	$ 200.00
Surf City	$144.97				$ 200.00
Topsail Beach	$303.15	$66.00		$32.50	
Washington City	$200.00			$122.00	
Wrightsville B.	$400.00				$ 400.00
TOTALS:	**$ 6,444.50**	**$3,547.00**	**$295.00**	**$487.50**	**$2,964.07**

In order to promote participation, the Division of Coastal Management reimburses counties and municipal governments for the cost of training and allows the local governments to keep permit fees to cover administrative program costs. The Minor Permit application fee is currently $100.00 [15A NCAC 7J .0204(b)(6)(B)] as authorized by the CRC and approved by the Council of State in 2000. The reference in 15A NCAC 7I .0406 states that the fee is $25 and has not been changed since 1982. These amendments will correct this inconsistency by citing the more current reference to permit fees that has been in effect for the past 12 years.

Description of Rule Amendments

15A NCAC 7I .0400 Generally Applicable Standards, contains the administrative rules and policies governing reimbursements and eligible activities as well as permit application fees associated with Local Implementation and Enforcement Program (Minor Permit Program). 15A NCAC 7I .0401 Program Costs, specifically outlines how local governments are to be reimbursed for activities including the issuance of minor permits and attendance at annual training sessions. According to 15A NCAC .401(d), local governments are eligible for reimbursement of up to $150 per LPO for travel costs associated with participation in LPO training session. However, since 1993, the Division has allowed reimbursement of $200 per LPO for up to three LPOs per local government participating in annual training sessions. The proposed amendment will align the Administrative Code with what has been the Commission's policy for the past 19 years.

15A NCAC 7I .406 cites the application fee associated with Minor Permits as $25.00 and was last amended in 1982. This fee is in conflict with subsequent changes to fees associated with CAMA permits found in 15A NCAC 7J .0204(b)(6) which indicates processing fees for all CAMA permits. 15A NCAC 7J .0204(b)(6)(B) in particular cites the fee for processing Minor Development Permits as $100 and was last amended in 2000. In order to avoid future conflicts of this nature, 7I .0406 is being amended to include only a reference to 7J .0204(b)(6)(B).

Other minor technical amendments are proposed to bring both rules in to compliance with the NC Administrative Procedures Act.

Cost or Neutral Impacts

Private Property Owners:

The reimbursement to local governments for participation in LPO trainings sessions (15A NCAC 7I .0401) does not affect private property owners. No changes are proposed in the fees [15A NCAC 7J .0204(b)(6)(B)] paid by private property owners to obtain Minor development permits.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .0306(a)(2) will not affect environmental permitting for the NC Department of Transportation.

Local Government:

The revenue to local governments participating in the program from the proposed $50 increase in the reimbursement rate for training is estimated at up to $10,800 per year (equal to $50/LPO/training for up to 3 LPOs for each of the 36 government units for each of the 2 trainings provided a year). Note, however, that since 1993 local governments have been reimbursed up to $200.00 per LPO for up to three LPOs per local government for travel costs associated with participating in annual LPO training sessions. As this has been the Commission's policy for 19 years, no actual impact to local government or state government funds is anticipated.

The Minor Development permit fee collected and retained by local governments has been $100.00 per permit for the past 12 years. Correcting the reference to CAMA permit fees will not impact local government funding.

Division of Coastal Management:

The impact of the proposed $50 increase in reimbursement rate for the Implementation and Enforcement Program training is estimated at up to $10,800 in additional cost for DCM. Again, since 1993 DCM has been reimbursing local governments up to $200.00 per LPO for up to three LPOs per local government for travel costs associated with participating in annual LPO training sessions. As this has been the Commission's policy for 19 years, no impact to the Division's budget is anticipated.

Since the $100.00 fee for Minor Development permits is retained by the local government issuing the permit and has not changed since 2000, the Division of Coastal Management does not anticipate changes in permitting receipts due to the proposed action.

Benefits

Private Citizens:

The proposed amendments are consistent with the mandate of the Governor's Executive Order 70 Rules Modification and Improvement Program and will alleviate any confusion among the regulated community regarding the cost of CAMA permits. Referencing the common citation to CAMA permit fees as opposed to the fee itself will also eliminate the occurrence of similar inconsistencies within the CRC's administrative rules in the future.

Cost/Benefit Summary

This action is based on a periodic evaluation and review of the Commission's rules in accordance with the procedures described in Executive Order 70 of the Governor's Rules Improvement and Modification Program. The results of this review noted the above inconsistencies and do not change any existing policies or procedures. As such, in reality there is no economic impact associate with the rule change. Correcting the inconsistencies will alleviate any confusion among the regulated community regarding the cost of CAMA permits and referencing the common citation to CAMA permit fees as opposed to the fee itself will also eliminate the occurrence of similar inconsistencies within the CRC's administrative rules in the future.

APPENDIX

SECTION .0400 - GENERALLY APPLICABLE STANDARDS

15A NCAC 07I .0401 PROGRAM COSTS

(a) Costs associated with the management of a local Implementation and Enforcement Program will be recovered on a per permit basis established by the Secretary unless specified elsewhere in this Rule.
(b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies, copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates are set as follows:

(1) All county permit-letting authorities are eligible to receive seventy-five dollars ($75.00) for each processed permit.
(2) All municipal permit-letting authorities are eligible to receive fifty-five dollars ($55.00) for each processed permit.
(3) For multi-unit programs involving a county and a municipality, the higher county rate applies, however, programs involving two or more municipalities will use the municipal rate.
(4) Mandatory follow-up inspections are required when the permitted activity is completed, and such inspections will be documented on a form specified by the Secretary; the follow-up inspection fee received by all local governments is set at forty dollars ($40.00).

~~(c) Funds for field and office equipment have been made available for the first four years of the permit program. Due to funding limitation, no further funds will be allocated for the purpose.~~
(c)~~(d)~~ Training costs for Local Permit Officers (LPOs) at the Department of Environment ~~Environment, Health,~~ and Natural Resources annual training session are limited to a maximum ~~one~~ two hundred ~~fifty~~ dollars ($200.00)/LPO ~~($150.00)/LPO~~ for up to three (3) LPOs per local government upon submittal of proper receipts. No funds will be provided for attendance at ~~CRC~~ Coastal Resources Commission meetings.

History Note: *Authority G.S. 113A-112; 113A-124;*
Eff. December 10, 1977;
Amended Eff. May 1, 1990; October 1, 1982; May 20, 1980; August 1, 1978.

15A NCAC 07I .0406 APPLICATION FEES

The application fees collected by the locality shall be used only to defray the administrative costs associated with processing of a CAMA Minor Development Permit application. Deficits resulting from administrative costs exceeding amounts received from application fees shall be recovered from ~~per~~ permit reimbursements. The ~~current~~ application fee ~~is now~~ shall be consistent with 15A NCAC 7J .0204(b)(6)(B). ~~twenty-five dollars ($25.00).~~

History Note: *Authority G.S. 113A-112; 113A-119; 113A-124;*
Eff. December 10, 1977;
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NC COASTAL RESOURCES COMMISSION (CRC)
November 15-16, 2012
Vernon James Research & Extension Center
Plymouth, NC

Present CRC Members
Bob Emory, Chair
Joan Weld, Vice Chair

Renee Cahoon
David Webster
Jerry Old
Bill Peele
Joseph Hester
Jamin Simmons
Lee Wynns
Veronica Carter

Present CRAC Members
Charles Jones
Tim Tabak
Ray Sturza
Morgan Jethro
Wayne Howell
Harry Simmons
Ben Rogers (for Bryant Buck)
Joe Lassiter
Phil Harris
Webb Fuller

Present Attorney General's Office Members
Mary Lucasse
Christine Goebel

CALL TO ORDER/ROLL CALL
Bob Emory 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. No conflicts were reported. Pat Joyce, Melvin Shepard and Ed Mitchell were absent. Based upon this roll call, Chairman Emory declared a quorum.

Renee Cahoon, Bob Emory, Veronica Carter and Jamin Simmons read their Evaluations of Statement of Economic Interest from the State Ethics Commission which indicated they did not find an actual conflict, but did find the potential for a conflict of interest. The potential conflicts identified do not prohibit service.

MINUTES
Veronica Carter made a motion to approve the minutes of the August 2012 Coastal Resources Commission meeting. David Webster seconded the motion. The motion passed unanimously (Weld, Cahoon, Hester, Webster, Old, Peele, Carter, Simmons)(Wynns absent for vote).

EXECUTIVE SECRETARY'S REPORT

DCM Director Braxton Davis gave the following report.

A DCM update memo was provided in your packets that covers recent permitting, enforcement, rule development, planning and Coastal Reserve activities within the Division. Some notable items include the recent Secretary's three-month extension of our Emergency General Permit for the replacement of structures damaged by Hurricane Irene. We think the three month extension will be a big help to a number of property owners, especially in this region, who have experienced unavoidable construction delays or delays in obtaining insurance settlements. We have updated information on our permitting trends and our recent issuance of a CAMA Major Permit for the Bonner Bridge replacement. You will also find updates on proposed rules as well as some non-regulatory program activities being led by DCM's policy and planning section related to estuarine shoreline management, the BIMP and land use planning activities. You will also find an update on our Coastal Reserve program and their recent Local Advisory Committee meetings and appointments.

I also want to provide an update on the Division's activities in response to Hurricane Sandy and the nor' easter that followed last week. Significant beach erosion and coastal flooding occurred as Hurricane Sandy passed offshore of North Carolina in late October with the greatest impacts felt in Dare County, especially Kitty Hawk and Kill Devil Hills, and overwash along several segments of NC-12. I was able to fly the coast to assess damage last week, and staff in each of our District offices conducted immediate post-storm damage assessments and coordinated closely with local governments, NCDOT and other state agencies before, during and after the storms. We also worked with Secretary Freeman for the issuance of an Emergency CAMA General Permit that allows for emergency dune reconstruction in beachfront communities with no permit application fee and reduced permit processing requirements. Frank Jennings, District Manager in DCM's Elizabeth City district office, opened a temporary office in Southern Shores in Dare County to answer questions and help people affected by the storm navigate any state and federal permitting requirements for repairs.

We had a fantastic field trip yesterday. I want to express our sincere appreciation for the significant work that Commissioners Simmons and Peele put into this field trip. I would also like to thank Rufus Croom of NRCS and Mac Gibbs from the Hyde County Cooperative Extension as well as Hyde County, the Blackland Farm Manager's Association, Impact Agronomics, and the NC Farm Bureau. I would also like to commend the work that DCM staff have done to pull the field trip and this meeting's agenda together. In working with the Executive Committee, I hope you'll agree that we have a very good agenda for this meeting. We will be discussing drainage issues in this region, sea level rise, and agricultural practices that are important issues in this region as well as an update on the work being conducted in accordance with HB819. There are also updates on several proposed rules and other efforts that DCM staff are engaged in. I hope you'll be able to join us for a poster reception to recognize the outstanding work of this year's Walter B. Jones Memorial Awards for Coastal and Ocean Resource Management. These are national awards for excellence in our field. It should be noted that North Carolina nominees received seven of the fourteen national awards made this year.

Finally, I would like to thank NCSU and the Vernon James Center for allowing us to hold the meeting here today. We now have dates set for the 2013 CRC meetings. The locations for these meetings will be largely budget-driven but we are going to try to have our February meeting in Wilmington. We would like to travel to Nags Head in April and then back to Carteret County in

July. Please let me know if you have any thoughts or suggestions on locations for Commission meetings.

I spoke with the Governor's office a couple of days ago. There are still two outstanding reappointments that are in the works as well as two vacancies to be filled.

CHAIRMAN'S COMMENTS

Bob Emory stated the field trip was very helpful in gaining a better understanding of the issues in this area including salt water intrusion and other sea level rise related problems. We were also able to see some of the adaptation measures that are already being taken. It was clear that there is a big challenge here with the rising water levels. The last Science Panel meeting was well attended and there was a good exchange with the Science Panel about the interaction between the Commission and the Panel. One of the outcomes was identifying the need for the Commission to be much more specific when we ask the Science Panel to do something. This will allow them to be more efficient and will help them to stay focused on the real needs. We will have requests of the Panel to help with HB819 and we need to be very specific.

Renee Cahoon gave a Dare County update following Hurricane Sandy. She stated NC12 and Hatteras Island were hit the hardest. Some houses have been condemned and one house was lost. The beach nourishment in Nags Head worked exactly the way it was designed to work and there was minimal damage. There was some ocean overwash. Kill Devil Hills and Kitty Hawk had more damage.

PRESENTATIONS

Unique Challenges Facing Eastern NC related to Sea-Level-Rise and Drainage Issues
Paul Lilly, NCSU Assoc. Prof Emeritus, Department of Soil Science

Paul Lilly stated this is an area that has been impacted for a very long time and has an interesting history and interesting geology with a problematic future. We are located in the tidewater area. This is a relatively young landscape. All of the surface features in the coastal plain were shaped by the ocean or by rivers. The main factor that has shaped the coastal plain into what it is now and what it will become is continental glaciations. There were small glaciers in the North Carolina mountains, but that impact had no affect on us here. The continental glaciers tied up such vast amounts of sea water that the sea level rose and fell substantially. The coast at that time was in the vicinity of Raleigh. Glaciers covered what are now the Great Lakes and all of the northern part of the continent. Sea level was 400 feet below the present level and the coast line was much further east than it is today. As sea level has risen and fallen and paused at different times over the years we have formed scarps. The elevation in Plymouth is quite low. The elevation at the foot of the Suffolk Scarp is twenty feet and the land slopes at about one foot per mile to the coast from there. According to the Corps of Engineers, since colonization took place by Europeans sea level has been rising at about one foot per 100 years. That is not a long, slow, gradual rise over thousands of years, but it comes in spurts and sometimes reverses. More recently it has been rising one foot per 100 years. That means that since the first colonists came to this region, sea level has probably risen at least four feet. Four feet on this landscape is significant. When you see some of the houses and businesses that are located in areas that seem to be awfully wet today you wonder why they located here. When they were put there it wasn't that wet. Sea level has risen and made it wet. If global warming increases then the rate of sea level rise will likely increase also. There is marsh migration due to rising sea level. The Corps has estimated that a one foot rise in sea level can cause about 1,000 feet of migration on this landscape. Without protection a lot of the crop land near the

Pamlico Sound is subject to saltwater overwash. Lunar wind tides cause the salt to move up the canals and flood the land. This is not uncommon. A lot of places that are now marsh have been crops in the past. The coastal area of North Carolina has never been stable for very long. It has always been in transition from one state to another. The lower coastal plain and tidewater because of its flatness and newness is characterized by wetlands. The factors of wetland formation on this landscape are high rainfall or high water table, flat topography, slow movement of water downward, and large distances between drains. The counties in this region have a high proportion of wetlands. Hydric soil by itself is not the definition of a wetland, but it is close. Hyde County is 97.3% hydric soil. Because of the prevalence of wetlands, artificial drainage and water management have been necessary for agriculture, forestry and construction in much of the coastal zone.

With the population expansion by 1734 the Governor reported that all plantable land along navigable streams had been taken up. There was pressure and demand for more cropland. The first place people looked was the Great Dismal Swamp. This was the first deep organic swamp attempted to be farmed. Before the Revolution, George Washington and other investors obtained the rights to about 40,000 acres of land in the Great Dismal Swamp. Washington had about a 5,000 acre share in The Dismal Swamp Land Company. He believed the land could be drained and used for farming. There was little profit in it so he started producing Jumpier shingles after the Revolutionary War which proved very profitable. The land eventually became part of the Camp Manufacturing Company and is now part of the Dismal Swamp National Wildlife Refuge. During this time there was a canal dug and it was called "Washington's Ditch". It was surveyed in 1768 and dug shortly after. It is still there. A watershed event occurred after the Revolutionary War. All land that had been Crown land became state property which had great implications. The state took over the management of public lands. This introduced a time of tremendous land speculation and land development. Most all of the unclaimed land was swampland. The first development in truly deep organic soils was at Lake Phelps in Washington County. The state issued a permit for a group of investors to drain Lake Phelps. After they began their development they found that they had enough elevation for water power and irrigation and the lake was not drained. Josiah Collins and his partners did drain about 100,000 acres near Lake Phelps with a six mile canal that was dug around 1787-1788. That canal is now the county line between Tyrrell and Washington counties. Somerset Place Plantation on the shores of Lake Phelps was built in the 1830's and is now a state historic site. The Plantation was successful. As a result of the success, the state got into the land development business in the early 1800's. The state had invested with the swamplands as a way to raise money for public education. The state endowed the fund with money for land development. A canal was dug at Pungo Lake in 1843, at New Lake in 1843, a canal in Fairfield in 1849, and a canal at Lake Landing in 1838. This was all an attempt to develop swamplands sold to support the Literary Board. The Lake Landing canal was done on a petition of the landowners and lowered the level of the Lake by three feet in 1838. The Lake has never retained the previous depth. The first canals at Open Ground were dug in the 1850's under the same program. After the Civil War, North Carolina was bankrupt and interest turned to logging the swamps. The state had huge tracts of valuable, virgin timber. Entrepreneurs from the north came in and took advantage of it. Before the Civil War there was very little heavy logging in the swamps. After the Civil War people of the north brought in narrow gauge logging railroads into the region. There was extensive logging from about 1870-1900's. One of the largest companies was the Roper Lumber Company. In 1907 Roper owned 600,000 acres of land and had cutting rights on 200,000 more. The town of Roper (formerly named Lees Mill) was renamed for the large sawmill located there. Norfolk and Southern Railroad later bought out Roper to obtain their railroad right of ways. This was a time of great abundance and waste in lumbering. There were a number of other lumber companies to the east. Richmond Cedar Works owned most of Dare County and parts of Tyrrell. There was no reforestation. Reforestation

did not come to North Carolina until about the 1930's. They wound up with a lot of cut over forest land that for all practical purposes was worthless at that time. Owners of the cut over land, including Norfolk and Southern Railroad, promoted land sales and development and invented the term, "The Land of Tall Corn".

A major turning point to state drainage was the State Drainage Act of 1909. The Act made it possible for people to band together and form drainage districts. By 1911, drainage districts were covering 700,000 acres. By 1928, it was estimated that over 500,000 acres had been drained. Lake Mattamuskeet was drained in 1916, 1920, and 1926. There was no equipment for large-scale land clearing so it was all done by hand. A pumping station was built and the shell of the building is still there today. The pumping capacity was 1,200,000 gallons per minute. At the time it was the largest pumping station in the world. A plan for the Town of New Holland was laid out. The town was built on the bottom of Lake Mattamuskeet around 1921-1923. Part of the lake bottom was farmed. By 1932 the Lake was full again. The land was purchased by the federal government in 1934 and today it is Mattamuskeet National Wildlife Refuge. There was very little activity in the region between the first and second World Wars because of the Great Depression and because there was a land surplus. After the Second World War, interest turned back to clearing swamp lands with the advances in equipment technology and attractive crop prices. The flat and level land that occurred in large tracts was suited for large-scale mechanized agriculture. Land was still relatively cheap in the 1960's and 1970's. The largest attempt during this time period was by Malcom McLean. In 1973 he paid $60 million dollars for 581 square miles of land which was about one third of the entire Albemarle-Pamlico peninsula and established First Colony Farms. At the same time, Open Grounds was acquired by the Ferruzzi Family and they have kept it through the present time. It is now the largest farm in North Carolina with over 50,000 acres. During this time period field size and drainage patterns became standardized. By 1977, Mclean had made a decision to switch to a tenant system of farm management. Over time all First Colony land was sold or transferred to other owners. Concern over loss of wetlands and stricter laws stopped all land development in the early 1980's. Low elevation was and still is a considerable problem for much of the land in Hyde, Tyrrell and Dare Counties. If you were around here 30-40 years ago you didn't hear much about it. Folks just dealt with it by putting in dikes and pumps. Salt water intrusion on crop land was a recurring problem. Dikes and pumps create artificial elevation differential for drainage. Dikes protect against storm surge to a degree depending on the size of the dike. Dikes with pumps or tide gates block salt water intrusion. Tailwater recycling is very feasible on pumped land. Water discharge can be located for least environmental impact when you have dikes and pumps. The Governor's Coastal Water Management Task Force was formed in 1981. A report was issued in 1982 that included agriculture, forestry, fishing and environmental interests. A status report was issued in 1984 and then the Administration in Raleigh changed and it was never seen again. Things have not changed much in 30 years. Water management issues today are about the same. These are not new issues and they are not going to go away. There are drainage systems that have been here for well over 200 years and they need to be addressed. You should not ignore the traditional, long-term drainage systems and prevent their use when they have been in place for that long. Salt water intrusion and flooding due to rising sea level and storms is still an ongoing issue. Timely water removal after large storm events at low elevations is a real problem. Outlet placement to mitigate fresh water impacts on nursery areas was a big issue 30 years ago and we haven't heard much about it since. A recommendation was made for the state to take over outlets and outlets should be located in less sensitive environmental places. That hasn't happened. Water conservation and storage is a problem. It could be a resource, but we don't use it. North Carolina has no water storage. A statement from the EPA Environmental Research Letters of 2009 stated that most of the land vulnerable to sea level rise is along the Albemarle and Pamlico Sounds. These lands are

lightly developed, with little immediate prospects for development except for land immediately along the shorefront. Nevertheless, some agriculture areas in Tyrrell and Hyde Counties are protected with dikes, and Tyrrell county expects to expand that practice as sea level rises. These Letters tend to ignore extensive land protection inland. There are areas they didn't even recognize that had been under dike and pump. They don't recognize that there are people living in those areas that have that protection today. We need area-wide, comprehensive water management strategies. One major problem is the lack of water storage. As agriculture progresses and as urbanization continues there is a demand for water and we shouldn't continue to dump fresh water into marine environments. The South Florida Water Management District is a regional governmental agency that oversees the water resources in the southern half of the state, covering 16 counties from Orlando to the Florida Keys and serving a population of 7.7 million residents. It is the oldest and largest of the state's five water management districts. It was created in 1949 and the agency is responsible for managing and protecting water resources of South Florida by balancing and improving water quality, flood control, natural systems and water supply. The management system has more than 1,600 miles of canals and 1,000 miles of levees/berms, 60 pump stations and more than 500 structures and 700 culverts. It helps to protect regional water supplies, provide flood control, and has dedicated water storage areas. We need to look at our water resources in North Carolina in a more holistic way. We focus on water as a limitation and as a problem. We need to focus on water as a resource.

Permitting Agricultural Drainage
David Moye, DCM

David Moye stated two years ago Commissioner Peele asked how CAMA permits agricultural drainage ditches. A presentation was given to describe the permitting authority. CAMA lays out specific activities that are not development and do not require a permit. This includes the use of any land for the purposes of planting, growing, or harvesting plants, crops, trees or other agriculture or forestry products including normal, private road construction, raising livestock or poultry or for other agricultural purposes except where excavation or filling affecting estuarine waters as defined in NCGS 113-229 or navigable waters is involved. Based on this statute, DCM's first thought was that agricultural ditches are exempt from permitting authority. However, an exception to this exemption is if the proposed activity includes excavating or filling estuarine waters. In Hyde County all the ditches drain into the headwaters of the bay and sound system and all of those waters are classified as estuarine waters. The jurisdictional authority extends in there for any digging or filling activity. If we move to the CRC rules, there is a section in 7K that exempts small ditches. Small ditches used for agriculture or forestry purposes with maximum dimensions equal to or less than six feet top width by four feet deep are exempt from CAMA permitting requirements. All ditches with widths greater than six feet by four feet will require an application for a letter of authorization from the CRC. If the Commission determines that the ditch will affect estuarine or navigable waters a Major Development Permit will be required. A lot of the ditches we saw on the field trip and that we see in the field fit the exemption. When we move out of the agricultural field and move into the 404 wetland area, the wooded area or marsh area the regulatory authority applies and permits are required. You can get a General Permit for maintenance excavation in a manmade system allowing up to 1,000 cubic yards in material to be removed as long as the excavated depth is no deeper than the connecting water body and as long as you have a high ground place to put the spoil. The problem we run into is once we move into a coastal wetland component those ditches may not have been maintained for decades. The old spoil banks are not functioning spoil banks. Then it becomes filling coastal wetlands if you try to place spoil on it. No activity is exempt from the state Dredge and Fill Law. In areas with large canal systems we have tried to look for a cutoff (a

road crossing or culvert) that we can demarcate a line to say that below that we claim jurisdiction on the open-water portion going out and above it we do not. We have always said that if the use above the cutoff changes then we would change the jurisdictional call. Most of the issues we have had are once we get out of the fields and get into the transitional area as we have seen in Hyde County.

Impact of Water-Level Rise on Municipal Infrastructure: Town of Plymouth Perspective
Brian Roth, Mayor Town of Plymouth

Brian Roth stated there are a lot of trees in the Albemarle Sound and cypress trees don't germinate in water. If there isn't dry land then the seedlings will die. In this region there are trees in the water. Plymouth is a typical coastal community. I use the term water level rise instead of sea level rise. Sea level rise is a long term thing that is happening and will continue to happen, but we know we have water level rise issues today. We have a sewer lift station on Main Street that is underwater after a heavy spring rain. In coastal communities we know that if the water comes and stays what it will look like. If water level rise comes and stays as sea level rise, how are we as small towns around America going to get to our pipes to maintain them?

Parts of our sewer and water systems are over 100 years old. When we have rain events the old pipes deteriorate. When the water table is high it puts enormous hydrostatic pressure on the pipes. We smoke tested the sewer system and everywhere that there is a crack is an opportunity for water to go into the sewer system. If sea level rise happens and stays permanently then our system will be permanently saturated with surface water. We received funds from the Clean Water Management Trust Fund and did a project in 2006-2007. We were able to replace over a mile of pipe and dozens of manholes. We would not have been able to do this project without the Clean Water Management Trust Fund and the Rural Economic Development Center. We have created a very efficient system to get our sewage to the treatment plant, but if water level rise comes and stays then we are going to have to deal with the pumping stations and other piping along the lower edges in all towns across the country. A key starting point to getting assistance is to document what is going on in your town. Sea Grant was very instrumental in working with the Town of Plymouth about two years ago on a Vulnerability and Consequences Adaptation and Planning Scenario (VCAPS) process. We looked at our vulnerable infrastructure and from there we identified the assets that we feel are vulnerable to water level rise. Detailed water level rise mapping was done for the community. Our communities are ready to get work done. We need to move beyond the rhetoric. In small communities we know that we have water level rise issues today that no one can argue with. We need financial funding and technical assistance from external sources.

Tailwater Recovery as an Agricultural BMP
Erin Fleckenstein, NC Coastal Federation

Eric Fleckenstein introduced herself as the person heading up the North Carolina Coastal Federation's habitat restoration work. Some people call this tailwater recovery and some call it integrated water management. At the Coastal Federation we think that there is a real opportunity for the co-mingling of water management and improvements in coastal water quality. This is just one technique that could be employed throughout eastern North Carolina to improve water quality and build some resiliency into the landscape in the face of sea level rise and climate change. Oysters improve water quality through filtering, protect shorelines from erosion, they provide habitat for a number of estuarine dependent species, and are important to the economy and culture of eastern North Carolina. Since the late 1880's oyster harvest has declined considerably. The

decline has occurred from a number of factors. In 2003, the Coastal Federation with funding from the Clean Water Management Trust Fund, set about to devise a plan for restoration of oysters throughout North Carolina. In the northern region we looked at where historic oyster rock occurred. There was a high concentration along the Hyde and Dare county mainland. The workgroup that was created to prioritize locations for oyster restoration decided to focus on the Hyde and Dare county mainland, but quickly realized that to have successful oyster restoration we need to tackle some water quality issues that the Sound was dealing with. They formed a wetlands stakeholders group. Much of the area in Dare and Hyde counties is in Pocosin Swamp with very rich, deep organic soils. Much of it has been cleared for farming operations. The drainage off of the landscape is a concern because of sediments, bacteria and nutrients that are being discharged into the sound. We needed to look at ways that we could mitigate and lessen the impact of the canal system. The stakeholder group was formed to look at pocket wetlands throughout Dare and Hyde Counties where we could restore some small wetlands at the mouth of the canal and allow for settlement and treatment of the stormwater runoff. We were put in touch with Wilson Daughtry, a local farmer, who has been thinking about tailwater recovery as an agricultural benefit and thought that there might be some co-mingling of wetlands restoration and tailwater recovery on a large scale. Wilson is part of the Matamuskeet Drainage Association. He owns and manages about 7,000 acres. The Association is comprised of about 39 landowners and it is 42,500 acres. The landowners are assessed a fee based on their land use and they pay into the Association structure which operates and maintains the pumps, canals and roads within the Association. Two of the pump stations discharge into Pamlico Sound. The waters are closed for shellfish harvest because of the bacterial contamination in the water. The sources of bacteria are animals so source control is not an option. Treating the bacteria is difficult. The best option is to look at the flow to the sound to capture and treat the water. We worked with NCSU through a grant from Clean Water Management Trust Fund to model the historic flow of water in the Drainage Association. There was no flow to the Sound. We wanted to get back to the historic flow and reduce flow to the Sound. The current flow is discharging a lot out to the Sound. Through a variety of stakeholder meetings and lots of field visits we started talking about how to manage the water differently. We developed a series of wetland restoration projects throughout the Drainage Association. Most of them are in partnership with the Natural Resources Conservation Service. Much of the land in the proposed projects is in a conservation easement program called the Wetland Reserve Program. We are working with NRCS to implement these projects. One of the projects was the shorebird project. It is a 600 acre area. In addition to the water quality benefits we were also looking at creating some shorebird habitat. This project was implemented in 2010 and was funded by NRCS, USFWS, and APNEP. The land was already being used as waterfowl impoundments and we did some earth work and installed a pump that allows the landowner to manage the waters so they create a foraging area for the migrating shorebirds. A water management plan was developed with guidance from the Fish and Wildlife Service to create mudflat habitat and moist soil habitat for the shorebirds. Two additional projects are funded for construction through Clean Water Management Trust Fund. Permits have been received to install two pump stations. This will restore the historic flow. This will bring it back to the oyster restoration once the water quality has been improved. We have plans to continue to work with the Division of Marine Fisheries and the Nature Conservancy to install future sanctuaries to continue the holistic landscape scale approach to water quality, water management, and oyster restoration.

Impacts of Rising Water Levels on Wildlife Refuges
Chuck Peoples, Nature Conservancy

Chuck Peoples stated his primary focus area is the Roanoke River, but facilitates all TNCs activities across North Carolina. We are working on a project in collaboration with the Fish and Wildlife Service. It is all about using ecological restoration to create resilience in a coastal habitat complex. We have worked at the Refuge and used natural infrastructure to address some of these adaptation issues. The Great Dismal Swamp was one of our first big projects in this area in 1973. It became a national wildlife refuge. Then we helped Alligator River National Wildlife Refuge in 1984. We also have a strategic partner in the Fish and Wildlife Service. They have 490,000 acres in this region. When you think about that and their National Refuge system, it wouldn't seem that significant, but when you look at the eastern seaboard of the United States it represents 39% of Fish and Wildlife's land holdings. There is a substantial investment in this region by the Fish and Wildlife Service. We have had multiple large fires in the Pocosin wetlands. From 2008-2011 there has been 52 million dollars spent putting out fires in this region. 415,000 acres of public land lie within one meter of sea level. The Albemarle-Pamlico is an extremely vulnerable region. It has been identified as one of the most vulnerable regions on the east coast in terms of sea level rise. One of the first things you will see on Google Earth when looking at the Refuge's historical imagery is how the forest and wetland that fringe the Albemarle and Pamlico Sound has died back and transitioned into a marsh system. There is also substantial shoreline erosion that has occurred. There is also direct inundation. The other thing that contributes to the vulnerability in the region is the legacy of past use. There is a considerable network of canals, ditches, and drainage ways that empty into the sound. There are also deep peat deposits in this region. It is of particular importance because this is one of the few areas where large peat based wetlands fringe the sound. These peat systems are like putting a carbon filter in your water to remove odors and toxins. There is salt water intrusion on the lower elevations. Where the ditches meet the sound there is salt water coming into the landscape. There is salt poisoning of vegetation. There is anaerobic soil decomposition which leads to local subsidence. At the higher elevations you have incremental soil loss due to oxidation. There is also catastrophic soil loss due to soil ignition. Six million tons of carbon went up into the atmosphere during the Evans Road fire in Pocosin Lake National Wildlife Refuge. There is a range of benefits to restoring wetlands. The biggest one is reducing the threats of wildfire. There are ancillary benefits to that. During these fires incidents of asthma and visitation to emergency rooms went up. We know that there are impacts to tourism and there are cost savings. Restoration facilitates application of prescribed fire that can promote healthy forest growth. Having a freshwater head on the wetland slows the onset of sea level rise. All of this improves water quality. One of the first big steps is working with Fish and Wildlife Service. We have partnerships with nine coastal refuges. Another step is identifying the types of strategies you might put in place. We had to pick an area that we could test concepts on to demonstrate them to the public. We picked a site in Dare County. Our three main components there are planting of salt tolerant vegetation, managing the hydrology and building nearshore oyster reefs. There has been significant evidence of change at this site of both habitat transition and shoreline erosion. Most of the shoreline loss is associated with areas that have ditches taking water off of Alligator River out into the sound. We planted 80 acres at the demonstration project site. The first year we had great survival. Then we had a hurricane. The species that we picked were ones you would find on the refuge now but they didn't like the salt water. We had about 10% survival. You have to envision what you want in the system and not necessarily what was there in the past. This site had a water control structure. We were able to pull together the funds to put in a new structure. One of the big concerns was not about the flow going out; it was more about the salt water coming in. We put in tide flex check valves. They only open with pressure from above. When the sound water moves in they actually

pinch and close. They are working very well. There was an immediate change in the salinity above the structure. The key is to keep the salt water off the landscape and keep the fresh water on it. We also built reefs out of marl and limestone and also built reefs out of oyster shell bags. We were experimenting with construction techniques and looking at the efficacy of them. We found that oyster reefs do a great job. You will not stop shoreline loss in this area, but you can slow the rate of loss. We have been plugging ditches that are carrying water off of the landscape from Highway 264 out. We haven't moved toward the interior of the Refuge. We have expanded our reef work and we have begun looking at how to put a marsh in place that will hold the peat together in the absence of salt tolerant tree plantings. We have also pulled together the funds to develop a water management plan that includes the Dare County bombing range and a big chunk of the Refuge. We have also done some work at Swan Quarter where there was a failed bulkhead and we replaced it with an oyster reef.

H819 Legislative Studies Status (CRC 12-40)
Braxton Davis, DCM

Braxton Davis stated H819 which became law in July has five sections. The first section defined the coastal area and codified the twenty coastal counties. The sea level rise policy was the next section. It lays out that the Commission and DCM shall be the only agency authorized to define rates of sea level change for regulatory purposes and we cannot adopt any rates for regulatory purposes prior to July 1, 2016. It also directs the Science Panel to deliver the five-year updated assessment to its Report by March 31, 2015. The update needs to have a comprehensive literature review, address the potential for sea level fall as well as rise; it must define assumptions and limitations, and be made available for public comment. It also mentions that the CRC should evaluate predictive models and sub-regional rates of change in different parts of the coast and a study of economic and environmental costs and benefits of adopting sea level rise regulations. The evaluation of predictive models and sub-regional rates of change would likely come through the Science Panel's Report Update because they addressed some of those in the first Report. The economic environmental costs and benefits would be a separate exercise. The timeline for the Science Panel's Assessment Report due March 31, 2015, will begin by asking the Science Panel for a draft by late summer or early fall 2014. We would include a three month technical review period. The CRC could seek written public comment for 90 days and a public hearing over the summer. A final report from the Commission would be ready by December 31, 2015. The CRC's report would have the Science Panel's Report within in it and would include the costs and benefits of adopting sea level rise regulations. The cover report from the CRC would need to go out for public comment as well. The package must be submitted to the ERC by March 2016. On October 29 there was a Science Panel meeting in New Bern to review the Bill. We talked about the sea level rise update and the Science Panel is ready to work on this with us. There was good discussion at the meeting about how to do the comprehensive literature review. There was also good discussion about how to use Staff support and how to bring in additional expertise. We want to develop a very specific scope of work for the Science Panel that would be brought to the CRC for review.

Section three of the Bill was ocean setbacks. This has to do with the replacement of single family and duplex residential structures greater than 5,000 square feet in the ocean hazard area AEC. It grandfathers any structures that were built prior to August 11, 2009 when the updated setback factors were effective. The structures cannot exceed their original square footage or footprint. The structures must be able to meet the minimum setback requirement (30 x erosion rate) or a minimum of 60 feet if unable to meet the current setback. The structure also has to be built as far landward on the lot as feasible. This part of the law requires the Commission to adopt temporary rules until a

permanent rule becomes effective. In the meantime, the Division shall not deny a permit. The temporary rule was approved for public hearing in August, a public hearing was held on October 17, and Staff is asking the Commission to adopt the rule language and fiscal note at this meeting. Staff is also asking the Commission to approve the permanent rule and fiscal analysis for public hearing.

Section Four is the Cape Fear River Area of Environmental Concern and directs the Commission to study the feasibility of creating a new AEC for lands adjacent to the Cape Fear River. It asks us to consider the unique coastal morphologies and hydrographic conditions in the region and collaborate with the Town of Caswell Beach and the Village of Bald Head Island and adjacent land owners. The Commission is also directed to consider whether action is necessary to eliminate overlapping AECs in the area and incorporate appropriate development standards into a single unique area of environmental concern for the sub-region. The report would be due December 31, 2013. Chairman Emory and some of the staff at DCM, including myself, met with local officials on October 3 to discuss what we envision the process being for this study. We want to follow a process in the Commission's rules, 7H .0503, which lays out a process for nominating new areas of environmental concern. In accordance with the law, the Commission needs to provide a justification that there are unique conditions in this sub-region. Bald Head Island has concerns about changes in the inlet, navigation projects and impacts on shoreline changes. Caswell Beach was concerned with the potential new inlet hazard areas; Ft. Caswell has experienced some significant beach erosion and is interested in being part of this effort. Caswell Beach and Bald Head Island had consultants at the meeting who discussed some of the unique aspects of the region. We have asked them to draft the justification of the unique conditions. The second part is to describe the regulatory concerns and issues they face in the region. We offered to help put together a public workshop in late winter or early spring of 2013 where staff present how our areas of environmental concern work in the region and how the rules have evolved over time and talk about the regulatory issues and concerns.

Section Five is the Inlet Hazard Area Study and the directive is the CRC shall determine feasibility of eliminating the inlet hazard area AEC and incorporate appropriate development standards adjacent to the state's developed inlets considering eliminating the inlet hazard boxes the Science Panel drafted and look at tailored shoreline management strategies. The CRC should also work in collaboration with local governments and landowners to look at regulatory concerns and strategies for inlet areas. This report is due January 1, 2015. We have discussed this with the Science Panel. We are going to ask them to look at various models for determining long term erosion rates for inlets, the implications for historical and ongoing engineering projects, and looking at the most scientifically defensible methods for looking at erosion related hazards in those zones. We would envision their report going out for technical review and public engagement by January 2014. The best way to look at the regulatory issues and concerns is to hold regional workshops with stakeholders to discuss these issues. The final report will be created by July 2014 and taken out for public comment. At the next Science Panel meeting we will focus on developing a specific scope of work for this study to bring to the CRC for feedback.

The last meeting with the Science Panel was the first meeting since November of last year and there has been a lot of work done through email and conference calls. One of the ideas we talked to them about was taking the by-laws and creating a new charge from the CRC that lays out some of the same types of operating considerations on membership, meeting frequency, public involvement, and consensus building approaches.

Evaluating the Effects of Shoreline Stabilization on Fish Habitat Function and Erosion of Estuarine Shorelines in North Carolina (CRC 12-34)
Rachel Gittman, UNC

Rachel Gittman stated estuarine shorelines, salt marshes, oyster reefs, and sea grass habitats provide valuable ecosystem services. They provide habitat for juvenile fish and crustaceans, they provide filtration for our waters, they can store flood waters during storm events and reduce storm surge, provide stabilization for the shoreline, and they have the ability to sequester carbon in light of global climate change and support socio-economic services. One of the major concerns we have in North Carolina is the effect of sea level rise on the estuarine habitats. Much of our state is at risk for inundation if we see sea level rise at the current projections of one meter by 2100. We have substantial concerns about the estuarine habitats that we may lose if these habitats are not able to keep up with sea level rise through vertical accretion or transgression landward. One of the factors that contribute to the loss of estuarine habitats regardless of sea level rise is coastal erosion. We are losing a lot of our estuarine habitats to this natural process. One of the responses that private property owners have had to erosion problems on their property is to armor their shoreline. There are two common methods that have been used over several decades and those are bulkheads and revetments. A bulkhead is a vertical wall that is placed landward of any wetland vegetation and above the high water line. Revetments are located in the same location and are essentially just piled rocks or concrete against the shoreline. One of the concerns we have with bulkheads is related to sea level rise. As sea level rises, the habitats either have to vertically accrete or transgress landward. In a natural setting as the water rises, the habitats are able to move landward and keep up with the water rise. If you have coastal development with a bulkhead in place, as sea level rises if the habitats are not able to vertically accrete then they will be lost as sea level rises. As salt marsh and deeper shoreline habitats disappear the estuary will become a walled tub. This will have major effects on commercial and recreational fisheries, there will be a loss of habitat for migratory birds, water quality will degrade, and the esthetics of the shoreline will decline. An alternative to bulkheads that has been considered is marsh sills, or living shorelines. Marsh sills are seaward of salt marsh habitat in public trust waters. It can be constructed of granite, marl, or oyster bags. The sills will provide erosion protection, but will still allow the salt marsh to be inundated regularly allowing fish and crustaceans to access this habitat. The North Carolina General Assembly directed the Division of Coastal Management to develop a General Permit for marsh sills. The GP was used to construct several sills within North Carolina. A lot of them were constructed with the help of the NC Coastal Federation. As these sills were constructed, resource agencies and scientists began to raise concerns about the unknown consequences of marsh sills on estuarine habitat function. In 2010, DCM led a permitting based assessment of constructed marsh sills in North Carolina. It consisted of visiting every sill in the state and assessing whether the sill had been constructed according to permit regulations and whether the sill was constructed in a way that the resource agency felt protected the habitats that may be affected. Our main question was, how do different types of shoreline stabilization affect the ecosystem services of estuarine shorelines? We wanted to look at the fish and crustacean use of estuarine habitats with and without stabilization. We looked at salt marsh habitat that is being used by fish and crustaceans at high tide with sills in place and without. Then we wanted to look at the subtidal habitat and sample the fish communities using the habitat with and without sills. Then we looked at an unvegetated habitat and fish use adjacent to bulkheads. Our study area was Pine Knoll Shores. It was an appropriate study area because it has several sills that were constructed on the same shorelines with the same tidal inundations and geomorphology. We sampled fish communities from June to October 2010 and 2011. The results showed that there was a higher abundance and biomass with sills than at the control sites. Sill sites had a higher richness and species diversity. We then moved to subtidal habitat with and without

sills. There was no difference between natural sites and sill sites in the total fish and crustacean abundance. Then we shift and look at the unvegetated habitat corridor. We found that sills had a higher abundance and biomass of fish and crustaceans than bulkheads. Sills also had a higher abundance than natural marshes, but the differences between natural marshes and bulkheads or natural marshes and sills are not significant. The salt marsh associated with sills does seem to have a higher abundance of fish and crustaceans, but the sea grass habitat did not. Some of our theories are that the sill is located directly adjacent to salt marsh and is buffering some of the wave energy that is coming in so it is providing a quiet, lower-flow refuge for juvenile fish and small species. Another potential explanation could be that the hard substrate that the sill has contains a lot of oysters, algae and barnacles growing on it and would be serving as a food resource. The sills could be replacing the intertidal oyster reefs that previously provided these services. With the landfall of Hurricane Irene I was able to assess whether marsh sills provide adequate shoreline stabilization to homeowners. An assessment of the physical site characteristics was taken in 2010. I was able to revisit the sites in 2011 following Irene to take the same measurements and then revisited the sites again a few weeks ago to see the post-year recovery. After Irene we did shoreline damage classification surveys along Bogue Banks. We wanted to ask if different types of shoreline stabilization performed differently during a storm event. We quantified the type and length of shoreline and then assessed whether or not the shoreline was damaged. We focused on armored shorelines because natural shorelines are difficult to tell if there is damage and what it may have been caused by. For the 20 kilometers of Bogue Banks that we surveyed (the back barrier side) we found that about 50% is marsh habitat and 40% is bulkhead. The smaller percentages were riprap, sills and hybrid shoreline. Because bulkheads were the dominant feature we focused on the damage associated with the bulkheads. The riprap, sills and hybrid shorelines showed no visible damage to the shoreline. There were some collapses of bulkheads and some significant land erosion. But it was only about 5% of the bulkheads that we surveyed. In the Rodanthe, Waves, Salvo and Hatteras Village areas we conducted the same surveys. About half of the shoreline is still natural marsh and about 35% is bulkhead. What we found in this region was different than in Bogue Banks. One third of the bulkheads that we surveyed were damaged. On Bogue Banks at a sill site there wasn't any visible damage to the shoreline. After Hurricane Irene we took surface elevation measurements and found that there wasn't much of a change in either the sill or control sites as a result of Hurricane Irene. There was very little loss in elevation. We also looked at the vegetation. There was an initial loss after Irene in the vegetation density, but when resurveyed in 2012 most of the sites seemed to recover their density. From the fish sampling we have done we do have the potential for sills, when designed properly, to enhance fish and crustacean habitat. Some of them may function similarly to oyster reefs. This is particularly true if we start constructing sills out of loose oyster shell. We have some evidence that they may provide better erosion protection from storm events than bulkheads. I didn't see a difference in how natural sites responded than to the sill sites. Marsh planting alone may be all that homeowners need. One of the major issues with shorelines and erosion may be that the slope is off. If you have vegetation in place that is trapping sediment then you don't need extreme structures. Careful sill design and construction is critical. We selected sills to study that were designed appropriately and were for private property. This work does not address the effects of industrial sills that are found on Ocracoke and Cedar Island. More work is needed to understand to the long-term effects of stabilization on estuarine habitats in the context of sea level rise.

Sustainable Estuarine Shoreline Stabilization: Research, Education and Public Policy in NC
John Fear, DCM

John Fear stated the CRC has been hearing about this project for the past couple of years and we are finally able to bring the results. Consider me a spokesman as much of the work I am presenting was created by our project partners. We know that estuarine shorelines in North Carolina are eroding. We also know that our coastal population continues to increase. When you put those two things together it tells us the pressure to armor the shorelines is only going to continue. We need to have an appropriate plan in place to deal with it. We know that fringing marsh provides critically important ecosystem services. Ecosystem service is something that we gain from the marsh that we don't have to pay for. The recently completed DCM shoreline mapping project showed that statewide the dominant shoreline stabilization method being used currently is vertical bulkheads. About 87% of our armored shoreline is bulkheaded. There are potential issues with bulkheads that we may want to be concerned about. They cause wave refraction which can lead to scour and potential loss of fringing marsh. They also block the ability of fringing marsh to transgress upslope. Bulkheads separate the upland from the intertidal/subtidal region and change the slope of the shoreline. Is the most widely used form of shoreline stabilization used in North Carolina causing deleterious impacts to our coastal marsh and the ecosystem services provided by that marsh? We designed a project to answer it. As a part of this project we wanted to construct an alternative to a bulkhead to be used as a demonstration project and put a lot of effort into education and outreach. The data collection time period for this project was 2009-2010. This work was done in three regions of the North Carolina coast. Our estuarine systems differ dramatically as you move north to south both in tide range and also in salinity. In order to make the work relevant to the entire state we worked in all three regions. Within each region we had six sample sites that had a natural marsh with no bulkheads, a bulkhead site with differing levels of marsh width in front of them, and a bulkhead that had no marsh in front of it. We looked at the maximum height of the marsh at the sites and did not see any differences. One thing marshes can do to maintain themselves is to grow taller. There was a difference in stem density. There is a decreasing trend in stem density as we move toward narrow marsh and no marsh. The key results from the vegetation elevation work are that the bulkhead sites with no marsh and bulkheads with narrow marsh have much lower elevations in terms of bathymetry and stem density of the bulkhead sites decreased with marsh width. The wave attenuation results were collected during Hurricane Earl. Fringing marsh effectively reduced wave energy. There was no repeatable pattern of infauna at the sites. The key result was that it was extremely variable by site and year and we did not see any impact to the benthic infauna due to either marsh width or bulkhead presence. However, when we move to the nekton we did see an interesting pattern. Wider marshes equaled more nekton. If we are wanting to preserve fisheries then we want wider marshes. We also found narrow marshes had high nekton density. This tells us that the edge of the marsh is important to the fisheries. Despite the narrowness of the marsh it is still providing a valuable habitat. The natural marsh had a much higher bird abundance than any of the bulkheaded sites. Sites with no marsh had the lowest bird counts of all sites. Wider marshes removed more nitrogen than narrow ones. What was not expected was that per unit area, the nitrogen removal rate was the same so narrow marshes were just as efficient at removing nitrogen as the wider marsh.

For the demonstration project we only wanted to go with something that used natural materials. We decided to go with an oyster shell reef with marsh plantings. We also wanted to do it in a location where people would see it so we put it in the Rachel Carson component of the North Carolina National Estuarine Research Reserve. This is an eroding shoreline. We are losing marsh habitat along the edge and the erosion rate was about 20 feet per year. We utilized loose shell for this

project. The main problem with loose shell is it can quickly get blown away if you have a weather event or lots of wave energy. The marsh plantings survived. All monitoring to date suggests that this is working and we will continue to monitor it in the future to see how it is protecting the shoreline in terms of erosion. We also tried to reach out to the homeowners and marine contractors as part of this project. We did that by mailing out almost 900 surveys to the estuarine property owners. We only received 75 back. Although it was a poor response rate, it allowed us to get some useful information. We asked what most influenced their choice in picking a shoreline stabilization method. We thought that cost would be what was most important, but it turned out that protection from erosion was what they cared about. If we can show property owners that something besides a bulkhead will work just as good as a bulkhead then there isn't anything that prevents them from moving toward that option. This opens the door to some education and outreach activities moving forward. We also reached out to marine contractors. We asked them what kind of structures they most commonly recommend. It was not surprising that over 80% of the time they recommend a bulkhead. We have printed products as part of this project as well as online information. Our project was not long enough to equivocally determine if bulkheads lead to marsh loss, but our data are supportive of this model even after just two years. Based on monitoring to date, shoreline stabilization using oyster reef and marsh plantings is a viable, cost-effective alternative.

DENR Living Shorelines Strategy & Modification of Sill GP (CRC 12-35)
Daniel Govoni, DCM

Daniel Govoni stated this will be an update on the progress on the living shoreline strategy and the General Permit .2700. Since the last update we have had several meetings. We met with the Virginia Institute of Marine Science (VIMS), other agencies, and completed some research studies that we are trying to incorporate into a draft strategy. We also had a meeting with the US Army Corps of Engineers with regards to General Permit .2700. The meeting with VIMS was conducted to compare living shoreline initiatives in Virginia, North Carolina, and Maryland. We learned from them that they have created some online information and training resources. Specifically they have created a decision support tool which is a web-based non-regulatory tool to provide guidance on the preferred shoreline stabilization structure for the property owner. They have also conducted a marine contractors training course. We also held a meeting with other resource agencies including the Wildlife Resources Commission, Division of Water Quality, DMF's Ecosystem Enhancement Program, Community Conservation Assistance Program, Albemarle-Pamlico National Estuary Program and NOAA. We were asked to incorporate into the draft strategy the mapping analysis data, to look at other areas of living shorelines, expansion of CCAP which would be a financial incentive to property owners, CRFL funds could be used to conduct further research, incorporate storm performance, and EEP showed a strong interest in involvement. We will take all the information that has been gathered and draft a final living shoreline strategy. We want to ask the Estuarine Shoreline Biological Processes Workgroup for their recommendations, specifically in the areas of the research result, the mapping results and the outreach plan. We would like to bring the draft strategy before the CRC in 2013 for approval and ask for DENR's endorsement. The implementation of the strategy will focus primarily on advocacy, public awareness, public incentives, monitoring, research needs and short and long-term actions of the plan. The meeting that was held with the Corps of Engineers was to see if we could streamline the General Permit .2700 for construction of riprap sills. Our current permit requires coordination with DMF, DWQ and the Corps. Following meetings with DMF and DWQ their coordination is no longer needed. The Corps explained that they do not have the legal framework for rapid issuance of their General Permit. It was further explained that under our CAMA Major Permit process they have a 291 Programmatic General Permit for CAMA projects that is unique to North Carolina and it is more

efficient than other coastal states. Staff recommends that the General Permit remain in its current form and will implement the other streamlining measures. There is no formal rulemaking proposed for this General Permit.

David Lekson, northeast section chief for the Corps of Engineers, stated we cover 28 northeastern counties of North Carolina. We very much value the relationship we have with CAMA. Raleigh Bland is also here. Some of the Corps' rules go back to 1899. We have a long regulatory history in America. My Commander has some very specific requirements as it relates to protecting the navigable capacity of North Carolina's waters as well as commitments to federal laws that CAMA would not have to deal with. We also cannot be a proponent or an opponent. We started this coordination in 2003 and have talked closely with Congressman Jones in 2004, coordinated with Secretary Freeman in 2011 and laid out the challenges that the Corps has. North Carolina has the quickest process of any other state in America. The Corps has been very involved with the sill strategy for decades, but sills are a hardened structure offshore and my Commander has to be concerned about commercial navigation as well as traditional navigation.

Chairman Emory stated the next step may be to take the shoreline mapping data that we have and pick out an area of the state and focus our outreach activities on the contractors that work in those areas. We could make a pitch to the EEP program for a pilot study where they would provide some incentives to set up a two year project.

PUBLIC INPUT AND COMMENT
No public comments were received.

VARIANCES
Harbour Village Yacht Club (CRC VR 12-08) Pender County, 30' Buffer
Christine Goebel

Christine Goebel of the Attorney General's Office represented Staff on this variance request.She stated Petitioner is a corporation which owns property adjacent to Topsail Sound in Hampstead, North Carolina. Mr. Ray Blackburn, counsel for Petitioner is present and will address the Commission. On August 6, 2012, the CAMA Local Permitting Officer for Pender County denied Petitioner's CAMA Minor Permit application for an 8-foot by 16-foot extension to Petitioner's existing 192 square foot deck allowance within the 30-foot buffer as the addition would exceed the 200 square foot deck allowance within the 30 foot buffer 15A NCAC 07H .0209(d)(10)(F). Mrs. Goebel reviewed the stipulated facts for this variance request. Staff and Petitioner disagree on the four statutory variance criteria which must be met in order to grant the variance request. Staff submits that there are no unnecessary hardships resulting from a strict application of the rules to the request because Petitioner has other alternatives available to achieve its goal that are not inconsistent with the buffer rule. Staff denies there are any physical conditions peculiar to the property. In addition, staff submits that Petitioners has caused its own hardship. Even without a variance, Petitioner could redesign the existing deck. It is the Petitioner's design choice that has caused any existing hardship. Staff denies that granting variance request would be consistent with the spirit, purpose or intent of the rules, standards or orders issued by the Commission. Furthermore, the requested variance will not secure the public safety or welfare; and will not preserve substantial justice. If the Commission decided to grant the variance request and conditioned the variance on the requirement that Petitioner shall install a stormwater management system, then the staff agrees that granting the requested variance could be considered consistent with the spirit, purpose and

intent of the rules. Presently there is no existing stormwater management system on the highly developed site.

Ray Blackburn, counsel for Petitioner, reviewed the stipulated facts which he contends supports Petitioner's request for a variance. Petitioner argued that strict application of the rules would cause unnecessary hardship and in support of this position stated that everyone wants to maximize the use of their property. Petitioner was permitted for200 feet of decking and thought they could request a variance to extend the permitted deck. Mr. Blackburn explained that there is nowhere else to put the deck. Petitioner believes the lot is peculiar due to the size of the lot and the fact that part of the lot is unusable. The Yacht Club bought the property "as is" and the building was built before the rules were effective.

Renee Cahoon made a motion to support Staff's position that strict application of the applicable development rules, standards or orders issued by the Commission do not cause the Petitioner unnecessary hardships. The motion was seconded by Veronica Carter. The motion failed with four votes in favor (Carter, Weld, Webster, Cahoon) and five opposed (Old, Hester, Simmons, Wynns, Peele).

Jerry Old made a motion that strict application of the applicable development rules, standards or orders issued by the Commission cause the Petitioner unnecessary hardships. Joe Hester seconded the motion. The motion failed with three votes in favor (Old, Hester, Wynns) and six opposed (Simmons, Carter, Weld, Peele, Webster, Cahoon).

Jamin Simmons made a motion to table the variance request. Bill Peele seconded the motion. The motion failed with three votes in favor (Hester, Simmons, Peele) and six opposed (Old, Carter, Weld, Wynns, Webster, Cahoon).

Bill Peele made a motion to reconsider the first variance factor and support Staff's position that strict application of the applicable development, rules, standards or orders issued by the Commission do not cause the Petitioner unnecessary hardships. Lee Wynns seconded the motion. The motion passed with seven votes (Simmons, Carter, Weld, Wynns, Peele, Webster, Cahoon) and two opposed (Old, Hester).

Veronica Carter made a motion to support Staff's position that hardships do not result from conditions peculiar to Petitioner's property. Joan Weld seconded the motion. The motion passed with seven votes (Simmons, Carter, Weld, Wynns, Peele, Webster, Cahoon) and two opposed (Old, Hester).

Veronica Carter made a motion to support Staff's position that hardships result from actions taken by Petitioner. Bill Peele seconded the motion. The motion passed with six votes (Simmons, Carter, Weld, Wynns, Webster, Cahoon) and three opposed (Old, Hester, Peele).

Bill Peele made a motion to support Staff's position that the variance request, if conditioned to require a stormwater management system, would be consistent with the spirit, purpose and intent of the Commission's buffer rule. Joe Hester seconded the motion. The motion passed with eight votes (Old, Hester, Simmons, Weld, Wynns, Peele, Webster, Cahoon) and one opposed (Carter).

The variance request was denied.

NCDOT – NC Highway 12 (CRC VR 12-09)
Christine Goebel

Renee Cahoon stated she lives in Dare County and owns property on Hatteras Island but does not have a conflict of interest on this variance request. Jerry Old stated he owns property on Hatteras Island, but does not have a conflict of interest. Joe Hester stated he owns property in Manteo but does not have a conflict of Interest. Jamin Simmons owns property on Ocracoke but does not have a conflict. Lee Wynns stated he is a property owner in Nags Head, but does not have a conflict of interest.

Christine Goebel of the Attorney General's Office represented DCM Staff. Mrs. Goebel stated Mr. Tom Henry of the Attorney General's Office is present and represents NCDOT. Petitioner is the NC Department of Transportation which maintains NC 12 on the Outer Banks within its right-of-way easement, including the Rodanthe "S-Curves" area on Hatteras Island in Dare County near Mirlo Beach. Last year this area suffered a breach and significant damage to NC 12 from Hurricane Irene. Following Irene, DOT received CAMA Major Permit No. 103-11, issued as an Emergency Permit pursuant to G.S. 113A-118(f), to repair the breach in NC 12 including the installation of sandbags along the "S-Curves". On October 27-28, 2012, Hurricane Sandy caused damage to NC 12 in the same location, including significant overwash and buckling of NC 12. On November 7, 2012, Petitioner applied for a CAMA Emergency Permit seeking to modify CAMA Permit No. 103-11 in order to realign NC 12, to increase the total length of sandbags and increase the size of the sandbag structure to dimensions larger than allowed by Commission rules. On November 7, 2012, DCM issued an Emergency Permit modification to CAMA Major Permit No. 103-11, which conditioned the sandbag structure to meet the Commission's size limits. Petitioner seeks a variance to allow the placement of sandbags in the 8 feet high and 25 feet wide configuration proposed in their permit application. Mrs. Goebel reviewed the stipulated facts for this variance request and stated Staff agree with Petitioners on all four variance criteria which must be met in order to grant the variance request.

Tom Henry of the Attorney General's Office represented Petitioners. Mr. Henry reviewed the stipulated facts which he contends supports the granting of this variance request. This site does fall within a plan of a larger, long-term improvement project for NC 12. There is an obvious hardship to the NCDOT, North Carolina's public, and visitors to and from Hatteras Island.

Veronica Carter made a motion to support Petitioner's position that strict application of the applicable development rules, standards or orders issued by the Commission cause Petitioner unnecessary hardships. Jerry Old seconded the motion. The motion passed unanimously (Old, Hester, Carter, Weld, Wynns, Peele, Webster, Cahoon, Simmons).

Jerry Old made a motion to support Staff's position that hardships result from conditions peculiar to the Petitioner's property. Veronica Carter seconded the motion. The motion passed unanimously (Old, Hester, Carter, Weld, Wynns, Peele, Webster, Cahoon, Simmons).

Veronica Carter made a motion to support Petitioner's position that hardships do not result from actions taken by the Petitioner. Jerry Old seconded the motion. The motion passed unanimously (Old, Hester, Carter, Weld, Wynns, Peele, Webster, Cahoon, Simmons).

Jerry Old made a motion to support Staff's position that the variance request will be consistent with the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. David Webster seconded the motion. The motion passed unanimously (Old, Hester, Carter, Weld, Wynns, Peele, Webster, Cahoon, Simmons).

This variance request was granted.

PUBLIC HEARINGS
15A NCAC 07H .0308(a)(2)
15A NCAC 07H .1705

Mike Lopazanski stated the current time limit for sandbags is two years for structures less than 5,000 square feet and five years for structures greater than 5,000 square feet. If you are located in a community that is pursuing a beach nourishment project then you can have a five year time limit and if you are in an inlet hazard area then the time limit is eight years if the community is actively pursuing inlet relocation. Currently sandbags can only protect a structure once if it is in the ocean hazard area. If you are in an inlet hazard area then there isn't a restriction on how many times you can use sandbags. You become eligible for an additional eight years if the structure becomes imminently threatened and the community continues to pursue an inlet relocation project. The changes that we are proposing match the rules adopted for the inlet hazard areas. The time limit for sandbags will be eight years in ocean hazard areas if the community is pursuing a beach fill project. We are removing the one-time per structure limitation if it becomes imminently threatened and the community is pursuing a beach nourishment project. We are also including inlet stabilization as an activity eligible to seek an extension on sandbags in accordance with the changes to CAMA. We are not proposing any timeframe changes for areas that are not seeking beach fill, inlet relocation or inlet stabilization and there are no changes to the provisions requiring removal. In the fiscal analysis we found that NCDOT would benefit from the time extension, the local governments would benefit from the time extension, and the Division would have increased monitoring requirements and some efficiencies derived from the uniform management of sandbags. There would also be an increased compliance with sandbag removal.

Mack Paul stated I am here on behalf of some homeowners on Figure Eight Island on the north end near Rich Inlet. As most of you know, we have been following this very closely and have been involved for almost 4 ½ years. There was a major issue with the rules in May 2008 when sandbags that were expired needed to come out. Since that time there has been a lot of work by Staff to assess the state of sandbags on the coast of North Carolina and come up with a rating system. We held a number of stakeholder meetings and came out with some recommendations. From our standpoint we were looking for a solution that would move away from strict timelines. That was not the will of the CRC and I understand that. At the last CRC meeting where the committee dealt with the rules, there was some discussion to clarify that the changes which allow not restricting sandbags to one time only is positive. It provides incentive to remove sandbags since they won't be fearful that they won't be allowed to put them back. Prior to these rules being proposed the General Assembly had not acted on inlet stabilization or the terminal groin. Now that there is some limited availability in North Carolina, these rules are recognizing that communities that are pursuing it in addition to inlet stabilization or inlet relocation would have the benefit of eight years. From my clients' standpoint once these rules go into effect then they would be able to maintain the sandbags for an additional eight years since their community did not have the opportunity to pursue inlet

stabilization until the legislation went into effect. We would want it interpreted that the eight years would go forward from here.

CRAC REPORT

Ray Sturza stated the CRAC gathered in the hotel lobby for a roundtable discussion about issues pertinent to the North Carolina coast. We plan to develop a summary of our activities for 2012. We want to put together a summary of the work that we have been doing to accentuate North Carolina's positive role in shoreline access and access opportunities for the coast. We will wrap that up with the activities that we foresee will be coming, particularly in terms of partnerships with foundations and public interest organizations to augment public money to further enhance existing facilities and find opportunities for more beach access. We are also going to look at what might be pertinent in 2013. One of the issues we have targeted but didn't get into was the structures on the beach issue and what local governments are able and not able to do in terms of removal. We discussed briefly the ramifications of impacts of super storm Sandy and how it impacted North Carolina.

ACTION ITEMS

Land Use Plan Certifications and Amendments

Brunswick County Land Use Plan Amendment Certification (CRC 12-41)
John Thayer, DCM
Veronica Carter stated she lives in Brunswick County and has reviewed the amendments and finds no conflict of interest.

John Thayer stated the County is requesting the third amendment to the original plan that was certified by the Commission in November 2007. This third amendment has several components to it. Staff has reviewed this request and feels that it meets the substantive requirements and recommends certification.

Renee Cahoon made a motion to certify the Brunswick County Land Use Plan Amendment. Jerry Old seconded the motion. The motion passed unanimously (Old, Hester, Carter, Weld, Wynns, Peele, Webster, Cahoon, Simmons).

Planning Program Review Strategy and Activities (CRC 12-42)
John Thayer, DCM

The memo provides an overview of the strategy and activities of the planning program. It also outlines six of the items that we are involved with. The first item is land use plan assessments. The planners are developing an instrument to review the local land use plans relative to our existing program goals in CAMA. The assessment is not meant to be a qualitative assessment of the strengths and weaknesses of the community's plan, but rather an assessment to provide the Commission with a broader profile of the character of the existing plan. We will begin this review in December and should complete it in April. The next item is local government listening sessions. Staff is developing a strategy for conducting meetings with local governments to discuss concerns they have and how we can assist them related to the planning program or land use plans. This will happen from March – June 2013. The third item is a review of the Community Rating System manual. The planners are working on the changes and how DCM might assist coastal communities in scoring more points or putting themselves in a better position of getting a better insurance rating. The next item is overhauling the Division's webpage related to planning and the public access program. One of the critical components of that is to ensure that the existing actions by the

Commission relative to the certification of land use plans and amendments are listed as well as links to the documents and reports online. The final item on the list is the Access Grant Program. We are in the process of gearing up for another request cycle for proposals for grant money. We will be looking at making the process from application to contract as efficient as possible to ensure that it is user friendly for the local governments. Additionally we are looking a setting up a workshop in the spring relative to applicants that wish to apply for grants. An email is about to go out to local governments regarding their interest in a workshop for routine land use plan amendments.

CRC Rule Development

Amendments to 15A NCAC 07I .0401 & .0406 and Fiscal Analysis – Minor Permit Program (CRC 12-36)
Mike Lopazanski

CAMA authorizes local government to participate in the permitting process by administering implementation and enforcement programs. Minor permits are issued by local governments through local permitting officers (LPO). DCM trains the LPOs at annual regional workshops. LPOs are reimbursed for attendance at these workshops. As part of Executive Order 70, DCM is required to review the CRC rules annually to look for inconsistencies and outdated rules. Since 1993 we have been reimbursing local governments $200.00 per LPO for up to three LPOs to participate in the training workshops. However, in 7I the reimbursement rate is listed at $150.00 per LPO. Also in reviewing the Minor Permit program we found that the application fee is wrong. Currently the application fee for a Minor Permit is $100.00. This fee has been in place since 2000. In 7I .0406 the fee is listed as $25.00. It hasn't been changed since 1982. We aren't changing any existing policies and procedures. The fiscal analysis has been approved by DENR and we have tentative approval from OSBM.

Renee Cahoon made a motion to approve the rule amendments and fiscal analysis for 7I .0401 and 7I .0406. Veronica Carter seconded the motion. The motion passed unanimously (Old, Hester, Simmons, Carter, Weld, Wynns, Peele, Cahoon, Webster).

Public Comment Summary 15A NCAC 07H .0304(1)(a)
AECs Within Ocean Hazard Areas – Erosion Rates (CRC 12-37)
Ken Richardson

In December 2010, we learned that we needed to expedite the next erosion rate update to satisfy FEMA's requirement that we have updated erosion rates so communities could get benefits from the Community Rating System. We wanted to make sure we were consistent with our methodology and the report. When we took it to public hearing, there was a table inside the report that caused a lot of questions. The table was consistent with tables that had appeared in previous reports, so we simply added new data to the old table. The terminology of "setback factor" and "blocked erosion rates" and "erosion rates" are used interchangeably and caused a lot of confusion this time. Our minimum setback is two feet. It appeared as if the entire coast was eroding as there wasn't anywhere to see accretion. The table has now been updated to show a clear comparison of the numbers and to show the accretion. Rudi Rudolph, Carteret County Shore Protection Office, expressed some concern that we call the report "Long-Term Average Annual Erosion Rate Report" and in actuality what we are talking about is just updating the setback factor. Some of the other concerns were the potential changing of the methodology for analyzing erosion rates. We are planning to do that on the next update.

David Webster made a motion to approve the rule amendment for 15A NCAC 07H .0304. Jerry Old seconded the motion. The motion passed unanimously (Old, Hester, Simmons, Carter, Weld, Wynns, Peele, Cahoon, Webster).

Public Comment Summary and Adoption of Temporary Rules 15A NCAC 07H .0306 – Replacement of Single Family or Duplex Residential Dwellings (CRC 12-38)
Mike Lopazanski

As part of House Bill 819, the CRC was required to amend 7H .0306 to allow for the replacement of single-family residential and duplex structures greater than 5,000 square feet. This replacement would be allowed if they were constructed prior to August 11, 2009. They cannot exceed their original square footage or footprint and must meet the minimum setback factor. They must also be built as far landward on the lot as feasible. We held a public hearing on October 17 in Morehead City and had two comments which were both in favor of the temporary rules. Staff is asking the Commission to adopt the temporary rule. This rule will remain in effect until the Commission adopts a permanent rule to replace it.

Jerry Old made a motion to adopt temporary rule 15A NCAC 07H .0306. Veronica Carter seconded the motion. The motion passed unanimously (Old, Hester, Simmons, Carter, Weld, Wynns, Peele, Cahoon)(Webster absent for vote).

Approve 15A NCAC 07H .0306 and Fiscal Analysis –
Replacement of Single Family or Duplex Residential Structures–Permanent Rule (CRC 12-39)
Mike Lopazanski

This is the same rule language for the temporary rule change that was just adopted. We were required to do a fiscal analysis for the permanent rule. This rule change was required by legislation. We found that it would benefit property owners with structures greater than 5,000 square feet that were damaged. It will not have an effect on NCDOT permitting and may preserve the local tax base. Staff is recommending the CRC approve the rule amendment and fiscal analysis for public hearing. The fiscal analysis has been approved by DENR and OSBM.

Jerry Old made a motion to approve the rule amendment and fiscal analysis for 15A NCAC 07H .0306 and send out to public hearing. Jerry Old seconded the motion. The motion passed unanimously (Old, Hester, Simmons, Carter, Weld, Wynns, Peele, Cahoon)(Webster absent for vote).

OLD/NEW BUSINESS
Bob Emory stated at the next meeting we should have a discussion on how we handle variances. We should also try to incorporate a way to encourage local government interaction while in Wilmington.

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

February 7, 2013

MEMORANDUM *CRC-13-01*

TO: Coastal Resources Commission

FROM: Braxton Davis

SUBJECT: DCM Update

Regulatory Update

For the fourth quarter of the year, the Division processed 26 major permit actions with an average processing time of 74.4 days. In addition, regulatory staff from the four districts issued 377 general and 47 minor permits. Through the Local Permitting Officer (LPO) program, local governments issued another 173 minor permits. In late October, Hurricane Sandy passed the coast of North Carolina. Damage related to the storm was generally limited to beach erosion. As a result of this damage, on November 1, 2012, Secretary Freeman implemented a portion of the emergency response General Permit, specifically allowing oceanfront property owners with beach and dune erosion to be able to obtain rapid authorization to allow beach bulldozing for the reconstruction of primary and frontal dune systems.

Notable permitting actions: Hurricane Sandy caused additional damage to a portion of NC Highway 12 on Hatteras Island in Dare County that was breached during Hurricane Irene. In the week following the hurricane, DCM staff worked closely with the NC Department of Transportation (NCDOT) as they developed emergency plans to restore this vital transportation link. On November 7, 2012, DCM issued an emergency permit to NCDOT allowing for the partial relocation of the damaged roadway, and for the protection of the new roadway alignment with sandbags. On November 19th, this emergency permit was modified by way of a CRC variance to allow for a larger sandbag structure than was allowable by the CRC's regulations. These authorized activities have since been completed. Last, on December 21st, the Division issued a Major Permit to New Hanover County authorizing the county to take over the beach nourishment activities at Carolina Beach from the U.S. Army Corps of Engineers - if federal funding for the project is not maintained.

Compliance and enforcement update: DCM continues conducting bi-monthly monitoring flights with the NC Marine Patrol. Eight flights were conducted during the last two quarters. Regulatory staff continues to concentrate on the timely restoration of any impacted resources as well as the speedy resolution and closure of all violations. In summary for 2012, the average life of a typical Notice of Violation, including restoration (when applicable), penalty assessment and collection, was approximately 23 days. Staff initiated 68 new enforcement actions while closing out 54 cases. A total of $38,000 in penalties was assessed with $25,750 collected.

Policy and Planning

Beach and Inlet Management Plan (BIMP) Implementation

The Division has been focusing on the BIMP recommendation for regional approaches to beach and inlet management projects. Staff recently met with the Carteret County Shore Protection Office, Town of Pine Knoll Shores, Town of Atlantic Beach, and Town of Emerald Isle to learn more about the development of the Bogue Banks Beach Master Nourishment Plan. DCM intends to use the Bogue Banks Plan as a model for developing a Guidance Document to promote Regional Sediment Management elsewhere in the state. These initial meetings helped DCM assess beach nourishment activities, local goals and priorities, regulatory concerns, and proposed thresholds or monitoring strategies that could be incorporated into the Guidance Document. The Guidance Document will provide strategies for local governments to address a range of anticipated beach nourishment activities that could be incorporated into a regional plan. These activities could include Atlantic Intracoastal Waterway dredging with concurrent beach disposal, other beneficial use dredging projects, inlet channel realignment projects, FEMA reimbursement projects, or beach nourishment projects. Next, DCM staff will meet with state and federal regulatory and resource agencies to determine the scope of a programmatic instrument, the approval process, and what the agency requirements would be in terms of allowable activities, restrictions, and monitoring.

Rule Development

Policy staff continued to work with the Department and the Office of State Budget and Management on fiscal analyses associated with rules previously approved by the Commission for public hearing.

- ***15A NCAC 7H .0308(a)(2) & 7H .1705 – Sandbags***: Fiscal Analysis approved by DENR and OSBM. Public Hearing held November 15, 2012 in Plymouth. Schedule for adoption at February 7, 2013 CRC meeting in Wilmington. Proposed effective date April 1, 2013.
- ***15A NCAC 7H .0304 – Erosion Rates***: Fiscal Analysis approved by DENR and OSBM. Public hearings concluded. Adopted by CRC at November 16, 2012 meeting in Plymouth. Approved by Rules Review Commission January 17, 2013. Effective date February 1, 2013.
- ***15A NCAC 7H.0304 – OEA, Mad Inlet, Unvegetated Beach Designation*** – Fiscal Analysis in development by DCM and DENR.
- ***15A NCAC 7H .0312 – Sediment Criteria***: Fiscal Analysis approved by DENR. Anticipate OSBM approval by February 1, 2013. CRC may approve for public hearing at February 7, 2013 meeting in Wilmington. Proposed effective date September 1, 2013.
- ***15A NCAC 7M .1300 - Sea-Level Rise Policy*** – Approved by CRC for public hearing at August 30, 2012 meeting in Sunset Beach. Fiscal Analysis approved by DENR. DENR in discussions with OSBM regarding policy and Fiscal Analysis.
- ***15A NCAC 7H .0306(a)(2) - General Use Standards for Ocean Hazard Areas*** (Temporary Rule) – Grandfather provision for single-family and duplex residential structures. Public Hearing held October 17, 2012 in Morehead City. Adopted by CRC at the November 16, 2012 meeting in Plymouth. Temporary rule effective February 1, 2013.
- ***15A NCAC 7H .0306(a)(2) - General Use Standards for Ocean Hazard Areas*** (Permanent Rule)– Fiscal Analysis approved by DENR. CRC approved for public hearing at November 16, 2012 meeting in Plymouth. Expect OSBM approval by February 1, 2013. Proposed effective date August 1, 2013.
- ***15A NCAC 7I .0401 & .0406 – Amendments to Minor Permit Program***. Fiscal Analysis approved by DENR and OSBM. Approved by CRC for public hearing at the November 16, 2012 CRC meeting in Plymouth. Public hearing scheduled for February 6, 2013 CRC meeting in Wilmington. Proposed effective date July 1, 2013.

Land Use Planning/Public Access
Staff have continued an internal assessment of local Land Use Plans, as well as finalizing the proposed format and schedule for conducting local "listening sessions" on issues related to local government planning needs and administration of Minor Permitting Programs. Local governments are also being surveyed to determine interest in workshops to provide guidance on making routine amendments to existing certified Land Use Plans (LUPs). Local governments are encouraged to send in any questions, topics or issues that the community would be interested in having covered.

Public shoreline / beach access grant proposals are being solicited (pre-application) for the 2013 cycle. DCM is expecting to have approximately $1.1 million dollars available. The pre-application deadline is April 5th, invitations to submit final applications are expected by May 31st, and final proposals will be due to the DCM by August 30th. Award notifications are expected in October. Currently there are over 23 active access grant projects involving over $2 million dollars in awards.

Estuarine Shoreline Mapping
An analysis of statewide and county-by-county shoreline statistics was completed in December. The next steps for the project are to classify shoreline segments and structures according to their associated water body, and to break statistics further down from county level to municipality level. Interest in town/city level statistics arose after the project was presented at LPO training meetings. An update to the structures inventory using 2012 imagery will commence once the imagery becomes available, which is expected to occur in April-May. The Division is moving forward with a contract with East Carolina University to complete spatial analysis of the mapping project's data.

DENR Living Shoreline Strategy
DCM staff met with other DENR agencies to discuss development of a Living Shorelines Implementation Strategy. The Strategy will summarize previous and ongoing marsh sill research in the state, identify information gaps, highlight the need for continued education and outreach, and investigate potential financial incentives. Attendees discussed additional staff advocacy, expansion of the CCAP program and associated project cost share opportunities in other CAMA counties; marine contractor education/certification; incorporation of storm performance data in outreach materials; the need to promote/advocate other living shoreline strategies and not just riprap sills; dissemination of research study results, and the potential use of CRFL funds for additional research. The Division will present these and other ideas to the Estuarine and Biological Processes Work for consideration and additional recommendations. The final strategy will be presented to the Commission and DENR for approval and implementation.

Coastal Reserve Program

A "Managing Visitor Use on Coastal Public Lands" workshop was hosted by the Coastal Training Program on January 23 & January 24 in Beaufort. This two-day course led by instructors from NOAA's Coastal Service Center provided participants with tools to identify and define unacceptable visitor use impacts to natural resources and visitor experiences. The training focused on a step-by-step process that can be used to help determine these impacts and explore a range of strategies and tactics that can be implemented to address them. Local presentations included Paula Gillikin, the Reserve's Central Sites Manager, entitled "Wild Horse Interactions on Public Lands located in Carteret County, N.C."

The Coastal Training Program will host a “Low Impact Development (LID) Basics for Water Quality Protection - Workshop for Realtors” on February 12 in Beaufort. The goal of this workshop is to introduce realtors to the interconnectedness between land use choices and water quality. Participants will learn about the major pollutants that degrade water quality; sources of these pollutants; and methods to prevent this degradation, including stormwater management practices and low impact development. The workshop was also hosted on November 2, 2012.

One of the Reserve’s water quality monitoring stations identified the cause of a recent Atlantic Menhaden fish kill at the Masonboro Island Reserve. The Reserve maintains one of NOAA’s System-wide Monitoring Program (SWMP) monitoring stations in the area where the fish kill occurred, continuously monitoring the water for dissolved oxygen levels, temperature and pH levels, among other data. The monitoring station recorded a significant drop in dissolved oxygen levels in the early morning hours of January 8. The Atlantic Menhaden appear to have clustered by the thousands in a narrow area at Loosins Creek, causing dissolved oxygen levels in the water to plummet to nearly zero in less than one hour, killing the fish. See the full press release for additional details: http://portal.ncdenr.org/web/guest/news-releases.

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: Coastal Resources Commission

FROM: Tancred Miller

SUBJECT: 15A NCAC 7H.0312 Technical Standards for Beach Fill Projects – Fiscal Analysis

DATE: January 23, 2013

The CRC previously approved amendments to its Technical Standards for Beach Fill Projects (aka Sediment Criteria rule). Staff has completed the required fiscal analysis, which has been certified by DENR and the Office of State Budget and Management (OSBM). The Administrative Procedures Act requires the CRC to approve the fiscal analysis before publishing the rule change and fiscal analysis in the Register for public hearing.

Staff has prepared the required fiscal analysis and has found that the proposed amendments will result in considerable cost savings to permittees. The proposed amendments will not have a substantial economic impact (defined as at least $500,000 in a 12-month period).

At the upcoming meeting staff will review the proposed amendments that have already been approved for public hearing, and will present the findings of the fiscal analysis for the Commission's approval. Both documents are attached for review.

The DENR budget office has already approved the fiscal analysis, and we are awaiting final certification from the Office of State Budget and Management (OSBM). OSBM staff has reviewed the analysis and considers it ready for certification.

Fiscal Analysis

TECHINCAL STANDARDS FOR BEACH FILL PROJECTS

T15A NCAC 07H.0312

Prepared by

Tancred Miller, Coastal Policy Analyst
NC Division of Coastal Management
(252) 808-2808

January 17, 2013

Basic Information

Agency	DENR, Coastal Resources Commission (CRC), Division of Coastal Management (DCM)
Rule Title	Technical Standards for Beach Fill Projects
Citation	T15A 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	Tancred Miller Tancred.Miller@ncdenr.gov (252) 808-2808, ext. 224
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 renourishment 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 renourishment 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.

Three areas routinely used as sources of sand for beach renourishment are navigation channels that must be dredged periodically to maintain navigable depths, ocean dredged material disposal sites (ODMDS), and sediment deposition basins within the active nearshore that trap sand transported by waves and currents. Sediment sampling has shown that many of these regularly-dredged areas tend to be re-filled with beach-quality sand. This knowledge has led the CRC to re-assess the need to perform compatibility analyses before each project. The CRC has concluded that ongoing sampling is unnecessary if those areas prove repeatedly that they accumulate beach-compatible sand.

The costs of performing sediment compatibility analyses can be substantial, although not prohibitive, in comparison to the typical cost of a renourishment project. 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 projects costs with the state and local governments each contributing 17.5 percent. With these assumptions, the likely annual cost savings to local governments and the state will be $18,000 in two out of the next three years and $86,000 every third year. The likely savings to the federal government will be $66,000 in two out of the next three years and $320,000 every third year. Total likely cost savings will be $102,100 in two out of the next three years and $492,300 every third year. The 10-year net present value of the proposed rule changes is approximately $1,508,000.

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, the likely annual cost savings to local governments and the state will be $51,000 (each) in two out of the next three years and $246,000 every third year. These savings are further discussed in the Risk Analysis section.

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 less than one project per year that would be affected by this proposed action; however, this analysis is based upon the assumption of two channel projects per year (or multiple borrow areas per project) and one ODMDS project every third year because of the likelihood of increased activity in coming years.

The proposed effective date of these changes is September 1st, 2013.

Introduction and Purpose

The Coastal Resources Commission (CRC) seeks to amend its administrative rule that establishes sediment compatibility standards for beach fill projects. The Division of Coastal Management (DCM) recently identified certain locations and circumstances where a reduced sampling protocol should be implemented. Reduced sampling requirements will result in cost savings to permit applicants.

The proposed rule change is intended to reduce sampling costs in situations where past sampling or project history has shown that material from these areas has consistently been beach-compatible material. Because these are routine, periodic projects from well-defined borrow areas, the agency believes that sampling each time is unnecessary. The changes will reduce the sampling intensity and costs in areas that have historically held and been replenished with beach-quality material.

Description of the Proposed Rule

The CRC's Technical Standards for Beach Fill Activities rule, 15A NCAC 7H.0312, first took effect in February 2007. Beach fill is done primarily to replace sand lost to erosion. Bigger beaches provide more wildlife habitat, better protection from storms, and more room for recreation. 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.

These amendments would affect the sediment characterization of three types of borrow areas:

1. Areas located within maintained navigation channels,

2. Sediment basins located within the active nearshore, beach or inlet shoal complex, and
3. Areas located within an ocean dredged material disposal site (ODMDS). An ODMDS is a geographically-defined offshore area that is a permitted location for dumping dredged material. These areas are mined periodically as a source of sand for beach renourishment. The frequency at which an ODMDS can be used as a borrow area depends on how quickly it is recharged, either naturally or through disposal projects, and funding availability.

A brief summary of the proposed changes are as follows:

- A reduced sampling protocol for federal or state maintained navigation channels would be expanded to include all maintained navigation channels and sediment deposition basins that are located within the active nearshore, beach or inlet shoal system. In these areas only five (5) evenly spaced vertical samples or sample spacing of no more than 5,000 linear feet, per channel or sediment basin, whichever is greater, would be required. Swath sonar imaging of the seafloor without elevation or geophysical imaging of the subsurface would not be required. Characterization of the recipient beach and carbonate analysis would not be required.
- For an ODMDS only one set of imagery without elevation would be required. Line spacing for geophysical imaging would be expanded from 1,000 feet to 2,000 feet. Grid spacing for sediment sampling would be expanded from 1,000 feet to 2,000 feet. Characterization of material deposited after the initial characterization would not be required if the new material was removed from a maintained navigation channels or sediment deposition basin within the active nearshore, beach or inlet shoal system and if the original two sampling sets are found to be compatible with Section 3(a) of the rule, i.e., less than 10 percent fine grained material.
- If two consecutive sets of sampling from maintained navigation channels or sediment basins within the active nearshore, beach, or inlet shoal system (with at least one dredging event in-between) finds the sediment to be compatible with Section 3(a) of the rule, i.e., less than 10 percent fine grained material, those sampling results may be used to characterize material for subsequent nourishment events.

The following is a description of the individual sections of the rule, along with a discussion of any proposed changes.

<u>7H.0312(1) Characterization of the Recipient Beach</u>
This section establishes the methodology that applicants must follow in order to determine the sediment composition of the recipient beach.

- Part 1(a) is proposed for amendment to broaden the situations in which the characterization of the recipient beach would not be required. Characterization of the recipient beach would no longer be required if the material is taken directly from and completely confined to maintained navigation channels or associated sediment basins within the active nearshore, beach or inlet shoal system.

<u>7H.0312(2) Characterization of the Borrow Area Sediments</u>
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 only require one set of imagery without elevation for offshore dredged material disposal sites, and to not require sonar imaging of the seafloor without elevation for borrow sites completely confined to maintained navigation channels or sediment depositions basins within the active nearshore, beach or inlet shoal system.
- Part 2(d) is proposed for amendment to expand the grid spacing for geophysical imaging of the seafloor subsurface in offshore dredged material disposal sites from 1,000 feet to 2,000 and to only require one set of geophysical imaging of the seafloor subsurface. The allowance for not requiring subsurface geophysical imaging for borrow sites completely confined to maintained navigation channels or upland sites would be expanded to include all navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system.

- Part 2(e) is proposed for amendment to reduce the sediment sampling for borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system to no less than five (5) 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 can be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Section 3(a) of this rule. The provision for not requiring geophysical imaging of and below the seafloor for borrow sites other than maintained navigation channels where water depths are no greater than 10 feet would be expanded to include all navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system.
- Part 2(f) is proposed for amendment to expand the grid spacing to 2,000 feet and to not require characterization after the initial characterization if all of the material deposited complies with Section 3(a) of this rule as demonstrated by at least two sets of sampling data with at least one dredging event in-between.
- Part 2(h) is proposed for amendment to expand the allowance for not requiring carbonate analysis for borrow sites completely confined to maintained navigation channels to include all navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system.

7H.0312(3) Compatibility Determination

This section contains the criteria for determining whether recipient beach sediments and borrow area sediments are compatible.

- Part 3(a) is proposed for amendment to expand the compatibility determination of no less than 10% fine grained material from only borrow sites that are completely confined to maintained navigation channels, to include associated sediment deposition basins within the active nearshore, beach or inlet shoal system.

7H.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 for amendment to require that sediment excavated from a maintained navigation channel (not just federally or state maintained) 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 sampling. The proposed changes could substantially 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 the Division of Coastal Management associated with periodic replenishment 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
The agency expects no direct costs to private industry to result from this proposed rule change.

Benefits

Estimate of Cost Savings and Model Assumptions

Costs are incurred to mobilize and demobilize equipment, to drill, retrieve and analyze sediment core samples (vibracores), and to collect geophysical data. These costs can be substantially reduced by decreasing the amount of sampling required in areas where previous sampling has consistently shown the sites to hold beach-quality sand. The cost savings realized by reducing the sampling intensity for an ODMDS will vary according to the amount of material required for the project and the size of the borrow area being sampled. In general, sampling costs will likely be one-third to one-half lower under the proposed changes than under the existing requirements.

This action only affects a few well-defined categories of projects (i.e., areas that are located within maintained navigation channels; sediment basins located within the active nearshore, beach or inlet shoal complex; and areas that are located within offshore dredged material disposal sites). 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 one navigation channel project performed in any given year in which the sand is placed on a recipient beach, and mostly on a smaller scale than the Bogue Banks (Carteret County) example described below. 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.

While one channel project per year is the historical average, more than one project within a 12-month period can occur. In the future, multiple channel, deposition basin, or ODMDS projects in a given 12-month period are likely, With recent reductions in federal and state funding, 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. Combining projects reduces overall mobilization and demobilization costs and time, and DCM is seeing a lot of interest in multijurisdictional projects at the local government level. Because multijurisdictional projects require a larger volume of sand, it is likely that multiple borrow areas will have to be used (e.g., multiple inlet channels, or a combination of inlet channels, nearshore deposition basins, and an ODMDS).

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 could result in a cost savings of approximately $455,069 for an upcoming nourishment project due to the unusually large size of the project.

BOGUE BANKS POTENTIAL PROJECT COST SAVINGS[1]

Vibracoring Cost Savings for Bogue Banks Nourishment Project under the Proposed Rule Change

Initial Costs Incurred for Offshore Dredged Material Disposal Site (ODMDS):
Average costs:

[1] Cost estimates based on figures provided by Moffatt and Nichol.

Mobilization/Demobilization = $37,475 Analysis cost per core = $2,713

Current rule: ODMDS (Incl. Mob/Demob) @ 1000' Spacing = 181 cores	$528,528
Proposed rule: ODMDS (Incl. Mob/Demob) @ 2000' Spacing = 53 cores	-$181,264
One-Time Vibracore Cost Savings for 2000' Spacing	**$347,264**

Recurring Costs Incurred Each Time Navigation Channel is Used:	
Bogue Channel sampling (minimum of 5 Vibracores @ $2,713 each)	$13,565
Beaufort Channel sampling (minimum of 5 Vibracores @ $2,713 each)	+$13,565
Moblization/Demobilization	+$37,475
Recurring [2]Savings Potential	**$64,605**

Geophysical Cost Savings Under the Proposed Rule Change

Current: ODMDS (Incl. Mob/Demob). 1000' Spacing. $1,500/mile x 62.9 miles	$94,350
Proposed: ODMDS (Incl. Mob/Demob). 2000' Spacing. $1,500/mile x 34.1 miles	-$51,150
One-Time Geophysical Cost Savings for 2000' Spacing	**$ 43,200**

TOTAL SAVINGS	**$455,069**

Another potential saving in the proposed amendment is the ability to forgo vibracoring in a maintained inlet or sediment deposition basin if two consecutive samplings, with one nourishment project in between, find the borrow area sediments to be compatible with the native beach. In the Bogue Banks example, this provision would result in savings of $64,605 for each comparable project after the proposed conditions are met.

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 moderate to substantial cost savings.

Summary of typical expected savings (approximate based on three contractor estimates):

- Navigation channels: minimum of five vibracores at $2,713 each, plus mobilization and demobilization costs = $51,040 per channel project (after two separate samples have demonstrated compatibility)
- Offshore Dredged Material Disposal Sites: $347,000 (vibracores) + $43,200 (geophysical) = $390,200 per ODMDS project, including mobilization/demobilization

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 will assume that the federal portion of funding will be provided in the future. In the risk analysis section, we consider how savings would be divided without federal support for the projects.

Since the current rule has only been in place for six years, DCM does not believe that many qualifying borrow areas have yet satisfied the two-prior-samples with one project in-between requirement in Section 2(e). DCM does expect, however, that new projects will be in a position to take advantage of the reduced sampling requirement soon after implementing the proposed rule. DCM's 30 years of experience with permitting the types of projects included in this action has shown that sediment obtained from the described borrow areas is usually beach-compatible, and that non-compatible material from these areas is rare and easily removed if is placed on the beach. Problems with non-compatibility have been experienced in areas that are not regularly dredged, and in areas that propose to exceed the dredge depth that is authorized by the Army Corps of Engineers. Exempting those areas from compatibility sampling is not being considered in this action.

For analysis purposes DCM assumes two navigation channel projects (or two borrow areas for a single project) per year (statewide) where the sand is placed on the beach. Although one project per year is the average, two projects in a given

[2] Recurring savings would be realized after two consecutive sampling events with one dredging project in-between.

12-month period can occur. This will result in annual cost savings of $102,100, proportionally distributed among the funding entities.

We will assume one ODMDS project every three years where sand is placed on the beach. This will result in annualized average savings of $130,100, proportionally distributed among the funding entities.

When an ODMDS project and two navigation channel projects (or a single two-area project) occur in the same year the cumulative fiscal impact in that year will be total savings of approximately $492,300, depending on the size of the ODMDS borrow area and the length and number of navigation channels involved.

If we assume that two channel projects per year (or two borrow areas per project) and one ODMDS project every three years is the average frequency for these types of projects, then we will consider three years to be a complete cycle upon which to calculate annual average savings. The total fiscal impact over three years is savings of ($102,100 x 3) + $390,200 = $696,500, and the average annual fiscal impact is savings of $232,200.

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 exempted 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 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. The vast majority 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. Federal appropriations have not kept pace with increasing demand, and the Bush Administration considered a moratorium on beach project funding.[3] Presidential budget requests for beach nourishment funding during the Bush and Obama Administrations have been significantly lower than the approximately $100 million eventually appropriated through Congress. Where federal funding has declined, however, state and local funds have typically been able to compensate. Based on the assumption that federal funding continues, the federal government would save approximately $66,000 per year in years with two affected channel projects (or a single two-area project) and no affected ODMDS projects. In years with an affected ODMDS project, every third year on average, federal savings would increase to $320,000.

State Government General Fund

[3] Source: NC Beach and Inlet Management Plan.

If federal funds are still available and the state match equals 17.5 percent of the total project costs, the likely impact (savings) to the state General Fund would be $18,000 in years when no ODMDS project occurs (two out of three years, on average) and $86,000 in a year when an ODMDS project occurs.

Local Governments

The proposed rule changes could result in a significant cost savings to any community or group proposing a beach fill project utilizing material from an offshore disposal site, a navigation channel, or a sediment deposition basin within the active nearshore, beach or inlet shoal system. These types of projects are usually undertaken by communities and county governments in order to provide for safe water depths for boating and to enlarge beaches for tourism, wildlife habitat and storm protection.

If federal funds are still available and the state match equals 17.5 percent of the total project costs, the likely impact (savings) to local governments would be identical to state savings: $18,000 in years when no ODMDS project occurs (two of every three years) and $86,000 in years when an ODMDS project occurs.

Estimated Costs and Benefits of Technical Standards for Beach Fill Projects Rule Change With Federal Funding

Fiscal Year	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
Year Number	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Costs											
Division Implementation											
Private Contractors											
Total Costs	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***
Benefits											
State Government		$17,868	$17,868	$86,153	$17,868	$17,868	$86,153	$17,868	$17,868	$86,153	$17,868
Local Government		$17,868	$17,868	$86,153	$17,868	$17,868	$86,153	$17,868	$17,868	$86,153	$17,868
Federal Government		$66,365	$66,365	$319,995	$66,365	$66,365	$319,995	$66,365	$66,365	$319,995	$66,365
Total Benefits	***$0***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***
Net Impact (benefits-costs)	**$0**	**$102,100**	**$102,100**	**$492,300**	**$102,100**	**$102,100**	**$492,300**	**$102,100**	**$102,100**	**$492,300**	**$102,100**
Total Impact (benefits + costs)	***$0***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***
Net Present Value	**$1,507,877**										

Alternatives Considered

Although the proposed action does not result in a substantial economic impact as defined under G.S. 150B-21.4(b1), the agency considered two alternatives to the proposed action because the potential exists for a substantial economic impact if a sufficient number of large-scale projects are undertaken over a 12-month period.

Alternative 1: No Action

The baseline scenario of taking no action was the first alternative considered. In the Bogue Banks example above, this alternative would require that the affected governments (federal, state, and local) forgo the $455,100 in potential savings through reduced sampling. As public entities, the county and the agency have an obligation to seek opportunities to reduce unnecessary public expenditures. This alternative was rejected because the repeated sampling of borrow areas that have been found to conform consistently to the agency's rules is considered unnecessary. The savings that will result from this action greatly outweigh any potential benefits from taking no action. The primary benefit that the agency has identified from taking no action is additional pre-project confirmation that the proposed borrow area contains beach-quality material, but the agency has not quantified this potential benefit. Taking no action would also contradict 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.

Alternative 2: Reduced Sampling for Navigation Channels Only

The second alternative considered was to adopt reduced sampling requirements that would apply only to areas that are located within maintained navigation channels since those areas would be dredged more frequently for beach fill sediment than sediment basins located within the active nearshore, beach or inlet shoal complex; or areas that are located within offshore dredged material disposal sites. The current rule requires a minimum of five vibracores per inlet, or a sample spacing of 5,000 linear feet (whichever is greater). Under this alternative, the estimated cost savings would be about $51,040 per inlet, which includes mobilization/demobilization and five vibracores. If repeated samples from these and the other types of borrow areas included in the proposed changes shows that the sediment is consistently compatible with the sediment compatibility criteria, the agency believes that affected parties should be given the opportunity to realize the full amount of potential cost savings. Therefore, this alternative was rejected.

Risk Analysis

Without federal funding, the estimated savings will be split among the state and local governments but the overall amounts will not change.

Estimated Costs and Benefits of Technical Standards for Beach Fill Projects Rule Change (Without Federal Funding)											
Fiscal Year	**2012-13**	**2013-14**	**2014-15**	**2015-16**	**2016-17**	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
Year Number	**0**	**1**	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**
Costs											
Division Implementation											
Private Contractors											
Total Costs	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***	***$0***
Benefits											
State Government		$51,050	$51,050	$246,150	$51,050	$51,050	$246,150	$51,050	$51,050	$246,150	$51,050
Local Government		$51,050	$51,050	$246,150	$51,050	$51,050	$246,150	$51,050	$51,050	$246,150	$51,050
Federal Government		$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
Total Benefits	***$0***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***
Net Impact (benefits-costs)	**$0**	**$102,100**	**$102,100**	**$492,300**	**$102,100**	**$102,100**	**$492,300**	**$102,100**	**$102,100**	**$492,300**	**$102,100**
Total Impact (benefits+costs)	***$0***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***	***$102,100***	***$492,300***	***$102,100***
Net Present Value	**$1,507,877**										

Another key assumption for this analysis is the number of projects that will be performed each year. As a result of the reduction in federal funding for dredging and nourishment projects, North Carolina, like other coastal states, has experienced a decline in the number and frequency of projects that would be affected by this proposed action. Over the past decade, DCM has permitted less than one project per year that would be affected by this proposed action. That number is not expected to increase, as the industry standard is moving towards beneficial use of dredged material, whereby beach-quality sediment that is dredged from a navigation channel would be placed in a nearshore area and allowed to accrete onto downdrift beaches. Carteret County has already begun this practice under an agreement with the US Army Corps of Engineers. While the number of projects permitted might not increase, the number of borrow sources included in each permit application may increase as communities strive to realize economies of scale from undertaking larger, multijurisdictional projects. Economies of scale that would result from reduced sampling intensity would not be fully available until all borrow areas included in a multi-source project have met the necessary criteria. Recalculating cost savings using the assumption that, on average, only one single-borrow-area project will occur each year and that, every third year, the project will be an ODMDS project, leads to a total 10-year net present value of $1,212,000.

15A NCAC 07H .0312 is proposed for amendment as follows:

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

Emplacement of sediment along the oceanfront shoreline ~~shall be~~ is referred to in this Rule as beach fill. 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 ~~shall not be~~ is not required for the placement of sediment directly from and completely confined to a ~~federally or state~~ maintained navigation ~~channel;~~ 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 (5) 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 on 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);

(d) No less than 13 sediment samples shall be taken along each beach profile transect. At least one (1) 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 ~~shall be~~ is 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 (4) grain size categories;

(f) A composite of the simple arithmetic mean for each of the four (4) 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 (4) 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 ~~shall be~~ 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 ~~shall be~~ is a grand mean calculated by summing the 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 three (3) 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 ~~shall be~~ is considered a representative sample of the entire project area and referred to as the "background" value;

(i) Beaches that have 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 area 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;

(c) Seafloor surveys shall measure elevation and provide acoustic imagery of the seafloor. Measurement of seafloor elevation at each submarine borrow site shall provide 100 percent coverage and use survey-grade swath sonar in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component shall also provide 100 percent US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, 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 and seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Elevation data shall be tide- and motion-corrected and referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (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;~~ 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 (1) 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 ~~shall not be~~ are not required for ~~federally or state~~ borrow sites completely confined to maintained navigation ~~channels~~ 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 the North American Datum of 1983 (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 less than 10 evenly spaced cores or one (1) core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to ~~federally or state~~ maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no less than five (5) 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 Section 3(a) of this rule. In submarine borrow sites other than ~~federally or state~~ 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 ~~acquired,~~ required, sediment sample spacing shall be no less than one (1) core per six (6) 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 Section 3(a) of this rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;

~~(f)~~(g) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four (4) 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; ~~and~~

~~(g)~~(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 ~~shall not be~~ is not required for sediment confined to ~~federally or state~~ maintained navigation ~~channels; and~~ channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

~~(h)~~(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 ~~federally or state~~ maintained navigation channel ~~shall be~~ 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) Sediment used solely to establish or strengthen dunes ~~shall not be~~ is not considered a beach fill project under this Rule;

(c) Sediment used solely to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor ~~shall not be~~ is not considered a beach fill project under this Rule;

(d) 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 (5) percent;

(e) 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 five (5) percent;

(f) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five (5) percent;

(g) 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

(h) 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 ~~federally or state~~ maintained navigation channel shall not exceed the permitted dredge depth of the channel;

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

(c) 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;~~ agencies; and

(d) Sediment and shell material with a diameter greater than three (3) inches (76 millimeters) ~~shall be~~ are considered incompatible if it has been placed on the beach during the beach fill project, is observed between mean low water (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. 113A-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

CRC-13-03

January 22, 2013

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Public Comment Summary - 15A NCAC 7H .0308(a)(2) and 15A NCAC 7H .1705 – Sandbags

A public hearing was held on November 15, 2012 at the CRC meeting in Plymouth for amendments to 15A NCAC 7H .0308(a)(2) and15A NCAC 7H .1705 which are the Commission's rules governing the use of sandbags as temporary erosion control structures. The public comment period ran from October – December 14, 2012.

One person spoke at the public hearing representing property owners on the north end of Figure Eight Island and the Division received 33 written comments (including 28 co-signers on a single letter from property owners on Ocean Isle Beach). All comments (attached) supported the proposed amendments and specifically spoke in favor of extending the duration of sandbag permits, eliminating the one time per structure limitation and inclusion of terminal groins as one of the activities local governments can be pursuing which would meet the criteria for granting the extended sandbag time period. One particular comment advocated elimination of strict timelines associated with sandbag permits all together. The comments also spoke of a necessity to maintain the integrity of sandbag structures which span multiple adjacent properties while a long-term solution (terminal groin) is pursued by the locality. No comments were received on the fiscal analysis.

Attached are the proposed amendments to 7H .0308(a)(2) General Use Standards and 7H .1705 Specific Use Standards for Emergency General Permits regulating the use of sandbags as temporary erosion control measures as they were approved for public hearing. The time limit for the use of sandbags is proposed for extension from five years to eight years if located in a community actively pursuing a beach fill or inlet relocation project. The "one time per structure" limitation is also proposed to be removed provided that the structure once again becomes imminently threatened and is located in a community that is actively pursuing a beach fill or inlet relocation project. The proposed amendments also include an expansion of the activities a community could be actively pursuing that

would warrant an extended permit time limit to include an inlet stabilization project in accordance with G.S. 113A-115.1 (CAMA amendment associated with terminal groin legislation). No changes are proposed for structures located outside of areas seeking a beach fill, inlet relocation or inlet stabilization project, where the two and five-year timeframes would remain. No changes are proposed for the provisions under which sandbags would need to be removed (i.e., the structure is not imminently threatened due to beach fill, inlet relocation or stabilization project).

Staff is recommending that the Commission adopt the proposed amendments at the February 7, 2013 meeting in Wilmington.

15A NCAC 07H .0308 IS PROPOSED FOR AMENDMENTS AS FOLLOWS:

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

(A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.

(B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.

(C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.

(D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.

(E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.

(F) Project construction shall be timed to minimize adverse effects on biological activity.

(G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.

(H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:

(i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this subchapter;

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and

(iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.

(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:

(i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this subchapter; and

(ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and

(iii) the structure is limited in extent and scope to that necessary to protect the site; and

(iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:

(i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and

(ii) dredging alone is not practicable to maintain safe access to the affected channel; and

(iii) the structure is limited in extent and scope to that necessary to maintain the channel; and

(iv) the structure shall not adversely impact fisheries or other public trust resources; and

(v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

(i) the structure will not be enlarged beyond the dimensions set out in the permit;

(ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

(L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure ~~shall be~~ is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee.

(F) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion

control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.

(G) Temporary sandbag erosion control structures may remain in place for up to ~~five~~ eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, ~~and for up to eight years from the date of approval~~ or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation ~~project.~~ or stabilization project in accordance with G.S. 113A-115.1 For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment or~~ nourishment, or inlet relocation or stabilization project if it has:

(i) an active CAMA permit, where necessary, approving such project; or

(ii) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(iii) received a favorable economic evaluation report on a federal project or,

(iv) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach ~~nourishment or~~ nourishment, inlet relocation or stabilization project.

If beach ~~nourishment or~~ nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

(H) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment ~~project or~~ project, an inlet relocation or stabilization project, it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(I) Removal of temporary erosion control structures ~~shall not be~~ is not required if they are covered by dunes with stable and natural vegetation.

(J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.

(L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(M) An imminently threatened structure may be protected only once, regardless of ~~ownership~~ ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter and the community in which it is located is actively pursuing ~~an~~ a beach nourishment, inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

(i) a building and septic system shall be considered as separate structures.

(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and ~~type.~~ in accordance with 15A NCAC 07H .0312. ~~Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.~~

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the

pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

(1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.

(2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.

(4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

(5) No new dunes shall be created in inlet hazard areas.

(6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.

(7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune provided that:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is less than six feet in width;

(C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.

(4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of wooden sections fastened together over the length of the affected dune area.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

(4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124;*
Eff. June 1, 1979;
Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989;
Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;

Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. February 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002.

15A NCAC 07H .1705 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

(1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure ~~shall be~~ is considered imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(3) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(5) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal management or designee.

(6) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 square feet or less and its associated septic system, or for up to five years for a building with a total floor area of more than 5000 square feet and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.

(7) Temporary sandbag erosion control structures may remain in place for up to ~~five~~ eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, ~~and up to eight years from the date of approval~~ or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation ~~project.~~ or stabilization project in accordance with G.S. 113A-115.1 For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment or~~ nourishment, inlet relocation or stabilization project if it has:

(A) an active CAMA permit, where necessary, approving such project, or

(B) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or

(C) received a favorable economic evaluation report on a federal project; or

(D) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach ~~nourishment or~~ nourishment, inlet relocation or stabilization project.

If beach ~~nourishment or~~ nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.

(8) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment ~~project or~~ project, an inlet relocation or stabilization project, it shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(9) Removal of temporary erosion control structures ~~shall not be~~ is not required if they are covered by dunes with stable and natural vegetation.

(10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed 6 feet.

(12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(14) An imminently threatened structure may be protected only once regardless of ~~ownership~~ ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures ~~located in Inlet Hazard Areas~~ may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph and the community in which it is located is actively pursuing a beach nourishment, an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

(A) a building and septic system shall be considered as separate structures.

(B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Rule.

(15) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

(1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(2) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee.

(3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

(1) Work permitted by this general permit shall be subject to the following limitations:

(A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee;

(C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC 7H .0208;

(D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

(2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1;*
Eff. November 1, 1985;
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. <u>February 1, 2013;</u> May 1, 2010; August 1, 2002.Temporary Amendment Eff. July 3, 2000; May 22, 2000.

Lopazanski, Mike

To: Lopazanski, Mike
Subject: FW: November 14 vote

-----Original Message-----
From: Cheryl Fisher [mailto:fisher1036@gmail.com]
Sent: Sunday, September 09, 2012 10:11 AM
To: Davis, Braxton C
Cc: zanecofield@hotmail.com
Subject: November 14 vote

Dear Mr. Davis,

Being a property owner on the East end of Ocean Isle Beach, I am concerned about the damage our property will receive if the sand bags currently in use are removed before a more permanent solution is in place. The proposal that the current law be changed to allow the sand bags to remain is vital to the protection of the east end property owners as well as preserving the beautiful beach front.

My family has been property owners at Ocean Isle Beach since 1958,and thus we have witnessed many changes over the years. We purchased our current property in 1997 and have many wonderful memories of our times on the beach.

In conclusion, I am asking that our sandbags be allowed to remain in use until a permanent solution is in place to preserve the beautiful beachfront enjoyed by so many residents and visitors. Thanking you in advance.

Sincerely,

John and Cheryl Fisher
Sand dwellers 1 B6
Ocean Isle Beach, NC

September 10, 2012

Dear Mr. Davis,

I am writing this letter to ask your support for the "Proposed Rule Changes" that will allow sand bags to stay in place. As a homeowner and President of the Homeowners Association at Sand Dwellers 1; I want you to be aware of how hard we have worked to keep the erosion of the beach in front of our condos at a minimum. We are one of the islands seeking a Department of the Army Permit to build a groin and should be exempted from any enforcement of sand bag removal. Our homeowners have provided a significant financial outlay and investment in our sand bags. If they are removed at this time, it would not only jeopardize the financial resources of our small complex but also the other homes on our end of the beach. We are simply asking to be left alone, have the rules amended, and be allowed to do what we must to protect our homes and property throughout the entire process of our pursuit of the Department of Army Permit to build our groin. These sand bags protect more than just our complex; they are an integral part of shoring up the east end of the beach.

We are not just talking about beach property but an area that has provided many families with memories and peaceful vacations. My grandchildren have so much enjoyed running on the beach, swimming in the ocean and picking up sea shells. We have witnessed some amazing sunrises and sunsets. The beach has provided us with lasting friendships with people we may never have met. We are asking that we be given the chance to continue these memories and friendships. By supporting the rule changes to allow the sand bags to remain in place will ensure that Ocean Isle remain the "hidden jewel" on the east coast of North Carolina.

Thank you for your support,

Tom Barnes

President Sand Dwellers 1

447 East Second St.

Ocean Isle Beach, N. C.

September 10, 2012

Sent via email: Braxton.davis@ncdenr.gov

Mr. Braxton Davis, Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, North Carolina 28557
email: Braxton.davis@ncdenr.gov

RE:Proposed Amendments to 15A NCAC 7H .0308(a)(2) &15A NCAC 7H .1705 – Sandbags (CRC-12-27)

Dear Mr. Davis,

This letter is an urgent request that the CRC and DCM (Coastal Resources Commission and Department of Coastal Management) accept:

Proposed Amendments to 15A NCAC 7H .0308(a)(2) &15A NCAC 7H .1705 – Sandbags (CRC-12-27)

I am a homeowner in Ocean Isle Beach, NC and I have been an advocate of the town's efforts to address the erosion of our island and the coastal North Carolina. Ocean Isle Beach is one of those islands seeking a Department of the Army Permit to build a terminal groin to address the long-term beach erosion, and therefore should logically be excepted from any enforcement of sand bag removal until such time as we have pursued the terminal groin permitting process to its eventual end.

I am on the Board of the homeowners association of Sand Dwellers I representing 24 condos. Over the last several years we have made significant financial outlay and investment in our sandbags. Removal of the sandbags would jeopardize the financial resources of our small complex and likely risk the complex in its entirety.

The sandbags in front of my complex, Sand Dwellers I, protect more than just our complex; they are an integral part of a shoring-up of our beach, protecting scores of homes fighting the erosion process. I believe it is critical to pass this amendment so that we can maintain our protection to avoid a domino effect, or weakening of one area, only to cause further damage to another part of the beach.

I request support of the above amendment to allow Sand Dwellers I the ability to protect our homes and property. It is important that we be allowed to do what we must to protect our

homes and property throughout the entire process of our pursuit of a Department of the Army Permit to build our terminal groin.

Please pass this change allowing sandbags to STAY In PLACE.
Thank you.

Sincerely,

Y. Kay Yancey
Homeowner Sand Dwellers I
Secretary, Sand Dwellers I
447 E. 2nd Street
Ocean Isle Beach, NC 28469

Cc: Tom Barnes, President Sand Dwellers I
Jon Lazzeri, Treasurer Sand Dwellers I
Rick Whitaker, Vice President Sand Dwellers I

Willis, Angela

From: Davis, Braxton C
Sent: Monday, September 10, 2012 8:38 AM
To: Lopazanski, Mike; Willis, Angela
Subject: FW: Sand Dwellers 1 - Ocean Isle Beach NC - Sand Bags

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From: Rick Whitaker [mailto:rick@bbph.com]
Sent: Monday, September 10, 2012 8:34 AM
To: Davis, Braxton C
Cc: Jon Iazzeri; Zane Cofield
Subject: Sand Dwellers 1 - Ocean Isle Beach NC - Sand Bags

Director Davis,

Please except this email as a letter in support of changing the rules to allow the sand bags to stay in place at our complex on Ocean Isle Beach's east end. Since Hurricane "Hanna" washed under our building ant took away our intersections of road, sand bags have kept the encroaching surf away from our foundations. They are still in very good order and are definitely providing us protection. My wife and I own unit A-4, Sand Dwellers 1 Condominiums, 447 East Second St, Ocean Isle Beach NC. We are one of twenty-four units, spread through a total of six buildings, all of which are adjacent to the ocean.

Thank you for your service,

Rick and Bonnie Whitaker

--

Rick A Whitaker, President
Brown Brothers Plumbing & Heating Co Inc
919-220-2554

Willis, Angela

From: Davis, Braxton C
Sent: Monday, September 10, 2012 8:41 AM
To: Willis, Angela; Lopazanski, Mike
Subject: FW: SANDBAGS

Importance: High

From: Janet Stone [mailto:janet1940@charter.net]
Sent: Friday, September 07, 2012 6:42 PM
To: Davis, Braxton C
Subject: SANDBAGS
Importance: High

Mr. Braxton Davis, Director, Div. of Coastal Management,

I would like to hereby request that our Sand Bags here at 447 East Second St. stay in place until the groin is up and giving us some relief in case a bad storm/hurricane comes thru. Would like to enjoy my home for a few more years, Lord willing.

I own D13 of Sand Dwellers 1 and would appreciate the bill to be ratified for use until the problem is fixed. The five year problem will last much longer if something isn't done fast. There is too much paperwork etc to even get sand placed in two breaks that are now eroding our beautiful area. At my age, I just don't want more stress.

Sincerely,
Janet A. Stone

Willis, Angela

From: Davis, Braxton C
Sent: Monday, September 10, 2012 2:53 PM
To: Lopazanski, Mike; Willis, Angela
Subject: FW: Sandbag Rule Change at OIB

I've responded to all so far.

Braxton Davis
Director, NC Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557
(252) 808-2808 ext. 202

From: Stull, Phil [mailto:Phil.Stull@crossco.com]
Sent: Monday, September 10, 2012 2:50 PM
To: Davis, Braxton C
Cc: zanecofield@hotmail.com; jlazzeri@nc.rr.com
Subject: Sandbag Rule Change at OIB

Dear Mr. Davis,

I understand that the CRC will soon vote on whether a rule change that would allow the retention and bolstering of sandbags on OIB since we continue with our long-term remedy of installing a terminal groin to prevent further erosion.

I beg you to please support this initiative—it is vitally important that we do everything we can to stem the erosion rate until we can get the terminal groin built.

Thank you very much for your support

Phil and Sandy Stull
Sand Dwellers I Unit 9-C
Ocean Isle Beach, NC

cross
Phil Stull
Pneumatic/Automation Business Unit Mgr.
704.907.4173
phil.stull@crossco.com
Employee Owned Since 1979

Willis, Angela

From: Davis, Braxton C
Sent: Monday, September 17, 2012 8:57 AM
To: R Sistek
Cc: Jon Lazzeri; zanecofield@hotmail.com
Subject: RE: We SUPPORT Proposed Changes to Sandbag Law

Mr. and Mrs. Sistek,
Thank you for your comments on the proposed rule change regarding the use of sandbags for temporary erosion control along North Carolina's beaches. At their August 28, 2012 meeting, the Coastal Resources Commission approved proposed amendments to the rules for public comment. While the rule amendments have not yet been published in the NC Register, the Division anticipates the public comment period will run from October 15 to December 14, 2012 and a public hearing will be held on November 15, 2012 at 5:00 pm at the Commission's next meeting. The location of the meeting is not definite at this point, although it is likely to be in Plymouth, NC. While the public comment period has not yet started, we will include your remarks in the official record. For more information, please visit: http://portal.ncdenr.org/web/cm/proposed-rules

Again, thank you for your comments and please let me know if you have any additional questions on this.

Braxton Davis
Director, NC Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557
(252) 808-2808 ext. 202

From: R Sistek [mailto:rsistek@hotmail.com]
Sent: Sunday, September 16, 2012 8:03 AM
To: Davis, Braxton C
Cc: Jon Lazzeri; zanecofield@hotmail.com
Subject: We SUPPORT Proposed Changes to Sandbag Law

Dear Mr. Davis:

It is our understanding that the North Carolina Coastal Resources Commission is considering changes to the existing regulations regarding the placement and removal of sandbags along the coastal area of North Carolina.

As property owners in Ocean Isle Beach (447 2nd Street, Sand Dwellers I, C-10), we appreciate that the Commission has scheduled a public hearing regarding proposed amendments to 15A NCAC 07H .0304

As such, we would like you to know that we **support** the proposed amendments that would allow extensions of sand bagging permits and longer emplacement terms for those threatened by erosion.

Support for the amendment makes the most financial sense. The cost to remove, trnasport, and relocate the number of sandbags at issue would be brought into question by many. Furthermore, the damage to coastal properties would also diminish the tax base of many struggling local economies just at the time when those communities need all the help they can muster.

Thank you for your time and consideration of this matter.

Sincerely,
Ron and Rita Sistek

Willis, Angela

From: Lopazanski, Mike
Sent: Wednesday, September 26, 2012 8:16 AM
To: Willis, Angela
Subject: FW: Support for Rule Changes to Allow Sand Bags to Remain

Comments

From: Davis, Braxton C
Sent: Tuesday, September 25, 2012 10:06 AM
To: Lopazanski, Mike
Subject: Fw: Support for Rule Changes to Allow Sand Bags to Remain

Connected by DROID on Verizon Wireless

-----Original message-----
From: Beth <bmel@mindspring.com>
To: "Davis, Braxton C" <Braxton.Davis@NCDENR.Gov>
Sent: Mon, Sep 24, 2012 23:51:56 GMT+00:00
Subject: Support for Rule Changes to Allow Sand Bags to Remain

Mr. Braxton Davis
Director
Division of Coastal Management

Dear Mr. Davis:

This letter is to support the proposed rule changes to allow sand bags to remain in place as long as a long-term remedy for erosion is being pursued by a beach commounity. My husband and I are long time property owners on Ocean Isle Beach. We have seen the damaging effects of erosion on both property and wildlife habitat over the years. We are thrilled that the town of Ocean Isle Beach is pursuing a terminal groin to stabilize the beach. We need the rule changes to allow the sand bags to remain and protect from further loss of property and natural areas until the permanent groin solution is in place. We strongly support these rules changes.
Sincerely,

Beth Melcher
Wa.ter Chmelelwski
6404 Winthrop Dr.
Raleigh, NC 27612

Sand Dwellers I, E-19
447 East Second St.
Ocean Isle Beach, NC 28469

Willis, Angela

From: Lopazanski, Mike
Sent: Wednesday, September 26, 2012 8:53 AM
To: Willis, Angela
Subject: FW: Change of Rules for Sandbags

Do you have this one?

From: Davis, Braxton C
Sent: Monday, September 24, 2012 1:16 PM
To: Lopazanski, Mike
Subject: Fw: Change of Rules for Sandbags

Can you pls respond, thanks...

Connected by DROID on Verizon Wireless

-----Original message-----
From: jon <jlazzeri@nc.rr.com>
To: "Davis, Braxton C" <Braxton.Davis@NCDENR.Gov>
Cc: Zane Cofield <zanecofield@hotmail.com>
Sent: Sun, Sep 23, 2012 00:02:47 GMT+00:00
Subject: Change of Rules for Sandbags

September 22, 2012

Dear Mr. Davis,
I am writing this letter to ask your support for the "Proposed Rule Changes" that will allow sand bags to stay in place. As a homeowner and Treasurer of the Homeowners Association at Sand Dwellers 1, I want you to be aware of how hard we have worked to keep the erosion of the beach in front of our condos at a minimum. We are one of the islands seeking a Department of the Army Permit to build a groin and should be exempted from any enforcement of sand bag removal. Our homeowners have provided a significant financial outlay and investment in our sand bags. If they are removed at this time, it would not only jeopardize the financial resources of our small complex but also the other homes on our end of the beach. We are simply asking to be left alone, have the rules amended, and be allowed to do what we must to protect our homes and property throughout the entire process of our pursuit of the Department of Army Permit to build our groin. These sand bags protect more than just our complex; they are an integral part of shoring up the east end of the beach.
We are not just talking about beach property but an area that has provided many families with memories and peaceful vacations. My grandchildren have so much enjoyed running on the beach, swimming in the ocean and picking up sea shells. We have witnessed some amazing sunrises and sunsets. The beach has provided us with lasting friendships with people we may never have met. We are asking that we be given the chance to continue these memories and friendships. By supporting the rule changes to allow the sand bags to remain in place will ensure that Ocean Isle remain the "hidden jewel" on the east coast of North Carolina. We greatly appreciate your consideration in this matter.

Thank you for your support,
Jon And Patty Lazzeri
Unit C-11

Treasurer Sand Dwellers 1
447 East Second St.
Ocean Isle Beach, N. C.

Jon Lazzeri
JP&L Consulting
Email jlazzeri@nc.rr.com
Tel 919-260-6006
Tel 919-967-0949
Fax 919-240-4634

Lopazanski, Mike

From: Davis, Braxton C
Sent: Friday, September 28, 2012 4:23 PM
To: Lopazanski, Mike; Willis, Angela
Subject: FW: Support for Rule Changes to Allow Sand Bags to Remain

sorry, just to be sure, did ya'll respond to this one? thanks

---

Braxton Davis
Director, NC Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557
(252) 808-2808 ext. 202

From: Beth [mailto:bmel@mindspring.com]
Sent: Monday, September 24, 2012 7:52 PM
To: Davis, Braxton C
Subject: Support for Rule Changes to Allow Sand Bags to Remain

Mr. Braxton Davis
Director
Division of Coastal Management

Dear Mr. Davis:

This letter is to support the proposed rule changes to allow sand bags to remain in place as long as a long-term remedy for erosion is being pursued by a beach commounity. My husband and I are long time property owners on Ocean Isle Beach. We have seen the damaging effects of erosion on both property and wildlife habitat over the years. We are thrilled that the town of Ocean Isle Beach is pursuing a terminal groin to stabilize the beach. We need the rule changes to allow the sand bags to remain and protect from further loss of property and natural areas until the permanent groin solution is in place. We strongly support these rules changes.
Sincerely,

Beth Melcher
Wa.ter Chmelelwski
6404 Winthrop Dr.
Raleigh, NC 27612

Sand Dwellers I, E-19
447 East Second St.
Ocean Isle Beach, NC 28469

Willis, Angela

From: Davis, Braxton C
Sent: Wednesday, October 03, 2012 8:58 AM
To: Glenda
Cc: zanecofield@hotmail.com; jlazzeri@nc.rr.com; browningwh@aol.com
Subject: RE: Proposed Amendmentsto 15A NCAC 7H.0308(a)(2) &15A NCAC 7H.1705 - Sandbags (CRC-12-27)Mr. Braxton Davis

Ms. Browning,
Thank you for your comments on the proposed rule change regarding the use of sandbags for temporary erosion control along North Carolina's beaches. At their August 28, 2012 meeting, the Coastal Resources Commission approved proposed amendments to the rules for public comment. While the rule amendments have not yet been published in the NC Register, the Division anticipates the public comment period will run from October 15 to December 14, 2012 and a public hearing will be held on November 15, 2012 at 5:00 pm at the Commission's next meeting. The location of the meeting is not definite at this point, although it is likely to be in Plymouth, NC. While the public comment period has not yet started, we will include your remarks in the official record. For more information, please visit: http://portal.ncdenr.org/web/cm/proposed-rules.

Again, thank you for your comments and please let me know if you have any additional questions on this.

Braxton

Braxton Davis
Director, NC Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557
(252) 808-2808 ext. 202

From: Glenda [mailto:gicbrowning@aol.com]
Sent: Tuesday, October 02, 2012 11:00 AM
To: Davis, Braxton C
Cc: zanecofield@hotmail.com; jlazzeri@nc.rr.com; browningwh@aol.com
Subject: Proposed Amendmentsto 15A NCAC 7H.0308(a)(2) &15A NCAC 7H.1705 - Sandbags (CRC-12-27)Mr. Braxton Davis

October 2, 2012

Mr. Braxton Davis, Director
Division of Coastal Management
400 Commerce Ave.
Morehead City, North Carolina 28557

Dear Chairman Davis,

Mr. Davis, thank you for all you do for our wonderful state in your capacity as Director of the Division of Coastal Management. Thank you, in advance of your consideration in this very important matter.

This e-mail is a request that you help our amazing state and citizens with the support of the above amendments. My husband and I are homeowners in Leland, NC and Ocean Isle Beach, NC. I am the Executive Director of the Town of Leland Tourism Development Authority and I serve on the Brunswick County Tourism Authority Board, as well. I am writing to you to express my personal thoughts.

Tourism in North Carolina is a major and extremely important industry for the state of North Carolina. In this challenging economic time we need to work together to protect and build upon our resources to insure that we have a strong foundation and prosperous future for our state and citizens. Tourism dollars are imperative to the economic well being and continued growth and development of North Carolina. For every dollar spent on tourism the return is more than double. The above amendments to allow the sandbags to remain will give the beach communities the time and opportunity to work and find better ways to protect what we have that has been compromised by nature and mankind, alike. This is a request that you and the entire Division of Coastal Management please allow the amendment to pass. This is a request for you to protect the sustainable revenue source that is, North Carolina's future!

Again, thank you for your time and consideration.

Best regards,

Glenda Browning
1017 Heron Run Dr.
Leland, NC 28451
&
A-1 ,Sand Dwellers II
445 E. 2nd St.
Ocean Isle Beach, NC 28469
910-471-7216(c)
910-371-9333(h)

Hard copy of email to Director Braxton Davis in re:

Proposed Amendmentsto 15A NCAC 7H.0308(a)(2) &15A NCAC 7H.1705 - Sandbags (CRC-12-27)

04 October 2012

Attn - Note: Petition Attached

Braxton Davis

Director, NC Division of Coastal Management

400 Commerce Avenue

Morehead City, NC 28557

Dear Director Davis:

I am writing to you on behalf of my wife, Jennifer, and myself in support of the proposed relaxed rules on Sand Bags as they would pertain to Ocean Isle Beach and other areas and islands currently in the permitting process for a terminal groin permit from the USACE (Proposed Amendments to 15A NCAC 7H.0308(a)(2) &15A NCAC 7H.1705 - Sandbags (CRC-12-27).

I ask that you adopt the relaxed regulations which would forestall any enforcement action against Ocean Isle Beach, Holden Beach, Bald Head Island and Figure 8 Island; that you amend the rules as indicated to allow for prolonged permit duration; that you revoke the "one time per location/residence provision;" that you allow for the bolstering, reshoring and maintenance of current revetments; as well as granting all new permits for a period of not less than eight years for the foreseeable future as we progress through the USACE permitting process based on the following logic:

1. Permits issued at staggered times and years: It is detrimental to have one property remove their sand bags when their permit expires if the property next door to them has a current permit still in force. The sum total of this type of enforcement serves to remove a vital link in the chain

of protection for all homes along that coast, even those who should rightfully, under the old rules, be allowed to keep their sand bags in place. We cannot remove any part of the protection on coasts protected by sand bags while waiting on terminal groin permits without comprimsing the integrity of the whole sand bag construct.

2. On Ocean Isle Beach where we are in the active process of seeking a US Army Permit for the constrution of a terminal groin we have already lost five homes to the sea, have lost over 3/8ths of a mile of loggerhead sea turtle nesting habitat and currenly have thirty-six addition homes/dwellings that would be at the mercy of the flood tides were any of our sand bags to be removed. The removal of our sand bags at this point has not only an impact on the human factor on the island but also on the wildlife we so dearly love.

3. Based on prior litigation regarding sand bag rules it would be a waste of the taxpayers' money and your valuable time to operate with the old rules; certainly no one wants to litigate 40 lawsuits at once and this would be detrimental to all parties involved. We are confident that with the terminal groin permitting process now in action on our island that we will have a better solution in place in a few short years and feel that once we have the groin in place we can then mitigate the impact of the sand bags in such a way that will restore the natural dunes and restore the wildlife habitat as well.

By now you have received quite a few letters from our part of the community out here on the east end of Ocean Isle Beach and I think you'll see that we're of one accord on this matter. Our postion is that we feel the USACE permit is forthcoming and we need these relaxed rules in order to have a "bridge" to carry us from right now and all the way through to the installation of the terminal groin.

I would like to commend the agencies their divisions responsible for proposing these relaxed rules and ask that you convey my gratitude to those responsible and would also ask that you adopt these rules changes at the earliest convenience. Please make my letter part of the public record and please also look forward to receiving a hard copy of this letter along with a signed petition by others who ask that you go forth with the revision of the current rules and amend them to include all of the proposed relaxed provisions.

Mr. Davis, I thank you for all the help you can give us and look forward to speaking with you in the future and until that time I am and will remain

Yours truly,

G. Zane Cofield

Resident: Ocean Isle Beach

447 East Second Street

Ocean Isle Beach, NC 28469

(910) 709-1317

cc: Mayor Debbie Smith

Mr. Jon Lezzari, Mr. Tom Barnes, Mr. Rick Whitaker, Executive Board "Sand Dwellers I," Ocean Isle Beach

PETITION: THOSE IN SUPPORT OF AMENDMENTS TO CRC SANDBAG REGULATIONS TO ALLOW REVETMENTS SUFFICIENT TO PROTECT PROPERTY, TO REMOVE "ONE TIME PER RESIDENCE" REGULATIONS, DELAY ALL ENFORCEMENT ACTIONS AND TO LENGTHEN PERMIT PERIODS FOR OCEAN ISLE BEACH PROPERTY OWNERS WHILE WE PURSUE THE DEPARTMENT OF THE ARMY PERMIT PROCESS FOR A TERMINAL GROIN STRUCTURE HAVE AFFIXED THEIR SIGNATURES BELOW.

TOPIC: Revision of Coastal Resource Commission Sand Bag Rules	Petition Date: 22 September 2012
Gatherer: Gary Zane Cofield	Place: OIB, NC

PRINT YOUR NAME	YOUR SIGNATURE	Phone	Address
Bonnie T Whitaker	Bonnie T Whitaker	919-477-2786	304 Sutherland Ct Durham NC 27712
Janet A Stone	Janet A Stone	931-484-1116	26 Hickory Hollow Cr Crossville TN 38555
Rick A. Whitaker	Rick A. Whitaker	919-971-4441	457 E. SECOND ST OCEAN ISLE BEACH NC 28469
Ron + Rita Sistek	Ron Sistek		72 TIMBERLAND Rd PENN RUN PA 15765
Selina Dougherty	Selina Dougherty	336-210-7485	457 E. Second St. E-18 Ocean Isle Beach, NC 28469
G Paul Dougherty Jr	G Paul Dougherty Jr	336-861-6811	4865 Lauren Taylor Dr Trinity NC 27320
John Mohr	John Mohr	910-209-2867	2273 Sedgefield PL Ocean Isle Beach NC
CARL M. HILL	Carl M. Hill	704-982 4830	1416 Meldon Rd Albemarle, N.C. 28001
Judith J. Barnes	Judith J. Barnes	803-716-9422	152 Sox Run Dr Hopkins SC 29061
Donna Henley	Donna Henley	336-529-6361	1514 Langdon Village Dr Clemmons NC 27012
Kyle Henley	Kyle B Henley	336 9225437	4172 Webger Dr. Pfafftown, NC 27040
Patricia E. Lazzari	Patricia E. Lazzari	910-575-0949	457 E. Second Street Ocean Isle Beach, NC 28469
JON J. LAZZARI	Jon J. Lazzari	919-967-0949	404 Ironwoods Dr Chapel Hill, NC 27516
PHIL & SANDY STULL	Phil Stull		457 EAST 2nd Street OCEAN ISLE BEACH NC 28469
Gayle Hughes	Gayle Hughes		457 E. 2nd Street Ocean Isle Beach NC 28469
John and Sophie Hall	John Hall		457 East Second St. Ocean Isle Beach NC 28469
KAY YANCEY	Kay Yancey	703 201-4292	447 E 2nd St. D16 Ocean Isle Beach, NC 28469

SUFFICIENT TO PROTECT PROPERTY, TO REMOVE "ONE TIME PER RESIDENCE" REGULATIONS, DELAY ALL ENFORCEMENT ACTIONS AND TO LENGTHEN PERMIT PERIODS FOR OCEAN ISLE BEACH PROPERTY OWNERS WHILE WE PURSUE THE DEPARTMENT OF THE ARMY PERMIT PROCESS FOR A TERMINAL GROIN STRUCTURE HAVE AFFIXED THEIR SIGNATURES BELOW.

TOPIC: Revision of Coastal Resource Commission Sand Bag Rules	**Petition Date: 22 September 2012**
Gatherer: Gary Zane Cofield	**Place:** OIB, NC

PRINT YOUR NAME	YOUR SIGNATURE	Phone	Address
Sandra Lee Best	S Best	828-452 0168	447 E. 2nd St. E19 Ocean Isle Beach, NC 28469
KATHLeen ORRinger	K Orringer	910 575 - 2105	Brick Landing Ocean Isle Beach NC
James T. Haskins	James T. Haskins	9105313126	447 E 2nd St A1 Ocean Isle Beach NC.
Ernestine Haskins	Ernestine Haskins	910-521-3126	223 Addison Tram Rd. Rowland, NC 28383
David Oliver	David Oliver	704 982 9600	1507 Huntingdon Rd Kannapolis N.C. 28081
Zane + Jennifer Cofield	A. Zane Cofield	910-709-1317	447 E. Second Street, OIB NC 28469

Lopazanski, Mike

From: Willis, Angela
Sent: Tuesday, January 22, 2013 2:38 PM
To: Lopazanski, Mike
Subject: Public Comment from November 15, 2012

Mack Paul stated I am here on behalf of some homeowners on Figure Eight Island on the north end near Rich Inlet. As most of you know, we have been following this very closely and have been involved for almost 4 ½ years. There was a major issue with the rules in May 2008 when sandbags that were expired needed to come out. Since that time there has been a lot of work by Staff to assess the state of sandbags on the coast of North Carolina and come up with a rating system. We held a number of stakeholder meetings and came out with some recommendations. From our standpoint we were looking for a solution that would move away from strict timelines. That was not the will of the CRC and I understand that. At the last CRC meeting where the committee dealt with the rules, there was some discussion to clarify that the changes which allow not restricting sandbags to one time only is positive. It provides incentive to remove sandbags since they won't be fearful that they won't be allowed to put them back. Prior to these rules being proposed the General Assembly had not acted on inlet stabilization or the terminal groin. Now that there is some limited availability in North Carolina, these rules are recognizing that communities that are pursuing it in addition to inlet stabilization or inlet relocation would have the benefit of eight years. From my clients' standpoint once these rules go into effect then they would be able to maintain the sandbags for an additional eight years since their community did not have the opportunity to pursue inlet stabilization until the legislation went into effect. We would want it interpreted that the eight years would go forward from here.

--

Angela Willis
NC Division of Coastal Management
NC Department of Environment and Natural Resources
400 Commerce Avenue
Morehead City, NC 28557
Phone: 252.808.2808 ext. 201 Fax 252.247.3330
Toll Free 888.912.CAMA
Angela.Willis@ncdenr.gov

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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

February 7, 2013

MEMORANDUM *CRC-13-04*

TO: Coastal Resources Commission

FROM: Braxton Davis

SUBJECT: DCM Rules Review / Proposals for Changes to Rules and Procedures

Each year, the Division of Coastal Management is required to complete a review of the Coastal Resource Commission's rules in accordance with NCGS 150B-19.1(b) (NC Administrative Procedures Act). In September, 2012, I asked staff to undertake a comprehensive survey regarding the Commission's rules and policies, as well as the Division's procedures for processing and making decisions on Coastal Area Management Act permits. Based on my experiences with the Division over the past year, I knew that our staff could offer unique and important perspectives on the impact, efficiency, and "on-the-ground" effectiveness of our rules and procedures.

I asked staff for feedback centered on the following issues, and suggested that we focus on our interactions with individual property owners and businesses:

- permit processing and procedures
- impacts on customer service
- internal and external communications
- regulatory overlaps and redundancies
- ineffective, burdensome, or otherwise unnecessary rules or procedures

After all staff responses were compiled and organized according to their corresponding CAMA and CRC rule sections, internal meetings were held with DCM's Assistant Director for Permitting and Enforcement, District Managers, the Major Permits Coordinator, and policy staff. During those meetings, suggestions were prioritized for potential rule development in cooperation with the Coastal Resources Commission during 2013. Legislative actions may also be required to authorize some of the changes outlined below.

We are seeking the Commission's preliminary approval to move forward in the formal rulemaking process, where appropriate. The suggestions were grouped into the following six key focus areas:

1) Streamlining General Permits for Docks and Piers

The Coastal Resources Commission amended CAMA General Permit 7H.1200 in July, 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. The Division is now considering the number of docking facilities authorized under the GP. Currently, "docking spaces" for up to 2 vessels can be authorized through

the GP for individual piers, and up to 4 docking spaces are authorized through the GP for shared piers. Prior to 1999, this GP authorized docking spaces for up to 4 vessels for individual piers.

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; or, after obtaining the GP, owners sometimes decide to fit multiple PWCs into a single docking space or boat lift. Docking more than two vessels creates a technical violation based on existing use standards and GP requirements.

Staff suggest that this problem could be addressed by increasing the number of vessels allowed under a GP from 2 back to 4. In most cases, this would take care of the problems associated with smaller-scale docking facilities for individual property owners. At the same time, it is unlikely that this would result in a significant increase in the square footage of docking facilities along the coast as a result of applicants "maximizing" their site plans based on increased allowances for docking spaces.

2) Streamlining General Permits for Boat Ramps

Three General Permits are often required for a single boat ramp project, as separate permits are currently required for the ramp, an access pier, and a protective bulkhead or riprap structure. Requiring three permits creates an unnecessary and overly burdensome hardship on applicants. General Permit 7H.1300 could be improved by including a modest-sized launching pier and shoreline stabilization structure to protect the ramp. This action would simplify permitting for the applicant and reduce costs.

On a broader note, for coastal projects that do require multiple GPs, the Division also recommends establishing a single-project cap on GP fees to reduce the incentive for violations and to ensure that the fee associated with a multiple GP project is in line with the fee for Major Permits.

3) Streamlining Permits for Inlet Dredging Activities

As North Carolina seeks consistent funding to maintain adequate depths in our shallow-draft inlets, it is the Division's priority to ensure that the permitting process for individual dredging projects is not unnecessarily expensive or time-consuming. The Division intends to implement a regional, programmatic permitting process based upon a comprehensive set of project histories and past environmental studies (with any necessary updates) related to the dredging of inlets and Atlantic Intercoastal Waterway crossings. A single regional application package could be submitted for multiple sites, under which expedited permits could be issued for individual projects. DCM staff are currently working with stakeholders to identify appropriate participants, procedures, and next steps for implementation. At this time, DCM does not anticipate the need for CRC rule changes to implement this new process.

4) Reducing Regulatory Burden Related to Beach Fill Projects

In 2007, the CRC adopted "Technical Standards for Beach Fill Projects" in 15A NCAC 7H.0312. These standards are primarily focused on ensuring the compatibility of sand obtained from borrow sites with recipient beaches. The rule seeks to ensure post-project performance and to protect beaches from negative impacts on environmental, aesthetic, recreational, and economic values due to incompatible sediments and other materials (muds, shells, rocks, etc). However, the Division's experience with these rules has been somewhat problematic. In several cases, the technical standards have been overly rigid; sampling and data analyses have not yielded decidedly useful results for decision-making by either the project consultants, local governments, or the Division; and these sampling requirements can result in significant costs to the applicant.

In addition, the Division has received a number of complaints about environmental monitoring conditions placed on CAMA permits for beach fill projects. Monitoring is an important aspect of these projects, and results can yield valuable lessons with respect to future projects with similar designs. At the same time, staff recognize that not all monitoring data prove useful in learning about past or future project performance, and the associated costs are high. (It is important to note that not all monitoring conditions are imposed by CAMA permits - some requirements are dictated by federal permitting agencies).

While the CRC is already in the process of reducing sampling requirements and costs for certain types of beach fill projects, staff recommend that the technical standards under 15A NCAC 7H.0312 be further reviewed and revised as appropriate, with minimum standards clarified for both sediment compatibility and pre- and post-project monitoring. Staff propose to work with a stakeholder group to review the existing rule and recommend to the Commission more flexible, meaningful, and streamlined standards for these projects.

5) Streamlining Public Notice and Adjacent Property Owner Notifications

CAMA Minor Permits require that a public notice be posted in the local newspaper and allow for a comment period (NCGS 113A-119). Many local newspapers are not published on a regular basis, and the resulting timeframe for issuing CAMA Minor Permits often makes CAMA the slowest part of obtaining a local building permit. In addition, out-of-state individuals often do not have access to these newspapers. The publication process is expensive for local governments, and reimbursements through DCM contracts barely cover the publication cost. These minor projects do not necessarily directly impact public resources and are often more related to adjacent property owner issues.

Staff recommend eliminating the public notice newspaper publication requirement within CAMA for Minor Permits and standardizing notice requirements across Minor and General Permits. Local governments would be able to keep more of the permit fee as reimbursement for their time processing an application, and elimination of the public notice requirement will result in more expeditious processing as intended in CAMA (NCGS 113A-121(a)).

Permit exemptions for single family residences require a "statement of no objection" from adjacent riparian property owners under 15A NCAC 7K.0208(3). Applicants could benefit from the elimination of the requirement for such a statement, which is sometimes difficult to obtain and consequently elevates the proposed activity into the Minor permit process. This was a suggestion made under last year's Executive Order 70 public comment process and staff concurs with the suggestion.

Finally, staff suggest that signed statements of no objection by adjacent property owners be considered as an acceptable alternative to certified mail requirements for adjacent property owner notification under CAMA Major Permits. This would benefit by allowing applications to proceed more timely and expeditiously when individuals being notified refuse to accept (or cannot accept) postal service delivery of certified mail.

6) GP 7H.2600 – Wetland, Stream, and Buffer Mitigation General Permit

This general permit authorizes the construction of mitigation sites by the NC Ecosystem Enhancement Program or the NC Wetlands Restoration Program. Based on past experience and the substantial reviews that are undertaken by an Interagency Review Team for proposed mitigation projects, staff recommend expanding this GP authorization to also cover projects undertaken by private sector organizations.

North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

(CRC -13-05)

MEMORANDUM

To: The Coastal Resources Commission
From: Maureen Meehan, DCM Morehead City District Planner
Date: January 22, 2013
Subject: Certification of the Cedar Point Workbook Land Use Plan

DCM Staff Recommendation

DCM Staff has determined that the Town of Cedar Point has met the substantive requirements outlined within the 2002 Land Use Plan Guidelines for workbook plans and that there are no conflicts evident with either state or federal law, or the State's Coastal Management Program.

DCM Staff recommends that the CRC Certify the Cedar Point Workbook Land Use Plan.

Overview: The Town of Cedar Point is requesting Certification of the 2012 Cedar Point CAMA Workbook Land Use Plan. The Town held a public hearing and adopted the plan, by resolution, on November 27, 2012. Further, the public had an opportunity to provide written comments on the LUP fifteen business days prior to the CRC meeting it is being considered for certification. DCM did not receive any correspondence.

Cedar Point is a small town in western Carteret County, with a population of 1,279. The town is situated on a peninsula between the White Oak River and Bogue Sound. While it is in close proximity to the beaches of Carteret County and within a tourist driven area, the community has felt a slight shift from seasonal to permanent residents. Further, the median age has decreased and vacancy rates have dropped. The town is anticipating growth and will use the LUP as a tool to direct future development.

Workbook Plan Requirements: A workbook plan is a simplified CAMA Core Land Use Plan. When the rules were developed they provided this LUP option for small non-ocean-side communities. The requirements acknowledge less analysis is necessary and that such a document should be able to be prepared without grant monies or the need for use of consultants.

A workbook plan is only required to addresses the following five (5) elements:

1. Statement of community concerns, aspirations, and vision;
2. Existing land use map;
3. Land suitability analysis;
4. Local growth and development policies addressing each Management Topic and applicable Areas of Environmental Concern;
5. Future land use map

In contrast to a Core Land Use Plan, a workbook plan is NOT required to include the following elements:

- Formal Public Participation Plan
- "Composite Map of Environmental Conditions"
- A comparison and analysis of apparent differences between FLUP Map and the Land Suitability Analysis (LSA) Map within the document
- Illustrating future infrastructure needed on the FLUP Map
- Holding capacity of the FLUP Map be assessed and directly tied to projected trends, population projections and land area needs
- Formal infrastructure carrying capacity review towards a projected twenty (20) year projection for new infrastructure
- Formal assessment of earlier LUP policy
- Policy impact analysis
- A five (5) year implementation Action Plan

It is important to note the Cedar Point workbook plan includes several elements, which are not required by the rules for workbook plans. This was accomplished with the assistance of Eastern Carolina Council of Governments, the Institute for the Environment at UNC Chapel Hill, and the North Carolina Coastal Federation. Elements that exceed the workbook requirements include, but are not limited to: a) both a traditional build out analysis and stormwater build out analysis; b) policy development for economic development, including economic development strategies; c) visual preference manual for the town; d) low impact development manual; and e) a watershed implementation plan. In addition to the narrative content of the plan, five (5) additional maps are included in the document including: Cedar Point Flood Hazard Areas Suitability Map, Cedar Point Storm Surge Suitability Map, Wetlands Suitability Map, Soil Classification Suitability Map, and Environmental Composite Map.

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-13-06

January 23, 2013

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Science Panel Origin

Beginning with Hurricane Opal in October 1995 and ending with Hurricane Fran in September 1996, North Carolina experienced five presidentially declared disasters within a twelve month period. As a result, Governor Hunt formed a Disaster Recovery Task Force in October 1996 to develop a comprehensive set of recommendations to facilitate the state's recovery. One of the issues address was the review of the CRC's hazard mitigation rules and Ocean Hazard Areas. Specifically, the Commission was requested to evaluate the methodologies used to delineate hazard areas including an assessment of erosion rate calculations, setback requirements and accuracy of ocean, flood and inlet hazard area delineations.

To begin this assessment, the Division arranged for a panel discussion at the January 1997 CRC meeting to discuss the Ocean Hazard AEC. The panel was comprised of Dr. Bill Cleary (UNCW, geologist), David Owens (UNCCH Institute of Government, lawyer), Dr. Stan Riggs (ECU, geologist), and Dr. John Wells (UNC-CH Institute of Marine Sciences, geologist). During the presentations and discussion, Dr. Cleary recommended the creation of a barrier island erosion task force to re-examine erosion rates, setbacks and associated methodology used in their determination. Cleary stated that such a task force would allow scientists actively involved in such research to interact more regularly and effectively with the Commission. Motions to create such a task force were made at the meeting and passed unanimously, first in the Implementation & Standards Committee and then by the full CRC. The Commission discussed the need to get scientific knowledge to bear on the problems the CRC faced as regulators. Chairman Hackney added that the Commission needed the participation of scientists who had an understanding of the coastal management program and the CRC's rules. The intent of such a task force would be to determine how the current state of knowledge could assist the Commission in the development of regulations - bridging the gap between science and policy. The Commission also discussed the need for a long-term, on-going task and that there would need to be a clear charge from the Commission to ensure their direction.

400 Commerce Ave., Morehead City, NC 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 Internet: www.nccoastalmanagement.net

The Division had already been planning to make coastal hazards an area of focus by including it as a topic in its five-year strategic. As part of this effort, DCM was to propose rule changes to the Ocean Hazard AEC, develop an emergency response plan and hire a coastal geologist into a coastal hazards specialist position to guide the initiative. An advisory scientific task was incorporated into the implementation of this strategy.

The initial science advisory task force was assembled by DCM staff and had its first meeting in May 1997 at ECU. The initial panel included Dr. Bill Cleary (Geologist – UNC-W) , Dr. John Fisher (NCSU - engineer), Mr. Tom Jarrett (US Army Corps of Engineers, engineer), Dr. Stan Riggs (ECU – Geologist),Mr. Spencer Rogers (NC Sea Grant - coastal engineering specialist), Dr. Margery Overton (NCSU - engineer), and Dr, John Wells (UNC- Geologist), Craig Webb (Duke Earth Sciences). Dr. Fisher volunteered to chair the panel and DCM provided staff support.

Officially named the CRC's Science Panel on Coastal Hazards, the original charge was developed by the Panel and the Commission focusing on:

1. Update and report on current state of knowledge of coastal processes of NC.

2. Review current methodologies being used by NC and others to define and identify coastal hazard areas.

3. Review current rules applied by DCM to development in coastal hazard areas.

4. Considering immediate (next 1-3 years) and long term (3 or more years away) actions, develop recommendations for the NC CRC in the following areas:
    i. Studies that are needed to better describe NC coastal processes for management purposes.
    ii. Specific changes to the methodology utilized by DCM to determine coastal hazards.
    iii. New hazard identification methodologies that should be considered.
    iv. Opportunities to incorporate current information on NC coastal processes.

Over the course of the next year, a set of short- and long-term recommendations (attached) were developed by the Science Panel and presented to the CRC in May 1999 and February 2000, respectively. The short-term recommendations included suggestions for digital mapping, erosion rate computation, storm surge modeling to define OEA width, development of a structures database (e.g., piers and bulkheads along estuarine shoreline), outreach and public education, creation of a coastal coordination committee (federal and state agencies with coastal responsibilities), inlet hazard area re-delineation, building code issues, sandbags, and oceanfront setbacks. The long-term recommendations discussed the development of an integrated hazard classification of the NC ocean shoreline including physical dynamics, geologic framework, subaerial characteristics, modern inlets, sediment budget, and erosion/accretion rates. In the development of the recommendations, the Panel discussed that it would keep to the science and not make recommendations that were broader than the science and technical issues they were charged with examining.

Over the intervening years, the Panel has been asked by the Commission and Division to develop recommendations or provide technical advice on a number of issues including:

1. Sediment Criteria Development (2002 - 2007)
2. Review Innovative Erosion Control Structures - Holmberg Stabilizer System (2002 - 2003)
3. Inlet Hazard Areas Analysis 7 Delineation (2007 – 2010; per HB-819 continue study in 2013)
4. Terminal Groins (Review Feasibility Study 2009)
5. Terminal Groins (Guidance on monitoring for adverse impacts 2011- 2012)
6. Sea Level Rise Assessment (2009 to Present)
7. Review results from updated Erosion Rate study (2011)

Traditionally, the Science Panel membership has been balanced with coastal engineers and coastal geologists. A marine biologist was added to assist with the sediment criteria and vacancies were filled by recommendations of the Division, Panel members and with the consultation and at the discretion of the CRC Chair. The Panel has also asked others to provide information when particular expertise was required.

The current members of the Science Panel are:
Chairman Dr. Margery Overton (Dept. of Civil, Construction & Environmental Engineering, NCSU)
Mr. Steve Benton (coastal geologist, retired DCM)
Dr. William Cleary (Center for Marine Science, UNC-W)
Mr. Tom Jarrett P.E. (US Army Corps of Engineers, retired)
Dr. Charles “Pete” Peterson (Institute of Marine Sciences, UNC-CH)
Dr. David Mallinson (Dept. of Geology, ECU)
Dr. Stan Riggs (Dept. of Geology, ECU)
Mr. Spencer Rogers (NC Sea Grant)
Dr. Antonio Rodriguez (Institute of Marine Sciences, UNC-CH)
Dr. Gregory Williams (US Army Corps of Engineers, Wilmington)
Mr. William Birkemeier (Field Research Facility, ERDC/CHL US Army Corps of Engineers)
Dr. Elizabeth Sciaudone, P.E. (Dept. of Civil, Construction & Environmental Engineering, NCSU)
Dr. Robert Young (Dept. of Geosciences, Western Carolina University).

North Carolina State University is a land-grant university and a constituent institution of The University of North Carolina

Department of Civil Engineering

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May 4, 1999

Ms. Donna D. Moffitt, Director
Division of Coastal Management
NCDENR
PO Box 27687
Raleigh, NC 27611-7687

Dear Donna:

The CRC Science Panel on Coastal Hazards has prepared the attached recommendations for your consideration. The charge to the panel was to review the current understanding of coastal hazard identification and to make recommendations aimed at reducing the impacts of future severe storms and long-term erosion. The Panel has divided its assignments into two main categories, short-term issues, and long-term. The current recommendations only address the short-term, namely things we think might be undertaken within the next one to three years.

The Panel has been meeting monthly, and has developed a good internal relationship such that members with rather diverse interests and agendas have been able to work well together. We are continuing our efforts to respond to the original charge from DCM, and hope to be able to provide you with recommendations that focus on long-term issues later this year. The process has been slow but steady, and we continue to believe that we will be able to assist you and your staff as you grapple with the complexity of managing the North Carolina shoreline.

We look forward to your comments with regard to our current recommendations.

Sincerely,

John S. Fisher, Ph.D., Chairman

Dr. Bill Cleary, UNC-W
Mr. Tom Jarrett, US Army Corps of Engineers
Dr. Margery Overton, NCSU
Dr. Orrin Pilkey, Duke University
Dr. Stan Riggs, ECU
Mr. Spencer Rogers, North Carolina Sea Grant
Dr. John Wells, UNC-CH

Enc.

CRC Science Panel on Coastal Hazards
SHORT-TERM RECOMMENDATIONS

The following recommendations refer to the 1-3 year time frame.

Digital Mapping

The Panel endorses the recent DCM decision to adopt the Science Panel's recommendation to use vertically controlled aerial photography in their shoreline updates. The use of state of the art digital mapping procedures both minimizes the potential mapping error in the identification of the ocean shoreline and enables the integration of DCM's shoreline mapping program with the Division's GIS initiatives.

Recommendation: All future shorelines (currently defined as the wet-dry line) should be identified on the digital orthophotographs and digitized such that the data are compatible with standard GIS programs.

Erosion Rate Computation

The current method to determine the annual long-term ocean shoreline erosion rate is based upon two dates: the historical date and the most recent date from DCM's shoreline update studies. This rate, known as the endpoint rate, is often criticized because it does not yield information on short-term changes. However, for much of the state, the COAST database is too sparse (as few as five datapoints) and more sophisticated time series analysis is not statistically valid.

Recommendation:

a) The Panel recommends that DCM continue to use the endpoint method to calculate the long-term erosion rate in the next erosion rate update.

b) The Panel recommends that DCM undertake a pilot study to determine the cost and utility of acquiring additional dates in their shoreline database. This study would be designed to evaluate the use of a time series analysis to determine both long term and short term erosion rates as an alternative (or complement) to the end point method.

The "Early Date"

The current endpoint computation of the long-term erosion rate is based upon the most recent shoreline position (digital orthophotograph) and a shoreline position determined from a set of historical uncontrolled aerial photographs. The method used to establish control for this early set no longer reflects the state of the art. In addition, this early date is not in a GIS format.

Recommendation:

The Panel recommends that DCM establish a properly geo-referenced historical shoreline to be used for the next update of the long-term erosion rates. Data sources to be considered include NOS T sheets, USGS topographic surveys and a set of historical photographs with control established from the 1998 digital orthophotographs.

Ocean Erodible Area

The current delineation of the Ocean Erodible Area is based in part on a dune erosion analysis over twenty years old. The computation was based upon a relatively simple model for dune erosion for a single severe storm. This analysis depends upon estimates for extreme (100 year) storm surge and wave conditions and dune topography. In the years since this analysis was completed, there have been new methods developed for dune erosion analysis and wave and storm surge prediction. In addition, the 1998 digital photography can be used to develop a new set of dune topography

Recommendation:

The Panel recommends that DCM revise the landward limits of the Ocean Erodible Area. The new analysis should take advantage of the newer models for dune erosion, storm surge and wave prediction, and the current dune topography. The results of this analysis should be interpreted in the context of the known coastal geology of the NC coast.

Structures Database

As a result of recent studies at DCM, the Corps of Engineers, and NC State, several site specific GIS databases of structures (houses and other buildings) exposed to coastal storm hazards has been compiled. The database includes distance to the shoreline, elevation of the ground, elevation of the living space, type of structure, etc.

Recommendation:

The Panel recommends that DCM merge the existing structures databases, and expand it to include the development along the entire ocean shoreline within the Ocean Hazard AEC. Once complete this database will prove to be a valuable asset when estimating storm impacts, the changes in development density (and hence risk) and the success of the DCM coastal management program.

Outreach and Public Education

One of the most effective ways to reduce the impacts of severe storms is to have an informed public. The inherent risks of owning coastal property have been documented in books, magazines, newspaper articles and videos. Nonetheless, this information does not appear to be reaching the current and potential coastal property owners in sufficient numbers.

Recommendation:

The Panel recommends that DCM develop a new set of brochures, videos, graphs, etc., designed to educate the public to the risks associated with coastal property ownership. Public programs and workshops should also be considered. These new instructional activities could draw heavily from the Hurricane Fran and Bonnie experience. This initiative should be designed to target prospective property owners. The focus should be on developing an understanding of the nature of coastal hazards including flood elevations, shoreline erosion and inlet dynamics.

Coastal Coordinating Committee

There are many state and federal agencies and academic institutions involved in the research and management of the NC coast. There are many advantages to be realized from the coordination and mutual cooperation of these efforts. The recent experience of the Science Panel on Coastal Hazards is a clear indication of the benefits of bringing together a diverse group of coastal scientists and engineers.

Recommendation:

The Panel recommends that DCM take the lead in forming a Coastal Coordinating Committee consisting of the DCM Science Panel and the state and federal agencies with research and management responsibilities for the NC coast. This committee should meet quarterly to exchange ideas, coordinate management activities, develop research initiatives and set priorities. In addition, this committee should be convened after severe storms to facilitate a coordinated response for post-storm scientific data collection and analysis.

Inlet Hazard Areas

Inlet Hazard Areas are coastal zones that are especially vulnerable to migration, erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic tidal inlets. Each of North Carolina's inlets is unique and there are distinct differences in the history and behavior of inlets in different coastal compartments of the state. Current Inlet Hazard Areas are based upon original studies conducted over twenty years ago. The Inlet Hazard Areas need revision to incorporate updated knowledge.

Recommendation:

The Panel recommends that the delineation of the Inlet Hazard Areas be revised after a review of site-specific studies of each inlet by a group of experts. The hazard zone delineation shall consider such factors as previous inlet territory, structurally weak areas along migration pathways, unusually low and narrow sections of barriers prone to breaching, external influences such as jetties and channelization, and increased erosion extending along adjacent shorelines. These Inlet Hazard Areas should be periodically reviewed.

Building Code

The success of managing development for coastal hazards depends not just on the CRC's efforts to define where development may take place, but also on how the buildings are constructed. By NC law, most construction standards are established by the NC Building Code Council. Like the CRC, the Building Code Council has been a national leader in establishing storm-resistant construction practices along the coast. The Council has adopted major improvement to the wind standards in the last five years and is continuing to refine those standards at this time. However, the coastal hazard provisions of the NC Building Code which address erosion, waves and coastal flooding have changed little since 1985. The recent hurricanes have helped identify the many benefits of the earlier requirements, but also identified several deficiencies in the present building code. Particular concerns of the Panel include: the smaller erosion area used in the Building Code compared to the CRC's Ocean Hazard Area, which is intended to address both long-term erosion and hurricane-induced erosion; the foundation standards for decks and porches; and the general foundation standards in higher-elevation sand dunes.

Recommendation:

The Panel recommends that CRC request that the Building Code Council consider updating the ocean hazard provisions of the North Carolina State Building Code and that DCM assist the Council in integrating appropriate construction standards into the identified Ocean Hazard Areas. Specific areas to be considered for review include the definition of the erosion areas, foundation standards for decks and porches and foundation standards in dune areas.

Sandbags

Sandbags are allowed as temporary erosion control structures. There is concern that the size of the structures, and their longevity, is causing them to function as permanent shoreline hardening structures. Therefore, these sandbags act like hard structures in terms of their impacts on the quality of the recreational beach on a retreating shoreline.

Recommendation:

The Panel recommends enforcement of the current sandbag regulations.

Oceanfront Setbacks

The size of houses constructed along North Carolina's oceanfront has increased tremendously since the first setbacks were adopted. Regulations double the setback distance for commercial buildings larger than 5,000 square feet, but the size of residential houses is unrestricted. Single-family oceanfront houses larger than 5,000 square feet are now commonly permitted on the minimum 30-year setback. Houses as large as 13,000 square feet have been constructed at the 30-year setback. Although the CRC's regulatory assumption that existing houses were readily movable was valid in 1979, the recent increase in the sizes of new houses indicates that the general assumption is no longer valid. Practical experience suggests that houses greater than 2000 square feet are not readily moved. The present building safety standards for erosion are considerably lower than those established for other hazards like wind, flood and fire.

Recommendation:

The CRC should revise setback requirements for larger structures which are not readily movable. Revisions should consider additional limits on the sizes of buildings on the highest risk lots and encourage those desiring larger structures to use lower risk sites.

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0003-12-CRC-00-13

CRC-00-14

February 22, 2000

NC Coastal Resources Commission
c/o Ms. Donna D. Moffitt
Division of Coastal Management
NC DENR
1638 Mail Service Center
Raleigh, NC 27699-1638

Members of the Coastal Resources Commission:

The Science Panel on Coastal Hazards has continued to pursue its charge to review the current understanding of coastal hazard identification and to make recommendations aimed at reducing the impacts of future severe storms and long-term erosion. Last May the Panel presented a list of short-term recommendations to the Commission. The Science Panel has also completed our long-term recommendations for dealing with coastal hazards, which we now present in the attached report.

The Science Panel is pleased to assist the staff and Commission in your efforts in managing the North Carolina coast. I look forward to discussing your comments on these recommendations at the March 23, 2000 CRC meeting.

Sincerely,

John S. Fisher, Ph.D., Chairman

Dr. Bill Cleary, UNC-W
Mr. Tom Jarrett, US Army Corps of Engineers
Dr. Margery Overton, NCSU
Dr. Orrin Pilkey, Duke University
Dr. Stan Riggs, ECU
Mr. Spencer Rogers, NC Sea Grant
Dr. John Wells, UNC-CH

Enc.

AN INTEGRATED HAZARD CLASSIFICATION OF NORTH CAROLINA'S OCEAN SHORELINES

REPORT TO THE NORTH CAROLINA COASTAL RESOURCES COMMISSION

BY THE NC CRC
SCIENCE PANEL ON COASTAL HAZARDS

JULY 19, 1999

A. INTRODUCTION

The North Carolina ocean shoreline has a very unique geometry defined by major capes and associated cape shoals which separate the adjacent cuspate embayments. This results in a series of distinct coastal compartments whose orientations and oceanographic settings are uniquely different. Also, the spatial location and orientation of each shoreline segment within each embayment has a dramatic effect upon beach behavior. Consequently, the rate of shoreline recession and/or accretion is extremely variable along the NC ocean shoreline. At any given location, change in the shoreline is directly dependent upon a series of variables: the specific regional setting, surficial geometry, and geologic framework of the shoreline, as well as the physical dynamics and storm patterns impacting that coastal segment.

The relevant variables that should be included in defining coastal hazards can be grouped into six distinct categories. The first category determines the physical forces that produce coastal hazards. Categories two through five are the geologic parameters that modify the physical forces and their impacts upon the coastal zone. Category six integrates these variables into the long-term coastal impact.

B. QUANTIFIABLE VARIABLES DETERMINING DEGREE OF COASTAL HAZARDS

PHYSICAL DYNAMICS

The wave and tide climate vary along the North Carolina coast with a resulting influence on the patterns of short-term and long-term shoreline change. These patterns can result in some areas being more vulnerable during storm events than others. For example, the type of storm (tropical cyclone, northeaster, etc.), the characteristics of the storm (direction of movement, forward speed, wind speed, storm surge, etc.), the storm climate (eg. the number and timing relative to other storms) and the oceanic conditions at time of storm impact (waves, currents, tides, etc.) are factors. During storms, the specific combinations of these variables can cause extreme changes in shoreline position and consequent damage.

GEOLOGIC FRAMEWORK

The geology of the shoreline plays a significant role in determining how it responds to the physical forces. A number of important components are important to a site's geologic framework including the geologic history and geomorphic location within a coastal segment (i.e., headland, river valley/estuarine backfill, type and presence of historic/prehistoric inlets, etc.) The shoreface composition (sand, mud, rock, etc.) and the profile (steepness, depth and shape) are significant. The continental shelf profile also effects the shoreline changes in response to storms. The presence and the characteristics of a back-barrier estuarine water body plays a role in determining the degree of hazards associated with storms.

SUBAERIAL CHARACTERISTICS

The geometry of the beach, dunes and backdune areas are important elements in determining how a shoreline responds to storm waves, wind and tides. The height and width of the dunes and the extent of vegetative cover of the dunes and backdune area are important. The complexity of a coastal system (headland, simple or

compound barrier) as well as the island height/width ratio are also major factors.

MODERN INLETS

The dynamics of inlets, relative stability and history are major influences on the spatial and temporal changes of adjacent shorelines. Regional sand management and inlet control structures are critical factors in determining the relationship between an inlet and shorelines.

SEDIMENT BUDGET

The thickness of the active sand prism and the sediment transport pathways (longshore, onshore/offshore, inlets/estuaries, rivers, etc.) are key elements of the sediment budget. The sediment budget of a shoreline segment determines how a beach responds to extreme events. In addition, the potential availability of sediments for natural post-storm accretion or artificial nourishment is also important.

EROSION/ACCRETION RATES

The long-term patterns of shoreline erosion and accretion are the natural response to the physical and geologic factors described above. The computation of erosion/accretion rates from periodic mapping of shoreline position documents these patterns of change and helps identify hazard areas prone to severe damage during storms.

C. INTEGRATED HAZARD CLASSIFICATION PLAN

It is important to understand the processes that control the many different scales and rates of change taking place at the interface between the land and sea. To maintain healthy shorelines and effectively respond to natural changes, we must understand the complex interactions between the geologic framework and dynamic physical processes. In order to integrate our scientific understanding into a coastal management

scheme for minimizing human impact upon the natural system and maximizing human safety factors in growth and development, it is recommended that North Carolina undertake the following plan. A comprehensive plan of this magnitude will require a major input of resources.

The primary objective is to update the hazard classifications for the North Carolina ocean shoreline and associated inlets by integrating all critical variables that determine the coastal hazard. The realization of this long-term goal will result in reevaluation of and redefinition of the AEC's and associated ocean-setback policies. In order to realize this objective, it is essential that the State implement the following series of recommendations as the framework of the hazard identification plan.

A tremendous amount of research has been done on coastal processes and dynamics of the North Carolina coastal system during the past 30 years. The geologic data was accumulated by numerous researchers in different ways and formats and is housed at many universities, state and federal agencies, and various organizations. Today we are working with new digital aerial photography with DGPS controls (error bars = +/- meters) while the early geologic data was based upon Loran C navigation (error bars = +/- hundreds of meters). The earlier data as well as all new data to be collected should be compiled and maintained in a GIS data base.

RECOMMENDATION:

a) Evaluate and integrate all prior coastal studies into a comprehensive synthesis of the North Carolina coastal system. The data should be compiled into a set of appropriate base maps and GIS data bases for use by coastal managers and public and private user groups.

b) Develop a set of standards for collection of new data sets concerning the scientific understanding of the coastal zone. The standards should include procedures concerning navigation

and location control that will allow all new data to be georeferenced and GIS compatible.

c) The State should maintain a program to assimilate these GIS data. This GIS data base should be made available to all federal, state, and local communities involved with coastal management.

2. Some portions of the coast are well studied including remotely sensed data bases that have been ground truthed. Other segments are either poorly known or the data have not been adequately ground truthed. Developing a satisfactory level of scientific understanding for all portions of the coastal system is essential in order to define coastal hazard zones and improve risk assessment.

RECOMMENDATION: Implement a systematic evaluation program to bring each coastal segment up to a common level of scientific understanding. Key elements in this program include the following.

a. Define the geologic framework of the barrier islands utilizing an integrated program of remotely sensed surveys (i.e., seismic, side-scan sonar, ground-penetrating radar, etc.), direct sampling techniques (i.e., vibracores, drill cores, diving, etc.), and subsequent sediment analyses.

b. Complete the characterization study for each of North
Carolina's inlets that integrates the geologic framework, physical dynamics, and historical record of evolutionary change.

c. Collect and synthesize the existing data on physical energy inputs and storm patterns for each coastal compartment, including both the shelf and associated barrier and estuarine segments.

3. An important aspect of understanding complex coastal dynamics includes establishing specific sites that can

be monitored through storm events on a short-term (hours to days) as well as long-term (annual to decadal) timeframe. Study sites should include specific segments of the shoreline and inlets at particularly severe problem zones and unique geologic settings. This monitoring effort should approach the example established by the US Army Corps of Engineers understanding of coastal dynamics at Duck, NC.

RECOMMENDATION: Establish a set of beach-shoreface monitor zones along specific segments of the shoreline and inlets. Specific location, design, and monitoring of these zones should be: a) based upon the geologic framework and the physical dynamics; b) extend from well inland of the barrier dune ridge, seaward across the beach and shoreface to the innermost-continental shelf; and c) utilized by different federal, state, university, and private research groups. Examples of the data to be collected include physical oceanographic data as well as geologic data.

4. Some coastal processes have remained elusive to the scientific and engineering community over the years. One such problem area includes the definition of regional sediment budgets and sediment transport paths between coastal compartments, islands, and segments within an island, as well as the onshore-offshore movement of sediment. Developing this sediment inventory and balancing the amount of sediment in the active beach system and availability of potential long-term sources of beach nourishment sand are crucial for long-term management decisions for each shoreline segment.

RECOMMENDATION: Develop sediment inventories for major high-risk coastal segments. These sand inventories should include the active beach sand system (i.e., beach prism, inlet tidal deltas, inner-shelf shoals, etc.), older sediment units cropping out on the adjacent inner-continental shelf (i.e., paleo-riverine channels, Cretaceous and Tertiary sediment units, etc.), and potential sand sources on the adjacent mainland. Once these

inventories are compiled, the identification of the transport pathways and the development of models for sediment budgets should be undertaken.

5. Development and implementation of the hazard classification of the entire North Carolina ocean shoreline is an ambitious and complex undertaking. In order to work out the problems and procedures, CRC should fund an initial pilot study.

RECOMMENDATION: Implement a pilot study for the development of hazard classifications on a set of distinctly different sites where the current scientific data are most robust. This study will be based upon currently should be carried out as follows.

a. The pilot study should integrate at least the following parameters.

1. Physical dynamics
2. Erosion/accretion rates
3. Geologic framework of coastal system
4. Subaerial coastal geometry
5. Relationship to modern inlets
6. Sediment inventories
7. Anthropogenic shoreline modifications

b. Various hazard models, including those presently used by the U.S. Army Corps of Engineers, should be tested on the pilot study as part of development of the hazards classification.

c. The final report should include a comparative evaluation of several ocean hazard management techniques based upon different approaches including the method currently in use by the CRC.

d. Use the broad-based expertise of the CRC Science Panel on Coastal Hazards to assist with defining the basic framework, contribute technical data and expertise, and generally oversee the pilot study.

e. The study should have a Principal Investigator

directly responsible for carrying out the mechanics of the study.

7. To successfully realize the application of the new integrated hazard classification methodology into the NC coastal management program, it is absolutely essential that a major public education program be undertaken.

RECOMMENDATION: Implement a public education program that is directed towards managers, developers, politicians, and the user public and which focuses on the identification of the natural hazards associated with dynamic coastal systems.

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-13-07*

TO: Coastal Resources Commission

FROM: Braxton Davis

SUBJECT: Draft Science Panel Charge from CRC

DATE: January 22, 2013

Below is a draft charge for the Science Panel from the Commission, which would replace the existing Panel Bylaws. The draft charge focuses on a consensus-based approach and reiterates that the Panel is tasked with working on projects either assigned by the CRC or projects requested by the Panel and approved by the CRC. It also covers member appointment procedures and officer elections. The draft charge was developed with input from the Science Panel and was presented to the group at their December 19, 2012 meeting. The draft charge has since been revised based on the Panel's comments, and we are now asking for the Commission's approval.

Draft Charge to the Coastal Resources Commission's Science Panel on Coastal Hazards

Charge

The purpose of the Science Panel on Coastal Hazards (Panel) is to provide the Coastal Resources Commission (CRC) scientific data and recommendations regarding coastal hazards processes. The Panel is charged with the following: 1) continually review the current state of knowledge of coastal processes and ecological functions of coastal North Carolina; 2) review the current methodologies being used by North Carolina and others to define and identify coastal hazard areas and impacts associated with development in public trust areas of North Carolina; 3) review the scientific basis of the CRC's rules as applied by the Division of Coastal Management (DCM) to development in the coastal area; and 4) develop recommendations for the Coastal Resources Commission on topics that include the following:

400 Commerce Ave., Morehead City, NC 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 Internet: www.nccoastalmanagement.net

1. Opportunities to incorporate current information on North Carolina coastal processes in the CRC rules for Estuarine and Ocean Areas;

2. New coastal engineering technologies or methods;

3. Specific projects as assigned by the CRC or requested by the Panel. When the CRC assigns a project, it should provide the Panel with specific questions it needs answered and any necessary timelines. The Panel should maintain the flexibility to propose projects and scopes of work to the CRC for approval.

Membership and Officers

The membership of the Panel should be no more than 13 individuals having professional expertise in coastal science or engineering, but additional members may be added on an ad hoc basis to expand the expertise of the Panel for specific studies if deemed necessary by the CRC Chair in consultation with the Panel. Members will be appointed by the CRC Chair. Replacement members will be appointed as needed. New member terms should be for five years, with reappointments for up to five years when mutually agreed upon by the Panel member and CRC Chair. Regular attendance or participation by other means is important, and the CRC Chair may request a Panel member to step down after prolonged non-participation.

The officers of the Panel are the Chair and Vice-Chair. Officer terms are for two years, and the Chair and Vice-Chair should be elected biennially by the Panel. The Chair should work with staff to establish meeting agendas, preside over Panel meetings, and appoint subcommittees and subcommittee chairs as necessary to carry out the Panel's business. The Vice-Chair should preside over Panel meetings in the absence of the Chair and assume the duties of the Chair if the Chair is unable to complete their term until another Chair is selected by the Panel.

Panel Meeting Agendas

Meetings of the Panel will be open to the public and each meeting should include an opportunity for public comments for the Panel to consider. Meeting notes and other records of all Panel meetings will be kept by the Division of Coastal Management. Draft notes will be distributed to Panel members for review, and final notes will be posted on the DCM webpage.

The Chair, Vice-Chair, and DCM staff should work together to prepare meeting agendas, which will be provided to members and to the public at least seven days prior to a scheduled meeting.

Consensus Building

Final Panel reports should be developed by consensus whereby (preferably) all Panel members support the general findings and recommendations, and clearly articulate any differences of opinion related to specific findings. In the absence of consensus, a minority opinion section should be included with each recommendation or report, if applicable.

Panel reports should follow a common outline so the CRC and stakeholders know what to expect in terms of format and content. The goal of Panel reports is to use the best available data to identify common ground and areas of disagreement to help set the context for CRC policy deliberations. To help reach consensus, it is essential for Panel members to participate in discussions, weigh in on draft recommendations, and review final reports. The outline should include, at a minimum, the following sections:

- General Issue
- Specific Question(s) to be Answered
- Options Explored by Panel
- Best Available Science
- Key Assumptions, Uncertainties, and/or Data Limitations Associated with Each Option
- Consensus Findings and Recommendations
- Minority Opinions and/or Specific Areas of Disagreement

The outline above is a general guideline for larger reports, but not all communications between the Panel and the CRC may need to follow this format. Some recommendations, such as those pertaining to new coastal engineering technologies or methods, may be as simple as a memo from the Panel to the CRC.

Dissemination of Information

Draft findings and recommendations should be released for public comment prior to being presented to the Coastal Resources Commission. Division of Coastal Management staff will coordinate the public review process.

Final recommendations of the Panel adopted pursuant to the consensus building and public review procedures described above should be reported in writing to the Division Director and the Chair of the Coastal Resources Commission. Presentations of Panel recommendations to the CRC should be made by the Panel Chair or their designee.

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: Coastal Resources Commission

FROM: Tancred Miller

SUBJECT: Draft Sea-Level Rise Assessment Update Scope of Work

DATE: January 23, 2013

The CRC's Science Panel on Coastal Hazards, along with several co-authors, completed the first NC Sea-Level Rise Assessment Report in 2010. In that report the authors recommended that the report be updated at least every five years, making the first update due in 2015. In response to a request from the Commission, the CRC completed an addendum to the original report in 2012 to include additional information and clarifications. The General Assembly last year passed House Bill 819 (Session Law 2012-202), which directs the CRC to have the Science Panel prepare and deliver the update no later than March 31, 2015. The law prescribes several benchmarks, including timelines, types of material to be considered, consideration of regional differences, opportunities for public comment, scope of the study, and others.

The law also requires a study of the economic and environmental costs of developing, or not developing, sea-level rise rules and policies. DCM plans to coordinate this study separately from the Science Panel assessment update since this directive is outside of the Panel's expertise. We will present a plan for completing this study at a future Commission meeting.

Staff drafted a Scope of Work for the Assessment Update and reviewed it with the Science Panel at a meeting in December. Along with the bill language, staff recommends that the five specific questions attached be given to the Science Panel as a Scope of Work for the update. For reference, the Scope of Work for the 2010 report is also attached.

The 2010 report was developed with writing and reviewing assistance from several other individuals. The same approach is envisioned for the 2015 update, and as a new step in the process we are proposing an expert review of the draft report before it is delivered to the Commission. Staff invites the Commission's input on additional co-authors and reviewers. We will review a general timeline at the February meeting.

Introduction

NC House Bill 819 was ratified on July 3, 2012 and became law on August 3, 2012. Section 2(c) of the Act requires the Coastal Resources Commission (CRC) to direct the Science Panel to provide a five-year update of its Sea-Level Rise report by March 31, 2015. The following is the full text from Section 2(c) of the Act:

“The Coastal Resources Commission shall direct its Science Panel to deliver its five-year updated assessment to its March 2010 report entitled "North Carolina Sea Level Rise Assessment Report" to the Commission no later than March 31, 2015. The Commission shall direct the Science Panel to include in its five-year updated assessment a comprehensive review and summary of peer-reviewed scientific literature that address the full range of global, regional, and North Carolina-specific sea-level change data and hypotheses, including sea-level fall, no movement in sea level, deceleration of sea-level rise, and acceleration of sea-level rise. When summarizing research dealing with sea level, the Commission and the Science Panel shall define the assumptions and limitations of predictive modeling used to predict future sea-level scenarios. The Commission shall make this report available to the general public and allow for submittal of public comments including a public hearing at the first regularly scheduled meeting after March 31, 2015. Prior to and upon receipt of this report, the Commission shall study the economic and environmental costs and benefits to the North Carolina coastal region of developing, or not developing, sea-level regulations and policies. The Commission shall also compare the determination of sea level based on historical calculations versus predictive models. The Commission shall also address the consideration of oceanfront and estuarine shorelines for dealing with sea-level assessment and not use one single sea-level rate for the entire coast. For oceanfront shorelines, the Commission shall use no fewer than the four regions defined in the April 2011 report entitled "North Carolina Beach and Inlet Management Plan" published by the Department of Environment and Natural Resources. In regions that may lack statistically significant data, rates from adjacent regions may be considered and modified using generally accepted scientific and statistical techniques to account for relevant geologic and hydrologic processes. The Commission shall present a draft of this report, which shall also include the Commission's Science Panel five-year assessment update, to the general public and receive comments from interested parties no later than December 31, 2015, and present these reports, including public comments and any policies the Commission has adopted or may be considering that address sea-level policies, to the General Assembly Environmental Review Commission no later than March 1, 2016.”

The key components in this section of the Act are 1) to develop the comprehensive literature review, 2) to evaluate regional rates of sea-level change, 3) to make the report available for public comment, and 4) to study the economic and environmental costs and benefits of developing, or not developing, sea-level regulations and policies. As the technical advisors to the Commission, the Science Panel on Coastal Hazards (Panel) is tasked with developing the comprehensive literature review and evaluating regional rates of sea-level change. Division of Coastal Management staff will support the Panel’s work throughout the project, and will be responsible for following public comment procedures and performing the economic analysis of sea-level regulations and policies.

Specific Questions to be Addressed

Question 1: Based on the comprehensive review of peer-reviewed scientific literature, characterize the level of agreement among climate scientists about projected sea-level change.

Question 2: What does the available scientific data indicate about historic sea-level change in North Carolina?

Question 3: What are the assumptions and limitations of predictive modeling that is used to predict future sea-level scenarios?

Question 4: How do sea-level measurements compare to predictive models?

Question 5: What is the potential range of future sea-level change in North Carolina at multiple timescales and geographic regions?

North Carolina
Coastal Resources Commission

September 1, 2009

MEMORANDUM

TO: CRC Science Panel
FROM: Robert Emory, Jr.
SUBJECT: Sea Level Rise Metrics Scope of Work

Dear Members of the Science Panel:

At the August 27th CRC meeting, DCM staff summarized the August 18th meeting of the Science Panel, members of the Estuarine Biological & Physical Processes Workgroup, and DCM staff. Staff reported that the Panel, with support from appropriate members of the Workgroup, has offered to prepare a report on sea level rise metrics for the Commission in time to present the results at the January 14-15, 2010 DENR Sea Level Rise Science Forum in Raleigh.

The CRC supports and appreciates the Panel's and Workgroup's desire and commitment to undertake this project. To that end, we have identified the following metrics that we would like to see included in the report:

1. An explanation of how sea level rise is measured: globally, and at the state and regional scales
2. Relative sea level rise ranges for different sections of the North Carolina coast, as appropriate to account for regional differences
3. Relative sea level rise ranges for North Carolina expressed in time slices for the years 2025, 2050, 2075, and 2100
4. Relative sea level rise rate curves for North Carolina through 2100
5. A discussion of the confidence level or margin of error for the reported ranges and rate curves
6. Your recommendations as to what needs to be done for improved sea level rise monitoring in the State of North Carolina
7. Your recommendations as to how frequently the State of North Carolina should update its projected sea level rise ranges and rates

This is a momentous undertaking and I recognize that time and resources are very limited. Tancred Miller will be your primary DCM support for this project. Please coordinate your efforts through him at Tancred.Miller@ncdenr.gov or (252) 808-2808. If there is anything that I can do to facilitate this project please do not hesitate to ask. Again, and as always, we extend our deepest gratitude for the irreplaceable services that you provide.

Sincerely,

Robert R. Emory, Jr.

RRE/tm

Division of Coastal Management
Department of Environment and Natural Resources
400 Commerce Ave., Morehead City, North Carolina 28557
Phone 252-808-2808 FAX 252-247-3330

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-13-09**

TO: Coastal Resources Commission

FROM: Matt Slagel

SUBJECT: Draft Inlet Hazard Areas Study Scope of Work

DATE: January 18, 2013

At the November 2012 meeting of the Commission, Braxton Davis provided an update on the three studies included in House Bill 819 (SL 2012-202). Below is a draft scope of work for the Science Panel to follow as it evaluates the state's existing and proposed Inlet Hazard Areas. The draft scope of work was developed with input from the Science Panel and was presented to the group at their December 19, 2012 meeting. It has since been revised based on the Panel's comments. We are now asking for the Commission to approve the draft scope of work so the Panel can move forward with the study.

The existing Inlet Hazard Area boundaries were adopted by the Commission in 1979, based on a 1978 study that used statistical analysis of historic shoreline movement defined by multiple aerial photosets. In 2010, the Science Panel proposed draft updated Inlet Hazard Area boundaries for the state's 12 developed inlets based on new shoreline data and GIS capabilities to more accurately delineate areas that are directly influenced by inlets. The draft updated Inlet Hazard Areas were not adopted by the Commission, but were tabled until the state's long-term annual erosion rates could be updated by DCM. The updated erosion rates have since been calculated and are set to be adopted in early 2013.

Draft Inlet Hazard Areas Study Scope of Work

Introduction

NC House Bill 819 was ratified on July 3, 2012 and became law on August 3, 2012. Section 5 of the Act requires the Coastal Resources Commission (CRC) to study the feasibility of eliminating the state's Inlet Hazard Area of Environmental Concern. The following is the full text from Section 5 of the Act:

> "The Coastal Resources Commission shall study the feasibility of eliminating the Inlet Hazard Area of Environmental Concern and incorporating appropriate development standards adjacent to the State's developed inlets into the Ocean Erodible Area of Environmental Concern. If the Commission deems action is necessary to preserve, protect, and balance the economic and natural resources adjacent to inlets, the Commission shall consider the elimination of the inlet hazard boxes; the development of shoreline management strategies that take into account short- and long-term inlet shoreline oscillation and variation, including erosion rates and setback factors; the development of standards that account for the lateral movement of inlets and their impact on adjacent development and habitat; and consideration of how new and existing development standards, as well as existing and proposed development, are impacted by historical and ongoing beach and inlet management techniques, including dredging, beach fill, and engineered structures such as groins and jetties. As part of this study, the Commission shall collaborate with local governments and landowners affected by the Commission's Inlet Hazard Areas to identify regulatory concerns and develop strategies for creating a more efficient regulatory framework. The Commission shall report its findings, including any proposed actions the Commission deems appropriate, to the Secretary of Environment and Natural Resources, the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Environmental Review Commission on or before January 31, 2015."

The two key components in this section of the Act are 1) to consider eliminating the "inlet hazard boxes" and instead developing tailored shoreline management strategies in inlet areas (e.g. erosion rates, setback factors, use standards), and 2) to collaborate with local governments and landowners to identify regulatory concerns. As the technical advisors to the Commission, the Science Panel on Coastal Hazards (Panel) is tasked with performing this feasibility study and reporting its findings and recommendations to the Commission. Division of Coastal Management staff will support the Panel's work on the feasibility study, and will be responsible for holding regional workshops to discuss regulatory issues or concerns.

Specific Questions to be Addressed

Question 1: How are hazards different in inlet areas compared to other beach areas?

Question 2: What is the best method to delineate the areas at greatest risk in inlet areas?

Question 3: How should dredging, beach fill projects, and groins or jetties be accounted for in the delineation of risk areas near inlets?

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-13-10

MEMORANDUM

TO: Coastal Resource Commission
FROM: Steve Trowell, DCM Field Representative – Washington Regional Office
SUBJECT: Staff Follow up on Agriculture Drainage Issues
DATE: 23 January 2012

The primary issue for discussion during the last CRC meeting conducted on 14-15 November 2012 in the Town of Plymouth centered around drainage, mainly agriculture but included municipal drainage, as well as salt water intrusion and its affect on agriculture land in the Albemarle/Pamlico peninsula. A field trip prior to the meeting was undertaken on 14 November 2012 touring Hyde County to see and hear firsthand accounts from state and federal agency personnel, as well as the local area farmers, on the aforementioned issues. This meeting was beneficial in that it enhanced the discussion of agricultural drainage between the farmers and regulatory community by bringing together a variety of non-regulatory agencies, academia, private businesses, local government and nonprofit organizations like the Coastal Federation to share ideas and relate experiences in seeking resolution to the problems while enhancing or protecting coastal habitats.

DCM staff has and continues to be involved with saltwater intrusion on agricultural land through the permitting of water control structures (mainly tide gates) and flood prevention dikes as well as ditch maintenance to improve or maintain current levels of drainage. DCM field staff become involved when the drainage feature exceeds the ditch dimensions outline by rule (NCAC 07K.0206) or meets the definition of Estuarine Waters (G.S.113-229(n)(2)). David Moye, District Manager in the Washington Regional Office, gave an overview to the Commission at the November meeting explaining the Division's regulatory authority regarding certain drainage features and activities.

DCM staff also coordinates with the local County Soil and Water and federal Natural Resource Conservation staff in the review of clearing and snagging projects to ensure best management practices are followed, which can relieve the property owner or farmer of CRC permit requirements. These BMPs were developed with input from the Division. As with other projects requiring CAMA/Dredge and Fill permits, the permitting of drainage and water control structures require close coordination with the USACOE and the Division of Water Quality as well as input from the North Carolina Wildlife Resources Commission and the Division of Marine Fisheries.

During the February meeting in Wilmington, Staff will summarize DCM's involvement in addressing the issues discussed during the 14 November 2012 field trip. Staff will also continue to engage the local County Soil and Water and federal Natural Resource Conservation staff in discussions concerning agriculture drainage and saltwater intrusion and what can be done to improve the current situation.