

NC COASTAL RESOURCES COMMISSION

February 26-27, 2014

Jennette's Pier

Nags Head, 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 26th

- 10:00 COMMISSION CALL TO ORDER*** (Oceanview Hall) Frank Gorham, Chair
- Roll Call
 - Approval of December 11-12, 2013 Meeting Minutes
 - Executive Secretary's Report Braxton Davis
 - Chairman's Comments Frank Gorham
- 10:15 VARIANCES**
- Currituck Co. – (*CRC-VR-13-05*), Oceanfront setback Christine Goebel
 - COBA Ventures LLC - (*CRC-VR-13-07*) New Hanover County, ¼ width rule Jill Weese
 - Taylor - (*CRC-VR-14-01*) Atlantic Beach, 15' riparian setback Amanda Little
 - Town of Carolina Beach - (*CRC-VR-14-02*), Oceanfront setback Jill Weese
- 12:00 PUBLIC INPUT AND COMMENT**
- 12:15 LUNCH**
- 1:30 VARIANCES**
- Bald Head Island, LLC (*CRC-VR-14-04*) Brunswick County, 30' buffer Amanda Little
 - NC DOT - (*CRC-VR-14-03*) Nags Head, Oceanfront setback Christine Goebel
- 2:15 CRC Business**
- Coastal Resources Advisory Council, Background & Appointment Process (*CRC-14-01*) Tancred Miller
- 3:00 BREAK**
- 3:15 Beach Management**
- Beach Nourishment, Static Lines and Static Line Exceptions (*CRC-14-02*) Matt Slagel
 - Inlet Management Strategy Development (*CRC-14-03*) Mike Lopazanski
- 4:00 CRC Rule Development**
- Staff Rules Review Recommendations (*CRC-14-09*) David Moye
- 4:30 ACTION ITEMS**
- Fiscal Analysis for 15A NCAC 7H .2600 General Permit for Mitigation & In Lieu Fee Projects (*CRC-14-04*) Mike Lopazanski
 - Science Panel Mad Inlet Assessment & Public Comments on –15A NCAC 7H .0304 Inlet Hazard Areas and Unvegetated Beach Designations (*CRC-14-05*) Mike Lopazanski
- 5:00 Public Hearings** Frank Gorham, Chair
- 15A NCAC 7H .0312 Technical Standards for Beach Fill Projects
 - 15A NCAC 7H .1204 & .1205 Docks and Piers
 - 15A NCAC 7H .1305 Construction of Boat Ramps

RECESS

- 6:00 EXECUTIVE COMMITTEE MEETING** (Classroom)

Thursday, February 27th

- 9:00 COMMISSION CALL TO ORDER*** (Oceanview Hall) Frank Gorham, Chair
- Roll Call
 - Chairman's Comments Frank Gorham
- 9:15 ACTION ITEMS**
- Land Use Plan Certifications, Amendments**
- Town of Emerald Isle Land Use Plan Amendment (*CRC-14-06*) Mo Meehan
- 9:30 Overview of Inlet Management**
- NC Coastal Management Program Permitting Jurisdictions & Regulatory Framework Doug Huggett
- 9:45 Inlet Dredging Panel Discussion**
- Layton Bedsole – Shore Protection Coordinator, New Hanover County
 - Rudi Rudolph – Shore Protection Manager, Carteret County
 - Erik Olsen – President, Olsen Associates Inc.
 - Todd Miller – Executive Director, NC Coastal Federation
 - Barry Holliday – Executive Director, Dredging Contractors of America
 - Chris Gibson – TI Coastal
 - Jeff Richter – Biologist, USACE Planning & Environmental Branch
- 11:30 BREAK**
- 11:45 CRC Business Cont.**
- CRC Science Panel Origin, Role and Composition (*CRC-14-08*) Mike Lopazanski
- 12:00 PUBLIC INPUT AND COMMENT**
- 12:15 LUNCH**
- 1:30 Flood Insurance Panel Discussion** John Snipes
- Stewart Powell – Vice President Insurance Operations & Technical Affairs, Independent Insurance Agents of NC, INC.
 - John Gerber - State NFIP Coordinator, NC Division of Emergency Management
 - Willo Kelly - Government Affairs Director, Outer Banks Homebuilders Association
- 3:00 BREAK**
- 3:15 CRC Business**
- CRC Priorities Discussion / Chairman's Survey Frank Gorham, Chair
- OLD/NEW BUSINESS** Frank Gorham, Chair
- 3:30 ADJOURN**
- 3:45 EXECUTIVE COMMITTEE MEETING** (Classroom)

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

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



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

Next Meeting: May 14-15, 2014; Location TBD

NC COASTAL RESOURCES COMMISSION (CRC)
December 11-12, 2013
Hilton DoubleTree
Atlantic Beach, NC

Present CRC Members

Frank Gorham, Chair
Renee Cahoon, Vice-Chair

| | |
|----------------|---------------|
| Neal Andrew | Bill Naumann |
| Larry Baldwin | Jamin Simmons |
| Suzanne Dorsey | Harry Simmons |
| Bob Emory | John Snipes |
| Marc Hairston | Lee Wynns |
| Greg Lewis | |

Present Attorney General's Office Members

Mary Lucasse
Christine Goebel
Amanda Little

CALL TO ORDER/ROLL CALL

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

Angela Willis called the roll. Chairman Gorham stated he has no known conflict but wants to disclose that Bill Raney is a personal friend and he will be one of the attorneys involved in a variance request. Mr. Raney is also the Chairman's personal lawyer and is the lawyer for Figure Eight HOA. Chairman Gorham stated that he has not talked with Mr. Raney about the variance request. Neal Andrew stated he has a potential conflict on the Cape Fear River AEC Feasibility study. Larry Baldwin stated he has a conflict on the Cape Fear River AEC study. Renee Cahoon stated she has a conflict with the Town of Nags Head Land Use Plan. Suzanne Dorsey stated she has a potential conflict with the Cape Fear River AEC study. Harry Simmons stated he has a potential conflict with the Cape Fear River AEC study. John Snipes read into the record his Statement of Economic Interest evaluation letter received from the State Ethics Commission. Chairman Gorham stated at the last meeting he had Commissioners Dorsey and H. Simmons recuse themselves from the Cape Fear River AEC study and thinks he was wrong in asking them to do that. He stated he did not feel that they have a conflict, but have some knowledge that he would appreciate hearing. We will be briefed by CRC counsel on the conflict of interest issues and she will help us determine conflicts. All duly appointed Commissioners were present and based upon this roll call Chairman Gorham declared a quorum.

MINUTES

Renee Cahoon made a motion to approve the minutes of the November 2013 Coastal Resources Commission meeting. Marc Hairston seconded the motion. The motion passed unanimously (Andrew, Baldwin, Cahoon, Dorsey, Emory, Hairston, Lewis, Naumann, J. Simmons, H. Simmons, Snipes, Wynns).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

I would like to welcome to the Commission our two newly appointed Commissioners and I look forward to having an opportunity to meet with each of you soon to discuss the work of the Commission and the Division of Coastal Management. At this point in each Commission meeting I typically review the activities of the Division since your last meeting and keep you posted on the status and trends of permitting-related activities. Today, I have some significant news to report to you about some major changes at the Division that were announced earlier this week. At the November meeting, I briefed the Commission on our general operating budget, which is made up of a mix of grant funds from the National Oceanic and Atmospheric Administration (NOAA) under the federal Coastal Zone Management Act (CZMA), state appropriated funds, and revenue from permit fees. Our federal grant makes up over half of our operating budget, while state appropriations represent about 1/3 and permit receipts about 10%. What I did not discuss in detail at the last meeting is that the Division has experienced significant funding reductions over the past several years, including federal and state appropriations as well as reduced funding from permit receipts. Starting with our federal funding, for more than a decade this has been level as costs have increased due to inflation. But in the most recent fiscal year, our federal (NOAA) grant was reduced by about 6% due to the well-known "sequester" of funds by Congress. State appropriations for DCM are also down approximately 35% since 2009, and permit receipts have also been down approximately 30% in comparison with past years due to the drop-off in permit activity during the recession. As each year's budget has been developed over the past few years, staff have done an excellent job squeezing as much as we could from our budget, and we have met our mission and covered our core operating responsibilities well. However, we have had to eliminate Land Use Planning grants to local governments, we've abolished four positions over the past three years, we've cut various other special projects, and we've trimmed operating expenses. We have done a lot to improve efficiencies, but in the current fiscal year we are continuing to fund three staff positions using a prior year's grant award. This is unsustainable and we anticipate additional federal and state funding reductions next year. Simply put, we needed to make significant changes to reduce our operating costs. As a result, I spent considerable time this year reviewing our organizational chart, operations, and position responsibilities to identify opportunities for realignment and cost-savings. After careful consideration, I recently proposed a re-organization plan to the Department which will become effective at the end of this month. The plan eliminates five positions from our organizational chart, which is almost 10% of our total staff. Eliminated positions include the Assistant Director position, Federal Consistency Coordinator, Coastal Planning Director, IT Support position, and a vacant Policy Analyst position. The responsibilities of each position will be distributed across our remaining staff. This was not an easy decision to come to, and I want to be clear that this plan had nothing whatsoever to do with job performance. The affected individuals are wonderful people who have made outstanding contributions to our organization for many years. We will miss them both personally and professionally. Many of us will

have to take on significant additional duties as a result of their departure. I would be happy to discuss this in further detail with you after the meeting.

We worked with the Executive Committee to develop this meeting's agenda and I will just touch on a few items. Staff will provide an orientation on the Regulatory program with a focus on operations, CAMA major permits, compliance/enforcement activities, and rule development procedures. John Thayer will provide a brief overview of the land use planning program with a focus on the information that will be relevant to your action items related to approval of local plan amendments and status reports. Also on the agenda are a series of proposed rules and fiscal analyses that we will be seeking your approval to go to public hearing. We recognize that there is a lot to digest in this meeting, and we do not want to overload you with new information and action items. However, I wanted to let you know that these rule proposals follow from an internal staff review of CRC rules by the Division in late 2011 to help identify unnecessary burdens or negative impacts on customer service. We would like to continue with the rule development process by sending these proposals to public hearing, after which you would have additional opportunities to hear public comments and to decide on the best path forward. We are certainly willing to hold off on these if you need more time to get up to speed, I just wanted to let you know why we have included them on today's agenda and how these proposals originated.

On January 22, in partnership with the NC Coastal Federation and the Business Alliance for a Sound Economy, we will be holding a second regional workshop in Plymouth to solicit input from local governments and stakeholders on the future of the CAMA Land Use Planning program. This follows on our recent workshop in Wilmington, where over 85 participants provided a great deal of input. We hope to release summary notes from that meeting in the next few weeks. We will be sending out invitations to stakeholders, local governments, and to the Commission very soon.

In other staff news, Alice Johnson, DCM Human Resources manager, will be retiring at the end of this year. In addition, John Fear, our Research Coordinator for the Coastal Reserve Program, has taken a new position as Deputy Director with NC Sea Grant and the Water Resources Research Institute. We are happy for both Alice and John and wish them the very best, they will certainly be missed.

Last, we are tentatively planning for the February Commission meeting to be held at Jennette's Pier in Nags Head. For our new commissioners, please let me know what we can do to help you get up to speed and I hope that we can meet soon. Please feel free to stop by our office anytime for a tour. With that I'd be happy to answer any questions the Commission may have.

PRESENTATIONS

Regulatory Program

Ted Tyndall

Ted Tyndall, DCM Assistant Director, stated the Coastal Area Management Act (CAMA) was passed in 1974 by the General Assembly. The reason it was passed was to stop some of the destructive development practices that were taking place at that time. The coastal area was under intense development and the valuable resources that the coast held were being damaged or destroyed uncontrollably. CAMA established how the CRC is formed, how the CRAC is formed and how activities will be managed. The regulatory program concentrates on three aspects of the Act. CAMA defines the coastal area as the counties that are adjacent to, adjoining, intersected by or

bounded by the Atlantic Ocean or any coastal sound. CAMA also defines development as any activity in a duly designated AEC involving, requiring, consisting of the construction or enlargement of a structure; excavation; dredging; filling; dumping; removal of clay, silt, sand, gravel or minerals; bulkheading, driving of pilings, clearing or alteration of land as an adjunct of construction; alteration or removal of sand dunes; alteration of the shore, bank, or bottom of the Atlantic Ocean or any sound, bay, river, creek, stream, lake or canal. The Act went on to describe areas of environmental concern (AECs). CAMA states that the CRC shall by rule designate geographic areas of the coastal area as AECs and shall specify the boundaries thereof, in a manner provided in any one or more of nine specific areas.

Before the cutbacks just announced by DCM's Director, the regulatory section was structured with 1 Assistant Director, 4 District Managers, 11 field representatives, 4 compliance officers, 1 major permit/federal consistency manager, 2 assistant major permit coordinators, 4 DOT representatives (2 housed in Raleigh), 2 fisheries resource specialists, and 1 federal consistency coordinator. DCM has field offices in Morehead City, Elizabeth City, Washington and Wilmington.

You are likely to be in an AEC if the activity is in or on navigable waters within the 20 CAMA counties, is on the marsh, is within 75 feet of the normal water line or normal high water line along an estuarine shoreline, near the ocean beach, near an inlet, or near a public water supply. There are four broad categories of AECs: the estuarine and ocean system, ocean hazard, public water supply and natural and cultural resource areas. The estuarine and ocean system category include coastal wetlands (marshes subject to tidal flooding), estuarine waters (bays, rivers, sounds), public trust areas (waters and lands from mean high water seaward to State jurisdiction), estuarine shorelines (75 feet landward of normal high water or normal water level and 575 feet landward of normal high water or normal water level adjacent to outstanding resource waters), and the public trust shoreline (30 feet landward of normal high water or normal water level). The ocean hazard category includes the ocean erodible area (between the mean low water line and a point landward of the first line of stable natural vegetation equal to sixty times the erosion rate plus the 100-year storm recession), the high hazard flood area (V-zone), inlet hazard area, and unvegetated beach (no stable vegetation present). The public water supply category includes small surface supply watersheds (Kill Devil Hill and Nags Head) and a public water supply well field (Toomers Creek Watershed). The natural and cultural resource areas include areas that sustain remnant species, complex natural areas, unique geologic formations (Jockey's Ridge), significant archeological resources (Permuda Island) and significant historic architectural resources.

A CAMA permit or authorization is required for development proposed within AECs. The three types of permits are major permits, general permits, and minor permits. The two exemption types are statutory (NCGS 113A-105(b) and (c)) and regulatory (15A NCAC 07K). Major permit applications are reviewed by 9 state and 4 federal agencies. These are issued by the Morehead City office and account for about 6% of all CAMA permits. General permits are issued by DCM field staff and are streamlined/expedited major permits for routine development. The Division currently offers 17 general permits. General permits account for about 65% of all CAMA permits. Minor permits are issued by local governments for high ground development. Minor permits account for about 29% of all CAMA permits. Eighty-five percent of all major and general permits are issued by the Division within seven days of receipt of a completed application. There is a federal consistency review for any project within or affecting the coastal area that is proposed by a federal agency, requires a federal permit, or uses federal funds. The Division coordinates a state-agency reviews of the project and then issues a state position on whether the activity is consistent with CAMA.

Major Permits Doug Huggett

Doug Huggett, Major Permits/Federal Consistency Manager, stated the rules of the CRC incorporate both the State Dredge and Fill Law and the Coastal Area Management Act. The State Dredge and Fill Law was enacted in the late 1960's and requires that an individual obtain a permit from the State before excavating or filling in estuarine waters, tidelands, or coastal wetlands. CAMA established a cooperative program of the coastal area management between local and state governments. In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible. CAMA requires that water resources be managed to preserve and enhance water quality and to provide optimum utilization of water resources and land resources. The Commission is charged with guiding growth and development and minimizing damage to the natural environment. The intent is not to stop development but rather to ensure the compatibility of development with the continued productivity and value of certain critical land and water areas. Applications for permits, except special emergency permit applications, are circulated by DCM to all state agencies and, at the discretion of the Secretary, appropriate federal agencies having jurisdiction over the subject matter which might be affected by the project for comment. Upon receipt of an application the Secretary provides public notice of the proposed development to any interested state agency. Major permit applications are coordinated with the appropriate state and federal resource agencies so that each reviewing agency can make an independent analysis of the application and submit recommendations and comments to the DCM. Each reviewing agency may request additional information if such information is deemed necessary for a thorough and complete review of the application. DCM is not just a coordinator of the permit review process; we are also a commenting agency. CRC rules require that all comments received during the review process be considered before DCM makes a final decision on a major permit.

Before issuing a permit DCM must make a determination that the project will not be detrimental to the public trust rights and the biological and physical functions of the estuary. We have to be sure that projects won't block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, violate water quality standards or cause degradation of shellfish waters. Projects shall have a minimum adverse impact upon the productivity and biologic integrity of coastal marshland, shellfish beds, beds of submerged aquatic vegetation, spawning and nursery areas, important nesting and wintering sites for waterfowl and wildlife, and important natural erosion barriers. Development shall not violate water or air quality standards and shall not cause major or irreversible damage to valuable documented archeological or historic resources. We must make the determination that the development's timing is proper to have a minimum adverse affect on life cycles of estuarine and ocean resources and that the development shall not impede navigation or access to public trust areas or estuarine waters. Navigation channels and canals may be allowed if the loss of coastal wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands. Maintenance excavation may take place as long as excavated material can be removed and placed in an approved disposal area without significantly impacting adjacent nursery areas and beds of submerged aquatic vegetation. Marinas shall not be located within areas that will result in the closure of shellfish waters. No development shall be allowed in any AEC which would result in a violation of any other rule or regulation of the State of North Carolina or the local government in which the development takes place. When the economy was booming we received over 200 permit applications per year for several years. When the

economy started to go down we stabilized and received 160-170 new permit actions per year. When the economy was up the complexity of the projects was high and our review times were too long. In the last couple of years we have implemented some major changes to our review process to improve processing time. We will continue to improve this. There are benefits to the umbrella permit process. This process was set up to incorporate other permits into the CAMA process. If an applicant submits an application for a CAMA Major permit that application suffices as an application for other state and federal permits. It can serve as a state application for a state Water Quality Certification and buffer authorizations, a federal wetlands permit from the Army Corps of Engineers, it will initiate the process for stormwater permits, erosion and sedimentation control permits, and State submerged lands easements. This is a cost savings for the applicant and DCM coordinates with the other agencies on the applicant's behalf. If this process did not take place the applicant would suffer significantly if they tried to coordinate with each of these agencies individually. DCM has a cooperative agreement with DWR where we collect one permit application processing fee for both agencies. This fee is less than what they would pay if they paid the fee separately. The application review process also involves coordination with the local government where the project takes place to ensure the project meets local zoning requirements.

Braxton Davis stated that because CAMA has set up this umbrella permitting process with reviews from other agencies for projects on the coast, it was recognized in the 2011 General Assembly that the CAMA permit process should exempt projects from a SEPA review. While we can do more to reduce the processing times, sometimes the longer time frame is a result of us negotiating a complicated project with multiple reviews.

Frank Gorham requested staff send out a survey to the last two years of Major Permit applicants to see what we could do to improve the process. The results should go to the CRC and not DCM so there won't be a fear of backlash. Doug Huggett stated we are in the process of implementing this already. Braxton Davis stated a draft survey is already done and is being reviewed by the Department.

Conflicts of Interest

Mary Lucasse

Mary Lucasse, CRC Counsel, stated that our conflict of interest analysis is governed by the NC General Statutes and the Governor's Executive Order. The statute that addresses conflicts is NCGS 138A-2. The purpose behind the Ethics Act is to ensure that elected and appointed state agency officials exercise their authority honestly and fairly, free from improprieties, threats, coercions, and undue influence. The Ethics Act applies whether the Commission is doing quasi-judicial work,(for example a variance) or exercising quasi-legislative authority such a rulemaking, resolutions and policy. The Constitutional due process requires that each of you act as an impartial decision maker. It is easy to understand what type of situation poses an actual conflict. This can include when an individual member of the Commission has a direct or substantial financial interest. It is more difficult to understand what types of things can pose an appearance of or a potential conflict of interest. At this point it becomes very important to disclose potential or apparent conflicts. You have all gone through the process of reading your letters from the State Ethics Commission. That creates an understanding within the Commission of each member's potential conflicts. The Chairman has a special responsibility under the Ethics Act and he is entitled and encouraged to raise potential conflicts as often as he thinks is necessary. We have these discussions, not to point fingers, but to help each other find the way to be the best and most impartial decision makers that we can be. What is important to remember is that each member gets to make the decision about

whether he or she has an actual or potential conflict. Members may bring up the question of whether another member has a potential conflict, but that final decision on whether there is a conflict is made by the member. There are two specific conflict provisions in the Statute. Recusal should happen to the extent necessary to protect the public interest from any proceeding in which a member has an actual conflict or in which the member's impartiality might reasonably be questioned because of a familial relationship, a personal relationship, or a financial relationship. So who is a participant in a proceeding? A participant can be an owner of a company, shareholder, partner, a member or manager of an LLC, an employee, agent, officer, director of a business or an organization or group that is involved in the matter. It could also be an organization or group that has some specific, unique or substantial interest in the proceeding. A personal relationship includes when a commissioner serves in a leadership or policy making position with that other entity. As we work through that there is another provision which is the safe harbor provision. This provision provides that a covered person may participate if his or her only interest or the reasonably foreseeable benefit is no greater than that which could reasonably be foreseen to affect all members of that profession, occupation or general class. For example, if you are an attorney and you do real estate closings and serve on the Real Estate Commission and benefit to an extent no greater than any other real estate attorney then you can participate in the decision without recusal. Each of you has certain expertise which may well have been the reason the appointing authorities appointed you to this Commission. The safe harbor provision may be applicable in situations where you may initially appear to have a benefit but if that is no greater than that which could reasonably be foreseen to affect all members of a general class, occupation or profession. If you aren't sure about conflicts then you can ask me or ask the Chairman. We can also request an opinion from the Ethics Commission. Once you have been recused from a proceeding, you should not change your mind. If there is an actual conflict then you should recuse yourself. If you do not know, the result may be that the Commission's decision be invalidated by the courts. The result of appropriate use of recusal operates to preserve the public trust in the work that we are doing.

Compliance and Enforcement

Roy Brownlow

Roy Brownlow, Compliance and Enforcement Coordinator, stated the overall mission and purpose of CAMA permits are to protect the environment and public trust rights and to protect the economy of the North Carolina coast. An issued permit is of no use unless you have someone to enforce the permit. A person is in violation when they undertake development within an AEC without a valid permit or if any of the permitted work does not comply with an issued permit. DCM does routine inspections. We have pre-permit site visits and go on site before a permit is issued. Once a permit is issued then we do a follow-up monitoring on the site to be sure the work complies with the permit criteria. We also go on site if a complaint is filed in the office. Aerial monitoring is done through an agreement with DMF Marine Patrol. We also get self audits and self reports as well as incidental discoveries. Some of the enforcement tools are provided by the CRC and the General Statutes. A notice of violation is based on the new tiered enforcement policy. We may issue a stop work order (cease and desist order). We can request the impacted resources be restored and that the property be brought back to predevelopment conditions as much as is practical. We issue civil penalties based on the degree of impact on the resources. We also have the option of seeking injunctive relief from the courts to order restoration of the impacted resources, although this enforcement proceeding is not used very often. The primary objective of DCM is resource recovery through restoration or mitigation of the damaged environment. The second objective is the protection of adjoining riparian property owner rights including rights of access.

In 1985, the CRC approved a tiered enforcement policy for minor violations. In 1989, the DCM Director provided the authority to district managers to issue proposed civil penalty assessments. This is unique within DENR and has been very effective. In 2006, the CRC was given statutory authority to increase the penalties for CAMA violations. Prior to that, many times it was cheaper to commit a violation without getting a permit than it was to get a permit. In 2007, designated staff for enhanced monitoring and compliance was provided in the Coastal Habitat Protection Plan. We picked up four compliance officers to provide compliance assistance and be proactive in detection of violations. The Regulatory Reform Act of 2001 brought in provisions that mandated that the regulatory agencies within DENR adopt a three level tiered enforcement policy. Each tier progresses in accordance with the degree of harm or significance of the violation. This new policy was drafted and provided to the Environmental Review Commission on October 1, 2011. It was effective February 1, 2012. NCGS 113A-126(d)(4) directs the CRC to consider the degree and extent of harm, duration and gravity, effect on water quality and resources or public trust use, cost of rectifying the damage, amount saved by non-compliance, willful and intentional, prior record of the violator, and the cost to the State for the enforcement. Tier 1 includes issuance of an informal notice and a letter of concern or warning letter. Tier 2 is the most common enforcement action where we issue a Notice of Violation and a civil penalty. Tier 3 includes issuing a Notice of Continuing Violation, a civil penalty and an injunction if necessary. Tier 1 minor violations are violations where the offense has to be permissible, must be still in progress, and there are no previous CAMA violations. Tier 1 major development violations would have been permissible under a General permit, the work is still in progress, there are no previous CAMA violations, and does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands. Tier 2 minor development violations are a permissible offense, the work has been completed, and there are no previous CAMA violations. Tier 2 major development violations would have been permissible under a General or Major permit, the work is completed, there have been no previous CAMA violations, and the work does not involve dredge and fill activity in estuarine or public trust waters or coastal wetlands. Tier 2 also includes work that was not permissible development but the resources are recoverable and restored to pre-development condition. Tier 3 violations are minor and major violations that are willful and intentional, continuing minor and major violations due to failure or refusal to restore or bring development into compliance, unauthorized dredge and fill activity within estuarine and/or public trust waters or coastal wetlands, or previous CAMA violations. This is a violation of such a degree, gravity, or duration that significant environmental harm has been documented.

CAMA Variance Procedures

Mary Lucasse

Mary Lucasse explained the variance process. NCGS 113A -120.1 sets forth the variance process. In addition, the Commission has adopted rules relating to variances; specifically 15A NCAC 07J .0701, .0702, and .0703. Before the CRC holds a hearing on a variance, several things have already happened. For example, the petitioner will have already asked for a permit and been denied. If the permit requested would violate the CRC's rules, then DCM is required to deny the permit. DCM may issue a permit with conditions and the applicant may ask the CRC for a variance from one or more of the permit conditions. In order to begin the variance process the applicant has to submit a complete variance petition. A complete application includes the name and location of the proposed development, the permit decision, and a copy of the deed to the property. The applicant must also stipulate that the development is inconsistent with the rule at issue, provide proof that notice was sent to the adjacent landowners, seek variances from the local government if required before submitting a request for a CAMA variance, submit written reasons and arguments about why the

applicant meets the variance criteria, and a draft set of proposed stipulated facts. DCM staff and the petitioner must agree on the stipulated facts that will be presented to the CRC. The CRC makes its decisions on stipulated facts and does not do any fact finding on its own. The CRC has the option to ask for additional facts. If the petitioner and DCM cannot agree on the facts then the request goes to the Office of Administrative Hearings to determine the facts. The CRC will always hear from an attorney representing the DCM staff and from the petitioner. Sometimes the staff will agree that a variance should be issued and sometimes staff will oppose the variance request. After the CRC has reviewed the information provided, the CRC holds a quasi-judicial hearing during one of its regular meetings. In the material provided to the CRC will be photos of the site, the stipulated facts, and oral arguments. The CRC then has the opportunity to ask questions. It is the petitioner's burden to show that the four variance criteria have been met. The Commission must affirmatively find each of the four factors. It is my recommendation that the Commission should vote on each of the factors individually. The CRC has the option of remanding the request back to DCM staff and petitioner and ask for more facts, you can send the request to the Office of Administrative Hearings for a contested case hearing, you can grant the variance with or without conditions, or you can deny the variance request. The CRC is required to make its decision at the hearing or in no case later than the next meeting. Once you have made a decision, CRC counsel will put the decision into writing within 30 days and send it to all parties. If the petitioner does not like the CRC's decision then he or she may appeal to the Superior Court in the county where they live. Upon appeal, the Superior Court may remand the decision back to the CRC for further action or the Superior Court may affirm the CRC's decision. A further appeal of the Superior Court's decision may be made to the NC Court of Appeals.

CAMA Land Use Plans – CRC Rule

John Thayer

John Thayer, Land Use Planning and Public Access Manager, stated that CAMA is a cooperative state and local program, especially in regards to planning. The Act states that the state government shall act primarily in a supportive standard-setting and review capacity, except where local governments do not elect to exercise their initiative. Enforcement shall be a concurrent state-local responsibility. Only counties are required to have land use plans. Local governments that do not have a land use plan are folded into the county plan. The Act states that the General Assembly had found an immediate and pressing need to establish a comprehensive plan for the protection, preservation, orderly development and management of the coastal area of North Carolina. The State does not have a plan. Originally when the Act was being developed there was a concept of a coastal plan; however the net result was that instead the state would rely on the local governments' land use plans which would be used as part of the coastal program. When the state issues permits it uses the local plan as part of the review process to ensure consistency. The Act requires that county land use plans consist of statements of objectives, policies, and standards to be followed in public and private use of land within the county, which shall be supplemented by maps showing the appropriate location of particular types of land or water use in particular areas. The plan shall give special attention to the protection and appropriate development of areas of environmental concern. No land use plan can become effective until it has been approved by the CRC. The CRC shall afford interested persons an opportunity to present objections and comments regarding the plan and shall review and consider each county land use plan in light of such objections and comments. No permit can be issued for development which is inconsistent with the approved land use plan for the county in which it is proposed. No local ordinance or other local regulations shall be adopted which, within the area of environmental concern, is inconsistent with the land use plan of the county or city in which it is effective. Any existing local ordinances and regulations within areas of environmental

concern shall be reviewed in light of the applicable local land use plan and modified as may be necessary to make them consistent.

The appropriate DCM district planner provides a report to the CRC and highlights any unique characteristics of the plan, identifies any land use conflicts with adjacent planning jurisdictions or other state or federal agencies, identify inaccuracies or inconsistencies of items in the plan and recommends certification, conditional certification or non-certification. The public has an opportunity to comment, object, or provide statements of support. The CRC is required to certify that the land use plan is consistent with the current federally approved North Carolina Coastal Management Program, the rules of the CRC, does not violate state or federal law, and contains policies that address each management topic (public access, land use compatibility, infrastructure capacity, water quality, hazards, local area concerns). If a plan is not certified, the CRC shall within 30 days inform the local government as to how the plan might be changed so certification can be granted. The CRC does not have the authority to prescribe local policy. Clearly the CRC can have a great deal of influence, but if you don't like a local policy you cannot deny based on that alone. Until the plan is certified, the pre-existing certified land use plan shall remain in effect. The CRC can conditionally certify a land use plan. If a plan is conditionally certified, the CRC shall within 30 days provide the local government with the conditions that shall be met for certification. When the local government complies with all conditions for the conditionally certified plan, as determined by the Executive Secretary of the CRC, plan certification is automatic with no further action needed by the CRC. Land use plan amendments can be certified by the Executive Secretary if the amendments are minor. If the Executive Secretary certifies the amendment, the amendment shall become final upon certification of the Executive Secretary and is not subject to further CRC review. If the Executive Secretary denies certification of the amendment, the local government shall submit its amendment for review by the CRC in accordance with the regular plan certification process. Within 90 days of a land use plan certification, the local government shall provide one copy of the amendment to each jurisdiction with which it shares a common boundary and with the regional planning entity.

Press and Media Interactions

Michele Walker

Michele Walker, Public Information Officer, stated a large part of my job involves working with news media, writing press releases, talking with reporters, interviews, and spokesperson for the Division and occasionally the Department. One thing I am not is a spokesperson for the Commission. I leave that up to you. Some of you have dealt with reporters. As members of the Commission the press is very interested in you, your actions and your opinions. A lot of the things you talk about are controversial. Depending on the topics on the agenda we frequently have television reporters at the CRC meetings. As private citizens you are free to talk to the media any time that you like. Please let me know if you have done an interview so I can be on the lookout for the story. Do not ignore reporters. They will not go away. If you are uncomfortable talking to them just call me and we can talk about it so we can figure out how I can help. There are occasions when you shouldn't comment. Do not talk about cases that are in active litigation. You do not want to talk about variances that the CRC hasn't heard. If there is an issue that you have a conflict with then do not talk to the press about that issue. The best thing would be for me to find someone else for the press to talk to about the topic. The best advice I can give you is to be prepared, be honest, and think before you speak. The media is a way to get your message out to the public.

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

Tancred Miller

Tancred Miller, Strategic Planning Manager, stated NCGS 150B is the North Carolina Administrative Procedures Act. This Act contains all of the requirements the CRC must follow for the adoption, amendment and repeal of rules. All of the CRC's rulemaking is done under the authority of CAMA and the Dredge and Fill law. There are three categories of rules; temporary, emergency and permanent. Most of the CRC's rules are permanent. Temporary rulemaking is typically done due to an unforeseen threat or a legislative requirement. Temporary rules have a 30 day comment period, require a public hearing and are effective for up to 270 days unless a replacement rule is submitted to the Rules Review Commission. Emergency rules are for things that are dire emergencies and against the public interest to go through the public hearing process. For permanent rules the CRC determines a need for rulemaking. The staff drafts the proposed new rule or amendment with stakeholder participation. The CRC reviews and approves the proposed text for public hearing. Staff prepares a fiscal note and secures DENR approval and OSBM certification. The CRC then approves the fiscal note for public hearing. Staff submits the proposed language and fiscal note to the North Carolina Register for publication. Comments are accepted on the rule language and fiscal note for a minimum of sixty days and at least one public hearing. If a rule change affects an AEC then the CRC is required to hold a public hearing in each county that is affected by the rule change. Staff presents the comments to the CRC along with any recommended changes. The CRC reviews the comments received and can make changes, if substantial changes are made then we must republish in the Register. The CRC can then adopt the rule and staff submits the rule to the Rules Review Commission (RRC) for approval. During the RRC staff review they can recommend technical changes or recommend objection to the rule. DCM staff will address the RRC staff comments. Rules Review can approve the rule and it becomes effective on the first day of the next month unless ten letters are received requesting legislative review. RRC can also object to the rule and the CRC must satisfy their objection or else the rulemaking action dies. Staff prepares a fiscal note for every rule. The notes address impacts to state and local budgets and any impacts to NCDOT. If the fiscal impact is below a million dollars over a 12 month period then it is a routine fiscal analysis. If it is above a million dollar impact then a more extensive analysis is required.

We have two rule reviews that we are legislatively required to do. The CRC and all other regulatory agencies must do an annual review of its rules as well as a periodic review (10 year cycle). Executive Order 70, signed by Governor Perdue, mandated the annual review to do away with rules that are considered unduly burdensome or outdated. During last year's legislative session there was a change in the APA that replaced that Executive Order but requires the same type of annual review. The periodic reviews came out of this year's legislative session in House Bill 74. After DCM did its review of the rules we came up with six immediate actions that we wanted to take and the CRC agreed to move forward. There are three rules that will be on this meeting's agenda. One change was achieved through legislation this year and the other two are still undergoing review. We will come back to the CRC in 2014 with the results of this year's review and recommendations for change. Prior to this year, rules that were adopted or amended as permanent did not expire. Now most of the CRC's rules have to be reviewed on a ten year basis and if they aren't then they will expire. Subchapter 7B is scheduled to be reviewed in 2015 and the rest of the rules must be classified by 2018 as either unnecessary, necessary with public interest, or necessary without substantial public interest. The CRC has 300 rules in the Administrative Code and this will require staff time and CRC meeting time.

Interpretation of Variance Criteria

Mary Lucasse

Mary Lucasse stated there are four factors that must be found when deciding on a variance request. The first factor is whether there is an unnecessary hardship. We all know what a hardship is, but what does it mean to be unnecessary? The attorneys for the Commission have taken the position that in order to give meaning to this section you have to find something that is different from the second factor, whether the hardship is a result of a condition that is peculiar to the property. You have to see if there is anything that is specific to that property. The third factor is whether the owner did anything to cause the hardship. In terms of substantial justice, the CRC in the past has looked at items such as lot placement or existing docks on surrounding properties. The Commission will have to weigh each of these factors as you look at the stipulated facts for each variance request.

Braxton Davis stated that the Commission can also add conditions on a variance request. Once conditions have been set then they are pretty much set in stone.

CRC Internal Operating Procedures – Review and Adoption (CRC 13-33)

Mary Lucasse

You were provided the Internal Operating Procedures in your packet of information. There is a red-lined edition so you can see the changes that have been made. Revisions to the Internal Operating Procedures are based on changes discussed at the last meeting as well as suggestions by counsel and DCM staff.

Bill Naumann made a motion to approve the CRC's Internal Operating Procedures. Renee Cahoon seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

It was unclear which Commissioners had signed an Oath of Office from their appointing authority. All Commissioners were sworn in by Greg Lewis, Chair of Carteret County Board of Commissioners on December 11, 2013 at 4:00 p.m.

Cape Fear River AEC Feasibility Study Report (CRC 13-34)

Mike Lopazanski

Mike Lopazanski stated that staff presented the draft report at the last meeting. The CRC approved the draft to be sent out for a 30 day public comment period. The comment period ends Saturday, December 7th. For the benefit of our new Commissioners, I will run through how we got to this point. House Bill 819 became Session Law 2012-202 and amended some coastal management policies and directed the Division and Commission to take on several studies. One of the studies was the Cape Fear River AEC Feasibility Study. The Commission was charged to look at the unique coastal features of the Cape Fear River Inlet area and work with stakeholders, the Town of Caswell Beach and Village of Bald Head Island, to identify regulatory concerns associated with the management of development within this area. The CRC is also to determine if a new AEC is necessary to address these concerns and any unique coastal features of the Cape Fear Inlet. If the CRC agrees it is a necessary action then we would need to eliminate any overlapping AECs and

apply appropriate development standards that would apply specifically to the Cape Fear River Inlet AEC. The report on this feasibility study is due to the Governor and Legislature by the end of the month. We worked with the Town of Caswell Beach and Village of Bald Head Island to hold a number of public meetings. The towns asserted that the Cape Fear River navigation channel is the primary factor in beach erosion and they are looking to require the Army Corps of Engineers to dredge the channel every two years and place the sand on the adjacent beaches. There was a feeling from the towns that the existing erosion control strategies available to them were limited, that their permit reviews were too slow, and were reactive as opposed to proactive. They proposed a number of strategies for dealing with this and these strategies would have the Cape Fear River AEC replace the existing AECs in this area (Ocean Erodible Area and Inlet Hazard AEC). The proposals would also allow for the use of engineered erosion control measures, expanded use of sandbags, and reduced setbacks in certain situations where mitigative actions were planned. It also called for expedited authorizations to address the erosion issues that are being faced by the Towns. The draft report has been released for public comment and we received four comments on the draft report. The comments came from the Village of Bald Head Island, NC Coastal Federation, Duke Energy and the US Army Corps of Engineers. These comments were provided to the CRC. The Village stated that the draft report was the culmination of a lot of hard work on the part of DCM staff as well as the municipalities involved and said that the current regulations are inadequate to address the environmental challenges of the Cape Fear River entrance and to protect private property rights. The Village also stated that they continue to bear the financial costs associated with the erosion issue and that the Cape Fear River AEC report warrants the CRC to move forward in directing the Division to develop strategies for the creation of a more efficient regulatory framework. NC Coastal Federation commented that the dredging of the Wilmington Harbor navigation channel causes shoreline erosion particularly to the beaches of Bald Head Island and they support the mandatory sand management plan to compel the US Army Corps of Engineers to abide by the plan. The Coastal Federation does not support special exemptions to expedite emergency permits for the bypassing of the normal variances processes. The Federation also objects to beach erosion determinations being made by contract engineers as well as the grandfathering of structures from setback requirements and relaxing of imminently threatened structure requirements. Duke Energy comments were primarily focused on the Brunswick Nuclear Plant's pumping station located on Caswell Beach Road. They were interested in how a new AEC might affect the dredge spoil pond located just north of the station and along the discharge canal and have asked to be kept apprised of developments as the AEC is considered. The Corps' comments included 2,000 pages of supporting documents. The Corps does not concur with the findings and recommendations contained in the draft report and find them inconsistent with engineering studies previously completed by the district. The Wilmington district also objects to any law, regulation or decision that requires them to dredge in a defined schedule for the purposes of placing sand on adjacent beaches with a proposed AEC. They also object to any proposal that attempts to dictate which beach would receive sand on any given year, where it would be placed and in what quantity. The Corps also disputes that the navigation project and maintenance dredging is the cause of the erosion as it is not supported by the historical evidence and states that the sand management plan is a disposal plan rather than a mitigation or beach nourishment plan.

Earlier this week Chairman Gorham sent his proposal for handling the Cape Fear River AEC to the Commission. Braxton Davis stated that to be in compliance with HB819 we have to have a finding of the Commission and attached to the report to be delivered to the General Assembly, DENR Secretary and the Governor. Chairman Gorham stated that there is no question that the Cape Fear River Inlet presents a unique set of challenges. I am concerned about the precedent of establishing a separate AEC. Some of the recommendations made by this study are invaluable and can be used

at other inlets. He proposed that we take this work as a base case and explore the possibility of having an inlet management program where all 12 developed inlets would be able to utilize a set of tools/remedies/approaches. We can go through the process of coming up with simplistic ways that could help all inlets. We already have several ongoing studies and have been directed by the legislature to look at all of our regulatory issues. We could roll all of this into one inlet management program. We will have regional hearings in areas with inlets (Hatteras Village, Morehead City, Wrightsville Beach, and Ocean Isle). We will seek towns, communities, and stakeholder comments and suggestions to find things that would be helpful with inlets. Then we will have one recommendation and will have looked at all inlets. One criticism I heard about this recommendation is to have another study and kill all the work that has been done on this one. All the regional hearings will be done by April 30. We will have a summary of these meetings and preliminary recommendations to the full CRC by the May CRC meeting. The CRC will send a preliminary legislative report to the legislature and the Governor by June 30 outlining the preliminary findings. We will require that a final draft of findings and recommendations submitted to the CRC by the July CRC meeting and the CRC can vote on whether to move forward with the recommendations and submit them through the rulemaking process by September 30, 2014. By December 31 we could submit our findings to the legislature and the Governor.

Renee Cahoon made a motion to approve and forward the December 9, 2013 draft Cape Fear River AEC Feasibility Study Report and adopt the schedule and study for the Inlet Management Program. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

The meeting was opened for public comment on this issue.

Andy Sayre, Mayor of Bald Head Island, stated I appreciate the difficulty that has been presented to a new Commission to make a recommendation in a short amount of time; however it is hard for the Village not to feel like we have been thrown backwards. We have spent a lot of time trying to make a point that we are unique and do not fit into a lot of the rules and regulations of DCM. We are supporting of the CRC's actions and will participate in this.

Rudi Rudolph, Carteret County Shoreline Protection Manager, stated I want to alert the CRC that the Corps just issued their dredge material management plan for the next 20 years for the Morehead City Harbor. The public hearing on this is January 15. Most of the Corps' comments about the Cape Fear River AEC were about the dredge material management plan done in 1991. We have met with DCM staff about the management plan.

Future Directions Frank Gorham

Frank Gorham stated the CRC's number one priority is the inlet management program. By the next meeting we owe it to the public to finalize the CRAC process. By the end of January the nominations will have been submitted and a list will be provided to the CRC members. The Executive Committee should review the list and make a recommendation to the full CRC. The CRC can then discuss the recommendations at the February meeting. Priority should be given to institutional expertise and prior participation. We also need to address the Science Panel. There are currently four openings. We need to decide how we want to use the Science Panel and how we will fill the vacancies. DCM will send a list of the existing Science Panel members. Another priority

should focus on the coast's economic impact and value. I would like to put together an economic development sales package explaining the value of the 20 coastal counties. Braxton Davis stated that an outreach document is already in the works that could help encourage economic development along the coast. A subcommittee was formed to work on the economic value report (Dorsey, H. Simmons, Cahoon, Baldwin, Lewis). This subcommittee will report back by the end of January. The Commissioners have been asked to come up with their three top issues to work on. Please submit your top three issues to Braxton and we will come up with a master list and then prioritize the list in February. Finally, our newest Commissioner John Snipes will facilitate a flood/wind insurance information session for the Commission. Commissioner Snipes said he would be glad to bring the information to the CRC. Greg Lewis asked that the Joint Underwriters be included in the discussion.

VARIANCE REQUESTS

NNP IV – Cape Fear River LLC (CRC VR 13-03)

New Hanover County, ¼ width pier rule

Amanda Little

Amanda Little of the Attorney General's Office represented staff and stated petitioner owns property located at 4410 River Road in Wilmington. On April 29, 2013, petitioner applied for a Major Modification to CAMA Major Permit #92-07 to relocate the footprint of the permitted community marina and commercial dry stack launch site into deeper water. On July 15 petitioners permit was denied because the proposed relocation of the development was inconsistent with the Commission's one-fourth width limitation to pier lengths. Petitioner seeks relief from 15A NCAC 07H .0208 by allowing the increased pier length to one-third of the water body. Ms. Little reviewed the stipulated facts of this variance request. Ms. Little stated no federal or state agency has had an objection to this proposed development and staff and petitioners agree on all four variance criteria which must be met in order to grant the variance request.

Bill Raney, Wessell & Raney, LLP, represented petitioner and stated we agree with the Staff's positions all four variance criteria. Mr. Raney added that there is a site plan included in the materials that is instructive if you have any questions on the affect of navigation. The principle reason for the one-fourth rule is to preserve public rights of use in the bodies of water, but in this case there will not be a negative effect on navigation.

Renee Cahoon made a motion to support Staff's position that strict application of the development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardship. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Bob Emory made a motion to support Staff's position that hardships result from conditions peculiar to the petitioner's property. Lee Wynns seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Bill Naumann made a motion to support Staff's position that hardships do not result from actions taken by the petitioner. J. Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Renee Cahoon made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

This variance request was granted.

**City of Jacksonville (CRC VR 13-06)
Dredging in PNA
Christine Goebel/Jill Weese**

Christine Goebel of the Attorney General's Office represented staff and stated the petitioner owns property in Jacksonville adjacent to the New River. In August 2013 the petitioner, with the assistance from the Wildlife Resources Commission acting as its agent, sought a CAMA Major Permit to construct a public boating access area with associated driveways, parking areas, boat ramps, breakwaters, access piers, boardwalk, and bulkhead and proposed to excavate an access channel from the proposed boat ramp to the main navigation channel of the New River. This area is designated as a Primary Nursery Area (PNA) by the Marine Fisheries Commission and per CRC rule 15A NCAC 07H .0208, navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas. Petitioner's permit was denied on November 8, 2013. Ms. Goebel reviewed the stipulated facts of the variance request and stated staff and petitioner agree on all four variance criteria which must be met in order to grant the variance request. Ms. Goebel added that all parties worked together on some mitigation opportunities and the City agreed to a condition on the variance to install an educational kiosk on the site informing and educating the boating public about the value of Primary Nursery Areas and the potential for impacts to PNAs from boating. The City, in cooperation with the WRC, DCM and DMF, will also explore alternative stabilization measures at the location of the small boat ramp once it is removed. The WRC has also agreed to install channel markers to clearly designate the navigation channel which should help minimize adverse impacts to the PNA bottom at this site.

John Carter, City of Jacksonville Attorney, represented the petitioner. He stated, we have three governmental units coming together to work for the common good of the public. The current facility is undersized and does not meet the needs for the City of Jacksonville. The City has agreed to stipulated fact number 24 in an effort to work with the staff. We request the CRC grant the variance.

Bill Naumann made a motion to support Staff's position that strict application of the development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardship. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Bob Emory made a motion to support Staff's position that hardships result from conditions peculiar to the petitioner's property. Lee Wynns seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Larry Baldwin made a motion to support Staff's position that hardships do not result from actions taken by the petitioner. Lee Wynns seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Renee Cahoon made a motion to support Staff's position that the variance request will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. The permit should include the condition noted in Stipulated Fact 24. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

This variance request was granted.

PUBLIC INPUT AND COMMENT

No public comments were received.

CRC RULE DEVELOPMENT

**Fiscal Analysis for 15A 7H NCAAC .0302 Technical Standards for Beach Fill Projects (CRC 13-35)
Matt Slagel**

Matt Slagel stated this rule is also known as the sediment criteria rule and the goal is to ensure that sediment that is placed on the beach during a beach nourishment project is compatible with the existing beach. The weight percent of silt (fine material) must be within five percentage points of the native beach. For the sand sized material there are no restrictions. Granular and gravel material must also be within five percent of the native beach. For calcium carbonate (shell material) it must be within 15 percent. Thirteen samples are required on the recipient beach from the dune toward the ocean. Sediment grain size analysis must be done from those samples. Beach profiles are also required to determine volumes. At least five beach profiles are required and spacing cannot exceed 5,000 feet. If fill material is coming from an adjacent inlet then the recipient beach sediment characterization is not required. The rule requires swath bathymetry from borrow areas. Sidescan sonar is also required to determine the hardness of the sediment. The rule also requires geophysical subsurface seismic data which looks below the seafloor and vibracores are required that drills into the seafloor and then grain size analysis can be done on the sediment.

The changes are a balance between minimizing the risks of placing incompatible sediment onto the beach while ensuring that the rules are not overly burdensome or expensive for permit applicants. We solicited input on the implementation of the rule from coastal engineers, geologists, and local beach project managers in the state. This rule has been in effect since 2006. At the July 2013 CRC meeting, the CRC approved four changes for public hearing. The first change was a clarification that swath sonar refers to multi-beam or similar technologies and that seafloor imaging without an elevation component actually refers to sidescan sonar or similar technologies. The second change is the minimum number of vibracores within a borrow site should be reduced from ten to five. For smaller borrow sites, this change would require half of the vibracores. For large sites, it would maintain the required spacing. Vibracores cost an average of \$2,713 per core based on average costs from contractors. Under the proposed change there would be a significant cost savings for smaller

borrow sites. The third proposed change changes the granular fraction for sediment slightly coarser than sand would be increased to native plus ten percent. The gravel material and the very fine sediment would be kept at native plus five. This will provide applicants the flexibility to use sediment that is close to the native composition. The fourth change addresses the rule where it says that sediment excavation depth within a maintained navigation channel shall not exceed the permitted dredge depth of the channel. We believe this is redundant and has led to confusion. Any CAMA Major Permit or Corps Permit would involve the review of proposed dredging depths and would indicate the depth that could occur.

Given several assumptions and the average cost of each vibrocore sample in a year when there is one federally and one non-federally sponsored projects the federal government would save \$17,634, the state would save \$18,313 and the local government would save \$18,313. In a year when there are two non-federally sponsored projects the state government and local government would split a \$54,260 savings. If the Commission approves this fiscal analysis it can be sent to public hearing and would have a proposed effective date of June 1, 2014.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 07H .0312 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

**Fiscal Analysis for 15A NCAC 7H .1300 – Maintain, Repair and Construct Boat Ramps (CRC 13-36)
Tancred Miller**

Tancred Miller stated this fiscal analysis is for boat ramps. This rule change was approved by the CRC in July. The changes allow an applicant to apply for a single permit for three related structures (non-commercial boat ramp, an access pier and a protective groin) that currently require three permits. There is a cost savings to the applicant. Over the past five years there have been 110 projects that have come in for two of the three structures. If one permit had been required then it would have saved them \$22,000 or about \$4,400 per year. Over that same time there have been three projects that did all three structures and it would have saved \$240 per year. There will be a minimal decrease in permit fees for the Division, but we think that will be offset by the decreased staff time for site visits.

Bob Emory made a motion to approve the fiscal analysis for 15A NCAC 07H .1300 for public hearing. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

**Fiscal Analysis for 15A NCAC 7H .1200 –
GP for Construction of Piers and Docking Facilities (CRC 13-37)
Mike Lopazanski**

Mike Lopazanski stated this General Permit allows for the docking space for up to two boats or up to four boats for a shared pier. We allow eight square feet per linear foot of shoreline to address shading impacts, with a maximum square footage of 400 square feet for any individual component. Over the years we have seen an increased use of personal watercraft being stored on floating platforms or on the dock. When this happens we count stored boats in the slip count. This has resulted in the applicant having to apply for a Major Permit. Under the General Conditions section

of these rules we have created an exception for the storage of boats on platforms. In the Specific Conditions we clarified that the docking space limit excludes boats stored on platforms.

The fiscal analysis reflects that this change will affect about 20 permits per year and will save permit applicants a \$50 permit fee. There will also be a time savings in applying for a General Permit instead of a Major Permit for both the applicant and the staff and reviewing agencies.

Harry Simmons made a motion to approve the fiscal analysis for 15A NCAC 07H .1200 for public hearing. Jamin Simmons seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

**Public Comments on 15A NCAC 7H .0304 –
Inlet Hazard Areas and Unvegetated Beach Designations (CRC 13-38)
Mike Lopazanski**

Mike Lopazanski stated the comment period for this amendment ends today so there is no action necessary by the Commission. One change is the removal of the Unvegetated Beach designation. The CRC has the ability to establish an unvegetated beach where there is no stable natural vegetation on a permanent or temporary basis. This can also be done for areas that are suddenly unvegetated as a result of a hurricane or major storm. This gives DCM the ability to establish a measurement line on the oceanfront from which we measure the setback. In 2004 the CRC designated the oceanfront areas in front of Hatteras Village as an Unvegetated Beach. The vegetation was destroyed by a storm on September 18, 2003. In the past couple of years the vegetation has exhibited recovery. The natural vegetation line is less restrictive than the measurement line. We held a public hearing on November 12 at Hatteras Village and received one comment that was supportive of the action.

The second amendment in 7H .0304 deals with an update from the Science Panel on inlet hazard areas. In 2006 the CRC asked the Science Panel to look at areas that are subject to the dynamic influence of ocean inlets. The report was completed in May 2010. The report had recommendations to address the 12 developed inlets as well as some of the undeveloped inlets. There was also reference to two inlets that had closed. While the Commission spent a lot of time discussing the proposed inlet hazard areas there was a separate action to remove the inlet hazard designation from Mad Inlet. 7H .0310 deals with the use standards in ocean hazard areas. Inlet hazard designations do not preclude development, but they affect the density of development and maximum structure sizes. Immediately to the west of Sunset Beach there are 126 properties that are within the inlet hazard designated area. Less than 10 of these properties are developed and it includes the Bird Island component of the Coastal Reserve system. The inlet closed in 1997 and that is what prompted the Science Panel's recommendation to remove the designation and their belief that it will not reopen. One of their reasons is the Little River Inlet jetties in South Carolina has caused an accretion of sand in that area and made that inlet more efficient in terms of the water transfer as opposed to what had been going through Mad Inlet. By removing the inlet hazard designation it would remove the density restrictions for the properties in that area. It will also remove the size restrictions and there will be a benefit to any large, previously un-subdivided properties and would give a greater development potential. We held a public hearing on November 6 in Sunset Beach and had about 50 people in attendance. Nine people spoke against removing the inlet hazard designation and two spoke in favor. The comments questioned the scientific basis of the decision, asserted that the inlet would reopen, concerns about impacts on insurance, concerns

about turtles and wildlife in the area, concerns about impacts of a terminal groin in Ocean Isle, and concerns about changing the character of Sunset Beach. The comments in favor cited the years of accretion in the area and the stability that has been granted to the area because of the construction of the Little River Inlet jetties in South Carolina. To date we have received 35 written comments against the action. The Town of Sunset Beach has also passed a resolution opposing the removal of the designation.

Spencer Rogers stated you have to go back to what the inlet hazard area is intended to do. It is one component of the ocean hazard area. That system is to focus the CRC's concerns, regulatory efforts and property owner understanding to the hazard. There are risks along the entire ocean hazard area of inlet breaches and is not unique to any place including Bird Island. There have been a couple of attempts over the years to try and identify potential inlet locations, but none of them have proven to be reliable in identifying potential risk. One of the issues the Science Panel brought up when this started was we need to have a better way to define potential inlets. What we decided was it was more important to identify the present inlet hazard areas than to spend time working on potential inlets for the future. Mad Inlet's fate was doomed by the construction of the Intracoastal Waterway in the 1930's, the construction of the Little River Inlet jetties, and major changes at Tubbs Inlet.

Chairman Gorham asked Staff to get a statement from the Science Panel about the removal of the Inlet Hazard designation from Mad Inlet for the CRC to review at the February meeting.

LAND USE PLANS

Town of Swansboro Future Land Use Plan Map Amendment (CRC 13-39)

Maureen Meehan

Maureen Meehan, Morehead City District Planner, stated the Town of Swansboro requested an amendment to their Future Land Use Map. The subject property is currently classified as both high-density residential and commercial. This amendment will change the residential portion to commercial and classify the whole parcel as commercial. The subject property is located on Highway 24. The Swansboro Board of Commissioners unanimously adopted the amendment at a duly advertised hearing and there were no comments received. Staff finds that the amendment meets the 7B guidelines, and there are no conflicts with state or federal law. Staff recommends certification of this amendment.

Harry Simmons made a motion to certify the Town of Swansboro Future Land Use Plan Map amendment. Larry Baldwin seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Town of Nags Head Land Use Plan Amendment (CRC 13-40)

Charlan Owens

Charlan Owens, Elizabeth City District Planner, stated the Town of Nags Head has requested a background policy and implementation text amendment to address septic systems and sandbags on the oceanfront beach. The Town opposes the permitting, construction or placement of septic systems or sandbags on the beach. The Town held duly advertised public hearings on the amendments and unanimously adopted the amendment. The public was provided an opportunity to submit written comments and no comments were received. Staff recommends certification based

on the determination that the Town has met the substantive requirements outlined in the 2002 Land use Plan guidelines and there are no conflicts evident with either state or federal law.

H. Simmons made a motion to certify the Town of Nags Head Land Use Plan amendment. Bill Naumann seconded the motion. The motion passed unanimously (Andrew, Hairston, Naumann, Lewis, Baldwin, H. Simmons, Cahoon, Emory, Wynns, J. Simmons, Dorsey, Snipes).

Mike Lopazanski stated the Towns of Duck, Kitty Hawk, and Southport Land Use Plan Implementation Status reports were included in your meeting materials. The rules require that these are submitted every two years. There is no action required by the Commission.

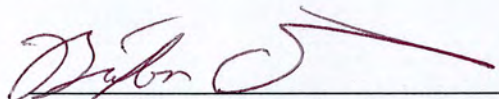
OLD/NEW BUSINESS

Chairman Gorham stated that after discussion with fellow commissioners I would like to see members of the CRC make it possible for kids who live in the coastal area but have not been to the ocean the chance to experience a fishing trip. Fifty percent of the people in New Hanover County have never seen the ocean and this is a startling fact. The CRC discussed the idea and came up with the following ideas: Commissioners could support this project in their individual capacity, Commissioners could work with the existing Take a Kid Fishing Foundation or directly with individual boat captains to schedule an event around a CRC meeting, DCM staff could plan an information item at a future meeting to provide the Commission with more information about the existing DCM Reserve program that works closely with schools and teachers to introduce kids to the natural resources of the coastal area. Braxton introduced Lori Davis, DCM Reserve Education Coordinator.

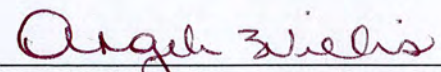
Renee Cahoon thanked the staff that will no longer be with the Division by the next meeting. She complimented them on a job well done and thanked them for their service to the Division and the Commission. Chairman Gorham stated he thought it would be appropriate on the part of the CRC to send a letter to the Secretary thanking DCM staff for their help during the transition and let the Secretary know we are pleased with the staff's effort. Harry Simmons and Bob Emory reported that they will not be in attendance at the February meeting.

With no further business, the CRC adjourned.

Respectfully submitted,



Braxton Davis, Executive Secretary



Angela Willis, Recording Secretary



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
cgoebel@ncdoj.gov

TO: The Coastal Resources Commission
FROM: Christine A. Goebel, Assistant Attorney General *CAG*
DATE: February 10, 2014 (for the February 26-27, 2014 CRC Meeting)
RE: **Variance Request by Currituck County (13-05)**

Petitioner is Currituck County, which owns and runs a water supply system consisting of several smaller water supply systems it purchased from a private water utility in 2011. Along with 22 active wells, the County purchased two existing but not fully developed deep wells located near the oceanfront in the area of Corolla near the Currituck Lighthouse. In February of 2013, the County applied for a CAMA major permit to complete these two deep wells by installing a new well pump in each existing casing, installing a concrete pad and housing over the top of the well and connecting these wells to the existing system. On June 14, 2013, DCM denied the County's application as it conflicted with the oceanfront erosion setback rules found at 15A NCAC 07H .0306(a), as the development did not meet the applicable 60-foot setback. The County now seeks a variance to allow the development of the two wells as proposed in their permit application.

The following additional information is attached to this memorandum:

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

cc: Ike McRee, County Attorney, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Currituck County CAMA LPO, electronically

RELEVANT STATUTES OR RULES

ATTACHMENT A

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

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

(1) **The ocean hazard setback for development is measured in a landward direction from the vegetation line**, the static vegetation line or the measurement line, whichever is applicable. **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, *[none of the .0309 exceptions apply in this variance case]* **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:

(I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, **and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;**

STIPULATED FACTS

ATTACHMENT B

1. The Petitioner is Currituck County (County), which is a subdivision of the State of North Carolina. The County owns a water supply system, which consists of several smaller water supply systems it purchased from Carolina Water Service, Inc. of North Carolina (CWS) and consolidated in 2011.
2. The County proposes to complete development of two existing deep wells (Well 1 and Well 2, or collectively Two Wells), to connect them to one another, and then to connect them to the existing water system owned by the County. These Two Wells were drilled in 2006 by the previous owner, CWS. The existing development at the Two Wells consists of wells approximately 220 feet deep, casings and screens. The details of the proposed project to complete the Two Wells can be found in the DCM Field Report and the Project Narrative, copies of which are attached.
3. The County has obtained easements to use the proposed area for development (Site) which is located in Corolla, an unincorporated portion of the County. The Site is located landward of the first line of stable and natural vegetation (Vegetation Line) and is largely waterward of existing oceanfront cottages, except where the proposed development would follow Shad Street to the west. The Site is located between Franklyn Street to the north and Shad Street to the south. The Two Well sites are located approximately 3400 feet southeast (well # 1) and 2300 feet southeast (well # 2) of the Currituck Lighthouse . A map showing the general location and extent of the project is attached, along with ground-level and aerial site photographs.
4. The County purchased the Two Wells in 2011 from the previous owner CWS. In addition to the Two Wells, CWS constructed 19 other existing completed wells. A check of the County's and DCM's records could not locate any record of a CAMA permit for the initial work on the Two Wells in 2006, or for any of the other wells fully constructed at that time. A search of records from 2006 did not locate any such permit application. An email from the County regarding old permits is attached.
5. Prior to acquisition of the CWS water supply systems the County had sufficient sources of water to meet the 2.71 million gallons per day required to meet the water demand for platted property within the County's service area.
6. The water supply required to meet the water demand for platted property in Corolla Light and Monteray Shores communities is an additional 1.0 million gallons per day. The Two Wells and other wells acquired from CWS will supply sufficient water to meet the water demand from Corolla Light and Monteray Shores communities.

7. The proposed development at each of the Two Wells will involve inserting a new well pump in the existing casing and installing a new 8' x 6' concrete pad base and a new 6' x 5' x 4' tall fiberglass cover over the top of the well. Other than an extension of pipe from the well to the raw water supply line and electrical wiring, no other disturbance will occur within the 60' oceanfront setback. A concrete meter vault and electric panels will be installed as part of the Two Wells but will be located landward of the 60' oceanfront setback. The project also consists of approximately 1840 linear feet of 10" pipe horizontally drilled under the dune system landward of the 60' oceanfront setback. The landward side of the primary dune will be graded approximately 1,380 square feet for the installation of the concrete pad.
8. The Two Wells and connecting pipe are proposed within the Ocean Erodible AEC and the High Hazard Flood AEC, which are sub-sets of the Ocean Hazard Area, and this development requires a CAMA permit per N.C.G.S. § 113A-118. These Ocean Hazard Areas "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 .0301. Also, the Commission's rules at 15A NCAC 07H .0306(k) require that "Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence."
9. In this case, the rule that the County seeks a variance from is referred to as the oceanfront erosion setback rule. It requires that new "development" such as that proposed be setback landward of the vegetation line (and thus, the ocean) a prescribed distance. The Commission's setback rules at 15A NCAC 07H .0306, require that linear development such as the water lines meet a setback equal to 30-times the average annual erosion rate of the adjacent shoreline. In this case, the applicable erosion rate is 2-feet per year, resulting in a required setback of 60-feet waterward of the Vegetation Line. Other than pipe connecting each of the Two Wells to a raw water line, the water line and appurtenances for the County's project are currently located landward of, and meet the 60' oceanfront setback. The Two Wells, however, are proposed waterward of the 60' oceanfront setback, requiring a variance.

10. Based on the permit application materials and a November 2012 site visit, the Two Wells had been located approximately 32 feet and 41 feet landward of the Vegetation Line. As of a site visit by Division of Coastal Management staff a year later in November 2013, the Vegetation Line has shifted waterward by 10 feet since the original application in 2012, such that Deep Well 1 is now located approximately 42 feet landward of the Vegetation Line.
11. The Primary Dune (as defined by the Commission's Rules at 15A NCAC 7H .0305(a)(3)) at the Site varies from approximately 18' to 25' in elevation above normal high water (NHW).
12. The County, through its engineers, contacted DCM staff in the fall of 2012 to begin discussing the CAMA permit application. DCM staff met on Site in November of 2012.
13. The County's CAMA permit application was accepted as complete on February 21, 2013.
14. The CAMA Major Permit process provides that the application materials be circulated to several local, state and federal agencies for review and comment. That took place in this case. None of the agencies objected to the issuance of this permit. The Public Water Supply Section of the Division of Water Resources (DWR) did note that they had already approved the project but that final approval was required by DWR before service. A copy of DWR's comments is attached.
15. As required, notice of the project was provided to the adjacent riparian property owners. One of these owners contacted DCM and noted concerns and objections about the look of the wells. A copy of this letter is attached. Notice was also provided through publication in the local newspaper, the Coastland Times. No other objections were received.
16. On June 14, 2013, DCM denied the County's CAMA permit application due to the proposed development's failure to meet the applicable 60-foot setback. A copy of the denial letter is attached.
17. On August 14, 2013, the County submitted this petition for a variance from the Commission in order to construct the development of the Two Wells and their connection to the existing water supply system as proposed in its application.
18. The Two Wells are located at the current Site because the quality and quantity of water at the Site is the best that can be found in the Middle Yorktown aquifer as determined in a March 23, 2001 study entitled Water Resource Investigation for Southern Currituck Outer Banks, Currituck County, NC by Edwin Andrews & Associates, P.C. As further determined by the referenced study, well sites further north and south have limited yield and well sites further south have higher levels of chlorides that affect treatment costs because of higher feed pressure

into the treatment plant and finished water of lower quality. A copy of the narrative from this study is attached.

19. 15A NCAC 18C.0203 requires that a public water supply well be located on a lot so that the area within 100 feet of the well is owned or controlled by the person supplying the water. The Two Wells are located adjacent to privately owned ocean front property. Taking privately owned ocean front property adjacent to the Two Wells through condemnation would be cost prohibitive and limit the ability of the private property owners to fully use, develop or redevelop their property to the extent otherwise allowed under the Currituck County Unified Development Ordinance.
20. The County is represented by Ike McRee, the Currituck County Attorney.

STIPULATED EXHIBITS:

DCM Field Report

Project Narrative from CAMA Permit Application

Site maps and site photographs in Powerpoint

Email from County regarding old permits search

CAMA permit application materials

DWR's comments to DCM during application review

Adjacent riparian owner objection letter

CAMA permit denial letter

Narrative from water study

Petitioner's and Staff's Positions

ATTACHMENT C

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

Petitioner's Position: Yes.

The strict application of the rules prohibiting the location of Deep Well #1 and Deep Well #2 within the 60-foot setback from the first line of stable vegetation will result in the loss of raw water required for the production of the quantity and quality of potable water necessary to meet the use demands of the population on the Currituck Outer Banks. The Petitioner's Southern Outer Banks Water Treatment Plant is undergoing expansion to provide required water capacity to users acquired by the Petitioner in 2011 from a private utility unable to provide the quantity of water required by its users and unable to meet state and federal quality standards. To meet the additional use requirements it is necessary that the Petitioner access a minimum of 750,000 additional gallons of water per day. Deep Well #1 and Deep Well #2 are expected to yield 1,000,000 gallons of water per day. It is an unnecessary hardship that the Petitioner risk the loss of critical water supply wells resulting in the inability to meet water use demand and fire suppression requirements.

Staffs' Position: Yes.

Staff does not contest that the County needs extra capacity in its current water supply system, and that a strict application of the oceanfront setback rules causes petitioner unnecessary hardships where much of the work for the Two Wells is already complete, and that it would be an unnecessary hardship for the County not to be able to do the relatively small-scale work needed to complete the Two Wells or to have to remove and relocate the existing development to an area that satisfies the 60' setback.

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

Petitioner's Position: Yes.

The hardships are a result of the location and natural condition of the area in which Deep Well #1 and Deep Well #2 are located. The property on which the wells are placed is linear in shape and located between the Atlantic Ocean and platted residential lots in the Corolla Light Planned Unit Development. At the location of Deep Well #1 the property is approximately 292 feet wide and at the location of Deep Well #2 is approximately 340 feet in width. Due to the location of the property along the Atlantic Ocean the dune line and line of stable vegetation has changed due to the effects of Atlantic Ocean and more significantly due to the effects of Hurricane Sandy in 2012 causing some erosion along the property. It is believed that the erosive effect of the Atlantic Ocean has resulted in the well locations, installed in 2006 by a private utility, to now be within the 60 foot setback area. Upon information and belief, Division of Coastal Management staff has determined that the dune seaward of the well locations is restoring and that the first line of stable vegetation is now located 10 feet seaward from the first line of stable vegetation delineation in November 2012.

Petitioner's hardship resulting from conditions peculiar to the property location and size is further impacted by rules of the North Carolina Department of Environment and Natural Resources, ("DENR"), which require Petitioner to own and control property within 100 feet of the wellhead. The wells were installed at nearly 100 feet from the adjoining property line. New wells could not be constructed on the property that would be located outside of the 60 foot setback area and also maintain 100 foot setback from adjoining property lines required by the DENR rule.

Staffs' Position: Yes.

Petitioner's hardships result primarily due to conditions peculiar to the property, including the fact that according to a 2001 Water Resource Investigation study, the best water within the Middle Yorktown Aquifer is in this area, and that the existing wells are in place, and only require small-scale development to be operable.

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

Petitioner's Position: No.

The hardships are a result of the location and natural condition of the property on which the wells are located. Without the location of adjoining property lines within 100 feet of the well heads the wells could be located landward of the 60 foot setback area. In addition, the wells were drilled by a private utility company in 2006 prior to the Petitioner's 2011 acquisition of the private utility's water system.

Staff's Position: No.

While the prior private utility may have caused the hardships in this case by possibly not seeking a CAMA permit before undertaking development in 2006, and by not completing the Two Wells in 2006 when the initial construction took place, those are issues inherited by the County when it purchased the system. Staff agrees that any hardships are not the result of the County's actions, where the County now seeks to complete these partially developed wells to help provide an adequate public water supply.

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.

(a) Consistent with the spirit, purpose and intent of the rules.

The spirit, purpose, and intent of the rules, standards, or orders issued by the Commission are to protect coastal resources and life and property in the vicinity of the coastal resources. The project is located landward of the primary and frontal dunes. The project will not disturb, weaken or affect the protective nature of the ocean beach or the primary and frontal dunes. There are no indentified or documented historic or archaeological resources within the area of proposed disturbance. Further, the project is outside all coastal wetlands and open waters and where located will not impact the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation and spawning and nursery areas. There will also be no siltation or creation of stagnant water bodies.

Implementation of the project at its location will not increase the danger to life or personal property due to the forces associated with coastal resources. The primary property of value for the project is piping, electrical components and enclosures. The primary property of value will be located either landward of the 60 foot setback line or underground. The enclosure will contain inexpensive piping and air release valves.

CAMA rules allow uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel and a footprint that does not exceed 200 square feet. Here, the enclosure for each wellhead is characteristically similar to that of a shed allowed in the 60 foot setback area. Each wellhead enclosure will be an uninhabitable, single-story structure with less than 50 square feet of area. Each enclosure will have a concrete slab floor on a packed sand base.

(b) Secure the public safety and welfare.

The public safety and welfare will be secured by the wells providing the additional raw water required for the Petitioner to produce a quantity and quality of water that ensures sanitation and good health. The public safety and welfare is further secured by ensuring sufficient water and pressure necessary for adequate fire suppression.

(c) Preserve substantial justice.

The Petitioner is seeking to complete the construction of Deep Well #1 and Deep Well #2 installed by a private utility for a water system subsequently acquired by the Petitioner. It is unknown whether the initial well installation by the private utility was performed in compliance with CAMA rules as conditions on the property have changed since the wells were installed. The Petitioner is completing the construction of the wells in compliance with CAMA rules to the extent feasible that allows for the use of the existing infrastructure. Such efforts include design modifications to relocate as many project components as possible landward of the 60 foot setback area. Substantial justice will be preserved by granting the variance to allow for the full utilization of Petitioner's water resources, water treatment facilities and adequate and quality water service to the general public.

Staffs' Position: Yes.

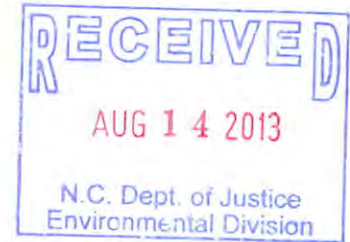
Granting the variance would be consistent with the spirit, purpose, and intent of the rules, standards or orders of the Commission. While the ocean erosion setback rules attempt to keep inappropriately sited development off the public beach and to safeguard the protective nature of the dune system, these Two Wells are already mostly developed and now propose minimal additional development within the setback. The proposed development is located landward of the vegetation line and primary dune. Granting this variance would allow the County to utilize this infrastructure it purchased in a partially developed condition.

Staff agrees that on balance, public safety and welfare is protected in this case by supplying the County's public water system, while minimizing the amount of added infrastructure waterward of the 60-foot setback. Granting a variance would preserve substantial justice, which would be served by enabling the County to complete and utilize the partially completed infrastructure it obtained from a private utility.

Attachment D:
Petitioners' Variance Request Materials



COUNTY OF CURRITUCK



BOARD OF COMMISSIONERS

S. Paul O'Neal, Chairman
Paul R. Martin, Vice-Chairman
O. Vance Aydlett, Jr.
Marion Gilbert
David L. Griggs
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H. M. "Butch" Petrey

153 Courthouse Road, Suite 210
Currituck, NC 27929
Telephone (252) 232-0300 / Fax (252) 232-3551
State Courier # 10-69-17

DANIEL F. SCANLON, II
County Manager
DONALD I. MCREE, JR.
County Attorney
MARY S. GILBERT
Clerk to the Board

August 13, 2013

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

Re: CAMA Variance Request for Currituck County, North Carolina – Southern Outer Banks Water Treatment Plant Wellfield

Dear Mr. Davis:

Currituck County hereby formally requests a variance under the Coastal Area Management Act (CAMA) for the completion of two deep wells, herein referred to as the Southern Outer Banks Water Treatment Plant Wellfield, and the connection of the wells to an existing raw water system. The County has submitted an application for a CAMA Major permit which was denied because the proposed activities were deemed inconsistent with 15A NCAC 07H .0306(a)(2)(A). The wellheads consist of a structure less than 5,000 square feet proposed to be located less than the required minimum of 60 feet from the first line of stable natural vegetation within the Ocean Hazard Area of Environmental Concern (AEC). The permit was denied in a letter dated June 14, 2013 which is attached.

Construction of the two wells was commenced by Carolina Water Service, Inc. of North Carolina in 2006. The well casings and screens are in place. The County proposes to complete the construction of the wells, including installation of pumps, construction of well heads, and provision of electrical service and controls to each well. For each well, completion of construction includes a 6-inch PVC Certa-Lok drop pipe; a stainless steel, submersible pump; construction of the wellhead; concrete pad for the wellhead and wellhead enclosure; a 480-volt, 3-phase electrical service; manual transfer switch with plug for portable, standby generator; pump control panel; and RTU panel to connect well to the SOBWS telemetry system. Construction of the wellhead will involve installation of a well seal, turbine flow meter, isolation valve, check valve, sample tap, level probe, pressure gauge, and 6-inch flanged, stainless steel piping. The wellhead enclosure will contain the wellhead, air release valve, sample valve, and level sensor and will measure 6 feet in length, 5 feet in width, and 4 feet in height. A precast concrete vault will be installed nearby to house a flow meter, check valve, and isolation valve. A 10-inch HDPE pipeline will be installed to convey raw water from Deep Well No. 2 to the vicinity of Deep Well No. 1, and a 10-inch PVC

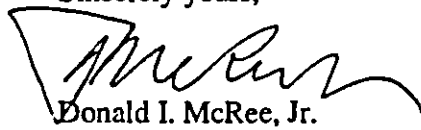
raw water pipeline will be installed from Deep Well No. 1 to the existing 14-inch raw water line at the intersection of Shad Street and Whalehead Drive in Corolla, North Carolina. Additional information regarding the proposed project is provided in the attached Project Description and depicted on the attached site plan.

Pursuant to 15A NCAC 07J .0701(a), relief from local requirements restricting use of the property must be sought prior to requesting a CAMA variance. The Public Water Supply Section of the North Carolina Department of Health and Natural Resources requires that a 100-foot radius surrounding a raw water supply well be controlled by the well owner. The wells are located as near to the adjacent residences as allowed by the requirement. There are no regional, county, or municipal requirements that further restrict the location of the wells. Therefore, there is no applicable variance to be requested from a local government.

Additional documentation is enclosed, including the County's written reasons and arguments why the County meets the four variance criteria, and a draft set of proposed stipulated facts and stipulated exhibits.

The purpose of this letter is to request issuance of a variance by the Coastal Resources Commission relative to the denial of the County's application for Major Permit. We appreciate your attention to this request. If you have any questions regarding this request, please contact me at 252-232-0300, the county's engineer Eric Weatherly at 252-232-6035 or the county's consulting engineer representative Keven Arrance of Hazen and Sawyer, P.C. at 919-863-9350. We look forward to working with your agency on this important project for Currituck County.

Sincerely yours,



Donald I. McRee, Jr.
County Attorney

Enclosures

cc: Attorney General's Office, Environmental Division
Eric Weatherly, Currituck County
Patrick Irwin, Currituck County
David S. Briley, Hazen and Sawyer
Keven Arrance, Hazen and Sawyer
Maggie Hennessy, Hazen and Sawyer

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Currituck County

COUNTY WHERE THE DEVELOPMENT IS PROPOSED Currituck County

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

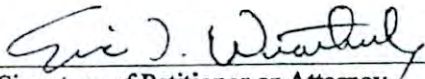
Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the

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

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

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

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

| | |
|--|---|
|  Signature of Petitioner or Attorney | 7-2-13 Date |
| Eric T. Weatherly, P.E. Printed Name of Petitioner or Attorney | eric.weatherly@currituckcountync.gov Email address of Petitioner or Attorney |
| 153 Courthouse Road, Suite 302 Mailing Address | (252) 232-6035 Telephone Number of Petitioner or Attorney |
| Currituck NC 27929 City State Zip | (252) 232-3298 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

Deed to the Property on which the Proposed Development would be Located

Doc ID: 002435370003 Type: CRP
Recorded: 08/24/2012 at 02:15:48 PM
Fee Amt: \$26.00 Page 1 of 3
Excise Tax: \$0.00
Currituck County, NC
Charlene Y Dowdy Register of Deeds
BK 1213 PG 593-595

553

TRANSFER TAX AMOUNT None
COLLECTOR 8/24/2012

NORTH CAROLINA EXCISE STAMPS
ATTACHED AND CANCELLED None

Prepared by: Donald I. McRee, Jr., Attorney
Return to: 153 Courthouse Road, Suite 210
Currituck, NC 27929

STATE OF NORTH CAROLINA

DEED OF EASEMENT

COUNTY OF CURRITUCK

THIS DEED OF EASEMENT made this 17th day of August, 2012, by and between COROLLA LIGHT COMMUNITY ASSOCIATION, INC., (the "Grantor"), and COUNTY OF CURRITUCK, NORTH CAROLINA, a body corporate and politic existing pursuant to the laws of the State of North Carolina, whose mailing address is 153 Courthouse Road, Suite 204, Currituck, NC 27929, (the "Grantee"):

WITNESSETH:

THAT WHEREAS, Grantor is the owner of all of that certain lot or parcel of land as set forth in those deeds recorded in Book 325, Page 435 and Book 325, Page 438 of the Currituck County Registry;

AND WHEREAS Grantee has requested Grantor's conveyance of an easement for access, egress, ingress, construction, operation and maintenance of all water facilities including well fields, well sites, underground water lines and underground electrical lines over, upon, across and under the lands owned by the Grantor of the above-referenced property and the Grantor has agreed to conveyance of the easement;

NOW, THEREFORE, for and consideration of the sum of ten and no/one hundred dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor does hereby give, grant and convey unto the Grantee a perpetual right and easement for access, egress, ingress, construction, operation and maintenance of all water

facilities including well fields, well sites, including obtaining water from said wells, underground water lines and underground electrical lines over, upon, across and under the lands owned by Grantor, said easement more particularly described as follows:

That area in, upon, across and into the property of the Grantor lying within the lines as shown on a map or plat prepared by McDowell & Associates, P.A., entitled in part "Well field To Be Dedicated To The County of Currituck, Being That Certain Area Known As The Oceanfront Well Sites As Described On Page 441 Of Deed Book 325, Poplar Branch Township, Currituck County, North Carolina", dated August 16, 2012 the same being recorded in Plat Cabinet 11, Slide 111 of the Currituck County Registry, said area being more particularly described as follows:

BEGINNING at a concrete monument, being the northeast corner of Corolla Light P.U.D., said monument located North 85 degrees 20 minutes 12 seconds East 1,526.85 feet from the intersection of the southern right-of-way of N.C.S.R. 1152 and the eastern right-of-way of Ocean Trail, thence with the eastern line of Corolla Light P.U.D. South 13 degrees 56 minutes 49 seconds East 2,417.67 feet to a point in the northern right-of-way line of Shad Street; thence with the northern right-of-way of Shad Street South 76 degrees 06 minutes 29 seconds West 292.62 feet to a point, cornering; thence North 13 degrees 56 minutes 48 seconds West 839.76 feet to a point; thence North 54 degrees 39 minutes 13 seconds West 120.31 feet to a point; thence North 19 degrees 56 minutes 15 seconds West 59.51 feet to a point; thence North 89 degrees 46 minutes 40 seconds East 7.28 feet to a point; thence North 0 degrees 13 minutes 21 seconds West 266.44 feet to a point; thence North 14 degrees 35 minutes 51 seconds West 250.00 feet to a point, cornering; thence along the north boundary of Lot 201, Phase 2C of Corolla Light P.U.D. South 75 degrees 24 minutes 09 seconds West 100.00 feet to a point in the east margin of the right-of-way of Franklyn Street; thence along the east margin of the right-of-way of Franklyn Street North 14 degrees 35 minutes 51 seconds West 14.49 feet to a concrete monument being in and marking the southwest corner of Lot 228, Phase 2G of Corolla Light P.U.D.; thence along the southern boundary of Lot 228 North 49 degrees 29 minutes 17 seconds East 67.08 feet to a concrete monument; thence North 76 degrees 14 minutes 38 seconds East 38.00 feet to a point, cornering; thence North 17 degrees 09 minutes 05 seconds West 310.54 feet to a point; thence North 14 degrees 35 minutes 49 seconds West 621.93 feet to a point in the northern line of Corolla Light P.U.D.; thence with the northern line of Corolla Light P.U.D. North 85 degrees 20 minutes 12 seconds East 340.88 feet to a concrete monument, the point and place of beginning.

TO HAVE AND TO HOLD the above described easement unto the Grantee, its successors and assigns forever.

The Grantor covenants that it is seized of said premises in fee simple and that it has the right to grant this easement for the purposes set forth herein, that Grantor will warrant and defend title to the perpetual right and easement hereinbefore described against the lawful claims of all person whosoever except as to those exceptions stated herein. Title to the property hereinabove described is subject to easements, restrictions, rights of way and other matters of record.

IN TESTIMONY WHEREOF Grantor has caused this instrument to be signed in its corporate name by its duly authorized officers and its corporate seal affixed hereto by authority of its Board of Directors, the day and year first above written.

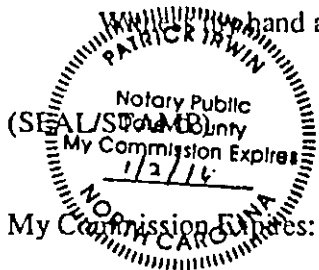
COROLLA LIGHT COMMUNITY ASSOCIATION, INC.

By: [Signature]
President

STATE OF NORTH CAROLINA
CITY/COUNTY OF DARE

I, Patrick Irwin, a Notary Public of the City/County and State aforesaid, hereby certify that Jack Waber personally came before me this day and acknowledged that he/she is President of Corolla Light Community Association, Inc., a North Carolina corporation, and acknowledged, on behalf of Corolla Light Community Association, Inc., the grantor, the due execution of the foregoing instrument.

My hand and official seal this the 17 day of AUGUST, 2012.



My Commission Expires: 1/2/14

[Signature]
Notary Public
Printed Name Patrick Irwin

**Attachment E:
Stipulated Exhibits including Powerpoint**

**DIVISION OF COASTAL MANAGEMENT
FIELD INVESTIGATION REPORT**

1. APPLICANT'S NAME: Currituck County (Southern Outer Banks Water Treatment Plant Well Field)
2. LOCATION OF PROJECT SITE: East end of Shad Street (SR 1409) extending north for ±1,600 feet within an easement located on Corolla Light Community Association property, Corolla Light S/D, Corolla, Currituck County, adjacent to the Atlantic Ocean.

Photo Index –

2006: 201-7489 (T 13-18) 2000: 201-2196 (U 13-19) 1998: 45-1148 (P,Q 11-18)
1995: 201-2109 (U,V 14-19) 1989: 140-21 (P,Q 12-17) 1984: 135-628 (O,P 5-10)
1978: 94-1229 (R,S 8-13)

| | <u>State Plane Coordinates</u> | | <u>Lat/Long</u> |
|-------------|--------------------------------|-----------|---------------------------|
| Deep Well 1 | X: 2935411 | Y: 968648 | 36.3702167°, -75.8225619° |
| Deep Well 2 | X: 2935060 | Y: 969950 | 36.3738218°, -75.8236119° |

Quadrangle: Mossey Islands, NC (U.L.)

3. INVESTIGATION TYPE: CAMA
4. INVESTIGATIVE PROCEDURE: Dates of Site Visit – 11/6/2012
Was Applicant Present – Agent present
5. PROCESSING PROCEDURE: Application Received Complete – 2/21/2013
Office - Elizabeth City
6. SITE DESCRIPTION:
 - (A) Local Land Use Plan – Currituck
Land Classification from LUP – Full Service Area
 - (B) AEC(s) Involved: Ocean Hazard (Ocean Erodible & High Hazard Flood Areas)
 - (C) Water Dependent: No
 - (D) Intended Use: Public/Government
 - (E) Wastewater Treatment: Existing – N/A
Planned - N/A
 - (F) Type of Structures: Existing – Multiple groundwater wells within well field easement area, beach access walkways.
Planned - Installation of well pumps, wellheads, wellhead enclosures, associated electrical components, 10" HDPE pipeline and 10" PVC pipeline.
 - (G) Estimated Annual Rate of Erosion: 2 ft/yr
Source - NC Division of Coastal Management 2011 Erosion Rate Map

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7. HABITAT DESCRIPTION: [AREA, square feet (sf)]

| | DREDGED | FILLED | DISTURBED |
|----------------------------|---------|--------|------------|
| (A) Ocean Hazard AEC | | | ±35,500 sf |
| (B) Non-Vegetated Wetlands | | | |
| (C) Other | | | |

(D) Total Area Disturbed: ±35,500 sf (±0.815 acres)

(E) Primary Nursery Area: No

(F) Water Classification: SB Open to Shellfishing: No

8. PROJECT SUMMARY: The applicant proposes to complete construction on two existing wells then install a 10" pipeline via directional boring that will connect the wells to an existing raw water line. Upon completion, a 24 hour pump test will occur in which brackish water will be discharged directly into the Atlantic Ocean.

Project Setting

The site of the proposed development is located along the east end of Shad Street (SR 1409) extending north for ±1,600 feet within an existing well field that is located on Corolla Light Community Association property, Corolla Light S/D, Corolla, Currituck County, adjacent to the Atlantic Ocean.

The existing well field is located within the Yorktown aquifer on the landward side of a primary dune line within a deeded easement area. It should be noted that the majority of the wells within the well field are currently located within the 60' Oceanfront Setback. The oceanfront along this area is ±2,500' in length. The primary dune line varies in height from 18' to 25' within the proposed well construction areas and the first line of stable natural vegetation (FLSNV) is located at or near the crest of the dune line. Dune vegetation consists of sea oats, American beach grass and various herbaceous plants. The oceanward side of the dune line is a steep escarpment from the FLSNV to the flat beach profile resulting from Hurricane Sandy. The dunes extend landward of the FLSNV ±30' to a point where elevation changes become minimal. According to the 2011 long term erosion rate and setback factors, the erosion rate for this area is 2 ft/yr. The Ocean Erodible AEC is 145' landward of the FLSNV and the High Hazard Flood AEC extends ±800' landward of the FLSNV.

Existing structures within the project area include ±19 existing wells and ±7 beach access walkways. The adjacent beaches to the north of the project site are a continuation of the properties owned by the Corolla Light Community Association and include more wells and beach accessways. The adjacent property to the south of Shad Street is the location of a single family dwelling with a similar dune line. The waters of the Atlantic Ocean in this area are classified as SB by the Division of Environmental Management, and are closed to shellfish taking.

Development Proposal

Due to an expansion to the Southern Outer Banks Water Treatment Plant (WTP) in Corolla, an increase in water capacity from 2.1 million gallons per day (mgd) to 3.1 mgd is required to meet the future demands of the WTP. In order to meet the increase to the raw water supply, the applicant proposes to complete construction on two existing deep wells and then connect them to an existing raw water pipe.

The two existing deep wells (Deep Well #1, Deep Well #2) were installed in 2006 and at that time only well casings and screens were installed. Both wells are located within the 60' Oceanfront Setback area, being 32' and 41' landward of the FLSNV at Deep Wells #1 and 2, respectively. For each well, completion of construction includes a 6" PVC Certa-Lok drop pipe; a stainless steel submersible pump; construction of the wellhead; an 8'x6' concrete pad for the wellhead and wellhead enclosure; a 480-volt, 3-phase electrical service; manual transfer switch with plug for a portable, standby generator; pump control panel; and an RTU panel to connect the well to the Southern Outer Banks Water Service telemetry system. Construction of the wellhead will involve installation of a well seal, turbine flow meter, isolation valve, check valve, sample tap, level probe, pressure gauge, and 6" flanged stainless steel piping. The wellhead enclosure will contain the wellhead, air release valve, sample valve, and level sensor and will measure 6 feet in length, 5 feet in width, and 4 feet in height. An 8'x5' precast concrete vault will be installed landward of the 60' Oceanfront Setback to house a flow meter, check valve, and isolation valve. The wells will be connected to the vaults with a 10" HDPE pipe via open cut trenching.

Fill material will be brought in to elevate the area surrounding the wells and vaults above the 100-year flood elevation in order to comply with FEMA regulations. At the location of Deep Well #1, the installation of the wellhead will require grading a maximum area of $\pm 46' \times 30'$ on the backside of the primary dune.

Approximately 1,370' of 10" HDPE pipeline will be installed to convey raw water from Deep Well #2 to the vicinity of Deep Well #1 via directional boring in order to avoid impacts to the dunes and existing beach accessways. The two wells will then be tied to the existing raw water transmission pipe network. Approximately 760' of 10" PVC pipeline will be installed via open cut trenching from Deep Well #1 crossing to the south side of Shad Street and paralleling the street in a westerly direction where it will then connect to the existing pipeline at the intersection of Shad Street and Whalehead Drive. The excavated soil will be used to backfill the trench, and the excavated area will be returned to the existing grade and elevation. The pavement will be repaired following installation of the pipeline under Shad Street.

Upon completion of the wells, a 24-hour pump test will be conducted. Brackish groundwater produced from the test will be discharged directly into the Atlantic Ocean via flexible hoses placed over the dunes and the flat beach. After the 24-hour test, no additional discharges will occur.

Anticipated Impacts

- The disturbance within the Ocean Hazard AEC will be $\pm 35,500$ sf (± 0.815 acres).

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- The elevating of the wellheads and vaults will result in fill material being placed within an area of $\pm 4,180$ sf at Deep Well #1 and $\pm 2,803$ sf at Deep Well #2.
- At Deep Well #1, installation of the wellhead will require grading a maximum area of $\pm 1,380$ sf on the backside of the primary dune.
- The 24-hour pump test may result in temporary water degradation within the adjacent waters of the Atlantic Ocean.

Submitted by: Ron Renaldi

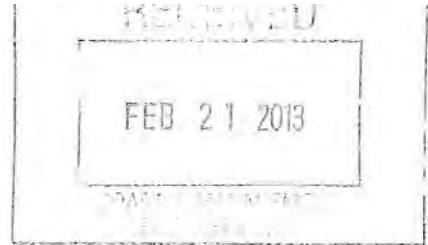
Date: 3/6/2013

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Additional Information Required for Permit Application



6a. Project Narrative:

Currituck County, North Carolina, is pursuing an expansion to the existing Southern Outer Banks Water Treatment Plant (WTP), located in Corolla, North Carolina. Currituck County acquired several water systems formerly owned by a private utility, Carolina Water Service, Inc. of North Carolina, resulting in an increase in necessary capacity from 2.1 million gallons per day (mgd) to 5.1 mgd. The proposed expansion will occur in two phases, from 2.1 mgd to 3.1 mgd and then from 3.1 mgd to 5.1 mgd. In order to increase the raw water supply to meet the future 3.1-mgd capacity of the WTP, two existing deep wells are proposed to be connected to the raw water system as described in the following paragraphs.

Two wells in the Yorktown aquifer are planned to supply raw water to the reverse osmosis system of the Southern Outer Banks WTP, supporting the expansion from 2.1 mgd to 3.1 mgd. The wells are located in Corolla Light (Figures 1 and 2). The well casings and screens were installed in 2006 by Carolina Water Service, Inc. and were acquired in 2011 by Currituck County. The wells are located within the required 60-foot setback area, being 32 feet and 41 feet landward from the stable line of vegetation at Deep Wells #1 and 2, respectively. The proposed project includes connecting the wells to each other and completing the construction of the two wells by installing pumps, constructing well heads, and providing electrical service and controls to each well (Drawings M2, M3, and M4). A 10-inch HDPE pipeline is proposed along the dune line to convey raw water from Deep Well No. 2 to the vicinity of Deep Well No. 1. The proposed pipeline will be installed via horizontal directional drill in order to avoid impacts to the dunes and six existing elevated boardwalks for beach access. Completion of well construction will include an enclosure for each wellhead and a precast concrete vault at each well, which will contain valves and a flow meter.

The two wells will be tied into the existing raw water transmission pipe network. A 10-inch PVC pipeline is proposed to cross to the south side of Shad Street, turn west to follow Shad Street, and connect to the existing pipeline at the intersection of Shad Street and Whalehead Drive. The proposed pipeline will be installed via open cut trench from the dune area under Shad Street and along Shad Street to the tie-in location. The excavated soil will be used to backfill the trench, and the excavation area will be returned to the existing grade and elevation. The pavement will be repaired following installation of the pipeline under Shad Street.

The proposed wells and HDPE pipeline connecting the wells will be placed within an existing easement located within two parcels owned by the Corolla Light Community Association. The proposed transmission pipeline under and along Shad Street will be located within the existing NCDOT right-of-way. An encroachment agreement between NCDOT and Currituck County has been executed and is enclosed.

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Howell, Jonathan

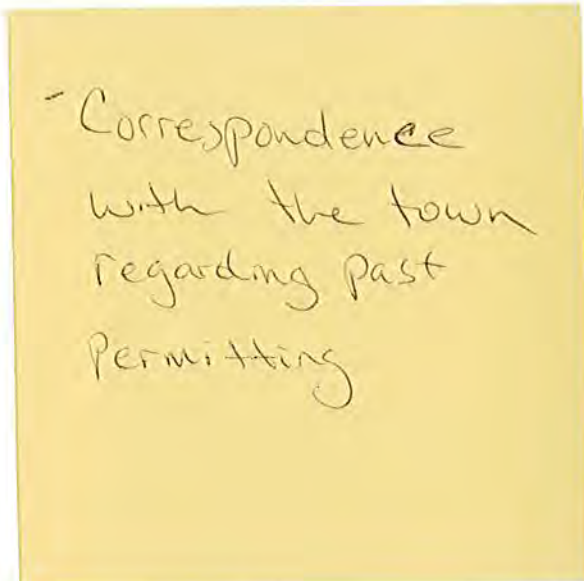
To: eric.weatherly@currituckcountync.gov
Subject: Currituck County (SOBWTP Wellfield)

Eric, as you know, DCM is heading towards denial of the CAMA Major Permit request to complete construction on the two existing wells that were started by Carolina Water System in 2006. Before we move forward with the denial, can you give me some information on how the existing wells were constructed and the background on the permitting of these structures. We are trying to determine if the existing structures received any type of CAMA Permit in the past as we will need it as part of the record moving forward. Thanks for your help in figuring all this out.

Jonathan Howell
Asst. Major Permits Coordinator

400 Commerce Avenue
Morehead City, NC 28557
(252)808-2808 (Ext. 211)
www.nccoastalmanagement.net

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.



- Correspondence
with the town
regarding past
Permitting

Howell, Jonathan

From: Eric Weatherly [Eric.Weatherly@CurrituckCountyNC.gov]
Sent: Friday, June 07, 2013 4:49 PM
To: Howell, Jonathan
Cc: Pat Irwin; David S. Briley (dbriley@hazenandsawyer.com)
Subject: RE: Currituck County (SOBWTP Wellfield)
Attachments: Corolla Light as-built plan sheet 5 of 5.pdf; Corolla Light Deep Wells-scan0001.pdf; Corolla Light Deep Wells Site Plan 11 28 11.pdf; Corolla Light Deep Well Information.pdf

Jonathan, we do not have any records of any CAMA permit applications for the two existing wells. I have enclosed easement and location maps as well as a DENR Public Water Supply Permit.

Eric T. Weatherly, P.E.
County Engineer



County of Currituck | Public Works Department
153 Courthouse Road, Suite 302 | Currituck, NC 27929
P: 252-232-6035 | F: 252-232-3298
Eric.Weatherly@CurrituckCountyNC.gov

From: Howell, Jonathan [mailto:jonathan.howell@ncdenr.gov]
Sent: Wednesday, June 05, 2013 8:39 AM
To: Eric Weatherly
Subject: Currituck County (SOBWTP Wellfield)

Eric, as you know, DCM is heading towards denial of the CAMA Major Permit request to complete construction on the two existing wells that were started by Carolina Water System in 2006. Before we move forward with the denial, can you give me some information on how the existing wells were constructed and the background on the permitting of these structures. We are trying to determine if the existing structures received any type of CAMA Permit in the past as we will need it as part of the record moving forward. Thanks for your help in figuring all this out.

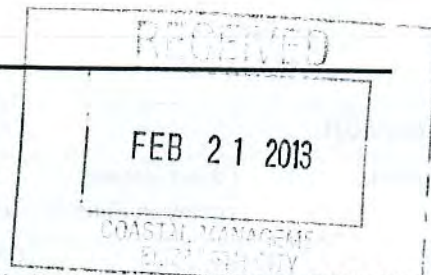
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APPLICATION for Major Development Permit

(last revised 12/27/06)



North Carolina DIVISION OF COASTAL MANAGEMENT

1. Primary Applicant/ Landowner Information

| | | | |
|---|----------------|--|-------------------|
| Business Name Currituck County | | Project Name (if applicable) Southern Outer Banks Water Treatment Plant Wellfield | |
| Applicant 1: First Name Eric | MI | Last Name Weatherly | |
| Applicant 2: First Name | MI | Last Name | |
| <i>If additional applicants, please attach an additional page(s) with names listed.</i> | | | |
| Mailing Address 153 Courthouse Road, Suite 302 | | PO Box | City Currituck |
| | | State NC | |
| ZIP 27929 | Country USA | Phone No. 252 - 232 - 6035 ext. | FAX No. - |
| Street Address (if different from above) | | City | State |
| | | ZIP | |
| Email Eric.Weatherly@currituckcountync.gov | | | |

2. Agent/Contractor Information

| | | | |
|---|--------------|--------------------------------------|--------------------------------------|
| Business Name Hazen And Sawyer, P.C. | | | |
| Agent/ Contractor 1: First Name Keven | MI | Last Name Arrance | |
| Agent/ Contractor 2: First Name | MI | Last Name | |
| Mailing Address 4011 WestChase Blvd, Suite 500 | | PO Box | City Raleigh |
| | | State NC | |
| ZIP 27607 | | Phone No. 1 919 - 833 - 7152 ext. | Phone No. 2 919 - 863 - 9350 ext. |
| FAX No. 919 833 1828 | Contractor # | | |
| Street Address (if different from above) | | City | State |
| | | ZIP | |
| Email karrance@hazenandsawyer.com | | | |

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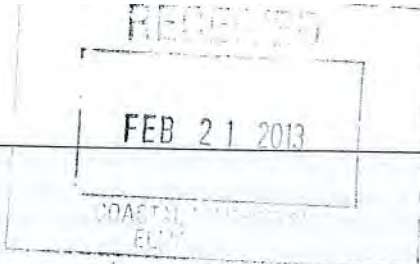
| 3. Project Location | | | | |
|--|--|--|-------------|-------------|
| County (can be multiple) Currituck | | Street Address between Shad Street and Franklyn Street | | State Rd. # |
| Subdivision Name Corolla Light | | City Corolla | State NC | Zip - |
| Phone No. - - ext. | | Lot No.(s) (if many, attach additional page with list) | | |
| a. In which NC river basin is the project located? Pasquotank | | b. Name of body of water nearest to proposed project Atlantic Ocean | | |
| c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Manmade <input type="checkbox"/> Unknown | | d. Name the closest major water body to the proposed project site. Atlantic Ocean | | |
| e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Currituck County | | |

| 4. Site Description | |
|---|---|
| a. Total length of shoreline on the tract (ft.) 1,840 | b. Size of entire tract (sq.ft.) 534,045.6 |
| c. Size of individual lot(s) 437,778, 96,268, (if many lot sizes, please attach additional page with a list) | d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) 6 to 26 feet above MSL <input type="checkbox"/> NHW or <input checked="" type="checkbox"/> NWL |
| e. Vegetation on tract Existing vegetation consists of sparse herbaceous plants. Herbaceous species observed include seaside aster, camphor weed (Heterotheca subaxillaris), coastal sandspur (Cenchrus incertus), and running beachgrass (Panicum amarum). | |
| f. Man-made features and uses now on tract The tracts contain frontal dunes with wooden boardwalks providing the adjacent residents access to the beach and existing groundwater wells. The tracts extend onto the beach, which is used for recreation activities. | |
| g. Identify and describe the existing land uses adjacent to the proposed project site. Adjacent properties include residential development, a community center with pools and ball courts, existing roadways, and the beach. | |
| h. How does local government zone the tract? Single-Family Residential - Outer Banks | i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA If yes, by whom? | |
| l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA | |

<Form continues on next page>

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m. (i) Are there wetlands on the site? Yes No

(ii) Are there coastal wetlands on the site? Yes No

(iii) If yes to either (i) or (ii) above, has a delineation been conducted?
(Attach documentation, if available) Yes No

n. Describe existing wastewater treatment facilities.
In Currituck County, there is a mix of sewered and unsewered areas. The residences that have sewer service area served by several privately owned wastewater treatment plants (WWTPs), including Ocean Sands, Monterey Shores, Corolla Light, and Village of Ocean Hills. In Corolla Light, the community adjacent to the wells, the houses are served by the Corolla Light WWTPs (No. 1 or 2), which are operated by Carolina Water Services of North Carolina.

o. Describe existing drinking water supply source.
Potable water service is available throughout the southern Outer Banks of Currituck County, from Village of Ocean Hills to the Currituck-Dare County line. In 2011, Currituck County acquired private water systems in Corolla Light, Pine Island, and Currituck Club from Carolina Water Services. The Southern Outer Banks Water Treatment Plant (WTP) will serve all of the southern Outer Banks of Currituck County.

p. Describe existing storm water management or treatment systems.
Stormwater in Corolla Light is treated by a series of connected stormwater ponds.

5. Activities and Impacts

a. Will the project be for commercial, public, or private use? Commercial Public/Government
 Private/Community

b. Give a brief description of purpose, use, and daily operations of the project when complete.
The purpose of the project is to increase the raw water yield that supplies the reverse osmosis system of the Southern Outer Banks WTP. The project's use is withdrawal of water from the Yorktown aquifer via groundwater wells. The daily operations of the project will be groundwater withdrawal via pumping through the two proposed wells. The groundwater will be transported via a proposed new pipeline, which will connect the two proposed wells to existing transmission mains that convey groundwater from existing wells to the Southern Outer Banks WTP.

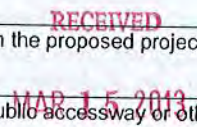
c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored.
The approximately 1,300 feet of HDPE pipe and electrical conduit will be installed via horizontal directional drill. Approximately 930 feet of C-900 PVC pipe will be installed via an open-cut trench. Equipment that is expected to be used onsite includes one of each of the following: backhoe, directional drill boring machine, mud truck, and support vehicle. More than one support vehicle may be necessary. Equipment will be stored onsite during construction. The equipment storage area will be located beyond the 60-foot setback line and outside of jurisdictional waters of the US.

d. List all development activities you propose.
Construction of the two wells was commenced by Carolina Water System in 2006. The well casings and screens are in place. The County proposes to complete the construction of the wells, including installation of pumps, construction of well heads, and provision of electrical service and controls to each well. For each well, completion of construction includes a 6-inch PVC Certa-Lok drop pipe; a stainless steel, submersible pump; construction of the wellhead; concrete pad for the wellhead and wellhead enclosure; a 480-volt, 3-phase electrical service; manual transfer switch with plug for portable, standby generator; pump control panel; and RTU panel to connect well to the SOBWS telemetry system. Construction of the wellhead will involve installation of a well seal, turbine flow meter, isolation valve, check valve, sample tap, level probe, pressure gauge, and 6-inch flanged, stainless steel piping. The wellhead enclosure will contain the wellhead, air release valve, sample valve, and level sensor and will measure 6 feet in length, 5 feet in width, and 4 feet in height. A precast concrete vault will be installed nearby to house a flow meter, check valve, and isolation valve. A 10-inch HDPE pipeline will be installed to convey raw water from Deep Well No. 2 to the vicinity of Deep Well No. 1, and a 10-inch PVC raw water pipeline will be installed from Deep Well No. 1 to the existing 14-inch raw water line at the intersection of Shad Street and Whalehead Drive.

e. Are the proposed activities maintenance of an existing project, new work, or both? Maintenance New Work Both
The proposed activities are completion of the construction that was commenced in 2006 by Carolina Water Service.

f. What is the approximate total disturbed land area resulting from the proposed project? 0.815 Sq.Ft or Acres

g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of? Yes No NA



h. Describe location and type of existing and proposed discharges to waters of the state.
Upon completion of construction, a pump test will be performed at each well. The pump test will last approximately 24 hours per well and is anticipated to result in the release of 1 mgd per well. A flexible pipe will be temporarily placed across the dune and beach to convey the pump test water from each well to the Atlantic Ocean, where the water will be discharged. The discharge water is anticipated to be brackish and therefore of lower salinity than the ocean water.

i. Will wastewater or stormwater be discharged into a wetland? Yes No NA
If yes, will this discharged water be of the same salinity as the receiving water? Yes No NA

j. Is there any mitigation proposed? Yes No NA
If yes, attach a mitigation proposal.

<Form continues on back>

6. Additional Information
In addition to this completed application form, (MP-1) the following items below, if applicable, must be submitted in order for the application package to be complete. Items (a) – (f) are always applicable to any major development application. Please consult the application instruction booklet on how to properly prepare the required items below.

a. A project narrative.

b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed.

c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site.

d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties.

e. The appropriate application fee. Check or money order made payable to DENR.

f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management.

| | |
|--|-----------|
| Name Nancy Odonoghue | Phone No. |
| Address 119 Sherwood St, #200, Greenville, SC 29601 | |
| Name Don Cheek, Property Manager | Phone No. |
| Address Corolla Light Resort, 1197-B Franklyn Street, Corolla, NC 27927 | |
| Name Jerry Jennings, P.E., Division Engineer | Phone No. |
| Address NC DOT, Highway Division 1, 113 Airport Dr, Suite 100, Edenton, NC 27932 | |

g. A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates.

h. Signed consultant or agent authorization form, if applicable.

i. Wetland delineation, if necessary.

j. A signed AEC hazard notice for projects in oceanfront and inlet areas. (Must be signed by property owner)

k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act.

7. Certification and Permission to Enter on Land

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit.

I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

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MAR 15 2013

APPLICATION for
Major Development Permit

Date 12-20-12

Print Name ERIC T. WEATHERLY

Signature *Eric T. Weatherly*

Please indicate application attachments pertaining to your proposed project.

DCM MP-2 Excavation and Fill Information

DCM MP-5 Bridges and Culverts

DCM MP-3 Upland Development

DCM MP-4 Structures Information



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EXCAVATION and FILL

(Except for bridges and culverts)



Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

Describe below the purpose of proposed excavation and/or fill activities. All values should be given in feet.

| | Access Channel (NLW or NWL) | Canal | Boat Basin | Boat Ramp | Rock Groin | Rock Breakwater | Other (excluding shoreline stabilization) |
|---------------------|-----------------------------|-------|------------|-----------|------------|-----------------|---|
| Length | | | | | | open Trenching | 985 ft |
| Width | | | | | | | 6 ft |
| Avg. Existing Depth | | | | | NA | NA | |
| Final Project Depth | | | | | NA | NA | |

1. EXCAVATION

This section not applicable

- a. Amount of material to be excavated from below NHW or NWL in cubic yards.
0
- b. Type of material to be excavated.
Native materials, primarily sand.
- c. (i) Does the area to be excavated include coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW SAV SB WL None
- (ii) Describe the purpose of the excavation in these areas:

- d. High-ground excavation in cubic yards.
1,332 cy will be excavated during construction in order to facilitate the installation of the water line, vault, and associated equipment. The excavated material will be used to backfill the excavated areas and as one source of fill material to be placed around the vault and well, as described in Section 4 below.

2. DISPOSAL OF EXCAVATED MATERIAL

This section not applicable

- a. Location of disposal area.

- b. Dimensions of disposal area.

- c. (i) Do you claim title to disposal area?
 Yes No NA
- (ii) If no, attach a letter granting permission from the owner.
- d. (i) Will a disposal area be available for future maintenance?
 Yes No NA
- (ii) If yes, where?

- e. (i) Does the disposal area include any coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW SAV SB WL None
- (ii) Describe the purpose of disposal in these areas:

- f. (i) Does the disposal include any area in the water?
 Yes No NA
- (ii) If yes, how much water area is affected?

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3. SHORELINE STABILIZATION

This section not applicable

(If development is a wood groin, use MP-4 – Structures)

- a. Type of shoreline stabilization:
 Bulkhead Riprap Breakwater/Sill Other: _____
- b. Length: _____
 Width: _____
- c. Average distance waterward of NHW or NWL:

- d. Maximum distance waterward of NHW or NWL:

- e. Type of stabilization material:

- f. (i) Has there been shoreline erosion during preceding 12 months?
 Yes No NA
 (ii) If yes, state amount of erosion and source of erosion amount information.

- g. Number of square feet of fill to be placed below water level.
 Bulkhead backfill _____ Riprap _____
 Breakwater/Sill _____ Other _____
- h. Type of fill material.

- i. Source of fill material.

4. OTHER FILL ACTIVITIES

This section not applicable

(Excluding Shoreline Stabilization)

- a. (i) Will fill material be brought to the site? Yes No NA
 If yes,
 (ii) Amount of material to be placed in the water 0
 (iii) Dimensions of fill area 50' x 55' (DW#1) and 35' x 40' (DW#2)
30' x 36' RAVE
 (iv) Purpose of fill
 The fill material will be used to elevate the area surrounding the wells and vaults above the 100-year flood elevation, in order to comply with FEMA regulations.

- b. (i) Will fill material be placed in coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW _____ SAV _____ SB _____
 WL _____ None
 (ii) Describe the purpose of the fill in these areas:

5. GENERAL

- a. How will excavated or fill material be kept on site and erosion controlled?
 Material excavated for the installation of the pipes will be returned as backfill. Excess excavated material and off-site fill material will be stockpiled onsite until the area surrounding the wells and vaults is graded, as described in Section 4 above. The stockpile area will be designated and surrounded by silt fencing.

- b. What type of construction equipment will be used (e.g., dragline, backhoe, or hydraulic dredge)?
 A backhoe is anticipated to be used for all excavation activities.

- c. (i) Will navigational aids be required as a result of the project?
 Yes No NA
 (ii) If yes, explain what type and how they will be implemented.

- d. (i) Will wetlands be crossed in transporting equipment to project site? Yes No NA
 (ii) If yes, explain steps that will be taken to avoid or minimize environmental impacts.

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Southern Outer Banks Water Treatment Plant Wellfield

Date

Project Name

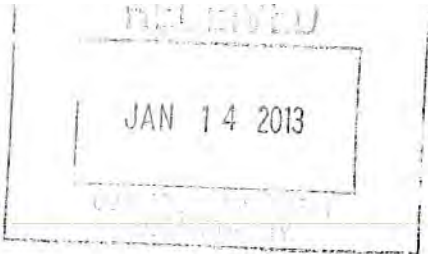
MAR 15 2013

ERIC T. WEATHERLY
Applicant Name
Eric T. Weatherly
Applicant Signature



UPLAND DEVELOPMENT

(Construction and/or land disturbing activities)



Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

GENERAL UPLAND DEVELOPMENT

- a. Type and number of buildings, facilities, units or structures proposed.
Two deep wells and two valve vaults are proposed within the project, a total of four structures.
- b. Number of lots or parcels.
The project will be located on two parcels.
- c. Density (give the number of residential units and the units per acre).
N/A
- d. Size of area to be graded, filled, or disturbed including roads, ditches, etc.
35,500 sq ft (0.815 acre)
- e. If the proposed project will disturb more than one acre of land, the Division of Land Resources must receive an erosion and sedimentation control plan at least 30 days before land-disturbing activity begins.
 - (i) If applicable, has a sedimentation and erosion control plan been submitted to the Division of Land Resources?
 Yes No NA
 - (ii) If yes, list the date submitted:
- f. List the materials (such as marl, paver stone, asphalt, or concrete) to be used for impervious surfaces.
Impervious surfaces will consist of concrete, fiberglass, and stainless steel.
- g. Give the percentage of the tract within the coastal shoreline AEC to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.
Less than 1%.
- h. Projects that require a CAMA Major Development Permit may also require a Stormwater Certification.
 - (i) Has a site development plan been submitted to the Division of Water Quality for review?
 Yes No NA
 - (ii) If yes, list the date submitted:
- i. Give the percentage of the entire tract to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.
Less than 1%.
- j. Describe proposed method of sewage disposal.
No sewage will be generated by the proposed project.
- k. Have the facilities described in Item (i) received state or local approval?
 Yes No NA
If yes, attach appropriate documentation.
- l. Describe location and type of proposed discharges to waters of the state (e.g., surface runoff, sanitary wastewater, industrial/commercial effluent, "wash down" and residential discharges).
Upon completion of the wells, a 24-hour pump test will be required by NC Division of Water Quality, Public Water Supply Section. Brackish groundwater produced from the well test will be discharged directly into the ocean during the test. No additional discharges are proposed.
- m. Does the proposed project include an innovative stormwater design?
 Yes No NA
If yes, attach appropriate documentation.

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m. Describe proposed drinking water supply source (e.g., well, community, public system, etc.)

The existing source of the drinking water supply for the surrounding area is a series of deep wells in the Yorktown aquifer as well as shallow wells in the surficial aquifer. The project proposes to add two additional deep wells, which will draw water from the Yorktown aquifer.

o. When was the lot(s) platted and recorded?

The lots were recorded in September 1993. The easement for the wells was recorded in August 2012.

n. (i) Will water be impounded? Yes No NA

(ii) If yes, how many acres? _____

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?

Yes No NA

| |
|--|
| Date |
| Southern Outer Banks Water Treatment Plant Wellfield |
| Project Name |
| Applicant Name |
| Applicant Signature |

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DCM-MHD CITY

Form DCM MP-3 (Upland Development, Page 2 of 2)

m. Describe proposed drinking water supply source (e.g., well, community, public system, etc.)

The existing source of the drinking water supply for the surrounding area is a series of deep wells in the Yorktown aquifer as well as shallow wells in the surficial aquifer. The project proposes to add two additional deep wells, which will draw water from the Yorktown aquifer.

o. When was the lot(s) platted and recorded?


The lots were recorded in September 1993. The easement for the wells was recorded in August 2012.

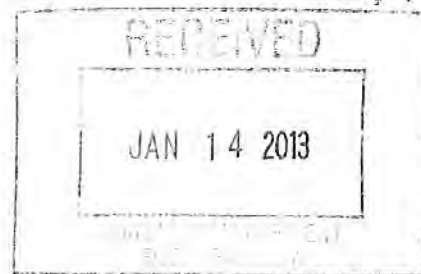
n. (i) Will water be impounded? Yes No NA

(ii) If yes, how many acres? _____

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?

Yes No NA

| | |
|---------------------|---|
| Date | 12-20-12 |
| Project Name | Southern Outer Banks Water Treatment Plant Wellfield |
| Applicant Name | ERIC T. WEAVER |
| Applicant Signature |  |



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DCM-MHD CITY



511 SW7130306

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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

March 8, 2013

MEMORANDUM

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TO: Scott Vinson, Stormwater Unit
Division of Water Quality - WARO

MAR 12 2013

FROM: Doug Huggett
Major Permits Processing Coordinator

D WARO

SUBJECT: CAMA/DREDGE & FILL Permit Application Review

Applicant: Currituck County

Project Location: East end of Shad Street, Corolla Light S/D, Corolla

Proposed Project: Southern Outer Banks Water Treatment Plant Wellfield Expansion

Please indicate below your agency's position or viewpoint on the proposed project and return this form by 03/29/13 to 400 Commerce Avenue, Morehead City, NC 28557. If you have any questions regarding the proposed project, please contact Ron Renaldi at (252) 264-3901. When appropriate, in-depth comments with supporting data are requested.

- REPLY:** This agency has no objection to the project as proposed.
- This agency has no comment on the proposed project.
- This agency approves of the project only if the recommended changes are incorporated. See attached.
- This agency objects to the project for reasons described in the attached comments.

SIGNED [Signature] **DATE** 4-9-13
Project exempted from stormwater requirements under project number SW 7130306.

1367 US 17 South, Elizabeth City, NC 27909
Phone: 252-264-3901 \ FAX: 252-264-3723 ; Internet: www.nccoastalmanagement.net

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JH

North Carolina Department of Environment and Natural Resources

Division of Water Quality

Charles, Wakild, P.E.

Director

John E. Skvarla, III

Secretary

Pat McCrory
Governor

April 9, 2013

Mr. Eric Weatherly, County Engineer
Currituck County
153 Courthouse Road, Suite 302
Currituck, NC 27929

Subject: **EXEMPTION from Stormwater Management Permit Regulations
CAMA Major- Dredge & Fill / Bulkhead / Pier
Southern Outer Banks Water Treatment Plant Wellfield
Expansion
Stormwater Project No. SW7130306
Currituck County**

Dear Mr. Weatherly:

The Washington Regional Office received a copy of your CAMA Major application for proposed wellfield expansion project, located at the east end of Shad Street, Corolla Light Subdivision, Corolla, Currituck County, NC on March 12, 2013. Staff review of the plans and specifications has determined that the project, as proposed, consists of activities that will not pose surface water quality threats from stormwater runoff since no significant new impervious area is proposed.

The Director has determined that projects that are reviewed and approved by the Division as not posing water quality threats from stormwater runoff should not be subject to the stormwater management permitting requirements of 15A NCAC 2H.1000 and SL 2008-211. For this reason, we are informing you by way of this letter that your project will not require a State Stormwater management permit at this time.

The stormwater rules require the Division to permit the common plan of development, therefore, any future development on the property, regardless of whether a SEC plan or CAMA Major permit is also required, will require a Stormwater Management Permit application and permit issuance from the Division of Water Quality prior to any construction. Any construction on the subject site, prior to receipt of the required permit, will constitute a violation of 15A NCAC 2H.1000 and SL 2008-211 and may result in appropriate enforcement actions by this Office.

Please keep in mind that this determination does not affect your legal requirements to obtain other permits which may be required by the Division of Water Quality, the Division of Land Resources, Coastal Area Management Act or any other Federal, State or Local Government.

Please reference the Stormwater Project Number above on all correspondence. If you have any questions or need additional information concerning this matter, please contact Samir Dumpor at (252) 946-6481.

Sincerely,

Amy Adams
Regional Supervisor
Washington Regional Office

AA/ sd: K:ASD\ EXEMPTED\SW7130306
cc: ✓ Doug Huggett, DCM – Morehead
Washington Regional Office



North Carolina Department of Environment and Natural Resources
Division of Water Quality

Pat McCrory
Governor

Charles Wakild, P. E.
Director

John E. Skvarla III
Secretary

JL

April 22, 2013

DWQ Project # 13-0247
Currituck County

Eric Weatherly
Currituck County - WTP
153 Courthouse Road, Suite 302
Currituck, NC 27929

Subject: **NO WRITTEN CONCURRENCE REQUIRED**

Dear Applicant:

The Division of Water Quality (DWQ) has received a copy of your CAMA Major application. DWQ issues approvals in the form of a Water Quality Certification (WQC) in conjunction with the CAMA Major Permit and General Permit(s) 198000291 issued by the US Army Corps of Engineers (USACE). This Certification allows you to use the CAMA Major Permit when the Division of Coastal Management issues it.

In accordance with the attached General Certification #3900 (GC3900), the impacts described in your application do not require written authorization to utilize GC 3900. However, you are required to follow the conditions listed in the attached certification. You should get or otherwise comply with any other federal, state and local requirements before you go ahead with your project including (but not limited to) erosion and sediment control regulations. Please be advised that discharges of groundwater generated by well construction or other construction activities are deemed permitted pursuant to G.S. 143-215.1 (c).

This approval is for the purpose and design that you described in your application. If you change your project, you must notify us and you may be required to send us a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter and is thereby responsible for complying with all conditions. If total fills for this project (now or in the future) exceed one acre of wetland or 150 linear feet of stream, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h). This letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please telephone Roberto Scheller in the Washington Regional Office at 252-948-3940 or Karen Higgins of the Wetland, Buffer, Stormwater, Compliance and Permitting (Webscape) Unit at 919-807-6360.

Sincerely,

Roberto Scheller
Senior Environmental Specialist
Surface Water Protection Section

North Carolina Division of Water Quality
943 Washington Square Mall
Washington, NC 27889

Internet: www.ncwaterquality.org
Phone: 252-946-6481
FAX: 252-946-9215

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One
North Carolina
Naturally

March 3, 2012

Dear Sir,

I do have an objection
to the Deep Well #1 & need
to discuss the appearance of
the well & pipes.

Please call me at 864-380-1780

Thank you,

Nancy O'Donoghue

Nancy O'Donoghue
119 Sherwood St. #200
Greenville, SC 29601

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MAR 04 2013

DCM-MHD CITY



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

June 14, 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Currituck County c/o Eric Weatherly
Southern Outer Banks Water Treatment Wellfield
153 Courthouse Road, Suite 302
Currituck, NC 27929

Dear Mr. Weatherly:

This letter is in response to your application for a Major Permit under the Coastal Area Management Act (CAMA), in which authorization was requested to complete construction on two existing wells, and to install a 10" pipeline via directional boring to connect the wells to an existing raw water line. Processing of the application, which was received as complete by the Division of Coastal Management's Elizabeth City office on February 21, 2013, is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The proposed project is located within an area designated by the Rules of the Coastal Resource Commission (CRC) as an Ocean Hazard/ Ocean Erodible Area of Environmental Concern (AEC). As such, the proposed development is subject to 15A NCAC 07H.0306(a)(2), which states in part that *"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."*
- 2) 15A NCAC 07H .0306(a)(2) states in part that *"The ocean hazard setback is established based on the following criteria"* and 15A NCAC 07H .0306(a)(2)(I) states: *"Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;"*

400 Commerce Avenue, Morehead City, North Carolina 28557
Phone: 252-808-2808 \ FAX: 252-247-3330 \ Internet: www.nccoastalmanagement.net

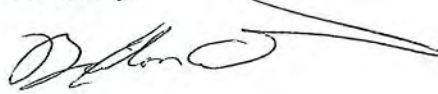
- 3) The types of development subject to the exceptions referenced in 15A NCAC 07H .0309 that are permittable seaward of the setback are listed as: *“(1) campsites; (2) driveways and parking areas with clay, packed sand or gravel; (3) elevated decks not exceeding a footprint of 500 square feet; (4) beach accessways consistent with Rule .0308(c) of this Subchapter; (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less; (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less; (7) temporary amusement stands; (8) sand fences; and (9) swimming pools.”*
- 4) The two existing deep wells appear to have been partially constructed in 2006, although the Division can find no evidence that a CAMA permit was ever authorized for the construction of the wells. Currently only the well casings and the screens have been installed.
- 5) For each well, the proposal consists of the construction of a concrete apron, piping, pumps, electrical service, and associated accessory items.
- 6) As indicated on the plat submitted with the original permit application, much of proposed development on Deep Well 1 and Deep Well 2 would be located seaward of the 60' setback and are not exempt under 15A NCAC 07H .0309.
- 7) Based upon the findings outlined above, the proposed project has been determined to be inconsistent with 15A NCAC 07H.0306(a)(2)(I).

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

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

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

Sincerely,



Braxton C. Davis
Director

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

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WATER RESOURCE INVESTIGATION

FOR

SOUTHERN OUTER BANKS

CURRITUCK COUNTY, N.C.

Volume I

Analysis and Models

**March 23, 2001
Revised May 21, 2001**

Prepared in Support of: McDowell & Associates, P.A.

**EDWIN ANDREWS & ASSOCIATES, P. C.
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May 21, 2001

Mr. W. P. McDowell, P.E.
McDowell & Associates
P.O. Box 391
Elizabeth City, N.C. 27909

Re: Submittal Water Resource Investigation - EAA -20 - 00
Southern Outer Banks Area, Currituck County, N.C.

Dear Mr. McDowell:

Enclosed is the report entitled "Water Resource Investigation for Southern Outer Banks, Currituck County, North Carolina." Based on our previous conversations, information that you have provided me, and my previous 20 years of experience in evaluating the ground water resources on the Currituck southern outer banks, this report has been prepared with the following concepts in mind:

1. Currituck County has been planning for over ten years to build a primary potable water system on its southern outer banks(SOBWS) distinct and separate from its mainland water system.
2. The purpose of this system is to provide an alternative water source for those areas without central water; provide emergency water for those areas with central water; and fulfill the requirements of a 1987 settlement agreement between Currituck County and Coastland Development for providing a long term and reliable potable water supply for the Ocean Sands Water and Sewer District.
3. This project is being built to help eliminate existing and potential future issues with on lot septic tank systems and inadequate surface water drainage conditions affecting the quality of the on lot shallow wells in areas without central water systems.
4. Due to the 1987 Coastland Settlement Agreement, SOBWS will be unique in that the raw water to be treated for the Ocean Sands Water and Sewer District property owners must originate within the Ocean Sands area on property provided by Coastland Development in the open space areas. Raw water for all other SOBWS customers must originate outside of the Ocean Sands Water and Sewer District area. This requirement necessitates the identification and development of two distinct and separate raw water supplies.
5. The proposed service area for the SOBWS will be from the Ocean Hill area south to the Dare County line. The initial areas to be served in Phase 1 will be The Villages at Ocean Hill; Section 1, Ocean Hill; Whalehead Beach; Ocean Sands Water and Sewer District; and Sections A, B, C of Ocean Sands PUD.
6. The ultimate treatment plant size for SOBWS is 3MGD. Phase 1 is projected to be 1.5MGD. The plant will have conventional (removal of iron & manganese etc) as well as reverse osmosis treatment capability.

Mr. W. P. McDowell, P.E.
Re: Submittal Water Resource Investigation - EAA -20 - 00
Southern Outer Banks Area, Currituck County, N.C.
May 21, 2001
page 2

7. The Ocean Sands Water and Sewer District is projected to need approximately 50% or 1.5MGD of the ultimate 3MGD SOBWS capacity and the balance of the capacity will be used for SOBWS customers outside of the OSWSD.
8. Currituck County has and will continue to investigate with Dare County areas of mutual concern and benefits for a connection between their two respective water systems.
9. This project is being designed to be environmentally sensitive to the fragile Currituck County southern outer banks including the marsh and wetlands areas as well as the Currituck Sound

This analysis includes the test drilling of twenty two sites, analysis of the well data and a MODFLOW simulation of the investigated aquifer to evaluate the reliability of each aquifer.

In the model, I tried to stress the aquifers for fifteen years at a greater rate than I finally recommended, in order to provide a slim margin for conservatism. Additionally, the model begins using full build out (two million gallons per day) after 5 years (first five years model time at half capacity - one million gallons per day). The model takes into account the seasonal usage patterns and it provides a sustainable supply. The model reflects full build out at the sixth year. At the present time the current proposed service area is approximately 50% built out. The average growth rate over the past ten years in Oceans Sands has been approximately 7%. The model identifies some limitations for a pumping period of 15 years after final build out. Well efficiency, water resource potential, well and well field management all affect the final amount of water obtained.

In the aquifer test analysis and modeling I was hoping that I would find evidence of some source of significant recharge to the Yorktown Aquifer A significant source of recharge to the Yorktown Aquifer was not identified. Therefore, I have not recommended the Yorktown Aquifer as the sole major future supply of the water needed for SOBWS. The SOBWS area will also need to rely on the Surficial Aquifer as the rechargeable source, supplying water in conjunction with the Yorktown Aquifer.


Long range plans for SOBWS should be to consider augmenting the Yorktown Aquifer through the concept of "ASAR - Aquifer Storage and Recovery". SOBWS should develop its potential shallow water at the proposed RO site. Sections A, B, and C of Oceans Sands and Whalehead Beach area to accommodate this initiative.

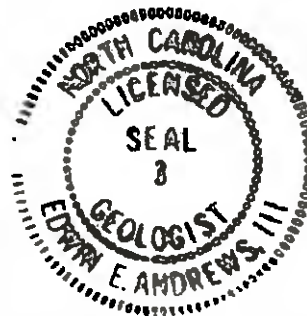
Previous and current evaluations indicate that to sustain the Ocean Sands Water and Sewer District ultimate water needs that it will need to continue to use its 5 existing well fields and develop 2 well fields in Section T (Primrose), an additional well field for the future Section G and a future well field in Section X.

For the planning purposed, an approximate two million gallon per day supply can be expected from the Yorktown Aquifer, as well as one and one half million gallons per day from the surficial aquifer in the Ocean Sands Water and Sewer District existing and future areas and one million gallons per day from the surficial aquifer in SOBWS service areas outside of the OSWSD area. However, salinity will increase over time in both aquifers. In this report, I have recommended common methods of controlling salt water intrusion, providing for indefinite sustainability.

Please contact my office if you have any questions.

Very truly yours,
Edwin E. Andrews III, P.G.


EDWIN ANDREWS & ASSOCIATES, P.C.
Consulting Hydrogeologists
EEA/sba



EXECUTIVE SUMMARY:

This report is a regional water supply and water management evaluation completed for Currituck County, North Carolina's proposed Southern Outer Banks Water System(SOBWS). The SOBWS is planning to build a 3 MGD system. The system will be built in phases with Phase 1 being 1.5MGD. The projected volume of three million gallons per day is for full build out conditions consisting of a 1.5MGD supply needed for the Ocean Sands Water and Sewer District(OSWSD) and a 1.5MGD supply needed for SOBWS customers not living in the OSWSD. The project service area is generally described as being from the Dare County line north to the Ocean Hill area.

A court ordered settlement agreement in 1987 between Currituck County and Coastland Corporation the developer of the Ocean Sands PUD, requires that the raw water resources in the Ocean Sands Water and Sewer District can only be used for the property owners in the Ocean Sands Water and Sewer District. Therefore SOBWS is developing one raw water source for all of its customers outside of Ocean Sands and Ocean Sands provides its own raw water for SOBWS to treat and return to Ocean Sands.

This water resource investigation is an analysis of a test drilling program of two distinct aquifers in the area to be serviced by SOBWS. Test wells were drilled at 22 sites extending from Northern Ocean Hill southward to the Currituck County Beach Access Site south of Ocean Sands Section T (Primrose Beach). Initially, five sites were investigated to determine the potential for a ground water supply from two aquifers. The uppermost is the Surficial Aquifer which is typically 60 feet deep in the southern area and only less than 20 feet in the area north of Whalehead Beach. The second aquifer is the Yorktown Aquifer encountered from 180 to 220 feet below land surface.

The Surficial Aquifer is currently used by most of the developments in the area as a fresh water source. There have been occurrences of salt water intrusion in these shallow wells, therefore, desalinization will become more necessary in the future for the surficial aquifer. The Yorktown Aquifer is currently used with a reverse osmosis plant for the Ocean Hill Development. The water in the Yorktown Aquifer contains brackish water that will require future desalinization.

Information for this report has also been obtained from Edwin Andrews & Associates, P.C. previous evaluations including "Water Resource Evaluation for Ocean Sands Subdivision, Tracts "X" "F" and "T" Currituck County, N.C., November 15, 1996 which focused on the Surficial Aquifer which serves the Ocean Sands Water and Sewer District; as well as from previous reports we prepared concerning the surficial aquifer for Monterey Shores Development, Currituck Club Development, Whalehead Club, Corolla Light Development, Tim Buck II, and the Pine Island Development.

The evaluation of the test well results and modeling efforts leads to the following recommendations and conclusions:

1. The OSWSD has sufficient water to meet their projected requirements needed to send raw water to the SOBWS water plant for treatment and returned to OSWD for consumption. Together with the existing five well fields at Ocean Sands, the three well fields evaluated in the "Water Resource Evaluation for Ocean Sands Subdivision, Tracts "X" "F" and "T" Currituck County, N.C., November 15, 1996 should be developed to meet future demands of the OSWSD. These three additional areas include two well fields in Section T(Primrose), one field for the future Section G and a wellfield area in Section X. The development of these three new wellfield areas in the near future will provide a management tool to minimize the salt water intrusion already experienced in the summer in wellfields no 4 and 5, by dispersing the withdrawal. The estimated sustainable supply is two million gallons per day for the OSWSD existing and future areas.
2. Develop the Yorktown Aquifer in the vicinity of the Whalehead Club and Ocean Hill Development and north Whalehead Beach area for a two million gallon per day supply. This supply will probably experience two types of salt water intrusion. There will be seasonal salt water intrusion similar to that identified by the 30 day pump test. The second type of salt water intrusion will be a net chloride increase from pumping season to pumping season due to long term overpumping, where withdrawal exceeds recharge. The 20 year model indicating overpumping is based on full capacity (two million gallons per day) after build-out beginning after the fifth year. For the period of the first five years of the model, the pumping is based on one million gallons per day (half capacity). Therefore time to full build out must be taken into account when estimating the total time projected for salt water intrusion to degrade the quality of the water withdrawn. Currently, OSWSD has been growing at an average ten year rate of approximately 7% per year.
3. The Surficial supply will be limited during periods of drought, while the Yorktown Aquifer will be limited as a continuous source because of drawdown and salt water intrusion. The Yorktown Aquifer will best function as a storage reservoir to be used to augment during periods of high demand and drought.
4. The surficial supply has excess water during the winter months. Consideration should be made for "ASAR - Aquifer Storage and Recovery" using the excess water from the surficial aquifer during the winter months. At the early stages of growth for SOBWS, this will not be important.
5. As growth occurs, a pilot ASAR program should be implemented at the proposed water treatment plant site. Injection cycles of treated water should be pumped into the Yorktown Aquifer during the winter months. Development of the Yorktown injection well(s) should include pumping cycles during this injection period. The water quality of the Yorktown Aquifer should be monitored to determine the reduction of chlorides around the injection well. From this water quality information, summer withdrawal patterns can be established. As aquifer storage and recovery is

- documented practical, the best area for injection will be in the vicinity of the Whalehead Club and Ocean Hill - at the Yorktown Production well sites.
6. The surficial aquifer is an important source of water because of rainfall recharge, which restores the aquifer each winter. The water pumped for water supplies will not be discharged to surface water. Rather all of the water recharges the aquifer as part of the base flow from the surficial aquifer to the Currituck Sound and to the Atlantic Ocean. Treatment and management of this water to reclaimed status will help to protect the surficial aquifer. Irrigation of this reclaimed water on the Currituck Southern Outer Banks will augment aquifer recharge. Currently, Currituck Club is actively irrigating reclaimed water. Plans for water reuse are being considered for parts of Monterey Shores/TimBuck II, Ocean Hill, The Villages of Ocean Hill and parts of OSWSD.
 7. Location of the surficial well fields should take advantage of the water quality difference between the Atlantic Ocean and Currituck Sound. There is one limitation with the development of well fields shifted to the Currituck Sound side of the barrier island. If an inlet breach in the region occurs, the salinity of the Currituck Sound could increase dramatically.
 8. Strategic location of wellfields, confined aquifer withdrawals, and a proposed ocean outfall for the treatment plant brine concentrate discharge will minimize environmental issues relative to the sensitive marsh, wetlands, and the Currituck Sound.

This current report recommends the construction of two Yorktown Aquifer Production wells in the vicinity of the Whalehead Club, capable of producing one and one half million gallons per day. The management of this supply from the Yorktown Aquifer should be in conjunction with a substantial supply from the surficial aquifer. Each surficial well field should be configured to produce a minimum of 125 gallons per minute (180,000 gallons per day). Therefore, two well fields in the Whalehead Beach area, two well fields at the existing site near the proposed water plant and one well field in the Primrose Beach area will supply approximately one half million gallons per day to be used conjunctively with the Yorktown Aquifer wells, to provide a sustainable water supply for the SOBWS.

These two distinct water supplies (SOBWS and OSWSD), while requiring good management, can sustain a 3.0 million gallon per day water supply without the need to import water from the mainland or Dare County. I do not recommend the importing or exporting of the water resources from the area as part of a sustainable supply. Connection to outside water systems should be to provide a balance in the event of temporary needs due to a barrier island breach or storm event. Connection would be an engineering decision to provide redundancy.

There is a water balance that is applicable to a barrier island system. The equation: inflow = outflow + storage, is applicable to the SOBWS service area. As a system, the majority of water pumped from the two aquifers will be land applied back into the water table. Importing water will result in a greater need to provide artificial drainage. Exporting water will result in additional salt water intrusion and lower the water table surface during dry summer months. I recommend a balanced management plan.

I have emphasized the management of the Yorktown Aquifer with the Surficial Aquifer. This balance is offered for Currituck County. Other barrier island systems are beginning to rely heavily on the Yorktown Aquifer as the primary source. As development occurs south of Currituck County, a need for the development of a rechargeable source of water will become apparent. As development reduces the availability of Surficial Aquifer well sites and salt water intrusion occurs in the Yorktown Aquifer, Dare County may develop a shortage of water. While it appears that Dare County has adequate water at this time, it is possible that the water supply from the south would become inadequate in the future.

By combining the recommendations of the "Water Resource Evaluation for Ocean Sands Subdivision, Tracts "X" "F" and "T" Currituck County, N.C., November 15, 1996 with this report a sustainable balance will be provided. Based on these hydrogeologic evaluations, there is not a need to seek water from Dare County. Decisions to combine the two water supplies should be determined based on engineering hydraulics, rather than as a procurement for new water.

LIST OF FIGURES

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- FIG. NO. 2, CROSS SECTION CURRITUCK OUTER BANKS**
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- FIG. NO. 5A - V, AQUIFER TESTS RESULTS (VOLUME II)**
- FIG. NO. 6 A - M, MODFLOW CALIBRATION**
- FIG. NO. 7A - M, MODFLOW - YORKTOWN AQUIFER - EQUIPOTENTIALS - NORTH**
- FIG. NO. 8A - L, MODFLOW - YORKTOWN AQUIFER - DRAWDOWNS - NORTH**
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- TABLE 2 - COMPLETION REPORT**
- TABLE 3 - ELECTRIC LOGS**
- TABLE 4 - LITHOLOGY LOGS**
- TABLE 5/FIGURE 5 - AQUIFER TEST RESULTS**
- TABLE 6 - WATER QUALITY RESULTS**

1.0 INTRODUCTION:

1.1 Purpose and Scope:

This water resources development investigation for the Southern Outer Banks of Currituck County, North Carolina includes, aquifer identification; potential well yields and initial water quality analysis. Prior to this evaluation, the Yorktown Aquifer had been identified as a water resource for desalinization for the Ocean Hill Development. Part of this evaluation provided testing to determine the presence of suitable formations within the Yorktown Aquifer system for groundwater development of brackish water. This evaluation also tested the water table aquifer in order to locate a fresh water supply needed to augment the desalinization of the Yorktown Aquifer.

The purpose of the initial investigation as proposed on October 23, 1999, was to investigate five sites for potential water resource development. The testing on the initial five sites (alternate II) were 1) at the Whalehead Club, 2) at the parking lot at the intersection of Bonito St. and Whalehead Dr., 3) at the parking lot at the intersection of Sailfish Rd. and Whalehead Dr., 4) at the Ocean Sands Waste Water Treatment Plant site and 5) at the Beach Access Parking Area south of Primrose Beach.. Test wells were constructed in the surficial aquifer and the Yorktown Aquifer at each site. The wells were pump tested and water samples were collected from January through April 2000. After the laboratory analyses were completed, additional test sites were scheduled for the Yorktown Aquifer analysis using a single test well. The single well was pumped to obtain a short term specific capacity and collect a water sample. The additional wells were tested at the following sites:

CURRITUCK COUNTY WATER RESOURCE EVALUATION
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| | | |
|--------|--|--------------------------------|
| SITE A | OCEAN HILL PUMPING WELL - 2 NORTH | ONE WELL YORKTOWN AQUIFER |
| SITE B | OCEAN HILL PUMPING WELL - 1 EAST | ONE WELL YORKTOWN AQUIFER |
| SITE C | OCEAN HILL - PUMPING WELL - 1 CENTER | ONE WELL YORKTOWN AQUIFER |
| SITE D | OCEAN HILL R/O TREATMENT PLANT | ONE WELL YORKTOWN AQUIFER |
| SITE E | OCEAN HILL - WOODED SITE SOUTH | ONE WELL YORKTOWN AQUIFER |
| SITE F | WHALEHEAD CLUB SITE | SURFICIAL AND YORKTOWN AQUIFER |
| SITE G | SHAD AND WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE H | PERCH AND WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE I | BONITO AND WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE J | FIRE DEPT. AT WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE K | PROPOSED WATER TREATMENT SITE | ONE WELL YORKTOWN AQUIFER |
| SITE L | OCEAN SANDS WASTE WATER TREATMENT SITE | TWO WELLS YORKTOWN AQUIFER |
| SITE M | OCEAN SANDS PUMPING WELL - 5 NORTH | ONE WELL YORKTOWN AQUIFER |
| SITE N | OCEAN SANDS PUMPING WELL - 4 NORTH | ONE WELL YORKTOWN AQUIFER |
| SITE O | OCEAN SANDS PUMPING WELL - 1 CENTER | ONE WELL YORKTOWN AQUIFER |
| SITE P | OCEAN SANDS PUMPING WELL - 2 SOUTH | ONE WELL YORKTOWN AQUIFER |
| SITE Q | PRIMROSE BEACH SITE | ONE WELL YORKTOWN AQUIFER |
| SITE R | CURRITUCK CLUB WELL FIELD | ONE WELL YORKTOWN AQUIFER |
| SITE S | BEACH ACCESS SITE - SOUTH | SURFICIAL AND YORKTOWN AQUIFER |
| SITE T | STURGEON AND WHALEHEAD DR. | SURFICIAL AND YORKTOWN AQUIFER |
| SITE U | SAIL FISH AND WHALEHEAD DR. | SURFICIAL AND YORKTOWN AQUIFER |
| SITE V | OCEAN SANDS PUMPING WELL - 3 SOUTH | ONE WELL YORKTOWN AQUIFER |

1.2 Location and Geomorphology:

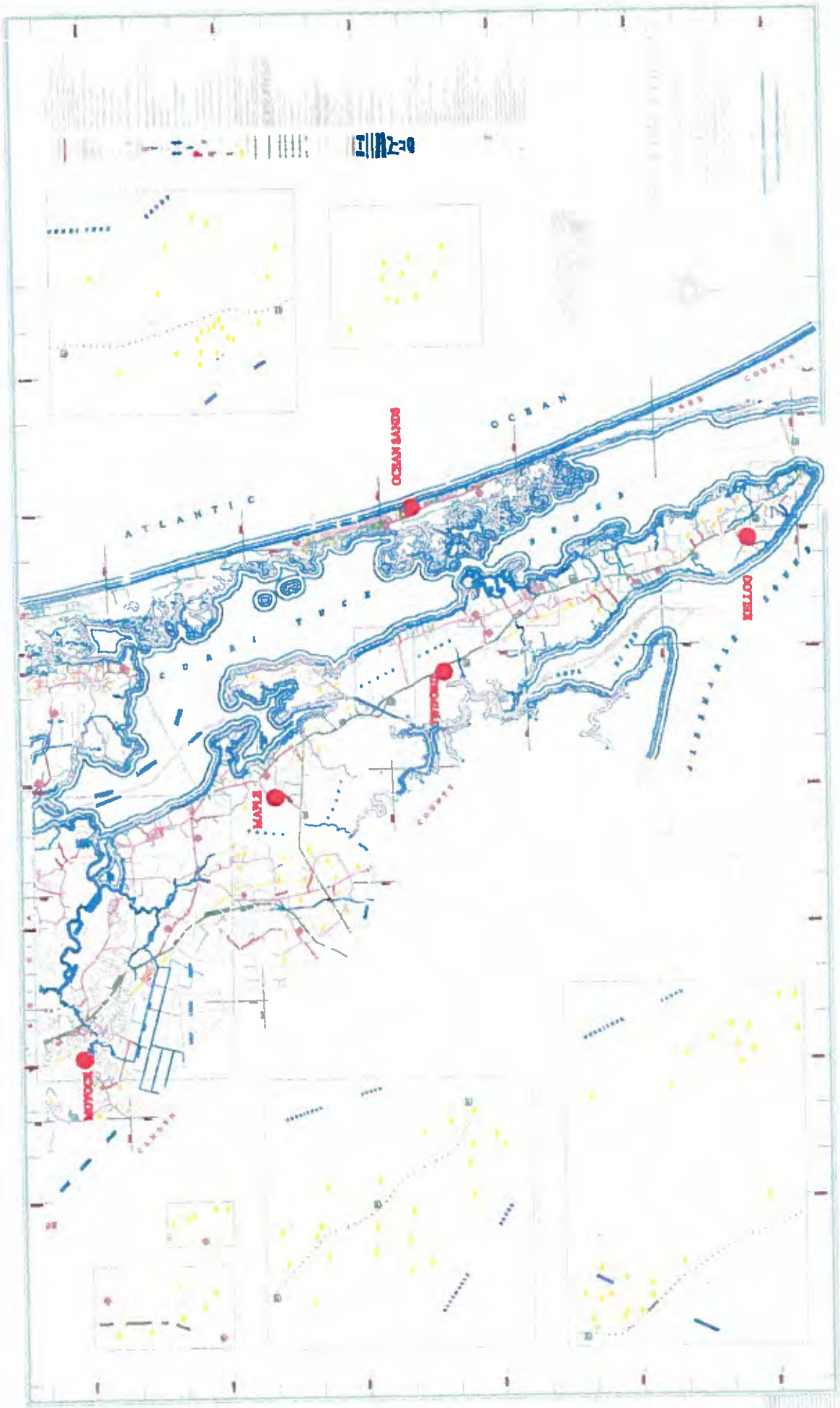
The Currituck Outer Banks is a regressive beach ridge sequence that extends from the southern end of Pine Island northward to the Virginia State Line, as a peninsula extending southward from Virginia Beach (Figure No. 1, Site Location Map). The portion of this regressive beach ridge that is investigated in this report extends from



See 8.5 by 11 inch map attached

the Pine Island Development to the south through the Ocean Hill Development to the north. The southern end of the site is located at the Beach Access Area south of Primrose Beach with well 1 - BA being located at North Carolina Planar Coordinate 2,944,381 feet easting and 935,464 feet northing (NAD 83).

The project area is approximately 8.4 miles long by 4,500 feet wide or 202,824,950 square feet oriented north northwest. The beach ridge complex is bounded by the Atlantic Ocean to the east and Currituck Sound to the west. The western portion of the barrier island consists of finer sediments compared to the relatively coarse sand deposits that form the beach, dunes and interdunal deposits of the regressive beach ridge complex. Essentially, the soils consist of Newhan, Corolla, Duckston and similar soil associations. The nature of these soils provides for efficient infiltration. Therefore, there are few regions that will have rainfall runoff under normal conditions.



1.3 Extent of Work:

The work efforts performed on each site were configured to obtain as much hydrologic information as possible using two inch diameter tests wells. The first five sites were tested using a test hole constructed through the Yorktown Aquifer (300 to 400 feet deep). Afterwhich, an electric log using 16/64 normal resistivity, spontaneous potential, single point resistivity and gamma profile was compared to the well drilling wash cuttings (drillers and lithology logs) in order to determine the location of the best water bearing sediments. Typically, two water bearing zones were identified from the logs. The uppermost water bearing zone was the surficial aquifer. The surficial aquifer is commonly called the water table aquifer, which receives rainfall recharge, and provides water to vegetation for transpiration. The second zone was a relatively sandy portion of the Yorktown formation from typically found from 180 to 250 feet below land surface. Two wells were constructed into each zone at the Whalehead Club; at the parking lot at the intersection of Sturgeon St. and Whalehead Dr.; and at the parking lot at the intersection of Sailfish Rd. and Whalehead Dr.. A third set of test well pairs was constructed into a sandy gravel deposit found at the Beach Access Parking Area south of Primrose Beach. At the Ocean Sands Waste Water Treatment Plant site two Yorktown wells were constructed, because of the previous evaluation of the surficial aquifer across S.R. 12 ("Water Resource Evaluation for Oceans Sands Subdivision, Tracts "X", "F" & "T", Currituck County, North Carolina," by Edwin Andrews & Associates, P.C., November 15, 1996).

During the investigation the availability of the Ocean Hill system provided interest in test drilling at each of the Ocean Hill Production sites. The test wells were tested using a test hole constructed through the Yorktown Aquifer (300 feet deep). Afterwhich, an electric log using 16/64 normal resistivity, spontaneous potential, single point resistivity and gamma profile was compared to the well drilling wash cuttings (drillers and lithology logs) in order to determine the location of the best water bearing sediments. The test well served as an observation well at Ocean Hill Pumping Well No. 1. The

CURRITUCK COUNTY WATER RESOURCE EVALUATION
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test drilling continued at two future Ocean Hill Production Well sites, all of the parking lots on Whalehead Drive in the Whalehead Subdivision, at the Ocean Sands Development Production Well sites, at the Currituck Club Well Field Site, at Primrose Beach. At each of these sites one two inch diameter test well was pumped for several hours to obtain a pumping capacity from which a specific capacity was estimated. At the end of each test water samples were collected.

| | ELOG | LITH | AQUIFER TEST | WATER SAMPLE | NO. OF 2" WELLS | NO. OF 6" WELLS | No. of 4" WELLS |
|--------|------|------|---------------------------|--------------|-----------------|-----------------|-----------------|
| SITE A | yes | yes | 6.34 gp.m. | Yes | 1 | 0 | 0 |
| SITE B | yes | yes | 75 gp.m. | yes | 1 existing | 1 existing | 0 |
| SITE C | yes | yes | 125 gp.m. | yes | 1 | 1 existing | 0 |
| SITE D | yes | yes | 12.8 gp.m. | yes | 1 | 0 | 0 |
| SITE E | yes | yes | 18.2 gp.m. | Yes | 1 | 0 | 0 |
| SITE F | yes | yes | 425 gp.m. | 3 yes | 4 | 1 | 0 |
| SITE G | yes | yes | 11.8 gp.m. | Yes | 1 | 0 | 0 |
| SITE H | yes | yes | 25.1 gp.m. | yes | 1 | 0 | 0 |
| SITE I | yes | yes | 3.4 gp.m. | yes | 1 | 0 | 0 |
| SITE J | yes | yes | 3.3 gp.m. | yes | 1 | 0 | 0 |
| SITE K | yes | yes | 11.45 gp.m. | yes | 1 | 1 | 0 |
| SITE L | yes | yes | 18.5 gp.m. | yes | 2 | 0 | 0 |
| SITE M | yes | yes | 4.8 gp.m. | yes | 1 | 0 | 0 |
| SITE N | yes | yes | 4.4 gp.m. | yes | 1 | 0 | 0 |
| SITE O | yes | yes | 3.4 gp.m. | yes | 1 | 0 | 0 |
| SITE P | yes | yes | 4.1 gp.m. | yes | 1 | 0 | 0 |
| SITE Q | yes | yes | 3.8 gp.m. | yes | 1 | 0 | 0 |
| SITE R | yes | yes | 27.7 gp.m. | yes | 1 | 0 | 1 |
| SITE S | yes | yes | 20.8 gp.m.-s/4.2 gp.m.-y | yes | 6 | 0 | 0 |
| SITE T | yes | yes | 25.1 gp.m.-s/22 gp.m.-y | yes | 4 | 0 | 0 |
| SITE U | yes | yes | 12.7 gp.m.-s/31.0 gp.m.-y | yes | 4 | 0 | 0 |
| SITE V | yes | yes | notest | yes | 1 | 0 | 0 |

The test drilling began in the early winter of 2000. After the first five sites were tested it was determined that two areas needed more detailed analysis. The first area had a potential yield at the Whalehead Yorktown Aquifer site that was estimated significantly greater than the 33 gallons per minute pumped during the original test. Therefore, a six inch diameter test well was constructed in the Yorktown Aquifer, with one additional observation well located toward Currituck Sound. This six inch well was pumped at 425 gallons per minute for 30 days to stress the aquifer, subsequently inducing salt water intrusion. The existing two Ocean Hill Production Wells (1 and 3) were pumped at 75 and 125 gallons per minute respectfully after two weeks of the 30 day stress test.

The second area that was added for a detailed analysis was the proposed Currituck County water treatment plant site. A six inch diameter pumping well and a two inch diameter observation well were constructed. The wells were not stressed; rather a centrifugal pump withdrew 11.4 gallons per minute for a short specific capacity test and water sample.

1.4 Report Format:

This report consists of two volumes. The first volume is the regional hydrogeologic analysis of the findings summarized from each site. The first volume compares and contrasts the two aquifers. A MODFLOW simulation was made to help to determine the safe yield for each aquifer. The first volume is segregated into five sections. Section 1 is the Introduction, Section 2 is the Geologic Framework, Section 3 is the Hydrologic and Modeling Analysis, Section 4 is Water Quality Analysis and Section 5 is the Conclusions and Recommendations. The second volume is the site specific analysis of each site. The information includes well logs, completion reports, geophysical logs, pumping tests, water quality results and a site summary for each site.

1.0 INTRODUCTION:

1.1 Purpose and Scope:

This water resources development investigation for the Southern Outer Banks of Currituck County, North Carolina includes, aquifer identification, potential well yields and initial water quality analysis. Prior to this evaluation, the Yorktown Aquifer had been identified as a water resource for desalinization for the Ocean Hill Development. Part of this evaluation provided testing to determine the presence of suitable formations within the Yorktown Aquifer system for groundwater development of brackish water. This evaluation also tested the water table aquifer in order to locate a fresh water supply needed to augment the desalinization of the Yorktown Aquifer.

The purpose of the initial investigation as proposed on October 23, 1999, was to investigate five sites for potential water resource development. The testing on the initial five sites (alternate II) were 1) at the Whalehead Club, 2) at the parking lot at the intersection of Bonito St. and Whalehead Dr., 3) at the parking lot at the intersection of Sailfish Rd. and Whalehead Dr., 4) at the Ocean Sands Waste Water Treatment Plant site and 5) at the Beach Access Parking Area south of Primrose Beach. Test wells were constructed in the surficial aquifer and the Yorktown Aquifer at each site. The wells were pump tested and water samples were collected from January through April 2000. After the laboratory analyses were completed, additional test sites were scheduled for the Yorktown Aquifer analysis using a single test well. The single well was pumped to obtain a short term specific capacity and collect a water sample. The additional wells were tested at the following sites:

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| | | |
|--------|--|--------------------------------|
| SITE A | OCEAN HILL PUMPING WELL - 2 NORTH | ONE WELL YORKTOWN AQUIFER |
| SITE B | OCEAN HILL PUMPING WELL - 1 EAST | ONE WELL YORKTOWN AQUIFER |
| SITE C | OCEAN HILL - PUMPING WELL - 1 CENTER | ONE WELL YORKTOWN AQUIFER |
| SITE D | OCEAN HILL R/O TREATMENT PLANT | ONE WELL YORKTOWN AQUIFER |
| SITE E | OCEAN HILL - WOODED SITE SOUTH | ONE WELL YORKTOWN AQUIFER |
| SITE F | WHALEHEAD CLUB SITE | SURFICIAL AND YORKTOWN AQUIFER |
| SITE G | SHAD AND WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE H | PERCH AND WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE I | BONITO AND WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE J | FIRE DEPT. AT WHALEHEAD DR. | ONE WELL YORKTOWN AQUIFER |
| SITE K | PROPOSED WATER TREATMENT SITE | ONE WELL YORKTOWN AQUIFER |
| SITE L | OCEAN SANDS WASTE WATER TREATMENT SITE | TWO WELLS YORKTOWN AQUIFER |
| SITE M | OCEAN SANDS PUMPING WELL - 5 NORTH | ONE WELL YORKTOWN AQUIFER |
| SITE N | OCEAN SANDS PUMPING WELL - 4 NORTH | ONE WELL YORKTOWN AQUIFER |
| SITE O | OCEAN SANDS PUMPING WELL - 1 CENTER | ONE WELL YORKTOWN AQUIFER |
| SITE P | OCEAN SANDS PUMPING WELL - 2 SOUTH | ONE WELL YORKTOWN AQUIFER |
| SITE Q | PRIMROSE BEACH SITE | ONE WELL YORKTOWN AQUIFER |
| SITE R | CURRITUCK CLUB WELL FIELD | ONE WELL YORKTOWN AQUIFER |
| SITE S | BEACH ACCESS SITE - SOUTH | SURFICIAL AND YORKTOWN AQUIFER |
| SITE T | STURGEON AND WHALEHEAD DR. | SURFICIAL AND YORKTOWN AQUIFER |
| SITE U | SAILFISH AND WHALEHEAD DR. | SURFICIAL AND YORKTOWN AQUIFER |
| SITE V | OCEAN SANDS PUMPING WELL - 3 SOUTH | ONE WELL YORKTOWN AQUIFER |

1.2 Location and Geomorphology:

The Currituck Outer Banks is a regressive beach ridge sequence that extends from the southern end of Pine Island northward to the Virginia State Line, as a peninsula extending southward from Virginia Beach (Figure No. 1, Site Location Map). The portion of this regressive beach ridge that is investigated in this report extends from



See 8.5 by 11 inch map attached

the Pine Island Development to the south through the Ocean Hill Development to the north. The southern end of the site is located at the Beach Access Area south of Primrose Beach with well 1 - BA being located at North Carolina Planar Coordinate 2,944,381 feet easting and 935,464 feet northing (NAD 83).

The project area is approximately 8.4 miles long by 4,500 feet wide or 202,824,950 square feet oriented north northwest. The beach ridge complex is bounded by the Atlantic Ocean to the east and Currituck Sound to the west. The western portion of the barrier island consists of finer sediments compared to the relatively coarse sand deposits that form the beach, dunes and interdunal deposits of the regressive beach ridge complex. Essentially, the soils consist of Newhan, Corolla, Duckston and similar soil associations. The nature of these soils provides for efficient infiltration. Therefore, there are few regions that will have rainfall runoff under normal conditions.

1.3 Extent of Work:

The work efforts performed on each site were configured to obtain as much hydrologic information as possible using two inch diameter tests wells. The first five sites were tested using a test hole constructed through the Yorktown Aquifer (300 to 400 feet deep). Afterwhich, an electric log using 16/64 normal resistivity, spontaneous potential, single point resistivity and gamma profile was compared to the well drilling wash cuttings (drillers and lithology logs) in order to determine the location of the best water bearing sediments. Typically, two water bearing zones were identified from the logs. The uppermost water bearing zone was the surficial aquifer. The surficial aquifer is commonly called the water table aquifer, which receives rainfall recharge, and provides water to vegetation for transpiration. The second zone was a relatively sandy portion of the Yorktown formation from typically found from 180 to 250 feet below land surface. Two wells were constructed into each zone at the Whalehead Club; at the parking lot at the intersection of Sturgeon St. and Whalehead Dr.; and at the parking lot at the intersection of Sailfish Rd. and Whalehead Dr.. A third set of test well pairs was constructed into a sandy gravel deposit found at the Beach Access Parking Area south of Primrose Beach. At the Ocean Sands Waste Water Treatment Plant site two Yorktown wells were constructed, because of the previous evaluation of the surficial aquifer across S.R. 12 ("Water Resource Evaluation for Oceans Sands Subdivision, Tracts "X", "F" & "T", Currituck County, North Carolina," by Edwin Andrews & Associates, P.C., November 15, 1996).

During the investigation the availability of the Ocean Hill system provided interest in test drilling at each of the Ocean Hill Production sites. The test wells were tested using a test hole constructed through the Yorktown Aquifer (300 feet deep). Afterwhich, an electric log using 16/64 normal resistivity, spontaneous potential, single point resistivity and gamma profile was compared to the well drilling wash cuttings (drillers and lithology logs) in order to determine the location of the best water bearing sediments. The test well served as an observation well at Ocean Hill Pumping Well No. 1. The

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test drilling continued at two future Ocean Hill Production Well sites, all of the parking lots on Whalehead Drive in the Whalehead Subdivision, at the Ocean Sands Development Production Well sites, at the Currituck Club Well Field Site, at Primrose Beach. At each of these sites one two inch diameter test well was pumped for several hours to obtain a pumping capacity from which a specific capacity was estimated. At the end of each test water samples were collected.

| | ELOG | LITH | AQUIFER TEST | WATER SAMPLE | NO. OF 2" WELLS | NO. OF 6" WELLS | No. of 4" WELLS |
|--------|------|------|---------------------------|--------------|-----------------|-----------------|-----------------|
| SITE A | yes | yes | 6.34 gp.m. | Yes | 1 | 0 | 0 |
| SITE B | yes | yes | 75 gp.m. | yes | 1 existing | 1 existing | 0 |
| SITE C | yes | yes | 125 gp.m. | yes | 1 | 1 existing | 0 |
| SITE D | yes | yes | 12.8 gp.m. | yes | 1 | 0 | 0 |
| SITE E | yes | yes | 18.2 gp.m. | Yes | 1 | 0 | 0 |
| SITE F | yes | yes | 425 gp.m. | 3 yes | 4 | 1 | 0 |
| SITE G | yes | yes | 11.8 gp.m. | Yes | 1 | 0 | 0 |
| SITE H | yes | yes | 25.1 gp.m. | yes | 1 | 0 | 0 |
| SITE I | yes | yes | 3.4 gp.m. | yes | 1 | 0 | 0 |
| SITE J | yes | yes | 3.3 gp.m. | yes | 1 | 0 | 0 |
| SITE K | yes | yes | 11.45 gp.m. | yes | 1 | 1 | 0 |
| SITE L | yes | yes | 18.5 gp.m. | yes | 2 | 0 | 0 |
| SITE M | yes | yes | 4.8 gp.m. | yes | 1 | 0 | 0 |
| SITE N | yes | yes | 4.4 gp.m. | yes | 1 | 0 | 0 |
| SITE O | yes | yes | 3.4 gp.m. | yes | 1 | 0 | 0 |
| SITE P | yes | yes | 4.1 gp.m. | yes | 1 | 0 | 0 |
| SITE Q | yes | yes | 3.8 gp.m. | yes | 1 | 0 | 0 |
| SITE R | yes | yes | 27.7 gp.m. | yes | 1 | 0 | 1 |
| SITE S | yes | yes | 20.8 gp.m.-s/4.2 gp.m.-y | yes | 6 | 0 | 0 |
| SITE T | yes | yes | 25.1 gp.m.-s/22 gp.m.-y | yes | 4 | 0 | 0 |
| SITE U | yes | yes | 12.7 gp.m.-s/31.0 gp.m.-y | yes | 4 | 0 | 0 |
| SITE V | yes | yes | no test | yes | 1 | 0 | 0 |

The test drilling began in the early winter of 2000. After the first five sites were tested it was determined that two areas needed more detailed analysis. The first area had a potential yield at the Whalehead Yorktown Aquifer site that was estimated significantly greater than the 33 gallons per minute pumped during the original test. Therefore, a six inch diameter test well was constructed in the Yorktown Aquifer, with one additional observation well located toward Currituck Sound. This six inch well was pumped at 425 gallons per minute for 30 days to stress the aquifer, subsequently inducing salt water intrusion. The existing two Ocean Hill Production Wells (1 and 3) were pumped at 75 and 125 gallons per minute respectfully after two weeks of the 30 day stress test.

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1.4 Report Format:

This report consists of two volumes. The first volume is the regional hydrogeologic analysis of the findings summarized from each site. The first volume compares and contrasts the two aquifers. A MODFLOW simulation was made to help to determine the safe yield for each aquifer. The first volume is segregated into five sections. Section 1 is the Introduction, Section 2 is the Geologic Framework, Section 3 is the Hydrologic and Modeling Analysis, Section 4 is Water Quality Analysis and Section 5 is the Conclusions and Recommendations. The second volume is the site specific analysis of each site. The information includes well logs, completion reports, geophysical logs, pumping tests, water quality results and a site summary for each site.

2.0 REGIONAL GEOLOGY:

2.1 Cretaceous and Early Tertiary Stratigraphy:

The regional geology of the Southern Currituck County Outer Banks evolved as sedimentary deposition on the Paleozoic basement complex. Several Cretaceous Formations are projected to be present beneath 1500 feet below land surface based test wells from the City of Chesapeake at Northwest River, from Moyock, N.C.D.W.R.; from the Twiford oil test well near Aydlette; from the Kellog Test Well near Harbinger, and from the Ocean Sands Test Site. The basement complex ranges from 4100 feet to more than 5300 feet through the region. The basement complex is unconformably overlain by the Lower Cretaceous formations. The Lower Cretaceous (Cape Fear Formation, Owens and Gohn (1985)). formations have not been evaluated as a potential water resource in Northeastern North Carolina, because of suspected chloride concentrations. However, there may be some future potential as an Aquifer Storage and Recovery reservoir in the future. The Cape Fear Formation is overlain by the Black Creek Formation and the Black Creek Formation is unconformably overlain by the Pee Dee Formation of the Late Cretaceous.

The water bearing sand deposits for the Cape Fear, Black Creek and Pee Dee Formations are utilized as drinking water aquifers in the Central Coastal Plain. However, the depths to these aquifers and chloride concentrations are projected to be relatively high on the Outer Banks of Currituck County. A 1500 foot test well was constructed at Ocean Sands to attempt to locate the upper portion of this Pee Dee Aquifer. The wells was not deep enough to reach the water bearing formations of the Cretaceous Formations.

The Paleocene Beaufort Formation was deposited unconformably on the Pee Dee Aquifer. The Beaufort Formation functions as a leaky confining layer in the Currituck Outer Banks Region. The

Eocene Castle Hayne Formation overlays the Beaufort Formation at a Depth of 950 to 1500 feet below land surface at Ocean Sands. The Castle Hayne Formation appears to be cemented sand and very fine shell fragments at Ocean Sands ("Hydrogeologic Investigation, Water Resources of a 1500 Foot Deep Test Well, Ocean Sands Subdivision" June 1991, Russnow, Kane & Andrews, Inc.).

The regional evolution of the post Eocene deposits were formed in the Albermarle Embayment which extended landward during high sea level transgressions (glacial melting during global warming) and retreated seaward during low sea levels regressions (glacial periods during cooling). The Eastover Formation consists of Miocene marine clay deposits (Ward, Lauck W. and Blackwelder, Blake W., *Stratigraphic Revision of Upper Miocene and Lower Pliocene Beds of the Chesapeake Group, Middle Atlantic Coastal Plain*: 1980, U.S.G.S. Geological Survey Bulletin 1482 - D).

2.2 Yorktown Formation:

A initial transgression formed the Sunken Meadow member of the Yorktown Formation (middle early Pliocene 4.0 to 3.8 million years before present)(Ward, Lauck W. and Blackwelder, Blake W., 1980). The Sunken Meadow consists of finer warm water sediments in the vicinity of the Currituck Outer Banks, with the Sunken Meadow shoreline thirty to forty miles to the west. This was followed by a sea level regression, which eroded significant portions of the Sunken Meadow Formation(Ward, Lauck W., Bailey, Richard H. and Carter, Joseph G. Chapter 16, "Pliocene and Early Pleistocene Stratigraphy, Depositional History, and Molluscan Paleobiogeography of the Coastal Plain," from The Geology of the Carolinas, Carolina Geological Society Fiftieth Anniversary Volume, edited by J. Wright Horton, Jr and Victor A. Zullo, 1991, Tennessee Press) .

Following the erosion another extensive marine transgression deposited the Rushmere and Mogarts Beach Members of the early late Pliocene (3.4 to 3.0 million years before present). At the outcrop areas these formations are basically shelly sand deposits. However, the deposits found in this

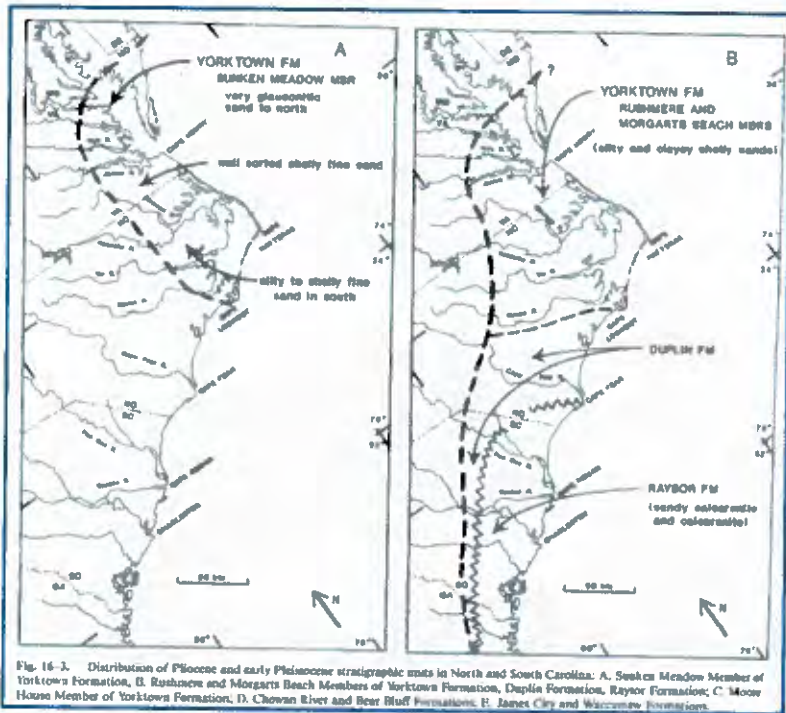


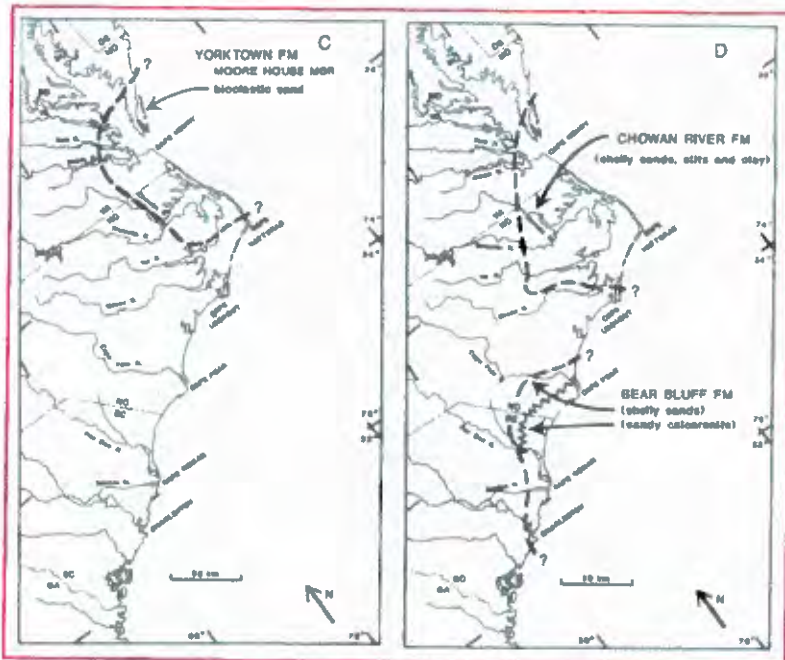
Fig. 16-2. Distribution of Pliocene and early Pleistocene stratigraphic units in North and South Carolina: A. Sunken Meadow Member of Yorktown Formation, B. Rushmere and Mogarts Beach Members of Yorktown Formation, Duplin Formation, Raybor Formation; C. Moore House Member of Yorktown Formation, D. Chowan River and Bear Bluff Formations, E. James City and Waccamaw Formations.

Location of Pliocene Transgressive Seas - A - Sunken Meadow and B - Rushmere/Mogarts Beach (Ward, Lauck, Bailey, Richard H. and Carter, Joseph G., 1991.)

House Member of the Yorktown Formation. Being eastward of the previous transgressions, the sediment transport energy in the vicinity of the Currituck Outer Banks should have been greater, resulting in coarser sediments. These sediments are overlain by Late Pliocene transgressive deposits (2.2 to 2.0 million years before present). These finer silts and clays form the overlying leaky confining

investigation beneath the current Currituck Outer Banks are silty sand with some shell fragments reflecting deeper sea deposits. During a period of 3.0 to 2.8 million years before present, the upper portion of the Mogarts Beach Member was eroded by a regression.

After which, a transgression extended to the vicinity of the Suffolk Scarp forming the Moore



Late Pliocene - Sea Location - Moore House Member (C) Formation (Ward, Lauck W., Bailey, Richard H. and Carter, Joseph G. 1991)

layer of the "Yorktown Aquifer." After review of the lithologic samples collected on the Currituck Southern Outer Banks from January 2000 to July 2000, it appears that the Moore House Member actually forms the Upper Yorktown Aquifer.

2.2 Recent and Pliestocene Formations:

The sea level fluctuations during the Pliestocene resulted in thin beds that were deposited and partially eroded. One of these deposits may have been the coarse sand/gravel bed encountered at a depth of 90 to 110 feet beneath much of the Currituck Outer Banks. A Pliestocene transgression resulted in shallow marine deposits above this thin layer.

After the last Pleistocene transgression, a Holocene to recent regression formed the current beach ridge complex. The beach ridge sediments consist of very well sorted fine to medium sand (0.15 to 0.2 mm median diameter sand). This sand is bimodal due to shore face deposition and aeolian redeposition of finer grained heavy mineral assemblages (0.08 to 0.12 mm median diameter heavy minerals) in a cross bedded pattern. These regressive beach ridge deposits extend from 15 feet in the Ocean Hill Development area to more than eighty feet in the Southern Monterey Shores area. The beach ridge deposits in the Ocean Hill area are underlain by fine grained marsh deposits. The marsh deposits extend from Ocean Hill to the middle of the Monterey Shores development and these deposits outcrop on the beach north of Ocean Hill.

3.0 HYDROGEOLOGY:

3.1 Hydrogeologic Framework:

The hydrogeologic framework of the Currituck County Southern Outer Banks consists of two water bearing zones that have unique characteristics that should be considered in the development of a water supply plan. The upper water bearing zone (Surficial Aquifer) is unique because natural recharge of rainwater and the discharge of groundwater to the Currituck Sound and Atlantic Ocean significantly varies seasonally. The lower water bearing zone (Yorktown Aquifer) consists of brackish water that is not readily recharged through the overlying confining clays. The following table provides a comparison of some of the favorable and unfavorable characteristics of each aquifer.

Surficial Aquifer Characteristics

| Favorable Characteristics | Unfavorable Characteristics |
|--|---|
| Rainfall Recharge | Drought Sensitive during Peak Demand Period |
| Basically Fresher Water than the Yorktown Aquifer | Susceptible to iron and surface contamination |
| Major Discharge is Vegetation - Seasonally - Evapotranspiration (ET) | Recharge is unpredictable |
| Possible source of usable salt water intrusion is Currituck Sound (+/-2000 mg/l) for well sites located to the west | Possible source of unsuitable salt water intrusion is Atlantic Ocean (+/-12,000 mg/l) for wells located to the east |
| Wells construction is relatively inexpensive | Well yields relatively low requiring more land |
| Wells are suitable for rehabilitation | Wells susceptible to iron bacteria encrustation |
| Aquifer thickness provides some storage on the east side of the barrier island south of Monteray Shores | Aquifer thickness limits yield on west side of barrier island north of Monteray Shores |
| Artificial recharge by water reuse will reduce the impact of well fields | Well head protection may be difficult to obtain in areas with on-site systems |
| Wells are basically inactive during winter, while the water table is highest - source of water that can be injected seasonally into the Yorktown | Chemical incompatibility with the Yorktown Aquifer will necessitate pre-treatment before injection |

Yorktown Aquifer Characteristics

| Favorable Characteristics | Unfavorable Characteristics |
|---|--|
| Storage extends beyond the barrier island limits | Salinity is variable from north to south |
| High yield from the Whalehead Club area to Ocean Hill | Low yield from the middle of Monteray Shores southward |
| Aquifer can serve as storage reservoir | Salt water intrusion expected seasonally |
| Aquifer can conjunctively augment surface supplies | Aquifer is not readily recharged |
| Some yield available at all surficial well sites for blending | Withdrawal comes from storage - at rates greater than recharge |
| Iron typically less than surficial aquifer | Iron is high - may inhibit desalinization |

3.1 Aquifer Test Results:

The surficial aquifer was tested in previous investigations for Monteray Shores Development, Currituck Club Development, Whalehead Club, Corolla Light Development, Tim Buck II, Pine Island Development and the Ocean Sands Development. Additional testing was performed at the Whalehead Club water supply well, Site S (Beach Access at the south end of Primrose Beach), Site T (Sturgeon St. & Whalehead Dr. in the Whalehead Beach Subdivision - "North Parking Lot"), and Site V (Sailfish St. & Whalehead Dr. in the Whalehead Beach Subdivision - "South Parking Lot"). The aquifer test results are contained in the Appendix (Volume II) for each site.

The results of aquifer tests are expressed as Transmissivity and Specific Yield. Transmissivity is defined as the hydraulic conductivity of one foot of the permeable aquifer material multiplied by the total thickness of the aquifer. On the outer banks the surficial sand aquifer has a hydraulic conductivity of approximately 50 feet per day. Inspection of the following table reveals that the estimated transmissivity for Ocean Hill is 400 square feet per day. Therefore, the aquifer thickness is estimated at 8 feet thick. The measured thickness of the surficial aquifer is only 10 to 14 feet throughout Ocean Hill, the Whalehead Club and on the southwestern edge of the barrier island into Monteray Shores.

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A buried clay layer truncates the surficial aquifer in this region. The buried clay appears to plunge from the north to the south, outcropping on the beach north of Ocean Hill. The clay lens disappears in the southern part of Monteray Shores development area, and the surficial aquifer thickens to more than 50 to 60 feet. The transmissivity increases accordingly.

The second determination from an aquifer test analysis is the specific yield or storativity. The specific yield is the water that can be drained from the pore space of the beach sediments. Near surface the specific capacity ranges from 0.15 to 0.25 for beach sand. This is the readily drained water from a total porosity of 40 to 45%. In deeper surficial aquifers the specific yield (storage coefficient) becomes water being released from storage between the grains. The values for deeper storage coefficients becomes less than shallow specific capacity.

Aquifer Characteristics Summary:

| | * - Estimated value | Yorktown | Yorktown | Surficial | Surficial |
|--------|--|-------------------------------|------------------------|-------------------------------|-------------------|
| | ** - Estimated from Previous Evaluations | Transmissivity sq. ft./day | Storage Coefficient | Transmissivity sq. ft./day | Specific Yield |
| SITE A | OCEAN HILL PUMPING WELL - 2 NORTH | 617 | .0001* | 400* | .15* |
| SITE B | OCEAN HILL PUMPING WELL - 1 EAST | 2290 | .0755 | 400* | .15* |
| SITE C | OCEAN HILL - PUMPING WELL - 1 CENTER | 1600 | .0001* | 400* | .15* |
| SITE D | OCEAN HILL R/O TREATMENT PLANT | 892 | .0001* | 400* | .15* |
| SITE E | OCEAN HILL - WOODED SITE SOUTH | 1500 | .0001* | 400* | .15* |
| SITE F | WHALEHEAD CLUB SITE | 4010 | .00158 | 218 | .000105 |
| SITE G | SHAD AND WHALEHEAD DR. | 926 | .0001* | 250* | .15* |
| SITE H | PERCH AND WHALEHEAD DR. | 110 | .0001* | 300* | .15* |
| SITE I | BONITO AND WHALEHEAD DR. | 67.9 | .0001* | 300* | .15* |
| SITE J | FIRE DEPT. AT WHALEHEAD DR. | 122 | .0001* | est. 1000 | .15* |
| SITE K | PROPOSED WATER TREATMENT SITE | 63.4 | .0001* | est. 800 | .15* |
| SITE L | OCEAN SANDS WASTE WATER TREATMENT SITE | 1560 | .00111 | 800* | .15* |
| SITE M | OCEAN SANDS PUMPING WELL - 5 NORTH | 141 | .0001* | 2000** | .26** |

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| | | | | | |
|--------|-------------------------------------|------|---------|--------|-------|
| SITE N | OCEAN SANDS PUMPING WELL - 4 NORTH | 126 | .0001* | 2000** | .26** |
| SITE O | OCEAN SANDS PUMPING WELL - 1 CENTER | 184 | .0001* | 2000** | .15** |
| SITE P | OCEAN SANDS PUMPING WELL - 2 SOUTH | 112 | .0001* | 2000** | .15** |
| SITE Q | PRIMROSE BEACH SITE | 102 | .0001* | 500* | .15* |
| SITE R | CURRITUCK CLUB WELL FIELD | 69.1 | .0001* | 500* | .15* |
| SITE S | BEACH ACCESS SITE - SOUTH | 203 | .000779 | 1790 | .116 |
| SITE T | STURGEON AND WHALEHEAD DR. | 1500 | .00116 | 342 | .0303 |
| SITE U | SAILFISH AND WHALEHEAD DR. | 532 | .000376 | 1540 | .012 |
| SITE V | OCEAN SANDS PUMPING WELL - 3 SOUTH | 70* | .0001* | 500* | .15* |

* - estimated & ** estimated from previous data

The transmissivity of the Yorktown Aquifer is a function of grain size distribution of the aquifer material and the aquifer thickness. In the Ocean Hill, a water bearing fine sand was encountered from 180 to 220 feet. Initial evaluation determined that the aquifer could supply 75 to 125 gallons per minute in the Ocean Hill Well Field. The Yorktown Aquifer becomes thinner and siltier to the north as encountered at Ocean Hill Well Number 2 (northernmost well).

The test drilling at the Whalehead Club revealed that the aquifer matrix has become coarser than encountered at Ocean Hill and that the aquifer thickness has increased. The main water bearing fine to medium sand was encountered at 180 to 240 feet with an additional 30 feet of finer sand extending downward to 270 feet. The resulting high transmissivity of the Yorktown Aquifer in the Whalehead Club appears to be restricted to that area. The testing at site T Sturgeon St. and Whalehead Drive indicated that the aquifer characteristics are similar to those found at Ocean Hill.

The region extending southward from the Whalehead Subdivision through the Ocean Sands and Currituck Club area revealed that aquifer matrix had become a finer silty sand. The aquifer thickness still remained approximately 40 feet from 180 to 220 feet below land surface. However, in some local cases (marsh deposits) the hydraulic conductivity appears to be less than 10 feet per day. It should

be noted that the single well "specific capacity" tests to estimate transmissivity are highly influenced by well efficiency. However, review of the electric logs, drill cuttings and test results in the Ocean Sands area support the finding that well yield potential in the Yorktown Aquifer will still be low, even from properly developed production wells.

3.2 Modflow Simulation:

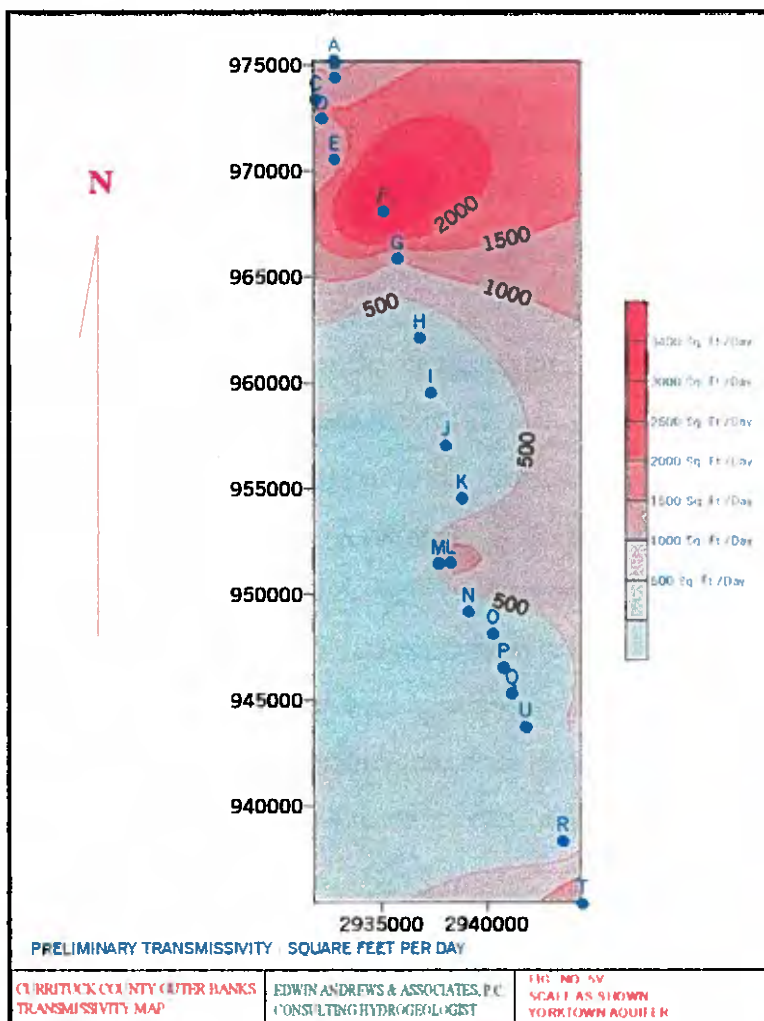
A computer simulation was made using the hydrogeologic framework defined in this evaluation. Basically, the model contains four layers (two aquifer and two confining layers). The model calculates the water levels associated with each layer. In order to make the model meaningful, the model is calibrated to measured water levels from November 30, 2000. There had been substantial pumping for an unknown length of time at Ocean Hill pumping well No. 3 prior to the water levels reading, resulting in a water level of -54.93 below mean sea level (approximately 78 feet below land surface). Whereas the undisturbed water levels in the Yorktown Aquifer were measured two to three feet above sea level to the south. The drawdown from the Ocean Hill pumping extended southward to the Whalehead Subdivision with the water level at Shad St. being 0.12 feet below mean sea level. The Ocean Hill Well Number 3 had been pumped heavily over the previous summer and immediately prior to our testing. There were no specific records of the exact pumping record. The MODFLOW simulation had to calibrate to this well defined cone of depression.

The model is a block centered finite difference model calculating changes of average water level across each block. In order to determine the maximum regional effect, areas with pumping and other hydrologic activities have a finer grid than outlying areas (Figure No. 6A, Grid). The blocks are finer grids in the region of Ocean Hill and the Whalehead Club. The model exchanges water flow and pressure across each block laterally and vertically. In Layer 1, (surficial aquifer) rainfall recharge is added, evapotranspiration is applied and the Atlantic Ocean and Currituck Sound are "Constant Head"

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boundaries. For modeling purposes, the Atlantic Ocean and the Currituck Sound will always be near mean sea level, regardless of how much the surficial aquifer is pumped (Figure No. 6B, Constant Head Boundaries).

The model has four layers, with the uppermost being the surficial aquifer, the second layer being the Yorktown confining layer, the third layer being the Yorktown aquifer and the fourth layer being a lower confining layer. The water flows from areas of greater water pressure (hydraulic heads) to areas of lower pressure. This water flow is restricted by the sedimentary framework resulting in the hydraulic conductivity and subsequent transmissivity values. For the surficial aquifer, four general hydraulic conductivity values were used in the model for calibration. The purple and blue reflected a lower hydraulic conductivity compared to the white area. These values were used to simulate a flow to result in calibration with the surface layer wells.



For the Yorktown Confining layer the vertical hydraulic conductivity becomes the important aquifer

3.2.2 Pumping Model:

The pumping model begins with the calibrated water levels that were similar to the actual measured levels in the fall of 2000 for a Yorktown Aquifer well field in Ocean Hill and the Whalehead Club area, with a well at both Shad Street and Whalehead Drive and Bonito Street and Whalehead Drive. A series of pumping wells were added at every test site. The capacity of each well was either 50 gallons per minute for low yield sites, 150 gallons per minute of moderate yield sites and 700 gallons per minute at the high yield site (Whalehead Club Area). The model begins with stress periods of 60 days for five years. During the first 60 days the wells are only withdrawing approximately 50% of their capacity, afterwhich, the pumping rate increases reflecting summer demand. After 180 days the new cone of depression begins to appear in the vicinity of the Whalehead Club. This water level continues to decline and coalesces with the Ocean Hill cone of depression by five years. The resulting cone of depression was modeled showing continued expansion of the cone of depression for 20 years (Figures No. 7A through 7M, Equipotential - Yorktown Aquifer). These water levels were subtracted from the calibrated water level elevation to obtain the drawdown of the aquifer (the difference between the calibrated water level and the water level during the pumping). There appears to be approximately 16 to 20 feet of drawdown (regionally) at the Whalehead Club area after five years. This drawdown increases to 30 to 40 feet after 20 years, in the vicinity of the Whalehead Club, showing that the aquifer will have difficulty sustaining development over time without proper management (Figure No. 8A through 8L, Drawdown - Yorktown Aquifer). The wells were added to the current (calibrated) conditions at 50% of the maximum capacity (in the model). This is a hypothetical five year interim to build-out. After the first five year pumping at 50% the model simulates a maximum withdrawal for the next fifteen years. The model reflects the drawdown for fifteen years after build-out.

A second set of models was made using the same wells and withdrawal patterns as well as adding low yield wells for each site tested extending southward to the beach access area (Figure No. 9A through 9H, Equipotential Surface Yorktown Aquifer). These water surfaces were subtracted from the

A water budget after 360 and 7200 days indicates that 2,794,645 cubic feet per day of water enters the surficial aquifer as recharge (Figure Nos. 13A through 13C, Budget Graphs). After 360 days, 1,098,136 cubic feet per day leaves the surficial aquifer to the constant head boundaries (lateral discharge to the Atlantic Ocean and Currituck Sound) after the wells withdrew 242,569.9 cubic feet per day. The withdrawals were increased to 454,325.1 cubic feet per day, with the water coming from reduced discharge to the Atlantic Ocean and Currituck Sound, evapotranspiration and drains. The recharge and evapotranspiration were limited so that the model will show the maximum impact due to long term withdrawal. On the barrier island with no discharge (N.P.D.E.S.) being permitted, the net recharge volume to the barrier island will approach the volume of water withdrawn. Nearly, all of the water withdrawn from either aquifer will recharge the Surficial Aquifer. The model shows that there is sufficient water resources in the Surficial Aquifer to resolve the lack of sustainability of the Yorktown Aquifer.

Potential Surficial Aquifer well fields include Whalehead Beach area, Primrose Beach, Ocean Sands Tracts A, B and C; the proposed water plant site and the Currituck Club sites. Low yield wells could be added from the Whalehead Club and Ocean Sands area, however, iron concentrations may exceed 1.0 milligrams per liter.

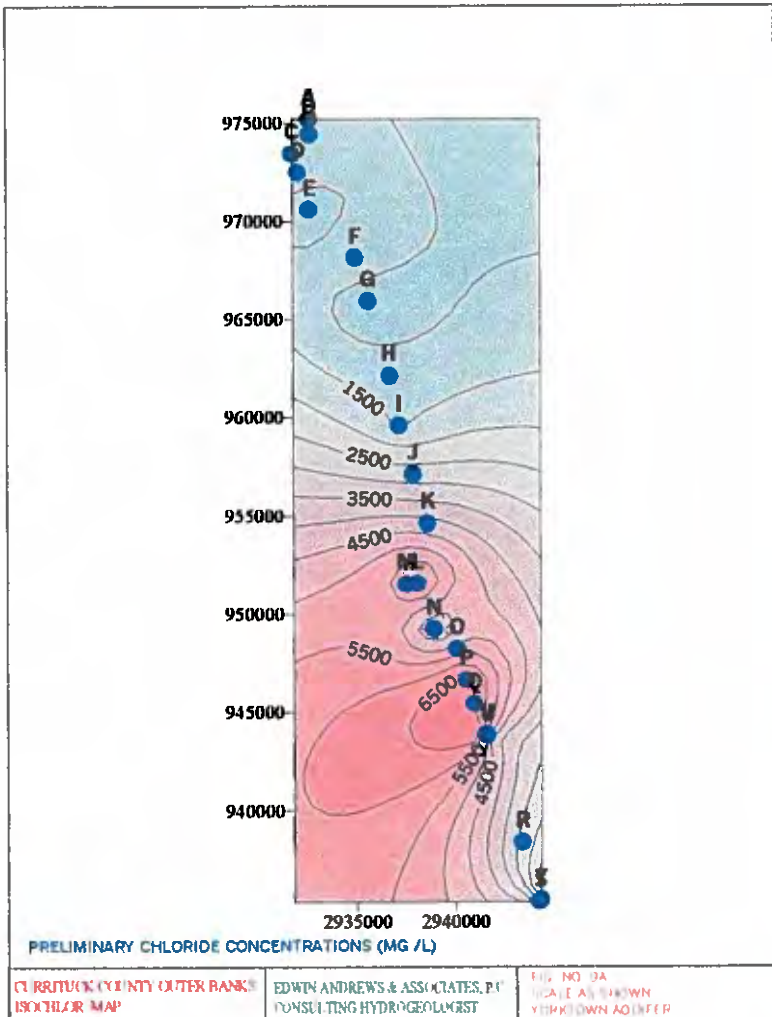
4.0 WATER QUALITY:

A portion of this analysis evaluates the basic water quality characteristics of both the surficial aquifer and the Yorktown Aquifer. This part of the evaluation focuses on the inorganic constituents of each aquifer. This report describes two groups of inorganic constituents found in the aquifers. The first group is mineral derived ions that dissolve into groundwater. An example of this type of constituent is iron. Iron can exist as hematite, pyrite, siderite or other minerals in an anaerobic high pressure environment. "Recharge reaching the water table is generally oxygenated owing to contact with air, and any reduced iron minerals, especially pyrite, which the solution contacts will be attacked to yield ferrous iron and sulfate" (Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Waters, 1970, U.S.G.S. Water-Supply Paper 1473). When a pump reduces the pressure, air is introduced or bacteria act as a catalyst and the iron can dissolve into the groundwater. On the Outer Banks, iron concentrations in a well water supply can change over the life of the pumping well.

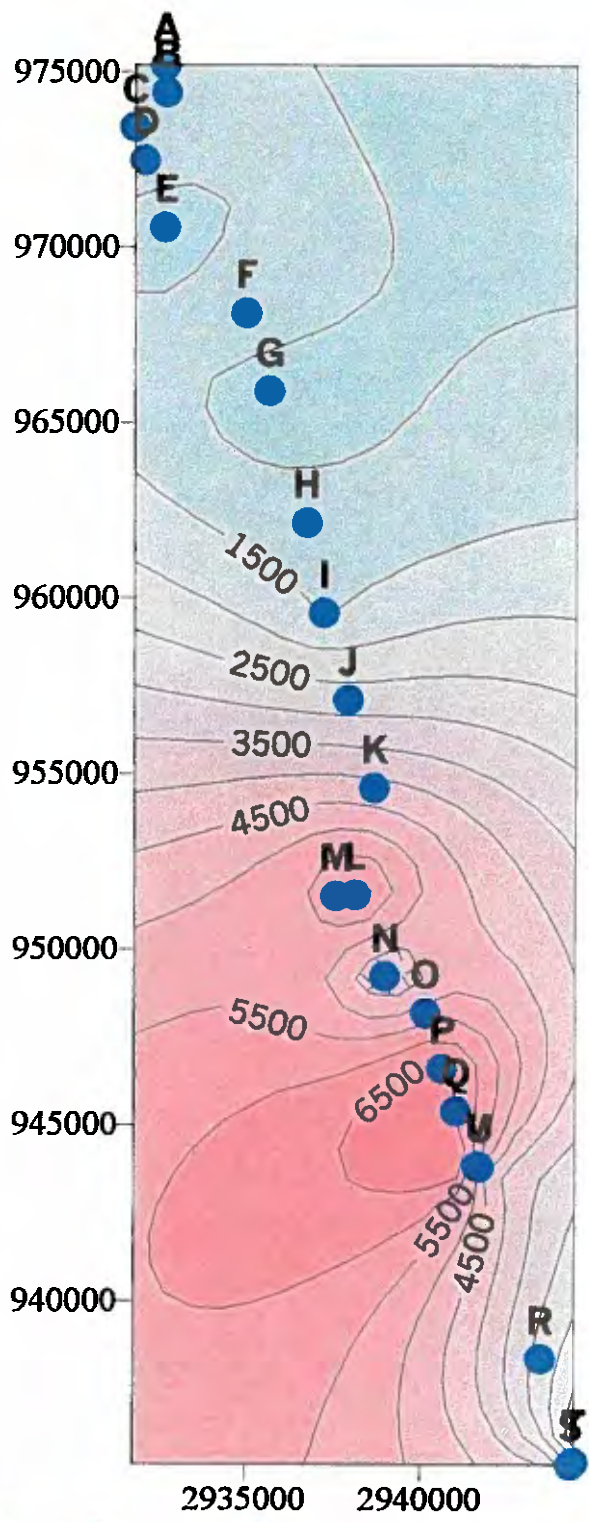
The second type of constituent is the dissolved salts (ions) deposited or transported into an aquifer from a marine body of water (surface or ground). "More than three-fourths of the total quantity of chlorine known to be present in the earth's crust to a depth of 16 kilometers and in the hydrosphere is in solution in the oceans"(Hem, John D., "Study and Interpretation of the Chemical Characteristics of Natural Waters, 1970, U.S.G.S. Water-Supply Paper 1473). In the case of the Surficial Aquifer, with the constant head boundaries, dissolved salts occur at the very bottom of the aquifer and salts grade to marine concentrations toward the Atlantic Ocean or the salts grade to the same concentration as Currituck Sound to the west. Salt water is heavier than fresh water by the weight of the salts contained in the water. Therefore, the freshwater floats as a lense, mixing as depth increases. Locating wells in the middle of the Barrier Island optimizes the development of fresh water without the need for desalinization. In the case where desalinization occurs, locating wells closer to a source of suitable salt water recharge such as Currituck Sound will help to sustain the supply.

4.2 Water Quality - Yorktown Aquifer:

This report evaluates the basic inorganic framework of the Yorktown Aquifer with specific respect to mapping the current chloride ion concentration. The chloride anion is used as an indicator parameter for the salts associated with marine water. This mapping should be considered as background prior to major pumping from the aquifer. Ocean Hill has used this aquifer since 1989, primarily from Ocean Hill Well No. 3. The planned development of 1.5 million gallons per day will result in significant redistribution of the chloride ion or salt water intrusion. If the salt water intrusion impacts pumped wells, adjustments of treatment technology will be needed.



Iron and hardness are parameters of specific interest because both iron and hardness are associated with the mineral matrix that forms the aquifer framework (heavy minerals and shell fragments) and dissolved ions in marine water. It is feasible that iron and hardness will increase as additional screen length is added to optimize the well yield by exposing finer silty formations, which will dissolve more readily due to pumping activity.



PRELIMINARY CHLORIDE CONCENTRATIONS (MG./L)

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Enclosed is a summary table of the dissolved constituents for the Yorktown Aquifer:

| | YORKTOWN AQUIFER | Iron | Chlorides | Total Dissolved Solids | Hardness |
|--------|--|-------|-----------|------------------------------|----------|
| | n/p - sample not reliable n/s - no sample | mg/l | mg/l | mg/l | mg/l |
| SITE A | OCEAN HILL PUMPING WELL - 2 | 0.329 | 1078 | 3110 | 290 |
| SITE B | OCEAN HILL PUMPING WELL - 1 | 0.420 | 1108 | 3220 | 325 |
| SITE C | OCEAN HILL - PUMPING WELL - 3 | 0.168 | 1832 | 3610 | 290 |
| SITE D | OCEAN HILL R/O PLANT | 0.255 | 1324 | 3150 | 320 |
| SITE E | OCEAN HILL - WOODED SITE | n/p | n/p | 3100 | 270 |
| SITE F | WHALEHEAD CLUB SITE | 0.334 | 2120 | 4160 | 364 |
| SITE G | SHAD AND WHALEHEAD DR. | 0.386 | n/p | 3400 | 286 |
| SITE H | PERCH AND WHALEHEAD DR. | .827 | 1317 | 5170 | 444 |
| SITE I | BONITO AND WHALEHEAD DR. | 0.772 | 1452 | 5440 | 456 |
| SITE J | FIRE DEPT. AT WHALEHEAD DR. | 1.111 | 2739 | 8580 | 1080 |
| SITE K | PROPOSED WATER TREATMENT SITE | n/s | n/s | 8326 | 740 |
| SITE L | OCEAN SANDS WASTE WATER SITE | 0.823 | 6448 | 8300 | 830 |
| SITE M | OCEAN SANDS PUMPING WELL - 5 | 1.069 | 5782 | 10220 | 1040 |
| SITE N | OCEAN SANDS PUMPING WELL - 4 | 1.463 | 3749 | 10180 | 1010 |
| SITE O | OCEAN SANDS PUMPING WELL - 1 | n/s | n/s | n/s | n/s |
| SITE P | OCEAN SANDS PUMPING WELL - 2 | 1.842 | 6910 | 11739 | 1080 |
| SITE Q | PRIMROSE BEACH SITE | 0.493 | 2793 | 6390 | 540 |
| SITE R | CURRITUCK CLUB WELL FIELD | n/s | n/s | n/s | n/s |
| SITE S | BEACH ACCESS SITE - SOUTH | 0.389 | 4199 | 5120 | 408 |
| SITE T | STURGEON AND WHALEHEAD DR. | 0.448 | 1090 | 3950 | 380 |
| SITE U | SAILFISH AND WHALEHEAD DR. | 0.635 | 4124 | 6150 | 588 |
| SITE V | OCEAN SANDS PUMPING WELL - 3 | 1.872 | 7082 | 11005 | 1130 |

From this information it is determined that pretreatment for iron and associated cations should be planned as needed for maintenance of the desalinization process. The initial chloride concentration was mapped as 1000 to 2500 milligrams per liter in the location with the greatest well yields (Ocean Hill and the Whalehead Club Area).

A 30 day stress test was made from November 16, through December 16, 2000, by pumping the six inch diameter well at the Whalehead Club at 425 gallons per minute for more than 18,360,000 gallons. Well No. 3 was pumping 125 gallons per minute at Ocean Hill for the 30 day period and Well No. 1 was added after 16 days (pumped for 14 days) at 75 gallons per minute for 6,912,000 gallons during the same general period of time. The initial chloride concentration from the Whalehead Club pumping well was 1461 milligrams per liter and the initial total dissolved solids concentration was 3700 milligrams per liter on November 16, 2000. After the withdrawal of more than 25,272,000 gallons of water the chloride concentration increased to 2120 milligrams per liter of chloride concentration and 4160 milligrams per liter of total dissolved solids. It should be noted that the iron concentration was 0.594 milligrams per liter at the beginning of the test and was actually less at 0.334 milligrams per liter at the end of the test. It is probable that iron is in equilibrium with the mineral matrix rather than as a mobile solute in the aquifer. The increase in chloride concentration is probably an initial upconing of higher chloride concentrations from the bottom of the Yorktown aquifer at the Whalehead Club site.

A test well, at the Whalehead Club, had been constructed in February 2000 to sample the chloride concentration in the finer sand deposits in the lower part of the Yorktown Aquifer, from 250 to 270 feet below land surface. The chloride concentrations of this deeper water was 2622 milligrams per liter with total dissolved solids of 4890 milligrams per liter. The iron for this deeper zone was of 0.619 milligrams per liter. Typically, iron concentrations increase slightly in finer sediments.

4.2 Water Quality - Surficial Aquifer:

The Surficial Aquifer has had the chloride ions flushed by rainfall recharge during the evolution of the barrier island complex. Being denser than fresh water (specific gravity of marine water is 1.025 and fresh water is 1.00), salt water sinks to the bottom of the aquifer. In reality there is a continuum of salt concentrations from the fresh water to the marine salt water interface. This general interface is in equilibrium with the amount of fresh water recharge. Withdrawal of fresh water is the same as a reduction of the fresh water recharge, therefore, the pumping will result in an adjustment of the salt water interface or salt water intrusion.

The Currituck Outer Banks has a unique characteristic that should be considered when planning well field design for the Surficial Aquifer compared to the Outer Banks of Dare and Hyde County. This characteristic is that the Currituck Sound has a moderate chloride concentration. Location of well fields, which should normally be placed in the center of the barrier island, can be shifted toward the Currituck Sound, which would provide a constant head of brackish water that can then be treated.

Iron will be a significant consideration when developing the surficial aquifer. Screen elevation within the aquifer may be a method to reduce the iron concentration initially; however, continued pumping, the introduction oxygen, and possibly bacteria can result in rapid degradation of the well due to iron bacteria. Iron bacteria on the outer banks is typically associated with shallow wells, in which the drawdown approaches the tops of the well screens, allowing for high dissolved oxygen water to reach the dissolved or precipitated iron. Iron bacteria will proliferate under the correct circumstances. Screen location, proper well construction and disinfection will help to prevent iron bacteria.

The following are water quality results from the Surficial Aquifer testing:

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| | SURFICIAL AQUIFER | Iron | Chlorides | Total Dissolved Solids | Hardness |
|--------|------------------------------------|-------|-----------|------------------------------|----------|
| | | mg/l | mg/l | mg/l | mg/l |
| SITE F | WHALEHEAD CLUB SITE* | 0.123 | 384 | 2790 | 190 |
| SITE S | BEACH ACCESS SITE - SOUTH 40-50' | 0.287 | 36 | 260 | 182 |
| SITE T | STURGEON AND WHALEHEAD DR. 50-70' | 0.173 | 635 | 2790 | 190 |
| SITE U | SAILFISH AND WHALEHEAD DR. 40-50' | 1.286 | 138 | 454 | 142 |
| SITE K | PROPOSED WATER TREATMENT SITE -35' | 0.75 | 37.4 | 366 | 143 |
| SITE K | PROPOSED WATER TREATMENT SITE -50' | 0.30 | 61.9 | 328 | 76.6 |
| SITE K | PROPOSED WATER TREATMENT SITE -60' | 0.68 | 438 | 1170 | 239 |

There is a third aquifer present between the Surficial Aquifer and the Yorktown Aquifer on the Southern Currituck Outer Banks. This unnamed aquifer consist of a thin coarse sand aquifer ranging from 9 to 110 feet below land surface. Samples collected from this thin sand at the Beach Access Site S (See Appendix II Site S Laboratory Results), and Tracts X, F and T, in an earlier investigation revealed essentially marine chloride concentrations. The chloride concentration at the Beach Access Site at 100 to 120 feet was 9213 milligrams per liter. The chloride concentration at Tract X was 7470 milligrams per liter, at Tract F was 7100 mg/l and Tract T was 14,400 milligrams per liter .

The analysis of this zone indicates that vertical leakage from recharge has not flushed this intermediate zone. The probability that vertical leakage will improve water quality in the Yorktown aquifer is unlikely. Reduced heads (increased vertical gradients between aquifers) may induce leakage. It is possible that leakage will introduce higher chloride water from above as well as laterally and from beneath (upconing). Well field management and integration between the two primary aquifers will be important in order to maintain useable water quality.

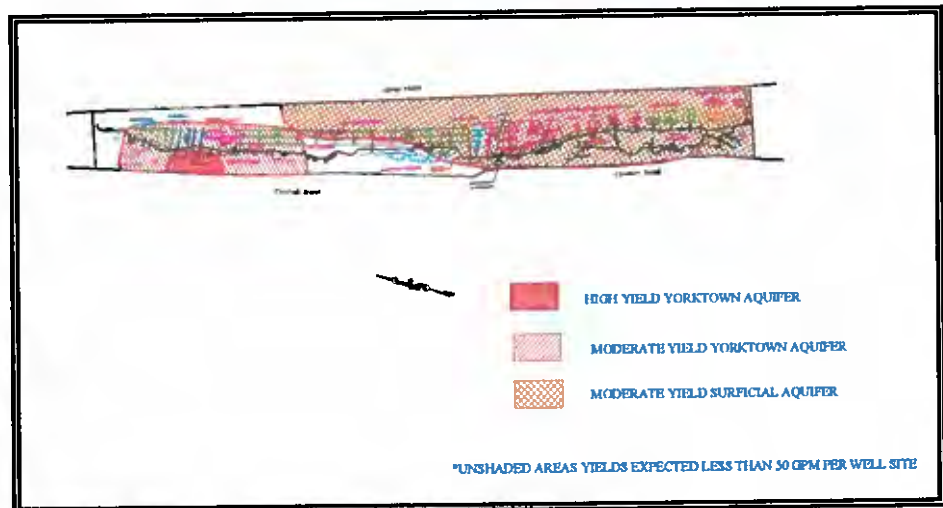
5.0 CONCLUSIONS AND RECOMMENDATIONS:

5.1 Conclusions:

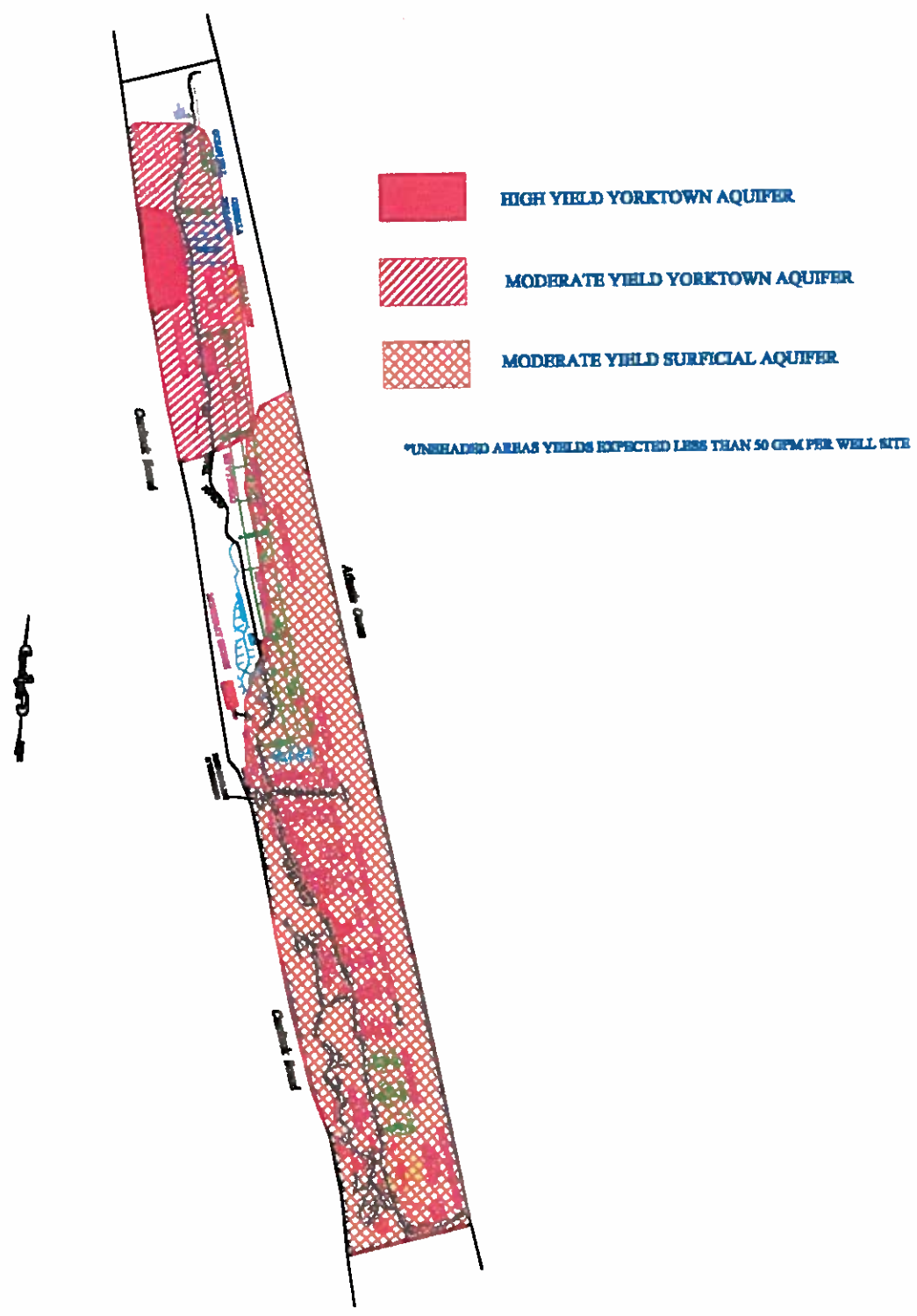
Analysis of the tests performed for this report has helped to define the suitable aquifers within 400 feet of land surface that could be used as potential water resources for complete development of the Currituck County Southern Outer Banks Water System. The test data is enclosed in Volume II of this report for each well site. The conclusions of this report are largely based on a MODFLOW simulation and a general knowledge of the total water resource management practices that are currently being implemented in the region.

The uppermost aquifer that was identified is currently used by the Ocean Sands Development, Monterey Shores Development, Currituck Club, Pine Island,

Tim Buck II, and Corolla North Utilities, as well as individual private wells throughout Whalehead Beach, Ocean Hill and Corolla. The Surficial Aquifer is unique because excess rainfall recharge occurs every winter, recharging the aquifer. The surficial aquifer is susceptible to overpumping during late summer when transpiration is high and water supply demand is greatest. The effective capacity of the surface system to withstand the late summer stress will be to allow for salt water intrusion in a controlled manner. The best areas for the development of the Surficial Aquifer are from Monterey Shores Development to the south. This area is the major source of sustainable water resources that will readily recover during low demand



See Figure No. 15 - AQUIFER PLANNING MAP



Currituck Southern Outer Banks Study
Aquifer Planning Map

Edwin Andrews & Associates, P.C.
 Consulting Hydrogeologists

Figure No. 15
Not to Scale
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high recharge periods typically encountered each winter.

The second aquifer is a confined or semi-confined Yorktown Aquifer located between 180 to 250 feet below land surface throughout much of the area. The Yorktown Aquifer varies in thickness and hydraulic conductivity. The areas with the greatest hydraulic conductivity are Ocean Hill and the Whalehead Club areas. The transmissivity of the Yorktown Aquifer decreases significantly from Monterey Shores to the south.

It is the conclusion of this report that primary source of water for the Currituck County Southern Outer Banks Water System is the Yorktown Aquifer in the vicinity of the Whalehead Club through Ocean Hill. The water contained in the Yorktown Aquifer is a brackish water suitable for desalinization. Water quality analysis of test wells throughout the area indicates that the chloride concentrations in the Yorktown Aquifer increase significantly from Monterey Shores to the south. Therefore, the best areas for the development of water from the Yorktown Aquifer are in the vicinity of The Whalehead Club and Ocean Hill. The modeling shows that this water source does not get adequate recharge to serve as a sole supply of one and one half million gallons per day. Therefore, the development of water that is readily recharged is necessary. The Surficial Aquifer is significantly recharged during the fall, winter and spring months. The Surficial Aquifer can augment the one and one half million gallons per day supply by providing an alternative supply, thus allowing for resting periods or artificial recharge to the Yorktown Aquifer. The surficial aquifer can be developed at the proposed water plant site, the Whalehead Beach Subdivision, Ocean Sands Tracts A, B & C and Primrose. A major source of Surficial Aquifer water is the Currituck Club, near the Currituck Sound.

All proposed well fields at Tract F, T and X should be used in conjunction with the existing Surficial Aquifer well sites for the development of a 1.5 million gallon per day water resource for the Ocean Sands Water and Sewer District. It is not recommended to develop the Yorktown Aquifer in the area extending south from the proposed water plant site.

The development of water from the Yorktown Aquifer in the region of the Whalehead Club and Ocean Hill should be suitable for seasonal use up to two million gallons per day. The Surficial Aquifer is not a desirable source of water in the vicinity of Ocean Hill, the Whalehead Club and northern Whalehead Beach because the aquifer is too thin and associated iron concentrations will inhibit development.

A sustainable water resource is obtainable using both aquifer systems, providing for salt water intrusion as a planned resource, with a good management strategy using each aquifer's strengths. The Surficial Aquifer is rechargeable and the Yorktown aquifer is a good storage medium. The Yorktown Aquifer will experience drawdown and water quality deterioration if the aquifer is overpumped.

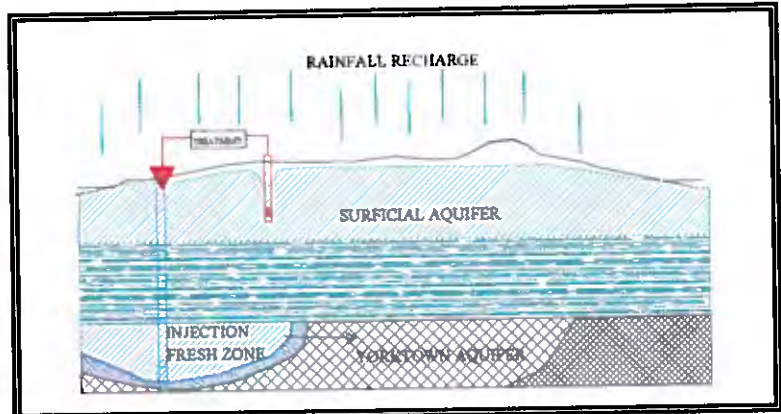
Because the Yorktown Aquifer confining units did not provide significant leakage (recharge to the aquifer), there will be no impact due to pumping one and one half million gallons per day from the Yorktown Aquifer on any surface ecological systems such as wetlands.

3.2 Recommendations:

1. Develop the surficial well fields, which are rechargeable to the maximum extent feasible. The three well fields evaluated in the "Water Resource Evaluation for Ocean Sands Subdivision, Tracts "X" "F" and "T" Currituck County, N.C., November 15, 1996 should be developed to meet future demands of Ocean Sands Water and Sewer District with their existing well fields. For planning purposes a supply of one and one half million gallons per day million gallons per day is readily sustainable from the Surficial Aquifer for the Ocean Sands Water and Sewer District.
2. The Currituck County Southern Outer Banks Water System should develop the Yorktown Aquifer in the vicinity of the Whalehead Club and Ocean Hill Development for a one and one half million gallons per day million gallon per day supply. This supply will probably experience two types of salt water intrusion. There will be seasonal salt water intrusion similar that identified by the 30 day pump test. The second type of salt water intrusion will be a net chloride increase from pumping

season to pumping season due to long term overpumping (from season to season).

3. The Surficial supply will be limited during periods of drought, while the Yorktown Aquifer will be limited as a continuous source because of drawdown and salt water intrusion. The Yorktown



WINTER INJECTION CONCEPT

Aquifer will best function as a storage reservoir to be used to augment during periods of high demand and drought.

4. The surficial supply has excess water during the winter months. Initially, the Surficial Aquifer could be used as an alternate source seasonally, providing water from the early fall through the late spring. Eventually, the Currituck County Southern Outer Banks Water System should consider "ASAR - Aquifer Storage and Recovery" using the excess water from the Surficial Aquifer during the winter months.
5. A pilot ASAR program should be implemented at the proposed water treatment plant site. Injection cycles of treated water should be pumped into the Yorktown Aquifer during the winter months. Development of the Yorktown injection well should include pumping cycles during this injection period. The water quality of the Yorktown Aquifer should be monitored to determine the **reduction** of chlorides around the injection well. From this water quality information, summer withdrawal patterns can be established. As aquifer storage and recovery is documented feasible, the best area for injection will be in the vicinity of the Whalehead Club and Ocean Hill - at the Yorktown Production well sites.
6. Because of the reliance on the surficial aquifer to establish sustainability, continued development of water reuse throughout the region will balance the recharge and limit the potential of contamination of well head susceptibility areas. Currently, Currituck Club is actively irrigating

The development of water from the Yorktown Aquifer in the region of the Whalehead Club and Ocean Hill should be suitable for seasonal use up to two million gallons per day. The Surficial Aquifer is not a desirable source of water in the vicinity of Ocean Hill, the Whalehead Club and northern Whalehead Beach because the aquifer is too thin and associated iron concentrations will inhibit development.

A sustainable water resource is obtainable using both aquifer systems, providing for salt water intrusion as a planned resource, with a good management strategy using each aquifer's strengths. The Surficial Aquifer is rechargeable and the Yorktown aquifer is a good storage medium. The Yorktown Aquifer will experience drawdown and water quality deterioration if the aquifer is overpumped.

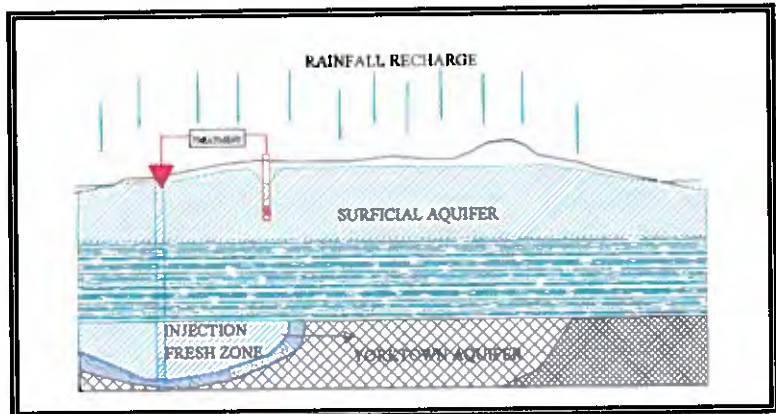
Because the Yorktown Aquifer confining units did not provide significant leakage (recharge to the aquifer), there will be no impact due to pumping one and one half million gallons per day from the Yorktown Aquifer on any surface ecological systems such as wetlands.

3.2 Recommendations:

1. Develop the surficial well fields, which are rechargeable to the maximum extent feasible. The three well fields evaluated in the "Water Resource Evaluation for Ocean Sands Subdivision, Tracts "X" "F" and "T" Currituck County, N.C., November 15, 1996 should be developed to meet future demands of Ocean Sands Water and Sewer District with their existing well fields. For planning purposes a supply of one and one half million gallons per day million gallons per day is readily sustainable from the Surficial Aquifer for the Ocean Sands Water and Sewer District.
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5. A pilot ASAR program should be implemented at the proposed water treatment plant site. Injection cycles of treated water should be pumped into the Yorktown Aquifer during the winter months. Development of the Yorktown injection well should include pumping cycles during this injection period. The water quality of the Yorktown Aquifer should be monitored to determine the **reduction** of chlorides around the injection well. From this water quality information, summer withdrawal patterns can be established. As aquifer storage and recovery is documented feasible, the best area for injection will be in the vicinity of the Whalehead Club and Ocean Hill - at the Yorktown Production well sites.
6. Because of the reliance on the surficial aquifer to establish sustainability, continued development of water reuse throughout the region will balance the recharge and limit the potential of contamination of well head susceptibility areas. Currently, Currituck Club is actively irrigating

reclaimed water. Plans for water reuse are being considered for parts of Monterey Shores/TimBuck II, Ocean Hill and parts of Ocean Sands.

7. Location of the surficial well fields should take advantage of the water quality difference between the Atlantic Ocean and Currituck Sound. There is one limitation with the development of well fields shifted to the Currituck Sound side of the barrier island. If an inlet breach in the region occurs, the salinity of the Currituck Sound could increase dramatically.

5.3 Limits of Investigation:

Data presented in this investigative report represent isolated data points. Conclusions of this report, including maps, calculations and models, are based on extrapolations between data points and on subjective hydrogeologic, soils and geologic interpretation, therefore, may not be completely representative of all conditions in the study area.

Conclusions and recommendations of this report are based on best available data, collected within budgetary constraints of the original proposal and the expanded drilling. It is the premise of this effort that the information collected and analyzed is representative of a reasonable effort to understand and solve the existing problem. No guarantee is expressed or implied that new or additional data will not be required at a later time.

Submitted March 23, 2001

Revised May 21, 2001



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Consulting Hydrogeologist for
EDWIN ANDREWS & ASSOCIATES, P.C.



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**Currituck County
Variance Request**

#13-05

January 7, 2014

Southern Outer Banks Water
Treatment Wellfield Project
Corolla, NC



Atlantic Ocean

Site

Historic Whalehead Club

Currituck Sound



Deep Well #2

Atlantic Ocean

Deep Well #1



Deep Well #1

(Looking North)



Deep Well #1

(Looking South)



Deep Well #1 Vegetation Line

(Looking North)



First Line Stable Natural Vegetation (FLSNV)

Deep Well #2

(Looking North)



Deep Well #2

(Looking South)



Deep Well #2 Vegetation Line

(Looking North)

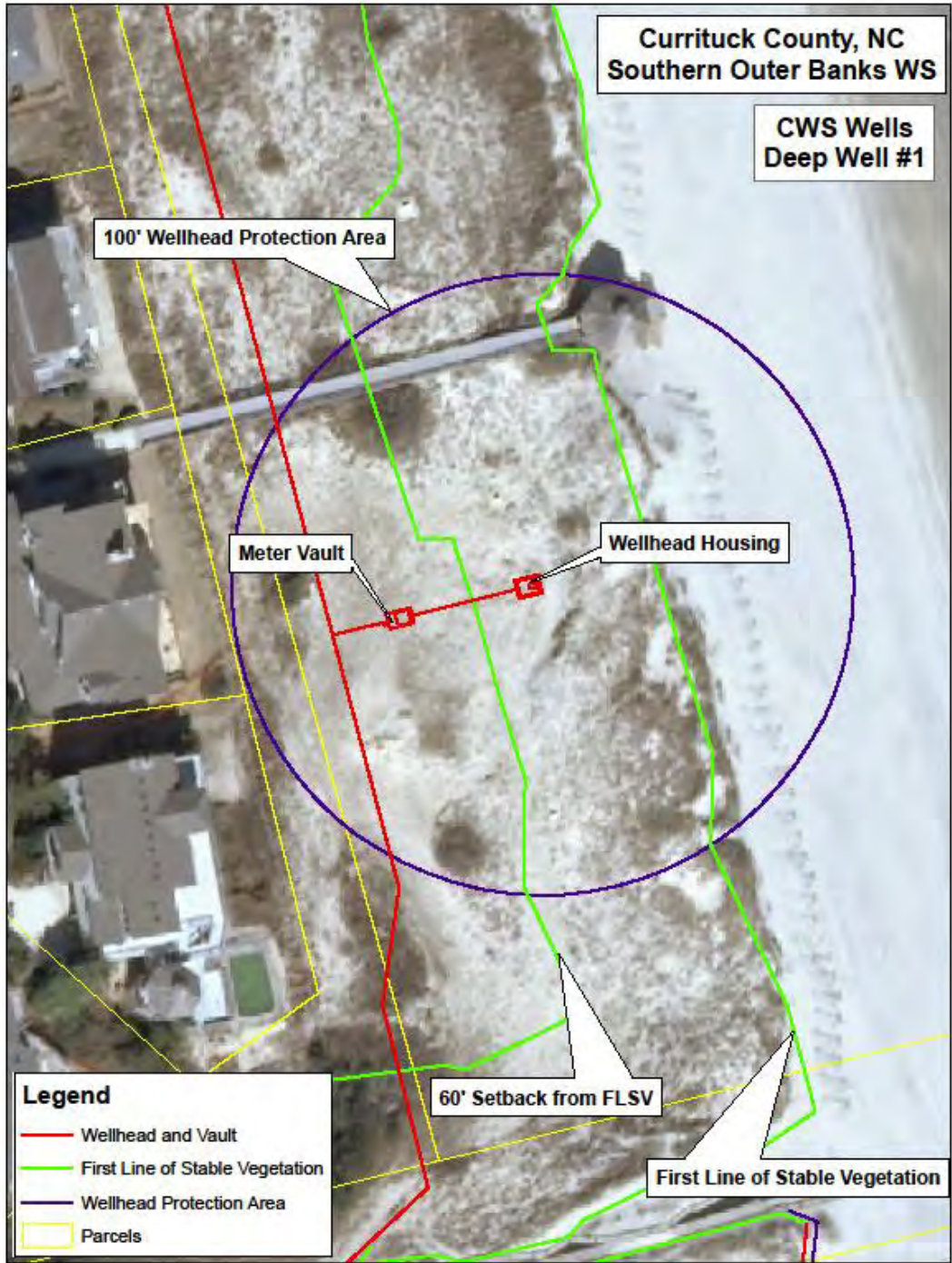


First Line Stable Natural Vegetation (FLSNV)

Currituck County, NC
Southern Outer Banks WS

CWS Wells
Deep Well #1

Proposed Deep Well 1



Proposed Deep Well 2





State of North Carolina
Department of Justice

ROY COOPER
Attorney General

PO Box 629
Raleigh, North Carolina
27602

Reply to: Elizabeth Jill Weese
Environmental Division
Phone: (919) 716-6600
Fax: (919) 716-6767
jweese@ncdoj.gov

TO: Coastal Resources Commission

FROM : Elizabeth Jill Weese *ESW*
Assistant Attorney General

DATE: February 10, 2014 (for the February 26-27 CRC Meeting)

RE: **Variance Request by COBA Ventures, LLC. (CRC-VR-13-07)**

Petitioner COBA Ventures, LLC, owns a tract of land located at 4616 Serenity Point Road, Wilmington, North Carolina. By application dated 7/11/2013, Petitioner applied for a CAMA Major Permit for upland improvements and for construction of a community docking facility consisting of a pier, pier platform and 8 boat slips with lifts, as an adjunct to Petitioner's 4 lot residential development. Major CAMA Permit No. 113-13 was authorized for the proposed upland development and the community docking facility, however, Additional Condition No. 5 of the Permit states that "No portion of the docking facility, including tie piles, shall extend more than one quarter the width of the water body." As designed, the pier and docking facility would extend into the Atlantic Intracoastal Waterway (AIWW)/Masonboro Sound. The waters of Masonboro Sound are classified as Outstanding Resource Water (SA-ORW) by the NC Division of Water Resources and are designated as a Primary Nursery Area (PNA), by the NC Division of Marine Fisheries. The area of Masonboro Sound is OPEN to the harvesting of shellfish. The limit on pier length prescribed by 15A NCAC 7H .0208(b)(6) (G)(iii) requires that piers not exceed one-fourth of the width of the water body (the "1/4 rule"). An exception to this length limit is when the proposed pier will be located between longer piers within 200 feet of the applicant's property. However, even then, the proposed pier cannot be longer than the pierhead line established by the adjacent piers, nor longer than 1/3 the width of the water body (the "1/3 rule exception"). In this case petitioner proposes to go to the 1/3 line and seeks a variance to allow construction of the proposed pier.

The following additional information is attached to this memorandum:

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

cc: Charles T. Busby, Attorney for Petitioner, electronically
Mary L. Lucasse, Counsel to CRC, electronically
Douglas V. Huggett, Major Permits and Consistency Manager, DCM, electronically
Robb L. Mairs, Field Representative, DCM, electronically
Debra Wilson, Wilmington Region District Manager, DCM, electronically

**ATTACHMENT A:
RELEVANT STATUTES AND RULES**

Statutes

§ 113A-102. Legislative findings and goals of the Coastal Area Management Act of 1974 (CAMA).

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

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

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

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

(1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;

(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;

(3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;

(4) To establish policies, guidelines and standards for:

- a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
- b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
- c. Recreation and tourist facilities and parklands;
- d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
- e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
- f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
- g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

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

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

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

...

(2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources;

...

(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

...

(8) Outstanding Resource Waters as designated by the Environmental Management Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation.

...

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

(NOTE: The Commission has not designated PNAs as a “stand-alone” AEC, but instead provides protection to PNAs through its rules.)

COASTAL RESOURCES COMMISSION RULES

15A NCAC 07H .0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE AND OCEAN SYSTEM

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

15A NCAC 7H .0205 Coastal Wetlands

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

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. Highest priority of use is allocated to the conservation of existing coastal wetlands. Second priority of coastal wetland use is given to those types of development activities that require water access and cannot function elsewhere. Examples of unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways and factories. Examples of acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law or other applicable laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

15A NCAC 7H .0206 Estuarine Waters

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

(d) Use Standards. Suitable land/water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

15A NCAC 7H .0207 Public Trust Areas

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

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

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;

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

(A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;

...

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

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:

...

(6) Piers and Docking Facilities.

...

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

(i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);

(ii) not extending into the channel portion of the water body; and

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

**ATTACHMENT B:
STIPULATED FACTS**

CAMA VARIANCE REQUEST COBA VENTURES, LLC

STIPULATED FACTS

1. Petitioner COBA Ventures, LLC, owns a tract of land located at 4616 Serenity Point Road, Wilmington, North Carolina.
2. By application dated 7/11/2013, Petitioner, through its agent, Greg Stier, applied for a CAMA Major Permit, both for upland improvements, and for construction of a community docking facility consisting of a pier, pier platform and 8 boat slips with lifts, as an adjunct to Petitioner's 4 lot residential development.
3. State Permit No. 113-13 was authorized for the proposed upland development and the community docking facility, but Additional Condition No. 5) of the Permit states that "No portion of the docking facility, including tie piles, shall extend more than one quarter the width of the water body."
4. The pier and docking facility would extend into the Atlantic Intracoastal Waterway (AIWW)/Masonboro Sound. The waters of Masonboro Sound are classified as Outstanding Resource Waters (SA-ORW) by the NC Division of Water Resources and are designated as a Primary Nursery Area (PNA), by the NC Division of Marine Fisheries. The area of Masonboro Sound is OPEN to the harvesting of shellfish. The Site can be seen in the photographs in the attached power point presentation.
5. The proposed pier extends eastward from the west side of the AIWW/Masonboro Sound approximately 279' into the AIWW, the platform at the end of the pier extends eastward an additional approximately 12', and four floating finger piers with associated access ramps extend 28' eastward from the platform, resulting in a total extension into the AIWW of approximately 315' into a waterbody, that measures approximately 970' across. This distance appears to not conform to the 1/4 width rule; however, it appears to extend to the 1/3 distance and the established pier length.
6. The "one quarter width of the water body" limit at this point of the AIWW is approximately 242' from the West side of the AIWW/Masonboro Sound, and the proposed pier extends approximately 72' beyond this limit.
7. The properties immediately to the South of Petitioner's property includes a pier, located 125' south of the proposed docking facility, which extends eastward to a point exactly even with the point of eastward extension of the proposed docking facility, such that the proposed docking facility will not extend further waterward than the existing piers and an existing peninsula, that is privately owned and available to the Channel Haven Property Owners for water access. The existing docking facility located just to the south at 4608 Serenity Point (Point Clan, LLC c/o Stuart Point) received a variance from the CRC in 2005 (CRC-VR-05-22) to build the existing docking facility to the 1/3 distance and subsequently received State Permit No. 81-05. This was authorized through a CAMA Major Permit.

8. The adjacent properties to the north of the project site are bordered by an existing natural cove located on the western side of the AIWW/Masonboro Sound. Located within this cove is a natural channel, which restricts the location of the existing docking facilities along this cove to the edge of deep water. See attached power point photographs.
9. Water depth at mean low water (MLW) is generally less than -1' to -2' at MLW between the shore and the eastward end of the proposed docking facility. Water depths in excess of -1' to -2' at MLW are generally not attainable at distances less than 291' from the shore, which is the length of the proposed pier and docking structures. Petitioner believes that a minimum of at least -1' at MLW is required for use of the docking facility. Per the attached survey, the water depth at the 1/3 distance is -2.4' at MLW.
10. Petitioner has included accurate hydrographic and riparian surveys with the Application showing the above-referenced distances. Copies of both surveys are attached.
11. The adjoining property owners were sent notice of the Application, and Petitioner is not aware of any objections.
12. Petitioner seeks a modification of the conditions of the permit to allow the proposed docking facility on the basis that the proposed docking facility will not encroach any further into the waterway than the existing adjacent private dockings facilities and peninsula to the south. Based on the provided survey and drawings, the proposed structures would not encroach into the 80' setback from the AIWW federal channel.

**ATTACHMENT C:
PETITIONER'S POSITION AND STAFF'S
RESPONSES TO CRITERIA**

ATTACHMENT C

*Note: This permit consists of two parts: one part for UPLAND DEVELOPMENT and the other for a DOCKING FACILITY. No variance is sought with regard to the UPLAND DEVELOPMENT portion. The following comments relate to the portion addressing the DOCKING FACILITY.

Petitioner and Staff Positions

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

Petitioner's Position: Yes.

The proposed docking facility extends eastward from the western shore of the Atlantic Intracoastal Waterway, and is intended to provide docking facilities for boats using the adjoining waters. Due to current rules, the permit limits the length of the dock to the area extending not more than one quarter of the width of the water body. Surveys submitted with the application indicate that the depth of water in the permitted area varies between -0.5 feet and -0.8 feet, effectively preventing boats of any appreciable size from approaching a dock within that area. This limitation in effect defeats the purpose of the dock and imposes a hardship on the petitioner in that it prevents petitioner from fully utilizing its common law right to wharf out to a reasonable navigable depth.

Staff's Position: Yes.

Staff agrees that strict application of the Commission's rules regarding pier length likely creates an unnecessary hardship in this case. The Commission's rules are intended to keep at least one-half of any water body free of development that could impede navigation. The limit on pier length prescribed by 15A NCAC 7H .0208(b)(6) (G)(iii) requires that piers not exceed one-fourth of the width of the water body (the "1/4 rule"). An exception to this length limit is when the proposed pier will be located between longer piers within 200 feet of the applicant's property. However, even then, the proposed pier cannot be longer than the pierhead line established by the adjacent piers, nor longer than 1/3 the width of the water body (the "1/3 rule exception"). In this case, while there are no longer piers within 200 feet of petitioners property, petitioner proposes to go to the 1/3 line. Petitioner's proposed pier will not be longer than the adjacent property owner's pier, nor will it exceed the established pierhead line. Because of the shallow waters of this embayment within Masonboro Sound, this appears to be the only way for Petitioner to reach sufficient water depth for the use and docking of boats in all tidal conditions by boats customarily used in the area. Finally, this area is classified as a primary nursery area (PNA) by the Division of Marine Fisheries. The Commission's rule 15A NCAC 7H .0208(b)(1) prohibits excavation of new canals, channels and boat basins within PNA's.

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 hardship arises from the fact that the one quarter width area to which petitioner is limited is of minimal depth which is not sufficient for navigation. This is in turn caused by the fact that the body of water in which the AICW [sic] is located is relatively narrow at the point in question. By extending the pier and dock to a length which would not exceed the length of the existing pier located on the adjacent property to the South, petitioner could reach navigable depth without creating a new level of intrusion and without encroaching on the 80' channel setback line.

Staff's Position: Yes.

In addition, the peninsula to the south of the proposed docking facility makes navigation in this area unique. While staff does not consider the peninsula a "pier structure" for the purposes of 15A NCAC 07H.0208(b)(6)(G)(iii), the effect of the peninsula is similar to that of a pier in that they both make navigation close to the shore difficult. Therefore, a longer pier by Petitioner would not substantially interfere with navigation along this section of shoreline of Masonboro Sound.

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

Petitioner's Position: No.

The hardships result from natural conditions existing before petitioner acquired the property.

Staff's Position: No.

While some of the hardship may be attributed to Petitioner's desire to build a pier with a dock and eight boat slips, Staff agrees that the primary hardship is due to the peculiarity of the shoreline, the relatively shallow water depth at the one-fourth line, and the narrow width of the AIWW/Masonboro Sound, as well as the existing piers and peninsula.

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

Petitioners's Position: Yes, as to all three.

The variance would not depart from the overall intent to prevent docking facilities from encroaching into the ICW [sic] channel [sic] setback. The most extensive portion of the dock would not come within 200 feet of the edge of the channel, and would not need to extend materially beyond the length of the existing pier to the South. It would appear that justice would allow petitioner to exercise privileges similar to those already afforded to the adjacent property owner.

Staff's Position: Yes.

Staff agrees that the proposed project is consistent with the spirit, purpose and intent of the rule that limits pier length. The proposed docking facility is water dependent and a traditional use that is generally allowed in Estuarine Waters and Public Trust Areas. The proposed pier will not extend beyond the established pier length along the same shoreline. It will not extend into the channel portion of the AIWW and it will not significantly impact traditional navigation. Allowing the pier to span the shallow areas of the embayment minimizes any potential impact to the estuarine resources. Because the waters in this area are designated Primary Nursery Area, allowing development farther from shore will also minimize potential damage due to prop dredging. Substantial justice will be preserved by affording Petitioner riparian use similar to that of neighboring properties.

The Commission amended its pier length rules in 1998 to change the 1/3 standard to a 1/4 standard, except in certain circumstances e.g., when the proposed pier is located between longer piers within 200 feet of the application. While that exception does not technically apply in this case, the peninsula has the same effect as a pier would have in the same location with regard to restricting navigation. Therefore, the spirit of the exception seems to be met in this case. The proposed length - 30% of the waterbody width - is probably the length necessary to reach adequate water depth. Finally, the proposed length would not encroach into the United States Army Core of Engineers' 80' setback.

**ATTACHMENT D:
PETITIONER'S VARIANCE REQUEST
MATERIALS**

Bailey & Busby, PLLC

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December 2, 2013

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

Office of the North Carolina Attorney General
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

Re: COBA VENTURES, LLC – CAMA Variance Request
Permit # 113-13 New Hanover County

Dear Sirs:

Please find enclosed with this letter the CAMA VARIANCE REQUEST FORM of COBA Ventures, LLC, seeking a variance with regard to the above-referenced permit.

Thank you.

Sincerely,


Charles T. Busby

cc. Rob Mairs, NC Div of Coastal Management, Wilmington

RECEIVED

DEC 03 2013

DCM-MHD CITY

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.: 13-07

PETITIONER'S NAME **COBA VENTURES, LLC**

COUNTY WHERE THE DEVELOPMENT IS PROPOSED: **NEW HANOVER**

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

*Please make your written arguments that Petitioner meets these criteria on a separate piece of paper.
[See attached Statement]*

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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:

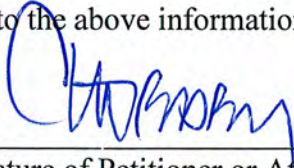
- The name and location of the development as identified on the permit application;
- A copy of the permit decision for the development in question;
- A copy of the deed to the property on which the proposed development would be located;
- A complete description of the proposed development including a site plan; [SEE APPLICATION ATTACHED TO PERMIT]
- A stipulation that the proposed development is inconsistent with the rule at issue; BY SUBMITTING THIS CAMA VARIANCE REQUEST FORM, PETITIONER STIPULATES THAT THE DOCKING FACILITY PORTION OF 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);
- n/a 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; SEE ATTACHED STATEMENT
- 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. [SEE ATTACHED DRAFT]
- This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

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



12/2/13

Signature of Petitioner or Attorney

Date

Charles T. Busby, Attorney
Printed Name of Petitioner or Attorney

charles@baileybusby.com
Email address of Petitioner or Attorney

PO Box 818
Mailing Address

(910) 270-8830
Telephone Number of Petitioner or Attorney

Hampstead , NC 28443
City State Zip

(910) 270-8831
Fax Number of Petitioner or Attorney

DELIVERY OF THIS HEARING REQUEST

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

Contact Information for DCM:

Contact Information for Attorney General's Office:

By mail, express mail or hand delivery:

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

By mail:

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

By Fax:
(252) 247-3330

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

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

By Fax:
(919) 716-6767

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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

October 23, 2013

COBA Ventures, LLC
c/o Babatunde Olatidoye
P.O. Box 3743
Wilmington, N.C. 28406

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Dear Sir or Madam:

The enclosed permit constitutes authorization under the Coastal Area Management Act, and where applicable, the State Dredge and Fill Law, for you to proceed with your project proposal. The original (buff-colored form) is retained by you and it must be available on site when the project is inspected for compliance. Please sign both the original and the copy and return the copy to this office in the enclosed envelope. Signing the permit and proceeding means you have waived your right of appeal described below.

If you object to the permit or any of the conditions, you may request a hearing pursuant to NCGS 113A-121.1 or 113-229. Your petition for a hearing must be filed in accordance with NCGS Chapter 150B with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27611-6714, (919) 733-2698 within twenty (20) days of this decision on your permit. You should also be aware that if another qualified party submits a valid objection to the issuance of this permit within twenty (20) days, the matter must be resolved prior to work initiation. The Coastal Resources Commission makes the final decision on any appeal.

The project plan is subject to those conditions appearing on the permit form. Otherwise, all work must be carried out in accordance with your application. Modifications, time extensions, and future maintenance requires additional approval. Please read your permit carefully prior to starting work and review all project plans, as approved. If you are having the work done by a contractor, it would be to your benefit to be sure that he fully understands all permit requirements.

From time to time, Department personnel will visit the project site. To facilitate this review, we request that you complete and mail the enclosed Notice Card just prior to work initiation. However, if questions arise concerning permit conditions, environmental safeguards, or problem areas, you may contact Department personnel at any time for assistance. By working in accordance with the permit, you will be helping to protect our vitally important coastal resources.

Sincerely,

Douglas V. Huggett
Major Permits and Consistency Manager

Enclosure

Permit Class
NEW

Permit Number
113-13

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

for

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

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Issued to COBA Ventures, LLC c/o Babatunde Olatidoye, PO Box 3743, Wilmington, NC 28406

Authorizing development in New Hanover County at AIWW (Masonboro Sound), 4616 Serenity Point Road, Wilmington, as requested in the permittee's application dated 7/11/13 (MP-1 & MP-3) and 8/4/13 (MP-4), including the attached workplan drawings (3), 1 dated 7/10/13 and 2 dated revised 7/12/13

This permit, issued on October 23, 2013, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

Upland Development

- 1) Unless specifically altered herein, this permit authorizes the grading and other land disturbing activities associated with the development of the above referenced property, including the 4-lot subdivision, driveways, stormwater system and associated infrastructure, all as expressly and specifically set forth in the attached permit application and workplan drawings. Any additional land disturbing activities and/or construction may require a modification of this permit. Contact a Division of Coastal Management representative at (910) 796-7215 for this determination.

(See attached sheets for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

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

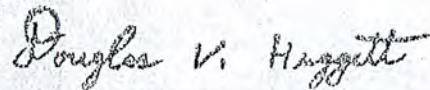
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

December 31, 2016

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.



for Braxton C. Davis, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

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ADDITIONAL CONDITIONS

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Sedimentation and Erosion Control

- 2) In order to protect water quality, runoff from construction shall not visibly increase the amount of suspended sediments in adjacent waters.
- 3) A ground cover sufficient to restrain erosion shall be provided within 30 calendar days of completion of any phase of grading on cut or filled slopes.

Docking Facility

- 4) Unless specifically altered herein, this permit authorizes the docks and other structures and uses located in or over the water that are expressly and specifically set forth in the permit application. No other structure, whether floating or stationary, shall become a permanent part of this docking facility without permit modification. No non-water dependent uses of structures shall be conducted on, in or over public trust waters without permit modification.
- 5) No portion of the authorized docking facility, including tie piles, shall extend more than one quarter of the width of the water body.
- 6) No sewage, whether treated or untreated, shall be discharged at any time from any boats using the docking facility. Any sewage discharge at the docking facility shall be considered a violation of this permit for which the permittee is responsible. This prohibition shall be applied and enforced throughout the entire existence of the permitted structure.
- 7) No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.
- 8) The permittee shall maintain the authorized work in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if he abandons the permitted activity without having it transferred to a third party.
- 9) This permit does not authorize the interference with any existing or proposed Federal project, and the permittee shall not be entitled to compensation for damage to the authorized structure or work, or injury which may be caused from existing or future operations undertaken by the United States in the public interest.
- 10) The permittee shall install and maintain at his expense any signal lights or signals prescribed by the U.S. Coast Guard, through regulation or otherwise, on the authorized facilities. At a minimum, permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.
- X 11) No portion of any structure shall be located within 80 feet of the near bottom edge of the federally maintained AIWW channel.
- 12) The authorized covered platform shall not be enclosed. Any material used on the sides shall not obstruct view and shall be permeable to air and water. Screen or wire on the sides along with benches and knee walls are permitted. Lattice is specifically excluded from being used under this authorization.

ADDITIONAL CONDITIONS

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13) The roof of the covered platform shall not be designed for second story use.

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14) This permit authorizes 8 new formalized boatslips in association with this docking facility.

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General

15) The permittee understands and agrees that, if future operations by the United States requires the removal, relocation, or other alteration of the structure or work authorized by this permit, or if in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate or alter the structural work or obstructions caused thereby, without expense to the United States or the state of North Carolina. No claim shall be made against the United States or the state of North Carolina on account of any such removal or alteration.

16) Approval of the structure was based on determinations that there would be no obstruction to navigation. Under conditions existing in the federal channel, a possibility exists that the structure may be damaged by wave wash from passing vessels. Unreasonable slowing down of vessel traffic cannot be required because it would tend to nullify the navigational benefits on which the federal channel was justified. Issuance of this permit should not be construed, as relieving the permittee of taking proper steps to insure the structure and moored boats will not be damaged by wave wash normally to be expected in the federal channel.

17) No vegetated wetlands shall be excavated or filled, even temporarily, without permit modification.

18) This permit shall not be assigned, transferred, sold, or otherwise disposed of to a third party without the written approval of the Division of Coastal Management.

19) The permittee and/or his or her contractor shall meet with a representative of the Division prior to project initiation.

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.

NOTE: Future development of the permittee's property may require a modification of this permit. Contact a representative of the Division at (910) 796-7215 prior to the commencement of any such activity for this determination.

NOTE: The N.C. Division of Water Resources has authorized the proposed project under DWR Project No. 13-0859.

NOTE: The U.S. Army Corps of Engineers authorized the proposed project under COE Action Id. No. SAW-2013-00030 which was issued on 10/21/13.

APPLICATION for Major Development Permit

(last revised 12/27/06)

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North Carolina DIVISION OF COASTAL MANAGEMENT

1. Primary Applicant/Landowner Information

| | | | |
|--|--------------------------|---|--------------------|
| Business Name COBA VENTURES, LLC | | Project Name (if applicable) 4616 SERENITY POINT RD. | |
| Applicant 1: First Name BARATUNDE | MI | Last Name OLATIDOYE | |
| Applicant 2: First Name | MI | Last Name | |
| If additional applicants, please attach an additional page(s) with names listed. | | | |
| Mailing Address P.O. Box 3743 | | PO Box | City Wilmington |
| | | | State N.C. |
| ZIP 28406 | Country NEW HAMPSHIRE | Phone No. 910-264-4858 ext. | FAX No. |
| Street Address (if different from above) | | City | State |
| | | | ZIP |
| Email | | | |

2. Agent/Contractor Information

| | | | |
|---|-----------------------|----------------------------------|---------------------------------|
| Business Name STIER CONSTRUCTION COMPANY, INC. | | | |
| Agent/ Contractor 1: First Name GREG | MI E | Last Name STIER | |
| Agent/ Contractor 2: First Name | MI | Last Name | |
| Mailing Address 7049 MASONBORO SOUND RD. | | PO Box | City Wilmington |
| | | | State N.C. |
| ZIP 28409 | | Phone No. 1 910-264-1410 ext. | Phone No. 2 RECEIVED ext. |
| FAX No. 910-791-9630 | Contractor # 22053 | | AUG 18 2013 |
| Street Address (if different from above) | | City | State |
| | | | ZIP DCM WILMINGTON |
| Email GREG.STIER@YAHOO.COM | | | |

Phone - 910-264-1410

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| 3. Project Location | | | | |
|--|--|---|---------------|--------------|
| County (can be multiple) New Hanover | | Street Address 4616 SERENITY POINT RD. | | State Rd. # |
| Subdivision Name x Serenity Point | | City WILMINGTON | State N.C. | Zip 28409 |
| Phone No. ext. | | Lot No.(s) (if many, attach additional page with list) | | |
| a. In which NC river basin is the project located? Cape Fear | | b. Name of body of water nearest to proposed project A.I.W.W. | | |
| c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Manmade <input type="checkbox"/> Unknown | | d. Name the closest major water body to the proposed project site. Masonboro Sound | | |
| e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. New Hanover Co. | | |

| 4. Site Description | |
|---|---|
| a. Total length of shoreline on the tract (ft) 479.16 | b. Size of entire tract (sq ft.) 2.08 acres 90,580 sq ft |
| c. Size of individual lot(s) .49 .52 .55 .52 acres (If many lot sizes, please attach additional page with a list) | d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) <input checked="" type="checkbox"/> NHW or <input type="checkbox"/> NWL |
| e. Vegetation on tract Hardwood trees, primarily oak and coastal wetlands, section 404 (see JD) | |
| f. Man-made features and uses now on tract Timber bulkhead, undeveloped lot. | |
| g. Identify and describe the existing land uses adjacent to the proposed project site. Home at 4612 Serenity Point Rd. Home at 4607 New Jack Road. | |
| h. How does local government zone the tract? R-15 | i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. If yes, by whom? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA | |
| l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA | |

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m. (i) Are there wetlands on the site? Yes No

(ii) Are there coastal wetlands on the site? Yes No

(iii) If yes to either (i) or (ii) above, has a delineation been conducted? Yes No
(Attach documentation, if available)

n. Describe existing wastewater treatment facilities. CFPWA

o. Describe existing drinking water supply source. CFPWA

p. Describe existing storm water management or treatment systems. NONE

5. Activities and Impacts

a. Will the project be for commercial, public, or private use? Commercial Public/Government Private/Community

b. Give a brief description of purpose, use, and daily operations of the project when complete.
Four homesites.

c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored. *no tall silt fence - backhoe, clearing - backhoe, dump truck, grading - bulldozer, water + sewer - backhoe, roadway*

d. List all development activities you propose.
GRADING, CLEARING, STORM WATER SYSTEM, WATER + SEWER, GRAVEL ROAD, PIER

e. Are the proposed activities maintenance of an existing project, new work, or both? NEW WORK

f. What is the approximate total disturbed land area resulting from the proposed project? 1.5 AC Sq.Ft or Acres

g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of? Yes No NA

h. Describe location and type of existing and proposed discharges to waters of the state.
N/A

i. Will wastewater or stormwater be discharged into a wetland? Yes No NA
If yes, will this discharged water be of the same salinity as the receiving water? Yes No NA

j. Is there any mitigation proposed? Yes No NA
If yes, attach a mitigation proposal.

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6. Additional Information

In addition to this completed application form (MP-1) the following items below, if applicable, must be submitted in order for the application package to be complete. Items (a) - (f) are always applicable to any major development application. Please consult the application instruction booklet on how to properly prepare the required items below.

- a. A project narrative.
- b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed.
- c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site.
- d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties.
- e. The appropriate application fee. Check or money order made payable to DENR.

f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management.

| | | |
|---------|--|-----------|
| Name | JOYCE HALL LEWIS | Phone No. |
| Address | 4607 NEW JACK ROAD, WILMINGTON, NC 28409 | |
| Name | GREG BROWN | Phone No. |
| Address | 4612 SERENITY POINT ROAD, WILMINGTON, NC 28409 | |
| Name | | Phone No. |
| Address | | |

g. A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates.

GP-6837-D 5/20/1990

h. Signed consultant or agent authorization form, if applicable.

i. Wetland delineation, if necessary.

j. A signed AEC hazard notice for projects in oceanfront and inlet areas. (Must be signed by property owner)

k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act.

7. Certification and Permission to Enter on Land

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit.

I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

X Date 2-11-13 X Print Name GREG STIER
 X Signature [Signature]

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Please indicate application attachments pertaining to your proposed project.

- DCM MP-2 Excavation and Fill Information
- DCM MP-3 Upland Development
- DCM MP-4 Structures Information
- DCM MP-5 Bridges and Culverts

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UPLAND DEVELOPMENT

(Construction and/or land disturbing activities)

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

GENERAL UPLAND DEVELOPMENT

a. Type and number of buildings, facilities, units or structures proposed.

4 lots + 1 pier w/ 8 slips

b. Number of lots or parcels.

4

c. Density (give the number of residential units and the units per acre)

4 units

$2.08 + 4 = .52 \text{ units/acre}$

d. Size of area to be graded, filled, or disturbed including roads, ditches, etc.

1.5 acre

e. If the proposed project will disturb more than one acre of land, the Division of Land Resources must receive an erosion and sedimentation control plan at least 30 days before land-disturbing activity begins

(i) If applicable, has a sedimentation and erosion control plan been submitted to the Division of Land Resources?

Yes No NA

(ii) If yes, list the date submitted GP 34-12

f. List the materials (such as marl, paver stone, asphalt, or concrete) to be used for impervious surfaces

gravel road

concrete driveway

g. Give the percentage of the tract within the coastal shoreline AEC to be covered by impervious and/or built-upon surfaces such as pavement, building, rooftops, or to be used for vehicular driveways or parking

25%

h. Projects that require a CAMA Major Development Permit may also require a Stormwater Certification.

(i) Has a site development plan been submitted to the Division of Water Quality for review?

Yes No NA

(ii) If yes, list the date submitted: SWB 130103

2/22/2013

i. Give the percentage of the entire tract to be covered by impervious and/or built-upon surfaces, such as pavement, building, rooftops, or to be used for vehicular driveways or parking.

25%

j. Describe proposed method of sewage disposal

CAPE FEAR PUBLIC UTILITY
AUTHORITY

k. Have the facilities described in item (j) received state or local approval?

Yes No NA

If yes, attach appropriate documentation

see SWB 130103

l. Describe location and type of proposed discharges to waters of the state (e.g. surface runoff, sanitary wastewater, industrial, commercial effluent, "wash down" and residential discharges).

STORM WATER GOES INTO AN
IN FILTRATION SYSTEM

m. Does the proposed project include an innovative stormwater design?

Yes No NA

If yes, attach appropriate documentation.

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m. Describe proposed drinking water supply source (e.g., well, community, public system, etc.)

CAPE FEAR PUBLIC UTILITY
AUTHORITY

n. (i) Will water be impounded? Yes No NA

(ii) If yes, how many acres? _____

o. When was the lot(s) platted and recorded?

N/A

p. If proposed development is a subdivision, will additional utilities be installed for this upland development?

Yes No NA

7-11-13

Date

SERENITY POINT

Project Name

GREG STIER

Applicant Name



Applicant Signature

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STRUCTURES

(Construction within Public Trust Areas)

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

1. DOCKING FACILITY/MARINA CHARACTERISTICS

This section not applica.

a. (i) Is the docking facility/marina:
 Commercial Public/Government Private/Community

b. (i) Will the facility be open to the general public?
 Yes No

c. (i) Dock(s) and/or pier(s)
(ii) Number 1
(iii) Length 290'
(iv) Width 6'
(v) Floating Yes No

d. (i) Are Finger Piers included? Yes No
If yes:
(ii) Number 4
(iii) Length 16'
(iv) Width 6'
(v) Floating Yes No

e. (i) Are Platforms included? Yes No
If yes:
(ii) Number 2
(iii) Length 36' + 72'
(iv) Width 12' + 6'
(v) Floating Yes No
Note: Roofed areas are calculated from drpline dimensions

f. (i) Are Boatlifts included? Yes No
If yes:
(ii) Number 8
(iii) Length 13'
(iv) Width 14'

g. (i) Number of slips proposed 8
(ii) Number of slips existing 0

h. Check all the types of services to be provided.
 Full service, including travel lift and/or rail, repair or maintenance service
 Dockage, fuel, and marine supplies
 Dockage ("wet slips") only, number of slips _____
 Dry storage, number of boats _____
 Boat ramp(s), number of boat ramps, _____
 Other, please describe
NONE

i. Check the proposed type of siting
 Land cut and access channel
 Open water, dredging for basin and/or channel
 Open water; no dredging required
 Other, please describe

j. Describe the typical boats to be served (e.g., open runabout, charter boats, sail boats, mixed types):
OPEN RUNABOUTS

k. Typical boat length ± 22'

l. (i) Will the facility be open to the general public?
 Yes No

m. (i) Will the facility have tie pilings?
 Yes No
(ii) If yes, number of tie pilings?
10

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2. DOCKING FACILITY/MARINA OPERATIONS

N/A

This section not applicable

a. Check each of the following sanitary facilities that will be included in the proposed project.

Office Toilets

Toilets for patrons; Number: _____; Location: _____

Showers

Boatholding tank pumpout; Give type and location. _____

b. Describe treatment type and disposal location for all sanitary wastewater.

c. Describe the disposal of solid waste, fish offal and trash.

d. How will overboard discharge of sewage from boats be controlled?

e. (i) Give the location and number of "No Sewage Discharge" signs proposed.

(ii) Give the location and number of "Pumpout Available" signs proposed.

f. Describe the special design, if applicable, for containing industrial type pollutants, such as paint, sandblasting waste and petroleum products.

g. Where will residue from vessel maintenance be disposed of?

h. Give the number of channel markers and "No Wake" signs proposed _____

i. Give the location of fuel-handling facilities, and describe the safety measures planned to protect area water quality.

j. What will be the marina policy on overnight and live-aboard dockage?

k. Describe design measures that promote boat basin flushing?

l. If this project is an expansion of an existing marina, what types of services are currently provided?

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m. Is the marina/docking facility proposed within a primary or secondary nursery area?

Yes No

n. Is the marina/docking facility proposed within or adjacent to any shellfish harvesting area?

Yes No

o. Is the marina/docking facility proposed within or adjacent to coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.

CW _____ SAV _____ SB _____
 WL _____ None

p. Is the proposed marina/docking facility located within or within close proximity to any shellfish leases? Yes No

If yes, give the name and address of the leaseholder(s), and give the proximity to the lease.

3. BOATHOUSE (including covered lifts)

N/A

This section not applicable

a. (i) Is the boathouse structure(s):

Commercial Public/Government Private/Community

(ii) Number _____

(iii) Length _____

(iv) Width _____

Note: Roofed areas are calculated from drpline dimensions

4. GROIN (e.g., wood, sheetpile, etc. If a rock groin, use MP-2, Excavation and Fill.)

N/A

This section not applicable

a (i) Number _____

(ii) Length _____

(iii) Width _____

5. BREAKWATER (e.g., wood, sheetpile, etc.)

N/A

This section not applicable

a Length _____

b Average distance from NHW, NWL, or wetlands _____

c. Maximum distance beyond NHW, NWL or wetlands _____

6. MOORING PILINGS and BUOYS

N/A

This section not applicable

a Is the structure(s):

Commercial Public/Government Private/Community

b Number _____

c. Distance to be placed beyond shoreline _____

Note: This should be measured from marsh edge, if present.

d. Description of buoy (color, inscription, size, anchor, etc.)

e Arc of the swing _____

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7. GENERAL

a. Proximity of structure(s) to adjacent riparian property lines

+ 15'

b. Proximity of structure(s) to adjacent docking facilities.

+ 90'

Note: For buoy or mooring piling, use arc of swing including length of vessel.

c. Width of water body

+ 920'

d. Water depth at waterward end of structure at NLW or NWL

- 2.4' NLW

e. (i) Will navigational aids be required as a result of the project?

Yes No NA

(ii) If yes, explain what type and how they will be implemented

8. OTHER

This section not applicable

a. Give complete description:

Proposed 8 Slip Dock Facility from Serenity Point.
6' x 290' Fixed Pier with 12' x 36" L" Heave which includes 12' x 16' Roof and 6' x 32" L" Heave
Four - 6' x 16' Floating Docks with associated Guide and Tie Pilings with Eight Boat Lifts
WITHIN THE SLIPS.

8-4-13

Date

Serenity Point

Project Name

GREG STICK

Applicant Name

[Signature]

Applicant Signature

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AUG 06 2013

PRELIMINARY:
NOT FOR RECORDATION, CONVEYANCES,
OR SALES PURPOSES.

Sheet 2 of 2 Sheets
PROPOSED PIER
OVERLAY ON
HYDROGRAPHIC SURVEY

4616 SERENITY POINT

ADJACENT TO CHANNEL HAVEN SUBDIVISION
EXCLUSIVELY FOR:

COBA Ventures LLC

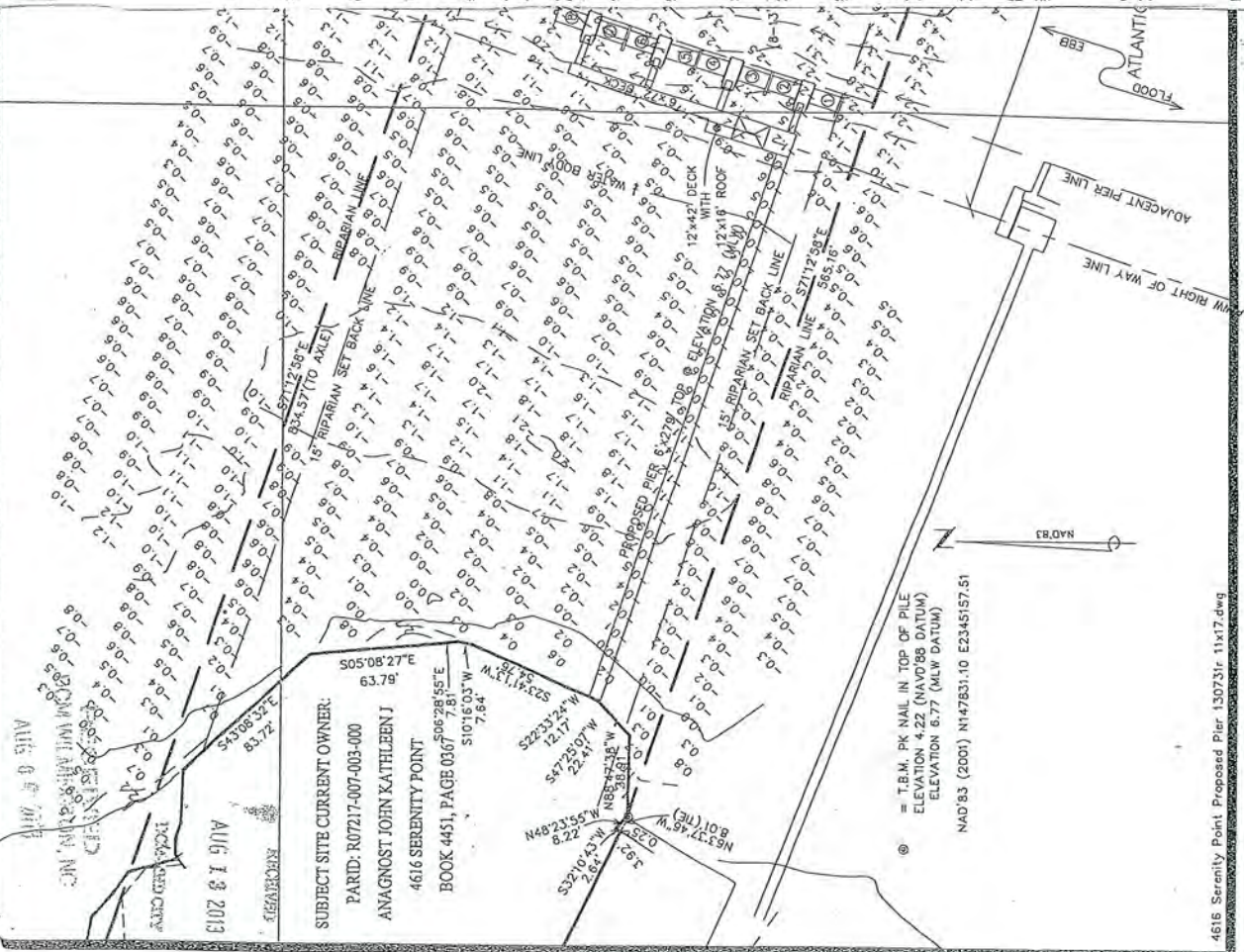
AS RECORDED BOOK 4451, PAGE 367 OF THE NEW HANOVER COUNTY REGISTRY
NEW HANOVER COUNTY NORTH CAROLINA

Revised: 7/12/2013 Proposed Pier

ARNOLD W. CARSON, PLS PC (C-2138)
406 NORTH THIRD STREET
P.O. BOX 11401
WILMINGTON, NC 28404
(910) 772-9113 acarson@awcpls.com

MASONBORO TOWNSHIP
SCALE: 1" = 60'

SUBJECT SITE CURRENT OWNER:
PARID: R07217-007-003-000
ANAGNOST JOHN KATHLEEN J
4616 SERENITY POINT
BOOK 4451, PAGE 0367



4616 Serenity Point Proposed Pier 130731r 11x17.dwg

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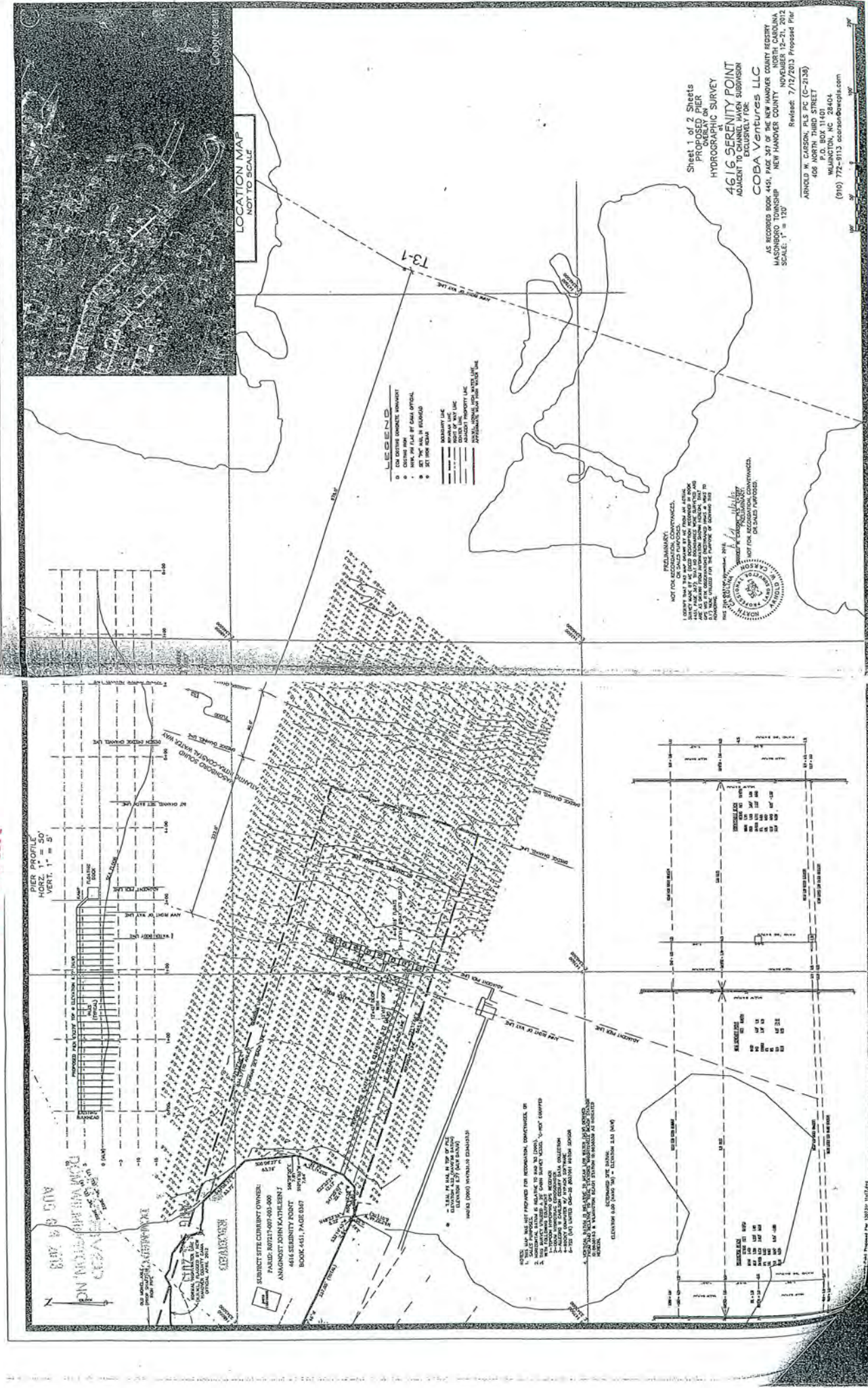
DEC 03 2013

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LOCATION MAP
NOT TO SCALE

LEGEND

- PIER
- CHANNEL
- SURVEY LINE
- BOUNDARY
- PROPERTY LINE
- ADJACENT PROPERTY LINE
- ADJACENT PROPERTY LINE
- ADJACENT PROPERTY LINE
- ADJACENT PROPERTY LINE

Sheet 1 of 2 Sheets
PROPOSED PIER
OVERLAY ON
HYDROGRAPHIC SURVEY
4616 SERENITY POINT
ADJACENT TO CHANNEL HAVEN SUBDIVISION
EXCLUSIVELY FOR:
COBA Ventures LLC

AS RECORDED BOOK 445, PAGE 247 OF THE NEW HAMPSHIRE COUNTY RECORDS
NEW HAMPSHIRE COUNTY, NOVEMBER 12-21, 2012
SCALE: 1" = 120'
Released: 7/12/2013 Prepared For:
ARNOLD W. CARSON, PLS PC (C-2138)
408 NORTH THIRD STREET
P.O. BOX 11404
WALTON, NH 03091
(603) 772-9113 acarson@acwpl.com



PIER PROFILE
HORZ. 1" = 50'
VERT. 1" = 50'

SUBJECT SITE CURRENT OWNER:
PAID: 8/27/11-07-03-000
ANGUST JOHNS KATHLEEN J
4616 SERENITY POINT
BOOK 4411, PAGE 1387

THIS MAP HAS NOT BEEN PROVIDED FOR RECORDATION, DEPOSITED BY
1. THE STATE OF NEW HAMPSHIRE TO THE PUBLIC RECORDS OF THE
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10. THE STATE OF NEW HAMPSHIRE TO THE PUBLIC RECORDS OF THE

| STATION | ELEVATION | DEPTH |
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| 98 | 100.00 | 10.00 |
| 99 | 100.00 | 10.00 |
| 100 | 100.00 | 10.00 |

A
26
2/20/RS



FOR REGISTRATION REGISTER OF DEED
TAMMY THEUSCH BEASLEY
NEW HANOVER COUNTY, NC
2013 MAR 05 01:38 26 PM
BK 5717 PG 274-278 FEE \$26 00
NC REV STAMP \$2,120 00
INSTRUMENT # 2013007904

THE ATTORNEY PREPARING THIS INSTRUMENT HAS MADE NO RECORD SEARCH OR TITLE EXAMINATION AS TO THE PROPERTY HEREIN DESCRIBED UNLESS THE SAME IS SHOWN BY HIS WRITTEN AND SIGNED CERTIFICATE.

The property herein conveyed does not include the primary residence of a Grantor.

Prepared by Matthew A Nichols, Esq
SHANKLIN & NICHOLS, LLP
214 Market Street
P.O. Box 1347
Wilmington, NC 28402
Telephone. (910) 762-9400
Telefax (910) 251-1773

Revenue Stamps: \$2,120.00
Brief Description for Index: 4616 Serenity Point Road
Tax Parcel I.D. #: R07217-007-003-000

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STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

GENERAL WARRANTY DEED

THIS DEED made this 1st day of March, 2013, by and between JOHN W. ANAGNOST and wife, KATHLEEN JEWELL, whose mailing address is 5 East Fayetteville Street, Wrightsville Beach, NC 28480, parties of the first part, hereinafter referred to as the "GRANTORS," and COBA VENTURES, LLC, a North Carolina limited liability company, whose mailing address is

* BAILEY & BURBY

4111 Chapra Drive, Wilmington, NC 28412, party of the second part, hereinafter referred to as the "GRANTEE."

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

WITNESSETH:

THAT the Grantors, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, have and by these presents do grant, bargain, sell and convey unto the Grantee, its successors and assigns, in fee simple forever, all that certain lot or parcel of land situated in New Hanover County, North Carolina, and being more particularly described as follows

BEING ALL OF THE PROPERTY DESCRIBED ON EXHIBIT "A" HERETO ATTACHED, MADE A PART HEREOF AND INCORPORATED HEREIN BY REFERENCE

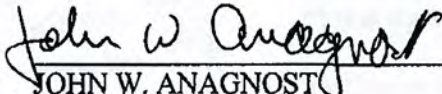
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges, easements and appurtenances thereto belonging to the Grantee, its successors and assigns, in fee simple FOREVER.

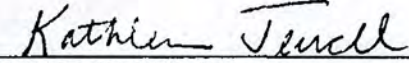
And the Grantors covenant with the Grantee that the Grantors are seized of the premises in fee simple, have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, except as set forth herein, and the Grantors will warrant and defend the title against the lawful claims of all persons whomsoever, except for the exceptions hereinafter stated

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

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

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

 (SEAL)
JOHN W. ANAGNOST

 (SEAL)
KATHLEEN JEWELL

[ACKNOWLEDGEMENT PAGE FOLLOWS]

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EXHIBIT "A"
TO
GENERAL WARRANTY DEED

BEGINNING at an old concrete monument in the Northern line of a dirt road (50 feet in width), said dirt road being created by Indenture recorded in Book 424, Page 574 of the New Hanover County Registry, said old concrete monument being located South 50 degrees 12 minutes 30 seconds East 345.94 feet as measured Eastwardly along the Northern line of the above mentioned dirt road from its point of intersection with the Southeastern right-of-way line of a road having a width of 43.6 feet said point of intersection also being the Southwest corner of the John J Malpass, Jr tract as recorded in Book 1267, Page 1547 of the New Hanover County Registry, running thence, from said Beginning point, along the centerline of a ditch and the Eastern most line of the above mentioned John J. Malpass, Jr. tract North 38 degrees 07 minutes East 153 50 feet to an old concrete monument in said ditch at its intersection with another ditch, said concrete monument being in the Southern line of the Charles E. Lewis tract as recorded in Book 439, Page 376 of the New Hanover County Registry; running thence, with the Southern line of the above mentioned Charles E. Lewis tract and with the centerline of said other ditch South 74 degrees 22 minutes East 176.03 feet to a brass shaft inside an old pipe at the high water line of the Masonboro Sound; running thence, with the high water line of the Masonboro Sound as it meanders in a Southeastwardly direction to a point that is located South 50 degrees 21 minutes East 135.07 feet, North 40 degrees 53 minutes East 25.95 feet, South 65 degrees 02 minutes East 66.64 feet, South 59 degrees 30 minutes East 252.88 feet and South 59 degrees 30 minutes East 29 feet more or less from the point of Beginning; running thence North 59 degrees 30 minutes West 29 feet more or less to an old granite stone in the Northern line of the Dudley Malpass tract as recorded in Book 1145, Page 58 of the New Hanover County Registry, running thence, with the Northern line of the above mentioned Dudley Malpass tract, the same course continued North 59 degrees 30 minutes West 252.88 feet to an iron pipe; thence continuing with the Northern line of the above mentioned Dudley Malpass tract North 65 degrees 02 minutes West 66 64 feet to an old pipe, said pipe being the Northwest corner of the above mentioned Dudley Malpass tract, running thence, with the Western line of said Dudley Malpass tract South 40 degrees 53 minutes West 25.95 feet to an old pipe in the Northern line of the above mentioned dirt road created by Indenture recorded in Book 424, Page 574 of the New Hanover County Registry; running thence with the Northern line of said dirt road North 50 degrees 21 minutes West 135.07 feet to the point of Beginning, containing 2.1 acres more or less.

The above described tract of land being the same lands as described in that certain Deed dated 30 June 1955 from D. D. Cameron and wife, Elizabeth H Cameron to Walter F. Johnston and wife, Margaret S. Johnston and Francis E. Newton and wife, Miriam J. Newton and recorded in Book 571 at Page 226 of the New Hanover County Registry. Also being the same property described in that certain Deed from Miriam J Newton to Walter F Johnston and wife, Margaret S. Johnston dated October, 1985 and recorded in Book 1306 at Page 640 of the New Hanover County Registry Also being the same property described in that certain Deed from Walter F. Johnston and wife, Margaret S Johnston to John W. Anagnost and wife, Kathleen Jewell dated December 21, 1989 and recorded on December 28, 1989 in Book 1480 at Page 1138 of the New Hanover County Registry

TOGETHER WITH AND SUBJECT TO the rights and privileges of that certain Deed of Easement and Agreement dated 1 February 1988 and recorded in Book 1404 at Page 1069 of the New Hanover County Registry.

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To Doug
9-5-13

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY | |
|---|---|-------------------------------|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front, if space permits. | A. Signature <input checked="" type="checkbox"/> <i>Pamela J. Brown</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee | |
| 1. Article Addressed to: GREG BROWN 4612 Serenity Point Rd. WILMINGTON, NC DCM WILMINGTON, NC 28409 SEP 05 2013 | B. Received by (Printed Name) | C. Date of Delivery 9-6-13 |
| | D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No Pamela Brown | |
| 2. Article Number: (Transfer from service label) | 3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. | |
| | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes | |
| PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540 | | |

7013 0600 0000 0123 3183

| SENDER: COMPLETE THIS SECTION | COMPLETE THIS SECTION ON DELIVERY | |
|---|---|----------------------------|
| <ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front, if space permits. | A. Signature <input checked="" type="checkbox"/> <i>Joyce N. Lewis</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee | |
| 1. Article Addressed to: Joyce Lewis 4607 New Jack Rd. Wilmington, NC 28409 | B. Received by (Printed Name) J Lewis | C. Date of Delivery 8/7 |
| | D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No DCM WILMINGTON, NC SEP 05 2013 | |
| 2. Article Number: (Transfer from service label) | 3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. | |
| | 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes | |
| Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540 | | |

7013 0600 0000 0123 3190

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CAMA VARIANCE REQUEST FOR COBA VENTURES, LLC
STATEMENT REGARDING VARIANCE CRITERIA

This Permit consists of two parts: one part for UPLAND DEVELOPMENT and the other for a DOCKING FACILITY. No variance is sought with regard to the UPLAND DEVELOPMENT portion. The following comments relate to the portion addressing the DOCKING FACILITY.

- (a) *Will strict application of developmental rules, standards or orders issued by the Commission cause the petitioner unnecessary hardships?*

YES. The proposed docking facility extends eastward from the western shore of the Atlantic Intracoastal Waterway, and is intended to provide docking facilities for boats using the adjoining waters. Due to current rules, the permit limits the length of the dock to the area extending not more than one quarter of the width of the water body. Surveys submitted with the application indicate that the depth of water in the permitted area varies between -0.5 feet and -0.8 feet, effectively preventing boats of any appreciable size from approaching a dock within that area. This limitation in effect defeats the purpose of the dock and imposes a hardship on the petitioner in that it prevents petitioner from fully utilizing its common law right to wharf out to a reasonably navigable depth.

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

Yes. The hardship arises from the fact that the one quarter width area to which petitioner is limited is of minimal depth which is not sufficient for navigation. This is in turn caused by the fact that the body of water in which the AICW is located is relatively narrow at the point in question. By extending the pier and dock to a length which would not exceed the length of the existing pier located on the adjacent property to the South, petitioner could reach navigable depth without creating a new level of intrusion and without encroaching on the 80' channel setback line.

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

NO. The hardships result from natural conditions existing before petitioner acquired the property.

- (d) *Will the variance requested by 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?*

YES, as to all three.

The variance would not depart from the overall intent to prevent docking facilities from encroaching into the ICW channel setback. The most extensive portion of the dock would not come within 200 feet of the edge of the channel, and would not need to extend materially beyond the length of the existing pier to the South. It would appear that justice would allow petitioner to exercise privileges similar to those already afforded to the adjacent property owner.

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CAMA VARIANCE REQUEST FOR COBA VENTURES, LLC
PROPOSED STIPULATED FACTS

The facts underlying this request are not contested.

The Petitioner requested a CAMA permit as set forth in the attached application. The permit was granted, but with limitations on the length of the Docking Facility. The limitation was due to the encroachment of the proposed Docking Facility into the area covered by the 'one quarter width of the water body' rule.

There is no question that the proposed Docking Facility extends into the one quarter width area.

Petitioner has submitted what it believes to be accurate surveys showing the length of the proposed Docking Facility, the water depths at the permit location, and the location of the pier on the adjacent property.

Petitioner seeks a modification on the basis that the proposed facility will not encroach any further into the waterway than the existing adjacent pier, and that limiting the length of the pier as set for the in the current permit would make the pier all but unusable as a boat dock due to the shallow water depths at the allowed length.

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ATTACHMENT E:
STIPULATED EXHIBITS

- Project Narrative from applicant
- DCM Field Report
- Hydrographic and Riparian Surveys from CAMA major permit application
- Power Point presentation showing the Site

PROJECT NARATIVE

We plan to subdivide a 2.08 acre parcel into four residential lots, and construct a ⁸ slip ~~allow~~ community docking facility into Masonboro Sound. The docking facility will be located to the same distance as the adjacent piers to the south at the -2.0' at mean low water contour.

G.S. 86-13

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AUG 06 2013



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

August 9, 2013

Greg Stier
c/o Stier Construction Company, Inc.
7049 Masonboro Sound Road
Wilmington, North Carolina 28409

Dear Mr. Stier:

The Division of Coastal Management hereby acknowledges receipt of your application, acting as agent for COBA Ventures, LLC for State approval for the proposed development at property located at 4616 Serenity Point, adjacent to Masonboro Sound, in New Hanover County. It was received as complete on August 6, 2013, and appears to be adequate for processing at this time. The projected deadline for making a decision is October 21, 2013. An additional 75-day review period is provided by law when such time is necessary to complete the review. If you have not been notified of a final action by the initial deadline stated above, you should consider the review period extended. Under those circumstances, this letter will serve as your notice of an extended review. However, an additional letter will be provided on or about the 75th day.

If this agency does not render a permit decision within 70 days from August 6, 2013, you may request a meeting with the Director of the Division of Coastal Management and permit staff to discuss the status of your project. Such a meeting will be held within five working days from the receipt of your written request and shall include the property owner, developer, and project designer/consultant.

NCGS 113A-119(b) requires that Notice of an application be posted at the location of the proposed development. Enclosed you will find a "Notice of Permit Filing" postcard which must be posted at the property of your proposed development. You should post this notice at a conspicuous point along your property where it can be observed from a public road. Some examples would be: Nailing the notice card to a telephone pole or tree along the road right-of-way fronting your property; or at a point along the road right-of-way where a private road would lead one into your property. Failure to post this notice could result in an incomplete application.

A field report has been prepared and is in the process of being circulated to the various state and federal review agencies for their comments. If additional information is required based on this review, the agencies may contact you directly.

Sincerely,

Robb L. Mairs
Field Representative

cc: Doug Huggett, DCM
Dave Timpy, USACE
Ken Vafier, NH Co.
COBA Ventures, LLC (applicant)

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

**DIVISION OF COASTAL MANAGEMENT
FIELD INVESTIGATION REPORT**

1. **APPLICANT'S NAME:** COBA Ventures, LLC (Babatunde Olatidoye) c/o Greg Stier
PROJECT NAME: Serenity Point Subdivision
2. **LOCATION OF PROJECT SITE:** 4616 Serenity Point, in Masonboro Sound, New Hanover County.

Photo Index – 2006: 22-7419, 8-9, P-S **2000:** 22-268: 8-9, Q-T **1995:** 22-249: 2-3, Q-T
State Plane Coordinates - X: 2345082 **Y:** 148000 **GPS - O-071015A**
Latitude: 34°09'04.28190"N **Longitude:** 77°51'34.25848"W

3. **INVESTIGATION TYPE:** CAMA/D&F
4. **INVESTIGATIVE PROCEDURE: Dates of Site Visit – 07/03/2013 and 07/10/2013**
Was Applicant Present – No

5. **PROCESSING PROCEDURE: Application Received – 08/06/2013 (completed)**
Office – Wilmington

6. **SITE DESCRIPTION:**

- (A) **Local Land Use Plan -** Wilmington/New Hanover Co. 2006 Update Plan
Land Classification From LUP - Resource Protection
- (B) **AEC(s) Involved:** EW, PT, ES, ORW
Water Dependent: Yes
- (D) **Intended Use:** Residential
- (E) **Wastewater Treatment: Existing –** Municipal Sewer (CFPUA)
Planned – Municipal Sewer (CFPUA)
- (F) **Type of Structures: Existing –** Timber bulkhead
Planned – New four (4) lot subdivision and community docking facility
- (G) **Estimated Annual Rate of Erosion:** N/A
Source - N/A

7. **HABITAT DESCRIPTION:**

| | [AREA] <u>DREDGED</u> | <u>FILLED</u> | <u>OTHER</u> |
|---|--------------------------|---------------|---------------------------------|
| (A) Vegetated Wetlands (Coastal) | | | |
| (B) Non-Vegetated Wetlands (Open water) | | | 4,384 sq. ft. (Incorporated) |
| (C) Other (Highground) | | | 65,340 sq. ft. |

- (D) **Total Area Disturbed:** 69,724 sq. ft. (1.6 acres)
- (E) **Primary Nursery Area:** Yes
- (F) **Water Classification:** SA-ORW **Open:** Yes

8. **PROJECT SUMMARY:** The applicant proposes a four (4) lot subdivision and an associated community docking facility in Masonboro Sound.

9. PROJECT DESCRIPTION:

The project site is located at 4616 Serenity Point, adjacent to the Channel Haven Subdivision and Masonboro Sound, in New Hanover County. To locate the property of interest from the Wilmington Regional Office (WiRO), travel southwest on Cardinal Drive Extension until you reach Eastwood Road. Turn left at Eastwood Road and travel east approximately 2.0 miles until you reach Military Cut-Off Road. Turn right on Military Cut-Off Road and continue onto Oleander Drive for approximately 3.3 miles until you reach Pine Grove Drive. Turn left onto Pine Grove Drive and travel south for approximately 2.0 miles until you reach Masonboro Loop Road. Turn right onto Masonboro Loop Road and travel south approximately 2.5 miles until you reach the Channel Haven Subdivision, which will be located on the left. Turn left onto Channel Haven Drive South and then turn left onto Channel Haven Drive North. Turn left onto Aqua Drive which turns onto Channel Haven Drive North. Continue heading east until you reach Serenity Point, which will be a gravel road located on the left. Continue down Serenity Point until it terminates to the property of interest. The property is adjacent to residential properties to the north and south. The site is also just north of the Channel Haven Subdivision community boat ramp located on the northwest side of the peninsula. The community boat ramp provides water access to the inland property owners of the adjacent Channel Haven Subdivision.

The approximately 2.08 acre property has an average elevation of approximately 10' above normal high water (NHW) with approximately 480' of shoreline, which is currently stabilized by a timber bulkhead, which was authorized to the previous property owner under CAMA General Permit No. 6837-D on May 20, 1990. The existing timber bulkhead currently ties into an existing bulkhead located on the adjacent property to the south. The applicant currently remains as a vacant lot; however there was a previous single-family residence on this property, which has been demolished.

Upland vegetation consists primarily of wild grasses and Live Oak trees. Located on the northern end of the property the vegetation transitions which exhibits §404 type wetlands, consisting primarily of Common Reed (*Phragmites australis*), Grousel-bush (*Baccharus halimifolia*), Marsh-elder (*Iva frutescens*), Wax Myrtle (*Myrica cerifera*) and Yaupon (*Ilex vomitoria*) shrubs. A narrow border of Sea Oxeye (*Borrchia frutescens*) and high coastal marsh vegetation, including, Black Needle Rush (*Juncus roemarianus*), and Salt Meadow Grass (*Spartina patens*) transitions to an area of Smooth Cordgrass (*Spartina alterniflora*) approximately 25' in width to the open water area of Masonboro Sound. Existing NHW was delineated by New Hanover County Inspections Department and existing §404 wetlands were delineated and verified by the U.S. Army Corps of Engineers (USACE) (See **Jurisdictional Determination (JD), C1 Sheet 1 of 3 and Project Narrative**).

The Wilmington/New Hanover County Land Use Plan 2006 update classifies adjacent waters as Conservation, and the adjacent high ground portion of the project area as Resource Protection. The waters of Masonboro Sound are Classified as Outstanding Resource Water (**SA-ORW**) by the NC Division of Water Resources and **are** designated as a **Primary Nursery Area (PNA)**, by the NC Division of Marine Fisheries. The area of Masonboro Sound is **OPEN** to the harvesting of shellfish.

PROPOSED PROJECT:

The applicant proposes a four (4) lot subdivision and an associated community docking facility in Masonboro Sound. The application states the approximately 2.08 acre tract would be subdivided into four (4), approximately 0.52 units per acre lots, averaging approximately 15,000 sq. ft. The lots would be accessed via a 20' access easement and would include a 30' concrete driveways and stormwater infiltration system. The applicant proposes to provide a 6' wide pedestrian elevated walkway to the community dock within a 10' wide access easement along the most southern side of Lot 4 for the proposed four-lot subdivision. The entire site is located within the 575' ORW Area of Environmental Concern (AEC). No dwellings are proposed at this time, only proposed footprint. The property owners would be required to obtain individual permits from the local level. The applicant has received a State Stormwater Permit from the N.C. Division of Water Resources on February 22, 2013 (**SW8 130103**) and a Sedimentation and Erosion Control Plan from the New Hanover County Engineering Department (**GP 34-12**) (See **Sheet C1 Sheet 1 of 3 dated July 10, 2013**).

A new fixed pier, measuring approximately 280' in length by 6' in width would extend from the existing highground of the community common area towards Masonboro Sound to the east. The pier would terminate to a new partially covered platform, measuring approximately 36' in length by 12' in width, which would be located entirely over open water and oriented towards the north creating an "L-shaped" configuration. A fixed platform would continue a distance approximately 72' in length by 6' in width towards the north. Waterward of the proposed platforms would be four (4) access ramps, which would lead onto four (4) new floating docks, each measuring approximately 16' in length by 6' in width, running perpendicular to the channel and shoreline. These floating docks would be spaced approximately 30' apart to allow for the construction of eight (8) boatlifts, each measuring approximately 13' in length by 14' in width to be located within this configuration. The application states that the proposed configuration would accommodate up to eight (8) vessels, specifically for the four lot owners of the Serenity Point Subdivision.

Based on the provided hydrographic survey that was conducted in this area of Masonboro Sound, the application states that the proposed docking structures would be located in water depths of approximately -2.4' relative to mean low water (MLW); further, based on this survey the proposed docking facility would extend to the established pier length south of the project site, which includes two (2) private docking facilities and the Channel Haven Subdivision peninsula, aforementioned (**See Sheets 1 and 2 of 2 For Proposed Pier dated July 12, 2013 and Project Narrative**).

10. ANTICIPATED IMPACTS

The proposed upland development would disturb approximately 65,340 sq. ft. (1.5 acres) of highground within the Estuarine Shoreline area. According to the site drawings, the four lots, portions of the 20' access easement, 30' concrete driveways and stormwater infiltration system are entirely located within the 575' AEC. It is assumed that these four lots would be developed, however there should be no long term impacts associated with the development of these lots. The applicant has indicated that approximately 25.0 % of the SA-ORW shoreline would be covered by built upon area.

The proposed structures would incorporate approximately 4,384 sq. ft. of Public Trust Area and Estuarine Waters. The structures would not encroach into the 15' riparian corridor setback requirement of the adjacent riparian properties. Based on the provided survey and drawings, the proposed structures would not encroach into the 80' setback from the AIWW federal channel. The proposed structures would extend approximately 315' into a waterbody, which measures approximately 970' across. This distance appears to not conform to the 1/4 width rule; however, it appears to extend to the 1/3 distance and the established pier length, aforementioned. The proposed structures would accommodate up to eight (8) vessels at this location within current water depths of approximately -2.4' relative to MLW. The nearest docking facility is approximately 100' or less to the south. Minor turbidity increases may be expected during the construction process.

Recommendations for State Permit - Serenity Point Subdivision c/o Babatunde Olatidoye

The total square footage of platform and docks were calculated as follows:

Shoreline length = $\sim 480' \times 8 \text{ sq. ft} = 3,840 \text{ sq. ft. allowable (2,000 sq. ft. limitation)}$

Fixed partially covered platform = $36' \times 12' = 432 \text{ sq. ft.}$

Fixed "L-head" platform = $72' \times 6' = 432 \text{ sq. ft.}$

Floating docks= four (4): $16' \times 6' = 384 \text{ sq. ft.}$

Total = 1,248 sq. ft.

It is the staff's recommendation that the proposed docking facility appears to be **consistent** with the use standards set forth in NCAC 07H .0208(b)(6) including the eight square foot rule and the pier width rule. The proposed floating docks, platforms, and boatlifts would be located entirely over open water; however, it appears the docking facility would be **inconsistent** with NCAC 07H .0208(b)(6)(G)(iii) (1/4 distance rule). It is recommended that the proposed docking facility conform to the 1/4 width distance.

It is the staff's recommendation that the proposed project is **CONSISTENT** with the Rules of **15A NCAC 07H .0209 COASTAL SHORELINES** (d). This office has no objection to the proposed work, provided it is consistent with state and federal permitting requirements. If the project is determined to be consistent with **15A NCAC 07H .0209 COASTAL SHORELINES** (d) and built in accordance with NCAC 07H .0208(b)(6)(iii), this office has no objection to the proposed work, provided it is consistent with all other state and federal permitting requirements. Any permit issued should include the following conditions:

1. This permit authorizes only the docks, piers, and other structures and uses located in or over the water that are expressly and specifically set forth in the permit application. No other structures, whether floating or stationary, may become a permanent part of the structure without permit modification. No non-water dependent uses of structures may be conducted on, in, or over public trust waters without permit modification.
2. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.
3. **The authorized structure and associated activity must not cause an unacceptable interference with navigation and shall not exceed the 1/4 width distance rule.**
4. The permittee must install and maintain, at his expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities.
5. The permittee will maintain the authorized work in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if he abandons the project without having the permit transferred to a third-party.
6. This permit authorizes a maximum of eight (8) boat slips. At no time shall more than eight (8) vessels be moored or docked at the facility. The restriction of the number of vessels shall apply to all marine vessel types, including but not limited to motorboats, sailing vessels and personal watercraft.
7. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.
8. The authorized project is located within a primary nursery area (PNA). Therefore, in accordance with 07H.0208 of the Rules of the Coastal Resources Commission, no new dredging or excavation within the PNA shall be permitted. Dredging in any manner, including "kicking" with boat propellers, is not authorized.

Additional Recommended Permit Conditions on Next Page

9. In order to protect water quality, runoff from the construction must not visibly increase the amount of suspended sediments in adjacent waters.
10. Appropriate sedimentation and erosion control devices, measures or structures must be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, etc.).
11. A ground cover sufficient to restrain erosion shall be provided within the shorter of 15 working or 30 calendar days of completion of any phase of grading on cut or filled slopes.
12. The Division of Water Resources approval of this project under stormwater management rules of the Environmental Management Commission is covered by way of Stormwater Permit No. **SW8 130103**, which was issued on February 22, 2013. Any violation of the permit approved by the DWQ will be considered a violation of this CAMA permit.

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.

NOTE: Future development of the permittee's property may require a modification of this permit. Contact a representative of the Division at (910) 796-7215 prior to the commencement of any such activity for this determination. The permittee is further advised that many non-water dependent activities are not authorized within 30 feet of the normal high water level.

NOTE: The permittee and/or his contractor is urged to meet with a representative of the Division prior to project initiation.

NOTE: The permittee is cautioned that this permit does not authorize the placement of tie piles in association with the docking facility. Furthermore, due to the proximity of the AIWW, boats utilizing the docking facility will be subject to frequent wave wash from passing vessels. The issuance of this permit does not relieve the permittee from taking all proper steps to ensure the integrity of the structure and the safety of moored boats. The permittee shall not hold the State of North Carolina or the United States liable for any damage to the structure or moored boats.

**COBA Ventures, LLC
Serenity Point Subdivision
4616 Serenity Point Road,
New Hanover County**

**Variance Request
February 26, 2014**





**View of Project Site and Adjacent
Properties Facing North
Photo: NC DCM Photography
dated 1.10.2014**



**View of Project Site and Adjacent
Properties Facing Southeast
Photo: NC DCM Photography
dated 1.10.2014**

Wilmington District

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

Last Update: 19 Aug 2011

**COBA Ventures, LLC
Approximate Project
Location**



1/4 distance

1/3 distance

970 feet across

AIWN

Channel Haven Canal



Channel Haven Canal

**COBA Ventures, LLC
Approximate Project Location**



AIWW

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



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 *APL*
DATE: February 10, 2014 (for the February 26-27, 2014 CRC Meeting)
RE: **Variance Request by William Jake Taylor**

Petitioner owns property located at 213 Smith Street in Atlantic Beach, Carteret County, North Carolina. On October 2, 2013, Petitioner applied for a CAMA Major Permit to construct a pier and two boat lifts, as proposed. On October 7, 2013, the adjacent riparian property owner submitted a letter of objection declining to waive the 15-foot riparian setback established by 15A NCAC 7H .0208(b)(6)(I) for Petitioner’s proposed development. On December 18, 2013, Petitioner’s application was denied on the basis that the proposed development is inconsistent with the Commission’s 15-foot riparian setback rule in that the proposed development does not meet the minimum setback of 15 feet from the adjacent property owner’s area of riparian access. On January 15, 2014, Petitioner filed this variance request seeking relief from strict application of the Commission’s 15-foot riparian setback rule to construct a pier and two boat lifts, as proposed in his permit application.

The following additional information is attached to this memorandum:

- Attachment A: Relevant Rule (15A NCAC 07H .0208(b)(6)(I))
- Attachment B: Stipulated Facts
- Attachment C: Petitioner’s Position and Staff’s Responses to Criteria
- Attachment D: Stipulated Exhibits
- Attachment E: Petitioner’s Variance Request Materials

- cc: William Jake Taylor, Petitioner, electronically
Mary Lucasse, CRC Counsel, electronically
Doug Huggett, DCM Major Permits Coordinator, electronically
Daniel Govoni, Assistant Major Permits Coordinator, electronically
Roy Brownlow, DCM Morehead City District Manager, electronically
Heather Styron, DCM Field Representative, electronically

RELEVANT RULE

ATTACHMENT A

15A NCAC 7H .0208 Use Standards

(b) Specific Use Standards

(6) Piers and Docking Facilities.

- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management;

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner, William Jake Taylor owns property located at 213 Smith Street in the Beach Mobile Home Court subdivision, adjacent to an entrance channel from Bogue Sound to the Moonlight Bay area, in Atlantic Beach, Carteret County, North Carolina (“the site”).
2. The site is located within the Public Trust Area and Estuarine Waters Areas of Environmental Concern (“AEC”), as described in 15A NCAC 7H .0207 and .0206, respectively.
3. The adjacent riparian property owners located to the north of the site at 215 Smith Street (Lot 36) are Kirby L. and Teresa P. Marshburn.
4. The adjacent riparian property owners located to the south of the site at 209 Smith Street (Lot 33) are William C. Coley III and Vickie Coley.
5. On July 29, 2011, Petitioner purchased a residence on a non-waterfront .09 acre lot, Lot 35 of the Beach Mobile Home Court subdivision (213 Smith Street). At that time, Lot 35 did not have riparian access; however, Lot 34 (211 Smith Street), situated on the waterward-side to the rear of Petitioner’s property, had 58.4 feet of shoreline with a pier and boat lift (“existing pier”).
6. In early 2013, Petitioner began negotiations with Kirby L. and Teresa P. Marshburn, owners of Lots 34 and 36, to purchase a portion of Lot 34 that adjoined the rear of Petitioner’s property (Lot 35) in order to gain riparian access.
7. On March 8, 2013, Petitioner and Mr. Coley exchanged emails where Mr. Coley stated that he and his wife “were not willing to and will not waive any setbacks or other legal requirements that may be applicable to the pier(s) or desired improvements to the property at issue.” (*See Attachment E*)
8. On April 11, 2013, Petitioner executed a contract/offer to purchase with Kirby L. and Teresa P. Marshburn, owners of Lot 34, to purchase a portion of Lot 34. Petitioner also agreed as part of this contract to remove any portion of the existing pier that encroached beyond the riparian access line of Lot 36, also owned by the Marshburns, within 12 months of purchase. (*See Attachment E*)
9. On June 6, 2013, Petitioner purchased a portion of Lot 34 that was recombined with Lot 35 resulting in the site becoming a .17 acre lot with 31.7 feet of shoreline as shown on the riparian survey by James Phillips PLS dated June 12, 2013 for Lot 34 to be recombined with Lots 35 and 36 (hereinafter “riparian survey”). The remaining portion of Lot 34 was recombined with Lot 36.

10. 15A NCAC 07H .0208(b)(6)(I) provides that “the line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water’s edge.”
11. Division of Coastal Management (“DCM”) agrees with the riparian access lines for the site and adjacent riparian properties as set out in the riparian survey. (*See* Attachment D)
12. On October 2, 2013, Petitioner submitted an application for a CAMA Major Permit requesting to dismantle the existing pier and construct the proposed pier that would be centered in the site’s riparian area consisting of a 6-foot by 50-foot pier, a 1-foot by 10-foot finger pier, a irregularly shaped platform of 175.05 square feet, a four pole 13-foot by 13-foot boatlift on the south side of the pier, and a two pole 8-foot by 6 foot boatlift on the north side of the pier (hereinafter “proposed development”).
13. 15A NCAC 07H .0208(b)(6)(I), in pertinent part, provides that “piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner’s areas of riparian access. ... The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s)...”
14. The configuration of Petitioner’s proposed development would result in an encroachment into both adjacent 15-foot riparian setbacks.
15. Petitioner obtained a waiver of the 15-foot riparian setback from Mr. Marshburn, the northern adjacent riparian property owner for the proposed development. (*See* Attachment E)
16. On October 7, 2013, Mr. Coley, the southern adjacent riparian property owner submitted a letter of objection declining to waive the 15-foot setback for the proposed development. (*See* Exhibit)
17. On December 18, 2013, DCM denied Petitioner’s application for a CAMA major permit for the proposed development because it was inconsistent with 15A NCAC 07H .0208(b)(6)(I).
18. There are other alternatives consistent with the Commission’s rules that Petitioner could pursue which would provide Petitioner with reasonable use of his riparian access.
19. The existing pier currently within the Petitioner’s riparian area encroaches on both adjacent 15-foot riparian setbacks.
20. On January 15, 2014, Petitioner filed his variance request seeking relief from the application of the 15-foot riparian setback rule set forth at 15A NCAC 07H .0208(b)(6)(I) to allow construction of a pier and two boat lifts, as proposed.

21. Petitioner submitted, as part of his variance request, a letter on the letterhead of Triangle Neurosurgery, PA dated April 21, 2008, regarding his medical condition. (*See Attachment E*)
22. Petitioner submitted, as part of his variance request, a letter on the letterhead of Wilson Nephrology-Internal Medicine, P.A. dated November 4, 2013, regarding his brother's medical condition. (*See Attachment E*)
23. The parties stipulate that the photographs and drawings submitted with the petition and at hearing are admissible.

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.**

Petitioner's Position: Yes.

The hardship is that the lot has only 31.7 feet of water frontage and 15 foot setback from the riparian line will not allow use of that frontage to build a new pier and boat lift centered on the lot. Requiring 15 foot setbacks from both sides would only leave 1.7 feet to build a pier with a boat lift. I have a waiver from the property to the north but none from the south. I also have a blind partially crippled brother that I take fishing, as fishing is one of few recreational activities he can participate in. Using the maintenance permit path to rebuild part of the existing pier with having to remove all encroachments to the north would not leave enough space for a boat lift and wide enough pier to safely accommodate his use. It appears the intent of the rule that a variance is being asked for (15' setback from the riparian line) was to keep an adjacent riparian lot owner from building a structure that would impact the use of an existing riparian usage on the adjacent lot. The rule was drafted so that a property owner would not build so close to the property line that the use of the riparian area by the adjacent lot owner was impacted. The rule (while it is a good one) can be applied in certain situations to be detrimental to lot owners while not having any adverse impact on the adjacent property's use of their riparian area. The hardship I will experience is that I have water frontage for my lot that I cannot adequately use the riparian area fronting that lot for a pier and boat lift even though if allowed the planned pier were built it would not adversely affect the use of the riparian area fronting the adjacent lot owner not granting the waiver. The proposed pier would encroach into the 15 foot setback on each side but would still be 33 feet from the pier to the south an 17 feet from the pier to the north (property that signed waiver). One of the main reasons for the new permit was to build a pier capable of safely accommodating my blind partially crippled brother fishing. Without allowing the proposed pier permit without the 15 ' setback from the riparian line, any resulting pier and boat lift may not safely accommodate his usage of that pier.

Staff's Position: No.

Staff disagrees with Petitioner that the strict application of the 15-foot riparian setback required by 15A 7H .0208(b)(6)(I) causes Petitioner an unnecessary hardship because Petitioner has other alternatives available which would provide riparian access while not being inconsistent with the rule. Petitioner contends that since he only has 31.7 feet of shoreline, he cannot adequately use his riparian area safely, unless he can build the proposed pier and two boat lifts, as proposed within the center of his riparian area. Staff contends that with the 15-foot riparian setback waiver Petitioner has obtained from Mr. Marshburn, there are numerous alternatives that could be chosen that would allow for riparian access while still complying with the Commission's rules. Petitioner argues that without a variance, he will have no use of his riparian

area; however, as described above, Staff contends that there are numerous options that Petitioner could implement to provide riparian access. While the alternatives available to Petitioner might not be what he desires, they are nonetheless viable and reasonable uses of his riparian access. Therefore, Staff believes that Petitioner does not suffer an unnecessary hardship from strict application of the 15-foot riparian setback rule.

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

Petitioner's Position: Yes.

The water frontage of the lot is only 31.7 feet wide.

Staff's Position: No.

Staff disagrees with Petitioner that there is any specific location, size or topographical condition that is peculiar to their property. This property is typical of many properties located within and adjacent to the Public Trust Area and Estuarine Water AECs along the coast of North Carolina.

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

Petitioner's Position: No.

The condition of the lot seller was that the water frontage added to 213 Smith Street from the recombination of the old lot #211 be a minimum of 31.7 feet so his portion of that lot frontage to be combined with his other lot would be 26.7 feet. The water frontage of the lot was controlled by the lot seller. Originally the lot seller offered ½ of the water frontage of the old lot that had 58.4' of water frontage which would have been only 29.2'. I pursued purchasing more frontage but had no control of the size of the frontage the lot seller would agree to sell. After reviewing the requirements for any new permits, I negotiated as much as he was willing to give up which was 31.7'. The lot seller (215 Smith Street) only had 10 foot of lot frontage on the water thus combined enough usable lot frontage from the lot in question (old 211 Smith Street) to add to that 10 foot so he could adequately use his frontage (existing pier and boat lift). This only left 31.7 feet of water frontage on the lot the permit is being applied for.

Staff's Position: Yes.

As stated above, Staff does not agree that the application of the rule in this situation will result in an unnecessary hardship to Petitioner. Staff also contends that Petitioner's actions have directly resulted in causing the inconsistency with the Commission's rules. As provided in the variance materials, email exchanges between Petitioner and the adjacent riparian property owner to the south, Mr. Coley, reveal that at the time Petitioner purchased the riparian property, he was

aware that Mr. and Mrs. Coley were not willing to waive the 15-foot riparian setback. Therefore, Petitioner knew he could not feasibly construct the new pier and two boat lifts in the center of his riparian area, as proposed. Petitioner, however, does have other alternatives available, including but not limited to redesign and/or different configurations, which would allow Petitioner to have reasonable access to his riparian area. Accordingly, it is Staff's position that Petitioner's choice of the proposed design is the cause of the inconsistency 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.

Petitioner's Position: Yes.

I ask the board to look at the original intent of requiring a 15' setback from adjacent property riparian lines and not just the setback requirement. I content that the intent of the rule that a variance is being asked for (requiring a 15' setback from the riparian line) was to allow adjacent riparian lot owners adequate use of the riparian area fronting their lot without having a structure built adjacent to their property that would infringe on that use. This should not be for one lot owner to control the water frontage adjacent to their property just because they can when there are no adverse impacts to the use of their riparian area. The rule appears to have been drafted so that a property owner would not build close to the property line thus impacting the use of the adjacent lot owner's use of his riparian area. The rule (while it is a good one) if applied to in every case can be detrimental to lot owners while not having any impact on the adjacent property except to control the water frontage next to him. The ordinance allows waivers, which assumes adjacent property owners will work together for the greater good use of that riparian area by all which is not always the case. The adjacent lot owner to the south has stated he will not sign any waiver on any requirement or approve of any development on the lot in question even though he has one of the widest water front lots in the development and his pier is 28 feet from the subject riparian line not counting the 15 foot setback. This property owner has opposed every structure built in the water close to his property. This includes a small jet ski lift two lots over (60 plus feet away) as shown in his opposition letter (waiver asked for by mistake by contractor). The ordinance should not be interpreted to be a first come first controls a good portion of his neighbor's property even though it would not impact the use of his water frontage, but allow reasonable use by a property owner of their water frontage. The proposed pier/boatlift plan I submitted is located approximately the center of the lot and would still allow the adjacent lot owners adequate and reasonable use of the riparian areas fronting their lots. The proposed pier would be 33 feet from the pier to the south (lot owner opposing the permit) and 23 feet from the pier to the north (see page 16 of 27 of the submission). This seems to follow the spirit of the intent of the rule as all parties would have adequate use of the riparian area fronting their lots. Allowing the variance on the 15 foot setback requirement would also allow building a pier that would safely accommodate usage by my handicapped brother (blind and partially crippled). I have attached a doctor's letter.

Staff's Position: No.

The spirit, purpose, and intent of 15A NCAC 7H .0208(b)(6)(I) of the CRC's riparian setback rules is to protect the riparian access rights of adjacent riparian property owners. This rule was designed to protect both existing and future riparian access rights of adjacent riparian property owners. It is clear that the rule contemplated that there would be situations where an applicant would not be able to construct a docking facility with a design of the applicant's choosing. Therefore, Staff believes that allowing a variance for Petitioner to construct a pier and two boat lifts, as proposed, would not be consistent with the spirit, purpose, and intent of the Commission's 15-foot riparian setback rule. Moreover, Staff cannot support Petitioner's proposed development because it does not secure public safety and welfare due to the Coleys' objection and the fact that Petitioner has viable alternatives to the proposed development that would provide him reasonable use of his riparian access. Finally, substantial justice will not be preserved because construction of the pier and boat lifts, as proposed, would infringe upon and usurp a portion of the riparian access corridor provided to adjacent riparian property owners by the Commission's 15-foot riparian setback rule especially when considering that other docking facility configurations exist that would comply with the 15-foot riparian setback and still allow for reasonable riparian access by the Petitioner.

ATTACHMENT D

STIPULATED EXHIBITS

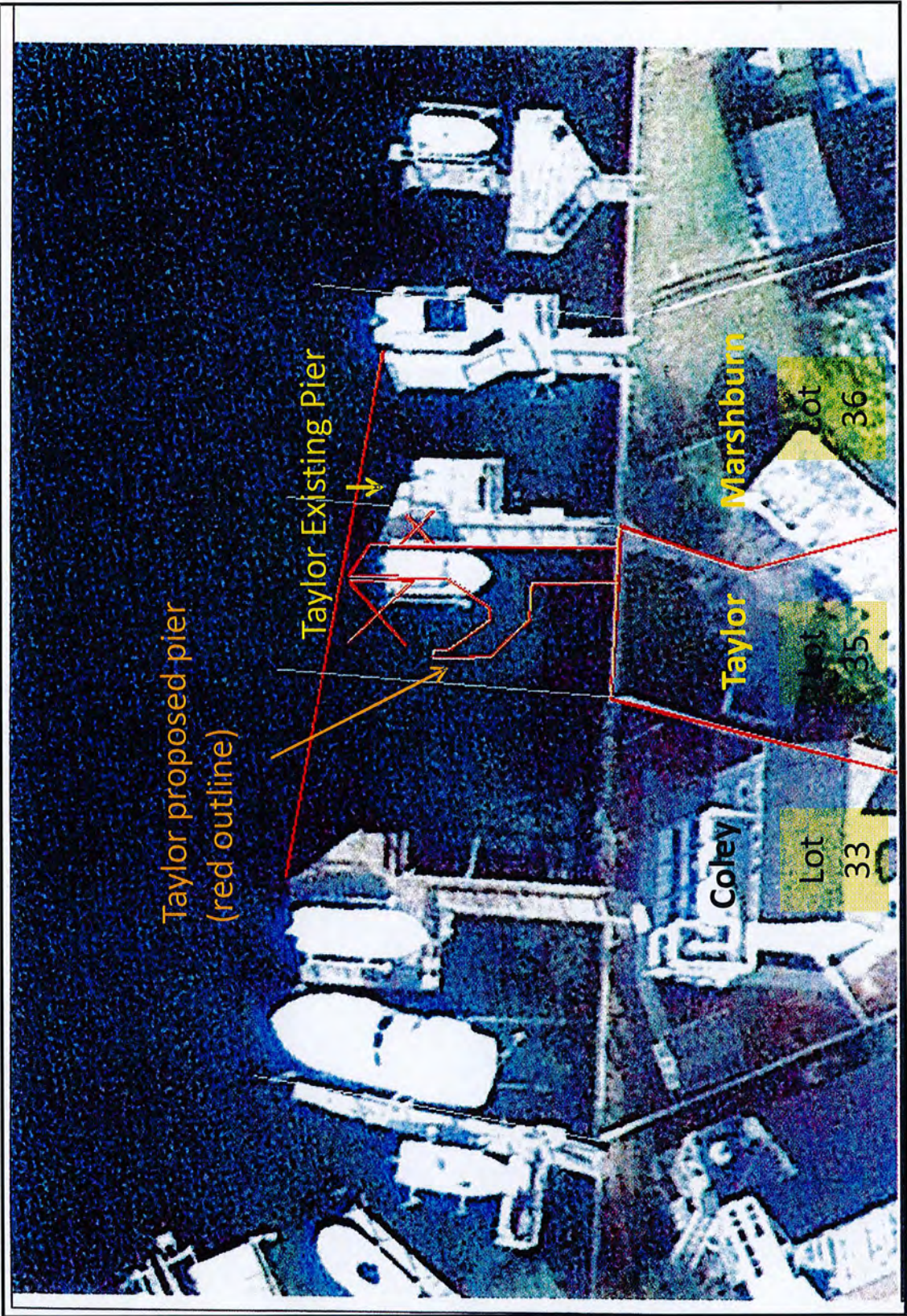
Powerpoint slides of riparian survey, drawing of the proposed development, and site photographs (total of 14 slides including title slide).

**William Jake Taylor
213 Smith Street
Atlantic Beach, Carteret County**

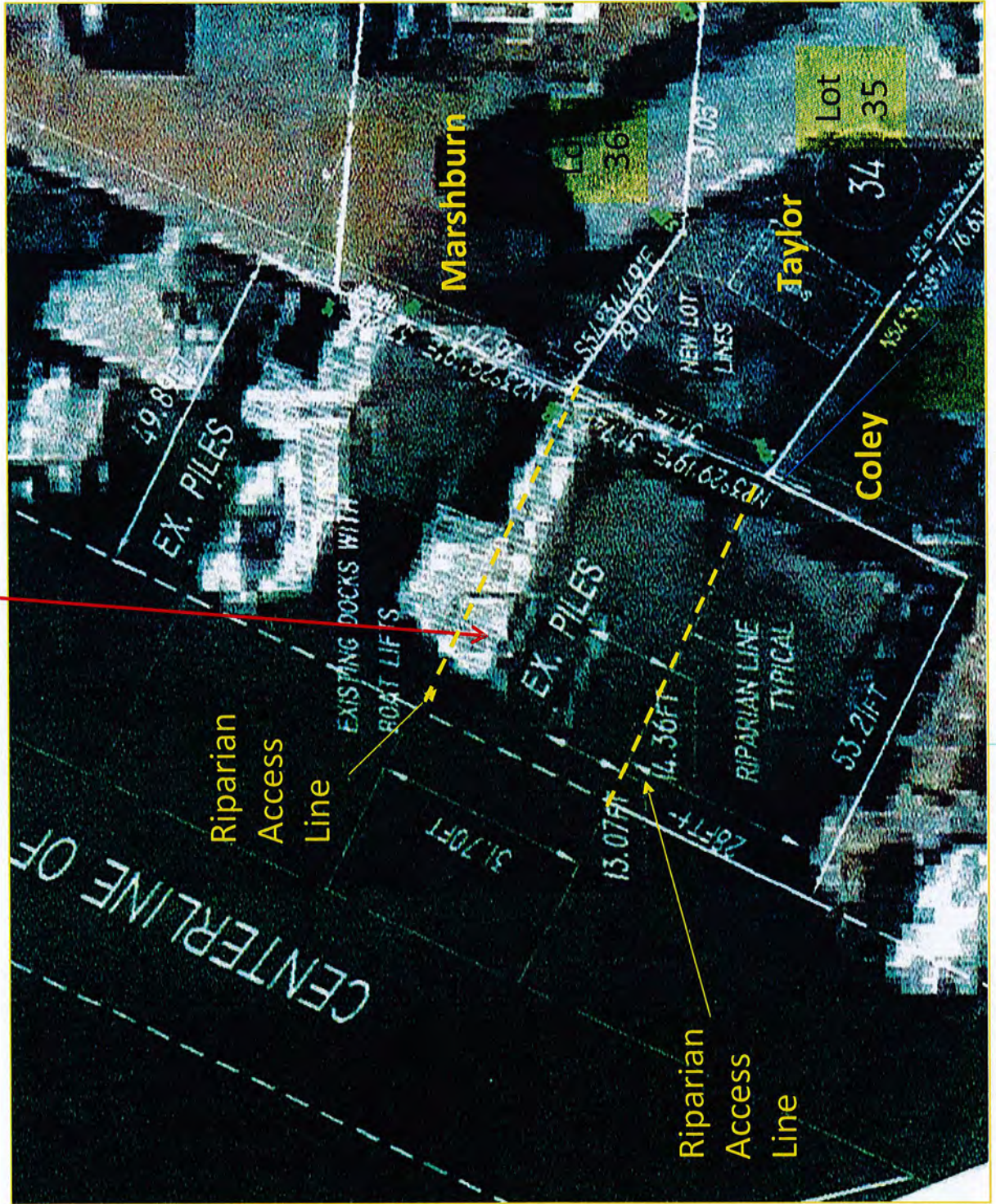
CRC

**Variance Request
February 26, 2014**

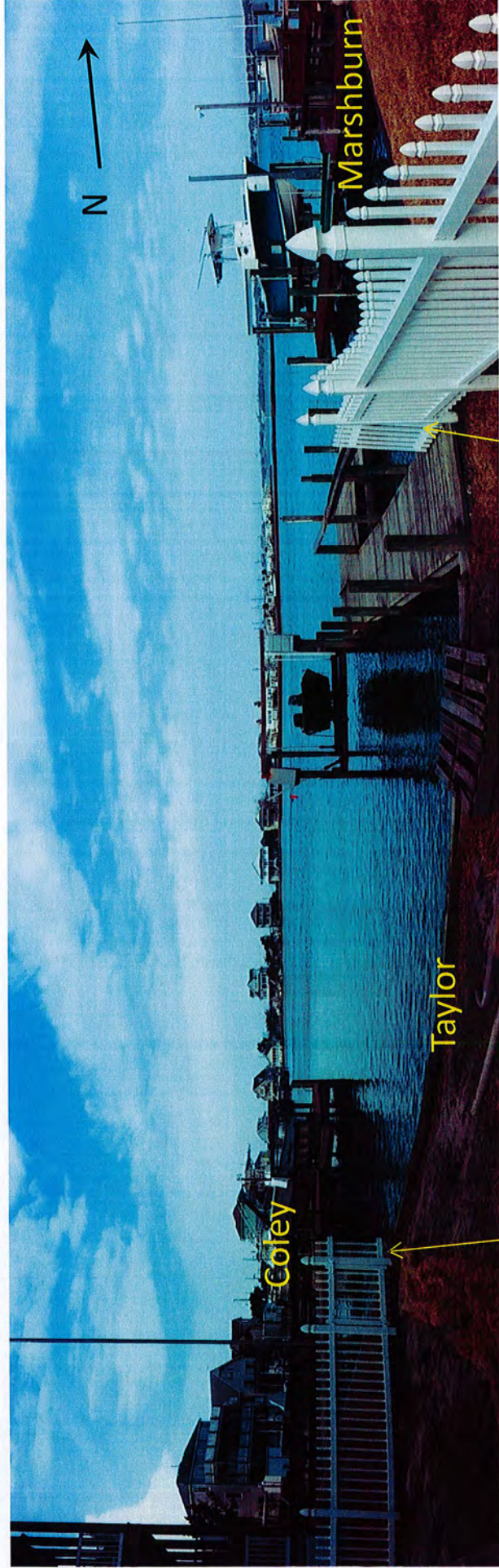
N



Enlarged Riparian Survey
(Existing Taylor Pier)



**Panoramic View
2/3/2014**



North Property Corner
(Approximate)

South
Property
Corner
(Approximate)

West View



Taylor Property

East View

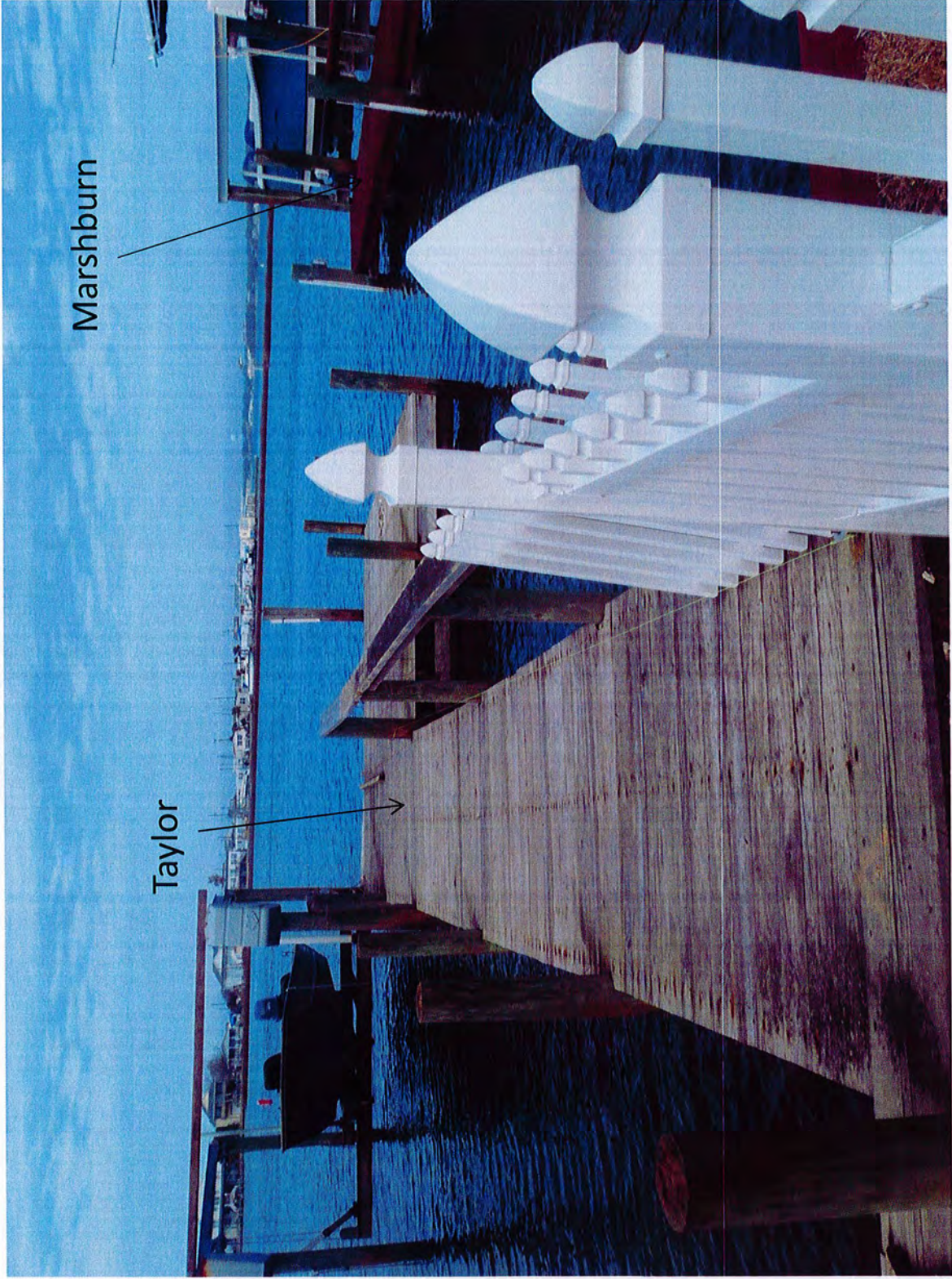
Approximate
Taylor/Marshburn
Property Corner



East View



Western View



Taylor

Marshburn

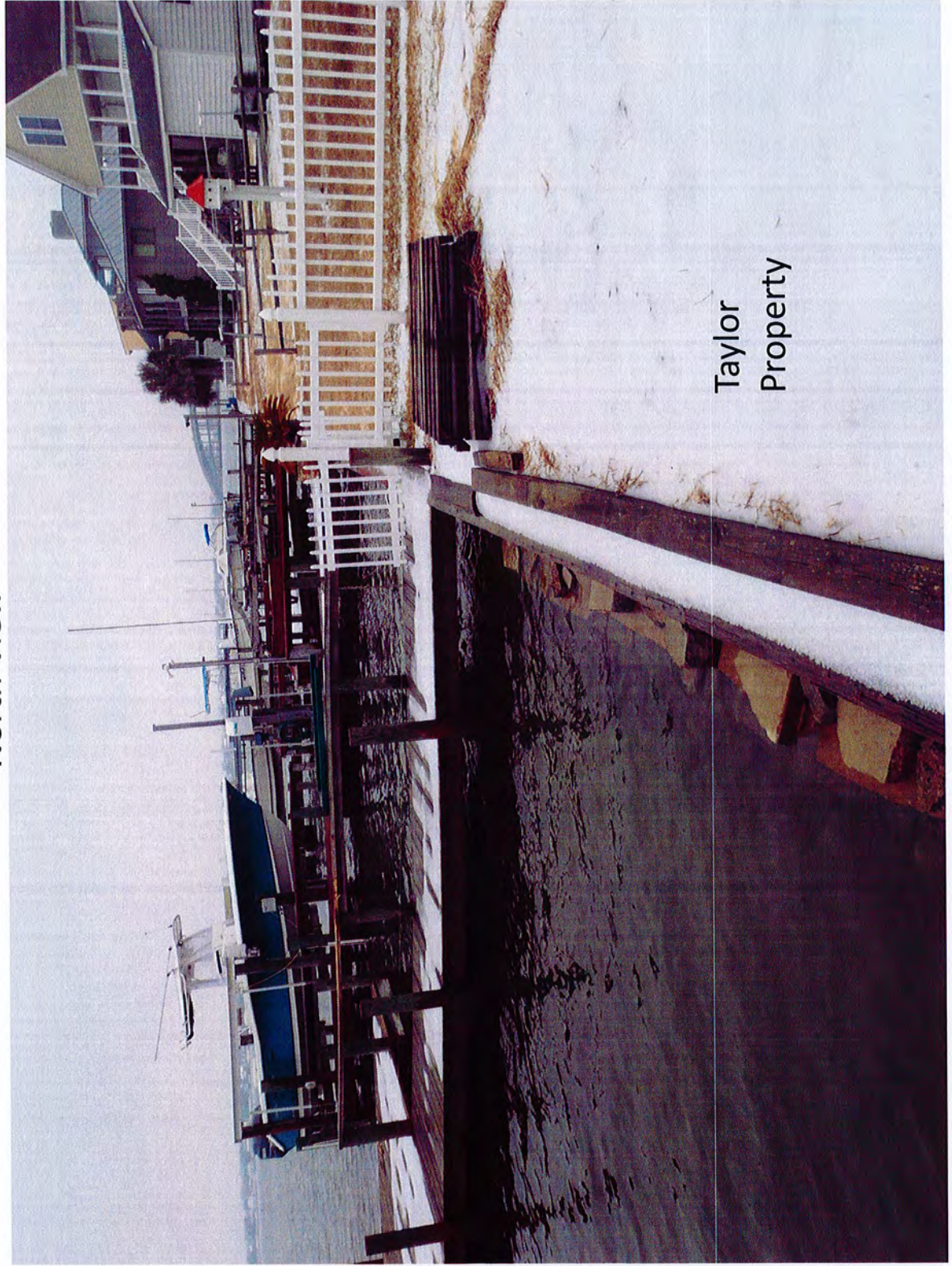
Northwest View



North View from the end of the existing Taylor Pier

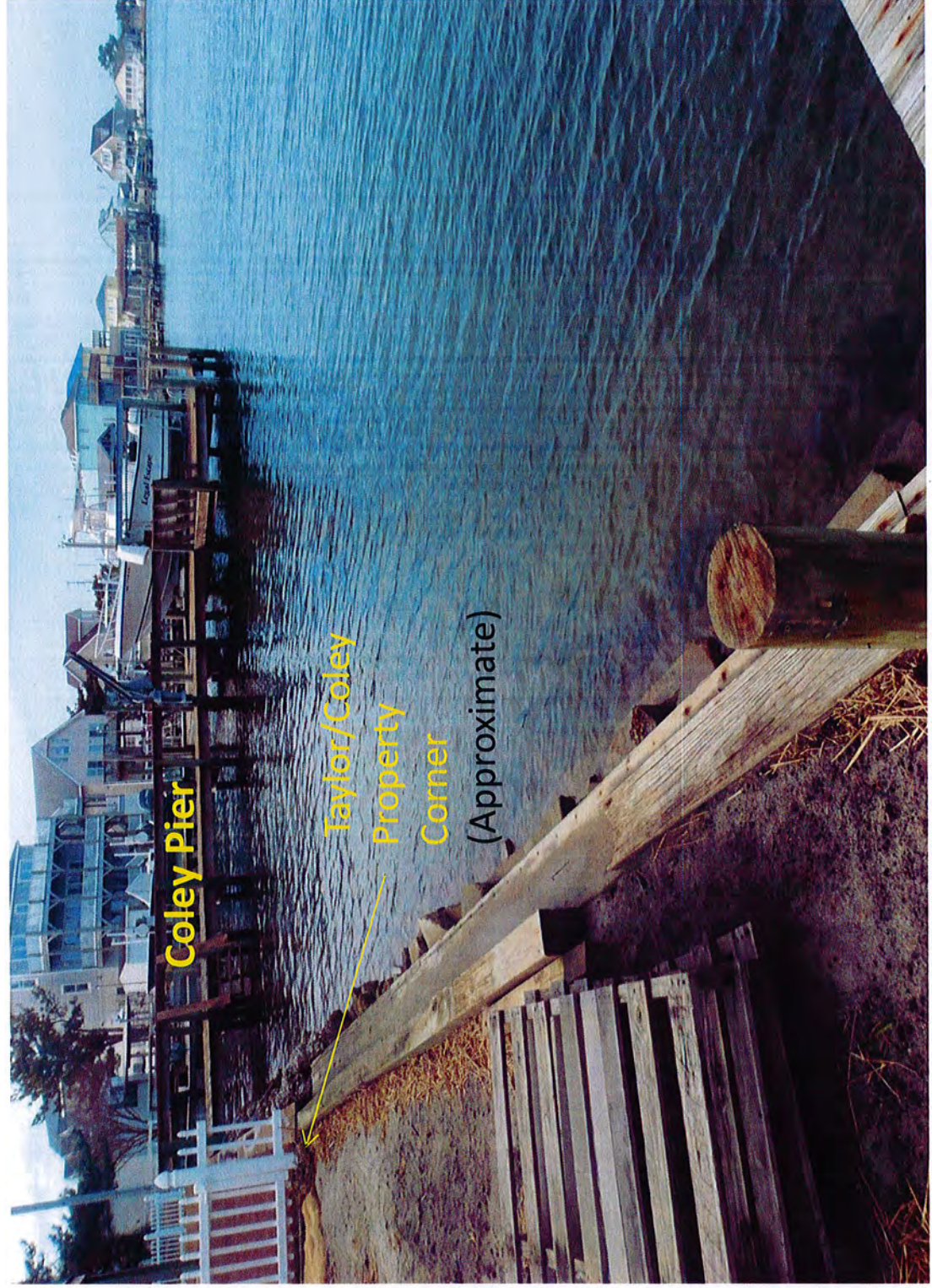


North View

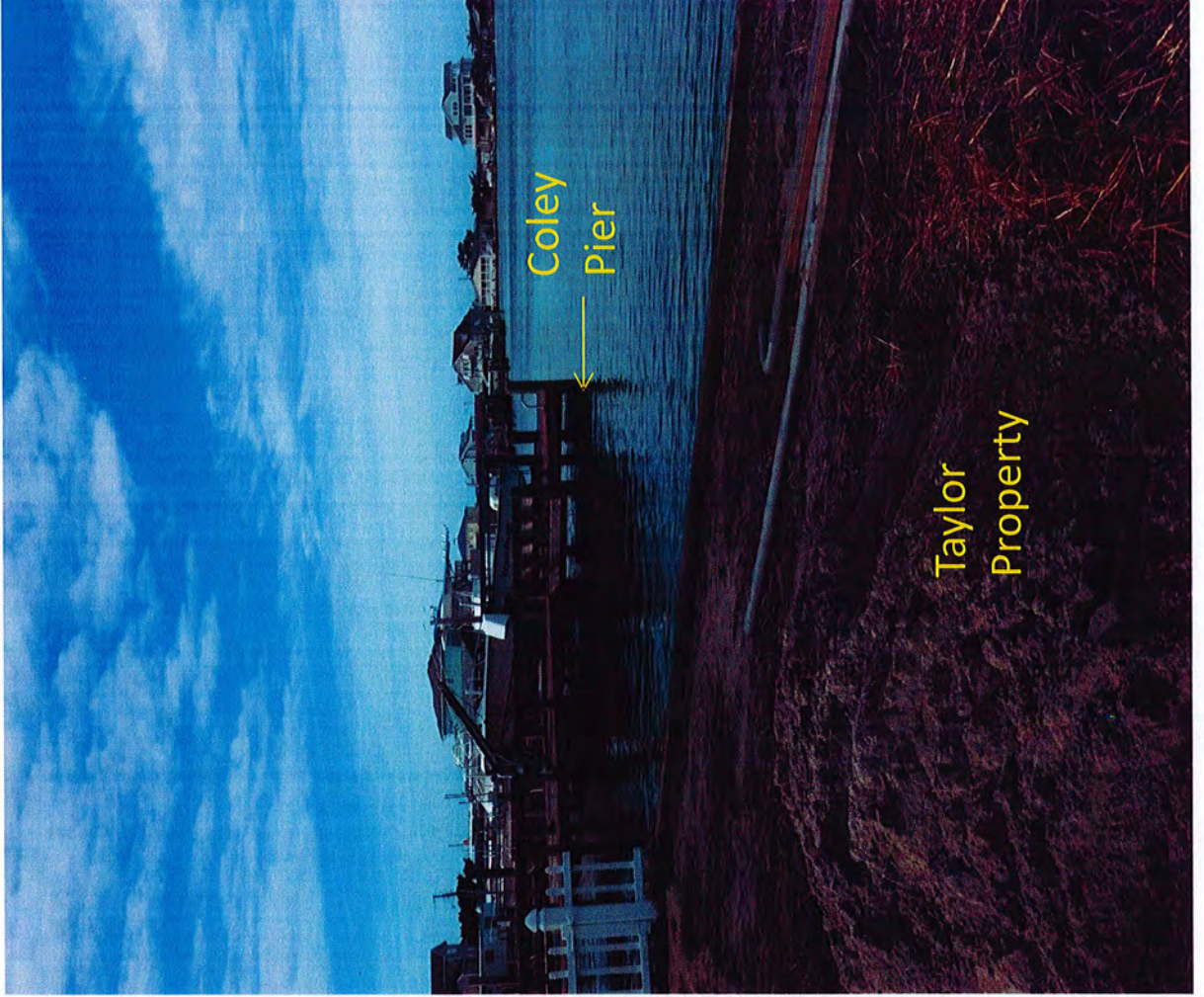


Taylor
Property

South View



Southwest View



Taylor
Property

ATTACHMENT E

PETITIONER'S VARIANCE REQUEST MATERIALS

Petitioner supplies the following information:

Your Name: William Jake Taylor
Address: 2801 Sandia Drive Raleigh NC 27607
Telephone: 919-606-2677
Fax and/or Email: jakewjt@bellsouth.net fax 919-510-0532

Name of Your Attorney (if applicable)
Address
Telephone
Fax and/or Email

Have you received a decision from the Division of Coastal Management (DCM) or a Local Permit Officer denying your application for a CAMA permit?

no (You are not entitled to request a variance until your permit application has been denied.)

yes (You may proceed with a request for a variance.)

What did you seek a permit to do?

The permit application was to build a new residential pier with boat lifts on a newly created lot at 213 Smith Street Atlantic Beach, NC. The lot was created by combining parts of an existing lot with two existing adjacent lots, in effect making two lots out of three. The lot being done away with (lot C) had a mobile home, septic and an existing pier. The mobile home and septic tank were removed and portions of the lot were combined with adjacent lots. The previous owner of the lot that was done away with combined part of the lot with his existing lot (lot B) as the old lot had only 10 foot of water frontage on lot B and wanted to keep a minimum of 26.7 foot of frontage when parts of lot C were combined, make his lot frontage (riparian area) larger, thus he would only sell 31.7 foot of water frontage for lot A (213 Smith Street). 213 Smith Street originally had no water frontage. The two new lots ended up with lot A having 31.7 foot of water frontage and lot B getting 26.7 foot of water frontage to combine with his existing 10 foot of water frontage. In doing this there was an old existing pier that was split by the new property lines. Part of the agreement to sell the lot was that all encroachments of this structure over the new riparian line created by the land transfer had to be removed within 12 months (June 2014). The existing pier and boat lift have deteriorated to the point that it would have to be totally rebuilt as the pilings and cross members were rotten and support bolts and nails rusted and broken making the existing pier unusable. Thus an application was applied for centering a new pier with boat lifts. This plans submitted for the new pier would be centered on lot A and be 33 feet from the existing pier on the lot to the south and 23 feet from the pier on the lot to the north. The planned pier and boat lifts would encroach on the 15 foot setback from the riparian lines of the adjacent properties. The property to the north agreed to sign a waiver but would prefer the pilings of the new pier to be at least 2 feet off the riparian line. The

property to the south would not sign a waiver for any distance and has filed a letter of objection to the permit and thus the permit was denied.

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

Section (q) of 15A NCAC 07H .1205 SPECIFIC CONDITIONS

(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas

of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

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

The lot water frontage is only 31.7 feet. Any structure wider than 1.7 feet would encroach over one of the adjacent setback lines. Part of the existing pier and all the deck/platform of the existing pier extends over the riparian line to the north and the pilings of the existing boat lift extend over the 15' setback from riparian line to the south. A new 4 piling boat lift is 13 feet wide (outside piling to outside piling) and even with a minimum pier width any pier adjacent to the boat lift would encroach on the 15 foot setbacks.

Can you obtain a permit for a portion of what you wish to do?

NO If so, please state what the permit would allow.

The only permit allowed without a waiver of the 15' setback would be a maintenance permit. This would allow replacing 50% of the pier and 50 % of the boat lift in one year and then the other 50% of each later. The entire existing boat lift has to be replaced as some of the pilings are rotten and will not support a heavy boat. The metal material of the lift is badly rusted and the motors need replacing. Encroachments of the existing pier over the riparian line to the north have to be removed by June of 2014 as part of the lot purchase contract. This would require removing part of the pier and all the deck / platform to the north. With the maintenance permit the boat lift pilings would have to stay in the same location. After the encroachment to the north is removed this would leave about a 5 to 6 foot width for both a pier and a small skiff lift. One of the main reasons for wanting to have a pier with boat lifts was to take my blind partially crippled brother fishing as fishing is probably the only recreation he can participate in. I am 63 and have a hard time managing him safely and at the same time launching a boat at a boat ramp from a trailer. I have been taking him on our 23 foot boat for deeper water fishing and on a small 16' skiff for shallow water fishing. Thus two lifts are required for the 2 boats. A 4 pole lift for the

larger boat and a small 2 pole lift for the skiff. The pier has to be wide enough to safely walk him down the pier to the boat lifts. He has two toes removed, pins and plates in his ankle and foot and does not have good balance. With his condition I try to take him fishing as much as possible due to his limited recreational activities. Plans were to build a pier wide enough with railings to accommodate safely walking him out to the boat lift. Plans were to have a lift for the larger boat on one side and a small 2 pole lift for the opposite side with at least a 5 foot wide pier for safety. The maintenance permit would not allow a small lift and a pier wide enough to be safe for by brother.

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

Without acquiring a variance on the requirement of a 15 foot setback from the riparian line separating the properties for building a new pier, I would not be able to build a new pier or associated boat lifts. The existing pier and lift are in bad shape and both need to be replaced. The boat lift is inoperable as the pilings have deteriorated to the point they need to be replaced. The electric wiring to the motors of the boat lift have been removed when the old mobile home was removed for the lot recombination (required by Town of Atlantic Beach subdivision staff) and the only way to try to use the lift at this time is with an extension cord to the house. The motors for the lift work sporadically and need to be replaced. The pier has broken support bolts on the multiple cross members, sags in several areas and also needs to be entirely replaced as it is not safe. Without a new pier permit the only possible solution is to use the maintenance of the existing pier section of the ordinance. This allows replacing/maintaining 50% of the pier and 50% of the boat lift in one 12 month period and then the balance is allowed to be replaced. Thus, I would not have any use of the riparian area water frontage for my lot for a boat lift for over a year. The contract to purchase the lot requires all encroachments of the pier/deck to be removed by June of 2014. Removing the portion of the pier that encroaches would not allow keeping the remaining portion of the pier adjacent to the boat lift as the support piling for the pier are included in the encroachment. I would not be able to move the pier to a more central location on my lot to minimize any adverse impact on use of the riparian area by myself and the lot owner to the north. Without moving the pier to a more central location would also create a hardship for the property owner on the north as it reduces the size of the riparian area he can use. Since his existing boat lift extends over the adjacent lot to the north he would like to also relocate his lift away from that encroachment and would pursue that after the issues on my pier/lift location are resolved.

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

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

(1) The hardship is that the lot has only 31.7 feet of water frontage and 15 foot setback from the riparian line will not allow use of that frontage to build a new pier and boat lift centered on the lot. Requiring 15 foot setbacks from both sides would only leave 1.7 feet to build a pier with a boat lift. I have a waiver from the property to the north but none from the south. I also have a blind partially crippled brother that I take fishing, as fishing is one of few recreational activities he can participate in. Using the maintenance permit path to rebuild part of the existing pier with having to remove all encroachments to the north would not leave enough space for a boat lift and wide enough pier to safely accommodate his use. It appears the intent of the rule that a variance is being asked for (15' setback from the riparian line) was to keep an adjacent riparian lot owner from building a structure that would impact the use of an existing riparian usage on the adjacent lot. The rule was drafted so that a property owner would not build so close to the property line that the use of the riparian area by the adjacent lot owner was impacted. The rule (while it is a good one) can be applied in certain situations to be detrimental to lot owners while not having any adverse impact on the adjacent property's use of their riparian area. The hardship I will experience is that I have water frontage for my lot that I cannot adequately use the riparian area fronting that lot for a pier and boat lift even though if allowed the planned pier were built it would not adversely affect the use of the riparian area fronting the adjacent lot owner not granting the waiver. The proposed pier would encroach into the 15 foot setback on each side but would still be 33 feet from the pier to the south and 17 feet from the pier to the north (property that signed waiver). One of the main reasons for the new permit was to build a pier capable of safely accommodating my blind partially crippled brother fishing. Without allowing the proposed pier permit without the 15' setback from the riparian line, any resulting pier and boat lift may not safely accommodate his usage of that pier.

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

(2) The water frontage of the lot is only 31.7 feet wide.

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

(3) The condition of the lot seller was that the water frontage added to 213 Smith Street from the recombination of the old lot #211 be a minimum of 31.7 feet so his portion of that lot frontage to be combined with his other lot would be 26.7 feet. The water frontage of the lot was controlled by the lot seller. Originally the lot seller offered ½ of the water frontage of the old lot that had 58.4' of water frontage which would have been only 29.2'. I pursued purchasing more frontage but had no control of the size of the frontage the lot seller would agree to sell. After reviewing the requirements for any new permits, I negotiated as much as he was willing to give up which was 31.7'. The lot seller (215 Smith Street) only had 10 foot of lot frontage on the water thus combined enough usable lot frontage from the lot in question (old 211 Smith Street) to add to that 10 foot so he could adequately use his frontage (existing pier and boat lift). This only left 31.7 feet of water frontage on the lot the permit is being applied for.

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

(4) I ask the board to look at the original intent of requiring a 15' setback from adjacent property riparian lines and not just the setback requirement. I content that the intent of the rule that a variance is being asked for (requiring a 15' setback from the riparian line) was to allow adjacent riparian lot owners adequate use of the riparian area fronting their lot without having a structure built adjacent to their property that would infringe on that use. This should not be for one lot owner to control the water frontage adjacent to their property just because they can when there are no adverse impacts to the use of their riparian area. The rule appears to have been drafted so that a property owner would not build close to the property line thus impacting the use of the adjacent lot owner's use of his riparian area. The rule (while it is a good one) if applied to in every case can be detrimental to lot owners while not having any impact on the adjacent property except to control the water frontage next to him. The ordinance allows waivers, which assumes adjacent property owners will work together for the greater good use of that riparian area by all which is not always the case. The adjacent lot owner to the south has stated he will not sign any waiver on any requirement or approve of any development on the lot in question even though he has one of the widest water front lots in the development and his pier is 28 feet from the subject riparian line not counting the 15 foot setback. This property owner has opposed every structure built in the water close to his property. This includes a small jet ski lift two lots over (60 plus feet away) as shown in his opposition letter (waiver asked for by mistake by contractor). The ordinance should not be interpreted to be a first come first controls a good portion of his neighbor's property even though it would not impact the use of his water frontage, but allow reasonable use by a property owner of their water frontage. The proposed pier/boatlift plan I submitted is located approximately the center of the lot and would still allow the adjacent lot owners adequate and reasonable use of the riparian areas fronting their lots. The proposed pier would be 33 feet from the pier to the south (lot owner opposing the permit) and 23 feet from the pier to the north (see page 16 of 27 of the submission). This seems to follow the spirit of the intent of the rule as all parties would have adequate use of the riparian area fronting their lots. Allowing the variance on the 15 foot setback requirement would also allow building a pier that would safely accommodate usage by my handicapped brother (blind and partially crippled). I have attached a doctor's letter.

Please attach copies of the following:

Permit Application and Denial documents
Site Drawing with Survey and Topographical Information
Any letters filed with DCM or the LPO commenting on or objecting to your project

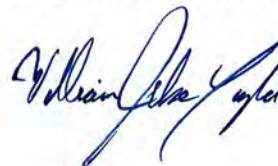
Provide a numbered list of all true facts that you are relying upon in your explanation as to why you meet the four criteria for a variance. Please list the variance criterion, ex. unnecessary hardship, and then list the relevant facts under each criterion. [The DCM attorney will also propose facts and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

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

Pursuant to N.C.G.S. 113A-120.1 and 15A NCAC 7J .0700, the undersigned hereby requests a variance.

Date: 1/11/2014

Signature:



This variance request must be filed with the Director, Division of Coastal Management, and the Attorney General's Office, Environmental Division, at the addresses shown on the attached Certificate of Service form.

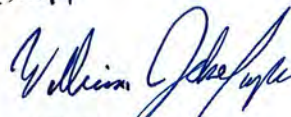
CERTIFICATE OF SERVICE

I hereby certify that this Variance Request has been served on the State agencies named below by United States Mail or by personal delivery to the following:

Original served on: Director
Division of Coastal Management 400
Commerce Avenue . Morehead City,
NC 28557

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

This the 11 day of January, 2014



Signature of Petitioner or Attorney

A. Hochmuth #1



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

December 18, 2013

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

William Jake Taylor
2801 Sandia Drive
Raleigh, NC 27607

Dear Mr. Taylor:

This letter is in response to your application for a Major Permit under the Coastal Area Management Act (CAMA), in which authorization was requested to dismantle, relocate, and construct a pier at 213 Smith Street adjacent an entrance channel from Bogue Sound to the Moonlight Bay area of Atlantic Beach, Carteret County. Processing of the application, which was received as complete by the Division of Coastal Management's Morehead City Office on October 2, 2013 is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The application and narrative indicate the existing pier/deck currently originates from 213 Smith Street and 215 Smith Street. The narrative further indicates that due to the recent sale and subdivision of 211 Smith Street, the applicant must dismantle and relocate the existing pier by June of 2014.
- 2) The proposed project consists of dismantling the existing pier/deck and the construction of a new docking facility in the center of the new riparian corridor located on 213 Smith Street. As proposed, the docking facility would encroach within 15' of both adjacent property owners' riparian setback corridors. The applicant has obtained a signed riparian corridor waiver allowing encroachment into the 15' setback at 215 Smith Street, however the applicant has not obtained a signed riparian corridor waiver allowing encroachment into the 15' setback at 209 Smith Street.
- 3) On October 7, 2013, the adjacent property owner located at 209 Smith Street submitted a letter of objection to the proposed project.
- 4) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following rule of the Coastal Resources Commission:
 - a) 15A NCAC 07H.0208(b)(6)(I), which states: "Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent

400 Commerce Ave., Morehead City, NC 28557-3421
Phone: 252-808-2808 \ FAX: 252-247-3330 Internet: www.nccoastalmanagement.net

An Equal Opportunity \ Affirmative Action Employer

William Jake Taylor
December 18, 2013
Page 2

riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier.”

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

If you wish to appeal this denial, you are entitled to a hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties before making a final decision on the appeal. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the General Statutes of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this letter. A copy of this petition should be filed with this office.

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

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

Sincerely,



Braxton C. Davis
Director

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

AH Mohamed # 2

WILSON NEPHROLOGY - INTERNAL MEDICINE, PA

2503 Wooten Boulevard
Wilson, North Carolina 27893
Telephone 252-243-2268 • Fax 252-243-2917

Anwar D. Haidary, M.D., M.Sc., M.R.C.P.
American Board Certified in Nephrology

Mark P. Randolph, PA-C

Mailing Address
P.O. Box 3127
Wilson, NC 27895


November 4, 2013

TO WHOM IT MAY CONCERN:

Jerry Taylor is a severe insulin dependent diabetic. He is currently on a minimum dosage of 3 shots of 3 different kinds of insulin and more as needed per testing. Due to this, he lost sight totally in both eyes & became permanently blind 30 years at the age of 28. The next year he went into renal failure and lost both kidney. He was on dialysis until he received a kidney transplant and is on special medicines for life to maintain the transplanted kidneys. Since then, he also had triple bypass surgery and stents on 2 other occasions for heart trouble. He had an amputated toe procedure on his left foot and also on his right foot along with plates and rods in his left foot from a broken ankle. This, with the blindness makes it very difficult for walking.

He has ongoing skin cancer (squamous cell carcinoma) maintained by freezing, chemotherapy creams, and Mohs surgery. He is under physician's care for each of these routinely.

Sincerely,


Lorie Collier, ANP

LC/jpb

TRIANGLE NEUROSURGERY, PA
DENNIS E. BULLARD, MD, FACS

1540 Sunday Drive, Suite 214
Raleigh, North Carolina 27607-5613

Telephone (919) 235-0222
Facsimile (919) 235-0227

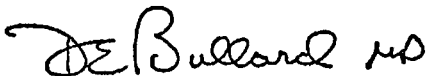
April 21, 2008

RE: WILLIAM JAKE TAYLOR #4513

To Whom It May Concern:

I have followed Mr. Taylor since the time of his original surgery on July 10, 2003, and we have been completing his disability forms since that time. The most recent form and letter of February 20, 2008, describe in detail his job description. The LGERS disability retirement plan is such that unless he can go back to his specific job, he is by definition disabled. His job requires him to drive to construction sites and other areas for inspection. He is also required to stand and walk, to a significant degree often on uneven and muddy terrain associated with construction sites, stream bottoms and wetland areas. Given the fact that he has had a multilevel anterior cervical procedure, I think such a job would put him at high risk should he fall. He has a significant risk factor for injuring his spinal cord or causing disruption of the levels above and below his fusion. For that reason, I believe he is totally disabled based upon the criteria the plan has established. I do not believe there will be in any change in that during his lifetime.

Yours truly,



Dennis E. Bullard, M.D.
TRIANGLE NEUROSURGERY, PA

DEB/bs

cc: William Jake Taylor
Don M. Maultsby, Benefits Manager, Wake County, POB 550, Raleigh, NC 27602

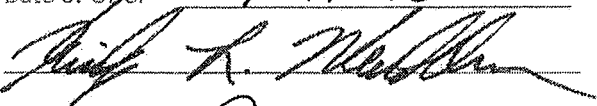
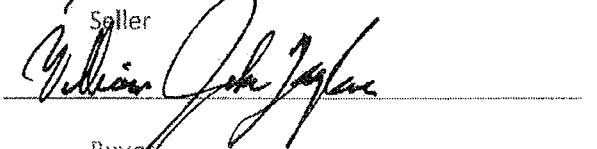
OFFER TO PURCHASE AND CONTRACT

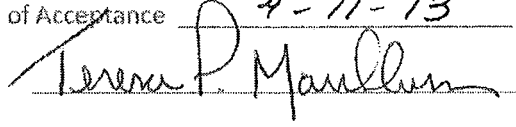
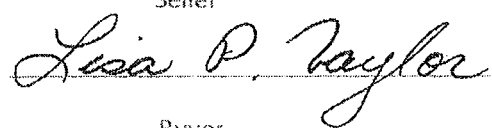
William Jake and Lisa P. Taylor as Buyers, do hereby agree to purchase and Kirby L. and Teresa P. Marshburn as Sellers agree to sell and convey, all of that plot, piece or parcel of lands described below (as Item # 1) in accordance with the Standard Provisions on the reverse side hereof and upon the following terms and conditions.


Purchase Price: The purchase price is \$ 225,000 and shall be paid as follows:

- (a) \$ 11,250, in earnest money paid with delivery of this contract.
 - (b) \$ 213,750, the balance of the purchase price to be financed by Kirby and Teresa Marshburn as per the terms and conditions of Promissory Note, Deed of Trust and Amortization Schedule. The terms of the note will be \$ 213,750 at 3.75% financed for 30 years equaling a monthly payment of \$ 989.91 with no pre-payment penalty for early payments.
1. REAL PROPERTY: Located in the City of Atlantic Beach, County of Carteret, State of North Carolina, being known as and more particularly described as: That portion of Lot 34 Beach Mobile Home Court at 211 Smith Street, Atlantic Beach, being divided, which adjoins the rear of Lot 35 Beach Mobile Home Court at 213 Smith Street, Atlantic Beach as shown on survey plat by James Phillips PLS dated 4-5-2013 for recombination of Lot 35 and Lot 36.
 2. Any portion of the existing pier that encroaches beyond the perpendicular channel line by either buyer or seller will be removed within twelve months after closing.
 3. Buyers and sellers agree to sign an encroachment agreement to waive the 15' setback of the perpendicular channel line between Lot 35 and Lot 36

All parties agree to execute any and all documents and papers necessary in connection with the closing and transfer of title when existing mobile home is removed from lot being divided. Deed to be made to buyers. Possession shall be delivered at closing.

Date of Offer 4-11-13

 Seller

 Buyer

Date of Acceptance 4-11-13

 Seller

 Buyer

I hereby acknowledge receipt of the earnest money herein set forth in accordance with the terms hereof. Date 4-11-13 By: 

213 Smith Street Pier

Subject: Application for Residential Pier
for
William Jake Taylor



Prepared by:

William Jake Taylor

2801 Sandia Drive Raleigh NC 27607 phone: (919) 606-2677

Date: July 22, 2013

July 22, 2013

2801 Sandia Drive
Raleigh NC 27607

Heather Styron
NC Division of Coastal Management
Morehead City Regional Office
400 Commerce Ave. Morehead City, NC 28557

Subject: residential pier construction
213 Smith Street, Atlantic Beach NC
Bogue Sound

Dear Ms. Styron,

I am writing to discuss a permit application for a proposed pier to be located on the sound side of Atlantic Beach at 213 Smith Street. This proposal involves the moving of an existing pier that was located on an old lot recorded in the 1970's as part of Beach Mobile Home Court. The old lot that the pier was located on was 211 Smith Street. Part of this lot was combined with 213 Smith Street and part with 215 Smith Street. This recombination made 2 larger lots out of 3 lots with the old mobile home and septic tank removed from the old lot at 211 Smith Street. The water frontage was divided between 213 Smith Street and 215 Smith Street lots. The new lot line dividing the 2 new lots split the existing pier that was on the 211 Smith Street lot.

The issue at hand is requesting a permit for a pier for the new 213 Smith Street lot which now has 31.7 feet of water frontage. There is an old pier on the 211 Smith Street lot that now is split by the new riparian line between 215 and 213 Smith Street lots. A condition of the contract was that all parts of the pier encroaching on the riparian water frontage of the Kirby Marshburn tract at 215 Smith Street would have to be removed within 12 months of the deed transfer. All the existing deck and part of the main pier extending into the water would have to be removed. To have the least impact on both of the two adjacent property owner's use of their riparian areas, the pier and associated boat lift new location would have to be moved to the south approximately centering the lot at 213 Smith Street. The new water frontage of 213 Smith Street is now 31.7 feet. The proposed pier was discussed with CAMA staff at the Morehead City office and it was explained that there is a riparian line extending perpendicular from the channel to each of the property lines of the adjacent lots. A survey was performed by James I. Phillips III, PLS who is a registered surveyor from Morehead City and familiar with the CAMA riparian line procedures. The riparian line between 213 Smith Street and 209 Smith Street is 28 feet from the pier to the south owned by Mr. William Coley. The existing boat lift of the old pier at 213 Smith Street is now 41.5 feet from Mr. Colley's pier. The property to the north at 215 Smith Street is owned by Mr. Kirby Marshburn. The existing pier is approximately 13 feet from the pier owned by Mr. Marshburn. The existing pier encroaches over that riparian line approximately 9.5 feet and all encroachments of that structure have to be removed before June of 2014.

The existing pier needs be totally removed as the bolts holding the joist to the decking are rusted badly with several completely broken off and the pilings are deteriorating and not structurally sound. The property owner to the north (Marshburn) is planning to move his boat lift to the opposite side of his pier as the existing one encroaches on the neighbor to the north (217 Smith Street) owned by Hilda Creech. This relocated boat lift will almost touch the existing pier at 213 Smith Street and make the area very congested. To have a usable pier with boat lifts and relieve congestion the pier location at 213 Smith Street would have to be moved to the south.

Plans are to move the pier with boat lift to the center of the lot 31.7' water frontage. This would place the boat lift of the proposed pier 33 feet from the existing pier owned by William Coley at 209 Smith Street (existing pier to the north) and would be approximately 5 feet from the riparian line. The new proposed pier would be 22 feet from the pier to the north owned by Mr. Kirby Marshburn at 215 Smith Street and approximately 3.5 feet from the riparian line. This pier would be 50 feet long and 6 feet wide with a 4 pole boat lift (13'x13') located on the north side and a 2 pole skiff lift (8'x 6') planned to be connected on the north side of the pier. A platform (deck) is proposed in front of the 4 post boat lift with a narrow finger pier extending partially around the north side of the 4 pole lift for boat maintenance. The combined square footage of the proposed platform and finger pier would be 185 square feet. The plans for the new pier would place the beams of the two pole boat lift of the new pier 21 feet from the existing pier to the north (8 feet from the planned relocated boat lift Mr. Marshburn would like to apply for) and one foot off the riparian line of 215 Smith Street. On the opposite side (south side) of the proposed pier, the distance would be 33 feet from the existing pier at 209 Smith Street owned by Mr. William C. Coley and 5 feet off that riparian line.

Issues:

- (1) CAMA requires a waiver signed by the adjacent property owner on any construction within 15 feet of the riparian line between properties on new construction. Since the water property frontage on 213 Smith Street is only 31.7 feet it would be impossible to build any pier on this lot without these waivers signed from both adjacent property owners. The adjacent property owner to the south (209 Smith Street) is reluctant to sign any waiver for any construction within the 15 foot setback. To compound the problem the riparian line between 213 Smith Street and 209 Smith Street lot #angles to the north (toward lot 213) making the usable area from the southern line for 213 Smith Street smaller because of the location of the existing pier located on that adjacent lot to the north. The piers on either side of this property are built perpendicular to the shore line and it is beneficial to all parties to have the same alignment. The 10,000 boat lift has a distance of 13 feet from outside of piling to outside of piling. Any new configuration of a new pier and boat lift outside that 15 foot setback from the pier to the south would leave only about a one foot wide pier without encroaching on the riparian line to the north.

Conclusions: The new lot at 213 Smith Street now has 31.7 feet of water frontage on Bouge Sound and the owner of that lot would like to have use of a pier and boat lift within that riparian frontage. The existing pier has to have all encroachment over the riparian area from 215 Smith Street removed in 12 months as a condition of the purchase contract. The existing pier and boat lift are structurally unsound and needs to be replaced or rebuilt. The boat lift beams are badly rusted and the pilings supporting the exiting lift have deteriorated and are in need of replacing. The proposed pier at 213 Smith Street would be 33 feet from the pier to the south and 5 feet from the riparian line for that property. The proposed pier would be 21 feet from the pier boat lift to the north at 215 Smith Street (8 feet from the planned relocation) and one foot from the riparian line for that property. This would give all affected property owners ample use of the riparian area and associated piers fronting their properties. Both adjacent property owners have been sent copies of the proposed pier via return receipt certified mail and asked to sign waivers from the 15 foot setback from the riparian lines. Kirby Marshburn, the property owner to the north at 215 Smith Street has approved the proposal and signed the waiver. William C. Coley, the property owner at 209 Smith Street has been reluctant to sign any waivers and has sent a letter opposing the pier and any development adjacent to his lot. While it would be possible to rebuild part of the existing pier in its existing location under the maintenance provision of the CAMA rules all

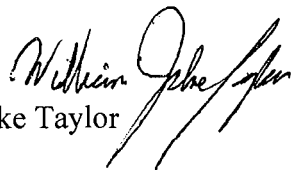
encroachments of that pier over the riparian line must be removed. Also only 50% of the pier can be replaced every 12 months so it could take up to 2 years to rebuild the pier and lift under that provision. Also by only rebuilding the part of the pier not encroaching over the riparian line the pier would be right on the riparian line to the north owned by Mr. Kirby Marshburn. Mr. Marshburn's pier now encroaches over the riparian line of the property to the north side of his property (217 Smith Street) so he is planning to apply to move his boat lift to relieve congestion on that side. This would make the area very congested between 213 Smith Street and 215 Smith Street on the north side of the pier thus making it difficult to use the riparian area by either lot owner. Without waiving the 15 foot setback requirement construction of a usable new pier fronting at 213 Smith Street would not be possible.

I understand the plans will have to be denied without the waiver of the 15 foot setback from the riparian line signed by the property owner to the south. While the intent of that requirement is good in that it keeps adjacent property owners from building too close to a property line and impacting the use of their riparian area, allowances should be made if the use of the riparian area of the adjacent lot is not impacted and there are constraints caused by lot size and associated water frontage of the subject lot. Please consider waiving that requirement to facilitate relieving congestion of the use of the riparian areas between lots 213, 215 and 217 Smith Street.

Please review and advise of procedure for a variance from that section of the ordinance if this section of the ordinance cannot be waived.

Photos and plans for the proposed pier at 213 Smith Street are attached.

Sincerely,


William Jake Taylor

cc: Kirby Marshburn (215 Smith Street)
William C. Coley (209 Smith Street)

Attachment 1

Aerial photos showing new lot lines, existing and proposed pier with riparian lines overlaid



(Supporting photos of the site)



View of 213 Smith Street lot showing pier location and property lines (fence). This photo shows the distance between the 209 Smith street pier and the existing boat lift at 213 Smith Street which is 41 feet. The proposed pier and boat lift will be moved over approximately 6 feet to the south (left) leaving a distance of 35' to the adjacent existing pier (left) located at 209 Smith Street. This would maximize the use of the riparian areas on both sides of the pier. This location would not adversely impact the use of either of the adjacent property owner's use of their riparian areas.



View of existing pier location showing 213 Smith Street lot (center) showing the encroachment of the existing pier onto 215 Smith Street lot. All encroachments over the new riparian line between 213 Smith Street and 215 Smith street are required to be removed as part of the purchase contract by June of 2014. The small green shed is on that adjacent lot (on left). The space to right is the proposed location of the new pier.



View of existing pier from the line dividing the 213 and 215 properties. This shows the encroachment of the existing pier over the riparian line of the property to the north owned by Kirby Marshburn. *All part of the pier that encroaches will have to be removed by June of 2014 as part of the purchase contract.* Mr. Marshburn plans to place a 4 pole lift from his pier on the right which would touch the existing deck of the pier on 213 Smith Street. This photo also shows how close the pier to the north is and the potential congestion once Mr. Marshburn starts his planned boat lift permit application to move his boat lift to the south side of his pier to relieve congestion between 215 and 217 Smith Street piers.



View of existing pier and encroachment over the riparian line viewed from the property to the north owned by Kirby Marshburn. The existing pier extends well into the frontage of that lot. The proposed pier being moved over to the center of the 213 Smith Street lot would also give Mr. Marshburn (215 Smith Street) better use of his riparian area while not affecting the use of the riparian area in front of 209 Smith Street.

APPLICATION for Major Development Permit

(last revised 12/27/06)



North Carolina DIVISION OF COASTAL MANAGEMENT

| 1. Primary Applicant/ Landowner Information | | | |
|---|----------------|---|-----------------------------|
| Business Name | | Project Name (if applicable) Jake Taylor Residential Pier at 213 Smith Street Atlantic Beach | |
| Applicant 1: First Name William | MI Jake | Last Name Taylor | |
| Applicant 2: First Name | MI | Last Name | |
| <i>If additional applicants, please attach an additional page(s) with names listed.</i> | | | |
| Mailing Address 2801 Sandia Drive | | PO Box | City Raleigh |
| | | State NC | |
| ZIP 27607 | Country USA | Phone No. 919 - 606 - 2677 ext. | FAX No. 919 - 510 - 0532 |
| Street Address (if different from above) | | City | State |
| | | ZIP - | |
| Email jakewjt@bellsouth.net | | | |

| 2. Agent/Contractor Information | | | |
|--|--------------|-------------------------|-------------------------|
| Business Name | | | |
| Agent/ Contractor 1: First Name | MI | Last Name | |
| Agent/ Contractor 2: First Name | MI | Last Name | |
| Mailing Address | | PO Box | City |
| | | State | |
| ZIP | | Phone No. 1 - - ext. | Phone No. 2 - - ext. |
| FAX No. | Contractor # | | |
| Street Address (if different from above) | | City | State |
| | | ZIP - | |
| Email | | | |

<Form continues on back>

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| 3. Project Location | | | | |
|--|--|--|--|----------------|
| County (can be multiple) Carteret | | Street Address 213 Smith Street | | State Rd. # |
| Subdivision Name Beach Mobile Home Court | | City Atlantic Beach | State NC | Zip 28512 - |
| Phone No. 919 - 606 - 2677 ext. | | | Lot No.(s) (if many, attach additional page with list) | |
| a. In which NC river basin is the project located? White Oak | | b. Name of body of water nearest to proposed project Moonlight Bay | | |
| c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Manmade <input type="checkbox"/> Unknown | | d. Name the closest major water body to the proposed project site. Bouge Sound | | |
| e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Atlantic Beach | | |

| 4. Site Description | |
|---|---|
| a. Total length of shoreline on the tract (ft.) 31.7' | b. Size of entire tract (sq.ft.) 7214.49 sq ft |
| c. Size of individual lot(s) .165 acres, (If many lot sizes, please attach additional page with a list) | d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) <input type="checkbox"/> NHW or <input type="checkbox"/> NWL |
| e. Vegetation on tract turf grass (St Augustine) | |
| f. Man-made features and uses now on tract Residential dwelling , Vinyl bulkhead with rip rap support installed in front of that bulkhead, Private Pier with a boat lift | |
| g. Identify and describe the existing land uses adjacent to the proposed project site. Residential dwelling , Vinyl bulkhead, Rip rap bulkhead, Private Pier with a boat lift south side Residential dwelling , Vinyl bulkhead , Private Pier with a boat lift north side | |
| h. How does local government zone the tract? R-1M (The R-1M residential district established as a district in which the only land use is for single family dwellings and manufactured homes) | i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA If yes, by whom? | |
| l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA | |

<Form continues on next page>

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| | |
|--|---|
| m. (i) Are there wetlands on the site? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| (ii) Are there coastal wetlands on the site? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| (iii) If yes to either (i) or (ii) above, has a delineation been conducted? <i>(Attach documentation, if available)</i> | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| n. Describe existing wastewater treatment facilities. Town of Atlantic Beach approved septic tank and drain field | |
| o. Describe existing drinking water supply source. Town of Atlantic Beach municipal water | |
| p. Describe existing storm water management or treatment systems. existing sheet flow | |

| | |
|---|--|
| 5. Activities and Impacts | |
| a. Will the project be for commercial, public, or private use? | <input type="checkbox"/> Commercial <input type="checkbox"/> Public/Government <input checked="" type="checkbox"/> Private/Community |
| b. Give a brief description of purpose, use, and daily operations of the project when complete. private residential pier and boat lift for recreational use by owners of the lot | |
| c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored. Wooden treated pilings with treated wooden structural members and decking. Galvanized bolts and stainless steel decking screws. One 10,000 four post boat lift and one 3000 lb two pole boat lift. Treated wood structural members (approximately five 12 foot 2x8s , two 14 foot 2x8s, eleven 16 foot 2x8s, six 14 foot 2x8s, four 10 foot 2x8s, four 8 foot 2x8s and 485 sq ft of 2x6 decking) to be stored temporarily on the lot's grassed yard during construction process. Treated pilings (approximately eight ten inch diameter 30 foot, and seven eight inch diameter 20 foot, and five ten inch diameter 16 foot) to be hauled in by contractor on barge, stored on the barge and installed (driven into substrate) by that contractor. Boat lift will be hauled in on barge and installed by contractor. Old pier and boat lift to be demolished and hauled to approved land field. Usable part of the old boat lift will be salvaged and sold for reuse or scrap metal | |
| d. List all development activities you propose. Pier with railings, seating bench and boat lift for recreational use of lot owner | |
| e. Are the proposed activities maintenance of an existing project, new work, or both? | New . Over 50 % of the existing pier/deck encroaches on the riparian area of the property to the north and has to be removed by June of 2014 as part of the purchase contract. The balance of the structural part of the pier and pilings are deteriorating and in need of removal. Bolts are rusted with several broken causing structural sagging of pier deck, pilings rotten or worm eaten and decking nails rusted to point not holding deck in place. The old pier will be completely removed and the new pier and boat lift to be centered on the property frontage. |
| f. What is the approximate total disturbed land area resulting from the proposed project? | none <input type="checkbox"/> Sq.Ft or <input type="checkbox"/> Acres |

| | |
|--|---|
| g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| h. Describe location and type of existing and proposed discharges to waters of the state. | none |
| i. Will wastewater or stormwater be discharged into a wetland? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA |
| If yes, will this discharged water be of the same salinity as the receiving water? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA |
| j. Is there any mitigation proposed? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA |
| If yes, attach a mitigation proposal. | |

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| | |
|--|------------------------|
| 6. Additional Information | |
| <i>In addition to this completed application form, (MP-1) the following items below, if applicable, must be submitted in order for the application package to be complete. Items (a) - (f) are always applicable to any major development application. Please consult the application instruction booklet on how to properly prepare the required items below.</i> | |
| a. A project narrative. | |
| b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed. | |
| c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site. | |
| d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties. | |
| e. The appropriate application fee. Check or money order made payable to DENR. | |
| f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management. | |
| Name Kirby Marshburn | Phone No. 919-422-7587 |
| Address 6901 Lake Myra Road, Wendell NC 27591 | |
| Name William C. Coley | Phone No. 252-527-1605 |
| Address 572 Lakeland Drive, Kinston NC 28504 | |
| Name | Phone No. |
| Address | |
| g. A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates. | |
| Permit 62709 issued 6/28/2013 for rip rap bulkhead to William Jake Taylor | |
| h. Signed consultant or agent authorization form, if applicable. | |
| i. Wetland delineation, if necessary. | |
| j. A signed AEC hazard notice for projects in oceanfront and inlet areas. (Must be signed by property owner) | |
| k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act. | |

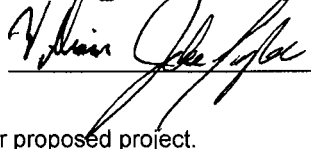
7. Certification and Permission to Enter on Land

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit.

I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

Date 9 / 2 / 2013 _____ Print Name William Jake Taylor _____

Signature  _____

Please indicate application attachments pertaining to your proposed project.

- DCM MP-2 Excavation and Fill Information
- DCM MP-3 Upland Development
- DCM MP-4 Structures Information
- DCM MP-5 Bridges and Culverts

Form DCM MP-4

STRUCTURES

(Construction within Public Trust Areas)

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

1. DOCKING FACILITY/MARINA CHARACTERISTICS This section not applicable

a. (i) Is the docking facility/marina:
 Commercial Public/Government Private/Community

b. (i) Will the facility be open to the general public?
 Yes No

c. (i) Dock(s) and/or pier(s)
(ii) Number 1
(iii) Length 50'
(iv) Width 6'
(v) Floating Yes No

d. (i) Are Finger Piers included? Yes No
If yes:
(ii) Number 1
(iii) Length 10'
(iv) Width 1'
(v) Floating Yes No

e. (i) Are Platforms included? Yes No
If yes:
(ii) Number #B #C #D
(iii) Length 9' 7' 7'
(iv) Width 14.5' 6' 5.4'
All three platforms are connected as one platform but listed separately because of the irregular shape
area of platform #B is 95.25 sq ft as it is not a rectangle
area of platform #C is 42 sq ft as it is a triangle
area of platform #D is 37.8 sq ft as it is a triangle
(v) Floating Yes No
Note: Roofed areas are calculated from dripline dimensions.

f. (i) Are Boatlifts included? Yes No
If yes:
(ii) Number two (one 4 piling lift and one two pole lift)
(iii) Length 13' (#1) and 8' (#2)
(iv) Width 13'(#1) and 6' (#2)

g. (i) Number of slips proposed
one
(slip B is a 2 pole 3,000 lb boat lift which is to be installed on two of the pilings of the proposed pier)
(ii) Number of slips existing
one
(old 4 piling boat lift has deteriorated and not structurally sound is to be demolished and slip A which is a 4 pole 10,000 lb boat lift to be constructed six feet to the south from the existing old lift location)

h. Check all the types of services to be provided.
 Full service, including travel lift and/or rail, repair or maintenance service
 Dockage, fuel, and marine supplies
 Dockage ("wet slips") only, number of slips: _____
 Dry storage; number of boats: _____
 Boat ramp(s); number of boat ramps: _____
 Other, please describe:

i. Check the proposed type of siting:
 Land cut and access channel
 Open water; dredging for basin and/or channel
 Open water; no dredging required
 Other; please describe:

j. Describe the typical boats to be served (e.g., open runabout, charter boats, sail boats, mixed types).
open center console runabout

k. Typical boat length: 16' to 24'

l. (i) Will the facility be open to the general public?

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m. (i) Will the facility have tie pilings?

Yes No

Yes No

(ii) If yes number of tie pilings?

4

2. DOCKING FACILITY/MARINA OPERATIONS

This section not applicable

a. Check each of the following sanitary facilities that will be included in the proposed project.

Office Toilets

Toilets for patrons; Number: _____; Location: _____

Showers

Boatholding tank pumpout; Give type and location: _____

b. Describe treatment type and disposal location for all sanitary wastewater.

c. Describe the disposal of solid waste, fish offal and trash.

d. How will overboard discharge of sewage from boats be controlled?

e. (i) Give the location and number of "No Sewage Discharge" signs proposed.

(ii) Give the location and number of "Pumpout Available" signs proposed.

f. Describe the special design, if applicable, for containing industrial type pollutants, such as paint, sandblasting waste and petroleum products.

g. Where will residue from vessel maintenance be disposed of?

h. Give the number of channel markers and "No Wake" signs proposed. _____

i. Give the location of fuel-handling facilities, and describe the safety measures planned to protect area water quality.

j. What will be the marina policy on overnight and live-aboard dockage?

k. Describe design measures that promote boat basin flushing?

Page 13 of 27

l. If this project is an expansion of an existing marina, what types of services are currently provided?

m. Is the marina/docking facility proposed within a primary or secondary nursery area?

Yes No

n. Is the marina/docking facility proposed within or adjacent to any shellfish harvesting area?

Yes No

o. Is the marina/docking facility proposed within or adjacent to coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.

CW _____ SAV _____ SB _____
 WL _____ None

p. Is the proposed marina/docking facility located within or within close proximity to any shellfish leases? Yes No

If yes, give the name and address of the leaseholder(s), and give the proximity to the lease.

3. BOATHOUSE (including covered lifts)

This section not applicable

a. (i) Is the boathouse structure(s):

Commercial Public/Government Private/Community

(ii) Number _____

(iii) Length _____

(iv) Width _____

Note: Roofed areas are calculated from dripline dimensions.

4. GROIN (e.g., wood, sheetpile, etc. If a rock groin, use MP-2, Excavation and Fill.)

This section not applicable

a. (i) Number _____

(ii) Length _____

(iii) Width _____

5. BREAKWATER (e.g., wood, sheetpile, etc.)

This section not applicable

a. Length _____

b. Average distance from NHW, NWL, or wetlands _____

c. Maximum distance beyond NHW, NWL or wetlands _____

6. MOORING PILINGS and BUOYS

This section not applicable

a. Is the structure(s):

Commercial Public/Government Private/Community

b. Number _____

c. Distance to be placed beyond shoreline _____

Note: This should be measured from marsh edge, if present.

d. Description of buoy (color, inscription, size, anchor, etc.)

Page 14 of 27

e. Arc of the swing _____

7. GENERAL

a. Proximity of structure(s) to adjacent riparian property lines
5' from riparian line to the south and 1' from the riparian line to the north

b. Proximity of structure(s) to adjacent docking facilities.
33' from pier on the south side
23' from pier to the north side

Note: For buoy or mooring piling, use arc of swing including length of vessel.

c. Width of water body
206'

d. Water depth at waterward end of structure at NLW or NWL
7 foot at NLW

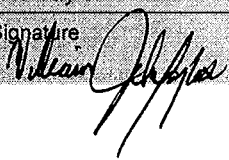
e. (i) Will navigational aids be required as a result of the project?
 Yes No NA
(ii) If yes, explain what type and how they will be implemented.

8. OTHER

This section not applicable

a. Give complete description:

A water front lot was purchased with an existing pier splitting the new lot line between lots. A condition of the purchase contract was to remove all encroachments over the new riparian line formed by the new lot line within 12 months of the closing date of June of 2013. The new lot has a 31.7 foot frontage on the water. This application is to rebuild the approximate pier and associated boat lift in the center of that water frontage. The pier will be 50 ft long and 6 feet wide with a platform on the southside (3 irregular shapes connected) in front of the 10,000 boat lift curving around the front of the boat lift connected to a narrow finger pier for boat maintenance. A small 3,000 lb 2 pole boat lift is proposed to be installed on the opposite side of the pier (north side) connected to structural pilings of the pier. See attached plans with narrative and photos.

| | |
|---------------------|---|
| Date | September 1, 2013 |
| Project Name | Jake Taylor Residential Pier at 213 Smith Street Atlantic Beach |
| Applicant Name | William Jake Taylor |
| Applicant Signature |  |

Page 15 of 27

Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

Applicant: William Jake Taylor

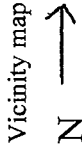
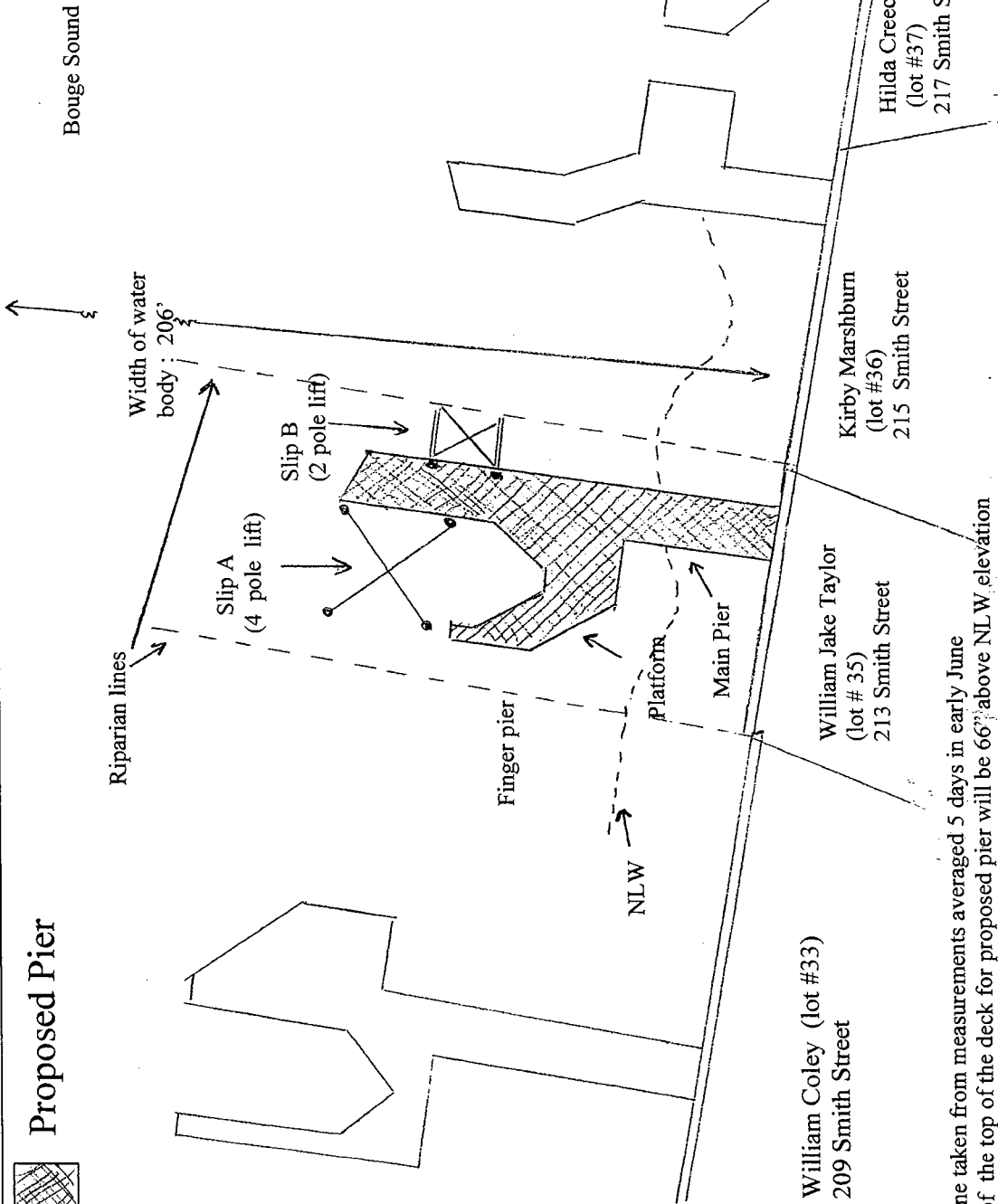
Scale: 1" = 20'



Location of Proposed Pier



Proposed Pier



- Depth of water below NLW
- 7th piling (end of pier): 83"
 - 6th piling (from end of pier): 60"
 - 5th piling (from end of pier): 36"
 - 4rd piling (from end of pier): 18"
 - 3rd piling (from end of pier): 6"

NLW line taken from measurements averaged 5 days in early June
Height of the top of the deck for proposed pier will be 66" above NLW elevation

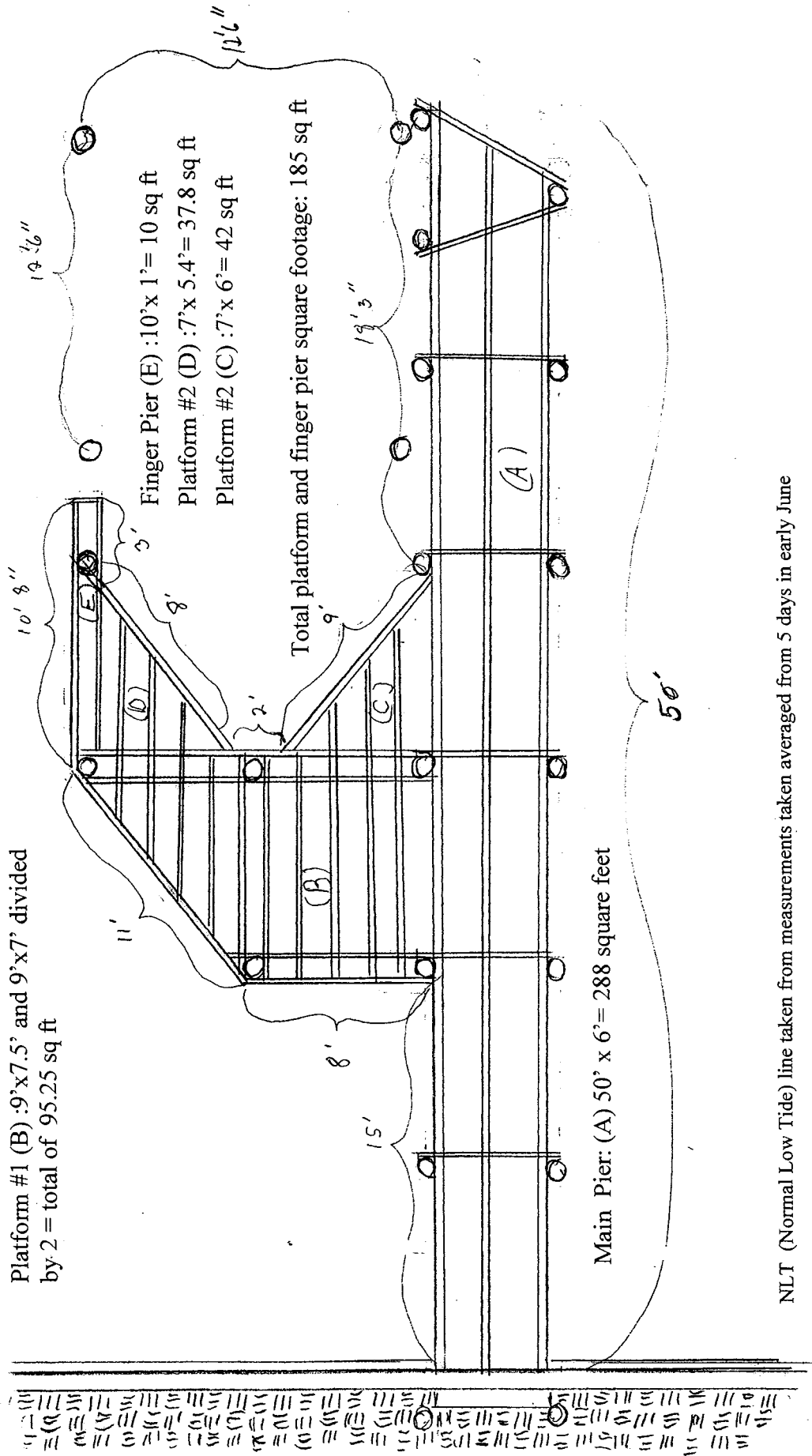
Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

Applicant: William Jake Taylor

Scale: 1" = 6'



Proposed Pier Plan Drawing (square footage of each section shown)



NLT (Normal Low Tide) line taken from measurements taken averaged from 5 days in early June

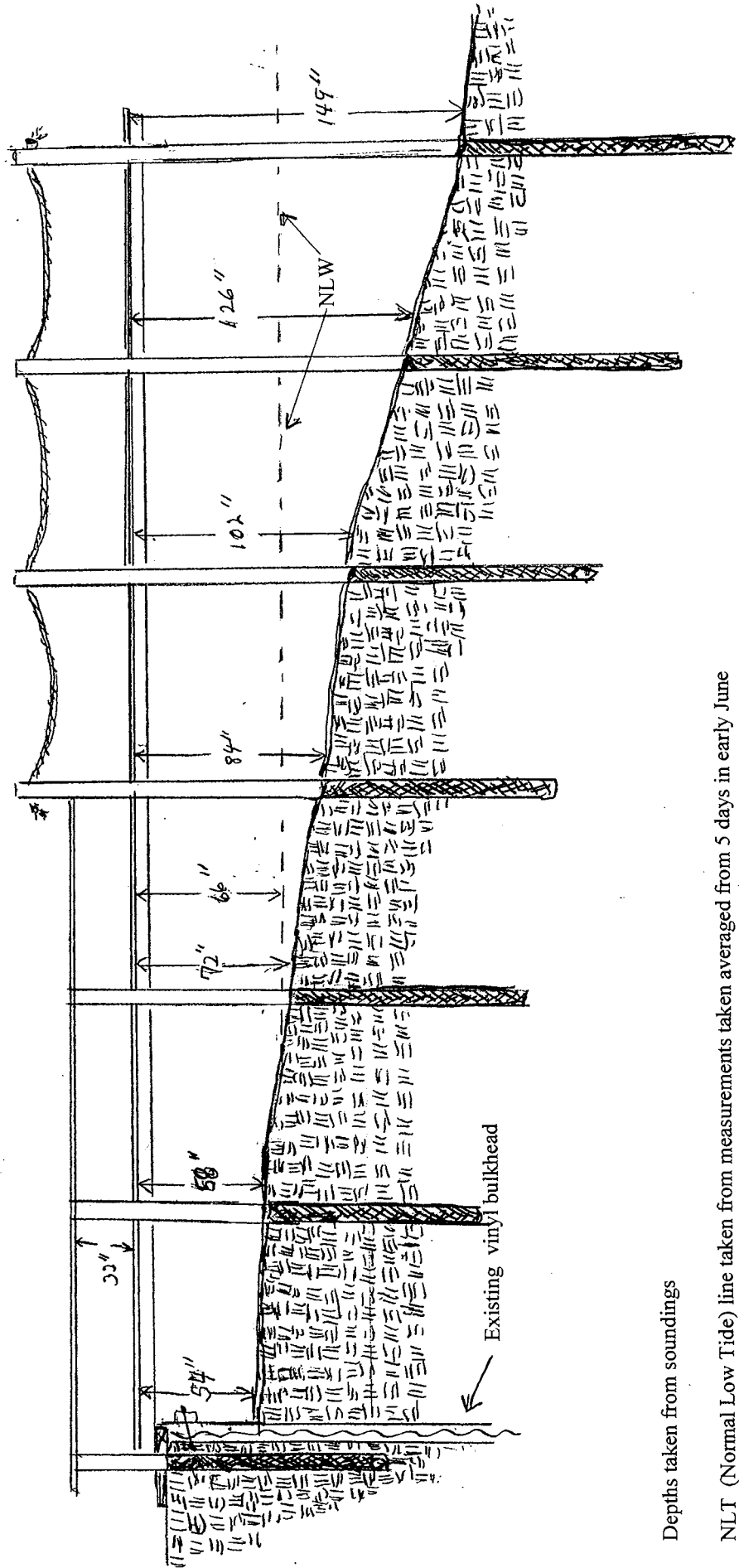
Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

Applicant: William Jake Taylor

Scale: 1" = 6'

Location of Proposed Pier (Profile Drawing)

Vicinity map



Depths taken from soundings

NLT (Normal Low Tide) line taken from measurements taken averaged from 5 days in early June

Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

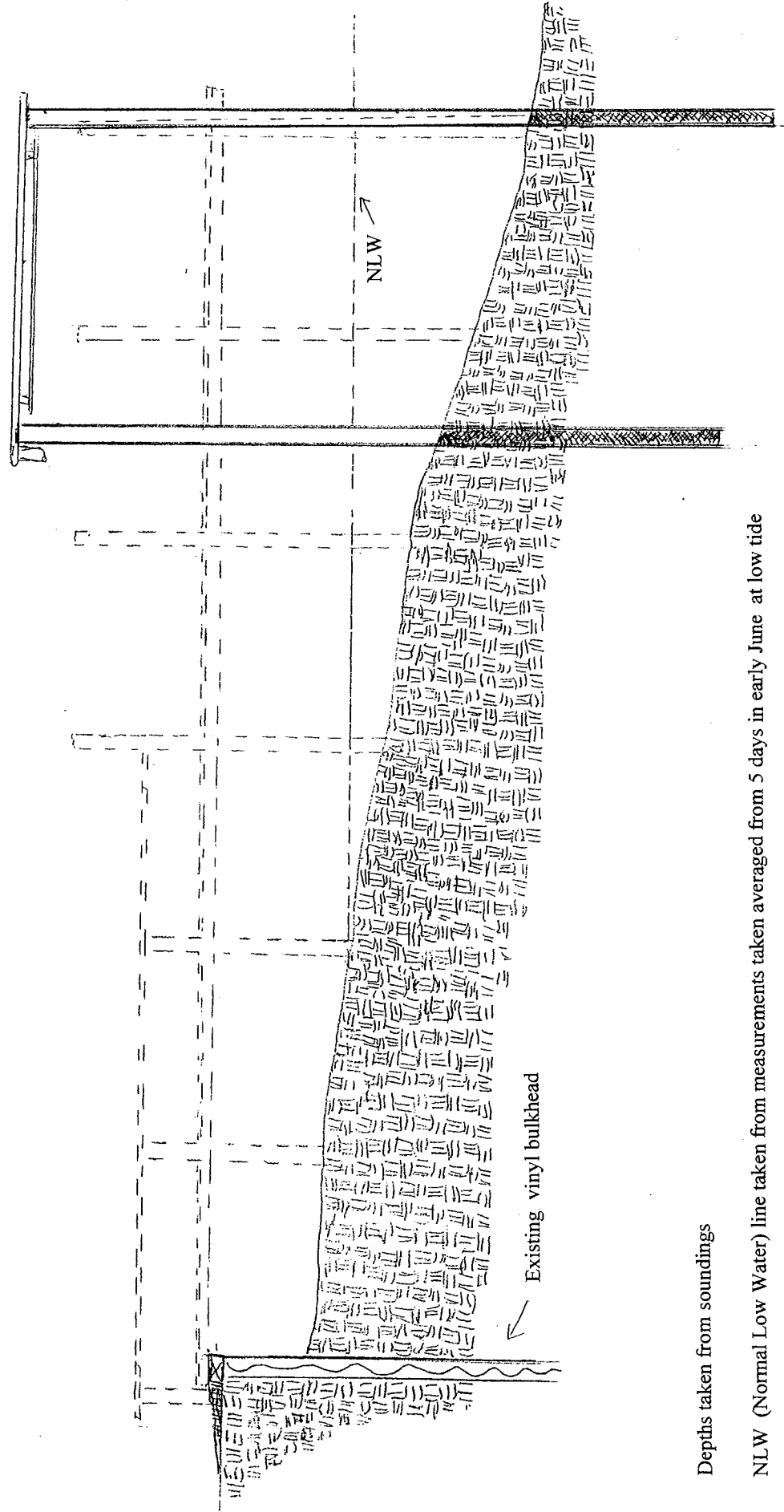
Applicant: William Jake Taylor

Scale: 1" = 6'

Location of Proposed Four Pole Lift (Profile Drawing)

Proposed 4 pole 10,000 lb boat lift for boats 20 to 26 foot long. Pilings will be 10" minimum diameter and driven into substrate a minimum of 8 feet

Vicinity map



Depths taken from soundings

NLW (Normal Low Water) line taken from measurements taken averaged from 5 days in early June at low tide



Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

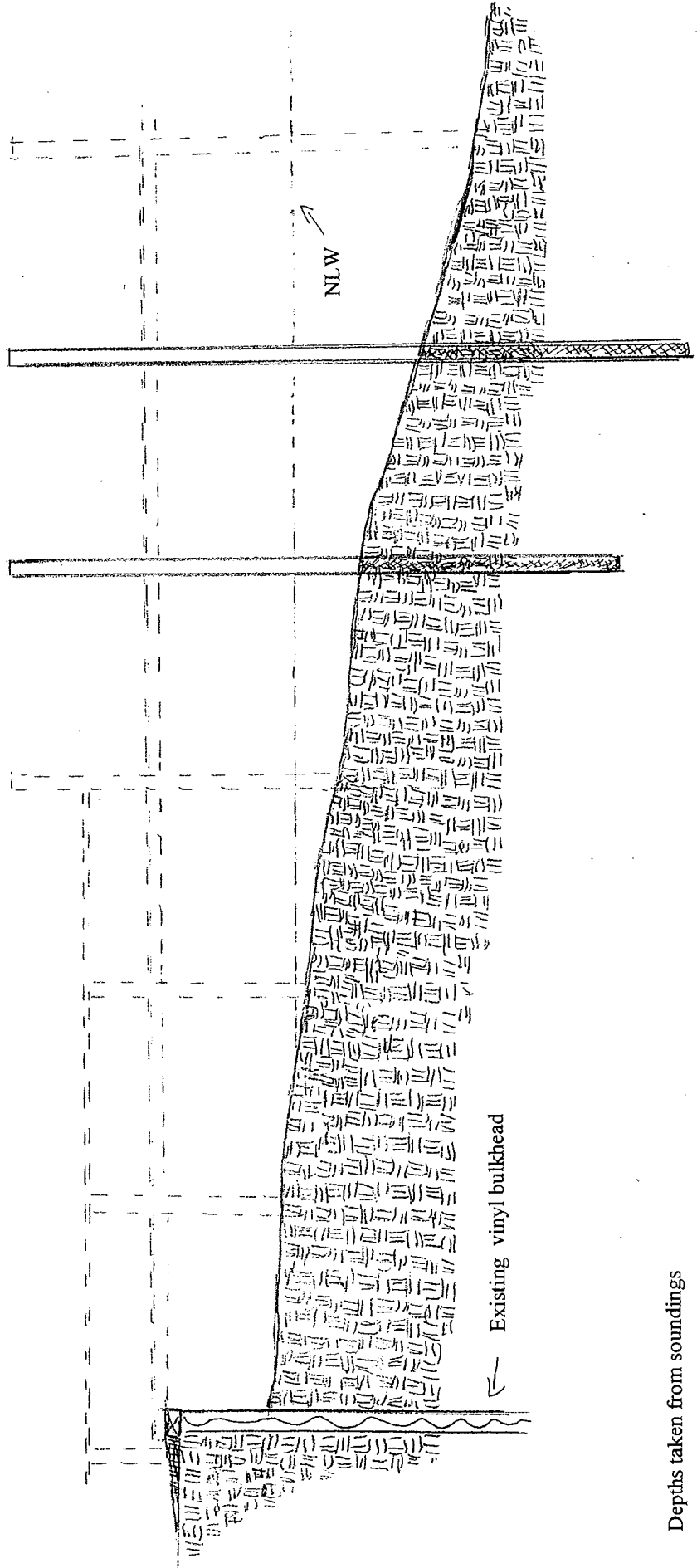
Applicant: William Jake Taylor

Scale: 1" = 6'

Location of Proposed Two Pole Lift (Profile Drawing)

Vicinity map

Proposed 2 pole 3,000 lb boat lift for boats 14 to 18 foot long. Pilings will be attached to main pier and will be 10" minimum diameter driven into substrate a minimum of 8 feet



Depths taken from soundings

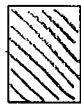
NLW (Normal Low Water) line taken from measurements taken averaged from 5 days in early June at low tide

Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

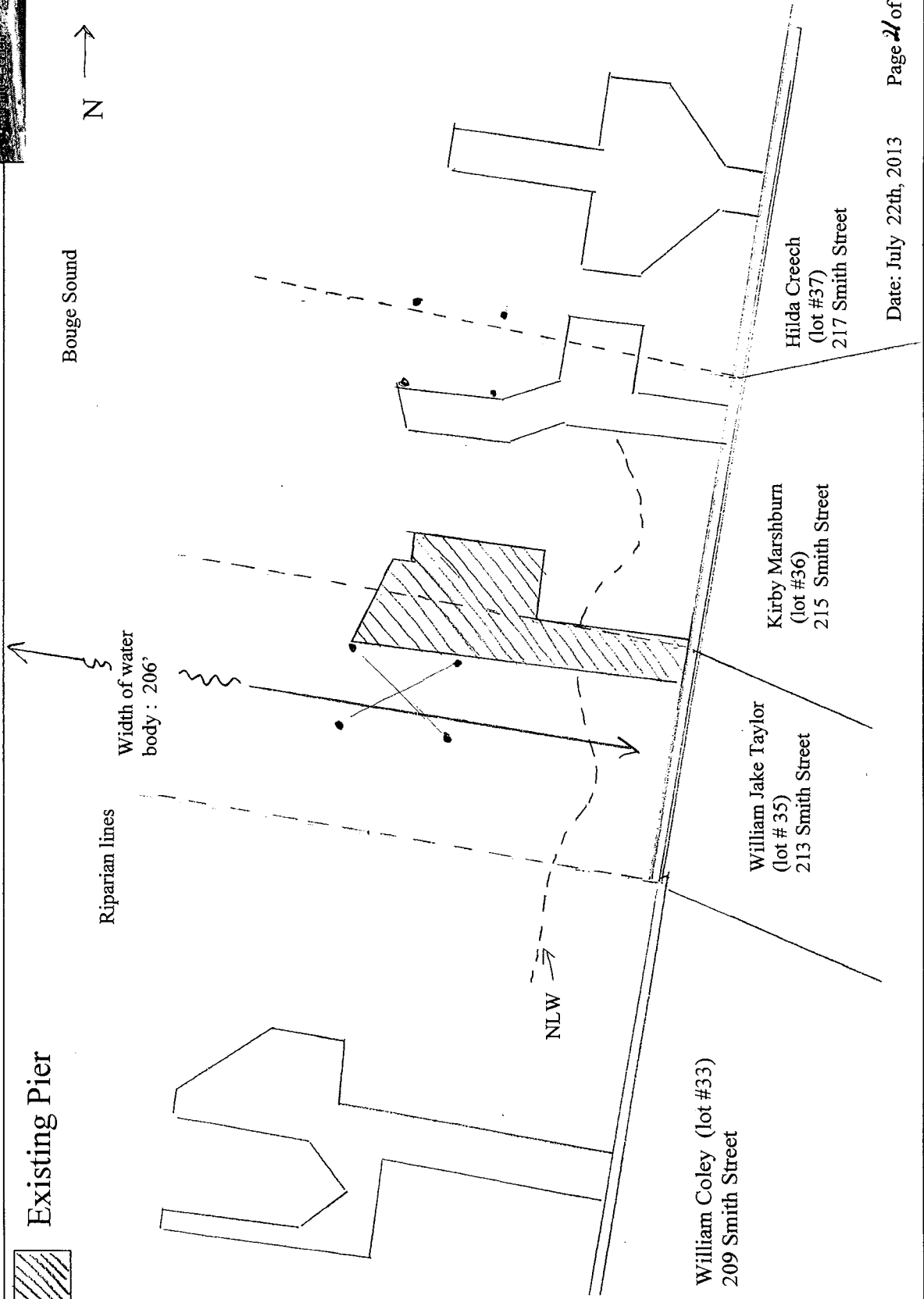
Applicant: William Jake Taylor

Scale: 1" = 20'

Location of Proposed Pier



Existing Pier



Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

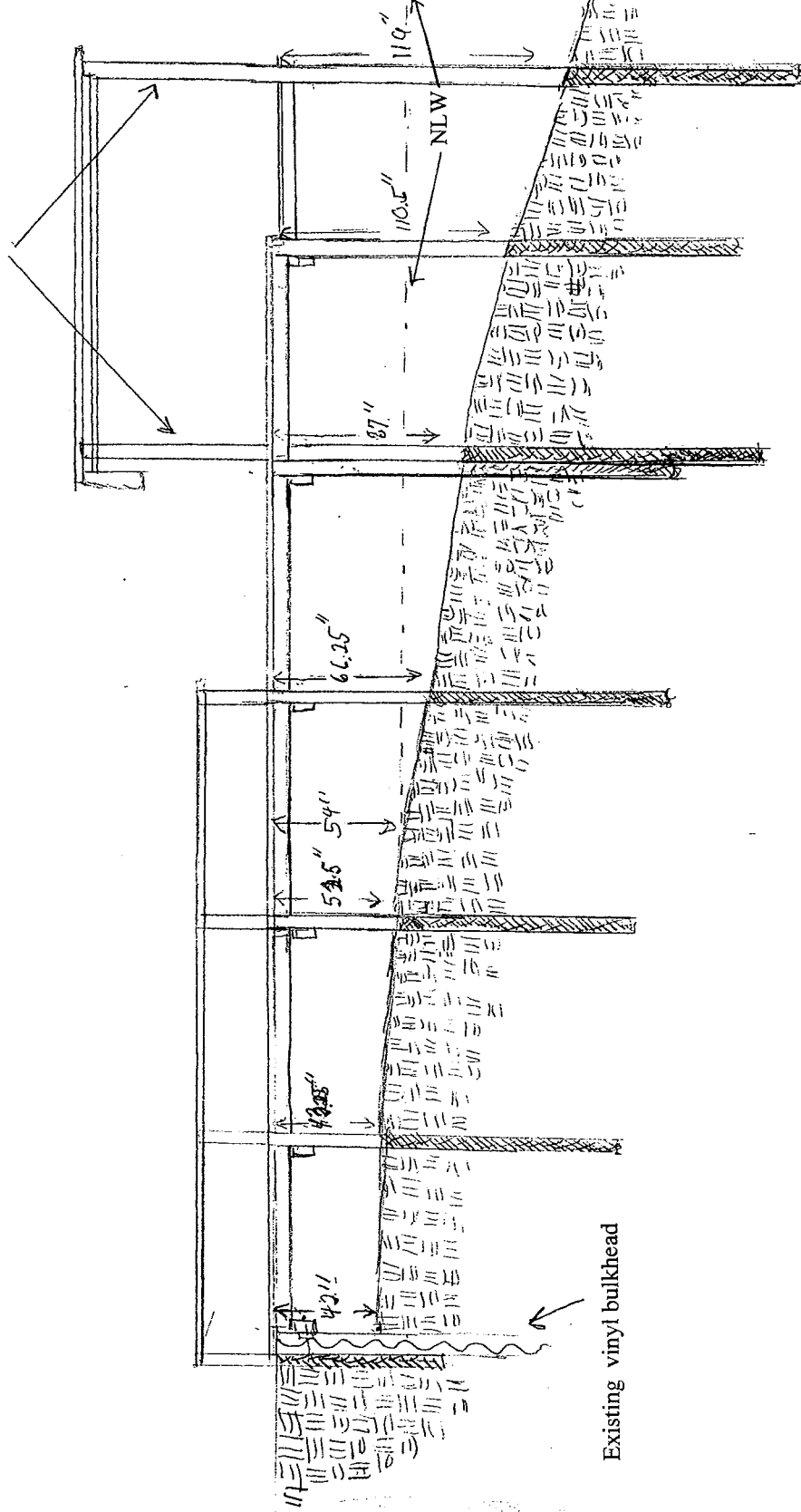
Applicant: William Jake Taylor

Scale: 1" = 6'

Location of Existing Pier with Boat lift (Profile Drawing)

Existing boat lift pilings
(deteriorated and need replacing)

Vicinity Map



Depths taken from soundings

NLW (Normal Low Water) line taken from measurements at low tide averaged from 5 days in early June

Name of Project: Jake Taylor Residential Pier at 213 Smith Street, Atlantic Beach

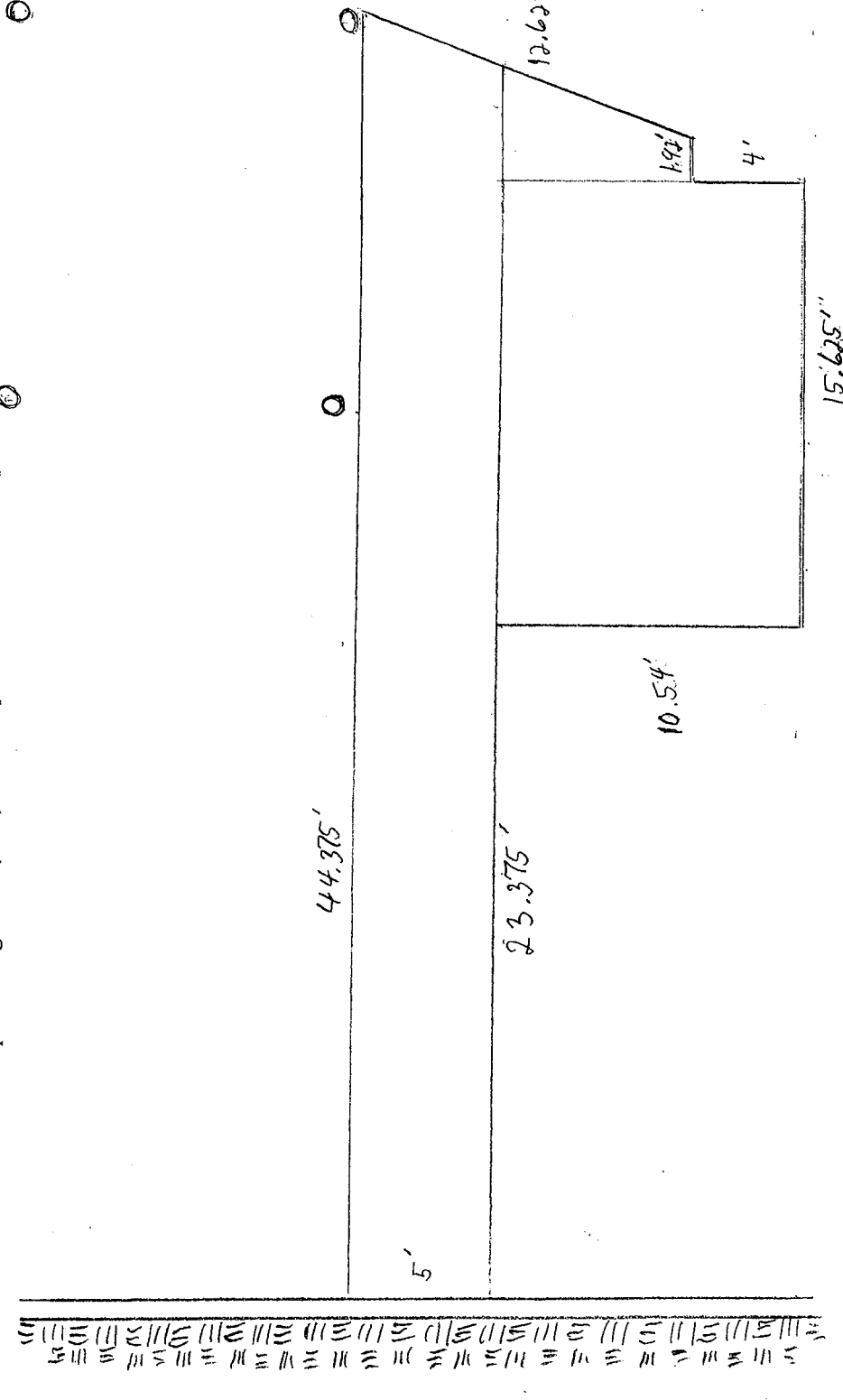
Applicant: William Jake Taylor

Scale: 1" = 6'

Plan Drawing of Existing Pier

Calculations: Pier: 216.58 Sq ft Finger Pier (deck): 203.01 sq ft Total: 419.59 sq feet

Vicinity Map





FILE # 1449210

NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

FOR REGISTRATION REGISTER OF DEEDS
Joy Lawrence
Carteret County, NC
June 06, 2013 12:24:57
BWC DEED 2 P
FEE \$26.00
NC REVENUE STAMP: \$450.00
FILE # 1449210

Joy Lawrence, Register of Deeds
By *[Signature]*
Asst. Deputy, Register of Deeds

Excise Tax \$450.00

Recording Time, Book and Page

Tax Lot No. 637512973143000 (split out)

Parcel Identifier No.

Verified by County on the day of, 20.....

by

Mail after recording to George N. Hamrick, 7048 Knightdale Blvd., Ste. 200
Knightdale, NC 27545 ✓

This instrument was prepared by George N. Hamrick

Brief description for the Index

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 4th day of June, 2013, by and between

GRANTOR

GRANTEE

Kirby L. Marshburn, Trustee of the
Kirby L. Marshburn Revocable Trust
u/a December 15, 2009
and
Teresa P. Marshburn, Trustee of the
Teresa P. Marshburn Revocable Trust
u/a December 15, 2009

William Jake Taylor, Jr.
and wife,
Lisa P. Taylor
2801 Sandia Drive
Raleigh, NC 27607

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

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

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

BEING all of that part of Lot 34 as is combined with Lot 35 on map recorded in Map Book 32, Page 355, Carteret County Registry.

All or a portion of the property herein conveyed does not include the primary residence of a Grantor.

BOOK 1449 PAGE 210

(2)

page 24 of 27

The property hereinabove described was acquired by Grantor by instruments recorded in Book 1337, Page 19, Carteret County Registry.

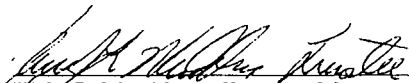
A map showing the above-described property is recorded in Map Book 32, Page 355, Carteret County Registry. See also map recorded in Map Book 7, Page 43, Carteret County Registry.

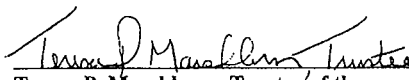
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto, belonging to the Grantee in fee simple.

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) Easements and other matters as may be shown on recorded maps.
- (2) Restrictive covenants recorded in Book 303, Page 286, Carteret County Registry.
- (3) 2013 property taxes (not yet due and payable).

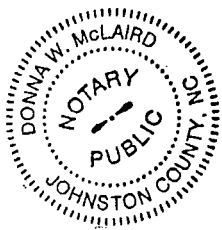
IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

 (SEAL)
 Kirby L. Marshburn, Trustee of the
 Kirby L. Marshburn Revocable Trust u/a December 15, 2009

 (SEAL)
 Teresa P. Marshburn, Trustee of the
 Teresa P. Marshburn Revocable Trust u/a December 15, 2009

SEAL-STAMP

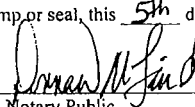
State of North Carolina, County of Wake



I, a Notary Public of the County and State aforesaid, certify that Kirby L. Marshburn, Trustee of the Kirby L. Marshburn Revocable Trust u/a December 15, 2009 and Teresa P. Marshburn, Trustee of the Teresa P. Marshburn Revocable Trust u/a December 15, 2009, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 5th day of June, 2013.

My Commission Expires: 4-13-2018


Notary Public

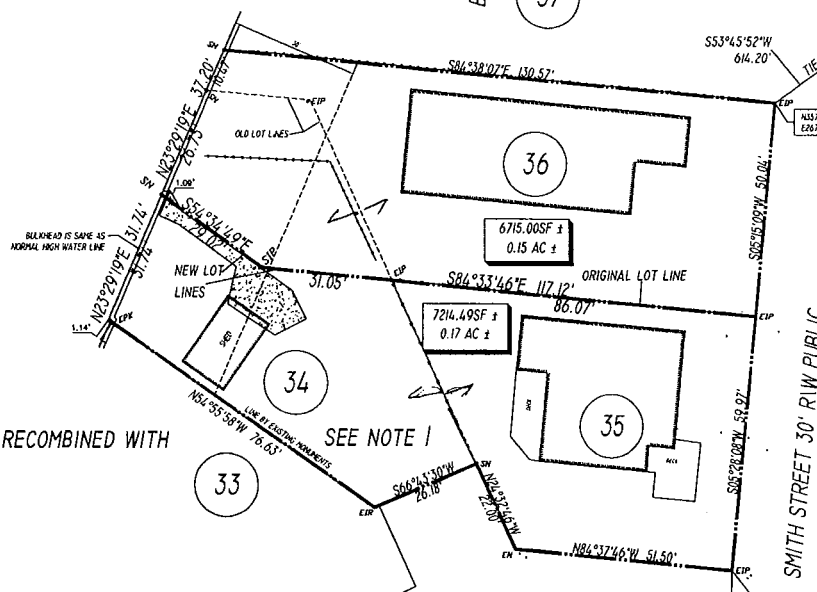
BOOK 1449 PAGE 210

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BOGUE SOUND

BLOCK A



NOTES
NOTE 1-LOT 34 TO BE RECOMBINED WITH
LOT 35 AND 36

SURVEYORS CERTIFICATION
I, JAMES L. PHILLIPS II, CERTIFY THAT THIS PLAT WAS DRAWN BY ME (OR, I, DRAWN UNDER MY SUPERVISION (S), FROM AN ACTUAL SURVEY MADE BY ME (OR, I, MADE UNDER MY SUPERVISION (S)) THAT THE RATIO OF PRECISION AS CALCULATED BY COORDINATE METHOD IS 1:6,000; THAT THIS PLAT WAS PREPARED IN ACCORDANCE WITH G.S. 17-30 AS AMENDED, WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER, AND SEAL THIS THIRTY DAY OF APRIL, A.D. 2003.
A. THAT THE SURVEY CREATES A SUBDIVISION OF LAND WITHIN THE AREA OF THE COUNTY OR MUNICIPALITY THAT HAS AN ORDINANCE THAT REGULATES PARCEL OF LAND.
B. THAT THE SURVEY IS LOCATED IN EACH PORTION OF A COUNTY OR MUNICIPALITY THAT IS UNREGULATED AS TO AN ORDINANCE THAT REGULATES PARCELS OF LAND.
C. THAT THE SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.
XXX. THAT THE SURVEY IS OF ANOTHER CATEGORY, SUCH AS THE RECOMBINATION OF EXISTING PARCELS.
E. THAT THE INFORMATION AVAILABLE TO THE SURVEYOR IS SUCH THAT THE SURVEYOR IS UNABLE TO MAKE A DETERMINATION TO THE BEST OF HIS OR HER PROFESSIONAL ABILITY AS TO PROVISIONS CONTAINED IN (A) THROUGH (D) ABOVE.

JAMES L. PHILLIPS II
RES. NO. 1358
PA. #C-3546



STATE OF NORTH CAROLINA
I, _____ REVIEW OFFICER OF CARTERET COUNTY CERTIFY THAT THIS MAP OR PLAT TO WHICH THIS CERTIFICATION IS AFFIXED MEETS ALL STATUTORY REQUIREMENTS FOR RECORDING.

REVIEW OFFICER
DATE: _____

REGISTER OF DEEDS
FILED FOR REGISTRATION AT _____ ON _____ DAY OF _____ AND RECORDED IN BOOK _____ PAGE _____ OFFICE OF THE REGISTER OF DEEDS, CARTERET COUNTY, NORTH CAROLINA

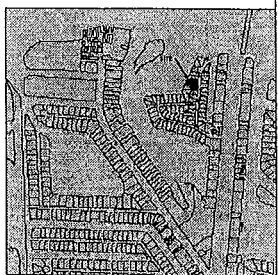
JAY LAWRENCE
REGISTER OF DEEDS

Assistant Deputy

NO PLANNING REQUIRED AS PER EXEMPTION TO SUBDIVISION ORDINANCE ARTICLE V SECTION 14

ATLANTIC BEACH TOWN OFFICIAL _____ DATE _____

- LEGEND
- EP-EXISTING IRON PIPE
- ER-EXISTING IRON ROD
- EC-EXISTING CONCRETE MONUMENT
- EA-EXISTING AXLE
- EM-EXISTING NAIL
- EP-EXISTING PE NAIL
- FP-EXISTING POINT-AND-RING
- NS-EXISTING NORTH CAROLINA GEODESIC SURVEY
- NCS-NATIONAL GEODESIC SURVEY
- W-M-MONUMENT
- SP-SET IRON PIPE
- SR-SET IRON PIPE
- SCM-SET CONCRETE MONUMENT
- EA-SET AXLE
- SN-SET NAIL
- SPK-SET PE NAIL
- OP-OVERHEAD POWER
- NOT FIELD-NOT CONSIDERED PART OF SURVEY
- HW-NORMAL HIGH WATER LINE
- HC-AREA OF CHANGING CURVE
- CA-NORTH AMERICAN VERTICAL DATUM
- NA-NORTH AMERICAN HORIZONTAL DATUM



RECOMBINATION SURVEY
LOTS 34, 35, 36, BLK A, BEACH MOBILE
HOME COURT
211, 213 & 215 SMITH STREET
TOWN OF ATLANTIC BEACH, HORIZONIA TOWNSHIP
CARTERET COUNTY, N.C.
SCALE 1"=20'

PLAT NUMBER: 2003-0171
DATE OF SURVEY: 4/30/03
DATE OF PLATING: 5/20/03

REGISTERED PROFESSIONAL SURVEYOR
JAMES L. PHILLIPS II
PA. #C-3546

page 26 of 21

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

hereby certify that I own property adjacent to William Jake Taylor
(Name of Property Owner)
property located at 213 Smith Street
(Address, Lot, Block, Road, etc.)
On Moonlight Bay off the intracoastal waterway, in Atlantic Beach, N.C.
(Waterbody) (City/Town and/or County)

The applicant has described to me, as shown below, the development proposed at the above location.

I have no objection to this proposal.

I have objections to this proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT (Individual proposing development must fill in description below or attach a site drawing)

The existing 213 Smith Street lot was enlarged by combining with part of the old 211 Smith Street lot. The balance of the 211 Smith Street lot was combined with 215 Smith Street lot thus turning 3 lots into 2 lots. There was a pier on the old lot which part of will have to be removed/moved as conditional of the purchase contract requirements as it encroached into the frontage of the new 215 Smith Street lot owned by Mr. Kirby Marshburn. The proposed new pier for 213 Smith Street will be located in approximately the center of the 31.74 foot between the riparian lines of lots adjacent to the new 213 Smith Street lot. The new pier will have a 6 foot main section with a small deck off built in front of a 10,000 lb boat lift on the southern side toward the property owned by Mr. William Coley. The new pier/boatlift will be 33 feet from the pier to the south of the adjoining property owned by William Coley property located at 211 Smith Street, Atlantic Beach NC. The proposed pier will be 28 feet from the pier to the north owned by Mr. Kirby Marshburn. Allowing the pier to be moved over to the south will relieve congestion of use of the riparian area between lots 213 and 215 (Taylor and Marshburn) and eventually between 215 and 217 Smith Street lots Marshburn and Creech). See attached drawing

WAIVER SECTION

I understand that a pier, dock, mooring pilings, breakwater, boathouse, lift, or groin must be set back a minimum distance of 15' from my area of riparian access unless waived by me. (If you wish to waive the setback, you **must initial** the appropriate blank below.)

I do wish to waive the 15' setback requirement.

I do not wish to waive the 15' setback requirement.

(Property Owner Information)

Signature: William Jake Taylor

Print or Type Name: William Jake Taylor

Mailing Address: 2801 Sandia Drive

Telephone Number: 919-606-2677

Date: 9/20/2013

(Adjacent Property Owner Information)

Signature: Kirby Marshburn

Print or Type Name: Kirby Marshburn

Mailing Address: 6901 Lake Myra Road

Telephone Number: 919-422-7587 cn 919-365-3306

Date: 9-26-13

RECORDED
OCT 02 2013
FROM: MIND CITY

WILLIAM C. COLEY III

ATTORNEY AT LAW
572 LAKELAND DRIVE
KINSTON, NORTH CAROLINA 28504

OCTOBER 7, 2013
UPS Next Day Air
#1Z-9R3-V32-22-1000-6853

Ms. Heather Styron
NC Division Of Coastal Management
Morehead City Regional Office
400 Commerce Avenue
Morehead City, NC 28557

RE: **OBJECTION TO MAJOR CAMA DEVELOPMENT PERMIT APPLICATION FOR 213 SMITH STREET, ATLANTIC BEACH, NC APPLICANT - WILLIAM JAKE TAYLOR**

Dear Ms. Styron:

My wife, Vickie M. Coley, and I are the record owners (since August 21, 1991) of 209 Smith Street, Atlantic Beach, North Carolina (also known as Lot 33, Block A, Beach Mobile Home Court). William Jake Taylor and his wife, Lisa, purchased non-waterfront Lot 35, Block A, in 2011. On June 6, 2013, Mr. and Mrs. Taylor purchased a portion of sub-divided Lot 34 which had waterfront footage. We are apprised that Mr. and Mrs. Taylor have now made and been denied the initial application for a waiver and permitting to tear down an existing pier and build a new pier associated in some fashion with the property they purchased. As a result of the initial denial, we understand that they are now pursuing a Major CAMA permit to basically override the law and regulations relative to permitting the location and construction of dockage/pier structure.

My wife and I strenuously object to the granting of any pending permit application submitted by Mr. and Mrs. Taylor, object to their proposed pier project and further DO NOT waive in any fashion or form the FIFTEEN (15) FOOT setback requirement (or any other setback requirement that may be pertinent or applicable) from our riparian line or property boundary for any purpose or reason associated herewith.

In explanation of and support for our objection(s), we have attached and enclosed an Appendix and Exhibits which we believe more than justify denial of the Taylors' application. If we need to provide any additional information/documentation, or should you have any questions, please feel free to contact me at 252-523-8000 (office), 252-527-1605 (home), or my wife at 252-361-1802 (cell). Our mailing/home address is as listed at the top of this letter and my office mailing address is P. O. Box 1555, Kinston, N. C. 28503-1555.

RECEIVED

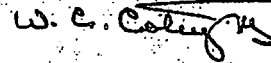
OCT 08 2013

DCM-MHD CITY

Ms. Heather Styron
October 7, 2013
Page 2

Thank you for your attention to and cooperation in this matter. With best regards,
I am

Very truly yours,



William C. Coley III

Enclosures

RECEIVED

OCT 08 2013

DCM-MHD CITY

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

hereby certify that I own property adjacent to William Jake Taylor
(Name of Property Owner)
property located at 213 Smith Street
(Address, Lot, Block, Road, etc.)
On Moonlight Bay off the intra-coastal waterway, in Atlantic Beach, N.C.
(Waterbody) (City/Town and/or County)

The applicant has described to me, as shown below, the development proposed at the above location.

_____ I have no objection to this proposal.
X weem I have objections to this proposal.

DESCRIPTION AND/OR DRAWING OF PROPOSED DEVELOPMENT (Individual proposing development must fill in description below or attach a site drawing)

The existing 213 Smith Street lot was enlarged by combining with part of the old 211 Smith Street lot. The balance of the 211 Smith Street lot was combined with 215 Smith Street lot thus turning 3 lots into 2 lots. There was a pier on the old lot which part of will have to be removed/moved as conditional of the purchase contract requirements as it encroached into the frontage of the new 215 Smith Street lot owned by Mr. Kirby Marshburn. The proposed new pier for 213 Smith Street will be located in approximately the center of the 31.74 foot between the riparian lines of lots adjacent to the new 213 Smith Street lot. The new pier will have a 6 foot main section with a small deck off built in front of a 10,000 lb boat lift on the southern side toward the property owned by Mr. William Coley. The new pier/boatlift will be 33 feet from the pier to the south of the adjoining property owned by William Coley property located at 211 Smith Street, Atlantic Beach NC. The proposed pier will be 28 feet from the pier to the north owned by Mr. Kirby Marshburn. Allowing the pier to be moved over to the south will relieve congestion of use of the riparian area between lots 213 and 215 (Taylor and Marshburn) and eventually between 215 and 217 Smith Street lots Marrshburn and Creech). See attached drawing

WAIVER SECTION

I understand that a pier, dock, mooring pilings, breakwater, boathouse, lift, or groin must be set back a minimum distance of 15' from my area of riparian access unless waived by me. (If you wish to waive the setback, you must initial the appropriate blank below.)

_____ I do wish to waive the 15' setback requirement.
X weem I do not wish to waive the 15' setback requirement.

(Property Owner Information)

(Adjacent Property Owner Information)

Signature: William Jake Taylor
Print or Type Name: William Jake Taylor
Mailing Address: 2801 Sandia Drive
City/State/Zip: Raleigh, NC 27607
Telephone Number: 919-606-2677
Date 9/15/2013

Signature: William C. Coley III
Print or Type Name: William C. Coley III
Mailing Address: 572 Lakeland Drive
City/State/Zip: Kinston, NC 28504
Telephone Number: 252-527-1605
Date 10-7-13

RECEIVED

OCT 08 2013

APPENDIX TO OBJECTION LETTER

OBJECTION OF WILLIAM C. (FORD) COLEY III AND WIFE, VICKIE M. COLEY,
as adjacent riparian property owners (209 Smith Street),
to APPLICATION FOR MAJOR DEVELOPMENT PERMIT
submitted by WILLIAM JAKE TAYLOR,
dated September 1, 2013, for
ADDRESS: 213 Smith Street, Atlantic Beach, NC

Date of Objection Response: October 7, 2013

RECEIVED

OCT 08 2013

DCM-MHD CITY

ISSUE: Whether the relief requested, including that pursuant to the APPLICATION FOR MAJOR DEVELOPMENT PERMIT, NORTH CAROLINA DIVISION OF COASTAL MANAGEMENT, submitted by WILLIAM JAKE TAYLOR bearing date of September 1, 2013, for a pier as configured and located therein, at 213 Smith Street, Atlantic Beach, N.C., should be granted.

ANSWER: NO

SUPPORTING REASONS/ARGUMENTS

1. There is a FIFTEEN (15) Foot setback requirement relative to situations such as the present, from adjoining riparian lines which is NOT and has NOT been waived by Coley (Lot 33, 209 Smith Street) relative to Taylor or any application submitted by him/them. Coley is neither forced nor required to waive said setback requirements. **(See attached copy of 15A NCAC 07H .1205 Specific Conditions, and specifically sub-section "q" of same)**
2. There is/are other pier configuration(s) that Taylor could suggest and/or utilize which would not violate the set back requirements relative to the Coley property. Coley understands and believes that Taylor has been informed of this by proper and appropriate agency personnel (according to information and belief, even before the purchase by Taylor of the part of Lot 34), but he refused/refuses to pursue, submit or apply same.
3. Taylor knew unequivocally of Coley's position (unwilling to waive the setback or agree to modification/relocation/reconfiguration of any pier on or for Lot 34) at least 3 months prior to the recording of the Taylor deed wherein Taylor purchased part of Lot 34 from Marshburn. **(Exhibits 17 and 20)** There was no effort by Coley to be deceptive, misleading or manipulative about this issue or matter, and that was plainly communicated to Taylor by Coley. Further, Taylor was made aware of Coley's position **(Exhibit 17)** prior to the date the Survey Field work was done relative to division of Lot

34 and before the Map Preparation date, both being reflected on the survey that was attached to the subdivision Deed. **(Exhibit 10)** Taylor knew or reasonably should have known of the position of Coley relative to the set back requirement/limitation and the issues that could be raised or affected by Taylor trying to deal with an existing pier relocation or reconfiguration. Coley should not now be penalized for protecting and asserting their rights relative to the protection of their riparian area.

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4. a. Taylor states that there was a contractual term between he and Marshburn relative to Taylor's purchase of part of Marshburn's Lot 34 (211 Smith Street) requiring that "...all parts of the pier encroaching on the riparian water frontage of the Kirby Marshburn tract at 215 Smith Street would have to be removed within 12 months of the deed transfer." This contract has never been seen by Coley, is not attached to any permit application documentation submitted by Taylor, and thus there is no way to verify the actual existence of such a term or contract. Therefore, without further proof, such purported term/provision and/or contract may actually be non-existent, a 'ruse', and should not be considered in any fashion in this process or evaluation.

b. Coley was not and is not a party to any contractual arrangement (if same actually exists) between Taylor and Marshburn relative to Lot 34 and its disposition. Thus, Coley is neither bound by nor should be impacted by any arrangement or alleged contract between Taylor and Marshburn relative to this situation.

c. Coley's understanding is that Taylor, back in March, 2013, was informed that one way of dealing with this situation would be in how the division of Lot 34 ultimately occurred and how much waterfront Taylor ultimately purchased. However, the understanding is further that Taylor indicated that he did not want to have to purchase any more of the Lot 34 from Marshburn than he had to due to cost/expense. This is indicative of the flexibility of the subdivision lines and the attendant ongoing negotiations between Taylor and Marshburn relative to how Lot 34 would actually be divided prior to same actually being decided upon. Therefore, Taylor could have purchased more of the Lot 34 than he did thus making this situation "moot". Again, Coley was not party to this negotiation, or any aspect of same, between Taylor and Marshburn, and is not and should not be bound by the outcome of same or the attendant responsibilities or obligations of either party (and especially Taylor) relative to this situation. Taylor is desiring to exact a "price" from Coley by forcibly encroaching on Coley's riparian and property rights while simultaneously "saving money" by not purchasing any more of Lot 34.

d. Taylor (in his July 22, 2013 letter to Heather Styron as well as by reference/inference in the Major Permit application) references and emphasizes the comparison of distances between existing piers on either side of Lot 34 and the distances anticipated by the new pier he proposes, suggesting that Coley's usability of his riparian area would not be unreasonably impacted by relocating and building the pier that Taylor proposes. These distances, at least as relates to Coley's pier (Lot 33) is irrelevant, as the set back distance from the riparian line dividing Lot 33 and Lot 34 is the determining factor. Coley's pier has always, since before 1991 when Coley

purchased Lot 33, been in the same location relative to the piers on either side (Lots 32 and 34) and those piers for Lots 32 and 34 have been in the basic same location this entire time as well (see Exhibits 3, 5, 6, 11, 12, 13, 14 and 15). The entire configuration of Lot 33 (land and riparian areas, including 'openness of same') was considered by Coley when initially considering and ultimately determining to purchase said property, same having been expressed to Taylor. (Exhibit 20)

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e. Taylor states in his July 22, 2013, letter to Ms. Styron, that to "...have the least impact on both of the two adjacent property owner's use of their riparian areas and associated boat lift new location would have to be moved to the south..." (i.e. towards Lot 33 owned by Coley). Coley was not part of the 'deal' between Taylor and Marshburn, did not desire that Lot 34 be divided in any fashion, had no input in to any deal between Taylor and Marshburn, and did not receive any benefit from same (land, money or any other consideration); yet Taylor (and ancillary Marshburn) want Coley to suffer and be penalized by taking away his property rights as a result of their actions relative to Lot 34.

f. If a contract actually exists relative to Lot 34 between Taylor and Marshburn, Taylor states in his July 22, 2013, letter to Ms. Styron that within 12 months of the deed transfer "...all the existing deck and part of the main pier extending into the water would have to be removed..." which encroaches on the water frontage of Marshburn. Importantly, Taylor does not indicate that the entire pier would have to be removed, demolished or destroyed. In fact, by studying the riparian line between Marshburn and Taylor (which was provided by Taylor), one can easily see that there is substantial structure left on the existing pier off of Lot 34 which could, over the course of a couple of years, be repaired (maintenance provision of the CAMA rules) in order to comply with regulations concerning repair to existing dockage/pier structures, and still comply with the purported provision of the alleged Taylor-Marshburn contract requiring removal of encroaching structure on Marshburn Lot 36. Taylor actually acknowledges, in a telling "admission", that this approach of rebuilding part of the existing pier in its present location is possible in his within referenced letter as appears on the bottom of page 3 of 27 of his Major CAMA Permit Applications. Additionally, Taylor acknowledges in his letter to Coley dated September 18, 2013, that "I can rebuild the existing boat lift and construct a new deck in front of the lift; I would only have a small pier on the north side after removing the encroachments over Kirby's (Marshburn) line." (copy of Taylor's September 18, 2013 letter is not included in this packet but is available) However, Taylor discards this approach because it would cost him too much time and not comply with his expressed objective of immediately having a brand new pier and boat lifts located exactly where he chooses.

g. Taylor references the need for approving his application in order "...to facilitate relieving congestion of the use of the riparian areas between lots, 213, 215 and 217 Smith Street.", this appearing in his July 22, 2013, letter to Ms. Styron as page 4 of 27 in his Major CAMA Permit Application. A review of Exhibit 1 reflects the lot configurations for all of Block A of Beach Mobile Home Court, including Lots 32, 33, 34, 35, 36 and 37. Of particular note is the approximate 10 foot water frontage that Lot 36 was attributed

and has been limited to since this sub-division was 'laid out' - such being the case since Marshburn has owned it and before him, Jackson, and before him, Sugg - which pre-dates 1991 and goes as far back as May, 1969, when Sugg purchased Lot 36. (**Exhibit 2**) Only after Marshburn purchased Lot 34 from Johnson in 2001 (**Exhibit 8**) did the practical usage by Marshburn of the entire waterfronts of the combined Lots 36 and 34 occur. However, even then the existing pier for Lot 34 remained and the tenant (and his extended family) that Marshburn rented the mobile home to continued to actively use the Lot 34 pier and boat lift for fishing, boating, swimming, sunning, social activities and the like. If there had been true congestion relative to Lots 34,36 and 37 (Creech Lot - see **Exhibit 2**), Marshburn as the owner of both Lots 34 and 36 could have removed the Lot 34 pier as well as the Lot 36 pier, constructing **one pier** in the middle of the two lots (Lots 34 and 36). However, that was never done. Further, the relative locations of the piers for Lots 34, 36 and 37 (Creech Lot), have been the same for years, pre-dating 1991 when Coley purchased Lot 33; and, all families and lot owners have, by observation, freely, regularly, consistently and without problem utilized the waterways and dockage without incident. Further, Coley is not aware of any judicial proceeding of any kind that has been initiated at any time or that is presently pending between any of the lot owners for Lots 34, 35, 36 and 37 concerning encroachment or riparian right issues. Thus, it appears that 'congestion' is not and has not been an "actionable issue" at any time, and certainly not one that rises to the level of judicial intervention nor provides a basis for granting Taylor's requested relief.

5. Taylor indicates in his July 22, 2013, letter to Ms. Styron (same appearing as page 2 of 27 in Taylor's Major Permit Application) as a reason for granting his permit application that Marshburn (owner of Lot 36 and now part of old Lot 34) "...is planning to move his boat lift to the opposite side of his pier as the existing one encroaches on the neighbor to the north (217 Smith Street or Lot 37 owned by Creech - see **Exhibit 2**). To Coley's knowledge Marshburn has not initiated such action in any fashion, so same is pure speculation at this point. Further, Taylor communicated to Coley by letter dated September 18, 2013, (copy not enclosed with this packet) that Marshburn purportedly "...is waiting to see how I can move my pier..." before taking further action, confirming inaction by Marshburn. Creech, as owner of Lot 37 since 1969 (**Exhibit 2**), has or had to agree to placement of the Lot 36 pier in its current location as Lot 36 only had about TEN (10) feet of waterfront property since inception (**Exhibit 1**) and there has never been any judicial action initiated to Coley's knowledge or belief by Creech or anyone else to attempt to rescind such *de facto* or *de jure* acceptance of the Lot 36 pier location. Thus, this is a non-issue, is 'moot' and certainly non-persuasive under the law and regulations relative to Taylor's application.

6. Taylor states in his September 18, 2013, letter to Coley that the construction Taylor is seeking under his Major CAMA Permit Application would increase Coley's property value and therefore is a reason for granting permission or conceding to Taylor's efforts to obtain this Major Permit. There has been no professional appraisal offered to indicate such would be the case. But, regardless, Coley does not have to, and will not voluntarily forego, waive, release or in any way compromise the property and riparian rights attendant to Lot 33, regardless of value issues.

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7. Taylor communicated to Coley in his e-mail dated March 21, 2013, (**Exhibit 19**) that he serves "...on several advisory panels to NCDENR for Division of Water Quality and one of my fraternity brothers sets (sic) on the 45 person Coastal Resources Commission advisory panel to CAMA. From what I have been told...". Based upon this representation, Coley is concerned about and is not certain what communications and/or contacts Taylor has made in order to facilitate his current application process.

8. Coley communicated to Taylor in his March 22, 2013, (**Exhibit 20**) letter that the water and riparian area to the north of Lot 33 pier had been and continues to be used by Coley, as well as guests and family, for purposes of positioning water craft for ultimately docking as well as for swimming, fishing, crabbing and other aquatic activities. Thus, Coley would not want to and does not desire to compromise any of that riparian area associated with Lot 33.

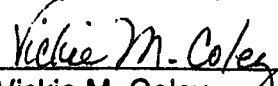
9. Taylor by e-mail to Coley dated March 12, 2013 (**Exhibit 18 - first paragraph**) indicated that they were given the opportunity to purchase half the lot (i.e. Lot 34) and combine it with theirs "several weeks ago". This "opportunity" presentation would have been in February, 2013, same being corroborated by **Exhibit 16**, the February 27, 2013, e-mail concerning the pier issue. Within 10 days (i.e. on March 8, 2013) Coley indicated they would not waive any set back or other requirements relative to Taylor's pier request, thus giving Taylor ample 'lead time' to negotiate whatever lot division was needed in order to meet all requirements relative to any pier with that lot.

In support of Coley's objection, they incorporate herein by reference all Exhibits and attachments included with this response. Based upon the facts in this case, Taylor has failed to show that: strict application of the CRC's development standards would result in unnecessary hardships; that there are any hardships that result from conditions peculiar to the Taylor property, such as its location, size or topography; that there are hardship which did not result from actions taken by Taylor; and that Taylor's requested variance/Major CAMA permit is consistent with the spirit, purpose and intent of the CRC's development standards, will secure public safety and welfare and will preserve substantial justice. In summary, William C. Coley III and wife, Vickie M. Coley renew their objection to and request the denial of the Taylor Application for Major Development Permit, his request for a 'variance', and any attendant, ancillary or associated request(s) relative to the Taylor property in Block A, Beach Mobile Home Court, Atlantic Beach, NC.

Respectfully submitted, this 7th day of October, 2013.



William C. (Ford) Coley III



Vickie M. Coley

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15A NCAC 07H .1205 SPECIFIC CONDITIONS

- (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
- (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.
- (c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.
- (d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.
- (f) The maximum size of any individual component of the docking facility authorized by this General Permit shall not exceed 400 square feet.
- (g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level (whichever is applicable) under this permit without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable).
- (h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation (as defined by the Marine Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission (whichever is applicable) if the following two conditions are met:
- (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level (whichever is applicable).
 - (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure.
- (i) Floating piers and floating docking facilities located in PNAs, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level, whichever is applicable.
- (j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (k) The width requirements established in Paragraphs (d), (e), (f), (g), (h), (i), and (j), of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.
- (l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.
- (m) The area enclosed by a boat lift shall not exceed 400 square feet.
- (n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.
- (o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act.
- (p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

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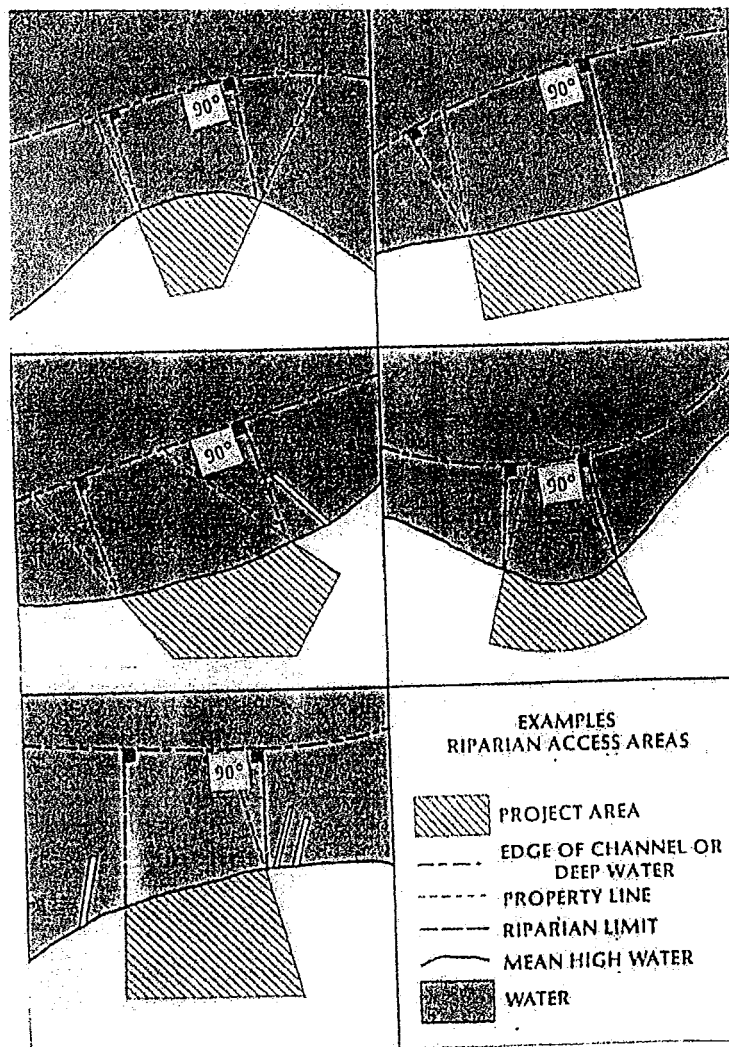
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(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall be designed to provide docking space for no more than two boats.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:



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(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with (a) through (t) of this rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.
- (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using (e) of this rule and in addition shall allow for combined shoreline of both properties.
- (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in subparagraph (q) of this rule as it applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file.
- (5) The construction of a second access pier or docking facility not associated with the shared pier shall require authorization through the CAMA Major full review permit process.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;
RRC Objection due to ambiguity Eff. March 18, 1993;
Amended Eff. August 1, 1998; April 23, 1993;
Temporary Amendment Eff. December 20, 2001;
Amended Eff. July 1, 2009; April 1, 2003.*

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ATTACHMENT
LISTING OF EXHIBITS

OBJECTION BY WILLIAM C. COLEY III AND VICKIE M. COLEY TO MAJOR CAMA
PERMIT APPLICATION FILED BY WILLIAM JAKE TAYLOR

1. Copy of Survey "Map of Beach Mobile Home Court located at Atlantic Beach, Carteret County, N.C. June 13, 1968" certified by C. C. King, Reg. Surveyor No. L760 July 10, 1968, and registered on even date therewith in Book 7, Page 43 of the Carteret County Registry.
2. Copy of Carteret County Grantor/Grantee Index which reflects deed recorded in Book 310, Page 462 to Harold R. & Hilda Creech, Grantee, on May 20, 1969, of Lot 37, Block A, Beach Mobile Home Court.
Also reflects deed recorded in Book 311, Page 16 to Samuel Clarkson & Ruth Holland Sugg, Grantee, on May 23, 1969, of Lot 36, Block A, Beach Mobile Home Court, a predecessor owner to Marshburn.
3. Copy of Survey Map for "Larry R. & Connie Burke, Atlantic Beach, Carteret Co., N.C." dated April 28, 1982, by Collier Survey Company, John W. Collier of Lot 32, Block A, Beach Mobile Home Court, Map Book 7, Page 43.
4. Copy of Warranty Deed from Koyt Everhart, Jr. and wife, Delane S. Everhart, Grantor, to William C. Coley III and wife, Vickie M. Coley, Grantee of Lot 33, Block A, Beach Mobile Home Court, DB 646, PG 41, MB 7, PG 43, (deed and attached August 21, 1991, Collier Survey Company survey map of said lot) all registered in Book 666, Page 48 on September 6, 1991.
5. Copy of John W. Collier & Associates survey map of Lot 33, Block A, Atlantic Beach Mobile Court dated September 12, 2006, certified by Donald A. Nelms, L-3650, for William Coley and wife, Vickie Coley, reflecting the lot and improvements thereon (mobile home, concreted drive/walk, shed and existing pier). This survey reflects references which include: Deedbook 666, Page 48; Mapbook 7, Page 43.
6. Copy of John W. Collier & Associates survey map of Lot 33, Block A, Atlantic Beach Mobile Court dated September 10, 2008, certified by Donald A. Nelms, L-3650, for William Coley and wife, Vickie Coley, reflecting the lot and improvements thereon (newly constructed home/deck, concrete drive, shed and existing pier). This survey reflects references which include: Deedbook 666, Page 48; Mapbook 7, Page 43.
7. Copy of partial Carteret County tax card for Kirby Mashburn (sic) et al Teresa Trustee for Lot 36 BA Beach Mobile Home Court (also referenced as 215 Smith Street, Atlantic Beach) indicating July 21, 2000, as date of purchase from previous owner.
8. Copy of Carteret County on-line Real Estate Index indicating transfer by deed of L-34 B-A Beach Mobile Home Court from Bobby H. Johnson to Kirby L. Marshburn reflecting deed filing date of November 2, 2001.

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9. Copy of partial Carteret County tax card for "Taylor, William Jak Jr et ux Lis" for L35 BA Beach Mobile Home Court (also referenced as 213 Smith Street, Atlantic Beach) indicating July 29, 2011, as date of purchase from previous owner.

10. Copy of North Carolina General Warranty Deed from Kirby L. Marshburn, Trustee of the Kirby L. Marshburn Revocable Trust u/a December 15, 2009 et al, Grantor, to William Jake Taylor, Jr. and wife, Lisa P. Taylor, Grantee, dated June 4, 2013, recorded June 6, 2013, in Book 1449, Page 210 of the Carteret County Registry for "...part of Lot 34 as is combined with Lot 35 on map recorded in Map Book 32, Page 355, Carteret County Registry..."

11. Copy of "Adjacent Riparian Property Owner Statement" dealing with request of Bobby Johnson, then owner of "Beach Mobile Home Court Lot 34" indicating an existing dock for that property with handwritten inscriptions thereon reflecting 17' distance of existing pier platform from property line of lot to the north (i.e. lot 36 with written reference to "Suggs" as property identification information) and distance of 24' from property line of lot to the south (i.e. lot 33 with written reference to "Ford" [who is the same person as William C. Coley III] as property identification information). Document reflects that William C. Coley III, adjacent lot 33 owner, did not waive the setback requirement. This document, although not dated, reflects a facsimile transmission date at the top of July 28, 1992.

12. Copy of "Adjacent Riparian Property Owner Statement" dealing with request of Robert Johnson, then owner of 211 Smith Street (i.e. lot 34, Block A of Beach Mobile Home Court) dealing with installation of new sea wall in front of 'deteriorated asbestos seawall'. This document reflects existing boat dock/pier, with lot to north being identified as "Marshburn Prop." and lot to south being identified as "Coley Prop.". Document was dated May 26, 2001, and reflects that W. C. Coley III, as owner of adjacent lot 33, did not waive the setback requirement "...except as it related to the sea wall work."

13. Copy of "Adjacent Riparian Property Owner Statement" dealing with request of Kirby Marshburn, to widen existing pier/dock and boat lift access walkway from 3 1/2 to 6 feet in width associated with property address of 215 Smith Street, Atlantic Beach (i.e. lot 36, Block A, Beach Mobile Home Court), accompanied by Fax Cover Sheet dated 3/4/02 from Dick Dolgas of Mud Bucket Dredging, Inc. This document reflects lot to the north being identified as "Creech Prop." and lot to south being identified as "Coley Prop". This document also reflects the Marshburn property distance between the Creech property line and the Coley property line as an uninterrupted 50 foot distance along the sea wall. The document was hand dated March 9, 2002, reflects that W. C. Coley III, as owner of adjacent lot 33, did not waive the setback requirement and was returned by facsimile to Mr. Dolgas on March 9, 2002, as indicated by the facsimile cover page from Wooten & Coley. The drawing reflects the existing and continuing close proximity of the Marshburn pier to the Creech property line.

14. Copy of "Adjacent Riparian Property Owner Statement" dealing with request of Kirby Marshburn, to widen existing pier/dock and boat lift access walkway

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from 3 1/2 to 6 feet in width as well as add a "jet ski lift location", all associated with property address of 215 Smith Street, Atlantic Beach (i.e. lot 36, Block A, Beach Mobile Home Court), accompanied by Fax Cover Sheet dated 3/14/02 from Dick Dolgas of Mud Bucket Dredging, Inc. This document reflects lot to the north being identified as "Creech Prop." and lot to south being identified as "Coley Prop". This document **AGAIN** reflects the Marshburn property distance between the Creech property line and the Coley property line as an uninterrupted 50 foot distance along the sea wall. The document was hand dated March 9, 2002, reflects that W. C. Coley III, as owner of adjacent lot 33, did **not** waive the setback requirement and was returned by facsimile to Mr. Dolgas on March 14, 2002, as indicated by the facsimile cover page from Wooten & Coley. The drawing again reflects the existing and continuing close proximity of the Marshburn pier to the Creech property line.

15. Copy of "Adjacent Riparian Property Owner Statement" with attached diagram and explanation dealing with request of Larry & Connie Burke to basically replace an existing pier from their lot at 207 Smith Street, Atlantic Beach (i.e. Lot 32, Block A, Beach Mobile Home Court) that previously was connected to and shared with another lot (see Exhibit 3 above for diagram). The document was hand dated September 11, 2003, and reflects that W. C. Coley III, as owner of adjacent lot 33, waived the setback requirement but only to the extent as defined and shown on the attached drawing with explanation, as the pier location relative to the riparian line between lots 33 and 32 was basically remaining the same as it always had been. Additionally, this was nothing more, and possibly less than the pier conformation that had been in existence prior to Lot 33 being purchased by W. C. Coley III and Vickie M. Coley. (Again, see and compare to Exhibit 3 above for the diagram.)

16. Copy of e-mail from Jake Taylor dated Wednesday, February 27, 2013, to William Coley regarding "pier relocation and proposed new line".

17. Copy of e-mail from Jake Taylor dated Friday, March 08, 2013, to William Coley regarding "Atlantic Beach (Jake/Kirby)" along with responsive e-mail from William Coley to Jake Taylor dated the March 8, 2013, copied to V. M. Coley, regarding the stated subject matter.

18. Copy of e-mail from Jake Taylor dated Tuesday, March 12, 2013, to William Coley, copied to Kirby Marshburn, regarding Atlantic Beach with attached photograph.

19. Copy of e-mail from Jake Taylor dated Thursday, March 21, 2013, to William Coley regarding Atlantic Beach pier with attached photograph.

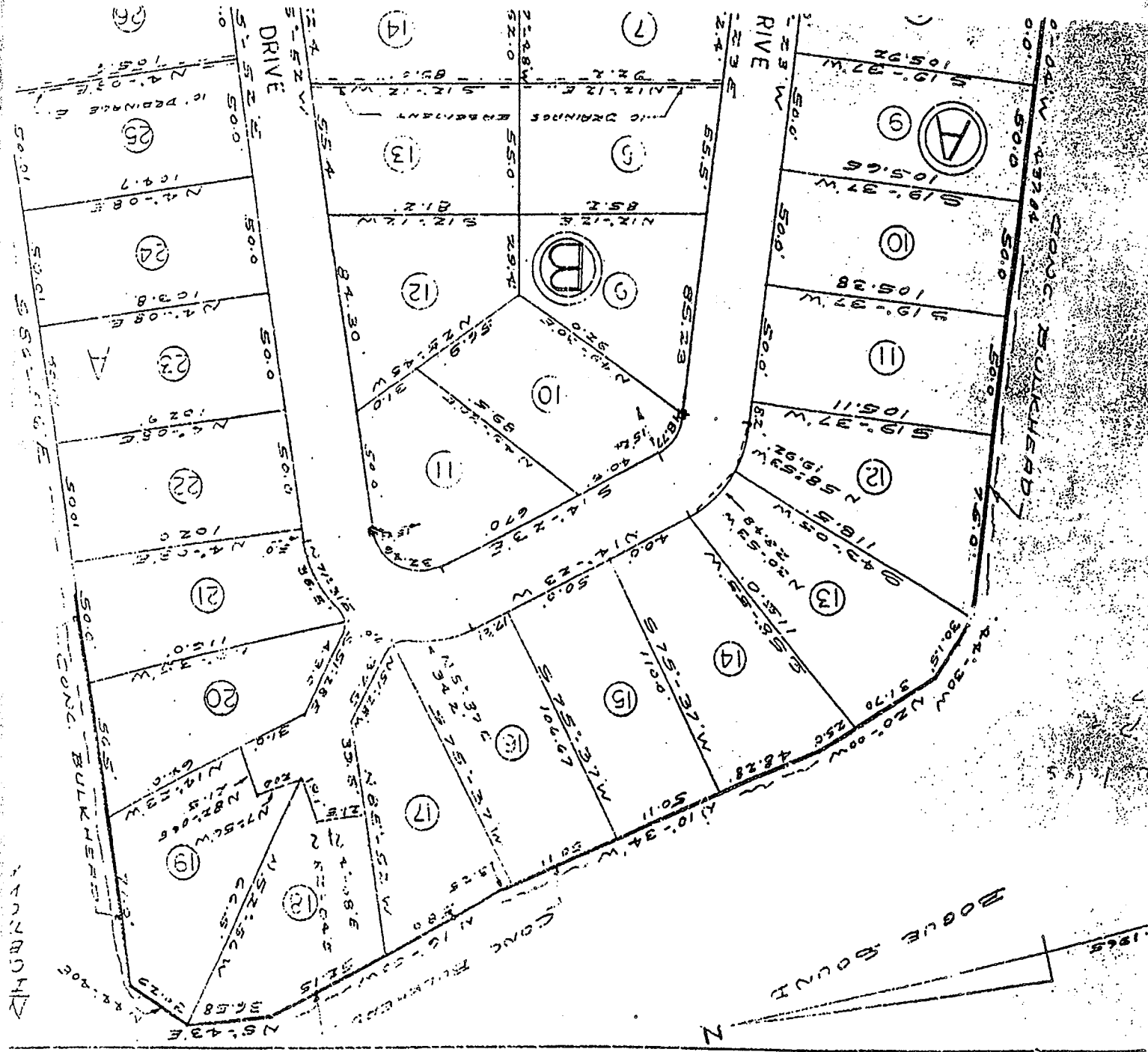
20. Copy of March 22, 2013, letter from William C. Coley III to "Jake" regarding "Atlantic Beach/Beach Mobile Home Court Matter" which original was mailed to Jake Taylor and copy mailed to Kirby Marshburn.

21. Timeline of Pertinent Events (with references to supporting exhibits)

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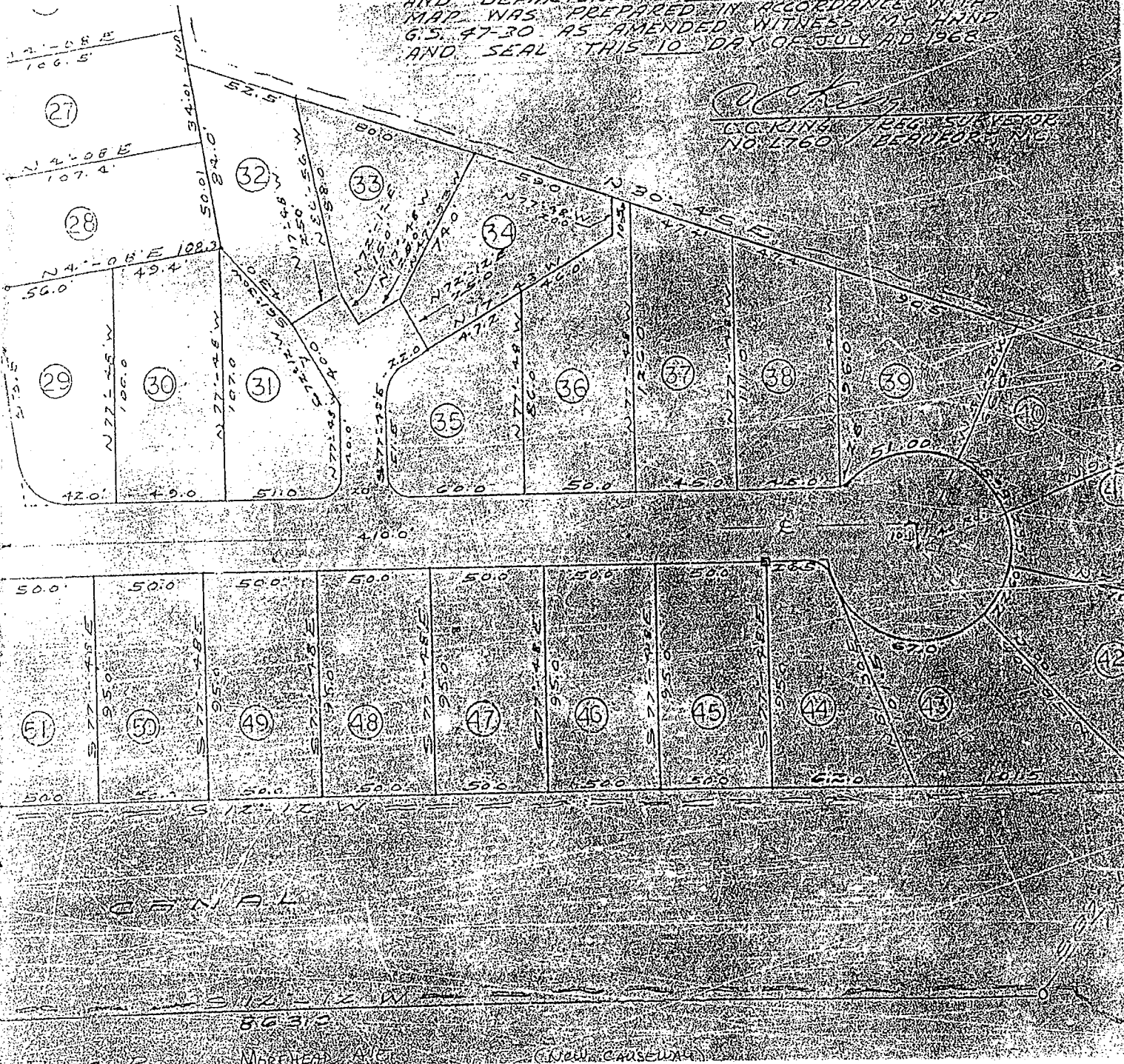
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AND DEPARTURE IN THIS
MAP WAS PREPARED IN ACCORDANCE WITH
G.S. 47-30 AS AMENDED WITNESS MY HAND
AND SEAL THIS 10 DAY OF JULY AD 1968

[Signature]
CORKIN SURVEYOR
NO. 1760 DEANE COUNTY



SEAWALL

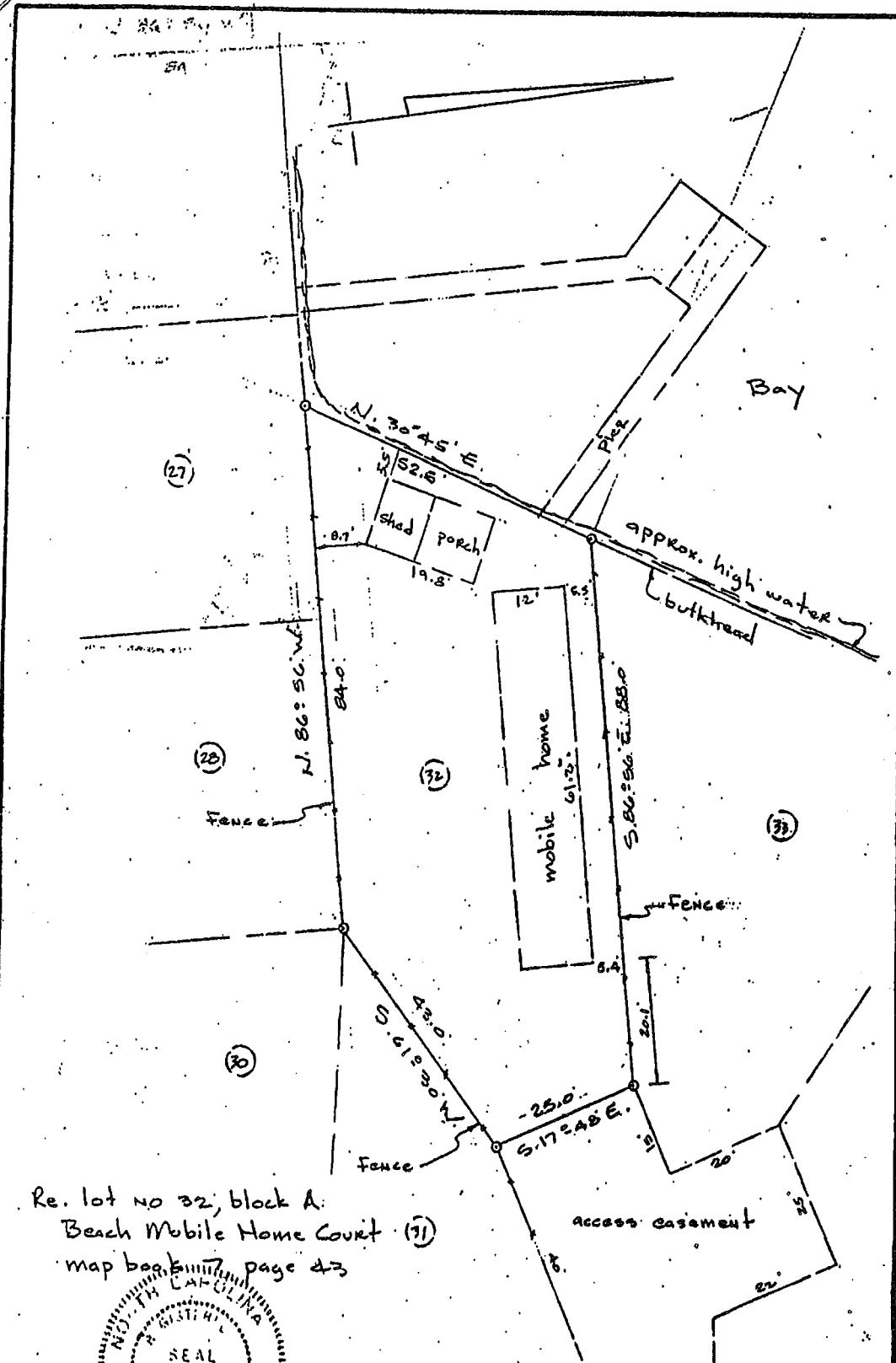
50.0

MOOREHEAD (New Causeway)

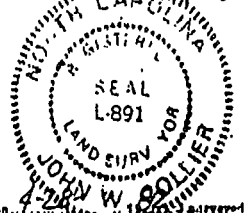
| GIVEN NAMES IJKLMNOP | GIVEN NAMES QRSTUVWXYZ | AP | GRANTEE | AP | KIND OF INSTRUMENT | RECORD | | DATE FILED | | BRIEF DESCRIPTION | |
|-------------------------|---------------------------|----|--|----|--------------------|--------|------|------------|-----|-------------------|--|
| | | | | | | Vol. | Page | Mo. | Day | | Year |
| | RHODA | W | RALPH WAYNE & MINNIE LEE PRIDGEN | W | DEED | 304 | 442 | 9 | 6 | 68 | AT BEACH 5/A BMHC |
| YES C | REBECKAH Y | W | WAITUS W & MARJORIE WORRELL | W | DEED | 304 | 451 | 9 | 8 | 68 | MHEAD |
| | RHODA G | W | CLYDE & PEGGY B JAMES | W | DEED | 305 | 162 | 9 | 25 | 68 | AT BEACH 8/A |
| | RHODA G | W | CLYDE & PEGGY B JAMES | | DEED | 305 | 163 | 9 | 25 | 68 | AT BEACH 7/A |
| | RHODA G | W | GLADYS KIDD BURGESS | | DEED | 305 | 231 | 10 | 1 | 68 | AT BEACH 17/A |
| | | | HARVEY HAMILTON JR TR | | D OF T | 305 | 264 | 10 | 3 | 68 | BOGUE BANKS 4.44 ac PMH |
| | RHODA G | W | FRANK H & ELZIE DEGROAT DUNN | W | DEED | 305 | 358 | 10 | 14 | 68 | MHEAD 18-A |
| | RHODA G | W | WAITE W HOWARD TR | | D T | 306 | 144 | 11 | 12 | 68 | MHEAD Henderson & Canelle |
| | RHODA G | W | FIRST CITIZENS BANK & TR | | SEC AGREE | 306 | 145 | 11 | 12 | 68 | Cancelled |
| | RHODA G | W | C RAY & JO ANNE MORLEY LYNCH | W | DEED | 306 | 161 | 11 | 13 | 68 | M HEAD 26/A BMHC |
| | RHODA G | W | JASPER HOLT CHESSON | | DEED | 306 | 392 | 11 | 22 | 68 | M HEAD 59/2 Sec 12 SVI MB 7/53 |
| | RHODA G | W | HEBER W WINDLEY JR | | DEED | 306 | 392 | 11 | 22 | 68 | M HEAD |
| | RHODA G | W | JOHN A & ROMANA WILTON SAYAGE | W | DEED | 306 | 492 | 12 | 3 | 68 | AT BEACH 19/A BMHC |
| | RHODA G | W | CHARLES L & ALICE STEELE DIXON | W | DEED | 307 | 68 | 12 | 9 | 68 | MHEAD 20/A BMHC |
| | RHODA G | W | JAMES E & MARGARET BONEY WATSON | W | DEED | 307 | 340 | 1 | 8 | 69 | MHEAD 21/A |
| | RHODA G | W | NED T GRADY | | DEED | 307 | 401 | 1 | 15 | 69 | MHEAD 67-69/12 SVI |
| | RHODA G | W | GEORGE L EDWARDS JR | | DEED | 307 | 401 | 1 | 15 | 69 | MHEAD 60/12 SVI |
| | RHODA G | W | DUANE LEE WELLS | | DEED | 307 | 416 | 1 | 16 | 69 | MHEAD 61/12 SVI |
| | RHODA G | W | NORMAN E WELLS | | DEED | 307 | 417 | 1 | 16 | 69 | MHEAD 62/12 SVI |
| | RHODA G | W | JOSEPH F KOSTER | | DEED | 307 | 421 | 1 | 16 | 69 | MHEAD 64/12 SVI |
| | RHODA G | W | THOMAS C B HOWARD | | DEED | 307 | 450 | 1 | 21 | 69 | MHEAD 24/A |
| | RHODA G | W | RICHS RESTAURANT INC | | DEED | 307 | 488 | 1 | 22 | 69 | MHEAD 1-6, 34, 32, 7, 5, 3, 1, 2, 11 1/L |
| | RHODA G | W | W E & MAMIE HOUSE STEPHENSON | W | DEED | 308 | 8 | 1 | 24 | 69 | MHEAD 12/A BMHC |
| | RHODA G | W | CARSON B & MARIE BRISCOE ANNIS | W | DEED | 308 | 161 | 2 | 6 | 69 | MHEAD 28/A |
| | RHODA G | W | HENRY C & RACHEL CROW BRIDGERS | W | DEED | 308 | 348 | 2 | 13 | 69 | MHEAD 4/A |
| | RHODA G | W | RALPH D JR & ELIZABETH SKAAL STOUT | W | DEED | 309 | 366 | 4 | 2 | 69 | M HEAD 22/A |
| | RHODA G | W | CARL R & BETTY RISKE HINSON | W | DEED | 309 | 388 | 4 | 3 | 69 | M HEAD 34/A |
| | RHODA G | W | DURAL LEE & GOLDIE BLACKMAN FISH | W | DEED | 309 | 418 | 4 | 8 | 69 | M HEAD 1/A |
| | RHODA G | W | DOUGLAS L & JESIE LEE FRANKS | W | DEED | 309 | 451 | 4 | 10 | 69 | M HEAD 2/A |
| | RHODA G | W | THELBERT V FRANKS | | DEED | 309 | 451 | 4 | 10 | 69 | M HEAD 66/12 SVI |
| | RHODA G | W | G WARD & BETTY S BALLOU | W | DEED | 309 | 453 | 4 | 10 | 69 | M HEAD 60/12 SVI |
| | RHODA G | W | RUDOLPH GARLAND & JOYCE HAGAN FERELL | W | DEED | 310 | 101 | 4 | 22 | 69 | M HEAD 5/11 SVI |
| | RHODA G | W | GORDON A MARKS | | DEED | 310 | 128 | 4 | 23 | 69 | M HEAD 28/A BMHC |
| | RHODA G | W | WM R & NANCY DIETZ CAMPBELL | W | DEED | 310 | 235 | 5 | 2 | 69 | ATLANTIC BCH 25/A BMHC |
| | RHODA G | W | STEVE & ROXIE W MYRICK | W | DEED | 310 | 247 | 5 | 5 | 69 | MHEAD 59/12 SVI |
| | RHODA G | W | DAVID GRAHAM & SEDALIA SMITH GREEN | W | DEED | 310 | 328 | 5 | 12 | 69 | MHEAD 27/A BMHC |
| | RHODA G | W | HAROLD R & HILDA CREECH | W | DEED | 310 | 462 | 5 | 20 | 69 | MHEAD 37/A BMHC |
| | RHODA G | W | SAMUEL CLARKSON & RUTH HOLLAND SUGG | W | DEED | 311 | 16 | 5 | 23 | 69 | MHEAD 26/A |
| | RHODA G | W | JOHN W GRIFFIN | | DEED | 311 | 189 | 6 | 9 | 69 | MHEAD 44/11 SVI Sec 2 |
| | RHODA G | W | HOWARD G & FRANCES GURGANUS MCDUSTRELL | W | DEED | 311 | 229 | 6 | 11 | 69 | ATLANTIC BCH 33/A BMHC |
| | RHODA G | W | HENRY DAVID & LOIS PATRICK BELL | W | DEED | 311 | 230 | 6 | 11 | 69 | ATLANTIC BCH 38/A BMHC |
| | RHODA G | W | WILLIAM H & EVELYN WOODFORD LINBERRY | W | DEED | 311 | 270 | 6 | 13 | 69 | MHEAD 16/A BMHC |
| | RHODA G | W | J M SR & JENNIE GRIGGS BROCK | W | DEED | 311 | 359 | 6 | 23 | 69 | MHEAD 47/A |
| | RHODA G | W | ROBERT G & MARGARET SMITH HOLLINGSWORTH | W | DEED | 311 | 368 | 6 | 24 | 69 | MHEAD 32/A |
| | RHODA G | W | DAUGHTRIDGE GAS CO | | DEED | 311 | 433 | 6 | 30 | 69 | 4/A |



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Re. lot NO 32, block A.
Beach Mobile Home Court (71)
map book 7, page 43



I certify that on... I surveyed the property shown on this plat; that the property lines and location of all structures are correctly shown herein; that no structures located on this property encroach on any adjacent street or property and that no structure on adjacent property encroaches on the premises surveyed.
John W. Collier
Surveyor

LARRY R. & CONNIE BURKE
Atlantic Beach, Carteret Co., N.C.

| | |
|-------------------|---|
| SCALE 1" = 20' | COLLIER SURVEY COMPANY 700 ARENDELL STREET - P. O. BOX 3480 MOREHEAD CITY, NORTH CAROLINA 28557 OFFICE 919 726 1464 RESIDENCE 919 726 6030 |
| DATE 4-28-83 | |
| FILE D-1 | |

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THIS INSTRUMENT WAS PREPARED BY: EVERETTE L. WOOTEN, JR., ATTORNEY
Whitley, Coley and Wooten, P.O. Box 3555, Kinston, NC 28502-3555
PARCEL # 13040F0232

NORTH CAROLINA

WARRANTY DEED

CARTERET COUNTY

THIS DEED, made and entered into this 28th day of August, 1991, by and between KOYT EVERHART, JR. and wife, DELANE S. EVERHART, hereinafter called "Grantor"; to WILLIAM C. COLEY III and wife, VICKIE M. COLEY, hereinafter called "Grantee";

WITNESSETH:

That said Grantor, for and in consideration of the sum of Ten Dollars (\$10.00), to them in hand paid, have bargained and sold and by these presents do bargain, sell, and convey unto said Grantee in fee simple, that certain tract or parcel of land lying and being in Atlantic Beach Township, Carteret County, North Carolina, and more particularly described as follows:

\$ 220.00

Real Estate Excise Tax 220.00

STATE OF NORTH CAROLINA
CARTERET COUNTY
SEP-89
RB.10715

Being that certain tract or parcel of land more particularly described on that certain map entitled "WILLIAM C. COLEY III VICKIE M. COLEY ATLANTIC BEACH T.S. CARTERET CO. N.C.", prepared by John W. Collier, R.L.S. L-891, dated 8/21/91, a copy of which map is attached hereto and by reference incorporated herein.

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This conveyance is made subject to Restrictive Covenants as recorded in Book 303, Page 286, Carteret County Registry.

To have and to hold said lands and premises, together with privileges and appurtenances thereunto belonging, to the Grantee, in fee simple.

686980 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


BOOK 666 - PAGE 48

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 as hereafter stated.

Title to the property hereinabove described is subject to the following exceptions: Subject to all valid and enforceable easements, restrictions and rights-of-way of record, if any, and the prorata portion of the 1991 ad valorem taxes.

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

IN TESTIMONY WHEREOF, said parties of the first part have hereunto set their hands and seals, this the day and year first above written.

 (SEAL)
Koyt Everhart, Jr.

 (SEAL)
Delane S. Everhart

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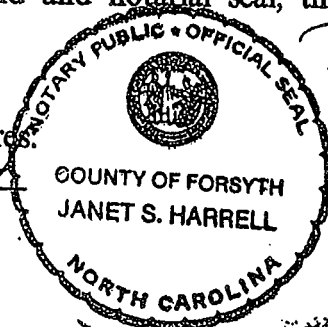
OCT 08 2013


STATE OF NORTH CAROLINA
COUNTY OF Forsyth

DCM-MHD CITY

I, Janet S. Harrell, a Notary Public, do hereby certify that **KOYT EVERHART, JR.** and wife, **DELANE S. EVERHART** personally appeared before me this day and acknowledged the due execution of the foregoing document.

Witness my hand and notarial seal, this the 30th day of August/ 1991.




Notary Public

My Commission Expires:
May 25, 1994

STATE OF NORTH CAROLINA, CARTERET COUNTY

The foregoing Certificate of Ganet J. Nance is certified to be correct. This instrument and this certificate are duly registered this 6th day of September, 1991 at 1:35 o'clock P.M. in Book 666, Page 48.

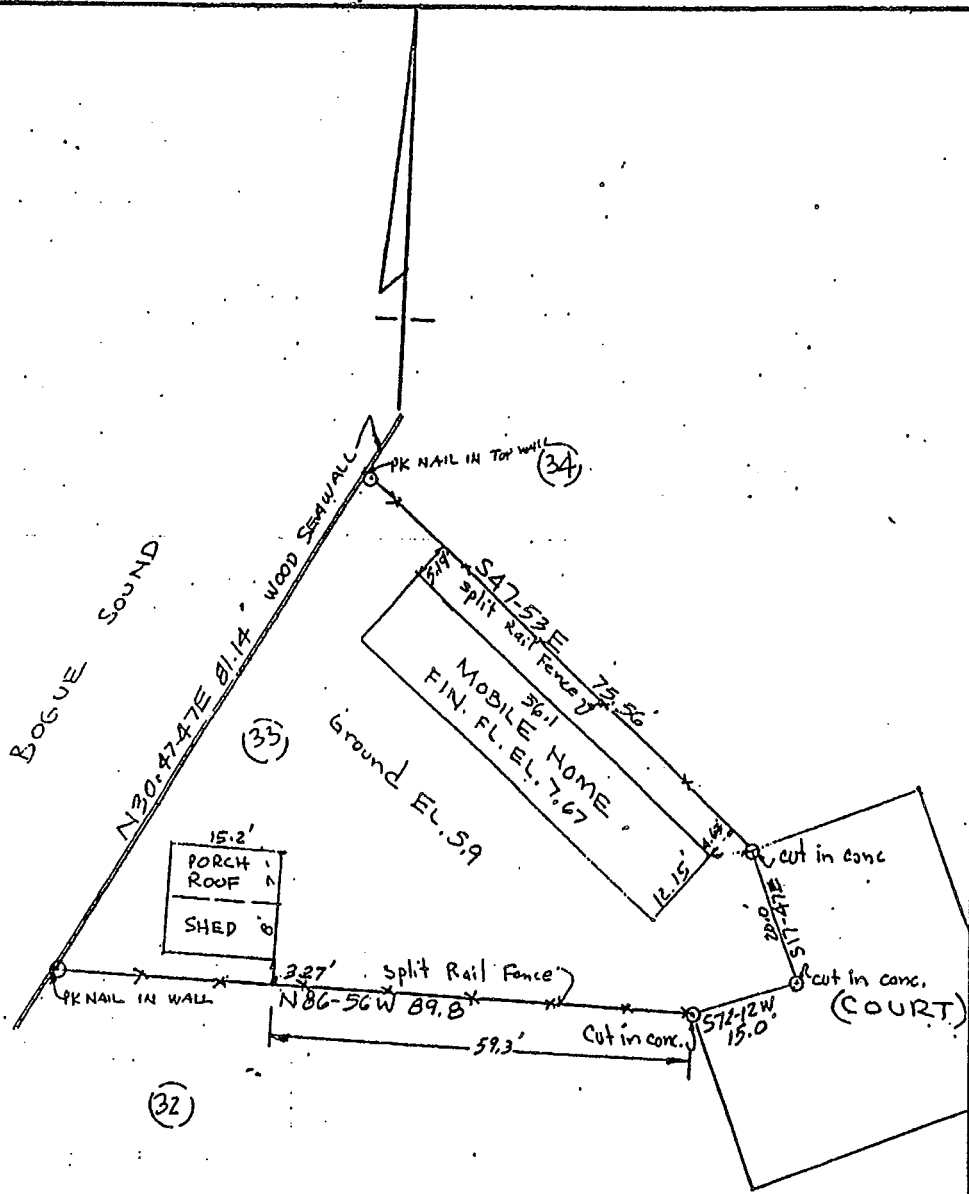
Sharon P. Puro
Register of Deeds, Carteret County, NC

BY: Dorothy Munn
Deputy/Assistant

deedscoley.33

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BOOK 666 PAGE 48



Ref: Lot 33, Block 'A' BEACH MOBILE
 HOME COURT
 DB 646, PG 41
 MB 7, PG 43
 PIN 13-40F-2-32

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OCT 08 2013

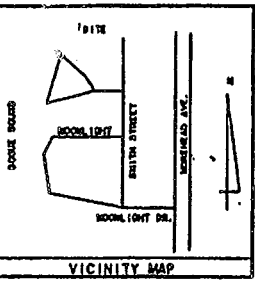
DCM-MHD CITY

I certify that on 8-21-91, I surveyed the property shown on this plat; that the property lines and location of all structures are accurately shown hereon; that the structures located on this property ~~do not~~/DOESNOT encroach on any adjacent structure, property and that the structure on the ~~left~~/right property ~~does~~/DOESNOT encroach on the ~~right~~/left property surveyed.

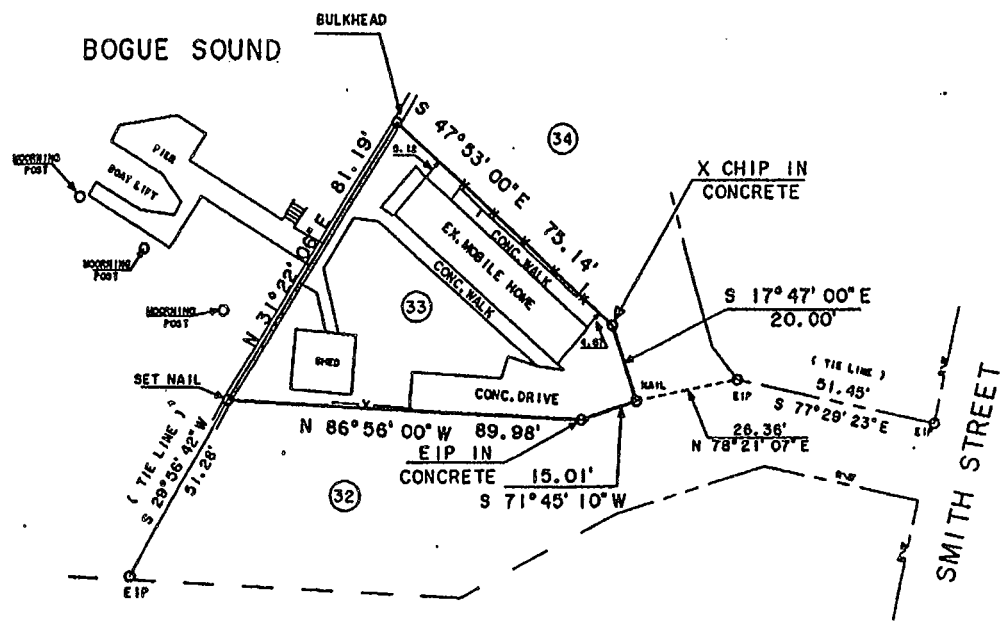
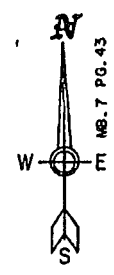
John W. Collier
 JOHN W. COLLIER
 LAND SURVEYOR
 BEAC John W. Collier R.L.S.
 L-881

| | |
|---|---|
| WILLIAM C. COLEY III VICKIE M. COLEY | |
| ATLANTIC BEACH T.S., CARTERET CO., N.C. | |
| SCALE 1" = 20' | COLLIER SURVEY COMPANY |
| DATE 8-21-91 | 408 Arendell Street / PO Box 3440 Morehead City, North Carolina 28557 Office (919) 726-1464 Residence (919) 247-6983 Toll Free 1-800-682-4316 |
| FILE D-1-C | |

BOOK 6666 - PAGE 418



- LEGEND
- SIP • SET IRON PIPE
 - SIR • SET IRON ROD
 - EIP • EXISTING IRON PIPE
 - EIR • EXISTING IRON ROD
 - EIS • EXISTING IRON STAKE
 - ECM • EXISTING CONCRETE MONUMENT
 - R/W • RIGHT OF WAY
 - OVERHEAD POWERLINE ————E———E———
 - FENCE ————X———X———X———
 - N/F • NOW OR FORMERLY
 - HWL • HIGH WATER LINE

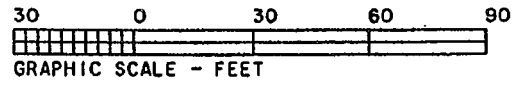


NOTES:

THIS PROPERTY IS IN A FLOOD ZONE AE (EL-7)
FIRM MAP 37206375 J DATED 7-16-2003
ACREAGE = 4233.67 SQ.FT. - 0.09 AC.

REFERENCES

DEEDBOOK 666 PAGE 48
MAPBOOK 7 PAGE 43
LOT 43 BLOCK A
ATLANTIC BEACH MOBILE COURT
PIN H 637512973028

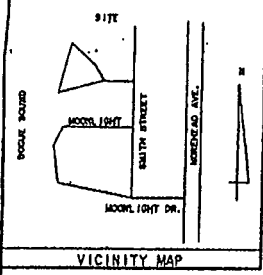


| | | |
|--|--------------------------|------------------|
| MAP PREPARED FOR: | | |
| WILLIAM COLEY AND WIFE VICKIE COLEY | | |
| <p>L DONALD A. NELMS, A PROFESSIONAL LAND SURVEYOR, CERTIFY THAT THIS PLAT CONFORMS TO THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA AND THAT THE RATIO OF PRECISION AS CALCULATED IS GREATER THAN 1:10,000 AND THAT THE ANGULAR ERROR OF CLOSURE IS GREATER THAN 80 SECONDS TIMES THE SQUARE ROOT OF THE NUMBER OF ANGLES TURNED.</p> <p><i>Donald A. Nelms</i> DONALD A. NELMS, P.L.S. L-3650</p> | TYPE OF SURVEY: PHYSICAL | |
| | SCALE: 1" = 30' | COUNTY: CARTERET |
| | DATE: 9-12-2006 | STATE: N. C. |
| | TWP: MOREHEAD | PLAT#: ABMHC33A |
| MAP PREPARED BY: | | |
| JOHN W. COLLIER & ASSOCIATES | | |
| 408 ARENDELL STREET/P.O. BOX 3480 MOREHEAD CITY, N.C. 28557 OFFICE:(252)728-1464/(800)882-4316 | | |

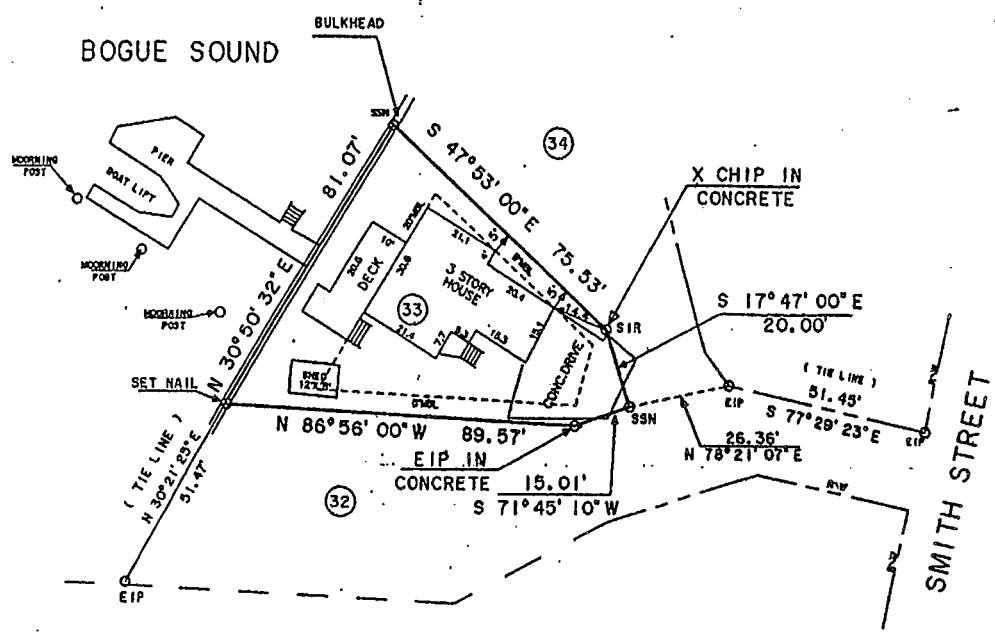
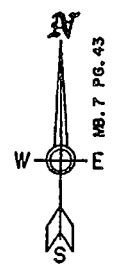
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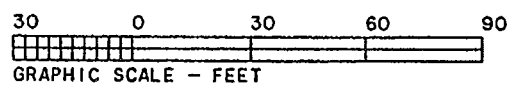


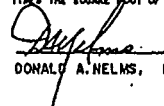

- LEGEND**
- SIP • SET IRON PIPE
 - SIR • SET IRON ROD
 - EIP • EXISTING IRON PIPE
 - EIR • EXISTING IRON ROD
 - EIS • EXISTING IRON STAKE
 - ECM • EXISTING CONCRETE MONUMENT
 - R-W • RIGHT OF WAY
 - OVERHEAD POWERLINE — E — E —
 - FENCE — X — X — X —
 - PROPERTY LINE — — — —
 - NWL • NORMAL WATER LINE
 - C.P. • COMPUTED POINT
 - N.F. • NOW OR FORMERLY
 - SSH • SET SURVEY NAIL



NOTES:
 THIS PROPERTY IS IN A FLOOD ZONE AE (EL-7)
 FIRM MAP 37206375 J DATED 7-16-2003
 ACREAGE = 4233.67 SQ.FT. = 0.09 AC.

REFERENCES
 DEEDBOOK 666 PAGE 48
 MAPBOOK 7 PAGE 43
 LOT 43 BLOCK A
 ATLANTIC BEACH MOBILE COURT
 PIN H 637512973028



| | |
|---|-------------------------|
| MAP PREPARED FOR: | |
| WILLIAM COLEY AND WIFE VICKIE COLEY | |
| I, DONALD A. HELMS, A PROFESSIONAL LAND SURVEYOR CERTIFY THAT THIS PLAT CONFORMS TO THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA AND THAT THE RATIO OF PRECISION AS CALCULATED IS LESS THAN 1/10,000 AND THAT THE ANGULAR ERROR OF CLOSURE IS LESS THAN 1/100,000 TIMES THE SQUARE ROOT OF THE NUMBER OF ANGLES MEASURED. | |
|  DONALD A. HELMS, P. L. S. No. L-3650 | |
|  | |
| TYPE OF SURVEY: PHYSICAL | |
| SCALE: 1" = 30' | COUNTY: CARTERET |
| DATE: 9-10-2008 | STATE: N. C. |
| TWP: MOREHEAD | FILE#: ABMHC33A |
| MAP PREPARED BY: | |
| JOHN W. COLLIER & ASSOCIATES | |
| 408 ARENDELL STREET/P.O. BOX 3480 | |
| MOREHEAD CITY, N.C. 28557 | |
| OFFICE: (252) 728-1484 / (800) 882-4316 | |

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RT 520006.023.000
PID R 6375.12.97.4116000

MASHBURN, KIRBY ETAL TERESA TR

2014
712,146 PY Val

712,146 MKT
USE
DEF
.122 ACRES

CARD 002
324,800 LAND 001
370,332 BLDG 001
17,014 XFOB 006

LISTER 2/04/2010 F1

6901 LAKE MYRA ROAD
WENDELL NC 27591

REScue OTHER
ADDRESS 0000215 SMITH ST ATLANTIC BEACH 28512
PRINTED 4/29/2013 BY ALLENW

TWP MOREHEAD CITY ATLANTIC BEACH FIRE
LOT BLK PL BK/PG 7 43 PLAT
NBHD 52000600 USE 000100 RESIDENTIAL DEED 1337 19 AICUZ
LEGAL: L36 BA BEACH MOBILE HOME COURT

SALES BUILDING PERMITS

| IN | Q | RC | M | V | Sale Date | Sale Price | Number | Type | Description | Issued | Schd | Complt | Revisit | Act | Complt | Amount |
|----|----|----|---|---|-----------|------------|--------|------|-------------|--------|------|--------|---------|-----|--------|--------|
| WD | V | OA | I | | 3/23/2010 | | | | | | | | | | | |
| WD | U | | I | | 7/21/2000 | 425,000 | | | | | | | | | | |
| U | 16 | V | | | 8/03/1998 | 110,000 | | | | | | | | | | |

EXTRA FEATURES

| Seq | Bldg | Code | Description | Length | Width | Height | #Units | UT | Qty | Qual | UTPrice | Year | Adj1 | Adj2 | Adj3 | Adj4 | %Good | Value |
|-----|------|--------|-----------------|--------|-------|--------|----------|----|-----|------|-----------|------|------|------|------|------|--------|-------|
| 001 | | 00067C | BULKHEAD-C | 10 | 1 | | 10.000 | LF | 1 | OC | 64.300 | 0000 | .75 | 1.00 | 1.00 | 1.00 | 100.00 | 482 |
| 002 | | 00049D | PIER-D | 270 | 1 | | 270.000 | SF | 1 | OD | 15.040 | 0000 | .70 | 1.00 | 1.00 | 1.00 | 100.00 | 2,843 |
| 003 | | 00066C | CONCRETE PAD-C | 410 | 1 | | 421.000 | SF | 1 | OC | 5.260 | 0000 | .95 | 1.00 | 1.00 | 1.00 | 100.00 | 2,104 |
| 004 | | 00040C | CONCRETE PAVING | 37 | 28 | | 1036.000 | SF | 1 | OC | 6.270 | 0000 | .95 | 1.00 | 1.00 | 1.00 | 100.00 | 6,171 |
| 005 | | 00010C | BOATLIFT-C | | | | 1.000 | UT | 1 | OC | 4,260.000 | 0000 | .60 | 1.00 | 1.00 | 1.00 | 100.00 | 2,556 |
| 006 | | 00010E | BOATLIFT-E | | | | 1.000 | UT | 1 | OE | 3,175.000 | 0000 | .90 | 1.00 | 1.00 | 1.00 | 100.00 | 2,858 |

LAND

| Seq | Zone | Code | Use | Description | Front | Depth | Back | FT | #Units | UT | UTPrice | Adj1 | Adj2 | Adj3 | Adj4 | Fadj | Dadj | Nbhd | Adj | Eff Rate | Value |
|-----|------|--------|-----|----------------------|-------|-------|------|----|--------|----|-----------|------|------|------|------|------|------|------|-------|-----------|---------|
| 1 | | 520617 | | CANALFRONT-MOONLIGHT | 50 | 107 | 60 | | 50.000 | FF | 6,400.000 | 1.00 | .95 | 1.00 | 1.00 | 1.25 | .85 | | 1.000 | 6,496.000 | 324,800 |



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Search Real Estate Index

Criteria: Grantor Begins with JOHNSON BOBBY Document Type is DEED

Showing Records 1 through 8 (8 records found as of 10/08/2013 12:58:29 PM count=8)

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 View Image
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 Print Detail
 Print Image
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 Prev Item
 Next Item
 Last Item
 Page 1 Help

| # | Instrument # | Book | Page | Date Filed | Document Type | Party Name | More | Reverse Party Name | More | Legal Description | Status | Image |
|---|--------------|------|------|------------|---------------|---------------------|------|------------------------|------|--|--------|-------|
| 1 | 01205611 | 305 | 242 | 10/02/1968 | DEED | R JOHNSON BOBBY H | (+) | E AMY L CHAPMAN | | NEWPORT OLD DOCUMENT KIND:DEED OLD BOOK/PAGE:0305-242 | Perm | |
| 2 | 035532 | 342 | 372 | 10/10/1972 | DEED | R JOHNSON BOBBY H | (+) | E MALCOLM E SIMMONS JR | | NEWPORT OLD DOCUMENT KIND:DEED OLD BOOK/PAGE:0342-372 | Perm | |
| 3 | 035535 | 345 | 469 | 01/10/1973 | DEED | R JOHNSON BOBBY H | (+) | E JOHN C DIEBERT III | | NEWPORT OLD DOCUMENT KIND:DEED OLD BOOK/PAGE:0345-469 | Perm | |
| 4 | 035536 | 346 | 70 | 01/17/1973 | DEED | R JOHNSON BOBBY H | (+) | E JOHN C DEIBERT III | | NEWPORT OLD DOCUMENT KIND:DEED OLD BOOK/PAGE:0346-070 | Perm | |
| 5 | 922413 | | | 11/02/2001 | DEED | R JOHNSON BOBBY H | (+) | E MARSHBURN, KIRBY L | (+) | L-34 B-A BEACH MOBILE HOME COURT | Perm | |
| 6 | 962097 | | | 11/07/2002 | DEED | R JOHNSON BOBBY H | (+) | E JOHNSON, BOBBY H JR | (+) | NEWPORT | Perm | |
| 7 | 01137815 | U101 | 302 | 07/19/1991 | DEED | R JOHNSON BOBBY RAY | (+) | E ANDREWS W E BUD* TR | | U-93 PINE KNOLL TOWNES OLD DOCUMENT KIND:DEED OLD BOOK/PAGE:U101-302 | Perm | |
| 8 | 09509594 | 758 | 305 | 06/22/1995 | DEED | R JOHNSON BOBBY RAY | (+) | E ORTMAN GENEVIEVE R | | U-93 PINE KNOLL TOWNES | Perm | |



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RT 520006.024.000 TAYLOR,WILLIAM JAK JR ETUX LIS 2014 342,624 MKT CARD 002
 PID R 6375.12.97.4120000 2801 SANDIA DRIVE 342,624 PY Val USE 58,125 LAND 001
 RALEIGH NC 27607 .095 ACRES DEF 278,266 BLDG 001
 LISTER 2/04/2010 F1 CITY ATLANTIC BEACH FIRE RESCUE OTHER 6.233 XFOB 002
 TWP MOREHEAD LOT BLK PL BK/PG 32 66 PLAT ADDRESS 0000213 SMITH ST ATLANTIC BEACH 28512
 NBHD 52000600 USE 000100 RESIDENTIAL DEED 1382 21 AICUZ PRINTED 4/29/2013 BY ALLENW
 LEGAL: L35 BA: BEACH MOBILE HOME COURT

SALES

| IN Q | RC | M | V | Sale Date | Sale Price | Number | Type | Description | Issued | Schd | Complt | Revisit | Act | Complt | Amount |
|------|----|----|---|------------|------------|---------|------|-----------------|-----------|------------|--------|---------|------------|--------|--------|
| WD | Q | I | | 7/29/2011 | 360,000 | 0600970 | DEMO | DEMOLITION | 7/17/2006 | | | | 9/01/2006 | | |
| WD | V | OE | I | 12/03/2007 | | | RVDT | RVDT REVISTDATE | 7/11/2006 | 9/01/2006 | | | 9/27/2006 | | |
| | | | | | | | RVDT | RVDT REVISTDATE | 1/11/2006 | 10/01/2007 | | | 10/03/2007 | | |

EXTRA FEATURES

| Seq | Bldg | Code | Description | Length | Width | Height | #Units | UT | Qty | Qual | UTPrice | Year | Adj1 | Adj2 | Adj3 | Adj4 | %Good | Value |
|-----|------|--------|-----------------|--------|-------|--------|---------|----|-----|------|---------|------|------|------|------|------|--------|-------|
| 001 | | 00040C | CONCRETE PAVING | 23 | 22 | | 506.000 | SF | 1 | 0C | 6.270 | 2007 | .95 | 1.00 | 1.00 | 1.00 | 100.00 | 3.014 |
| 002 | | 00031B | WOOD DECK-B | 14 | 8 | | 112.000 | SF | 1 | 0B | 30.250 | 2007 | .95 | 1.00 | 1.00 | 1.00 | 100.00 | 3.219 |

LAND

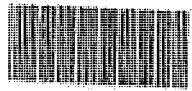
| Seq | Zone | Code | Use | Description | #Units | UT | UTPrice | Adj1 | Adj2 | Adj3 | Adj4 | Fadj | Dadj | Nbhd | Adj | Eff | Rate | Value |
|-----|-------|-------|------|-------------|-----------------|----|-----------|------|------|------|------|------|------|------|-------|-----|---------|--------|
| 1 | Front | Depth | Back | FT | THIRD ROW WTRVW | | 1,250,000 | 1.00 | .95 | 1.00 | 1.00 | 1.20 | .68 | | 1,000 | | 968,750 | 58,125 |

NOTES

XFOB DCK IS WIDOWS WALK ON ROOF



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 DCM-MHD CITY



FILE # 1449210

NORTH CAROLINA, CARTERET COUNTY
This instrument and this certificate are duly filed at
the date and time and in the Book and Page shown
on the first page hereof.

W. Lawrence
W. Lawrence, Registrar of Deeds
Asst. Deputy, Registrar of Deeds

FOR REGISTRATION REGISTER OF VALUE
Joy Lawrence
Carteret County, NC
June 08, 2013 12:24:57
BWC DEED 2 P
FEE \$28.00
NC REVENUE STAMP: \$450.00
FILE # 1449210

Excise Tax \$450.00 Recording Time, Book and Page
Tax Lot No. 637512973143000 (split out) Parcel Identifier No.
Verified by County on the day of, 20.....
by

Mull after recording to George N. Hamrick, 7048 Knightdale Blvd., Ste. 200
Knightdale, NC 27545 ✓

This instrument was prepared by George N. Hamrick

Brief description for the Index:

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 4th day of June, 2013, by and between

| GRANTOR | GRANTEE |
|---|---|
| Kirby L. Marshburn, Trustee of the Kirby L. Marshburn Revocable Trust u/a December 15, 2009 and Teresa P. Marshburn, Trustee of the Teresa P. Marshburn Revocable Trust u/a December 15, 2009 | William Jake Taylor, Jr. and wife, Lisa P. Taylor 2801 Sandia Drive Raleigh, NC 27607 |

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

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

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

BEING all of that part of Lot 34 as is combined with Lot 35 on map recorded in Map Book 32, Page 355, Carteret County Registry.

All or a portion of the property herein conveyed does not include the primary residence of a Grantor.

BOOK 1449 PAGE 210

(2)

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The property hereinabove described was acquired by Grantor by instruments recorded in Book 1337, Page 19, Carteret County Registry.


A map showing the above-described property is recorded in Map Book 32, Page 355, Carteret County Registry. See also map recorded in Map Book 7, Page 43, Carteret County Registry.

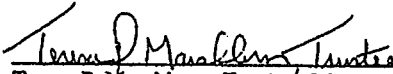
TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto, belonging to the Grantee in fee simple.

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) Easements and other matters as may be shown on recorded maps.
- (2) Restrictive covenants recorded in Book 303, Page 286, Carteret County Registry.
- (3) 2013 property taxes (not yet due and payable).

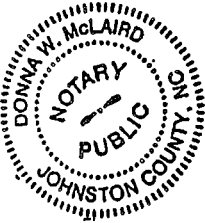
IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

 (SEAL)
 Kirby L. Marshburn, Trustee of the
 Kirby L. Marshburn Revocable Trust u/a December 15, 2009

 (SEAL)
 Teresa P. Marshburn, Trustee of the
 Teresa P. Marshburn Revocable Trust u/a December 15, 2009

SEAL-STAMP

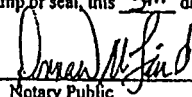
State of North Carolina, County of Wake



I, a Notary Public of the County and State aforesaid, certify that Kirby L. Marshburn, Trustee of the Kirby L. Marshburn Revocable Trust u/a December 15, 2009 and Teresa P. Marshburn, Trustee of the Teresa P. Marshburn Revocable Trust u/a December 15, 2009, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official stamp or seal, this 5th day of June, 2013.

My Commission Expires: 4/3/208


Notary Public

BOOK 1449 PAGE 210

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 DCM-MHD CITY

Bn-
774-8745
H-776-4083
726-2174 Fax

Ford Coley
523-7111



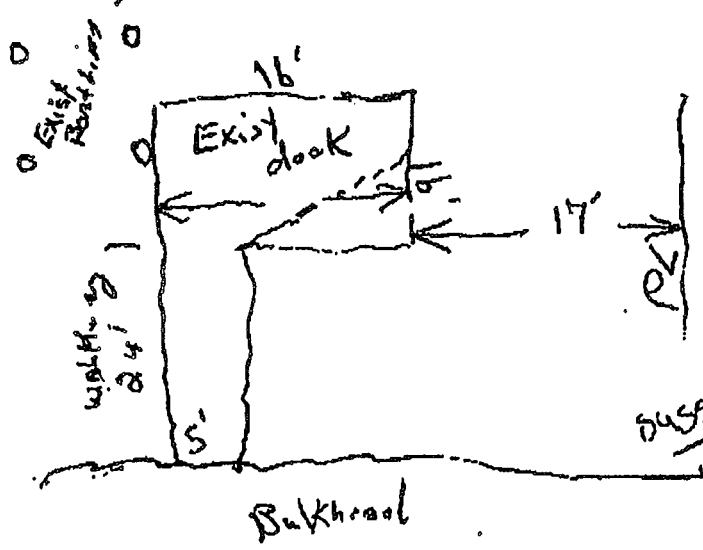
ADJACENT RIPARIAN PROPERTY OWNER STATEMENT
(FOR A PIER)

I hereby certify that I own property adjacent to
Bobby Johnson 's property
located at Beach Mobile Home court lot 34 on
Beach Sound (Water Body) in Atlantic Beach (Town and/or County), N. C.
He has described to me as shown below the development he is proposing at
that location and I have no objections to his proposal. I understand
that a pier or bulkhead must be set back a minimum distance of fifteen
(15) feet from my area of riparian access unless waived by me.

X I do not wish to waive that setback requirement.
_____ I do wish to waive that setback requirement.

Ford

Description and/or drawing of proposed development: (TO BE FILLED IN BY
INDIVIDUAL PROPOSING DEVELOPMENT)



William C. Coley
Signature
William C. Coley
Name
919-523-7111 (office)
Phone

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OCT 08 2013
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ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

I hereby certify that I own property adjacent to

ROBERT JOHNSON 's property

located at 211 SMITH STREET, on
(Lot, Block, Road, etc.)

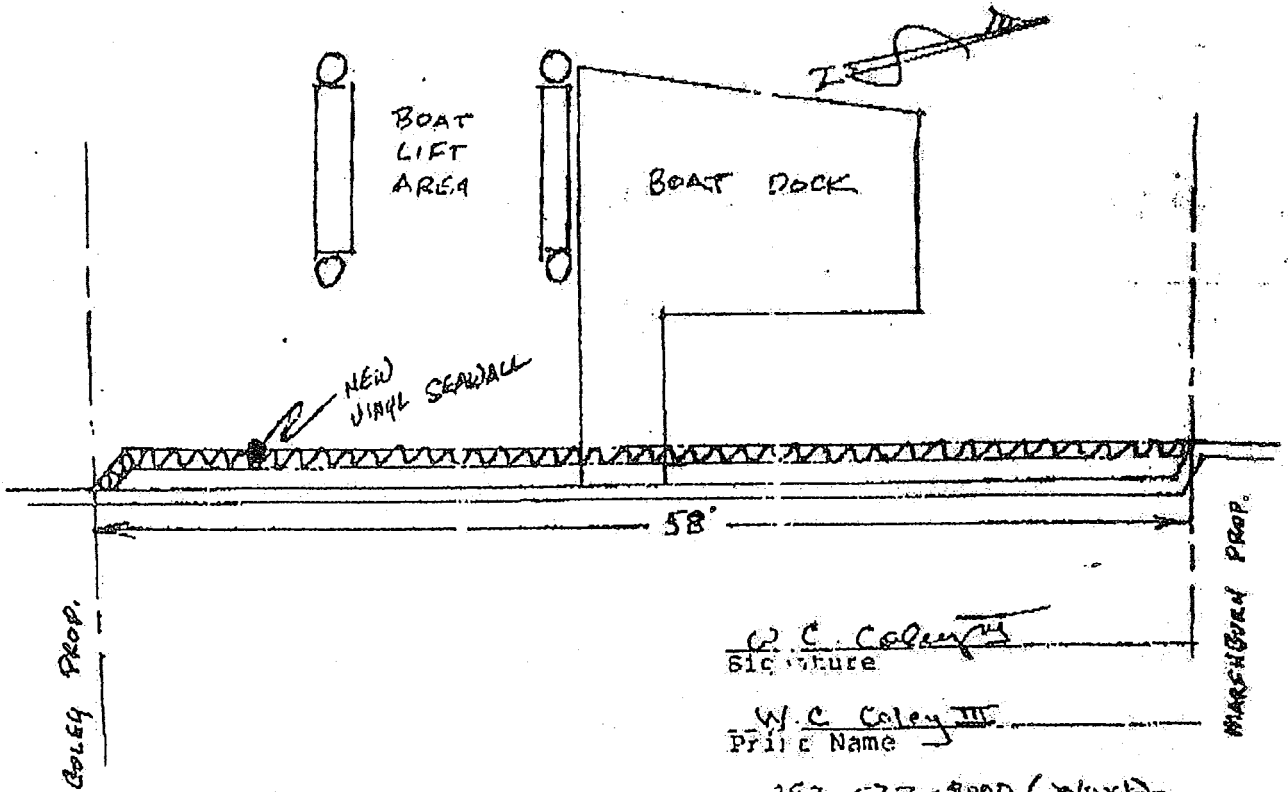
BOQUE SOUND
ACCESS CHANNEL (Water Body) in ATLANTIC BEACH, N.C.
(Town and/or County) ZBS12

He has described to me as indicated below the development he is proposing at that location and I have no objections to his proposal. I understand that a pier, pilings and dredging must be set back a minimum distance of fifteen feet (15') from my area of riparian access unless waived by me.

X I do not wish to waive that setback requirement. *except as it relates to the sea wall work.*
I do wish to waive that setback requirement.

Description and/or drawing of proposed development:
(To be filled in by individual proposing development.)

INSTALLATION OF 58 LIN. FT OF VINYL SEAWALL DIRECTLY IN FRONT OF DETERIORATED ASBESTOS SEAWALL.



W. C. Coley III
Signature

W. C. Coley III
Print Name

Date 5-26-01

252-523-9000
Phone Number

Send copy to 252-68-2012c60



VINYL SEAWALLS
Distributor / Installer

DOCK CONSTRUCTION
ACE BOAT LIFTS / PILING SETTING

DICK DOLGAS
President

TEL 252-726-2191
EVE 252-240-1787
FAX 252-726-6112

Atlantic Beach Causeway
P.O. Box 8355
Atlantic Beach, NC 28512

WOOTEN & COLEY
ATTORNEYS AT LAW

POST OFFICE BOX 1555
KINSTON, NORTH CAROLINA 28503-1555

Telephone: (252) 523-8000

Telefax: (252) 523-2060

OFFICE ADDRESS:
600 PLAZA BOULEVARD

FACSIMILE COVER PAGE

DATE: May 29, 2001

TO: Dick Dolgas, President, Mud Bucket Dredging, Inc.

SUBJECT: Bobby Johnson set-back document for Smith Street sea wall installation

RECEIVER FAX NUMBER: 252 726 6112

NUMBER OF PAGES (Including this Cover Sheet): 1

COMMENTS: Thank you for your offer to fax to me a copy of the document that I signed this past Saturday concerning the above referenced sea wall installation concerning my neighbor, Bobby Johnson. The address for this installation is Smith Street, Atlantic Beach. I anticipate receipt of same from you today. Thanks.

SENDER: Ford Coley, Attorney

For Reply By Fax, Our Fax Number Is (252) 523-2060

IF THE FOLLOWING COPIES ARE NOT LEGIBLE OR IF YOU ARE NOT RECEIVING ALL OF THE PAGES BEING SENT, PLEASE CALL (252) 523-8000.

The pages comprising this facsimile transmission contain confidential information from WOOTEN & COLEY. This information is intended solely for use by the individual entity named as the recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

teresa\5-29\Fax to dick dolgas

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OCT 08 2013

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ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

ADDRESS -
6901 LAKE MYRA RD
WENDELL, NC
27591

I hereby certify that I own property adjacent to
MR. KIRBY MARSHBORN 919-365-3900
's property

located at 215 SMITH ST., on
(Lot, Block, Road, etc.)
MOONLIGHT BAG in ATLANTIC BEACH, N.C.
(Water Body) (Town and/or County) 28512

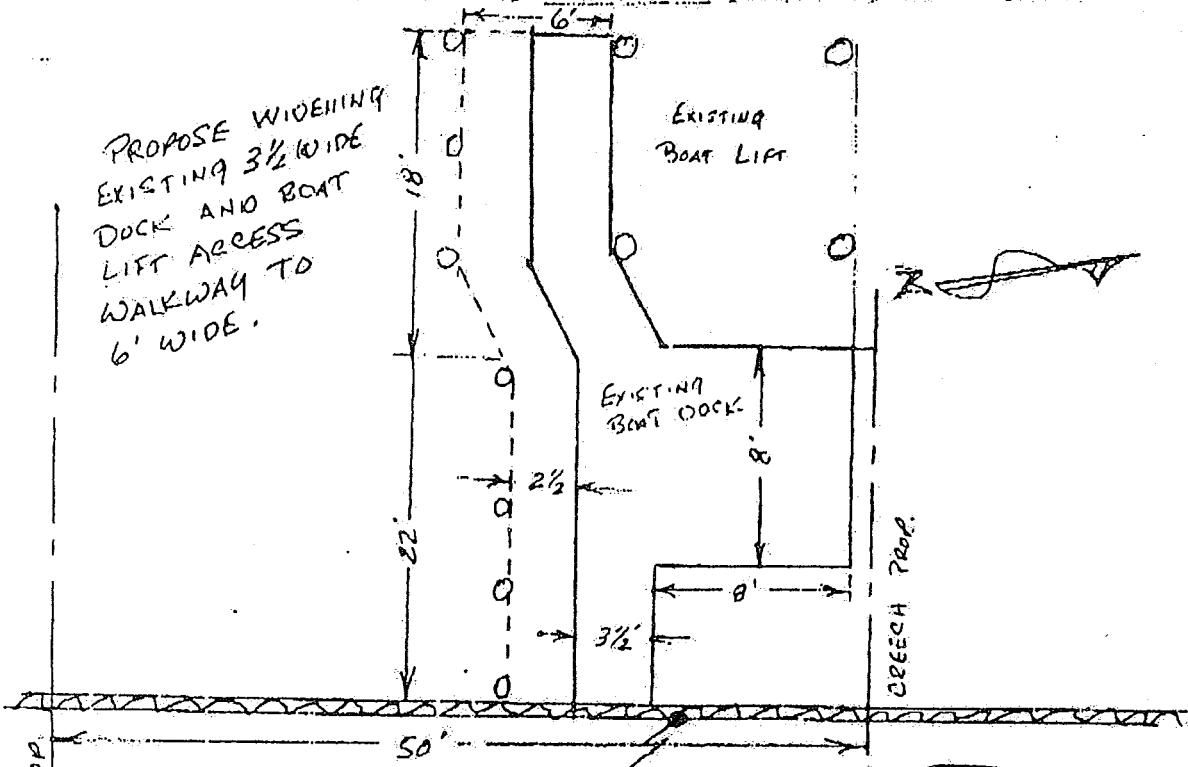
Blumberg No. 6182
13 EXHIBIT

He has described to me as indicated below the development he is proposing at that location and I have no objections to his proposal. I understand that a pier, pilings and dredging must be set back a minimum distance of fifteen feet (15') from my area of riparian access unless waived by me.

I do not wish to waive that setback requirement.

I do wish to waive that setback requirement.

Description and/or drawing of proposed development:
(To be filled in by individual proposing development.)



COLEY PROP.

Signature W.C. Coley III

Print Name W.C. Coley III

Date 3-9-02

Phone Number 252-523-8000 RECEIVED

OCT 08 2013

FAX COVER SHEET

MUD BUCKET DREDGING, Inc.
107 Old Causeway Road
P.O. Box 3355
Atlantic Beach, N.C. 28512
Phone: 252-726-2191 or 240-1787
Fax: 252-726-6112

| | |
|---|--|
| SEND TO Company name <i>40 FORD COLEY</i> | From <i>DICK DOLGAS</i> |
| Attention | Date <i>3-4-02</i> |
| File number <i>* 252-726-6112</i> | Phone number <i>252-646-3881 (CELL)</i> |

Urgent
 Reply ASAP
 Please comment
 Please review
 For your information

Total pages, including cover: 2

COMMENTS

FORD -
I have FAXED you a CANA application for your neighbor Kirby Marshburn. He wants to widen the access walkway to his boat lift in front of his house. Would you please look over the application, then sign the info lines at bottom of the application and return Fax it to me, 252-726-6112.
Thank you for your assistance.

Dick Dolgas

RECEIVED

OCT 08 2013

DCM-MHD CITY

WOOTEN & COLEY
ATTORNEYS AT LAW
POST OFFICE BOX 1555
KINSTON, NORTH CAROLINA 28503-1555

Telephone: (252) 523-8000

Telefax: (252) 523-2060

WILLIAM C. COLEY III •
EVERETTE L. WOOTEN, JR.
• DRC Certified Family Financial Mediator

OFFICE ADDRESS:
600 PLAZA BOULEVARD

FACSIMILE COVER PAGE

DATE: March 9, 2002

TO: Mr. Dick Dolgas

SUBJECT: Riparian Property Statement Pertaining to Kirby Marshburn

RECEIVER FAX NUMBER: 252-726-6112

NUMBER OF PAGES (Including this Cover Sheet): 2

COMMENTS: I am sorry for the delay in returning this; however, this past week was extremely busy. I am returning the adjacent riparian property owner statement signed and dated. Please let me know if anything further is needed. Best regards.

SENDER: Ford Coley, Attorney

For Reply By Fax, Our Fax Number Is (252) 523-2060

IF THE FOLLOWING COPIES ARE NOT LEGIBLE OR IF YOU ARE NOT RECEIVING ALL OF THE PAGES BEING SENT, PLEASE CALL (252) 523-8000.

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teresa@wooten.com

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ADDRESS -

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT

6901 LAKE MYRA RD.
WENDELL, NC 27591

FILE COPY

I hereby certify that I own property adjacent to
MR. KIRBY WALSHBURN 919-365-3900
s property

located at 215 SMITH ST. on
(Lot, Block, Road, etc.)

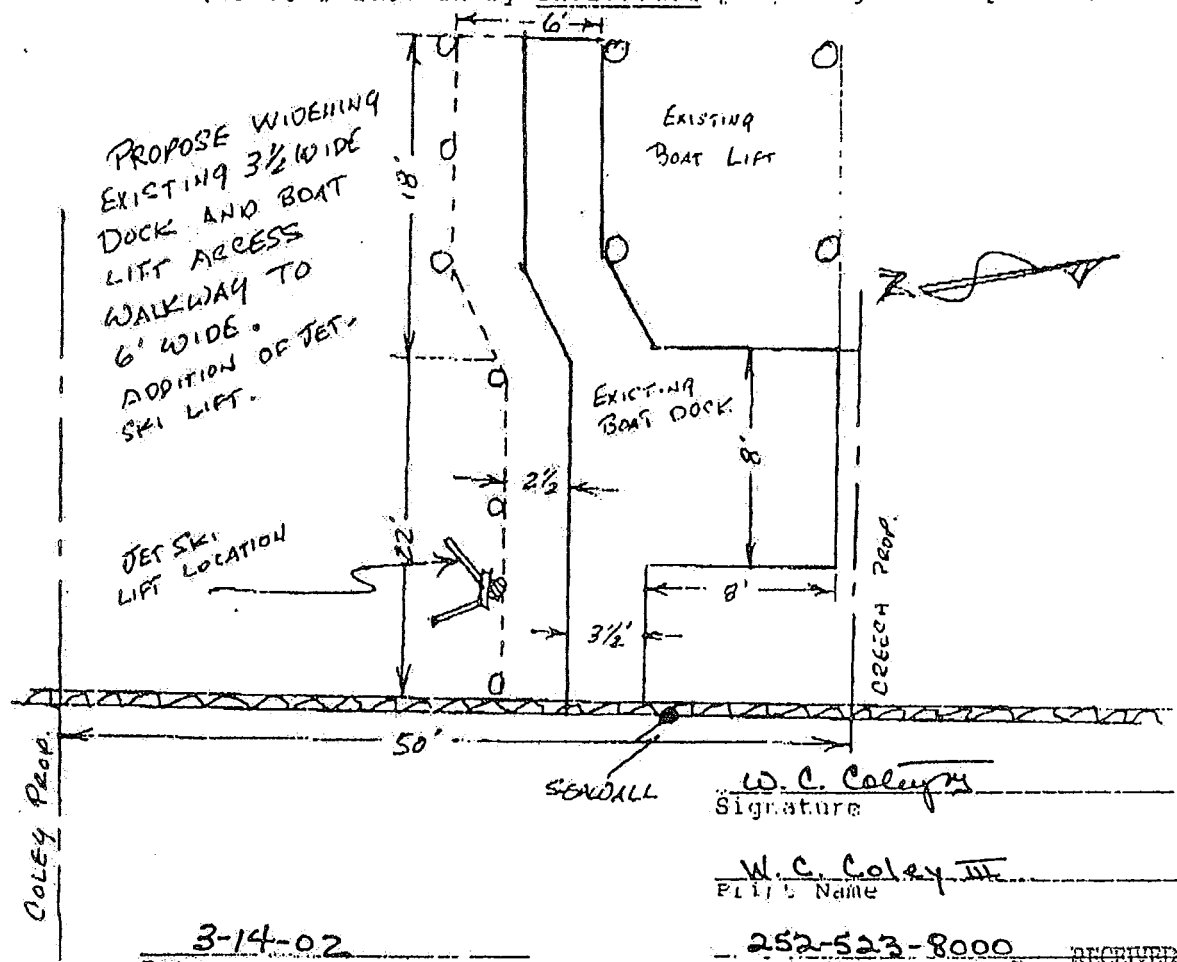
MOONLIGHT BAY in ATLANTIC BEACH, N.C.
(Water Body) (Town and/or County) 28512.

He has described to me as indicated below the development he is proposing at that location and I have no objections to his proposal. I understand that a pier, pilings and dredging must be set back a minimum distance of fifteen feet (15') from my area of riparian access unless waived by me.

I do not wish to waive that setback requirement.

I do wish to waive that setback requirement.

Description and/or drawing of proposed development:
(To be filled in by individual proposing development.)



W. C. Coley III
Signature

W. C. Coley III
Print Name

3-14-02
Date

252-523-8000
Phone Number

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DCM-MHD CITY

Blumberg No. 5192
EXHIBIT
14

FAX COVER SHEET

MUD BUCKET DREDGING, Inc.
107 Old Causeway Road
P.O. Box 3355
Atlantic Beach, N.C. 28512
Phone: 252-726-2191 or 240-1767
Fax: 252-726-6112

| | |
|--|--|
| SEND TO Company name <i>c/o FORD COLEG</i> | From <i>DICK DOLGAS</i> |
| Attention | Date <i>3-14-02</i> |
| Office location | Office location |
| Fax number | Phone number <i>252-646-3881 (CELL)</i> |

Urgent Reply ASAP Please comment Please review For your Information

RETURN FX - 252-726-6112

Total pages, including cover: _____

COMMENTS

Ford *3-14-02*
This is revised FX of Kirby Marshburns plan showing location of the new JET-SKI lift. Would you please sign and return via FAX to 252-726-6112, Thank you.
Dick Dolgas

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WOOTEN & COLEY

ATTORNEYS AT LAW

POST OFFICE BOX 1555

KINSTON, NORTH CAROLINA 28503-1555

Telephone: (252) 523-8000

Telefax: (252) 523-2060

WILLIAM C. COLEY III *
EVERETTE L. WOOTEN, JR.
* DRC Certified Family Financial Mediator

OFFICE ADDRESS:
600 PLAZA BOULEVARD

FACSIMILE COVER PAGE

DATE: March 14, 2002

TO: Dick Dolgas, Mud Bucket Dredging, Inc.

SUBJECT: Kirby Marshburn Adjacent Riparian Property Owner Statement

RECEIVER FAX NUMBER: 252-726-6112

NUMBER OF PAGES (Including this Cover Sheet): 2

COMMENTS: Please see attached and completed document referenced above. I am also faxing this document to Brad Shaver at 252-247-3330.

SENDER: Ford Coley, Attorney

For Reply By Fax, Our Fax Number Is (252) 523-2060

IF THE FOLLOWING COPIES ARE NOT LEGIBLE OR IF YOU ARE NOT RECEIVING ALL OF THE PAGES BEING SENT, PLEASE CALL (252) 523-8000.

The pages comprising this facsimile transmission contain confidential information from WOOTEN & COLEY. This information is intended solely for use by the individual entity named as the recipient hereof. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this transmission is prohibited. If you have received this transmission in error, please notify us by telephone immediately so we may arrange to retrieve this transmission at no cost to you.

teresa3-14fax to dolgas

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DCM-MED CITY

HP Fax Series 900
Plain Paper Fax/Copier

Fax History Report for
Wooten & Coley Attorneys
1-252-523-2060
Mar 14 2002 11:47am

Last Fax

| <u>Date</u> | <u>Time</u> | <u>Type</u> | <u>Identification</u> | <u>Duration</u> | <u>Pages</u> | <u>Result</u> |
|-------------|-------------|-------------|-----------------------|-----------------|--------------|---------------|
| Mar 14 | 11:46am | Sent | 12522473330 | 0:49 | 2 | OK |

Result:

OK - black and white fax

RECEIVED

OCT 08 2013

DCM-MHD CITY

HP Fax Series 900
Plain Paper Fax/Copier

Fax History Report for
Wooten & Coley Attorneys
1-252-523-2060
Mar 14 2002 11:46am

Last Fax

| <u>Date</u> | <u>Time</u> | <u>Type</u> | <u>Identification</u> | <u>Duration</u> | <u>Pages</u> | <u>Result</u> |
|-------------|-------------|-------------|-----------------------|-----------------|--------------|---------------|
| Mar 14 | 11:44am | Sent | 12527266112 | 1:55 | 2 | OK |

Result:

OK - black and white fax

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FILE COPY

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT
(FOR A PIER)

I hereby certify that I own adjacent property to
LARRY & CONNIE BURKE 's property
(Name)

located at 207 Smith Street, on
(Lot, Block, Road, etc.)

Bogue Sound in Atlantic Beach, N. C.
(Water Body) (Town and/or County)

He has described to me as shown below the development he is proposing at that location and I have no objections to his proposal. I understand that a pier must be set back a minimum distance of fifteen (15') from my area of riparian access unless waived by me.

 I do not wish to waive that setback requirement.

X I do wish to waive that setback requirement for the sole purpose of allowing the property owners (M/M Burke) to make changes to their pier/dock as indicated on the attached Exhibit "A" Description and/or drawing of proposed development: (TO BE which I

FILLED IN BY INDIVIDUAL PROPOSING DEVELOPMENT)

have also signed + dated 9/11/03

William C. Colyer III 9/11/03
(Signature)

William C. Colyer III
(Name)

262-523-8000 (W)
(Phone Number) RECEIVED

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AUG 26 2003

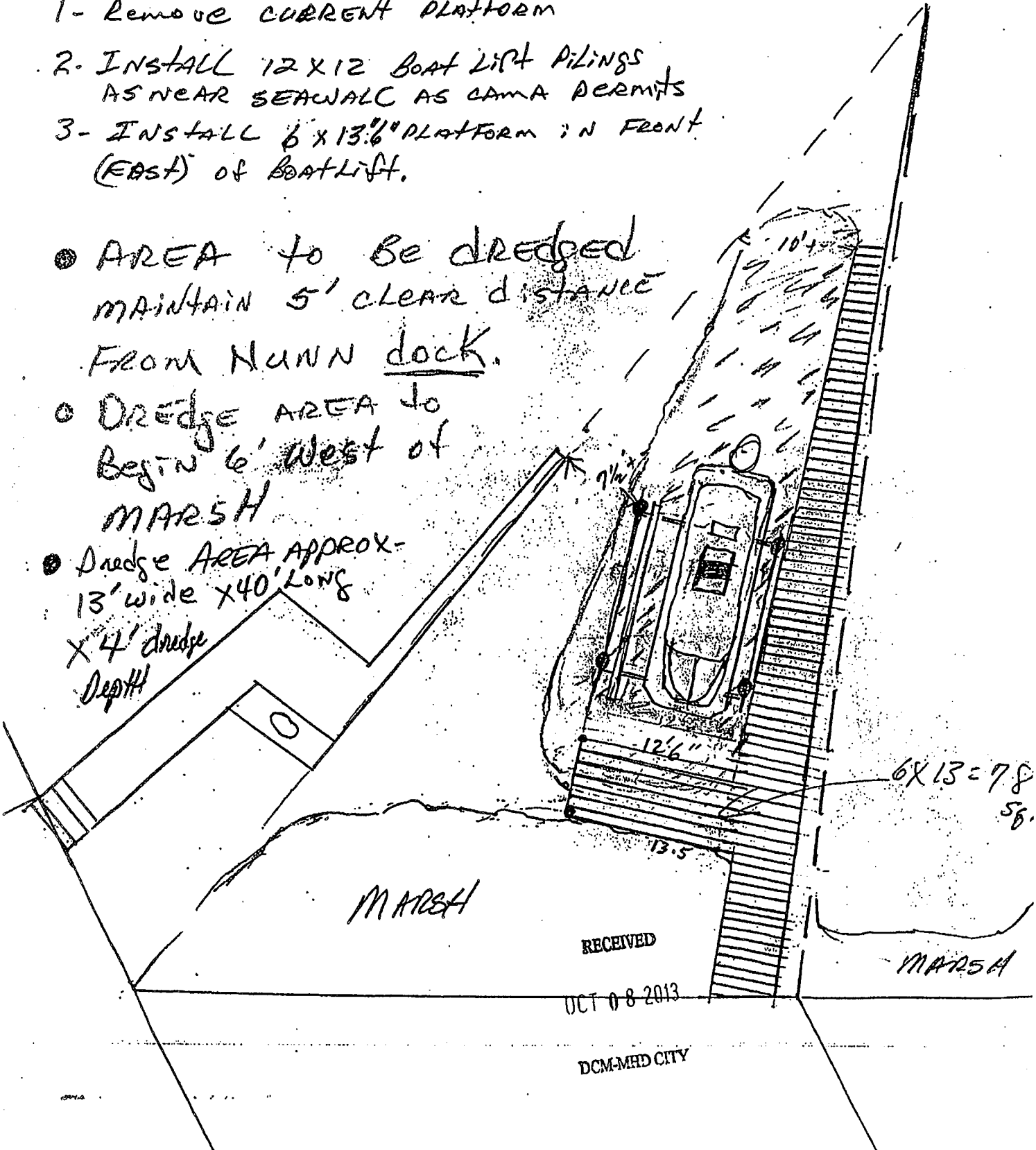
Proposed changes to Burke RIPARIAN AREA -

- 1- Remove CURRENT PLATFORM
- 2- INSTALL 12 X 12 BOAT LIFT PILINGS AS NEAR SEAWALL AS CAMA PERMITS
- 3- INSTALL 6 X 13 1/2" PLATFORM IN FRONT (EAST) OF BOAT LIFT.

- AREA to Be dredged maintain 5' clear distance from NUNN dock.

- Dredge AREA to begin 6' west of MARSH

- Dredge AREA APPROX- 13' wide x 40' LONG x 4' dredge depth

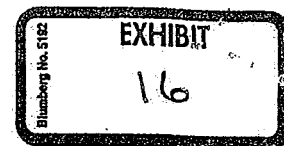


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From: Jake Taylor [mailto:jakewjt@bellsouth.net]
Sent: Wednesday, February 27, 2013 9:30 PM
To: William Coley
Subject: pier relocation and proposed new line



Ford I have attached a drawing overlay of the proposed pier with ariel photography of the existing pier. The new line would split the old lot frontage in half recombining part of the lot with Kirby's lot and part of the lot with my lot . This would give me about 29.5 feet of frontage but the old pier would mostly be on Kirby's part. For this to work I would have to move the pier over a little to be on my frontage. The end result would be 2 lots instead of 3. I checked with Atlantic Beach and they have no problems with a recombination. The mobile home would be moved, yard grassed and a new fence set along the new line. The proposal is to move the main leg of the pier and pilings for the lift over 5 feet. I also thought about putting a small catwalk around the lift (2 ' wide) like you had done so I could wash down boat easily. I drew a line perpendicular to your property line for reference. The existing boat lift is about 15 feet from that line. The proposed pier would be about 8' from that line.

Thanks for the advise on the restrictive covenant. I will do some research. Hope this works out. I would love to have some water frontage and a larger grassed yard . Let me know the next time you are down and we can talk it over.

*Jake Taylor CPESC #3602
Pollution Monitoring Services Inc.
2801 Sandia Drive Raleigh, NC
cell 919-606-2677
fax 919-510-0532*

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From: William Coley
Sent: Friday, March 08, 2013 11:45 AM
To: 'Jake Taylor'
Cc: V. M. Coley
Subject: RE: Atlantic Beach (Jake / Kirby)



Jake: Received your e-mail below. We are not currently planning to be down at the beach this weekend. In your mail you indicate you want to construct a pier about 7 - 8 feet closer to our property line than the existing pier. While we acknowledge your desire, we are not willing to and will not waive any setbacks or other legal requirements that may be applicable to the pier(s) or desired improvements to the property at issue. We are concerned that waiver of such setback requirement(s) could be detrimental to the value of our property in the future. Hopefully you can figure out an alternative course of action. Regards. Ford

William C. Coley III, Attorney



Attorneys at Law
P.O. Box 1555
Kinston, NC 28503-1555
Telephone: 252-523-8000
Facsimile: 252-523-2060

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CIRCULAR 230 DISCLOSURE: "To ensure compliance with requirements imposed by the IRS, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding tax related penalties or promoting, marketing or recommending to another party any tax related matter addressed herein."

From: Jake Taylor [mailto:jakewt@bellsouth.net]
Sent: Friday, March 08, 2013 9:31 AM
To: William Coley
Subject: Atlantic Beach (Jake / Kirby)

Ford,
Kirby and I will both be down this weekend to discuss options on exact property line locations. If you are coming down please drop over to talk about moving pier over 7.5 feet toward your property line. The new location would still be about 8 feet from a line running perpendicular to your property line. I would really like to talk to you sometimes and get pointers on pier construction as yours is one of the nicest piers (well built and thought out) in the area. I would love some suggestions on do's and don'ts.

Jake Taylor CPESC #3602
Pollution Monitoring Services Inc.

2801 Sandia Drive Raleigh, NC
cell 919-606-2677

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OCT 08 2013

DCM-MHD CITY

William Coley

From: Jake Taylor[jakewjt@bellsouth.net]
Sent: Friday, March 08, 2013 10:31 AM
To: William Coley
Subject: Atlantic Beach (Jake / Kirby)
Attachments: Jake pier.pdf

Ford,

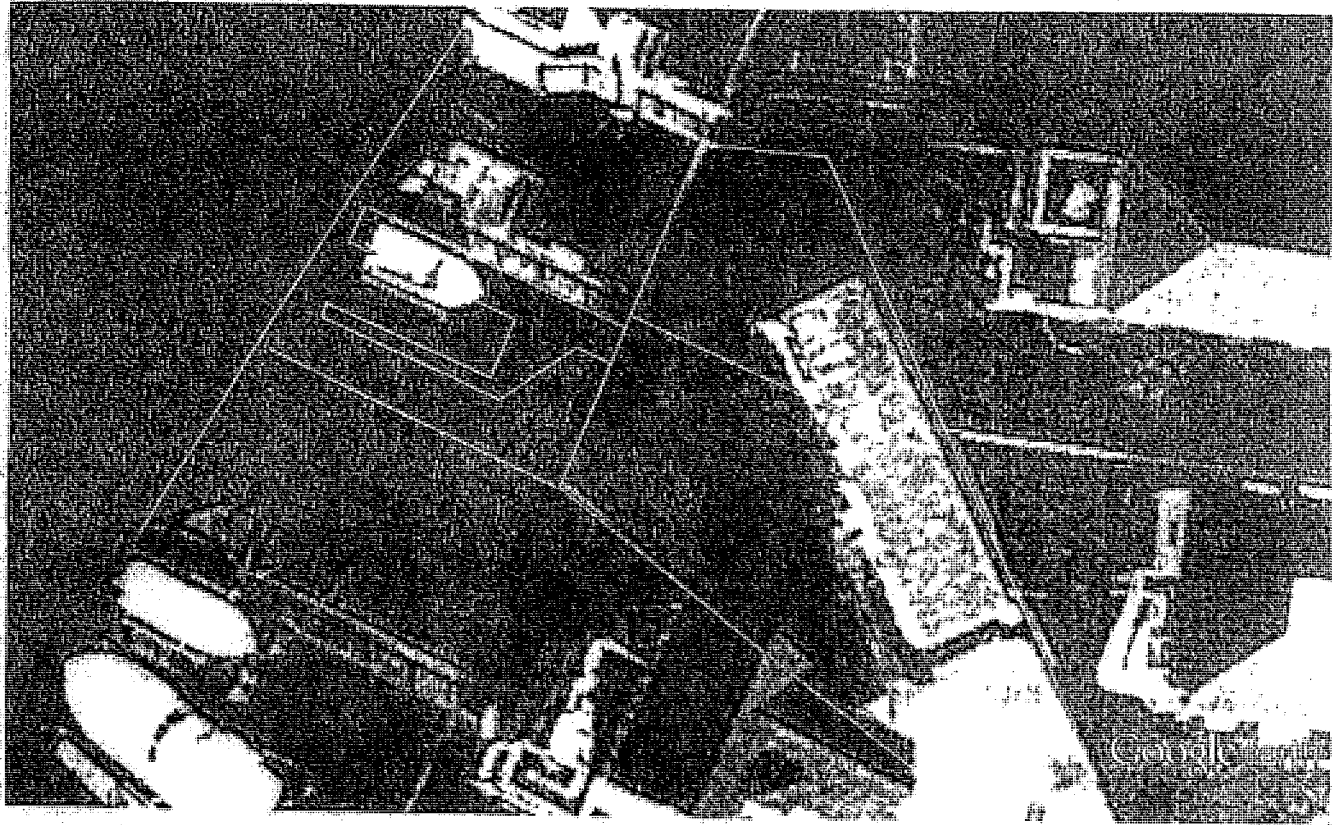
Kirby and I will both be down this weekend to discuss options on exact property line locations. If you are coming down please drop over to talk about moving pier over 7.5 feet toward your property line. The new location would still be about 8 feet from a line running perpendicular to your property line. I would really like to talk to you sometimes and get pointers on pier construction as yours is one of the nicest piers (well built and thought out) in the area. I would love some suggestions on do's and don'ts.

*Jake Taylor CPESC #3602
Pollution Monitoring Services Inc.
2801 Sandia Drive Raleigh, NC
cell 919-606-2677
fax 919-510-0532*

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Google earth

feet 100
meters 30

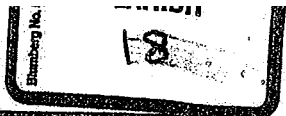


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William Coley



From: Jake Taylor [jakewjt@bellsouth.net]
Sent: Tuesday, March 12, 2013 2:45 PM
To: William Coley
Cc: 'Kirby Marshburn'
Subject: Atlantic Beach
Attachments: Jake kirby recombination and pier location.docx

Ford we need your help. Several weeks ago when Lynwood told Kirby he was no longer going to rent and the opportunity came up for Lisa and I to purchase half the lot and combine it with ours. This way we would have water frontage, the trailer would be remove and we would not have more cars and new renters to move in. We thought this would make our community in the cul-de sac a lot nicer for us all not having to deal with the trailer and whoever rented the trailer. Lynwood was real nice but the new tenant might not be. The worst thing for Lisa and I would be for Kirby to sell the lot and someone build a 3 story house there. We thought making 2 lots out of 3 would work for all of us. You, Kirby and I would all have a better view of the water.

In the planning to buy a portion of the old Linwood lot from Kirby and combine it with our lot we have had a few issues come up. I talked to CAMA about moving the pier over a little and they explained that a buffer line was measured perpendicular to the main channel for anything they approved. They explained there is a 15 foot buffer to the adjacent property according to that line and any movement of the pier that way would require the adjacent property owner (you) to sign off on the permit. Our dream is to have a water frontage lot and a pier. When Lisa and I bought the house we talked to Kirby first and he agreed at that in time he would eventually sell us water front someday. That would be 1/2 the frontage of that lot of which the existing pier is right in the middle. I had no idea that there would be any problems with the moving the pier over a little. What Kirby thought about doing was to move part of his pier over to the opposite side and put a lift on that side as he is encroaching on Hilda a little on the north side. To do that the existing pier on my potential water front would have to be moved over 3 to 5 feet to stay in our proposed CAMA line. Our plan was to combine that portion of the lot with ours with the trailer removed, the yard grassed and fenced in with the same kind of fence you have.

I have redrawn an ariel overlay of the property, CAMA channel lines to main channel and proposed pier locations moving the pier over 2.5 feet or 5 feet. I came up with 2 different channel lines. One line appeared to be the center of the channel from ariel photo and the other came down further south before the turn to meet what other neighbors stated was their CAMA approved line (inside line). Larry said his was right down his pier line and if I moved the channel line over it would make the line move more your way. Based on that I think the inside one is more correct. I showed 2 possible pier locations with pier moved over 5 feet and other moved only 2.5 feet (which would requiring me to buy more frontage from Kirby).

I would also really like to add a small catwalk on the other side to clean and maintain the boat similar to yours, but that is optional. From what I can measure using the Google earth calculator the distance to the CAMA channel perpendicular line would be (including catwalk) about 4 to 7 feet your CAMA line depending on how far over the pier is moved. Both the proposed piers would be within my frontage but I am trying to see what is more acceptable to you. In our phone call you seemed a little distressed at what we were planning. Both you and Vickie have been great new neighbors and we do not want to do anything that would upset either of you. We would love to set down and discuss any issues you have. We really would appreciate any help or advice and would be glad to address any concerns you might have.

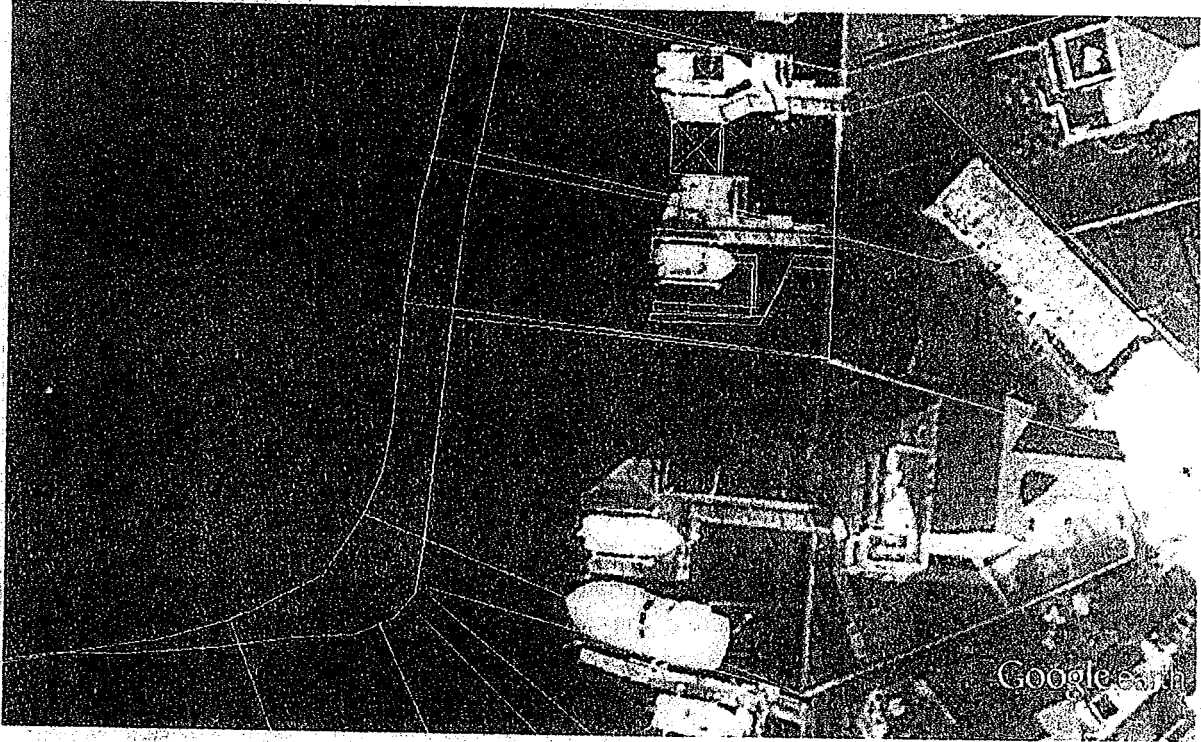
Best wishes.

Jake and Lisa Taylor
2801 Sandia Drive Raleigh, NC
cell 919-606-2677

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From: Jake Taylor (mailto:jakevtj@bellsouth.net)
Sent: Thursday, March 21, 2013 4:31 PM
To: William Coley
Subject: Atlantic Beach pier



Ford and Vickie,

We understand your concerns about any changes on the old rental lot and pier. We really believe taking a rental mobile home away from being adjacent to your property would increase the value of your property. Kirby and I are trying to work out a division line and pier location to give us use of the frontage while causing the least impact to you. The property division would be about 1/2 way across the pier and make the existing deck of pier extend over onto Kirby's frontage. It appears the CAMA 15 foot riparian setback line from the line running from your property line to the center of the channel line would run very close to the existing boat lift pilings and angle closer to your property line the closer it gets near the shore. The previous plan I sent you showed the pier moved over 7 to 8 feet which apparently causes you concern. I have redrawn a design that only moves the pier over 3 feet over from the existing boat lift pilings and removed the catwalk. This slightly moves the existing pier over, removes the existing wing (deck) on the right side of the pier replacing it with a small deck in front of the existing lift. This way the wing (deck) does not stick out in front of Kirby's lot, and I would have a small deck in front of the boat lift (close to shore) and you should hardly notice the pier was moved. This would be about 12 feet from your riparian line at the further point and about 38 feet from your pier. This would have the new pier right on the division line between Kirby and myself and move the boat lift piling only 3 feet over toward you. We could even have a requirement on the signed waiver specifying a set # of feet off the line.

Our only other option is to request a variance from CAMA on the waiver requirement. I have checked into this as I serve on several advisory panels to NCDENR for Division of Water Quality and one of my fraternity brothers sets on the 45 person Coastal Resources Commission advisory panel to CAMA. From what I have been told if the variance is heard by the Coastal Resources Commission the ultimate issue they will look at is does the variance request *meet the intent of the requirement* of the regulation of requiring the adjacent riparian owner to sign off on plans next to his property. The issue was to give each riparian property owner use of their water frontage and not have an adjacent property owner build something close to their property that would limit the use of their water frontage. With your existing pier being close to 30 feet from the line I do not think we would have any problems getting the variance approved as your riparian access is not compromised by any building within the 15 foot buffer. Neither I or Kirby wants to have to go thru the variance request hassle and would like us to all be good neighbors and work together.

Would you please as a good neighbor and friend sign the waiver allowing us to move the pier over just 3 feet.

Jake Taylor CPESC #3602

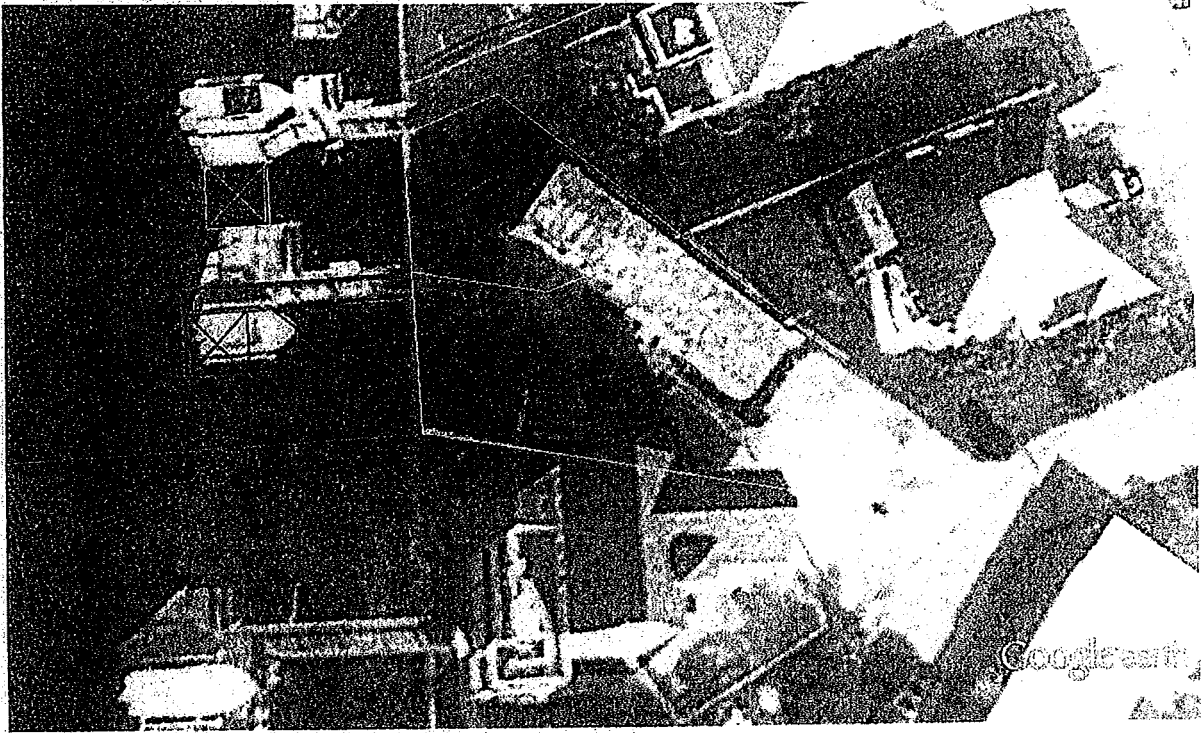
Pollution Monitoring Services Inc.

2801 Sandia Drive Raleigh, NC

cell 919-606-2677

fax 919-510-0532

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original + copy
mailed 3/23/13

WILLIAM C. COLEY III

EXHIBIT
20
Hunting No. 512

ATTORNEY AT LAW
572 LAKELAND DRIVE
KINSTON, NORTH CAROLINA 2850

MARCH 22, 2013

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Re: Atlantic Beach/Beach Mobile Home Court Matter

Dear Jake:

When Vickie and I purchased our property at the beach at 209 Smith Street, we had already been a resident of the same subdivision for a period of time, having initially bought a 'fixer upper' down the street on the canal. We bought that initial piece of property with the understanding 'going in' that it had major problems and structural issues, requiring much work. It literally was structurally defective with weak floors, rotten framing and windows, defective appliances and long neglected appointments, wall boarding and floor coverings. We knowingly decided to make the purchase, willingly and gratefully accepting the property for what it was. We invested 'sweat equity' and our money in to that property enjoying it for what it was during the time we were there.

When we became aware that 209 Smith Street was available and for sale, we investigated the surrounding properties as well as that which we were interested in. At that time, the docks on the adjacent properties were located in basically the same positions they are currently in, ending up in those locations for whatever reasons, laws and regulations were in existence at the time and before our purchase of 209 Smith Street or our interest in same. The entire time we have owned our present property, the adjacent docks have continued to remain in the same basic positions they were in when we purchased. The initial layout, plot/subdivision plan for Beach Mobile Home Court envisioned the lots as currently in existence relative to the lots adjacent

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to ours as well as our lot. Each of those lots had a dock at the time of our purchase and each still does.

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I do not know what conversations you have indicated that you and Kirby had at the outset of your interest in and purchase of your property on Smith Street. You indicated in your March 12, 2013, e-mail to me that "...you talked to Kirby first and he agreed at that in (sic) time he would eventually sell us water front someday". That may have been the case; but I have not heard about or seen anything in writing with appropriate formalities whereby Kirby and Teresa agreed or represented they would sell any portion of the "Lynwood lot" to you. Such a formal written form is the only enforceable format relative to sale or lease (at least for 3 years or more) of real estate in North Carolina. [Further, and even if such a written document exists between you and Kirby, we are neither 'parties' to nor bound by same.] We were not privy to that and therefore cannot verify what conversations were had or the content thereof. What I am fairly certain of is that you did not decide to purchase and ultimately purchase your present property with any written guarantee, from anyone, that you would have water access in the future. Thus, the purchase of your property occurred with no enforceable water access as a part of your 'purchase decision equation'. Had you seriously wanted direct water access at the time of your purchase of your current property, you could have decided to purchase something else or somewhere else 'on the water'.

When we purchased our property at 209 Smith Street, we did not expect or anticipate that either of the adjacent lots would be considered for subdivision or that such decision, if made, would require us to consider foregoing or compromising our property rights in any fashion, including a waiver such as you are requesting. Our decision to purchase 209 Smith Street back in the early '90's was based upon the facts that existed at that time and the expectation that the circumstances would remain constant. We knowingly determined to buy 'water front' property and knew that in doing so, protecting that property was important to its overall value (in all respects) to us, part of which includes its fair market value, which for water front property is based in

large part on the 'water front' part of that equation. We also determined that it was 'worth' the large investment that we were making under our circumstances at that time. We, as well as our guests, use and have used over the years the area adjacent to our pier (especially to the north of our pier) for purposes of positioning water craft for and ultimately docking. Also, this area has been used for swimming, fishing and crabbing by us and our friends/family.

Your reference in your most recent e-mail that we as "...a good neighbor and friend..." should sign the waiver allowing for modifications of the pier and its location on the "Lynwood lot" is offensive and demeaning. We are and have been 'good neighbors' to those in our neighborhood for well in excess of 20 years. Agreeing or consenting, or refusing to agree or consent, to your request does not alter what we have done or been as neighbors to others in the subdivision long before you decided to locate in this area; nor will it affect our neighborly efforts in the future. This is a business decision on our part, as a facet of our original investment decision. Thus, we are not willing to voluntarily waive any set back requirements or other legal/regulatory requirements as I earlier set forth in my responsive e-mail to you, which I ultimately mailed to your home due to electronic delivery problems I experienced every time I attempted to send it to your e-mail address.

With best regards, I am

Very truly yours,



William C. Coley III

cc: Mr. Kirby Marshburn

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COLEY OBJECTION:
TIMELINE OF PERTINENT EVENTS
(with references to supporting exhibits)

- 6/13/68 Recorded Survey Map of Beach Mobile Court, Atlantic Beach showing individual lots numbered including 32, 33, 34, 35, 36 and 37. (Exh. 1)
- 5/20/69 Creech purchases Lot 37. (Exh. 2) RECEIVED
- 5/23/69 Sugg purchases Lot 36 (now owned by Marshburn). (Exh. 2) OCT 08 2013
- 4/28/82 Burke purchases Lot 32 (on or around this time). (Exh. 3) DCM-MHD CITY
- 9/6/91 Coley purchases Lot 33 (i.e. 209 Smith Street). (Exh. 4)
- 7/28/92 Adjacent Riparian Property Owner Statement re: Lot 34 (i.e. 211 Smith Street then owned by Bobby Johnson) showing existing Lot 34 pier with Coley not waiving 15 foot set back. (Exh. 11)
- 7/21/00 Marshburn purchases Lot 36 (i.e. 215 Smith Street). (Exh. 7)
- 5/26/01 Adjacent Riparian Property Owner Statement re: Lot 34 (i.e. 211 Smith Street then owned by Bobby Johnson) showing existing Lot 34 pier and Marshburn owning Lot 36, with Coley not waiving 15 foot set back except for specified sea wall work (pier configuration not moved or changed). (Exh. 12)
- 11/2/01 Marshburn purchases Lot 34 from Bobby Johnson (i.e. 211 Smith Street). (Exh. 8)
- 3/9/02 Adjacent Riparian Property Owner Statement re: 215 Smith Street (i.e. Lot 36 then owned by Marshburn) showing existing Lot 36 pier and reflecting Marshburn owned all of water front property (i.e. Lots 36 & 34) with uninterrupted 50 distance long the sea wall, between Creech (Lot 37) and Coley (Lot 33). Coley, as owner of Lot 33, did not waive the 15 foot setback requirement. (Exh. 13)
- 3/14/02 Adjacent Riparian Property Owner Statement dealing with revised request re: 215 Smith Street (i.e. Lot 36 owned by Marshburn) showing existing Lot 36 pier and reflecting Marshburn owned all of water front property (i.e. Lots 36 & 34) with uninterrupted 50 distance long the sea wall, between Creech (Lot 37) and Coley (Lot 33). Coley, as owner of Lot 33, did not waive the 15 foot setback requirement. (Exh. 14)
- 9/11/03 Adjacent Riparian Property Owner Statement re: 207 Smith Street (i.e. Lot 32 owned by Burke) with Coley waiving setback requirement but only to

TIMELINE (continued)

extent as defined and shown on the drawing with explanation which was nothing more, and possibly less than the pier configuration/conformation that had been in existence prior to Lot 33 being purchased by Coley. (Exh. 15)

- 9/12/06 Survey map of Lot 33 owned by Coley (i.e. 209 Smith Street) reflecting then existing mobile home and other improvements as well as pier in riparian area of this lot, in same basic location and configuration as when Lot 33 was purchased by Coley. (Exh. 5)
- 9/10/08 Survey map of Lot 33 owned by Coley (i.e. 209 Smith Street) reflecting the newly constructed home, improvements as well as the existing pier in same basic location and configuration as when Lot 33 was purchased by Coley and as reflected on Exh. 5 survey map of 9/12/06. (Exh. 6)
- 7/29/11 Taylor purchases Lot 35 (i.e. 213 Smith Street). (Exh. 9)
- 2/27/13 E-mail from Taylor to Coley regarding pier relocation and proposed new line. (Exh. 16)
- 3/8/13 E-mail from Taylor to Coley regarding Atlantic Beach (Jake/Kirby) with responsive e-mail from Coley to Taylor the same day indicating Coley is "...not willing to and will not waive any setbacks or other legal requirements that may be applicable to the pier(s) or desired improvements to the property at issue". (Exh. 17)
- 3/12/13 E-mail from Taylor to Coley, copied to Marshburn, regarding Atlantic Beach (pier matter) with attached photograph. (Exh. 18)
- 3/21/13 E-mail from Taylor to Coley regarding Atlantic Beach (pier matter) with attached photograph. (Exh. 19)
- 3/22/13 Detailed letter (3 pages) from Coley to Taylor, copied to Marshburn, regarding "Atlantic Beach/Beach Mobile Home Court Matter" (pier matter) explaining and expressing Coley's position and reiterating unwillingness to waive any setbacks or other legal requirements that may be applicable to the pier or desired improvements to the property at issue. (Exh. 20)
- 6/6/13 Taylor purchases part of Lot 34 from Marshburn. (Exh. 10)
- 7/22/13 date on front of Taylor Application for 213 Smith Street Pier (NOTE: Coley cannot find evidence that a copy of this initial letter/packet ~~was ever~~ received by them even though Taylor indicates at the end of the letter that Coley was copied. First exposure by Coley to this initial packet of documentation was included in Taylor's Major CAMA Permit application.)



State of North Carolina
Department of Justice

ROY COOPER
Attorney General

PO Box 629
Raleigh, North Carolina
27602

Reply to: Elizabeth Jill Weese
Environmental Division
Phone: (919) 716-6600
Fax: (919) 716-6767
jweese@ncdoj.gov

TO: Coastal Resources Commission

FROM : Elizabeth Jill Weese *EJW*
Assistant Attorney General

DATE: February 10, 2014 (for the February 26-27 CRC Meeting)

RE: **Variance Request by the Town of Carolina Beach. (CRC-VR-14-02)**

On November 18, 2013, Petitioner, the Town of Carolina Beach, applied for a CAMA minor development permit requesting approval of the Carolina Beach Boardwalk Improvement Project - Phase 2. On December 20, 2013 the Division of Coastal Management denied the Permit Application pursuant to N.C.G.S. § 113A-130(a)(8) which requires that projects which are inconsistent with CAMA guidelines be denied. Rule 15A NCAC 07H .0306(a)(2) states that no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance, with the exception of those types of development defined in 15A NCAC 07H .0309. The proposed replacement/expansion of the Carolina Beach Boardwalk called for in Phase 2 is inconsistent with the strict application of 15A NCAC 07H .0306(a)(2) in that the entire structure is located oceanward of the Ocean Hazard 60' setback and portions of the new structure will extend oceanward of the static vegetation line. The boardwalk replacement/expansion does not conform to any of the exceptions set forth in 15A NCAC 07H .0309.

Petitioner was granted a static vegetation line exception pursuant to 15A NCAC 7J .1200 et seq. by this Commission on August 27, 2009. A draft five year progress report was submitted by the Town to the North Carolina Division of Coastal Management in Morehead City in July 2013 for DCM comment. In order to keep the static line exception, the Town of Carolina Beach must have its 5-year updated progress report approved by the Commission by August 27, 2014. The Carolina Beach Boardwalk project is within the limits of the delineated static vegetation line. Based on on-site meetings and the provided survey dated November 25, 2013, the actual vegetation line is approximately 90' oceanward of the static vegetation line. Petitioner seeks a variance to allow construction of Phase 2.

The following additional information is attached to this memorandum:

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

cc: Charlotte Noel Fox, Town Attorney and Counsel for Petitioner, electronically
Mary L. Lucasse, Counsel to CRC, electronically
Jerry Haire, Project Manager, Town of Carolina Beach
Robb L. Mairs, Field Representative, DCM, electronically
Debra Wilson, Wilmington Region District Manager, DCM, electronically

**ATTACHMENT A:
RELEVANT STATUTES AND RULES**

Statutes**§ 113A-102. Legislative findings and goals of the Coastal Area Management Act of 1974 (CAMA).**

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

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

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

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

(1) To provide a management system capable of preserving and managing the natural ecological conditions of the estuarine system, the barrier dune system, and the beaches, so as to safeguard and perpetuate their natural productivity and their biological, economic and esthetic values;

(2) To insure that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations;

(3) To insure the orderly and balanced use and preservation of our coastal resources on behalf of the people of North Carolina and the nation;

(4) To establish policies, guidelines and standards for:

- a. Protection, preservation, and conservation of natural resources including but not limited to water use, scenic vistas, and fish and wildlife; and management of transitional or intensely developed areas and areas especially suited to intensive use or development, as well as areas of significant natural value;
- b. The economic development of the coastal area, including but not limited to construction, location and design of industries, port facilities, commercial establishments and other developments;
- c. Recreation and tourist facilities and parklands;
- d. Transportation and circulation patterns for the coastal area including major thoroughfares, transportation routes, navigation channels and harbors, and other public utilities and facilities;
- e. Preservation and enhancement of the historic, cultural, and scientific aspects of the coastal area;
- f. Protection of present common-law and statutory public rights in the lands and waters of the coastal area;
- g. Any other purposes deemed necessary or appropriate to effectuate the policy of this Article.

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

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

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

...

(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

...

(6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:

- a. Sand dunes along the Outer Banks;
- b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;
- c. Floodways and floodplains;

d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;

e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.

...

§ 113A-120. Grant or denial of permits

(a) The responsible official or body shall deny an application for a permit upon finding:

...

(8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.

...

COASTAL RESOURCES COMMISSION RULES

15A NCAC 7H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

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

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

...

(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. . . .

15A NCAC 7H .0309(a) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

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

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands;
- (8) sand fences; and
- (9) swimming pools.

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

...

**ATTACHMENT B:
STIPULATED FACTS**

STIPULATED FACTS

1. The Town of Carolina Beach (“Petitioner”) is a North Carolina municipal body politic organized and existing in Carolina Beach, New Hanover County, North Carolina.
2. The Carolina Beach Building Line Act was passed in 1963 [Session Law 1963, Chapter 511] which granted the Town title to the land between the building line and the low water mark of the Atlantic Ocean subject to the public trust rights.
3. The Public Beach (land from the high water mark westward to any land raised by a publicly financed beach renourishment project) is owned by the State of North Carolina in accordance with N.C.G.S. §146-6(f) and the Public Trust Doctrine.
4. In accordance with 15A NCAC 7J .1200 et seq. the Town of Carolina Beach was granted a static vegetation line exception by the CRC on August 27, 2009. A draft five year progress report was submitted by the Town to the North Carolina Division of Coastal Management in Morehead City in July 2013 for DCM comment. In order to keep the static line exception, the Town of Carolina Beach must have its 5-year updated progress report approved by the CRC by August 27, 2014.
5. The Carolina Beach Boardwalk project is within the limits of the delineated static vegetation line. Based on on-site meetings and the provided survey dated November 25, 2013, the actual vegetation line is approximately 90’ oceanward of the static vegetation line. This can be seen on the survey as well as in the power point photographs which are attached.
6. In August of 2013, DCM notified the Town that it was awarding the Town a Public Beach and Coastal Waterfront Access grant. The total grant amount was \$602,900, with a Local Match of \$247,560 and a Local in-kind contribution of \$202,760. The grant is for the project proposed in this variance, including the replacement and extension of the existing boardwalk, nine beach access ramps, a gazebo, lighting, bike racks, trash bins and benches. The grant contract has not yet been signed, pending the approval of a CAMA permit and variance. If granted, the contract award date will determine the expiration date of the grant. A letter dated August 12, 2013 acknowledging this grant is attached.
7. The Town has also received a \$500,000 grant from New Hanover County to support the proposed project. Additionally, in 2010 the Town received a grant from DENR Water Resources for \$250,000 to facilitate land acquisition for a pier; however, other funding for

the proposed pier was not available. In 2013 DENR/Water Resources approved the Town's request to transfer the funding to the proposed Boardwalk project.

8. On November 18, 2013, the Petitioner applied for a CAMA minor development permit (Permit Application Number- CB13-12) requesting approval of the Carolina Beach Boardwalk Improvement Project – Phase 2. While the Town of Carolina Beach has an implementation and enforcement program which authorizes the designated local official to issue CAMA minor permits, because the Town is the applicant in this case, the minor permit must be considered and determined by the Division of Coastal Management, pursuant to N.C.G.S. § 113A-121(b).
9. The Petitioner proposes to replace and expand the existing 8' in width by 750' in length boardwalk which runs parallel to the oceanfront central business district of Carolina Beach.
10. New dimensions of the boardwalk would be 16' in width and would extend an additional distance of approximately 875' to the north to Pelican Lane, resulting in a total length of approximately 1730'.
11. The extension also includes three new 10' in width public beach access ways and nine new 100 sq. ft. bump-outs for seating areas, resulting in a total of eight public beach access ways and 25 bump-out seating areas. Five (5) of the beach accesses were recently authorized under Phase I CAMA Minor Permit (#CB13-10). Phase II also includes covering the existing uncovered platform with a new roof measuring approximately 40' in length by 18' in width and the construction of three (3) covered gazebos, each measuring approximately 12' in length by 24' in width.
12. Upland development along the landward side of the new beach accesses and within the Ocean Hazard 60' Small Structure Setback include a splash pad/water park which includes approximately 2,500 sq. ft. of concrete within an existing landscaped cove area just south of the existing public access located at Harper Ave.
13. No objections to the CAMA permit application were received by the Wilmington Regional office; however, on or about January 28, 2014 an attorney representing Mr. A.D. Averette forwarded a letter outlining Mr. Averette's concerns about the proposed project to the Director of the Division of Coastal Management. A copy of Mr. Averette's deed was included with the letter and both are attached.

14. On or about December 6, 2013, Mr. Averette communicated with a town council member about the boardwalk project. The Town's responses to Mr. Averette are also attached.
15. On December 20, 2013 the Division of Coastal Management denied the Permit Application pursuant to N.C.G.S. § 113A-130(a)(8) which requires that projects inconsistent with State guidelines for Areas of Environmental Concern (AEC's) be denied.
16. Rule 15A NCAC 07H .0306(a)(2) states that no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance, with the exception of those types of development defined in 15A NCAC 07H .0309.
17. The proposed replacement/expansion of the Carolina Beach Boardwalk is inconsistent with the strict application of 15A NCAC 07H .0306(a)(2) in that the entire structure is located oceanward of the Ocean Hazard 60' setback and portions of the new structure will extend oceanward of the static vegetation line. The boardwalk replacement/expansion does not conform to any of the exceptions set forth in 15A NCAC 07H .0309.
18. The existing concrete portion of the Carolina Beach Boardwalk along the central business district has been in existence in some form since approximately 1890.
19. The elevated timber portion of the existing Carolina Beach Boardwalk was permitted in May 1989 and was deemed consistent with rules in effect at that time.
20. The Carolina Beach Boardwalk provides access to the public beach areas for the general public. The proposed replacement/expansion of the Carolina Beach Boardwalk will increase access to the public beach areas for handicapped individuals who use wheelchairs or other assistive devices for mobility. Expanding the width of the boardwalk will also facilitate the flow of traffic for pedestrians by easing overcrowding.
21. The structure will be elevated above the existing dune system, so it should have only temporary minimum impact during the installation of pilings.

**ATTACHMENT C:
PETITIONER'S POSITION AND STAFF'S
RESPONSES TO CRITERIA**

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

Petitioner's Position: Yes.

Strict application of 15 NCAC 07H .0306(a) will prevent TCB from, in accordance with 15A NCAC 07H .0203 and 15A NCAC 07 .0207(c), "providing and protecting public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic values"). These rules were designed, in part, to limit a private individual's ability to infringe on the public's access to the public trust areas. Here the applicant is a municipality and the Town of Carolina Beach is committed and has always been committed to providing access to the public trust areas to the general public.

The Carolina Beach Boardwalk has existed in some respect since the early 1930s. The existing Boardwalk was permitted by CAMA and built in 1989. Due to the proximity of the Boardwalk to the Atlantic Ocean, the Boardwalk is a popular means for the public to view or access the Atlantic Ocean. The access to the Ocean provided by the Boardwalk has a significant economic impact on businesses located adjacent to the Boardwalk, the Central Business District of Carolina Beach, the Town of Carolina Beach and New Hanover County.

The Boardwalk is in need of significant repairs to assure the safety of the public. The Boardwalk creates a unique opportunity for the general public without other means of access to view and access the ocean and dune ecosystem from a variety of locations. With an increased demand for access to the beach and Ocean from elderly and handicapped individuals, the widening of the Boardwalk will allow elderly and handicapped individuals convenient beach access as well as the ability to view the dune ecosystem. An undue hardship to the public would be created from strict application of the development rules, standards, or orders issued by the commission. Specifically, handicapped individuals would be denied a convenient and safe means of accessing the beach and/or viewing the ocean and dune ecosystem. Furthermore, general public's access to the ocean and view the dune ecosystem would be impaired. A lack of safe access, as provided by the proposed Boardwalk, could result in damage to the dunes ecosystems by those creating their own means of access to the beach.

Staff's Position: Yes.

Staff agrees that strict application of the Commission's rule prohibiting development oceanward of the ocean hazard setback distance causes Petitioner unnecessary hardships.

In creating the Coastal Area Management Act (CAMA), the legislature recognized the importance of preserving and protecting the public's opportunity to enjoy the physical, esthetic, cultural and recreational qualities of the shorelines of the State. Included among the stated goals of CAMA are (1) insuring the orderly and balanced use and preservation of coastal resources on behalf of the people of North Carolina and the nation and (2) the establishment of policies, guidelines, and standards for economic development, recreation and tourist facilities, preservation and enhancement of the historic and cultural aspects of the coastal area. See N.C.G.S. §113A-102(a) and (b). The Commission's rules also recognize the need to balance protecting the coastal lands and waters of the State with common law and statutory rights of access to the public trust areas. Not only has the existing boardwalk been in existence for many years, but Carolina Beach has been nourished through a Corps of Engineers project for the last 50 years, and this part of the beach is under the static line exception designation. Strict application of the oceanfront erosion setback will cause the Town unnecessary hardships where the static line, which is based on a pre-nourished vegetation line, is significantly landward of the actual vegetation line's location on this nourished beach. Additionally, this public project will aid access to the beach by the public, and will not significantly adversely impact the dune system in doing so.

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

Petitioner's Position: Yes

TCB's property upon which the Boardwalk will be expanded is located within the dunes and beachfront between Charlotte Avenue and Pelican Lane, Carolina Beach, New Hanover County, NC. It is public trust area. Specifically, the hardship exists due to the strict application of the Commissions regulations to a project to be constructed upon the public trust lands for public use. As it has historically done, TCB is attempting to improve access to the public trust lands to the general public through the extension of the existing Boardwalk. The Boardwalk is proposed to be expanded in a manner that improves access to the public trust lands for the general public. Additionally, in keeping with its commitment to providing ADA accessible access to the handicapped public, the majority of crossover ramps will meet the ADA requirements. TCB recently acquired beach wheelchairs for use by handicapped individuals on the beach. These wheelchairs are available by reservation for no fee.

Staff's Position: Yes.

Petitioner's hardship is caused by conditions peculiar to Petitioner's property. The hardship of not meeting the oceanfront erosion setback for the expanded boardwalk is due in part by the current location of the existing boardwalk on publically owned property subject to a historic static line on a beach nourished for the last 50 years, and where the actual vegetation line is significantly waterward of the static line. While this situation would be covered by the static line exception if the proposed development were a house, in this case, the shoreline parallel boardwalk is not included in these rules. Accordingly, Staff agrees that Petitioner meets this variance criterion.

III. Do the hardships result from action taken by the petitioner. Explain.

Petitioner's Position: No.

Specifically, the hardship exists due to the strict applications of the Commissions regulations to a project to be constructed upon the public trust lands for public use. Additionally, the hardship exists due to the fact that there is limited public property available for access to the beaches due to significant value in property adjacent to the Atlantic Ocean. TCB is attempting, by construction of the Boardwalk, to eliminate hardships to members of the general public who do not have convenient access to the public trust lands and to allow access to the public trust lands to handicapped and elderly individuals.

Staff's Position: No.

While allowing the boardwalk enlargement to be expanded within the ocean hazard setback may be a rare exception, Staff agrees that making public beach access more accessible to individuals with disabilities and others is a worthy goal and is in keeping with the legislature's mandate to provide and preserve the public's opportunity to enjoy the physical, esthetic, cultural and recreational qualities of the shorelines of the State. Staff also notes that this is the replacement and enlargement of an existing facility and not the development of a new facility.

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 justice? Explain.

Petitioner's Position: Yes

The Commissions regulations that TCB are intended, in part, to limit private property owners from infringing upon the general public's right to access and preservation of the public trust lands. Additionally, see below.

(d)(1) The variance requested by TCB will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission. 15A NCAC 07H .0203 states that:

It is the objective of the Coastal Resource Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values... Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

In addition to the foregoing, in accordance with 15A NCAC 07H .0207, TCB is attempting, through construction of the Boardwalk to “protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. The proposed project will improve the biological value of the public trust lands by increasing the dune ecosystem and facilitating access in a manner that preserves the dune ecosystem.

(d)(2) The variance requested by TCB will secure the public safety and welfare.

Safe and convenient access to the public trust area for the public, including those who are handicapped, improves the public safety and welfare. With the extension of the Boardwalk, elderly and handicapped individuals will be provided the ability to view the ocean and dune ecosystems at various points without endangering themselves by accessing the beach itself. Without the access proposed to be provided by the TCB with the extension of the Boardwalk, public access to the beach and ocean will be more limited. Additionally, without the Boardwalk structure as proposed, the public could attempt access to the beach across the dune ecosystem which would overtime endanger the public’s safety and welfare. The proposed Boardwalk would protect rare natural habitat within the dunes.

(d)(3) The variance requested by TCB will preserve substantial justice.

The construction of the proposed Boardwalk will preserve substantial justice by affording those without private access to public trust lands with safe and convenient access. The proposed Boardwalk will preserve substantial justice by creating safe and convenient handicap accessible access to the public trust land.

Staff’s Position: Yes.

Staff agrees that granting the requested variance would be consistent with the spirit, purpose and intent of the Commission’s rules. The combination of the width of the beach at this location

based on the location of the actual vegetation line, the fact that the beach is not in a natural state due to the years of beach nourishment by the ACOE, the historical presence of a boardwalk - albeit a smaller boardwalk than the one proposed by this project - and the increased access for visitors with disabilities would meet these goals with minimal adverse impacts to the dune system.

Staff also agrees that granting the requested variance would secure the public safety and welfare, and preserve substantial justice. The proposed replacement/expansion of the boardwalk is designed to increase access to the public beach and ease congestion of movement along the boardwalk for all. The Town's commitment to improving access for visitors with disabilities is also in keeping with the Commission's rules. While Staff is not familiar with ADA requirements specifically applicable to boardwalks, with regard to the design and construction of new public facilities, the Act generally requires that all or part of such public facilities be readily accessible to, and usable by, individuals with disabilities. See e.g., 28 CFR Part 35, §35.151. The proposed boardwalk replacement/expansion will also enhance the community economically, which is an important aspect of the Commission's role in balancing development with the protection and preservation of the coastal area of North Carolina. Finally, Staff notes that the grant issuing function of DCM and the permitting function of DCM are kept separate; therefore, the fact that DCM has approved the Town for a CAMA grant is not a guarantee of a CAMA permit and, in this case, is unrelated to this staff position and consideration of a variance by the Commission.

**ATTACHMENT D:
PETITIONER'S VARIANCE REQUEST
MATERIALS**

CRAIGE & FOX

ATTORNEYS & COUNSELORS AT LAW

701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX

ASHLEY MICHAEL
BONNIE M. BRAUDWAY

*Board Certified Specialist in Elder Law
*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

January 15, 2014

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JAN 15 2014

DCM-MHD CITY

Braxton Davis, Director
Division of Coastal Management
North Carolina Department of Environment and Natural Resources
400 Commerce Avenue
Morehead City, North Carolina 28557

**Re: Town of Carolina Beach
Boardwalk Modification
CAMA Minor Permit No. CB13-12**

Dear Mr. Davis,

The enclosed CAMA Variance Request Form pertains to requested modifications to an existing Boardwalk permitted and constructed in 1989 by the Town of Carolina Beach. The existing Boardwalk is in need of repairs to ensure the safety of the public and the continued preservation of the public's right to access the public trust areas. The Boardwalk has been a primary means for the public to enjoy and access the public trust areas for decades while simultaneously preserving and perpetuating the biological and aesthetic value of the public trust areas.

Thank you very much for your assistance.

Sincerely,

CRAIGE & FOX, PLLC

By: Charlotte Noel Fox
Charlotte Noel Fox

Enclosure as stated

PRACTICE AREAS

Civil Litigation / Business Law / Estate Administration / Estate Planning / Guardianship
Elder Law / Real Property Law / Community Association Law / Family Law / Juvenile Law

Town of Carolina Beach – Coastal Resources Commission Variance Request

Boardwalk Improvement Project Phase 2

January 14, 2014

Table of Contents



1. Variance Request Form
2. Permit Decision Letter
3. Project Description
4. Proof of Notification of Adjacent Property Owners – Certified Mail Receipts
5. Written Reasons and Arguments
6. Draft Stipulated Facts
7. Exhibits:
 - Site photos – 2 sheets
 - Site Plan –“ CAMA Minor Permit Boardwalk Improvement Project Phase Two” – Sheets 1 & 2
 - Color Concept Plan – Existing Boardwalk Area Only
 - Preliminary Structural Drawings Sheets S1.0, S1.1, S1.2 & S2.0 through S12.0

JAN 15 2014

CAMA VARIANCE REQUEST FORM

DCM FORM 11 DCM AND CITY
DCM FILE No.: 14-02PETITIONER'S NAME Town of Carolina BeachCOUNTY WHERE THE DEVELOPMENT IS PROPOSED New Hanover

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

VARIANCE HEARING PROCEDURES

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

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

VARIANCE CRITERIA

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

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

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

RECEIVED

JAN 15 2014

COMMERCIAL CITY

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

RECEIVED
JAN 15 2014

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

Charlotte Noel Fox _____ Date 1-15-2014 _____
Signature of Petitioner or Attorney

Charlotte Noel Fox _____ crtfox@craigandfox.com _____
Printed Name of Petitioner or Attorney Email address of Petitioner or Attorney

701 Market St. _____ (910) 815-0085 _____
Mailing Address Telephone Number of Petitioner or Attorney

Wilmington NC 28401 (910) 815-1095 _____
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:

Contact Information for Attorney General's Office:

By mail, express mail or hand delivery:

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

By mail:

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

By Fax:

(252) 247-3330

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Email:

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

By Fax:

(919) 716-6767

JAN 15 2014

Town of Carolina Beach – Coastal Resources Commission Variance Request

DCM-MHD CITY

Project: Boardwalk Improvement Project Phase 2**Location: Dune and Beachfront Area between Charlotte Ave. and Pelican Lane****Project Description – January 14, 2014**

The Carolina Beach Boardwalk has been in place in some form or fashion since the 1890's. It is recognized as a unique historic icon and focal point for the community in providing beach access for the central business district and the hundreds of thousands of visitors each year. The existing structure was permitted in 1989 under Section .0309 – Exceptions – Accessways. The structure is now antiquated and in need of much repair or replacement (photos attached). Replacement of the narrow existing Boardwalk and accessways with newer wider structures will provide safer, more functional and handicapped accessible facilities for beach access and enjoyment of the dune ecosystem.

The 1989 CAMA Permit cited that boardwalk construction would result in some trampling and minor short term loss of dune vegetation, but "On the other hand the structure would control public access to the beach and prevent the development of multiple paths across dune vegetation by beachgoers and tourists. (Note that with 18 adjacent properties the potential exists for 18 accesses in this area. This project will allow a total of 8 public accesses and 3 rebuilt private accesses.) The permitted Phase 1 of the project includes enhancement of existing dunes using sand from enlarged landscaped coves between the crossover accesses.

In accordance with 15A NCAC 07J, the Town has had a Static Line Exception in place for 5 years. The Boardwalk project is within the limits of the Static Line Exception. The required progress report has been submitted and is under review. The latest beach maintenance event occurred earlier this year.

The project has received strong financial support from local and state agencies. The Town was awarded a \$603,000 CAMA Public Beach Access Grant for the project in August of this year. Other funding includes a \$250,000 NC DENR Water Resources Grant, a \$500,000 grant from New Hanover County, and \$250,000 in local Tourism Development Authority funding. With a total project budget of \$1.6 million, the project is fully funded with construction plans nearing completion.

Phase 1 for the project was approved under CAMA Minor Development Permit #CB13-10 in September, 2013. Phase 1 included replacement of crossover beach accesses, viewing platform improvements, and excavation of non-dune landscaped coves westward of the Boardwalk and redistribution of the sand from these areas to enhance dune low spots eastward of the Boardwalk. The proposed Phase 2 project involves the following elements: (Reference attached drawing "CAMA Minor Permit Boardwalk Improvement Project Phase Two – November 25, 2013 – sheets 1 and 2, color concept plan for the existing Boardwalk area, and preliminary structural drawings sheets S1.0, S1.1, S1.2, S2.0 through S12.0.

1. Demolition of the entire 750 foot existing 8' foot wide Boardwalk and four existing 6' wide cross over public beach accesses and construction of a new 16' wide Boardwalk structure parallel to the shoreline and 5 new 10 foot wide crossover public beach

accesses. The new Boardwalk would be located in the existing structure footprint widened 4 feet on either side. The Boardwalk is proposed to include four 200 sf covered gazebos, and sixteen 96 sf (6' x 16') "bumpouts" for benches and swings, and 4 non-covered wooden lattice trellises. The new accesses would also be located in existing footprints widened 2 feet either side. The 5th new access from the Boardwalk to the beach is the second access from south as shown on the attached drawing. All structures will be elevated above the dunes. The structure and piling depths will be in accordance with Building Code requirements. The structure is an engineered "heavy timber" type design in accordance with Building Code requirements for commercial structures. This type of design is also required to comply with Carolina Beach Fire District requirements.

2. New extension of the Boardwalk approximately 875 feet north to the Pelican Lane Public Access. The design is identical to that proposed for the existing structure – 16' wide with 3 new 10 foot wide public accesses, 3 re-built existing private accesses, and nine 96 sf bump outs for benches and swings. A lattice trellis is proposed at the Pelican Lane Access.
3. Addition of a wood framed roof to the existing 700 sf viewing platform (see drawing)
4. New showers at the Harper Ave. Access.
5. A splash pad/water park facility approximately 2,500 sf in size is proposed in the landscaped cove just south of Harper Ave. While a final design has not been completed, the pad would be a pervious pavement area with a variety of water fountains, arches, spray and misting fixtures for recreational use. In addition, the landscaped coves between the Boardwalk and sidewalk will be redesigned to also include public art, historical and environmental educational kiosks, seating and picnic facilities and open space for music, art and other cultural events and passive recreational use. (see color concept drawing)

Statement of Ownership

Title to all lands east of the established "building line" was conveyed to the Town of Carolina Beach in the 1963 NC General Assembly House Bill 612, Chapter 511. The property is now Public Trust land for the State of North Carolina.



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

RECEIVED
JAN 15 2014
DCM-MHD CITY

December 20, 2013

CERTIFIED MAIL – 7011 0110 0000 3789 2709
RETURN RECEIPT REQUESTED

Town of Carolina Beach
c/o Mr. Ed Parvin, Assistant Town Manager
1121 N. Lake Park Boulevard
Carolina Beach, N.C. 28428

**RE: DENIAL OF CAMA MINOR DEVELOPMENT
PERMITAPPLICATION NUMBER- CB13-12**

PROJECT ADDRESS- Town of Carolina Beach property located within dunes and beachfront between Charlotte Avenue and Pelican Lane (Public Boardwalk), Carolina Beach, New Hanover County, N.C.

Dear Mr. Parvin:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA), it is my determination that no permit shall 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 consists of replacement and expansion of the existing public beachfront boardwalk, including associated amenities, proposed within the minimum setback (measured 60 feet from the First Line of Stable Natural Vegetation (FLSNV), or 30 times the shoreline erosion rate of 2 feet/year).

Your proposal is inconsistent with 15 NCAC 07H .0306(a)(2) GENERAL USE STANDARDS OF OCEAN HAZARD AREAS, which states: "***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***"; and 15 NCAC 07H .0309(a) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS, which states: "***The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met: (1) campsites; (2) driveways and parking areas with clay, packed sand or gravel; (3) elevated decks not exceeding a footprint of 500 square feet; (4) beach accessways consistent with Rule .0308(c) of this Subchapter; (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less; (6) uninhabitable, single-story storage sheds with a foundation of floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less; (7) temporary amusement stands; (8) sand fences; and (9) swimming pools***".

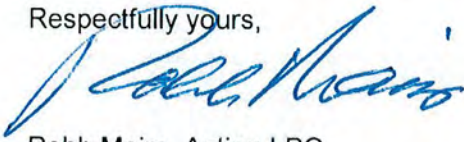
127 Cardinal Drive Ext., Wilmington, NC 28405
Phone: 910-796-7215 \ FAX: 910-395-3964 Internet: www.nccoastalmanagement.net

Town of Carolina Beach CB13-12
Page Two

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

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

Respectfully yours,



Robb Mairs, Acting LPO
127 Cardinal Drive
Wilmington, NC 28405

cc: Braxton Davis, NCDCCM-Morehead City
Jerry Haire, Project Manager, Town of Carolina Beach
Wilmington Files

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JAN 15 2014

WRITTEN REASONS AND ARGUMENTS

Petitioner Town of Carolina Beach ("TCB") meets the four variance criteria listed in the CAMA Variance Request Form for the following reasons. TCB incorporates herein by reference in each section below the Attachments and Exhibits to this Petition.

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

Yes. Strict application of 15 NCAC 07H .0306(a) and 15 NCAC 07H .0309(a) will prevent TCB from, in accordance with 15A NCAC 07H .0203 and 15A NCAC 07H .0207(c), "providing and protecting public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic values"). These rules were designed, in part, to limit a private individual's ability to infringe on the public's access to the public trust areas. Here the applicant is a municipality and the Town of Carolina Beach is committed and has always been committed to providing access to the public trust areas to the general public.

The Carolina Beach Boardwalk has existed in some respect since the early 1930s. The existing Boardwalk was permitted by CAMA and built in 1989. Due to the proximity of the Boardwalk to the Atlantic Ocean, the Boardwalk is a popular means for the public to view or access the Atlantic Ocean. The access to the Ocean provided by the Boardwalk has a significant economic impact on businesses located adjacent to the Boardwalk, the Central Business District of Carolina Beach, the Town of Carolina Beach and New Hanover County.

The Boardwalk is in need of significant repairs to assure the safety of the public. The Boardwalk creates a unique opportunity for the general public without other means of access to view and access the ocean and dune ecosystem from a variety of locations. With an increased demand for access to the beach and Ocean from elderly and handicapped individuals, the widening of the Boardwalk will allow elderly and handicapped individuals convenient beach access as well as the ability to view the dune ecosystem. An undue hardship to the public would be created from strict application of the development rules, standards, or orders issued by the commission. Specifically, handicapped individuals would be denied a convenient and safe means of accessing the beach and/ or viewing the ocean and dune ecosystem. Furthermore, general public's access to the ocean and view the dune ecosystem would be impaired. A lack of safe access, as provided by the proposed Boardwalk, could result in damage to the dune ecosystems by those creating their own means of access to the beach.

(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. TCB's property upon which the Boardwalk will be expanded is located within the dunes and beachfront between Charlotte Avenue and Pelican Lane, Carolina Beach, New Hanover County, NC. It is public trust area. Specifically, the hardship exists due to the strict application of the Commissions regulations to a project to be constructed upon the public trust lands for

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public use. As it has historically done, TCB is attempting to improve access to the public trust lands to the general public through the extension of the existing Boardwalk. The Boardwalk is proposed to be expanded in a manner that improves access to the public trust lands for the general public. Additionally, in keeping with its commitment to providing ADA accessible access to the handicapped public, the majority of crossover ramps will meet the ADA requirements. TCB recently acquired beach wheelchairs for use by handicapped individuals on the beach. These wheelchairs are available by reservation for no fee.

(C) Do the hardships result from action taken by the petitioner. Explain.

No. Specifically, the hardship exists due to the strict application of the Commissions regulations to a project to be constructed upon the public trust lands for public use. Additionally, the hardship exists due to the fact that there is limited public property available for access to the beaches due to significant value in property adjacent to the Atlantic Ocean. TCB is attempting, by construction of the Boardwalk, to eliminate hardships to members of the general public who do not have convenient access to the public trust lands and to allow access to the public trust lands to handicapped and elderly individuals.

(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 justice? Explain.

Yes. The Commissions regulations that TCB are intended, in part, to limit private property owners from infringing upon the general public's right to access and preservation of the public trust lands. Additionally, see below.

(d)(1) The variance requested by TCB will be consistent with the spirit, purpose and intent of the rules, standards or orders issued by the Commission. 15A NCAC 07H .0203 states that:

It is the objective of the Coastal Resource Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values... Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

In addition to the foregoing, in accordance with 15A NCAC 07H .0207, TCB is attempting, through construction of the Boardwalk to "protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value. The proposed project will improve the biological value of the public trust lands by increasing the dune eco system and facilitating access in a manner that preserves the dune eco system.

(d)(2) The variance requested by TCB will secure the public safety and welfare.

Safe and convenient access to the public trust area for the public, including those who are handicapped, improves the public safety and welfare. With the extension of the Boardwalk, elderly and handicapped individuals will be provided the ability to view the ocean and dune ecosystems at a various points without endangering themselves by accessing the beach itself. Without the access proposed to be provided by the TCB with the extension of the Boardwalk, public access to the beach and ocean will be more limited. Additionally, without the Boardwalk structure as proposed, the public could attempt access to the beach across the dune ecosystem which would overtime endanger the public's safety and welfare. The proposed Boardwalk would protect rare natural habitat within the dunes.

(d)(3) The variance requested by TCB will preserve substantial justice.

The construction of the proposed Boardwalk will preserve substantial justice by affording those without private access to public trust lands with safe and convenient access. The proposed Boardwalk will preserve substantial justice by creating safe and convenient handicap accessible access to the public trust land.

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PROPOSED STIPULATED FACTS

1. The Town of Carolina Beach ("Petitioner") is a North Carolina municipal body politic organized and existing in Carolina Beach, New Hanover County, North Carolina.
2. The Carolina Beach Building Line Act was passed in 1963 [Session Law 1963, Chapter 511] which granted the Town title to the land between the building line and the low water mark of the Atlantic Ocean subject to the public trust rights.
3. The Public Beach (land from the low water mark westward to any land raised by a publicly financed beach renourishment project) is owned by the State of North Carolina in accordance with N.C.G.S. §146-6(f) and the Public Trust Doctrine.
4. In accordance with 15A NCAC 07J, The Town of Carolina Beach has had a static line exception in place for five (5) years.
5. The Carolina Beach Boardwalk project is within the limits of the Static Line Exception.
6. On November 18, 2013, the Petitioner applied for a CAMA minor development permit (Permit Application Number- CB13-12) requesting approval of the Carolina Beach Boardwalk Improvement Project – Phase 2.
7. On December 20, 2013 the Division of Coastal Management denied the Permit Application pursuant to NCGS § 113A-130(a)(8) which requires denial for projects inconsistent with State guidelines for Areas of Environmental Concern.
8. Rule 15A NCAC 07H .0306(a)(2) states that no development, including any portion of a building or structure, shall extend oceanward fo the ocean hazard setback distance, with the exception of those types of development defined in 15A NCAC 07H .0309.
9. The proposed modifications to the Carolina Beach Boardwalk are inconsistent with the strict application of 15A NCAC 07H .0306(a)(2).
10. Rule 15A NCAC 07H .0309 allows for development seaward of the oceanfront setback requirements of sand fences and beach accessways consistent with Rule .0308(c).
11. Rule 15A NCAC 07H .0309 (1) requires the accessways to permitted across primary dunes if they are designed and constructed in a manner that entails negligible alteration on the primary dune.
12. Rule 15A NCAC 07H. 0309(2) states that an accessway is presumed to entail negligible alteration of a primary dune if:
 - a. it is exclusively for pedestrian use

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JAN 15 2014

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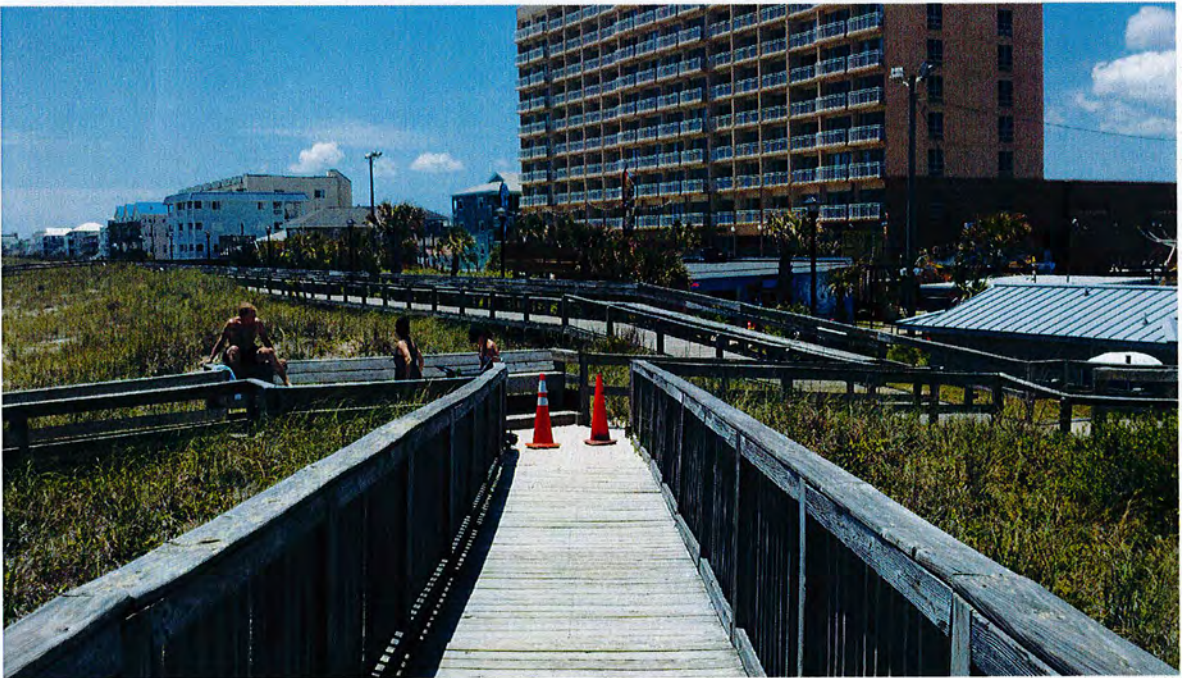
- b. less than six feet wide
 - c. The structure shall touch the dune only to the extent absolutely necessary if the pilings are required to be more than five (5) feet of depth.
13. Rule 15A NCAC 07H. 0309(3) states that an accessway may be permitted if doesn't it doesn't meet 15A NCAC 07H. 0309(2)(A)(B) if it meets a public purpose or need which cannot be other met.
 14. The Carolina Beach Boardwalk has been in existence in some form since 1890.
 15. Federal and State funds were used in the 1930's to construct the Boardwalk.
 16. The Existing Carolina Beach Boardwalk was permitted in 1989 under Section .0309.
 17. The Carolina Beach Boardwalk provides access to the public trust areas for the general public.
 18. The Carolina Beach Boardwalk preserves and perpetuates the biological and aesthetic value of the public trust area.
 19. The Carolina Beach Boardwalk operates as a sand fence and improves and preserves the dune ecosystem.
 20. The proposed modifications to the Carolina Beach Boardwalk enhance existing dunes by using sand from enlarged landscaped coves between the proposed crossover accesses.
 21. The Carolina Beach Boardwalk is exclusive for pedestrian use.
 22. The proposed modifications to the Carolina Beach Boardwalk will increase access to the public, including handicapped individuals, to the public trust areas.
 23. The proposed modifications to the Carolina Beach Boardwalk will not diminish the dune's capacity as a protective barrier against flooding and erosion.
 24. The proposed modifications to the Carolina Beach Boardwalk meet a public purpose and a need that cannot be met otherwise which is allowing safe, convenient access to the public and handicapped public to the public trust areas.

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JAN 15 2014

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Existing Carolina Beach Boardwalk - 2013



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Existing Carolina Beach Boardwalk - 2013



ATTACHMENT E: STIPULATED EXHIBITS

- Permit Denial Letter
- Letter Acknowledging CAMA Grant
- Letter from Ned M. Barnes, Esq. regarding A.D. Averette to Braxton Davis dated 1/28/2014
- Deed Enclosed with Barnes' Letter
- Letter from Carolina Beach Town Councilmember Steve Shuttleworth to James Averette dated 12/6/2013
- Letter from Carolina Beach Town Attorney to James Averette dated 12/6/2013
- Three Drawings Enclosed with Town Attorney's letter to James Averette
- Color Concept Plan of Existing Boardwalk Phase 2
- Site Plan Sheets 1 & 2
- Preliminary Structural Drawings
- Power Point Showing the Site
- Aerial Photo of Averette Property



North Carolina Department of Environment and Natural Resources

Division of Coastal Management

Braxton C. Davis

Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

December 20, 2013

CERTIFIED MAIL – 7011 0110 0000 3789 2709

RETURN RECEIPT REQUESTED

Town of Carolina Beach
c/o Mr. Ed Parvin, Assistant Town Manager
1121 N. Lake Park Boulevard
Carolina Beach, N.C. 28428

**RE: DENIAL OF CAMA MINOR DEVELOPMENT
PERMITAPPLICATION NUMBER- CB13-12**

PROJECT ADDRESS- Town of Carolina Beach property located within dunes and beachfront between Charlotte Avenue and Pelican Lane (Public Boardwalk), Carolina Beach, New Hanover County, N.C.

Dear Mr. Parvin:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA), it is my determination that no permit shall 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 consists of replacement and expansion of the existing public beachfront boardwalk, including associated amenities, proposed within the minimum setback (measured 60 feet from the First Line of Stable Natural Vegetation (FLSNV), or 30 times the shoreline erosion rate of 2 feet/year).

Your proposal is inconsistent with 15 NCAC 07H .0306(a)(2) GENERAL USE STANDARDS OF OCEAN HAZARD AREAS, which states: "***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***"; and 15 NCAC 07H .0309(a) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS, which states: "***The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met: (1) campsites; (2) driveways and parking areas with clay, packed sand or gravel; (3) elevated decks not exceeding a footprint of 500 square feet; (4) beach accessways consistent with Rule .0308(c) of this Subchapter; (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less; (6) uninhabitable, single-story storage sheds with a foundation of floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less; (7) temporary amusement stands; (8) sand fences; and (9) swimming pools***".

127 Cardinal Drive Ext., Wilmington, NC 28405

Phone: 910-796-7215 \ FAX: 910-395-3964 Internet: www.nccoastalmanagement.net

Town of Carolina Beach CB13-12
Page Two

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

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

Respectfully yours,



Robb Mairs, Acting LPO
127 Cardinal Drive
Wilmington, NC 28405

cc: Braxton Davis, NCDCCM-Morehead City
Jerry Haire, Project Manager, Town of Carolina Beach
Wilmington Files

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OFFICIAL USE

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| Certified Fee | | |
| Return Receipt Fee (Endorsement Required) | | |
| Restricted Delivery Fee (Endorsement Required) | | |
| Total Postage & Fees | \$ 6.31 | |

Sent To: *Town CB 90 E. Parvin, Asst. Twn. Mgr.*
Street, Apt. No., or PO Box No.: *1121 N. Lake Park Blvd.*
City, State, ZIP+4: *Carolina Beach, NC 28428*

PS Form 3800, August 2006 See Reverse for Instructions

DCM
Denial CB13-12 pm

7011 0110 0000 3789 2709



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

August 12, 2013

The Honorable Bob Lewis
Mayor, Town of Carolina Beach
1121 N. Lake Park Boulevard
Carolina Beach, N.C. 28428

Dear Mayor Lewis:

I am pleased to announce that the Town of Carolina Beach has been awarded a public access grant of \$602,900 through the North Carolina Beach and Waterfront Access Program.

The Division of Coastal Management will be administering this grant. If you have any questions concerning this grant, please contact John Thayer in our Morehead City office at (252)808-2808 Ext. 204.

Congratulations on being selected for this grant. I hope these funds will help you as you work to provide better public access to our beautiful coastal beaches and waterways.

Sincerely,

John E. Skvarla, III
NCDENR Secretary

cc: Joseph Harwood, DENR Ombudsman
Braxton C. Davis, Director, DENR Division of Coastal Management

**NED M. BARNES
ATTORNEY AND COUNSELOR AT LAW**

A-3 Pleasure Island Plaza
Carolina Beach, North Carolina 28428
email: vhelms@nedbarnes.com

Telephone: (910) 458-4466

Fax: (910) 458-8845

January 28, 2014

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

RE: Our Client: A. D. Averette
Town of Carolina Beach Boardwalk Expansion

Dear Mr. Davis:

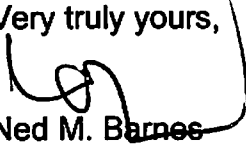
This letter is inform you that I represent A.D. Averette in reference to the above variance request by the Town of Carolina for the boardwalk expansion. As you will see by the deed I have enclosed Mr. Averette has owned this property since March 14, 1935. Mr. Averette's property consists of a single family residence that he and his family members have used and enjoyed for the last 78 years. Since the acquisition of this property by Mr. Averette, there have been many changes in Carolina Beach. In recent years, a commercial restaurant and bar have been established across the street from Mr. Averette's property which creates a large volume of noise and foot traffic for five months out of the year. It is the concern of Mr. Averette and his family that the expansion of the boardwalk to include the ocean front portion of his lot, would result in an inordinate amount of noise, foot traffic and access to his property, which again, is a private residence, all of which would greatly disturb the use and enjoyment of the property that Mr. Averette and his family have enjoyed for the prior 78 years. Of additional concern to Mr. Averette and his family, is the fact that when they are not present at the property, since, again, this is a vacation home, the expansion of the boardwalk would allow enhanced access to his property by those who may have unlawful intent.

Mr. Braxton Davis
January 28, 2014
Page Two

Based upon the above, Mr. Averette and his family wish to express their strong opposition to the expansion of the boardwalk project as relates to his property.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ned M. Barnes", written over a horizontal line.

Ned M. Barnes

NMB/vbh
Enclosure

State of North Carolina, }

S. E. - WARRANTY DEED

New Hanover County.

THIS INDENTURE Made this 2nd day of May A.D. 1933 by and between Margaret Caldwell Bolles and husband, Charles F. Bolles

of Wilmington County of New Hanover and State of North Carolina of the first part, and A.D. Averette and wife, Minnie Lee Averette

County of Wake and State of North Carolina of the second part.

WITNESSETH, That the said part 100 of the first part, for and in consideration of the sum of One hundred Dollars, and other valuable considerations to them in hand paid by the said part 100 of the second part; the receipt whereof is hereby acknowledged, do hereby give, grant, bargain and sell, alien, convey and confirm unto the said part 100 of the second part and to their heirs and assigns forever, all that certain lot of land, situated, lying and being in New Hanover County of North Carolina, bounded and described as follows, to wit:

BEGINNING in the eastern line of Carolina Beach Avenue North, 200 feet southwardly from the point where the eastern line of Carolina Beach Avenue North is intersected by the southern line of First Avenue North; runs thence eastwardly and parallel with the said First Avenue North, 125 feet; thence southwardly and parallel with Carolina Beach Avenue North, fifty (50) feet; thence westwardly and parallel with First Avenue North, one hundred and twenty-five (125) feet to the southern line of Carolina Beach Avenue North, thence northwardly fifty (50) feet to the point of beginning, being otherwise designated as Lot #6 in Block #1 according to the revised map of Carolina Beach as plotted by J.L. Becton, C.E. September 1913, and being the same tract of land conveyed to the said Margaret Caldwell Bolles by deed dated July 8th, 1932 and recorded in Book 230 at page 528.

It is understood and agreed by and between the parties hereto that this deed is made subject to the unpaid taxes for the tax year commencing April 1st, 1933, which said taxes the parties of the second part hereby agree to assume and pay off.

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

TO HAVE AND TO HOLD the above granted and described premises, together with all and singular, the rights, privileges, easements, tenements and appurtenances thereto belonging, or in anywise appertaining unto the said part 100 of the second part their heirs and assigns, in fee simple, FOREVER.

And the said part 100 of the first part, for themselves, their heirs, executors and administrators do covenant and with the said part 100 of the second part their heirs and assigns, that they are seized in fee of the above granted and described premises, and they have good right to sell and convey the same in fee simple; that the same are free and clear from any and all encumbrances, and that they will and their heirs, executors and administrators shall WARRANT and DEFEND the title to the same against the lawful claims and demands of any and all persons whomsoever.

IN TESTIMONY WHEREOF, the said part 100 of the first part ha 79 hereunto set their hand and affixed their seal, the day and year above written.

WITNESSES: Margaret Caldwell Bolles (Seal) Charles F. Bolles (Seal)

State of North Carolina, }

New Hanover County.

I, Meares HARRIS a Notary Public in and for the State and County aforesaid, do hereby certify that Chas. F. Bolles and Margaret Caldwell Bolles his wife, personally appeared before me this day and acknowledged the due execution of the annexed instrument, and the said Margaret Caldwell Bolles wife of Chas. F. Bolles

being by me privately examined, separate and apart from her said husband touching her voluntary execution of the same, doth state that she signed the same freely and voluntarily, without fear or compulsion of her said husband, or any other person, and that she doth still voluntarily assent thereto.

Witness my hand and seal, this 2nd day of May, 1933 Meares HARRIS Notary Public. My commission expires 14 day of March, 1935

State of North Carolina, }

County.

I, Notary Public in and for the State and County aforesaid, do hereby certify that personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Let the said instrument and this certificate be registered. Witness my hand and official seal this day of 1933

(Notarial Seal) My Commission expires day of 1933 Notary Public

Clerk Superior Court

State of North Carolina, }

New Hanover County.

The foregoing Certificate of Meares HARRIS a Notary Public of New Hanover County, is adjudged to be correct. Let the instrument with the Certificate be recorded. This 3 day of May 1933 Received and Recorded, this 3rd day of May 1933 M HARRIS Register of Deeds. Dy Clerk Superior Court.

Bob Lewis
Mayor

Sarah Friede
Council Member

Jody Smith
Council Member



Steve Shuttleworth
Mayor Pro Tem

Tom Bridges
Council Member

Michael Cramer
Town Manager

TOWN OF CAROLINA BEACH
1121 N. Lake Park Boulevard
Carolina Beach, North Carolina 28428
910 458 2996
FAX 910 458 2997

December 6, 2013

James Averette
503 Faucette St.
Fuquay-Varina, NC 27526

Re: Town of Carolina Beach Boardwalk Expansion

Dear Mr. Averette,

Thank you for speaking with me recently about our Boardwalk project. As discussed I am enclosing some materials for your reference. The first is a letter from our attorney Noel Fox explaining the Town's jurisdiction over beachfront lands eastward of a Building Line established by the State Legislature in 1963. The Building Line Act affected all beachfront properties in Carolina Beach in varying degrees. As shown on the exhibit map this line affected the easternmost 20' of your lot.

Also attached is a drawing showing several options for tying your beach access into the Boardwalk by ramps, steps or a combination of both. Since your access is ground level and the Boardwalk will be 12" to 18" off the ground it would be necessary to ramp or step your access on each side, and provide secure gates on each side as shown. The Town will assume all costs for this work, as well as keeping a temporary access open for your property during construction. We would also be happy to discuss any other reasonable access options with you.

Lastly, I have enclosed a site plan showing the Boardwalk expansion from Harper Avenue North to Pelican Lane. The nearest 10' public access from the Boardwalk to the beach is approximately 120' south of your property.

Thanks again for your time and consideration. We are committed to working through this project with the least amount of inconvenience for you. I would very much like to meet with you in person in the near future to discuss the project further. Please feel free to call 719-499-1373 with any questions you may have.

Sincerely,



Steve Shuttleworth
Town Councilmember

Cc: Ned Barnes, Attorney at Law

CRAIGE & FOX P.L.L.C.

ATTORNEYS & COUNSELORS AT LAW

701 Market Street / Wilmington, North Carolina 28401
Telephone: (910) 815-0085 / Facsimile: (910) 815-1095 / www.craigeandfox.com

LAWRENCE S. CRAIGE*
CHARLOTTE NOEL FOX

*Board Certified Specialist in Elder Law
*Certified Elder Law Attorney by ABA Accredited National Elder Law Foundation

ASHLEY MICHAEL
BONNIE M. BRAUDWAY

December 6, 2013

Mr. James Averette
503 Faucett Street
Fuquay-Varina NC 27526-2018

Re: Town of Carolina Beach Boardwalk Expansion

Dear Mr. Averette,

I hope this letter finds you doing well. I am the Town Attorney for the Town of Carolina Beach ("Town").

It is my understanding that you have concerns about the Town's ability to construct the Boardwalk in front of your residence located at 230 Carolina Beach Avenue North, Carolina Beach, NC ("Residence"). Specifically, it is my understanding that you maintain that you are the owner of the land between your Residence and the Atlantic Ocean. Oceanfront land owners often consider themselves the owner of all the land between their land and the Ocean. However, as I will explain below, the State of North Carolina is the actual owner of the land between your Residence and the Atlantic Ocean.

In 1963, the Carolina Beach Building Line Act was passed by the North Carolina Legislature. The purpose of this act was to grant the Town of Carolina Beach title to land between the building line and the low water mark of the Atlantic Ocean. I have enclosed a survey dated October 4, 2013 that illustrates the location of the building line in relation your Residence.

In 1985, there was an amendment to the State Lands Act that shifted ownership of the land between the building line and the low water mark of the Atlantic Ocean to the State of North Carolina if beach renourishment was publicly funded. Since the Town of Carolina Beach has accepted public funds over the years to assist with the renourishment of the beach strand, the land between your Residence and the Atlantic Ocean is owned by the State of North Carolina.

PRACTICE AREAS

Civil Litigation / Business Law / Estate Administration / Estate Planning / Guardianship
Elder Law / Real Property Law / Community Association Law / Family Law / Juvenile Law

The Town, subject to restrictions placed on it by CAMA, has the ability to build the Boardwalk. As you will see from the enclosed drawings, the Town is committed to working with you to ensure that access from your Residence to the beach is not impeded. I would be pleased to speak with you about this project and answer any questions you might have.

Please do not hesitate to contact me with any questions.

Sincerely,

CRAIGE & FOX, PLLC

By: 
Charlotte Noel Fox

Cc: client

Enclosure as stated.
CNF/ar



PROPOSED BOARDWALK IMPROVEMENTS
SCALE: 1" = 40'-0"

RECEIVED
DCM WILMINGTON, NC
NOV 18 2013



reynolds/architecture
ARCHITECTS, INC.
P. O. BOX 2220
CAROLINA BEACH, N.C. 28428

| DATE | BY | REVISIONS |
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EXISTING OVERALL SITE PLAN
PROPOSED FACILITY FOR THE
CAROLINA BEACH BOARDWALK LINEAR PARK
CAROLINA BEACH, NORTH CAROLINA



NOTE:
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SHEET NUMBER
A2.1
PROJECT NUMBER
2013-116

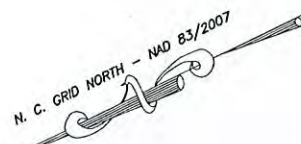
SURVEY REFERENCE:
MAP BOOK 2, PAGE 30

- NOTES:
1. FEMA FLOOD MAP INFORMATION:
MAP PANEL NO. - 3702.13000
FLOOD ZONES AND B.F.E.: AS NOTED
MAP PANEL DATE: APRIL 3, 2006
CORNERS ARE MARKED AS NOTED ON MAP.
 2. ALL BEARINGS ARE (TYPE OF MEAS.)
 3. ALL DISTANCES ARE HORIZONTAL FIELD MEASUREMENTS.
 4. AREA COMPUTED BY THE COORDINATE METHOD.
 5. THE FIRST LINE OF STABLE VEGETATION WAS TAKEN FROM 2012 AERIAL PHOTOGRAPHY FROM MCOE MAPS.
 6. ALL ELEVATIONS ARE NAVD 88 DATUM.

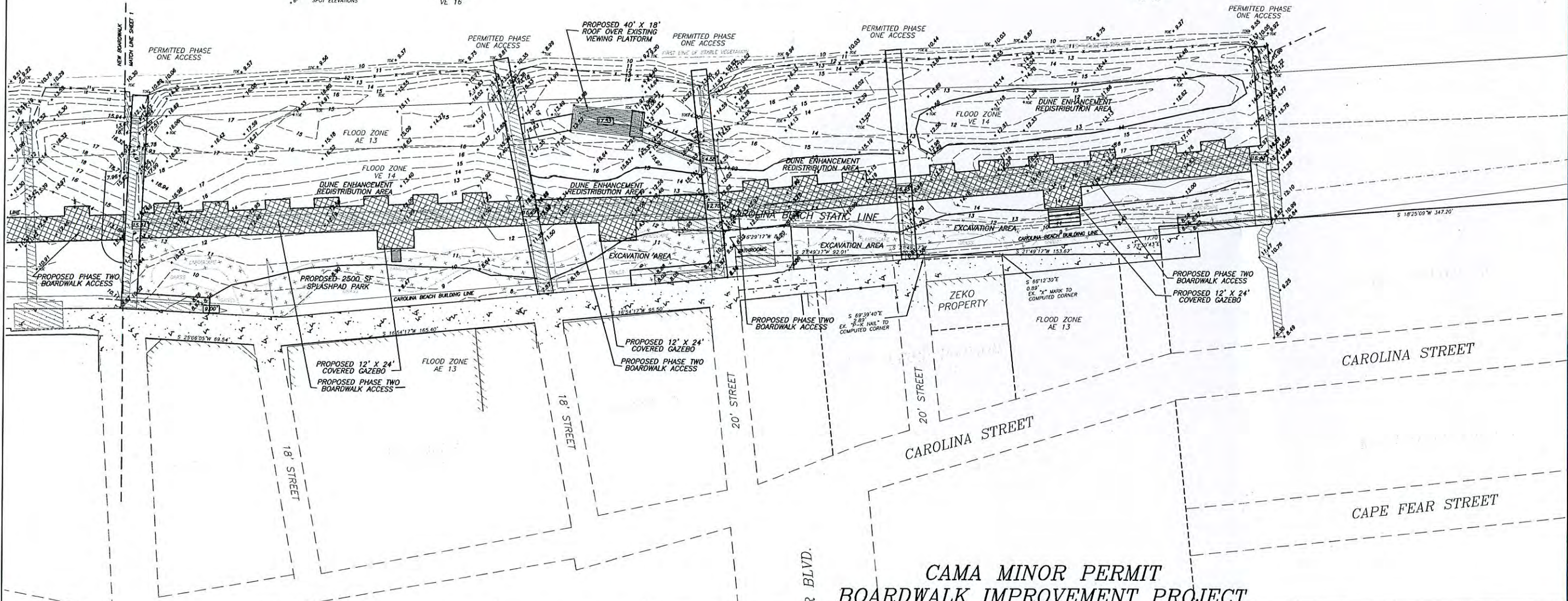
LEGEND:

- IRON PIPE (NEW OR EXISTING)
- IRON ROD (NEW OR EXISTING)
- CONTROL MONUMENT
- N.C.S. GRID MONUMENT
- P-K NAIL OR MAG NAIL
- OLD AXLE
- AREA LIGHT
- POWER POLE
- ELEC. OUTLET
- SPRIG
- PROPERTY LINE
- NON-SURVEYED LINE
- EASEMENT LINE
- FENCE LINE
- LANDSCAPED AREA WITH BUSHES
- ELEVATED WOOD WALK
- CONCRETE "BOARDWALK"
- WOOD WALK ELEVATION
- SPOT ELEVATIONS

ATLANTIC OCEAN



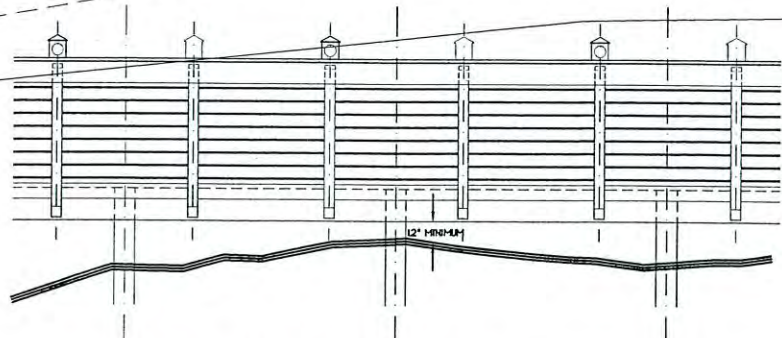
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**CAMA MINOR PERMIT
BOARDWALK IMPROVEMENT PROJECT
PHASE TWO
NOVEMBER 15, 2013**

RECEIVED
DCM WILMINGTON NC

NOV 18 2013



TYP. ELEVATION / SECTION
SCALE 1/2" = 1'-0"

CAMA MINOR PERMIT FOR BOARDWALK IMPROVEMENT PROJECT
PHASE TWO
TOWN OF CAROLINA BEACH

SHEET 1 OF 2
TOWN OF CAROLINA BEACH - FEDERAL POINT TOWNSHIP
NEW HANOVER COUNTY - NORTH CAROLINA
SCALE: 1" = 30' DATE: NOVEMBER 6, 2013

1 INCH = 30 FEET

reynolds architecture

ARCHITECTURE • PLANNING • INTERIOR DESIGN
P. O. BOX 2200
CAROLINA BEACH, N.C. 28428
910/547-3254

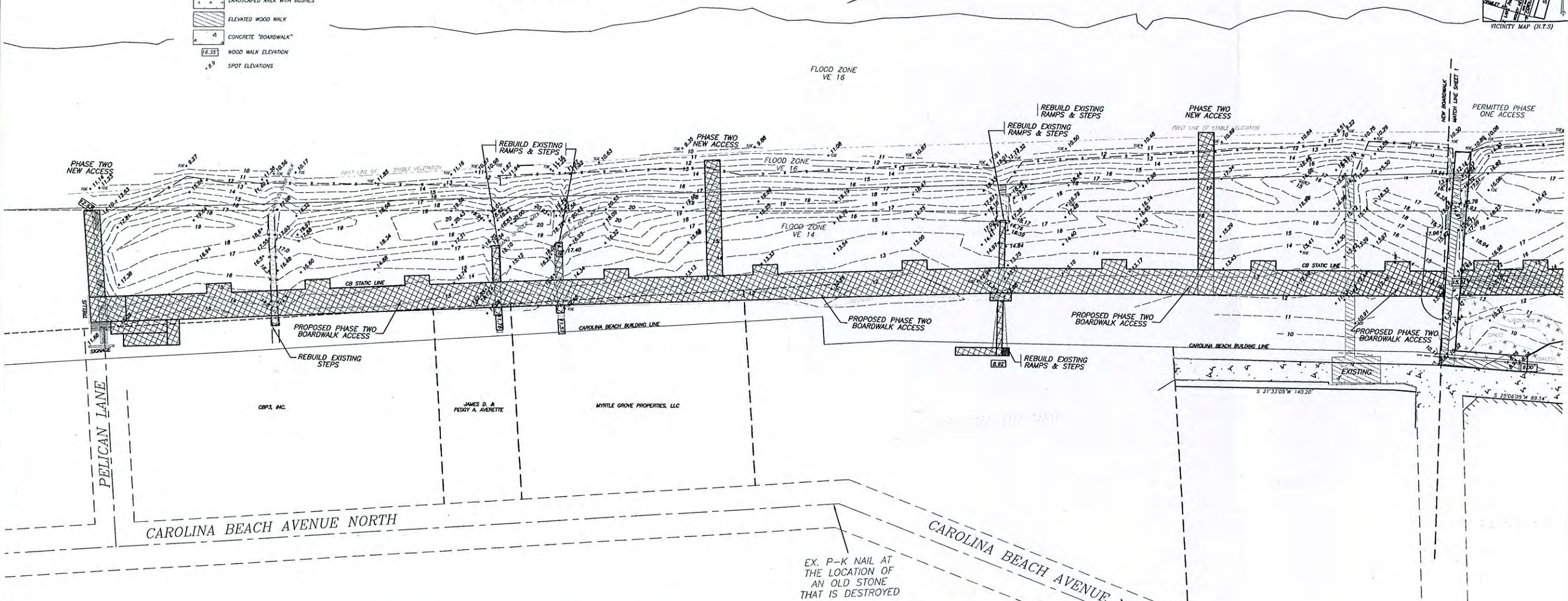
SURVEY REFERENCE:
MAP BOOK 2, PAGE 30

- NOTES:
1. FEMA FLOOD MAP INFORMATION:
MAP PANEL No.: 3720313003
FLOOD ZONES AND B.F.E.: AS NOTED
MAP PANEL DATE: APRIL 3, 2006
 2. CORNERS ARE MARKED AS NOTED ON MAP.
 3. ALL BEARINGS ARE (Type of north)
 4. ALL DISTANCES ARE HORIZONTAL FIELD MEASUREMENTS.
 5. AREA COMPUTED BY THE COORDINATE METHOD.
 6. THE FIRST LINE OF STABLE VEGETATION WAS TAKEN FROM 2012 AERIAL PHOTOGRAPHY FROM NCGE MAPS.
 7. ALL ELEVATIONS ARE NAVD 88 DATUM.

- LEGEND:
- IRON PIPE (NEW OR EXISTING)
 - IRON ROD (NEW OR EXISTING)
 - CONTROL MONUMENT
 - ⊕ NOISE GRID MOVEMENT
 - ⊙ P-K NAIL OR MAG NAIL
 - OLD NAIL
 - ⊙ AREA LIGHT
 - ⊙ POWER POLE
 - ⊙ ELEC. OUTLET
 - ⊙ SPIGOT
 - PROPERTY LINE
 - - - NON-SURVEYED LINE
 - - - EASEMENT LINE
 - - - FENCE LINE
 - ⊕ LANDSCAPED AREA WITH BUSHES
 - ▨ ELEVATED WOOD WALK
 - ▨ CONCRETE "BOARDWALK"
 - 16.35 WOOD WALK ELEVATION
 - 59 SPOT ELEVATIONS

ATLANTIC OCEAN

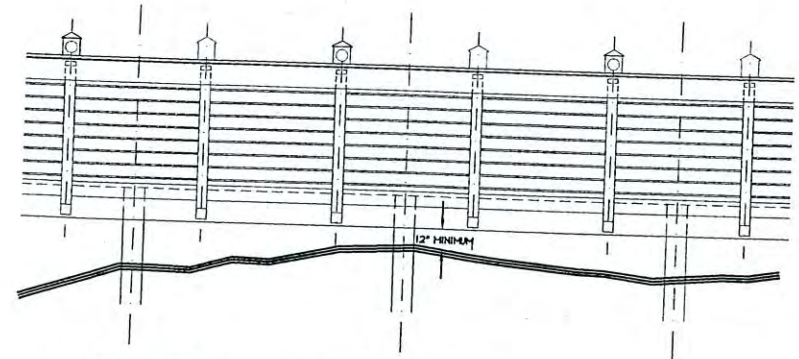
N. C. GRID NORTH - NAD 83/2007



EX. P-K NAIL AT THE LOCATION OF AN OLD STONE THAT IS DESTROYED

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**CAMA MINOR PERMIT
BOARDWALK IMPROVEMENT PROJECT
PHASE TWO
NOVEMBER 15, 2013**



TYP. ELEVATION / SECTION
SCALE: 1/2" = 1'-0"

FLOOD ZONE
AE 13

CAMA MINOR PERMIT FOR BOARDWALK IMPROVEMENT PROJECT
PHASE TWO
TOWN OF CAROLINA BEACH
OF THE BOARDWALK AREA
SHEET 2 OF 2
TOWN OF CAROLINA BEACH - FEDERAL POINT TOWNSHIP
NEW HANOVER COUNTY - NORTH CAROLINA
SCALE: 1" = 30'
DATE: NOVEMBER 6, 2013

1 INCH = 30 FEET

RECEIVED
DCM WILMINGTON, NC
NOV 18 2013

PRELIMINARY

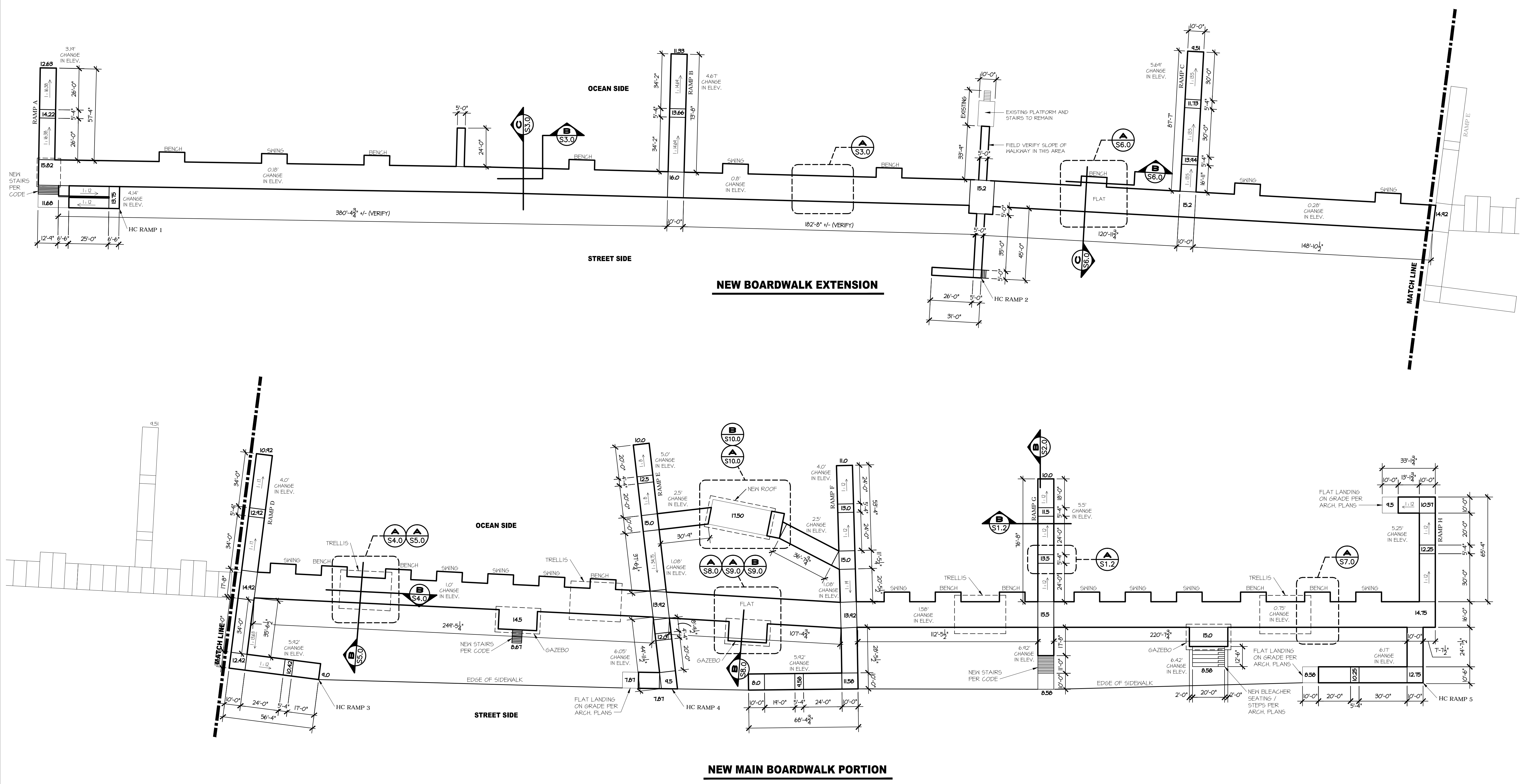
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|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | |
| Revision Date | |
| Int. | |

Boardwalk Improvement Project
Carolina Beach, North Carolina
Project No: 13177
Designed By: **M.B.P.**
Date: 12.20.13
P.R.B.

CHRISTOPHER A. HOLMES, P.E.
"Providing Structural Solutions"
5725 Oleander Drive (Oleander Oaks) - Suite F-4 - Wilmington - N.C. 28403
Phone (910) 796.9988 Fax (910) 796.9989 holmes@bizec-rt.com

Sheet: **S1.0**
of 12



SCHEMATIC BOARDWALK LAYOUT AND DETAIL KEY PLAN • SCALE: 1" = 30'

STRUCTURAL INFORMATION FOR APPENDIX B

STRUCTURAL ENGINEER: CHRISTOPHER A. HOLMES, P.E.
 LICENSE NUMBER: 16336

STRUCTURAL DESIGN

DESIGN LOADS:

IMPORTANCE FACTORS: Wind (lw) 1.0
 Snow (ls) 1.0
 Seismic (le) 1.0

LIVE LOADS: Roof 20 psf
 Floor 100 psf

GROUND SNOW LOAD: 10 psf

WIND LOAD: Basic Wind Speed 130 mph (ASCE-7)
 Exposure Category C
 Wind Base Shears (for MRFs) $V_x = 0.7K$ $V_y = .65OK$

SEISMIC DESIGN CATEGORY: A B C D

Provide the following Seismic Design Parameters:
 OCCUPANCY CATEGORY (TABLE 1604.5) I II III IV
 SPECTRAL RESPONSE ACCELERATION $S_s = 0.223$ $S_1 = 0.3$ $S_2 = 0.3$
 SITE CLASSIFICATION I II III IV V VI VII VIII IX X
 BASIC STRUCTURAL SYSTEM (check one)
 Bearing Wall Dual w/ Special Moment Frame
 Building Frame Dual w/ Intermediate R/C or Special Steel
 Moment Frame Inverted Pendulum

SEISMIC BASE SHEAR: $V_x = 12k$ $V_y = 12k$
ANALYSIS PROCEDURE: Simplified Equivalent Lateral Force Modal
ARCHITECTURAL, MECHANICAL, COMPONENTS ANCHORED? AS REQUIRED BY ASCE 7, CHAPTER 13

LATERAL DESIGN CONTROL: Earthquake Wind

SOIL BEARING CAPACITY:
 Field Test (provide copy of test report) N/A psf
 Presumptive Bearing Capacity 1500 psf
 Pile size, type, and capacity 8" BUTT ROUND PILES, P.T. 8x8, 16'-0" EMBEDMENT

DESIGN CRITERIA NOT INCLUDED IN APPENDIX B

WIND: Internal Pressure Coefficients: +/- 0.18
 Components and Cladding Pressures as listed on Quality Assurance Plan

SEISMIC: $S_D = 0.233$ $S_1 = 0.148$
 Response Modification Factor, $R = 1.0$
 Seismic Response Coefficient $C_s = 0.034$

FLOOD: VE 14

GENERAL NOTES:

- DESIGN AND CONSTRUCTION SHALL CONFORM TO THE REQUIREMENTS OF THE NORTH CAROLINA BUILDING CODE.
- REFER TO PROJECT SPECIFICATIONS FOR ADDITIONAL REQUIREMENTS AND INFORMATION WHEN APPLICABLE.
- STRUCTURAL DRAWINGS SHALL BE USED IN CONJUNCTION AND COORDINATED WITH ARCHITECTURAL, MECHANICAL, ELECTRICAL, CIVIL, AND OTHER DOCUMENTS.
- STRUCTURAL FRAME TO BE BRACED UNTIL ERECTION IS COMPLETE.

PILE FOUNDATION NOTES FOR COMMERCIAL STRUCTURE:

- ALL TIMBER PILE CONSTRUCTION SHALL COMPLY WITH NORTH CAROLINA BUILDING CODE, SECTIONS 1809 AND 1802.
- DRIVE ALL P.T. 8x8 PILES TO CAPACITY NOTED ON PLAN USING AN APPROVED DROP HAMMER AS PER SECTION 1809.2.2.2 IN THE NORTH CAROLINA BUILDING CODE.
- ALL TIMBER PILES TO BE SOUTHERN YELLOW PINE AND PRESURE TREATED WITH CHROMIATED COPPER ARSENATE TO 0.80 LBS/CF NET RETENTION - EQUAL ALTERNATIVE PRESERVATIVES ARE ALLOWED. (AWPA C3 FOR ROUND PILES OR ANPA C24 FOR SAWN TIMBER PILES) PILE CUTOFFS SHALL BE TREATED IN ACCORDANCE WITH ANPA M4.
- MINIMUM PENETRATION SHALL BE 5'-0" BELOW M.S.L. FOR 8x8 PILES. CONTRACTOR TO VERIFY THAT PILE DEPTH MEETS REQUIREMENTS OF SECTION 1624 OF THE NORTH CAROLINA BUILDING CODE, ASCE-24, AND NOTE #1.
- PILES SHALL MEET ANPA STANDARD C1, C2, 4, C24 FOR SAWN TIMBER PILES.
- PROVIDE "SIMPSON" PS410 TIE PLATES ON EACH SIDE OF PILE WHEN MORE THAN 50% OF PILE IS NOTCHED.
- CONC. COLLAR AND SLAB DESIGN BASED ON ALLOWABLE SOIL PRESSURES OF 1500 PSF (FIELD VERIFY SOIL CONDITIONS PRIOR TO CONSTRUCTION).
- WHEN BOTTOM OF CONC. COLLAR IS AT OR BELOW WATER TABLE, PROPERLY Dewater EXCAVATION PRIOR TO POURING CONCRETE.
- WHEN HEIGHT OF GRADER IS GREATER THAN 6'-0" ABOVE GRADE OR CONCRETE SLAB, NOTIFY ENGINEER FOR ADDITIONAL X-BRACE REQUIREMENTS.
- WHEN APPLICABLE, REMOVE ALL TOPSOIL, ORGANICS, AND SOFT CLAY IN AREAS WHERE FLOOR SLABS, AND FOOTING ARE TO OCCUR AND ALSO 5'-0" BEYOND EACH SIDE OF BUILDING FOOTPRINT.
- PROOF ROLL EXPOSED SUBGRADE WITH A 3 TON VIBRATORY ROLLER MAKING 3 PASSES IN EACH DIRECTION.
- BACK FILL WITH CLEAN SELECTED FILL COMPACTED IN 6" LAYERS TO 98% OF MAXIMUM DENSITY AT OPT. MOISTURE CONTENT (ASTM D-698).
- WHEN THE SPECIFICATIONS OF NOTE 10 ARE NOT REQUIRED, AND THE SLAB OR FOOTING IS BEING BUILT ON EXISTING CLEAN SAND, THE EXISTING SAND SHOULD BE GRADED AS REQUIRED AND COMPACTED TO ACHIEVE 98% MAXIMUM DENSITY AT OPTIMAL MOISTURE CONTENT (ASTM D-698).
- WHEN THE CODE PERMITS, THE 6 MIL. POLY VAPOR BARRIER MAY BE OMITTED.

STRUCTURAL TIMBER NOTES:

- LUMBER SHALL BE AS FOLLOWS: #2 KD SOUTHERN YELLOW PINE (OR BETTER) FOR ALL STRUCTURAL MEMBERS.
- ALL NAIL SIZES AND NUMBER OF NAILS REQUIRED MAY NOT BE SHOWN. SUFFICIENT NAILING SHALL BE REQUIRED TO DEVELOP JOINT STRENGTH.
- ALL HARDWARE IN COASTAL REGIONS SHALL BE HOT-DIPPED GALVANIZED IN ACCORDANCE WITH ASTM A153 AS APPLICABLE (OR STAINLESS STEEL).
- LUMBER LESS THAN 10" ABOVE GROUND AND LUMBER EXPOSED TO WEATHER SHALL BE PRESURE TREATED CCA OR ACQ 0.25 LBS/CF NET RETENTION (LUMBER IN CONTACT WITH GRADE SHALL BE PRESURE TREATED CCA OR ACQ 0.4 LBS/CF NET RETENTION).
- USE ASTM A307 BOLTS WITH NUTS AND WASHERS FOR ALL BOLTED CONNECTIONS.

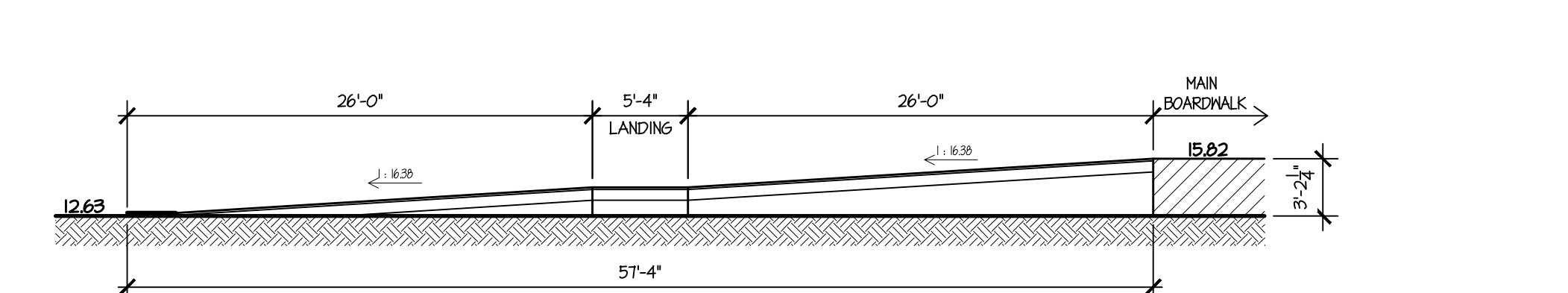
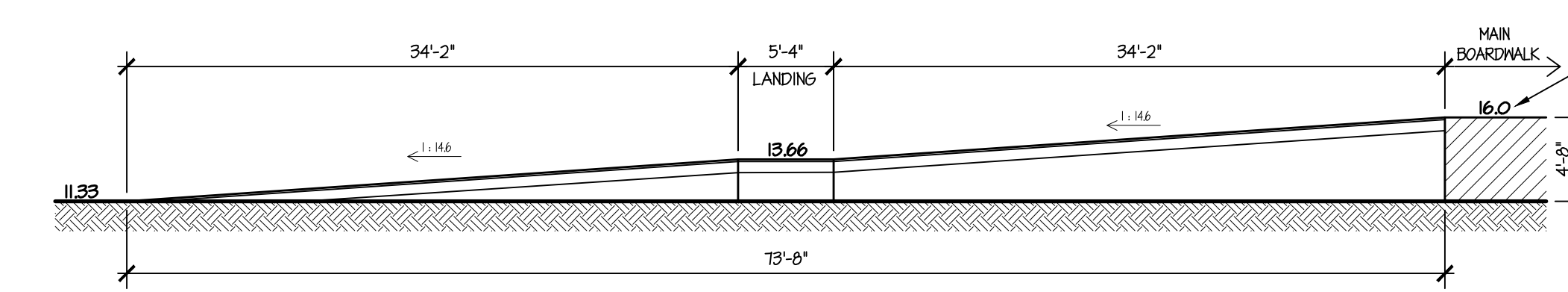
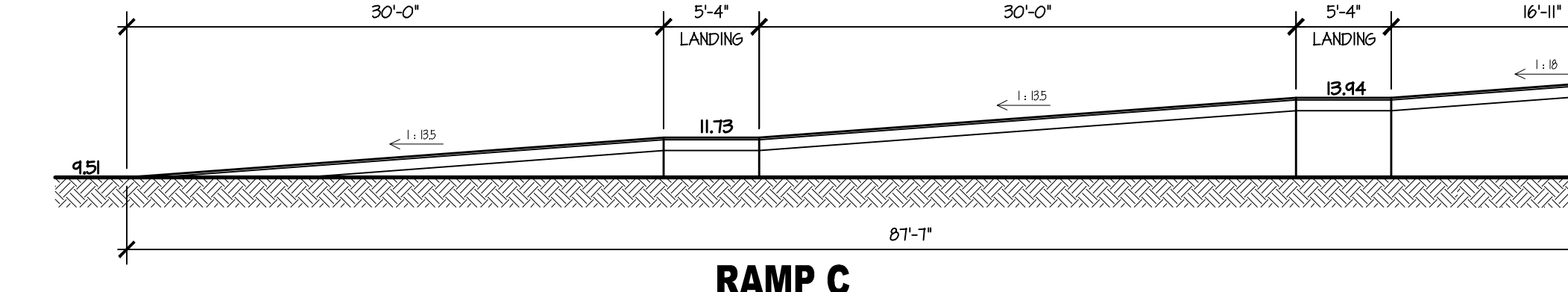
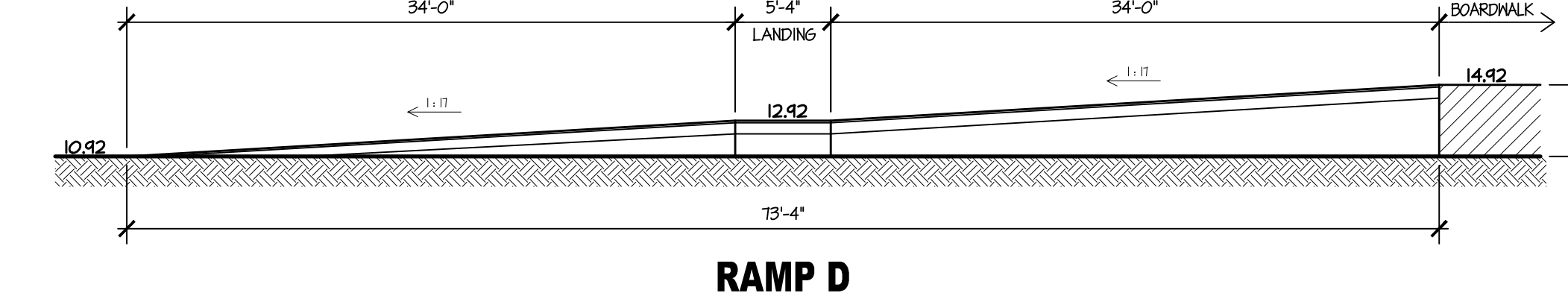
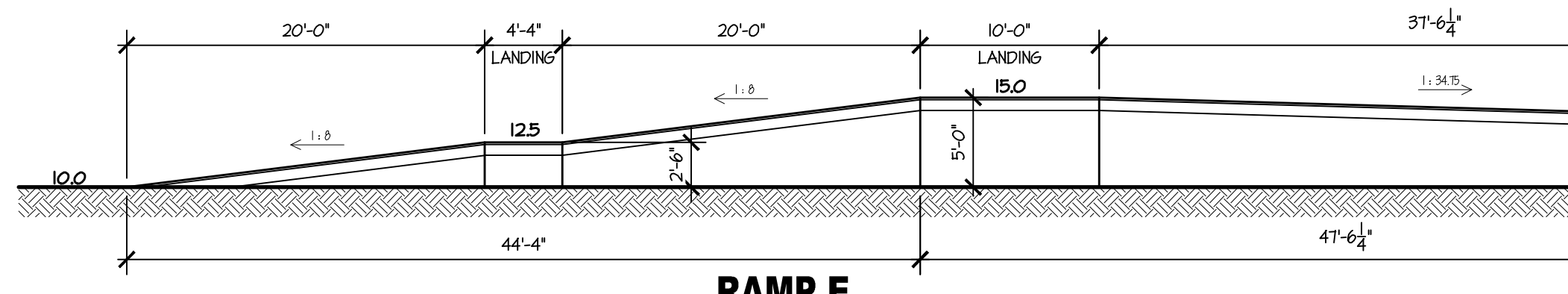
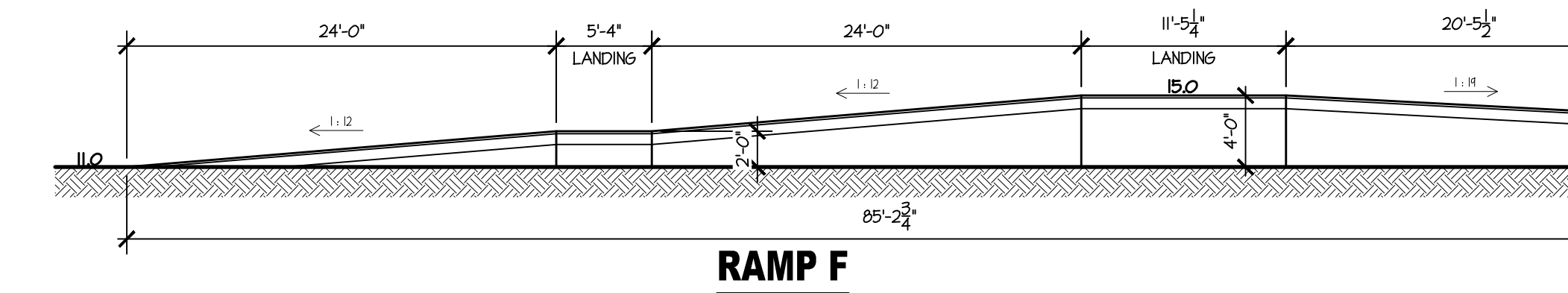
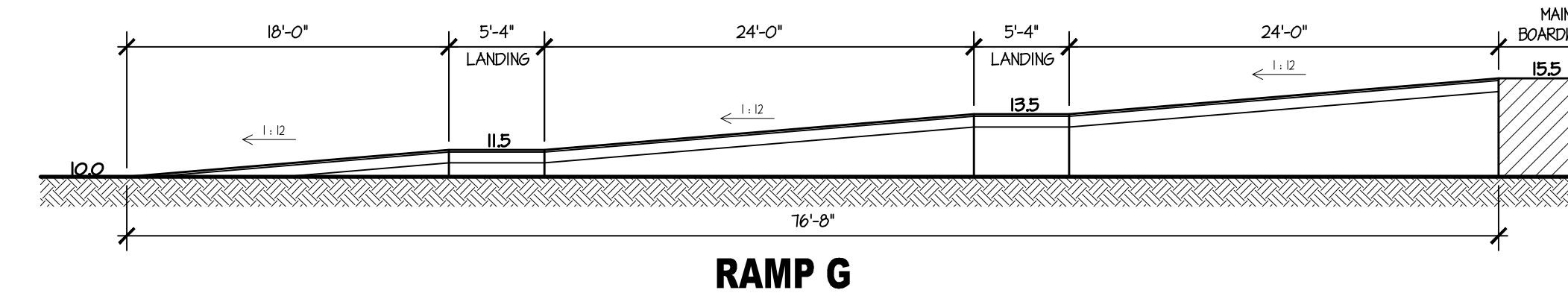
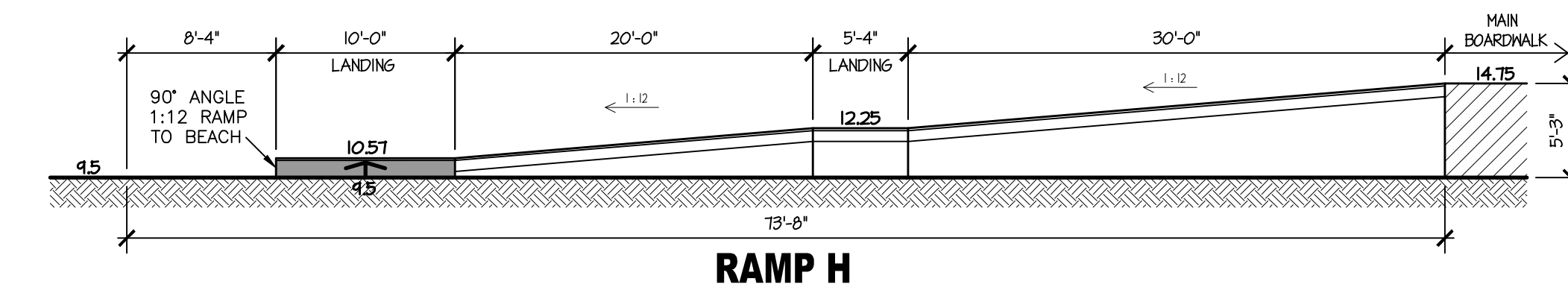
STRUCTURAL STEEL NOTES:

- H.S.S. = HOLLOW STRUCTURAL SECTION
- STRUCTURAL STEEL ANGLES, "M" SECTIONS, "S" SECTIONS, CHANNELS, AND PLATES = ASTM A36
 STRUCTURAL STEEL "HP" SECTIONS = ASTM A572, GRADE 50
 STRUCTURAL STEEL "WT" SECTIONS = ASTM A992
 ALL "TEE" SECTIONS USE SAME MATERIAL AS THEIR ROOT SHAPE
 H.S.S. (TUBE STEEL) RECTANGULAR AND ROUND = ASTM A500, GRADE B
 STEEL PIPE = ASTM A53, GRADE B
- DESIGN ALL CONNECTIONS FOR FULL STRENGTH OF MEMBERS.
 ALL BOLTS TO BE 3/4" DIA. H.S. ASTM A325 (MIN) UNQ. WELDING ELECTRODES TO BE E70 SERIES.
- ALL WELDS TO BE MADE BY A CERTIFIED WELDER OF A6S FOR TYPE OF WELD WHICH IS REQUIRED.

EPOXY GROUTED ANCHOR NOTES:

- THE EPOXY GROUT ADHESIVE MUST BE AS FOLLOWS:
 - SOLID OR FILLED MASONRY & CONCRETE
 - "HILTI" HY-200 ADHESIVE ANCHOR SYSTEM OR "HILTI" HIT HY 200 INJECTION ADHESIVE ANCHOR SYSTEM
 - "SIMPSON" SET-XP HIGH STRENGTH EPOXY
 - EQUIVALENT OR BETTER PRODUCT
- HOLLOW MASONRY:
 - "HILTI" HY-200 ADHESIVE ANCHOR SYSTEM WITH HIT SCREEN TUBE AND DISPENSER
 - EQUIVALENT OR BETTER PRODUCT
 - ONLY BOLT TO HOLLOW MASONRY WHEN SPECIFIED ON DRAWINGS.
- HOLES MUST BE DRILLED AND CLEANED PER EPOXY MANUFACTURER'S RECOMMENDATIONS. HOLES MUST BE BLOWN AND BRUSHED CLEAN. FAILURE TO PROPERLY CLEAN THE HOLES WILL COMPROMISE THE CAPACITY OF THE ANCHOR. (HIT-2 ANCHOR RODS OR TE-CD / TE-YD HOLLOW DRILL BITS MAY BE USED TO AVOID THE CLEANING PROCESS - REFER TO HILTI SPECS FOR MORE INFO.)
- THREADED RODS AND ANCHOR BOLTS MUST BE A36 STEEL OR BETTER. REBAR MUST BE ASTM A615 GRADE 60 STEEL OR BETTER.
- ALLOW PROPER SETTING AND CURING TIMES FOR THE EPOXY. THE EPOXY MANUFACTURER CAN SUPPLY GUIDELINES OR CONTACT OUR OFFICE.
- THE MINIMUM EMBEDMENT DEPTH FOR EPOXY GROUTED ANCHORS IN SOLID MATERIAL IS 6" UNQ.

ENGINEER RESPONSIBLE FOR ALL STRUCTURAL COMPONENTS ON THIS DRAWING. ALL DIMENSIONS AND DETAILS MAY NOT BE SHOWN AND ARE THE RESPONSIBILITY OF THE DESIGNER AND CONTRACTOR. CONTRACTOR IS TO VERIFY WITH ENGINEER ANY ADDITIONAL DETAILS REQUIRED FOR CONSTRUCTION.



NUMBER REPRESENTS PROPOSED HEIGHTS AT TOP AND BOTTOM OF EACH RAMP. ACTUAL HEIGHTS MAY VARY, AND CONTRACTOR MUST ADJUST RAMP PITCH OR LENGTH AS REQUIRED FOR HEIGHT CHANGE. PITCH MUST NOT EXCEED 1:12 AT ACCESSIBLE RAMPS AND 1:8 AT ALL OTHER RAMPS. (A LANDING MUST BE PROVIDED FOR EVERY 30' OF VERTICAL HEIGHT CHANGE PER CODE.)

GRADE NOTE:
 THE GRADE LINE SHOWN ON THESE SCHEMATIC SECTIONS DOES NOT REPRESENT THE ACTUAL TOPOGRAPHY OF THE SITE (REFER TO CIVIL DRAWINGS)

NOTE:
 THESE SCHEMATICS ARE GENERAL IN NATURE AND DO NOT SHOW FRAMING MEMBERS AND CONNECTIONS. SEE STRUCTURAL DETAILS FOR MORE INFORMATION. THESE SCHEMATICS ARE MEANT TO CONVEY HEIGHT CHANGE FROM BASE OF RAMP TO BOARDWALK AND APPROXIMATE LANDING LOCATIONS ONLY. ALL HEIGHTS MUST BE VERIFIED WITH ARCHITECT AND CHECKED BY THE CONTRACTOR IN THE FIELD.

S1.1 SCHEMATIC BEACH ACCESS RAMP CROSS-SECTIONS
 SCALE: 1/8"=1'-0"

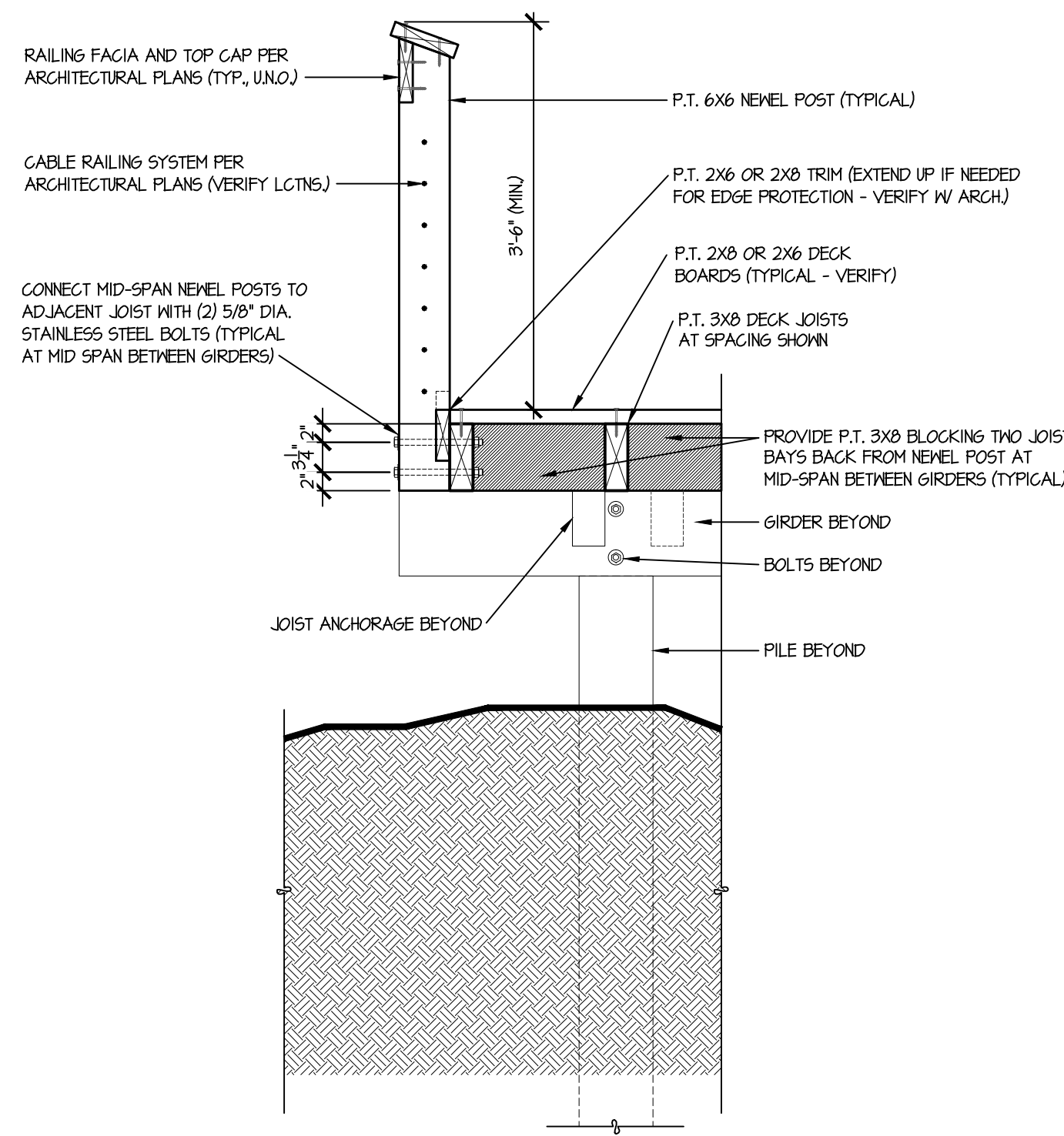
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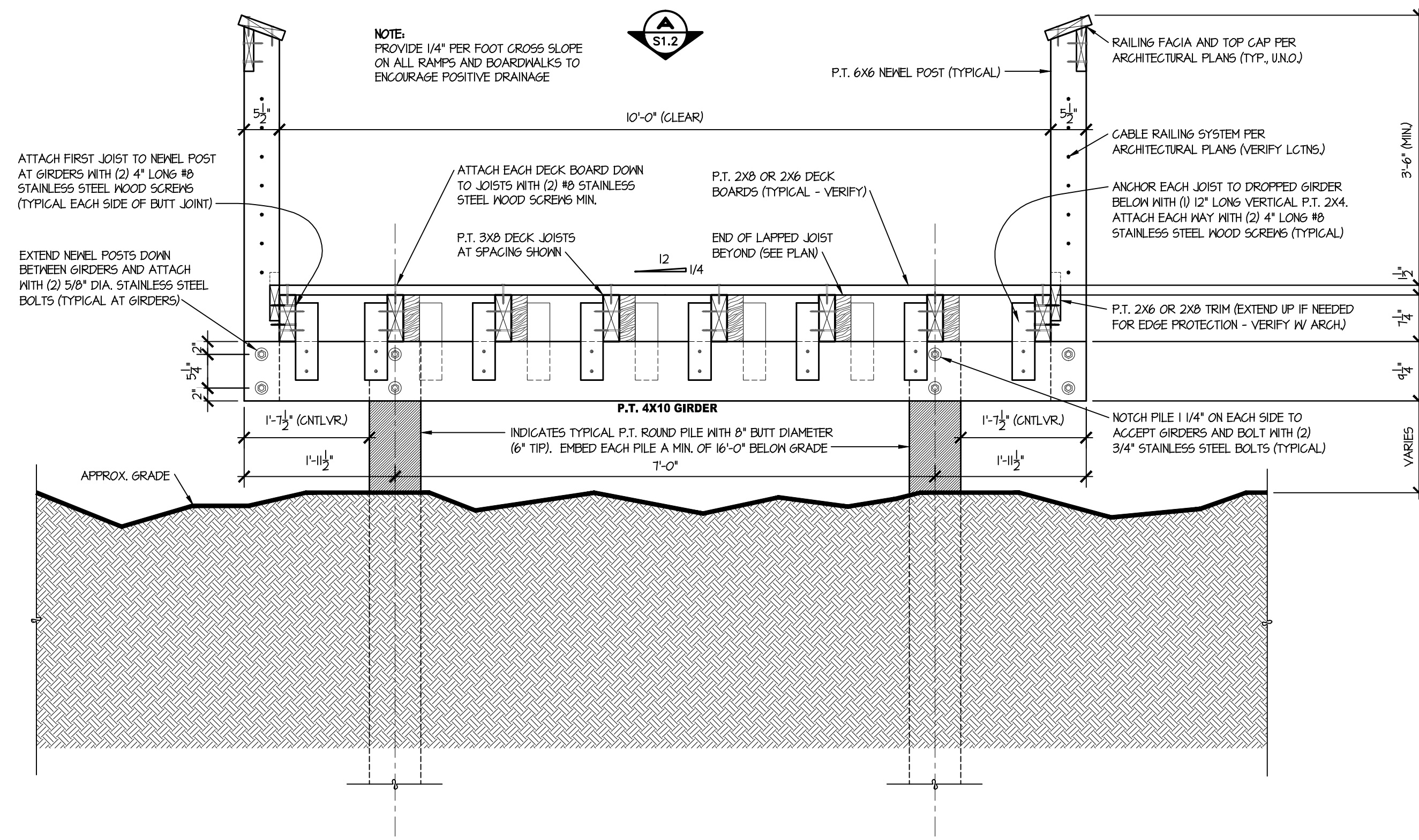
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|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | |
| Revision Date | |
| By | |
| Checked | |
| Approved | |

Boardwalk Improvement Project
 Carolina Beach, North Carolina
 Project No. 13177
 Schematic layout Plan & Notes
 Project Name: Boardwalk Improvement Project
 Project No.: 13177
 Date: 12.20.13
 Drawn By: P.R.B.
 Designed By: M.B.P.

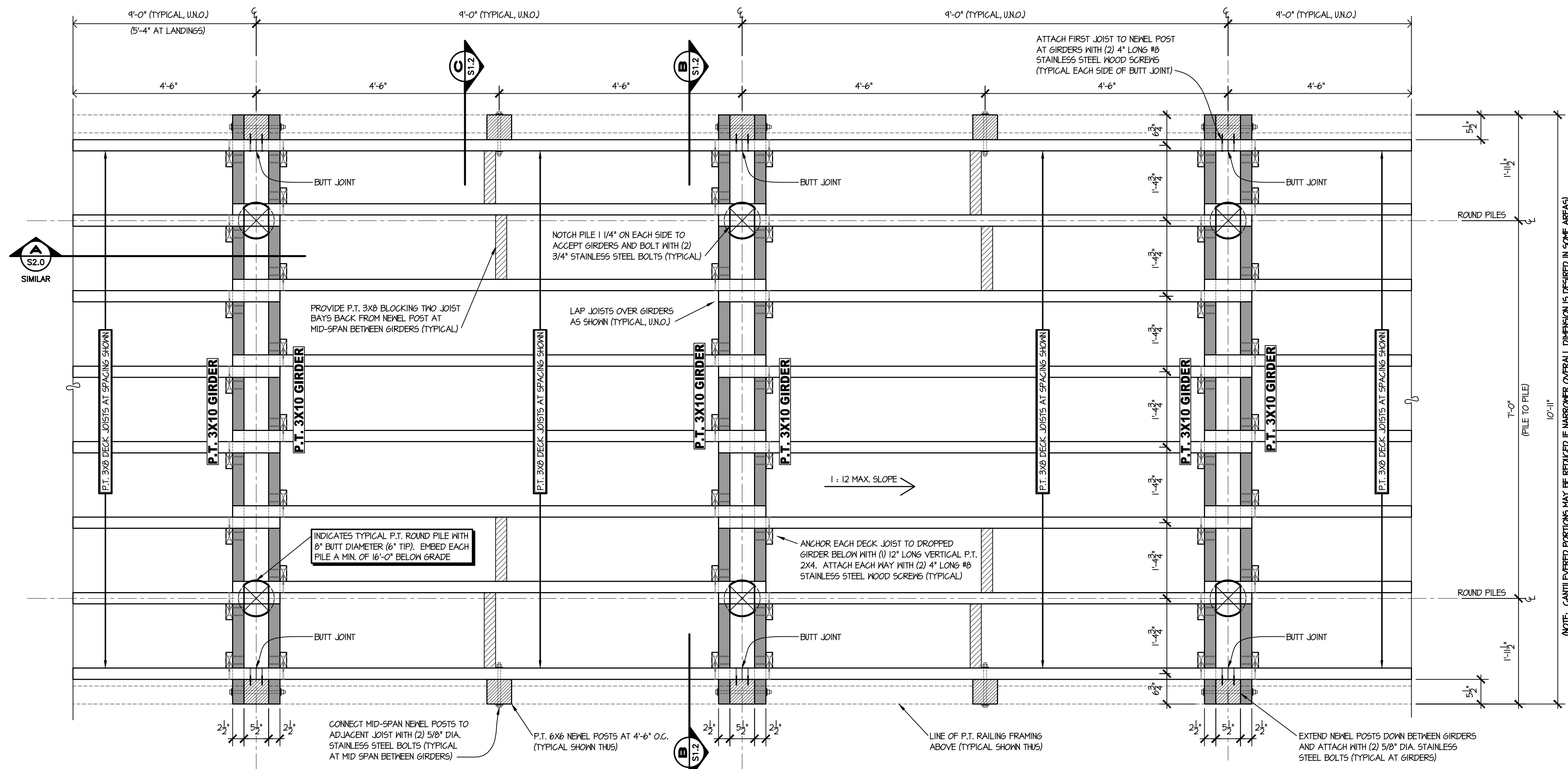
CHRISTOPHER A. HOLMES, P.E.
"Providing Structural Solutions"
 5725 Oleander Drive (Oleander Oaks) - Suite F-4 - Wilmington - N.C. 28403
 Phone (910) 796.9988 Fax (910) 796.9989 holmes@bizec-rr.com



C NENE POST TO JOIST ATTACHMENT (MID-SPAN)
S1.2 SCALE: 3/4"=1'-0"



B TYPICAL BEACH CROSS-OVER SECTION
S1.2 SCALE: 3/4"=1'-0"



A TYPICAL BEACH CROSS-OVER FRAMING PLAN BLOWUP
S1.2 SCALE: 3/4"=1'-0"

NOTE: PROVIDE 1/4" PER FOOT CROSS SLOPE ON ALL RAMPS AND BOARDWALKS TO ENCOURAGE POSITIVE DRAINAGE

IMPORTANT NOTE: PER N.C.B.C., A 60" WIDE (MIN) LEVEL LANDING MUST BE PROVIDED FOR EVERY 30' OF VERTICAL RISE OF RAMP (TYPICAL AT ALL SLOPING RAMP PORTIONS) CONTRACTOR TO FIELD VERIFY LOCATIONS OF ALL LANDINGS PRIOR TO CONSTRUCTION BASED ON ACTUAL TOPOGRAPHY OF SITE.

CORROSION PROTECTION OPTION: STAINLESS STEEL HARDWARE HAS BEEN CALLED OUT FOR THIS PROJECT FOR MAXIMUM LONGEVITY. HOT-DIP GALVANIZED HARDWARE MAY BE USED IF DESIRED TO REDUCE COST WITH PERMISSION OF ARCHITECT AND TOWN OFFICIALS. VERIFY PRIOR TO ORDERING MATERIALS.

PRELIMINARY

FOR REVIEW

| | |
|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | |
| Revision Date | |
| Revised By | |

Project Name: **Boardwalk Improvement Project**
 Carolina Beach, North Carolina
 Project Description: **Structural Framing Plans & Details**
 Project No: **13177**
 Drawn By: **P.R.B.** Date: **12.20.13**
 Designed By: **M.B.P.**

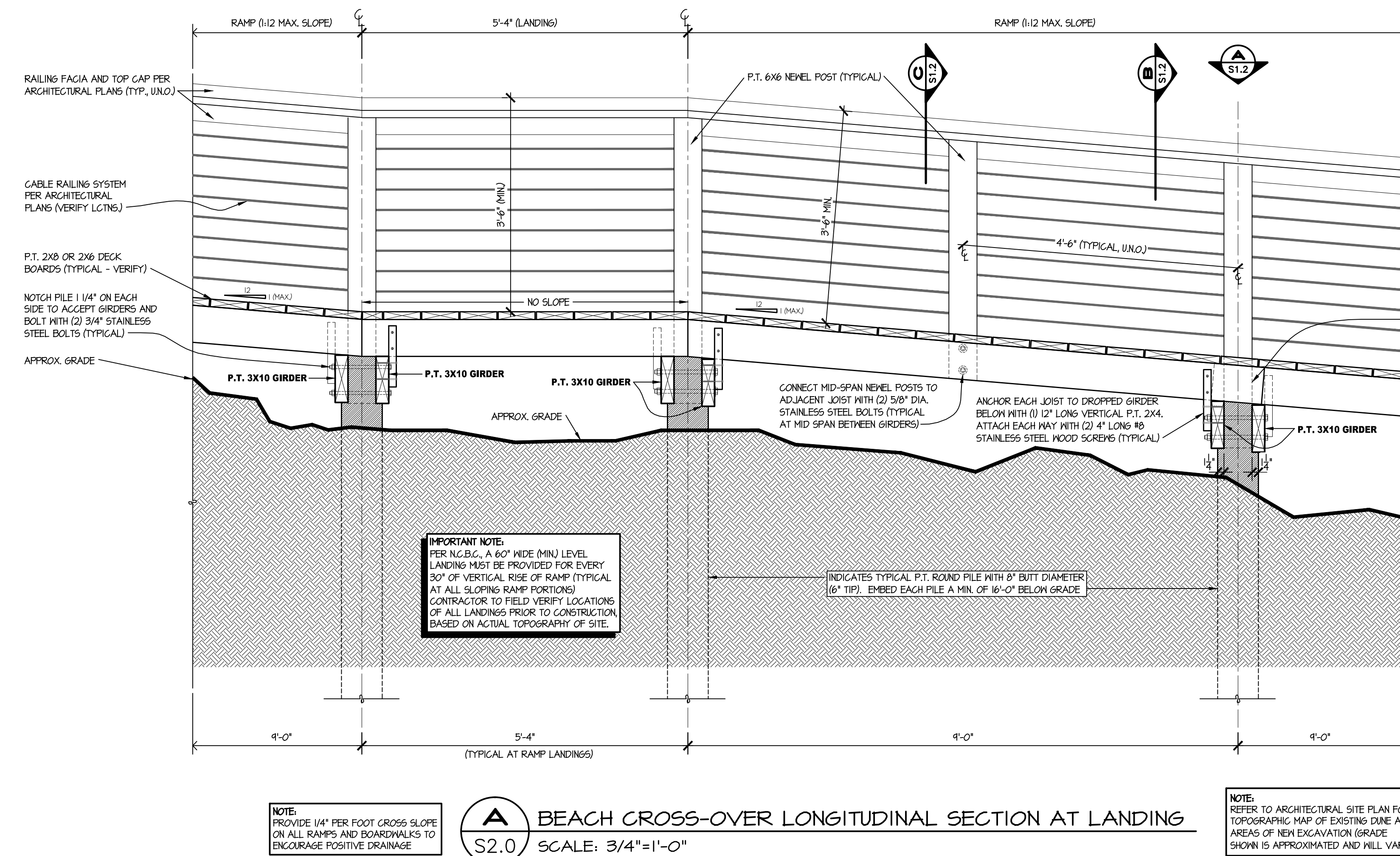
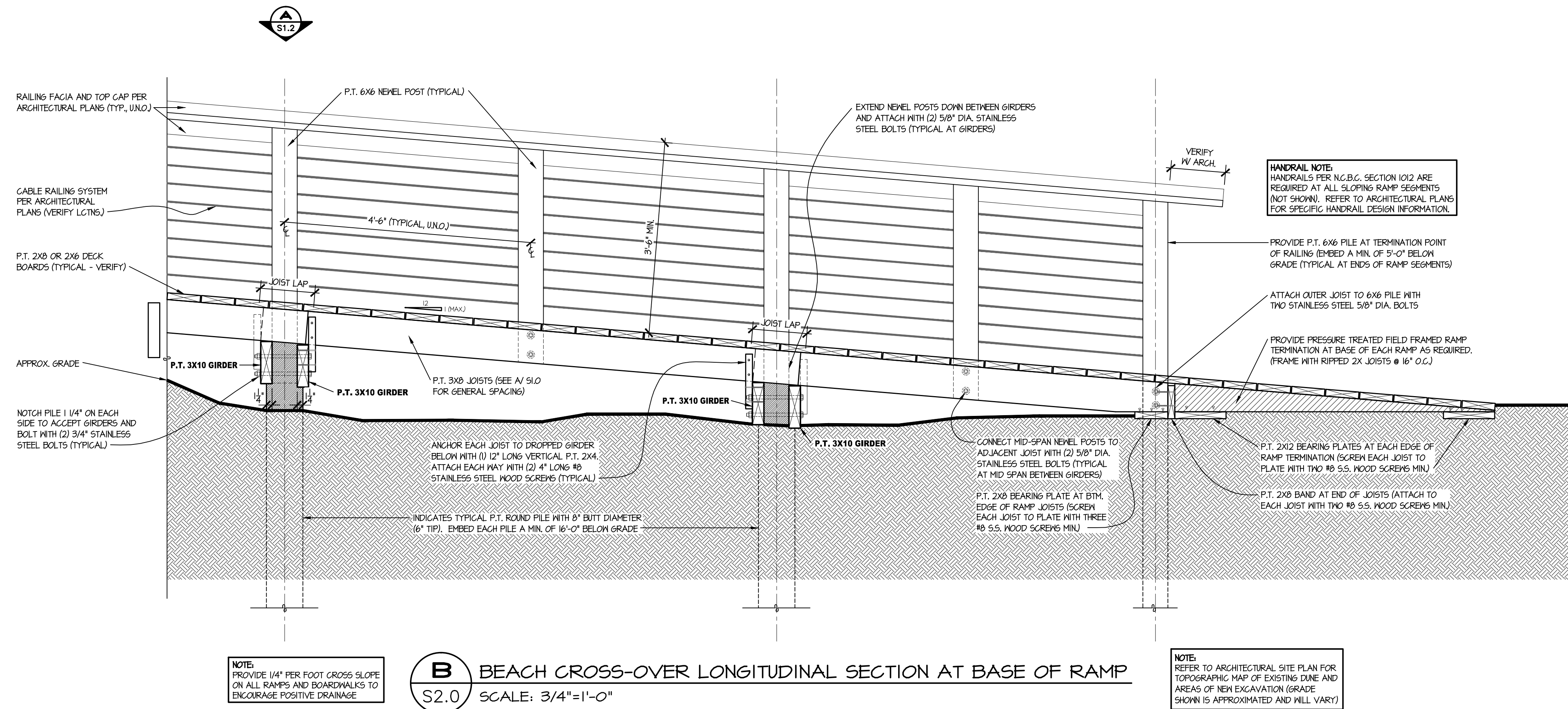
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| Revised By: | |
| No. | |
| Rev. | |
| Rev. | |
| Rev. | |
| Rev. | |

Project Name: **Boardwalk Improvement Project**
Carolina Beach, North Carolina
Project No: **13177**
Project Description: **Structural Framing Plans & Details**
Drawn By: **P.R.B.** Date: **12.20.13**
Designed By: **M.B.P.**



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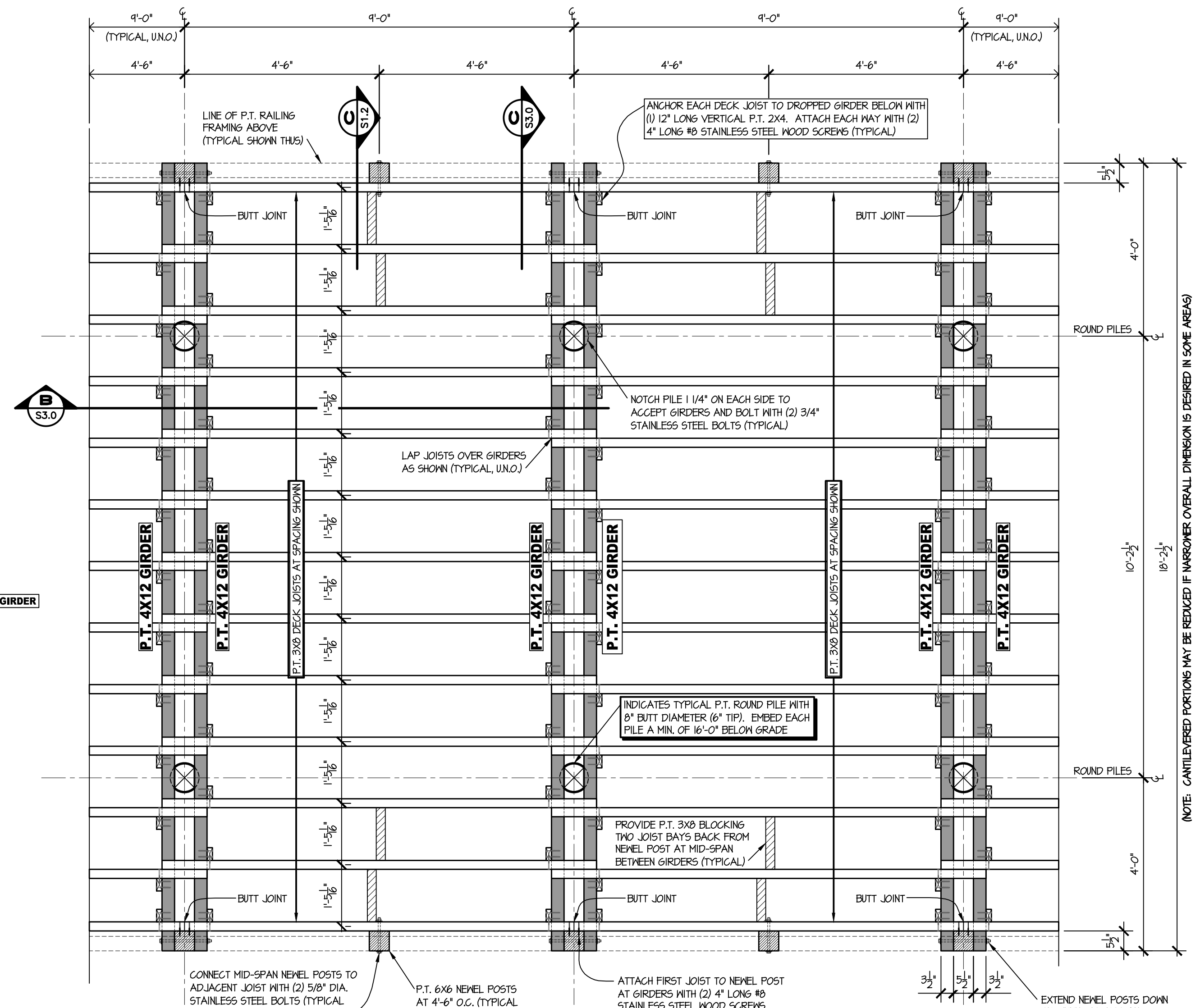
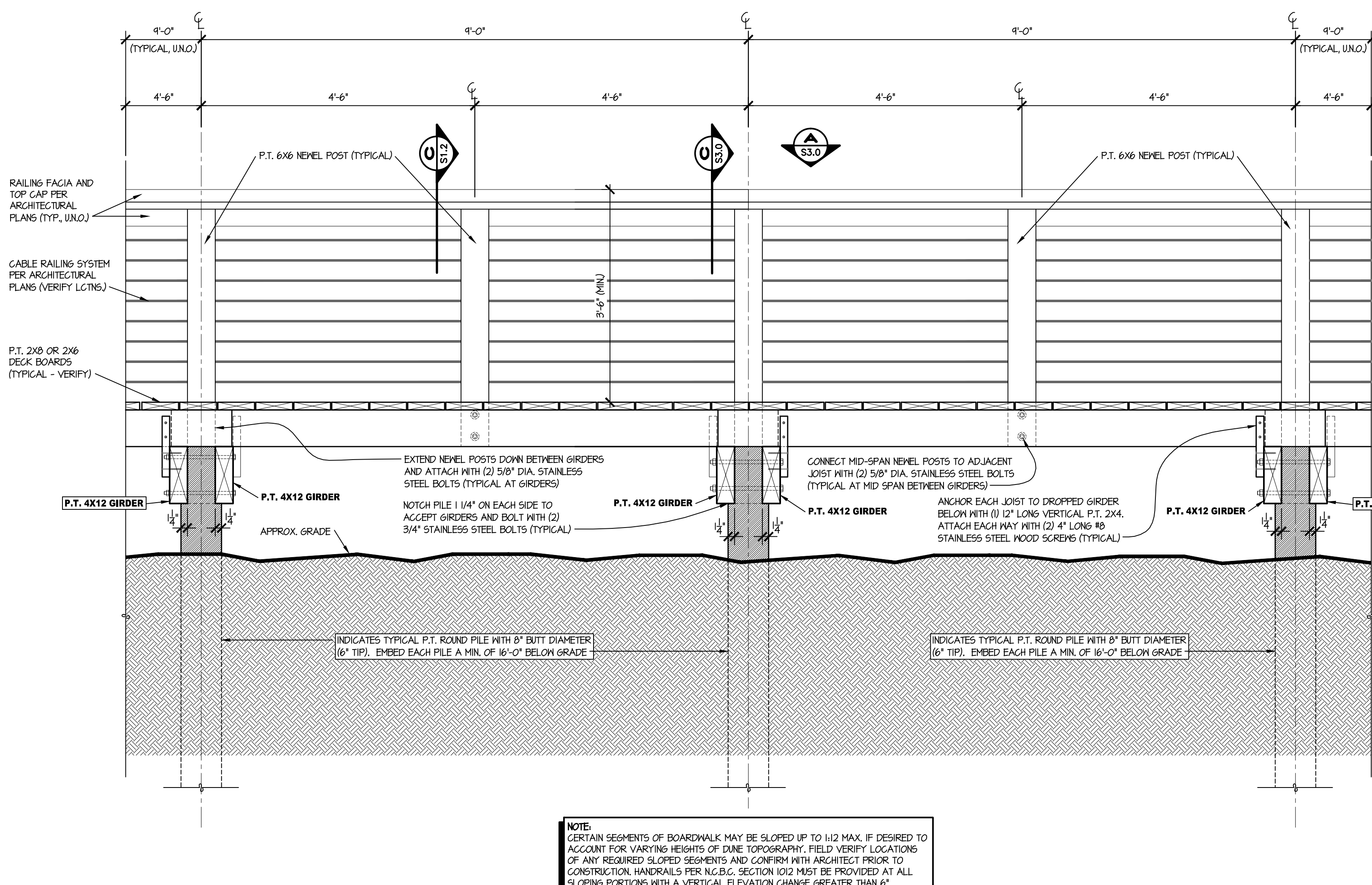
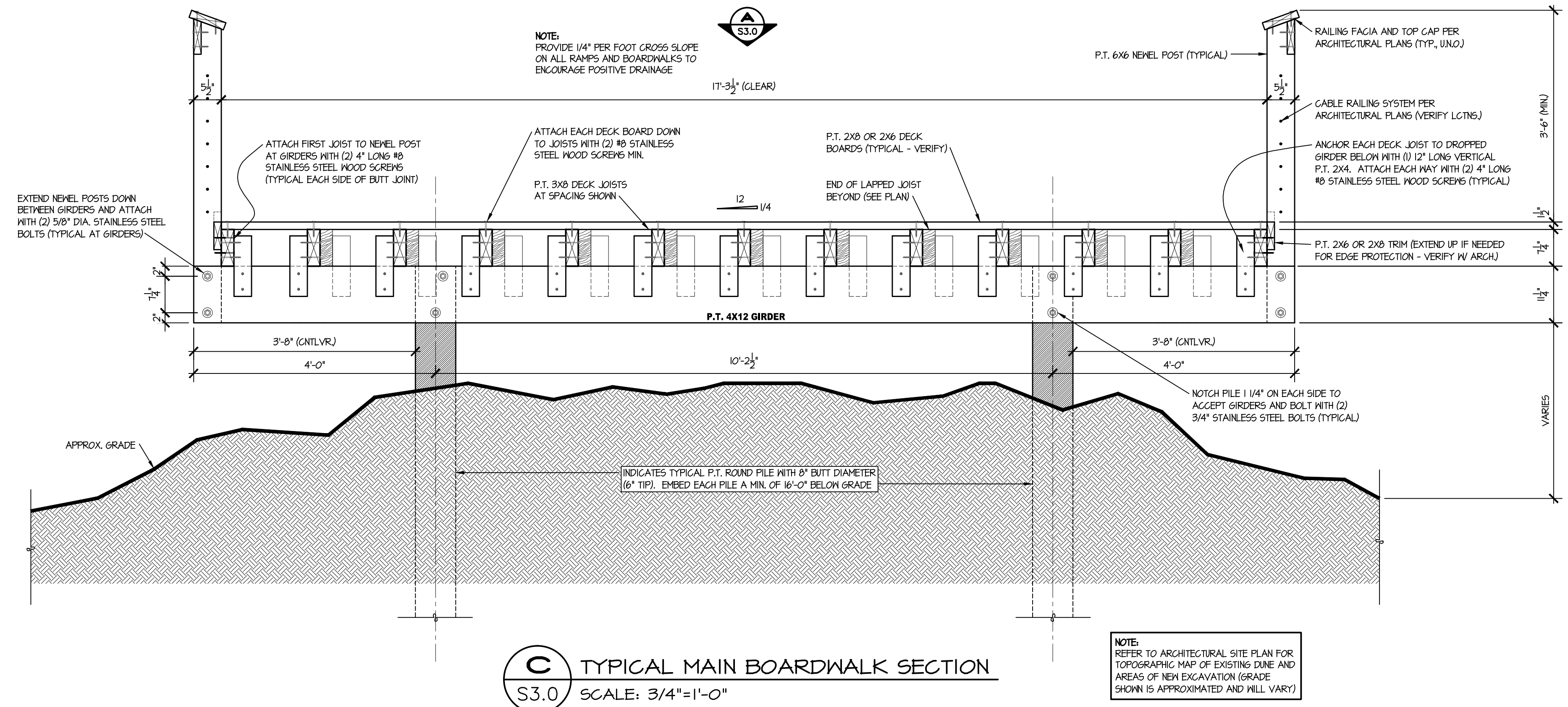
FOR REVIEW

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|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | 001 |
| Revision Date | |
| Revised By | |

Boardwalk Improvement Project
 Carolina Beach, North Carolina
 Project No. 13177
 Structural Framing Plans & Details
 Date: 12.20.13
 Designed By: M.B.P.
 Drawn By: P.R.B.

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Sheet: **S3.0**
 of 12



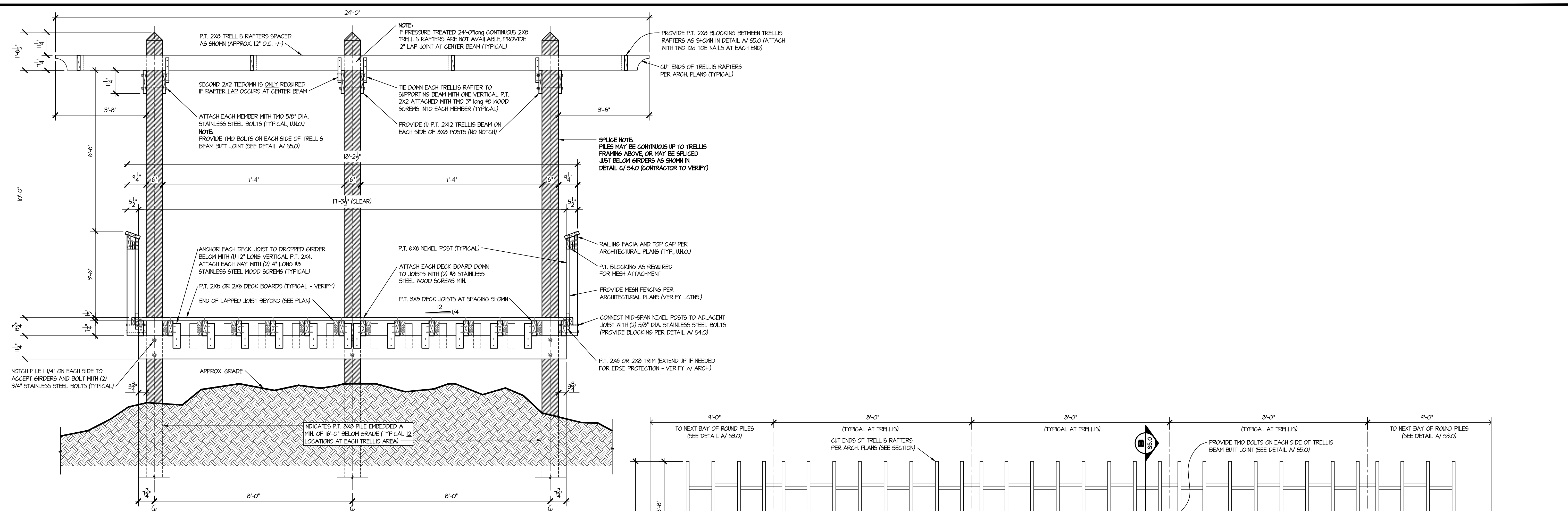
NOTE: PROVIDE 1/4" PER FOOT CROSS SLOPE ON ALL RAMP AND BOARDWALKS TO ENCOURAGE POSITIVE DRAINAGE.

B TYPICAL MAIN BOARDWALK LONGITUDINAL SECTION
 S3.0 SCALE: 3/4"=1'-0"

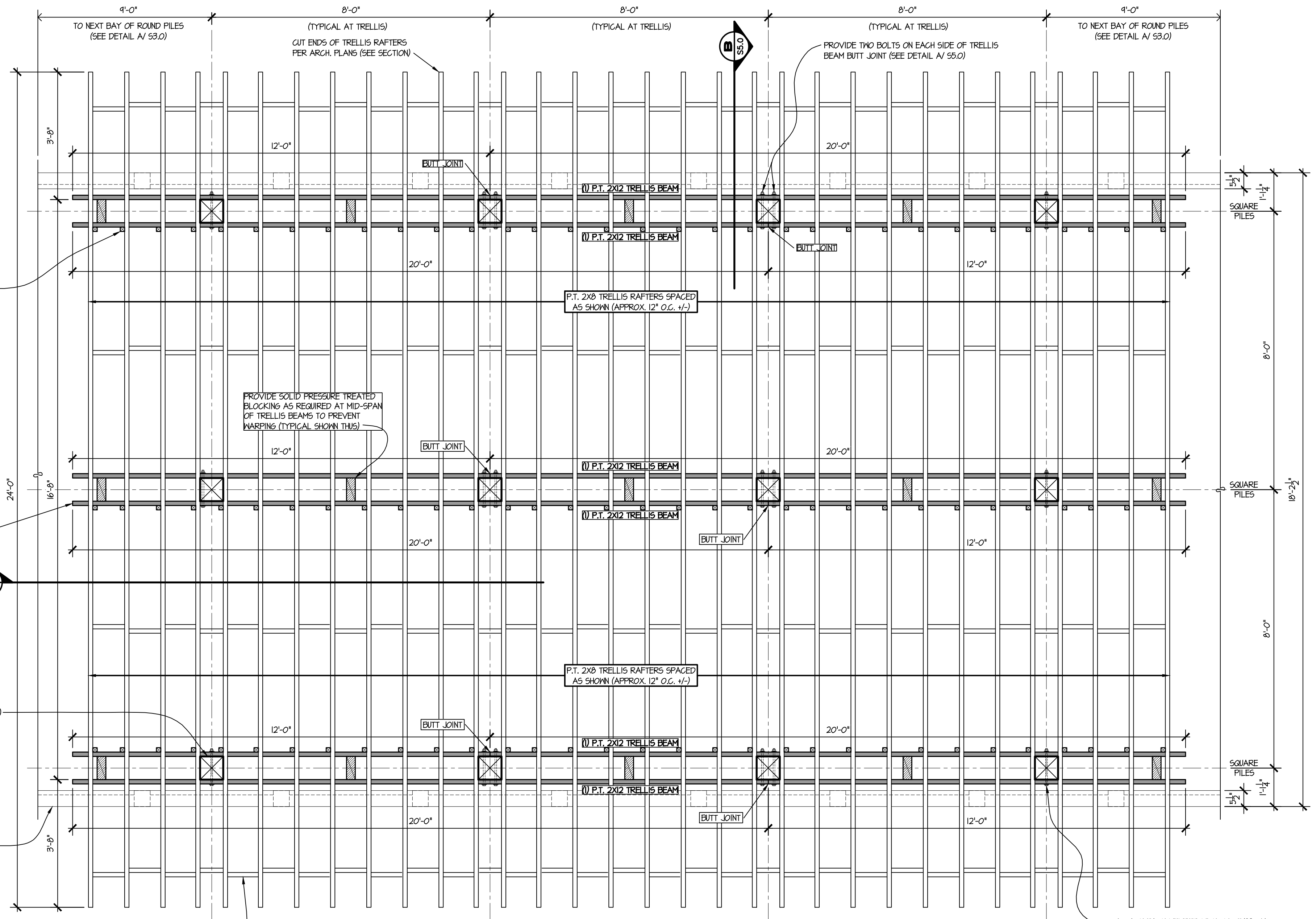
NOTE: CORROSION PROTECTION OPTION: STAINLESS STEEL HARDWARE HAS BEEN CALLED OUT FOR THIS PROJECT FOR MAXIMUM LONGEVITY. HOT-DIP GALVANIZED HARDWARE MAY BE USED IF DESIRED TO REDUCE COST WITH PERMISSION OF ARCHITECT AND TOWN OFFICIALS. VERIFY PRIOR TO ORDERING MATERIALS.

NOTE: PROVIDE 1/4" PER FOOT CROSS SLOPE ON ALL RAMP AND BOARDWALKS TO ENCOURAGE POSITIVE DRAINAGE.

A TYPICAL MAIN BOARDWALK FRAMING PLAN BLOWUP
 S3.0 SCALE: 1/2"=1'-0"



B TYPICAL SECTION AT BOARDWALK TRELLIS
 S5.0 SCALE: 1/2"=1'-0"



A TYPICAL ROOF FRAMING PLAN AT BOARDWALK TRELLIS
 S5.0 SCALE: 1/2"=1'-0"

CORROSION PROTECTION OPTION:
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NOTE:
 THIS LAYOUT ASSUMES THAT PRESSURE TREATED 24'-0" LONG CONTINUOUS 2X8 TRELLIS RAFTERS ARE AVAILABLE. IF NOT, PROVIDE 12" LAP JOINT AT CENTER BEAM AND ADJUST RAFTER SPACING AS REQUIRED (TYPICAL)

PRELIMINARY

FOR REVIEW

| | |
|------------------------|----------|
| Original Release Date: | 12.20.13 |
| Revision Date: | |
| No. | |
| Int. | |

Boardwalk Improvement Project
 Carolina Beach, North Carolina
 Project No: 13177
 Project Description: Structural Framing Plans
 Drawn By: P.R.B. Date: 12.20.13
 Designed By: M.B.P.

CHRISTOPHER A. HOLMES, P.E.
 "Providing Structural Solutions"
 5725 Oleander Drive (Oleander Oaks) - Suite F-4 - Wilmington - N.C. 28403
 Phone (910) 796.9988 Fax (910) 796.9989 holmes@biztec-rt.com

PRELIMINARY

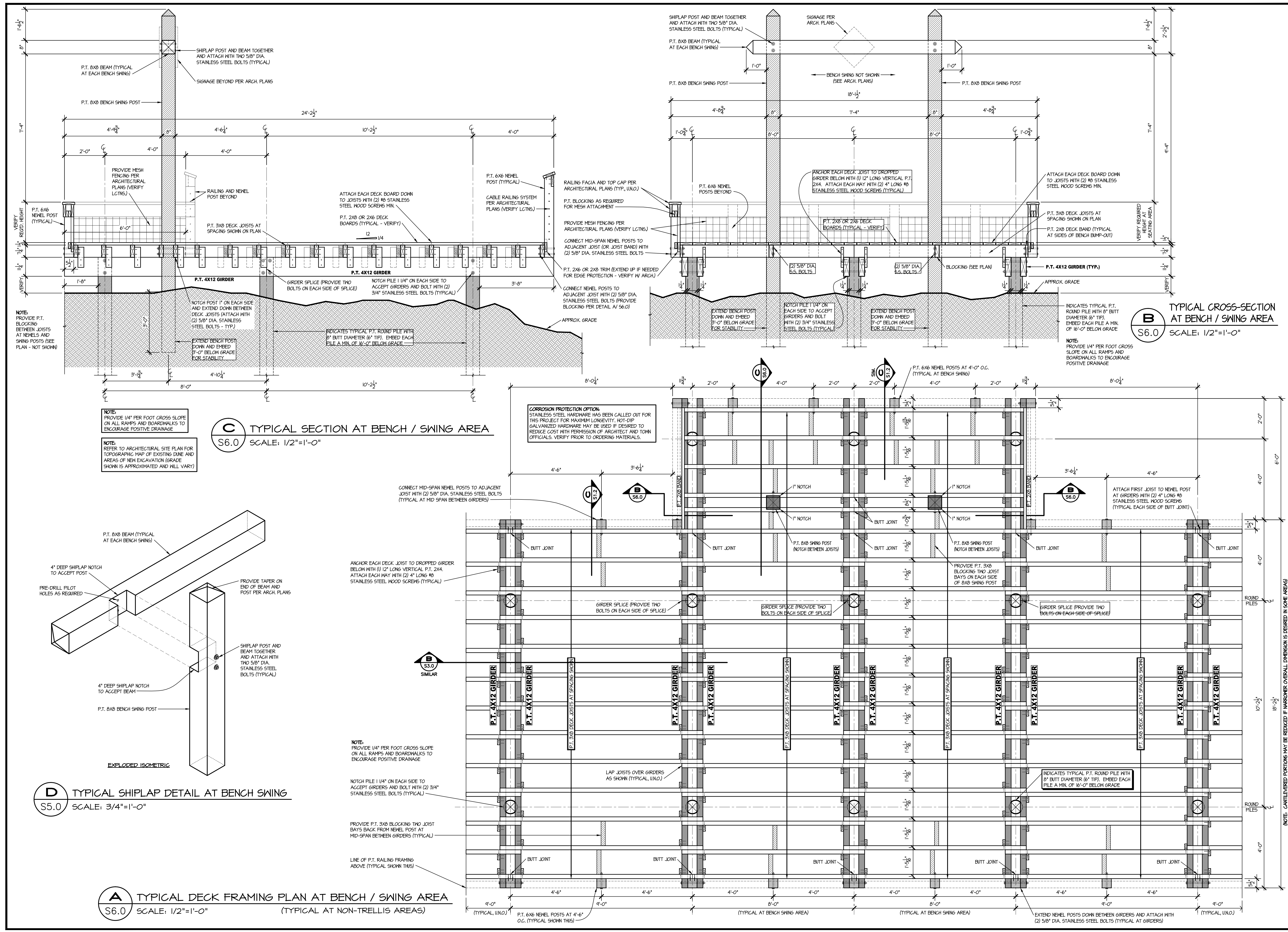
FOR REVIEW

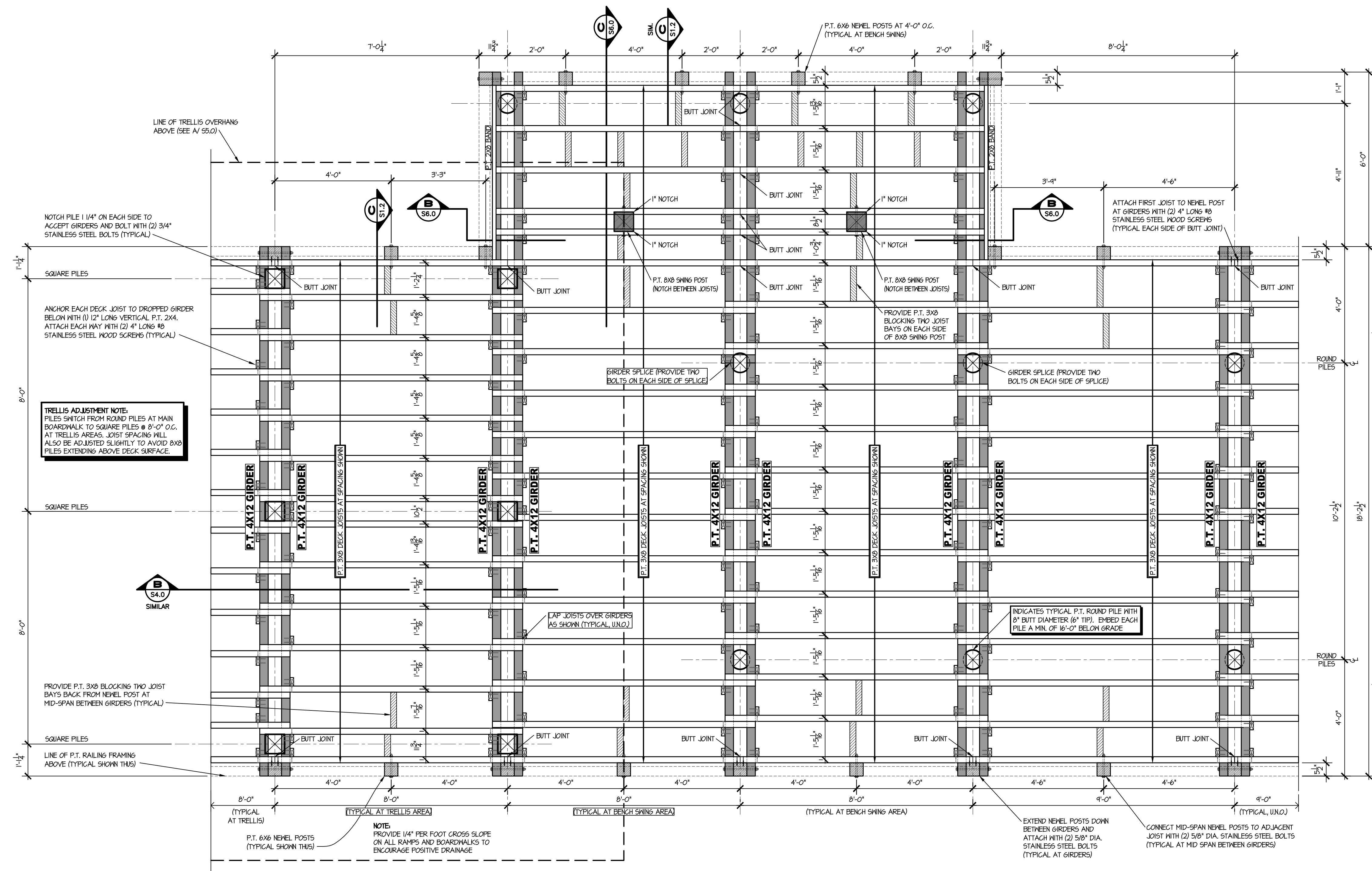
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|------------------------|----------|
| Original Release Date: | 12.20.13 |
| Revision No. | |
| Revision Date | |
| Drawn By: | P.R.B. |
| Date: | 12.20.13 |
| Designed By: | M.B.P. |

Boardwalk Improvement Project
Carolina Beach, North Carolina
Project No: 13177
Project Description: Structural Framing Plans
Date: 12.20.13

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Sheet: **S6.0**
of 12





A DECK FRAMING PLAN AT BENCH / SWING ADJACENT TO TRELLIS
 S7.0 SCALE: 1/2"=1'-0"

CORROSION PROTECTION OPTION
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PRELIMINARY

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| No. | |
| Revision Date | |
| Int. | |

Project Name: Boardwalk Improvement Project
 Carolina Beach, North Carolina
Project Description: Structural Framing Plans
 Project No. 13177
 Drawn By: P.R.B. Date: 12.20.13
 Designed By: M.B.P.

CHRISTOPHER A. HOLMES, P.E.
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PRELIMINARY

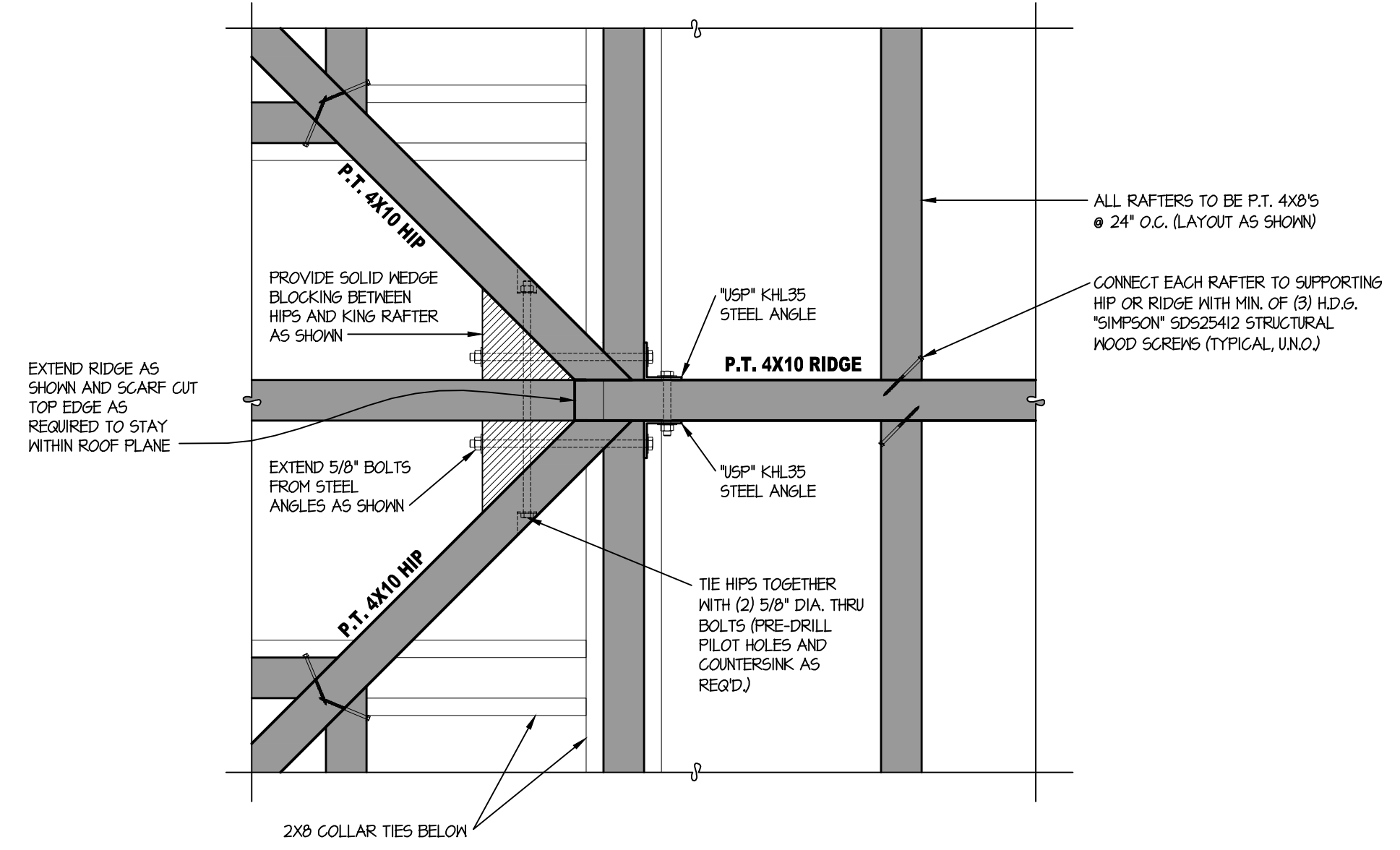
FOR REVIEW

| | |
|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | 001 |
| Revision Date | |
| Revised By | |
| Drawn By | P.R.B. |
| Date | 12.20.13 |

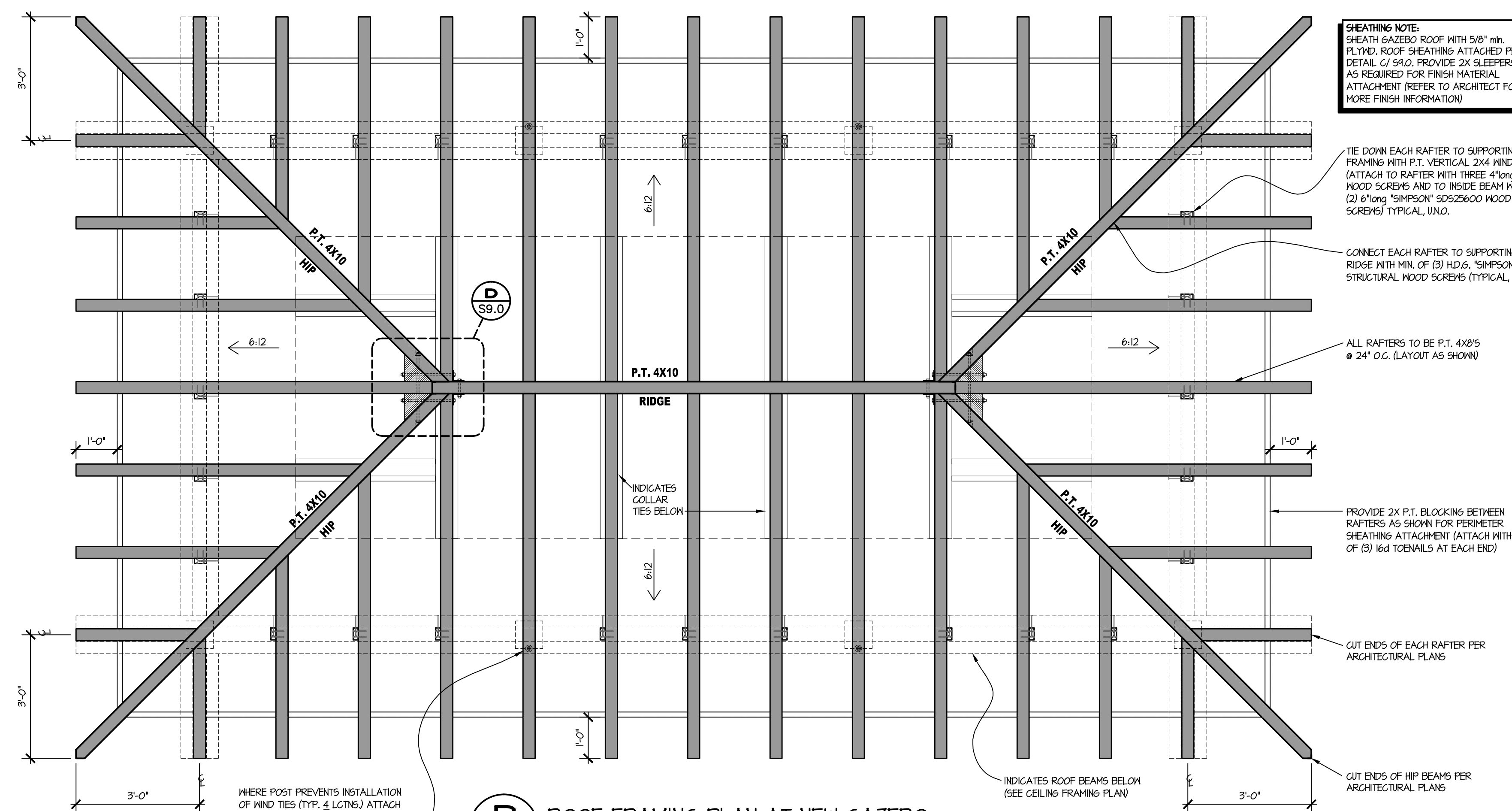
Boardwalk Improvement Project
 Carolina Beach, North Carolina
 Project No. 13177
 Structural Framing Plans
 Project Description: M.B.P.
 Drawn By: M.B.P.
 Date: 12.20.13

CHRISTOPHER A. HOLMES, P.E.
 "Providing Structural Solutions"
 5725 Oleander Drive (Oleander Oaks) - Suite F-4 - Wilmington - N.C. 28403
 Phone (910) 796.9988 Fax (910) 796.9989 holmespe@bizcc-rr.com

Sheet: **S9.0**
 of 12

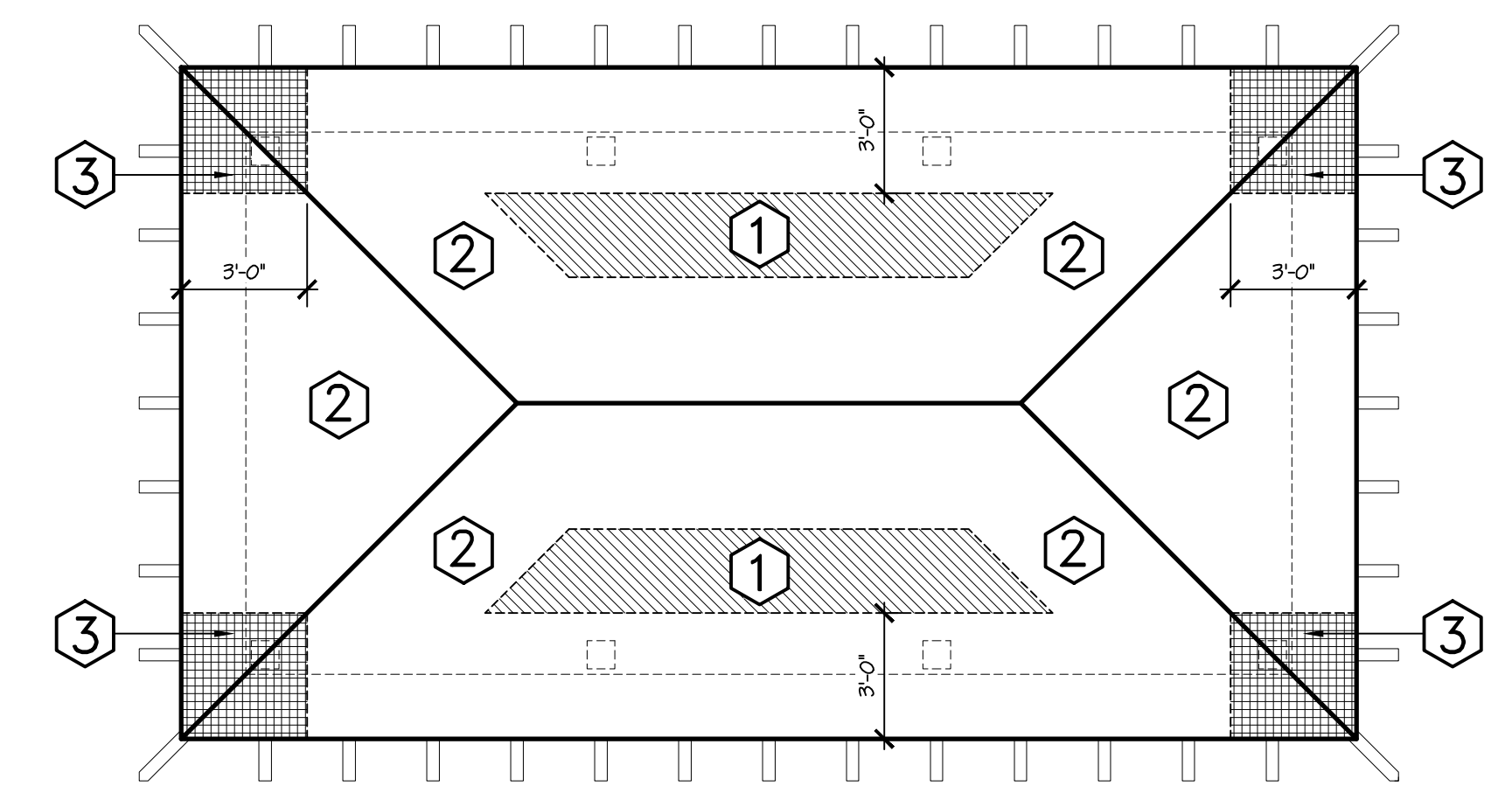


D HIP TO RIDGE CONNECTION DETAIL
 S9.0 SCALE: 1"=1'-0"



B ROOF FRAMING PLAN AT NEW GAZEBO
 S9.0 SCALE: 1/2"=1'-0"

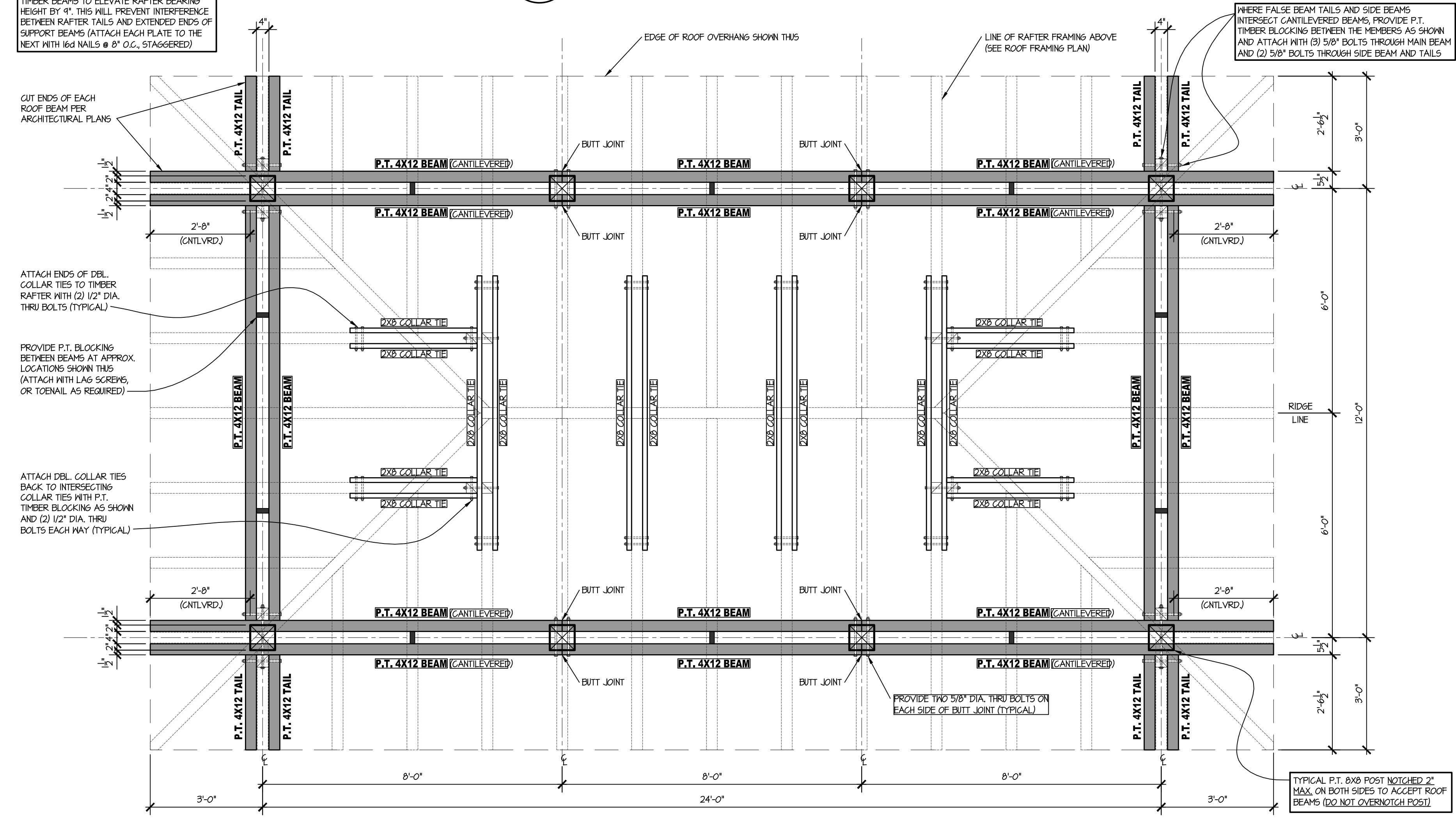
RAFTER BEARING NOTE:
 PROVIDE (6) P.T. 2x4 PLATES ON TOP OF OUTER TIMBER BEAMS TO ELEVATE RAFTER BEARING HEIGHT BY 4". THIS WILL PREVENT INTERFERENCE BETWEEN RAFTER TAILS AND EXTENDED ENDS OF SUPPORT BEAMS (ATTACH EACH PLATE TO THE NEXT WITH 16d NAILS @ 8" O.C., STAGGERED)



| ZONE | NAILING PATTERN |
|------|---|
| 1 | ATTACH ROOF SHEATHING PANELS TO ROOF FRAMING W/ 10d GALVANIZED NAILS AT 6" O.C. ALONG PANEL EDGES AND 12" O.C. AT INTERMEDIATE ROOF FRAMING (NO BLOCKING REQUIRED) - SEE NOTE 2 |
| 2 | NAIL ROOF SHEATHING PANELS TO ROOF FRAMING W/ 10d GALVANIZED NAILS AT 4" O.C. ALONG PANEL EDGES AND 8" O.C. AT INTERMEDIATE ROOF FRAMING |
| 3 | NAIL ROOF SHEATHING PANELS TO ROOF FRAMING W/ 10d GALVANIZED NAILS AT 4" O.C. ALONG PANEL EDGES AND 4" O.C. AT INTERMEDIATE ROOF FRAMING |

- NOTES:
- 1) FOR ALL ROOF SHEATHING CONNECTIONS, USE HURRICANE NAILS AS NOTED.
 - 2) 12" O.C. SPACING MAY NOT BE ADEQUATE FOR SOME PANELS, DECREASE SPACING AS REQUIRED TO SECURE WAPPED PANELS OR ENSURE ALIGNMENT.
 - 3) PLYWOOD SHEATHING TO BE PRESSURE TREATED IF EXPOSED TO WEATHER.
 - 4) ALL PANELS ADJACENT TO RIDGES MUST BE AT LEAST 24" WIDE.
 - 5) ALL PANELS AT EDGES OF ROOF OVERHANGS, VALLEYS, AND HIPS MUST BE AT LEAST 2'-0" LONG (ON AVERAGE) WHENEVER POSSIBLE.
 - 6) WHEN RIDGE VENTS ARE USED, PROVIDE BLOCKING AS REQ'D. AT PANEL EDGES UNDER VENT.

C ROOF DIAPHRAGM ATTACHMENT DETAIL
 S9.0 SCALE: 1/4"=1'-0"



HEIGHT NOTE:
 TOP OF ROOF BEAMS ARE 10'-0" ABOVE DECK SURFACE BELOW BOTH OF COLLAR TIES ARE APPROX. 12'-0" ABOVE DECK SURFACE BELOW

A CEILING FRAMING PLAN AT NEW GAZEBO
 S9.0 SCALE: 1/2"=1'-0"

CORROSION PROTECTION OPTION:
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PRELIMINARY

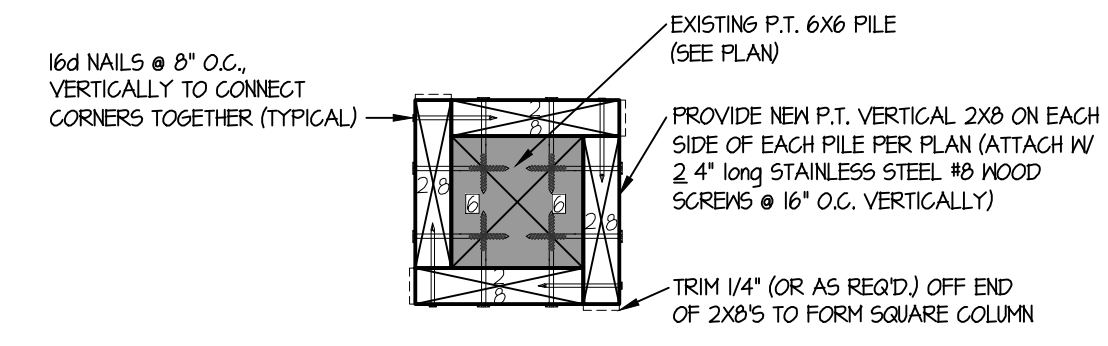
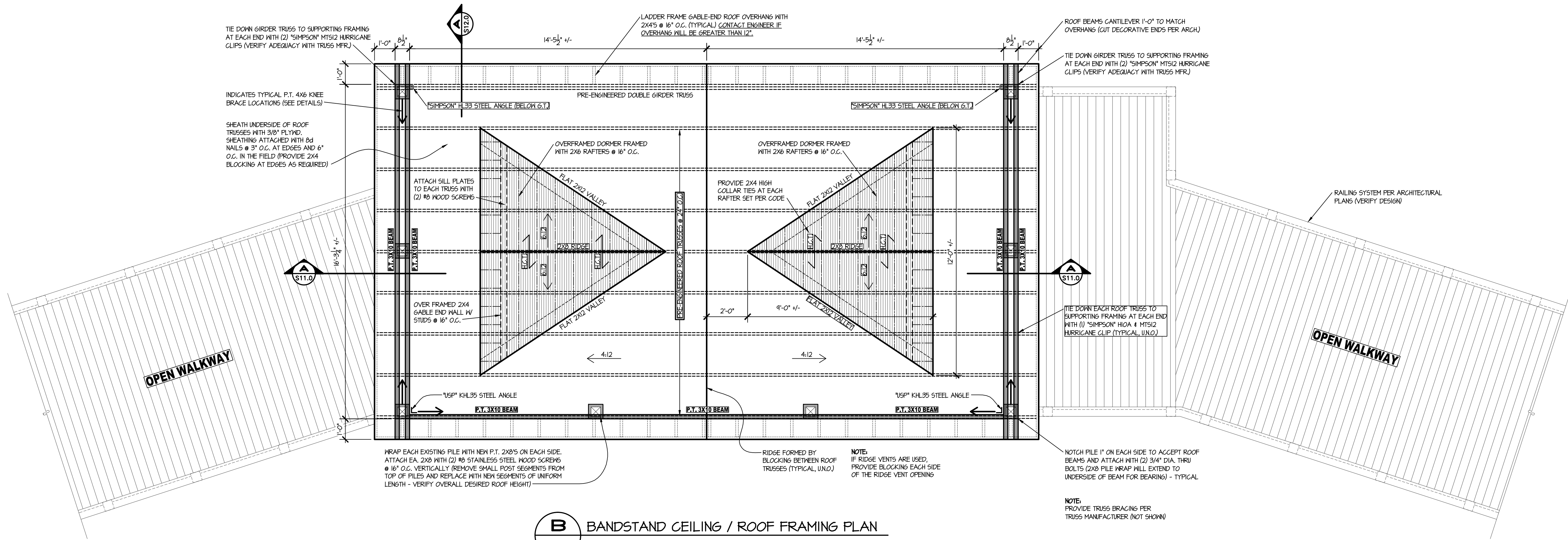
FOR REVIEW

| | |
|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | 001 |
| Revision Date | |
| Int. | |

Boardwalk Improvement Project
 Carolina Beach, North Carolina
 Project No. 13177
 Structural Framing Plans
 Drawn By: P.R.B. Date: 12.20.13
 Designed By: M.B.P.

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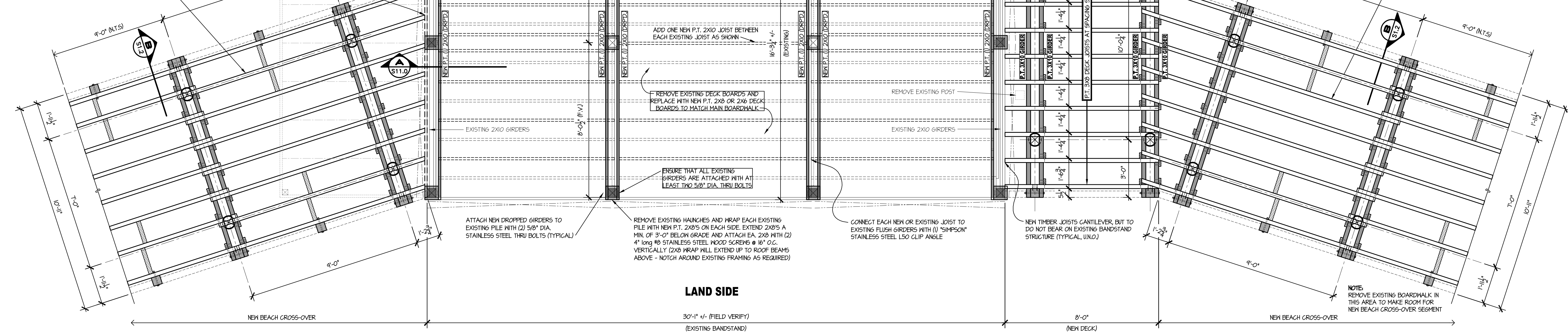
Sheet: **S10.0**
 of 12



PILE WRAP BLOWUP
 SCALE: 1 1/2" = 1'-0"

PROVIDE NEW P.T. 2X12 CONTINUOUS DECK BAND ON THIS SIDE TO SUPPORT ENDS OF BEACH CROSS-OVER JOISTS. ATTACH TO EXISTING FRAMING WITH (3) 16d NAILS AND (1) 5/8" DIA. THRU BOLT @ 16" O.C. PROVIDE CONT. P.T. 2X4 LEDGER STRIP ATTACHED TO BAND WITH (4) 12d NAILS AT EACH JOIST.

REFER TO SHEET S1.2 FOR TYPICAL BEACH CROSS-OVER FRAMING INFORMATION



PRELIMINARY

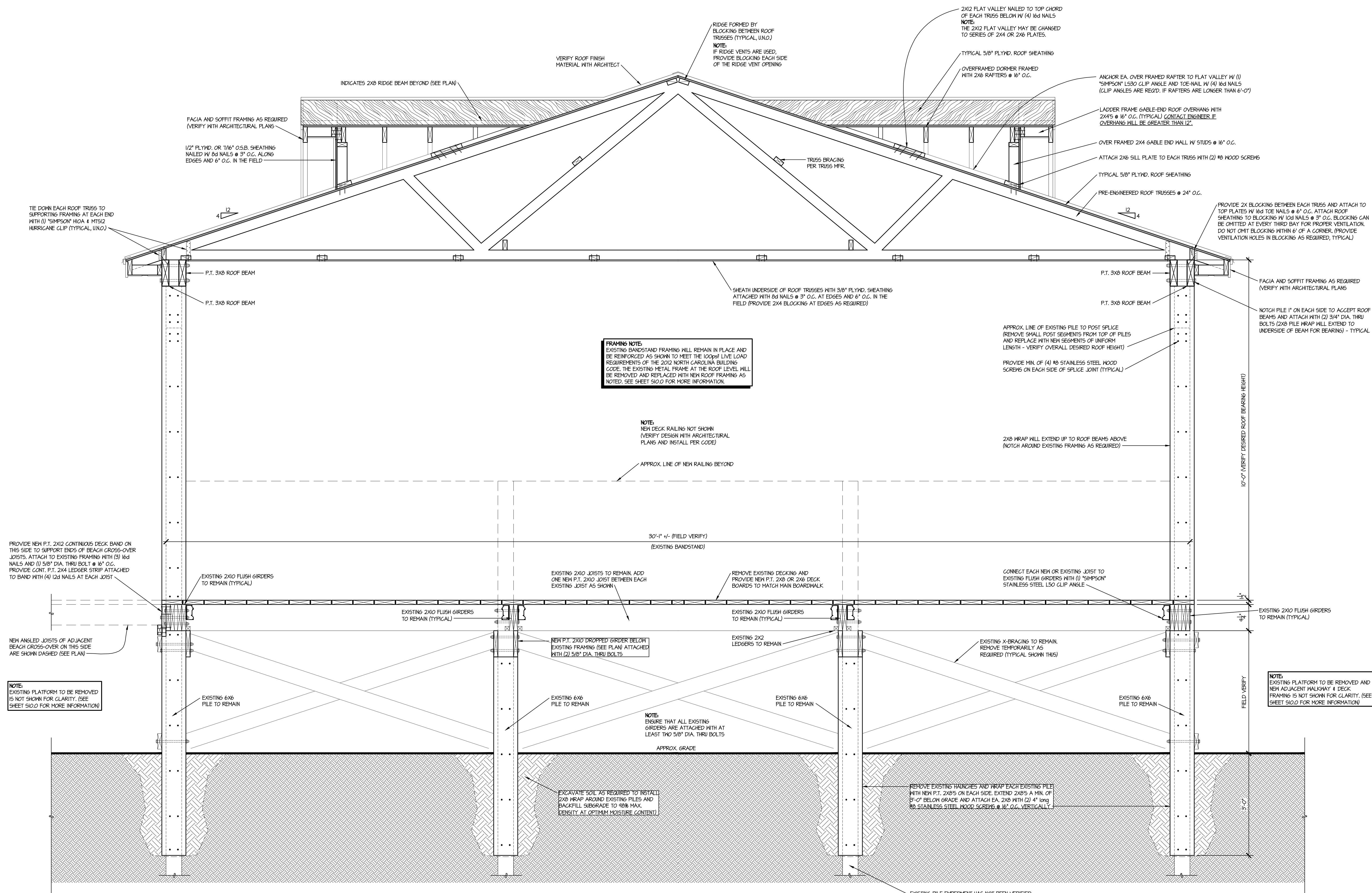
FOR REVIEW

| | |
|------------------------|----------|
| Original Release Date: | 12.20.13 |
| Revised Date: | |
| Revised By: | |
| No. | |
| 1 | |
| 2 | |
| 3 | |
| 4 | |

Project Name: **Boardwalk Improvement Project**
 Carolina Beach, North Carolina
 Project No: **13177**
 Project Description: **Structural Framing Plans**
 Drawn By: **P.R.B.** Date: **12.20.13**
 Designed By: **M.B.P.**

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 Phone (910) 796.9988 Fax (910) 796.9989 holmespe@biztec-rt.com

Sheet: **S11.0**
 of **12**



FRAMING NOTE:
 EXISTING BANDSTAND FRAMING WILL REMAIN IN PLACE AND BE REINFORCED AS SHOWN TO MEET THE 100psf LIVE LOAD REQUIREMENTS OF THE 2012 NORTH CAROLINA BUILDING CODE. THE EXISTING METAL FRAME AT THE ROOF LEVEL WILL BE REMOVED AND REPLACED WITH NEW ROOF FRAMING AS NOTED. SEE SHEET S10.0 FOR MORE INFORMATION.

NOTE:
 NEW DECK RAILING NOT SHOWN (VERIFY DESIGN WITH ARCHITECTURAL PLANS AND INSTALL PER CODE)

NOTE:
 ENSURE THAT ALL EXISTING GIRDERS ARE ATTACHED WITH AT LEAST TWO 5/8" DIA. THRU BOLTS

CORROSION PROTECTION OPTION:
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LONGITUDINAL SECTION THROUGH REMODELED BANDSTAND FRAMING
 SCALE: 3/4"=1'-0"

NOTE:
 EXISTING PLATFORM TO BE REMOVED IS NOT SHOWN FOR CLARITY. (SEE SHEET S10.0 FOR MORE INFORMATION)

NOTE:
 EXISTING PLATFORM TO BE REMOVED AND NEW ADJACENT WALKWAY # DECK FRAMING IS NOT SHOWN FOR CLARITY. (SEE SHEET S10.0 FOR MORE INFORMATION)

PRELIMINARY

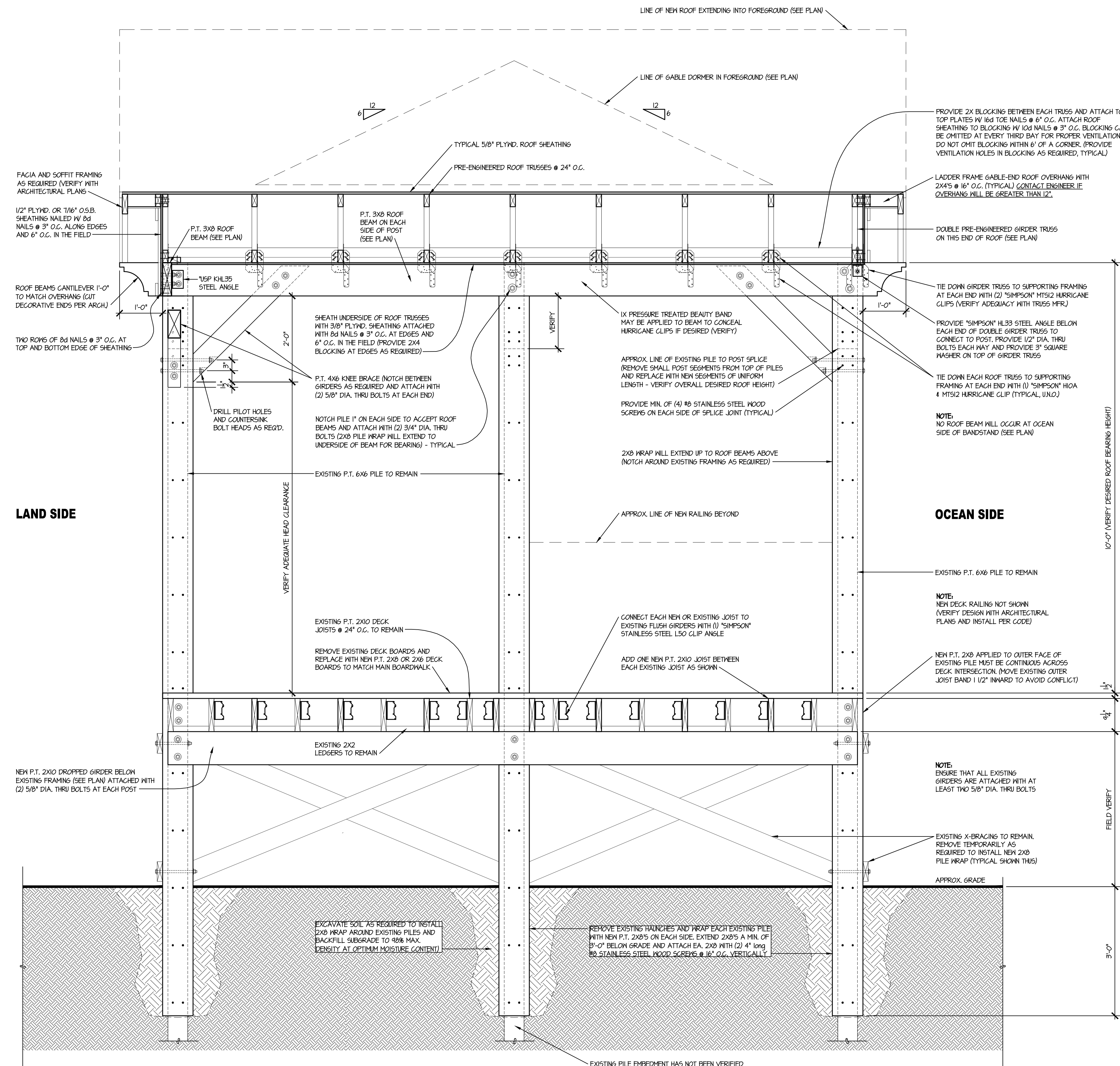
FOR REVIEW

| | |
|------------------------|----------|
| Original Release Date: | 12.20.13 |
| No. | |
| Revision Date | |
| Int. | |

Project Name: **Boardwalk Improvement Project**
 Carolina Beach, North Carolina
 Project No: **13177**
 Project Description: **Structural Framing Plans**
 Drawn By: **P.R.B.** Date: **12.20.13**
 Designed By: **M.B.P.**

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Sheet: **S12.0**
 of **12**



FRAMING NOTE:
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S12.0 LATERAL SECTION THROUGH REMODELED BANDSTAND FRAMING
 SCALE: 3/4"=1'-0"

CORROSION PROTECTION OPTION:
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Averette

10'

**Town of Carolina Beach
Public Boardwalk Improvement
Project Phase 2
Carolina Beach,
New Hanover County**

**Variance Request
February 26, 2014**



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

Carolina Beach Yacht Basin

Town of Carolina Beach
Approximate Northern End of
Project Location



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



Town of Carolina Beach
Approximate Southern End of
Project Location



*Approximate 60' Setback from
Static Vegetation Line*

Actual Vegetation Line

Static Vegetation Line

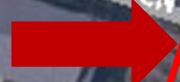
Existing Elevated Public Boardwalk

Southern End of Project

Atlantic Ocean

Carolina Beach North Beach

Northern End of Project

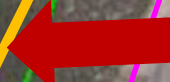


Approximate 60' Setback from
Static Vegetation Line

Static Vegetation Line

Actual Vegetation Line

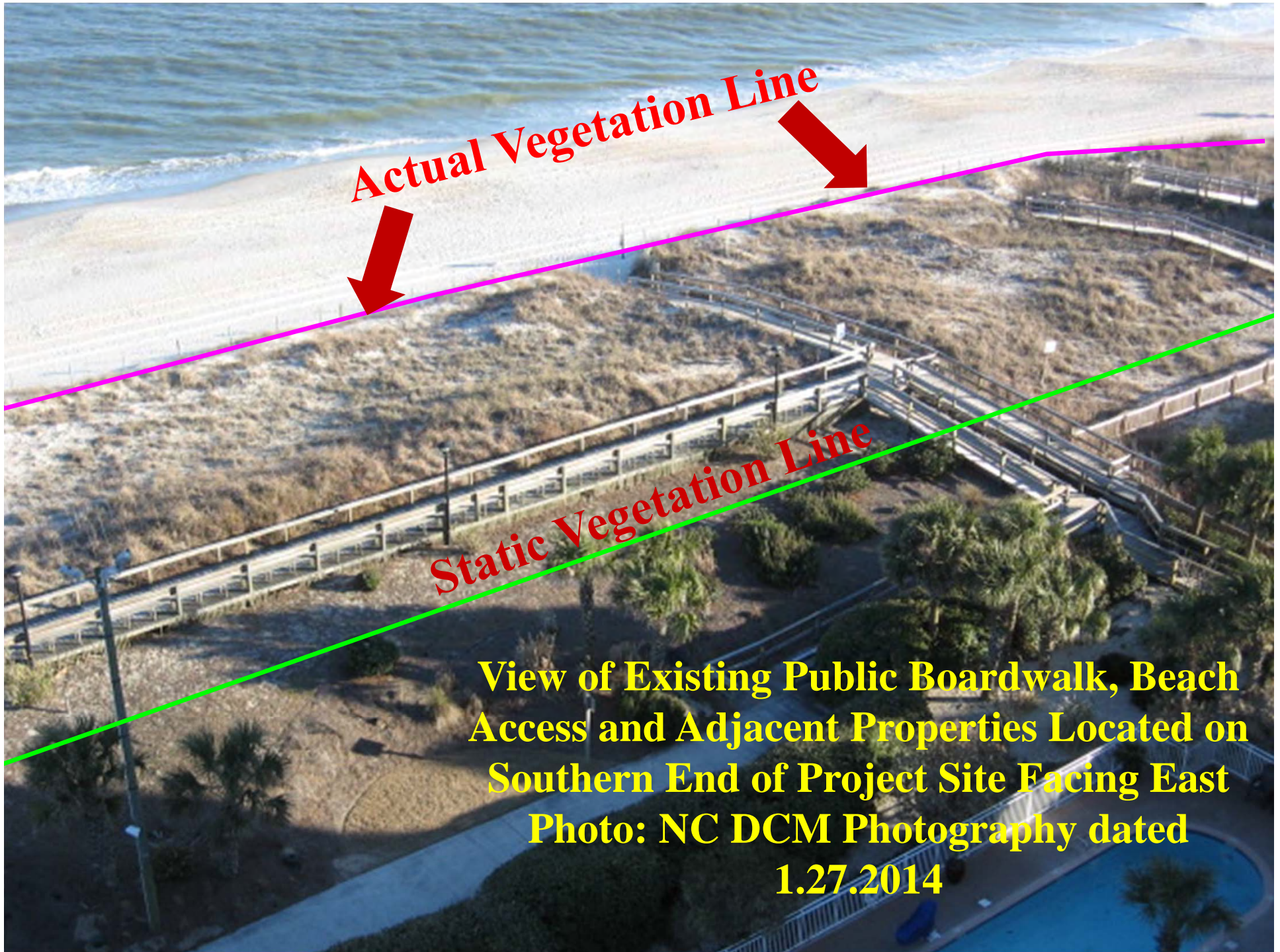
Proposed Public Boardwalk
Extension



NC DCM - Copyright (C) 2014

0 0.022mi

Airphoto: Co



Actual Vegetation Line

Static Vegetation Line

**View of Existing Public Boardwalk, Beach
Access and Adjacent Properties Located on
Southern End of Project Site Facing East
Photo: NC DCM Photography dated
1.27.2014**



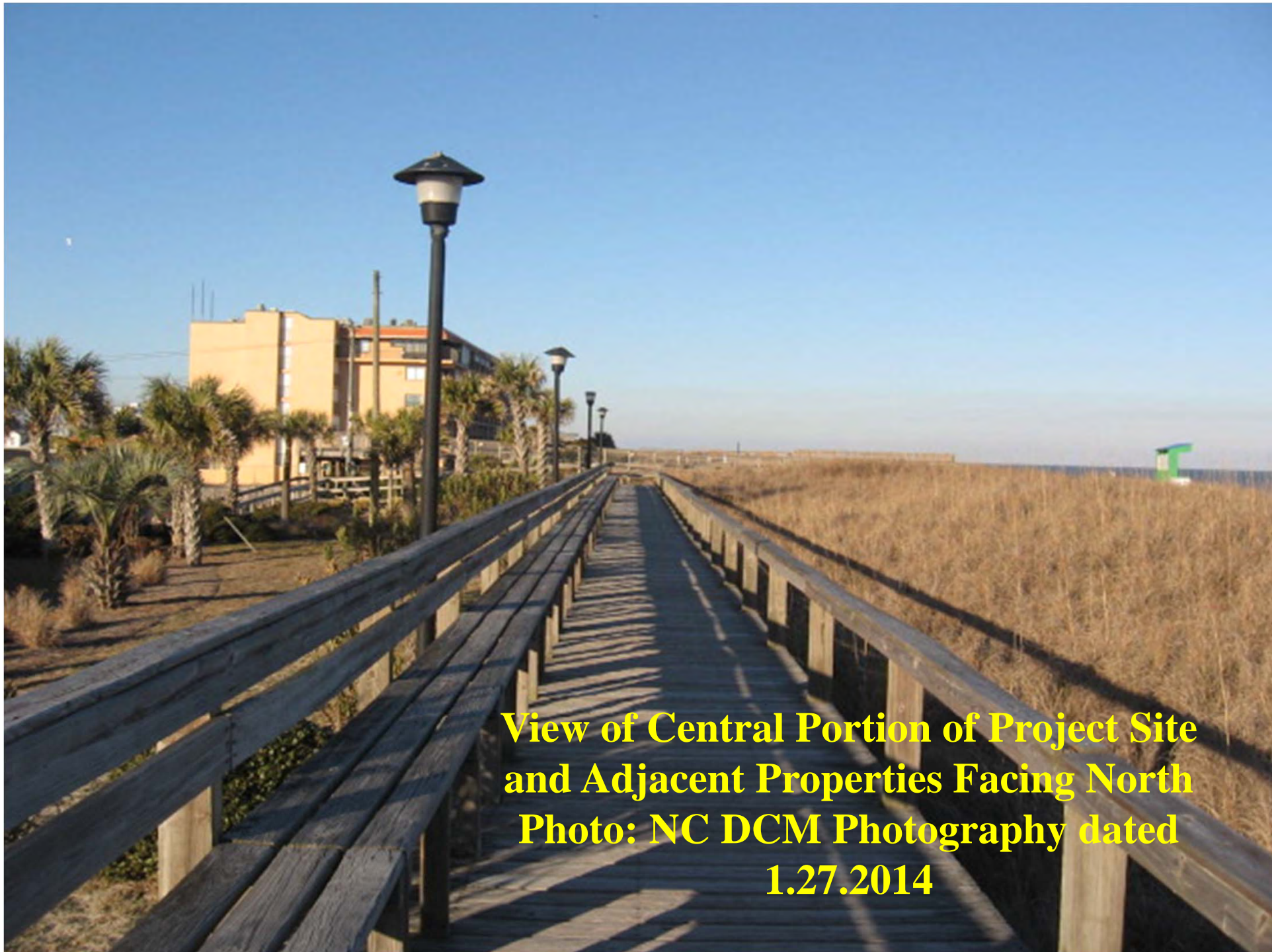
**Existing Public Boardwalk,
Stage, Restrooms &
Landscaped Cove**

**View of Southern End of Project Site
and Adjacent Properties Facing East
Photo: NC DCM Photography dated
1.27.2014**



**Existing Public Concrete
Boardwalk & Location of Proposed
Splash Pad within Existing
Landscaped Cove**

**View of Southern End of Project Site and
Adjacent Properties Facing South
Photo: NC DCM Photography dated
1.27.2014**



**View of Central Portion of Project Site
and Adjacent Properties Facing North
Photo: NC DCM Photography dated
1.27.2014**



**Approximate Location of
Proposed Public Boardwalk
Extension**

**View of Northern End of Project Site, Dune
System and Adjacent Properties Facing South
Photo: NC DCM Photography dated 1.27.2014**



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 *APL*

DATE: February 10, 2014 (for the February 26-27, 2014 CRC Meeting)

RE: **Variance Request by Bald Head Island Limited, LLC**

On January 8, 2014, Petitioner submitted a minor modification request for its CAMA Major Permit No. 172-87 to construct additional decks with stairs and a brick "transition area" on its property located in the Village of Bald Head Island, North Carolina. On January 15, 2014, the Division of Coastal Management ("DCM") issued Petitioner a minor modification authorizing the proposed development with the conditions that no portion of the brick "transition area" shall be located within the 30-foot buffer and that no portion of the decking authorized shall be located within the 30-foot buffer because existing decking exceeds the allowable area of 200 square feet pursuant to 15A NCAC 7H .0209(d)(10)(F). Petitioner seeks a variance from application of the 30-buffer rule set forth at 15A NCAC 7H .0209(d)(10) to allow construction of the portions of the proposed development located within the 30-foot buffer that were not allowed in the minor modification issued by DCM.

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 Positions and Staff's Responses to Criteria
Attachment D: Stipulated Exhibits
Attachment E: Petitioner's Variance Request Materials

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

RELEVANT RULE**ATTACHMENT A****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, Bald Head Island Limited, LLC is a limited liability company, organized and existing under the laws of the State of Texas, authorized to transact business in the State of North Carolina.
2. Petitioner is the current developer of Bald Head Island, a predominantly residential development located on the east side of the mouth of the Cape Fear River. Bald Head Island consists of approximately 1100 residential living units including detached single-family residences and condominium units. There are also approximately 971 vacant lots currently platted on Bald Head Island.
3. Petitioner is the owner of much of the commercial property located at the Bald Head Island Marina, including the site for the proposed development.
4. Bald Head Island is accessible only by boat or by foot down the east beach from Fort Fisher.
5. The ferry terminal at Bald Head Island is located in the southern portion of the Bald Head Island Marina, adjacent to the Cape Fear River, in an area devoted to commercial and transportation related facilities. The marina basin and the facilities have been gradually permitted, developed and maintained from the 1970s to present.
6. According to Petitioner, its wholly owned subsidiary, Bald Head Island Transportation, Inc., a North Carolina corporation, operates ferries that provide passenger service from its mainland base near Southport to the Bald Head Island Marina.
7. The ferry service is the principal means for residents, workers, and visitors to get to and from Bald Head Island. This ferry service provided approximately 272,000 round trips for passengers in the calendar year of 2013.
8. Petitioner's proposed development lies within the Coastal Shorelines (estuarine and public trust shoreline) Areas of Environmental Concern (AEC) as described in 15A NCAC 7H .0209. In this location, the AEC extends 75 feet landward of the normal high water level.
9. Since August 1, 2000, 15A NCAC 7H .0209 has provided that new development within the Coastal Shorelines AEC be located a distance of 30 feet landward of the normal high water level (hereinafter "30-foot buffer"), unless it meets an exception currently listed in subsection (d)(10)(A)-(J) of that rule.
10. On August 19, 1987, CAMA Major Permit No. 172-87 was issued to Petitioner for construction of a marina and associated development on Bald Head Island. This permit has been modified several times throughout the years to authorize Petitioner's evolving development needs.

11. On January 8, 2014, Petitioner submitted a minor modification request to CAMA Major Permit No. 172-87 to allow replacement of the existing 942 square foot wood sales office deck with associated stairs with a smaller rectangular 760 square foot deck with stairs; construction of a 15-foot by 15-foot triangular shaped wooden deck; **construction of a 370 square foot deck to serve as an entrance deck to a proposed ferry information center (approximately 90 square feet would be located within the 30-foot buffer)**; construction of a 110 square foot wooden stairway leading from that entrance deck to ground level; **and the construction of a 1,240 square foot brick “transition area” in the southwest corner of the marina basin (805 square feet of would be located within the 30-foot buffer)**, as shown in the drawing marked “Sheet C1” with the caption “Bald Head Island Landing” by Bruce Marek, P.E. dated January 8, 2014. (hereinafter collectively referred to as “the proposed development”). (emphasis added to portions of the proposed development that is within the 30-foot buffer)
12. The proposed development that lies within the 30-foot buffer (portion of decking and brick “transition area”) are not considered water-dependant structures as defined by 15A NCAC 07H .0208(a)(1).
13. 15A NCAC 07H .0209(d)(10)(F) provides only slatted, wooden, elevated and unroofed decks, *not to exceed 200 feet (singularly or collectively)*, can be built within the 30-foot buffer. (emphasis added)
14. Some existing development within the 30-foot buffer at the marina basin was permitted and constructed prior to the adoption of the current 30-foot buffer rule in 2000. The existing decking at the site of the proposed development currently exceeds the allowable collective 200 square feet.
15. The proposed development that lies within the 30-foot buffer (portion of decking and brick “transition area”) are not considered re-development of existing impervious area pursuant to 15A NCAC 07H .0209(d)(10)(H).
16. Petitioner’s proposed development does not meet any of the exception criteria set forth in 15A NCAC 7H .0209(d)(10) because the existing and proposed decking 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 replacement of the existing wooden decking/boardwalk with a brick “transition area” within the 30-foot buffer.
17. The portion of Petitioner’s proposed development that lies within the 30-foot buffer is inconsistent with 15A NCAC 07H .0209(d)(10).
18. On January 15, 2014, Petitioner was issued a minor modification to CAMA Major Permit No. 172-87 authorizing the proposed development with the conditions that no portion of the 1240 square foot brick “transition area” shall be located within the 30-foot buffer and that no portion of the decking authorized shall be located within the 30-foot buffer because existing decking exceeds the allowable area of 200 square feet under 15A NCAC 7H .0209(d)(10)(F).

19. The proposed development is subject to stormwater rules enforced by the North Carolina Division of Energy, Mineral and Land Resources (DEMLR). As of February 3, 2014, a revised plan update to Petitioner's current high density stormwater permit (SW8-940918) regarding the proposed development has been submitted by Petitioner and is under review by DEMLR.
20. On January 15, 2014, Petitioner filed its variance request seeking relief from the application of 30-foot buffer rule set forth at 15A NCAC 07H .0209(d)(10) to allow construction of the portions of the proposed development exempted from the minor modification issued by DCM on January 15, 2014, including the decking and the brick "transition area" located within the 30-foot buffer.
21. The parties stipulate that the photographs and drawings submitted with the petition and at the hearing are admissible.

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.****Petitioner's Position: Yes.**

The strict application of the 30' shoreline buffer rule causes an unnecessary hardship to the Petitioner by not allowing the Petitioner to convert an existing wooden walkway to a more durable and safer brick walkway. It is also a hardship to restrict the size of the steps and the deck leading to the repurposed Visitor Information Center. The area proposed to be converted from wood to brick is heavily used by persons coming to and leaving from the Island. The existing wooden walkway area has five different slopes to transition to changing elevations. This commercial area needs a more permanent and uniform surface for durability and safety. The new steps and deck area serving as the entrance to the Visitor Information Center is only partially within the buffer zone. The part of the steps and deck within the buffer zone is necessary for proper functioning of these areas. The area of the new deck and steps within the buffer area will not exceed the decking for a cannon that will be removed from the base area. The hardship is unnecessary because the effect of conversion from wood to brick will not result in any significant change in stormwater runoff that will flow into the marina basin and the storm water will be controlled in accordance with stormwater rules of the Environmental Management Commission.

Staff's Position: Yes.

Staff agrees that the strict application of the 30-foot buffer rule would cause Petitioner an unnecessary hardship due to the fact that the Visitor Center is a main gateway for the majority of visitors coming to and leaving Bald Head Island. Due to very heavy usage and the fact that original permitting of Petitioner's development occurred prior to the existence of the buffer rules, Staff agrees that restrictions on the size of the platform(s) and the types of material utilized will have a negative impact on the functionality and safe use of the facility. In their minor modification request to CAMA Major Permit No. 172-87, Petitioner seeks to replace an existing wooden walkway with a brick walkway and add additional decking to serve as an entrance deck to the Ferry Visitor Information Center within the 30-foot buffer. Rule 15A NCAC 07H .0209 is designed to ensure that development within coastal shorelines is compatible with and do not harm the biological and physical functions of the estuarine system. This is accomplished by limiting allowable 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 already exceeds the allowable collective 200-square feet because of the existing decking/boardwalk that was constructed within the 30-foot buffer before the buffer rules were implemented in 2000. Furthermore, a brick walkway is not listed among the exceptions as an allowable use. Petitioner has submitted a revised plan update to their current high density stormwater permit to address any change in stormwater runoff into the marina basin. 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 the proposed development would minimally alter the current pattern of rainfall runoff on Petitioner's property while simultaneously providing safer accessibility for ferry passengers.

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

Petitioner's Position: Yes.

The hardships result from conditions peculiar to the Petitioner's property. The marina basin and surrounding areas were already the site of ferry operations and facilities serving Bald Head Island at the time the shoreline buffer rules became effective. Bald Head has no other feasible locations for the operation of its ferry system. The ferry service provides the sole access to the Island for most property owners and visitors. The Bald Head Marina is different from other ferry terminal sites because it is solely a pedestrian ferry. Other ferry systems in North Carolina are primarily for transporting vehicles that need only road access for embarking and disembarking.

Staff's Position: Yes.

Staff agrees with the Petitioner that the location of the marina basin and surrounding areas that were in existence prior to the buffer rules do result in a condition peculiar to Petitioner's property. This peculiarity is further supported by the fact that the subject property is the main access and departure point for a large majority of visitors to and residents of the Island.

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

Petitioner's Position: No.

The hardships results from the peculiar nature of the pedestrian ferry service necessary for Bald Head Island to serve its residents and visitors.

Staff's Position: No.

Staff agrees with Petitioner that the hardships are not the result of Petitioner's action. The majority of the ferry facility was designed and constructed prior to the adoption of the 30-foot buffer, and it would be very difficult for Petitioner to retrofit its design of the proposed development to be compliant with the Commission's current rules. Additionally, the Petitioner has the responsibility to maintain the ferry facility property in a safe manner.

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.**

The purpose of the Coastal Shoreline Buffer Rule is to prevent excessive stormwater runoff directly into coastal waters so as to protect coastal waters from pollutants carried by runoff. The Environmental Management Commission through the Division of Energy, Mineral and Land Resources (DEMLR) has established a stormwater regulatory program for the same purpose. The applicant will have to comply with the DEMLR program to prevent harmful stormwater runoff. In some instances stormwater will be diverted by appropriate means to natural soil areas for infiltration. The top of the bulkhead surrounding the marina basin at the location of the proposed new brickwork is above the ground surface thereby preventing direct runoff of stormwater into the marina basin from most rainfall events. The bulkhead will act as a dam allowing the retained stormwater to infiltrate into the soil behind the bulkhead. The new wooden steps and deck of which 44 square feet are within the buffer area will not create significant additional stormwater runoff because an equal amount of currently decked area in the same location will be removed from within the buffer.

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

The existing wooden walkway serving the ferry terminal and commercial area currently has multiple slopes making it undesirable from a safety standpoint. The wooden construction also requires frequent maintenance to assure that it remains as safe as feasible. Replacement of the wooden decking with brick will enhance safety.

- **Preserve substantial justice.**

The ferry terminal in the Bald Head Marina is the only feasible location for a ferry terminal to serve the residents, workers and visitors to Bald Head. The expansion and improvement of this area is necessary to serve existing and growing needs for passenger ferry service. The location of existing buildings, built under regulatory standards in place at the time they were built, requires the necessary enlargement and improvements to be located partially within the buffer area that was established in 1999. Development in areas surrounding the marina is now subject to stormwater rules administered by the Division of Energy, Mineral and Land Resources. Substantial justice will be preserved by allowing needed expansion that complies with the standards set by the Environmental Management Commission.

Staff's Position: Yes.

Staff agrees that the variance requested by Petitioner would be consistent with the spirit, purpose and intent of the rules; secure the public safety and welfare; and preserve substantial justice. One of the purposes of the 30-foot buffer rule is to safeguard the water quality of coastal waters from harmful stormwater runoff due to impervious development. Furthermore, one of the

management objectives for the Coastal Shorelines AEC is to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine system and the people of North Carolina. 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 more impervious surfaces, Staff notes that Petitioner currently has a stormwater permit for this highly developed property which is enforced by the Division of Energy, Mineral and Land Resources (DEMLR). In addition, Petitioner has submitted an update to their current stormwater plan in order to accommodate the proposed development, which is currently under review by DEMLR. Given that the Petitioner is required in this case to obtain DEMLR's approval of their modified stormwater plan, Staff agrees that a variance would be consistent with the spirit, purpose, and intent of the Commission's 30-foot buffer rule. Furthermore, Staff agrees that the existing decking/boardwalk leading from the ferry terminal to the Visitors Center of the marina has multiple elevations; therefore, public safety would be enhanced by replacing such with a more stable and level brick walkway. Substantial justice would also be preserved based on the fact that this marina and associated development which was permitted prior to the implementation of the 30-foot buffer rule has become the primary means of transportation for residents and visitors to access Bald Head Island on a daily basis.

ATTACHMENT D

STIPULATED EXHIBITS

Powerpoint slides of Google Earth imagery, site photographs, and drawing of proposed development marked Sheet C1 with the caption “Bald Head Island Landing” (total of 9 slides including title slide).

**Bald Head Island Ltd, LLC
VARIANCE REQUEST**

Bald Head Island Marina

Brunswick County

February 26, 2014

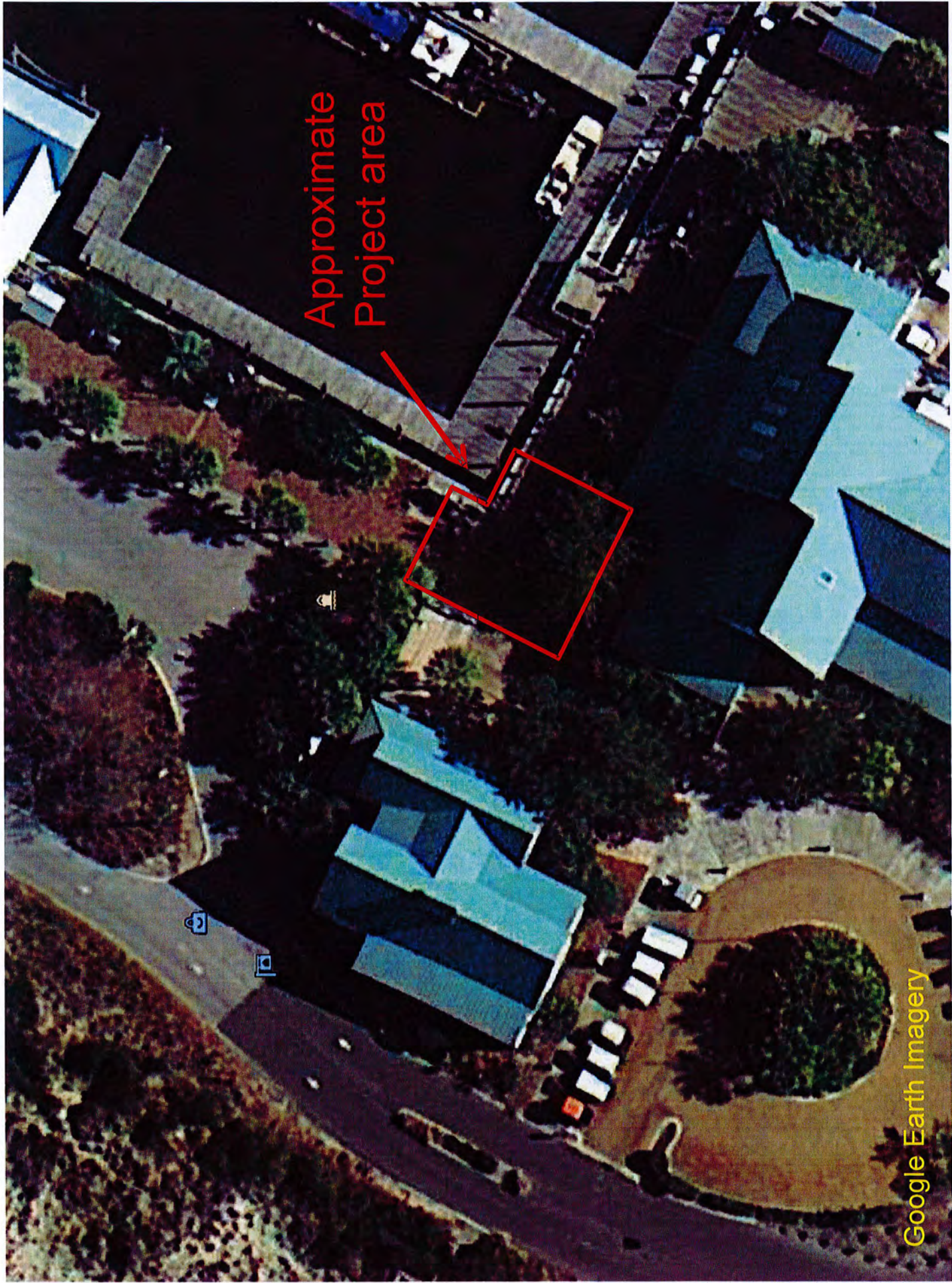


Proposed project area



Approximate
Project area

Google Earth imagery of southwest corner of BHI Marina

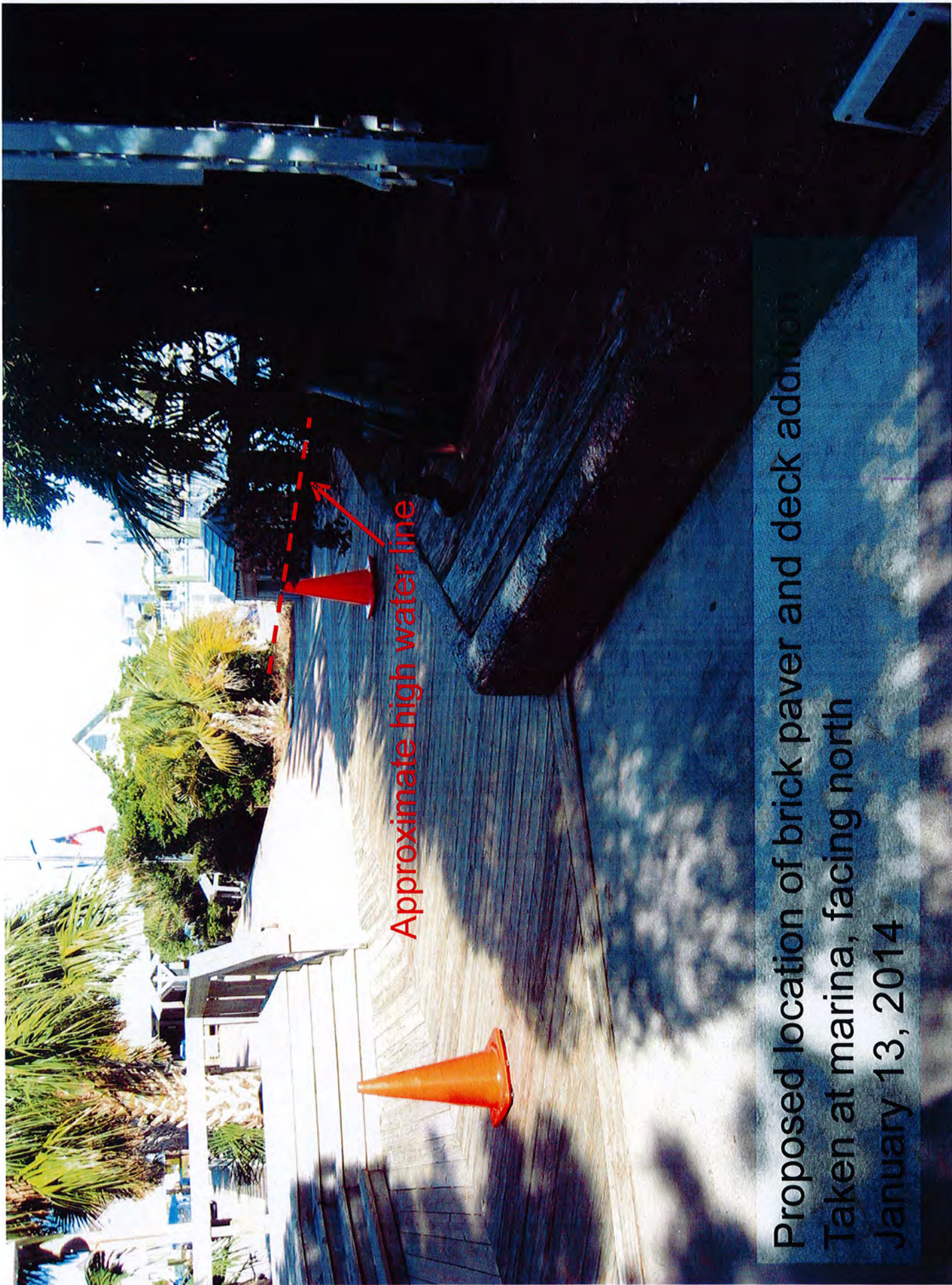


Approximate
Project area

Google Earth Imagery



Proposed location of brick paver and deck addition
Taken at marina, facing south
January 13, 2014



Approximate high water line

Proposed location of brick paver and deck addition
Taken at marina, facing north
January 13, 2014



Approximate high water line

Proposed location of brick paver and deck addition
Taken at marina, facing west
January 13, 2014

A photograph showing a wooden deck with a railing. A red traffic cone is placed on the deck. In the background, there is a building with a red roof and some trees. The photo is taken from a sales office, facing east.

Photo taken from sales office, facing east
January 13, 2014

ATTACHMENT E

PETITIONER'S VARIANCE REQUEST PETITION AND ATTACHMENTS

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

JOHN C. WESSELL, III
WESSELL@BELLSOUTH.NET

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

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

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

January 15, 2014

VIA U.S. MAIL

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

VIA E-MAIL

Braxton.Davis @ncdenr.gov

VIA FAX

252-247-3330

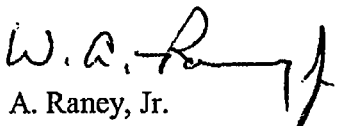
Re: **Variance Petition – Bald Head Island, Limited, LLC, Brunswick County**

Dear Mr. Davis:

Enclosed is a CAMA Variance Request Form regarding the above-referenced project. Please schedule this variance for the February, 2014 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:dc
Enclosures
cc: Ms. Christy Goebel (via U.S. mail, e-mail and fax)

WAR\environ\R14-004-C01

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Bald Head Island Limited, 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:

- Ex. 1 The name and location of the development as identified on the permit application;
- Ex. 2 A copy of the permit decision for the development in question;
- Ex. 3 A copy of the deed to the property on which the proposed development would be located;
- Ex. 4 A complete description of the proposed development including a site plan;
- Ex. 5 A stipulation that the proposed development is inconsistent with the rule at issue;
- Ex. 6 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;
- Ex. 7 Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- Ex. 3 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

1-15-14
Date

William A. Raney, Jr.
Printed Name of Petitioner or Attorney

waraney@bellsouth.net
Email address of Petitioner or Attorney

PO Box 1049
Mailing Address

(910) 762-7475
Telephone Number of Petitioner or Attorney

Wilmington, NC 28402-1049
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:

Contact Information for Attorney General's Office:

By mail, express mail or hand delivery:

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

By mail:

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

By Fax:
(252) 247-3330

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Email:

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

By Fax:

(919) 716-6767

Revised: February 2011

Permit Class
MODIFICATION/MINOR

Permit Number
172-87

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

for
 Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to Bald Head Island Limited, LLC, PO Box 3069, Bald Head Island, NC 28461

Authorizing development in Brunswick County at Cape River River, marina basin and lands
immediately adjacent _____ as requested in the permittee's letter dated 1/8/14, including the
attached workplan drawing (1), dated 1/8/14.

This permit, issued on January 15, 2014, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

- 1) Unless specifically altered herein, this minor modification authorizes the replacement of the wood sales office deck with associated stairs, the construction of the 15' X 15' triangular wooden deck, the 370 square foot deck, the 110 square foot wooden stairway, and the 1240 square foot brick "transition area" in the corner of the basin, all as expressly and specifically set forth in the attached workplan drawing.
- 2) No portion of the 1240 square foot brick "transition area" shall be located within 30' of the Normal High Water Line.

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

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

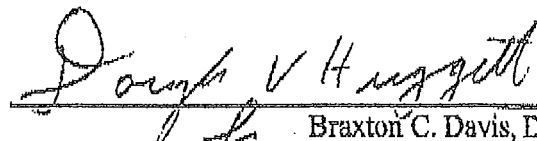
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

May 6, 2015

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.



Braxton C. Davis, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

- 3) Due to the fact that existing decking within 30' of the Normal High Water Line exceeds the area allowable under 15A NCAC 07H .0209(d)(10)(f), no portion of the decking authorized by this permit shall be located within 30' of the Normal High Water Line.
- 4) The permittee and/or his or her contractor shall meet with a representative of the Division prior to project initiation.
- 5) This minor modification shall be attached to the original of Permit No. 172-87, which was issued on 8/19/87, as well as all subsequent modification, amendments, refinements and renewals, and copies of all documents shall be readily available on site when Division personnel inspect the project for compliance.
- 6) All conditions and stipulations of the active permit remain in force under this minor modification unless specifically altered herein.

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

STATE OF NORTH CAROLINA
Real Estate Excise Tax
900.00
6-14-83

STATE OF NORTH CAROLINA
Real Estate Excise Tax
900.00
6-14-83

BOOK 532 PAGE 546

REGISTRATION
1983 JUN 14 PM 4:41
COLLEEN J. ROBINSON
REGISTRAR OF DEEDS
BRUNSWICK COUNTY, N.C.
STATE OF NORTH CAROLINA
Real Estate Excise Tax
900.00
6-14-83

Mail after recording to:

This instrument was prepared by: Hixson and Bruckel

Brief description for the Index: Bald Head Island and .923 acre tract in Southport

NORTH CAROLINA
BRUNSWICK COUNTY
GENERAL WARRANTY DEED

THIS DEED made this 1st day of June, 1983, by and between BALD HEAD ISLAND CORPORATION, a North Carolina corporation, Grantor, and BALD HEAD ISLAND LIMITED, a Texas limited partnership, Grantee, P. O. Box 4000, The Woodlands, Texas 77380.

The designation "Grantor" and "Grantee" as used herein shall include said parties, their successors and assigns.

WITNESSETH:

That the Grantor for the sum of One Dollar (\$1.00) and other 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, that certain lot or parcel of land situated in Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

SEE SCHEDULE A ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

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

103
BHA-20-51

D/50-5
STATE OF NORTH CAROLINA
Real Estate Excise Tax
900.00
6-14-83
STATE OF NORTH CAROLINA
Real Estate Excise Tax
900.00
6-14-83

STATE OF NORTH CAROLINA
EXCISE TAX
900.00

BOOK 532 PAGE 547

Grantor and Grantor hereby covenant that it 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.

This conveyance is made expressly subject to the exceptions in Schedule B attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF the Grantor 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 as of the day and year first above written.

SECRETARY
Bald Head Island Corporation

BALD HEAD ISLAND CORPORATION

Signature of James E. Harrington, President

STATE OF NORTH CAROLINA
EXCISE TAX
900.00
6-16-83

NORTH CAROLINA
Brunswick COUNTY

I, Donna Jones, a Notary Public in and for said State and County, do hereby certify that Charles J. Hinkle III personally appeared before me this day and acknowledged that he is Secretary of BALD HEAD ISLAND CORPORATION, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, James E. Harrington, sealed with its corporate seal, and attested by him self as its Secretary.

WITNESS my hand and notarial seal this the 14th day of June, 1983.

NOTARY PUBLIC
DONNA JONES

Signature of Donna Jones, Notary Public

My commission expires: 9-13-86

EXCISE TAX
275.00
6-16-83

D/50-5

STATE OF NORTH CAROLINA, Brunswick County
The Forgoing Certificate(s) of Donna Jones, Notary Public

Recorded this 15th day of June, 19 83 at 4:41 P. M. (to be corrected)
Robert J. Robinson, Registrar of Deeds

Signature of Robert J. Robinson, Registrar of Deeds

All those certain tracts or parcels of land lying and being in Smithville Township, Brunswick County, North Carolina, and more particularly described as follows:

PARCEL A

Bounded on the North by an agreed division line with Hugh McRae and Company set forth in deed recorded in Book 76, at Page 480 in the Brunswick County Public Registry, bounded on the West and South by the channel of the Cape Fear River; and bounded on the East by the Atlantic Ocean, and described as follows:

TRACT ONE:

BEGINNING in the mouth of Lighthouse Creek, at Four Posts, where the U.S. Government formerly kept a beacon light in the mouth of said creek, it being about 150 feet east of the present place where said beacon light is now kept by said Government, and running thence up the main channel of Lighthouse Creek in an easterly direction about five miles to a point in the head of said creek about 400 yards west of the eastern coast of the Atlantic Ocean; thence about south-east to the Atlantic Ocean and into the Atlantic Ocean until the line reaches a depth of three feet of water; thence with the easterly boundary line of the Atlantic Ocean said boundary to be on a line along said coast at a point where the water will average a depth of three feet to a point on Frying Pan Shoals; thence with the boundary of the western coast of said Atlantic Ocean, said boundary being on a line in said ocean where the water will reach a depth of three feet, and in a westerly direction to the bar at the mouth of the Cape Fear River, being a distance of about five miles; thence up said river with the channel of the same to a point in said channel opposite Lighthouse Creek; thence direct to the place of BEGINNING, being said Four Posts in the mouth of Lighthouse Creek where said beacon lights were formerly kept by said Government, and containing Five Thousand Acres, more or less.

The foregoing description includes and is intended to include all land of Smith Island south of Light House Creek.

BEING the same property conveyed to Frank O. Sherrill by Brunswick County, by deed dated March 23, 1938 and recorded in Book 66, at Page 226 in the Brunswick County Public Registry and the same property conveyed to Carolina Cape Fear Corporation by Frank O. Sherrill and Ruth J. Sherrill, his wife, by deed dated June 30, 1970 and recorded in Book 244, at Page 251 in the Brunswick County Public Registry.

TRACT TWO:

BEGINNING at the mouth of Lighthouse Creek, four beacon posts, and runs with Lighthouse Creek in a southeasterly direction about four miles to the Atlantic Ocean; thence with the Atlantic Ocean in a northeasterly direction to New Inlet; thence with New Inlet to the Cape Fear River; thence with Cape Fear River to the BEGINNING, this being the balance of the land bought by T. F. Boyd about 20 years ago less the part which he had sold to other parties.

UNCERTIFIED

UNCERTIFIED

BOOK 532 PAGE 549

BEING the same property conveyed to Frank O. Sherrill by D. C. Boyd and wife, Bessie B. Boyd, by deed dated November 29, 1938, recorded in Book 66 at page 515 in the Brunswick County Public Registry and the same property conveyed to Carolina Cape Fear Corporation by Frank O. Sherrill and Ruth J. Sherrill, his wife, by deed dated June 30, 1970 and recorded in Book 244, at Page 251 in the Brunswick County Public Registry.

TRACT THREE A:

A certain piece or parcel of land situate on Cape or Smith's Island BEGINNING at the first bluff of high land on the south side of Lower Cape Creek; running thence south twelve poles along said creek to a stake; thence southeast twenty poles along said creek to a stake; thence south seventy-five east, twenty poles along said creek to a stake; thence southwest forty-one poles; thence northwest forty-six poles; thence northeast thirty-nine poles to the BEGINNING, containing ten acres, together with the free use and navigation of said Lower Cape Creek from the entrance into Cape Fear River to the aforesaid land;

TRACT THREE B:

At southeast end of Smith Island at mouth of Cape Fear River, beginning at a point 2000 feet N. 59° W. from the south corner of the building used for quarters of the Life Saving Station on the pitch of Cape Fear, N.C., and running thence N. 44° E. 1320 feet; thence N. 46° W. 660 feet; thence S. 44° W. 20 feet; thence S. 46° W. 650 feet to the place of BEGINNING, the whole containing 20 acres, more or less, together with a right of way thirty feet wide running from the middle of the western boundary of above tract of land N. 46° W. 13,600 feet to the easterly boundary of the "present" Cape Fear Lighthouse Reservation. Then beginning on the prolongation of the same line when it intersects with the westerly boundary of the same reservation, and running thence N. 29° W. 1220 feet to low water line on the easterly bank of Cape Fear River, including the right to cut down trees and to construct road beds or tramways, erect such boat houses, landings and store sheds as may be necessary or convenient for the proper construction, maintenance and repairs at all times hereafter of the New Cape Fear Light Station, N.C. This right of way covers 10 acres, more or less.

Tracts Three A and Three B being the same property conveyed to Frank O. Sherrill by deed from the United States of America dated October 24, 1963, recorded in Book 176, at Page 221 in the Brunswick County Public Registry and the same property conveyed to Carolina Cape Fear Corporation by deed from Frank O. Sherrill and Ruth J. Sherrill, his wife, dated June 30, 1970, recorded in Book 244, at Page 251 in the Brunswick County Public Registry.

TRACT FOUR:

BEGINNING in the center of the middle cord of the Rock Dam across New Inlet, the point being marked with a cross cut in the Rock Dam it being the beginning corner of a tract of land conveyed by Frank O. Sherrill to Hugh Hagan & Company by deed dated December 9, 1943, and running from said point (1) South 70° 20' East 7150 feet crossing what is known as South Water Basin to low water mark on the shore of the Atlantic Ocean, the line being marked by an iron monument on the beach 110 feet from low water mark; (2) thence with low water mark of the Atlantic Ocean South 15° West

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42,000 feet to the point of Cape Fear; (3) thence with the Southern shore of Bald Head Island with low water mark North 62° West 20,000 feet to a point beyond the Western shore of said Island in the ship channel of Cape Fear River; (4) thence up the various courses of the ship channel of the Cape Fear River in a Northeasterly direction to a point in said channel North 70° 20' West 2300 feet from the point of beginning; (5) thence South 70° 20' East 2300 feet to the BEGINNING.

Including the property generally known as the Bald Head Island Tract.

All of which will more fully appear by reference to a survey made by C. J. Josephans and Eric Norden, Civil Engineers, October 29, 1943.

Being the same property conveyed to Frank O. Sherrill by Hugh McRae & Company by deed dated December 9, 1943 and recorded in Book 76, at page 480 in the Brunswick County Public Registry.

Together with all right, title and interest of Frank O. Sherrill in an easement reserved to the said Frank O. Sherrill over and across the lands formerly owned by Hugh McRae & Company, lying immediately north of the property of Frank O. Sherrill, said easement being set forth in that deed from Frank O. Sherrill and wife, Ruth J. Sherrill, to Hugh McRae & Company dated December 9, 1943 and recorded in Book No. 76, Page 209 in the Office of the Register of Deeds, New Hanover County, N.C.

All of the tract referred to as "Tract Four" being the same property conveyed to Carolina Cape Fear Corporation by Frank O. Sherrill and Ruth J. Sherrill, his wife, by that certain deed without warranty dated June 30, 1970, recorded in Book 244, Page 258 in the Brunswick County Public Registry.

Together with those easements (a) retained in the deed to The Nature Conservancy dated May 3, 1975, and recorded in Book 401 at Page 598 in the Brunswick County Registry and (b) set forth in that Easement from the State of North Carolina dated June 19, 1979 and recorded in Book 427 at Page 927 in the Brunswick County Registry.

Grantor further does hereby grant, convey and assign to Grantee, the right of use, all rights, privileges and easements of Grantor reserved in the deeds to York Realty Co., Inc. recorded in Book 399, Page 448 and Book 499, Page 167, Brunswick County Registry.

PARCEL B

BEGINNING at a point in the southern line of Moore Street in the City of Southport, said point being located South 29° 20' 48" East 51.2 feet from a point in the center line of Moore Street, said point in the center line of Moore Street being located north 56° 32' East 437.23 feet from the point where the culvert of Bonnett's Creek crosses Moore Street in the City of Southport, North Carolina, said beginning point also being a common corner with the W Wiley Will's tract. From said beginning point runs thence south 29° 20' 48" East 22.65 feet to the mean high water mark of the Cape Fear River, runs thence north 43° 45' East and with the mean high water mark of the Cape Fear River 139.32 feet to a point; runs thence north 29° 20' 48" West 575.64 feet

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to a concrete monument in the southern right-of-way line of Moore Street; runs thence South 54° 57' 22" West and with the southern right-of-way line of Moore Street 134.09 feet to the place and point of beginning; the same containing 0.923 acres more or less and being the same tract of land as was conveyed to the Grantor by warranty deed from Phillip King and wife, Susan T. King, dated December 22, 1977, and recorded in Book 390, Page 14 of the Brunswick County Registry.

THERE IS ALSO TRANSFERRED AND CONVEYED a certain permit from the Department of the Army issued to Bald Head Island Corporation on March 27, 1981, to perform work in or affecting the navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403). The nature of the permit is to allow for an enlargement of the waterward section of an existing pier abutting the property conveyed in the Parcel B above. Grantee, by acceptance of this property, hereby agree to comply with all terms and conditions of these permits, copies of which are attached as Exhibit A(1) and incorporated herein by reference.

THERE IS ALSO TRANSFERRED AND CONVEYED a certain permit from the Department of the Army issued to Bald Head Island Corporation on January 22, 1981, to perform work in or affecting the navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403). The nature of the permit is to allow for installation of a wooden fender system, for placement of riprap material on both sides of the entrance channel jetties, and installation of a sandbag bulkhead with backfill, abutting the property conveyed in the Parcel A above. Grantee, by acceptance of this property, hereby agree to comply with all terms and conditions of these permits, copies of which are attached as Exhibit A(2) and incorporated herein by reference.

THERE IS ALSO TRANSFERRED AND CONVEYED a certain permit from the Department of the Army issued to Bald Head Island Corporation on July 17, 1981, to perform work in or affecting the navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403). The nature of the permit is to allow for lengthening the entrance channel jetties on the Cape Fear River, abutting the property conveyed in the Parcel A above. Grantee, by acceptance of this property, hereby agree to comply with all terms and conditions of these permits, copies of which are attached as Exhibit A(3) and incorporated herein by reference.

LESS AND EXCEPTING FROM THE ABOVE DESCRIBED TRACTS ONE, TWO, THREE-A, THREE-B and FOUR (Parcel A), all of the lots and tracts listed on "Exhibit A", consisting of the following pages 5 through 10, attached hereto and incorporated herein by reference.

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EXHIBIT A

BALD HEAD ISLAND CORPORATION

SUBJECT: LOTS IN STAGE 1, ACCORDING TO A SURVEY OF BALD HEAD ISLAND BY WM. F. FREEMAN ASSOCIATES, ENGINEERS, MAPS OF WHICH ARE DULY RECORDED IN MAP BOOK 12, PAGES 1-9, RECORDS OF BRUNSWICK COUNTY, NORTH CAROLINA

| | | | | | | |
|-----|-----|-----|-----|-----|-----|-----|
| 1 | 137 | 199 | 254 | 316 | 416 | 497 |
| 3 | 142 | 200 | 255 | 317 | 417 | 498 |
| 4 | 147 | 201 | 256 | 318 | 418 | 499 |
| 5 | 148 | 202 | 257 | 319 | 419 | 500 |
| 6 | 149 | 203 | 258 | 320 | 420 | 501 |
| 7 | 150 | 204 | 259 | 321 | 421 | 502 |
| 9 | 151 | 205 | 260 | 322 | 422 | 503 |
| 10 | 152 | 206 | 261 | 323 | 423 | 504 |
| 11 | 153 | 207 | 262 | 324 | 424 | 505 |
| 12 | 154 | 208 | 265 | 327 | 425 | |
| 14 | 155 | 209 | 266 | 328 | 426 | 507 |
| 15 | 156 | 210 | 300 | 363 | 427 | 508 |
| 16 | 157 | 211 | 301 | 364 | 428 | 509 |
| 17 | 158 | 212 | 302 | 365 | 429 | 510 |
| 18 | 159 | 214 | 303 | 366 | 430 | 511 |
| 19 | 160 | 215 | 304 | 367 | 431 | 512 |
| 20 | 161 | 216 | 305 | 368 | 432 | 513 |
| 21 | 162 | 217 | 306 | 369 | 433 | 514 |
| 22 | 163 | 218 | 307 | 370 | 434 | 515 |
| 102 | 164 | 219 | 308 | 372 | 436 | 516 |
| 103 | 165 | 220 | 309 | 373 | 437 | 517 |
| 104 | 166 | 221 | 310 | 374 | 438 | 518 |
| 106 | 167 | 222 | 311 | 375 | 439 | 519 |
| 107 | 168 | 223 | 312 | 376 | 440 | 520 |
| 108 | 170 | 224 | 313 | 377 | 441 | 521 |
| 109 | 171 | 225 | 314 | 378 | 442 | 522 |
| 110 | 172 | 226 | 315 | 379 | 447 | 523 |
| 111 | 173 | 227 | 316 | 380 | 449 | 524 |
| 112 | 174 | 228 | 317 | 381 | 452 | 525 |
| 114 | 175 | 229 | 318 | 382 | 453 | 527 |
| 115 | 176 | 230 | 319 | 385 | 454 | 529 |
| 116 | 177 | 231 | | 389 | 461 | 532 |
| 117 | 178 | 232 | 321 | 389 | 463 | 533 |
| 118 | 179 | 233 | 322 | 391 | 465 | 536 |
| 119 | 180 | 234 | 323 | 392 | 465 | 537 |
| 120 | 181 | 235 | 324 | 394 | 466 | 538 |
| 121 | 182 | 238 | 325 | 395 | 467 | 539 |
| 122 | 183 | 239 | 326 | 396 | 468 | 540 |
| 123 | 184 | 240 | 327 | 397 | 469 | 541 |
| 124 | 185 | 241 | 328 | 398 | 470 | 543 |
| 125 | 186 | 242 | 329 | 399 | 471 | 545 |
| 126 | 187 | 243 | 330 | 400 | 476 | 546 |
| 127 | 188 | 244 | 331 | 402 | 477 | 547 |
| 128 | 189 | 245 | 332 | 403 | 479 | 548 |
| 129 | 190 | 246 | 334 | 404 | 480 | 549 |
| 130 | 191 | 247 | 336 | 408 | 481 | 550 |
| 131 | 192 | 248 | 337 | 409 | 487 | 551 |
| 132 | 193 | 249 | 341 | 410 | 491 | 552 |
| 133 | 194 | 250 | 342 | 412 | 492 | 553 |
| 134 | 195 | 251 | 343 | 412 | 493 | 554 |
| 135 | 196 | 252 | 344 | 413 | 494 | 555 |
| 136 | 197 | 253 | 345 | 414 | 495 | 556 |
| | 198 | | | 415 | 496 | |

*Lot should have been conveyed referencing Map Book 12 at Page 11.

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| | | | | | | |
|-----|-----|-----|------|-----|------------|------|
| 557 | 616 | 672 | 739 | 857 | 942 | 1086 |
| 558 | 617 | 673 | 741 | 858 | 943 | 1087 |
| 559 | 618 | 674 | 742 | 859 | 944 | 1088 |
| 560 | 619 | 675 | 743 | | 945 | 1089 |
| 561 | 620 | 676 | 744 | | 946 | 1090 |
| 562 | 621 | 677 | 745 | 863 | 947 | 1091 |
| 563 | 622 | 678 | 747 | 864 | 948 | 1092 |
| 564 | 623 | 679 | 748 | 865 | 949 | 1093 |
| 565 | 624 | 680 | 749 | 866 | 950 | 1094 |
| 566 | 626 | 681 | 750 | 867 | 951 | 1095 |
| 567 | 627 | 682 | 751 | 869 | 952 | 1096 |
| 568 | 628 | 683 | 752 | 871 | 953 | 1097 |
| 569 | 629 | 684 | 753 | 873 | 957 | 1098 |
| 570 | 630 | 685 | 754 | 873 | 958 | 1099 |
| 571 | 631 | 686 | 755 | 883 | 959 | 1101 |
| 572 | 632 | 687 | 757 | 884 | 960-2/3 | 1102 |
| 573 | 633 | 688 | 758 | 885 | 961 inter- | 1203 |
| 574 | 634 | 689 | 759 | 889 | 962 est | 1104 |
| 575 | 635 | 690 | 760 | 891 | 963 only | 1105 |
| 576 | 636 | 691 | 761 | 892 | 964 | 1106 |
| | 637 | | | | 965 | |
| 577 | 638 | 692 | 763 | 893 | 966 | 1107 |
| | | 693 | | | | |
| 578 | 639 | 697 | 764 | 894 | 967 | 1108 |
| 579 | 640 | 698 | 765 | 900 | 968 | 1109 |
| 580 | 641 | 699 | 766 | 907 | 1000 | 1110 |
| 581 | 642 | 700 | | 908 | | 1111 |
| 582 | 643 | 701 | 767 | 911 | 1037 | 1112 |
| 583 | 644 | 702 | 769* | 912 | 1046 | 1200 |
| 584 | 645 | 703 | 771* | 911 | 1051 | 1201 |
| 585 | 646 | 704 | 775* | 912 | 1052 | 1203 |
| 586 | 647 | 705 | 776* | 913 | 1053 | 1205 |
| 587 | 648 | 706 | 777* | 915 | 1057 | 1206 |
| 588 | 649 | 707 | 779 | 918 | 1061 | 1207 |
| 589 | 650 | 708 | 780 | 919 | 1062 | 1208 |
| 590 | 651 | 710 | 791 | 921 | 1065 | 1209 |
| 591 | 652 | 719 | 792 | 922 | 1066 | 1210 |
| 592 | 653 | 720 | 807 | 923 | 1067 | 1211 |
| 593 | 654 | 721 | 808 | 924 | 1068 | |
| 594 | 655 | 722 | 809 | 925 | 1069 | |
| 595 | 656 | 723 | 810 | 926 | 1070 | |
| 600 | 657 | 724 | 811 | 927 | 1071 | |
| 601 | 658 | 725 | 828 | 928 | 1072 | |
| 602 | 659 | 726 | 829 | 929 | 1073 | 1266 |
| 603 | 660 | 727 | 824 | 930 | 1074 | 1287 |
| 604 | 661 | 728 | 825 | 931 | 1075 | 1288 |
| 605 | 662 | 729 | 826 | 932 | 1076 | 1289 |
| 606 | 663 | 730 | 827 | 933 | 1077 | 1290 |
| 607 | 664 | 731 | 828 | 934 | 1078 | 1291 |
| 609 | 665 | 732 | 829 | 935 | 1079 | 1292 |
| 610 | 666 | 733 | 837 | 936 | 1080 | 1293 |
| 611 | 667 | 734 | 838 | 937 | 1081 | 1294 |
| 612 | 668 | 735 | 843 | 938 | 1082 | 1295 |
| 613 | 669 | 736 | 844 | 939 | 1083 | 1296 |
| 614 | 670 | 737 | 846 | 940 | 1084 | 1297 |
| 615 | 671 | 738 | 848 | 941 | 1085 | 1298 |
| | | | 849 | | | |
| | | | 850 | | | |

*Lots should have been conveyed by referencing Map Book 12 at Page 10.

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(Portion reconveyed to SHIC by deed in Book 390 at Page 173 and added to Lot 1361 by Map Cabinet I at Page 173).

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Book 12 at page 10, Brunswick County Registry:

769 774
771 775
772 776
773 777
778

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Book 12 at page 11, Brunswick County Registry:

105
106

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Book 12 at page 36, Brunswick County Registry:

1059

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Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Book 12 at Page 39, Brunswick County Registry:

229

Lots in Stage I, according to surveys of parts of Bald Head Island recorded in the following Map Books in the Brunswick County Registry:

| Lot | Map Cabinet | Page |
|------|-------------|------|
| 100 | I | 373 |
| 1361 | I | 373 |
| 1362 | I | 373 |
| 624 | J | 319 |

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet L, Page 195, Brunswick County Registry:

- EC-1
- EC-2
- EC-3
- EC-4

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet M, Page 84, Brunswick County Registry:

| | | |
|------|------|------|
| 1029 | 1031 | 1240 |
| 1050 | 1038 | 1240 |
| 1031 | 1039 | 1249 |
| 1042 | 1040 | 1253 |
| 1033 | 1042 | 1254 |
| 1034 | 1043 | 1255 |
| 1035 | 1044 | |
| 1036 | | |

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet M, Page 85, Brunswick County Registry:

| | |
|------|--------|
| 1005 | 1213 |
| 1006 | 1214 |
| 1007 | 1215-A |
| | 1216 |

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet M, Page 86, Brunswick County Registry:

| | | |
|------|------|------|
| 1012 | 1025 | 1221 |
| 1013 | 1026 | 1228 |
| 1016 | 1027 | 1229 |
| 1022 | 1028 | 1238 |
| | | 1239 |

Lots in Stage I, according to a survey of part of Bald Head Island entitled "BALD HEAD ISLAND VILLAS" recorded in Map Cabinet M, Page 70, Brunswick County Registry:

| | |
|---|---|
| 1 | 9 |
| 2 | 6 |
| 3 | 7 |
| 4 | 8 |

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BOOK 532 PAGE 556

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet N, Page 19, Brunswick County Registry:

- 138-A
- 146-A

Lots in Stage I, according to a survey of part of Bald Head Island entitled "BALD HEAD ISLAND VILLAS" recorded in Map Cabinet N, Page 133, Brunswick County Registry:

- 12
- 13
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A 2.2860 acre condominium tract in Stage I conveyed to Cinco Associates by deed recorded in Book 344, Page 333 of the Brunswick County Public Registry.

A 4.944 acre tract was conveyed to Robert C. Hayes by deed dated July 25, 1977 and recorded in Book 379, Page 583 in the Brunswick County Registry.

Middle Island and 2,000 feet of ocean frontage adjacent thereto was conveyed to Young Realty Co., Inc., by deed recorded in Book 399, Page 448 and Book 499, Page 167, Brunswick County Registry.

Quitclaim deed of a portion of the Marsh Highlands and high marsh to the State of North Carolina dated May 3, 1976 and recorded in Book 401, Page 516 in the Brunswick County Registry.

Deed to The Nature Conservancy dated May 3, 1976 recorded in Book 401, Page 598 in the Brunswick County Registry.

Deed of Trust to NSI covering 26 lots (Lots Nos. 1493-1501, 1506-1513 and 1519-1527) north of North Bald Head Wynd recorded in Book 291, Page 523, Brunswick County Registry. This Deed of Trust was foreclosed.

Property of Charles D. Young as shown on map recorded in Map Book 12, Page 37, Brunswick County Registry, and property conveyed by deed recorded in Book 425, Page 125, and Book 441, Page 180, Brunswick County Registry.

Property conveyed to Walter R. Davis by deed recorded in Book 462, Page 763, Brunswick County Registry.

Property conveyed to Arron W.E. Capel by deed recorded in Book 473, Page 484, Brunswick County Registry.

Property conveyed to Bald Head Island Villas Association by deed recorded in Book 487, Page 974, Brunswick County Registry, saving and excepting any portion of Lots 19 and 20, as shown on map recorded in Map Cabinet N, Page 133, Brunswick County Registry.

Property conveyed to Walter R. Davis by deed recorded in Book 492, Page 89, Brunswick County Registry.

Property conveyed to Arron W.E. Capel by deed recorded in Book 501, Page 401, Brunswick County Registry.

Property conveyed to Bald Head Island Villas Association by deed recorded in Book 512, Page 513, Brunswick County Registry.

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BOOK 532 PAGE 557

Property conveyed to Rising 3, Inc. by deed recorded in Book 520, Page 898, Brunswick County Registry.

Property conveyed to STATE OF NORTH CAROLINA, by deed recorded in Book 489, Page 7, Brunswick County Registry.

Phase II, Royal James Landing as shown on map recorded in Map Cabinet N, Page 251, Brunswick County Registry.

Gazebo Tract north of North Bald Head Wynd more particularly described as follows:

BEGINNING at a point in the north right-of-way line of North Bald head Wynd, said point being North 32° 18' 41" East 60.00 feet from the northwestern corner of Lot 809, Stage I, Bald Head Island, recorded in Map Book 12, Page 1 through 9, Brunswick County Registry and also having N.C. Grid Coordinates N=45732.932 and E=2,303,716.772; thence from said POINT OF BEGINNING North 21° 35' 05" East 352.89 feet to a point in the high water line of Bald Head Creek; thence along the high water mark of said creek the following two courses and distances: (1) South 45° 12' 43" East 116.95 feet to a point; (2) South 26° 10' 07" East 73.05 feet to a point; thence leaving said creek South 38° 38' 05" West 286.42 feet to a point in the northern right-of-way of North Bald Head Wynd; thence along said northern right-of-way line along a curve to the left having a radius of 2,894.79 feet a distance of 79.24 feet to the POINT OF BEGINNING, and containing 0.95 acres according to a survey of the "Gazebo Tract, Bald Head Island" dated June 13, 1983, prepared by Moore, Gardner & Associates, Inc., Consulting Engineers, Cary, North Carolina.

TOGETHER with a non-exclusive easement for access, ingress and egress over and on all the existing roads, wynds, trails, paths, and courts of Stage I, Bald head Island, as shown on all existing recorded maps, and over the marina, docks and adjoining property and the Mainland facilities.

LESS AND EXCEPTING from the above described Parcel A, the following lots:

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Book 12, Pages 1 - 9, Brunswick County Registry:

| | |
|-----|------|
| 369 | |
| 478 | 954 |
| 489 | 1311 |
| 490 | 1323 |
| 531 | 1315 |

Lot in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet M, Page 86, Brunswick County Registry;

1227

Lots in Stage I, according to a survey of part of Bald Head Island recorded in Map Cabinet M, Page 84, Brunswick County Registry:

1251
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UNCERTIFIED

Bruce Marek, P.E.

P. O. Box 3069

Bald Head Island, NC 28461

January 8, 2014

Ms. Heather Coats
NCDENR Division of Coastal Management
127 Cardinal Drive Extension, Wilmington, NC 28405

Re: CAMA #172-87 Bald Head Island Limited, LLC Minor Modification Request for various Wood Decks and Additional Brick Walkway at the Southwest Corner of Bald Head Island Marina leading to the Ferry Terminal.

Dear Ms. Coats:

This Minor Modification Request is submitted on behalf of Bald Head Island Limited, LLC for CAMA Permit #172-87 Marina Development. Last winter, we constructed a the covered ferry passenger staging area, which is part of a long permitted ferry terminal expansion, and also replaced in kind the appx 160 lf x 13'-10" brick walkway. This winter, we are proposing three wood decks, a wood stairway and a brick transition to replace the deteriorating wood transition into the existing brick walkway.

Included for this minor mod request are five drawings C-1, seal dated 1-8-14. This submittal replaces my 12-13-13 Letter of Refinement Request, per our discussions. Action items are indicated in red on my drawing.

Item #1, labelled as Wood Deck #1, is a replacement/rebuild of the existing 865 sf wood Sales Office Deck (942 sf with stairs) with a smaller, more rectangular 700 sf deck (760 sf with stairs). Also indicated on the drawing is a temporary aluminum ramp (that we have in inventory at Deep Point Marina) as an access during construction. The Deck includes a planter area between the stairs. This work is within the 75' AEC, and outside of the 30' marina buffer.

Item #2 is a 15' x 15' triangular shaped wood deck, totally outside of the 75' AEC, near the existing main stairs to the Administration building.

Item #3 is a 370 sf wood deck which will serve as an entrance deck to a proposed Ferry Info Center, similar in concept, but much smaller scale than the upstairs area at our Deep Point Ferry Terminal Building. It is indicated as appx 28'-6" x 14'-2", and is an extension of the existing deck leading to the Harbour Master Store. Following the existing building lines, 90 sf of this deck is proposed within the 30' marina buffer. The info center and deck prime purpose relates to the Ferry Transpo System.

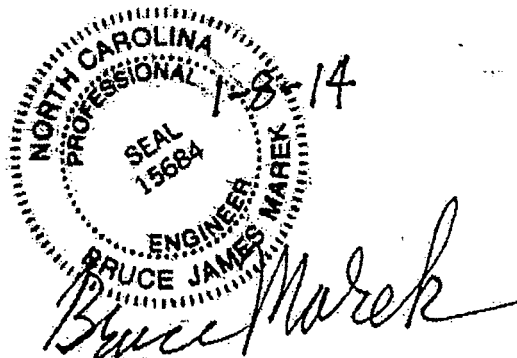
Item #4 is an appx 110 sf wood stairway leading from the corner of the deck. 44 sf of this building code required access stairway is indicated within the marina buffer, appx at the existing cannon & sign. The existing wood deck at the cannon, built in the 1980's, is a trapezoid 7'-4" x 12' = 88 sf, with about half (44 sf) in the buffer. We ask to swap the cannon wood pad for the 44 sf of wood stairway in the buffer.

Item #5 is a proposed brick transition area in this convoluted southwest corner of the marina. The company safety officer has asked if we could address the transition from the brick ferry landing walkway to the administration building concrete sidewalks. The existing wood transition has 5 different slopes. We would like to continue the brick walkway as a brick transition to the existing concrete sidewalk system. Our configuration allows it to be at one gentle, handicap compliant slope.

Note that the Administration Building and this "intersection" was built in the mid 1980's, and is considered as pre-1988 exempt impervious. Our 2008 SW8-940918 Mod included the impervious transition. They are being consulted as this corner entails three different drainage areas plus the exempt development. Of the 1240 sf of proposed new brick transition, 435 sf is outside of the 30' buffer, and 805 sf is within the buffer. As this intersection directly leads to/from the ferry terminal, we consider this as part of the ferry transportation egress/access pathway. Please see the renderings on my drawing.

As we have discussed, the wood decking of wood deck #3 and the brick transition within the 30' buffer may be subject to portion(s) of our proposed projects within the 30' marina buffer may be subject to denial/require a CRC Variance due to existing state coastal/marina buffer regulations. I have indicated above my seal area the AEC and Marina Buffer information for CAMA Permit #172-87. There are 1270 LF +/- of marina shoreline from the south entrance channel to the south east corner at MoJo's. (The entire marina perimeter is close to ¼ of a mile). The 30 ft buffer area is appx 37,500 sf (0.86 acres), and the 75' AEC area is 84,590 sf (1.94 acres). The permit area, out to the MHW line of the Cape Fear River, is appx 13 acres. The 200 sf deck limitation within the 30' buffer seems restrictive for a commercial marina, especially a marina that includes a utilities commission regulated private ferry system. Ferry transpo system related features are by nature water dependent and need to be within the marina buffer. We ask that this be considered in any permit decision.

I am enclosing Bald Head Island LTD Planning and Permits check # 1478 for \$100, dated 1-7-14 with this submission. Please fax or e-mail a copy of the permit when it is available. Thanks in advance for your kind consideration.



Bruce Marek, P.E.

For Bald Head Island Limited, LLC Planning Dept.

Cell: 910-228-2484 Planning Dept Fax 910-457-7463

marekyd@ec.rr.com and bmarek@bhisland.com

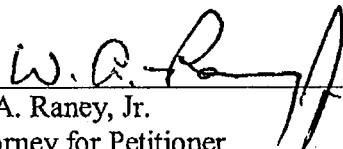
cc: Chad Paul, Jim Henry Bald Head Island Limited, LLC

CAMA VARIANCE PETITION
BALD HEAD ISLAND LIMITED, LLC

Petitioner, Bald Head Island Limited, 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
(910) 762-7475
NC Bar No. 5805

NOTICE TO ADJACENT OWNERS

The letters following this page were delivered and mailed to adjacent owners. Additional proof will be provided when received.

Bruce Marek, P.E.

5489 Eastwind Rd
Wilmington, NC 28403
January 15, 2014

Re: **Variance Request by Bald Head Island Limited, LLC to CAMA Permit 172-87 Marina Development
Adjacent Property Owner Notification**

ELVITO, INC
10 Marina Wynd
Bald Head Island, NC 28461
Attn: Mr. John Pitera

By Certified Mail and Hand Delivery

Dear Property Owner:

This is to notify you that Bald Head Island Limited, LLC is applying for a variance from the North Carolina Coastal Resource Commission for development in the 30' Buffer at the southwest corner of Bald Head Island Marina. Particular issues include the replacement with brick the multi-sloped wood transition at the end of the existing brick walkway at the Main Passenger Ferry Terminal, and for additional wood decking within the buffer. See attached drawing C1, seal dated 1-8-14. The variance is projected to be heard at the February 26-27, 2014 meeting of the Coastal Resource Commission.

If you wish to receive further information regarding the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, NC 28405. You may also contact CAMA field rep Heather Coats direct at 910-796-7424.

Sincerely,



Bruce Marek, P.E.
Authorized Agent for Bald Head Island Limited, LLC
Cell: 910-228-2484 Planning Dept Fax 910-457-7463
marekvd@ec.rr.com and bmarek@bhisland.com

Received By:

Owner/Representative Name (Printed) Signature Date

I have objections to this project _____ I have no objections to this project _____

Owner/Representative Name (Printed) Signature Date

Bruce Marek, P.E.

5489 Eastwind Rd
Wilmington, NC 28403
January 15, 2014

Re: Variance Request by Bald Head Island Limited, LLC to CAMA Permit 172-87 Marina Development
Adjacent Property Owner Notification

Old Baldy Foundation, Inc.
101 Lighthouse Wynd
Bald Head Island, NC 28461

By Certified Mail and Hand Delivery

Dear Property Owner:

This is to notify you that Bald Head Island Limited, LLC is applying for a variance from the North Carolina Coastal Resource Commission for development in the 30' Buffer at the southwest corner of Bald Head Island Marina. Particular issues include the replacement with brick the multi-sloped wood transition at the end of the existing brick walkway at the Main Passenger Ferry Terminal, and for additional wood decking within the buffer. See attached drawing C1, seal dated 1-8-14. The variance is projected to be heard at the February 26-27, 2014 meeting of the Coastal Resource Commission.

If you wish to receive further information regarding the variance, you may contact me. If you wish to make comments on the variance, you may direct your comments to the North Carolina Division of Coastal Management, 127 Cardinal Drive Extension, Wilmington, NC 28405. You may also contact CAMA field rep Heather Coats direct at 910-796-7424.

Sincerely,



Bruce Marek, P.E.
Authorized Agent for Bald Head Island Limited, LLC
Cell: 910-228-2484 Planning Dept Fax 910-457-7463
marekvd@ec.ri.com and bmarek@bhisland.com

Received By:

Owner/Representative Name (Printed) Signature Date

I have objections to this project _____ I have no objections to this project _____

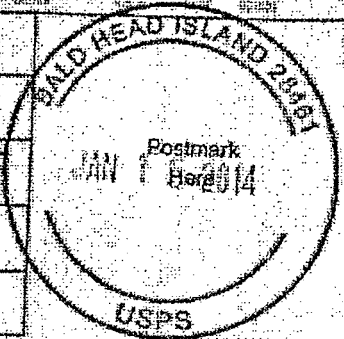
Owner/Representative Name (Printed) Signature Date

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| Certified Fee | 3.10 |
| Return Receipt Fee (Endorsement Required) | 2.55 |
| Restricted Delivery Fee (Endorsement Required) | |
| Total Postage & Fees | \$ 6.77 |



91799 822E 0000 050E 2102

Sent To: DAVID ELVITO

Street, Apt. No.,
or PO Box No. _____

City, State, ZIP+4 _____

PS Form 3800, August 2006

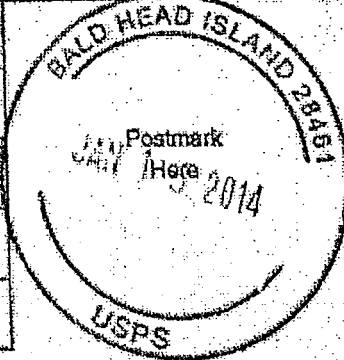
See Reverse for Instructions

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OFFICIAL USE

| | |
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| Total Postage & Fees | \$ 6.77 |



91799 822E 0000 050E 2102

Sent To: Old Baldy Friends

Street, Apt. No.,
or PO Box No. _____

City, State, ZIP+4 _____

PS Form 3800, August 2006

See Reverse for Instructions



Village of Bald Head Island

Existing Conditions



- Stage I
- Stage II
- Middle Island
- Cape Fear Station PUD
- DCM "Static Line" (2007)
- Lots Deemed "Unbuildable" due to CAMA Regulations (124 Lots)
- Bald Head Association "Common Areas"
- Maritime Forest Preserve
- State of NC Property Office
- Lagoons

- Single-Family Residential Structures (764)
 - Multi-Family/Cluster Development Structures (313)
Note: 313 physical structures/352 actual units
 - Commercial Structures (47)
 - Village Structures (8)
 - Smith Island Land Trust (40) (SILT)
 - Lots Underwater (68)
 - Unimproved Property (971)
- Total Structures 1,132 Total 1,079



From: Bruce Marek [mailto:bmarek@bhisland.com]
 Sent: Tuesday, January 21, 2014 4:16 PM
 To: marekd@ec.rr.com; Jim Henry
 Subject: FW: Ridership 2010 - 2013

From: Claude McKernan
 Sent: Tuesday, January 21, 2014 1:05 PM
 To: Bruce Marek
 Subject: Ridership 2010 - 2013

| | 2013 | | | | | | | | | | | | TOTAL |
|--------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| TYPE PASSENGER TO BHI | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | TOTAL |
| Class I GENERAL: | 1,884 | 2,131 | 6,436 | 6,572 | 10,348 | 13,713 | 15,016 | 14,212 | 9,204 | 7,520 | 4,478 | 2,858 | 94,372 |
| Class II BULK/BULK 40: | 1,044 | 952 | 1,976 | 2,179 | 2,913 | 2,730 | 2,656 | 2,821 | 2,041 | 2,097 | 1,795 | 1,176 | 24,380 |
| Class III BULK 80 | 303 | 271 | 278 | 272 | 391 | 783 | 860 | 869 | 690 | 464 | 310 | 299 | 5,790 |
| Class VII/IV NO FRILLS | 515 | 531 | 657 | 706 | 801 | 1,119 | 1,447 | 1,151 | 725 | 736 | 539 | 481 | 9,408 |
| Class VII/IV CONTRACTOR | 2,294 | 2,285 | 2,436 | 2,514 | 2,883 | 2,546 | 2,322 | 2,388 | 2,024 | 2,127 | 1,897 | 1,897 | 27,613 |
| Class IX/VI EMPLOYEE | 5,569 | 5,089 | 6,715 | 7,492 | 8,936 | 9,417 | 9,868 | 9,220 | 7,263 | 7,189 | 6,012 | 5,281 | 88,051 |
| Class XVII CHILDREN | 251 | 239 | 1,075 | 884 | 1,390 | 3,298 | 3,766 | 3,632 | 807 | 707 | 756 | 408 | 17,213 |
| Class XVII CHILDREN NO COST | 55 | 51 | 192 | 209 | 407 | 612 | 534 | 556 | 347 | 164 | 154 | 101 | 3,382 |
| Class XIV/III ANNUAL PASS | 82 | 83 | 89 | 80 | 89 | 56 | 56 | 59 | 88 | 108 | 69 | 95 | 954 |
| Class X ONE WAY TICKET | 47 | 34 | 89 | 111 | 129 | 138 | 193 | 159 | 153 | 86 | 49 | 50 | 1,238 |
| TOTAL to BHI (no CI X tickets) | 11,997 | 11,632 | 19,854 | 20,908 | 28,158 | 34,274 | 36,525 | 34,908 | 23,189 | 21,112 | 16,010 | 12,596 | 271,163 |

| | 2012 | | | | | | | | | | | | TOTAL |
|--------------------------------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|---------|
| TYPE PASSENGER TO BHI | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | TOTAL |
| Class I GENERAL: | 2,110 | 2,343 | 5,484 | 8,476 | 9,847 | 13,734 | 14,783 | 13,003 | 8,588 | 6,828 | 4,358 | 2,668 | 92,222 |
| Class II BULK/BULK 40: | 1,113 | 1,276 | 2,019 | 2,367 | 2,723 | 2,770 | 2,419 | 2,520 | 2,126 | 1,916 | 1,640 | 1,231 | 24,120 |
| Class III BULK 80 | 221 | 225 | 233 | 237 | 316 | 744 | 801 | 886 | 717 | 487 | 307 | 260 | 5,434 |
| Class VII/IV NO FRILLS | 461 | 503 | 590 | 765 | 885 | 1,109 | 1,368 | 1,217 | 696 | 693 | 590 | 605 | 9,432 |
| Class VII/IV CONTRACTOR | 2,506 | 2,724 | 3,060 | 2,829 | 2,643 | 2,841 | 2,426 | 2,285 | 2,108 | 2,334 | 1,983 | 1,434 | 29,173 |
| Class IX/VI EMPLOYEE | 4,884 | 4,766 | 5,914 | 6,903 | 8,031 | 8,334 | 8,792 | 8,777 | 7,020 | 6,852 | 5,985 | 4,932 | 81,190 |
| Class XVII CHILDREN | 236 | 279 | 828 | 1,606 | 1,332 | 3,271 | 3,717 | 3,228 | 774 | 625 | 669 | 411 | 16,978 |
| Class XVII CHILDREN NO COST | 56 | 72 | 168 | 317 | 401 | 598 | 565 | 529 | 356 | 194 | 130 | 97 | 3,504 |
| Class XIV/III ANNUAL PASS | 108 | 107 | 102 | 79 | 110 | 63 | 75 | 77 | 71 | 86 | 59 | 52 | 1,009 |
| Class X ONE WAY TICKET | 41 | 62 | 92 | 149 | 206 | 284 | 316 | 226 | 110 | 100 | 49 | 36 | 1,671 |
| TOTAL to BHI (no CI X tickets) | 11,695 | 12,295 | 18,398 | 23,581 | 26,288 | 33,464 | 34,967 | 32,522 | 22,456 | 20,015 | 15,731 | 11,700 | 263,112 |

**PETITIONER'S POSITION
ON
VARIANCE CRITERIA**

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

Petitioner's position: Yes.

Petitioner's argument: The strict application of the 30' shoreline buffer rule causes an unnecessary hardship to the Petitioner by not allowing the Petitioner to convert an existing wooden walkway to a more durable and safer brick walkway. It is also a hardship to restrict the size of the steps and the deck leading to the repurposed Visitor Information Center. The area proposed to be converted from wood to brick is heavily used by persons coming to and leaving from the Island. The existing wooden walkway area has five different slopes to transition to changing elevations. This commercial area needs a more permanent and uniform surface for durability and safety. The new steps and deck area serving as the entrance to the Visitor Information Center is only partially within the buffer zone. The part of the steps and deck within the buffer zone is necessary for proper functioning of these areas. The area of the new deck and steps within the buffer area will not exceed the decking for a cannon that will be removed from the base area. The hardship is unnecessary because the effect of conversion from wood to brick will not result in any significant change in stormwater runoff that will flow into the marina basin and the storm water will be controlled in accordance with stormwater rules of the Environmental Management Commission.

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

Petitioner's position: Yes.

Petitioner's argument: The hardships result from conditions peculiar to the Petitioner's property. The marina basin and surrounding areas were already the site of ferry operations and facilities serving Bald Head Island at the time the shoreline buffer rules became effective. Bald Head has no other feasible locations for the operation of its ferry system. The ferry service provides the sole access to the Island for most property owners and visitors. The Bald Head Marina is different from other ferry terminal sites because it is solely a pedestrian ferry. Other ferry systems in North Carolina are primarily for transporting vehicles that need only road access for embarking and disembarking.

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

Petitioner's position: No.

Petitioner's argument: The hardships results from the peculiar nature of the pedestrian ferry service necessary for Bald Head Island to serve its residents and visitors.

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

Petitioner's position: Yes.

Petitioner's argument:

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

The purpose of the Coastal Shoreline Buffer Rule is to prevent excessive stormwater runoff directly into coastal waters so as to protect coastal waters from pollutants carried by runoff. The Environmental Management Commission through the Division of Energy, Mineral and Land Resources (DEMLR) has established a stormwater regulatory program for the same purpose. The applicant will have to comply with the DEMLR program to prevent harmful stormwater runoff. In some instances stormwater will be diverted by appropriate means to natural soil areas for infiltration. The top of the bulkhead surrounding the marina basin at the location of the proposed new brickwork is above the ground surface thereby preventing direct runoff of stormwater into the marina basin from most rainfall events. The bulkhead will act as a dam allowing the retained stormwater to infiltrate into the soil behind the bulkhead. The new wooden steps and deck of which 44 square feet are within the buffer area will not create significant additional stormwater runoff because an equal amount of currently decked area in the same location will be removed from within the buffer.

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

The existing wooden walkway serving the ferry terminal and commercial area currently has multiple slopes making it undesirable from a safety standpoint. The wooden construction also requires frequent maintenance to assure that it remains as safe as feasible. Replacement of the wooden decking with brick will enhance safety.

- **Preserve substantial justice.**

The ferry terminal in the Bald Head Marina is the only feasible location for a ferry terminal to serve the residents, workers and visitors to Bald Head. The expansion and improvement of this area is necessary to serve existing and growing needs for passenger ferry service. The location of existing buildings, built under regulatory standards in place at the time they were built, requires the necessary enlargement and improvements to be located partially within the buffer area that was established in 1999. Development in areas surrounding the marina is now subject to stormwater rules administered by the Division of Energy, Mineral and Land Resources.

Substantial justice will be preserved by allowing needed expansion that complies with the standards set by the Environmental Management Commission.

WAR\14-004-003



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
cgoebel@ncdoj.gov

TO: The Coastal Resources Commission
FROM: Christine A. Goebel, Assistant Attorney General *CAG*
DATE: February 10, 2014 (for the February 26-27, 2014 CRC Meeting)
RE: **Variance Request by NC DOT (14-03)**

Petitioner is the NC Department of Transportation (“NCDOT”), which maintains NC Highway 12 on the Outer Banks within its right-of-way easement, including within the Town of Nags Head. NCDOT also maintains a stormwater outfall located at Milepost 10.45 near the Red Drum Restaurant, which is intended to convey stormwater from NC Highway 12 to the Atlantic Ocean. In November of 2013, NCDOT applied for a CAMA major permit to replace portions of this outfall and to extend it by 65-foot waterward. On December 20, 2013, DCM issued CAMA Major Permit 3137-13 to NCDOT for this proposed work, but conditioned out the 65-foot extension as it conflicted with the oceanfront erosion setback rules found at 15A NCAC 07H .0306(a). NCDOT now seeks a variance to allow 65-foot extension to the stormwater outfall as proposed in their permit application.

The following additional information is attached to this memorandum:

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

cc: Thomas Henry, Asst. AG and Counsel for Petitioner, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Town of Nags Head CAMA LPO, electronically

RELEVANT STATUTES OR RULES

ATTACHMENT A

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

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

(1) **The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. 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, *[none of the .0309 exceptions apply in this variance case]* **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:

(I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, **and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;**

STIPULATED FACTS

ATTACHMENT B

1. The Petitioner in this case is the North Carolina Department of Transportation (NCDOT), which is an agency of the State of North Carolina organized around the general purpose of planning, constructing, maintaining, and operating an integrated statewide transportation system for the economical and safe transportation of people and goods. See N.C. Gen. Stat. § 143B-346 (“The general purpose of the Department of Transportation is to provide for the necessary planning, construction, maintenance, and operation of an integrated statewide transportation system for the economical and safe transportation of people and goods as provided for by law.”).
2. NCDOT controls and maintains the public right-of-way known as NC Highway 12, which runs the length of the Outer Banks, including through the Town of Nags Head. NC Highway 12 is a primary route in Dare County and serves as a highway evacuation route in the event of major storms and hurricanes.
3. NCDOT also controls and maintains a drainage easement located at mile post 10.45 along NC Highway 12 in the Town of Nags Head (“Site”). The Site is located approximately 6 miles north of Jennette’s Pier, and is also referenced as the “Red Drum” outfall due to its proximity to the Red Drum Restaurant (and also used to be called the Carolinian or Gallery outfall). According to NCDOT, a structure known as ocean outfall #3 has existed on this easement since approximately 1966, prior to the enactment of the Coastal Area Management Act. The outfall structure consists of two lines of 27-inch reinforced concrete pipe running from NC Highway 12 to the beach.
4. The purpose of the outfall is to convey stormwater away from NC Highway 12 and towards the Atlantic Ocean. NCDOT’s goal is to ensure that NC Highway 12 does not flood during storm events.
5. Over the years, natural forces have damaged or degraded the outfall. NCDOT’s files show that the original structure extended 576 feet from a junction box towards the ocean. Due to storms, the end of the pipe has broken off. In 2003 correspondence, NCDOT explained to DCM that the pipe had lost approximately 65 feet of its original length over the years. Also, typically during periods of beach accretion the outfall has become clogged and/or covered with sand. The sand interferes with the transport of stormwater through the pipes. Because of the degraded condition of the outfall and the blockages caused by sand, stormwater can back up within the pipes and onto NC Highway 12 and other properties in the vicinity of the pipes’ inlet. Flooding has been documented near the outfall during rain events, as can be seen in photographs provided to the Commission.
6. The Site is not located within the bounds of the recent Nags Head beach nourishment project, but is located approximately half a mile north of the northern end of the project area.

7. By application dated November 1, 2013 and accepted as complete by the Division of Coastal Management (DCM) on November 15, 2013, NCDOT requested a CAMA permit in order to replace portions of the outfall and extend the structure an additional 65 feet towards the ocean.

8. NCDOT's project proposal includes: replacing 65 feet of existing pipe with 30-inch polyethylene plastic pipe; replacing support structures with 30-foot concrete piles and pipe collars; extending the structure's length in a linear seaward direction by 65 feet; constructing a temporary work trestle platform approximately 175 feet by 20 feet; and driving approximately 380 feet of temporary sheet pile to protect the work from the tides and waves. Information about the project is included in the permit application materials, attached.

9. As part of the CAMA major permit review process, DCM Field Staff reviewed the application and summarized it and the anticipated impacts in a Field Report, a copy of which is attached.

10. As part of the CAMA major permit review process, NCDOT's permit application was circulated to several state and federal resource agencies for review and the opportunity to comment. The only comments of note were from staff from the Shellfish Sanitation and Recreational Water Quality Section of the Division of Marine Fisheries who commented that there are negative impacts to water quality associated with stormwater outfalls, and if this outfall discharges into the surf zone, it will continue to have negative impacts on water quality. A copy of this letter is attached.

11. DCM District Planner's reviewed NCDOT's application and found the project to be consistent with/not in conflict with the CAMA Land Use Plan for the Town of Nags Head. A copy of her comments is attached.

12. In 1991 DCM issued CAMA Major Permit #118-91 to NCDOT authorizing a 48-foot extension to this outfall. Based on the field report from that permit file, NCDOT had replaced three 12-foot sections of 30" diameter pipe in 1991, but needed a CAMA permit for the extension. This permit expired in 1994 and it appears the permitted extension never took place at that time.

13. Staff from the Wildlife Resources Commission comments on the permit application, and suggested that work be done outside sea-turtle nesting season. This condition is contained as Condition #1 on the CAMA permit at issue.

14. Also as part of the CAMA major permit process, notice of the proposed project was posted on site and was published in the Coastland Times, and no public comments were received by DCM.

15. Through a January 28, 2013 letter from the Town of Nag Head Mayor Robert Oakes to NCDOT, the Town expressed interest in working with NCDOT to extend the outfall to improve drainage. A copy of this letter is attached.
16. On December 20, 2013, DCM issued CAMA Major Permit #137-13 to NCDOT. The permit authorizes the pipe replacement portion of the project, but conditions out approval for the proposed 65-foot extension of the pipe, based on 15A N.C.A.C. 07H .0306(a), which requires that an expansion of a structure meet the ocean erosion setbacks. A copy of this permit is attached.
17. The equipment to be used in the proposed project will access the beach through the public access point located 0.20 miles south at Admiral Street Drive.
18. The work is scheduled to begin in March 2014 and be completed before the end of May 2014, in order to occur at a time of typically low tourist activity. Condition 1 of the Permit #137-13 requires that work be completed by May 1, 2014 due to the sea turtle moratorium, and so any work after that date would require approval from DCM and coordination with relevant resource agencies.
19. NCDOT stipulates that proposed extension is inconsistent with 15A N.C.A.C. 07H .0306(a).
20. NCDOT seeks a variance in order to extend the ocean outfall by 65 feet as proposed in their permit application. NCDOT contends that extension of the outfall by 65 feet will improve the outfall's function and reliability and, in turn, minimize the risk of flooding on NC Highway 12.

STIPULATED EXHIBITS:

Survey Plat for Conch Shell Estates (depicting State-owned easement)

April 2003 Photo of Outfall on Beach

September 2005 Photos of Outfall on Beach

1/28/2013 Letter from Town of Nags Head Mayor Robert Oakes to NCDOT

NCDOT Project Drawings (Sheets 1-4)

November 2013 Photos of Outfall on Beach, of Junction Box and Catch Basin

NCDOT Application for CAMA Major Permit

DCM Field Report

Comments from N.C. Division of Marine Fisheries

Comments from DCM District Planner

CAMA Major Permit #137-13

Notice to Adjacent Landowners of Variance Petition with return receipts

5 Undated Photos of Flooding Along NC Highway 12 in Project Vicinity

Powerpoint

Petitioner's and Staff's Positions

ATTACHMENT C

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

Petitioner's Position: Yes.

Yes, strict application of the applicable development rules, standards, or orders issued by the CRC will cause NCDOT and the public unnecessary hardship.

NCDOT is an agency of the State of North Carolina and has responsibility for developing and maintaining a safe, efficient state highway system. See N.C.G.S. §§ 136-45, 143B-346. NC Highway 12, which is the road at issue in this variance request, is a primary route in the state highway system and provides north-south connectivity along the Outer Banks. It facilitates commerce, tourism, and emergency response activities. NC Highway 12 is also a hurricane evacuation route.

The outfall structure at issue is located in a natural drainage pathway and was installed in order to prevent flooding on NC Highway 12. Natural forces and weather events have degraded the outfall over the years. During periods of beach accretion (typically, the summer months), the end of the drain pipe will often be covered and blocked by sand. Such blockage of the outfall inhibits proper drainage, and the risk of flooding on NC Highway 12 increases. As evident from the photos in Exhibits 7-a and 7-b attached (five undated photos showing flooding at the site), flooding on the roadway and surrounding properties has in fact occurred.

NCDOT anticipates that sand deposition within the pipes will be significantly mitigated if the proposed 65-foot extension is permitted. If NCDOT is not permitted to extend the outfall, stormwater will likely continue to accumulate on NC Highway 12 during storm events, potentially creating hazardous conditions for the motoring public. Flooding in this area is also problematic for residences and businesses. Temporary clearing of the pipe is not likely to provide a reliable level of drainage in this area.

NCDOT believes that measures should be taken to adequately protect NC Highway 12 from flooding. A flooded roadway poses unnecessary risk and hardship to nearby residences, businesses, and the general public. This is especially true in the case of a road, like NC Highway 12, that carries significant traffic volumes. Recurrent roadway flooding is also a hardship to NCDOT because it diverts NCDOT's attention and resources away from other pressing needs to a problem that is correctable. Accordingly, strict application of the CRC's development rules to this project will result in unnecessary hardship.

Staffs' Position: Yes.

Staff agrees that DOT is charged with maintaining safe roadways for the public, and its proposal will minimize unnecessary hardship to the public as a result of road closings due to a clogged outfall. The proposal will also decrease maintenance expenses associated with continuously working to keep the outfall clear to the extent it can as the outfall's current location.

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.

Yes, the above-described hardship results from conditions peculiar to the property. The property at issue – the area comprised of the public right-of-way and associated drainage easement – is in Dare County in close proximity to the Atlantic Ocean. This area is particularly dynamic and is susceptible to a range of natural forces such as severe storms, high winds, ocean waves, tidal events, and beach erosion and accretion. The outfall structure and its ability to function are directly impacted by these peculiar local conditions. For example, as described above, accretion of the beach often leads to sand accumulation within the pipes, thereby thwarting the outfall's intended function.

Furthermore, the outfall is located in a natural drainage pathway and collects stormwater not only from the public roads but also from nearby private residences and businesses. The low topography and the poorly functioning outfall together contribute to flooding in this area. As already mentioned, NC Highway 12 serves important public functions – including hurricane evacuation – and the public expects NCDOT to keep the road open and safe for travel.

Accordingly, the hardship to NCDOT and the public are a direct result of location, topography, and dynamic local conditions at the site.

Staffs' Position: Yes.

Staff does not dispute that this Site was chosen in 1966 for the outfall's location due to it being a low-point and a natural drainage way. While proximity to the ocean is not itself peculiar, the existing location at the natural drainage area and the proximity of NC Highway 12 to the ocean combined with NCDOT's unique public safety mission in keeping NC Highway 12 clear of stormwater combine to cause a hardship.

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

Petitioner's Position: No.

No, the hardship facing NCDOT and the travelling public do not result from actions taken by the department. Rather, the hardship is a direct result of natural coastal processes, weather events, and local topography. All of these things are beyond the control of NCDOT.

Staff's Position: No.

Staff agrees with NCDOT. This outfall was constructed before the enactment of the CAMA and was located in a natural drainage area in order to most effectively carry stormwater off NC Highway 12. The hardships result from natural coastal processes impacting the waterward end of the outfall, which are not the result of actions of NCDOT.

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.

Yes, the proposed variance meets each of the three factors noted above.

The general use standards for ocean hazard areas indicate that their purpose is "to protect life and property." 15A N.C.A.C. 7H .0306(a). This variance request is entirely consistent with – indeed, will promote – that purpose. Proper drainage of stormwater away from the public right-of-way will minimize risk to life and property. Denying NCDOT's request to extend the outfall would result in a continuation (or a worsening) of the status quo, including continued blockage of the outfall, likely flooding on NC Highway 12, and increased risks to life and property.

Granting this variance will secure the public safety and welfare, as it will better ensure that NC Highway 12 is not flooded and remains available for general public use and for emergency and evacuation purposes. Allowing the extension of the outfall will also minimize the risk of flooding damage to nearby residences and businesses.

The variance will also preserve substantial justice. NCDOT has not caused the failure of the outfall, but NCDOT seeks to correct the situation. Without the variance, the associated portion of NC Highway 12 will continue to be threatened by flooding, which may result in periodic closings and may impede evacuation, emergency response, and access to residences and businesses. In short, this variance request is intended to support the public interest and to improve the reliability of our vital transportation infrastructure.

Staffs' Position: Yes.

The variance would be consistent with the spirit, purpose, and intent of the rules, standards or orders of the Commission. While the ocean erosion setback rules attempt to keep inappropriately sited development off the public beach, the purpose of an outfall is to cross the beach carrying stormwater into the ocean and off NC Highway 12 to improve travel during significant rain events. Granting this variance would ensure that this existing outfall would be able to serve this function as originally designed. The proposal is not the siting of a new outfall, and will not expand stormwater capacity entering the ocean. Instead, the proposed project will allow the existing structure to function as originally designed and installed. Staff agrees that if NCDOT is not allowed to restore the outfall to its original design, public safety and welfare could be negatively impacted as NC Highway 12 would continue to have flooding problems, possibly leading to closure of this important road. Granting a variance would preserve substantial justice, which would be served by enabling the public to traverse NC Highway 12 more often, even during significant rain events as it would help to increase drainage at this Site.

**Attachment D:
Petitioners' Variance Request Materials**

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: Permit 137-13

PETITIONER'S NAME North Carolina Department of Transportation

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);
- N/A 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.

Thomas Henry

Signature of Petitioner or Attorney

January 15, 2014

Date

Thomas Henry, Assistant AG

Printed Name of Petitioner or Attorney

thentry@ncdoj.gov

Email address of Petitioner or Attorney

1505 Mail Service Center

Mailing Address

(919) 707-4480

Telephone Number of Petitioner or Attorney

Raleigh NC 27699

City

State

Zip

(919) 733-9329

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



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
Thomas D. Henry
Transportation Section

January 15, 2014

Via E-mail and U.S. Mail

Braxton C. Davis, Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, North Carolina 28557
E-mail: Braxton.Davis@ncdenr.gov

Re: Variance Request for Major Permit No. 137-13

Dear Mr. Davis:

Please consider this variance request in connection with major permit no. 137-13, which your agency issued to the North Carolina Department of Transportation (NCDOT) on December 20, 2013. See Exhibit 1 (permit no. 137-13). As explained in more detail below, this variance request should be granted because it complies with the relevant requirements under the Coastal Area Management Act (CAMA) and the rules of the Coastal Resources Commission (CRC or Commission).

I. Background

In November 2013, NCDOT applied to the Division of Coastal Management (DCM) for a CAMA major permit in order to replace and extend an existing ocean outfall structure in Nags Head, Dare County. See Exhibit 2 (NCDOT permit application). This outfall structure is located at mile post 10.45 on NC Highway 12, approximately 375 feet south of East Gallery Row, and consists of two lines of 27-inch reinforced concrete pipe. See Exhibits 3-a, 3-b (map of project vicinity). The structure runs along an easement owned by the State of North Carolina. See Exhibit 4 (subdivision plat showing drainage easement).

During rain events, the stormwater which accumulates on NC Highway 12 and on surrounding properties will drain towards the ocean outfall structure. Its intended function is the conveyancy of stormwater away from the public highway and towards the Atlantic Ocean. From

NCDOT's perspective, it is important to convey stormwater off the right-of-way and minimize the risk of roadway flooding. Improving drainage from roads and other properties is also a concern to the Town of Nags Head. In January 2013, the Town's mayor sent NCDOT a letter expressing interest in extending the ocean outfall at issue in order to improve its functionality. See Exhibit 5 (mayor's letter to division's maintenance engineer).

The outfall is not functioning at an optimal level. The pipes have been damaged over the years by natural forces. Also, because of where the pipes terminate on the beach, there has been significant accumulation of sand on, around, and in the pipes. This problem is typical during seasonal periods of beach accretion. When sand accumulates within the pipes, it inhibits the oceanward flow of stormwater, which in turn causes flooding on NC Highway 12 and the surrounding drainage area. See Exhibit 6 (photos of sand-clogged pipes); Exhibits 7-a and 7-b (photos of flooding on right-of-way and surrounding property).

In order to reduce the threat of flooding on the public right-of-way, NCDOT has proposed replacing and extending the current structure. The proposed work, which is described in NCDOT's application, includes the following details:

- Replacing 65 feet of existing damaged pipe with 30-inch polyethylene plastic pipe;
- Replacing the supporting structures with 30-foot concrete pile supports and pipe collars;
- Extending the structure in a linear, seaward direction by adding another 65 feet of 30-inch polyethylene pipe;
- Constructing a temporary work trestle platform approximately 175 feet long by 20 feet wide; and
- Driving approximately 380 feet of temporary steel sheet pile in order to protect the work from incoming tides and waves.

The attached workplan drawings depict the scope of this project. See Exhibit 8 (project drawings). Once the project is complete, the protective steel sheeting and work trestle will be completely removed.

The work equipment will access the beach through the public access point located approximately 0.20 miles south of the project area at Admiral Street Drive. Any staging of equipment will be in the beach access pathway or upper beach above the mean high water mark, within the project area. NCDOT is scheduling the work during a time of low tourist activity and low beach use: the anticipated start date is March 2014, with completion by May 31, 2014.

DCM issued major permit no. 137-13 on December 20, 2013. This permit authorizes the above-described project, but states that "[i]n accordance with 15A NCAC 7H .0306(a), the proposed extension of the existing ocean outfall by 65 feet is not authorized." Therefore, the permit allows replacement of the existing outfall but prohibits the proposed 65-foot extension. The rule referenced by DCM is entitled "General Use Standards for Ocean Hazard Areas." NCDOT believes that the proposed extension was denied because it constitutes development that is not compliant with relevant setback requirements. NCDOT stipulates that the proposed extension of the outfall is inconsistent with the rule referenced by DCM.

II. NCDOT's Requested Variance Satisfies the Relevant Criteria

Granting this variance request will: (i) prevent undue hardship to NCDOT and the public; (ii) be consistent with the spirit, purpose, and intent of the CRC's rules; (iii) secure the safety and welfare of the public; and (iv) preserve substantial justice. Because this variance request satisfies the criteria set forth in N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., NCDOT respectfully requests that you recommend approval of this request by the CRC.

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

Yes, strict application of the applicable development rules, standards, or orders issued by the CRC will cause NCDOT and the public unnecessary hardship.

NCDOT is an agency of the State of North Carolina and has responsibility for developing and maintaining a safe, efficient state highway system. See N.C.G.S. §§ 136-45, 143B-346. NC Highway 12, which is the road at issue in this variance request, is a primary route in the state highway system and provides north-south connectivity along the Outer Banks. It facilitates commerce, tourism, and emergency response activities. NC Highway 12 is also a hurricane evacuation route.

The outfall structure at issue is located in a natural drainage pathway and was installed in order to prevent flooding on NC Highway 12. Natural forces and weather events have degraded the outfall over the years. During periods of beach accretion (typically, the summer months), the end of the drain pipe will often be covered and blocked by sand. Such blockage of the outfall inhibits proper drainage, and the risk of flooding on NC Highway 12 increases. As evident from the photos in Exhibits 7-a and 7-b attached hereto, flooding on the roadway and surrounding properties has in fact occurred.

NCDOT anticipates that sand deposition within the pipes will be significantly mitigated if the proposed 65-foot extension is permitted. If NCDOT is not permitted to extend the outfall, stormwater will likely continue to accumulate on NC Highway 12 during storm events, potentially creating hazardous conditions for the motoring public. Flooding in this area is also problematic for residences and businesses. Temporary clearing of the pipe is not likely to provide a reliable level of drainage in this area.

NCDOT believes that measures should be taken to adequately protect NC Highway 12 from flooding. A flooded roadway poses unnecessary risk and hardship to nearby residences, businesses, and the general public. This is especially true in the case of a road, like NC Highway 12, that carries significant traffic volumes. Recurrent roadway flooding is also a hardship to NCDOT because it diverts NCDOT's attention and resources away from other pressing needs to a problem that is correctable.

Accordingly, strict application of the CRC's development rules to this project will result

in unnecessary hardship.

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 above-described hardship results from conditions peculiar to the property. The property at issue – the area comprised of the public right-of-way and associated drainage easement – is in Dare County in close proximity to the Atlantic Ocean. This area is particularly dynamic and is susceptible to a range of natural forces such as severe storms, high winds, ocean waves, tidal events, and beach erosion and accretion. The outfall structure and its ability to function are directly impacted by these peculiar local conditions. For example, as described above, accretion of the beach often leads to sand accumulation within the pipes, thereby thwarting the outfall's intended function.

Furthermore, the outfall is located in a natural drainage pathway and collects stormwater not only from the public roads but also from nearby private residences and businesses. The low topography and the poorly functioning outfall together contribute to flooding in this area. As already mentioned, NC Highway 12 serves important public functions – including hurricane evacuation – and the public expects NCDOT to keep the road open and safe for travel.

Accordingly, the hardship to NCDOT and the public are a direct result of location, topography, and dynamic local conditions.

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

No, the hardship facing NCDOT and the travelling public do not result from actions taken by the department. Rather, the hardship is a direct result of natural coastal processes, weather events, and local topography. All of these things are beyond the control of NCDOT.

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 proposed variance meets each of the three factors noted above.

The general use standards for ocean hazard areas indicate that their purpose is “to protect life and property.” 15A N.C.A.C. 7H .0306(a). This variance request is entirely consistent with – indeed, will promote – that purpose. Proper drainage of stormwater away from the public right-of-way will minimize risk to life and property. Denying NCDOT's request to extend the outfall would result in a continuation (or a worsening) of the status quo, including continued blockage of the outfall, likely flooding on NC Highway 12, and increased risks to life and property.

Granting this variance will secure the public safety and welfare, as it will better ensure that NC Highway 12 is not flooded and remains available for general public use and for

emergency and evacuation purposes. Allowing the extension of the outfall will also minimize the risk of flooding damage to nearby residences and businesses.

The variance will also preserve substantial justice. NCDOT has not caused the failure of the outfall, but NCDOT seeks to correct the situation. Without the variance, the associated portion of NC Highway 12 will continue to be threatened by flooding, which may result in periodic closings and may impede evacuation, emergency response, and access to residences and businesses. In short, this variance request is intended to support the public interest and to improve the reliability of our vital transportation infrastructure.

III. Additional Documents

In support of this variance request, NCDOT attaches and incorporates by reference all the following:

- Exhibit 1 (CAMA permit no. 137-13)
- Exhibit 2 (NCDOT permit application)
- Exhibits 3a, 3b (map of project vicinity)
- Exhibit 4 (subdivision plat showing drainage easement)
- Exhibit 5 (Mayor letter)
- Exhibit 6 (photos of sand-clogged pipes)
- Exhibits 7a, 7b (photos of flooding on right-of-way and surrounding property)
- Exhibit 8 (project drawings)
- Exhibit 9 (notice of variance petition to third parties)
- Exhibit 10 (draft set of stipulated facts)

IV. Conclusion

For all the reasons discussed herein, and based on the documents attached hereto, NCDOT requests that DCM recommend to the Commission that this variance petition be granted. Further, NCDOT requests that this variance petition be heard at the Commission's regularly scheduled meeting in February 2014. Lastly, NCDOT requests that the Commission, after an opportunity for review and consideration, grant this variance petition and allow NCDOT to extend the outfall structure's current length by an additional 65 feet towards the ocean.

Sincerely,



Thomas Henry, Assistant Attorney General
N.C. Department of Justice, Transportation Section

cc: Christine Goebel, NCDOJ, Counsel to Division of Coastal Management (*via hand delivery*)
Clay Willis, NCDOT, Division Environmental Officer (*via mail*)

Ocean Outfall # 3 at Mile Post 10.45
Red Drum in Nags Head



East Gallery Row Street

NC 12

Red Drum Restaurant

Ocean Outfall # 3
Mile Post 10.45 Nags Head
Lat 35.988825
Long. -75.640773



EXHIBIT
3-a

0 250 500 1,000 Feet

Ocean Outfall # 3
Nags Head Mile Post 10.45

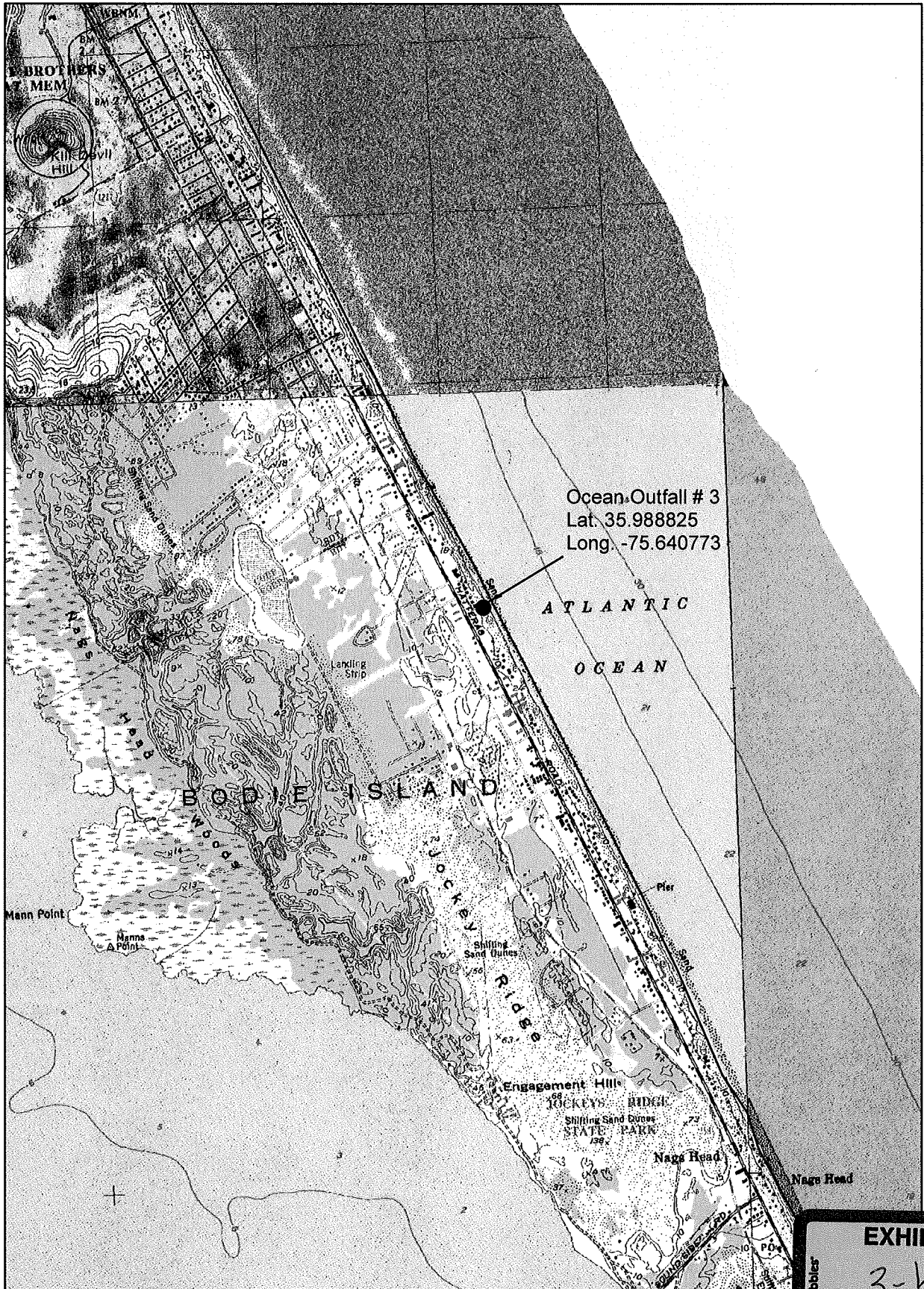


EXHIBIT
3-b

Attachment E: Stipulated Exhibits including Powerpoint

Survey Plat for Conch Shell Estates (depicting State-owned easement) (DOT's Ex 4)

April 2003 Photo of Outfall on Beach (DOT's Ex 6)

September 2005 Photos of Outfall on Beach

1/28/2013 Letter from Town of Nags Head Mayor Robert Oakes to NCDOT (DOT's Ex 5)

NCDOT Project Drawings (Sheets 1-4) (DOT's Ex 8)

November 2013 Photos of Outfall on Beach, of Junction Box and Catch Basin

NCDOT Application for CAMA Major Permit

DCM Field Report

Comments from N.C. Division of Marine Fisheries

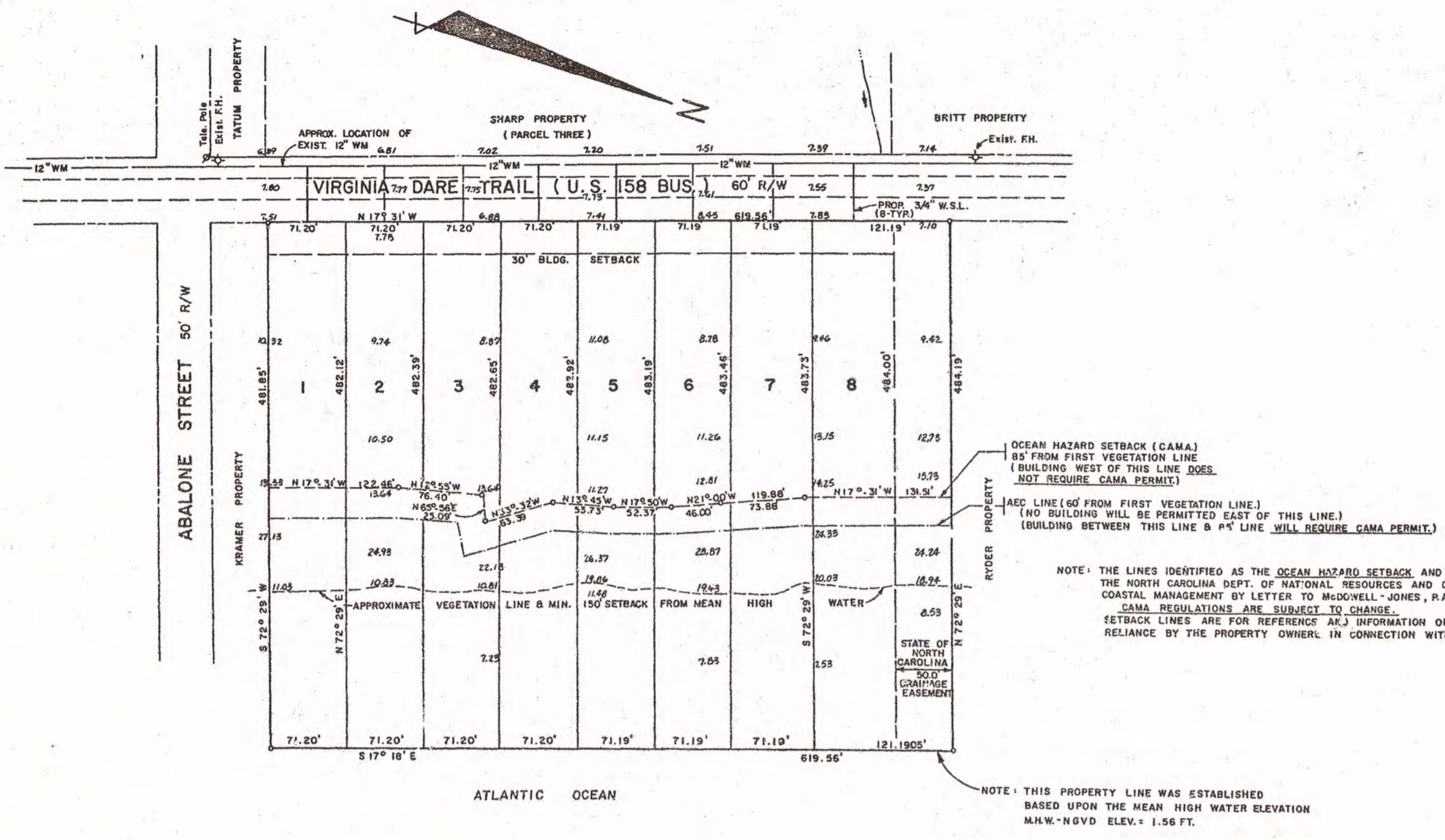
Comments from DCM District Planner

CAMA Major Permit #137-13 (DOT's Ex 1)

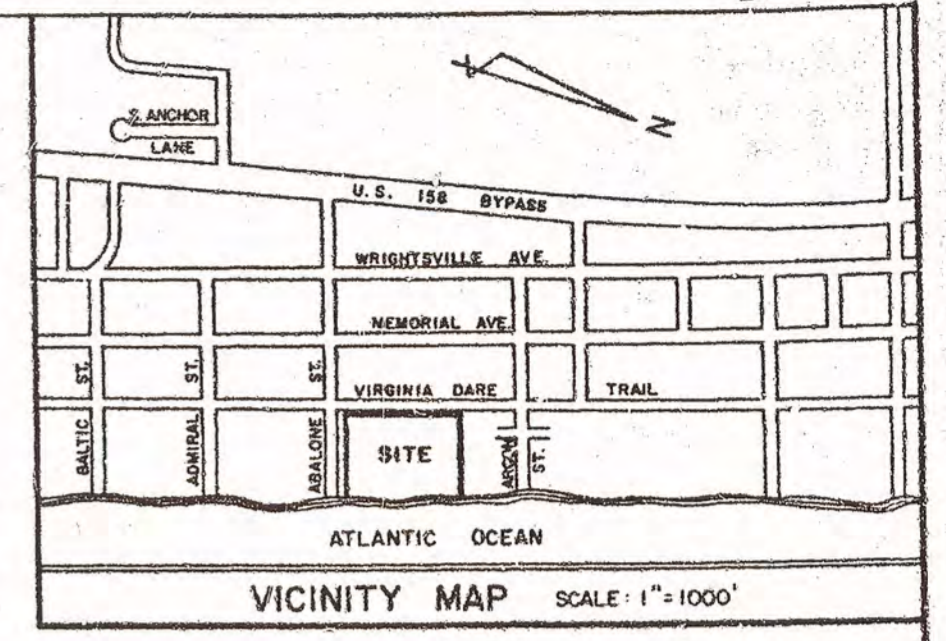
Notice to Adjacent Landowners of Variance Petition with return receipts (DOT's Ex 9)

5 Undated Photos of Flooding Along NC Highway 12 in Project Vicinity (DOT's Ex 7)

Powerpoint



FILED
 '81 JUN 23 PM 4 52
 ALVA C. WISE
 REGISTER OF DEEDS
 DARE COUNTY, N.C.



| LOT NO. | AREA IN SQ. FT. WEST OF C.A.M.A. LINE | TOTAL AREA IN SQ. FT. |
|---------|---------------------------------------|-----------------------|
| 1 | 17,199 | 34,315 |
| 2 | 17,215 | 34,336 |
| 3 | 17,825 | 34,355 |
| 4 | 18,523 | 34,375 |
| 5 | 18,377 | 34,389 |
| 6 | 18,288 | 34,408 |
| 7 | 17,967 | 34,427 |
| 8 | 30,428 | 58,651 |

I HEREBY CERTIFY THAT UNDER MY DIRECTION AND SUPERVISION THIS PLAT, AS SHOWN AND DESCRIBED HEREON, WAS DRAWN FROM AN ACTUAL FIELD SURVEY, THAT THE ERROR OF CLOSURE IS CALCULATED BY LATITUDES AND DEPARTURES AND IS 1:5000±, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

WITNESS MY HAND AND SEAL THIS 12th DAY OF May 1981
 GARY L. JONES, REGISTERED LAND SURVEYOR L-1476

I, Jane G. Boyce NOTARY PUBLIC DO CERTIFY THAT GARY L. JONES PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE CERTIFICATION FOR THE ABOVE CERTIFICATE FOR THE PURPOSES THEREIN EXPRESSED.

WITNESS MY HAND AND NOTARIAL SEAL THIS 24th DAY OF May 1981
 JANE G. BOYCE, NOTARY PUBLIC

I (WE) HEREBY CERTIFY THAT I AM (WE ARE) THE OWNER(S) OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I (WE) HEREBY ADOPT THIS PLAN OF SUBDIVISION WITH MY (OUR) FREE CONSENT. FURTHER, I (WE) CERTIFY THE LAND AS SHOWN HEREON IS WITHIN THE PLATTING JURISDICTION OF THE TOWN OF NAGS HEAD.

23 June 81
 DATE
Stackey Sharp
 OWNER OR AUTHORIZED AGENT
 for Jean S. Sharp
 OWNER OR AUTHORIZED AGENT

I HEREBY CERTIFY THAT THE LOTS PROPOSED IN THIS MAP OF THE SUBDIVISION ENTITLED CONCH SHELL ESTATES - SECTION TWO MEET THE REQUIREMENTS AS TO MINIMUM AREA OF CENTRAL OR INDIVIDUAL SEWAGE DISPOSAL SYSTEM AND CENTRAL WATER SUPPLY SYSTEM AS PROVIDED BY ORDINANCE OF THE DARE COUNTY BOARD OF HEALTH. LOTS ARE EVALUATED SEPARATELY AS TO TOPOGRAPHY, DRAINAGE, AND SOIL POROSITY.

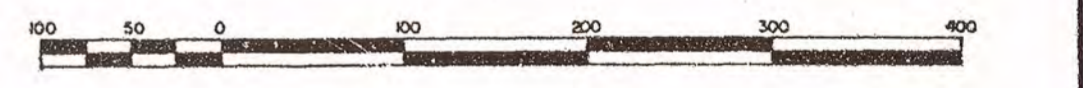
3/10/81
 DATE
Joseph J. Stoker
 DARE COUNTY HEALTH OFFICER OR LEGAL REPRESENTATIVE

FINAL PLAT APPROVED / ~~CONDITIONALLY APPROVED~~ (STRIKE ONE).
 6/16/81
 DATE
M. Edward Hamell
 SECRETARY OF PLANNING BOARD

I, Constance V. Hardee TOWN CLERK OF NAGS HEAD, NORTH CAROLINA, DO CERTIFY THAT ON THE 19th DAY OF May 1981, THE TOWN OF NAGS HEAD APPROVED THIS PLAT FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS AND ACCEPTED THE DEDICATION OF THE IMPROVEMENTS, LISTED BY RESOLUTION OF THE BOARD OF COMMISSIONERS BUT ASSUMES NO RESPONSIBILITY TO OPEN OR MAINTAIN THE SAME UNTIL, IN THE OPINION OF THE BOARD OF COMMISSIONERS OF NAGS HEAD, IT IS IN THE PUBLIC INTEREST TO DO SO.
 6/16/81
 DATE
Constance V. Hardee
 TOWN CLERK

NORTH CAROLINA
 The foregoing certificate of Clay & Jones, R.L.S. and
James B. Boyce, Notary Public, Perquimans Co., N.C.
 are certified to be correct.
 Presented for registration this the 23rd day of June 1981 at 4:53 p.m. and recorded in this office in Book 57-399 p. M., and Page 16
David B. Wiser
 Register of Deeds

NOTES: ALL EASEMENTS ARE SUBJECT TO THE RIGHTS OF THE TOWN OF NAGS HEAD, NORTH CAROLINA, AND ARE FOR SURFACE AND UNDERGROUND DRAINAGE, UNDERGROUND AND OVERHEAD UTILITIES, CABLE T.V., AND PEDESTRIAN ACCESS.
 PARTS OF THIS SUBDIVISION ARE WITHIN AREAS OF ENVIRONMENTAL CONCERN AND A COASTAL AREA MANAGEMENT ACT PERMIT MAY BE REQUIRED BEFORE DEVELOPMENT IS BEGUN WITHIN THESE AREAS.
 ALL PROPERTY CORNERS ARE MARKED WITH IRON PINS, EXCEPT THOSE SHOWN ALONG THE 1.56 FT. CONTOUR.



CONCH SHELL ESTATES
SECTION 2
 NAGS HEAD TOWNSHIP, DARE COUNTY, NORTH CAROLINA

| | | |
|---------------------|-----------------------|--------------------|
| DESIGNED WPM | DRAWN DAB | CHECKED WPM |
| APPROVED WPM | DATE 5-12-81 | SCALE 1" = 100' |
| PROJ. NO. 400-16 | FILE NO. A-100-30A | SHEET 1 OF 1 |

McDOWELL-JONES, P.A.
 ENGINEERS - SURVEYORS
 Post Office Box 391
 303 E. Main Street, Suite 9A
 Elizabeth City, N.C. 27909



Blocked outlet at Ocean outfall # 3





Bob Oakes
Mayor

Doug Remaley
Mayor Pro Tem

Cliff Ogburn
Town Manager

Town of Nags Head

Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

Anna D. Sadler
Commissioner

M. Renée Cahoon
Commissioner

Susie Walters
Commissioner

January 28, 2013

Mr. Sterling D. Baker
Division Maintenance Engineer
NC Department of Transportation
Highway Division 1
113 Airport Dr., Suite 100
Edenton, NC 27932

RE: Outfall Extension, 2400 Block of S Virginia Dare Trail in Nags Head

Dear Mr. Baker:

On behalf of the Town of Nags Head's Board of Commissioners, I would like to express our interest in working with your organization to extend the ocean outfall located in the 2400 block of S Virginia Dare Trail. We believe all of the outfalls in Nags Head play a critical role in our community's overall drainage system. You probably remember that in 2011, the Town, with design assistance from NC DOT, extended three of the outfalls located in our beach nourishment project area. So far, this project has been successful in reducing stormwater on Nags Head's properties and roads.

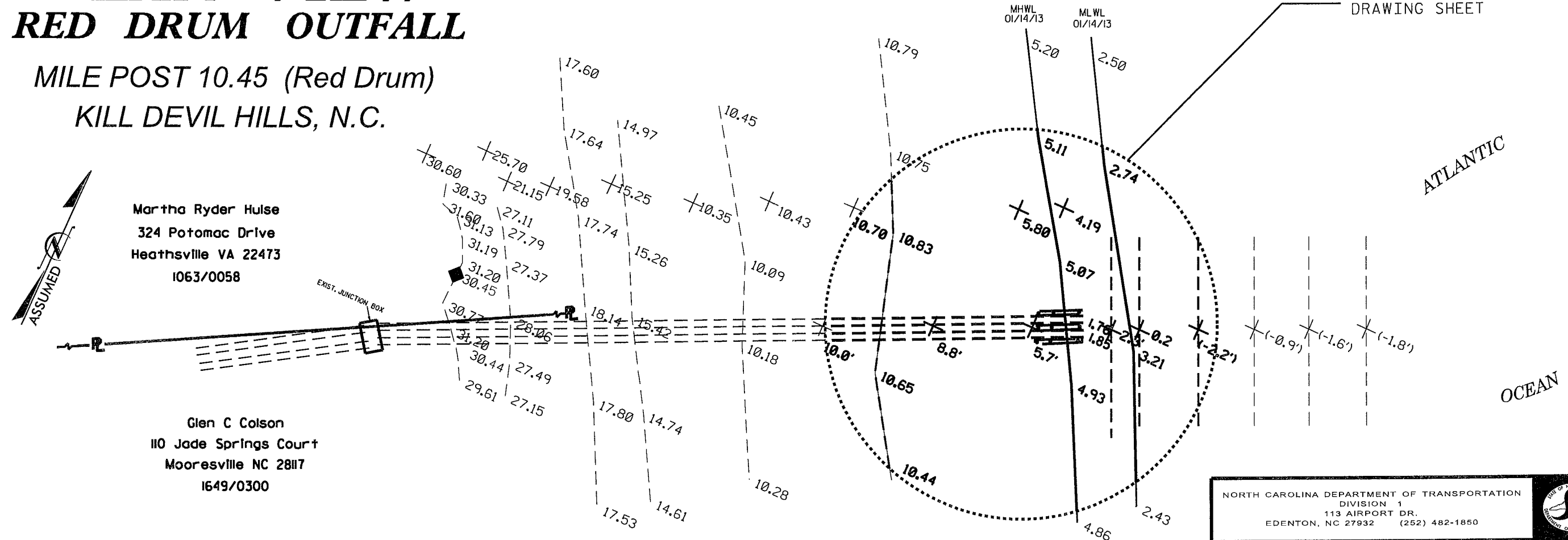
We are looking forward to working with your organization to improve stormwater flow by extending the ocean outfall located in the 2400 block of S Virginia Dare Trail. It is in both of our organization's interest to ensure Nags Head's drainage systems remain healthy and viable.

Warm regards,

Robert O. Oakes, Jr.
Mayor

PLAN VIEW RED DRUM OUTFALL

MILE POST 10.45 (Red Drum)
KILL DEVIL HILLS, N.C.



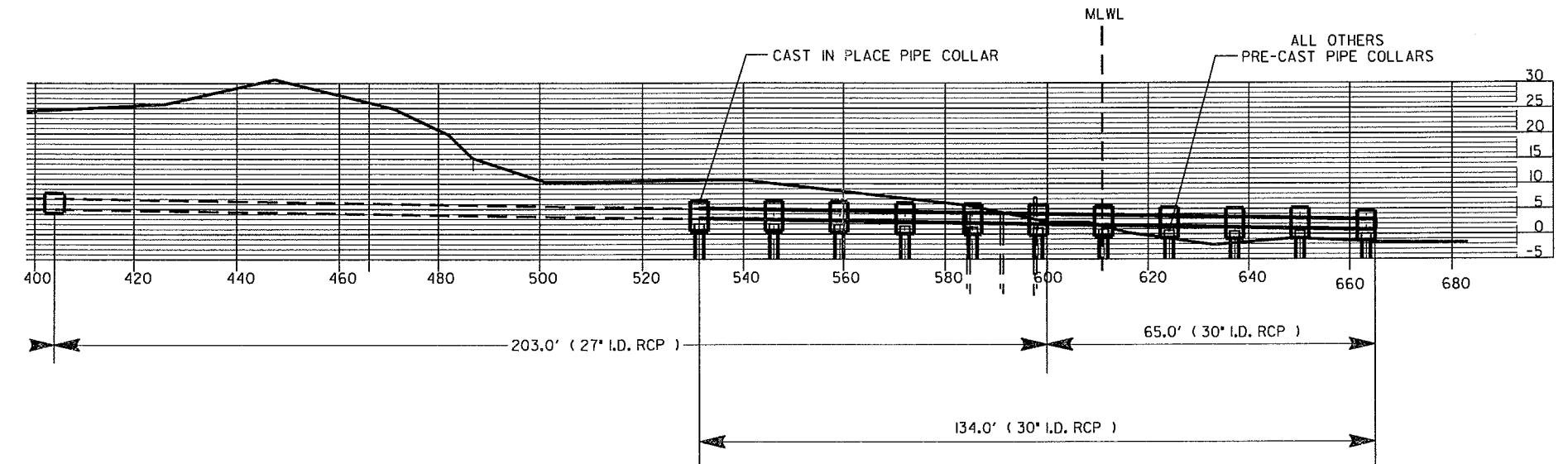
Martha Ryder Hulse
324 Potomac Drive
Heathsville VA 22473
1063/0058

Glen C Colson
110 Jade Springs Court
Mooresville NC 28117
1649/0300

NOTE: ALL ELEVATIONS BASED ON ASSUMED BENCHMARK, BM-1, A POINT LOCATED 20.65' SW OF THE CENTERLINE OF NC 12, AT MILEPOST 10.45', IN THE VICINITY OF RED DRUM TAP HOUSE. THE POINT IS ALSO LOCATED 8.9' ENE OF A POWER POLE, (POLE IS LOCATED 33.35' ESE OF SOUTH CORNER OF RED DRUM TAP HOUSE). THE POINT, BM-1, HAS AN ASSUMED ELEVATION OF 10.00'. THERE IS ALSO A POINT, BM-2, LOCATED ALONG THE CREST OF THE DUNE LINE, 17' NNW OF THE CENTERLINE OF THE OUTFALL PIPE CULVERT. ITS ELEVATION IS 30.45'.

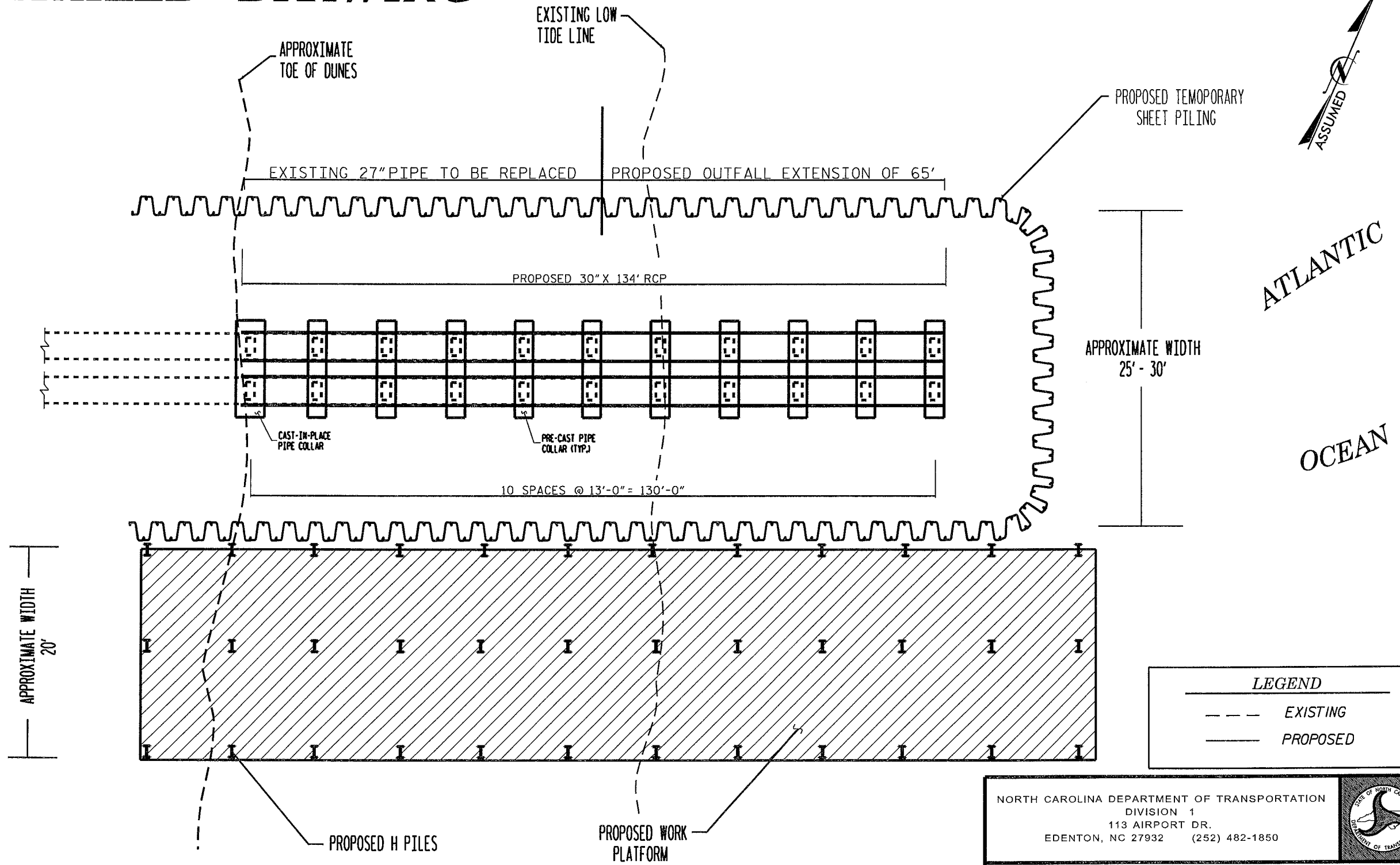
| | | |
|--|--------------------------|---------------------|
| NORTH CAROLINA DEPARTMENT OF TRANSPORTATION DIVISION 1 113 AIRPORT DR. EDENTON, NC 27932 (252) 482-1850 | | |
| COUNTY: DARE | WBS#: 43832 | |
| QUAD: MANTEO | DATE: SEPTEMBER 24, 2013 | |
| BASIN: PASQUOTANK | SHEET #: 1 OF 4 | |
| SUBJECT: RED DRUM OCEAN OUTFALL REHAB | | |
| LAT = 35.989218 N | | LONG. = 75.640818 W |
| DRAWN BY: D.H. STALLINGS | | SCALE: 1" = 30' |

PROFILE



PLAN VIEW DETAILED DRAWING

RED DRUM OUTFALL



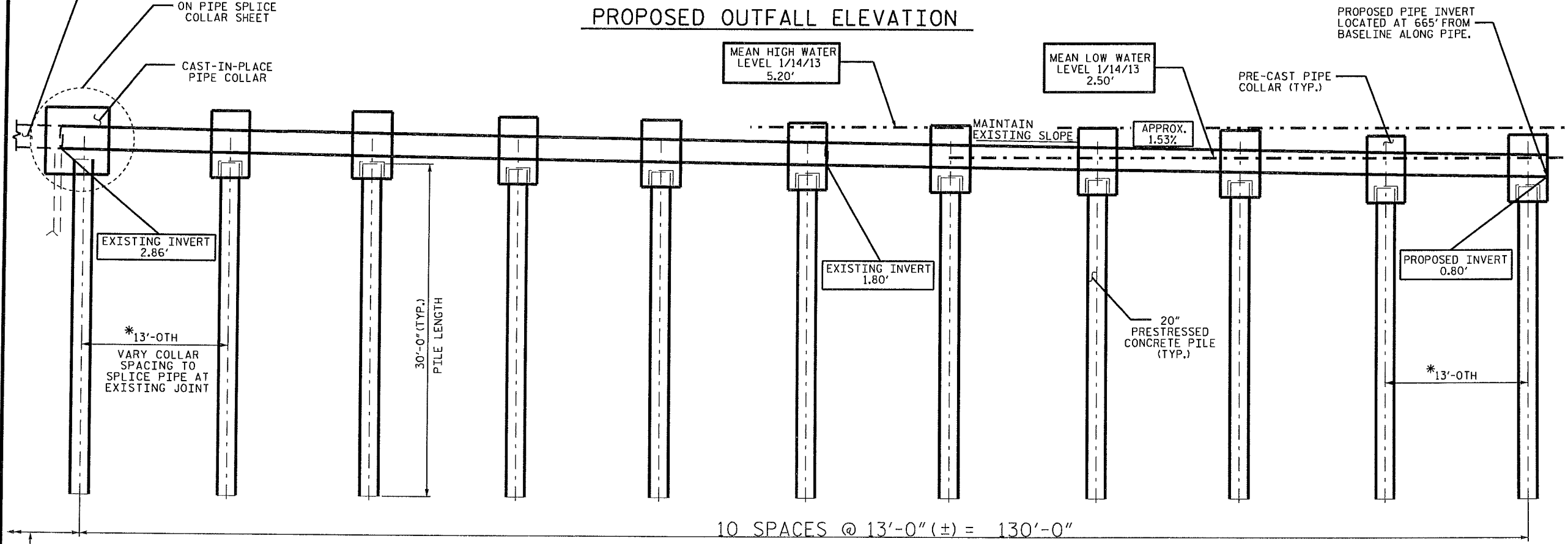
NOTE: JETTING SHALL BE REQUIRED FOR DRIVING ALL PILES
 NOTE: PILE LOCATIONS APPROXIMATE: EXACT PILE SPACING TO BE DETERMINED BASED ON FIELD CONDITIONS

vertical scale 1 = 40
 horizontal scale 1 = 20

| LEGEND | |
|--------|----------|
| --- | EXISTING |
| — | PROPOSED |

| | | |
|--|---------------------------|---------------------|
| NORTH CAROLINA DEPARTMENT OF TRANSPORTATION DIVISION 1 113 AIRPORT DR. EDENTON, NC 27932 (252) 482-1850 | | |
| COUNTY: DARE | WBS#: 43832 | |
| QUAD: MANTEO | DATE: SEPTEMBER 23, 2013 | |
| BASIN: PASQUOTANK | SHEET #: 2 OF 4 | |
| SUBJECT: RED DRUM OCEAN OUTFALL REHAB | | |
| LAT. = 35.989218 N | | LONG. = 75.640818 W |
| DRAWN BY: D.H. STALLINGS | SCALE: 1" = 40', 1" = 20' | |

RED DRUM OUTFALL

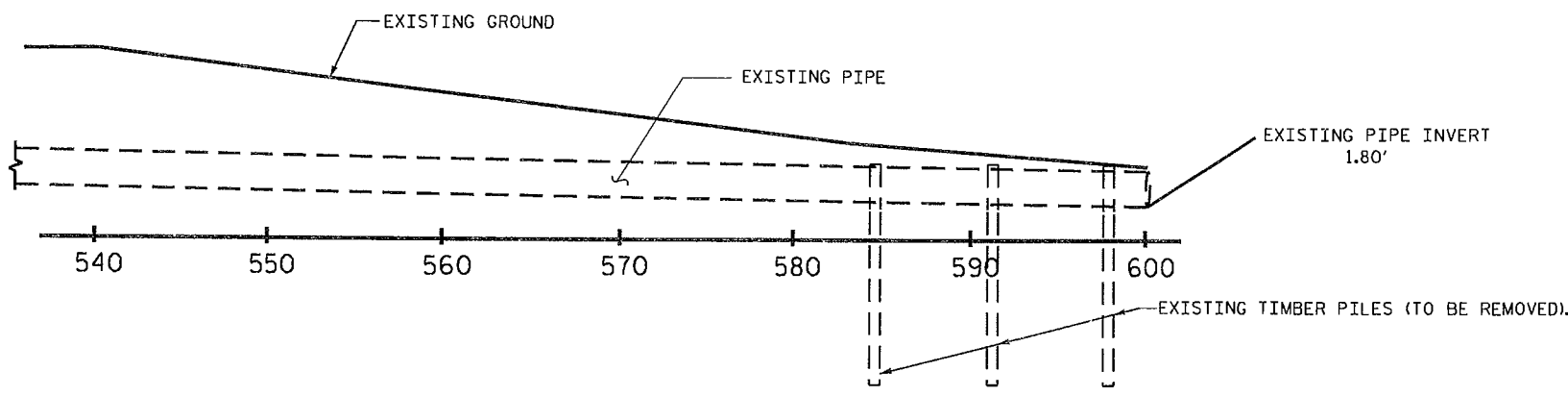


535' FROM BASELINE ALONG EXISTING PIPELINE

* ALL ELEVATIONS BASED ON ASSUMED DATA

* REDUCE SPACING IF NEEDED TO MAINTAIN PROPOSED PIPE INVERT. PIPE MAY EXTEND A MAXIMUM OF 2'-0" BEYOND FACE OF COLLAR.

EXISTING OUTFALL ELEVATION



LEGEND

--- EXISTING

— PROPOSED

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
 DIVISION 1
 113 AIRPORT DR.
 EDENTON, NC 27932 (252) 482-1850

COUNTY: DARE WBS#: 43832
 QUAD: MANTEO DATE: SEPTEMBER 23, 2013
 BASIN: PASQUOTANK SHEET #: 3 OF 4

SUBJECT: RED DRUM OCEAN OUTFALL REHAB

LAT. = 35.989218 N LONG. = 75.640818 W

DRAWN BY: D.H. STALLINGS SCALE: 1" = 10'

NOTES

EXCEPT AS MAY OTHERWISE BE SPECIFIED ON PLANS OR IN THE SPECIAL PROVISIONS, ALL MATERIAL AND WORKMANSHIP SHALL BE IN ACCORDANCE WITH THE 2012 N.C. DEPARTMENT OF TRANSPORTATION STANDARD SPECIFICATIONS FOR ROADS AND STRUCTURES.

EXISTING PIPE AND PIPE EXTENSION DETAILS INDICATED ON THE PLANS ARE FROM THE BEST INFORMATION AVAILABLE. THIS INFORMATION IS SHOWN FOR THE CONVENIENCE OF THE CONTRACTOR. THE CONTRACTOR SHALL HAVE NO CLAIM WHATSOEVER AGAINST THE DEPARTMENT OF TRANSPORTATION FOR ANY DELAYS OR ADDITIONAL COST INCURRED BASED ON DIFFERENCES BETWEEN THE EXISTING PIPING AND EXTENSION DETAILS SHOWN ON THE PLANS AND THE ACTUAL CONDITIONS AT THE PROJECT SITE.

THE DISTANCES AND ELEVATIONS ARE DERIVED FROM THE THE BEST INFORMATION AVAILABLE. THE CONTRACTOR IS RESPONSIBLE FOR VERIFYING THE DIAMETER, SPACING, SLOPE AND ELEVATION OF THE EXISTING PIPES.

THE CONTRACTOR SHALL VERIFY THAT THE PROPOSED PIPE EXTENSION LENGTH IS ADEQUATE TO ACCOMODATE THE PROPOSED WIDTH OF THE SHORELINE.

THE CONTRACTOR SHALL VERIFY THAT THE PROPOSED PIPE IS ALIGNED PARALLEL WITH AND ON A SIMILAR SLOPE TO THE EXISTING PIPE PRIOR TO CASTING THE PIPE COLLAR. SECURE THE PIPES BEFORE CONCRETE PLACEMENT TO PROHIBIT PIPE MOVEMENT.

THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THE PRECAST PIPE COLLARS WILL FIT THE PROPOSED PIPES.

ALL REINFORCING STEEL SHALL BE GRADE 60 EPOXY COATED.

ALL BAR SUPPORTS USED SHALL BE EPOXY COATED IN ACCORDANCE WITH THE STANDARD SPECIFICATIONS.

MAINTAIN 3" MIN. CL. TO ALL REINFORCING STEEL UNLESS OTHERWISE SPECIFIED.

CHAMFER ALL CORNERS $\frac{3}{4}$ ".

PROPOSED POLYETHYLENE PIPE TO BE ISCO SNAP-TITE PIPE OR EQUIVALENT.

PLACE PILES SO AS TO MAINTAIN SLOPE OF THE EXISTING PIPE.

CONTRACTOR SHALL SUPPLY PILE COLLAR TO MAINTAIN GROUT VOID BETWEEN PRE-CAST CAP AND PILE.

STAINLESS STEEL ROD ASSEMBLIES SHALL BE GRADE 316; TIGHTEN ALL ASSEMBLIES TO SNUG-TIGHT CONDITION AND BURR THREADS AFTER INSTALLATION.

THE CONCRETE IN THE PIPE COLLARS SHALL CONTAIN SILICA FUME. SILICA FUME SHALL BE SUBSTITUTED FOR 5% OF THE PORTLAND CEMENT BY WEIGHT. IF THE OPTION OF ARTICLE 1024-1 OF THE STANDARD SPECIFICATIONS TO PARTIALLY SUBSTITUTE CLASS F FLY ASH FOR PORTLAND CEMENT IS EXERCISED, THEN THE RATE OF FLY ASH SUBSTITUTION SHALL BE REDUCED TO 1.0 LB OF FLY ASH PER 1.0 LB OF CEMENT. NO PAYMENT WILL BE MADE FOR THIS SUBSTITUTION AS IT IS CONSIDERED INCIDENTAL TO THE COST OF THE PRECAST PILE CAPS.

GROUT NOTES

USE GROUT THAT IS A COMMERCIALY MANUFACTURED NON-SHRINK, NON-METALLIC MATERIAL MEETING THE REQUIREMENTS OF THE STANDARD SPECIFICATIONS WHEN WATER OR WATER AND AGGREGATE IS ADDED IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.

THE GROUT SHALL BE FREE OF SOLUBLE CHLORIDES AND CONTAIN LESS THAN 1% SOLUBLE SULFATE.

INITIAL SETTING TIME SHALL NOT BE LESS THAN 10 MINUTES WHEN TESTED IN ACCORDANCE WITH ASTM C266.

COMPRESSIVE STRENGTH SHALL BE AT LEAST 5000 PSI AT 3 DAYS.

COMPRESSIVE STRENGTH IN THE LABORATORY WILL BE DETERMINED IN ACCORDANCE WITH ASTM C109 EXCEPT THAT THE TEST MIX SHALL CONTAIN ONLY WATER AND THE DRY MANUFACTURED MATERIAL. COMPRESSIVE STRENGTH WILL BE DETERMINED IN THE FIELD BY MOLDING AND TESTING 4" X 8" CYLINDERS IN ACCORDANCE WITH AASHTO T22.

WHEN TESTED IN ACCORDANCE WITH ASTM C666, PROCEDURE A, THE DURABILITY FACTOR OF THE GROUT SHALL NOT BE LESS THAN 80.

THE QUALITY OF WATER ADDED TO THE MIX SHALL BE IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.

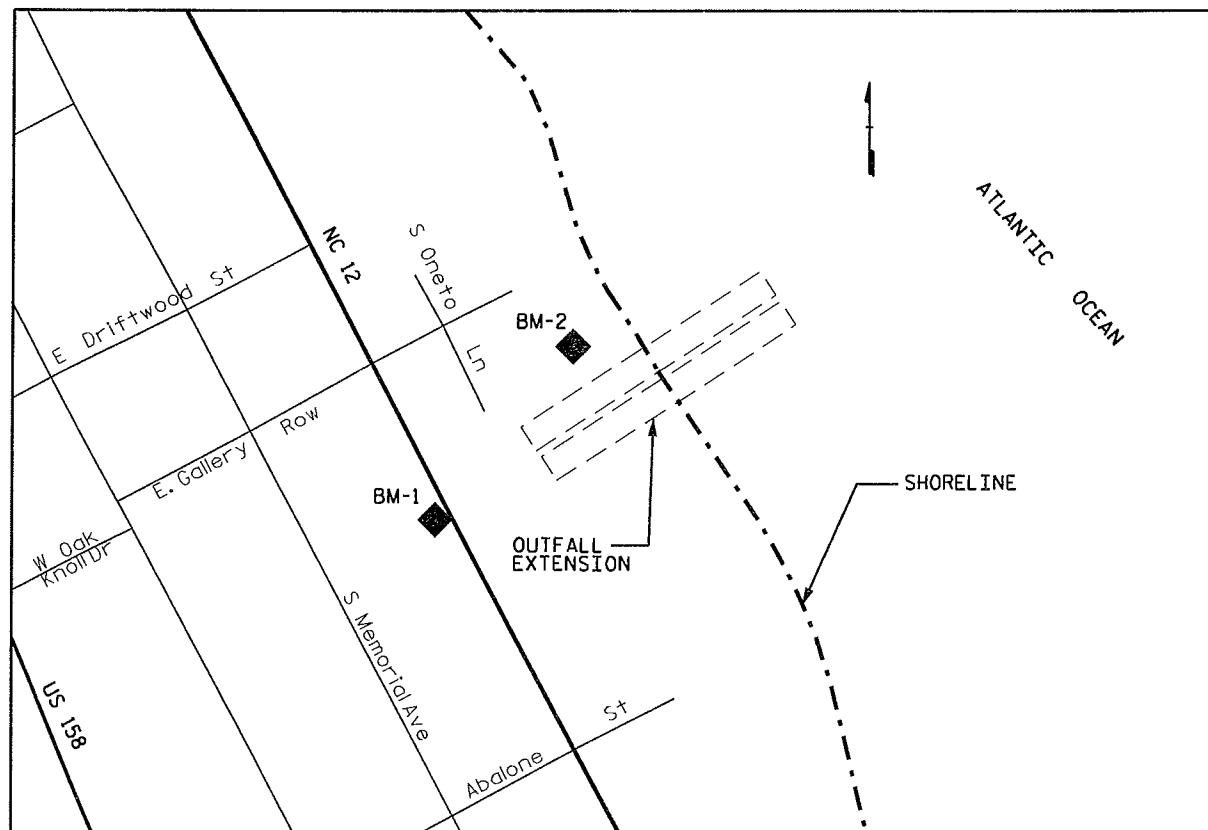
AGGREGATE MAY BE ADDED TO THE MIX ONLY WHERE RECOMMENDED OR PERMITTED BY THE MANUFACTURER. THE QUANTITY AND GRADATION OF THE AGGREGATE WILL BE IN ACCORDANCE WITH WITH THE MANUFACTURER'S RECOMMENDATIONS.

FURNISH A TYPE 4 MATERIAL CERTIFICATION SHOWING RESULTS OF TESTS CONDUCTED TO DETERMINE THE PROPERTIES LISTED IN THE STANDARD SPECIFICATIONS AND TO ASSURE THAT THE MATERIAL IS NON-SHRINK.

THE ENGINEER RESERVES THE RIGHT TO REJECT MATERIAL BASED ON UNSATISFACTORY PERFORMANCE.

SURVEY NOTES

NOTE: ALL ELEVATIONS BASED ON ASSUMED BENCHMARK, BM-1, A POINT LOCATED 20.65' SW OF THE CENTERLINE OF NC 12, AT MILEPOST 10.45', IN THE VICINITY OF RED DRUM TAP HOUSE. THE POINT IS ALSO LOCATED 8.9' ENE OF A POWER POLE, POLE IS LOCATED 33.35' ESE OF SOUTH CORNER OF RED DRUM TAP HOUSE). THE POINT, BM-1, HAS AN ASSUMED ELEVATION OF 10.00'. THERE IS ALSO A POINT, BM-2, LOCATED ALONG THE CREST OF THE DUNE LINE, 17' NNW OF THE CENTERLINE OF THE OUTFALL PIPE CULVERT. ITS ELEVATION IS 30.45'



LOCATION SKETCH

| | | |
|--|--------------------------|---------------------|
| NORTH CAROLINA DEPARTMENT OF TRANSPORTATION DIVISION 1 113 AIRPORT DR. EDENTON, NC 27932 (252) 482-1850 | | |
| COUNTY: DARE | WBS#: 43832 | |
| QUAD: MANTEO | DATE: SEPTEMBER 23, 2013 | |
| BASIN: PASQUOTANK | SHEET #: 4 OF 4 | |
| SUBJECT: RED DRUM OCEAN OUTFALL REHAB | | |
| LAT. = 35.989218 N | | LONG. = 75.640818 W |
| DRAWN BY: D.H. STALLINGS | SCALE: NOT TO SCALE | |



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PATRICK L. MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

November 5, 2013

Paul Williams
Division of Coastal Management
1367 U. S. 17 South
Elizabeth City, NC 27909

Dear Mr. Williams,

NCDOT is requesting a CAMA major permit from the Division of Coastal Management for the proposed activity of replacing 5 sections of damaged storm water pipe and adding 65 feet of new pipe seaward of the existing outfall. Stormwater outfall structure # 3 located at miles post 10.45 (375 feet south of East Gallery Row) in Nags Head, Dare County. This ocean outfall provides a conveyance for storm water to the ocean. The current damaged condition of the pipe inhibits the ocean outfall structures from functioning properly, resulting in flooding within their drainage areas. This flooding poses a safety concern for roadways and residential home sites. In order to reduce the threat of flooding NCDOT is proposing to replace 65 feet of the damaged sections of outfall pipe and extend the ocean outfall 65 feet seaward. This will restore the function of the drainage pipe and reduce the frequent deposition of sand within the outlet section of the pipe. Sand deposited within the pipe creates a barrier and prohibits flow, resulting in flooding on NC 12 and within the pipes drainage area. Ocean outfall # 3, currently consist of two lines of 27-inch reinforced concrete pipe. The proposed length of replacement pipe for the outfall is 65 feet of 30-inch polyethylene plastic pipe. In addition to the sections of replaced pipe, NCDOT is also proposing to extend the outfall 65 feet, using 30-inch polyethylene pipe. In conjunction with the pipe replacement and extension, the pipe support structures will need to be replaced. This consists of 30 feet concrete pile supports and concrete pipe collars that harness the pipes in place. The provided permit drawings illustrate the proposed pipe configuration. In order to perform the work, protection from the incoming tides and waves will be required. Therefore, steel sheet pile will be temporarily driven around the work area utilizing a crane driving operation. The proposed amount of steel sheeting is currently 380 feet. In order to install the sheet pile and 30 foot long concrete support piles, a temporary work trestle platform will be constructed adjacent to the ocean outfall pipes. This work trestle will be supported by steel H-piles and have a steel deck. The trestle will be approximately 175 feet long by 20 feet wide. Once the outfall pipe repair and extension is made, the protective sheeting and work trestle will be entirely removed. The work equipment will access the beach through the public beach access point located approximately 0.20 miles south of the project area at

Admiral Street Drive. Any staging of equipment and supplies will be in the beach access pathway or upper beach above the mean high water mark, within the project area.

This work is being scheduled during time periods of relatively low tourist activity and beach use, NCDOT is scheduled to begin this work in February/March 2014 and be complete by May 31st 2014.

Included with this letter are the MP forms, permit drawings, location map, and adjacent landowner notices. The permit fee can be charged to WBS # 43832. NCDOT appreciates your efforts in this matter, if any additional information is needed please contact me at 252-482-7977.

Sincerely,
Jerry Jennings, P.E.
Division Engineer, Division One

Clay Willis 
Environmental Officer, Division One

Ocean Outfall # 3 at Mile Post 10.45
Red Drum in Nags Head



APPLICATION for Major Development Permit



(last revised 12/27/06)

North Carolina DIVISION OF COASTAL MANAGEMENT

| 1. Primary Applicant/ Landowner Information | | | | | |
|---|----------------|------------------------------------|---|-----------------------------|-------------|
| Business Name Ncdot Division One | | | Project Name (if applicable) Ocean Outfall # 3 on 370 feet South of East Gallery Row Street in Nags Head (mile post 10.45) | | |
| Applicant 1: First Name Clay | | MI | Last Name Willis | | |
| Applicant 2: First Name | | MI | Last Name | | |
| <i>If additional applicants, please attach an additional page(s) with names listed.</i> | | | | | |
| Mailing Address 113 Airport Drive Suite 100 | | | PO Box | City Edenton | State NC |
| ZIP 27932 | Country USA | Phone No. 252 - 482 - 1876 ext. | | FAX No. 252 - 482 - 8722 | |
| Street Address (if different from above) | | | City | State | ZIP - |
| Email tcwillis@ncdot.gov | | | | | |

| 2. Agent/Contractor Information | | | | | |
|--|--|-------------------------|-----------|-------------------------|----------|
| Business Name | | | | | |
| Agent/ Contractor 1: First Name | | MI | Last Name | | |
| Agent/ Contractor 2: First Name | | MI | Last Name | | |
| Mailing Address | | | PO Box | City | State |
| ZIP | | Phone No. 1 - - ext. | | Phone No. 2 - - ext. | |
| FAX No. | | Contractor # | | | |
| Street Address (if different from above) | | | City | State | ZIP - |
| Email | | | | | |

<Form continues on back>

| 3. Project Location | | | | |
|--|--|---|--|--------------------|
| County (can be multiple) DARE | | Street Address approximately 370 feet south of S. Gallery Row Street | | State Rd. # N/A |
| Subdivision Name N/A | | City Nags Head | State NC | Zip 27959 - |
| Phone No. - - ext. | | | Lot No.(s) (if many, attach additional page with list) | |
| a. In which NC river basin is the project located? Pasquotank | | b. Name of body of water nearest to proposed project Atlantic Ocean | | |
| c. Is the water body identified in (b) above, natural or manmade? <input checked="" type="checkbox"/> Natural <input type="checkbox"/> Manmade <input type="checkbox"/> Unknown | | d. Name the closest major water body to the proposed project site. Atlantic Ocean | | |
| e. Is proposed work within city limits or planning jurisdiction? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | | f. If applicable, list the planning jurisdiction or city limit the proposed work falls within. Nags Head | | |

| 4. Site Description | |
|---|---|
| a. Total length of shoreline on the tract (ft.) The lot has 50 ft. of shoreline. The work area will include approximately 200 ft of beach shoreline. | b. Size of entire tract (sq.ft.) 40000 |
| c. Size of individual lot(s) (If many lot sizes, please attach additional page with a list) | d. Approximate elevation of tract above NHW (normal high water) or NWL (normal water level) 0 - 1 ft above <input type="checkbox"/> NHW or <input checked="" type="checkbox"/> NWL |
| e. Vegetation on tract None, sandy beach | |
| f. Man-made features and uses now on tract Ocean stormwater outfall structure # 3 , beginning at NC 12 Virginia Dare Trail and extending to the ocean. This drainage structure is made of two separate lines of 27-inch concrete pipe and held in place by wooden pilings and cross members. | |
| g. Identify and describe the existing land uses adjacent to the proposed project site. The adjacent properties to the north and south are oceanfront residential homes. | |
| h. How does local government zone the tract? Properties are oceanfront residential | i. Is the proposed project consistent with the applicable zoning? (Attach zoning compliance certificate, if applicable) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| j. Is the proposed activity part of an urban waterfront redevelopment proposal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | |
| k. Has a professional archaeological assessment been done for the tract? If yes, attach a copy. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA If yes, by whom? | |
| l. Is the proposed project located in a National Registered Historic District or does it involve a National Register listed or eligible property? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA | |

<Form continues on next page>

| | |
|---|---|
| m. (i) Are there wetlands on the site? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| (ii) Are there coastal wetlands on the site? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| (iii) If yes to either (i) or (ii) above, has a delineation been conducted? (Attach documentation, if available) | <input type="checkbox"/> Yes <input type="checkbox"/> No |

| |
|---|
| n. Describe existing wastewater treatment facilities. None |
| o. Describe existing drinking water supply source. None |
| p. Describe existing storm water management or treatment systems. Currently there are none, however this site is part of a storm water monitoring program. |

| | |
|--|---|
| 5. Activities and Impacts | |
| a. Will the project be for commercial, public, or private use? | <input type="checkbox"/> Commercial <input checked="" type="checkbox"/> Public/Government <input type="checkbox"/> Private/Community |
| b. Give a brief description of purpose, use, and daily operations of the project when complete. The purpose of this project is to maintain an existing stormwater structure that carries stormwater from within it's drainage area and conveys the water to the ocean. The drainage structure is made of two lines of 27-inch reinforced concrete pipe, which begins at the roadway of NC 12 and extends to the ocean. The last five lengths of pipe have been damaged in past storms, which has impacted the pipes ability to function properly. NCDOT proposes to replace the last five lengths of pipe, which is approximatley 65 ft. in length. These pipes will be replaced with 30-inch polyethylene commercial plastic pipe. In conjunction with the pipe replacements the pile support structure will also be replaced. This includes 30 feet concrete piles, and concrete pipe collar/saddles that secure the pipe. In addition to the proposed pipe replacements, NCDOT proposes adding 65 ft. of 30" pipe and 5 new concrete pile support structures. This extention will be approximately 52 feet waterward of the mean low water line. The provided permit drawings show the details on the configuration of the drain pipe replacement and extension. Once this is complete the drainage structure will be able to function properly and remove water effeciently from the drainage area. | |
| c. Describe the proposed construction methodology, types of construction equipment to be used during construction, the number of each type of equipment and where it is to be stored. The pipe replacement and extension will be supported by 30 ft. concrete piles. These piles will have to be installed by utilizing a crane pile driving operation. Due to the compact sandy soils, pile jetting techniques will be required to reach designed pile depth criteria. The crane pile driving operation will require a work trestle platform adjacent to the pipe outfall alignment. This will provide a stable and safe platform for crane operations and pile installation. The work trestle will be comprised of steel H piles and surface deck. The work trestle will be approximately 175 in length and 20 feet wide. In addition to the work trestle, sheet pile enclosure of the outfall pipe is proposed, which will reduce the risk of wave energy damage and complication during the construction process. The work trestle and sheetpile will be installed in accordance with the provided work drawings. Once the project is complete the work trestle and sheetpile will be entirely removed. This work will take approximately 3 months and is currently proposed for the early spring of 2014. The completion date will not extend beyond May 31 st , 2014. Equipment and supples will be staged on-site at the upper beach and the Admiral Street Beach Access point, which is approximately 0.20 miles south of the ocean outfall. Equipment used for this project will included a excavator, crane, service trucks and backhoe. | |
| d. List all development activities you propose. Replace 65 feet of ocean outfall pipe and support piles, which is currently 2 lines of 27-inch reinforced concrete drain pipe that is no longer functioning properly due to past storm damage. The new pipe will be 2 lines of 30-inch diameter polypropelyne pipe. In conjunction with the pipe replacement, NCDOT proposes an ocean outfall extension. This extension will result in an additional 65 feet of two 30-inch lines supported on concrete piles, placed seaward of the mean low water mark. This work will require a temporary work trestle and sheet pile installation. The temporary protective sheet pile barrier will be comprised of approximately 380 ft. of steel sheet pile. The sheetpile will be placed as depicted on the provided work drawings and removed once the work is complete along with the work trestle. | |
| e. Are the proposed activities maintenance of an existing project, new work, or both? | Maintenance and new work |
| f. What is the approximate total disturbed land area resulting from the proposed project? | 1 <input type="checkbox"/> Sq.Ft or <input checked="" type="checkbox"/> Acres |
| g. Will the proposed project encroach on any public easement, public accessway or other area that the public has established use of? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| h. Describe location and type of existing and proposed discharges to waters of the state. Existing discharge of two lines of 27-inch storm drain that drains into the Atlantic Ocean. This is being maintained in it's current alignment. | |

| | |
|--|---|
| i. Will wastewater or stormwater be discharged into a wetland? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA |
| If yes, will this discharged water be of the same salinity as the receiving water? | <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA |
| j. Is there any mitigation proposed? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> NA |
| If yes, attach a mitigation proposal. | |

<Form continues on back>

| |
|--|
| 6. Additional Information |
| <i>In addition to this completed application form, (MP-1) the following items below, if applicable, must be submitted in order for the application package to be complete. Items (a) – (f) are always applicable to any major development application. Please consult the application instruction booklet on how to properly prepare the required items below.</i> |
| a. A project narrative. |
| b. An accurate, dated work plat (including plan view and cross-sectional drawings) drawn to scale. Please give the present status of the proposed project. Is any portion already complete? If previously authorized work, clearly indicate on maps, plats, drawings to distinguish between work completed and proposed. |
| c. A site or location map that is sufficiently detailed to guide agency personnel unfamiliar with the area to the site. |
| d. A copy of the deed (with state application only) or other instrument under which the applicant claims title to the affected properties. |
| e. The appropriate application fee. Check or money order made payable to DENR. |
| f. A list of the names and complete addresses of the adjacent waterfront (riparian) landowners and signed return receipts as proof that such owners have received a copy of the application and plats by certified mail. Such landowners must be advised that they have 30 days in which to submit comments on the proposed project to the Division of Coastal Management. |
| Name Martha Ryder Hulse |
| Phone No. |
| Address 324 Potomac Drive Heathsville, VA 22473 |
| Name C Glen Colson |
| Phone No. |
| Address 110 Jade Springs Court Moorestown, NC 28117 |
| Name Willie H Colston, Jr. |
| Phone No. |
| Address 1329 Johnstown Road Chesapeake, VA 23322 |

g. A list of previous state or federal permits issued for work on the project tract. Include permit numbers, permittee, and issuing dates.

COE - NW 3 Permit SAW-2008-02664
DWQ -401 certification 3687

h. Signed consultant or agent authorization form, if applicable.

i. Wetland delineation, if necessary.

j. A signed AEC hazard notice for projects in oceanfront and inlet areas. *(Must be signed by property owner)*

k. A statement of compliance with the N.C. Environmental Policy Act (N.C.G.S. 113A 1-10), if necessary. If the project involves expenditure of public funds or use of public lands, attach a statement documenting compliance with the North Carolina Environmental Policy Act.

7. Certification and Permission to Enter on Land

I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit.

I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project.

I further certify that the information provided in this application is truthful to the best of my knowledge.

Date 11/1/13 Print Name Clay Willis
Signature [Handwritten Signature]

Please indicate application attachments pertaining to your proposed project.

- DCM MP-2 Excavation and Fill Information
- DCM MP-5 Bridges and Culverts
- DCM MP-3 Upland Development
- DCM MP-4 Structures Information

Form DCM MP-2

EXCAVATION and FILL

(Except for bridges and culverts)

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

Describe below the purpose of proposed excavation and/or fill activities. All values should be given in feet.

| | Access Channel (NLW or NWL) | Canal | Boat Basin | Boat Ramp | Rock Groin | Rock Breakwater | Other (excluding shoreline stabilization) |
|---------------------|-----------------------------|-------|------------|-----------|------------|-----------------|---|
| Length | | | | | | | |
| Width | | | | | | | |
| Avg. Existing Depth | | | | | NA | NA | |
| Final Project Depth | | | | | NA | NA | |

1. EXCAVATION This section not applicable

- a. Amount of material to be excavated from below NHW or NWL in cubic yards.
None
- b. Type of material to be excavated.
n/a
- c. (i) Does the area to be excavated include coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW SAV SB WL None
(ii) Describe the purpose of the excavation in these areas:
n/a
- d. High-ground excavation in cubic yards.
n/a

2. DISPOSAL OF EXCAVATED MATERIAL This section not applicable

- a. Location of disposal area.
no waste will be generated from this project
- b. Dimensions of disposal area.
n/a
- c. (i) Do you claim title to disposal area?
 Yes No NA
(ii) If no, attach a letter granting permission from the owner.
- d. (i) Will a disposal area be available for future maintenance?
 Yes No NA
(ii) If yes, where?
- e. (i) Does the disposal area include any coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW SAV SB WL None
(ii) Describe the purpose of disposal in these areas:
n/a
- f. (i) Does the disposal include any area in the water?
 Yes No NA
(ii) If yes, how much water area is affected?

3. SHORELINE STABILIZATION This section not applicable
(If development is a wood groin, use MP-4 – Structures)

- a. Type of shoreline stabilization:
 Bulkhead Riprap Breakwater/Sill Other:
temporary sheet pile
- b. Length: 380 ft.
 Width: 1 - 2 inch sheet pile
- c. Average distance waterward of NHW or NWL: Sheet pile will be placed above the NWL on the beach face and extend approximately 70 - 80 feet below the low water line.
- d. Maximum distance waterward of NHW or NWL: 70-80 ft. below the low water mark
- e. Type of stabilization material:
temporary placement of steel sheet pile
- f. (i) Has there been shoreline erosion during preceding 12 months?
 Yes No NA
 (ii) If yes, state amount of erosion and source of erosion amount information.
- g. Number of square feet of fill to be placed below water level.
 Bulkhead backfill _____ Riprap _____
 Breakwater/Sill _____ Other NONE
- h. Type of fill material.
n/a
- i. Source of fill material.
n/a

4. OTHER FILL ACTIVITIES This section not applicable
 (Excluding Shoreline Stabilization)

- a. (i) Will fill material be brought to the site? Yes No NA
 If yes,
 - (ii) Amount of material to be placed in the water _____
 - (iii) Dimensions of fill area _____
 - (iv) Purpose of fill

- b. (i) Will fill material be placed in coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
 CW _____ SAV _____ SB _____
 WL _____ None
 (ii) Describe the purpose of the fill in these areas:

5. GENERAL

- a. How will excavated or fill material be kept on site and erosion controlled?
n/a
- b. What type of construction equipment will be used (e.g., dragline, backhoe, or hydraulic dredge)?
crane, excavator, backhoe, truck
- c. (i) Will navigational aids be required as a result of the project?
 Yes No NA
 (ii) If yes, explain what type and how they will be implemented.

- d. (i) Will wetlands be crossed in transporting equipment to project site? Yes No NA
 (ii) If yes, explain steps that will be taken to avoid or minimize environmental impacts.

Date 4/1/13 Applicant Signature Clay Wilby Ap

Project Name Ocean Outfall # 3

Applicant Name NCDOT/Division 1 Clay Wilby Ap

BRIDGES and CULVERTS

Attach this form to Joint Application for CAMA Major Permit, Form DCM MP-1. Be sure to complete all other sections of the Joint Application that relate to this proposed project. Please include all supplemental information.

1. BRIDGES This section not applicable

- a. Is the proposed bridge:
 - Commercial Public/Government Private/Community
- b. Water body to be crossed by bridge: _____
- c. Type of bridge (construction material): _____
- d. Water depth at the proposed crossing at NLW or NWL: _____
- e. (i) Will proposed bridge replace an existing bridge? Yes No
 - If yes,
 - (ii) Length of existing bridge: _____
 - (iii) Width of existing bridge: _____
 - (iv) Navigation clearance underneath existing bridge: _____
 - (v) Will all, or a part of, the existing bridge be removed? (Explain)
 - _____
 - _____
- f. (i) Will proposed bridge replace an existing culvert? Yes No
 - If yes,
 - (ii) Length of existing culvert: _____
 - (iii) Width of existing culvert: _____
 - (iv) Height of the top of the existing culvert above the NHW or NWL: _____
 - (v) Will all, or a part of, the existing culvert be removed? (Explain)
 - _____
 - _____
- g. Length of proposed bridge: _____
- h. Width of proposed bridge: _____
- i. Will the proposed bridge affect existing water flow? Yes No
 - If yes, explain:
 - _____
 - _____
- j. Will the proposed bridge affect navigation by reducing or increasing the existing navigable opening? Yes No
 - If yes, explain:
 - _____
 - _____
- k. Navigation clearance underneath proposed bridge: _____
- l. Have you contacted the U.S. Coast Guard concerning their approval? Yes No
 - If yes, explain:
 - _____
 - _____
- m. Will the proposed bridge cross wetlands containing no navigable waters? Yes No
 - If yes, explain:
 - _____
 - _____
- n. Height of proposed bridge above wetlands: _____

2. CULVERTS This section not applicable

- a. Number of culverts proposed: 2 lines of drainage pipe consisting of 30-inch polypropylene plastic pipe, which will total 130 ft. of pipe to be replaced (65 feet is replacement of existing pipe and 65 feet is new additional pipe, extending seaward)
- b. Water body in which the culvert is to be placed: _____
The beach face adjacent to the Atlantic Ocean

< Form continues on back >

- c. Type of culvert (construction material):
Two lines of 27-inch reinforced concrete pipe along with salt treated timber piles and cross members will be replaced with 65 feet of 30-inch polypropylene plastic pipe. In conjunction with the 65 feet of pipe replacement an additional 65 feet of 30-inch plastic pipe will be added to extend the ocean outfall beyond the mean low water mark. This will result in a total of 2 lines at 130 feet being placed. These two lines will be supported by 30 feet concrete piles. The provided permit drawings illustrate the pipe line and pile configuration.

- d. (i) Will proposed culvert replace an existing bridge? Yes No
- If yes,
- (ii) Length of existing bridge: _____
 - (iii) Width of existing bridge: _____
 - (iv) Navigation clearance underneath existing bridge: _____
 - (v) Will all, or a part of, the existing bridge be removed? (Explain)
- _____
- _____
- _____

- f. Length of proposed culvert: 130'
 - h. Height of the top of the proposed culvert above the NHW or NWL. approximately 0-1 ft. below the NWL depending on beach face conditions
 - j. Will the proposed culvert affect navigation by reducing or increasing the existing navigable opening? Yes No
- If yes, explain:
- _____
- _____
- _____

- e. (i) Will proposed culvert replace an existing culvert? Yes No
- If yes,
- (ii) Length of existing culvert(s): 65 ft.
 - (iii) Width of existing culvert(s): 27 inch
 - (iv) Height of the top of the existing culvert above the NHW or NWL: 0-1 ft. below the NWL depending on the beach face erosion or accretion
 - (v) Will all, or a part of, the existing culvert be removed? (Explain) 65' of the existing culverts will be removed and replaced with new reinforced plastic pipe
- _____
- _____
- _____

- g. Width of proposed culvert: two lines of 30 - inch
 - i. Depth of culvert to be buried below existing bottom contour. pipe grade is established by the existing pipes that extend to the storm drain catch basin adjacent to NC 12
 - k. Will the proposed culvert affect existing water flow? Yes No
- If yes, explain: The replacement of the damaged pipes and 65' extension will restore the original drainage function of the outfall and reduce sand accumulation in the pipe outlet.
- _____
- _____
- _____

3. EXCAVATION and FILL This section not applicable

- a. (i) Will the placement of the proposed bridge or culvert require any excavation below the NHW or NWL? Yes No
- If yes,
- (ii) Avg. length of area to be excavated: 50-65'
 - (iii) Avg. width of area to be excavated: 15'
 - (iv) Avg. depth of area to be excavated: 8'
 - (v) Amount of material to be excavated in cubic yards: 288

- b. (i) Will the placement of the proposed bridge or culvert require any excavation within coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.
- CW _____ SAV _____ SB _____
- WL _____ None
- (ii) Describe the purpose of the excavation in these areas:
- _____
- _____
- _____

- c. (i) Will the placement of the proposed bridge or culvert require any high-ground excavation? Yes No
- If yes,
- (ii) Avg. length of area to be excavated: _____
 - (iii) Avg. width of area to be excavated: _____
 - (iv) Avg. depth of area to be excavated: _____
 - (v) Amount of material to be excavated in cubic yards: _____

d. If the placement of the bridge or culvert involves any excavation, please complete the following:

(i) Location of the spoil disposal area: n/a

(ii) Dimensions of the spoil disposal area: n/a

(iii) Do you claim title to the disposal area? Yes No (If no, attach a letter granting permission from the owner.)

(iv) Will the disposal area be available for future maintenance? Yes No

(v) Does the disposal area include any coastal wetlands/marsh (CW), submerged aquatic vegetation (SAVs), other wetlands (WL), or shell bottom (SB)?

CW SAV WL SB None

If any boxes are checked, give dimensions if different from (ii) above.

(vi) Does the disposal area include any area below the NHW or NWL? Yes No

If yes, give dimensions if different from (ii) above.

e. (i) Will the placement of the proposed bridge or culvert result in any fill (other than excavated material described in Item d above) to be placed below NHW or NWL? Yes No

If yes,

(ii) Avg. length of area to be filled: _____

(iii) Avg. width of area to be filled: _____

(iv) Purpose of fill:

f. (i) Will the placement of the proposed bridge or culvert result in any fill (other than excavated material described in Item d above) to be placed within coastal wetlands/marsh (CW), submerged aquatic vegetation (SAV), shell bottom (SB), or other wetlands (WL)? If any boxes are checked, provide the number of square feet affected.

CW _____ SAV _____ SB _____

WL _____ None

(ii) Describe the purpose of the excavation in these areas:

n/a

g. (i) Will the placement of the proposed bridge or culvert result in any fill (other than excavated material described in Item d above) to be placed on high-ground? Yes No

If yes,

(ii) Avg. length of area to be filled: _____

(iii) Avg. width of area to be filled: _____

(iv) Purpose of fill:

4. GENERAL

a. Will the proposed project require the relocation of any existing utility lines? Yes No

If yes, explain:

b. Will the proposed project require the construction of any temporary detour structures? Yes No

If yes, explain:

If this portion of the proposed project has already received approval from local authorities, please attach a copy of the approval or certification.

< Form continues on back >

c. Will the proposed project require any work channels? Yes No

If yes, complete Form DCM-MP-2.

d. How will excavated or fill material be kept on site and erosion controlled?

n/a

e. What type of construction equipment will be used (for example, dragline, backhoe, or hydraulic dredge)?
crane, excavator, backhoe, trucks

f. Will wetlands be crossed in transporting equipment to project site?
 Yes No
If yes, explain steps that will be taken to avoid or minimize environmental impacts.

g. Will the placement of the proposed bridge or culvert require any shoreline stabilization? Yes No
If yes, complete form MP-2, Section 3 for Shoreline Stabilization only.

Date 10/1/07

Project Name Ocean outfall #3 repair/extension

Applicant Name Clay Wilho

Applicant Signature [Signature]

**DIVISION OF COASTAL MANAGEMENT
FIELD INVESTIGATION REPORT**

1. APPLICANT'S NAME: North Carolina Department of Transportation (NCDOT)
2. LOCATION OF PROJECT SITE: Ocean Outfall #3, Milepost 10.45 in Nags Head,
Dare County
Photo Index - 2006: N/A 2000: N/A
State Plane Coordinates - X: 2,993,751 Y: 831,672
Latitude: 35° 59' 20" N Longitude: 75° 38' 25" W

RECEIVED

3. INVESTIGATION TYPE: CAMA and D&F **NOV 25 2013**
4. INVESTIGATIVE PROCEDURE: Date of Site Visit – Nov. 13, 2013 OF COASTAL MANAGEMENT
Was Applicant Present – No RALEIGH
5. PROCESSING PROCEDURE: Application Received Complete – Nov. 15, 2013
Office – Elizabeth City
6. SITE DESCRIPTION:
- (A) Local Land Use Plan – Town of Nags Head
Land Classification from LUP – Single-Family Residential
 - (B) AEC(s) Involved: Ocean Hazard Area
 - (C) Water Dependent: Yes
 - (D) Intended Use: Public
 - (E) Wastewater Treatment: Existing – N/A
Planned – N/A
 - (F) Type of Structures: Existing – Ocean Outfall for Virginia Dare Trail
Planned – Ocean Outfall for Virginia Dare Trail
 - (G) Estimated Annual Rate of Erosion: 2 ft/yr
Source – NC Division of Coastal Management Interactive Mapping Site
2011 Setback Factors

7. HABITAT DESCRIPTION:

| | <u>EXCAVATED</u> | <u>FILLED</u> | <u>OTHER</u> |
|------------------------|-------------------------|---------------|--|
| (A) Open Water | | 520 sq.ft. | 2,105 sq.ft. temp. disturb (sheetpiles) 1,900 sq.ft. temp. shading (trestle) |
| (B) Beach (oceanfront) | 2,100 sq.ft. (temp.) | | 525 sq.ft. temp. disturb (sheetpiles) 3,500 sq.ft. temp. shading (trestle) 32,910 sq.ft. temp. disturb (staging) |

- (D) Total Area Disturbed: 43,560 sq. ft.
- (E) Primary Nursery Area: No
- (F) Water Classification: SB (Atlantic Ocean) Open: Yes

8. PROJECT SUMMARY: The applicant proposes to replace 65 feet of damaged pipe sections at the end of Ocean Outfall #3. The applicant also proposes to extend the existing structure 65 feet seaward with additional pipe sections.

9. NARRATIVE DESCRIPTION:

Project Setting

The project area is within the Town of Nags Head on Bodie Island in Dare County. Ocean Outfall #3 is located 375 feet south of East Gallery Row Street at milepost 10.45. The existing ocean outfall structure was constructed in 1966 to drain storm water from Virginia Dare Trail to the Atlantic Ocean. Due to heavy wave action from storms over the years, the structure has been damaged and filled with sand, preventing it from functioning properly. As a result, flooding occurs and poses a safety concern for the roadways and residences in the drainage area. Originally constructed to 576 feet in length, the ocean outfall is currently 511 feet in length from the junction box on Virginia Dare Trail to the outlet, with two lines of 27” interior diameter reinforced concrete pipes supported by timber piles and cross members.

The project area is classified as Single-Family Residential by the Town of Nags Head Local Land Use Plan. Coastal Wetlands and submerged aquatic vegetation beds are not present in the project area. The project area is adjacent to several private residences, and includes a vegetated frontal dune, oceanfront beach, and the open waters of the Atlantic Ocean. The adjacent frontal dune is approximately 31 feet tall. No known archeological sites are present in the project area. Two public beach accesses are located 700 feet south at Abalone Street and 0.2 miles south at Admiral Street.

The Federal Emergency Management Agency has designated the project area as a Zone VE hazard area. Multiple utilities are located within the right-of-way of Virginia Dare Trail, but none exist in the project area.

The Environmental Management Commission has classified the Atlantic Ocean as SB in the area of the proposed construction. The project area is in the Pasquotank River basin. The North Carolina Division of Marine Fisheries has classified all waters in the proposed area as Coastal Waters. The project area is located within the oceanfront beach and the tidal zone. Land uses in the project area include swimming, sunbathing, and fishing.

The N.C. Division of Coastal Management issued CAMA Major Permit #118-91 to NCDOT on August 15, 1991 for the extension of Ocean Outfall #3 seaward 48 feet. This permit expired on December 31, 1994. Construction on the extension was not started, and the project was not completed.

Project Proposal

NCDOT proposes to replace 65 feet of the 5 damaged sections of pipe at the end of Ocean Outfall #3 with two lines of 30” polyethylene plastic pipe. The applicant also proposes to extend the two pipes with an additional 65 feet of 30” polyethylene plastic pipe. The existing timber support piles of the damaged section would be replaced with 20” prestressed concrete piles 30 feet in length. The support piles for the proposed extended section would also be 20” prestressed concrete piles 30 feet in length. The applicant proposes to install all piles with jetting. The proposed extension would locate the ocean outfall outlet approximately 52 feet seaward of the Normal Low Water Level. The replacement outfall pipes would be attached to the existing outfall pipes with a cast-in-place pipe collar supported by two concrete piles. The rest of the proposed structure would be attached and supported with 10 pre-cast pipe collars supported by two concrete piles each. The proposed collar spacing would be approximately 13 feet.

The applicant also proposes to construct a temporary work trestle and temporary sheet

**FIELD INVESTIGATION REPORT:
NCDOT – OCEAN OUTFALL #3
NAGS HEAD, DARE COUNTY
PAGE #3**

piling to work in the tidal zone. The temporary work trestle would be steel decking approximately 175' in length by 20' in width supported by steel H-piles. The work trestle would be adjacent to the proposed work area and would be required to drive the concrete piles and the temporary steel sheet piling. Approximately 380' of temporary steel sheet piling would be needed to protect the work area from the tides and waves. Upon project completion, the work trestle and sheet piling would be removed.

Equipment and materials would be staged on-site above the Mean High Water Level and at the Admiral Street Beach Access, approximately 0.20 miles south of the project area. The Admiral Street Beach Access would also be used to transport equipment and materials to the project area. The applicant has stated the approximate construction time would be 3 months, and the project would need to be completed by May 31, 2014.

Anticipated Impacts

As proposed, the replacement and extension of Ocean Outfall #3 would result in approximately 2,100 sq. ft. of temporary impacts due to excavation of oceanfront beach and approximately 520 sq. ft. of permanent fill in open waters due to the outfall pipes and pipe collars. The temporary work trestle would temporarily shade approximately 3,500 sq. ft. of oceanfront beach and approximately 1,900 sq. ft. of open water. The installation of temporary sheet piling would disturb approximately 2,105 sq. ft. of open water and 525 sq. ft. of oceanfront beach. Staging equipment and materials would temporarily disturb approximately 32,910 sq. ft.

During construction, public access to the beach in the project area would be reduced and the Admiral Street Beach Access would be affected. Vehicular travel on the beach would be impeded in the project area due to equipment, materials, and the temporary sheet piling. Sea turtle nesting activities could be negatively affected if the project is carried out between May 1st and November 15th. Upon project completion, the functional ocean outfall could threaten the public's use of the ocean and beach in the immediate area.

The public is expected to benefit upon completion of the project by the restored stormwater drainage of the ocean outfall. Ocean Outfall #3 would drain the roadway and increase the safety for traffic and residences during storm events for the area.

Submitted by: Paul Williams –Elizabeth City District – November 21, 2013

13

C.B



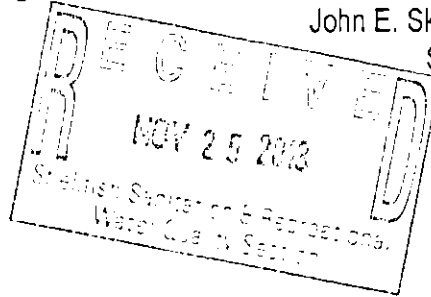
North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

November 21, 2013



MEMORANDUM

TO: Patti Fowler, Shellfish Sanitation
NC DIVISION OF MARINE FISHERIES

FROM: Doug Huggett
Major Permits Processing Coordinator

SUBJECT: CAMA/DREDGE & FILL Permit Application Review

Applicant: NC Department of Transportation

Project Location: Ocean Outfall #3 in the Town of Nags Head, Dare County

Proposed Project: Repair and Extension of Ocean Outfall #3

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DEC 10 2013

DIV. OF COASTAL MANAGEMENT
RALEIGH

Please indicate below your agency's position or viewpoint on the proposed project and return this form by **12/12/13**, to **Cathy Brittingham, 1638 Mail Service Center, Raleigh, NC 27699-1638**. If you have any questions regarding the proposed project, please contact Paul Williams at (252) 264-3901, ext. 237. When appropriate, in-depth comments with supporting data are requested.

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

_____ This office has no comment on the proposed project.

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

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

SIGNED *Pat Davis*

DATE *11/28/13*

CB



North Carolina Department of Environment and Natural Resources
Division of Marine Fisheries
Dr. Louis B. Daniel III
Director

Pat McCrory
Governor

John E. Skvarla, III
Secretary

MEMORANDUM December 4th, 2013

TO: Doug Huggett
 Major Permits Processing Coordinator

FROM: Shannon Jenkins
 Environmental Program Supervisor

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

SUBJECT: Ocean Outfall #3 – Town of Nags Head
 Dare County

Negative impacts to beach water quality associated with the Dare County ocean storm drains have been well documented by both the University of North Carolina Institute of Marine Sciences and the UNC Coastal Studies Institute. As proposed, this outfall will most likely discharge within the surf zone, and thus will continue to have a negative impact on swimmers. Extending the drain pipe further offshore beyond the surf zone will likely allow for the stormwater to discharge beyond the area used by swimmers, and thus reduce the threat to public health.

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DEC 06 2013

DCM-MHD-CITY



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

November 21, 2013

MEMORANDUM

RECEIVED
DEC 05 2013
DIV. OF COASTAL MANAGEMENT
RALEIGH

TO: Charlan Owens, District Planner
Division of Coastal Management

FROM: Doug Huggett
Major Permits Processing Coordinator

SUBJECT: CAMA/DREDGE & FILL Permit Application Review

Applicant: NC Department of Transportation

Project Location: Ocean Outfall #3 in the Town of Nags Head, Dare County

Proposed Project: Repair and Extension of Ocean Outfall #3

Please indicate below your agency's position or viewpoint on the proposed project and return this form by **12/12/13**, to **Cathy Brittingham, 1638 Mail Service Center, Raleigh, NC 27699-1638**. If you have any questions regarding the proposed project, please contact Paul Williams at (252) 264-3901, ext. 237. When appropriate, in-depth comments with supporting data are requested.

-
- REPLY:** This office has no objection to the project as proposed.
- This office has no comment on the proposed project.
- This office approves of the project only if the recommended changes are incorporated. See attached.
- This office objects to the project for reasons described in the attached comments.

X SEE ATTACHED

SIGNED

DATE

12-3-13



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

Pat McCrory
Governor

Braxton C. Davis
Director

John E. Skvarla, III
Secretary

MEMORANDUM

TO: Doug Huggett, DCM Major Permit Coordinator

FROM: Charlan Owens, AICP, NE DCM District Planner

SUBJECT: Major Permit Request by NC Department of Transportation to repair and extend Outfall No. 3, located 375 feet south of East Gallery Row Street, with two (2) 130 foot lengths of 30 inch diameter pipe and associated concrete pile supports; connecting to a junction box located on Virginia Dare Trail (NC 12) and extending into the Atlantic Ocean in the Town of Nags Head.

Date: December 3, 2013

Consistency Determination: The request is consistent with/not in conflict with the Town of Nags Head 2010 Land Use Plan certified by the CRC on February 24, 2011.

Overview: The project site surrounds Atlantic Ocean Outfall #3 and extends along approximately 200 feet of ocean shoreline. The project site is adjacent to several private residences and includes vegetated frontal dune, oceanfront beach, and the open waters of the ocean. The ocean beach is used for swimming, sunbathing, and fishing in this area. The outfall was constructed in 1966 to drain storm water from Virginia Dare Trail. The outfall was originally constructed of two (2) 27 inch interior diameter reinforced concrete pipes attached to a junction box on Virginia Dare Trail with a length of 576 feet supported by timber piles and cross members extending into the ocean. Due to years of heavy wave action, the structure has been damaged and filled with sand, preventing it from functioning properly. It is currently 511 feet in length.

Repair and extension of the existing outfall is proposed. Approximately 65 feet of damaged sections of pipe at the ocean end of the outfall will be replaced with two (2) lines of 30 inch diameter polyethylene plastic pipe and extended an additional 65 feet. Existing timber support piles for the damaged sections will be replaced with 20 inch pre-stressed concrete piles 30 feet in length. Support piles for the extended section will also be 20 inch pre-stressed concrete piles 30 feet in length. The extension will locate the outfall outlet approximately 52 feet seaward of the Normal Low Water Level.

Equipment and materials will be staged on-site above the Mean High Water Level and at the Admiral Street Beach Access, approximately .2 mile to the south. The beach access will also be used to transport equipment and materials to the project site. A temporary work trestle and

temporary sheet piling will be used for work in the tidal zone. The trestle will consist of steel decking approximately 20 feet wide and 175 feet long supported by steel H-piles. Approximately 380 linear feet of sheet piling will be used to protect the work area from wave action. The trestle and sheet piling will be removed at project completion. Approximate construction time will be 3 months. Work will need to be completed by May 31, 2014.

The Atlantic Ocean is designated as "Coastal Waters" with a water quality classification of SB (Primary Recreational, aquatic life propagation and survival, fishing and wildlife).

There are no known archaeological sites within the project area.

Anticipated impacts resulting from this project are expected to include: the filling of 520 sq. ft. of Open Water; the temporary excavation of 2,100 sq. ft. of Oceanfront Beach; the temporary disturbance of 2,105 sq. ft. of Open Water and .77 acre of Oceanfront Beach, and; the temporary shading of 1,900 sq. ft. of Open Water and 3,500 sq. ft. of Oceanfront Beach; all within the Ocean Hazard Area of Environmental Concern (AEC).

During construction, public access to the beach in the project area will be reduced and the Admiral Street Beach Access will be affected. Vehicular traffic will be impeded during construction.

Basis for Determination:

The following LUP policies may be applicable to this request:

Public Access:

Policy 1, Page 91.

"The Town recognizes that the ocean beaches are our single greatest asset. Fundamental elements important to the Town include, clean beaches, ample recreational access opportunities, no commercialization, reasonable beach driving regulations and the prompt resolution of user conflicts as they arise."

Policy 6, Page 93.

"The continued success of the Town as a tourist and vacation destination depends in part on the continued use of recreational uses and activities on the ocean shoreline and in the sound. The Town shall provide an adequate mix of recreational access sites for residents and visitors in order that they can enjoy the ocean and estuarine shoreline and water recreational opportunities."

Policy 10, Page 94.

"It is the position of the Town that both the wet sand beach and the dry sand beach east of the first line of vegetation represents public land available for public access and the Town will actively oppose any action to restrict public access to and across the ocean beach."

Land Use Compatibility:

Policy 1, Page 94.

"The Town views the preservation of dunes, vegetation and topography as an important component in the Nags Head image and shall strictly enforce the existing applicable rules and regulations and seek additional measures as needed to preserve these elements as much as possible."

Water Quality:

Policy 4, Page 101.

"The Town recognizes that maintenance is essential for the proper functioning of the ocean and sound outfalls shall actively lobby NCDOT for continued maintenance."

Planning Objective:

A. The Town will investigate the feasibility of land disposal and storm water retention in lieu of outfalls and may seek funds and grants or lobby NCDOT where the feasibility exists for land application of stormwater."

Policy 5, Page 101.

"The Town will comply with State rules regarding stormwater control."

Planning Objective:

B. The Town will implement flood control projects discussed in the stormwater systems section of this plan as funds become available."



N.C. Department of Environment and Natural Resources
Division of Coastal Management

Permitting
1405-107

Project, Date
Number

Permit Number
Secretary

December 23, 2013

N.C. Department of Transportation
113 Airport Drive, Suite 100
Edenton, NC 27932

Dear Sir or Madam:

The enclosed permit constitutes authorization under the Coastal Area Management Act, and where applicable, the State Dredge and Fill Law, for you to proceed with your project proposal. The original (buff-colored form) is retained by you and it must be available on site when the project is inspected for compliance. Please sign both the original and the copy and return the copy to this office in the enclosed envelope. Signing the permit and proceeding means you have waived your right of appeal described below.

If you object to the permit or any of the conditions, you may request a hearing pursuant to NCGS 113A-121.1 or 113-229. Your petition for a hearing must be filed in accordance with NCGS Chapter 150B with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27611-6714, (919) 733-2698 within twenty (20) days of this decision on your permit. You should also be aware that if another qualified party submits a valid objection to the issuance of this permit within twenty (20) days, the matter must be resolved prior to work initiation. The Coastal Resources Commission makes the final decision on any appeal.

The project plan is subject to those conditions appearing on the permit form. Otherwise, all work must be carried out in accordance with your application. Modifications, time extensions, and future maintenance requires additional approval. Please read your permit carefully prior to starting work and review all project plans, as approved. If you are having the work done by a contractor, it would be to your benefit to be sure that he fully understands all permit requirements.

From time to time, Department personnel will visit the project site. To facilitate this review, we request that you complete and mail the enclosed Notice Card just prior to work initiation. However, if questions arise concerning permit conditions, environmental safeguards, or problem areas, you may contact Department personnel at any time for assistance. By working in accordance with the permit, you will be helping to protect our vitally important coastal resources.

Sincerely,

Douglas V. Huggett
Major Permits and Consistency Manager

Enclosure

Permit Class
NEW

Permit Number
137-13

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

for

X Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

X Excavation and/or filling pursuant to NCGS 113-229

Issued to N.C. Department of Transportation, 113 Airport Drive, Suite 100, Edenton, NC 27932

Authorizing development in Dare County at Ocean Outfall #3 at milepost 10.45, south of East Gallery Row, Nags Head, as requested in the permittee's application dated 11/1/13, incl. the attached workplan drawings (4): 1 dated 1966, 2 dated 9/23/13, and 1 dated 9/24/13, & AEC Hazard Notice dated 11/13/13.

This permit, issued on 12/20/13, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

Ocean Outfall

- 1) In order to protect sea turtle nesting sites, no work seaward of the frontal dune or the first line of stable natural vegetation, whichever is more restrictive, shall be conducted from May 1st to November 15th of any year, without the prior approval of the N.C. Division of Coastal Management (DCM), in consultation with the N.C. Wildlife Resources Commission.
- 2) In accordance with 15A NCAC 07H .0306(a), the proposed extension of the existing ocean outfall by 65 feet is not authorized.
- 3) In performing maintenance and/or repair activities on the existing outfall structures, the repaired outfall pipes and associated structures shall not exceed the footprint of the existing outfall structures.

(See attached sheets for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

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

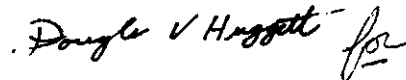
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

December 31, 2016

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.



Braxton C. Davis, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

- 4) The permittee shall post appropriate signs to warn the public of potential hazards during maintenance and construction activities.
- 5) The permittee shall remove all debris and construction material immediately upon project completion.
- 6) The elements of the support structures from the existing ocean outfall that are no longer needed shall be removed in their entirety.
- 7) All materials and debris associated with the repair and/or maintenance of the existing ocean outfall and associated materials shall be disposed of at an approved upland site or shall be recycled in an environmentally appropriate manner provided appropriate authorizations from any relevant state, federal, or local authorities are obtained.
- 8) Land-based equipment necessary for construction work shall be brought to the site through the existing public beach access located at Admiral Street Drive. Should the work result in any damage to the existing access, the access shall be restored to pre-project conditions immediately upon project completion.
- 9) Live concrete shall not be allowed to contact Waters of the State or water that will enter Waters of the State.

Temporary Sheet Pile and Temporary Work Trestle Platform

- 10) The temporary sheet pile and temporary work trestle platform shall be installed securely to minimize the likelihood that they will break loose and become a hazard during any damaging weather events that may occur while the project is underway.
- 11) The temporary sheet pile and temporary work trestle platform shall be removed in their entirety within 7 days after project completion.

General

NOTE: The following comments were received from the N.C. Division of Marine Fisheries, Shellfish Sanitation and Recreational Water Quality Section: “Negative impacts to beach water quality associated with the Dare County ocean storm drains have been well documented by both the University of North Carolina Institute of Marine Sciences and the UNC Coastal Studies Institute. As proposed, this outfall will most likely discharge within the surf zone, and thus will continue to have a negative impact on swimmers. Extending the drain pipe further offshore beyond the surf zone will likely allow for the stormwater to discharge beyond the area used by swimmers, and thus reduce the threat to public health.”

- 12) Development authorized by this permit shall only be conducted on lands owned by the N.C. Department of Transportation and/or its right-of-ways and/or easements.

ADDITIONAL CONDITIONS

- 13) The permittee and/or their contractor shall contact a DCM Field Representative in Elizabeth City to request a preconstruction conference prior to project initiation.

NOTE: This permit does not eliminate the need to obtain any additional permits, approvals or authorizations that may be required. This includes a 401 Water Quality Certification, if required, from the N.C. Division of Water Resources, and any required authorization from the U.S. Army Corps of Engineers.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

Patrick McCrory
GOVERNOR

Tony Tata
SECRETARY

November 1, 2013

Willie H Colston Jr.
1329 Johnstown Road
Chesapeake, VA 23322

CERTIFIED MAIL

To Whom It May Concern:

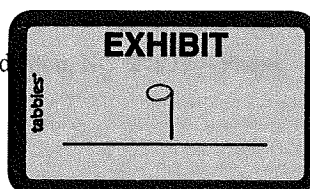
The NC Department of Transportation is proposing to replace 65 feet of 2 lines of 27-inch concrete ocean outfall drain pipe that has been damaged by storm events. The outfall is located at milepost 10.45 along NC Highway 12 in Nags Head, Dare County. The replacement pipe will be 30-inch commercial plastic pipe supported by concrete piles. NCDOT also proposes to extend the drain pipe an additional 65 feet seaward of its current location. This extension will reduce the accumulation of sand around the pipe outlet, which currently results in ongoing maintenance of the drainage structure.

As previously stated in a certified letter to you dated November 1, 2013, NCDOT applied for a permit from the NC Division of Coastal Management to perform the work. Part of this permitting process will involve a request by NCDOT to obtain a variance from the NC Division of Coastal Management development rules. The variance request will seek approval to extend the ocean outfall by 65 feet, which will reduce blockage of the outlet pipe and increase functionality. The NC Division of Coastal Management rule requires NCDOT to notify the adjacent landowners during the permitting process and also if a variance request follows the initial permit request. Therefore, NCDOT is now sending notice to you of its intent to obtain a variance allowing the outfall's extension by 65 feet.

A map depicting the project area, along with a design plat is included with this letter. If you have any questions or comments concerning the proposed work you can contact Clay Willis at 252-482-1876.

Sincerely,
Jerry Jennings, P.E.
Division Engineer, Division One

Clay Willis 
Environmental Officer, Division One





STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

Patrick McCrory
GOVERNOR

Tony Tata
SECRETARY

November 1, 2013

C Glen Colson
110 Jade Springs Court
Mooreville, NC 28117

CERTIFIED MAIL

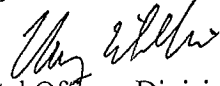
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STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

Patrick McCrory
GOVERNOR

Tony Tata
SECRETARY

November 1, 2013

Martha Ryder Hulse
324 Potomac Drive
Heathsville, VA 22473

CERTIFIED MAIL

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Division Engineer, Division One

Clay Willis 
Environmental Officer, Division One



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

Patrick McCrory
GOVERNOR

Tony Tata
SECRETARY

November 1, 2013

NCDMF
Attention Kevin Hart
943 Washington Square Mall
Highway 17
Washington, NC 27889

CERTIFIED MAIL

Dear Mr. Kevin Hart:

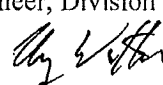
The NCDMF commented on NCDOT's proposal to extend ocean outfall # 3 in Nags Head. Therefore, NCDOT is required to inform you of our intent to seek a variance from the NCDCM.

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Highway 17
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Drain Inlet for Ocean Outfall # 3



Pictures from flooding associated with Ocean Outfall # 3 blockage



Ocean Outfall #3 in Nags Head Dare County

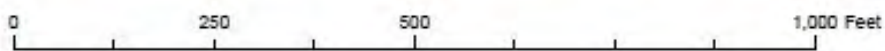
Variance for Extension



Ocean Outfall # 3 at Mile Post 10.45
Red Drum in Nags Head



Ocean Outfall # 3
Mile Post 10.45 Nags Head
Lat 35.988825
Long. -75.640773





Blocked outlet at Ocean outfall # 3



April 2003



September 2005

Ocean Outfall #3 Outlet



November 2013

Ocean Outfall #3



Junction Box



Catch Basin





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-14-01

TO: Coastal Resources Commission
FROM: Tancred Miller
SUBJECT: Coastal Resource Advisory Council Background and Appointments
DATE: February 11, 2014

Chairman Gorham and the CRC Executive Committee asked staff to prepare this memo giving a brief history of the Coastal Resources Advisory Council (CRAC), as well as the process that the Executive Committee has followed in soliciting and selecting nominees for the CRAC. Although the CRC can appoint up to 20 members to the CRAC, the Executive Committee will be recommending to the full CRC that 10 members be appointed at the February 26-27th meeting in Nags Head. The Chairman is also recommending that the CRC interact with the CRAC for a period of time in order to clarify the types of projects that the CRAC will be involved in, and to identify the gaps in skill sets and representation that the CRC would like to fill. Following those meetings the Chairman proposes to revisit the nominations process to identify additional members. The Chairman is also open to discussing new nominees from CRC members at the Nags Head meeting.

Background

The CRAC was created by the N.C. Coastal Area Management Act (CAMA) of 1974. At its inception the CRAC was a 45-member standing stakeholder group, and was intended to be a state-local advisory board to guide the development of coastal policies and regulations. The CRAC was also intended to serve as a communications link between the CRC and local governments.

Each of the 20 CAMA counties had the authority to appoint a member to the CRAC, and those members served at the pleasure of the appointing counties. The CRC had appointing authority for eight representatives of cities and towns in the coastal area, and three experts in marine science and technology. CAMA required the CRC to invite nominations from local governments for the eight "coastal cities" appointments. There were also nine state agency representatives appointed directly by the respective state agencies, one representative from each of the four multi-county planning organizations in the coastal area, and one local health director.

Session Law 2013-360 vacated the membership of the CRAC, reduced it to a 20-member body, and made the CRC the sole appointing authority. The law allows, but does not require the CRC to accept

nominations from counties and cities in the coastal area. There are no longer designated seats on the CRAC, except that at least one-half of the membership at the beginning of each two-year term must be coastal residents. The CRC was supposed to appoint members to the CRAC with terms beginning on August 1st, 2013, but due to the timing of finalizing appointments to the CRC that deadline could not be met. The law requires that initial CRAC member terms expire on June 30, 2015.

Appointments

The CRC recently invited nominations from Commission members and local governments to fill the 20 vacant seats on the CRAC. Following the January 31st end date of the nominating period, the CRC's Executive Committee held a conference call to evaluate the nominees and select a slate of recommended appointments for the full CRC's consideration. The Executive Committee performed its evaluation within the context of the attached draft CRAC job description that the Committee developed. The draft job description is also being recommended for review and adoption by the full CRC.

The Executive Committee reviewed a list of 22 nominees, some of whom previously served on the CRAC and possess important institutional knowledge. Based on the background information that was available the Executive Committee is recommending that the CRC appoint 10 members to the CRAC:

Northern Region

- 1. Kristin Noble** (Swan Quarter, Hyde County)
Planner and Economic Development Director for Hyde County. Holds a B.S. in Business Administration with a concentration in Entrepreneurship and Small Business Management, and an MBA from East Carolina University. Is a graduate of the North Carolina Rural Center's Rural Economic Development Institute (REDI). Previously served on the CRAC.
- 2. Robert Outten** (Kitty Hawk, Dare County)
Dare County Manager and County Attorney since 2009. Contract County Attorney for Dare County since 2001. Has provided legal services to several local governments in Dare County. Holds a B.S.B.A from the University of North Carolina, and a J.D. from Wake Forest University.
- 3. Raymond Sturza** (Kill Devil Hills, Dare County)
Former mayor and planning director for Kill Devil Hills. Former planning director for Dare County. Served over 25 years on the CRAC and was most recent CRAC Chair. Holds a B.A. in Political Science from UNC-Wilmington.

Central Region

- 4. Jordan Hughes** (Deep Run, Lenoir County)
City Engineer for the City of New Bern. Manages the city's Water Resources division, including capital improvements. Responsible for regulatory compliance. Board member on the Neuse River Compliance Association and the Lower Neuse Basin Association. Holds a B.S. in Civil Engineering from NC State University and is a licensed professional engineer.
- 5. Charles Jones** (Smyrna, Carteret County)
Worked at the Division of Coastal Management from 1978-2007, and served as director from 2004-2007. Graduated from East Carolina University with a bachelor's degree in geography and planning. Previously served on the N.C. General Assembly's Waterfront Access Study Committee and on the CRAC.

6. **Greg “Rudi” Rudolph** (Emerald Isle, Carteret County)
Carteret County’s Shore Protection Manager. Coordinates and develops the County’s beach preservation program and manages beach nourishment projects. Serves as secretary to the County’s Beach Commission. Holds an M.S. in Coastal Geology and B.S. in Geology from East Carolina University, and a B.A. in Biology from UNC-Charlotte. Serves on the board of directors for the American Shore & Beach Preservation Association, the N.C. Coastal Resources Law, Planning, & Policy Center, the N.C. Sea Grant Outreach Advisory Board.

Southern Region

7. **Bill Morrison** (Topsail Beach, Pender County)
6-year member of Topsail Beach Planning Board, 5-year member of Topsail Beach Shoreline Protection Committee, 8-year board member of the NC Beach, Inlet & Waterway Commission, and previously served 15 years on the CRAC, including two years as CRAC Chair.
8. **Spencer Rogers** (Wilmington, New Hanover County)
Coastal Construction and Erosion Specialist with North Carolina Sea Grant. Serves on the faculty at the UNC-Wilmington’s Center for Marine Science, and as adjunct faculty in the department of civil, construction, and environmental engineering at NC State University. Holds a Masters degree in coastal and oceanographic engineering from the University of Florida and a Bachelor’s degree in engineering from the University of Virginia. Member of the CRC’s Science Panel on Coastal Hazards. Long-serving member of the CRAC.
9. **Debbie Smith** (Ocean Isle Beach, Brunswick County)
Mayor of Ocean Isle Beach since 2003 and has served Ocean Isle Beach as an elected official since 1983. Chair of the NC Beach, Inlet & Waterway Association. Serves on the Brunswick County Tourism Authority. Founding Director and Secretary of the North Carolina Vacation Rental Managers Association. Realtor since 1972. Previously served on the CRAC.
10. **Dave Weaver** (Wilmington, New Hanover County)
Serves on New Hanover County Planning Board. Retired assistant county manager for New Hanover County. Treasurer of the NC Beach, Inlet & Waterway Association. Long-serving member of the CRAC.

DRAFT

Coastal Resources Commission Charge to the Coastal Resources Advisory Council

The Coastal Resources Advisory Council (CRAC) serves as a resource to the Coastal Resources Commission (CRC) for those issues determined by the CRC to need CRAC input, including special projects or investigations. The CRAC is an active conduit for relaying issues affecting the coastal area to the attention of the CRC, takes responsibility for communicating CRC policies, positions and actions to citizens and local governments, and solicits stakeholder input on matters before the Commission. CRAC members attend and actively participate in up to five CRAC meetings per year, scheduled in conjunction with CRC meetings. CRAC members serve two-year terms beginning on July 1st and ending on June 30th of every odd-numbered year.

CRAC Member Qualifications

CRAC members are appointed by the CRC, and must have one or more of the following qualifications:

1. Represent a County or local government, or a coastal stakeholder group important to the business of the CRC;
2. Possess expertise deemed relevant by the CRC; and
3. Provide a geographical balance and/or perspective.



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-14-02

TO: Coastal Resources Commission

FROM: Matt Slagel, DCM Shoreline Management Specialist

SUBJECT: Beach Nourishment, Static Vegetation Lines, and Static Line Exceptions

DATE: February 11, 2014

Static Vegetation Lines

Oceanfront setbacks are measured from the first line of stable natural vegetation except in unvegetated beach areas and areas within the boundaries of a large-scale beach fill project. A large-scale beach fill project is defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers (USACE) (15A NCAC 7H.0305(a)(7)). In areas that have received a large-scale beach fill project, the building setback is measured from the vegetation line in existence within one year prior to the onset of the project. This is the “Static Vegetation Line,” and once a static vegetation line is established, it is used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In locations where the vegetation line is landward of the static vegetation line, the vegetation line is used as the reference point for measuring oceanfront setbacks. A static vegetation line is established in coordination with DCM using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project (15A NCAC 7H.0305(a)(6)). A static vegetation line has been established for the following communities (though not necessarily the entire community): Ocean Isle Beach, Oak Island, Caswell Beach, Bald Head Island, Kure Beach, Carolina Beach, Wrightsville Beach, Emerald Isle, Indian Beach, Salter Path, Pine Knoll Shores, Atlantic Beach, and Nags Head.

Codified in 1996, the use of the pre-project vegetation line to determine development setbacks was a procedure used by DCM staff since 1981. The CRC recognized that beach fill can be used as an option to mitigate erosion and protect existing development and infrastructure but should not encourage encroachment farther seaward. The static vegetation line policy was established by the CRC, in part, based on three factors:

- 1) Engineered beaches erode at least as fast as, if not faster than, the pre-project beach;
- 2) There is no assurance of future funding (or beach-compatible sand) for project maintenance; and
- 3) Development tied to a vegetation line in artificially forced systems could be located so as to be more vulnerable (closer to the shoreline) to natural hazards along the oceanfront.

“Large-Scale Beach Fill Project” Definition

Prior to 2008, a large-scale beach fill project was defined as one that placed more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline, or a Hurricane Protection project constructed by the USACE. In order to avoid a static vegetation line, municipalities had the ability to design projects with a total sediment volume less than 200,000 cubic yards or, more commonly, a total sediment volume greater than 200,000 cubic yards with an average volume distribution under 50 yds³/ft (e.g., 49 yds³/ft). While high-frequency maintenance projects could be designed to avoid triggering a static vegetation line, larger projects last longer and less frequent projects have fewer environmental impacts. The policy at the time created a disincentive for large-scale, low frequency beach fill projects for municipalities that wanted to avoid the restrictions of static vegetation lines.

The definition was changed in 2008 to remove the 50 yds³/ft average volume requirement and increase the total volume threshold to 300,000 cubic yards. The CRC increased the total volume threshold based on the fact that during the 30-year period between 1975 and 2004, 562 out of 608 (91%) of USACE inlet navigation maintenance dredging projects disposed of less than 300,000 cubic yards of sediment. All but one of the larger projects was associated with dredging Oregon Inlet and placing sand on Pea Island. Therefore, beach disposal of typical inlet navigation projects in NC does not trigger a static vegetation line.

Static Line Exceptions

In some communities with a demonstrated, long-term commitment to beach fill, proposed development on many lots could meet the required setback from the natural vegetation line, but could not be permitted because it could not meet the setback from the static vegetation line. The CRC created the static line exception (15A NCAC 7H.0306(a)(8)) as a mechanism to allow setbacks for small-scale development to be measured from either the natural vegetation line or the static line, making many more lots developable. Communities wanting a static line exception may petition the CRC for the designation and demonstrate that they meet the criteria to qualify under the rule. Once granted, the static line exception applies to the entire community and must be renewed every five years.

An approved static line exception allows development setbacks to be measured from a natural vegetation line that is oceanward of the static line under the following conditions:

- Development meets the minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater, as measured from the vegetation line;
- Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- Total floor area of a building is no greater than 2,500 square feet;
- No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure; and
- Swimming pools are not allowed oceanward of the static vegetation line.

Another feature of the static line exception is that only two erosion setback factors apply to development within the boundaries of the exception. Development less than 2,500 square feet must meet a minimum setback of 30 times the erosion rate or 60 feet, whichever is greater, and the setback is measured from a natural vegetation line in areas where it is oceanward of the static line. Development between 2,500 and 5,000 square feet also must meet a minimum setback of 30 times the erosion rate or 60 feet, whichever is

greater, but the setback is measured from the static line, natural vegetation line, or other measurement line, whichever is more landward. Development 5,000 square feet or larger must meet a minimum setback of 60 times the erosion rate in place at the time of permit issuance, and also must be measured from the static line, natural vegetation line, or other measurement line, whichever is more landward (15A NCAC 7H.0306(a)(2)(K)).

The municipalities in the table below have approved static line exceptions. The exceptions must be reviewed by the CRC every five years. As shown in the table, the Commission will be reviewing the five-year progress reports for Carolina Beach and Wrightsville Beach in the coming months.

| Municipality | Date Adopted by CRC | 5-Year Progress Reports Due |
|----------------------------|----------------------------|------------------------------------|
| Carolina Beach | August 27, 2009 | August 27, 2014 |
| Wrightsville Beach | August 27, 2009 | August 27, 2014 |
| Ocean Isle Beach | January 13, 2010 | January 13, 2015 |
| Atlantic Beach | March 24, 2010 | March 24, 2015 |
| Emerald Isle | March 24, 2010 | March 24, 2015 |
| Indian Beach / Salter Path | March 24, 2010 | March 24, 2015 |
| Pine Knoll Shores | March 24, 2010 | March 24, 2015 |

Procedures for Establishing a New Static Line Exception

Any local government or permit holder of a large-scale beach fill project that is subject to a static vegetation line may petition the CRC for an exception to the static line. A petitioner is eligible to submit a request for a static line exception after five years have passed since the completion of the initial large-scale beach fill project that required the establishment of a static line. The Commission’s rule 15A NCAC 7J.1203(b) indicates that the Commission “shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 7J.1201(d)(1) through (d)(4).” Specifically, these four criteria require a showing by the petitioner of (1) a summary of all beach fill projects in the area proposed for the exception, (2) plans and related materials showing the design of the initial fill projects, and any past or planned maintenance work needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception request, (3) documentation showing the location and volume of compatible sediment necessary to construct and maintain the project over its design life, and (4) identification of the financial resources or funding sources to fund the project over its design life.

Upon receiving a static line exception request which contains the technical information above, DCM prepares a written summary report of the request to be presented to the CRC. The summary report includes a description of the area affected by the static line exception request, a summary of the large-scale beach fill project that required the static vegetation line and completed and planned maintenance, a summary of the evidence required for a static line exception, and a recommendation to grant or deny the static line exception. DCM also provides the petitioner requesting the static line exception an opportunity to review the summary report. At the CRC meeting where the exception is considered, DCM orally presents the summary report, a representative for the petitioner may provide written or oral comments, additional parties may provide written or oral comments relevant to the static line exception request, and the Commission evaluates the four criteria above to either authorize or deny the static line exception request.

Procedures for Renewing an Existing Static Line Exception

The petitioner that received the static line exception must provide a progress report to the Commission at intervals no greater than every five years from the date the static line exception was authorized. In addition to the four criteria in the original exception request, the five-year progress report should include (1) design changes to the initial large-scale beach fill project, (2) design changes to the location and volume of compatible sediment necessary to construct and maintain the large-scale beach fill project, and (3) changes in the financial resources or funding sources necessary to fund the large-scale beach fill project.

The process for reviewing the five-year progress report is very similar to the process for reviewing the original static line exception request. Upon receiving a progress report which contains the technical information above, DCM prepares a written summary of the progress report to be presented to the CRC. The summary includes a recommendation from DCM on whether the conditions defined in 15 NCAC 7J.1201(d)(1) through (d)(4) have been met. DCM also provides the petitioner submitting the progress report an opportunity to review the written summary. At the CRC meeting where the progress report is considered, DCM orally presents the written summary of the progress report, a representative for the petitioner may provide written or oral comments, additional parties may provide written or oral comments relevant to the static line exception progress report, and the Commission evaluates the four criteria above to either reauthorize or revoke the static line exception.

If the Commission reauthorizes the static line exception based on the information in the progress report, the exception is valid for another five years. The static line exception is revoked immediately if the Commission determines that any of the four criteria under which the static line exception was authorized are no longer being met. The static line exception expires immediately at the end of the design life of the large-scale beach fill project including subsequent design changes to the project. If a progress report is not received by DCM within five years from either the static line exception or the previous progress report, the static line exception is revoked automatically at the end of the five-year interval for which the progress report was not received.

The rules governing static vegetation lines and static line exceptions are attached. I look forward to further discussing this at your meeting in Nags Head.

15A NCAC 7H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This section describes natural and man-made features that are found within the ocean hazard area of environmental concern.

- (5) **Vegetation Line.** The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and

rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.

- (6) **Static Vegetation Line.** In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.
- (7) **Beach Fill.** Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.

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

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

- (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line or the measurement line, whichever is applicable. 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;
 - (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
 - (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
 - (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
 - (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
 - (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
 - (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
 - (I) Infrastructure that is linear in nature such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
 - (J) Parking lots greater than or equal to 5,000 square feet requires a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
 - (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line or measurement line, whichever is farthest landward; and
 - (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet shall be allowed provided that the structure meets the following criteria:
 - (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(2) of this Rule;

- (iv) the structure as replaced meets the minimum setback required under Part (a)(2)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (3) If a primary dune exists in the AEC on or landward of the lot on which the development is proposed, the development shall be landward of the crest of the primary dune or the ocean hazard_setback, whichever is farthest from vegetation line, static vegetation line or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but shall not be located on or oceanward of a frontal dune. The words "existing lots" in this Rule shall mean a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership.
- (4) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot on which the development is proposed, the development shall be set landward of the frontal dune or landward of the ocean hazard setback whichever is farthest from the vegetation line, static vegetation line or measurement line, whichever is applicable.
- (5) If neither a primary nor frontal dune exists in the AEC on or landward of the lot on which development is proposed, the structure shall be landward of the ocean hazard setback.
- (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.
- (7) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (8) Beach fill as defined in this Section represents a temporary response to coastal erosion, and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach. Furthermore, there is no assurance of future funding or beach-compatible sediment for continued beach fill projects and project maintenance. A vegetation line that becomes established oceanward of the pre-project vegetation line in an area that has received beach fill may be more vulnerable to natural hazards along the oceanfront. A development setback measured from the vegetation line provides less protection from ocean hazards. Therefore, development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section. However, in order to allow for development landward of the large-scale beach fill project that is less than 2,500 square feet and cannot meet the setback requirements from the static vegetation line, but can or has the potential to meet the setback requirements from the vegetation line set forth in Subparagraphs (1) and (2)(A) of this Paragraph, a local government or community may petition the Coastal Resources Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line exception applies to development of property that lies both within the jurisdictional boundary of the petitioner and the boundaries of the large-scale beach fill project. This static line exception shall also allow development greater than 5,000 square feet to use the setback provisions defined in Part (a)(2)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner as well as the boundaries of the large-scale beach fill project. The procedures for a static line exception request are defined in 15A NCAC 07J .1200. If the request is approved, the Coastal Resources

Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the static vegetation line under the following conditions:

- (A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(2)(A) of this Rule;
- (B) Total floor area of a building is no greater than 2,500 square feet;
- (C) Development setbacks are calculated from the shoreline erosion rate in place at the time of permit issuance;
- (D) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent building or structure. When the configuration of a lot precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, a distance no less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;
- (E) With the exception of swimming pools, the development defined in 15A NCAC 07H .0309(a) is allowed oceanward of the static vegetation line; and
- (F) Development is not eligible for the exception defined in 15A NCAC 07H .0309(b).

SECTION .1200 – STATIC VEGETATION LINE EXCEPTION PROCEDURES

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after five years have passed since the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than 25 years of shore protection from the date of the static line exception

request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff. March 23, 2009.*

15A NCAC 07J .1202 REVIEW OF THE STATIC LINE EXCEPTION REQUEST

(a) The Division of Coastal Management shall prepare a written report of the static line exception request to be presented to the Coastal Resources Commission. This report shall include:

- (1) A description of the area affected by the static line exception request;
- (2) A summary of the large-scale beach fill project that required the static vegetation line as well as the completed and planned maintenance of the project(s);
- (3) A summary of the evidence required for a static line exception; and
- (4) A recommendation to grant or deny the static line exception.

(b) The Division of Coastal Management shall provide the petitioner requesting the static line exception an opportunity to review the report prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff: March 23, 2009.*

15A NCAC 07J .1203 PROCEDURES FOR APPROVING THE STATIC LINE EXCEPTION

(a) At the meeting that the static line exception is considered by the Coastal Resources Commission, the following shall occur:

- (1) The Division of Coastal Management shall orally present the report described in 15A NCAC 07J .1202.
- (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (3) Additional parties may provide written or oral comments relevant to the static line exception request. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

(b) The Coastal Resources Commission shall authorize a static line exception request following affirmative findings on each of the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4). The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.

(c) The decision to authorize or deny a static line exception is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff. March 23, 2009.*

15A NCAC 07J .1204 REVIEW OF THE LARGE-SCALE BEACH-FILL PROJECT AND APPROVED STATIC LINE EXCEPTIONS

(a) Progress Reports. The petitioner that received the static line exception shall provide a progress report to the Coastal Resources Commission at intervals no greater than every five years from date the static line exception is authorized. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission to the petitioner.

(b) The Coastal Resources Commission shall review a static line exception authorized under 15A NCAC 07J .1203 at intervals no greater than every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d)(2) through (d)(4). The Coastal Resources Commission shall also consider the following conditions:

- (1) Design changes to the initial large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
- (2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
- (3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s) defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.

(c) The Division of Coastal Management shall prepare a written summary of the progress report and present it to the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. This written summary shall include a recommendation from the Division of Coastal Management on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the written summary prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

(d) The following shall occur at the meeting at which the Coastal Resources Commission reviews the static line exception progress report:

- (1) The Division of Coastal Management shall orally present the written summary of the progress report as defined in this Rule.

- (2) A representative for the petitioner may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.
- (3) Additional parties may provide written or oral comments relevant to the static line exception progress report. The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff. March 23, 2009.*

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF THE STATIC LINE EXCEPTION

- (a) The static line exception shall be revoked immediately if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the static line exception is authorized, as defined in 15A NCAC 07J .1201(d)(2) through (d)(4) are not being met.
- (b) The static line exception shall expire immediately at the end of the design life of the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2) including subsequent design changes to the project as defined in 15A NCAC 07J .1204(b).
- (c) In the event a progress report is not received by the Division of Coastal Management within five years from either the static line exception or the previous progress report, the static line exception shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.
- (d) The revocation or expiration of a static line exception is considered a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff. March 23, 2009.*

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH STATIC VEGETATION LINES AND STATIC LINE EXCEPTIONS

A list of static vegetation lines in place for petitioners and the conditions under which the static vegetation lines exist, including the date(s) the static line was defined, shall be maintained by the Division of Coastal Management. A list of static line exceptions in place for petitioners and the conditions under which the exceptions exist, including the date the exception was granted, the dates the progress reports were received, the design life of the large-scale beach fill project and the potential expiration dates for the static line exception, shall be maintained by the Division of Coastal Management. Both the static vegetation line list and the static line exception list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6), 113A-124
Eff. March 23, 2009.*



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-14-03

February 8, 2014

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Inlet Management Strategy Development

You will recall that in considering the Cape Fear River AEC Feasibility Study at the December 2013 meeting, the Commission determined that local governments adjacent to other inlets may have to contend with similar issues. The Commission decided to undertake a comprehensive review of inlet-related issues and develop a suite of management tools that will allow local governments to more proactively address the issues confronted in these dynamic areas.

Development of an inlet management strategy is to begin with an "Inlet Management in NC" panel discussion at our upcoming meeting in Nags Head. The panel is comprised of sand managers, engineers, dredging industry representatives, the USACE and those with an interest in environmental impacts associated with inlet management. Panel members will provide the Commission with an overview of their concerns and ideas regarding inlet management, including in-water issues (dredging), erosion control alternatives, and development standards on adjacent lands.

DCM will also move ahead with a series of regional forums to elicit from stakeholders a range of management options and regulatory reforms related to inlet management. The regional meetings will be held in Hatteras, Beaufort, Wilmington and Ocean Isle Beach. The meetings will include a DCM Staff presentation on the regulatory framework in inlet areas to include dredging and beach nourishment as well as specific issues/actions related to the inlets encompassed by the region. Local governments and other entities adjacent to inlets in the region will be invited to present their specific concerns related to the inlet(s) within their jurisdiction. Local governments will also be encouraged to provide written comments on new tools and management options to address the 11 areas outlined below. After the local government presentations, the public will be invited to comment on what they heard and provide additional thoughts. Written comments will also be accepted March 1 – April 15, 2014.

Inlet Management Topics

- | | |
|--|--|
| 1) Beneficial use of dredged materials | 7) Emergency permitting: beach bulldozing and sandbags |
| 2) Dredging windows / moratoria | 8) Terminal groins and sand bypassing |
| 3) Dredging depths and sediment criteria rules | 9) Erosion rate calculations for Inlet Hazard Areas |
| 4) Channel realignment projects | 10) Dune creation in the IHA |
| 5) Development standards / erosion setbacks /local vs. state authorities | 11) Monitoring conditions associated with various projects |
| 6) Volumetric triggers for "static lines" | |

Information from these meetings will be summarized and used to develop findings and preliminary recommendations for the Commission to consider at the May 15, 2014 CRC meeting.

Regional Inlet Management Meeting Locations

March 6, 2016 4:00 PM
Fessenden Center
46830 Hwy 12
Buxton NC 27920

March 26, 2014 6:00 PM
Ocean Isle Beach Town Hall
3 West Third Street
Ocean Isle Beach, NC 28469

March 12, 2014 6:00 PM
NOAA/NERR Administration Bldg
101 Pivers Island Road
Beaufort, N.C. 28516

April 2, 2014 6:00 PM
New Hanover County Gov't Center
230 Government Center Drive
Wilmington, NC 28403

Inlet Management Study Schedule

- April 30, 2014 - Four regional meetings completed.
- May 15, 2014 - Summary of regional meetings, findings, and preliminary recommendations to CRC.
- June 30, 2014 - Legislative status report.
- July 31, 2014 - Final draft findings and recommendations to CRC.
- September 30, 2014 - Submit proposed rulemaking changes for public comment.
- December 31, 2014 - Submit report findings to Governor and Legislature.



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, 2014

MEMORANDUM

CRC-14-09

TO: Coastal Resources Commission
FROM: Braxton Davis
SUBJECT: DCM Rules Review / Proposals for Changes to Rules and Procedures

The Division of Coastal Management is required to complete an annual review of the Coastal Resource Commission's rules in accordance with NCGS 150B-19.1(b) (NC Administrative Procedures Act). In September 2013, I asked staff to undertake a comprehensive review of 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, I know that our staff can 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:

- 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, an internal meeting was held with DCM's District Managers, the Major Permits Coordinator, and policy staff. During those meetings, suggestions were prioritized for presentation to the Coastal Resources Commission during 2014. We are seeking the Commission's preliminary approval to move forward in the formal rulemaking process on the following proposed changes:

1) Streamlining Exemptions for Single Family Residences

Within the Estuarine Shoreline Area of Environmental Concern, the Commission's rules at 15A NCAC 7K.0208 exempt from permitting requirements the construction of single family residences and related land disturbances that are more than 40 feet landward of normal high water or normal water level. This exemption requires the notification of adjacent property owners, and the Division recommends amending notification requirements in 7K.0208(c)(3).

The requirement for a signed statement of no objection from adjacent property owners sometimes causes an unnecessary hardship and prevents property owners from qualifying for the 7K exemption. Staff has observed that property owners are sometimes unable to secure signed statements from adjacent riparian

property owners because they do not live in the area, or because the adjacent owner declines to sign. In these situations, property owners must then go through the Minor Permit process, resulting in increased costs and lost time. To obtain a Minor Permit, an applicant is only required to notify the adjacent property owners and is not required to obtain a signed statement of no objection, so this (stricter) requirement for the 7K permit exemption seems unnecessary. In addition, since Minor Permits are valid for three years but the exemption is only valid for one year (7K.0208(e)), DCM also recommends extending the exemption period to three years.

2) Allow surface accessways to coastal shorelines

Under the same permit exemption as above, the Commission's rules (7K .0208(a)) exempt from permitting requirements the construction of an accessway to the water "in accordance with Rule 07H .0209(d)(10)(D)," providing it is an elevated, slatted, wooden boardwalk that is exclusively for pedestrian use and is six feet in width or less. However, the rules at 7H .0209(d)(10)(D) are intended to apply to shore-parallel boardwalks and not for traditional house-to-water access. The Division recommends amending this rule to strike the incorrect rule reference, and further to allow that walkways under this rule are not required to be elevated, slatted, and wooden. Other materials, such as gravel or concrete, would be allowable under this exemption to allow ease of house-to-water access without dramatically increasing impervious surface coverages.

3) Consider elimination of the beachfront High Hazard Area of Environmental Concern jurisdiction.

The High Hazard Flood AEC is defined as the area subject to "high velocity waters" in a storm having a one percent chance of being equaled or exceeded in any given year (also known as a 100-year storm). This area is also identified as being in a V-zone on FEMA Flood Insurance Rate Maps (FIRMs). Single family residences in the High Hazard Flood AEC are exempt from CAMA permit requirements provided that the development is consistent with all other applicable CAMA permit standards and local land use plans (15A NCAC 7K .0213). Although this type of development does not require a CAMA permit, it requires a site visit by a DCM Field Representative or CAMA Local Permit Officer in addition to an application for a permit exemption and fee of \$50. The rules in this section have not been updated since 2002.

Staff believe that there is a need to reach out to local governments and the state floodplain management program to determine if: a) the CRC's rules are up-to-date and consistent with other state and local floodplain rules; b) any uniform credits (or location-specific credits) are gained through the National Flood Insurance Program (NFIP) Community Rating System as a result of the CRC rules; and c) local governments are relying in any way on the CRC's rules rather than through local ordinances with respect to the specific standards within 7K .0213. The potential elimination of this AEC would remove a significant number of properties from the CRC's permitting jurisdiction along the coast of North Carolina. These properties (located in the FEMA V-zone but outside of the Ocean Erodeable Area AEC and Inlet Hazard Area AEC) would continue to comply with the NC Building Code and local flood damage prevention ordinances as required by the NFIP, but they would not be required to obtain a CAMA permit exemption.

4) Streamlining permits associated with upland boat basins (General Permit 7H.1500)

Two CAMA General Permits are often required for a single upland boat basin project, as separate permits are currently required for a) the basin dredging activity and b) a protective bulkhead structure within the basin. Requiring two permits is unnecessary and overly burdensome for applicants. General Permit 7H.1500 could be improved by authorizing shoreline stabilization structures to protect the newly dredged basin. This action would simplify permitting for the applicant and reduce costs. On a broader note, where coastal projects 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 do not greatly exceed the costs of a CAMA Major Permit.



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-14-04

February 8, 2014

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Fiscal Analysis for 15A NCAC 7H .2600 GP for Mitigation and In-Lieu Fee Projects

Summary of Rule Change

In 2004, the Coastal Resources Commission (CRC) adopted General Permit 15A NCAC 7H .2600 for the construction of wetland, stream and buffer mitigation sites by the NC Ecosystem Enhancement Program (NCEEP) or the North Carolina Wetlands Restoration Program (NCWRP). This General Permit was adopted based upon assurances that the development of mitigation sites by the NCEEP and/or the NCWRP would involve significant pre-project coordination with relevant review agencies and would contain numerous pre- and post-project checks and balances, ensuring that these mitigation projects were compatible with the goals and objectives of the Coastal Area Management Act.

Since the adoption of this General Permit, the US Environmental Protection Agency (EPA) has implemented new guidance on compensatory mitigation banks and in-lieu fee projects. This guidance requires all mitigation bank and in-lieu fee projects in North Carolina, including NCEEP and NCWRP projects, to undergo significant agency coordination prior to obtaining final regulatory approvals. Staff from the Division of Coastal Management (DCM) are involved in this coordination effort for any such project located within the coastal zone.

Mitigation banking projects undertaken by private entities are currently not eligible for review and approval through this General Permit. Private entities are required to go through the Major Permit process which includes review of the planned mitigation activities by nine state and four federal agencies. The major permit application requires an extensive review (up to 75 days) as well as submission of design work to be included with the project application.

Due to the level of DCM staff involvement in reviewing mitigation projects under the EPA guidance, DCM has proposed making the General Permit available for all mitigation bank and in-lieu fee projects, not just the NCEEP and NCWRP.

Summary of Fiscal Analysis

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for NCAC 7H .2600 has been prepared by the Division and approved by DENR and the Office of State Budget & Management (OSBM).

The amended rules for the construction of wetland, stream and buffer mitigation projects would apply to entities in the mitigation banking business. Over the past 10 years, the Division of Coastal Management has reviewed an average of one mitigation project every two to three years. Expansion of the General Permit for use by private entities in addition to the NCEEP and NCWRP is anticipated to result in a shorter application process and a fast rate of review of one project per year.

The economic impacts of these proposed rule changes are potential financial benefits to private entities developing compensatory mitigation banks and in-lieu fee projects. Applicants for compensatory mitigation projects will save the cost of design drawings (up to \$1,000) normally required with the Major Permit application. Project applicants will also realize a time savings as the proposed amendments will allow these projects to be permitted within about a week under the General Permit process as opposed to 75 days under the Major Permit process. In addition, state and federal agencies will realize a time savings by not having to review these projects under the Major Permit process thereby devoting more time to other project reviews. Assuming no change in the permit fee and that the cost of the design drawing will increase with inflation (annual rate of 1.7%), the financial benefits to mitigation banks and in-lieu fee projects for would be close to \$3,000 for four additional projects in a 10 year period. As mentioned above, there would be additional time savings from the shortened review process.

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .1204 and 7H .1205 will not affect environmental permitting for the NC Department of Transportation. However, NC DOT could possibly take advantage of additional mitigation opportunities afforded by an increase in the number of mitigation banks permitted. This may decrease the permitting time required for NC DOT projects and result in time savings. Local governments are generally not involved in the construction of mitigation banks or in-lieu fee projects. However, local governments could possibly take advantage of additional mitigation opportunities afforded by an increase in the number of mitigation banks. This may decrease the permitting time required for local projects and result in time savings. While there may be a modest increase in the number of projects reviewed (one per year) it is not expected to significantly increase the overall permit review load of the agency. It is estimated that the Division could see an increase in permit fees of \$400 in some years due to processing applications faster.

If the Commission approves, the fiscal analysis as well as proposed amendments may be sent to public hearing with a proposed effective date of July 1, 2014.

Proposed Amendments 15A NCAC 7H.2600 General Permit for Construction of Mitigation Banks and In-Lieu Fee Mitigation Projects

SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION OF MITIGATION BANKS AND IN-LIEU FEE MITIGATION PROJECTS OF WETLAND, STREAM AND BUFFER MITIGATION SITES BY THE NORTH CAROLINA ECOSYSTEM ENHANCEMENT PROGRAM OR THE NORTH CAROLINA WETLANDS RESTORATION PROGRAM

15A NCAC 7H .2601 PURPOSE

This general permit shall allow for the construction of mitigation banks and in-lieu fee mitigation projects of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program. This permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services. These activities include: restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters. This permit shall be applicable only where the restoration, creation or enhancement of a wetland, stream or buffer system is proposed. However, this permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.

15A NCAC 7H .2602 APPROVAL PROCEDURES

- (a) The applicant shall contact the Division of Coastal Management (DCM) and request approval for development. The applicant shall provide information on site location, a mitigation plan outlining the proposed mitigation activities, and the applicant's name and address.
- (b) The applicant shall provide either confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work, or confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection.
- (c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section
- (d) No work shall begin until a meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development shall be issued. Construction of the mitigation site shall be started within 180 365 days of the issuance date of this permit or the general authorization expires and it shall be necessary to re-examine the proposed development to determine if the general authorization shall be reissued.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.

15A NCAC 7H .2604 GENERAL CONDITIONS

- (a) This permit authorizes only the following those activities associated with the construction of mitigation banks and in-lieu fee mitigation projects, wetland, stream or buffer restoration, creation or enhancement projects conforming to the standards herein; the removal of accumulated sediments; the installation, removal and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the placement of in-stream habitat structures; modifications of the stream bed or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; the planting of submerged aquatic vegetation; activities needed to reestablish vegetation, including plowing or discing

for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive exotic or nuisance vegetation; and other related activities.

(b) Individuals shall allow authorized representatives of DENR to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.

(d) This permit shall not be applicable to proposed construction where the DENR has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) At the discretion of DCM staff, review of individual project requests shall be coordinated with ~~Division of Marine Fisheries or Wildlife Resources Commission~~ DENR personnel. This coordination may result in a construction moratorium during periods of significant biological productivity and/or critical life stages of fisheries resources.

(f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

(g) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.*

15A NCAC 7H .2605 SPECIFIC CONDITIONS

(a) This general permit shall be applicable only for ~~the construction of mitigation banks or in-lieu fee mitigation projects~~ mitigation site proposals made by the North Carolina Ecosystem Enhancement Program or North Carolina Wetlands Restoration Program.

(b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.

(c) The need to cross wetlands in transporting equipment shall be avoided or minimized to the maximum extent practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, track and low pressure equipment or temporary construction mats shall be utilized for the area(s) to be crossed. The temporary mats shall be removed immediately upon completion of construction.

(d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control structures, or those structures needed for site monitoring or shoreline stabilization of the mitigation site.

(e) This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for any particular project. The use of any portion of the site as compensatory mitigation for future projects shall be determined in accordance with the regulatory policies and procedures in place at the time such a future project is authorized.

(f) The authorized work shall result in a net increase in coastal resource functions and values.

(g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state and shall be owned by the permittee or its approved designee. An appropriate conservation easement, deed restriction or other appropriate instrument shall be attached to the title for the subject property.

(h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared for the authorized mitigation bank or in-lieu fee project site.

(i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the likelihood of flooding any adjacent property.

(j) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, sand fence, etc.).

(k) If one or more contiguous acre of property is to be graded, excavated or filled, the applicant shall file an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land Quality Section, or government having jurisdiction. The plan shall be approved prior to commencing the land-disturbing activity.

(l) All fill material shall be clean and free of any pollutants, except in trace quantities.

*History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.*

Fiscal Analysis

Expansion of the General Permit for Construction of Wetland, Stream and/or Buffer Mitigation Sites by the NC Ecosystem Enhancement Program or the NC Wetlands Restoration Program

Prepared by

Mike Lopazanski
NC Division of Coastal Management
(252) 808-2808 Ext. 223

February 7, 2014

Basic Information

| | |
|-----------------------------------|---|
| Agency | DENR, Division of Coastal Management (DCM) Coastal Resources Commission |
| Citations and Titles | 15A NCAC 7H .2601 – Purpose 15A NCAC 7H .2602 – Approval Procedures 15A NCAC 7H .2604 – General Conditions 15A NCAC 7H .2605 – Specific Conditions |
| Description of the Proposed Rules | Section 7H .2600 defines specific development requirements for the construction of wetland, stream and buffer mitigation sites by the NC Ecosystem Enhancement Program (NCEEP) or the NC Wetlands Restoration Program (NCWRP). The proposed rule change amends language in Rules 7H .2601, 7H .2604 and 7H .2605 to make the General Permit available for all mitigation bank and in-lieu fee projects. This would also change the title of Section .2600 to reflect the Rule changes in this Section. |
| Agency Contact | Mike Lopazanski Policy & Planning Section Chief Mike.Lopazanski@ncdenr.gov (252) 808-2808 ext 223 |
| Authority | 113A-107; 113A-107(b); 113A-113(b)(6); 113A-118.1; 113A-119.1. |
| Necessity | The Coastal Resources Commission is proposing to amend its administrative rules to expand this General Permit to include all mitigation bank and in-lieu fee projects, and not only those related to the NCEEP and/or the NCWRP. The proposed rule changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden. |
| Impact Summary | State government: Yes Local government: No Substantial impact: No Federal government: No Private entities: Yes |

Summary

In 2004, the Coastal Resources Commission (CRC) adopted Coastal Area Management Act (CAMA) General Permit 15A NCAC 7H .2600 for the construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program (NCEEP) or the North Carolina Wetlands Restoration Program (NCWRP). This General Permit was adopted based upon assurances that the development of mitigation sites by the NCEEP and/or the NCWRP would involve significant pre-project coordination with relevant review agencies and would contain numerous pre- and post-project checks and balances, ensuring that these mitigation projects were compatible with the goals and objectives of the Coastal Area Management Act.

Since the adoption of this General Permit, the U.S. Environmental Protection Agency has implemented new guidance on compensatory mitigation banks and in-lieu fee projects. This guidance requires all mitigation bank and in-lieu fee projects in North Carolina, including NCEEP and NCWRP projects, to undergo significant agency coordination prior to obtaining final regulatory approvals. Staff from the Division of Coastal Management (DCM) are involved in this coordination effort for any such project located within the coastal zone. Due to the level of DCM staff involvement in reviewing these mitigation projects, the Coastal Resources Commission is proposing to make the General Permit available for all mitigation bank and in-lieu fee projects, not just the NCEEP and NCWRP.

The economic impacts of this proposed rule change are potential benefits to private entities developing compensatory mitigation banks and in-lieu fee projects. Although there is no difference in the fee for a General versus a Major permit for these types of projects (both have an application fee of \$400), applicants for compensatory mitigation projects will save the cost of design drawings (up to \$1,000) that are normally required to accompany a Major Permit application. Project applicants will also realize a time savings as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75 days under the Major Permit process. In addition, state and federal agencies will realize a time savings by not having to review these projects under the Major Permit process thereby devoting more time to other project reviews. Over the past 10 years, the Division has permitted four mitigation projects. Based on agency staff experience, it is expected that project applications will increase to one per year due to shortened review time. Therefore, in four years DCM will approve the same number of projects as they did before in 10 years. Assuming no change in the permit fee and that the cost of the design drawing will increase with inflation (annual rate of 1.7%), the financial benefits to mitigation banks and in-lieu fee projects for would be close to \$3,000 for four projects. As mentioned above, there would be additional time savings from the shortened review process. The impact is not expected to be substantial.

These amendments will have no impact on NC Department of Transportation (NC DOT) projects, local governments or the federal government. It is estimated that DCM will see additional fee revenue of \$400 in some years due to applications going through a faster review process. DCM and other state/federal permit review agencies will realize a time-savings benefit by not having to review applications for compensatory mitigation banking or in-lieu fee projects under the more rigorous Major Permit process.

The proposed effective date of these amendments is August 1, 2014.

Introduction and Purpose

In 2004, the Coastal Resources Commission (CRC) adopted Coastal Area Management Act (CAMA) General Permit 15A NCAC 7H.2600 for the construction of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program (NCEEP) or the North Carolina Wetlands Restoration Program (NCWRP). The NCEEP was formed to reinvent the way North Carolina was handling compensatory wetland mitigation projects. The goal of the NCEEP was to approach mitigation more on an ecosystem basis rather than focus on small mitigation sites. Another anticipated benefit of the NCEEP model is that applicants needing compensatory wetland mitigation could utilize the NCEEP's mitigation services and take the mitigation out of the permit process. For example, if NCDOT was building a new road that needed mitigation, part of the plan and permit would have to include the wetland mitigation component which leads to delays in permit acquisition. The NCEEP process takes the mitigation out of the individual permit stage and puts it in the hands of a DENR agency, providing DENR regulatory agencies with assurances that it will be done in the proper manner.

The CAMA General Permit was adopted based upon assurances that the development of mitigation sites by the NCEEP and/or the NCWRP would involve significant pre-project coordination with relevant review agencies and would contain numerous pre- and post-project checks and balances, ensuring that these mitigation projects were compatible with the goals and objectives of the Coastal Area Management Act.

Mitigation banking projects undertaken by private entities are currently not eligible for review and approval through this General Permit. Private entities are required to go through the Major Permit process which includes review of the planned mitigation activities. The major permit application requires an extensive review (up to 75 days) as well as submission of design work to be included with the project application. Based on DCM staff experience, this design work adds approximately \$1,000 to the cost of the project.

Since the adoption of this General Permit, the U.S. Environmental Protection Agency has implemented new guidance on compensatory mitigation banks and in-lieu fee projects. This guidance requires all mitigation bank and in-lieu fee projects in North Carolina, including NCEEP and NCWRP projects, to undergo significant up-front agency coordination prior to obtaining final regulatory approvals. Staff from the Division of Coastal Management are involved in this coordination effort for any such project located within the coastal zone. The level of review required for non-NCEEP/NCWRP mitigation activities now provides the same level of assurance that projects are compatible with the goals and objectives of the Coastal Area Management Act. The CRC is therefore proposing to expand this General Permit to include all mitigation bank and in-lieu fee projects, and not just those related to the NCEEP and/or the NCWRP. This will allow these projects to be permitted within a few days as opposed to 75 days saving applicants time. Applicants for mitigation projects will save the cost of design drawings (up to \$1,000) normally required with the Major Permit application. In addition, state and federal agencies will realize time savings by not having to review these projects under the Major Permit process thereby devoting to other project reviews.

Over the past 10 years, the Division has permitted one mitigation project every two to three years. Based on agency staff experience, it is expected that project applications will increase to one per year due to the shortened permit application review process. Therefore, in four years DCM will approve the same number of projects as they did before in 10 years. Assuming no change in the permit fee and that the cost of the design drawing will increase with inflation (annual rate of 1.7%), the financial benefits to mitigation banks and in-lieu fee projects for would

be close to \$3,000 for four projects. As mentioned above, there would be additional time savings from the shortened review process. The impact is not expected to be substantial.

Description of Rule Amendment

15A NCAC 7H .2601 includes the title and purpose of the General Permit. Deleting references to the Ecosystem Enhancement Program and the Wetlands Restoration Program will allow use of the General Permit for mitigation banking and in-lieu fee projects in general. The eligible activities have been broadened to incorporate new ideas and techniques associated with compensatory mitigation projects.

DCM staff experience with mitigation projects over the past 10 years have shown that there are often complicating factors such as incorporating the growing season for wetland plantings that can delay construction of mitigation projects. For this reason, 15A NCAC 7H .2602 is being proposed for amendment to allow one year for the construction to begin rather than only six months. This change would afford applicants flexibility in completing their projects since they will not need to time their permit application with the growing season.

15A NCAC 7H. 2604 General Conditions originally attempted to incorporate an exhaustive list of possible mitigation activities. However, DCM experience over the last 10 years has shown that such a list was limiting and the intention is now to foster new ideas and the utilization of new technologies to increase the success rate of mitigation projects. For this reason, the list of specific activities is being deleted.

Proposed amendments to 15A NCAC 7H .2605 Specific Condition address conditions associated with mitigation banks and in-lieu fee mitigation projects generally rather than those conducted only by the NCEEP and NCWRP. Other minor changes are also included.

Based on these Rule amendments the title of Section .2600 is amended to reflect these changes.

Cost or Neutral Impacts

Private Property Owners:

The proposed rule amendments would only apply to entities developing mitigation banks or in-lieu fee projects and not individual property owners. Mitigation in the coastal area is only allowed if there is an overriding public benefit. It is therefore unlikely that individual property owners would purchase mitigation credits from such projects.

NC Department of Transportation (NC DOT):

Pursuant to G.S. 150B-21.4, the proposed amendments to 15A NCAC 7H .2601, 7H .2602, 7H .2604, 7H .2605 and Section .2600 will not affect environmental permitting for the NC DOT. However, NC DOT could possibly take advantage of additional mitigation opportunities afforded by an increase in the number of mitigation banks. This may decrease the permitting time required for NC DOT projects and result in time savings.

Local Government:

Local governments are generally not involved in the construction of mitigation banks or in-lieu fee projects. However, local governments could possibly take advantage of additional mitigation opportunities afforded by an increase in the number of mitigation banks. This may decrease the permitting time required for local projects and result in time savings.

Division of Coastal Management (DCM):

DCM's permit review process will not be changed by these amendments. The U.S. Environmental Protection Agency has implemented new guidance on compensatory mitigation banks and in-lieu fee projects. This guidance requires all mitigation bank and in-lieu fee projects in North Carolina, including NCEEP and NCWRP projects, to undergo significant up-front agency coordination prior to obtaining final regulatory approvals. Staff from the Division of Coastal Management are involved in this coordination effort for any such project located within the coastal zone. While there may be a modest increase in the number of projects reviewed (one per year) it is not expected to significantly increase the overall permit review load of the agency. It is estimated that the Division could see an increase in permit fees of \$400 in some years due to processing applications faster.

Cost/Benefits Summary

Private Sector:

The amended rules for the construction of wetland, stream and buffer mitigation projects would apply to entities in the mitigation banking business. Over the past 10 years, the Division of Coastal Management has reviewed an average of one mitigation project every two to three years. Expansion of the General Permit for use by private entities in addition to the NCEEP and NCWRP is anticipated to result in a shorter application process and a fast rate of review of one project per year.

The economic impacts of these proposed rule changes are potential financial benefits to private entities developing compensatory mitigation banks and in-lieu fee projects. Applicants for compensatory mitigation projects will save the cost of design drawings (up to \$1,000) normally required with the Major Permit application. Project applicants will also realize a time savings as the proposed amendments will allow these projects to be permitted within a few days under the General Permit process as opposed to 75 days under the Major Permit process. In addition, state and federal agencies will realize a time savings by not having to review these projects under the Major Permit process thereby devoting more time to other project reviews. Over the past 10 years, the Division has permitted one mitigation project every two to three years. Based on agency staff experience, it is expected that project applications will increase to one per year due to shortened review time. Therefore, in four years DCM will approve the same number of projects as they did before in 10 years. Assuming no change in the permit fee and that the cost of the design drawing will increase with inflation (annual rate of 1.7%), the financial benefits to mitigation banks and in-lieu fee projects for would be close to \$3,000 for four projects. As mentioned above, there would be additional time savings from the shortened review process. The impact is not expected to be substantial.

APPENDIX A

SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION OF MITIGATION BANKS AND IN-LIEU FEE MITIGATION PROJECTS OF WETLAND, STREAM AND BUFFER MITIGATION SITES BY THE NORTH CAROLINA ECOSYSTEM ENHANCEMENT PROGRAM OR THE NORTH CAROLINA WETLANDS RESTORATION PROGRAM

15A NCAC 7H .2601 PURPOSE

This general permit shall allow for the construction of mitigation banks and in-lieu fee mitigation projects of wetland, stream and buffer mitigation sites by the North Carolina Ecosystem Enhancement Program or the North Carolina Wetlands Restoration Program. This permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services. These activities include: restoration, enhancement, and establishment of tidal and non-tidal wetlands and riparian areas, the restoration and enhancement of non-tidal streams and other non-tidal open waters, and the rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters. This permit shall be applicable only where the restoration, creation or enhancement of a wetland, stream or buffer system is proposed. However, this This permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.

15A NCAC 7H .2602 APPROVAL PROCEDURES

- (a) The applicant shall contact the Division of Coastal Management (DCM) and request approval for development. The applicant shall provide information on site location, a mitigation plan outlining the proposed mitigation activities, and the applicant's name and address.
- (b) The applicant shall provide either confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work, or confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection.
- (c) DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project meets the requirements of the rules in this Section
- (d) No work shall begin until a meeting is held with the applicant and appropriate Division of Coastal Management representative. Written authorization to proceed with the proposed development shall be issued. Construction of the mitigation site shall be started within 180 365 days of the issuance date of this permit or the general authorization expires and it shall be necessary to re-examine the proposed development to determine if the general authorization shall be reissued.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.

15A NCAC 7H .2604 GENERAL CONDITIONS

- (a) This permit authorizes only the following those activities associated with the construction of mitigation banks and in-lieu fee mitigation projects, wetland, stream or buffer restoration, creation or enhancement projects conforming to the standards herein; the removal of accumulated sediments; the installation, removal and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the placement of in-stream habitat structures; modifications of the stream bed or banks to restore or create stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands; the construction of open water areas; the construction of oyster habitat over unvegetated bottom in tidal waters; the planting of submerged aquatic vegetation; activities needed to reestablish vegetation;

including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive exotic or nuisance vegetation; and other related activities.

(b) Individuals shall allow authorized representatives of DENR to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work.

(d) This permit shall not be applicable to proposed construction where the DENR has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

(e) At the discretion of DCM staff, review of individual project requests shall be coordinated with ~~Division of Marine Fisheries or Wildlife Resources Commission~~ DENR personnel. This coordination may result in a construction moratorium during periods of significant biological productivity and/or critical life stages of fisheries resources.

(f) This permit shall not eliminate the need to obtain any other required state, local, or federal authorization.

(g) Development carried out under this permit shall be consistent with all local requirements, AEC Guidelines, and local land use plans current at the time of authorization.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.

15A NCAC 7H .2605 SPECIFIC CONDITIONS

(a) This general permit shall be applicable only for the construction of mitigation banks or in-lieu fee mitigation projects~~mitigation site proposals made by the North Carolina Ecosystem Enhancement Program or North Carolina Wetlands Restoration Program.~~

(b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.

(c) The need to cross wetlands in transporting equipment shall be avoided or minimized to the maximum extent practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, track and low pressure equipment or temporary construction mats shall be utilized for the area(s) to be crossed. The temporary mats shall be removed immediately upon completion of construction.

(d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control structures, or those structures needed for site monitoring or shoreline stabilization of the mitigation site.

(e) This permit does not convey or imply approval of the suitability of the property for compensatory mitigation for any particular project. The use of any portion of the site as compensatory mitigation for future projects shall be determined in accordance with the regulatory policies and procedures in place at the time such a future project is authorized.

(f) The authorized work shall result in a net increase in coastal resource functions and values.

(g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state and shall be owned by the permittee or its approved designee. An appropriate conservation easement, deed restriction or other appropriate instrument shall be attached to the title for the subject property.

(h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared for the authorized mitigation bank or in-lieu fee project site.

(i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the likelihood of flooding any adjacent property.

(j) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, sand fence, etc.).

(k) If one or more contiguous acre of property is to be graded, excavated or filled, the applicant shall file an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land Quality Section, ~~or government having jurisdiction~~. The plan shall be approved prior to commencing the land-disturbing activity.

(l) All fill material shall be clean and free of any pollutants, except in trace quantities.

History Note: Authority G.S. 113A-107; 113A-118.1;
Eff. October 1, 2004.



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-14-05

February 9, 2014

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: Science Panel Assessment of Mad Inlet and Public Comments on 15A NCAC 7H .0304 – Inlet Hazard Areas and Unvegetated Beach Designations

At the December 12, 2013 meeting, the Commission was presented with a preliminary review of the public comments associated with proposed changes to the Inlet Hazard Area (IHA) designation at Mad Inlet and the Unvegetated Beach designation in the vicinity of Hatteras Village. The Commission was advised that the de-designation of Mad Inlet as an IHA had generated local interest with many Sunset Beach citizens and the Town opposed to its removal. During the ensuing discussion, questions were raised as to what degree the Science Panel assessed the conditions at Mad Inlet during the 2010 IHA Boundary Update study. The CRC requested that the Science Panel re-assess the conditions at Mad Inlet and provide the Commission with information regarding its status as an inlet.

The Science Panel met on February 4th to discuss the issue and review information (photos, migration trends, historical shorelines, etc.) provided by Spencer Rogers and Dr. Bill Cleary. The Panel was also provided with the Mad Inlet excerpt from the original 1978 IHA study, the 2010 IHA Update Report, the current Mad Inlet IHA boundary, a recent assessment of Mad Inlet by Spencer Rogers, and public comments that have specific concerns regarding data or technical issues. Prior to beginning their discussions, the public was invited to comment at which time several citizens of Sunset Beach expressed their views on the proposed rule amendment as well as their perceptions of Mad Inlet. The meeting was attended by the DCM Director and CRC Chair.

Spencer Rogers presented information on the past history of Mad Inlet focusing on how construction of the Intracoastal Waterway (ICW) in the 1930s significantly changed the hydrodynamics of the area. The more efficient circulation provided by the ICW channel allowed larger, more efficient inlets (particularly those that were dredged for navigation) to increase the volume of tidal circulation. That increased the stability of larger inlets

but reduced the tidal volume flowing through smaller inlets which makes them less stable and prone to closure. The construction of the Little River Inlet jetties completed in the 1980s also interrupted the natural dynamics of the creeks associated with Mad Inlet. He further added that the engineering that occurred at Tubbs Inlet also contributes to the factors that will prevent Mad Inlet from reopening on a long-term basis. Tubbs Inlet was artificially closed in 1969 and reopened a year later about a mile to the northeast which was a factor in an increased sand supply to Sunset Beach. This resulted in an extended period of accretion and increased sand transport in the vicinity of Mad Inlet.

Dr. Bill Cleary presented his analysis noting that since 1905, there have been substantial changes to the tidal basin. He presented a time series of photos from his inlet studies that show that while the main channel opened during Hurricane Hazel, there was dramatic filling of the tidal basin. Dr. Cleary stated that washovers occur constantly, which begins to fill the marsh, further reducing the tidal prism keeping the inlet open. He stated that due to the filling, a breach would be more likely to occur west of Bird Island rather than cut across the marsh at the location of Mad Inlet. He stated that Mad Inlet is no longer an inlet.

The Panel discussed the time it takes to close an inlet and how a large body of water is required to maintain a tidal prism necessary to keep the inlet open. The Panel considered shoreline variability associated Little River Inlet but noted that the variability disappears at the point of reaching the former location of Mad Inlet. Also discussed were similar areas on Topsail Island and the Outer Banks that have breached but did not form persistent inlets. The Panel agreed the area of former Mad Inlet is subject to being overwashed or breached; however, the estuary behind this location has filled in to the extent that conditions have been diminished, or no longer exist that could support the long-term reopening of Mad Inlet. They agreed that it is a hazard area but that it was similar to other low lying areas along the coast that are subject to overwash or breaching but are not IHAs and are not likely to re-open based on current knowledge.

Panel members unanimously agreed to make the following recommendations to the Commission:

- Mad Inlet is not presently an inlet and is not likely to persist as a viable inlet.
- The present Inlet Hazard Areas are severely out of date and need to be updated.
- Other high hazard areas that should be addressed by the Commission are areas subject to overwash potential and ephemeral inlet formation or breaching.

Summary of Rule Change

The proposed amendments affect two sections within 15A NCAC 07H .0304 – Areas of Environmental Concern (AECs) within Ocean Hazard Areas. These rules define and establish AECs that are considered to be within the Ocean Hazard Areas along the

state's ocean shoreline. Ocean Hazard Area AECs include the Ocean Erodible Area, High Hazard Flood Area, Inlet Hazard Area and the Unvegetated Beach Area.

The first change is to 07H .0304(4) related to the Unvegetated Beach (UB) AEC designation. The Commission may designate areas where no stable natural vegetation is present as an Unvegetated Beach AEC on either a temporary or permanent basis. Such a designation allows the establishment of a measurement line used to determine setbacks for oceanfront development. In May 2004, the CRC approved the UB designation as a temporary measurement line used in place of the actual first line of stable and natural vegetation after the loss of vegetation from Hurricane Isabel (September 2003). The only oceanfront community currently with an UB designation is Hatteras Village and this proposed rule change would remove the UB designation from the Village. The removal the UB designation near Hatteras Village is necessary as the vegetation line has exhibited recovery since 2004 and can once again be used for setback determinations.

The second change removes the Inlet Hazard Area designation for Mad Inlet. The Inlet Hazard Area (IHA) designations are based on a 1978 study (minor amendments in 1981) of areas that are subject to the dynamic influence of ocean inlets. Mad Inlet, which closed in 1997, previously separated Sunset Beach and Bird Island (part of the NC Coastal Reserve system). As part of the CRC Science Panel's ongoing review of the State's 12 developed inlets, the Panel opted not to review the boundary for the former Mad Inlet as it was generally accepted that the inlet would not reopen. Removal of the IHA designation will allow property owners to develop under the more common oceanfront development standards as opposed to the more restrictive IHA standards.

The public comment period for both these rule changes ended on December 12, 2013. The fiscal analysis (attached) was approved by DENR and OSBM. While the Commission was briefed on public comments received at the public hearings and written comments received prior to the December 12th meeting, additional comments were received by the end of the public comment period and have been incorporated in the summaries below.

Summary of Public Comments – Mad Inlet IHA Designation

A public hearing was held in Sunset Beach on November 6, 2013. Approximately 48 people attended. Speakers at the hearing included local elected officials, citizens and an environmental advocacy organization. Eleven people spoke at the hearing with nine opposed to the action and two in favor. Those opposing the action questioned the scientific basis for the decision (4); believed that the inlet would open again (3); expressed concerns regarding insurance (3); that there have been no recent storms (3); it would be detrimental to sea turtles and wildlife (1); concerned about potential impacts of development on Bird Island Coastal Reserve (1); concerned with the potential impact

of a terminal groin on Ocean Isle Beach (3); would only benefit a few property owners (5); and would change the character of Sunset Beach (1). The two speakers in favor of the action spoke of the years of accretion in the area, the stability afforded by jetties at Little River Inlet, and that it would be an asset to Sunset Beach.

The Division has received 40 written comments. Out of the 40 responses, all but one has been opposed to the action. The comments express concern that the inlet will re-open (10); concerns regarding insurance (5); the impact of future storms (18); it would be detrimental to sea turtles and wildlife (6); question the scientific basis for the decision (9); potential threat to Bird Island Coastal Reserve (12), potential impact of a terminal groin on Ocean Isle Beach (9); an interest in keeping the area pristine (10); the potential effects of sea-level rise (4); would only benefit a few property owners (12); detrimental impact of increased development (11); the area is not an inlet (1).

Summary of Public Comments – Hatteras Village Unvegetated Beach Designation

A public hearing was held November 12, 2013 in Hatteras Village. One person spoke. Beth Midgett thanked the Commission and Division for establishing the measurement line. She also expressed support for allowing the vegetation line to re-establish. No written comments have been received.

Staff Response to Public Comments

Many of the comments reference the physical conditions of the site as an inlet or its possibility of again becoming an inlet. These comments also include questions regarding the analysis of those conditions that led to the recommendation to remove the IHA designation. The Commission has asked the Science Panel to reconsider the area and the Panel found that Mad Inlet is not presently an inlet and is not likely to persist as a viable inlet. This supports the original finding of the 2010 IHA Boundaries Update that the threat of the inlet reopening is no higher than the creation of new inlets through the breaching process associated with storms that historically have occurred along the State's barrier islands. IHA designation is not meant to preclude development entirely. The intention is to limit the scale of development (through density and size restrictions) in natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. Should the IHA designation be removed, the area would be subject to the same restrictions and development standards as similar oceanfront areas of the coast including development setbacks, dune protection and federal flood protection requirements. In addition, the area remains subject to the requirements of the federal Coastal Barriers Resources Act. While this federal designation does not prevent or impose restrictions on development, it does prohibit the expenditure of federal funds and denies federal flood insurance in the area.

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The ~~seaward~~ oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
 - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management; and
 - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.
- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the ~~normal~~ mean low water line a distance sufficient to encompass that area within which the inlet ~~shall~~, shall migrate, based on statistical analysis, ~~migrate~~, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference ~~without future changes~~ and are hereby designated as Inlet Hazard Areas except ~~that the Cape Fear Inlet Hazard Area as shown on~~

~~the map does not extend northeast of the Baldhead Island marina entrance channel. These areas are extensions for:~~

- ~~(a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and~~
- ~~(b) the former location of Mad Inlet, which closed in 1997.~~

~~In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be not be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.~~

- (4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area on either a permanent or temporary basis as follows:

- (a) An area appropriate for permanent designation as an ~~unvegetated beach area~~ Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the ~~Coastal Resources Commission~~ Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management.

- (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

~~The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub Item 4(a) of this Rule.~~

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124;
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*

Temporary Amendment Eff. October 10, 1996;

Amended Eff. April 1, 1997;

Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;

Temporary Amendment Eff. October 22, 1997;

Amended Eff. February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004;

Amended Eff. June 1, 2014; April 1, 2004; August 1, 1998.

**Proposed Amendments to 15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS
Public Comment Record as of November 26, 2013**

**Public Hearing
NCAC 07H .0304
Sunset Beach, NC
Wednesday, November 6, 2013 5:00 p.m.
Mike Lopazanski, Hearing Officer**

Mike Lopazanski called the hearing to order and Mike Lopazanski reviewed the proposed rule amendment and fiscal analysis.

Mike Giles, NC Coastal Federation, stated the Coastal Federation is very familiar with this piece of property and Mad Inlet. We will also submit written comments. Mad Inlet has a very long history of migration and opening and closing. It migrates to the east very quickly and migrates east and west depending on storms. The Director of the Virginia Institute of Marine Science has provided us with documented historical data over 60 years that shows a regular opening and closing of Mad Inlet. The Science Panel opted not to review Mad Inlet due to the fact that it has not reopened since 1997. Is this a scientific analysis or just because of the fact that it hasn't opened since 1997? We would like to see the predicted effects of sea level rise on this proposal. Hurricane Sandy brushed our coast and we haven't seen a major hurricane in this area in years. Mad Inlet is a ticking time bomb. If the right storm comes in it has the potential to blow open and what does that do for the people that develop property there and the people that have to pay insurance and taxes? The federal government is redoing the flood zones. This is a VE area. If these lots are developed, who will pay the price for that flooding? Look at Hatteras Island and Smyrna or in the area of the S-Curves. We would like to see these things addressed in this proposal and look forward to seeing what evidence and what data was used to take Mad Inlet out of the Inlet Hazard zone.

Richard Hilderman of 407 37th Street Sunset Beach stated I have serious concerns about taking this off the endangered list. I am an avid kayaker and I spend a tremendous amount of time paddling in this area. You need to understand that there is a strong, deep tidal creek parallel to the dunes from 40th Street to Bird Island. If you are paddling out there you can see areas where the dunes are starting to break away. You can also see on the ocean side where the dunes are starting to break away. It is my opinion that all that it will take is on great big storm or several storms and then the dunes are going to disappear and Mad Inlet will reopen. I don't think you can see, understand or appreciate this from satellite imagery. If the people that are making this decision want to go back there, I would be happy to take them on a kayak tour so you can see it for yourself.

Bill Ducker stated he agreed with the comments that Mike Giles made and would like to ask the Commission what the basis is for making the decision to take this designation away. Is it

scientific or does it have to do with some other request by individuals. It says in the notice that the CRC is proceeding to remove the inlet hazard designation from this area. Are we to assume that this is a done deal? The notice also says that removal of this designation will allow property owners to develop under more common oceanfront development standards. Are we to assume that the CRC is promoting development in areas that anyone can look at and know that it is a hazard of various natures? This is all shifting sand that we are talking about and the assumption that the inlet will never open again is very broad and probably does not have the scientific explanation needed for making this conclusion.

Rich Cerrato stated I have a few concerns and one primarily is the government on one hand is trying to preserve the coast and on the other they are trying to over-develop the coast with all of the restrictions that we have faced because of Hurricane Sandy. Can you please help me understand who the architect of this is? How is this formulated and who are the parties that seem to have a financial interest in this? I recognize that this is Mad Inlet but this seems to be a mad decision. I think the citizens of Sunset Beach are so concerned about the preservation of their coast and we are now being faced with terminal groins and we seem to be overdeveloping the coastline. I can't speak for most of the citizens, I can only speak for myself but I am truly concerned about the invasion of our coastline and the dangers that we will face as a result of it. I wish you could provide with who is the architect of this idea and what is the purpose other than development.

Mark Benton of 409 40th Street said we are all tapping around the question. We all know Mr. Gore owns the property and wants to develop the property. Mr. Gore, it would fundamentally change the look of Sunset Beach forever. I have been here for fifty years. Why take the risk? I am from New Jersey originally and I Sandy opened places that have never been open. Mr. Gore doesn't need the money. Why are we changing the inlet?

Katie Hovermale of Bay Street Sunset Beach stated in the material I have read the CRC is amending this rule and it is considered highly unlikely by the Science Panel on Coastal Hazards that Mad Inlet will reopen under current conditions. It also says that it is generally accepted that the inlet will not reopen. Has the CRC's Science Panel visited the area or is it based on information from aerial photos?

Sammy Varnum stated you say that there are 120 something property owners that are in the shaded inlet hazard zone. Mr. Gore is one property owner. He does not own everything in the shaded area. We have storms. Hurricane Hazel opened up several inlets and we closed them. If we have a big rain event and it cuts the road in two then we fix it. Don't freak out. The inlet is not there. There are 120 some property owners in the area.

Mark Benton stated Mr. Gore has the largest, open piece of land. Most of the property owners are single-family home owners with established homes. If you allow this to be built on then there will be new structures oceanfront that will disturb the turtle nests and the flow of the inlet. It may never open again, but what if it does open again? If all of the homes are destroyed who is

going to pay for that? Whose insurance is going to go up again because we built on the oceanfront again and we didn't learn from Hazel and the other storms?

Bill Ducker stated as far as the inlet opening and some erosion taking place I think its a good example for the CRC and Science Panel to look at is the end of Ocean Isle. The end of Ocean Isle has been eroding for a number of years and as far as repairing the area, all they have done is put up warning signs. There are obviously no funds available for that type of repair. I think the most important thing to consider is that this whole area is shifting sands. To make a conclusion that because there hasn't been an inlet there for 16 years is unfounded.

Edward M. Gore, Sr. stated I am a second generation developer of Sunset Beach. I have been here all my life and I am 81 years old. The inlet has never opened and shut in my lifetime but once and that was 17 years ago. The accretion of that area that caused it to close is not because it was a natural thing. It is because of the jetties at Little River Inlet to stabilize the navigation channel. It has benefited Bird Island and all of Sunset Beach. Sunset Beach is the only one on the coast that is accreting rather than eroding. Mr. Ducker referred to the end of Ocean Isle and he must have been referring to the east end of Ocean Isle because that is where the erosion is occurring. What will be done in the future is not foreseeable at this time, but I would image that not being a hydrologist that has credentials, but watching the shifting sands as we have heard expressed, I see it as gathering sand that will continue as long as the jetties exist and are maintained by the federal government. It is appropriate to change the designation from inlet hazard area to an asset area for the Town of Sunset Beach.

Lynn Strandquist of 414 Sailfish stated the erosion is occurring on the west end of Ocean Isle and there is a house in jeopardy of falling into the ocean as we speak. Ocean Isle is proposing terminal groins to prevent further erosion. If they do that, then any and all properties downstream from the terminal groins will cease to accrue sand and begin to erode. Why would we think about putting houses out there when the terminal groins may happen?

Public Hearing
NCAC 07H .0304
Hatteras Village, NC
Tuesday, November 12, 2013 5:00 p.m.
Renee Cahoon, Hearing Officer

Renee Cahoon called the hearing to order and Mike Lopazanski reviewed the proposed rule amendment and fiscal analysis.

Beth Midgett, replacethebridgenow.com, said she would like to thank the Commission and Division for doing this. When this designation happened it was an out of the box thing and showed that the coast is not a one size fits all case. There is not a high erosion rate in this area

and we felt we had a strong case. We appreciate being given the opportunity to let the vegetation re-establish.

Proposed Amendment to 15A NCAC 7H .0304 AECs in Ocean Hazard Areas Written Comments

From: Martha Mullins [<mailto:mullinsmfm@gmail.com>]
Sent: Thursday, November 07, 2013 1:18 PM
To: Davis, Braxton C
Subject: FW: Public Hearing on Mad Inlet

Mr. Braxton, I am forwarding you a comment by a man who is very interested in the fate of Mad Inlet. I also am interested in that and the future of the entire island of Sunset Beach, NC. Please, with such instability on the coastal waters of NC that has deeply affected many of the island communities, do support leaving the (Mad) Inlet on the hazard list. Further development there would ruin the inlet and, in my opinion, Bird Island. And who knows what effect it might have on other coastal properties nearby? Thank you for your attention. Martha Mullins

From: Thomas Vincenz [<mailto:tvincenz@gmail.com>]
Sent: Thursday, November 07, 2013 3:52 PM
To: Davis, Braxton C
Cc: Noelle Kehrberg; rblevan@verizon.net; Jim Strandquist; Carol Scott
Subject: 11/6/2013 Madd Inlet Public Hearing

I was in attendance of the 11/6 meeting held at Sunset Beach, NC in regard to a proposed change, removing the inlet hazard designation from this area. I strongly object to this proposed change for several reasons:

1. Property owners in coastal areas are already facing insurance cost increases of some 28%, largely due to the tremendous financial losses suffered from Hurricanes Katrina and Sandy. I find it irresponsible for the NC Division of Coastal Management to take steps which facilitate further development of this already environmentally delicate area.
2. It appears likely that terminal groins will be constructed in the Ocean Isle Beach, NC area, which a number of scientists have said will likely create erosion problems in Sunset Beach. Does the Division of Coastal Management really want to promote development in an area which is likely to become even more delicate in coming years?
3. Many view the west end of Sunset Beach, a nesting area for various endangered sea turtles, and an area of pristine beaches, to be one of southeast coastal North Carolina's greatest assets. I cannot imagine a state agency taking action which could further endanger those animals, and destroy the beauty of this pristine area.
4. It was noted on several occasions during the public hearing that Madd Inlet closed in 1997, and is unlikely to reopen in the future. It was not made clear on what scientific study this conclusion was drawn. I would suggest, however, that we focus less on this, and more on the reality of a recent natural disaster (superstorm Sandy), and how a major storm would impact this area.

The only driving force that I can see behind this change is a financial one for a very few property owners. The certain negative impact this change would bring to the population at large far outweighs the positive financial benefit for a few. Please do NOT remove the current inlet hazard designation from Madd Inlet.

Thomas Vincenz

422 36th. Street
Sunset Beach, NC

From: Mary Louise Williamson [<mailto:mwillia502@aol.com>]

Sent: Thursday, November 07, 2013 5:14 PM

To: Davis, Braxton C

Subject: Mad Inlet

Please reconsider any plans to remove Mad Inlet from the North Carolina division of Coastal Management Hazard List. I have been visiting Sunset Beach, NC for more than 35 years and want to make sure that Bird Island and Mad Inlet remain undeveloped. The only way to insure this is by remaining on the hazard list. I am also concerned about any plans by Ocean Isle Beach to implement groins and the potential impact of erosion on Sunset Beach caused by these groins. Look at Folly Beach, SC as an example...

Best regards,

Mary Louise Williamson
948 Casseque Province
Mt Pleasant, SC 29464
843-412-2177

November 7, 2013

I attended yesterday the North Carolina Division of Coastal Management public hearing on the proposed change to remove an inlet hazard designation from a site previously occupied by Mad Inlet at the west end of Sunset Beach Island. I have two main reasons why Mad Inlet shouldn't have its designation as an inlet hazard removed.

1. I spend a tremendous amount of time paddling my kayak in this area. There is a strong, deep tidal creek that runs parallel and close to the dunes from 40th Street on Sunset Beach out onto Bird Island. When paddling in this area it is easy to see places where the dunes are opening up. One can also see where the dunes are opening up when walking on the ocean side of the beach. It is simply a matter of time before a critical storm or series of storms reopens Mad Inlet. The only way to stop a potential reopening would be to block off and shut down the tidal creek and we don't want to do this because that creek feeds a large area of the marshes. One can't get an understanding or appreciation of what I am stating by simply viewing satellite images and looking at physical data. One must take a "hands on" approach and visit the area to see for his/herself. I would be willing to arrange a kayak tour for people who would like to view this area before making a decision.
2. As you are aware there are several beach towns looking into the possibility of using terminal groins to curb beach erosion. Ocean Isle Beach is one of the towns looking into placing terminal groins on their island. If this happens it will trigger beach erosion on Sunset Beach and make Sunset Beach Island very unstable. This instability will increase the probability that Mad Inlet will reopen. It seems to me a decision on whether to take Mad Inlet off the inlet hazard designation list should at least be delayed until we know how terminal groins on Ocean Isle Beach plays out.

Richard Hilderman, Ph.D.
407 37th Street
Sunset Beach
910-5752452

From: Richard Hilderman [<mailto:doggenome@gmail.com>]

Sent: Wednesday, November 20, 2013 2:58 PM

To: Davis, Braxton C

Subject: Comments for the Commission Pertaining to taking Mad Inlet Off the Endangered List

Hi Braxton,

I have already submitted comments pertaining to Mad Inlet but since I sent you those comments Mike has sent me the two reports that recommended it closing. Thus attached is a second comment document that I would like to be presented to the Commission that is meeting on Dec 12.

Thanks

Richard Hilderman, Ph.D

I have reviewed the following two documents that recommend removing Mad Inlet from the Inlet Hazard Area designation:

1. Inlet Hazard Areas: The Final Report and Recommendations to the Coastal Resources Commission. The only reference this document makes to Mad Inlet is---Mad Inlet: Minor, unstable inlet; wide excursion since 1938 (500 to 5000) makes statistical predictions weak.

By looking at the recent Mad Inlet closing/reopening data clearly indicates why the report states it is a weak statistical prediction.

Mad Inlet Closing/Reopening

1938-1958---closed and reopened at different location---20 years

1958-1987-closed and reopened at different location---29 years

1987-1992-closed and reopened at different location---5 years

1997-2013 closed---16 years

2. Inlet Hazard Area Boundaries Update: Recommendations to the North Carolina Coastal Resources Commission. The only reference to Mad Inlet in this report is on page 100 under recommendations--Adoption of this report by the CRC will also remove existing IHA boundaries from Mad Inlet because they have closed. DCM and the CRC Science Panel have determined that the threat of Mad Inlet reopening is no higher than the creation of new inlets through the breaching process associated with storms that historically have occurred along the State's barrier islands.

It should be noted this report presented data for other inlets in NC but no data pertaining to Mad Inlet was presented.

The question that needs to be addressed is why has Mad Inlet closed/opened five times since 1958? The answer lies in the topography around Mad Inlet. The west boundary of Mad Inlet starts at 40th Street of Sunset Beach and the east boundary is Bird Island. The dunes on both the west and east boundary are significantly higher and deeper than the dunes in the Mad Inlet area. Thus the Mad Inlet area is more unstable and prone to reopening following storms. Looking at the dunes in the Mad Inlet area on both the ocean and marsh sides clearly show areas where the dunes are starting to opening up.

In summary, all this data doesn't support the hypothesis that Mad Inlet won't reopen but this data clearly supports the hypothesis that Mad Inlet will reopen. Thus Mad Inlet should not be removed from the Inlet Hazard Area designation.

Richard Hilderman, Ph.D.

From: Ann Bokelman [gordon_annbokelman@hotmail.com]
Sent: Friday, November 08, 2013 3:31 PM
Mr. Davis,

We are sending this email to express our opposition to taking Mad Inlet off of the Inlet Hazard List. Time, history, and aerial/satellite photos have shown that this inlet has moved many times over the years. In addition, the development that could take place would pose a serious threat to the Bird Island Reserve.

As residents of Sunset Beach and members of Bird Island Preservation Society, we thank you for reading our comments.

Gordon & Ann Bokelman
404 3rd Street
Sunset Beach, NC 28468

Subject: Mad Inlet Public Hearing
From: bonefish0204@sc.rr.com

Sent: Sunday, November 10, 2013 11:27 AM
To: "Davis, Braxton C" <Braxton.Davis@NCDENR.Gov>
CC:

Mr. Davis: Unfortunately we were out of town and were unable to attend the Public Hearing. I have seen articles regarding the meeting and what took place. While I don't pretend to understand the process of how this even became an issue it appears to me that it was done out of greed by the person wanting to develop the land and who has a history of getting what is wants done. It also seems like the developer wanted to get this issue out with a minimal amount of effort of his part and has successfully got the State and the residents of Sunset Beach to do the work of fighting it.

I knew Mad Inlet before it filled in and if nature can do that then it can open it again. Additionally I feel that the NCDENR should be doing everything in it's power to protect the natural resources that we have and should not even consider building on land that has the potential to be destroyed by Mother Nature. This area should be treated with the same respect as Bird Island.

Needless to say we are opposed to this proposed development and would urge you, the State and the NCDENR to do everything in it's power to put this issue aside.
Respectfully.

Jim and Vicky Skiff
414 33rd Street

Sunset Beach, NC 28468

From: Gail Powell [gspowell299@gmail.com]
Sent: Saturday, November 09, 2013 12:26 PM
To: Davis, Braxton C
Subject: Mad Inlet/ Hazard List

Mr. Davis,

I have been vacationing at Sunset Beach for 40 years. I heard there is a plan to take Mad Inlet off the Hazard List. In this time of rising sea levels, I think this would be a foolish action. Clearly the land there is unstable and should not be developed.

Gail Powell, Ph.D
Raleigh, NC

From: Pete and Noreen Thompson <petenoreen@att.net>
To: "Braxton.Davis@ncdenr.gov" <Braxton.Davis@ncdenr.gov>
Sent: Monday, November 11, 2013 10:56 AM
Subject: Madd Inlet at Sunset Beach, NC

Dear Mr. Braxton:

Our comments below are in regard to the issue of the CRC's proposal of a rule change to the Madd Inlet designation (15A NCAC 07H.0304):

In our opinion, there is no reason to believe Madd Inlet will not one day re-open. We have read literature of Dr. Orrin Pilky (Emeritus -- Duke University) who talks much about the constant changing of our coastlines. This is certainly not the time to encourage more oceanfront building by changing the current designation, especially because of the severe storms that have recently caused extreme damage along the coast. A devastation in many ways -- one being financially to the homeowner and to the Local, State and Federal Government. When accessing Sunset Beach, one sees a sign stating it is a "Turtle Sanctuary." Many nests have been located in the area in question. Clearly construction would have a negative impact on the turtles. The area in question abuts Bird Island which is a bird sanctuary and a North Carolina State Park. There is simply no good reason for the CRC to consider re-labeling the area. How might terminal groins, if put in place, at Ocean Isle Beach, affect Sunset Beach? We may be the only beach that has had the luxury of accretion, but this may not always be the case. Of the 40-50 people at the Hearing on November 6, only two spoke remotely in favor of the proposition, and both of them have a potential financial interest. There are "hundreds" of visitors to the Sunset Beach area who each year very much enjoy the serene walk on the beaches in this undeveloped location. The bottom line: we are against changing the designation being proposed.

We appreciate you taking our comments into consideration.

Sincerely,

Pete and Noreen Thompson
Property owners at Sunset Beach, NC since 1996
Vacationing at Sunset Beach, NC since 1980
petenoreen@att.net

From: John F Pagels <jpagels@vcu.edu>
Date: Mon, Nov 11, 2013 at 11:13 AM
Subject: Mad Inlet/SB NC
To: braxton.davis@ncdenr.gov
Mr. Braxton Davis
Director, Division of Coastal Management
400 Commerce Ave
Morehead City, NC 28577

Dear Mr. Davis,

As property owners on Sunset Beach Island and the mainland, it was with dismay that my wife and I heard about the public hearing concerning potential development in the Mad Inlet area. We were disappointed that we could not attend, but more importantly, that there was necessity for such a hearing in the first place. We cannot imagine there would be contemplation of development of the area which serves as a valuable natural resource, but also serves as a natural buffer to human impacts and as an aesthetically critical component of greater Sunset Beach and adjoining SC land. We suggest that nobody except a "few" who might personally benefit financially would be in favor of such development. The "few" mentioned above is likely one individual who has controlled so much in Sunset Beach, developed nearly every square inch of the Island, and now apparently wants to put his tentacles around whatever remains, regardless of natural heritage.

As a scientist I sometimes feel awkward when I tell folks we own property on a barrier island. As a person who witnessed Mad Inlet when it was open, one understands the name "Mad" and the impact the inlet had in the past. It could open again during an episodic weather event; bulldozers will not be the answer. For so many reasons, we hope this issue will not be pursued further.

Cordially,

John and Barb Pagels
4425 Morehouse Terrace
Chesterfield, VA 23832

John F. Pagels, PhD
Professor Emeritus of Biology
Virginia Commonwealth University

jpagels@vcu.edu

From: Debra Singer-Harter [debrasingerharter@gmail.com]
Sent: Sunday, November 17, 2013 11:32 AM
To: Davis, Braxton C
Subject: Mad Inlet Hazard designation should not be changed

Braxton,

As a 40th street home owner at Sunset Beach, I would like to comment on the proposed rule change that modifies the Mad Inlet designation from inlet hazard area to an asset area.

I am against it.

- 1) Other than for commercial property business profit, I do not understand the motivation for this proposed designation change.
- 2) Home Owner's property values will decrease. Sunset Island has the distinction of a wild area which promotes home values.
- 3) Wildlife populations are already greatly diminished, and to build more homes on remaining precious wild areas will continue to degrade the environment. How can the town claim to be a bird and turtle sanctuary if there are greatly reduced beach areas for them to live and thrive?
- 4) Greater numbers of people will degrade fishing populations and promote the decline of NC oceans. Ocean based jobs will be risked as less species are able to survive.
- 5) A long term plan should consider how this decision impacts future generations when global warming and rising waters are definitive science. What is the state and town plan for these future realities?

My conclusion is that to allow one of North Carolina's most beautiful coastal wild areas to become convenience stores and suburbia would be an unwise choice for the greater good of the state, town, and future generations.

Thank you for the opportunity to provide my comments.

Debra Singer-Harter.
1306 West Main Street
Sunset Beach 28468

From: Jean Smith [geematwo@gmail.com]
Sent: Friday, November 15, 2013 3:44 PM
To: Davis, Braxton C
Subject: Mad Inlet

Mr. Davis,

I am a very concerned resident of Sunset Beach. After listening to the environmental experts talk about the fragility of our coastline and beaches I cannot believe your agency is even considering removing an inlet hazard designation from a Sunset Beach island site previously occupied by Mad Inlet. It is all of our responsibility to preserve and protect our beautiful beaches and the coastal wildlife which inhabit them. I take great pride in working with the Bird Island Preservation Society to help maintain the integrity of our beautiful and ever changing beach. Please review all the information presented by the experts and choose to leave the present designation in place. I fear we are facing this action because of the greed of a few individuals who would want to develop this most magnificent peaceful place.

Thank you for your consideration,
Jean Smith, Sunset Beach resident

From: Greg [boomerjensen22@aol.com]
Sent: Monday, November 18, 2013 12:56 PM
To: Davis, Braxton C
Subject: Mad Inlet

Greetings,

We oppose removing the hazard designation from Mad Inlet. We have had a home on Sunset Beach since 1993 and have seen many changes as this is a barrier island that still moves.

If you visit the area today, you will see the high tide mark eating away at the dunes. Several years ago that was not happening. A super storm, northeaster or large hurricane will overwhelm the dunes in my opinion. As you walk down from 40th street you will see openings where the wind has worn down the dunes. We assume you did walk the area?

That inlet has opened and closed several times since 1938 as research has shown. This is not a good area to be developed.

Thank you.

Regards,

Gregory & Ann Jensen
1309 E. Main Street
Sunset Beach, NC 28468

From: Hugh Munday [hugh@sunsetrealty.com]
Sent: Monday, November 11, 2013 12:09 PM
To: Davis, Braxton C
Subject: Madd Inlet

Mr. Davis,

I hope you and the CRC will reconsider their proposal to change the designation of Madd Inlet from a Hazard Area to a Non-Hazard Area. The problems on the outer banks with Inlets moving from one location to another and cutting Hwy 12 into and the damage to the bridges should tell you something about trying to control mother nature.

I have aerial pictures that were taken by the US Army Corps of Engineers from 1938-1996 and I realize the migration has been to the west but we don't know what would happen if we had another storm such as the 1954 Hazel storm. You know and I know that if this change is made there would be a great effort made to build a bridge across the marsh at the west end of Main St. to gain access to the vacant end of Sunset and start construction of homes in that area.

Tubbs Inlet is shoaling and in our next big storm there is no telling what will happen there or at Madd Inlet.

Thanks for your work and I hope you will reconsider the current proposal to change the current designation.

Hugh S. Munday

From: Colette Worley [<mailto:interiorsbycolette@comcast.net>]
Sent: Saturday, November 23, 2013 10:40 AM
To: Davis, Braxton C
Subject: Mad Inlet

Mr. Davis,

Please do not remove the hazard designation from Mad Inlet.

As a part time resident of Sunset Beach we have explored all or most of the area on the west end of the island. Whether one favors the marsh that teems with life, the bird sanctuary, the sea turtle habitat, the miles of kayaking creeks, or simply the vast undeveloped beauty, it is an area that remains that way in part because of this designation. Please stand in support of this hazard designation remaining in place.

Thank you,
Jim and Colette Worley
1427 Bay Street
Sunset Beach, NC

From: The Seelands [<mailto:the.seelands@gmail.com>]

Sent: Tuesday, November 26, 2013 10:57 AM

To: Davis, Braxton C

Subject: Public Hearing on Mad Inlet

Dear Mr Davis,

we are part owners of the house on 312 East Main Street at Sunset Beach and wanted to voice our opposition to taking Mad Inlet off the hazard list by the North Carolina Division of Coastal Management. We love the wonderful beach at Sunset and don't want anything done to endanger this.

Sincerely, Herbert and Gerda Seeland

November 13, 2013

To: Director Braxton Davis

Fr: Robert D. Hoover

Ref: Mad Inlet – removal of Hazard Designation?

Dear Mr. Davis,

I have been an Island homeowner for 24 years on Sunset Beach. I distinctly remember not that long ago when Mad Inlet cut through to the Sea; gosh I have carried my bike thru it; jogged thru it, and remember in both cases you could only do this on low tide. It still had water in low tide and would have been risky to cut through it in high tide.

If my memory serves me correctly, Hurricane Floyd closed this in 1999; not even 15 years ago. If you kayak the back creek and marshes, and if you have experienced several hurricanes which we did when we lived in Wilmington, NC..... a hurricane tidal surge at high tide will likely reopen the inlet.

Thus, I am clueless why a government agency would even waste their time trying to consider removal of the Hazard status. Especially considering the political discussions going on at Ocean Isle to perhaps create a jetty on their east end, this could change the dynamics of Mad Inlet.

It makes sense to a layman like me that it isn't going to take much to reopen Mad Inlet – considering the distance from Tubbs to Little River – hurricane dynamics could reopen it. Also, please consider we have barely had a Level 1 hurricane since 1999, so nobody really knows. I truly expect some day to again carry my bike thru the inlet!

Leave this “sleeping dog” alone!

Thank you!

Robert D. Hoover
1509 Canal Drive
Sunset Beach, N.C. 28468 910-579-2591

Virginia home contact is 540-951-5228

Mary and Ted Jones
302 Rolling Knoll Drive
Bel Air, Maryland 21014-5656

RECEIVED

NOV 14 2013

DCM-MRD CITY

Braxton C. Davis
Director NC Division of Coastal Mgmt

12, November 2013

Dear Mr. Davis

For 40 years I have walked Sunset Beach Island and Bird Island. I have been a property owner at Sunset for 34 years. As a member of Nature Conservancy, a life member of The Sierra Club, and the Audubon Society I think I have a good eye for and understanding of the West end flats of Sunset Beach, the role the Little River jetty played in depositing sand at MAD Inlet, the changes I've seen in nesting bird sites at MAD Inlet, etc. A thousand times I arrived at MAD Inlet an hour before low tide to wade over to Bird Island. For years I sat on the beach and watched the Euclid Trucks deliver jetty rocks into the sea - sadly. Now I must wait to watch the folly of Ocean Isle put in "trial" terminal groins.

I am also aware of the 1.3 mm projected sea level rise per year for the US East Coast. We are working hard in the Chesapeake Bay marshes to prepare for this. Can anyone who seriously cares about planning for sea level rise consider for a moment the proposed change to remove an inlet hazard designation from the MAD Inlet site on the west end of Sunset Beach Island? I have not even mentioned the average MSL elevation at MAD Inlet or what a high tide, 30 foot wall of hurricane driven surge, will do

to all of the Sunset Beach Island and Bird
Island.

Mr. Davis I urge you to walk there and
see for yourself - as I have done for 40
years. It's not rocket science. I have
also kayaked the marsh waters.

Please, please use some vision and
some courage and do not remove the
inlet hazard designation at MAD Inlet.

Vision is seeing things not as they are, but as
they could be. Not protecting the flats of
MAD Inlet and the marsh waters within
could be a huge mistake in judgement.
Enough damage was done by the Little
River Jetty.

Respectfully,

Edwin W. JAMES
403 37th Street
Sunset Beach

ewjames@yahoo.com

410 638 1019

RECEIVED

NOV 14 2013

DEM-IND CITY

From: coyle666@roadrunner.com [mailto:coyle666@roadrunner.com]
Sent: Saturday, November 23, 2013 8:31 PM
To: Davis, Braxton C
Cc: jaguarjean1@gmail.com; doggenome@gmail.com
Subject:

Please do not remove Mad Inlet from the endangered list. Too much development on the western end of Sunset Beach will occur. We who own property on Sunset Beach realize the conservation that occurs from our beach not being built upon sand and other steps that we make for turtle hatching, wildlife activity, and many other benefits. Our sand has increased on our beach for the 13 years we have owned our cottage. We do not have to have sand blown in for our beach. This beach has an extensive dune system which has consistently protected us from hurricane damage and flooding. We love our beach and want to keep it as pristine as God designed/intended it to be. Please consider the rarity of our south-facing beach in Southern North Carolina's Coast! It is one special place in God's plan for all of us. Unless you have stayed here, you would not know this. We welcome you to stay at our beach cottage for a week at your convenience-- Thank You!
Cheryl Coyle

From: Sue & Owen Weddle [mailto:soweddle@atmc.net]
Sent: Sunday, December 08, 2013 12:14 PM
To: Braxton Davis
Cc: Todd Miller; 'Mike Giles'; 'Lauren'; Hope Sutton; Carol Scott; Gary Parker; Lou DeVita; Mayor Ron Watts; Mike Williams; Terry Johnson; Wilson Sherrill; Ann McNally; 'Erik Jensen'; 'Jean & John Hutchinson'; 'Minnie Hunt'; 'Ray Puknys'; 'Sue & Owen Weddle'; 'Camilla Herlevich'; 'Frank Nesmith'; Noelle Kehrberg; seahawk111@atmc.net; Sue Jensen; 'Todd Miller'; 'Walker Golder'
Subject: PROPOSAL TO REMOVE INLET HAZARD DESIGNATION FROM MAD INLET

Braxton Davis, Director
Division of Coastal Management

Dear Mr. Davis:

The information presented by the Division of Coastal Management at the Public Hearing at Sunset Beach in November contained an error that makes all of the conclusions drawn by the state in that information wrong – especially the fiscal analysis. This issue should not move forward until an accurate assessment of the impacts of removing the Inlet Hazard designation are presented and an informed decision can be made.

Area Impacted

The last road on Sunset Beach that runs north to south and abuts Mad Inlet is 40th Street. (Sunset Beach is one of the three islands in Brunswick County whose length is from east to west.) The last walkover to the beach on the western end of the island is the 40th Street walkover. Main Street--Sunset Beach's oceanfront drive--ends at the tidal marsh, just past the walkover at 40th Street.

Virtually all of 40th Street, which fronts Mad Inlet, is developed. The state's description says there are 126 properties located in this area with about 10 lots undeveloped. The development along the marsh

overlooking Mad Inlet consists of some small older cottages on 4500 square foot lots. The remainder are newer, large, expensive homes built to the state's inlet hazard requirements, sitting 60' back from mean high tide and on larger lots.

The state's analysis fails to take into account the property that could accommodate 30 to 40 oceanfront lots that have accreted from the 40th Street walkover west to the boundary of the Bird Island Conservation Reserve. It is the development of these lots that would seriously impact the Bird Island Conservation Reserve and the sitting property owners on the built-out Sunset Beach oceanfront and built-out properties on 40th Street by a change in the Inlet Hazard designation.

Impact

The developers of Sunset Beach island sold the last oceanfront lot on the inlet before any land accreted in Mad Inlet, and a large home on a large lot sits on the oceanfront and abuts the newly accreted land and the tidal marsh on the western side. The state road of Main Street ends at the tidal marsh. Currently the only way a developer can reach the newly accreted oceanfront land is to extend Main Street with a bridge that would swing out over the tidal marsh and connect to the newly accreted land.

Under the current Inlet Hazard designation, it is not possible to build such a bridge. The state Inlet Hazard regulations prohibit any structure larger than 5,000 square feet. During the 12 year effort to persuade the state to buy what is now the NC Bird Island Conservation Reserve, the Bird Island Preservation Society asked the Coastal Resources Commission (CRC) for a Declaratory Ruling as to whether a bridge was a structure. The CRC ruled that it was.

If the Inlet Hazard Designation for Mad Inlet goes away, this prohibition on any structure larger than 5,000 square feet goes away. This was confirmed by one of the state employees attending the Public Hearing. After hemming and hawing about "appropriate permits," she said, "Yes, a bridge could be built."

All of this development would negatively affect the Bird Island Conservation Reserve, which is intended to preserve a slice of the North Carolina oceanfront and tidal estuarine as it has been through time immemorial. The taxpayers of North Carolina paid \$4.3 million for this pristine reserve through the Clean Water Management fund, the Natural Heritage Foundation, and the NC Department of Transportation.

It would also negatively impact the oceanfront property owners on Sunset Beach. This newly accreted land beyond what used to be the end of Sunset Beach island is a block oceanward of the current line of oceanfront properties – not in front of them, but beside them and then a block oceanward. This is bound to have an impact on the value of the current oceanfront properties and the enjoyment these property owners take in their oceanfront homes.

Then, too, the property owners on 40th Street would be negatively impacted. Currently from their decks on the marsh, they can look to the ocean. If a number of houses are built on the newly created land, they would then be looking at the backside of those houses.

The recommendation for a change in inlet designation

I have reviewed both the 1978 report by the Division of Marine Fisheries and the 2010 report by the Division of Coastal Management.

The 1978 report shows a strong and vibrant Mad Inlet with no recommendation for removing the Inlet Hazard designation.

A review of the 2010 report by the Division of Coastal Management has a scientific analysis of every inlet in North Carolina except Mad Inlet. I also see no recommendation from the Science Advisory Board recommending that the Inlet Hazard designation be removed from Mad Inlet.

It is my understanding that DCM staff made the recommendation to the Coastal Resources Committee to remove the Inlet Hazard Designation from Mad Inlet – not the Science Advisory Board. And that this was done to “give some relief to Sunset Beach and the properties affected by the Mad River Inlet.” (quote from CRC minutes September 2010)

The Public Hearing in Sunset Beach was packed with standing room only and among the audience were many who owned property in the area impacted. It quickly became clear that everyone in that room objected to the change in designation with the exception of the second generation developer, Ed Gore, and his spokesperson, Sammy Varnum, who have a financial interest in changing this designation. This may enrich them, but it will harm the island as a whole and many other property owners on Sunset Beach island.

The Mad Inlet Hazard Area is designated a FEMA VE zone and a federal COBRA zone. In other words, the federal government is doing everything to protect public money and discourage development in this hazardous area. Why does the state want to open the door for such a dicey investment?

Barring a scientific analysis of Mad Inlet and a recommendation from the Science Advisory Board to the Coastal Resources that the Inlet Hazard designation be removed from Mad Inlet, a removal of the designation is premature. The recommendation to rescind the Inlet Hazard designation for Mad Inlet needs to be withdrawn, reworked, and rethought.

Thank you for the opportunity to comment.

Sue Weddle, a full-time resident of Sunset Beach for 25 years*
706 North Shore Drive
Sunset Beach, NC 28468
(910-579-9754
(910-393-9967

*Appointed by the Coastal Resources Commission to serve on the Stakeholders Committee to Recommend Changes to the Coastal Rules

*Appointed by the Environmental Management Commission to serve on the Stakeholders Committee to Recommend Stormwater Regulations to Meet the NPDES Phase II Rules

From: Jim Barber [mailto:seahawk111@atmc.net]
Sent: Sunday, December 08, 2013 6:17 PM
To: Davis, Braxton C
Cc: Sue Weddle; Lauren Kolodij; Carol Scott
Subject: Comments re the removal of the IHA designation from Mad Inlet, Brunswick County

Braxton Davis
Director, Division of Coastal Management

Dear Mr. Braxton,

As a member of your DENR Bird Island Local Advisory Committee, a member of the Bird Island Preservation Society Board of Directors, coordinator of the Bird Island Stewards, and a 20 year resident of Sunset Beach, I want to express my opposition to the removal of the IHA designation for Mad Inlet. My position in opposing this action is based on my personal experiences over that 20 years walking the beach and the upland areas as a steward and sea turtle patrol volunteer, as well as kayaking throughout the marsh's tidal creeks. Our current residence on the intracoastal waterway overlooks this area and offers us a unique year round perspective of the natural forces that affect it. All barrier islands are dynamic and constantly changing with the forces of nature, but the Bird Island/Mad Inlet area is even more so. The significant changes in this area over the past some 250 years are well documented. Hurricane Hazel in 1954 over washed the entire area with its 18 foot storm surge. Any storm with a surge or super high tide of 5-10 foot above mean high tide would undoubtedly breach the current primary and secondary dune line and easily connect with one or more of the tidal creeks.

There are innumerable interconnected tidal creeks in the immediate area including Bonaparte's Creek, East River, Dead Backwater Creek, Salt Boiler Creek and Blane Creek, as well as the remnants of Mad Inlet. All these are navigable by kayak and at high tide, you can traverse between all of them. The tidal flow is quite evident throughout this area. Most of the creeks are deep enough for crab fisherman to place their traps. At the lunar high tides, this area is almost all underwater except for the dunes and the maritime forest upland areas. On the beach strand, there are several areas where there is no primary dune line or it has been breached and there is no dune between the beach and the lowland/marsh/creeks. These features are not visible from just viewing aerial photographs. Based on all these factors, the Mad Inlet coastal area clearly meets the criteria for an IHA designation as an area vulnerable to flooding, erosion, migration, and the related natural effects of sand, wind, and water simply because of the close proximity of the ocean and the many tidal creeks with very dynamic flow characteristics. The absence of an actual tidal inlet today is only temporary given the geologic history of the area. The area is structurally weak and has many very low and narrow areas that are subject to breaching by only moderate storms or seasonal high tides. As you recognize, each inlet area is unique and therefore should be evaluated on the data relevant to its own natural dynamics. If further study of this area is necessary before making a determination, I respectfully request DENR conduct such a study.

Thank you,
Jim Barber
915 Shoreline Drive W
Unit 334
Sunset Beach, NC

Two Documents of Mad Inlet re: Hazard Area Designation
By Richard Hilderman, Ph.D., 407 37th Street, Sunset Beach 910-575-2452

November 7, 2013

I attended yesterday the North Carolina Division of Coastal Management public hearing on the proposed change to remove an inlet hazard designation from a site previously occupied by Mad Inlet at the west end of Sunset Beach Island. I have two main reasons why Mad Inlet shouldn't have its designation as an inlet hazard removed.

1. I spend a tremendous amount of time paddling my kayak in this area. There is a strong, deep tidal creek that runs parallel and close to the dunes from 40th out onto Bird Island. When paddling in this area it is easy to see places where the dunes are opening up. One can also see where the dunes are opening up when walking on the ocean side of the beach. It is simply a matter of time before a critical storm or series of storms reopens Mad Inlet. The only way to stop a potential reopening would be to block off and shut down the tidal creek and we don't want to do this because that creek feeds a large area of the marshes. One can't get an understanding or appreciation of what I am stating by simply viewing satellite images and looking at physical data. One must take a "hands on" approach and visit the area to see for his/herself. I would be willing to arrange a kayak tour for people who would like to view this area before making a decision.

2. As you are aware there are several beach towns looking into the possibility of using terminal groins to curb beach erosion. Ocean Isle Beach is one of the towns looking into placing terminal groins on their island. If this happens it will trigger beach erosion on Sunset Beach and make Sunset Beach Island very unstable. This instability will increase the probability that Mad Inlet will reopen. It seems to me a decision on whether to take Mad Inlet off the inlet hazard designation list should at least be delayed until we know how terminal groins on Ocean Isle Beach plays out.

I have reviewed the following two documents that recommend removing Mad Inlet from the Inlet Hazard Area designation:

1. Inlet Hazard Areas: The Final Report and Recommendations to the Coastal Resources Commission. The only reference this document makes to Mad Inlet is—Mad Inlet: Minor, unstable inlet; wide excursion since 1938 (500 to 5000) makes statistical predictions weak.

By looking at the recent Mad Inlet closing/reopening data clearly indicates why the report states it is a weak statistical prediction.

Mad Inlet Closing/Reopening

1938-1958—closed and reopened at different location—20 years

1958-1987—closed and reopened at different location—29 years

1987-1992—closed and reopened at different location—5 years

1997-2013 closed—16 years

2. Inlet Hazard Area Boundaries Update: Recommendations to the North Carolina Coastal Resources Commission. The only reference to Mad Inlet in this report is on page 100 under recommendations—Adoption of this report by the CRC will also remove existing IHA boundaries from Mad Inlet because they have closed. DCM and the CRC Science Panel have determined that the threat of Mad Inlet reopening is no higher than the creation of new inlets through the breaching process associated with storms that historically have occurred along the State's barrier islands.

It should be noted this report presented data for other inlets in NC but no data pertaining to Mad Inlet was presented.

The question that needs to be addressed is why has Mad Inlet closed/opened five times since 1958?

The answer lies in the topography around Mad Inlet. The west boundary of Mad Inlet starts at 40th Street of Sunset Beach and the east boundary is Bird Island. The dunes on both the west and east boundary are significantly higher and deeper than the dunes in the Mad Inlet area. Thus the Mad Inlet area is more unstable and prone to reopening following storms. Looking at the dunes in the Mad Inlet area on both the ocean and marsh sides clearly show areas where the dunes are starting to opening up.

In summary, all this data doesn't support the hypothesis that Mad Inlet won't reopen but this data clearly supports the hypothesis that Mad Inlet will reopen. Thus Mad Inlet should not be removed from the Inlet Hazard Designation.

RECEIVED

DEC 03 2013

Nov 30, 2013

ANDREW CONSENTERS

Neal Andrew
3811 Peachtree Avenue
Suite 300
Wilmington, NC, 28403

Dear Sir,

I write this letter to object to the proposed change to remove the inlet hazard designation from the area previously occupied by the Mad Inlet area at the west end of Sunset Beach Island. Mad last closed in 1997 but this area has a history of opening/closing 5 times since 1958. 16 years is a very short time from which to infer there is no chance this inlet will reopen in the future. A close look at this fragile area will show both shorter and shallower dunes from Bird Island to 40th Street, indicating that any significant storm will impact this relatively less protected area to a greater degree than adjacent areas with a more robust dune system.

With global climate change, sea level rise and more violent storms predicted in the future, this area will have a greater chance of being adversely impacted by the effects of wind and water. The Science Panel on Coastal Hazards has recommended a planning target for sea level rise in NC through 2100 at 39 inches. Granted that is a long way off but the trend is clear and it would be irresponsible to not use this scientific data in future planning activities.

Removing this hazard designation would make development of this unstable area much easier and the risks of building in high hazard coastal areas is not simply borne by the developer/owner. Through various state and federal subsidies, risk is shared by the general taxpaying public through insurance subsidies, post storm assistance and other programs. This state has greater areas of critical need for scarce taxpayer dollars than spending those funds on programs to aid development of fragile coastal low lying areas subject to ever more increasing risk of damage and destruction.

The city of Sunset Beach has gone on record in opposing this change of designation and the homeowners in the area to whom I have talked are all in opposition to this proposed change.

I urge you to vote against this proposed change and retain the designation of the Mad Inlet area as an inlet hazard zone.

Thank you.

Sincerely,



Gerald V Otteni
5604 Yorke Street NW
Concord, NC 28027

December 6, 2013

[Name] Member,
Management
[Address]

Division of Coastal

Dear _____,

My brother, Tom John, and I have owned Mauna Kea, the house on the marsh at 424 40th Street, Sunset Beach, NC, since 1981. We have been going to Sunset Beach with family and extended family since the late 1950's, and have closely observed the many changes over the years, most especially the changes in the Mad Inlet area. We well remember when a walk to Bird Island meant careful timing, so as to not get stuck on Bird Island around high tide, which was swift and deep and dangerous.

Our concern goes far beyond an unsightly bridge and houses on dunes that would block our view. Just last year we had our sea wall reinforced because of concerns of storms breaking through the dunes between the 40th Street walkover and Bird Island, during even relatively minor storms. The tidal waters in the marsh are quite strong at high tide.

Two specific concerns are terminal groins that are likely to go in on Ocean Isle, and sea level rise. Though a terminal groin permit is not now in place for Ocean Isle, the political climate is such that it could happen, and soon. Certainly Ocean Isle has long term major problems with erosion at the east end. The effects of terminal groins deplete the beaches to the south.

Sunset Beach is beginning to have similar problems. A friend has been taking photos during high and low tides at the east end of Sunset Beach, documenting beach erosion. Should you wish to view this evidence, I can put you in contact with the person who can show you the photos.

While storms, sea level rise and potential terminal groins are reason enough to dismiss this request for removing the inlet hazard designation, I must also make two other observations: The exceptional fauna and flora of this stretch of beach is precious. I understand that some of the plants are unique. And this unspoiled area is needed for bird and turtle nests. A major part of the love people, owners and renters alike, have for the special place that is Sunset Beach and Bird Island, is the opportunity to walk that beautiful stretch of pristine beach on the way to the Kindred Spirit mailbox. That the Town of Sunset Beach signed a resolution against the change is strong validation of these points.

For our location on the marsh on 40th Street, it would be in our best interest to have the designation removed. I am writing because we care about the long term interests of Sunset Beach and Bird Island more than about an inconvenience and potential costs to us. We have years of experience observing the changes that occur in the Mad Inlet area, and know that just one storm could open the inlet relatively easily, especially because of the force of the waters in the marsh. We have known ever since we bought our house that it is not in a stable area, but the enjoyment of the marsh allows us to take our chances.

One last point is that people have gone to great lengths for generations to stop the Gores from making inappropriate developments. Removal of the inlet hazard designation would make it more difficult to stop yet another inappropriate Gore development.

Thank you for your time in considering these points. Should you desire clarification, I would be glad to provide assistance.

Sincerely,
Helen Livingston
311 Montrose Lane
Laurinburg, NC 283352
[910-276-1797](tel:910-276-1797)
Mauna Kea
424 40th Street
Sunset Beach, NC 28468

From: Ted Janes [mailto:ewjanes2@gmail.com]
Sent: Monday, December 09, 2013 5:53 PM
To: Davis, Braxton C
Subject: Mad Inlet designation

Dear Mr. Braxton,

Several weeks ago I wrote and mailed a hand-written letter to you. I have been walking Sunset Beach to Mad Inlet for 40 years and have been a property owner on the Island of Sunset Beach since 1981. I am a life member of The Sierra Club and a member Of The Nature Conservancy. As I suggested in my letter, all one has to do is walk this beach to understand the role that Mad Inlet plays in protecting the marsh and bird life. Both science and history show that Mad Inlet has closed and opened, true to the nature of a barrier island, at least 5 times in recent history. To prematurely remove the current Mad Inlet designation without adequate investigation and science is irresponsible and will have serious consequences. Until you "walk the walk", as i have. you cannot seriously say you have considered the consequences of changing the Mad Inlet designation. I urge you to be thoughtful and responsible and to do the right thing.

Respectfully,

Edwin W. Janes
403 37th Street
Sunset Beach, NC

From: Terry Johnson [mailto:tjohnson@sunsetbeachnc.gov]
Sent: Monday, December 09, 2013 10:56 AM
To: 'Sue & Owen Weddle'; Davis, Braxton C
Cc: 'Todd Miller'; 'Mike Giles'; 'Lauren'; 'Hope Sutton'; 'Carol Scott'; 'Gary Parker'; 'Lou DeVita'; 'Mayor Ron Watts'; 'Mike Williams'; 'Wilson Sherrill'; 'Ann McNally'; 'Erik Jensen'; 'Jean & John Hutchinson'; 'Minnie Hunt'; 'Ray Puknys'; 'Camilla Herlevich'; 'Frank Nesmith'; 'Noelle Kehrborg'; seahawk111@atmc.net; 'Sue Jensen'; 'Todd Miller'; 'Walker Golder'
Subject: RE: PROPOSAL TO REMOVE INLET HAZARD DESIGNATION FROM MAD INLET

Sue and Owen,

I would like to acknowledge receipt of your email to Braxton Davis concerning the outstanding "proposal to remove inlet hazard designation from Mad Inlet." As you would imagine, based on our previous conversations, I strongly support your argument against such removal for all the reasons you mention. And, furthermore, although I did not get to vote on the SSB Town Council "resolution" from Monday December 2, 2013, I strongly support that Council resolution. In addition, I believe Richard Hilderman's recent "Spring Tide" observations (December 5-6, 2013) are compelling as well.

Sincerely,

Terry Johnson,
SSB Town Councilman

12/11/2013

Members of the N.C. Coastal Resources Commission

My correspondence is in response to the move by the C.R.C. to remove the Inlet Hazard Designation of Mudd Inlet. This designation has been, since its origin, a red flag to builders as well as C.A.M.A. when contemplating development along our N.C. coast. To remove the designation of Inlet Hazard can only be construed as encouraging development in this area.

Certainly you have reasons for making such a move, but I feel that you should take the following reasoning into consideration:

The phrase "at the time" is key in this explanation. At the time, C.A.M.A. gave the Inlet Hazard Designation to MADD Inlet, they had at least 16 decades of maps, aerial photos, personal and scientific findings/facts of the dynamics of Mudd Inlet! The openings and closings of Mudd Inlet had been spread over approximately two miles of the coast in those decades.

At this time, you, the C.R.C. + C.A.M.A., are considering the last 16 years as evidence that Mudd Inlet will be no more!

This area of Mudd Inlet and the entire surrounding area is shifting sands -

It changes by the hour/daily
monthly and certainly annually.
To add to this mix, you must
acknowledge that this C.R.C. is
allowing the establishment of
Terminal Grains! We all know this will
change these shifting sands; but
no one knows exactly how!

While you are responsible for any
designation of these areas, I ask you
to show wisdom and not change
anything based on 16 years of shifting sands!
At least, wait until you have
determined what effect Terminal Grains
will have on this area. You cannot
know in such a short span of time what
these shifting sands will do.

Thank you
Bill Wicker
Chair - Bird Island Preservation Socy

Branton C. Davis @ NC, DENR, Gov

From: Jim Worley [<mailto:evergreen28@comcast.net>]
Sent: Tuesday, November 26, 2013 7:55 PM
To: Davis, Braxton C
Subject: Mad Inlet Hazard Area at Sunset Beach North Carolina
Importance: High

I want to strongly object to the potential plan to declare that Mad Inlet is no longer a designated Hazard area.

I understand that many developers; real estate people, and others interested in developing and paving every potential square inch of beach area at Sunset Beach are attempting to once again pave some more and develop some more.

Mad inlet was designated an Inlet Hazard area for a reason and supported by professional staff from the CRC. Their position and ruling should be the ultimate deciding factor in this discussion.

Mad inlet has moved many times and significant distances over the past 50 plus years and just because it hasn't moved in the past 10 to 15 years why should it be designated stable; we are discussing ocean front areas that move and change all the time.

Consider some of the other areas in North Carolina that have had substantial changes based on storms or just natural beach front erosion. Review what's happened at the Outer Banks with washed out road ways and major changes to their beach areas.

One doesn't have to look very far to notice what changes can occur; go look at the eastern side of Ocean Isle where their sewer pipes are now above ground and their beach front homes have had to be moved back from ocean front to third and fourth row. They are building terminal groins to stabilize their beach front; what do you think that's going to do to Sunset Beach which will now be deprived of significant sand accumulation that we've had over the years.

It makes no sense other than someone will try to make more money by opening up access to the Sunset Beach ocean front; Sunset Beach is a nice place to live and there are plenty of lots open for building on the Island why try to build and develop on land that could quickly wash away.

This attempt to consider building and providing access via Mad Inlet across Main Street is not viable and provides no value to the citizens of North Carolina or Sunset beach it only puts more money into the pockets of the developers.

Jim Worley
1427 Bay Street
Sunset Beach, North Carolina

Evergreen Partners
301-332-2231



North Carolina
Coastal Federation
Working Together for a Healthy Coast

December 11, 2013

Braxton Davis
Director
N.C. Division of Coastal Management
400 Professional Dr.
Morehead City, NC

RE: MAD INLET HAZARD AREA DESIGNATION

Dear Dr. Davis:

Please accept the following comments on behalf of the N.C. Coastal Federation regarding the proposal to remove designation of Mad Inlet as an Inlet Hazard Area of Environmental Concern (AEC).

The federation opposes the removal of the inlet hazard area designation from Mad Inlet. We join with the Town of Sunset Beach in requesting that the Coastal Resources Commission maintain the current inlet hazard area designation.

The ever-changing nature of inlets in North Carolina has been documented for centuries. It is well known that inlets are the coast's zones of weakness, and terms such as relic and historic inlets were coined to precisely describe the ephemeral nature of these geomorphic features. Mad Inlet has been closed for several years but the area remains a zone of weakness and an inlet could reopen with the next major storm.

Inlets open and close all the time on our coast. For example, according to Mallinson et al.¹, Drum Inlet initially opened in about 1899, closed naturally by 1919 and reopened during a major Outer Banks Hurricane in 1933. Then, by 1977, the Inlet almost closed until it was reopened in 1999 by Hurricane Dennis. While we recognize that the geomorphic features of Drum Inlet differ from Mad Inlet, its history illustrates that inlets are not fixed and can migrate in different directions, reverse direction of migration, open and close, narrow or widen, or follow any combination of these patterns.²

The Coastal Resources Commission was briefed on the ephemeral nature of Mad Inlet in 1995 by geologist Dr. John T. Wells. Dr. Wells was then the director of the UNC Institute of Marine Sciences, and has since become the Director of the Virginia Institute of Marine Sciences. Dr. Wells and Jesse McNinch (now the director of the Duck Research Pier for the U.S. Army Corps of Engineers) prepared a report for the commission that included maps illustrating how Mad Inlet had opened and closed repeatedly over the past two centuries.

¹ http://www.ecu.edu/icsp/ICSP/Reports_files/PastPresentAndFutureInletsDec2008.pdf

² <http://www.wcu.edu/coastal hazards/libros/libroschapter7.htm>



The Mad Inlet IHA is an area that due to the historic inlet location receives overwash from storms and is an excellent habitat for colonial nesting birds and sea turtles. The width of the island at the current IHA is very narrow compared with the width of the northern areas of Sunset beach. Development of the IHA would threaten critical habitat and increase the likelihood of further beach erosion and potential loss of nesting sites for birds and turtles.

The Division's Bird Island Coastal Reserve is within the Mad Inlet Hazard Area designation. This natural reserve showcases stunning beauty of coastal barrier systems and represents habitat for various biotic communities and rare species. The reserve attracts many tourists and provides an economic benefit to local communities.

Privately owned property adjacent to the Bird Island Reserve could be more intensely developed should the Mad Inlet IHA designation be eliminated. The IHA designation only allows residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area. This is sound policy in the currently designated IHA area due to the dynamic nature of the area, and the fact that it is a zone of weakness and that the inlet could reopen. Removal of the IHA would remove these prudent development restrictions.

According to the current local zoning and development regulations, this area could potentially hold about 100 residences. If developed this area would have negative effects on the Bird Island Reserve and its natural communities, potentially impacting hundreds of species and diminishing not only natural, but also economic value of this natural area.

Furthermore, if the IHA designation is removed and the area developed, residents of the new development would fall under the Coastal Barrier Resources Act of 1982. That means that should a storm causing major damages occur, the costs of repairing the utilities and the residences would fall on the residents and local communities since this property would not be eligible for federal financial aid for storm relief.

For the reasons presented above, the federation requests that the commission maintain the Inlet Hazard Area designation for Mad Inlet.

In addition, we request that the Commission examine and evaluate what scientific criteria should be used in the future to determine if an "inlet is not expected to reopen." A major storm or hurricane could cause the inlet to reopen and shift as documented in the Wells and McNinch report which would threaten any more intense development permitted due to the removal of the IHA designation and permit requirements.

Thank you.

Sincerely,



Ana Zivanovic-Nenadovic
Program and Policy Analyst

From: jean hutchinson [jaguarjean1@gmail.com]
Sent: Wednesday, December 11, 2013 4:38 PM
To: Davis, Braxton C
Subject: Mad Inlet designation

THE SUNSET BEACH TAXPAYER'S ASSOCIATION
POST OFFICE BOX 6053
SUNSET BEACH, NORTH CAROLINA 28469

Baxter Davis, Director
Division of Coastal Management

Dear Mr. Davis:

The membership of the Sunset Beach Taxpayer's Association ("SBTA") are adding their approximately 900 collective voices to ask that the Coastal Resources Commission ("CRC") not remove the inlet hazard designation from Mad Inlet.

SBTA reviewed two documents that recommend removing Mad Inlet from the Inlet Hazard Areas: The Final Report and Recommendations to the CRC. The only reference this document makes to Mad Inlet is as follows:

Mad Inlet: Minor, unstable inlet; wide excursion since 1938 makes statistical predictions weak. By looking at the recent Mad Inlet closing/reopening data clearly indicates why the report states it is a weak statistical prediction.

Mad Inlet Closing/Reopening

1938-1958—closed and reopened at different location---20 years 1958-1987- closed and reopened at different location---29 years 1987-1992-closed and reopened at different location---5 years 1997-2013 closed---16 years

Additionally, Inlet Hazard Area Boundaries Update: Recommendations to the North Carolina Coastal Resources Commission. The only reference to Mad Inlet in this report is on page 100 under recommendations.

Adoption of this report by the CRC will also remove existing IHA boundaries from Mad Inlet because they have closed. Division of Coastal Management and the CRC Science Panel have determined that the threat of Mad Inlet reopening is no higher than the creation of new inlets through the breaching process associated with storms that historically have occurred along the State's barrier islands.

It should be noted this report presented data for other inlets in NC but no data pertaining to Mad Inlet was offered. The question that needs to be addressed is why has Mad Inlet closed/opened five times since 1958?

The answer lies in the topography around Mad Inlet. The west boundary of Mad Inlet starts at 40th Street of Sunset Beach and the east boundary is Bird Island. The dunes on both the west and east boundary are significantly higher and deeper than the dunes in the Mad Inlet area. Thus the Mad Inlet area is more unstable and prone to reopening following storms. Looking at the dunes in the Mad Inlet area on both the ocean and marsh sides clearly show areas where the dunes are starting to open up.

In summary, all this data does not support the hypothesis that Mad Inlet won't reopen but this data clearly supports the hypothesis that Mad Inlet will reopen. Thus Mad Inlet should not be removed from the Inlet Hazard Area designation.

Based on Mad Inlet's history, SBTA believes it would be foolhardy and irresponsible to change the present designation of an inlet hazardous area. Clearly this inlet has opened and closed numerous times in the past. It would not take a very large storm to cause the inlet to reopen and if houses are built in the hazardous area they could be destroyed or severely damaged by nature. The debris associated with the destruction could threaten other homes not in the hazardous zone.

Sincerely,

Jean Hutchinson
Secretary, SBTA

--

Jean

Jean Hutchinson
436 6th Street
Sunset Beach, NC 28468
home: 910-579-2715
cell: 910-880-4924
summer: 802-524-1964

From: Richard Hilderman [mailto:doggenome@gmail.com]
Sent: Monday, December 16, 2013 3:32 PM
To: Davis, Braxton C
Subject: Information Pertaining to Mad Inlet

Hi Braxton,

I was not able to attend the Commission meeting last week on Mad Inlet because I had to attend a week long convention in FL. However, I plan to attend the Commission meeting in February. In reference to this meeting could you please address my four questions below:

1. It is my understanding that the Commission is requesting more information from the science panel for their February meeting pertaining to Mad Inlet. Could you send me a copy of the science panel report prior to the February meeting?
2. I stated in two of the documents I sent you that the area of Mad Inlet is flooded during Spring Tide. This flooding in some areas comes up to the base of the dunes and in other areas very close to the base of the dunes. During the next Spring Tide I plan to take pictures of this flooding and will also take pictures where the dunes are starting to open up. If I send you these pictures with comments will you send them to the Commission prior to their February meeting?
3. Will the Commission allow public comments at their February meeting?
4. Can you send me the time and address at Nags Head where the Commission will address the

Mad Inlet issue?

Richard Hilderman, Ph.D.

From: J D Kennedy [mailto:jdkennedy@atmc.net]
Sent: Thursday, December 12, 2013 3:57 PM
To: Davis, Braxton C
Subject: Proposed change to Mad Inlet's designation

Dear Mr. Davis: We oppose the removal of the designation of inlet hazard to Mad Inlet. We walk Sunset Beach and Bird Island almost every morning and several times a year the water from Mad Inlet flows to the ocean. Admittedly it is not as deep as it was until 1997, but when it comes across the beach it is much wider than before and much closer to Sunset Beach. In addition, water from the inlet stays immediately behind the first primary dunes for many days after it has come across the beach. Obviously, we are not engineers and do not have the expertise to determine whether or not Mad Inlet will flow to the ocean as it once did, however without a very serious, detailed study, the hazard designation should not be removed. As you well know there are already too few unspoiled coastal areas on barrier islands in North Carolina.

Sincerely,
James and Darlene Kennedy
101 N Shore Dr.
Sunset Beach, NC 28468

910-575-5170

December 6, 2013

Mr. Neal Andrew
Member
Division of Coastal Management
3811 Peachtree Avenue, Suite 300
Wilmington, NC 28403

Dear Mr. Andrew,

My brother, Tom John, and I have owned Mauna Kea, the house on the marsh at 424 40th Street, Sunset Beach, NC, since 1981. We have been going to Sunset Beach with family and extended family since the late 1950's, and have closely observed the many changes over the years, most especially the changes in the Mad Inlet area. We well remember when a walk to Bird Island meant careful timing, so as to not get stuck on Bird Island around high tide, which was swift and deep and dangerous.

Our concern goes far beyond an unsightly bridge and houses on dunes that would block our view. Just last year we had our sea wall reinforced because of concerns of storms breaking through the dunes between the 40th Street walkover and Bird Island, during even relatively minor storms. The tidal waters in the marsh are quite strong at high tide.

Two specific concerns are terminal groins that are likely to go in on Ocean Isle, and sea level rise. Though a terminal groin permit is not now in place for Ocean Isle, the political climate is such that it could happen, and soon. Certainly Ocean Isle has long term major problems with erosion at the east end. The effects of terminal groins deplete the beaches to the south.

Sunset Beach is beginning to have similar problems. A friend has been taking photos during high and low tides at the east end of Sunset Beach, documenting beach erosion. Should you wish to view this evidence, I can put you in contact with the person who can show you the photos.

While storms, sea level rise and potential terminal groins are reason enough to dismiss this request for removing the inlet hazard designation, I must also make two other observations: The exceptional fauna and flora of this stretch of beach is precious. I understand that some of the plants are unique. And this unspoiled area is needed for bird and turtle nests. A major part of the love people, owners and renters alike, have for the special place that is Sunset Beach and Bird Island, is the opportunity to walk that beautiful stretch of pristine beach on the way to the Kindred Spirit mailbox. That the Town of Sunset Beach signed a resolution against the change is strong validation of these points.

For our location on the marsh on 40th Street, it would be in our best interest to have the designation removed. I am writing because we care about the long term interests of Sunset Beach and Bird Island more than about an inconvenience and potential costs to us. We have years of experience observing the changes that occur in the Mad Inlet area, and know that just one storm could open the inlet relatively easily, especially because of the force of the waters in the marsh. We have known ever since we bought our house that it is not in a stable area, but the enjoyment of the marsh allows us to take our chances.

One last point is that people have gone to great lengths for generations to stop the Gores from making inappropriate developments. Removal of the inlet hazard designation would make it more difficult to stop yet another inappropriate Gore development.

Thank you for your time in considering these points. Should you desire clarification, I would be glad to provide assistance.

Sincerely,



Helen Livingston

311 Montrose Lane
Laurinburg, NC 283352
[910-276-1797](tel:910-276-1797)

Mauna Kea
424 40th Street
Sunset Beach, NC 28468

Cc: Members of Coastal Resources Commission

Donald C. Lueder, Ph.D.
2327 Hamilton Mill Road
Charlotte, NC 28270
(704) 364-4030
dlueder@carolina.rr.com

December 3, 2013

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

Dear Mr. Davis:

The purpose of this letter is to urge your commission not to lift the Mad Inlet hazard restriction. We have been walking Sunset Beach and Bird Island since 1975. We have waited until low tide to wade across the inlet to Bird Island and at times swam across. Then over the years we watched the inlet fill in. This was a natural process that has happened several times.

To suggest that Mad Inlet will not be created again is a faulty assumption. Who can possibly predict what nature has in store for the island? The potential developers would like you to believe that they know. Please leave things alone and let nature take its course.

Thank you and happy holidays,

Don and Jan Lueder

From: Michael Giancaspro [<mailto:mgiancaspro@verizon.net>]
Sent: Monday, December 09, 2013 10:12 AM
To: Davis, Braxton C
Subject: Mad Inlet - Opposition to Removing Inlet Hazard Designation

Braxton,

I am a property owner on Sunset Beach (1810A East Main St. on the island). We bought our home in 1997 (previous to Mad Inlet shoaling over). Before a decision is made, please order for \$15 the following publication:

Shifting Shorelines: A Pictorial Atlas of North Carolina Inlets
by William J. Cleary and Tara Marden | Publication # UNC-SG-99-04 | Pages: 50 | Provides an in-depth guide to the changing morphology of North Carolina's 22 inlets. Each inlet is illustrated with six photographs that show how the waterway changed over time. Accompanying text explains how the forces of nature and human ingenuity combined to shape the inlets.

<http://www.ncseagrant.org/home/resource-library/shop-coastal-products?id=31&category=Coastal+Hazards>

I would scan the Mad Inlet pictures from this publication for you, but it is at our beach home, and I am in Virginia. Please refer to aerial photographs over the past 75 years that show the dramatic changes in all of the NC inlets. The Bird Island/Sunset Beach historical movement of Mad Inlet over the past 75 years is dramatic. I cannot understand how after 15 years it can be determined with any certainty that similar inlet movement is not possible in the near future. Why put uninformed potential property owners in a position of undue risk from inlet changes? Have you observed the dramatic (and devastating) inlet changes at Ocean Isle Beach from Tubbs inlet (West) and Shalotte Inlet (East)?

After a decision to remove an inlet hazard designation, how do you undo that decision after residential development occurs that is followed by a significant storm and subsequent inlet migration?

There is significant developer interest in approving this change with lobbying to the NC legislature. Please do not succumb to this pressure. Please carefully examine the history and other compelling evidence. Please make a prudent decision for current and future property owners of Sunset Beach.

Respectively submitted,

Mike

--

Michael W. Giancaspro
President
Turnaround Strategies LLC
[804-938-0194](tel:804-938-0194)

From: Richard Dickey [mailto:radmd51@gmail.com]
Sent: Sunday, December 08, 2013 5:28 PM
To: Davis, Braxton C
Cc: Dickey Jim; Dickey Kurt; Dickey Margie; Dickey Meri; Moore Devon; Moore Kirsten
Subject: Mad Inlet

Baxter Davis, Director
Division of Coastal Management
Braxton.Davis@ncdenr.gov
RE: PROPOSAL TO REMOVE 'INLET HAZARD' DESIGNATION FROM MAD INLET
Dear Mr. Davis:

We have been owners at Sunset Beach Island for only 20 years but have cherished our homes there and want to ask you to reject the requested removal of 'inlet hazard' designation from Mad Inlet. Here are some of our reasons: We originally built and owned about the tenth row on 28th Street. This was in the early 1990s. We loved our frequent walks down the beach to Bird Island, often with many other members of the group advocating and raising money for the purchase of the isolated and deserted Bird Island property and its designation as a bird sanctuary. We were so delighted when that dream became a reality after decades of effort. We and our friends and family continue to enjoy the walks and talks as we walk that beachfront each year and especially now that the birds are protected and add to the beauty of those strolls. The first few years we were owners, on our treks to Bird Island through Mad Inlet to reach the Western end of the Bird Island beach, we often had to ford the water rushing into or out of the Inlet,

which could be several feet deep at high tide. It was a real surprise the year a hurricane closed the Inlet and we continue to wonder when one will reopen it. We would be happy to have to ford it again.

In the late 1990s we bought a beachfront lot at 34th Street and built our present home. We knew it would be a walk of nearly 800 feet to reach the beach from our new home but the Coastal protection rules would not let us build any closer and even required us to set back from other existent, adjacent homes which restricted our views, views which are still beautiful, especially from the second floor deck. Still, we accepted, value and respect the coastal plan requirements for setbacks. Dave Nelson told us about the accretion of the beach he has seen over the years and we appreciate the safety that gives us, especially the more western end of the Island. Now we are dumbfounded to hear that someone wants to take advantage of the accretion on the end of our Island, not the end as we understood it, i.e. at 40th Street where the house which is the cite of a well-known book of fiction, but many potential lots beyond that. We understand that Mr. Gore hopes to reap great profit from the building on that accreted beach. Has he not made enough on our Island already? Are we and our neighbors and friends on the Island, especially those down at 40th to be subjected to the selfishness and abuse of Mr. Gore's greed which has prompted him to ask for a eedesignation of Mad Inlet? Clearly the removal of the 'Inlet Hazard' designation request is intended to allow the building of structures on the land beyond 40th, structures which would clearly harm the value and enjoyment of our neighbors on 40th and impact the beauty and enjoyment of the bird sanctuary we worked so long to obtain near there. Not to mention the issues of access to that property and the impact of that on our current Island residents and owners. Moreover, why should any homes built on the accreted land have a privilege Margie and I did not by being able to build close to the beach? Let us live with what most of us on the Island anticipated and value, an end to houses at 40th and an isolated bird sanctuary and a quiet walk to Bird Island after we pass the collection barrels at the access to the beach at 40th. We will not pray for a hurricane to do it but should one decide to reopen our inlet, we would not object. Please let the designation be as it is and honor the wishes of the vast majority of Islanders first. Except for the interests of a very few who aren't even residents of the Island, I am unaware of any who would want it otherwise.

Thank you for your consideration.

Richard and Margie Dickey
Owners at 707 West Main St, Sunset Beach Island
51 Players Ridge Road
Hickory, NC 28601
(828) 495-1230
radmd51@gmail.com



RECEIVED
DEC 09 2013
DCM-MHD CITY

**Resolution
Opposing the Removal of the
Inlet Hazard Area Designation of Mad Inlet**

WHEREAS, the Town of Sunset Beach Town Council recognizes the CRC Science Panel's ongoing review of Mad Inlet in which it has been generally accepted that the inlet would not reopen, and that the CRC is therefore proceeding with removing the Inlet Hazard Area designation; and,

WHEREAS, the Sunset Beach Town Council is aware that several beach towns are looking into the possibility of using terminal groins to curb beach erosion including Ocean Isle Beach; and,

WHEREAS, the Town Council feels that there is a probability that Mad Inlet could reopen given the unpredictability of the amount of sand movement that will be experienced if terminal groins are installed in neighboring communities; and

WHEREAS, the Sunset Beach Town Council is aware that the Inlet Hazard Areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind and water because of their proximity to dynamic ocean inlets, (including hurricane wave wash).

NOW, THEREFORE BE IT RESOLVED THAT, the Town of Sunset Beach requests CRC to re-assess their proposal for amendment to 15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS by removing Mad Inlet off the inlet hazard designation, and allowing Mad Inlet to remain an Inlet Hazard Area.

Adopted by the Town of Sunset Beach Council, this the 2nd day of December, 2013.



TOWN OF SUNSET BEACH
Richard Cerrato
Richard Cerrato, Mayor

ATTEST:

Lisa H. Anglin
Lisa Anglin, Town Clerk

From: Lloyd Viets [<mailto:loviets@aol.com>]
Sent: Tuesday, December 10, 2013 1:50 PM
To: Davis, Braxton C
Subject: Fwd: COMMENTS ON REMOVING INLET HAZARD DESIGNATION FROM MAD INLET

Please consider the following comments proposed by Sue. She as usual has a good point which support.

-----Original Message-----

From: Sue & Owen Weddle <soweddle@atmc.net>
Sent: Sun, Dec 8, 2013 1:25 pm
Subject: COMMENTS ON REMOVING INLET HAZARD DESIGNATION FROM MAD INLET

HELLO ISLANDERS,

Below are comments I've sent regarding the proposed change in the Inlet Hazard designation for Mad Inlet. If this is an issue important to you, I recommend you send your comments by December 12th to:

Baxter Davis, Director
Division of Coastal Management
Braxton.Davis@ncdenr.gov

The Coastal Resources Commission (CRC) will hear this issue at their December 12th meeting in Atlantic Beach at the Hilton Double Tree at 11:45. If any of you are in the area and can attend the meeting, that would be a great idea. Sign up to speak. We all have a different perspective, and we all have different knowledge; you'll notice I didn't say a word about the science. Speak from your heart and from what you know.

Our Town Council has sent a Resolution asking that the Inlet Hazard designation remain unchanged. We are united in this.

If you have supported Governor McCrory, it would be a great idea to let him and his office know how displeased you will be if the Coastal Resources Commission changes the designation. Governor McCrory has appointed a number of new people to the CRC, and I'm sure he could have some impact on a decision.

~~~Sue~~~

MY COMMENTS SENT TO DIRECTOR DAVIS BELOW

Baxter Davis, Director  
Division of Coastal Management

RE: PROPOSAL TO REMOVE 'INLET HAZARD' DESIGNATION FROM MAD INLET

Dear Mr. Davis:

The information presented by the Division of Coastal Management at the Public Hearing at Sunset Beach in November contained an error that makes all of the conclusions drawn by the state in that information wrong – especially the fiscal analysis. This issue should not move forward until an accurate assessment

of the impacts of removing the Inlet Hazard designation are presented and an informed decision can be made.

#### Area Impacted

The last road on Sunset Beach that runs north to south and abuts Mad Inlet is 40<sup>th</sup> Street. (Sunset Beach is one of the three islands in Brunswick County whose length is from east to west.) The last walkover to the beach on the western end of the island is the 40<sup>th</sup> Street walkover. Main Street--Sunset Beach's oceanfront drive--ends at the tidal marsh, just past the walkover at 40<sup>th</sup> Street.

Virtually all of 40<sup>th</sup> Street which fronts Mad Inlet is developed. The state's description says there are 126 properties located in this area with about 10 lots undeveloped. The development along the marsh overlooking Mad Inlet consists of some small older cottages on 4500 square foot lots. The remainder are newer, large, expensive homes built to the state's inlet hazard requirements, sitting 60' back from mean high tide and on larger lots.

The state's analysis fails to take into account the property that could accommodate 30 to 40 oceanfront lots that have accreted from the 40<sup>th</sup> Street walkover west to the boundary of the Bird Island Conservation Reserve. It is the development of these lots that would seriously impact the Bird Island Conservation Reserve and the sitting property owners on the built-out Sunset Beach oceanfront and built-out properties on 40<sup>th</sup> Street by a change in the Inlet Hazard designation.

#### Impact

The developers of Sunset Beach island sold the last oceanfront lot on the inlet before any land accreted in Mad Inlet, and a large home on a large lot sits on the oceanfront and abuts the newly accreted land and the tidal marsh on the western side. The state road of Main Street ends at the tidal marsh. Currently the only way a developer can reach the newly accreted oceanfront land is to extend Main Street with a bridge that would swing out over the tidal marsh and connect to the newly accreted land.

Under the current Inlet Hazard designation, it is not possible to build such a bridge. The state Inlet Hazard regulations prohibit any structure larger than 5,000 square feet. During the 12 year effort to persuade the state to buy what is now the NC Bird Island Conservation Reserve, the Bird Island Preservation Society asked the Coastal Resources Commission (CRC) for a Declaratory Ruling as to whether a bridge was a structure. The CRC ruled that it was.

If the Inlet Hazard Designation for Mad Inlet goes away, this prohibition on any structure larger than 5,000 square feet goes away. This was confirmed by one of the state employees attending the Public Hearing. After hemming and hawing about "appropriate permits," she said, "Yes, a bridge could be built."

All of this development would negatively affect the Bird Island Conservation Reserve, which is intended to preserve a slice of the North Carolina oceanfront and tidal estuarine as it has been through time immemorial. The taxpayers of North Carolina paid \$4.3 million for this pristine reserve through the Clean Water Management fund, the Natural Heritage Foundation, and the NC Department of Transportation.

It would also negatively impact the oceanfront property owners on Sunset Beach. This newly accreted land beyond what used to be the end of Sunset Beach island is a block oceanward of the current line of oceanfront properties – not in front of them, but beside them and then a block oceanward. This is bound to have an impact on the value of the current oceanfront properties and the enjoyment these property owners take in their oceanfront homes.

Then, too, the property owners on 40<sup>th</sup> Street would be negatively impacted. Currently from their decks on the marsh, they can look to the ocean. If a number of houses are built on the newly created land, they would then be looking at the backside of those houses.

The recommendation for a change in inlet designation

I have reviewed both the 1978 report by the Division of Marine Fisheries and the 2010 report by the Division of Coastal Management.

The 1978 report shows a strong and vibrant Mad Inlet with no recommendation for removing the Inlet Hazard designation.

A review of the 2010 report by the Division of Coastal Management has a scientific analysis of every inlet in North Carolina except Mad Inlet. I also see no recommendation from the Science Advisory Board recommending that the Inlet Hazard designation be removed from Mad Inlet.

It is my understanding that DCM staff made the recommendation to the Coastal Resources Committee to remove the Inlet Hazard Designation from Mad Inlet – not the Science Advisory Board. And that this was done to “give some relief to Sunset Beach and the properties affected by the Mad River Inlet.” CRC minutes September 2010

The Public Hearing in Sunset Beach was packed with standing room only and among the audience were many who owned property in the area impacted. It quickly became clear that everyone in that room objected to the change in designation with the exception of the second generation developer, Ed Gore, and his spokesperson, Sammy Varnum, who have a financial interest in changing this designation. This may enrich them, but it will harm the island as a whole and many other property owners on Sunset Beach island.

The Mad Inlet Hazard Area is designated a FEMA VE zone and a federal COBRA zone. In other words, the federal government is doing everything to protect public money and discourage development in this hazardous area. Why does the state want to open the door for such a dicey investment?

Barring a scientific analysis of Mad Inlet and a recommendation from the Science Advisory Board to the Coastal Resources that the Inlet Hazard designation be removed from Mad Inlet, a removal of the designation is premature. The recommendation to rescind the Inlet Hazard designation for Mad Inlet needs to be withdrawn, reworked and rethought.

Thank you for the opportunity to comment.

Sue Weddle, a full-time resident of Sunset Beach for 25 years\*  
706 North Shore Drive  
Sunset Beach, NC 28468  
(910-579-9754  
(910-393-9967

\*Appointed by the Coastal Resources Commission to serve on the Stakeholders Committee to Recommend Changes to the Coastal Rules

\*Appointed by the Environmental Management Commission to serve on the Stakeholders Committee to Recommend Stormwater Regulations to Meet the NPDES Phase II Rules

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From: Charley Winterbauer [capefearaudubonsociety@yahoo.com]

Sent: Wednesday, December 11, 2013 4:56 PM

To: Davis, Braxton C

Subject: Mad Inlet

The Cape Fear Audubon Society opposes the removal of the "inlet hazard" designation for Mad Inlet at Sunset Beach. As the name implies this inlet now closed through sand accretion could reopen following storm activity. This pattern of moving inlets is characteristic of our barrier islands. To allow development off his area would be bad public policy and potentially require ongoing remediation if the necessary (for development) bridge failed. FEMA authorities strongly discourage development of this area, so one wonders why the state would encourage it. The Bird Island Coastal Reserve would be adjacent to any new development. Not only would the serenity of the Reserve be compromised but development would impact on shore bird nesting sites. The Reserve site represents excellent examples of barrier communities with several occurrences of rare species. The following barrier island biotic communities are present: upper beach, dune grass, maritime dry grassland, maritime wet grassland, maritime shrub thicket, maritime shrub swamp, brackish marsh, salt shrub, salt flat, and salt marsh. The most notable species of the island are nesting loggerhead sea turtles (*Caretta caretta*) and seabeach amaranth (*Amaranthus pumilus*), a plant of the foredune area. Both species are listed as threatened by the federal and state governments.

Cape Fear Audubon strongly recommends against the removal of the "inlet hazard" designation for Mad Inlet.

Charley Winterbauer, President  
Cape Fear Audubon Society

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1419 Bay St  
Sunset Beach, NC 28468

December 12, 2013

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

**Re: Proposed rule amendment to 15A NCAC 07H.0304 to remove the Inlet Hazard Area designation from the site formerly occupied by Mad Inlet.**

Dear Sir:

I am writing to submit my comments on the proposed rule amendment to 15A NCAC 07H.0304 to remove the Inlet Hazard Area designation from Mad Inlet.

As has been pointed out by others, over the past 75 years Mad Inlet has a history of opening, closing and reopening, specifically:

1938-1958 closed and reopened at different location – 20 years  
1958-1987 closed and reopened at different location – 29 years  
1987-1992 closed and reopened at different location – 5 years  
1997-2013 closed – 16 years

With two of the past three closing and reopening cycles being 20 years or greater, making the assumption at only 16 years since its closing that Mad Inlet is not expected to reopen, is both premature and inconsistent with its natural cycle.

Indeed, if one walks the area where Mad Inlet has historical been, there are quite obvious signs that the process of reopening is starting to occur. Attached are photographs showing two locations where wash-through of the dune system is now occurring. This wash-through process is currently occurring on spring tides and storm tides. It will not take much of a storm to turn any of these wash-throughs into an outright breach of the emerging dune system in the area and reopen the channel.

In public comments at the hearing in Sunset Beach on November 6, 2013, it was asserted in comments that the construction of the jetty by the Army Corps of Engineers at Little River Inlet has caused accretion on Sunset Beach and thus the closure of the inlet. Assuming that this may be true to date, the present move to permit the construction of terminal groins is very likely to change the process. Ocean Isle Beach, which is upstream of the natural drift, is in the process of studying a terminal groin and will likely proceed with this project to remedy their beach erosion problems. The expected outcome will be at a minimum a disruption to any accretion process on Sunset Beach (including Mad Inlet area) and, more worryingly, a transition to a beach erosion

process. This effect, combined with the 2 feet per year average annual erosion rate established for the inlet area by the NC DER could have the effect of reversing the closure.

I oppose the proposed change of designation and believe given the obvious process that is underway may in fact reopen the channel consistent with its natural cycle, if not sooner due to storm or terminal groin implementation.

Regards



Bruce Hovermale  
1419 Bay St  
Sunset Beach, NC 28468

Attachments

1. Photos of wash-throughs, Location 1
2. Photos of wash-throughs, Location 2

Location 1: 33.85902°, -78.52577°



Location 2: 33.85730°, -78.53012°



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From: Nina [ninam@atmc.net]  
Sent: Thursday, December 12, 2013 8:03 AM  
To: Davis, Braxton C  
Subject: Mad Inlet: Inlet Hazard Area

Baxter Davis, Director  
Division of Coastal Management

RE: PROPOSAL TO REMOVE 'INLET HAZARD' DESIGNATION FROM MAD INLET Dear Mr. Davis:

The decision to propose removal of the Inlet Hazard Zone designation for Mad Inlet appears to have been made without scientific advice or a sense of local history and geography. Mad Inlet has opened and closed – and moved - many times since 1954, and surely many times before that. In 1954, the inlet was at 40th street. By 1997-1999, when it closed<sup>1</sup>, it had moved about a mile to the west. At the end of 2012, the closest backwater of what was Mad Inlet was only about 500 feet from high tide. As anyone who walks Bird Island knows, the marsh often joins the sea during moderate storms. One big storm could open the inlet again. The Coastal Hazards Information Clearinghouse at Western Carolina University classifies inlets such as Mad Inlet as historic inlets and says that “in terms of storm damage mitigation, this area of the island [a historic inlet] should be treated as if it were a present day inlet and should be designated as an inlet hazard area.”<sup>2</sup> What reasoning and scientific information justify this recommendation?

Surely, the recommendation deserves further study. Thank you for your time.

<sup>1</sup>Note that a spokeswoman for the state Division of Coastal Management is quoted in the Star-News as saying, “Since Mad Inlet has not been an inlet since 1997, we are proposing to not call it an inlet hazard area anymore for permit purposes.” <http://www.starnewsonline.com/article/20131206/articles/131209813>  
However, the Bird Island Reserve website writes of “the closure of Mad Inlet in 1999 following Hurricane Bonnie.” <http://www.nccoastalreserve.net/about-the-reserve/reserve-sites/bird-island/87.aspx>  
<sup>2</sup><http://www.wcu.edu/coastalhazards/Libros/libroschapter7.htm>

Nina Marable  
Full-time resident of Sunset Beach Island  
502 N Shore Dr. West  
Sunset Beach, NC 28468

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From: bonefish0204@sc.rr.com [mailto:bonefish0204@sc.rr.com]  
Sent: Friday, February 07, 2014 9:33 AM  
To: Davis, Braxton C  
Subject: Mad Inlet

Mr. Davis: I recently received information that the Science Advisory Board recommended that the Hazard Designation be removed from Mad Inlet. It appeared that the wording or language played a part in their decision. That being said I would hope that the NCCRC would do the right thing and not allow the area to be opened for development. There is no doubt that the citizens of Sunset Beach are opposed to this being changed. The State and the Town have invested a great deal to protect this area which should be taken into consideration. It is also my understanding that in any case there would be Federal restrictions

on acquiring various types of Insurance.

That being said one has to wonder what is the motive for the Developer wanting to move forward. It is my opinion that this exercise will sometime result in the Developer attempting to sell this land to the State or the Town.

I would ask that you and the NCCRC do the right thing for everyone, especially the environment, and not allow the Mad Inlet area to be developed.

Regards,

James H. Skiff  
414 33rd St.  
Sunset Beach, NC 28468

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Sent: Tuesday, February 11, 2014 2:50 PM  
To: Davis, Braxton C  
Subject: FW: Madd Inlet, Sunset Beach, NC

Mike,

Attached is my statement to be included for the upcoming meeting for the decision to change hazardous inlets to non-hazardous inlets. My statement is based on my experience from visual changes of the inlet since 1981 and owning property since 1984 at 1430 Bay Street, Sunset Beach, NC located on Madd Inlet. Please call if you need additional information or have questions. You can call me at cell no: 910-214-2858 or 910-214-2859.

Thank you for your assistance.

H. Robert Honeycutt

I, Robert Honeycutt, have owned property on Madd Inlett, 1430 Bay Street, Sunset Beach, NC since 1984. I am in favor of Madd inlet being changed to a Non-Hazardous Inlet. This change to a non-hazardous inlet should be based on scientific evidence and should not be based on someone's personal opinion. The scientific evidence proves that the so called Madd Inlet does not exist. The evidence proves there IS NOT an inlet in the so called area and has not been an inlet for many years. As for development of this area – the Town of Sunset Beach will have control of this area and can prevent any development. Once again, as a property owner and a taxpayer of Sunset Beach, NC, I am in favor of the area in question, Madd Inlet, Sunset Beach, NC to be approved as a Non-Hazardous Inlet based on the scientific evidence.

H. Robert Honeycutt

**Fiscal Analysis**

**Areas of Environmental Concern within Ocean Hazard Areas**

**15A NCAC 07H .0304**

Prepared by

Mike Lopazanski  
Policy & Planning Section Chief  
NC Division of Coastal Management  
(252) 808-2808, ext. 223

August 20, 2013



## Basic Information

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|                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Agency                           | DENR, Division of Coastal Management (DCM)<br>Coastal Resources Commission                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Title of the Proposed Rule       | Areas of Environmental Concern (AECs) within Ocean Hazard Areas                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| Citation                         | 15A NCAC 07H .0304                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| Description of the Proposed Rule | 07H .0304 defines and establishes AECs that are considered to be within the Ocean Hazard Areas along the State's Atlantic Ocean shoreline. Ocean Hazard Area AECs include the Ocean Erodible Area, High Hazard Flood Area, Inlet Hazard Area and the Unvegetated Beach Area.                                                                                                                                                                                                                                     |
| Agency Contact                   | Mike Lopazanski<br>Policy & Planning Section Chief<br>Mike.Lopazanski@ncdenr.gov<br>(252) 808-2808 ext. 223                                                                                                                                                                                                                                                                                                                                                                                                      |
| Authority                        | G.S. 113A-107; 113A-113; 113A-124                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| Necessity                        | The Coastal Resources Commission is proposing to amend its administrative rules in order to reflect physical changes in the environment that influence how and where oceanfront development is permitted. These changes will serve the public interest by preventing confusion of the regulated community, protecting life and property from the destructive forces indigenous to the Atlantic shoreline and by removing overly restrictive development standards from areas where they are no longer necessary. |
| Impact Summary                   | State government: No<br>Local government: No<br>Substantial impact: No<br>Federal government: No<br>Private property owners: Yes                                                                                                                                                                                                                                                                                                                                                                                 |

## Summary

The proposed rule amendments (see proposed rule text in the Appendix) will remove the temporary Unvegetated Beach (UB) designation from the area in the vicinity of Hatteras Village. The existing vegetation line has exhibited recovery since 2004 and is deemed by the CRC to be no longer necessary for permitting purposes. The proposed changes will also remove the Inlet Hazard Area designation from the site formerly occupied by Mad Inlet, which closed in 1997 and is not expected to reopen.

The groups most affected by these changes will be 137 oceanfront property owners in the area of Hatteras Village designated as an unvegetated beach and 126 property owners within the Mad Inlet designated Inlet Hazard Area. The Division of Coastal Management (DCM) estimates that there will be potential benefits to property owners of increased development potential for parcels in the vicinity of Hatteras Village and Mad Inlet. However, any estimate by the Division of how many structures would be re-built or existing lots could be recombined to increase density would be highly speculative as it would depend upon the occurrence of storms, normal deterioration and other events such as structure fires, as well as

upon the individual willingness of landowners to redevelop properties or rebuild in locations where their prior home had been damaged or destroyed.

The Division of Coastal Management does not expect costs and benefits from these proposed rule changes to exceed \$500,000 annually.

The Division of Coastal Management anticipates the effective date of these rule amendments to be December 1, 2013.

## **Introduction and Purpose**

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The Coastal Resources Commission (CRC) is initiating rule making to amend its administrative rules governing two separate sections within 15A NCAC 07H .0304 (AECs within Ocean Hazard Areas). The first rule change is to 07H .0304(4) related to the Unvegetated Beach (UB) Area of Environmental Concern (AEC) designation. The CRC has approved rule language that will remove the current temporary UB designation for Hatteras Village (adopted in 2004). The removal the UB designation near Hatteras Village is necessary as the vegetation line has exhibited recovery since 2004 and can once again be used for setback determinations. The UB designation was a temporary designation connected with damage from Hurricane Isabel (2003) and with subsequent recovery of the vegetation line, this action is seen as being consistent with established CRC policy. The second rule change removes the Inlet Hazard Area designation for Mad Inlet, which closed in 1997. It is considered highly unlikely by the CRC's Science Panel on Coastal Hazards that Mad Inlet will reopen under current conditions.

The removal of the temporary UB designation on Hatteras Village will have no significant effect as the stable and natural vegetation has re-established itself at or oceanward of the measurement line set forth in the UB designation (i.e., in some cases, the UB designation has been more restrictive for development setbacks). The removal of the Inlet Hazard Area designation for the former location of Mad Inlet removes all of the restrictions and use standards (15A NCAC 07H .0310) set forth by the CRC for development adjacent to active tidal inlets. Future development would then be subject to the use standards common along all oceanfront shorelines.

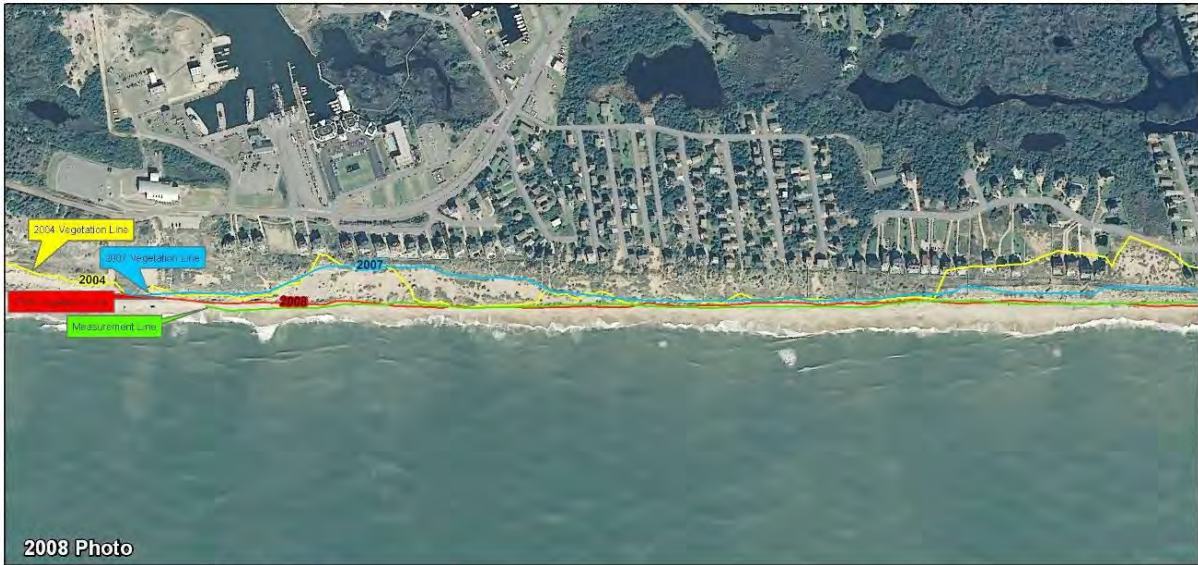
## **Description of the Proposed Rules**

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### **UNVEGETATED BEACH AREA**

The first issue being addressed through this proposed rule change focuses on the Unvegetated Beach (UB) AEC designation and its application by the CRC on either a temporary or permanent basis to areas where no stable natural vegetation is present. In May 2004, the CRC approved the UB designation as a temporary measurement line used in place of the actual first line of stable and natural vegetation after the loss of vegetation from Hurricane Isabel (September 2003). The only oceanfront community currently with an UB designation is Hatteras Village and this proposed rule change would remove the UB designation from the Village.

After on-the-ground observations at Hatteras Village in February 2010 and a review of the vegetation line recovery since 2004, the temporary UB designation for Hatteras Village is recommended for removal. The photos below show how the vegetation line has reestablished itself since 2004. The result of this action will be an easing of the setback restrictions with a return in many areas to pre-storm conditions. The actual number of properties that will benefit is unknown as setback delineations (based on the first line of stable and natural vegetation) are determined on a lot-by-lot basis and dependent upon the size (square footage) of development proposed for the property.



2008 Photo

# Hatteras Village

Oceanfront Vegetation Line

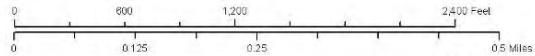
## Legend

- Measurement Line (*Un-Veg. Beach*)
- Vegetation Line - 2007
- Vegetation Line - 2008
- Vegetation Line - 2004

NOTE: Vegetation Line represents "stable-natural" as interpreted from photography

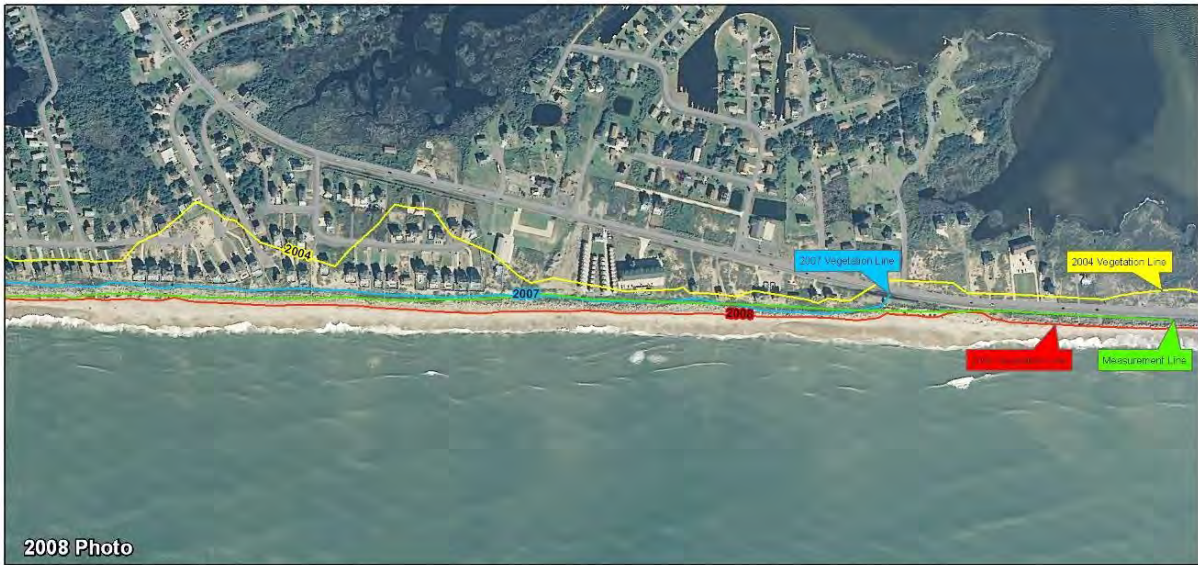


Datum: NAD 83  
Projection: North Carolina State Plane  
Units: Feet



2008 Photo  
Map 1 of 2

NC DENR - Division of Coastal Management - 2010



2008 Photo

# Hatteras Village

Oceanfront Vegetation Line

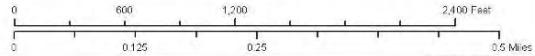
## Legend

- Measurement Line (*Un-Veg. Beach*)
- Vegetation Line - 2007
- Vegetation Line - 2008
- Vegetation Line - 2004

NOTE: Vegetation Line represents "stable-natural" as interpreted from photography



Datum: NAD 83  
Projection: North Carolina State Plane  
Units: Feet

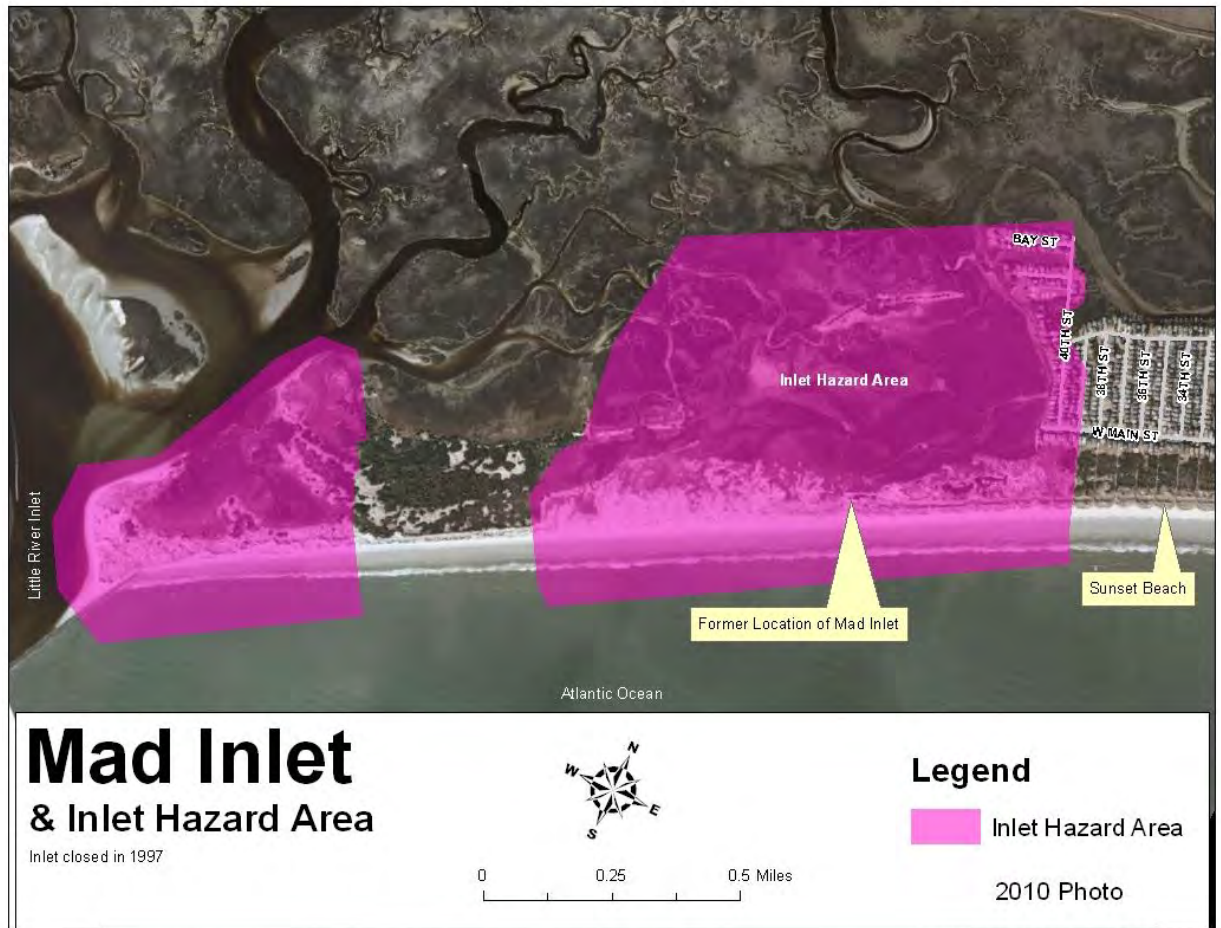


2008 Photo  
Map 2 of 2

NC DENR - Division of Coastal Management - 2010

## INLET HAZARD AREA

The Inlet Hazard Area (IHA) designations are based on a 1978 study (minor amendments in 1981) of areas that are subject to the dynamic influence of ocean inlets. Mad Inlet, which closed in 1997, previously separated Sunset Beach and Bird Island (part of the North Carolina Coastal Reserve system). As part of the CRC Science Panel's ongoing review of the State's 12 developed inlets, the Panel opted not to review the boundary for the former Mad Inlet as it was generally accepted that the inlet would not reopen. The CRC is therefore proceeding with removing the Inlet Hazard Area designation from the area formally known as Mad Inlet. Removal of the IHA designation will allow property owners to develop under the more common oceanfront development standards as opposed to the more restrictive IHA standards.



NC Division of Coastal Management - 06/13/2013

## COSTS OR NEUTRAL IMPACTS

### NC Department of Transportation

#### Removal of Unvegetated Beach Designation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 07H .0304 will not affect environmental permitting for the NC Department of Transportation (NCDOT). Roads are subject to setback requirements (development such as roads, parking lots, and other public infrastructure such as utilities have a minimum setback factor of 60 feet or 30 times the shoreline erosion rate, whichever is greater as defined by 07H .0306(a)(2)(I)). Since Hwy 12 already exists in this area, DCM has permitted the repair of the road in its existing location in the event the area is breached during storms. CRC

rule 15A NCAC 07H .0208(a)(3) also allow for the consideration of public benefits consistent with the findings and goals of the NC Coastal Area Management Act when the proposed development is in conflict with its rules. In the event that NCDOT needs to build or maintain a road located within the area currently designated as Unvegetated Beach, the proposed amendments will not change the CRC's approach to permitting that activity. For these reasons, DMC estimates no fiscal impact on DOT.

#### Removal of Inlet Hazard AEC Designation of Mad Inlet

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 07H .0304 will not affect environmental permitting for the NC Department of Transportation (NCDOT). Removal of the Inlet Hazard AEC designation will not affect the siting of access roads or the maintenance and replacement of existing bridges per 15A NCAC 07H .0310(a)(3). In the event that NCDOT needs to build or maintain a road located within the area currently designated as an Inlet Hazard AEC for Mad Inlet, the proposed amendments will not change the CRC's approach to permitting that activity. For these reasons, DCM estimates no fiscal impact on DOT.

### **Local Government**

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#### Removal of Unvegetated Beach Designation

Public infrastructure (roads, parking lots, & utilities) have a minimum setback factor of sixty feet (60) or thirty (30) times the shoreline erosion rate (whichever is greater) as defined by 07H .0306(a)(2)(I). In the event that local governments need to replace or rebuild public infrastructure within an Ocean Hazard AEC, the proposed amendments will not change the CRC's approach to permitting that activity per 15A NCAC 07H .0310(a)(3). While the amendment may have a positive impact on the local government's tax base by preserving the tax value (destroyed structures may be re-built due to the seaward movement of the vegetation line), any estimate of how many structures would be re-built would be highly speculative as it would depend upon the occurrence of storms, normal deterioration and other events such as structure fires, as well as upon the individual willingness of landowners to rebuild in locations where their prior home had been destroyed or damaged.

#### Removal of Inlet Hazard AEC Designation of Mad Inlet

Currently, the IHA designation limits the density of development to no more than one commercial or residential unit per 15,000 square feet of land area and only residential structures of four units or less or non-residential structures less than 5,000 square feet. There are approximately 126 properties located in this area. Less than 10 are undeveloped. These properties would no longer be required to adhere to the density and size restrictions should they be developed or redeveloped. However, they will still be subject to local zoning restrictions as well as designation under the federal Coastal Barriers Resources Act which may also restrict development potential.

## **BENEFITS**

### **Private Property Owners**

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#### Removal of Hatteras Village Unvegetated Beach Designation

Property owners will benefit from recovery of the beachfront and the associated dunes that will allow natural conditions to dictate the siting of development as opposed to a measurement line imposed in the aftermath of a storm. The primary economic impact of this proposed rule change are potential benefits to 137 property owners of structures that may be damaged beyond 50 percent of their value and requiring a CAMA permit. Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development, requiring a CAMA permit and compliance with current CRC rules including oceanfront setback provisions. Should these property owners replace their structures, they will be able to re-build the structure based on the existing vegetation line with a possibly expanded building envelope.

### Removal of Inlet Hazards Area Designation

This action will affect property owners in the vicinity of the area formally known as Mad Inlet. The result of the removal of the designation will lift the restrictions placed on development in the area. Currently, density of development is limited to no more than one commercial or residential unit per 15,000 square feet of land area and only residential structures of four units or less or non-residential structures less than 5,000 square feet. There are approximately 126 properties located in this area. Less than 10 are undeveloped. These properties would no longer be required to adhere to the density and size restrictions should they be developed or redeveloped. This action may be beneficial to any large, not previously subdivided parcel as it could be developed at a greater density than under the Inlet Hazard Area designation. The benefit to property owners is a greater development potential. The Division, however, does not expect this impact to be substantial since less than 10 properties are undeveloped and the largest parcel of affected land is a 104 acre site that comprises the Bird Island Coastal Reserve, which is managed by the Division for conservation purposes.

### **Local Government**

This action may affect the tax base of the local government in the vicinity of the area formally known as Mad Inlet. The result of the removal of the designation will lift the Coastal Resources Commission restrictions placed on development in the area. However, local zoning and federal restrictions may affect overall development potential. The second largest property impacted, after the Bird Island Coastal reserve, is a 35 acre tract comprised of mostly open water and marshland with some high ground. This is a zone Conservation Reserve District by the Town of Sunset Beach. Development is restricted to habitat conservation and limited single family residential development. Minimum lot size is 1 acre with only half of that being buildable high ground. The entire area is also within the Waites Island Complex CBRA Unit (Coastal Barriers Resources Act) administered by the US Fish and Wildlife Service. Development in CBRA areas is ineligible for National Flood Insurance from FEMA. While some development is possible, there will still be substantial restrictions.

### **Division of Coastal Management**

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These amendments do not significantly change how various projects are reviewed or permitted by the Division of Coastal Management and the Division does not anticipate a change in permitting receipts due to the proposed action. Since the areas discussed are mostly built out, the Division does not foresee any significant increase in permit requests; therefore the Division does not expect staff to expend more time on permit activities.

### **COST/BENEFIT SUMMARY**

There will be a return to the standard practice of utilizing the first line of stable and natural vegetation in the determination of oceanfront setbacks for the Hatteras Village area. This proposed rule change would ease the setback restrictions with a return in many areas to pre-storm conditions. While there are 137 parcels in the currently designated area, the actual number of property owners who will benefit is unknown as setback delineations (based on the first line of stable and natural vegetation) are determined on a lot-by-lot basis and dependent upon the size (square footage) of development proposed for the property. However, removal of the fix measurement line will allow the use of existing vegetation to determine setbacks. As the vegetation continues to recover, building envelopes within the area will likely increase offering more opportunities for development by property owners. The Division's estimate of how many structures will be re-built would be highly speculative as it would depend upon the occurrence of storms, normal deterioration and other events such as structure fires, as well as upon the individual willingness of landowners to rebuild in locations where their prior home had been damaged or destroyed.

With regard to the Inlet Hazard designation of Mad Inlet, the amendments respond to natural changes in the environment by removing the Inlet Hazard AEC designation and its associated development restrictions for properties in the vicinity of the now closed Mad Inlet. These 126 properties would no longer be required to adhere to the density and size restrictions should they be developed or redeveloped. This action will be particularly beneficial to any large, not previously subdivided parcel as it could be developed at a greater density than under the Inlet Hazard Area designation. However, there are other restrictions including local zoning and federal designation as a CBRA unit that may limit overall development potential. As with lifting the Unvegetated Beach designation, the Division's estimate of how many properties could take advantage of the lifting of density restriction would be highly speculative. The benefit to property owners in the area of Mad Inlet is a greater development potential. Given the reliance on decisions by individual property owners that would affect future development plans on their properties, the Division does not expect there to be a significant economic impact in a 12-month period.

## APPENDIX

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area in which there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The ~~seaward~~ oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:
  - (a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line that would be established by multiplying the long-term annual erosion rate times 60, provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled “2011 Long-Term Average Annual Shoreline Rate Update” and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management; and
  - (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.
- (2) The High Hazard Flood Area. This is the area subject to high velocity waters (including hurricane wave wash) in a storm having a one percent chance of being equaled or exceeded in any given year, as identified as zone V1-30 on the flood insurance rate maps of the Federal Insurance Administration, U.S. Department of Housing and Urban Development.
- (3) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the ~~normal~~ mean low water line a distance sufficient to encompass that area within which the inlet ~~shall~~, shall migrate, based on statistical analysis, ~~migrate~~, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet and external influences such as jetties and channelization. The areas identified as suggested Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference ~~without future changes~~ and are hereby designated as Inlet Hazard Areas ~~except that the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Baldhead Island marina entrance channel. These areas are extensions for:~~
  - (a) the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald Head Island marina entrance channel; and



(b) the former location of Mad Inlet, which closed in 1997.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area ~~are not be~~ less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environment and Natural Resources, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina. Photo copies are available at no charge.

- (4) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable natural vegetation is present may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an ~~unvegetated beach area~~ Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change from wind and wave action. The areas in this category shall be designated following studies by the ~~Coastal Resources Commission~~ Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any ~~local permit officer~~ Local Permit Officer or the Division of Coastal Management.

(b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated as an ~~unvegetated beach area~~ Unvegetated Beach Area for a specific period of time. At the expiration of the time specified by the Coastal Resources Commission, the area shall return to its pre-storm designation.

~~The Commission designates as temporary unvegetated beach areas those oceanfront areas on Hatteras Island west of the new inlet breach in Dare County in which the vegetation line as shown on Dare County orthophotographs dated 4 February 2002 through 10 February 2002 was destroyed as a result of Hurricane Isabel on September 18, 2003 and the remnants of which were subsequently buried by the construction of an emergency berm. This designation shall continue until such time as stable, natural vegetation has reestablished or until the area is permanently designated as an unvegetated beach area pursuant to Sub Item 4(a) of this Rule.~~

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124;  
Eff. September 9, 1977;  
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;  
Temporary Amendment Eff. October 10, 1996;  
Amended Eff. April 1, 1997;  
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;  
Temporary Amendment Eff. October 22, 1997;  
Amended Eff. February 1, 2013; January 1, 2010, February 1, 2006; October 1, 2004;  
Amended Eff. December 1, 2013; April 1, 2004; August 1, 1998.*



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

Pat McCrory  
Governor

Braxton C. Davis  
Director

John E. Skvarla, III  
Secretary

**CRC – 14 – 06**

**MEMORANDUM**

**To:** Coastal Resources Commission  
**From:** Maureen Meehan, DCM Morehead City District Planner  
**Date:** February 7, 2014  
**Subject:** Amendment of the 2004 Town of Emerald Isle Land Use Plan

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**Recommendation:**

**Certification of the Town of Emerald Isle Land Use Plan Amendment with the determination that the Town has met the substantive requirements outlined in the 7B Land Use Plan Guidelines and that there are no conflicts with either state or federal law or the State's Coastal Management Program.**

**Overview**

The Town of Emerald Isle is requesting a future land use map amendment to their LUP, certified by the CRC on October 28, 2004. This will be the fourth amendment to the plan (amended February 12, 2009).

Subject properties being considered for this amendment are all changes from Commercial Corridor to Village West Area. There are 12 properties which are located north and south of Crew Drive extending from Coast Guard Road to Mallard Drive (the attached maps outline the exact properties). The Emerald Isle Board of Commissioners held duly advertised public hearings for the LUP amendments and voted unanimously, by resolutions, to adopt the map amendment on November 12, 2013 and December 10, 2013.

The adopted changes and proposed amendment to the LUP are outlined below:

1. **FLUM Change** – change of designations from Commercial Corridor to Village West Area. The properties are flagged on the maps attached to this memo. The subject properties currently have commercial designations, but the new classification will allow more flexibility for future development.

The public had the opportunity to provide written comments on the LUP up to fifteen business days prior to the CRC meeting, which the amendments are being considered for certification (February 6, 2014). DCM did not receive any comments.

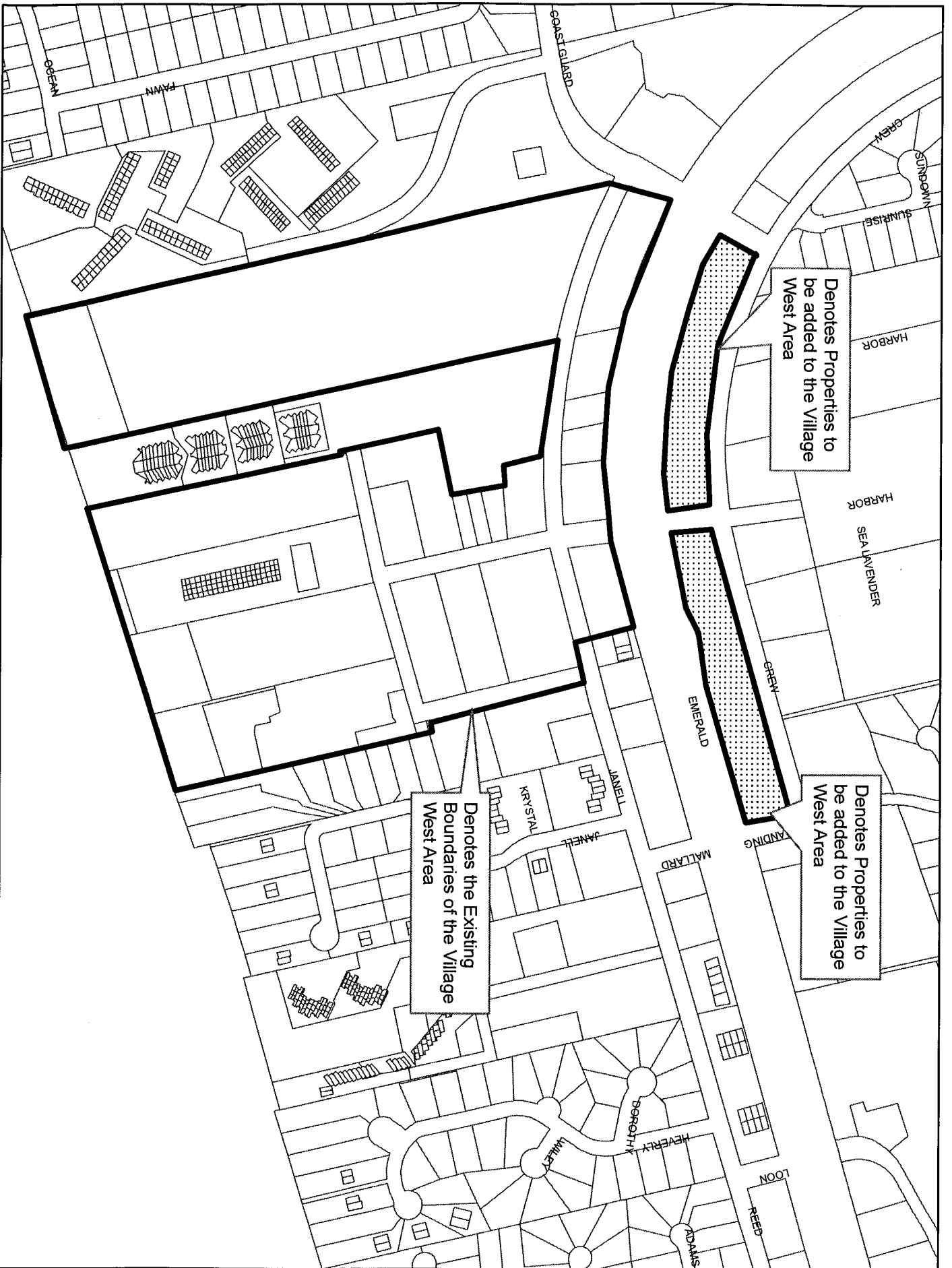
To view the full 2004 Emerald Isle Land Use Plan, go to the following link:

[http://www.nccoastalmanagement.net/Planning/under\\_review.htm](http://www.nccoastalmanagement.net/Planning/under_review.htm).

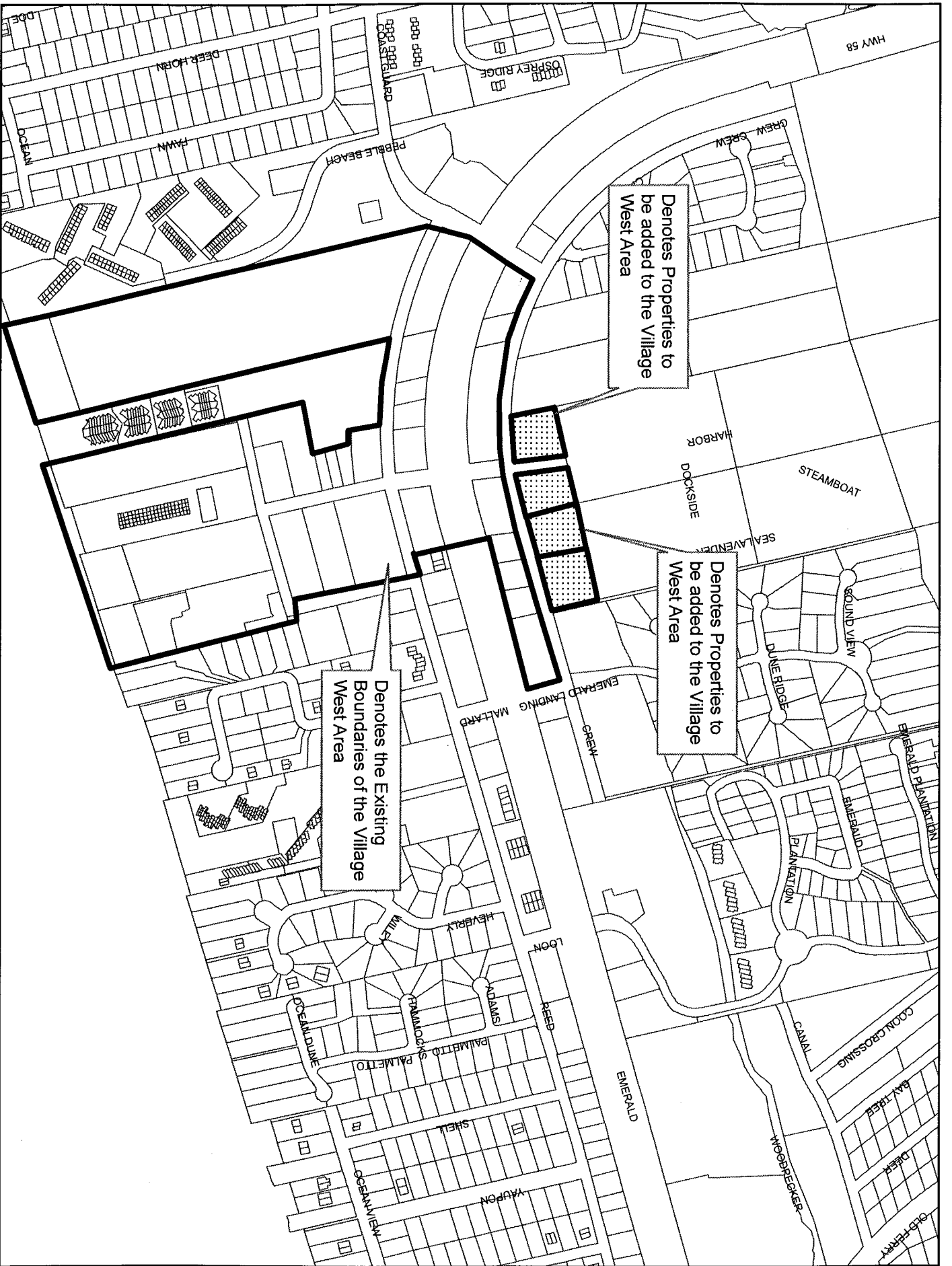
Attachment 1 – Updated Future Land Use Map Boundaries  
Attachment 2 – Resolutions adopting changes to the Land Use Plan

400 Commerce Ave., Morehead City, NC 28557-3421  
Phone: 252-808-2808 \ FAX: 252-247-3330 Internet: [www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

# Existing and Proposed Boundaries of the Village West Area



# Existing and Proposed Boundaries of the Village West Area

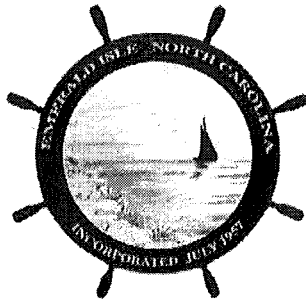


# Town of Emerald Isle

*Mayor*  
Arthur B. Schools, Jr.

*Mayor Pro-Tem*  
Floyd Messer, Jr.

*Board of Commissioners*  
Nita Hedreen  
Tom Hoover, Jr.  
John Wootten  
Maripat Wright



*Town Manager*  
Frank A. Rush, Jr.  
[frush@emeraldisle-nc.org](mailto:frush@emeraldisle-nc.org)

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## RESOLUTION AMENDING THE 2004 CAMA LAND USE PLAN

**WHEREAS**, the Town of Emerald Isle desires to amend its 2004 CAMA Land Use Plan, specifically the Future Land Use Map, in order to project the future land use of certain properties as Village West rather than Commercial Corridor, and

**WHEREAS**, the Town conducted a public hearing on the proposed amendment at a meeting of the Board of Commissioners held on November 12, 2013, and

**WHEREAS**, the Town has sufficient facility capacity to handle the proposed development of the property for mixed-use purposes, and

**WHEREAS**, the amendment to the Future Land Use Map has been evaluated for its consistency with other existing policies and no internal inconsistencies exist; and

**WHEREAS**, the amendment is consistent with the six management topics outlined in the Town's Land Use Plan, and

**WHEREAS**, the amendment is consistent with the federally approved North Carolina Coastal Management Program and the rules of the Coastal Resources Commission, and

**WHEREAS**, the amendment does not violate any State or Federal laws,

**NOW, THEREFORE, BE IT RESOLVED** by the Emerald Isle Board of Commissioners that

1. The Town's Future Land Use Map be hereby amended to project certain properties as Village West rather than Commercial Corridor, and
2. The North Carolina Coastal Resources Commission is hereby asked to certify the aforesaid amendment.

Adopted this the 12<sup>th</sup> day of November, 2013, by a vote of

Commissioner(s) Hedreen, Hoover, Messer, Wootten, Wright voting for,

Commissioner(s) \_\_\_\_\_ voting against, and

Commissioner(s) \_\_\_\_\_ absent.

Arthur B. Schools, Jr.  
Arthur B. Schools, Jr., Mayor

ATTEST:

Rhonda Ferebee  
Rhonda Ferebee, Town Clerk

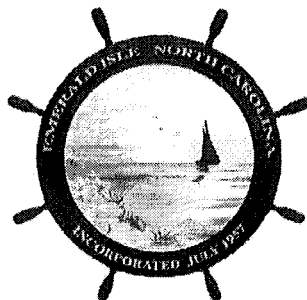


# Town of Emerald Isle

Mayor  
Eddie Barber

Mayor Pro-Tem  
Floyd Messer, Jr.

Board of Commissioners  
Nita Hedreen  
Tom Hoover, Jr.  
John Wootten  
Maripat Wright



Visit our web site at [www.emeraldisle-nc.org](http://www.emeraldisle-nc.org)!

Town Manager  
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## RESOLUTION AMENDING THE 2004 CAMA LAND USE PLAN (TO EXPAND BOUNDARIES OF THE VILLAGE WEST PLANNING AREA TO THE NORTH SIDE OF CREW DRIVE)

**WHEREAS**, the Town of Emerald Isle desires to amend its 2004 CAMA Land Use Plan, specifically the Future Land Use Map, in order to project the future land use of four lots located on the north side of Crew Drive as Village West rather than Mixed Residential and Commercial Corridor, and

**WHEREAS**, the Town conducted a public hearing on the proposed amendment at a meeting of the Board of Commissioners held on December 10, 2013, and

**WHEREAS**, the Town has sufficient facility capacity to handle the proposed development of the property for residential and commercial purposes, and

**WHEREAS**, the amendment to the Future Land Use Map has been evaluated for its consistency with other existing policies and no internal inconsistencies exist; and

**WHEREAS**, the amendment is consistent with the six management topics outlined in the Town's Plan, and

**WHEREAS**, the amendment is consistent with the federally approved North Carolina Coastal Management Program and the rules of the Coastal Resources Commission, and

**WHEREAS**, the amendment does not violate any state or federal laws,

**NOW, THEREFORE, BE IT RESOLVED** by the Emerald Isle Board of Commissioners that:

1. The Town's Future Land Use Map is hereby amended to project certain properties as Village West rather than Mixed Residential and Commercial Corridor, and
2. The North Carolina Coastal Resources Commission is hereby asked to certify the aforesaid amendment.

Adopted this the 10th day of December, 2013, by a vote of

Commissioner(s) Hedreen, Hoover, Messer, Wright voting for,

Commissioner(s) \_\_\_\_\_ voting against, and

Commissioner(s) Wooten absent.

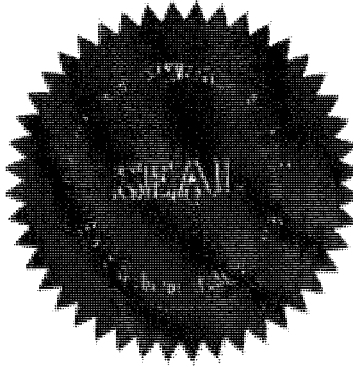
Eddie Barber

Eddie Barber, Mayor

ATTEST:

Rhonda Ferebee

Rhonda Ferebee, Town Clerk







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

Pat McCrory  
Governor

Braxton C. Davis  
Director

John E. Skvarla, III  
Secretary

CRC-14-08

January 30, 2014

**MEMORANDUM**

**TO:** Coastal Resources Commission  
**FROM:** Mike Lopazanski  
**SUBJECT:** Science Panel Origin, Role and Composition

**Background – Hurricanes and Hazard Mitigation**

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. The recommendations included 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.

The Division arranged for a panel 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) to discuss the Ocean Hazard AEC at the January 1997 CRC meeting. Dr. Cleary recommended the creation of a barrier island erosion task force to re-examine erosion rates, setbacks and associated methodologies used in their determination. Such a task force would allow scientists actively involved in related research to interact regularly and effectively with the Commission. The CRC created the task force and discussed the need for applying scientific knowledge to the problems the CRC faced as regulators. CRC Chairman Hackney stated that the Commission needed the participation of scientists who had an understanding of the coastal management program as well as 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 force and that there would need to be a clear charge from the Commission to ensure their direction.

The Division had already been planning to make coastal hazards an area of focus 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 force was incorporated into the implementation of this strategy.

### CRC Science Panel on Coastal Hazards – Formation, Members and Charge

The initial science advisory task force was assembled by DCM and began meeting in May 1997. 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 to focus 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 (three or more years out) actions, and develop recommendations for the 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 next year, a set of short- and long-term recommendations 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 included the development of an integrated hazard classification of the 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.

### Science Panel Appointments

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 in consultation with and at the discretion of

the CRC Chair. The Panel has also asked others to provide information when particular expertise was required.

### Science Panel Activities

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 & 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)
8. Mad Inlet Assessment (2013)

### Recent CRC Discussions

In late 2012, the Commission began reviewing the structure and function of the Science Panel beginning with the Charge (attached) and formalizing the appointment of members. The Charge focuses on a consensus based approach to working on assignments, four-year staggered terms, member appointment procedures as well as officer elections. The Commission also incorporated, two additional slots, the use of ad hoc members to fill specific needs, provisions for replacement due to non-participation, staggered terms and the review of a nominee's expertise and credentials. Once Panel members are formally appointed, the members will elect a Chair and Vice-Chair. The Chair and Vice-Chair serve two-year terms as officers. In order to implement staggered terms, it has been necessary for half of the existing Panel members to volunteer for two-year terms and the other half to volunteer for four-year terms which they have done. There have been two resignations due to time commitments and with the two additional slots, there are four vacancies.

### Member Qualifications

In reviewing the 2013 draft Charge, the Science Panel discussed the need for a basis for the CRC Chair to evaluate credentials of nominees, but stated that new members should not be limited to those that are published in peer-reviewed journals. For example, some practicing coastal engineers or geologists may not be published, but they may still be qualified to join the Panel. The Science Panel members recommended and the Commission agreed that new members and ad hoc members will be appointed by the CRC Chair based on a review of the nominee's relevant expertise and credentials with respect to coastal hazards processes.

In discussing the CRC's interest in expanding the Panel and possibly including an economist, the Panel members recommended that economists should be added on an ad hoc as needed basis to work on specific projects. The Science Panel has traditionally focused on oceanfront coastal hazard processes and has been balanced between coastal engineers and coastal geologists. Panel members recommended that the Commission retain that composition and focus.

### Science Panel Reports

Under the existing Charge, the CRC reviews draft Panel recommendations or reports before they are released for public comment. With regard to report format, the Panel suggested clarifying what is

expected for larger more complex reports while allowing for communication of recommendations on engineering technologies and methods in memo form. Final Panel reports are to 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 is to be included with each recommendation or report, if applicable.

### 2013 Science Panel Nominations

In order to fill vacancies, the Commission agreed to a nominations process for two categories: Science Panel slots and “ad hoc” study slots (e.g., for the Sea Level Rise Assessment Update). For the four vacant Science Panel slots, the Division issued a call for nominations letter to CRC, CRAC and Science Panel members seeking nominations for two engineers and two geologists with the charge to the Science Panel used as guidance for qualifications. Nominees were asked to provide the CRC, CRAC or Science Panel member with a resume, CV and any other qualifying information that will be forwarded to the DCM Director. The call for nominations will also request that the potential nominee be contacted prior to submission in order to ensure their interest in serving. The nominations period was open for 30 days. A subcommittee of the CRC, including the CRC Executive Committee (CRC committee chairs, CRAC Chair and Executive Secretary) and Science Panel Chair, would then review the nominees and make a recommendation to the CRC Chair. The Chair would then make the appointments known at an upcoming CRC meeting.

For the ad hoc study members, the Science Panel could indicate that they need a certain number of members with specified expertise. The Commission or Advisory Council could also suggest a number of members with specific expertise. The call for nominations would be handled and reviewed in the same manner as above, with the specifics dictated by the needs.

### Current Status

At the July 2013, the CRC agreed to re-appoint the current members of the Science Panel at the discretion of the CRC Executive Committee. However, no action has been taken on nominations received due to the legislative changes made to the Commission. A meeting of the Science Panel is currently scheduled for February 4<sup>th</sup> at the Washington DENR Regional Office. The Panel will be reviewing a methodology for determining erosion rates in inlet areas and discussing the history of Mad Inlet, local geomorphology and other factors involved in inlet formation as was requested by the Commission at December 2013 meeting.

### Current members of the Science Panel

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. Stan Riggs (Dept. of Geology, ECU)  
Mr. Spencer Rogers (NC Sea Grant)  
Dr. Antonio Rodriguez (Institute of Marine Sciences, UNC-CH)  
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).

# Charge to the Coastal Resources Commission's Science Panel on Coastal Hazards

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## **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:

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 15 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. Nominations for new members and ad hoc members may be made by CRC members, current Science Panel members, DCM staff, or the Coastal Resources Advisory Council at any public meeting of the CRC. New members and ad hoc members will be appointed by the CRC Chair based on a review of the nominee's relevant expertise and credentials with respect to coastal hazards processes. New and replacement members will be appointed as needed. Panel members should serve staggered terms of four years to ensure continuity. New member terms should be for four years, with re-appointments for additional four-year terms when mutually agreed upon by the Panel member and CRC Chair. Regular attendance or participation by other means is important, and a Panel member may be asked to step down after prolonged non-participation, or at the discretion of the CRC Chair.

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.

The outline below is a general guideline for larger reports, but not all communications between the Panel and the CRC need to follow this format. Some recommendations, such as those pertaining to new coastal engineering technologies or methods, are as simple as a memo from the Panel to the CRC.

Larger 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

## **Dissemination of Information**

Draft findings and recommendations should be released for public comment following preliminary review and approval by 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.