



PAT McCRORY
Governor

DONALD R. VAN DER VAART
Secretary

TO: The Coastal Resources Commission

FROM: Katie Mills, Assistant General Counsel
Christine A. Goebel, Assistant General Counsel

DATE: August 31, 2016 (for the September 13-14, 2016 CRC Meeting)

RE: **Variance Request by the NC Department of Natural and Cultural Resources,
Division of Parks and Recreation (Fort Fisher) (CRC-VR-16-07)**

Petitioner, NC DNCR's Division of Parks and Recreation ("Petitioner" or "Parks") manages the Fort Fisher State Recreation Area in Kure Beach, New Hanover County, North Carolina. In June of this year, Parks Staff submitted a CAMA minor permit application seeking to develop a maritime trail with elevated public boardwalk, access walkways, renovations to the existing public restrooms and five new small and one new large shade structures. The shade structures do not meet the applicable 225-foot ocean erosion setback based on the current first line of stable and natural vegetation and the applicable erosion rate at the site. On July 1, 2016, DCM issued CAMA Minor Permit KB 16-03, but conditioned the six shade structures out of the permit for failing to meet the setback. On July 29, 2016, Petitioner filed a variance petition from the Commissions ocean erosion setback rules in order to develop the shade structures 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.): Jonathan Avery, DNCR Asst. General Counsel, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, electronically
John Batson, Town of Kure Beach CAMA LPO, electronically

RELEVANT STATUTES OR RULES**ATTACHMENT 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 .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;**

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:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands;
- (8) sand fences; and
- (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 requirements of this Subchapter.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner is the North Carolina Department of Natural and Cultural Resources, Division of Parks and Recreation. The North Carolina Department of Natural and Cultural Resources is an agency of the State of North Carolina created under N.C.G.S. § 143B-49. The North Carolina Division of Parks and Recreation (the “Division”) was created pursuant to legislative authority and is a division of the Department, pursuant to the provisions of North Carolina General Statutes (“N.C.G.S.”) §143B- 53(b) and Parts 31 and 32 of Article 2, Chapter 143B of the North Carolina General Statutes.

2. Fort Fisher State Recreation Area (“FOFI”) is a state recreation area, located in Kure Beach, NC, under the management and control of the Division, in accordance with N.C.G.S. §143B – 135.16, and attracts thousands of visitors every year to enjoy FOFI’s public beach access.

3. In 1982, the Division developed a portion of FOFI, building public restroom and changing facilities for visitors to use while enjoying the public beach access. In 1998, a visitor’s center was built on the property to provide a central office for park staff and an information and educational hub for visitors interested in the recreational opportunities and environmental resources at FOFI.

4. Because of FOFI’s popularity, age and usage, the current facilities are in need of renovation and improvements in order to continue to provide a high quality visitor experience while protecting and educating visitors about the surrounding environment. These improvements include more access to shaded areas where visitors can escape the direct heat of the day, which will help to alleviate heat-related medical conditions, and provide the public with more recreational opportunities.

5. The North Carolina Coastal Resources Commission’s (the “Commission”) rules at 15A N.C.A.C. 07H.0306(a)(5) – General Use Standards for Ocean Hazard Areas, generally prohibit development oceanward of the ocean hazard setback. The ocean hazard setback specifically establishes that “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[.]”

6. 15A N.C.A.C. 07H .0309(a) allows some types of development within the setback, but landward of the vegetation line. Those exceptions include:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet;
- (4) beach accessways consistent with Rule .0308(c) of this Subchapter;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands;
- (8) sand fences; and
- (9) swimming pools.

This list of exceptions does not encompass the proposed shade structures pilings.

7. Due to the average annual erosion rate at the Site of 7.5 feet per year, the setback for the proposed development which is less than 5,000 square feet is 225 feet, measured landward from the current location of the first line of stable and natural vegetation (“FLSNV”).

8. On June 8, 2016, Petitioner submitted a CAMA minor development permit application requesting authorization to develop a portion of FOFI within the Ocean Erodible and Coastal Wetlands AECs. The proposed development consisted of construction of a maritime trail with an associated 650-foot-long elevated public boardwalk over coastal wetlands, additional Americans with Disabilities Act (“ADA”) compliant access walkway, renovations to the existing public restrooms and changing facilities, and five (5) small and one (1) large shade structures.

9. Notice of proposed development and improvements at FOFI was sent via certified mail, return receipt requested, to three (3) adjacent landowners prior to the submission of any application to the Commission. Two (2) of the adjacent landowners returned the notice indicating that they had no objections, while the third did not respond. No other objections or comments were received by the Division of Coastal Management (“DCM”) Staff.

10. The proposed location of the one (1) large shade structure is approximately 145 feet from the first line of stable natural. The large shade structure is shaped as a trapezoid, comprised of four triangular panels, which can be removed in the event of inclement weather. The panels cover an estimated perimeter of 56’ x 35’ x 61’ x 43’ and are fastened to poles that are anchored with concrete footers. The concrete footers (3’ x 3’ x 3’ at each piling with a total of 6 pilings), would remain indefinitely.

11. The proposed location of the five (5) small shade structures is approximately 185 feet landward from the first line of stable and natural vegetation. The small shade structures each cover an 18’ x 18’ area, and are grounded with one 3’ x 3’ x 3’ concrete footer each. These structures are similar to an umbrella, and can collapse in the event of inclement weather. The concrete footers would remain indefinitely.

12. As part of the permit process, notice of this application was advertised in the local paper and posted on site. No comments were received by DCM staff.

13. On July 1, 2016, the application was approved and issued by DCM as CAMA Minor Permit KB 16-03 (the “Permit”) with the condition that the Permit does not authorize construction of the five (5) small and one (1) large shade structures. The Permit specifically states the following:

“The proposed shade structures, specifically the pile support and concrete footers and are not consistent with current rules under 15A NCAC 07H .0306(a)(5) GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS and 07H.0309(a) USE STANDARDS FOR OCEAN HAZARD

AREAS: EXCEPTIONS. Accordingly, the proposed shade structures are not authorized by this permit.”

14. Petitioner stipulates that the proposed development of the five (5) small and one (1) large shade structures conditioned out of the Permit is inconsistent with 15A N.C.A.C. 07H .0306(a)(5), as the proposed structures would be located waterward of the applicable ocean erosion setback of 225 feet measured landward from the FLSNV. Petitioner also stipulates that the proposed development of the five (5) small and one (1) large shade structures denied in the Permit is inconsistent with 15A N.C.A.C. .0309(a), as the proposed structures are not included in the list of types of structures permitted seaward of the oceanfront setback requirements of 15A N.C.A.C. 07H .0306(a).

15. Petitioner requests that the Commission approve a variance from the requirements of 15A N.C.A.C. 07H .0306(a)(5) and 15A N.C.A.C. 07H.0309(a) authorizing construction and eliminating the condition in the Permit denying the proposed development of the five (5) small and one (1) large shade structures as the proposed development will have an impact on the land and resources protected under CAMA of less than .1 acres, increase the public beach access and the quality of the recreational opportunities along the natural shoreline, and be developed in a manner consistent with the land’s capabilities and environmental factors.

16. Pictures of the site are included in the PowerPoint presentation attached to this variance.

Stipulated Exhibits

- Copy of CAMA Minor Development Permit KB 16-03
- Copy of the Deed and Judgement from Superior Court in New Hanover County in the case of the State of North Carolina vs. James E. Johnson, Jr. et al, showing ownership of the property by the State, as recorded in the New Hanover County Register of Deeds office
- Project Description and Site Plan for the Entire Proposed Project
- Vicinity Map Showing Construction Area of Total FOFI Development Project approved by CAMA Minor Development Permit KB 16-03
- Aerial Photo Map of Proposed Construction Showing the Proposed Shade Structures and the Applicable Setback Distances
- Notice of Variance Petition to Adjacent Landowners

PETITIONER'S 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.**

Petitioner's Position: Yes.

While the Commission has indicated that the installation of shade structures at FOFI is not consistent with 15A N.C.A.C. 07H .0306(a)(5) and 15A N.C.A.C. 07H.0309(a), Parks asserts that strict adherence to these rules does create an unnecessary hardship.

Parks is a subunit of the State of North Carolina with the responsibility of providing recreational and educational opportunities for the citizens of the State and its visitors while also conserving the State's natural wonders. By denying the public access to these structures because of a strict application of the Commission's rules, the public is deprived of necessary shade and the opportunity for more outdoor recreational opportunities.

Keeping in line with its mission, Parks has been committed to providing educational, fun and environmentally conscious recreational opportunities to the citizens of North Carolina and the thousands of visitors to our great State for a century. FOFI, in particular, provided public beach access to over 162,000 citizens and visitors in 2015.

Providing adequate shade structures is of the utmost importance to Parks because these structures provide much needed relief from the heat of the sun, especially during summer months, FOFI's peak season. Currently, there are very few facilities at FOFI that provide shade relief to the public. This lack of shade becomes a public health issue during the hottest months of the summer where heat stroke, heat exhaustion, severe sunburns, and other heat-related medical conditions can become a problem to visitors. Denial based on strict adherence to the rules will only perpetuate these problems and detract from the overall visitor's recreational experience.

Staff's Position: Yes.

Staff agrees that Petitioners will suffer an unnecessary hardship from strict application of the Commission's ocean erosion setbacks in this case. Generally, the Commission's rules require "development" to be set back a certain distance from the vegetation line in order to protect life and property and prevent inappropriately sited development. While the Commission's rules already provide for certain exceptions from the setback rules in 15A NCAC 7H .0309, those rules do not specifically encompass the shade structure support poles proposed. However, Staff believe that such support poles are similar in character to other listed exceptions in both size and their accessory nature. Accordingly, Staff agree that an unnecessary hardship will result from strict application of the ocean erosion setback rules to the de minimis proposed development.

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

Petitioner's Position: Yes.

Yes, the hardships do result from conditions peculiar to the property, particularly the property's topography.

FOFI was developed and is managed as a public recreation area, providing beach access for the citizens and visitors of the State of North Carolina. The topography of the beach at FOFI does not allow for much, if any, natural shade, as it is made up primarily of dunes with low-lying beach grasses before transitioning seaward into a fine-sand beach to the ocean. Because of the topography of the property, there is no other natural alternative to construction of the shade structures.

Furthermore, because of the significant amount of wind that blows across the property due to the lack of other natural diversions and the possibility of severe weather events such as hurricanes, the shade structures must be constructed with reinforced concrete footings. The shades can be dismantled in the event of severe weather and the base of the structures will be reinforced with concrete footings, so as to eliminate any safety risk to the public or property.

Staff's Position: Yes.

Staff agrees that any hardships to the Petitioners result from conditions peculiar to the property such as location, size, or topography. The proposed shade structures need to be developed adjacent to the existing bath house and parking area where the picnic area is located in order to be enjoyed by visitors to the park and that the concrete footings and pilings are necessary due to site and weather conditions. Additionally, with a setback distance of 225 feet combined with the relative ease of removing these structures (pilings and concrete footings) and relocating them in case of erosion, the Petitioner will be able to move these structures before they are subject to erosion and impact the public beach.

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

Petitioner's Position: No.

No, the hardship facing Parks and the visitors to FOFI do not result from action taken by Parks. Rather, the hardship is a direct result of the topography of the property, environmental and weather factors, and the increased popularity of FOFI and desire for public beach access. None of these things are within Parks' control.

Staff's Position: No.

Staff agree that the hardships are not a result of Petitioner's actions. The existing bath house, parking area and picnic area have been in place since 1982, and the proposed shade structures will be more likely to be utilized by the public if they are placed near these existing structures. Additionally, Petitioner selected structures which could be dismantled and removed/relocated in the case of erosion at the site.

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 justice? Explain.

Petitioner’s Position: Yes

Yes, the proposed variance meets each of the three factors noted above.

In N.C.G.S. 113A-102(b), the legislature outlines the goals for CAMA, which include insuring “that the development or preservation of the land and water resources of the coastal area proceeds in a manner consistent with the capability of the land and water for development, use, or preservation based on ecological considerations” and to “establish policies, guidelines and standards for.... (c) [r]ecreation and tourist facilities and park lands[.]” It is Parks’ contention that the development of these shade structures follows in the spirit, purpose and intent of these goals and should be approved for construction.

While these shade structures are not specifically listed in 15A N.C.A.C. 07H.0309(a) as a type of structure permitted to be constructed seaward of the oceanfront setback requirements of 15A N.C.A.C. 07H. 0306(a), they are of the same spirit, purpose and intent as the permitted structures. For example, a campsite, which is permitted under 15A N.C.A.C. 07H.0309(a), is a structure built to facilitate a recreational opportunity for the public to experience the outdoors while having a minimal impact on the surrounding environment. The proposed shade structures similarly create a recreational opportunity for the visiting public to experience the coastal environment while leaving an even smaller impact on the natural landscape (less than .1 acres) than those structures permitted in the rule. The largest impact created by the shade structures are the required reinforced concrete footings, which are only necessary because of the significant amount of wind that the property faces daily and the potential for severe weather activity. Denial based on these rules is, in essence, merely a matter of the rules not fully encompassing all of the structures currently used today to offer additional recreational opportunities and deal with health and safety issues.

As stated above, granting this variance contributes to the public safety and welfare by providing a public service to visitors to alleviate visitor’s risk of heat-related medical conditions, as well as providing further recreational opportunities for visitors who may want to escape the heat of the sun, especially during the extreme temperatures of the peak summer months. The shades have the ability to be dismantled in the event of an approaching severe weather event and will be anchored by reinforced concrete footings to withstand any associated high winds and tides, therefore creating little to no safety risk to the public.

The variance will also preserve justice by providing all visitors, especially those without private beach access, the equal opportunity to experience North Carolina’s diverse coastal ecosystem while having access to public shade facilities for their enjoyment and recreation. These shade structures will be open on a first come, first serve basis to all FOFI visitors at no charge.

Staff’s Position: Yes.

Staff agrees that the variance requested by Petitioners is consistent with the spirit, purpose, and intent of the Commission’s ocean erosion setback rules. These rules seek to prevent inappropriately sited development and the resulting impacts to the public. In this case, although

not specifically identified in 7H .0309 as a structure that is acceptable within the setback area, the de minimis nature of the development and its ability to be easily removed/relocated in case of erosion show the similarity of the shade structure supports to the other types of development formally listed in the Commission's exceptions to the setback. Accordingly, Staff agrees that a variance would be consistent with the spirit, purpose, and intent of the Commission's Rules. The ability to easily relocate the support structures will safeguard public safety and welfare while providing these benefits to visitors of FOFI until such time as they would need to be relocated. Staff does not disagree with Petitioner's claims of substantial justice.

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

CAMA VARIANCE REQUEST FORM

DCM FORM 11
DCM FILE No.: _____

PETITIONER'S NAME North Carolina Division of Parks and Recreation

COUNTY WHERE THE DEVELOPMENT IS PROPOSED New Hanover

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 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;
- 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);
- N/A* 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.*

ATTACHMENT E:
STIPULATED EXHIBITS INCLUDING POWERPOINT

- Copy of CAMA Minor Development Permit KB 16-03
 - Copy of the Deed and Judgement from Superior Court in New Hanover County in the case of the State of North Carolina vs. James E. Johnson, Jr. et al, showing ownership of the property by the State, as recorded in the New Hanover County Register of Deeds office
 - Project Description and Site Plan for the Entire Proposed Project
 - Vicinity Map Showing Construction Area of Total FOFI Development Project approved by CAMA Minor Development Permit KB 16-03
 - Aerial Photo Map of Proposed Construction Showing the Proposed Shade Structures and the Applicable Setback Distances
 - Notice of Variance Petition to Adjacent Landowners
- Powerpoint presentation



PAT MCCRORY
Governor

DONALD R. VAN DER VAART
Secretary

BRAXTON DAVIS
Director

July, 2016

State of North Carolina
Division of Parks & Recreation
Attn: Justin Williamson
1615 Mail Service Center
Raleigh, NC 27699-1615

Dear Mr. Williamson:

Attached is CAMA Minor Development Permit KB16-03 for work to be done at 1000 Loggerhead Road, in Kure Beach, New Hanover County. An electronic copy has been sent to the Kure Beach Inspections Department.

In order to validate this permit, please sign both copies of the permit as indicated for our records. Retain the orange copy for your files and sign both pages of the white copy and return to us within 20 days of receipt, in the enclosed, self-addressed envelope.

This is not a valid permit until it is signed and returned to our office.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shaun K. Simpson', written over a horizontal line.

Shaun K. Simpson
Permit Support Technician

Enclosures

cc: WiRO files
KB Inspections Dept.

Issued by WIRO
For The Town of
Kure Beach

KB 16-03
Permit Number

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 environmental concern pursuant to Section 113A-118 of the General Statutes, "Coastal Area Management"

Issued to the N.C. Department of Natural and Cultural Resources, Division of Parks and Recreation authorizing development within an Ocean Erodible and Coastal Wetlands AECs located at the Fort Fisher State Recreation Area at 1000 Loggerhead Road, in Kure Beach, NC as requested in the permittee's application dated June 8, 2016. This permit, issued on July 1, 2016, is subject to compliance with the application and site drawings (where consistent with the permit), all applicable regulations and special conditions and notes set forth below. Any violation of these terms may subject the permittee to a fine, imprisonment or civil action, or may cause the permit to be null and void.

*This permit authorizes: construction of a maritime trail with an associated 650' in length elevated public boardwalk over Coastal Wetlands, additional ADA compliant access walkway and renovations to the existing public restroom/changing facilities to accommodate for beach goers and visitors. **Note: This permit does not authorize the proposed five (5) small shade structures and the one (1) large shade structure. Any other development will require additional permits or a modification to this permit.***

- (1) All proposed development and associated construction must be done in accordance with the permitted work plat drawing(s) dated received by the NC DCM on June 8, 2016. The proposed shade structures, specifically the pile support and concrete footers and are not consistent with current rules under 15A NCAC 07H .0306(a)(5) GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS and 07H.0309(a) USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS. Accordingly, the proposed shade structures are not authorized by this permit.
- (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, and/or land use activities will require re-evaluation and modification of this permit.
- (4) A copy of this permit shall be posted or available on site throughout the construction process. Contact this office at (910) 796-7215 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, 2019

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.

Robb Mairs
Acting CAMA LOCAL PERMIT OFFICIAL
127 Cardinal Drive Extension
Wilmington, NC 28405-3845

PERMITTEE
(Signature required if conditions above apply to permit)

- (5) The permittee is required to contact the Acting Local Permit Officer (910) 796-7215, 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.
- (6) Any structure(s) constructed within the Ocean Hazard and Coastal Wetlands areas 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.
- (7) 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.
- (8) Any portion of the permitted boardwalk built over any wetlands must not exceed six feet in width and must be elevated a minimum of three feet over the wetland substrate as measured from the bottom of the decking.
- (9) No excavation or filling of any wetlands or waters is authorized under this permit.
- (10) Pursuant to 15A NCAC, Subchapter 7J.0406(b), this permit may not be assigned, transferred, sold or otherwise disposed of to a third-party.

SIGNATURE: _____ DATE: _____
PERMITTEE

FILED

STATE OF NORTH CAROLINA:
COUNTY OF NEW HANOVER :

FEB 4 10 59 AM 1966
D E E D
THAD EURE
SECRETARY OF STATE
NORTH CAROLINA

THIS DEED, made this 18th day of January, 1966, by

HUGH M. MORTON and wife, JULIA T. MORTON, and JULIAN W. MORTON, Jr.,
(unmarried), parties of the first part, to STATE OF NORTH CAROLINA,
party of the second part:

W I T N E S S E T H:

That the said HUGH M. MORTON and wife, JULIA T. MORTON, and
JULIAN W. MORTON, Jr., (unmarried) in consideration of ONE HUNDRED
(\$100.00) DOLLARS, and other good and valuable considerations to them
paid by the STATE OF NORTH CAROLINA, the receipt of which is hereby
acknowledged, have bargained and sold, and by these presents do grant,
bargain, sell and convey to said STATE OF NORTH CAROLINA, its successors
and assigns, a certain tract or parcel of land in the County of New
Hanover, State of North Carolina, and more particularly described as
follows:

BEGINNING at an iron pipe in the high water line of
the Atlantic Ocean, said iron pipe being the corner be-
tween Hugh MacRae & Company's Fort Fisher Tract and land
of the State of North Carolina, which lands were conveyed
to the State of North Carolina by Bessie Orrell by deed
recorded in Book 690, page 573 of the New Hanover County
Registry; and running thence from the beginning point
with the northern line of Hugh MacRae & Company's tract,
N 47° 24' W 212.78 feet to an iron pipe; thence N 55°
14' W, 360.73 feet to a point in the line of U. S. Govern-
ment; thence with the line of the U. S. Government, S 31°
57' W, 348.94 feet to an iron pipe; thence continuing
with the line of the U. S. Government, S 34° 05' W, 500
feet to an iron pipe; thence S 38° 06' 30" East, 577.67
feet to an iron pipe in the high water line of the Atlantic
Ocean; thence with the high water line of the Atlantic
Ocean the following calls and distances: N 13° 47' E,
100.00 feet to an iron pipe; N 27° 18' E, 309.35 feet
to an iron pipe; N 57° 23' E, 313.12 feet to an iron
pipe; and N 25° 41' E, 304.23 feet to an iron pipe,
the point of beginning. The same containing 11.51 acres
and being part of the Hugh MacRae & Company, Inc., Fort
Fisher Tract, as surveyed by Henry Von Oesen & Associates,
Consulting Engineers, August 1965.

TO HAVE AND TO HOLD the aforesaid tract or parcel of land and all privileges and appurtenances thereto belonging, to the said STATE OF NORTH CAROLINA, its successors and assigns, in fee simple forever.

And the said HUGH M. MORTON and wife, JULIA T. MORTON, and JULIAN W. MORTON, Jr., for themselves and their heirs, executors and administrators, covenant with said STATE OF NORTH CAROLINA, its successors and assigns, that they are seized of said premises in fee and have the right to convey in fee simple, that the same are free and clear from all encumbrances except as hereinabove set out, and that they do hereby otherwise forever warrant and will forever defend the title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the said HUGH M. MORTON and wife, JULIA T. MORTON, and JULIAN W. MORTON, Jr., (unmarried) have hereunto set their hands and seals the day and year first above written.



(42.⁰⁰)

Hugh M. Morton (SEAL)
Hugh M. Morton

Julia T. Morton (SEAL)
Julia T. Morton

Julian W. Morton, Jr. (SEAL)
Julian W. Morton, Jr.

STATE OF NORTH CAROLINA:
COUNTY OF NEW HANOVER :

I, Lucy B. Johnson, a Notary Public in and for the County and State aforesaid, do hereby certify that HUGH M. MORTON and wife, JULIA T. MORTON, and JULIAN W. MORTON (unmarried) personally appeared before me this day and acknowledged the due execution of the foregoing deed of conveyance.



WITNESS my hand and notarial seal this 18th day of January, 196

Lucy B. Johnson
Notary Public

My commission expires:

April 8, 1967

Recorded in Book 786, page 119, New Hanover Co. 1/18/66

STATE OF NORTH CAROLINA
New Hanover County.
The foregoing Certificate of Lucy B. Johnson
Notary Public of New Hanover County, is adjudged to be correct. Let the instrument with the Certificate be recorded. This the 18th day of Jan 1966
Joseph W. Davis
Clerk Superior Court

Drawn by Marshall + Wilhem

ADMITTED TO FILE

1/25 Rice
CLERK SUPERIOR COURT
NEW HANOVER COUNTY

JUL 15 3 42 PM '75

STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER
NEW HANOVER CO., N.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

STATE OF NORTH CAROLINA)
VS.)
JAMES E. JOHNSON, JR., ET AL)

J U D G M E N T

THIS CAUSE coming on for trial at the call of the calendar before His Honor, James H. Pou Bailey, Judge Presiding, and a jury duly empaneled, at the May 21, 1973, Special Civil Session of the New Hanover Superior Court, and the following issues having been submitted to and answered by the jury as follows:

What was the fair market value of the 268.58 acres of real property illustrated in red on the State map, State's Exhibit 1, as of June 28, 1968?
ANSWER: SIX HUNDRED SEVENTEEN THOUSAND (\$617,000.00) DOLLARS.

And it appearing to the Court from an examination of the record in this proceeding including the judgment of Cowper, J., and the opinion of the Supreme Court of North Carolina, 278 N.C. 126, and from evidence presented and considered:

That this action was duly instituted on the 28th day of June, 1968, by the filing of a complaint and declaration of taking and notice of deposit and by the issuance of summons; that summons, together with a copy of the pleadings, was duly served on all defendants; that answer was filed by the defendants within the time permitted by law; that the defendants, James E. Johnson, Jr., Albert S. Killingsworth and wife, Elizabeth E. Killingsworth, Hugh M. Morton and wife, Julia T. Morton, and Southern National Bank of North Carolina, are the only persons who had an interest in the property described in the complaint and declaration of taking and hereinafter described, as of the date of the institution of this action; and that all parties having or claiming an interest in said property are parties to this action and are duly before the Court;

That the plaintiff, State of North Carolina, has the power of eminent domain for the purpose of acquiring property and property rights, including property belonging to the defendants, for public use;

JL APS3

That as of the date of this judgment the defendants James E. Johnson, Jr., Albert S. Killingsworth and wife, Elizabeth E. Killingsworth, are the only persons who have or claim an interest in the property hereinafter described;

That the estate or interest acquired by the State of North Carolina upon the institution of this action is fee simple title to the property as hereinafter more fully described; that a copy of a map showing the location and boundary lines of the property condemned has been filed as a part of the pleadings in this action by the State of North Carolina and introduced into evidence and used by all parties by stipulation in the trial of this action;

That the plaintiff deposited with the Clerk of New Hanover County Superior Court, at the time of the institution of this action, the sum of TWO HUNDRED THIRTY-SEVEN THOUSAND FIVE HUNDRED (\$237,500.00) DOLLARS as estimated just compensation for the appropriation of the property and property rights as herein set forth; that said sum deposited is not subject to calculation of interest thereon as a part of just compensation; that the Court has deducted said sum deposited from the verdict, leaving a balance due on the verdict of THREE HUNDRED SEVENTY-NINE THOUSAND FIVE HUNDRED (\$379,500.00) DOLLARS, upon which balance due the Court has calculated interest at the rate of SIX PER CENT (6%) per annum from the 28th day of June, 1968, until the date of this judgment; that said interest due of ONE HUNDRED THIRTEEN THOUSAND EIGHT HUNDRED FIFTY (\$113,850.00) DOLLARS plus the \$379,500.00 balance due on the verdict results in a net sum of FOUR HUNDRED NINETY-THREE THOUSAND THREE HUNDRED FIFTY (\$493,350.00) DOLLARS remaining to be paid by the plaintiff to the defendants James E. Johnson, Jr., and Albert S. Killingsworth and wife, Elizabeth E. Killingsworth.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the plaintiff, State of North Carolina, was entitled to acquire and did acquire on the 28th day of June, 1968, by eminent domain, fee simple title to the lands described in the complaint and hereinafter described as follows:

BEGINNING at a concrete monument lying just West of U. S. Highway #421 at Fort Fisher, said concrete monument being the Southwest corner of an 11.57 acre tract of land conveyed by Hugh M. Morton and others to the State of North Carolina by deed duly recorded on January 18, 1966, in Book 786, page 118, New Hanover County Registry, said concrete monument being in the U. S. Government Taking Line for lands condemned in connection with the Sunny Point Ammunition Depot, said concrete monument being located South 31 degrees 57 mins. West 348.94 feet and South 34 degrees 05 mins. West 500 feet from an iron pipe, said iron pipe being in said U. S. Government Taking Line and being the Northwestern corner of the 11.57 acre tract above described and also being the Southwestern corner of a tract of land conveyed by Bessie Orrell to the State of North Carolina by deed duly recorded in Book 690, page 573, New Hanover County Registry, and running thence from said beginning corner South 38 degrees 06 mins. East crossing U. S. Highway #421, 667 feet, more or less, to the high water mark of the Atlantic Ocean; thence Southwardly and Southwestwardly with the high water mark of the Atlantic Ocean 15,800 feet, more or less, to the Northern high water line of an Inlet; running thence Westwardly with the high water mark of said Inlet to the Eastern high water mark of Still Water Bay; thence Northwardly and Northeastwardly with the Eastern high water line of Still Water Bay 13,400 feet, more or less, to the Northernmost point of said Bay; thence Southwestwardly, Northwardly and Northeastwardly with the Northern high water line of Still Water Bay 5,250 feet, more or less, to the intersection of said high water line with the U. S. Government Taking Line; thence with the U. S. Government Taking Line North 59 degrees 42 mins. East 404 feet, more or less, to a concrete monument, North 57 degrees 34 mins. East 500.00 feet to a concrete monument, North 55 degrees 26 mins. East 500.00 feet to a concrete monument, North 53 degrees 18 mins. East 500.00 feet to a concrete monument, North 51 degrees 10 mins. East 500.00 feet to a concrete monument, North 49 degrees 02 mins. East 500.00 feet to a concrete monument, North 46 degrees 54 mins. East 500.00 feet to a concrete monument, North 44 degrees 46 mins. East 500.00 feet to a concrete monument, North 42 degrees 38 mins. East 500.00 feet to a concrete monument, North 40 degrees 30 mins. East 500.00 feet to a concrete monument, North 38 degrees 22 mins. East 500.00 feet to a concrete monument, and North 36 degrees 14 mins. East crossing U. S. Highway #421, 500.00 feet to the point of BEGINNING, containing 333.518 acres, excluding the right of way of U. S. Highway #421, and being the same lands surveyed by Howard M. Loughlin, Registered Land Surveyor, completed in August, 1969, as shown on a map filed by the plaintiff in this action on November 9, 1971.

2. That the lands owned by defendants and for which just compensation is provided herein are described as follows:

BEGINNING at a concrete monument lying just West of U. S. Highway #421 at Fort Fisher, said concrete monument being the Southwest corner of an 11.57 acre tract of land conveyed by Hugh M. Morton and others to the State of North Carolina by deed duly recorded on January 18, 1966, in Book 786, page 118, New Hanover County Registry, said concrete monument being in the U. S. Government Taking Line for lands condemned in connection with the Sunny Point Ammunition Depot, said concrete monument being located South 31 degrees 57 mins. West 348.94 feet and South 34 degrees 05 mins. West 500 feet from an iron pipe, said iron pipe being in said U. S. Government Taking Line and being the Northwestern corner of the 11.57 acre tract above described and also being the Southwestern corner of a tract of land conveyed by Bessie Orrell to the State of North Carolina by deed duly recorded in Book 690, page 573, New Hanover County Registry, and running thence from said beginning corner South 38 degrees 06 mins. East crossing U. S. Highway #421, 667 feet, more or less, to the high water mark of the Atlantic Ocean; thence Southwardly and Southwestwardly with the high water mark of the Atlantic Ocean 10,938.68 feet, more or less, to a point in the high water line of the Atlantic Ocean; thence running across the beach with a line agreed to

by the parties hereto as being the centerline of New Inlet which closed in approximately 1933, North 68 degrees 48 mins. 30 seconds West 520 feet, more or less, to a point in the eastern high water line of Still Water Bay, as shown on a map filed by the plaintiff in this action on November 9, 1971; thence Northwardly and Northeastwardly with the Eastern high water line of Still Water Bay 8,559.68 feet, more or less, to the Northernmost point of said Bay; thence Southwestwardly, Northwardly and Northeastwardly with the Northern high water line of Still Water Bay 5,250 feet, more or less, to the intersection of said high water line with the U. S. Government Taking Line; thence with the U. S. Government Taking Line North 59 degrees 42 mins. East 404 feet, more or less, to a concrete monument, North 57 degrees 34 mins. East 500.00 feet to a concrete monument, North 55 degrees 26 mins. East 500.00 feet to a concrete monument, North 53 degrees 18 mins. East 500.00 feet to a concrete monument, North 51 degrees 10 mins. East 500.00 feet to a concrete monument, North 49 degrees 02 mins. East 500.00 feet to a concrete monument, North 46 degrees 54 mins. East 500.00 feet to a concrete monument, North 44 degrees 46 mins. East 500.00 feet to a concrete monument, North 42 degrees 38 mins. East 500.00 feet to a concrete monument, North 40 degrees 30 mins. East 500.00 feet to a concrete monument, North 38 degrees 22 mins. East 500.00 feet to a concrete monument, and North 36 degrees 14 mins. East crossing U. S. Highway #421, 500.00 feet to the point of BEGINNING, containing 268.58 acres, excluding the right of way of U. S. Highway #421, and being the same lands surveyed by Howard M. Loughlin, Registered Land Surveyor, completed in August, 1969, as amended and filed as an exhibit in this action on November 9, 1971.

Together with all Riparian Rights and together with all right, title and interest, if any, of the defendants in and to the areas lying between the high water mark and the low water mark of the Atlantic Ocean, the Inlet and the waters of Still Water Bay.

3. That the State of North Carolina, plaintiff herein, deposit into Court the additional sum of \$493,350.00, and that said sum be disbursed to the defendants James E. Johnson, Jr., Albert S. Killingsworth and wife, Elizabeth E. Killingsworth, as their interests may appear, together with the original deposit, unless previously disbursed.

4. That the sum of SEVEN HUNDRED THIRTY THOUSAND EIGHT HUNDRED FIFTY (\$730,850.00) DOLLARS, the same being the total of the jury verdict plus interest as calculated by the Court, is the fair and adequate value of and represents just compensation to the defendants for the appropriation of the interests and areas owned by them hereinabove set out.

5. That a copy of this judgment be certified under the seal of this Court to the Register of Deeds of New Hanover County and that said Register of Deeds is ordered to record said judgment among the land records of New Hanover County.

6. That the plaintiff, State of North Carolina, pay the costs of this action.

By consent of all parties, this judgment is signed out of district and term.

This 20th day of June, 1973.

James H. Pau Brien
Judge Presiding



NEW HANOVER County

Office of the Clerk of the Superior Court

I, Jerry W. Grier, Deputy, Clerk of the Superior Court of NEW HANOVER County, State of North Carolina, said Court being a Court of Record, having an official seal, which is hereto affixed, do hereby certify the foregoing and attached (5 sheets) to be a true copy of

JUDGEMENT SIGNED BY JAMES H. POU BAILEY ON
JUNE 20, 1973 IN THE CASE OF:
STATE OF NORTH CAROLINA VS JAMES E. JOHNSON, ET AL
CASE NO: 68 CVS 1011

as the same is taken from and compared with the original now on file in this office.

In Witness Whereof, I hereunto subscribe my name and affix the seal of the Superior Court of NEW HANOVER County, at my office in WILMINGTON, North Carolina, this 1st. day of April, 19 75


DEPUTY Clerk Superior Court
Ex Officio Judge of Probate
(Jerry W. Grier)



AOC-L FORM 147

Received and Recorded
July 15, 1975 at 3:42 p m.

Eric L. LeRay
Register of Deeds 9

Project Description – Restroom Renovation & Shade Structures

This project is to completely renovate the aging and heavily used restroom facility and make minor improvements to the picnic area at the park. The current facility is a pre-manufactured building completed in 1982. The original use was a concession stand and restroom/changing facility for the beach access. The concession part of the facility is currently used as storage since a newer concession area was built with the contact station in the late 1990's. The facility does not meet ADA codes as it was built prior to ADA. The facility is in poor condition, not only from the extremely heavy use and its age, but also the beach environment has taken its toll on the facility. In addition to the complete renovations of this facility, this project will also include minor picnic area improvements and any necessary site, electrical, wood decking, and walkway improvements. This renovation will not have any additional ground disturbance. All construction materials for this project will be stored within the already disturbed area and no additional ground disturbance is anticipated for this project.

The Division is also proposing the construction of one large shade structure and five small picnic table structures. These structures are necessary for the public as the park itself provides very little shade to park visitors. Currently there are only a handful of small picnic tables with umbrellas that provide shade to the public. These structures will have minor ground disturbance footprints as they only require footers. These structures will be provided for the public on a year round basis and will only be taken down when a major storm is approaching.

The total ground disturbance for this project is less than .1 acres.

Coastal Shoreline AEC's Calculations *Built upon Area, not ground disturbance

Boardwalk: 3330 sq. ft. (All work over CAMA regulated wetlands)

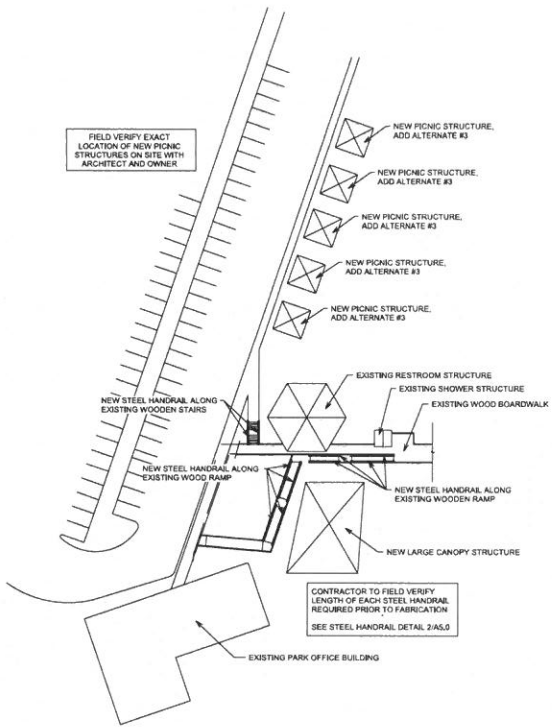
Restroom Decking: 367 sq. ft. (Within Ocean Erodible Area)

Large Shade Structure: 2623 sq. ft. (Within Ocean Erodible Area)

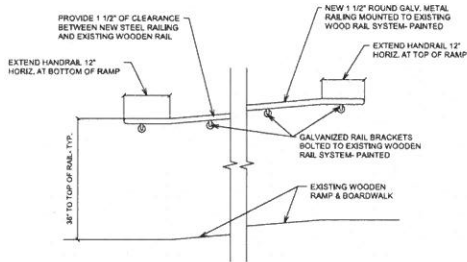
Small Shade Structures: 1620 sq. ft. (Within Ocean Erodible Area)

7940 sq. ft.

***Note: The shade structures are fabric material and should allow most precipitation to seep through. The restroom decking expansion is necessary to make the structure ADA accessible.**



1 HANDRAIL & FABRIC STRUCTURE SITE PLAN
A5.0 1" = 30'-0"



2 NEW STEEL RAMP & STAIR SECTION
A5.0 3/4" = 1'-0"

Hipp Architecture & Development, PC
 228 N. Front Street, Suite 202a
 Wilmington, NC 28401
 (910) 777-8005 Fax
 (910) 777-5450 Fax
 This drawing is the property of Hipp Design & Development, PC and is not to be used without the permission of the Architect, © 2016



CONSTRUCTION DOCUMENTS FOR
 FORT FISHER STATE RECREATION
 AREA BATHROOM/CONCESSION
 BUILDING RENOVATIONS
 SC04141118001 CODE:41416 ITEM:4FR82
 1610 FORT FISHER BLVD, SOUTH
 KURE BEACH, NC 28449



PROJECT #

A5.0

DATE: 2/15/16

OCEAN HAZARD AEC NOTICE

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

Property Owner: State of North Carolina / NC Division of Parks & Recreation

Property Address: 1000 Loggerhead Rd. Kure Beach, NC 28449

Date Lot Was Platted: N/A

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 7.5/9 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 360 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 12/14 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.

Donald H. Smith 6/8/16
Property Owner Signature Date

Assistant Director
NC Division of Parks and Recreation

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 re-measured. Also, the occurrence of a major shoreline change as the result of a storm within the 60-day period will necessitate re-measurement 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:

Local Permit Officer

Address

Locality

Phone Number

BEFORE YOU BUILD

Setting Back for Safety: A Guide to Wise Development Along the Oceanfront

When you build along the oceanfront, you take a calculated risk. Natural forces of water and wind collide with tons of force, even on calm days.

Man-made structures cannot be guaranteed to survive the force of a hurricane. Long-term erosion (or barrier island migration) may take from two to ten feet of the beach each year, and, sooner or later, will threaten oceanfront structures. These are the facts of life for oceanfront property owners.

The Coastal Resources Commission (CRC) has adopted rules for building along the oceanfront. The rules are intended to avoid an unreasonable risk to life and property, and to limit public and private losses from storm and long-term erosion. These rules lessen but do not eliminate the element of risk in oceanfront development.

As you consider building along the oceanfront, the CRC wants you to understand the rules and the risks. With this knowledge, you can make a more informed decision about where and how to build in the coastal area.

The Rules

When you build along the oceanfront, coastal management rules require that the structure be sited to fit safely into the beach environment.

Structures along the oceanfront, less than 5,000 square feet in size, must be behind the frontal dune, landward of the crest of the primary dune, and set back from the first line of stable natural vegetation a distance equal to 30 times the annual erosion rate (a minimum of 60 feet). The setback calculation increases as the size of the structure increases [15A NCAC 7H.0306(a)(2)]. For example: A structure between 5,000 and 10,000 square feet would require a setback from the first line of stable, natural vegetation to a distance equal to 60 times the annual erosion rate (a minimum of 120 feet). The graduated setback continues to increase through structure sizes greater than 100,000 square feet.

The Reasons

The beachfront is an ever-changing landform. The beach and the dunes are natural "shock absorbers," taking the beating of the wind and waves and protecting the inland areas. By incorporating building setbacks into the regulations, you have a good chance of enjoying the full life of the structure. At first, it seems very inviting to build your dream house as close to the beach as possible, but in five years you could find the dream has become a nightmare as high tides and storm tides threaten your investment.

The Exception

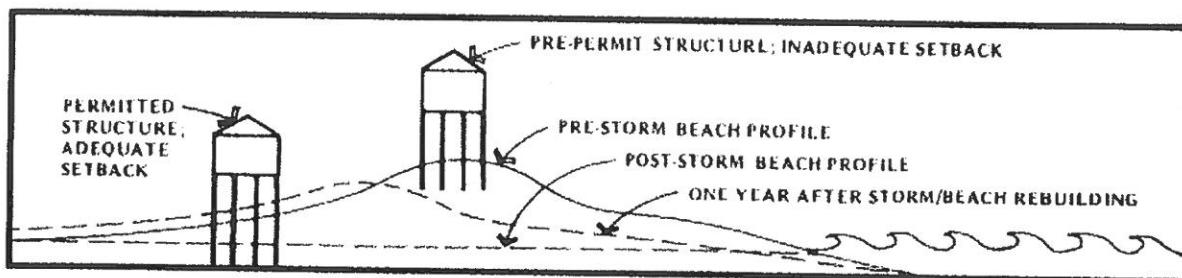
The Coastal Resources Commission recognized that these rules, initially passed in June 1979, might prove a hardship for some property owners. Therefore, they established an exception for lots that cannot meet the setback requirement. The exception allows buildings in front of the current setback, if the following conditions apply:

- 1) the lot must have been platted as of June 1, 1979, and is not capable of being enlarged by combining with adjoining land under the same ownership;
- 2) development must be constructed as far back on the property as possible and in no case less than 60 feet landward of the vegetation line;
- 3) no development can take place on the frontal dune;
- 4) special construction standards on piling depth and square footage must be met; and
- 5) all other CAMA, state and local regulations must be met.

The exception is not available in the Inlet Hazard Area.

To determine eligibility for the exception the Local Permit Officer will make these measurements and observations:

- _____ required setback from vegetation line
- _____ exception setback (maximum feasible)
- _____ rear property line setback
- _____ max. allowable square footage on lowest floor



After the storm, the house on the dune will be gone. The other house has a much better chance of survival.

18'x18'x8' Single Column Umbrella Shade Structure

FRAME MYSTIC BLUE | FABRIC TURQUOISE



For illustration purposes only. Colors may vary.

SQUARE UMBRELLA SHADE

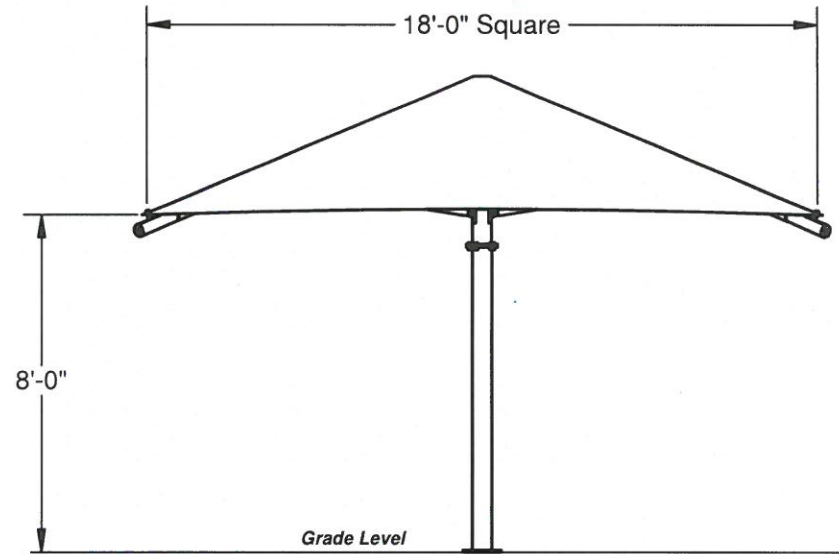
18' x 18' x 8'

MODEL #:

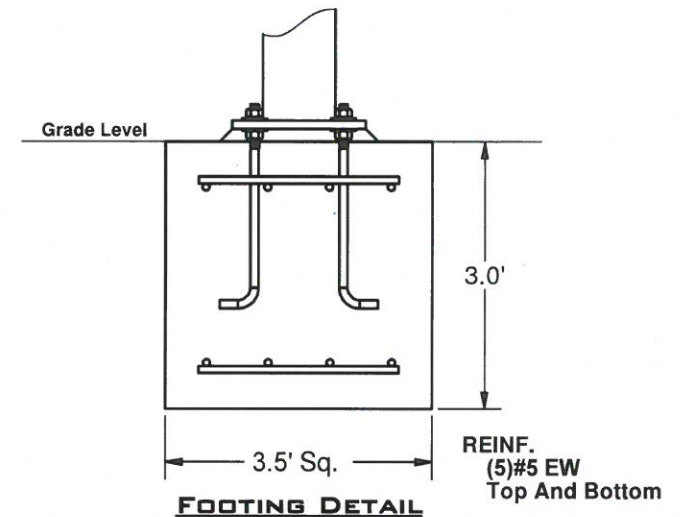
SU181808SG (With Glide Elbows)

SU181808SN (Without Glide Elbows)

REF.#	PART DESCRIPTION	QTY.
1	Ø6.6" Column - Surface Mount	1
2	Ø6.6" Crown - With Four Sockets	1
3	Ø3.5" Rafter - Swaged With Bracket	4
4	Strut - Rigid Fixed	4
5	Fabric - With Cable Insert	1
6	Frame Hardware Kit	1



ELEVATION VIEW

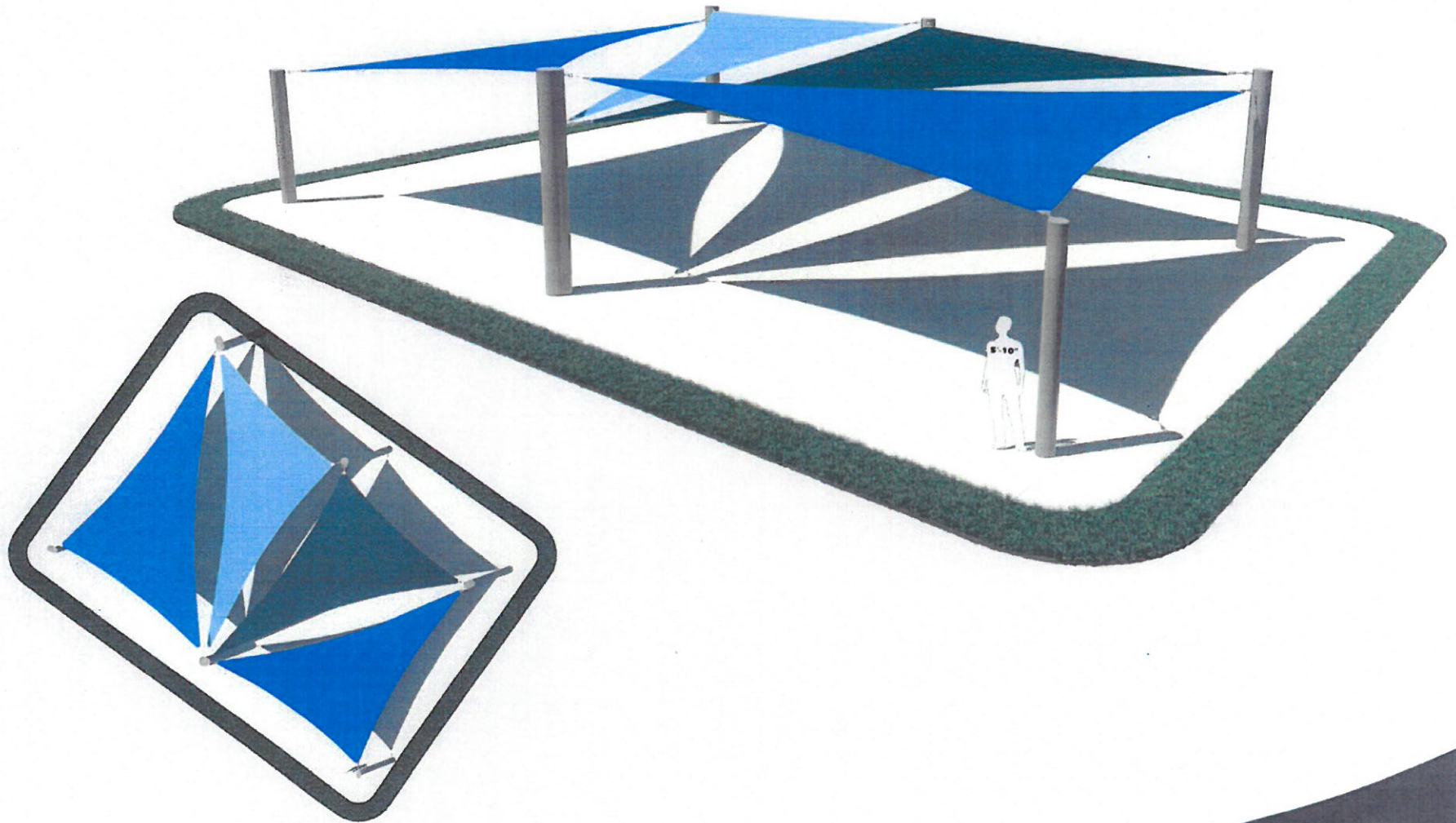


FOOTING DETAIL

*Footing design based on 1500 PSF soil bearing pressure.

Custom Sail Shade Structure

FRAME GRAY | FABRIC TRUE BLUE, TURQUOISE, SKY BLUE



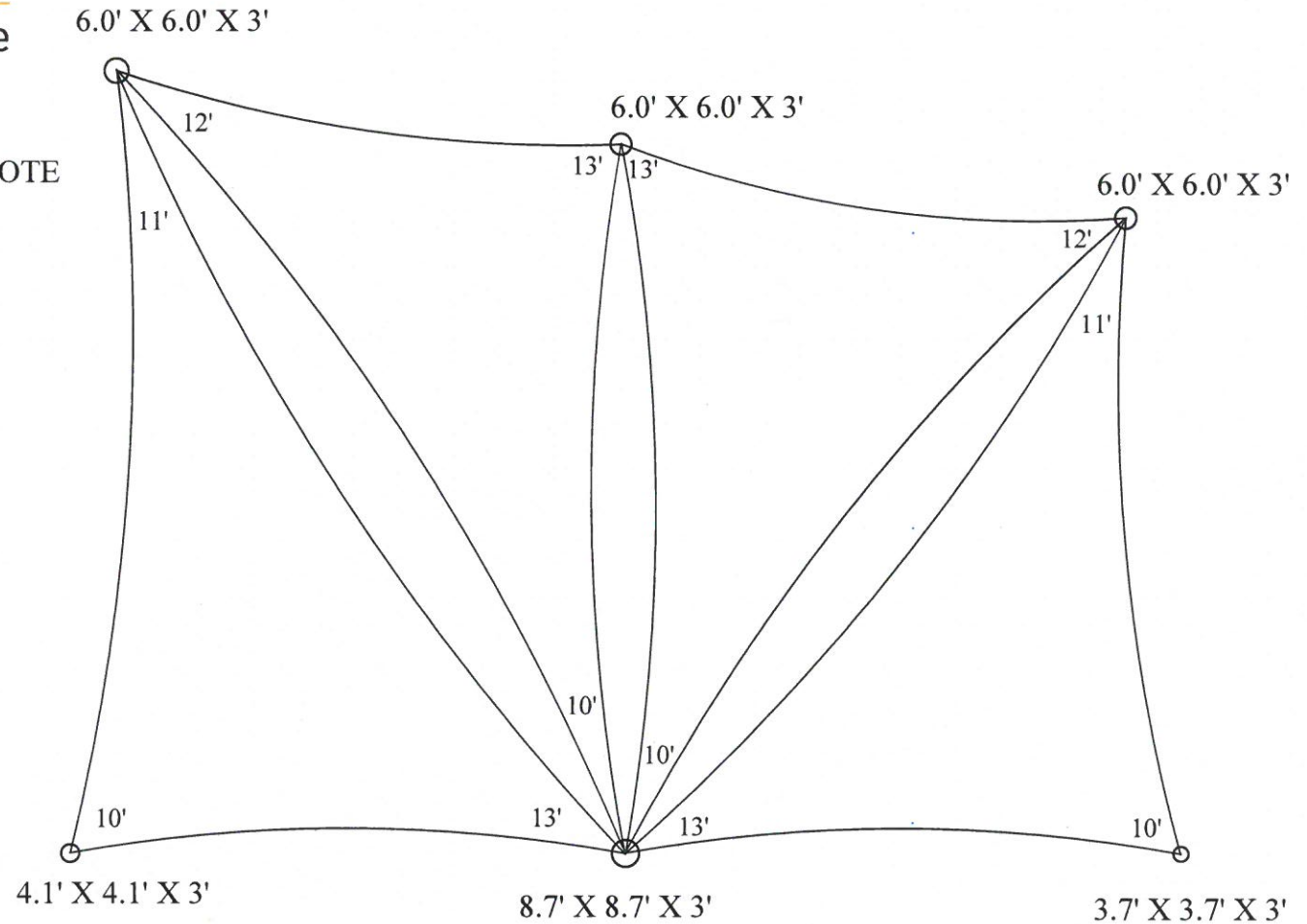
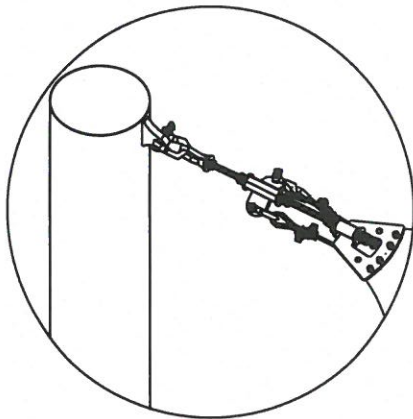
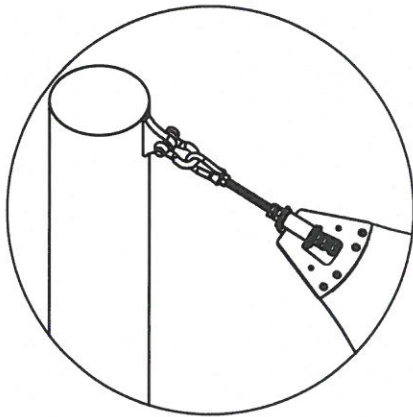
For illustration purposes only. Colors may vary.

Shade

QUO0074814

PIERS AT FORT FISHER SHADE QUOTE

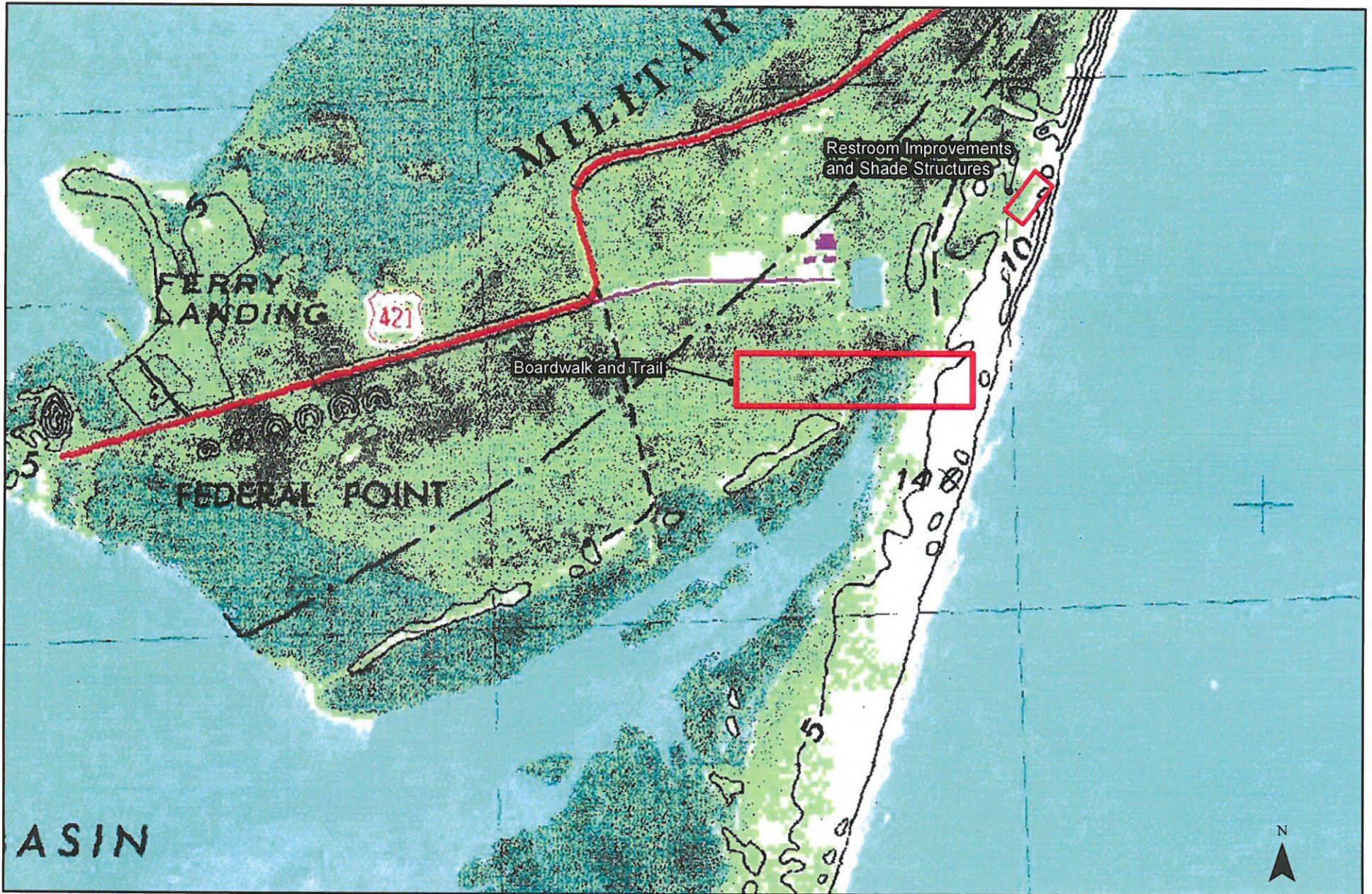
Typical Column to
Fabric Connection



Estimated Footings

Additional Notes:

These drawings are for reference only and should not be used as construction details. They show the general character and rough dimensions of the structural features. Exact spans, fasteners, materials, and foundations can be determined by a licensed structural engineer upon request.



Legend

 Project Location

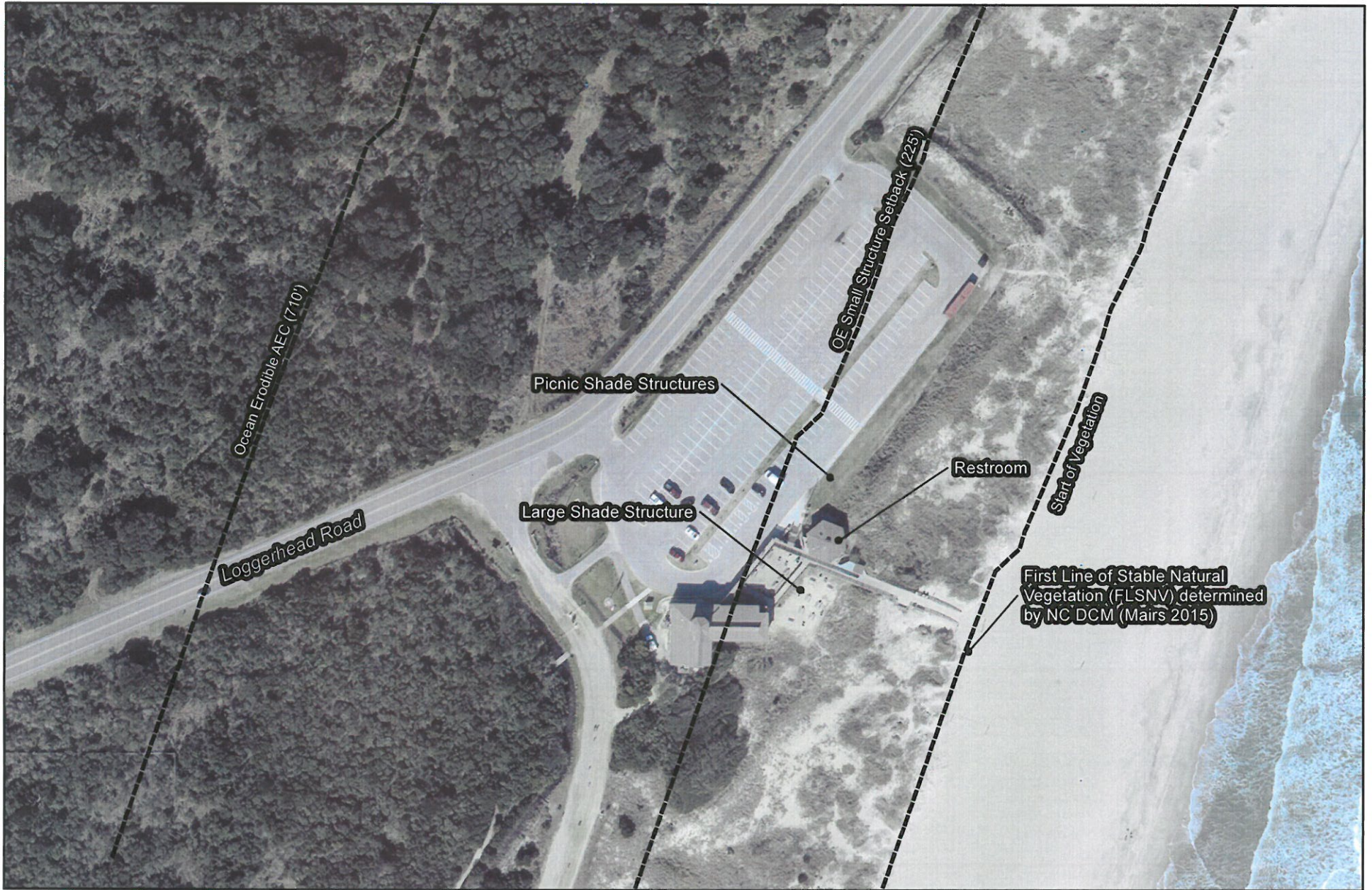


New Hanover County

**Vicinity Map
Construction Projects
Fort Fisher State Recreation Area**

USGS 7.5' Quad - Kure Beach
June 10, 2015





Legend

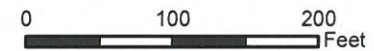
 Project Location



New Hanover County

Vicinity Map of Proposed Construction Restroom Renovations and Shade Structures Fort Fisher State Recreation Area

April 2016





North Carolina Department of Natural and Cultural Resources

Pat McCrory
Governor

Susan Klutz
Secretary

Ms. Peggy Sloan
900 Loggerhead Road
Kure Beach, NC 28449

Dear Ms. Sloan:

In accordance with North Carolina Administrative Code provision 15A N.C.A.C. 07J .0701(c), this letter is to advise you, as a landowner with property adjacent to Fort Fisher State Recreation Area, that the N.C. Division of Parks and Recreation ("Parks") is seeking a variance to the recently issued CAMA Minor Development Permit KB 16-03. As you'll recall from our previous letter, Parks is planning improvements to Fort Fisher State Recreation Area, which include construction of a boardwalk and nature trail over coastal marsh and maritime forest, improvements to the restroom facilities, and the addition of several shade structures adjacent to the existing visitor center. CAMA Minor Development Permit KB 16-03 was issued on July 1st, 2016 authorizing all of the proposed development except for the shade structures. The variance petition will seek relief from the permit's condition denying authorization to construct the shade structures.

Should you have no objections to this proposal, please mark the appropriate statement below, sign and date the letter, and return this letter to:

Justin T. Williamson
N. C. Division of Parks and Recreation
1615 MSC
Raleigh, NC 27699-1615

or the Division of Coastal Management at the address given below. Should you have any objections to this proposal, please send your written comments to the N. C. Division of Coastal Management, 127 Cardinal Drive Ext. Wilmington, NC 28405-3845.

Sincerely,

Justin T. Williamson

_____ I have no objections to the variance petition as presently proposed.

_____ I have objections to the variance petition as presently proposed and have enclosed comments.

Signature

Date



North Carolina Department of Natural and Cultural Resources

Pat McCrory
Governor

Susan Klutz
Secretary

6280 Sunny Point Road
Southport, NC 28461

Dear Commander:

In accordance with North Carolina Administrative Code provision 15A N.C.A.C. 07J .0701(c), this letter is to advise you, as a landowner with property adjacent to Fort Fisher State Recreation Area, that the N.C. Division of Parks and Recreation (“Parks”) is seeking a variance to the recently issued CAMA Minor Development Permit KB 16-03. As you’ll recall from our previous letter, Parks is planning improvements to Fort Fisher State Recreation Area, which include construction of a boardwalk and nature trail over coastal marsh and maritime forest, improvements to the restroom facilities, and the addition of several shade structures adjacent to the existing visitor center. CAMA Minor Development Permit KB 16-03 was issued on July 1st, 2016 authorizing all of the proposed development except for the shade structures. The variance petition will seek relief from the permit’s condition denying authorization to construct the shade structures.

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1615 MSC
Raleigh, NC 27699-1615

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Sincerely,

Justin T. Williamson

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_____ I have objections to the variance petition as presently proposed and have enclosed comments.

Signature

Date



North Carolina Department of Natural and Cultural Resources

Pat McCrory
Governor

Susan Klutz
Secretary

Mr. Jim Steele
1610 Ft. Fisher Blvd. South
Kure Beach, NC 28449

Dear Mr. Steele:

In accordance with North Carolina Administrative Code provision 15A N.C.A.C. 07J .0701(c), this letter is to advise you, as a landowner with property adjacent to Fort Fisher State Recreation Area, that the N.C. Division of Parks and Recreation ("Parks") is seeking a variance to the recently issued CAMA Minor Development Permit KB 16-03. As you'll recall from our previous letter, Parks is planning improvements to Fort Fisher State Recreation Area, which include construction of a boardwalk and nature trail over coastal marsh and maritime forest, improvements to the restroom facilities, and the addition of several shade structures adjacent to the existing visitor center. CAMA Minor Development Permit KB 16-03 was issued on July 1st, 2016 authorizing all of the proposed development except for the shade structures. The variance petition will seek relief from the permit's condition denying authorization to construct the shade structures.

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N. C. Division of Parks and Recreation
1615 MSC
Raleigh, NC 27699-1615

or the Division of Coastal Management at the address given below. Should you have any objections to this proposal, please send your written comments to the N. C. Division of Coastal Management, 127 Cardinal Drive Ext. Wilmington, NC 28405-3845.

Sincerely,

Justin T. Williamson

_____ I have no objections to the variance petition as presently proposed.

_____ I have objections to the variance petition to as presently proposed and have enclosed comments.

Signature

Date

7015 0640 0007 6923 1588

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 City, State, ZIP+4® KURE BEACH NC 28449

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

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<input type="checkbox"/> Adult Signature Required	\$
<input type="checkbox"/> Adult Signature Restricted Delivery	\$
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Total Postage and Fees	\$

Postmark
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Sent To MS. PEGGY SLOAN
 Street and Apt. No., or PO Box No. 900 LOGCREEK ROAD
 City, State, ZIP+4® KURE BEACH NC 28449

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

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<input type="checkbox"/> Adult Signature Restricted Delivery	\$
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 City, State, ZIP+4® SOUTH POB - NC 28461

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

N.C. Division of Parks and Recreation Variance Request

September 13, 2016



Department of Environmental Quality







Fort Fisher Historic Site

Site Location

N.C. Aquarium at Fort Fisher

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Image © 2016 TerraMetrics



**View Of Project Site Facing South
Photo: NC DCM On-Site
Photography Dated 8.12.2016**

View From Project Site Facing South
Photo: NC DCM On-Site
Photography Dated 8.12.2016



View From Project Site Facing East
Photo: NC DCM On-Site
Photography Dated 8.12.2016



View From Project Site Facing East
Photo: NC DCM On-Site
Photography Dated 8.12.2016




View From Project Site Facing North
Photo: NC DCM On-Site
Photography Dated 8.12.2016





Legend

 Project Location



New Hanover County

Vicinity Map of Proposed Construction
Restroom Renovations and Shade Structures
Fort Fisher State Recreation Area

April 2016

