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TO: The Coastal Resources Commission

FROM: Alyssa Wright, DEQ Assistant General Counsel
Christine A. Goebel, DEQ Assistant General Counsel

DATE: April 19, 2022 (for the April 28, 2022, CRC Meeting)

RE: **Variance Request by Petitioner Town of Kure Beach (CRC-VR-22-02)**

Petitioner is the Town of Kure Beach (the “Town”) a municipality in New Hanover County which owns three structural accessways at the beach access points located at 99, 110, and 140 Atlantic Avenue. Petitioner is seeking to use one Architectural Barriers Act/Americans with Disabilities Act compliant beach accessibility mat (the “Beach Mat”) at the end of one of the three structural accessways. On February 21, 2022, the Division of Coastal Management (“DCM”) received the Town’s application for a CAMA Minor Development Permit for the proposed installation of the Beach Mat. On March 8, 2022, DCM denied the Town’s application for the minor development permit due to inconsistency with 15A NCAC 07H.0306(a)(2), which prohibits development seaward of the development line, and 15A NCAC 07H.0308(c)(5), which provides that “structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune[.]” The Town now seeks a variance from the Commission to use the Beach Mat as proposed in their Minor Development Permit Application.

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.): James E. Eldridge, Esq., Town’s Counsel, electronically
John Batson, Local Permitting Officer and Director of Planning and Development
for the Town of Kure Beach, electronically
Mary Lucasse, Special Deputy AG and CRC Counsel, 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 180 feet landward from the first line of stable and 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 "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (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.

....

(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 at the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to provisions of Rule .0306(a)(2) of this Section.

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 shall be set in accordance with Subparagraphs (a)(3) through (a)(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 land or oceanward of the mean high water line or perpetual property easement line, whichever is more restrictive.

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(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 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 considered to entail negligible alteration of primary or frontal dunes provided that:

(A) The accessway is exclusively for pedestrian use;

(B) The accessway is 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 dune. Where this is deemed by the Division of Coastal Management to be impossible due to any more restrictive local, state, and/or federal building requirements, the structure shall touch the dune only to the necessary; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway that 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 are not prohibited provided all other applicable standards of this Rule are met.

(4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened 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 .0309(a) of this Section.

STIPULATED FACTS**ATTACHMENT B**

1. Petitioner Town of Kure Beach (“Town”) is a North Carolina municipal body politic organized and existing in Kure Beach, New Hanover County, North Carolina. The Town is represented by Town Attorney, James E. Eldridge.
2. The Town intends to use one Architectural Barriers Act/Americans with Disabilities Act (“ABA/ADA”) compliant beach accessibility mat (the “Beach Mat”) at the end of one of the three structural accessways at the beach access points located at 99, 110, and 140 Atlantic Avenue (collectively, the “Beach Access Points”).
3. The Town intends to vary the location of the Beach Mat throughout the proposed May-September season, considering various factors such as wind, tide, erosion, and accretion, from the three proposed Beach Access Points. The proposed sites are shown on the PowerPoint presentation and the Site Plans are included as Stipulated Exhibits.
4. The Town intends to use the Beach Mat to facilitate greater beach access for individuals with mobility disabilities, foster a greater sense of independence for those individuals, and enhance their opportunity to enjoy the public beach.
5. The three proposed locations for the Beach Mat are within the Ocean Hazard Area as defined by CAMA and the Commission’s rules such that any proposed development requires a CAMA permit under N.C.G.S. §§ 113A-118 and 113-120.
6. All three of the proposed locations are adjacent to the Atlantic Ocean, the waters of which at this location are classified as SB waters by the Environmental Management Commission.
7. Under Sections 1 and 6 of the 1967 General Assembly Senate Bill 664, Chapter 329, the land waterward of the Town’s building line and landward of the low water mark of the Atlantic Ocean is within the Town’s corporate limits. The Town also has a CAMA Development Line. A Copy of the 1967 Session Law is attached as a Stipulated Exhibit.
8. In December 2017, the Coastal Resource Commission (“Commission”) issued a Final Agency Decision approving the Town’s Development Line. The Town’s Development Line was largely based on the easements procured under the Town’s 1997 Coastal Storm Damage Reduction Project. The Development Line identifies the most waterward location any “development,” as that term is defined by CAMA, could be sited on oceanfront properties in the Town. Under the Commission’s rules, specifically 15A NCAC 07H.0306(a)(2), no buildings or accessory structures may be located waterward of the Development Line.
9. The three Beach Access Points are located within the Atlantic Avenue public right-of-way, and the Town owns legal title to those access points as demonstrated by the public use and public maintenance of that right-of-way beyond the 20-year prescription period. An email

exchange between Attorneys James Eldridge and Christine A. Goebel concerning the same is attached as a Stipulated Exhibit.

10. The Beach Mat will be located on the dry sand beach seaward of the dunes, which land is owned by the Town and is subject to public trust use rights. Copies of the site plans showing the Beach Mat installation at each of these locations are attached as Stipulated Exhibits.
11. John Batson, the Local Permitting Officer and the Town's Building Inspector indicated in his affidavit that the Town currently owns five beach wheelchairs, which are provided free of charge, and which are in high demand during the "season" from May to September. The use of a Beach Mat will allow individuals with disabilities to utilize their own mobility devices to traverse the dry sand beach and gain access to the wet sand beach. Mr. Batson's affidavit is included herein as a Stipulated Exhibit.
12. As averred by Mr. Batson and described in the AccessMat® specifications, the Beach Mat is:
 - a. ADA compliant;
 - b. Lightweight;
 - c. Easy to install and remove;
 - d. Durable and maintenance free;
 - e. Visible; and
 - f. Measures 25 by 38 feet.

A copy of the AccessMat® specifications is included as a Stipulated Exhibit, as well as a photograph demonstrating similar use.

13. According to Mr. Batson, the Beach Mat will be used on a seasonal basis from approximately May to September, maintained daily, continuously monitored by the Town's Ocean Rescue and Fire Department personnel, and removed when weather conditions warrant so as not to risk public safety and welfare. The location of the Beach Mat will vary between the proposed locations throughout the season depending on how various factors—such as wind, tide, storms—impact the dry sand beach at those locations. When not in use, the Beach Mat will be stored at either the Town's Fire Station or Ocean Rescue Headquarters.
14. As averred to by Mr. Batson, and indicated on the provided site plans, the Beach Mat will not cross over any dune as the frontal dune is just landward of the first line of stable and natural vegetation ("FLSNV") and the proposed locations of the mat. At each of the three proposed locations, the Beach Mat will connect to the Town's public accessway boardwalk.
15. According to the Pleasure Island Sea Turtle Project, a North Carolina non-profit corporation that monitors sea turtle nesting activity on the ocean beach in the Town, there has been little to no Sea Turtle nesting activity at Beach Access Points 110 and 140 since prior to the 2021 nesting season and some minimal nesting activity at Beach Access Point 99 over the past several years. A March 17, 2022, letter to Mr. Batson from the Pleasure Island Sea Turtle Project is attached as Stipulated Exhibit.

16. DCM staff reached out to coordinate with the United States Fish & Wildlife Service (“USFWS”) and the North Carolina Wildlife Resource Commission (“WRC”). Their comments included:
 - a. Changing the Beach Mat configuration from “T” to “L”
 - b. USFWS recommended the Beach Mat not extended more than 15 feet from the FLSNV
 - c. Limiting the Beach Mat locations to Access 110 and 140
17. The location of the FLSNV as well as the current Mean High-Water line at each of the proposed locations is shown on each of the site plans provided to the Commission.
18. Beach nourishment is scheduled to occur at Kure Beach to this year, which may shift the Mean High-Water line waterward.
19. In accordance with N.C.G.S. § 113-118, the Town applied for a CAMA Minor Development Permit for the proposed installation of the Beach Mat that was received by the Division of Coastal Management (“DCM”) on February 21, 2022. A copy of the Town’s application for the minor development permit is attached as a Stipulated Exhibit.
20. On February 17, 2022, as part of its minor permit application, the Town, through Mr. Batson, provided notice to the adjacent riparian property owners of its CAMA application. Copies of the provided notice and signed Property Owner Statements are included in the Minor Permit Application, attached as a Stipulated Exhibit.
21. On March 8, 2022, DCM denied the Town’s application for the minor development permit. A copy of the denial letter is attached as a Stipulated Exhibit.
22. As set forth in said letter, the denial was based on a finding that the proposed installation of the Beach Mat violates 15A NCAC 07H.0306(a)(2), which provides that “[i]n no case shall new development be sited seaward of the [Town’s] development line.”
23. As also set forth in said letter, the denial was based on a finding that the proposed installation violates 15A NCAC 07H.0308(c)(5), which provides that “structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune....”
24. 15A NCAC 07H.0306(a)(2) prohibits development seaward of the development line.
25. The Town stipulates that the denial of the Town’s minor development permit was correct under 15A NCAC 07H .0306 (a)(2) and 15A NCAC 07H .0308(c)(5).
26. The proposed locations for the Beach Mat are owned by the Town such that it is inapplicable for the Town to seek a variance from itself.
27. On March 14, 2022, the Town provided notice to the adjacent property owners via certified mail, return receipt requested, that it submitted a variance petition with the Commission as required by 15A NCAC 7J .0701(c)(7). During the comment period, DCM received no written

comments. Copies of the Town's certified mail notice, including delivery confirmations, are attached as a Stipulated Exhibit.

28. The Town now seeks a variance from the Commission to use the Beach Mat as proposed in their Minor Development Permit Application.

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.

A strict application of the Subject CRC Rules [15A NCAC 07H.0306(a)(2) and 15A NCAC 07H.0308(c)(5) are collectively referred herein as the "Subject CRC Rules"] prevents the Town from using the Beach Mat to ensure that the public beach is accessible to all residents and visitors regardless of physical abilities. Specifically, the strict application of the Subject CRC Rules prevents the Town from being able to facilitate access to and over the dry and wet sand beaches by individuals with mobility disabilities. Such limitations are in derogation of the Coastal Area Management Act's ("CAMA") recognition of the importance of the public to enjoy the recreational benefits of the public beaches.

Strictly applying the Subject CRC Rules results in a significant hardship to the Town's services and efforts to provide beach access to all individuals, including those individuals with mobility disabilities. Indeed, the public beach, and the services provided by the Town thereat, may perhaps be viewed as a local government program or facility requiring reasonable accommodation under the ADA; a reasonable accommodation that can be efficiently provided through the use of the Beach Mat.

Staff's Position: Yes.

Staff agrees that strict application of the Commission's rules prohibiting development oceanward of the development line and extending more than six feet seaward of the waterward toe of the frontal or primary dune causes Petitioner unnecessary hardships.

In creating the Coastal Area Management Act ("CAMA"), the North Carolina Legislature recognized the importance of preserving and protecting the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the shorelines of the State. Included among the stated goals of CAMA are (1) insuring the orderly and balanced use and preservation of coastal resources on behalf of the people of North Carolina and the nation and (2) the establishment of policies, guidelines, and standards for economic development, recreation and tourist facilities, preservation, and enhancement of the historic and cultural aspects of the coastal area. See N.C.G.S. §113A-102(a) and (b). The Commission's rules also recognize the need to balance protecting the coastal lands and waters of the State with common law and statutory rights of access to the public trust areas.

A beach mat will help facilitate public access along the beach and to the ocean for those who utilize wheelchairs. The Town maintains five beach wheelchairs; however, they are in high demand, especially during the tourist season. Although the wooden access boardwalk is wheelchair accessible, accommodating wheelchairs onto and along the dry sand beach and to the ocean is

currently limited to those who could operate and transport one of the Town's five beach-wheelchairs across the dry sand beach. Accordingly, strict application of the Commission's rules will cause the Town unnecessary hardships in providing access to visitors in wheelchairs where the location of accessways is limited to six feet beyond the seaward toe of the primary or frontal dune. Strict application of the Commission's rules will otherwise prevent a structure intended to be located on the dry sand beach specifically to allow improved access to the public trust beach by visitors with wheelchairs.

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

Petitioner's Position: Yes.

The property in question is a public beach within the Town's corporate limits and, at the locations shown on the site plans, the Beach Mat would be placed at the seaward end of the structural accessway thereby facilitating access to the dry and wet sand beaches by the public, including individuals with disabilities who will be able to utilize their own mobility devices on the mat in lieu of being dependent on the Town's limited number of beach wheelchairs which are seasonally in high demand. Given its proposed location on and in proximity to the dry and wet sand beaches, utilization of the Beach Mat will help ensure the independent and spontaneous use of the beach by individuals with mobility disabilities.

Staff's Position: Yes.

Petitioner's hardship is caused by conditions peculiar to Petitioner's property. The proposed sites are public accessways owned and operated by the Town of Kure Beach and that offer unique opportunities for enhanced handicap access to oceanfront beaches.

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

Petitioners' Position: No.

The Beach Mat is not a structural development that will interfere with legal access to or use of public resources. It is instead a durable, lightweight, and visible pathway that is easy to place upon and remove from the sand and that will be placed upon the sand at grade and without any excavation or fill; a use which 15A NCAC 07H.0308(c)(2)(C) seemingly contemplates: "Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune...." Further, the mat will be used seasonally, maintained daily, and removed and stored when weather conditions deem it advisable to do so for public safety and welfare.

Staff's Position: No.

Staff agrees that allowing this configuration and area of beach mat to extend onto the dry sand beach waterward the development line and up to 30 feet seaward of the waterward toe of the frontal or primary dune is not in conflict with the Commissions general policy of keeping dry sand beach clear of structures to preserve public access. The Town's proposed use for the Beach Mat,

subject to the conditions outlined below, minimizes the impact of the Beach Mat to the shoreline and to potential habitats while enhancing public access for visitors using wheelchairs. Staff agrees there are no preferable alternatives that would reduce overall impacts to the dry sand beach and shoreline while providing the same level of access for visitors using wheelchairs.

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.

The variance requested by the Town is intended to facilitate and enhance access to the Town's beaches by all individuals regardless of their physical capabilities and this intent is squarely on point with the spirit, purpose, and policy of the rules, standards, and orders of the Commission as set forth in 15A NCAC 07H.0203 that provides, in pertinent part, as follows:

It is the objective of the [Commission] to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines...so as to safeguard and perpetuate the biological, social, economic, and aesthetic values...it is the objective of the [Commission] to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

The Town's intended use of the Beach Mat to facilitate access to the public beach is directly on point with the Commission's mission as stated above.

The variance requested by the Town will help secure public safety and welfare by providing access to the beach for individuals with disabilities without them having to be dependent on the availability of the Town's limited number of beach wheelchairs. By using the Beach Mat, individuals with disabilities can traverse the dry sand and gain access to the more hard-packed wet sand beach thereby facilitating the individual transferring from the mobility device to, for example, a beach wheelchair to traverse the wet sand beach. Using the Beach Mat will also provide unimpeded access to the dry sand beach and enhance the safety and welfare of the public use of the accessway.

The use of the Beach Mat to facilitate access for individuals with mobility disabilities preserves substantial justice by reasonably accommodating those individuals' use of the public beach and the services provided by the Town thereat.

Staff's Position: Yes.

Staff agrees that granting the requested variance, subject to the conditions outlined below, would be consistent with the spirit, purpose and intent of the Commission's rules. With regard to Access points 110 and 140, the limited area of the proposed beach mat on a heavily trafficked area, and the increased access for visitors with mobility disabilities, would meet the legislative goals of the NC Coastal Area Management Act. Staff agrees that there would appear to be no significant

adverse impacts to the public's use of dry sand beach, especially if the mat is removed prior to storm events.

Data, in the form of nesting history, provided by the Pleasure Island Sea Turtle Project indicates that sea turtles avoid Access 140 and 110 due to the high volume of human activity and lighting. Thus, the beach mat at these locations would also seem to have a limited impact on sea turtle nesting in this heavily developed and heavily used area. The Pleasure Island Sea Turtle Project documented some nesting activity at Access 99 and concluded that “[p]lacing a mat on the beach at this location could potentially pose an obstacle for nesting sea turtle[,]” further noting that nesting frequencies increased “the further you get away from the pier.” Because monitoring by volunteers is likely to detect but not prevent false crawls, Staff recommends the Commission limit the scope of this Variance to apply only to Access Sites 140 and 110 to avoid impacts on nesting sea turtles.

Staff also agrees that granting the variance would secure the public safety and welfare and preserve substantial justice. The proposed beach mat placement is designed to increase access to the public beach for visitors using wheelchairs. The Town's commitment to improving access for visitors with mobility disabilities is a laudable goal and is in keeping with the goals of the CAMA and the Commission's rules, to provide and preserve *all* of the public's opportunity to enjoy the physical, aesthetic, cultural and recreational qualities of the shorelines of the State.

Staff recommends the Commission consider conditioning any variance grant authorizing the beach mat:

1. To be limited to Beach Access 110 and 140.
2. To be configured in an L shape instead of the T shape proposed by the Town
3. Without the May-September use restriction the Town requested in their permit application in case the Town wishes to extend the use of the beach mat beyond these months in the future. This condition would avoid the need for another variance although a permit modification may be required.
4. To allow their placement within thirty feet of the FSLNV.
5. To require the Town to remove the beach mat in the event of a storm event and/or severe weather conditions and if the mat is within twenty feet of mean high water.
6. To begin and continue to work directly with the United States Fish & Wildlife Service (USFWS) to ensure compliance with the federal Endangered Species Act.

PETITIONER'S NAME: Town of Kure Beach

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 (Commission) for a variance.

VARIANCE HEARING PROCEDURES

A variance petition will be considered by the Commission 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 Commission meeting to be eligible for consideration by the Commission 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 Commission 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 Commission 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.

ARGUMENTS IN SUPPORT OF VARIANCE REQUEST

Petitioner Town of Kure Beach ("Town") respectfully submits that the Town's use of an ABA/ADA compliant beach accessibility mat (hereinafter, the "Beach Mat") meets the criteria for the variance being requested from the strict application of 15A NCAC 07H.0306(a)(2) and 15A NCAC 07H.0308(c)(5). The Town's CAMA Minor Development Permit application for the

installation of the Beach Mat was denied under 15A NCAC 07H.0306(a)(2) based on the standard that “[i]n no case shall new development be sited seaward of the [Town’s] development line.” The application was also denied under 15A NCAC 07H.0308(c)(5) which provides that “structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune....” (15A NCAC 07H.0306(a)(2) and 15A NCAC 07H.0308(c)(5) are collectively referred herein as the “Subject CRC Rules”).

The installation of the Beach Mat, as shown on the site plans included with the Stipulated Exhibits, will be at (only) one of the Beach Access Points located at 99, 110, and 140 Atlantic Avenue; said locations being variable depending on various environmental factors such as wind, tide, erosion, or accretion. The use of the Beach Mat will provide greater beach access for individuals with mobility disabilities, foster a greater sense of independence for those individuals, and enhance their opportunity to enjoy the public beach. While the Town owns 5 beach wheelchairs which are provided free of charge (and which are in high demand during the season) the use of the Beach Mat will allow individuals with disabilities to utilize their own mobility devices to traverse the dry sand beach and gain access to the wet sand beach.

The Beach Mat will be used from, approximately, May through September and removed during weather events resulting in exceptionally high tides such as tropical storms and hurricanes. The Beach Mat will be swept at least once daily and continuously monitored by the Town’s Ocean Rescue staff.

(a) Will strict application of the Subject CRC Rules issued by the Commission cause the petitioner unnecessary hardships? Explain the hardships.

Yes. A strict application of the Subject CRC Rules prevents the Town from using the Beach Mat to ensure that the public beach is accessible to all residents and visitors regardless of physical abilities. Specifically, the strict application of the Subject CRC Rules prevents the Town from being able to facilitate access to and over the dry and wet sand beaches by individuals with mobility disabilities. Such limitations are in derogation of the Coastal Area Management Act’s (“CAMA”) recognition of the importance of the public to enjoy the recreational benefits of the public beaches.

Strictly applying the Subject CRC Rules results in a significant hardship to the Town’s services and efforts to provide beach access to all individuals, including those individuals with mobility disabilities. Indeed, the public beach, and the services provided by the Town thereat, may perhaps be viewed as a local government program or facility requiring reasonable accommodation under the ADA; a reasonable accommodation that can be efficiently provided through the use of the Beach Mat.

(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. The property in question is a public beach within the Town’s corporate limits and, at the locations shown on the site plans, the Beach Mat would be placed at the seaward end of the structural accessway thereby facilitating access to the dry and wet sand beaches by the public, including individuals with disabilities who will be able to utilize their own mobility devices on the mat in lieu of being dependent on the Town’s limited number of beach wheelchairs which are seasonally in high demand. Given its proposed location on and in proximity to the dry and wet

sand beaches, utilization of the Beach Mat will help ensure the independent and spontaneous use of the beach by individuals with mobility disabilities.

(c) Do the hardships result from actions taken by the petitioner? Explain.

No. The Beach Mat is not a structural development that will interfere with legal access to or use of public resources. It is instead a durable, lightweight, and visible pathway that is easy to place upon and remove from the sand and that will be placed upon the sand at grade and without any excavation or fill; a use which 15A NCAC 07H.0308(c)(2)(C) seemingly contemplates: "Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune...." Further, the mat will be used seasonally, maintained daily, and removed and stored when weather conditions deem it advisable to do so for public safety and welfare.

(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.

Yes. The variance requested by the Town is intended to facilitate and enhance access to the Town's beaches by all individuals regardless of their physical capabilities and this intent is squarely on point with the spirit, purpose, and policy of the rules, standards, and orders of the Commission as set forth in 15A NCAC 07H.0203 that provides, in pertinent part, as follows:

It is the objective of the [Commission] to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines...so as to safeguard and perpetuate the biological, social, economic, and aesthetic values...it is the objective of the [Commission] to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

The Town's intended use of the Beach Mat to facilitate access to the public beach is directly on point with the Commission's mission as stated above.

The variance requested by the Town will help secure public safety and welfare by providing access to the beach for individuals with disabilities without them having to be dependent on the availability of the Town's limited number of beach wheelchairs. By using the Beach Mat, individuals with disabilities can traverse the dry sand and gain access to the more hard-packed wet sand beach thereby facilitating the individual transferring from the mobility device to, for example, a beach wheelchair to traverse the wet sand beach. Using the Beach Mat will also provide unimpeded access to the dry sand beach and enhance the safety and welfare of the public use of the accessway.

The use of the Beach Mat to facilitate access for individuals with mobility disabilities preserves substantial justice by reasonably accommodating those individuals' use of the public beach and the services provided by the Town thereat.

STATEMENT OF OWNERSHIP INTEREST

Under Section 3 of the 1947 "Act to Incorporate the Town of Kure Beach in the County of New Hanover, State of North Carolina [SB 371]" the boundary of the municipal corporate limits extends to and runs along the "low water mark of the Atlantic Ocean." A copy of the Charter is included in the Stipulated Exhibits.

Additionally, under Sections 1 and 6 of the 1967 General Assembly Senate Bill 664, Chapter 329, all new land "between the present seaward property line of the land or lot owners bordering on said ocean and the low watermark of the Atlantic Ocean" shall be, after the land is filled in, restored and made or to be filled in, restored and made as the result of placing sand from the ocean and other sources onto the Town's seaward side, within the corporate limits of the Town. A copy of this 1967 Session Law is included with the Stipulated Exhibits.

The Beach Mat will be installed, depending on various environmental factors, at the end of the structural accessway at either of the 3 different Beach Access points located within the Atlantic Avenue public right-of-way. Only 1 Beach Mat will be installed and used at any one time. The Town owns legal title to these access points as demonstrated by the public use and public maintenance of the right-of-way beyond the 20-year prescription period. Copies of the site plans for the installation of the Beach Mat at these locations is included with the Stipulated Exhibits. Thus considered, the Beach Mat will be located on the dry sand beach seaward of the dunes which land is owned by the government and which is impressed with public rights of use under the public trust doctrine and the doctrine of custom or prescription.

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:

- X The name and location of the development as identified on the permit application;
- X A copy of the permit decision for the development in question;
- X A copy of the deed to the property on which the proposed development would be located;
- X A complete description of the proposed development including a site plan;
- X A stipulation that the proposed development is inconsistent with the rule at issue;
- X Proof that notice was sent to adjacent owners and objectors*, as required by 15A N.C.A.C. 07J .0701(c)(7);
- NA Proof that a variance was sought from the local government per 15A N.C.A.C. 07J .0701(a), if applicable;
- X Petitioner's written reasons and arguments about why the Petitioner meets the four variance criteria, listed above;

X 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.

X 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.*

Due to the above information and pursuant to statute, the undersigned hereby requests a variance.

TOWN OF KURE BEACH

JAMES E. EVANS
Signature of Town Attorney

March 16, 2022
Date

JAMES E. EVANS
Printed Name of Town Attorney

jee@cc.rr.com
Email Address of Town Attorney

PO Box 1380
Mailing Address of Town Attorney

(910) 232-6005
Telephone No. of Town Attorney

Wilmington, NC 28402
City, State, Zip

NA
Fax No. of Town Attorney

DELIVERY OF THIS HEARING REQUEST

This variance petition must be **received** by the Division of Coastal Management at least six (6) weeks before the first day of the regularly scheduled Commission meeting at which it is heard. A copy of this request must also be sent to the Attorney General's Office, Environmental Division. 15A N.C.A.C. 07J .0701(e).

Contact Information for DCM:

By mail, express mail or hand delivery:

Director
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

By Fax:

(252) 247-3330

By Email:

Check DCM website for the email
address of the current DCM Director
www.nccoastalmanagement.net

Contact Information for Attorney General's Office:

By mail:

Environmental Division
9001 Mail Service Center
Raleigh, NC 27699-9001

By express mail:

Environmental Division
114 W. Edenton Street
Raleigh, NC 27603

By Fax:

(919) 716-6767

Revised: July 2014

ATTACHMENT E

STIPULATED EXHIBITS

1. 1967 General Assembly Senate Bill 664, Chapter 329.
2. Email exchange between James E. Eldridge, Town Attorney, and Christine A. Goebel, DEQ Assistant General Counsel, dated September 3, 2021, concerning the Town's ownership of the Beach Access Points located in the Atlantic Avenue public right-of-way.
3. Site plans for the proposed locations and use of the Beach Mat.
4. Affidavit of John J. Batson, Local Permitting Officer.
5. Manufacturer's information on the AccessMat® ABA/ADA Compliant Beach Accessibility Mat.
6. March 17, 2022 letter from Jennifer Hufham, Kure Beach Permit Holder, Pleasure Island Sea Turtle Project, to John Batson, Building Inspector concerning the incidence of sea turtle nesting at the subject Beach Access Points.
7. Town's application for a CAMA Minor Development Permit for the proposed use and locations of the Beach Mat.
8. March 8, 2022, letter from Tara MacPherson, District Manager for the Wilmington DCM to John Batson, Building Inspector for the Town, denying the Town's application for a CAMA Minor Development Permit for the proposed use and locations of the Beach Mat.
9. Copies of certified mail receipts showing that notice of the Town's variance petition was delivered to adjacent property owners.
10. Photograph illustrating the location and use of a similar beach mat by the Town of Carolina Beach.

NORTH CAROLINA GENERAL ASSEMBLY
1967 SESSION

CHAPTER 664
SENATE BILL 329

AN ACT RELATING TO THE TITLE TO THE LAND TO BE BUILT UP AND CONSTRUCTED AS A RESULT OF CERTAIN EROSION CONTROL WORK, IN THE SEVERAL MUNICIPALITIES AND COUNTIES OF NORTH CAROLINA BOUNDED IN PART BY THE ATLANTIC OCEAN.

WHEREAS, during the course of many years, in the several municipalities and counties of North Carolina, bounded in part by the Atlantic Ocean, much of the land abutting and fronting on the Atlantic Ocean in the said municipalities and counties, formerly belonging to various property owners, has been, and is now being, washed away by successive storms, tides, and winds; and

WHEREAS, the said municipalities and counties, separately or jointly, with aid from the State of North Carolina, the United States Government, and the Federal Agencies thereunder, and with their own funds, have made available, or will make available, from time to time, funds with which to control the erosion caused by the said tides and winds, and other causes; and to that end the said counties, and the said municipalities, located therein, separately or jointly, have entered into a contract in the future to place sand by hydraulic pumping, or by other means, from the waters, or from other sources within the nearby or immediate area, onto the seaward side of the said municipalities and counties, or certain designated parts thereof; and as a result thereof, there has been, is now, or will be made and constructed new lands on the ocean front of the said municipality, municipalities, county or counties, which may or will change the ordinary and usual watermark or the waters of the Atlantic Ocean along the seaward boundary of the said municipalities and counties, and when the project or projects are terminated, the question will arise as to whom title to the said new land shall belong; and

WHEREAS, it is the desire of the authorities of the municipalities and the counties of North Carolina bounded in whole or in part by the Atlantic Ocean, as well as the State of North Carolina, to fix and define the title to such new land, and to fix and determine its use, and to further define the littoral rights of the property owners abutting on the ocean front which will be added or taken by and through the making of such new made lands: Now, therefore,

The General Assembly of North Carolina do enact:

Section 1. That all land filled in, restored, and made, and to be filled in, restored and made, as the result of the recitals in the preamble to this Act, which will

exist between the present seaward property line of the land or lot owners bordering on said ocean and the low watermark of the Atlantic Ocean after the work referred to in the preamble hereof is completed, shall be within the corporate limits of the municipalities or counties, or both, of North Carolina bounded in whole or in part by the Atlantic Ocean, and so much of said lands so filled in, restored, and made which will lie "inland" of the "building line" or "project protection line," determined by Section 2 of this Act, is hereby granted and conveyed in fee simple to the land owner, to the extent that his land abuts thereon, and the balance of said land lying "seaward" of said "building line," to be fixed and determined by Section 2 of this Act, is hereby granted and conveyed in fee simple to the respective municipalities or counties, or both, wherein the land lies; provided, however, that no building or structure shall be built and erected on said made and built up land lying "seaward" of the "building line," to be defined and set out in Section 2 of this Act, and provided further, that all made and constructed land lying "seaward" of the "building line" shall be at all times kept open for the use of the public, as the governing authorities of the municipalities or counties, or both, wherein the land lies, by ordinance shall determine; and provided, however, no streets or highways shall be constructed parallel to the ocean on said built up land, and provided further, that if any such property as is hereby granted and conveyed to the said respective municipalities and counties, or both, shall cease to be used for the purposes or in the manner prescribed in this Act, it shall revert and become the property of the State of North Carolina; and provided further, that the owners of the property abutting on said newly made or constructed land, shall, in front of their said property possess and keep their rights, as if littoral owners, in the waters of the Atlantic Ocean, bordering on said newly acquired and constructed land.

Sec. 2. Prior to the initiation of said work to be carried on by the said municipality, municipalities, county, counties, or both, and referred to in the preamble hereof, the said municipality, municipalities, county, counties, separately or jointly, shall, at their own cost, survey or have surveyed by a competent engineer or engineers a line to be known as the "building line," and which shall constitute and define the "building line" referred to in Section 1 of this Act, and which shall run the full length of the beach with the municipal or county limits, or both, or parts thereof, that will be duly designated by the governing body or bodies; and after the "building line" shall have been surveyed and fixed and determined, the said authorities of each of the said municipality, municipalities, county or counties, or both, shall immediately cause to be prepared a map showing, fixing, and determining the "building line," which map so prepared shall be immediately recorded in the office of the register of deeds of the county wherein the land lies, in a map book kept for said purposes, after the engineer has appended an oath to the effect that said line has been truly and properly surveyed and laid out and marked on said map, and the register of deeds shall properly index and cross-index said map, and when so recorded in said map book or entered or placed therein, in lieu of inserting a transcript thereof, and indexed, the said map shall be competent and prima facie evidence of the facts thereon, without other or further proof of the making of said map, and shall conclusively fix and determine the "building line" referred to in Section 1 of this Act.

Sec. 3. Any property owner or claimant of land who is in any manner affected by the provisions of this Act, and who does not bring suit against the municipality or county, or both, as the case may be, wherein the land lies, or assert such claims by filing notice thereof with the governing body of the said municipality or county wherein the land lies, either or both, as the case may be, or any claimant thereto under the provisions of this Act, or their successor or successors in title, within six months after the "building line" is surveyed and established, and the map thereof recorded, as provided for herein, shall be conclusively presumed to have acquiesced in, and to have accepted the terms and conditions hereof, and to have abandoned any claim, right, title, or interest in and to the territory immediately affected by and through or as a result of the doing of act or acts or things herein mentioned, and shall be forever barred from maintaining any action for redress upon such claim.

Sec. 4. For the purposes of this Act, the terms "project protection line," as defined in Article 3 of Chapter 104B of the North Carolina General Statutes, and "building line," as used in Chapter 246 of the 1939 Session Laws and Chapter 511 of the 1963 Session Laws, are used herein interchangeably and are in accord as to definition.

Sec. 5. The governing bodies of these municipalities and counties bounded in part by the Atlantic Ocean, are hereby empowered to adopt and enforce such regulations as they may deem appropriate, to enforce the provisions of this Act. Each municipality and county may act separately or jointly of any and all other municipalities and counties which are bounded in part by the Atlantic Ocean.

Sec. 6. This Act shall apply to Brunswick County and the municipalities located therein, New Hanover County and the Town of Kure Beach.

Sec. 7. All laws and clauses of laws in conflict with this Act are hereby repealed, except Chapter 246, 1939 Session Laws, and Chapter 511, 1963 Session Laws.

Sec. 8. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 2nd day of June, 1967.

John Batson

From: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Sent: Friday, September 3, 2021 12:08 PM
To: jee@ec.rr.com
Cc: John Batson; Ed Kennedy; Mandy Sanders; MacPherson, Tara
Subject: RE: [External] Proposed Addition to Lifeguard Shack

Hi Jim-

Hope you're doing well. Thanks for this summary- it's very helpful. I don't know what it says about me that I have the Lawrence book in my office and turn to it often as well.

Tara- this information is sufficient to satisfy the "deed or other instrument" rule for part of a complete CAMA permit application. Please let me know if you have any questions on this.

John and Jim- I believe you're planning to seek a variance from the Commission's/Town's development line for the CAMA variance. The deadline for filing for the November 9-10 CRC meeting is September 29th. Please let me know if you have any questions about that process.

Have a good holiday weekend-
Christy

From: jee@ec.rr.com [mailto:jee@ec.rr.com]
Sent: Friday, September 3, 2021 11:23 AM
To: Goebel, Christine A <Christine.Goebel@NCDENR.GOV>
Cc: 'John Batson' <j.batson@townofkurebeach.org>; 'Ed Kennedy' <e.kennedy@townofkurebeach.org>; 'Mandy Sanders' <m.sanders@townofkurebeach.org>; MacPherson, Tara <tara.macpherson@ncdenr.gov>
Subject: [External] Proposed Addition to Lifeguard Shack

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to Report Spam.

09/03/2021

Dear Ms. Goebel:

I am the Town Attorney for Kure Beach and John Batson has asked me to respond to your August 26, 2021 email requesting documentation of the "parcel at issue" with respect to the proposed improvement to an existing lifeguard structure. A sketch plan of the proposed improvement and the existing lifeguard structure is attached hereto.

The structure and the proposed improvement is and will be located in the unimproved portion of the Atlantic Avenue public ROW (hereinafter, the "ROW"). The existence of the ROW, as part of the Fort Fisher Sea Beach development, preceded the Town's incorporation in 1947 and there are not any known instruments transferring ownership of the ROW to the Town. However, the public has continuously used and the Town has continuously maintained the ROW, as a Town-system street, over the past 74 years. Thus considered, the Town's ownership interest in the ROW is by prescription. See *David M. Lawrence, Property Interests in North Carolina City Streets* 18-19 (1985):

[Ownership interest] for public streets may also be acquired by prescription – adverse use of the street by the public. This method of acquisition, frequently labeled “public user” by the courts, is chiefly used today to demonstrate public title to streets for which there is no documentary evidence of conveyance or dedication...[T]he case law has...held that prescription required that the street have been used by the public for twenty years in a manner that is adverse to the owner...If a public agency has been maintaining the street for the necessary period, that fact would constitute public user and should indicate that the use is adverse.

See also Hemphill v. Board of Aldermen, 212 N.C. 185 (1937) (public maintenance is a necessary component of public use); *State v. Fisher*, 117 N.C. 733 (1895) (public maintenance was the best evidence of a continuous and unequivocal assertion of a claim of right).

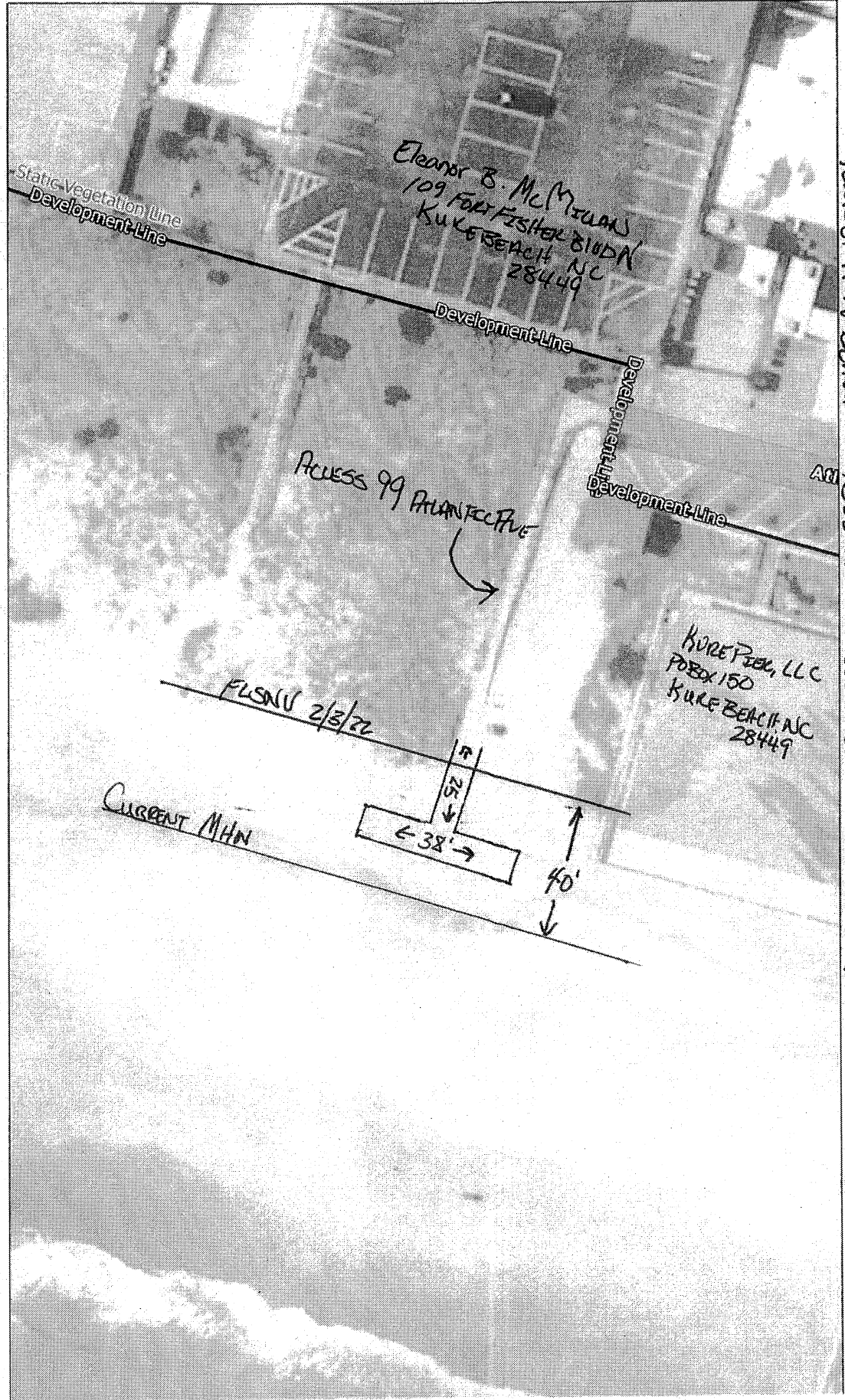
Given that the public use and the public maintenance of the ROW has extended way beyond the required 20-year period, it is my opinion that the Town has an ownership interest in the ROW by prescription. Please let me know if I can be of any further assistance.

James E. Eldridge

Eldridge Law Firm, PC
Post Office Box 1380
Wilmington, NC 28402
910.232.6005

2/25/2022, 2:30:39 PM

Static Vegetation Lines
 Development Lines



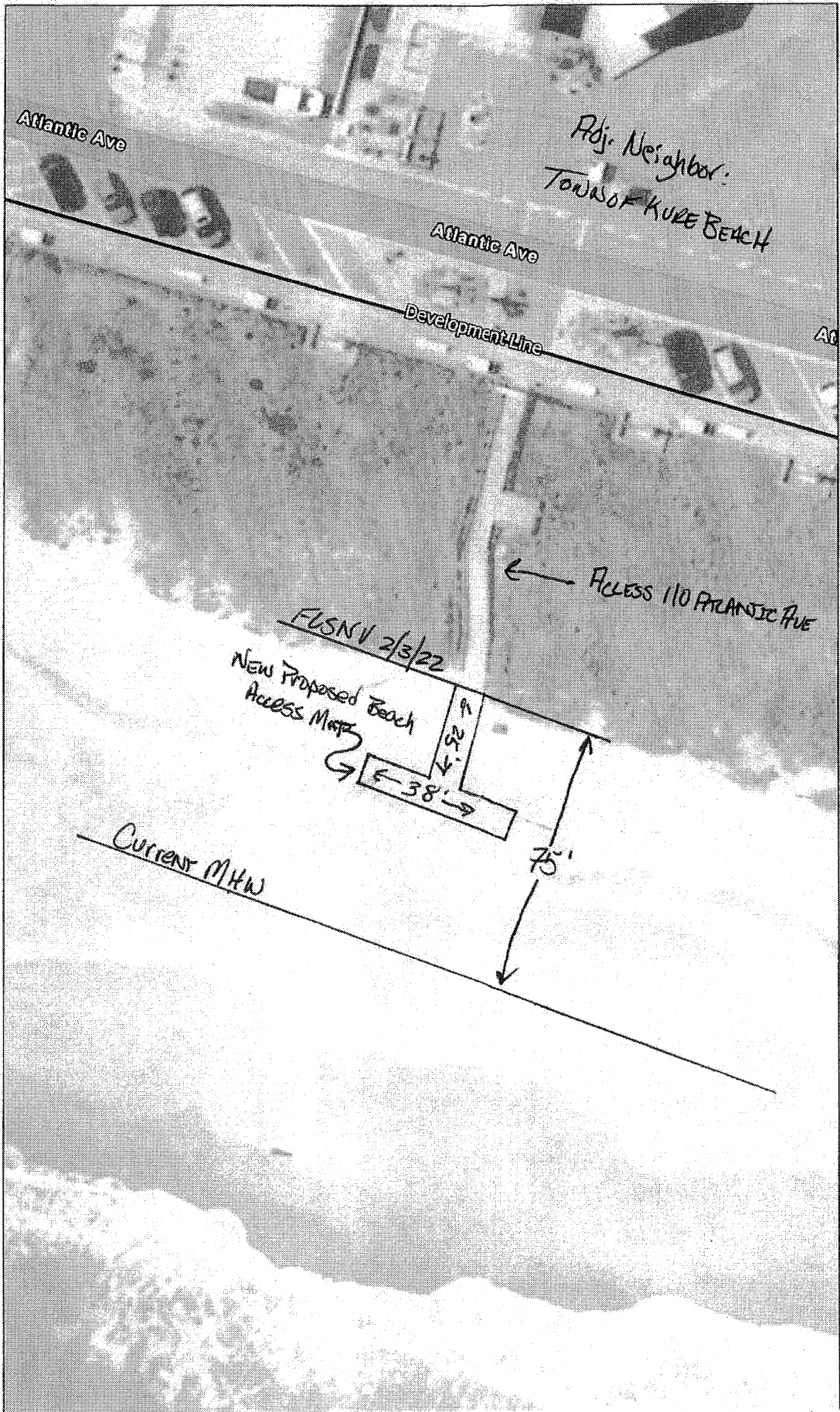
TOWN OF KURE BEACH KB22-02 LOCATION: 99 ATLANTIC AVE



Esri Community Maps Contributors, New Hanover County, Carolina DOT, OpenStreetMap, Microsoft, Esri, HERE, Garmin, GeoRedunet, Inc., Mapbox, USGS, EPA, NPS, US F, USDA, Source: Esri, DigitalGlobe, GeoEye, Earthstar Group, NC Department of Error

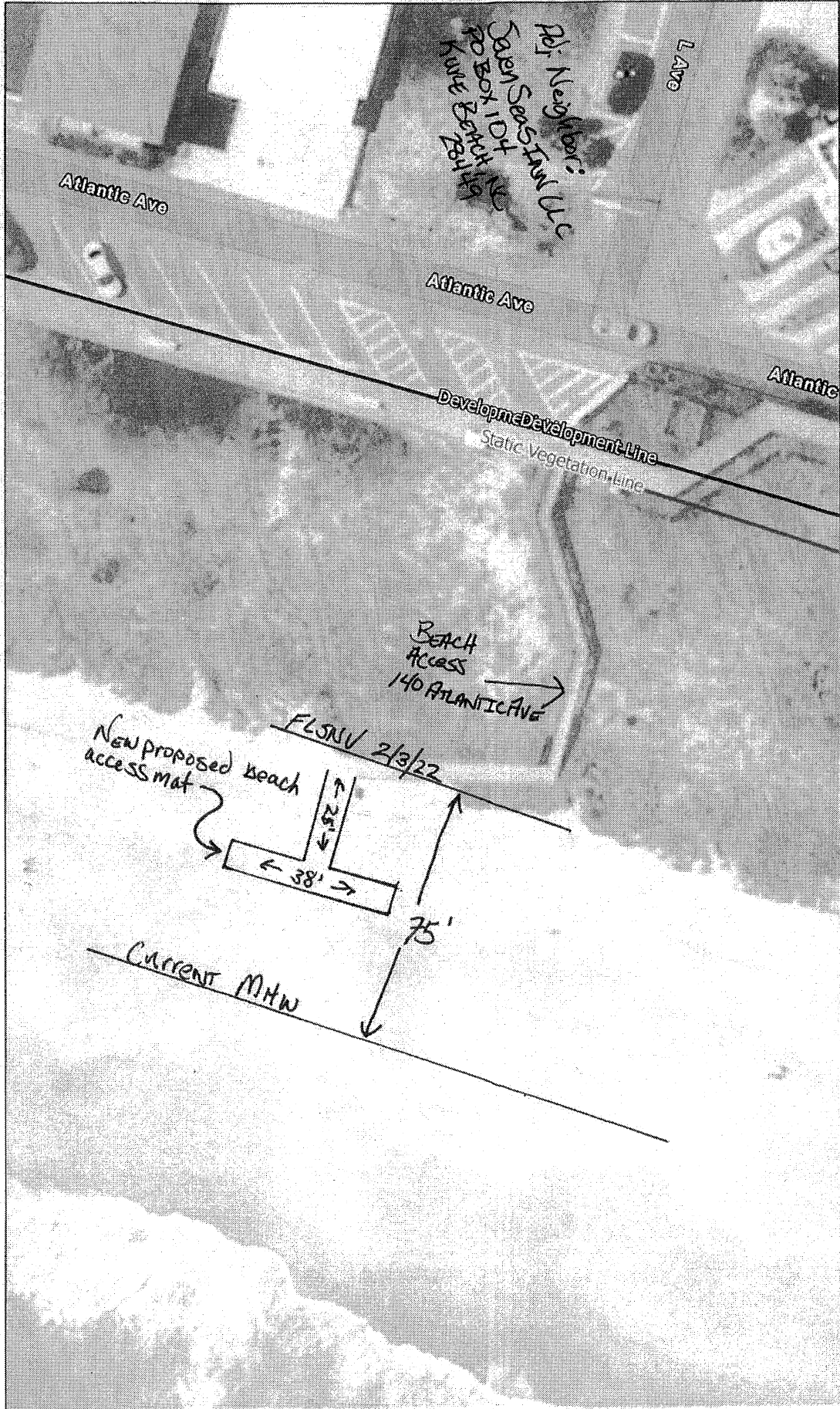
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Development Lines



Esti Community Maps Coordinator, New Hanover County
 Carolina DOT @ OpenStreetMap, Microsoft, Esri, HERE, Garmin
 GeoInt, contributors, Mapbox, METRANASA, USGS, EPA, NPS, USGS
 USGS, Source: Esri, DigitalGlobe, GeoEye, Earthstar, GeoEye

TOWN OF KURE BEACH KB 22-02 LOCATIONS: 140 ATLANTIC AVE



2/25/2022, 1:57:28 PM

—— Static Vegetation Lines

—— Development Lines



ESRI Community Maps Contributors: New Hanover County, Carolina DOT, © OpenStreetMap contributors, Esri, HERE, Garmin, GeoTechnologies, Inc., Mapbox, USGS, EPA, NPS, US C, USDA. Source: Esri, DigitalGlobe, GeoEye, Earthstar Geog, NC Department of Error

**STATE OF NORTH CAROLINA
COUNTY OF NEW HANOVER**

**AFFIDAVIT OF
JOHN J. BATSON, LPO**

JOHN J. BATSON, LPO, being first duly sworn, deposes and testifies as follows:

1. I am an adult resident of New Hanover County, North Carolina and I am competent to provide the following sworn testimony which is based upon my own personal knowledge.

2. I am employed by the Town of Kure Beach ("Town") as the Building Inspector and have served continuously since 2004 as the Local Permit Officer ("LPO") administering and enforcing the CAMA Minor Development Permit Program in areas of environmental concern within the Town's planning and development jurisdiction.

3. During Town Council's March 15, 2021 Regular Meeting, representatives of Island Women, Inc., a domestic non-profit corporation, requested that the Town accept, as a donation from the group, an ABA/ADA Compliant Beach Accessibility Mat manufactured by AccessRec (hereinafter, the "Beach Mat").

4. Having observed the Island Women's presentation to Council, and after further discussions I had with various members of the Town Staff regarding the same, it is my understanding that the Beach Mat will be used by the Town to facilitate greater beach access for the public and particularly for those individuals with mobility disabilities.

5. I personally know that the Town owns 5 beach wheelchairs which are provided free of charge to the public and which are in high demand during the season. Based on the Island Women's presentation to Council and my follow-up discussions with other members of Town Staff, I understand that individuals with disabilities will be able to utilize their own mobility devices on the Beach Mat to traverse the dry sand beach and access the wet sand beach.

6. Following the March 15, 2021 meeting and my discussions with Staff, I researched the characteristics of the Beach Mat to determine whether its installation and use would be feasible and where it might be installed. My research included a review of AccessRec's information about the mat which the Island Women had provided to the Town. A copy of AccessRec's information is included as a Stipulated Exhibit for illustrative purposes.

7. Based on my research and analysis, it is my opinion that the Beach Mat is:

- a. ADA compliant;
- b. Lightweight;
- c. Easy to install and remove;
- d. Durable and maintenance free;
- e. Visible; and
- f. Measures 25 by 38 feet.

8. After conferring with the Town's Fire Chief and other members of the Town's Staff, it is my understanding that the Beach Mat will be used seasonally from approximately May to September, swept daily, monitored by the Town's Ocean Rescue personnel, removed when weather conditions warrant the same to reduce risk to public safety and welfare, and stored, when not in use, in either the Kure Beach Fire Station or the Town's Ocean Rescue Headquarters.

9. Upon examining various beach access points where the Beach Mat could be located at the end of the structural accessways without excavating the grade or utilizing fill, I determined that the mat could be located at beach access points 99, 110, and 140 (collectively, the "Beach Access Points").

10. Each of the Beach Access Points are located within the Atlantic Avenue public right-of-way, said right-of-way having been continuously used by the public and maintained by the Town without interruption since 1947.

11. While the Town intends to use only 1 Beach Mat, the beach is always in a state of flux and the beach conditions at the end of the structural accessways vary from time to time due to various factors such as wind, tide, erosion, and accretion. I therefore determined that the best and most effective use of the mat would be realized by re-locating the Beach Mat from 1 of the 3 Beach Access Points to another as conditions warrant. Having researched the matter, I am of the opinion that such relocations can be efficiently performed considering the characteristics of the mat.

12. As shown on the site plans I produced, the Beach Mat will not cross over any dune as the frontal dunes are just landward of the FLSNV and the proposed locations of the mat.

13. I am informed and believe that the Pleasure Island Sea Turtle Project, a domestic non-profit corporation, consists of volunteers who regularly patrol the beach from the south end of Kure Beach to the north end of Carolina Beach during the May 1-August 31 sea turtle nesting season and that it is the regular practice of that entity to report and record the incidence of sea turtle nesting activity at or near the time such nesting activity occurs.

14. Based on the documentation the Sea Turtle Project has regularly compiled over the past several years, there has been little to no nesting activity at Beach Access Points 110 and 140 and minimal nesting activity at Beach Access Point 99. A copy of the Sea Turtle Project's March 17, 2022 letter to me reporting on said documentation is included as a Stipulated Exhibit.

15. Representatives of Island Women attended Town Council's January 24, 2022 meeting to follow-up on their offer to donate the Beach Mat and request Council to decide whether the Town would move forward with the offer.

16. Having been informed that the Town of Carolina Beach had been granted a CAMA variance for its installation and use of a similar beach access mat, Town Council, by a unanimous vote during its January 24, 2022 meeting, authorized me to proceed forth with applying for a CAMA Minor Development Permit and, if the same was denied, a CAMA Variance Request, for the installation and use of the Beach Mat.

17. On behalf of the Town, I applied for a CAMA Minor Development Permit for the proposed installation and use of the Beach Mat; said application being received by the Division of Coastal Management ("DCM") on February 21, 2022. A copy of the minor permit application is included as a Stipulated Exhibit.

18. I provided notice of the minor permit application to the adjacent landowners by certified mail on February 17, 2022.

19. Being tasked by Town Council with applying for and monitoring the same, I personally know that the Coastal Resources Commission ("Commission"), in December 2017, issued a Final Agency Decision approving the Town's Development Line. The Development Line identifies the most waterward location any "development," as that term is defined by CAMA, could be sited on oceanfront properties. Under the Commission's rules, specifically 15A NCAC 07H.0306(a)(2), no buildings or accessory structures may be located waterward of the Development Line.

20. In a March 8, 2022 letter from Tara MacPherson, District Manager for DCM's Wilmington Office, I was informed that the Town's application for the minor development permit was denied. A copy of the denial letter is included as a Stipulated Exhibit.

21. As set forth in said letter, the denial was based on a finding that the proposed installation of the Beach Mat violates 15A NCAC 07H.0306(a)(2) which provides that "[i]n no case shall new development be sited seaward of the [Town's] development line."

22. As also set forth in said letter, the denial was based on a finding that the proposed installation violates 15A NCAC 07H.0308(c)(5) which provides that "structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune...."

23. As the LPO, and based on my understanding of 15A NCAC 07H.0306(a)(2), I agree that the denial of the minor development permit was correct under said provision.

24. As authorized by Town Council, the Town Attorney has applied for a CAMA variance from the strict application of 15A NCAC 07H.0306(a)(2) and 15A NCAC 07H.0308(c)(5).

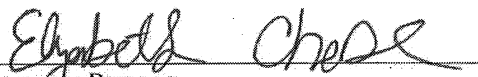
25. I provided notice of the Town's variance request to the adjacent property owners via certified mail on March 14, 2022.

26. I personally know that during its February 2021 meeting, the Commission granted a variance to the Town of Carolina Beach for its installation of beach mats similar in nature, characteristics, and location to the Town's proposed Beach Mat. A photograph illustrating the use of the Carolina Beach accessibility mat is included as a Stipulated Exhibit for illustrative purposes.

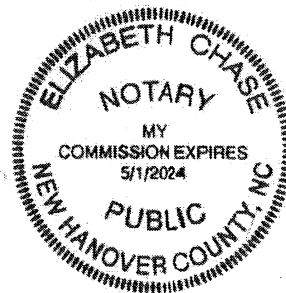
This the 18th day of March 2022.


John J. Batson, LPO

Sworn to and subscribed before me, this
18th day of March 2022.


NOTARY PUBLIC

My Commission expires: 5/1/2024



AccessMat® Kit – ABA/ADA compliant Beach Accessibility Routes / Mats (F248) Specifications for Bid.

SUMMARY

Section 1- General

- Submittals
- Product Data
- Samples
- Accessibility
- Warranty

Section 2 - Products

- Vendor
- Material Characteristics
- Beach Access Matting Design Features
- Fabrication
- Material
- Technical Characteristics
- Other Product Accessories



Email: sales@AccessRec.com
Ph: +1-973-955-0514 / Fax: +1-201-624-7007

Exhibit 5
55 Park Slope
Clifton, NJ 07011 - USA

SECTION 1 – GENERAL

SUBMITTALS:

With the bid, provide the following:

PRODUCT DATA:

Submit manufacturer's product literature indicating materials, specification, and other information required to demonstrate compliance with these requirements

SAMPLES:

Samples must be submitted with the bid including, but not limited to a minimum of 5" x 4" material sample. These samples shall be representative of the actual fabric of the product with appropriate materials as specified.

ACCESSIBILITY:

Materials shall be 100% accessible via wheelchair, beach access chair, walker, stroller, or other wheeled pedestrian assistance vehicles. AccessMat® shall be offered at a minimum of 60" wide. Even though there is no slip resistance requirement when creating an ABA/ADA compliant beach access route, AccessMat® shall provide a firm and non-slip surface providing the beach site complies with the ABA/ADA rules in general.

WARRANTY:

Provide a certificate of warranty that meets or exceeds the requirements below.

A two (2) years warranty shall be provided from the date of invoice. Should the AccessMat® non-woven fabric fail within the first two years of use, the mat will be replaced or repaired by the product supplier. Cosmetic issues and wear due to normal usage are not considered a defect in material or workmanship. Damage caused by vandalism or vehicular usage (other than that which the product is intended for use) shall not be included in this warranty. Accessories are not covered under any warranty.



SECTION 2 – PRODUCTS

VENDOR:

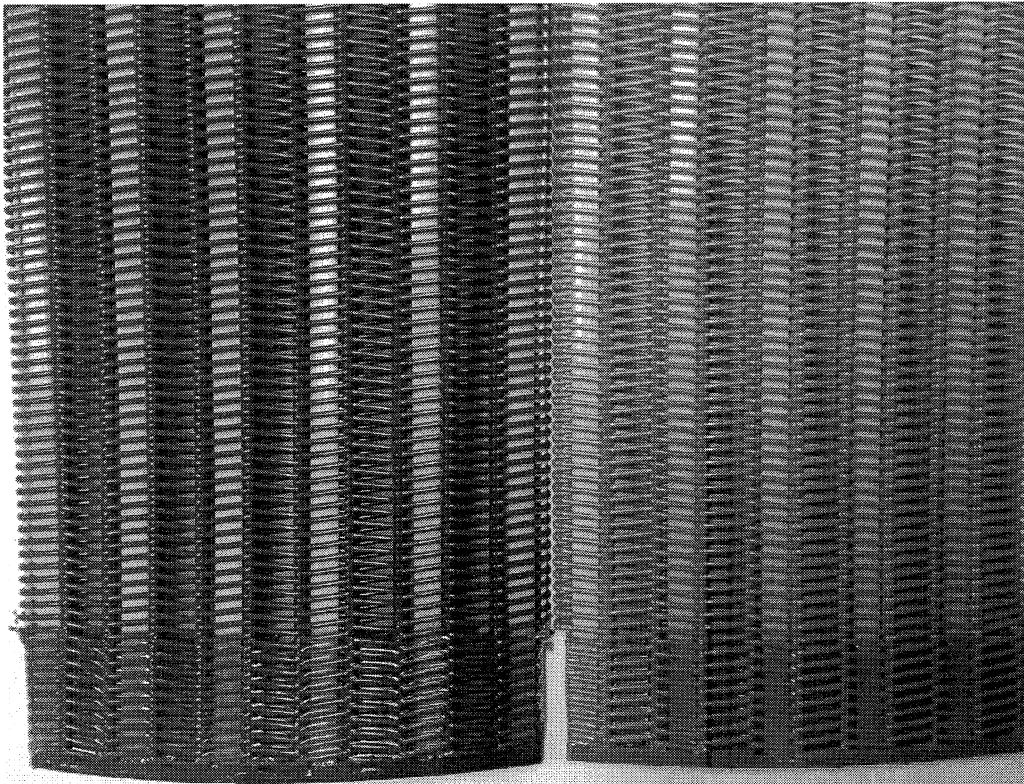
The following beach access mats specifications are based on those provided by AccessRec LLC. The brand specified is AccessMat®, material used to create ADA/ABA compliant beach access route as supplied by AccessRec, LLC. - 55 Park Slope – Clifton, NJ 07011 - USA, Tel: +1-973-955-0514 - Fax: +1-201-624-7007. Any proposal shall meet or exceed the specifications herein as determined by the owner or the owner's representative. Submittal packages that do not include all the required information will be returned and will not be considered for use.

MATERIAL CHARACTERISTICS:

PRODUCT: ACCESSMAT®

DIMENSIONS: 36", 60" or 72" wide by various standard lengths of 33', 50', 75' or 100' with possibility to offer custom lengths.

COLOR: Brown or Blue





BEACH ACCESS MATTING DESIGN FEATURES:

ABA BEACH ACCESS ROUTES COMPLIANT (F248):

AccessMat® shall be offered at a minimum of 60" wide. Even though there is no slip resistance requirement when creating an ABA / ADA compliant beach access route, AccessMat® shall provide a firm and non-slip surface providing the beach site complies with the ABA / ADA rules in general. AccessMat® material and accessories should be 100% barrier / obstacle free to meet the ADA guidelines.

DURABILITY:

AccessMat® shall be a durable material that withstands the environmental elements as well as extensive pedestrian and wheelchair traffic. AccessMat® will not fray on its edges nor show any kind of wear & tear on the surface during normal use and proper maintenance.

LIGHTWEIGHT AND EASY INSTALLATION:

AccessMat® shall be lightweight (0.42 lbs/sqft.) and shall be capable of being installed and removed in a maximum of ten minutes per roll by two people. Rolls shall be of such size and weight that they may be manageably moved by two people at the end of the beach season. The material shall be capable of being installed on any type of sand, regardless of the ground surface stability.

MAINTENANCE FREE:

The matting material shall require little or no maintenance under normal conditions. The use of a broom, blower or pressure washer shall be the only equipment required to clear the surface of any debris, should any accumulate.

REMOVABILITY:

AccessMat® shall be easily removable to comply with environmental requirements by being viewed as a temporary access material.

VISIBLE PATHWAY

AccessMat® is offered in blue color to provide a more visible path to people with visible impairments, or in brown color to create a pathway that better blends to the landscape.

FABRICATION: All components shall arrive fully factory fabricated and ready for installation.

MATTING MATERIAL:

All AccessMat® matting materials shall be manufactured of **NON-WOVEN 100% polyester** filament. The material shall provide stability on unstable surfaces such as sand. The material shall also be manufactured to provide comfort in the case of bare foot usage. The material shall have a flat structure so that sand do not get stuck underneath – making the material too heavy to be quickly removed by man power in case of emergency or at the end of the beach season. The edges of the matting shall be flat and safe to the staff and to environment. AccessMat® should be manufactured with a white flat monofilament polyester inserted in every other pocket of the mat itself, enabling better bearing capacity.



TECHNICAL CHARACTERISTICS:

GENERAL:

Weight	0.42 lbs. per square foot
Thickness:	0.134 in. / 3.41 mm
Composition	100% Polyester
High strength	
Durability, smoothness and good dirt release	

AccessMat® is filled every other pockets with a minimum of a 3/16" width flat white polyester monofilament to achieve different filtration characteristics and provide better bearing capacity.
 Completely rot proof & rust proof

MECHANICAL PROPERTIES: test result in accordance with ISO 13934-2

Against abrasion	High resistance
Under high pressure	Stable
Tensile strength	High – Ultimate stress = 4.43 ksi / 30.6 MPa
Elongation at break %	minimum of 22.53%
Tenacity	High – Ultimate Load = 2380 lbf / 10600 N

CHEMICAL PROPERTIES:

Acid, Alkali, Solvent resistance	Good
UV and weather resistance	Good - no loss of strength from the light over a period of several years
Inorganic Salt	Excellent
Micro-Organism resistance	Excellent
Urea and liquid manure resistance	Excellent

THERMAL PROPERTIES:

Thermal Stability	High
Useable Temperature	-140°F (-40°C) / 176°F (80°C)
Softening Temperature	Te = 446°F (230°C)
Melting Temperature	Ts = 500°F (260°C)
Degradation Temperature	572°F (300°C)
Combustion stops burning slowly as flame is taken away	

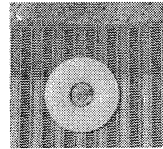
OTHER ACCESSMAT® ACCESSORIES:



DISPOSABLE ANCHORING GROMMETS / CAPS (\$1.49 – min. 8 per ACCESSMAT® Kit):

White HDPE (high density polyethylene) anchoring caps. These caps are made in the USA using UV inhibitor with 2 lines of molding beads to restrain spike from coming out of the ground.

Top cap diameter:	2.37"
Top cap thickness:	0.09"
Hole diameter:	0.87"
Cap depth:	0.5"



Benefits:

- I. *Removing barrier and tripping hazard to AccessMat® pathway to meet ADA guidelines.*
- II. *Fixing issues with grommets pulling off the mats.*

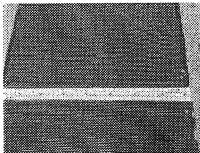
SPIKES (\$1.99 – min. 22 per ACCESSMAT® Kit):



Spikes shall be provided to facilitate the installation/anchoring of the beach access pathway. Spikes shall be made of galvanized steel or plastic - 10" to 20" long and go easily through the anchoring caps, connector holes and sand. Spikes can be pin down until flush with the top of caps or connector's holes.

Benefits:

- I. *Removing barrier and tripping hazard to AccessMat® pathway to meet ADA guidelines.*
- II. *Spikes are highly corrosion resistant.*

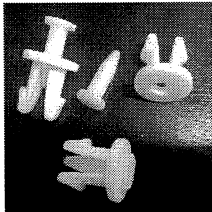


CONNECTORS (\$29.00, \$49.00 and \$59.00 respectively for 3', 5, and 6' – 2 each per ACCESSMAT® Kit):

A plastic connector is riveted to AccessMat® extremities. Simply overlap both end of connectors and connect them using our spikes or connectors plugs to create a seamless transition between your two mats. Connectors are manufactured in the USA using UV inhibitor.

Benefits:

- I. *Removing barrier and tripping hazard to AccessMat® pathway to meet ADA guidelines.*
- II. *Connectors will not disconnect when tensile strength and pressure is applied to AccessMat®.*



CONNECTOR PLUGS (\$1.99 – 3 to 7 each per ACCESSMAT® Kit):

Connector plugs have the shape of a tooth – made in the USA of a really strong plastic material with UV inhibitor. Simply snap your plugs into the holes of the connectors and insert the pin inside it to connect two AccessMat® rolls together seamlessly.

CONNECTOR BOLTS & NUTS (\$1.99 – 2 each per ACCESSMAT® Kit):

Connector bolts & nuts are made of marine grade stainless steel. Use them to connect two sections of ACCESSMAT® at each edge of the connectors.

Benefits:

- I. *Removing barrier and tripping hazard to AccessMat® pathway to meet ADA guidelines – unlike other systems using staples that create tripping hazard and necessitates at least the use of 7 staples to keep connectors together. Our plugs will not create a dip to the sand that will make your beach pathway not ADA compliant and unsafe to the use of pedestrians and wheelchairs.*
- II. *Easiest and simplest way to connect two AccessMats® together*



STRAPS (\$5.99 – 2 each per ACCESSMAT® Kit):

Two thwart grab standard cam straps in Pacific blue or black color. Heavyweight polypropylene is great to use in the outdoors. It has excellent UV protection, and it doesn't absorb water quickly giving it resistance to rot & mildew. This webbing is perfect for medium duty applications. It has a thickness of .060 of an inch and its breaking strength ranges from 675lbs. - 1800lbs. Our straps are designed with a slightly raised loop pocket so you can grab it quickly. The grab handle is the standard loop pocket, which is 6 inches wide. Our cam buckles include the standard 1 inch cam. Our 1" cam buckles are the cream of the crop. We have them made especially for use to our high standards.

PLEASURE ISLAND
sea turtle
PROJECT

PO Box 1743, Carolina Beach NC 28428

pistp@seaturtleproject.org**Date: 03/17/2022****To: John Batson, Building Inspections/Code Enforcement, Town of Kure Beach**

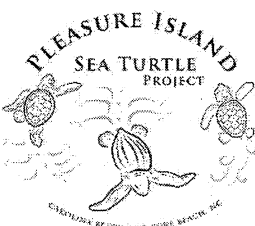
Thank you for reaching out to get a better understanding of the potential impacts to nesting activity as a result of mats on the beach. We are in full support of the Island Women and its mission to make our beach accessible to all. Should impacts occur in these locations, they will be duly reported as required for all sea turtle projects by the State.

The Pleasure Island Sea Turtle Project, a 501(c)3 organization dedicated to ensuring the preservation and protection of threatened and endangered sea turtles, consists of volunteers who patrol from the south end of Kure Beach to the north end of Carolina Beach during the May 1-August 31 nesting season to document sea turtle nesting activity. It is the regular practice of the Sea Turtle Project to report and record the incidence of sea turtle nesting activity at or near the time such nesting activity is observed by the volunteer making the report.

Town of Kure Beach Proposed Locations

- Access #140 (L Avenue) - The Pleasure Island Sea Turtle Project has documented little nesting activity as of our most recent nesting season (2021 and prior) in this proposed location. This location has a high volume of human activity and lighting, which typically discourages nesting activity altogether.
- Access #110 (Ocean Front Park) - The Pleasure Island Sea Turtle Project has documented zero nesting activity as of our most recent nesting season (2021 and prior) in this proposed location. This location has a high volume of human activity and lighting, which typically discourages nesting activity altogether.
- Access #99 (Lifeguard Shack) - The Pleasure Island Sea Turtle Project has documented nesting activity in this location over the years. The attached map shows nesting activity from the last several years, and as you can see, nesting activity increases as you get further away from the pier, specifically south of the pier. Placing a mat on the beach at this location could potentially pose an obstacle for nesting sea turtles.

Jennifer Hufnam
Kure Beach Permit Holder
Pleasure Island Sea Turtle Project





Locality TOWN OF KURE BEACH Permit Number KB-22-02

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

(For official use only)

GENERAL INFORMATION

LAND OWNER

Name TOWN OF KURE BEACH

Address 117 SETTLERS LANE

City KURE BEACH State NC Zip 28444 Phone 910-458-6535

AUTHORIZED AGENT

Name SAME - JOHN BATSON

Address _____

City _____ State _____ Zip _____ Phone _____

LOCATION OF PROJECT: (Address, street name and/or directions to site. If not oceanfront, what is the name of the adjacent waterbody.) 99 Atlantic Ave, 110 Atlantic Ave and 140 Atlantic Ave

DESCRIPTION OF PROJECT: (List all proposed construction and land disturbance.) To install beach mats for ADA access from end of beach access toward MHW approximately 15' (see map and project narrative)

SIZE OF LOT/PARCEL: _____ square feet _____ acres

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

TOTAL ENCLOSED FLOOR AREA OF A BUILDING IN THE OCEAN HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC): _____ square feet (includes all floors and roof covered decks)

SIZE OF BUILDING FOOTPRINT AND OTHER IMPERVIOUS OR BUILT-UPON SURFACES IN THE COASTAL SHORELINE AREA OF ENVIRONMENTAL CONCERN (AEC): _____ square feet

(Calculations 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.)

Choose the AEC area that applies to your property:

- (1) within 75 feet of Normal High Water/Normal Water Level for the Estuarine Shoreline AEC
 - (2) within 575 feet of Normal High Water/ Normal Water Level for the Estuarine Shoreline AEC, adjacent to Outstanding Resource Waters
 - (3) within 30 feet of Normal High Water/ Normal Water Level for the Public Trust Shoreline AEC
- (Contact your Local Permit Officer if you are not sure which AEC applies to your property.)

RECEIVED

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

YES _____ NO _____

DCM WILMINGTON, NC

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. As a service we have compiled a listing of the kinds of permits that might be required. We suggest you check over the listing on your LPO to determine if any of these apply to your project. Zoning, Drinking Water Well, Septic Tank (or other sanitary waste treatment system), Building, Electrical, Plumbing, Heating and Air Conditioning, Insulation and Energy Conservation, FIA Certification, Flood Dune, Sediment Control, Subdivision Approval, Mobile Home Park Approval, Highway Connection, and others.

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 OWNERSHIP BY PRESCRIPTION PER CHARISTY GOEBEL, see Deed Book _____, in the _____ County Registry of Deeds. SEE ATTACHED EMAILS

an owner by virtue of inheritance. Applicant is an heir to the estate of _____; estate 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 further certify that the following persons are owners of properties adjoining this property. I affirm that I have given **NOTICE** to each of them concerning my intent to develop this property and to apply for a CAMA permit.

(Name)	(Address)
KUCE PER INC	PO BOX 150 KURE BEACH NC 28449
ELEANOR B. MCMILLAN ETAL	109 FORT FISHER BLVD N KURE BEACH NC 28449
SEVEN SEAS INN LLC	PO BOX 104 KURE BEACH NC 28449

ACKNOWLEDGEMENT BY DEVELOPERS IN OCEAN HAZARD AND ESTUARINE HAZARD AREAS:

I 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.

PERMISSION TO ENTER ON LAND:

I further certify that I am authorized to grant and do in fact grant permission to the local permit officer and his agents to enter on the aforementioned lands in connection with evaluating information related to this permit application.

This application includes: general information (this form), a site drawing as described on the back of this application, the ownership statement, the AEC hazard notice where necessary, a check for \$100.00 made payable to the locality, and any other 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.

This the 17 day of FEB, 20 22

 JOHN BATSON

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

APPLICATION:

LOCALITY:

2/17/22
 Date
SEVEN SEAS INN LLC
 Adjacent Property Owner
PO BOX 104
 Mailing Address
KURE BEACH NC 28449
 City, State, Zip Code

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

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

OFFICIAL USE

Certified Mail Fee \$ 3.75
 Extra Services & Fees (check box, add fee as appropriate)
 Return Receipt (hardcopy) \$ 05
 Return Receipt (electronic) \$
 Certified Mail Restricted Delivery \$
 Adult Signature Required \$
 Adult Signature Restricted Delivery \$
 Postage \$.73
 Total Postage and Fees \$ 7.53

Sent To: Seven Seas Inn LLC
 Street and Apt. No., or PO Box No.: PO BOX 104
 City, State, ZIP+4: Kure Beach NC 28449

PS Form 3800, April 2015 PSN 7530-02-900-9047 See Reverse for Instructions

7020 2450 0000 6308 7879

KURE BEACH NC 28449
 FEB 17 2022

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor Property Owner

Permit on my property at 104, 110, and 134 ATLANTIC AVE, Kure Beach, Property Address

New Hanover County. 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 910-458-6535, or by mail at the address listed below. If you wish to
 Applicant's Telephone

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

Tara MacPherson
 CAMA Wilmington District Manager
 127 Cardinal Drive Ext
 Wilmington NC, 28405
 910-796-7266

TOWN OF KURE BEACH C/O BATSON
 Property Owner

117 SETTLERS LN
 Mailing Address

KURE BEACH NC 28449
 City, State, Zip Code

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

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

OFFICIAL USE

7020 0640 0000 0528 7272

Certified Mail Fee	\$ 3.25	
Extra Services & Fees (check box, add fees as appropriate)		
<input checked="" type="checkbox"/> Return Receipt (hardcopy)		
<input type="checkbox"/> Return Receipt (electronic)		
<input type="checkbox"/> Certified Mail Restricted Delivery		Postmark Here
<input type="checkbox"/> Adult Signature Required		
<input type="checkbox"/> Adult Signature Restricted Delivery \$		
Postage	\$.73	
Total Postage and Fees	\$ 7.53	
Sent To	Kure Pire Inc	
Street and Apt. No., or PO Box No.	PO Box 150	
City, State, ZIP+4®	Kure Beach NC 28449	

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

2/17/2022
 Date

KURE PIRE INC
 Adjacent Property Owner

PO BOX 150
 Mailing Address

KURE BEACH NC 28449
 City, State, Zip Code

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor
 Property Owner

Permit on my property at 104, 110 and 134 ATLANTIC AVE, Kure Beach,
 Property Address

New Hanover County. As required by CAMA regulations, I have enclosed a copy of my permit application and
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 Applicant's Telephone

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Tara MacPherson
 CAMA Wilmington District Manager
 127 Cardinal Drive Ext
 Wilmington NC, 28405
 910-796-7266

TOWN OF KURE BEACH C/O BATTEN
 Property Owner

117 SETTLERS LN.
 Mailing Address

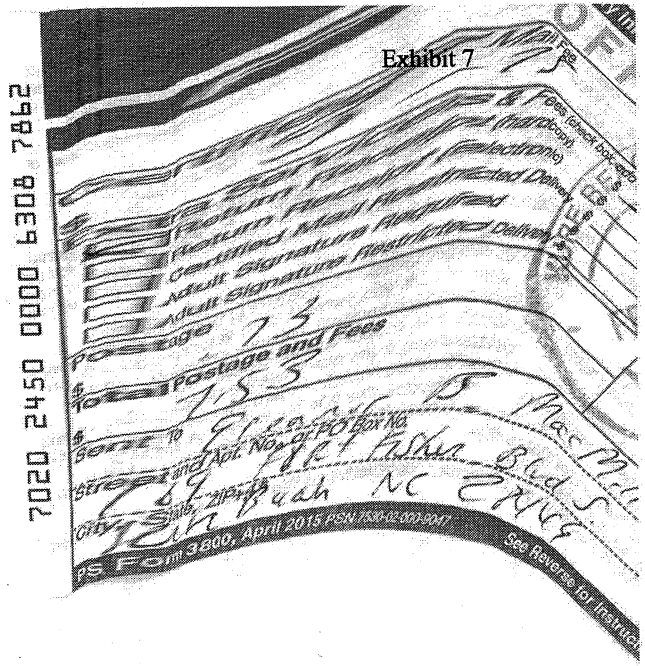
KURE BEACH NC 28449
 City, State, Zip Code

2/17/22
Date

ELEANOR B MCMILLAN ETAL
Adjacent Property Owner

109 FORT FISHER BLVD S.
Mailing Address

KURE BEACH NC 28449
City, State, Zip Code



Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor
Property Owner

Permit on my property at 104, 110 and 134 ATLANTIC NE, Kure Beach,
Property Address

New Hanover County. 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 910-458-6535, or by mail at the address listed below. If you wish to
Applicant's Telephone

If you have any comments or objections with the CAMA Minor Permit Program, you may submit them to:

Tara MacPherson
CAMA Wilmington District Manager
127 Cardinal Drive Ext
Wilmington NC, 28405
910-796-7266

TOWN OF KURE BEACH C/O BATSON
Property Owner

117 SETTLERS LN
Mailing Address

KURE BEACH NC 28449
City, State, Zip Code

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Town of Kure Beach's

(Name of Property Owner)

property located at 99, 110, 140 Atlantic Ave

(Address, Lot, Block, Road, etc.)

on Atlantic Ocean, in Kure Beach, N.C.

(Waterbody)

(Kure Beach, New Hanover County)

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal.

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

B. Del Pizzo
Signature

Bridgette Del Pizzo
Print or Type Name

910-458-8122
Telephone Number

2.28.22
Date

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Town of Kure Beach's

(Name of Property Owner)

property located at 99, 110, 140 Atlantic Ave

(Address, Lot, Block, Road, etc.)

on Atlantic Ocean, in Kure Beach, N.C.

(Waterbody)

(Kure Beach, New Hanover County)

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal.

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)

Paula Lankford

Signature

Paula Lankford

Print or Type Name

910 620 3273

Telephone Number

3/1/2022

Date

ADJACENT RIPARIAN PROPERTY OWNER STATEMENT FOR CAMA MINOR PERMITS

I hereby certify that I own property adjacent to Town of Kure Beach's

(Name of Property Owner)

property located at 99, 110, 140 Atlantic Ave

(Address, Lot, Block, Road, etc.)

on Atlantic Ocean, in Kure Beach, N.C.
(Waterbody) (Kure Beach, New Hanover County)

He has described to me as shown in the attached application and project drawing(s), the development he is proposing at that location, and, I have no objections to his proposal.

(APPLICATION AND DRAWING OF PROPOSED DEVELOPMENT ATTACHED)



Signature

PAUL ROBERTSON

Print or Type Name

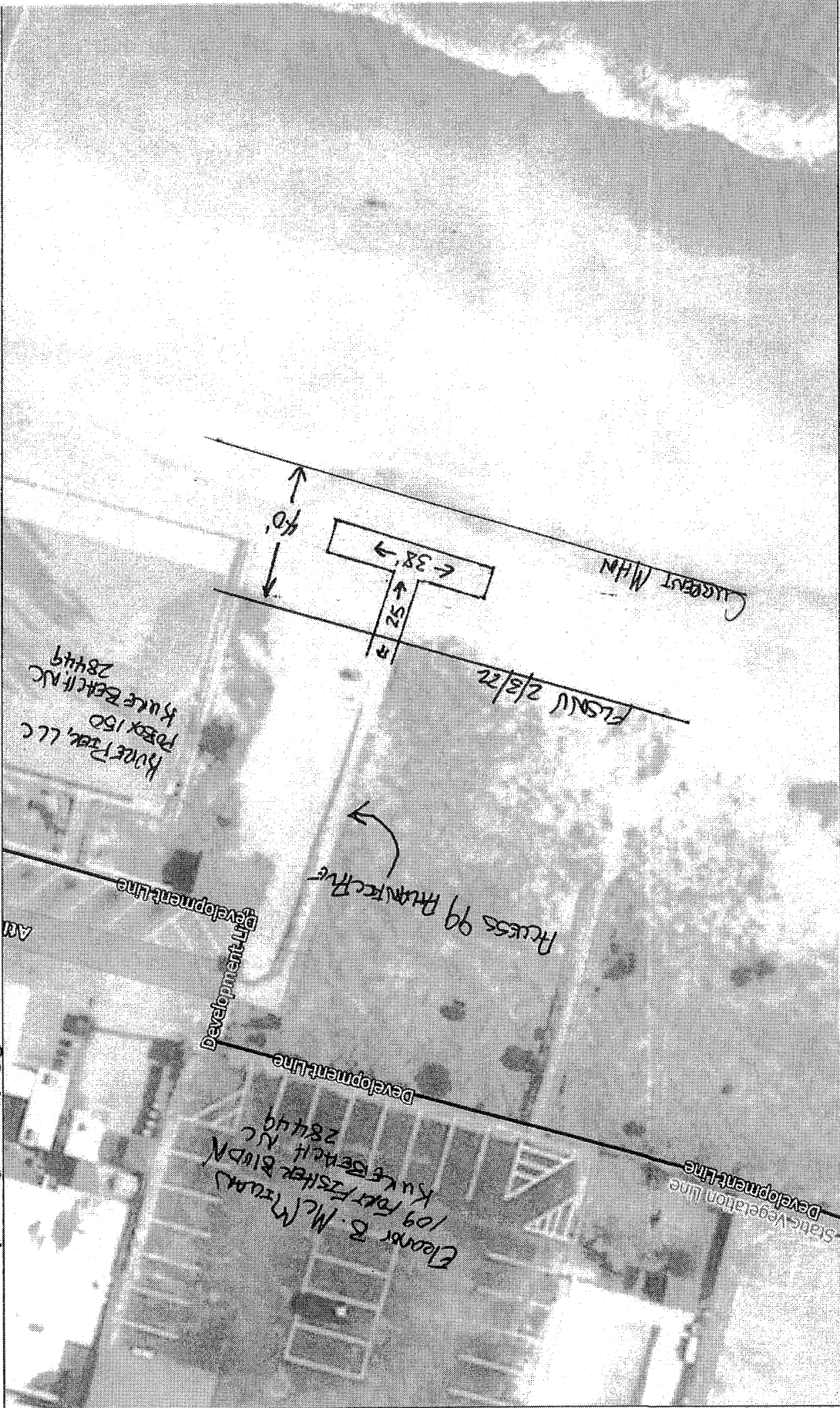
910-617-4000

Telephone Number

2-28-21

Date

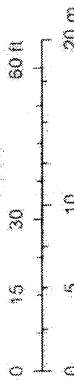
Town of Kure Beach KB22-02 Locations: 99 Atlantic Ave



2/25/2022, 2:30:39 PM

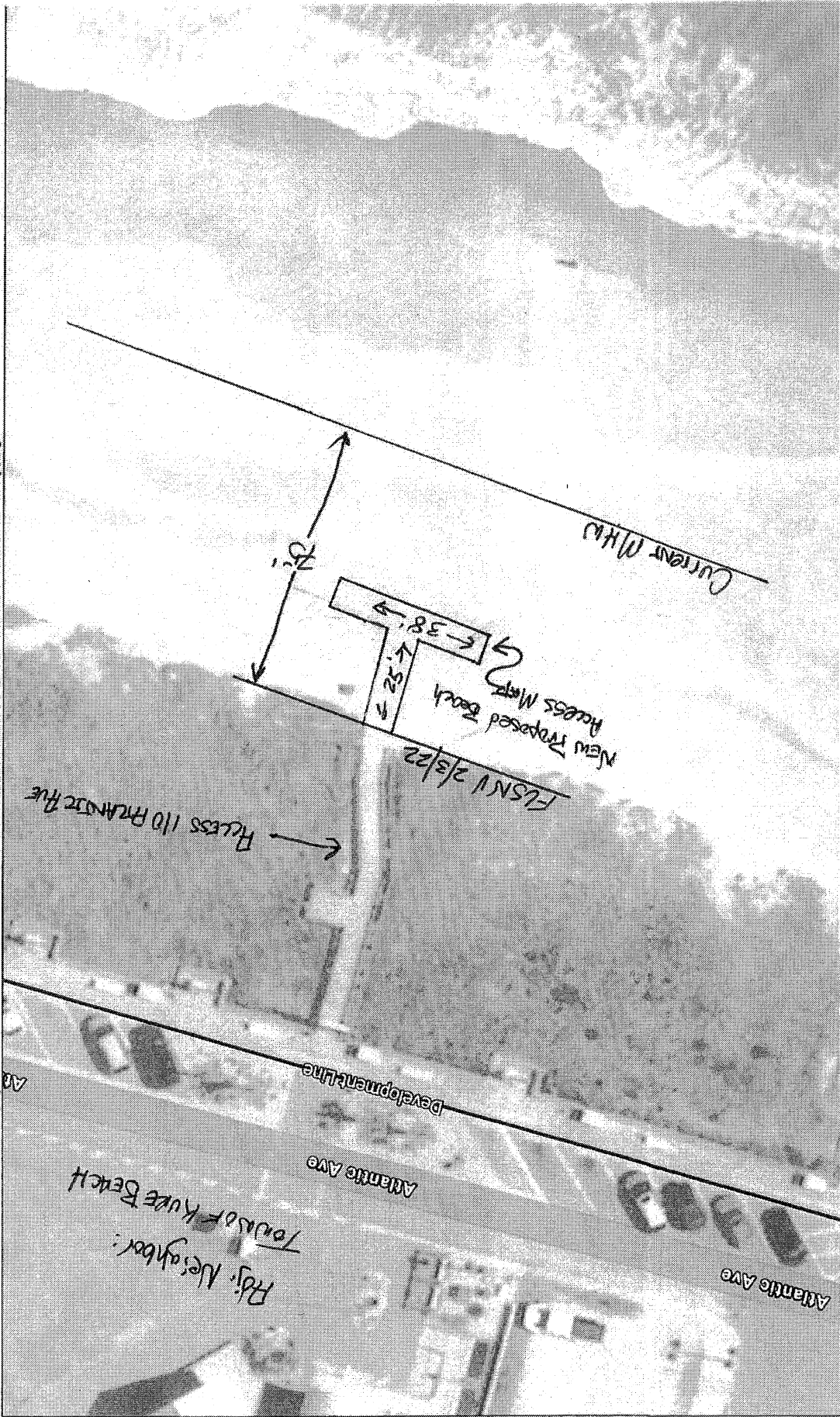
- Static Vegetation Lines
- Development Lines

1:502



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TOWN OF KURE BEACH KB 22-02 LOCATION: 110 ATLANTIC AVE



2/25/2022, 1:56:27 PM

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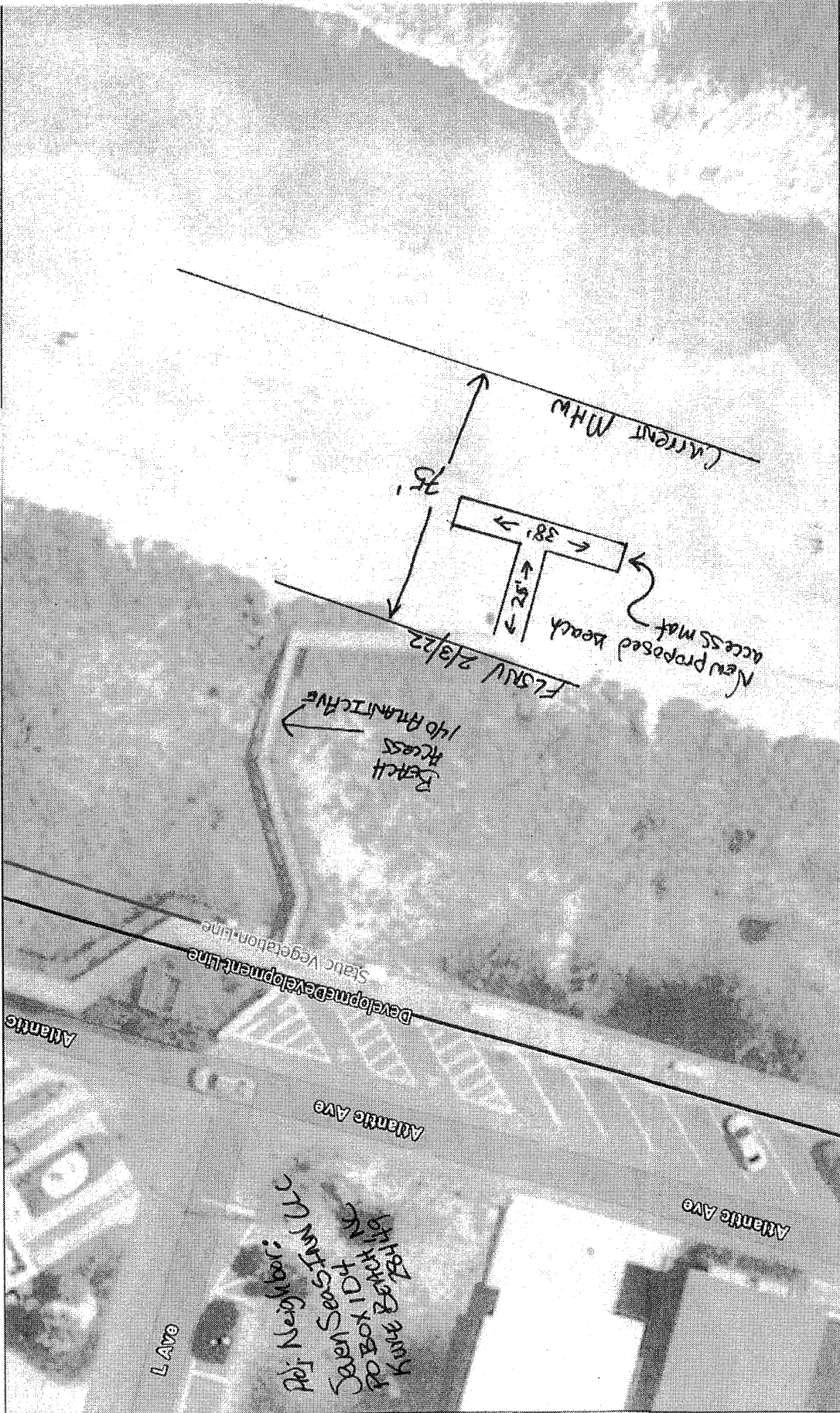


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Development Lines

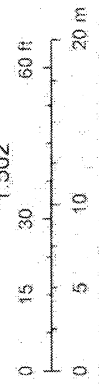
LOCATIONS: 140 ATLANTIC AVE

TOWN OF KURE BEACH KB 22-02



2/25/2022, 1:57:28 PM

1:502



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OCEAN HAZARD AEC NOTICE

Project is in an: Ocean Erodible Area Inlet Hazard Area

Property Owner: TOWN OF KURE BEACH

Property Address: 104 Atlantic Ave, 110 Atlantic Ave, 134 Atlantic Ave

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 180 feet landward in a major storm.

The flood waters in a major storm are predicted to be about 16 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.

 _____
Applicant Signature 2/17/22
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 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:

Tara MacPherson

Local Permit Officer

127 Cardinal Drive Ext

Address

Wilmington NC 28405

Locality

910-796-7266

Phone Number

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

BRAXTON DAVIS
Director



NORTH CAROLINA
Environmental Quality

March 8, 2022

CERTIFIED MAIL – 7018 2290 0001 8295 8161
RETURN RECEIPT REQUESTED

Town of Kure Beach
c/o John Batson
117 Settlers Lane
Kure Beach, NC 28449

RE: DENIAL OF CAMA MINOR DEVELOPMENT PERMIT
APPLICATION NUMBER- # KB 22-02
PROJECT ADDRESS- Located at 99, 110 and 140 Atlantic Ave Beach Accesses

Dear Mr. Batson:

After reviewing the Town of Kure Beach's application in conjunction with the development standards established through rules of the N.C. Coastal Resources Commission (CRC) and in accordance with the N.C. Coastal Area Management Act (CAMA), the proposed permit application must be denied due to inconsistencies with specific CRC rules.

The town has applied to install beach mats at three Town Beach Accesses, located at 99, 110 and 140 Atlantic Avenue, which is inconsistent with 15A 07H .0306(a)(2), which states in part: "In no case shall new development be sited seaward of the development line". The proposed development is also inconsistent with 15 NCAC 7H .0308(c)(5), which states in part: "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."

Should you wish to appeal my decision to the N.C. Office of Administrative Hearings (within twenty days of the date of this letter), please contact me so I can provide you with the proper forms and any other information you may require. Based on our recent communications, it is our understanding that the Town intends to pursue a petition for a variance from the N.C. Coastal Resources Commission. The Division remains committed to supporting this petition and assisting in any way so that it can be heard at the April meeting, provided your variance request is submitted in a timely matter. As previously discussed, the scheduled deadline for a variance petition for the April meeting is March 16, 2022 unless an extension is requested and granted by the CRC Chair. Please let us know if you have any questions or if we can assist in the submittal of your request. Your Town Attorney may contact our attorney, DEQ Asst. GC Christy Goebel at Christine.goebel@ncdenr.gov with any questions about the variance process.

Sincerely,

Tara MacPherson
District Manager



3/14/22
Date

KURE PIER INC
Adjacent Property Owner

PO BOX 150
Mailing Address

KURE BEACH NC 28449
City, State, Zip Code

1966 8000 0000 6308 9361

2020 2450 0000 6308 9361

U.S. Postal Service™		Exhibit 9
CERTIFIED MAIL® RECEIPT		
Domestic Mail Only		
For delivery information, visit our website at www.usps.com ®.		
OFFICIAL USE		
Certified Mail Fee	\$ 3.75	Postmark Here
Extra Services & Fees (check box, add fee as appropriate)		
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$ 2.85	
<input type="checkbox"/> Return Receipt (electronic)	\$	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	
<input type="checkbox"/> Adult Signature Required	\$	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	
Postage	\$ 1.53	
Total Postage and Fees	\$ 7.33	
Sent To	<u>Kure Pier Inc</u>	
Street and Apt. No., or PO Box No.	<u>PO BOX 150</u>	
City, State, ZIP+4®	<u>Kure Beach NC 28449</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047		See Reverse for Instructions

Dear Adjacent Property Owner,

This letter is to inform you that I, TOWN OF KURE BEACH have applied for a CAMA Minor
Property Owner

Permit on my property at 99, 110, 140 ATLANTIC AVE, Kure Beach,
Property Address

New Hanover County which was subsequently denied on 3/14/22. The Town will be requesting a variance from the
CRC to be heard at the April meeting. No action is required from you. If you have any questions or comments
about my proposed project, please contact me at 910-458-6535, or by mail at the address listed
Applicant's Telephone
below.

If you wish to file comments or objections with the CAMA Minor Permit Program, you may submit them to:

Wilmington DCM
127 Cardinal Drive Ext.
Wilmington, NC 28405
910-796-7266

TOWN OF KURE BEACH C/O BATSON
Property Owner

117 SETTLERS LN.
Mailing Address

KURE BEACH NC 28449
City, State, Zip Code

USPS Tracking®

[FAQs >](#)

[Track Another Package +](#)

Tracking Number: 7020245000063089361

[Remove X](#)

Your item was picked up at the post office at 11:01 am on March 19, 2022 in KURE BEACH, NC 28449.

USPS Tracking Plus® Available [v](#)

 **Delivered, Individual Picked Up at Post Office**

March 19, 2022 at 11:01 am
KURE BEACH, NC 28449

Feedback

Get Updates [v](#)

- Text & Email Updates** [v](#)
- Tracking History** [v](#)
- USPS Tracking Plus®** [v](#)
- Product Information** [v](#)

See Less [^](#)

3/14/22
Date

SEVEN SEAS INN LLC
Adjacent Property Owner

PO BOX 104
Mailing Address

KURE BEACH NC 28449
City, State, Zip Code

U.S. Postal Service™ Exhibit 9
CERTIFIED MAIL® RECEIPT
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Certified Mail Fee \$ 5.75

Extra Services & Fees (check box, add fee as appropriate)

Return Receipt (hardcopy) \$ 2.25

Return Receipt (electronic) \$

Certified Mail Restricted Delivery \$

Adult Signature Required \$

Adult Signature Restricted Delivery \$

Postage \$ 1.53

Total Postage and Fees \$ 7.33

Sent To Seven Seas Inn LLC

Street and Apt. No., or PO Box No. PO Box 104

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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Wilmington, NC 28405
910-796-7266

TOWN OF KURE BEACH C/O BATSON
Property Owner

117 SEASIDE LN.
Mailing Address

Kure Beach NC 28449
City, State, Zip Code

USPS Tracking®

Track Another Package +

Tracking Number: 70202450000063089347

[Remove X](#)

Your item arrived at the KURE BEACH, NC 28449 post office at 8:34 am on March 19, 2022 and is ready for pickup.

USPS Tracking Plus® Available ∨

Available for Pickup

March 19, 2022 at 8:34 am
KURE BEACH, NC 28449

Get Updates ∨

Feedback

Text & Email Updates ∨

Tracking History ^

March 19, 2022, 8:34 am

Available for Pickup
KURE BEACH, NC 28449

Your item arrived at the KURE BEACH, NC 28449 post office at 8:34 am on March 19, 2022 and is ready for pickup.

March 19, 2022, 8:27 am

Arrived at Post Office
KURE BEACH, NC 28449

March 18, 2022
In Transit to Next Facility

March 16, 2022, 3:42 am
Departed USPS Regional Facility
FAYETTEVILLE NC DISTRIBUTION CENTER ANNEX

March 15, 2022, 9:53 am
Arrived at USPS Regional Facility
FAYETTEVILLE NC DISTRIBUTION CENTER ANNEX

March 15, 2022, 1:54 am
Departed USPS Regional Facility
CHARLOTTE NC DISTRIBUTION CENTER

March 15, 2022, 1:29 am
Arrived at USPS Regional Facility
CHARLOTTE NC DISTRIBUTION CENTER

Feedback

USPS Tracking Plus®



Product Information



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Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

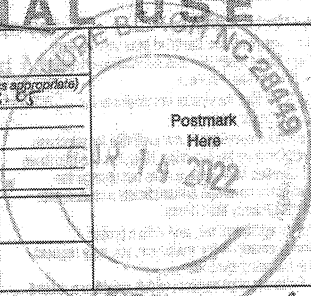
FAQs

3/14/22
Date

Eleanor B. McMillan Etal
Adjacent Property Owner

109 Fork Fishers Blvd S.
Mailing Address

Kure Beach NC 28449
City, State, Zip Code

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only	
For delivery information, visit our website at www.usps.com ®	
OFFICIAL USE	
Certified Mail Fee \$ <u>3.75</u>	Postmark Here 
Extra Services & Fees (check box, add fee as appropriate) <input checked="" type="checkbox"/> Return Receipt (hardcopy) \$ <u>3.05</u> <input type="checkbox"/> Return Receipt (electronic) \$ _____ <input type="checkbox"/> Certified Mail Restricted Delivery \$ _____ <input type="checkbox"/> Adult Signature Required \$ _____ <input type="checkbox"/> Adult Signature Restricted Delivery \$ _____	
Postage \$ <u>.53</u>	
Total Postage and Fees \$ <u>7.33</u>	
Sent To <u>Eleanor B. McMillan Etal</u> Street and Apt. No., or PO Box No. <u>109 S. FF Blvd</u> City, State, ZIP+4® <u>Kure Beach NC 28449</u>	
PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	

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Town of Kure Beach c/o Batson
Property Owner

117 Settlers Ln
Mailing Address

Kure Beach NC 28449
City, State, Zip Code



[FAQs >](#)

Track Another Package +

Tracking Number: 70202450000063089354

[Remove X](#)

Your item was delivered to an individual at the address at 1:57 pm on March 19, 2022 in KURE BEACH, NC 28449.

USPS Tracking Plus® Available

Delivered, Left with Individual

March 19, 2022 at 1:57 pm
KURE BEACH, NC 28449

Feedback

Get Updates

Text & Email Updates

Tracking History

March 19, 2022, 1:57 pm
Delivered, Left with Individual
KURE BEACH, NC 28449

Your item was delivered to an individual at the address at 1:57 pm on March 19, 2022 in KURE BEACH, NC 28449.

March 19, 2022, 8:38 am
Out for Delivery
KURE BEACH, NC 28449

March 19, 2022, 8:27 am
Arrived at Post Office
KURE BEACH, NC 28449

March 18, 2022
In Transit to Next Facility

March 16, 2022, 3:42 am
Departed USPS Regional Facility
FAYETTEVILLE NC DISTRIBUTION CENTER ANNEX

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FAYETTEVILLE NC DISTRIBUTION CENTER ANNEX

March 15, 2022, 1:29 am
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CHARLOTTE NC DISTRIBUTION CENTER

Feedback

USPS Tracking Plus®



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Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs





NC COASTAL RESOURCES COMMISSION MEETING

April 28, 2022

**Town of Kure Beach
(CRC-VR-22-02)
Kure Beach, Beach Mats**





River Rd SE

Orton Pond

Sunny Point
Military Ocean
Terminal

Sea Breeze

Carolina Beach
State Park

Carolina Beach

Wilmington
Beach

Sunny Point
Army Terminal

Kure Beach

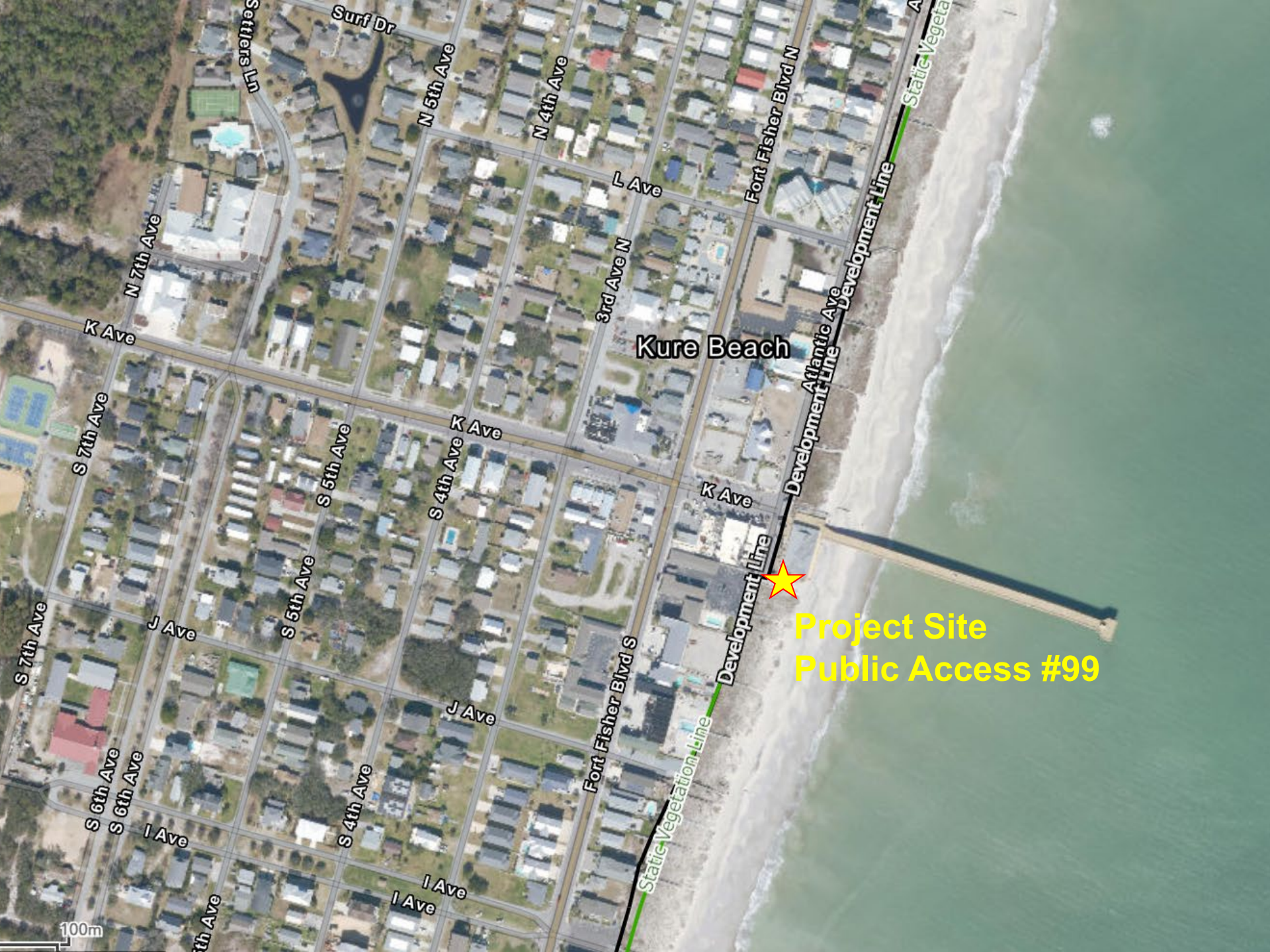
Project area

Fort Fisher

2km

34.060 Degrees

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geograph

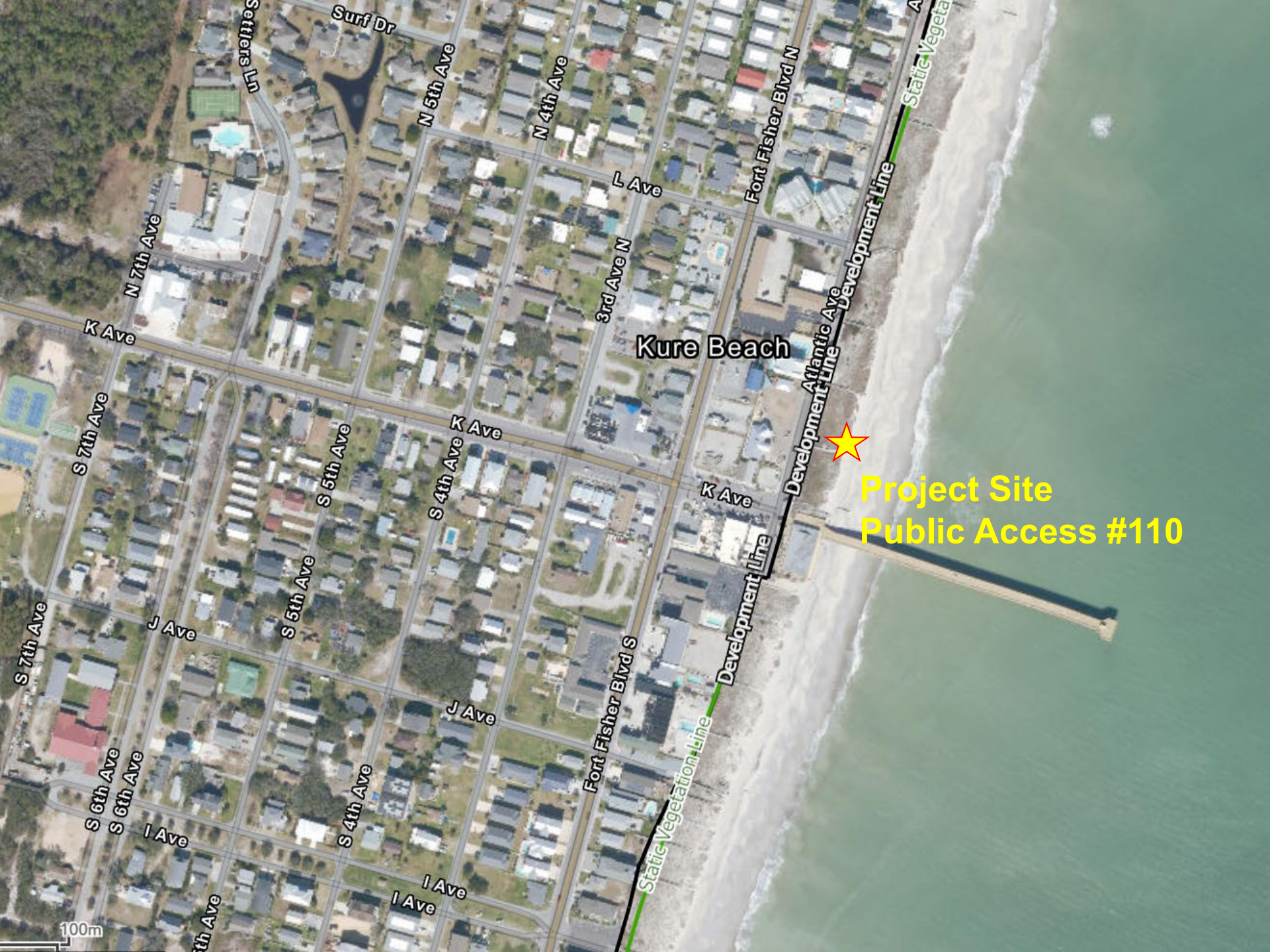


Kure Beach

**Project Site
Public Access #99**

100m

Streets labeled on the map include: Settlers Ln, Surf Dr, N 7th Ave, N 5th Ave, N 4th Ave, L Ave, Fort Fisher Blvd N, Atlantic Ave, K Ave, S 7th Ave, S 5th Ave, S 4th Ave, J Ave, S 6th Ave, S 6th Ave, I Ave, Fort Fisher Blvd S, and I Ave. Development Line and Static Vegetation Line labels are also present along the coastline.

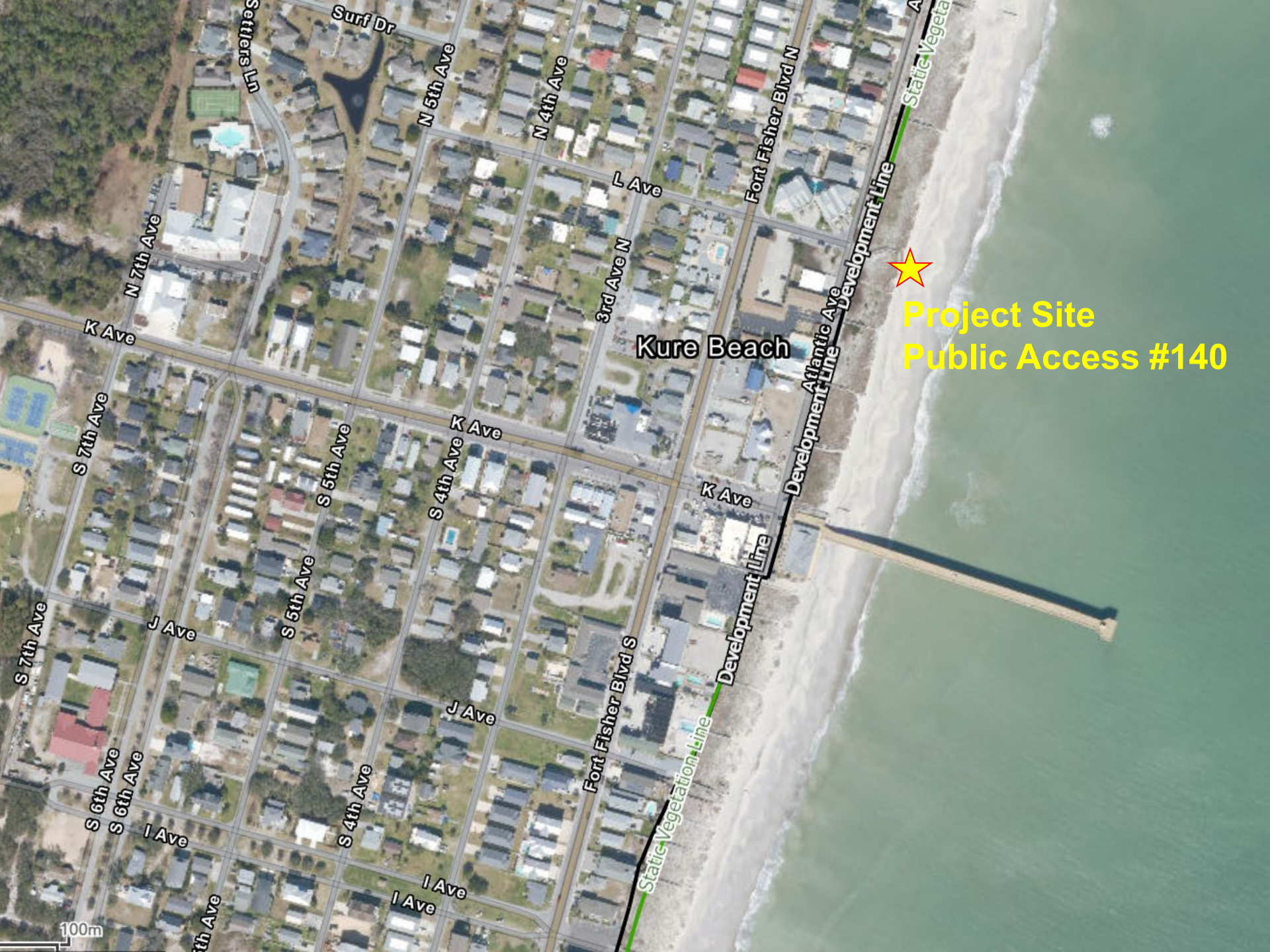


Kure Beach



Project Site
Public Access #110

100m



Kure Beach



Project Site
Public Access #140

100m



**Project Site
Public Access #99**

**Proposed Beach
Mat**

Atlantic Ave

Atlantic Ave

Development Line

Development Line

100 Line
Development Line

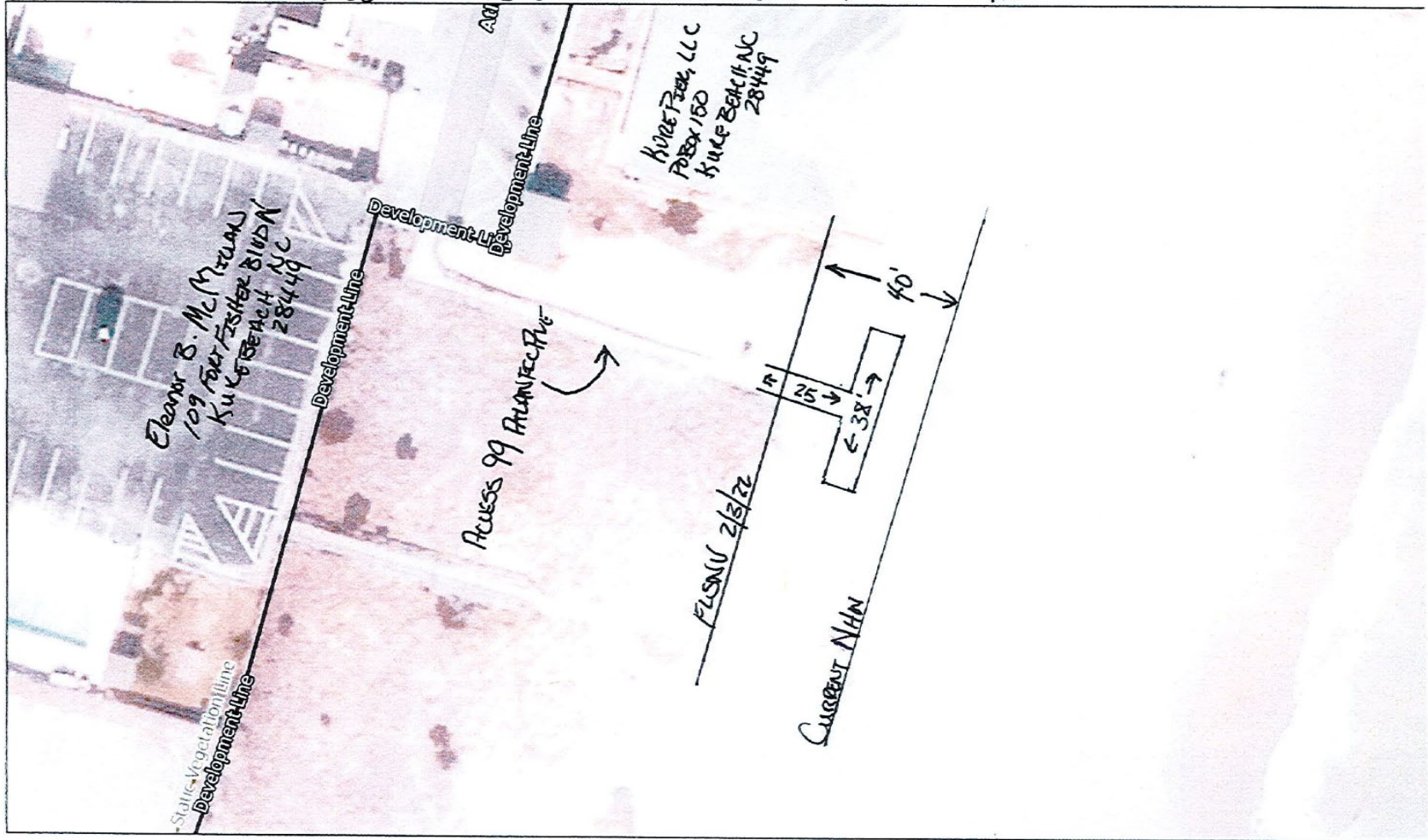




TOWN OF KURE BEACH

KBZZ-02

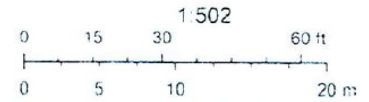
LOCATION: 99 ATLANTIC AVE



2/25/2022, 2:30:39 PM

Static Vegetation Lines

Development Lines



Esri Community Maps Contributors, New Hanover County, Carolina DOT, OpenStreetMap, Microsoft, Esri, HERE, DeLorme, Swatchbourn, GEBCO, USGS, TerraStar, IGN, Intermap, Inc., Swire, GEBCO, Esri, DigitalGlobe, GeoEye, Earthstar (Group), USDA, SIO, GEBCO, CNES, Swire, GEBCO, Esri, DigitalGlobe, GeoEye, Earthstar (Group)

NC Department of Error



Views of existing public access
#99 facing east and west

Image source: DCM 4/5/22



Views of existing public access
#110 facing east and west

Image source: DCM 4/5/22



Views of existing public access #140
facing east, southeast, west
Image source: DCM 4/5/22



VARIANCE CRITERIA

15A NCAC 07J.0703(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.**