



Planning Board
April 21, 2016
Town Hall 10:30 am

Regular Monthly Meeting Agenda

Call to Order:

Approval of the Minutes:

Public Comment: Please state your name and address for the record.

Approval of the Agenda:

Old Business:

- 1) Impervious Surface Map

New Business:

- 1) Proposed Development Line
- 2) Dune Protection Ordinance

Other Business:

- 1) Board Member Reports
- 2) Staff Reports – Tree Protection Ordinance
- 3) Updates from Council Meeting – (Impervious Surface Bedrooms Text Amendment, swimming pool, non-conformities, preliminary plat process, parking and definitions, allowable square footage)

Adjournment

MINUTES
OAK ISLAND PLANNING BOARD
SPECIAL MEETING – DRAFT UDO REVIEW
FEBRUARY 24, 2016 10 A.M.
COUNCIL CHAMBERS-OAK ISLAND TOWN HALL

Present: Chairman Ted Manos, Vice-chairman Denise Pacula, members Bob Carpenter, Cathy Bowes, Helen Cashwell, and Clay Jenkins, Planning and Zoning Coordinator Jake Vares, Town Clerk Lisa P. Stites, CMC and Dale Holland with Holland Consulting.

Chairman Ted Manos called the meeting to order at 10 a.m. Chairman Manos led the Pledge of Allegiance to the flag and gave the invocation.

With no objections to the agenda as prepared, Chairman Manos moved to Old Business, discussion of Section 2.0 of the draft UDO.

Mr. Holland said that some wording had been handed out that was an addition to 2.1.2.10; he hoped that the members would take it with them to read over and consider. Chairman Manos suggested alternate wording and the Board members discussed the section. Mr. Holland explained that there are parcels previously divided that are as small as 25 feet; this provision is intended to prohibit subdividing to lots with less than 50 feet road frontage. Vice-chairman Pacula asked about lots in the mobile home district that were originally platted at 42 feet. Mr. Holland asked the Board to take this, read it and said there would be further discussion at a future meeting. Answering a question from Ms. Bowes, Mr. Holland gave the definition of a flag lot. A narrow piece of land serves as a connection to the roadway; they are most frequently seen in coastal areas with access to the water or in the mountains where there is access to a view.

Review of Articles 4 and 5:

Mr. Holland explained that Article 4 addresses legislative and quasi-judicial procedures; those procedures are somewhat scattered in the current ordinances. The Conditional Use Permit process is quasi-judicial. He also noted that the name for Conditional Use Permits is now Special Use Permits. Mr. Holland said he is suggesting the change because towns don't have the right to place additional conditions onto a use permit, and calling it a Conditional Use Permit implies that. If a permit application meets all the conditions listed in the ordinance, it must be approved. If an applicant's intent to comply with the conditions is not clear, a town can place qualifications on permit approval to ensure compliance. Chairman Manos asked where the conditions for the special use permit would be listed. The ordinance will have sections for lighting, parking, signage, site plans, traffic flow, etc. On page 4-12, under Council Action, there are listed in items 4.9.4.5.1 through 4.9.4.5.8, considerations that should come into play when you're deciding whether to approve a Special Use Permit. Mr. Holland also addressed how Special Use Permits would be approved in Oak Island. Right now, in about 2/3 of the towns in North Carolina, the Planning Board reviews applications and makes a recommendation to Council; that is not a statutory requirement. State statutes say that such a permit can be approved by the Planning Board, Board of Adjustment or the Council. The opinion from the School of Government is that one board should oversee the quasi-judicial process. He said that if the Planning Board reviews those requests, it raises the question of whether proper procedure was followed regarding the quasi-judicial process, ex parte communication, etc. He recommended having one board or the other handle those permits. If the Planning Board heard requests for Special Use Permits, it would save Council the time it takes to hear those requests. If the Planning Board were the Board to review those permits, a decision from the Board would be appealed to

the Courts, not the Town Council, and that is what most municipalities object to in giving that authority to planning boards. Mr. Holland also said that in small communities, it is very difficult to control ex parte communications. Ms. Cashwell asked if the Planning Board handled Special Use Permits, would there be a hearing for the public. Mr. Holland said all the rules and regulations for quasi-judicial hearings would still apply. Chairman Manos suggested recommending the Planning Board handle quasi-judicial proceedings; Mr. Holland agreed. Vice-chairman asked if both the Planning Board and Council could review the requests. Mr. Holland said what is being recommended is that just one or the other review those requests, not both. Answering a question from Mr. Carpenter, Mr. Vares said that the School of Government opinion was released a couple of weeks after Council took action to change the process. That action did at least change it to have one board handle the quasi-judicial hearings (Council). The Board discussed whether there should be another text amendment to change that authority to the Planning Board; Chairman Manos suggested making that change through adoption of the UDO when that happens.

4.2: “Town Council” will be changed to “Planning Board” for the Special Use Permit hearing process throughout the UDO.

4.3.2.1: Chairman Manos asked if the Town relies on the applicant to decide what property owners need to be notified within 200 feet; Mr. Vares said that he verifies it. He suggested that a sentence such as “The subdivision administrator shall verify the information provided for accuracy,” or something similar could be added. Mr. Holland said this section was modeled on the state statutes and part of the reason was so the burden was on the applicant to provide the information. He also said that it was basic practice to verify the information provided in an application. The Board asked to add language that says the Town is responsible for mailing those notices.

4.4: Vice-chairman Pacula asked if the time frames used for expiration of permits was common across the state. Mr. Holland said this was fairly common. Regarding 4.4.3, extension of permits, Chairman Manos said the draft language states they can be granted with quasi-judicial hearings every six months, which he said is ridiculous. He asked why the UDO Administrator couldn’t be given the authority to extend those in six-month increments if he sees reasonable efforts for compliance. Mr. Holland said they have to be careful with the word “reasonable.” He said that 4.4.3 could be revised to give the Administrator the authority to grant an extension. The Board discussed whether the UDO Administrator could have the authority to approve an extension for a special use permit and whether an appeal of the UDO Administrator’s would go to the Planning Board or the Board of Adjustment. Mr. Holland said the appeals would go to the Board of Adjustment. Chairman Manos also suggested making it a legislative decision, not quasi-judicial, to approve an extension. Mr. Holland said there should be some time limit on how long the UDO Administrator could approve extensions. Regarding 4.4.1.2, Vice-chairman Pacula said she didn’t think one year was enough time to even get the permits needed to meet the proposed 10 percent requirement. Ms. Bowes said maybe there could be different timeframes for different types of development. Mr. Carpenter suggested having the UDO Administrator report extensions to the Planning Board; Mr. Holland said that could be included. Mr. Holland said that the UDO would not address every possible thing that could happen with developments and permitting, etc. and that appeals to the Board of Adjustment are always a possibility. Vice-chairman Pacula suggested extending the maximum time in 4.4.1.2 would eliminate the need for six-month reviews. Chairman Manos suggested allowing the UDO Administrator to approve extensions for up to two years (doesn’t have to be in 6-month increments). Mr. Vares asked about 4.4.1, saying it references 4.7 (vested rights), which speaks to two years and asked if they should match. Mr. Holland said that vested rights would override the individual issuance of a Special Use Permit or a zoning permit. He also said there are two types of vested rights – those granted under the UDO and common law vested rights (which are adjudicated by the Courts). Mr. Holland explained what

vested rights are – if a property owner has vested rights, the Town cannot change the zoning, use, etc. for the property during that period of time. Following additional discussion on vested rights and the process for approving extensions, Chairman Manos said he just wanted to make sure there was some review process so that properties were developed as the applicants said they would be. Mr. Holland said that the vested rights would allow a developer to develop property under the ordinances as they existed at the time vested rights were granted; but if the Special Use Permit guidelines weren't met during the specified time period for which the permit was issued, an extension might not be granted and a new permit would have to be applied for.

4.4.2: Chairman Manos asked if the applicant would be the one to have the Special Use Permit signed by the property owner and recorded with the Register of Deeds, or if Town staff should handle that. Mr. Vares explained how he handles the process currently, which is that he sends it to the applicant for signature. He also keeps a copy. These permits are currently not recorded with the County, but Mr. Vares said he agreed with the recommendation that they should be recorded. Mr. Holland said it will be rewritten for the applicant to provide proof to the Town that it had been recorded at the Register of Deeds.

4.6.2.5: Ms. Bowes said it would be helpful if there were examples of “substantial impact.” The Board discussed whether the word “may” or “must” should be used. The Board asked for the neighborhood meeting requirement in our current ordinance to be reviewed/included in this section. Mr. Vares said he was concerned this placed an undue burden on the applicant. Mr. Holland said that he does not favor the neighborhood meeting requirement; he said there is ample opportunity for people to be involved in the process already. Those types of meetings could actually lead to ill will in the community. Ms. Bowes said that the statement in this section was “squishy.” She said it should be clear if the meetings are required and for what purpose. Mr. Vares agreed and said that he thought it should be taken out altogether. Mr. Jenkins said that his concern with striking it from the UDO would be that citizens would come to the rezoning uninformed; Ms. Cashwell said that would be the case regardless. Mr. Jenkins said that if the Town were not involved in the neighborhood meeting, it shouldn't be a requirement. The Board agreed to strike that provision from the proposed UDO.

4.7: Mr. Holland said this section came almost verbatim from the state statutes. Vice-chairman Pacula asked about using the term “Special Use Approval” rather than “Special Use Permit.” Mr. Holland said he would not recommend that, since there is no legislative basis for that as the statutes say something different.

4.7.5.4: Mr. Germaine read from the proposed language and asked if it applied to the Lucas Cove process. Chairman Manos said it did not apply; he said the procedure the applicant went through was perfectly valid. Mr. Germaine said that what was presented to the Planning board was not what went to Town Council. Chairman Manos said that the Council did not approve it as the Planning Board submitted, but the Town had the right to tell the applicant to make changes; what in effect happened was that the Town changed it. The Town had the right to approve it, which it did. Ms. Cashwell said that they kept insisting they vote that night and Councilor Winecoff said there was not a Corps of Engineers' permit and staff insisted there was one. Mr. Carpenter said the Board was getting off track. The Town Clerk reminded the Board that the Special Meeting agenda was for discussing the UDO, not specific projects that had previously come before the Board. Ms. Cashwell said that what they were discussing was misrepresentation. Ms. Stites said the Board could discuss the draft UDO, but that specific projects were not on the Board's agenda. Chairman Manos said it was not the Clerk's place to tell the Board that. Chairman Manos said that the Board was discussing misrepresentation with relation to Section 4.7.5.4. Chairman Manos said it came from the state statutes; there is nothing in 4.7 that needs changing. He said

that if the Board members had any questions about Section 7 they could ask them, but they didn't need to discuss other stuff.

4.9: The references to Town Council will also change to Planning Board in this section as well.

4.9.3.1: Chairman Manos said the section reads that the Planning Board may “suggest,” and that he thought it should say “require reasonable conditions.” Mr. Holland said that all of that would have to be revised since the draft UDO will give authority for Special Use Permits to the Planning Board.

4.10.1.5: Chairman Manos read from the fourth line, where it says “...after notice of appeal has been filed...a stay would cause immediate peril to life or property, or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the ordinance.” He asked for an example of violation that is transitory in nature. Mr. Holland said that if someone has a truck that transports hazardous materials and he routinely parks it in the driveway in a residential district. It might be there for five days, be gone and then there for a few days again. That would be a transitory situation and that would have to be documented to show it was being a problem.

4.9.4.5.8: Mr. Germaine noted that the word “plan” should be “plans.”

4.10.4: Chairman Manos asked about the voting requirements of 4/5 when there are only five members on the Board of Adjustment; if there were only four members present at a meeting, the applicant would need all the votes. Mr. Holland agreed.

4.10.2.2.3: Mr. Carpenter said if someone buys property knowing there is an issue, that is a self-created hardship. Answering a question from Chairman Manos, Mr. Holland said that that court cases and state law were crystal clear on this subject. The first question when considering a variance is if the needs for the variance is a result of action by the applicant, and if it is, the variance cannot be approved. Mr. Holland said the UNC School of Government opinion is that variances should be rarely granted. Mr. Holland suggested adding it to the UDO, if it is not currently in the ordinances, that a property owner would have permission to rebuild to existing conditions before a storm if it were done within 180 days. If a house were torn down voluntarily, then it would have to be rebuilt in compliance with the ordinances in place at the time of rebuilding. Mr. Edwards explained what the ordinance currently says on the subject and the Board agreed it should be changed.

4.12: Vice-chairman Pacula asked if that had been changed elsewhere in the UDO. Mr. Holland said that not allowing resubmittal unless there are substantial changes is according to the statutes.

The next meeting will be March 23 to discuss Article 5.

Mr. Germaine asked if the new software the Town is getting would allow Development Services to keep track of everything being discussed regarding development, subdivisions, etc. Mr. Vares said that staff does keep track of that information. Mr. Germaine wondered how one person would keep track of all of it.

Chairman Manos asked if Article 5 would apply to commercial development and new subdivisions. Mr. Holland said that it would apply to all development, including residential. Mr. Vares said the Board would discuss how a PUD (Planned Unit Development) is handled. Mr. Holland said that in the Town's current ordinance, it is considered a use, not a zoning district. He is going to recommend that PUD be a special-use zoning district and not a use within other zoning districts.

Chairman Manos asked about 2.14.1, side lot lines are discussed; he asked if that would preclude the ability of someone to have flexibility when building a cul-de-sac. Mr. Holland said that a radial property line could be used, and the cul-de-sac would look like the spokes of a wagon wheel. There does not have to be geometric regularity; it is just saying that those lines don't have to be perpendicular to the street.

Mr. Jenkins made a motion to adjourn the meeting at 12:04 p.m. Mr. Carpenter seconded and the motion passed unanimously.

Chairman Ted Manos

Attested: _____
Lisa P. Stites, CMC, Town Clerk

MINUTES
PLANNING BOARD
March 17, 2016 – 10:30 a.m.
Oak Island Town Hall

Present: Chairman Ted Manos, members Bob Carpenter, Cathy Bowes, Bob Germaine and Helen Cashwell. Vice-chairman Denise Pacula and member Clay Jenkins were previously excused from the meeting.

Chairman Manos called the meeting to order at 10:30 a.m. He gave the invocation and led the Pledge of Allegiance to the flag.

Chairman Manos reviewed amendments needed to the February 18, 2016 Minutes: The name Rick Bowes should be changed to "Rick Rowe." There was a correction on page 8 and one on page 5. There were no other changes.

Ms. Cashwell made a motion to approve the minutes as amended. Mr. Germaine seconded, and the motion passed unanimously.

Adjustment/Approval of the Agenda: Chairman Manos switched New Business 3 Signage Discussion and New Business 4 Allowable Square Footage Text Amendment.

Ms. Cashwell made a motion to approve the agenda as corrected. Mr. Carpenter seconded, and the motion was passed unanimously.

Old Business:

1. Bedrooms Text Amendment: Mr. Vares said the Board could send Council a recommendation that removes the requirement of one space per bedroom and then continue to discuss the issue further. Chairman Manos said that the problem is related to the fact that sometimes people try to build large houses on small lots; it is a beachside problem, not a mainland or wooded section problem. He said he did not see any reason to restrict the current specific ordinance to an area near the beach. Chairman Manos said that there were large lots in some areas near the west end. Mr. Germaine said that there was a problem with sewer flow last year on July 4th and the beachfront isn't even built out yet. Mr. Germaine reviewed some examples he gave the Board regarding house size, the number of bedrooms and the number of parking spaces. Ms. Cashwell said that every bit of this goes against the design of the sewer system. She said that she does not believe the information being provided from the Utilities Department is correct and she can prove it. She said that if this keeps up, the Town will blow up. Answering a question from the Board, Development Services Director Steve Edwards confirmed that houses could still be built on slabs or foundations and did not need to be on stilts. Chairman Manos suggested requiring a minimum of 4 parking spaces and providing some relief for the houses that would be made non-conforming by such a rule. Ms. Bowes said that she is concerned that would not solve the issue. Mr. Germaine also said that the sewer system would just shut down if there is too much flow. He said he is also concerned that people will be told they can't build because there is not enough flow available to connect the system. Mr. Carpenter said that whatever the situation is, people will find a way to abuse it. Ms. Cashwell said that we are piece-mealing the ordinances; she suggested handling it all at once. Mr. Germaine said that only 2.8 percent of the homes on Oak Island would not meet code with regards to impervious surface. He asked if we would survive if we continued to allow this type of development to continue. Chairman Manos said that they need to take it one at a time or they will never get anything done; that is why he is suggesting a

minimum of four parking spaces. Responding to a question from Ms. Bowes regarding houses with one car garages, Mr. Purser answered from the audience that it was on 51st Street and there were not two parking spaces in front of the garage. He is building two others with a one-car garage and barely room for three parking spaces. Mr. Vares suggested doing a text amendment that removes the bedroom requirements and conforms to new general statutes and then providing more options for a future meeting. There was discussion regarding home placement on lots to provide adequate parking. Mr. Edwards suggested using “habitable room” instead of bedroom and creating a definition for habitable room, requiring a minimum of two parking spaces for up to four habitable rooms and then one additional parking space per habitable room beyond that. Chairman Manos asked for a definition of “habitable.” Mr. Vares read from the Town’s definitions; he had included it in the agenda on page 15. Mr. Edwards suggested moving “excluding” to between “sleeping” and “cooking.” There was further discussion on house sizes, bedrooms and parking spaces. Chairman Manos asked Mr. Edwards if there would be any difficulty on the normal size lots for someone to have 10 bedrooms. Mr. Edwards said not if it were on pilings; he used his own home as an example and said homes have to be designed to meet the ordinance.

Regarding impervious surface changes, Mr. Germaine said he thinks Council needs to understand what is really going on in town. He again brought up the fact that only 2.8% of houses would be non-conforming, and said that the beachfront has a problem with too much impervious surface. The Board discussed with Mr. Edwards and Mr. Vares what is included in the impervious surface calculations. Chairman Manos asked the Board members how they felt about the 45 percent proposal; both Mr. Carpenter and Ms. Bowes agreed with the proposal. Mr. Vares confirmed there would be 197 properties made nonconforming by the new impervious regulations if adopted. Ms. Cashwell said that she would be concerned by the houses that would be made nonconforming; she asked for a revised map that would show where the nonconforming houses are located to see if they are all oceanfront, etc. She is worried about the nonconforming houses, and would like to wait to give her opinion after Mr. Vares can provide a map of where they are located. Chairman Manos said that Council had advised him that they didn’t like the 10 percent/35 percent split as proposed. He was hoping to pass an all-encompassing plan to send the Council that they all agreed upon, and was hoping that the change of bedroom to habitable rooms along with the 5,000 square foot maximum would be something they could work with. Mr. Germaine expressed concern about the number of stories in some of the newer houses. Chairman Manos suggested limiting the definition of livable areas to two living levels.

Mr. Vares recommended keeping the built-upon area definition as is so it matches and complies with the State definition. Ms. Cashwell said that the capacity of the sewer system must be taken into consideration. Mr. Vares agreed, but at the end of the day they must do what the General Statutes say. Ms. Cashwell said the bottom line is they are here to talk about solving stormwater. Chairman Manos asked the Board members how they felt about changing the 5,000 square feet limit for homes to be built on the mainland; none of the Board members said they had an issue with that. Mr. Germaine said that he would want to make sure that the lots were large enough. Chairman Manos asked about limiting structures to two stories, whether on or off the island. Chairman Manos said that he thinks they can come up with a plan that limits homes to 5,000 square feet in two stories above the pilings and requiring parking space as discussed earlier. To clarify, Chairman Manos asked if parking would be per habitable room or per a certain amount of square feet in habitable rooms. Mr. Edwards suggested letting the height limits take care of that instead of limiting the number of stories; there would be many homes made nonconforming. Mr. Carpenter said that he didn’t think limiting the number of floors will ever pass at Council. Mr. Vares said we could go stricter than state laws but cannot go counter to state laws. (11:39 – Ms. Bowes out for a break).

Mr. Purser said that what would come next is car stacking systems under houses. He suggested not allowing parking in the rights-of-way and it would heal itself. Chairman Manos said that off the island, the majority of the future building would be in Planned Unit Developments; Mr. Vares concurred. Development in those areas would be regulated by those plans. The Board further discussed parking places and habitable rooms. Mr. Vares said the text amendment would also contain the definition of habitable room he reviewed the proposed text amendments.

Mr. Carpenter made a motion to accept the proposed change in the Bedroom Text Amendment as Mr. Vares read it. Ms. Bowes seconded the motion. Mr. Germaine opposed, all others were in favor and the motion passed.

Ms. Bowes made a motion to approve the proposed text amendment to exclude the mainland from the 5,000 square foot maximum allowance (New Business 3). Mr. Carpenter seconded, and the motion passed unanimously.

New Business 1: Swimming Pool text Amendment: Mr. Vares spoke about his agenda memo. The Town does not currently have a definition for swimming pool, and he has provided a suggested definition. This definition came from other towns, and he inserted it as well. Also, if an infiltration system is included, it would result in many non-conforming pools. Mr. Manos asked if Mr. Vares was proposing that the Town adopt and accept this 18-32 definition of swimming pool, and he said this was correct.

Ms. Cashwell made a motion to accept the definition of swimming pool in section 18.32 as the new Town ordinance. Ms. Bowes seconded. There was no discussion and the motion passed unanimously.

Chairman Manos then referenced his proposed amendments to section 14-31 that was provided in the agenda packet.

Ms. Bowes made a motion to approve the proposed text amendment as Chairman Manos provided. Ms. Cashwell seconded and the motion passed unanimously.

Preliminary Plat Text amendment: Mr. Vares explained that the new ordinance language proposed is pursuant to what the Planning Board requested at last month's meeting. Consensus was to leave the number of copies to be provided for a preliminary plat at 15. Mr. Carpenter said that what the Planning Board discussed was that if there were any changes, it should come back to the Planning Board. Ms. Cashwell said that what the Planning Board had approved had major changes made to it before it went before Council. Mr. Carpenter clarified that the Board wouldn't want administrative changes to come back, and he wasn't sure how "substantial" would be defined. Ms. Bowes said she was confused because of what happened; the Town Council had that information and should have reviewed that information. She asked if it wasn't Council's prerogative to approve something other than what the Planning Board recommended. Chairman Manos said that if it is changed by the developer between the Planning Board's review and it being sent to Council, then it should come back to the Planning Board, but if Council requires a change that should not come back to the Planning Board. The last sentence of the proposed text amendment will be removed.

Ms. Bowes made a motion to approve the proposed text amendment as follows: “If changes are made to the preliminary plat after the Planning Board meeting, other than the changes noted by the Planning Board...” Mr. Carpenter seconded and the motion passed unanimously.

Chairman Manos proposed a motion that all new signage on and off the island, should, in the future, only incorporate LED lighting. **Ms. Cashwell made that motion.** She said she would prefer that businesses be required to replace existing signs as bulbs burn out, etc. Mr. Vares said he had never seen anything like this with other towns. Ms. Bowes asked why there was a push for LED signs. Chairman Manos conformed that this would apply only to outdoor display signs. Mr. Carpenter asked what was trying to be accomplished. Chairman Manos said that the LED signs use less electricity and they are simply trying to conserve and be progressive. **The motion died for a lack of second.**

Board Member reports:

Ms. Cashwell said that she wanted to revisit the Tree Ordinance at the next meeting. Mr. Vares said that all the paperwork has been signed for the grant the Town is receiving. There is an arborist involved, Connie Head. Due to budgetary reasons, she can only come one day, which is April 6. She will meet with the Tree City USA Board, the Environmental Advisory Board and hopefully the Planning Board also. There will be a public outreach meeting. She will also do the site work, such as taking photos, etc. Mr. Vares said that this would be a public meeting. Chairman Manos asked Mr. Vares to convey the Planning Board’s concern of cutting trees before construction and replacing them with non-native species. Ms. Cashwell proposed having owners sign waivers stating they do not want the trees on their lots when construction is done, rather than taking the contractor’s words as such. There was discussion regarding this situation; Chairman Manos said he is interested to see what the arborist’s findings will provide.

Chairman Manos asked Mr. Vares for updates from the Town Council meeting. Mr. Vares said that they sent back the impervious surface amendment. Mr. Edwards noted that Council directed staff to research how many homes would be made nonconforming by the changes in the flood maps and to draft an ordinance amendment to counter that. Mr. Edwards said that hundreds of homes would be affected.

Mr. Germaine made a motion to adjourn at 12:37 p.m. Ms. Cashwell seconded and the motion passed unanimously.

Chairman Ted Manos

Attested: _____
Lisa P. Stites, CMC, Town Clerk

MINUTES
OAK ISLAND PLANNING BOARD
SPECIAL MEETING – Draft UDO Review
March 23, 2016 – 10 a.m.
Oak Island Town Hall – Council Chambers

Present: Chairman Ted Manos, Vice-chairman Denise Pacula, members Bob Carpenter, Helen Cashwell, Bob Germaine and Clay Jenkins, Town Planning and Zoning Coordinator Jake Vares and Town Clerk Lisa P. Stites, CMC. Mr. Dale Holland with Holland Consulting was also present. Member Cathy Bowes was unable to attend the meeting; she had submitted comments which were noted as each section was reviewed.

Chairman Ted Manos called the meeting to order at 10 a.m. He called for a moment of silence to remember those who died in Belgium, gave the invocation and led the Pledge of Allegiance. There were no objections to the agenda as presented.

Comprehensive Plan Ad hoc Committee Chairman Kelley Germaine said the committee would not meet again until June. The draft is being revised and prepared and will be sent to the committee, Planning Board and Council in the beginning of May. The Committee will meet June 6 to review Section 6 and the entire draft.

5.1: Chairman Manos noted that the second paragraph states this UDO will apply to new development only.

5.2.3.5: Mr. Germaine asked if “gate” should be added. Chairman Manos suggested that would be considered an amenity. Mr. Holland said that this section regarded the initial review process; the plan could be refined as it progresses.

5.3: Mr. Holland clarified that a final plat would be reviewed by staff; there is no need to take up the Planning Board or Council’s time to review final plats. Ms. Cashwell asked what happened if there were changes, and Mr. Holland said it would have to go back if the final plat did not meet the preliminary plat requirements. He also said he thought that was in the draft UDO but he would verify that. Mr. Holland said that having the UDO Administrator review final plats achieved two things – it was making it easier for the public to navigate the process and save the Boards’ time in reviewing the final plats, leaving time to handle other issues. Regarding as-built drawings, Mr. Holland said there would be adjustments made in the field; that is routine and they would be reflected in the as-built drawings. Town staff will be relied on to do inspections during and after construction to verify that what is being built complies with the preliminary plat/plans. Answering a question from Chairman Manos, Mr. Holland said if there is a substantial difference between the as-built drawings and the construction drawings, that is a problem with the inspections, not the developer. Mr. Holland said the as-built drawings reflect what is actually in the ground. Chairman Manos asked if a lift station were moved from its original position on the plan, would there be any reason to go back and change the original plans. Mr. Holland said that in his opinion, the answer is no. Vice-chairman Pacula said she felt like maybe the section was out of order, as the mention of the original plat comes first. Mr. Holland said that 5.3 is saying up front what the UDO Administrator is for, and the process is discussed in 5.4 and on. Mr. Holland and the Board discussed the order in which the information should be presented and the structure of flow charts included in the following sections.

5.3.1 (and 5.4.1) The Board suggested switching the positioning of the top line and the second line.

5.3.5: Ms. Bowes had asked what triggered a staff review. Chairman Manos said that staff review was automatic. Mr. Holland said that why a review was referred to specific Town departments depended on the development planned. Mr. Vares asked about the list included; Mr. Holland noted that it said it included but was not limited to and said that other state or federal agencies or departments could be included in a review as necessary.

5.3.6: Chairman Manos asked what the Planning Board's role would be. Mr. Holland said the Board could overturn the UDO Administrator's decision. Chairman Manos suggested using language such as "applicant may request, within 30 days, de novo review by the Planning Board" instead of appeal.

5.3.7.1: Chairman Manos said it needed to be clear that a permit was still required after the Board of Adjustment issued a variance. He suggested changing the "No" to "A," removing the word "except" and adding "which shall require permit issuance in accordance therewith," or something similar.

5.3.7.1: Mr. Holland read Ms. Bowes' comment; he said that the UDO references the state building code and that additional language was not necessary here.

5.3.8: Chairman Manos asked for clarification as to the difference between a zoning compliance permit and a building permit. Mr. Holland said the zoning permit states that an applicant has permission to do what he wanted on the property under the terms of the ordinance and the building permit gives permission to begin construction.

5.3.8.2: Chairman Manos asked about a zoning permit being issued for a part of a building. Mr. Holland said, as an example, this section would cover an addition on an existing building to ensure that the new construction also complied with the zoning requirements. Mr. Jenkins gave the example of a strip mall; if one of the businesses changes, it would be part of a building that also needs to comply with the zoning requirements.

5.3.9: Chairman Manos noted that there was nothing included about a building being altered while it was still occupied; he said he thought the language was conflicting. There were suggested amendments to this section.

5.7.4.3 (out of order): Vice-chairman Pacula said she thought the time frame now was seven years and she thinks this looks like a lot less. Mr. Holland said there was not a lot of wiggle room here because the state statutes were pretty specific about vested rights. Mr. Holland said staff had to have some flexibility or construction on Oak Island would come to a screeching halt. He said this section has nothing to do with vested rights other than to say that if you have vested rights, this section does not apply. Mr. Vares suggested adding a sentence or two that explains this would be for a subdivision that does not have established vested rights; that would make it clearer.

Mr. Vares and Vice-chairman Pacula left the meeting to attend another meeting.

5.4.5: Chairman Manos asked if this would be handled by the Planning Board and Council or just the Planning Board. Mr. Holland said this was not a quasi-judicial process and would, as is being suggested, go through both boards. Mr. Holland said that most small and medium towns do not give the Planning Board authority to approve preliminary plats and major site plans as there are generally performance bonds required; most municipal boards do not like to relinquish that authority.

5.4.5.3: Ms. Bowes had suggested adding the words "developer's application," but Mr. Holland suggested not adding that as the application could be filed by someone other than the developer. Chairman Manos said if anything, it should state "as presented to the Planning Board" as the Town Council or staff could

require the applicant to make changes; or it could have been presented to the Planning Board but the Planning Board did not take action on it. Mr. Holland said that he thought the review process was well stated throughout the UDO, but he will make that change.

5.4.7: Mr. Carpenter said that when something came before the Board and it went to Town Council, it did not move forward at Council for lack of a second. He said there was a flaw in the process that typically an applicant has to wait six months before going back before Town Council, but that because there was a lack of a second, the applicant could come right back and re-present. Mr. Carpenter said there had been an election and a different set of Council members was there. He said he did not know if the intent of that rule was that someone could go back the next month to the Council meeting instead of waiting six months. He said the intent of the rules is that if something is not approved, then the applicant has to wait six months. In this case, the plan was not approved due to lack of a second, but because of the rules, the applicant came back the next month. He said he didn't know if this process could be cleaned up a bit. Mr. Carpenter said he was trying to keep personal opinions out of it, but the intent of the rules is that if something is not approved, you can re-present in six months, not something is not approved, there's an election and then 30 days later you're re-presenting. Ms. Cashwell said that it was not reviewed as it should have been. Mr. Carpenter said that in his mind, failing for a lack of a second is the same as not approved, and the UDO should be written so that nobody can play the political system, have the Council change out and re-present in 30 days. Mr. Holland said that Ms. Germaine (in the audience) suggested changing "denial to "no approval." Chairman Manos said that he disagreed with Mr. Carpenter because what happened was there was never any true consideration given to the issue at hand at that particular meeting; it just happened to be the meeting when Council changed. Mr. Carpenter said there was discussion, it was raised, and the motion died when there was no second. He agreed that making it clear that if it was not approved, the six-month waiting period would apply. Chairman Manos said that the problem is that if Council wants to continue something, then the applicant would have to wait six months again. Ms. Cashwell said she was not sure that was a true statement. She said at that point the denial, or the lack of approval should be explained as to why it wasn't approved. It shouldn't just drop through the cracks; there is a reason for the six-month review. Chairman Manos said that what happened was that several members of the Council said they couldn't agree with it or didn't want to weigh in on it and they wanted to wait until after the board changed. Ms. Cashwell said she didn't believe that happened. Mr. Carpenter said that changing it to lack of approval versus denial would take politics out of the process and politics don't belong in the process. Ms. Cashwell said it might make them more responsible when they vote if they understand that this is going to have a residual effect, six months' worth. Mr. Germaine agreed, and said they were playing politics because they didn't want to deal with it so they gave it to someone else. Mr. Jenkins said that he was trying to look at it generally, not with a specific project in mind. He said that there are times Council members want more time to look into something and want to put something onto the next meeting; he was concerned that tabling the matter wouldn't be affected by this area or that Council would be forced to make a decision. The language will be changed to "a failure to approve by the Town Council." The Board also discussed the timeframe under which an application could be resubmitted; consensus was to use six months. Ms. Cashwell suggested deleting the part of the sentence (fourth line) that begins with "by the Town Council..." and go to the next sentence that begins "All applications..." The Board discussed whether an applicant could submit an application for a different use for the same property within the six-month period. After further discussion, consensus was that the phrase that begins "by the Town Council..." would remain.

5.6.2: Responding to comments supplied by Ms. Bowes, Mr. Holland said that he agreed the second, third and fourth sentences should be moved to 5.3.3

5.6.3: Mr. Holland said that an applicant could not simply change the plan between the Planning Board review and the Council meeting. Chairman Manos said that is something that happened and the Planning Board already addressed this with a proposed text amendment.

5.6.4.1.10: Chairman Manos said that an 8-inch diameter is a large tree. Mr. Holland said that the Town was working with an arborist on a tree study and a review of the tree ordinance. The Board will address this issue following that process.

5.6.4.2.2: Mr. Holland agreed with Ms. Bowes' comment that "aesthetically pleasing design" should be deleted.

5.6.4.2.4 and 2.5 will be combined.

5.6.4.2.7: Regarding Ms. Bowes' comments on this section about the need to define "local," Chairman Manos said he thought it was not necessary.

5.7.3.3: Chairman Manos said he had an issue with the word "appeal" in this section also. It will be changed to read "may seek review of the Planning Board at its next regular meeting" instead.

5.7.4.1.3: This is the section that would address the plan being changed between the Planning Board review and the Council meeting. Ms. Cashwell said that recently, the plan the Planning Board sent and what the Town Council saw was different. The Board discussed possible revisions to ensure the Council would see the plan as it was presented to the Planning Board. Ms. Stites suggested that wording would not leave room for a developer to incorporate changes the Planning Board recommends. The wording will be changed to say "...as presented to or as reviewed and revised by the Planning Board..."

5.7.4.2.2: Ms. Bowes had asked what "substantially agrees" means. Chairman Manos said that would be within the UDO Administrator's discretion. Consensus was to leave that section as is.

5.7.4.4: Mr. Holland confirmed that more than a 10-percent change would trigger a new submittal process. He said that this event should never actually arise if that much goes awry during the building process. Mr. Holland said that this section could be deleted because that circumstance should not ever happen.

5.7.4.6.1 through .5: Mr. Holland said that performance guarantees were a right granted by the state statutes.

5.7.6: Responding to a question from Mr. Germaine, Chairman Manos said that this section referred to the necessity for a plat to be recorded prior to land being transferred.

5.7.8: Chairman Manos asked about the last sentence; it seems something is missing. Mr. Holland will check that wording.

Mr. Holland said that Article 6 will be provided at a future date; Holland staff is waiting until the next process of the CPAC is completed before providing the draft of Article 6. This next piece will be a substantial piece of the UDO. Some or all of Article 6 will be sent to the members prior to the next meeting.

Following discussion of the timing of the Comprehensive Plan approval, Chairman Manos suggested delaying work on the UDO until the Land Use Plan has been received. Mr. Holland said that with the extent of public input received and the volume of work the CPAC has done on the Plan, the hope is that any changes recommended by the Planning Board would be minimal. Mr. Holland also reminded the

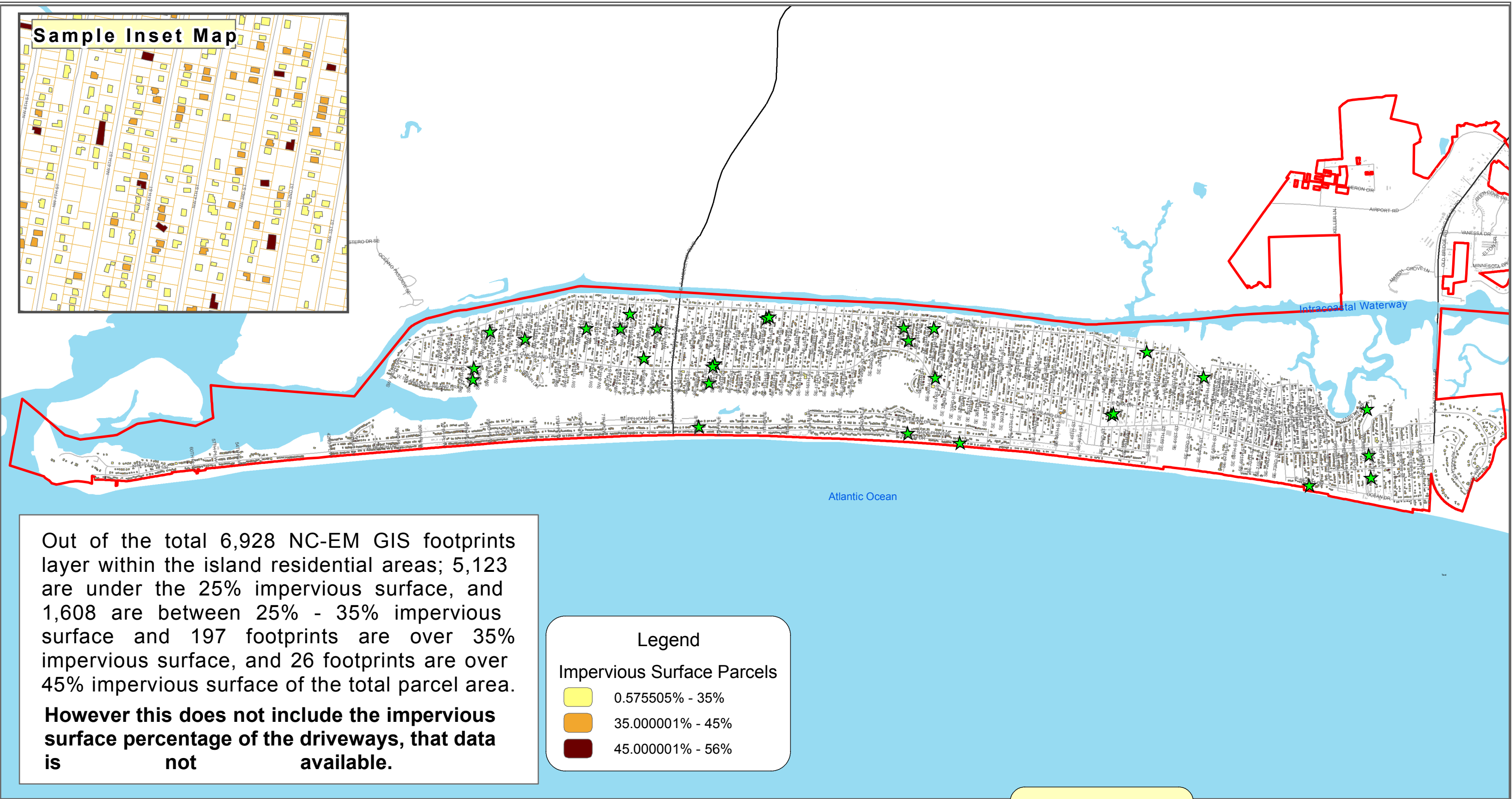
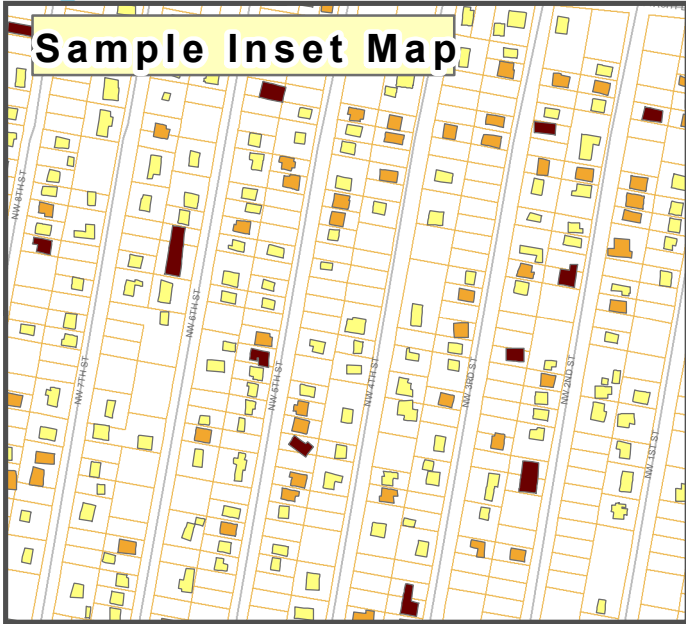
Planning Board that the Comprehensive Plan is policy document and is the vision for where Oak Island wants to go, not the UDO. The next UDO Review meeting will be in June.

Ms. Cashwell made a motion to adjourn at 12:16 p.m. Mr. Carpenter seconded and the motion passed unanimously.

Chairman Ted Manos

Attested: _____
Lisa P. Stites, CMC, Town Clerk

Impervious Surface Map

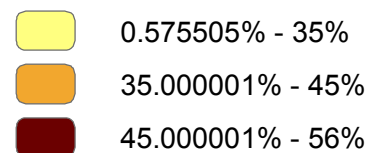


Out of the total 6,928 NC-EM GIS footprints layer within the island residential areas; 5,123 are under the 25% impervious surface, and 1,608 are between 25% - 35% impervious surface and 197 footprints are over 35% impervious surface, and 26 footprints are over 45% impervious surface of the total parcel area.

However this does not include the impervious surface percentage of the driveways, that data is not available.

Legend

Impervious Surface Parcels



Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

Impervious Surface

Town of Oak Island, NC



Map Prepared By:
Jacob Vares
Town of Oak Island
Development Services
3/21/2016



TOWN OF OAK ISLAND
PLANNING BOARD
AGENDA ITEM MEMO

Agenda Item: New Business No. 1

Date: April 1, 2016

Issue: Development Line

Department: Planning & Zoning Administrator

Presented by: Steve Edwards

Presentation: None

Estimated Time for Discussion: 40 Minutes

Subject Summary:

Any local government may petition the Coastal Resources Commission (CRC) for a development line to guide ocean front development. The development line would serve to mark the ocean-ward limit where structures could be built to, like a traditional setback line. With a CRC approved development line, a structure must also meet the graduated CAMA setback requirements measured from first line of stale and natural vegetation. The official definition of development line according to 15A NCAC 07H .0305 (10) is *"The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H .0306(a)(2)."* Town staff reviewed 4 possible development line possibilities and determined that the 85 foot line was most suitable. The methodology was to create several potential development lines, via GIS, that showed the distance of feet from the front property line and calculate how many existing structures interested or were beyond the proposed development line. This serves to illuminate for staff the amount of ocean front structures that would be made non-conforming. Staff also calculated the number of existing structures that were behind the development line and would not be effected.

Approximately a total of 694 ocean front residential parcels are within the proposed development line. Of those parcels, there are approximately 519 total ocean front residential structures that are parallel to the proposed development line. 407 structures do not intersect the proposed development line at all. 156 parcels are undeveloped along the proposed development line. The total number of Oak Island ocean front parcels is not listed because the map is specifically concerned with properties only along the proposed development line. 112 ocean front houses intersect the 85 ft. ocean front development line. That figure grows higher the smaller the distance from the front property line the ocean front development line is drawn. 93 structures that parallel the proposed town development line also

intersect the existing CAMA setback line that is 60ft from the existing static vegetation development line.

The data on the maps represent the Static Vegetation Line (SVL), and location of First Line of Stable-Natural Vegetation (FLSNV) on the oceanfront prior to the start of a "large scale" beach nourishment/fill project. Currently, North Carolina defines "large scale" as any project placing 300,000 cubic yards or more, or a US Army Corps of Engineers (USACE) Storm Protection project. Where these projects occur, oceanfront construction/development setbacks must be measured from the Static Vegetation Line; unless a community has an approved Static Vegetation Line Exception.

If a structure is seaward of the adopted development line and is damaged it is allowed to rebuild unless the damage is greater than 50% according to 15A NCAC 07J.0210. The development line is conforming throughout the Oak Island ocean-front but there are some locations where keeping the development line linear is not sensible. That area on map is in frame 6 and frame 10 the proposed town development line is adjusted. This is due to the unusual length of the ocean front properties in that frame. Those wishing to build in those areas will need to use the traditional static vegetation line that is currently used if not town development line exists or the town development line that slightly adjusted. If this development line ordinance were to be adopted, some structures would be made non-conforming and many would have their non-conforming status removed.

In order for a municipality to have an ocean-front development line the town must follow the process detailed by the Division of Coastal Management (DCM) in section 300 15A NCAC 07J0 1301. The town must submit an aerial map showing the proposed development line and the current static vegetation line. The GIS data has to contain all the proper FGDC (Federal Geographic Data Committee) meta-data. The coordinates of the development line are labeled throughout the map so the location can be verified by DCM. Finally, the documentation of the adopted text amendment that covers the development line must be provided to DCM staff and the CRC. Documentation of incorporation of development line into Town ordinances or rules and regulations, minutes do not suffice. Before we submit, the Town must first incorporate the Development Line into our Town Ordinance(s), and provide a copy of the ordinance(s) that pertain to the development line. The reason for this is that it shows the CRC that the Town recognizes the line as an enforceable building line limitation, and since the CRC cannot request a change after they have approved it. The DCM staff has been contacted regarding this issue. The state guidelines and regulations regarding a development line are attached to this staff memorandum.

The CRC is required to decide on the development line petition at the meeting where it is on their agenda and no later than the following CRC meeting. Once/if the development is adopted by the CRC and therefore becomes official, staff will place the new development line on the town's online GIS map where the current vegetation line is displayed. The URL is: <http://www.oakislandnc.com/General-Info/Maps-and-Flood-Insurance-Info.aspx>. Only the town can petition to have the location of the development line changed after CRC adoption. The text amendment is in Chapter 14 – Environment, because that is the section in the town Code of Ordinances that pertains to CAMA regulations. The text amendment language and required maps are all attached.

Attachments: Text Amendment, State Development Line Regulations, Maps

Recommendation/Action Needed:

Suggested Motion: Approval or Denial or Text Amendment

Funds Needed: \$0.00

Follow Up Action Needed: Forward Recommendation to Town Council

Attachment A

Sec. 14-121. - Definitions

Development means any activity in a duly designated area of environmental concern involving, requiring, or consisting of the construction or enlargement of a structure; excavation, dredging, filling, dumping, or the removal of clay, silt, sand, gravel, or minerals; bulkheading, driving of pilings, clearing or installation of land as an adjunct of construction; alteration or removal of sand dunes, alteration of the shore, bank, or bottom of the Atlantic Ocean or any bay, sound, river, creek, stream, lake or canal.

Development line means the line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H .0306(a)(2)."

Division of coastal management means a division of the state department of environment and natural resources charged by the state with the administration and enforcement of the Coastal Area Management Act of 1974.

Sec. 14-125. - Use and development coverage.

This article shall be applicable to all use of and development on ocean beaches in the town. Included, but not limited to the following, are types of uses and development activity to which this article applies. Specifically, this article is applicable to all oceanfront property owners intending to construct, repair or replace decks, walkways, and/or steps for the purpose of gaining access to the public ocean beach from private property along the oceanfront in the town. This article applies to all persons crossing ocean beaches for the purpose of gaining access to the beaches and Atlantic Ocean

No structures shall be built seaward of the Oak Island development line except as allowed under CAMA regulations 15A NCAC 07H.0309.

Attachment B

1 15A NCAC 07J .1301 is proposed for adoption as follows:

2

3

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

4

5 15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE

6 (a) Any local government, group of local governments involved in a regional beach fill project or qualified owner's
7 association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A
8 NCAC 07H .0305, may petition the Coastal Resources Commission for a development line for the purposes of siting
9 oceanfront development in accordance with the provisions of this Section. A qualified owner's association is an
10 owner's association defined in NCGS 47F-1-103-(3) that has authority to approve the locations of structures on lots
11 within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

12 (b) A development line request applies to the entire large scale project area as defined in 15A NCAC 07H .0305(a)(7),
13 and at the petitioner's request may be extended to include the entire oceanfront jurisdiction or legal boundary of the
14 petitioner.

15 (c) The petitioner shall utilize an adjacent neighbor sight-line approach, resulting in an average line of structures. In
16 areas where the seaward edge of existing development is not linear, the petitioner may determine an average line of
17 construction on a case-by-case basis. In no case shall a development line be established seaward of the most seaward
18 structure within the petitioner's oceanfront jurisdiction.

19 (d) An existing structure that is oceanward of an approved development line can remain in place until damaged greater
20 than fifty percent in accordance with 15A NCAC 07J .0210; and can only be replaced landward of the development
21 line, and must meet the applicable ocean hazard setback requirements as defined in 15A NCAC 07H .0306(a).

22 (e) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the
23 CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall
24 include the following:

25 (1) A detailed survey of the development line using on-ground observation and survey, or aerial imagery
26 along the oceanfront jurisdiction or legal boundary; any local regulations associated with the
27 development line; a record of local adoption of the development line by the petitioner; and
28 documentation of incorporation of development line into local ordinances or rules and regulations
29 of an owner's association.

30 (2) The survey shall include the development line and static vegetation line.

31 (3) Surveyed development line spatial data in a geographic information systems (GIS) format
32 referencing North Carolina State Plane North American Datum 83 US Survey Foot, to include
33 Federal Geographic Data Committee (FGDC) compliant metadata.

34 (f) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a
35 change or reestablishment of the position of the development line.

36 (g) A development line request shall be submitted to the Director of the Division of Coastal Management, 400
37 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development

1 line request, including notification of the date of the meeting at which the request will be considered by the Coastal
2 Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

3 (h) The Coastal Resources Commission shall consider a development line request no later than the second scheduled
4 meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the
5 petitioner and the Division of Coastal Management agree upon a later date.

6
7 History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
8 Eff. April 1, 2016.

1 15A NCAC 07J .1302 is proposed for adoption as follows:
2

3 15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE

4 (a) At the meeting that the development line request is considered by the Coastal Resources Commission, the
5 following shall occur:

6 (1) A representative for the petitioner shall orally present the request described in 15A NCAC 07J .1301.
7 The Chairman of the Coastal Resources Commission may limit the time allowed for oral
8 presentations.

9 (2) Additional persons may provide written or oral comments relevant to the development line request.
10 The Chairman of the Coastal Resources Commission may limit the time allowed for oral comments.

11 (b) The Coastal Resources Commission shall approve a development line request if the request contains the
12 information required and meets the standards set forth in 15A NCAC 07J .1301. The final decision of the Coastal
13 Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next
14 scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days
15 following the meeting at which the decision is reached.

16 (c) The decision to authorize or deny a development line is a final agency decision and is subject to judicial review in
17 accordance with G.S. 113A-123.

18
19 History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
20 Eff. April 1, 2016.

1 15A NCAC 07J .1303 is proposed for adoption as follows:

2

3 **15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT**
4 **LINES**

5 A list of development lines in place for petitioners and any conditions under which the development lines exist,
6 including the date(s) the development lines were approved, shall be maintained by the Division of Coastal
7 Management. The list of development lines shall be available for inspection and the Division of Coastal Management,
8 400 Commerce Avenue, Morehead City, NC 28557.

9

10 History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124

11 Eff. April 1, 2016.

15A NCAC 07H .0305 is proposed for amendment as follows:

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

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

- (1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:
 - (A) the growth of vegetation occurs, or
 - (B) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.
- (2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.
- (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind that same mound of sand (commonly referred to as the dune trough).
- (4) Frontal Dunes. The frontal dune is deemed to be the first mound of sand located landward of the ocean beach having sufficient vegetation, height, continuity and configuration to offer protective value.
- (5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on ground observations or by aerial photographic interpretation.
- (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of initial project construction shall be defined as the static vegetation line. A static vegetation line shall be established in coordination

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

- (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A large-scale beach fill project shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers. The onset of construction shall be defined as the date sediment placement begins with the exception of projects completed prior to the effective date of this Rule, in which case the award of contract date will be considered the onset of construction.
- (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.
- (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(4) of this Section. Procedures for determining the measurement line in areas designated pursuant to Rule .0304(4)(a) of this Section shall be adopted by the Commission for each area where such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be available from any local permit officer or the Division of Coastal Management. In areas designated pursuant to Rule .0304(4)(b) of this Section, the Division of Coastal Management shall establish a measurement line that approximates the location at which the vegetation line is expected to reestablish by:
 - (A) determining the distance the vegetation line receded at the closest vegetated site to the proposed development site; and

- (B) locating the line of stable natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (g)(1) of this Rule.

The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.

- (10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have approved development lines, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of 15A NCAC 07H .0306(a)(2).

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

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. September 9, 1977;

Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;

Temporary Amendment Eff. October 10, 1996;

Amended Eff. January 1, 1997;

Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;

Temporary Amendment Eff. October 22, 1997;

Amended Eff. April 1, 2016; April 1, 2008; August 1, 2002; August 1, 1998.

15A NCAC 07J .1201 is proposed for amendment as follows:

15A NCAC 07J .1201 REQUESTING THE STATIC LINE EXCEPTION

(a) Any local government, group of local governments involved in a regional beach fill project, qualified owner's association defined in NCGS 47F-1-103-(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline, or permit holder of a large-scale beach fill project, herein referred to as the petitioner, that is subject to a static vegetation line pursuant to 15A NCAC 07H .0305, may petition the Coastal Resources Commission for an exception to the static line in accordance with the provisions of this Section.

(b) A petitioner is eligible to submit a request for a static vegetation line exception after ~~five years have passed since~~ the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a static vegetation line(s). For a static vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the static vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A static line exception request applies to the entire static vegetation line within the jurisdiction of the petitioner including segments of a static vegetation line that are associated with the same large-scale beach fill project. If multiple static vegetation lines within the jurisdiction of the petitioner are associated with different large-scale beach fill projects, then the static line exception in accordance with 15A NCAC 07H .0306 and the procedures outlined in this Section shall be considered separately for each large-scale beach fill project.

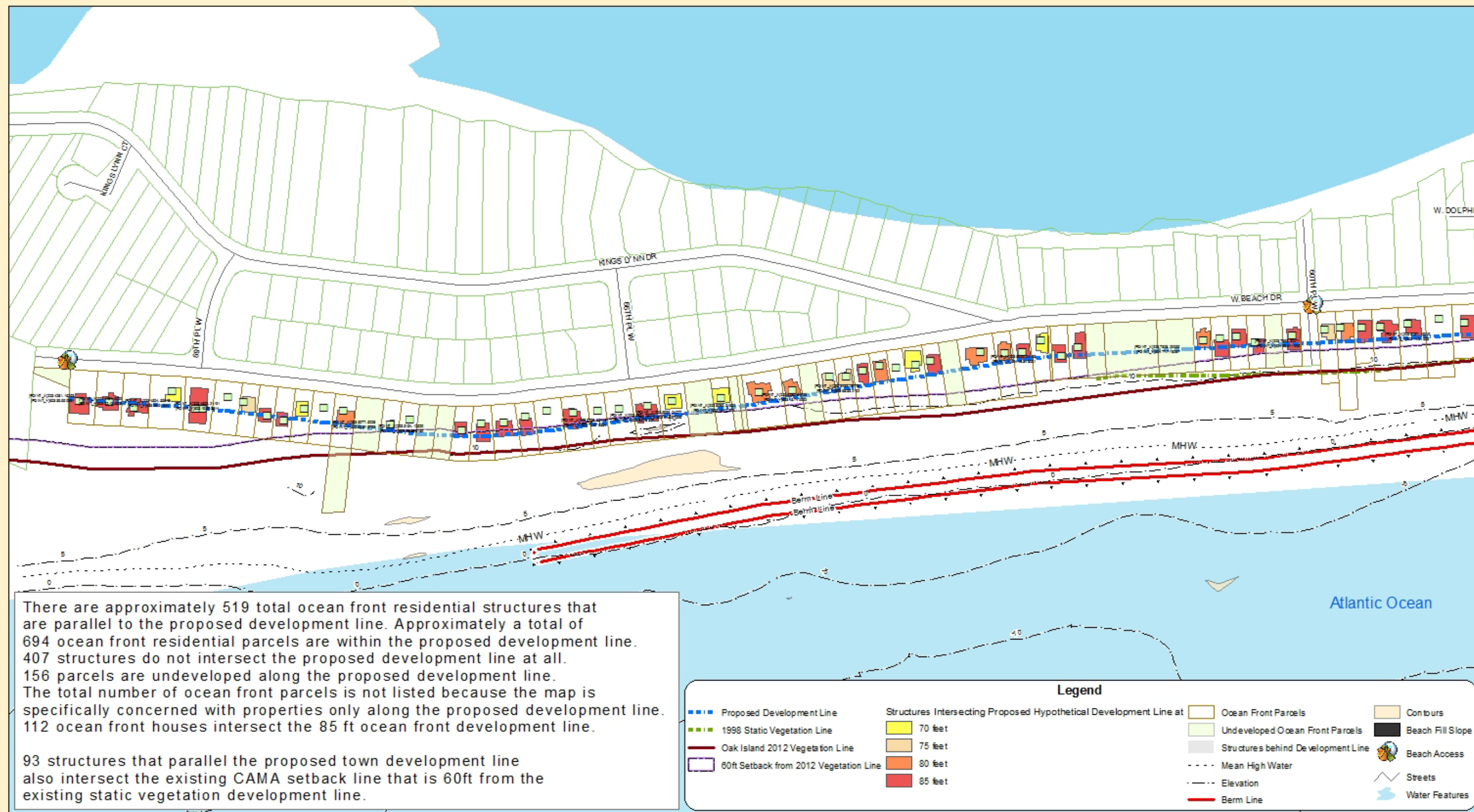
(d) A static line exception request shall be made in writing by the petitioner. A complete static line exception request shall include the following:

- (1) A summary of all beach fill projects in the area for which the exception is being requested including the initial large-scale beach fill project associated with the static vegetation line, subsequent maintenance of the initial large-scale projects(s) and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys and a project footprint;
- (2) Plans and related materials including reports, maps, tables and diagrams for the design and construction of the initial large-scale beach fill project that required the static vegetation line, subsequent maintenance that has occurred, and planned maintenance needed to achieve a design life providing no less than ~~25~~ 30 years of shore protection from the date of the static line exception request. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;
- (3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and
- (4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project over its design life.

(e) A static line exception request shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed static line exception request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(f) The Coastal Resources Commission shall consider a static line exception request no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

*History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124
Eff. April 1, 2016; March 23, 2009.*



FRAME 1

Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

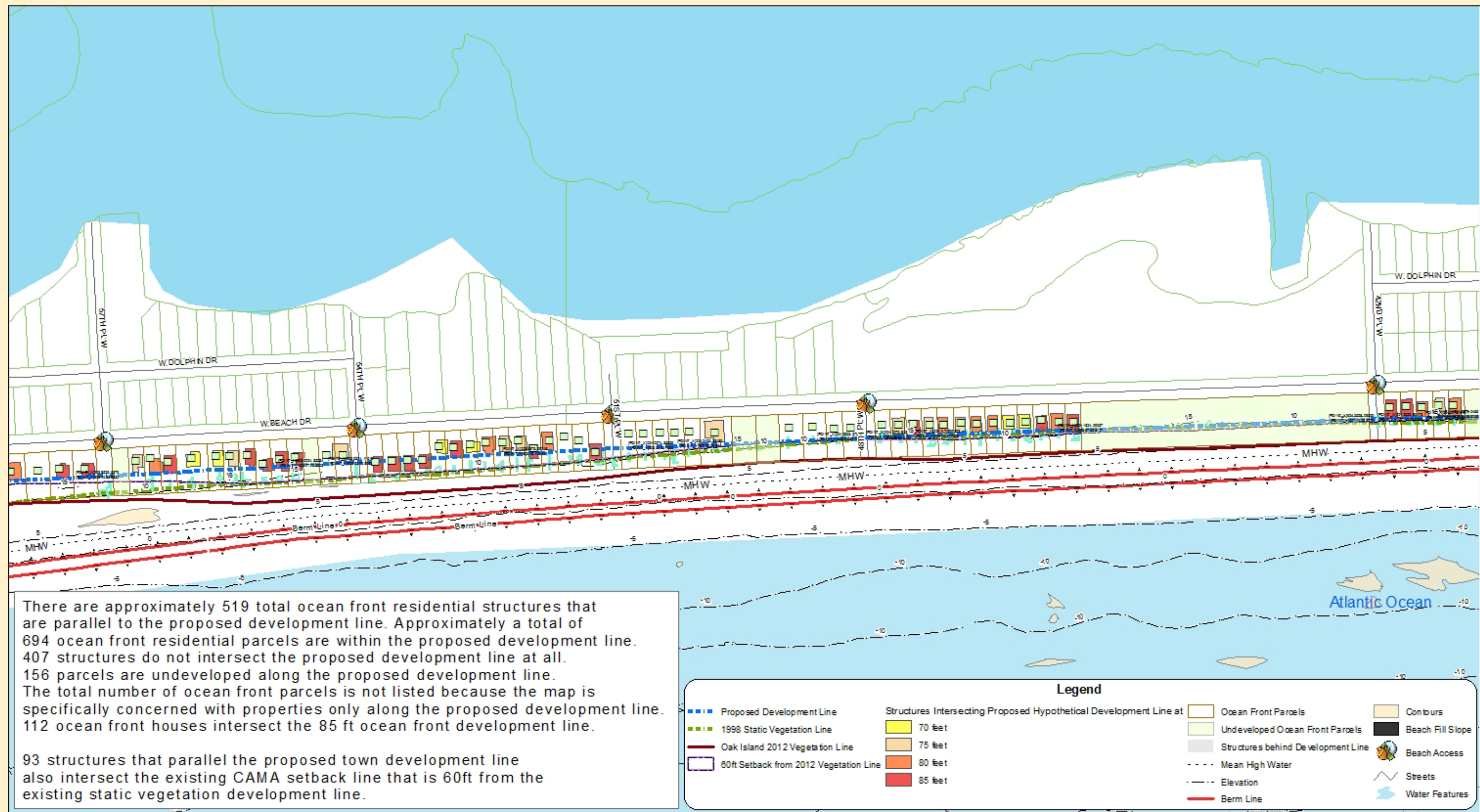
Oceanfront Developmet Line Map

Town of Oak Island, NC



Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4601 E. Oak Island Drive
Oak Island, NC 28465
04/06/2018

0 95 190 380 570 Feet



FRAME 2

Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

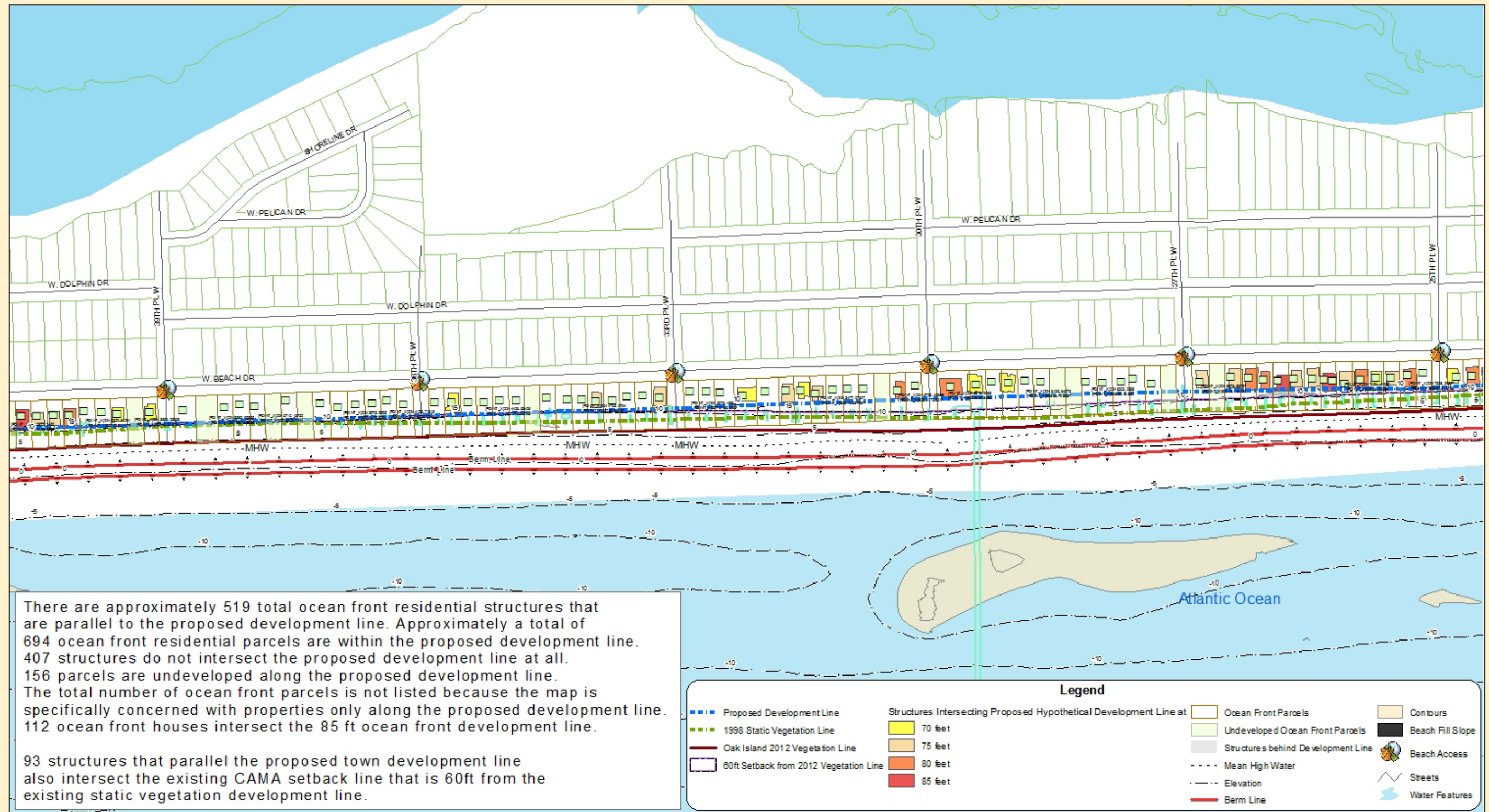
Oceanfront Development Line Map

Town of Oak Island, NC



Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4601 E. Oak Island Drive
Oak Island, NC 28465
04/14/2016

0 110 220 440 660 Feet



FRAME 3

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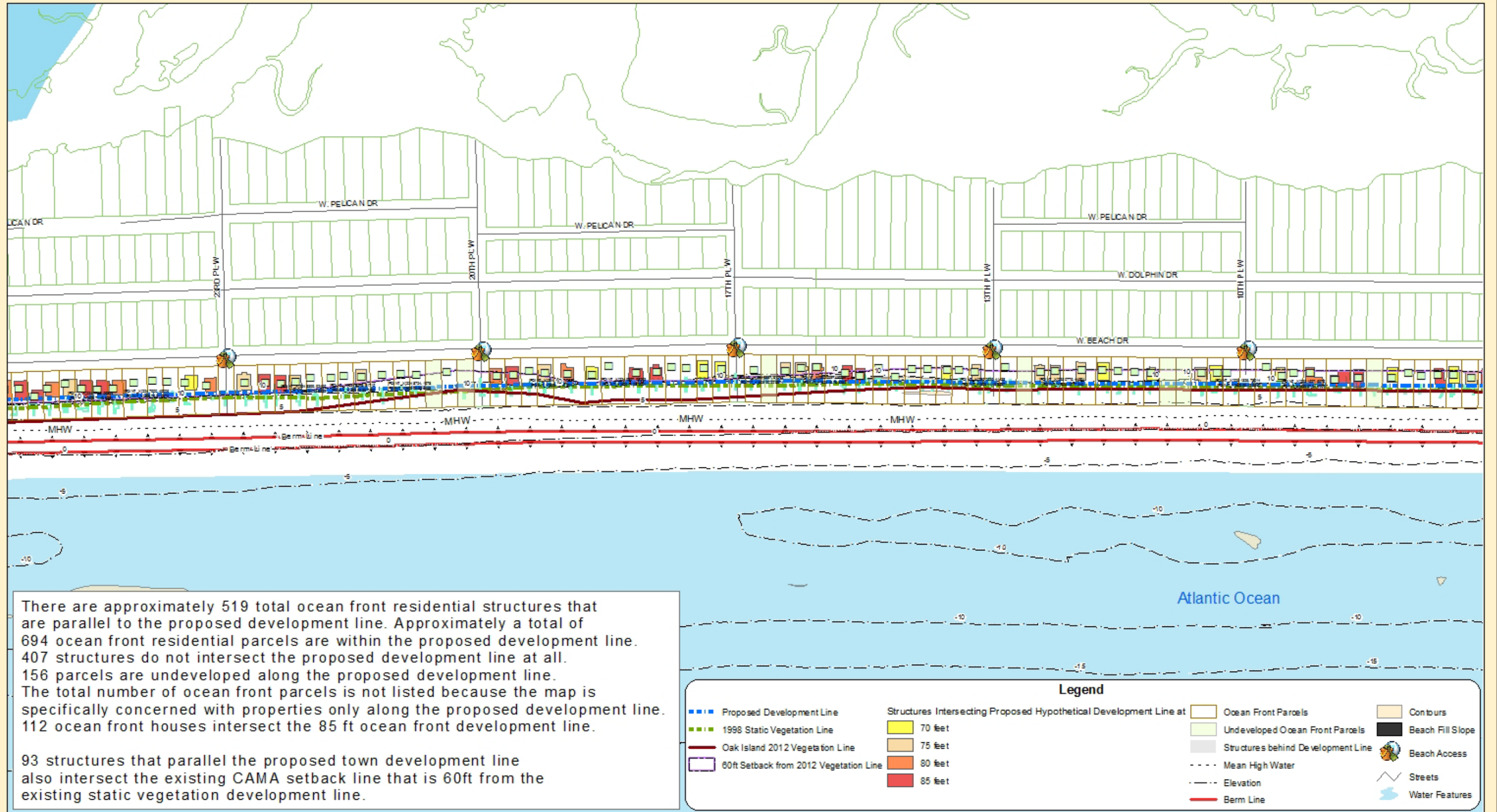
Oceanfront Developmet Line Map

Town of Oak Island, NC



Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4801 E. Oak Island Drive
Oak Island, NC 28465
04/14/2016

0 110 220 440 660 Feet



FRAME 4

Map is to be used to only show the general vicinity of address numbers. Cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

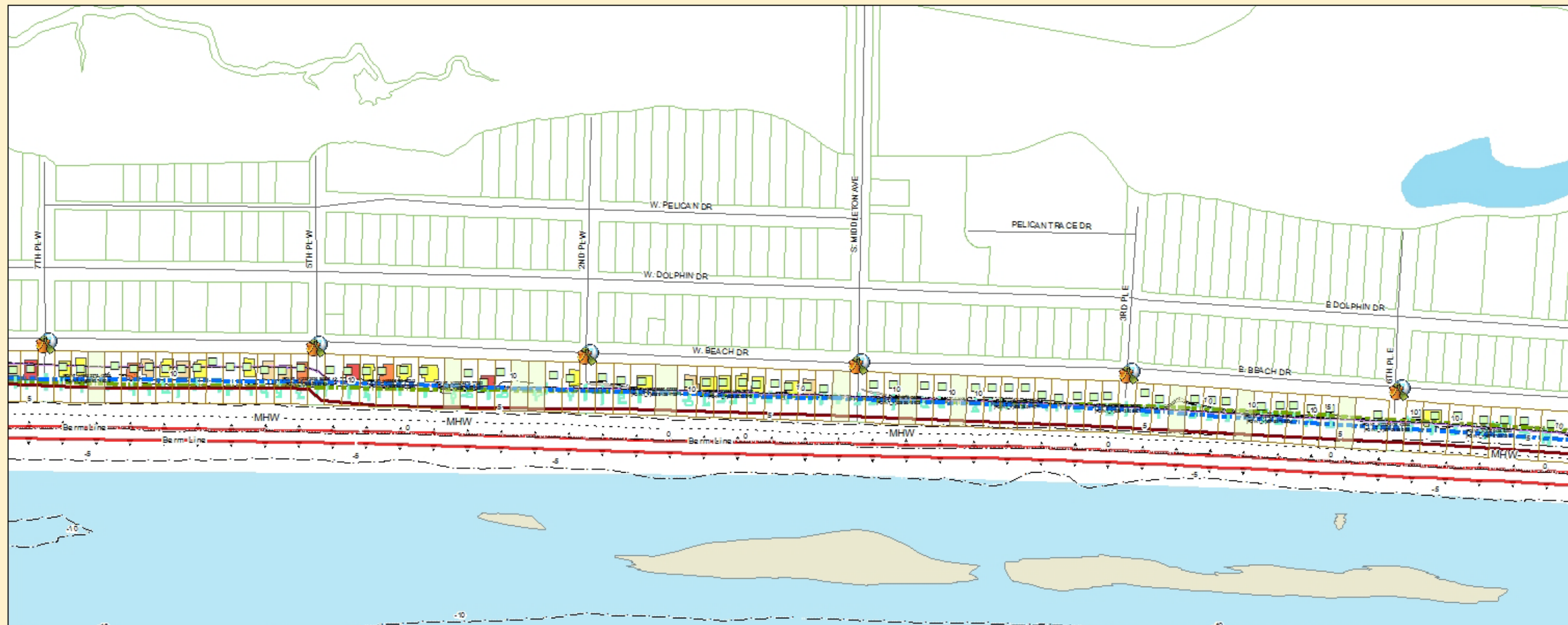
Oceanfront Development Line Map

Town of Oak Island, NC



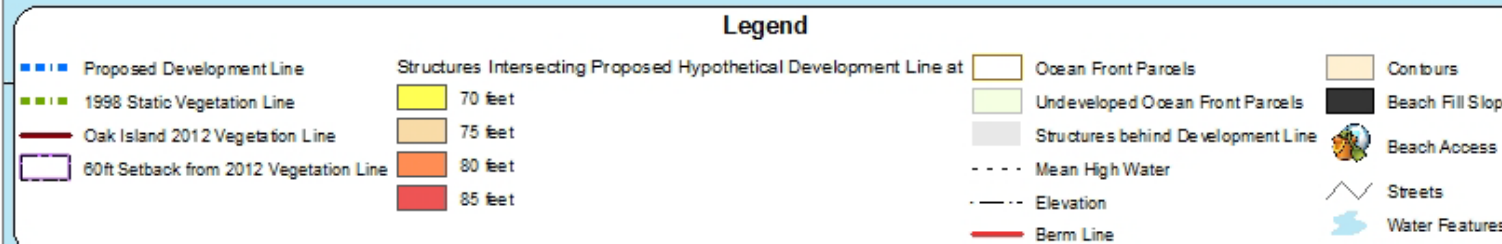
Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4601 E. Oak Island Drive
Oak Island, NC 28465
04/14/2016

0 110 220 440 660 Feet



There are approximately 519 total ocean front residential structures that are parallel to the proposed development line. Approximately a total of 694 ocean front residential parcels are within the proposed development line. 407 structures do not intersect the proposed development line at all. 156 parcels are undeveloped along the proposed development line. The total number of ocean front parcels is not listed because the map is specifically concerned with properties only along the proposed development line. 112 ocean front houses intersect the 85 ft ocean front development line.

93 structures that parallel the proposed town development line also intersect the existing CAMA setback line that is 60ft from the existing static vegetation development line.



FRAME 5

Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

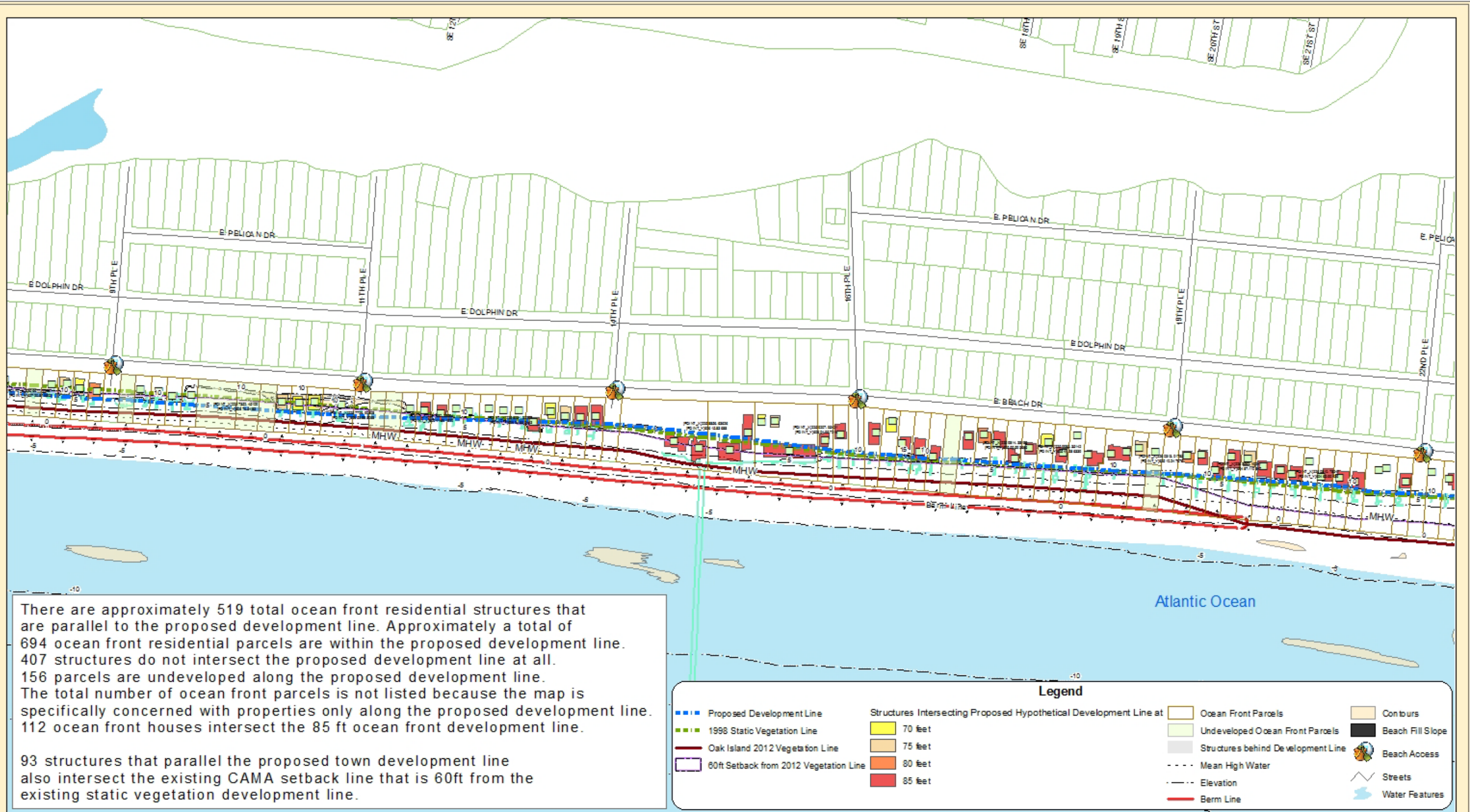
Oceanfront Developmet Line Map

Town of Oak Island, NC



Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4801 E. Oak Island Drive
Oak Island, NC 28465
04/14/2016

0 110 220 440 660 Feet



FRAME 6

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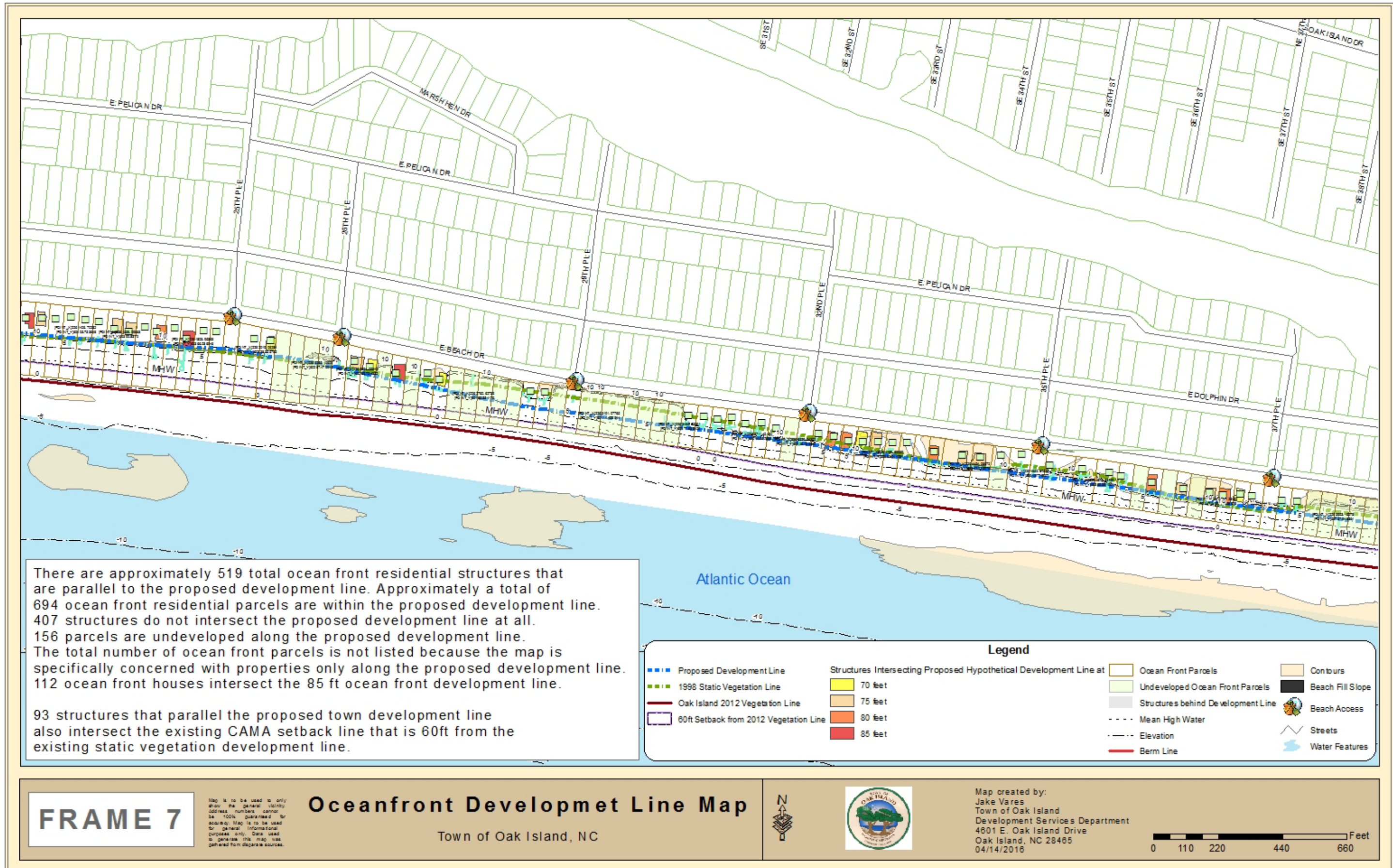
Oceanfront Development Line Map

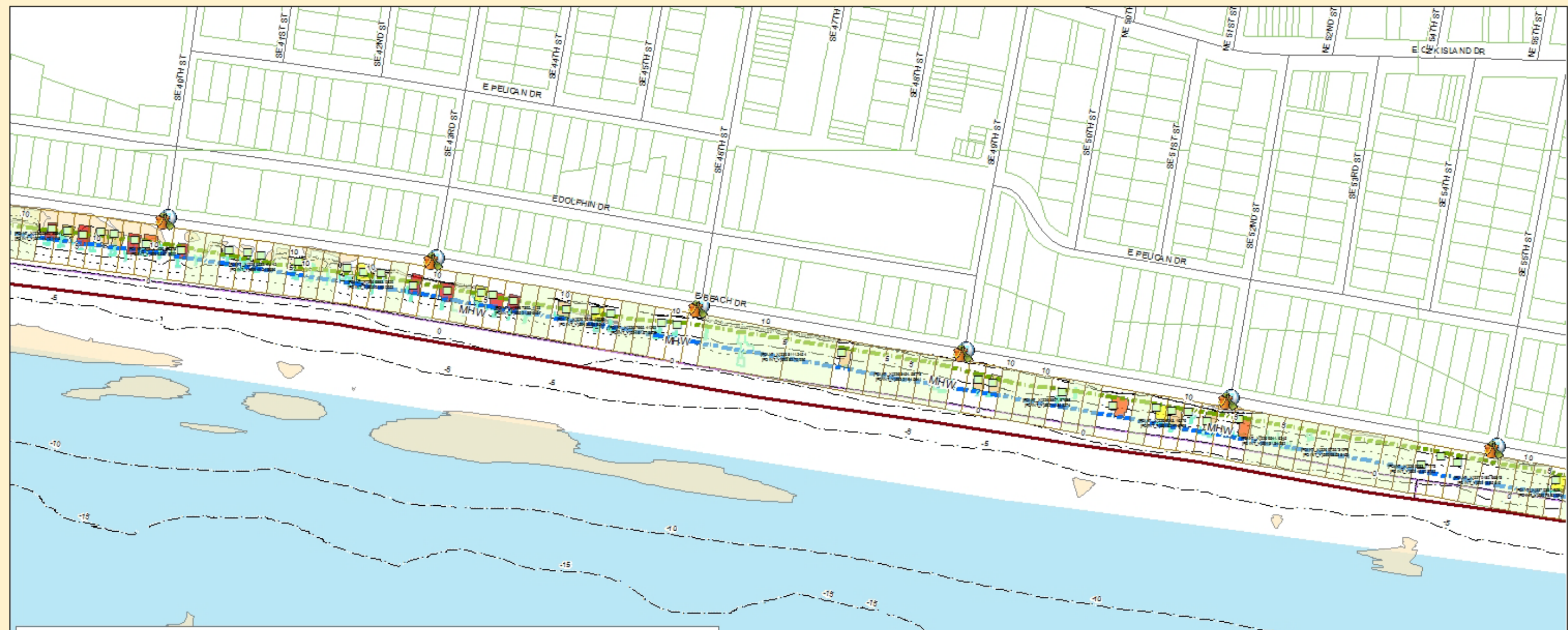
Town of Oak Island, NC



Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4601 E. Oak Island Drive
Oak Island, NC 28465
04/14/2016

0 110 220 440 660 Feet





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93 structures that parallel the proposed town development line also intersect the existing CAMA setback line that is 60ft from the existing static vegetation development line.

Legend

- Proposed Development Line
- 1998 Static Vegetation Line
- Oak Island 2012 Vegetation Line
- 60ft Setback from 2012 Vegetation Line

Structures Intersecting Proposed Hypothetical Development Line at

- 70 feet
- 75 feet
- 80 feet
- 85 feet

- Ocean Front Parcels
- Undeveloped Ocean Front Parcels
- Structures behind Development Line
- Mean High Water
- Elevation
- Berm Line
- Contours
- Beach Fill Slope
- Beach Access
- Streets
- Water Features

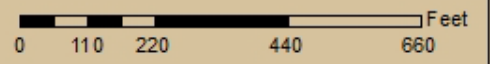
FRAME 8

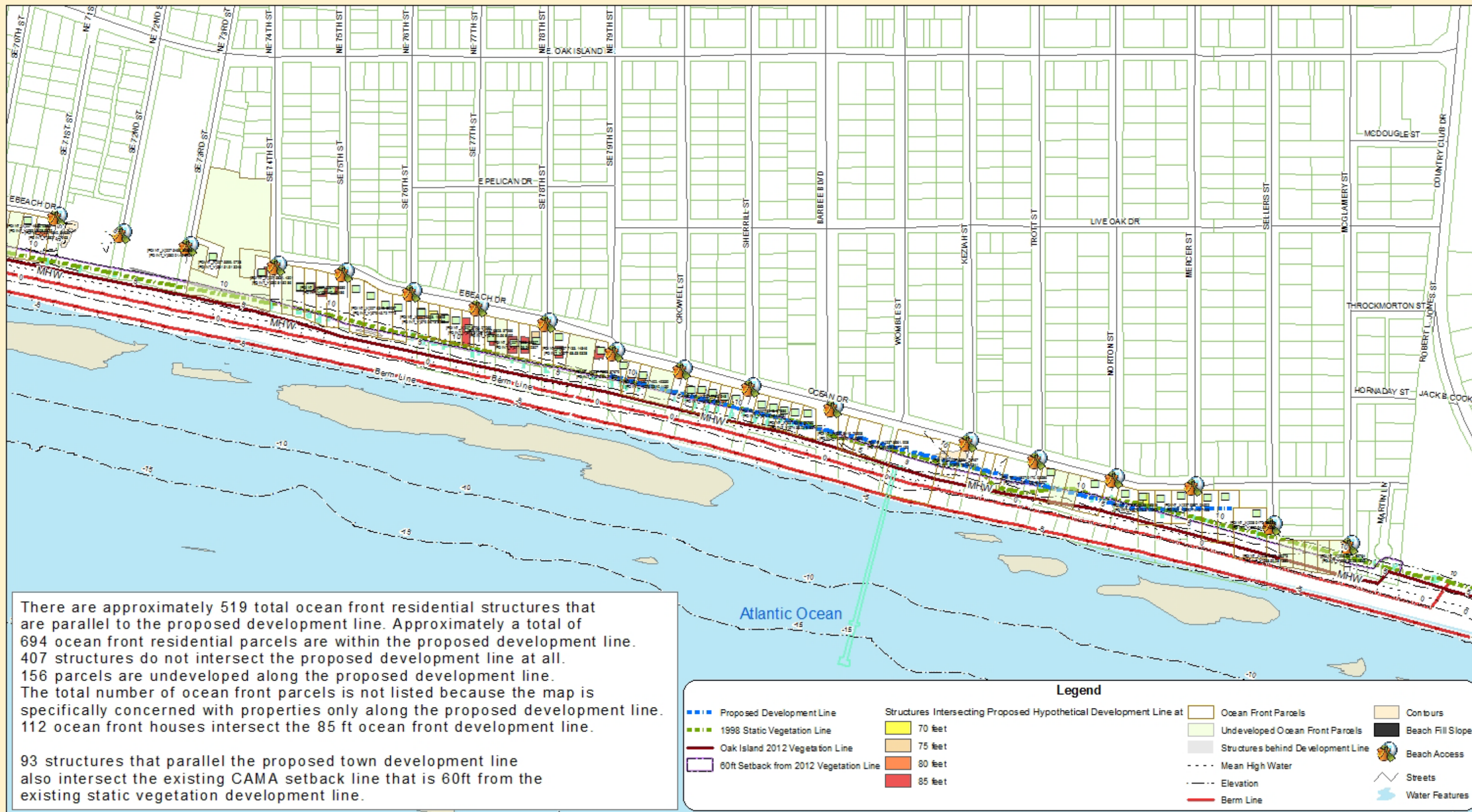
Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was gathered from disparate sources.

Oceanfront Developmet Line Map Town of Oak Island, NC



Map created by:
 Jake Vares
 Town of Oak Island
 Development Services Department
 4601 E. Oak Island Drive
 Oak Island, NC 28465
 04/14/2016





FRAME 10

Map is to be used to only show the general vicinity. Address numbers cannot be 100% guaranteed for accuracy. Map is to be used for general informational purposes only. Data used to generate this map was generated from disparate sources.

Oceanfront Development Line Map

Town of Oak Island, NC



Map created by:
Jake Vares
Town of Oak Island
Development Services Department
4601 E. Oak Island Drive
Oak Island, NC 28465
04/14/2016

0 155 310 620 930 Feet

TOWN OF OAK ISLAND
PLANNING BOARD
AGENDA ITEM MEMO

Agenda Item: New Business No. 2

Date: April 7, 2016

Issue: Dune Protection Ordinance

Department: Planning & Zoning Administrator

Presented by: Jake Vares

Presentation: None

Estimated Time for Discussion: 40 Minutes

Subject Summary:

An appeal from members of the public to protect secondary dunes was requested of town leaders. Staff has been directed to submit a dune protection ordinance text amendment. The attached newly proposed ordinance language is placed in Chapter 14 – Environment Article III portion of the towns Code of Ordinances. Dune protection ordinances from many other municipalities was reviewed by staff and the content that was considered exemplary was incorporated into the text amendment.

The dune protection ordinance adds in additional definitions to provide more clarity. The purpose and intent is also expanded and a caveat is added to state that the dune protection ordinance is consistent with the intent of the Coastal Area Management Act (CAMA). A few more statements are included throughout the text amendment to insure that we are in compliance with state law and the Coastal Resource Commission (CRC). Two of the primary sections that are added to are the enforcement and exemptions sections. The enforcement section essentially give the town more authority to take corrective action ourselves, revoke permits, do inspections, and issue stop work orders. The exemptions covers standard actions such as emergency vehicle access, the removal of a small amount of sand, beach renourishment activities, already CAMA approved projects, and Town Council specifically approved actions. The access provisions section was also modified to include ADA and handicap access, signage requirements, and shared private access points. A number of additional prohibited activities are added to Sec. 14-132. The prohibited activities are comprised of planting invasive vegetation, digging, shelling, mining, obstructing access with tents, significantly altering the dune, and removing vegetation. Three new sections were added to the end of the dune protection ordinance to regulate non-conformities, designation of enforcement officials, and undue restriction. The non-conformities portion is designed specifically to address permanent structures that become damaged. The language states that it applies only to residential development and that they can rebuild access structures like walk-overs that are damaged or destroyed greater than 50% of their replacement value. Sec. 14-146 spells out whom the enforcement officials are and their duties and enforcement authority. The final Section 14-147 was added in as a final measure to address potential regulatory taking situations which the town has to be careful to avoid because regulatory takings are illegal. A definition of secondary dune is also included with a statement that says the regulations that apply to the frontal dunes also apply to the secondary dunes. The text amendment also stipulates that when CAMA rules and town rules both apply the more restrictive regulation must be followed.

Attachments: Proposed Text Amendment

Recommendation/Action Needed: Approval of the text amendment

Suggested Motion: Approval or Denial of text amendment

Funds Needed: \$0.00

Follow Up Action Needed: Forward Recommendation to Town Council

Attachment

CHAPTER 14 - ENVIRONMENT

ARTICLE III. - PROTECTION OF SAND DUNES, SEA TURTLES AND OTHER WILDLIFE HABITAT; SAND MANAGEMENT PROJECTS

Sec. 14-121. - Definitions.

The following words, phrases, and terms, when used in this article, shall have meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Definitions of this article shall be interpreted to be the same as those recognized by the state department of environment and natural resources, the coastal resources commission, and/or the division of coastal management.

Adverse Impact means anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat.

CAMA means the Coastal Area Management Act of 1974.

CRC means the state coastal resources commission.

Development means any activity in a duly designated area of environmental concern involving, requiring, or consisting of the construction or enlargement of a structure; excavation, dredging, filling, dumping, or the removal of clay, silt, sand, gravel, or minerals; bulkheading, driving of pilings, clearing or installation of land as an adjunct of construction; alteration or removal of sand dunes, alteration of the shore, bank, or bottom of the Atlantic Ocean or any bay, sound, river, creek, stream, lake or canal.

Division of coastal management means a division of the state department of environment and natural resources charged by the state with the administration and enforcement of the Coastal Area Management Act of 1974.

Dunes (natural or manmade) means, for the purposes of the administration and enforcement of this article, those dunes or berms and sand management project areas, either manmade or natural, in existence as of December 10, 1999, and/or those restored by the town or other public entity. It shall also apply to any placement of materials from any other soil deposition project undertaken after the adoption of this article.

Dune System, Frontal Dune, means the first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

Imminently threatened means the foundation of the primary structure is less than twenty (20) feet from the toe of the erosion scarp and/or the septic system is exposed.

Invasive Exotic Species means a non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a landscape comprised of a singular plant species.

Ocean beach means lands consisting of unconsolidated soil materials that extend from the mean low water mark landward to the mean high water mark as surveyed by the U.S. Army Corps of Engineers in January 2000; to a point where either the growth of vegetation occurs or a distinct change in slope of elevation alters the configuration of landform, whichever is further landward.

Oceanfront private property means, for purposes of this article, oceanfront private property ends at the mean high water mark as surveyed by the U.S. Army Corps of Engineers in January 2000.

PCA means the project cooperation agreement entered into by the town and the U. S. Army Corps of Engineers prior to the commencement of the sea turtle habitat restoration project (sea turtle project), the Wilmington Harbor section 933 project (harbor project), or any other sand placement project entered into by the town and other government agency following the adoption of this article.

Secondary dune means, for the purposes of the administration and enforcement of this article, those dunes or berms and sand management project areas, either manmade or natural that meet the continuity of the existing surrounding primary frontal dunes. Regulations that apply to the frontal dunes also apply to the secondary dunes.

Tents means a portable shelter supported by a framework of multiple poles (this is not to include umbrellas, which have 1 supporting pole in the center of the shelter).

USACE means the United States Army Corps of Engineers.

Vehicle means a motor-driven or wind-powered vehicles, including fishing boats and amphibious vehicles, but excluding sailboats used for sport, surfboards and amphibious vehicles which are afloat and no portion of which is beached, aground, or operating on wheels or tracks.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.7)

Cross reference— Definitions generally, § 1-2.

Sec. 14-122. - Authority.

The Coastal Management Act of 1974 under G.S. 113A-117 enables local governments to participate in the CAMA land use planning and permit-letting process. The town, by filing an affirmative letter of intent, has adopted regulations with respect to the Coastal Area Management Act implementation and enforcement plans; the town has entered into a project cooperation agreement with the U.S. Army Corps of Engineers to provide vegetation and maintenance for the sea turtle habitat restoration project, the Wilmington Harbor section 933 project, and G.S. 160A-364, which gives the authority to adopt and amend ordinances related to the use of land.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.2)

Sec. 14-123. - Purpose and intent.

Dunes, berms, and the public beach are the first lines of protection against hurricanes, seasonal storms, natural erosion and other forces generated by the Atlantic Ocean. This article serves to protect, preserve, and promote the natural and manmade dune structures relied upon by the town to provide protection against the eroding effects of wind and water. This article shall also provide regulations to protect the health, safety, and general welfare of the citizens and visitors to the beaches of the town. It is also the intent of this article to promote awareness and protection of the habitat utilized by nesting sea turtles and other wildlife along the beachfront areas of the town. The town acknowledges that environmentally sensitive issues such as beach renourishment and the protection of endangered wildlife are among its responsibilities in cooperation with other state and federal regulatory agencies, and that the town must exercise its local initiatives to provide and promote an effective program for protection of its ocean beaches.

These requirements are therefore adopted for the health, safety, and welfare of persons living and visiting in the town and for the protection of public and private property. The town council does hereby find, determine and declare that it is in the best interest of the town and its citizens and the property of its citizens to preserve and protect the dunes as described in this article located within the town and bordering the waters of the Atlantic Ocean.

The town council further find that dune protection as set forth in this article will work to preserve lives and property of the citizens of the town, will work to protect the public streets within the town, will create a greater awareness on the part of residents and property owners within the town of the effects of uncontrolled dune alterations, will improve the town's ability to control alteration of dunes as described herein, will permit the town to more effectively control the alteration of protective dunes and will create a system of enforcing the regulations governing the alterations of dunes that will be equitable, understandable and applied in uniform manner to all property owners within the town.

The town council further finds that the adoption of this article will not conflict with the requirements established by the state under the Coastal Area Management Act but rather will create a regulatory system consistent with the regulations promulgated under the Coastal Area Management Act and which will operate to make those regulations promulgated under the Coastal Area Management Act more effective.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.1)

Sec. 14-124. - Territorial coverage.

This article shall apply to dunes, berms, and any other landform or sand project placement or management areas, both natural and manmade, and the vegetation located thereon, from the "mean low water mark" extending landward to the "mean high water mark" as surveyed by the USACE in January 2000; to a distance equal to the Ocean Erodible Area and/or Inlet Hazard Area as shown on maps compiled by the Division of Coastal Management, whichever distance is further landward. The maps shall be available for public review at the Development Services Department.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.5)

Sec. 14-125. - Use and development coverage.

This article shall be applicable to all use of and development on ocean beaches in the town. Included, but not limited to the following, are types of uses and development activity to which this article applies. Specifically, this article is applicable to all oceanfront property owners intending to construct, repair or replace decks, walkways, and/or steps for the purpose of gaining access to the public ocean beach from private property along the oceanfront in the town. This article applies to all persons crossing ocean beaches for the purpose of gaining access to the beaches and Atlantic Ocean.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.6)

Sec. 14-126. - Compliance.

Regulations have been drafted to protect specific areas and landforms; and prohibit projects and development not specifically addressed by CAMA. Failure to comply with this article could result in conviction and be punishable by fine or imprisonment, as provided by the state general statutes and town ordinances. The town reserves the right to prosecute offenders and may use all authorized remedies necessary, such as mandatory injunctions or abatement orders, to aid in the enforcement of this article.

If any provision of this chapter is in conflict with a rule adopted by the State Coastal Resources Commission dealing with oceanfront erosion control or regulation of development as contained in 15A NCAC 07H.300, then the rule or regulation shall control and apply in lieu of the provision of this chapter in conflict therewith. When CAMA rules and town rules both apply the more restrictive regulation must be followed.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.3)

Sec. 14-127. - Enforcement.

Violation of this article shall be punishable under section 1-7, up to \$500.00 fine or 20 days in jail. Anything placed in or on sand dunes or their designated access areas or attached to posts, ropes, sand fences or signs may also be designated as litter and removed and disposed of by the town. All persons are also notified that any person who shall be adjudged to have knowingly or willfully violated the provisions of this article may also be guilty of a class II misdemeanor as defined in G.S. 113A-126(c) and may also be subject to civil penalties as provided in G.S. 113A-126(d)(1)(2)(3) and (4).

- (a) The property owner, as well as his or her agents, contractors, subcontractors, or employees, may be held liable for the proper execution of any portion of work performed under the permit or permits issued for such work.
- (b) The Code Enforcement Official shall inspect every project approved under this section at least one time after completion of the work and completion of any restoration or protection of vegetation which he may prescribe.
- (c) Any person violating the provisions of this section shall immediately undertake restoration or replacement of such items in accordance with requirements of the Code Enforcement Official. In the event such restoration or replacement is not completed within 30 days of the initial violation, the town is authorized to undertake such restoration. All costs of such restoration or repair incurred by the Town shall be deemed an additional civil penalty to be collected from the violator.
- (d) In the event that an individual fails to comply with the requirements set forth in this subsection, the Town shall have the authority to revoke all issued permits and issue stop work orders on the real property on which the offense occurred until such time as the offender has come into compliance with the provisions of this section.

- (e) The provisions of this article may be enforced by an appropriate equitable remedy issued from a court of competent jurisdiction.
- (f) Failure to comply with this division or with the provisions of a permit or to perform the work as proposed by the permit application shall result in the immediate issuance of a stop work order by the building inspector.
- (g) Failure of any person to comply with a stop work or restoration order issued by the building inspector shall constitute a violation of this article subject to all the enforcement provisions of this section.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.11; Amend. of July 13, 2010)

Sec. 14-128. - Exemptions.

Exempted from this article is the removal of sand, seashells, or similar materials for souvenirs in amounts that can be carried on the person; or damage caused by rescue vehicles in an attempt to gain emergency access to the public beach. Nothing in this section shall be deemed to allow any acts which shall willfully damage or destroy vegetation as an exemption.

- (a) Private and emergency vehicles authorized through the Town of Oak Island Police Department and public vehicles are allowed to access the public beach by way of designated, improved vehicular access-ways.
- (b) The provisions of this section shall not apply to the town, the state or any agency of the federal government, their contractors and subcontractors, while engaged in beach restoration efforts on that portion of the beach lying within the boundaries of the town and adjacent to the waters of the Atlantic Ocean, such beach restoration efforts to include, but be limited to, beach bulldozing and the pumping or placing of sand on the beach strand.
- (c) Areas designated in connection with approved residential or commercial facilities for the installation or water and sewage systems are exempt if the proper permits obtained.
- (d) Activities authorized by the town for beach renourishment and protection to include the placement of any pipe lines required to permit the pumping of sand onto the beach are exempt if the proper permits obtained..
- (e) To the extent the provisions of this section conflict with any regulations adopted by agencies of the state under the provisions of the Coastal Area Management Act or other acts of the general assembly, then such rules or regulations adopted pursuant to such state statutes shall control.
- (f) Storage of small sailboats out of the public trust beach area and the tidal zone, provided permission is granted by the oceanfront property owner.
- (g) Work performed under the direction of the property owner to protect primary structures that are imminently threatened as a result of severe erosion, provided the appropriate state permit has been obtained.
- (h) Work authorized by a general waiver by the town council following a natural disaster.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.4)

Sec. 14-129. - Access provisions.

- (a) Town-owned and maintained street-end access points will employ sand walkovers, except those required to be elevated by the PCA in the sea turtle project and at town-designated disability access sites.
- (b) For the purpose of establishing access points between town-owned and maintained street-end access points, sand walkover access paths shall be located at approximately 180-foot intervals in 750-foot wide blocks, and at approximately 157-foot intervals where blocks between town-owned street-end access points are approximately 320 feet wide. Town staff is authorized to vary distances between access points established between town-owned street-end access points as may be necessary to accomplish as nearly as possible equal distance between access points. Access paths in the sea turtle project area shall be approximately six feet wide, except in those areas designated

for emergency vehicle access and town equipment access, which may be up to ten feet in width. Access paths outside the sea turtle project and the harbor project shall be up to ten feet in width as town staff determines necessary for emergency vehicle access and access for town equipment. Emergency vehicle and town equipment access points shall be designated by town staff and clearly marked as such. Unless required by the USACE pursuant to the PCA or other USACE agency rule, wooden walkways or walkovers from private property onto public property will not be permitted. For purposes of this article, private property ends and public property begins at the mean high water mark as surveyed by the U.S. Army Corps of Engineers prior to placement of sand for the sea turtle project or other sand placement projects.

- (c) To protect and promote the vegetation placed by the town on the new sand dunes as required by the PCA in the sea turtle project and for the purpose of protecting and promoting vegetation placed by the town on the new sand dunes in the area of the harbor project, pedestrian traffic shall not be allowed across sand dune areas vegetated by the town. The town shall install sand fencing along the landward side of the new sand dune, and post and rope fencing on the seaward side of the new dune in the area of the sea turtle project. In the area of the harbor project, similar sand fencing and/or post and rope fencing shall be put in place as areas are vegetated by the town or its volunteers. Consistent with the number of access paths required in subsection (b) of this section between town-owned street-end access points, exact location of sand fencing and post and rope fencing on the sand dunes in the area of the harbor project may be varied in the discretion of town staff as the beach profile and vegetation patterns become more established. Sand fencing will be placed in a "U" configuration at accesses. (From "U", post and rope will be used to mark and delineate access.)
- (d) Garbage receptacles will be placed by the town on the seaward side of each town-owned street-end access point and also on the landward side of the street-end access points. Other garbage receptacles may, at the discretion of town staff, depending upon the amount of usage, be placed on the seaward and/or landward side of non street-end access points.
- (e) Individual oceanfront property owner access to the public beach will continue as before, and placement of sand fencing and rope and post fencing shall not be done in such a manner as would impair an oceanfront property owner from direct entry onto the public beach from his private property. For the purposes of this article, private property ends and public property begins at the mean high water mark as determined by the USACE survey in January 2000.
- (f) Commercial beach access structures must meet commercial structure Americans with Disabilities Act requirements according to the North Carolina Building Code.
- (g) Signage less than one square foot instructing persons to avoid trespassing into the dunes, and rope fence for pedestrian traffic control may be installed. Construction of such devices shall only be permitted with the prior written consent of the Code Enforcement Official. Willful removal or damage to any public or private approved dune stabilization device such as sand fencing or pedestrian control mechanisms shall constitute a violation of the provisions of this section.
- (h) The Town Council or their designee may grant an exception for private residential beach access structures regarding horizontal and vertical development for purposes of allowing a handicapped accessible structure to be built. These structures must meet the provisions of the NC Building Code.
- (i) The town encourages adjoining property owners to construct centrally located shared beach access structures where appropriate in order to reduce the overall number of structures on the beach. In cases where shared structures are proposed, the property owners must submit a site plan and restrictive covenants that indicate the location of the proposed structure and the proper restrictions against construction of additional individual structures.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.8)

Sec. 14-130. - Decks, walkways, and stairs; construction standards.

The following rules shall govern the construction, repair, or replacement of all oceanside decks, walkways and steps. In all cases, whether new construction, repair, or replacement, the following standards and rules shall apply:

- (1) Construction of decks, walkways, and steps shall be in accordance with the state building code as the code may be amended from time to time.
- (2) Where the height of the structure would cause steps to impede upon the public beach when built as prescribed in this article, a landing may be built to allow steps to land in an easterly or westerly direction, terminating on private property and meeting all required setbacks. A local

permit officer shall determine, based on findings following a site visit and after analyzing specific site conditions, in which direction steps shall land. In no case shall the development exceed what is absolutely necessary and required by the state building code for landings and turnaround areas.

- (3) If an additional set of steps that would terminate beneath the primary structure for access to storage, parking, or shower facilities is desired by a property owner, this may be allowed as long as the development would not increase damages to dunes or vegetation. In no case shall the development exceed what is absolutely necessary and required by the state building code for landing and turnaround areas.
- (4) Cantilevered seating areas along walkways will be allowed, but in no case shall the entire width of the walkway, including the cantilevered area, exceed six feet.
- (5) New construction (includes the construction of new residences, accessory structures, additions, or enlargements permitted by section 8-121) of decks, walkways, and steps will be in accordance with CAMA regulations. A CAMA minor development permit must be obtained for all new construction. New construction of walkways and steps for the purpose of gaining access to the public beach shall be constructed in accordance with applicable CAMA regulations for such structures. No part of the structure or any supporting member of any deck, walkway, or step will be allowed to rest on public property. For the purposes of this article, private property ends and public property begins at the mean high water mark as surveyed by the USACE in January 2000. Walkways and steps may in no way encroach into the side setbacks of the district in which the structure is located. In areas where the mean high water mark as surveyed and determined by the USACE in January 2000 is located within six feet or closer to the oceanward side of any home or other structure proposing to construct a deck, walkway, or steps, then, in that event, a deck or walkway up to six feet in width may be constructed, but the deck or walkway must be supported by cantilevering to the main structure or angle-bracing sufficient to meet all state building code standards as the code may be amended from time to time. It is the purpose and intent of this section to allow new construction of decks, walkways, and steps on existing structures where such construction might necessarily extend beyond the mean high water mark, but at the same time to prevent any part of the deck, walkway, or steps, or its supporting members from coming to rest on public property, except to the extent absolutely necessary to allow landing of steps within the area of six feet seaward of the existing structure. Angle-bracing and cantilevering shall not be required in those areas where construction would allow for all portions of the deck, walkway, or steps to remain on private property.
- (6) The following are intended to apply to replacement of decks, walkways, or steps which have been damaged more than 50 percent of their value, based on actual replacement costs, including labor and material:
 - a. Decks on existing structures may be replaced, provided that they are constructed in accordance with the state building code as the code may be amended from time to time. The deck may not exceed six feet in width, but may extend the full length of any previous deck that existed on the structure.
 - b. If the mean high water mark as surveyed and determined by the USACE in January 2000 is located six feet or closer to the oceanward side of the existing structure, then any deck to be constructed pursuant to this article may not exceed six feet in width and must be supported entirely by cantilevering or diagonal bracing attached to existing house pilings. The design and construction of this deck must be accompanied by a professional engineer's certificate that the deck will meet all building code standards of the state as such standards may be amended from time to time.
 - c. Walkways and steps for access to the public beach shall be constructed in accordance with applicable CAMA regulations for such structures. Steps must land south and be completely within private property as described in this article. Steps may in no way encroach into the side setbacks of the district in which the structure is located. In cases where the mean high water mark as surveyed and determined by the USACE in January 2000 is located six feet or closer to the oceanward side of the structure to which the deck, walkway, and steps is to be attached, then in that event, the landing of the steps leading from the deck may come to rest within the area up to six feet oceanward of the house. It is the intent and purpose of this section to allow repair and replacement of decks, walkways, and steps, but at the same time to minimize the intrusion of repair and replacement on public property.
 - d. In any case where the general construction of the primary structure would prohibit the attachment of a cantilevered or diagonally-braced deck (i.e., preform house not elevated on pilings or with concrete or block pilings that cannot be drilled), a special exception may be

made to allow the construction of a freestanding deck, not to exceed the regulations prescribed in this section. An engineer's report confirming these findings must accompany any request for this exception.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.9)

Sec. 14-131. - Repair and maintenance of the public beach, dunes, and sand management project areas.

- (a) In no case shall any person physically alter the dunes, ocean beach, or any part of sand management project areas without first having obtained a permit for such alteration from the town and any appropriate state agencies. An application for such permit must include a statement describing the proposed development or action, length of time for the project to be completed, and any other information deemed pertinent by the town. Any work permitted by the town shall not commence until such time as a CAMA permit has also been issued. No CAMA permit for the alteration of dunes, ocean beach, or sand management project areas shall be issued unless a copy of the permit issued by the town has been received and reviewed by the proper permitting office. Any damage caused to dunes, ocean beach, or sand management project areas or the vegetation located thereon shall be immediately corrected or restored as nearly as possible to the conditions that were present prior to the commencement of the activity. If vegetation cannot be restored immediately, the person responsible for causing such damage shall be responsible for replanting vegetation to the satisfaction of the town at the start of the next planting season.
- (b) The town may from time to time have need to repair and maintain dunes and project areas. Nothing in this article shall prohibit the town or other public entities from completing necessary actions to protect and maintain the health, safety, and general welfare of the public.
- (c) The normal, non-impacting maintenance of lawns, commercial, office, and institutional tracts which are already developed. Maintenance shall include lawn maintenance, the relocating and replacement of shrubs, the cutting and removal of poisonous or harmful plants, briars, and dead foliage. In accomplishing the foregoing, the use of equipment which limits damage to surrounding vegetation is encouraged; the use of heavy commercial equipment is discouraged. The removal or destruction of vegetation referenced in this section is prohibited.

(Ord. of 3-12-2002, ch. 5, art. 1, § 1.10)

Sec. 14-132. - Additional prohibited activities.

The following additional activities are prohibited:

- (a) Walking, running, playing, climbing or other pedestrian traffic of any kind or description across sand dunes except in designated access areas.
- (b) Allowing pets to traverse sand dunes except in designated access areas.
- (c) Placing anything in or on sand dunes or their designated access areas.
- (d) Attaching anything to sand dune access area posts, ropes, sand fences or signs.
- (e) Vehicular traffic of any kind or description across sand dunes except in designated access areas as authorized by the town.
- (f) Cutting, removing, trampling or in any manner damaging dune vegetation.
- (g) Throwing or depositing refuse onto sand dunes or their designated access areas.
- (h) Allowing refuse to be windblown onto sand dunes or their designated access areas.
- (i) Engaging in any other activities that reduce the stability of sand dunes and potentially decrease their storm protection value, wildlife habitat value and aesthetic value.
- (j) Installation of vegetation inconsistent with sand dune systems, such as lawn grasses or sod, or herbaceous varieties that are not commonly known as "salt-tolerant" dune varieties or that may be determined to be "invasive exotic species";
- (k) Digging, shelling, mining, or mechanical alteration of the dune topography;
- (l) Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.

- (m) Development activities without a valid building permit, Health Department approval, or CAMA authorization
- (n) When, due to beach width, tide levels, crowd conditions, or other factors, placement of tents or similar devices will obstruct the passage of emergency or ocean rescue vehicles or the line of sight from lifeguard stands or other surveillance areas.
- (o) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand whereby, in the opinion of code enforcement officers, such alteration presents a dangerous condition. Persons responsible for altering the contour or shape of the beach to any extent shall restore the beach to its original condition prior to leaving the area unattended for any period of time.
- (p) One shall not remove any vegetation growing on any sand dune except areas designated on site plans for commercial or multifamily development as approved for land disturbing activities under the provisions of the Coastal Area Management Act and as shown on site plans approved by appropriate officials of the town.

(Ord. of 8-12-2008(2); Amend. of 7-13-2010)

Editor's note— Amendment of July 13, 2010 changed the title of § 14-132 from dune planting area to additional prohibited activities.

Secs. 14-133—14-140. - Reserved.

ARTICLE IV. - BEACH HAZARDS

Sec. 14-141. - Definitions.

The following words, phrases, and terms, when used in this article, shall have meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Beach equipment means any personal items that are designed or manufactured for use, or actually used, on the beach or in the adjacent tidal waters. Examples include, without limitations: chairs, lounges, umbrellas, cabanas, canopies, tents, horseshoes and stakes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers and any other personal property items. Beach equipment shall not include municipal trash containers, signage or structures, or any items placed or permitted by a governmental agency (such as signs or protection devices for turtle nests). Non-motorized sailboats and catamarans shall be permitted to remain on the strand overnight and shall conform to the requirements in subsections 14-143(b)—(d).

Ocean beaches means the area adjacent to the ocean and ocean inlets that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach that is subject to regular flooding by tides and the dry sand area of the beach that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. The landward extent of the ocean beaches is established by the common law as interpreted and applied by the courts of this state. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. (1979, c. 618, s. 2; 1998-225, s. 5.1.)

Nighttime hours means 8:30 p.m. until 6 a.m.

(Ord. of 7-13-2010; Amend. of 7-12-2011; Amend. of 11-12-2013; Amend. of 11-12-2013)

Sec. 14-142. - [Digging holes on beach].

Holes dug on the beach are required to be attended at all times and filled prior to leaving the beach.

(Ord. of 7-13-2010)

Sec. 14-143. - Beach equipment, personal property, obstructions and glass containers.

- (a) Except as provided by a specific provision of this Code, all beach equipment must be removed from the beach by its owner or permitted user on a daily basis. All personal items and beach equipment

unattended and remaining on the public beach during "nighttime hours" as set forth in section 14-141 shall be classified as abandoned property and will be removed and disposed of by the town.

- (b) A business that rents beach equipment may not place or erect said equipment strictly for advertising purposes only. Such business shall abide by all rules and regulations pertaining to their particular license that has been issued and must adhere to the installation and removal regulations as outlined in this article.
- (c) All beach equipment shall be set at least ten feet from any sea turtle nest and the town or the Oak Island Sea Turtle Protection Program shall provide a visual marker or sign to designate this area.
- (d) No beach equipment, personal property, or obstructions may be placed in an area within a 15 feet of any duly marked and designated emergency beach access points on the seaward side of the access.
- (e) It shall be unlawful for any person to have glass containers of any kind on the beach or beach access areas.

Editor's note— An amendment of Feb. 20, 2015, changed the title of § 14-143 from "Beach equipment, personal property, and obstructions" to "Beach equipment, personal property, obstructions and glass containers."

Sec. 14-144 - [Penalty.]

Any person who shall violate this article shall be subject to a civil penalty in an amount of \$50.00 for the first offense, \$100.00 for the second offense, and escalates to a criminal offense after second violation. Each day that a person is in violation of this article shall constitute a new and separate offense. Civil penalties shall be payable to the town within 15 days of a civil citation.

Sec. 14-145 - Non-Conformities

Nonconforming structures. Access structures and beach walkovers that are damaged or destroyed greater than 50% of their replacement value may only be built back in conformance with current requirements as set forth in this section. Access structures and beach walkovers for single-family and duplex lots that are damaged or destroyed greater than 50% of their replacement value may not be built back. All determinations of replacement value under this section shall be made by the building inspector.

Sec. 14-146 – Designation of Enforcement Officials

- (a) The building inspector, planning and zoning administrator, and code enforcement officer is designated as the town official to perform the duties relating to the issuance of and/or revocation of permits described under the terms of this article and enforcing the terms and conditions of this article.

Sec. 14-147 – Undue Restriction

If the planning director concludes that application of the dune protection standards in Chapter 14, Article III; unduly restricts the landowner's reasonable use of the land, less restrictive means of preserving the significant dune(s) may be authorized, subject to one or more of the following mitigation:

- (a) Stabilization of the portions of the dune impacted by development through revegetation with native vegetation;
- (b) Use of sand fencing with a minimum height of four feet to inhibit sand migration due to disturbance;
- (c) Mechanical excavation of replacement sand, where appropriate;
- (d) Use of piles and elevation of crossovers or other development at least two feet above the sand dune;
- (e) Avoidance of storage of equipment, materials, vehicles, or other debris on dune faces; and
- (f) Any other mitigation technique considered appropriate by the Planning Director.