PRMUSACE - Western Dare LLC

Dare County

Project ID #100624

This property portfolio has been created for the NC DEQ Division of Mitigation Services. It includes real property documents related to compensatory mitigation. Typical documents include recorded conservation easements, warranty deeds, and plats. Other relevant legal documents and illustrations are incorporated when they provide insight to the intended audience of land stewards, landowners and program personnel.

NORTH CAROLINA
Department of Environmental Quality

Unofficial Document

Filed Book: 1494 Page: 223 Doc Id: 6097848
05/13/2003 04:06PM Receipt #: 80178
Doc Code: DEED/ NC Excise Tax pd: $0.00
BARBARA M GRAY, REGISTER OF DEEDS DARE CO, NC

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Page: 1 of 6
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Prepared by and return to:
Dan L. Merrell
Alexy, Merrell, Wills and Wills
Post Office Drawer 270
Kitty Hawk, NC 27949

EXEMPT
DARE COUNTY TAX
COLLECTOR

STATE OF NORTH CAROLINA NO. 2557-03
COUNTY OF DARE

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT DEED, made this 13th day of May, 2003, by and between HATTERAS/KINNAKEET ASSOCIATES AT AVON, LLC, Grantor, and the State of North Carolina, Grantee, whose mailing address is State of North Carolina State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. Section 143-214.8 et seq., the State of North Carolina has established the Wetlands Restoration Program (as defined in N.C. Gen. Stat. Section 143-214.8) within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, and creating wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Wetlands Restoration Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February, 2000; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. Section 143-214.8, two of the components of the Wetlands Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

WHEREAS, Grantor owns in fee simple certain real property situated, lying and being in Kinnakeet Township, Dare County, North Carolina (the "Protected Property"), and being more particularly described as that certain parcel of land in Kinnakeet Township, Dare County, North Carolina and being conveyed to the Grantor by deed recorded in Deed Book 1281, at Page 605 of the Dare County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement on the Protected Property, thereby restricting and limiting the use of the Protected Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

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NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over a portion of the Protected Property, referred to hereafter as the EASEMENT TRACT AREA, for the benefit of the people of North Carolina, and being all of the tract of land as identified as EASEMENT TRACT AREA: 8,712 S.F.: as shown on a plat of survey entitled "SURVEY FOR LOT 1734 WETLAND MITIGATION AREA CONSERVATION EASEMENT", "KINNAKEET SHORES SUBDIVISION PHASE 23, TRACT AREA TOTAL MITIGATION AREA: 8,712 S.F.

The PHASE 23 EASEMENT TRACT AREA being more particularly described as follows:

> Beginning at a point in the northern boundary line of the property now or formerly owned by Orville Beach West, Inc., also known as the future Askins Creek Subdivision; said point also marking the intersection of the easternmost boundary of Phase 20 of Kinnakeet Shores Subdivision and the westernmost boundary of Phase 23 of Kinnakeet Shores Subdivision; running thence North 00 degrees 08 minutes 45 seconds West 104.00 feet to a point and cornering; running thence North 89 degrees 51 minutes 15 seconds East 83.77 feet to a point and cornering; running thence South 00 degrees 08 minutes 45 seconds East 104.00 feet to a point in the northernmost boundary line of the future Askins Creek Subdivision and cornering; running thence South 89 degrees 51 minutes 15 seconds West 83.77 feet along the northernmost boundary line of the future Askins Creek Subdivision to the point and place of beginning.
>
> Reference is made to that survey entitled "SURVEY FOR LOT 1734 WETLAND MITIGATION AREA CONSERVATION EASEMENT", dated May 13, 2003 and prepared by Bissell Professional Group, Fred S. Price, Professional Land Surveyor, a copy of which is attached hereto and incorporated herein by referenced for further clarification as Exhibit "A".

The purposes of the Conservation Easement are to maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contributes to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with those purposes. To achieve these purposes, the following conditions and restrictions are set forth:

I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hunting and fishing, and access to the

Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.

B. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Easement Area for such purposes including organized educational activities such as site visits, studies and observations.

C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area is prohibited.

D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.

E. **Residential Use.** Residential use of the Easement Area is prohibited.

F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.

G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.

H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area.

I. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Easement Area.

J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.

K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.

L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the easement area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.

M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.

N. **Development Rights.** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the bydrology of the site, and installation of natural and manmade materials as needed to direct instream, above ground, and subterraneous water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Protected Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

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The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Wetlands Restoration Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

III. ENFORCEMENT AND REMEDIES

A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.

B. No failure on the part of the Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

IV. MISCELLANEOUS

A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen. Stat. Section 143-214.8 et seq., the Wetlands Restoration Program.

B. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of the Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.

D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Protected Property or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Protected Property is conveyed subject to the Conservation Easement herein created.

V. QUIET ENJOYMENT

Grantor reserves all rights accruing from ownership of the Protected Property, including the right to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent easement herein granted; that the same are free from encumbrances and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

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IN TESTIMONY WHEREOF, the Grantor has hereunto executed this deed by and through its manager as the act of and by the authority of said limited liability company the day and year first above written.

Hatteras/Kinnakeet Associates at Avon, LLC

(SEAL)

By: Ray E. Hollowell, Jr., Manager

STATE OF NORTH CAROLINA
COUNTY OF DARE

I, MINDY N. DORMAN, a Notary Public in and for the County and State aforesaid, do hereby certify that **Ray E. Hollowell, Jr., Manager of Hatteras/Kinnakeet Associates at Avon, LLC**, Grantor, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 13th day of May, 2003.

(Seal/Stamp)

MINDY N. DORMAN NOTARY PUBLIC TYRRELL COUNTY, N.C.

Mindy N. Dorman
Notary Public

My Commission Expires: 10/28/06

STATE OF NORTH CAROLINA
COUNTY OF DARE

The foregoing certificate of Mindy N. Dorman, a Notary Public of Tyrrell County, North Carolina is certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

BARBARA M. GRAY Register of Deeds of Dare County.

Adrian Y. Tillett Deputy/~~Assistant~~ Register of Deeds

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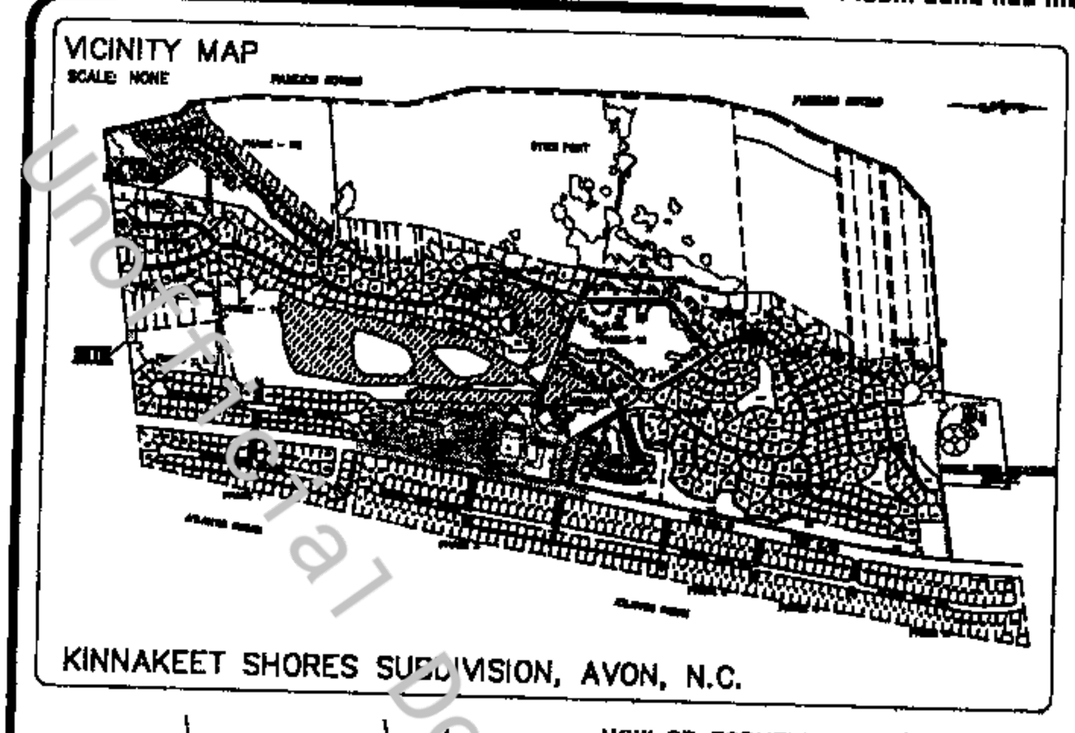
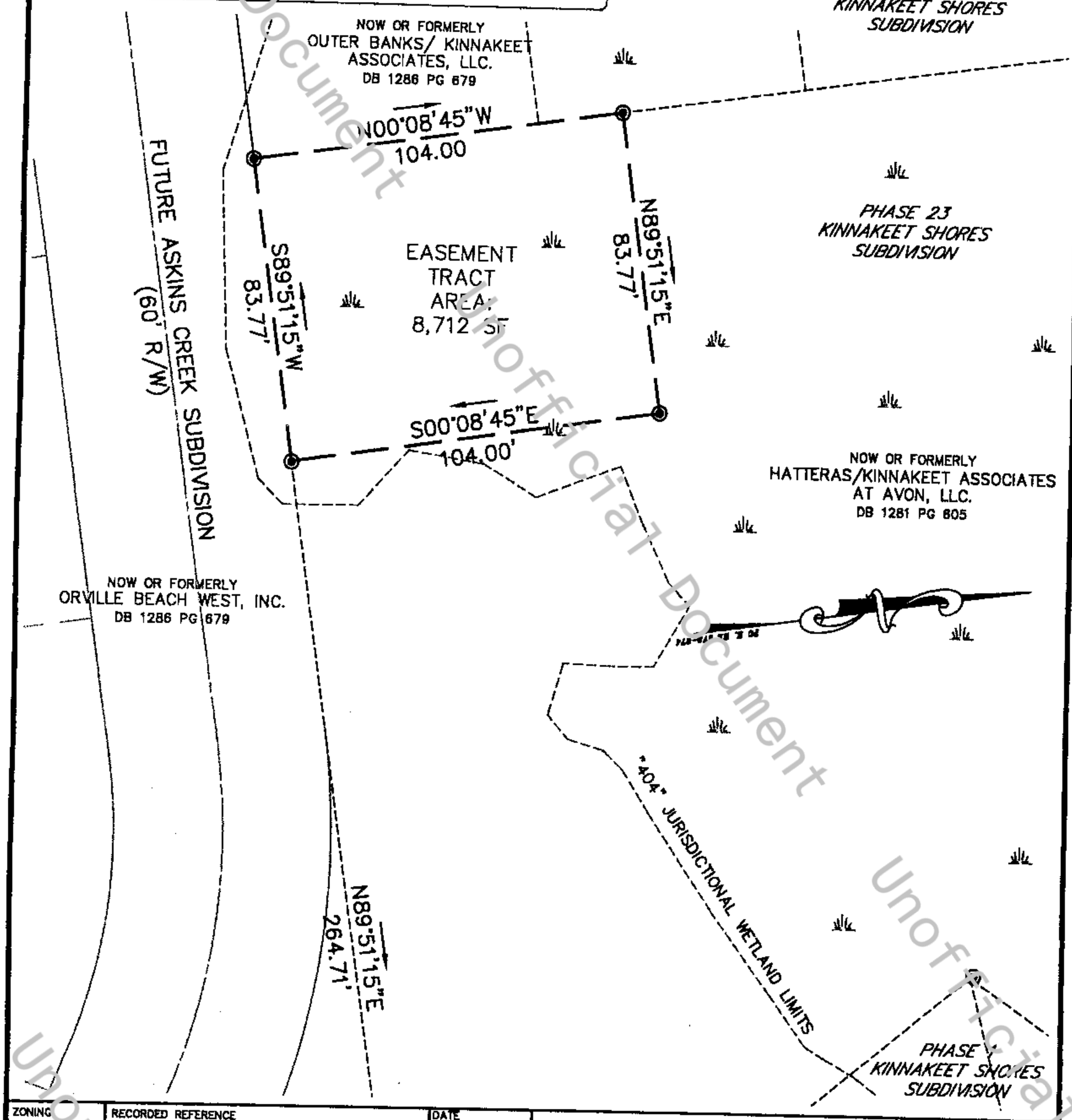
Page: 6 of 6
05/13/2003 04:06PM

EXHIBIT "A"





ZONING	RECORDED REFERENCE D.B. 1281, PG. 605	DATE 5/13/03	SURVEY FOR:
AVG. GRD. ELEV.	F.I.R.M. ZONE AE(8') / PANEL NO. 375348 0810 E	FILE NO. 1523	LOT 1734 WETLAND MITIGATION AREA CONSERVATION EASEMENT
FB/PG	PIN NO. / CADD FILE LOT1734	SCALE 1"=40'	KINNAKEET SHORES SUBDIVISION PHASE 23 TRACT AREA
		DRAWN DMR	TOTAL MITIGATION AREA: 8,712 S.F.
		CHECKED FSP	
		KINNAKEET TOWNSHIP	DARE COUNTY NORTH CAROLINA

I, FRED S. PRICE, CERTIFY THAT THIS MAP WAS PREPARED UNDER MY SUPERVISION FROM RECORDED DEED SOURCES AND DOES NOT REPRESENT AN ACTUAL FIELD SURVEY AND THAT THE RATIO OF PRECISION EXCEEDS 1 : 10,000.

WITNESS MY HAND AND SEAL THIS 13 DAY OF MAY, 2003

P.L.S. L-4277

BISSELL PROFESSIONAL GROUP

Engineers, Planners, Surveyors and Environmental Specialists

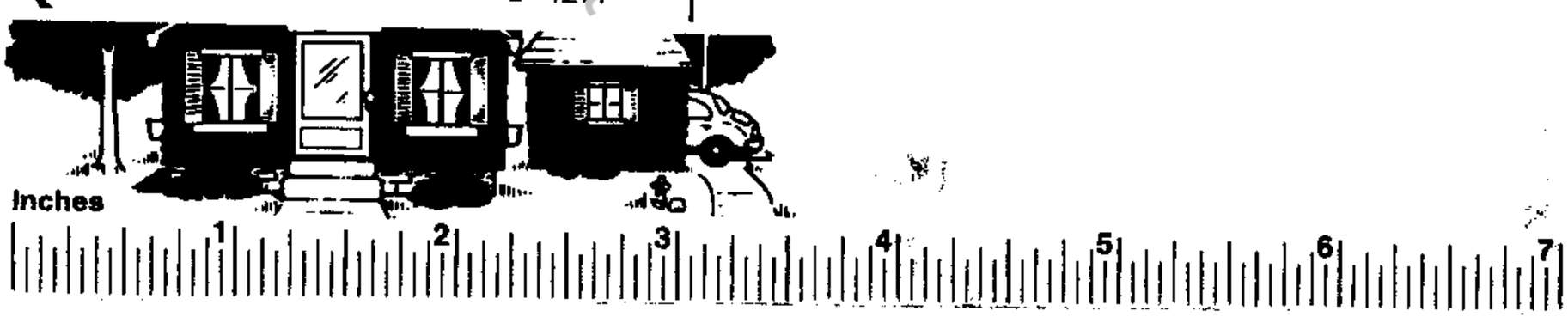
Bissell Professional Group
4417 North Croatan Highway
P.O. Box 1068
Kitty Hawk, North Carolina 27949
(252) 261-3225 or 261-3266
FAX (252) 261-1760

State of North Carolina County of Dare

I, Edward Francis, Review Officer of Dare County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording.

Edward Francis
Review Officer

5-13-03
Date



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