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May 2, 2020

Via U.S. and Electronic Mail

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

Re: Petition for Rulemaking to Amend 15A N.C. Admin. Code 07H.0209

Mr. Davis:

The undersigned Petitioners hereby file this Petition for Rulemaking (Petition) pursuant to and in accordance with the North Carolina Administrative Procedure Act, N.C. Gen. Stat. § 150B-20 and 15A N.C. Admin. Code 07J.0605. These provisions allow any person wishing to adopt, amend, or repeal a rule of the North Carolina Coastal Area Management Act (CAMA) to submit a Rulemaking Petition to the Division of Coastal Management (DCM).

Before presenting our Petition below, however, we would like to thank you and the DCM staff for taking the earlier initiative to determine the Commission's interest in undertaking rulemaking for the purpose of expanding the very limited non-water dependent exceptions that currently exist for development within the 30-foot buffer zone. However, we were disappointed in hearing the Commission's lack of interest in undertaking further rulemaking as it was presented.

Unfortunately, what DCM presented did not address the specific issues we would like the Commission to consider, and as a result, warrants further consideration by the Commission, as outlined in our Petition for Rulemaking below.

In order to ensure that all shoreline development be compatible with the dynamic nature of coastal shorelines in a manner that perpetuates their biological, social, aesthetic, and economic values while also enabling all of its citizens to enjoy the widest range of beneficial uses of these areas, Petitioners seek to amend 15A N.C. Admin. Code 07H.0209(d)(10) by adding an additional exception to the non-water dependent uses currently listed in the rule that are allowed within the 30-foot buffer zone along Coastal Shorelines. (Attached as Exhibit A.)

The following sections of this Petition provide the information that is required of Rulemaking Petitions as set forth in 15A N.C. Admin. Code 07J.0605.

I. TEXT OF THE PROPOSED RULES

The text of the proposed rule is attached hereto as Exhibit B.

II. STATEMENT OF REASONS FOR ADOPTION OF THE PROPOSED RULE

The current rules allow for a limited number of non-water dependent exceptions to development within the 30-foot buffer along the Coastal Shoreline. Petitioners desire to expand on those non-water dependent uses by adding an exception that would have the equivalent impact, if not less of an impact, on the water quality and the environment than do other current allowable exceptions. Petitioners' proposed rule would add an exception (K) to allow patio-like structures no larger than 200 square feet and constructed in such a manner as to avoid potential storm water runoff into adjacent waterways and have little impact to water quality, ecological and aesthetic values.

It is important to remember that the intent of the restrictions on development within the 30-foot buffer is to prevent storm water runoff into adjacent waterways and negative impact on water quality.[1] As such, the focus and measure of merit in allowing further exceptions to development within the 30-foot buffer should be their collective effect on these characteristics. Provided the development does not allow for storm water runoff or negative impact on water quality, it should be allowed as an additional exception. The determination as to the allowability of our proposed new exception should not be dependent upon whether a permeable surface retains its permeability over time (as raised by the Commission at its September 18, 2019 hearing as a reason for denying DCM's suggestion for rulemaking.) Instead, it should be based on how the overall design of the development impacts storm water runoff, and thus water quality, taken in its totality. *This key point was not addressed in the Commission hearing and is at the crux of our Petition for Rulemaking.*

In developing the current exceptions to the 30-foot buffer rule, the DCM staff researched common non-water dependent uses within the buffer zone that might be allowed provided they would cause little impact to water quality, ecological and aesthetic values.[2]

Petitioners believe that not only would their proposed additional exception meet or exceed those criteria, but also would allow greater use by private property owners of their waterfront property, a stated intent of NC's environmental protection rules. (NCEPA *§ 113A-3)*

Outdoor patios near the water are becoming ubiquitous and not atypical of landscaping projects overall. Additionally, as the result of new products and engineering techniques, patios and fire pits can be designed with appropriate protective measures (regardless of the permeability of the surface) and be as non-impactful as current non-water use exceptions. When properly installed to specific standards, such as those included in the proposed rule, patio-like structures will not increase the risk of hazards associated with coastal storms, erosion, and flooding and could protect the estuarine shoreline against such risks as well if not better than the current rules.

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[1] Memorandum dated October 24, 2000, from Mike Lopazanski to I&S Committee and N.C. Division of Coastal Management publication attached as Exhibit E.

[2] *Recommendation of the Director of the Division of Coastal Management,* CRC-19-18, July 8, 2019.

The specified criteria in the proposed rule would ensure there is no negative impact to the waterways or surrounding environment through storm water runoff, while at the same time permitting the widest beneficial use of the environment.

The proposed rule would require residential property owners seeking a permit to build a patio within the 30-foot buffer zone to limit the size of the patio-like structure to no more than 200 square feet, which is consistent with the total expanse allowed under one of the current exceptions (Exception F). The surface of the patio shall be composed of materials such as pavers, bricks, stone, slate, or similar, and spaced on a sand base so as to provide for water drainage within the 200 square foot surface area. The proposed rule would also require that the patio be placed no closer to a bulkhead than 4 feet and on level ground. It would also require that the 4-foot buffer area, and all areas surrounding the development, be filled with natural vegetation and that there be at least a 2-inch lip between the vegetated area and the bulkhead. Should the resident also be seeking a permit to include a gas fire pit, the fire pit would have to be constructed within the 200-square foot patio area and may not exceed 6 feet in diameter and 18 inches in height with drainage directly into in-situ ground.

Another concern that the Commission expressed at its September 18, 2019 hearing was the extra DCM enforcement time that would be necessary to monitor levels of permeability of development within the 30-foot buffer, presumably assuming no other vegetative barrier or mitigations such as a barrier lip at the bulkhead would be in place to prevent runoff. However, the new rule proposed in this Petition would require no further permitting and enforcement time on the part of DCM than currently is required. The rule is straightforward and requires the individual requesting the permit to have all of the required criteria met and signed off on by the proper authorities prior to submitting the request for a permit. DCM would only need to check that what the permit requester has submitted meets the rule's criteria, which is the same as is required under the current exceptions.

Overall, adding this proposed exception would allow North Carolina private waterfront property owners to have greater use of their property from which to enjoy the benefits of being on the water and a unique natural environment, while causing no harm, risk to health or safety, or degradation to the environment – again, all key objectives of the North Carolina Environmental Policy Act (NCEPA). The proposed exception is also a less arbitrary exception to the current non-water dependent use rules, and is more protective of the environment and water quality, than currently allowed exceptions.

Petitioners' proposed rule would remain consistent with the spirit and intent of North Carolina's environmental laws and regulations and not be detrimental to the public trust rights and the biological and physical functions of the estuarine system. Those laws and regulations were designed to protect the environment and waterways AND provide its citizens safe, healthful, productive, and aesthetically pleasing surroundings as well as the widest range of beneficial uses of the environment. (NCEPA *§ 113A-3).*

It has been almost 20 years since the current rules have been adopted and it is time to update them based on new and more innovative designs. It is the Petitioners' desire that DCM undertake a more comprehensive review of the current rules for non-water dependent uses within the 30' buffer zone. The Petitioners' proposed rule is offered as an example of how the current rules could be amended to achieve this purpose.

III. STATEMENT OF EFFECT ON EXISTING RULE

The proposed rulemaking will amend section 15A N.C. Admin. Code 07H.0209(d)(10). The proposed rule is not expected to affect any other existing rules.

IV. DATA IN SUPPORT OF PROPOSED RULE

A. Petitioners' proposed exception to the rule offers a higher level of protection from storm water runoff and less impact on water quality than do a number of currently allowable exceptions and practices.

Exception F, for example, currently permits the construction of a 200-square foot raised slatted wooden deck that could be placed right at the waterline or bulkhead, without regard to the underlying ground water absorption characteristics (i.e. heavily clayed ground that could reduce water absorption and result in runoff) or the added protection of a raised lip. Exception F includes no board spacing requirements or required distance from the water or height above the ground. Such a deck, with even a notional 1/8 inch spacing between each board, would consist of over 193 square feet of non-pervious material (over 96% of the surface), not even including the impervious pilings and substructure necessary to support the decking. Also, under the current rule, such a deck would likely result in runoff going directly into the water, as the rule requires no barriers or lip around the deck to prevent runoff from entering the water.

Notably, under our proposed rule, a 200-square foot patio-like structure (with spaced pavers on a sand base) would provide approximately the same square footage of impervious material as currently allowed under Exception F, but would also require such a patio to have a minimum of 4 feet between the patio and the water and be surrounded by mature vegetation and a 2-inch barrier lip (above which the water would have to rise to produce any runoff). If the patio-like structure included a 6-foot diameter open gas fire pit (even assuming no natural drainage from the spaced paver patio, which would not be the case under the proposed rule), the amount of impervious surface drops to 172 square feet or 11 percent less impervious surface than is already allowed under Exception F. Far more storm water is likely to run off from that allowable wooden deck than from the patio-like structure described in the proposed rule.

It should also be noted that Exception F was not derived through any engineering study or through empirical data supporting the rationale for this exception. Rather, like the other exceptions under 15A N.C. Admin. Code 07H.0209(d)(10), it was purely a notional standard arrived at by surveying typical non-water dependent uses within the 30-foot buffer area in the vicinity.[3] Normally such provisions are derived through professional engineering associations, building codes or through engineering studies that can validate their effectiveness—or excessive restrictiveness. This was not the case here when these exceptions were enacted. The 200-square foot raised wood deck criteria was an arbitrary exception without qualification. It was allowed because it did not have or would have very little impact to water quality. What we propose is not only more effective in preventing impact to the water quality than what is currently allowed, but also has been time-tested as proof of its effectiveness, with engineering studies validating this (previously submitted to DCM on an earlier appeal on this issue).

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[3] *Recommendation of the Director of the Division of Coastal Management,* CRC-19-18, July 8, 2019.

Additionally, the proposed rule also is far less likely to cause storm water runoff than is currently allowed under Exception D to the rule in question. (15A N.C. Admin. Code 07H.0209(d)(10)(D)). Exception D permits an unlimited length of up to 6-foot wide, elevated, slatted, wooden boardwalk that could be placed directly along the water's edge. For the same empirical reasons cited above, this permissible exception would clearly have far greater runoff consequences than what is proposed in this Petition.

Furthermore, under the current rule, there is no prohibition against having both Exception D and Exception F on the same piece of property within feet of each other. These two structures together would clearly cause more storm water runoff and negative impact to water quality than what Petitioners' propose, and yet this would be allowable development under the current rule.

Another example of an allowable practice that could be more hazardous to water quality than Petitioners' proposal is allowing a yard that sloops down to the water with no barrier or bulkhead to prevent storm water runoff from the yard going directly into the water. (Exhibit D). Such a condition clearly introduces fertilizer, herbicides and other contaminants directly into the water—far more hazardous runoff than what Petitioners are proposing. Again, the current exceptions for non-water dependent uses within the 30' buffer zones are arbitrary, without any empirical data support, and are potentially more harmful to the environment than what the Petitioners propose.

Finally, 15A NCAC 07H .0209(d)(2), which allows for 30 percent of the Area of Environmental Concern (AEC) (that area which is 75 feet from the shoreline) to have impervious areas, should be taken into consideration. Where the development on the lot does not exceed the allowable amount, there ought to be some consideration given to the reduced overall impact of the total lot development as it pertains to storm water runoff. For example, to the extent that the impervious area within the AEC is significantly less than permitted, some additional allowance ought to be permitted within the 30-foot buffer, as it is already reducing total runoff from the property at large. Moreover, this rule also allows for greater than 30 percent as long as "the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation," which the proposed rule does.

To be clear, Petitioners are not suggesting that any of the above current rule or exceptions be changed. The above examples are offered merely to demonstrate that what is being proposed in this Petition protects the environment better than existing exceptions do.

Current exceptions for development within the 30-foot buffer are too restrictive and do not allow for other structures such as that outlined in the Proposed Rule that are equally if not more protective of water quality, ecological and aesthetic value.

B. DCM's suggested use of the "DEQ Stormwater Design Manual, Section C-5" is excessively burdensome, restrictive and unnecessary when other more effective mitigations are readily available.

DCM previously has suggested that the stringent requirements of 15A NCAC 02H.1055, implemented in "DEQ Stormwater Design Manual, Section C-5," be incorporated into any patio-like development within the 30-foot buffer zone. Consequently, at the September 18 hearing, the Commission focused almost exclusively on the permeability of any development surface, regardless of its location relative to the shoreline or any additional protective measures to prevent runoff. However, as stated earlier in this Petition, the focus should not be on permeability, which is what 15A NCAC 02H.1055 addresses, but on

how the design and construction of the development will impact storm water runoff and water quality taken in its totality.

The C-5 criteria were developed and incorporated into the NCAC for the purpose of implementing G.S. 143-215.1, which "requires permits for control of sources of water pollution by providing the requirements and procedures for application and issuance of state NPDES permits for a discharge from an outlet, point source, or disposal system discharging to the surface waters of the state, and for the construction, entering a contract for construction, and operation of treatment works with such a discharge." (15A NCAC 02H.0101) This rule was designed primarily for major construction projects such as roadways and large parking lots where vehicular pollutants are an inherent and a major concern to the protection of the waterways. It was not designed for the construction of a 200-square foot residential patio within the 30-foot buffer zone, with a surrounding vegetated barrier, and a 2-inch lip between the patio and the water or bulkhead—all being mitigating measures prohibiting any possible runoff. Applying such a standard would be excessively burdensome, restrictive and unnecessary when other more effective mitigations are easily available.

What the Petitioners are requesting is not an exception that will allow for the discharge of waste or pre-treated waste into the surface waters of the state as was intended to be covered by the above-stated rule. At most, any highly improbable runoff under the proposed rule would be plain rainwater—not contaminated water or pollutants that 15A NCAC 02H.1055 was designed to prevent. Applying C-5 criteria for a 200-square foot residential patio is excessive and overly burdensome for the purposes under discussion and more importantly, adds less protection to the water quality than what the Petitioners propose.

Clearly, there is more than one method to achieve the same objective of preventing runoff and negative impact on water quality. In fact, even C-5 allows for the use of other types of materials provided they "demonstrate that the design functions adequately hydraulically and structurally."

Again, regardless of the permeability of a 200-square foot patio-like surface, especially with an open fire pit in the middle, if it is built on a relatively level surface, at least 4 feet from a bulkhead, surrounded completely by mature vegetation, and with a 2-inch lip between the vegetation and the bulkhead, there is virtually no possibility of storm water runoff that would negatively impact the adjacent water quality.

Petitioners suggest that the focus should be on the whole of the proposed patio-like structure, mitigation measures and their impact on storm water runoff, water quality, ecological and aesthetic values, and not solely on the permeability of the specific materials used.

V. STATEMENT OF THE EFFECT OF THE PROPOSED RULE ON EXISTING PRACTICES

The proposed rule will allow North Carolina private waterfront property owners to have greater use of their property from which to enjoy the benefits of being on the water and a unique natural environment, while causing no harm, risk to health or safety, or degradation to the environment. The proposed rule would not create any additional workload to DCM and would not require further maintenance inspections. The specified criteria in the proposed rule will ensure there is no negative impact to the waterways or surrounding environment while at the same time permitting the widest beneficial use of the environment.

VI. NAME AND ADDRESS OF PETITIONERS

Thomas S. Lampley
Judith A. Lampley
108 Virginia Court
Hertford, NC 27944

VII. CONCLUSION

The Coastal Resources Commission (CRC) has a duty to adopt rules to create "safe, healthful, productive and aesthetically pleasing surroundings," and to attain "the widest range of beneficial uses of the environment without degradation or risk to health or safety" and "it shall be the policy of the state to seek such for all of its citizens." (NCEPA § 113A-3)

Declining to consider alternative methodologies for achieving equal or better protections to the environment, while affording its citizens greater beneficial use of their properties, would be inconsistent with the State's policy.

Petitioners have proposed a rule that would allow the CRC to meet its obligation to protect NC waterways, without the requirement for additional CRC follow-up inspections or additional work, while still providing its citizens with a greater ability to enjoy those waterways.

The proposed rule is within the authority of the Commission and in the public interest.

For the reasons stated above, Petitioners request that the CRC adopt the proposed rule. Pursuant to N.C. Gen. Stat. § 150B-20, the CRC has 120 days to make a final determination regarding this Petition. Petitioners would appreciate the opportunity to discuss this Petition with the Commission. Petitioners also would welcome questions from DCM or the Commission at any time via phone (252-232-8677) or email (jlampley1227@gmail.com.)

Petitioners appreciate the Commission's consideration of their Petition.

Sincerely,

Thomas Lampley

Judith Lampley

Judith Lampley

cc Ron Renaldi
Mary L. Lucasse, Esq.
Christine A. Goebel, Esq.

EXHIBIT A

15A N.C. Administrative Code 07H.0209(d)(10)

(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 highwater 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;

(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 shall 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 15A NCAC 07J .0201 and .0211; and

(J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule 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 shall 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 shall 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 shall be allowed within the buffer; and

(v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Marine Fisheries of the Department of Environmental Quality.

EXHIBIT B

15A N.C. Administrative Code 07H.0209(d)(10)(K)

(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 highwater level, with the exception of the following:

. . . (K) Residential, patio-like structures no larger than 200 square feet, provided

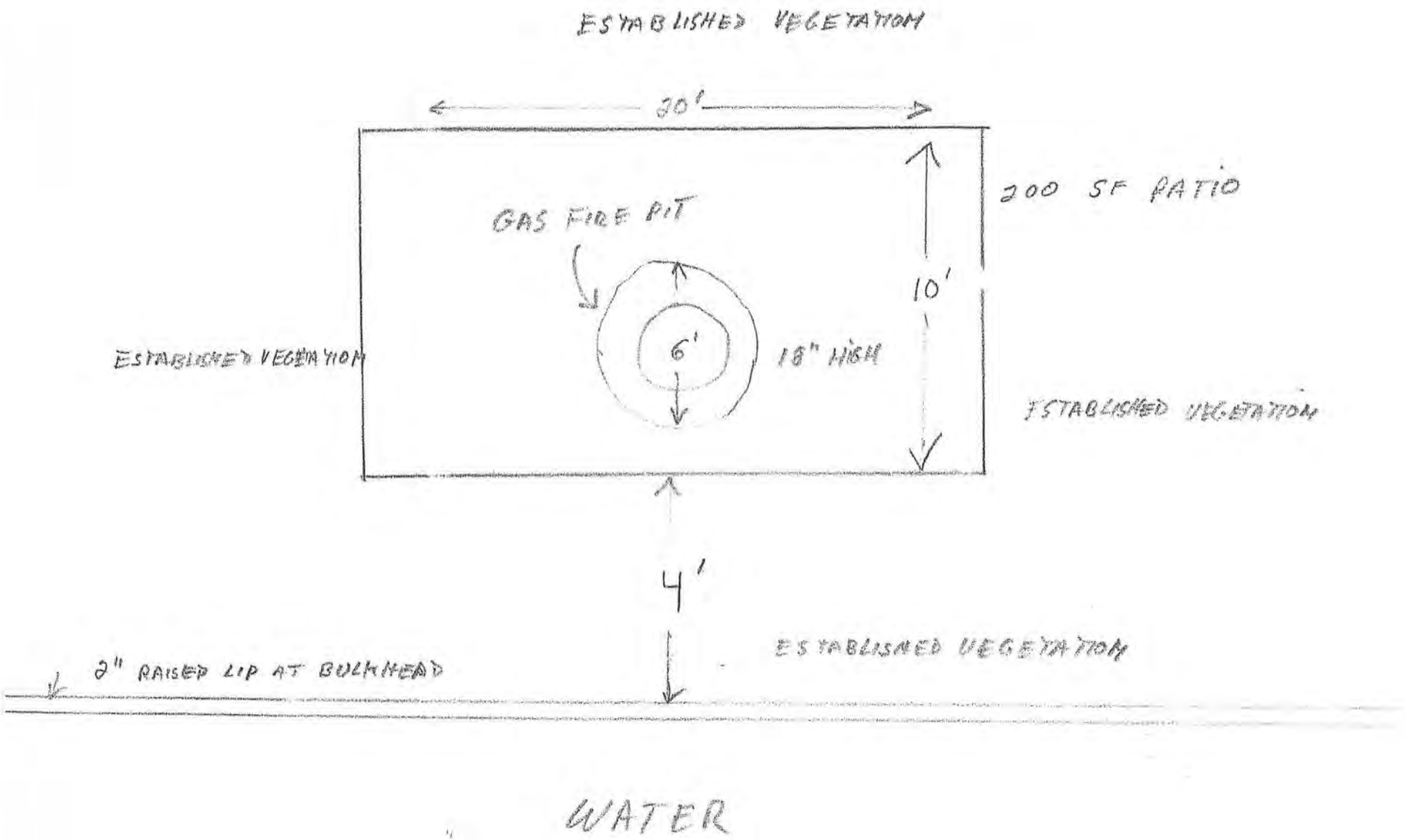
(i) The surface of the patio is composed of materials such as pavers, bricks, stone, slate, or similar, spaced in sand so as to provide for water drainage within the 200 square foot surface area;

(ii) Any development in the 30-foot buffer zone may not be closer than 4 feet from a bulkhead and be situated on level ground;

(iii) The development must be surrounded with mature vegetation;

(iv) The location must be separated from the water by a bulkhead that shall have a 2-inch lip above the vegetated area; and

(v) Inclusion of a gas fire pit, not to exceed 6 feet in diameter, 18 inches in height, and with drainage directly into in-situ ground, shall be permitted, if constructed within the patio area.


ESTABLISHED VEGETATION
20'
200 SF PATIO
GAS FIRE PIT
10'
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18" HIGH
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ESTABLISHED VEGETATION
4'
ESTABLISHED VEGETATION
2" RAISED LIP AT BULKHEAD
WATER

EXHIBIT C

Exhibit D

Exhibit E

October 24, 2000

I&S 00-16

MEMORANDUM

TO: I&S Committee

FROM: Mike Lopazanski

SUBJECT: Buffer Exceptions

At the September 28, 2000CRC meeting, the I&S Committee the I&S Committee was presented with a list of the most common existing water dependent and non-water dependent uses typically found in the 30' buffer area. The Committee felt there were some items which could be authorized since the uses did not have or would have very little impact to water quality. Staff was instructed to provide recommendations on which uses should be considered for buffer exceptions at the November meeting.

Attached is a list of activities recommended as buffer exceptions. Staff believes that these uses or uses with limitations will have no significant impacts on water quality of adjacent public trust and estuarine waters. Also attached for your information are two letters received with regard to bulkheads and retaining walls in the buffer. These uses will be further discussed at the upcoming meeting in Wrightsville Beach.

Allowable Non-water Dependent Uses Within the 30' Buffer

Advertising Signs and Billboards	
Boardwalks –	Must be exclusively for pedestrian use and must be 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.
Crab Shedders –	Allowed if uncovered and elevated trays with no associated impervious surfaces except those necessary to protect the pump.
Residential Wells & Pumphouses	
Decks/ Observation Decks -	Limited to wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet.
Fences	
Grading/Excavation/ Landscaping no associated with shoreline stabilization projects -	No wetlands fill and must be certified by a NC licensed design professional that there will be no increase in stormwater runoff to adjacent estuarine and public trust waters
Stormwater Detention Ponds	
Swales for Stormwater	

CRC considering additional exceptions to 30-foot buffer requirement

The N.C. Coastal Resources Commission (CRC) will hold a public hearing in July on proposed amendments to the rule requiring a 30-foot buffer along coastal shorelines.

The buffer rule, which took effect last summer, requires new homes, businesses and other non-water-dependent structures to be built at least 30 feet from the water along non-oceanfront coastal shorelines. The primary purpose of the rule is to protect coastal waters from pollutants carried by stormwater runoff. It also will reduce flood risks, because development will be located farther from the water.

The CRC is considering changing the rule to allow houses to be built within the buffer on small previously platted lots. The changes also would allow certain structures with non-water-dependent uses – such as fences and unroofed decks – inside the buffer.

The proposed exceptions

The first exception would apply to undeveloped lots that are:

- 5,000 square feet or less (7,500 square feet or less if an onsite septic system is required);
- platted prior to June 1, 1999;
- located in an intensely developed area (houses present on both sides immediately adjacent to the lot);
- not located adjacent to approved or conditionally approved shellfish waters.

The exception would allow property owners to align their houses with those of their neighbors. They would have to install a stormwater system to collect and contain on site the first 1½ inches of rainfall.

The exception would replace and expand a temporary version the CRC adopted last year in response to a directive from the General Assembly. The temporary rule, which would remain effective until the permanent version takes effect, only covers lots that are:

- 5,000 square feet or less;
- platted prior to June 1, 1999;
- located in intensely developed areas (houses present on both sides immediately adjacent to the lot).

Rule also proposes more flexibility for owners of larger lots

The proposed permanent rule also would change an existing exception for house construction on larger previously platted lots with configurations that may prevent building outside the buffer. The existing exception allows a new house to encroach into the buffer, but limits the amount of ground it can cover to 1,000 square feet.

The proposed exception would increase the footprint limit to 1,200 square feet. The change would allow for the construction of homes that are more consistent in size with existing structures.

Common uses inside the buffer

The second set of exceptions covers non-water-dependent structures and activities that commonly occur within 30 feet of the water but do not harm water quality.

The rule would allow the following activities and structures:

- pile-supported signs that comply with local government standards;
- post- or pile-supported fences;
- elevated, slatted, wooden boardwalks that are 6 feet wide or less and for pedestrian use (they may be larger if they serve a public use or need);

Published March 2001 by the North Carolina Division of Coastal Management – Donna D. Moffitt, Director
Raleigh: 919-733-2293 or 1-888-4RCOAST / Elizabeth City: 252-264-3901 / Morehead City: 252-808-2808
Washington: 252-946-6481 / Wilmington: 910-395-3900
E-mail: domfrontdesk@ncmail.net / Web: dcm2.enr.state.nc.us

- uncovered crab shedders that have elevated trays and no associated impervious surfaces except for those needed to protect the pump;
- unroofed decks and observation decks that are slatted, wooden and elevated and are 200 square feet or less in size;
- grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project (projects shall not increase stormwater runoff to adjacent estuarine and public trust waters and shall be certified by a state-licensed design professional);
- vertical expansion of existing structures, as long as the original footprint of the structure is not increased.

Replacement of existing structures allowed

One provision of the buffer rule that will not change is an exception that allows the replacement of existing structures. If an existing non-water-dependent structure becomes damaged to the point of needing to be replaced, the property owner **may rebuild** the structure in its original footprint and to its original dimensions, if the land is too small to allow replacement outside the buffer.

EMC's buffer rule takes precedence in Neuse and Tar-Pam river basins

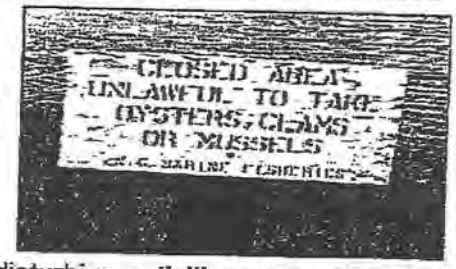
Another provision in the CRC's rules will remain unchanged. The provision dictates that the buffer requirement **will not apply** to those coastal shorelines where the Environmental Management Commission (EMC) adopts its own buffer standards. The EMC enacts regulations to protect water quality statewide. EMC buffer rules already exist in the Neuse and Tar-Pamlico river basins.

What happens after the public hearing?

The CRC could vote on the amendments or send them back to the Division of Coastal Management staff for fine-tuning. Once the CRC adopts the amended rule, it will go to the state Rules Review Commission and the General Assembly. If neither body raises objections, the rule would take effect in summer 2002.

What the buffer does

The buffer plays an integral part in protecting North Carolina's coastal waters. The pollution addressed by the buffer rule – nonpoint source pollution – is the primary cause of decline in our state's coastal waters. All land-disturbing activities cause nonpoint source pollution. Maintaining a buffer adjacent to the estuarine and public trust shorelines can reduce the discharge of sediments and other pollutants.



Controlling nonpoint source pollution is an urgent need considering the rate at which our shorelines are being developed and the increase in seasonal and year-round populations in communities with estuarine and public trust shorelines.

History of the coastal shoreline buffer rule

The 30-foot buffer requirement was the result of more than two years of CRC discussions about ways to increase protection of coastal water quality.

The Division of Coastal Management sought extensive public comment on the buffer rule, conducting 40 public hearings in coastal counties in 1999. Nearly 400 people commented on the rule, voicing opinions both for and against it. The CRC adopted the rule in November 1999 after adding exceptions and other language suggested during the hearings. It took effect in August 2000.

Learn more at dcm2.enr.state.nc.us, or call your nearest Coastal Management office.

Elizabeth City – 252-264-3901
Morehead City – 252-808-2808
Raleigh – 919-733-2293 or 1-888-4RCOAST
Washington – 252-946-6481
Wilmington – 910-395-3900

EXHIBIT A

15A N.C. Administrative Code 07H.0209(d)(10)

(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 highwater 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;

(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 shall 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 15A NCAC 07J .0201 and .0211; and

(J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule 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 shall 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 shall 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 shall be allowed within the buffer; and

(v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Marine Fisheries of the Department of Environmental Quality.

EXHIBIT B

15A N.C. Administrative Code 07H.0209(d)(10)(K)

(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 highwater level, with the exception of the following:

. . . (K) Residential, patio-like structures no larger than 200 square feet, provided

(i) The surface of the patio is composed of materials such as pavers, bricks, stone, slate, or similar, spaced in sand so as to provide for water drainage within the 200 square foot surface area;

(ii) Any development in the 30-foot buffer zone may not be closer than 4 feet from a bulkhead and be situated on level ground;

(iii) The development must be surrounded with mature vegetation;

(iv) The location must be separated from the water by a bulkhead that shall have a 2-inch lip above the vegetated area; and

(v) Inclusion of a gas fire pit, not to exceed 6 feet in diameter, 18 inches in height, and with drainage directly into in-situ ground, shall be permitted, if constructed within the patio area.