

# NC COASTAL RESOURCES COMMISSION

April 10-11, 2018

Dare County Government Complex

Manteo, NC

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

## Tuesday, April 10<sup>th</sup>

- 1:00 COASTAL RESOURCES ADVISORY COUNCIL MEETING (Room #168)** Greg “rudi” Rudolph, Chair
- 3:15 COMMISSION CALL TO ORDER\* (Commissioner’s Room)** Renee Cahoon, Chair
- Roll Call
  - Chair’s Comments
- 3:30 VARIANCES**
- Hunter - (*CRC-VR-18-02*), Ocean Isle Beach, 30’ buffer  
Drew Hargrove, Esq.,  
Debbie Wilson (DCM)  
Todd Roessler, Esq.
  - Sackett – (*CRC-VR-18-03*), Nags Head, Oceanfront setback  
Drew Hargrove, Esq.,  
Yvonne Carver (DCM)  
Charles Evans Esq.
- 4:45 LEGAL UPDATES**
- Update on Litigation of Interest to the Commission  
Mary Lucasse
- 5:00 RECESS**

## Wednesday, April 11<sup>th</sup>

- 8:30 COMMISSION CALL TO ORDER\* (Commissioner’s Room)** Renee Cahoon, Chair
- Roll Call
  - Chair’s Comments
  - Approval of February 13-14, 2018 Meeting Minutes
  - Executive Secretary’s Report  
Braxton Davis
  - CRAC Report  
Greg “rudi” Rudolph, Chair
- 9:00 ACTION ITEMS**
- Fiscal Analysis 7H .0308 & 7H .1704; 1705 Temporary Erosion Control Structures (*CRC-18-11*)  
Mike Lopazanski
- 9:15 BEACH AND INLET MANAGEMENT**
- Inlet Hazard Areas (*CRC-18-12*)  
Mike Lopazanski
  - CRC Science Panel IHA Delineation Update (*CRC-18-13*)  
Ken Richardson
  - Commission Discussion of IHA Management  
Heather Coats
  - State Port Inlet Management AECs (*CRC-18-14*)
- 10:45 BREAK**
- 11:00 PUBLIC INPUT AND COMMENT** Renee Cahoon, Chair
- 11:15 BEACH AND INLET MANAGEMENT CONT.**
- Hwy 12/Bonner Bridge / Hatteras Island Nourishment Projects Update  
Jerry Jennings, NCDOT
  - Review of Ocean Hazard AEC Setback Line (*CRC-18-15*)  
Ken Richardson

**12:15 OLD/NEW BUSINESS**

Renee Cahoon, Chair

**12:30 LUNCH**

**1:15 PUBLIC HEARING**

- 15A NCAC 7H .0308 Specific Use Standards & 7K .0103 Maintenance and Repair (Dune Rules)
- 15A NCAC 7K .0208 - Single Family Residences Exempted (LPO Authority)
- 15A NCAC 7H .0209 - Coastal Shorelines (Stormwater Correction)
- 15A NCAC 7B .0802 Public Hearing and Local Adoption Requirements & 7B. 0803 Certification and Use of the Plan (CRC Delegation of Certification)

**1:30 ADJOURN**

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

*\* Times indicated are only for guidance and will change. The Commission will proceed through the agenda until completed; some items may be moved from their indicated times.*



N.C. Division of Coastal Management

[www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)

Next Meeting: July 11-12, 2018

TBD



ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

TO: The Coastal Resources Commission

FROM: Drew Hargrove, Assistant General Counsel  
Christine A. Goebel, Assistant General Counsel

DATE: March 28, 2018 (for the April 10-11, 2018 CRC Meeting)

RE: **Variance Request by West P. Hunter, Jr. (CRC-VR-18-02)**

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Petitioner West P. Hunter, Jr. (“Petitioner”) owns property in Ocean Isle Beach, Brunswick County, North Carolina. The property is adjacent to man-made “Canal 8” on two sides. The property is within the Coastal Shorelines AEC, and so the first 30’ landward from normal high water is subject to the Commission’s 30-foot buffer rule, which limits impervious surfaces and development within the buffer. In January 2018, Petitioner applied for a CAMA minor permit to construct a two-story piling-supported residence on his lot. On February 1, 2018, the Ocean Isle Beach CAMA LPO denied Petitioner’s CAMA permit application as a portion of the proposed house extended into the 30-foot buffer along the south side of the lot, contrary to 15A NCAC 7H .0209(f)(10). Petitioner now seeks a variance from the 30-foot buffer rule in order to develop the house on his property as proposed.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Todd Roessler, Esq., Petitioner’s Counsel, electronically  
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically  
Keith Dycus, OIB CAMA LPO, electronically

**RELEVANT STATUTES OR RULES****APPENDIX A****15A NCAC 07H .0209 COASTAL SHORELINES**

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

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

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

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

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

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

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

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

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

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

- (i) The lot on which the proposed residential structure is to be located, is located between:
  - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
  - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
- (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
- (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
- (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
- (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

15A NCAC 2H .1019 Coastal Stormwater Rules are included at the end of the summary of positions

**STIPULATED FACTS****ATTACHMENT B**

1. Petitioner West P. Hunter, Jr. (“Petitioner”) is a Co-Trustee with Jason Brian Hunter and West P. Hunter, III, of the Brenda R. Hunter Trust (dated January 9, 2009) (the “Trust”). The Trust owns property located at 1 Raeford Street in the Town of Ocean Isle Beach (“Town”), Brunswick County, North Carolina (the “Site”). The Site is also known as Lot 25, Canal 8, Section A&B of Ocean Isle Beach per a map recorded at Cabinet H, Page 618 in the Brunswick County Registry.
2. The Trust took title to the Site through an April 19, 2011 deed recorded at Book 3154, Page 76 of the Brunswick County Registry from the Petitioner as the Executor of the Brenda R. Hunter Estate (Petitioner’s Wife). Petitioner and Brenda R. Hunter originally purchased the Site in 1987 through a November 12, 1987 deed recorded at Book 712, Page 623 of the Brunswick County Registry. Copies of these deeds are attached as stipulated exhibits.
3. The Site is 6,136 square feet or 0.14 acres in size, and the dimensions of the Site are shown on the site plan, a copy of which is attached as a stipulated exhibit. The Site is served by the Town’s sewer system. The Site is not a “small lot,” which is defined to be 5,000 square feet or less for lots served by sewer per 15A NCAC 7H .0209(d)(10)(J).
4. The Site is bounded on the south and west sides by a man-made canal that extends beyond the Site and serves as water access for the Site and other lots in the area. The Site is bounded to the north by a vacant lot (also on Raeford Street) owned by the Palmer Trust (“Palmer”), and to the south by a single-family residence located at 151 East Second Street and owned by Hiram M. and Karen J. Reynolds (“Reynolds”). The waters of the man-made canal are classified as SA-High Quality Waters (SA-HQW) by the Environmental Management Commission, and are closed to the harvest of shellfish by the Marine Fisheries Commission. There are no wetlands identified on the Site.
5. The proposed home on the Site is located within the Coastal Shorelines Area of Environmental Concern (“AEC”), and pursuant to N.C.G.S. 113A-118, the proposed home development requires a permit issued pursuant to the Coastal Area Management Act (“CAMA”).
6. The Site is currently cleared and undeveloped as far as a residence, but there is a concrete bulkhead along the entire shoreline of the Site. Additionally, there is an existing t-head pier and floating dock located on the west side of the Site, which was constructed pursuant to CAMA General Permit #64671D issued on June 12, 2015, a copy of which is attached.
7. On or about January 16, 2018, Petitioner applied to the Town of Ocean Isle Beach’s CAMA Local Permit Officer (“LPO”) for a CAMA minor permit to undertake the development of a single-family residence on the Site. A copy of the permit application materials is attached as a stipulated exhibit.

8. Petitioner has entered into a purchase and sale agreement for the Site, and if this variance is granted, Petitioner will sell the Site. It is the Petitioner's understanding that the purchaser plans to build a single-family residence consistent with the proposed plans.

9. The proposed house will be a piling-supported, two-story structure with an interior first floor area of 2,131 square feet (36' x 59.2') and a Total Floor Area of 4,262 with a second story. The eaves of the roof are proposed to extend two-feet beyond the exterior walls, and the proposed building footprint at the roofline is 2,530 square feet (40' x 63.2'). Copies of the proposed plan view and profile view are attached as stipulated exhibits.

10. Petitioner's proposed single-family residences exceeds the Commission's "Small House" Exception, 15A NCAC 7H .0209(d)(10)(I) because the proposed footprint of the house measured at the drip line is in excess of 1,200 square feet (at 2,530 square feet), and also does not meet other requirements of a "small house."

11. The Site is subject to the Commission's buffer rules applicable to coastal shorelines set forth at 15A NCAC 7H .0209(d)(10) (the "30-foot buffer rule"), which was promulgated in 1999. The 30-foot buffer rule is measured 30-feet landward from the normal high water level, which at this Site, is located at the concrete bulkhead, and it's location marked by the LPO is shown on the Site plan, attached. Town Code Section 66-45(6), attached, limits the heated square feet of a single-family residence to "no more than 50 percent of the total deeded lot area." The lot is 6,136 square feet; therefore, the maximum heated square feet is 3,068 square feet.

12. In addition to the 30-foot buffer rule, local zoning requires a 25-foot setback from the front and rear property line and a 7-foot setback from each of the side property lines. See Town Code Section 66-45(3), attached. As indicated in a letter dated February 9, 2018 from the Town, the proposed development on the Lot meets applicable Town requirements, including the setback requirements. A copy of the letter is attached as a stipulated exhibit.

13. The Town has a stormwater ordinance found at Code Section 49-33, attached. In order to comply with the Town's stormwater ordinance, Petitioner has proposed an engineered stormwater system to be located on the northern boundary of the lot within the Town's 7-foot setback and underneath the proposed driveway outside of the Commission's 30-foot buffer.

14. Application of the 30-foot buffer rule and the Town's setbacks results a building footprint of approximately 16' by 59.2' or 947 square feet in area.

15. As part of the CAMA minor permit review process, notice of the proposed development was sent to adjacent riparian owners, Palmer and Reynolds. The LPO received questions about the proposed development from the Reynolds, but did not receive any objections to the proposed development.

16. On February 1, 2018, the LPO denied Petitioner's CAMA minor development permit finding that the proposed development along the south side of the Site is inconsistent with the 30-foot buffer rule found at 15A NCAC 7H .0209(d)(10). The proposed house meets the 30-foot buffer along the west side of the Site. A copy of the denial letter is attached as a stipulated exhibit.

17. If the Commission grants the variance, Petitioner is committed to constructing, maintaining and operating the proposed engineered stormwater system that will meet State specifications (found at 15A NCAC 7H .0209(d)(10)(j)(iv) and 15A NCAC 2H .1000 et seq.) and Town specifications (found at OIB Code Section 49-33, attached). A copy of a letter dated January 8, 2018 to Petitioner from Intracoastal Engineering, PLLC, detailing the proposed engineered stormwater system is attached as a stipulated exhibit.

18. As part of the CAMA Variance process, notice to the adjacent riparian neighbors and anyone who commented on the application is required per 15A NCAC 7J .0701 (c)(7). See the attached notices of the variance request sent to Palmer and Reynolds dated February 21, 2018, and attached as stipulated exhibits. If any responses are received before the variance hearing, they will be shared with the Commission.

19. As part of the CAMA Variance process, the Commission's rules require that "[b]efore filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the Property." 15A NCAC 7J .0701(a). Petitioner's proposed design meets the Town's front (25'), rear (25'), and side (7') setbacks. Any variance from the front and rear setbacks would not change the intrusion into the south side setback. Petitioner could have sought a variance from the Town's 7' north side setback and shift the house north, but that would preclude placing the stormwater system within that side setback area as proposed.

20. Two of the exceptions to the 30-foot buffer rule provided for in the Commission's rules are generally relevant to the Commission's consideration of this variance but are not met.

The "small-lot exception" applies to lots platted before 1999 and which are 5,000 square feet or less (if served by sewer as this is) per 15A NCAC 7H .0209(d)(10)(J). This lot is 6,136 square feet and also does not meet other criteria for use of this exception.

The "small-house exception" allows residential structures with a 1,200 square feet footprint on lots platted prior to 1999 (as this Site is), but anticipates single frontage lots and not double-frontage lots such as this. Additionally, the proposed house has a footprint of 2,530 square feet, so it is larger than a "small-house."

21. Without a variance from the Commission of its 30-foot buffer rule, the available building footprint is 16' x 59.2' long or 947 square feet (or 1,894 TFA when doubled for a two-story structure).

22. The Site is shown on aerial and ground-level photos of the site contained in a Powerpoint presentation, attached as a stipulated exhibit.

#### STIPULATED EXHIBITS

- A. 2011 Deed to Trust 3154/76
- B. 1987 Hunter Deed 712/623
- C. Site Plan Reviewed by LPO
- D. 2015 CAMA General Permit #64671D for pier
- E. CAMA Minor Permit application materials
- F. OIB Town Code Sections 49-33 (stormwater), 66-45(6) (max heated area)
- G. Notice to Adjacent Riparian Owners during permit review and email confirmation of LPO
- H. February 1, 2018 Denial
- I. January 8, 2018 letter to Petitioner from Intracoastal engineering, PLLC re: stormwater
- J. Notice to Adjacent Riparian Owners of variance request with delivery confirmation info
- K. Powerpoint Presentation

**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 Petitioner will suffer unnecessary hardship from strict application of the Coastal Resources Commission's (the "Commission") 30-foot buffer rule (15A NCAC 7H .0209(d)(10)) to the Petitioner's property and the Commission's procedural requirement to seek relief from local requirements restricting use of the property before filing a petition for a variance from a rule of the Commission (15A NCAC 7J .0701(a)). If the Commission's 30-foot buffer rule is strictly applied to the Petitioner's lot, the Petitioner will be unable to build a single-family dwelling on the lot. If the Commission's procedural requirement to first seek a local variance is strictly applied, the Petitioner will be required to seek a local variance even though the proposed development is in compliance with all applicable ordinances of the Town of Ocean Isle Beach (the "Town") and (in this case) seeking a local variance would not achieve the objective of eliminating or reducing the need for a variance from the Commission.

Petitioner's lot is bounded by water on two sides (south and west), which results in a lot width of approximately 50 feet. Local zoning requires a 25-foot setback from the front and rear property line and a 7-foot setback from each of the side property lines. See Town Code Section 66-45(3). Without a variance, CAMA rules require a 30-foot setback from the normal high water line on the south side of the lot and the western back of the lot. See 15A NCAC 7H .0209(d)(10). If strictly applied, the setbacks leave a buildable lot width of approximately 16 feet.

Application of the Commission's 30-foot buffer rule on the Petitioner's lot is negatively affected by the man-made canal located on two sides of the lot. This creates a narrow lot, and strict application of the Commission's 30-foot buffer rule would prevent the Petitioner from building a single-family dwelling on the lot, which would cause unnecessary hardship to the Petitioner.

With respect to the procedural requirement to first seek a local variance, the proposed development is in compliance with all applicable Town ordinances, and the proposed single-family dwelling cannot be moved to the north to encroach into the Town's 7-foot setback because the proposed engineered stormwater system is proposed to be located in this area. There is no other location on the lot where the engineered stormwater system could be located outside the Commission's 30-foot buffer. The Town supports the Petitioner's request to seek a variance from the Commission without first seeking a variance from the Town.

**Staff's Position: Yes.**

Staff agrees that strict application of the local variance requirement of 7J.0701 will cause Petitioner unnecessary hardships, as seeking a variance from the 7' side setback on the north side of the Site where the engineered stormwater system is proposed will not reduce the need for a variance from the Commission to any significant degree.

As to the 30' Buffer variance request, Staff agrees that Petitioner will suffer an unnecessary hardship from a strict application of the Commission's 30-foot buffer rule to Petitioner's property, where it would result in a building envelope 16' wide (north to south), which is a narrow distance for building a standard single-family residence.

**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 unnecessary hardship results from conditions peculiar to Petitioner's property. The Petitioner's property is bounded by water on two sides (south and west). The strict application of the Commission's 30-foot buffer rule on two sides of the lot creates an extremely narrow buildable area on the lot.

**Staff's Position: Yes.**

Staff agree that any hardship results from the application of the 30' Buffer to two sides of this lot which is a condition peculiar to the property, on this lot, it creates a 16' wide building envelope without a variance.

**III. Do the hardships result from the actions taken by the Petitioner? Explain.****Petitioner's Position: No.**

The unnecessary hardship does not result from actions taken by the Petitioner. The lot was created by recordation of a subdivision map on September 10, 1976. Petitioner and his wife acquired the lot on June 27, 1987 before the Commission's 30-foot buffer rule was promulgated in 1994.

**Staff's Position: No.**

While Petitioner took title to this property in 1987, before the Commission's 30-foot buffer rule was promulgated, Petitioner now seeks to maximize the buildable area of the lot by requesting a variance from the 30' Buffer for the full width of the lot between the Town's 7' side setbacks, while meeting the 30' Buffer only on the west side of the lot. Staff agree above that strict application of the Buffer causes hardships where it results in a 16' wide envelope, but Staff also believes that Petitioner's proposed layout of a footprint which maximizes the full 36' width of the lot contributes to Petitioner's hardships, where Petitioner proposes a footprint of 2,530 square feet, far surpassing the Commission's "small-house" standard of a 1,200 square foot footprint.

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

**Petitioner's Position: Yes.**

The variance requested by the Petitioner is consistent with the spirit, purpose and intent of the Commission's 30-foot buffer rule. The principal purposes of the Commission's 30-foot buffer rule are to reduce stormwater runoff from development that is located near coastal shorelines, to protect the ecological values of areas near coastal shorelines, and to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines. See 15A NCAC 7H .0209(c). The Petitioner's lot is bounded by a man-made canal on two sides (south and west). The entire coastal shoreline of the lot is bulkheaded, which reduces the risk of erosion. If the variance is granted, the site will be developed to meet the stormwater requirements set forth in the CAMA rules and the Town of Ocean Isle Beach's stormwater ordinance. An engineered stormwater system would be located along the northern boundary of the property and underneath the driveway outside the Commission's 30-foot buffer. The proposed engineered stormwater system would maintain runoff from the site at pre-development levels, even during a ten-year storm. A letter describing the stormwater requirements and proposed engineered stormwater system is attached as Exhibit G-2.

The variance requested by the Petitioner from the procedural requirement to first seek a local variance is consistent with the spirit, purpose and intent of the Commission's procedural requirement to first seek local relief. The purpose of this procedural requirement is to eliminate or reduce the need for a variance from the Commission's rules. If a local government relaxes local requirements (i.e., street-side setback or adjacent property setbacks), the proposed development could be sited farther landward. However, in this case, the proposed development cannot be moved within the Town's 7-foot setback unless the proposed engineered stormwater system is moved to another location on the lot, which would be within the Commission's 30-foot buffer. Therefore, seeking a local variance would not achieve the objective of eliminating or reducing the need for a variance from the Commission.

The variance proposed by the Petitioner will have no adverse effect on public safety and welfare.

The variance proposed by the Petitioner will preserve substantial justice by allowing a reasonable use of the lot, which was created before the Commission's 30-foot buffer rule became effective, and by allowing the Petitioner to seek a variance from this Commission without first seeking a local variance that would not eliminate or reduce the need for a variance from the Commission.

**Staff’s Position: Yes.**

On balance, Staff believes that the variance requested by Petitioner is consistent with the spirit, purpose, and intent of the Commission’s buffer rule.

Petitioner is correct that the stated significance of the Commission’s 30’ Buffer includes limiting development on the shorelines which “serve as barriers against flood damage and control erosion between the estuary and the uplands.” (15A NCAC 7H .0209(b)) These areas also serve as habitat “for many valuable commercial and sport fisheries of the coastal area.” The Commission’s 30’ Buffer rule is intended “to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system.”

Petitioner has addressed one of the purposes of the 30’ Buffer, which is protecting water quality by creating a buffer between a waterbody and any impervious surfaces which would lead to stormwater runoff into the marine environment through an engineered stormwater system which meets the standards of the applicable Town ordinance and state stormwater law by collecting the first 1.5” of rainfall from all impervious surfaces.

However, Petitioner also maximizes the footprint on the lot, including 1,385 square feet within the 30’ Buffer instead of minimizing impacts to the buffer and contemplated by the Commission’s rule and this variance criteria. While a 16’ width allowed without a variance is a hardship, Staff has concerns that Petitioner’s request seeking the full 36’ between the 7’ side setbacks may go beyond the spirit of the buffer rule. Staff continue to have concerns about this request for that reason.

If the stormwater system was built to handle 100% of the impervious surfaces on the lot and was maintained for the life of the structure, Staff agree that a variance would preserve public safety and welfare. However, in not minimizing impacts to the buffer without explanation, Staff believe substantial justice will be preserved by granting the variance.

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**As requested by the Commission in the past for buffer variances, Staff includes the stormwater management-related conditions which have been placed on some prior variances issued by the Commission below.**

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

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

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

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

**15A NCAC 02H .1019 COASTAL COUNTIES**

The purpose of this Rule is to protect surface waters in the 20 Coastal Counties from the impact of stormwater runoff from new development.

- (1) Implementing Authority. This Rule shall be implemented by:
  - (a) local governments and other entities within the 20 Coastal Counties that are required to implement a Post-Construction program as a condition of their NPDES permits;
  - (b) local governments and state agencies that are delegated to implement a stormwater program pursuant to G.S. 143-214.7(c) and (d); and
  - (c) the Division in all other areas where this Rule applies.
- (2) APPLICABILITY OF THIS RULE. This Rule shall apply to the following types of developments within the Coastal Counties:
  - (a) projects that require an Erosion and Sedimentation Control Plan pursuant to G.S. 113A-57;
  - (b) projects that require a Coastal Area Management Act (CAMA) Major Development Permit pursuant to G.S. 113A-118; and
  - (c) projects that do not require either an Erosion and Sedimentation Control Plan or a CAMA Major Development Permit, but meet one of the following criteria:
    - (i) nonresidential projects that propose to cumulatively add 10,000 square feet or more of built-upon area; or
    - (ii) residential projects that are within ½ mile of and draining to SA waters, and propose to cover 12 percent or more of the undeveloped portion of the property with built-upon area.
- (3) EFFECTIVE DATES. The effective dates are as follows:
  - (a) for prior Rule .1000 of this Section, January 1, 1988;
  - (b) for prior Rule .1005 of this Section, September 1, 1995;
  - (c) for S.L. 2006-264, August 16, 2006; and
  - (d) for S.L. 2008-211, October 1, 2008.

Prior versions of these rules are available for no cost on the Division's website at <http://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permits/stormwater-program>.
- (4) GENERAL REQUIREMENTS FOR ALL PROJECTS. In addition to the requirements of this Rule, development projects shall also comply with the requirements set forth in Rule .1003 of this Section.
- (5) DETERMINATION OF WHICH COASTAL STORMWATER PROGRAM APPLIES.
  - (a) SA WATER. SA Water requirements shall apply to projects located within one-half mile of and draining to waters classified as SA-HQW or SA-ORW per 15A NCAC 02B .0301.
    - (i) The SA boundary shall be measured from either the landward limit of the top of bank or the normal high water level. In cases where a water is listed on the Schedule of Classifications, but the applicant provides documentation from the Division of Water Resources or the U.S. Army Corps of Engineers that the water is not present on the ground, the applicant shall not be subject to the SA requirements of this Rule.
    - (ii) An SCM with any portion of its drainage area located within the SA waters boundary shall be designed to meet SA water requirements.
  - (b) FRESHWATER ORW. Freshwater ORW requirements shall apply to projects that drain to waters classified as B-ORW and C-ORW per 15A NCAC 02B .0301.
  - (c) OTHER COASTAL COUNTY WATER. If a project does not meet the applicability requirements for Sub-Items (5)(a) or (b) of this Rule, then it shall be subject to the [other Coastal County Water requirements set forth in Item (6) of this Rule.
  - (d) PROJECTS THAT ARE SUBJECT TO TWO OR MORE COASTAL STORMWATER PROGRAMS. Projects with portions that are located within two or more coastal stormwater program boundaries shall meet the applicable requirements of Item (6) inside each of the project's portions.
- (6) STORMWATER REQUIREMENTS. Depending on the applicable program pursuant to Item (5) of this Rule, the following stormwater requirements shall apply:

- (a) **SUMMARY OF COASTAL PROGRAM REQUIREMENTS.** The requirements shall be in accordance with the following table:

Program that Applies	Maximum BUA for Low Density	Required Storm Depth for High Density Projects	Additional Special Provisions
SA Water that is SA-HQW	12%	One-year, 24-hour storm	SCMs for High Density SA Projects per Item (7) of this Rule
SA Water that is SA-ORW	12%	One-year, 24-hour storm	SCMs for High Density SA Projects per Item (7) of this Rule; and Density Requirements for SA-ORW Projects per Item (8) of this Rule
Freshwater ORW	12%	1.5 inch storm	None
Other Coastal County Water	24%	1.5 inch storm	None

- (b) **VEGETATED SETBACKS.** For all subject projects within the Coastal Counties, vegetated setbacks from perennial waterbodies, perennial streams, and intermittent streams shall be at least 50 feet in width for new development and at least 30 feet in width for redevelopment and shall comply with Rule .1003(4) of this Section.
- (7) **SCMS FOR SA WATER HIGH DENSITY PROJECTS REQUIREMENTS.** High density projects subject to SA water requirements shall use one of the following approaches for treating and discharging stormwater:
- (a) **RUNOFF VOLUME MATCH.** The project shall achieve runoff volume match, and excess runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (b) **RUNOFF TREATMENT WITH NON-DISCHARGING SCMs.** SCM(s) shall provide runoff treatment without discharging in excess of the pre-development conditions during the one-year, 24-hour storm event. The runoff volume in excess of the one-year, 24-hour runoff volume shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (c) **RUNOFF TREATMENT WITH DISCHARGING SCMs.** SCM(s) shall provide runoff treatment for the difference between the pre- and post-development runoff volumes for the one-year, 24-hour storm event and meet the following requirements:
- (i) documentation shall be provided that it is not feasible to meet the MDC for infiltrations systems as set forth in Rule .1051 of this Section;
- (ii) the stormwater shall be filtered through a minimum of 18 inches of sand prior to discharge;
- (iii) the discharge from the SCM shall be directed to either a level spreader-filter strip designed as set forth in Rule .1059 of this Section, a swale that fans out at natural grade, or a natural wetland that does not contain a conveyance to SA waters; and
- (iv) the runoff volume in excess of the one-year, 24-hour storm event shall be released at a non-erosive velocity at the edge of the vegetated setback or to an existing stormwater drainage system.
- (8) **DENSITY REQUIREMENTS FOR SA-ORW PROJECTS.** The following shall apply:
- (a) For the entire project, the percentage built-upon area shall not exceed 25 percent.

- (b) For the portion of a project that is within 575 feet of SA-ORW waters, the percentage built-upon area shall not exceed 25 percent for high density projects and shall not exceed 12 percent for low density projects.

*History Note: Authority G.S. 143-214.1; 143-214.5; 143-215.3(a)(1);  
Eff. January 1, 2017 (portions of this rule previously codified in 15A NCAC 02H .1005).*

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



KILPATRICK TOWNSEND & STOCKTON LLP  
www.kilpatricktownsend.com

Suite 1400 4208 Six Forks Road  
Raleigh NC 27609  
t 919 420 1700 f 919 420 1800

Todd S. Roessler  
direct dial 919 420 1726  
direct fax 919 510 6121  
TROessler@KilpatrickTownsend.com

February 21, 2018

*Via First Class Mail and Email*

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

**Re: CAMA Variance Petition – West P. Hunter, Jr., Brunswick County**

Dear Mr. Davis:

Please find enclosed a CAMA variance petition on behalf of West P. Hunter, Jr. Mr. Hunter is seeking to build a single-family residence on a lot located at 1 Raeford Street, Ocean Isle Beach, North Carolina and is seeking a variance from CAMA's 30-foot buffer rule (15A NCAC 7H .0209(d)(10)) and CAMA's procedural requirement to first seek a local variance (15A NCAC 7J .0701(a)). Please schedule this variance petition for the April 10-11, 2018 Coastal Resources Commission meeting. I have enclosed the CAMA Variance Request Form and supporting documents.

Thank you for consideration of this request and please let me know if you need any additional information.

Sincerely,

KILPATRICK TOWNSEND & STOCKTON LLP

Todd S. Roessler  
*Attorney for Petitioner West P. Hunter, Jr.*

Enclosures

cc: Christy Goebel  
West P. Hunter, Jr.

13897868V.1

## CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: \_\_\_\_\_

PETITIONER'S NAME West P. Hunter, Jr.  
 COUNTY WHERE THE DEVELOPMENT IS PROPOSED Brunswick County, 1  
Raeford Street, Ocean Isle Beach, North Carolina

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](http://www.nccoastalmanagement.net)

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

## VARIANCE CRITERIA

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

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships. See attached.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain. See attached.
- (c) Do the hardships result from actions taken by the petitioner? Explain. See attached.
- (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. See attached.

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

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

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

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

	<u>2/21/18</u>
_____ Signature of Petitioner or Attorney	_____ Date
<u>Todd S. Roessler</u>	<u>TRoessler@KilpatrickTownsend.com</u>
_____ Printed Name of Petitioner or Attorney	_____ Email address of Petitioner or Attorney
<u>4208 Six Forks Road, Suite 1400</u>	<u>(919) 420-1726</u>
_____ Mailing Address	_____ Telephone Number of Petitioner or Attorney
<u>Raleigh, NC 27609</u>	<u>(919) 510-6121</u>
_____ City State Zip	_____ Fax Number of Petitioner or Attorney

**DELIVERY OF THIS HEARING REQUEST**

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

Contact Information for DCM:**By mail, express mail or hand delivery:**

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

**By Fax:**

(252) 247-3330

**By Email:**

Check DCM website for the email  
address of the current DCM Director  
**[www.nccoastalmanagement.net](http://www.nccoastalmanagement.net)**

Contact Information for Attorney General's Office:**By mail:**

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

**By express mail:**

Environmental Division  
114 W. Edenton Street  
Raleigh, NC 27603

**By Fax:**

(919) 716-6767

Revised: July 2014

## EXHIBIT C-1

West P. Hunter, Jr. Variance Petition  
Description of Proposed Development

The Petitioner proposes to build a single-family residence on a lot located at 1 Raeford Street in Ocean Isle Beach, Brunswick County, North Carolina. The lot is bounded to the south and to the west by a man-made canal that provides water access to lots in the area. The proposed house will be elevated on pilings with two heated living floors of 36 feet by 59.2 feet for a total of up to 4,262 square feet of heated living space, dependent on actual construction details and optional porches as shown in Exhibit C-2. The proposed building footprint is 2,131 square feet. The eaves of the roof will extend two-feet beyond the exterior walls. The area covered by the roof drip line would be 2,530 square feet. As proposed, 1,385 square feet of impervious roof area and 458 square feet of gravel driveway would be located within the Commission's 30-foot buffer. An engineered stormwater system would be located on the northern boundary of the lot within the Town's 7-foot setback and underneath the proposed driveway outside of the Commission's 30-foot buffer. A bulkhead exists along the entire waterfront of the lot. A site location, plan view and profile view are attached as Exhibits C-2 and C-3.

## EXHIBIT D

West P. Hunter, Jr. Variance Petition  
Stipulation

Petitioner, West P. Hunter, Jr., through his attorney, Todd S. Roessler, stipulates that the proposed development that is the subject of this variance petition is inconsistent with Coastal Resource Commission Rules 15A NCAC 7H .0209(d)(10) and 15A NCAC 7J .0701(a).

## EXHIBIT F-1

West P. Hunter, Jr. Variance Petition  
Local Variance Requirement

The Petitioner is seeking a variance from the procedural requirement set forth at 15A NCAC 7J .0701(a), which requires the Petitioner to first seek relief from local requirements restricting use of the property before filing a petition for a variance from a rule of the Coastal Resources Commission (the "Commission").

The Petitioner will suffer unnecessary hardship from strict application of this procedural requirement. If the Commission's procedural requirement to seek a local variance before filing a petition for a variance from the Commission's 30-foot buffer rule is strictly applied, the Petitioner will be required to seek a local variance even though the proposed development is in compliance with all applicable ordinances of the Town of Ocean Isle Beach (the "Town"). Not only is the proposed development in compliance with all applicable Town ordinances, the proposed single-family dwelling cannot be moved to the north to encroach into the Town's 7-foot setback because the proposed engineered stormwater system is proposed to be located in this area. There is no other location on the lot where the engineered stormwater system could be located outside the Commission's 30-foot buffer. The Town supports the Petitioner's request to seek a variance from the Commission without first seeking a variance from the Town. A letter dated February 9, 2018 from the Town supporting the Petitioner's request for a variance from this procedural requirement is attached.

Because the Petitioner's property is bounded by water on two sides (south and west), this unnecessary hardship is a result of conditions peculiar to Petitioner's property.

This unnecessary hardship does not result from actions taken by the Petitioner. The lot was created by recordation of a subdivision map on September 10, 1976. Petitioner and his wife acquired the lot on June 27, 1987 before the Commission's 30-foot buffer rule was promulgated in 1994.

The variance requested by the Petitioner is consistent with the spirit, purpose and intent of the Commission's procedural requirement to first seek local relief. The purpose of this procedural requirement is to eliminate or reduce the need to seek a variance from the Commission's rules. If a local government relaxes local requirements (*i.e.*, street-side setback or adjacent property setbacks), the proposed development could be sited farther landward.

The issue with Petitioner's proposed development and need to seek a variance is related to the width of the lot. If the Petitioner sought a variance from the Town's 7-foot setback on the northern side of the property, the single-family dwelling could *theoretically* be moved to the north, reducing the encroachment in the Commission's 30-foot setback. However, the proposed engineered stormwater system (which is required by law and will maintain stormwater runoff from the lot at pre-development levels) is proposed to be located in this area. There is no location (other than within the Commission's 30-foot buffer) on the lot where the proposed

engineered stormwater system can be located. Therefore, the proposed single-family dwelling could not be moved farther landward, and a variance from this procedural requirement is consistent with the spirit, purpose and intent of the Commission's rule.

The variance proposed by the Petitioner will have no adverse effect on public safety and welfare.

The variance proposed by the Petitioner will preserve substantial justice by allowing the Petitioner to proceed with the variance request from the Commission's 30-foot buffer rule without first seeking a local variance, which in this case would not achieve the objective of eliminating or reducing the need for a variance from the Commission.

## EXHIBIT G-1

West P. Hunter, Jr. Variance Petition  
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 Petitioner will suffer unnecessary hardship from strict application of the Coastal Resources Commission's (the "Commission") 30-foot buffer rule (15A NCAC 7H .0209(d)(10)) to the Petitioner's property and the Commission's procedural requirement to seek relief from local requirements restricting use of the property before filing a petition for a variance from a rule of the Commission (15A NCAC 7J .0701(a)). If the Commission's 30-foot buffer rule is strictly applied to the Petitioner's lot, the Petitioner will be unable to build a single-family dwelling on the lot. If the Commission's procedural requirement to first seek a local variance is strictly applied, the Petitioner will be required to seek a local variance even though the proposed development is in compliance with all applicable ordinances of the Town of Ocean Isle Beach (the "Town") and (in this case) seeking a local variance would not achieve the objective of eliminating or reducing the need for a variance from the Commission.

Petitioner's lot is bounded by water on two sides (south and west), which results in a lot width of approximately 50 feet. Local zoning requires a 25-foot setback from the front and rear property line and a 7-foot setback from each of the side property lines. *See* Town Code Section 66-45(3). Without a variance, CAMA rules require a 30-foot setback from the normal high water line on the south side of the lot and the western back of the lot. *See* 15A NCAC 7H .0209(d)(10). If strictly applied, the setbacks leave a buildable lot width of approximately 16 feet.

Application of the Commission's 30-foot buffer rule on the Petitioner's lot is negatively affected by the man-made canal located on two sides of the lot. This creates a narrow lot, and strict application of the Commission's 30-foot buffer rule would prevent the Petitioner from building a single-family dwelling on the lot, which would cause unnecessary hardship to the Petitioner.

With respect to the procedural requirement to first seek a local variance, the proposed development is in compliance with all applicable Town ordinances, and the proposed single-family dwelling cannot be moved to the north to encroach into the Town's 7-foot setback because the proposed engineered stormwater system is proposed to be located in this area. There is no other location on the lot where the engineered stormwater system could be located outside the Commission's 30-foot buffer. The Town supports the Petitioner's request to seek a variance from the Commission without first seeking a variance from the Town.

**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 unnecessary hardship results from conditions peculiar to Petitioner's property. The Petitioner's property is bounded by water on two sides (south and west). The strict application of the Commission's 30-foot buffer rule on two sides of the lot creates an extremely narrow buildable area on the lot.

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

**Petitioner's Position:** No.

**Petitioner's Argument:** The unnecessary hardship does not result from actions taken by the Petitioner. The lot was created by recordation of a subdivision map on September 10, 1976. Petitioner and his wife acquired the lot on June 27, 1987 before the Commission's 30-foot buffer rule was promulgated in 1994.

**4. Will the variance requested by the Petitioner (a) be consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission; (b) secure public safety and welfare; and (c) preserve substantial justice?**

**Petitioner's Position:** Yes.

**Petitioner's Argument:** The variance requested by the Petitioner is consistent with the spirit, purpose and intent of the Commission's 30-foot buffer rule. The principal purposes of the Commission's 30-foot buffer rule are to reduce stormwater runoff from development that is located near coastal shorelines, to protect the ecological values of areas near coastal shorelines, and to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines. *See* 15A NCAC 7H .0209(c). The Petitioner's lot is bounded by a man-made canal on two sides (south and west). The entire coastal shoreline of the lot is bulkheaded, which reduces the risk of erosion. If the variance is granted, the site will be developed to meet the stormwater requirements set forth in the CAMA rules and the Town of Ocean Isle Beach's stormwater ordinance. An engineered stormwater system would be located along the northern boundary of the property and underneath the driveway outside the Commission's 30-foot buffer. The proposed engineered stormwater system would maintain runoff from the site at pre-development levels, even during a ten-year storm. A letter describing the stormwater requirements and proposed engineered stormwater system is attached as Exhibit G-2.

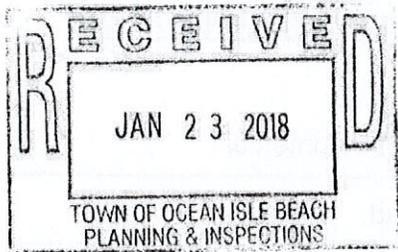
The variance requested by the Petitioner from the procedural requirement to first seek a local variance is consistent with the spirit, purpose and intent of the Commission's procedural requirement to first seek local relief. The purpose of this procedural requirement is to eliminate or reduce the need for a variance from the Commission's rules. If a local government relaxes local requirements (*i.e.*, street-side setback or adjacent property setbacks), the proposed development could be sited farther landward. However, in this case, the proposed development

cannot be moved within the Town's 7-foot setback unless the proposed engineered stormwater system is moved to another location on the lot, which would be within the Commission's 30-foot buffer. Therefore, seeking a local variance would not achieve the objective of eliminating or reducing the need for a variance from the Commission.

The variance proposed by the Petitioner will have no adverse effect on public safety and welfare.

The variance proposed by the Petitioner will preserve substantial justice by allowing a reasonable use of the lot, which was created before the Commission's 30-foot buffer rule became effective, and by allowing the Petitioner to seek a variance from this Commission without first seeking a local variance that would not eliminate or reduce the need for a variance from the Commission.

**ATTACHMENT E:**  
**STIPULATED EXHIBITS INCLUDING POWERPOINT**



B3154 P0076 04-18-2011 10:40:40.000  
Brenda N. Clemmons PROP  
Brunswick County, NC Register of Deeds page 1 of 3

Presenter Andrea Lindley Rel: May  
Total 25.00 Rev 0 int 24  
Ck \$ 25.00 Cl 9.882 Ckns \$  
Refund: \_\_\_\_\_ Finance \_\_\_\_\_  
 Portions of original condition  
 Document made from original instrument (not reproduced or copied)

DEED PREPARATION ONLY - NO TITLE EXAMINATION

R.S. §-0-

Tax Lot No. \_\_\_\_\_ Parcel Identifier No. 244PL025 and 244OH013  
Verified by \_\_\_\_\_  
County on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_

Mail after recording to \_\_\_\_\_  
This instrument was prepared by Gray Layton Kersh Solomon Furr & Smith, P.A.

Brief Description for the index

NORTH CAROLINA SPECIAL WARRANTY DEED

THIS DEED made 18 day of April, 2011, by and between

GRANTOR  
WEST P. HUNTER, JR., Executor of  
the Estate of Brenda R. Hunter

GRANTEE  
WEST PORTER HUNTER, JR., JASON  
BRIAN HUNTER and WEST PORTER HUNTER  
III, Co-Trustees of the Brenda R.  
Hunter Trust U/A dated January 9,  
2009, Family Trust portion at  
Paragraph 4.B.(3)

ADDRESS:

2430 Galloway Road  
Charlotte, NC 28262

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

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

WITNESSETH, that the Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain and convey unto the Grantee in fee simple, its one-half (1/2) interest in that certain lot or parcel of land situated in Brunswick County, North Carolina and more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO.

RECEIVED  
DCM WILMINGTON, NC

JAN 23 2018

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.



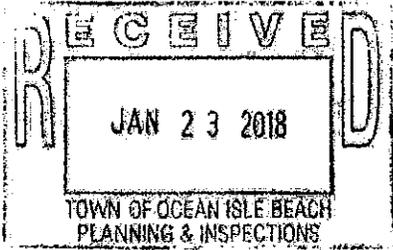
Title to the property hereinabove described is subject to the following exceptions:

All restrictions, reservations, covenants, conditions, easements and rights of way of record.

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

ESTATE OF BRENDA R. HUNTER

By West P. Hunter, Jr. (SEAL)  
West P. Hunter, Jr., Executor



USE BLACK INK ONLY

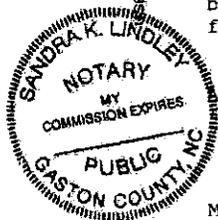
SEAL-  
STAMP

BLACK INK

State of North Carolina  
County of Gaston

I, Sandra K. Lindley, a Notary Public for said County and State, do hereby certify that West P. Hunter, Jr., Executor of the Estate of Brenda R. Hunter, personally appeared before me this day, and acknowledged the execution of the foregoing instrument.

Witness my hand and official seal, this 18 day of April, 2011.



Sandra K. Lindley  
Notary Public

My Commission Expires: 12-10-15

The foregoing Certificate(s) of \_\_\_\_\_

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof. \_\_\_\_\_ REGISTER OF DEEDS FOR BRUNSWICK COUNTY

By \_\_\_\_\_  
Deputy/Assistant-Register of Deeds.

RECEIVED  
DCM WILMINGTON, NC

JAN 23 2018



SCHEDULE "A"

Located, lying and being in Brunswick County, North Carolina, and being more particularly described as follows:

TRACT ONE:

BEING ALL Lot No. 14 in Block 58, Section A, of Ocean Isle Beach according to a map of the same which is duly recorded in Book of Maps 3, at Pages 178 and 178A in the Office of the Register of Deeds for Brunswick County North Carolina.

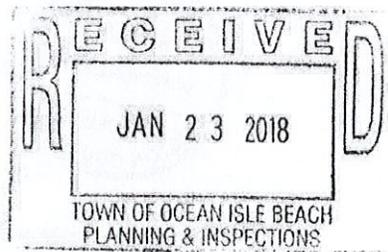
The property hereinabove described was acquired by Grantor by instrument recorded in Book 1309, Page 1208 of the Brunswick County Public Registry. SEE ALSO Renunciation and Disclaimer filed in Book 3051, Page 618 of the Brunswick County Public Registry.

TRACT TWO:

BEING ALL of Lot No. 25, Canal 8, Section A&B, Ocean Isle Beach, according to a map entitled "An Addition to Ocean Isle Beach, Section A&B", prepared by Jan K. Dale, Registered Land Surveyor, dated September 18, 1976. This map being duly recorded in Cabinet H, Page 374 in the Office of the Register of Deeds for Brunswick County North Carolina.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 712, Page 623 of the Brunswick County Public Registry. SEE ALSO Renunciation and Disclaimer filed in Book 3051, Page 618 of the Brunswick County Public Registry.

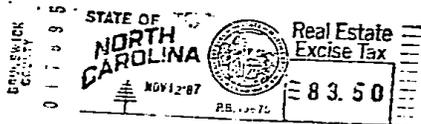
The subject properties are NOT the primary residence of the Grantor.



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TOWN OF OCEAN ISLE BEACH  
JAN 23 2018

RECEIVED  
DCM WILMINGTON, NC  
JAN 23 2018

0712 623



FILED FOR REGISTRATION  
BOOK 712 PAGE 623  
87 NOV 12 AM 9:27  
ROBERT J. JOHNSON  
REGISTER OF DEEDS  
BRUNSWICK COUNTY, N.C.

Excise Tax 83.50 Recording Time, Book and Page 1000  
Tax Lot No. Parcel Identifier No.  
Verified by County on the day of 19  
Mail after recording to Odell Williamson, The Cemetery, Ocean Isle Beach, NC 28459  
This instrument was prepared by Odell Williamson  
Brief description for the Index LOT 25, CANAL 8, SECTION A&B

### NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 27th day of June, 1987, by and between

GRANTOR

GRANTEE

OCEAN ISLE DEVELOPING CO.

WEST P. HUNTER, JR. and wife,  
BRENDA R. HUNTER

2430 Galloway Rd.  
Charlotte, N.C. 28213

TS	ADM	CON	GR	REL	SPL	BY
60		244	L	025		WPH

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

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

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

BEING all of Lot 25, Canal 8, Section A&B, Ocean Isle Beach, according to a map entitled, "An Addition to Ocean Isle Beach, Section A&B", prepared by Jan K. Dale, Registered Land Surveyor, dated September 10, 1976. This map being duly recorded in Cabinet H, Page 374, in the Office of the Register of Deeds for Brunswick County, North Carolina.

This conveyance is made subject to the following restrictions:

1. There shall be no outside toilets in any section of this subdivision nor shall any sewage or refuse be deposited either in the Atlantic Ocean in front of this property, or in any creek, sounds or other waters located in the vicinity of Ocean Isle Beach. All sewage disposal shall at all times meet with the approval of the North Carolina State Board of Health.
2. No lot in the section of Ocean Isle Beach referred to above shall be used for any purpose other than residential purposes.
3. All construction within said subdivision shall be carried out according to the following rules:

0712 0624

(a) No residence or building, with the exception of garages shall be smaller than 1,000 square feet of floor space on the ground floor and such space shall be exclusive of porches, steps, walks and other additions of such character, and all buildings shall be erected on pilings or posts, and a minimum of 9 feet above ground level.

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

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

(d) The front line of all dwellings shall be located exactly 25 feet from the street property line as shown on said map, and no part of any building constructed within 5 feet of the canal line or within 5 feet of either of the side lines of any lot.

4. The owner of any lot or lots within said area facing the canals shown thereon are authorized to build boat docks on said canals at the end of said lots provided said docks do not extend beyond the property line of said owner or owners and further provided that said boat docks are built for and/or used for domestic purposes only; commercial docks are specifically prohibited and any of said docks which might be built on any of the property within said area shall not be used under any circumstances for commercial purposes.

5. These covenants are to run with the land and shall be binding on all parties claiming under them until January 1, 1980, at which time said covenants shall be automatically extended for successive periods of ten years unless by vote of the majority of the then owners of the lots, it is agreed to change said covenants in whole or in part.

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

7. Invalidation of any one of these restrictions shall not invalidate the others.



3007  
8712 626

SEAL - STAMP NORTH CAROLINA, \_\_\_\_\_ County.  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Grantor  
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my  
 hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 My commission expires: \_\_\_\_\_ Notary Public

SEAL - STAMP NORTH CAROLINA, \_\_\_\_\_ County.  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Grantor  
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my  
 hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 My commission expires: \_\_\_\_\_ Notary Public

SEAL - STAMP NORTH CAROLINA, \_\_\_\_\_ County.  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Grantor  
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my  
 hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 My commission expires: \_\_\_\_\_ Notary Public

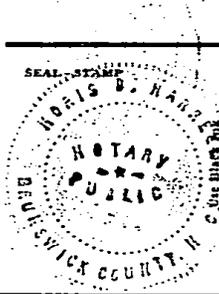
SEAL - STAMP NORTH CAROLINA, \_\_\_\_\_ County.  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Grantor  
 personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my  
 hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 My commission expires: \_\_\_\_\_ Notary Public

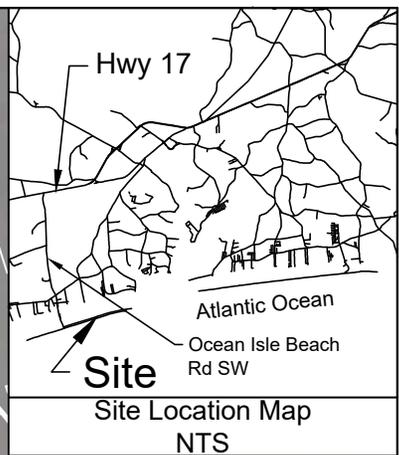
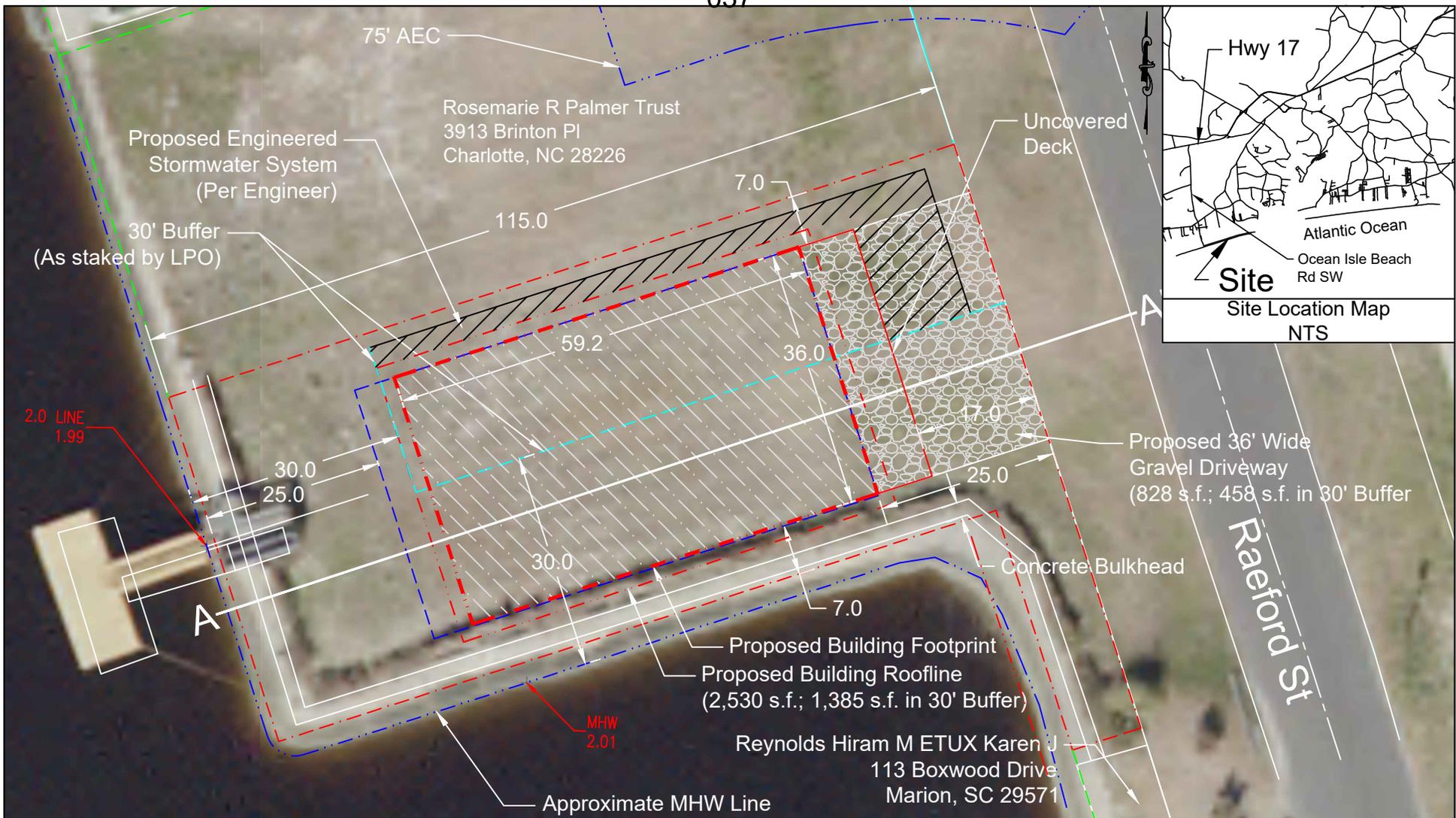
SEAL - STAMP NORTH CAROLINA, Brunswick County.  
 I, a Notary Public of the County and State aforesaid, certify that Virginia Williamson  
 personally came before me this day and acknowledged that she he is \_\_\_\_\_ Secretary of  
OCEAN ISLE DEVELOPING CO. a North Carolina corporation, and that by authority duly  
 given and as the act of the corporation, the foregoing instrument was signed in its name by its  
 President, sealed with its corporate seal and attested by her as its Secretary.  
 Witness my hand and official stamp or seal, this 10th day of November, 1987.  
 My commission expires: 12-16-89 Noris B. Harrell Notary Public

SEAL - STAMP NORTH CAROLINA, \_\_\_\_\_ County.  
 I, a Notary Public of the County and State aforesaid, certify that \_\_\_\_\_  
 Secretary of  
 personally came before me this day and acknowledged that \_\_\_\_\_ he is \_\_\_\_\_  
 a North Carolina corporation, and that by authority duly  
 given and as the act of the corporation, the foregoing instrument was signed in its name by its  
 President, sealed with its corporate seal and attested by \_\_\_\_\_ as its Secretary.  
 Witness my hand and official stamp or seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_  
 My commission expires: \_\_\_\_\_ Notary Public

The foregoing Certificate(s) of Noris B. Harrell, Notary Public

is/are certified to be correct. This instrument and this certificate are duly registered as the date and time and in the Book and Page shown on the  
 first page hereof. Recorded this 12 day of November, 1987 at 9:27 A.M.  
Robert P. Robinson REGISTER OF DEEDS FOR Brunswick COUNTY  
 By Anita F. Smith Deputy Register of Deeds.





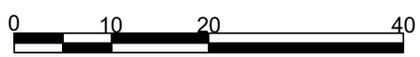
**Legend**

Parcel Boundary (6,136 s.f.)	
30' Buffer	
R1 Building Setbacks	
Approx MHW Line	

Proposed Building Footprint (2,131 s.f.)	
Proposed Engineered Stormwater System	

**FOR ENVIRONMENTAL PERMITTING ONLY.  
NOT AN ENGINEERED OR SURVEYED DRAWING.**

NOTE: THE PROPOSED ENGINEERED STORMWATER SYSTEM WILL COLLECT AND CONTAIN, AT A MINIMUM, THE FIRST ONE AND ONE-HALF INCHES OF RAINFALL FROM ALL IMPERVIOUS SURFACES ON THE LOT IN ACCORDANCE WITH THE DESIGN STANDARDS FOR STORMWATER MANAGEMENT AS SPECIFIED IN 15A NCAC 02H .01105 OR PER LOCAL ORDINANCE.



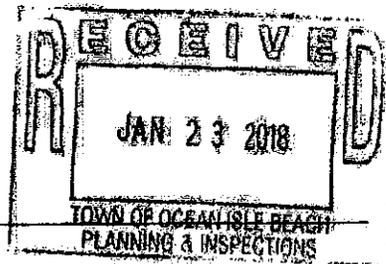
**LMG**  
LAND MANAGEMENT GROUP INC.  
Environmental Consultants  
Post Office Box 2522  
Wilmington, North Carolina 28402  
Telephone: 910-452-0001

Project: 1 Raeford Street Ocean Isle Beach	Date: 1/15/18	Revision Date: 1/29/18
	Scale: 1"=20'	Job Number: 02-17-323
Title: CAMA Minor Permit Site Location and Plan View	Drawn By: GSF	Sheet Number: 1 of 2

Locality Town of Ocean Isle Beach Permit Number 18-5

Ocean Hazard \_\_\_\_\_ Estuarine Shoreline  ORW Shoreline \_\_\_\_\_ Public Trust Shoreline \_\_\_\_\_ Other \_\_\_\_\_

(For official use only)



**GENERAL INFORMATION**

**LAND OWNER - MAILING ADDRESS**

Name West P Hunter, Jr

Address 484 Beaten Path Road

City Moorsville State NC Zip 28117 Phone 704-201-9164

Email wph@hunterconstructiongroup.com

**AUTHORIZED AGENT**

Name Greg Finch, Land Management Group, Inc.

Address 3805 Wrightsville Avenue, Suite 15

City Wilmington State NC Zip 28403 Phone 910-452-0001

Email gfinch@lmgroup.net

**LOCATION OF PROJECT:** (Address, street name and/or directions to site; name of the adjacent waterbody.)

1 Raeford Street, Ocean Isle Beach, NC 28469 / Canal 8

**DESCRIPTION OF PROJECT:** (List all proposed construction and land disturbance.) Construction of a single family residence

**SIZE OF LOT/PARCEL:** 6,136 square feet. 0.14 acres

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

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

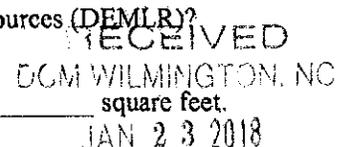
(1) **OCEAN HAZARD AECs:** TOTAL FLOOR AREA OF PROPOSED STRUCTURE: NA square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) **COASTAL SHORELINE AECs:** SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 2131 square feet (includes the area of the foundation of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

**STATE STORMWATER MANAGEMENT PERMIT:** Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Energy, Mineral and Land Resources (DEMRLR)?

YES \_\_\_\_\_ NO

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



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

**STATEMENT OF OWNERSHIP:**

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

an owner or record title, Title is vested in name of West Port Hunter, Jr. Jason Brian Hunter and West Port Hunter III, see Deed Book 3154 page 0076 in the Brunswick County Registry of Deeds.

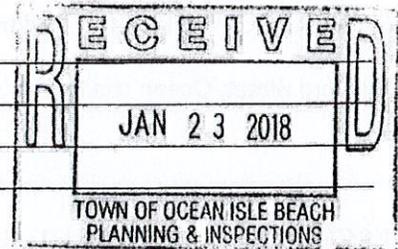
an owner by virtue of inheritance. Applicant is an heir to the estate of \_\_\_\_\_; probate was in \_\_\_\_\_ County.

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

**NOTIFICATION OF ADJACENT RIPARIAN PROPERTY OWNERS:**

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

- | (Name)                             | (Address)                            |
|------------------------------------|--------------------------------------|
| (1) Rosemarie R Palmer Trust,      | 3913 Brinton Pl, Charlotte, NC 28226 |
| (2) Reynolds Hiram M ETUX Karen J, | 113 Boxwood Drive, Marion, SC 29571  |
| (3) _____                          | _____                                |
| (4) _____                          | _____                                |



**ACKNOWLEDGEMENTS:**

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

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

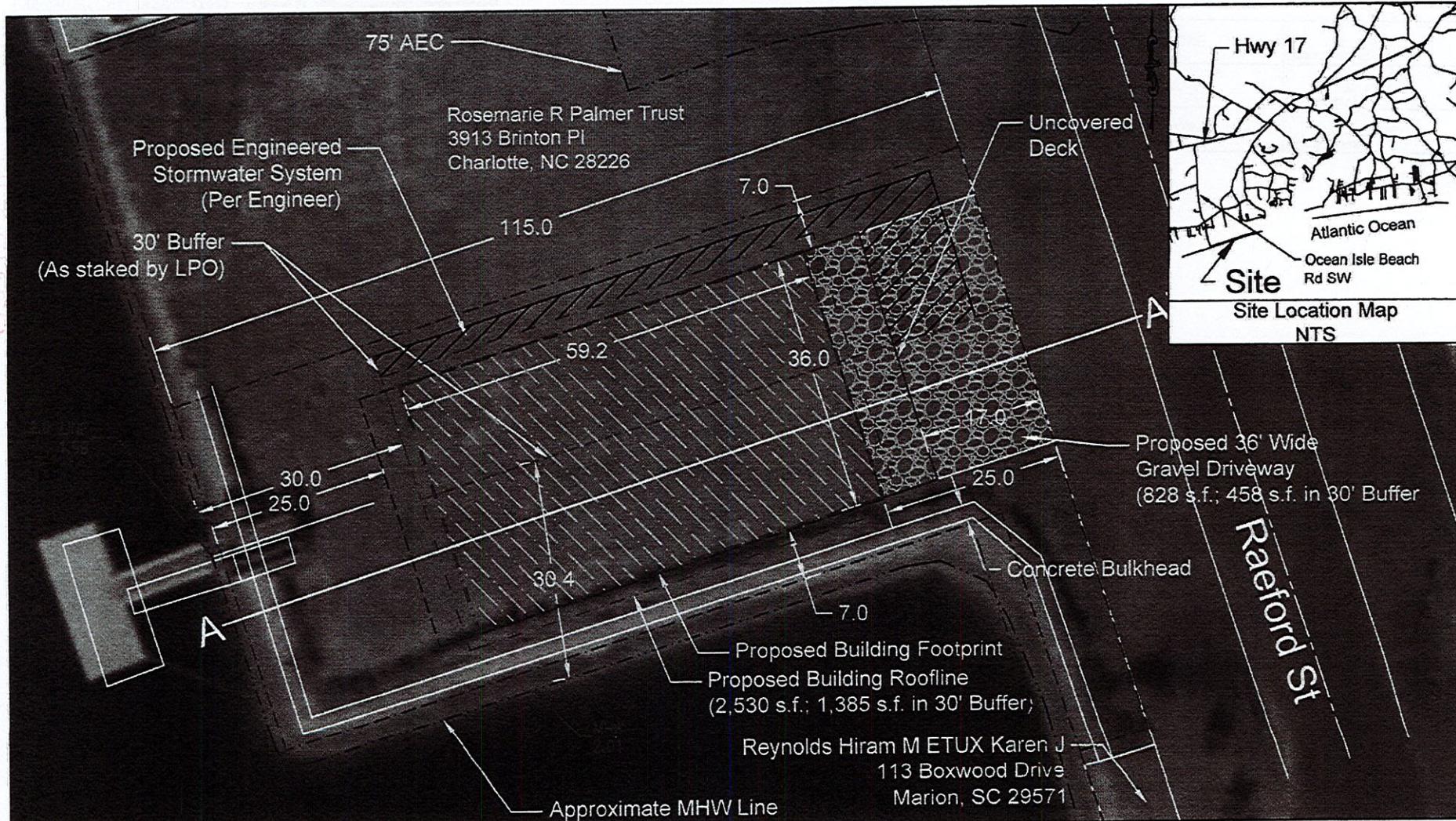
This the 15 day of Jan, 20 18

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

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

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DCM WILMINGTON, NC  
JAN 23 2018

RECEIVED  
DCM WILMINGTON, NC  
JAN 23 2018



**Legend**

- Parcel Boundary (6,136 s.f.)
- 30' Buffer
- R1 Building Setbacks
- Approx MHW Line

- Proposed Building Footprint (2,131 s.f.)
- Proposed Engineered Stormwater System

FOR ENVIRONMENTAL PERMITTING ONLY.  
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NOTE: THE PROPOSED ENGINEERED STORMWATER SYSTEM WILL COLLECT AND CONTAIN, AT A MINIMUM, THE FIRST ONE AND ONE-HALF INCHES OF RAINFALL FROM ALL IMPERVIOUS SURFACES ON THE LOT IN ACCORDANCE WITH THE DESIGN STANDARDS FOR STORMWATER MANAGEMENT AS SPECIFIED IN 15A NCAC 02H .01105 OR PER LOCAL ORDINANCE.

RECEIVED  
DCM WILMINGTON, NC  
JAN 29 2018



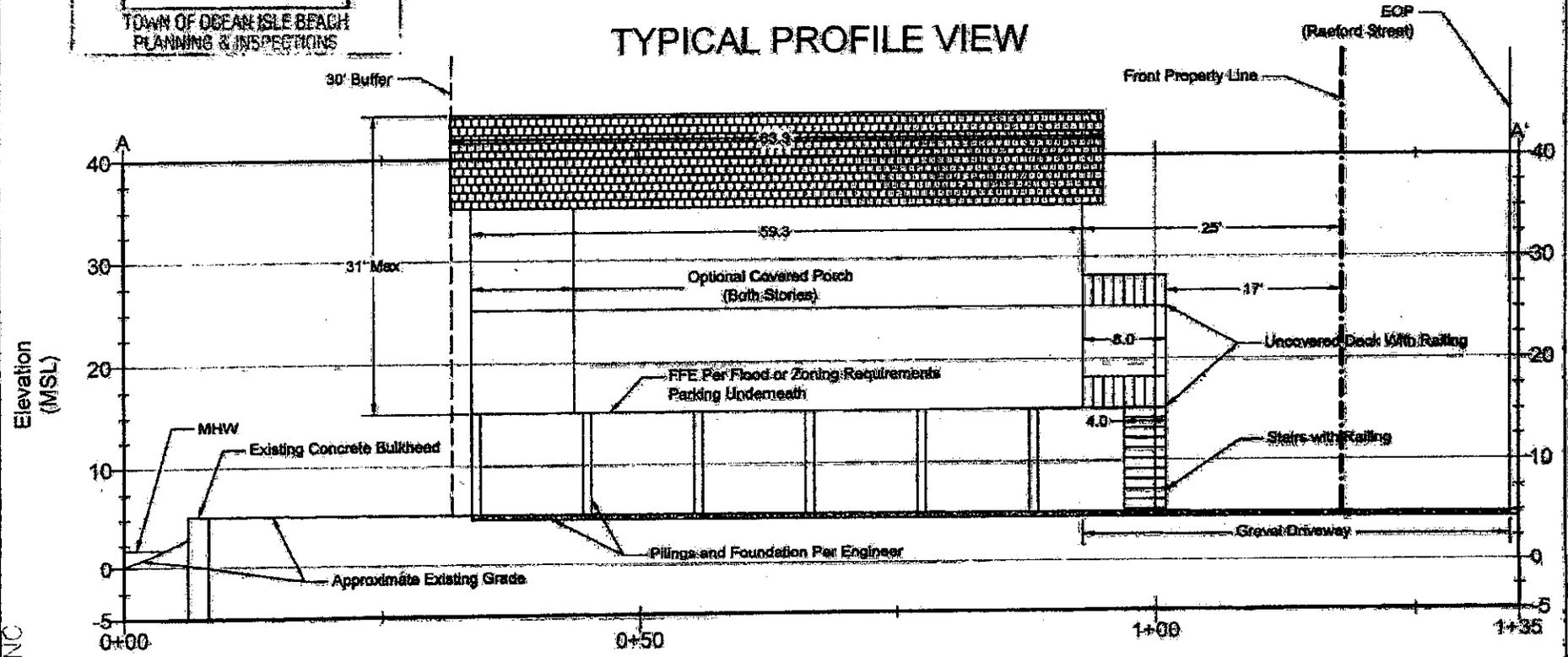
JAN 29 2018

**LMG**  
LAND MANAGEMENT GROUP INC.  
Environmental Consultants  
Post Office Box 2522  
Wilmington, North Carolina 28402  
Telephone: 910-452-0001

Project: 1 Raeferd Street Ocean Isle Beach	Date:	1/15/18	Revision Date:	1/29/18
	Scale:	1"=20'	Job Number:	02-17-323
Title: CAMA Minor Permit Site Location and Plan View	Drawn By:	GSF	Sheet Number:	1 of 2

**RECEIVED**  
 JAN 29 2018  
 TOWN OF OCEAN ISLE BEACH  
 PLANNING & INSPECTIONS

**TYPICAL PROFILE VIEW**



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 WILMINGTON, NC  
 JAN 29 2018

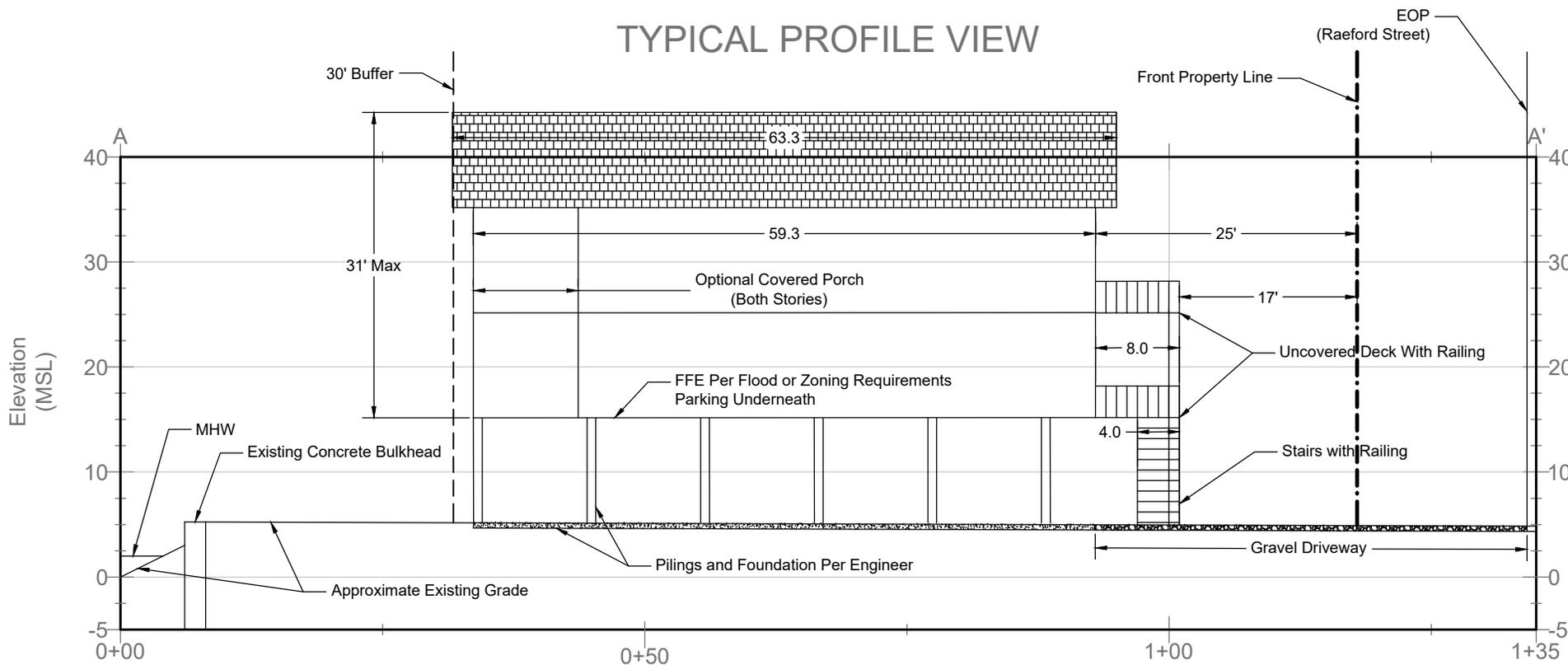
NOTES:  
 ENTIRE LOT IS WITHIN THE 75' AEC.  
 TYPICAL PROFILE FOR ENVIRONMENTAL PERMITTING ONLY.



**LMG**  
 LAND MANAGEMENT GROUP, INC.  
 Environmental Consultants  
 Post Office Box 2622  
 Wilmington, North Carolina 28402  
 Telephone: 910-452-0001

Project: 1 Raeford Street Ocean Isle Beach	Date: 1/15/18	Revision Date: 1/20/18
	Scale: 1"=15'	Job Number: 02-17-323
Title: CAMA Minor Permit Profile View	Drawn By: GSF	Sheet Number: 2 of 2

# TYPICAL PROFILE VIEW



- NOTES:  
 1. ENTIRE LOT IS WITHIN THE 75' AEC.  
 2. TYPICAL PROFILE, FOR ENVIRONMENTAL PERMITTING ONLY.



**LMG**  
 LAND MANAGEMENT GROUP INC.  
 Environmental Consultants  
 Post Office Box 2522  
 Wilmington, North Carolina 28402  
 Telephone: 910-452-0001

Project:  
 1 Raeford Street  
 Ocean Isle Beach

Title:  
 CAMA Minor Permit  
 Profile View

Date:  
 1/15/18

Scale:  
 1"=15'

Drawn By:  
 GSF

Revision Date:  
 1/29/18

Job Number:  
 02-17-323

Sheet Number:  
 2 of 2

Sec. 49-33. - Same—Stormwater requirements.

All development activities within the jurisdiction of the Town of Ocean Isle Beach shall manage stormwater as follows:

- (1) Runoff from all new development, regardless of size, shall approximate the rate of flow and timing of runoff that would have occurred following the same rainfall under predevelopment conditions for the 24-hour ten-year frequency rainfall events.
- (2) Control systems must be infiltration systems designed in accordance with section 49.34 to control the runoff from all surfaces generated by the first inch and one-half inches of rainfall along with the requirements from paragraph (1) above. Alternatives as described in section 49-34 may also be approved if they do not discharge to surface waters in response to the design storm;
  - a. Development shall be approved if the following conditions are met:
    1. No direct outlet channels or pipes to SA waters unless permitted in accordance with 15A NCAC 2H .0126;
    2. Control systems must be infiltration systems designed in accordance with section 49.34 to control the runoff from all surfaces generated by the ten-year frequency rainfall event. Alternatives as described in section 49-34 may also be approved if they do not discharge to surface waters in response to the design storm;
    3. Runoff in excess of the design volume must flow overland through a vegetative filter, designed in accordance with section 49-34.

(Ord. of 11-14-00, § 12.2; Ord. of 9-9-2003(2), §§ 4, 5)

Sec. 49-34. - Same—Design of stormwater management systems.

- (a) Structural stormwater control options. Stormwater control measures which may be approved include:
  - (1) Stormwater infiltration systems including infiltration basins/ponds, swales, dry wells and vegetative filters;
  - (2) Wet detention ponds; and
  - (3) Devices meeting alternative design criteria.
- (b) Innovative measures for controlling stormwater which are not met will be established through actual experience and may be approved on a demonstration basis under the following conditions:
  - (1) There is a reasonable expectation that the control measures will be successful;
  - (2) The projects are not adjacent to or near high quality waters (HQW);
  - (3) Monitoring requirements are included to verify the performance of the control measures; and,
  - (4) Alternatives are available if the control measures fail and when the Town has determined that the system has failed.
- (c) Vegetation in the filter may be natural vegetation, grasses, or artificially planted wetland vegetation appropriate for site characteristics.
- (d) General engineering design criteria, specific stormwater management system design criteria and alternative design criteria shall be as described in 15A NCAC 2H.1008, Design of Stormwater Management Measures.
- (e) Stormwater systems must be designed by an individual who meets the North Carolina professional engineer requirements for the type of system proposed. Upon completion of construction, the designer for the type of stormwater system installed must certify that the system was inspected

during construction, was constructed in substantial conformity with plans and specifications approved by the town and complies with the requirements of this section prior to issuance of the certificate of occupancy.

- (f) In subdivisions where retaining ponds have been created to control stormwater runoff, the developer shall install a dry fire hydrant to provide for a method by which water in the retaining ponds can be used by the responding fire department to apply to fires. Compliance with § 26-3 of the Code of Ordinances is required.

(Ord. of 11-14-00, § 12.3; Ord. of 6-8-2004, § 3)

Sec. 49-35. - Same—Operation and maintenance.

- (a) Prior to site plan approval by the town, an operation and maintenance plan or manual shall be provided by the developer for stormwater systems, indicating the operation and maintenance actions that shall be taken, specific quantitative criteria used for determining when those actions shall be taken, and who is responsible for restoring a stormwater system to design specifications if a failure occurs and must include an acknowledgment by the responsible party. Development must be maintained consistent with the requirements in the operation and maintenance plan and the original plans and any modifications to these plans must be approved by the town.
- (b) A maintenance agreement between the responsible party and the town shall be signed by the responsible party in which the responsible party agrees to the continued performance of the maintenance obligations. This agreement shall be assigned to the successors in the title upon transference of the property.

(Ord. of 11-14-00, § 12.4)

## Sec. 66-45. - R-1 single-family residential district.

The R-1 district is intended primarily for single-family dwellings. Certain nonresidential uses are permitted. Regulations for this district are designed to maintain a suitable environment for family living. Two-family dwellings were deleted as a permitted use in R-1 zoned areas effective February 9, 1999.

- (1) *Permitted uses.* Single-family for short-term or long-term occupancy, accessory use structures, clubhouses <sup>1</sup>, commercial parking, municipal or public utility stations and substations are permitted. Clubhouses are not permitted in the R-1 district.
- (2) *Special uses.* The following uses shall be permitted if approved as a special use: Tennis courts, parks or playgrounds, churches, public or private schools, museums, municipally owned recreational facilities and fire stations. Nonconforming special uses will be allowed to continue as long as they are not structurally altered to increase the size or servitude of the structure and they uphold the requirements of their original special use permit.
- (3) *Lots.* Minimum lot area, width and yard requirements are as follows:

Use	Lot in Square Feet	Lot Width in Feet	Front Yard in Feet	Side Yard in Feet	Rear Yard in Feet	Max. Bldg. Height
Commercial Accommodations	10,000	100	25	7	25	31
Multifamily	10,000	100	25	7	25	31
Single-Family	5,000	50	25	7	25	31
Two-Family	7,500	75	25	7	25	31
Clubhouses <sup>1</sup>	5,000	50	25	10 *	25	31
Commercial parking	5,000	50	5	5	5	—

<sup>1</sup> *All structures that meet the definition of "clubhouse" shall only be allowed to be constructed or operated in commercial zones (C-1, C-2, C-2M, and C-3). An exception to this limitation would permit planned unit developments or residential subdivisions yet to be developed within residential zones to have a community building or clubhouse that will be open to those who purchase property within the subdivision provided that any clubhouse constructed within this proposed exception shall be located within the boundaries of the subdivision or planned unit development. For the purpose of this exception, subdivisions and planned unit developments must contain a minimum of 10 contiguous acres and 45 lot[s] or residential units.*

- (a) The maximum height of structures for other than utility purposes shall be measured such as to allow for the construction of two floors, limited to 31 feet measured from the bottom of the lowest horizontal structural member to the highest point of the structure.
  - (b) Reserved.
  - (c) All new or substantially improved structures shall comply with the National Flood Insurance Program (NFIP) requirements, flood insurance rate maps (FIRM) and any subsequent regulations contained in chapter 30 of the Ocean Isle Beach Code of Ordinances.
  - (d) The Town takes notice of the fact that there are several lots within residential subdivisions that when originally platted or modified are only 47 feet in width or less than 5,000 square feet. Since these lots were platted prior to 2005, the Town will not deny the issuance of a permit for construction as long as these lots are at least 47 feet in width and contain less than 5,000 square feet. However, all other requirements of the zoning ordinance must be met.
- (4) *Height limitation.* All buildings shall be limited to two stories of living area.
  - (5) *Rear yard setback for lots adjacent to water bodies* shall be subject to current CAMA requirements affecting such lots.
  - (6) *Gross floor area.* The gross floor areas above flood level shall be no more than 50 percent of the total deeded lot area. Impervious surfaces shall not exceed 50 percent of the total deeded lot area.
  - (7) *Exterior walls.* Exterior walls of all dwellings shall be located no closer than seven feet from the side lines.
  - (8) *Lockout rooms.* The use of lockout rooms is prohibited for multi-tenant or multifamily occupancy within the R-1 single-family residential district.
  - (9) *Reserved.*
  - (10) *[Calculating square footage of lot.]* For purposes of calculating the square footage of a lot, the dimensions of the lot shall be controlled by the dimensions on the original subdivision plat or the original metes and bounds description contained within the deed, if there was not a recorded plat of said property and provided said deed was recorded prior to November 9, 2004. If a property owner is conveyed additional property contiguous to his original lot, the additional area may not be included for purposes of determining the square footage of the lots unless:
    - a. A deed of recombination is prepared and filed; and
    - b. The additional property is entirely outside/landward of the mean high water, the 404 line, any designated wetlands and the first line of stable natural vegetation as defined by CAMA.

NOTE: Permits for development and construction on property located on the concrete canals will be required to use the property line that was established by the dimensions on the original subdivision plat or contained in the metes and bounds description within the deed for the property within the chain of title that was recorded prior to November 9, 2004. No additional property conveyed on the concrete canals after November 9, 2004, can be used in determining the rear yard setback line.
  - (11) *[Motor homes, campers and travel trailers.]* Motor homes, campers and travel trailers shall be parked entirely on property that the owner of said vehicle owns or leases. Motor homes, campers and travel trailers shall maintain a required five-foot setback from the front, side and rear property lines. At no time shall these ever be used as sleeping quarters on the premises. (See traffic and vehicle ordinance chapter 54-73)
  - (12) *Clubhouses.* \* Clubhouses and associated parking areas shall meet the following criteria:

- a. Provide an opaque vegetative screening which shall be ten feet tall at the time of planting and a ten-foot natural vegetative buffer zone between the property line and any building, structure or surface associated with the clubhouse.
  - b. Clubhouse signage shall be limited to nonilluminated wall signage with a six-square foot maximum size.
  - c. Associated parking areas shall have a five-foot natural vegetative buffer around the property line which shall contain plantings at least ten feet in height at the time of planting
- (13) *Commercial parking.* Commercial parking located within the R-1 zoning district shall only be permitted if the parking is directly adjacent to a commercially zoned lot where a commercial business is being operated. For the purposes of this section, directly adjacent shall mean either the parcel abuts directly to the commercial zoning district or is separated from the commercial zoning district by a street or street right-of-way.
- a. If the property proposed to be used as parking space is not owned by the adjacent business owner, the owner must submit a lease between him and the lessor in a form that can be properly recorded, said lease terms shall be reviewed and approved by the town prior to recordation.
  - b. Commercial parking located in the R-1 zoning district shall not be used to meet the minimum number of spaces required for parking as set out in chapter 66, article IV for newly constructed businesses. Parking shall only be used for expansion or overflow purposes for existing businesses or commercial accommodations.
  - c. All parking must meet the minimum requirements set out in section 66-135 and 66-136. However, commercial parking on residential lots shall be exempt from the paving requirement in section 66-135(d)(5). If an impervious material is used an engineered stormwater drainage plan must be submitted prior to approval.
  - d. The five-foot minimum setback shall be used as a vegetative screening from adjacent residential properties. A landscaping plan must be submitted to the town for approval prior to any improvements being installed on the property. All landscaping shall be maintained for the duration of the parking lease.
- (14) *Density.* The density limitation within this district shall be six units per acre.

(Ord. of 4-10-2007; Res. of 10-30-2007; Res. No. 2012-09, § 1, 8-14-2012; Res. No. 2013-25, § 1, 11-12-2013; Res. No. 2014-12, § 2, 7-8-2014; Res. No. 2014-24, § 1, 12-9-2014; Res. No. 2015-19, § 1.a., 9-8-2015)

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 JAN 23 2018  
 TOWN OF OCEAN ISLE BEACH  
 PLANNING & INSPECTIONS

7015 0640 0002 2839 4663

609 02-17-323

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
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Total Postage and Fees	\$7.50

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 01/16/2018  
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 Raymond Hiram METUX Kiska J  
 Street and Apt. No., or PO Box No.  
 113 Boxwood Dr  
 City, State, ZIP+4®  
 Myrtle SC 29571

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7015 0640 0002 2839 4656

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<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.40
Total Postage and Fees	\$7.50

WILMINGTON, NC 28403  
 01/16/2018  
 Postmark Here

Sent To  
 Rosemarie B Palmer Trust  
 Street and Apt. No., or PO Box No.  
 3913 Brimble Place  
 City, State, ZIP+4®  
 Charlotte NC 28226

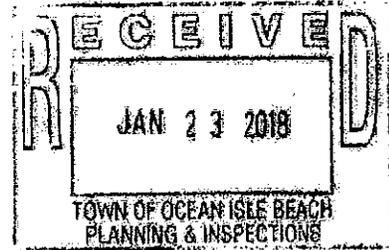
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**DCM WILMINGTON, NC**  
**JAN 23 2018**



January 15, 2018

Reynolds Hiram M ETUX Karen J  
 113 Boxwood Drive  
 Marion, SC 29571



To Whom It May Concern:

West P Hunter Jr. is applying for a CAMA Minor permit for development at his property located at 1 Raeford Street, Ocean Isle Beach, Brunswick County, North Carolina. The specifics of the proposed work are in the enclosed application package.

As the adjacent riparian property owner to the aforementioned project, I am required to notify you of the development in order to give you the opportunity to comment on the project. Please review the attached permit application and drawings. Should you have any objections to this proposal, please send your written comments within 10 days of your receipt of this notice to:

Keith Dycus  
 Ocean Isle Beach Planning and Inspections  
 Town of Ocean Isle Beach  
 3 West Third Street  
 Ocean Isle Beach, NC 28469

Comments will be considered by the NC Department of Coastal Management in reaching a final decision on the application. No comment within 10 days of your receipt of this notice will be considered as no objection. If you have any questions on this project, please call me at 910-452-0001, or e-mail me at [gfinch@lmgroup.net](mailto:gfinch@lmgroup.net)

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg Finch".

Greg Finch, Agent  
 Land Management Group, Inc.

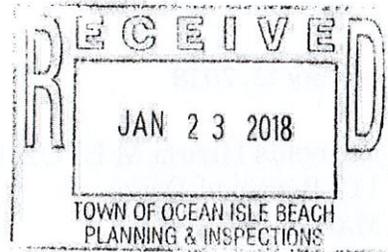
Enclosures

A rectangular stamp with the word "RECEIVED" at the top. Below it, it says "DCM WILMINGTON, NC". At the bottom, it reads "JAN 23 2018".



January 15, 2018

Rosemarie R Palmer Trust  
3913 Brinton Pl  
Charlotte, NC 28226



To Whom It May Concern:

West P Hunter Jr. is applying for a CAMA Minor permit for development at his property located at 1 Raeford Street, Ocean Isle Beach, Brunswick County, North Carolina. The specifics of the proposed work are in the enclosed application package.

As the adjacent riparian property owner to the aforementioned project, I am required to notify you of the development in order to give you the opportunity to comment on the project. Please review the attached permit application and drawings. Should you have any objections to this proposal, please send your written comments within 10 days of your receipt of this notice to:

Keith Dycus  
Ocean Isle Beach Planning and Inspections  
Town of Ocean Isle Beach  
3 West Third Street  
Ocean Isle Beach, NC 28469

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Sincerely,

A handwritten signature in dark ink, appearing to read "Greg Finch".

Greg Finch, Agent  
Land Management Group, Inc.

Enclosures

RECEIVED  
DCM WILMINGTON, NC

JAN 23 2018

**From:** Roessler, Todd  
**To:** [Goebel, Christine A](#); [Hargrove, Andrew D](#)  
**Subject:** [External] FW: 1 Raeford Street - CAMA Variance  
**Date:** Tuesday, March 06, 2018 2:59:03 PM  
**Attachments:** [image001.png](#)

---

**CAUTION:** External email. Do not click links or open attachments unless verified. Send all suspicious email as an attachment to [Report Spam](#).

FYI. This is the Reynolds house.

Todd

**Todd Roessler**  
**Kilpatrick Townsend & Stockton LLP**  
Suite 1400 | 4208 Six Forks Road | Raleigh, NC 27609  
office 919 420 1726 | cell 919 271 0595 | fax 919 510 6121  
[troessler@kilpatricktownsend.com](mailto:troessler@kilpatricktownsend.com) | [My Profile](#) | [VCard](#)

---

**From:** Keith Dycus [<mailto:keith@oibgov.com>]  
**Sent:** Monday, February 12, 2018 4:27 PM  
**To:** Roessler, Todd <[TRoessler@kilpatricktownsend.com](mailto:TRoessler@kilpatricktownsend.com)>  
**Subject:** RE: 1 Raeford Street - CAMA Variance

I did receive a call from 151 E. Second St. who had some questions regarding the proposed project, but after speaking with the property owner he didn't seem to have any objections at that time.

**Keith Dycus**  
**Planning & Zoning Administrator**  
**Town of Ocean Isle Beach**  
**phone: (910) 579-3469**  
**fax: (910) 579-2940**  
[www.oibgov.com](http://www.oibgov.com)



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---

**From:** Roessler, Todd [<mailto:TRoessler@kilpatricktownsend.com>]  
**Sent:** Monday, February 12, 2018 3:23 PM  
**To:** Keith Dycus; Justin Whiteside  
**Subject:** 1 Raeford Street - CAMA Variance

I'm in the process of preparing the CAMA variance. We are required to provide notice to the adjacent property owners and any objectors. Did you all receive any comments on the CAMA permit application?

Thanks,  
Todd



**Todd Roessler**

**Kilpatrick Townsend & Stockton LLP**

Suite 1400 | 4208 Six Forks Road | Raleigh, NC 27609

office 919 420 1726 | cell 919 271 0595 | fax 919 510 6121

[troessler@kilpatricktownsend.com](mailto:troessler@kilpatricktownsend.com) | [My Profile](#) | [VCard](#)

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February 1, 2018

**CERTIFIED MAIL – 7013 0600 0002 2605 6796**  
**RETURN RECEIPT REQUESTED**

West P. Hunter Jr.  
484 Beaten Path Rd.  
 Mooresville, NC 28117

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT**  
**APPLICATION NUMBER - OIB 18-5**  
**PROJECT ADDRESS- 1 Raeford Street**

Dear Mr. Hunter:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines. You have applied to construct a new single-family dwelling in which 1,385 square feet of impervious area and 458 square feet of gravel driveway is proposed to be located within the 30 foot buffer from mean high water. The proposed development is inconsistent with 15A NCAC 7H .0209(d)(10), which states that: new development along estuarine and public trust shoreline AEC's shall be located a distance of 30 feet landward of the normal water level or normal high water level. I have concluded that your request also violates NCGS 113A-120(a)(8), which requires that all applications be denied which are inconsistent with the Town of Ocean Isle Beach's Local Land Use Plan. On page 5-19, of the Town of Ocean Isle Beach Land Use Plan, you will find that Policy 5.1.A14 states: "residential, recreational, educational, and commercial land uses are all appropriate types of use along the estuarine shoreline provided all standards of 15A NCAC Subchapter 7H relevant to estuarine shoreline AECs are met, and the proposed use is consistent with the policies set forth in this plan."

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. I have enclosed 15 NCAC Subchapter 7J Section .0700 – *Procedures for Considering Variance Petitions* for review.

Respectfully yours,

Keith F. Dycus, LPO  
Town of Ocean Isle Beach  
3 West Third Street  
Ocean Isle Beach, NC 28469

Enclosure

cc: Sean Farrell, DCM Field Representative  
Greg Finch, Land Management Group, Inc.



# Intracoastal Engineering PLLC

January 8, 2018

Mr. West Hunter  
2430 Galloway Rd.  
Charlotte, NC 28262

Re: 1 Raeford Street  
Ocean Isle Beach, NC

Dear Mr. Hunter,

We are writing in response to your request to review the proposed development of Lot 1 Raeford Street referenced above. The site will be developed to meet both the CAMA Stormwater Rules and the Town Stormwater Ordinance. Both of these ordinances will require the site to provide stormwater controls. The more stringent of the ordinances is the 10year Pre-Post design. This will require the stormwater system to maintain the runoff from the site at Pre-development levels, even during the 10year storm.

Your question: "How much different is my runoff with a larger home than what I am allowed with the normal setbacks? During the design storm no development will be allowed to have runoff exceeding the Pre-development level. Your stormwater system will be smaller for the smaller house and larger for the larger house to make up the additional volumes required, but the allowed runoff will remain the same. Therefore during the required 10 year design storm, runoff from the site (whether smaller or larger footprint) will be equal to or less than the site in an undeveloped state during the 10year design storm.

Once the approval of the variance has been obtained we will work with you to provide an acceptable design to comply with these ordinances. Please contact us with any questions you might have at this time.

Sincerely,  
Intracoastal Engineering PLLC

Charles D. Cazier, P.E.



KILPATRICK TOWNSEND & STOCKTON LLP  
www.kilpatricktownsend.com

Suite 1400 4208 Six Forks Road  
Raleigh NC 27609  
t 919 420 1700 f 919 420 1800

Todd S. Roessler  
direct dial 919 420 1726  
direct fax 919 510 6121  
TRoessler@KilpatrickTownsend.com

February 21, 2018

**Via Certified Mail – Return Receipt Requested**

Hiram M. and Karen J. Reynolds  
113 Boxwood Drive  
Marion, SC 29571

**Re: CAMA Variance Request by West P. Hunter, Jr.**

Dear Property Owner:

I am writing to notify you that West P. Hunter, Jr. is applying for a variance from the North Carolina Coastal Resources Commission to allow construction of a single-family residence on the lot located at 1 Raeford Street, Ocean Isle Beach, North Carolina. A copy of the proposed site plan is enclosed for your information. The variance is projected to be heard at April 10-11, 2018 meeting of the Coastal Resources Commission at the Dare County Administrative Building located at 954 Marshall C. Collins Drive, Manteo, North Carolina 27954. If you would like to receive more information about the variance request, you may contact me. If you would like to provide comments on the variance request, you may direct your comments to the North Carolina Division of Coastal Management, Wilmington District, 127 Cardinal Drive Extension, Wilmington, North Carolina, 28405-3845. You may also call the Division of Coastal Management to talk to a representative at (910) 796-7215.

Sincerely,

KILPATRICK TOWNSEND & STOCKTON LLP

A handwritten signature in black ink that reads 'Todd S. Roessler'.

Todd S. Roessler  
*Attorney for Petitioner West P. Hunter, Jr.*

Enclosure

13876767V.1

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1. Article Addressed to:

Hiram M. and Karen J. Reynolds  
113 Boxwood Drive  
Marion, SC 29571  
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A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

**X**

Agent  
 Addressee

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If YES, enter delivery address below:

Yes  
 No

103753.1075305-01729 -



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ATTORNEYS AT LAW

KILPATRICK TOWNSEND & STOCKTON LLP  
www.kilpatricktownsend.comSuite 1400 4208 Six Forks Road  
Raleigh NC 27609  
t 919 420 1700 f 919 420 1800Todd S. Roessler  
direct dial 919 420 1726  
direct fax 919 510 6121  
TROessler@KilpatrickTownsend.com

February 21, 2018

**Via Certified Mail – Return Receipt Requested**Rosemarie R. Palmer Trust  
3913 Brinton Place  
Charlotte, NC 28226-7007**Re: CAMA Variance Request by West P. Hunter, Jr.**

Dear Property Owner:

I am writing to notify you that West P. Hunter, Jr. is applying for a variance from the North Carolina Coastal Resources Commission to allow construction of a single-family residence on the lot located at 1 Raeford Street, Ocean Isle Beach, North Carolina. A copy of the proposed site plan is enclosed for your information. The variance is projected to be heard at April 10-11, 2018 meeting of the Coastal Resources Commission at the Dare County Administrative Building located at 954 Marshall C. Collins Drive, Manteo, North Carolina 27954. If you would like to receive more information about the variance request, you may contact me. If you would like to provide comments on the variance request, you may direct your comments to the North Carolina Division of Coastal Management, Wilmington District, 127 Cardinal Drive Extension, Wilmington, North Carolina, 28405-3845. You may also call the Division of Coastal Management to talk to a representative at (910) 796-7215.

Sincerely,

KILPATRICK TOWNSEND &amp; STOCKTON LLP

A handwritten signature in black ink, appearing to read 'Todd S. Roessler'.

Todd S. Roessler  
*Attorney for Petitioner West P. Hunter, Jr.*

Enclosure

13876828V.1

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2. Article Number



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4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

Rosemarie R. Palmer Trust  
3913 Brinton Place  
Charlotte, NC 28226  
US

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly)	B. Date of Delivery
C. Signature <b>X</b>	
<input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
D. Is delivery address different from item 1? If YES, enter delivery address below:	
<input type="checkbox"/> Yes <input type="checkbox"/> No	

103753.1075305-01729 -



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**Tracking Number:** 9414726699042043656737

Remove X

The item is currently in transit to the next facility as of February 25, 2018.

### In-Transit

February 25, 2018 at 12:03 pm  
In Transit to Next Facility  
On its way to CHARLOTTE, NC 282267007

**Get Updates** ✓

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**Text & Email Updates**

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**Tracking History****February 25, 2018, 12:03 pm**

In Transit to Next Facility  
On its way to CHARLOTTE, NC 282267007  
The item is currently in transit to the next facility as of February 25, 2018.

---

**February 24, 2018, 12:03 pm**

In Transit to Next Facility  
On its way to CHARLOTTE, NC 282267007

---

**February 23, 2018, 12:03 pm**

In Transit to Next Facility  
On its way to CHARLOTTE, NC 282267007

---

**February 22, 2018, 9:03 am**

Departed USPS Regional Facility  
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**February 22, 2018, 8:14 am**

Arrived at USPS Regional Facility  
CHARLOTTE NC DISTRIBUTION CENTER

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**February 22, 2018, 12:40 am**

Departed USPS Regional Facility  
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**February 21, 2018, 10:05 pm**

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# USPS Tracking®

FAQs > (<http://faq.usps.com/?articleId=220900>)

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Your item was delivered to an individual at the address at 12:24 pm on February 23, 2018 in MARION, SC 29571.

### **Delivered**

February 23, 2018 at 12:24 pm  
Delivered, Left with Individual  
MARION, SC 29571

Get Updates 

---

**Text & Email Updates**



---

**Tracking History**



**February 23, 2018, 12:24 pm**

Delivered, Left with Individual  
MARION, SC 29571

Your item was delivered to an individual at the address at 12:24 pm on February 23, 2018 in MARION, SC 29571.

---

**February 22, 2018, 4:45 pm**

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COLUMBIA SC PROCESSING CENTER

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**February 22, 2018, 11:49 am**

Arrived at USPS Regional Facility  
COLUMBIA SC PROCESSING CENTER

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**February 22, 2018, 12:40 am**

Departed USPS Regional Facility  
RALEIGH NC DISTRIBUTION CENTER

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**February 21, 2018, 10:05 pm**

Arrived at USPS Regional Facility  
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**Product Information**

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**FAQs** (<http://faq.usps.com/?articleId=220900>)

# Hunter Variance Request



# Hunter Variance Request



1 RAEFORD ST.

IMAGERY DATE  
10/29/2016

Google earth

© 2018 Google

ATLANTIC OCEAN



# Hunter Variance Request

NC Division of Coastal Management Department of Environmental Quality

home

Enter Location

1 RAEFORD ST

NCDQM GIS  
2016 BASEMAP  
IMAGERY

Parcels: HUNTER WEST PORTER JR TR ETALS

PARNO	107519520342
ALTPARNO	244PL025
OWNNAME	HUNTER WEST PORTER JR TR ETALS
IMPROVAL	1,000.00
LANDVAL	255,000.00
PARVAL	256,000.00
MAILADD	2430 GALLOWAY ROAD
MUNIT	
MCITY	CHARLOTTE
MSTATE	NC
MZIP	28262
SITEADD	
<a href="#">Zoom to</a>	...

33.892605 -78.422446 Degrees

State of North Carolina DOT, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA | NCCGIA | NC Counties, NCCGIA, NC OneMap, US EPA

POWERED BY esri

# *Hunter Variance Request*



View of Petitioner's property  
looking West

Photo taken by DCM Staff  
02/28/18



# *Hunter Variance Request*



View of Petitioner's property  
looking northwest

Photo taken by DCM Staff  
02/28/18



# *Hunter Variance Request*



View of Petitioner's property  
looking West

Photo taken by DCM Staff  
02/28/18



# *Hunter Variance Request*



View of Petitioner's property looking Northeast

Photo taken by DCM Staff  
02/28/18



# Hunter Variance Request



View of Petitioner's property looking southeast from northwest property corner

Photo taken by DCM Staff  
02/28/18



# Hunter Variance Request



View of Petitioner's property looking northwest from southeast property corner

Photo taken by DCM Staff  
02/28/18



# Hunter Variance Request



View of Petitioner's property looking east from southwest property corner, view of T-Canal

Photo taken by DCM Staff  
02/28/18



# Hunter Variance Request



View of finger canal from  
Petitioner's property  
looking west

Photo taken by DCM Staff  
02/28/18



# Hunter Variance Request

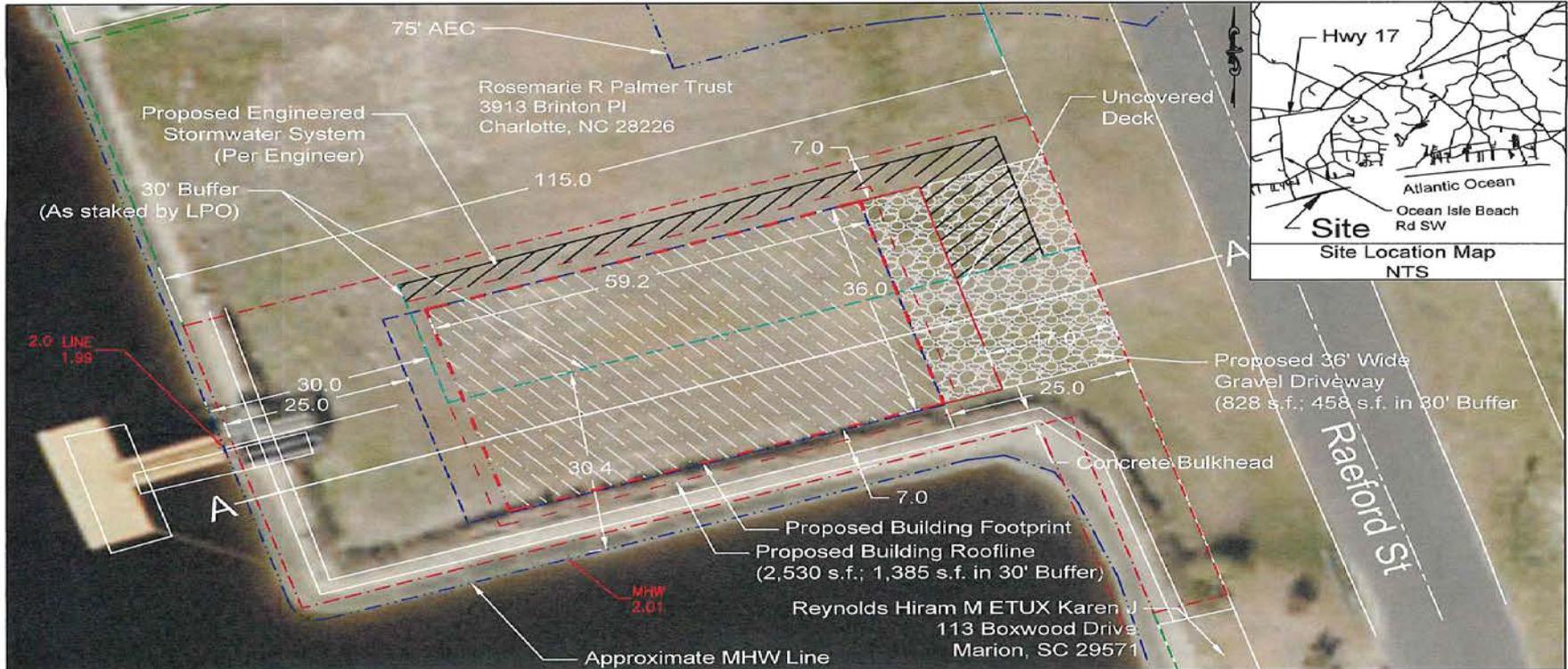


View of finger canal from  
Petitioner's property  
looking north

Photo taken by DCM Staff  
02/28/18



# Hunter Variance Request



- Legend**
- Parcel Boundary (6,136 s.f.)
  - 30' Buffer
  - R1 Building Setbacks
  - Approx MHW Line

- Proposed Building Footprint (2,131 s.f.)
- Proposed Engineered Stormwater System

FOR ENVIRONMENTAL PERMITTING ONLY.  
NOT AN ENGINEERED OR SURVEYED DRAWING.

NOTE: THE PROPOSED ENGINEERED STORMWATER SYSTEM WILL COLLECT AND CONTAIN, AT A MINIMUM, THE FIRST ONE AND ONE-HALF INCHES OF RAINFALL FROM ALL IMPERVIOUS SURFACES ON THE LOT IN ACCORDANCE WITH THE DESIGN STANDARDS FOR STORMWATER MANAGEMENT AS SPECIFIED IN 15A NCAC 02H .01105 OR PER LOCAL ORDINANCE.



RECEIVED

JAN 29 2018

**LMG**  
LAND MANAGEMENT GROUP INC.  
Environmental Consultants  
Post Office Box 2522  
Wilmington, North Carolina 28402  
Telephone: 910-452-0001

Project: 1 Raeferd Street Ocean Isle Beach	Date: 1/15/18	Revision Date: 1/29/18
	Scale: 1"=20'	Job Number: 02-17-323
Title: CAMA Minor Permit Site Location and Plan View	Drawn By: GSF	Sheet Number: 1 of 2

## *Hunter Variance Request*

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

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

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





ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

WILLIAM F. LANE  
*General Counsel*

TO: The Coastal Resources Commission

FROM: Drew Hargorve, DEQ Assistant General Counsel  
Christine A. Goebel, DEQ Assistant General Counsel

DATE: March 28, 2018 (for the April 10-11, 2018 CRC Meeting)

RE: **Variance Request by Dean R. Sackett (CRC-VR-18-03)**

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Petitioner Dean R. Sackett (“Petitioner”) owns a residence at 9131 South Old Oregon Inlet Road (the “Site”) in the South Nags Head area of the Town of Nags Head. The property is located within the Commission’s Ocean Hazard Area of Environmental Concern (“AEC”). This area of Nags Head is subject to a “static line” following a large-scale beach nourishment project in 2011.

In February of 2018, Petitioner filed a CAMA Minor Permit application seeking to construct a 72.33 square foot addition to the bottom floor of the piling-supported residence under an existing covered porch. On February 23, 2018, the Town of Nags Head’s Coastal Area Management Act (“CAMA”) Local Permitting Officer (“LPO”) denied Petitioner’s CAMA Minor Permit application as the proposed addition does not meet the applicable 105’ setback from the static line. On February 28, 2018, Petitioner, through counsel, filed this variance petition to request the Commission vary the oceanfront setback rules so it can develop the addition as proposed.

The following additional information is attached to this memorandum:

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

cc(w/enc.): Charles D. Evans, Esq., Petitioner’s Counsel, electronically  
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically  
Kelly Wyatt, Town of Nags Head CAMA LPO, electronically



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

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

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

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

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

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

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

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

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

The ocean hazard AECs contain all of the following areas:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**STIPULATED FACTS****ATTACHMENT B**

1. Dean R. Sackett (“Petitioner”) and his wife Marie-Elise M. Sackett own property at 9131 South Old Oregon Inlet Road (“Site”) in the Town of Nags Head (“Town”), Dare County, North Carolina. Petitioner is represented in this variance by Charles D. Evans, Esq. of Kellogg and Evans, P.A. in Manteo.
2. Petitioner obtained the Site, known as Lot 1, Block 10, Section 2 of Hollywood Beach through an October 18, 2017 deed from Acquiror, Inc., recorded at Book 2199, Page 260 of the Dare County Registry, a copy of which is attached. The Site is shown on a Plat of Hollywood Beach dated April 17, 1952 and recorded at Map Book 1, Page 78 of the Dare County Registry, a copy of which is attached.
3. As part of the permit review, Petitioner provided a copy of an October 2, 2017 survey of the Site by W.L. Norris, Jr., P.L.S. of Mesa Professional Corporation, a copy of which is attached. This survey showed the location of the Static Line, incorrectly omits the location of the FLSNV (at that time), and incorrectly shows the setback as being 90’ (instead of the applicable 105’).
4. The Site is currently developed with a 1,432 square foot two-story piling-supported single-family residence. The house is a three-bed, two-bath house based on the tax card, attached. The house is serviced by septic and by city water. Photographs of the existing residence are attached as part of the stipulated PowerPoint presentation.
5. The Dare County Tax Card indicates that the home on the Site was built in 1984, a copy of which is attached. The original house has not been enlarged and the covered porch where the bathroom would be added is original.
6. The Site is located within the Ocean Erodible portion of the Ocean Hazard Area of Environmental Concern (“AEC”). The applicable erosion rate at the Site is 3.5’/year, and so the applicable setback for this “Development” under 5,000 square feet Total Floor Area (TFA) is 105’ landward of the static line.
7. The Town of Nags Head funded its first large-scale nourishment project resulting in sand being placed during the summer of 2011 at the Site. Before the project began, the existing first line of stable and natural vegetation was surveyed, and is shown on DCM’s GIS mapping tool, copies of which (showing the Site on 1998 and 2016 aerial photography) are attached.
8. The location of the “actual” first line vegetation at the time of permit review is not shown on the survey, but according to the LPO, was located just waterward of the static line. Therefore, the 105’ setback was measured landward from the static line per the Commission’s rules.
9. Pursuant to N.C.G.S. § 113A-118, proposed development requires authorization though the issuance of a CAMA permit as the entire existing house is located waterward of the applicable 105’ ocean erosion setback.

10. At the Site, the waters of the Atlantic Ocean are classified as SB waters, open to the harvest of shellfish.
11. The portion of the Site where development is proposed is located has a Base Flood Elevation of 11 feet NAVD 1988 and is located within a VE-11 Flood Zone, based on the November 30, 2017 Elevation Certificate, a copy of which is attached as a stipulated exhibit.
12. On or about February 7, 2018, Petitioner (through Petitioner's Authorized CAMA Agent Robert Lawson of R. Lawson Construction Co., Inc.), applied for a CAMA Minor Development Permit with the Town of Nags Head Local Permit Officer ("LPO") seeking to create a new bathroom by enclosing an area 9'4" x 7'9" or 72.33 square feet currently used as a covered porch. The added enclosed Total Floor Area ("TFA") is proposed to be located on the lower level, underneath an existing covered porch on the rear (landward side) of the house, so the footprint of the residence will remain the same. A copy of Petitioner's CAMA permit application materials are included as stipulated exhibits.
13. The 72.33 square foot addition to the currently 1,432 square foot residence represents a 5% increase in area compared to the current area.
14. The applicable 105' setback from the applicable static vegetation line results in the setback line falling landward of Petitioner's existing house, near the end of the existing gravel drive. This setback was omitted on the survey provided by Petitioner, and had to be approximated and hand-drawn onto the 2017 Survey by the LPO not to scale, a copy of which is attached. The proposed development was proposed to be approximately 45-50 feet behind the static line.
15. At the time of Petitioner's permit application in 2018, Petitioner sent notice of the proposed addition to its two adjacent riparian owners (Howard at Lot 2, Block 1 and Town of Nags Head as owner of Indigo Street). The Town of Nags Head received no objections to this application from adjacent property owners or any member of the public.
16. By letter dated February 23, 2018, the Nags Head CAMA LPO denied Petitioner's proposed addition as the structural addition was not landward of the applicable 105' setback from the static vegetation line. A copy of the denial letter is attached as a stipulated exhibit.
17. On February 28, 2018, Petitioner, through counsel Charles D. Evans, submitted the attached variance petition, seeking a variance from the Commission to the ocean erosion setback rules, to construct the bathroom addition as proposed.
18. Petitioner did not seek a variance from local setbacks as he proposes to build under the existing covered porch on the rear of the residence.
19. Adjacent riparian property owners were sent notice of this variance request. Copies of the notice and the certified mailing information are attached as stipulated exhibits. If any comments are received by the time of the Commission Meeting, they will be shared with the Commission at that time.

20. CAMA Major Permit No. 45-10 was originally issued in 2010 to place 4.6 mcy from Blackmon Street to McCall Street in Nags Head (includes the Site). On February 12, 2018, DCM issued a major modification to 45-10 authorizing the placement of approximately 4 mcy of sand over the 10 miles of beach from Bonnett Street to the Northern boundary of the National Seashore beach ramp off South Old Oregon inlet Road (includes the Site). A statement from the Town Manger describing the project is attached.

21. For purposes of this Variance Request, Petitioner stipulates that it's proposed addition constitutes development that is inconsistent with the CAMA setback rules specified in 15A NCAC 7H .0306.

22. After the filing of this variance, a strong nor'easter impacted the Site. The LPO marked the new "actual" FLSNV on March 12, 2018, and that line was surveyed and shown on a revised survey of the Site, a copy of which is attached. This revised survey also shows the location of the proposed addition in a hatch-marked area. This revised survey also correctly shows the 105' setback being pulled landward from the new "actual" FLSNV and the static line, whichever is more restrictive. As seen on the revised survey, the "actual" FLSNV follows the static line on the south side of the Site, and then curves landward as it moves to the north side of the Site. Based on this revised survey, Petitioner is still seeking a variance from the setback, in that the area for proposed addition is located approximately 50' - 55' waterward of the 105' setback.

23. A PowerPoint is attached which shows the Site in aerial and ground-level photographs over time.

#### Stipulated Exhibits:

- A. 2017 Sackett Deed 2199/260
- B. 1952 Plat Map 1/78
- C. Site Survey- October 2, 2017 (with incorrect setback)
- D. Site Survey- with LPO's hand-written notes and corrected setback approximated
- E. Site Survey- updated to show location of March 12, 2018 FLSNV
- F. Dare County Tax Card for the Site
- G. Site overlain on 1998 and 2016 aerial photography
- H. November 30, 2017 Flood Elevation Certificate
- I. CAMA Minor Permit Application Materials, including interior view and side view
- J. Notice of CAMA Permit application to adjacent riparian owners
- K. February 23, 2018 Denial Letter
- L. Notice of CAMA Variance request to adjacent riparian owners
- M. Letter from Town Manager re: nourishment
- N. PowerPoint Presentation with ground & aerial Site Photos

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

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

**Petitioners' Position: Yes.**

Yes, because without the permit we cannot add another working bathroom within the existing structure and under the existing screened porch. An additional bathroom would be very desirable. The proximity of the existing bathroom and the proposed changes make it conclusive to add a much smaller separate bathroom and the proposed changes make it conducive to add a much smaller separate bathroom adjacent to the existing bathroom for the persons staying in that bedroom, which would then not require them to share the handicapped bathroom. The expansion is modest and based on the square footage requested, the increase is only approximately five (5%) percent of the existing, already small structure, as compared to the structures around it. The additional square footage would also remain within the footprint of the existing house, as it would fill in space below a covered porch adjacent to and below the bedroom on the upper level and would become a part of the first floor and would therefore, remain above the pilings already in place. Similarly, since it would fit beneath the existing main level floor space, it would not require any alterations to the roof. From an appearance perspective, it would look as though it should have been part of the home in its original construction, and had it been included then, it would have been no issue with it.

**Staff's Position: No.**

Staff disagree that a strict application of the oceanfront erosion setback rules cause Petitioner an unnecessary hardship where Petitioner has an existing structure and wishes to increase the size of the structure by 5% where the house is within the setback (waterward of the applicable 105' setback from the Static Line). This area has a high rate of average annual erosion at 3.5'/year, and the home is located only 50'-55' behind the first line as delineated in early-March. While the Town's planned nourishment (which may not happen until 2019) may temporarily slow erosion and allow the landward movement of the vegetation line in this area, there is still a significant risk of this structure becoming "imminently threatened" and on the dry-sand public beach. While the increase is 72.33 square feet and being built under the existing covered porch, it still represents a 5% increase of total floor area and the associated materials could add to future storm debris. The Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development" (15A NCAC 07H

.0303(b)). Staff see no unnecessary hardships from not being able to add additional total floor area within the setback given the significant oceanfront erosion oceanward of the Site.

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

**Petitioners' Position: Yes.**

Yes, because the lot is in an ocean hazard area and due to the erosion that has occurred over time since the house was built in 1984, it no longer meets the setback rules that apply today for any additional development. The Town of Nags Head completed its first Beach Nourishment Project in 2011. The existing setback line could change again based on upon the pending beach replenishment plan by the Town of Nags Head. With regard to the physical size of the house, it should be noted that when it was built in 1984, the typical floor plan sometimes consisted of bathroom areas separated from the adjacent bedroom. Through no fault of the developer, builder or ourselves upon purchase, the design is reflective of its time. Adding a connecting bathroom to the master bedroom would greatly enhance the use and flexibility of the existing structure.

**Staff's Position: No.**

Staff disagree that Petitioner's location within an Ocean Hazard AEC is unusual, nor that the 3.5'/year average annual erosion rate at the site is unusual along the high energy northern beaches. The high erosion rate in this area does not justify the granting of a variance to increase the total floor area of a structure. Staff also note that floorplan design is not a "condition peculiar to the Petitioner's property, such as location, size or topography of the property" and so should not be considered by the Commission for this statutory factor.

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

**Petitioners' Position: No.**

No. The hardships are specific and peculiar to the property over which the petitioner has had no control. Again, the property lies within an ocean hazard area which is ever changing and is being taken into account. All aspects of the proposed changes have taken into consideration the intent of the law that exists to protect these land areas. The proposed bathroom expansion will require no additional pilings, the structure will remain exactly as is and there will be no adverse environmental impacts.

**Staff's Position: Yes.**

While Staff agree that Petitioners did not cause the erosion of the vegetation line and dune system landward of their lot, and acknowledge that the proposed addition will not require new pilings or a new roof, Petitioners may have the option to re-work their existing interior space without the need for a variance or increasing the size of the structure by 5% in a highly erosive area. Staff contend that the addition of 72.33 square feet of new floor area to the structure waterward of the setback is a hardship caused by Petitioners' choice of design and the structure's location.

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

**Petitioners' Position: Yes.**

Yes. Consistent with the Management Objective of Estuarian [sic] Ocean Systems in 15ANCAC [sic]07H.0203, the proposed structure would not impact any biological, social, economic or aesthetic values, based on the physical properties of the structure as previously described, in that it does not increase the footprint, add pilings, impact adversely any environmental issues surrounding it (as it is contained under an existing covered porch), would remain above flood level and does not change the height of the existing structure. Furthermore, the proposed changes would actually enhance the use of the property, making it more livable and usable. The fact that additional time and care would be spend enjoying and maintaining the home perpetuates the conservation of the entire area and minimizes the likelihood of significant loss of private property and public resources. Maintenance of the structure and the enjoyment of the surrounding natural habitat and environment would be our priority.

2. Similarly, as described above, it would preserve and enhance public safety, in that it does not adversely impact the property or the rights of anyone else.

3. Preserving substantial justice is a unique situation, in that changes or modifications would be specific to accommodating and enhancing use by the occupants or guests and would allow the property to be more useable and therefore maintained on a regular basis and would not create any know injustice as it would have no adverse impacts on any surrounding properties. In summary, what is being proposed is unique to this property, will promise additional use of the property and will not create any known adverse circumstances and should be allowed by granting the variance requested.

**Staff's Position: No.**

Staff notes that Petitioner is seeking a variance from the oceanfront erosion setback rules found at 15A NCAC 7H .0306 and not the rules for the Estuarine Shorelines which Petitioner cites. The Commission's rules have provided an oceanfront erosion setback since 1979, where structures are required to meet a setback landward of the FLSNV or the Static Line as the case may be (here, the "actual" first line staked in March is near or slightly landward of the location of the Static Line). In this case, there is a high average erosion rate of 3.5'/year, which results in a setback from the State Line of 105-feet. The Commission's rules for the Ocean Hazard AEC include 7H .0303(b), which notes that the purpose of these rules:

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

Staff contend that granting a variance to the oceanfront erosion setback rule in this highly erosive area would not be within the spirit of the setback rules. While this Site was nourished in 2011, there has not been any improvement in the vegetation line, as the 2011 static line location is in the same place as the "actual" vegetation today. While this may improve with the proposed 2018 (or more likely 2019) nourishment cycle, Staff believe that at this time, a variance would not be within the spirit of the setback rules, given the potential for increased property losses, both direct and indirect as a result of additional storm debris. Allowing this variance would therefore not secure public safety and welfare or substantial justice.

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

## KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS  
 CREECY S. RICHARDSON  
 MEGHAN E. ASHWORTH  
 MARTIN KELLOGG, JR.  
 1908-2001

P.O. BOX 189  
 MANTEO, NC 27954

DELIVERY ADDRESS:  
 201 ANANIAS DARE STREET  
 MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171  
 FACSIMILE: (252) 473-1214

EMAIL ADDRESS:  
 chariese@kelloggandevans.com  
 courtneyb@kelloggandevans.com  
 creecyr@kelloggandevans.com  
 meghana@kelloggandevans.com

February 27, 2018

To: Division of Coastal Management  
 Director  
 400 Commerce Avenue  
 Morehead City, NC 28557  
 Attn: Angela Willis, Assistant to the Director  
 (transmitted via email only: [angela.willis@ncdenr.gov](mailto:angela.willis@ncdenr.gov))

Re: **CAMA Variance Request Form**  
**April 10-11, 2018 CRC Meeting**

Dear Ms. Willis:

Enclosed with this letter please find the completed CAMA Variance Request Form, signed and dated by myself, Charles D. Evans, as the Petitioner's Attorney. Also enclosed, please find the additional information required for submission with the said Form.

On behalf of my client, the Petitioner, I am respectfully requesting that the enclosed Request Form and attachments and exhibits be considered at the CRC Meeting scheduled to be held on April 10 - 11, 2018 in Manteo, NC.

After your review of the enclosed documents, if you determine that any supplemental materials are necessary, please let me know and I will provide them promptly. I greatly appreciate your continued assistance and guidance with this matter. Thank you for your acceptance of the enclosed Form on behalf of the Director of the Division of Coastal Management.

Best regards,



Charles D. Evans  
 CDE/cab  
 Enclosures

## CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: \_\_\_\_\_

PETITIONER'S NAME Dean R. Sackett, III & Marie-Elise M. Sackett  
 COUNTY WHERE THE DEVELOPMENT IS PROPOSED Dave

Pursuant to N.C.G.S. § 113A120.1 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](http://www.nccoastalmanagement.net)

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

**VARIANCE CRITERIA**

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

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

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

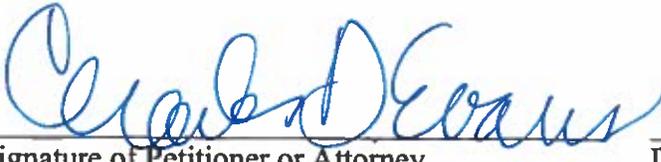
*contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of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

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

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

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

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

  
 Signature of Petitioner or Attorney \_\_\_\_\_ Date February 27, 2018

Charles D. Evans  
 Printed Name of Petitioner or Attorney \_\_\_\_\_ Email address of Petitioner or Attorney Charles.e. Kellogg and Evans.com

P.O. Box 189  
 Mailing Address \_\_\_\_\_ Telephone Number of Petitioner or Attorney (252) 473-2171

Manteo, NC 27954  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Fax Number of Petitioner or Attorney (252) 473-1214

### 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](http://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

**Petitioners Answer re: Hardship and Establishing a Variance Criteria**

(a) WILL STRICT APPLICATION OF THE APPLICABLE DEVELOPMENT RULES, STANDARDS OR ORDERS ISSUED BY THE COMMISSION CAUSE THE PETITIONER UNNECESSARY HARDSHIPS? EXPLAIN THE HARDSHIPS.

Yes, because without the permit we cannot add another working bathroom within the existing structure and under the existing screened porch. An additional bathroom would be very desirable. The proximity of the existing bathroom and the proposed changes make it conducive to add a much smaller separate bathroom adjacent to the existing bathroom for the persons staying in that bedroom, which would then not require them to share the handicapped bathroom.

The expansion is modest and based on the square footage requested, the increase is only approximately five (5%) percent of the existing, already small structure, as compared to the structures around it.

The additional square footage would also remain within the footprint of the existing house, as it would fill in space below a covered porch adjacent to and below the bedroom on the upper level and would become a part of the first floor and would therefore, remain above the pilings already in place. Similarly, since it would fit beneath the existing main level floor space, it would not require

any alterations to the roof. From an appearance perspective, it would look as though it should have been part of the home in its original construction, and had it been included then, there would not have been any issue with it.

(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, because the lot is in an ocean hazard area and due to the erosion that has occurred over time since the house was built in 1984, it no longer meets the setback rules that apply today for any additional development .

The Town of Nags Head completed its first Beach Nourishment Project in 2011. The existing setback line could change again based upon the pending beach replenishment plan by the Town of Nags Head.

With regard to the physical size of the house, it should be noted that when it was built in 1984, the typical floor plan sometimes consisted of bathroom areas separated from the adjacent bedroom. Through no fault of the developer, builder or ourselves upon purchase, the design is reflective of its time. Adding a connecting bathroom to the master bedroom would greatly enhance the use and flexibility of the existing structure.

(c) DO THE HARDSHIPS RESULT FROM ACTIONS TAKEN BY THE PETITIONER? EXPLAIN.

No. The hardships are specific and peculiar to the property over which the petitioner has had no control. Again, the property lies within an ocean hazard area which is ever changing and is being taken into account. All aspects of the proposed changes have taken into consideration the intent of the law that exists to protect these land areas.

The proposed bathroom expansion will require no additional pilings, the structure will remain above the flood plain, the roof will remain exactly as is and there will be no adverse environmental impacts.

(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.

1. Yes. Consistent with the Management Objective of Estuarian Ocean Systems in 15ANCACo7H.0203, the proposed structure would not impact any biological, social, economic or aesthetic values, based on the physical properties of the structure as previously described, in that it does not increase the footprint, add pilings, impact adversely any environmental issues surrounding it

(as it is contained under an existing covered porch), would remain above flood level and does not change the height of the existing structure. Furthermore, the proposed changes would actually enhance the use of the property, making it more livable and usable. The fact that additional time and care would be spent enjoying and maintaining the home perpetuates the conservation of the entire area and minimizes the likelihood of significant loss of private property and public resources. Maintenance of the structure and the enjoyment of the surrounding natural habitat and environment would be our priority.

2. Similarly, as described above, it would preserve and enhance public safety, in that it does not adversely impact the property or the rights of anyone else.

3. Preserving substantial justice is a unique situation, in that changes or modifications would be specific to accommodating and enhancing use by the occupants or guests and would allow the property to be more useable and therefore maintained on a regular basis and would not create any known injustice as it would have no adverse impacts on any surrounding properties.

In summary, what is being proposed is unique to this property, will promise additional enhanced use of the property and will not create any known adverse circumstances and should be allowed by granting the variance requested.

### **Closing**

On behalf of the Applicant, I submit that the proposed development does not thwart the Management Objective of the Estuarine Ocean System and carries forward the objectives 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 AEC's so as to safeguard and perpetuate their biological, social, economic and aesthetic values and to ensure that development occurring within these AEC's is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. And the proposed development is consistent with the objectives of CAMA and the Coastal Resources Commission to protect present common law and statutory public rights of access to our lands and waters within in the coastal area.

**ATTACHMENT E:  
STIPULATED EXHIBITS**

- A. 2017 Sackett Deed 2199/260
- B. 1952 Plat Map 1/78
- C. Site Survey- October 2, 2017 (with incorrect setback)
- D. Site Survey- with LPO's hand-written notes and corrected setback approximated
- E. Site Survey- updated to show location of March 12, 2018 FLSNV
- F. Dare County Tax Card for the Site
- G. Site overlain on 1998 and 2016 aerial photography
- H. November 30, 2017 Flood Elevation Certificate
- I. CAMA Minor Permit Application Materials, including interior view and side view
- J. Notice of CAMA Permit application to adjacent riparian owners
- K. February 23, 2018 Denial Letter
- L. Notice of CAMA Variance request to adjacent riparian owners
- M. Letter from Town Manager re: nourishment
- N. PowerPoint Presentation with ground & aerial Site Photos



Unofficial Document

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1810, Page 210, Dare Registry.

A map showing the above described property is recorded in Map Book 1, Page 78, Dare 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:

Easements and restrictions of record, if any, in the Dare County Registry.

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 by authority of its Board of Directors, the day and year first above written.

ACQUIROR, Inc.

By Larry Fentress, Vice-President

(SEAL)

James Fontenay Chairman

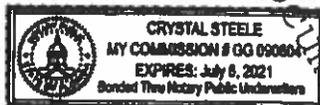
STATE OF Florida  
COUNTY OF Pinellas

I, a Notary Public of the County and state aforesaid, certify that Larry Fentress personally appeared before me this day and acknowledged that he/she is an officer of Acquiror, Inc., a corporation, to wit its Vice President and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by him/her in that capacity. Witness my hand and official stamp or seal, this 9 day of October, 2017. By Lauric Fentress

My commission expires: 07/06/2021

Crystal Steele Notary Public

(Place Seal or Stamp Here)



Unofficial Document

B: 1810 P: 210 Doc Id: 6263524  
08/20/2009 04:04 PM Receipt # 09-11562  
Doc Code: DEED NCExcise Tax pd. \$0.00  
Vanolia McHurren, Register of Deeds Dare CO, NC

UNOFFICIAL DOCUMENT

EXEMPT  
DARE COUNTY TAX  
COLLECTOR

NO. 2637519

Excise Tax \$ Recording Time, Book and Page:

Parcel No. 007226000 & 007477000

Mail after recording to: Brumsey and Brumsey, PLLC, PO Box 100, Currituck, NC 27929

This instrument was prepared by: William Brumsey, IV/mnm File no. 09 B 41018

Brief Description for Index:

Nags Township

### NORTH CAROLINA GENERAL WARRANTY DEED

This DEED, made this 18 day of August 2009 by and between

GRANTOR

GRANTEE

LARRY FENTRISS, unmarried

ACQUIROR, INC.

This is a Deed of Gift

409 Cratan Road  
Virginia Beach, VA 23451

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

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

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

See attached Exhibit "A"

This instrument prepared by William Brumsey, IV, a licensed North Carolina attorney. Delinquent taxes, if any, to be paid by the closing attorney to the county tax collector upon disbursement of closing proceeds.



The property hereinabove described was acquired by Grantor by instrument recorded in Book 1796 Page 317  
A map showing the above described property is recorded in Plat Book 1 Page 78

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to Grantees 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:

Reservations, Restrictions and Easements of record.  
Restrictive Covenants recorded in Deed Book 247, Page 325, Book 244, Page 452 (Tract One)

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.

By \_\_\_\_\_ (Corporate Name) LARRY FENTRISS (SEAL)  
\_\_\_\_\_  
President  
ATTEST: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
Secretary (Corporate Seal) \_\_\_\_\_ (SEAL)

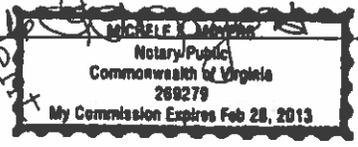
STATE OF Virginia, COUNTY/CITY OF Norfolk

I, Michelle S. Moyers a Notary Public do hereby certify  
That LARRY FENTRISS personally  
Appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

Witness my hand and official stamp or seal this 18<sup>th</sup> day of Aug. 2009.

AFFIX NOTARY SEAL

My commission expires: 2.28.2013



STATE OF NORTH CAROLINA, COUNTY/CITY OF \_\_\_\_\_

I, \_\_\_\_\_ A Notary Public do hereby certify that  
\_\_\_\_\_ personally came before me this day and acknowledged that he is  
Secretary of \_\_\_\_\_ a North Carolina corporation, and that by authority duly  
given and as the act of the corporation, the foregoing instrument was signed in its name by its \_\_\_\_\_ President,  
sealed with its corporate seal and attested by \_\_\_\_\_ as its Secretary.

AFFIX NOTARY SEAL

My commission expires: \_\_\_\_\_  
North Carolina, Dare County

The foregoing certificate(s) of \_\_\_\_\_  
is certified to be correct. This instrument was presented for registrations this \_\_\_\_\_ day of \_\_\_\_\_  
2009, at \_\_\_\_\_ M., and duly recorded in the Office of the Register of Deeds for Dare County, North Carolina, in Book \_\_\_\_\_ at  
Page \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Dare County Register of Deeds

By: \_\_\_\_\_

Exhibit "A"

Tract One:

Lot 45 of the subdivision known as Goose Wing, as shown on a map or plat thereof made by Rose & Purcell, Inc., Engineers, dated January 1977, and recorded in Map Book 9, page 57, Public Registry of Dare County, North Carolina.

The Grantees herein shall have the right of access to the Atlantic Ocean and State Road 1243, over and across the area designated "Access Area", which said is to be held in common with each owner in the subdivision.

Tract Two:

Being Lot Number One (1) of Block Ten (10), Section Two (2), of Hollywood Beach, map or plat thereof made by David H. Lawrence, Registered Surveyor, dated April 17, 1952, and duly recorded in Map Book 1, Page 78, office of the Register of Deeds, Dare County, NC, reference to which is hereby made for a more particular description of the lands conveyed.

Initials

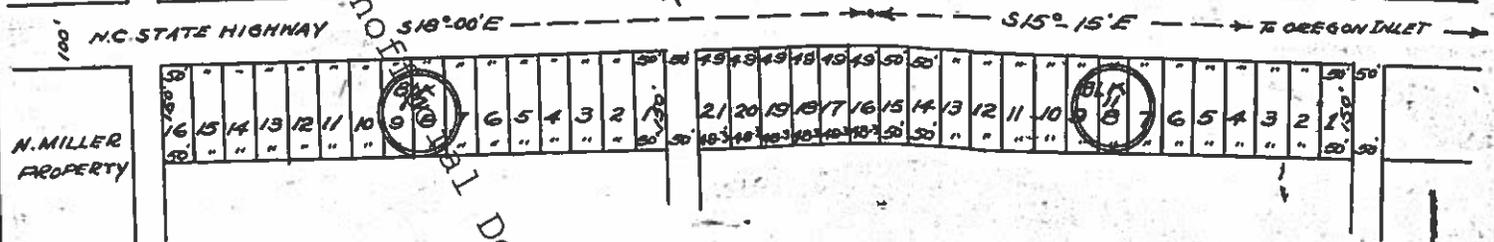
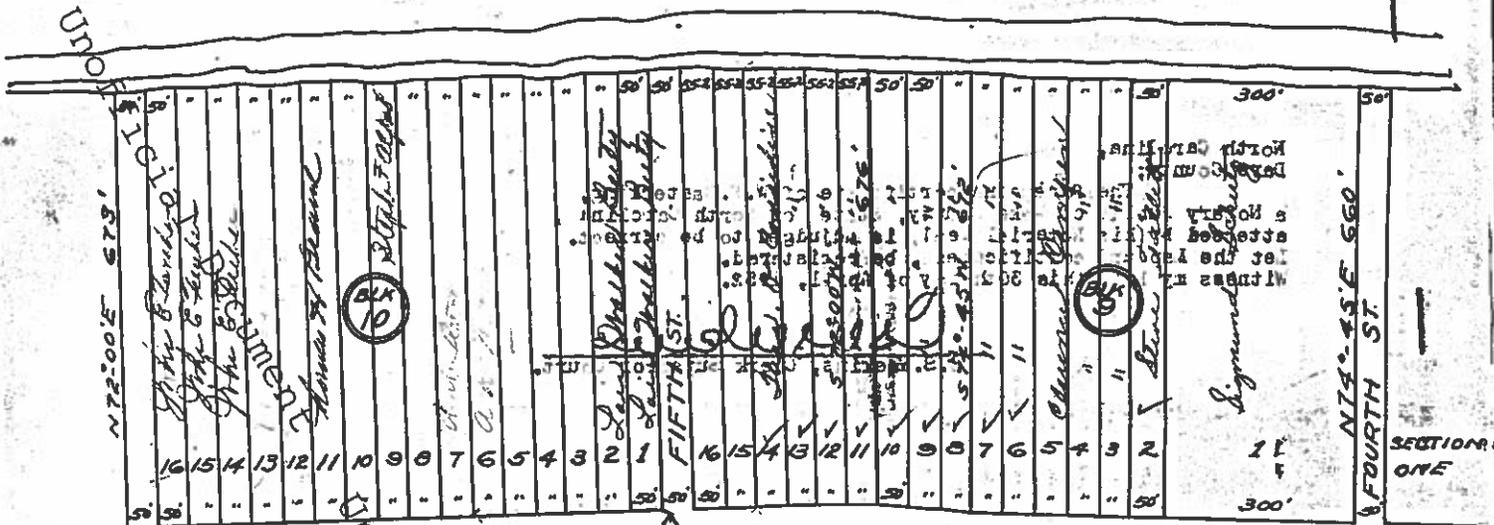
*[Handwritten signature]*

Unofficial Document

Unofficial Document

Unofficial Document

ATLANTIC OCEAN



PLAT OF USECTION TWO HOLLYWOOD BEACH

DARE COUNTY, N.C.

I, D.H. LAWRENCE, REGISTERED SURVEYOR, DO HEREBY CERTIFY THAT I AM THE MAKER OF THIS SUBDIVISION BY ACTUAL SURVEY ON THE LOCATION, & THAT IT IS CORRECT TO THE BEST OF MY KNOWLEDGE & BELIEF.

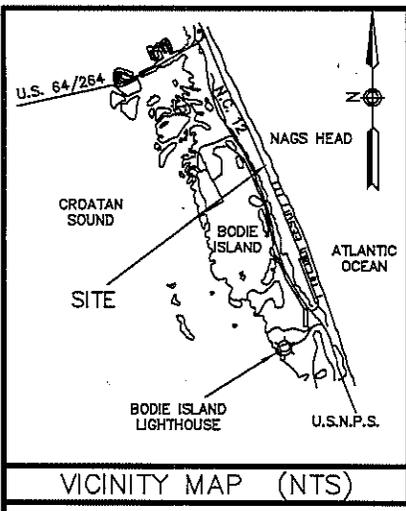
*D.H. Lawrence - Reg. Surveyor*

SUBSCRIBED TO & SWORN TO BEFORE ME THIS 26<sup>th</sup> DAY OF APRIL, 1952

MY COMM. EXPIRES: OCT. 8, 1953

*W. H. Lawrence*  
NOTARY PUBLIC

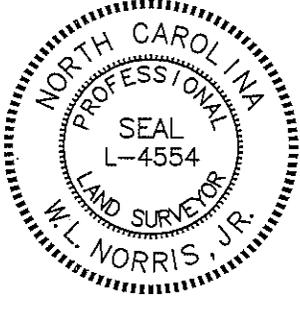
SCALE - 1 INCH = 200'  
APRIL 7, 1952



VICINITY MAP (NTS)

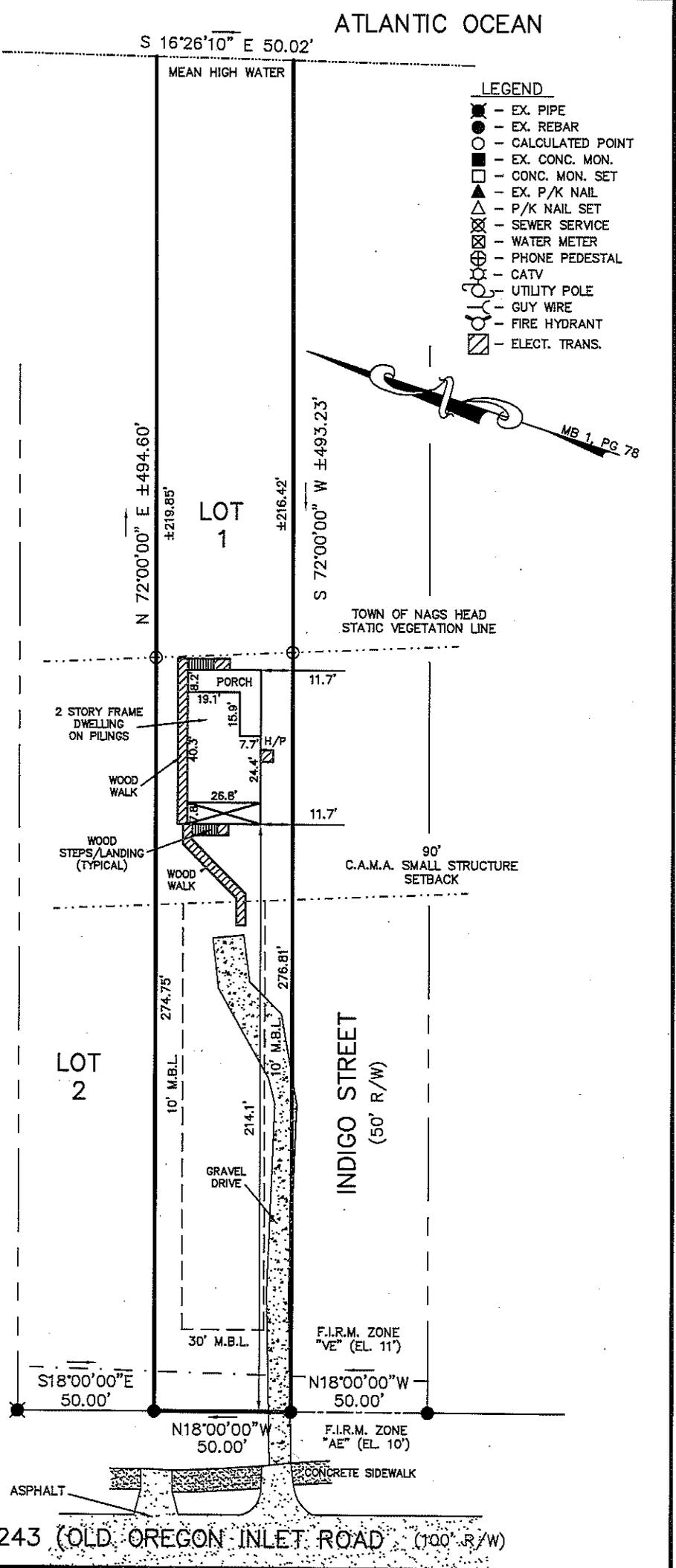
**NOTES:**

1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
2. AREA BY COORDINATE COMPUTATION = ±24,696 S.F.
3. F.I.R.M. ZONE: AS SHOWN
4. PIN NO.: 14 071918 32 1312
5. RECORDED REFERENCE: MB 1, PG 78
6. MINIMUM BUILDING LINES (MBL) SHOWN HEREON ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
7. ELEVATIONS (NAVD 1988): N/A



I, W.L. NORRIS, JR., P.L.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY UNDER MY SUPERVISION. PLAT RECORDED IN MB 1, PG 78, THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN MB 1, PG 78 IN THE DARE COUNTY REGISTRY OF DEEDS; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; AND THAT THIS PLAT MEETS THE REQUIREMENTS OF "THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56 .1600)"

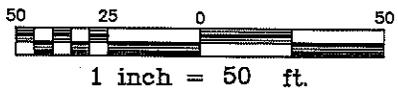
DATE 10/02/17  
L-4554



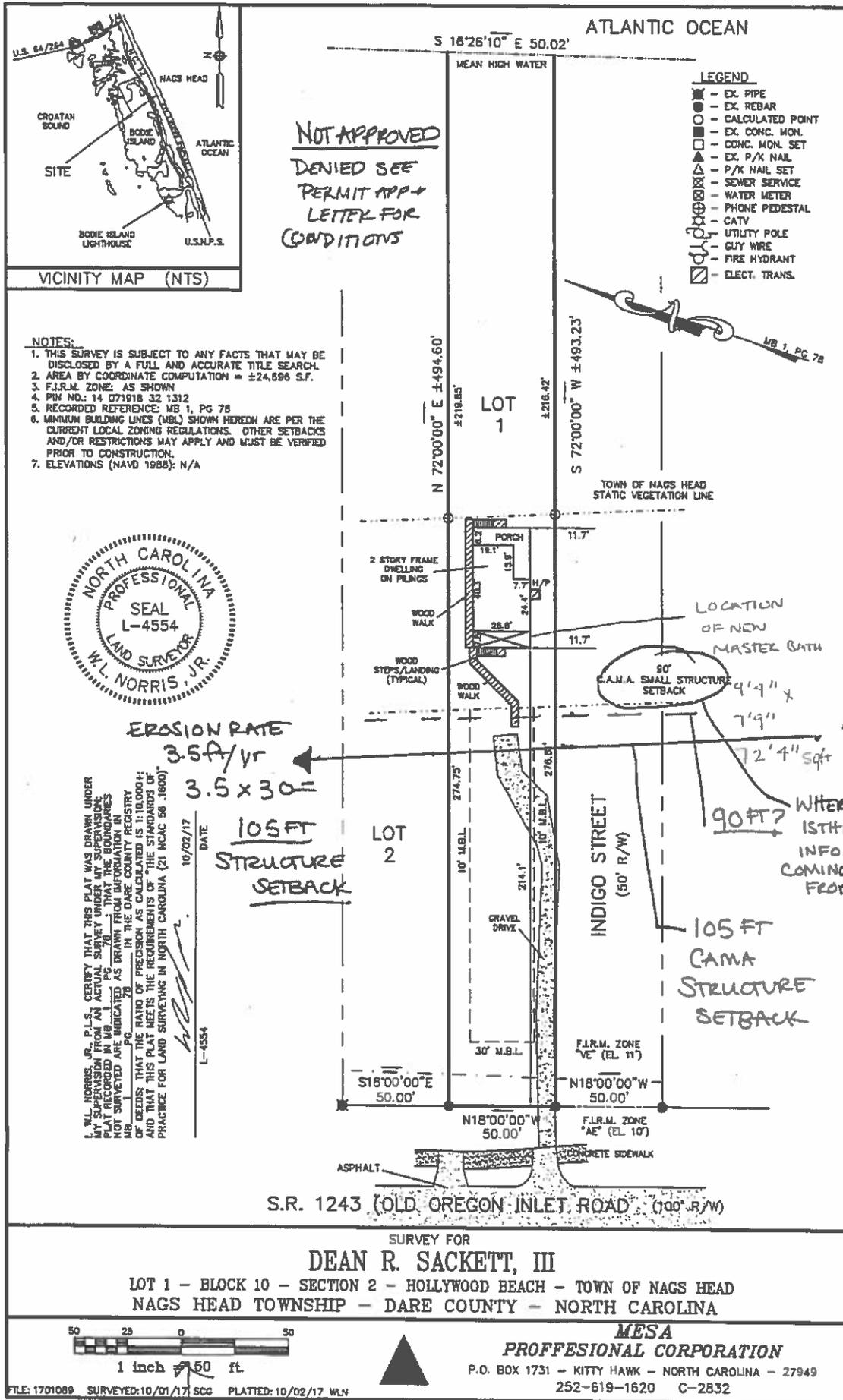
**LEGEND**

- EX. PIPE
- EX. REBAR
- — CALCULATED POINT
- EX. CONC. MON.
- — CONC. MON. SET
- ▲ — EX. P/K NAIL
- P/K NAIL SET
- SEWER SERVICE
- WATER METER
- PHONE PEDESTAL
- CATV
- UTILITY POLE
- GUY WIRE
- FIRE HYDRANT
- ELECT. TRANS.

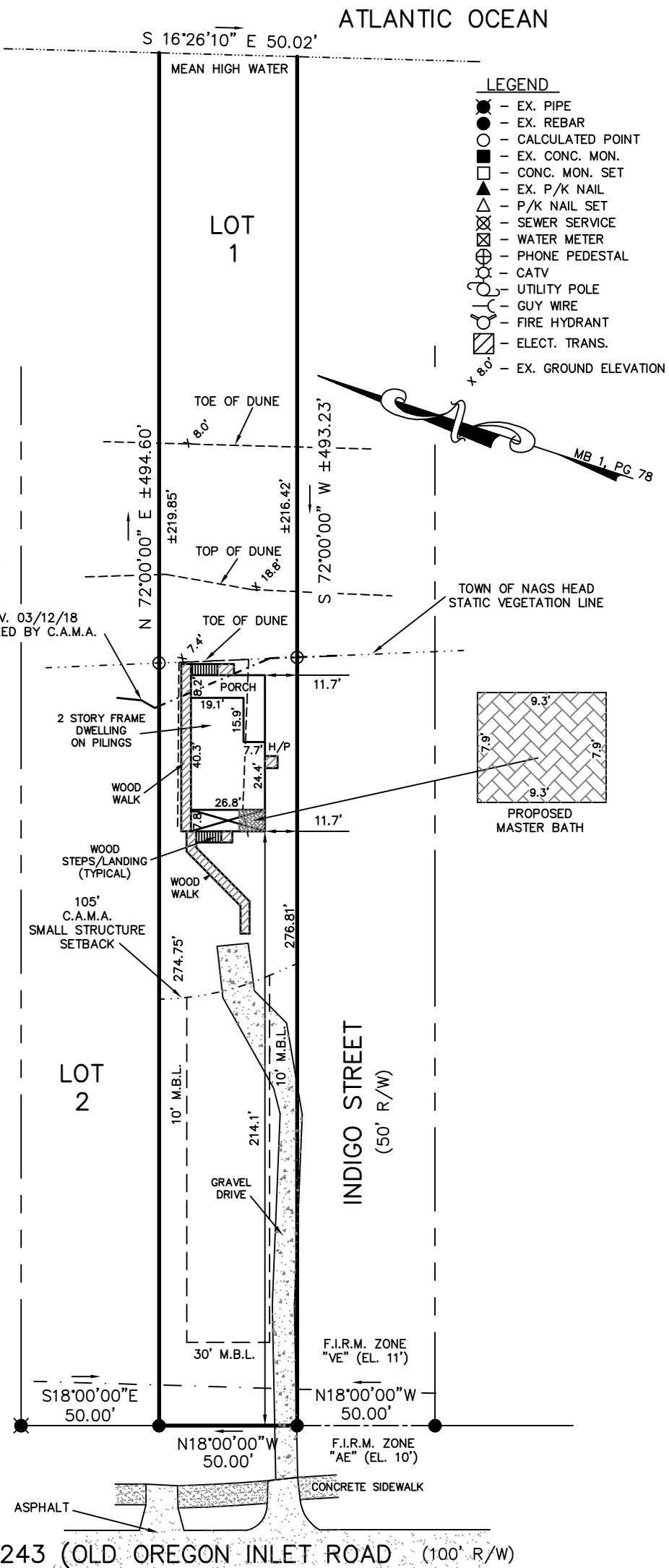
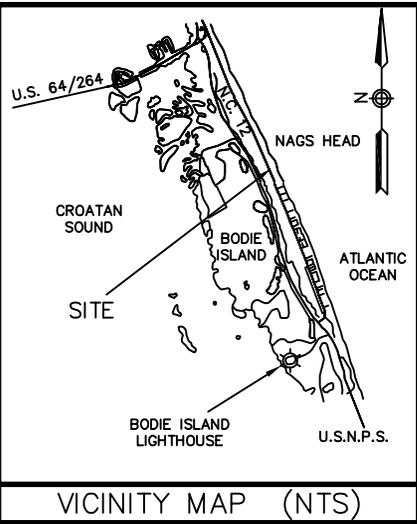
SURVEY FOR  
**DEAN R. SACKETT, III**  
LOT 1 - BLOCK 10 - SECTION 2 - HOLLYWOOD BEACH - TOWN OF NAGS HEAD  
NAGS HEAD TOWNSHIP - DARE COUNTY - NORTH CAROLINA



**MESA**  
**PROFFESIONAL CORPORATION**  
P.O. BOX 1731 - KITTY HAWK - NORTH CAROLINA - 27949  
252-619-1620 C-2832



\* NOT TO SCALE SEE RED WHEN SCALED OUT



**NOTES:**

1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
2. AREA BY COORDINATE COMPUTATION = ±24,696 S.F.
3. F.I.R.M. ZONE: AS SHOWN
4. PIN NO.: 14 071918 32 1312
5. RECORDED REFERENCE: MB 1, PG 78
6. MINIMUM BUILDING LINES (MBL) SHOWN HEREON ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
7. ELEVATIONS (NAVD 1988): AS SHOWN

F.L.S.V. 03/12/18  
AS STAKED BY C.A.M.A.



I, W.L. NORRIS, JR., P.L.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY UNDER MY SUPERVISION; PLAT RECORDED IN MB 1, PG 78; THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM INFORMATION IN MB 1, PG 78 IN THE DARE COUNTY REGISTRY OF DEEDS; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000+; AND THAT THIS PLAT MEETS THE REQUIREMENTS OF "THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56 .1600)"

10/02/17  
DATE

L-4554

S.R. 1243 (OLD OREGON INLET ROAD) (100' R/W)

SURVEY FOR

**DEAN R. SACKETT, III**

LOT 1 - BLOCK 10 - SECTION 2 - HOLLYWOOD BEACH - TOWN OF NAGS HEAD  
NAGS HEAD TOWNSHIP - DARE COUNTY - NORTH CAROLINA



1 inch = 50 ft.

REV. 03/12/18 (PER CRC PERMIT)

FILE: 1701089 SURVEYED:10/01/17 SCG PLATTED:10/02/17 WLN



**MESA**  
**PROFFESIONAL CORPORATION**

P.O. BOX 1731 - KITTY HAWK - NORTH CAROLINA - 27949  
252-619-1620 C-2832

County of Dare, North Carolina

\*Owner and Parcel Information is based on current data on file and was last updated on February 09 2018

**Primary (100%) Owner Information:**

SACKETT, DEAN R III EUX  
 SACKETT, MARIE-ELISE M EUX  
 8541 RIVERSIDE RD  
 ALEXANDRIA VA 22308

**Parcel Information:**

Parcel: 007226000 PIN: 071918321312  
 District: 14- NAGS HEAD  
 Subdivision: HOLLYWOOD BEACH SEC 2  
 LotBlkSect: LOT: 1 BLK: 10 SEC: 2  
 Multiple Lots: -  
 PlatCabSlide: PL: 1 SL: 78 Units: 1  
 Deed Date: 10/18/2017  
 BkPg: 2199/0260  
 Parcel Status: ACTIVE



Property Use: RESIDENTIAL

9131 S OLD OREGON INLET RD

<b>BUILDING USE &amp; FEATURES</b>	<b>Tax Year Bldg Value: \$117,300</b>	<b>Next Year Bldg Value: \$117,300</b>
Building Use:	CAPE COD	
Exterior Walls:	MODERN FRAME	Actual Year Built: 1984
Full Baths:	2 Half Baths: 0	
Bedrooms:	3	
Heat-Fuel:	3 - ELECTRIC	
Heat-Type:	2 - FORCED AIR	Finished sqft for building 1: 1432
Air Conditioning:	4 -CENTRAL W/AC	Total Finished SqFt for all bldgs: 1432

Disclaimer: In instances where a dwelling contains unfinished living area, the square footage of that area is included in the total finished sqft on this record. However, the assessed value for finish has been removed.

<b>MISCELLANEOUS USE</b>	<b>Tax Year Misc Value: \$0</b>	<b>Next Year Misc Value: \$0</b>
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<b>LAND USE</b>	<b>Tax Year Land Value: \$447,300</b>	<b>Next Year Land Value: \$447,300</b>
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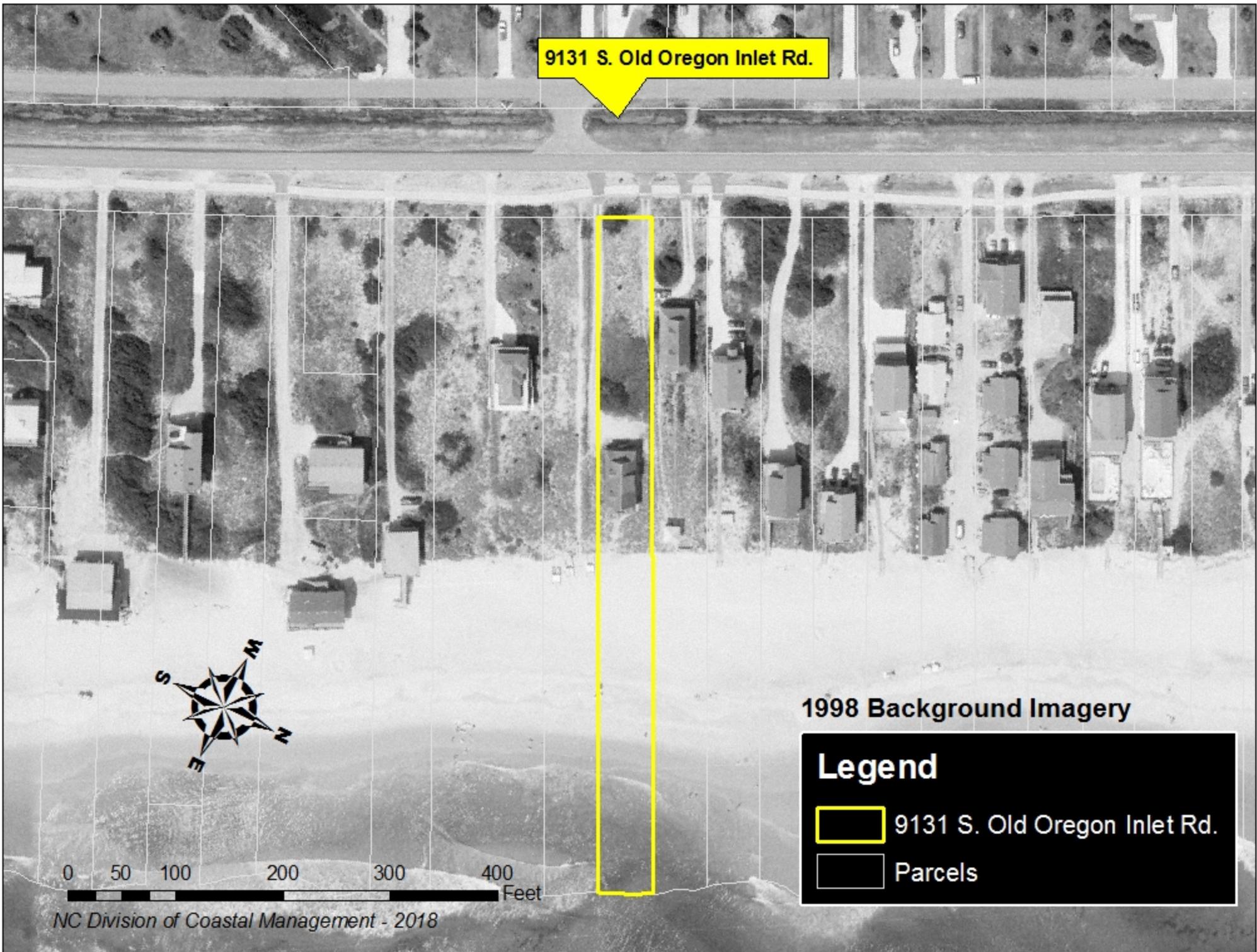
Land Description : 14-Ocean front

TOTAL LAND AREA: 13000 square feet

	<b>Tax Year Total Value: \$564,600</b>	<b>Next Year Total Value: \$564,600</b>
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\*Values shown are on file as of February 09 2018

9131 S. Old Oregon Inlet Rd.



1998 Background Imagery

**Legend**

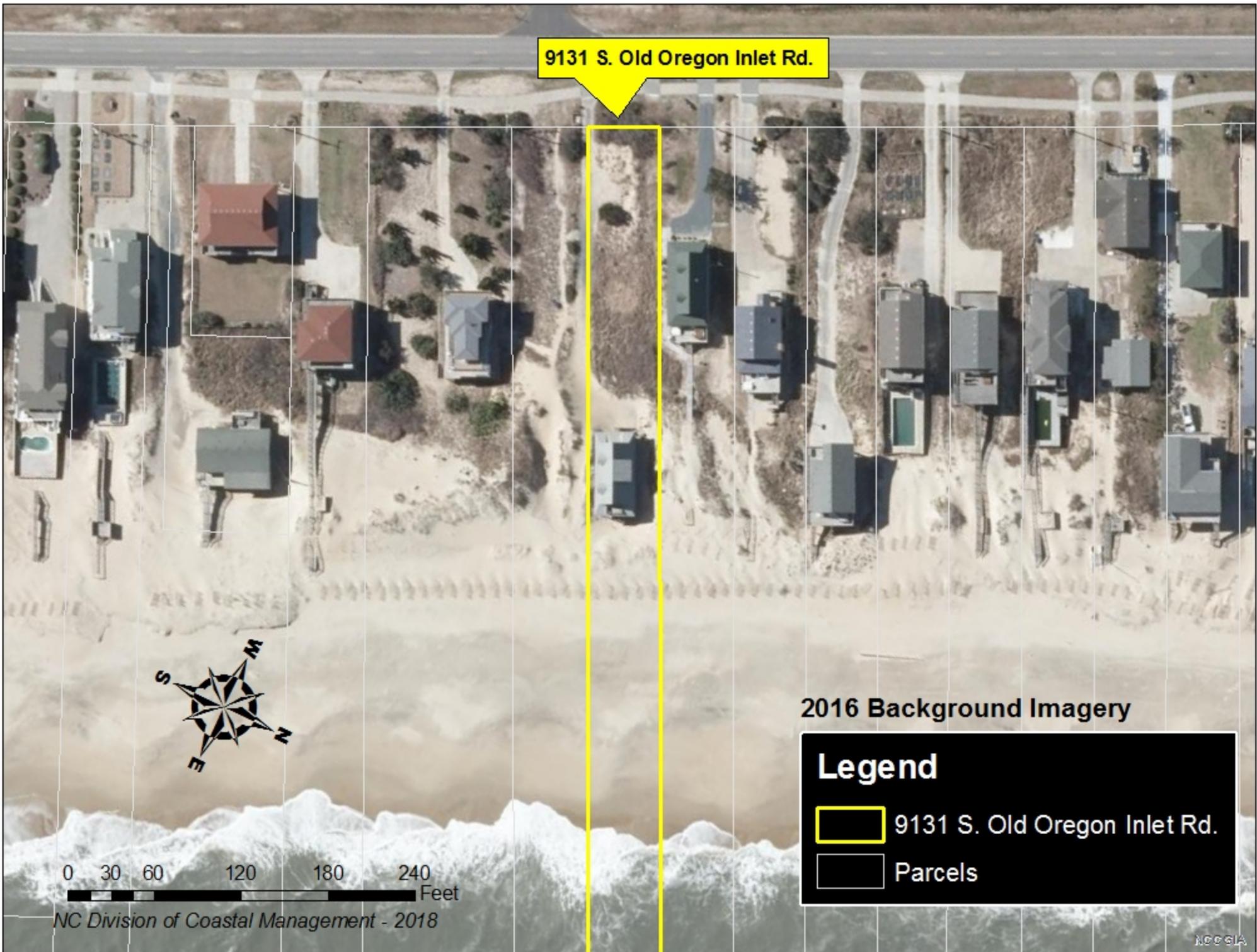
 9131 S. Old Oregon Inlet Rd.

 Parcels

0 50 100 200 300 400 Feet



9131 S. Old Oregon Inlet Rd.



2016 Background Imagery

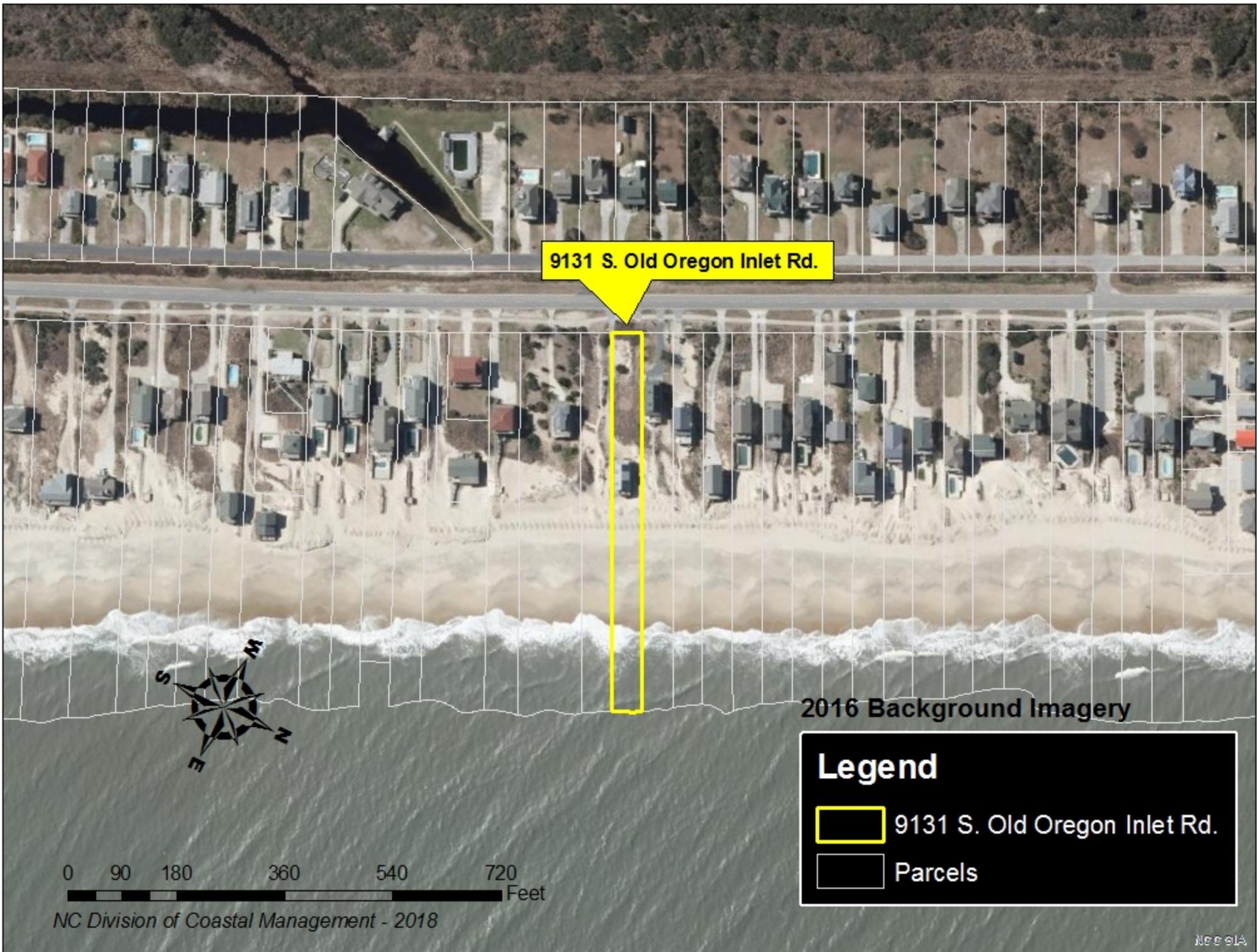
**Legend**

 9131 S. Old Oregon Inlet Rd.

 Parcels

0 30 60 120 180 240 Feet

NC Division of Coastal Management - 2018



## ELEVATION CERTIFICATE

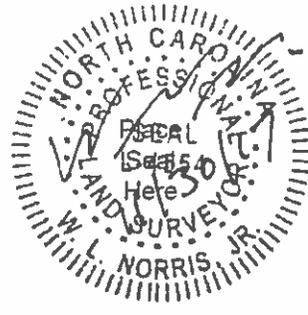
Important: Follow the instructions on pages 1-9.

Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.

SECTION A - PROPERTY INFORMATION				FOR INSURANCE COMPANY USE	
A1. Building Owner's Name Dean R. Sackett, III				Policy Number:	
A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 9131 S. Old Oregon Inlet Road				Company NAIC Number:	
City Nags Head		State North Carolina		ZIP Code 27959	
A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) Lot 1 - Block 10 - Section 2 - Hollywood Beach					
A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) <u>Residential</u>					
A5. Latitude/Longitude: Lat. <u>35.87891</u> Long. <u>75.57976</u> Horizontal Datum: <input type="checkbox"/> NAD 1927 <input checked="" type="checkbox"/> NAD 1983					
A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.					
A7. Building Diagram Number <u>5</u>					
A8. For a building with a crawlspace or enclosure(s):					
a) Square footage of crawlspace or enclosure(s) <u>0</u> sq ft					
b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade <u>0</u>					
c) Total net area of flood openings in A8.b <u>0</u> sq in					
d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
A9. For a building with an attached garage:					
a) Square footage of attached garage <u>0</u> sq ft					
b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade <u>0</u>					
c) Total net area of flood openings in A9.b <u>0</u> sq in					
d) Engineered flood openings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. NFIP Community Name & Community Number Town of Nags Head - 375356			B2. County Name Dare County		B3. State North Carolina
B4. Map/Panel Number 3730071900	B5. Suffix J	B6. FIRM Index Date 09/20/2006	B7. FIRM Panel Effective/ Revised Date 09/20/2006	B8. Flood Zone(s) VE	B9. Base Flood Elevation(s) (Zone AO, use Base Flood Depth) 11'
B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9: <input type="checkbox"/> FIS Profile <input checked="" type="checkbox"/> FIRM <input type="checkbox"/> Community Determined <input type="checkbox"/> Other/Source: _____					
B11. Indicate elevation datum used for BFE in Item B9: <input type="checkbox"/> NGVD 1929 <input checked="" type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____					
B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Designation Date: _____ <input checked="" type="checkbox"/> CBRS <input type="checkbox"/> OPA					

## ELEVATION CERTIFICATE

OMB No. 1660-0008  
Expiration Date: November 30, 2018

<b>IMPORTANT: In these spaces, copy the corresponding information from Section A.</b>			<b>FOR INSURANCE COMPANY USE</b>	
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 9131 S. Old Oregon Inlet Road			Policy Number:	
City Nags Head	State North Carolina	ZIP Code 27959	Company NAIC Number	
<b>SECTION C – BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)</b>				
C1. Building elevations are based on: <input type="checkbox"/> Construction Drawings* <input type="checkbox"/> Building Under Construction* <input checked="" type="checkbox"/> Finished Construction *A new Elevation Certificate will be required when construction of the building is complete.				
C2. Elevations – Zones A1–A30, AE, AH, A (with BFE), VE, V1–V30, V (with BFE), AR, AR/A, AR/AE, AR/A1–A30, AR/AH, AR/AO. Complete Items C2.a–h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters. Benchmark Utilized: <u>N.G.S. "V-168"</u> Vertical Datum: <u>NAVD 1988</u>				
Indicate elevation datum used for the elevations in items a) through h) below. <input type="checkbox"/> NGVD 1929 <input checked="" type="checkbox"/> NAVD 1988 <input type="checkbox"/> Other/Source: _____				
Datum used for building elevations must be the same as that used for the BFE.				
Check the measurement used.				
a) Top of bottom floor (including basement, crawlspace, or enclosure floor)	<u>18.13</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
b) Top of the next higher floor	<u>N/A</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
c) Bottom of the lowest horizontal structural member (V Zones only)	<u>16.13</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
d) Attached garage (top of slab)	<u>N/A</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments)	<u>16.63</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
f) Lowest adjacent (finished) grade next to building (LAG)	<u>7.4</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
g) Highest adjacent (finished) grade next to building (HAG)	<u>13.1</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support	<u>7.4</u>	<input checked="" type="checkbox"/> feet	<input type="checkbox"/> meters	
<b>SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION</b>				
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.				
Were latitude and longitude in Section A provided by a licensed land surveyor? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Check here if attachments.				
Certifier's Name W.L. Norris, Jr.		License Number L-4554		
Title Professional Land Surveyor				
Company Name Mid-Eastern Surveyors & Associates, P.C.				
Address Post Office Box 1731				
City Kitty Hawk	State North Carolina	ZIP Code 27949		
Signature 	Date 11/30/2017	Telephone (252) 619-1620		
Copy all pages of this Elevation Certificate and all attachments for (1) community official, (2) insurance agent/company, and (3) building owner.				
Comments (including type of equipment and location, per C2(e), if applicable) C2(e) - H.V.A.C. Stand				

## ELEVATION CERTIFICATE

OMB No. 1660-0008  
Expiration Date: November 30, 2018

<b>IMPORTANT: In these spaces, copy the corresponding information from Section A.</b>			<b>FOR INSURANCE COMPANY USE</b>
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 9131 S. Old Oregon Inlet Road			Policy Number:
City Nags Head	State North Carolina	ZIP Code 27959	Company NAIC Number

**SECTION E – BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED)  
FOR ZONE AO AND ZONE A (WITHOUT BFE)**

For Zones AO and A (without BFE), complete Items E1–E5. If the Certificate is intended to support a LOMA or LOMR-F request, complete Sections A, B, and C. For Items E1–E4, use natural grade, if available. Check the measurement used. In Puerto Rico only, enter meters.

- E1. Provide elevation information for the following and check the appropriate boxes to show whether the elevation is above or below the highest adjacent grade (HAG) and the lowest adjacent grade (LAG).
- a) Top of bottom floor (including basement, crawlspace, or enclosure) is \_\_\_\_\_ . \_\_\_\_\_  feet  meters  above or  below the HAG.
- b) Top of bottom floor (including basement, crawlspace, or enclosure) is \_\_\_\_\_ . \_\_\_\_\_  feet  meters  above or  below the LAG.
- E2. For Building Diagrams 6–9 with permanent flood openings provided in Section A Items 8 and/or 9 (see pages 1–2 of Instructions), the next higher floor (elevation C2.b in the diagrams) of the building is \_\_\_\_\_ . \_\_\_\_\_  feet  meters  above or  below the HAG.
- E3. Attached garage (top of slab) is \_\_\_\_\_ . \_\_\_\_\_  feet  meters  above or  below the HAG.
- E4. Top of platform of machinery and/or equipment servicing the building is \_\_\_\_\_ . \_\_\_\_\_  feet  meters  above or  below the HAG.
- E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance?  Yes  No  Unknown. The local official must certify this information in Section G.

**SECTION F – PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION**

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. The statements in Sections A, B, and E are correct to the best of my knowledge.

Property Owner or Owner's Authorized Representative's Name

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_ Telephone \_\_\_\_\_

Comments

Check here if attachments.

## ELEVATION CERTIFICATE

OMB No. 1660-0008  
Expiration Date: November 30, 2018

<b>IMPORTANT: In these spaces, copy the corresponding information from Section A.</b>			<b>FOR INSURANCE COMPANY USE</b>
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 9131 S. Old Oregon Inlet Road			Policy Number:
City Nags Head	State North Carolina	ZIP Code 27959	Company NAIC Number
<b>SECTION G – COMMUNITY INFORMATION (OPTIONAL)</b>			
The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below. Check the measurement used in Items G8–G10. In Puerto Rico only, enter meters.			
G1. <input type="checkbox"/> The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)			
G2. <input type="checkbox"/> A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.			
G3. <input type="checkbox"/> The following information (Items G4–G10) is provided for community floodplain management purposes.			
G4. Permit Number	G5. Date Permit Issued	G6. Date Certificate of Compliance/Occupancy Issued	
G7. This permit has been issued for: <input type="checkbox"/> New Construction <input type="checkbox"/> Substantial Improvement			
G8. Elevation of as-built lowest floor (including basement) of the building: _____ <input type="checkbox"/> feet <input type="checkbox"/> meters Datum _____			
G9. BFE or (in Zone AO) depth of flooding at the building site: _____ <input type="checkbox"/> feet <input type="checkbox"/> meters Datum _____			
G10. Community's design flood elevation: _____ <input type="checkbox"/> feet <input type="checkbox"/> meters Datum _____			
Local Official's Name		Title	
Community Name		Telephone	
Signature		Date	
Comments (including type of equipment and location, per C2(e), if applicable)			
<input type="checkbox"/> Check here if attachments.			

**BUILDING PHOTOGRAPHS**

**ELEVATION CERTIFICATE**

See Instructions for Item A6.

OMB No. 1660-0008  
Expiration Date: November 30, 2018

<b>IMPORTANT: In these spaces, copy the corresponding information from Section A.</b>			<b>FOR INSURANCE COMPANY USE</b>
Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No. 9131 S. Old Oregon Inlet Road			Policy Number:
City Nags Head	State North Carolina	ZIP Code 27959	Company NAIC Number

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.



Photo One

Photo One Caption

Front View 11/30/17



Photo Two

Photo Two Caption

Rear View 11/30/17



Coastal Management ENVIRONMENTAL QUALITY

APPLICATION FOR CAMA MINOR DEVELOPMENT PERMIT

In 1974, the North Carolina General Assembly passed the Coastal Area Management Act (CAMA) and set the stage for guiding development in fragile and productive areas that border the state's sounds and oceanfront.

This application for a minor development permit under CAMA is part of the Commission's effort to meet the spirit and intent of the General Assembly. It has been designed to be straightforward and require no more time or effort than necessary from the applicant.

\* Under CAMA regulations, the minor permit is to be issued within 25 days once a complete application is in hand. Often less time is needed if the project is simple. The process generally takes about 18 days.

Other permits are sometimes required for development in the coastal area. While these are not CAMA-related, we urge you to check with the Local Permit Officer to determine which of these you may need.

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

Coastal Resources Commission Division of Coastal Management

APPLICATION:

Sackett

LOCALITY:

9131 Sboik

18-009

RECEIVED 2/13/2018 COMPLETE APPLICATION

# SITE DRAWING/APPLICATION CHECKLIST

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

*Q: Has Rob Newson Status addressed fees issue?*

## PHYSICAL DIMENSIONS

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

## PHYSICAL CHARACTERISTICS

- Draw and label normal high water line (contact LPO for assistance) ✓
- Draw location of on-site wastewater system - NOT SHOWN

If you will be working in the ocean hazard area:

- Draw and label dune ridges (include spot elevations) - NOT SHOWN
- Draw and label toe of dunes - NOT SHOWN
- Identify and locate first line of stable vegetation (contact LPO for assistance)
- Draw and label erosion setback line (contact LPO for assistance) - 3.5ft/yr x 30 = 105ft
- Draw and label topographical features (optional) - NOT SHOWN

SEE SITE PLAN

3.5ft/yr  
X30 = 105ft

If you will be working in a coastal shoreline area:

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

## DEVELOPMENT PLANS

- Draw and label all proposed structures - DID NOT DRAW ON SITE PLAN - I HAD TO HIGHLIGHT AREA BASED UPON PLANS
- Draw and label areas that will be disturbed and/or landscaped
- Note size of piling and depth to be placed in ground
- Draw and label all areas to be paved or graveled
- Show all areas to be disturbed
- Show landscaping

## NOTE TO APPLICANT

Have you:

- completed all blanks and/or indicated if not applicable? TO EXTENT POSSIBLE YES
- notified and listed adjacent property owners?
- included your site drawing? DID NOT NOTE DRAWING WHERE MASTER BATH PROPOSED
- signed and dated the application?
- enclosed the \$100.00 fee? HAD TO COME IN + PAY - RENEE
- completed an AEC Hazard Notice, if necessary? (Must be signed by the property owner)

ITE PLAN

FOR STAFF USE			
Site Notice Posted _____	Final Inspection _____	Fee Received _____	✓ 2/13/2018
Site Inspections			*SEE STAMPED INVOICE SUMMARY
Date of Action: Issued _____ Exempted _____ Denied <input checked="" type="checkbox"/>			Appeal Deadline (20 days from permit action) _____

Locality Nags Head Permit Number 18-009  
 Ocean Hazard  Estuarine Shoreline \_\_\_\_\_ ORW Shoreline \_\_\_\_\_ Public Trust Shoreline \_\_\_\_\_ Other \_\_\_\_\_  
 (For official use only)

**GENERAL INFORMATION**

**LAND OWNER - MAILING ADDRESS**

Name DEAN & ELISE SACKETT (Dean R. + Marie-Elise M. SACKETT III)  
 Address 8541 RIVERSIDE ROAD  
 City ALEXANDRIA State VA Zip 22308 Phone 703-980-9082  
 Email deansa@cox.net

**AUTHORIZED AGENT**

Name Robert Lawson - R. LAWSON CONSTRUCTION CO., INC.  
 Address 8443 Caratoke Hwy., Suite J  
 City Powells Point State NC Zip 27966 Phone 252-491-9993  
 Email ROB@RLCCI.COM

**LOCATION OF PROJECT:** (Address, street name and/or directions to site; name of the adjacent waterbody.)

9131 S. OLD OREGON INLET ROAD, NAGS HEAD, NC 27959

ATLANTIC OCEAN

**DESCRIPTION OF PROJECT:** (List all proposed construction and land disturbance.) ADDING NEW BATH

ROOM ON FIRST FLOOR

**SIZE OF LOT/PARCEL:** 24,696 square feet \_\_\_\_\_ acres

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

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

(1) **OCEAN HAZARD AECs:** TOTAL FLOOR AREA OF PROPOSED STRUCTURE: ~~711~~ 72'4" SF / 72.33 sqft square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

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

**STATE STORMWATER MANAGEMENT PERMIT:** Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Energy, Mineral and Land Resources (DEMRLR)?

YES \_\_\_\_\_ NO x

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

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

**STATEMENT OF OWNERSHIP:**

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

an owner or record title, Title is vested in name of DEAN & ELISE SACKETT *Dean R. Sackett III and wife Marie-Elise M. Sackett*  
see Deed Book 2199 page 0260 in the DARE County Registry of Deeds.

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

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

**NOTIFICATION OF ADJACENT RIPARIAN PROPERTY OWNERS:**

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

(Name)	(Address)
1) WALTER & LINDA HOWARD	3 HILLOCK WOODS, THE WOODLANDS, TX 77380
2) TOWN OF NAGS HEAD	P O BOX 99, NAGS HEAD, NC 27959
3) _____	_____
4) _____	_____

**ACKNOWLEDGEMENTS:**

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

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

*Flawson* \_\_\_\_\_  
This the 7TH day of FEB, 20 18  
*Denise M. ...*  
agent for purpose of filing a CAMA permit application

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

**AGENT AUTHORIZATION FOR CAMA PERMIT APPLICATION**

Name of Property Owner Requesting Permit: Dean & Lise Sackett

Mailing Address: 8541 Riverside Road  
Alexandria, VA 22308

Phone Number: (703) 980-9082

Email Address: deansa@cox.net

I certify that I have authorized Robert Lawson/ R. Lawson Construction Co., Inc.  
Agent / Contractor

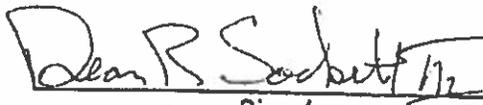
to act on my behalf, for the purpose of applying for and obtaining all CAMA permits  
necessary for the following proposed development: remodeling and addition work

at my property located at 9131 S Old Oregon Inlet Road

in Dare County.

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

**Property Owner Information:**

  
Signature

Dean Sackett  
Print or Type Name

Owner  
Title

2 / 4 / 18  
Date

This certification is valid through 12 / 31 / 19



## BEFORE YOU BUILD

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

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

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

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

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

#### The Rules

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

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

#### The Reasons

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

#### The Exception

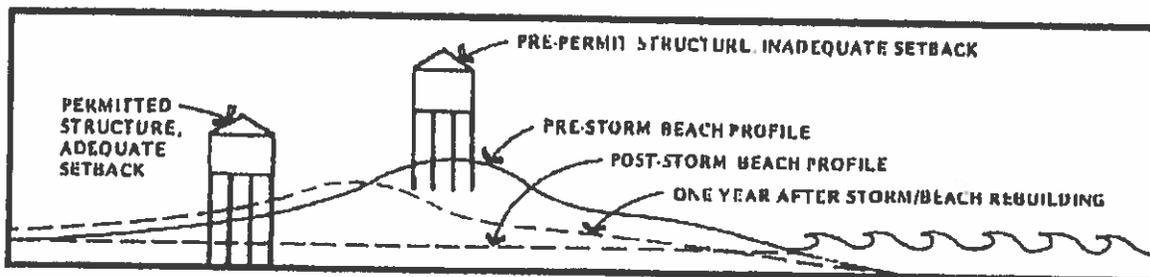
The Coastal Resources Commission recognized that these rules, initially passed in June 1979, might prove a hardship for some property owners. Therefore, they established an exception for lots that cannot meet the setback requirement. The exception allows buildings in front of the current setback, if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

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

#### The exception is not available in the Inlet Hazard Area.

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

- \_\_\_ required setback from vegetation line
- \_\_\_ exception setback (maximum feasible)
- \_\_\_ rear property line setback
- \_\_\_ max. allowable square footage on lowest floor



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

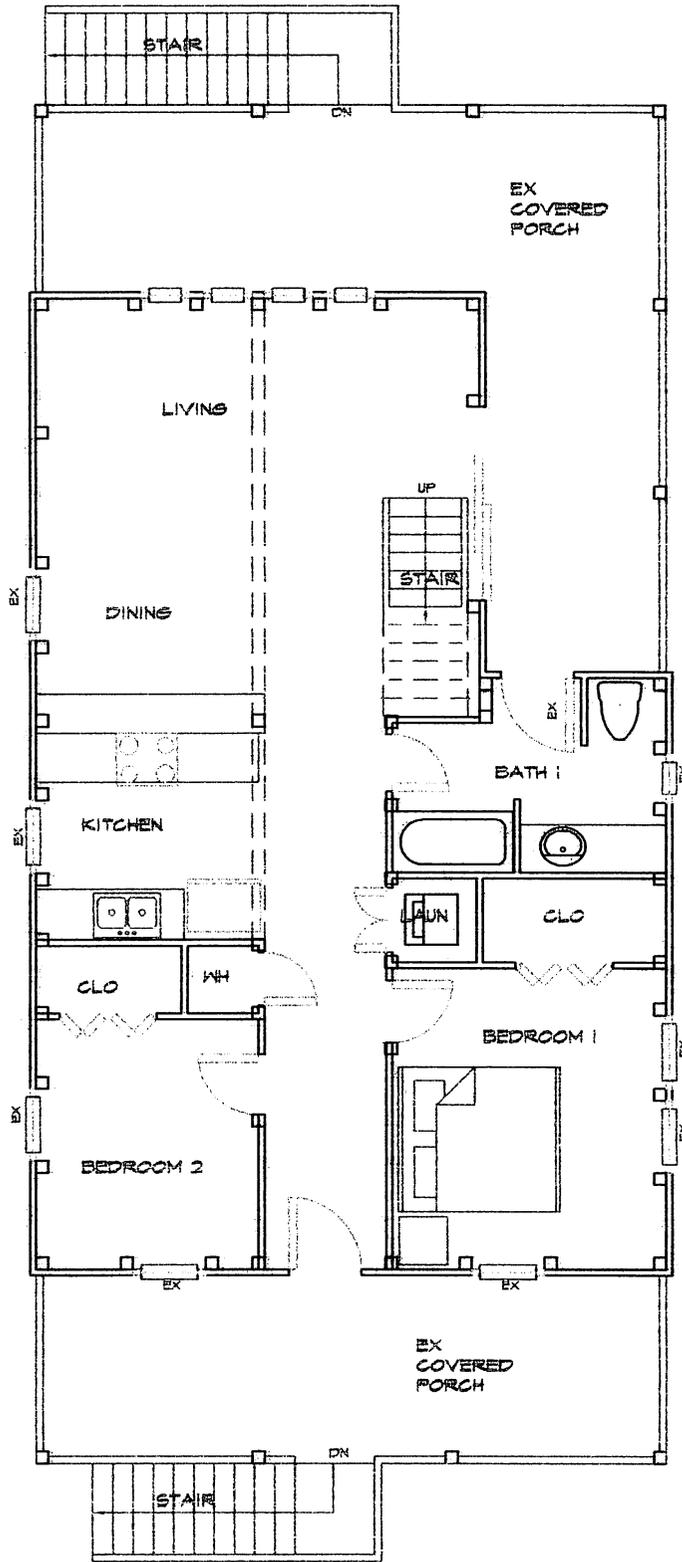


EXISTING WEST ELEVATION

1/4" = 1'-0"

MARIE-ELISE & DEAN SACKETT

9131 SOUTH OLD OREGON INLET ROAD  
NAGS HEAD, NORTH CAROLINA



# EXISTING FIRST FLOOR PLAN

1/8" = 1'-0"

## MARIE-ELISE & DEAN SACKETT

9131 SOUTH OLD OREGON INLET ROAD  
NAGS HEAD, NORTH CAROLINA

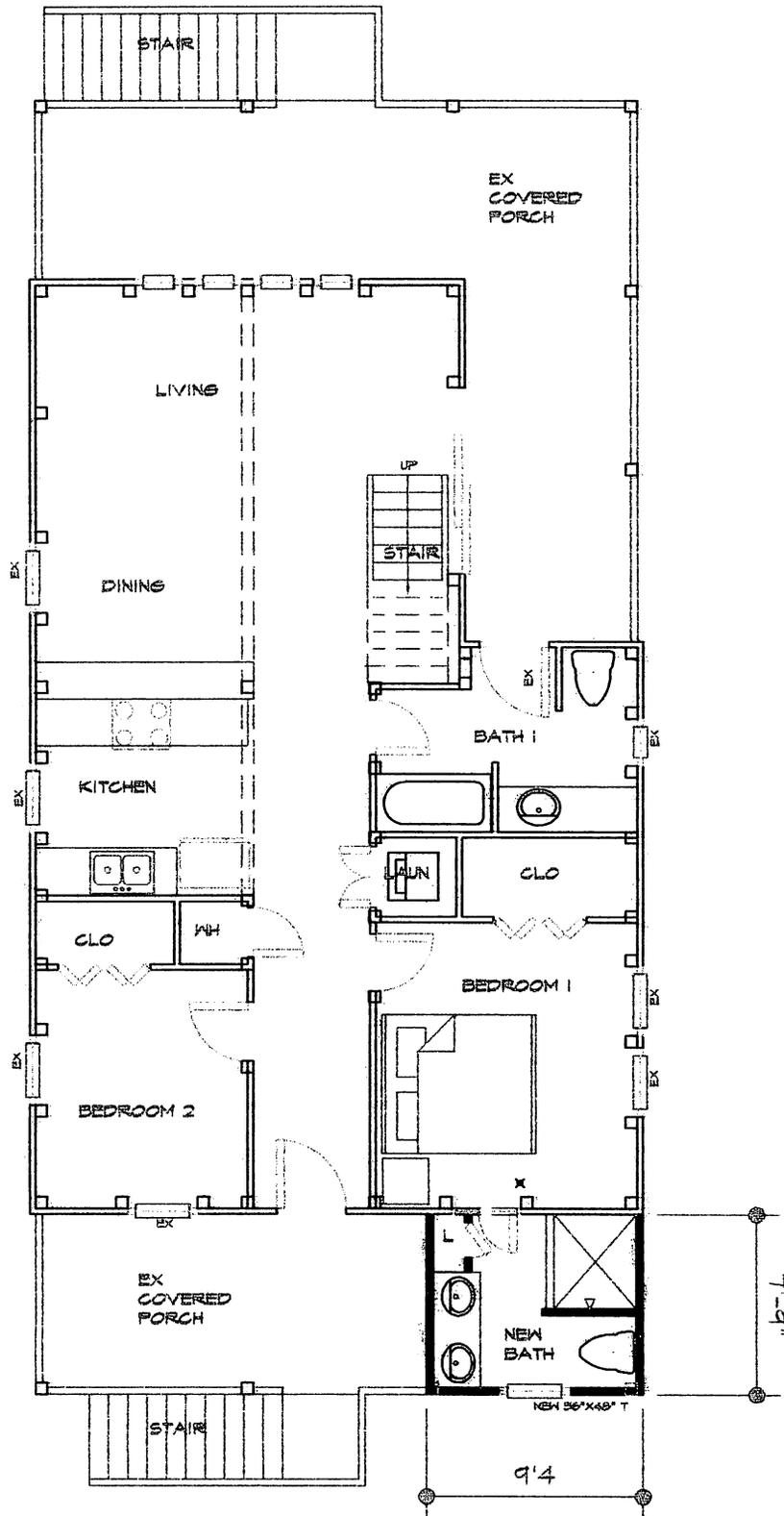


# WEST ELEVATION WITH BATH ADDITION

1/4" = 1'-0"

**MARIE-ELISE & DEAN SACKETT**

9131 SOUTH OLD OREGON INLET ROAD  
NAGS HEAD, NORTH CAROLINA



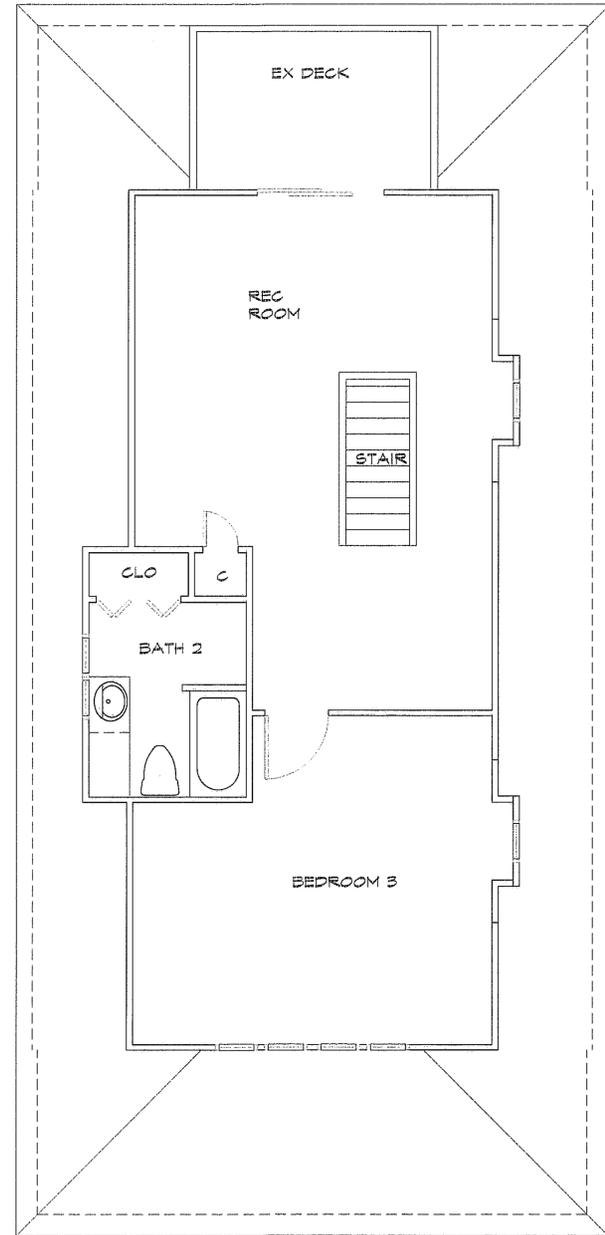
# FIRST FLOOR PLAN WITH ADDITION

1/8" = 1'-0"

## MARIE-ELISE & DEAN SACKETT

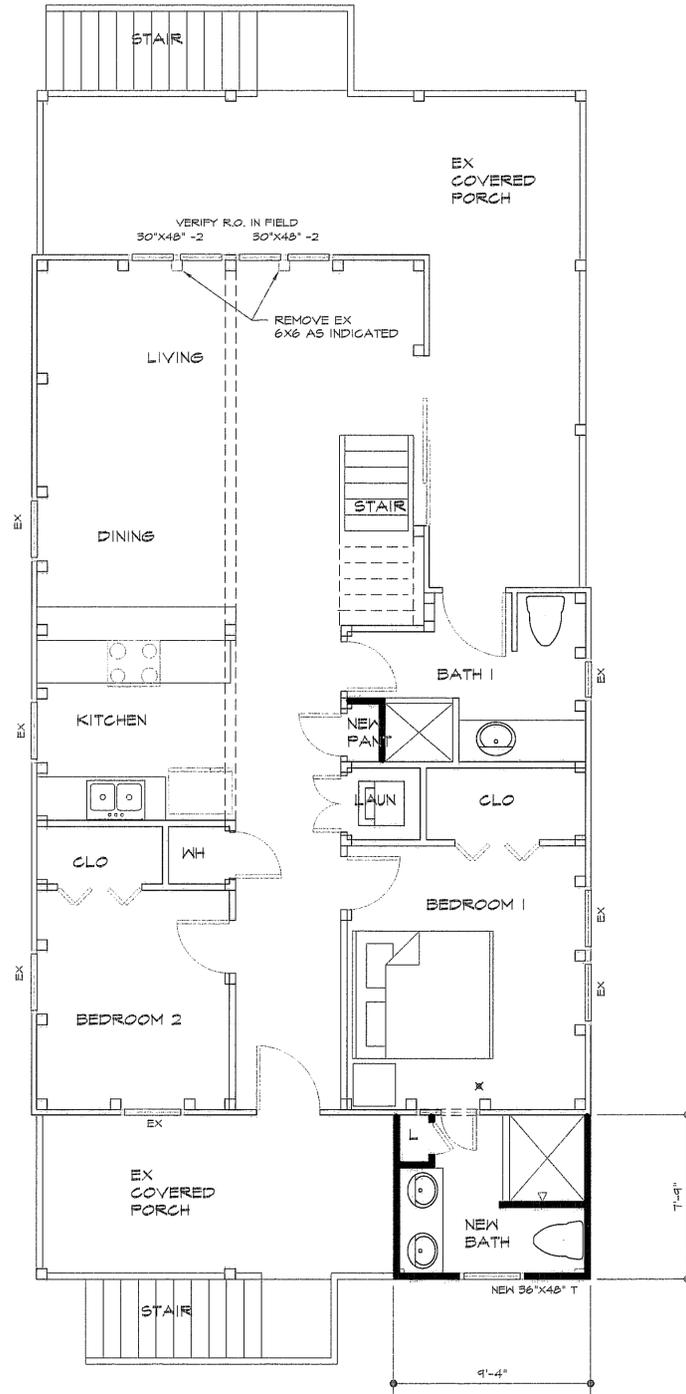
9131 SOUTH OLD OREGON INLET ROAD  
NAGS HEAD, NORTH CAROLINA

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SECOND FLOOR PLAN

1/4" = 1'-0"



FIRST FLOOR PLAN

1/4" = 1'-0"

REVISIONS	BY

**MAGNACORP DESIGNS**

P.O. BOX 5417 • KITTY HAWK, N.C. 27544 • (252) 261-4447

ADDITION FOR:  
**MARIE-ELISE & DEAN SACKETT**  
 9131 SOUTH OLD OREGON INLET ROAD  
 NAGS HEAD, NORTH CAROLINA

DATE	6/14/2017
FILE	SACKETT-1
DRAWN	M. MANSUM
JOB	1779
SHEET	02
OF # SHEETS	02

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED or HAND DELIVERED**

2/7/18

Date

TOWN OF NAGS HEAD  
Name of Adjacent Riparian Property Owner  
P O BOX 99  
Address  
NAGS HEAD, NC 27959  
City, State Zip

To Whom It May Concern:

This correspondence is to notify you as a riparian property owner that I am applying for a CAMA Minor permit to  
ADD A BATHROOM ON FIRST FLOOR

on my property at 9131 S. OLD OREGON INLET ROAD NAGS HEAD  
in DARE County, which is adjacent to your property. A copy of the application and project drawing is attached/enclosed for your review.

If you have no objections to the proposed activity, please mark the appropriate statement below and return to me as soon as possible. If no comments are received within 10 days of receipt of this notice, it will be considered that you have no comments or objections regarding this project.

If you have objections or comments, please mark the appropriate statement below and send your correspondence to: (LOCAL PERMIT OFFICER, NAME OF LOCAL GOVERNMENT, MAILING ADDRESS CITY, STATE, ZIP CODE)

If you have any questions about the project, please do not hesitate to contact me at my address/number listed below, or contact (LOCAL PERMIT OFFICER) at (PHONE NUMBER), or by email at: (LPO EMAIL).

Sincerely, R. LAWSON, AGENT FOR DEAN & ELISE SACKETT

R. LAWSON CONSTRUCTION CO., INC.

252-491-9993

Property Owner's Name

Telephone Number

Address

City

State

Zip

       I have no objection to the project described in this cor  
       I have objection(s) to the project described in this cor

Adjacent Riparian Signature

Print or Type Name

P O BOX 99

NAGS HEAD, NC

Address

City

7015 1730 0000 0027 5701

U.S. Postal Service™  
**CERTIFIED MAIL® RECEIPT**  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Certified Mail Fee  
\$ 3.45  
Extra Services & Fees (check box, add fee as appropriate)  
 Return Receipt (hardcopy) \$ 2.75  
 Return Receipt (electronic) \$ \_\_\_\_\_  
 Certified Mail Restricted Delivery \$ \_\_\_\_\_  
 Adult Signature Required \$ \_\_\_\_\_  
 Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage  
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TOWN OF NAGS HEAD  
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P O BOX 99  
City, State, ZIP+4®  
NAGS HEAD, NC 27959

EP  
2018  
H/PC

CERTIFIED MAIL, RETURN RECEIPT REQUESTED or HAND DELIVERED

2/7/18

Date

WALTER & LINDA HOWARD

Name of Adjacent Riparian Property Owner  
3 HILLOCK WOODS

Address

THE WOODLANDS, TX 77380

City, State Zip

To Whom It May Concern:

This correspondence is to notify you as a riparian property owner that I am applying for a CAMA Minor permit to  
ADD A BATHROOM ON FIRST FLOOR

on my property at 9131 S. OLD OREGON INLET ROAD, NAGS HEAD

in DARE County, which is adjacent to your property. A copy of the application and project drawing is attached/enclosed for your review.

If you have no objections to the proposed activity, please mark the appropriate statement below and return to me as soon as possible. If no comments are received within 10 days of receipt of this notice, it will be considered that you have no comments or objections regarding this project.

If you have objections or comments, please mark the appropriate statement below and send your correspondence to:  
(LOCAL PERMIT OFFICER, NAME OF LOCAL GOVERNMENT, MAILING ADDRESS CITY, STATE, ZIP CODE)

If you have any questions about the project, please do not hesitate to contact me at my address/number listed below, or contact (LOCAL PERMIT OFFICER) at (PHONE NUMBER), or by email at: (LPO EMAIL).

Sincerely, ROB LAWSON, AGENT FOR DEAN & ELISE SACKETT

R. LAWSON CONSTRUCTION CO., INC.

Property Owner's Name

252-491-9993

Telephone Number

8443 CARATOKE HWY, SUITE J

POWELLS POINT, NC 27966

Address

City

I have no objection to the project described in this correspondence.  
 I have objection(s) to the project described in this correspondence.

Adjacent Riparian Signature

WALTER & LINDA HOWARD

Print or Type Name

3 HILLOCK WOODS

THE WOODLANDS, TX

Address

City

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

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**OFFICIAL USE**

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Certified Fee	2.75
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.70

Mark  
7  
2018

Sent by WALTER & LINDA HOWARD  
Street, Apt. No., or PO Box No. 3 Hillock Woods  
City, State, ZIP+4 the Woodlands, TX 77380

CERTIFIED MAIL, RETURN RECEIPT REQUESTED or HAND DELIVERED

2/7/18

Date

TOWN OF NAGS HEAD

Name of Adjacent Riparian Property Owner  
P O BOX 99

Address  
NAGS HEAD, NC 27959

City, State Zip

To Whom It May Concern:

This correspondence is to notify you as a riparian property owner that I am applying for a CAMA Minor permit to  
ADD A BATHROOM ON FIRST FLOOR

on my property at 9131 S. OLD OREGON INLET ROAD NAGS HEAD

in DARE County, which is adjacent to your property. A copy of the application and project drawing is attached/enclosed for your review.

If you have no objections to the proposed activity, please mark the appropriate statement below and return to me as soon as possible. If no comments are received within 10 days of receipt of this notice, it will be considered that you have no comments or objections regarding this project.

If you have objections or comments, please mark the appropriate statement below and send your correspondence to: (LOCAL PERMIT OFFICER, NAME OF LOCAL GOVERNMENT, MAILING ADDRESS CITY, STATE, ZIP CODE)

If you have any questions about the project, please do not hesitate to contact me at my address/number listed below, or contact (LOCAL PERMIT OFFICER) at (PHONE NUMBER), or by email at: (LPO EMAIL).

Sincerely, R. LAWSON, AGENT FOR DEAN & ELISE SACKETT

R. LAWSON CONSTRUCTION CO., INC.

252-491-0993

Property Owner's Name

Telephone Number

Address

City

State

Zip

I have no objection to the project described in this correspondence.

I have objection(s) to the project described in this correspondence.

Adjacent Riparian Signature

Date

Print or Type Name

Telephone Number

P O BOX 99

NAGS HEAD, NC

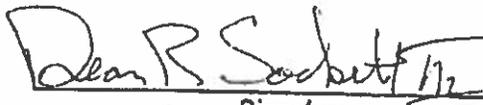
27959

Address

City

State

Zip

**AGENT AUTHORIZATION FOR CAMA PERMIT APPLICATION**Name of Property Owner Requesting Permit: Dean & Lise SackettMailing Address: 8541 Riverside RoadAlexandria, VA 22308Phone Number: (703) 980-9082Email Address: deansa@cox.netI certify that I have authorized Robert Lawson/ R. Lawson Construction Co., Inc.  
Agent / Contractorto act on my behalf, for the purpose of applying for and obtaining all CAMA permits  
necessary for the following proposed development: remodeling and addition workat my property located at 9131 S Old Oregon Inlet Roadin Dare County.*I furthermore certify that I am authorized to grant, and do in fact grant permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.***Property Owner Information:**  
SignatureDean Sackett

Print or Type Name

Owner

Title

2 / 4 / 18

Date

This certification is valid through 12 / 31 / 19*Revised Mar. 2016*



## Town of Nags Head

Planning and Development  
Department

Post Office Box 99  
Nags Head, North Carolina 27959  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

Telephone 252-441-7016  
FAX 252-441-4290

February 23, 2018

**CERTIFIED MAIL – 7016 0910 0000 6155 7039**  
**RETURN RECEIPT REQUESTED**

Dean R. Sackett III  
Marie-Elise M. Sackett  
8541 Riverside Road  
Alexandria, VA 22308

**RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT**  
**APPLICATION NUMBER- # 18-009**  
**PROJECT ADDRESS- 9131 S. Old Oregon Inlet Road**

Dear Mr. and Mrs. Sackett:

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

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to increase the floor area of the existing structure, by adding 72.3 square feet of heated living on first floor for New Master Bath (9' 4" x 7' 9"= 72' 4"sqft), which is inconsistent with 15 NCAC 7H.0306(a)(1-5)(9), which states that: (a) *In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable: (1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable. (2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line. (3) In no case shall a development line be created or established below the mean high water line.(4) The setback distance shall be determined by both the size of development and the shoreline long term erosion rate (Erosion Rate 3.5 ft/ yr) as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following: (A) The total square footage of heated or air-conditioned living space; (B) The total square footage of parking elevated above ground level; and (C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing..... Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.*

(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria: (A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate (3.5ft/yr x 30 = 105 ft), whichever is greater;.....(9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.

Addition of New Master Bath (72.3 sqft) proposed increases the total floor area of the building/structure is required to meet the 105 ft structure setback – in this case the entire building/structure is within the 105 ft structure setback.

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

OR: Should you wish to appeal my decision to the Coastal Resources Commission or request a Variance from that group, you must complete the enclosed DCM Form 11, CAMA Variance Request, and submit your request to the Division of Coastal Management office in Morehead City. Appeal notices must be received within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,



Margaux Kerr, LPO  
Town of Nags Head  
5401 S. Croatan Hwy  
P.O. Box 99  
Nags Head, NC 27959

cc: Yvonne Carver, DCM Elizabeth City, Field Representative  
Robert Lawson, R. Lawson Construction Co., Inc.

## KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS  
 CREECY S. RICHARDSON  
 MEGHAN E. ASHWORTH  
 -----  
 MARTIN KELLOGG, JR.  
 1908-2001

P.O. BOX 189  
 MANTEO, NC 27954

-----  
**DELIVERY ADDRESS:**  
 201 ANANIAS DARE STREET  
 MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171  
 FACSIMILE: (252) 473-1214

EMAIL ADDRESS:  
 charlese@kelloggandevans.com  
 creecyr@kelloggandevans.com  
 meghana@kelloggandevans.com  
 courtneyb@kelloggandevans.com

March 1, 2018

The Town of Nags Head  
 P.O. Box 99  
 Nags Head, NC 27959

To Whom It May Concern:

I am writing to you today on behalf of my clients, Dean and Marie-Elise Sackett, the record owner of the property located at 9131 S. Old Oregon Inlet Road, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

As you may know, the Sacketts are requesting a CAMA Variance in order to construct an addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent property owners.

Please review the enclosed copies of the Petition submitted February 27, 2018 to the Coastal Resources Commission for review prior to the scheduled hearing on April 10 and 11, 2018 at The Dare County Administration Building, 954 Marshal.

If you have any questions or comments regarding this letter and the enclosures, please do not hesitate to contact myself or a member of the Division of Coastal Management with comments or concerns (DCM, 401 S. Griffin St., Suite 300, Elizabeth City, 27909).

Best regards,

Charles D. Evans

CDE/cab

Enclosures

CC: Dean and Elise-Marie Sackett, III (transmitted via email only)

061

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Town of Nags Head  
 P.O. Box 99  
 Nags Head, NC 27959

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
*xCrazel Little*  Address

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

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



- Certified Mail®  Priority Mail Express™
- Registered  Return Receipt for Merchandise
- Insured Mail  Collect on Delivery

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
 (Transfer from service label)

7008 2810 0000 5864 8388

PS Form 3811, July 2013

Domestic Return Receipt

## KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS  
 CREECY S. RICHARDSON  
 MEGHAN E. ASHWORTH  
 -----  
 MARTIN KELLOGG, JR.  
 1908-2001

P.O. BOX 189  
 MANTEO, NC 27954

-----  
**DELIVERY ADDRESS:**  
 201 ANANIAS DARE STREET  
 MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171  
 FACSIMILE: (252) 473-1214

EMAIL ADDRESS:  
 charlese@kelloggandevans.com  
 creecyr@kelloggandevans.com  
 meghana@kelloggandevans.com  
 courtneyb@kelloggandevans.com

March 1, 2018

Walter and Linda Howard  
 3 Hillock Woods  
 The Woodlands, TX 77380

Dear Mr. and Mrs. Rice:

I am writing to you today on behalf of my clients, Dean and Marie-Elise Sackett, the record owner of the property located at 9131 S. Old Oregon Inlet Road, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

As you may know, the Sacketts are requesting a CAMA Variance in order to construct an addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent property owners.

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Charles D. Evans

CDE/cab  
 Enclosures  
 CC: Dean and Marie-Elise Sackett, III (transmitted via email only)

063

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 Walter & Linda Howard  
 3 Hill oak woods  
 The Woodlands, TX 77580

2. Article Number  
 (Transfer from service label)

7008 2810 0000 5864 8395

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  X  Agent  
 Addressee  
 B. Received by (Printed Name) *Lynnda Howard* C. Date of Delivery *03/02/18*  
 D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No



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

4. Restricted Delivery? (Extra Fee)  Yes



**Ben Cahoon**  
Mayor

**Susie Walters**  
Mayor Pro Tem

**Cliff Ogburn**  
Town Manager

**Town of Nags Head**  
Post Office Box 99  
Nags Head, NC 27959  
Telephone 252-441-5508  
Fax 252-441-0776  
[www.nagsheadnc.gov](http://www.nagsheadnc.gov)

**M. Renée Cahoon**  
Commissioner

**J. Webb Fuller**  
Commissioner

**Michael Siers**  
Commissioner

January 22, 2018

I can confirm that the Town Nags Head has applied for the necessary permits for a beach re-nourishment construction project to take place either Spring of 2018 or 2019. We are waiting to determine if we will have the approval from FEMA to replace 1.4 mcy that was lost due to Hurricane Matthew before we know which year the project takes place. The town's place is to re-nourish the beach with 2.3 mcy in response to how the beach reacted to our 2011 project.

The town has made clear its intention to re-nourish its beach for as long as it is financially viable and for as long as there is a sand source to borrow from. The policy has been to re-nourish the beach after 50% of the volume is lost or six years after each project is complete – whichever comes last. Our long range comprehensive land use plan contains language committing to beach nourishment.

Cliff Ogburn, Town Manager  
Town of Nags Head

The State of North Carolina  
County of Dare

I Michelle H Gray, a Notary Public for Dare County and State of North Carolina, do hereby certify that Cliff Ogburn personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 22<sup>nd</sup> day of January 2018.

My commission expires October 4, 2020.

Michelle H Gray, Notary





ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

BRAXTON C. DAVIS  
*Director*

**CRC-18-11**

March 26, 2018

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Fiscal Analysis 7H .0308; 7H .1704 & 7H .1705 Temporary erosion Control Structures

At the November 2017 CRC meeting, the Commission approved proposed amendments to the rules governing the use of temporary erosion control structures (sandbags). The most significant proposed changes are as follows:

- Remove the distinction between structures greater or less than 5,000 square feet, setting the time limit at eight years for all structures;
- Remove the “vegetated” requirement for sandbag structures to remain beyond their permitted time when covered by sand;
- Require that only sandbags exposed above grade be removed at the expiration of the permit;
- Modify the “no longer necessary” provisions to require the removal of sandbags that are exposed above grade upon completion of a beach nourishment or inlet relocation/stabilization project.
- Clarify that structures determined by the Division of Coastal Management to be imminently threatened upon the expiration date of permitted temporary erosion control structures may be permitted to remain in place for an additional eight years if they are located in a community pursuing beach nourishment, inlet relocation or stabilization.
- Temporary erosion control structures can be extended beyond the protected structure to address gaps in adjoining sandbag walls.

Staff has prepared the attached fiscal analysis of the proposed amendments in compliance with NC Administrative Procedures Act.

**Summary of Fiscal Analysis**

The groups most affected by these changes will be oceanfront property owners within the Ocean Eroding (OEA) and Inlet Hazard Areas (IHA) Areas of Environmental Concern (AECs), including private property owners and governments. The NC Department of Transportation will also be affected.

DCM estimates that there will be **cost savings** to property owners from this action of ranging from \$379 - \$3,003 per individual, and to NCDOT ranging from \$1,211 to \$5,878. These cost savings are derived from the delayed costs associated with the removal of sandbags, and the elimination of the requirement to plant vegetation on top of covered bags. Additional, unquantified benefits would

accrue to property owners in the future who would no longer have had to comply with the existing two- or five-year limit. Given all the unknowns related to future benefits, it would be difficult for DCM to estimate this savings. Other unquantified savings include the value of being able to use sandbags more than once to stabilize an imminently threatened structure (sandbags are the only erosion control structures available for individual oceanfront property by law). There are additional changes to other parts of the rules that are merely clarifications, and have no impact. These proposed rule changes are in the public interest, will reduce cost to coastal land owners and conform to the principles of G.S. 150B-19.1 and Executive Order 70.

The fiscal analysis has been approved by DEQ and is currently being reviewed by OSBM. Staff recommends Commission approval of the fiscal analysis conditioned on OSBM approval if it is not received in time for the meeting in Manteo. DCM anticipates the effective date of these rule amendments to be September 1, 2018.

## **Fiscal Analysis**

### **Temporary Erosion Control Structures**

15A NCAC 07H .0308

15A NCAC 07H .1704

15A NCAC 07H .1705

Prepared by

Tancred Miller

&

Mike Lopazanski

Policy & Planning Section

NC Division of Coastal Management

(252) 808-2808, ext. 223

March 13, 2018

## Summary

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Agency	DENR, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rule	Specific Use Standards for Ocean Hazard Areas
Citation	15A NCAC 07H .0308 15A NCAC 07H .1704 15A NCAC 07H .1705
Description of the Proposed Rule	7H .0308 contains the CRC's guidelines for the permitting and use of temporary erosion control structures in Ocean Hazard Area of Environmental Concern. 7H .1704 and 7H .1705 rules contain the "General" and "Specific" use standards for emergency work requiring Coastal Area Management Act and/or Dredge and Fill permits to use sandbags for temporary erosion control.
Agency Contact	Tancred Miller Coastal and Ocean Policy Manager Tancred.Miller@ncdenr.gov (252) 808-2808
Authority	G.S. 113-229(c); G.S. 113A-107; 113A-113; 113A-115; 113A-118; 113A-124
Necessity	The Coastal Resources Commission proposes to amend its administrative rules in order to comply with a recent legislative mandate (S.L. 2015-241) related to the management of temporary erosion control structures (sandbags) along oceanfront and estuarine shorelines. The amendments also include changes requested by local government and agency stakeholders, and recommended by the CRC and the Coastal Resources Advisory Council. The amendments will provide uniformity in administration of the sandbag rules while still serving to protect life and property from the hazardous forces indigenous to the Atlantic shoreline.
Impact Summary	State government: Yes Local government: No Substantial impact: No Federal government: No Private citizens: Yes

## Introduction and Purpose

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The 2015 Appropriations Act (S.L. 2015-241) Section 14.6(p) directed the Coastal Resources Commission (CRC) to amend its rules governing temporary erosion control structures (sandbags), in order to give property owners greater flexibility in their elective use of sandbags for emergency erosion control. The CRC was instructed to adopt temporary rules no later than December 31, 2015, followed by permanent rules in 2016. The time available between the legislative directive and deadline, along with the CRC's meeting schedule and G.S. 150B requirements, prevented the CRC from being able to comply

with the legislative deadline for adopting the temporary rules. While the CRC adopted the proposed amendment on February 10, 2016, the Rules Review Commission objected to the rule on February 18, 2016, stating that the CRC lacked statutory authority because the legislative deadline had passed.

The General Assembly indicated their desire to see the amendments adopted by inserting them into House Bill 593 in 2016, although the bill did not become law that year. During the 2017 legislative session, the General Assembly's most recent action, S.L. 2017-10 (Senate Bill 131), which contained further directives for the Commission regarding temporary erosion control structures. SECTION 3.14.(a) of S.L. 2017-10 **repeals** Sections 14.6(p) and 14.6(q) of S.L. 2015-241 which directed the CRC to adopt rules that:

- (1) Allow the placement of temporary erosion control structures on a property that is experiencing coastal erosion even if there are no imminently threatened structures on the property if the property is adjacent to a property where temporary erosion control structures have been placed.
- (2) Allow the placement of contiguous temporary erosion control structures from one shoreline boundary of a property to the other shoreline boundary, regardless of proximity to an imminently threatened structure.
- (3) The termination date of all permits for contiguous temporary erosion control structures on the same property shall be the same and shall be the latest termination date for any of the permits.
- (4) The replacement, repair, or modification of damaged temporary erosion control structures that are either legally placed with a current permit or legally placed with an expired permit, but the status of the permit is being litigated by the property owner.

S.L. 2017-10 Section 3.14.(b) further states *“Notwithstanding G.S. 150B-21.1A(a), the Coastal Resources Commission may adopt an emergency rule for the use of temporary erosion control structures consistent with the amendments to the temporary erosion control structure rules adopted by the Commission as agenda item CRC-16-23 on May 11, 2016, with any further modifications in the Commission's discretion. The Commission shall also adopt temporary and permanent rules to implement this section.”*

The CRC, therefore, is again proposing to amend its rules governing sandbags minus the four specific changes that were identified under S.L. 2015-241. The CRC is proposing changes as a result of discussions with local government and agency stakeholders, and with the Coastal Resources Advisory Council. The most significant proposed changes are as follows:

- Remove the distinction between structures greater or less than 5,000 square feet, setting the time limit at eight years for all structures;
- Remove the “vegetated” requirement for sandbag structures to remain beyond their permitted time when covered by sand;
- Require that only sandbags exposed above grade be removed at the expiration of the permit;
- Modify the “no longer necessary” provisions to require the removal of sandbags that are exposed above grade upon completion of a beach nourishment or inlet relocation/stabilization project.
- Clarify that structures determined by the Division of Coastal Management to be imminently threatened upon the expiration date of permitted temporary erosion control structures may be permitted to remain in place for an additional eight years if they are located in a community pursuing beach nourishment, inlet relocation or stabilization.
- Temporary erosion control structures can be extended beyond the protected structure to address gaps in adjoining sandbag walls.

The groups most affected by these changes will be oceanfront property owners within the Ocean Erodible (OEA) and Inlet Hazard Areas (IHA) Areas of Environmental Concern (AECs), including private property owners and governments. The NC Department of Transportation will also be affected.

DCM estimates that there will be **cost savings** to property owners from this action of ranging from \$379 - \$3,003 per individual, and to NCDOT ranging from \$1,211 to \$5,878. These cost savings are derived from the delayed costs associated with the removal of sandbags, and the elimination of the requirement to plant vegetation on top of covered bags. Additional, unquantified benefits would accrue to property owners in the future who would no longer have had to comply with the existing two- or five-year limit. Given all the unknowns related to future benefits, it would be difficult for DCM to estimate this savings. Other unquantified savings include the value of being able to use sandbags more than once to stabilize an imminently threatened structure (sandbags are the only erosion control structures available for individual oceanfront property by law). There are additional changes to other parts of the rules that are merely clarifications, and have no impact. These proposed rule changes are in the public interest, will reduce cost to coastal land owners and conform to the principles of G.S. 150B-19.1 and Executive Order 70.

DCM anticipates the effective date of these rule amendments to be September 1, 2018.

### **Description of the Proposed Rules**

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DCM currently issues permits for temporary erosion control structures under 15A NCAC 7H .0308(a)(2) and 15A NCAC 7H .1700, which are limited to sandbags used to protect imminently threatened structures (buildings, roads and septic systems). Currently, sandbag structures may remain in place for up to two years if protecting a structure that is less than 5,000 square feet or up to five years for larger structures. Sandbag structures may also remain in place for up to five years, regardless of structure size, if the structure is located in a community that is considered to be actively pursuing a beach nourishment project. If a structure is located in an Inlet Hazard Area of Environmental Concern (AEC) and in a community pursuing an inlet relocation project, the sandbags may remain in place for up to eight years. The use of sandbags for temporary erosion control is allowed only once during the life of a structure on the oceanfront, regardless of ownership, but may be used multiple times if it is located in a community that is actively pursuing a beach nourishment, inlet relocation or inlet stabilization project.

The CRC is proposing the following amendments, based upon a prior legislative mandate, and discussions with stakeholders:

- (1) ***Allow the placement of contiguous temporary erosion control structures from one shoreline boundary of a property to the other shoreline boundary, regardless of proximity to an imminently threatened structure.***  
Currently, the landward edge of a sandbag structure cannot be located more than 20 feet waterward of the structure or right of way being protected, and may not extend more than 20 feet past the sides of the structure being protected.
- (2) ***Increase the allowable time for permitted sandbags to eight years, regardless of location, or the size or type of property being protected.***  
Currently, sandbags may be permitted for two, five or eight years, depending on the size and location of the structure being protected.
- (3) ***Allow sandbags to remain past their permitted time if they are covered with sand.***  
Currently, sandbags can remain past their permitted time only if they are covered with sand and vegetation. The proposed change removes the vegetation requirement.
- (4) ***When sandbags are no longer needed, only bags exposed above grade be removed.***  
Currently, all sandbags that are not covered and vegetated must be removed when they are no longer needed, which could necessitate excavation to remove settled bags. The proposed change allows buried bags to remain, reducing cost and disturbance.
- (5) ***Allow sandbags to remain until the completion of a beach nourishment, inlet relocation or inlet stabilization project.*** Currently, sandbags must be removed prior to the completion of beach and inlet erosion mitigation projects.

Allowing sandbag placement across the entire width of a lot will give property owners the ability to connect their sandbag structures, eliminating gaps that can undermine the effectiveness of adjacent sandbag structures.

The most significant change being proposed by the CRC, that was not included in the legislation, is a change to the permitted time period for sandbag structures. Currently, sandbags may be permitted for two, five or eight years, depending on the size and location of the structure being protected. The proposed amendments standardize the maximum time period that sandbags can be utilized for temporary erosion control to eight years for any size structure, in all locations. The initial eight-year timeframe will apply as well to properties located in communities that are not actively pursuing long-term actions to address beach erosion. This eight-year, across-the-board permit duration is expected to account for the time it takes to complete a beach or inlet project, including project design, permitting, construction, and typical delays. There is some potential that property owners will need sandbags longer than eight years in the event that a planned nourishment project does not happen within that timeframe, or fails.

One of the anticipated effects of this proposed rule change will be consistent application of temporary erosion control measures along all oceanfront and inlet shorelines. Synchronizing the use of temporary erosion control measures with long-term actions to address chronic erosion will prevent property owners from prematurely exposing their structures to hazards associated with the Atlantic shoreline and endangering their structures.

The CRC is also proposing a minor modification to the conditions under which sandbags would need to be removed. Currently, sandbags must be removed when the permit expires, or when they are no longer necessary because the structure they are protecting is no longer imminently threatened due to a beach fill, inlet relocation or stabilization project; however, removal is not required if the bags are covered with sand and vegetation. Under the proposed amendment, sandbags can remain when they are no longer necessary, provided they are covered with sand; the vegetated requirement is being removed, so that only uncovered sandbags above grade must be removed. This provision will result in cost savings to property owners by allowing them to delay or avoid the costs of sandbag removal and dune planting. These cost savings are estimated in the Benefits section below.

## **COSTS OR NEUTRAL IMPACTS**

The CRC offers property owners who wish to do so, the ability to install sandbags for temporary erosion control once their structure becomes imminently threatened, which is defined as the foundation or septic system being located less than 20 feet away from the erosion scarp (steep ridge). In the 20-year period from 1996-2015, DCM permitted 435 sandbag structures, an average of 22 structures per year (rounded up). Excluding 1998, which was a true outlier, DCM issued 354 permits over 19 years, for an average of 19 permits per year. Over the most recent 10-year period from 2006 to 2015, DCM issued 117 permits, an average of 12 per year. The cost to install a sandbag structure is approximately \$425 per linear foot. Assuming the typical width of an oceanfront lot to be 50 feet, and with sandbag structures able to span the entire width of the lot, the typical installation cost will be about \$21,250. Under normal conditions, sandbag structures are durable and stable enough to easily outlast the eight-year permit duration without deterioration or displacement. Storm events and vandalism can damage or shift sandbags, requiring property owners to spend money on maintenance or repairs, but these events are unpredictable and may not occur at all during the lifespan of a sandbag structure.

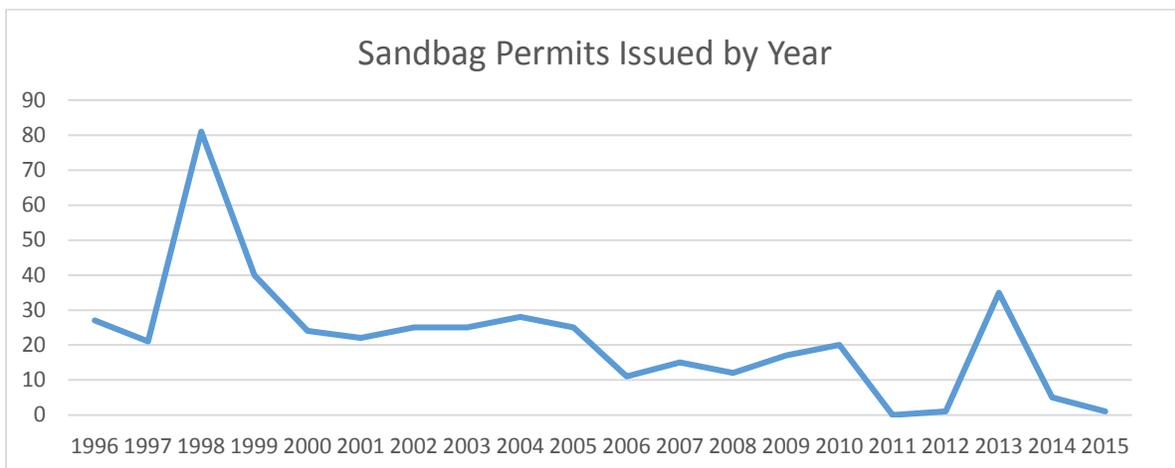
289 of the 435 permitted structures from 1996 to 2015 still remained on the beach in 2015, meaning that 146 sandbag structures had been removed, or an average of seven sandbag structures removed per year. DCM estimates that the cumulative length of all sandbag structures currently on the beach is approximately six miles. With the extension of permit duration to eight years, the number of sandbag structures removed can be expected to fall initially, but the return to historic levels as the longer-term permits begin to expire, and regular nourishment projects diminish the need for sandbags. It is also possible that removal could trend downward over the longer term if property owners elect to cover their bags with sand instead of removing them. The removal of the requirement to keep bags covered *and* vegetated may provide some additional incentive to keep expired bags instead of removing them; DCM estimates the cost of vegetating a 50-foot sandbag structure at \$1,000, based on 1,500 plants at about \$0.60 per plant, plus tools and fertilizer. Sandbags that can successfully retain vegetation, typically

because they are not regularly overwashed, do not generally require manual plantings. Sandbag structures that require manual plantings tend to experience periodic overwash, and it is difficult or impossible to keep them covered with sand or vegetated. For the purpose of this analysis; therefore, we will assume that removing the vegetation requirement will not have any meaningful impact on removal rates, and the average number of structures removed over the next 10 years will be the same as the average over the last 10 years; i.e., seven structures per year. The cost to remove a sandbag structure ranges from \$4,000 - \$8,000 depending upon whether bags are buried or exposed, the number of bags, the equipment required, and other factors.

With the exception of a couple outlier years that followed unpredictable major storms that affected the state, the trend of new permits for sandbags has been declining. One possible explanation other than the low incidence of major storms in recent years, is that the vast majority of structures that qualify for sandbags, already have them. Since the proposed amendments will not make more properties eligible for sandbags, the number of permits issued/miles protected is not expected to increase. For the purpose of this analysis, we will assume that the average for new permits issued over the next 10 years will be the same as the average over the last 10 years; i.e., 12 permits per year. Since sandbags can be used more than once on properties located in communities that are actively pursuing a beach or inlet project, some of the “new” permit applications could be to allow existing sandbag structures to remain in place for another eight years. The application fee for a sandbag permit \$400, Based on the average number of permits issued over the past 10 years, DCM receives \$4,800 per year in sandbag permit fees, on average.

DCM has heard claims that the entire value of property behind sandbags would be lost if the bags were removed, but it is not valid to assume that all 289 remaining structures would be destroyed if their sandbag protection were to be removed. While sandbags are effective in mitigating hazards that can cause erosion and destroy structures, there are other factors that affect a property’s ability to withstand coastal hazards (e.g., setbacks, freeboard, topography, shoreline orientation, and the property’s proximity to an inlet). In addition, chronic erosion produces different effects than episodic events. Sandbags may perform well against chronic erosion, but may be significantly less effective in storm events. DCM regularly calculates average annual rates of chronic erosion and uses them to determine development setbacks, but storm frequency and intensity, which can have larger impacts than chronic erosion, are impossible to predict.

<http://deq.nc.gov/about/divisions/coastal-management/coastal-management-data/oceanfront-sandbags>)



Other potential costs that might result from the proposed changes include the aesthetic impacts of sandbags on the beach, the potential for refracted wave energy to increase erosion on adjacent properties and the public beach, public and emergency access obstructions, and ecological impacts. These types of costs are not readily quantifiable, but are to some degree mitigated by regulatory standards on sandbag color and location, and restricting the use of sandbags until a structure becomes imminently threatened.

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 7H.0308(a)(2) and 7H.1700 will not affect environmental permitting for the NC Department of Transportation (NCDOT). The primary change applicable to NCDOT is the longer duration of sandbag permits however, the majority of NCDOT projects (roads) fall into the greater than 5,000 square foot structure category and are already eligible for the eight-year permit duration. NCDOT therefore is not expected to experience any negative fiscal impacts associated with the proposed rule amendments.

#### Local Government

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Local governments do not typically apply for General Permits for sandbag structures; local government sandbag applications are usually at the scale where Major Permits are required and similar to NCDOT, the structures are generally larger than 5,000 square feet. As such, the proposed amendments are not expected to affect local government revenues or expenditures in a significant or measurable way.

#### Division of Coastal Management

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DCM does not anticipate that the proposed action will significantly increase operating cost over what is currently required for permitting, inspecting, and ensuring compliance of sandbag structures. The adoption of a uniform approach to managing sandbags for temporary erosion control will increase the efficiency in which this activity is permitted as permit expiration dates will not be dependent upon the location of the structure other than being present in a community pursuing beach nourishment, inlet relocation or inlet stabilization. Extended time limits on sandbags will provide some relief to DCM staff from the current situation as property owners have increasingly sought variances once sandbag permits expire. Only about 12 of the existing sandbag structures are located in communities that are not actively pursuing a beach or inlet project, meaning that the vast majority of sandbags are eligible for new permits to allow them to remain in place for an additional eight years. In addition, sandbags will not need to be removed after their permit expires if they are covered with sand. DCM expects this flexibility to increase the compliance rate with the new rules and decrease the enforcement burden on DCM. Property owners may be less likely to contest the removal of sandbags after a beach nourishment, inlet relocation or inlet stabilization project if they know sandbags would once again be permitted should their structure again become imminently threatened.

DCM does not anticipate any change in permitting receipts due to the proposed action. Any potential increase in the number of permits issued would likely be offset by a decrease in the number of permits needed due to a beach nourishment project or an inlet relocation/stabilization project. Virtually all of the developed beaches in the state that have erosion problems have either been recently nourished, or have plans to be nourished. The frequency of renourishment varies but is typically tied to need, and can be as frequent as annually or as infrequently as once per decade or more.

## **BENEFITS**

#### Private Property Owners

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New permits upon the effective date of the rule would have an eight-year expiration, a benefit that would be realized through the deferred cost from having to remove sandbags at an earlier date. The costs associated with the removal of sandbags varies from \$4,000 - \$8,000 depending on the length of the sandbag structure and other factors as described previously.

Instead of spending the money to remove sandbags in the current timeframe, property owners would have an additional three to six years of time before incurring this expense. Benefits are calculated as the amount of investment income that a property owner could earn during this period assuming a return ranging between 3% and 7%. Cost savings also include \$1,000 as an estimate of the amount of money it

would have cost to purchase and plant vegetation on top of a sandbag structure. Application of 3% and 7% investment rates of return to the \$5,000 - \$9,000 cost savings range associated with removal of sandbags and plantings is utilized to estimate the net present value (NPV) for delayed sandbag removal. For a 3% investment return, the NPV to a property owner ranges from \$379 - \$1,163. For a 7% investment return, the NPV to a property owner ranges from \$918 - \$3,003. Table 1 depicts the investment return afforded by the number of years of additional permit duration.

**Table 1. Estimate of Benefits to Property Owners for Delayed Sandbag Removal**

<b>Years of investment</b>	<b>Cost savings</b>	<b>Investment income at 3 percent</b>	<b>NPV at 3% return</b>	<b>Investment income at 7 percent</b>	<b>NPV at 7% return</b>
3	\$5,000	\$464	\$379	\$1,125	\$918
	\$9,000	\$935	\$763	\$2,025	\$1,653
6	\$5,000	\$970	\$646	\$2,504	\$1,669
	\$9,000	\$1,746	\$1,163	\$4,507	\$3,003

While these properties will benefit from the ability to protect their structures for an increased time period, it is not possible to calculate the number that may become condemned, relocated, damaged/destroyed or otherwise unusable as these factors depend on unknown natural events and owner decisions. It is also not possible to predict whether or not a community will be successful in completing a beach nourishment, inlet relocation or stabilization project as financing of these projects involve the local, state and federal entities outside DCM's control. DCM therefore cannot say with any certainty that the value of these properties will be preserved at some future time even with the extended sandbag permit duration.

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NC Department of Transportation

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Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 7H.0308(a)(2) and 7H.1705 will not affect environmental permitting for NCDOT. The changes primarily lengthen the duration of sandbag permits for NCDOT projects from five years to eight. NCDOT's sandbag structures are typically bigger than sandbag structures on individual properties, since they are typically used to protect bridges and sections of imminently threatened roadways. Consequently, removal costs for NCDOT's sandbags are higher than for individual property owners. One recent estimate for removing a typical NCDOT sandbag structure was between \$16,000 and \$32,000. If this range is assumed to be average, the NPV of NCDOT's additional three years of permit duration ranges between \$1,211 and \$5,878. Table 2 depicts the investment return afforded by the three years of additional permit duration.

**Table 2. Estimate of Benefits to NCDOT for Delayed Sandbag Removal**

<b>Years of investment</b>	<b>Cost to remove bags</b>	<b>Investment income at 3 percent</b>	<b>NPV at 3% return</b>	<b>Investment income at 7 percent</b>	<b>NPV at 7% return</b>
3	\$16,000	\$1,484	\$1,211	\$3,601	\$2,939
	\$32,000	\$2,967	\$2,422	\$7,201	\$5,878

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Division of Coastal Management

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If the expected increase in compliance and decrease in enforcement actions prove true, DCM would benefit by the ability to spend less time on sandbag compliance and enforcement, and more time on other agency tasks. Enforcement actions on sandbags do not follow a regular timeline, because permit expiration dates and violations are not uniform. It is not feasible to estimate the total amount of time that

DCM staff has spent on sandbag enforcement in recent years, nor to predict how much time might be required in future years. The fiscal benefit of this rule change to DCM cannot be quantified.

### **COST/BENEFIT SUMMARY**

The greatest benefit of the proposed rule changes will be the ability of property owners to maintain sandbags structures for a period of time more closely aligned with the timeframes associated with a community completing a beach nourishment, inlet relocation or inlet stabilization project. In the near term, property owners will realize a benefit associated with the delayed removal of sandbags ranging from \$379-\$3,003. Additional, unquantified benefits would accrue to property owners in the future who would have had to comply with the existing two- or five-year limit. Given all the unknowns, it is difficult for the Division of Coastal management to estimate this savings.

There will also be a decrease in the enforcement burden on DCM as property owners may be less likely to contest the removal of sandbags after a beach nourishment, inlet relocation or inlet stabilization project if they know sandbags would once again be permitted should their structure again become imminently threatened.

The quantified costs and benefits from these proposed rule changes do not exceed \$500,000 annually. Table 3 summarizes the range of estimated costs and benefits of this action. Benefits arise from the ability to keep sandbags in place for an additional three or six years (amendment allows for eight years instead of two or five). Dollar amounts in the table represent the net present value (NPV) of investing the money that would otherwise have been spent on removal at 3% and 7% rates of return. The calculations assume that seven sandbag structures (six private and one NCDOT) will be removed each year, consistent with the historical average.

**Table 3. Cost/Benefit Summary**

	<b>Benefit (NPV)</b>	<b>Cost</b>	<b>Substantial Impact</b>
Private Citizens	\$2,274-18,018	0	No
Local Government	0	0	No
NCDOT	\$1,211-5,878	0	No
State Government	0	0	No
Federal Government	0	0	No
<b>TOTAL</b>	<b>\$3,485-23,896</b>	<b>0</b>	<b>No</b>

PROPOSED AMENDMENTS 15A NCAC 7H .0308; .1704; .1705

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

(1) Use Standards Applicable to all Erosion Control Activities:

- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, grovetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- ~~(D)~~ ~~All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.~~
- ~~(E)~~(D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule ~~.0306(i)~~ .0306(h) of this Section.
- ~~(F)~~(E) Project construction shall be timed to minimize adverse effects on biological activity.
- ~~(G)~~(F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- ~~(H)~~(G) Erosion Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
  - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provisionPart (a)(2)(B) of this Rule;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
  - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- ~~(I)~~(H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
  - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
  - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
  - (iv) any a permit for a structure under this Part ~~(I)~~ may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable significant adverse impacts on adjoining properties and on public access to and use of the beach.
- ~~(J)~~(I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
  - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
  - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
  - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
  - (iv) the structure shall not adversely impact have significant adverse impacts on fisheries or other public trust resources; and
  - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable significant adverse impacts on adjoining properties and on public access to and use of the beach.
- ~~(K)~~(J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement

of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
- (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

~~(L)~~(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part ~~(2)~~(A) of this Subparagraph shall ~~shall~~ may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures shall be used to protect only the principal structure—and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under 15A NCAC 07H .0309 as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed seaward waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be ~~protected.~~ protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure being protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward waterward of the structure to be ~~protected~~ protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or ~~their~~ the Director's designee in accordance with Part ~~(2)~~(A) of this Subparagraph.
- (F) Temporary erosion control structures may remain in place for up ~~to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five~~ eight years for a building with a total floor area of more than 5000 sq. ft. and its associated septic ~~system, system.~~ system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade the temporary structure within 30 days of the end of the allowable time period.
- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:
  - (i) a building and its septic system shall be considered separate structures.

(ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.

~~(G)~~(H) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment, nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it has:

- (i) has been issued an active CAMA permit, where necessary, approving such project; or
- (ii) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) has received a favorable economic evaluation report on a federal project; or
- (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project and or the identification of the financial resources or funding bases necessary to fund the beach nourishment or the inlet relocation or stabilization project.

If beach nourishment or inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

~~(H)~~(I) Once the a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade # shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management Management regardless of the time limit placed on the temporary erosion control structure.

~~(I)~~(J) Removal of temporary erosion control structures is not required if they are covered by dunes sand, with stable and natural vegetation. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

~~(J)~~(K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

~~(K)~~(L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet. feet, as measured from the bottom of the lowest bag.

~~(L)~~(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed. An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Part (G)(H) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment, inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or

~~extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:~~

- ~~(i) a building and septic system shall be considered as separate structures.~~
- ~~(ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.~~

- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

#### 15A NCAC 07H .1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

- (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.
- (2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
- (3) Any permitted temporary erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case ~~of roads, roads,~~ except as provided under 15A NCAC 07H .0308. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee.
- (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (5) Structural work shall meet sound engineering practices.
- (6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources Environmental Quality to make inspections at any time deemed necessary to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions in these Rules.

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

(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

(e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.

(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

*History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118.1; Eff. November 1, 1985; Amended Eff. December 1, 1991; May 1, 1990; RRC Objection due to ambiguity Eff. May 19, 1994; Amended Eff. May 1, 2010; August 1, 1998; July 1, 1994;*

#### 15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph shall may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, ~~or, or~~ right-of-way in the case of ~~roads, roads~~ is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp

- may also be found to be imminently threatened when the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (3) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under 15A NCAC 07H .0309 as an exception to the erosion setback requirement.
  - (4) Temporary erosion control structures may be placed seaward waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
  - (5) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be ~~protected~~. protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure being protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward waterward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Subparagraph (1) of this Paragraph.
  - (6) Temporary erosion control structures may remain in place for up to ~~two years after the date of approval if they are protecting a building with a total floor area of 5,000 square feet or less and its associated septic system, or for up to five eight years for a building with a total floor area of more than 5,000 square feet and its associated septic system.~~ Temporary erosion control structures may remain in place for up to five eight years if they are protecting a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade the temporary structure within 30 days of the end of the allowable time period.
  - (7) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment,~~ nourishment or an inlet relocation or stabilization project if it has:
    - (A) has an active CAMA permit, where necessary, approving such project; or
    - (B) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
    - (C) has received a favorable economic evaluation report on a federal project; or
    - (D) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project ~~and or~~ the identification of the financial resources or funding bases necessary to fund the beach ~~nourishment,~~ nourishment or inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.
  - (8) Once ~~the a~~ temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed by the property owner to maximum extent practicable within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade ~~it~~ shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management, regardless of the time limit placed on the temporary erosion control structure.
  - (9) Removal of temporary erosion control structures is not required if they are covered by dunes sand with stable and natural vegetation. Any portion of a temporary erosion control structure that becomes exposed

after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.

- (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
  - (11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the total height shall not exceed 6 feet, as measured from the bottom of the lowest bag.
  - (12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
  - (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
  - (14) An imminently threatened structure may be protected only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures may be permitted eligible for an additional eight-year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph Subparagraph, and the community in which it is located is actively pursuing a beach nourishment, nourishment or an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph.- In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
    - (A) a building and its associated septic system shall be considered as separate structures.
    - (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Rule.
  - (15) Existing sandbag temporary erosion control structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule. Paragraph.
- (b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:
- (1) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
  - (2) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee.
  - (3) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.
- (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.
- (1) Work permitted by this general permit shall be subject to the following limitations:
    - (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
    - (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward waterward of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Subparagraph (a)(1) of this Rule;
    - (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC 7H .0208; 7H .0208; and

- (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
- (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1;  
Eff. November 1, 1985;  
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;  
Temporary Amendment Eff. July 3, 2000; May 22, 2000;  
Amended Eff. May 1, 2013; May 1, 2010; August 1, 2002. Temporary Amendment Eff. July 3, 2000;





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*Secretary*

BRAXTON C. DAVIS  
*Director*

**CRC-18-12**

March 16, 2018

**MEMORANDUM**

**TO:** Coastal Resources Commission

**FROM:** Mike Lopazanski

**SUBJECT:** Inlet Hazard Areas

The Ocean Hazard Area of Environmental Concern (AEC) is a grouping of geographic areas considered vulnerable to natural hazards along the Atlantic shoreline. These areas are designated as hazard areas due to the increased risk of erosion and the adverse effects of sand, wind and water which can endanger both life and property. Your rules define three specific Ocean Hazard Areas of Environmental Concern in 15A 7H.300: the Ocean Erodible AEC, Inlet Hazard AEC (IHA), and Unvegetated Beach AEC. The IHA boundaries, unlike many of the other CRC jurisdictional areas, are defined in a report referenced in 7H.0304(2). The IHA boundaries correspond to maps originally developed by Priddy and Carraway (1978) for all of the State's then-active inlets, and which were adopted by the CRC in 1979. Minor amendments were made by the Commission in 1981.

**Inlet Hazard AEC History**

The CRC's initial discussions regarding inlets began soon after the passage of CAMA and were part of the general discussion of AECs. Drawing on inlet-related studies conducted by NC State University and the US Army Corps of Engineers (USACE), the CRC decided in 1977 to designate IHAs based on the delineation of an inlet's migratory history. Using aerial photography, the initial IHAs incorporated either the inlet's migration over the past 25 years, or the predicted migration 25 years into the future, whichever was less. The development standards adopted by the Commission for IHAs were the same as those existing for the Ocean Hazard AEC at that time and included: permanent non-water dependent development seaward of the frontal dune was prohibited; a prohibition on the removal of sand and vegetation from the frontal dune, and; a prohibition on state supported public facilities.

By 1981, the Commission began to recognize that inlet areas were more hazardous than the rest of the oceanfront, noting that out of the 70 structures impacted by erosion, 60 were near inlets. The CRC began to re-evaluate the IHAs and considered expanding the AEC to include all areas that were previously underwater, however they instead chose a statistical approach similar to the one used to calculate the newly adopted oceanfront setbacks. In addition to setbacks from the first line of stable and natural vegetation, the Commission included density restrictions, lot- and structure-size limits, a public access provision, and a prohibition on permanent erosion control structures outside of public projects.

Due to challenges over the accuracy of the data used in the statistical determination of inlet shoreline setbacks from both the private sector and academia, the Commission instead utilized the setback requirements of the adjacent Ocean Erodible AEC in determining setbacks with in IHAs.

Inlet Hazard AECs have also been subject of legislative interest by the NC General Assembly. The 2012 N.C. General Assembly directed the Commission to study the feasibility of creating a new AEC for the lands adjacent to the mouth of the Cape Fear River. Session Law 2012-202 required the CRC to consider the unique coastal morphologies and hydrographic conditions of the Cape Fear River region, and to determine if action was necessary to preserve, protect, and balance the economic and natural resources of this region through the elimination of current overlapping AECs by incorporating appropriate development standards into a single AEC unique to this location. For the purposes of this feasibility study, the CRC was directed to consider a region that encompassed the Town of Caswell Beach, the Village of Bald Head Island, and surrounding areas.

The Commission responded by conducting a comprehensive review on inlet management issues. This initiative centered on soliciting stakeholder input, beginning with a panel discussion where several regional beach project managers, engineers, dredging industry representatives, the USACE, and environmental advocates provided their views and concerns regarding inlet management. In-water issues (dredging), erosion control alternatives, and development standards on adjacent lands were all raised as topics of concern. DCM also arranged a series of regional forums to elicit from stakeholders a range of management options and regulatory reforms related to inlet management. At these regional meetings, local governments and other entities adjacent to inlets were invited to present their specific concerns related to the inlet(s) within their jurisdiction. Written comments were also accepted from the general public.

Stakeholder input was summarized and categorized at the May 2014 CRC meeting. After discussion, the Commission prioritized inlet management topics and directed staff to consider the following inlet management priorities:

**Short Term Priorities**

Dredging Depths and Sediment Criteria Rules  
Erosion Rate Calculations for Inlet Hazard Areas  
Emergency Permitting/Beach Bulldozing  
Static Vegetation Lines  
Stockpiling of Sand

**Long Term Priorities**

Beneficial Use of Dredged Material  
Inlet Management Plans  
Funding Sources and Partnerships  
Dredging Windows/Moratoria  
Monitoring Conditions

Actions taken by the Commission and Division on these priorities include:

- Completing the Science Panel technical study of Inlet Hazard Areas.
- Establishing a Deep Draft/Port/Navigation-Based Inlet Management Area of Environmental Concern (State Ports Inlet Management AEC).
- Meeting with the US Army Corps of Engineers regarding beach bulldozing permitting procedures (Beach bulldozing is now allowed below mean high water).
- Developing policy alternatives to the existing static vegetation line and static line exception rules (Development Line).

In addition, the legislature through SL 2014-120 removed the Inlet Hazard Area designation for areas meeting one of the following three criteria: the location of a former inlet which has been closed for at least 15 years; inlets that due to shoreline migration, no longer include the current location of the inlet; and for inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

## Current Rules

As mentioned previously, the Inlet Hazard AEC is described in 15A NCAC 7H .0304(2) and references maps 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. Excluded from the IHA designation by action of the General Assembly (SL 2014-120) are Cape Fear River Inlet and Beaufort Inlet as they are navigation channels providing access to a state port, and Mad Inlet which has been closed for at least 15 years.

The IHA rules (15A NCAC 7h .03010 - attached) have remained relatively unchanged since their adoption in 1981. Use standards specific to IHAs include:

- All development is required to be setback from the first line of stable and natural vegetation utilizing the erosion rate setback of the adjacent Ocean Erodible AEC.
- Density is restricted to no more than one commercial or residential unit per 15,000 square feet of land area.
- Only residential structures of four units or less or non-residential structures of less than 5,000 square feet are allowed.
- Access roads and the replacement of existing bridges are allowed (Added in 1995).
- Residential piers are allowed along shorelines exhibiting features of estuarine shorelines (Clarified in 1995).

Other Inlet Hazard AEC-related rules include:

- 15A NCAC 7H .0308(b)(5) Specific Use Standards for Ocean Hazard Areas, which prohibits the creation of new dunes in IHAs.
- 15A NCAC 7H .0309(b) Use Standards for Ocean Hazard Areas: Exceptions, in which certain lots platted prior to June 1, 1979 are eligible for an exception to the oceanfront setback rules is not applicable to the IHA.
- 15A NCAC 7H .1800 General Permit to Allow Beach Bulldozing in the Ocean Hazard AEC, which is not applicable to IHAs.

## Future Inlet Hazard Area Management

The CRC's Science Panel has been focusing on a methodology for determining the "area of inlet influence that can be used in delineating IHAs for management by the Commission. Staff is not proposing major changes to the existing IHA rules. However, for the upcoming discussion, the CRC should consider a grandfathering provision for lots not previously in an IHA, removing the distinction between commercial and residential structures, limiting the size of all structures regardless of use (as is the case on the oceanfront), and, based on new methodologies, using the actual erosion rates in the IHA rather than the erosion rate of the adjoining Ocean Erodible AEC.

Staff looks forward discussing IHA management at the upcoming meeting in Manteo.

## SECTION .0300 – OCEAN HAZARD AREAS

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

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; 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 or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.
- (2) **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 mean low water line a distance sufficient to encompass that area within which the inlet migrates, based on statistical analysis, 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 on the maps 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 and are hereby designated as Inlet Hazard Areas, except 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 less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule. Photocopies are available at no charge.
- (3) 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 on either a permanent or temporary basis as follows:
  - (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the 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 or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
  - (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

*History Note:* Authority G.S. 113A-107; 113A-107.1; 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. July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013;  
January 1, 2010, February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.

**15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS**

(a) Inlet areas as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to this extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

- (1) All development in the inlet hazard area shall be set back from the first line of stable natural vegetation a distance equal to the setback required in the adjacent ocean hazard area;
- (2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;
- (3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;
- (4) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet 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;
- (5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.

(b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 7H .0309(a), nor, to the types of development listed in 15A NCAC 7H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 7H .1100, .1200 and 7K .0203.

*History Note: Filed as a Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;  
Filed as an Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;  
Authority G.S. 113A-107; 113A-113(b); 113A-124;  
Eff. December 1, 1981;  
Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991;  
March 1, 1988.*



Coastal Management  
ENVIRONMENTAL QUALITY

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MICHAEL S. REGAN  
*Secretary*

BRAXTON DAVIS  
*Director*

March 27, 2018

**MEMORANDUM**

**CRC-18-13**

**TO:** Coastal Resources Commission  
**FROM:** Ken Richardson, *Shoreline Management Specialist*  
**SUBJECT:** CRC Science Panel Inlet Hazard Area (IHA) Delineation Update

**Background:**

At the July 2016 CRC meeting in Beaufort, the Commission issued the following scope of work to the Science Panel:

- 1) **Develop a methodology for calculating inlet shoreline change rates**  
The Science Panel has chosen the linear regression method to measure shoreline change at inlets. This method incorporates multiple shorelines, versus the end-point method currently used to calculate rates on the oceanfront which only uses two shorelines (early and current). Inlet shoreline changes rates have not historically been used for determining construction setbacks at inlets.
- 2) **Re-evaluate points along the oceanfront shoreline where inlet processes no longer influence shoreline position**  
When the Science Panel first started working on updating IHA boundaries in 2005, the Panel evaluated changes in shoreline position over time to determine the location along the shoreline where inlet-related processes no longer have a dominant influence on the shoreline's position.
- 3) **Present results at a CRC Meeting**  
Initially, the goal was to present results to the CRC in 2017. However, due to computer and software issues, delays were unavoidable. Draft maps have been prepared using the linear regression methodology and will be reviewed by the Science Panel in April. Staff will present the drafts to the CRC later this year.

Since the 2016 CRC meeting, the Panel has been working with staff to delineate updated IHA boundaries using statistical methods and historical data, professional knowledge and updated mapping methodologies. In December 2017, the Panel met in New Bern to review results from the analyses, and agreed that additional modifications to the methodology were needed before a proposal could be endorsed.

The current techniques being considered for the update of the IHA boundaries utilize statistical methods to: 1) determine the transitional point along the oceanfront shoreline where inlet processes

no longer dominate shoreline position; 2) calculate the average shoreline orientation, and; 3) determine the landward-most boundary.

Staff has reanalyzed data based on the Panel's recommendations and using most up to date data, and plan to submit results to the Panel for their review at their May 3, 2018 meeting in New Bern. Staff is preparing to present updated boundaries and rule language at the Commission's September meeting.



ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

BRAXTON C. DAVIS  
*Director*

March 29, 2018

**CRC-18-14**

**TO:** Coastal Resources Commission

**FROM:** Heather Coats, Assistant Major Permits Coordinator, Wilmington Office

**SUBJECT: Proposed State Port Inlet Management Area of Environmental Concern (AEC)**

Beginning in July 2014, the Commission directed DCM staff to develop management objectives and use standards for a new AEC category. The new AEC category would be associated with the two inlets in North Carolina that include federally maintained shipping channels: Beaufort Inlet and the Cape Fear River Inlet. The new AEC category was a result of recommended priorities set in the CRC's Inlet Management Study.

Staff first met with representatives from the adjacent local governments to solicit input regarding the application of current rules, as well as possible new management strategies the local governments believe would address the unique circumstances experienced at these inlets. Discussions with the Village of Bald Head Island revolved around needs previously discussed as part of the Cape Fear River AEC Feasibility Study, which was mandated by the General Assembly in 2012. The Village expressed an interest in more flexible sandbag rules – particularly in regards to the ability to protect dunes in addition to primary structures and infrastructure – as well as the allowable location and size of sandbags and sandbag structures. The Village also stated that new rules for the AEC should advocate the beneficial use of dredged material as part of Coastal Zone Management Act (CZMA) federal consistency process.

Discussions with representatives from the Town of Caswell Beach and the NC Baptist Assembly at Ft. Caswell primarily focused on the federal designation of Ft. Caswell as a national historic site and the need for more flexibility to address shoreline erosion on the property.

The main topic of discussion with Carteret County's Shore Protection Manager was beneficial use of beach-compatible dredged material and the limitations of the current federal Dredged Material Management Plan (DMMP) at Beaufort Inlet. Concerns were expressed that a lack of funding should not be considered sufficient justification to avoid beneficial use of beach-quality material.

Staff drafted an AEC definition and rule language for a new State Port Inlet Management AEC for CRC discussion at your October 2014 meeting. The draft rule language also addressed action taken by the legislature (S.L. 2014-120) to remove the Inlet Hazard Area designation for inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

Over the first year of AEC development, discussion focused on the beneficial use rule language requiring beach-compatible dredged materials to be placed on active nearshore, beach or inlet shoal system and whether the rule should further require all sand be placed on adjacent beaches. Strong objections were received from the US Army Corps of Engineers (USACE) during that time, with the Corps reporting that removing flexibility could seriously jeopardize the continued operation of the NC State Port at Morehead City. Following additional discussion with the USACE and other stakeholders, the beneficial use requirement was removed from the draft rule. A working group was instead formed to create a Memorandum of Agreement that would facilitate beneficial use through federal, state, and local cost-sharing.

The Coastal Resources Advisory Council (CRAC) also discussed the remaining components of the draft AEC rule language, including the sandbag provisions, at the April and July 2015 meetings. They recommended the AEC definition specify that the AEC includes the Cape Fear and Beaufort Inlets. The CRAC also recommended that a minimum sandbag size be specified, in accordance with current sandbag rule language. The draft rule language was updated to include these recommendations.

In April 2016, staff met with Town of Caswell Beach's newly elected Mayor Deborah Ahlers and Town Administrator, Chad Hicks, to discuss the history of the State Ports Inlet Management AEC development and the Town's previous comments. Mayor Ahlers and Mr. Hicks reaffirmed the Town's previous position and only wished to reiterate the Town's desire to have its entire jurisdiction within the limits of the AEC, rather than limiting the boundary to the "Area of Inlet Influence" that was previously identified by the CRC Science Panel. The Town's request is due to erosion that has historically occurred west of the Science Panel's boundary, which has threatened the primary road and access to much of the Town's jurisdiction. The Town wants the ability to use the less restrictive sandbag rules to protect Caswell Beach Road, if needed in the future, as a response to erosion. The Town has also reiterated their desire to have as much flexibility as possible to address shoreline erosion, which they attribute to boat traffic in the federal channel.

The 2015 Appropriations Bill (S.L. 2015-241) required that the CRC adopt specific amendments to the current temporary erosion control structure (sandbag) rules. Because the State Ports Inlet Management AEC draft rules pertain primarily to sandbag use standards, State Ports Inlet Management AEC development was suspended pending an evaluation of the overall use standards applicable to all Ocean Hazard AECs. While the Commission voted to move forward with AEC development at the September 2016 meeting, additional legislation (S.L. 2017-10) was subsequently passed in regards to temporary erosion control structure rules which warranted further consideration of how any resulting rule changes may impact this AEC's use standards.

With the temporary erosion control structure rules having been addressed at your November 2017 meeting, due to the time that has elapsed, staff wants to consult with the Commission once again prior to moving forward with finalizing rule-making and proceeding with the fiscal analysis. Attached is the last version of draft rule language and proposed AEC boundaries approved by the Commission in September 2016, which reflected past discussions and significant input from the affected local governments.

As a recap, the rule language defines the State Port Inlet Management AEC, allows the use of sandbags to protect primary and frontal dunes as well as structures and infrastructure, redefines the means of determining what is imminently threatened within the new AEC, and allows for the use of larger sized bags (e.g. geotextile tubes) for temporary erosion control structures. In addition, the draft rules address action taken by the legislature through SL2014-120 to remove the Inlet Hazard Area designation for areas meeting one of the following three criteria: the location of a former inlet which has been closed for at least 15 years; inlets that due to shoreline migration, no longer include the current location of the inlet; and for inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

Staff is looking forward to confirming the Commission's direction through discussion of the AEC at the upcoming meeting in April.

**15A NCAC 07H .0304 AECs WITHIN OCEAN HAZARD AREAS**

The ocean hazard AECs contain all of the following areas:

- (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; 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 and 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 or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.
- (2) 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 mean low water line a distance sufficient to encompass that area within which the inlet migrates, based on statistical analysis, 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 on the maps 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 and are hereby designated as Inlet Hazard Areas, except 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.~~
  - (a) the location of a former inlet which has been closed for at least 15 years,
  - (b) inlets that due to shoreline migration, no longer include the current location of the inlet,
  - (c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.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 less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule. ~~Photocopies are available at no charge.~~
- (3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as ~~an~~ Unvegetated Beach ~~Area~~ Areas on either a permanent or temporary basis as follows:
  - (a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the 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 or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.
  - (b) An area that is suddenly unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.
- (4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward

as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website referenced in Sub-item(1)(a) of this Rule.

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

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

- (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.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Subchapter would preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted seaward of the applicable setback line in ocean erodible areas and State Ports Inlet Management Areas, but not inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line or static vegetation line, whichever is applicable;
- (3) The development is not located on or in front of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Subchapter.
  - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
  - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof covered decks and porches that are structurally attached shall be included in the calculation of footprint;
  - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used;
  - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, 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, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

(5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:

(1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;

(2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences. For the purposes of this Rule, an existing lot is 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. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.

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

(1) piers providing public access; and

(2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.

(e) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;

(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;

(3) The pier house shall be limited to a maximum of two stories;

(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;

(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;

(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

(f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted on those nonoceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 07K .0203.

(g) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule 07H .0305, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and

(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

### **15A NCAC 07H .0313 USE STANDARDS FOR STATE PORTS INLET MANAGEMENT AREAS**

Development within State Ports Inlet Management areas, as defined by Rule .0304 of this Section, shall be permitted in accordance with the following standards:

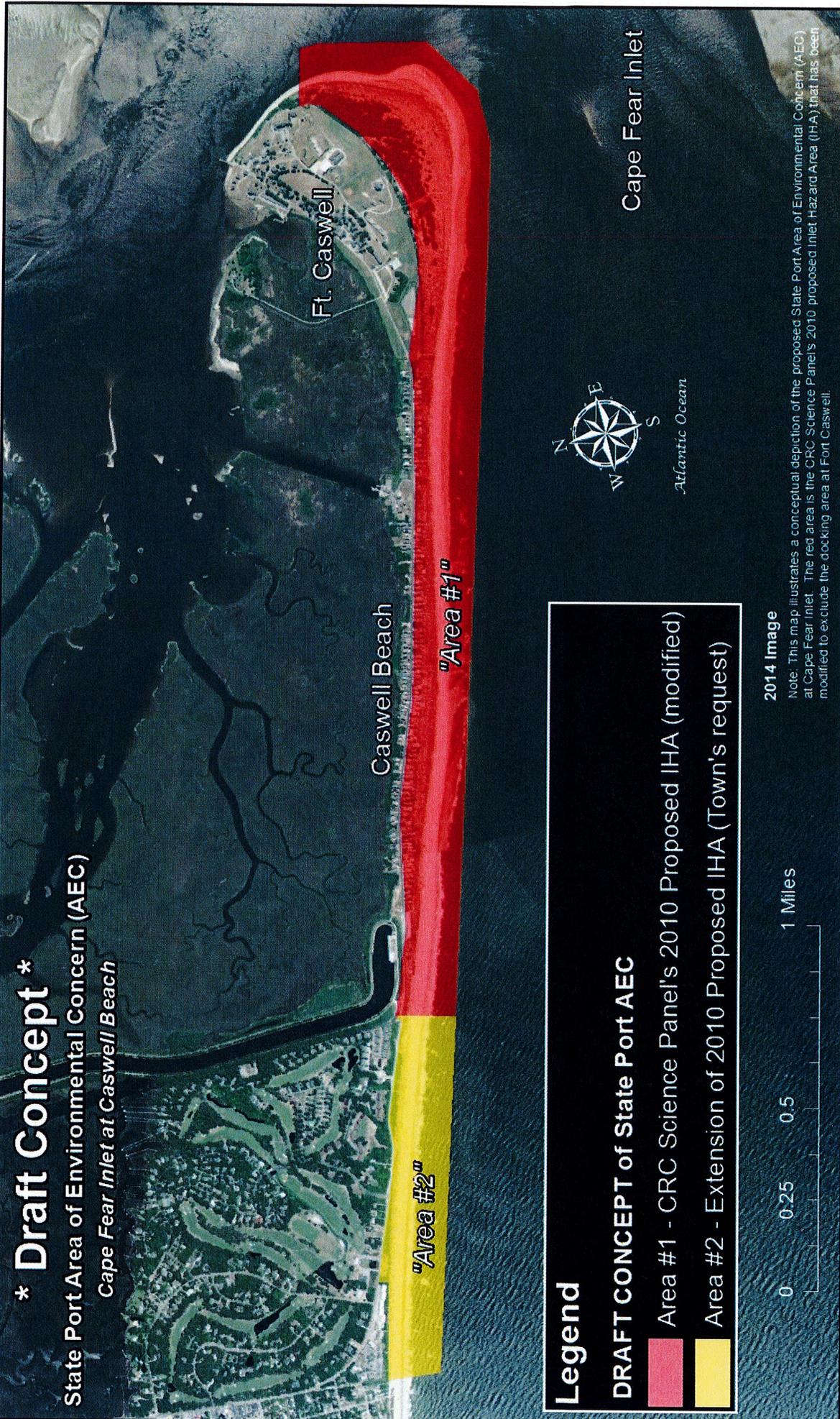
- (a) All development in the State Ports Inlet Management Areas shall be set back from the first line of stable and natural vegetation, static vegetation line, or measurement line at a distance in accordance with 15A NCAC 7H .0305(a)(5), except for development exempted under 15A NCAC 7H .0309.
- (b) Notwithstanding the use standards for temporary erosion control structures described in 15A NCAC 7H .0308(a)(2), a local government may apply for a permit to seek protection of an imminently threatened frontal or primary dune, public and private structures and/or infrastructure within a State Ports Inlet Management Area. For the purpose of this rule, a frontal or primary dune, structure, or infrastructure shall be considered imminently threatened in a State Ports Inlet Management Area if:
  - (1) its foundation, septic system, right-of-way in the case of roads, or waterward toe of dune is less than 20 feet away from the erosion scarp; or
  - (2) site conditions, such as flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure as determined by the Director of the Division of Coastal Management; or
  - (3) the frontal or primary dune or infrastructure will be imminently threatened within six (6) months as certified by persons meeting applicable State occupational licensing requirements; or
  - (4) the rate of erosion from the erosion scarp or shoreline within 100 feet of the infrastructure, structure, frontal or primary dune was greater than 20 feet over the preceding 30 days.

Permit applications to protect property where no structures are imminently threatened require consultation with the US Army Corps of Engineers.
- (c) Temporary erosion control structures constructed by a local government shall have a base width not exceeding 20 feet, and a height not to exceed six feet. Individual sandbags shall be tan in color and be a minimum of three feet wide and seven feet in length when measured flat.
- (d) Established common-law and statutory public rights of access to the public trust lands and waters in State Ports Inlet Management Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (e) Except where inconsistent with the above standards, all other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the State Ports Inlet Management Areas.
- (f) In addition to the types of development excepted under Rule .0309 of this Section, small scale, non-essential development that does not induce further growth in the State Ports Inlet Management Areas, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated State Ports Inlet Management Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 7H .1100, and.1200.

# \* Draft Concept \*

State Port Area of Environmental Concern (AEC)

Cape Fear Inlet at Caswell Beach



## Legend

### DRAFT CONCEPT of State Port AEC

- Area #1 - CRC Science Panel's 2010 Proposed IHA (modified)
- Area #2 - Extension of 2010 Proposed IHA (Town's request)

2014 Image

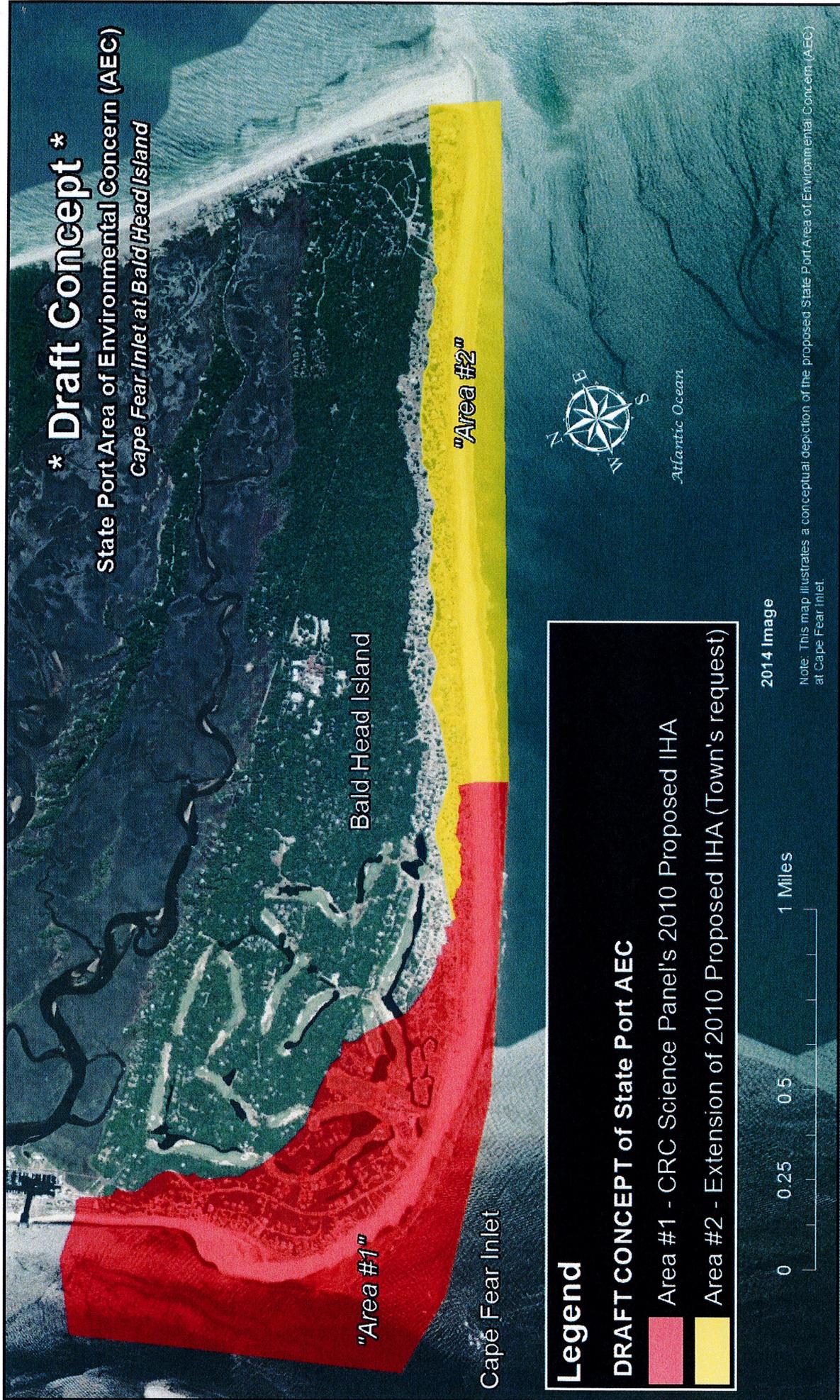
1 Miles



Note: This map illustrates a conceptual depiction of the proposed State Port Area of Environmental Concern (AEC) at Cape Fear Inlet. The red area is the CRC Science Panel's 2010 proposed Inlet Hazard Area (IHA) that has been modified to exclude the docking area at Fort Caswell.

# \* Draft Concept \*

State Port Area of Environmental Concern (AEC)  
Cape Fear Inlet at Bald Head Island



## Legend

### DRAFT CONCEPT of State Port AEC

- Area #1 - CRC Science Panel's 2010 Proposed IHA
- Area #2 - Extension of 2010 Proposed IHA (Town's request)





**\* Draft Concept \***

**State Port Area of Environmental Concern (AEC)**  
**Beaufort Inlet**



**Shackleford  
 Banks**

**Beaufort Inlet**

**Ft. Macon State Park**

**Radio Island**

**Legend**

**DRAFT CONCEPT of State Port AEC**

**CRC Science Panel's 2010 Proposed IHA (modified)**



**2014 Image**

*Atlantic Ocean*  
 Note: This map illustrates a conceptual depiction of the proposed State Port Area of Environmental Concern (AEC) at Cape Fear Inlet.



Coastal Management  
ENVIRONMENTAL QUALITY

ROY COOPER  
*Governor*

MICHAEL S. REGAN  
*Secretary*

BRAXTON DAVIS  
*Director*

March 27, 2018

**MEMORANDUM**

**CRC-18-15**

**TO:** Coastal Resources Commission  
**FROM:** Ken Richardson, *Shoreline Management Specialist*  
**SUBJECT:** Review of Ocean Hazard AEC Setback Lines

**Ocean Hazard AEC:**

The Ocean Hazard Setback for development is measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line. Setback distance is calculated by multiplying a Setback Factor (a.k.a. “erosion rate”) times a graduated variable that is dependent on size of the proposed structure (*see Table 1*). The Setback Factor represents the statistically smoothed and blocked average annual long-term shoreline change rates, which are updated approximately every 5 years. For purposes of establishing a minimum construction setback, “2” is the default minimum Setback Factor, which includes those areas with erosion rates less than 2 feet/year and areas where accretion is measured.

Oceanfront Setback Factors were established by the Coastal Resources Commission (CRC) under the Coastal Area Management Act (CAMA) in 1979 to minimize losses of life and property resulting from storms and long-term erosion, while also preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately-sited development. To accomplish this, Setback Factors serve two purposes: 1) to site oceanfront development, and; 2) to determine the landward-most extent of the Ocean Erodible Area of Environmental Concern (OEA) - the area where there is a substantial possibility of excessive shoreline erosion.

*Table 1. Setback Factors & graduated setback.*

<b>Structure Size</b>	<b>Setback (feet)</b>	<b><i>example “setback factor = 2”</i></b>
< 5,000 sqft.	Minimum 60 feet, or 30 x setback factor	<i>2 x 30 = 60 feet</i>
≥ 5,000 sqft.	Minimum 120 feet, or 60 x setback factor	<i>2 x 60 = 120 feet</i>
≥10,000 sqft.	Minimum 130 feet or 65 x setback factor	<i>2 x 65 = 130 feet</i>
≥20,000 sqft.	Minimum 140 feet or 70 x setback factors	<i>2 x 70 = 140 feet</i>
≥40,000 sqft.	Minimum 150 feet or 75 x setback factor	<i>2 x 75 = 150 feet</i>
≥60,000 sqft.	Minimum 160 feet or 80 x setback factor	<i>2 x 80 = 160 feet</i>
≥80,000 sqft.	Minimum 170 feet or 85 x setback factor	<i>2 x 85 = 170 feet</i>
≥100,000 sqft.	Minimum 180 feet or 90 x setback factor	<i>2 x 90 = 180 feet</i>

North Carolina’s oceanfront shoreline changes rates have historically been calculated using the End-Point method since the first study conducted in 1979. This method uses the earliest and most current shoreline data points where they intersect at any given shore-perpendicular transect. The distance between the two shorelines (shore-transect intersect) is then divided by the time, or number of years, between the two shorelines. Since the current method used to calculate shoreline change rates has been consistent since 1979, it provides the CRC with results that can be generally compared to those from previous studies. With the advancement of mapping technology and a greater inventory of shoreline data, results from methods that can incorporate multiple (more than two) shorelines will be compared during the 2018-2019 update.

Additionally, because setbacks can help preserve spaces that can serve as undeveloped buffer areas for storms, the U.S. Federal Emergency Management Administration (FEMA) currently uses North Carolina’s erosion rate updates to award Community Rating System (CRS) points to qualified coastal communities. The CRS is used by FEMA to assess flood insurance rates for these communities. FEMA’s current policy allows North Carolina’s oceanfront erosion rate update to account for fifty (50) CRS points only if the state’s erosion rates are updated once every five years. Loss of these points could potentially result in increased flood insurance rates for certain coastal communities.

**Setback Lines:**

Oceanfront Setback Lines for development are measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line.

**The Vegetation Line, or First Line of Stable & Natural Vegetation (FLSNV):** is the primary reference feature for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, and the more stable uplands. If the vegetation has been planted, it may be considered stable when most of the plant stems are from continuous rhizomes rather than

planted individual root sets. Planted vegetation may be considered natural when most of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are like adjacent areas that are naturally occurring.

While the vegetation line has been used as an oceanfront setback measurement line since 1979, the CRC has previously determined that the vegetation on nourished beaches often did not meet the standard to be considered “stable and natural” and should not be used for measuring oceanfront setbacks. In 1995 the CRC codified a method of measuring setbacks on nourished beaches that utilizes the surveyed pre-project existing vegetation line, which became known as the “Static Vegetation Line.”

**The Static Vegetation Line (SVL):** is established in areas within the boundaries of a large-scale beach fill project (>300,000 cubic yards), and represents the vegetation line that existed within one year prior to the onset of project construction. A static line is established in coordination with the Division of Coastal Management. Once a static line is established, setbacks are measured from either the static line or the vegetation line, whichever is more landward.

The CRC’s static line rule was based on three primary issues: 1) evidence that nourished beaches can have higher erosion rates than natural beaches, 2) no assurance that funding for future nourishment projects would be available for maintenance work as the original project erodes away, and 3) structures could be more vulnerable to erosion damage since their siting was tied to an artificially-forced system. The intent of the static line provisions has been to recognize that beach nourishment is an erosion response necessary to protect existing development, but should not be a stimulus for new development on sites that are not otherwise suitable for building. Once a static line is established it does not expire.

Prior to 2009, a community that completed construction of a large-scale beach fill project was required to measure construction setbacks from the static line or the vegetation, whichever was more landward. Over time, the Commission found that some communities had demonstrated a long-term commitment to beach nourishment and maintenance of their nourished beaches. Due to this long-term commitment, the vegetation had become stable and migrated oceanward of the static line. In many cases, proposed development on lots within these communities could meet the required setback from the natural vegetation line, but could not be permitted since they did not meet the setback from the static vegetation line.

To recognize local government efforts to address erosion through a documented long-term commitment to beach nourishment and offer relief from the static line requirements, the CRC adopted Static Vegetation Line Exception Procedures in 2009. These procedures require local communities to petition the CRC for an exception to the static line that allows property owners within that community to measure construction setbacks from the vegetation line instead of the static line, under specific conditions.

In 2016, the Commission provided a second alternative to the Static Line by promulgating the Development Line procedures. The Development Line allows use of the vegetation line for setback determinations, with local governments setting the oceanward limit of structures. Unlike with the Static Line Exception, there is no requirement for a long-term commitment to beach nourishment.

- 1) **Static Vegetation Line Exception** for a community to measure setbacks from vegetation line rather than the static line. The following conditions are required:
  - a. Authorized by the CRC, and then reauthorized every 5 years
  - b. Petitioner must provide a beach management plan that describes the project area and design; identify sediment sources; identify funding sources to maintain the initial large-scale project, and; provide an update on project effectiveness and how it will continue to be maintained. The plan must be updated and presented to the CRC every 5 years.
  - c. Development must meet setback from vegetation line
  - d. No portion of the building or structure can be oceanward of landward-most adjacent neighbor. When configuration of lot prevents this condition, an average line of construction is determined by the DCM
  - e. No swimming pools seaward of static line
  
- 2) **Development Line (DVL)** is established by local governments and allows a community to measure setbacks from the vegetation line rather than the static line. The following conditions are required:
  - a. Development line is mapped by the community using an average line of construction, and must be referenced in local ordinance(s).
  - b. Represents the seaward-most allowable limit of oceanfront development.
  - c. Must be approved by the CRC. Once approved, only the community can request a change.
  - d. Development must meet setback from the vegetation line
  - e. No swimming pools seaward of the static line

Currently there are twenty communities with a static line, eight of those have CRC-authorized Static Vegetation Line Exceptions, and four communities have CRC-approved Development Lines (*see Table 2*).

**Table 2.** List of Communities with Static Vegetation Lines, SVL Exceptions and Development Lines.

<b>Community</b>	<b>SVL</b>	<b>SVL Exception</b>	<b>DVL</b>
<b>Ocean Isle</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Oak Island</b>	<b>Yes</b>	No	<b>Yes</b>
<b>Caswell Beach</b>	<b>Yes</b>	No	No
<b>Bald Head Island</b>	<b>Yes</b>	No	No
<b>Kure Beach</b>	<b>Yes</b>	No	<b>Yes</b>
<b>Carolina Beach</b>	<b>Yes</b>	<b>Yes</b>	<b>Yes</b>
<b>Wrightsville Beach</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Figure Eight Island</b>	No	No	<b>Yes</b>
<b>Topsail Beach</b>	<b>Yes</b>	No	No
<b>North Topsail Beach</b>	<b>Yes</b>	No	No
<b>Emerald Isle</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Indian Beach</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Salter Path</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Pine Knoll Shores</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Atlantic Beach</b>	<b>Yes</b>	<b>Yes</b>	No
<b>Buxton</b>	<b>Yes</b>	No	No
<b>Rodanthe</b>	<b>Yes</b>	No	No
<b>Yes</b>	<b>Yes</b>	No	No
<b>Kill Devil Hills</b>	<b>Yes</b>	No	No
<b>Kitty Hawk</b>	<b>Yes</b>	No	No
<b>Southern Shores</b>	<b>Yes</b>	No	No

**Measurement Line:** Represents the post-storm location of a vegetation line if a storm causes overwash or a loss of vegetation so that not enough vegetation exists to determine oceanfront setbacks. This line is located using most current pre-storm aerial photography to map the pre-storm vegetation line, and then moving it landward a distance equal to the average width of the beach recession. Measurement lines are temporary until the vegetation is re-established to the point where it can once again be used for determining oceanfront setbacks.

**Appendix:** Oceanfront Development Setback Reference (will be provided as handout)

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# Oceanfront Development Setback

Siting of oceanfront construction is based on a graduated setback (see Table 1). Setbacks are measured from one of three reference features: #1) *First Line of Stable & Natural Vegetation (FLSNV)*, #2) *Static Vegetation Line (SVL)*, or #3) *Measurement Line* (for unvegetated beaches).

Structure Size	Setback (feet)	example “minimum setback factor = 2”
< 5,000 sqft.	Minimum 60 feet, or 30 x setback factor	$2 \times 30 = 60 \text{ feet}$
≥ 5,000 sqft.	Minimum 120 feet or 60 x setback factor	$2 \times 60 = 120 \text{ feet}$
≥10,000 sqft.	Minimum 130 feet or 65 x setback factor	$2 \times 65 = 130 \text{ feet}$
≥20,000 sqft.	Minimum 140 feet or 70 x setback factor	$2 \times 70 = 140 \text{ feet}$
≥40,000 sqft.	Minimum 150 feet or 75 x setback factor	$2 \times 75 = 150 \text{ feet}$
≥60,000 sqft.	Minimum 160 feet or 80 x setback factor	$2 \times 80 = 160 \text{ feet}$
≥80,000 sqft.	Minimum 170 feet or 85 x setback factor	$2 \times 85 = 170 \text{ feet}$
≥100,000 sqft.	Minimum 180 feet or 90 x setback factor	$2 \times 90 = 180 \text{ feet}$

**Table 3.** “Setback Factors” are based on average annual long-term shoreline change rates. The default minimum is 2 where actual erosion rates are less than or equal to 2 feet/year, or where accretion is measured. For more details refer to 15A NCAC 07H .0306

## Question: FLSNV or SVL - does community have a Static Line(SVL)?

- **Answer - No.** Community does not have SVL
  - Setbacks are measured from FLSNV
- **Answer - Yes.** Community does have SVL
  - **If a community has a SVL, they may choose from one of three alternatives:**
    1. Only measure setbacks from SVL; or
    2. Only measure setbacks from FLSNV - with a CRC authorized SVL Exception; or
    - Only measure setbacks from FLSNV - with a CRC approved Development Line.

## Definition of Terms:

1. **Vegetation Line.** Refers to the *First Line of Stable & Natural Vegetation (FLSNV)*, which is the primary reference feature for measuring oceanfront setbacks. The line represents the boundary between the normal dry-sand beach, and the more stable uplands. While the *Vegetation Line* can fluctuate due to waves, tides, storms and wind, it is generally located oceanward of the seaward toe of the frontal dune.
2. **Static Vegetation Line.** In areas within the boundaries of a large-scale beach fill project (>300,000 cubic yards), the static line is the vegetation line that existed within one year prior to the onset of initial project construction. A static line is a surveyed line that is established in coordination with the Division of Coastal Management. Once a static line is established, setbacks will be measured either from the static line or the vegetation line, whichever is more landward, unless the community successfully petitions the CRC for a static line exception or a development line.

3. **Static Vegetation Line Exception.** *A community that has a static line, and that can demonstrate a long-term (30 years or more) commitment to beach nourishment, including a reliable source of sand and a funding mechanism, may petition the CRC for a static line exception. Once approved, a community can measure setbacks from the vegetation line instead of the static line new construction cannot be sited any further oceanward than the landward-most adjacent neighbor. A Static Vegetation Line Exception is required to be reauthorized by the CRC once every five years. For more details refer to 15A NCAC 07H .0306(a) (12)*
  
4. **Development Line.** *Established by local governments and approved by the CRC, a development line is an alternative to the Static Line Exception, and represents the seaward-most allowable limit of oceanfront development. Communities do not have to demonstrate a long-term commitment to beach nourishment; providing evidence of a sand source and a funding mechanism is not required for the CRC to approve a development line request. Communities with a CRC-approved development line can measure setbacks from the vegetation line instead of the static line, but new construction cannot be sited seaward of the development line. Once approved by the CRC, a Development Line does not expire, and changes can only be requested by the community. For more details refer to 15A NCAC 07J. 1300*
  
5. **Measurement Line.** *Though rare, the CRC may designate oceanfront areas devoid of stable & natural vegetation as Unvegetated Beach Areas of Environmental Concern. This line is usually established by the Commission after storms and is repealed once the vegetation has re-established itself to the point it can be used for setback determinations. For areas so designated, DCM uses aerial photography and other techniques to establish a measurement line to be used in place of the vegetation line for measuring setbacks.*

<b>Key Differences</b>	<b>SVL Exception</b>	<b>DVL</b>
Approved by CRC	✓	✓
Measure Setbacks from FLSNV (not SVL)	✓	✓
Mapped & Managed by Community	✗	✓
CRC Reauthorization Required	✓	✗
Structures could potentially move seaward of adjacent structure	✗	✓
Beach Management Plan Required	✓	✗
Swimming Pools Seaward of SVL	✗	✗
Eliminates Static Vegetation Line	✗	✗

**Table 4.** Comparison of differences between Static Vegetation Line Exception and Development Line.