

Proposed Critical Line and Jurisdictional Freshwater Wetland Impervious Setback and Buffer

Planning Commission Draft March 2021

(Appropriate location within the Ordinance to be determined)

§ #.1 Purpose and Intent

The purpose of the Critical Line and Jurisdictional Freshwater Wetland Setback and Buffer is to reduce and prevent new impervious surfaces near the DHEC-OCRM delineated critical line and jurisdictional freshwater wetlands subject to review of the Clean Water Act; to reduce stormwater runoff from properties within the Town; to reduce non-point source pollution contaminating Jeremy Creek, the Intracoastal Waterway, and other wetland areas of the Town; to prevent the contamination of wildlife by pollution and, therefore, protect the shrimp and seafood industry and recreational fishing of the Town and surrounding area; to provide for the visual feel of a coastal forest while entering or leaving the Town via waterways.

It is the intent of this ordinance to reduce the need for man-made stormwater management systems and, therefore, reducing infrastructure costs incurred to the Town's taxpayers. The setback and buffer will also allow the Town to mitigate against the effects of sea level rise and storm surge from tropical cyclones. The standards contained herein provide for the management and sustainability of the purpose and intent.

§ #.2 Applicability

The provisions of this chapter in their entirety shall apply to activities conducted on all real property, public or private, within the Town of McClellanville.

- (a) The provisions shall be applied to the subdivision of land, new construction including accessory structures, and parcels with nonconforming buildings and structures per Section 4.2. Where an existing structure remains that is to be not improved, or not improved to the limitations of Section 4.2, on the same parcel with a development, the setback and buffer shall be established to the greatest extent possible.
- (b) The boundaries of the setback and buffer, and any proposed vision corridor, shall be clearly delineated and identified on all development plans and plats submitted for approval.
- (c) Once established, and after any approved subsequent revision, the buffer and setback and, if applicable, the vision corridor, shall be delineated on a recorded plat of the property on which it is located to act as a record of its establishment. The distances of all boundaries from point to point must be shown.
- (d) Subsequent changes to an established buffer, setback, or vision corridor must be reapproved and re-recorded, with the restoration required for any previously disturbed bufferyard area, if necessary.
- (e) Critical and jurisdictional areas are dynamic systems by their nature and subject to change over time. Where a setback or buffer has been established in the past, new development may necessitate reapproval of the setback and buffer. At such a time when new development is proposed, if the governing body's certification has expired, recertification is required and will

establish the new critical line or jurisdictional wetland line. This will subsequently establish new setback and buffer areas and subject to any required revisions per this chapter.

- (f) If a private or public entity, including the Town of McClellanville, has approved provisions that are different than those included within this chapter, whichever is more strict shall apply.

§ #.3 Definitions

Critical Area: The area delineated by critical lines as determined by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (SC DHEC-OCRM). State and Federal permits must be acquired for any alteration of land within any critical area.

Critical Line: Determined by the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (SC DHEC-OCRM), the Critical Line delineates the boundaries of coastal wetland systems, one of multiple critical areas.

Critical Line Buffer: A natural vegetated area, including indigenous trees, shrubs, and herbaceous vegetation, which exists or is established to protect a salt-water wetland or coastal estuarine area. Alteration of this area is strictly limited to those activities permitted under this ordinance.

Critical Line Impervious Setback: An area located between the Critical Line and a developed area that is devoid of surfaces that are not permeable to rainfall or associated runoff. It is established to protect a salt-water wetland or coastal estuarine area by filtering non-point source pollutants. Alteration of this area is strictly limited to those activities permitted under this ordinance.

Intertidal or Tidal: Pertaining to the region above the low water mark of low tide and below the high-water mark of high tide. This region is covered by water for a portion of every day and is above water for the remainder of every day.

Jurisdictional Wetlands: Wetlands under the jurisdiction of the Clean Water Act. Modifications of these areas are subject to United States Army Corps of Engineers (US ACE) review and approval.

Jurisdictional Freshwater Wetland Buffer: A natural vegetated area, including indigenous trees, shrubs, and herbaceous vegetation, which exists or is established to protect a stream or ditch system, lake, reservoir, swamp, or other waterbody determined to be subject to the provisions of the Clean Water Act.

Jurisdictional Freshwater Wetland Impervious Setback: An area located between a Jurisdictional Wetland and a developed area that is devoid of surfaces that are not permeable to rainfall or associated runoff. It is established to protect a stream or ditch system, lake, reservoir, or other waterbody determined to be subject to the provisions of the Clean Water Act.

Nonpoint Source Pollution (NPS): Pollution from diffuse sources that cannot be attributed to one identifiable point, such as a discharge pipe.

Ocean and Coastal Resource Management (OCRM): A division of the South Carolina Department of Health and Environmental Control (SC DHEC) that manages all development within the coastal zone of South Carolina including dock and bulkhead permits and certification of the tidally influenced critical line, among other aspects.

Permeable: Capable of being penetrated or passed through.

Point Source Pollution: Pollution from a definable source, such as an outfall pipe.

Pollution: The addition of a substance(s) to an environment in greater than natural concentrations as a result of human activity producing a net detrimental effect on the environment.

Runoff: Rainwater that does not penetrate the ground's surface and therefore flows off into waterbodies often carrying with it sediment and sediment bound contaminants.

Salt Marsh: A low-lying tract of soft wetland that is tidally flooded with salt water and is often dominated by a few plant species.

Sediment: Particles which accumulate on the bottom of a waterway.

Water Quality: The condition of water based on its physical, chemical, and biological integrity in regard to a specific designated use.

§ #.4 Provisions of the Critical Line and Jurisdictional Freshwater Wetland Impervious Setback

- (a) A 50-foot impervious setback on all property located in any zoning district, except that which is provided below, shall be applied to the critical line or jurisdictional freshwater wetland as determined by the appropriate governing body, whether or not the critical line or jurisdictional freshwater wetland lies outside the boundary lines of the particular lot on which the improvement is to be located. The setback line distance shall be measured at right angles to all points along the critical line or jurisdictional freshwater wetland and, in cases of overlapping lines at angles, the greatest distance shall apply.
- (b) For any development, the critical line or jurisdictional freshwater wetland shall be certified by the appropriate governing body.
- (c) Only permeable structures or materials are permitted and impervious materials or structures are prohibited unless otherwise noted in this section.

§ #.5 Provisions of the Critical Line and Jurisdictional Wetland Buffer

- (a) A 35-foot vegetated buffer shall be applied to the critical line or jurisdictional freshwater wetland as determined by the appropriate governing body, whether or not the critical line or jurisdictional freshwater wetland lies outside the boundary lines of the particular lot on which the improvement is to be located. The buffer line distance shall be measured at right angles to all points along the critical line or jurisdictional freshwater wetland and, in cases of overlapping lines at angles, the greatest distance shall apply.
 - 1. The entire buffer shall remain as an undeveloped vegetated area, except as provided herein.
 - 2. The intent of this division is to prohibit grassed, manicured lawns within this buffer area.
- (b) This buffer shall be established concurrently with the setback, not in addition.
- (c) No invasive vegetative species shall be subsequently allowed to be planted within the buffer.

§ #.6 Reduction of Provisions

- (a) Due to the nature of the businesses upon those properties zoned Marine Commercial District relying on close proximity to open water, the critical line buffer shall not apply and the critical line impervious setback shall be limited to 10-feet.
- (b) For non-conforming parcels, as defined in Chapter IV, the setback shall be reduced the same percentage of the non-conformity for lot size and/or depth, whichever is greater. The buffer shall

only be reduced when the setback is reduced to less than 35 feet. The buffer shall be the same width as the setback in these cases.

§ #.7 Allowances within the Setback and Buffer

(a) Allowances in both setbacks and buffers.

1. Erosion control structures are allowed with prior governing body approval, and provided that the required setback and buffer width is maintained or reestablished landward of the installed erosion control structure; provided that the maximum horizontal distance of any above-grade component shall not exceed 12 inches in width.
2. Fencing and walls that allow for the passage of water through it without damming or obstructing the flow. Stockade fencing or solid walls are prohibited. Fences and walls are limited to be four (4) feet in height.

(b) Allowances within the buffer:

1. A pervious pedestrian access foot trail parallel to the critical line connecting multiple lots within a subdivision development. This trail must either be left at grade or be an elevated boardwalk to avoid channelization.
2. A pervious pedestrian accessway leading to such water-dependent uses as docks, piers, bridges, and boat landings.
 - a. These accessways must either be left at grade level or be an elevated boardwalk to avoid channelization.
 - b. Such uses must be the minimum necessary to provide access and must be within the vision corridor, if applicable.
3. Minimal utility line penetrations, as specifically and previously approved on development plans.
4. Use of swales or other means, rather than drainage pipes, shall be required.
5. Where a developable parcel is or can only be accessed by automobile through what would be the setback or buffer, the driveway, easement, or the like shall be allowed with a cut of no more than 14-ft wide and be made of only non-asphalt, pervious materials.
6. Pervious sitting benches shall be allowed next to pervious pedestrian paths if established.

(c) Vision corridors may be established through the critical line buffer, but not the jurisdictional freshwater wetland buffer, in accordance with the following provisions:

1. The vision corridor may be established on properties where allowed and a critical line buffer is provided. The effect of this should be a vertical corridor cut through the buffer, allowing a view through the critical line buffer.
2. The vision corridor shall not exceed more than 1/4th (25-percent) of the square footage of the total critical line buffer area, but is limited to 2,000 square feet total, subject to the following provisions apply:
 - a. This area generally shall be formed by two near perpendicular lines connecting the critical line to the inland critical line buffer line;
 - b. The vision corridor shall be one single uniform unbroken portion.
 - c. The vision corridor may be established on an adjoining property, provided the owner gives written consent and that the subject neighboring property's vision corridors' total does not exceed the limits listed above.

3. Corridors should be established to coincide with the location of existing or planned pervious pedestrian accessways, boat docks, boat landings, and utility line penetrations within the buffer.
4. Within the vision corridor, trees of a protected size shall not be removed. Smaller trees may be pruned or cut with hand tools, but the stump must remain in place. Grasses, shrubs, and other vegetation may be appropriately pruned and trimmed, but not removed at the root. No heavy equipment or herbicides are to be utilized in this area. The intent of this provision is to ensure that the root mass remains intact to allow filtration of runoff waters.

§ #.8 Protections During Construction and Other Activities

- (a) Prior to and during construction, the buffer shall be protected by silt fencing. If protected trees exist within the buffer, the silt fencing shall add tree protection along these areas per the provisions of Chapter VI.
- (b) No construction activities, materials, or vehicles shall be allowed within the buffer, except that which is otherwise allowed in this section.

§ #.9 Variances

Upon demonstration of a hardship, the Board of Zoning Appeals may vary the provisions of this Article. In considering a hardship, the Board of Zoning Appeals, in addition to other factors, must also consider whether the critical line and jurisdiction freshwater wetland impervious setback and buffer, as situated, prevent all reasonable site configurations, and that the removal of the setback and buffer, in all or in part, is the only reasonable means by which building, zoning, subdivision, health, public safety or other requirements of the Town can be met.

§ #.10 Violations and Penalties

Any person, firm, organization, society, association or corporation, or any guest or representative thereof who commits, participates, or assists in the removal of the critical line or jurisdictional freshwater wetland buffer, in all or in part, or installs impervious surfaces within the critical line or jurisdictional freshwater wetland impervious setback in violation of this ordinance shall be guilty of a misdemeanor and upon conviction, punishable pursuant to Article XII, and the following:

- (a) Should violations be noted during the course of ~~a project~~ construction or at final inspection, the Zoning Administrator may cause permits to be revoked and withhold certificates of occupancy. No further activity shall be had on the site until such time that the landowner or applicant have provided and the Zoning Administrator has approved a buffer replacement plan pursuant to § #.# (below section) or the removal of the impervious surface(s) has been conducted and inspected by staff.
- (b) Should violations be noted on developed land without active construction, the buffer shall be reestablished per the provisions of §#.# and/or impervious surfaces eliminated from the setback. The Town will not process any permits upon the property until these violations are remedied.
- (c) Should any significant, grand, or historic trees be removed through a buffer removal, each removal shall be considered a separate violation in addition to the buffer removal.
- (d) If the violation includes the clearing of any lands subject to the oversight of the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource

Management (SC DHEC-OCRM), the provisions of (a) or (b) shall apply until notified by a representative of SC DHEC-OCRM has confirmed compliance.

- (e) If upon the illicit removal of a buffer, after the reestablishment of the buffer per the provisions of § **## (below section)**, the Town shall not permit or allow the reestablishment of a vision corridor for a period of five (5) years for the parcel(s) in violation to allow the buffer to grow to a natural state.
- (f) If the applicant disagrees with the staff interpretations of any violation and penalty, they may file an appeal with the Board of Zoning Appeals in accord with the provisions in this Ordinance.

§ **##.11 Provisions for Replacement Buffer due to for Illegal Removal or Non-Existence Before Construction**

- (a) Upon the illegal removal of a buffer or where a proposed development or subdivision does not have the proposed buffer in full, the buffer shall be reestablished per the following planting treatment per 100 linear feet, or prorated portion thereof:
 1. 6 canopy trees of 3-inch caliper with a minimum of two different species.
 2. 9 understory trees of 2-inch caliper with a minimum of three different species
 3. 36 shrubs, 3-gallon pots with a minimum of four different species.
 4. 50 grasses and palms, 1-gallon pots with a minimum of five different species.
- (b) Plantings shall be based randomly for a natural appearance and the species shall be chosen from the Native Plants Appendix of the Zoning Code.
- (c) If the illegal removal or the proposed development of subdivision has a partially non-existent buffer, as determined by the Zoning Administrator, the buffer shall be made wholesome by plantings as prescribed above.
- (d) A site plan showing the location, size, and species of the plantings shall be provided and approved by the Zoning Administrator.
- (e) These plantings shall be inspected in 2-years time from their installation to ensure the buffer has not been removed, altered or experienced significant erosion or accretion.
- (f) If buffer removal included protected trees, the buffer canopy tree plantings can count toward some or all of the mitigation, depending on the amount owed.