

NC COASTAL RESOURCES COMMISSION
February 13-14, 2018
Sea Trail Convention Center
Sunset Beach, NC

The State Government Ethics Act mandates that at the beginning of any meeting the Chair remind all the members of their duty to avoid conflicts of interest and inquire as to whether any member knows of any conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or potential conflict, please state so at this time.

Tuesday, February 13th

- 1:00 COASTAL RESOURCES ADVISORY COUNCIL MEETING (Egret Room)** Greg “rudi” Rudolph, Chair
- 3:15 COMMISSION CALL TO ORDER* (Salon 1)** Renee Cahoon, Chair
- Roll Call
 - Chair’s Comments
- 3:30 VARIANCES**
- Heasley - (*CRC-VR-17-03*), Oak Island, Oceanfront setback
Christine Goebel, Esq.,
Brooks Surgan (DCM)
Petitioner *pro se*
 - Sandy Court Beach, LLC/Fohs – (*CRC-VR-18-01*), Nags Head
Oceanfront setback
Christine Goebel, Esq.,
Frank Jennings (DCM)
Charles Evans Esq.
- 4:45 LEGAL UPDATES**
- Update on Litigation of Interest to the Commission
Mary Lucasse
 - Riggings Annual Report & Staff Response (*CRC-18-09*)
Christine Goebel
- 5:15 RECESS**

Wednesday, February 14th

- 8:30 COMMISSION CALL TO ORDER* (Salon 1)** Renee Cahoon, Chair
- Roll Call
 - Chair’s Comments
 - Approval of November 7-8, 2017 Meeting Minutes
 - Executive Secretary’s Report
Braxton Davis
 - CRAC Report
Greg “rudi” Rudolph, Chair
- 9:00 ACTION ITEMS**
- Fiscal Analysis 7H .0308 & 7K .0103 - Dune Rules (*CRC-18-01*)
Tancred Miller
 - Fiscal Analysis 7H .0209 - Coastal Stormwater Correction (*CRC-18-03*)
Tancred Miller
 - Fiscal Analysis 7K .0208 - Single Family Residences Exempted (*CRC-18-02*)
Daniel Govoni
 - Fiscal Analysis 7B Land Use Planning Requirements (*CRC-18-04*)
Rachel Love-Adrick
 - Amendments to 7B .0802 Public Hearing and Local Adoption
Requirements (*CRC-18-10*)
Rachel Love-Adrick
 - Amendments to 7H .0312 Sediment Criteria (*CRC-18-05*)
Ken Richardson
- 9:30 COMMISSION UPDATES AND DISCUSSION ITEMS**
- CRC Science Panel Update (*CRC-18-08*)
Ken Richardson
 - CAMA Minor Permit Program
Debbie Wilson
 - Federal Consistency—General Overview (*CRC-18-06*)
Daniel Govoni

10:45 BREAK

11:00 PUBLIC INPUT AND COMMENT

Renee Cahoon, Chair

11:15 COMMISSIONER UPDATES AND DISCUSSION ITEMS (CONT'D)

- CRC Ocean Energy Policies (*CRC-18-07*)
- Ocean Energy Activities Update

Mike Lopazanski
Braxton Davis &
Daniel Govoni

12:15 OLD/NEW BUSINESS

Renee Cahoon, Chair

12:30 ADJOURN

Executive Order 34 mandates that in transacting Commission business, each person appointed by the governor shall act always in the best interest of the public without regard for his or her financial interests. To this end, each appointee must recuse himself or herself from voting on any matter on which the appointee has a financial interest. Commissioners having a question about a conflict of interest or potential conflict should consult with the Chairman or legal counsel.

** Times indicated are only for guidance and will change. The Commission will proceed through the agenda until completed; some items may be moved from their indicated times.*



N.C. Division of Coastal Management

www.nccoastalmanagement.net

Next Meeting: April 10-11, 2018

Manteo, Dare County



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: January 31, 2018 (for the February 13-14, 2018 CRC Meeting)

RE: **Variance Request by Richard & Valerie Heasley (CRC-VR-17-03)**

Petitioners Richard & Valerie Heasley (“Petitioners”) own a vacant oceanfront lot at 4017 East Beach Drive (the “Site”) in the middle portion of Oak Island. The property is located within the Commission’s Ocean Hazard Area of Environmental Concern (“AEC”). Much of Oak Island is subject to a “static line” following a large-scale beach nourishment project in 2001-02. Also, since September of 2016, the Town is subject to a “development line” following approval by the Commission.

Following Petitioners’ purchase of the Site in February of 2017, they filed a CAMA Minor Permit application in June of 2017, seeking to construct a single-family residence, a deck and a pool. On July 7, 2017, the Town of Oak Island’s Coastal Area Management Act (“CAMA”) Local Permitting Officer (“LPO”) denied Petitioner’s CAMA Minor Permit application as the proposed swimming pool, which is not allowed under the “development line rule” (if it doesn’t meet the static line) was inconsistent with the applicable setback rules, where the pool would not be landward of the static line. In August of 2017, Petitioners filed this variance petition in order to have the oceanfront setback rules varied so they could include the proposed swimming pool along with the proposed home (which does not need a variance). As part of the variance process, Petitioners have re-designed their layout to pull the proposed pool landward on the lot, but half the pool and decking still would require a variance.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules

Attachment B: Stipulated Facts

Attachment C: Petitioner’s Positions and Staff’s Responses to Variance Criteria

Attachment D: Petitioner’s Variance Request Materials

Attachment E: Stipulated Exhibits including powerpoint

cc(w/enc.): Richard & Valerie Heasley, Petitioners, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
Donna Coleman, Town of Oak Island CAMA LPO, electronically



RELEVANT STATUTES OR RULES**APPENDIX A****15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. **Ocean hazard areas include beaches**, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, **the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them.** The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long term annual erosion rate times 90; provided that, where there has been no long term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>.

15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS

(a) This Paragraph describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either: (A) the growth of vegetation occurs; or (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the “dune trough.”)

(4) Frontal Dunes. The frontal dune is the first mound of sand located landward of the ocean beach that has stable and natural vegetation present.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

(6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the “static vegetation line.” The “onset of project construction” shall be defined as the date sediment placement begins, with the exception of projects completed prior to the effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A static vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established,

and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the static vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static vegetation line shall not be established where a static vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all static vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd (September 1999) caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the static line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A “large-scale beach fill project” shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(3) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(3) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by: (A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and (B) locating the line of stable and natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (a)(1) of this Rule. The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

(10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line

shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of Rule 07H .0306(a)(2) of this Section.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permit-letting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

(1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the static vegetation line, or the measurement line, whichever is applicable.

(2) In areas with a development line, the ocean hazard setback shall be set in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.

(3) In no case shall a development line be created or established on state owned lands or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.

(4) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

- (a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter if all other provisions of this Subchapter and other state and local regulations are met:

- (9) swimming pools.

In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is not essential to the continued existence or use of an associated principal development; is not required to satisfy minimum requirements of local zoning, subdivision or health regulations' and meets all other non-setback requirement of this Subchapter.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioners Richard & Valerie Heasley ("Petitioners") own a vacant oceanfront lot located at 4017 East Beach Drive (the "Site") near SE 40th Street in the Town of Oak Island ("Town"), Brunswick County, North Carolina. (Lot 9, Block 17, Section 2 of Long Beach). The Site was platted in June of 1963, and is shown on a plat map recorded at Map Book 1, Pages 96-99 of the Brunswick County Registry, a copy of which is attached as a stipulated exhibit.
2. Petitioners purchased the Site on February 17, 2017, as evidenced by a deed recorded at Book 3873, Page 623 of the Brunswick County Registry, a copy of which is attached as a stipulated exhibit.
3. The Site as platted is 50 feet wide by 150 feet deep, for a total of 7,500 square feet (or .17 acres), as shown on a survey prepared by Licensed Professional Land Surveyor Joey Brochure of Island Surveyors, Inc. PA (the "Site Survey"), a copy of which is included as part of Petitioner's CAMA Minor Permit application. The CAMA Minor Permit application including the Site Survey is attached as stipulated exhibits. The Site is serviced by sewer, not septic.
4. The Site is in Flood Zone VE 19 as shown on the Site Survey.
5. The Site is in a developed area along the oceanfront, with an existing residence on the west side and a vacant lot on the east side. The 1,898 square foot residence to the west was built in 1984 per the tax card and there is no pool on this lot. The currently-vacant lot on the east side was recently issued a CAMA permit for a home and deck, as well as a pool on the street-side of the house. A copy of the CAMA permit and Site Plan is attached as a stipulated exhibit.
6. The Lot is within the Ocean Erodible Area of Environmental Concern ("AEC"), a subcategory of the Ocean Hazard AEC designated by the Coastal Resources Commission ("CRC") in 15A NCAC 7H .0304.
7. N.C.G.S. § 113A-118 requires that a CAMA permit be obtained before any development takes place in an AEC.
8. On or about June 29, 2017, Petitioners applied to the Town's CAMA Local Permit Officer (LPO) for a CAMA minor development permit to develop a 2-story, piling-supported single family residence with a 28' by 34' footprint (952 sq ft x 2 = 1,904). Petitioners also proposed an 8' by 34' oceanfront deck and a 12' by 25' pool with an associated 6' wide concrete apron around the pool and a 6' by 12' concrete pad on the east side of the pool. This would result in a total footprint 60' deep on the Site (28' house + 8' deck + 6' deck + 12' pool + 6' deck). A copy of the Petitioners' CAMA Minor Permit application is attached as a stipulated exhibit.
9. On the application survey, the "development line" was labeled and was approximately 1' waterward of the waterward edge of the pool apron. The "static line" was shown and was

labeled “1998 Vegetation Line.” The “actual” vegetation line was located approximately 98’ waterward of the development line.

10. In June of 2017, before submitting his CAMA permit application, Petitioner reviewed two proposed site plans offered by their surveyor, including one that pulled the proposed house back to the 15’ street side setback and one that had the rear of the house 25’ from the street side setback. Petitioner chose to submit the plan with 25’ between the street right of way and the rear of the house in order to have a larger parking area for five cars. A copy of the rejected 15’ site plan is attached with email from surveyor. Section 18-148 of the Town’s ordinances requires two minimum off-street parking spaces for up to three habitable rooms and an additional parking space for each additional habitable room (excluding kitchens, hallways, bathrooms & closets).

11. As required, Petitioner claims that he gave notice of the permit application to the two adjacent riparian property owners and both acknowledged notice, though no copies of this notice can be located at this time. Notice was also posted on site and no public comments were received.

12. On July 7, 2017, the Town’s CAMA LPO denied Petitioner's application as the proposed swimming pool does not comply with 15A NCAC 07H .0306(a) which prohibits construction of a swimming pool seaward of the applicable vegetation line (which in this case is the “static line”). While a “development line” allows for residences to build to the development line, the Commission’s development line rule does not specifically allow pools which are landward of the development line and waterward of the applicable vegetation line. Petitioner's application was also denied based on being inconsistent with the Town’s CAMA Land Use Plan policy I.112 which says that “The Town will continue to enforce the dune preservation Ordinance (Chapter 14, Article III of the Town Code). A copy of the denial letter is attached as a stipulated exhibit.

13. Since it was first adopted in 1979, the Commission has required an erosion setback (“Erosion Setback”) requirement that applies to development along the oceanfront. 15A NCAC 7H .0306(a).

14. The Erosion Setback is generally measured from the FLSNV. “This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and more stable upland areas. [It] is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment.” 15A NCAC 7H .0305(a)(5).

15. The FLSNV on the Lot was staked by CAMA LPO Donna Coleman for this permit application and associated survey. It is located waterward of the lot and is labeled “first line of vegetation/top of dune” on the survey.

16. Generally, structures measuring less than 5,000 square feet must be set back a distance of 30 times the long-term annual erosion rate affecting the Lot from the FLSNV. 15A NCAC 07H .0306(a)(5)(A).

17. The average annual erosion rate for the Lot is 2 feet per year. Therefore, the Erosion Setback applicable to the Lot, for the 1,904 square foot “total floor area” building is 60 feet (30 years x 2 feet).

18. During the 1990’s, the Town was impacted by a series of hurricanes, including major hurricanes Fran (1996) and Floyd (1999).

19. In the winter of 2001-02, the U.S. Army Corps of Engineers (“Corps”) began a “Section 933” spoil deposition project on the oceanfront at Oak Island. This project was completed in March of 2002. The project met the definition of a “large scale spoil deposition project” under the CRC’s ocean hazard rules as it was defined at that time, and so the area within the bounds of the project were subject to the use of a “static line” for determining CAMA ocean erosion setbacks. Attached aerial photographs of the Site taken from the time of this large scale project are attached as a Stipulated Exhibit with the Site’s parcel lines overlain on the historic photographs.

20. The applicable “static line” for Oak Island is based on 1998 pre-storm aerial photography instead of the 2001 hurricane-impacted pre-project vegetation line location. See 15A NCAC 7H .0305(a)(6). At the request of the Town, the Commission allowed the use of 1998 pre-storm aerial photography to determine the location of the vegetation line to be used as the static line, as the 2001 line was still largely a result of Hurricane Floyd-caused erosion in 1999. The Commission felt it was more fair to use the 1998 location instead of the Floyd-impacted location from 2001.

21. As an alternative to the “static line” rule for communities with demonstrated long-term nourishment projects, the Commission developed the “static line exception” rule at 15A NCAC 7H .0306(a)(12). The Town of Oak Island has not petitioned the Commission for a “static line exception” designation, which requires a long-term nourishment plan and associated funding, which to date, the Town lacks. The “static line exception” rules specifically did NOT apply to the development of swimming pools per 15A NCAC 7H .0306(a)(12)(D).

22. As an alternative to the “static line exception” rule, the Commission recently developed the “development line” rule, which became effective on April 1, 2016, and was codified as 15A NCAC 7H .0305(a)(10) and 7H .0306(a)(12). This rule allows for development of a residence up to the development line location. However, the Commission did not specifically include swimming pools as development subject to the development line rule. Instead, swimming pool development is controlled by 15A NCAC 7H .0309(a) which states that “In all cases, this development [including swimming pools] shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable. . .”

23. At the September 2016 meeting of the Commission, the Commission granted the Town of Oak Island's request for a development line. This approval was memorialized in a September 23, 2017 decision letter from CRC Counsel, a copy of which is attached.

24. The CRC's rules governing variance procedures require that "[b]efore filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot." 15A NCAC 7J .0701(a).

25. The Town has a front yard/building setback of 15 feet ("Town Setback") for oceanfront lots zoned R-7 (which is different from other R-7 lots which have a 25-foot setback). While Petitioners sought a variance from the Town's Board of Adjustment, they were incorrectly advised by the Town's Zoning Administrator to seek a variance from this Commission's setback rules and not from Town setback ordinances. Correctly, the zoning administrator advised, and the Board of Adjustment denied Petitioners' variance request for lack of jurisdiction to vary this Commission's rules. See the Board of Adjustment Packet in the attached Stipulated Exhibits.

26. Petitioners gave notice to their adjacent riparian owners they were seeking a Town Variance. On June 29, 2017, the Town's Board of Adjustment unanimously denied Petitioners' request for a variance. A copy of the Town's order is attached as a stipulated exhibit.

27. Petitioners contend that moving their development closer than 15' from the road is too close and so do not wish to relocate their development landward any amount, and not closer than the current 15' town setback. Petitioners were given the option to seek a new, correct local variance in September of 2017, but declined to do so and instead, seek a variance from the Commission's procedural rules requiring a local variance be sought before applying for a CAMA variance.

28. Aerial and ground-level photographs of the Lot and the surrounding properties are attached as exhibits and as part of the powerpoint exhibit.

29. Aerial photography on Google Earth (dated October 2016) shows that the nearest existing oceanfront swimming pools are located 1.59 miles to the east (at St. James Plantation Beach Club between SE 71st and SE 72nd Streets) and located 0.93 miles to the west (at 25th Place East).

30. Petitioners stipulate that their proposed development does not comply with the Commission's ocean erosion setback rules including 15A NCAC 7H .0309(a) which requires swimming pools to be landward of the 1998 Town of Oak Island static line on the Site. Petitioners also stipulate that this variance petition does not include proof that they sought local variance relief from applicable streetside setbacks, as required by 15A NCAC 7J .0701.

31. Petitioners have notified both adjacent owners that they are applying for this variance from the Commission. Copies of the letters and the associated “green cards” and tracking information is attached as stipulated exhibits.

32. As part of this variance request, Petitioner offers an “Alternative Site Plan” that he would accept if the Commission is willing to grant a variance. This “Alternative Site Plan” is attached and the seal is dated October 30, 2017. This “Alternative Site Plan” pulls the house landward to the 15’ street side setback (as far back as allowed without a local variance), and the static line bisects the pool in half (with approximately 6’ of pool and 6’ of concrete apron waterward of the static line).

33. Petitioner seeks a variance from 1) the Commission’s procedural rule at 15A NCAC 7J.0701 requiring that a variance petition first seek local relief (though a street-side setback variance in this case) before their CAMA variance application is complete, and 2) a variance from the Commission’s oceanfront setback rules, requiring development (including swimming pools) to be set back behind the applicable line (in this case, the static line).

34. On October 18, 2017, Petitioner sent notice of this Alternative Site Plan to his two adjacent riparian owners. To date, no comments have been received by DCM Staff.

35. Without a variance from this Commission, Petitioners can construct a pool landward of the proposed house, similar to what is permitted on the adjacent lot to the east. Also without a variance from this Commission, Petitioners can still construct the proposed house and deck in their originally proposed locations (per the application drawing), and omit the pool. Petitioners could also omit the proposed “deck or porch” and pull the swimming pool landward of the static line. Petitioners could also seek a variance from the local street-side setback to reduce the size of the variance requested (i.e. 5’ local variance = 10’ street-side setback area and CAMA variance of 7’ CAMA variance).

36. In this matter, the Division of Coastal Management is represented by Christine Goebel, Assistant General Counsel for DEQ. The Petitioners are representing themselves.

Stipulated Exhibits

1. Heasley Deed recorded at Book 3873, Page 623 of the Brunswick County Registry
2. Plat Maps Book 1, Pages 96-99
3. CAMA Minor Permit Application, including Site Survey
4. Survey considered and rejected by Petitioner with house at 15' setback
5. CAMA Permit with site plan for owners to the east
6. July 7, 2017 CAMA permit denial letter
7. Development Line Approval Letter from CRC Counsel, September 2016
8. June 13, 2017 Town Variance Application, notice to adjacent owners and Denial Letter and copy of Board of Adjustment meeting minutes.
9. Notice of CAMA Variance to adjacent owners - signed green cards
10. GIS parcel boundaries overlain on aerial photos from 1998 and 2016, showing historic shorelines.
11. Powerpoint presentation with ground and aerial photos of the Site
12. Alternative Site Plan proposed by Petitioner during variance process
13. Notice of Alternative Site Plan sent to riparian neighbors on October 18, 2017

PETITIONERS' and STAFF'S POSITIONS**ATTACHMENT C**

- I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.**

Petitioners' Position: Yes.

The strict application of the 1998 static vegetation line limiting where the pool can be placed will cause great monetary and personal hardship because we will not be able to build our dream beach house and pool within our budget on the lot we purchased. We hope to build a basic 28x34 (1904 square foot) beach house with pool and porches ocean side to enjoy the views. We plan to use it as a rental most of the year in order to recoup our investment and to generate retirement income. However, it's more than a rental investment to us. We also hope to enjoy it a few times a year making memories with friends and family becoming part of the community after retirement. The rental management company and builder both say this size house with a pool oceanside is in high demand for rentals. The current rule sets the pool in the center of the buildable footprint space making it impossible. The now static vegetation line serves no purpose for our property's protection. As you can see from the photos it has a great dune protection seaward of the development line. We are a great proponent of costal [sic] management and will maintain and improve on the natural vegetation extending seaward of the current static vegetation line. We have tried all configuration's to this property, to make reasonable use of with pool and found none.

Staff's Position: Yes.

1) As an initial matter, Petitioners seek a variance from the Commission's procedural variance rule at 15A NCAC 7J .0701(a), which requires that before seeking a variance from the Commission, a Petitioner "must seek relief from local requirements restricting use of the property..." In this case, while Petitioners sought a variance from the Town of Oak Island, they were incorrectly directed by Town Staff to seek a variance from this Commission's rules with the Town's Board of Adjustment, which was denied on June 29, 2017 as the Board understood it lacked the authority to vary this Commission's setback rules. Instead, Petitioners could have sought a variance from the Town's front (road-side) setback of 15' in the several months that have passed before seeking this variance, in order to slide the proposed development footprint landward and eliminating/reducing the size of the variance sought from this Commission. However, Staff acknowledge that the Town has essentially granted a variance from its street-side setback through an ordinance which reduces the street-side setback for all oceanfront lots. Due to this ordinance, Staff contend that the Commission should proceed with this variance without first requiring that Petitioner seek a local variance from the street-side setback.

2) Petitioners seek a variance from the Commission's oceanfront setback rules, specifically 15A NCAC 07H .0309, which prohibit development of a pool waterward of the Town of Oak

Island's 1998 static vegetation line. The Town's 1998 Static Line was the location of the first line of stable, natural vegetation as it existed in 1998, before both Hurricane Floyd in 1999 and the Town's 2001-02 large-scale nourishment project. This large-scale project was a one-time project and not part of a long-term nourishment plan, and the Town has not received another large-scale nourishment since the 2001-02 project. As it lacks a long-term nourishment plan, the Town of Oak Island never applied for the Static Line Exception. Instead, the Town adopted a Development Line in September 2017, and that is what allows Petitioners to build the house and deck as proposed. However, in creating both the Static Line Exception rules and the Development Line rules, the Commission very specifically chose not to include swimming pools as allowable development covered by those exceptions to the ocean erosion setback. The Commission's rules at 15A NCAC 07H .0309, which are exceptions to the oceanfront erosion setback, allow swimming pools, but only as long as they are located landward of the FLSNV or the static line as applicable.

The Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development" (15A NCAC 07H .0303(b)).

Staff contend that Petitioners do not face an unnecessary hardship by not being able to include a swimming pool waterward of their proposed home and deck as proposed (both initially during permit review and the alternative design). As evidenced by the location of the Static Line (the location of the FLSNV in 1998, before Hurricane Floyd, which eroded the FLSNV even further), this Site has experienced significant erosion in the past. While this portion of Oak Island has been largely untested by storm-caused erosion since 1999, the Site will continue to be impacted by coastal storms and chronic erosion that may result in the swimming pool being undermined or eventually located on the public beach. In addition, the Town of Oak Island does not have a long-term renourishment permit or plan.

Staff believe that not having an oceanfront pool is not an "unnecessary hardship" as required by this statutory criterion. Without a variance from this Commission, the Petitioners could place the pool along the side of the house or between the house and street following the example set by the house to the east. (See Facts 5 & 35) For these reasons, staff contend that the strict application of the Commission's oceanfront setback rules does not cause Petitioners' any unnecessary hardships.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioners' Position: Yes.

The 1998 vegetation line is no longer protective but causes a hardship for us by restricting our footprint. We were shocked and dumbfounded to find a 1998 line that no longer seems relevant and prevents us from being able to put a pool past the center of the buildable area. Especially when we were first attracted to the property by the impressive dunes with mature vegetation. The dunes on the lot are over 8-10 ft. high and at least 30 to 40 ft. deep. The building footprint is 34 ft. wide and 70 ft. long. We need more than a 15ft. set back to handle 5 vehicles and build the house large enough to accommodate families – like our own 4 grown children and their expanding families (3 grandchildren) and a pool. A ground pool is more economical and assessable [sic] for those with handicaps and the elderly (we hope my wife's parents in their 80s can visit) and makes it safer and easier for families, especially with children going back and forth from the ocean to the pool. We also intend to use the pool for health reasons because we suffer from chronic arthritis and joint pain.

Staff's Position: No.

Staff disagree that the 1998 static vegetation line is a condition peculiar to the property. Instead, it is the post-nourishment line used to measure setbacks at the Site. Initially, the pre-project line used for setbacks was the location of the vegetation line at the start of the 2001-02 nourishment project. However, this Commission gave relief to the Town by acknowledging that the 2001-02 vegetation line was largely a result of 1999's Hurricane Floyd, and so agreed to use the 1998 (pre-Floyd) position of the vegetation line as the Static Line. So the 1998 line is not even the farthest landward that the first line of stable, natural vegetation has been on the Site. The Commission, in authorizing nourishment projects, wanted to prevent development-creep on renourished beaches, understanding that beach renourishment is only a temporary fix. Even when renourishment projects have largely stabilized, the underlying processes of beach erosion and the potential for future storms remain. In the long-term, further erosion at the Site is likely and therefore the Static Line is not irrelevant or outdated, especially where the Town lacks a long-term beach renourishment plan. Staff identify no peculiar conditions on the property which cause Petitioners' hardship.

Petitioners' health conditions and family make-up are not physical conditions of the property, such as size, location or topography, and so are not proper for consideration by the Commission in deciding this statutory criterion.

III. Do the hardships result from the actions taken by the Petitioner? Explain.

Petitioners' Position: No.

The hardship is not self-imposed, we just need to be able to build a reasonable house that suits our needs and is well within the buildable footprint.

Staff's Position: Yes.

Staff believe any hardships alleged by Petitioners would be entirely self-imposed. Rather than redesigning the site layout to place the pool on the street-side of the house and alleviating the need for a variance (as the adjacent owner has done), Petitioner seeks to have both a closer view of the ocean as well as a pool. The proposed location of the pool is waterward of where the natural vegetation line was in 1998 (Pre-Floyd). Staff also note that Petitioner can, without a variance, build the house and deck as proposed, landward of the development line, and so it is entirely the Petitioners' choice to seek the proposed house, deck and pool where proposed and not pull the development back on the lot. Finally, there are no existing oceanfront pools near the Site (see Fact 29), and so they will not be at a disadvantage in the rental market compared to those oceanfront rentals in this 2+ mile long area.

IV. Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Petitioners' Position: Yes.

We believe this request is in the spirit of the ordinance since the property now has an exceptionally large dune to protect it a good distance from the building area. The home we wish to build is not out of the ordinary, but what anyone would expect to enjoy such a beautiful setting. We have tried every possible shift and configuration and cannot find another way. We cannot leave out porches, parking, or make the house 16ft. deep! – and still have a rentable, or even usable home.

Staff's Position: No.

Staff contends that granting a variance to Petitioners in order to vary the Commission's oceanfront erosion setback rules so that Petitioners can add approximately 186 square feet of new decking and half of the proposed pool is not consistent with the spirit, purpose, and intent of the Commission's rules. The Commission's rules have provided an oceanfront erosion setback since 1979, and the Commission has already allowed two exceptions to the static line with the Static Line Exception rule and the Development Line rule. Petitioner is already utilizing the Development Line Rule in order to build the proposed beach cottage as an exception to the static

line setback. However, in drafting both the Static Line Exception Line Rule and the Development Line Rule, the Commission specifically did not include swimming pools. The location of the static line is where the FLSNV existed in 1998, and while the Town has been fortunate in avoiding significant erosion at the Site since the 2001-02 large-scale beach project, the Commission's rules are based on concerns that the FLSNV will eventually erode landward again, especially where the Town lacks a long-term nourishment plan. While the additional decking and pool area proposed may seem like a small amount of square footage, there are other locations to place the pool that would not require a variance.

Staff contend that granting a variance will not secure public safety and welfare where it will be authorizing inappropriately sited development that can interfere with the public trust beach, be at greater risk for loss of property for both Petitioners and their neighbors with more structure in harm's way. It and may become a cost to the public if the public will have to pay to remove the deck and pool as future post-storm debris, or result in future applications for erosion control structures that further impact beach processes, public access, and public expenditures.

Finally, Staff contend that granting a variance would not preserve substantial justice where the Commission's rules already make several exceptions for structures that do not have to meet the oceanfront erosion setback rule, but this request for an "exception to the exceptions" would go further and allow a swimming pool waterward of the Static Line.

**ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST MATERIALS**

DCM FORM 11
(revised 6/26/06)

CAMA VARIANCE REQUEST

DCM FILE NO.

Petitioner supplies the following information:

Your Name *Rick and Valerie Heasley*
 Address *122 S. 7th Ave Paden City W.V. 26159*
 Telephone *(304) 337-9123* Cell *(304) 771-2673*
 Fax and/or Email *rwheasley@suddenlink.net*

Name of Your Attorney (if applicable)

Address

Telephone

Fax and/or Email

Have you received a decision from the Division of Coastal Management (DCM) or a Local Permit Officer denying your application for a CAMA permit?

no (You are not entitled to request a variance until your permit application has been denied.)

yes (You may proceed with a request for a variance.)

What did you seek a permit to do? *Extend the static vegetation line 18-20 feet seaward on my buildable footprint to install a pool*

What Coastal Resources Commission rule(s) prohibit this type of development?

NCGS 113A-120(a)(8)

15 NCAC 7H, 0309(a)

Rule .0306(a)(9)

Local Land Use Plan - I. 112 pg 5-39

Can you redesign your proposed development to comply with this rule? NO If your answer is no, explain why you cannot redesign to comply with the rule. *The static vegetation line runs through the middle of my development footprint 34' x 70'. The static line is 42' from the required 15' setback line. To do what I wish to do my home would be 16' deep and unbuildable.*

Can you obtain a permit for a portion of what you wish to do? NO If so, please state what the permit would allow.

State with specificity what you are NOT allowed to do as a result of the denial of your permit application. It will be assumed that you can make full use of your property, except for the uses that are prohibited as a result of the denial of your permit application. *To have my pool past the 1998 Static Vegetation line, I need 18-20' seaward well within the 34'x70' footprint.*

RESPOND TO THE FOUR STATUTORY VARIANCE CRITERIA:

- See
Hack
variance
response*
- I. Identify the hardship(s) you will experience if you are not granted a variance and explain why you contend that the application of this rule to your property constitutes an unnecessary hardship. [The North Carolina Court of Appeals has ruled that this factor depends upon the unique nature of the property rather than the personal situation of the landowner. It has also ruled that financial impact alone is not sufficient to establish unnecessary hardship, although it is a factor to be considered. The most important consideration is whether you can make reasonable use of your property if the variance is not granted. [*Williams v. NCDENR, DCM, and CRC*, 144 N.C. App. 479, 548 S.E.2d 793 (2001).]
 - II. Describe the conditions that are peculiar to your property (such as location, size, and topography), and cause your hardship.
 - III. Explain why your hardship does not result from actions that you have taken.
 - IV. Explain why the granting of the variance you seek will be consistent with the spirit, purpose, and intent of the CRC's rules, standards, or orders; preserve substantial justice; and secure public safety.

Please attach copies of the following:



Permit Application and Denial documents
 Site Drawing with Survey and Topographical Information
 Any letters filed with DCM or the LPO commenting on or objecting to your project

Provide a numbered list of all true facts that you are relying upon in your explanation as to why you meet the four criteria for a variance. Please list the variance criterion, ex. unnecessary hardship, and then list the relevant facts under each criterion. [The DCM attorney will also propose facts and will attempt to verify your proposed facts. Together you will arrive at a set of facts that both parties agree upon. Those facts will be the only facts that the Commission will consider in determining whether to grant your variance request.]

Attach all documents you wish the Commission to consider in ruling upon your variance request. [The DCM attorney will also propose documents and discuss with you whether he or she agrees with the documents you propose. Together you will arrive at a set of documents that both parties agree upon. Those documents will be the only documents that the Commission will consider in determining whether to grant your variance request.]

Pursuant to N.C.G.S. 113A-120.1 and 15A NCAC 7J .0700, the undersigned hereby requests a variance.

Date: 7/20/17

Signature: 


This variance request must be filed with the Director, Division of Coastal Management, and the Attorney General's Office, Environmental Division, at the addresses shown on the attached Certificate of Service form.

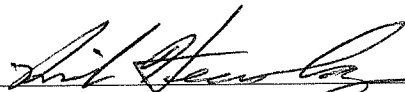
CERTIFICATE OF SERVICE

I hereby certify that this Variance Request has been served on the State agencies named below by United States Mail or by personal delivery to the following:

Original served on: Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

copy: Attorney General's Office
Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

This the 20 day of July, 20 17.



Signature of Petitioner or Attorney

CAMA VARIANCE REQUEST

DEAR DIRECTOR FOR THE DIVISION FOR COSTAL MANAGEMENT AND ATTORNEY
GENERAL OFFICE ENVIRONMENTAL DIVISION

1. The strict application of the 1998 static vegetation line limiting where the pool can be placed will cause great monetary and personal hardship because we will not be able to build our dream beach house and pool within our budget on the lot we purchased. We hope to build a basic 28x34 (1904 square foot) beach house with pool and porches ocean side to enjoy the views. We plan to use it as a rental most of the year in order to recoup our investment and to generate retirement income. However, it's more than a rental investment to us. We also hope to enjoy it a few times a year making memories with friends and family becoming part of the community after retirement. The rental management company and builder both say this size house with a pool oceanside is in high demand for rentals. The current rule sets the pool in the center of the buildable footprint space making it impossible. The now static vegetation line serves no purpose for our property's protection. As you can see from the photos it has a great dune protection seaward of the development line. We are a great proponent of costal management and will maintain and improve on the natural vegetation extending seaward of the current static vegetation line. We have tried all configuration's to this property, to make reasonable use of with pool and found none.
2. The 1998 vegetation line is no longer protective but causes a hardship for us by restricting our footprint. We were shocked and dumbfounded to find a 1998 line that no longer seems relevant and prevents us from being able to put a pool past the center of the buildable area. Especially when we were first attracted to the property by the impressive dunes with mature vegetation. The dunes on the lot are over 8-10 ft. high and at least 30 to 40 ft. deep. The building footprint is 34 ft. wide and 70 ft. long. We need more than a 15ft. set back to handle 5 vehicles and build the house large enough to accommodate families -like our own 4 grown children and their expanding families (3 grandchildren) and a pool. A ground pool is more economical and assessible for those with handicaps and the elderly (we hope my wife's parents in their 80s can visit) and makes it safer and easier for families, especially with children going back and forth from the ocean to the pool. We also intend to use the pool for health reasons because we suffer from chronic arthritis and joint pain.
3. The hardship is not self-imposed, we just need to be able to build a reasonable house that suits our needs and is well within the buildable footprint.
4. We believe this request is in the spirit of the ordinance since the property now has an exceptionally large dune to protect it a good distance from the building area. The home we wish to build is not out of the ordinary, but what anyone would expect to enjoy such a beautiful setting. We have tried every possible shift and configuration and cannot find another way. We cannot leave out porches, parking, or make the house 16ft. deep! - and still have a rentable, or even usable home.

We have been dreaming of living on the ocean for a long time and after searching up and down the coast choice Oak Island to be our dream destination. We have fallen in love with the area for its small-town atmosphere, kind, friendly people and the beauty all around. We hope to become both part of this wonderful community and economy.

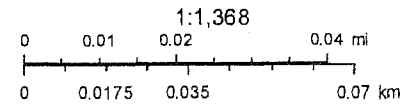
Thank you,
Rick and Valerie Heasley
06/12/17

Brunswick County GIS Data Viewer



June 14, 2017

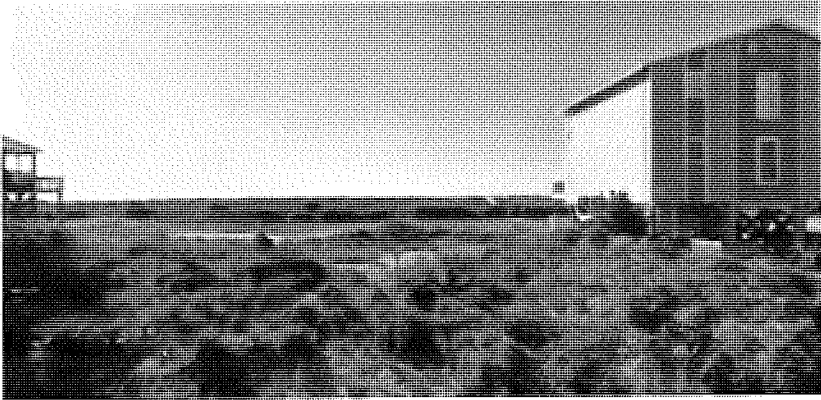
- | | | | | |
|--------------|--------------|---------|-------------------|-----------------|
| ■ Addresses | — US Hwy | Minor | Parcel | ■ Green: Band_2 |
| — Roads | — NC Hwy | Parcels | ■ County Boundary | ■ Blue: Band_3 |
| — Interstate | — State Road | Condo | ■ Red: Band_1 | |



Google Maps 4017 E Beach Dr



Imagery ©2017 Google, Map data ©2017 Google United States 50 ft



4017 E Beach Dr
Oak Island, NC 28465



ATTACHMENT E:
STIPULATED EXHIBITS INCLUDING POWERPOINT



Brenda M. Clemmons Register of Deeds
02-17-2017 12:21:00.001 Brunswick County, NC
NC REVENUE STAMP: \$406.00 (#519706)

Presenter G+K Ret: BK
Total 26 Rev 406 Int. 55
Ck \$ 432 Ck # 10954 Cash \$ _____
3 Refund: _____ Cash \$ _____ Finance _____
 Portions of document are illegible due to condition of original.
 Document contains seals verified by original instrument that cannot be reproduced or copied.

NORTH CAROLINA GENERAL WARRANTY DEED

This instrument prepared by Geddings & Kleva, PLLC, licensed North Carolina attorneys. Delinquent taxes, if any, to be paid by the closing attorney to the Brunswick County Tax Collector upon disbursement of closing proceeds.

Excise Tax: \$ 406.00
Brief Description For The Index: **L-9 B-17 S-2**

Parcel ID: **249DG017**

THIS DEED made by and between,

GRANTOR

Linda W. Crowe and husband, Phillip E. Crowe
31 Locust Grove Road
Weaverville, NC 28787

GRANTEE

Richard W. Heasley and wife, Valerie L. Heasley
122 S 7th Ave.
Paden city, WV 26159

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple all that certain lot or parcel of land situated in Brunswick County, North Carolina and more particularly described in EXHIBIT A, attached hereto and made a part hereof.

Geddings & Kleva, PLLC
8721 East Oak Island Drive, Oak Island, North Carolina 28465



TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee that the Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the following exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

- 1- Ad valorem taxes for the current year;
- 2- Restrictions, easements and rights-of-way of record.

The property being conveyed is ___/ is not XX the seller's primary residence.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, the day and year first above written.

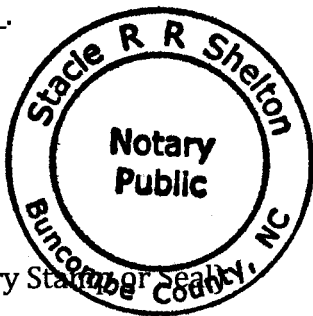
Linda W. Crowe (SEAL)
Linda W. Crowe

Phillip E. Crowe (SEAL)
Phillip E. Crowe



STATE OF North Carolina
COUNTY OF Buncombe

I, the undersigned Notary Public of the County and State aforesaid, certify that **Linda W. Crowe and Phillip E. Crowe** personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 10 day of February, 2017.



(Notary Stamp or Seal)

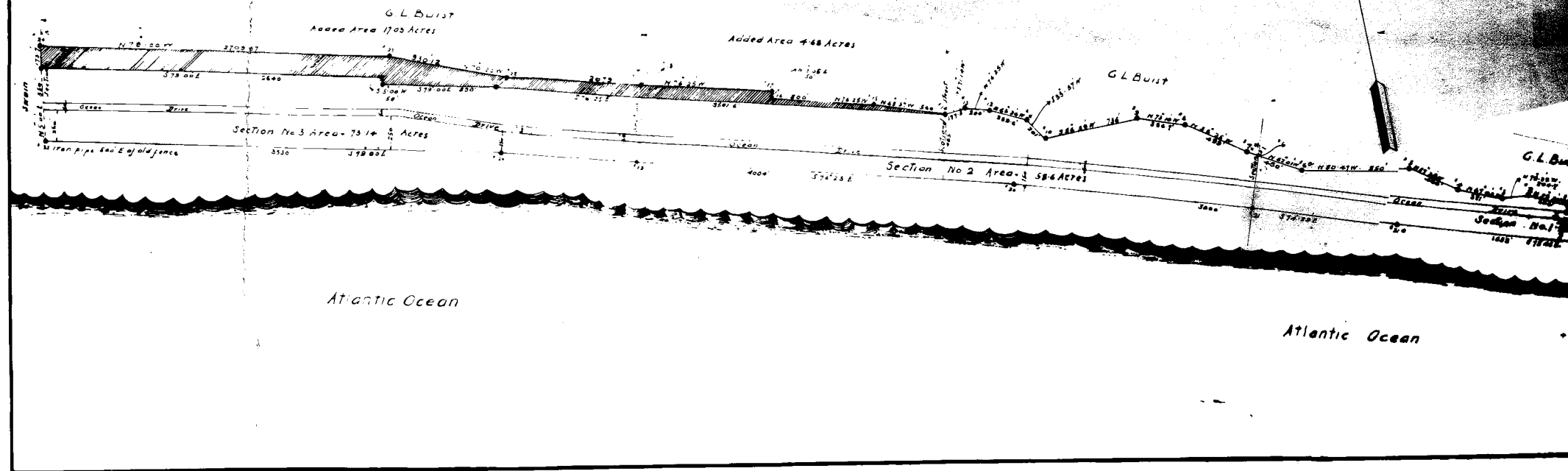
Stacie R R Shelton
Notary Public
My commission expires: 01/08/2022



EXHIBIT A

ALL that certain lot or parcel of land situated in the City of Long Beach (now known as Oak Island), North Carolina, according to a map thereof recorded in Map Book 1 at Pages 96-99 of the Brunswick County Registry, said lot having the metes, bounds and location as shown on said map. Also being all of Lot 9, Block 17, Section 2, as the same appears on a plat of a subdivision of property on Long Beach by Frank E. Lawrence, Engineer and recorded in Map Book 1 at pages 96-99, in the office of the Register of Deeds of Brunswick County, North Carolina.

For back reference see Deed recorded in Book 3392, Page 835 of the Brunswick County Registry.



STATE OF NORTH CAROLINA

COUNTY OF BRUNSWICK
 Personally appeared before me, F.L. Lawrence
 Civil Engineer and being duly sworn, deposes and
 says that the foregoing map is the result of an
 actual survey made by him of the boundary of this
 tract, with subdivisions surveyed and plotted,
 and he believes the same to be correct.
 Magnetic Variation is 5° 00' West

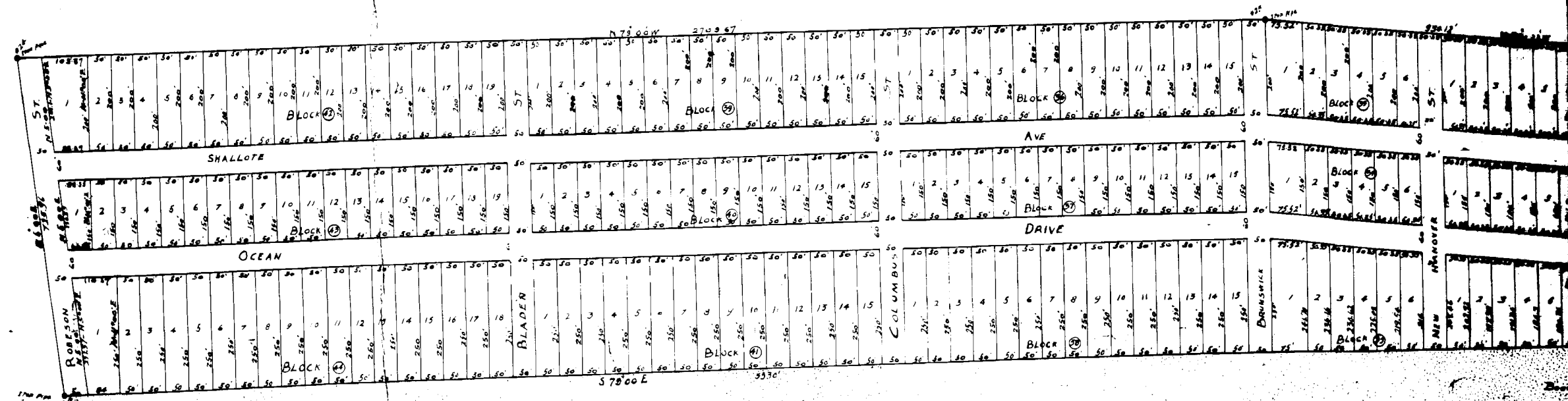
Dated this the 12th day of March 1930

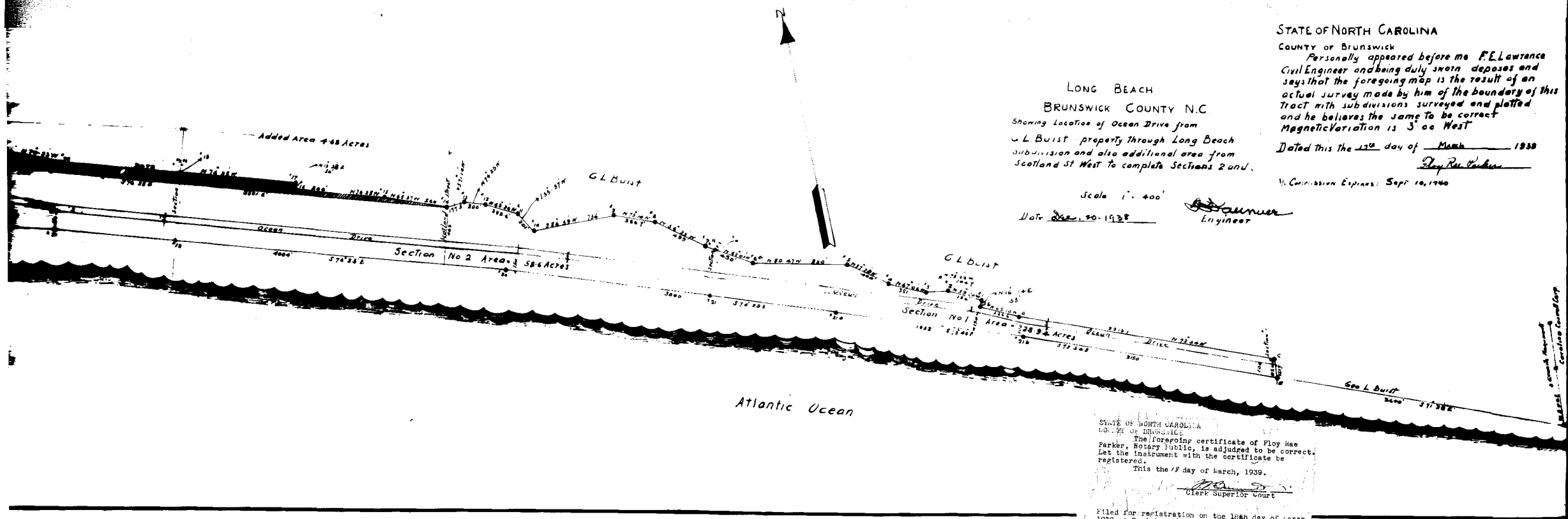
My Commission Expires: Sept. 15, 1934

State of North Carolina
COUNTY OF BRUNSWICK

The foregoing certificate of F.L. Lawrence
 is adjudged to be correct and
 with this certificate be read
 the 18th day of March, 1930

Filed for registration on the
 15th day of March 1930 at 2 o'clock
 Landed in Book of Maps, p. 96





STATE OF NORTH CAROLINA
 COUNTY OF BRUNSWICK
 Personally appeared before me F.E. Lawrence
 Civil Engineer and being duly sworn deposes and
 says that the foregoing map is the result of an
 actual survey made by him of the boundary of this
 tract with subdivisions surveyed and plotted
 and he believes the same to be correct
 Magnetic Variation is 3° 00' West
 Dated this the 12th day of March 1939
 Floy R. Parker
 My Commission Expires: Sept. 10, 1940

LONG BEACH
 BRUNSWICK COUNTY N.C.
 Showing Location of Ocean Drive from
 L. Buist property through Long Beach
 subdivision and also additional area from
 Scotland St West to complete Sections 2 and 1.

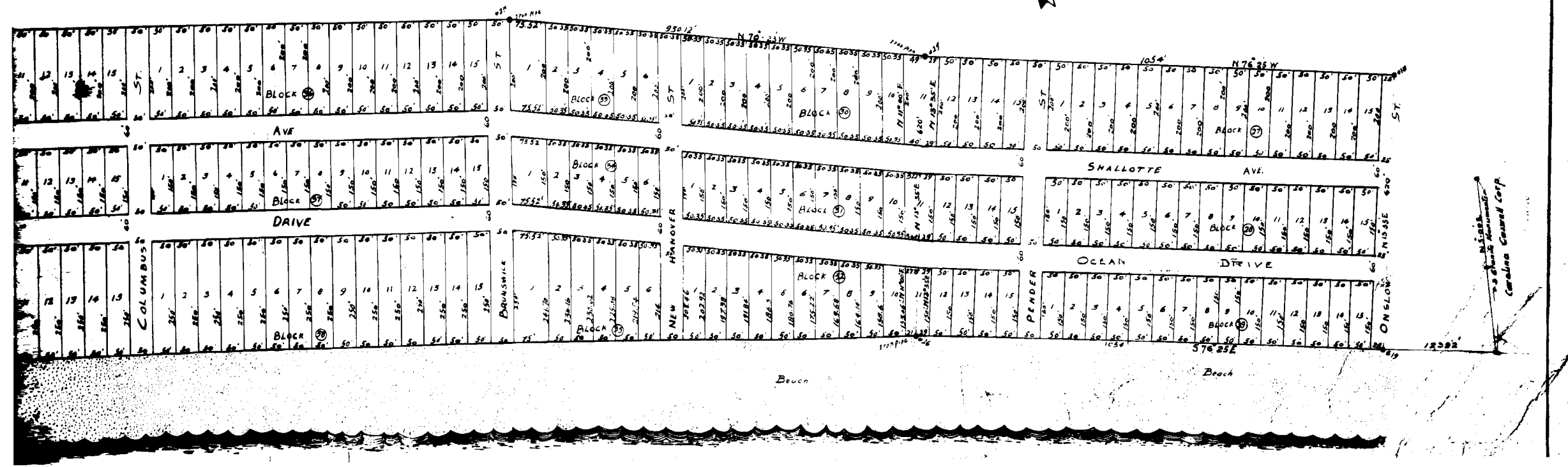
Scale 1" = 400'
 Date Dec. 20, 1938
 F. Lawrence
 Engineer

STATE OF NORTH CAROLINA
 COUNTY OF BRUNSWICK
 The foregoing certificate of Floy R. Parker, Notary Public, is adjudged to be correct.
 Let the instrument with the certificate be registered.
 This the 17th day of March, 1939.
 Clerk Superior Court
 Filed for registration on the 18th day of March 1939 at 2 o'clock P. M. and recorded in Book of Maps, page
 Register of Deeds

STATE OF NORTH CAROLINA
 COUNTY OF BRUNSWICK
 Personally appeared before me F.E. Lawrence
 Civil Engineer and being duly sworn deposes and
 says that the foregoing map is the result of an
 actual survey made by him of the boundary of this
 tract, with subdivisions surveyed and plotted,
 and he believes the same to be correct
 Magnetic Variation is 3° 00' West
 Dated this the 12th day of March 1939
 Floy R. Parker
 My Commission Expires: Sept. 10, 1940

State of North Carolina
 County of Brunswick
 The foregoing certificate of Floy R. Parker is
 adjudged to be correct. Let the instrument
 with this certificate be registered this
 the 18th day of March, 1939.
 Filed for registration on the 18th day
 of March 1939 at 2 o'clock P.M. and re-
 corded in Book of Maps page
 Register of Deeds

PLAT OF LONG BEACH
 Section 3
 BRUNSWICK COUNTY N.C.
 Scale 1" = 100' Nov. 26, 1938
 F. Lawrence
 Engineer



STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

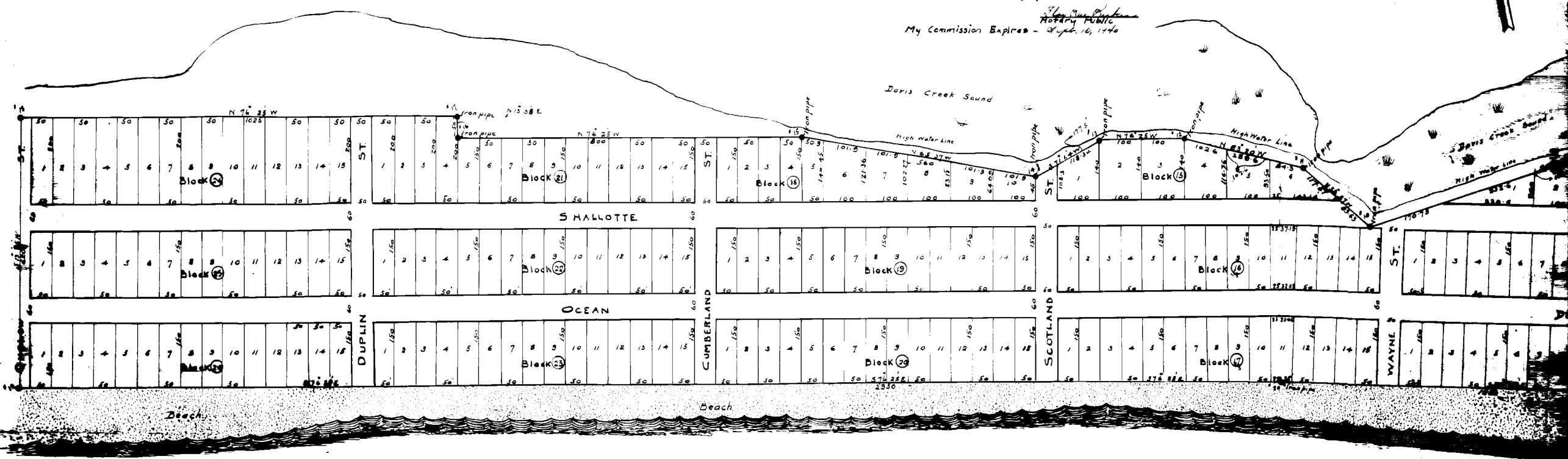
Personally appeared before me F.E. Lawrence,
Civil Engineer and being duly sworn, deposes and
says that the foregoing map is the result of an
actual survey made by him of the boundary of this
tract, with subdivisions surveyed and plotted,
and he believes the same to be correct.
Magnetic Variation is 3 degrees West

Dated this 12th day of December 1938

My Commission Expires - Oct. 16, 1940

The foregoing certificate of F.E. Lawrence
is adjudged to be correct. Let the in-
strument with this certificate be registered.
This the 18th day of March 1939.

Clerk Superior Court
Filed for registration on the 18th day
of March 1939 at 2 o'clock P.M. and
recorded in Book of Maps, Page
Register of Deeds



STATE OF NORTH CAROLINA
COUNTY OF BRUNSWICK

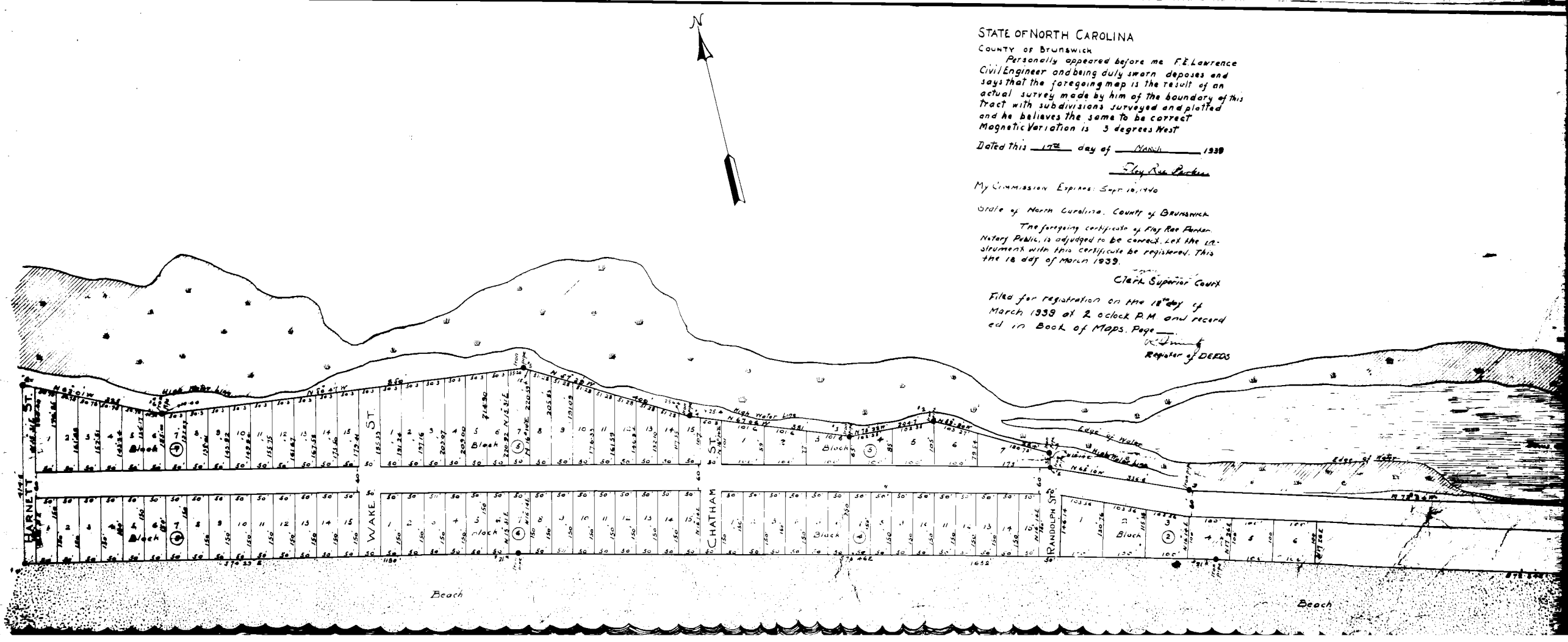
Personally appeared before me F.E. Lawrence
Civil Engineer and being duly sworn, deposes and
says that the foregoing map is the result of an
actual survey made by him of the boundary of this
tract with subdivisions surveyed and plotted
and he believes the same to be correct.
Magnetic Variation is 3 degrees West

Dated this 12th day of March 1939

My Commission Expires - Sept. 16, 1940

Clerk Superior Court
The foregoing certificate of F.E. Lawrence
is adjudged to be correct. Let the in-
strument with this certificate be registered.
This the 18th day of March 1939.

Clerk Superior Court
Filed for registration on the 18th day of
March 1939 at 2 o'clock P.M. and record
ed in Book of Maps, Page
Register of Deeds



Locality Oak Island Permit Number OI 17-42

Ocean Hazard Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other HH

(For official use only)

GENERAL INFORMATION

LAND OWNER

Name Rick & Valerie Heasley

Address 122 S. 7th Ave

City Raden City State W.V. Zip 26159 Phone (304) 337-9123

Email rwheasley@suddenlink.net (304) 771-2673

AUTHORIZED AGENT

Name _____

Address _____

City _____ State _____ Zip _____ Phone _____

Email _____

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 4017 E. Beach Dr.

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Single Family Resident with swimming Pool

SIZE OF LOT/PARCEL: _____ square feet _____ acres

PROPOSED USE: Residential (Single-family Multi-family) Commercial/Industrial Other

COMPLETE EITHER (1) OR (2) BELOW (Contact your Local Permit Officer if you are not sure which AEC applies to your property):

(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE: 1904 square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: _____ square feet (includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?

YES _____ NO

If yes, list the total built upon area/impervious surface allowed for your lot or parcel: _____ square feet.

OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit, including, but not limited to: Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others. Check with your Local Permit Officer for more information.

STATEMENT OF OWNERSHIP:

I, the undersigned, an applicant for a CAMA minor development permit, being either the owner of property in an AEC or a person authorized to act as an agent for purposes of applying for a CAMA minor development permit, certify that the person listed as landowner on this application has a significant interest in the real property described therein. This interest can be described as: (check one)

an owner or record title, Title is vested in Richard & Valerie Heasley see Deed Book _____ page _____ in the Brunswick County Registry of Deeds.

an owner by virtue of inheritance. Applicant is an heir to the estate of _____; probate was in _____ County.

if other interest, such as written contract or lease, explain below or use a separate sheet & attach to this application.

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

I furthermore certify that the following persons are owners of properties adjoining this property. I affirm that I have given **ACTUAL NOTICE** to each of them concerning my intent to develop this property and to apply for a CAMA permit.

(Name)	(Address)
(1) <u>Sgt. Smith</u>	<u>4012 E. Beach Dr</u>
(2) <u>Richard Carlson</u>	<u>4015 E Beach Dr</u>
(3) _____	_____
(4) _____	_____

ACKNOWLEDGEMENTS:

I, the undersigned, acknowledge that the land owner is aware that the proposed development is planned for an area which may be susceptible to erosion and/or flooding. I acknowledge that the Local Permit Officer has explained to me the particular hazard problems associated with this lot. This explanation was accompanied by recommendations concerning stabilization and floodproofing techniques.

I furthermore certify that I am authorized to grant, and do in fact grant, permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This the June 29 day of June, 20 17

Valerie Heasley
Landowner or person authorized to act as his/her agent for purpose of filing a CAMA permit application

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the Ocean Hazard AEC Notice where necessary, a check for \$100.00 made payable to the locality, and any information as may be provided orally by the applicant. The details of the application as described by these sources are incorporated without reference in any permit which may be issued. Deviation from these details will constitute a violation of any permit. Any person developing in an AEC without permit is subject to civil, criminal and administrative action.

AEC HAZARD NOTICE

Project Is In An: Ocean Erodible Area High Hazard Flood Area Inlet Hazard Area

Property Owner: Phil Henry

Property Address: 4017 E. Beach Dr Oak Island NC

Date Lot Was Platted: _____

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and dune alterations are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development. Permits issued in the Ocean Hazard Area of Environmental Concern include the condition that structures be relocated or dismantled if they become imminently threatened by changes in shoreline configuration. The structure(s) must be relocated or dismantled within two (2) years of becoming imminently threatened, and in any case upon its collapse or subsidence.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual long-term average ocean erosion rate for the area where your property is located is 2 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 325 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 19 feet deep in this area.

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary sand bags may be authorized under certain conditions.

The applicant must acknowledge this information and requirements by signing this notice in the space below. Without the proper signature, the application will not be complete.

Phil Henry 6/29/2017
Applicant Signature Date

SPECIAL NOTE: This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer must be contacted to determine the vegetation line and setback distance at your site. If the property has seen little change since the time of permit issuance, and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. Substantial progress on the project must be made within 60 days of this setback determination, or the setback must be remeasured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate remeasurement of the setback. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal can be authorized. It is unlawful to continue work after permit expiration.

For more information, contact:

Donna Coleman
Local Permit Officer

4601 E. Oak Island Dr
Address

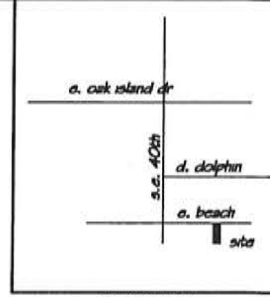
Oak Island, NC 28465
Locality

(910) 201-8047
Phone Number

I, Joseph R. Brochure, PLS - 1759, Certify that this plat was drawn under my supervision from an actual survey made under my supervision from information shown in deed books referenced on map and map books reference on map; That any lines not actually surveyed appear as broken lines and were plotted from information as noted on the plat; That the ratio of precision as calculated is better than 1:10,000, that the area is computed by coordinate method. witness my original signature, registration number and seal this the 07TH day of JUNE. A.D. 2017.

Joseph R. Brochure - L-1759
Professional Land Surveyor

NOTES:
ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DIS.
THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.
PROPERTY ADDRESS:
4017 E. BEACH DRIVE
OAK ISLAND, N.C.
PARCEL # 249DG017
LOT AREA: 7,500 SF. +/-

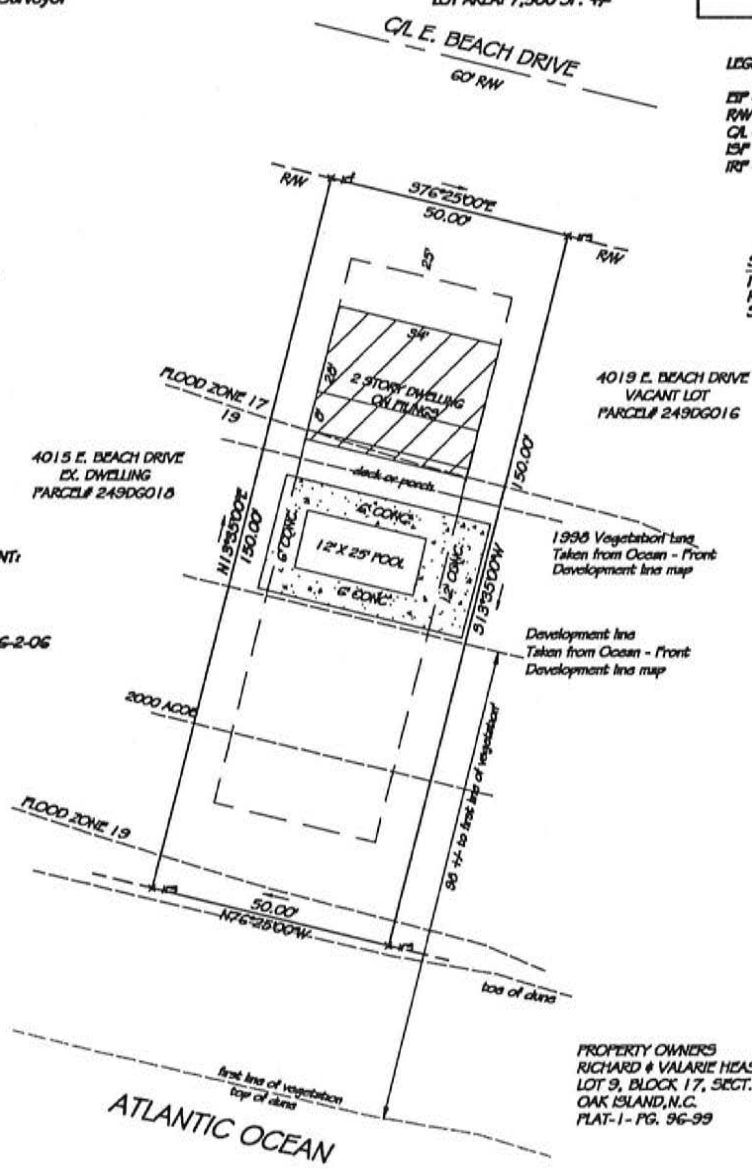


LEGEND:
EIP - EXISTING IRON PIPE
RW - RIGHT OF WAY
CL - CENTERLINE ST.
ISP - IRON STAKE FOUND
IRS - IRON ROD SET

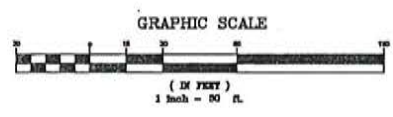
SETBACKS - R7
FRONT - 15'
REAR - 20'
SIDE - 8'



FLOOD STATEMENT:
FIRM: 370202
PANEL: 2065
PREFIX: 1J
ZONED: 1/2 15'
EFFECTIVE DATE: 6-2-06



PROPERTY OWNERS
RICHARD & VALARIE HEASLEY
LOT 9, BLOCK 17, SECT. 2
OAK ISLAND, N.C.
PLAT-1 - PG. 96-99



Island Surveyors, Inc. P.A.
JOEY BROCHURE L-1759
427 Womble St
Oak Island, N.C. 29465
PHONE: 910-250-9192
CELL: 910-523-6122
www.islandsurveyor.com

Residential & Commercial Site Plan
Lot Surveys & Flood Elev. Certificates
email: islandsurveyors@gmail.com

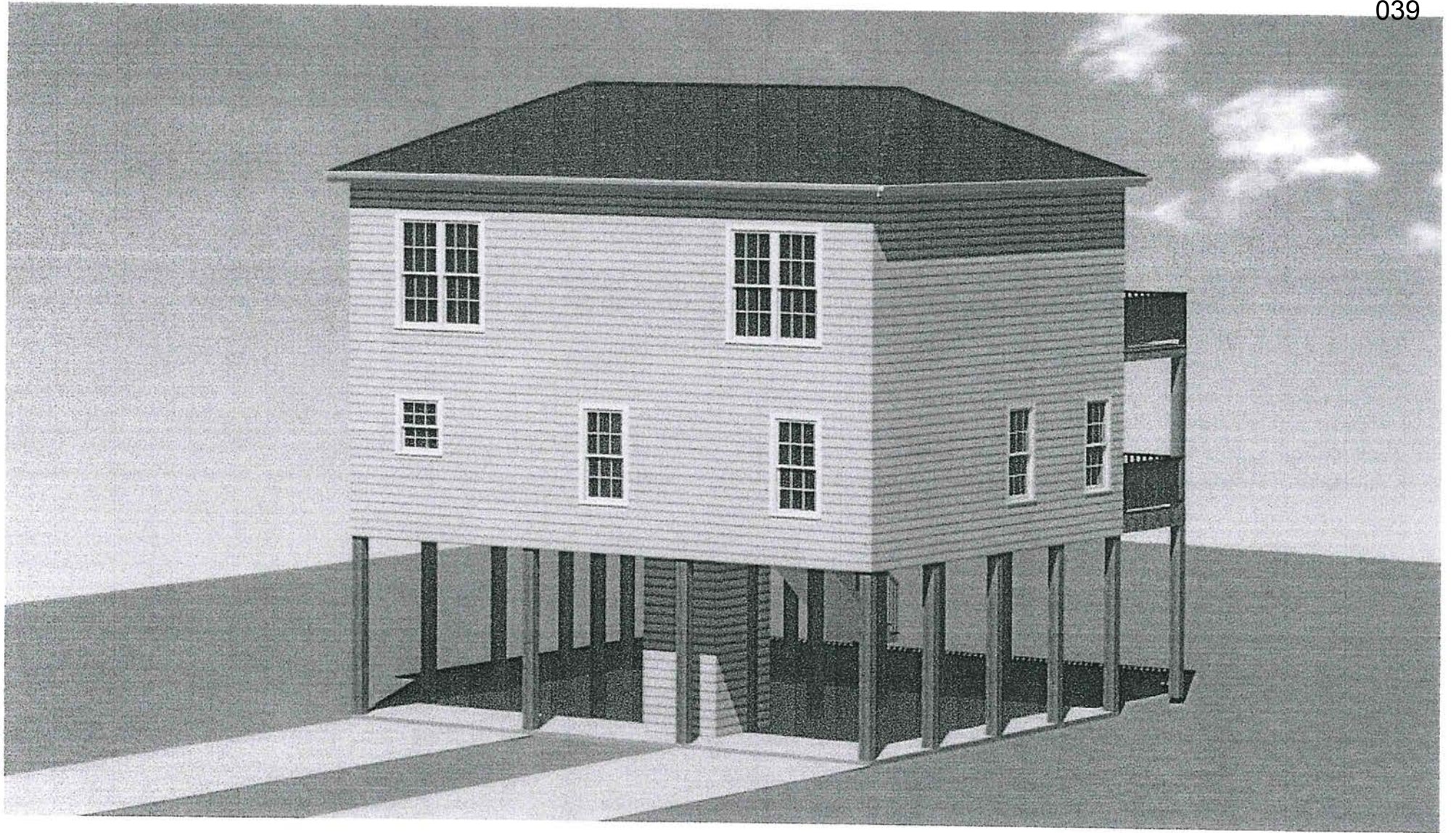
PROJECT # -
2017-000-HEASLEY

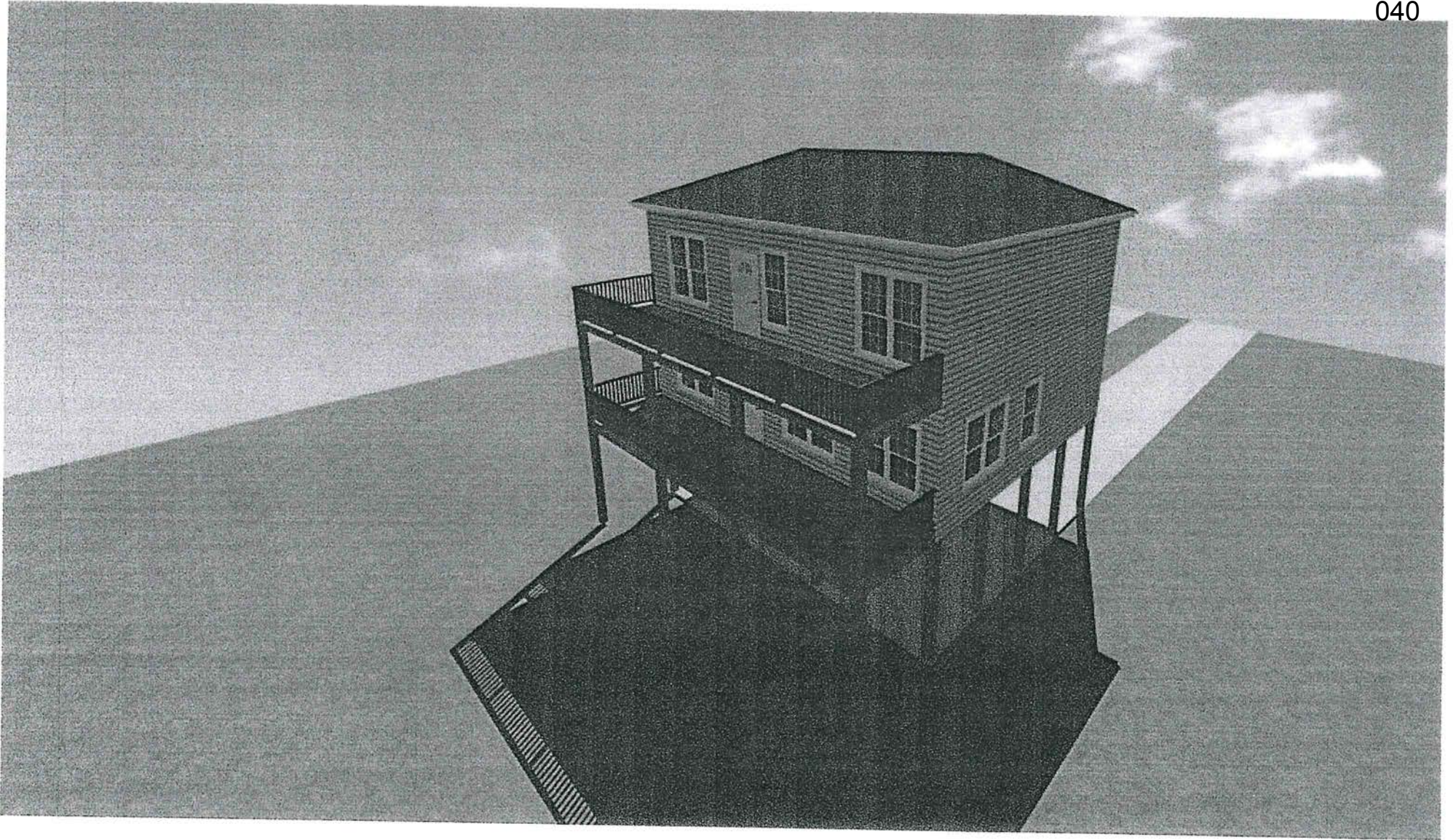
SURVEYED BY: JRB
DRAWN BY: JRB
CHECKED BY: JRB
DATE: 06/26/2017

SCALE: 1" = 30'

SURVEY FOR
RICHARD & VALARIE HEASLEY
4017 E. BEACH DRIVE
OAK ISLAND, N.C.
SMITHVILLE TWP. - BRUNSWICK CO. N.C.
DATE: 06/17 SCALE: 1" = 30'

PRELIMINARY: NOT FOR RECORDATION CONVEYANCES OR SALES





SITE DRAWING/APPLICATION CHECKLIST

Please make sure your site drawing includes the following information required for a CAMA minor development permit. The Local Permit Officer will help you, if requested.

PHYSICAL DIMENSIONS

- Label roads
- Label highways right-of-ways
- Label local setback lines
- Label any and all structures and driveways currently existing on property
- Label adjacent waterbody

PHYSICAL CHARACTERISTICS

- Draw and label normal high water line (contact LPO for assistance)
- Draw location of on-site wastewater system

If you will be working in the ocean hazard area:

- Draw and label dune ridges (include spot elevations)
- Draw and label toe of dunes
- Identify and locate first line of stable vegetation (contact LPO for assistance)
- Draw and label erosion setback line (contact LPO for assistance)
- Draw and label topographical features (optional)

If you will be working in a coastal shoreline area:

- Show the roof overhang as a dotted line around the structure
- Draw and label landward limit of AEC
- Draw and label all wetland lines (contact LPO for assistance)
- Draw and label the 30-foot buffer line

DEVELOPMENT PLANS

- Draw and label all proposed structures
- Draw and label areas that will be disturbed and/or landscaped
- Note size of piling and depth to be placed in ground
- Draw and label all areas to be paved or graveled
- Show all areas to be disturbed
- Show landscaping

NOTE TO APPLICANT

Have you:

- completed all blanks and/or indicated if not applicable?
- notified and listed adjacent property owners?
- included your site drawing?
- signed and dated the application?
- enclosed the \$100.00 fee?
- completed an AEC Hazard Notice, if necessary? (Must be signed by the property owner)

FOR STAFF USE

Site Notice Posted Final Inspection Fee Received

Site Inspections

Date of Action: Issued Exempted Denied Appeal Deadline (20 days from permit action)

I, Joseph R. Brochure, PLS - 1759, Certify that this plat was drawn under my supervision from an actual survey made under my supervision from information shown in deed books referenced on map and map books reference on map; That any lines not actually surveyed appear as broken lines and were plotted from information as noted on the plat; That the ratio of precision as calculated is better than 1:10,000, that the area is computed by coordinates method. witness my original signature, registration number and seal this the 07TH day of JUNE. A.D. 2017.

Joseph R. Brochure - L-1759
Professional Land Surveyor

NOTES:

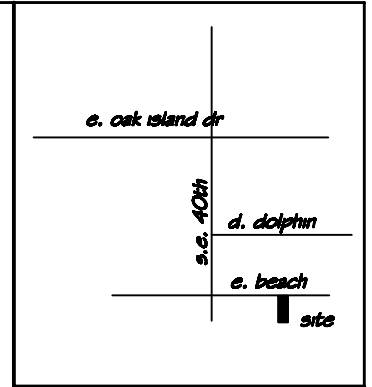
ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DIS.

THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.

PROPERTY ADDRESS:
4017 E. BEACH DRIVE
OAK ISLAND, N.C.

PARCEL # 249DGO17

LOT AREA: 7,500 SF. +/-

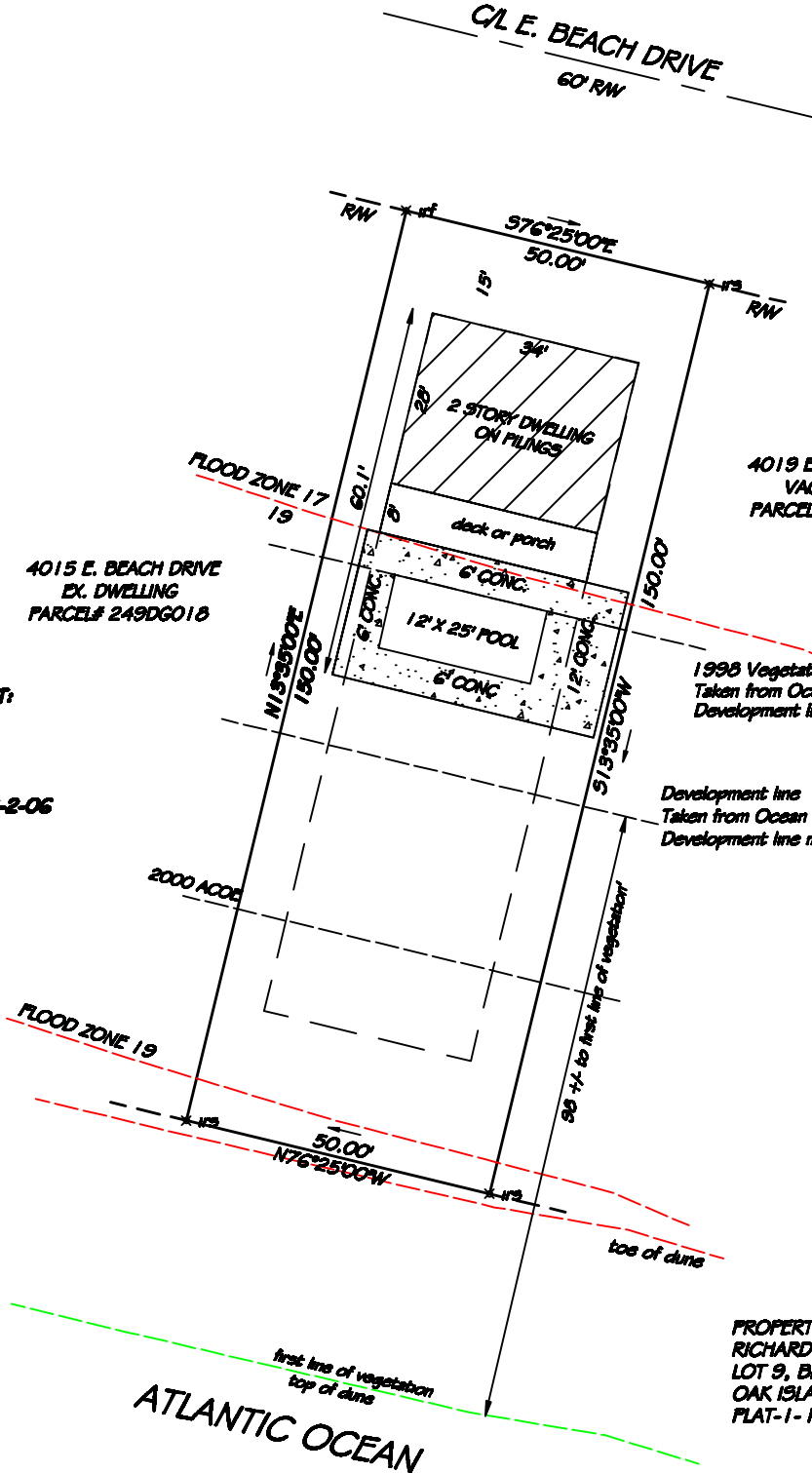


- VICINITY MAP -
(NOT TO SCALE)

LEGEND:

- EIF - EXISTING IRON PIPE
- RW - RIGHT OF WAY
- CL - CENTERLINE ST.
- ISF - IRON STAKE FOUND
- IRF - IRON ROD SET

SETBACKS - R7
FRONT - 15'
REAR - 20'
SIDE - 0'



4015 E. BEACH DRIVE
EX. DWELLING
PARCEL# 249DGO18

4019 E. BEACH DRIVE
VACANT LOT
PARCEL# 249DGO16

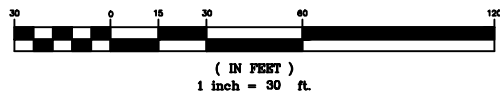
FLOOD STATEMENT:
FIRM: 370202
PANEL: 2063
PREFIX 'J'
ZONED 'VE 19'
EFFECTIVE DATE: 6-2-06

1998 Vegetation Line
Taken from Ocean - Front
Development line map

Development line
Taken from Ocean - Front
Development line map

PROPERTY OWNERS
RICHARD & VALARIE HEASLEY
LOT 9, BLOCK 17, SECT. 2
OAK ISLAND, N.C.
PLAT-1 - PG. 96-99

GRAPHIC SCALE



Island Surveyors, Inc. P.A.

JOEY BROCHURE L-1759
427 Womble St
Oak Island, N.C. 28465
PHONE: 910-250-9192
CELL: 910-523-6122
www.islandsurveyor.com

Residential & Commercial Site Plan
Lot Surveys & Flood Elev. Certificates
email: islandsurveyors@gmail.com

PROJECT # -
2017-000-HEASLEY

SURVEYED BY: JRB
DRAWN BY: JRB
CHECKED BY: JRB
DATE: 06/2017

SCALE: 1" = 30'

SURVEY FOR

RICHARD & VALARIE HEASLEY

4017 E. BEACH DRIVE
OAK ISLAND, N.C.

SMITHVILLE TWSF. - BRUNSWICK CO. N.C.

DATE: 06/17 SCALE: 1" = 30'

PRELIMINARY: NOT FOR RECORDATION CONVEYANCES OR SALES

From: [Joey](#)
To: rwheasley@suddenlink.net
Subject: map
Date: Thursday, June 08, 2017 10:59:03 PM
Attachments: [4017 e beach drive.dwg_25" sb-8.5x14.pdf](#)

moved house 25' from right of way, probably will need this to get 5 cars parking spaces

--

Island Surveyors, Inc.
427 Womble St.
Oak Island, N.C. 28465
Joey Brochure, PLS
910-250-9192

I, Joseph R. Brochure, PLS - 1759, Certify that this plat was drawn under my supervision from an actual survey made under my supervision from information shown in deed books referenced on map and map books reference on map; That any lines not actually surveyed appear as broken lines and were plotted from information as noted on the plat; That the ratio of precision as calculated is better than 1:10,000, that the area is computed by coordinates method. witness my original signature, registration number and seal this the 07TH day of JUNE. A.D. 2017.

Joseph R. Brochure - L-1759
Professional Land Surveyor

NOTES:

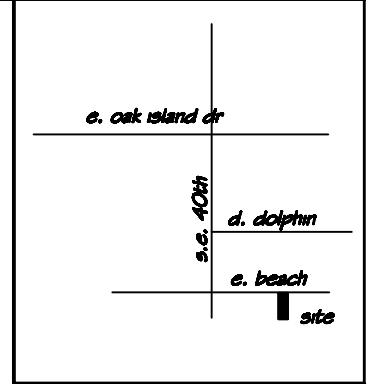
ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DIS.

THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.

PROPERTY ADDRESS:
4017 E. BEACH DRIVE
OAK ISLAND, N.C.

PARCEL # 249DGO17

LOT AREA: 7,500 SF. +/-

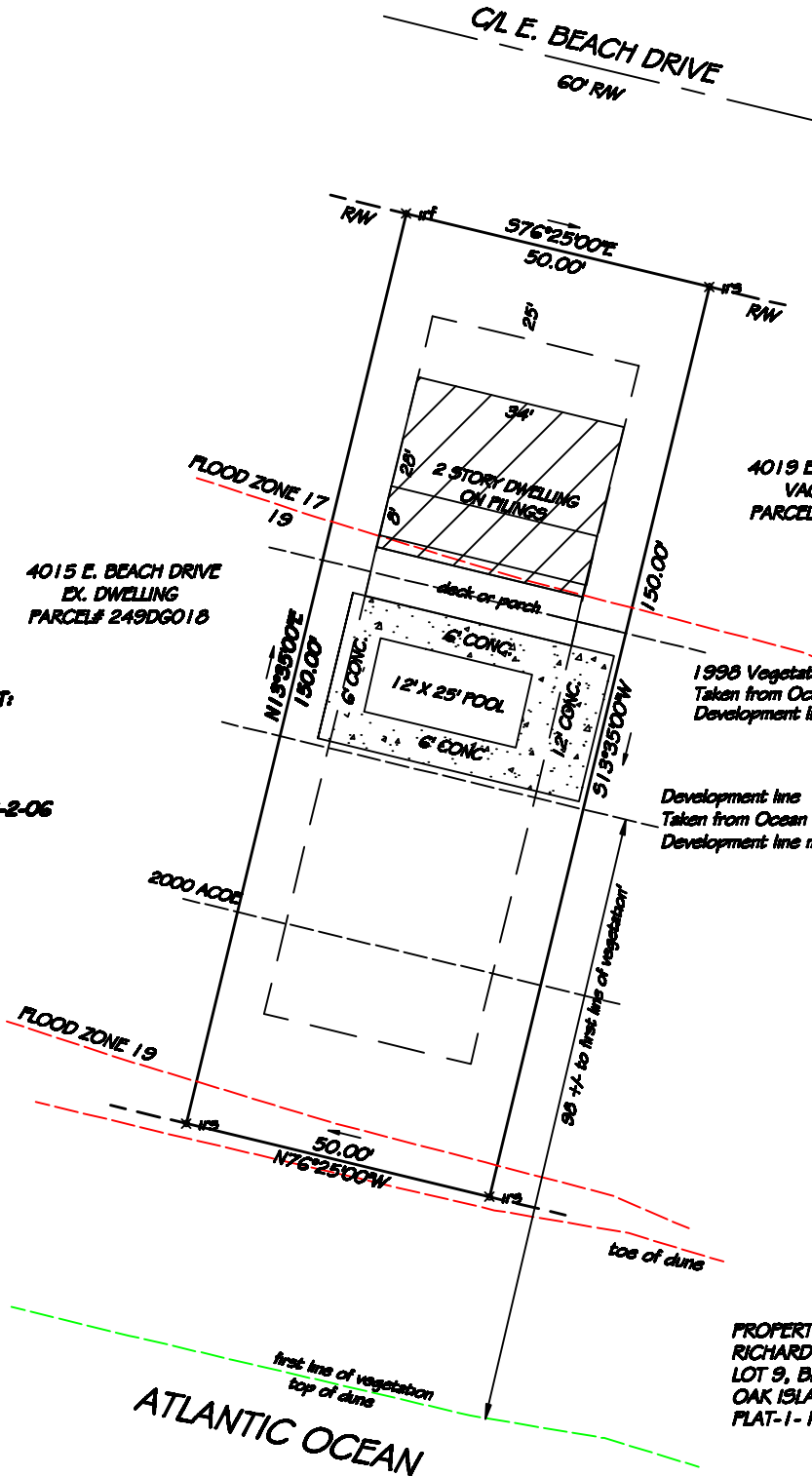


- VICINITY MAP -
(NOT TO SCALE)

LEGEND:

- EIF - EXISTING IRON PIPE
- RW - RIGHT OF WAY
- CL - CENTERLINE ST.
- ISF - IRON STAKE FOUND
- IRF - IRON ROD SET

SETBACKS - R7
FRONT - 15'
REAR - 20'
SIDE - 0'



FLOOD STATEMENT:
FIRM: 370202
PANEL: 2065
PREFIX 'J'
ZONED 'VE 19'
EFFECTIVE DATE: 6-2-06

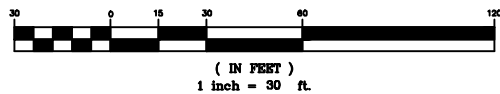
4019 E. BEACH DRIVE
VACANT LOT
PARCEL# 249DGO16

1998 Vegetation Line
Taken from Ocean - Front
Development line map

Development line
Taken from Ocean - Front
Development line map

PROPERTY OWNERS
RICHARD & VALARIE HEASLEY
LOT 9, BLOCK 17, SECT. 2
OAK ISLAND, N.C.
PLAT-1 - PG. 96-99

GRAPHIC SCALE



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JOEY BROCHURE L-1759
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Residential & Commercial Site Plan
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email: islandsurveyors@gmail.com

PROJECT # -
2017-000-HEASLEY

SURVEYED BY: JRB
DRAWN BY: JRB
CHECKED BY: JRB
DATE: 06/2017

SCALE: 1" = 30'

SURVEY FOR

RICHARD & VALARIE HEASLEY

4017 E. BEACH DRIVE
OAK ISLAND, N.C.

SMITHVILLE TWSF. - BRUNSWICK CO. N.C.

DATE: 06/17 SCALE: 1" = 30'

PRELIMINARY: NOT FOR RECORDATION CONVEYANCES OR SALES

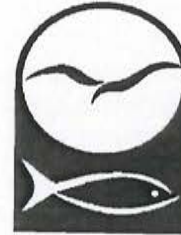
From: [Joey](#)
To: rwheasley@suddenlink.net
Subject: site plan
Date: Thursday, June 08, 2017 10:37:32 PM
Attachments: [4017 e beach drive-8.5x14.pdf](#)

Mr. Heasley, look at this one and let me know what you think, you had one with the house being setback 25', going to plot that for you also

--

Island Surveyors, Inc.
427 Womble St.
Oak Island, N.C. 28465
Joey Brochure, PLS
910-250-9192

CAMA MINOR DEVELOPMENT PERMIT



as authorized by the State of North Carolina, Department of Environmental, Quality and the Coastal Resources Commission for development in an area of environment concern pursuant to Section 113A-118 of the General Statutes, "Coastal Area Management"

Issued to Sage Smith, authorizing development in the Ocean Hazard (AEC) at 4019 E. Beach Dr., in Oak Island, as requested in the permittee's application, dated 5/12/2017. This permit, issued on 5/31/2017, is subject to compliance with the application and site drawing (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

This permit authorizes: the construction of a single family residence with a pool and associated development.

- (1) All proposed development and associated construction must be done in accordance with the permitted work plat drawings(s) dated received on 5/12/2017.
- (2) All construction must conform to the N.C. Building Code requirements and all other local, State and Federal regulations, applicable local ordinances and FEMA Flood Regulations.
- (3) Any change or changes in the plans for development, construction, or land use activities will require a re-evaluation and modification of this permit.
- (4) A copy of this permit shall be posted or available on site. Contact this office at (910)278-5024 for a final inspection at completion of work.

(Additional Permit Conditions on Page 2)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. This permit must be on the project site and accessible to the permit officer when the project is inspected for compliance. Any maintenance work or project modification not covered under this permit, require further written permit approval. All work must cease when this permit expires on:

DECEMBER 31, 2020

In issuing this permit it is agreed that this project is consistent with the local Land Use Plan and all applicable ordinances. This permit may not be transferred to another party without the written approval of the Division of Coastal Management.

Donna F. Coleman
CAMA LOCAL PERMIT OFFICIAL
4601 E. Oak Island Dr.
Oak Island, NC 28465

PERMITTEE

(Signature required if conditions above apply to permit)

Name: Smith
Minor Permit # OI 17-27
Date: 5/31/2017
Page 2

- (5) The structure must set back a minimum of 60 feet from the first line of stable natural vegetation and extend no farther seaward than the OI Development line", as determined by the DCM, the LPO, or other assigned agent of the DCM.
- (6) The permittee is required to contact the Local Permit Officer (910)201-8047, shortly before he plans to begin construction to arrange a setback measurement that will be effective for sixty (60) days barring a major shoreline change. Construction must begin within sixty (60) days of the determination or the measurement is void and must be redone.
- (7) All buildings constructed within the ocean hazard area shall comply with the NC Building Code, including the Coastal and Flood Plain Construction Standards of the N. C. Building Code, and the Local Flood Damage Prevention Ordinance as required by the National Flood Insurance Program. If any provisions of the building code or a flood damage prevention ordinance are inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (8) All buildings must be elevated on pilings with a diameter of at least 8 inches in diameter if round, or 8 inches to a side if square; and the first floor level of the sills and joists must meet the 100-year flood level elevation.
- (9) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure.
- (10) Dune disturbances will be allowed only to the extent necessary for development and if the dune's protective value is not weakened or reduced. Disturbed dune areas will be immediately stabilized.
- (11) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures. Disturbed areas shall be vegetatively stabilized (planted and mulched) within 14 days of construction completion.
- (12) Any structure authorized by this permit shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration. The structure(s) shall be relocated or dismantled within two years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach renourishment takes place within two years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled at that time. This condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed under CRC rules.

SIGNATURE: _____ DATE: _____
PERMITTEE

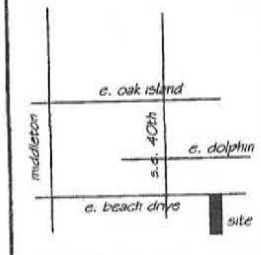
NOTES:

ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DIS.
 THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.

PROPERTY ADDRESS:
 4019 E. BEACH DRIVE OAK ISLAND, N.C. 28465

PARCEL # 249DGO16
 LOT AREA: 7,500 SF. +/-

SURVEYED BY: JRB
 DRAWN BY: JRB
 CHECKED BY: JRB
 DATE: 03/23/2017
 SCALE: 1" = 30'



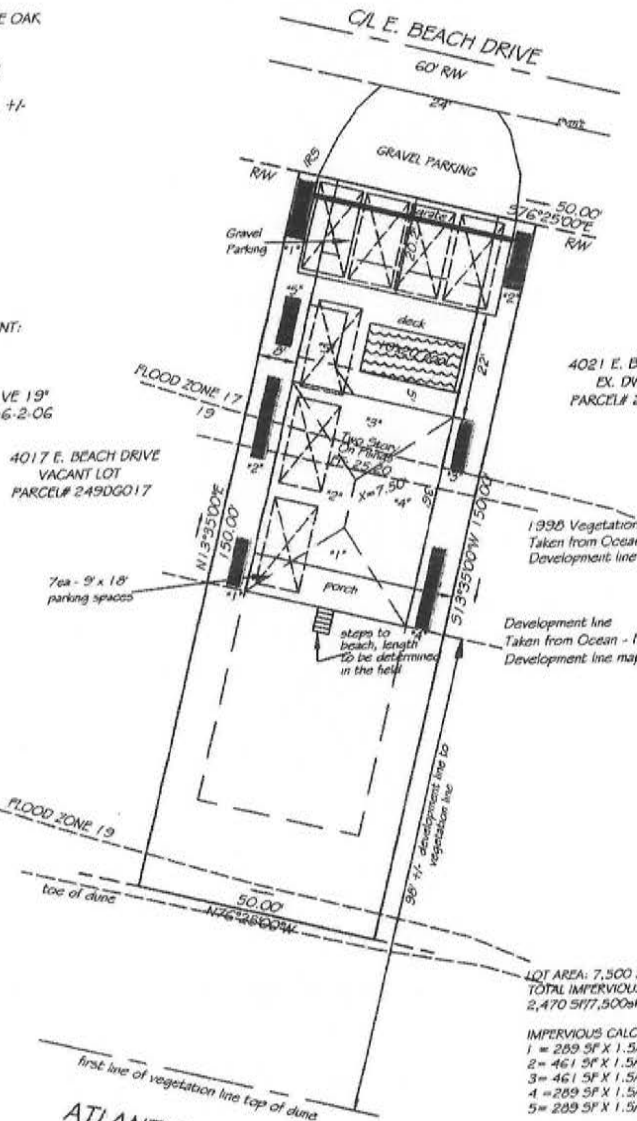
LEGEND:

EIP - EXISTING IRON PIPE
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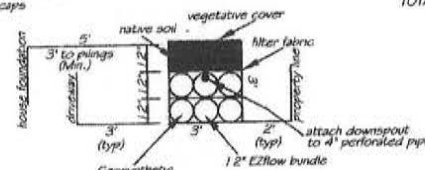
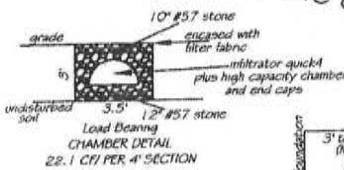
SETBACKS

FRONT - 15'
 REAR - 20'
 SIDE - 8'

FLOOD STATEMENT:
 FIRM: 370202
 PANEL: 2065
 PREFIX "J"
 ZONED "VE 17 - VE 19"
 EFFECTIVE DATE: 6-2-06



PROPERTY OWNERS
 SAGE SMITH
 LOT 10, BLOCK 17, SECT. 2
 OAK ISLAND, N.C.
 PLAT-1 - PG. 96-99

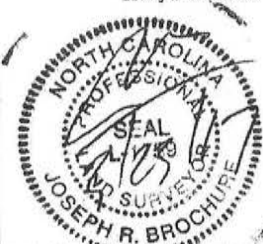


GRAPHIC SCALE



Island Surveyors, Inc. P.A.
 JOEY BROCHURE L-1759
 427 Womble St
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 PHONE: 910-250-9192
 CELL: 910-523-6122
 www.islandsurveyor.com

Residential & Commercial Site Plan
 Lot Surveys & Flood Elev. Certificate
 email: islandsurveyors@gmail.com



SITE PLAN FOR
SAGE SMITH
 4019 E. BEACH DRIVE
 OAK ISLAND, N.C.
 SMITHVILLE TWP. - BRUNSWICK CO. N.C.
 DATE: 03/23/17 SCALE: 1" = 30'
 PRELIMINARY: NOT FOR RECORDATION CONVEYANCES OR SALES



7/07/2017

CERTIFIED MAIL - INSERT CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Rick & Valerie Heasley
 122 S. 7th Avenue
 Paden City, WV 26159

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
 APPLICATION NUMBER- OI 17-42
 PROJECT ADDRESS- 4017 E. Beach Dr.

Dear Rick & Valerie:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed.

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to build a house which is inconsistent with 15 NCAC 7H .0309(a), which states that: The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of the Subchapter and other state and local regulations are met: (9) swimming pools
 In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line, whichever is applicable.. Your application is also inconsistent with our Local Land Use Plan. On page 5-39 of the Land Use Plan, you will find that **I.112** The Town will continue to enforce the dune preservation Ordinance (Chapter 14, Article III of the Town Code)..

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered.

Respectfully yours,

Donna F. Coleman, LPO
 Town of Oak Island

cc: Brooks Sorgan DCM-Wilmington

STATE OF NORTH CAROLINA

COASTAL RESOURCES COMMISSION

COUNTY OF BRUNSWICK

CRC 16-36

IN THE MATTER OF THE
TOWN OF OAK ISLAND'S
 REQUEST FOR APPROVAL
 OF A DEVELOPMENT LINE

)
)
)
)

FINAL AGENCY DECISION**FACTS**

1. The Town of Oak Island ("Town") is a beachfront town located on a barrier island and on the mainland around bridges leading to the barrier island in Brunswick County, North Carolina. The Town has an approximately nine-mile south facing beach that fronts the Atlantic Ocean.

2. On April 21, 2016, the Planning Board voted to recommend approval of a proposed text amendment to Sec. 14-121 and Sec 14-125 of Town Ordinance No. 16-1018 in order to define an ocean front development line and adopt regulations regarding the use of that line for development of ocean front parcels. The Planning Board found that the proposed text amendments are consistent with the goals, objectives, and policies of the Town's Coastal Area Management Act ("CAMA") Land Use Plan adopted April 13, 2010, and will provide the Town with greater flexibility and regulatory power to authorize development within its jurisdiction on ocean-front parcels.

3. The Planning Board's recommendation to the Town Council that it adopt a development line included the following information:

- (a) There are approximately 525 total ocean front residential structures that are parallel to the proposed development line in the Town.

- (b) There are 167 parcels that are undeveloped along the proposed development line and 129 parcels (142 lots) are identified as currently unbuildable along the ocean-front in the Town.
- (c) Before making a recommendation, the Town's planning staff drew several potential development lines using GIS technology showing the distance in feet from the front property line and calculating how many existing structures were seaward of each proposed development line.
- (d) The Town's planning staff determined that that if the development line was set 85 feet seaward of the front property line, this development line would result in the least number of nonconforming homes (about 85 properties).

4. On June 14, 2016 the Town Council held a duly advertised public hearing and regular meeting. During the public hearing, the Town received several comments from citizens for and against the proposed development line.

5. After the public hearing was closed, the Town Council considered the Planning Board's recommendation and unanimously passed a motion to approve the proposed amendment to Sections 14-121 and 14-125 of Ordinance No. 16-1018 and to request the North Carolina Coastal Resources Commission ("Commission") approve the Town's proposed development line.

6. By e-mail correspondence sent to the Director of the Division of Coastal Management ("DCM") on June 20, 2016, the Town requested the Commission approve the development line adopted by the Town. In support of its request, the Town forwarded the following information:

- (a) Certified copy of approved minutes from June 14, 2016 Oak Island Town Council meeting reflecting adoption of development line (pages 1, 2, 9, 10, and 16);
- (b) Town of Oak Island Ordinance No. 16-1018 with revised Secs. 14-121 and -125;
- (c) Detailed survey of the Town's proposed development line including the static vegetation line and mean high water line;
- (d) Town of Oak Island Planning Board recommendation including development line Review and Adoption (pages 1, 2, 3 and 12).

7. The Commission scheduled and duly noticed the Town's request for the Commission's approval of its development line at its September 14, 2016 regularly scheduled meeting which was held at the New Hanover county Government Complex in Wilmington, North Carolina.

8. During the September 14, 2016 meeting, Jake Vares, Senior Planning Director and Steven Edwards, Development Services Director for the Town of Oak Island presented the Town's request for approval to the Commission. During discussion on the request, the Commission became aware that the survey indicated that along sections of the Town's oceanfront, the proposed development line was drawn waterward of mean high water line(s) established during past beach nourishment projects.

9. The Commission's rule provides that "in no case shall a development line be created or established below the mean high water line." 15A NCAC 07H .0306(a)((3).

10. At the September 14, 2016 meeting, the Commission rejected the development line as submitted and conditionally approved a development line for the Town of Oak Island as long as the revised development line is landward of the mean high water line. In order to receive

the Commission's approval of a proposed revised development line the Commission required the Town to 1) submit a survey showing a revised development line located landward of any existing mean high water lines and 2) submitted a certified copy of the Town of Oak Island Town Council Meeting Minutes showing adoption of a revised development line.

11. At the Commission meeting, the Town agreed to provide the Commission with a revised development line consistent with the Commission's rules.

CONCLUSIONS OF LAW

1. Any local government, group of local governments involved in a regional beach fill project, or qualified owner's association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A NCAC 07H .0305 may petition the Commission for a development line for the purposes of siting oceanfront development in accordance with the provisions of 15A NCAC 7J .1301.

2. The Town is required to request approval for its development line from the Commission according to the procedures outlined in 15A NCAC 7J .1300 *et seq.* and in compliance with the requirements in 15A NCAC 07H .0306(2), (3), (6), (7), (8), and (11).

3. The elected body of the Town of Oak Island made a final decision to request a development line during its June 14, 2016 meeting and provided opportunity for the public to provide comments. Because the proposed development line is, at some locations, waterward of the mean high water line, the Town is required to adopt a revised development line that is consistent with the Commission's rules and forward revised survey drawings reflecting the revised line to DCM.

4. DCM is required to review the additional materials submitted by the Town. If DCM determines that the revised development is at all locations landward of all existing mean high water lines, it shall provide written verification to the Town with a shown copy to the Commission confirming that the conditions established by the Commission for approval of the Town's development line have been met.

DECISION

For the reasons stated herein, the Town of Oak Island's request for approval of a development line is conditionally granted as long as the following steps are successfully completed:

1. The Town shall submit drawings showing a revised development line located landward of any existing mean high water lines;
2. The Town shall submit a certified copy of the Town of Oak Island Town Council Meeting Minutes showing adoption of a revised development line; and
3. DCM shall forward to the Commission a copy of the supplemental information provided by the Town along with its review of the supplemental information. If the Town's revised development line meets all the requirements of the Commission's rules (i.e. is located landward of any existing mean high water line), DCM shall provide written confirmation to the Commission and the Town that the conditions established by this Final Agency Decision have been met.

This is the 23rd day of September 2016.

Frank D. Gorham III

Frank D. Gorham, III, Chairman
N.C. Coastal Resources Commission

CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the attached **Final Agency Decision** by the means specified below:

Method of Service

Steven Edwards
Development Services Director
Town of Oak Island
4601 E. Oak Island
Oak Island, NC 28465

CERTIFIED MAIL RETURN RECEIPT REQUESTED
and electronically: SEdwards@ci.oak-island.nc.us


Jacob Vares
Senior Planning Director
Development Services Department
Town of Oak Island
4601 E. Oak Island Drive
Oak Island, NC 28465

CERTIFIED MAIL RETURN RECEIPT REQUESTED
and electronically: planner@ci.oak-island.nc.us

Braxton Davis, Director
Mike Lopazanski, Assist. Director
Ken Richardson, Specialist
Angela Willis, Assist. to Director,
Division of Coastal Management
400 Commerce Ave.
Morehead City, NC 28557-3421

electronically: Braxton.Davis@ncdenr.gov
electronically: Mike.Lopazanski@ncdenr.gov
electronically: Ken.Richardson@ncdenr.gov
electronically: Angela.Willis@ncdenr.gov

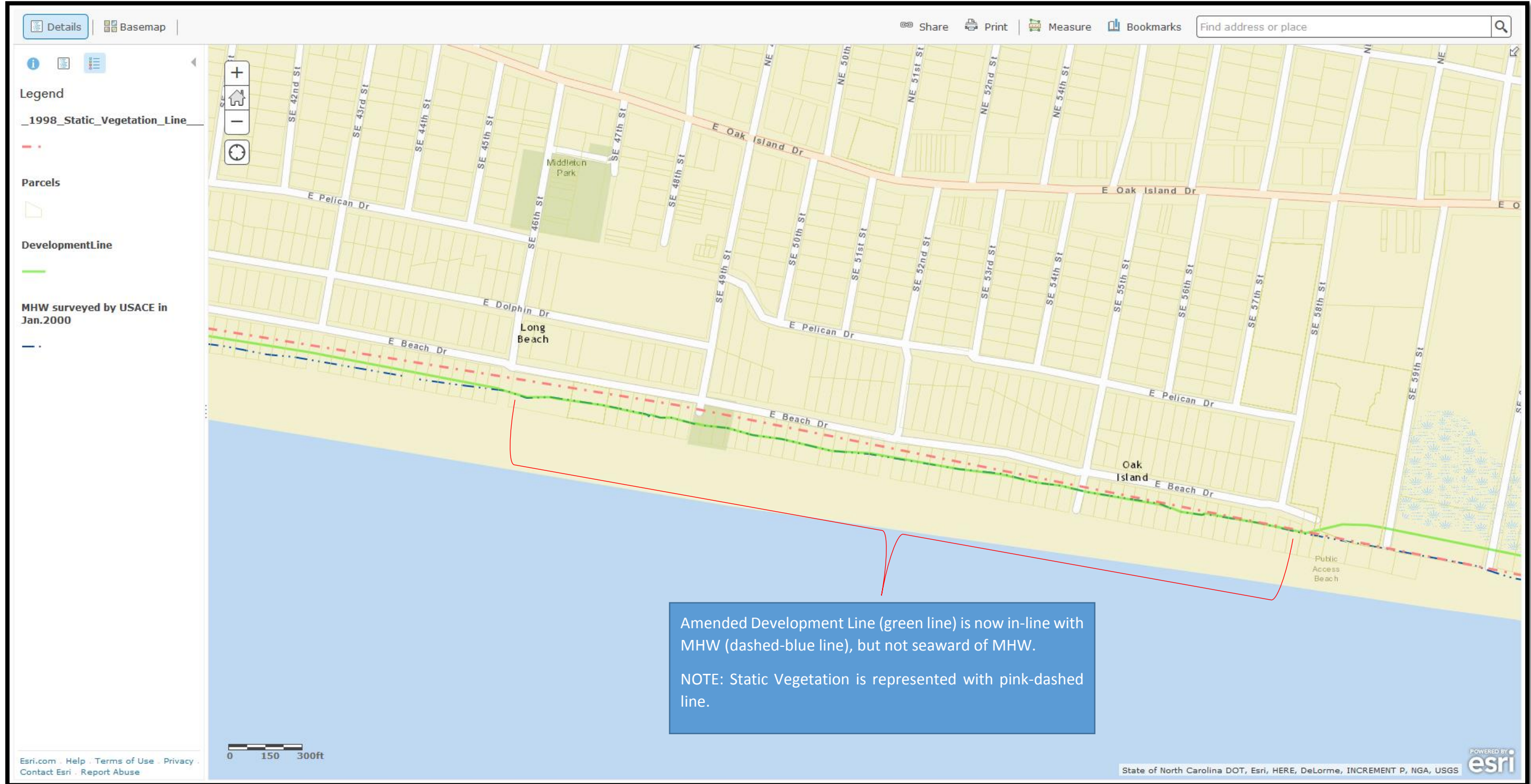
This is the 23rd day of September 2016.

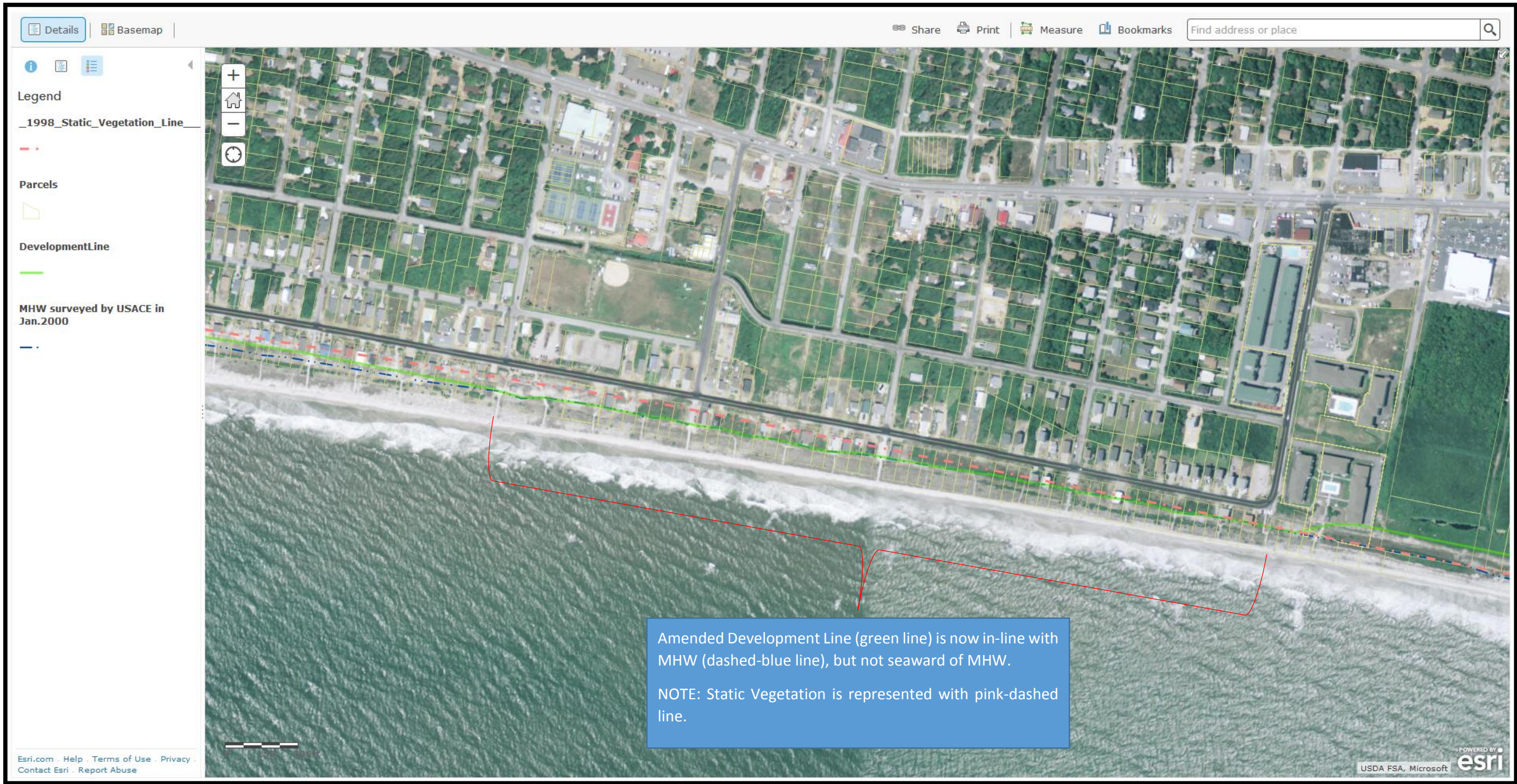


 Mary L. Lucasse
 Special Deputy Attorney General
 Post Office Box 629
 Raleigh, NC 27603-0629
 Counsel to the Commission

Town of Oak Island

Amended Development Line (section between SE 46th Street & SE 58th Street). DVL is now in-line with MHW, not seaward of MHW.







Town of Oak Island

BOARD OF ADJUSTMENTS

Council Chambers

Oak Island Town Hall
June 29, 2017

10:00am

Call to Order:

Approval of Minutes

Old Business: (none)

New Business:

- (1) Appeal
- (2) Variance

Other Business:

- (1) Board Member Reports
- (2) Staff Reports -- next meeting date selection

Adjournment:

**TOWN OF OAK ISLAND
BOARD OF ADJUSTMENT
AGENDA ITEM MEMO**

Agenda Item: New Business Item No. 2

Date: June 16, 2017



Issue: Variance Application

Department: Planning & Zoning Administrator

Presented by: Jake Vares

Estimated Time for Discussion: 25 Minutes

Subject Summary:

The variance request you will be hearing is a quasi-judicial decision so it must be conducted in a way to insure procedural and substantive due process. Anyone wanting to provide testimony must be sworn in. As a quasi-judicial hearing the decision makers must be fair and impartial and you must base your decision only on the competent evidence you receive. If anyone has a direct or potential financial interest in this proposed project then they should recuse themselves. A 4/5th vote is required to be granted a variance. Conditions can be applied but they must be proportional and directly applicable to the applicant's variance situation. In other words they should be designed in such a way to assist the applicant come into better and closer conformance with the towns zoning regulations. All of the evidence and testimony heard is supposed to be substantive and competent in nature. Each case is decided on a site by site basis. The decision has to be based on the specific site and not the owner or other locations they may own or have issues with. The Board of Adjustment is to look at the circumstances of the property, not the circumstances of the property owner.

At the end of the hearing a motion to adopt a finding of facts document has to be adopted and signed by the chair once a decision has been officially made, regardless if the variance is approved or denied. Findings of Fact are essentially an accepted record of the exhibits, evidence presented, and a formal recording of the decision made at the hearing. The motion to adopt the findings of facts can be made in conjunction with the motion to approve or deny the application or as a separate motion afterwards. The finding of fact document will be provided at the time of the hearing.

General Statute (GS) 160A-388. (d) Codifies the evaluative criteria one is required to use when deciding a variance request. The four standards are:

"(1) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(2) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(3) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved."

Be sure to use these General Statute requirements when hearing the case. If approval is granted, the case needs to comply with all of the G.S. standards. Furthermore, variances are not allowed to grant a change in permitted uses.

The applicant is not applying for relief from a town's ordinances but rather from a state regulation that does not allow swimming pools to be seaward of the 1998 Static Vegetation line. The 1998 Static Vegetation line was created when the town did a large-scale beach renourishment project was done around 1999 – 2000 after Hurricane Floyd. The town appealed to the CRC (Coastal Resources Commission) to look at the pre-hurricane vegetation line, using aerial photography that existed before Floyd.

CAMA regulations do not allow pools seaward of the 1998 Static Vegetation line but are allowed seaward of the recently town adopted Development Line. The swimming pool appears to be 10 feet past the 1998 Static Vegetation line at its most seaward point. After the Oak Island Board of Adjustment decision the applicant can then and will apply for a variance to the NC Coastal Resources Commission (CRC) to place the swimming pool seaward of the 1998 Static Vegetation line setback. The Oak Island Board of Adjustment cannot grant a variance to CAMA (Coastal Area Management Act) regulations because those our state rules and the board and town does not have the authority to usurp state regulations. The applicants end goal is to apply and obtain a variance from the CRC and in order to accomplish this he/she has to proceed through the Town of Oak Island variance application process first in order to show the CRC that all possible options have been exhausted. Official notification of an Oak Island variance request approval or denial has to be provided to the CRC before he/she can go before the CRC for obtain a variance from the state.

The Town of Oak Island has an interactive map online on its website that shows the relevant ocean-front lines. That map can be found here: <https://www.arcgis.com/home/webmap/viewer.html?webmap=2bbcbad57598493387b5ba7934e2a965&extent=-78.208,33.9129,-78.204,33.9148>. One can search or zoom into any address to see where those lines lay, including the 1998 Static Vegetation line runs through it. The important lines on the attached surveys are the Mean High Water Line, the first line of stable vegetation, the Development Line, and the 1998 Static Vegetation line. All of these lines are color coded in order to make it easier to identify and read the survey.

The applicant needs to or may have already applied for CAMA minor permit to build on this lot. The CAMA minor permit would be denied because the proposed swimming pool would be seaward of the 1998 static vegetation line, but the applicant/property owner still has to go through the process.

The Oak Island Board of Adjustment cannot grant a variance to CAMA (Coastal Area Management Act) regulations because those our state rules and the board and town does not have the authority to usurp state regulations. The applicants end goal is to apply and obtain a variance from the CRC and in order to accomplish this he/she has to proceed through the Town of Oak Island variance application process first in order to show the CRC that all possible options have been exhausted.

The attached documentation contains the applicant's justification narrative, a general map of the area, site-plans, photos, the property report card, and the state evaluative criteria checklist. The property is currently in a Residential-7 zoning district which has a rear yard setback of 20ft, a side yard setback of 8ft and a front yard setback of 15ft, because it is an ocean front property. Official certified letters have been sent to the adjacent property owners and a sign, required by the Town zoning ordinance, has been placed at the site detailing the hearing date, time and location, per the zoning ordinance requirements (Sec.18-334c). It is for the Board of Adjustment to determine if the attached variance application meets the outlined criteria in the General Statutes. The hearing should not be closed until after the vote has occurred because if something comes up during deliberation then the applicant or opponents cannot submit information that may be relevant to the discussion/deliberation. I suggest at the end of the meeting the state criteria checklist be reviewed and each General Statute standard be assessed before a vote is taken. The motion when the vote occurs needs to specifically state why or why not the General Statute criteria is or is not met.

Attachments: Variance Application form, applicant justification narrative, photos, surveys, site area map, property report card, property report card, General Statute Evaluative Criteria handout

Action Needed: approve, deny, or approve with conditions

Suggested Motion: Applicant does meet all of the general statute mandated evaluative criteria or the applicant does not meet all of the general statute mandated evaluative criteria specifically _____ because _____.

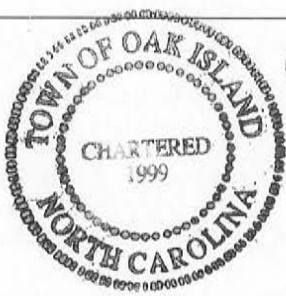
Funds Needed: \$0.00

Follow Up Action Needed: Issue official notice to the applicant.

Attachments

VARIANCE APPLICATION

TOWN OF OAK ISLAND
Planning Department
4601 E. Oak Island Drive
Oak Island, NC 28465



rec'd
6-13-17
JA



Fee \$ paid-54.

Submittal Information and Procedures:

The applicant will submit to the Development Services staff the application form and all necessary documentation prior to the Board of Adjustment hearing date.

Supplementary information is considered a required part of the application. Applications will not be considered accepted for review unless all required information is provided.

A fee in accordance with the town's adopted fee schedule must accompany the application.

The applicant is expected to attend the hearing to present evidence and answer questions of the Board. The applicant must be prepared to be cross examined concerning evidence or testimony provided. The absence of the applicant is grounds to warrant deferral of action by the Board of Adjustment.

Section A: Applicant Information

Name: Richard W. Heasley & Valerie L. Heasley

Mailing Address:
122 South 7th Ave
Paden City WV. 26159

Phone Number: Home (304) 337-9123 CELL (304) 771-2673

Email: rwhasley@suddenlink.net

Property Owner Information (if different from the applicant):

Name(s): _____

Address: _____

Phone Number: _____

Email: _____

Section B: Property Information

Address of site:

4017 E. Beach Dr.
Oak Island NC, 28465

Property Identification Number: 2490G017Lot/Block/Section: LOT 9 / BLOCK 17 / SECTION 2Zoning District: Smithville Twp - Brunswick Co. N.C.Required setbacks: Front: 15' Side: 8' Rear: 65'Total Site Area: 7500 sq/ftFlood Zone: VE 19/17**Section C: Hearing Type (Please Circle One)**

- Variance
 Appeal
 Interpretation

Section D: Required Justifications/Attachments

If you checked item A. above, please attach an explanation of how you intend to prove that the Board can reasonably find all of the following five (5) items to be true:

1. There is unnecessary hardship resulting from strict application of the ordinance.
2. The hardship of which the applicant suffers is unique to the subject property in question and is not suffered by neighboring properties.
3. The hardship results from conditions peculiar to the property.
4. The hardship suffered is not self-imposed.
5. The variance request is consistent with the spirit and intent of the ordinance.

If you check items B or C above, please attach a justification narrative of the details of your appeal or request for interpretation.

Any attachments must be clear and legible and contain only factual information pertinent to the hearing.

Section E: Supplemental Information

Copies of the site plan (preferably 11"x17"). The site plan must be clear and legible. See Section F. below for the minimum required information to be contained on the site plan.

List of names of owners, their addresses and tax parcel numbers of the properties within one hundred (100) feet of the subject property including those separated by a street right of way.

Section F: Required Site Plan Data

- Title Box including the project name, applicant name, and address of property
- The present zoning classification
- Property lines and dimensions
- The names of the owners of record of the adjacent properties
- The location and names of all adjacent street rights of way
- The total area of the property
- The location of all existing buildings on the property
- All existing easements, reservations, or rights of way

Section G: Certification

In filling this application to the Board of Adjustment, I hereby certify that all of the information presented in the application is accurate to the best of my knowledge, information, and belief.

Michael W. Heasley

6/11/17

Signature of Applicant(s)

Date

Michael W. Heasley

Signature of Applicant (if jointly applying)

Section H: Addendum to Application

I have received, read, and fully understand Chapter 18, Article 2, Division 13, Section 18-334, Zoning Board of Adjustment as it pertains to my application. I have also read and understand the application to the Board of Adjustment. The items I did not understand, if any, have been explained to my satisfaction by an employee of the Town of Oak Island Development Services Department.

I understand the Board of Adjustment, being quasi-judicial in nature, will receive only competent evidence concerning my application. I understand that I have the right to cross examine witnesses presented and that I may be cross examined on matters pertaining to the evidence and testimony that I present.

I further understand that the decision of the Board of Adjustment are subject to review in superior court by proceedings in the nature of certiorari and that I have only thirty (30) days from the date of the filing of the Board's decision in the office of the clerk to the Board of Adjustment or the date that the decision is served upon be or any other person who has requested a copy of such decision, whichever is later to file for such review.

Signature of Applicant(s)

Date

Michael W. Heasley

Signature of Applicant (if jointly applying)

Appointment of Authorized Agent

I, _____, the owner of the property subject to the Application to the Town of Oak Island Board of Adjustment, do hereby appoint _____, as my authorized agent regarding this application, to provide testimony and evidence and respond to testimony and evidence on my behalf and to represent me regarding this application. If chosen to have a third party representation at the evidentiary hearing, representation must be a registered attorney.

Property Owner Signature

Date

Authorized Agent Signature

Date

VARIANCE

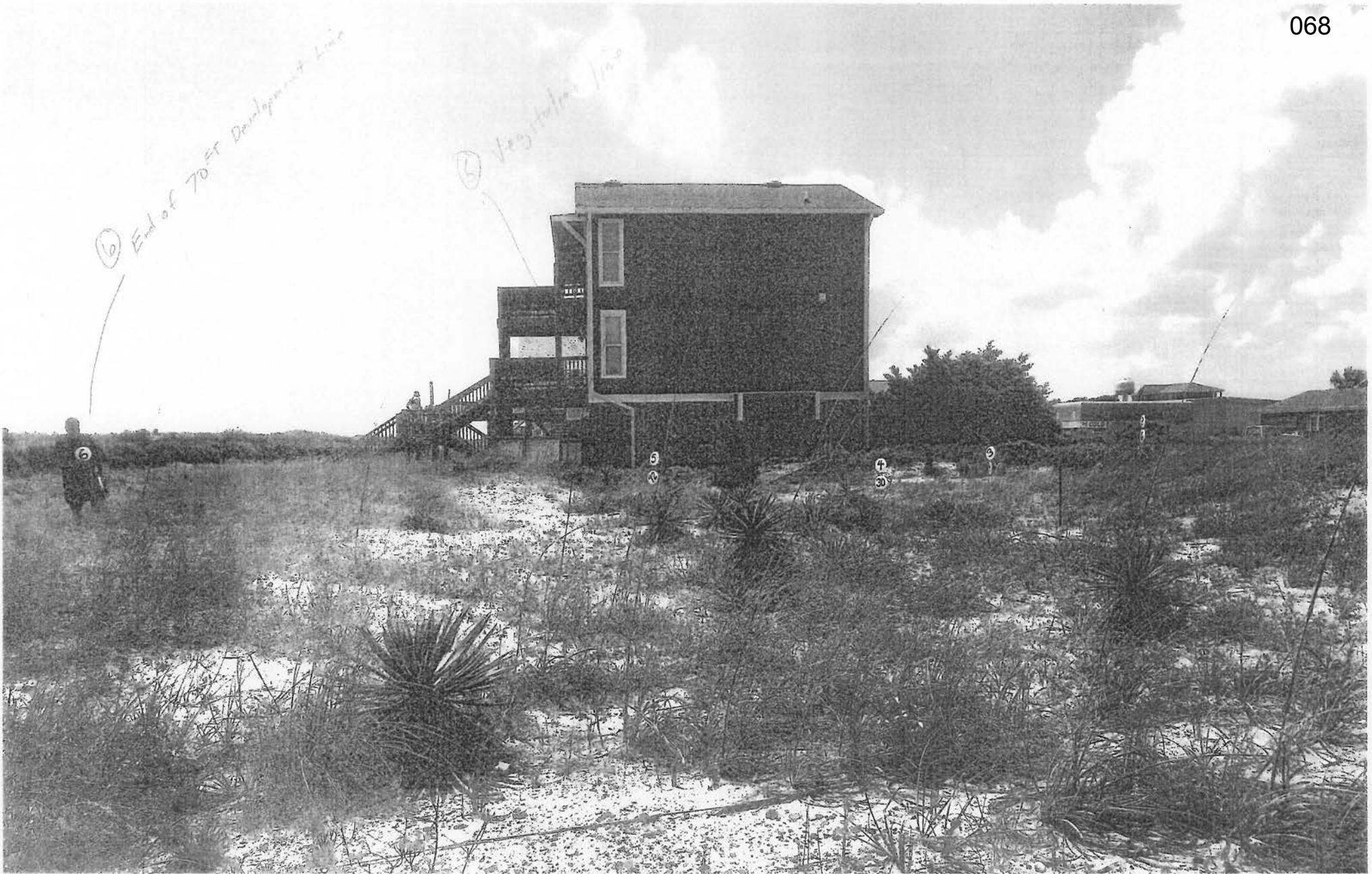
DEAR BOARD MEMBERS

1. The strict application of the limited pool line will cause great monetary and personal hardship because we will not be able to build our dream beach house and pool within our budget on the lot we purchased. We hope to build a 5 bedroom, 3 ½ bath beach house with pool and porches ocean side to enjoy the views. We plan to use it as a rental most of the year in order to recoup our investment and to generate retirement income. However, it's more than a rental investment to us. We also hope to enjoy it a few times a year making memories with friends and family becoming part of the community after retirement. The rental management company and builder both say this size house with a pool oceanside is in high demand for rentals. Most renter's families (like ours) have at least a few members squeamish who prefer a pool to the ocean. The current rule sets the pool in the center of the building space making it impossible.
2. The building footprint is 34 ft. wide and 70 ft. long. We need more than a 15ft. set back to handle 5 vehicles and build the house large enough to accommodate families -like our own 4 grown children and their expanding families (3 grandchildren) and a pool. A ground pool is more economical and assessible for those with handicaps and the elderly (we hope my wife's parents in their 80s can visit) and makes it safer and easier for families, especially with children going back and forth from the ocean to the pool. We also intend to use the pool for health reasons because we suffer from chronic arthritis and joint pain, a dip in the pool in the evening without having to worry about sea creatures would be wonderful.
3. The 1998 vegetation line is no longer protective but causes a hardship for us by restricting our footprint. We were shocked and dumbfounded to find a 1998 line that no longer seems relevant prevents us from being able to put a pool past the center of the buildable area. Especially when we were first attracted to the property by the impressive dunes and mature vegetation. The dunes on the lot are over 8-10 ft. high and at least 30 to 40 ft. deep.
4. The hardship is not self-imposed, we just need to be able to build a reasonable house that suits our needs and is well within the buildable footprint.
5. We believe this request is in the spirit of the ordinance since the property now has an exceptionally large dune to protect it a good distance from the building area. The home we wish to build is not out of the ordinary, but what anyone would expect to enjoy such a beautiful setting. We have tried every possible shift and configuration and cannot find another way. We cannot leave out porches, parking, or make the house 16ft. deep! - and still have a rentable, or even usable home.

We have been dreaming of living on the ocean for a long time and after searching up and down the coast choice Oak Island to be our dream destination. We have fallen in love with the area for its small-town atmosphere, kind, friendly people and the beauty all around. We hope to become both part of this wonderful community and economy.

Thank you,
Rick and Valerie Heasley
06/12/17

A handwritten signature in black ink, appearing to read "Rick Heasley", written in a cursive style.



⑤ End of 12 Ft Pool @ 42 Ft Ves. Line

④ End of 6 Ft CONCRETE SURROUND OF POOL

③ End of 8 Ft Deck

② End of House 16 Ft deep with current restriction without variance

① 15' SETBACK



⑤
②

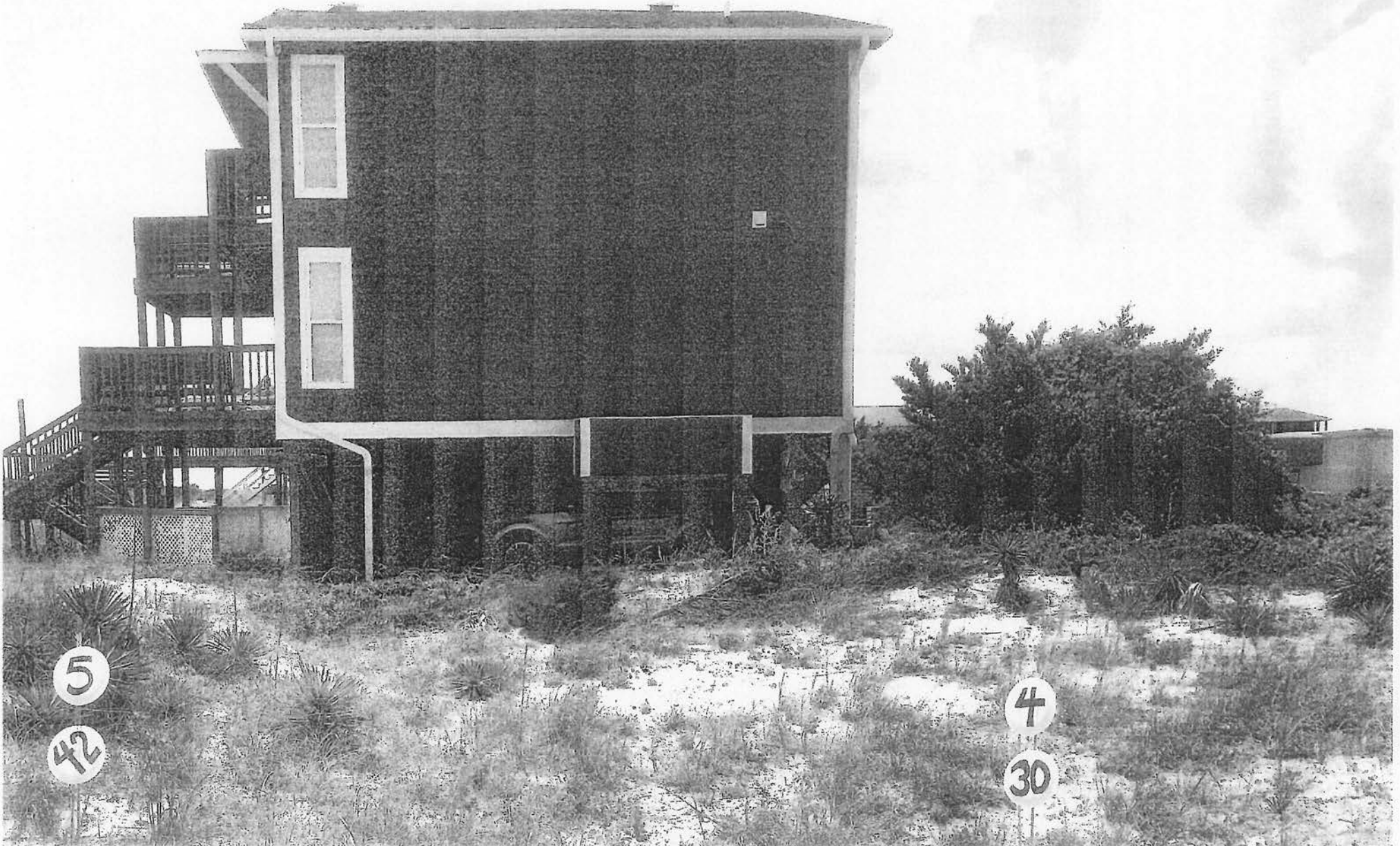
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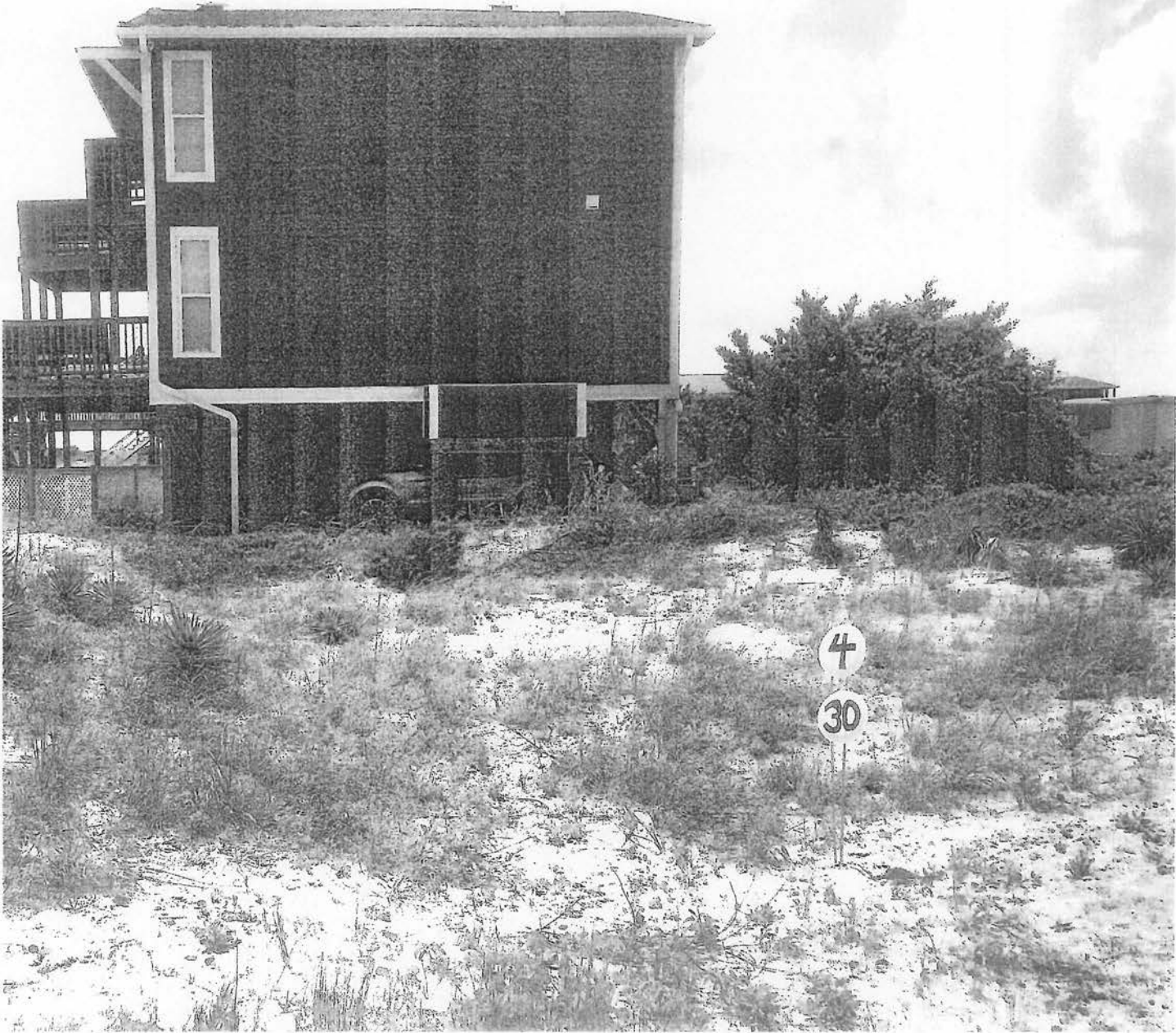


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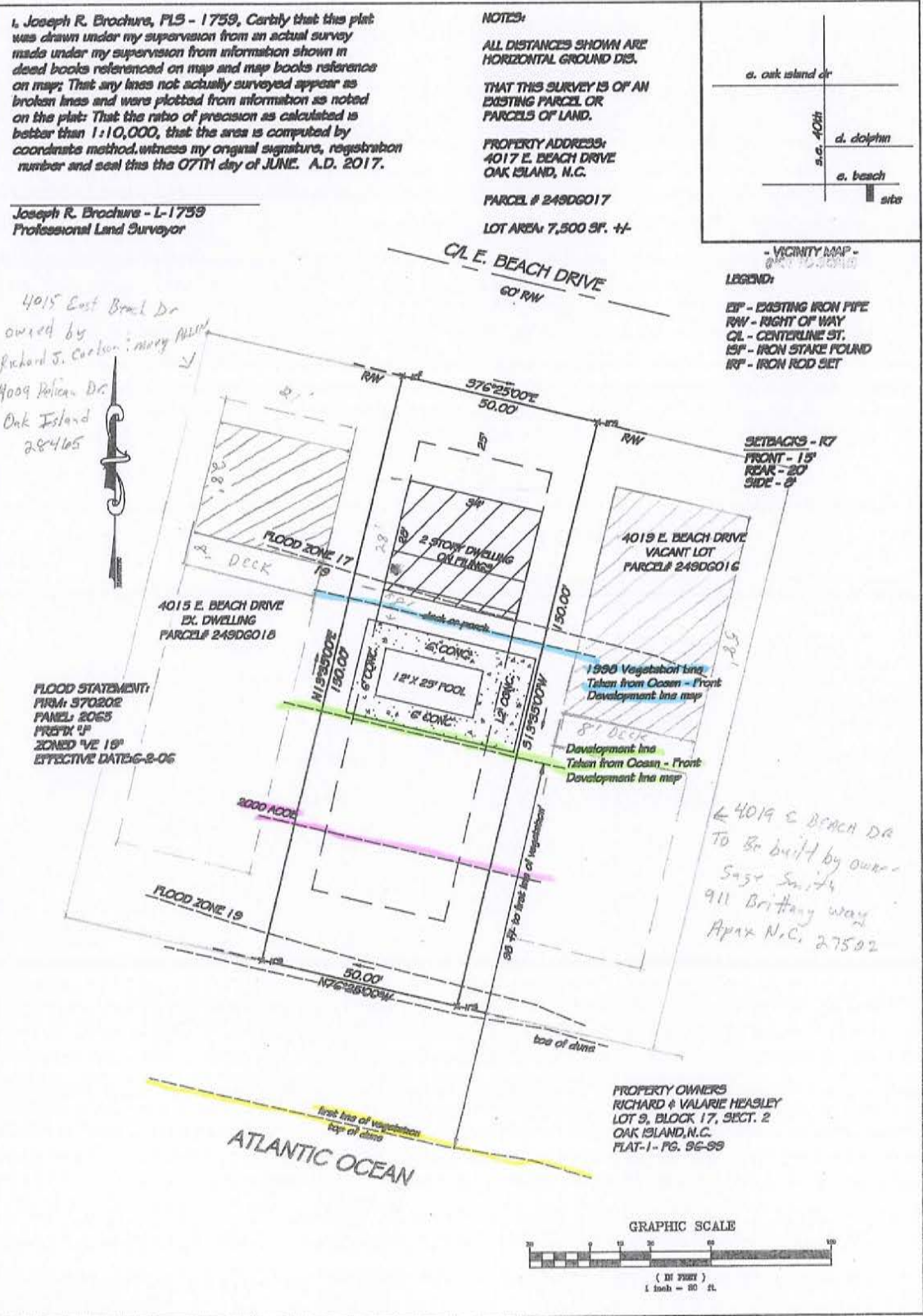
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Island Surveyors, Inc. P.A.
 JOEY BROCHURE L-1759
 427 Womble St
 Oak Island, N.C. 28465
 PHONE: 910-250-9192
 CELL: 910-523-6122
 www.islandsurveyor.com

Residential & Commercial Site Plan
 Lot Surveys & Flood Elev. Certificates
 email: islandsurveyors@gmail.com

PROJECT # -
 2017-000-HEASLEY

SURVEYED BY: JRB
 DRAWN BY: JRB
 CHECKED BY: JRB
 DATE: 05/2017

SCALE: 1" = 30'

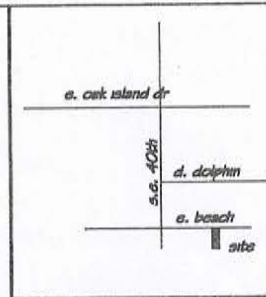
SURVEY FOR
RICHARD & VALARIE HEASLEY
 4017 E. BEACH DRIVE
 OAK ISLAND, N.C.
 SMITHVILLE TWP. - BRUNSWICK CO. N.C.
 DATE: 06/6/17 SCALE: 1" = 30'

PRELIMINARY: NOT FOR RECORDATION CONVEYANCES OR SALES

I, Joseph R. Brochure, PLS - 1759, Certify that this plat was drawn under my supervision from an actual survey made under my supervision from information shown in deed books referenced on map and map books references on map; That any lines not actually surveyed appear as broken lines and were plotted from information as noted on the plat; That the ratio of precision as calculated is better than 1:10,000, that the area is computed by coordinate method, witness my original signature, registration number and seal this the 07TH day of JUNE, A.D. 2017.

Joseph R. Brochure - L-1759
Professional Land Surveyor

NOTES:
ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DIS.
THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.
PROPERTY ADDRESS:
4017 E. BEACH DRIVE
OAK ISLAND, N.C.
PARCEL # 249DGO17
LOT AREA: 7,500 SF. +/-

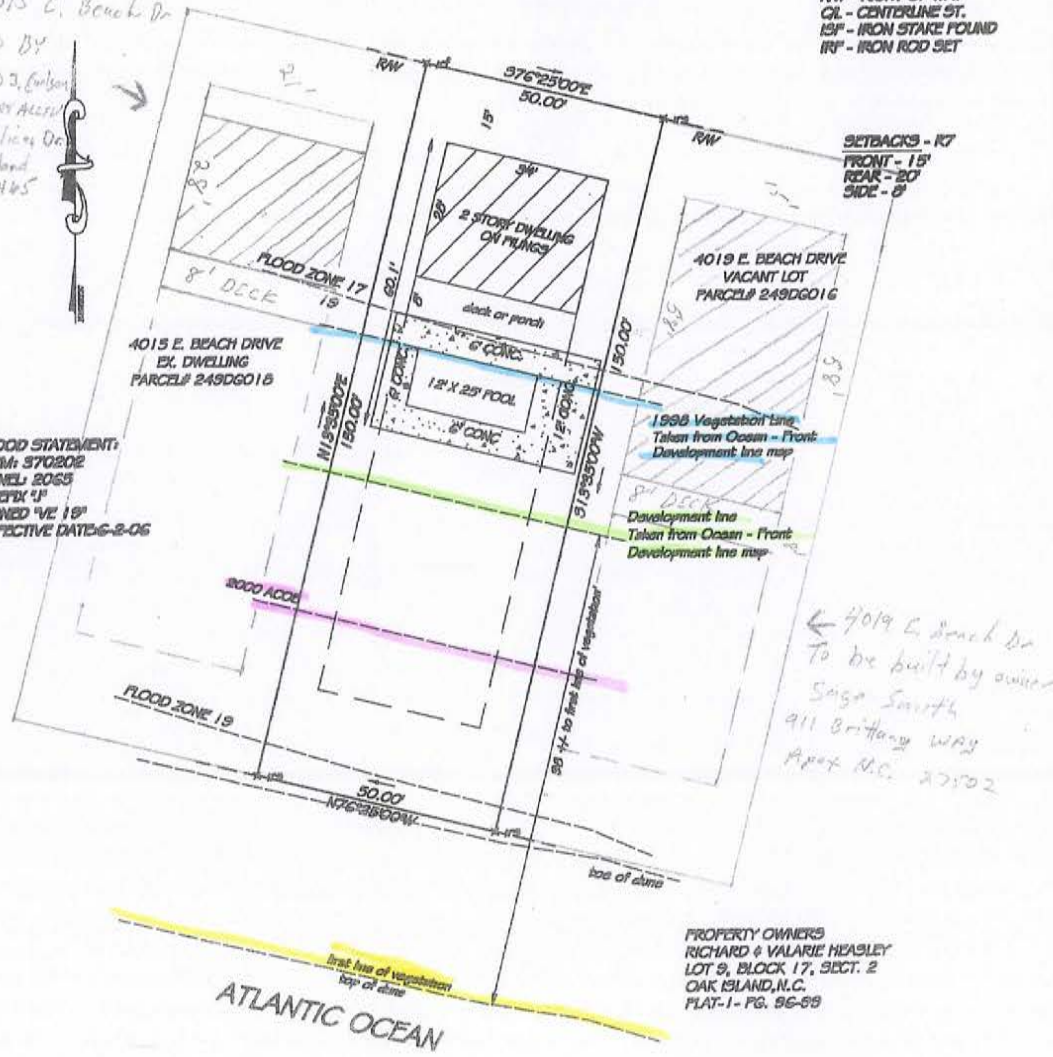


- VICINITY MAP -
(1" = 400' approx)
LEGEND:
EIF - EXISTING IRON PIPE
RW - RIGHT OF WAY
CL - CENTERLINE ST.
ISF - IRON STAKE FOUND
IRF - IRON ROD SET

4015 E. Beach Dr.
OWNED BY
RICHARD J. HEASLEY
AND VALARIE HEASLEY
4009 Pelican Dr.
Oak Island
28465

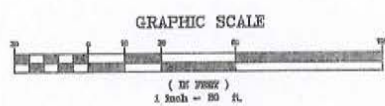
FLOOD STATEMENT:
FIRM: 376202
PARCEL: 2065
PREFIX: 1P
ZONED: VE 19'
EFFECTIVE DATES: 8-06

SETBACKS - R7
FRONT - 15'
REAR - 20'
SIDE - 8'



← 4019 E. Beach Dr.
To be built by owner
Sara Smith
911 Brittany way
Appt N.C. 27902

PROPERTY OWNERS
RICHARD & VALARIE HEASLEY
LOT 9, BLOCK 17, SECT. 2
OAK ISLAND, N.C.
PLAT-1 - PG. 96-99



Island Surveyors, Inc. P.A.
JOEY BROCHURE L-1759
427 Womble St
Oak Island, N.C. 28465
PHONE: 910-250-9192
CELL: 910-523-6122
www.islandsurveyor.com
Residential & Commercial Site Plan
Lot Surveys & Flood Elev. Certificates
email: islandsurveyors@gmail.com

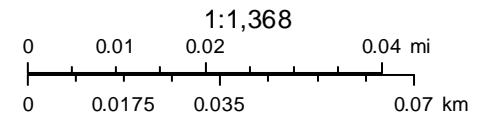
PROJECT # -
2017-000-HEASLEY
SURVEYED BY: JRB
DRAWN BY: JRB
CHECKED BY: JRB
DATE: 06/06/2017
SCALE: 1" = 30'

SURVEY FOR
RICHARD & VALARIE HEASLEY
4017 E. BEACH DRIVE
OAK ISLAND, N.C.
SMITHVILLE TWP. - BRUNSWICK CO. N.C.
DATE: 06/06/17 SCALE: 1" = 30'
PRELIMINARY: NOT FOR RECORDATION CONVEYANCES OR SALES



June 14, 2017

- | | | | | |
|---|--|--|--|---|
| ■ Addresses | — US Hwy | — Minor | □ Parcel | ■ Green: Band_2 |
| Roads | — NC Hwy | Parcels | □ County Boundary | ■ Blue: Band_3 |
| — Interstate | — State Road | □ Condo | ■ Red: Band_1 | |



BRUNSWICK COUNTY										6/14/2017 4:01:25 PM											
CROWE LINDA W ET VIR										CROWE PHILLIP E											
80006655										Return/Appeal Notes: Parcel: 249DG017											
BRUNSWICK COUNTY (100), DOSHER HOSP TAX (100), OAK ISLAND (100), OAK ISLAND FIRE (10)										PLAT: UNIQ ID 128163 ID NO: 206507697604											
Reval Year: 2015 Tax Year: 2017										CARD NO. 1 of 1											
L-9 B-17 S-2 LB 1/96-99										1.000 LT SRC=											
Appraised by A2 on 12/01/2011 306F OAK ISLAND-MAINLAND-SOUTH										TW-03 CI-14 FR-08 EX- AT- LAST ACTION 20150120											
CONSTRUCTION DETAIL		MARKET VALUE					DEPRECIATION					CORRELATION OF VALUE									
TOTAL POINT VALUE		USE	MOD	Eff. Area	QUAL	BASE RATE	RCN	EYB	AYB						CREDENCE TO						
BUILDING ADJUSTMENTS		98	00							% GOOD					DEPR. BUILDING VALUE - CARD						
TOTAL ADJUSTMENT FACTOR		TYPE: VACANT LAND										DEPR. OB/XF VALUE - CARD									
TOTAL QUALITY INDEX		STYLE:										MARKET LAND VALUE - CARD									
												TOTAL MARKET VALUE - CARD									
												TOTAL APPRAISED VALUE - CARD									
												TOTAL APPRAISED VALUE - PARCEL									
												TOTAL PRESENT USE VALUE - PARCEL									
												TOTAL VALUE DEFERRED - PARCEL									
												TOTAL TAXABLE VALUE - PARCEL \$									
												PRIOR									
												BUILDING VALUE									
												OBXF VALUE									
												LAND VALUE									
												PRESENT USE VALUE									
												DEFERRED VALUE									
												TOTAL VALUE									
												PERMIT									
		CODE		DATE		NOTE		NUMBER		AMOUNT											
		ROUT: WTRSHD:																			
		SALES DATA																			
		OFF. RECORD		DATE		DEED TYPE		Q/UV/I		INDICATE SALES PRICE											
		BOOK	PAGE	MOYR																	
		03873	0623	2	2017	GW*	Q	V						203000							
		03392	0835	4	2013	WD*	C	V						0							
		02009	0572	9	2004	WD	U	V						0							
		01180	0448	10	1997	WD	U	V						0							
		00838	0738	4	1991	WD	U	V						4500							
		HEATED AREA																			
		NOTES																			
SUBAREA		GS	RPL	CODE	QUALITY	DESCRIPTION	COUNT	LT	WTH	UNITS	UNIT PRICE	ORIG % COND	BLDG#	SIZE FACT	AY	EYB	ANN DEP RATE	% OVR	COND	OB/XF DEPR. VALUE	
TYPE		AREA	%	CS	TOTAL OB/XF VALUE																
FIREPLACE																					
SUBAREA TOTALS																					
BUILDING DIMENSIONS																					
LAND INFORMATION																					
HIGHEST AND BEST USE	USE CODE	LOCAL ZONING	FRON TAGE	DEPTH	DEPTH / SIZE	LND MOD	COND FACT	OTHER ADJUSTMENTS AND NOTES RF AC LC TO OT	ROAD TYPE	LAND UNIT PRICE	TOTAL LAND UNITS	UNT TYP	TOTAL ADJST	ADJUSTED UNIT PRICE	LAND VALUE	OVERRIDE VALUE	LAND NOTES				
ERO CAMA	9604	R7	50	150	1.0000	0	0.1000	CAMA	PS	250,000.00	1.000	LT	0.100	25,000.00	25000		0				
TOTAL MARKET LAND DATA																25,000					
TOTAL PRESENT USE DATA																					

Notice of Intent

August 21, 2017

Dear Mr. Richard Carlson

This is to inform you that I have applied for a variance to construct a pool seaward of the '98 static vegetation line on my property at 4017 E. Beach Drive and will likely be heard at the September 27-28, 2017 CRC meeting. I am enclosing a drawing of my intentions. My building setback will be either 15' to 20'. If you have any questions you can contact DCM District Manager Debbie Wilson at the Wilmington office.

Thank you.

Sincerely,

Rick Heasley

122 S. 7th Ave.
Paden City, WV 26159

August 21, 2017

Dear Mr. Sage Smith:

This is to inform you that I have applied for a variance to construct a pool seaward of the '98 static vegetation line on my property at 4017 E. Beach Drive and will likely be heard at the September 27-28, 2017 CRC meeting. I am enclosing a drawing of my intentions. My building setback will be either 15' to 20'. If you have any questions you can contact DCM District Manager Debbie Wilson at the Wilmington office.

Thank you.

Sincerely,

Rick Heasley

122 S. 7th Ave.
Paden City, WV 26159

7015 0640 0002 0136 3918

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
 Domestic Mail Only

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OFFICIAL USE

Certified Mail Fee	\$3.75	0769 01
Extra Services & Fees (check box, add fees as appropriate)	\$0.00	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	Postmark Here
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.47	08/22/2017
Total Postage and Fees	\$4.22	

Sent to
 Mr. Richard Carlson & Mary Allen
 Street and Apt. No., or PO Box No.
 4009 Pelican Dr.
 City, State, ZIP+4®
 Oak Island NC 28465

PS Form 3800, April 2015 PSN 7520-02-000-9007 See Reverse for Instructions

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OFFICIAL USE

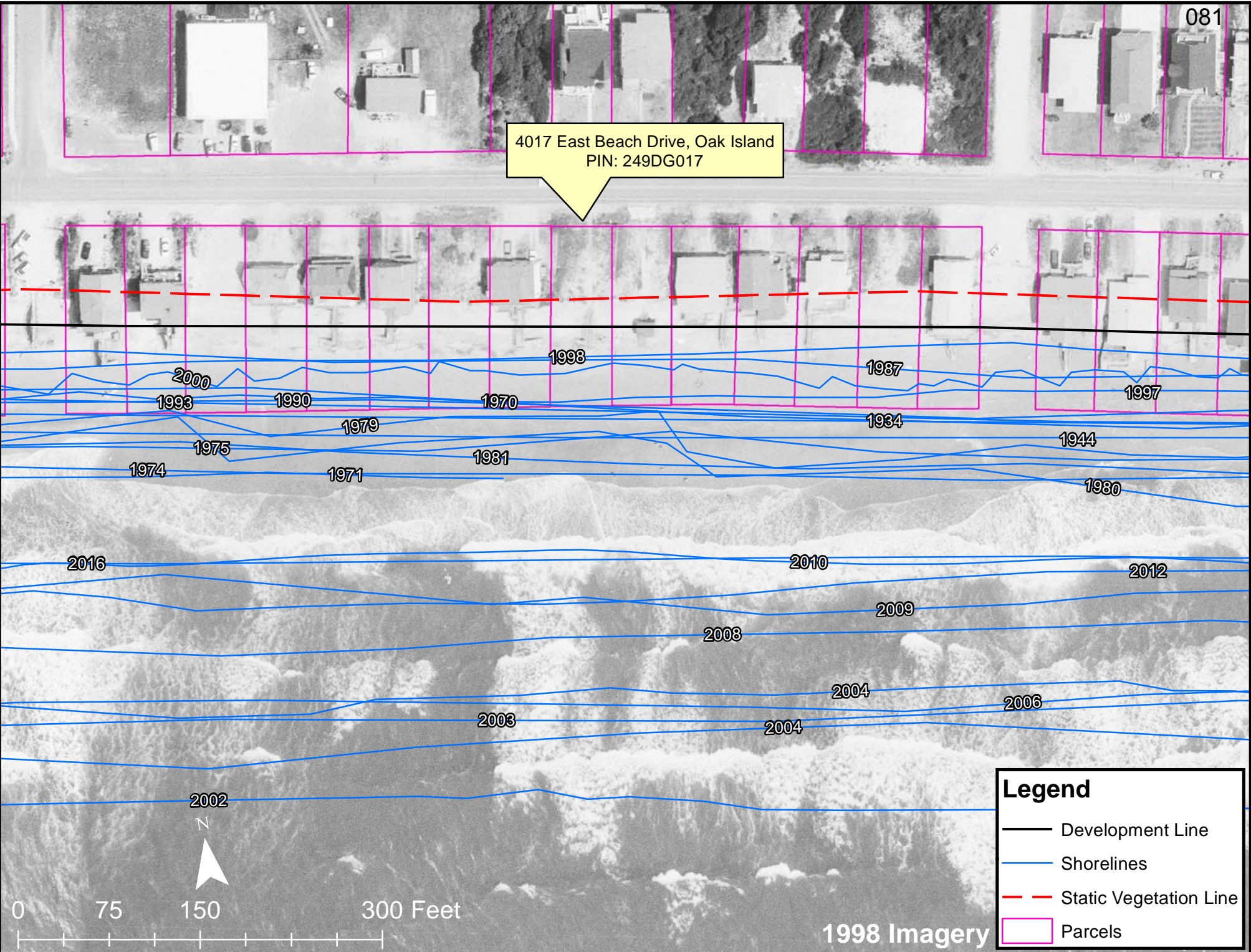
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Extra Services & Fees (check box, add fees as appropriate)	\$0.00	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	Postmark Here
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.45	08/22/2017
Total Postage and Fees	\$4.20	

Sent to
 Mr. Sage Smith
 Street and Apt. No., or PO Box No.
 911 Brittleway Way
 City, State, ZIP+4®
 Apex, NC 27502

PS Form 3800, April 2015 PSN 7520-02-000-9007 See Reverse for Instructions

081

4017 East Beach Drive, Oak Island
PIN: 249DG017



2000
1993
1990
1979
1975
1974
1998
1970
1931
1937
1934
1944
1930
2016
2010
2012
2009
2003
2004
2006
2003
2004
2002

Legend

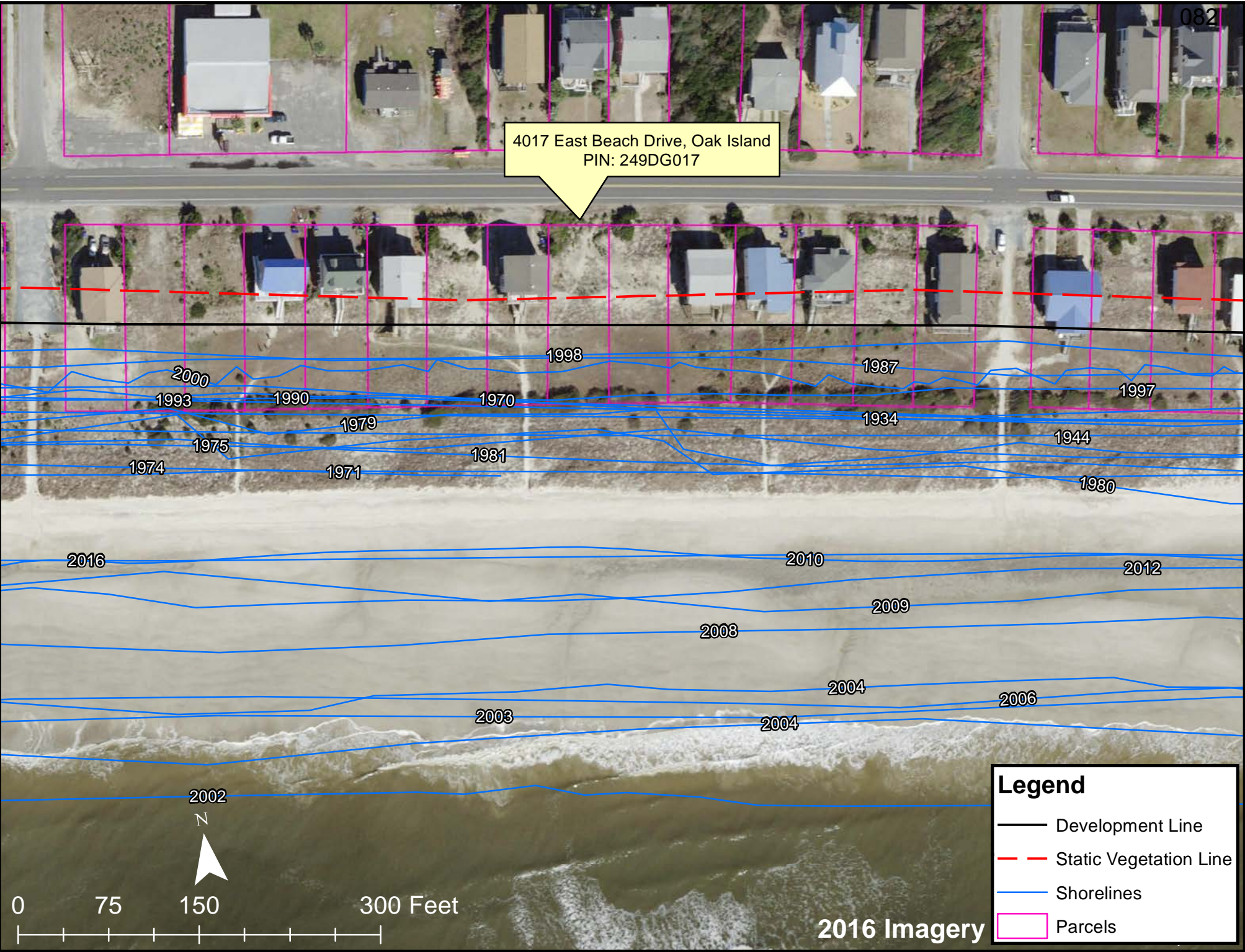
- Development Line
- Shorelines
- - - Static Vegetation Line
- ▭ Parcels

0 75 150 300 Feet

1998 Imagery

082

4017 East Beach Drive, Oak Island
PIN: 249DG017



Legend

- Development Line
- - - Static Vegetation Line
- Shorelines
- ▭ Parcels

2016 Imagery

I, Joseph R. Brochure, PLS - 1759, Certify that this plat was drawn under my supervision from an actual survey made under my supervision from information shown in deed books referenced on map and map books reference on map; That any lines not actually surveyed appear as broken lines and were plotted from information as noted on the plat: That the ratio of precision as calculated is better than 1/10,000, that the area is computed by coordinate method. witness my original signature, registration number and seal this the 30TH day of OCT. A.D. 2017.

Joseph R. Brochure - L-1759
Professional Land Surveyor



NOTES:

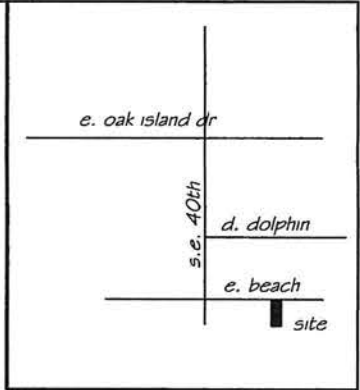
ALL DISTANCES SHOWN ARE HORIZONTAL GROUND DIS.

THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND.

PROPERTY ADDRESS:
4017 E. BEACH DRIVE
OAK ISLAND, N.C.

PARCEL # 249DG017

LOT AREA: 7,500 SF. +/-

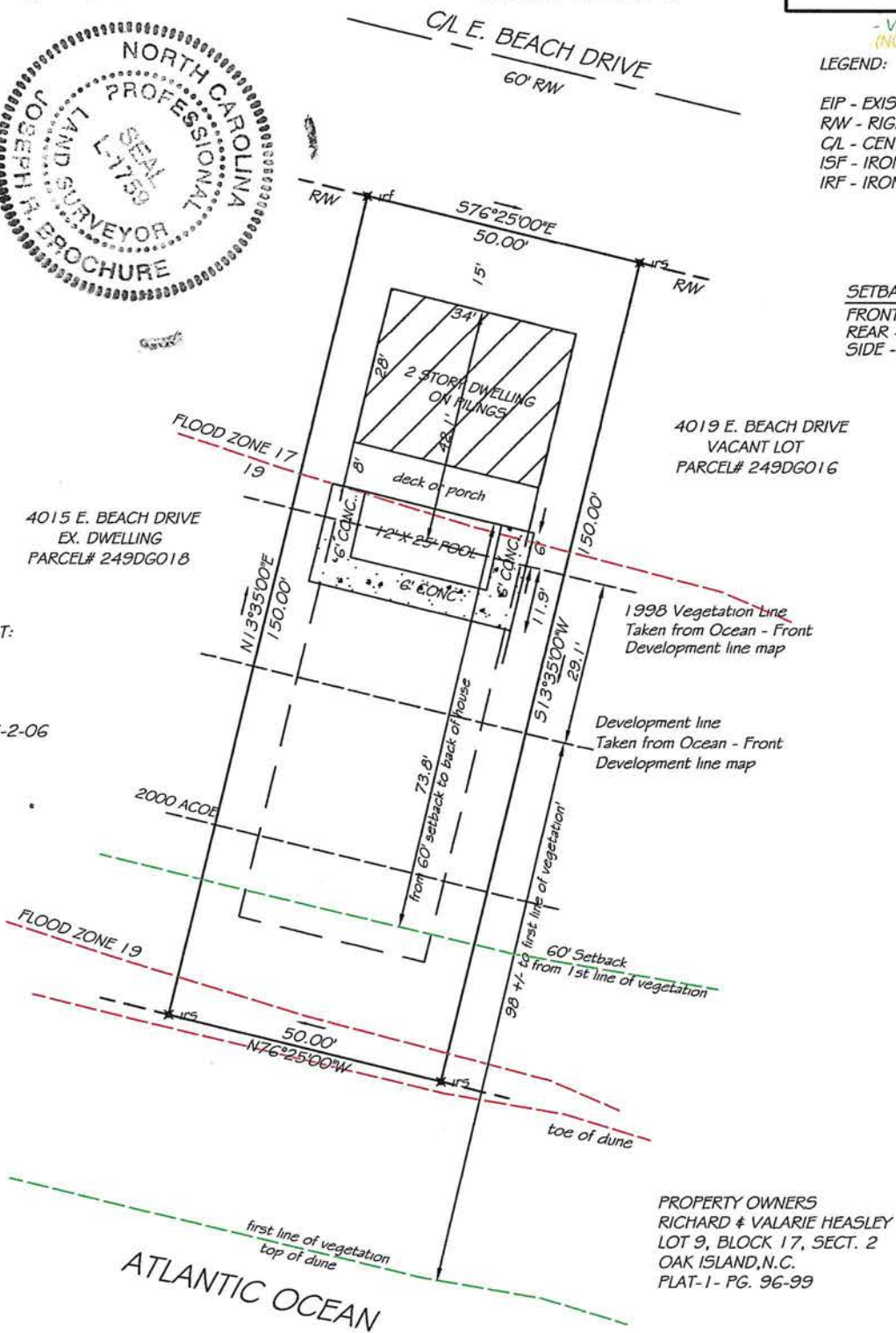


- VICINITY MAP -
(NOT TO SCALE)

LEGEND:

- EIP - EXISTING IRON PIPE
- RW - RIGHT OF WAY
- C/L - CENTERLINE ST.
- ISF - IRON STAKE FOUND
- IRF - IRON ROD SET

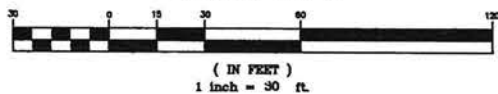
SETBACKS - R7
FRONT - 15'
REAR - 20'
SIDE - 8'



FLOOD STATEMENT:
FIRM: 370202
PANEL: 2065
PREFIX "J"
ZONED "VE 19"
EFFECTIVE DATE: 6-2-06

PROPERTY OWNERS
RICHARD & VALARIE HEASLEY
LOT 9, BLOCK 17, SECT. 2
OAK ISLAND, N.C.
PLAT-1 - PG. 96-99

GRAPHIC SCALE



Island Surveyors, Inc. P.A.

JOEY BROCHURE L-1759
427 Womble St
Oak Island, N.C. 28465
PHONE: 910-250-9192
CELL: 910-523-6122
www.islandsurveyor.com

Residential & Commercial Site Plan
Lot Surveys & Flood Elev. Certificate
email: islandsurveyors@gmail.com

PROJECT # -
2017-000-HEASLEY

SURVEYED BY: JRB
DRAWN BY: JRB
CHECKED BY: JRB
DATE: 06/06/2017

SCALE: 1" = 30'

PRELIMINARY SITE PLAN

FOR VARIANCE

RICHARD & VALARIE HEASLEY

4017 E. BEACH DRIVE
OAK ISLAND, N.C.

SMITHVILLE TWS. - BRUNSWICK CO. N.C.

DATE: 10/30/17 SCALE: 1" = 30'

PRELIMINARY: "NOT FOR RECORDATION CONVEYANCES OR SALES"

Notice of Intent

October 17, 2017

Dear Mr. Richard Carlson

This is to inform you that I have applied for a variance to construct a pool seaward of the '98 static vegetation line on my property at 4017 E. Beach Drive. It was filed as a CAMA MINOR PERMIT in early July 2017 I am enclosing a drawing of my intentions. My building setback will be 15' If you have any questions you can contact local permit officer Donna Coleman for the town of oak island 4601 E. Oak Island Oak Island NC

Thank you.

Sincerely,

Rick Heasley

122 S.7th Ave.

Paden City, WV 26159

Notice Of Intent

October 17, 2017

Dear Mr. Sage Smith:

This is to inform you that I have applied for a variance to construct a pool seaward of the '98 static vegetation line on my property at 4017 E. Beach Drive. It was filed as a CAMA MINOR PERMIT in early July 2017. I am enclosing a drawing of my intentions. My building setback will be 15'. If you have any questions you can contact local permit officer Donna Coleman for the town of Oak Island 4601 E. Oak Island Oak Island NC

Thank you,

Sincerely,
Rick Heasley
122 S 7th Ave.
Paden City WV 26159

PADEN CITY
 213 W MAIN ST
 PADEN CITY
 WV
 26159-9998
 5561680769
 10/18/2017 (800)275-8777 10:12 AM

Product Description	Sale Qty	Final Price
First-Class Mail Letter	1	\$0.49

(Domestic)
 (OAK ISLAND, NC 28465)
 (Weight: 0 Lb 0.50 Oz)
 (Expected Delivery Day)
 (Saturday 10/21/2017)

Certified	1	\$3.35
Return Receipt	1	\$2.75

(@USPS Certified Mail #)
 (70150640000201384506)

First-Class Mail Letter	1	\$0.49
-------------------------	---	--------

(Domestic)
 (APEX, NC 27502)
 (Weight: 0 Lb 0.50 Oz)
 (Expected Delivery Day)
 (Saturday 10/21/2017)

Certified	1	\$3.35
Return Receipt	1	\$2.75

(@USPS Return Receipt #)
 (9590940222216193651091)

Total \$13.18

Cash \$20.00
 Change (\$6.82)

Text your tracking number to 28777 (2USPS) to get the latest status. Standard Message and Data Rates may apply.

7015 0640 0002 0138 4506

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OAK ISLAND, NC 28465
OFFICIAL USE

Certified Mail Fee	\$3.35	0769 01 Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	\$2.75	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	10/18/2017
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.49	Total Postage and Fees \$6.59
Total Postage and Fees	\$6.59	

Sent To
 Street and Apt. No., or PO Box No.
 City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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APEX, NC 27502
OFFICIAL USE

Certified Mail Fee	\$3.35	0769 01 Postmark Here
Extra Services & Fees (check box, add fee as appropriate)	\$2.75	
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	10/18/2017
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$0.49	Total Postage and Fees \$6.59
Total Postage and Fees	\$6.59	

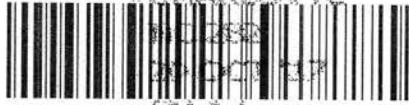
Sent To
 Street and Apt. No., or PO Box No.
 City, State, ZIP+4®

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>M. L. Allen</i></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: <i>Mr. Richard Carlson 4009 Pelican Dr. Oak Island NC, 28465</i></p>	
 9590 9402 2221 6193 6511 07	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p><i>7015 0640 0002 0138 4506</i></p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>[Signature]</i></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>1. Article Addressed to: <i>Mr. Sage Smith 911 Brittlely Way Apex NC, 27502</i></p>	
 9590 9402 2221 6193 6510 91	<p>3. Service Type <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>
<p>2. Article Number (Transfer from service label)</p> <p><i>7015 0640 0002 0138 4490</i></p>	
PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt	

USPS TRACKING#



9590 9402 2221 6193 6511 07

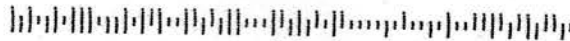


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Rick Heasley
122 S 7th Ave
Paden City WV, 26159



USPS TRACKING#



9590 9402 2221 6193 6510 91

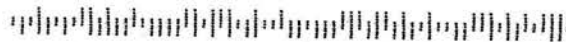


First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Rick Heasley
122 S 7th Ave.
Paden City WV, 26159





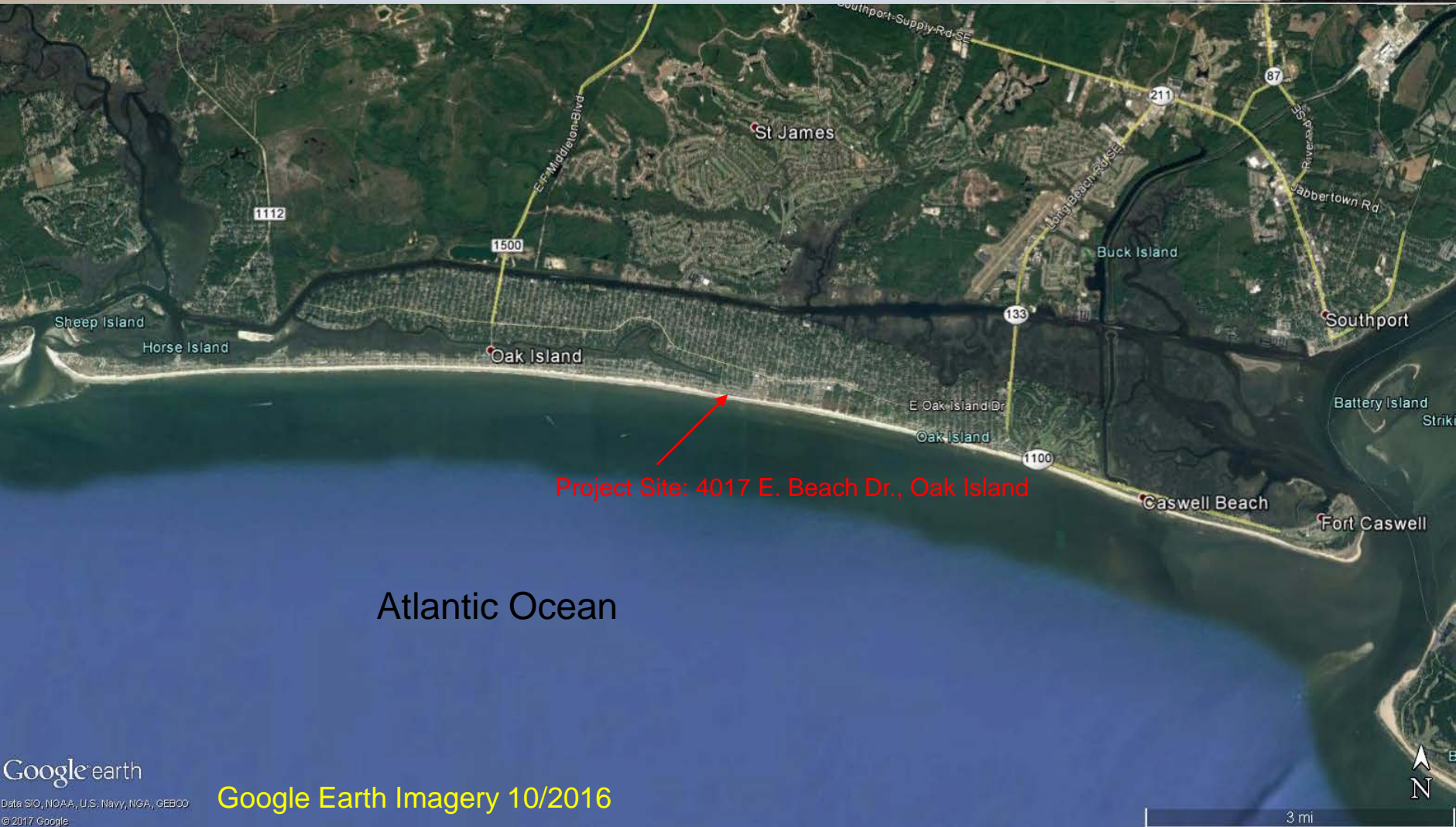
Rick & Valerie Heasley Variance Request
4017 East Beach Dr., Oak Island, Brunswick County
February 13, 2018



Department of Environmental Quality



Heasley Variance Request



Heasley Variance Request



Google earth Google Earth Imagery 10/2016

Department of Environmental Quality



Heasley Variance Request



Heasley Variance Request



FLSNV measured July 26, 2017 by Brooks Surgan (DCM)



Heasley Variance Request



View of Petitioner's property looking South

Photo taken by DCM Staff 7/26/17



Heasley Variance Request

095



View of Petitioner's property
looking North

Photo taken by DCM Staff 7/26/17

Thexton Variance Request

096



View of Petitioner's property
looking West

Photo taken by DCM Staff 7/26/17



Heasley Variance Request

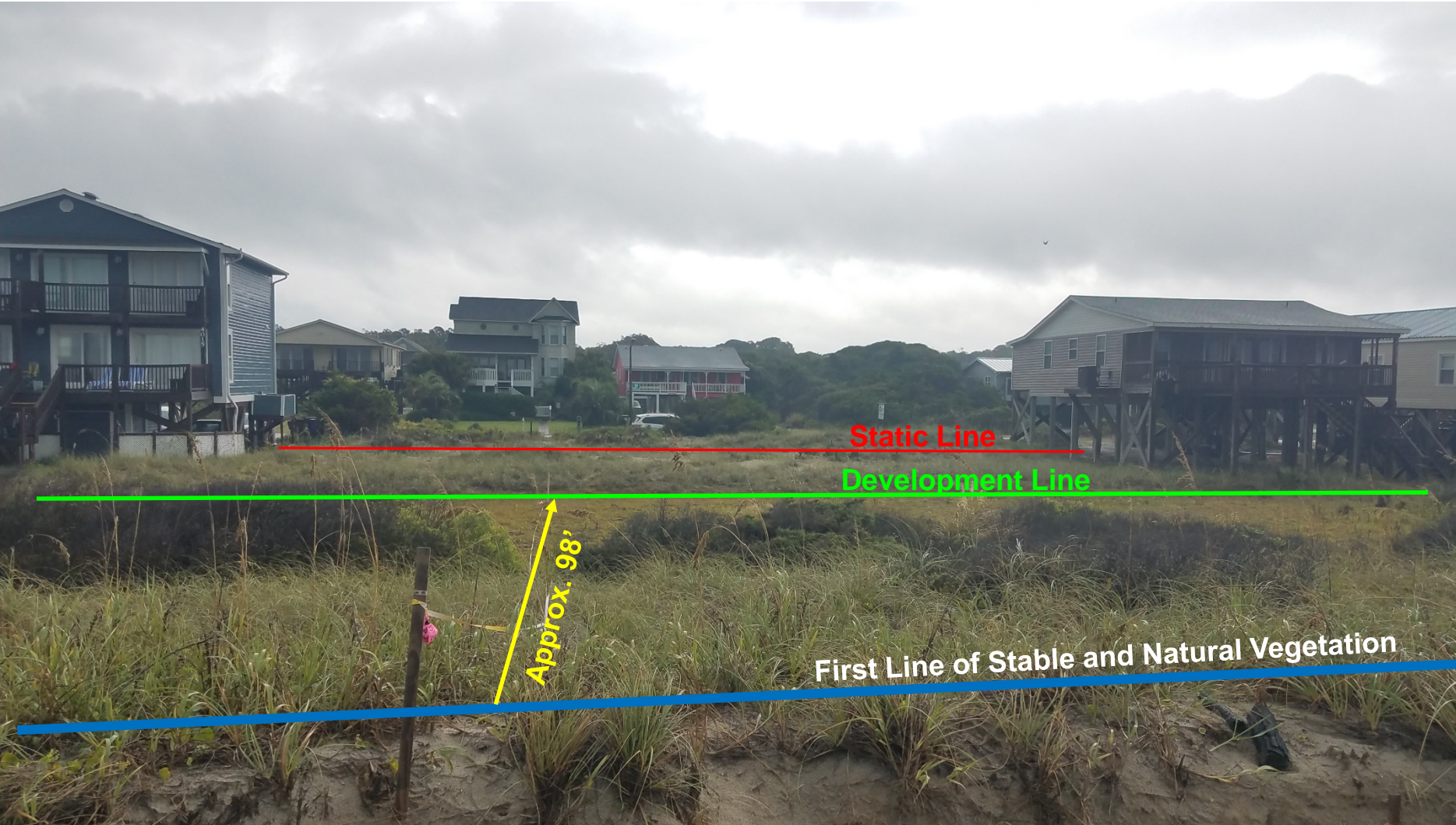
097



View of Petitioner's property
looking Northeast

Photo taken by DCM Staff 7/26/17

Heasley Variance Request



View of Petitioner's Property looking South

Photo taken by DCM Staff 7/26/17



Heasley Variance Request



View of Petitioner's Property looking South

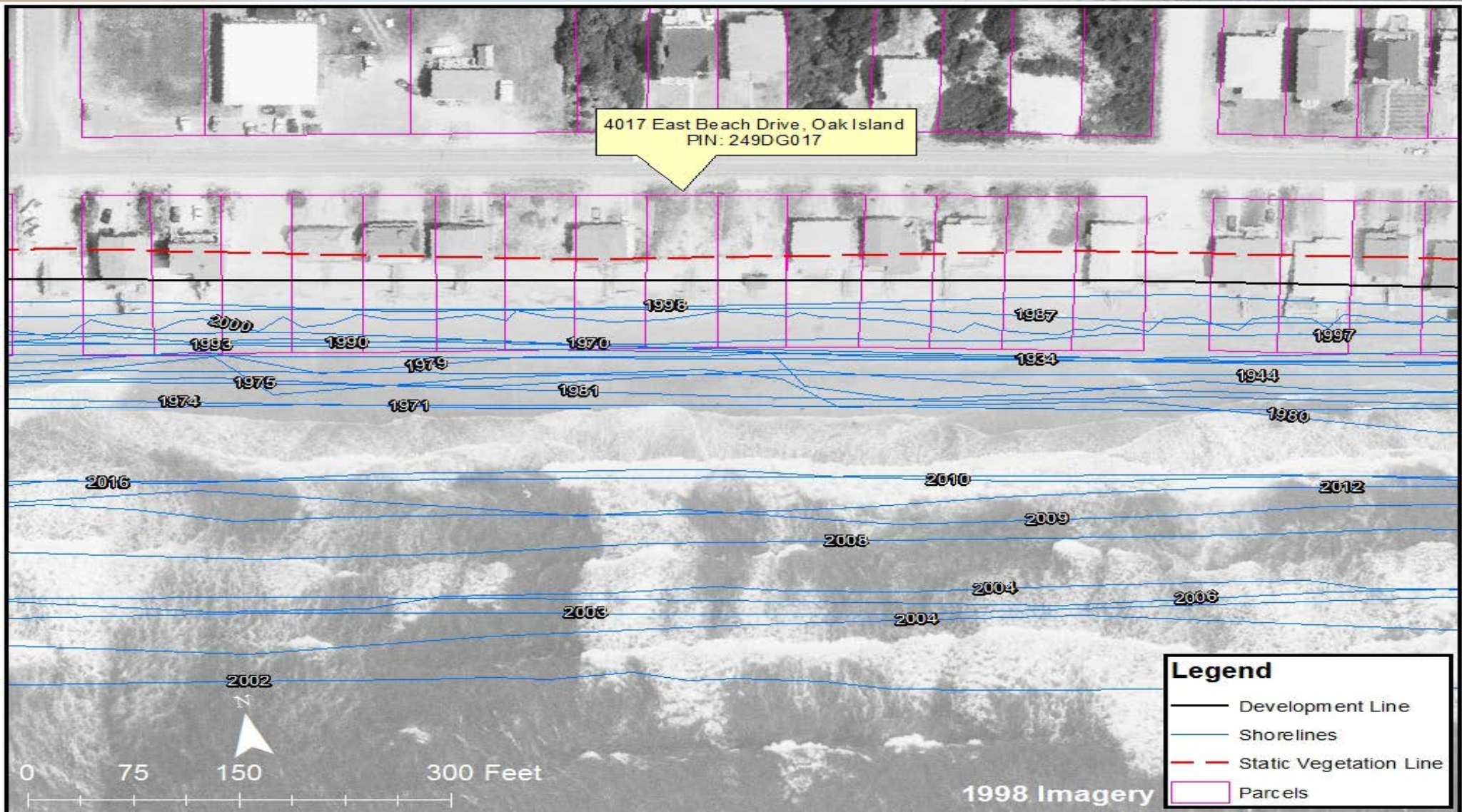
Photo taken by DCM Staff 7/26/17



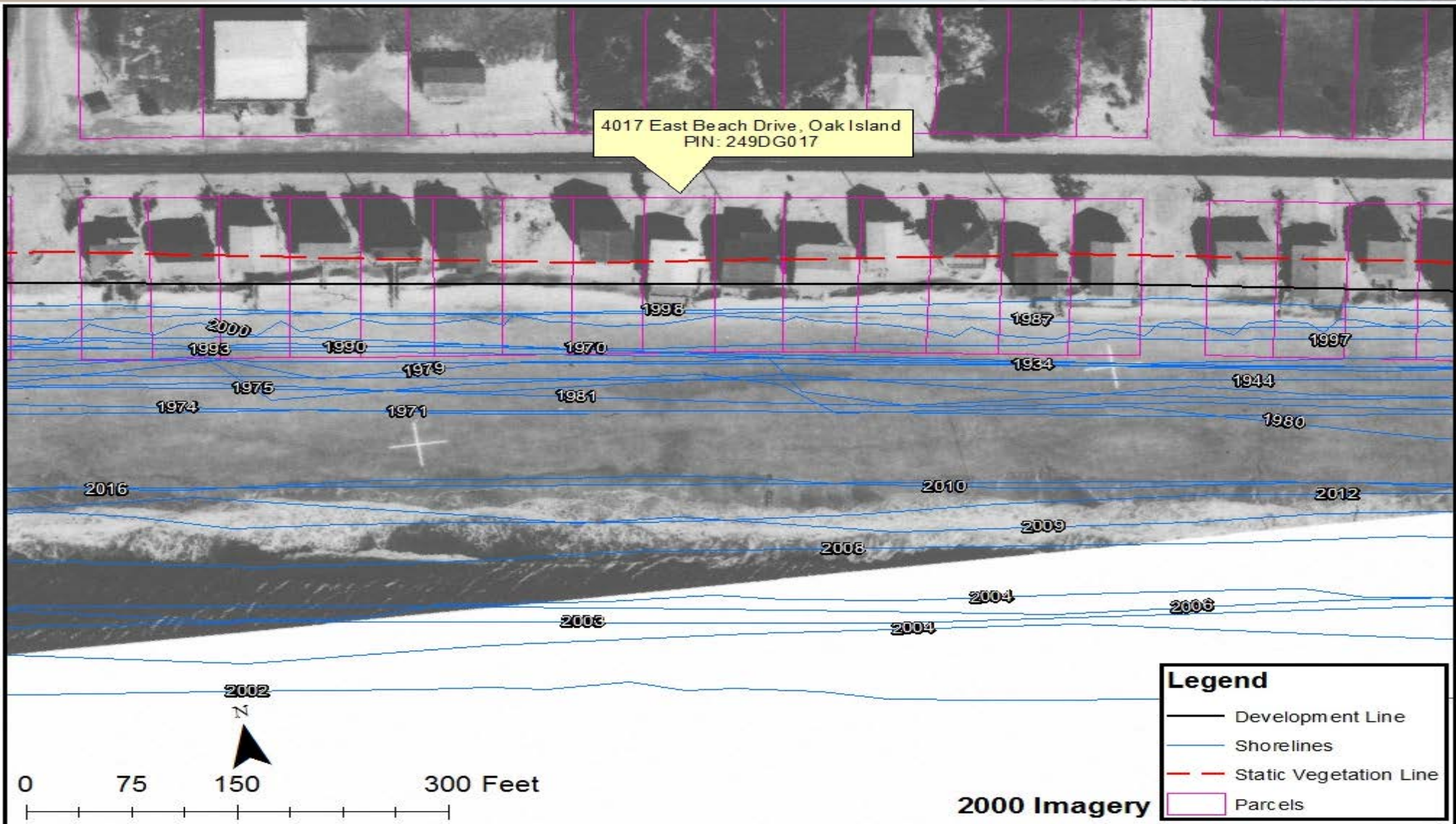
Heasley Variance Request



Heasley Variance Request



Heasley Variance Request



VARIANCE CRITERIA 15A NCAC 07J.0703 (f)

-to grant a variance, the Commission must affirmatively find each of the following factors listed in G.S. 113A-120.1(a).

- (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
- (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
- (C) that such hardships did not result from actions taken by the petitioner; and
- (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.





ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

TO: The Coastal Resources Commission

FROM: Christine A. Goebel, DEQ Assistant General Counsel

DATE: January 31, 2018 (for the February 13-14, 2018 CRC Meeting)

RE: **Variance Request by Sandy Court Beach, LLC/Fohs (CRC-VR-18-01)**

Petitioner Sandy Beach Court, LLC (c/o Member/Manager John Fohs) (“Petitioner”) owns a residence at 9913 Sand Court (the “Site”) in the South Nags Head area of the Town of Nags Head. The property is located within the Commission’s Ocean Hazard Area of Environmental Concern (“AEC”). This area of Nags Head is subject to a “static line” following a large-scale beach nourishment project in 2011.

In November of 2014, Petitioner filed a CAMA Minor Permit application seeking to construct an addition to the bottom floor of the piling-supported residence underneath a “bump out” which currently exists on the top floor. On December 11, 2014, the Town of Nags Head’s Coastal Area Management Act (“CAMA”) Local Permitting Officer (“LPO”) denied Petitioner’s CAMA Minor Permit application as the proposed addition does not meet the applicable 150’ setback from the static line. In January of 2018, Petitioner, through counsel, filed this variance petition to request the Commission vary the oceanfront setback rules so it can develop the addition as proposed.

The following additional information is attached to this memorandum:

Attachment A: Relevant Rules
 Attachment B: Stipulated Facts
 Attachment C: Petitioner’s Positions and Staff’s Responses to Variance Criteria
 Attachment D: Petitioner’s Variance Request Materials
 Attachment E: Stipulated Exhibits including powerpoint

cc(w/enc.): Charles D. Evans, Esq., Petitioner’s Counsel, electronically
 Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
 Kelly Wyatt, Town of Nags Head CAMA LPO, electronically



RELEVANT STATUTES OR RULES**APPENDIX A****15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES**

The next broad grouping is composed of those AECs that are considered natural hazard areas along the Atlantic Ocean shoreline where, because of their special vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could unreasonably endanger life or property. **Ocean hazard areas include beaches**, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions indicate a substantial possibility of excessive erosion or flood damage.

15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) The primary causes of the hazards peculiar to the Atlantic shoreline are the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause significant changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical, therefore, because of both the severity of the hazards and the intensity of interest in the areas.

(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, **the appropriate location of structures on and near these landforms must be reviewed carefully in order to avoid their loss or damage. As a whole, the same flexible nature of these landforms which presents hazards to development situated immediately on them offers protection to the land, water, and structures located landward of them.** The value of each landform lies in the particular role it plays in affording protection to life and property. (The role of each landform is described in detail in Technical Appendix 2 in terms of the physical processes most important to each.) Overall, however, the energy dissipation and sand storage capacities of the landforms are most essential for the maintenance of the landforms' protective function.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces indigenous to the Atlantic shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective to provide management policies and standards for ocean hazard areas that serve to eliminate unreasonable danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.

(b) The purpose of these Rules shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is determined as follows:

(a) a distance landward from the first line of stable and natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 60; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 120 feet landward from the first line of stable natural vegetation. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "2011 Long-Term Average Annual Shoreline Rate Update" and approved by the Coastal Resources Commission on May 5, 2011 (except as such rates may be varied in individual contested cases, declaratory, or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at <http://www.nccoastalmanagement.net>; and (b) a distance landward from the recession line established in Sub-Item (1)(a) of this Rule to the recession line that would be generated by a storm having a one percent chance of being equaled or exceeded in any given year.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

(1) The ocean hazard setback for development is measured in a landward direction from the vegetation line, **the static vegetation line**, or the measurement line, whichever is applicable.

(2) In areas with a development line, the ocean hazard setback line shall be set at a distance in accordance with Subparagraphs (a)(3) through (9) of this Rule. In no case shall new development be sited seaward of the development line.

(3) In no case shall a development line be created or established below the mean high water line.

(4) The setback distance shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways are not included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(5) With the exception of those types of development defined in 15A NCAC 07H .0309, no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback distance. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback is established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner is Sandy Court Beach, LLC a Maryland Limited Liability Company (“Petitioner” or “SCB, LLC”). Based on the Operating Agreement of SCB, LLC, John J. Fohs (“Fohs”) and Donna H. Fohs are the Member-managers of SCB, LLC. Charles D. Evans, Esq is the registered agent according to the State of North Carolina Designation of Registered Agent Form, a copy of which is attached and which is in process with the NC Secretary of State’s office. Petitioner is also represented by Mr. Evans in this variance proceeding.
2. Petitioner obtained property known as Lot 8 of Limulus, part of the High Dunes South Subdivision (the “Site”), though an October 18, 2006 deed recorded at Book 1556, Page 271 of the Dare County Registry, a copy of which is attached. The Site is shown on a survey of High Dunes South dated January 23, 1976 and recorded at Map Book 8, Page 66 of the Dare County Registry, a copy of which is attached. The Site is also known as 9913 Sand Court, Nags Head, North Carolina in Dare County.
3. Petitioner obtained the Site from John J. Fohs and Donna H. Fohs, who had owned the Site since they took title through an August 22, 1997 deed recorded at Book 1130, Page 275 of the Dare County Registry, a copy of which is attached.
4. Petitioner has provided a copy of a December 15, 2014 survey of the Site by Manson Ray Meekins, P.L.S., a copy of which is attached.
5. The Site is currently developed with an 1,848 square foot two-story piling-supported single-family residence. The house is a four-bed, three-bath house based on the tax card, attached. The house is serviced by septic and by city water. Photographs of the existing residence are attached as part of the stipulated PowerPoint presentation.
6. The Dare County Tax Card indicates that the home on the Site was built in 1985, a copy of which is attached. Petitioner believes that the bump-out at issue was original to the cottage.
7. The Site is located within the Ocean Erodible portion of the Ocean Hazard Area of Environmental Concern (“AEC”), and is currently a second-row home (it is shown as a third-row home on the 1976 plat, attached). The applicable erosion rate at the Site is 5’/year, and so the applicable setback for this “Development” under 5,000 square feet Total Floor Area (TFA) is 150’ landward of the static line.
9. The Town of Nags Head funded its first large-scale nourishment project resulting in sand being placed during the summer of 2011 at the Site. Before the project began, the existing first line of stable and natural vegetation was surveyed, and is shown on DCM’s GIS mapping tool, copies of which (showing the Site on 1993 and 2016 aerial photography) are attached.
10. The location of the static line and the “actual” vegetation is essentially the same, based on a recent site visit by staff and a review of the static line location.

11. Pursuant to N.C.G.S. § 113A-118, the proposed development requires authorization through the issuance of a CAMA permit.
12. At the Site, the waters of the Atlantic Ocean are classified as SB waters, open to the harvest of shellfish.
13. The portion of the Site where development is proposed is located has a Base Flood Elevation of 11 feet NAVD 1988 and is located within a VE-11 Flood Zone, based on the July 31, 2015 Elevation Certificate, a copy of which is attached as a stipulated exhibit.
14. On or about November 11, 2014, Fohs (and Petitioner's Authorized CAMA Agent Sam Moor of Soundside Construction), on behalf of Petitioner, applied for a CAMA Minor Development Permit with the Town of Nags Head Local Permit Officer ("LPO") seeking to renovate an existing bathroom and create a new bathroom by enclosing an area 8' x 16' or 128 square feet. The added Total Floor Area ("TFA") is proposed to be located on the lower level, underneath an existing bump-out on the top floor, so the footprint of the residence will remain the same. A copy of Petitioner's CAMA permit application materials are included as stipulated exhibits.
15. The bump-out where the addition is proposed is on the west side of the residence, and faces the driveway. The bump-out can be seen in site photos which are part of the stipulated PowerPoint presentation.
16. The 128-square foot addition to the currently 1,848 square foot residence represents a 7% increase in area compared to the current area.
17. The applicable 150' setback from the applicable static vegetation line results in the setback line falling landward of the existing residence, and is shown on the 2015 Meekins Survey as the "150' CAMA Minimum Structure Setback (2011)."
18. At the time of Petitioner's permit application in 2014, Petitioner sent notice of the proposed addition to its four adjacent riparian owners (Lots 7, 9, 27, 28 on the 2015 Meekins Survey). Notice was also given to the public through publication and on-site posting. The Town of Nags Head received no objections from adjacent property owners or any member of the public.
19. By letter dated December 11, 2014, the Nags Head CAMA LPO denied Petitioner's proposed addition as the structural addition was not landward of the applicable 150' setback from the static vegetation line. A copy of the denial letter is attached as a stipulated exhibit.
20. On January 3, 2018, Petitioner, through counsel Charles Evans, submitted the attached variance petition, seeking a variance from the Commission to the ocean erosion setback rules, to construct the bathroom addition as proposed.
21. Petitioner did not seek a variance from local setbacks as he proposes to build under the existing bump-out on the rear of the residence.

22. Adjacent riparian property owners were sent notice of this variance request. Copies of the notice and the certified mailing information are attached as stipulated exhibits. If any comments are received by the time of the Commission Meeting, they will be shared with the Commission at that time.
23. The Town has a CAMA Major Permit application pending with DCM Staff. The Town has submitted a statement regarding this nourishment cycle, attached as a stipulated exhibit.
24. For purposes of this Variance Request, Petitioner stipulates that it's proposed addition constitutes development that is inconsistent with the CAMA setback rules specified in 15A NCAC 7H .0306.

Stipulated Exhibits:

1. NC SOS's office Designation of Registered Agent Form for SCB, LLC
2. Deed to SCB, LLC from Fohs 1556/271
3. High Dunes Map at Map Book 8, Page 66
4. Deed to Fohs 1130/275
5. 2014 Meekins Survey
6. Tax Card
7. 2011 Static Line overlain on 1993 and 2016 aerial photography
8. 2015 Elevation Certificate for the Site
9. 2014 CAMA Minor Permit Application Form
10. 2014 Notice of CAMA Permit Application sent to neighbors
11. 2014 Denial Letter
12. 2018 Notice of CAMA Variance sent to neighbors
13. Official Statement from Town of NH re: another nourishment
14. PowerPoint Presentation including ground level and aerial photography of the Site

PETITIONERS' and STAFF'S POSITIONS**ATTACHMENT C**

- I. Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? If so, the petitioner must identify the hardships.**

Petitioners' Position: Yes.

Yes, because without the permit we cannot add another working bathroom and expand/enhance an existing bathroom to be handicapped accessible. The proximity of the existing bathroom and the proposed changes make it conclusive to add a much smaller separate bathroom adjacent to the existing bathroom for the persons staying in that bedroom, which would then not require them to share the handicapped bathroom. The expansion is modest and based on the square footage requested, the increase is only seven (7%) percent of the existing, already small structure, as compared to the structures around it. The additional square footage would also remain within the footprint of the existing house, as it would fill in space below an 8'x16' room on the upper level and would become part of the bedroom level and would therefore, remain above the pilings already in place. Similarly, since it would fit beneath the existing main level floor space, it would not require any alterations to the roof. From an appearance perspective, it would look as though it should have been part of the home in its original construction, and had it been included then, it would have been no issue with it.

Staff's Position: No.

Staff disagree that a strict application of the oceanfront erosion setback rules cause Petitioner an unnecessary hardship where Petitioner has an existing structure and wishes to increase the size of the structure by 7% where the house is within the setback (waterward of the applicable 150' setback from the Static Line). This area has a high rate of average annual erosion at 5'/year, and while Petitioner's home is not yet oceanfront, the "actual" vegetation is behind the first-row house. While the Town's planned nourishment may temporarily slow erosion and the landward movement of the vegetation line in this area, there is still a significant risk of this structure being located on the first row, and then on the dry-sand public beach. While the increase is 128 square feet and being built under the existing bump-out, it still represents a significant increase of total floor area and the associated structure which could become storm debris. The Commission's rules regarding the Ocean Hazard AEC acknowledge that shoreline erosion is part of the oceanfront system, and the intent of the rules is "minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development" (15A NCAC 07H .0303(b)). Staff see no unnecessary hardships from not being able to add additional total floor area within the setback given the significant oceanfront erosion oceanward of the Site.

II. Do such hardships result from conditions peculiar to the petitioner's property, such as location, size, or topography of the property? Explain.

Petitioners' Position: Yes.

Yes, because the lot is in an ocean hazard area and due to the erosion that has occurred over time since the house was built in 1985, it no longer meets the setback rules that apply today. It is important to note that the house is not oceanfront and lies behind a row of existing houses, As a result, any erosion issue that may occur on the properties to the east of us (oceanfront), cannot be controlled or managed by us. For example, we do not have the luxury or the right to aid our situation by moving sand, enhancing the dunes, adding sand fencing or sandbags to manage the erosion. (Please note the ever-change vegetation lines here and how they could change again based on pending beach replenishment 2017-2018.) With regard to the physical size of the house, it should be noted that when it was built in 1985, the typical floor plan consisted of long narrow hallways and tight doorways, bedroom and bathroom spaces. The floor plan is inherently restrictive of anyone with limited mobility or in need of accommodations, Through no fault of the developer, builder or ourselves upon purchase, the design is reflective of its time. Today, however, meeting the needs of a wider range of individuals in building is widely accepted, applauded and even mandated in some cases. It is an important advancement which we would like to further in order to provide handicapped accessible facilities.

Staff's Position: No.

Staff disagree that Petitioner's location within an Ocean Hazard AEC is not unusual for second row houses when they are located in areas with high average annual erosion rates, as the erosion rate is the multiplier used to define the AEC jurisdiction and can result in a larger AEC area. The high erosion rate in this area does not justify the granting of a variance to increase the total floor area of a structure. Staff also note that floorplan design is not a "condition peculiar to the Petitioner's property, such as location, size or topography of the property" and so should not be considered by the Commission for this statutory factor.

III. Do the hardships result from the actions taken by the Petitioner? Explain.

Petitioners' Position: No.

No. The hardships are specific and peculiar to the property over which the petitioner has had no control. Again, the property lies within an ocean hazard area which is ever changing and is being taken into account. All aspects of the proposed changes have taken into consideration the intent of the law that exists to protect these land areas. For example, there will be no additional pilings, the structure will remain above the flood plain, the roof will remain exactly as is and there will be no adverse environmental impacts.

Staff's Position: Yes.

While Staff agree that Petitioners did not cause the erosion of the vegetation line and dune system landward of their lot, and acknowledge that the proposed addition will not require new pilings or a new roof, Petitioners have the option to re-work their existing interior space without the need for a variance or increasing the size of the structure by 7% in a highly erosive area. Staff contend that the addition of 128 square feet of new floor area to the structure waterward of the setback is a hardship caused by Petitioners' choice of design.

- IV. Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards, or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.**

Petitioners' Position: Yes.

Yes. Consistent with the Management Objective of Estuarian [sic] Ocean Systems in 15ANCAC [sic]07H.0203, the proposed structure would not impact any biological, social, economic or aesthetic values, based on the physical properties of the structure as previously described, in that it does not increase the footprint, add pilings, impact adversely any environmental issues surrounding it (as it is contained under an existing overhanging space), would remain above flood level and does not change the height of the existing structure. Furthermore, the proposed changes would actually enhance the use of the property, making it more livable and handicapped accessible, therefore better accommodating the owners and increasing the time spend enjoying and maintaining the home perpetuates the conservation of the entire area and minimizes the likelihood of significant loss of private property and public resources. Maintenance of the structure and the enjoyment of the surrounding natural habitat and environment would be our priority.

2. Similarly, as described above, it would preserve and enhance public safety, in that it does not adversely impact the property or the rights of anyone else.

3. Preserving substantial justice is a unique situation, in that changes or modifications would be specific to accommodating any handicapped occupants or guests and would allow the property to be more accessible and useable and therefore maintained on a regular bases and would not create any know injustice as it would have no adverse impacts on any surrounding properties. In summary, what is being proposed is unique to this property, will promise additional use of the property by handicapped individuals and will not create any known adverse circumstances and should be allowed for the good of the community.

Staff's Position: No.

Staff notes that the rule which Petitioner is seeking a variance from are the oceanfront erosion setback rules found at 15A NCAC 7H .0306 and not the rules for the Estuarine Shorelines which Petitioner cites. The Commission's oceanfront erosion setback rules have provided an oceanfront erosion setback since 1979, where structures are required to meet a setback landward of the FLSNV or the Static Line as the case may be (here, the "actual" first line is in approximately the same location as the Static Line). In this case, there is a high average erosion rate of 5'/year, which results in a setback from the State Line of 150-feet. The Commission's rules for the Ocean Hazard AEC include 7H .0303(b), which notes that the purpose of these rules:

shall be to further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

Staff contend that granting a variance to the oceanfront erosion setback rule in this highly erosive area would not be within the spirit of the setback rules. While this Site was nourished in 2011, there has not been any improvement in the vegetation line, as the 2011 static line location is in the same place as the "actual" vegetation today. While this may improve with the proposed 2018 nourishment cycle, Staff believe that at this time, a variance would not be within the spirit of the setback rules, given the potential for increased property losses, both direct and indirect as a result of additional storm debris. Allowing this variance would therefore not secure public safety and welfare or substantial justice.

**ATTACHMENT D:
PETITIONERS' VARIANCE REQUEST MATERIALS**

KELLOGG AND EVANS, P.A.

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January 3, 2018

To: Division of Coastal Management
 Director
 400 Commerce Avenue
 Morehead City, NC 28557
 Attn: Angela Willis, Assistant to the Director
 (transmitted via email only: angela.willis@ncdenr.gov)

Re: **CAMA Variance Request Form**
February 13-14, 2018 CRC Meeting

Dear Ms. Willis:

Enclosed with this letter please find the completed CAMA Variance Request Form, signed and dated by myself, Charles D. Evans, as the Petitioner's Attorney. Also enclosed, please find the additional information required for submission with the said Form.

On behalf of my client, the Petitioner, I am respectfully requesting that the enclosed Request Form and attachments and exhibits be considered at the CRC Meeting scheduled to be held on February 13-14 in Sunset Beach.

After your review of the enclosed documents, if you determine that any supplemental materials are necessary, please let me know and I will provide them promptly. I greatly appreciate your continued assistance and guidance with this matter. Thank you for your acceptance of the enclosed Form on behalf of the Director of the Division of Coastal Management.

Best regards,


 Charles D. Evans
 CDE/
 Enclosures

CAMA VARIANCE REQUEST FORM

DCM FORM 11

DCM FILE No.: _____

PETITIONER'S NAME Sandy Court Beach, LLC a Maryland limited liability company
John J. Fohs, managing member
 COUNTY WHERE THE DEVELOPMENT IS PROPOSED Dare

Pursuant to N.C.G.S. § 113A-120.1 and 15A N.C.A.C. 07J .0700 *et seq.*, the above named Petitioner hereby applies to the Coastal Resources Commission (CRC) for a variance.

VARIANCE HEARING PROCEDURES

A variance petition will be considered by the CRC at a regularly scheduled meeting, heard in chronological order based upon the date of receipt of a complete petition. 15A N.C.A.C. 07J .0701(e). A complete variance petition, as described below, must be *received* by the Division of Coastal Management (DCM) a minimum of six (6) weeks in advance of the first day of a regularly scheduled CRC meeting to be eligible for consideration by the CRC at that meeting. 15A N.C.A.C. 07J .0701(e). The final set of stipulated facts must be agreed to at least four (4) weeks prior to the first day of a regularly scheduled meeting. 15A N.C.A.C. 07J .0701(e). The dates of CRC meetings can be found at DCM's website: www.nccoastalmanagement.net

If there are controverted facts that are significant in determining the propriety of a variance, or if the Commission determines that more facts are necessary, the facts will be determined in an administrative hearing. 15A N.C.A.C. 07J .0701(b).

VARIANCE CRITERIA

The petitioner has the burden of convincing the CRC that it meets the following criteria:

- (a) Will strict application of the applicable development rules, standards, or orders issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.
- (b) Do such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property? Explain.
- (c) Do the hardships result from actions taken by the petitioner? Explain.
- (d) Will the variance requested by the petitioner (1) be consistent with the spirit, purpose, and intent of the rules, standards or orders issued by the Commission; (2) secure the public safety and welfare; and (3) preserve substantial justice? Explain.

Please make your written arguments that Petitioner meets these criteria on a separate piece of paper. The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the

The Commission notes that there are some opinions of the State Bar which indicate that non-attorneys may not represent others at quasi-judicial proceedings such as a variance hearing before the Commission. These opinions note that the practice of professionals, such as engineers, surveyors or contractors, representing others in quasi-judicial proceedings through written or oral argument, may be considered the practice of law. Before you proceed with this variance request, you may wish to seek the advice of counsel before having a non-lawyer represent your interests through preparation of this Petition.

For this variance request to be complete, the petitioner must provide the information listed below. The undersigned petitioner verifies that this variance request is complete and includes:

- The name and location of the development as identified on the permit application;
- A copy of the permit decision for the development in question; *(Town of Morehead)*
- A copy of the deed to the property on which the proposed development would be located;
- A complete description of the proposed development including a site plan;
- A stipulation that the proposed development is inconsistent with the rule at issue;
- Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7); *(Town of NH)*
- Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;
- A draft set of proposed stipulated facts and stipulated exhibits. Please make these verifiable facts free from argument. Arguments or characterizations about the facts should be included in the written responses to the four variance criteria instead of being included in the facts.
- This form completed, dated, and signed by the Petitioner or Petitioner's Attorney.

**Please contact DCM or the local permit officer for a full list of comments received on your permit application. Please note, for CAMA Major Permits, the complete permit file is kept in the DCM Morehead City Office.*

Petitioners Answer re: Hardship and Establishing a Variance Criteria

(a) WILL STRICT APPLICATION OF THE APPLICABLE DEVELOPMENT RULES, STANDARDS OR ORDERS ISSUED BY THE COMMISSION CAUSE THE PETITIONER UNNECESSARY HARDSHIPS? EXPLAIN THE HARDSHIPS.

Yes, because without the permit we cannot add another working bathroom and expand/enhance an existing bathroom to be handicapped accessible. The proximity of the existing bathroom and the proposed changes make it conclusive to add a much smaller separate bathroom adjacent to the existing bathroom for the persons staying in that bedroom, which would then not require them to share the handicapped bathroom.

The expansion is modest and based on the square footage requested, the increase is only seven (7%) percent of the existing, already small structure, as compared to the structures around it.

The additional square footage would also remain within the footprint of the existing house, as it would fill in space below an 8'x16' room on the upper level and would become a part of the bedroom level and would therefore, remain above the pilings already in place. Similarly, since it would fit beneath the existing main level floor space, it would not require any alterations to the roof. From an appearance perspective, it would look as though it

should have been part of the home in its original construction, and had it been included then, it would have been no issue with it.

(b) DO SUCH HARDSHIPS RESULT FROM CONDITIONS PECULIAR TO THE PETITIONER'S PROPERTY SUCH AS THE LOCATION, SIZE OR TOPOGRAPHY OF THE PROPERTY? EXPLAIN.

Yes, because the lot is in an ocean hazard area and due to the erosion that has occurred over time since the house was built in 1985, it no longer meets the setback rules that apply today. It is important to note that the house is not oceanfront and lies behind a row of existing houses. As a result, any erosion issues that may occur on the properties to the east of us (oceanfront), cannot be controlled or managed by us.

For example, we do not have the luxury or the right to aid our situation by moving sand, enhancing the dunes, adding sand fencing or sandbags, to manage the erosion. (Please note the ever-changing vegetation lines here and how they could change again based on pending beach replenishment 2017-2018.)

With regard to the physical size of the house, it should be noted that when it was built in 1985, the typical floor plan consisted of long narrow hallways and tight doorways, bedroom and bathroom spaces. The floor plan is inherently restrictive of anyone with limited mobility or in need of accommodations. Through no fault of the developer, builder or ourselves upon purchase, the design is

reflective of its time. Today, however, meeting the needs of a wider range of individuals in building is widely accepted, applauded and even mandated in some cases. It is an important advancement which we would like to further in order to provide handicapped accessible facilities.

(c) DO THE HARDSHIPS RESULT FROM ACTIONS TAKEN BY THE PETITIONER? EXPLAIN.

No. The hardships are specific and peculiar to the property over which the petitioner has had no control. Again, the property lies within an ocean hazard area which is ever changing and is being taken into account. All aspects of the proposed changes have taken into consideration the intent of the law that exists to protect these land areas.

For example, there will be no additional pilings, the structure will remain above the flood plain, the roof will remain exactly as is and there will be no adverse environmental impacts.

(d) WILL THE VARIANCE REQUESTED BY THE PETITIONER (1) BE CONSISTENT WITH THE SPIRIT, PURPOSE AND INTENT OF THE RULES, STANDARDS OR ORDERS ISSUED BY THE COMMISSION; (2) SECURE THE PUBLIC SAFETY AND WELFARE; AND (3) PRESERVE SUBSTANTIAL JUSTICE? EXPLAIN.

1. Yes. Consistent with the Management Objective of Estuarian Ocean Systems in 15ANCACo7H.0203, the proposed structure would not impact any biological, social, economic or aesthetic values, based on the physical properties of the structure as previously described, in that it does not increase the footprint, add pilings, impact adversely any environmental issues surrounding it (as it is contained under an existing overhanging space), would remain above flood level and does not change the height of the existing structure. Furthermore, the proposed changes would actually enhance the use of the property, making it more livable and handicapped accessible, therefore better accommodating the owners and increasing the time spent enjoying and maintaining the home now that it is no longer on the rental market. The fact that additional time and care would be spent enjoying and maintaining the home perpetuates the conservation of the entire area and minimizes the likelihood of significant loss of private property and public resources. Maintenance of the structure and the enjoyment of the surrounding natural habitat and environment would be our priority.

2. Similarly, as described above, it would preserve and enhance public safety, in that it does not adversely impact the property or the rights of anyone else.

3. Preserving substantial justice is a unique situation, in that changes or modifications would be specific to accommodating any

handicapped occupants or guests and would allow the property to be more accessible and useable and therefore maintained on a regular basis and would not create any known injustice as it would have no adverse impacts on any surrounding properties.

In summary, what is being proposed is unique to this property, will promise additional use of the property by handicapped individuals and will not create any known adverse circumstances and should be allowed for the good of the community.

Closing

On behalf of the Applicant, I submit that the proposed development does not thwart the Management Objective of the Estuarine Ocean System and carries forward the objectives of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas and estuarine and public trust shorelines, as an interrelated group of AEC's so as to safeguard and perpetuate their biological, social, economic and aesthetic values and to ensure that development occurring within these AEC's is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. And the proposed development is consistent with the objectives of CAMA and the Coastal Resources Commission to protect present common law and statutory public rights of access to our lands and waters within in the coastal area.

ATTACHMENT E:
STIPULATED EXHIBITS

1. NC SOS's office Designation of Registered Agent Form for SCB, LLC
2. Deed to SCB, LLC from Fohs 1556/271
3. High Dunes Map at Map Book 8, Page 66
4. Deed to Fohs 1130/275
5. 2014 Meekins Survey
6. Tax Card
7. 2011 Static Line overlain on 1993 and 2016 aerial photography
8. 2015 Elevation Certificate for the Site
9. 2014 CAMA Minor Permit Application Form
10. 2014 Notice of CAMA Permit Application sent to neighbors
11. 2014 Denial Letter
12. 2018 Notice of CAMA Variance sent to neighbors
13. Official Statement from Town of NH re: another nourishment
14. PowerPoint Presentation including ground level and aerial photography of the Site

STATE OF NORTH CAROLINA
Department of the Secretary of State

DESIGNATION OF REGISTERED OFFICE ADDRESS
AND/OR REGISTERED AGENT

Pursuant to §55D-30 and §55D-31 of the General Statutes of North Carolina, the undersigned entity submits the following for the purpose of designating a registered office and/or registered agent in the State of North Carolina.

1. The name of the entity is: Sandy Court Beach, LLC
2. (Check if applicable) [X] The entity currently has no registered office on file with the Secretary of State.
3. (Check if applicable) [X] The mailing address of the registered office is not on file with the Secretary of State.
4. The street address and county of the entity's designated registered office is:
Number and Street: 201 Ananias Dare Street
City: Manteo State: NC Zip Code: 27954 County: Dare

5. The mailing address if different from the street address of the designated registered office is:
Number and Street: P.O. Box 189
City: Manteo State: NC Zip Code: 27954 County: Dare

6. (Check if applicable) [X] The entity currently has no registered agent on file with the Secretary of State.
7. The name of the designated registered agent and the designated registered agent's written consent to the appointment appears below :

Charles D. Evans
(Type or Print Name of New Agent)

Handwritten signature of Charles D. Evans and the title Registered Agent.

8. The address of the entity's registered office and the address of the business office of its registered agent, as designated herein, will be identical.

9. This statement will be effective upon filing, unless a date and/or time is specified: upon filing

10. This is the January day of 18, 2018. Sandy Court Beach, LLC
(Name of Entity)
Handwritten signature of John J. Fohs
(Signature)
John J. Fohs, Member-Manager
(Type or Print Name and Title)

NOTES:
1. Filing fee is \$5.00. One executed statement must be filed with the Secretary of State.
2. This form is for use by entities that have not filed the name of a registered agent or address of a registered office with the Business Registration Division.
* Instead of signing here, the new registered agent may sign a separate written consent to the appointment, which must be attached to this statement.

Filed Book: 1656 Page: 271 Doc Id: 6182108
10/18/2005 04:32PM Receipt #: 152408
Doc Code: DEED
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC



6182108
Page: 1 of 2
10/18/2005 04:32P

UNOFFICIAL DOCUMENT
EXEMPT
DARE COUNTY TAX
COLLECTOR
NO. 70-1067-05

NORTH CAROLINA GENERAL WARRANTY DEED

Excise Tax:

Parcel Identifier No. 007200000 Verified by _____ County on the _____ day of _____, 20____
By: _____

Mail/Box to: Esther Street, Esq., 6411 Ivy Ln. Ste.200, Greenbelt, MD 20770

This instrument was prepared by: Betsy Butler, Attorney at Law

Brief description for the Index: Lot 8, Limulus / High Dunes South

THIS DEED made this 10th day of September, 2005, by and between

GRANTOR

GRANTEE

JOHN J. FOHS and wife,
DONNA H. FOHS

10 Hunt Club Court
Edgewater, MD 21037

SANDY COURT BEACH, LLC,
a Maryland Limited Liability Company

10 Hunt Club Court
Edgewater, MD 21037

This is a Deed of Gift

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Nags Head, Nags Head Township, Dare County, North Carolina and more particularly described as follows:

Being Lot Number 8 of the subdivision known as "Limulus" as shown on a map or plat entitled "High Dunes South" prepared by Quible & Associates, Inc., Consulting Engineers and Surveyors, dated January 23, 1976, and recorded in Map Book 8, Page 66 Public Registry of Dare County, North Carolina, and which has the address of 9913 Sandy Court, Limulus S/D, Nags Head, North Carolina 27959.

The property hereinabove described was acquired by Grantor by instrument recorded in Book 1130 page 275.

A map showing the above described property is recorded in Plat Book _____ page _____.

NC Bar Association Form No. 3 © 1976, Revised © 1977, 2002
Printed by Agreement with the NC Bar Association - 1981

+ James Williams & Co., Inc.
www.JamesWilliams.com



TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple. And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever, other than the following exceptions:

Easements and restrictions of record

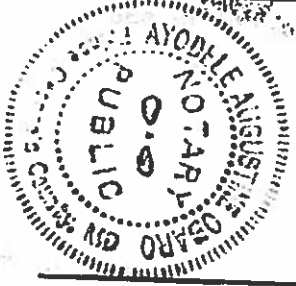
IN WITNESS WHEREOF, the Grantor has duly executed the foregoing as of the day and year first above written.

By: _____
(Entity Name)
Title: _____
By: _____
Title: _____
By: _____
Title: _____

John J. FOHS (SEAL)
Donna H. FOHS (SEAL)

(SEAL)

USE BLACK INK ONLY



State of North Carolina - County of Anne Arundel
I, the undersigned Notary Public of the County and State aforesaid, certify that JOHN J. FOHS personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed. Witness my hand and Notarial stamp or seal this 7th day of October, 2005.
My Commission Expires: 07/01/2009

USE BLACK INK ONLY

Ayodele Augustina Oshero Notary Public

State of North Carolina - County of _____
I, the undersigned Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that he is the _____ of _____ a North Carolina or _____ corporation/limited liability company/general partnership/limited partnership (strike through the inapplicable), and that by authority duly given and as the act of each entity, he signed the forgoing instrument in its name on its behalf as its act and deed. Witness my hand and Notarial stamp or seal this _____ day of _____, 20__.
My Commission Expires: _____

USE BLACK INK ONLY

Notary Public

State of North Carolina - County of _____
I, the undersigned Notary Public of the County and State aforesaid, certify that _____
Witness my hand and Notarial stamp or seal this _____ day of _____, 20__.
My Commission Expires: _____

USE BLACK INK ONLY

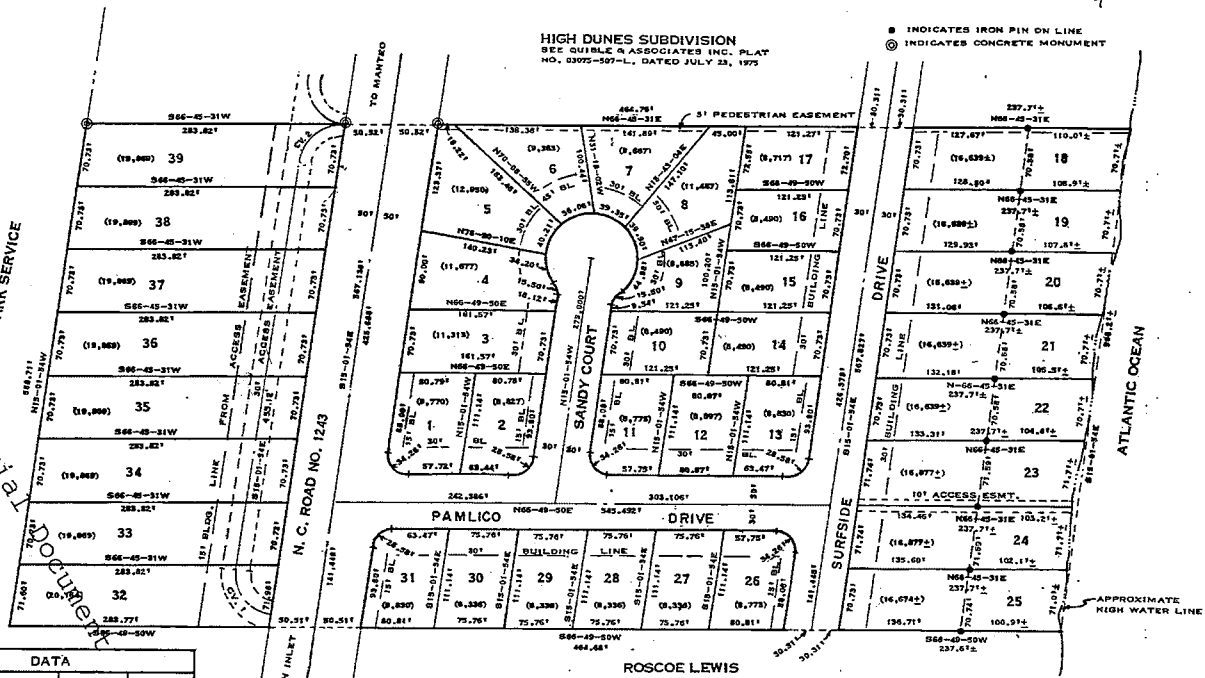
Notary Public

The foregoing Certificate(s) of _____ is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.
By: _____ Register of Deeds for _____ County
Deputy/Assistant - Register of Deeds

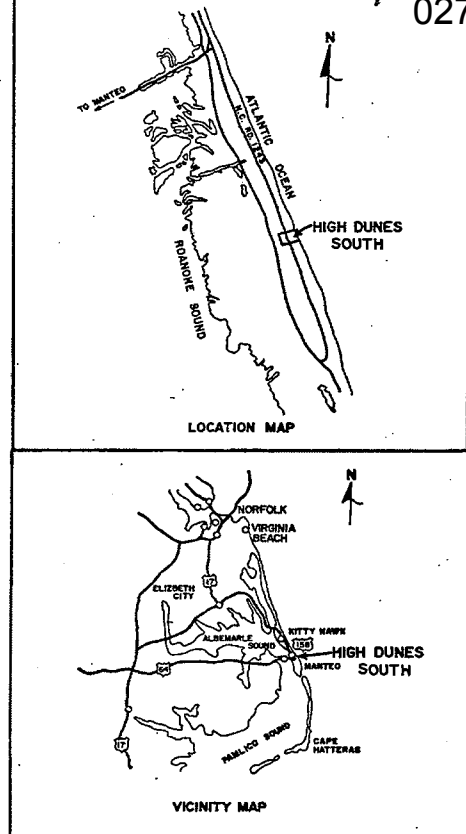
1960
Unofficial Document

3-8-76
4-10 P.M.

8/66
027



CURVE DATA				
CURVE NO.	DELTA	RADIUS	LENGTH	CHORD
1	89-12-24	45.00'	70.06'	20.7'
2	89-47-25	52.50'	74.84'	24.9'



CERTIFICATE OF OWNERSHIP AND DEDICATION

I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED HEREON AND THAT I HEREBY ADMIT THIS PLAN OF SUBDIVISION WITH MY FREE CONSENT. FURTHER, I CERTIFY THE LAND AS SHOWN HEREON IS WITHIN THE PLATTING JURISDICTION OF THE TOWN OF NAGS HEAD.
DATE Feb. 10, 1976 Pauline L. Sherman
PAULINE L. SHERMAN

SANITARIANS CERTIFICATE

I HEREBY CERTIFY THAT THE LOTS PROPOSED IN THIS MAP OF THE SUBDIVISION ENTITLED HIGH DUNES SOUTH, MEET THE REQUIREMENTS AS TO MINIMUM AREA FOR AN INDIVIDUAL SEWAGE DISPOSAL AND COMMUNITY WATER SUPPLY SYSTEM AS PROVIDED BY ORDINANCE OF THE DARE COUNTY BOARD OF HEALTH. (LOTS ARE EVALUATED SEPARATELY AS TO TOPOGRAPHY, DRAINAGE AND SOIL POROSITY.)
3/8/76
DATE Joseph P. ...
SANITARIAN

SURVEYORS CERTIFICATE

I, F. RICHARD GUILBE, CERTIFY THAT THIS MAP WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION, THAT THE ERROR OF CLOSURE AS CALCULATED BY LATITUDES AND DEPARTURES IS 1:11,500, THAT THE BOUNDARIES NOT ACTUALLY SURVEYED ARE SHOWN BY DASHED LINES PLOTTED FROM INFORMATION FOUND IN BOOK 573, PAGE 643, THAT THIS MAP WAS PREPARED IN ACCORDANCE WITH G. S. 17-37 AND 38-35.1 AS AMENDED AND THAT ALL MONUMENTS HAVE BEEN PLACED AS SHOWN HEREON.
WITNESS MY HAND AND SEAL THIS 23rd DAY OF Jan, A.D., 1976.
F.R. Guilbe
F. RICHARD GUILBE
REG. LAND SURVEYOR NO. L-1157

CERTIFICATE OF TOWN CLERK, TOWN OF NAGS HEAD

I, Constance V. Harder, TOWN CLERK OF NAGS HEAD, NORTH CAROLINA, DO CERTIFY THAT ON THE 15th DAY OF February, 1976, THE TOWN OF NAGS HEAD APPROVED THIS PLAT FOR RECORDING IN THE OFFICE OF THE REGISTER OF DEEDS AND ACCEPTED THE OBLIGATION OF THE IMPROVEMENTS, LIMITED BY RESOLUTION OF THE BOARD OF COMMISSIONERS BUT ASSUME NO RESPONSIBILITY TO OPEN OR MAINTAIN THE SAME, UNTIL, IN THE OPINION OF THE BOARD OF COMMISSIONERS OF NAGS HEAD IT IS IN THE PUBLIC INTEREST TO DO SO.
3/8/76
DATE Constance V. Harder
TOWN CLERK

PLANNING BOARD APPROVAL

FINAL PLAT APPROVED - CONDITIONALLY APPROVED. (STRIKE ONE)
DATE 3/8/76
Constance V. Harder
SECRETARY OF PLANNING BOARD

MECKLENBURG COUNTY, VIRGINIA

I, Rebecca B. Hilligree, NOTARY PUBLIC OF MECKLENBURG COUNTY, VIRGINIA, DO HEREBY CERTIFY THAT F. RICHARD GUILBE, REGISTERED LAND SURVEYOR, PERSONALLY APPEARED BEFORE ME THIS DAY AND ACKNOWLEDGED THE DUE EXECUTION OF SURVEYORS CERTIFICATE BEARING DATE OF Jan 23, 1976, APPEARING ON PLAT OF HIGH DUNES SOUTH.
MY COMMISSION EXPIRES 4/24/77 Rebecca B. Hilligree
NOTARY PUBLIC

NORTH CAROLINA, DARE COUNTY
The foregoing certificate of F. R. Guilbe, R.L.S. and Rebecca B. Hilligree, Notary Public are certified to be correct.
Presented for registration this the 8 day of March, 1976, at 7-10 o'clock P. M., and recorded in this office in Book 8 Page 66.
Ernest B. DeLoach
Register of Deeds

- NOTES**
- CURVES AT PROPERTY LINE INTERSECTIONS HAVE A RADIUS OF 30.00'
 - LOT FRONTS ON CURVES ARE ARC LENGTHS.
 - ALL CUL-DE-SACS HAVE A RADIUS OF 30.00' UNLESS OTHERWISE NOTED.
 - PAVING SHALL BE 20.00' WIDE WITH 4.00' SAND CLAY SHOULDERS ON EACH SIDE. DIAMETER OF PAVING AT CUL-DE-SAC WILL BE 30.00'
 - CURVES AT INTERSECTION OF ROAD PAVEMENT SHALL HAVE A RADIUS OF 30.00'
 - NO U.S.O.S. SURVEY MONUMENTS EXIST WITHIN 2,000' OF THIS PROPERTY.
 - THE DEVELOPER RESERVES RIGHTS-OF-WAY AND EASEMENTS FOR WATER, GAS, SEWERS, DRAINAGE PIPES, ELECTRIC AND TELEPHONE SERVICES, TOGETHER WITH AND ALL APPURTENANCES THEREON, ON, OVER, AND ACROSS EACH OF THE LOTS, AS SHOWN HEREON, AS WELL AS EASEMENTS 5' IN WIDTH CONTIGUOUS TO ALL SIDE LINES OF EACH LOT AND 15' CONTIGUOUS TO ALL REAR LOT LINES AND STREET FRONTS.
 - THERE WILL BE NO INDIVIDUAL DRIVEWAYS ENTERING ONTO N.C. ROUTE 123.
 - THE 30' ACCESS EASEMENT ON LOTS 31 THROUGH 39 IS TO BE THE LOCATION OF THE SERVICE ROAD FOR THE ABOVE STATED LOTS. THIS SERVICE ROAD IS TO BE OWNED AND MAINTAINED BY THE OWNERS OF THE SAID LOTS.
 - THESE STREETS SHOWN ON THE PLAT ARE DEDICATED AS PUBLIC STREETS; HOWEVER, THEY ARE PRIVATE STREETS ACCORDING TO G.S. 136-102.6.

HIGH DUNES SOUTH
Town of Nags Head-Dare Co., N.C.

LOTS 1 THROUGH 39

OWNED BY PAULINE L. SHERMAN

Quible and Associates
INCORPORATED
CONSULTING ENGINEERS & LAND SURVEYORS
CHASE CITY, VIRGINIA

DARE COUNTY



REAL ESTATE TRANSFER TAX

L-5014-97

\$1,680.00

DARE COUNTY NC 17

08/22/97 \$336.00

STATE OF NORTH CAROLINA



Real Estate Excise Tax

Book Page 1130 0275

FILED DARE COUNTY NC 08/22/97 4:10 PM DORRIS A. FRY Register Of Deeds

Document # 000058 Recording Book and Page

\$1680.00 T# 5014-97

Excise Tax \$336.00

Tax Lot No. Parcel Identifier No. Verified by County on the day of 19 by

Mail after recording to AYCOCK, SPENCE AND BUTLER Post Office Box 117, Nags Head, NC 27959

This instrument was prepared by Robert L. Outten, Attorney at Law

Brief description for the Index LOT 8, LIMULUS -HIGH DUNES SOUTH

NORTH CAROLINA GENERAL WARRANTY DEED

THIS DEED made this 12th day of August, 1997, by and between

GRANTOR EVA JO KELLY, unmarried

GRANTEE JOHN J. FOHS AND WIFE, DONNA H. FOHS

24 Lakeside Drive Greenbelt, MD 20770

Enter in appropriate block for each party: name, address, and, if appropriate, character of entity, e.g. corporation or partnership.

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that the Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in the City of Nags Head, Atlantic Township, Dare County, North Carolina and more particularly described as follows:

Being Lot Number 8 of the subdivision known as "Limulus" as shown on a map or plat entitled "High Dunes South" prepared by Quible & Associates, Inc., Consulting Engineers and Surveyors, dated January 23, 1976, and recorded in Map Book 8, Page 66, Public Registry of Dare County, North Carolina, and which has the address of 9913 Sandy Court, Limulus S/D, Nags Head, North Carolina 27959.

Book 1130 Page 0276

The property hereinabove described was acquired by Grantor by instrument recorded in Book 761, Page 803

A map showing the above described property is recorded in Map Book 8 page 66

TO HAVE AND TO HOLD the aforesaid lot or parcel of land and all privileges and appurtenances thereto belonging to the Grantee in fee simple.

And the Grantor covenants with the Grantee, that Grantor is seized of the premises in fee simple, has the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances, and that Grantor will warrant and defend the title against the lawful claims of all persons whomsoever except for the exceptions hereinafter stated. Title to the property hereinabove described is subject to the following exceptions:

All restrictions and easements of record, Dare County Public Registry.

IN WITNESS WHEREOF, the Grantor has hereunto set his hand and seal, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers and its seal to be hereunto affixed by authority of its Board of Directors, the day and year first above written.

(Corporate Name)

By: President

ATTEST: Secretary (Corporate Seal)

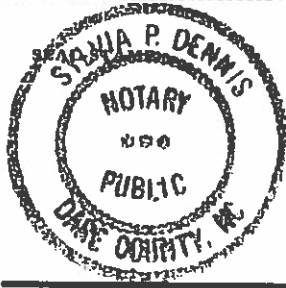
USE BLACK INK ONLY

Eva Jo Kelly (SEAL)

(SEAL)

(SEAL)

(SEAL)



NORTH CAROLINA, DARE County.

I, a Notary Public of the County and State aforesaid, certify that Eva Jo Kelly Grantor,

personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 20th day of August, 1997.

My commission expires: May 7, 2001 Sylvia P. Dennis Notary Public

SEAL-STAMP

NORTH CAROLINA, County.

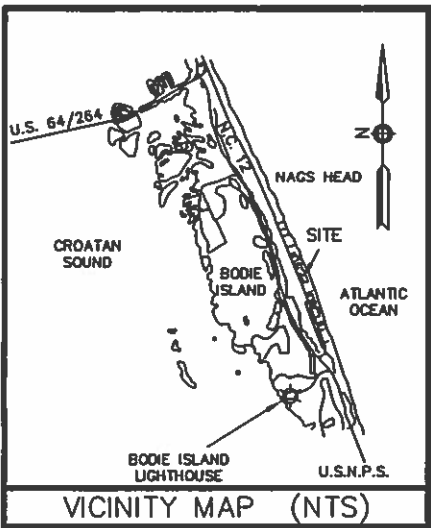
I, a Notary Public of the County and State aforesaid, certify that he is Secretary of a North Carolina corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by as its Secretary. Witness my hand and official stamp or seal, this day of, 19.

My commission expires: Notary Public

The foregoing Certificate(s) of Sylvia P. Dennis a Notary Public of Dare Co, NC

is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

By Vanzella M. Walcott REGISTER OF DEEDS FOR Dare COUNTY Deputy/Assistant - Register of Deeds



N/F
LOT 27 - HIGH DUNES
 (MB 8, PG 58)

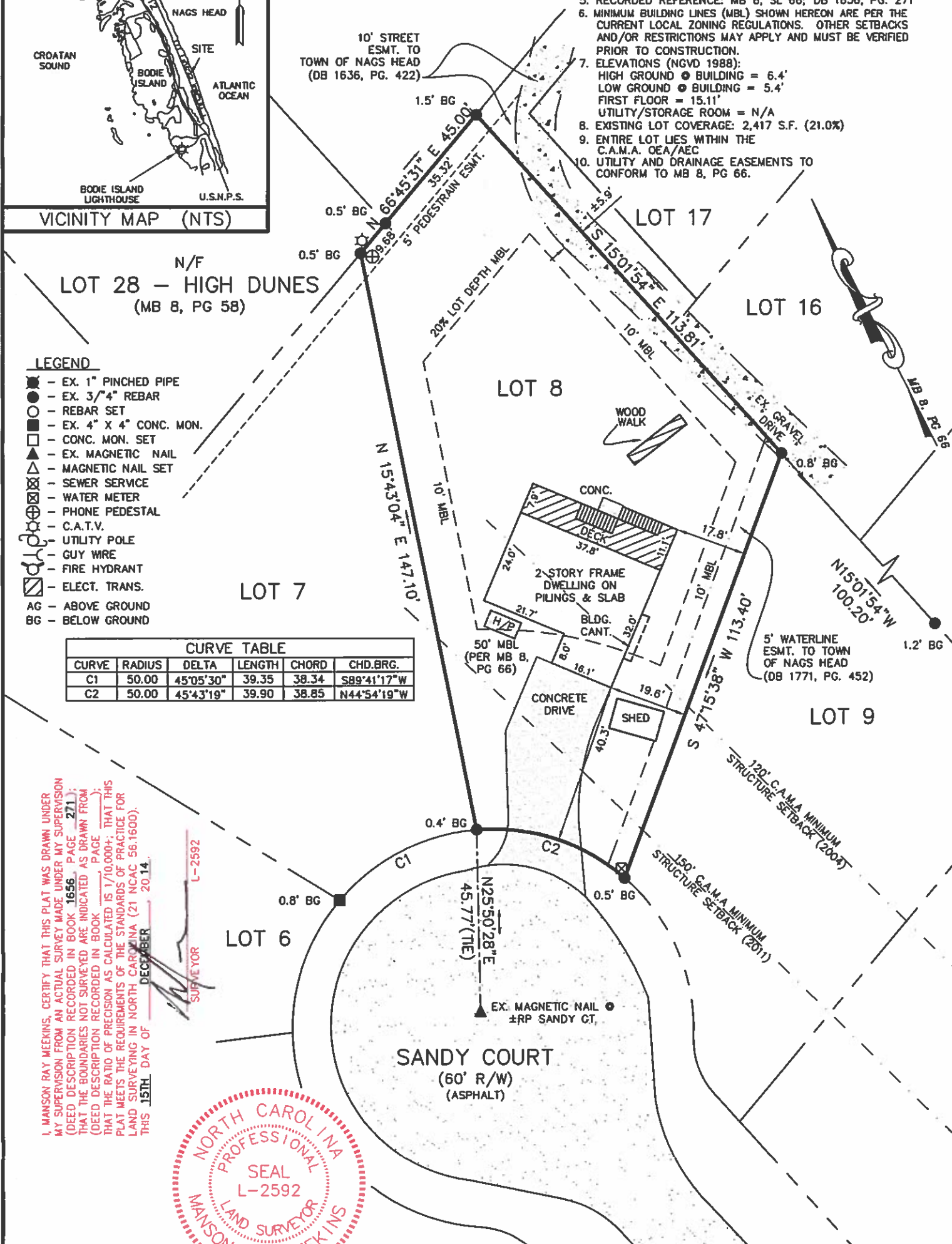
- NOTES:**
1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
 2. AREA BY COORDINATE COMPUTATION = 11,487 S.F.
 3. F.I.R.M. ZONE: "VE" (EL. 11') (PER F.I.R.M.) + 1.0' FREEBOARD
 4. PIN NO.: 14 071811 56 7187
 5. RECORDED REFERENCE: MB 8, SL 66; DB 1656, PG. 271
 6. MINIMUM BUILDING LINES (MBL) SHOWN HEREON ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
 7. ELEVATIONS (NGVD 1988):
 HIGH GROUND @ BUILDING = 6.4'
 LOW GROUND @ BUILDING = 5.4'
 FIRST FLOOR = 15.11'
 UTILITY/STORAGE ROOM = N/A
 8. EXISTING LOT COVERAGE: 2,417 S.F. (21.0%)
 9. ENTIRE LOT LIES WITHIN THE C.A.M.A. OEA/AEC
 10. UTILITY AND DRAINAGE EASEMENTS TO CONFORM TO MB 8, PG 66.

N/F
LOT 28 - HIGH DUNES
 (MB 8, PG 58)

- LEGEND**
- - EX. 1" PINCHED PIPE
 - - EX. 3/4" REBAR
 - - REBAR SET
 - - EX. 4" X 4" CONC. MON.
 - ▣ - CONC. MON. SET
 - ▲ - EX. MAGNETIC NAIL
 - △ - MAGNETIC NAIL SET
 - ⊗ - SEWER SERVICE
 - ⊕ - WATER METER
 - ⊙ - PHONE PEDESTAL
 - ⊛ - C.A.T.V.
 - ⊚ - UTILITY POLE
 - ⊗ - GUY WIRE
 - ⊕ - FIRE HYDRANT
 - ⊙ - ELECT. TRANS.
 - AG - ABOVE GROUND
 - BG - BELOW GROUND

CURVE TABLE					
CURVE	RADIUS	DELTA	LENGTH	CHORD	CHD.BRG.
C1	50.00	45°05'30"	39.35	38.34	S89°41'17"W
C2	50.00	45°43'19"	39.90	38.85	N44°54'19"W

I, MANSON RAY MEEKINS, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK PAGE 271); THAT THE BOUNDARIES NOT SURVEYED ARE INDICATED AS DRAWN FROM (DEED DESCRIPTION RECORDED IN BOOK PAGE 271); THAT THE RATIO OF PRECISION AS CALCULATED IS 1/10,000+; THAT THIS PLAT MEETS THE REQUIREMENTS OF THE STANDARDS OF PRACTICE FOR LAND SURVEYING IN NORTH CAROLINA (21 NCAC 56.1600).
 THIS 15TH DAY OF DECEMBER 2014



Parcel:

[Parcel Data](#)[Tax Bill](#)[Tax Certification](#)[GIS](#)[Quick Links](#)

County of Dare, North Carolina

*Owner and Parcel information is based on current data on file and was last updated on January 12 2018

Primary (100%) Owner Information:

SANDY COURT BEACH, LLC

10 HUNT CLUB CT

EDGEWATER MD 21037

Parcel Information:

Parcel: 007390000 PIN: 071811567187

District: 14- NAGS HEAD

Subdivision: HIGH DUNES SOUTH
(LIMULUS)

LotBlkSect: LOT: 8 BLK: SEC:

Multiple Lots: -

PlatCabSlide: PL: 8 SL: 66 Units: 1

Deed Date: 10/18/2005

BkPg: [1656/0271](#)**Parcel Status:** ACTIVE

007390-000 14-071811-076 03/11

Property Use: RESIDENTIAL**9913 S SANDY CT****BUILDING USE & FEATURES**

Building Use:	BEACH BOX
Exterior Walls:	MODERN FRAME
Full Baths:	3 Half Baths: 0
Bedrooms:	4
Heat-Fuel:	3 - ELECTRIC
Heat-Type:	2 - FORCED AIR
Air Conditioning:	4 -CENTRAL W/AC

Tax Year Bldg Value: \$133,300**Next Year Bldg Value: \$133,300****Actual Year Built: 1985****Finished sqft for building 1: 1848
Total Finished SqFt for all bldgs:
1848**

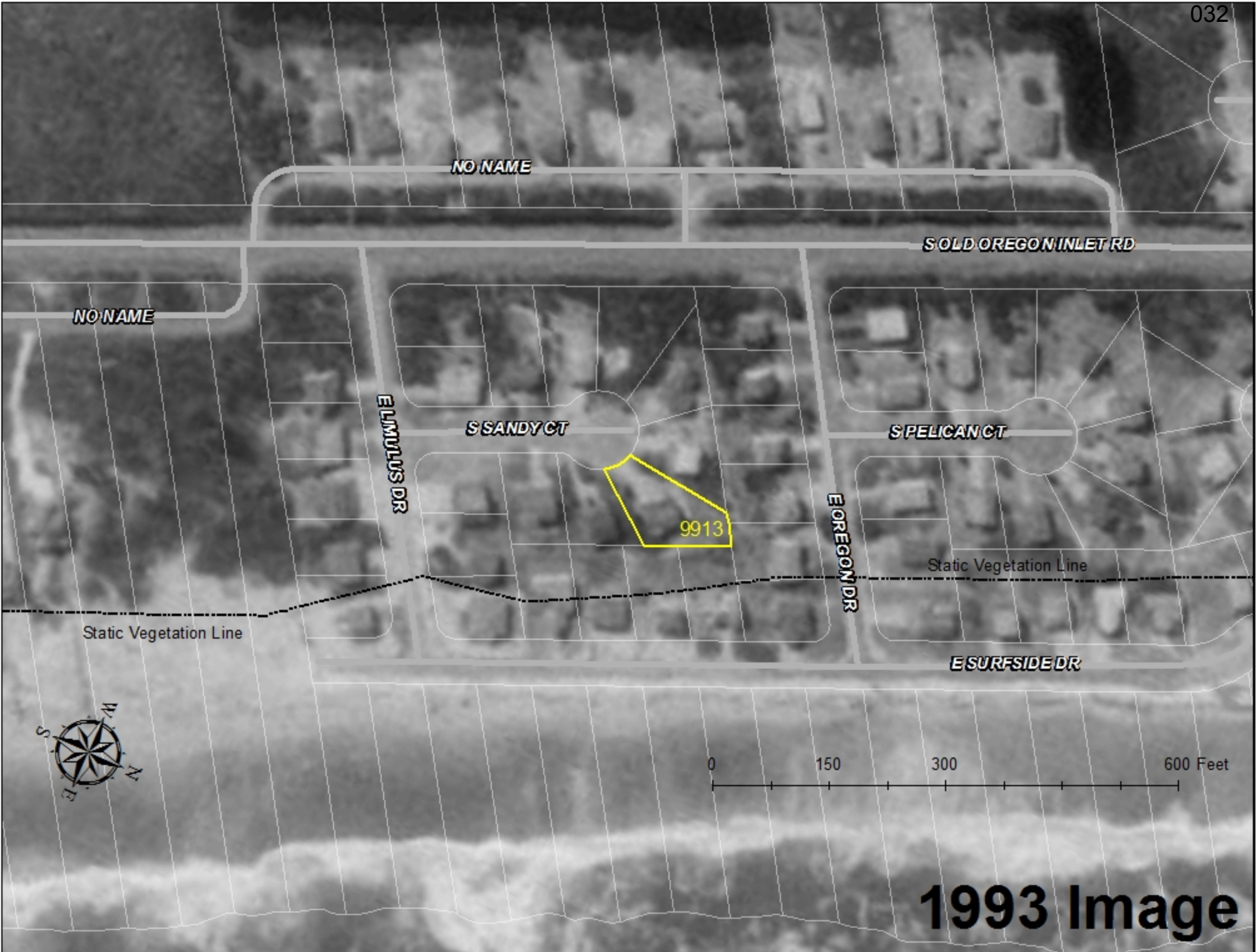
Disclaimer: In instances where a dwelling contains unfinished living area, the square footage of that area is included in the total finished sqft on this record. However, the assessed value for finish has been removed.

MISCELLANEOUS USE Tax Year Misc Value: \$0**Next Year Misc Value: \$0****LAND USE****Tax Year Land Value: \$216,200****Next Year Land Value: \$216,200**

Land Description : 14-Ocean Influence A

TOTAL LAND AREA: 11500 square feet**Tax Year Total Value: \$349,500****Next Year Total Value: \$349,500**

*Values shown are on file as of January 12 2018



NO NAME

SOLD OREGON INLET RD

NO NAME

E LUMULUS DR

S SANDY CT

SPELICAN CT

9913

E OREGON DR

Static Vegetation Line

Static Vegetation Line

E SURFSIDE DR

0 150 300 600 Feet

1993 Image



NO NAME

SOLD OREGON INLET RD

NO NAME

E MIMULUS DR

S SANDY CT

S PELICAN CT

E OREGON DR

9913

Static Vegetation Line

Static Vegetation Line

E SURFSIDE DR

0 150 300 600 Feet

2006 Image

ELEVATION CERTIFICATE

OMB No. 1660-0008 **034**
 Expiration Date: July 31, 2015

Important: Read the instructions on pages 1-9.

SECTION A - PROPERTY INFORMATION

FOR INSURANCE COMPANY USE

A1. Building Owner's Name **Sandy Court Beach, LLC (SSP File:0704838)**

Policy Number:

A2. Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
9913 S. Sandy Ct.

Company NAIC Number:

City **Nags Head**

State **NC**

ZIP Code **27959**

A3. Property Description (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.)
Lot 8, High Dunes South

A4. Building Use (e.g., Residential, Non-Residential, Addition, Accessory, etc.) **Residential**

A5. Latitude/Longitude: Lat. **35-51-42.6** Long. **-75-34-16.7** Horizontal Datum: NAD 1927 NAD 1983

A6. Attach at least 2 photographs of the building if the Certificate is being used to obtain flood insurance.

A7. Building Diagram Number **5**

A8. For a building with a crawlspace or enclosure(s):

- a) Square footage of crawlspace or enclosure(s) **N/A** sq ft
- b) Number of permanent flood openings in the crawlspace or enclosure(s) within 1.0 foot above adjacent grade **N/A**
- c) Total net area of flood openings in A8.b **N/A** sq in
- d) Engineered flood openings? Yes No

A9. For a building with an attached garage:

- a) Square footage of attached garage **N/A** sq ft
- b) Number of permanent flood openings in the attached garage within 1.0 foot above adjacent grade **N/A**
- c) Total net area of flood openings in A9.b **N/A** sq in
- d) Engineered flood openings? Yes No

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. NFIP Community Name & Community Number
Nags Head 375356

B2. County Name
Dare

B3. State
NC

B4. Map/Panel Number
3730 0718 00

B5. Suffix
J

B6. FIRM index Date
9/20/2006

B7. FIRM Panel Effective/Revised Date
09/20/2006

B8. Flood Zone(s)
VE

B9. Base Flood Elevation(s) (Zone AO, use base flood depth)
11.0'

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in Item B9.

- FIS Profile FIRM Community Determined Other/Source: _____

B11. Indicate elevation datum used for BFE in Item B9: NGVD 1929 NAVD 1988 Other/Source: _____

B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? Yes No
 Designation Date: _____ CBRS OPA

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: Construction Drawings* Building Under Construction* Finished Construction

*A new Elevation Certificate will be required when construction of the building is complete.

C2. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO. Complete Items C2.a-h below according to the building diagram specified in Item A7. In Puerto Rico only, enter meters.

Benchmark Utilized: **Y-168**

Vertical Datum: **NAVD 88**

Indicate elevation datum used for the elevations in items a) through h) below. NGVD 1929 NAVD 1988 Other/Source: _____

Datum used for building elevations must be the same as that used for the BFE.

Check the measurement used.

- a) Top of bottom floor (including basement, crawlspace, or enclosure floor) **15.1** feet meters
- b) Top of the next higher floor **24.2** feet meters
- c) Bottom of the lowest horizontal structural member (V Zones only) **13.5** feet meters
- d) Attached garage (top of slab) **N/A** feet meters
- e) Lowest elevation of machinery or equipment servicing the building (Describe type of equipment and location in Comments) **13.4** feet meters
- f) Lowest adjacent (finished) grade next to building (LAG) **5.4** feet meters
- g) Highest adjacent (finished) grade next to building (HAG) **6.4** feet meters
- h) Lowest adjacent grade at lowest elevation of deck or stairs, including structural support **5.5** feet meters

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information on this Certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

- Check here if comments are provided on back of form. Were latitude and longitude in Section A provided by a licensed land surveyor? Yes No
- Check here if attachments.

Certifier's Name **Manson Ray Meekins**

License Number **L-2592**

Title **PLS**

Company Name **Seaboard Surveying & Planning, Inc.**

Address **103F West Wood Hill Dr.**

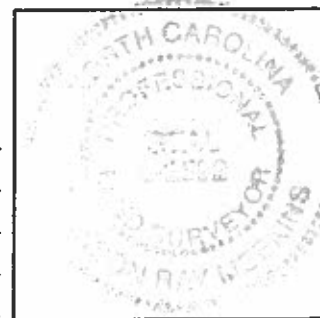
City **Nags Head**

State **NC** ZIP Code **27959**

Signature 

Date **8/20/15**

Telephone **252-480-9998**



IMPORTANT: In these spaces, copy the corresponding information from Section A.

FOR INSURANCE COMPANY USE

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
9913 S. Sandy Ct.

Policy Number:

City Nags Head

State NC

ZIP Code 27959

Company NAIC Number:

SECTION D – SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

Comments (C-1536);(SSP File: 0704838); municipality requires one foot freeboard above B.F.E.; C2e refers to heat pump (lowest elec. outlet: 9.8')

Signature

Date 8/20/15

SECTION E – BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zones AO and A (without BFE), complete Items E1–E5. If the Certificate is intended to support a LOMA or LOMR-F request, complete Sections A, B, and C. For Items E1–E4, use natural grade, if available. Check the measurement used. In Puerto Rico only, enter meters.

- E1. Provide elevation information for the following and check the appropriate boxes to show whether the elevation is above or below the highest adjacent grade (HAG) and the lowest adjacent grade (LAG).
a) Top of bottom floor (including basement, crawlspace, or enclosure) is ... feet meters above or below the HAG.
b) Top of bottom floor (including basement, crawlspace, or enclosure) is ... feet meters above or below the LAG.
E2. For Building Diagrams 6–9 with permanent flood openings provided in Section A Items 8 and/or 9 (see pages 8–9 of Instructions), the next higher floor (elevation C2.b in the diagrams) of the building is ... feet meters above or below the HAG.
E3. Attached garage (top of slab) is ... feet meters above or below the HAG.
E4. Top of platform of machinery and/or equipment servicing the building is ... feet meters above or below the HAG.
E5. Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance? Yes No Unknown. The local official must certify this information in Section G.

SECTION F – PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here. The statements in Sections A, B, and E are correct to the best of my knowledge.

Property Owner's or Owner's Authorized Representative's Name

Address

City

State

ZIP Code

Signature

Date

Telephone

Comments

Check here if attachments.

SECTION G – COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below. Check the measurement used in Items G8–G10. In Puerto Rico only, enter meters.

- G1. The information in Section C was taken from other documentation that has been signed and sealed by a licensed surveyor, engineer, or architect who is authorized by law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)
G2. A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.
G3. The following information (Items G4–G10) is provided for community floodplain management purposes.

Table with 3 columns: G4. Permit Number, G5. Date Permit Issued, G6. Date Certificate Of Compliance/Occupancy Issued

- G7. This permit has been issued for: New Construction Substantial Improvement
G8. Elevation of as-built lowest floor (including basement) of the building: ... feet meters Datum
G9. BFE or (in Zone AO) depth of flooding at the building site: ... feet meters Datum
G10. Community's design flood elevation: ... feet meters Datum

Local Official's Name Title

Community Name Telephone

Signature Date

Comments

Check here if attachments.

See Instructions for Item A6.

IMPORTANT: In these spaces, copy the corresponding information from Section A.

FOR INSURANCE COMPANY USE

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
9913 S. Sandy Ct.

Policy Number:

City Nags Head

State NC

ZIP Code 27959

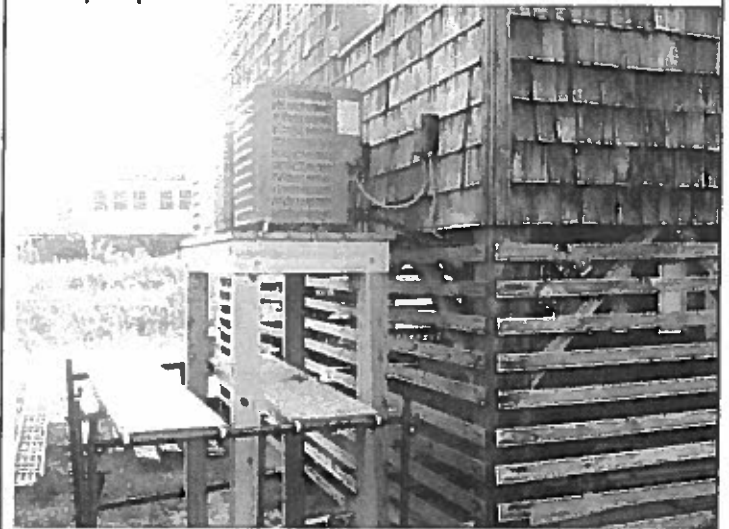
Company NAIC Number:

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.

Front 8/17/15



Heat pump 8/17/15



Rear 8/17/15



[Handwritten Signature]
8/25/15

Building Photographs

See instructions for Item A6.

IMPORTANT: In these spaces, copy the corresponding information from Section A.

FOR INSURANCE COMPANY USE

Building Street Address (including Apt., Unit, Suite, and/or Bldg. No.) or P.O. Route and Box No.
9913 S. Sandy Ct.

Policy Number:

City Nags Head

State NC

ZIP Code 27959

Company NAIC Number:

If using the Elevation Certificate to obtain NFIP flood insurance, affix at least 2 building photographs below according to the instructions for Item A6. Identify all photographs with date taken; "Front View" and "Rear View"; and, if required, "Right Side View" and "Left Side View." When applicable, photographs must show the foundation with representative examples of the flood openings or vents, as indicated in Section A8. If submitting more photographs than will fit on this page, use the Continuation Page.

Front 1/26/15



NORTH CAROLINA
 PROFESSIONAL
 SEAL
 L-2302
 LAND SURVEYOR
 MANSON RAY MEEKINS
 1/29/15

Rear 1/26/15



Locality NAGS HEAD Permit Number 14-52

Ocean Hazard Estuarine Shoreline _____ ORW Shoreline _____ Public Trust Shoreline _____ Other _____

(For official use only) DEC 2 2014

GENERAL INFORMATION

LAND OWNER

Name JOHN J. FOHS - SANDY CT. BEACH LLC

Address 9913 SANDY CT

City NAGS HEAD State NC Zip 27959 Phone 301 502-4279

Email jay.fohs@gmail.com

AUTHORIZED AGENT

Name SAM MOORE - SOUND SIDE CONSTRUCTION

Address P.O. Box 956

City MANTEO State NC Zip 27954 Phone 252-305-2526

Email Sam@MooreIslandProperties.com

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 9913 SANDY CT

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) Add 250 sq ft of living space

SIZE OF LOT/PARCEL: _____ square feet _____ acres

PROPOSED USE: Residential (Single-family Multi-family) Commercial/Industrial Other

COMPLETE EITHER (1) OR (2) BELOW (Contact your Local Permit Officer if you are not sure which AEC applies to your property):

(1) OCEAN HAZARD AECs: TOTAL FLOOR AREA OF PROPOSED STRUCTURE: 1,016 square feet (includes air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load-bearing attic space)

(2) COASTAL SHORELINE AECs: SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT UPON SURFACES: 1,016 square feet (includes the area of the roof/drip line of all buildings, driveways, covered decks, concrete or masonry patios, etc. that are within the applicable AEC. Attach your calculations with the project drawing.)

STATE STORMWATER MANAGEMENT PERMIT: Is the project located in an area subject to a State Stormwater Management Permit issued by the NC Division of Water Quality?
 YES _____ NO

If yes, list the total built upon area/impervious surface allowed for your lot or parcel: _____ square feet.

OTHER PERMITS MAY BE REQUIRED: The activity you are planning may require permits other than the CAMA minor development permit, including, but not limited to: Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Sand Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others. Check with your Local Permit Officer for more information.

STATEMENT OF OWNERSHIP:

I, the undersigned, an applicant for a CAMA minor development permit, being either the owner of property in an AEC or a person authorized to act as an agent for purposes of applying for a CAMA minor development permit, certify that the person listed as landowner on this application has a significant interest in the real property described therein. This interest can be described as: (check one)

an owner or record title, Title is vested in Sandy Court Beach see Deed Book 1656 page 271 in the Dare County Registry of Deeds.

an owner by virtue of inheritance. Applicant is an heir to the estate of _____; probate was in _____ County.

if other interest, such as written contract or lease, explain below or use a separate sheet & attach to this application.

NOTIFICATION OF ADJACENT PROPERTY OWNERS:

I furthermore certify that the following persons are owners of properties adjoining this property. I affirm that I have given **ACTUAL NOTICE** to each of them concerning my intent to develop this property and to apply for a CAMA permit.


- | (Name) | (Address) |
|-----------------------------|--|
| (1) <u>KEN KOOCHER</u> | <u>100 TURKEY HILL RD NEWBURYPORT, MA</u> |
| (2) <u>GEORGE GUNLOCK</u> | <u>18755 LACROSSE AVE SOUTHFIELD MI</u> |
| (3) <u>BEACH GLASS, LLC</u> | <u>2028 PUNGGO RIDGE CT VIRGINIA BEACH, VA</u> |
| (4) <u>ROBERT PHILLIPS</u> | <u>6691 GIVENS POND LN LAUREL, DE</u> |

ACKNOWLEDGEMENTS:

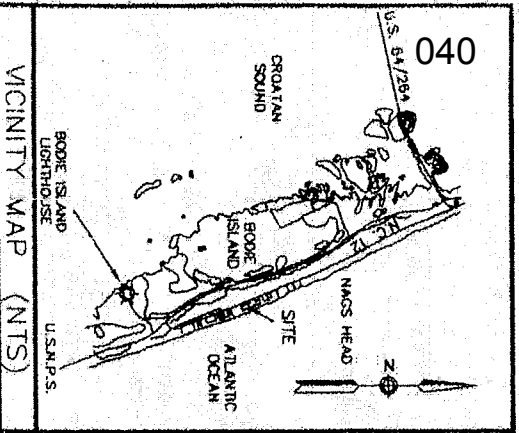
I, the undersigned, acknowledge that the land owner is aware that the proposed development is planned for an area which may be susceptible to erosion and/or flooding. I acknowledge that the Local Permit Officer has explained to me the particular hazard problems associated with this lot. This explanation was accompanied by recommendations concerning stabilization and floodproofing techniques.

I furthermore certify that I am authorized to grant, and do in fact grant, permission to Division of Coastal Management staff, the Local Permit Officer and their agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This the 11th day of NOV., 20 14


Landowner or person authorized to act as his/her agent for purpose of filing a CAMA permit application

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the Ocean Hazard AEC Notice where necessary, a check for \$100.00 made payable to the locality, and any information as may be provided orally by the applicant. The details of the application as described by these sources are incorporated without reference in any permit which may be issued. Deviation from these details will constitute a violation of any permit. Any person developing in an AEC without permit is subject to civil, criminal and administrative action.



LOT 27 - HIGH DUNES
(MB 8, PG 58)

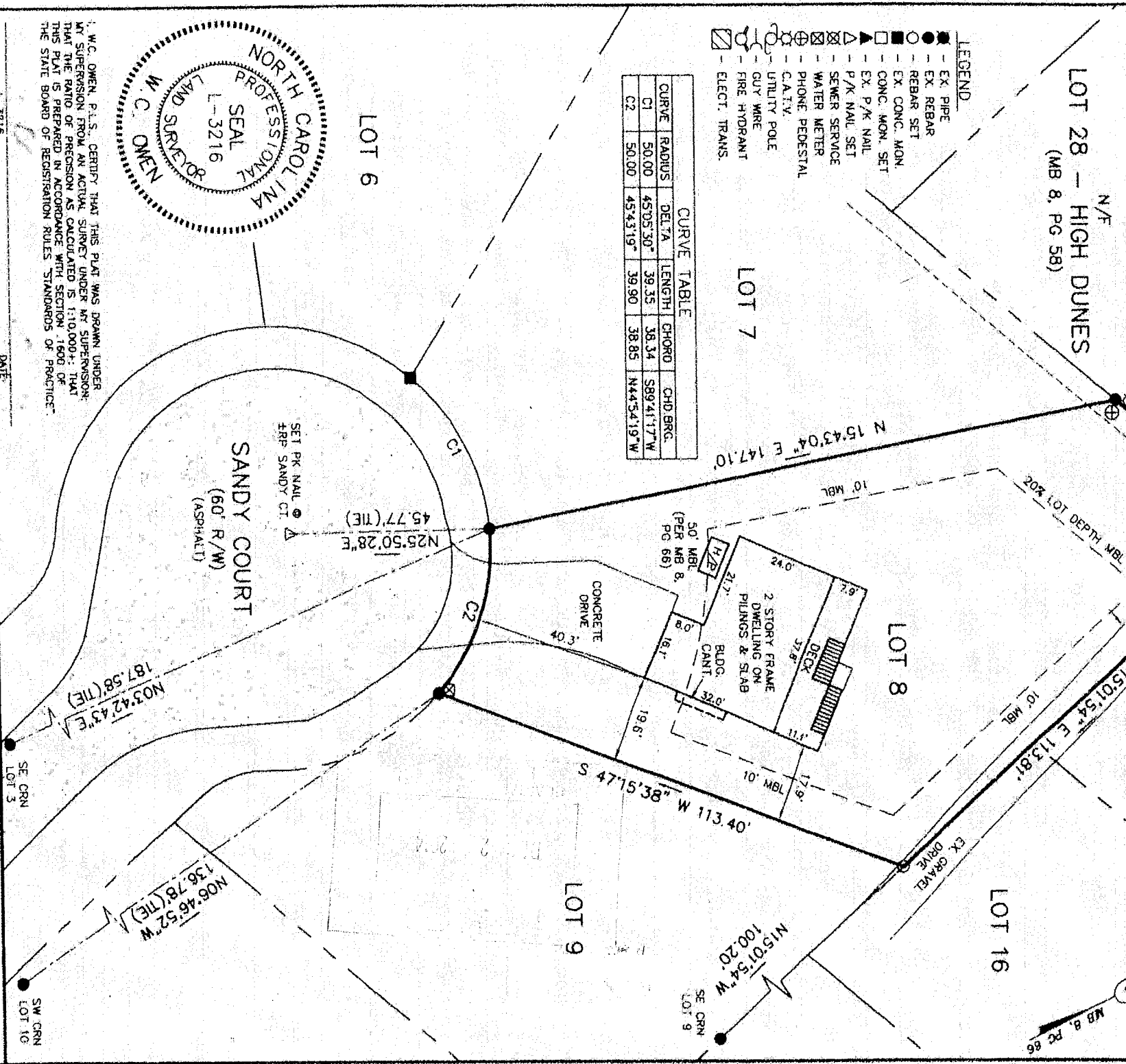
LOT 28 - HIGH DUNES
(MB 8, PG 58)

LEGEND

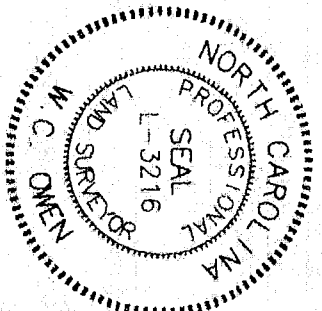
- - EX. PIPE
- - EX. REBAR
- ◻ - REBAR SET
- ◻ - EX. CONC. MON.
- ◻ - CONC. MON. SET
- ▲ - EX. P/K NAIL
- △ - P/K NAIL SET
- ⊗ - SEWER SERVICE
- ⊗ - WATER METER
- ⊗ - PHONE PEDESTAL
- ⊗ - C.A.T.V.
- ⊗ - UTILITY POLE
- ⊗ - GUY WIRE
- ⊗ - FIRE HYDRANT
- ⊗ - ELECT. TRANS.

CURVE TABLE

CURVE	RADIUS	DELTA	LENGTH	CHORD	CHD BRG.
C1	50.00	45°05'30"	39.35	38.34	S89°41'17"W
C2	50.00	45°43'19"	39.90	38.85	N44°54'19"W

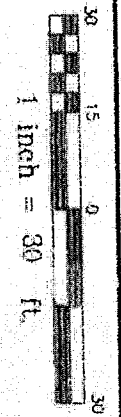


- NOTES:
1. THIS SURVEY IS SUBJECT TO ANY FACTS THAT MAY BE DISCLOSED BY A FULL AND ACCURATE TITLE SEARCH.
 2. AREA BY COORDINATE COMPUTATION = 11,487 S.F.
 3. F.I.R.M. ZONE: "VE" (EL. 11') (PER F.I.R.M.)
 4. PIN NO.: 14 071811 56 7009
 5. RECORDED REFERENCE: MB 8, SL 66
 6. MINIMUM BUILDING LINES (MBL) SHOWN HEREON ARE PER THE CURRENT LOCAL ZONING REGULATIONS. OTHER SETBACKS AND/OR RESTRICTIONS MAY APPLY AND MUST BE VERIFIED PRIOR TO CONSTRUCTION.
 7. ELEVATIONS (NGVD 1989):
HIGH GROUND ● BUILDING = 6.4'
LOW GROUND ● BUILDING = 5.4'
FIRST FLOOR = 15.11'
 8. UTILITY AND DRAINAGE EASEMENTS TO CONFORM TO MB 8, PG 66.



I, W.C. OWEN, P.L.S., CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY UNDER MY SUPERVISION, THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000±; THAT THIS PLAT IS PREPARED IN ACCORDANCE WITH SECTION 1800 OF THE STATE BOARD OF REGISTRATION RULES "STANDARDS OF PRACTICE".

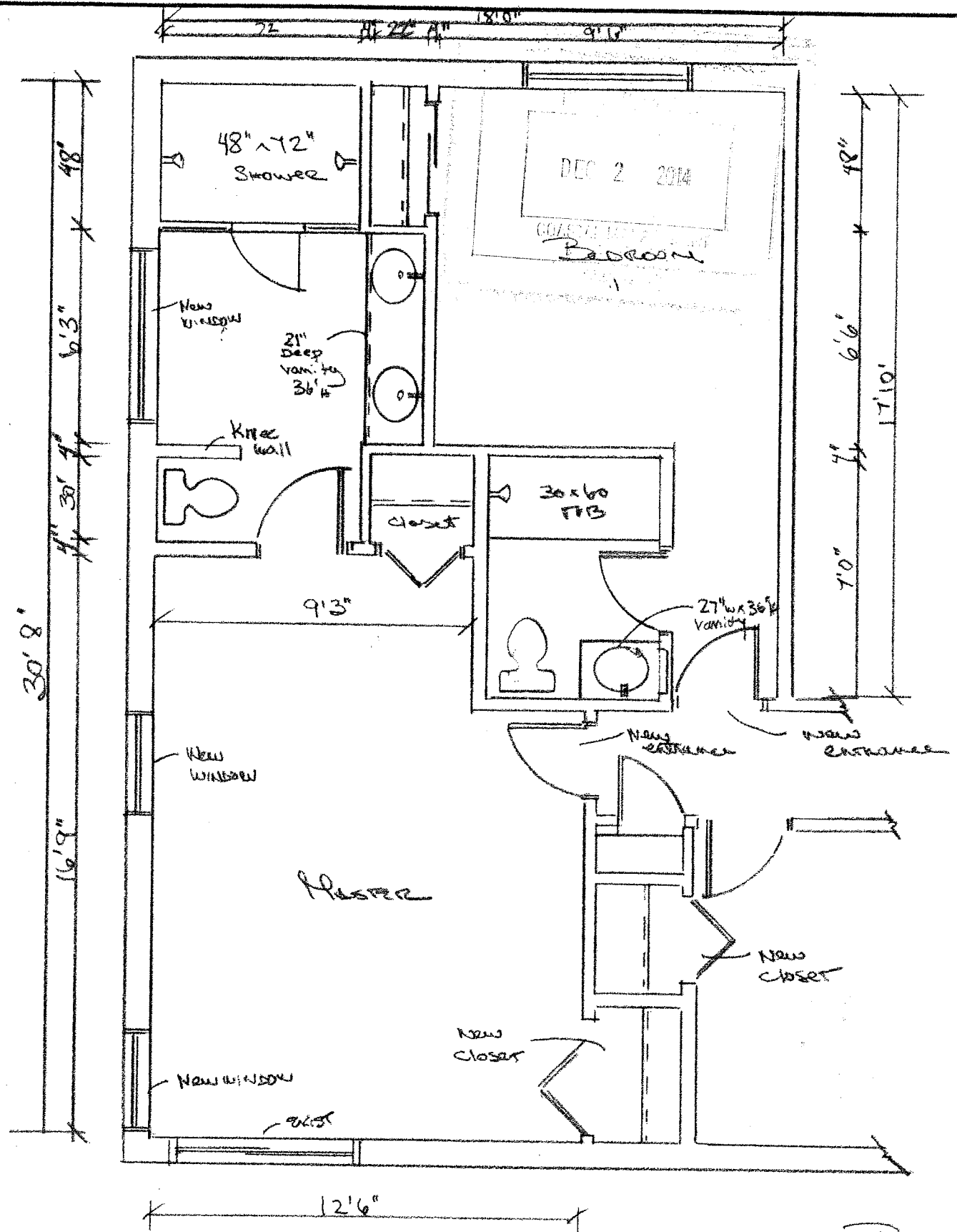
PHYSICAL SURVEY FOR
SANDY COURT BEACH, LLC
LOT 8 - HIGH DUNES SOUTH - NAGS HEAD
NAGS HEAD TOWNSHIP - DARE COUNTY - NORTH CAROLINA



FILE: 0704838 SURVEYED: 10/23/07 PJM PLATTED: 10/29/07 TG



SEABOARD SURVEYING & PLANNING, INC.
103F W. WOOD HILL DR., P.O. BOX 58, NAGS HEAD, NC 27959
OFFICE: (252) 480-9998 FAX: (252) 480-0571



Please note: Drawing is for design purposes only. All dimensions must be confirmed by builder.

Toms Residence Nails Head		
SCALE: 1/4" = 1'0"	APPROVED BY: [Signature]	DRAWN BY: HMA
DATE: 7/26/2012		REVISED:
PLAN - BUILDER'S		
Bedroom Level w/ New Bath		DRAWING NUMBER: 1

OCEAN HAZARD AEC NOTICE

042

Project is in an: Ocean Erodible Area High Hazard Flood Area Inlet Hazard Area

Property Owner: Sandy Court Beach LLC

Property Address: 9913 S Sandy Ct

Date Lot Was Platted: _____

This notice is intended to make you, the applicant, aware of the special risks and conditions associated with development in this area, which is subject to natural hazards such as storms, erosion and currents. The rules of the Coastal Resources Commission require that you receive an AEC Hazard Notice and acknowledge that notice in writing before a permit for development can be issued.

The Commission's rules on building standards, oceanfront setbacks and dune alterations are designed to minimize, but not eliminate, property loss from hazards. By granting permits, the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development. Permits issued in the Ocean Hazard Area of Environmental Concern include the condition that structures be relocated or dismantled if they become imminently threatened by changes in shoreline configuration. The structure(s) must be relocated or dismantled within two (2) years of becoming imminently threatened, and in any case upon its collapse or subsidence.

The best available information, as accepted by the Coastal Resources Commission, indicates that the annual long-term average ocean erosion rate for the area where your property is located is 2 feet per year.

The rate was established by careful analysis of aerial photographs of the coastline taken over the past 50 years.

Studies also indicate that the shoreline could move as much as 25 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 11 feet deep in this area.

Preferred oceanfront protection measures are beach nourishment and relocation of threatened structures. Hard erosion control structures such as bulkheads, seawalls, revetments, groins, jetties and breakwaters are prohibited. Temporary sand bags may be authorized under certain conditions.

The applicant must acknowledge this information and requirements by signing this notice in the space below. Without the proper signature, the application will not be complete.

[Signature]
Property Owner Signature _____ Date _____

SPECIAL NOTE: This hazard notice is required for development in areas subject to sudden and massive storms and erosion. Permits issued for development in this area expire on December 31 of the third year following the year in which the permit was issued. Shortly before work begins on the project site, the Local Permit Officer must be contacted to determine the vegetation line and setback distance at your site. If the property has seen little change since the time of permit issuance, and the proposed development can still meet the setback requirement, the LPO will inform you that you may begin work. Substantial progress on the project must be made within 60 days of this setback determination, or the setback must be remeasured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate remeasurement of the setback. It is important that you check with the LPO before the permit expires for official approval to continue the work after the permit has expired. Generally, if foundation pilings have been placed and substantial progress is continuing, permit renewal can be authorized. It is unlawful to continue work after permit expiration.

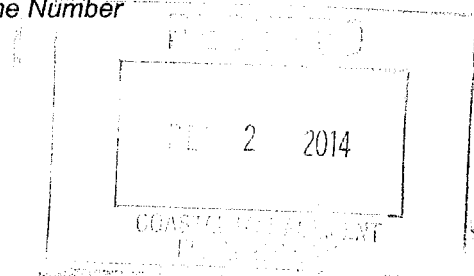
For more information, contact:

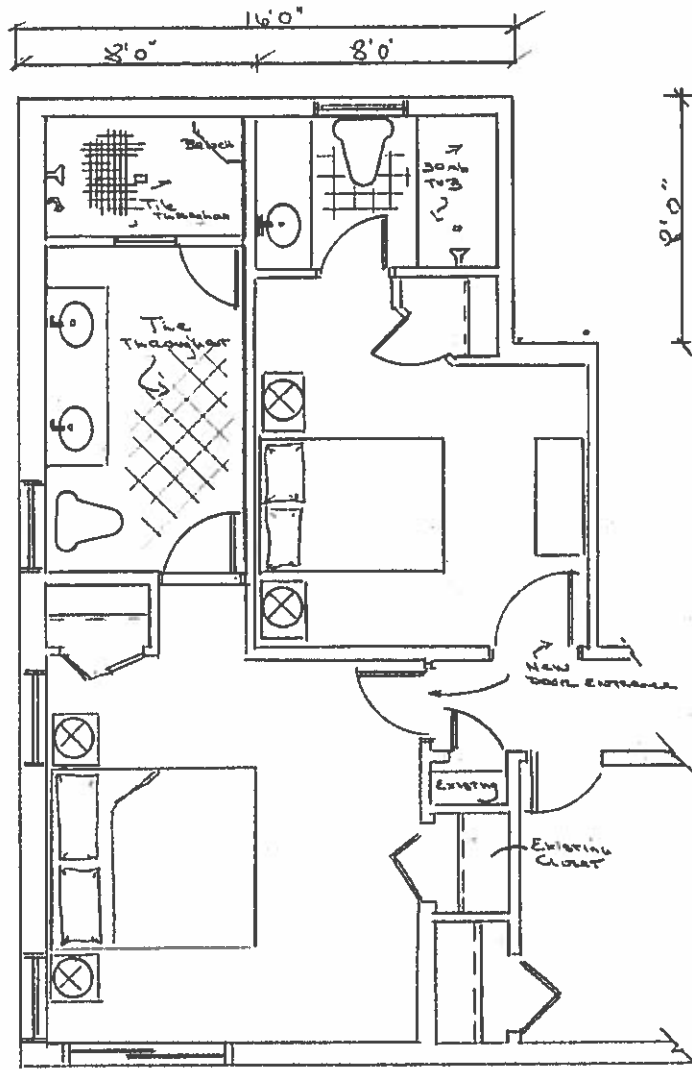
Kim Allen
Local Permit Officer

PO Box 99
Address

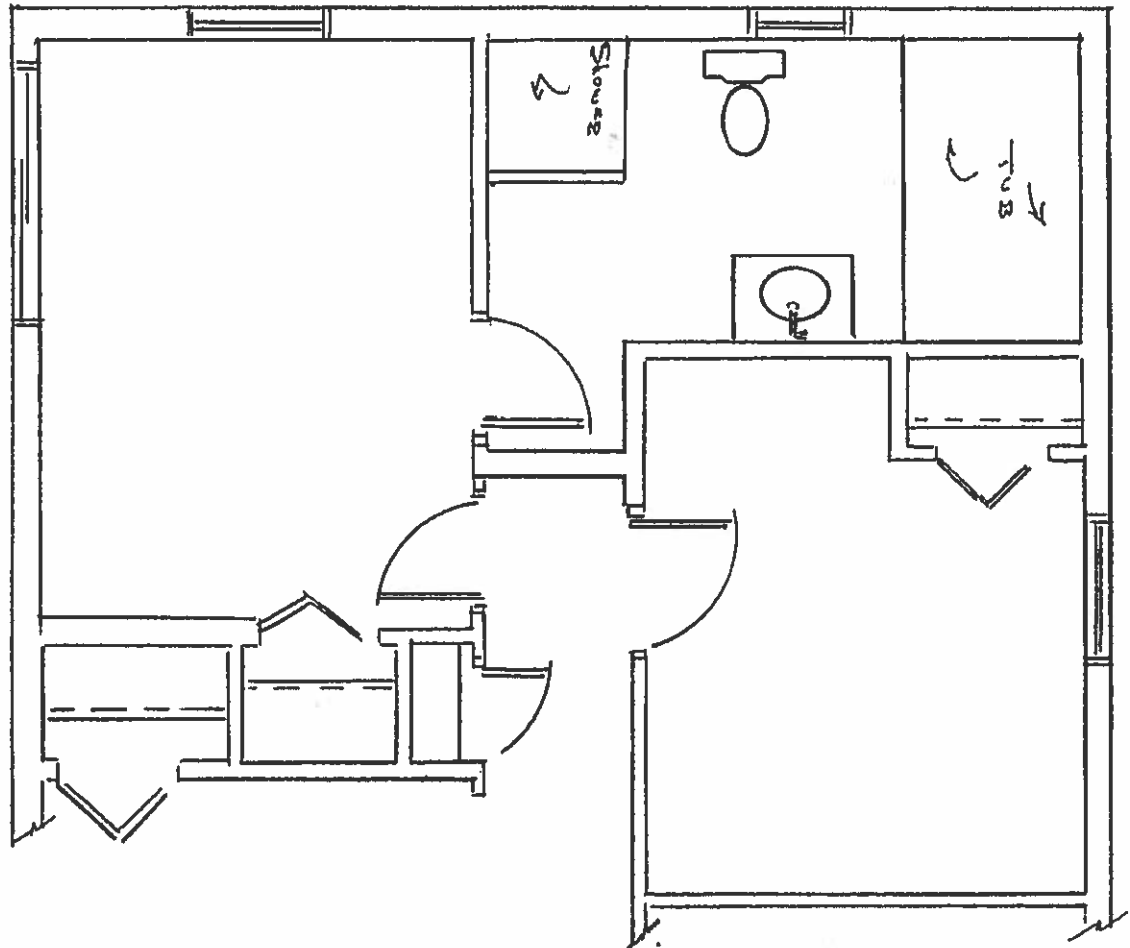
Nags Head NC 27959
Locality

(252) 441-7016
Phone Number





TOMAS RESIDENCE		MRS MITCHELL INTERIORS	
HALES HEAD, NC		APPROVED BY:	DRAWN BY: <i>NOR</i>
SCALE: 1/4" = 1'-0"	DATE: 8/29/07	REVISD	
BEDROOM / BATH			
PLAN			DRAWING NUMBER 1.0



TOM'S RESIDENCE		
NABS HEAD, NC		MES MITCHELL INTERIORS
SCALE: 1/4" = 1'0"	APPROVED BY:	DRAWN BY: <i>MM</i>
DATE: 8/29/2011		REVISED
BEDROOM / BATH		
EXISTING PLAN		DRAWING NUMBER 1.1

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

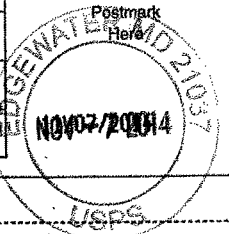
For delivery information visit our website at www.usps.com

7013 1710 0000 6815 5476

OFFICIAL USE

Date 11/5/14
Adjacent Property Owner ROBERT PHILLIPS
6691 GIVENS POND LN
Mailing Address LAUREL, DE 19956
City, State, Zip Code

Postage	\$ 00.49	0237
Certified Fee	\$ 33.30	05
Return Receipt Fee (Endorsement Required)	\$ 00.00	
Restricted Delivery Fee (Endorsement Required)	\$ 00.00	
Total Postage & Fees	\$ 33.79	



Sent To PHILLIPS
Street, Apt. No.; or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

Dear Adjacent Property:

This letter is to inform you that I, JOHN J. FOHS have applied for a CAMA Minor Property Owner

Permit on my property at 9913 SANDY CT in Nags Head Property Address

As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 301 502-4279 or by mail at the address listed below. If you wish to

file written comments or objections with the Nags Head CAMA Minor Permit Program, you may submit them to:

Local Permit Officer
Town of Nags Head
PO Box 99
Nags Head NC 27959

Sincerely,
[Signature]
Property Owner

10 HUNT CLUB CT
Mailing Address
EDGEWATER, MD 21037
City, State, Zip Code

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only, No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

045 579 000 0171 7013

Date 11/5/14
Adjacent Property Owner KEN KOOSHER
100 TURKEY HILL RD
Mailing Address
NEWBURYPORT, MA 01951
City, State, Zip Code

Postage	\$	\$0.47
Certified Fee		\$3.30
Return Receipt Fee (Endorsement Required)		\$0.00
Restricted Delivery Fee (Endorsement Required)		\$0.00
Total Postage & Fees	\$	\$3.79

0257
05
Postmark Here
NOV - 7 2014
11/07/2014

Sent To Koosher
Street, Apt. No., or PO Box No.
City, State, ZIP+4
PS Form 3800, August 2009 See Back for Instructions

Dear Adjacent Property:

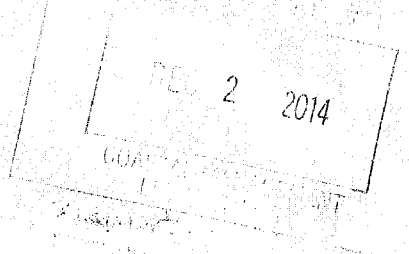
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Property Owner

Permit on my property at 9913 SANDY CT in
Nags Head
Property Address

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Applicant's Telephone

file written comments or objections with the Nags Head CAMA Minor Permit Program, you may submit them to:

Local Permit Officer
Town of Nags Head
PO Box 99
Nags Head NC 27959



Sincerely,
[Signature]
Property Owner

10 HUNT CLUB CT
Mailing Address
EDGEWATER, MD 21037
City, State, Zip Code

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

8945 5189 0000 6815 5483
7170 0000 6815 5483

For delivery information visit our website at www.usps.com

SOUTHFIELD MI 48076

OFFICIAL USE

11/5/14
Date
GEORGE GUNLOCK
Adjacent Property Owner
18755 LACROSSE AVE
Mailing Address
SOUTHFIELD MI 48076
City, State, Zip Code

Postage	\$ 0.49	0237
Certified Fee	\$3.30	
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 3.79	

Sent To GUNLOCK
Street, Apt. No., or PO Box No.
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

Dear Adjacent Property:

This letter is to inform you that I, JOHN J. FOHS have applied for a CAMA Minor
Property Owner

Permit on my property at 9913 SANDY CT in
Nags Head Property Address

As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 301 502-4279 or by mail at the address listed below. If you wish to

file written comments or objections with the Nags Head CAMA Minor Permit Program, you may submit them to:

Local Permit Officer
Town of Nags Head
PO Box 99
Nags Head NC 27959

Sincerely,
[Signature]
Property Owner

10 HUNT CLUB CT
Mailing Address
EDGEWATER, MD 21037
City, State, Zip Code

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. Postal Service
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

9055 ST 89 0000 DT LT ET 02

OFFICIAL USE		
Postage	\$ 0.49	0237
Certified Fee	\$3.30	05
Return Receipt Fee (Endorsement Required)	\$0.00	
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 43.79	
Sent To <u>BEACH GLASS</u>		
Street, Apt. No., or PO Box No.		
City, State, ZIP+4		

Postmark Here
NOV - 7 2014
11/07/2014

PS Form 3870, August 2009 See Reverse for Instructions

11/5/14
Date
BEACH GLASS, LLC
Adjacent Property Owner
2028 PUNGO RIDGE CT
Mailing Address
VIRGINIA BEACH, VA 234
City, State, Zip Code

Dear Adjacent Property:

This letter is to inform you that I, JOHN J. FOLS have applied for a CAMA Minor
Property Owner

Permit on my property at 9913 SANDY CT in
Nags Head Property Address

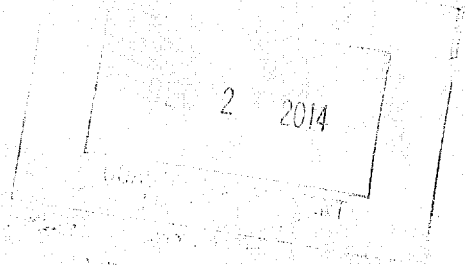
As required by CAMA regulations, I have enclosed a copy of my permit application and project drawing(s) as notification of my proposed project. No action is required from you or you may sign and return the enclosed no objection form. If you have any questions or comments about my proposed project, please contact me at 301 502-4279 or by mail at the address listed below. If you wish to
Applicant's Telephone

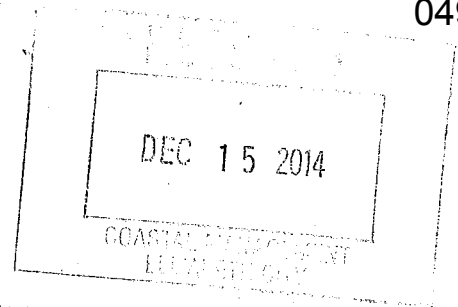
file written comments or objections with the Nags Head CAMA Minor Permit Program, you may submit them to:

Local Permit Officer
Town of Nags Head
PO Box 99
Nags Head NC 27959

Sincerely,
[Signature]
Property Owner

10 HUNT CLUB CT
Mailing Address
EDGEWATER, MD 21037
City, State, Zip Code





Town of Nags Head

Planning and Development
Department

Post Office Box 99
Nags Head, North Carolina 27959
www.townofnagshead.net

Telephone 252-441-7016
FAX 252-441-4290

December 11, 2014

CERTIFIED MAIL – 7014 0150 0002 2518 0620
RETURN RECEIPT REQUESTED

Sandy Ct. Beach, LLC
Attn: John Fohs
10 Hunt Club Ct
Edgewater, MD 21037

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- 14-52
PROJECT ADDRESS- 9913 Sandy Court

Dear Mr. Fohs:

After reviewing your application in conjunction with the development standards required by the Coastal Area Management Act (CAMA) and our locally adopted Land Use Plan and Ordinances, it is my determination that no permit may be granted for the project which you have proposed.

This decision is based on my findings that your request violates NCGS 113A-120(a)(8) which requires that all applications be denied which are inconsistent with CAMA guidelines and Local Land Use Plans. You have applied to construct a heated living space addition which is inconsistent with 15 NCAC 7H .306 (a)(6), which states that: *Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a).*

Should you wish to appeal my decision to the Coastal Resource Commission or request a variance from that group, please contact me so I can provide you with the proper forms and any other information you may require. The Division of Coastal Management central office in Morehead City must receive appeal notices within twenty (20) days of the date of this letter in order to be considered. Please be aware that all work done in the Special Flood Hazard Area (SFHA) will also have to comply with NFIP Flood Regulations.

Respectfully yours,

Tiffany B. Sanders
Tiffany B. Sanders, LPO
Town of Nags Head
P.O. Box 99
Nags Head, NC 27959

cc: Kelly Russell, DCM
Sam Moore, Soundside Construction

Domestic Mail Only, No Insurance Coverage Provided
For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.92

Sent To **Ken Koocher**
 Street, Apt. No., or PO Box No. **100 Turkey Hill Road**
 City, State, ZIP+4 **Newburyport, MA 01950**

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.92

Sent To **Beach Glass, LLC**
 Street, Apt. No., or PO Box No. **2028 Kings Ridge Ct.**
 City, State, ZIP+4 **Virginia Beach, VA 23457**

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.92

Sent To **Robert W. Phillips, Jr**
 Street, Apt. No., or PO Box No. **6401 Oxbridge Dr.**
 City, State, ZIP+4 **Salisbury, MD 21801**

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35

Domestic Mail Only, No Insurance Coverage Provided
For delivery information visit our website at www.usps.com
OFFICIAL USE 050

Postage	\$ 1.82
Certified Fee	3.35
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.92

Sent To **Brett & Angela Rice**
 Street, Apt. No., or PO Box No. **408 E. Alexandria Ave**
 City, State, ZIP+4 **Alexandria, VA 22301**

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.92

Sent To **George Quibick**
 Street, Apt. No., or PO Box No. **19755 Lacross Ave**
 City, State, ZIP+4 **Southfield, MI 48076**

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35
Return Receipt Fee (Endorsement Required)	2.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 7.92

Sent To **Phillip & Virginia Smith**
 Street, Apt. No., or PO Box No. **2445 Seastone Trce**
 City, State, ZIP+4 **Chesapeake, VA 23321**

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com
OFFICIAL USE

Postage	\$ 1.82
Certified Fee	3.35

7008 2810 0000 5864 8357
 7008 2810 0000 5864 8272
 7008 2810 0000 5864 8357
 7008 2810 0000 5864 8272

USPS Tracking®

[FAQs > \(http://faq.usps.com/?articleId=220900\)](http://faq.usps.com/?articleId=220900)

Track Another Package +

Tracking Number: 70082810000058648296

Remove X

Expected Delivery on

SATURDAY

13

JANUARY
2018 ⓘ

by
8:00pm ⓘ

 **Delivered**

January 13, 2018 at 8:04 am
DELIVERED, LEFT WITH INDIVIDUAL
VIRGINIA BEACH, VA 23457

Get Updates ▾

Text & Email Updates



Tracking History



Product Information



See Less ^

Tracking Number: 70082810000058648302

Remove X

This is a reminder to arrange for redelivery of your item before January 26, 2018 or your item will be returned on January 27, 2018. You may arrange redelivery by using the Schedule a Redelivery feature on this page or may pick up the item at the Post Office indicated on the notice.

Delivery Attempt: Action Needed

REMINDER TO SCHEDULE REDELIVERY OF YOUR ITEM BEFORE JANUARY 26, 2018

[Get Updates](#) ▼

[Schedule Redelivery](#) ▼

[See More](#) ▼

Tracking Number: 70082810000058648364

[Remove](#) ✕

Expected Delivery on

WEDNESDAY

17

JANUARY
2018 ⓘ

by

8:00pm ⓘ

 **Delivered**

January 17, 2018 at 4:57 pm
DELIVERED, LEFT WITH INDIVIDUAL
NEWBURYPORT, MA 01950

[Get Updates](#) ▼

[See More](#) ▼

Tracking Number: 70082810000058648357

[Remove](#) ✕

The item is currently in transit to the destination as of January 16, 2018 at 12:53 pm. It is on its way to LATHRUP VILLAGE, MI 480762527.

In-Transit

January 16, 2018 at 12:53 pm
IN TRANSIT TO DESTINATION
On its way to LATHRUP VILLAGE, MI 480762527

[Get Updates](#) ✓

[See More](#) ✓

Tracking Number: 70082810000058648371

[Remove](#) ✕

Your item was delivered to an individual at the address at 4:07 pm on January 13, 2018 in SALISBURY, MD 21801.

✓ Delivered

January 13, 2018 at 4:07 pm
DELIVERED, LEFT WITH INDIVIDUAL
SALISBURY, MD 21801

[Get Updates](#) ✓

[See More](#) ✓

Tracking Number: 70082810000058648272

[Remove](#) ✕

Your item was delivered to an individual at the address at 5:40 pm on January 12, 2018 in CHESAPEAKE, VA 23321.

 **Delivered**

January 12, 2018 at 5:40 pm
DELIVERED, LEFT WITH INDIVIDUAL
CHESAPEAKE, VA 23321

Get Updates ▼

See More ▼

Tracking Number: 70082810000058648289

Remove ✕

Your item was delivered to an individual at the address at 11:20 am on January 16, 2018 in GLENSIDE, PA 19038.

 **Delivered**

January 16, 2018 at 11:20 am
DELIVERED, LEFT WITH INDIVIDUAL
GLENSIDE, PA 19038

Get Updates ▼

See More ▼

Can't find what you're looking for?

Go to our **FAQs** (<http://faq.usps.com/?articleId=220900>) section to find answers to your tracking questions.

70082810000058648289 - Jeffery Steigelmann

70082810000058648275 - Phillip & Virginia Smith

70082810000058648371 - Robert W. Phillips, Jr.

70082810000058648357 - George Gunlock

70082810000058648364 - Ken Koocher

70082810000058648302 - Brett & Angela Rice

70082810000058648296 - Beach Glass, LLC

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY 056	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>Robert W Phillips Jr</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Robert W. Phillips, Jr. 6401 OXBRIDGE DR. SALISBURY, MD 21861		B. Received by (Printed Name) C. Date of Delivery Robert W Phillips Jr 1-13-18	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No JAN 16 2018	
		3. Service Type <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7008 2810 0000 5864 8371	
PS Form 3811, July 2013		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>Phillip Smith</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Phillip & Virginia Smith 2145 Seastone Trce Chesapeake, Va 23321		B. Received by (Printed Name) C. Date of Delivery Phillip Smith	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7008 2810 0000 5864 8272	
PS Form 3811, July 2013		Domestic Return Receipt	

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 		A. Signature X <i>Wanda Koehler</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee	
1. Article Addressed to: Ken Koehler 100 Turkey Hill Road Newburyport, MA 01950		B. Received by (Printed Name) C. Date of Delivery Diane Koehler 1/17/18	
		D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No	
		3. Service Type <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
		4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes	
2. Article Number (Transfer from service label)		7008 2810 0000 5864 8364	
PS Form 3811, July 2013		Domestic Return Receipt	

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSON

MEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001

P.O. BOX 189
MANTEO, NC 27954

DELIVERY ADDRESS:
201 ANANIAS DARE STREET
MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214

EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

Beach Glass, LLC
2028 Pungo Ridge Ct
Virginia Beach, VA 23457

Dear Beach Glass, LLC:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

As you may know, the Fohs are requesting a CAMA Variance in order to construct an addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent property owners.

Please review the enclosed copies of the Petition submitted last Wednesday, January 3, 2018 to the Coastal Resources Commission for review prior to the scheduled hearing on February 13 and 14, 2018.

If you have any questions or comments regarding this letter and the enclosures, please do not hesitate to contact myself or a member of the Coastal Resources Commission, here in North Carolina.

Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSONMEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001P.O. BOX 189
MANTEO, NC 27954-----
DELIVERY ADDRESS:
201 ANANIAS DARE STREET
MANTEO, N.C. 27954TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

George Gunlock
18755 LaCross Ave
Southfield, MI 48076

Dear Mr. Gunlock:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

As you may know, the Fohs are requesting a CAMA Variance in order to construct an addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent property owners.

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Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSONMEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001P.O. BOX 189
MANTEO, NC 27954-----
DELIVERY ADDRESS:
201 ANANIAS DARE STREET
MANTEO, N.C. 27954TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

Ken Koocher
100 Turkey Hill Road
Newburyport, MA 01950

Dear Mr. Koocher:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

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Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSON

MEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001

P.O. BOX 189
MANTEO, NC 27954

DELIVERY ADDRESS:
201 ANANIAS DARE STREET
MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214

EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

Robert W. Phillips, Jr.
6410 Oxbridge Dr
Salisbury, MD 21801

Dear Mr. Phillips:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

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Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSON

MEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001

P.O. BOX 189
MANTEO, NC 27954

DELIVERY ADDRESS:
201 ANANIAS DARE STREET
MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214

EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

Brett & Angela Rice
408 E Alexandria Ave
Alexandria, VA 22301

Dear Mr. and Mrs. Rice:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

As you may know, the Fohs are requesting a CAMA Variance in order to construct an addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent property owners.

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Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSON

MEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001

P.O. BOX 189
MANTEO, NC 27954

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201 ANANIAS DARE STREET
MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214

EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

Phillip & Virginia Smith
2145 Seastone Trce
Chesapeake, Va 23321

Dear Mr. and Mrs. Smith:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

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Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

KELLOGG AND EVANS, P.A.

ATTORNEYS AT LAW

CHARLES D. EVANS
CREECY S. RICHARDSON

MEGHAN E. ASHWORTH

MARTIN KELLOGG, JR.
1908-2001

P.O. BOX 189
MANTEO, NC 27954

DELIVERY ADDRESS:
201 ANANIAS DARE STREET
MANTEO, N.C. 27954

TELEPHONE: (252) 473-2171
FACSIMILE: (252) 473-1214

EMAIL ADDRESS:
charlese@kelloggandevans.com
creecyr@kelloggandevans.com
meghana@kelloggandevans.com
courtneyb@kelloggandevans.com

January 9, 2018

Jeffrey J. Steigelmann
2750 Lineklin Pike
Glenside, PA 19038

Dear Mr. Steigelmann:

I am writing to you today on behalf of my clients, John and Donna Fohs, members of Sandy Court Beach, LLC, a Maryland limited liability company. Sandy Court Beach, LLC is the record owner of the property located at 9913 S. Sandy Court, Nags Head, North Carolina 27959; the same subject property being that which is located adjacent to the property you own in Nags Head.

As you may know, the Fohs are requesting a CAMA Variance in order to construct an addition to their home located at the address provided just above. Pursuant to N.C.G.S. sections 113A-120.1 and 15A N.C.A.C. 07J .0700 et seq., my clients are required to provide notice of their variance petition by certified mail to adjacent property owners.

Please review the enclosed copies of the Petition submitted last Wednesday, January 3, 2018 to the Coastal Resources Commission for review prior to the scheduled hearing on February 13 and 14, 2018.

If you have any questions or comments regarding this letter and the enclosures, please do not hesitate to contact myself or a member of the Coastal Resources Commission, here in North Carolina.

Best regards,

Charles D. Evans

CDE/
Enclosures
CC: John and Donna Fohs (transmitted via email only)

Ben Cahoon
Mayor

Susie Walters
Mayor Pro Tem

Cliff Ogburn
Town Manager



Town of Nags Head
Post Office Box 99
Nags Head, NC 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

M. Renée Cahoon
Commissioner

J. Webb Fuller
Commissioner

Michael Siers
Commissioner

January 22, 2018

I can confirm that the Town Nags Head has applied for the necessary permits for a beach re-nourishment construction project to take place either Spring of 2018 or 2019. We are waiting to determine if we will have the approval from FEMA to replace 1.4 mcy that was lost due to Hurricane Matthew before we know which year the project takes place. The town's place is to re-nourish the beach with 2.3 mcy in response to how the beach reacted to our 2011 project.

The town has made clear its intention to re-nourish its beach for as long as it is financially viable and for as long as there is a sand source to borrow from. The policy has been to re-nourish the beach after 50% of the volume is lost or six years after each project is complete – whichever comes last. Our long range comprehensive land use plan contains language committing to beach nourishment.

Cliff Ogburn, Town Manager
Town of Nags Head

The State of North Carolina
County of Dare

I Michelle H Gray, a Notary Public for Dare County and State of North Carolina, do hereby certify that Cliff Ogburn personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the 22nd day of January 2018.

My commission expires October 4, 2020.

Michelle H Gray, Notary





Division of Coastal Management

NC COASTAL RESOURCES COMMISSION MEETING

February 13, 2018

**FOHS - SANDY COURT BEACH, LLS (CRC-VR-18-01)
NAGS HEAD, OCEANFRONT SETBACK**

Frank Jennings
District Manager
Northeastern District Office
Elizabeth City, NC



Nothing Compares
NORTH CAROLINA

Department of Environmental Quality

3/2017

PROJECT LOCATION: 9913 S. Sandy Ct

E Oregon Dr

E Limulus Dr

Cape Hatteras National Park Rd

1243
10209 E Seagull Dr

12

Google Earth

1993

Imagery Date: 3/24/2017 35°51'30.56" N 75°34'07.30" W elev 0 ft eye alt 5656



243

9913 S Sandy Ct

© 2018 Google

Google Earth

1993

Imagery Date: 3/24/2017 35°51'41.73" N 75°34'16.26" W elev 0 ft eye alt 1805 ft

NO NAME

SOLD OREGON INLET RD

NO NAME

ELMULUS DR

S SANDY CT

S PELICAN CT

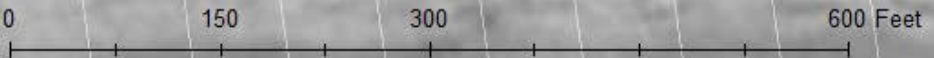
E OREGON DR

9913

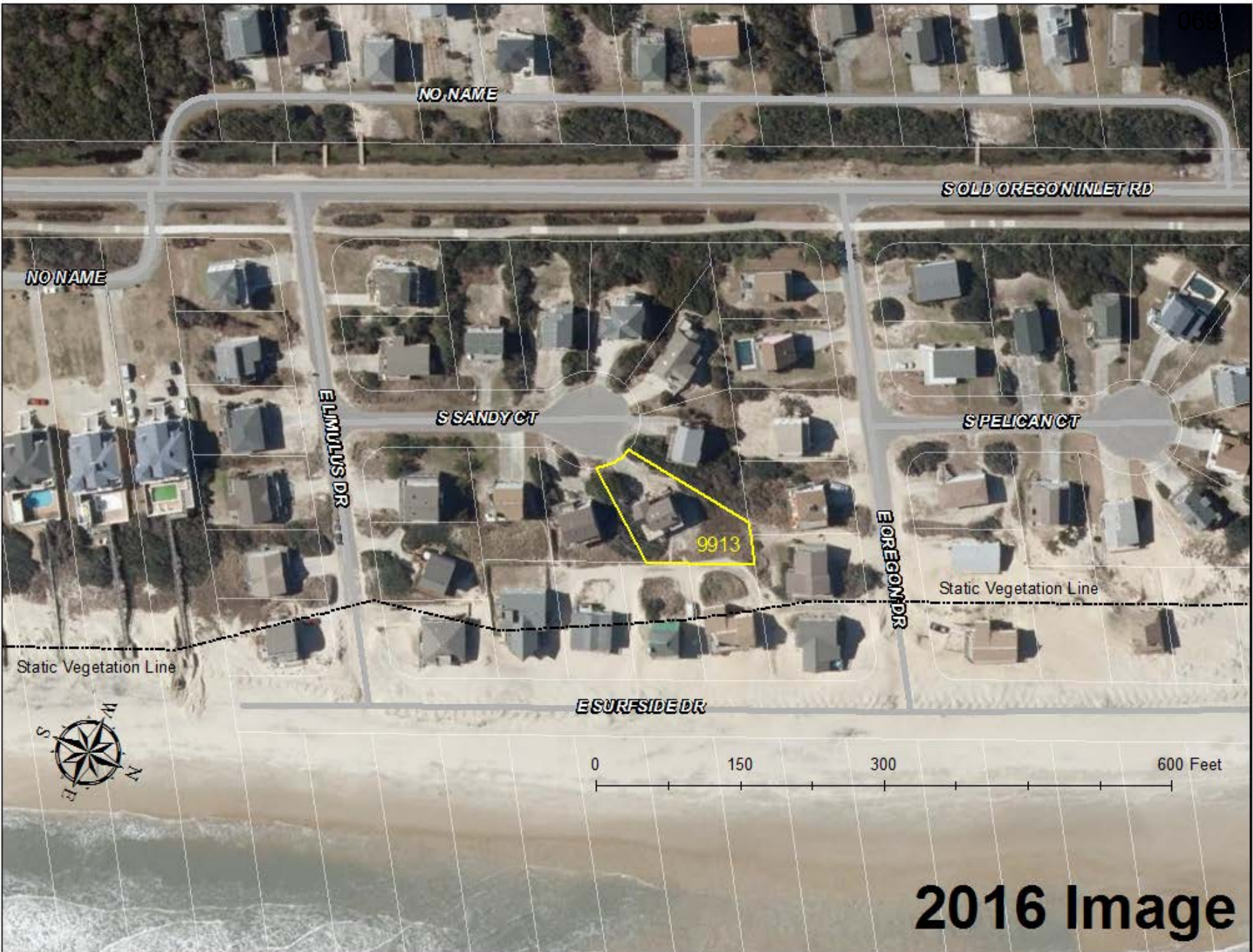
Static Vegetation Line

Static Vegetation Line

ESURFSIDE DR



1993 Image



NO NAME

SOLD OREGON INLET RD

NO NAME

ELIMULUS DR

S SANDY CT

S PELICAN CT

OREGON DR

9913

Static Vegetation Line

Static Vegetation Line

ESURFSIDE DR

0 150 300 600 Feet

2016 Image

Photo taken on 070
01/19/2018 by
DCM Staff



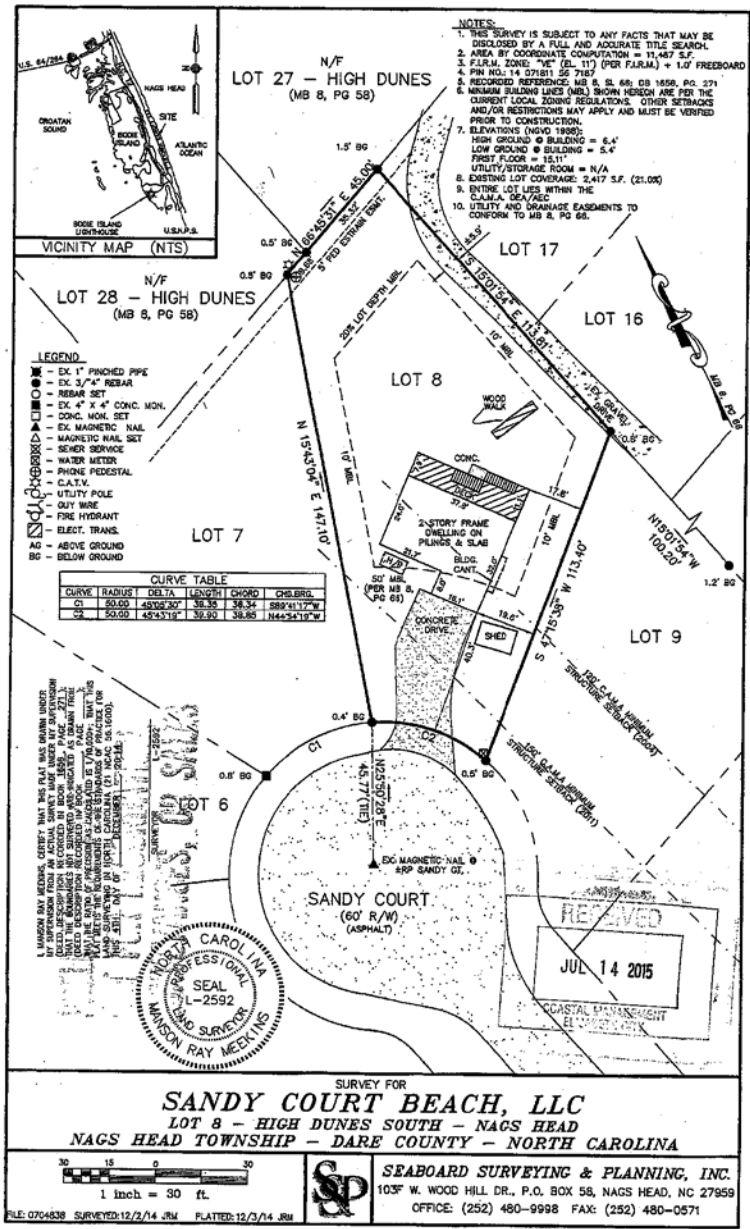


**Photo taken on
01/19/2018 by
DCM Staff**

Photo taken on
01/19/2018 by
DCM Staff

072





AREA OF PROPOSED
ADDITION



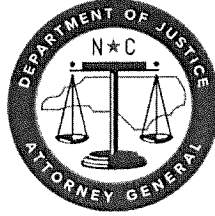
15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

(f) To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).

- (1) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
- (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size, or topography;
- (3) that such hardships did not result from actions taken by the petitioner; and
- (4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.



JOSH STEIN
ATTORNEY GENERAL




REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

Memorandum

TO: Coastal Resource Commissioners

CC: Candice Young, President, Board of Directors, The Riggings Homeowners, Inc.
Braxton Davis, Director of DCM

FROM: Mary Lucasse 
Special Deputy Attorney General and CRC Counsel

DATE: January 31, 2018

RE: **The Riggings HOA 2017 Annual Report (CRC-18-09)**

The Commission required an Annual Update on alternative solutions to address erosion at the Riggings in the Final Agency Decision issued December 11, 2015 conditionally granting The Riggings Homeowners Inc.'s (HOA) request for a variance relating to sandbags. The Final Agency decision provides factual and procedural information about erosion and sandbags at site. The first Annual Update was provided to the Commission in 2016 and was discussed by the Commission at its February 8, 2017 meeting. Following that meeting, the Commission sent a Response to the HOA by letter dated March 7, 2017. In the 2017 Annual Update, the HOA responded to the issues raised by the Commission. The Division of Coastal Management provided written comments on the 2017 Annual Update. The purpose of requesting the HOA to provide an annual update is, in part, to allow the Commission to have ongoing discussions with the HOA and to proactively consider methods of addressing erosion at the Site (other than sandbags).

Recommendation: Following discussion of the 2017 annual Update and DCM's comments, determine whether the Commission would like to request additional information or suggest the HOA take additional steps to proactively consider possible ways to address erosion at the Site.

Attachment A - Commission's March 7, 2017 letter to HOA
Attachment B - The 2017 Annual Update submitted by the HOA
Attachment C - DCM's comments on the 2017 Annual Update



STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

JOSH STEIN
ATTORNEY GENERAL

P.O. BOX 629
RALEIGH, NC 27602

REPLY TO: MARY L. LUCASSE
ENVIRONMENTAL DIVISION
TEL: (919) 716-6962
FAX: (919) 716-6767
mlucasse @ncdoj.gov

March 7, 2017

Riggings Homeowners, Inc.
Paul Derek Jarrett, Registered Agent
Premier Management Company
2018 Eastwood Road
Wilmington, NC 28403

Certified Mail, Return Receipt Requested

**Re: Commission's Response to Annual Update (2016) submitted pursuant to
CRC-VR-15-08**

Dear The Riggings Homeowners, Inc.:

Thank you for sending Mr. Sampson as your representative to the February 8, 2017 meeting of the North Carolina Coastal Resources Commission ("Commission"). The Commission greatly appreciated your willingness to participate in a discussion regarding The Riggings Homeowners, Inc.'s ("The Riggings") December 11, 2016 Annual Update and the Division of Coastal Management ("DCM") Response dated January 25, 2017 regarding erosion impacting the Riggings which has led to the use of temporary sandbag structures on the property. The purpose of the discussion was to provide the Commission with the opportunity to proactively make suggestions and recommendations to the Riggings on methods of addressing erosion at the Site (other than the use of temporary sandbags) before the sandbags are required to be removed in 2020. During the discussion, the Commission made the following suggestions:

- The Riggings should make a written request to the U.S. Army Corp of Engineers and explore whether the segment of beach in front of The Riggings' property could be included in future beach nourishment projects;
- The Riggings should approach the NC Department of Natural and Cultural Resources ("NCDNCR"), the State agency responsible for the Natural Heritage Program Area, and New Hanover County and request information as to what limitations, if any, result from the 1982 designation of the Fort Fisher Coquina Outcrop Natural Area in the North Carolina Registry of Natural Heritage Areas and the inclusion of the Coquina Natural Area in the May 2003 Natural Area Inventory of New Hanover, County. In particular, The Riggings should inquire whether the Natural Heritage Program and New Hanover County's designation of the area would have an impact on beach nourishment at the site. If necessary, The Riggings could request relief from these designations to allow beach nourishment at the site;

Riggings Homeowners, Inc.
Paul Derek Jarrett, Registered Agent
May 7, 2017
Page 2 of 2

- The Riggings should consider further study by coastal geologists or engineers to solicit suggestions for possible approaches to address erosion at the site;
- The Riggings should consider initiating a scoping meeting with DCM, NCDNCR, and other resources agencies to solicit their current concerns about beach nourishment along the Riggings beach that may cover the coquina outcroppings and to explore other options to address erosion at the site.

The Commission respectfully requests that any information learned by The Riggings in exploring the suggestions and recommendations set forth above be provided to the Commission in the 2017 Annual Update.

Since The Riggings periodically comes before the Commission in quasi-judicial proceedings the Commission avoids exchanging information about The Riggings and associated issues that might ultimately be considered outside of the official record in such proceedings. Thank you for understanding the limitations that proceedings such as a possible future request for a variance from the Commission's sandbag rules may place on direct communications with Commission members. You are always welcome to provide information to the Commission through undersigned counsel with copies of those communications provided to DCM. Please feel free to contact me by letter or email with a shown copy to DCM if you have any questions regarding this letter. Note that if you are working on technical or scheduling issues with DCM or other state agencies you are welcome to contact them directly.

Sincerely,

signed electronically

Mary L. Lucasse
Special Deputy Attorney General and
Counsel for the Coastal Resources Commission

cc: Ted Sampson, US Mail and electronically at tedsr@sampsoncontracting.com
Frank D. Gorham, III, electronically
Christine A. Goebel, Esq., electronically
Braxton Davis, electronically
Angela Willis, electronically

◆ RIGGINGS HOMEOWNERS INC ◆
1437 South Fort Fisher Blvd
Kure Beach, NC 28449

Date: December 5, 2017

ANNUAL UPDATE ON ALTERNATIVE SOLUTIONS TO
ADDRESS EROSION AT THE RIGGINGS 2017

This annual report is in response to the recommendation by the Coastal Resources Commission's (CRC) Variance order issued on December 11, 2015 seeking alternative solutions for erosion.

At the February 8th, 2017 CRC meeting, our representative reported that Chairman Gorham commented that the inclusion of the Riggings shoreline within the Area South portion of the Carolina Beach nourishment project could be an alternative to the use of sandbags for erosion protection. He questioned the significance of this shoreline having been included in the North Carolina Registry of National Heritage Areas. Christy Goebel and Braxton Davis of the North Carolina Division of Coastal Management (DCM) stated that it was not known whether this precluded beach nourishment in that area.

According to the Army Corp of Engineers, listing on this **voluntary** program of the NC Registry of National Heritage Areas, which was put in place on February 6th, 1982, is the reason for stopping nourishment short of the Coquina rock outcropping to the north of the Riggings. We contacted the North Carolina Heritage Program and asked if this does in fact prevent being nourished. Our research continues with this question.

We have been in contact with Jim Medlock the project manager for the Wilmington District of the US Army Corps of Engineers inquiring about getting on the 2018/2019 nourishment program for the Carolina Beach and Area South /Kure Beach project. We have been told it is too late to get on this coming nourishment program. The basis for this determination is described in the Carolina Beach and Vicinity-Area South Portion NC Design Memorandum Supplement and Draft Final Environmental Impact Statement dated January 1993. We have submitted a FOIA request for this Impact Statement so we can better understand what we need to do and what agencies we need to contact to get on the next nourishment program.

Mr Medlock informed us that: "to be included in the nourishment would require Federal and non-Federal funding of a new cost shared feasibility study that would reformulate the Kure Beach portion of that project including, at a minimum, reevaluation of the entire project's benefits, costs, and environmental acceptability. Upon completion of the feasibility study, a new project Federal construction authorization would be required followed by the appropriation of Federal funds, with non-Federal funds, to continue to perform periodic nourishment of the revised project. The time needed for this effort from beginning to end would not be completed quickly and would be subject to the availability of Federal and non Federal funds. Also, the cost sharing sponsor for the study can only be a public entity - town, county or state. A private entity like the Riggings Homeowners Association could not be the cost sharing sponsor".

Mr Medlock also stated: "Since the shoreline in front of the Riggings is not part of the federally authorized project, it cannot be included in a subsequent periodic nourishment contract until a cost-shared feasibility study is completed."

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Federal sponsor has been completed and a Federal construction authorization has been received". A feasibility study would need to also include the town of Kure Beach and New Hanover County.

Another question to Mr. Medlock was:

Can you clarify whether The Riggings shoreline was at one time ever included in the Area South nourishment project?

If never included, do you know why it was excluded or have documentation stating this?

If it was previously included, prior to 1993, can you tell us why it was removed? We did not receive a direct answer to our question instead a FOIA request was submitted on our behalf. Mr. Medlock stated that our question would be answered in this report that contained documents related to the Federally authorized project at Kure Beach.

We also asked if the Corps has a comprehensive monitoring program post nourishment to look at the effects of nourishment on beach, organisms, population and structures. We have not received an answer to this question.

Kure Beach Mayor (at that time) Emilee Swearingen was contacted about getting on the nourishment program starting 2018. She referred us to John Batson. We then contacted

John Batson, the Kure Beach building inspector and CAMA representative. His response was the following, "Around a year ago, we met with Ted Sampson, who requested the meeting on behalf of the Riggings to explore a nourishment idea. Bottom line, in order to include the Riggings in the project, environmental and engineering studies would have to be made, our current project would get dissolved, and a brand new project would have to be introduced to the US Congress for approval.

Given the fact that our current project is effective until 2047, I highly doubt the Town would be interested in taking this gamble, especially because we are already struggling to get the funding to take care of the project we have now".

We corresponded with three people in the North Carolina Registry of National Heritage Program several times to see if being on this voluntary program affects the beach area in front of The Riggings from being nourished. From the map they supplied it appears to extend north of the Riggings in front of the Ocean Dunes Complex, part of which is a nourished area and also has many coquina rock outcroppings. To date we have not received a direct answer to this direct question but they are continuing to look into our question for an answer. They recommended that we contact the Division of Marine Fisheries, as the custodian of the property, and signatory to the voluntary agreement. We contacted Anne Deaton from this department and she said that it does not specifically state that being on the National Heritage Program prevents nourishment. It is a collaboration of the many regulatory agencies that determine this. She referred us to Doug Huggett, the permit coordinator from the DCM for further information. We are waiting on his reply.

Stated in the Constitution of North Carolina, Article XIV Section 5 is the following:

"It shall be the policy of this State to conserve and protect its lands and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty".

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This is what The Riggings is attempting to do, protect our beach and our property. Reported in THE 2001 SESSION OF THE 2001 GENERAL ASSEMBLY OF NORTH CAROLINA was the following:

"Charles B. Chestnutt of the Planning Division, Civil Works of the U.S. Army Corps of Engineers. Mr. Chestnutt indicated that the Corps does not have the same authority to study the performance of its coastal projects as it does the performance of its flood control projects. The advent of Hurricanes Bertha and Fran gave them an opportunity, however, to go in and assess the storm protection offered to the beach communities that had engineered beaches and dune systems. The Corps of Engineers went in and analyzed the wind, wave and storm surge conditions that prevailed on the North Carolina coast during the storms. In particular they looked at the stretch from Kure Beach to North Topsail Beach. Although conditions throughout the area were similar, Wrightsville Beach and Carolina Beach suffered the least erosion-based damage with the **unnourished beaches suffering the greatest amount of erosion damage**".

A report was prepared as a product of the National Shoreline Management Study (NSMS) looking at The Corp of engineers and shore protection study of 2003 and in this is stated:

"The collected data indicate that as miles of coastal area protected by Corps shore protection projects increase, coastal damages due to hurricanes per mile of coastal project and damages from hurricanes per U.S. citizen both decrease."

Protection of property and prevention of erosion by nourishment has not only protected beaches for residents but also for visitors to our great state, and has reduced costs associated with storm damage and flood damage to property. It is in the public interest to preserve and restore the beaches on the coast, and in the best interest of the town to assist with nourishment and include the area in front of the Riggings. Not only do vacationers that rent at Ocean Dunes and the Riggings Complexes use our beach but visitors to the Fort Fisher State Park use our beach. Visitors and vacationers to Kure Beach contribute to our local economy and tax base and of course use our beaches. Refer to the Beach and Inlet Management Plan (BIMP) of 2016 to see how much Kure Beach, of which the Riggings is a part, impacts and contributes to the state and local economy.

Construction of a dune, berm, and or beach, together with periodic nourishment, is the primary engineering solution to provide hurricane and storm damage reduction benefits according to the Corps Shore Protection Program..." Artificial dune and/or beach protection measures are simply replications of the comparable natural features and rely on the high wave-energy dissipation characteristics of such features as the means of protecting coastal developments". This has been the general consensus over and over in various studies and reports from numerous regulatory agencies, not just from the Corps of Engineers.

The Department of Environmental and Natural Resources (DENR) recommends strategies that will protect, conserve and restore our valuable resources.

Stated in the: Storm Reduction Project, Design Memorandum Supplement and Draft Final Environmental Impact Statement, Carolina Beach & Vicinity- Area South Portion NC (Kure Beach) report from January 1993 (authorized by congress in 1962) "project construction will cover 3 ½ miles of shoreline between the town of Carolina Beach to the north end of Fort Fisher Historic site to the south" It was also stated that there were no known areas of controversy or unresolved issues at this time but also stated potential areas of controversy could be the project's impacts on Coquina rock outcrops at the southern terminus of the

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project. Also noted in this report are the coquina rock outcroppings with pictures which show in front of the Ocean Dunes Complex not the Riggings. This is also where the transition zone is for nourishment.

The plan recommended by this study is the National Economic Development (NED) plan. This plan would benefit our area socioeconomically. Kure beach has undergone a population growth and vacationers continue to visit. More beach available to tourists as well as residents is not only attractive and inviting but is a boost to our economic growth. If we do not have a beach we will not have tourists and our local economy will suffer.

In the Coastal Erosion Study dated February 12, 2016 by the Division of Coastal Management (DCM) under *Benefits of Beach Nourishment Primarily* it states: "Benefits associated with beach nourishment include storm damage reduction and enhanced recreational/tourism opportunities. A wide beach not only acts as a direct buffer to absorb wave energy during storm events, but it also provides a reservoir of sand that may be transported to an offshore bar". "Coastal engineers report that reductions in wave height and wave forces due to relatively small additional beach widths are surprisingly large. In Florida and North Carolina, several studies have documented that damage to structures after hurricanes was significantly reduced in areas that had wider beaches".

Stated in the Storm Reduction report Final Environmental Impact Statement:

"A notice of intent to prepare a Draft Environmental Impact Statement (DEIS) was published on May 15 1991, in the Federal Register inviting comments from all agencies, organizations and interested parties. A draft Environmental Impact Statement, dated October 1992, was filed with the US EPA agency on November 6, 1992. The DEIS was circulated for a 45 day public review period ending on December 21, 1992.

There are no known areas of controversy or unresolved issues at this time". See attached letter from Mr. Daniel Small.

SUMMARY

Nourishment is the most environmentally acceptable means of shoreline erosion control and the preferred approach to erosion at the local, state and federal level.

The Riggings is actively pursuing a beach nourishment project. We have been unsuccessful in getting on the upcoming 2018/2019 project. We continue to research the path in this direction and contact the various regulatory agencies to find out how we can be added to the next program.

We also seek to clarify if being on the National Heritage Program does prevent us from being nourished.

Nourishment to the rock revetment at Fort Fisher would be compatible with the success of the nourishment project for Carolina and Kure Beach area if it were continued in front of the Riggings and to the rock revetment at Fort Fisher.

Stated in our previous annual letter, During and/or subsequent to the previous nourishment projects in Area South, the USACE pledged to conduct additional studies to assess the impact of the Project on Coquina outcroppings. These will be obtained and reviewed to further assess the potential of seeking nourishment of The Riggings' shoreline when they are available.

We will continue to reach out to the various state and local agencies to gather information on what is the next step in adding the area south of the transition zone to the next nourishment program.

Researching nourishment has proved to be complex and a learning experience.

Answers to our questions are not always forthcoming. At the writing of this letter we have not heard back from all sources (there are many) we contacted to gather information. Not everyone knows what the answer is so we are referred to

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PRELIMINARY
FINAL ENVIRONMENTAL IMPACT STATEMENT

**Carolina Beach and Vicinity - Area South Project
Beach Erosion Control and Hurricane Wave Protection
New Hanover County, North Carolina**

The responsible lead agency is the U.S. Army Engineer District, Wilmington

ABSTRACT: The Carolina Beach and Vicinity - Area South project, New Hanover County, North Carolina, was authorized as part of the Carolina Beach and Vicinity, North Carolina, project under the Authority of the Flood Control Act of 1962. The Wilmington District has investigated public concerns in the study area related to greater protection from hurricane waves and flooding so as to reduce their detrimental effects, and control of beach erosion to arrest recession of the shoreline. Alternatives investigated consisted of berms and dunes of various dimensions. The no-action alternative was also considered. The National Economic Development (NED) plan consists of a 25-foot-wide crest width artificial dune with a vegetated crest elevation of 13.5 feet above National Geodetic Vertical Datum (NGVD), (approximately sea level), and a storm berm approximately 50 feet wide at 9 feet NGVD. Project construction will cover approximately 3 1/2 miles of shoreline between the Town of Carolina Beach to the north and the Fort Fisher Historic Site to the south. The source of beachfill for project construction and maintenance is located in two offshore borrow sites located approximately 1 to 2 miles offshore in the Atlantic Ocean.

A Draft Environmental Impact Statement (DEIS) was filed with the U.S. Environmental Protection Agency on November 6, 1992, and was circulated for a 45 day public review period ending on December 21, 1992. Comments received on the DEIS are included in Attachment E of this document.

SEND YOUR COMMENTS TO THE DISTRICT ENGINEER BY THE DATE INDICATED ON THE REPORT TRANSMITTAL LETTER.

If you would like further information on this statement, please contact:

Mr. Daniel Small
Environmental Resources Branch
U.S. Army Engineer District, Wilmington
P.O. Box 1890
Wilmington, North Carolina 28402-1890

Phone: (919) 251-4730

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Attach: Rigging's 2017 Annual Report

someone else. We will continue to gather information to build our file towards a positive outcome for nourishment of the Riggings.

The Riggings takes these important steps of finding and implementing an alternative solution for erosion control very seriously. We will continue our efforts in the upcoming year as we explore yet more possibilities.

Respectfully submitted,
The Riggings Board of Directors.

PLEASE NOTE:

**Project drawings or graphs used by the various agencies in their reports were not included in this letter since many of them were already included in our 2016 letter.

**Contact The Riggings president Candice Young if you have any questions
jimcan1@nycap.rr.com

*******Ted Sampson and Yogi Harper are no longer The Riggings representatives and are not to receive any further information or correspondence concerning the Riggings. Please notify us of any requests to obtain information of The Riggings by them.**

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DCM- MHD CITY



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

WILLIAM F. LANE
General Counsel

To: Coastal Resources Commission

CC: Candice Young, President of the Riggings Homeowners, Inc.
Riggings Homeowners, Inc. c/o Registered Agent Paul Derek Jarrett

From: Christine A. Goebel, Assistant General Counsel

Date: February 1, 2018

Re: DCM Response to Riggings HOA's December 5, 2017 Annual Update (CRC-18-09)

On December 5, 2017, the Division of Coastal Management (“DCM”) received the Second Annual Update on Alternatives Solutions to address Erosion at the Riggings 2017 report (“2017 Update”) from The Riggings Homeowners, Inc. (“HOA”) through its President, Candice Young. Like the 2016 Update, the 2017 Update was required as a condition of the December 2015 Order of the Commission granting a variance authorizing the use of sandbags by the HOA for an additional five years. Last year, in response to DCM’s receipt of the 2016 Update, DCM prepared a written response for the Commission, at their request. Following a discussion of the 2016 Update at the Commission’s January 2017 meeting, the Commission offered a suggested action plan through a March 7, 2017 letter to the HOA. The following is DCM’s response to the 2017 Update, including review, written comments, and attachments.



[Coastal Resources Commission]

[February 1, 2018]

Page 2

**DCM STAFF RESPONSE TO THE RIGGINGS' 2017 ANNUAL UPDATE
ON ALTERNATIVE SOLUTIONS
TO ADDRESS EROSION AT THE RIGGINGS**

In its March 7, 2017 suggested action plan, the Commission asked the HOA do the following:

- Make a written request to the Corps and explore whether the segment of beach in front of The Riggings' property could be included in future beach nourishment projects;
- Approach the NC DNCR to find out what limitations, if any, result from the 1982 designation of the Fort Fisher Coquina Outcrop Natural Area, if the designation would impact the possibility of beach nourishment at the area, and if relief from the designation is possible;
- Consider further study by coastal geologists or engineers for possible approaches to address erosion at the site;
- Consider initiating a scoping meeting with DCM, DNCR, and other resource agencies about their concerns about nourishment that may cover the coquina and to explore other options to address erosion at the site.

DCM will address the amount to which the 2017 Update met these suggestions of the Commission, other concerns DCM has with the HOA's progress, and the results of DCM's own investigative efforts.

1. Corps Project

As an initial concern, it was unclear to DCM if the contacts referenced in the 2017 Update were new contacts or reports of earlier contacts, and whether the quotes were based on written responses not attached, from recorded conversations, or from memory. It would be helpful to have the contacts clarified by the HOA in future updates.

While the HOA did not make a written request to the Corps to be included in the nourishment project, they were told by Mr. Medlock of the Corps that they could not be included in the current project without a new feasibility study, as the beach by the HOA was not included in the 1993 FEIS. Additionally, approval by Congress for the inclusion of this area would be required, as well as the designation of a public entity to be the cost-sharing sponsor.

[Coastal Resources Commission]

[February 1, 2018]

Page 3

HOA representatives also had a conversation with former Kure Beach Mayor Emilee Swearingen, who indicated her understanding that if the current project were proposed, the current project “would get dissolved, and a brand-new project would have to be introduced to the US Congress for approval.” Ms. Swearingen indicated this was the basis for her conclusion that the Town would not be interested in risking the current project which she understands to be approved through 2047.

Following the receipt of the 2018 Update, DCM contacted representatives of the Corps to better understand these statements. Based on this contact, DCM agrees that it is unlikely that the southern end of Kure Beach, at least in the short-term, could successfully be included in the existing federal project. This is largely because of current funding levels for such projects, the eventual need for Congressional authorization, and because the environmental concerns of federal and state resource agencies, like those raised previously about the coquina rock formations, remain. However, it may be possible for the Town to pursue a more limited feasibility study addressing only the proposed addition of a southern extension to the federal project. Such a study would not automatically end the current project or invalidate the prior authorization, project feasibility study, or environmental reviews. Still, while not impossible, the addition of the southern end of Kure Beach to the federal project is unlikely in the short-term and uncertain in the long-term.

2. Natural Area Designation

The HOA corresponded with representatives of DNCR’s Natural Heritage Program (“NHP”). The NHP staff supplied a map which showed the designated area from the Riggings north to the Ocean Dunes Condo area, some of which is also within the nourishment area. This Fort Fisher Coquina Outcrops Natural Area was designated in 1982, after it was proposed for inclusion on the registry by the Division of Marine Fisheries. DMF Staff act as the volunteer custodians of the Area. DMF Staff indicated that the designation does not automatically prevent nourishment.

Following the receipt of the 2017 Update, DCM Counsel contacted NHP representatives and received a copy of the Nature Preserves Act and the associated Administrative Rules, a copy of the 1982 Agreement between DMF and NHP designating the Natural Area, and a copy of a 2000 letter from Colonel DeLony, District Engineer of the Corps to Former Congressman Mike McIntyre [already included in the Riggings Record]. A review of the Act and rules shows that it is a voluntary registry process, and while there is a process for removal from the registry [15A NCA 13H], it is granted only when a site “no longer meets the criteria for registration as set forth” in the rules. DCM believes that the habitat values and the geological uniqueness of the outcroppings first recognized in 1982 likely remain.

The 2000 letter from the Corps to Congressman McIntyre indicates that the reasons for not including the southern end of Kure Beach in the project was two-fold. The uniqueness of the

outcroppings as well as their habitat value were one reason the area was not included and this was based on the designated status of the outcroppings, as well as comments from resource agencies at the time. The other reason given for not including the outcroppings was the HOA's location at a "point...whereby any beach fill would be exposed to wave actions and longshore currents that would quickly erode unless protected. . ."

This information indicates that while listing on the Registry is voluntary, and there is a process for removal, it would not be likely to qualify for removal as the habitat and geologic value of the outcroppings has not likely changed since 1982. While removal from this program could be attempted, the site's de-designation as a Natural Heritage Area would not necessarily alleviate the environmental concerns of resource agencies, including the Corps.

3. Further Study by Coastal Geologists or Engineers

It does not appear the HOA requested any further study of options at the site by coastal geologists or engineers.

4. Resource Agency Scoping Meetings

While the HOA made some contacts with resource managers, it does not appear the HOA requested a scoping meeting with all relevant resource managers present.

5. Recommendations

Based on a review of the 2017 Update, as well as information gathered through DCM's own efforts, DCM suggests the following as topics for discussion by the Commission or further examination by the Riggings.

- Further study of the site by coastal geologists or engineers, including their suggestions for possible approaches to take at the site including, but not limited to trucking-in sand for a site-specific nourishment designed to avoid impacts to the coquina.
- Seek a scoping meeting with relevant resource managers to solicit their current concerns about possible trucking-in sand along the beach in front of the HOA that might avoid covering the outcroppings.
- Examine of the potential for structure relocation and provide information collected on structure relocation, including current cost estimates.

February 25, 2000

Project Management Branch

Honorable Mike McIntyre
House of Representatives
Washington, DC 20515

Dear Mr. McIntyre:

At the request of Ms. Mary Ellen Simmons of your Wilmington, NC, office, we are pleased to provide you with more details and background information on the Carolina Beach and Vicinity – Area South Portion Hurricane Wave and Shore Protection Project at Kure Beach North Carolina and why it did not include the Riggings Condominiums.

The project, as authorized by Section 203 of the Flood Control Act of 1962, Public Law 87-874, starts at the southern town limits of Carolina Beach, North Carolina, and extends south for 18,000 feet. The last 500 feet of the southern end of the project makes a transition from the full project width back to the existing shoreline. The project ends approximately 600 feet north of the northern most building of the Riggings.

The primary reason that the project stops short of the Riggings is due to the intertidal coquina rock outcropping. The coquina outcrops are the only natural marine rock exposures on the entire North Carolina beach system and the most northern outcrops along the eastern coast of the United States. Destruction of this habitat would result in the loss of the only coquina outcrops found along the North Carolina beachfront and one of only approximately three such beach outcrops found along the Atlantic coast of North America. The rock outcropping has been declared a natural heritage area by the North Carolina Natural Heritage Program and burying them was not an acceptable alternative. While it is true that the outcropping has been covered by sand, this happened as a natural occurrence rather than through a purposeful act of man.

A second reason for the project not extending past the Riggings is that they are located on a "point" whereby any beach fill would be exposed to wave actions and longshore currents that would quickly erode unless protected by some type of jetty, sea wall, or groin which is unacceptable to the State of North Carolina. The State has a ban on construction of hardened structures in surf zones. The seawall constructed at Fort Fisher was done so under an exception granted by the State due to the Fort Fisher National Historic Site being endangered by the eroding beachfront.

-2-

However, based on an earlier request by you during a visit with me on January 12, 2000, we performed a quick analysis of the engineering and economic feasibility of extending the project to include protection of the Riggings. We also met with the environmental agencies on February 9, 2000, to discuss extending the project and their earlier concerns with covering the coquina rock outcropping. The environmental agencies are still opposed to intentionally covering the rock outcropping as they were during the initial evaluation of the project. Our engineering and economic analysis resulted in a project with a first cost of approximately \$9,000,000 and a benefit to cost ratio of 0.77 to 1. Based on this information, our recommendation to you in my letter of February 10, 2000, was that shore protection for the Riggings not be pursued.

Again, we are please to provide you with additional information regarding this matter. If I can be of any further assistance, please let me know.

Sincerely,

James W. DeLony
Colonel, U.S. Army
District Engineer

Copy Furnished:
Honorable Mike McIntyre
152 North Front Street, Room 208
Wilmington, North Carolina 28401

BCF:
CECW
CESAD-PM
CESAW-DX/Burch
CESAW-PM-C/McIntosh
CESAW-TS-EC/Jarrett
CESAW-DP/Tickner
CESAW-PM-P/Aiken

NORTH CAROLINA
REGISTRY OF NATURAL HERITAGE AREAS

Letter of Intent and Agreement to Register and Protect a Natural Area in
the Management of the Department of Natural Resources and Community Development

Whereas the State of North Carolina is the owner of an area known as Fort Fisher Coquina Outcrop Natural Area, managed by the Department of Natural Resources and Community Development, Division of Marine Fisheries and consisting of 27 acres, further described on the attached maps, and/or survey descriptions which are a part of this agreement, and located in New Hanover County.

And Whereas this area possesses the following natural values, justifying its recognition by the State as an outstanding part of the natural heritage of North Carolina:

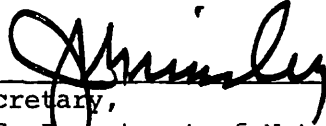
The Fort Fisher coquina outcrops are the only natural marine rock exposures on the entire North Carolina Beach system. The coquina rock is composed of shell fragments, marine and estuarine fossils, and other sediments cemented together by calcite. This mixture indicates that the rock was formed in a depositional environment in late Pleistocene time and was composed of rivermouth, inlet, or estuarine deposits. The potholes, cracks, and abrasions bowls of the coquina exposed during low tide offer prime habitat for various species of marine algae, sessile animals, and other forms of marine life. The tidepools serve as an exceptional educational resource for observation of nearshore marine plant and animal life. Numerous fishes and invertebrate fauna are found on the submerged zone of the coquina outcrops.

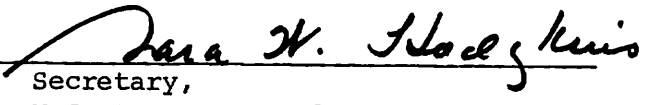
It is therefore agreed between the parties whose names are affixed below that Fort Fisher Coquina Outcrop Natural Area shall be entered on the official North Carolina Registry of Natural Heritage Areas on the 6th day of February, 1982.

It is understood that this agreement involves no change of administrative authority, but simply expresses the sincere intentions of the Department to refrain from making or permitting changes that negatively affect the natural values for which this area was registered within the boundaries outlined on the attached maps and/or survey descriptions. Specifically, the Department agrees to:

Maintain the property in its natural condition for educational, scientific, recreational, and aesthetic purposes, without alteration or disturbance of habitats, plants or animal populations, except as may be necessary and appropriate for management and use of the area for the foregoing purposes.

The Fort Fisher Coquina Outcrop Natural Area is hereby registered as a North Carolina Natural Heritage Area.

By: 
Secretary,
N.C. Department of Natural Resources
and Community Development
Post Office Box 27687
Raleigh, North Carolina 27611


Secretary,
N.C. Department of Cultural Resources
109 East Jones Street
Raleigh, North Carolina 27611

Date: 2/6/82

Date: 1/4/82

STATEMENT OF RECOMMENDATION

Designation of a Natural Heritage Area

It has been shown and documented that the area known as Fort Fisher Coquina Outcrop, in New Hanover County, North Carolina, which is further described in attached statements and attached map and/or survey description, has a natural value of statewide significance and is recommended to the North Carolina Natural Heritage Registry.

Charles E. Roe
Coordinator, Natural Heritage Program

January 27, 1982
Date

James D. Matten
Chairman, Natural Areas Advisory
Committee

Jan. 29, 1982
Date

James Stevens
Director, Division of Parks and
Recreation

Feb. 3, 1982
Date

Jay Langfeld
Assistant Secretary, Department of
Natural Resources and Community
Development

Feb. 5, 1982
Date

Secretary, North Carolina Department of Natural Resources and Community Development approves this area for registration.

W. M. Miller
Secretary, Department of Natural
Resources and Community
Development

Feb. 6, 1982
Date

NC COASTAL RESOURCES COMMISSION (CRC)

November 7-8, 2017

Hilton DoubleTree, Atlantic Beach, NC

Present CRC Members

Renee Cahoon, Chair

Neal Andrew, Vice-Chair

Greg Lewis, Second Vice-Chair

Larry Baldwin

Rick Catlin

Denise Gibbs

Robert High

Doug Medlin

Phil Norris

Jamin Simmons

Bill White

Present CRAC Members

Greg "Rudi" Rudolph, Chair

Bobby Outten, Co-Vice Chair

Spencer Rogers, Co-Vice Chair

Candy Bohmert

John Brodman

Jett Ferebee

David Kellam

Seth Laughlin

Mike Moore

David Moye

Kris Noble

Kathleen Riely

Dave Weaver

Present from the Office of the Attorney General

Mary L. Lucasse

Present from the Department of Environmental Quality, Office of the General Counsel

Christine A. Goebel

CALL TO ORDER/ROLL CALL

Renee Cahoon called the meeting to order at 1:00 p.m. on November 7, 2017 reminding the Commissioners of the need to state any conflicts due to Executive Order Number 34 and the State Government Ethics Act. The State Government Ethics Act mandates that at the beginning of each meeting the Chair remind all members of their duty to avoid conflicts of interest and inquire as to whether any member knows of a conflict of interest or potential conflict with respect to matters to come before the Commission. If any member knows of a conflict of interest or a potential conflict of interest, please state so when the roll is called.

~~Angela Willis called the roll. Russell Rhodes and Marc Hairston were absent. Robert High and Doug Medlin read their Statements of Economic Interest Evaluation letters. Commissioner Medlin stated he would recuse himself from the Drummond variance request. Commissioner Andrew stated that he is a Board Member of Masonboro.org, but does not believe there is a conflict with this agenda. Based upon this roll call Chair Cahoon declared a quorum.~~

CHAIR COMMENTS

Chair Cahoon welcomed Commissioners High and Medlin. Chair Cahoon reported that Dr. White did not accept her CRAC appointment after she realized she was not a good fit and her

expertise could be better utilized on another group. Marc Hairston communicated to DCM staff that he is not able to serve on the Commission at this time and was advised that he should forward a letter of resignation to the Senate which had appointed him to the Commission. The 2018 proposed CRC schedule is before each Commissioner for review. A per diem waiver form was provided to each Commissioner, please complete the waiver or fill out the required paperwork to continue receiving the per diem with taxes withheld. The CRC discussed issues with the flood maps at the last meeting and staff will draft a letter to John Dorman from the CRC about flood maps addressing modeling, nor'easters, and historical data. The CRC also heard a presentation on Hatteras Ramps. Staff should bring rule language for the CRC.

COMMISSIONER ORIENTATION

Mary Lucasse, CRC Counsel, stated Angela Willis is the contact for Ethics information. The State Ethics Act recommends that new commissioners read their Statements of Economic Interest evaluations letters for the record to inform other Commissioners of potential conflicts that may exist. The State Ethics Commission requires that each Commissioner attend and complete an ethics education training session and subsequent refresher training every two years. If any commissioner has an ethics concern, talk to CRC counsel before the meeting. The State Ethics Act, requires CRC members recuse themselves from discussion on any matter where an actual conflict exists. A good way to decide if there is a conflict is to consider if the decision involves a member of the Commissioner's family or if there will be a financial impact to the Commissioner. If a member is recused, the Commission's practice has been for that member to leave the table. This ensures that there is no participation in the conversation, there are no facial expressions, or other ways to influence the Commission's decision. Executive Order 34 imposes an additional requirement on Commission members that are appointed by the Governor. This Executive Order repeats several of the statutory requirements as well as the ban on receiving gifts and attendance requirements. The CRC by-laws also have attendance requirements. Counsel explained that Commission member should not speak with parties or staff ex-parte on quasi-judicial matters. In this way, the Commission ensures that its decisions are made based on the facts before the Commission and not on information learned through side conversations. There is also the constitutional due process reason for prohibiting the Commissioners from communicating individually with the parties. By requiring that all communications had handled through the Commission's counsel, the Commission ensures that each side has the same opportunity to present arguments and facts to the Commission, and to respond to what is said by their opponent. State Law requires that all deliberations of the CRC take place in public. The Public Meetings Law requires that the Commission's decisions be made by a quorum of members and that records are kept regarding the Commission's work and that these are available for review. The CRC Internal Operating Procedures were last amended in 2014 and can be updated as needed. If something is not spelled out in the Commission's internal Operating Procedures, the CRC refers to Roberts Rules of Order.

Counsel also explained the variance procedure. CAMA regulations place limits on how a coastal property owner can use his or her property. The variance process is used to permit development that would otherwise not be allowed under CRC rules as long as certain criteria are met. A variance proceeding is a quasi-judicial matter and ex-parte communication is not allowed. If you receive the materials for consideration in a variance proceeding and have a question, please alert CRC counsel. Your attorney will ensure due process is followed by asking both sides to respond

to the question. The variance criteria are spelled out in Statute and the CRC rules. The Petitioner has the burden to show an unnecessary hardship would result from strict application of the CRC's rules, that hardships result from conditions peculiar to the petitioner's property, that hardships do not result from actions taken by the petitioner, and that granting the variance will be consistent with the spirit, purpose and intent of the CRC's rules, will secure the public safety and welfare, and preserve substantial justice. Variance decisions are determined on stipulated facts. Testimony is not received at CRC variance presentations. All arguments should be limited to stipulated facts and exhibits. If the petitioner and staff cannot agree on stipulated facts, a hearing on the matter will be held in the Office of Administrative Hearings and the record of that testimony will be used by the Commission to decide the request. When considering a variance request, there are several possible outcomes. The CRC can remand the request for additional facts, the Commission can grant variance request in its entirety or with conditions. Or the Commission can deny the request for a variance.

Division of Coastal Management and NC Coastal Program Overview Regulatory Program/Public Trust Area of Environmental Concern

Braxton Davis stated the Coastal Area Management Act of 1974 has four major tenets. CAMA balances competing coastal pressures through development permitting and creation of a Coastal Resources Commission. CAMA also addresses coastal growth and related issues through a local/state partnership. It conserves undeveloped land for education and research through the Coastal Reserve Program. Lastly, CAMA enhances public access to beaches and coastal waters through grants to local governments. The mission of the Division of Coastal Management is to protect, conserve and manage North Carolina's coastal resources through an integrated program of planning, permitting, education and research. The Division has offices with regulatory staff in Elizabeth City, Washington, Morehead City, and Wilmington. The Policy and Planning staff work with the Commission on rule development and non-regulatory programs such as the Waterfront Access Grants, Land Use Planning, and Clean Marina Programs. There are ten Coastal Reserve sites which focus on research and education. The Division's appropriations have been reduced by 30% since the 2011 fiscal year. There has been a reduction of 14 full time employees, about a 22% reduction. Permit fees are rebounding as development increases and federal support has remained steady since 2002, but has faced several potential threats. The CRC signed a support letter to the North Carolina delegation to request continued support of the program. CAMA designates areas of environmental concern (AEC) and the Commission writes the rules for these areas. The AECs include the Estuarine and Ocean System, Ocean Hazard Areas, Public Water Supplies, and Natural and Cultural Resource Areas. In the Ocean Hazard Areas there are erosion setbacks based on the size of the structures, a ban on most permanent erosion control structures, and rules governing beach and inlet projects. In the estuarine system there are different rules based on the characteristics of that AEC. Minor Permits are issued mostly by local governments consistent with CRC rules. General permits are streamlined permits issued by DCM staff and cover routine projects. Major Permits are reviewed by nine state and four federal agencies and cover development not eligible for a General Permit. The federal consistency reviews can be a big part of our program since it applies to offshore energy development, operations of the Corps of Engineers, Coast Guard dredging operations, and any federal activity or federal permit that isn't also receiving a state permit.

Doug Huggett reviewed the regulatory program within the Division. A CAMA minor permit is used for development in an AEC that does not require any other state or federal permit. A majority of minor permits are issued by Local Permit Officers. Currently 38 local communities and municipalities participate in the Minor Permit Program. When the economy was strong during 2006-2007, permit numbers were up. Since that time, approximately 800 minor permits are issued per year. The trend for general permits is similar. During the construction boom, there were more than 3,000 general permits issued per year by the 15 field representatives for the twenty coastal counties. The Corps of Engineers in North Carolina has permitting authority for wetland permits as well as navigational permits. In an effort to streamline the process, the State and the Corps came up with General Permit No. 198000291 (GP 291) which sets up a cooperative agreement between the Corps and DCM for processing applications initiated through DCM. A pre-application meeting with a DCM field representative is not required, but is highly recommended. Once the application package and fee are submitted to DCM, the field rep does a site visit with the applicant and reviews the application packet for completeness. The field rep writes a field investigation report which acts as an executive summary for the overall project. This field report along with the application package is sent to state and federal review agencies. Then, the application is turned over to the major permits staff and public notice begins. Comments and objections are accepted from the public and the review agencies. At the end of the comment period, the permit coordinator reviews all comments and recommendations received determines whether the proposed project is consistent with CRC rules. If a permit is denied, the applicant can appeal the permit decision in OAH or request a variance from the CRC. If the permit is issued, a third party may request a hearing to challenge the permit. In addition, the permittee may appeal a permit condition or request a variance to modify or remove a permit condition. Commission rule 15A NCAC7H .0208 dictates that prior to issuing a permit, DCM must find there are no significant adverse impact to coastal wetlands, SAV habitat, shellfish beds, and spawning and nursery areas; the development will not violate water quality standards; will not jeopardize use of the waters for navigation and other trust rights, there are no significant adverse impact to wildlife or fisheries, and the development is timed to avoid impacts on life cycles. The fee for a CAMA major permit includes a fee for a DWR Wetlands Permit, which is a savings to the applicant. SEPA documents are no longer required for projects which receive a CAMA major permit.

Christy Goebel provided training on the legal concept of public trust which varies from state to state. The Public trust in North Carolina is defined by the State's Constitution, NC Statutes, CRC Rules, and case law. In North Carolina, the public trust includes the ability to navigate the waters of the state, swimming, hunting, fishing, and recreating. Public trust areas include the reach of navigable waters and the full breadth of the water body as well as the full depth and breadth of the ocean beaches. ~~The dry sand beach, fish and game are also included in the public trust. DCM~~ regulates the State's Dredge and Fill Act. This is where "estuarine waters" is defined. One of CAMA's goals is to protect common law and statutory public rights in the land and waters of the coastal area. CAMA requires a permit for development be denied if it will jeopardize public rights or interests. The CRC rules protect the waters as well as the shorelines. The management objectives of the AECs require protecting present common law and public rights of access to the lands and waters of the coastal area. In the estuarine waters AEC, CRC rules protect fisheries habitats as well as the public trust right of recreation. In the public trust area AEC section, the rules focus on ocean waters and navigable waters, including upland basins, and the CRC's desire

to protect the navigational, fishing and recreation rights of the public in these public trust areas. The use standards for the AECs protect the fisheries resource and the habitat as well as the traditional public trust rights.

ASSISTANT SECRETARY UPDATE

Sheila Holman, DEQ Asst. Secretary, welcomed the two new members of the Commission. She stated, John Nicholson, DEQ Chief Deputy, is at the Division of Marine Fisheries. A new director should be named shortly. I am taking on GenX in the Cape Fear River.

VARIANCES

Drummond (CRC VR 17-06) Surf City, Oceanfront Setback

Christine Goebel/Clark Wright

**Doug Medlin recused himself from this variance request.

Jason Dail, DCM Field Representative, presented an overview of the site. Christine Goebel, DEQ Assistant General Counsel, represented staff and acknowledged Mr. Clark Wright who is present and will represent Petitioners. Ms. Goebel reviewed the stipulated facts of this variance request and stated Petitioners Michael and Mary Drummond own oceanfront property at 1924 South Shore Drive in Surf City. The site is developed with a two-story, six-bedroom home. The location of the 60-foot setback from the current first line of stable and natural vegetation falls at the back of the existing house. Approximately 2/3 of the house is within the setback area. In 2017, Petitioners applied for a CAMA Minor Permit to enclose part of the entry deck area, increasing the total floor area by 37 square feet. Additionally, Petitioners propose to re-work the existing decks and stairways, resulting in a net increase of decking and 753 square feet of decking within the setback. DCM denied Petitioner's permit application as the proposed development does not comply with the ocean erosion setback at 15A NCAC 7H .0306(a)(9) and the decking is in excess of the 500 square feet allowed by 7H .0309(a)(3). Ms. Goebel stated the addition requested by Petitioners is de minimis. However, Staff argues that the request for an increased deck in the setback should be denied because the hardship do not result from conditions peculiar to the property, any hardships are a result of the petitioner's choice of design, and the additional decking on the oceanside of the existing home is not with the spirit of the rules and could negatively impact the public safety and welfare if it becomes storm debris.

Clark Wright, of Davis Hartman Wright, represented Petitioners and stated older decking is being replaced with newer, better-built materials. All work that is being proposed is de minimis and based on the plans are reducing storm debris with a positive net effect of zero or better. Mr. Wright reviewed the stipulated facts which Petitioners contend support the granting of the variance request.

The following Motions were made regarding the Request for 37 Square foot addition:

Greg Lewis made a motion that strict application of the applicable development rules, standards or orders issued by the Commission will cause the petitioner an unnecessary hardship as related to the proposed 37 square foot addition. Jamin Simmons seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Greg Lewis made a motion that any hardships associated with the 37 square feet addition result from conditions peculiar to the Petitioner's property. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Greg Lewis made a motion that hardships associated with the 37 square foot addition do not result from actions taken by the Petitioner. Denise Gibbs seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Greg Lewis made a motion that the 37 square foot addition is consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission; will secure the public safety and welfare; and preserve substantial justice. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

The following motions were made regarding the request to expand the oceanside deck:

Greg Lewis made a motion that the variance for the proposed decking be denied as strict application of the rules do not cause an unnecessary hardship. Bill White seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Greg Lewis made a motion that any hardship resulting from denying the request for the proposed deck was not caused by conditions peculiar to the Property. Bill White seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Greg Lewis made a motion that any hardships relating to the increased deck result from actions taken by the petitioner. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Greg Lewis made a motion that the requested decking is not consistent with the spirit, purpose and intent of the rules, standards, or orders issued by the Commission; will not secure public safety and welfare; and will not preserve substantial justice. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

This variance request was granted in part and denied as to the requested deck addition.

ACTION ITEMS

Adoption of 15A NCAC 7H .2200 Free Standing Moorings – Osprey Poles

Jonathan Howell

Jonathan Howell stated the amendments to this General Permit make it consistent with 7H .1200 and allow for one bird nesting pole per property placed within the property owner's riparian corridor and limits the maximum platform size. No public comments were received.

Neal Andrew made a motion to adopt amendments to 15A NCAC .2201, .2202, .2204, and .2205. Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Town of Swansboro Land Use Plan Amendment (CRC 17-24)

Mike Christenbury

Mike Christenbury stated the Town of Swansboro is seeking certification of an amendment to the 2009 Swansboro Land Use Plan. The Town held a duly advertised public hearing on August 8, 2017, and voted unanimously by resolution to adopt the amendment. DCM Staff reviewed the amendment and determined that the Town has met the substantive requirements outlined in the 7B Land Use Planning guidelines and there are no conflicts with state or federal law or the State's Coastal Management program. Staff recommends certification of the amendment to the 2009 Town of Swansboro CAMA Land Use Plan.

Neal Andrew made a motion to certify the amendment to the Town's Land Use Plan. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Town of Ocean Isle Beach Land Use Plan Certification

Mike Christenbury

Mike Christenbury stated the Town began the process to update and create a new land use plan in 2016. After public meetings with citizens, stakeholders and key decision makers, the Town held a duly advertised public hearing on September 12, 2017, and voted unanimously by resolution to adopt the 2017 Land Use Plan. DCM Staff reviewed the plan and determined that the Town has met the substantive requirements outlined in the 7B Land Use Planning guidelines and there are no conflicts with state or federal law or the State's Coastal Management Program. Staff recommends certification of the 2017 Ocean Isle Beach Land Use Plan.

Phil Norris made a motion to certify the Town of Ocean Isle Beach's Land Use Plan. Bill White seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Legislative Changes Regarding Delegation of LUP Certifications (CRC 17-30)

Mary Lucasse

Mary Lucasse provided some history on the initial controversy involving CAMA Land Use Plans. Now that local governments value and understand why these plans are important, approval is pro forma and the CRC has requested a statutory change delegating its authority to review and approve Land Use Plans to the Department. Session Law 2017-209 makes this change. The Legislature allowed the Commission to delegate the power to approve land use plans in

accordance with 113A-110(f) to any qualified employee of the Department and reviewed the draft delegation memo from the CRC to the Director of the Division of Coastal Management.

Neal Andrew made a motion to delegate the Director of the North Carolina Division of Coastal Management, Department of Environmental Quality, the authority to approve Land Use Plans pursuant to N.C.G.S 113A-110(f). Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

COASTAL HABITAT

CHPP Implementation Plans (CRC 17-29)

Jimmy Johnson

Jimmy Johnson, DEQ, stated the most recent version of the Coastal Habitat Protection Plan (CHPP) was adopted by the CRC, MFC, and EMC in the first quarter of 2016. This is the third version of document which is required by the Fisheries Reform Act of 1997. The first version was signed by the three Commissions in 2004 and the second revision was completed in 2010. This is a request to approve the Implementation Plan for the next two years. The document contains 26 recommendations and the Implementation Plan contains the actions that put the recommendations into action. The four priorities the CHPP Steering Committee identified were living shorelines, sedimentation, oyster habitat, and metrics (how to measure success).

Larry Baldwin made a motion to approve the 2018-2020 CHPP Implementation Plan. Neal Andrew seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

During comments on this agenda item, Greg Lewis stated he supports increased funding for the UNC oyster hatchery and has tried to get a pilot program in Carteret County with Marine Fisheries and Carteret Community College's small business center working with oyster growers.

By consensus, the CRC appointed Greg Lewis as the second CRC member on the CHPP Steering Committee.

LEGAL UPDATE

Mary Lucasse stated the CRC was not a party in *Nies v. Emerald Isle* but submitted an amicus brief in the public trust case in the NC Supreme Court. Recently the United States Supreme Court denied the Nies petition for review. As a result, the Court of Appeals holding that the public has the right to use the dry sand beach as part of our public trust area stands.

Brooks, Jr./HEB Properties v. CRC/DCM was filed in Guilford County Superior Court seeking judicial review. The petition was dismissed without prejudice.

Another property rights case is *Sunset Beach Taxpayers Association and NC Coastal Federation v. DCM and Sun's Set LLC v. DCM*. In this case, DCM issued a permit and the permit was appealed. The contested cases have been stayed until a decision is reached in the related case filed in Brunswick County Superior Court requesting determination of title issues.

The variance issued to the Riggings Homeowners, Inc. on December 11, 2015, required the HOA Board to submit annual written updates to the Commission on its search for a solution to address the erosion at the Site. The annual update will be discussed at your next meeting.

The CRC Chair received three requests for third-party hearings in October. The record documents in support of these three requests totaled more than 600 pages. Two of these requests were denied and one was granted permission to move forward to the Office of Administrative Hearings.

MINUTES

Larry Baldwin made a motion to approve the minutes of the July 11-12, 2017 Coastal Resources Commission meeting. Denise Gibbs seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

EXECUTIVE SECRETARY'S REPORT

Braxton Davis, DCM Director, gave the following report:

Legislative Update

Over the last few meetings I've updated you on several bills that DCM has been tracking during the past legislative session.

S.L. 2017-10 (S131) – An Act to Provide Further Regulatory Relief to the Citizens of NC

Section 3.8 Eliminate Outdated Provision of CAMA (113A -109) – This action eliminates the provision for the CRC to develop the initial LUP for a County as all CAMA counties have LUPs.

Section 3.14 CRC Rules on Temporary Erosion Control Structures

Allows the Commission to adopt an emergency rule for the use of sandbags consistent with the amendments in CRC-16-23. The Commission is directed to adopt temporary and permanent rules to implement this section. A review of proposed amendments is on your agenda.

Section 3.15 – CRC to Amend Sediment Criteria Rule, Exempt Cape Shoal Systems

Directs the CRC to exempt from the permitting requirements of the Sediment Criteria rule (15A NCAC 7H .0312) any sediment in the cape shoal systems used as a borrow site and any portion of an oceanfront beach that receives sediment from the cape shoals system. This provision is effective immediately until the Commission completes permanent rule making. You will recall the Commission began the process at the May 2017 meeting that included revisions of the sampling protocol associated the sediment criteria rules. Staff has been soliciting input from stakeholders on draft amendments and will have rule language for you to consider in early 2018.

Section 3.16 – DCM to Study Long-term Erosion Rates Adjacent to Terminal Groins

Directs DCM to study the change in erosion rates adjacent to existing and newly constructed terminal groins to determine if current erosion rates should be adjusted to reflect mitigation of shoreline erosion from terminal groin installation. Study is due to Legislature March 1, 2018.

Section 4.19 – Reporting Frequency on Terminal Groin pilot Projects by the CRC

Reduces the frequency of reports from once a year to once every five years.

Since the Legislature last adjourned, there are several other bills that have been passed or vetoes overridden:

SB16 (SL 2017-211) requires agencies to provide notice of petitions for rulemaking and a statement of the effect of the requested rule change to the Office of Administrative Hearings within three business days of receipt of the petition. The Office of Administrative Hearings shall distribute the information via its mailing list and website within three business days of receipt.

HB56 (SL 2017-209) Section 5.(a) Allows the CRC to delegate approval of CAMA land use plans to any qualified employee of the Department. Section 5.(b) removes the CAMA requirement for on-site posting to provide notice of minor permit applications. Section 6. establishes a Coastal Storm Damage Mitigation Fund to be used for costs associated with beach nourishment, artificial dunes, and other projects to mitigate or remediate coastal storm damage to the ocean beaches and dune systems of the State. Any project funded by revenue from the Fund must be cost-shared with non-State dollars on a basis of at least one non-State dollar for every one dollar from the Fund. No money has been appropriated. Section 19.(a) Repeals plastic bag ban in Dare County.

Regulatory

On the regulatory side, we are seeing similar or slightly higher permit activity in 2017 as compared to 2016. Division staff have been actively involved with Department senior staff and other DEQ Divisions on a Department-lead initiative to reinvent permitting. Efforts explored include “e-permitting”, acceptance of credit cards for permit fees, improved web-based access to rules, guidance documents and application forms, as well as better access to real-time permit processing information for individual projects. This effort is still underway. We will report back to you on final improvement ideas and action items.

Notable permit action since your July meeting include the issuance of a permit to the Brunswick Regional Water & Sewer for water infrastructure improvements in Brunswick County, issuance of a permit to the Cape Fear Public Utility Authority for Proposes for the extension of water distribution system and sanitary sewer collection system to serve commercial facilities, and the issuance of a permit to the Town of Manteo authorizing the large-scale maintenance dredging of the Town’s waterfront. On October 9th and 10th, the Division held a local permit officer training session in Dare County for local governments in the northern portion of the State participating in the LPO program. A similar session for southern LPO programs was conducted earlier this year. DCM, in cooperation with the U.S. Fish and Wildlife Service and the U.S. Army Corps of Engineers, recently developed a Statewide Programmatic Biological Opinion that should streamline a portion of the permitting process for beach nourishment projects along North Carolina’s oceanfront. This new, programmatic approach to the consideration of threatened and endangered species will make the planning and permitting of many beach projects more straightforward, particularly following the 2014 designation by the U.S. Fish and Wildlife Service of several coastal beaches in North Carolina as “critical habitat areas” for the threatened loggerhead sea turtle under the federal Endangered Species Act. This new approach should cut permitting timelines and reduce costs for routine beach projects. The statewide biological opinion will eliminate the requirement for the preparation of individual, project-specific assessments and case-by-case federal reviews of many sand placement projects in North Carolina and result in reduced permitting timelines and cost savings for locally-sponsored and federal beach nourishment projects, while continuing to ensure protections for threatened and endangered species. The coast-wide biological opinion outlines specific project designs, mitigation measures and monitoring requirements for a typical beach nourishment project.

Coastal Reserves

Coastal Reserve Staff have been active with a number of Program activities - details are on the Reserve's website event calendar. Seasonal temporary staff and interns have helped the Reserve with a variety of projects this summer including public and summer camp education programs, various site management activities, sea turtle and shorebird monitoring, pre-storm marsh sill assessment monitoring, and aerial photo documentation of marsh seaward of bulkheads. Of note the Masonboro Island Reserve sea turtle nesting season had record numbers this year, with 55 nests and over 4,460 hatchlings. Reserve staff and 11 volunteers patrolled the beach to monitor nests 3-5 times a week, contributing more than 500 volunteer hours from mid-May through October. The Coastal Reserve has also received several grants including a Thin Layer Deposition NERRS Science Collaborative Grant to serve as an experimental site for a project testing the effectiveness of thin-layer sediment placement as a climate adaptation strategy. The project tests how small additions of sediment affect the resilience of marshes to sea level rise and develops standardized monitoring protocols as well as siting and permitting guides for this technique. A Seeds to Shoreline NERRS Science Collaborative Transfer Grant to partner on a multi-Reserve project for teachers and students to hydroponic growing techniques for growing saltmarsh cordgrass (*Spartina alterniflora*) in their classrooms and plant for future restoration efforts. The Reserve has also received an additional NERRS Science Collaborative Transfer Grant to facilitate the use of a new tool, known as the Climate Change Vulnerability Assessment Tool for Coastal Habitats (CCVATCH), to assess habitat vulnerability to ecosystem stressors using the knowledge of Reserve staff and local experts. The Reserve hosted a Coastal Explorations Educator Workshop focused on estuaries and provided classroom activities participants can use with their students and groups. A Marine Planning Process Workshop will be held on January 8th 2018 in Beaufort to provide marine and coastal resource managers with tools to use effective marine planning techniques. This workshop is a partnership with the Albemarle-Pamlico National Estuary Partnership and Duke University's Nicholas School of the Environment.

Periodic Rules Review – Coastal Reserve Rules

Both the Rules Review Commission (RRC) and the Joint Legislative Administrative Procedures Oversight Committee approved the rules review report for the Coastal Reserve rules 15A NCAC 070. These actions follow input received on the classification of each rule in 070 from the local advisory committees (Spring 2016), N.C. Coastal Resources Commission (July 2016), and a 60-day public comment period (September-November 2016). One supportive comment was received during the public comment period. Staff is working with the Department to establish a timeline and process for readoption of these rules.

Policy & Planning

The Division's Planning Staff have completed the 2017 Public Beach and Coastal Waterfront Access Program grant process and the Governor's Office has announced awards for the 2017-18 fiscal year of more than \$1.6 million to 14 local governments for 15 projects to improve public access to coastal beaches and waters. The awards range from \$13,000 - \$300,000 and include projects such as boardwalks, public restrooms, kayak launches, fishing pier and parking improvements, and repair of the Yaupon Pier in Oak Island. The Division expects to solicit applications for FY 2018 in mid-January. Planning Staff are working with Coastal Reserve Staff to hold Coastal Government Planning for Open Space Workshops. Participants will learn about

the benefits of open space protection and how it can service multiple needs; including recreation opportunities, floodplain management, riparian buffers, military buffers, wildlife habitat, and forestry and farmland protection. Participants will identify contacts that build a framework for open space protection and how other communities approach open space protection. Workshops will be held November 30th at the New Hanover County Government Complex in Wilmington, and on December 5th at the Vernon James Research & Extension Center in Plymouth.

Administrative

As the Chair mentioned, the Office of State Controller is requiring that boards and commission members who receive a per diem payment have taxes withheld. At your seats are an opt out form for members who do not wish to collect the per diem anymore or want to return the payments they already received, a direct deposit form, the NC-4 NC Tax Withholdings Form, and the W-4 Federal Tax Withholding Form. Please complete and return to Angela.

Staffing News

Michelle Brodeur started as the Reserve's new Communications Specialist in August. Michelle is a marine ecologist who recently completed her PhD at UNC Institute of Marine Sciences. She explored how interactions within oyster reef communities affect oyster reef growth and restoration success in the Rachel Carson Reserve. She brings knowledge of estuarine ecosystems and experience communicating research to broad audiences through formal education, public outreach events, and filmmaking. Finally, I am both happy and sad to report that Ronda Bennett, the Division's office manager in our central office in Morehead City, is retiring at the end of this year. Ronda has been an extremely important part of the Division for 20 years. She has been invaluable in more ways that I can report, and while she will be very sorely missed, we all wish Ronda and her husband Chris all the best as they move forward to this new phase of their lives.

CRAC REPORT

Rudi Rudolph stated the Advisory Council discussed current vacancies. The Council agreed to request local governments submit additional nominations to fill the current vacancies. The CRAC also discussed requests by Nags Head and D.O.T. relating to current regulations that do not allow for expansion of stormwater outfalls. Following beach renourishment, outfalls are on the base of the dune and need to be extended oceanward. Cliff Ogburn, Nags Head Town Manager, and members from NCDOT presented the proposals. The CRAC discussed scenarios new regulations could address that would allow for the extension of these outfalls. The CRAC unanimously recommends the CRC move forward to promulgate new rules to allow for the extension of stormwater outfalls in Nags Head or coastwide.

Braxton Davis stated the CRC rules do not specifically ban the extension of ocean outfalls, but development is not permitted seaward of the first line of stable and natural vegetation on the beachfront unless it meets one of the exceptions. Ocean outfalls are not listed in the exceptions. During the CRAC discussion neither DEMLR nor DWR representatives were present. Chair Cahoon clarified that outfalls in Nags Head belong to D.O.T., not the Town.

Rudi stated that the CRAC asked local governments to identify their top coastal issues. Staff has compiled the list of topics received. The CRAC prioritize some issues for future consideration.

Renee Cahoon stated, Frank Rush and Lee Wynns did not seek reappointment to the CRAC. She proposed the CRC send both a Certificate thanking them for their service.

Greg Lewis made a motion to reappoint all current CRAC members for a two-year term. Phil Norris seconded the motion. (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

CRC RULE DEVELOPMENT

Review and Amendments to 7H .0308(a)(2) Temporary Erosion Control Structures

Mike Lopazanski (CRC 17-23)

Mike Lopazanski stated when the CRC began to develop a ban on oceanfront hardening, allowances were made for temporary measures to protect imminently threatened structures along the oceanfront including beach nourishment, sandbags, and beach bulldozing. The intent of these temporary measures was to protect the structure until the beach could repair itself after a storm event or to allow time for the property owner to relocate the structure. Temporary implied that a time limit was applied to these projects. During the 1990s the Commission received numerous complaints about permanent sandbags sued to address erosion problems. In 1994, DCM conducted an inventory that showed about 15,000 linear feet of oceanfront shoreline was protected by sandbags. Some bags had been in place for eight years. In 1995, the CRC amended the rules addressing the size and physical location of the bags, the burial issue, and placed a time limit of two years for protection of a structure of less than 5,000 square feet or five years for structures greater than 5,000 square feet. Sandbags were allowed to remain in place for up to five years if they were located in a community actively pursuing a beach nourishment project. The Commission limited the use of sandbags to one time per property. The hurricanes in 1996 and 1998 caused the CRC to extend the deadline for sandbag removal to September 1998 in counties that were declared disaster areas. The CRC granted variances to several properties in Onslow County. Since most of the sandbags were to be removed in 2000, staff began to notify property owners that 141 sandbag structures were subject to be removed. In January 2000, Dare County submitted a Petition for Rulemaking requesting an additional extension until 2006. The Science Panel recommended granting this extension, but only for sandbag structures that met the size limits and were in communities actively pursuing beach nourishment. Given the time it takes to get a beach nourishment permit, the CRC granted a statewide extension to these communities of May 2008. By 2005, beach nourishment was increasing and presented compliance problems and enforcement challenges. Many sandbag structures were not removed prior to beach nourishment and were buried. It was common to find sandbag structures interlaced among properties. Sandbag structures often had varying expiration dates based on when the structures were installed. In 2006, the six-foot height limit became an issue as property owners were allowed to maintain this height even as the bags sank into the sand. During erosion events, 15- to 20-foot high sandbag walls were uncovered. The CRC directed staff to measure the height of the structure from the base of the structure. As 2008 approached, DCM began preparing to notify the property owners that the sandbag structures would need to be removed. The Commission discussed using degradable materials as a means of ensuring removal. Staff research showed that there were issues with these materials, primarily the amount of time the biodegradable bags could survive in the coastal environment. The CRC considered further time extensions, but ultimately decided that the current rules should be enforced. Staff sent letters to 371 property owners notifying them of the May 1 deadline. DCM conducted an inventory of sandbag

structures and prioritized removal. The CRC received Petitions for Rulemaking to allow special provisions for commercial structures and to remove time limits. The CRC looked at the inlet hazard area provisions and concluded sandbags could remain for eight years in an inlet hazard area when the use of sandbags was associated with an inlet relocation project. Sandbags were to be removed when they were no longer needed and sandbags could be used multiple times provided there would be another inlet relocation project. The Commission received variance requests from 29 property owners. In 2009, the legislature stepped in and established a moratorium on the removal of sandbags if the community was pursuing beach nourishment or inlet relocation. The moratorium did not prevent DCM from moving ahead with enforcement on other rule provisions. The CRC established a stakeholder group on sandbag management and incorporated the provisions from the terminal groin legislation. Several sandbag structures were removed from Dare County where houses had been condemned or removed. In 2015, the legislature required that certain provisions be added to the CRC rules. There was concern these provisions could lead to the proliferation of sandbags and that their use would be allowed even when no threatened structures were present. The CRC had been discussing amendments to remove the distinction between structures based on size, to set a time limit of eight years for all structures; to require that only sandbags exposed above grade be removed upon expiration of the permit; to remove the vegetated requirement that allows structures to remain beyond their permitted time; and to allow a permitted sandbag structure to remain in place for an additional eight years if DCM determines a structure is imminently threatened and the property is located in a community pursuing a beach renourishment, inlet relocation or stabilization project. In 2017, the General Assembly allowed the CRC to adopt the amendments discussed in May 2016 (16-23) and repealed the legislature's directives on temporary erosion control structures in S.L. 2015-241. Two proposals are provided for the Commission's consideration. "Version A" includes the legislative provisions from 2015. "Version B" removes the legislative provisions.

Neal Andrew moved to approve "Version B" amending 7H .0308, 17H .1704, and 7H .1705 for public hearing. Denise Gibbs seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

Amendments to 7B – Land Use Plan Certification

Rachel Love-Adrick (CRC 17-32)

Rachel Love-Adrick stated the proposed amendments to 15A NCAC 7B .0803 are required by the passage of SL 2017-209 (House Bill 56). The proposed amendments allow the Commission to delegate the power to approve land use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

Neal Andrew made a motion to approve the amendments to 15A NCAC 7B .0803 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

BEACH AND INLET MANAGEMENT

Carolina Beach Inlet Maintenance – Inshore Storage

Layton Bedsole, New Hanover County Shore Protection Coordinator

Layton Bedsole explained the management approach for Carolina Beach Inlet. In water management of dredged material is not a new concept. The Corps has been managing offshore

dredge material management sites for years. Our goals were to increase the Corps' efficiency of a special dredge fleet and improve our management of beach quality material. In a case by case analysis of two similar Corps projects, the travel time is reduced by 62% and increased the dredging time by 33% for disposal at the IDMMS (in-shore dredge material management site) versus the nearshore by the hopper dredge. (*presentation available*)

Town of Kure Beach Development Line Approval (CRC 17-25)

John Batson, Building Inspector

Ken Richardson stated in March of 2017, the Town of Kure Beach adopted a development line in its local ordinances. In July, the CRC identified three locations on the proposed maps that needed to be addressed. Since then DCM received documentation that the Town adopted amendments to the development line as requested by the Commission. Mr. Batson spoke on behalf of the Town and addressed the three areas located at 217 South Fort Fisher Blvd., 1009 South Fort Fisher Blvd., and 1437 South Fort Fisher Blvd. At the CRC's request the Town straightened the development line at these locations.

Greg Lewis made a motion to approve the Town of Kure Beach's revised development line. Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

PUBLIC ACCESS

Evaluation and Economic Impact of NC's Public Beach and Coastal Waterfront Access Program

Drs. Jim Herstine, UNCW/Chris Dumas, UNCW/Alexia Franzidis, UNCW

Mike Lopazanski stated the Access Program is funded through the Parks and Recreation Trust Fund. Since the program was started in 1983, using a combination of state and federal funds, we have awarded \$46 million to local governments in the coastal area for construction of more than 430 access sites. These sites are ocean beach accesses, sound side beach accesses, parking areas, boardwalks, restrooms, and urban waterfront redevelopment.

Dr. Jim Herstine stated the purpose of this study was to look at the satisfaction that coastal business leaders, local government officials, and program users have with the public access program. We were also interested in understanding the importance the same people place upon the public access program. The purpose of the study was to provide data to DCM that could be used to make modifications or changes to the program. In each of the four districts we used focus group sessions, individual interviews, an online survey and a field survey. Based upon study results, DCM should continue the access program and consider seeking additional program funding. The study results indicated that there should be a shift from land acquisition for new sites to improvements to existing sites, especially for restrooms, showers, and parking. Chair Cahoon requested that a link to this study be provided on DCM's website for access to the study and recommended that Commissioners share the study with their local legislators.

PUBLIC INPUT AND COMMENT

Brad Rosov, APTIM, commented about larval entrainment impacts from navigation maintenance. (Written comments provided) Al Smeilus, oyster farmer, commented about oyster leases near Masonboro Island.

SHELLFISH AQUACULTURE

Overview of General Assembly Oyster Management Plan

Jeff Warren, PhD, Research Director, NC Policy Collaboratory

Dr. Jeff Warren stated the NC Policy Collaboratory was established last year by the General Assembly to leverage the talent and research of the staff and faculty across our UNC System. The Collaboratory is designed to study statutory mandates from the General Assembly and do proactive research to bring to the General Assembly. I am the only full-time employee of the Collaboratory. Oysters are a win-win situation. They can create jobs, they provide money for the economy, a great tax base, they bring more notoriety to our State, and an ecosystem benefit. The results of our oyster study are due no later than December 31, 2018. This year's Appropriations Act mandated the Collaboratory include a shellfish mariculture plan in the study. The Collaboratory will provide a summary of available and relevant information on shellfish mariculture; analyze existing programs, policies, rules and laws that govern or affect shellfish mariculture operations within the State; summarize what is being done in other states and countries; analyze how to reduce potential user conflicts regarding siting shellfish mariculture operations, and protect riparian property owners and public trust uses. The study will also include an evaluation and consideration of enforcement mechanisms necessary to protect shellfish mariculture operations from theft and degradation, a pathway for traditional commercial fishermen to participate in enterprises in or near their own communities, and the examination of environmental policies that protect or enhance shellfish mariculture operations. The Collaboratory was tasked with creating a North Carolina Oyster Trail and Oyster Festival.

Strategic Shellfish Mariculture Plan

Todd Miller, Executive Director, NC Coastal Federation

Todd Miller stated there has been a strategy to revive oysters in North Carolina since 2003. The strategy can be viewed at www.NCoysters.org. There are seven basic goals in the strategy. The key reason to do this is to think about the quality of our environment and how it effects the foundation of the coastal economy. There is a large interest in the General Assembly and within the Administration for helping the rural areas of North Carolina. On the coast oysters are an opportunity to bring a level of economic development that will be helpful to our coastal communities. One goal is to create about 500 acres of new oyster sanctuary in Pamlico Sound. We are currently about 40% of the way there. Another key element to the strategy is to plant cultch to provide ample wild harvest. Good management of our wild harvest is another element and without good water quality all this effort will be wasted. Stump Sound in Onslow County is one of the best growing areas in the State, but a couple of years ago, that Sound was closed more than half of the year due to pollution. It is important that we document the successes of this strategy. The CRC strategy should include encouraging DCM's continued engagement in oyster restoration efforts, refine its policies and rules to promote, encourage and streamline shellfish restoration efforts, balance public trust uses through expanded spatial planning, and advocate for legislative and Governor's rural coastal economic development initiatives.

Division of Marine Fisheries – Shellfish Leasing Program

Steve Murphey, Section Chief, DMF Habitat Enhancement

Steve Murphey stated the shellfish leasing program is a small part of DMF's budget, but an extremely important part of our program. In North Carolina, there have been shellfish leases of

public trust bottom for at least 100 years. The current program has existed since the mid-1960s. In 1989, the law was amended to allow water column leases. It only recently have we seen any interest in shellfish water column leasing. The authority to grant leases rest with the Department and the Secretary has delegated that authority to the DMF Division Director. From 2012 to 2015, we received 10 applications for shellfish leases. In 2016-2017 we have received over 100. Shellfish leases are playing a more prominent role in the production of shellfish. In 2016, oysters from shellfish aquaculture operations accounted for 45% of the total commercial harvest in North Carolina. It is the policy of the State to encourage development of shellfish aquaculture in ways that are compatible with other public uses. The Division takes this charge seriously and carefully considers each application to ensure it meets the standards and intent of the law. We work with the applicant to help guide a successful venture. Leases are treated like real property. Leases are on ten-year terms and can be up to a ten-acres. The Marine Fisheries Commission has rulemaking authority to develop rules relating to shellfish production. Rules have been developed to address adjacent riparian rights, marking, renewals, reporting requirements and how to transfer or cancel a lease. In addition to State law and the Commission's rules, the Army Corps of Engineers permits shellfish aquaculture under their Nationwide Permit number 48. Regional conditions are added by the Wilmington district to provide added protections to essential fish habitats and address navigation and access issues. Fractional limits on the use of the leases and setbacks and buffers are in place to ensure public access and navigation. Currently, DMF lease applications require a detailed lease management plan. This plan is forwarded to the Corps and a Nationwide permit authorizes the gear on the lease. Some gear outside the lease boundaries, such as the FLUPSY tied up at the dock, or lease marker pilings greater than four inches in diameter may require CAMA permits. Every new proposed lease site is inspected by Division lease program staff. The inspection protocol has been developed in coordination with NOAA and addresses a variety of environmental and geographical factors. Depending upon the size or complexity of a site, a single site inspection can take a week or more. Prior to 2016, the annual budget for the shellfish lease program was \$5,000 and there were no funded staff in this budget. In 2016, the General Assembly provided two positions and some operating funds. North Carolina has both public and private bottom in production for shellfish aquaculture. Leases are granted over public bottom for a fee and franchises may be granted over submerged land claims for no fee. Franchise owners may also apply to lease the water column for a fee. You must have a bottom lease to have a water column lease. There are production requirements in place to ensure leases are used for commercial purposes. New developments have led to an increase in water column leasing gear. In 2015, the General Assembly introduced an amendment to the shellfish leasing law to allow gear up to 18 inches off the bottom. Shellfish culture methods can be broadly grouped into two areas; extensive and intensive. The extensive methods include clams, oysters, clam seed, spat and spat on planted shell, minimal equipment, and are highly navigable. The intensive methods include mostly oysters, higher yields and costs, significant equipment needs, intensive labor, purchase oyster seed for grow-out, and limited navigation. There are no pre-approved areas or shellfish aquaculture zones. Each applicant selects his or her own site. Sea Grant has a full-time extension specialist in Morehead City who works closely with shellfish growers, other growers are knowledgeable about siting leases, and UNCW has a siting tool for assistance in siting leases. The application process takes between 4-6 months. Due diligence is necessary to ensure it is in the best interests of the State. Working closely with DCM, NOAA, and the Corps, this process was refined over the past year to provide broad review and comment to ensure that leases are as compatible with other uses as possible

under the law while still allowing the business to succeed. Once a lease is granted, the lease holder must maintain marking on the corners and boundaries. While MFC rules address public access, there is an incongruence between the use of the intensive gear and access across the lease. The benefits to increasing the commercial productions of shellfish, particularly oysters, include coastal county jobs, water quality enhancement, habitat function, nutrient removal, tourism, and supports working waterfront communities. Some of the challenges include the opposition to lease siting, navigations hazards, theft, terminating non-productive leases, public health issues, the costs to administer the program, and gear cleanup and abandonment. Possible solutions may result from NOAA's proposal for spatial planning, the UNC-Collaboratory's State Shellfish Mariculture Plan, a review of legal standards, consideration of navigational issues, exploration of Aquaculture Enterprise Zones and MFC acreage issues. We may need to revisit moratoriums in Core Sound and Brunswick Sound.

DCM Role in Shellfish Leasing Program

Braxton Davis, Executive Director and Jonathan Howell, District Manager, DCM

Braxton Davis stated over a hundred lease applications have come across my desk at DMF for a final decision. Only two have been denied. One is in litigation. Three other lease holders have been notified that their leases, which were approved by the prior Fisheries Director, are in conflict with another State law. Over the past several years we have done a couple of things. In the current CRC rules, the placement of natural cultch material is exempt from CAMA. Jonathan Howell, is DCM's point person to review and monitor all shellfish leasing and oyster restoration applications. One of the first things we did was to determine that DCM will not require a permit for anything that is permitted under the DMF shellfish lease program. DMF has a well-defined permit application process for shellfish leases. DCM believed our best efforts would be best spend working with DMF within their existing process. As part of DMF's expanded application program DCM is a commenting agency on shellfish lease applications. As a commenting agency, DCM may request lease conditions such as requiring that the lessee will not prevent the full and free use by the public of all navigable waters at or adjacent to the authorized lease. After looking at past and present aerial photography, the Division may request that DMF confirm the location of the natural channel to ensure a lease does not cut off access to coves. To ensure there is no hazard to navigation associated with a lease, at a minimum, DCM could request permanent reflectors or reflective tape be attached to any pilings or other markers associated with the lease. To conserve and manage coastal wetlands, DCM would request a condition requiring a 20' buffer be maintained between any part of the structures associated with the lease and the adjacent coastal wetlands to ensure there is no degradation of the coastal wetland species caused by prop-wash or other activities associated with the working of the leased area. Certain activities would require a CAMA permit including poles or pilings larger than 4-feet by 4-feet, fixed platforms within lease boundaries, and floating upwellers at private docks. DCM will also take into consideration siting of leases at Reserve sites which have unique concerns as these sites are part of a national network of pristine areas that enable the long-term studies. Due to these unique concerns, new lease applications within Reserve management boundaries were suspended from November 3, 2015 until December 31, 2016 to provide time for DCM staff to develop a policy on shellfish leases with Reserves. DCM identified potential conflicts with other uses that occur within the Reserve management boundaries and considered options for various shellfish lease activities. DCM notified the Natural Heritage Program (NHP) about three leases which had been approved within the Reserve management boundaries. DCM held local advisory committee

meetings to gather input from local stakeholders. In March 2017, NHP requested that DMF not issue any leases for commercial shellfish cultivation within the boundaries of any dedicated State Nature Preserve. The language within the State Nature Preserve dedication letters that supports NHP's position prohibits commercial activities and the removal, disturbance, molestation, or defacement of minerals, archeological, and natural resources or natural features. Based on NHP's position, DCM will deny future applications for aquaculture leases sited within the boundary of a dedicated State Nature Preserve. DMF has notified the leaseholders of the three existing leases within the Nature Preserve and Reserve boundaries that their leases can continue for the remaining term of the leases, but will not be renewed based on NHP's position. This should allow enough lead-time to allow the leaseholders to find a new location and move their operations. Currently, CRC rules do not address shellfish leases specifically. Some potential issues with these leases include public trust use conflicts, debris removal from storm damage or abandoned gear, riparian corridor conflicts, and shallow water habitat and marsh degradation.

Commissioner Andrew stated he is the vice-president of Masonboro.org, on the Masonboro Island local advisory committee, and a strong proponent of oyster programs and aquaculture. I appreciate the efforts of Marine Fisheries and Coastal Management on this issue. These agencies appear to be on the same place with the Legislature and the Coastal Federation. This is an important issue to many people in our State. I would like to request that a small subcommittee be created to meet with DEQ and DNCR staff to include oyster farmers and other interested parties to discuss a rational and reasonable approach to possible mariculture uses within preserve sites like Masonboro. Chair Cahoon stated Asst. Secretary Sheila Holman has done a great job of trying to facilitate discussion as we work through this issue. She has offered to facilitate a meeting between the lease holders at Masonboro, some CRC members, and DNCR. This will help everyone better understand what the ramifications are and implications are to the people on the coast. Braxton Davis stated there is a strong need to look at the overall issue of the role of a Nature Preserve designation and when that comes into play in terms of managing the sites.

CRC RULE DEVELOPMENT

Amendments to 7H .0306, 7J .1301 Development Line (CRC 17-26)

Ken Richardson

Ken Richardson stated the development line is an alternative to the static vegetation line exception, but does not replace the static vegetation line. Since adopting this rule, the Commission has approved four development lines. DCM has considered how each community maps its proposed development line. The CRC's rules state, that Petitioner shall utilize the adjacent site line approach resulting in an average line of the structures. In areas where the seaward edge of the existing development is not linear, Petitioner may determine an average line of construction on a case-by-case basis. DCM staff is concerned about the potential for seaward encroachment. The CRC has stated that this was not the intent of the rule. After considering several alternatives for increased staff involvement in the process, and how to limit the amount of potential seaward encroachment, staff believes that our best role may be in quantifying any potential for seaward encroachment that a proposed development line might allow. This will provide the Commission additional information in support of the decision-making process.

**Amendments to 7H .0209(f)(1) Stormwater Correction for ORW Shorelines (CRC 17-27)
Tancred Miller**

Tancred Miller stated the CRC's Coastal Shorelines rules are meant to compliment the EMC's Water Resource rules. The EMC allows the use of stormwater collection systems and the CRC's rules prohibit the use of stormwater collection systems within an ORW Coastal Shoreline. Staff is recommending an amendment so that the Commission's rules are consistent with the EMC's rules.

Neal Andrew approved the amendment to 15A NCAC 7H .0209 for public hearing. Larry Baldwin seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

**Amendments to 7K .0208 Single-Family Residences Exempted (CRC 17-28)
Debbie Wilson**

Debbie Wilson stated this rule allows for development of a single-family home as long as the proposed development and all land disturbing activity is located more than 40 feet landward of normal high water or normal water level, with the exception of a six-foot wide generally perpendicular water access. 7K .0208(d) provides that before beginning any work under this exemption, a representative of the Division of Coastal Management shall be notified of the proposed activity. Staff recommends that an amendment be made to authorize the Local Permit Officers to issue these exemptions as well.

Neal Andrew made a motion to approve the amendments to 15A NCAC 7K .0208 for public hearing. Phil Norris seconded the motion. The motion passed unanimously (Norris, Catlin, White, Baldwin, Lewis, Andrew, Cahoon, High, Medlin, Simmons, Gibbs).

OLD/NEW BUSINESS

Chair Cahoon stated the public comment received from Brad Rosov regarding larval impacts from navigation maintenance should be provided to the CRAC for their review and discussion.

Braxton Davis followed up on the Hyde County Drainage project and stated the appendix and final report has been reviewed. A guidance document was created for Hyde County to help clarify permitting issues and streamline permitting, and provide best practices. This final report will be on DCM's website.

With no further business, the CRC adjourned.
Respectfully submitted,

Braxton Davis, Executive Secretary

Angela Willis, Recording Secretary



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-01

January 31, 2018

MEMORANDUM

TO: Coastal Resources Commission, and
FROM: Tancred Miller
SUBJECT: “Dune Rules” Fiscal Analysis

The CRC began rulemaking to amend its administrative rules 15A NCAC 07H .0308, and 15A NCAC 07K .0103, in order to give flexibility to the ways that oceanfront sand dunes are maintained and managed, and that structural beach accessways are constructed.

Staff has prepared the required fiscal analysis and it has been reviewed by the Office of State Budget and Management (OSBM). Staff’s analysis, which is attached, did not find any fiscal impacts. OSBM also determined the proposed rule amendments have little to no impact on state or local governments, and no substantial economic impact.

The CRC must approve the fiscal analysis before the rule can advance to publication in the N.C. Register for public input. If the CRC approves of the analysis at your February meeting, it will be published for public comment and a public hearing. The earliest possible effective date will be September 1, 2018.

Fiscal Analysis

“Dune Rules”

15A NCAC 07H .0308 Specific Use Standards for Ocean Hazard Areas
15A NCAC 07K .0103 Maintenance and Repair

Prepared by

Tancred Miller
Coastal & Ocean Policy Manager
Policy & Planning Section
NC Division of Coastal Management
(252) 808-2808, ext. 224

January 22, 2018

Summary

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rule	1. Specific Use Standards for Ocean Hazard Areas 2. Maintenance and Repair
Citation	1. 15A NCAC 07H .0308 2. 15A NCAC 07K .0103
Description of the Proposed Rule	7H .0308 contains guidelines for dune establishment and stabilization, and the construction of structural accessways in the Ocean Hazard Area of Environmental Concern (AEC). 7K .0103 codifies activities under G.S. 113A-103(5)(b)(5) as exempt from the permitting requirements of the Coastal Area Management Act (CAMA), including “maintenance” and “repair” of damage caused by the elements, and the creation of protective sand dunes to prevent damage to imminently threatened structures.
Agency Contact	Tancred Miller Coastal and Ocean Policy Manager Tancred.Miller@ncdenr.gov (252) 808-2808
Authority	G.S. 113A-103(5)(b)(5); 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-118(a); 113A-124.
Necessity	The CRC proposes to amend its administrative rules in order to give necessary and beneficial flexibility to the ways that oceanfront sand dunes are maintained and managed; and that structural beach accessways are constructed.
Fiscal Impact Summary	State government: None Local government: None Substantial impact: No Federal government: None Private citizens: Potential, indirect benefit

Introduction and Purpose

Due to the importance of sand dunes as wildlife habitat, protective natural infrastructure, and sand “banks” that provide natural replenishment to eroding beaches, CAMA includes the alteration or removal of sand dunes in activities that are considered “development,” and therefore subject to the regulatory jurisdiction of the CRC.

The CRC is proposing a number of amendments to these rules in order to provide flexibility and relief to regulated parties, without compromising the integrity of the dune system or the protection and habitat values that it provides.

DCM anticipates the effective date of these rule amendments to be September 1, 2018.

Description of the Proposed Rules

Oceanfront dunes provide protection from storms and are a vital part of the Ocean Hazard AEC. One of the goals of the CAMA is to provide a management system capable of preserving and managing the natural ecological conditions of the barrier dune system (and the beaches) to safeguard and perpetuate their natural productivity.

For management purposes, the CRC's rules (15A NCAC 7H .0305) include definitions of various landforms associated with the Ocean Hazard Area, including Ocean Beaches, Nearshore, Primary Dunes, and Frontal Dunes. Frontal Dunes are defined as the first mound of sand located landward of the ocean beach that has stable and natural vegetation present. Primary Dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area, plus an additional six feet of elevation. Primary Dunes extend landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the "dune trough").

If a Primary Dune exists in the AEC on or landward of the lot where the development is proposed the development is required to be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots (platted by June 1, 1979), however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback but is not to be located on or oceanward of a frontal dune or the development line. If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development is to be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable. If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure must be sited landward of the ocean hazard setback or development line, whichever is more restrictive.

To avoid weakening the protective nature of Ocean Beaches and Primary and Frontal dunes, no development is permitted that involves the removal or relocation of primary or frontal dune sand or vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area are not to be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes is allowed only to the extent permitted by 15A NCAC 07H .0308(b).

The original intent of the CRC's dune rules (1981) was to address the practice of dune creation and set standards to require following natural dune alignment and configuration as much as possible, and also to avoid steep "pushed-up" dikes on the oceanfront. The CRC also intended to prevent the creation of artificial dunes out on the "storm beach" that would not last very long, and create a false sense of security. The CRC intended to restrict the building of primary and frontal dunes on the beachfront. From reviewing the CRC meeting minutes and materials in the early days of the coastal program, it seems there was concern by the CRC that allowing the pushing dunes out on the beach (past the frontal dune) would lead to an abuse of the setback rules and create a false sense of permanence particularly in inlet areas. The CRC also did not want other dunes within the AEC to be destroyed by being used as a sand supply for additional dunes.

In 1992, DCM staff realized that strict application of the rules restricting the pushing of sand oceanward was impractical as some degree of this activity was necessary to accommodate normal development of oceanfront lots, and some degree of land leveling should be allowed. To address these issues, the rule was

amended to allow the redistribution of sand “held in storage” in other dunes within the AEC, but no farther oceanward than the crest of the primary dune or landward toe of the frontal dune.

More recently, DCM staff has observed that shifting sand blown by hurricanes, tropical storms and northeasters has been covering decks, driveways, swimming pools, houses and buildings, both on the oceanfront as well as landward of the oceanfront area. This situation can create challenges for some property owners trying to remove sand from around their structures while staying compliance with the CRC’s dune protection rules, since sand can currently only be moved to the crest of the primary dune, if present, or the landward toe of the frontal dune. Additionally, property owners are looking for ways to enhance the barrier dune system while being able to utilize and enjoy and utilize their property, including the redistribution of sand on individual lots.

The proposed amendments relate to “Dune Establishment and Stabilization,” “Structural Accessways,” and “Maintenance and Repairs.” The most significant proposed changes are as follows:

(1) ***Require sand to remain on the lot to the maximum extent practicable;***

Currently, sand may be distributed provided it stays within the AEC, and is not placed farther oceanward than the crest of a primary dune, or landward toe of a frontal dune. The rule is being amended to require that sand stay on the lot or tract of land that is being developed, to the maximum extent practicable. This amendment is intended to prevent dunes from being weakened by removing sand from one lot and placing it where it might not be as beneficial.

(2) ***Allow redistribution of sand to the crest of a frontal dune;***

Currently, sand may be distributed on a lot or tract of land to the landward toe of a frontal dune. The proposed amendment will facilitate dune strengthening by allowing dune widening in a landward direction.

(3) ***Allow removal of sand from around structures provided it remains in the Ocean Hazard AEC;***

Property owners who have sand naturally transported onto their property by wind or waves have been allowed to remove that sand, as long as it is placed no farther oceanward than the crest of the primary dune, if present, or the landward toe of the frontal dune. The proposed amendment will allow placement to the crest of the frontal dune if there is no frontal dune present, which can lead to wider, stronger dunes.

(4) ***Allow accessways to cross frontal dunes and extend up to six feet past the vegetation line;***

Wooden walkways that cross over dunes to provide access to the beach must currently be built no farther oceanward than the first line of stable and natural vegetation. This limitation has created access difficulties in situations where the dune migrates oceanward and covers the accessway. The proposed changes will allow accessways to be built up to six feet past the vegetation line to provide unobstructed access, provided there is no interference with public trust rights or emergency access along the beach.

(5) ***Preserve the volume of dunes while allowing access, and expand materials allowed for “Hatteras ramps.”***

“Hatteras ramps” are structural accessways, typically made of wood, that provide off-road vehicle access over dunes to the beach. Hatteras ramps are allowed to limit damage to dunes while allowing recreational and emergency driving access. The proposed amendment increases the allowable width of Hatteras ramps from 10 feet to 15 feet, and will allow ramps to be built using materials other than wood, subject to DCM approval.

FISCAL IMPACTS

Since the proposed changes are all expansions of allowable development activities that can be voluntarily undertaken, DCM does not believe that any regulated party will incur additional costs as a result of this action.

Private Property Owners

Private property owners are expected to experience no increased costs, and only non-monetary benefits from the proposed rule changes. Property owners will have more flexibility in redistributing sand on their lots, will be able to increase the volume and strength of their frontal dunes, and will be able to extend their dune crossovers up to six feet waterward of the dune vegetation line. If a property owner chooses to take advantage of this increased flexibility, they could potentially gain some storm protection benefit, but the economic value of these benefits cannot be quantified without complex modeling of the protective ability of wider frontal dunes under a series design storm conditions. DCM does not have the ability to perform this modeling analysis.

NC Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments will not affect environmental permitting for the NC Department of Transportation (NCDOT). NCDOT is often required to clear roads of sand that washes onto roadways during storm events; however, DCM regards this as maintenance work as long as the sand is placed within the road right-of-way. In storms where extreme wave action damages or destroys dunes, NCDOT currently is currently required to get a CAMA permit for dune reconstruction, and this requirement will remain unchanged. NCDOT therefore is not expected to experience any change in permitting or any negative fiscal impacts associated with the proposed rule amendments.

Local Government

The proposed rule changes are expansions of allowable activities, local governments will not see any increased costs of compliance, or any increased need to apply for permits. As such, the proposed amendments are not expected to affect local government expenditures.

Division of Coastal Management

The proposed rule changes do not change the types of activities that are subject to CAMA permitting, nor will they affect the number of permit applications submitted for development. The changes simply increase the scope of what is currently allowable. DCM does not therefore anticipate any fiscal impacts.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(a) Ocean Shoreline Erosion Control Activities:

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
 - (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
 - (F) Project construction shall be timed to minimize adverse effects on biological activity.
 - (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
 - (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not adversely impact fisheries or other public trust resources; and
 - (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing

for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

- (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
 - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
 - (L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 7M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee in accordance with Part (2)(A) of this Subparagraph.
 - (F) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
 - (G) Temporary sandbag erosion control structures may remain in place for up to eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 For purposes of this Rule, a community is considered

to be actively pursuing a beach nourishment, inlet relocation or stabilization project if it has:

- (i) an active CAMA permit, where necessary, approving such project; or
- (ii) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (iii) received a favorable economic evaluation report on a federal project; or
- (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (H) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, an inlet relocation or stabilization project, it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
 - (I) Removal of temporary erosion control structures is not required if they are covered by dunes with stable and natural vegetation.
 - (J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
 - (K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
 - (L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
 - (M) An imminently threatened structure may be protected only once, regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional ~~eight-year~~ ~~eight-year~~ permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter and the community in which it is located is actively pursuing a beach nourishment, inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
 - (i) a building and septic system shall be considered as separate structures.
 - (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.
 - (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with 15A NCAC 07H .0312.

- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
 - (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
 - (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
 - (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
 - (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. ~~Activities to establish dunes shall be allowed so long as the following conditions are met:~~
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
 - (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
 - (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be ~~successfully~~ completed.
 - (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
 - (5) No new dunes shall be created in inlet hazard areas.
 - (6) Sand held in storage in any dune, other than the frontal or primary dune, ~~shall remain on the lot or tract of land to the maximum extent practicable and~~ may be redistributed within the ~~Ocean Hazard~~ AEC provided that it is not placed any farther oceanward than the crest of a primary ~~dune or landward toe dune, if present, or the crest~~ of a frontal dune.
 - (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid ~~unnecessary~~ dune impacts.
- (c) Structural Accessways:
- (1) Structural accessways shall be permitted across primary ~~or frontal~~ dunes so long as they are designed and constructed in a manner that entails negligible alteration ~~on~~ of the primary ~~or frontal~~ dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
 - (2) An accessway shall be ~~conclusively presumed considered~~ to entail negligible alteration of a primary or frontal dune provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is ~~less than a maximum of~~ six feet in width;
 - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the ~~frontal~~ dune. Where this is deemed impossible, the structure shall touch the dune only to the extent ~~absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; necessary;~~ and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
 - (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers ~~shall are not be deemed to be~~ prohibited by this Rule, provided all other applicable standards are met.
 - (4) In order to ~~avoid weakening~~ ~~preserve~~ the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") ~~shall may~~ be provided for ~~any~~ off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than ~~10 15~~ feet in width and ~~shall~~

may be constructed of wooden sections fastened together together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

(5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in 07H.0309(a).

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979; Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19, 1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity; Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity; Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002.

15A NCAC 07K .0103 MAINTENANCE AND REPAIR

(a) ~~Maintenance and repairs~~ “Maintenance” and “repairs” are specifically excluded from the definition of development “development” under the conditions and in the circumstances set out in G.S. 113A-103(5)(b)(5). Individuals required to take such measures within an AEC shall contact the local CAMA representative for consultation and advice before beginning work.

~~Property may be considered to be imminently threatened for the purpose of the exclusion for maintenance and repairs when it meets the criteria for an imminently threatened structure as set out in 15A NCAC 7H .0308(a), which provides that a structure will be considered to be imminently threatened by erosion when the foundation, septic system or right of way in the case of roads is less than 20 feet from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the risk of imminent damage to the structure.~~

(b) Beach bulldozing, defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation, for the purpose of preventing damage to imminently threatened ~~structures,~~ structures as defined in 15A NCAC 7H .0308(a), by the creation of protective sand dunes shall qualify for an exclusion under G.S. 113A-103(5)(b)(5) subject to the following limitations:

- (1) The area on which this activity is being performed must maintain a slope of adequate grade so as not to endanger the public or the public's use of the beach and should follow the natural that follows the pre-emergency slope as closely as possible, possible so as not to endanger the public or hinder the public's use of the beach. All mechanically disturbed areas must be graded smooth of ruts and spoil berms that are perpendicular to the shoreline. The movement of material utilizing a bulldozer, front-end loader, back hoe, scraper or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the ~~preactivity~~ surface elevation;
- (2) The activity must not exceed the lateral bounds of the applicant's property unless he has without written permission of adjoining landowners;
- (3) Movement of material from seaward of the mean low water line will not be permitted under this exemption;
- (4) The activity must not significantly increase erosion on neighboring properties and must not have a significant adverse effect on important natural or cultural resources;
- (5) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(c) ~~Redistribution of sand that results from storm overwash or aeolian transport around buildings, pools, roads, parking areas and associated structures is considered maintenance so long as the sand remains within the Ocean Hazard AEC.~~ Individuals proposing ~~other~~ such activities must consult with the Division of Coastal Management or local permit officer to determine whether the proposed activity qualifies for the exclusion under G.S. 113A-103(5)(b)(5).

History Note: Authority G.S. 113A-103(5)(b)(5); 113A-118(a);
Eff. November 1, 1984;
Amended Eff. March 1, 1985;
RRC Objection Eff. January 18, 1996 due to ambiguity;
Amended Eff. March 1, 1996.



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-03

January 31, 2018

MEMORANDUM

TO: Coastal Resources Commission, and
FROM: Tancred Miller
SUBJECT: Coastal Stormwater Fiscal Analysis

The CRC began rulemaking to correct a conflict between 15A NCAC 07H .0209 Coastal Shorelines, and the Environmental Management Commission's Coastal Stormwater rule 15A NCAC 02H .1019.

Staff has prepared the required fiscal analysis and submitted it to the Office of State Budget and Management (OSBM) for review and certification. Staff's analysis, which is attached, did not find any fiscal impacts.

If OSBM certifies the analysis prior to CRC's February meeting, the CRC may approve the analysis and proceed with the rulemaking process. If OSBM does not certify the analysis prior to your February meeting, the CRC may either conditionally approve the analysis subject to no major revisions from OSBM, or may wait for OSBM certification before approving the analysis.

Staff will inform you in February of the OSBM status, and will be happy to answer any questions about the CRC's options.

Fiscal Analysis

“Coastal Stormwater”

15A NCAC 07H .0209 Coastal Shorelines

Prepared by

Tancred Miller
Coastal & Ocean Policy Manager
Policy & Planning Section
NC Division of Coastal Management
(252) 808-2808, ext. 224

January 23, 2018

Summary

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rule	Coastal Shorelines
Citation	15A NCAC 07H .0209
Description of the Proposed Rule	7H .0209 describes the “Coastal Shorelines” category of Areas of Environmental Concern (AECs). The “Coastal Shorelines” AEC includes non-oceanfront shorelines within the state’s 20 coastal counties. 7H .0209 also includes Use Standards for development within the Coastal Shorelines AEC.
Agency Contact	Tancred Miller Coastal and Ocean Policy Manager Tancred.Miller@ncdenr.gov (252) 808-2808 ext. 224
Authority	G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124.
Necessity	The proposed amendments are needed to resolve a conflict between the CRC’s standards and the Environmental Management Commission’s (EMC) standards.
Fiscal Impact Summary	State government: None Local government: None Substantial impact: No Federal government: None Private citizens: None

Description of the Proposed Rules

DCM has discovered an inconsistency between the CRC's Coastal Shorelines rule and the EMC's Coastal Stormwater rule 15A NCAC 02H .1019. The EMC's rule allows stormwater control measures (SCMs), referred to as stormwater collection systems under the CRC's rules, along shorelines adjacent to waters designated as Outstanding Resource Waters (ORW) by the EMC. The CRC's do not allow stormwater collection systems on shorelines adjacent to ORW. Since the EMC has statutory authority (G.S. 143-214.1; 143-214.5; 143-215.3(a)(1)) for setting stormwater standards for water quality protection within the 20 Coastal Area Management Act (CAMA) counties, the CRC's rules must defer to the EMC's standards, allowing SCMs adjacent to ORW.

On coastal shorelines adjacent to ORW, the CRC's rule sets a maximum built-upon area (BUA) of 25%, or less if required by the EMC, with no stormwater collection system. The EMC's rule allows up to 12% BUA for low-density development, and up to 25% BUA for high density projects with appropriate SCMs.

DCM has deferred to the EMC's BUA standards and allowed SCMs adjacent to ORW because the EMC's standards are controlling, and because of the obvious water quality benefits. In order to become consistent with the EMC's Coastal Stormwater rule 15A NCAC 02H .1019, the CRC needs to delete 15A NCAC 07K .0208(c)(1), and expressly allow the use of stormwater collection systems adjacent to ORW.

Other minor administrative changes are proposed as well.

The proposed effective date of these amendments is September 1, 2018.

FISCAL IMPACTS

Since the proposed change simply removes a conflict with an EMC rule, DCM does not believe that any regulated party will incur additional costs as a result of this action. The amendments do not require any affected party to take any specific action, and does not affect permitting costs nor add any additional regulatory burden.

These amendments will have no impact on local governments. DCM does not expect any change in permits issued or the cost to secure permits.

NC Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to will not affect environmental permitting for the NC Department of Transportation (NCDOT). NCDOT is not known to undertake the activity associated with this rule amendment.

Division of Coastal Management

The proposed rule changes do not change the types of activities that are subject to CAMA permitting, nor will they affect the number of permit applications submitted for development. There will be no impact on DCM permit receipts, and DCM does not anticipate any fiscal impacts.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to ~~avoid, mitigate or reduce~~ **avoid or minimize** adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

- (1) All development projects, proposals, and designs shall preserve and not weaken or eliminate natural barriers to erosion including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to adequately service the major purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can effectively demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water which is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall permit an angle for graded slopes or fill which is greater than an angle which can be retained by vegetative cover or other erosion-control devices or structures.

- (C) All development projects, proposals, and designs which involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; provided that this shall not apply to clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use. For the purpose of this standard, "public facility" means a project that is paid for in any part by public funds.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of **Natural and Cultural Resources**.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
- (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
 - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
 - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
 - (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities such as water and sewer; and
 - (ii) The residential structure development shall be located a distance landward of the

normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in Rules .0201 and .0211 in Subchapter 07J of this Chapter; and

- (J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking may be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces will be allowed within the buffer; and
 - (v) The lots must not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health of the Department of Environment and Natural Resources.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.

(f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.

- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
 - ~~(A)~~ have no stormwater collection system;
 - ~~(B)~~(A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
 - ~~(C)~~(B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
- (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:
 - (A) the development has a CAMA permit application in process, or
 - (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.
- (3) Single-family residential lots that would not be buildable under the low-density standards defined complies with those standards to the maximum extent possible.

- (4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph (f)(2) of this Rule shall be the dates of nomination by the EMC.
- (g) Urban Waterfronts.
- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
- (A) The area lies wholly within the corporate limits of a municipality; and
- (B) the area has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.
- (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.
- (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.
- (4) Use Standards:
- (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule is not required for development within Urban Waterfronts that meets the following standards:
- (i) The development must be consistent with the locally adopted land use plan;
- (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can effectively demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface limitation may be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and
- (iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;
- (B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands may be allowed only within Urban Waterfronts as set out below.
- (i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes provided that the structure promotes, fosters, enhances or accommodates public benefit. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.
- (ii) For the purposes of this Rule, existing enclosed structures may be replaced ~~and/or~~ **and/or** expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the ~~structure structure~~, and is consistent with local requirements or limitations.
- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
- (I) The proposed development shall provide for enhanced public access to the shoreline;

- (II) Structures may be roofed but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind and shall be limited to a single story;
- (III) Structures shall be pile supported and require no filling of coastal wetlands, estuarine waters or public trust areas;
- (IV) Structures shall not extend more than 20 feet waterward of the normal high water level or normal water level;
- (V) Structures shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
- (VI) Structures shall have no more than six feet of any dimension extending over coastal wetlands;
- (VII) Structures shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
- (VIII) Structures shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) Structures shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there must be no reasonable alternative that would avoid wetlands. Significant adverse impacts include the development that would directly or indirectly impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;
- (X) Structures shall not degrade waters classified as SA or High Quality Waters or Outstanding Resource Waters as defined by the NC Environmental Management Commission;
- (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) Structures shall not pose a threat to navigation.

History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124; Eff. September 1, 1977; Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989; Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142); Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494); Amended Eff. March 1, 2010; April 1, 2008; August 1, 2002



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-02

January 31, 2018

MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Fiscal Analysis, 15A NCAC 7K .0208 Single Family Residence Exempted

The Estuarine and Ocean System includes the Coastal Shorelines category of Areas of Environmental Concern (AEC). 15A NCAC 07K .0208 is the exemption which allows for the construction of single family residences within the Coastal Shorelines AEC as long as the proposed development and all land disturbing activities (with the exception of a six-foot-wide generally perpendicular water access) are located more than 40 feet landward of normal high water or normal water level.

On November 8, 2017, the CRC voted in support of amending 15A NCAC 7K .0208 in order to correct an inconsistency with other exemptions within 15A NCAC 07K .0100 which allow local permit officers the ability to be notified, review and grant these exemptions before beginning any work. This proposed rule amendment would allow local permit officers the ability to grant this authorization which has been the current practice in the implementation of this rule.

The CRC also voted in support of amending 07H .0209(f)(1)(A), which prohibits the use of a stormwater collection system within an Outstanding Resource Water (ORW) Coastal Shoreline. This prohibition is in direct conflict with the Environmental Management Commission's (EMC) Coastal Stormwater rule 15A NCAC 02H .1019 that specifically allows stormwater collection systems within ORW Coastal Shorelines. This proposed amendment deletes 15A NCAC 07H .0209(f)(1)(A) to address the inconsistency with the EMC's Coastal Stormwater rules. This same rule language (prohibiting the use of stormwater collection system with an ORW Coastal Shoreline) is also found within 15A NCAC 7K .0208 Single Family Residence Exempted. The CRC's proposed rule amendment would also delete 15A NCAC 07K .0208(c)(1) in order to address the inconsistency with the EMC's Coastal Stormwater rules.

DCM does not anticipate any economic impacts as a result of this proposed rule change. The proposed amendment does not affect permitting costs nor add additional regulatory burden. These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be no impact on the Division of Coastal Management permit receipts.

DEQ and OSBM have reviewed the fiscal analysis and determined the proposed rule amendments have little to no impact on state or local governments and no substantial economic impact. The CRC is also required to approve this fiscal analysis before the proposed amendments can proceed to public hearing. The fiscal analysis and proposed rule amendments are attached.

Fiscal & Regulatory Impact Analysis

Single Family Residence Exempted 15A NCAC 07K .0208

Prepared by

Daniel Govoni
NC Division of Coastal Management
(252) 808-2808 Ext. 233

January 17, 2018

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC).
Title	Single Family Residences Exempted
Citation	15A NCAC 07K .0208
Description of the Proposed Rule	15A NCAC 07K .0208 is the Coastal Resources Commission's (CRC) rule which allows for the construction of single family residences within the Coastal Shorelines Area of Environmental Concern. The proposed rule amendments would allow local permit officers (LPOs) the ability to authorize this exemption, and deletes the prohibition of stormwater collection systems within Outstanding Resource Water (ORW) Coastal Shorelines.
Agency Contact	Daniel Govoni Coastal Policy Analyst Daniel.Govoni@ncdenr.gov (252) 808-2808 ext 233
Authority	113A-107(a) & (b); 113A-113(b)(1); 113A-124.
Necessity	The CRC is proposing to amend its rule governing single family residences exemption to become consistent with other CRC exemptions and with Environmental Management Commission standards.
Impact Summary	State government: No Local government: No Substantial impact: No Federal government: No Private property owners: No

Introduction/Summary

The Estuarine and Ocean System includes the Coastal Shorelines category of Areas of Environmental Concern (AEC). 15A NCAC 07K .0208 is the exemption which allows for the construction of single family residences within the Coastal Shorelines AEC as long as the proposed development and all land disturbing activities (with the exception of a six-foot-wide generally perpendicular water access) are located more than 40 feet landward of normal high water or normal water level.

The Environmental Management Commission (EMC) has the legislative authority to adopt rules and standards for stormwater management, including within the 20 CAMA counties, and the CRC has historically incorporated the EMC's standards into rule by reference. The CRC's rule 15A NCAC 07K .0208(c)(1) prohibits the use of a stormwater collection system within Coastal Shorelines adjacent to waters classified by the EMC as Outstanding Resource Waters (ORW). This is in direct conflict with the EMC's Coastal Stormwater rule 15A NCAC 02H .1019 that allows stormwater collection systems within ORW Coastal Shorelines. The CRC's proposed rule amendment would delete 15A NCAC 07K .0208(c)(1) in order to become consistent with the EMC's Coastal Stormwater rule 15A NCAC 02H .1019.

Additionally, 15A NCAC 07K .0208(d) requires that before beginning any work under this exemption, a representative of the Division of Coastal Management shall be notified prior to authorization. The proposed rule amendment would allow LPOs the ability to be notified, review and grant this authorization which has been the current practice of the implementation of this rule. This proposed rule amendment will make it consistent with other exemptions within 15A NCAC 07K .0100 including 15A NCAC 07K .0103 Maintenance and Repair, and 15A NCAC 07K .0207 Structural Accessways Over Frontal Dunes Exempted.

DCM does not anticipate any economic impacts as a result of these proposed rule changes. These amendments do not require any affected party to take or avoid any specific action. The proposed amendment does not affect permitting costs nor add additional regulatory burden.

These amendments will have no impact on Department of Transportation projects, local governments or the federal government. There will be no impact on Division of Coastal Management permit receipts.

The proposed effective date of these amendments is September 01, 2018.

Description of Rule Amendment

15A NCAC 07K .0208 is the exemption which allows for the construction of single family residences within the Coastal Shorelines AEC. The proposed rule amendments would create consistency with other CRC exemptions and with EMC standards:

- 15A NCAC 07K .0208(c)(1) is being amended to become consistent with EMC rule 15A NCAC 02H .1019 which allows the use of a stormwater collection system within Coastal Shorelines adjacent to waters classified as ORW. The proposed rule amendment deletes 15A NCAC 07K .0208(c)(1).

- 15A NCAC 07K .0208(d) is being amended to allow LPOs the ability to review and authorize the exemptions set forth in this rule. LPOs have historically granted this authorization and the proposed rule amendment will make it consistent with other exemptions within 15A NCAC 07K.0100. The proposed rule amendment adds LPOs to 15A NCAC 07K .0208(d).

Affected Parties

Private Property Owners:

The proposed rule amendments would apply to property owners seeking a CAMA permit exemption for construction of a single-family residence, however, there is no permit fee associated with stormwater collection systems, nor will property owners be required by this rule to install one. Therefore, DCM does not anticipate any increased costs to private property owners as a result of the proposed rule amendments.

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, the agency declares that the proposed amendments to 15A NCAC 07K .0208 will not affect environmental permitting for the NC Department of Transportation (DOT). While DOT would be eligible for the exemption and its associated uses, it is unlikely DOT would be involved in the construction of single-family residences, or associated stormwater collection systems.

Local Government:

DCM does not anticipate any increased costs to local governments as a result of the proposed rule amendments. LPOs are already issuing authorizations under this exemption through contractual agreements between DCM and local governments with LPO programs, so there is no anticipated increase in local government responsibilities. There will not be any increase in permit revenues since there is no permit fee associated with stormwater collection systems, and no anticipated increase in the number of site visits to authorize construction under the exemption.

Division of Coastal Management:

DCM permit review process will not be changed by this amendment, and the Division will not experience any change in permit receipts. These amendments do not reflect a significant change in how projects are reviewed and/or exempted.

Cost/Benefits Summary

The Division of Coastal Management does not anticipate any increase in expenditures in the government or private sector as a result of this action. The proposed amendments will become consistent with other CRC exemptions and with Environmental Management Commission standards.

APPENDIX A

15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED

- (a) All single family residences constructed within the Coastal Shorelines Area of Environmental Concern that are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption is granted.
- (b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be elevated at least three feet above any wetland substrate as measured from the bottom of the decking.
- (c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW), no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area of 25 percent or less and:
- ~~(1) has no stormwater collection system; and~~
 - ~~(2)~~(1) is at least 40 feet from waters classified as ORW.
- (d) Before beginning any work under this exemption, CAMA local permit officer or the Department of ~~Environment and Natural Resources~~ Environmental Quality representative shall be notified of the proposed activity to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall include:
- (1) the name, address, and telephone number of the landowner and the location of the work, including the county, nearest community, and water body; and
 - (2) the dimensions of the proposed project, including proposed landscaping and the location of normal high water or normal water level.
- (e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has been located the maximum feasible distance back on the lot but not less than forty feet.
- (f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year of the issuance date of this exemption.

History Note: Authority G.S. 113A-103(5) c;

Eff. November 1, 1984;

Amended Eff. May 1, 2015; December 1, 2006; December 1, 1991; May 1, 1990;

October 1, 1989.



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-04

MEMORANDUM

TO: Coastal Resources Commission

FROM: Rachel Love-Adrick

DATE: January 8, 2018

SUBJECT: Fiscal Analysis for 15A NCAC 7B .0802 and .0803

Summary of Rule Change

The NC Coastal Area Management Act (CAMA) requires that the 20 coastal counties prepare and update land use plans according to state guidelines (15A NCAC 7B). Municipalities have the option of preparing individual plans, if they are delegated authority by the county and meet specific community standards. There are approximately 100 local governments in coastal North Carolina with 60 individual or joint land use plans (LUP). The Division of Coastal Management (DCM) has provided both financial and technical assistance to local governments for development of these plans. Technical assistance and training to local government officials and local planners includes guidance on preparing land use plan updates and amendments, LUP policy, and ordinance inquiries. Plans are generally updated on a voluntary basis at seven- to ten-year intervals with locally initiated amendments at more frequent intervals. Plans are certified by the Coastal Resources Commission (CRC), and are used in making CAMA permit decisions, as no permit may be issued that is inconsistent with the local LUP.

In 2015, the CRC amended the 7B CAMA Land Use Planning Program in response to comments and input gathered at regional meetings in the coastal area, staff experience implementing the program, and a previous study by the CRC. The intent of these amendments was to provide increased flexibility for plan content and format, to clarify that updates and amendments are voluntary, and to introduce a new process option for CAMA Major Permit Review.

The 2015 amendments also sought to facilitate a streamlined process for plan approval, amendments, and updates by delegating certification of land use plans and plan amendments to the Division. In 2017, House Bill 56 and subsequent session law (S.L. 2017-209) were passed, adding a subdivision to the Coastal Area Management Act Section 113A-124(c) which gave the Commission authority "To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department." The intent of the CAMA amendment was to streamline the certification process to allow either the CRC or a qualified employee of the Department to certify land use plans.

Summary of Fiscal Analysis

The amendments to 15A NCAC 07B .0802 and .0803 replicate the intent of SL 2017-209, and facilitate a streamlined plan approval, amendment, and update process.

In accordance with the Administrative Procedures Act, the fiscal analysis associated with proposed rule changes must also be sent to public hearing. The attached fiscal analysis for 15A NCAC 7B .0802 and .0803 has been prepared by the Division and approved by DEQ and the Office of State Budget & Management (OSBM).

These amendments will have no impact on NC Department of Transportation (NC DOT) projects. While it is possible that NC DOT could be affected by the substance of the land use plans, NC DOT is not directly affected by the land use plan approval process.

These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. Division of Coastal Management Staff time savings will be minimal as Staff will still be reviewing plans for adherence to the 15A NCAC 7B Land Use Planning Requirements and will still prepare documentation for final agency action associated with certifications. These benefits may have an indirect fiscal impact on the Division as less coordination will be needed with local governments.

While private property owners have an interest in the development of land use plans, their interest is primarily confined to the substance of the plans and not necessarily the procedures. The amendments to 15A NCAC 7B .0802 and .0803 affect the procedures for certification of land use plans and plan amendments. These amendments; therefore, will not have a direct financial impact on private property owners.

Some plan amendments are undertaken due to requests for rezoning by property owners. As the proposed changes will result in time savings by streamlining the certification process, this may result in time savings that have an indirect positive economic impact on private property owners. However, any positive economic impact would vary based on project type, and may be nullified by other federal, state and/or local permitting requirements.

Staff recommends approval of the attached Fiscal Analysis of rule change to 15A NCAC 7B .0802 and .0803. If the Commission approves, the attached fiscal analysis and rule amendments will be sent to public hearing with a proposed effective date of June 1, 2018.

Fiscal Analysis

Land Use Plan and Amendment Review and Certification Amendments to 15A NCAC 07B .0802 & .0803

Prepared by

Rachel Love-Adrick
NC Division of Coastal Management
(252) 808-2808 Ext. 205

December 15, 2017

Basic Information

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission
Title	Land Use Plan and Amendment Review and Certification
Citation	15A NCAC 07B .0802 15A NCAC 07B .0803
Description of the Proposed Rule	Subchapter 07B establishes the criteria and procedures for certification of land use plan and plan amendments within the 20 coastal counties.
Agency Contact	Rachel Love-Adrick, District Planner – Morehead City rachel.love-adrick@ncdenr.gov (252) 808-2808 ext. 205
Authority	113A-106; 113A-107; 113A 110; 113A-124
Impact Summary	State government: Yes Local government: Yes Substantial impact: No Private entities: No
Necessity	<p>The Coastal Resources Commission (CRC) is proposing amendments to the CAMA Land Use Plan certification process, by allowing the CRC or a qualified employee of the Department to certify land use plans and plan amendments. These amendments will streamline the land use plan certification process; that include plan approval, amendments, and updates.</p> <p>These amendments are response to the Session Law 2017-209 which added a new subdivision to the Coastal Area Management Plan section 1113A-124(c) giving the CRC authority to delegate the power to approve land use plans. These changes are consistent with G.S. 150B-19.1(b) which requires agencies to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in 150B-19.1(a) and modify them to reduce regulatory burden.</p>

Summary

The NC Coastal Area Management Act (CAMA) requires that the 20 coastal counties prepare and update land use plans according to state guidelines (15A NCAC 7B). Municipalities have the option of preparing individual plans, if they are delegated authority by the county and meet specific community standards. There are approximately 100 local governments in coastal North Carolina with 60 individual or joint land use plans (LUP). The Division of Coastal Management (DCM) has provided both financial and technical assistance to local governments for development of these plans. Technical assistance and training to local government officials and local planners includes guidance on preparing land use plan updates and amendments, LUP policy, and ordinance inquiries. Plans are generally updated on a voluntary basis at seven- to ten-year intervals with locally initiated amendments at more frequent intervals. Plans are certified by the Coastal Resources Commission (CRC), and are used in making CAMA permit decisions, as no permit may be issued that is inconsistent with the local LUP. Updated and amended land use plans are submitted to the NOAA Office of Coastal Management for approval before they may be used for federal consistency determinations.

In 2015, the CRC amended the 7B CAMA Land Use Planning Program in response to comments and input gathered at regional meetings in the coastal area, staff experience implementing the program, and a previous study by the CRC. The intent of these amendments was to provide increased flexibility for plan content and format, to clarify that updates and amendments are voluntary, and to introduce a new process option for CAMA Major Permit Review.

The 2015 amendments also sought to facilitate a streamlined process for plan approval, amendments, and updates by delegating certification of land use plans and plan amendments to the Division. In 2017, House Bill 56 and subsequent session law (SL 2017-209) were passed, adding a subdivision to the Coastal Area Management Act Section 113A-124(c) which gave the Commission authority "To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department". The intent of the CAMA amendments was to update the certification process to allow either the CRC or a qualified employee of the Department to certify land use plans to facilitate a streamlined plan approval, amendment, and update process.

The amendments to 15A NCAC 07B .0802 and .0803 are in response to SL 2017-209 outlining the delegation of authority for the certification of land use plans intended to streamline the certification process. These amendments will have no impact on NC Department of Transportation (NC DOT) projects. While it is possible that NC DOT could be affected by the substance of the land use plans, the 15A NCAC 7B State Guidelines for Land Use Planning require that land use plan policies do not violate state or federal law to be certified.

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in

the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

The proposed effective date of these amendments is June 1, 2018

Introduction and Purpose

The Coastal Area Management Act (CAMA) established a cooperative program of coastal area management between local governments and the State, where local governments have the responsibility for developing land use plans, with the State acting primarily in a supportive, standard-setting, and review capacity. Permitting and enforcement responsibilities are shared between the State and local governments. Under CAMA, each of the 20 coastal counties are required to develop and adopt a land use plan. Municipalities within the 20-county jurisdiction are not required to have a land use plan; however, they may be delegated planning authority if they are currently enforcing a zoning ordinance, subdivision regulations, and the State Building Code. Otherwise, they are part of the county land use plan.

The State's coastal program employs a two-tiered approach to managing coastal resources. Critical resource areas, designated as Areas of Environmental Concern (AECs), comprise the first tier. The Division of Coastal Management (DCM) regulates activities in these areas through CAMA permits. CAMA permits are required to be consistent with an approved local CAMA land use plan. The second tier comprises non-AEC areas. These areas are managed through a coordinated effort of other state laws, local land use plans, and the requirement for state agency actions to be consistent with local land use plans. Plans are also used in the review of federal actions and federal permits. Local land use plans require approval of the Coastal Resources Commission (CRC) to become effective. Plans are reviewed for consistency with the CRC's 15A NCAC 7B State Guidelines for Land Use Planning and the requirements of CAMA.

The CRC has adopted standards and procedures for the development of land use plans by local governments that include public-participation requirements, analyses, and minimum issues to be addressed. Local governments are responsible for developing policies to address the minimum issues as well as those dealing with community character and traditional land use concerns. The initial planning rules came into effect in 1975 and were amended during the 1990s and 2000s. The current planning rules came into effect in 2016.

Prior to the legislative changes in House Bill 56 and subsequent session law (SL 2017-209) all CAMA Land Use Plans and plan amendments were required to be certified by the CRC. The CAMA and CRC rules contain specific public hearing notice and public comment requirements that must be met for CRC certification. Additionally, the required documentation must be submitted to meet the deadlines for circulation of the CRC meeting materials. As the CRC only meets 4-5 times per year this process can be lengthy; plan or amendment certification can take anywhere from three to six months depending on whether or not a community meets the various deadline requirements and the CRC meeting schedule.

The proposed amendments to the 15A NCAC 7B .0802 and .0803 are in response to comments and input gathered at regional meetings in the coastal area, staff experience implementing the program, and a previous study by the Coastal Resources Commission (CRC). The intent of the amendments is to provide a streamlined plan and amendment certification process by delegating the approval to the Division of Coastal Management as the CRC's role is primarily procedural.

Description of Rule Amendment

Subchapters 15A NCAC 07B .0802 and .0803 of the Coastal Resources Commission's rules establish the criteria and procedure for the certification of land use plans and plan amendments, and use of the plan. The following section outlines the proposed amendments and the intent of the changes to the subchapter.

15A NCAC 07B .0802 Public Hearing and Local Adoption Requirements

This section of the rules outlines the public hearing requirements and outlines the procedure for submitting a plan or plan amendment to the Division. The amendments to this section:

- Strikes the now unnecessary requirement that the locally adopted plan or plan amendment be sent to the Division 45 calendar days prior to the CRC meeting on which it is being considered for certification.

15A NCAC 07B .0803 Certification and Use of the Plan

This section of the rules focuses on the procedures for certification of the plan or plan amendments. The amendments to this section:

- Establishes that the DCM District Planning Staff can submit a written report to recommend certification to the CRC or a qualified employee of the Department, pursuant to G.S. 113A-124(c)(9).
- Establishes that plan and amendment certification decisions may be made by the CRC or a qualified employee of the Department, pursuant to G.S. 113A-124(c)(9).

Fiscal Impacts

Private Property Owners:

While private property owners have an interest in the development of land use plans, their interest is primarily confined to the substance of the plans and not necessarily the procedures. The amendments to 15A NCAC 7B .0802 and .0803 affect the procedures for certification of land use plans and plan amendments. It is therefore unlikely that these amendments will have a direct financial impact on private property owners.

NC Department of Transportation (NC DOT):

These amendments will have no impact on NC Department of Transportation (NC DOT) projects. While it is possible that NC DOT could be affected by the substance of the land use plans, the 15A NCAC 7B State Guidelines for Land Use Planning require that land use plan policies do not violate state or federal law to be certified.

Local Government:

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

Division of Coastal Management (DCM):

The amendments to 15A NCAC 7B .0802 and .0803 affect the certification procedures for land use plans and plan amendments and are intended to streamline the plan certification process. While these changes will reduce the complexity of the certification process for the Division of Coastal Management Staff, the savings will be minimal as Staff will still be reviewing plans for adherence to the 15A NCAC 7B Land Use Planning Requirements and will still prepare documentation for final agency action associated with certifications. These benefits may have an indirect fiscal impact on the Division as less coordination will be needed with local governments.

Cost/Benefits Summary

Property Owners:

Some plan amendment are undertaken due to requests for rezoning by property owners. As the proposed changes will result in time savings by streamlining the certification process, this may result in time savings that have a positive economic impact on private property owners. However, any positive economic impact would vary based on project type, and may be nullified by other federal, state and/or local permitting requirements.

Local Government:

The benefits of this proposed rule change take the form of a streamlined plan and plan amendment certification process. These changes reduce regulatory burden on local governments associated with the submission of land use plans and amendments for final certification, resulting in staff time savings and a reduction in the complexity of the certification process. These benefits may have an indirect fiscal impact on local governments in not having to work with the CRC meeting schedule.

1 15A NCAC 07B .0802 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

2
3 **15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS**

4 (a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice
5 of the public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter
6 referred to as "the plan", or amendment no less than five business days prior to publication of a public hearing notice.
7 The public hearing notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's
8 opportunity to provide written comment to the Secretary following local adoption of the plan.

9 (b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local
10 government.

11 (c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the
12 CRC or his or her designee the locally adopted plan, a certified statement of the local government adoption action,
13 and documentation that it has followed the public hearing process required in G.S. 113A-110. **The locally adopted**
14 **plan or amendment shall be submitted at least 45 calendar days prior to the CRC meeting on which it will be considered**
15 **for certification.**

16 (d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and
17 independent authority to make amendments to the plan as it affects its jurisdiction.

18
19 *History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;*
20 *Eff. August 1, 2002;*
21 *Amended Eff. January 1, 2007; February 1, 2006;*
22 *Readopted Eff. February 1, 2016.*
23

1 15A NCAC 07B .0803 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

2
3 **15A NCAC 07B .0803** **CERTIFICATION AND USE OF THE PLAN**
4

5 (a) **CRC** Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for
6 locally adopted land use plans or comprehensive plans, hereinafter referred to as **"the plan"**, **"the plan,"** or plan
7 amendments. The procedures **are shall be** as follows:

8 (1) The Division District Planner shall submit a written report to the CRC **or qualified employee of the**
9 **Department, pursuant to G.S. 113A-124(c)(9),** on the locally adopted plan or amendment and either
10 recommend certification or identify how the plan or amendment does not meet the procedures and
11 conditions for certification as set forth in Subparagraph (a)(3) of this Rule.

12 (2) The public shall have an opportunity to submit written objections or comments on the locally
13 adopted plan or amendment prior to **certification pursuant to G.S. 113A-110(e), action by the CRC.**
14 Written objections or comments shall be received by the Division no more than 30 calendar days
15 after local adoption of the plan or amendment. Written objections shall be limited to the criteria for
16 certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan
17 elements that are opposed. Written objections or comments shall be sent by the Division to the local
18 government submitting the plan or amendment. Written objections or comments shall be considered
19 **by the CRC** in the certification of the local plan or amendment.

20 (3) The CRC **or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9),** shall certify
21 plans and amendments following the procedures and conditions specified in this **rule. Rule. The**
22 **CRC shall certify plans and amendments which; that:**

23 (A) are consistent with the **Coastal Area Management Act G.S. 113A-110** **current federally**
24 **approved North Carolina Coastal Management Program;**

25 (B) are consistent with the rules of the CRC;

26 (C) do not violate ~~state~~ **State** or federal law; and

27 (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this
28 Subchapter.

29 (4) If the plan or amendment does not meet certification requirements, **the applicant shall be informed**
30 **by the Division of Coastal Management (the CRC shall** within 45 calendar days **inform the local**
31 **government regarding** how the plan or amendment does not meet the procedures and conditions for
32 certification.

33 (b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government
34 shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all
35 copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

36 (c) Use of the Plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with
37 G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing
38 from the following:

39 (1) Local administration: The local government reviews the CAMA permits for consistency with the
40 plan;

1 (2) Joint administration: The local government identifies policies, including the future land use map
2 and implementation actions that will be used by the Division for the CAMA permit consistency
3 reviews or;

4 (3) Division administration: The Division reviews the CAMA permits for consistency with the plan
5 policies, including the future land use map and implementation actions.

6 (d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan
7 updates and amendments.

8
9

10 *History Note: Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;*
11 *Eff. August 1, 2002;*
12 *Amended Eff. April 1, 2008; September 1, 2006;*
13 *Readopted and Amended Eff. February 1, 2016.*

14
15



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC 18-10

MEMORANDUM

TO: Coastal Resources Commission

FROM: Rachel Love-Adrick, District Planner
Division of Coastal Management

SUBJECT: Proposed Amendments to 15A NCAC 7B .0802

DATE: January 12, 2018

Attached is a proposed amendment to 15A NCAC 7B .0802 "Public Hearing and Local Adoption Requirements." This additional proposed amendment to the 7B Land Use Planning Guidelines is required due to the passage of House Bill 56 and subsequent session law (S.L. 2017-209). You will recall that the law added a new subdivision to the Coastal Area Management Act Section 113A-124(c) giving the Commission authority "To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department." The Division is proposing to amend the rule language to strike the now unnecessary requirement that the locally adopted plan or plan amendment be sent to the Division 45 calendar days prior to the CRC meeting on which it is being considered for certification. Staff recommends approval of the amendment for public hearing.

1 **15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS**

2 (a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice of the
3 public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter referred to as
4 "the plan", or amendment no less than five business days prior to publication of a public hearing notice. The public hearing
5 notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's opportunity to provide written
6 comment to the Secretary following local adoption of the plan.

7 (b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local
8 government.

9 (c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the CRC or
10 his or her designee the locally adopted plan, a certified statement of the local government adoption action, and documentation
11 that it has followed the public hearing process required in G.S. 113A-110. ~~The locally adopted plan or amendment shall be
12 submitted at least 45 calendar days prior to the CRC meeting on which it will be considered for certification.~~

13 (d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and independent
14 authority to make amendments to the plan as it affects its jurisdiction.

15
16 *History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;*
17 *Eff. August 1, 2002;*
18 *Amended Eff. January 1, 2007; February 1, 2006;*
19 *Readopted Eff. February 1, 2016.*
20



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON DAVIS
Director

February 1, 2018

MEMORANDUM

CRC-18-05

TO: Coastal Resources Commission
FROM: Ken Richardson, *Shoreline Management Specialist*
SUBJECT: Amendments to 7H .0312 Sediment Criteria

Program Description

The Coastal Resources Commission (CRC) adopted 15A NCAC 07H.0312 Technical Standards for Beach Fill Projects with an original effective date of February 1, 2007. The rule is often referred to informally as the “sediment criteria rule.” The CRC adopted the rule to ensure that sand used for beach nourishment closely matches the sand on the existing beach. The rule requires that the sediment intended for beach placement, as well as the sand on the existing beach be analyzed for grain size and composition, and that they be within defined ranges of similarity before the project can begin.

The sampling protocol associated with the sediment criteria rules is highly precise with regards to sample design, spacing, numbers of cores, etc. This precision can limit flexibility in sample design, and can also limit the ability of communities to pursue small projects or respond to nourishment opportunities in a rapid fashion. The sampling protocol can also severely limit applicants’ ability to use existing data. Additionally, the sampling protocol may eliminate the ability of communities to take advantage of beneficial use projects that present themselves late in the planning process (i.e. too late to be able to hire a firm and/or mobilize to take the extra samples required).

DCM staff propose eliminating this rigid protocol in favor of a simpler process where the project’s consultant/engineer designs a sampling protocol that assures sediment compatibility between the beach and borrow area. Staff propose to retain existing standards for the various grain sizes (e.g. the percentage of “fines” shall not exceed more than 5% over the recipient beach), and strengthen recipient beach sampling protocols but substitute language similar to that in the terminal groin legislation, which requires the applicant’s consultant/engineer attest to sediment compatibility from borrow sites (e.g. “*Compatibility with these sediment standards shall be documented by a professional engineer licensed to practice pursuant to Chapter 89C of the General Statutes.*”)

In this manner, compatibility between the borrow areas and recipient beach is ensured, with the responsibility for establishing the sampling protocol placed on project applicants, allowing staff to devote more time to the environmental review components of the project and possibly decreasing the time to permit issuance.

If the Commission recommends approval of these amendments, DCM staff will immediately begin the fiscal analysis part of the rule making process.

ATTACHEMENT A: PROPOSED RULE AMENDMENTS

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes ~~shall conform to the standards contained in 15A NCAC 07H .0308(b).~~ ~~or Sediment used~~ to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

- (1) The applicant shall characterize the recipient beach according to the following methodology. ~~Initial characterization of the recipient beach shall serve as the baseline for subsequent beach fill projects:~~
 - (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a ~~cape shoal system, or~~ maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system. ~~system;~~ For purposes of this rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;
 - (b) Sediment sampling and analysis shall be used to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
 - (c) Shore-perpendicular ~~transects shall be established for~~ topographic and bathymetric surveying of the recipient beach. ~~beach shall be conducted to determine the beach profile.~~ Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Transect spacing shall not exceed ~~one half mile~~ 5,000 feet (1,524 meters) in the shore-parallel ~~direction;~~ direction. Elevation data for all transects shall be referenced to the North American Vertical Datum of 1988 (NAVD 88) and the North American Datum of 1983 (NAD 83);
 - (d) ~~No fewer than 13 sediment samples shall be taken along each beach profile transect.~~ ~~Along each transect, at~~ At least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. ~~The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;~~
 - (e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;
 - (f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;
 - (g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment ~~samples.~~ ~~samples along each transect defined in Sub Item (1)(d) of this Rule.~~ The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects. For beaches on which fill activities have taken place prior to the effective date of this Rule, the Division of Coastal

Management shall consider visual estimates of shell content as a proxy for carbonate weight percent;

- (h) The ~~total~~ number of sediments and shell material greater than or equal to three inches (76 millimeters) in diameter shall be calculated through visual observation at each transect within the beach fill project boundaries for an observable 3 square meter surface area of the beach for each sample point between mean low (MLW) and the front dune toe as defined in Sub-Item (1)(d) of this rule. ~~diameter, observable on the surface of the beach between mean low water (MLW) and the frontal dune toe, shall be calculated for an area of 50,000 square feet (4,645 square meters) within the beach fill project boundaries. This area is considered a representative sample of the entire project area. A grand mean shall be calculated for all transects~~ and referred to as the "background" value;
 - (i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and shall use data collected from the recipient beach prior to the addition of beach fill. If such data were not collected or are unavailable, a dataset best reflecting the sediment characteristics of the recipient beach prior to beach fill shall be developed in coordination with the Division of Coastal Management; and
 - (j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For purposes of this rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:
- (a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the three-dimensional spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;
 - (b) The characterization of borrow sites shall include historical sediment characterization data collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule; (sediment characterization data provided by the Division of Coastal Management where available. These data can be found in individual project reports and studies, and shall be provided by the Division of Coastal Management upon request and where available;
 - (c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent, percent or the maximum extent practicable, of each submarine borrow site and use survey-grade swath sonar (*e.g.*, multibeam or similar technologies, technologies) in accordance with current US Army Corps of Engineers standards for navigation and dredging. Seafloor imaging without an elevation component (*e.g.* sidescan sonar or similar technologies) shall also cover 100 percent, percent or the maximum extent practicable, of each borrow site, site and be performed in accordance with US Army Corps of Engineers standards for navigation and dredging. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and referenced to NAVD 88 and NAD 83. Seafloor imaging data without an elevation component shall be referenced to the NAD 83. All final seafloor survey data shall conform to standards for accuracy, quality control and quality assurance as set forth by the US Army Corps of Engineers (USACE). The current surveying standards for navigation and dredging can be obtained from the Wilmington District of the US Army Corps of Engineers (USACE), USACE. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is not required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system;

- (d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site. ~~site and shall use survey grids with a line spacing not to exceed 1,000 feet (305 meters). Offshore dredged material disposal sites shall use a survey grid not to exceed 2,000 feet (610 meters) and only one set of geophysical imaging of the seafloor subsurface is required. Survey grids shall incorporate at least one tie point per survey line.~~ Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be referenced to NAD 83;
- (e) Sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than ~~one core every 23 acres, five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater.~~ Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal ~~system, or offshore dredged material disposal site (ODMDS) system~~ may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. In submarine borrow sites other than maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system where water depths are no greater than 10 feet (3 meters), geophysical data of and below the seafloor are ~~not required, required, and sediment sample spacing shall be no less than one core per six acres (grid spacing of 500 feet or 152 meters). Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. All sediment samples shall be integrated with geophysical data to constrain the surficial, horizontal and vertical extent of lithologic units and determine excavation volumes of compatible sediment as defined in Item (3) of this Rule; Because shallow submarine areas completely confined to maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case by case basis;~~
- (f) ~~For offshore dredged material disposal sites, the grid spacing shall not exceed 2,000 feet (610 meters). Characterization of material deposited at offshore dredged material disposal sites after the initial characterization are not required if all of the material deposited complies with Sub Item (3)(a) of this Rule as demonstrated by at least two sets of sampling data with at least one dredging event in between;~~
- (g)(f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;
- (h)(g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core.

Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

- ~~(i)~~(h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.
- (3) Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment compatibility is determined according to the following criteria:
- (a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system is considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;
 - (b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;
 - (c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;
 - (d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;
 - (e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and
 - (f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.
- (4) Excavation and placement of sediment shall conform to the following criteria:
- ~~(a)~~ Sediment excavation depths for all borrow sites shall not exceed the maximum depth of recovered core at each coring location;
- ~~(a)~~(b) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during any moratoriums times designated by the Division of Coastal Management in consultation with other State and Federal agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. ~~agencies.~~ The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and
- ~~(b)~~(c) A post-placement grand mean for sediment and shell material with a diameter greater than or equal to three inches (76 millimeters) shall be re-calculated according to the methodology described in Sub-Item (1)(h) of the Rule, and is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MLW and the frontal dune toe, and is in excess of twice the grand mean background value of material within the boundaries of the beach fill project as observed, measured and calculated prior to the beach fill project, of the same size along any 50,000 square foot (4,645 square meter) section of beach. In the event that more than twice the background value of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management and other State and Federal resource agencies.

History Note: Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5) and (6); 113A-118; 113A-124;
Eff. February 1, 2007;
Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008.



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON DAVIS
Director

February 1, 2018

MEMORANDUM

CRC-18-08

TO: Coastal Resources Commission
FROM: Ken Richardson, *Shoreline Management Specialist*
SUBJECT: Science Panel Update

Background:

Beginning with Hurricane Opal in October 1995 and ending with Hurricane Fran in September 1996, North Carolina experienced five presidentially-declared disasters within a twelve-month period. As a result, Governor Hunt formed a Disaster Recovery Task Force in October 1996 to develop a comprehensive set of recommendations to facilitate the state's recovery. One of the issues addressed was the review of the CRC's hazard mitigation rules and Ocean Hazard Areas. Specifically, the Commission was requested to evaluate the methodologies used to delineate hazard areas including an assessment of erosion rate calculations, setback requirements and accuracy of ocean, flood and inlet hazard area delineations.

To begin this assessment, the Division arranged for a panel discussion at the January 1997 CRC meeting to discuss the Ocean Hazard AEC. The panel was comprised of Dr. Bill Cleary (UNCW, geologist), David Owens (UNCCH Institute of Government, lawyer), Dr. Stan Riggs (ECU, geologist), and Dr. John Wells (UNC-CH Institute of Marine Sciences, geologist). During the presentations and discussion, Dr. Cleary recommended the creation of a barrier island erosion task force to re-examine erosion rates, setbacks and associated methodologies used in their determinations. Cleary suggested that formalizing the task force would allow scientists actively involved in such research to interact more regularly and effectively with the Commission.

The Commission discussed the need to get scientific knowledge to bear on the problems the CRC faced as regulators. Chairman Hackney added that the Commission needed the participation of scientists who understood the coastal management program and the CRC's rules. The intent of such a task force would be to determine how the current state of knowledge could assist the Commission in the development of regulations - bridging the gap between science and policy. The Commission also discussed the need for a long-term, on-going task and that there would need to be a clear charge from the Commission to ensure their direction.

The initial science advisory task force was assembled by DCM staff and included Dr. Bill Cleary (Geologist – UNC-W), Dr. John Fisher (NCSU - engineer), Mr. Tom Jarrett (US Army Corps of Engineers, engineer), Dr. Stan Riggs (ECU – Geologist), Mr. Spencer Rogers (NC Sea Grant - coastal engineering specialist), Dr. Margery Overton (NCSU - engineer), and Dr. John Wells

(UNC- Geologist), and Craig Webb (Duke Earth Sciences). Dr. Fisher volunteered to chair the panel and DCM provided staff support.

Officially named the CRC's Science Panel on Coastal Hazards, the original charge was developed by the Panel and the Commission focusing on:

1. Update and report on current state of knowledge of coastal processes in NC.
2. Review current methodologies being used by NC and others to define and identify coastal hazard areas.
3. Review current rules applied by DCM to development in coastal hazard areas.
4. Considering immediate (next 1-3 years) and long-term (3 or more years away) actions, develop recommendations for the CRC in the following areas:
 - Studies that are needed to better describe NC coastal processes for management purposes.
 - Specific changes to the methodology utilized by DCM to determine coastal hazards.
 - New hazard identification methodologies that should be considered.
 - Opportunities to incorporate current information on NC coastal processes.

Over the course of the next year, a set of short- and long-term recommendations were developed by the Science Panel and presented to the CRC in May 1999 and February 2000, respectively. The short-term recommendations included suggestions for digital mapping, erosion rate computation, storm surge modeling to define OEA width, development of a structures database (e.g., piers and bulkheads along estuarine shoreline), outreach and public education, creation of a coastal coordination committee (federal and state agencies with coastal responsibilities), inlet hazard area re-delineation, building code issues, sandbags, and oceanfront setbacks. The long-term recommendations included the development of an integrated hazard classification of the NC ocean shoreline—including physical dynamics, geologic framework, subaerial characteristics, modern inlets, sediment budget, and erosion/accretion rates. In the development of the recommendations, the Panel discussed that it would keep to the science and not make recommendations that were broader than the science and technical issues they were charged with examining.

Projects:

Over the subsequent years, the Panel has been asked by the Commission and Division to develop recommendations or provide technical advice on many issues, including:

1. Sediment Criteria Development (2002 - 2007)
2. Review Innovative Erosion Control Structures - Holmberg Stabilizer System (2002 - 2003)
3. Inlet Hazard Areas Analysis 7 Delineation (2007 – 2010; per HB-819 continue study in 2013)
4. Terminal Groins (Review Feasibility Study 2009)
5. Terminal Groins (Guidance on monitoring for adverse impacts 2011- 2012)
6. Sea Level Rise Assessment (2009 to Present)
7. Review results from updated Erosion Rate study (2011)

Currently, the Panel is working with staff to delineate updated Inlet Hazard Area boundaries using historical data, professional knowledge and updated mapping methodologies. In December 2017,

the Panel met in New Bern to review results from the most recent analysis. The Panel agreed that additional modifications to the methodology were needed before a proposal could be presented to the CRC. Staff has reanalyzed data based on the Panel's recommendations, and plans to submit results to the Panel for their review before March 2018.

In late spring/early summer 2018, staff will work with the Panel to compare end-point and linear regression shoreline change rate methodologies. The end-point methodology has been used since 1980 to calculate NC's oceanfront shoreline change rates using only two shorelines - an "early" and a "most recent." With the advancement of mapping technology and a greater inventory of shoreline data, a linear regression methodology would be used to incorporate multiple (more than two) shorelines.

Membership & New Member Nominations:

Traditionally, the Science Panel membership has been balanced with coastal engineers and coastal geologists. A marine biologist was added to assist with the sediment criteria rule development, and vacancies were filled by the CRC with recommendations from the Division and Panel members. The Panel has also asked others to provide information when particular expertise was required.

There are currently nine active members of the Science Panel:

1. Dr. Margery Overton (Dept. of Civil, Construction & Environmental Engineering, NCSU, and current Chair)
2. Mr. William Birkemeier (Field Research Facility, ERDC/CHL, Retired USACE)
3. Mr. Steve Benton (coastal geologist, retired DCM)
4. Dr. William Cleary (Retired, Center for Marine Science, UNC-W)
5. Mr. Tom Jarrett P.E. (US Army Corps of Engineers, retired)
6. Dr. Charles "Pete" Peterson (Institute of Marine Sciences, UNC-CH)
7. Mr. Spencer Rogers (NC Sea Grant)
8. Dr. Elizabeth Sciaudone, P.E. (Dept. of Civil, Construction & Environmental Engineering, NCSU)
9. Mr. Greg "Rudi" Rudolph (Carteret County Shore Protection Office)

At the May 2013 CRC meeting in Beaufort, the Commission unanimously approved the following Science Panel nomination process:

- For vacant Science Panel slots, the Division will send a call for nominations letter to CRC, CRAC and Science Panel members seeking nominations for engineers and geologists.
- The charge to the Science Panel will be used as guidance for qualifications.
- Nominees will need to provide the CRC, CRAC or Science Panel member with a resume, CV and any other qualifying information that will be forwarded to the DCM Director
- The call for nominations will also request that the potential nominee be contacted prior to submission to ensure their interest in serving.
- The nominations period will be open for 30 days.

- Nominations would then be reviewed by the Science Panel and recommendations made to the Science Panel Chair.
- A subcommittee of the CRC, including the CRC Executive Committee (CRC committee chairs, CRAC Chair and Executive Secretary) and Science Panel Chair, would then review the nominees and make a recommendation to the CRC Chair. Having the Executive Committee and Science Panel Chair make recommendations incorporates all the Commission leadership into the process.
- The Chair would then make the appointments known at the next CRC meeting
- “Ad hoc” Science Panel Membership: The Science Panel could indicate that they need a certain number of members with specified expertise. The Commission or Advisory Council could also suggest a number of members with specific expertise. The call for nominations would be handled and reviewed in the same manner as above, with the specifics dictated by the needs.

At their December 2017 meeting, the Science Panel expressed their desire to add new members to the Panel in order to fill existing vacancies. Should the CRC desire to fill existing vacancies, the DCM is prepared to send a call for nominations.



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-06

January 29, 2018

MEMORANDUM

TO: Coastal Resources Commission
FROM: Daniel Govoni
SUBJECT: Federal Consistency

The federal Coastal Zone Management Act (CZMA; 16 USC 1451 et seq.) provides states with a strong voice in federal agency actions through what are known as “federal consistency” provisions. While federal agencies are exempt from permitting requirements, the CZMA requires that federal actions that could have reasonably foreseeable coastal effects, within and outside the coastal zone, must be found consistent with the enforceable policies of a state’s federally-approved coastal management program. Under the CZMA, federal actions that trigger the federal consistency review process fall into four categories: federal agency activities, federal licenses or permits, outer continental shelf (OCS) plans, and federal assistance to state and local governments (15 CFR 930).

Federal agency activities are typically projects performed by a federal agency or a contractor on behalf of the federal agency; for example, U.S. Army Corps of Engineers (Corps) inlet dredging and beach renourishment projects or improvements to U.S. military bases. Federal license or permit activities are activities performed by a private entity that would require a federal permit, license, or other form of federal authorization; for example, Corps of Engineers 404 permits for development projects outside of N.C. Coastal Area Management Act (CAMA) jurisdiction (if within CAMA jurisdiction, a CAMA permit would convey federal consistency approval). OCS plans approved by the federal Bureau of Ocean Energy Management (BOEM) are also subject to federal consistency reviews, as are federal financial grants to state and local governments for development projects; for example, Housing and Urban Development (HUD) or Federal Highway Administration funds.

Federal agency activities that may have direct or indirect impacts on coastal resources or uses must be found consistent *to the maximum extent practicable* with the federally-approved enforceable policies of the state’s coastal management program. Additionally, the CZMA requires non-federal applicants for federal authorizations and funding be found *fully consistent* with the enforceable policies of the approved coastal management program. An approved enforceable policy includes the CAMA, N.C. Dredge and Fill Law, and any CRC rule that is legally binding under state law and that has been reviewed and approved by the NOAA Office for Coastal Management (OCM).

It is the federal agency, federal permit applicant, or federal funding recipient's responsibility to determine when a federal consistency determination is needed from a state. When a federal agency or applicant has determined that a proposed federal activity may have a coastal effect in North Carolina, a federal consistency determination must be prepared and submitted to DCM for concurrence with our approved enforceable policies.

For federal license or permit activities, and federal assistance activities, state coastal programs must have previously requested and listed those federal activities they believe could have a coastal effect, and this list must have been approved by NOAA OCM before federal consistency can be applied. If a state wishes to review an "unlisted" federal license or permit activity, it must notify the applicant and the federal agency and seek NOAA OCM approval to review the activity based on reasonably foreseeable coastal effects.

When DCM receives a federal consistency determination, DCM will often circulate the proposed project to other state agencies and may issue a public notice or hold a public hearing. DCM will consider all comments received and will review the proposed project for conformance with the state's approved enforceable policies. DCM will then either find the proposed action consistent, consistent with conditions, or object and find the proposal inconsistent with our approved enforceable policies. In the case of an objection, either party may seek mediation through NOAA.

On average, DCM reviews approximately 50 federal consistency determinations a year and approximately 95% of these proposals are found consistent with our approved coastal program. The majority of these consistency determinations are routine and consist primarily of U.S. military base improvement projects, National Park Service projects, and HUD grants. However, the federal consistency process has played an important role in our ability to coordinate on important and sometimes controversial projects, including the State Ports' Dredged Material Management Plans, BOEM's proposed wind energy lease and site assessment activities for the Kitty Hawk Wind Energy Area, and applications for BOEM permits to conduct geological and geophysical (seismic) surveys in federal waters off North Carolina's coast. Federal consistency is also an important mechanism for our state to be engaged in any proposed oil and gas development plans and lease sales.

I look forward to discussing DCM's federal consistency program at our upcoming meeting in Sunset Beach.



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

BRAXTON C. DAVIS
Director

CRC-18-07

January 31, 2018

MEMORANDUM

TO: Coastal Resources Commission

FROM: Mike Lopazanski

SUBJECT: CRC Coastal Energy Policies

While North Carolina's territorial jurisdiction extends only three miles into the Atlantic Ocean, the state has an interest in activities occurring beyond its jurisdictional boundary since there can be possible impacts to the State's coastal resources and uses. When it comes to offshore energy development, the State has the ability to comment on these projects under several authorities - the federal Outer Continental Shelf Lands Act (OCSLA), the federal Coastal Zone Management Act (CZMA), and the NC CAMA and the administrative rules of the CRC. The OCSLA outlines the provisions under which the Governor comments on proposed energy development activities. The CZMA, CAMA, and CRC Rules provide the authorities for making federal consistency determinations (as described in another memo in your packet, labelled **CRC-18-06**).

The CRC's administrative rules at 15A NCAC 7M .0400 (Coastal Energy Policies) outline information needs and issues of importance in making federal consistency determinations. The CRC Coastal Energy Policies were originally adopted in 1979. In 1996, these rules were updated based on a NC Sea Grant analysis of state ocean policies and recommendations of a DCM Ocean Resources Task Force. The Coastal Energy Policies were once again updated in 2010-2011 based on a DCM Ocean Policy Steering Committee's recommendations. At this time, your Coastal Energy rules were broadened to incorporate all ocean-based energy activities (including wind and other alternative sources).

In response to the BP Deepwater Horizon explosion in 2010, the NC General Assembly passed SL 2010-179 (S836) to address the possibility of such an event occurring in, or having some effect on North Carolina. SL 2010-179 added a new section to CAMA (113A-119.2 Review of Fossil Fuel Facilities), incorporating elements of CRC Coastal Energy Policies into law, specifically 7M .0403 definitions (Coastal Fishing Waters, Discharge, Offshore Fossil Fuel Facility and Oil). The law also incorporates federal requirements associated with Spill Prevention and Response Plans, assessment of alternatives to offshore facilities, and assessment of spills causing violations of water quality standards.

Your 7M .0400 Coastal Energy Policies include the following statements, policies or requirements:

- Reliable sources of energy serve the public interest.
- Development of energy resources can serve regional and national interests.
- Define “major energy facilities” (including wind energy facilities).
- List information to be included in impact assessments.
- List sensitive areas to be avoided to the maximum extent practicable.
- Require avoidance of nesting and spawning periods.
- Require accessibility to coastal resources including beach compatible sand.
- Specific information to be included in an Oil Spill Contingency Plan.
- Specific information relative to wind facility development.
- Protect scenic and visual qualities of coastal areas.
- Consider effects on the human environment from noise, vibration and visual impacts.
- Require restoration of coastal areas when facilities are abandoned.
- Local governments’ ability to plan and site energy facilities.
- Preserve access to and utilization of public trust resources.
- Require plans for decommissioning of facilities.

Your 7H .0208(b)(13) Specific Use Standards also include provisions related to Wind Energy development to address:

- Noise, viewshed and shadow flicker.
- Bird and bat impacts.
- Potential use conflicts (fishing, recreation, navigation etc).
- Impacts to natural/ artificial reefs, archaeological resources and significant biological communities, including high relief hard-bottom areas.
- Impacts to air navigation routes, military training areas/routes or special airspace.

North Carolina may review the following stages of ocean energy development under the consistency authority:

- Geologic and Geophysical Surveys – while not necessarily associated with ocean energy development, the NC Coastal Program has requested and received approval from NOAA to review these as an “unlisted activity.”
- Development of BOEM’s 5-Year Leasing Program.
- Lease Sale: the “bulk” lease sale that allows companies to bid for particular lease areas (for wind energy projects this includes the Site Assessment Plan).
- Plan of Exploration: the plan of how a company will explore in order to determine if they will develop their lease site.
- Plan of Development and Production: this lays out the plan for producing oil or gas from the lease site (for wind energy projects, this includes the Construction and Operations Plan).
- Decommissioning: (federal consistency review may be required, but not in all cases) there is likely to be a review at this stage, especially if the rig is decommissioned as part of a Rigs-To-Reef Program. However, decommissioning might also be included in the Plan of Development and Production in which case those activities are reviewed/approved under the Plan of Development and Production.

I have attached a brief history of North Carolina’s OCS activities as well as a copy of the Coastal Energy Policies and Wind Energy rules. I look forward to discussing the Coastal Energy Policies in more detail at our upcoming meeting in Sunset Beach.

NC OCS History

Mobil 1988

- Proposed to drill in Manteo Lease block 467.
- 1990 - found inconsistent by the state due to inadequate info.
- Mobil appealed consistency determination.
- Consistency determination upheld by US DOC.
- Mobil sues fed gov't.
- Congress passes OBPA in 1990.
- Mobil initially loses breach of contract suit, then wins on appeal to US Supreme Court (2000).
- As a result of winning, Mobil relinquishes leases.

NC Ocean Resources Task Force 1993

- Formed by DCM to review a range of ocean issues and provide recommendations to CRC.
- DCM also contracted NC Sea Grant for independent analysis of state ocean policies.
- ORTF recommends amendments to CRC Coastal Energy Policies
 - Address deficiencies from Mobil experience.
 - Clarify state's information needs for review of OCS proposals.
 - Identify specific areas (wildlife refuges, offshore reefs, hard bottom areas, SAV, anadromous fish spawning and nursery areas, sea turtle nesting beaches) as areas to be avoided when locating facilities.
 - Requires mitigation where impacts to coastal resources cannot be avoided.
 - Requires restoration of sites when facilities are abandoned.
 - Includes drill ships and platforms as "major energy facilities".

Chevron 1997

- Sept 1997 - Proposes to drill in Manteo lease block 467 or 510.
- Plans exploratory well in 2000.
- POE to be submitted in 1999.
- During the 1998 legislative session, DCM requested \$302,143 for staff, equipment, and studies related to the review of a Chevron POE. DCM received a \$367,023 appropriation:
 - \$37,106 Salary and fringe for Technical Position thru 6/30/99
 - \$59,917 Materials and supplies
 - \$270,000 Contracts
- In January 1998, MMS sponsored a technical workshop to identify issues and study needs relative to the NC OCS.
- State forms OCS Advisory Committee in 1998.
 - OCS Technical Review Team –
 - Focus on missing info from Mobil proposal
 - *Socioeconomic impacts
 - *Economic importance of "The Point" area
 - *Recreational fishery
 - *Laval fish impacts
 - *Hydrocarbon monitoring
- 1997 – Gov. Hunt enacts CRC 1996 amendments to Coastal Energy Policies by Executive Order.
- 1998 - MMS funds several studies to better define the importance of "The Point" area.
- 1998 – President withdraws areas not already under annual Congressional moratorium
- 1999 – Gas drops below \$1 per gallon.
- Early 2000 – Conoco purchases remaining interest in Manteo Block leases. Lease have since expired with no activity.

SECTION .0400 – COASTAL ENERGY POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

(a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy resources within the state and in offshore waters can serve important regional and national interests. However, unwise development of energy facilities or energy resources can conflict with the recognized and equally important public interest that rests in conserving and protecting the valuable land and water resources of the state and nation, particularly coastal lands and waters. Therefore, in order to balance the public benefits of necessary energy development with the need to 1) protect valuable coastal resources and 2) preserve access to and utilization of public trust resources, the planning of future uses affecting both land and public trust resources, the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon vital coastal resources or uses, public trust areas and public access rights.

(b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of the federally approved North Carolina Coastal Management Program, and that exploration, development and production activities associated with such leases comply with those enforceable policies. Enforceable policies applicable to OCS activities include all the provisions of this Subchapter as well as any other applicable federally approved components of the North Carolina Coastal Management Program. All permit applications, plans and assessments related to exploration or development of OCS resources and other relevant energy facilities shall contain sufficient information to allow analysis of the consistency of all proposed activities with these Rules.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;*

Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;

Temporary Amendment Eff. July 8, 1999; December 22, 1998;

Amended Eff. February 1, 2011; August 1, 2000.

15A NCAC 07M .0402 DEFINITIONS

(a) "Impact Assessment" is an analysis which discusses the potential environmental, economic and social consequences, including cumulative and secondary impacts, of a proposed major energy facility. At a minimum, the assessment shall include the following and for each of the following shall discuss and assess any effects the project will have on the use of public trust waters, adjacent lands and on the coastal resources, including the effects caused by activities outside the coastal area:

- (1) a discussion of the preferred sites for those elements of the project affecting the use of public trust waters, adjacent lands and the coastal resources:
 - (A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full discussion [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
 - (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present evidence to support the proposed location over a feasible alternate site;
 - (C) In those cases where an applicant chooses a site previously identified by the state as suitable for such development and the site is outside an AEC or not on a barrier

island, alternative site considerations shall not be required as part of this assessment procedure;

- (2) a discussion of the economic impacts, both positive and negative, of the proposed project. This discussion shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This discussion shall include analysis of likely adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts of significance;
- (3) a discussion of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;
- (4) a discussion of potential adverse impacts on existing industry and potential limitations on the availability of, and accessibility to, coastal resources, including beach compatible sand and water, for future use or development;
- (5) a discussion of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;
- (6) a discussion of potential risks to human life or property;
- (7) a discussion of the impacts on the human environment including noise, vibration and visual impacts;
- (8) a discussion of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
- (9) other specific data necessary for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;
- (10) a plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed.
- (11) a specific demonstration that the proposed project is consistent with relevant local land use plans and with guidelines governing land uses in AECs.

Any impact assessment for a proposed major energy facility shall include a discussion of the items described in Subparagraphs (a)(1) through (11) of this Rule for the associated energy exploration or development activities including all foreseeable assessments of resource potential, including the gathering of scientific data, exploration wells, and any delineation activities that are likely to follow development, production, maintenance and decommissioning.

(b) "Major energy facilities" are those energy facilities which because of their size, magnitude or scope of impacts, have the potential to affect any land or water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include, but are not necessarily limited to, the following:

- (1) Any facility capable of refining petroleum products;
- (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum products or synthetic gas;
- (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;
- (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;
- (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities and other equipment necessary for the operation of a wind generating facility that cumulatively,

- with any other wind energy facility whose turbines are located within one-half mile of one another, capable of generating three megawatts or larger;
- (6) Thermal energy generation;
 - (7) Major pipelines 12 inches or more in diameter that carry petroleum products or synthetic gas;
 - (8) Structures, including drillships and floating platforms and structures relocated from other states or countries, located in offshore waters for the purposes of energy exploration, development or production; and
 - (9) Onshore support or staging facilities related to offshore energy exploration, development or production.
- (c) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. October 1, 1988;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997.
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. March 1, 2011; August 1, 2000.*

15A NCAC 07M .0403 POLICY STATEMENTS

(a) The placement and operations of major energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resources of North Carolina shall be done in a manner that allows for protection of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and state guidelines in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply with local land use plans and with use standards for development within AECs, as set forth in 15A NCAC 07H.

(b) Proposals, plans and permit applications for major energy facilities to be located in or affecting any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated with the project. This disclosure shall be prepared at the earliest feasible stage in planning for the project and shall be in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant. If appropriate environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review will satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted in sufficient time to be used to review state permit applications for the project or subsequent consistency determinations.

(c) Local governments shall not unreasonably restrict the development of necessary energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

(d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. In instances when shoreline portions of the coastal zone area are necessary locations, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public's right to access and passage will not be unreasonably restricted, and all reasonable mitigating measures have been taken to minimize impacts to AECs. Whether

restrictions or mitigating measures are reasonable shall be determined after consideration of, as appropriate, economics, technical feasibility, aerial extent of impacts, uniqueness of impacted area, and other relevant factors.

(e) The scenic and visual qualities of coastal areas shall be considered and protected as important public resources. Energy development shall be sited and designed to provide maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration of natural landforms.

(f) All energy facilities in or affecting the use of public trust waters and adjacent lands or coastal resource shall be sited and operated so as to comply with the following criteria:

- (1) Activities that could result in significant adverse impacts on resources of the coastal area, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided unless site specific information demonstrates that each such activity will result in no significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (2) For petroleum facilities, necessary data and information required by the state for state permits and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information must demonstrate that the potential for petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. For facilities requiring an Oil Spill Response Plan, this information shall be included in such a plan;
- (3) Dredging, spoil disposal and construction of related structures that are likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be minimized, and any unavoidable actions of this sort shall minimize damage to the marine environment;
- (4) Damage to or interference with existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided to the extent that such damage or interference is likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources;
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided to the extent that damage to such structures resulting from geological phenomena is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources;
- (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated sufficiently in advance of the commencement of severe weather to ensure that significant adverse impacts on the use of public trust waters, adjacent lands and coastal resources shall be avoided;
- (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- (9) No energy facilities shall be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and areas in the vicinity of existing inlets;

- (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
- (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
 - (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
 - (C) crossings of streams, rivers, and lakes except for existing readily-accessible corridors;
 - (D) anchorage areas and port areas;
 - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
 - (F) dump sites;
 - (G) primary dunes and frontal dunes;
 - (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges and other areas used in a like manner;
 - (I) military air space, training or target area and transit lanes;
 - (J) cultural or historic sites of more than local significance; and
 - (K) segments of Wild and Scenic River System.
- (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided; and
- (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored as soon as practicable following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions as soon as practicable if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. April 1, 1992;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000.*

15A NCAC 7H .0208(b)(13) Wind Energy Facilities

(13) “Wind Energy Facilities”

(A) An applicant for the development and operation of a wind energy facility shall provide:

- (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
 - (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;
 - (iii) an evaluation of avian and bat impacts of the proposed facility;
 - (iv) an evaluation of viewshed impacts of the proposed facility;
 - (v) an evaluation of potential user conflicts associated with development in the proposed project area; and
 - (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.
- (B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:
- (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
 - (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
 - (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
 - (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;
 - (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
 - (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.
- (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to insure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and

- (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

*History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;
Eff. September 9, 1977;
Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;
RRC Objection due to ambiguity Eff. March 21, 1996;
Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1,
2010;
June 1, 2010; August 1, 1998; May 1, 1996.*