

additional speed control along the road, and Ms. Crockett concluded that many residents cannot attend Board meetings to express their concerns.

Randy Appleton, 2024 N. Virginia Dare Trail, Kill Devil Hills – Mr. Appleton stated that his property was one of seven houses west of Virginia Dare Trail that are included in the Town’s Beach Erosion Control and Flood and Hurricane Works Municipal Service District (MSD). He submitted a written request to the clerk to have his property removed from the MSD.

Response to Public Comment

Introductions and Presentations

Old Business

New Business

1. Draft Water Shortage Response Plan (Attached NB-1)

Town Manager Debora Díaz provided an overview of the process: North Carolina General Statute 143-355(1) requires each unit of government that provides water service to the public periodically update its water shortage response plan (WSRP). All WSRPs are required to be submitted to the Department of Environmental Quality, and must be adopted by each unit’s governing board. Kill Devil Hills’ plan closely follows Dare County’s WSRP as the County is the sole water supplier, while also addressing needs specific to the Town.

The draft WSRP has been reviewed by Environmental Quality staff and deemed complete to the standards and criteria established by statutory requirements. A 30-day public comment period is required before the plan can be adopted. The plan will be distributed and placed in strategic locations for public inspection. It will return to the Board’s November 14, 2018 meeting with a recommendation for adoption. She noted that Assistant Public Services Director Derek Dail and Water Plant Supervisor Al Burton were present to answer any questions.

Commissioner Windley inquired how often the plan was updated. Mr. Dail stated there was a minimum criterion of five years, or less if any changes are made, including personnel or technology. He noted the WSRP was mainly updated to address technology updates in community outreach.

Commissioner Windley asked whether the WSRP has ever been implemented. Neither Mr. Dail nor Ms. Díaz were aware of the plan being implemented. Ms. Díaz replied that it would likely be implemented during a catastrophic event like a transmission main break or a damaged water tower, in conjunction with a large fire where water was needed. Mr. Dail posed a scenario of Roanoke Island water supplies threatened by salt-water inundation from a storm, which could potentially halt all safe water delivery to the Town.

P. O. Box 1593
Kitty Hawk, NC 27949
October 8, 2018

Kill Devil Hills Board of Commissioners
c/o Mary Quidley, Clerk
102 Town Hall Drive
Kill Devil Hills, NC 27948

Re: Request for Removal of Property From MSD
Landowners Randall & Debbie Appleton
Property 2024 North Virginia Dare Trail, Kill
Devil Hills, NC

Dear Commissioners:

Pursuant to NCGS § 160A-538.1(a1), I am filing this request to remove the above-mentioned property owned by me and my wife from the Kill Devil Hills Municipal Service District (MSD) for the following reasons:

1. The subject property is our full time residence. It consists of a parcel of land approximately 50' x 150' on the west side of NC 12/Virginia Dare Trail (which is the site of our home) and a parcel of land that is 29.16' wide extending from the east side of NC 12/Virginia Dare Trail to the ocean. The parcel on the east side of NC 12/Virginia Dare Trail is undeveloped. (Original survey attached as #1.)

2. Our property is one of seven similarly situated parcels with residences located on the west side of NC 12/Virginia Dare Trail and an undeveloped parcel of land approximately 29' in width on the east side of NC 12/Virginia Dare Trail. All of these parcels were the site of the Clay Don Hotel and will be referred to generally herein as the "Clay Don" properties. (Attached as #2 is a copy of

a postcard depicting the Clay Don Hotel. I have designated the general location of the aforementioned seven parcels by black lines.)

3. According to a diagram depicting the property included in the Kill Devil Hills MSD, the only real property to the west of NC 12/Virginia Dare Trail included in the MSD are the seven properties making up the Clay Don properties. (Diagram of Kill Devil Hills MSD is attached as #3).

4. According to Town documents describing the purpose of the Kill Devil Hills MSD, it is to protect infrastructure improvements and private properties (page 8 of 19, Adopted Minutes of the Kill Devil Hills Board of Commissioner's Meeting, April 13, 2015, attached as #4).

5. The Kill Devil Hills MSD was created by the Town through the authority to create Municipal Service Districts as defined in "The Municipal Service District Act of 1973," NCGS § 160A-535, et seq. (attached as #5).

6. A function approved by The Municipal Service District Act is beach erosion control and flood and hurricane protective works (NCGS § 160A-536(1). A Municipal Service District is defined as a district ". . . in need of one or more of the services, facilities or functions" listed in NCGS § 160A-536 "to a demonstrably greater extent than the remainder of the city." NCGS § 160A-537(a).

7. Our property located at 2024 North Virginia Dare Trail is not in need of erosion control or flood or hurricane protection or protection of improvements or infra-structure to a demonstrably greater extent than any other residence/structure situated on the west side of NC 12/North Virginia Dare Trail, due to actions taken by the owners of the Clay Don properties jointly and separately to address erosion, storm and structure protection beginning in approximately 1999 and continuing to the present.

8. The owners of the Clay Don properties engaged in activities to address storm and erosion

protection beginning in approximately 1999 consisting of the erection of sand fencing, creation of two designated pathways and planting of various vegetation, including those commonly known as "beach grass" and "sea oats."

As the years passed, the owners gradually moved the fencing and vegetation in an easterly direction from NC 12/Virginia Dare Trail toward the ocean, resulting in the creation of a vegetated dune line filling the properties east of NC 12/Virginia Dare Trail from the north border to the south border of the parcels. The result of these efforts is a vegetated dune line approximately 7' to 8' high adjacent to NC 12/Virginia Dare Trail extending several hundred yards to the final eastward line of stable and natural vegetation.

A copy of a photograph taken from our front porch in January 1999 is attached as #6. It reflects a barren expanse of sand from the east side of NC 12/North Virginia Dare Trail to the ocean prior to the action taken by the Clay Don property owners described above.

An aerial photograph of the Clay Don properties taken on October 18, 2002, reflecting the presence of the early lines of beach fencing and presence of vegetation as a result of the efforts of the Clay Don property owners, including our family is attached as #7.

Attached as #8 is a photograph taken from our front porch reflecting the damage to the dunes, fencing and vegetation by Hurricane Isabel in 2003.

Attached as #9 is a photograph taken from near the eastern edge of the dunes and vegetation which were restored by the Clay Don owners following Hurricane Isabel. According to the image, #9 was taken on January 1, 2009.

Attached as #10 is a photograph of the same area as above taken in January 2013 following repair of the eastern most line of beach fencing damaged by Sandy (storm), which did not breach our dune.

Attached as #11 is a photograph taken in the

Spring of 2015 from the western side of the Clay Don properties which reflects the vegetated dune stretching several hundred yards from the east side of NC 12/North Virginia Dare Trail.

Attached as #12 is an aerial view of the area reflected above following beach nourishment reflecting the vegetated dune extending from NC 12/North Virginia Dare Trail.

Attached as #13 is a photograph taken from our driveway in September 2018 in an effort to give some perspective of the height of the dune reflected in the photographs above.

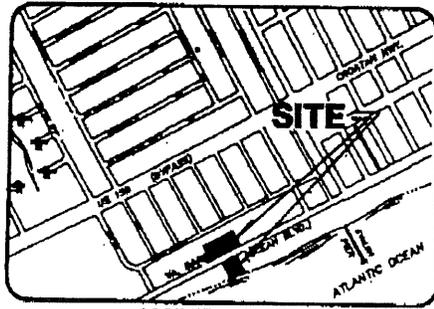
Attached as #14 is a photograph taken from our front porch in October 2018 reflecting the expanse and density of vegetation of the area depicted in the photographs above.

9. The dune line described above has not been breached since Hurricane Isabel in 2003 and has provided protection from storm and erosion damage for the residences described above as well as NC 12/Virginia Dare Trail and properties to the north and south of the parcels on both sides of NC 12/Virginia Dare Trail.

10. As a result of the efforts described above to establish a stable, vegetated dune, my property has not suffered storm or erosion damage to any demonstrable level, much less when compared to similarly situated residences on the west side of NC 12/Virginia Dare Trail which lay outside the current MDS.

11. Based upon the above, my property described herein is not in need of services, facilities or functions of the MSD to a demonstrably greater extent than similarly situated structures (remainder of the town) outside the current MSD.

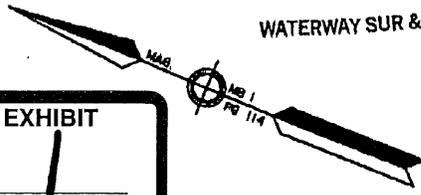
For the reasons stated above, I respectfully request our property at 2024 North Virginia Dare Trail, Kill Devil



PRINTED

JUN 19 1991

WATERWAY SUR & ENGRG



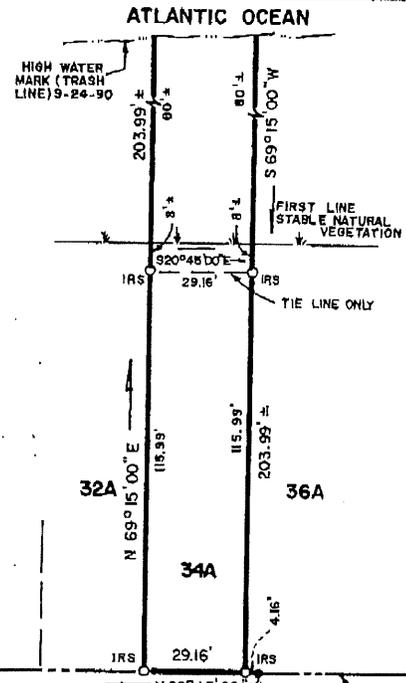
NOTES:

1. AREA = W.NC 12 - 7535 SF
E. NC 12 - 5948 SF
TOTAL - 13,483 ± SF
2. PROPERTY LOCATED IN FIRM ZONE A4 (W. SIDE N.C. 12)
3. BLDG. LINES PER TOWN ZONING ORDINANCE.
4. AVG. GRD. ELEV: 8.6' (W. SIDE N.C. 12)
5. DARE CO. PIN NO. 9885 (18) 30-1134.
6. * INDICATES CALCULATED POINT NOT SET IN FIELD.

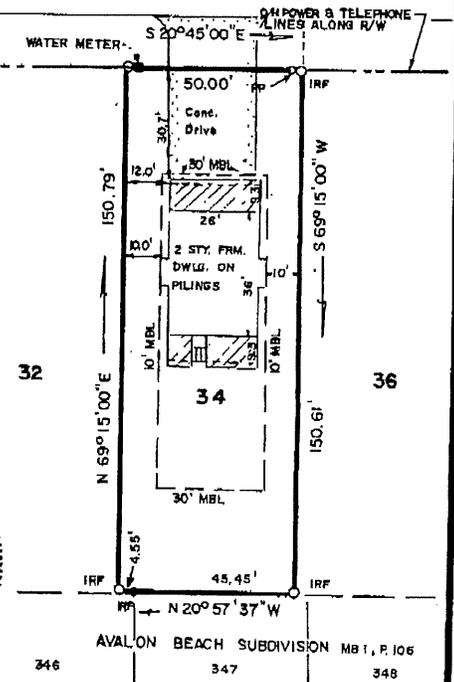
- Building lines shown hereon must be verified. The surveyor makes no certification as to zoning and/or restrictive covenant setbacks.
- This survey is subject to any facts that may be disclosed by a full and accurate title search.

I, James L. Overton, Sr. certify that this map was drawn under my supervision from an actual field land survey; and that this map is not for recordation. Witness my hand and seal this 19th day of June 1991.

James L. Overton, Sr.
James L. Overton, Sr. R.L.S. L-3339



NC 12 / VA. DARE TRAIL 50' R/W



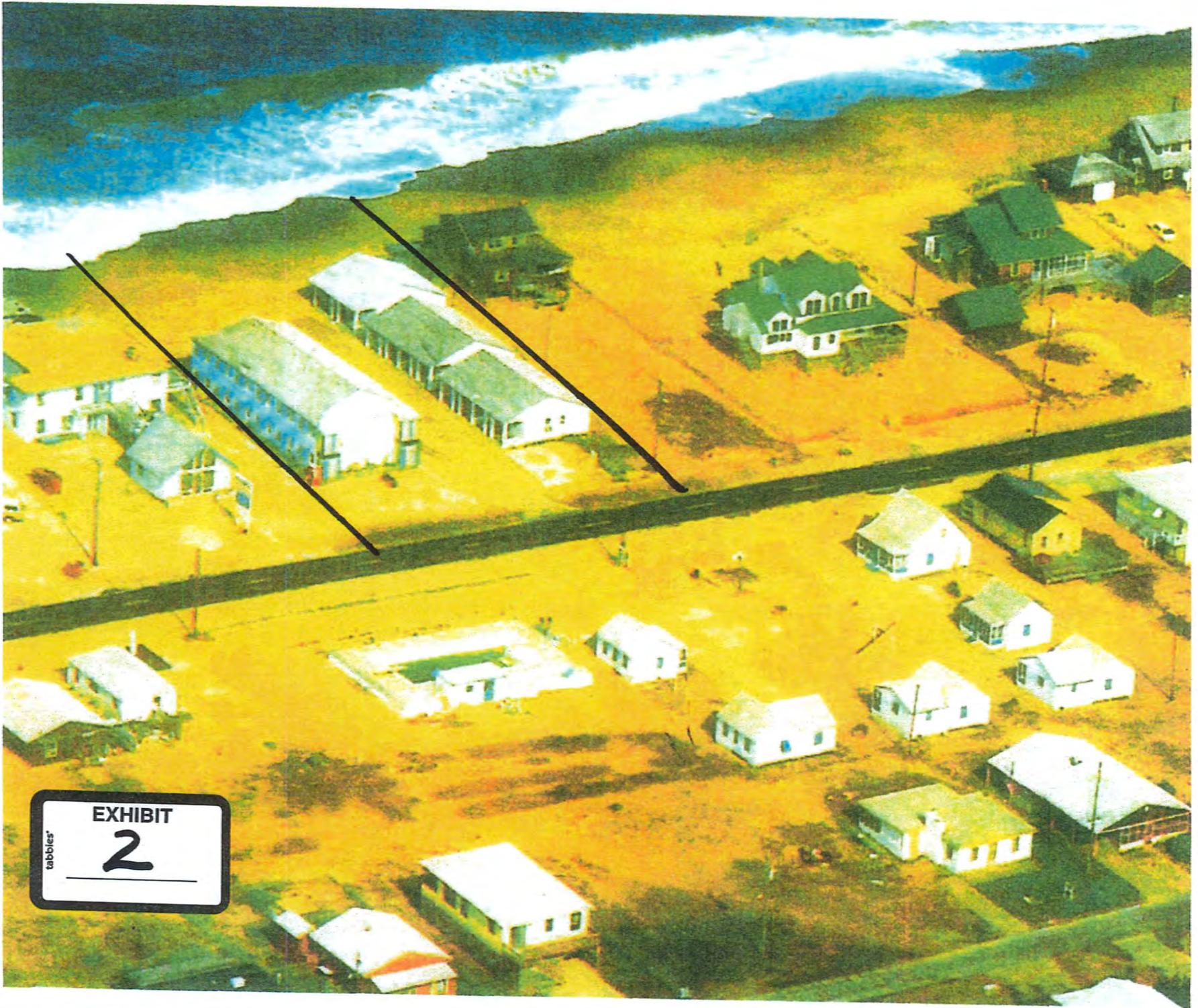
REFERENCE: PC C, SL 127D
DESCRIPTION: LOT 34, RECOMBINATION OF LOTS FOR CLAY DON, INC., TOWN OF KILL DEVIL HILLS, ATLANTIC TWP.

COUNTY OF DARE, NORTH CAROLINA

Waterway Surveys & Engineering, Ltd.
Coast Professional South
2503 N. Croatan Hwy., Suite 5
Kill Devil Hills, N.C. 27948 (919) 441-2113

PLAT FOR
ARMAND D. MULLER
BETTY A. MULLER AND WIFE
DBA / CLAY DON, INC.

SURVEYED 9-24-90 GBM PLATTED 10-4-90
SCALE: 1" = 40'
REVISED: FINAL AS-BUILT 6-17-91/MEK



tabbles®
EXHIBIT
2



TOWN OF KILL DEVIL HILLS

Land Where Flight Began

PUBLIC NOTICE

NOTICE is hereby given that on Monday, April 13, 2015 at 5:30 o'clock p.m. the Kill Devil Hills Board of Commissioners will hold its first meeting of the month in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road. The public is cordially invited to attend.

Call to Order

Pledge of Allegiance and Moment of Silence

Agenda Approval

Public Hearing

1. Proposed beach nourishment municipal service district and the proposed service to be provided within the municipal service district and adoption of resolution establishing municipal service district

Public Comment (Time limit of 3 minutes per person; 5 minutes per group)

Response to Public Comment

Introductions and Presentations

1. Representatives of the Outer Banks Visitors Bureau presentation on tourism and its impact to Dare County

Old Business

1. Beach driving

New Business

1. Beach nourishment agreements
 - A. Interlocal agreement with Dare County
 - B. Agreement for bond counsel for financing beach nourishment project
2. Appointments
 - A. Historic Landmarks Commission – regular position
 - B. Zoning Board of Adjustment – two regular and one alternate positions
 - C. Dangerous Animal Appeal Board – two regular positions
3. Personnel Classification and Pay Study – Becky Veazey, MAPS Group

Commissioners' Agenda

Mayor's Agenda

Town Manager's Agenda

Town Attorney's Agenda

Consent Agenda

Public Comment

Response to Public Comment

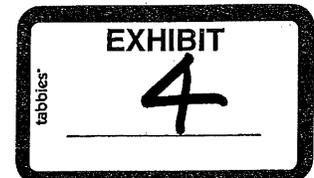
Adjourn

Posted this 8th day of April 2015.

Mary E. Quidley

Town Clerk

Copies to: Mayor and Board of Commissioners, TM, TA in their packet materials; all department heads; all Town bulletin boards; KDH Sunshine List, including all local news media; KDH Electronic Distribution List; Facebook; website; file



Minutes of the Monday, April 13, 2015 regular meeting of the Kill Devil Hills Board of Commissioners held at 5:30 o'clock p.m. in the Meeting Room at the Administration Building, 102 Town Hall Drive, off Colington Road.

Members Present: Mayor Sheila F. Davies; Commissioners Travis Appleman, Mike Hogan, Michael Midgette, Brandi Rheubottom

Members Absent: None

Others Present: Debora P. Diaz, Town Manager; Steven D. Michael, Town Attorney; Greg Loy, Planning Director; Mary E. Quidley, Town Clerk

Call to Order

At 5:31 p.m., Mayor Davies called this meeting of the Kill Devil Hills Board of Commissioners to order and welcomed all present.

Pledge of Allegiance and Moment of Silence

Mayor Davies asked all to remember Town staff member Dale Bliss in their thoughts this evening as he recently lost his brother.

Agenda Approval

Commissioner Hogan made a motion for the Board of Commissioners to approve the agenda for this meeting as submitted and Commissioner Appleman seconded that motion. Approval was unanimous, 5-0.

Public Hearing

Town Attorney Steve Michael read aloud the rules of procedure for this public hearing and at the conclusion of the procedural guide, he called the public hearing to order. He announced that the public hearing was called for the Board of Commissioners to receive public comment, both written and oral, on the proposed beach nourishment municipal service district and the proposed service to be provided within the municipal service district and adoption of the resolution establishing the municipal service district.

- 1. Proposed beach nourishment municipal service district and the proposed service to be provided within the municipal service district and adoption of resolution establishing municipal service district (Attached PH-1)**

Dirk Murray, 2028 N. Virginia Dare Trail, Kill Devil Hills: Mr. Murray submitted an e-mail inquiry on Monday, March 23, 2015. He asked how the decision to include the seven properties (mentioned earlier in this meeting by Mr. Raymond Murray) came to be included in the MSD. What part of those properties are being taxed at the proposed \$.33 increase – the entire property or just the property on the beach side?

(This e-mail was directed to Planning Director Greg Loy who responded to Mr. Murray by telephone. Mr. Murray indicated his interest in the public hearing and expressed a desire to attend.)

Frank Hicks, 2703 North Virginia Dare Trail, Kill Devil Hills: Mr. Hicks submitted an e-mail statement in favor of the beach nourishment project and indicated he would like to see it implemented soon. As a cost offset, Mr. Hicks suggested the beach be more friendly to entertainment venues that would generate extra money for the Town.

Mr. Hicks also suggested that once the project is completed that beach driving should be prohibited as it takes a toll on the sand, and people walking on the beach.

(Mr. Hicks e-mail was responded to by the Town Clerk.)

Frances Morris, 3201 North Virginia Dare Trail, Kill Devil Hills: Ms. Morris returned a copy of her notification letter and noted her support for the beach nourishment proposal. She also complimented the Town for doing a wonderful job.

Mr. Michael called for additional public speakers, and then made a final call for comments, and asked the Board if they had any questions or comments before the public hearing was closed.

Mayor Davies asked Planning Director Greg Loy to explain how and why the location of the taper was changed. Mr. Loy explained that the change in the taper was recommended by the Town's engineering team. He added that for any project there would always be a taper. Commissioner Appleman confirmed that there is only one taper in Kill Devil Hills and the Town Manager responded that was correct, and if Kitty Hawk were to choose to forego beach nourishment at this time, then Kill Devil Hills would have a north-end taper, as well.

There were no other comments offered at this time and Mr. Michael explained that if the Board members desired to make comments or ask questions of Staff about what they have heard during the public hearing, then he recommended the public hearing remain open. The Board agreed to keep the public hearing open at this time.

Mayor Davies called for discussion or comments from the Board of Commissioners. Commissioner Midgett stated that it was interesting to hear the comments from oceanfront property owners – hearing about people using their property to access the beach provided a viewpoint he had not previously considered. However, the Town has no remedy for that situation and Commissioner Hogan interjected that such actions would be a civil matter between the property owners and those using their property without permission.

Commissioner Rheubottom commented that many of the issues raised this evening were related to the taper zone. The comments made a lot of sense and lead Commissioner

Rheubottom to realize the differences in the amount of sand that would be received by properties within the taper as opposed to those oceanfront properties to the north of the taper zone. Commissioner Rheubottom added, she felt that regardless of where the taper is, somebody would be unhappy.

In response to a question from Commissioner Midgette, Mr. Michael explained that the tax rate within the MSD had to be the same amount for all property owners. The taper zone properties could be taken out of the MSD, but that would mean they would benefit from the beach nourishment project without having to pay for those benefits.

Mayor Davies stated that a number of the comments during the public hearing included statements about equity and fairness and questions on how the tax rate was calculated. She explained that shifting the greater tax burden of paying for the project to the oceanfront properties is because of the value the sand has in protecting the property. Kill Devil Hills is trying to protect infrastructure improvements and private properties. The Town is home to a majority of the working class in Dare County. Kill Devil Hills is known to be more affordable. She explained that the Board's job is to look out for all of the stakeholders in Kill Devil Hills – out-of-town property owners and those working to provide all of the services to our visitors and citizens. Additionally, she said, while Kill Devil Hills has a higher ad valorem tax rate than other Dare County municipalities, the services Kill Devil Hills provides are different, and sometimes at a higher level – such as with respect to animal control services.

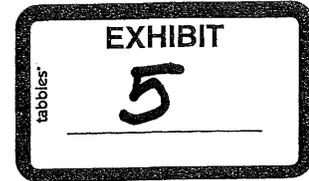
Mayor Davies said that while some might perceive the rate as inequitable, she assured everyone there is no conflict of interest from any member of the Board of Commissioners in the beach nourishment project. The Board is strictly guided on ethics and the decision-making process by the General Assembly and North Carolina School of Government.

Addressing Mr. Murray's comments, Mayor Davies asked for some assistance in understanding how the seven residential properties were platted with part of each property on the east side and the rest on the west side of NC 12. Mr. Loy explained that when the ClayDon Motel washed into the ocean some years ago, the owner of the motel site and the seven property on the west side of NC 12 came to the Town with a plat that laid out the seven lots. Each lot needed to be at least 15,000 square feet to be buildable and to meet that requirement, each was platted showing a majority of the square footage on the west side and the remainder on the east. The subdivision was platted with each lot being configured as it is today; they are forever tied by the subdivision approval. Today, those seven lots do not meet the 15, 000 square foot requirement due to erosion on the oceanfront.

There being no further comments from the Board at this time, Mr. Michael recognized another public speaker.

Dirk Murray, 2028 N. Virginia Dare Trail, Kill Devil Hills: Mr. Murray explained that he is Raymond Murray's son. He offered a different calculation for the tax on the 7 properties on the west side of NC 12, suggesting that if, for example, four houses could be built on the east side properties then that value could be used as a base on which to calculate the taxes for all seven properties.

Article 23.
Municipal Service Districts.



§ 160A-535. Title; effective date.

This Article may be cited as "The Municipal Service District Act of 1973," and is enacted pursuant to Article V, Sec. 2(4) of the Constitution of North Carolina, effective July 1, 1973. (1973, c. 655, s. 1.)

§ 160A-536. Purposes for which districts may be established.

(a) Purposes. - The city council of any city may define any number of service districts in order to finance, provide, or maintain for the districts one or more of the following services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire city:

- (1) Beach erosion control and flood and hurricane protection works.
- (1a) **(For applicability see note)** Any service, facility, or function which the municipality may by law provide in the city, and including but not limited to placement of utility wiring underground, placement of period street lighting, placement of specially designed street signs and street furniture, landscaping, specialized street and sidewalk paving, and other appropriate improvements to the rights-of-way that generally preserve the character of an historic district; provided that this subdivision only applies to a service district which, at the time of its creation, had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter.
- (2) Downtown revitalization projects.
- (2a) Urban area revitalization projects.
- (2b) Transit-oriented development projects.
- (3) Drainage projects.
- (3a) Sewage collection and disposal systems of all types, including septic tank systems or other on-site collection or disposal facilities or systems.
- (3b) **(For applicability see note)** Lighting at interstate highway interchange ramps.
- (4) Off-street parking facilities.
- (5) Watershed improvement projects, including but not limited to watershed improvement projects as defined in General Statutes Chapter 139; drainage projects, including but not limited to the drainage projects provided for by General Statutes Chapter 156; and water resources development projects, including but not limited to the federal water resources development projects provided for by General Statutes Chapter 143, Article 21.
- (6) Conversion of private residential streets to public streets as provided in subsection (e) of this section.

(b) Downtown Revitalization Defined. - As used in this section "downtown revitalization projects" are improvements, services, functions, promotions, and developmental activities intended to further the public health, safety, welfare, convenience, and economic well-being of the central city or downtown area. Exercise of the authority granted by this Article to undertake downtown revitalization projects financed by a service district do not prejudice a city's authority to undertake urban renewal

projects in the same area. Examples of downtown revitalization projects include by way of illustration but not limitation all of the following:

- (1) Improvements to water mains, sanitary sewer mains, storm sewer mains, electric power distribution lines, gas mains, street lighting, streets and sidewalks, including rights-of-way and easements.
- (2) Construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street.
- (3) Construction of public buildings, restrooms, docks, visitor centers, and tourism facilities.
- (4) Improvements to relieve traffic congestion in the central city and improve pedestrian and vehicular access to it.
- (5) Improvements to reduce the incidence of crime in the central city.
- (6) Providing city services or functions in addition to or to a greater extent than those provided or maintained for the entire city.
- (7) Sponsoring festivals and markets in the downtown area, promoting business investment in the downtown area, helping to coordinate public and private actions in the downtown area, and developing and issuing publications on the downtown area.

(c) **Urban Area Revitalization Defined.** - As used in this section, the term "urban area revitalization projects" includes the provision within an urban area of any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section. As used in this section, the term "urban area" means an area that (i) is located within a city and (ii) meets one or more of the following conditions:

- (1) It is the central business district of the city.
- (2) It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
- (3) It is located in or along a major transportation corridor and does not include any residential parcels that are not, at their closest point, within 150 feet of the major transportation corridor right-of-way or any nonresidentially zoned parcels that are not, at their closest point, within 1,500 feet of the major transportation corridor right-of-way.
- (4) It has as its center and focus a major concentration of public or institutional uses, such as airports, seaports, colleges or universities, hospitals and health care facilities, or governmental facilities.

(c1) **Transit-Oriented Development Defined.** - As used in this section, the term "transit-oriented development" includes the provision within a public transit area of any service or facility listed in this subsection. A public transit area is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line. A mass transit line is a rail line along which a public transportation service operates or a busway or guideway dedicated to public transportation service. A busway is not a mass transit line if a majority of its length is also generally open to passenger cars and other private vehicles more than two days a week.

The following services and facilities are included in the definition of "transit-oriented development" if they are provided within a transit area:

- (1) Any service or facility that may be provided in a downtown area as a downtown revitalization project under subdivision (a)(2) and subsection (b) of this section.
- (2) Passenger stops and stations on a mass transit line.
- (3) Parking facilities and structures associated with passenger stops and stations on a mass transit line.
- (4) Any other service or facility, whether public or public-private, that the city may by law provide or participate in within the city, including retail, residential, and commercial facilities.

(d) **Contracts.** - A city may provide services, facilities, functions, or promotional and developmental activities in a service district with its own forces, through a contract with another governmental agency, through a contract with a private agency, or by any combination thereof. Any contracts entered into pursuant to this subsection shall comply with all of the following criteria:

- (1) The contract shall specify the purposes for which city moneys are to be used for that service district.
- (2) The contract shall require an appropriate accounting for those moneys at the end of each fiscal year or other appropriate period. For contracts entered into on or after June 1, 2016, the appropriate accounting shall include the name, location, purpose, and amount paid to any person or persons with whom the private agency contracted to perform or complete any purpose for which the city moneys were used for that service district.

(d1) **Additional Requirements for Certain Contracts.** - In addition to the requirements of subsection (d) of this section, if the city enters into a contract with a private agency for a service district under subdivision (a)(1a), (2), or (2a) of this section, the city shall comply with all of the following:

- (1) The city shall solicit input from the residents and property owners as to the needs of the service district prior to entering into the contract.
- (2) Prior to entering into, or the renewal of, any contract under this section, the city shall use a bid process to determine which private agency is best suited to achieve the needs of the service district. The city shall determine criteria for selection of the private agency and shall select a private agency in accordance with those criteria. If the city determines that a multiyear contract with a private agency is in the best interest of the city and the service district, the city may enter into a multiyear contract not to exceed five years in length.
- (3) The city shall hold a public hearing prior to entering into the contract, which shall be noticed by publication in a newspaper of general circulation, for at least two successive weeks prior to the public hearing, in the service district.
- (4) The city shall require the private agency to report annually to the city, by presentation in a city council meeting and in written report, regarding the needs of the service district, completed projects, and pending projects. Prior to the annual report, the private agency shall seek input of the property owners and residents of the service district regarding needs for the upcoming year.
- (5) The contract shall specify the scope of services to be provided by the private agency. Any changes to the scope of services shall be approved by the city council.

(e) **Converting Private Residential Streets to Public Streets.** - A city may establish a municipal

service district for the purpose of converting private residential streets to public streets if the conditions of this subsection are met. The property tax levied in a municipal service district created for this purpose may be used only to pay the costs related to the transfer of ownership of the streets, evaluation of the condition of the private streets, and the design and construction costs related to improving the private streets to meet public street standards as approved by the governing board. Notwithstanding G.S. 160A-542, the property tax rate in a district created for this purpose may not be in excess of thirty percent (30%) of the ad valorem tax rate in effect in the city in the fiscal year prior to the establishment of the district. After the private streets have been upgraded to meet public street standards and all costs have been recovered from the tax in the district, no further tax may be levied in the district, and the city council must abolish the municipal service district as provided by G.S. 160A-541.

Notwithstanding G.S. 160A-299, if a city abandons the streets and associated rights-of-way acquired pursuant to this subsection, the street-related common elements must be returned to the owners' association from which the city acquired them in a manner that makes the owners' association's holdings in common elements as they were prior to the establishment of the municipal service district.

For a city to create a municipal service district for the purpose of converting private residential streets to public streets, all of the following conditions must be met:

- (1) The private residential road must be nongated.
- (2) The city must receive a petition signed by at least sixty percent (60%) of the lot owners of the owners' association requesting the city to establish a municipal service district for the purpose of paying the costs related to converting private residential streets to public streets. The executive board of an owners' association for which the city has received a petition under this subsection may transfer street-related common elements to the city, notwithstanding the provisions of either the North Carolina Planned Community Act in Chapter 47F of the General Statutes or the North Carolina Condominium Act in Chapter 47C of the General Statutes, or related articles of declaration, deed covenants, or any other similar document recorded with the Register of Deeds.
- (3) The city must agree to accept the converted streets for perpetual public maintenance.
- (4) The city must meet one of the following requirements:
 - a. Located primarily in a county that has a population of 750,000 or more according to the most recent decennial federal census, and also located in an adjacent county with a population of 250,000 or more according to the most recent decennial federal census.
 - b. Located primarily in a county with a population of 250,000 or more according to the most recent decennial federal census, and also located in an adjacent county with a population of 750,000 or more according to the most recent decennial federal census. (1973, c. 655, s. 1; 1977, c. 775, ss. 1, 2; 1979, c. 595, s. 2; 1985, c. 580; 1987, c. 621, s. 1; 1999-224, s. 1; 1999-388, s. 1; 2004-151, s. 1; 2004-203, s. 5(m); 2009-385, s. 1; 2011-72, ss. 1, 2; 2011-322, s. 1; 2012-79, s. 1.11; 2015-241, s. 15.16B(a); 2016-8, s. 1; 2017-102, s. 31.1.)

§ 160A-537. Definition of service districts.

(a) **Standards.** - The city council of any city may by ordinance define a service district upon finding that a proposed district is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city.

(a1) **Petition to Define District.** - The city council may also by ordinance define a service district if a petition submitted by a majority of the owners of real property in a defined area of the city establishes that the area is in need of one or more of the services, facilities, or functions listed in G.S. 160A-536 to a demonstrably greater extent than the remainder of the city. The petition shall contain the names, addresses, and signatures of the real property owners within the proposed district, describe the proposed district boundaries, and state in detail the services, facilities, or functions listed in G.S. 160A-536 which would serve as the basis for establishing the proposed district. The city council may establish a policy to hear all petitions submitted under this subsection at regular intervals, but no less than once per year.

(b) **Report.** - Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

- (1) A map of the proposed district, showing its proposed boundaries;
- (2) A statement showing that the proposed district meets the standards set out in subsection (a); and
- (3) A plan for providing in the district one or more of the services listed in G.S. 160A-536.

The report shall be available for public inspection in the office of the city clerk for at least four weeks before the date of the public hearing.

(c) **Hearing and Notice.** - The city council shall hold a public hearing before adopting any ordinance defining a new service district under this section. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a map of the proposed district and a statement that the report required by subsection (b) is available for public inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, it shall be mailed at least four weeks before the date of the hearing by any class of U.S. mail which is fully prepaid to the owners as shown by the county tax records as of the preceding January 1 (and at the address shown thereon) of all property located within the proposed district. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed and his certificate is conclusive in the absence of fraud.

(c1) **Exclusion From District.** - An owner of a tract or parcel of land located within the proposed district may, at the public hearing or no later than five days after the date of the public hearing required by subsection (c) of this section, submit a written request to the city council for the exclusion of the tract or parcel from the proposed district. The owner shall specify the tract or parcel, state with particularity the reasons why the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, and provide any other additional information the owner deems relevant. If the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, the city council may exclude the tract or parcel from the proposed district.

(d) **Effective Date.** - Except as otherwise provided in this subsection, the ordinance defining a

service district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the city council. If the governing body in the ordinance states that general obligation bonds or special obligation bonds are anticipated to be authorized for the project, it may make the ordinance effective immediately upon its adoption or as otherwise provided in the ordinance. However, no ad valorem tax may be levied for a partial fiscal year.

(e) Repealed by Session Laws 2016-8, s. 2, effective June 1, 2016.

(f) Passage of Ordinance. - No ordinance defining a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be defined except by ordinance. (1973, c. 655, s. 1; 1981, c. 53, s. 1; c. 733, s. 1; 2006-162, s. 25; 2012-156, s. 4; 2016-8, s. 2.)

§ 160A-538. Extension of service districts.

(a) Standards. - The city council may by ordinance annex territory to any service district upon finding that:

(1) The area to be annexed is contiguous to the district, with at least one eighth of the area's aggregate external boundary coincident with the existing boundary of the district;

(2) That the area to be annexed requires the services of the district.

(b) Annexation by Petition. - The city council may also by ordinance extend by annexation the boundaries of any service district when one hundred percent (100%) of the real property owners of the area to be annexed have petitioned the council for annexation to the service district.

(c) Report. - Before the public hearing required by subsection (d), the council shall cause to be prepared a report containing:

(1) A map of the service district and the adjacent territory, showing the present and proposed boundaries of the district;

(2) A statement showing that the area to be annexed meets the standards and requirements of subsections (a) or (b); and

(3) A plan for extending services to the area to be annexed.

The report shall be available for public inspection in the office of the city clerk for at least two weeks before the date of the public hearing.

(d) Hearing and Notice. - The council shall hold a public hearing before adopting any ordinance extending the boundaries of a service district. Notice of the hearing shall state the date, hour and place of the hearing and its subject, and shall include a statement that the report required by subsection (c) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the date of the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the area to be annexed. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(e) Effective Date. - The ordinance extending the boundaries of the district shall take effect at the beginning of a fiscal year commencing after its passage, as determined by the council.

(e1) Passage of Ordinance. - No ordinance annexing territory to a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council

by majority vote of the voting members present, and no territory shall be annexed to a service district except by ordinance.

(f) **Historic District Boundaries Extension.** - A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries extended to include territory which has been added to the historic district. (1973, c. 655, s. 1; 1981, c. 53, s. 2; 1987, c. 621, s. 2; 2016-8, s. 3.)

§ 160A-538.1. Reduction of service districts.

(a) **Reduction by City Council.** - Upon finding that there is no longer a need to include within a particular service district any certain tract or parcel of land, the city council may by ordinance redefine a service district by removing therefrom any tract or parcel of land which it has determined need no longer be included in said district. The city council shall hold a public hearing before adopting an ordinance removing any tract or parcel of land from a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing.

(a1) **Request for Reduction by Owner.** - A property owner may submit a written request to the city council to remove the owner's tract or parcel of land from a service district. The owner shall specify the tract or parcel, state with particularity the reasons why the tract or parcel is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the city, and provide any other additional information the owner deems relevant. Upon receipt of the request, the city council shall hold a public hearing as required by subsection (a) of this section. If the city council finds that the tract or parcel is not in need of the services, facilities, or functions of the district to a demonstrably greater extent than the remainder of the city, the city council may, by ordinance, redefine the service district by removing therefrom the tract or parcel.

(b) **Effective Date.** - The removal of any tract or parcel of land from any service district shall take effect at the end of a fiscal year following passage of the ordinance, as determined by the city council.

(b1) **Passage of Ordinance.** - No ordinance reducing a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be reduced except by ordinance.

(c) **Historic District Boundaries Reduction.** - A service district which at the time of its creation had the same boundaries as an historic district created under Part 3A of Article 19 of this Chapter may only have its boundaries reduced to exclude territory which has been removed from the historic district. (1977, c. 775, s. 3; 1987, c. 621, s. 3; 2016-8, s. 4.)

§ 160A-539. Consolidation of service districts.

(a) The city council may by ordinance consolidate two or more service districts upon finding that:

- (1) The districts are contiguous or are in a continuous boundary; and
- (2) The services provided in each of the districts are substantially the same; or
- (3) If the services provided are lower for one of the districts, there is a need to increase those services for that district to the level of that enjoyed by the other districts.

(b) **Report.** - Before the public hearing required by subsection (c), the city council shall cause to be prepared a report containing:

- (1) A map of the districts to be consolidated;
- (2) A statement showing the proposed consolidation meets the standards of subsection (a); and
- (3) If necessary, a plan for increasing the services for one or more of the districts so that they are substantially the same throughout the consolidated district.

The report shall be available in the office of the city clerk for at least two weeks before the public hearing.

(c) **Hearing and Notice.** - The city council shall hold a public hearing before adopting any ordinance consolidating service districts. Notice of the hearing shall state the date, hour, and place of the hearing and its subject, and shall include a statement that the report required by subsection (b) is available for inspection in the office of the city clerk. The notice shall be published at least once not less than one week before the date of the hearing. In addition, the notice shall be mailed at least four weeks before the hearing to the owners as shown by the county tax records as of the preceding January 1 of all property located within the consolidated district. The notice may be mailed by any class of U.S. mail which is fully prepaid. The person designated by the council to mail the notice shall certify to the council that the mailing has been completed, and his certificate shall be conclusive in the absence of fraud.

(d) **Effective Date.** - The consolidation of service districts shall take effect at the beginning of a fiscal year commencing after passage of the ordinance of consolidation, as determined by the council.

(e) **Passage of Ordinance.** - No ordinance consolidating two or more service districts as provided for in subsection (a) of this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service districts shall be consolidated except by ordinance. (1973, c. 655, s. 1; 1981, c. 53, s. 2; 2016-8, s. 5.)

§ 160A-540. Required provision or maintenance of services.

(a) **New District.** - When a city defines a new service district, it shall provide, maintain, or let contracts for the services for which the residents of the district are being taxed within a reasonable time, not to exceed one year, after the effective date of the definition of the district.

(b) **Extended District.** - When a city annexes territory for a service district, it shall provide, maintain, or let contracts for the services provided or maintained throughout the district to the residents of the area annexed to the district within a reasonable time, not to exceed one year, after the effective date of the annexation.

(c) **Consolidated District.** - When a city consolidates two or more service districts, one of which has had provided or maintained a lower level of services, it shall increase the services within that district (or let contracts therefor) to a level comparable to those provided or maintained elsewhere in the consolidated district within a reasonable time, not to exceed one year, after the effective date of the consolidation. (1973, c. 655, s. 1.)

§ 160A-541. Abolition of service districts.

Upon finding that there is no longer a need for a particular service district, the city council may by ordinance abolish that district. The council shall hold a public hearing before adopting an ordinance abolishing a district. Notice of the hearing shall state the date, hour and place of the hearing, and its subject, and shall be published at least once not less than one week before the date of the hearing. The abolition of any service district shall take effect at the end of a fiscal year following passage of the

ordinance, as determined by the council. (1973, c. 655, s. 1; 2016-8, s. 6.)

§ 160A-542. Taxes authorized; rate limitation.

(a) A city may levy property taxes within defined service districts in addition to those levied throughout the city, in order to finance, provide or maintain for the district services provided therein in addition to or to a greater extent than those financed, provided or maintained for the entire city. In addition, a city may allocate to a service district any other revenues whose use is not otherwise restricted by law.

(b) Property subject to taxation in a newly established district or in an area annexed to an existing district is that subject to taxation by the city as of the preceding January 1.

(c) Property taxes may not be levied within any district established pursuant to this Article in excess of a rate on each one hundred dollar (\$100.00) value of property subject to taxation which, when added to the rate levied city wide for purposes subject to the rate limitation, would exceed the rate limitation established in G.S. 160A-209(d), unless that portion of the rate in excess of this limitation is submitted to and approved by a majority of the qualified voters residing within the district. Any referendum held pursuant to this subsection shall be held and conducted as provided in G.S. 160A-209.

(d) In setting the tax rate, the city council shall consider the current needs, as well as the long-range plans and goals for the service district. The city council shall set the tax rate so that there is no accumulation of excess funds beyond that necessary to meet current needs, fund long-range plans and goals, and maintain a reasonable fund balance. Moneys collected shall be used only for meeting the needs of the service district, as those needs are determined by the city council.

(e) This Article does not impair the authority of a city to levy special assessments pursuant to Article 10 of this Chapter for works authorized by G.S. 160A-491, and may be used in addition to that authority. (1973, c. 655, s. 1; 2015-241, s. 15.16B(b).)

§ 160A-543. Bonds authorized.

A city may incur debt under general law to finance services, facilities or functions provided within a service district. If a proposed general obligation bond issue is required by law to be submitted to and approved by the voters of the city, and if the proceeds of the proposed bond issue are to be used in connection with a service that is or, if the bond issue is approved, will be provided only for one or more service districts or at a higher level in service districts than city wide, the proposed bond issue must be approved concurrently by a majority of those voting throughout the entire city and by a majority of the total of those voting in all of the affected or to be affected service districts. (1973, c. 655, s. 1; 2004-151, s. 4.)

§ 160A-544. Exclusion of personal property of public service corporations.

There shall be excluded from any service district and the provisions of this Article shall not apply to the personal property of any public service corporation as defined in G.S. 160A-243(c); provided that this section shall not apply to any service district in existence on January 1, 1977. (1977, c. 775, s. 4.)

§§ 160A-545 through 160A-549. Reserved for future codification purposes.



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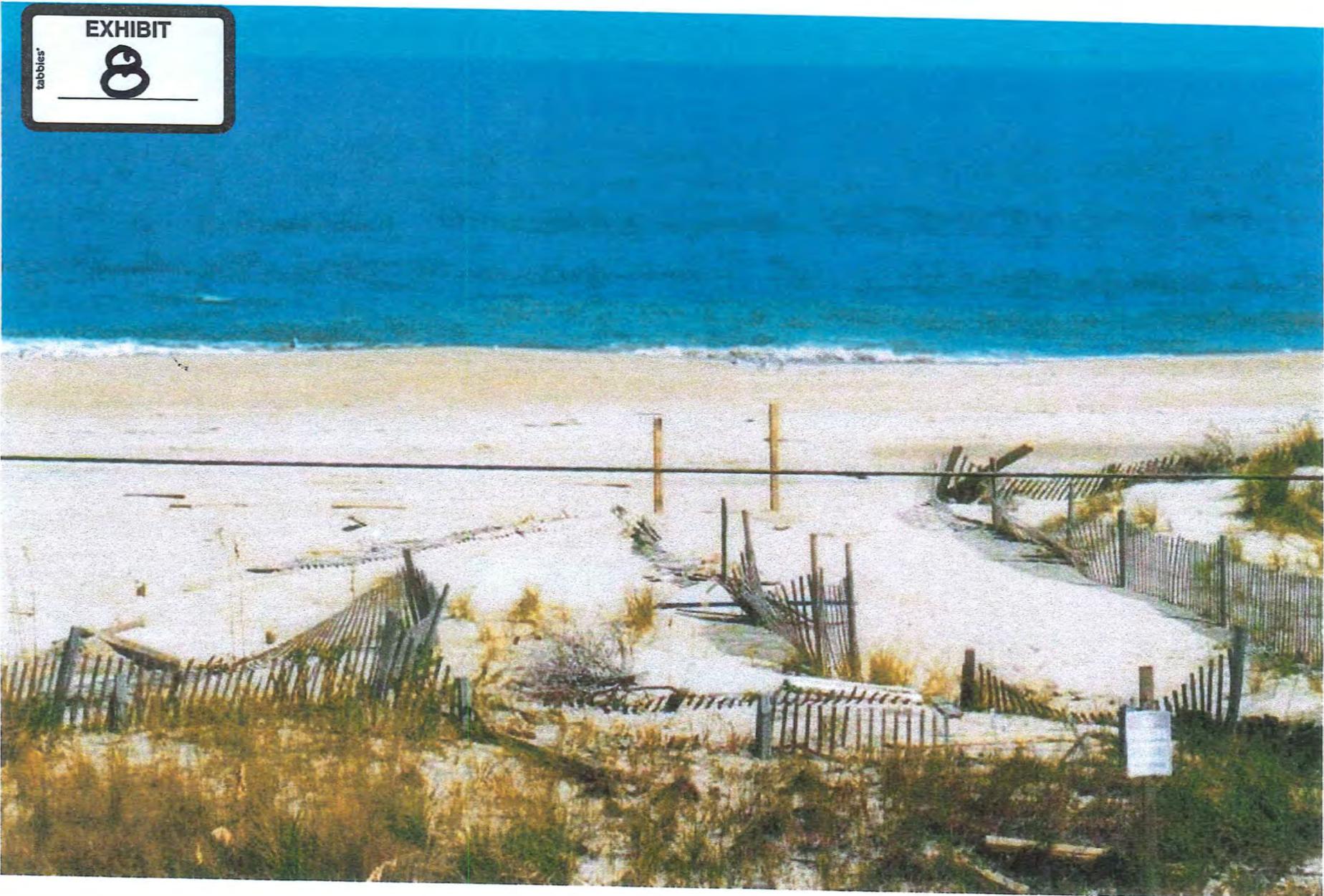
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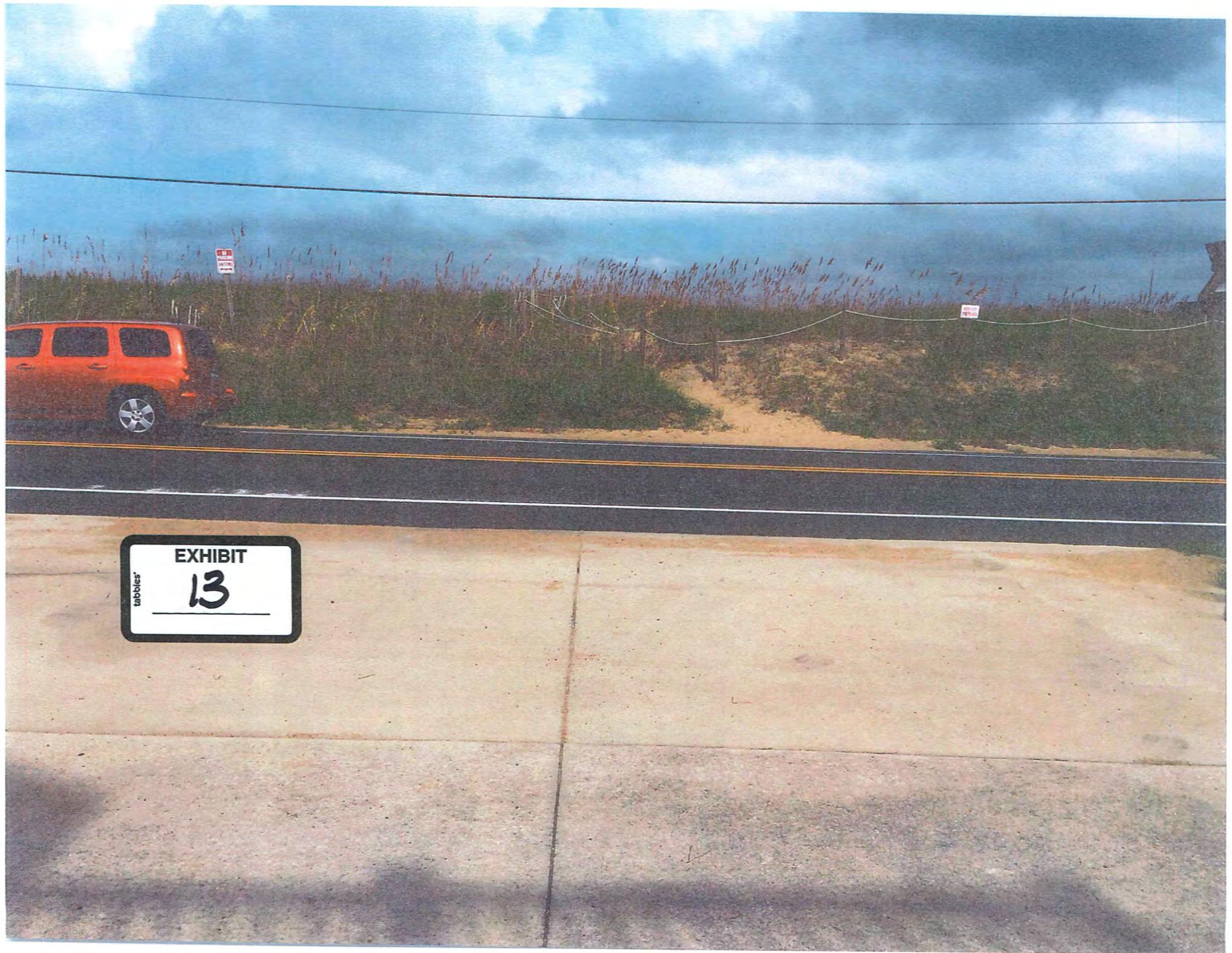


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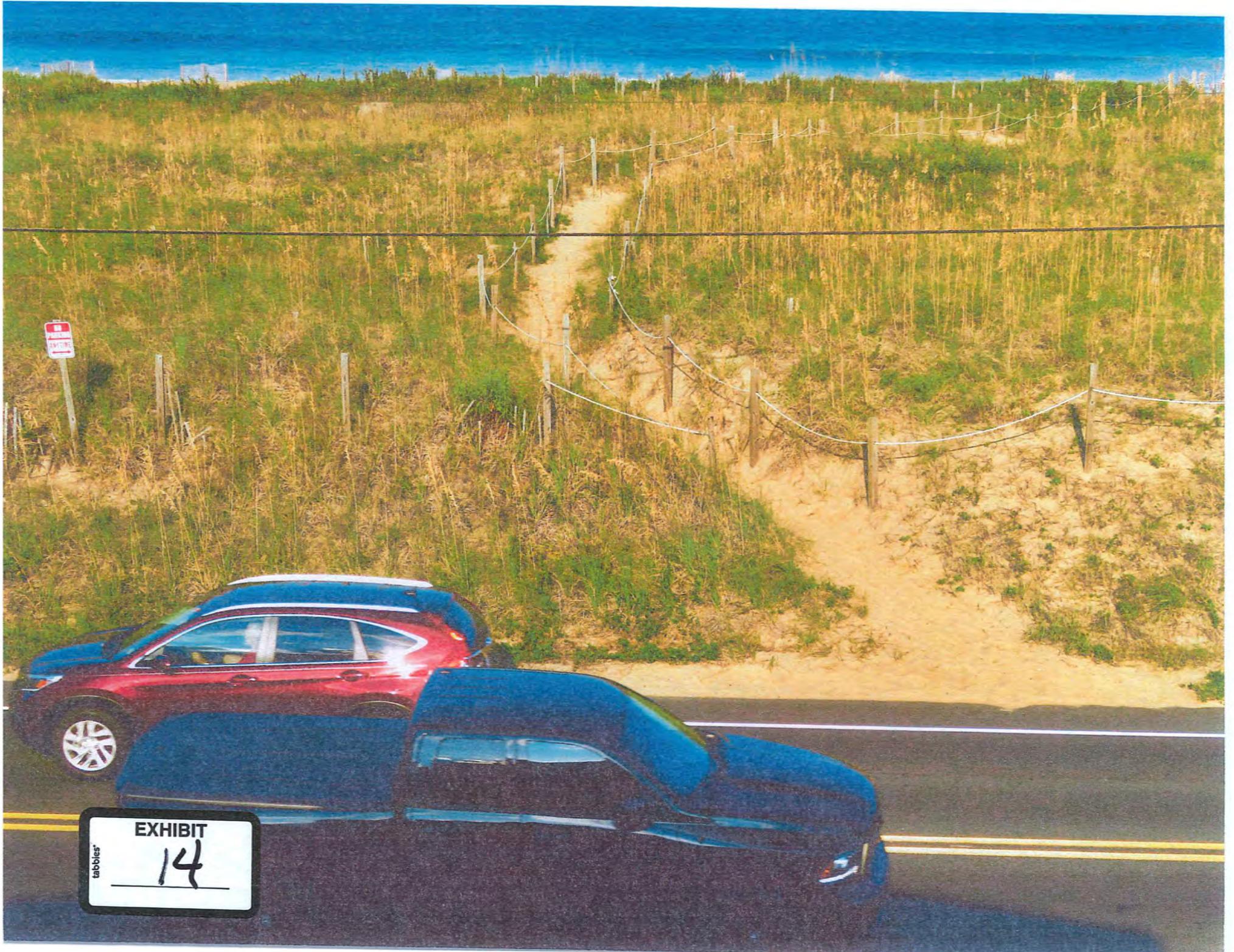




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