



**Board of Commissioners  
Agenda Packet**

**August 16, 2021**

**4:00 PM Call to Order**

- A) Invocation & Pledge of Allegiance
- B) Approval of Agenda

**Public Comment**

*Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 3 minutes.*

**Commissioner's Report****County Manager's Report****County Attorney's Report****Public Hearings**

- A) **PB 21-06 Ballance Mine:** Allied Properties, LLC requests a special use permit for an extractive industry (mine) on a 191.2 acre tract on the southwest side of NC 168 (Caratoke Highway) and south of Ballance Farms subdivision, Parcel 23, Tax Maps 40U, 40C through 40H, 40J through 40L in Moyock and Crawford Townships.

**Old Business**

- A) **PB 21-10 Currituck County Text Amendment:** Request to amend the Currituck County Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement to allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street.

**New Business**

- A) **Designation of County Attorney Ike McRee as Interim County Manager Under G. S. 153A-84 Effective August 28, 2021**
- B) **Consent Agenda**
  - 1. Consideration and Approval of Utility Line Easement Agreement to Public Safety Building from Currituck County to Carolina Telephone and Telegraph, LLC d/b/a Century Link
  - 2. Approval and Authorization for County Manager's Execution of Consent to Cross U.S. Government Right-of-Way at Coinjock Canal for Location of 16" Water Main
  - 3. Approval and Authorization for County Manager's Execution of Memorandum of Agreement With North Carolina Department of Environmental Quality for Construction, Maintenance and Monitoring of Groundwater Monitoring Station at Maple Wellfield
  - 4. Approval Of Minutes-August 2, 2021

**Adjourn**



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – 3202

**Agenda Item Title:** PB 21-06 Ballance Mine:

**Submitted By:** Cheri Elliott – Planning & Community Development

**Item Type:** Quasi-Judicial

**Presenter of Item:** Donna Voliva

**Board Action:** Action

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**Brief Description of Agenda Item:**

Allied Properties, LLC requests a special use permit for an extractive industry (mine) on a 191.2 acre tract on the southwest side of NC 168 (Caratoke Highway) and south of Ballance Farms subdivision, Parcel 23, Tax Maps 40U, 40C through 40H, 40J through 40L in Moyock and Crawford Townships.

**Planning Board Recommendation:**

**Staff Recommendation:** Application Reviewed

**TRC Recommendation:** Application Reviewed



**STAFF REPORT**  
**PB 21-06 BALLANCE MINE**  
**SPECIAL USE PERMIT**  
**BOARD OF COMMISSIONERS**  
**AUGUST 16, 2021**

### APPLICATION SUMMARY

<b>Property Owner:</b> APVA, LLC 417-D Caratoke Highway Moyock, NC 27958	<b>Applicant:</b> APVA, LLC 417-D Caratoke Highway Moyock, NC 27958
<b>Case Number:</b> PB 21-06	<b>Application Type:</b> Special Use Permit
<b>Parcel Identification Numbers:</b> See Attachment "A"	<b>Existing Use:</b> Farmland
<b>Land Use Plan Classification:</b> Rural	<b>Parcel Size (Acres):</b> 191.2 acres
<b>Moyock Small Area Plan:</b> Limited Service (portion)	<b>Zoning:</b> Agriculture (AG)
<b>Request:</b> Special Use Permit to establish a 57.36 acre mine operation (extractive industry)	

### SURROUNDING PARCELS

	Land Use	Zoning
North	Low Density Residential/ Woodland	AG
South	Farmland/Woodland	AG
East	Farmland/Woodland/New Bridge Creek	AG
West	Farmland/Woodland	AG

### STAFF ANALYSIS

#### Application Summary

The applicant/agent, Justin M. Old – APVA, LLC, is requesting a special use permit to excavate 57.36 acres of soil on a 191.2-acre parcel owned by APVA, LLC. The applicant proposes a traffic load count of 50-100 loads per day. The proposed affected area is 82.85-acres and includes the 57.36-acre mine, 6-acre stockpile and operations area, 3.33-acres of earth berm, 4.82-acre recharge ditch and 0.34-acre settling basin area for the dewatering operations, 7.23-acre haul road (partially off-site), and 3.77-acres of other disturbed area.

1. Size: The proposed excavated area is 30% of the total tract and future expansion is not planned.
2. Setbacks: The applicant is requesting a modified setback reduction for the following:
  - a. 100' property line setback – portion of the haul road, settling basin, and recharge ditch.
3. Access: The applicant proposes to utilize an existing access off Caratoke Highway. The 30' haul road crosses nine exempt division parcels (Ballance Farms) by way of a



variable width easement established on the exempt division plat. The haul road also includes a private railroad crossing (see license agreement) with an encroachment in the 150' Dominion Power easement/right of way. The access point is immediately southeast of the Willie Lead Ditch which crosses under Caratoke Highway.

4. Reclamation: The proposed mine will be backfilled with off-site fill material, primarily clay and topsoil, transported to the site (5-10 loads per day).
5. Dewatering: The excavation activities also include dewatering to the recharge ditch and settling basin that discharges to the Willie Lead Ditch (major drainageway). No in-use wells or ponds are within 1,500 feet of the mine and dewatering activities. Two monitoring wells are proposed between the excavation and dewatering activities and the wetlands along the southern wetland boundary to monitor water levels (wetland hydrology).

#### Community Meeting Summary

The community meeting was held on November 24, 2020 at the Eagle Creek Golf Pavilion in Moyock. A copy of the community meeting minutes is provided in the packet. The concerns include flooding along New Bridge Creek, flooding along Willie Lead Ditch near Caratoke Highway and Samuel Chapel Church, dewatering, future lot impacts (Ballance Farms), and maintenance of the Willie Lead Ditch.

#### Permits and Approvals

NCDEQ, Div. of Energy, Minerals, and Land Resources ( <i>SW7210207</i> )	Low Density Stormwater
Dominion Energy ( <i>TE020071006</i> )	Consent Agreement for Right of Way Encroachment
Chesapeake & Albemarle Railroad Co., Inc.	License Agreement for Private Grade Crossing
NCDOT ( <i>D011-027-21-00008</i> )	Driveway Permit
NCDEQ, Div. of Energy, Minerals, and Land Resources ( <i>27-55</i> )	Mine Permit
NCDEQ, Div. of Energy, Minerals, and Land Resources ( <i>NCG020972</i> )	National Pollutant Discharge Elimination System
US Army Corps of Engineers ( <i>2020-01827</i> )	General Permit (culverts in Willie Lead Ditch)

#### STAFF REVIEW

##### Technical Review Committee

The Technical Review Committee (TRC) reviewed the application and provided the following comments:

1. The Willie Lead Ditch is a major drainageway and is identified as the discharge point for the dewatering operation. There are existing drainage concerns associated with the major drainageway demonstrated by reoccurring overflow on developed lots near Caratoke Highway. The impacts of the additional discharge and maintenance of the ditch should be evaluated in the board's decision. The applicant indicated before the mining operations commence the Willie Lead Ditch will be cleared and snagged from the discharge location to the Caratoke Highway

- box culvert and periodically maintained. The Soil and Stormwater Technician identified several large trees and stumps off-site and downstream that may affect the drawdown time.
2. The asphalt entrance is proposed within 300' of an existing residence. During the March TRC review, the planning staff identified a concern with the placement of the mine haul road (northern access) and the impacts to the adjoining properties. The mine plan indicated two existing access points to the property (a northern and southern access). After the initial TRC review, the northern access was permitted by the state as the mine haul road and the southern access became the entrance road to a 17-lot division recorded May 24, 2021. Given the recent division recording, the northern access provides the least negative impact on adjoining properties. The applicant is proposing a six-foot-high vegetated berm on both sides of the haul road as well as retention of existing vegetation (excluding an area for the haul road installation). To further reduce the mine impacts to the existing residence to the north, the applicant moved the ticket office and associated parking to maintain the 300' setback.
  3. With input from NCDOT, the county shall require the installation of acceleration/deceleration lanes when it is determined that such lanes will enhance public safety. NCDOT issued a driveway permit, and in accordance with the *NCDOT Roadway Design Manual* (Figure 4) did not recommend a dedicated right turn lane. NCDOT District office and Division office determined the two southbound travel lanes will help expedite vehicular departure from the highway. Given the two southbound travel lanes and the anticipated traffic flow into the mine, a deceleration lane was not recommended.
  4. The Soil and Stormwater Technician recommends installing protection along the road and the Willie Lead Ditch in the vicinity of the railroad crossing.

#### 2006 Land Use Plan

The 2006 Land Use Plan classifies the site as Rural within the Moyock subarea. The following policy statement addresses mining activities:

POLICY ID8: MINING ACTIVITIES, or secondary impacts of mining activities not subject to permit approval by the State of North Carolina, may be subject to review and management by Currituck County. Activities to be addressed may include, but not limited to, the adequacy of roads serving the mine site, visual impacts during operation and after closing of the mine site, noise, dust considerations.

#### SPECIAL USE PERMIT REVIEW STANDARDS

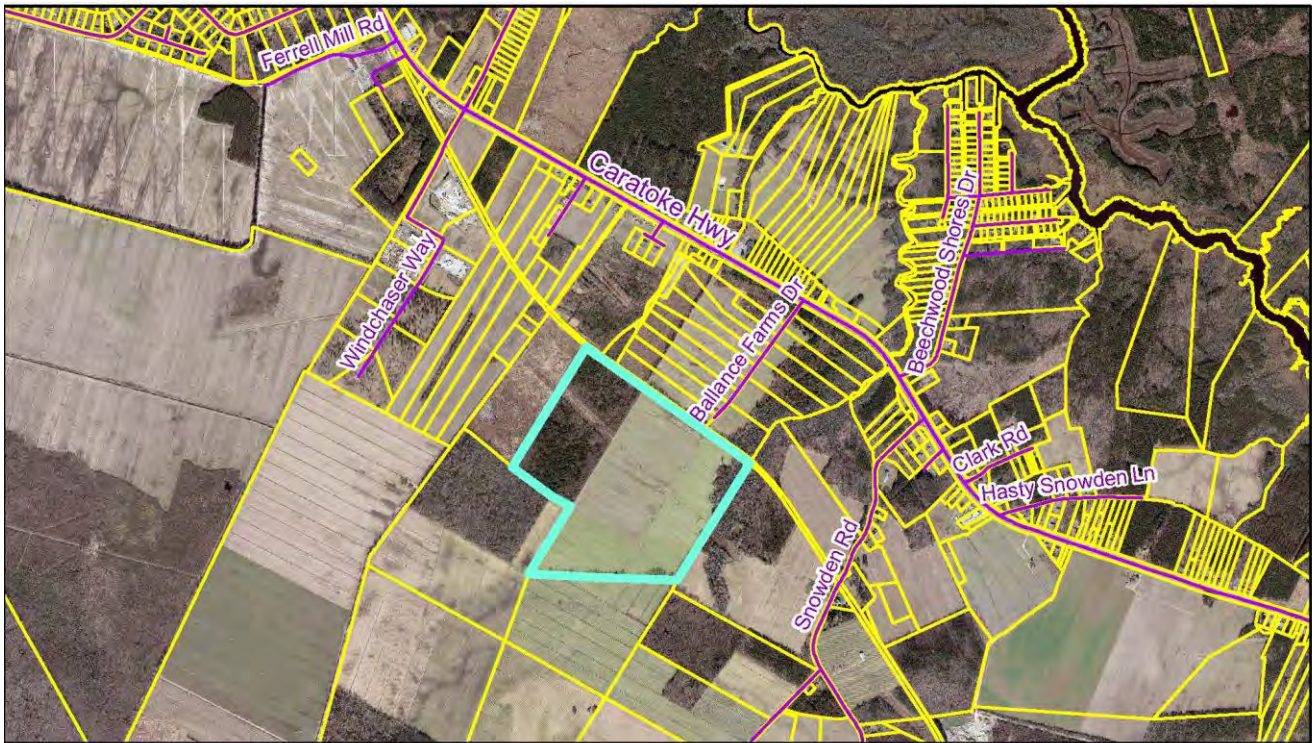
Following an evidentiary hearing, the board shall decide if the application is in accordance with Section 2.3.10, Decision-Making Body Review and Decision, and Section 2.4.6.D, Special Use Permit Review Standards.

#### Special Use Permit Review Standards

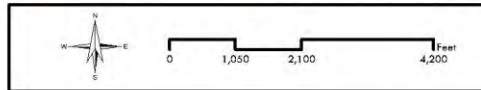
A special use permit shall be approved on a finding that the applicant demonstrates the proposed use will:

1. Not endanger the public health or safety.
2. Not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.
3. Be in conformity with the Land Use Plan or other officially adopted plan.
4. Not exceed the county's ability to provide adequate public facilities, including but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

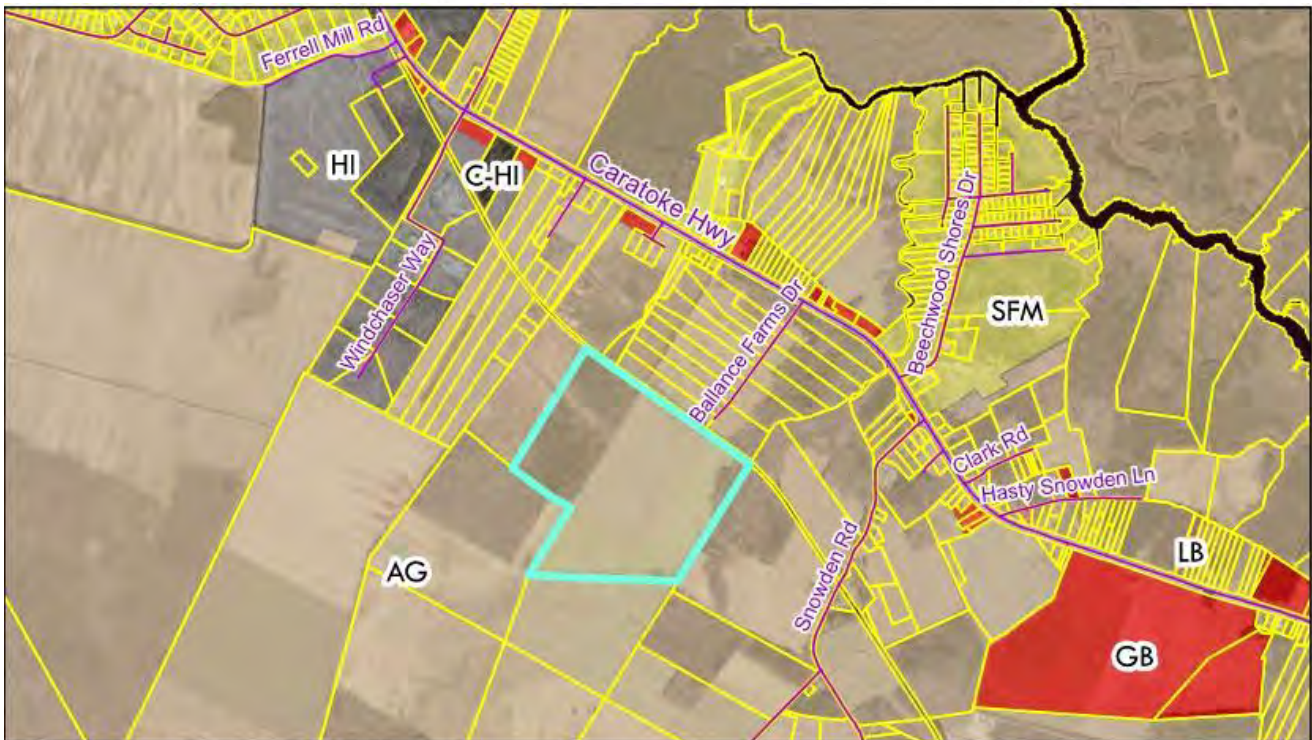




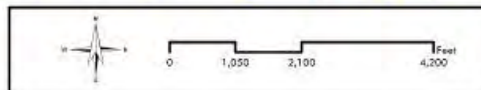
PB 21-06 Ballance Mine  
Special Use Permit  
Aerial



Currituck County  
Planning and Community  
Development

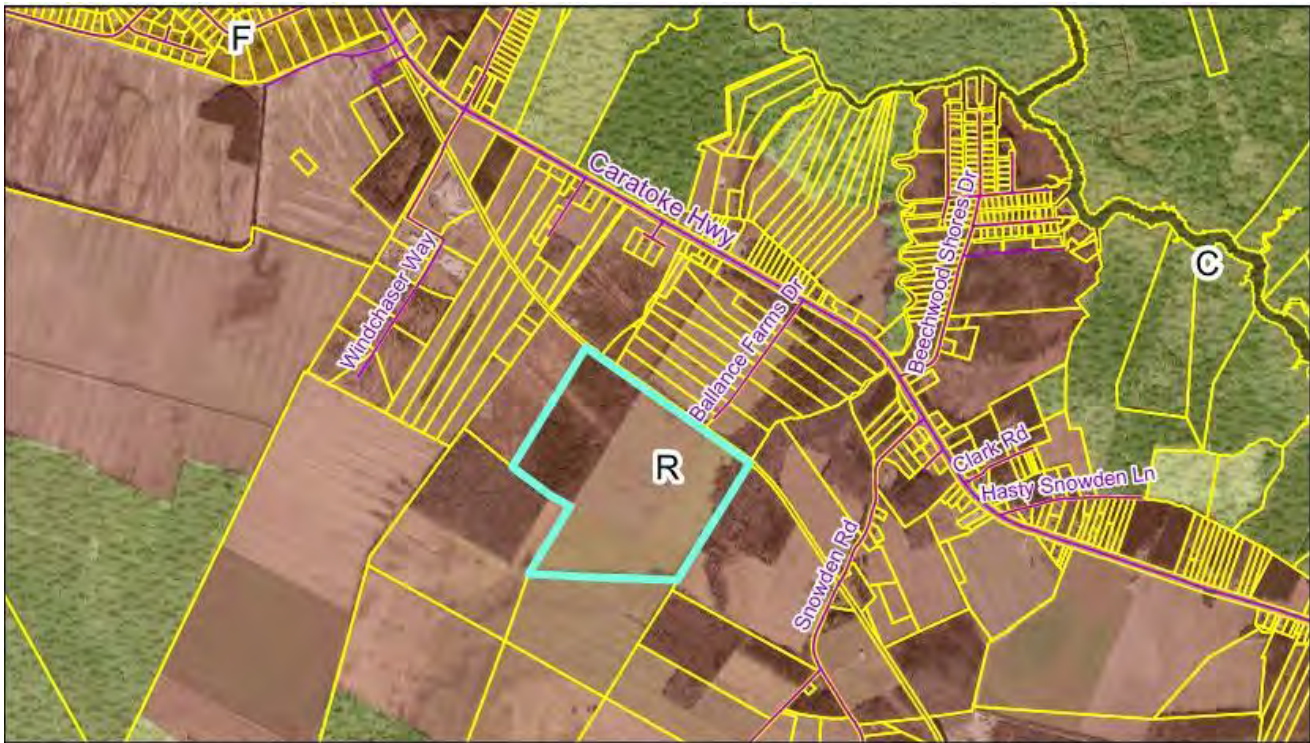


PB 21-06 Ballance Mine  
Special Use Permit  
Zoning

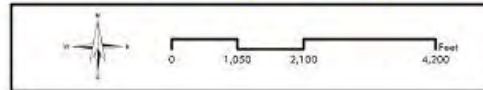


Currituck County  
Planning and Community  
Development

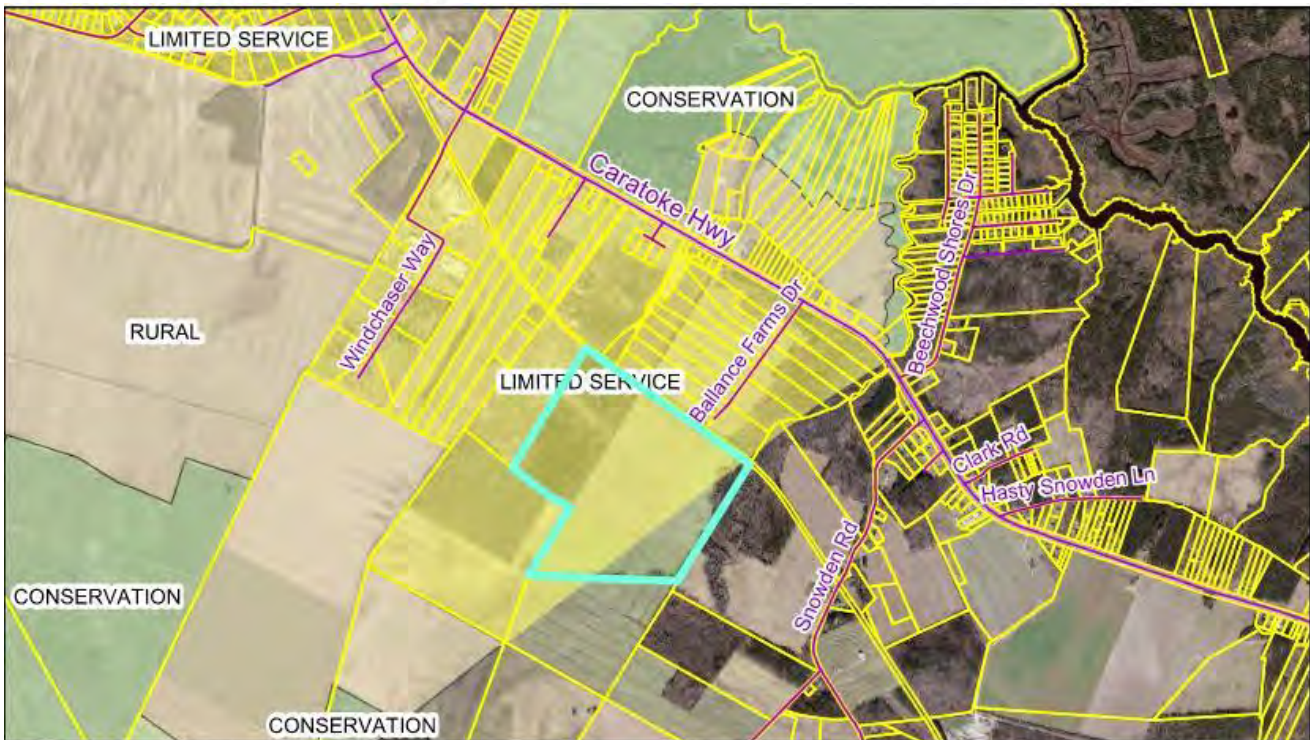




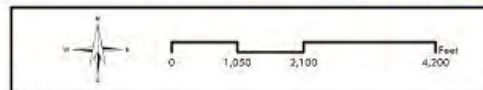
PB 21-06 Ballance Mine  
Special Use Permit  
Land Use Classification



Currituck County  
Planning and Community  
Development



PB 21-06 Ballance Mine  
Special Use Permit  
Moyock SAP



Currituck County  
Planning and Community  
Development

## Attachment A

Parcel Identification Numbers	Owner
0023-000-040U-0000	APVA, LLC
0023-000-040C-0000	APVA, LLC
0023-000-040D-0000	APVA, LLC
0023-000-040E-0000	APVA, LLC
0023-000-040F-0000	APVA, LLC
0023-000-040G-0000	APVA, LLC
0023-000-040H-0000	APVA, LLC
0023-000-040J-0000	APVA, LLC
0023-000-040K-0000	APVA, LLC
0023-000-040L-0000	APVA, LLC

THE APPLICATION AND RELATED MATERIALS ARE AVAILABLE ON THE COUNTY'S WEBSITE  
 Board of Commissioners: [www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm](http://www.co.currituck.nc.us/board-of-commissioners-minutes-current.cfm)





# Use Permit Application

**OFFICIAL USE ONLY:**

Case Number: \_\_\_\_\_  
 Date Filed: \_\_\_\_\_  
 Gate Keeper: \_\_\_\_\_  
 Amount Paid: \_\_\_\_\_

**Contact Information**
**APPLICANT:**

Name: APVA, LLC  
 Address: 417 Caratoke Hwy., Unit D  
Moyock, NC 27958  
 Telephone: 252-435-2718  
 E-Mail Address: jold@qhoc.com

**PROPERTY OWNER:**

Name: APVA, LLC  
 Address: 417 Caratoke Hwy., Unit D  
Moyock, NC 27958  
 Telephone: 252-435-2718  
 E-Mail Address: jold@qhoc.com

LEGAL RELATIONSHIP OF APPLICANT TO PROPERTY OWNER: Same

**Property Information**

Physical Street Address: Caratoke Hwy.  
 Location: Moyock, NC 27958  
 Parcel Identification Number(s): 0023-000-040U-0000;0023-000-040C-0000;0023-000-040D-0000;  
0023-000-040E-0000; 0023-000-040F-0000; 0023-000-040G-0000;  
 Total Parcel(s) Acreage: 191.2 0023-000-040H-0000; 0023-000-040J-0000; 0023-000-040K-0000;  
0023-000-040L-0000  
 Existing Land Use of Property: Agricultural

**Request**

Project Name: Ballance Tract Mine  
 Proposed Use of the Property: Sand Mine  
 Deed Book/Page Number and/or Plat Cabinet/Slide Number: DB 1597, PG 809: PB R, PG 131-132  
 Total square footage of land disturbance activity: 3,608,814 sf+/-  
 Total lot coverage: 315,600 sf +/- Total vehicular use area: 300  
 Existing gross floor area: 0 Proposed gross floor area: 200

**Community Meeting**

Date Meeting Held: 11-24-2020 Meeting Location: Eagle Creek Pavillion

Attachment: 2-Ballance Mine App (PB 21-06 Ballance Mine)

Purpose of the Use Permit and Project Narrative (please provide on additional paper if needed): \_\_\_\_\_

See Attachment A

The applicant shall provide a response to the each one of the following issues. The Board of Commissioners must provide specific findings of fact based on the evidence submitted. All findings shall be made in the affirmative for the Board of Commissioners to issue the use permit.

- A. The use will not endanger the public health or safety.

See Attachment A

- B. The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.

See Attachment A

- C. The use will be in conformity with the Land Use Plan or other officially adopted plan.

See Attachment A

- D. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities. Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.

See Attachment A

I, the undersigned, do certify that all of the information presented in this application is accurate to the best of my knowledge, information, and belief. Further, I hereby authorize county officials to enter my property for purposes of determining zoning compliance. All information submitted and required as part of this application process shall become public record.

Property Owner(s)/Applicant\*

12-15-2020

Date

\*NOTE: Form must be signed by the owner(s) of record, contract purchaser(s), or other person(s) having a recognized property interest. If there are multiple property owners/applicants a signature is required for each.

Use Permit Application

Page 6 of 8

Revised 7/1/2019

Attachment: 2-Balance Mine App (PB 21-06 Balance Mine)

## **ATTACHMENT “A”**

### **Purpose of the Use Permit and Project Narrative**

The Use Permit request includes a 99.9-acre sand mining operation proposed across five parcels of land totaling 358.9-acres. The properties are located along the south side of Caratoke Hwy (NC 168), approximately 0.4 miles west of the intersection of NC 168 and Beechwood Shores Dr. (SR 1281), towards Moyock. The properties are zoned Agricultural and have historically been used for agricultural activities.

The mining operation includes 57.36-acres of proposed excavation area that will extend up to 25 feet below the existing ground surface. A total of 25.49-acres of stock piles, haul roads, recharge ditching, a dewatering basin, screening berms, a ticket office and other minor improvements are also proposed to support the operation. A total of up to 82.85-acres of disturbance is proposed.

Of the combined 358.9-acres of property, 191.20-acres is being dedicated as the proposed mining site. This results in an excavation area equal to 30% of the site area, a limit allowed by Section 4.2.5.A.(2) of County’s UDO. With the exception of the haul road connection to Hwy 168, a railroad crossing to coincide with an existing farm road crossing and a dewatering basin outlet, a minimum 50’ undisturbed buffer is being established around the perimeter of the mine operation. The provision of 6’ high earthen berms with trees atop and the preservation of wooded areas will help to screen the haul road entrance from Hwy 168 and adjoining developed properties in that area. As prescribed by Section 4.2.4.A.(3)(b) of the UDO, the 50’ undisturbed buffer, or setback, being provided is a condition the Commissioners may allow when screening measures, like those described above, are provided. Or when the mine adjoins vacant or farmland, as most of this site does.

Separation between the proposed excavation area and the nearest residence is approximately 2,180 ft. Separation to the nearest residence served by a known well is approximately 2,880 ft and separation to Hwy 168 is over 3,600 ft. At these distances, impacts related to sight, sound, and groundwater degradation are considered to be negligible, if any.

Dewatering will include pumping groundwater to a system of recharges ditches installed around the perimeter of the excavation area that connect to a settling basin at the SW corner of the mine. The settling basin will help to remove sediment and pollutants from the discharge water before being released to the existing ditch running along the property boundary. The recharge ditches act to replenish groundwater conditions outside of the excavation area and help minimize offsite impacts. The cover sheet of the mining plans provides additional information regarding pumping operation and monitoring plans. Given the rate of pumping, scheduling, filtering, recharging and monitoring proposed, impacts downstream of the site are expected to be minimal.



**A. The Use will not endanger the public health or safety, due to the following:**

1. In addition to the County's review for a use permit, the proposed mining operation requires approvals from multiple divisions of NCDEQ, the NCDOT, the USACOE, Dominion Energy and Chesapeake & Albemarle Railroad. Applications for these approvals are being reviewed concurrently with the Use Permit application and it is understood that a Use Permit will not be granted until all other permits are in hand.
2. No trespassing signs will be posted around the permitter of the site.
3. Separations, dewatering, monitoring and screening are proposed as outlined in the Project Narrative and off-site impacts are expected to be minimal.
4. Traffic and noise generation are expected to be at, or below normal levels when compared with existing mine operations within the County and known to be in good standing with the County and State.

**B. The use will not injure the value of adjoining or abutting lands and will be in harmony with the area in which it is located.**

1. Property immediately surrounding the proposed excavation area is either wooded or farmland. The nearest residence to the excavation area is approximately 2,180 ft.
2. Berms, plantings and preservation of existing trees are proposed along the haul road entrance to help screen the use from Hwy 168 and nearby developed properties.

**C. The use will be in conformity with the Land Use Plan or other officially adopted plan.**

1. The CAMA Land Use Plan classifies the land as Rural. The Moyock Small Area Plan classifies most of the land as Limited Service. The County's Zoning Map classifies the property as Agricultural. Mining is a supported use in each of the above land classifications.
2. The proposed mining plan and activities are believed to be in conformity with the County's Unified Development Ordinance.

**D. The use will not exceed the county's ability to provide adequate public facilities, including, but not limited to, schools, fire and rescue, law enforcement, and other county facilities.**

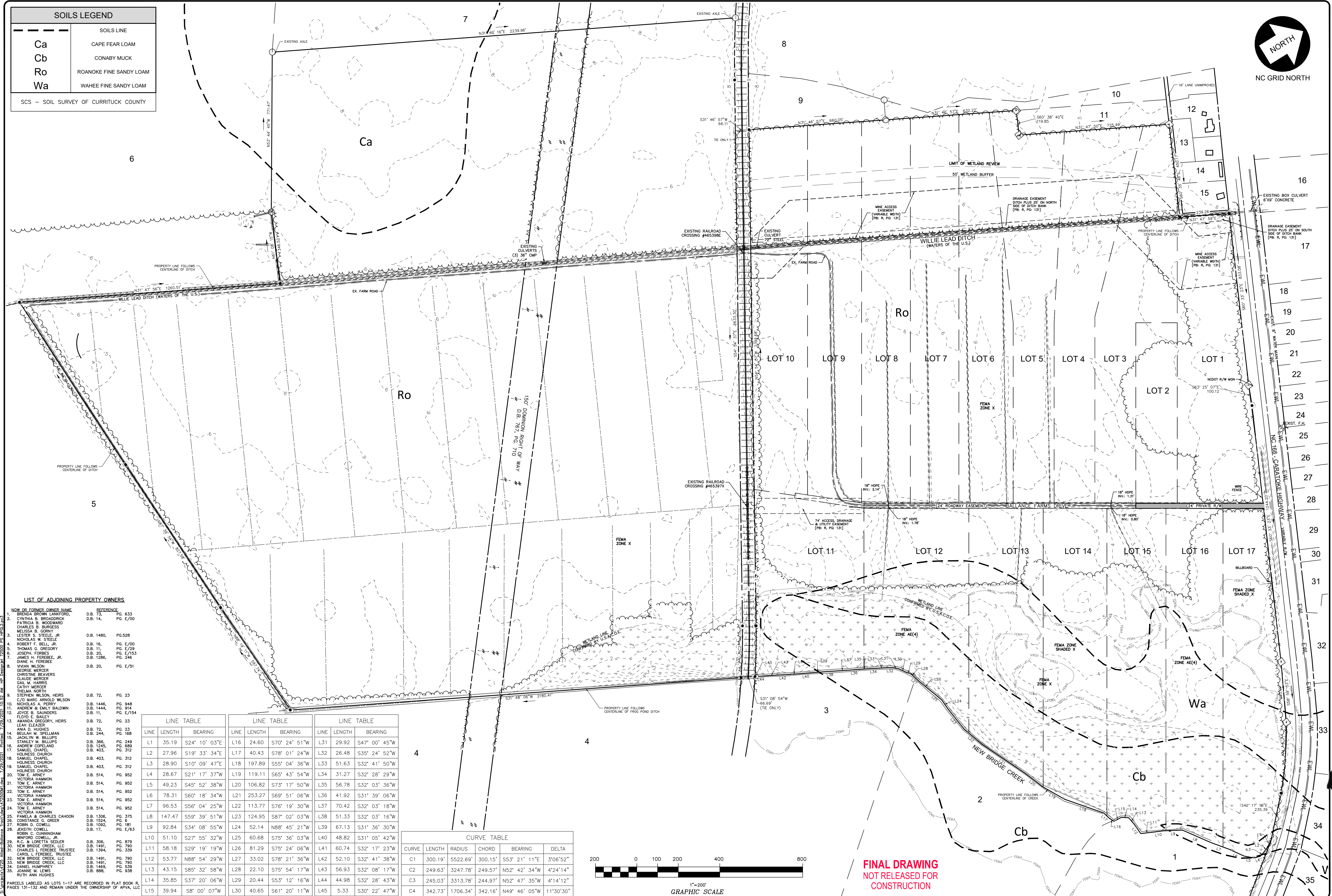
**Applicable state standards and guidelines shall be followed for determining when public facilities are adequate.**

1. Given the nature of the proposed mining operation, the use is expected to have minimal, to no impact on the County's public facilities.









SOILS LEGEND	
	SOILS LINE
Ca	CAPE FEAR LOAM
Cb	CONABY MUCK
Ro	ROANOKE FINE SANDY LOAM
Wa	WAHEE FINE SANDY LOAM
SCS - SOIL SURVEY OF CURRITUCK COUNTY	

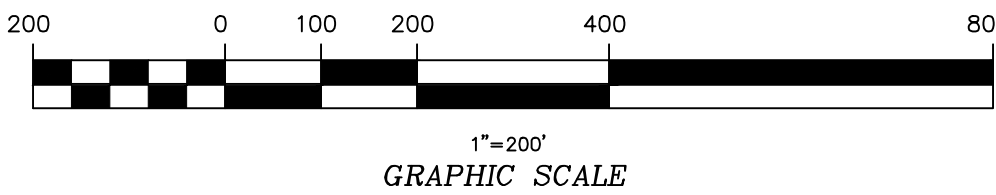
LIST OF ADJOINING PROPERTY OWNERS		
NOW OR FORMER OWNER NAME	REFERENCE	
1. BRENDA BROWN LANKFORD	D.B. 73, PG. 633	
2. CYNTHIA B. BROADBICK	D.B. 14, PG. E/00	
3. PATRICK B. WOODWARD		
4. CHARLES B. BURRESS		
5. MELISSA B. GORNY	D.B. 1480, PG. 528	
6. LESTER S. STEELE, JR.		
7. ROBERT F. BELL, JR.	D.B. 16, PG. E/00	
8. THOMAS G. GREGORY	D.B. 11, PG. E/29	
9. JOSEPH FORBES	D.B. 20, PG. E/133	
10. JAMES H. FERRELL, JR.	D.B. 1286, PG. 246	
11. JAMES H. FERRELL		
12. JAMES H. FERRELL	D.B. 20, PG. E/51	
13. JAMES H. FERRELL		
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32. JAMES H. FERRELL		
33. JAMES H. FERRELL		
34. JAMES H. FERRELL		
35. JAMES H. FERRELL		

LINE TABLE		
LINE	LENGTH	BEARING
L1	35.19	S24° 10' 03"E
L2	27.96	S19° 33' 34"E
L3	28.90	S10° 09' 47"E
L4	28.67	S21° 17' 37"W
L5	49.23	S45° 52' 38"W
L6	78.31	S60° 18' 34"W
L7	96.53	S56° 04' 25"W
L8	147.47	S59° 39' 51"W
L9	92.84	S34° 08' 55"W
L10	51.10	S27° 55' 32"W
L11	58.18	S29° 19' 19"W
L12	53.77	N88° 54' 29"W
L13	43.15	S85° 32' 58"W
L14	35.85	S37° 20' 06"W
L15	39.94	S8° 00' 07"W

LINE TABLE		
LINE	LENGTH	BEARING
L16	24.60	S70° 24' 51"W
L17	40.43	S78° 01' 24"W
L18	197.89	S55° 04' 36"W
L19	119.11	S65° 43' 54"W
L20	106.82	S73° 17' 50"W
L21	253.27	S69° 51' 06"W
L22	113.77	S76° 19' 30"W
L23	124.95	S87° 02' 03"W
L24	52.14	N88° 45' 21"W
L25	60.68	S75° 36' 03"W
L26	81.29	S75° 24' 06"W
L27	33.02	S78° 21' 36"W
L28	22.10	S75° 54' 17"W
L29	20.44	S53° 12' 16"W
L30	40.65	S61° 20' 11"W

LINE TABLE		
LINE	LENGTH	BEARING
L31	29.92	S47° 00' 45"W
L32	26.48	S35° 24' 52"W
L33	51.63	S32° 41' 50"W
L34	31.27	S32° 28' 29"W
L35	56.78	S32° 03' 36"W
L36	41.92	S31° 39' 06"W
L37	70.42	S32° 03' 18"W
L38	51.33	S32° 03' 16"W
L39	67.13	S31° 36' 30"W
L40	48.82	S31° 05' 42"W
L41	60.74	S32° 17' 23"W
L42	52.10	S32° 41' 38"W
L43	56.93	S32° 08' 17"W
L44	44.98	S32° 28' 43"W
L45	5.33	S30° 22' 47"W

CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	BEARING
C1	300.19'	5522.69'	300.15'	S53° 21' 11"E
C2	249.63'	3247.78'	249.57'	N52° 42' 34"W
C3	245.03'	3313.78'	244.97'	N52° 47' 35"W
C4	342.73'	1706.34'	342.16'	N49° 46' 05"W



FINAL DRAWING  
NOT RELEASED FOR  
CONSTRUCTION

**Bissell Professional Group**  
Firm License # C-945  
P.O. Box 1068  
Kitty Hawk, North Carolina 27949  
Tel: (252) 281-1790  
Fax: (252) 281-1790

**Bissell Professional Group**  
Engineers, Planners, Surveyors  
and Environmental Specialists

**EXISTING SITE CONDITIONS  
& SITE FEATURES MAP**

THIS DOCUMENT IS THE SOLE PROPERTY OF BPG, INC. OR KITTY HAWK SURVEYING, INC. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE EXPRESS WRITTEN CONSENT OF MARK S. BISSELL, PROFESSIONAL ENGINEER, P.E. LICENSE # 35017, NORTH CAROLINA.

**BALANCE TRACT MINE**  
CURRITUCK COUNTY  
MOYOCK TOWNSHIP

**MINE DEVELOPMENT PLANS**

PROJECT: 472500M1

DATE: 12/07/20

SCALE: 1" = 200'

DRAWN: DMK

CHECKED: BPG

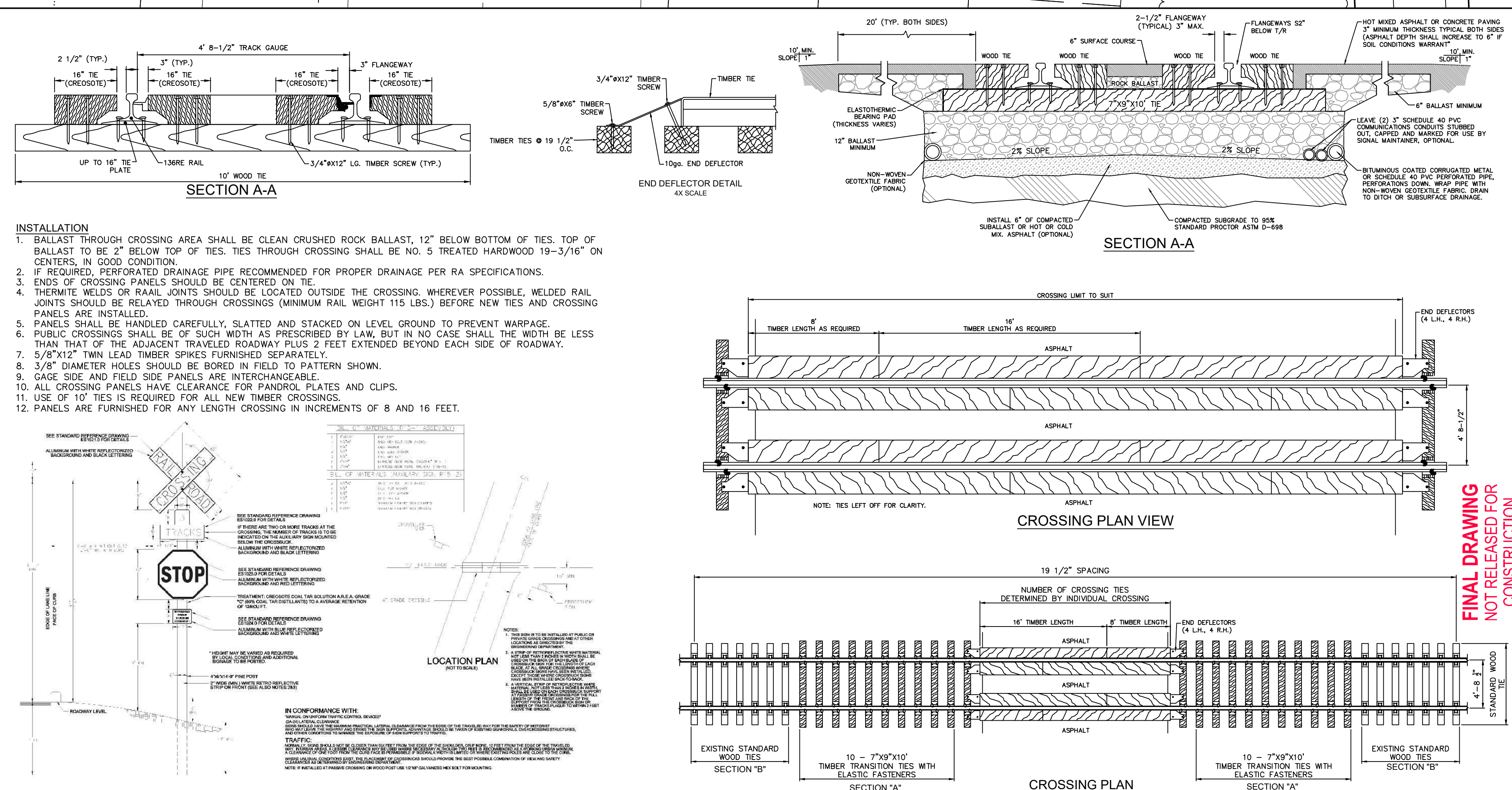
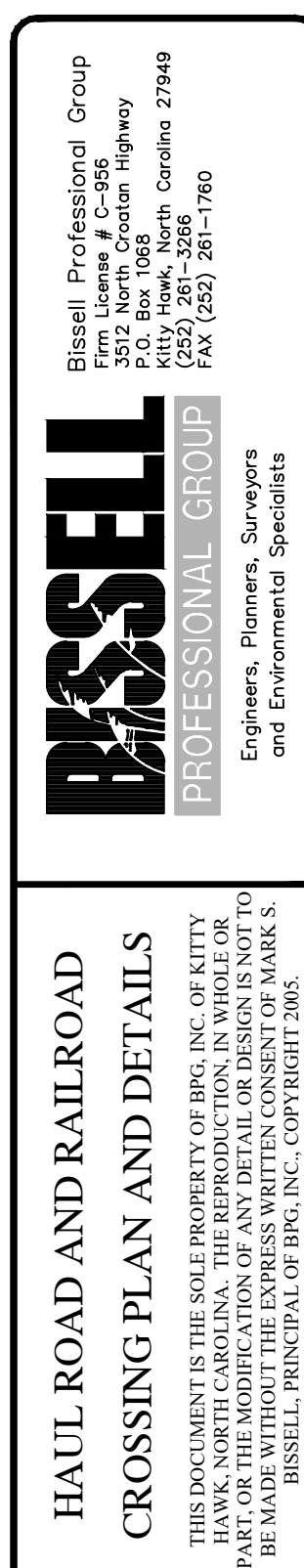
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SHEET: 2 OF 5


CAD FILE: 472500M1

PROJECT NO: 4725





REVISIONS		
NO.	DATE	BY
1	1-11-21	EXP. RAILROAD PROSSING DATA
2	2-11-21	EXP. CITIES & RESERVANCE DISCUSSION
3	3-11-21	EXP. CITIES & RESERVANCE DISCUSSION
4	3-22-21	UNAVAIL. EXISTING. REFER. FOR RING DATA
5	5-2-21	RAILGAGE FIELDS 10727/2425MENTS
6	7-29-21	IRON STEEL. TOOL OFFICE. SHOWER DRAIN



NORTH CAROLINA  
 SEAL  
 1776  
 1876  
 1976  
 2076  
 2176

DATE: 12/07/20 SHEET: AS NOTED

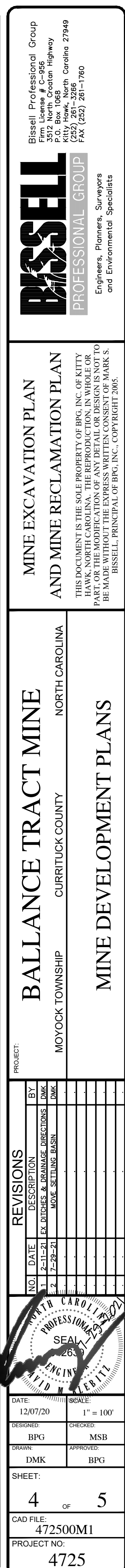
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SHEET: 3 OF 5

CAD FILE: 472500M1

PROJECT NO: 4725







**SEDIMENTATION AND EROSION CONTROL NOTES.****A. GROUND STABILIZATION REQUIREMENTS:**

The angle of graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, all disturbed areas left exposed will, **WITHIN 14 CALENDAR DAYS OF COMPLETION** of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. Additionally, certain critical areas as identified on the plan, such as, but not limited to, perimeter dikes, swales, slopes steeper than 3:1, and areas located within High Quality Water Zones, must be temporarily or permanently stabilized **WITHIN 7 CALENDAR DAYS OF COMPLETION** of any phase of grading in these areas. A permanent ground cover for all disturbed areas must be provided **WITHIN 15 WORKING DAYS OR 90 CALENDAR DAYS** (whichever is shorter) following completion of construction or development, unless temporary stabilization is applied.

**B. CONSTRUCTION SEQUENCE:**

1. INSTALL ASPHALT CONSTRUCTION ENTRANCE AT LOCATION SHOWN ON PLAN.
2. INSTALL SILT FENCING IN AREAS AS SHOWN ON PLAN, AND OTHER AREAS AS REQUIRED TO PREVENT SEDIMENTATION OF WETLAND AREAS.
3. CLEAR AND GRUB HAUL RD. AREAS, REMOVING TREES, VEGETATION, ROOT AND OTHER MATERIAL THAT MAY AFFECT FINAL ROADWAY STABILITY.
4. PROVIDE TEMPORARY STABILIZATION VEGETATION AS OUTLINED BELOW IN ALL DISTURBED AREAS. ALL TEMPORARY VEGETATION MUST BE IN PLACE AS NOTED IN SECTION "A" ABOVE AND ON THE PLAN.
5. PERFORM FINAL GRADING AND APPLY PERMANENT VEGETATION AS OUTLINED BELOW.
6. STABILIZATION AND LANDSCAPING: FINAL SLOPES IN ALL GRADED AREAS SHALL NOT EXCEED THOSE DESCRIBED ON THE PLAN. ALL SEEDING AND STABILIZATION SHALL BE IN PLACE AS DESCRIBED IN SECTION "A" ABOVE AND ON THE PLAN.
7. FERTILIZER: APPLY 3,000 LB./ACRE GROUND AGRICULTURE LIMESTONE AND 5— LB./ACRE 10-10-10 FERTILIZER. TOP DRESS WITH 50 LB./ACRE NITROGEN.
8. MULCH: APPLY 4,000 LB./ACRE STRAW. ANCHOR STRAW BY TACKING WITH ASPHALT, NETTING, OR A MULCH ANCHORING TOOL.
9. SEEDING:
  - a. TEMPORARY VEGETATION: IF TEMPORARY SEEDING OCCURS DURING WINTER, EARLY SPRING, OR FALL, APPLY 120 LB./ACRE RYE GRAIN. IF TEMPORARY SEEDING OCCURS DURING SUMMER, APPLY 40 LB./ACRE GERMAN MILLET/BERMUDA MIXTURE. TEMPORARY VEGETATION MUST BE APPLIED WITHIN 30 DAYS OF LAND DISTURBING ACTIVITY.
  - b. PERMANENT VEGETATION: APPLY COASTAL MIX CONSISTING OF 50 LB./PENSACOLA BAHIAGRASS, AND 10 LB./ACRE GERMAN MILLET. APPLY PERMANENT SEEDING BETWEEN APRIL 1, AND JULY 15. REFERTILIZE THE FOLLOWING APRIL WITH 50 LB./ACRE NITROGEN.
  - c. SODDING: (IF REQUIRED). PERMANENT VEGETATION — SELECT COMPATIBLE SPECIES TO PERMANENT SEEDING TYPE; INSTALL WITH LONGEST DIMENSION PERPENDICULAR TO THE SLOPE AND STAPLE IF NECESSARY; ROLL SOD IMMEDIATELY AND WATER TO 4".

1. INSPECT TEMPORARY EROSION CONTROL DEVICES AFTER EACH 0.5 INCH RAINFALL EVENT AND/OR WEEKLY. REPAIR AND REMOVE SEDIMENT BUILD-UP AS NECESSARY.
2. INSPECT STABILIZED AREAS AFTER EACH 0.5 INCH RAINFALL EVENT. RILLS AND GULLIES MUST BE REPAIRED, RE-SEEDED AND MULCHED AS SOON AS POSSIBLE. TEMPORARY DIVERSIONS MAY BE NECESSARY UNTIL NEW PLANTS DEVELOP. BARE SPOTS MUST BE RELIED, FERTILIZED, MULCHED AND RESEEDED AS PROMPTLY AS POSSIBLE. YEARLY REFERTILIZATION MAY BE REQUIRED TO MAINTAIN PRODUCTIVE STANDS.
3. INSPECTIONS SHALL ONLY BE REQUIRED DURING "NORMAL BUSINESS HOURS."
4. INSPECTION REPORTS MUST BE AVAILABLE ON-SITE DURING BUSINESS HOURS UNLESS A SITE-SPECIFIC EXEMPTION IS APPROVED.
5. RECORDS MUST BE KEPT FOR 3 YEARS AND AVAILABLE UPON REQUEST.
6. ELECTRONICALLY— AVAILABLE RECORDS MAY BE SUBSTITUTED UNDER CERTAIN CONDITIONS.
7. PERFORM ROUTINE MAINTENANCE (INCLUDING MOWING AND CLEANING OF ROADWAY SWALES) ONCE FINAL STABILIZATION HAS OCCURRED.

**E. THE INTENT OF THIS PLAN IS TO:**

- MINIMIZE THE EXTENT AND DURATION OF DISTURBED SOIL EXPOSURE.
- PROTECT DISTURBED AREAS FROM STORMWATER RUNOFF.
- STABILIZE DISTURBED AREAS AS SOON AS POSSIBLE.
- MAINTAIN LOW RUNOFF VELOCITIES (AND PROTECT AREAS WHERE THIS IS NOT POSSIBLE).
- RETAIN SEDIMENT ON SITE WITH SILT FENCING AND SILT DAMS.

THIS PLAN REPRESENTS MINIMUM SEDIMENTATION AND EROSION CONTROL MEASURES. ADDITIONAL MEASURES AND DEVICES MAY BE REQUIRED AS CONSTRUCTION PROCEEDS.

**RECLAMATION STABILIZATION NOTES:****SEEDING NOTES:**

The minimum requirement for reclamation is that all disturbed areas must be stabilized with a permanent ground cover. Staged seeding is generally the most economical and efficient reclamation practice.

The following table provides seeding specifications for the Coastal Plain Region:

**Seeding Mixture**

Species	(lbs./ac.)
Pensacola Bahiagrass	50
Sericea Lespedeza	30
Common Bermudagrass	10
German Millet	10

**Seeding Notes:**

Where a neat appearance is desired, omit Korean of Kobe Lespedeza. Use Common Bermudagrass only in isolated areas where it cannot become a pest. Bermudagrass may be replaced with 5 Centipedegrass (5 lbs./ac.).

**Nurse Plants:**

Prior to May 1 or after August 15, (temporary winter seeding)

Seeding of Rye (grain) @ 40 lbs./ac.

**Seeding Dates:**

Aug 15-May 1,

(see nurse plants above)

Apr 1-Aug 15,

Seeding of German Millet @ 10 lbs./ac.

Year Round,

Seeding of Korean or Kobe Lespedeza @ 30 lbs./ac.

**Soil Amendments:**

Apply lime and fertilizer according to soil tests, or apply 3,000 lb/ac. ground agricultural limestone and 50 lb/ac. 10-10-10 fertilizer.

**Mulch:**

Apply 4,000-5,000 lb./ac. grain straw or equivalent cover of another suitable mulching material. Anchor mulch by tacking with asphalt, roving, or netting, or by crimping with a mulch-anchoring tool. A disk with blades set nearly straight can be used as a mulch-anchoring tool.

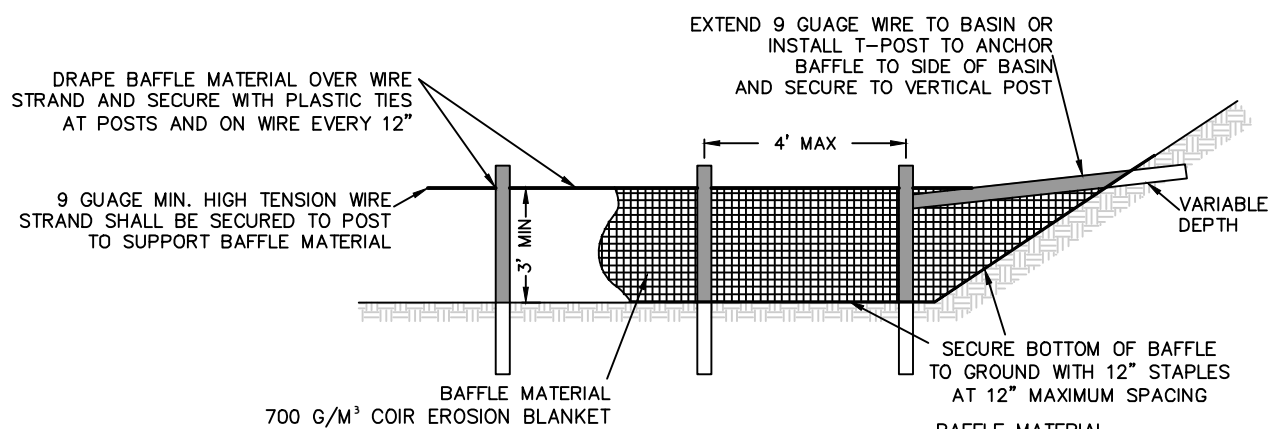
**Maintenance:**

Refertilize the following April with 50 lb./ac. nitrogen. Repeat, as growth requires. May be mowed only once a year. Where a neat appearance is desired, omit Sericea Lespedeza and mow as often as needed.

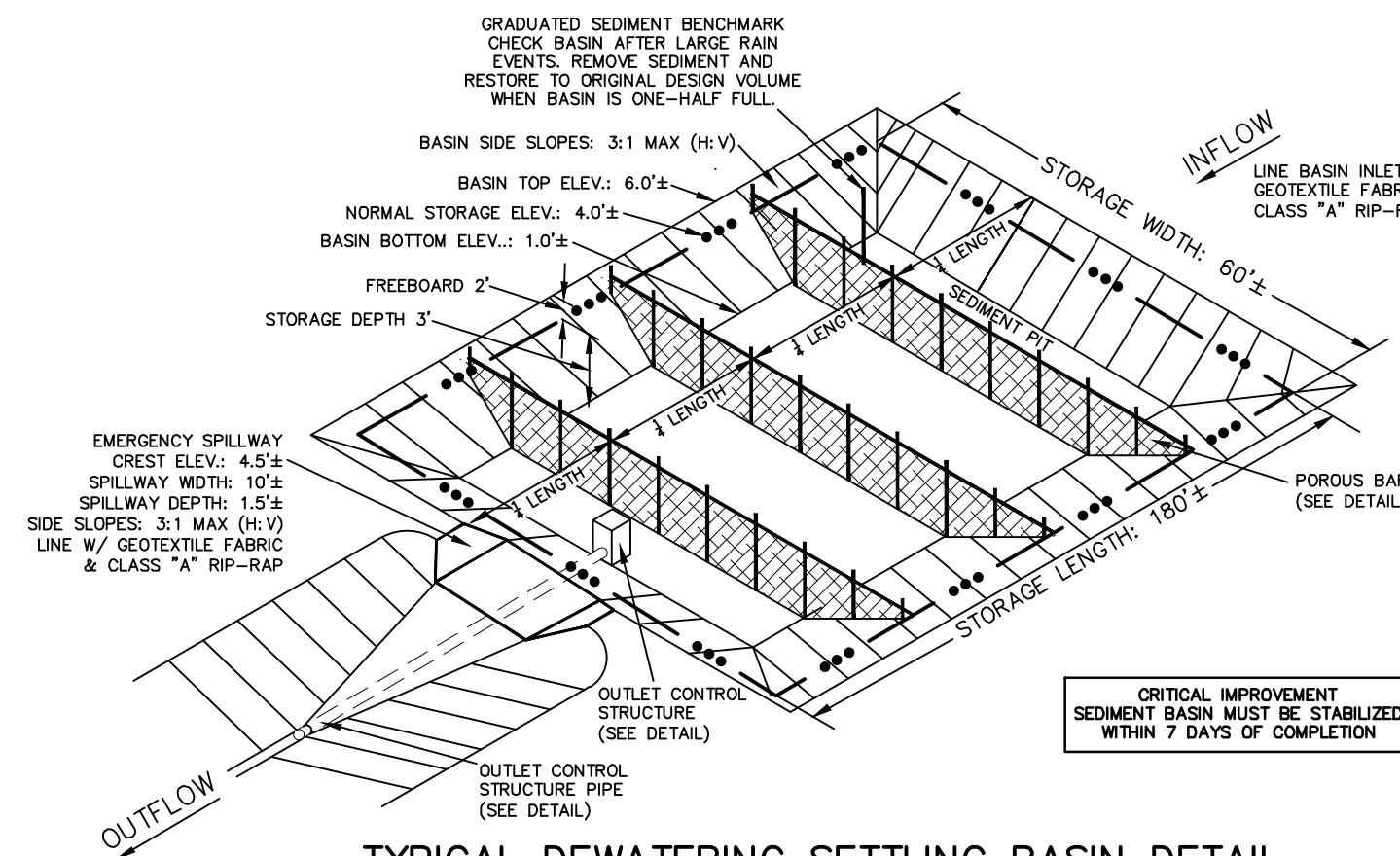
**SCREENING BERM TREE NOTES:**

TREES SHALL BE PROVIDED IN ACCORDANCE WITH THE FOLLOWING:

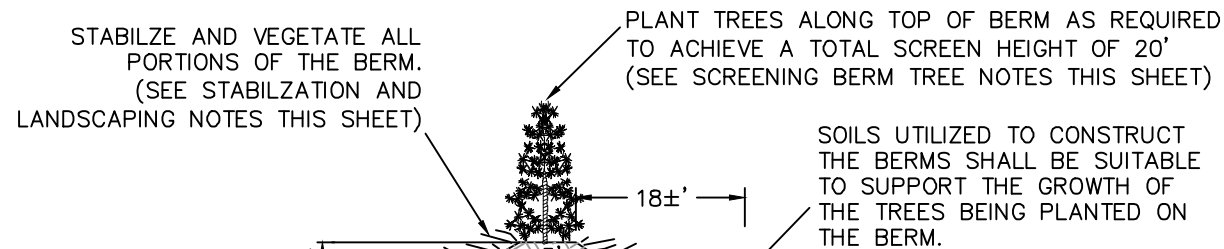
- TREES SHALL BE PLANTED ALONG THE TOP OF ALL EARTHEN SCREENING BERMS AS DETAILED THIS SHEET AND SHOWN ON SHEET 3 OF THIS SET.
- TREES SHALL BE CANOPY TYPE PLANTED A MAXIMUM OF 50' O/C OR UNDERSTORY TYPE PLANTED A MAXIMUM OF 30' O/C.
- SOILS UTILIZED TO CONSTRUCT THE BERMS SHALL BE SUITABLE TO SUPPORT THE GROWTH OF THE TREES BEING PLANTED ON THE BERM.
- ALL TREES SHALL BE INSTALLED IN ACCORDANCE WITH THE PLANTING STANDARDS SPECIFIED IN SECTION 3.5 OF THE CURRITUCK COUNTY ADMINISTRATIVE MANUAL AND THIS PLAN.
- CANOPY AND UNDERSTORY TREE SPECIES SHALL BE OF THOSE LISTED UNDER "TABLE 3.4.6: RECOMMENDED PLANTINGS" IN THE SAME MANUAL.
- TREE SPECIES SHALL BE DIVERSE. A MINIMUM OF (4) DIFFERENT SPECIES OF CANOPY AND UNDERSTORY TREES SHALL BE INSTALLED IN ROUGHLY EQUAL PROPORTIONS.
- AT INSTALLATION, CANOPY TREES SHALL HAVE A MINIMUM CALIPER OF 2 INCHES MEASURED AT 6 INCHES ABOVE GRADE. EIGHT FOOT HIGH TREES MAY BE PLANTED AS AN ALTERNATIVE.
- AT INSTALLATION, UNDERSTORY TREES SHALL HAVE A MINIMUM CALIPER OF 1.5 INCHES MEASURES AT 6 INCHES ABOVE GRADE. SIX FOOT HIGH TREES MAY BE PLANTED AS AN ALTERNATIVE.
- MATERIALS SHALL BE OF HIGH-QUALITY NURSERY GRADE.
- THE USE OF NATIVE, DROUGHT-TOLERANT TREES IS ENCOURAGED.
- A REPUTABLE LANDSCAPE CONTRACTOR OR SUPPLIER SHALL PREPARE AN ITEMIZED SCHEDULE OF TREES TO BE INSTALLED IN ACCORDANCE WITH THIS LANDSCAPE PLAN. THIS SCHEDULE SHALL BE REVIEWED BY CURRITUCK COUNTY AND THE ENGINEER TO DETERMINE COMPLIANCE BEFORE ORDERING AND INSTALLATION. ALTERNATE TREES AND SPECIFICATIONS MAY BE PRESENTED FOR REVIEW AND APPROVAL.

**POROUS COIR FIBER BAFFLE DETAIL**

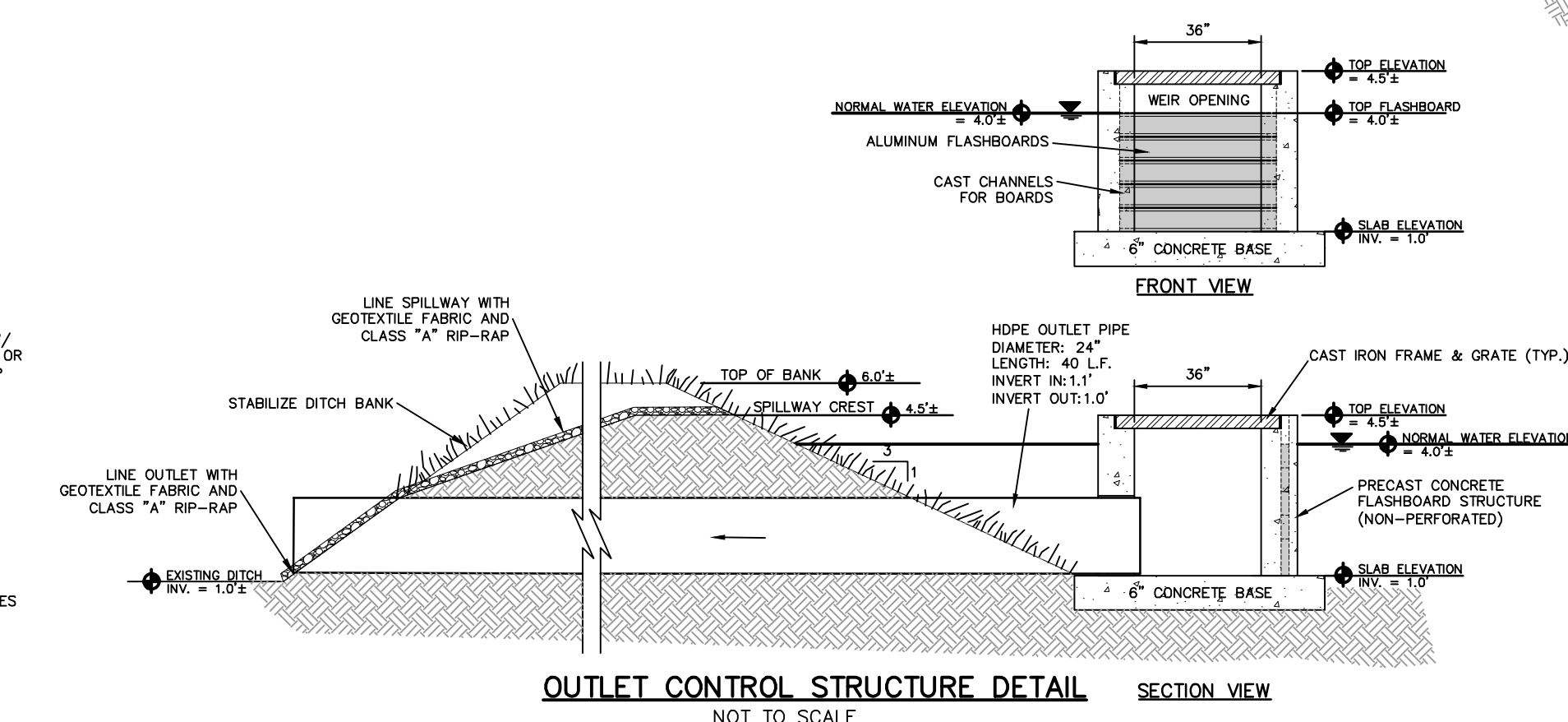
1. INSTALL THREE (3) COIR FIBER BAFFLES IN SEEDMENT BASINS AT DRAINAGE OUTLETS WITH A SPACING OF 1/4 THE BASIN LENGTH.
2. TWO (2) COIR FIBER BAFFLES SHALL BE INSTALLED IN SILT BASINS AND DAMS LESS THAN 20 FT. IN LENGTH WITH A SPACING OF 1/3 OF THE BASIN LENGTH.
3. TOP HEIGHT OF THE COIR FIBER BAFFLES SHALL NOT BE BELOW BASE OF EMERGENCY SPILLWAY ELEVATION.

**TYPICAL DEWATERING SETTLING BASIN DETAIL**

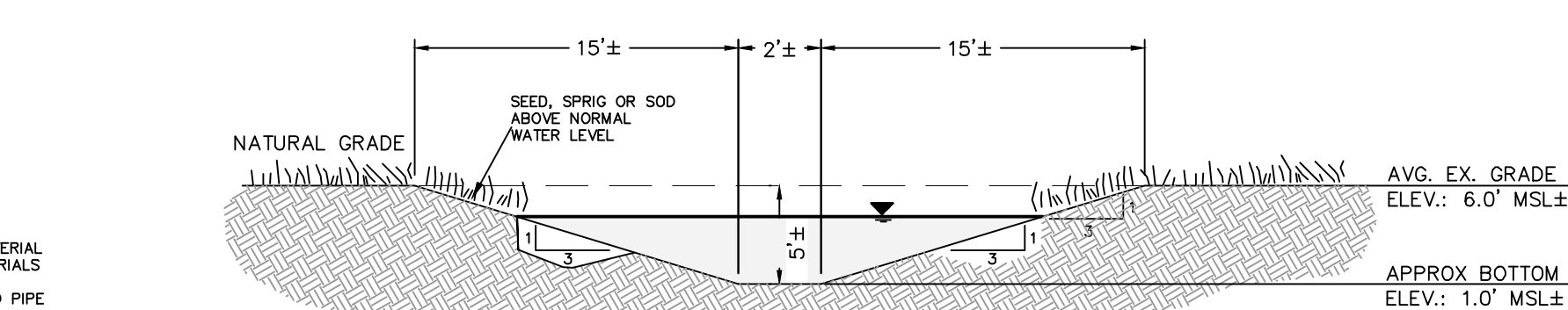
1. PLACE TEMPORARY SEDIMENT CONTROL MEASURES BELOW BASIN AS NEEDED. CLEAR, GRUB AND STRIP AREA. PROPERLY DISPOSE OF OBJECTIONABLE MATERIAL.
2. CONSTRUCT EMBANKMENT IN LIFTS OF 9 INCHES AND MACHINE COMPACT. ENSURE MATERIAL IS FREE OF ROOTS, WOOD AND OTHER OBJECTIONABLE MATERIALS.
3. SHAPE BASIN TO SPECIFIED DIMENSIONS.
4. PLACE OUTLET BARREL ON FIRM, SMOOTH IMPERVIOUS SOIL FOUNDATION. DO NOT USE SAND, GRAVEL, OR CRUSHED STONE. PLACE FILL MATERIAL AROUND PIPE SPILLWAY IN 4 INCH LIFTS AND COMPACT TO MATCH ADJACENT EMBANKMENT.
5. INSTALL SPILLWAY IN UNDISTURBED SOIL TO THE GREATEST EXTENT PRACTICABLE. ACHIEVE SPILLWAY DIMENSIONS PROVIDED. LINE SPILLWAY WITH NON-WOVEN GEOTEXTILE FILTER FABRIC AND CLASS "A" RIP-RAP.
6. WATER MUST DISCHARGE INTO BASIN IN A MANNER TO PREVENT EROSION. LINE INLET WITH GEOTEXTILE FABRIC AND CLASS "A" RIP-RAP STONE. USE TEMPORARY SLOPE DRAINS OR DIVERSION WITH OUTLET PROTECTION TO DIVERT RUNOFF TO THE UPPER END OF THE SEDIMENT BASIN.
7. INSTALL POROUS BAFFLES PER DETAILS PROVIDED.
8. AFTER ALL DEWATERING IS COMPLETE, BACKFILL THE BASIN AND LEVEL GRADE TO BLEND WITH ADJOINING AREAS. PROVIDE PERMANENT STABILIZATION.

**TYPICAL EARTHEN SCREENING BERM SECTION**

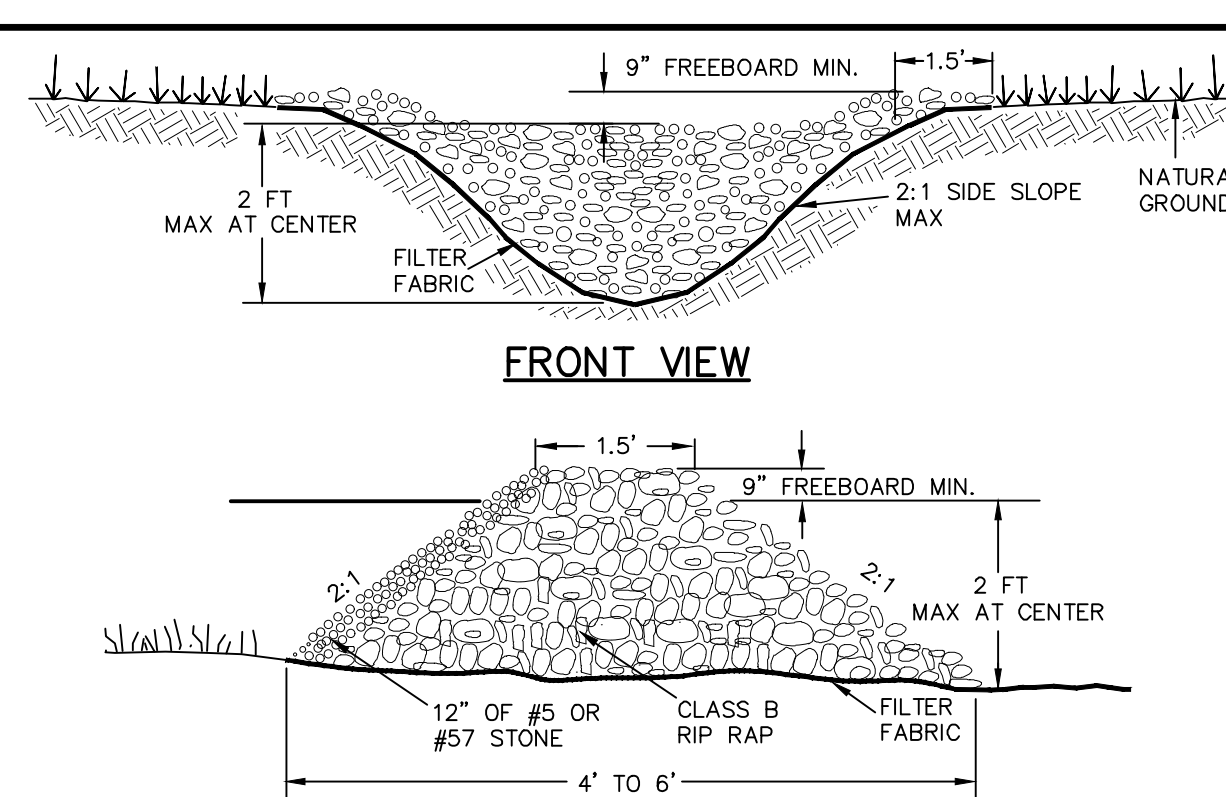
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**OUTLET CONTROL STRUCTURE DETAIL**

NOT TO SCALE

**TYPICAL DEWATERING RECHARGE DITCH SECTION**

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**SECTION VIEW****TEMPORARY STONE CHECK DAM CONSTRUCTION**

NOT TO SCALE LOCATIONS AS NOTED ON PLAN

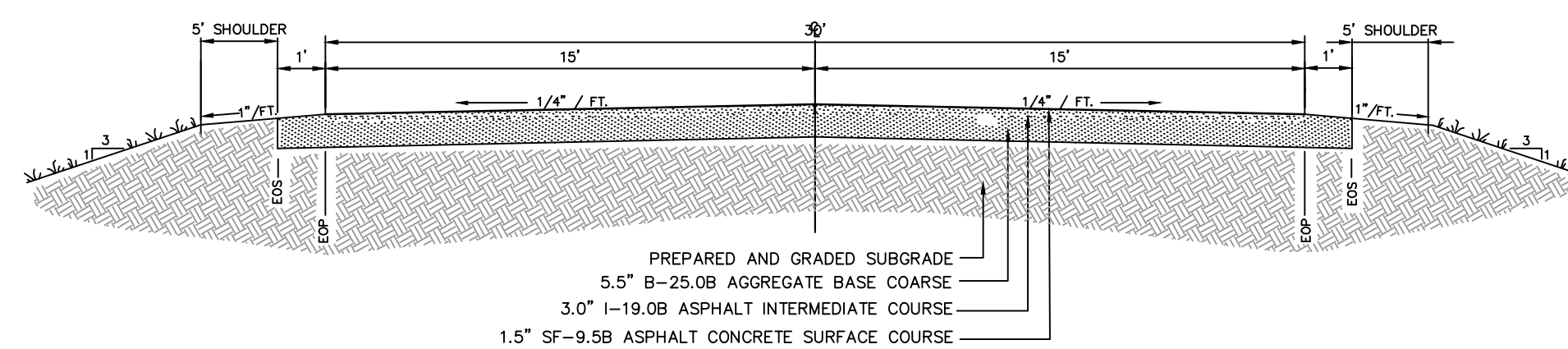
**TEMPORARY STONE CHECK DAM CONSTRUCTION SPECIFICATIONS:**

1. CLEAR, GRUB, AND STRIP THE AREA UNDER THE EMBANKMENT OF ALL VEGETATION AND ROOT MAT. REMOVE ALL SURFACE SOIL CONTAINING HIGH AMOUNTS OF ORGANIC MATTER AND STOCKPILE OR DISPOSAL OF IT PROPERLY. HAUL ALL OBJECTIONABLE MATERIAL TO THE DESIGNATED DISPOSAL AREA.
2. PLACE STONE TO THE LINES AND DIMENSIONS SHOWN IN THE PLAN ON A FILTER FABRIC FOUNDATION.
3. KEEP THE CENTER STONE SECTION AT LEAST 9 INCHES BELOW NATURAL GROUND LEVEL WHERE THE DAM ABUTS THE CHANNEL BANKS.
4. EXTEND STONE AT LEAST 1.5 FEET BEYOND THE DITCH BANK TO KEEP WATER FROM CUTTING AROUND THE ENDS OF THE CHECK DAM.
5. ALL CUT AND FILL SLOPES SHOULD BE 2:1 OR FLATTER.
6. PROTECT THE CHANNEL AFTER THE LOWEST CHECK DAM FROM HEAVY FLOW THAT COULD CAUSE EROSION.
7. MATERIAL USED IN THE STONE SECTION SHOULD BE A WELL-GRADED MIXTURE OF STONE WITH A 450 SIZE OF 9 INCHES (CLASS B EROSION CONTROL STONE IS RECOMMENDED) AND A MAXIMUM STONE SIZE OF 14 INCHES. THE STONE MAY BE MACHINE PLACED AND THE SMALLER STONES WORKED INTO THE Voids OF THE LARGER STONES. THE STONE SHOULD BE HARD, ANGULAR, AND HIGHLY WEATHER-RESISTANT.
8. STABILIZE THE EMBANKMENT AND ALL DISTURBED AREAS ABOVE THE SEDIMENT POOL AND DOWNSTREAM FROM THE TRAP IMMEDIATELY AFTER CONSTRUCTION.
9. ENSURE THAT OTHER AREAS OF THE CHANNEL, SUCH AS OULVERT ENTRANCES BELOW THE CHECK DAMS, ARE NOT SUBJECT TO DAMAGE OR BLOCKAGE FROM DISPLACED STONES.

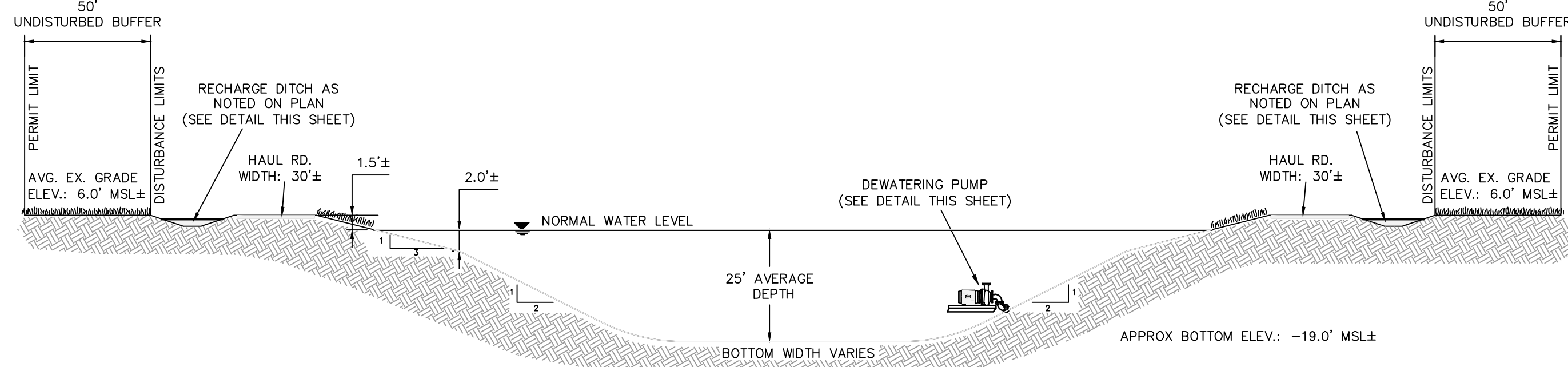
**MAINTENANCE OF TEMPORARY STONE CHECK DAMS:**

INSPECT CHECK DAMS AND CHANNELS AT LEAST WEEKLY AND AFTER EACH SIGNIFICANT (2" OR GREATER) RAINFALL EVENT AND REPAIR IMMEDIATELY. CLEAN OUT SEDIMENT, STRAW, LIMBS, OR OTHER DEBRIS WHEN NEEDED.

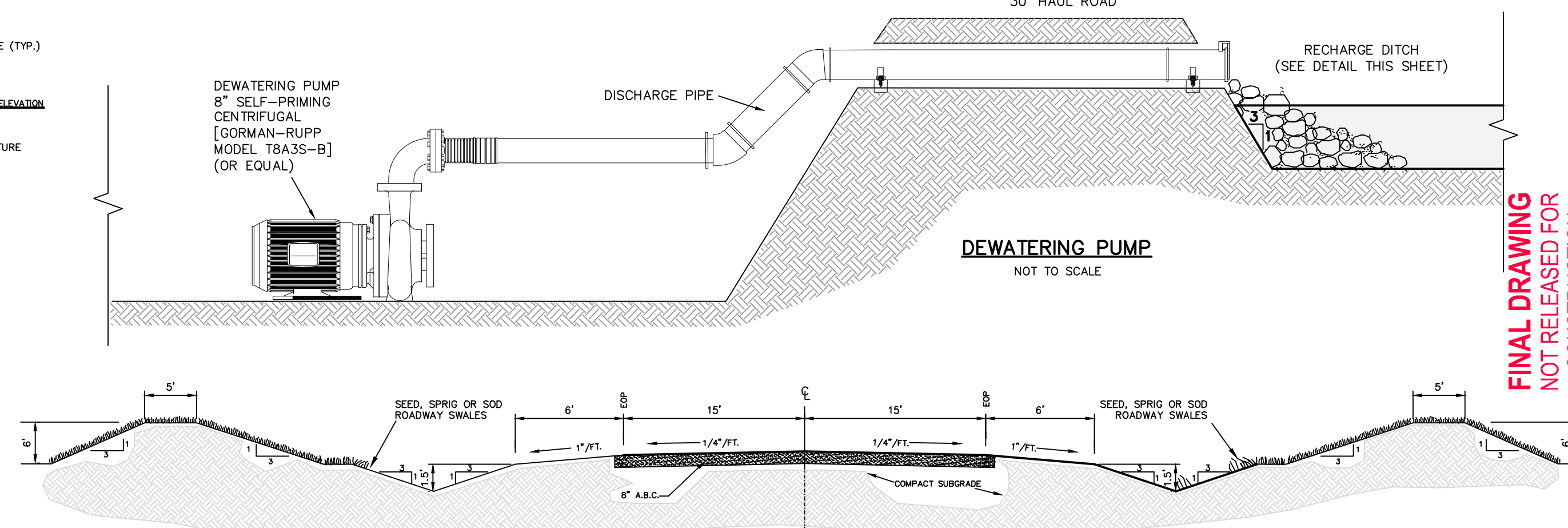
REMOVE SEDIMENT ACCUMULATION BEHIND THE DAMS AS NEEDED TO PREVENT DAMAGE TO CHANNEL VEGETATION, ALLOW THE CHANNEL TO DRAIN THROUGH THE STONE CHECK DAM, AND PREVENT LARGE FLOWS FROM CARRYING SEDIMENT OVER THE DAM. ADD STONES TO DAMS AS NEEDED TO MAINTAIN DESIGN HEIGHT AND CROSS SECTION.

**TYPICAL ENTRANCE ROADWAY SECTION**

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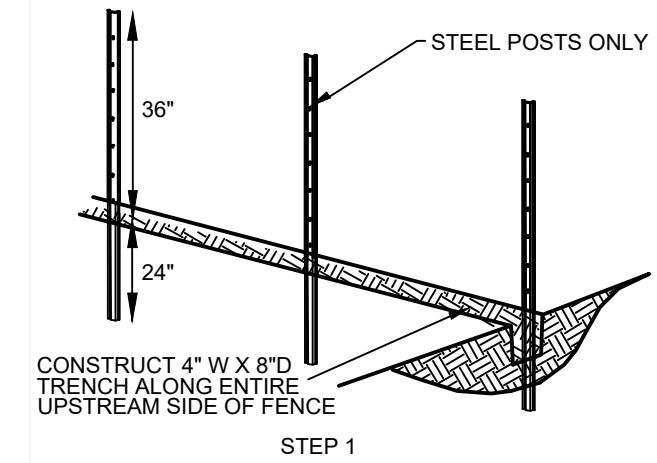
**TYPICAL MINE SECTION**

NOT TO SCALE

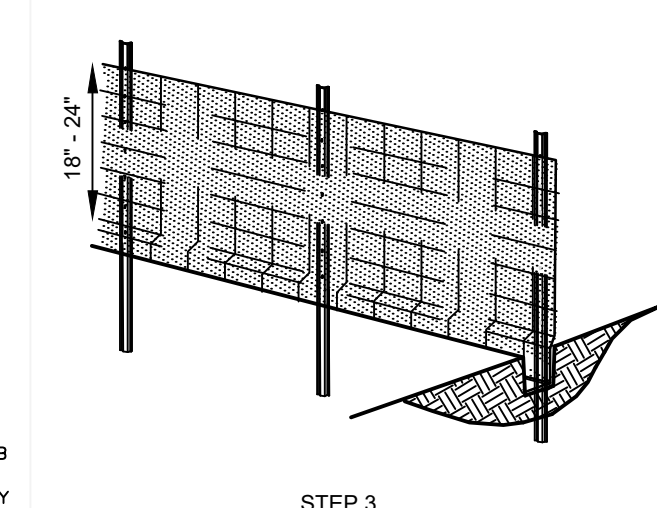
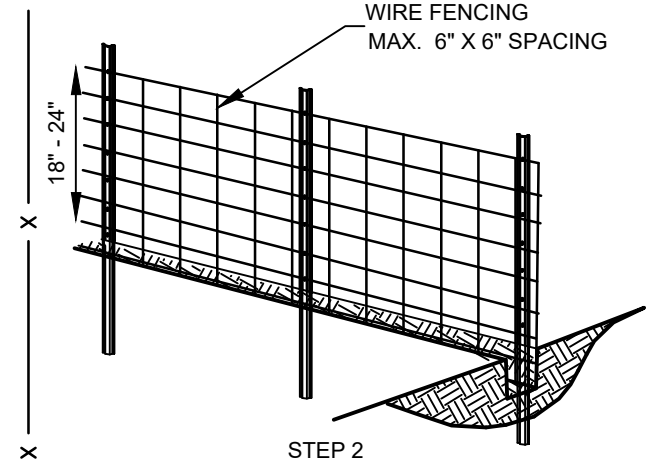
**TYPICAL GRAVEL HAUL ROAD SECTION**

NOT TO SCALE

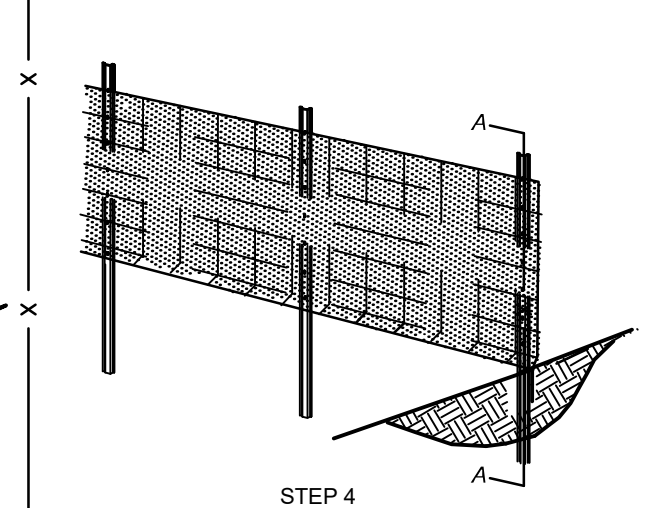
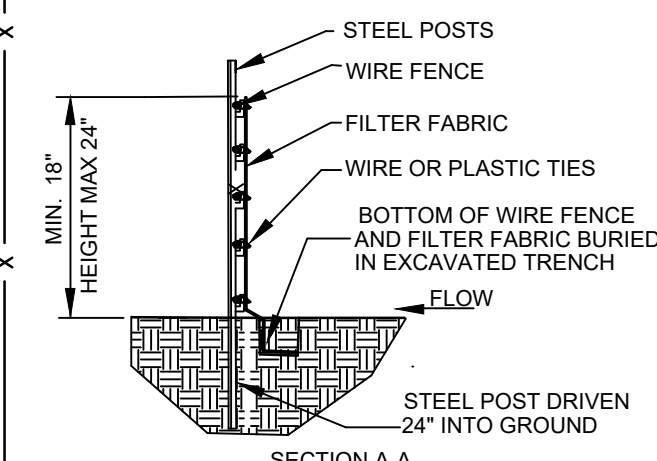
1. USE SYNTHETIC FILTER FABRIC OF AT LEAST 95% BY WEIGHT OF POLYOLEFINS OR POLYESTER, WHICH IS CERTIFIED BY THE MANUFACTURER AS CONFORMING TO THE REQUIREMENTS IN ASTM D 6611. FILTER FABRIC SHALL CONTAIN ULTRAVIOLET RAY INHIBITORS AND STABILIZERS TO PROVIDE A MINIMUM OF 6 MONTHS OF EXPECTED USABLE CONSTRUCTION LIFE AT A TEMPERATURE RANGE OF 0 TO 120°F.
2. CONSTRUCT THE SEDIMENT BARRIER OF STANDARD OR EXTRA STRENGTH SYNTHETIC FILTER FABRIC. ENSURE THAT THE HEIGHT OF THE SEDIMENT FENCE DOES NOT EXCEED 24 INCHES ABOVE THE GROUND SURFACE.
3. CONSTRUCT THE FILTER FABRIC FROM A CONTINUOUS ROLL CUT TO THE LENGTH OF THE BARRIER TO AVOID JOINTS. WHEN JOINTS ARE NECESSARY, SECURELY FASTEN THE FILTER CLOTH ONLY AT A SUPPORT POST WITH 4 FT MINIMUM OVERLAP TO THE NEXT POST.
4. SYNTHETIC FILTER FABRIC SHALL BE FASTENED SECURELY TO EACH FENCE POST WITH MIN. 50 LB. TENSILE STRENGTH WIRE OR ZIP TIES AT TOP, MID-SECTION AND BOTTOM. FABRIC HEIGHT SHALL BE BETWEEN 18" MIN. TO 24" MAX. ABOVE GROUND LEVEL ON THE UPSLOPE SIDE OF THE POSTS. EXTRA STRENGTH FILTER FABRIC W/8" POST SPACING SHALL BE SECURELY FASTENED DIRECTLY TO POSTS.
5. 12 INCHES OF FILTER FABRIC SHALL BE BURIED IN AN EXCAVATED TRENCH APPROXIMATELY 4 INCHES WIDE AND 8 INCHES DEEP ALONG THE PROPOSED LINE OF POSTS AND IMMEDIATELY SHOULD THE FABRIC COLLAPSE, TEAR, DECOMPOSE OR BECOME INEFFECTIVE, REPLACE IT PROMPTLY.
6. SILT FENCE SHALL BE INSPECTED AT LEAST ONCE A WEEK & AFTER EACH RAINFALL EVENT, MAKE ANY REPAIRS IMMEDIATELY. SHOULD THE FABRIC COLLAPSE, TEAR, DECOMPOSE OR BECOME INEFFECTIVE, REPLACE IT PROMPTLY.
7. REMOVE SEDIMENT DEPOSITS AS NECESSARY TO PROVIDE ADEQUATE STORAGE VOLUME FOR THE NEXT RAIN AND TO REDUCE PRESSURE ON THE FENCE. TAKE CARE TO AVOID UNDERMINING THE FENCE DURING CLEANOUT.
8. REMOVE ALL FENCING MATERIALS AND UNSTABLE SEDIMENT DEPOSITS AND BRING THE AREA TO GRADE AND STABILIZE IT AFTER THE CONTRIBUTING DRAINAGE AREA HAS BEEN PROPERLY STABILIZED.

**STEP 1**

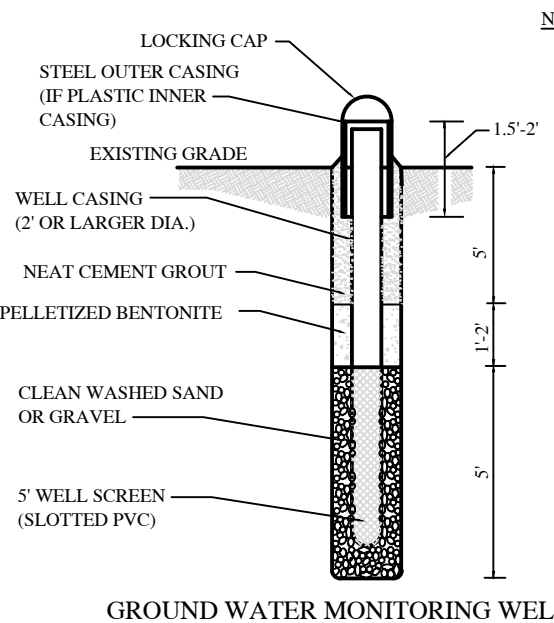
FASTEN THE FILTER FABRIC TO THE UPSTREAM SIDE OF POSTS OR WIRE FENCE IF UTILIZED. EXTEND FABRIC 8" DOWN & 4" FORWARD ALONG THE TRENCH.

**STEP 3****STEP 2**

BACKFILL THE TRENCH AND COMPACT THE SOIL FIRMLY TO ANCHOR THE BOTTOM OF THE SILT FENCE. BURIED FABRIC SHALL NOT BE VISIBLE.

**STEP 4****TYPICAL SILT FENCING DETAIL**

NOT TO SCALE LOCATION AS NOTED ON PLAN

**NOTES:**

1. BOREHOLE TO BE SIX INCHES LARGER THAN OUTSIDE DIA. OF CASING.
2. CASING AND SCREEN TO BE CENTERED IN BOREHOLE.
3. TOP OF WELL SCREEN SHOULD NOT BE ABOVE MEAN HIGH SEASONED WATER LEVEL.
4. CASING AND SCREEN MATERIAL TO BE SCH. 40 PVC.
5. WELL HEAD TO BE LABELED WITH HIGHLY VISIBLE WARNING SAYING: "WELL IS FOR MONITORING AND NOT CONSIDERED SAFE FOR DRINKING".
6. WELL TO BE AFFORDED REASONABLE PROTECTION AGAINST DAMAGE AFTER CONSTRUCTION.

Bissell Professional Group  
Firm License # C-945  
P.O. Box 108  
Rt. 1, Box 108  
Kitty Hawk, North Carolina 27949  
Tel: (252) 281-7900  
Fax: (252) 281-7900

**BISSELL**  
PROFESSIONAL GROUP

Engineers, Planners, Surveyors  
and Environmental Specialists

**TYPICAL CONSTRUCTION NOTES AND DETAILS****BALANCE TRACT MINE**

PROJECT

BY

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**MINE DEVELOPMENT PLANS**

PROJECT

BY

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CAD FILE: 472500M1

PROJECT NO: 4725

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PROJECT NO: 4725



ROY COOPER  
*Governor*

DIONNE DELLI-GATTI  
*Secretary*

BRIAN WRENN  
*Director*



NORTH CAROLINA  
*Environmental Quality*

June 4, 2021

Daniel Clay Cartwright  
Allied Properties, LLC  
417 Caratoke Hwy., Unit D  
Moyock, NC 27958

RE: Ballance Tract Mine  
Mining Permit No. 27-55  
Currituck County  
Pasquotank River Basin

Dear Mr. Cartwright:

The application for a mining permit for the above referenced mine site has been found to meet the requirements of G.S. 74-51 of The Mining Act of 1971. As we have received the required security to cover this application, I am enclosing the mining permit.

The conditions of Mining Permit No. 27-55 were based primarily upon information supplied in the application with conditions added as necessary to ensure compliance with The Mining Act of 1971. G.S. §74-65 states that the issuance of a mining permit does not supersede or otherwise affect or prevent the enforcement of any zoning regulation or ordinance duly adopted by an incorporated city or county or by any agency or department of the State of North Carolina.

As a reminder, your permitted acreage at this site is 99.87 acres and the amount of land you are approved to disturb is 82.85 acres, as indicated in the application and on the mine map received December 16, 2020.

Please review the permit and contact Adam Parr, Assistant State Mining Specialist, at (919) 707-9220 of any objection or questions concerning the terms of the permit.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Miller".

David Miller, PE  
State Mining Engineer

DM/ap

Enclosures

cc: Mr. Samir Dumpor, PE  
Mr. William Gerringer-DOL, Mine and Quarry Bureau, w/o enclosures



**DEPARTMENT OF ENVIRONMENTAL QUALITY****DIVISION OF ENERGY, MINERAL AND LAND****RESOURCES****LAND QUALITY SECTION****PERMIT**

For the operation of a mining activity

In accordance with the provisions of GS §74-46 through 68, “The Mining Act of 1971,” Mining Permit Rule 15A NCAC 5 B, and other applicable laws, rules, and regulations

Permission is hereby granted to:

APVA, LLC

Ballance Tract Mine

Currituck County - Permit No. 27-55

for the operation of a

Sand Mine

Which shall provide that the usefulness, productivity and scenic values of all lands and waters affected by this mining operation will receive the greatest practical degree of protection and restoration.

Attachment: 4-Ballance Mine State Permit (PB 21-06 Ballance Mine)



In accordance with the application for this mining permit, which is hereby approved by the Department of Environmental Quality, hereinafter referred to as the Department, and in conformity with the approved Reclamation Plan attached to and incorporated as part of this permit, provisions must be made for the protection of the surrounding environment and for reclamation of the land and water affected by the permitted mining operation. This permit is expressly conditioned upon compliance with all the requirements of the approved Reclamation Plan. However, completed performance of the approved Reclamation Plan is a separable obligation, secured by the bond or other security on file with the Department, and may survive the revocation or suspension of this permit.

This permit is not transferable by the permittee with the following exception: If another operator succeeds to the interest of the permittee in the permitted mining operation, by virtue of a sale, lease, assignment or otherwise, the Department may release the permittee from the duties imposed upon him by the conditions of his permit and by the Mining Act with reference to the permitted operation, and transfer the permit to the successor operator, provided that both operators have complied with the requirements of the Mining Act and that the successor operator agrees to assume the duties of the permittee with reference to reclamation of the affected land and posts a suitable bond or other security.

In the event that the Department determines that the permittee or permittee's successor is not complying with the Reclamation Plan or other terms and conditions of this permit or is failing to achieve the purposes and requirements of the Mining Act, the Department may give the operator written notice of its intent to modify, revoke or suspend the permit, or its intent to modify the Reclamation Plan as incorporated in the permit. The operator shall have right to a hearing at a designated time and place on any proposed modification, revocation, or suspension by the Department. Alternatively, and in addition to the above, the Department may institute other enforcement procedures authorized by law.

#### I. Definitions. GS §74-49.

Wherever used or referred to in this permit, unless the context clearly indicates otherwise, terms shall have the same meaning as supplied by the Mining Act, GS §74-49.

#### II. Permit History and Modification Summary. GS §74-51 and §74-52.

June 4, 2021: This permit has been issued to APVA, LLC.

This permit is valid for the life of the site or life of lease, if applicable, as defined by Session Law 2017-209 and has no expiration date. However, all provisions of GS §74-51 and GS §74-52 still apply for new, transferred, and modified mining permits.

#### III. Operating Conditions. GS §74-51.

##### 1. Wastewater and Quarry Dewatering.

- A. Any wastewater processing or mine dewatering shall be in accordance with the permitting requirements and rules promulgated by the N.C. Environmental Management Commission.
- B. Any stormwater runoff from the affected areas at the site shall be in accordance with any applicable permit requirements and regulations promulgated by the Environmental Protection Agency and enforced by the N.C. Environmental Management Commission. It shall be the permittee's responsibility to contact the Stormwater Program to secure any necessary stormwater permits or other approval documents.

2. Air Quality and Dust Control.

- A. Any mining process producing air contamination emissions shall be subject to the permitting requirements and rules promulgated by the N.C. Environmental Management Commission and enforced by the Division of Air Quality.
- B. During mining operations, water trucks or other means that may be necessary shall be utilized to prevent dust from leaving the permitted area.

3. Buffer Zones.

- A. Sufficient buffer (minimum 50 foot undisturbed) shall be maintained between any affected land and any adjoining waterway or wetland to prevent sedimentation of that waterway or wetland from erosion of the affected land and to preserve the integrity of the natural watercourse or wetland.
- B. Any mining activity affecting waters of the State, waters of the U. S., or wetlands shall be in accordance with the requirements and regulations promulgated and enforced by the N. C. Environmental Management Commission.

4. Erosion and Sediment Control.

- A. Adequate mechanical barriers including but not limited to diversions, earthen dikes, sediment check dams, sediment retarding structures, rip rap pits, or ditches shall be provided in the initial stages of any land disturbance and maintained to prevent sediment from discharging onto adjacent surface areas or into any lake, wetland, or natural watercourse in proximity to the affected land.
- B. All drainage from the affected areas around the mine excavations shall be diverted internal to said excavations.
- C. Mining activities, including dewatering activities and including the installation and maintenance of the approved sediment basins and associated diversion channels, shall occur as indicated on the Mine Maps received December 16, 2020, and the supplemental information received on May 4, 2021.

5. Permanently Marked Boundaries.

All affected area boundaries (82.85 acres) shall be permanently marked at the site on 100-foot intervals unless the line of sight allows for larger spacing intervals.

6. Graded Slopes and Fills.

The angle for graded slopes and fills shall be no greater than the angle, which can be retained by vegetative cover or other adequate erosion control measure, structure, or device. In any event, exposed slopes or any excavated channels, the erosion of which may cause off-site damage because of sedimentation, shall be planted, or otherwise provided with ground cover, devices, or structures sufficient to restrain such erosion.

7. Surface Drainage.

The affected land shall be graded so as to prevent collection of pools of water that are, or likely to become, noxious or foul. Necessary structures such as drainage ditches or conduits shall be constructed or installed when required to prevent such conditions.

8. Visual Screening.

Existing vegetation or vegetated earthen berms shall be maintained between the mine and public thoroughfares whenever practical to screen the operation from the public.

9. Buffer Between Mining Permit Boundaries and/or Right-of-ways.

Sufficient buffer, as shown on the mine maps Mine Maps received December 16, 2020, and the supplemental information received on May 4, 2021, shall be maintained between any excavation and any mining permit boundary to protect adjacent property.

10. Refuse Disposal.

- A. No on-site disposal of refuse or other solid waste that is generated outside of the mining permit area shall be allowed within the boundaries of the mining permit area unless authorization to conduct said disposal has first been obtained from both the Division of Waste Management and the Division of Energy, Mineral and Land Resources, Department of Environmental Quality. The method of disposal shall be consistent with the approved reclamation plan.
- B. Mining refuse as defined by GS §74-49 (14) of The Mining Act of 1971 generated on-site and directly associated with the mining activity may be disposed of in a designated refuse area. All other waste products must be disposed of in a disposal facility approved by the Division of Waste Management. No petroleum products, acids, solvents or their storage containers or any other material that may be considered hazardous shall be disposed of within the permitted area.
- C. For the purposes of this permit, the Division of Energy, Mineral and Land Resources considers the following materials to be "mining refuse" (in addition to those specifically listed under GS §74-49 (14) of the N.C. Mining Act of 1971):
  - i. on-site generated land clearing debris.
  - ii. conveyor belts.
  - iii. wire cables.
  - iv. v-belts.
  - v. steel reinforced air hoses.
  - vi. drill steel.
- D. If mining refuse is to be permanently disposed within the mining permit boundary, the following information must be provided to and approved by the Division of Energy, Mineral and Land Resources prior to commencement of such disposal:
  - i. the approximate boundaries and size of the refuse disposal area.
  - ii. a list of refuse items to be disposed.
  - iii. verification that a minimum of 4 feet of cover will be provided over the refuse.
  - iv. verification that the refuse will be disposed at least 4 feet above the seasonally high-water table; and,
  - v. verification that a permanent vegetative groundcover will be established.

IV. Annual Reclamation Report and Annual Operating Fee Submittal. GS §74-55.

An Annual Reclamation Report and Annual Operating Fee of \$400.00 shall be submitted to the Department by September 1 of each year until reclamation is completed and approved for release by the Department.

V. Prior Approval Required for Plan Modification. GS §74-52.

The operator shall notify the Department in writing of the desire to delete, modify or otherwise change any part of the mining, reclamation, or erosion/sediment control plan contained in the approved application for a mining permit or any approved revision to it. Approval to implement such changes must be obtained from the Department prior to on-site implementation of the revisions.

VI. Bonding. GS §74-54.

The security, which was posted pursuant to GS §74-54 in the form of a \$148,500.00 Irrevocable Standby Letter of Credit, is sufficient to cover the operation as indicated in the approved application. This security must remain in force for this permit to be valid. The total affected land shall not exceed the bonded acreage.

VII. Archaeological Resources. GS §70-3.

- A. Authorized representatives of the Division of Archives and History shall be granted access to the site to determine the presence of significant archaeological resources.
- B. Pursuant to GS §70-3, "The Unmarked Human Burial and Human Skeletal Remains Protection Act," should the operator or any person in his employ encounter human skeletal remains, immediate notification shall be provided to the county medical examiner and the chief archaeologist, North Carolina Division of Archives and History.

VIII. Approved Reclamation Plan. GS §74-53.

The Mining Permit incorporates this Reclamation Plan, the performance of which is a condition on the continuing validity of that Mining Permit. Additionally, the Reclamation Plan is a separable obligation of the permittee, which continues beyond the terms of the Mining Permit.

To comply with GS §74-53 the approved plan will provide:

1. Minimum Standards.

- A. The final slopes in all excavations in soil, sand, gravel, and other unconsolidated materials shall be at such an angle as to minimize the possibility of slides and be consistent with the future use of the land.
- B. Provisions for safety to persons and to adjoining property must be provided in all excavations in rock.
- C. All overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land.
- D. No small pools of water shall be allowed to collect or remain on the mined area that are, or are likely to become noxious, odious, or foul.
- E. The revegetation plan shall conform to accepted and recommended agronomic and reforestation practices as established by the North Carolina Agricultural Experiment Station and the North Carolina Forest Service.

- F. Permittee shall conduct reclamation activities pursuant to the Reclamation Plan herein incorporated. These activities shall be conducted according to the time schedule included in the plan, which shall to the extent feasible provide reclamation simultaneous with mining operations and in any event, provide reclamation at the earliest practicable time after completion or termination of mining on any segment of the permit area and shall be completed within two years after completion or termination of mining.

2. Reclamation Conditions.

- A. Provided further, and subject to the Reclamation schedule, the planned reclamation shall be to restore the mine excavation to a lake area and to grade and revegetate the adjacent disturbed areas.
- B. The specifications for surface gradient restoration to a surface suitable for the planned future use are as follows:
- i. The lake area shall be excavated to maintain a minimum water depth of four feet measured from the low water table elevation.
  - ii. The side slopes to the lake excavation shall be graded to a 3 horizontal to 1 vertical or flatter to the water line and 2 horizontal to 1 vertical or flatter below the water line.
  - iii. Any settling ponds or sediment basins shall be backfilled and stabilized.
  - iv. Any areas used for waste piles, screening, stockpiling, or other processing shall be leveled and smoothed.
  - v. No contaminants shall be permanently disposed of at the mine site. On-site disposal of waste shall be in accordance with Operating Condition Nos. III.10.A through III.10.D.
  - vi. The affected land shall be graded to prevent the collection of noxious or foul water.

3. Revegetation Plan.

After site preparation, all disturbed land areas shall be revegetated as per the Revegetation Plan approved by Dylan Lloyd on December 3, 2020 or the following:

Whenever possible, disturbed areas should be vegetated with native warm season grasses such as switch grass, Indian grass, bluestem, and gamma grass.

In addition, the permittee shall consult with a professional wildlife biologist with the N.C. Wildlife Resources Commission to enhance post-project wildlife habitat at the site.

4. Reclamation Plan.

Reclamation shall be conducted simultaneously with mining to the extent feasible. In any event, reclamation shall be initiated as soon as feasible after completion or termination of mining of any mine segment under permit. Final reclamation, including revegetation, shall be completed within two years of completion or termination of mining.

IX. Issuance and Modification Summary. GS §74-51.

This permit is hereby issued this 4th day of June, 2021 pursuant to GS §74-51.

By: , Poa

Brian Wrenn, Director  
Division of Energy, Mineral, and Land Resources  
By Authority of the Secretary  
Of the Department of Environmental Quality

Attachment: 4-Ballance Mine State Permit (PB 21-06 Ballance Mine)



CERTIFIED MAILNOTICE OF ISSUANCE OF  
MINING PERMIT

You have previously expressed an interest and/or are listed as an adjoining landowner in the application for a mining permit filed by Allied Properties, LLC to conduct mining activities off NC 168 (Caratoke Highway) in Currituck County. The mining permit (no. 27-55) was issued on June 4, 2021.

North Carolina law allows persons aggrieved by the issuance of a mining permit to contest the decision by filing a petition for a contested case in the Office of Administrative Hearings pursuant to N.C.G.S. 150B-23 of the Administrative Procedure Act (APA).

If you believe that you are an aggrieved party within the meaning of the APA, a petition for a contested case must be filed in writing with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within sixty (60) days of the issuance of the permit.

Requirements for filing and serving a Petition are set forth in Chapter 150B of the North Carolina General Statutes and Title 26 of the North Carolina Administrative Code. In accordance with NCGS 150B-23, the party who files the petition must serve a copy of the petition on the Department of Environmental Quality and the person who holds the permit. Additional information regarding requirements for filing a Petition and Petition forms may be accessed at <http://www.ncoah.com/> or by calling the OAH Clerk's Office at (919) 431-3000. In order to serve a petition on the **North Carolina Department of Environmental Quality** you must mail a copy of the petition to Mr. Bill Lane, Registered Agent and General Counsel, Department of Environmental Quality, 1601 Mail Service Center, Raleigh, NC 27699-1601.



Brian Wrenn  
Director  
Division of Energy, Mineral, and Land Resources  
North Carolina Department of Environmental Quality

This notice was mailed on \_\_\_\_\_.

\_\_\_\_\_  
Brenda Harris  
Mining Program Administrative Assistant

Attachment: 4-Ballance Mine State Permit (PB 21-06 Ballance Mine)

Dominion Energy Virginia  
10900 Nuckols Road, Suite 400  
Glen Allen, Virginia 23060  
DominionEnergy.com



**Reference #: TE020071006**

## **Consent Agreement for Right of Way Encroachment**

VIRGINIA ELECTRIC AND POWER COMPANY ("**Company**") and ALLIED PROPERTIES, LLC ("**Requestor**") enter into this Consent Agreement for Right of Way Encroachment ("**Agreement**") prepared by Company this 16 day of December, 2020.

Company is willing to grant to Requestor, this Agreement to encroach on, over and/or under a part of Company's easement(s) ("**Easement**" or "**Right of Way**") identified as:

- **Fentress-Shawboro #2 Corridor, Parcel Number 46X, [COR0515/46X]**
- **Hickory-Shawboro Corridor, Parcel Number 46, [COR0219/46]**
- **Line/Structure(s) #: 2192/225-226, 269/124-125**

The encroachment ("**Encroachment**") is described as:

- **30' Access Road Crossing**

The Encroachment as described above is located as follows:

**Caratoke Highway Moyock, NC 27958**

Company, under its Easement(s) identified above, hereby grants Requestor permission to install the Encroachment, described above, subject to the following terms and conditions hereinafter set forth.

1. The minimum distance required by the Occupational Safety and Health Administration ("OSHA") shall be maintained between electrical conductors and any part of the Encroachment or equipment used in the installation or maintenance of the Encroachment. Sag of conductors varies with changes in operating and ambient temperatures; therefore, required clearances will be based upon maximum sag. The minimum clearance shall be governed by the clearance required for the 230 kV line. For current voltage information see Exhibit "A". Voltage and conductor arrangement are subject to change. It is Requestor's responsibility to confirm voltage and location of conductors prior to installation, maintenance or repair of the Encroachment.
2. Company access to its facilities shall not be hampered at any time by the installation, use, maintenance or presence of the Encroachment. Company shall not be liable for damage to the Encroachment resulting from exercise of its Easement rights.



December 16, 2020

3. Permission for the Encroachment described in Exhibit(s) "B" and "C" does not include permission for storage on Company Easement of material or equipment related to the Encroachment.
4. No portion of any building, house, garage, porch, deck, shed, trailer, barn, playhouse, above-ground or in-ground swimming pool, dumpster or any other type of structure, temporary or permanent, shall be permitted on the Easement. **This includes, but is not limited to, any building projection or attachment such as roof overhang, gutters, garage lighting or window appurtenances. Portions of buildings and other structures found within Company's Easement(s) are required to be removed when discovered.**
5. Requestor shall restore any erosion or settling, within the Easement, related to the installation or maintenance of the Encroachment. Requestor shall comply with all state and local erosion and sedimentation control laws and shall not adversely affect grade elevations and water drainage patterns.
6. It is the Requestor's responsibility to notify Company of any damage to Company facilities by Requestor, its employees, contractors or agents. If any counterpoise (ground wire buried eighteen (18) to twenty-four (24) inches deep) is damaged, cut or severed, notify William Gatlin - Manager Field Transmission Lines, immediately so necessary repairs can be made.  
 Mobile: (434) 447-5506                      E-Mail: [william.gatlin@dominionenergy.com](mailto:william.gatlin@dominionenergy.com)
7. Requestor shall be responsible for all associated costs for the repairs of Company facilities (including but not limited to structures, guys, anchors or counterpoise) damaged by Requestor, his/her/their/its employees, contractors or agents.
8. If the Encroachment is determined to be unsafe by the Company at a future date, the unsafe condition shall be corrected or removed at Requestor's expense within forty-five (45) days after written notification from the Company. If not so corrected or removed by Requestor, the unsafe condition may be corrected or removed by the Company at Requestor's expense without liability by the Company for any resulting damage.
9. This Agreement in no way reduces the Company's rights under the Easement(s) identified above. The Company may at any time exercise its Easement rights in a way that conflicts or interferes with the Encroachment described above. Upon notice from the Company, the Requestor will promptly modify, rearrange or remove the Encroachment to enable the Company to exercise its Easement rights without conflict or interference with the Encroachment. Requestor will be responsible for the cost of any such modification, rearrangement or removal. If Requestor fails to so modify, rearrange or remove the Encroachment within forty-five (45) days after notice from the Company to do so, the Company may modify, rearrange or remove the Encroachment without liability for damage

December 16, 2020

resulting therefrom, and Requestor shall promptly reimburse the Company for the cost of such modification, rearrangement or removal.

10. Requestor shall begin physical installation of the Encroachment within one (1) year of the date of execution of this Agreement. If installation does not begin within that period, this Agreement shall become invalid. A new Encroachment application must be submitted before further consideration and will be subject to a processing fee. For the avoidance of doubt, Company's permission for this Encroachment in no way implies or assures that Company will reissue an Agreement for this Encroachment in the future should this Agreement become invalid.
11. Requestor shall give at least five (5) days advance notice, except in emergencies, of any activities being performed within the Easement to Timothy Hindman, Right-of-Way Management Representative so that the Company, at its discretion, may have an inspector present while the work is in progress. **Requestor pays the costs of the inspector.**

Mobile: (757) 334-0119

E-Mail: Timothy.Hindman@dominionenergy.com

12. This Agreement provides Requestor only with approval to encroach on Company's electric transmission Easement. For the avoidance of doubt, Company's approval of this Encroachment in no way implies or assures that Company will grant Requestor's future request (if any) that Company quitclaim or subordinate in favor of Requestor any portion of Company's electric transmission Easement.
13. Requestor, its/their heirs, successors, assigns, contractors or subcontractors hereby agree to indemnify and save harmless Company, its officers, agents and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of or growing out of the Agreement hereby granted, except when such claims and demands are caused solely by the negligence or willful misconduct of Company, its agents, employees, successors or assigns.
14. Before Requestor or its contractors, subcontractors and assigns enter upon Company's Easement, each shall obtain or keep, in full force and effect, with respect to its/their work within the Company's Easement, with insurance companies authorized to do business in the State of North Carolina, the following insurance:
  - a) Workers compensation insurance as required by the statutory benefit laws of the State of North Carolina or approved self-insurance and employers liability insurance with limits of at least \$1,000,000.00 bodily injury by accident and \$1,000,000.00 each employee for bodily injury by disease.
  - b) Commercial general liability insurance with coverage limits of at least \$2,000,000.00 each occurrence, \$2,000,000.00 aggregate. Such insurance shall include, but not be limited to, specific coverage for contractual liability encompassing the previously referenced indemnity and liability requirements.

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c) Automobile liability insurance covering bodily injury and property damage with a total limit of at least \$2,000,000.00 per accident. Such insurance shall cover liability arising out of any automobile (including owned, hired and non-owned automobiles).

The insurance required in paragraph (b) above shall: (1) name Company, its officers, directors and employees as an additional insured; (2) be primary coverage with respect to any liability coverage carried by the Company; and (3) provide for claims by one insured against another such that, except for the limits of insurance, the insurance shall apply separately to each insured against whom a claim is made or suit is brought.

Requestor and Requestor's contractors, subcontractors and assigns waive, and will require their insurers to waive, all rights of recovery against Company for damages to the extent these damages are covered by the insurance required to be maintained pursuant to the insurance requirements.

Before Requestor, Requestor's contractors, subcontractors and assigns enter upon Company Easement, and thereafter upon the renewal of their insurance policies, Requestor, Requestor's contractors, subcontractors and assigns, shall provide certificates of insurance to Company evidencing the coverage and limits required by this Agreement and that Company, its officers, directors and employees are an additional insured.

Failure of Company to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Company to identify a deficiency from evidence that is provided shall not be construed as a waiver of the obligation of Requestor, Requestor's contractors, subcontractors and assigns to maintain such insurance.

Requestor, Requestor's contractors, subcontractors and assigns, or their respective agents, representatives or insurers shall provide thirty (30) days prior written notice of cancellation to Company, except for non-payment of premium to which ten (10) days notice shall apply.

15. Requestor shall notify North Carolina 811 in a timely manner in advance of construction to allow existing nearby underground utility conflicts to be identified.
16. Unless otherwise specified in this Agreement, the site plans/drawings prepared by Bissell Professional Group, entitled "Ballance Tract Mine Mine Development Plans", sheet numbers 4 & 5, dated 11/11/20, shall be strictly adhered to. See Exhibit(s) "B" and "C".
17. Requestor may remove topsoil and gravel from portions of the Easement not occupied by Company facilities. In such cases Requestor must maintain a minimum island of undisturbed material with a fifty (50) foot radius on all sides of said facilities. The slope ratios, normally 3:1 or less, and transmission line access lanes must be maintained.
18. Motor vehicles may be parked on Company Easement provided that:
  - a. They do not exceed a height of 13 feet 6 inches.
  - b. They are not house, office or construction trailers.
  - c. They do not carry explosives or flammable cargo.

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- d. They are operative and the parking is of a transient nature.
  - e. They have current inspection decals and do not violate any local ordinances.
19. The proposed driveway/roadway shall follow the existing ground line contours. No more than one 1 foot of fill may be placed on the Easement.
20. Requestor shall provide a NCDOT standard entrance gutter to the Easement, in the curb and gutter on both sides of the roadway. Vehicular access to the Easement shall be a minimum 16 feet wide with a maximum 10% grade.
21. Should it be necessary to verify the final grade of the proposed cut and/or fill, then it will be the responsibility of Requestor to reimburse Company for all actual costs. If the verification reveals that the cut/fill/grading was not done as approved, then Requestor is responsible for all costs involved with correcting the problem(s).
22. There shall be no grading, excavation, filling or other construction activities within fifty (50) feet of any Company structure, foundation, guy, anchor or any other Company facilities.
23. Clean fill material may be placed on right-of-way to within fifty (50) feet of any existing or proposed transmission structure. In all cases, no fill will be allowed until the proposal is reviewed by the Electric Transmission Right of Way Management to insure proper grade and operating clearances.
24. In all cases, spoil material is prohibited and will not be permitted on Company Easement.
25. Material storage within the right-of-way will be allowed provided that:
- a. It is non-flammable.
  - b. It may be readily moved to avoid conflicts with Company facilities, Easement maintenance or future construction.
  - c. It is stored to a maximum height of ten (10) foot on both side of Easement between Easement boundary lines and the adjacent transmission line conductor, but no closer than ten (10) foot to a vertical plane projected down from that conductor.
  - d. It is not within fifty (50) feet of any structure or any other Company facility and does not interfere with access to the Easement.
  - e. Requestor shall remove any materials upon forty-five (45) days written notice from the Company.
  - f. Trash receptacles and dumpsters shall not be permitted on the Easement.
  - g. No dumping of household refuse, motor vehicles, tires, appliances, brush or any other debris or waste material, shall be permitted on the Easement.
26. Requestor is responsible for acquiring, from the owners of the underlying fee simple or otherwise, any additional property rights necessary for the Encroachment location. For the avoidance of doubt, Company does not convey, or otherwise transfer to Requestor

December 16, 2020

any Easement right that Company may hold nor does Company make any representation or warranty as to the status or availability of any rights that may be required for Requestor to make use of the Encroachment or Easement.

27. It is the responsibility of the Requestor to ensure that all contractors or sub-contractors are aware, informed of and abide by these conditions.
28. The above conditions only apply as specific to and set forth in this Agreement and do not set a precedent for further Agreements.
29. All notices, requests, demands and other communications required to be given, (except as otherwise indicated) shall be deemed to have been duly given if in writing and mailed, as follows:

If to  
Requestor: Allied Properties, LLC  
417 Caratoke Highway, Unit D  
Moyock, NC 27958

If to  
Company: Dominion Energy Virginia  
Highwoods One, Suite 400  
10900 Nuckols Road  
Glen Allen, Virginia 23060  
Attention: Electric Transmission Rights-of-Way

This Agreement is granted only to Requestor. It is not an interest in real property; it does not run with the underlying land or benefit any successors in interest to the underlying land, and it may not be assigned or transferred to anyone else without the prior written approval of Company, which Company may withhold in its sole discretion. [If Requestor is not the owner of the property on which the Encroachment is to be located; it is Requestor's responsibility to obtain any and all necessary permission(s) or easement(s) from the property owner(s) for the Encroachment prior to installation.]

For this Agreement to become effective, Company must be in possession of **both** the executed Agreement **and the required processing fee**.

Requestor must return the executed Agreement to Company by 01/31/2021, to:

Dominion Energy Virginia  
10900 Nuckols Road, Suite 400  
Glen Allen, Virginia 23060  
Attention: Margaret Hilbert

Additional contact: Dominion Energy Virginia at 1-800-215-8032 or e-mail at [ETROW@dominionenergy.com](mailto:ETROW@dominionenergy.com).



December 16, 2020

Company, Authorized Representative, will execute and finalize Agreement upon return of Agreement executed by Requestor or its Authorized Representative. Requestor will be provided a fully executed copy of Agreement for their records.

In consideration of this Agreement granted by Company for the above-described Encroachment, Requestor hereby agree(s) to the terms and conditions stated in the foregoing Agreement.

Company and Requestor hereby cause this Agreement to be executed by their duly Authorized Representative.

VIRGINIA ELECTRIC AND POWER COMPANY

By:

Fallon Madrid 1/15/21  
 Fallon Madrid Date  
 Supervisor, Rights of Way Management  
 Electric Transmission  
 Authorized Representative

ALLIED PROPERTIES, LLC

By:

[Signature] 12-28-2020  
 Signature Date

JUSTIN O'D  
 Print Name

MANAGING member  
 Print Title

Attachment: 5-Permits and Approvals (PB 21-06 Balance Mine)

ROY COOPER  
Governor

MICHAEL S. REGAN  
Secretary

BRIAN WRENN  
Director



March 18, 2021

APVA, LLC  
Attn: Justin M. Old, Agent  
417 Caratoke Hwy, Unit D  
Moyock, NC 27958

**Subject: State Stormwater Management Permit No. SW7210207  
Ballance Tract Mine  
Low Density Project  
Currituck County**

Dear Justin Old:

The Washington Regional Office received a complete, State Stormwater Management Permit Application for the subject project on February 19, 2021. Staff review of the plans and specifications has determined that the project, as proposed, complies with the Stormwater Regulations set forth in 15A NCAC 2H.1000 amended on January 1, 2017 (2017 Rules). We are hereby forwarding Permit No. SW7210207 dated March 18, 2021, for the construction of the built-upon areas (BUA) and vegetated conveyances associated with the subject project.

This permit shall be effective from the date of issuance until rescinded and the project shall be subject to the conditions and limitations as specified therein and does not supersede any other agency permit that may be required. Failure to comply with these requirements will result in future compliance problems. Please note that this permit is not transferable except after notice to and approval by the Division.

This cover letter, attachments, and all documents on file with DEMLR shall be considered part of this permit and is herein incorporated by reference.

If any parts, requirements, or limitations contained in this permit are unacceptable, you have the right to request an adjudicatory hearing by filing a written petition with the Office of Administrative Hearings (OAH). The written petition must conform to Chapter 150B of the North Carolina General Statutes and must be filed with the OAH within thirty (30) days of receipt of this permit. You should contact the OAH with all questions regarding the filing fee (if a filing fee is required) and/or the details of the filing process at 6714 Mail Service Center, Raleigh, NC 27699-6714, or via telephone at 919-431-3000, or visit their website at [www.NCOAH.com](http://www.NCOAH.com). Unless such demands are made this permit shall be final and binding.

If you have any questions concerning this permit, please contact Carl Dunn in the Washington Regional Office, at (252) 948-3959 or [carl.dunn@ncdenr.gov](mailto:carl.dunn@ncdenr.gov).

Sincerely,

William Carl Dunn, PE  
Division of Energy, Mineral and Land Resources

Enclosures: Attachment A – Designer's Certification Form  
Attachment B – Built-Upon Area Allocation  
Application Documents

cc: David Klebitz, PE – Bissell Professional Group ([davek@bissellprofessionalgroup.com](mailto:davek@bissellprofessionalgroup.com))  
Currituck County Inspections - Bill News ([Bill.Newns@CurrituckCountyNC.gov](mailto:Bill.Newns@CurrituckCountyNC.gov))  
Washington Regional Office Stormwater File



**STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF ENERGY, MINERAL AND LAND RESOURCES**

**STATE STORMWATER MANAGEMENT PERMIT**

**LOW DENSITY DEVELOPMENT**

In compliance with the provisions of Article 21 of Chapter 143, General Statutes of North Carolina as amended, and other applicable Laws, Rules, and Regulations promulgated and adopted by the North Carolina Environmental Management Commission, including 15A NCAC 02H.1000 amended on January 1, 2017 (2017 Rules) (the "stormwater rules"),

PERMISSION IS HEREBY GRANTED TO

*APVA, LLC*

*Ballance Tract Mine*

*Caratoke Hwy, Moyock, Currituck County*

FOR THE

construction, management, operation and maintenance of built-upon area (BUA) for a 24% low density project (the "low density area") discharging to Class NSW waters as outlined in the application, approved stormwater management plans, supplements, calculations, operation and maintenance agreement, recorded documents, specifications, and other supporting data (the "approved plans and specifications") as attached and/or on file with and approved by the Division of Energy, Mineral and Land Resources (the "Division" or "DEMLR"). The project shall be constructed, operated and maintained in accordance with these approved plans and specifications. The approved plans and specifications are incorporated by reference and are enforceable parts of this permit.

This permit shall be effective from the date of issuance until rescinded and shall be subject to the following specified conditions and limitations. The permit issued shall continue in force and effect until the permittee files a request with the Division for a permit modification, transfer, or rescission; however, these actions do not stay any condition. The issuance of this permit does not prohibit the Director from reopening and modifying the permit, revoking and reissuing the permit, or terminating the permit for cause as allowed by the laws, rules, and regulations contained in 15A NCAC 2H.1000 and NCGS 143-215.1 et.al.

1. **BUA REQUIREMENTS.** The maximum amount of BUA allowed for the entire project is 317,317 square feet. The BUA requirements and allocations for this project are as follows:



- a. **LOW DENSITY AREA BUA LIMITS.** The low density area, in the approved plans and specifications, must not exceed 24% per the requirements of the stormwater rules. Within this low density area, this permit approves a percent BUA of 24% and the construction of a total of 317,317 square feet of BUA.
  - b. **CAMA AECs.** Where a project or lot is located within CAMA's Area of Environmental Concern (AEC), the Division of Coastal Management (DCM) may calculate a different maximum BUA based on CAMA regulations. The more restrictive BUA limit will apply to the project.
2. **LOW DENSITY AREA REQUIREMENTS.** The low density area requirements for this project are as follows:
  - a. **LOW DENSITY AND CONVEYANCE DESIGN.** The low density area is permitted based on the design criteria presented in the sealed, signed and dated supplement and as shown in the approved plans and specifications. This low density area and conveyances must be provided and maintained at the design condition.
  - b. **PIPING.** Other than the piping shown on the approved plans, only minimal amounts of piping under driveways and roads is allowed within the low density area when it cannot be avoided. No additional piping is allowed.
  - c. **DISPERSED FLOW.** The low density area has maximized dispersed flow of stormwater runoff through vegetated areas and minimized the channelization of flow.
  - d. **VEGETATED CONVEYANCES.** Stormwater runoff that could not be released as dispersed flow may be transported by vegetated conveyances with minimum side slopes of 3:1 (H:V) designed to not erode during the peak flow from the 10-year storm event as defined in the stormwater rules and approved by the Division.
3. **STORMWATER OUTLETS.** This project does not propose any discharge points and therefore will not have the opportunity to cause erosion during the 10-year storm event.
4. **VEGETATED SETBACKS.** A 50-foot wide vegetative setback must be provided and maintained in grass or other vegetation adjacent to all surface waters as shown on the approved plans. The setback is measured horizontally from the normal pool elevation of impounded structures, from the top of bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline.
  - a. **BUA IN THE VEGETATED SETBACK.** BUA may not be added to the vegetated setback except as shown on the approved plans or in the following instances where the BUA has been minimized and channelizing runoff from the BUA is avoided:
    - i. Water dependent structures; and
    - ii. Minimal footprint uses such as poles, signs, utility appurtenances, and security lights that cannot practically be located elsewhere.

5. **RECORDED DOCUMENT REQUIREMENTS.** The stormwater rules require the following documents to be recorded with the Office of the Register of Deeds:
  - a. **ACCESS AND/OR EASEMENTS.** The entire stormwater conveyance system and maintenance accesses must be located in public rights-of-way, dedicated common areas that extend to the nearest public right-of-way, and/or permanent recorded easements that extend to the nearest public right-of-way for the purpose of inspection, operation, maintenance, and repair.
  - b. **OPERATION AND MAINTENANCE AGREEMENT.** The operation and maintenance agreement must be recorded with the Office of the Register of Deeds.
  - c. **FINAL PLATS.** The final recorded plats must reference the operation and maintenance agreement and must also show all public rights-of-way, dedicated common areas, and/or permanent drainage easements, in accordance with the approved plans.
6. **MODIFICATIONS.** No person or entity, including the permittee, shall alter any component shown in the approved plans and specifications. Prior to the construction of any modification to the approved plans, the permittee shall submit to the Director, and shall have received approval for modified plans, specifications, and calculations including, but not limited to, those listed below. For changes to the project that impact the certifications, a new or updated certification(s), as applicable, will be required and a copy must be submitted to the appropriate DEQ regional office upon completion of the modification.
  - a. Any modification to the approved plans and specifications, regardless of size including the BUA, details, etc.
  - b. Redesign or addition to the approved amount of BUA or to the drainage area.
  - c. Further development, subdivision, acquisition, lease or sale of any, all or part of the project and/or property area as reported in the approved plans and specifications.
  - d. Altering, modifying, removing, relocating, redirecting, regrading, or resizing of any component of the approved stormwater collection system and/or vegetative conveyance shown on the approved plan'
  - e. The construction of any allocated future BUA.
  - f. The construction of any permeable pavement, #57 stone area, public trails, or landscaping material to be considered a permeable surface that were not included in the approved plans and specifications.
  - g. Other modifications as determined by the Director.
7. **CONSTRUCTION.** During construction, erosion shall be kept to a minimum and any eroded areas of the on-site stormwater system will be repaired immediately.

- a. **PROJECT CONSTRUCTION, OPERATION AND MAINTNEANCE.** During construction, all operation and maintenance for the project and stormwater system shall follow the Erosion Control Plan requirements until the Sediment-Erosion Control devices are no longer needed.
  - b. **FINAL GRADING.** The vegetated areas and vegetated conveyances shall be entirely constructed and vegetated. Once the final grading is completed and the site is stabilized, the permittee shall provide and perform the operation and maintenance as outlined in the applicable section below.
8. **DESIGNER'S CERTIFICATION.** Upon completion of the project, the permittee shall determine if the project is in compliance with the approved plans and take the necessary following actions:
  - a. If the permittee determines that the project is in compliance with the approved plans, then within 45 days of completion, the permittee shall submit to the Division one hard copy and one electronic copy of the following:
    - i. The completed and signed Designer's Certification provided in Attachment A noting any deviations from the approved plans and specifications. Deviations may require approval from the Division;
    - ii. A copy of the recorded operation and maintenance agreement;
    - iii. Unless already provided, a copy of the recorded deed restrictions and protective covenants; and
    - iv. A copy of the recorded plat delineating the public rights-of-way, dedicated common areas and/or permanent recorded easements, when applicable.
  - b. If the permittee determines that the project is not in compliance with the approved plans, the permittee shall submit an application to modify the permit within 30 days of completion of the project or provide a plan of action, with a timeline, to bring the site into compliance.
9. **OPERATION AND MAINTENANCE.** The permittee shall provide and perform the operation and maintenance necessary, as listed in the signed operation and maintenance agreement to assure that all components of the permitted on-site stormwater system are maintained at the approved design condition. The approved operation and maintenance agreement must be followed in its entirety and maintenance must occur at the scheduled intervals.
  - a. **CORRECTIVE ACTIONS REQUIRED.** In the event that the low density area fails to meet the requirements of low density, the permittee shall take immediate corrective actions. This includes actions required by the Division and the stormwater rules such as the construction of additional or replacement on-site stormwater systems. These additional or replacement measures shall receive a permit from the Division prior to construction.
  - b. **MAINTENANCE RECORDS.** Records of maintenance activities must be kept and made available upon request to authorized personnel of the Division. The records will indicate the date, activity, name of person performing the work and what actions were taken.

10. **CURRENT PERMITTEE NAME OR ADDRESS CHANGES.** The permittee shall submit a completed Permit Information Update Application Form to the Division within 30 days to making any one or more of the following changes:
  - a. A name change of the current permittee;
  - b. A name change of the project;
  - c. A mailing address change of the permittee.
11. **TRANSFER.** This permit is not transferable to any person or entity except after notice to and approval by the Director. Neither the sale of the project and/or property, in whole or in part, nor the conveyance of common area to a third party constitutes an approved transfer of the permit.
  - a. **TRANSFER REQUEST.** The transfer request must include the appropriate application, documentation and the processing fee as outlined in 15A NCAC 02H.1045(2) and must be submitted upon occurrence of any one or more of the following events:
    - i. The sale or conveyance of the project and/or property area in whole or in part;
    - ii. Dissolution of the partnership, corporate, or LLC entity, subject to NCGS 55-14-05 or NCGS 57D-6-07 and 08;
    - iii. Bankruptcy;
    - iv. Foreclosure, subject to the requirements of Session Law 2013-121;
  - b. **TRANSFER INSPECTION.** Prior to transfer of the permit, a file review and site inspection will be conducted by Division personnel to ensure the permit conditions have been met and that the project and the on-site stormwater system complies with the permit conditions. Records of maintenance activities performed to date may be requested. Projects not in compliance with the permit will not be transferred until all permit and/or general statute conditions are met.
12. **COMPLIANCE.** The permittee is responsible for complying with the terms and conditions of this permit and the approved plans and specifications until the Division approves the transfer request.
  - a. **REVIEWING AND MONITORING FOR COMPLIANCE.** The permittee is responsible for verifying that the proposed BUA within each drainage area and for the entire project does not exceed the maximum amount allowed by this permit. The permittee shall review and routinely monitor the project to ensure continued compliance with the conditions of the permit, the approved plans and specifications.
  - b. **APPROVED PLANS AND SPECIFICATIONS.** A copy of this permit, approved plans, application, supplements, operation and maintenance agreement, all applicable recorded documents, and specifications shall be maintained on file by the permittee at all times.
  - c. **DIVISION ACCESS.** The permittee grants Division Staff permission to enter the property during normal business hours to inspect all components of the permitted project.



- d. ENFORCEMENT. Any individual or entity found to be in noncompliance with the provisions of a stormwater management permit or the requirements of the stormwater rules is subject to enforcement procedures as set forth in NCGS 143 Article 21.
- e. OBTAINING COMPLIANCE. The Director may notify the permittee when the permitted site does not meet one or more of the minimum requirements of the permit. Within the time frame specified in the notice, the permittee shall submit a written time schedule to the Director for modifying the site to meet minimum requirements. The permittee shall provide copies of modified plans and certification in writing to the Director that the changes have been made.
- f. OTHER PERMITS. The issuance of this permit does not preclude the permittee from obtaining and complying with any and all other permits or approvals that are required for this development to take place, as required by any statutes, rules, regulations, or ordinances, which are imposed by any other Local, State or Federal government agency having jurisdiction. Any activities undertaken at this site that cause a water quality violation or undertaken prior to receipt of the necessary permits or approvals to do so are considered violations of NCGS 143-215.1, and subject to enforcement procedures pursuant to NCGS 143-215.6.

Permit issued this the 18th day of March 2021.

NORTH CAROLINA ENVIRONMENTAL MANAGEMENT COMMISSION



For Brian Wrenn, Director  
Division of Energy, Mineral and Land Resources  
By Authority of the Environmental Management Commission

**Permit Number SW7210207**

## **Attachment A**

### Certification Forms

The following blank Designer Certification forms are included and specific for this project:

- As-Built Permittee Certification
- As-Built Designer's Certification for Low Density Projects

*A separate certification is required for each SCM. These blank certification forms may be copied and used, as needed, for each SCM and/or as a partial certification to address a section or phase of the project.*

### **AS-BUILT PERMITTEE CERTIFICATION**

I hereby state that I am the current permittee for the project named above, and I certify by my signature below, that the project meets the below listed Final Submittal Requirements found in NCAC 02H.1042(4) and the terms, conditions and provisions listed in the permit documents, plans and specifications on file with or provided to the Division.

- ☐ Check here if this is a partial certification. Section/phase/SCM #? \_\_\_\_\_
- ☐ Check here if this is part of a Fast Track As-built Package Submittal.

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public in the State of \_\_\_\_\_

County of \_\_\_\_\_, do hereby certify that \_\_\_\_\_

personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

and acknowledged the due execution of this as-built certification. (SEAL)

Witness my hand and official seal

\_\_\_\_\_  
My commission expires \_\_\_\_\_

Permittee's Certification NCAC .1042(4)	Completed / Provided	N/A
<b>A. DEED RESTRICTIONS / BUA RECORDS</b>		
1. The deed restrictions and protective covenants have been recorded and contain the necessary language to ensure that the project is maintained consistent with the stormwater regulations and with the permit conditions.	Y or N	
2. A copy of the recorded deed restrictions and protective covenants has been provided to the Division.	Y or N	
3. Records which track the BUA on each lot are being kept. (See Note 1)	Y or N	
<b>B. MAINTENANCE ACCESS</b>		
1. The SCMs are accessible for inspection, maintenance and repair.	Y or N	
2. The access is a minimum of 10 feet wide.	Y or N	
3. The access extends to the nearest public right-of-way.	Y or N	
<b>C. EASEMENTS</b>		
1. The SCMs and the components of the runoff collection / conveyance system are located in recorded drainage easements.	Y or N	
2. A copy of the recorded plat(s) is provided.	Y or N	
<b>D. SINGLE FAMILY RESIDENTIAL LOTS - Plats for residential lots that have an SCM include the following:</b>	Y or N	
1. The specific location of the SCM on the lot.	Y or N	
2. A typical detail for the SCM.	Y or N	
3. A note that the SCM is required to meet stormwater regulations and that the lot owner is subject to enforcement action as set	Y or N	

forth in NCGS 143 Article 21 if the SCM is removed, relocated or altered without prior approval.		
<b>E. OPERATION AND MAINTENANCE AGREEMENT</b>	Y or N	
1. The O&M Agreement is referenced on the final recorded plat.	Y or N	
2. The O&M Agreement is recorded with the Register of Deeds and appears in the chain of title.	Y or N	
<b>F. OPERATION AND MAINTENANCE PLAN</b> - maintenance records are being kept in a known set location for each SCM and are available for review.	Y or N	
<b>G. DESIGNER'S CERTIFICATION FORM</b> - has been provided to the Division.	Y or N	

Note 1- Acceptable records include ARC approvals, as-built surveys, and county tax records.

Provide an explanation for every requirement that was not met, and for every "N/A" below. Attach additional sheets as needed.



### **AS-BUILT DESIGNER'S CERTIFICATION FOR LOW DENSITY PROJECTS**

I hereby state that I am a licensed professional and I certify by my signature and seal below, that I have observed the construction of the project named above to the best of my abilities with all due care and diligence, and that the project meets all of the MDC found in 15A NCAC 02H.1003, in accordance with the permit documents, plans and specifications on file with or provided to the Division, except as noted on the "AS-BUILT" drawings, such that the intent of the stormwater rules and the general statutes has been preserved.

- ☐ Check here if this is a partial certification. Section or phase \_\_\_\_\_
- ☐ Check here if this is part of a Fast-Track As-Built Package Submittal per 15A NCAC 02H .1044(3).
- ☐ Check here if the Designer did not observe the construction but is certifying the project.
- ☐ Check here if pictures of the project are provided.

Printed Name \_\_\_\_\_ Signature \_\_\_\_\_

NC Registration Number \_\_\_\_\_ Date \_\_\_\_\_

SEAL:

Consultant's Mailing Address:

\_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_

Zip: \_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Consultant's Email address:

① Circle N if the as-built value differs from the Plan/permit. If N is circled, provide an explanation on page 3.

② N/E = Not Evaluated (provide explanation on page 2). ③ N/A = Not Applicable to this project/plan.

Consultant's Certification (MDC 15A NCAC 02H .1003)			
Project Density and Built-Up Area	①As-built	②N/E	③N/A
1. The project has areas of high density based on natural drainage area boundaries, variations in land use or construction phasing.	Y or N		
2. The project's built-upon area does not exceed the maximum limit specified in the permit.	Y or N		
Dispersed Flow	①As-built	②N/E	③N/A
1. The project maximizes dispersed flow through vegetated areas and minimizes channelized flow.	Y or N		

<b>Vegetated Conveyances</b>	<b>①As-built</b>	<b>②N/E</b>	<b>③N/A</b>
1. Stormwater that is not released as dispersed flow is transported by vegetated conveyances.	Y or N		
2. The project has a minimal amount of non-vegetated conveyances to reduce erosion.	Y or N		
3. Other than minimal piping under driveways and roads, no piping has been added beyond what is shown on the approved plans.	Y or N		
4. Side slopes are no steeper than 3H:1V.	Y or N		
5. The conveyance does not erode in response to the peak flow from the 10-year storm.	Y or N		
<b>Curb outlet systems (if applicable)</b>	<b>①As-built</b>	<b>②N/E</b>	<b>③N/A</b>
1. The swale or vegetated area can carry the peak flow from the 10-year storm at a non-erosive velocity.	Y or N		
2. The longitudinal slope of the swale or vegetated areas does not exceed 5%.	Y or N		
3. The swale has a trapezoidal cross-section and a minimum bottom width of two feet.	Y or N		
4. The minimum length of the swale or vegetated area is 100 feet.	Y or N		
5. Side slopes are no steeper than 3H:1V.	Y or N		
6. The project utilizes treatment swales designed per Section .1061 in lieu of the curb outlet system requirements.	Y or N		
<b>Vegetated Setbacks (if applicable)</b>	<b>①As-built</b>	<b>②N/E</b>	<b>③N/A</b>
1. The width of the vegetated setback is at least 50'.	Y or N		
2. The width of the vegetated setback has been measured from the normal pool of impounded waters, the MHW line of tidal waters, or the top of bank of each side of rivers or streams.	Y or N		
3. The vegetated setback is maintained in grass or other vegetation.	Y or N		
4. BUA that meets the requirements of NCGS 143-214.7(b2)(2) is located in the setback.	Y or N		
5. BUA that does NOT meet the requirements of NCGS 143-214.7(b2)(2) located within the setback and is limited to: <ul style="list-style-type: none"> <li>Publicly-funded linear projects (road, greenway, or sidewalk)</li> <li>Water dependent structures</li> <li>Minimal footprint uses such as poles, signs, utility appurtenances, and security lights.</li> </ul>	Y or N		

6. The amount of BUA within the setback is minimized, and channeling of the runoff from the BUA has been avoided.	Y or N		
7. Stormwater is not discharged (via swale or pipe) through a vegetated setback. Stormwater is released at the edge of the setback and allowed to flow through the setback as dispersed flow.	Y or N		
<b>Outlets</b>	①As-built	②N/E	③N/A
1. Stormwater outlets do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm.	Y or N		
<b>Variations</b>	①As-built	②N/E	③N/A
1. The project has variations from the MDC that were not previously approved. (Modification may be required.)	Y or N		
<b>Deed restrictions (if applicable)</b>	①As-built	②N/E	③N/A
1. Deed restrictions are recorded and ensure that the project and the BUA will be maintained in perpetuity consistent with the permit, approved plans, and specifications.	Y or N		
<b>For Subdivisions Only (Residential or Commercial)</b>	①As-built	②N/E	③N/A
1. The number of platted lots is consistent with the approved plans.	Y or N		
2. The project area is consistent with the approved plans.	Y or N		
3. The layout of the lots and streets is consistent with the approved plan.	Y or N		
4. The width / radius of streets, paved accesses, cul-de-sacs and sidewalk is consistent with the approved plan.	Y or N		
5. No piping, other than those minimum amounts needed under a driveway or under a road, has been added.	Y or N		
6. The lot grading, road grading, vegetated conveyances, piping, inverts, and elevations are consistent with the approved plans.	Y or N		

Provide an explanation below for every MDC that was not met, and for every item marked "N/A" or "N/E." Attach additional pages as needed.



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

ROY COOPER  
GOVERNOR

J. ERIC BOYETTE  
SECRETARY

March 26, 2021

**Driveway Permit ID:**  
D011-027-21-00008

Subject: Driveway Permit – Ballance Tract Mine  
County: Currituck

APVA, LLC  
Justin M. Old, Agent  
417 Caratoke Hwy, Unit D  
Moyock, NC 27958

Dear Applicant,

Attached for your files is a copy of a Residential / Commercial Driveway Permit, which has been properly executed. Please note any comments, which may appear on the permit form.

Sincerely,

DocuSigned by:

A blue ink signature of David Otts, P.E., written in a cursive style.

757334A95F0C4D5...

David Otts, P.E.  
District One Engineer

Attachments

Cc: Division Engineer (W/Attachments)  
County Maintenance Engineer (W/Attachments)

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)





# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

### Pre-Construction Notices

- PCN 1** Approval may be rescinded upon failure to follow any of the provisions in this permit and may be considered a violation of the Street and Driveway Access Permit.
- PCN 2** Prior to beginning work, the Applicant shall contact the Road Maintenance Supervisor for the corresponding county, to provide or verify the proposed pipe diameter. Please see the last page of the General Provisions for Contact Information
- PCN 3** Prior to beginning work, it is the requirement of the Applicant to contact the appropriate Utility Companies involved and make arrangements to adjust or relocate any utilities that conflict with the proposed work.
- PCN 4** It shall be the responsibility of the Applicant to determine the location of utilities within the permitted area. NCGS § 87-115 through § 87-130 of the Underground Utility Safety and Damage Prevention Act requires underground utilities to be located by calling 811 prior to construction. The Applicant shall be responsible for notifying other utility owners and providing protection and safeguards to prevent damage or interruption to existing facilities and maintain access to them.
- PCN 7** Trenching, bore pits and/or other excavations shall not be left open or unsafe overnight.

### Legal & Right-of-Way

- RW 1** This approval and associated plans and supporting documents shall not be interpreted to allow any design change or change in the intent of the design by the Owner, Design Engineer, or any of their representatives. Any revisions or changes to these approved plans or intent for construction must be obtained in writing from the District Engineer's office or their representative prior to construction or during construction, if an issue arises during construction to warrant changes.
- RW 2** NCDOT does not guarantee the right of way on this road, nor will it be responsible for any claim for damages brought about by any property owner by reason of this installation. It is the responsibility of the Applicant to verify the right of way.
- RW 3** Prior to the approval of any privately maintained facility within NCDOT right of way which the State of North Carolina is not the fee simple owner, written permission that each and every property owner affected by the installation shall be provided to NCDOT by the Applicant. (See corresponding attachment.)
- RW 4** Applicant shall be responsible for obtaining all necessary permanent and/or temporary construction, drainage, utility and/or sight distance easements.
- RW 6** No commercial advertising shall be allowed within NCDOT Right of Way.



# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

## Work Zone Traffic Control

### TC 2 WORK ZONE TRAFFIC CONTROL QUALIFICATIONS AND TRAINING PROGRAM

All personnel performing any activity inside the highway right of way are required to be familiar with the NCDOT Maintenance / Utility Traffic Control Guidelines (MUTCG). No specific training course or test is required for qualification in the Maintenance /Utility Traffic Control Guidelines (MUTCG).

All flagging, spotting, or operating Automated Flagger Assist Devices (AFAD) inside the highway right of way requires qualified and trained Work Zone Flaggers. Training for this certification is provided by NCDOT approved training resources and by private entities that have been pre-approved to train themselves.

All personnel involved with the installation of Work Zone Traffic Control devices inside the highway right of way are required to be qualified and trained Work Zone Installers. Training for this certification is provided by NCDOT approved training resources and by private entities that have been pre-approved to train themselves.

All personnel in charge of overseeing work zone Temporary Traffic Control operations and installations inside the highway right of way are required to be qualified and trained Work Zone Supervisors. Training for this certification is provided by NCDOT approved training resources and by private entities that have been pre-approved to train themselves.

For questions and/or additional information regarding this training program please refer to <https://connect.ncdot.gov/projects/WZTC/Pages/Training.aspx> or call the NCDOT Work Zone Traffic Control Section (919) 814-5000.

### TC 3 The party of the second part shall employ traffic control measures that are in accordance with the prevailing federal, state, local, and NCDOT policies, standards, and procedures. These policies, standards, and procedures include, but are not limited to the following:

A) Manual on Uniform Traffic Control Devices (MUTCD) – North Carolina has adopted the MUTCD to provide basic principles and guidelines for traffic control device design, application, installation, and maintenance. North Carolina uses the MUTCD as a minimum requirement where higher supplemental standards specific to North Carolina are not established. Use fundamental principles and best practices of MUTCD (Part 6, Temporary Traffic Control).

B) NCDOT Maintenance / Utility Traffic Control Guidelines – This document enhances the fundamental principles and best practices established in MUTCD Part 6, Temporary Traffic Control, incorporating NCDOT-specific standards and details. It also covers important safety knowledge for a wide range of work zone job responsibilities.

### TC 4 If the Traffic Control Supervisor determines that portable concrete barrier (PCB) is required to shield a hazard within the clear zone, then PCB shall be designed and sealed by a licensed North Carolina Professional Engineer. PCB plans and design calculations shall be submitted to the District Engineer for review and approval prior to installation.

### TC 5 Ingress and egress shall be maintained to all businesses and dwellings affected by the project. Special attention shall be paid to police, EMS and fire stations, fire hydrants, secondary schools, and hospitals.



# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

- TC 9 Work requiring lane or shoulder closures shall not be performed on both sides of the road simultaneously within the same area.
- TC 10 Any work requiring equipment or personnel within 5 feet of the edge of any travel lane of an undivided facility and within 10 feet of the edge of any travel lane of a divided facility shall require a lane closure with appropriate tapers per current NCDOT Roadway Standard Drawings or MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
- TC 13 Any pavement markings that are damaged or obliterated shall be restored by the Applicant at no expense to NCDOT.
- TC 14 Sidewalk closures shall be installed as necessary. Pedestrian traffic shall be detoured around these closures and shall be signed appropriately and in accordance with The American with Disabilities Act Accessibility Guidelines. The Applicant must adhere to the guidelines for accommodating pedestrians in encroachment work zones as described in the NCDOT Pedestrian Work Zone Accommodations Training found at <https://www.youtube.com/watch?v=AOuYa5IW3dg&feature=youtu.be>
- TC 15 Parking and material storage shall not be allowed along the shoulders of any NCDOT roadways, any NCDOT roadways along the route and adjacent to the route.
- TC 16 During periods of construction inactivity, place approved traffic control drums 3' minimum from the existing travel way.
- TC 17 Any violation of the Traffic Control provisions will result in the termination of the permit application and liquidated damages in the amount of \$2,000 per hour or any portion thereof and will be assessed by the District Engineer's office.

## Environmental Regulations

- EC 1 The Applicant shall comply with all applicable Federal, State and local environmental regulations and shall obtain all necessary Federal, State and local environmental permits, including but not limited to, those related to sediment control, stormwater, wetland, streams, endangered species and historical sites. Additional information can be obtained by contacting the NCDOT Roadside Environmental Engineer regarding the North Carolina Natural Heritage Program or the United States Fish and Wildlife Services. Contact the Division Roadside Environmental Engineer's Office at (252) 621-6310
- EC 2 When surface area in excess of one acre will be disturbed, the Applicant shall submit a Sediment and Erosion Control Plan which has been approved by the appropriate regulatory agency or authority prior to beginning any work on the Right of Way. Failure to provide this information shall be grounds for suspension of operations. Proper temporary and permanent measures shall be used to control erosion and sedimentation in accordance with the approved sediment and erosion control plan.



# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

- EC 3** The Verification of Compliance with Environmental Regulations (VCER-1) form is required for all non-utility permits or any utility permits when land disturbance within NCDOT right of way exceeds 1 acre. The VCER-1 form must be PE sealed by a NC registered professional engineer who has verified that all appropriate environmental permits (if applicable) have been obtained and all applicable environmental regulations have been followed.
- EC 4** All erosion control devices and measures shall be constructed, installed, maintained, and removed by the Applicant in accordance with all applicable Federal, State, and Local laws, regulations, ordinances, and policies. Permanent vegetation shall be established on all disturbed areas in accordance with the recommendations of the Division Roadside Environmental Engineer. All areas disturbed (shoulders, ditches, removed accesses, etc.) shall be graded and seeded in accordance with the latest NCDOT Standards Specifications for Roads and Structures and within 15 calendar days with an approved NCDOT seed mixture (all lawn type areas shall be maintained and reseeded as such). Seeding rates per acre shall be applied according to the Division Roadside Environmental Engineer. Any plant or vegetation in the NCDOT planted sites that is destroyed or damaged as a result of this permit shall be replaced with plants of like kind or similar shape.
- EC 5** No trees within NCDOT shall be cut without authorization from the Division Roadside Environmental Engineer. An inventory of trees measuring greater than 4 caliper inches (measured 6" above the ground) is required when trees within C/A right of way will be impacted by the encroachment installation. Mitigation is required and will be determined by the Division Roadside Environmental Engineer's Office.
- EC 6** Prior to installation, the Applicant shall contact the District Engineer to discuss any environmental issues associated with the installation to address concerns related to the root system of trees impacted by boring or non-utility construction of sidewalk, roadway widening, etc.
- EC 7** The applicant is responsible for identifying project impacts to waters of the United States (wetlands, intermittent streams, perennial streams and ponds) located within the NCDOT right-of-way. The discharge of dredged or fill material into waters of the United States requires authorization from the United States Army Corps of Engineers (USACE) and certification from the North Carolina Division of Water Quality (NCDWQ). The applicant is required to obtain pertinent permits or certification from these regulatory agencies if construction of the project impacts waters of the United States within the NCDOT right-of-way. The applicant is responsible for complying with any river or stream Riparian Buffer Rule as regulated by the NCDWQ. The Rule regulates activity within a 50-foot buffer along perennial streams, intermittent streams and ponds. Additional information can be obtained by contacting the NCDWQ or the USACE.
- EC 8** The contractor shall not begin the construction until after the traffic control and erosion control devices have been installed to the satisfaction of the District Engineer or their agent.
- EC 9** The contractor shall perform all monitoring and record keeping and any required maintenance of erosion and sediment control measures to maintain compliance with stormwater regulations.
- EC 10** Vegetative cover shall be established on all disturbed areas in accordance with the recommendations of the Division Roadside Environmental Engineer.





# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

### General

- G 1** An executed copy of the Street and Driveway Access Permit, provisions and approved plans shall be present at the construction site at all times. If safety or traffic conditions warrant such an action, NCDOT reserves the right to further limit, restrict or suspend operations within the right of way.
- G 2** The Applicant and/or their Contractor shall comply with all OSHA requirements. If OSHA visits the work area associated with this permit, the District Office shall be notified by the encroaching party immediately if any violations are cited.
- G 3** Any REVISIONS marked in RED on the attached non-PE sealed plans shall be incorporated into and made part of the approved permit.
- G 4** All disturbed areas are to be fully restored to current NCDOT minimum roadway standards or as directed by the District Engineer or their representative. Disturbed areas within NCDOT Right-of-Way include, but not limited to, any excavation areas, pavement removal, drainage or other features.
- G 5** The Applicant shall notify the District Engineer or their representative immediately in the event any drainage structure is blocked, disturbed or damaged. All drainage structures disturbed, damaged or blocked shall be restored to its original condition as directed by the District Engineer or their representative.
- G 8** Unless specified otherwise, during non-working hours, equipment shall be located away from the job site or parked as close to the right of way line as possible and be properly barricaded in order not to have any equipment obstruction within the Clear Recovery Area. Also, during non-working hours, no parking or material storage shall be allowed along the shoulders of any state-maintained roadway.
- G 9** No access to the job site, parking or material storage shall be allowed along or from the Control of Access Roadway.
- G 10** Guardrail removed or damaged during construction shall be replaced or repaired to its original condition, meeting current NCDOT standards or as directed by the District Engineer or their representative.
- G 12** Right of Way monuments disturbed during construction shall be referenced by a registered Land Surveyor and reset after construction.
- G 13** All Traffic signs moved during construction shall be reinstalled as soon as possible to the satisfaction of the District Engineer or their representative.
- G 16** All driveways disturbed during construction shall be returned to a state comparable with the condition of the driveways prior to construction.
- G 17** Conformance with driveway permit review should be required in conjunction with this encroachment agreement. In the event there is a conflict between the driveway permit and the encroachment agreement, the District Engineer should resolve the conflict and notify the parties involved.



# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

- G 18** If the approved method of construction is unsuccessful and other means are required, prior approval must be obtained through the District Engineer before construction may continue.
- G 22** Strict compliance with the Policy on Street and Driveway Access to North Carolina Highways manual shall be required.
- G 23** The Applicant may delegate the performance of certain provisions of this agreement to contractors or other parties. However, this shall not in any way release the Applicant from its obligations to the terms and provisions of the permit.

## Engineering

- E 1** All traffic control, asphalt mixes, structures, construction, workmanship and construction methods, and materials shall be in compliance with the most-recent versions of the following resources: ASTM Standards, Manual on Uniform Traffic Control Devices, NCDOT Utilities Accommodations Manual, NCDOT Standard Specifications for Roads and Structures, NCDOT Roadway Standard Drawings, NCDOT Asphalt Quality Management System manual, and the approved plans.

## Excavation

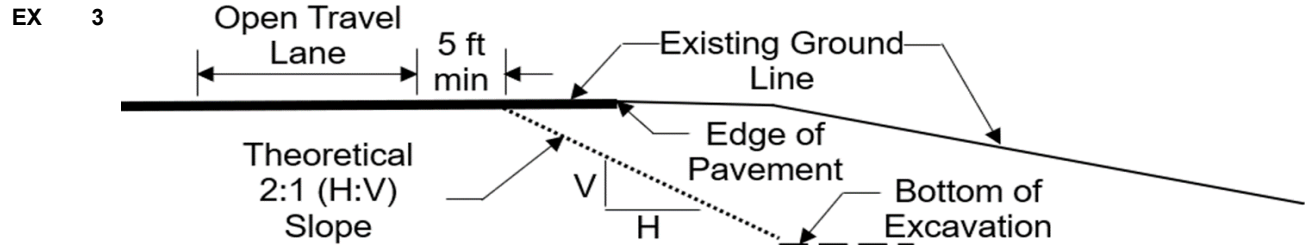
- EX 1** Excavation material shall not be placed on pavement.
- EX 2** It is the responsibility of the applicant and their contractor to prevent any mud/dirt from tracking onto the roadway. Any dirt which may collect on the roadway pavement from equipment and/or truck traffic on site shall be immediately removed to avoid any unsafe traffic conditions.
- EX 3** The utility shall be installed within 5 feet of the right of way line and outside the 5-foot minimum from travel lane plus theoretical 2:1 slope from the edge of pavement to the bottom of the nearest excavation wall for temporary shoring. If the 2:1 slope plus 5 feet requirement above is met for traffic, then temporary shoring is typically only necessary to protect roadways from damage when a theoretical 1:1 slope from the edge of pavement intersects the nearest excavation wall. This rule of thumb should be used with caution and does not apply to all subsurface conditions, surcharge loadings and excavation geometries. Situations where this 1:1 slope is not recommended include groundwater depth is above bottom of excavation or excavation is deeper than 10 feet or in Type B or C soils as defined by OSHA Technical Manual. Temporary shoring may be avoided by locating trenches, bore pits, and other excavations far enough away from the open travel lane, edge of pavement and any existing structure, support, utility, property, etc. to be protected. Temporary shoring is required when a theoretical 2:1 slope from the bottom of excavation will intersect the existing ground line less than 5 feet from the outside edge of an open travel lane as shown in the figure below or when a theoretical 2:1 slope from the bottom of excavation will intersect any existing structure, support, utility, property, etc. to be protected.



# Street and Driveway Access Permit

## General Provisions

Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.



- EX 4 Temporary shoring shall be designed and constructed in accordance with current NCDOT Standard Temporary Shoring provisions (refer to <https://connect.ncdot.gov/resources/Specifications/Pages/2018-Specifications-and-Special-Provisions.aspx> and see SP11 R002).

A) Temporary excavation shoring, such as sheet piling, shall be installed. The design of the shoring shall include the effects of traffic loads. The shoring system shall be designed and sealed by a licensed North Carolina Professional Engineer. Shoring plans and design calculations shall be submitted to the Division Engineer for review and approval prior to construction. (See NCDOT Utilities Accommodations Manual for more information on requirements for shoring plans and design calculations.) Trench boxes shall not be accepted as temporary shoring and will not be approved for use in instances where shoring is required to protect the highway, drainage structure, and/or supporting pavement or structure foundation.

B) All trench excavation inside the limits of the theoretical one-to-one slope, as defined by the policy, shall be completely backfilled and compacted at the end of each construction day. No portion of the trench shall be left open overnight. Any excavation that is not backfilled by the end of the workday must address any safety and traveling public concerns including accommodations for bicycles, pedestrians and persons with disabilities.

C) At the discretion of the District Engineer, a qualified NCDOT inspector shall be on the site at all times during construction. The applicant shall reimburse NCDOT for the cost of providing the inspector. If NCDOT cannot supply an inspector, the applicant (not the utility contractor) should make arrangements to have a qualified inspector, under the supervision of a licensed North Carolina Professional Engineer, on the site at all times. The Professional Registered Engineer shall certify that the utility was installed in accordance with the permit and that the backfill material meets the Statewide Borrow Criteria.

D) The length of parallel excavation shall be limited to the length necessary to install and backfill one joint of pipe at a time, not to exceed twenty-five (25) feet.



# Street and Driveway Access Permit

## General Provisions

**Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.**

- EX 5 The trench backfill material shall meet the Statewide Borrow Criteria. The trench shall be backfilled in accordance with Section 300-7 of the latest NCDOT Standard Specifications for Roads and Structures, which basically requires the backfill material to be placed in layers not to exceed 6 inches loose and compacted to at least 95% of the density obtained by compacting a sample in accordance with AASHTO T99 as modified by DOT.
- EX 6 All material to a depth of 8 inches below the finished surface of the subgrade shall be compacted to a density equal to at least 100% of that obtained by compacting a sample of the material in accordance with AASHTO T99 as modified by the Department. The subgrade shall be compacted at a moisture content which is approximately that required to produce the maximum density indicated by the above test method. The contractor shall dry or add moisture to the subgrade when required to provide a uniformly compacted and acceptable subgrade. The option to backfill any trenches with dirt or either #57 stone or #78 stone with consolidation with a plate tamp and without a conventional density test may be pursued with the written consent of the District Engineer. If this option is exercised, then roadway ABC stone and asphalt repair as required will also be specified by the District Engineer.
- EX 7 All roadway sections, ditch lines and slopes, and shoulders affected by the operations under this encroachment shall be restored to the satisfaction of the District Engineer.

## Pavement Repair

- PR 7 Any pavement damaged because of settlement of the pavement or damaged by equipment used to perform the permitted work, shall be re-surfaced to the satisfaction of the District Engineer. This may include the removal of pavement and a 50' mechanical overlay. All pavement work and pavement markings (temporary and final) are the responsibility of the Applicant.





# Street and Driveway Access Permit General Provisions

Our mission is to safely and efficiently manage and facilitate, as much as practicable, the accommodation of street and driveway accesses along NCDOT Highways, while protecting our public infrastructure.

## Post-Construction

- I 1 The Applicant shall notify the Roadway Maintenance Supervisor's office within 2 business days after construction is complete. The Roadway Maintenance Supervisor may perform a construction inspection. Any deficiencies may be noted and reported to the Applicant to make immediate repairs or resolve any issues to restore the right-of-way to a similar condition prior to construction, including pavement, signage, traffic signals, pavement markings, drainage, structures/pipes, or other highway design features.

Roadway Maintenance Supervisor Contact Information by County:

Camden  
Shelton James  
(252) 331-4778

Currituck  
Reggie Saunders  
(252) 453-2721

Dare  
Mark Gawlinski  
(252) 473-2990

Gates  
Michael Vann  
(252) 357-0844

Pasquotank  
Darrell Wilkins  
(252) 331-4778

Perquimans  
Kenny White  
(252) 426-4170

STATE OF NORTH CAROLINA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF ENERGY, MINERAL, AND LAND RESOURCES

**GENERAL PERMIT NO. NCG0200000**  
**CERTIFICATE OF COVERAGE No. NCG020972**

STORMWATER DISCHARGES AND WASTEWATER DISCHARGES

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

In compliance with the provision of North Carolina General Statute 143-215.1, other lawful standards and regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended,

APVA, LLC

is hereby authorized to operate wastewater treatment system(s) and discharge stormwater and wastewater from a facility located at

Balance Tract Mine  
Caratoke Highway  
Moyock  
Currituck County

to receiving waters designated as New Bridge Creek, class C;Sw, waters in the Pasquotank River Basin, in accordance with the effluent limitations, monitoring requirements, and other conditions set forth in Parts I, II, III, and IV of General Permit No. NCG020000 which can be downloaded by entering "[deq.nc.gov/SW-industrial](http://deq.nc.gov/SW-industrial)" in the browser window and navigating to the "NPDES Stormwater General Permits" web page.

This certificate of coverage shall become effective April 26, 2021.

This Certificate of Coverage shall remain in effect for the duration of the General Permit.

Signed this 26th day of April 2021.



for Brian Wrenn

Director, Division of Energy, Mineral and Land Resources  
By the Authority of the Environmental Management Commission

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)

## LICENSE AGREEMENT FOR PRIVATE GRADE CROSSING

This Agreement (the "Agreement") is made this   /   day of   APRIL  , 2021 ("Effective Date") by and between **Chesapeake & Albemarle Railroad Co., Inc., a division of North Carolina & Virginia Railroad, LLC** ("LICENSOR"), whose address is C/O Genesee & Wyoming Railroad Services, Inc., 13901 Sutton Park Dr. South, Suite 160, Jacksonville, FL 32224 and **APVA, LLC** (hereinafter "LICENSEE"), whose address is 417 Caratoke Highway, Unit D, Moyock, NC 27958.

WHEREAS, for valuable consideration as outlined herein, the receipt of which is hereby acknowledged, LICENSOR desires to grant to LICENSEE a license for a private grade crossing across LICENSOR'S rail line as specifically described herein and shown on Exhibit A attached hereto (the "Crossing"); and

WHEREAS, the parties have reached accord concerning the terms and conditions for LICENSEE'S exclusive use of the Crossing and desire to reduce them to writing.

NOW, therefore, for and in consideration of the premises and mutual covenants and agreements contained herein, the parties agree as follows:

### 1. CROSSING

Said Crossing to be located and described as follows:

Exclusive use of new grade crossing for access to land owned by LICENSEE, such use to include the necessary appurtenances and other related fixtures, equipment, marker posts, draining facilities or electric power for signals & cross arm, if any ("Licensee's Facilities"), as shown on LICENSEE'S Exhibit A attached hereto and made a part hereof. LICENSEE'S Facilities are subordinated to all matters of record. LICENSOR reserves the right to use the area three (3) feet below ground level of Licensee's Facilities and to enter Licensee's Facilities for construction and maintenance of LICENSOR'S rail line.

LICENSOR hereby grants to LICENSEE, insofar as it has the legal right and its present title hereby permits, the right to use said Crossing, over the rail line of the LICENSOR at milepost 29.3542, Main Subdivision, City of Moyock, County of Currituck, State of North Carolina. The Crossing shall be located in exact accordance with Exhibit A and no departure shall at any time be made therefrom except upon receipt of prior written approval of LICENSOR.

LICENSEE agrees that the continued use of the Crossing as provided herein shall be subject to LICENSEE'S compliance with the terms and conditions of this Agreement. Upon default LICENSOR, its successors or assigns, may, in its sole discretion, terminate this Agreement and order the removal of the Crossing.

### 2. PRIVATE USE

The use of the Crossing shall be private and no other use shall be made by anyone under, across, upon and/or over the Crossing herein described without obtaining the prior written permission of LICENSOR, except by LICENSEE, its officers, employees, agents and other persons having business or visiting with LICENSEE. LICENSOR shall, as it deems appropriate from time to time, have the ability to access and



operate on its rail line over the crossing. No lease, assignment of any type, transfer, or conveyance of real property is intended by this Agreement.

### 3. PAYMENT, FEE, MAINTENANCE FEES AND TAXES

Said Agreement and continued use of the Crossing is granted contingent upon payment to LICENSOR of **\$1,500.00 per year** as the minimum annual fee ("Annual Fee"), paid in advance. LICENSEE shall have no right of refund for any cause whatsoever in regard to Annual Fee payments paid to LICENSOR, which amount shall be payable on an annual basis, and due in advance no later than each anniversary of the Effective Date.

LICENSEE shall also pay LICENSOR **\$800.00 per year** as a minimum annual maintenance fee ("Maintenance Fee") paid in advance. LICENSEE shall have no right of refund for any cause whatsoever with respect to the Maintenance Fee payments made to LICENSOR, except in the event LICENSOR terminates this Agreement without cause. The Maintenance fee shall be payable on an annual basis, and due in advance no later than each anniversary of the Effective Date.

In the event this Agreement is terminated without cause by LICENSOR, LICENSOR shall refund to the LICENSEE the unearned portion of the Maintenance Fee paid in advance, prorated on a monthly basis. LICENSOR reserves the right to adjust the Annual Fee and Maintenance Fee on each anniversary date of this Agreement, or at such other times as conditions warrants. Billing or acceptance by LICENSOR of any Annual Fee [or Maintenance Fee] shall not imply a definite term or otherwise restrict either party from canceling this Agreement as herein provided.

At no time shall the Annual Fee or Maintenance Fee be less than those fees payable as of the Effective Date of this Agreement.

LICENSEE, shall assume and pay any and all taxes and assessments which may be levied upon the Licensee's Facilities, and LICENSEE shall indemnify, defend, and hold LICENSOR, ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THE RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS AND EMPLOYEES OF EACH (HEREINAFTER COLLECTIVELY THE "LICENSOR NDEMNITEES") harmless therefrom.

This Agreement shall continue in force indefinitely from and after the Effective Date, subject, however, to the right of either party to terminate this Agreement at any time, upon giving the other party thirty (30) days' notice in writing of its desire to terminate this Agreement. Notwithstanding the foregoing, in the event that the use as set forth in Section 1 above (1) materially changes, (2) terminates or (3) Licensee's Facilities are removed, this Agreement shall automatically terminate.

Within thirty (30) days from the date of the termination notice, LICENSEE agrees at its own risk and expense to remove Licensee's Facilities, or such portion thereof as LICENSOR shall require removed, and to restore the Crossing to a neat and safe condition as LICENSOR shall require and in a condition satisfactory to LICENSOR. If LICENSEE shall fail to do so within said time, LICENSOR shall have the right, but not the duty, to remove and restore the same, at the risk and expense of LICENSEE. Said restoration shall include, but not be limited to, any and all harm, damage or injury done to LICENSOR'S property and/or to any other public or private property by acts or occurrences subject to Federal, State or local environmental enforcement or regulatory jurisdiction, and shall include necessary and appropriate testing and cleanup.



Upon termination of this Agreement and use of the Crossing for any reason, all structures and alterations shall be removed from LICENSOR'S rail line and said property shall be returned to a physically and environmentally whole condition to the satisfaction of LICENSOR'S designated Officer or Representative, all at the sole cost and expense of LICENSEE. LICENSOR may, at LICENSOR'S sole discretion, during the removal of Licensee's Facilities, require LICENSEE to conduct an environmental appraisal and report of the property formerly occupied by Licensee's Facilities. All reports shall be prepared by a LICENSOR approved environmental consultant, to determine if any property has been environmentally impacted by Licensee's use of the Crossing. All environmental reports, which are prepared subject to this clause, shall be immediately available to LICENSOR by LICENSEE, if so requested. This clause shall survive termination of this Agreement.

This Agreement and the rights granted herein may not be transferred, assigned or sublet to another party not a signatory hereto without the prior written approval of LICENSOR. Upon approval by LICENSOR, LICENSEE shall satisfy any applicable transfer of rights or assignment fees in effect at that time.

#### 4. CONSTRUCTION

All materials and construction work required to construct, install or establish Licensee's Facilities shall be furnished and performed by LICENSOR at the sole risk, cost and expense of LICENSEE. LICENSEE shall paint appropriate highway warning markings on approaches to the Crossing.

The Crossing shall also include adequate drainage facilities necessary or appropriate for the prevention of ponding and/or flooding or any other kind of water damage in the general area where Crossing is located. Said drainage facilities shall be installed, if necessary, by LICENSEE at its sole risk, cost and expense.

If required by LICENSOR, LICENSEE at its sole cost and expense, shall, upon completion of the construction and installation of said Licensee's Facilities, furnish LICENSOR with a **survey drawing**, showing the final exact location of said Crossing and Licensee's Facilities as constructed. The survey drawing shall indicate LICENSOR'S survey valuation station which said installation is located, and/or the position of Licensee's Facilities in relation to the center line of the track and/or the centerline of the closest public street crossing said track(s). Said survey drawing shall be attached to this Agreement as Exhibit B and made a part hereof.

Licensee's Facilities shall be installed to the satisfaction and approval of LICENSOR'S Engineer and all costs of LICENSOR'S Engineer and other technicians or professional consultants as may be required from time to time shall be borne by LICENSEE.

In the event LICENSEE shall at any time desire to make changes in the physical or operational characteristics of said Crossing or Licensee's Facilities, LICENSEE shall first secure in writing, the consent and approval of LICENSOR. All renewals, changes or additional construction after Licensee's Facilities have initially been constructed shall be authorized only after an additional CONTRACTOR RIGHT OF ENTRY AGREEMENT is approved and executed by LICENSOR. LICENSEE agrees that such changes shall be made at LICENSEE'S sole risk, cost and expense and subject to all the terms, covenants conditions and limitations of this Agreement.

Any construction work set forth in this Section 4, requires LICENSOR's prior consent, which shall be obtained by LICENSEE providing LICENSOR'S Representative Roadmaster, Calton Ford, at 252.326.3206 or his designee, at least ninety (90) days prior notice.



Prior to beginning any construction to Licensee's Facilities or the Crossing, LICENSEE shall also submit a **one-time engineering observation fee of \$1,750.00** and a contractor **right of entry fee of \$1,750.00**, which will cover a separate agreement known as CONTRACTOR RIGHT OF ENTRY AGREEMENT. LICENSEE hereby agrees to reimburse LICENSOR for any and all expenses LICENSOR may incur or be subjected to, or in consequence of, the planning, negotiation, installation, construction, location, changing, alteration, relocation, operation or renewal of said Crossing and Licensee's Facilities, within thirty (30) days after receipt of LICENSOR'S invoice for payment.

## 5. MAINTENANCE

LICENSEE shall at all times keep the Crossing and the flangeways in the Crossing free and clear of dirt, ice, snow, and debris, and shall in any event promptly, upon notice from LICENSOR, perform the above work ("Ordinary Course Maintenance Work"). LICENSOR, for the purpose of protecting and safeguarding its property, traffic, employees or patrons, may at any time, with or without prior notice to LICENSEE, perform Ordinary Course Maintenance Work on the Crossing and the flangeways in the Crossing and thereafter, bill LICENSEE in accordance with the billing terms set forth herein for all such costs and expenses incurred by LICENSOR. LICENSEE shall be solely responsible for the cost of any delay in the movement of trains resulting from Licensee's failure to perform the Ordinary Course Maintenance Work and shall promptly pay any invoices rendered by LICENSOR for such costs.

LICENSEE when performing any Ordinary Course Maintenance Work shall be responsible to ensure that people, equipment, and materials are kept a safe distance away from the tracks on the approach or any moving equipment on the tracks.

LICENSEE shall also be responsible for maintaining the structural integrity of the Crossing and the flangeways, including but not limited to the condition of the asphalt at the Crossing and any gravel for grading purposes ("Structural Maintenance Work"), provided, that any Structural Maintenance Work requires the prior written consent of LICENSOR and LICENSOR reserves the right to perform the Structural Maintenance Work in its sole discretion at LICENSEE's sole cost and expense.

Any Structural Maintenance Work requires LICENSOR's prior consent, which shall be obtained by LICENSEE providing LICENSOR'S Representative Roadmaster, Calton Ford at 252.326.3206 or his designee, at least ninety (90) days prior notice.

LICENSEE agrees that any installation, maintenance, renewing or removal obligations of LICENSEE referenced in this Agreement, covers only the requirements and/or specifications of installation, maintenance, renewing or removal. Any said reference shall not be construed as LICENSOR'S permission or authority for LICENSEE to enter LICENSOR'S property without first obtaining a CONTRACTOR RIGHT OF ENTRY AGREEMENT from LICENSOR, and fulfilling the requirements contained therein.

## 6. MAINTENANCE OF RIGHT OF WAY

In the event LICENSOR shall be required, or may desire at any time, or from time to time, to change the grade or location of any of its tracks or facilities, or to remove, construct or add to any of its tracks or facilities, then LICENSOR shall, at the sole cost and expense of LICENSEE, make such adjustments or relocations in the Crossing and Licensee's Facilities which may, in the opinion of LICENSOR, be necessary and bill LICENSEE for such costs and expenses in accordance with the terms of Section 8 on



**BILLING** hereof. In the event any of the work provided for in this section requires the adjustment or relocation of Licensee's Facilities not located on LICENSOR'S property, then LICENSEE, shall, at its sole cost and expense, promptly make all required adjustments and relocations to Licensee's Facilities so affected.

LICENSOR shall have the paramount right at all times to use its track(s), right-of-way and property at the Crossing. LICENSEE shall exercise the greatest care in the use of the Crossing and shall require all others permitted under Section 2 hereunder to use the Crossing to also exercise the greatest care in the use of the Crossing and yield at all times to trains operating over it.

## **7. CROSSING PROTECTION**

Sole responsibility for protecting the Crossing from the standpoint of safety and policing the Crossing shall rest exclusively on LICENSEE at all times and under all circumstances. LICENSEE shall erect, maintain, and renew appropriate signs, or notices, satisfactory to LICENSOR setting forth the fact that the Crossing is private and shall take whatever further steps as deemed necessary to prevent unauthorized persons from entering upon or using the Crossing for any purposes whatsoever.

LICENSOR may at any time install, maintain and renew railroad – highway grade crossing signs, and LICENSEE shall pay all costs and expenses of the installation, maintenance and renewal thereof in accordance with the terms of Section 8 herein.

LICENSEE shall, at its sole risk, cost and expense, erect, maintain, repair and renew appropriate lock-type gates on both sides of the Crossing satisfactory to LICENSOR, which shall be suitably situated and kept closed and locked at all times when the Crossing is not in actual use.

If deemed necessary by LICENSOR or any Federal, State, or Municipal authority or other governing body, to install automatic warning devices at the Crossing, said automatic warning devices shall be installed, maintained and ultimately removed by LICENSOR at the sole cost and expense of LICENSEE.

In addition to the foregoing, but not in limitation thereof, if at any time LICENSOR should deem crossing flagmen or watchmen desirable or necessary to properly protect its operation near the Crossing, LICENSOR may place flagmen or watchmen at the Crossing and bill LICENSEE for all costs and expenses incurred in placing such flagmen or watchmen. The furnishing or failure to furnish flagmen or watchmen by LICENSOR shall not release LICENSEE from any and all other liabilities assumed by LICENSEE under this Agreement.

## **8. BILLING**

All costs and expenses in connection with the construction, adjustment, alteration, relocation and removal of the Crossing shall be borne by LICENSEE, and in the event of work being performed or material furnished by LICENSOR under the stipulated right to perform such work of construction, adjustment, alteration, relocation or removal under any section here of, LICENSEE shall pay LICENSOR the actual cost of material plus the current applicable overhead percentages for storage, handling, transportation, purchasing and other related materials management expenses and the actual cost of labor plus the current applicable overhead percentage as developed and published by the Accounting Department of Railroad for fringe benefits, payroll taxes, administration, supervision, use of tools, machinery and other equipment, supplies, employers liability insurance, public liability insurance, and other insurance, taxes and all other direct expenses. The aforementioned material and labor overhead charges shall be applied at



rate which is effective at the time of the performance of any work by LICENSOR on the Crossing. LICENSEE shall pay all bills rendered pursuant to this Agreement within thirty (30) days of presentation by LICENSOR.

## 9. LIABILITY

LICENSOR INDEMNITEES shall not be responsible for any damage to the Crossing at any time while this Agreement is in effect. In addition, LICENSEE and all others permitted hereunder to use the Crossing expressly assumes all risks of personal injury, including death, or property damage, including without limitation from the following causes, all of which LICENESSE and others permitted hereunder to use the Crossing are aware constitute actual potential hazards to any person present on or near the Crossing and/or the LICENSOR's property: (a) being struck by a locomotive, freight car, motor vehicle or any of LICENSOR's equipment; (b) slipping and falling from moving or stationary locomotives, cabooses, freight cars or any of LICENSOR's equipment; (c) slipping and falling because of poor footing conditions; (d) being struck by falling or flying objects; (e) being injured as a result of defectively used, manufactured or maintained rolling stock or any of the LICENSOR's equipment. LICENSEE shall inform all others permitted hereunder to use the Crossing that such users assume the aforementioned risks.

LICENSEE HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR INDEMNITEES FROM ANY AND ALL ACTIONS AT LAW, CLAIMS, DEMANDS, LOSSES, DAMAGES, SUITS, FINES, PENALTIES AND LIABILITIES OF EVERY KIND, FOR DEATH, BODILY INJURY, PERSONAL INJURY OR PROPERTY DAMAGE, ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RESULTING FROM LICENSEE'S ACTIVITIES PERMITTED HEREUNDER, INCLUDING BUT NOT LIMITED TO ITS USE OF THE CROSSING OR LICENSEE'S FACILITIES AND THE EXISTENCE OF LICENSEE'S FACILITIES BY LICENSEE, ITS PERMITTEES, INVITEES OR ANY OTHER PERSON REGARDLESS OF ANY NEGLIGENCE ON THE PART OF THE LICENSOR INDEMNITEES. THE INDEMNITIES PROVIDED IN THIS AGREEMENT ARE SPECIFICALLY MEANT TO INCLUDE INDEMNITY OF THE LICENSOR INDEMNITEES FOR THEIR OWN ORDINARY NEGLIGENCE, EVEN IF THE INJURY OR DAMAGE IS CAUSED ENTIRELY BY THE ORDINARY NEGLIGENCE OF THE LICENSOR INDEMNITEES AND THERE IS NO NEGLIGENCE ON THE PART OF LICENSEE.

THE PARTIES ACKNOWLEDGE THAT THE USE OF LICENSOR'S PREMISES IS FOR THE SOLE CONVENIENCE OF LICENSEE AND THAT THE LICENSOR INDEMNITEES SHALL HAVE NO DUTY TO LICENSEE, ITS OFFICERS, EMPLOYEES, AGENTS OR CONTRACTORS TO PROVIDE A REASONABLY SAFE PLACE IN WHICH TO WORK, TO PROVIDE ADEQUATE OR SAFE METHODS AND EQUIPMENT FOR THEIR WORK OR TO INSPECT OR MAINTAIN LICENSEE'S FACILITIES FOR SAID SAFE METHODS AND WORK EQUIPMENT NOR TO GIVE ANY WARNINGS OR OTHER NOTICES TO LICENSEE'S EMPLOYEES OR INVITEES REGARDING SAFETY EITHER OF LICENSEE'S FACILITIES AND RELATED WORKPLACE OR LICENSOR'S PROXIMATE RAILROAD OPERATIONS AND THAT ALL SUCH DUTIES SHALL BE ASSUMED BY LICENSEE WHO FURTHER AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE LICENSOR INDEMNITEES FROM ANY AND ALL CLAIMS ALLEGING ANY FAILURE TO PERFORM SAID DUTIES. LICENSEE'S INDEMNITY OBLIGATIONS OF THIS SECTION 9 SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS AVAILABLE UNDER WORKERS' OR WORKMEN'S COMPENSATION ACTS, DISABILITY ACTS OR OTHER EMPLOYEE BENEFIT ACTS.



WITHOUT PREJUDICE TO THE LICENSOR INDEMNITEES'S LIMIT OF LIABILITY ABOVE, IN NO EVENT SHALL THE LICENSOR INDEMNITEES BE LIABLE TO LICENSEE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES (INCLUDING BUT NOT LIMITED TO COST OF CAPITAL, DECLINE IN MARKET VALUE, BUSINESS INTERRUPTION EXPENSES, ATTORNEYS' FEES AND LOST SALES) OF ANY KIND ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LICENSOR INDEMNITEES KNEW OR REASONABLY SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

## 10. INSURANCE

LICENSEE, at its expense, shall obtain the insurance described in Exhibit C attached hereto and made a part hereof.

## 11. GENERAL

This Agreement is intended for the sole benefit of the parties hereto. Nothing in this Agreement is intended or may be construed to give any person, firm, corporation, or other entity, other than the parties hereto and their respective officers, agents, employees, parent corporation, subsidiaries, affiliates, successors, and permitted assigns, any right or benefit pursuant to any provision or term of this Agreement, and all provisions and terms of this Agreement are and will be for the sole and exclusive benefit of the parties to this Agreement.

Any waiver at any time by one party of a breach hereof by the other party will extend only to the particular breach so waived and will not impair or affect the existence of any provision, condition, obligation, or requirement of this Agreement or the right of either party hereto thereafter to avail itself of any rights under this Agreement with respect to a subsequent breach. No provision of this Agreement shall be waived by any act or knowledge of the parties hereto, but only by a written instrument signed by the party waiving a right hereunder.

No provision of this Agreement shall be modified without the written concurrence of the parties hereto. This Agreement includes exhibits appended hereto and represents the entire understanding of the parties hereto, and to that extent supersedes any prior understandings, written or oral.

The terms of this Agreement have been arrived at after mutual negotiation and, therefore, it is the intention of the Parties that its terms not be construed against any of the Parties by reason of the fact that it was prepared by one of the Parties.

This Agreement will be construed in accordance with the laws of the state of North Carolina.

Any dispute arising between the parties hereto with respect to any of the provisions hereof which cannot be settled by the parties themselves within thirty (30) calendar days of either party giving the other notice of the dispute shall be settled under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be held in Currituck County, North Carolina. There shall be a single arbitrator experienced in railroad matters and transportation law. The arbitrator shall apply North Carolina law to resolve legal matters in dispute. The decision of the arbitrator shall be final and conclusive upon the parties hereto and shall be enforceable in a court of competent jurisdiction.

If any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part of this Agreement and the remaining parts of this Agreement shall be enforced as if such invalid, illegal or unenforceable part were not contained herein.

The parties shall not disclose the terms of this Agreement to a third party (a) other than as required by law so long as such party required to disclose the terms of this Agreement under applicable law provides the other party with prior written notice of such requirement, or (b) as otherwise agreed in writing between the parties. Notwithstanding the foregoing, the parties may disclose the terms and conditions of the Agreement to (1) a parent, subsidiary or affiliated company; or (2) to their lawyers and consultants, including but not limited to its auditors, provided that all such parties agree to maintain the confidentiality of such information in accordance with the terms of this provision. If any party violates this paragraph, any adversely affected party may cancel this Agreement without penalty and exercise any available remedies under applicable law.

This Agreement may be executed in any number of counterparts, each of which may be deemed an original for any purpose.

*(Signature Page Follows)*



THIS AGREEMENT IS hereby declared to be binding upon the parties hereto.

IN WITNESS WHEREOF, the undersigned have hereunto agreed to the terms above this 26th day of April, 2021.

WITNESS

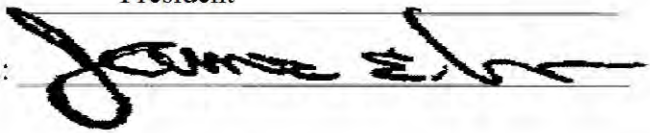
LICENSOR

**Chesapeake & Albemarle Railroad Co., Inc., a division of  
North Carolina & Virginia Railroad, LLC**

Mary Cole

by: James E. Irvin

its: President

Signed: 


WITNESS

LICENSEE

**APVA, LLC**

by: Justin Old

its: member

Signed: 

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)

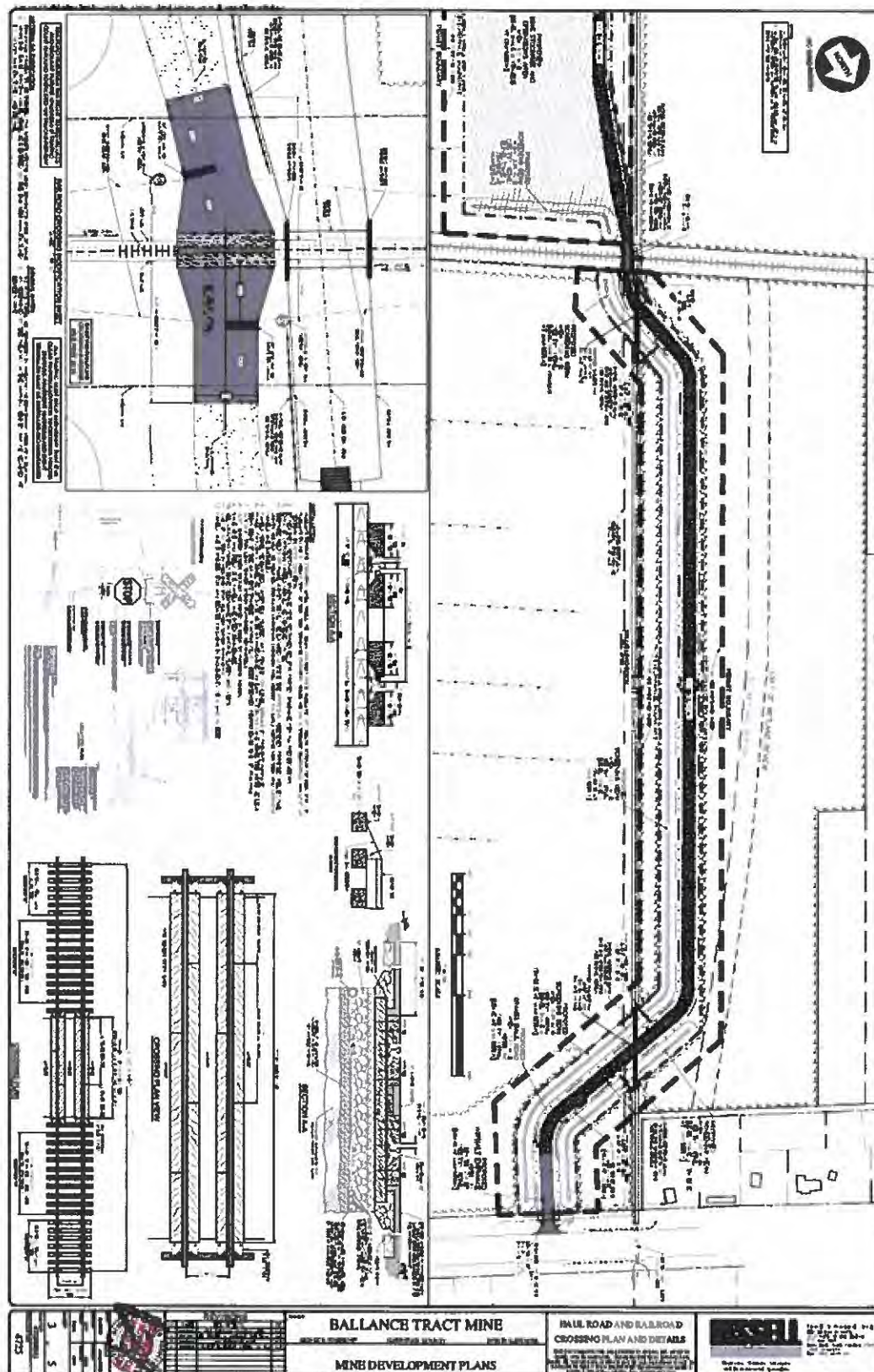
Form Approved 9/2020  
Private Grade Crossing License No. CARR210112469

**EXHIBIT A**

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)



EXHIBIT B





### EXHIBIT C

(a) LICENSEE shall, at its own cost and expense, prior to entry onto LICENSEE's Facilities, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

(i) LICENSEE shall maintain Public Liability or Commercial General Liability Insurance ("CGL"), including Contractual Liability Coverage and CG 24 17 "Contractual Liability – Railroads" endorsement, covering all liabilities assumed by LICENSEE under this Agreement, without exception or restriction of any kind, with a combined single limit of not less than Two Million Dollars (\$2,000,000) for Bodily Injury and/or Property Damage Liability per occurrence, and an aggregate limit of not less than Six Million Dollars (\$6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the LICENSOR INDEMNITEES** and **shall name the LICENSOR INDEMNITEES as Additional Insureds**. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section but must "follow form" and afford no less coverage than the primary policy.

(ii) LICENSEE shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) for Bodily Injury and/or Property Damage Liability per occurrence. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the LICENSOR INDEMNITEES** and **shall name the LICENSOR INDEMNITEES as Additional Insureds**.

(iii) LICENSEE shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of not less than One Million Dollars (\$1,000,000) for Bodily Injury by Accident, Each Accident; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Policy Limit; One Million Dollars (\$1,000,000) for Bodily Injury by Disease, Each Employee. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the LICENSOR INDEMNITEES**.

(iv) **Prior to construction within 50' of the railroad tracks**, LICENSEE shall purchase Railroad Protective Liability Insurance naming the LICENSOR INDEMNITEES as the named insureds with limits of Two Million Dollars (\$2,000,000) each occurrence and Six Million Dollars (\$6,000,000) aggregate limit. The policy shall be issued on a standard ISO form CG 00 35 12 03 or, if available, obtain such coverage from LICENSOR.

(b) The following general insurance requirements shall apply:

(i) The specified insurance policies must be affected under standard form policies underwritten by insurers licensed in the state where work is to be performed, and carry a minimum Best's rating of "A-" and size "Class VII" or better. LICENSOR reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.

(ii) All coverages shall be **primary and non-contributory to any insurance coverages maintained by the LICENSOR INDEMNITEES**.



(iii) All insurance policies shall be endorsed to provide LICENSOR with thirty (30) days prior written notice of cancellation, non-renewal or material changes.

(iv) LICENSEE shall provide LICENSOR with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Contractor Right of Entry License Agreement by agreement date and description and shall be furnished to LICENSOR at the following address, or to such other address as LICENSOR may hereafter specify:

Chesapeake & Albemarle Railroad Co., Inc., a division of North Carolina & Virginia Railroad, LLC  
C/O Genesee & Wyoming Railroad Services, Inc.  
13901 Sutton Park Drive South, Suite 270  
Jacksonville, FL 32224

(v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

- (1) The retroactive date shall be prior to the commencement of the work;
- (2) LICENSEE shall maintain such policies on a continuous basis;
- (3) If there is a change in insurer or policies are canceled or not renewed, LICENSEE shall purchase an extended reporting period of not less than three (3) years after the contract completion date; and
- (4) LICENSEE shall arrange for adequate time for reporting of any loss under this Agreement.

(c) LICENSOR may require LICENSEE to purchase additional insurance if LICENSOR reasonably determines that the amount of insurance then being maintained by LICENSEE is insufficient in light of all relevant factors. If LICENSEE is required to purchase additional insurance, LICENSOR will notify LICENSEE. Failure of LICENSEE to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

(d) Furnishing of insurance by LICENSEE shall not limit the LICENSEE's liability under this Agreement, but shall be additional security therefor.

(e) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

(f) Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at LICENSEE's sole risk.

(g) If contractors are utilized, LICENSEE agrees to require all such contractors to comply with the insurance requirements of this Exhibit C.



# U.S. ARMY CORPS OF ENGINEERS WILMINGTON DISTRICT

Action Id. 2020-01827 County: Currituck U.S.G.S. Quad: Currituck

## GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Permittee: Justin Old  
C/O Bissell Professional Group  
Address: 3512 North Croatan Highway  
Kitty Hawk, North Carolina 27949

Telephone Number: 252-261-3266

Size (acres) 341.9 Acres  
Nearest Waterway New Bridge Creek  
USGS HUC 03010205

Nearest Town Moyock  
River Basin Pasquotank  
Coordinates Latitude: 36.468366  
Longitude: -76.110840

Location description: The project area is located off the South side of US HWY 168 (Caratoke Highway), adjacent to New Bridge Creek and Tull Creek, near Moyock, in Currituck County, North Carolina. NC PIN: 8040-90-3888. Deed Book 1488. Page 380.

Description of projects area and activity: Repair and replacement of an existing culvert and installation of a new one at an additional location. The culverts will be utilized to cross a waters exhibiting an ordinary high water mark associated with the construction of a mine access road constructed in uplands.

Applicable Law: ☒ Section 404 (Clean Water Act, 33 USC 1344)  
☐ Sections 10 (Rivers and Harbors Act, 33 USC 403)

Authorization: Regional General Permit Number or Nationwide Permit Number: NWP 3-Repair and Replacement

**Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted application and attached information dated October 14, 2020. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order, a Class I administrative penalty, and/or appropriate legal action.**

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Resources (telephone 252-946-6481) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management in Elizabeth City, North Carolina at 252-264-3901.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact Raleigh W. Bland, SPWS at 910-251-4564.

Corps Regulatory Official: Raleigh W Bland, SPWS Date: October 30, 2020

Expiration Date of Verification: March 18, 2022

### Determination of Jurisdiction:

- A. ☒ There are waters, including wetlands, on the above described project area that may be subject to Section 404 of the Clean Water Act (CWA) (33 USC § 1344) and/or Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403). This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331). However, you may request an approved JD, which is an appealable action, by contacting the Corps district for further instruction. Please note, if work is authorized by either a general or nationwide permit, and you wish to request an appeal of an approved JD, the appeal must be received by the Corps and the appeal process concluded prior to the commencement of any work in waters of the United States and prior to any work that could alter the hydrology of waters of the United States.
- B. ☐ There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act (RHA) (33 USC § 403) and Section 404 of the Clean Water Act (CWA) (33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- C. ☐ There are waters, including wetlands, within the above described project area that are subject to the permit requirements of Section 404 of the Clean Water Act (CWA) (33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- D. ☐ The jurisdictional areas within the above described project area have been identified under a previous action. Please reference jurisdictional determination issued . Action ID: SAW- .

**Basis For Determination: : The crossing site exhibits waters with an ordinary high water mark adjacent to New Bridge Creek.**

**Remarks: Repair and replacement of an existing culvert.**

### E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

### F. Appeals Information (This information applies only to approved jurisdiction determinations as indicated in B and C above).

This correspondence constitutes an approved jurisdiction determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

US Army Corps of Engineers  
South Atlantic Division  
Attn: Jason Steele, Review Officer  
60 Forsyth Street SW, Room 10M15

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)

Atlanta, Georgia 30303-8801  
Phone: (404) 562-5137

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by N/A.

\*\*It is not necessary to submit an RFA form to the Division Office if you do not object to the determination in this correspondence.\*\*

Corps Regulatory Official: N/A

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete our Customer Satisfaction Survey, located online at

[http://corpsmapu.usace.army.mil/cm\\_apex/f?p=136:4:0](http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0).

Copy furnished:

CC: CESA-W-RG-W/Bland

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)

Action ID Number: SAW 2020-01827

County: Currituck

Permittee: Justin Old

Project Name: Bell-Balance Tract Mine Road

Date Verification Issued: October 30, 2020

Project Manager: Raleigh W. Bland, SPWS

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US ARMY CORPS OF ENGINEERS  
WILMINGTON DISTRICT  
Attn: Raleigh W. Bland, PWS  
Washington Regulatory Field Office  
2407 W. 5<sup>th</sup> Street  
Washington, North Carolina 27889

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. Failure to comply with any terms or conditions of this authorization may result in the Corps suspending, modifying or revoking the authorization and/or issuing a Class I administrative penalty, or initiating other appropriate legal action.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)



## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: <b>Justin Old</b>	File Number: <b>SAW 2020-01827</b>	Date: <b>October 30, 2020</b>
Attached is:		See Section below
<input type="checkbox"/> INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
<input type="checkbox"/> PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
<input type="checkbox"/> PERMIT DENIAL	C	
<input type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D	
<input checked="" type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx> or Corps regulations at 33 CFR Part 331.

### A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

### B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

## SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

### POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

**District Engineer, Wilmington Regulatory Division**  
**Attn: Raleigh W. Bland, SPWS**  
**Washington Regulatory Field Office**  
**2407 W. 5<sup>th</sup> Street**  
**Washington, North Carolina 27889**  
**Phone: (910) 251-4564**

If you only have questions regarding the appeal process you may also contact:

**Mr. Philip A. Shannin, Administrative Appeal Review Officer**  
**CESAD-PDO**  
**U.S. Army Corps of Engineers, South Atlantic Division**  
**60 Forsyth Street, Room 10M15**  
**Atlanta, Georgia 30303-8801**  
**Phone: (404) 562-5137**

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
----------------------------------	-------	-------------------

*For appeals on Initial Proffered Permits send this form to:*

**District Engineer, Wilmington Regulatory Division, Attn: Raleigh W. Bland, SPWS, 69 Darlington Avenue, Wilmington, North Carolina 28403**

*For Permit denials, Proffered Permits and Approved Jurisdictional Determinations send this form to:*

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Philip A. Shannin, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801**  
**Phone: (404) 562-5137**

Attachment: 5-Permits and Approvals (PB 21-06 Ballance Mine)



**Community Meeting Summary**  
**Ballance Tract Mine – Use Permit**

**Tuesday, November 24, 2020**

**Scheduled Time/Place: 5:30 pm, Eagle Creek Golf Pavilion, Moyock, NC**

**Meeting Began at approximately 5:30 pm and Ended at approximately 7:00 pm**

**Attendees:** Community Residents (See attached sign-in sheet)

Vivian Wilson, Resident	Greg Smith, Resident
Clifton Woodley, Resident	Nate Allen, Resident
Jason Prue, Resident	Beulah Spellman, Resident
Ralston Spellman, Resident	Bobby Bell, Resident
Jon Frederick, Resident	David Klebitz, Engineer
Donna Voliva, Currituck County	Clay Cartwright, Mine Operator
Owen Etheridge, Currituck County	

**Overview:**

An overview of the requested application and County review and approval process was offered. The overview included an explanation of the applicant's desire to establish a proposed sand mining operation that requires multiple permits from State and Federal agencies and a Use Permit from Currituck County. An aerial map illustrating the proposed mine site relative to the surrounding area was provided as a visual guide while an overview of the plan was given. The overview included information regarding the depth of mine, access to the mine, screening along the highway, anticipated traffic and noise generation, dewatering activities, groundwater recharge provisions and distances to the nearest dwelling and the nearest dwelling with a known well. An explanation of the amount and scheduling of dewatering was also provided along with a comparison to rainfall in an attempt to describe how downstream impacts are expected to be minor. An explanation was also provided about how the operation will be removing large area of farmland that currently drains to New Bridge Creek, which is understood to have an existing flooding problem. It was also explained that the existing Willie Lead Ditch will be cleaned and maintained by the mine operator from the dewatering discharge point to the culvert under Highway 168.

A copy of the proposed Mining Plans were also provided for review.

Comments from the Community	How Addressed
Concern expressed regarding existing flooding along New Bridge Creek.	It was explained that the mine will not be dewatering in the direction of New Bridge Creek. It was also explained that the mine will be removing a large area existing farm field that currently drains to New Bridge Creek that would, therefore, help to mitigate flooding in that direction.

Concern expressed regarding existing flooding along the Willie Lead Ditch near Hwy 168, adjacent to the church.	It was explained how dewatering from the mine is expected to have minimal downstream impacts. A comparison was given that a 1" rain event would generate a runoff rate of approximately 3 times that of the proposed dewater rate. An example was also provided regarding how the dewatering activities at the operators existing mine are unnoticeable downstream.
Several questions were asked regarding development of future lots on the residual property between the highway and railroad and possible affects by the mine.	Considering the lot development plans are unknow it was difficult to say, however, affects are expected to be minimal, if any.
A comment was made about making sure the pipes to be installed in the Willie Lead ditch to accommodate the haul road crossings are sized appropriately.	This was acknowledged and a response given that the pipes would be sized properly.

**Summary:**

A number of people stayed around after the meeting was adjourned to view the maps and ask questions. Those that had asked questions about the future lots appeared to be satisfied.

Information was also provided that, about 10 years ago, the Willie Lead Ditch south of Hwy 168 was cleaned, however, the property owners north of Hwy 168 did not want to participate and that section of ditch was not cleaned. This lack of maintenance may explain the existing flooding issues expressed in that area.



## Community Meeting Sign-In Sheet

Ballance Tract

November 24, 2020

5:30pm

NAME	ADDRESS	TELEPHONE	E-MAIL
Donna Voliva		252-232-6032	donna.voliva@currituckcountync.gov
VIVIAN m Wilson	104 mercer DR	757 409 8177	
CLIFTON woodley	1597 Caratoka Hwy	252 339-6395	
JASON TRUE	213 Laurel Woods way	757-297-2204	
Jon Frederick	126 Shady Oaks way	703-731-5947	Jon.frederick@LNF.com
Greg Smith	106 Covey Ln	757-544-4285	
Nate Allen	124 Shady Oaks way	413-348-0484	
Beth Spellman	P.O. Box 381		
Ralston Spellman	1614 Caratoka Hwy Moyock, NC 27958	252-232-0141	
Bobby Bell	1120 Shambora Rd	455-2884	

Attachment: 6-11-24-20 Community Meeting Summary and Sign in Sheet (PB 21-06 Ballance Mine)





Attachment: 7-Entrance (PB 21-06 Ballance Mine)



Google



## Currituck County

Department of Planning and Community Development  
 153 Courthouse Road, Suite 110  
 Currituck, North Carolina 27929  
 252-232-3055  
 FAX 252-232-3026

### MEMORANDUM

**To:** Allied Properties, LLC  
 Bissell Professional Group

**From:** Planning Staff

**Date:** March 10, 2021 and revised July 14, 2021

**Re:** PB 21-06 Ballance Tract Mine

On February 25, 2021 Allied Properties, LLC submitted a use permit application for a sand mine operation (extractive industry). The application was received for the March 10, 2021 TRC meeting. The TRC comments for the proposed sand mine are provided below. TRC comments are valid for six months from the date of the March 10, 2021 TRC meeting.

The resubmitted documents were received and reviewed by the TRC July 14, 2021. The comments that are determined satisfactorily addressed are indicated by struck through text and additional comments are provided in italics.

#### **Planning, Donna Voliva (252-232-6032)**

##### **Reviewed**

1. ~~The use permit application states the property owner is "See Attached List", but an attached list was not provided. The property ownership is listed as APVA, LLC (DB 1597, page 809). Please provide an application listing APVA, LLC as the owner of record.~~
2. ~~The wetland exhibit provided with the application, includes an illustration of 17 lots (1 lot less than 10 acres and the others are over 10 acres). The exhibit shows limits of jurisdictional wetlands as well as waters of the US (canal) also known as the Willie Lead Ditch. The exhibit shows an undetermined area that according NCDEQ, Division of Coastal Management may contain wetland characteristics. The proposed mine access road and the proposed excavation area are not shown in this potential wetland area. The outlet control structure and overflow spillway are shown connecting to the Willie Lead Ditch. Will the drainage connection to the Willie Lead Ditch require authorization from the USACOE and the NCDEQ (401)?~~
3. The Willie Lead Ditch is a major drainageway and requires maintenance easements. During the pre-application meeting staff expressed concern regarding the discharge water into the ditch and what impact this will have with the upstream and downstream drainage. Can you describe the impacts this additional flow will generate both upstream and downstream? *There are downstream blockages that could impact the water level in the ditch (identified by Dylan Lloyd). Can we schedule a meeting early next week to discuss ways to minimize the impacts associated with the dewatering?*
4. ~~The documents indicate the five properties be recombined. It appears the recombination will result in two properties; is this correct? What is the anticipated timing?~~
5. ~~What is the timing of the proposed Ballance Estates division? A general note (not part of the use permit application comments), Ballance Estates is an existing subdivision name.~~

Attachment: 8-Ballance Mine TRC 31021upd71421 (PB 21-06 Ballance Mine)



6. ~~Will the existing tree line along Caratoke Highway be protected?~~ As submitted, the site landscaping requirements (Section 5.2.4.), streetscape requirements (Section 5.2.8.), and vehicular use area requirements (Section 5.2.5.) will apply.
7. ~~What activities are proposed for the stockpile and operations area other than fuel storage?~~
8. The proposed activities associated with the mine are located within 100 feet of the property line (haul road, recharge ditch, dewatering settling basin, above ground fuel storage, stockpile and operations area)? The request includes a 50% reduction in the required setback. *The turnaround and a portion of the settling basin are in the 50' setback.*
9. The entrance, proposed ticket office, and associated parking are located within 300 feet of an existing residence. There are two access points to the property. The mining operation traffic shall be routed to the access having the least negative impact on adjoining properties. It appears the proposed access will have the greatest impact on the adjoining properties as shown (Section 4.2.5.A.(5)(b)). Staff recommends shifting/relocating the mine access haul road and ticket booth to reduce the impacts to the existing residents on Caratoke Highway. *Staff will recommend shifting the roadway to reduce the impacts to the existing residences. Can we schedule a meeting next week to go over possible solutions and ways to mitigate the impacts?*
10. ~~The application indicates the excavation area will be reclaimed with fill (chart). Will this occur simultaneously with the excavation or will the fill material be stockpiled on the site temporarily?~~
11. Does the applicant know the percentage of traffic movement exiting the site (north bound/south bound)? Will NCDOT require a deceleration lane? *Email was sent to NCDOT to discuss the need for a deceleration lane to improve the public safety, but I have not received a response. I would like to discuss this with you next week.*
12. During the community meeting, several property owners indicated drainage issues and are concerned with flooding. There was discussion about clearing and snagging the Willie Lead Ditch. I do not see this noted on the plans. A resident was concerned with the placement of two pipes in the ditch that will restrict the upstream flow. *Can you provide the culvert sizing calculations?*
13. ~~Will the railroad crossing require removal of vegetation for a clear line of site in both directions?~~
14. ~~The mine map shall include the following:~~
  - a. ~~Name and address of the mine operator~~
  - b. ~~At what point does the driveway transition to the haul road? Haul roads must maintain 300' setback from residences and 100' from property lines.~~
  - c. ~~Provide the buffer (streetscape for the road frontage).~~
  - d. ~~Provide the riparian buffer and drainage/maintenance easements.~~
15. ~~Provide the copy of the state mining permit, stormwater permit, NPDES, NCDOT driveway permit and encroachment agreement if turn lane is required, and railroad crossing.~~

#### **Currituck County Building and Fire Inspections (Bill Newns, 252-232-6023)**

Approved

1. Road must be maintained to support 75,000 lbs and allow access for emergency response apparatus.
2. Ticket building must meet building code for B occupancy. *Any structures provided on site must meet building code and be permitted.*
3. ~~Has the railroad approved the crossing?~~

#### **Currituck County GIS (Harry Lee, 252-232-2034)**

Reviewed

#### **Currituck County Parks and Recreation (Jason Weeks, 252-232-3007)**

No Comment

#### **Currituck Soil and Stormwater (Dylan Lloyd, 252-232-3360)**

Reviewed

1. Remove debris from Willie Lead Ditch between Hwy 168 and RR track

2. Ensure stream protection of this ditch portion and potential wetlands adjacent to haul road. *Is there more shoring or protection that can be placed between the road and the ditch?*
3. ~~Drainageway on southern end of property (New Bridge Creek) to be protected from dewatering or overflow; history of flooding and beaver activity.~~
4. *The Willie Lead ditch has blockages downstream. This may effect the drawdown time.*

**Currituck County Public Utilities (Will Rumsey, 252-232-6065 and Dave Spence 252-232-4152)**

No comment

**Currituck County Economic Development (Larry Lombardi, 252-232-6015)**

No Comment

**NC Division of Coastal Management (Charlan Owens, 252-264-3901)**

No Comment

**Albemarle Regional Health Services (Joe Hobbs, 252-232-6603)**

Reviewed

**US Post Office**

Contact the local post office for mail delivery requirements.

**No comments received from:**

**Currituck County Engineer (Eric Weatherly, 252-232-6035)**

**The following items are necessary for resubmittal:**

- 3 - full size copies of revised plans.
- 1- 8.5"x11" copy of all revised plans.
- 1- PDF digital copy of all revised documents and plans.

A typical special use permit (evidentiary) hearing at BOC:

- Swearing in of witnesses/speakers
- Presentation by County Staff on Application
- Required Presentation by Applicant or Authorized Agent (20-25 minutes)
  - Applicant to Present Findings of Fact
- Public Comment Period (typically 3 minutes each)
- Applicant Rebuttal (typically 5 minutes)
- BOC Deliberation & Decision

A special use permit hearing is an evidentiary hearing where the Board must make a quasi-judicial decision.

- An evidentiary hearing will be held for the Board of Commissioners to gather competent, material and substantial evidence to establish the facts of the case.
- All testimony is made under oath.
- The applicant or opposing parties shall establish written findings of fact and conclusions of law.
- Parties with standing may participate fully in the evidentiary hearing, including presenting evidence, cross-examining witnesses, objecting to evidence, and making legal arguments.
- Non-parties may present competent, material, and substantial evidence that is not repetitive.



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – 3154

**Agenda Item Title:** PB 21-10 Currituck County Text Amendment: Request to amend the Currituck County Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement to allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street.

**Submitted By:** Jennie Turner – Planning & Community Development

**Item Type:** Legislative

**Presenter of Item:** Jennie Turner

**Board Action:** Action

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### **Brief Description of Agenda Item:**

Second Reading: Request to amend the Currituck County Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement to allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street.

**Planning Board Recommendation:** Denial

**Staff Recommendation:** Approval

**TRC Recommendation:**





## Currituck County

Planning and Community Development Department  
 Planning and Zoning Division  
 153 Courthouse Road Suite 110  
 Currituck NC 27929  
 252-232-3055 Fax 252-232-3026

To: Board of Commissioners

From: Planning Staff

Date: **REVISED June 30, 2021**

Subject: PB 21-10 Currituck County Text Amendment  
 Family Subdivisions

### Request

The proposed text amendment initiated by the Board of Commissioners will allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street or a street that meets NCDOT standards. Resultant family subdivision lots shall be three acres in area minimum and are exempt from the current UDO requirement that private access streets shall not serve more than five lots. The current UDO language will not allow extension of a private access street serving more than five lots.

### Text Amendment Review Standards

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

1. Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
2. Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the county;
6. Would result in a logical and orderly development pattern; and
7. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

### Land Use Plan Policies

The following 2006 Land Use Plan Policies are relevant to this proposed text amendment.

**POLICY TR8:** Local streets shall be designed and built to allow for convenient CIRCULATION WITHIN AND BETWEEN NEIGHBORHOODS and to encourage mobility by pedestrians and bicyclists. Care shall be taken to encourage local street "connectivity" without creating opportunities for cut-through traffic from outside the connected areas.

POLICY TR12: New residential developments shall provide for the installation of PAVED PUBLIC ROADWAY AND DRAINAGE INFRASTRUCTURE at the time of development. This policy is intended to prevent the creation of substandard developments that must later correct for infrastructure problems that could have been avoided, had they been installed properly from the beginning. Family subdivisions and non-asphalt roads serving the northern beaches are the only exceptions to this policy.

### Staff Recommendation

Staff recommends that the Board carefully consider impacts of this text amendment on all property owners. Owners of property along existing private access streets currently have assurance that development that accesses the street will be limited unless the street is improved to NCDOT standards.

The UDO states that the purpose of subdivision regulations is to promote health, safety, convenience, order, prosperity, and welfare of present and future residents of the county and subdivision and infrastructure standards are established to maintain conditions essential to the public's health, safety, and general welfare.

Road maintenance is important and necessary for access, safety, and emergency response. Relaxing standards for family subdivisions may detrimentally impact existing roads and property owners along those roads. This ordinance may create situations where roads are further deteriorated due to the creation of additional lots on substandard roads. Staff is concerned with allowing unlimited lots along a private access street. This text amendment leaves the potential for an unlimited number of lots dependent on access from a private access street. The current limitation for private access streets is 5 lots.

Staff recommends a process for existing owners of a private access street and those with the legal right to access a private street the ability to provide consent for further subdivision along the street. The proposed language includes a requirement for consent by owners of existing private streets.

Staff recommends that family subdivision lots created subject to these regulations shall not be further divided into family subdivision lots, the proposed language includes this prohibition.

Staff suggests including language on the recorded plat that the family subdivision is for the purpose of keeping the land within the family and not for the purpose of short-term investment or circumvention of the UDO.

Staff recommends approval of the request and suggests the following Statement of Consistency: The requested zoning text amendment is consistent with the goals, objectives and policies of the 2006 Land Use Plan including:

Policy TR12: New residential developments shall provide for the installation of PAVED PUBLIC ROADWAY AND DRAINAGE INFRASTRUCTURE at the time of development. This policy is intended to prevent the creation of substandard developments that must later correct for infrastructure problems that could have been avoided, had they been installed properly from the beginning. Family subdivisions and non-asphalt roads serving the northern beaches are the only exceptions to this policy.

The request is reasonable and in the public interest because:

It allows family subdivisions to create larger parcels with relaxed access standards for the purpose of keeping the land within the family.

**Planning Board Recommendation**

On June 8, 2021, the Planning Board recommended denial of the requested text amendment with a 3-2 vote.

**Motion**

Mr. Doll moved to recommend denial of PB 21-10 because the request is not consistent with the 2006 Land Use Plan: Land Use and Development Goal #10 to properly distribute development forms in accordance with the suitability of land, infrastructure available, and the compatibility of surrounding land uses. And the text amendment may not result in a logical and orderly development pattern because extension of sub-standard private access streets for family subdivision purposes may detrimentally impact existing property owners along the streets. Chairman Ballance seconded the motion and the motion carried 3-2 with Mr. Owens and Mr. Bass voting nay.





**PB 21-10 CURRITUCK COUNTY  
TEXT AMENDMENT  
BOARD OF COMMISSIONERS  
JULY 19, 2021**

Amendment to the Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement.

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1:** That Chapter 2 is amended by adding the following underlined language and renumbering accordingly:

## **2.4.8. Subdivision**

### **D. Minor Subdivision**

#### **(1) Procedure**

##### **(a) Pre-Application Conference**

Not applicable.

##### **(b) Community Meeting**

Not Applicable.

##### **(c) Application Submittal and Acceptance**

**(i)** Applicable (see Section 2.3.4). Applications shall include a final plat prepared in accordance with the standards in Section 2.4.8.E.5.b, Final Plat Review Standards.

**(ii)** Applications and plats for a family subdivision shall include an attestation that the purpose for the subdivision is solely for the conveyance of lots to family members, and that conveyance of a lot in a family subdivision to a non-family member is a violation of this Ordinance.

##### **(d) Staff Review and Action**

Applicable (see Section 2.3.5). The Planning Director shall decide an application for a minor subdivision in accordance with Section 2.3.5.D, Applications Subject to Decision by Planning Director or Technical Review Committee, and Section 2.4.8.D.2, Minor Subdivision Review Standards.

##### **(e) Public Hearing Scheduling and Public Notification**

Not applicable.

- (f) **Public Hearing Procedures**  
Not applicable.
- (g) **Advisory Body Review and Recommendation**  
Not applicable.
- (h) **Decision-Making Body Review and Decision**  
Not applicable.

(2) **Minor Subdivision Review Standards**

(a) **General Standards**

A minor subdivision shall be approved on a finding that:

- (i) It complies with all applicable standards in Chapter 6: Subdivision and Infrastructure Standards, the standards for a final plat in Section 2.4.8.E.5.B; and all other applicable standards in this Ordinance;
- (ii) It complies with the dimensional standards of Chapter 3 (except as allowed in Section 2.4.8.D.2.B.IV);
- (iii) It will result in no more than three lots created from the parent parcel or tract (including the residual parcel or tract of less than ten acres in area), as it existed on April 2, 1989 (except as allowed in Section 2.4.8.D.2.B, Additional Standards for Family Subdivisions, or as allowed in Section 2.4.8.D.2.C., Additional Standards for Non-residential Minor Subdivisions);
- (iv) It does not front an existing NCDOT-maintained public street (except for Family Subdivisions, and Non-residential Minor Subdivisions);
- (v) The parent parcel and new parcel(s) shall front a private access street (except as allowed in Section 2.4.8.D.2.C, Additional Standards for Non-residential Minor Subdivisions). The existing driveway to the parent parcel shall be removed if that driveway is not converted into the private access street to service the resultant parcels.
- (vi) There is no public right-of-way dedication;
- (vii) It does not create a private access street serving more than two lots unless it is a family subdivision;
- (viii) Any private access street created shall connect to an existing NCDOT-maintained public street (except as allowed in Section 2.4.8.D.2.B.IV) and shall comply with Section 6.2.1.B.1 Private Access Street Standards; and,
- (ix) It does not require significant infrastructure improvements. For the purpose of this section significant infrastructure includes, but is not limited to: a road installed to NCDOT standards, fire hydrant, and/or a fire pond.

(b) **Additional Standards for Family Subdivisions**

Family subdivisions shall follow the review procedure for minor subdivisions and shall comply with the general standards in (a) above as well as the following:

- (i) Lots shall be conveyed solely to family members within two degrees of kinship (e.g., child, grandchild). A maximum of one lot shall be conveyed to the individual family member, including family subdivisions on different parent parcels.
- (ii) No more than five lots are created from the parent parcel or tract (including the residual parcel or tract of less than ten acres in area) as it existed ten years prior to application submittal.
- (iii) Ingress and egress to a lot shall not be from a major arterial street.
- (iv) Private access streets created shall connect to an NCDOT-maintained public street and shall not serve more than five lots except for lots that meet the following standards:
  - (A) The parent parcel or tract shall be a minimum of 12 acres in area.
  - (B) Lots created shall be a minimum of 3 acres in area in all zoning districts with a minimum lot width of 125 feet.
  - (C) Existing and new streets shall be improved in accordance with Section 6.2.1.B.1. from an NCDOT maintained public street to the lots created.
  - (D) A certification by an NC licensed engineer shall be required on the recorded plat indicating that the existing and new streets meet North Carolina State Fire Code.
  - (E) All owners of existing private streets shall consent to the family subdivision application.
  - (F) An agreement specifying ownership and responsibility for the maintenance of existing and new streets shall be recorded prior to approval of the plat.
  - (G) The plat shall state that lots created shall not be further divided into family subdivision lots.
- (v) Principal uses shall be limited to single-family detached dwellings and customary accessory uses.

**Item 2:** That Chapter 6 is amended by adding the following underlined language:

### 6.2.1. Street Standards

#### A. Applicability

Unless exempted in accordance with Section 6.2.1.B, Exemptions, the street standards shall apply to all streets serving three or more lots.

#### B. Exemptions

##### (1) Private Access Streets



- (a) A street within a family subdivision or serving a subdivision of two or fewer lots are exempted from the standards in this section, provided they are configured in accordance with Figure 6.2.1.B, Private Access Street Standards, and Section 6.2.1.CD.4, Connection with State Streets, except as permitted in Section 2.4.8.D.2.B.IV.
- (b) One private access street is allowed per parent parcel as it existed on April 2, 1989, except as permitted in Section 2.4.8.D.2.B.IV.
- (c) All subdivision plats served by private access streets shall bear the following notation:  
 "Private access streets do not meet the NCDOT's minimum standards for the assumption of maintenance. Currituck County does not construct or maintain streets. Further subdivision of any lot shown on this plat may be prohibited by the Currituck County UDO unless the private access street is improved consistent with minimum NCDOT standards."

#### D. Street Design Standards

Streets in development subject to these standards shall comply with the following:

##### (4) Connection with State Streets

Provide direct access to an improved street that meets NCDOT design and construction standards or one that has been accepted for maintenance by NCDOT, to the maximum extent practicable.

#### E. Minimum Street Width

All streets in a subdivision subject to these standards shall comply with the minimum street width standards in Table 6.2.1.D, Minimum Street Width Standards.

TABLE 6.2.1.D: MINIMUM STREET WIDTH STANDARDS							
Subdivision Type	Minimum Right of Way Width (feet)	Local Street		Collector Street		NCDOT Design Standards Applicable?	NCDOT Construction Standards Applicable?
		Minimum Pavement Width (feet)	Minimum Shoulder Width (feet)	Minimum Pavement Width (feet)	Minimum Shoulder Width (feet)		
Family Subdivision	24	20	2	N/A	N/A	No	No
Residential Subdivision	See NCDOT <i>Subdivision Roads Minimum Construction Standards Manual</i>					Yes	Yes
Nonresidential Subdivision						Yes	Yes
Conservation Subdivision	30	20 [1]	N/A	N/A	N/A	No	Yes
Planned Unit and Planned Development [2]	30	20 [1]	N/A	N/A	N/A	No	Yes

#### NOTES:

[1] See Section 6.2.1.G for one-way street pavement width requirements

[2] Streets in Planned Developments shall be installed in accordance with the approved master plan and the requirements of this section.

## 6.2.3 Utility Standards

### D. Water Supply Standards

#### (1) Water Supply System Required

- (a) Every principal use and every buildable lot in a subdivision shall be serviced by a means of water supply that is adequate to accommodate the reasonable needs of such use or lot and that complies with all applicable health regulations.
- (b) All buildable lots within a planned unit development, planned development, or multi-family development shall be connected and serviced by the county water supply system.
- (c) Except for family subdivisions, lots in the Fruitville and Moyock-Gibbs Woods Townships, and lots located in the Agriculture (AG) zoning district, all new subdivisions and nonresidential development shall be connected and serviced by the county water supply.

**Item 3:** That Chapter 10 is amended by adding the following underlined language:

### 10.3.3 Lots

#### (8) Lot Types (see Figure 10.3.3.A.7, Lot Types)

##### (e) Family Subdivision Lot

A lot created through the family subdivision process (see Section 2.4.8).

### B. General Lot Requirements

#### (2) Family Subdivision Lots

- (a) Family subdivision lots shall maintain a minimum lot area of 40,000 square feet, regardless of the minimum requirements for the zoning district (except as permitted in Section 2.4.8.D.2.B.IV or in the SFR district, where district requirements apply).
- (b) Family subdivision lots are not required to front onto a public or private street.

## 10.3 Definitions

### STREET, PRIVATE ACCESS

A street subject to the requirements of Section 6.2.1.B.1, Private Access Streets, that serves a family subdivision or a maximum of two lots.

### SUBDIVISION, FAMILY

A subdivision where single-family lots may only be conveyed to family members within two degrees of kinship (e.g., child, grandchild).

**Item 4:** Staff suggested Statement of Consistency and Reasonableness:

**Item 5:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Item 6:** This ordinance amendment shall be in effect from and after the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Board of Commissioners' Chairman  
Attest:

\_\_\_\_\_  
Leeann Walton  
Clerk to the Board

DATE ADOPTED: \_\_\_\_\_  
MOTION TO ADOPT BY COMMISSIONER: \_\_\_\_\_  
SECONDED BY COMMISSIONER: \_\_\_\_\_  
VOTE: \_\_\_\_\_AYES\_\_\_\_\_NAYS  
.....

PLANNING BOARD DATE: 6/8/2021  
PLANNING BOARD RECOMMENDATION: Denial  
VOTE: 3 AYES 2 NAYS  
ADVERTISEMENT DATE OF PUBLIC HEARING: 7/4/2021 & 7/14/2021  
BOARD OF COMMISSIONERS PUBLIC HEARING: 7/19/2021  
BOARD OF COMMISSIONERS ACTION: \_\_\_\_\_  
POSTED IN UNIFIED DEVELOPMENT ORDINANCE: \_\_\_\_\_  
AMENDMENT NUMBER: \_\_\_\_\_





## Text Amendment Application

## OFFICIAL USE ONLY:

Case Number: PB 21-10  
 Date Filed: \_\_\_\_\_  
 Gate Keeper: \_\_\_\_\_  
 Amount Paid: \_\_\_\_\_

## Contact Information

## APPLICANT:

Name: Currituck County  
 Address: 153 Courthouse Road  
Currituck, NC 27929  
 Telephone: 252-232-2075  
 E-Mail Address: ben.stikeleather@currituckcountync.gov

## Request

I, the undersigned, do hereby make application to change the Currituck County UDO as herein requested.

Amend Chapter(s) 2 & 6 Section(s) \_\_\_\_\_ as follows:

Amend the UDO to allow alternative family subdivisions.

Alternative family subdivisions are permitted on minimum 12-acre parent parcels.

Increase maximum number of family subdivision lots that can access a private access street.

Alternative family subdivision lots shall be a minimum of 3 acres.

\*Request may be attached on separate paper if needed.

Ben Stikeleather

Petitioner

3-25-21

Date



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 3204)

**Agenda Item Title:** Designation of County Attorney Ike McRee as Interim County Manager  
Under G. S. 153A-84 Effective August 28, 2021

**Submitted By:** Leeann Walton – County Manager

**Presenter of Item:**

**Board Action:** Action

---

**Brief Description of Agenda Item:**

Board approval on naming County Attorney, Ike McRee, to serve as an interim manager. The current manager's employment will terminate on August 27, 2021, and Attorney McRee will assume the role of interim on August 28, 2021.

**Potential Budget Affect:**

**Is this item regulated by plan, regulation or statute?** Yes

**Manager Recommendation:**



## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 3203)

**Agenda Item Title:** Consideration and Approval of Utility Line Easement Agreement to Public Safety Building from Currituck County to Carolina Telephone and Telegraph, LLC d/b/a Century Link

**Submitted By:** Leeann Walton – County Manager

**Presenter of Item:**

**Board Action:** Action

---

**Brief Description of Agenda Item:**

**CenturyLink data/phone line utility easement to allow service installation at the Public Safety Center.**

**Potential Budget Affect:** N/A

**Is this item regulated by plan, regulation or statute?** No

**Manager Recommendation:**



After recording, please return to:  
 CenturyLink  
 PO Box 688  
 Celina, TX 75009

---

Prepared by:  
 Omar Amaral  
 CenturyLink ROW

#### RECORDING INFORMATION ABOVE

Grantor: County of Currituck  
 Grantee: Carolina Telephone and Telegraph Company, LLC d/b/a CenturyLink  
 Parcel: 0052-000-0025-0000 & 0052-000-0017-0000  
 Abbreviated Legal: Regional Aviation & Training Center & Tract 1 Boundary Survey for Curr  
 County, 40-Crawford

#### EASEMENT AGREEMENT

The undersigned (“Grantor”), for good and valuable consideration, the receipt and sufficiency of which are acknowledged, hereby grants and conveys to **Carolina Telephone and Telegraph Company, LLC d/b/a CenturyLink**, its successors, assigns, lessees, licensees, agents and affiliates (“Grantee”), having an address of 100 CenturyLink Drive, Monroe, Louisiana 71203, Attn: Construction Service, a perpetual, non-exclusive easement (“Easement”) to construct, operate, maintain, repair, expand, replace and remove [a communication system that Grantee from time to time may require, consisting of but not limited to, cables, wires, conduits, manholes, drains, splicing boxes, vaults, surface location markers, equipment cabinets and associated wooden or concrete pads, aerial lines, poles and cables, and other facilities and structures, including utility service if required to operate such system, facilities and structures (collectively, the “Facilities”) over, under and across the following property located in the County of Currituck, State of North Carolina, which Grantor owns (“Easement Tract”):

SEE THE DESCRIPTION SET FORTH ON **EXHIBIT A** ATTACHED TO, AND BY THIS REFERENCE MADE A PART OF, THIS AGREEMENT

Grantor further grants and conveys to Grantee the following incidental rights:

(1) The right of ingress and egress over and across Grantor's lands to and from the Easement Tract; and

(2) The right to clear all trees, roots, brush and other obstructions that interfere with Grantee's use and enjoyment of the Easement Tract.

Grantor reserves the right to use and enjoy the Easement Tract so long as Grantor's use does not materially interfere with the rights granted in this Easement Agreement. Grantor will not erect any structure or plant trees or other vegetation within the Easement Tract and will not alter the surface or subsurface of the Easement Tract or the ground immediately adjacent to the Easement Tract by grading or otherwise excavating, without Grantee's written consent.

Grantor warrants that Grantor is the owner of the Easement Tract and will defend title to the Easement Tract against all claims. Grantee will have no responsibility for environmental contamination unless caused by Grantee.

The rights, conditions and provisions of this Easement Agreement will run with the land and will inure to the benefit of and be binding upon Grantor and Grantee and their respective successors and assigns.

Executed by Grantor this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

**GRANTOR:**

**County of Currituck**

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF NORTH CAROLINA    )  
  ) ss.  
COUNTY OF \_\_\_\_\_    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as \_\_\_\_\_, of County of Currituck.

My commission expires: \_\_\_\_\_

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)

**EXHIBIT A TO EASEMENT AGREEMENT****Legal Description of Easement Tract**

Parcel: 0052-000-0025-0000

Being two (2) ten-foot (10') wide utility easements, being five feet (5') wide on each side of the centerline, situated in the Southwest Quarter and the Northwest Quarter of the tract of land located in the City of Barco more particularly described in the North Carolina General Warranty Deed recorded in the Register of Deeds, Deed Book 1062 Page 358 – 358 in Currituck County, North Carolina on September 11, 2008.

Parcel: 0052-000-0017-0000

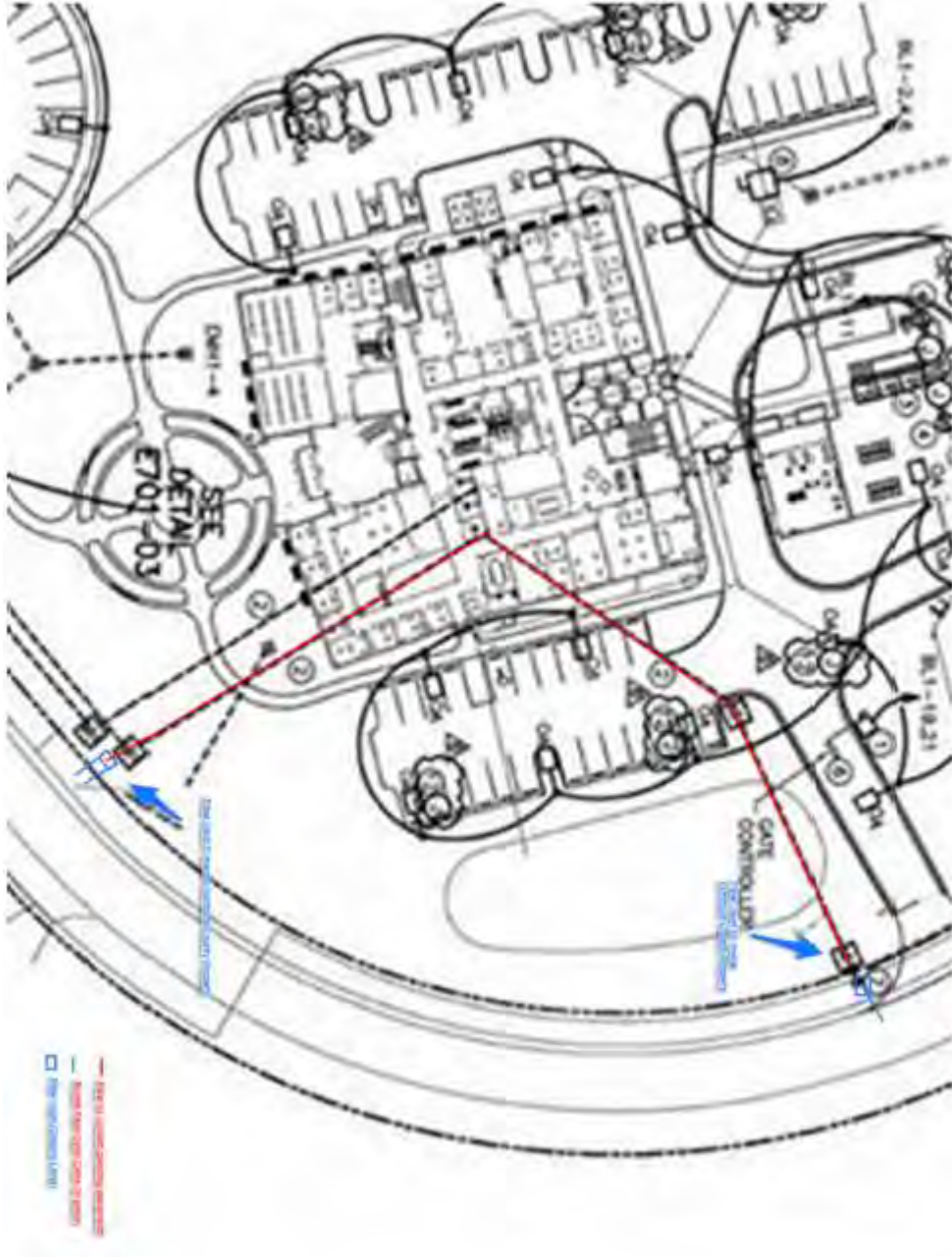
Being a ten-foot (10') wide utility easement, being five feet (5') wide on each side of the centerline, situated in the Westerly Quarter of the tract of land located in the City of Barco more particularly described in the North Carolina General Warranty Deed recorded in the Register of Deeds, Deed Book 1062 Page 358 – 358 in Currituck County, North Carolina on September 11, 2008.

THE MAPS ON THE NEXT PAGES MAY NOT BE A CERTIFIED SURVEY AND HAVE NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS AND HAS NOT BEEN REVIEWED FOR COMPLIANCE WITH RECORDING REQUIREMENTS FOR PLATS.

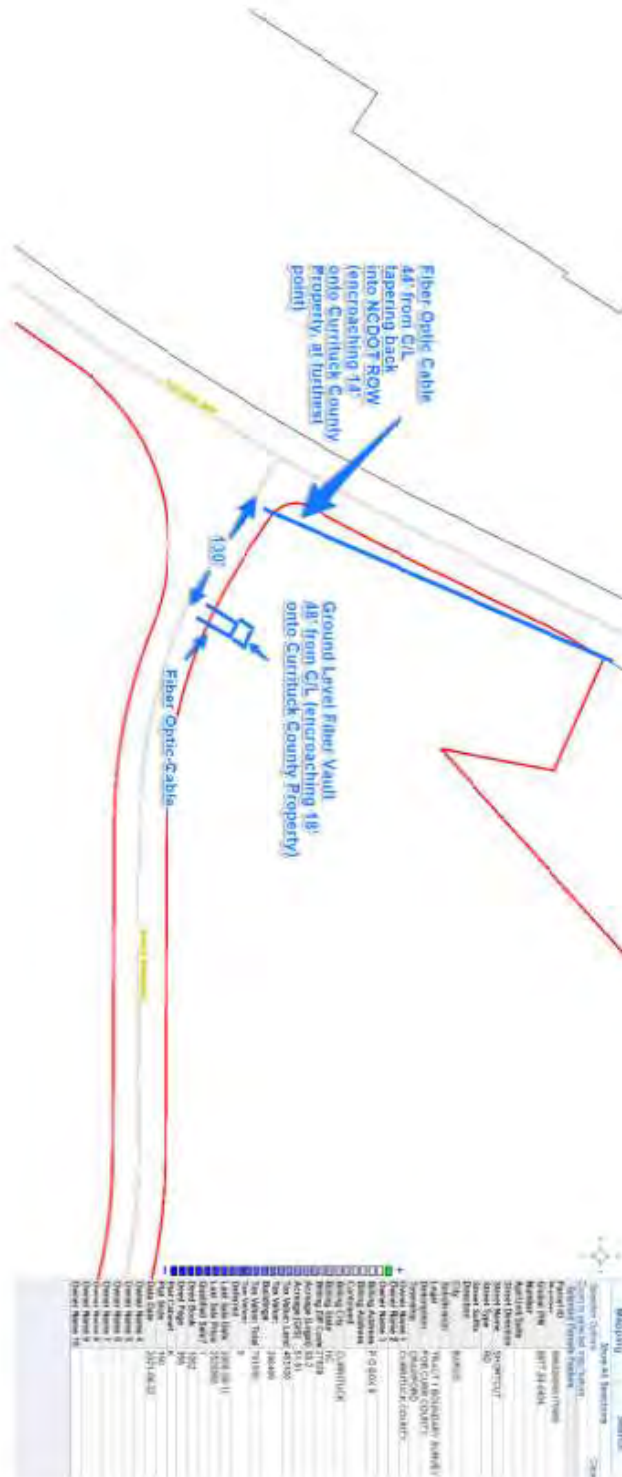


**EXHIBIT A CONTINUED**

**Sketch or Drawing of Easement Tract  
College Drive**



## Sketch or Drawing of Easement Tract Maple Parkway





## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 3206)

**Agenda Item Title:** Approval and Authorization for County Manager's Execution of Consent to Cross U.S. Government Right-of-Way at Coinjock Canal for Location of 16" Water Main

**Submitted By:** Leeann Walton – County Manager

**Presenter of Item:**

**Board Action:** Action

---

**Brief Description of Agenda Item:**

**Execution of Consent Agreement authorized by the US Dept of Army for the installation of a water main crossing the Intercoastal Waterway/Coinjock Canal.**

**Potential Budget Affect:** Agreement only, project has been budgeted

**Is this item regulated by plan, regulation or statute?** No

**Manager Recommendation:**



Consent No. DACW1-9-21-0084

DEPARTMENT OF THE ARMY

CONSENT TO CROSS U.S. GOVERNMENT RIGHT-OF-WAY  
AT

ATLANTIC INTRACOASTAL WATERWAY PROJECT, NORTH CAROLINA

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the United States, is hereby granted, to **County of Currituck** with principal address located at c/o Ben Stikeleather, County Manager, 153 Courthouse Road, Suite 204, Currituck, NC 27929, hereinafter designated as grantee, to construct, use, operate, maintain, control, and repair a 16" potable water main, hereinafter referred to as "structure", across, over and under the lands where the United States has acquired a perpetual easement, identified as Acquisition Tract No. 2, and which is recorded in Deed Book 52 page 489, in the records of Currituck County, North Carolina. The right-of-way for said structure for the purpose of this consent is located as shown on EXHIBIT "A" attached hereto and made a part hereof and described as follows:

This consent is granted subject to the following conditions:

1. It is understood that this consent is effective only insofar as the property rights of the United States in the land to be occupied are concerned, and this consent does not relieve the grantee from the necessity of obtaining grants from the owners of the fee and/or other interests therein.
2. The proposed construction authorized herein shall not be commenced until appropriate rights shall have been obtained by the grantee from the record owners and encumbrancers of the fee title to the lands involved.
3. The exercise of the privileges hereby consented to shall be without cost or expense to the Department of the Army, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "said officer" and subject to such regulations as may be prescribed by the District Commander, Savannah District, from time to time.
4. The grantee shall supervise and maintain the said structure and cause it to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structure or the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense to the same condition as that in which it existed prior to the commencement of such work, to the satisfaction of said officer.
5. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to the satisfaction of said officer, or in lieu of such repair or replacement, the grantee shall, if so required by said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of, damage to, or destruction of Government property.

## Consent No. DACW1-9-21-0084

6. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee, or the persons of the grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of any one of them arising from governmental activities on or in the vicinity of the said premises, and the grantee shall hold the United States harmless from any and all such claims.
7. This consent is effective only as to the following rights of the United States in the lands hereinabove described.
8. The United States shall in no case be liable for any damage or injury to the construction herein authorized which may be caused by any action of the Government, under the rights obtained in its easements, either hidden or known, or that may result from future operations undertaken by the Government, and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the grantee shall, upon due notice from the District Commander, Savannah District, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.
9. The construction and/or operation, maintenance and use of said structure incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the Government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.
10. This consent may be terminated by the Secretary of the Army upon reasonable notice to the grantee if the Secretary of the Army shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Secretary of the Army for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.
11. Upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the grantee shall vacate the premises, remove all property of the grantee therefrom, and restore the premises to a condition satisfactory to the officer having immediate jurisdiction over the property. If the grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the grantee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration.
12. The terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the grantee.

**Consent No. DACW1-9-21-0084**

13. The grantee within the limits of its respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.
14. The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, Savannah District and the site and the material shall be protected by the grantee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.
15. Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include assignees, transferees and their duly authorized representatives.
16. Grantee must provide to a "Schedule for Work" for construction activities to the Corps of Engineers Navigation Landuse Coordinator {POC Justin Arnette (910) 251-4196}. This schedule must be provided at least thirty (30) days prior to the commencement of this segment of your work.
17. All USCG requirements must be fulfilled including, but not limited to, installation of required signage and prior to commencement of work within the AIWW right-of-way. The Grantee shall be responsible for contacting the appropriate personnel at the US Coast Guard Group Fort Macon as well as the Wilmington Marine Safety Office and obtaining any necessary permits or clearances.
18. All work shall be conducted in strict accordance with applicable Department of the Army (DA), North Carolina Department of Environmental Quality (NCDEQ) and United States Coast Guard (USCG) requirements.
19. Grantee must install the pipeline, such that, no pipe shall be installed above -20 ft NGVD 1929 vertical datum within the 90-ft channel width of the AIWW.
20. Grantee must provide an "As-built" survey indicating the vertical and horizontal location of the pipeline alignment. Grantee shall provided both plan and cross-sectional views indicating following features: shoreline, channel Limits, pipeline alignment, and signage location. The survey must be referenced to the North Carolina State Plain Coordinate System NAD 1983 US survey feet horizontal datum and NGVD 1929 US survey feet vertical datum. The "As Built" survey shall be submitted in one of the following digital format: ".dwg", ".dgn.", or ".SHP". The "As Built" survey must be submitted within thirty (30) days of completion of the HDD activities to the U.S. Army Corps of Engineers, Wilmington District, P.O. Box 1890, Wilmington, North Carolina 28402.
21. The Grantee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work within the AIWW right-of-way herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the Grantee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.



**Consent No. DACW1-9-21-0084**

22. The Grantee is hereby put on notice that subsurface obstructions, remaining from the old swing span bridge substructure, may exist in the vicinity of the proposed pipeline and fiber optic conduit alignment. The government shall not be liable for any delay or obstruction with the pipeline and conduit installation.

23. Wilmington District Point of Contact regarding this action is OP-N Justin Arnette (910) 251-4196.

This consent is not subject to Title 10, U.S.C., Section 2662, as amended.

**IN WITNESS WHEREOF**, I have hereunto set my hand, by authority of the Secretary of the Army this \_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_

The above instrument, together with all the conditions thereof, is hereby accepted this \_\_\_\_ day of \_\_\_\_\_, 2021.

Currituck County

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

Title: County Manager

Consent No. DACW1-9-21-0084

**CERTIFICATE OF AUTHORITY**

I \_\_\_\_\_ (name) certify that I am the \_\_\_\_\_ (title) of  
 Currituck County, that \_\_\_\_\_ (signator of outgrant) who signed the foregoing  
 instrument on behalf of the grantee was then \_\_\_\_\_ (title of signator of outgrant) of  
 Currituck County. I further certify that the said officer was acting within the scope of powers  
 delegated to this governing body of the grantee in executing said instrument.

Currituck County

Date: \_\_\_\_\_

\_\_\_\_\_  
(Clerk or Appropriate Official)

(AFFIX SEAL)

Attachment: Coinjock Canal Water Main Crossing-Consent Agreement (Execution of Consent-Coinjock Canal Watermain Crossing)







## Currituck County Agenda Item Summary Sheet

**Agenda ID Number** – (ID # 3205)

**Agenda Item Title:** Approval and Authorization for County Manager's Execution of Memorandum of Agreement With North Carolina Department of Environmental Quality for Construction, Maintenance and Monitoring of Groundwater Monitoring Station at Maple Wellfield

**Submitted By:** Leeann Walton – County Manager

**Presenter of Item:**

**Board Action:** Action

---

**Brief Description of Agenda Item:**

**Consideration of agreement for the installation of monitoring wells in the vicinity of the airport in Maple.**

**Potential Budget Affect:** Costs assumed by DEQ/DWR

**Is this item regulated by plan, regulation or statute?** No

**Manager Recommendation:**

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

S. DANIEL SMITH

Director



NORTH CAROLINA  
Environmental Quality

**Memorandum of Agreement**  
**Operation of a Groundwater Monitoring Station**  
**Maple Well Field**  
**off Airport Road (SR 1530)**  
**Maple, Currituck County, NC**

This Memorandum of Agreement (hereinafter, "MOA") is made between the North Carolina Division of Water Resources (DWR) of the North Carolina Department of Environmental Quality (DEQ) or any successor agencies, and Currituck County. With the execution of this MOA, Currituck County authorizes DWR to construct, monitor and maintain wells comprising a groundwater monitoring station at Maple Well Field in Currituck County, North Carolina. Specifically, the monitoring station will consist of two to three wells, spaced 20 ft apart, positioned in line with, and located within 150 ft north-northwest of county monitoring well E. Monitoring well E is located along the sand road which extends east-northeast from the southern end of Airport Rd (SR 1530). The distance to well E along the sand road is approximately 1400 ft. Approximate coordinates for monitoring well E are 36.395 N latitude and -76.000 W longitude.

Currituck County and DWR, on behalf of DEQ, agree to the following conditions:

1. All costs of construction, monitoring, and maintenance of wells at the monitoring station shall be borne by DWR. DWR shall take reasonable measures to protect and prevent damage to the surrounding lands and facilities resulting from activities at the monitoring station. DWR's liability for property damages is governed by Chapter 143, Article 31 of the N.C. General Statutes.
2. DWR personnel and contractors shall have right of access to the groundwater station by a mutually agreeable route from the nearest public road.
3. The activities to be carried out by DWR are for the benefit of the DEQ and the State of North Carolina and any benefits accruing to Currituck County are incidental. DWR personnel and contractors are not and shall not be construed to be agents, employees, or contractors of Currituck County.
4. DWR shall provide prior written or verbal request to Currituck County for any major well maintenance or construction activities at least 48 hours in advance of the commencement of such activities and shall not commence such activities without

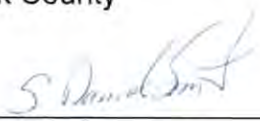


North Carolina Department of Environmental Quality | Division of Water Resources  
512 North Salisbury Street | 1636 Mail Service Center | Raleigh, North Carolina 27699-1636  
919.707.9129

approval from Currituck County, which approval shall not be unreasonably delayed or denied. Major maintenance or construction activities may include well installation, well abandonment, and well development.

5. Upon request, DWR will provide Currituck County with any data collected from this monitoring station, and with any reports generated from or written about such data.
6. Modification of this MOA must be in writing and signed by both parties.
7. This MOA is effective upon the signature of both parties. This MOA remains effective until it is terminated.
8. DWR and Currituck County may agree to terminate this MOA, but the termination must be in writing and signed by both parties. Termination of this MOA under this paragraph (bilateral termination) is effective upon the signature of both parties.
9. DWR or Currituck County may unilaterally terminate this MOA, but the terminating party must provide written notice to the other party 60 calendar days prior to termination. Termination of this MOA under this paragraph (unilateral termination) is effective after the 60-day notice period has expired.
10. If Currituck County wants the monitoring station abandoned and related structures removed, Currituck County must provide that request in writing to DWR prior to termination of this MOA. Upon receipt of Currituck County's written request, DWR must abandon its monitoring wells and remove related structures within 12 months.

County Representative (printed and signed)  
Currituck County

  
S. Daniel Smith  
Director - Division of Water Resources  
NC Department of Environmental Quality

Date

8.5.2021

Date



North Carolina Department of Environmental Quality | Division of Water Resources  
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ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

S. DANIEL SMITH

Director



**Date:** August 2, 2021

**To:** Eric Weatherly, County Engineer/Currituck County

**From:** Mark Durway, Hydrogeologist/NC DWR

**Subject:** Proposal for Maple Well Field Groundwater Monitoring Station

#### Purpose for Request

The NC DWR Groundwater Management Branch operates a statewide network of approximately 700 groundwater monitoring wells. Daily groundwater levels are recorded in these wells and used to understand and monitor the state's groundwater resources. Periodically, these wells are used for other purposes including sampling and analysis for chloride and other water quality parameters. The purpose for this request to install and operate a monitoring station is to expand and improve the state's groundwater program.

DWR's groundwater website, <https://deq.nc.gov/about/divisions/water-resources/groundwater-resources>, provides access to water level and water quality data for each well in the network, an interactive groundwater map, hydrographs, publications, and other information. In addition, DWR is a data provider to the USGS National Groundwater Monitoring Network (NGWMN), <https://cida.usgs.gov/ngwmn/index.jsp>.

#### Proposed Drilling Location

DWR proposes to install a groundwater monitoring station along the east side of the Maple well field near county monitoring well E. The monitoring station will consist of two to three wells, spaced 20 ft apart, positioned in line with, and located within 150 ft north-northwest of county monitoring well E. Monitoring well E is located along the sand road which extends east-northeast from the southern end of Airport Rd (SR 1530). The distance to well E along the sand road is approximately 1400 ft. Approximate coordinates for monitoring well E are 36.395 N latitude and -76.000 W longitude.



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Drill cuttings will be collected and described during drilling and geophysical logging will be performed upon well completion. Automatic data loggers will be installed in each well to collect water levels. Data will be downloaded quarterly by DWR personnel, at which time mowing and any other required well maintenance will be performed. The daily water levels and periodic sampling data from these wells will show water level and water quality changes over time resulting from pumping, drought, and other conditions.

Approximate construction details for the wells will be as follows:

<u>Well</u>	<u>Screen (ft)</u>	<u>Depth (ft)</u>	<u>Aquifer</u>
1	15-25	25	Surficial
2	165-175	180	Yorktown
3	725-735	740	Castle Hayne

#### Construction Schedule

Wells will be installed during summer or fall 2021.

#### Other Considerations

DWR's well drilling contractor will need a working area of approximately one acre to perform work and stage materials and equipment. Underground utilities and other features of concern will be identified prior to work to assure no damage or impact to county property occurs.

Drill cuttings and drilling fluids will be hauled for disposal at an approved location by the drilling contractor. Wells will be completed with approximate 3 ft locked stainless steel protective casing set into a 2 ft by 2 ft concrete pad. The work area will be re-graded and seeded with grass upon well completion.





# Figures

Figure 1. General location in Maple, Currituck County, NC

(north)



Attachment: Maple Well Field Groundwater Monitoring (MOA-Maple Well Field Groundwater Monitoring)



Figure 2. Maple well field. County monitoring well E, near where station will be installed, is located near supply well 11 on the east side of the well field. Supply well 11 is represented by the blue box and is the eastern-most well shown in this figure.



Attachment: Maple Well Field Groundwater Monitoring (MOA-Maple Well Field Groundwater Monitoring)

Figure 3. The monitoring station will consist of two to three wells, spaced 20 ft apart, positioned in line with, and located within 150 ft north-northwest of county monitoring well E. Proposed locations shown are approximate.



Attachment: Maple Well Field Groundwater Monitoring (MOA-Maple Well Field Groundwater Monitoring)



Figure 4. Example of a DWR monitoring station after well installation, grading and re-seeding has been completed.







## CURRITUCK COUNTY NORTH CAROLINA

August 2, 2021

Minutes – Regular Meeting of the Board of Commissioners

### WORK SESSION

#### 1. 4:30 PM Campgrounds Text Amendment

The Board of Commissioners met at 4:30 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina, for a work session to discuss a text amendment that will allow campgrounds as a use in Currituck County.

Chairman Payment offered opening comments to attendees and Development Services Director, Kevin Kemp, explained the text amendment language will allow existing non-compliant campgrounds to continue to operate, will provide a path toward compliance for existing campgrounds, and will allow new campgrounds to be established in the county. Planning and Community Development Director, Laurie LoCicero, reviewed requirements proposed in the text amendment for both existing and new campgrounds that had been established and agreed to by the Board in prior work sessions. Commissioners discussed several of the items as they were presented. Conditional zoning approval would be necessary for new campgrounds and for existing campgrounds wanting to expand or add amenities. Site conceptual plan requirements were presented for existing and new campgrounds. Commissioners discussed alternative camping units that would be allowed, on site staff and owner housing, campsite decking platforms, and required closure periods. Resident inventory and amortization requirements and pre-opening annual inspections were discussed. Commissioners set the effective date of amortization to coincide with the date the text amendment is adopted. Commissioners agreed to increase the minimum parcel size from 25 to 50 acres for new campgrounds and to allow a 50 foot setback with options for buffering and screening based on abutting parcels.

Non-conforming campgrounds who choose not to follow a path toward compliance would be required to maintain an accurate register of occupants and would only be able to maintain the buildings and amenities existing on site.

Commissioners agreed to a future work session to further discuss and define alternative sites and cabin requirements. The work session concluded at 5:45 PM.

#### 6:00 PM CALL TO ORDER

The Board of Commissioners met at 6:00 PM in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina, for a regular meeting.

Attendee Name	Title	Status	Arrived
---------------	-------	--------	---------

Communication: Minutes for August 2, 2021 (Approval Of Minutes-August 2, 2021)

Michael H. Payment	Chairman	Present	
Paul M. Beaumont	Vice Chairman	Present	
J. Owen Etheridge	Commissioner	Present	
Mary "Kitty" Etheridge	Commissioner	Present	
Selina S. Jarvis	Commissioner	Present	
Kevin E. McCord	Commissioner	Present	
Bob White	Commissioner	Present	

Chairman Payment called the meeting to order and announced the earlier work session on campgrounds.

#### **A) Invocation & Pledge of Allegiance**

Commissioner Beaumont offered the Invocation and led the Pledge of Allegiance.

#### **B) Approval of Agenda**

Commissioner White moved for approval of the Agenda. Commissioner McCord seconded the motion. The motion carried, 7-0.

Approved agenda:

#### **Work Session**

4:30 PM Campgrounds Text Amendment

#### **6:00 PM Call to Order**

A) Invocation & Pledge of Allegiance

B) Approval of Agenda

#### **Public Comment**

*Please limit comments to matters other than those appearing on this agenda as a PublicHearing. Public comments are limited to 3 minutes.*

#### **Commissioner's**

#### **Report**

#### **County Manager's**

#### **Report**

#### **County Attorney's**

#### **Report**

#### **Administrative**

#### **Reports**

**A) Presentation of Governor's Award for Volunteer Service****B) Emergency Management Departmental Update-Mary News, Director****Old Business**

- A) Consideration and Action on An Ordinance of the Currituck County Board of Commissioners Amending Chapter 2, Article III, Division 10 Historic Preservation Commission of the Currituck County Code of Ordinances to Conform With Chapter 160D of the General Statutes of North Carolina and to Make Technical Corrections**
- B) PB 21-10 Currituck County Text Amendment: Request to amend the Currituck County Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement to allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street.**

**Public Hearings**

- A) PB 21-12 Currituck County Text Amendment: Request to amend the Currituck County Unified Development Ordinance, Chapter 2. Administration, to allow a subdivision preliminary plat approval to be extended when a committed county utility cannot be provided.**

**New Business**

- A) Consideration of Resolution Authorizing the Purchase of Sulzer Pumps from Pete Duty & Associates, Inc., Through Sole Source Purchase**
- B) Resolution of the Board of Commissioners Opposing Unfunded School Mandates**
- C) Board Appointments**
1. Board of Adjustment
- D) Consent Agenda**
1. Budget Amendments
  2. Project Ordinance-Sound Park Bulkhead
  3. Project Ordinance-Silicone Roof Coatings at Central Elementary and Currituck Middle Schools (Lottery Funds)



4. Master Fee Schedule-Amended
5. Approval Of Minutes-July 19, 2021

**Recess****Special Meeting-Tourism Development Authority**

TDA                      Budget  
Amendments

**Adjourn TDA and****Reconvene****Closed Session**

Closed Session Pursuant to G.S. 143-318.11(a)(3) to consult with the County Attorney and preserve the attorney-client privilege; and G.S. 143-318.11(a)(6) to discuss personnel matters.

**New Business**

**Consideration of a Resolution of the Currituck County Board of Commissioners Approving the Memorandum of Agreement Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation**

**Adjourn**

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Bob White, Commissioner
<b>SECONDER:</b>	Kevin E. McCord, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

**PUBLIC COMMENT**

***Please limit comments to matters other than those appearing on this agenda as a Public Hearing. Public comments are limited to 3 minutes.***

Chairman Payment opened the Public Comment period. No one was signed up nor wished to speak and the Public Comment period was closed.

**COMMISSIONER'S REPORT**

Commissioner J. Owen Etheridge reported on the many residents who are utilizing the new Shingle Landing Park in Moyock. He suggested installing distance markers on the walking path and a bulletin board to post county information for residents.

Commissioner McCord welcomed the new Tractor Supply that recently opened in Moyock. He encouraged safety on the roadways with school buses traveling again and announced the school system is in need of bus drivers. He said Basic Law Enforcement Training will be offered in Currituck County at the new Public Safety Center and announced the ribbon cutting on August 16, 2021. He encouraged citizens to monitor the Currituck County website for information and cautioned people to do their research before commenting on social media.

Commissioner Beaumont, representative on the Albemarle Regional Planning Organization for Division 1, reported no funds for transportation projects are expected this year. Projects for scoring included adding a turn lane on Tulls Creek Road, a dividing island on Caratoke Highway, and roadwork on Waterlily Road. Commissioner Beaumont discussed fire response in the County and addressed criticisms when two fires broke in the same district at the same time. He encouraged folks who have concerns or questions about the county's fire services to email him.

Chairman Payment serves as a volunteer firefighter and also discussed fire response and how Dare County assists with calls in the lower end of the County when needed. He reported on the positive feedback from parents on various summer camps held by the YMCA and the Sheriff's Office. He commented how nice it was to see the Currituck County High School Band practicing outside at the school and announced a free Currituck Kids event on Saturday at the YMCA.

Commissioner Jarvis thanked all first responders for their efforts to keep the county safe and making Currituck County a top 10 family destination. She commended Chandler Sawyer, Maritime Museum Manager, and County staff for the museum's success since opening.

### **COUNTY MANAGER'S REPORT**

Ben Stikeleather, County Manager, announced upcoming events to be held in the County that includes a celebration of agricultural heritage through Currituck County Cooperative Extension and an Aviation Day at Currituck County Regional Airport. He acknowledged the efforts of Airport Manager, William Nelson, who has achieved record sales of jet fuel and has done an excellent job bringing new aircraft into the County airport.

### **COUNTY ATTORNEY'S REPORT**

County Attorney, Ike McRee, reported 424 contracts were processed through the office the past fiscal year. He announced the closing on the Tulls Creek Road, Moyock, school site property is scheduled for, Friday, August 6, 2021.

### **ADMINISTRATIVE REPORTS**

#### **A. Presentation of Governor's Award for Volunteer Service**

Kathie Foreman with the Guardian Ad Litem program attended the meeting to present Wendy Harvey with the Governor's Award for Volunteer Service. Ms. Foreman said Ms. Harvey has served as a volunteer since 2017, advocating for abused and neglected children in the community. Ms. Foreman read a statement on Ms. Harvey's service. Ms. Harvey was present to receive the award.

## **B. Emergency Management Departmental Update-Mary Newns, Director**

Mary Newns, Emergency Management Director, presented information on the Emergency Management and Communications offices. Call statistics were reported and services provided by the telecommunications office were discussed. Ms. Newns reported on storm preparations and predictions the 2021 Hurricane Season, presented predictions and preparations, and discussed the importance of vaccinations with the increase in Delta variant cases of Covid. Ms. Newns introduced the recently launched SafeCorolla.com website and in light of recent emergency calls, Commissioners discussed the importance of providing safety messaging to visitors. Commissioners recognized the teamwork and professionalism amongst Communications and Emergency Management staff.

## **OLD BUSINESS**

### **A. Consideration and Action on An Ordinance of the Currituck County Board of Commissioners Amending Chapter 2, Article III, Division 10 Historic Preservation Commission of the Currituck County Code of Ordinances to Conform With Chapter 160D of the General Statutes of North Carolina and to Make Technical Corrections**

#### **AN ORDINANCE OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS AMENDING CHAPTER 2, ARTICLE III, DIVISION 10, HISTORIC PRESERVATION COMMISSION OF THE CURRITUCK COUNTY CODE OF ORDINANCES TO CONFORM WITH CHAPTER 160D OF THE GENERAL STATUTES OF NORTH CAROLINA AND TO MAKE TECHNICAL CORRECTIONS**

WHEREAS, pursuant to N.C. Gen. Stat. §153A-76 a Board of Commissioners may change the composition and manner of selection of boards, commissions, and agencies, and may generally organize and reorganize the county government to promote orderly and efficient administration of county affairs; and

WHEREAS, pursuant to N.C. Gen. Stat. §153A-77 a board of commissioners may appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of commissioners; and

WHEREAS, Chapter 160D of the North Carolina General Statutes now requires that an ordinance establishing a county historic preservation commission include a route of appeal from a decision of a county historic preservation commission and a code of ethics for members for a county historic preservation commission.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Currituck, North Carolina as follows:

PART I. Chapter 2, Article III, Division 10 of the Code of Ordinances, Currituck County, North Carolina is amended as follows:

#### **DIVISION 10. HISTORIC PRESERVATION COMMISSION**

**Sec. 2-261. - Title.**



This division is known and may be cited as the Currituck County Historic Preservation Ordinance.

**Sec. 2-262. - Purpose.**

Whereas the historical heritage of Currituck County is a valued and important part of the general welfare; and whereas the conservation and preservation of the county's heritage, through the documentation and regulation of local historic districts or landmarks, or through the acquisition of historic properties, stabilizes and increases property values, and pursuant to G.S. 160A-400.1—160A-400.14, this division is enacted in order to:

- (1) Safeguard the heritage of Currituck County by preserving local landmarks within the county that embody important elements of county culture, history, architectural history, or prehistory; and
- (2) Promote the use and conservation of local landmarks for the education, pleasure and enrichment of the residents of Currituck County and the State of North Carolina.

**Sec. 2-263. - Created.**

There is hereby established a historic preservation commission, (the "commission"). The commission will consist of five members appointed by the board of commissioners. Members of the commission must have demonstrated education, experience, special interest, or a combination thereof, in historic preservation, history, architecture, architectural history, archaeology, cultural anthropology, planning, or related field. One member will be appointed to serve for a term of two years, two members will be appointed to serve for a term of three years, and two members will be appointed to serve for a term of four years. Thereafter members shall be appointed for terms of four years. Commissioners shall serve until their successors are appointed and qualified. All commissioners must be residents of the county.

**Sec. 2-264. - Officers.**

The commission will appoint from its membership a chair and any other officers as it may deem necessary for the orderly conduct of its business.

**Sec. 2-265. - Meetings.**

The commission will meet at least quarterly. A copy of the minutes of all meetings must be sent to the county manager. All meetings must be conducted in accordance with the Open Meetings Law of the State of North Carolina. The commission will annually present to the board of commissioners a report of its activities, budget, findings, recommendations, and actions, which will be made available to the public.

**Sec. 2-266. - Powers and duties.**

The commission is empowered to undertake such actions as may be reasonably necessary to the discharge and conduct of its duties and responsibilities as set forth in this division and in the North Carolina General Statutes, including, but not limited to:

- (1) Organizing and conducting its business;

- (2) Receiving and spending funds, if any, appropriated by the board of commissioners for operating and performing its duties;
- (3) Conducting an inventory of properties of historical, archaeological, architectural, and/or cultural interest;
- (4) Recommending to the board of commissioners that individual buildings, structures, sites, area, or object within its zoning jurisdiction be designated as "local historic landmarks;"
- (5) Recommending to the board of commissioners that designation of any building, structure, site area or object as a local historic landmark be revoked or removed for cause;
- (6) Reviewing and making recommendations on proposals for exterior alteration, relocation or demolition of designated local historic landmarks;
- (7) Negotiating with property owners who propose to demolish or relocate a designated local historic landmark, in an effort to find a means of preserving such properties, including consulting with private civic groups, interested private citizens, and other public boards or agencies;
- (8) Instituting action through the county planning and community development department to prevent, restrain, correct or otherwise abate violation of this division or of an ordinance designating local historic landmarks;
- (9) Entering, at reasonable times and with the consent of the owner or occupant, upon private lands to make examinations, conduct surveys and inventories or other purposes in performance of its official duties. However, no member, employee or agent of the commission shall enter any private building or structure without express consent of the owner or occupant thereof;
- (10) Reviewing and making recommendations on proposals for alterations of interior features of designated local historic landmarks, as specified, and for which owner consent was given, in the ordinance establishing designation;
- (11) Appointing advisory bodies or committees as appropriate;
- (12) Recommending to the board of commissioners negotiation with property owners for the acquisition or protection of significant historic properties;
- (13) Recommending to the board of commissioners acquisition by any lawful means, the purchase fee, or any lesser included interest, including options to purchase, properties designated as local landmarks, or land to which historic buildings or structures may be moved; recommending to the board of commissioners to hold, manage, preserve, and restore such a property and improving the interest; and to exchange or dispose of the interest through public or private sale, lease, or other lawful means, provided the property shall be subject to covenants or other legally binding restrictions which shall secure appropriate rights of public access and the preservation of the

property. All lands, buildings, structures, sites, areas, or objects acquired by funds appropriated by the board of commissioners shall be acquired in the name of the county unless otherwise provided by the board of commissioners;

- (14) Accepting grants of funds from private individuals or organizations for preservation purposes;
- (15) Conducting educational programs pertaining to local historic landmarks and historic areas within its jurisdiction;
- (16) Publishing or otherwise informing the public about any matter related to its purview, duties, responsibilities, organization, procedures, functions or requirements;
- (17) Advising property owners about appropriate treatment for characteristics of local historic properties;
- (18) Cooperating with the State of North Carolina, the United States of America, local governments, public or private organizations, or their agencies, in pursuing the purposes of this division;
- (19) Preparing and recommending adoption of a preservation element or elements as part of a county's comprehensive plan; and
- (20) Proposing to the board of commissioners amendment to this or to any other ordinance, and proposing new ordinance or laws relating to local historic landmarks or to the protection of the historic resources of the county and its environs.

**Sec. 2-267. - Inventory.**

The commission will use as a guide to identification, assessment, and designation of local historic landmarks an inventory of buildings, structures, sites, areas, or objects which are of historic, prehistoric, architectural, archaeological, and/or cultural significance. The commission will take steps as necessary to ensure that the inventory reflects information current to within 20 years.

**Sec. 2-268. - Adoption of local historic landmark ordinance of designation.**

(a) The board of commissioners may adopt and, from time to time, amend or repeal an ordinance designating one or more local historic landmarks. The ordinance will include the following:

- (1) The name or names of the owner or owners of the property;
- (2) Description of each property designated by the ordinance, including the address, if applicable, the physical configuration and orientation of the property so designated;
- (3) Description of those elements of the property which are integral to its historic, architectural, archaeological, and/or cultural significance;
- (4) Provide for each designated local historic landmark a suitable sign or plaque indicating that the local landmark has been designated a local historic landmark; and



- (5) Any other information deemed necessary by the board of commissioners.
- (b) The local landmark designation process may be initiated by either the commission or at the request of a property owner. No ordinance to designate a building, structure, site, area, or object will be adopted or amended until all of the requirements of this division and its subsections are satisfied.

**Sec. 2-269. - Criteria for designation as a historic local landmark.**

To be designated as a historic local landmark, a property, building, site, area, or object must be found by the commission to possess special significance in terms of its history, prehistory, architecture, archaeology, or cultural importance, and to retain the integrity of its design, setting, workmanship, materials, feeling, and/or association.

**Sec. 2-270. - Procedure for designating a local historic landmark.**

- (a) The commission will make, or cause to be made, an investigation and designation report which includes the following:
- (1) The name of the property to be designated, including both common and historic names if they can be determined;
  - (2) The name and address of the current owner or owners;
  - (3) The location of the property proposed for designation, including the street address and county tax map parcel number or parcel identification;
  - (4) The dates of original construction and of all later additions or alterations, if applicable and as can be determined;
  - (5) An assessment of the significance of the building or site as prescribed by this division;
  - (6) An architectural or archaeological description of the area of the site or structure, including descriptions of all outbuildings and appurtenant features, proposed for designation;
  - (7) A historical discussion of the site or structure within its type, period, and locality;
  - (8) A photograph showing, to the fullest extent possible, the overall disposition of the property; one photograph of each facade or elevation and supplementary photographs as necessary to illustrate architectural details or ornamentation, siting, scale, proportion, and relationship of features or buildings, structures, or objects to each other; and
  - (9) A map showing the location of the property, including all outbuildings and appurtenant features.
- (b) Pursuant to G.S. 160A-400.6, as amended, the designation report must be submitted to the North Carolina Department of Cultural Resources, Division of Archives and History, (the "department"), or its successor agency, which, acting through the state historic preservation officer, will review the designation report and provide written comment and recommendations to the board of

commissioners regarding the substance and effect of the proposed designation. Failure of the department to respond within 30 days following its receipt of the report will constitute approval of the report by the department and relieve the board of commissioners of all responsibility to consider the department's comments of recommendations concerning the report.

(c) At the expiration of the 30-day review period, the commission will consider the report and any comments or recommendations from the state historic preservation officer, and will accept it, amend it, reject it, or defer a decision until completion of a period of further study, not to exceed 60 days. The commission will forward to the board of commissioners a copy of the report, copies of written comments received from the department, and a recommendation either to approve or disapprove designation of the property, stating in its recommendation the extent to which the property meets the criteria for designation as set forth in this division. A recommendation for approval must be accompanied by a proposed ordinance of designation. A recommendation for disapproval will not necessarily prevent any future consideration of a property for designation as a local historic landmark.

(d) The board of commissioners will hold a public hearing, either jointly with the commission, or separately, to consider the proposed ordinance. Reasonable notice of the time and place thereof shall be given.

(e) Following the public hearing, the board of commissioners will consider the commission's designation report, its recommendation, the department's recommendation, and comments made at the public hearing, and may adopt the ordinance as proposed, adopt the ordinance with amendments, or reject the ordinance.

(f) Upon adoption of the ordinance, the commission staff will:

- (1) Within 30 days of adoption, send the owner(s) of the landmark(s) notice of the designation, explaining the substance of the commission's decision;
- (2) File one copy of the ordinance, and any subsequent amendments, in the office of the county's register of deeds, which will index local historic landmarks according to the name of the owner in the grantee and grantor indexes;
- (3) Notify the county tax assessor's office of the landmark designation.

(g) Upon notification of landmark designation from the commission, the county tax assessor shall indicate the designation on all appropriate tax maps for as long as the designation remains in effect.

(h) Upon disapproval of a designation report, a copy of the minutes of the meeting at which the decision to deny was made must be provided to the owner of the property proposed for designation, together with correspondence explaining the substance of the commission's decision.

**Sec. 2-271. - Certificate of appropriateness required.**

(a) From and after the designation of a local historic landmark, no construction, alteration, reparation, rehabilitation, relocation, or demolition of any building, structure, site, area, or object will be performed upon such

landmark until a certificate of appropriateness, (the "certificate"), is granted by the commission. A certificate will be required for any and all exterior work, including masonry walls, fences, light fixtures, steps and pavement, any other appurtenant features, any above ground utility structures, and any type of advertising sign.

(b) A certificate is required in order to obtain a building permit, or any other permit granted for the purposes of constructing, altering, moving, or demolishing structures, and is required whether a building permit or other permit is required. Any building permit or other permit not issued in conformity with this section is invalid.

(c) For the purposes of this division, "exterior features" includes architectural style, general design, general arrangement, kind and texture of material, size and scale, and type and style of all windows, doors, light fixtures, signs, any other appurtenant features, historic signs, historic advertising, landscape, and archaeological or natural features.

(d) A certificate is required to specific interior features of architectural, artistic, or historical significance in publicly owned local landmarks and in privately owned local landmarks for which consent to review has been given in writing by the owner. Such consent shall be filed with the county's register of deeds and indexed according to the name of the property owner in the grantee and grantor indexes and binds future owners and/or successors in title. The ordinance establishing historic designation of the property will specify the interior features subject to review and the specific nature of the commission's jurisdiction over those features.

(e) When approving a certificate, the commission may attach reasonable conditions necessary to the proper execution of this division.

(f) Commission staff may issue a certificate for "minor works" as defined by the commission. "Minor works" include the ordinary maintenance or repair of any exterior feature of a local historic landmark, provided such maintenance or repair does not involve a change in design, material, or appearance thereof.

(g) No application for a "minor works" certificate will be denied without deliberation by the commission.

(h) Under this section, the commission will institute action, through the county planning and community development department, to prevent, restrain, correct or otherwise abate the construction, reconstruction, alteration, restoration relocation or demolition of buildings structures, appurtenant features, or any other features which would be incongruous with the special character of the local landmark.

Sec. 2-272. - Review guidelines.

Prior to the designation of a historic local landmark, the commission will prepare and adopt guidelines not inconsistent with G.S. 160A-400.1—160A-400.14 for constructing, altering, restoring, rehabilitating, relocating, removing, or demolishing of property designated as historic, which guidelines will ensure, insofar as possible, that changes in designated local historic landmarks are in harmony with the reasons for designation.



**Sec. 2-273. - Certain changes not prohibited.**

Nothing in this division is to be construed to prevent:

- (1) The ordinary maintenance or repair of any exterior feature of a historic local landmark, provided such maintenance or repair does not involve a change in design, material, or appearance of the historic local landmark;
- (2) The construction, alteration, relocation, or demolition of any feature, building, or structure when the chief building inspector certifies to the commission that action is necessary to the public health or safety because of an unsafe or dangerous conditions;
- (3) A property owner from making use of property not otherwise prohibited by statute, ordinance, or regulation; or
- (4) The maintenance of, or, in the event of an emergency, the immediate restoration of any existing above ground utility structure without approval by the commission.

**Sec. 2-274. - Delay of demolition.**

(a) Except as provided below, a certificate authorizing the demolition of a designated local historic landmark may not be denied. However, the commission may delay the effective date of a certificate for a period of up to 365 calendar days from the date of approval. The commission may reduce the period of delay where it finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of such property as a result of the delay. During the delay period, the commission will negotiate with the property owner and with any other party in an effort to find a means of preserving the property as provided in section 2-266 of this division.

(b) The commission may deny an application for a certificate authorizing the demolition or destruction of any locally designated landmark, which the state historic preservation office has determined to be of statewide significance, as defined by the criteria of the National Register of Historic Places, unless the commission finds that the owner would suffer extreme hardship or be deprived permanently of all beneficial use of the property as a result of the denial.

(c) In the event that the commission has voted to recommend designation of a property as a local landmark and local landmark designation has not been made by the board of commissioners, the demolition of any building, site, object, area or structure located on the property of the proposed local landmark may be delayed by the commission for a period of up to 180 calendar days or until the board of commissioners takes final action on the proposed designation, whichever occurs first. If the board of commissioners approves the local landmark designation prior to the expiration of the 180-day delay period, an application for a certificate of appropriateness authorizing demolition must then be filed; however, the maximum delay period of 365 days shall be reduced by the number of days elapsed during the 180-day delay while designation was pending.

**Sec. 2-275. - Demolition by neglect.**

Failure of an owner to regularly, consistently, and fully maintain a designated local landmark constitutes demolition, through neglect, without a valid certificate of appropriateness and a violation of this division. The commission will institute action, through the county planning and community development department, to prevent, restrain, correct or otherwise abate such demolition, provided the action includes appropriate safeguards to protect property owners from undue economic hardship.

**Sec. 2-276. - Application and required procedures.**

(a) An application for a certificate shall be obtained from the commission staff. An application for a certificate will be completed and submitted to the ~~commission staff county planning director~~ in the form established ~~by the commission by the commission staff county planning director~~ and will be reviewed by commission staff to determine if the application is complete in accordance with the procedures and standards ~~adopted by the commission. included in the Administrative Manual and Unified Development Ordinance.~~

(b) The commission ~~has, as detailed in the administrative manual, power to~~ may require the submittal, with the application, of pertinent information sufficient to determine an application's completeness.

(c) Incomplete applications ~~are~~ shall not be accepted.

(d) Before considering an application for a certificate, the commission will notify by mail the owners of any adjacent property. Such notices are for the convenience of property owners and occupants and no defect or omission therein impairs the validity of the issuing a certificate or of any subsequent action.

(e) When considering an application for a certificate, the commission will give the applicant and owners of any property likely to be materially affected by the application an opportunity to be heard.

(f) When considering an application for a certificate, the commission will apply the review guidelines required by section 2-272 of this division and will, in approving with conditions, disapproving or deferring an application, make findings of fact to be entered into the minutes of its meetings. The minutes shall also contain a summary of any citation to evidence, testimony, studies, or other authority upon which the commission based its decision.

(g) The commission has 60 calendar days following submittal of a complete application within which to act. Failure by the commission to take final action within such period shall constitute approval of the application as submitted. This period may be extended by mutual agreement between the commission and the applicant.

(h) A certificate is valid for 180 calendar days from the date of issuance, or, in the case of a certificate for demolition, from the effective date. If the authorized work is not commenced within that period or has been discontinued for more than 365 calendar days from the date of issuance, the certificate will immediately expire and the applicant required to reapply.

(i) If the commission denies a certificate, a new application affecting the same property may be submitted, provided a substantial change is proposed in the plans.

(j) ~~An appeal of a final action by the commission may be made to the county board of adjustment. Written notice of intent to appeal must be sent to the commission, postmarked within 20 calendar days following the commission's decision. Appeals must be filed with the county board of adjustment within 30 calendar days following the commission's decision and is in the nature of certiorari. A decision by county board of adjustment may be appealed to the Superior Court of Currituck County.~~

(k) A certificate is required for locally designated landmarks or buildings, structures, sites, areas, which are owned by the State of North Carolina or any of its agencies, political subdivisions, or instrumentalities, subject to the regulations of this division and in accordance with G.S. 160A-400.9(f).

(l) In the case of a building, structure, site, area, or object designated as a local historic landmark threatened with demolition, as the result of willful neglect or otherwise, material alteration, rehabilitations or removal, except in compliance with this division, the commission, the board of commissioners or any other party aggrieved by such action may institute any appropriate action or proceeding to prevent, retrain, correct or otherwise abate such violation, or to prevent any illegal act or conduct with respect to such property.

**Sec. 2-277. - Conflict with other laws.**

Whenever the provisions of this division are in conflict with any other statute, charter provision, ordinance, or regulation of the Currituck County Board of Commissioners, the more restrictive ordinance or regulation shall govern.

**Sec. 2-278 – Code of Ethics.**

- (a) Before entering their duties, commission members shall qualify by taking an oath of office pursuant to G.S. 160D-309 and signing a written affirmation that the commission member has read and understands the code of ethics set out in this section.
- (b) A commission member shall not vote on any advisory or legislative decision regarding a regulation adopted pursuant to this ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the commission member.
- (c) A commission member shall not vote on any advisory or legislative decision regarding a regulation adopted pursuant to this ordinance if the landowner of the property subject to the application is a person with whom the member has a close familial, business, or other associational relationship. A close familial relationship means a spouse, parent, child, brother, sister, grandparent, or grandchild. This term includes the step, half, and in-law relationships.



(d) A commission member exercising quasi-judicial functions pursuant to this ordinance shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome.

**PART II.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

**PART III.** This ordinance is effective immediately upon adoption.

ADOPTED this 2<sup>nd</sup> day of August, 2021.

Ike McRee, County Attorney, presented the Ordinance at its second reading and reviewed the changes to the Historic Preservation Ordinance so it conforms with 160D state statutes. Language had also been added, as directed by the Board of Commissioners at the first reading of the Ordinance, to require Historic Preservation Commission members to adhere to the Code of Ethics.

Following review, Commissioner Jarvis moved to adopt the Ordinance. Commissioner White seconded the motion. The motion passed, 7-0.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Selina S. Jarvis, Commissioner
<b>SECONDER:</b>	Bob White, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

**B. PB 21-10 Currituck County Text Amendment: Request to amend the Currituck County Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement to allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street.**

To: Board of Commissioners

From: Planning Staff

Date: **REVISED June 30, 2021**

Subject: PB 21-10 Currituck County Text Amendment  
Family Subdivisions

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**Request**

Communication: Minutes for August 2, 2021 (Approval Of Minutes-August 2, 2021)

The proposed text amendment initiated by the Board of Commissioners will allow family subdivisions on parent parcels 12 acres in area or larger without the required connection to an existing NCDOT maintained street or a street that meets NCDOT standards. Resultant family subdivision lots shall be three acres in area minimum and are exempt from the current UDO requirement that private access streets shall not serve more than five lots. The current UDO language will not allow extension of a private access street serving more than five lots.

#### **Text Amendment Review Standards**

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

1. Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
2. Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the county;
6. Would result in a logical and orderly development pattern; and
7. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

#### **Land Use Plan Policies**

The following 2006 Land Use Plan Policies are relevant to this proposed text amendment.

POLICY TR8: Local streets shall be designed and built to allow for convenient CIRCULATION WITHIN AND BETWEEN NEIGHBORHOODS and to encourage mobility by pedestrians and bicyclists. Care shall be taken to encourage local street “connectivity” without creating opportunities for cut-through traffic from outside the connected areas.

POLICY TR12: New residential developments shall provide for the installation of PAVED PUBLIC ROADWAY AND DRAINAGE INFRASTRUCTURE at the time of development. This policy is intended to prevent the creation of substandard developments that must later correct for infrastructure problems that could have been avoided, had they been installed properly from the beginning. Family subdivisions and non-asphalt roads serving the northern beaches are the only exceptions to this policy.

#### **Staff Recommendation**

Staff recommends that the Board carefully consider impacts of this text amendment on all property owners. Owners of property along existing private access streets currently have assurance that development that accesses the street will be limited unless the street is improved to NCDOT standards.

The UDO states that the purpose of subdivision regulations is to promote health, safety, convenience, order, prosperity, and welfare of present and future residents of the county and subdivision and infrastructure standards are established to maintain conditions essential to the public's health, safety, and general welfare.

Road maintenance is important and necessary for access, safety, and emergency response. Relaxing standards for family subdivisions may detrimentally impact existing roads and property owners along those roads. This ordinance may create situations where roads are further deteriorated due to the creation of additional lots on substandard roads. Staff is concerned with allowing unlimited

lots along a private access street. This text amendment leaves the potential for an unlimited number of lots dependent on access from a private access street. The current limitation for private access streets is 5 lots.

Staff recommends a process for existing owners of a private access street and those with the legal right to access a private street the ability to provide consent for further subdivision along the street. The proposed language includes a requirement for consent by owners of existing private streets.

Staff recommends that family subdivision lots created subject to these regulations shall not be further divided into family subdivision lots, the proposed language includes this prohibition.

Staff suggests including language on the recorded plat that the family subdivision is for the purpose of keeping the land within the family and not for the purpose of short-term investment or circumvention of the UDO.

Staff recommends approval of the request and suggests the following Statement of Consistency: The requested zoning text amendment is consistent with the goals, objectives and policies of the 2006 Land Use Plan including:

Policy TR12: New residential developments shall provide for the installation of PAVED PUBLIC ROADWAY AND DRAINAGE INFRASTRUCTURE at the time of development. This policy is intended to prevent the creation of substandard developments that must later correct for infrastructure problems that could have been avoided, had they been installed properly from the beginning. Family subdivisions and non-asphalt roads serving the northern beaches are the only exceptions to this policy.

The request is reasonable and in the public interest because:

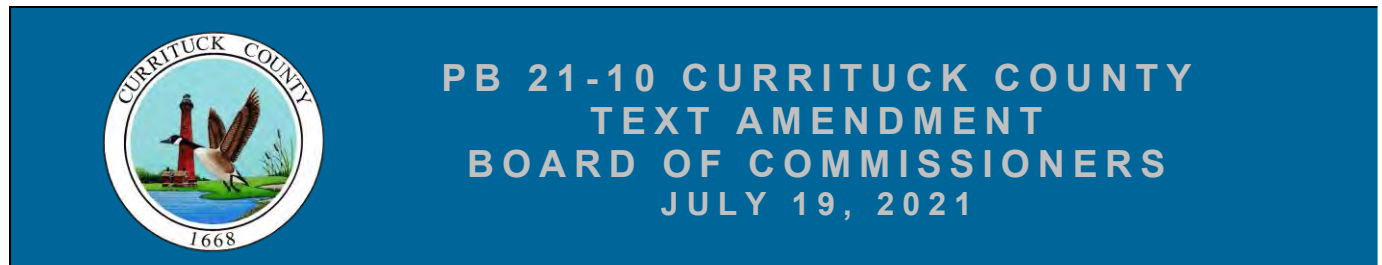
It allows family subdivisions to create larger parcels with relaxed access standards for the purpose of keeping the land within the family.

#### **Planning Board Recommendation**

On June 8, 2021, the Planning Board recommended denial of the requested text amendment with a 3-2 vote.

#### Motion

Mr. Doll moved to recommend denial of PB 21-10 because the request is not consistent with the 2006 Land Use Plan: Land Use and Development Goal #10 to properly distribute development forms in accordance with the suitability of land, infrastructure available, and the compatibility of surrounding land uses. And the text amendment may not result in a logical and orderly development pattern because extension of sub-standard private access streets for family subdivision purposes may detrimentally impact existing property owners along the streets. Chairman Ballance seconded the motion and the motion carried 3-2 with Mr. Owens and Mr. Bass voting nay.



Amendment to the Unified Development Ordinance, Chapter 2. Administration, Chapter 6. Subdivision and Infrastructure Standards, and Chapter 10. Definitions and Measurement.



BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1:** That Chapter 2 is amended by adding the following underlined language and renumbering accordingly:

**2.4.8. Subdivision**

**D. Minor Subdivision**

**(1) Procedure**

**(a) Pre-Application Conference**

Not applicable.

**(b) Community Meeting**

Not Applicable.

**(c) Application Submittal and Acceptance**

(i) Applicable (see Section 2.3.4). Applications shall include a final plat prepared in accordance with the standards in Section 2.4.8.E.5.b, Final Plat Review Standards.

(ii) Applications and plats for a family subdivision shall include an attestation that the purpose for the subdivision is solely for the conveyance of lots to family members, and that conveyance of a lot in a family subdivision to a non-family member is a violation of this Ordinance.

**(d) Staff Review and Action**

Applicable (see Section 2.3.5). The Planning Director shall decide an application for a minor subdivision in accordance with Section 2.3.5.D, Applications Subject to Decision by Planning Director or Technical Review Committee, and Section 2.4.8.D.2, Minor Subdivision Review Standards.

**(e) Public Hearing Scheduling and Public Notification**

Not applicable.

**(f) Public Hearing Procedures**

Not applicable.

**(g) Advisory Body Review and Recommendation**

Not applicable.

**(h) Decision-Making Body Review and Decision**

Not applicable.

**(2) Minor Subdivision Review Standards**

**(a) General Standards**

A minor subdivision shall be approved on a finding that:

(i) It complies with all applicable standards in Chapter 6: Subdivision and Infrastructure Standards, the standards for a final plat in Section 2.4.8.E.5.B; and all other applicable standards in this Ordinance;

(ii) It complies with the dimensional standards of Chapter 3 (except as allowed in Section 2.4.8.D.2.B.IV);

(iii) It will result in no more than three lots created from the parent parcel or tract (including the residual parcel or tract of less than ten acres in area), as it existed on April 2, 1989 (except as allowed in Section 2.4.8.D.2.B, Additional Standards for Family Subdivisions, or as allowed in Section 2.4.8.D.2.C., Additional Standards for Non-residential Minor Subdivisions);

(iv) It does not front an existing NCDOT-maintained public street (except for Family Subdivisions, and Non-residential Minor Subdivisions);

(v) The parent parcel and new parcel(s) shall front a private access street (except as allowed in Section 2.4.8.D.2.C, Additional Standards for Non-residential Minor Subdivisions). The existing driveway to the parent parcel shall be removed if that driveway is not converted into the private access street to service the resultant parcels.

(vi) There is no public right-of-way dedication;

(vii) It does not create a private access street serving more than two lots unless it is a family subdivision;

(viii) Any private access street created shall connect to an existing NCDOT-maintained public street (except as allowed in Section 2.4.8.D.2.B.IV) and shall comply with Section 6.2.1.B.1 Private Access Street Standards; and,

(ix) It does not require significant infrastructure improvements. For the purpose of this section significant infrastructure includes, but is not limited to: a road installed to NCDOT standards, fire hydrant, and/or a fire pond.

**(b) Additional Standards for Family Subdivisions**

Family subdivisions shall follow the review procedure for minor subdivisions and shall comply with the general standards in (a) above as well as the following:

(i) Lots shall be conveyed solely to family members within two degrees of kinship (e.g., child, grandchild). A maximum of one lot shall be conveyed to the individual family member, including family subdivisions on different parent parcels.

(ii) No more than five lots are created from the parent parcel or tract (including the residual parcel or tract of less than ten acres in area) as it existed ten years prior to application submittal.

- (iii) Ingress and egress to a lot shall not be from a major arterial street.
- (iv) Private access streets created shall connect to an NCDOT-maintained public street and shall not serve more than five lots except for lots that meet the following standards:
  - (A) The parent parcel or tract shall be a minimum of 12 acres in area.
  - (B) Lots created shall be a minimum of 3 acres in area in all zoning districts with a minimum lot width of 125 feet.
  - (C) Existing and new streets shall be improved in accordance with Section 6.2.1.B.1. from an NCDOT maintained public street to the lots created.
  - (D) A certification by an NC licensed engineer shall be required on the recorded plat indicating that the existing and new streets meet North Carolina State Fire Code.
  - (E) All owners of existing private streets shall consent to the family subdivision application.
  - (F) An agreement specifying ownership and responsibility for the maintenance of existing and new streets shall be recorded prior to approval of the plat.
  - (G) The plat shall state that lots created shall not be further divided into family subdivision lots.
- (v) Principal uses shall be limited to single-family detached dwellings and customary accessory uses.

**Item 2:** That Chapter 6 is amended by adding the following underlined language:

#### **6.2.1. Street Standards**

<b>E.</b>	<b>Applicability</b>
	Unless exempted in accordance with Section 6.2.1.B, Exemptions, the street standards shall apply to all streets serving three or more lots.
<b>F.</b>	<b>Exemptions</b>
<b>(1)</b>	<b>Private Access Streets</b>
	(a) A street within a family subdivision or serving a subdivision of two or fewer lots are exempted from the standards in this section, provided they are configured in accordance with Figure 6.2.1.B, Private Access Street Standards, and Section 6.2.1.€D.4, Connection with State Streets, <u>except as permitted in Section 2.4.8.D.2.B.IV.</u>
	(b) One private access street is allowed per parent parcel as it existed on April 2, 1989, <u>except as permitted in Section 2.4.8.D.2.B.IV.</u>
	(c) All subdivision plats served by private access streets shall bear the following notation: "Private access streets do not meet the NCDOT's minimum standards for the assumption of maintenance. Currituck County does not construct or maintain streets. Further subdivision of any lot shown on this plat may be prohibited



by the Currituck County UDO unless the private access street is improved consistent with minimum NCDOT standards.”

**G. Street Design Standards**

Streets in development subject to these standards shall comply with the following:

**(4) Connection with State Streets**

Provide direct access to an improved street that meets NCDOT design and construction standards or one that has been accepted for maintenance by NCDOT, to the maximum extent practicable.

**H. Minimum Street Width**

All streets in a subdivision subject to these standards shall comply with the minimum street width standards in Table 6.2.1.D, Minimum Street Width Standards.

TABLE 6.2.1.D: MINIMUM STREET WIDTH STANDARDS							
Subdivision Type	Minimum Right of Way Width (feet)	Local Street		Collector Street		NCDOT Design Standards Applicable?	NCDOT Construction Standards Applicable?
		Minimum Pavement Width (feet)	Minimum Shoulder Width (feet)	Minimum Pavement Width (feet)	Minimum Shoulder Width (feet)		
Family Subdivision	24	20	2	N/A	N/A	No	No
Residential Subdivision	See NCDOT <i>Subdivision Roads Minimum Construction Standards Manual</i>					Yes	Yes
Nonresidential Subdivision						Yes	Yes
Conservation Subdivision	30	20 [1]	N/A	N/A	N/A	No	Yes
Planned Unit and Planned Development [2]	30	20 [1]	N/A	N/A	N/A	No	Yes

NOTES:

[1] See Section 6.2.1.G for one-way street pavement width requirements

[2] Streets in Planned Developments shall be installed in accordance with the approved master plan and the requirements of this section.

**6.2.3 Utility Standards**

**I. Water Supply Standards**

**(1) Water Supply System Required**

(a) Every principal use and every buildable lot in a subdivision shall be serviced by a means of water supply that is adequate to accommodate the reasonable needs of such use or lot and that complies with all applicable health regulations.

(b) All buildable lots within a planned unit development, planned development, or multi-family development shall be connected and serviced by the county water supply system.

(c) Except for family subdivisions, lots in the Fruitville and Moyock-Gibbs Woods Townships, and lots located in the

Agriculture (AG) zoning district, all new subdivisions and nonresidential development shall be connected and serviced by the county water supply.

**Item 3:** That Chapter 10 is amended by adding the following underlined language:

### **10.3.3 Lots**

(8)

#### **Lot Types (see Figure 10.3.3.A.7, Lot Types)**

##### **(5) Family Subdivision Lot**

A lot created through the family subdivision process (see Section 2.4.8).

J.

#### **General Lot Requirements**

(2)

##### **Family Subdivision Lots**

(a) Family subdivision lots shall maintain a minimum lot area of 40,000 square feet, regardless of the minimum requirements for the zoning district (except as permitted in Section 2.4.8.D.2.B.IV or in the SFR district, where district requirements apply).

(b) Family subdivision lots are not required to front onto a public or private street.

### **10.3 Definitions**

#### **STREET, PRIVATE ACCESS**

A street subject to the requirements of Section 6.2.1.B.1, Private Access Streets, that serves a family subdivision or a maximum of two lots.

#### **SUBDIVISION, FAMILY**

A subdivision where single-family lots may only be conveyed to family members within two degrees of kinship (e.g., child, grandchild).

**Item 4:** Staff suggested Statement of Consistency and Reasonableness:

**Item 5:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Item 6:** This ordinance amendment shall be in effect from and after the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Planner, Jennie Turner, reviewed the text amendment with Commissioners after an initial presentation at the July 19, 2021, Commissioner meeting. Ms. Turner displayed a chart on the overhead and compared the rules currently established for family subdivisions in the

Unified Development Ordinance (UDO) with the relaxed access standards being considered by the Board. Proposed text amendment language and consistency statements were reviewed. Staff recommended approval of the text amendment as presented. The Planning Board had recommended denial of the request.

Ms. Turner responded to questions pertaining to the division of parcels and reset dates, and several scenarios demonstrating lot divisions were presented. Commissioners discussed the language proposed for road maintenance, improvements and enforcement of road requirements. Commissioners held lengthy discussion of road conditions and standards and Commissioner Jarvis expressed her concerns with a lack of established standards for access roads and the unlimited access points allowed in the current language.

To address concerns, Commissioners considered capping the number of access points. Commissioners also considered setting some standards for access roads which may include an initial engineering certification and resetting and grading at each housing build. Commissioners agreed to require a re-grade of access roads, utilizing the same road materials, prior to issuance of a Certificate of Occupancy (CO) for housing builds.

Chairman Payment called a recess at 7:51 PM. The meeting reconvened at 8:00 PM.

Ike McRee, County Attorney, clarified the proposed language would allow creation of up to ten (10) additional family subdivision lots. He discussed North Carolina Department of Transportation (NCDOT) standards and maintenance requirements. Commissioners discussed whether NCDOT maintenance should be required. It was confirmed that paving would be required to meet NCDOT standards.

Kevin Kemp, Development Services Director, said a real time picture could be presented should the text amendment result in an influx of family subdivision applications and suggested information could be passed on to the Board of Commissioners when applications are received by the Planning Department. Mr. McRee confirmed the requirements and the authority of the Board should a moratorium be necessary.

Needing additional discussion, Commissioner White moved to table the item until the August 16, 2021, meeting of the Board of Commissioners. The motion passed, 4-3, with Commissioners Paul Beaumont, J. Owen Etheridge, and Kevin McCord opposed. Mr. Kemp said staff would revise the text with requirements agreed upon so far.

<b>RESULT:</b>	<b>TABLED [4 TO 3]</b>	<b>Next: 8/16/2021 4:00 PM</b>
<b>MOVER:</b>	Bob White, Commissioner	
<b>SECONDER:</b>	Selina S. Jarvis, Commissioner	
<b>AYES:</b>	Michael H. Payment, Chairman, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Bob White, Commissioner	
<b>NAYS:</b>	Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Kevin E. McCord, Commissioner	

## PUBLIC HEARINGS

### A. PB 21-12 Currituck County Text Amendment:



To: Board of Commissioners

From: Planning Staff

Date: July 15, 2021

Subject: PB 21-12 Currituck County Text Amendment  
Extension of Preliminary Plat/Use Permit

### Request

The proposed text amendment initiated by the Board of Commissioners will allow for a subdivision preliminary plat approval to be extended when a committed county utility cannot be provided. The Board gave staff direction to address this situation in the 2021 Retreat.

### Background

Under the current Unified Development Ordinance, approval of a preliminary plat vests a subdivision project and allows it to move forward to construction drawing phase. Construction drawings are the detailed, engineered drawings showing individual lots and all the information necessary to install required public improvements. Upon approval of preliminary plat, an applicant typically invests time and resources to engineering the project, applying for any state permits (such as CAMA, stormwater, wastewater, and erosion control), and finalizing the design of the subdivision, including access to public utilities. State permits are required prior to approval of construction drawings. After construction drawings are approved, the next step is installation of the proposed improvements. Once the improvements are installed, certified, and verified, a project can move toward final plat. When a final plat is approved, the plat can be recorded, and individual lots may be sold.

Ordinance	Preliminary Plat Expiration and Extension
1984 Subdivision Ordinance	One year with potential one-year extension.
1989 UDO	One year with potential one-year extension.
1992 UDO	Two years with potential two-year extension.
2007 & 2013 UDO	Two years if a complete application for final plat not received with potential two-year extension. <sup>1</sup>
April 2019 UDO Amendment	Three years with no extension. <sup>2</sup>

<sup>1</sup>During this time, the Board heard numerous requests for extensions to allow time for full project design, application for all state permits and improvement installation.

<sup>2</sup>This standard is effective for all preliminary plats that received approval after April 2019.

With the existence of the Moyock Regional Wastewater Treatment Plant, the county committed to serve Moyock Commons residential subdivision with sewer. The 55-lot Moyock Commons subdivision received preliminary plat approval in June 2017 and an extension in June 2019. The project did not move forward with construction drawings phase until the Moyock Regional WWTP was under Special Order of Consent from NC Division of Water Resources that limits sewer availability. The project cannot move forward with this limitation. State permits for construction drawings cannot be issued under the

SOC. This language was drafted to give any applicant relief who is relying on a committed county utility but access to the utility cannot be provided in the appropriate time span. Staff is proposing an administratively approved extension when a committed county utility cannot be provided.

### **Text Amendment Review Standards**

The advisability of amending the text of the UDO is a matter committed to the legislative discretion of the Board of Commissioners and is not controlled by any one factor. In determining whether to adopt or deny the proposed text amendment, the Board of Commissioners may weigh the relevance of and consider whether and the extent to which the proposed text amendment:

1. Is consistent with the goals, objectives, and policies of the Land Use Plan and other applicable county-adopted plans;
2. Is not in conflict with any provision of this Ordinance or the County Code of Ordinances;
3. Is required by changed conditions;
4. Addresses a demonstrated community need;
5. Is consistent with the purpose and intent of the zoning districts in this Ordinance, or would improve compatibility among uses and ensure efficient development within the county;
6. Would result in a logical and orderly development pattern; and
7. Would not result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

### **Staff Recommendation/Statement of Consistency**

Staff recommends approval of the text amendment.

The proposed text amendment is consistent with the 2006 Land Use Plan including:

Land Use and Development Goal #10 To properly distribute development forms in accordance with the suitability of the land, infrastructure available and the compatibility of surrounding land uses.

POLICY PP2: Currituck County shall continue to implement a policy of ADEQUATE PUBLIC FACILITIES, sufficient to support associated growth and development. Such facilities may include but not be limited to water supply, school capacity, park and open space needs, fire fighting capability, and law enforcement.

### **Planning Board Recommendation**

On July 13, 2021, the Planning Board recommended approval of the requested text amendment as presented with a 5-0 vote.

### **Motion**

Mr. Bass motioned to approve PB 21-12 because the request is consistent with Land Use and Development Goal #10 and Policy PP2 of the 2006 Land Use Plan. Mr. Doll seconded the motion and the text amendment was approved unanimously with a 5-0 vote.



**PB 21-12 CURRITUCK COUNTY  
TEXT AMENDMENT  
BOARD OF COMMISSIONERS  
AUGUST 2, 2021**

Amendment to the Unified Development Ordinance, Chapter 2. Administration:

BE IT ORDAINED by the Board of Commissioners of the County of Currituck, North Carolina that the Unified Development Ordinance of the County of Currituck be amended as follows:

**Item 1:** That Chapter 2 is amended by adding the underlined language and numbering accordingly:

**2.4.8. Subdivision**

**Major Subdivision**

**Preliminary Plat Standards, Effect, Amendment, and Expiration**

**(a) Preliminary Plat Review Standards**

An application for a type I or type II preliminary plat shall be approved only upon a finding the applicant demonstrates the preliminary plat complies with:

- (i) All applicable standards in Chapter 6: Subdivision and Infrastructure Standards, and other applicable standards in this Ordinance;
- (ii) The standards in 2.4.6.D, Special Use Permit Standards, if applicable;
- (iii) The Currituck County Stormwater Manual;
- (iv) All standards or conditions of any prior applicable development permits and approvals; and
- (v) All other applicable requirements in the County Code of Ordinances.

**(b) Effect of Development Approval**

Approval of a type I or type II preliminary plat authorizes:

- (i) The submittal of construction drawings for the subdivision or an approved phase of the subdivision, in accordance with this section; or
- (ii) Review and decision on construction drawings by the Technical Review Committee, if submitted concurrently with the preliminary plat application.

**(c) Amendment of Development Approval**

Applicable (see Section 2.3.14).

**(d) Expiration of Development Approval**

- (i) Approval of a type I or type II preliminary plat shall automatically expire if a complete application for approval of a final plat is not submitted within

Communication: Minutes for August 2, 2021 (Approval Of Minutes-August 2, 2021)



three years after the date of approval of the type I or type II preliminary plat.

(ii) If the county cannot provide a committed county utility, the Director may, on receiving a written request for extension before the expiration date of the preliminary plat (including extensions granted prior to (INSERT: the effective date of this text amendment), grant an extension of the expiration time period of the preliminary plat for a period of two years from the date notice is provided to the applicant that the county utility is available.

## **Item 2: Statement of Consistency**

**Item 3:** The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of North Carolina by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

**Item 4:** This ordinance amendment shall be in effect from and after the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Planner, Jennie Turner, reviewed the County sponsored text amendment with the Board of Commissioners. Ms. Turner used the overhead and reviewed the background of the request which would provide relief for applicants when committed utilities are not available. Proposed text amendment language in the Unified Development Ordinance was reviewed. Review standards and consistency statements were presented. Both Planning Board and staff recommend approval.

Chairman Payment opened the Public Hearing. No one was signed up nor wished to speak and the Public Hearing was closed.

Commissioner McCord moved to approve PB 21-12 because the request is consistent with Land Use and Development Goal #10 and Policy PP2 of the 2006 Land Use Plan. Commissioner J. Owen Etheridge seconded the motion. The motion carried, 7-0.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Kevin E. McCord, Commissioner
<b>SECONDER:</b>	J. Owen Etheridge, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

## **NEW BUSINESS**

### **A. Consideration of Resolution Authorizing the Purchase of Sulzer Pumps from Pete Duty & Associates, Inc., Through Sole Source Purchase**

Ben Stikeleather, County Manager, reviewed the Sole Source Purchase Resolution that would provide for the purchase of pumps to maintain consistency with existing wastewater equipment.

Commissioner White moved for approval and the motion was seconded by Commissioner McCord. The motion carried, 7-0.

**RESOLUTION AUTHORIZING THE PURCHASE OF SULZER PUMPS FROM PETE DUTY & ASSOCIATES, INC. THROUGH SOLE SOURCE PURCHASE PURSUANT TO N.C. GEN. STAT. §143-129(e)(6)**

WHEREAS, N.C. Gen. Stat. §143-129(e)(6) authorizes a unit of local government to purchase apparatus, supplies, materials or equipment when standardization or compatibility is an overriding consideration; and

WHEREAS, proper functioning of the County's Ocean Sands Wastewater Treatment Plant (OSWWTP) requires replacement of one effluent dosing pump and three reactor backwash pumps with existing systems equipment; and

WHEREAS, as the sole and exclusive distributor of Sulzer wastewater products in the State of North Carolina, Pete Duty & Associates, Inc. is the only entity capable of providing the county with pumps compatible with current OSWWTP equipment and operational systems, and

WHEREAS, the County's OSWWTP has been using Pete Duty & Associates, Inc. to construct, develop and upgrade its system; and

WHEREAS, the County's OSWWTP needs replacement of one effluent dosing pump and three reactor backwash pumps and Pete Duty & Associates is supplier of compatible pumps; and

WHEREAS, Pete Duty & Associates, Inc. is supplying the County's OSWWTP with replacement of one effluent dosing pump at a cost of \$11,627.00 and three reactor backwash pumps at a cost of \$19,528.80; and

WHEREAS, the total cost for the purchase is \$31,155.80.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners for Currituck County, North Carolina as follows:

Section 1. The County of Currituck is authorized to enter into a contract in the amount of \$31,155.80 with Pete Duty & Associates, Inc. for the sole source purchase of Sulzer wastewater products in accordance with the sole source provision requirements set forth by N.C. Gen. Stat. §143-129(e)(6). Further, the County Manager is authorized to execute the agreement with Pete Duty & Associates, Inc. for the acquisition apparatus, materials, and equipment acquisition described in this resolution and the proposed contract.

Section 2. This resolution shall be effective upon its adoption.

This the 2nd day of August 2021.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Bob White, Commissioner
<b>SECONDER:</b>	Kevin E. McCord, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

## **B. Resolution of the Board of Commissioners Opposing Unfunded School Mandates**

Ike McRee, County Attorney, reviewed the Resolution that had been requested by the Board of Commissioners at the prior meeting to address the unfunded mandates counties are being burdened with as a result of actions taken by the North Carolina General Assembly.

Commissioner Jarvis suggested the Resolution be shared with neighbors to encourage other boards to adopt similar language.

Commissioner J. Owen Etheridge moved to adopt the Resolution and that copies be sent to the local education agencies in the State of North Carolina. The motion was seconded by Chairman Payment. The motion carried, 7-0.

### **RESOLUTION OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS EXPRESSING CONCERN WITH UNFUNDED AND UNDERFUNDED STATE MANDATES FOR PUBLIC EDUCATION**

WHEREAS, Article IX, §2 of the North Carolina Constitution provides “[T]he General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.”; and

WHEREAS, the Court of Appeals of North Carolina, citing the North Carolina Supreme Court decisions in *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997) and *Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004), explained in *Silver v. Halifax Cty. Bd. of Comm'rs*, 255 N.C. App. 559, 805 S.E.2d 320 (2017) that “[T]he constitutional duty to provide a sound basic education rests upon the State . . . .”; and

WHEREAS, there has been a long tradition and partnership and cost sharing between the State and counties to fund public education operations and facilities; and

WHEREAS, it is becoming a State practice, no matter how well meaning, to reduce State spending by shifting to counties unfunded or underfunded mandates for the improvement of public education as exemplified by requiring that local school systems reduce the size of K-3 elementary school classes; and



WHEREAS, because of these unfunded or underfunded mandates, Currituck County is faced with expending millions of local taxpayer dollars for capital improvements and additional funding for teachers and other school operational costs; and

WHEREAS, Currituck County opposes state unfunded mandates and requiring county funding of State responsibilities without revenue to cover a county's cost of such funding.

NOW, THEREFORE, BE IT RESOLVED by the Currituck County Board of Commissioners that the North Carolina General Assembly, and in particular the county's legislative delegation, take no action that places additional financial burden on counties and that the State of North Carolina assume the unfunded and underfunded mandates placed upon counties.

ADOPTED this 2<sup>nd</sup> day of August, 2021.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	J. Owen Etheridge, Commissioner
<b>SECONDER:</b>	Michael H. Payment, Chairman
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

## C) Board Appointments

### 1. Board of Adjustment

Chairman Payment nominated Robin Kane to serve as his representative on the Board of Adjustment. Mr. Kane will serve as an alternate on the Board and fill the unexpired term of Lynn Hicks through December, 2022.

Commissioner Mary Etheridge seconded the motion. The motion carried, 7-0.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Michael H. Payment, Chairman
<b>SECONDER:</b>	Mary "Kitty" Etheridge, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

## D) Consent Agenda

Commissioner Mary Etheridge asked about Item 3 of Consent Agenda and the cost differences between the two schools for silicone roofing repairs. It was explained that the schools had two different roof types, one being flat and needing more extensive repair.

Following review, Commissioner J. Owen Etheridge moved for approval of Consent Agenda. Commissioner McCord seconded the motion. The motion carried, 7-0.

**RESULT:** **APPROVED [UNANIMOUS]**  
**MOVER:** J. Owen Etheridge, Commissioner  
**SECONDER:** Kevin E. McCord, Commissioner  
**AYES:** Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

## 1. Budget Amendments

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10752-519700	HCCBG - In Home	\$ 15,532	
10560-519701	HCCBG - Access Services	\$ 837	
10330-432200	HCCBG - In Home		\$ 15,936
10390-499900	Fund Appropriate Balance		\$ 433
		<u>\$ 16,369</u>	<u>\$ 16,369</u>
<b>Explanation:</b>	PUBLIC ASSISTANCE (10752); INTER COUNTY TRANSPORTATION (10560) - Adjust to State Funding Authorizations.		
<b>Net Budget Effect:</b>	Operating Fund (10) - Increased by \$16,369.		
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10510-532001	Supplies - GHSP Grant PROJ013795	\$ 10,600	
10510-590001	Capital Outlay - GHSP Grant PROJ013795	\$ 23,796	
10330-449510	Sheriff Grants		\$ 34,396
		<u>\$ 34,396</u>	<u>\$ 34,396</u>
<b>Explanation:</b>	Sheriff (10510) - Increase appropriations to record grant funds for Governor's Highway Safety Program Project PROJ013795 for 4 permanent radar signs in school zones and for supplies for crisis response in schools.		
<b>Net Budget Effect:</b>	Operating Fund (10) - Increased by \$34,396.		

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
10460-590000	Capital Outlay	\$ 68,838	
10460-592000	Courthouse Projects	\$ 337,860	
10390-499900	Appropriated Fund Balance		\$ 406,698
		<u>\$ 406,698</u>	<u>\$ 406,698</u>
<b>Explanation:</b>	Public Works (10460) - Carry-forward Public Works funds for two (2) trucks, Cooperative Extension window replacement, stainless steel toilet in detention center and generator. Projects were delayed due to materials shortages.		
<b>Net Budget Effect:</b>	Operating Fund (10) - Increased by \$406,698.		
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
26535-590535	Capital Outlay - 911 Grants	\$ 332,700	
26330-445000	Emergency Mgmt Grants		\$ 332,700
		<u>\$ 332,700</u>	<u>\$ 332,700</u>
<b>Explanation:</b>	Emergency Telephone System Fund (26535) - Increase appropriations for Communications space in the Public Safety building funded through a PSAP grant.		
<b>Net Budget Effect:</b>	Operating Fund (10) - Increased by \$332,700.		
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
51848-591005	CCMS - Silicone Roof Coating	\$ 340,000	
51848-598005	Central Elem School - Silicone Roof Coating	\$ 65,000	
51380-425001	Lottery Proceeds		\$ 405,000
		<u>\$ 405,000</u>	<u>\$ 405,000</u>
<b>Explanation:</b>	School Construction (51848) - Increase appropriations for silicone roof coating on Currituck County Middle School and Central Elementary Schools, which will have twenty year warranties on each building.		
<b>Net Budget Effect:</b>	School Construction Fund (51) - Increased by \$405,000.		



		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
Account Number	Account Description		
43848-590000	Capital Outlay	\$ 880,000	
43390-499900	Fund Balance Appropriated		\$ 880,000
		\$ 880,000	\$ 880,000
<b>Explanation:</b> Land Banking Fund (43) - Carry-forward purchase of land for school property on Tulls Creek Road.			
<b>Net Budget Effect:</b> Land Banking Fund (43) - Increased by \$880,000.			
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
Account Number	Account Description		
10441-557100	Software License Fees	\$ 53,852	
10390-499900	Appropriated Fund Balance		\$ 53,852
		\$ 53,852	\$ 53,852
<b>Explanation:</b> Information Technology (10441) - Carry-forward FY 2021 funds remaining in ITS for telephone system upgrades that will be done in FY 2022.			
<b>Net Budget Effect:</b> Operating Fund (10) - Increased by \$53,852.			
		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
Account Number	Account Description		
50795-590008	Sound Park Bulkhead FY 2022	\$ 50,000	
50390-495015	T F - Occupancy Tax		\$ 50,000
		\$ 50,000	\$ 50,000
<b>Explanation:</b> County Governmental Construction (50795) - Increase appropriations for design to repair or replace the bulkhead at the Sound Park.			
<b>Net Budget Effect:</b> County Governmental Construction Fund (50) Increased by \$50,000.			

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
Account Number	Account Description		
10390-499900	Appropriated Fund Balance		\$ 38,096
10531 514500	Training and Education	\$ 1,000	
10531 516200	Vehicle Maint	\$ 500	
10531 514000	Travel	\$ 2,000	
10531 532000	Supplies	\$ 5,000	
10531 590000	Capital Outlay	\$ 29,596	
		\$ 38,096	\$ 38,096
<b>Explanation:</b>	Emergency Management (10531) - Carry-forward EMPG funding for 800 mHz radios, training and supplies for Emergency Management.		
<b>Net Budget Effect:</b>	Operating Fund (10) - Increased by \$38,096.		

## 2. Project Ordinance-Sound Park Bulkhead

### COUNTY OF CURRITUCK CAPITAL PROJECT ORDINANCE

BE IT ORDAINED by the Currituck County Board of Commissioners, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

**SECTION 1.** The project authorized is design and construction for repairs and replacement of the bulkhead at Sound Park in Point Harbor.

**SECTION 2.** The following amounts are appropriated for the project:

Central Elementary - Silicone coating on roof	\$ 65,000
Currituck Co Middle - Silicone coating on roof	\$ 340,000
	<u>\$ 405,000</u>

**SECTION 3.** The following funds are available to complete this project:

Lottery Funds	\$ 405,000
	<u>\$ 405,000</u>

**SECTION 4.** The Finance Director is hereby directed to report, on a quarterly basis, on the financial status of each project element delineated in Section 2 above.

#### **SECTION 5. SPECIAL APPROPRIATIONS AND RESTRICTIONS**

The Budget Officer is hereby authorized to transfer appropriations within the fund as contained herein under the following conditions:

- a. He may transfer amounts between object line items within the fund up to One Thousand dollars (\$1,000).

#### **SECTION 6. CONTRACTUAL OBLIGATIONS**

The County Manager is hereby authorized to execute contractual documents under the following conditions:

- a. He may execute contracts for construction or repair projects which do not require formal competitive bid procedures.
- b. He may execute contracts for (1) purchases of apparatus, supplies, and materials, or equipment which are within the budgeted departmental appropriations; (2) leases of personal property for a duration of one year or less and within budgeted departmental appropriations; and (3) services which are within budgeted departmental appropriations.
- c. He may execute contracts, as the lessor or lessee of real property, which are of a duration of one year or less which are within the budgeted departmental appropriations.

#### **SECTION 7. USE OF BUDGET ORDINANCE**

The Budget Officer and the Finance Director shall use this capital project ordinance for administration of the budget and for the accounting system.

ADOPTED this 2<sup>nd</sup> day of August 2021.

### **3. Project Ordinance-Silicone Roof Coatings at Central Elementary and Currituck Middle Schools (Lottery Funds)**

#### **COUNTY OF CURRITUCK CAPITAL PROJECT ORDINANCE**

BE IT ORDAINED by the Currituck County Board of Commissioners, North Carolina that pursuant to Section 13.2 of Chapter 159 of the General Statutes of North Carolina, the following capital project ordinance is hereby adopted:

**SECTION 1.** The project authorized is applying a silicone coating on roofs of Currituck Middle School and Central Elementary School to prevent leaks. This will provide a 20 year warranty for these facilities.



**SECTION 2.** The following amounts are appropriated for the project:

Central Elementary - Silicone coating on roof	\$ 65,000
Currituck Co Middle - Silicone coating on roof	\$ 340,000
	<u>\$ 405,000</u>

**SECTION 3.** The following funds are available to complete this project:

Lottery Funds	\$ 405,000
	<u>\$ 405,000</u>

**SECTION 4.** The Finance Director is hereby directed to report, on a quarterly basis, on the financial status of each project element delineated in Section 2 above.

**SECTION 5. SPECIAL APPROPRIATIONS AND RESTRICTIONS**

The Budget Officer is hereby authorized to transfer appropriations within the fund as contained herein under the following conditions:

- a. He may transfer amounts between object line items within the fund up to One Thousand dollars (\$1,000).

**SECTION 6. CONTRACTUAL OBLIGATIONS**

The County Manager is hereby authorized to execute contractual documents under the following conditions:

- a. He may execute contracts for construction or repair projects which do not require formal competitive bid procedures.
- b. He may execute contracts for (1) purchases of apparatus, supplies, and materials, or equipment which are within the budgeted departmental appropriations; (2) leases of personal property for a duration of one year or less and within budgeted departmental appropriations; and (3) services which are within budgeted departmental appropriations.
- c. He may execute contracts, as the lessor or lessee of real property, which are of a duration of one year or less which are within the budgeted departmental appropriations.

**SECTION 7. USE OF BUDGET ORDINANCE**

The Budget Officer and the Finance Director shall use this capital project ordinance for administration of the budget and for the accounting system.

ADOPTED this 2<sup>nd</sup> day of August 2021.

#### 4. Master Fee Schedule-Amended

#### 5) Approval Of Minutes-July 19, 2021

##### 1. Minutes for July 19, 2021

### RECESS

Chairman Payment recessed the regular meeting at 8:42 PM to hold a Special Meeting of the Tourism Development Authority.

### SPECIAL MEETING-TOURISM DEVELOPMENT AUTHORITY

The Board of Commissioners held a Special Meeting sitting as the Tourism Development Authority during a recess of the 6:00 PM, August 2, 2021 regular meeting. The Special Meeting was held in the Board Meeting Room of the Historic Courthouse, 153 Courthouse Road, Currituck, North Carolina, for the purpose of considering Budget Amendments.

#### TDA Budget Amendments

Ben Stikeleather, County Manager, reviewed the budget amendments for Board consideration. Occupancy Tax funds were provided for partial payment on the Sound Park bulkhead repair and to cover additional staff and contract extension for lifeguard services.

Commissioner White moved for approval. Commissioner Jarvis seconded the motion. The motion carried, 7-0.

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
Account Number	Account Description		
15447-587050	T T - County Govt Construction	\$ 50,000	
15320-415000	Occupancy Tax		\$ 50,000
		\$ 50,000	\$ 50,000
<b>Explanation:</b>	Tourism Related Expenses (15447) - Increase appropriations to transfer funding to the Governmental Construction fund for the design contracts and related costs for the repair/replacement of bulkhead at the Sound Park. The bulkhead has deteriorated in places and a portion of the boat ramp is closed. This was discovered in late June after the budget had been adopted.		
<b>Net Budget Effect:</b>	Occupancy Tax Fund (15) - Increased by \$50,000.		

		Debit	Credit
		Decrease Revenue or Increase Expense	Increase Revenue or Decrease Expense
<u>Account Number</u>	<u>Account Description</u>		
15447-545001	Beach Services	\$ 50,000	
15320-415000	Occupancy Tax		\$ 50,000
		\$ 50,000	\$ 50,000
<b>Explanation:</b>	Tourism Related Expenses (15447) - Increase appropriations to add three additional stations through October 11, 2021 and to extend truck patrol through the last Sunday in November for beach services.		
<b>Net Budget Effect:</b>	Occupancy Tax Fund (15) - Increased by \$50,000.		

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Bob White, Commissioner  
**SECONDER:** Selina S. Jarvis, Commissioner  
**AYES:** Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

### ADJOURN TDA AND RECONVENE

The Board had no further business and Commissioner Beaumont moved to adjourn. Commissioner McCord seconded the motion. The motion carried, 7-0, and the meeting of the Tourism Development Authority concluded at 8:46 PM.

**RESULT:** APPROVED [UNANIMOUS]  
**MOVER:** Paul M. Beaumont, Vice Chairman  
**SECONDER:** Kevin E. McCord, Commissioner  
**AYES:** Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

### CLOSED SESSION

The regular meeting was reconvened by Chairman Payment at 8:46 PM for a Closed Session.

**Closed Session Pursuant to G.S. 143-318.11(a)(3) to consult with the County Attorney and preserve the attorney-client privilege; and, G.S. 143-318.11(a)(6) to discuss personnel matters.**

Chairman Payment moved the Board into Closed Session pursuant to G.S. 143-318.11(a)(3) to consult with the County Attorney and preserve the attorney-client privilege; and, G.S. 143-318.11(a)(6) to discuss personnel matters.



**NEW BUSINESS****Consideration of a Resolution of the Currituck County Board of Commissioners Approving the Memorandum of Agreement Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation**

The Board returned from Closed Session at 9:25 PM to consider a Resolution authorizing the County to enter into an agreement with the State of North Carolina to settle litigation related to the opioid crisis.

Commissioner Beaumont moved for approval. Commissioner Jarvis seconded the motion. The motion carried, 7-0.

**A RESOLUTION OF THE CURRITUCK COUNTY BOARD OF COMMISSIONERS  
APPROVING THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE  
STATE OF NORTH CAROLINA AND LOCAL GOVERNMENTS ON PROCEEDS  
RELATING TO THE SETTLEMENT OF OPIOID LITIGATION**

**WHEREAS**, as of 2019, the opioid epidemic had taken the lives of more than 16,500 North Carolinians, torn families apart, and ravaged communities from the mountains to the coast; and

**WHEREAS**, the COVID-19 pandemic has compounded the opioid crisis, increasing levels of drug misuse, addiction, and overdose death; and

**WHEREAS**, the Centers for Disease Control and Prevention estimates the total "economic burden" of prescription opioid misuse alone in the United States is \$78.5 billion a year, including the costs of healthcare, lost productivity, addiction treatment, and criminal justice involvement; and

**WHEREAS**, certain counties and municipalities in North Carolina joined with thousands of local governments across the country to file lawsuit against opioid manufacturers and pharmaceutical distribution companies and hold those companies accountable for their misconduct; and

**WHEREAS**, representatives of local North Carolina governments, the North Carolina Association of County Commissioners, and the North Carolina Department of Justice have negotiated and prepared a Memorandum of Agreement (MOA) to provide for the equitable distribution of any proceeds from a settlement of national opioid litigation to the State of North Carolina and to individual local governments; and

**WHEREAS**, Local Governments and the State of North Carolina anticipate a settlement in the national opioid litigation to be forthcoming; and

**WHEREAS**, by signing onto the MOA, the state and local governments maximize North Carolina's share of opioid settlement funds to ensure the needed resources reach communities, once a negotiation is finalized, as quickly, effectively, and directly as possible; and

**WHEREAS**, it is advantageous to all North Carolinians for local governments, including Currituck County and its citizens, to sign onto the MOA and demonstrate solidarity in response to the opioid epidemic, and to maximize the share of opioid settlement funds received both in the state and this county to help abate the harm; and

**WHEREAS**, the MOA directs substantial resources over multiple years to local governments on the front lines of the opioid epidemic while ensuring that these resources are used in an effective way to address the crisis.

**NOW, THEREFORE BE IT RESOLVED**, by the Currituck County Board of Commissioners that Currituck County hereby approves the Memorandum of Agreement Between the State of North Carolina and Local Governments on Proceeds Relating to the Settlement of Opioid Litigation, and any subsequent settlement funds that may come into North Carolina because of the opioid crisis. Furthermore, the County Manager, County Attorney, County Finance Director and Chairman of the Board of Commissioners are authorized to take such measures as necessary to comply with the terms of the MOA and receive any settlement funds, including executing any documents related to the allocation of opioid settlement funds and settlement of lawsuits related to this matter. Be it further resolved copies of this resolution and the signed MOA be sent to opioiddocs@ncdoj.gov as well as forwarded to the North Carolina Association of County Commissioners at communications@ncacc.org.

Adopted this the 2<sup>nd</sup> day of August, 2021.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Paul M. Beaumont, Vice Chairman
<b>SECONDER:</b>	Selina S. Jarvis, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner

## ADJOURN

### Motion to Adjourn Meeting

The Board had no further business and Commissioner Mary Etheridge moved to adjourn. The motion was seconded by Commissioner Jarvis. The motion carried, 7-0, and the meeting of the Board of Commissioners adjourned at 9:26 PM.

<b>RESULT:</b>	<b>APPROVED [UNANIMOUS]</b>
<b>MOVER:</b>	Mary "Kitty" Etheridge, Commissioner
<b>SECONDER:</b>	Selina S. Jarvis, Commissioner
<b>AYES:</b>	Michael H. Payment, Chairman, Paul M. Beaumont, Vice Chairman, J. Owen Etheridge, Commissioner, Mary "Kitty" Etheridge, Commissioner, Selina S. Jarvis, Commissioner, Kevin E. McCord, Commissioner, Bob White, Commissioner