

Owens Law, PLLC

P.O. Box 16
Kitty Hawk, N.C. 27949

David W. Owens
Attorney
919-260-1949
owens@dwowenslaw.com

July 29, 2025

Dare County Commissioners
Dare County Administration Building
954 Marshall C. Collins Dr.
Manteo, NC 27954

Dear Board of Commissioners,

I am writing regarding the public hearing on the SED-1 Special Environmental District and the Buxton Woods Zone of Influence. As a current resident of Southern Shores I have followed with great interest your recent deliberations about the future of county regulations to protect this important resource area. I hope a quick review of the extensive deliberations about state-local collaborative effort to protect Buxton Woods that led to adoption of the county's regulations will be useful to you as you decide how to move forward on this issue.

I was the Director of the North Carolina Division of Coastal Management in the late 1980s when the state's coastal management program was actively considering designating Buxton Woods as an Area of Environmental Concern with development standards to be adopted by the Coastal Resources Commission (CRC). I was also directly involved in the creation of the state's estuarine research reserve system and the initial acquisition of land for the Buxton Woods Coastal Reserve.

When Coastal Area Management Act (CAMA) was enacted in 1974, a key initial decision was designating the areas that would be subject to state development standards, the areas of environmental concern (AECs). While there were proposals to designate the entirety of the state's barrier islands as an AEC, the CRC decided in 1977 to focus on key areas that needed state-level protection, such as ocean beaches, estuarine shorelines, and coastal waters and wetlands. Consideration was given to including maritime forests in this initial designation. In 1978 the CRC concluded that given the time pressures imposed by statutory deadlines for the initial AEC designations and the diversity of ecological conditions and development pressures for each maritime forest area, maritime forest AEC designation would be addressed separately after final adoption of the initial AECs.

As the first step in state action on maritime forest protection, the coastal management staff in 1980 prepared a report on draft standards for development within maritime forests. With this starting point, the CRC asked for more analysis and study. That resulted in a detailed 1988 report with an inventory and assessment of all of the state's maritime forests. The CRC referred that report to a working group, which spent a year reviewing the issues and discussing how the state and local governments could best manage maritime forests.

Throughout this decade of deliberation in the 1980s, Buxton Woods was the focal point of discussion. It was the state's largest and most significant maritime forest. The CRC, Dare County staff and officials, the water system staff, state environmental groups, and many Buxton residents actively engaged in several years of discussion seeking consensus on how best to balance the varying interests and approaches to manage this critical resource. In many respects this Buxton Woods work created the template for how the state would address all maritime forest management issues.

The state was presented with the opportunity to acquire key tracts in Buxton Woods during these discussions. Some \$5.5 million was raised in 1988 to 1993 to purchase the most threatened Buxton Woods parcels, including the site of a proposed golf course development. In large part based on this experience and recognizing that there were limited vehicles to accomplish similar land acquisition, the state adopted amendments to CAMA in 1989 to authorize a state coastal reserve system.

It was clear from the outset however that land acquisition alone was not the entire answer for Buxton Woods protection. Some level of managed development within and adjacent to the forest was appropriate and needed. The choice on how to implement this needed regulation was between CRC designation of the area as an AEC with CAMA enforcement or Dare County zoning and land use regulation with county enforcement. The Dare County Board of Commissioners, the county planning staff, and the county attorney all strongly argued for local regulation, contending the standards the county would adopt would be comparable to the state standards being considered. They assured the CRC that local enforcement would likewise be comparable to or superior to state enforcement. The county in March 1988 adopted the Special Environmental District to implement these local regulations. Given that county action and assurances, the CRC agreed with the county's recommended regulatory approach and tabled the proposed Buxton Woods AEC designation.

The hard work and strong state-local collaboration developed during these Buxton Woods deliberations set the tone for the state's approach for the rest of North Carolina's maritime forests. In 1990 the CRC decided to use the Buxton Woods model throughout the coastal area. Rather than pursuing designation of all remaining maritime forests as AECs, they determined that land acquisition and local regulation were the preferable route for management with AEC designation remaining an option if those strategies proved inadequate for particular areas.

In addition to the basic SED-1 zoning district noted above, the county in September 1988 added additional restrictions on the area adjacent to that zoning district. I understand questions have arisen regarding whether this amendment was properly filed and indexed.

While I was not directly involved with that zoning amendment and have not reviewed the documents adopted at that time, it seems that some of this confusion arises from the legal terminology being used to describe the September 1988 amendment. Much of the current discussion refers to this as the adoption of an "overlay zoning district." As zoning is currently practiced in this state, that would be the typical approach used for these supplemental regulations. While that approach could have been used by the county in 1988, it appears that it was not.

In the 1980s, particularly in small towns and rural counties, true "overlay districts" were still a new concept and were not yet regularly used. Instead of "overlay districts," local zoning regulations in the 1980s frequently used textually defined buffers for development regulations. Typical examples included prohibiting adult uses within a specified distance from sensitive land

uses, applying sign regulations within a specified distance of defined highways, or requiring buffers around streams regardless of the zoning district.

It appears from the material I have seen that the September 1988 county adoption of additional protections for Buxton Woods may have been a zoning text amendment that created additional regulations for a buffer area on one side of the SED-1 district, with the area affected defined in the ordinance text rather than being a zoning map amendment to create an “overlay district.” If that is the case, it would explain why the zoning map was not amended to show a new overlay district.

Either approach – adoption of supplemental standards for a buffer area described by text or adoption of a new overlay zoning district – was legally permissible in 1988. If the text amendment approach was used, the question would be whether the text amendment was properly included within the county’s code of ordinances. If so, it would likely still be legally in effect even if not fully and consistently enforced over time.

In sum, the state-local collaborative approach developed and implemented with Buxton Woods almost forty years ago depends on the long-term commitment of both parties to good faith and diligent implementation. I trust you will keep the spirit of that local commitment to protection of the Buxton Woods maritime forest in mind as you consider current options for zoning amendments and implementation.

Yours,

David W. Owens

cc:

Bobby Outten, County Manager and Attorney

Noah Gillam, County Planner