

### Waiver of Requirements (Ch. 172, 7A. (3))

(1) Waivers from Chapter 172 regulations and/or performance standards are only granted for “good cause shown”. On a case-by-case basis, this means consideration of three factors:

- (A) **How compelling is the need** (for the requested waiver) on the part of the applicant?  
The non-granting of a waiver that would make it impossible to build a home (on a legal parcel), would generally be considered compelling. So, too, might be (the need for a waiver) for (demonstrable) health and/or safety reasons. At the other (“non-compelling”) extreme, would be (for example) the “need” for a swimming pool as an appurtenance to an already existing (and functional) house.
- (B) To what degree are normal standards being asked to be put aside? **Is the request for relaxing of standards minor, moderate or major**, in both scope and impact?
- (C) **To what degree will compensatory/mitigating measures** (to off-set the impacts of the waived standards) **result in a significant enhancement of** the capacity of the (pre-existing) Resource Area (and/or adjacent buffer) to protect the **wetland values** of Chapter 172, section 1

protection of: public or private water supply, groundwater, surface water quality

control of flooding, water pollution, erosion and sedimentation

storm damage prevention (including coastal storm flowage)

protection of fisheries, shellfish, wildlife habitat and biodiversity and rare species

protection of recreation, agriculture and aquaculture

On a case-by-case basis, (A), (B) and (C) above, must always be evaluated. Obviously, if (A) is less than very compelling and (B) the requested relaxation of standards are more than minor, then chances for a waiver diminish significantly. Similarly, the larger (C) wetland value enhancement that can be achieved, the better are chances for a waiver.

(2) Mitigation must (to the greatest degree possible):

- (A) be as close as possible to the closest resource areas, or, nearest to other pre-existing naturally-vegetated and/or other areas with significance pertaining to the wetland values of Chapter 172, section 1.
- (B) be designed to augment the same **wetland value(s)** (see (B), above) that would be compromised by alteration. For example, attenuation of nitrogen does not mitigate loss of wildlife habitat, whereas appropriate planting might compensate for said loss.
- (C) demonstrate, by a preponderance of credible evidence a significant enhancement of the capacity of the (pre-existing) Resource Area (and/or adjacent buffer) to protect the wetland values inherent to said Resource Area (or adjacent buffer).

(D) utilize best available technologies/design/methodologies/products to make mitigative improvements as effective (and significant) as possible. It is likely that the services of competent professionals, with up-to-date knowledge of these rapidly evolving fields, will be necessary. The Commission reserves the right to examine the credentials of any professional services/companies/personnel involved in mitigation plans.

- (3) Where the provisions of Ch. 172, sec.(3) involve alterations within previously altered areas<sup>1</sup> within 100 feet of the closest resource area, the following table provides guidance for size of mitigation<sup>2</sup> areas:

(A) Alteration- Distance to <u>Closest</u> Resource Area	(B) Type of Resource Area/Riparian (R) or Non-Riparian (NR) <sup>3</sup>	(C) Area Altered within (A) (Square Feet)	Mitigation Area
100-50 ft.			<b>R-</b> 1.00 X C <b>NR-</b> 1.00 X C
50-45 ft.			<b>R-</b> 1.50 X C <b>NR-</b> 1.25 X C
<45-40 ft.			<b>R-</b> 1.75 X C <b>NR-</b> 1.50X C
<40-35 ft.			<b>R-</b> 2.0 X C <b>NR-</b> 1.75 X C
<35-30 ft.			<b>R-</b> 2.5 X C <b>NR-</b> 2.25 X C
<30-25 ft.			<b>R-</b> 3.0 X C <b>NR-</b> 2.75 X C
<25-20 ft.			<b>R-</b> 3.5 X C <b>NR-</b> 3.25 X C
<20-15 ft.			<b>R-</b> 4.25 X C <b>NR-</b> 4.00 X C
<15-10 ft.			<b>R-</b> 5.00 X C <b>NR-</b> 4.50 X C
<10-05 ft.			<b>R-</b> 6.00 X C <b>NR-</b> 5.00 X C

<sup>1</sup>within previously altered areas means areas already devoid of natural vegetation, such as lawns, parking areas, pavement, etc.

<sup>2</sup>mitigation areas refers to areas that are planted, or otherwise improved\*, to compensate for incursions closer to resource areas. (\*Some examples of improvements other than planting to augment wildlife habitat or stabilize soils, are additions of vegetated berms to prevent run-off or creation of ecological niches to provide for additional habitat and wildlife diversity.)

<sup>3</sup>**Riparian** (abbreviated **R**) Resource Areas are those bordering waterbodies, such as ponds, lakes, rivers, streams, estuaries, etc. For purposes of this guidance, wetlands, too (ex. saltmarshes and Freshwater Wetlands) will be considered **Riparian**.

**Non-Riparian** (abbreviated **NR**) Resource Areas are not as directly associated with water. They include dunes, coastal banks and inland banks.