

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER

BEFORE THE NORTH CAROLINA
COASTAL RESOURCES
COMMISSION
CRC-VR-19-09

IN THE MATTER OF:)
PETITION FOR VARIANCE)
BY **TOWN OF SUNSET BEACH**)

FINAL AGENCY DECISION

On December 19, 2019, Petitioner Town of Sunset Beach submitted a request for a variance from 15A N.C. Admin. Code 07H .0208(b)(1)(F) to allow maintenance dredging of -6 feet Mean Low Water (“MLW”) for S. Jinks Creek and the Bay Area and -5 feet MLW for the Finger Canals as more specifically identified in Petitioner’s CAMA Major/ Dredge & Fill Application. Pursuant to N.C. Gen. Stat. § 113A-120.1 and 15A N.C. Admin. Code 7J .0700, et seq., this matter was heard on oral arguments at the regularly scheduled meeting of the North Carolina Coastal Resources Commission (“Commission”) on February 12, 2020 in Beaufort, North Carolina. Assistant General Counsel Christine A. Goebel, Esq. appeared for Respondent Department of Environmental Quality, Division of Coastal Management (“DCM”). Attorney G. Grady Richardson, Jr., Esq. appeared on behalf of Petitioner Town of Sunset Beach.

When reviewing a petition for a variance, the Commission acts in a quasi-judicial capacity. *Riggings Homeowners, Inc. v. Coastal Resources Com’n*, 228 N.C. App. 630, 652, 747 S.E.2d 301, 314 (2013) (Commission has “judicial authority to rule on variance requests [] ‘reasonably necessary’ to accomplish the Commission’s statutory purpose.”); *see also Application of Rea Const. Co.*, 272 N.C. 715, 718, 158 S.E.2d 887, 890 (1968) (discussing Board of Adjustment’s quasi-judicial role in allowing variances for permits not otherwise allowed by ordinance). In its role as judge, the Commission “balance[es] competing policy concerns under CAMA’s statutory framework.” *Riggings*, 228 N.C. App. at 649 n.6, 747 S.E.2d at 312.

Petitioner and Respondent DCM, the parties appearing before the Commission, stipulated to facts and presented relevant documents to the Commission for its consideration during the hearing on the variance request. *See e.g.* N.C. Admin. Code 15A 07J .0702(a). If the parties had been unable to reach agreement on the facts, the North Carolina Office of Administrative Hearings would have held a full evidentiary hearing to create a record for the Commission to use in making its decision. *Id.* 07J .0702(d). Here, as in any court, the parties appearing before the decision-maker are responsible for developing and presenting evidence on which the Commission makes its decision. In this case, the record on which the Commission’s final agency decision was made includes the parties’ stipulations as to relevant facts, the documents provided to the Commission by the parties, and the arguments of the parties. In addition, the Commission reviewed and considered approximately fifty-five written comments submitted by the public which represented opinions both for and against the variance request.

FACTS STIPULATED TO BY PETITIONER AND RESPONDENT DCM

1. Petitioner is the Town of Sunset Beach (“Petitioner” or “Town”), a North Carolina Municipality created by the General Assembly in 1963. The Town is represented in this variance by Town Attorney Grady Richardson.
2. The site of the proposed development (“Site”) are approximately 18 acres encompassing the waterbodies know as Jinks Creek, the Bay Area, the Feeder Channel, and Finger Canals (A through D as shown on the attached map). The areas where dredging work is proposed are largely submerged lands owned by the state and held in public trust, and are within the Town’s borders or its Extra Territorial Jurisdictional Area.
3. The water bodies which make up the Site are classified as SA, High Quality Waters (“HQW”) by the Environmental Management Commission. The Finger Canals A-D and the Feeder Channel are closed to the harvest of shellfish by the DMF-Shellfish Sanitation Program, but the waters of the Bay Area and South Jinks Creek are open to the harvest of shellfish. None of the water bodies are classified as a Primary Nursery

Area by the Marine Fisheries Commission, but the area just north of the South Jinks Creek dredge area is a PNA.

4. The proposed dredging work would take place in the Estuarine Waters, Public Trust Areas, and Estuarine Shorelines sub-category of the Coastal Shorelines Areas of Environmental Concern (“AECs”). The proposed deposition of beach compatible sand would take place in the Ocean Hazard AEC. Pursuant to N.C.G.S. 113A-118, CAMA/D&F permit authorization is required for the proposed development.
5. Aerial and ground-level photographs of The Site were part of the Powerpoint presentation presented to the Commission. Historic aerial photographs show the movement of the shoal which is now located within part of the area proposed for dredging.
6. As seen in the application materials, Jinks Creek (both North and South) connects Tubbs Inlet to the AIWW and provides navigable access for the Canals, the Feeder Channel and the Bay Area. Where the Feeder Channel connects to Jinks Creek is where the creek is generally divided into north and south.
7. Based on historic aerial photography, it appears the Finger Canals and Feeder Channel were first excavated sometime around 1970, before the enactment of the Coastal Area Management Act (“CAMA”) and just following the 1969 enactment of the State Dredge & Fill Law (“D&F”). It appears that all of the areas proposed for dredging have been dredged previously. Some areas were dredged prior to the CAMA so no permits exist/could be located for these areas. Past permits identified include CAMA Major Permit No. 45-02 for maintenance dredging of the Finger Canals and Feeder Channel to -5.2’ MLW and CAMA Major Permit No. 211-85 which also authorized maintenance dredging of the Finger Canals and Feeder Channel. A summary of the permit history compiled by DCM Staff is found in the DCM Field Investigation Report.
8. The Petitioner and its agent had significant contact with resource agencies before the CAMA Major/D&F Permit application was submitted, including five pre-application meetings over two years.
9. Through the pre-application process and in response to agency concerns regarding shellfish resources in North Jinks Creek, the Petitioner elected to remove North Jinks Creek from the proposed dredging.

10. As part of the pre-application process, on February 12, 2019, DMF sent a memo to DCM requesting additional information from the Town prior to the application submittal, including a shellfish relocation plan.
11. On or about April 12, 2019, DCM received Petitioner's CAMA Major/D&F Permit application (following an initial draft application on March 22, 2019), and it was deemed complete on June 17, 2019. Petitioner's authorized CAMA agent is Moffatt & Nichol, Inc. Petitioner proposed the maintenance excavation of approximately 10,650 linear feet of South Jinks Creek, the Bay Area, the Feeder Channel and Finger Canals A-D to a maximum depth of -6' MLW (-5'+1' over dredge allowance) in all areas except to -5' MLW (-4' +1' over dredge) in the Finger Canals. The average water depths in the dredge footprint vary, as shown on the attached depth profiles which were taken every 200' feet in the original proposed dredge footprint. An estimated 40,500 cubic yards (CY) of beach compatible material will be dredged from South Jinks Creek, and an additional 48,600 CY of non-compatible material will be removed from Finger Canals A-D, the Feeder Channel system and Bay Area. The compatible dredge material will be placed via temporary pipeline to an 8.5-acre area of the oceanfront beach between 5th and 12th Streets on Sunset Beach, and non-compatible material will be placed in an upland landfill facility. A 10' dredge buffer from any Coastal Wetland was also proposed by Petitioner in response to agency concerns.
12. As part of their application, Petitioner submitted a Sediment Analysis for the beach compatible sand deposition proposed, a Jinks Creek Shellfish Survey, the Essential Fish Habitat ("EFH") and Biological Assessments ("BA") required by federal permitting, a Manatee Avoidance Guideline, and a Section 106 report per the National Historical Preservation Act. Copies of these documents are part of the application.
13. As part of the CAMA/D&F Major Permit process, notice of the proposed dredging project was sent to adjacent riparian neighbors. In this case, Petitioner sent notice to all property owners adjacent to the waterbodies where dredging was proposed, as well as those lots adjacent to where spoil deposition is proposed on the oceanfront and those owners of property where disposal/pipes will be laid after securing easements. There are emails between DCM counsel and the authorized agent regarding notice attempts.
14. As part of the CAMA/D&F Major Permit process, notice of the proposed dredging project was given to the general public through on-site posting

and through the June 26, 2019 publishing of notice in the Wilmington Star Newspaper.

15. Many letters and emails were received by DCM related to this project, and included both objections and comments in support of the project, including multiple letters from some individuals. The Commission was provided with these letters.
16. As part of the CAMA/D&F Major Permit process, copies of the permit application materials and DCM's Field Investigation Report were sent to state and federal resource agencies for review and comment. Relevant comments from these agencies are described in the facts to follow.
17. On or about June 21, 2019, DCM's Field Representative Tara MacPherson submitted her comments to the Major Permitting staff, recommending that the proposed dredging depths were inconsistent with 15A NCAC 7H .0208(b)(F) which states "Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters" and that the permit should be denied or the inconsistent dredge areas be conditioned out of a permit.
18. On June 21, 2019, the Division of Energy, Mineral and Land Resources ("DEMLR") commented that the spoil deposition on the two acres of high ground will require an Erosion and Sediment Control plan approval, and that a stormwater application will be necessary for review and a possible exemption.
19. On July 3, 2019, DCM received an email from the Army Corps of Engineers to staff of other commenting federal agencies indicating that, due to the large size of the application, a summary was being provided in the email, along with a link to the materials, and a summary of federal considerations.
20. On July 19, 2019, the Division of Marine Fisheries ("DMF") submitted its response to the project, indicating that it approved of the project with conditions, specifically set forth in its memo, including a shellfish relocation plan for shellfish resources in the proposed dredge cut and its buffer area, which is condition 7 on the Permit. DMF also suggested a dredging moratorium period of April 1 to September 30, which is condition 1 on the Permit. As part of this variance process, DCM reached out to DMF to ask about proposed dredging. Director Murphey indicated that "the proposed dredging of -5 to -6 ft. NLW as opposed to 2 ft. does not cause any fisheries or habitat concerns for us. Our principal concern with the proposal in the past was the dredging of North Jinks Creek to the

waterway which contained significant shellfish habitat. My understanding was this approach [dredging North Jinks Creek] was later removed from the proposal.”

21. On July 23, 2019, DCM was copied on a letter from the North Carolina Coastal Federation (“NCCF”) to Col. Clark of the Army Corps of Engineers, providing comment on the proposed project. Also included in the materials provided to the Commission is the August 9, 2019 response by the Town’s authorized agent to Col. Clark.
22. On August 1, 2019, the Division of Water Resources indicated it did not object to the project and that it had issued the 401 Water Quality Certification that same day.
23. DWR awarded a grant to the Town of Sunset Beach on May 28, 2019, using money from the Shallow Draft Inlet Fund for this proposed project.
24. On August 2, 2019, the Army Corps of Engineers provided comments to DCM and the Town regarding the proposed dredging, a copy of which is attached. The Corps representative indicated that the National Marine Fisheries Service had no objection to the work as proposed as stated in its August 2, 2019 letter, but the US Fish and Wildlife Service did not concur with the Corps’ effects determinations and requested they be changed to incorporate USFWS’s July 29, 2019 written comments, including an updated Biological Assessment (“BA”).
25. On August 6, 2019, DCM’s District Planner found the proposed project consistent with the Town’s Land Use Plan.
26. On August 9, 2019, the Town’s authorized agent provided an updated Biological Assessment to the Corps.
27. On August 9, 2019, the NC Wildlife Resources Commission (“WRC”) provided a written response indicating appreciation for the significant pre-application coordination and meetings with the Town, and also suggesting timing conditions intended to minimize and avoid impacts to sea turtles, endangered bird species, and marine life in the nearby PNA habitat.
28. On August 27, 2019, the Corps notified the Town and review agencies that it would now process the permit application through a Standard Permit (SP) rather than a General Permit, at the federal level, due to significant public interest (including the volume of comments during the CAMA

review process) and the need for more widespread notification to the public.

29. The depth in Jinks Creek between Tubbs Inlet and the Feeder Channel is approximately 0' MLW (as shown on the revised site plan approaching Tubbs Inlet). The depth in North Jinks Creek (between the Feeder Channel and the AIWW) is approximately -2' MLW in the area where North Jinks Creek meets the AIWW and approximately 1,200'-1,400' down Jinks Creek from the confluence with the AIWW. Depth profiles of this area at 200' intervals are included in the materials provided to the Commission.
30. On October 28, 2019, DCM issued CAMA/D&F Major Permit No. 79-19 (the "Permit") to the Town, but, along with other conditions, conditioned-out the proposed -6' MLW dredging depths and authorized a maximum dredging depth of -2' MLW in order to comply with 15A NCAC 7H .0208(b)(F) which is the "connecting waters" rule. The Permit and Condition 2 restricts the maximum dredging depth of any dredging to -2' MLW.
31. On December 20, 2019, Petitioner filed its Variance Request and proposed supporting materials through counsel, requesting that the Commission hear this matter at its February 2020 meeting. Petitioner seeks a variance from the "connecting waters" rule of the Commission at 15A NCAC 7H .0208(b)(F) in order to dredge to the depths proposed in Petitioner's CAMA Major/D&F Application (-6' MLW for all areas except -5' MLW for the Finger Canals).
32. As part of the variance process, the Commission's rules at 15A NCAC 7J. 0701(c)(7) requires that a variance petitioner send notice to adjacent property owners and persons who submitted written comments to DCM during the permit review process so they are aware of the Petition. DCM accepts written comments to include in the stipulated exhibits for the Commission's consideration. In this case, there were approximately 55 such comments received by a January 15, 2020 deadline communicated to the commenting parties. Please note: Due to the number of comments, DCM cannot confirm if the comments received are all from those who commented during permit review or if the comment website information has been passed on to others.
33. A comment letter was received on January 15, 2019 from Southern Environmental Law Center (SELC), which responds to the Town's variance petition.

EXHIBITS PROVIDED TO COMMISSION BY PETITIONER AND RESPONDENT DCM

1 of 4 Main Stipulated Exhibits, including:

1. Map of Town of Sunset Beach limits and ETJ
2. Site map from Petitioner showing/labeling the waterbodies
3. PNA maps of the area
4. DCM Field Investigation Report
5. February 12, 2019 DMF memo re: shellfish relocation plan
6. Spread sheet and information showing notice to adjacent riparian owners and emails discussing notice attempts
7. Newspaper Notice information
8. January 21, 2019 comments from DCM Field Representative
9. June 21, 2019 DEMLR comments
10. July 3, 2019 email from Corps to federal commenting staff
11. July 19, 2019 comments from DMF
12. July 23, 2019 comments from NCCF to Corps
13. August 9, 2019 response to NCCF comments to Corps from Petitioner's agent
14. August 1, 2019 comments and copy of 401 from DWR
15. Copy of Town's grant application and grant contract with DWR
16. August 2, 2019 comments from the Corps, enclosing NMFS August 2 letter and USS FWS letter of July 29, 2019 not-concurring requesting changes to the EA
17. August 6, 2019 comments of DCM district planner
18. August 9, 2019 revised BA with transmission email
19. August 9, 2019 comments from WRC
20. August 27, 2019 email from Corps indicating change to Standard Permit from General Permit
21. Depth Profiles of Jinks Creek
22. CAMA Major/D&F Permit No. 79-19
23. Powerpoint Presentation with ground-level and aerial photographs of the site including over time to show shoaling changes

2 of 4 Separate Stipulated Exhibits, including: Petitioner's CAMA Major Permit Application including drawings, sediment analysis, Shellfish Survey, EFH, BA, Manatee Avoidance, Section 106

3 of 4 Separate Stipulated Exhibits: Comments received during permit review

4 of 4 Separate Stipulated Exhibits: Comments received through January 14, 2020 relating to the variance request. The comments received were both in favor of and opposed to the requested variance. In those instances in which undersigned counsel was able to identify contact information, either an address or email address, a copy of this final agency

decision was provided to the persons who commented in opposition to the requested variance. See list provided in the attached Certificate of Service for the final agency decision.

Additional documents provided to the Commission by the parties on February 2, 2020, including:

1. December correspondence from the Town's agent to the USACE, addressing each individual comment received by the USACE during the public comment part of the ongoing processing of the Town's Corps permit application for the proposed dredging project.
2. January 31, 2020 letter from the USACE to the Town's agents regarding the comments received by the Corps in connection with the ongoing processing of the Town's Corp permit application for the proposed dredging project.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter.
2. All notices for the proceeding were adequate and proper.
3. Petitioner has met the requirements in N.C.G.S. § 113A-120.1(a) and 15 NCAC

07J .0703(f) which must be found before a variance can be granted as set forth below.

- a. **Strict application of 15A N.C. Admin. Code 7H .0208(b)(1)(F) will cause unnecessary hardship.**

Petitioner seeks a variance from the Commission's rule found at 15A N.C. Admin. Code 7H .0208(b)(1)(F), which states: "Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters." (Hereinafter referred to as the "connecting waters rule.") This rule was the basis for DCM conditioning the Permit to authorize dredging to only -2' Mean Low Water ("MLW") - the depth of the connecting waters. The purpose of this rule, as codified by the

Commission, is to prevent water from collecting in sinks and stagnating due to reduced flushing in canals. The connecting waters rule is designed to limit negative impacts on water quality and marine resources as a result of the accumulation of pollutants, low dissolved oxygen, and debris which may collect in the deeper areas.

Among the comments received on the variance request were concerns that without a thorough evaluation of previous dredging events, the impact of the proposed dredging on the surrounding environments cannot be assessed. Furthermore, concerns were expressed that the proposed dredging has the potential for negative environmental effects and it cannot be said that the “current maintenance operations will not create any adverse impacts.” *See* January 15, 2020 letter to Dr. Braxton Davis, Director DCM from Geoffrey R. Gisler, Senior Attorney, Southern Environmental Law Center and attached July 15, 2019 Letter to Braxton Davis from Kerri Allen, North Carolina Coastal Federation. In addition, the North Carolina Coastal Federation argued that because Jinks Creek proper, while not a designated Primary Nursery Area (“PNA”), is surrounded by PNAs, and it is “highly likely that Jinks Creek also functions as PNA.” For this additional reason, some commenters requested that the variance request be denied.

After reviewing the comments received from individuals and other agencies, DCM explained in its Staff Recommendation, that if the depth the Town was allowed to dredge was limited due to strict application of the connecting waters rule, the Town would need to dredge more frequently to maintain access. DCM explained that more frequent dredging could have greater impacts on the coastal environment than less frequent, but deeper, dredging. The Commission agrees with Petitioner and DCM that dredging to a deeper depth (as proposed) may increase the time interval between dredging events (as the deeper footprint can hold shoaling

sediment) and may be less impactful to coastal resources (particularly larval fish) than more frequent dredging events that might be required to maintain a -2' MLW channel.

The Commission further notes that in its Staff Recommendation, DCM pointed out that DWR's issuance of the 401 Water Quality Certification for the project as originally designed indicates little to no concerns about water quality in this area due to its close proximity to the inlet and rapid flushing rate. Similarly, the Commission's review of the materials submitted indicates that other relevant marine resource agencies, including DMF, WRC, and the National Marine Fisheries Service (NMFS), did not indicate any potential for significant adverse impacts to marine habitats from the revised project.

The Commission further notes that the revised project is different than that initially proposed. Upon review of the initial proposal, various resource agencies had expressed concerns about impacts to North Jinks Creek, which is a designated PNA and also holds significant shellfish resources. Given these concerns and the Commission's rules restricting new dredging in PNAs, the proposed dredging of North Jinks Creek was removed from the application and is not included in this variance request.

In their submissions, Petitioner and DCM indicate that strict application of the connecting waters rule would cause Petitioner unnecessary hardships such as increased shoaling and the need for more frequent dredging to maintain access with the potential for increased adverse impacts to the marine environment. The Commission agrees. For these reasons, the Commission affirmatively finds that Petitioner has shown that strict application of its connecting waters rule would cause unnecessary hardship and Petitioner has met the first factor without which a variance cannot be granted.

b. Petitioner has demonstrated that the hardship results from conditions peculiar to Petitioner's property.

The Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the property. Specifically, the area of South Jinks Creek is a waterbody adjacent to an ocean inlet with higher natural tidal flushing dynamics compared to a traditional canal system or boat basin. In addition, the rapid shoaling of the South Jinks Creek area, as shown on the aerial photos provided to the Commission, could result in significant impairment of recreational boating in the project area and/or require more frequent dredging if limited to -2' MLW depths. While rapid shoaling on its own is not necessarily a peculiar condition in a dynamic coastal system such as this, the rapid shoaling in this area contributes to the conditions peculiar to this property causing Petitioner's hardship.

Accordingly, the Commission affirmatively finds that Petitioner has demonstrated that the hardship results from conditions peculiar to the Site and has met the second factor required for the grant of its request for a variance.

c. Petitioner has demonstrated that the hardship does not result from Petitioner's own actions.

The Commission affirmatively finds that Petitioner's removal of the initially proposed dredging of the PNA habitat in North Jinks Creek during the pre-application coordination process resolved most resource agency concerns with this project. Indeed, DMF did not object to the project or its originally proposed dredge depths as long as certain conditions were applied, including a shellfish relocation plan, buffers between the dredge footprint and coastal wetlands, and seasonal dredge windows. DWR issued the 401 Water Quality Certification on August 1, 2019. Neither NMFS nor WRC objected to the work as proposed.

The Town is attempting to maintain historic access to recreational waterways while still protecting coastal resources. In comparison with the alternative of dredging the channel to -2' MLW as now authorized by the Permit, the Town's proposal to dredge deeper but less frequently should result in reduced impacts. The Commission notes Petitioner's willingness to minimize the frequency and area of the proposed dredging, which is designed to prevent adverse impacts. For these reasons, the Commission affirmatively finds that Petitioner's actions did not cause the hardship and further finds that Petitioner has demonstrated that it has met the third factor required for a variance.

d. Petitioner's request is consistent with the spirit, purpose and intent of the rule, will secure public safety and welfare, and preserve substantial justice.

Petitioner has demonstrated (a) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, (b) that it will secure public safety and welfare, and (c) that it will preserve substantial justice. The principal purposes of these rules is to protect coastal resources, specifically PNAs. For the reasons set forth in more detail below, the Commission affirmatively finds that Petitioner has demonstrated that the requested variance complies with each of the requirements of this rule.

Specifically, the Commission finds that the variance meets the spirit, purpose and intent of the Commission's connecting waters rule. 15A N.C. Admin. Code 7H .0208(b)(1)(F) states that "Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters." The purpose of this rule is to prevent stagnant water from collecting in sinks, thereby reducing the flushing rate in canals, and resulting in an accumulation of pollutants and low dissolved oxygen levels, along with associated impacts to living marine resources.

In this case, resource agencies have assessed the proposed project and indicate that given the Site conditions adequate flushing will occur. Based on its assessment, DWR issued a 401 Water Quality Certification. Moreover, approval of the project by DMF, WRC and NMFS is further evidence that the impact to marine resources resulting from the dredge depths as proposed have been minimized. The U.S. Army Corps of Engineers has not made a final permit decision (which is typical when a CAMA variance is sought), the Corps staff has not indicated additional concerns. The Commission further notes that in DCM's Recommendation, it noted that due to the site's proximity to Tubbs Inlet, dredging deeper but less frequently will result in fewer negative impacts to marine resources (specifically larval fish ingress/egress). For these reasons, the Commission affirmatively finds that the requested variance is consistent with the spirit, purpose and intent of the Commission's prohibition against dredging boat basins deeper than connecting waters since significant adverse impacts from water stagnation are not likely to occur at this Site.

Second, the Commission finds that public safety and welfare will be secured by improving the safety of navigation for more of the tidal cycle as a result of the deeper dredging. In addition, Public safety and welfare will also benefit from the likely reduction in needed dredging cycles and their resulting impacts to fisheries resources due to the increased capacity for the dredging footprint to hold future shoaling sediment. The Permit has been conditioned to require the development and implementation of an approved shellfish relocation plan, buffers between the proposed dredging and existing coastal wetlands resources, and regular dredging season windows. This approach is designed to reduce impacts while improving navigation.

The Commission is aware that concerns have been raised about flooding and erosion

resulting from the proposed dredging. The Commission notes that the footprint of the proposed dredging is similar to the location of South Jinks Creek in 2008 aerial photos provided to the Commission. Therefore, the Commission expects that there would be similar relationships, if any, between channel location, shoreline erosion, and flooding potentials along the northern shoreline of Sunset Beach. Currently, Palm Cove (at the far eastern end of Sunset Beach) is experiencing significant erosion. This erosion has been ongoing. The Commission is not persuaded by the opinions provided that the proposed dredging will increase any erosion in this area. To the extent that there continues to be erosion in the Palm Cove area, on balance the improved navigation and other benefits of the proposed dredging outweigh any concerns about future erosion impacts to this area.

Finally, the Commission affirmatively finds that substantial justice will be preserved by balancing protection of the resources with protection of recreational navigation, both identified as important goals of the Commission's rules and the CAMA. Therefore, the Commission affirmatively finds that Petitioner has met the fourth factor required by N.C. Gen. Stat. § 113A-120.1(a).

ORDER

THEREFORE, the requested variance from is GRANTED. The granting of this variance does not relieve Petitioner of the responsibility for obtaining any other required permits from the proper permitting authority.

FURTHERMORE, the Commission's decision to grant the variance is based upon the record provided to the Commission as described above. However, the Commission is not bound by the parties' stipulation of facts. The Commission reserves the right to reconsider the granting

of this variance and to take any appropriate action should it be shown that there are other relevant facts or documents relating to this variance request.

This the 25th day of February 2020.



M. Renee Cahoon Chair
Coastal Resources Commission

CERTIFICATE OF SERVICE

This is to certify that I have this day served the foregoing FINAL AGENCY DECISION upon the parties by the methods indicated below:

METHOD OF SERVICE

Attorney for Petitioner:

Law Office of G. Grady Richardson, Jr., P.C
1908 Eastwood Road, Suite 224
Lumina Station
Wilmington, NC 28403

U.S. Mail and Electronically:
grady@ggrlawoffice.com

Consultant for Petitioner

Robert Neal, PE
Moffatt & Nichol
4700 Falls of Neuse, Suite 300
Raleigh, NC 27609

U.S. Mail

Attorney for NC Division of Coastal Management

Christine A. Goebel
Assistant General Counsel
NC Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Electronically:
Christine.goebel@ncdenr.gov

NC Division of Coastal Management

Braxton C. Davis, Executive Director
Angela Willis, Administrative Assistant
400 Commerce Ave.
Morehead City, NC 28557

Electronically:
Braxton.Davis@ncdenr.gov
Angela.Willis@ncdenr.gov

Town Administrator and Planning Director

Hiram J. Marziano, II
700 Sunset Blvd. N.
Sunset Beach, NC 28466

Electronically:
hmarziano@sunsetbeachnc.gov

Persons providing Comments in Opposition to the variance request as listed on the attached Exhibit A

Certified Mail, Return Receipt Requested

Exhibit A

*Richard Cerrato
517 Twisted Oak Lane
Sunset Beach, NC 28468*

*Richard and Margie Dickey
707 W. Main
Sunset Beach, NC 28468*

*Michael Evans
908 Resort Circle
Sunset Beach, NC 28468*

*Geoffrey R. Gisler, Senior Attorney
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, NC 27516-2356*

*Janice Harris, Councilwoman
206 North Shore Dr. W.
Sunset Beach, NC 28368*

*Richard Hilderman, Ph.D
407 37th Street
Sunset Beach, NC 28468-4121*

*Edwin W. Janes
403 37th Street
Sunset Beach, NC 28468*

*Ted Janes
302 Roling Knoll Drive
Bel Air, MD 21014*

*Barry R. Lentz, Ph. D.
179 Tradescant Drive
Chapel Hill, NC 27517*

*Gary Merritt
646 Oyster Bay Drive
Sunset Beach, NC 28468*

*Dwight Willis
140 Carolina Avenue
Holden Beach, NC 28462*

*Mac Nelson
401 30^h Street
Sunset Beach, NC 28468*

*Lynn Nesmith
210 Shoreline Drive East
Sunset Beach, NC 28468*

*Todd Miller, Executive Director
North Carolina Coastal Federation
3609 N.C. 24
Newport, NC 28570*

*Kerri Allen and Tracy Skrabal
North Carolina Coastal Federation
309 W. Salisbury Street
Wrightsville Beach, NC 28480*

*James Skiff
414 33rd Street
Sunset Beach, NC 28468*

*Sam Swanson
29 Hunters Lane
Hendersonville, NC 28791*

*Ann & Rollin Tarter
410 37th Street
Sunset Beach, NC 28468*

*Jacqueline M. Trovato and
James C. Thomas, Jr.
1520 North Shore Drive
Sunset Beach, NC 28468*

*Monica Vogel
720 Sunset Boulevard N.
Sunset Beach, NC 28468*

*John Wells
604 Main Street East
Sunset Beach, NC 28468*

This the 25th day of February, 2020



Mary L. Lucasse
Special Deputy Attorney General and Commission Counsel
N.C. Department of Justice
P.O. Box 629
Raleigh, N. C. 27602