
 SUPREME COURT OF NORTH CAROLINA

GREGORY P. NIES and DIANE S.)
 NIES,)
)
 Plaintiff-Petitioners,)
)
 v.)
)
 TOWN OF EMERALD ISLE, a North)
 Carolina Municipality,)
)
 Defendant-Respondent.)

DEFENDANT RESPONDENT'S NEW BRIEF

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NO. 409PA15

THIRD DISTRICT

 SUPREME COURT OF NORTH CAROLINA

GREGORY P. NIES and DIANE S.)
 NIES,)
)
 Plaintiff-Petitioners,)
)
 v.)
)
 TOWN OF EMERALD ISLE, a North)
 Carolina Municipality,)
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 Defendant-Respondent.)

DEFENDANT RESPONDENT’S NEW BRIEF

ISSUES PRESENTED

- I. Whether the public’s, and by extension the Town’s, right to use North Carolina’s dry sand beaches is a pre-existing limitation on Appellants’ title and therefore cannot constitute a physical invasion of the Appellants’ property?
- II. Whether, as a matter of longstanding North Carolina common law and customary practice, the public has rights to free use, access, and enjoyment of all dry sand beaches, which forecloses the Appellants’ asserted takings claim?
- III. Whether this Court should affirm the summary judgment ruling below given that the Appellants have proved no taking as a matter of law?
- IV. Whether the longstanding and beneficial public policy of coastal North Carolina that has been heretofore protected by the common law should be disturbed?

INTRODUCTION

This case arises from the efforts of Gregory P. and Diane S. Nies (“Appellants” or the “Nieses”) to exclude the public, and by extension, the Town of Emerald Isle (“Town”), from the privately owned dry sand beach adjacent to their beach house. They ask this Court to break from a well-established North Carolina common law recognition of limited public use rights on all dry sand beaches and to change the law to create a taking when the public and local coastal governments engage in limited uses that have been conducted for centuries. The essential issue before the Court is whether North Carolina’s dry sand beaches will continue to be open to the public for appropriate beach uses, or whether, notwithstanding their special character, they will become entirely private on terms that change the traditional, fundamental understandings of beach-front-landowners and the beach-going public.

The Town submits that North Carolina beaches are not entirely private and denies that Appellants have the right to close the dry sand beach adjacent to their beach house. As is explained below, the Town’s positions rest firmly upon customary and universal use of our State’s beaches, both by its residents, and by the many thousands of tourists who have visited the Town annually since the Town’s incorporation in 1957.

The Nieses seek to put at issue two ordinances passed by the Town. These ordinances regulate the public's beach driving and its placement of beach equipment on dry sand beaches, including those adjacent to the Nieses' beach house. The Nieses would have the courts declare that these ordinances take away their supposed right to completely exclude the public from the dry sand beach, which they erroneously contend they acquired when they purchased their beach house.

The Nieses, however, never obtained any such a right. Their interest in the dry-sand beach, between the mean high-tide line of the Atlantic Ocean and the frontal dunes, is subject to the pre-existing public use limitation placed on it by the common law of the State of North Carolina, as recognized by the North Carolina General Assembly and confirmed by the Court of Appeals in this case. The public's customary right to use and access the dry sand beach for beach-going purposes means that the Nieses never acquired the exclusionary rights they assert. Consequently, no taking has occurred as a matter of law.

The North Carolina Court of Appeals correctly held that the Nieses have never had the right to exclude the public or the Town from the dry sand beach in front of their beach house. The Court of Appeals was likewise correct when it held that the Town's beach driving ordinance was restrictive, not permissive, with

respect to beach driving. Accordingly, the Town respectfully submits that this Court should affirm the decision of the Court of Appeals in all respects.

STATEMENT OF THE CASE

On December 9, 2011, the Nieses sued the Town alleging four claims: (1) an inverse condemnation claim under N.C. Gen. Stat. § 40A-51, (2) a violation of Art. 1, Sec. 19 of the North Carolina Constitution-“Law of the Land” Clause, (3) a violation of the Fifth Amendment to the U.S. Constitution, and (4) a claim under 42 U.S.C. § 1983. (R p 8.) On September 19, 2013, the Nies filed their Amended Complaint alleging three additional claims: (5) a claim under the Fourth and Fourteenth Amendments to the U.S. Constitution, (6) a claim seeking refund of an assessment, and (7) a breach of contract claim. (R p 161.)

The Nieses claims overlapped considerably and in essence all of their claims were premised upon two theories: (1) that the Town’s adoption of ordinances regulating the dry sand areas of the beach adjacent to their beach house constitutes a “taking,” and (2) that the Town’s establishment of a municipal service district of which their property is a part, was improper. (R p 8 at ¶¶ 53, 60, 80, 81, 88, 95, 101; R p 161 at ¶¶ 113, 116, 128(f), 153, 169.)

On July 25, 2014, the Town moved for summary judgment on all of the Nieses’ claims. (R pp 497-98.) On August 26, 2014, the Honorable Jack W. Jenkins, presiding over the August 4, 2014 Civil Session of Carteret County

Superior Court, granted the Town's motion for summary judgment and dismissed the Nieses' claims. (R p 757.) The Nieses appealed this Order to the Court of Appeals. (R p 758.)

At the Court of Appeals, the Nieses abandoned their federal 42 U.S.C. § 1983 Fourth Amendment unreasonable seizure claim, their claim for a refund of a municipal assessment, and their claim for breach of contract. (Plaintiff-Appellants' COA Brief pp 14-15.) On appeal, Appellants pressed only their takings claim.

The Court of Appeals issued a unanimous opinion affirming the trial court on November 17, 2015. Appellants petitioned this Court for discretionary review. On April 15, 2016, this Court dismissed Appellants' appeal as a matter of right and allowed Appellants' Petition for Discretionary Review.

STATEMENT OF FACTS

This case concerns use of a specific area of the beach – the dry sand beach. North Carolina beaches can generally be described as having three separate areas: the wet sand beach or “foreshore”, the dry sand beach, and the uplands. The “wet sand” beach or “foreshore” is generally defined as the area between the mean high water mark and the mean low water mark. The State holds title to the wet sand beach, and this area is considered public trust submerged lands. *Gwathmey v. State of North Carolina*, 342 N.C. 287, 294, 464 S.E.2d 674, 677 (1995). The “dry sand” beach is generally defined as the area lying between the mean high water

mark and the first line of protective dunes or vegetation. Natural dry sand beaches are privately owned, but subject to public use. *See* N.C. Gen. Stat. §§ 77-20(a), (d); *Nies v. Emerald Isle*, __ N.C. App. __, 780 S.E.2d 187 (2015). Landward of the dry sand beach is considered “private uplands.” The public generally may not use this upland area without the property owner’s permission.

I. THIS CASE OCCURS IN A SPECIFIC AND WELL-DEFINED HISTORICAL AND LEGISLATIVE CONTEXT.

Beach driving has occurred within the Town of Emerald Isle since its incorporation in 1957. (R. p 518 ¶ 3). In fact, beach driving was so prevalent in Emerald Isle that the General Assembly deemed it necessary to regulate driving on the “beach strand” in 1965. 1965 Sess. Law 1087 ch. 799, § 1 (Jun. 3, 1965). (the “1965 Act”) (App 2-3). In the 1965 Act, the “beach strand area” was defined as area between Beaufort Inlet and Bogue Inlet to the South of the dune line extending to the Atlantic Ocean.¹ In particular, the General Assembly limited driving on the “beach strand” to “beach buggies, jeeps, trucks, tractors or motor vehicles operated for commercial or sports fishing purposes” and “motor vehicles operated in connection with and owned by the Government of the United States of America or the State of North Carolina, or any political subdivision thereof.” *Id.* Eight years later, the General Assembly passed N.C. Gen. Stat. § 160A-308 which

¹ Emerald Isle is an East – West Beach. Thus, the area south of the dune line to the Atlantic Ocean encompasses the entire width and breadth of the dry sand beach.

empowered municipalities to pass their own ordinances to regulate beach driving on the beach strand; however, no municipal ordinance could prohibit commercial fisherman from driving on the beach strand.

Since as far back as December of 1980, the Town, by ordinance, has regulated beach driving by restricting beach driving to a “permitted driving area”.

(R. p 518 ¶ 3). The permitted driving area was defined as:

[T]he foreshore and the area within the Town consisting of primarily hardpacked sand and lying between the waters of the Atlantic Ocean and Bogue Sound at a point ten (10) feet seaward from the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound.

Id. Accordingly, the permitted driving area included the full width and breadth of the dry sand beach, excepting the ten feet strip adjacent to the frontal dune. The Town prohibited the public from driving on the beach strand during the summer months. The Town’s Beach Driving Ordinances retained this definition until October of 2013.² *Id.*

II. THE APPELLANTS KNEW WHEN THEY PURCHASED THE PROPERTY AT ISSUE THAT NORTH CAROLINA PERMITTED LIMITED PUBLIC USE OF THE STATE’S DRY SAND BEACHES, BUT THEY NONETHELESS HAVE PURSUED A LEGAL CHALLENGE SEEKING TO HAVE NORTH CAROLINA CHANGE ITS LAW TO MATCH THEIR UNDERSTANDING OF NEW JERSEY LAW.

² The Town’s Ordinance was amended in 2013 to cross-reference N.C. Gen. Stat. § 77-20; however, Appellants have never amended their Complaint to include the modified ordinances.

In North Carolina, the public has historically made frequent, uninterrupted and unobstructed use and enjoyment of the full width and breadth of the dry sand beach. The population of the Town of Emerald Isle swells from four thousand people in the winter months to over 40,000 people in the summer months. (App. 1.) These visitors and residents of the Town recreate on the dry sand beach. (R p 518).

The Nieses moved to Emerald Isle from New Jersey in 2001, after two decades of visiting Emerald Isle on vacation. (R p 235.) While living in New Jersey, the Nieses visited the beaches of New Jersey, which at that time either were publicly owned or were privately owned without public use and access rights. (R p 325.) At the time the Nieses lived in New Jersey, the public visiting the New Jersey's beaches were either guests of a private oceanfront homeowner or congregated on a municipal or state owned beach. (R p 325.) Accordingly, New Jersey beach-goers were required to display a badge each day on the beach to show it was valid (*i.e.* paid for) for that day. (R pp 325, 436.)

When the Nieses took their annual vacations on Emerald Isle from 1980 to 2001 (R p 237), they of course never saw any beach goers wearing tags as they did in New Jersey. (R pp 325.) With the benefit of this different experience, in 2001, the Nieses purchased an oceanfront beach house in Emerald Isle located at 9909 Shipwreck Lane. (R p 8 - ¶ 8; R p 231; R pp 234-35.)

The Nieses were aware that there was a Town Beach Driving Ordinance at the time they purchased their property, though they acknowledge they never read it.³ (R p 453.) Plaintiff Diane Nies recalls having concerns with beach driving around 2003, and she participated in a petition protesting beach driving to the Town. (R p 248-49.)

Beginning in 2005, the Town placed sand seaward of the Nieses' property as part of a beach nourishment project thereby creating a "new mean high water mark closer to the ocean." (R pp 12 ¶ 14). As a consequence, the dry sand beach created by the Town's nourishment project became the property of the State. N.C. Gen. Stat. § 146-6(f).

Though it apparently never bothered them in previous decades when they visited the Town, the Nieses have become unhappy with the public's access and use of the dry sand beach near their beach house. Their dissatisfaction appears unrelated to any legitimate claim of diminished value: The Nieses frequently rent out their Emerald Isle beach house for \$3,000 to \$5,000 per week, depending on the time of year, (R pp 426; R p 396), and the property is currently listed for sale at \$1.6 million. (R pp 282-83.)

³ Like all citizens, the Nies are presumed to know the law, including the Town's ordinances. *See Water Tower Office Assocs. v. Town of Cary Bd. of Adjustment*, 131 N.C. App. 696, 507 S.E.2d 589 (1998)

The Nieves now contend that the public has no right of access to the dry sand beach area in front of their beach house without their permission. (R pp 261-262.) They consider any member of the public on the dry sand beach in front of their beach house a trespasser. (R pp 286-287.) And they contend that the Town of Emerald Isle has no authority to regulate the dry sand area of the beach in front of their beach house.

The Nieves challenge two ordinances enacted by the Town and assert that these ordinances constitute a taking: (1) Emerald Isle, NC, Ordinances ch. 5, art. 2 §§ 18-19 (“Beach Equipment Ordinance”), (R pp 544-45), and (2) Emerald Isle, NC, Ordinances Ch. 5, art. 2 §§ 21-34 (the “Beach Driving Ordinance”), (R pp 536-40).

III. TOWN ORDINANCES AT ISSUE.

A. The Beach Equipment Ordinance.⁴

Section 5-101 of the Town Code addresses unattended beach equipment and requires all unattended beach equipment to be removed from the beach by 7:00 p.m.⁵ The Town adopted this Section, in part, to address the safety hazard posed by unattended beach equipment being left on the beach overnight and, in part, to curb an identified problem with unattended beach equipment sometimes blowing

⁴ Sections 5 -101 and 5-102 (a) were the version of the Beach Equipment Ordinance in effect at the time the lawsuit was filed.

⁵ Amended in 2013 to 8 p.m.

into the surf or otherwise causing a litter problem for the Town. (R p 518 - ¶ 5.) The Section includes exemptions for oceanfront property owners. Appellants have availed themselves of that provision. (R pp 264, 403.)

Section 5-102(a) of the Town Code prohibits the placement of beach equipment within 20 feet seaward of the base of the frontal dune. Approximately 40,000 people or more visit Emerald Isle in the summer. As a consequence of this increase, the beach strand can become very congested, leaving little room for emergency vehicles to traverse the beach. The Town adopted this Section in an effort to provide an unimpeded path for emergency services vehicles and Town personnel providing essential services on the beach strand. (R p 518 at ¶ 6, 552.)

B. Beach Driving Ordinances.⁶

The Town's Code of Ordinances regulates and restricts beach driving. It prohibits beach driving during the summer months or "peak season" and limits the area where beach driving is allowed:

Section 5-22 of the Town Code provides:

Driving on beach and sand dunes prohibited: exceptions. It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes located within the town between 9 pm on April 30 and 5 am on September 15. . . . This does not apply to commercial fisherm[e]n holding valid state licenses while engaged in commercial fishing activities.

⁶ Sections 5 -22, 5-23 and 5-21 were the versions of the Beach Driving Ordinances in effect at the time the lawsuit was filed.

Section 5-23 of the Town Code provides:

Driving on designated areas only. It shall be unlawful for any vehicular traffic holding and displaying a duly authorized permit issued pursuant to this article to travel on any portion of the beach and sand dune areas other than those areas designated herein as permitted driving areas and the limited access ways as defined in section 5-21.

Section 5-21 of the Town Code defines the permitted driving area as:

the foreshore and the area within the Town consisting of primarily hardpacked sand and lying between the waters of the Atlantic Ocean and Bogue Sound at a point ten (10) feet seaward from the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound.

Notwithstanding that these Ordinance provisions grant no additional access and use rights, Appellants contend that the Town's ordinances constitute a taking in that the Town has authorized both itself and members of the public to drive on the dry sand beach in front of their beach house.⁷ The Nieses premise this argument on the contention that they have the right to exclude the public and the Town from the dry sand beach. As the Court of Appeals accurately held, the Nieses have never possessed the right to exclude the public nor the Town from the dry sand beach in front of their beach house. Moreover, the Town's Beach Driving Ordinance regulates and *prohibits* – and does not *permit* – the public's right to drive on the dry sand beaches. In other words, the Town's Beach Driving Ordinance places reasonable limitations upon a right the public had prior to the

⁷ As discussed *infra*, the vast majority of North Carolina Coastal municipalities have ordinances that are similar to the Town's ordinances at issue in this case.

Nieses purchasing their beach house. Accordingly, the Court of Appeals' decision should be affirmed as no taking of the Nieses' property has occurred.

STANDARD OF REVIEW

The Nieses seek this Court's review of a summary judgment order unanimously affirmed by the Court of Appeals. This Court reviews a Court of Appeals determination for errors of law. N.C. R. App. P. Rule 16(a) ("Review by the Supreme Court after a determination by the Court of Appeals, whether by appeal of right or by discretionary review, is to determine whether there is error of law in the decision of the Court of Appeals."); *Irving v. Charlotte-Mecklenburg Bd. of Educ.*, __ N.C. __, 781 S.E.2d 282, 284 (2016). The standard of review is *de novo*. *Lunsford v. Mills*, 367 N.C. 618, 623, 766 S.E.2d 297, 301 (2014). However, this Court consistently affirms summary judgment rulings if they "can be sustained on any grounds," *Shore v. Brown*, 324 N.C. 427, 428, 378 S.E.2d 778, 779 (1989), even if this Court disagrees with the given rationale for the summary judgment ruling. *Eways v. Governor's Island*, 326 N.C. 552, 554, 391 S.E.2d 182, 183 (1990). Applying the standards to the case at bar, this Court should reject the Nieses attempt to change the law of our State.

ARGUMENT

The Nieses' title interest in the dry-sand beach, between the mean high-tide line of the Atlantic Ocean and the frontal dunes, is subject to the pre-existing

limitation placed on it by the common law customary right of the public to free use and enjoyment of the dry sand beaches of North Carolina. This right constitutes a background principle of North Carolina property law.

As is explained further below, this principle is part of the common law of this State and has been repeatedly recognized by the North Carolina General Assembly and has been acknowledged by the North Carolina Attorney General's Office and the North Carolina Coastal Resource Commission. The Court of Appeals' decision below simply acknowledges this common law right. Under established precedent governing such background property rights, there has been no taking under either the North Carolina Constitution or the Constitution of the United States. Therefore, the Superior Court properly granted summary judgment to the Town, and the decision of the Court of Appeals below upholding the summary judgment ruling should be affirmed.

I. THE PUBLIC'S, AND BY EXTENSION THE TOWN'S, RIGHT TO USE NORTH CAROLINA'S DRY SAND BEACHES IS A PRE-EXISTING LIMITATION ON PLAINTIFFS' TITLE AND THEREFORE CANNOT CONSTITUTE A PHYSICAL INVASION OF THE PLAINTIFFS' PROPERTY.

The United States Supreme Court has held that a federal takings challenge cannot rest upon pre-existing limitations upon a landowners' title that flow from background principles of state property law. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1028-30 (1992). "[T]he Takings Clause does not require compensation

when an owner is barred from putting land to a use that is proscribed by. . . ‘existing rules or understandings. . . .’” *Id.* at 1030 (holding that if background principles of South Carolina nuisance and property law were identified proscribing the plaintiff’s use of the property there would be no unconstitutional taking and remanding the case for a determination on that issue).

The United State Supreme Court has followed *Lucas*’ rationale to deny other takings claims. *See Stop the Beach Renourishment, Inc. v. Fla. Dep’t of Env’tl. Prot.*, 560 U.S. 702, 732 (2010) In addressing an analogous challenge to the one presented in the case *sub judice*, the Supreme Court declined to recognize a deprivation of private property where the Florida Supreme Court’s decision before was “consistent with [a number] background principles of state property law.” *Id.* at 731 (citing *Lucas*). Because those rights were previously established under state law, the Court held that Florida had not violated the Fifth and Fourteenth Amendments of the United States Constitution. *Id.* at 733.

The Court of Appeals has applied *Lucas* in rejecting a takings claim based on pre-existing limitations. In *Shell Island Homeowners Assoc., Inc. v. Tomlinson*, 134 N.C. App. 217, 231 (1999), the North Carolina Court of Appeals, citing *Lucas*, held that “because plaintiff’s tract was subject to the challenged restrictions at the time the original permit was issued . . . there can be no claim of compensable taking by reason of the regulations.” The *Shell Island* Court also dismissed

plaintiffs' inverse condemnation claim as a result of their failure to state a viable claim for regulatory taking. *Id.* at 232. *Lucas* forecloses the Nieses' attempt to claim a taking in this case.⁸

As is explained below, the Nieses took their property subject to the public's common law rights to use and access the dry sand beaches of our State, including those that are privately owned. These background principles of North Carolina common law exerts a pre-existing limitation on the Nieses' title that does not amount to a "taking."

II. AS A MATTER OF LONGSTANDING NORTH CAROLINA COMMON LAW AND CUSTOMARY PRACTICE, THE PUBLIC HAS RIGHTS TO FREE USE, ACCESS, AND ENJOYMENT OF ALL DRY SAND BEACHES, AND THIS PRINCIPLE FORECLOSES THE NIESES' TAKINGS CLAIM

A. The Common Law Right of the Public to the Customary Free Use and Enjoyment of the Ocean Beaches of North Carolina Constitutes a Background Principle of North Carolina Property Law that Exerts a Pre-Existing Limitation on Plaintiffs' Title to the Dry Sand Beach.⁹

⁸ The Nieses concede, as they must, that pre-existing limitations on their title (*i.e.* "background principles") will defeat their claims. *See* Plaintiffs-Appellants' New Brief, p 18.

⁹ Pursuant to the United States Supreme Court, and as Justice Scalia stated, the burden of proof to establish background principles is on the Nieses. *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env'tl. Prot.*, 560 U.S. 702, 729-39 (2010) ("Petitioner argues that the Florida Supreme Court took two of the property rights of the Members by declaring that those rights did not exist: the right to accretions, and the right to have littoral property touch the water (which petitioner distinguishes from the mere right of access to the water). Under petitioner's theory, because no prior Florida decision had said that the State's filling of submerged tidal lands could have the effect of depriving a littoral owner of contact with the

1. N.C. Gen. Stat. § 77-20(d) and (e) Recognize the Common Law Right of the Public to the Customary Free Use and Enjoyment of the Ocean Beaches of North Carolina.

In 1998, three years before the Nieses purchased their property, our General Assembly adopted N.C. Gen. Stat. § 77-20 (d) and (e), recognizing the public's common law right of the public to the customary free use and enjoyment of the dry sand beach and defining the "ocean beaches" of North Carolina.¹⁰ N.C. Gen. Stat. § 77-20 (d) and (e) provide:

(d) The public having made frequent, uninterrupted, and unobstructed use of the full width and breadth of the ocean beaches of this State from time immemorial, this section shall not be construed to impair the right of the people to the customary free use and enjoyment of the ocean beaches, which rights remain reserved to the people of this

water and denying him future accretions, the Florida Supreme Court's judgment in the present case abolished those two easements to which littoral property owners had been entitled. This puts the burden on the wrong party. There is no taking unless petitioner can show that, before the Florida Supreme Court's decision, littoral-property owners had rights to future accretions and contact with the water superior to the State's right to fill in its submerged land.").

¹⁰ N.C. Gen. Stat. § 77-20 (d) and (e) did not create a right of the public to use North Carolina's dry sand beaches. Such a right already existed and is "established in the common law as interpreted and applied by the courts of this State." *Id.* To the extent that Appellants argue that N.C. Gen. Stat. § 77-20 (d) and (e) created such a right, their takings claim is time-barred. Under that construction of the statute, the background principles of non-exclusion would have existed as of its enactment in 1998, three years prior to the Nieses taking title to the land. *Palazzolo v. Rhode Island*, 533 U.S. 606, 628, 121 S. Ct. 2448, 2463 (2001); See also *Naegle Outdoor Advert. v. City of Winston-Salem*, 340 N.C. 349, 351, 457 S.E.2d 874, 875 (1995). (Action alleging a regulatory taking and seeking damages for inverse condemnation pursuant to N.C. Gen. Stat. § 40A-51 accrued upon the enactment of the ordinance. "Any injury to plaintiff's property occurred at the time the statute was enacted.")

State under the common law and are a part of the common heritage of the State recognized by Article XIV, Section 5 of the Constitution of North Carolina. These public trust rights in the ocean beaches are established in the common law as interpreted and applied by the courts of this State.

(e) As used in this section, “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.

Significantly, the bill that became N.C. Gen. Stat. 77-20 (d) and (e) is titled “An Act . . . To *Recognize* the Common Law Right Of The Public To The Customary Free Use And Enjoyment Of The Ocean Beaches.” 1998 N.C. Sess. Laws, Ch. 98-0225. (emphasis added.) As this Court has held: “[T]he title is part of the bill when introduced, being placed there by its author, and probably attracts more attention than any other part of the proposed law, and if it passes into law the title thereof is consequently a legislative declaration of the tenor and object of the Act. . . . Consequently, when the meaning of an act is at all doubtful, all the authorities now concur that the *title should be considered.*” *State ex rel. Cobey v. Simpson*, 333 N.C. 81, 90, 423 S.E.2d 759, 764 (1992) (quoting *State v. Woolard*, 119 N.C. 779, 780, 25 S.E. 719, 719 (1896)) (emphasis added). Moreover, in

ascertaining legislative intent, the Court “presume[s] that the legislature acted with full knowledge of prior and existing law and its construction by the courts.” *Id.* at 90, 423 S.E.2d at 763 (citing *Raeferd Lumber Co. v. Rockfish Trading Co.*, 163 N.C. 314, 317, 79 S.E. 627, 628-29 (1913)).

Here, application of these maxims leads to the conclusion that the General Assembly intentionally chose its words and intentionally recognized a common law right that it determined already existed. The legislature’s manifest intention in enacting N.C. Gen. Stat. § 77-20 (d) and (e) that it would recognize the already-existing common law and customary right of the public to use and enjoy the ocean beaches of North Carolina should not be simply cast aside as the Nieses propose. Rather, the law recognized by the General Assembly applies to the dry sand beach adjacent to the Nieses’ beach house just as it applies to the other dry sand beaches in the State.

2. Consistent with N.C. Gen. Stat. § 77-20(d) and (e), Prior Statutes Repeatedly Recognized the Public Access and Use Rights in Dry Sand Beaches.

The legislative recognition of N.C. Gen. Stat. § 77-20(d) and (e) did not occur in a vacuum. Rather, the historical record of North Carolina supporting this recognition spans decades of legislative, executive and judicial acts. Indeed, the General Assembly itself has spoken to this issue many times, and each time, it has

expressed recognition and support for the public access and use rights that the Nieses now seek cavalierly to unravel.

In 1973, the General Assembly enacted N.C. Gen. Stat. § 160A-308 to empower municipalities to regulate existing beach driving by the public. The statute provides:

A municipality may by ordinance regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the governing body of the municipality on the foreshore, beach strand and the barrier dune system. Violation of any ordinance adopted by the governing body of a municipality pursuant to this section is a Class 3 misdemeanor.

Provided, a municipality shall not prohibit the use of such specified vehicles from the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Commercial fishermen, however, shall abide by all other regulations or restrictions duly enacted by municipalities under this section.

N.C. Gen. Stat. § 160A-308. This statute recognized the pre-existing fact that the public was driving on both the “foreshore” and the “beach strand” and confirmed the travel rights of commercial fishermen on these parts of the beach. In fact, the statute expressly provides that commercial fisherman cannot be prohibited from driving on the beach strand by a municipal ordinance, regardless of municipal regulation of recreational beach driving.

In 1981, twenty years before the Nieses purchased their property and thirty years before they filed this suit, our General Assembly established the State’s beach access program. In particular, the General Assembly found:

The public has traditionally fully enjoyed the State's beaches and coastal waters and public access to and use of the beaches and coastal waters. The beaches provide a recreational resource of great importance to North Carolina and its citizens and this makes a significant contribution to the economic well-being of the State. The General Assembly finds that the beaches and coastal waters are resources of statewide significance and have been customarily freely used and enjoyed by people throughout the State.

N.C. Gen. Stat. § 113A-134.1(b). Based on these findings, the General Assembly also found that “[t]he public interest would best be served by providing increased access to beaches and coastal waters and by making available additional public parking facilities.” *Id.* Notably, the General Assembly did not find, however, the need to acquire, by purchase or eminent domain, any rights in the dry sand beach. One would expect such a finding if, as the Nieses erroneously contend, the public’s right to the dry sand beach was not firmly established already.

In 1985, sixteen years before the Nieses purchased their property and twenty-six years before they filed this suit the General Assembly enacted N.C. Gen. Stat. § 1-45.1, acknowledging the public’s right to freely use and enjoy the dry sand beach:

[R]ights held in trust by the State for the use and benefit of the people of the State in common. They are established by common law as interpreted by the courts of this State. They include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State’s ocean and estuarine beaches and public access to the beaches.

In 1987, the General Assembly recognized that these public rights applied to both State owned submerged land and waters as well as privately owned land when it defined the term “public trust resources” to mean land and water areas, ***both public and private***, [which are] subject to public trust rights as that term is defined in G.S. 1-45.1.” N.C. Gen. Stat. §113-131(e) (emphasis added); *see also* N.C. Gen. Stat. Ann. § 146-6(f) (providing that the title to land “in or immediately along the Atlantic Ocean raised above the mean high water mark . . . through projects that received no public funding vests in the adjacent littoral proprietor” but that “[a]ll such raised lands shall remain open to the free use and enjoyment of the people of the State, consistent with the public trust rights in ocean beaches, which rights are part of the common heritage of the people of this State”).

These statutes overwhelmingly and conclusively establish the General Assembly’s position that the public possesses (and always has possessed) the right to use and enjoy the dry sand beaches. The General Assembly’s recognition of these rights spans a period of almost three decades prior to the Nieves purchase of their property and almost four decades prior to their filing this action.

3. Our Executive Branch has Likewise Recognized Public Trust Rights in Dry Sand Beaches.

The Executive Branch has recognized the common law right of the public to use and enjoy the dry sand beach consistent with the General Assembly. In a 1996

advisory opinion, issued five years prior to the Nieses purchase of their property and fifteen years before they filed this suit, the Attorney General opined:

Because the public ownership stops at the high water line, the public must be either in the water or on the dry sand beach when the tide is high. The term 'dry sand beach' refers to the flat area of sand seaward of the dunes or bulkhead which is flooded on an irregular basis by storm tides or unusually high tides. It is an area of private property which the State maintains is impressed with public rights of use under the public trust doctrine and the doctrine of custom or prescription.

Opinion of Attorney General Re: Advisory Opinion Ocean Beach Renourishment Projects, N.C. Gen. Stat. § 146-6(f), 1996 N.C. AG LEXIS 55, 1996 WL 925134, *2 (Oct. 15, 1996) *See also* 15A NCAC 7M .0301(a) (“The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. . .”).

4. This Court Has Implicitly Acknowledged the Public’s Long History of Use and Enjoyment of the Dry Sand Beach.

The Nieses cite no authority expressly holding that they can exclude the public from the dry sand beach. And their position contravenes more than a century of court decisions at least implicitly acknowledging the public’s historical rights to access and use the dry sand beach. This Court should reject the Nieses’

arguments and express recognition of the public's rights is the next logical development in the law.

Indeed, in the 1991 *Concerned Citizens* case, this Court disavowed language in a Court of Appeals decision that undermined the strong common law right of the public to access and use dry sand beaches. *Concerned Citizens v. Holden Beach Enterprises*, 329 N.C. 37, 404 S.E.2d 677 (1991). At issue in that case was an alleged prescriptive easement over privately owned uplands that led to the beach. Though the record indicates that the case involved a privately owned dry sand beach, this Court assumed a legitimate purpose of public access and use. *See id.* at 53, 404 S.E.2d at 687 (“The ‘purpose and nature’ of the easement here was to reach the inlet and seashore for fishing, bathing, and other recreational use.”). Perhaps more importantly, this Court took the unusual step of addressing – and disavowing – dicta in a Court of Appeals decision which noted the Court of Appeals panel’s view that the public trust doctrine did not secure public access to a public beach:

We note dicta in the Court of Appeals opinion to the effect that the public trust doctrine will not secure public access to a public beach¹¹ across the land of a private property owner. As the statement was not necessary to the Court of Appeals opinion, nor is it clear that in its unqualified form the statement reflects the law of this state, we expressly disavow this comment.

¹¹ Of note, this Court referred to the beach as a “public beach” even though the record unequivocally indicated that the dry sand beach was privately owned.

Id. at 55, 404 S.E.2d at 688 (citation omitted). It stands to reason that if the public trust doctrine could possibly secure perpendicular public access to the beach this Court implicitly did not question that the public would have a right to recreate and enjoy the beach once on the beach.

Concerned Citizens rests on more than a century of this Court and other courts sitting in North Carolina treating public access and use of the dry sand beach as uncontroversial. *See, e.g., Storm v. Town of Wrightsville Beach*, 189 N.C. 679, 682, 128 S.E.2d 17, 18 (1925) (taking judicial notice of the recreational use the beach: “The very name of defendant--Wrightsville Beach--indicates it is a town on the beach, and it is a matter of common knowledge that it prospers mostly by its summer visitors and tourists. They go there for health and recreation.”); *Boylston Ins. Co. Davis*, 68 N.C. 17, 20 (1873) (illustrating practice of storing salvaged cargo from shipwrecks on the beaches of North Carolina).

In *Town of Emerald Isle v. State of North Carolina*, 320 N.C. 640, 360 S.E.2d 756 (1987), this Court considered the constitutionality of an act that pertained to pedestrian access and vehicular driving on the beach in the western portion of Emerald Isle. The stipulated facts in that case, noted in the Court’s opinion, were as follows:

[T]he oceanfront and inlet beaches within the Town of Emerald Isle are frequented on a regular basis by numerous sport fishermen operating vehicles on the beaches. These beach areas adjacent to Bogue Inlet in particular are noted for excellent fishing, and annually

attract numerous fishermen. Because no parking is available within two miles of the vehicle access ramp in this area, many of the fishermen are forced to drive along the beaches in order to gain access to the fishing areas.

Id. at 651, 360 S.E.2d at 763.

The act at issue in that case prohibited, in part, public vehicular driving on the beach in four blocks located on the Western end of Emerald Isle near Bogue Inlet. *Id.* The plaintiffs alleged that the act granted the oceanfront property owners within those blocks a “special privilege or exclusive emolument” in that the oceanfront property owners within those four blocks did not have “the use and enjoyment of their oceanfront property [because it was] infringed upon or restricted by the public’s right to use motor vehicles” on the beach adjacent to their properties. The plaintiffs further contended that the oceanfront property owners on other blocks were not granted such privilege (*i.e.*, preclusion of public driving on the dry sand beach), since the act did not prohibit vehicular beach access over those areas. *Id.*

This Court found that the act did not provide an exclusive emolument or privilege because: (i) it was intended to promote general welfare and was not intended to benefit a particular group of persons; and (ii) there was a reasonable basis for the General Assembly to conclude granting the exemption would serve the public interest. *Id.* at 654-55, 360 S.E.2d at 764-65. This Court did not, however, in any way suggest the public was not allowed to drive on the dry sand

beach nor did any of the litigants take such a position. *Id.* Accordingly, inasmuch as the issue of beach driving on the dry sand was before this Court (*i.e.*, it was prohibited on four blocks but not the other fifty) this Court's decision implicitly acknowledged the public's right to drive on privately owned dry sand beaches as the decision clearly contemplated that public driving would continue to occur on the non-restricted blocks.

As a decision from our local federal district court demonstrates, this acknowledgment is the natural result of our state's longstanding culture and tradition. In *Peele v. Morton*, 396 F. Supp. 584, 585-86 (E.D.N.C. 1975), the United States District Court for the Eastern District of North Carolina acknowledged that the plaintiff fishermen "ply[ed] their trade by hauling seine nets onto the beaches of North Carolina's Outer Banks *as their ancestors have done for centuries*" (emphasis added). The *Peele* Court went on to note the significance Congress placed on the ancestral practices of the Plaintiff fishermen on the dry sand beach:

It is significant that the legislation establishing other national seashores contains no provisions comparable to the one at issue. Clearly there must have been some special impetus for the Congress to give recognition to the commercial fishermen of North Carolina's Outer Banks. The explanation is found in the rather extensive administrative record in this case, and it is grounded not on economic but rather on cultural considerations. *The methods employed by plaintiffs in their commercial fishing endeavors differ only slightly from the methods employed by their ancestors some two hundred years ago* [i.e., since at least 1776].

Id. at 588 (emphasis added).

The Nieses ask the Court to change course and to change our history. This Court should act consistently with its prior decision and reject the Nieses' appeal.

B. Under North Carolina Common Law, The Public Has Rights to Use and to Access All Dry Sand Beaches for Appropriate Purposes, And Beach Front Landowners' Title Is Subject to These Public Use and Access Rights.

The law of this country incorporates the common law as it existed prior to the founding of the nation “except so far as it has been modified by the charters, constitutions, statutes, or usages of the several colonies and states, or by the constitution and laws of the United States.” *E.g., Shively v. Bowlby*, 152 U.S. 1, 14, (1894). North Carolina law also generally incorporates the pre-founding common law:

All such parts of the common law as were heretofore in force and use within this State, or so much of the common law as is not destructive of, or repugnant to, or inconsistent with, the freedom and independence of this State and the form of government therein established, and which has not been otherwise provided for in whole or in part, not abrogated, repealed, or become obsolete, are hereby declared to be in full force within this State.

N.C. Gen. Stat. § 4-1(2016) (originally enacted in 1715 and amended in 1787).

In our State, the application of the pre-founding common law is not unlimited; rather, it is applicable here when it is “compatible with our way of living,” *State v. Willis*, 255 N.C. 473, 474, 121 S.E.2d 854, 854 (1961), and only to the extent that it was “in force and use” in North Carolina and is “not contrary

to the freedom and independence of North Carolina,” *Gwathmey v. State of North Carolina*, 342 N.C. 287, 296, 464 S.E.2d 674, 679 (1995). Here, we enjoy the benefit of the common law, as modified to reflect, “our way of living.” *Id.*

As discussed above, this Court has acknowledged that the public recreates on the beach, *Storm*, 189 N.C. at 682, 128 S.E.2d at 18, including driving on the beach, *Town of Emerald Isle*, 320 N.C. at 654-55, 360 S.E.2d at 764-65. Additionally, this Court expressly disavowed the Court Appeals’ expression that the public trust doctrine would not allow for a prescriptive easement to gain *access across private uplands* to the dry sand beach. *Concerned Citizens* 329 N.C. at 55, 404 S.E.2d. at 688. In doing so, this Court referred to the beach as a “public beach” which connotes that public trust rights of use (not ownership) apply to the privately owned ocean beaches of North Carolina. *Id.*

This case involves public use rights that have been “in force and in use” here since time immemorial, that therefore are grounded in the pre-founding common law of North Carolina, and that are quite consistent with our freedom, our independence, and our customary way of life in this State. *See* N.C. Gen. Stat. § 77-20. The Court of Appeals correctly drew on these precepts in affirming the public’s longstanding customary rights of use of and access to the dry sand beaches of North Carolina as a fundamental tenet of North Carolina common law and common practice. *Nies*, ___ N.C. App. at ___, 780 S.E.2d at 196. As the Court of

Appeals properly held, these common law rights find voice in the public trust doctrine, the doctrine of custom, or both. *See id.*

1. Public Trust Rights Apply to the Dry Sand Beach.

In the context of the public using and accessing dry sand beaches, the public trust doctrine is a strong common law principle that has been reinforced by legislation from our General Assembly. It now exists as an ancient common law principle that is expressly recognized as part of the law of this State. *See* N.C. Gen. Stat. § 1-45.1. This doctrine, *inter alia*, places in a limited trust certain land adjacent to bodies of water. The limited trust so created is held by the State and exists for the benefit of the public. The attendant public use and access rights include, but are not limited to, “the right to navigate, swim, hunt, fish and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches.” N.C. Gen. Stat. § 1-45.1. The public trust exists, and the corresponding public use and access rights, are available as a matter of law to “land and water areas, ***both public and private***”. N.C. Gen. Stat. § 113-131(e) (emphasis added).

It applies to all:

[A]rea[s] adjacent to the ocean and ocean inlets, [which are] in constant flux due to the action of wind, waves, tides, and storms and include[] 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

[these areas, known as 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.

N.C. Gen. Stat. § 77-20(e). In the context of this legislation, the facts before the court, and the well-established, long history of the public's use of the dry sand beaches of North Carolina, the Court of Appeals expressly confirmed this common law right that has existed for hundreds of years. *Nies*, at ___, 780 S.E.2d at 196.¹²

The Nieses would have this Court case aside the public trust doctrine in favor of an entirely opposite principle. Their position rests on no authority. No North Carolina court has ever held that public trust doctrine does not apply to the dry sand beaches of North Carolina – something one would expect were the issue even moderately controversial. Moreover, no North Carolina court has ever held that an oceanfront property owner has the right to exclude the public from the dry sand beach. As such, the Court of Appeals properly held that the public trust use rights apply to the dry sand beach and that the Nieses never obtained the right to

¹² Ironically, the Nieses' home state of New Jersey has now acknowledged that public trust rights exist on the dry sand beaches of New Jersey. *See Matthews v. Bay Head Improv. Asso.*, 471 A.2d 355, 326, 95 N.J. 306, 365-66 (N.J. 1984) (“[W]e find that the public trust must be given both access to and use of privately-owned dry sand areas as reasonable necessary... The public must be afforded reasonable access to the foreshore as well as a suitable area for recreation on the dry sand.”)

exclude the public from the dry sand portion of their property. This Court should deny the Nieses' invitation to hold otherwise.

2. The Doctrine of Custom Supports the Public's Right to Use the Dry Sand Beach.¹³

Custom also is a common law doctrine, which this Court recognized as far back as at least 1870. *See Bost v. Minguet*, 64 N.C. 44, 46-47 (1870) (acknowledging customary right of livestock to roam free). Its application rests upon principles of "common consent" to a practice over time. *State v. Anderson*, 123 N.C. 705, 709, 31 S.E. 219, 220 (1898) (finding that, unlike in England, the custom of North Carolina at the time was to allow stock to run at large, which has resulted from geographic differences giving rise to a different custom).

As Blackstone observed, the doctrine rests upon: (1) "ancient" or long and general usage, (2) that is uninterrupted, (3) that is peaceable and free from dispute, (4) that the public has exercised in a manner appropriate to the land and to the usages of the community, (5) with certainty of geographic boundaries, (6) that is obligatory upon private landowners, and (7) that is not repugnant to other customs

¹³ The Nieses erroneously contend that the Town has waived the legal theory of custom. It has not. The Town pled the provisions of N.C. Gen. Stat. § 77-20 in its Answer [R p116, 118]. N.C. Gen. Stat. §77-20 (d) specifically refers to the "customary" right of the public. Additionally, the Town's Brief to the Court of Appeals (Defendant-Appellee's Brief pp 11-12) asserted the public's right of access could exist under several different legal theories, including the doctrine of custom. Further, under the proper scope of review in this Court, the Town may defend the Court of Appeals decision on any appropriate legal grounds, even assuming *arguendo*, that the legal theory was not previously asserted.

or laws. 1 Blackstone, Commentaries *75-*78, cited in *State ex rel. Thornton v. Hay*, 462 P.2d 671 (Or. 1969). In an analogous case to this one, and faced with similar customs by its beach-going citizens, the Oregon Supreme Court applied to doctrine of custom in upholding the public's right to use Oregon's dry sand beaches. *Hay*, 462 P.2d at 676-77 ("This case deals solely with the dry-sand area along the Pacific shore, and this land has been used by the public as public recreational land according to an unbroken custom running back in time as long as the land has been inhabited."); see also *City of Daytona Beach v. Tona-Rama, Inc.*, 294 So. 2d 73, 78 (Fla. 1974) (recognizing long-standing public recreational customary use in dry sand beach);¹⁴ *In Re Ashford*, 50 Hawaii 314, 316-17, 440 P.2d 76, 78 (1968) (citing ancient Hawaiian law and practices); *United States v. St. Thomas Beach Resorts, Inc.*, 386 F. Supp. 769, 772-773, (D.V.I. 1974), aff'd, 429 F.2d 513 (3d Cir. 1975) (citing 1 Blackstone, Commentaries 75-78).

Application of the doctrine in this case leads inescapably to the same conclusion as reached in *Hay*. The Blackstone elements are conclusively established because, as is explained below, the public use of the beach in North Carolina and in particular Emerald Isle has been 1) long standing, 2) continuous

¹⁴ While Amici Curiae Owners' Counsel of America and Professor David L. Callies cite *City of Daytona Beach v. Tona-Rama, Inc.* for the proposition that Florida is a mean high water mark state, they neglect to note that the case also found a customary right in the public to use the dry sand beach. (Owners' Counsel and Callies Amici Br. at 12-13).

without interruption, 3) peaceable and free from dispute for over 200 years, 4) appropriate, 5) certain (visible boundaries exist such as dunes, first line of vegetation, escarpment line, storm trash line, 6) uniform and unquestioned and 7) is not repugnant to any other customs or laws.

Public use and access of our State's beaches are grounded in uninterrupted, historical practice. *See, e.g., State ex rel. Rohrer v. Credle*, 322 N.C. 522, 525, 369 S.E.2d 825, 827 (1988) (recognizing "the rights of the people to use . . . the riverbanks and seashores for towing and drying nets"); *Peele*, 396 at 585-86 (acknowledging that fishermen have hauled their seine nets onto North Carolina's beaches for centuries); Joseph J. Kalo, *The Changing Face of the Shoreline: Public and Private Rights to the Natural and Nourished Dry Sand Beaches of North Carolina*, 78 N.C. L. Rev. 1869, 1877 (2000) ("[T]he custom of the dry sand beaches being open to public trust uses has a long history in North Carolina").¹⁵

¹⁵ North Carolina's coastal municipalities and counties have universally governed their beaches in accordance with the public's historical right to use and recreate on the dry sand beach. Virtually every North Carolina coastal municipality has passed ordinances that are premised on the understanding that the public has the right to use the dry sand beach. *See* Summary of Local Beach Ordinances (App 4-54). Many of the coastal municipalities have ordinances similar to the Emerald Isle Ordinances at issue in this case. *See, e.g., id.* (generally defining the terms "beach," "beach strand," "public beach," and "permitted driving area" to include the beach area extending from the water to the toe of the frontal dune or first line of stable vegetation); Nags Head Ordinance 8-81 ("Beach means all that area from the easternmost edge of the barrier dune line eastward and protruding into the Atlantic Ocean for a distance of 100 yards east of the mean low water mark."); Carteret County Ordinance 12-26 ("Permitted driving area shall mean that area on

This practice is uncontroversial and orderly, as evidenced by the fact that it has so often found voice in the pronouncements of our legislature and by the fact that, until the Nieses brought the present suit, our State's private landowners have almost universally consented to the practice. It is widespread, uniform and obligatory. The public's use and access is appropriately limited as to geography, and it stands unopposed by any contrary practice of exclusion or any contrary law.

It is, therefore, binding as a matter of law upon the Nieses. The Court should reject

Bogue Banks consisting primarily of hard-packed sand and lying between the waters of the Atlantic Ocean and Bogue Sound and the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound.”); Holden Beach Ordinance 94-04 (“BEACH. The area between the mean low water mark of the Atlantic Ocean and the seaward toe of the frontal dune.”).

Similar to the Town, virtually every North Carolina coastal municipality regulates and prohibits beach driving. *See* Summary of Local Beach Ordinances (4-54). Even for those municipalities that prohibit beach driving, all municipalities provide an exception for emergency vehicles, such as police, fire, ambulance, and rescue vehicles, in performance of their duties, and most municipalities provide an exception for municipal vehicles engaged in official duties. *See id.*; *see, e.g.*, Nags Head Ordinance 8-86(a) (“The provisions of this division shall not apply to municipal employees, municipal vehicles or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties.”); Pine Knoll Shores Ordinance 46-22(d) (“Exception for emergency vehicles and other authorized vehicles. There is excepted from the application of this chapter any fire equipment, rescue equipment, or other vehicles of an emergency nature which find it necessary to utilize the beach and/or sand dune area. . . .”); Sunset Beach Ordinance 95-03 (“The provisions of this section shall not apply to: (1) Police, fire, rescue or other municipal vehicles and employees while in the performance of their duties.”).

These ordinances conclusively demonstrate that coastal municipalities and counties regulate their beaches with the understanding that the public has an historical right to use and recreate on the dry sand beach area.

the Nieves' request to outlaw a custom that pre-dates statehood and has always served our citizen landowners and our beach-going public well.

C. The Law's Treatment of the Dry Sand Beach Open to Free Public Access and Use is Eminently Sensible Given that Its Demarcation Point – the "Mean High Water Mark" – is Obscure.

The boundary between private lands and State-owned public trust lands on an ocean shoreline is the mean high water mark. *Carolina Beach Fishing Pier, Inc. v. Town of Carolina Beach*, 277 N.C. 297, 177 S.E.2d 513 (1970); see also N.C. Gen. Stat. § 77-20(a). The mean high water mark is "the average height of all the high waters at that place over a considerable period of time," specifically 18.6 years. *Borax Consolidated, Ltd. v. Los Angeles*, 296 U.S. 10 (1935), cited in *Carolina Beach Fishing Pier*, 277 N.C. at 303, 177 S.E.2d at 516. Both this Court and the United State Supreme Court relied upon the United States Coast and Geodetic Survey's definition. *Borax*, 296 U.S. at 22-27, 31. Yet, incredibly, the Nieves appear to think that the mean high water mark is stable and easy for the public to locate.

It is not. Because, as the Supreme Court noted in *Borax*, "[t]he range of the tide at any given place varies from day to day," and the ephemeral wet sand line is a particularly poor choice to use to demark the mean high water mark line as a property boundary. *Id.* at 23. It is actually an elevation (vertical datum) based on the mean of all high tides during an 18.6 year tidal epoch, not the landward-most

line of wet sand where wave run-up ended at the last high tide. *See* Maloney and Ausness, *The Use and Legal Significance Of The Mean High Water Line in Coastal Boundary Mapping*, 53 N.C. Law Rev. 185, 251-52 (1974). It requires a surveyor to determine that elevation by reference to tide stations maintained by the National Ocean Survey. *Id.* The surveyor must then locate the mean high water line on the beach, usually by running levels from a benchmark elevation. *Id.* Obviously, as the beach profile changes with wind and waves, the physical location of the mean high water mark on the beach changes as well. The nature of the routine changes have been described as follows:

The mean high water line boundary is found at the point at which the horizontal tidal plane of the mean high water intersects with the shore. The vertical determination of mean high water is basically stable, being based on observations over nineteen years. The horizontal element of the boundary determination on a sandy beach is anything but stable. The intersection of the horizontal plane of mean high water changes with erosion and accretion, seasonal variations in the beach, wind, waves, storms and man-made changes to the beach— anything that changes the profile of the beach. As a result, “[a] water boundary determined by tidal definition is . . . not a fixed visible mark on the ground, but represents a condition at the water's edge during a particular instant of the tidal cycle.” It follows that even the most accurate determination of the MHWL for a dynamic sandy beach is no more than a snapshot of the boundary at that particular time and place.

Donna R. Christie, *Of Beaches, Boundaries and SOBS*, 25 *Journal of Land Use & Evt'l Law* 19, 34 (2010).

This means, quite simply, that landowners, the public and law enforcement have no practical way to locate the mean high water line property line boundary

based on the “wet sand” absent a current daily “snapshot” survey. That is why, for centuries, North Carolinians have customarily recognized the toe of the frontal dune or vegetation line as the physical landward boundary of the public beach. Not only is the wet sand line not an accurate property boundary, it begins to fade as soon as the tide recedes and the coastal sun warms the beach. The Nieses’ assertion that the dune or vegetation line is less stable than the wet sand line defies logic, common sense, and centuries of common practice.

Rather, the people, the legislature, the executive branch, and the courts have properly recognized public use and access rights in the dry sand beach, which is in harmony with the predicable boundaries set by nature. The Town submits that this Court should reject the Nieses’ efforts to require that beachgoers and first responders either must become expert surveyors who can calculate the mean high water mark upon demand or must risk a trespassing claim.

D. The Common Law Rights of Public Use And Access Have Fostered North Carolina’s Vibrant Ocean Beaches Tourism Economy.

The following legislative findings are beyond dispute:

- (1) North Carolina has 320 miles of ocean beach, including some of the most pristine and attractive beaches in the country.
- (2) The balance between economic development and quality of life in North Carolina has made our coast one of the most desirable along the Atlantic Seaboard.
- (3) North Carolina's beaches are vital to the State's tourism industry.

(4) North Carolina's beaches belong to all the State's citizens and provide recreational and economic benefits to our residents statewide.

Act of June 30, 2000, ch.67, sec. 13.9(a)(1)-(4), 2000 Sess. Laws 197, 339. (App 55-60). These findings are consistent with decades of prior legislative acts, prior decisions of this and other Courts, including the Court of appeals below.

The open and orderly nature of North Carolina makes them appealing. In fact, the Nieves vacationed in Emerald Isle for twenty years prior to purchasing their property. The Nieves, like millions of other vacationers to our coast have enjoyed the ocean beaches of North Carolina free of fences, roped off areas, required badges and the like. Coastal tourism significantly contributes to our State's economy, accounting for more than \$2.6 billion in economic activity in 2009 alone. *See* NCDENR, North Carolina Beach Inlet Management Plan: Final Report at ES-1; XII-3 (April 2011). (App 61-62). The Court should decline the Nieves' invitation to deny future tourist the opportunity to enjoy our beaches just as the Nieves did for twenty years prior to moving to Emerald Isle.

III. THERE HAS BEEN NO TAKING OF THE NIESES' PROPERTY, AND THE SUPERIOR COURT PROPERLY GRANTED, AND THE COURT OF APPEALS PROPERLY AFFIRMED, SUMMARY JUDGMENT IN FAVOR OF THE TOWN.

A. The Town's Beach Driving Ordinance Does Not Constitute a Physical Invasion.

The Nieves erroneously insist that the Town has "taken" their property by committing a "physical invasion." (Appellants' New Br. at 13.) The physical

invasion, they in turn claim, occurs by virtue of the Town's Beach Driving Ordinance. This argument materially misapprehends the nature of the Beach Driving Ordinance and the rights that the Nieses have in the dry sand beach.

As the Court of Appeals properly held, the Beach Driving Ordinance is *not* a permissive ordinance. *Nies v. Emerald Isle*, at ____, 780 S.E.2d at 192. It does not give to the public anything that the public did not already possess, as the public already had the right to walk and drive upon the dry sand beach. *Supra*, at Section II(B). It does not take anything from the Nieses because, as a result of the existing public trust use rights, the Nieses never had the right to exclude the public from walking or driving on the dry sand beach. *Id.*

Indeed, in enacting the Beach Driving Ordinance, the Town was merely exercising its regulatory authority pursuant to N.C. Gen. Stat. §160A-308, which provides that the Town can “by ordinance regulate, restrict and prohibit the use of” vehicles of all kinds on the “on the foreshore, beach strand and the barrier dune system.” The Ordinance accomplishes what the statute contemplates – the Town’s regulation of the public’s existing right to traverse the dry sand beach via motor vehicle. It does not give rise to a physical invasion or a taking.

The Court of Appeals correctly held that the Nieses’ physical invasion argument lacks merit since the Nieses “have never, since they purchased the Property in 2001, had the right to exclude public traffic, whether pedestrian or

vehicular, from the public trust dry sand beach portions of the Property” and that “[t]he Town has the authority to both ensure public access to its ocean beaches, and to impose appropriate regulations pursuant to its police power.” *Nies*, at ____, 780 S.E.2d at 198 (citations omitted). The Court of Appeals further held properly, that the Town vehicular traffic is allowed pursuant to the public trust doctrine and, therefore, “cannot constitute a taking. *Id.*, at ____, 780 S.E.2d at 200.¹⁶ This Court should reject the Nieses’ invitation to disturb these rulings and to jettison both longstanding beach use-and-access rights and reasonable municipal regulation of those rights.

Further, any assertion of a physical taking is time barred. N.C. Gen. Stat. § 40A-51 provides a two-year statute of limitations for inverse condemnation actions. Because the Nieses allege that Beach Driving Ordinance constitutes a physical invasion, any takings claim resulting from ordinance would have accrued at the time it authorized the physical invasion. As discussed *supra*, the Town has regulated the public’s driving on the dry sand beach by ordinance since at least 1980. (R p 518) These ordinances have likewise excepted municipal vehicles. The Nieses had at least constructive knowledge of these facts when they purchased

¹⁶ As discussed *supra*, the Town’s driving on the beach was acknowledged as far back as the 1965 session law regulating driving on Bogue Banks (in that government vehicles were excepted from the act). It is axiomatic that if the public has a right to drive on the beach, so does the Town. The lawful presence of the public on the dry sand beach essentially mandates government presence to ensure a clean, safe and orderly beach.

their beach house. Appellants also concede this fact. *See* Plaintiffs-Appellants Brief (Court of Appeals), pp. 11-12 (acknowledging that “[h]istorically, the ordinance permitted public driving on the foreshore and area lying between the waters of the Atlantic Ocean . . . and a point ten (10) feet seaward from the foot or toe of the dune closest to the waters of the Atlantic Ocean”). Moreover, Appellant Diane Nies participated in a petition in the 2003 time frame protesting the public’s beach driving to the Town. (R. pp 248, 249). Therefore, any alleged takings authorized by the ordinance occurred long before the Nieses acquired the property in 2001, and the time to file has long since expired. The Town pled the statute of limitations in the Eighth Defense of the Answer (R p 117), and brought it forward in its Court of Appeals brief at p. 20, n 8. This provides an independent reason for this Court to reject the physical invasion claim. *See* footnote 10, *supra*.

B. The Town’s Beach Equipment Ordinances Involve a Proper Exercise of the Town’s Police Power and Are Not a Taking.

Perhaps realizing the fatal weaknesses of their “physical invasion” argument, the Nieses attempt to argue that the Town has exceeded the bounds of the public trust doctrine with its Beach Equipment Ordinances. (Appellants’ New Br. at 42). This, the Nieses insist, is tantamount to the Town “assum[ing] dominion” over the dry sand beach adjacent to their beach house. *Id.* Here, too, the Nieses misinterpret the nature of the Ordinance and the legal principles upon which it rests.

Under this Court's precedent, the Town possesses, under its police power, the authority to regulate property to prevent injury to the public. *Kirby v. NCDOT*, ___ N.C. ___, ___, ___ S.E.2d. ___, ___, 2016 WL 3221090 (June 10, 2016) (internal citations and quotations omitted). And "the right of property . . . [is] enjoyed subject to reasonable regulations" because "[t]he safety of the people is the supreme law" *City of Durham v. Eno Cotton Mills*, 141 N.C. 615, 637, 54 S.E. 435, 461 (1906). The Nieses have waived the right (if any) to argue a regulatory taking based on the exercise of the police power because, as the Court of Appeals properly noted, they did not advance a regulatory argument on appeal. *Nies*, at ___, 780 S.E.2d at 198, 200. Nonetheless, the Town's Beach Equipment Ordinance does not constitute a regulatory taking as it is a proper exercise of the Town's police power.

Nor can the Nieses legitimately claim a "physical" invasion based on the Town's proper exercise of its police power. That power exists, pursuant to state statute to promote the "health, safety, and welfare" of the public through regulation of the ocean beaches:

[A] city may, in the interest of promoting the health, safety, and welfare of the public, regulate, restrict, or prohibit the placement, maintenance, location, or use of . . . equipment, personal property, or debris upon the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries...

Nothing in this section shall be construed to . . . deny the existence of the authority recognized in this section prior to the date this section becomes effective...

N.C. Gen. Stat. § 160A-205 (2014). Such reasonable regulations have never been viewed as a taking. *Cf. Barnes v. Highway Commission*, 257 N.C. 507, 514, 126 S.E.2d 732, 737-38 (1962) (“If the act is a proper exercise of the police power, the constitutional provision that private property shall not be taken for public use, unless compensation is made, is not applicable.”) (citations and internal quotation marks omitted).

In the context of regulatory takings claims, the Supreme Court has held that a reviewing court must “focus on the parcel as a whole.” *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 327 (2002).

This requirement that “the aggregate must be viewed in its entirety” . . . clarifies why restrictions on the use of only limited portions of the parcel, such as setback ordinances, . . . were not considered regulatory takings. In each of these cases, [the United States Supreme Court] affirmed that “where an owner possesses a full ‘bundle’ of property rights, the destruction of one ‘strand’ of the bundle is not a taking.”

Id. at 327 (citations omitted).

Here, the Nieses cannot overcome the summary judgment ruling below because they have no evidence that the “full bundle” of their property rights has been impaired. Indeed, the Nieses themselves have not lost the right to leave

equipment on the dry sand beach for most of the year by virtue of the Ordinances.¹⁷ And the Ordinances do no more than restrict the public use and access rights with which the Nieses take issue anyway.

At best, the Nieses can liken the Town's prohibition of large beach equipment within 20 feet of the frontal dune to a building setback regulation, as it serves the same regulatory public health and safety objectives. It addresses: (1) the safety hazard posed by the equipment left on the beach, and 2) an identified problem with unattended beach equipment sometimes blowing into the surf or otherwise causing a nuisance litter problem. (R p 518) It has little in common with an easement, as the ordinance does not authorize the use and access of which the Nieses complain – that use and access arises from longstanding common law. And, problematically for the Nieses, analogous setback requirements have been held to be constitutional and not a taking. *See Goreib v. Fox*, 274 U.S. 603, 608 (1927) (holding that a building setback requirement was constitutional; “and the extent of the area to be left open for light and air, and in aid of fire protection, etc., are, in their general scope, valid under the federal Constitution”).

¹⁷ The Town's unattended beach ordinance includes an exemption for oceanfront property owners. (R p 544.) Appellants have availed themselves of that provision. (R pp 264, 403.) *See also* Plaintiffs-Appellants' New Brief, p 10 fn 6. Accordingly, the Appellants lack standing to even challenge this portion of the ordinance. *See Bailey v. State of North Carolina*, 348 N.C. 130, 147, 500 S.E.2d 54, 64 (1998) (“The rule is well settled that one who voluntarily proceeds under a statute and claims benefits thereby conferred will not be heard to question its constitutionality in order to avoid its burdens.”).

The Nieses' rights in the dry sand beach portion of their property are the same as they were when they purchased the property with the exception of the twenty-foot strip at the base on the frontal dune. With respect to that area, the Nieses are only prohibited from placing beach equipment there from May 1st to September 14th. They are not, however, prevented from being in that area as a whole. The Town and the public already had the right to drive on or otherwise traverse that area of the dry sand beach when the Nieses purchased the property. The Town's Beach Equipment Ordinance regarding that twenty-foot strip actually serves to enhance, not diminish the property in that it (1) precludes less pedestrian activity in that area, and (2) provides for a safe (emergency service vehicles), orderly (police if needed) and sanitary (trash pickup) dry sand beach adjacent to the Nieses' beach house.

The Nieses have no takings claims related to the Beach Equipment Ordinances. The decisions of the lower courts so holding should remain undisturbed.¹⁸

¹⁸ The Town of Emerald Isle is not alone in enacting these types of regulatory ordinances. Almost all coastal municipalities have a similar unattended beach equipment ordinance. For example:

- Nags Head Ordinance 8-8 (Prohibits any person from placing “any item on the beach which: (1) unreasonably restricts, prevents or disrupts the passage of public works, emergency or ocean rescue vehicles, or the public; or (2) impedes or obstructs the line of sight to the Atlantic Ocean from lifeguard stands or surveillance areas used by ocean rescue personnel.”);

C. The Authority on Which Plaintiff-Appellants' Rely is Distinguishable and Inapplicable.

To create the faulty appearance that they have a legitimate takings claim, the Nieves cite to a series of inapposite cases. Considered properly and in their appropriate context, these cases lend no support to the claims at issue. For

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- Carolina Beach Ordinance 28-119 (“So as not to impede or restrict the free and unconstrained use and occupancy of the public beach by the public and in order to assist police, lifeguards, and fire personnel in responding to emergency calls, absolutely no beach equipment is allowed on the beach at any time within 20 feet from the easternmost edge of the dune slope or vegetative line. Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis.”);
 - Holden Beach Ordinance 94-06 (“All beach equipment shall be set at least 10 feet from any sea turtle nest or dune vegetation.”);
 - Duck Ordinance 94-05 prohibits the erection of a tent, cabana, or sunshade within 15 feet of the base of the seaward toe of the primary dune; Southern Shores Ordinance 34-55 prohibits the erection of a tent, cabana, or umbrella which, in the opinion of public safety personnel: (a) prevents or disrupts the passage of emergency or ocean rescue vehicles; or (b) hampers the ability to provide adequate ocean rescue service by obstructing the line of sight to the water from lifeguard stands or other surveillance areas;
 - Surf City Ordinance 4-13 prohibits beach equipment from being placed within a 25 foot perimeter of an emergency access or any public beach access point. Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis;
 - Sunset Beach Ordinance 95.07 prohibits any obstruction from being placed within a 30-foot perimeter of any emergency access or any public beach access. Tents, shading devices, canopies and umbrellas must be located at least 12 feet from the dune line.

See Summary of Local Beach Ordinances (App 4-54). Beach equipment ordinances, such as the Town’s at issue in this case, are an appropriate exercise of municipal police power. They promote an orderly and safe beach, do not affect the entirety of the oceanfront lots, and are reasonable given the public’s use of North Carolina’s ocean beaches.

example, the Nieves cite *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987) for the proposition that, by virtue of the Town's ordinances, a permanent physical taking has occurred because individuals are given a right to continuously traverse over private property. *Nollan* is inapplicable because: (1) it did not address the public-trust doctrine and (2) subsequent cases have limited its application to land-use exactions.

In *Nollan*, the petitioners applied for a permit under California's Coastal Development Act to demolish an existing beach bungalow and replace it with a larger three-bedroom beach house. The California Coastal Commission granted the permit application to the Nollans on the condition that they allow the public an easement to pass across their property between the mean high tide line and their seawall. The Nollans objected to the condition and appealed the Commission's decision, which appeal eventually found its way to the United States Supreme Court.

The United States Supreme Court in *Nollan* dealt with the narrow question of whether a permit condition mandating the conveyance of a property interest that does not serve the same governmental purpose as a development ban is a legitimate exercise of the government's police power or a "taking" under the Fifth Amendment. The case did not involve the public trust doctrine or answer the question of whether the public had a pre-existing right to use that portion of the

beach. In fact, the Court explicitly noted that its decision, and the decisions below, did not implicate the public trust doctrine. *Nollan*, 483 U.S. at 833, 865 (noting that the court would not “take it upon [itself] to resolve” the public trust question). In short, *Nollan* is not a public trust case. Any language in the opinion that seems to suggest otherwise is dicta.

While in *Nollan*, the Court noted that the California Coastal Commission did not have standing to enforce the public trust rights in the ocean beaches; here, by contrast, the Town of Emerald Isle does have standing to assert this doctrine here. N.C. Gen. Stat. § 160A-205 (2015) (“a city may...regulate [the] conditions upon the State’s ocean beaches and prevent or abate any unreasonable restriction of the public’s rights to use the State’s ocean beaches”); *see also Fish House, Inc. v. Clarke*, 204 N.C. App. 130, 136-37 (2010) (allowing use of doctrine defensively). Further, later Supreme Court cases have limited *Nollan*’s holding to situations involving land-use exactions, *i.e.*, instances in which a government, under the guise of land-use regulation, has required an individual to deed portions of their property. *See Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) (“[T]he conditions imposed were . . . a requirement that she deed portions of the property to the city. In *Nollan, supra*, we held that governmental authority to exact such a condition was circumscribed by the Fifth and Fourteenth Amendments.”); *City of Monterey v. Del Monte Dunes*, 526 U.S. 687, 702 (1999) (citing to *Nollan*: “[W]e

have not extended the rough-proportionality test of Dolan beyond the special context of exactions – land-use decisions conditioning approval of development on the dedication of property to public use.”) In this case, the two subject ordinances do not involve any requirement that the Nieses transfer any ownership in their property; they simply regulate the Nieses’ use of their property in accordance with the public’s pre-existing rights to use the dry-sand beach. Consequently, *Nollan* is inapplicable.

For similar reasons, the other cases cited by the Nieses do not establish a taking. For example in *West v. Slick*, 313 N.C. 33, 362 S.E.2d 601 (1985), which concerned two unpaved and unimproved roads on the Outer Banks, neither of which was located on the dry-sand beach. *West* 313 N.C. at 43, 362 S.E.2d 606. Although the Court does recite North Carolina precedent regarding the “foreshore” and littoral property owners, *West*, 313 N.C. at 60-62, the opinion does not concern the dry sand beach and the public trust doctrine. Similarly, in *Kaiser Aetna v. United States*, 444 U.S. 164 (1979), the Supreme Court dealt with a unique situation in which an originally un-navigable pond was made navigable exclusively through substantial amounts of private investment and effort and the question before the Court was whether the pond had been converted “into a public aquatic park that which petitioners had invested millions of dollars in improving on the assumption that it was a privately owned pond.” *Kaiser*, 444 U.S. at 169. Contrary

to that decision, here, the Nieses have not altered the character of the dry-sand beach through any investment on their part and *Kaiser* is inapplicable.

Other cases cited by the Nieses, operate directly against their takings claim. *Carolina Beach Fishing Pier, Inc*, 277 N.C. 297 (holding, where the case did not consider the dry sand beach, that there was no taking by a town where it constructed a berm where, by virtue of the erosion, the subject property was vested in the State and the town did not take any of plaintiff's property by constructing the berm");¹⁹*Gwathmey v. State of North Carolina*, 342 N.C. 287, 294, 464 S.E.2d 674, 677 (1995) (concerning the navigability of privately owned marshlands and not concerned with the public's right access to the dry sand beach). Other cases cited by the Nieses are opinions that are out of date and jurisdiction. *See, e.g., Winder v. Blake*, 49 N.C. 332 (1857) (holding that a defendant failed to prove a "special custom" to fish in another's mill pond as there was no showing of well-documented use as in this case);²⁰ *Severance v. Patterson*, 370 S.W.3d 705, 2012

¹⁹ Similarly, in *Weeks v. NC Dept. of Natural Resources & Community Dev.*, 97 N.C. App. 215, 388 S.E.2d 228 (1990), the Court of Appeals agreed with the Department of Natural Resources that its denial of plaintiff's application to build a 900-foot long pier into Bogue Sound was not a takings as the denial did not deprive plaintiff of all practical uses of his property. The Town completely agrees with this reasoning as the challenged regulations in this case do not deprive the Nieses of all practical and economically beneficial uses of their property.

²⁰ No decision of this Court has followed *Winder*. *Morehead v. Brown*, 51 N.C. 367, 370 (1859) distinguished it, as did *Peterson v. South & Western R.R.*, 143

Tex. LEXIS 260, 55 Tex. Sup. J. 501, 2012 WL 1059341 (Tex. 2012) (addressing an avulsive event where the subject property was originally essentially a “second row” property that became an oceanfront property after Hurricane Rita and noting that prior to the Hurricane the public had not historically had access to the property at issue).²¹

IV. THE LONGSTANDING AND BENEFICIAL PUBLIC POLICY OF COASTAL NORTH CAROLINA THAT HAS HERETOFORE BEEN PROTECTED BY THE COMMON LAW SHOULD NOT BE DISTURBED.

In essence, the Nieses seek to change the long established and universally-accepted policy and law of this state by having this Court hold that they have the right to exclude the public from the dry sand ocean beaches of North Carolina. The repercussions of such a holding would be severe and long lasting. It would eviscerate numerous North Carolina statutes and would likewise invalidate existing ordinances in coastal municipalities. The effect such a holding would have on the State’s billion dollar tourism economy would be incalculable.

N.C. 260, 264, 55 S.E. 618 (1906) (citing *Winder* and holding that a business custom cannot be created merely by “a few instances” of a practice.). Given this Court’s later decisions in *Bost*, *Anderson* and other cases recognizing the doctrine of custom, *Winder* is not persuasive authority. Appellants’ reliance on *Winder* is misplaced.

²¹ Avulsion is *not* at issue in this case. In fact, Plaintiff alleges that their property has experienced accretion over the years and the Town’s nourishment project extended the dry sandy beach in front of their home. (R p 12),

Few things would be more “destructive of, or repugnant to, or inconsistent with, the freedom” of the people of this State than to privatize the ocean beaches in North Carolina. In the decision below, the Court of Appeals correctly took judicial notice of the fact that:

The public right of access to dry sand beaches in North Carolina is so firmly rooted in the custom and history of North Carolina that it has become a part of the public consciousness.

Nies, at ___, 780 S.E.2d at 196 (2015). In over two hundred years of North Carolina’s jurisprudence there has never been a case holding that a member of the public or municipal employee trespassed on the dry sand beach.

The Town urges this Court to consider how different North Carolina would be if it were not a beach state. Think of how the traditions of our people would be different, and how much poorer our citizens and our local governments would be. Under the Nieses’ construction of the law, coastal municipalities would be forced to sue their ocean front citizens to establish the existing otherwise harmonious reality that North Carolina beaches are open to the public. Moreover, thousands of “trespass” claims would occur against citizens and visitors simply for them doing what that have always done; enjoy the beach. This would include the virtually impossible task of having local law enforcement determine the mean high water mark on the beach which is demonstrably not simply the line between the wet sand and the dry sand. Such a construction of North Carolina law would also effectively

deny access to the beach during high tides as the public would be forced to wade through the water to get to the nearest public beach access point. That is the reality that the Nieses urge this Court to bring about.

There is no reason for this Court to do so. Takings law does not require such a change; indeed, it does not even authorize such a change. Nor does such a change find support in the general law as it has been promulgated and passed upon by all three branches of our State Government and enjoyed by our citizenry. Quite the contrary, the Nieses' arguments contravene the general law of this State and the traditions of our people. The Town respectfully requests that this Court decline the Nieses' invitation to make drastic and unwarranted changes in the law.

CONCLUSION

For the reasons stated above, the Town respectfully requests that this Court affirm the decision of the Court of Appeals below upholding the Superior Court's order granting summary judgment to the Town and rejecting the Nieses' legally inappropriate takings claim.

Respectfully submitted this 27th day of July, 2016.

CROSSLEY MCINTOSH COLLIER HANLEY & EDES, PLLC

By: Electronically Submitted
Brian E. Edes
N.C. State Bar. No. 25415

N.C. App. R. 33(b) Certification: I certify that the attorney listed below has authorized me to list his name on this document as if he had personally signed it.

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing New Brief of Defendant-Respondent was served on the following persons by United States Mail, postage prepaid, addressed as follows:

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This the 27th day of July, 2016.

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CH. 797-798

1965—SESSION LAWS

S. B. 460

CHAPTER 797

AN ACT TO AMEND CHAPTER 869, SESSION LAWS, 1961, WHICH AMENDED CHAPTER 22, SESSION LAWS, 1951, RELATING TO THE COMPENSATION OF THE MAYOR AND MEMBERS OF THE CITY COUNCIL OF THE CITY OF DURHAM.

The General Assembly of North Carolina do enact:

Section 1. That Section 1 of Chapter 869 of the Session Laws of 1961 is hereby amended by rewriting Section 2 of Chapter 22, Session Laws of 1951, to hereafter read as follows:

"Sec. 2. The salary of the members of the City Council of the City of Durham, other than the mayor, is hereby fixed at fifty dollars (\$50.00) each per month, payable out of the general fund of the city. In addition thereto, each member of the city council, other than the mayor, shall be entitled to the sum of fifteen dollars (\$15.00) for attendance at each regular or special council meeting and/or each committee meeting of the council. The total of such sums, however, in addition to said sum of fifty dollars (\$50.00) per month, shall not exceed ninety dollars (\$90.00) per month, but no payment of said additional amount of fifteen dollars (\$15.00) per meeting shall be made to any member of the council for any meeting not actually attended by such councilman."

Sec. 2. Except as herein amended by Section 1, Chapter 869 of Session Laws of 1961 shall remain in effect.

Sec. 3. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 4. This Act shall be in full force and effect from and after the first day of July, 1965.

In the General Assembly read three times and ratified, this the 3rd day of June, 1965.

S. B. 470

CHAPTER 798

AN ACT TO REGULATE THE OPERATION OF MOTOR VEHICLES ON THE BEACH STRAND ON BOGUE BANKS BETWEEN BEAUFORT INLET AND BOGUE INLET.

The General Assembly of North Carolina do enact:

Section 1. It shall be unlawful for any person to operate, park, or leave standing any motor vehicle on that area lying to the West of Beaufort Inlet to the South of the line of sand dunes, to the East of Bogue Inlet, and to the North of the low water mark of the waters of the Atlantic Ocean, which area is hereby designated and defined as the beach strand; provided, however, that this Section shall not apply to beach buggies, jeeps, trucks, tractors or motor vehicles operated for commercial or sports fishing purposes, and shall not apply to motor vehicles operated in connection with the construction of real or personal improvements on the said beach strand or contiguous areas; and provided further that this Section shall not apply to motor vehicles operated in connection with and owned by the Government

of the United States of America or the State of North Carolina, or any political subdivision or agency thereof.

Sec. 2. It shall be unlawful for any motor vehicle operated on the beach strand area as herein defined in accordance with and under the exceptions set out above to operate at a speed in excess of twenty-five miles per hour. Appropriate signs shall be posted by the State Highway Commission on the highway leading from Fort Macon to and including the Village of Salter Path.

Sec. 3. Any person who shall violate the provisions of this Act shall be guilty of a misdemeanor, and upon conviction shall be fined not more than fifty dollars (\$50.00) or imprisoned not more than thirty days, in the discretion of the court.

Sec. 4. All laws and clauses of laws in conflict with this Act are hereby repealed.

Sec. 5. This Act shall be in full force and effect from and after its ratification.

In the General Assembly read three times and ratified, this the 3rd day of June, 1965.

H. B. 387

CHAPTER 799

ACT TO AMEND VARIOUS SECTIONS OF ARTICLE 9, CHAPTER 106 OF THE GENERAL STATUTES OF NORTH CAROLINA, RELATING TO INSPECTION FEES ON COMMERCIAL FEEDING STUFFS.

The General Assembly of North Carolina do enact:

Section 1. Article 9, Chapter 106 of the General Statutes of North Carolina, is hereby amended by adding a new Section at the beginning to be designated as G. S. 106-93 and to read as follows:

"§ 106-93. Purpose. The purpose of this Article is to protect a farmer-buyer from the manufacturer-seller of concentrated, commercial feeds who might sell substandard or mislabeled feed stuff, and not to protect from himself a farmer who mixes his own feed."

Sec. 2. G. S. 106-93, as the same appears in the General Statutes of North Carolina, is hereby amended by designating said Section as G. S. 106-93.1, and is further amended by inserting the words "or distributed" immediately following the word "sale" and immediately preceding the word "within" in line 2.

Sec. 3. G. S. 106-95.1, as the same appears in the General Statutes of North Carolina, is hereby rewritten to read as follows:

"§ 106-95.1. Customer Formula Feed. A 'customer formula feed' is a feed, each batch of which is mixed according to the formula of the customer, furnished in writing over the signature of the customer or his designated agent, not to be stocked or displayed in sales areas and not to be sold commercially by any person, firm or corporation in the course of his or its regular business."

Sec. 4. G. S. 106-96, as the same appears in the General Statutes of North Carolina, is hereby amended by inserting the words "or distributing" immediately following the word "sale" and immediately preceding the word "in" in line 2.

Nies v. Emerald Isle Summary of Local Beach Ordinances			
Town/County Local Governments	Definition of Beach	Beach Driving/Exception for Government Vehicles	Equipment
Kitty Hawk	Beach means all that area from the easternmost edge of the barrier dune line eastward and protruding into the Atlantic Ocean for a distance of 100 yards east of the mean low-water mark. Ord 6-23.	<p>Except as otherwise provided in this section, it shall be unlawful to operate any automobile, off-the-road vehicle, motorcycle, wind-powered or motor-powered vehicle or other vehicle on the beaches, foreshore and barrier dunes of the town. It is unlawful for any person who owns a vehicle to allow it to be operated in violation of any of the provisions of this section.</p> <p>The provisions of this section shall not apply to:</p> <ol style="list-style-type: none"> (1) Commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities. (2) Town employees, town vehicles or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties. (3) A governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work. (4) Drivers who are participating in town-approved civic, governmental, or charitable events utilizing the ocean beach and fishing tournaments authorized by the town council. <p>Ord 6-23.</p>	
Nags Head	Beach means all that area from the easternmost edge of the barrier dune line eastward and protruding into the Atlantic Ocean for a distance of 100 yards east of the mean low water mark. Ord 8-81. Toe of slope means that point between the ocean and the barrier sand dune where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change of angle of direction upward and becomes the slope of the barrier dune. Ord 8-81.	<p>Except as provided in this division, it shall be unlawful to operate any automobile, "off the road" vehicle, motorcycle, wind-powered or motor-powered vehicle or other vehicle on the beaches of the town. Notwithstanding the provisions governing permits as provided in this division, no vehicle shall be operated on the beach of the town between 12:01 a.m. on May 1 and 12:00 midnight on September 30 of each and every year. Ord 8-82.</p> <p>The provisions of this division shall not apply to municipal employees, municipal vehicles or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties nor shall this division apply to a governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work. The provisions of this division shall also not apply to authorized military personnel, public safety personnel or authorized persons conducting scientific research or animal preservation studies or operations. Ord 8-86(a).</p>	<p>(a) It shall be prohibited for any person to leave unattended equipment, personal property, or debris on the ocean beaches of the Town between 8 p.m. and 7 a.m. daily.</p> <p>(b) It shall be prohibited for any person to place any item on the beach which:</p> <ol style="list-style-type: none"> (1) Unreasonably restricts, prevents or disrupts the passage of public works, emergency or ocean rescue vehicles, or the public; or (2) Impedes or obstructs the line of sight to the Atlantic Ocean from lifeguard stands or other surveillance areas used by ocean rescue personnel. <p>Ord 8-8.</p>

Summary of Local Beach Ordinances		
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles
Carteret County	<p>Beach and sand dunes area shall mean all sand landward of the low-water mark of the Atlantic Ocean and the low-water mark of Bogue Sound, to include single sand dunes, dune ridges, dune systems and any part thereof, both old and new, including the vegetative cover related to these dunes. However, public streets and highways and streets or highways are expressly excluded in such definition. Further, the areas of the front, side and rear yards of a residence or business which are not a part of a sand dune, dune ridge or dune system, and which are covered by vegetative cover, gravel, rock, asphalt, cement or similar material, are excluded from the definition herein. Ord 12-26.</p> <p>Permitted driving area shall mean that area on Bogue Banks consisting primarily of hard-packed sand and lying between the waters of the Atlantic Ocean and Bogue Sound and the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound. Ord 12-26.</p>	<p>It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes of Bogue Banks between June 1 and Labor Day of each year. This section shall not apply to vehicles operated by commercial fishing activities. Ord 12-30.</p> <p>Upon application to the licensing agencies designated by the board of county commissioners, such licensing agencies may issue annual permits for vehicles and vehicular traffic to enter the beach and sand dune area through the limited access ways and to drive in the permitted driving areas for the following purposes and no other:</p> <ol style="list-style-type: none"> (1) Commercial fishing. Applicant must present valid North Carolina commercial fishing license to the licensing agency. (2) Sports fishing. Applicant may request the licensing agency to issue a permit for sports fishing including surf casting, fishing by net, spear, hook or other means of sports fishing. (3) Surfing. An applicant may request the designated licensing agency to issue a permit for vehicles and vehicular traffic to enter the beach and sand dune areas through the limited access ways as designated herein and to drive in the permitted driving areas for surfing. Ord 12-32. <p>Fire equipment, rescue equipment and vehicles of an emergency nature shall be excepted from the application of this article. There is further excepted the use of vehicles in an emergency situation wherein the protection of property or a person's well-being and health is involved. There is further excepted from the application of this article the use of vehicles in carrying out work or development authorized by a sand dunes permit so long as such work is within the scope and limitations of the sand dunes permit. Ord 12-28.</p>
		Equipment

Summary of Local Beach Ordinances		
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles
Atlantic Beach	<p>Beach and sand dunes area means all land landward of the low water mark of the Atlantic Ocean and the low water mark of Bogue Sound, to include the foreshore beach strand, barrier dune system, single sand dunes, dune ridges, dune systems, and any part thereof, both old and new, including the vegetative cover relating to these dunes. However, public streets and highways are expressly excluded in this definition. Further, the areas of the front, side, and rear yards of a residence or business which is not part of a sand dune, dune ridge, or dune system, and which is covered by vegetative cover, gravel, rock, asphalt, cement, or similar material, is excluded from this definition. Ord 5-21.</p> <p>Permitted driving area means the foreshore and area within the town consisting of hardpacked sand and lying between the water of the Atlantic Ocean and a point ten (10) feet seaward from the foot or toe of the dune closest to the waters of the Atlantic Ocean or ten (10) feet from any bulkhead which ever point of demarkation is closer to the waters of the Atlantic Ocean. Ord 5-21.</p>	<p>It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes located within the town between mid-March and October 1 of each and every year. This section shall not apply to vehicles operated by commercial fishermen issued a valid state fishing license while engaged in commercial fishing activities and while being operated exclusively within the permitted driving area. Driving at other times on the beach strand shall be lawful only for vehicles which shall display a duly authorized permit as hereafter provided. Ord 5-22.</p> <p>It shall be unlawful for any vehicular traffic holding and displaying a duly authorized permit issued pursuant to this article to travel on any portion of the beach and sand dune areas other than those areas designated herein as permitted driving areas and the limited accessways as defined in section 5-27. Ord 5-23.</p> <p>Except for police and emergency vehicles performing law enforcement or emergency services, it shall be unlawful for any person to drive, park, or have a vehicle on any beach or beach access area between sunset and sunrise of any day without specific written authority to do so from the town's police department. Ord 5-29.</p> <p>Fire equipment, police vehicles, rescue equipment, town maintenance and inspection department vehicles, and vehicles of an emergency nature shall be excepted from the application of this article. There is further excepted the use of vehicles in emergency situations wherein the protection of property or a person's well-being and health is involved. There is further excepted from the application of this article the use of vehicles in carrying out work or development authorized by a sand dunes permit issued by the building inspector or other official for the town, so long as the work is within the scope and limitations of the sand dunes permit. Ord 5-31.</p>
Pine Knoll Shores	<p>Beach and sand dune area means and includes all or any part of:</p> <ol style="list-style-type: none"> (1) The "ocean beaches" as this term is defined in G.S. 77-20(e); (2) The Bogue Sound Beach seaward of the highwater mark; and (3) All property adjacent to the Atlantic Ocean Beach owned by the town, or under control of the town as a result of a lease, easement, or other instrument affecting the title or use of real property, and designated by the town for public beach access, or parking appurtenant to public beach access. Ord 46-21. <p>Permitted driving area means that area on Bogue banks consisting primarily of hard-packed sand and lying between the waters of the Atlantic Ocean and Bogue Sound and the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound. Ord 46-21.</p> 	<p>(a) Driving without permit prohibited. It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes of the town unless such vehicle is operated by a commercial fisherman duly licensed under this chapter.</p> <p>(b) Display of permit. No commercial fisherman duly licensed shall drive a vehicle upon the beach and sand dunes area of the town without displaying visibly on his vehicle a permit issued under this chapter, which is valid and in effect at the time of utilization.</p> <p>(c) Driving in permitted areas only. It shall be unlawful for any vehicular traffic, whether holding a duly authorized permit issued pursuant to this chapter or not, to travel on any portion of the beach and sand dunes areas other than those areas designated herein as permitted driving areas or limited accessways.</p> <p>(d) Exception for emergency vehicles and other authorized vehicles. There is excepted from the application of this chapter any fire equipment, rescue equipment, or other vehicles of an emergency nature which find it necessary to utilize the beach and/or sand dune area. There is further excepted from the application of this chapter the use of vehicle in carrying out work or development authorized by a sand dunes permit issued by the shoreline protection office for the county so long as this work is within the scope and limitation of the sands permit.</p> <p>Ord 46-22.</p>

Summary of Local Beach Ordinances			
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles	Equipment
North Topsail Beach	<p>Beach strand: The area of the beach considered public trust area. Ord 2014-8.</p> <p>Permissible Driving Area: The public trust area bordering the New River that has been designated as an area in which 4-wheel drive vehicles are allowed to drive. Ord 2014-8.</p>	<p>(a) No motor-driven vehicles shall be allowed on the beach or sand dunes of North Topsail Beach other than Town, County, State or federally authorized vehicles. The only exception is the "Permissible Driving Area."</p> <p>(b) Permitted vehicles shall operate only during hours between sunrise and sunset.</p> <p>(c) Four-wheel drive vehicles shall be allowed in the area designated as "Permissible Driving Area. Vehicles within this designated area require no vehicle permit.</p> <p>Ord. 2014-8.</p>	<p>Ord 2014-9 (enacted 8/7/14) prohibits unattended beach equipment remaining on the beach strand between 9:00 pm and 7:00 am and is in effect year round.</p> <p>All beach equipment shall be set at least 20 feet from any sea turtle nest.</p> <p>No beach equipment may be placed within a 25-foot perimeter of an emergency access or any beach strand access point.</p>
Surf City	<p>The word "beach," for the purposes of this chapter, shall be construed to mean the strand between the dunes and the water's edge and all approaches thereto, including boardwalks erected by the town on town-owned property and any portion of the strand, and including the water for a distance of one thousand (1,000) feet seaward and any structure erected thereon. Ord 4-1.</p>	<p>The following limitations shall apply to the use of vehicles on the beach by those persons who have obtained vehicle permits for same.</p> <p>(1) No vehicles shall be allowed on the beach strand within the corporate limits from May 15 in any one year through September 10 for the same year, except that vehicles transporting persons with disabilities shall be allowed to drive to the beach year around in an area from the designated crossing area to a point 1,000 feet south.</p> <p>(2) No vehicles shall be allowed on the beach except in the beach area between the 1300 block of South Shore on the south and Delphin Street on the north.</p> <p>(3) Night driving shall be allowed for fishing purposes only during the dates of Oct 1 through May 1 and in the same area described in 4-34(2), except that commercial fishing activities are permitted.</p> <p>Ord 4-34.</p> <p>Police, fire, and rescue vehicles, town maintenance vehicles, vehicles of contractors performing work for the town, and vehicles performing storm recovery or beach restore work under proper permits from the town and the state are exempt from this article. The town council may permit, by issuance of special permission with any conditions it deems appropriate, vehicle use on the beach in any part of the corporate limits, for special event. Ord 4-37.</p>	<p>Ord 4-13 prohibits unattended beach equipment remaining on the beach strand between 9:00 pm and 7:00 am and is in effect year round.</p> <p>All beach equipment shall be set at least 20 feet from any sea turtle nest.</p> <p>No beach equipment may be placed within a 25-foot perimeter of an emergency access or any beach strand access point.</p>
Topsail Beach	<p>Public beach means the dry sand lying between the Atlantic Ocean and the toe of the dune. Ord 24-36.</p>	<p>(j) Police vehicles, ambulances, municipal vehicles and fire vehicles are exempt from this division. Ord 22-66(j).</p>	<p>Ord 24-37 prohibits unattended beach equipment remaining on the beach strand between 7:00 pm and 7:00 am and is in effect year round.</p> <p>All beach equipment shall be set at least 20 feet from any sea turtle nest.</p> <p>No beach equipment may be placed within a 25-foot perimeter of an emergency access or any beach strand access point.</p>

Summary of Local Beach Ordinances			
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles	Equipment
New Hanover County	Dune area means all land situated in this county and lying within 750 feet of the low-water mark of the Atlantic Ocean or inlets adjacent thereto. Ord 53-31.	<p>No person shall operate a motor vehicle in the dune area for the purpose of racing, for hire or for commercial purposes, or for any purpose other than transportation. Ord 53-33.</p> <p>No motor vehicles may be operated in the dune area except as follows: (1) By a person licensed to drive a motor vehicle on the public highways; (2) Either below the high water mark or on property within 25 feet adjacent thereto, or on platted roadways; (3) If on private property, with permission of the owner of the property; (4) A motor vehicle weighing less than 5,000 pounds, except that no all-terrain vehicles (ATVs), motor homes, travel trailers, or other trailers of any kind including personal watercraft trailers, shall be allowed; (5) At a speed of 15 miles per hour or below; and (6) In such a manner as not to endanger persons in the dune areas, adjoining areas, or in the water. Ord 53-34.</p> <p>The provisions of this article shall not be applicable to emergency vehicles, including ambulances, rescue and firefighting vehicles, when operated for emergency purposes to save or protect human life or property. Ord 53-32.</p> <p>It shall be unlawful for any person to operate a motor vehicle upon the beach, sand dunes or any other area of Masonboro Island except as provided in this division. Ord 53-62.</p> <p>The provisions of this division shall not be applicable to emergency vehicles when operated for emergency purposes to save or protect human life or property. Ord 53-63(a).</p>	
Wrightsville Beach		<p>Notwithstanding the provisions of G.S. 160A-308, the Town Board is authorized to enact ordinances to regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the Board on the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities. Ord 74-4.</p> <p>The Board of Aldermen or Town Manager may grant authorization to a handicapped person to use a motor vehicle for the purpose of ingress and egress to the Atlantic Ocean. The vehicle must be approved by the Board of Aldermen or the Town Manager. A permit, issued by the Wrightsville Beach Police Department, must accompany vehicles accessing the beach stand. The permit will specify the date and location where the vehicle will be operated. Ord 92-05.</p> <p>No vehicle as defined in Chapter 70 of the town code shall be permitted on the foreshore, beach strand or barrier dune system within the town limits of the town except as follows:</p> <p>(A) Vehicles owned and/or operated by employees and agents of the town, county, the state, and the U.S. Government while engaged in official duties shall not be subject to the provisions of this section.</p> <p>(B) The Board of Aldermen or Town Manager may approve the operation of vehicles on the areas described hereinabove pursuant to the provisions of an activity or event approved by the Board of Aldermen or Town Manager. A permit, issued by the Wrightsville Beach Police Department, must accompany vehicles accessing the beach strand. The permit will specify the date and location where the vehicle will be operated.</p> <p>(C) Handicapped persons shall be permitted to use vehicles on the areas described above in accordance with the provisions of § 92.05 hereinabove. Ord 92-18.</p>	<p>It shall be unlawful for any person to leave tents, canopies or umbrellas on the beach strand adjacent to the waters of the Atlantic Ocean overnight without prior approval of the Town Manager or his or her authorized designee. Ord 92-09.</p>

Summary of Local Beach Ordinances			
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles	Equipment
Carolina Beach		<p>(a) Allowed in certain areas. Legally licensed private vehicles shall be permitted to drive within designated areas of the public beach strand north of the terminus of Canal Drive. No vehicles shall be allowed west of any protected area within the barrier dune system. Local, county, state and federal government vehicles and emergency vehicles engaged in official duties are not subject to these restrictions.</p> <p>(b) Handicapped persons. Handicapped persons shall be permitted to use specially approved vehicles on the beach strand area, provided said vehicle has been approved by and a special permit obtained from the police department. Only handicapped persons shall be allowed to apply for such special permits.</p> <p>(c) Special purposes. Private vehicles may be permitted for special purposes by special permit obtained from the Town Manager.</p> <p>Ord 28-63.</p>	<p>Ord 28-119 prohibits unattended beach equipment remaining on the beach strand between sunset and sunrise.</p> <p>So as not to impede or restrict the free and unconstrained use and occupancy of the public beach by the public and in order to assist police, lifeguards and fire personnel in responding to emergency calls, absolutely no beach equipment is allowed on the beach at any time within 20 feet from the easternmost edge of the dune slope or vegetative line. Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis.</p> <p>All beach equipment shall be set at least 20 feet from any sea turtle nest.</p> <p>No beach equipment may be placed within a 25-foot perimeter of an emergency access or any beach strand access point.</p> <p>No beach equipment may be placed directly in front of lifeguard stand.</p>
Kure Beach	<p>Beach strand shall mean the area of the beach more than twenty (20) feet seaward from the frontal dune. Ord 10-103.</p> <p>Beach means the area of sand that extends landward from the mean low water line to the stable line of natural vegetation. Ord 12-42.</p>	<p>It shall be unlawful for any person to operate a motor driven vehicle upon the beach strand within the corporate limits of the town, except as hereinafter specified. Ord 10-104.</p> <p>Handicapped persons may operate an approved hand capped vehicle used for pedestrian purposes subject to the conditions imposed on other exempted vehicles. Ord 10-105.</p> <p>By permit of the chief of police or designee: (1) A governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work. (2) Drivers who are participating in town approved civic, governmental, or charitable events authorized by the town council. Ord 10-106.</p> <p>The provisions of this division shall not apply to: (1) Police, fire, ambulance and municipal vehicles that may be required to enter upon the beach in the performance of their duties. (2) Other governmental agencies operating under a mutual aid agreement: during time of natural or manmade disaster. Ord 10-107.</p> <p>Prior to any motor driven vehicle being driven, parked or otherwise located on the beach strand, the owner or operator shall first obtain a permit to do so. This permit shall be issued at a cost in accordance with the regularly adopted fee schedule of the town at the time of issuance of the permit and the owner or operator will receive a device or insignia which must be displayed only on the vehicle as designated in the permit, which permit shall not be transferable to any other vehicle or person. If any person drives or leaves a vehicle parked on the beach strand, which does not have the required permit, then that person shall be in violation of this division. Ord 10-108.</p> <p>No motor driven vehicle shall be operated between the water line and the high tide crest (commonly referred to as the "wet sand" area). No motor driven vehicle shall be operated on any vegetation area or closer than twenty (20) feet to the front of the frontal dune, except that vehicles engaged in repair of walkovers and/or stairs to the beach may proceed landward provided they do not drive on any portion of the frontal dune. Ord 10-109.</p>	<p>Ord 12-43 prohibits unattended beach equipment remaining on the beach strand between 7:00 pm and 7:00 am and is in effect year round.</p> <p>All beach equipment shall be set at least 15 feet from any sea turtle nest or dune vegetation.</p> <p>No beach equipment may be placed within a 25-foot perimeter of an emergency access or any public beach access.</p>

Summary of Local Beach Ordinances			
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles	Equipment
Bald Head Island	Beach means the area of sand that extends landward from the mean low water line to the stable line of natural vegetation. Ord 10-164.	<p>It shall be unlawful for any person to drive a motor vehicle on the beaches within the village, except in the mission of the Bald Head Island Conservancy or an emergency or service vehicle operating for benefit of the village. Ord 28-33.</p> <p>No person, firm or corporation shall operate any motor vehicle (automobile, off the road vehicle, motorcycle, wind-powered, motor-powered) on the beach strand and the dune areas of the town.</p> <p>Nothing in this section shall be construed to prohibit the operation of police cars, fire trucks, emergency rescue equipment or other official vehicles while on official duty on the beach strand. Nor shall this section apply to a governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work. Nor shall this section apply to persons with disabilities and their vehicles or devices designed to propel the persons with disabilities on the strand of the beach area. Such vehicles or devices, however, are not permitted in the dune areas.</p> <p>Ord 70-01.</p>	<p>Ord 10-165 prohibits unattended beach equipment remaining on the beach strand between 9:00 pm and 8:00 am and is in effect year round.</p> <p>All beach equipment shall be set at least 10 feet from any sea turtle nest or dune vegetation.</p> <p>Abandoned property (left unattended for more than 6 days) located on town public roads, public right-of-ways and/or the public beach shall only be removed by town personnel and shall be disposed of in a manner to be determined by the Town Administrator or his or her designee. Ord 97-02.</p>
Caswell Beach		<p>No person shall operate any motor vehicle on the beach strand facing the Atlantic Ocean and Lockwood Folly Inlet or the sand dunes within the town limits. Exceptions: police car, fire truck, emergency rescue equipment or other official vehicles in the performance of their duties. Ord 28-5.</p>	<p>Ord 14-143 prohibits unattended beach equipment remaining on the beach strand between 8:30 pm and 6:00 am.</p> <p>All beach equipment shall be set at least 10 feet from any sea turtle nest.</p> <p>No beach equipment may be placed within a 15-foot perimeter of an emergency access point.</p>
Oak Island	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. Ord 14-141.		
Holden Beach	BEACH. The area between the mean low water mark of the Atlantic Ocean and the seaward toe of the frontal dune. Ord 94-04.	<p>Except as noted in § 94.01 of this chapter, no motor vehicles or other motor or engine-drive vehicles, or wind-powered wheeled vehicles, licensed or unlicensed, shall be allowed at any time upon the wetlands, beach strand, beach strand vehicular accessways, or the dunes adjoining the strand and accessways. Ord 94-02.</p> <p>This chapter shall not be construed in any manner to prohibit the use of law enforcement, beach patrol, rescue squad, Fire Department or other public or official vehicles in the performance of their duties, upon the beach strand or vehicular accessways to the beach strand, or wetlands. Ord. 94-01.</p>	<p>Ord 94-06 prohibits unattended beach equipment remaining on the beach strand between 6:00 pm and 7:00 am.</p> <p>All beach equipment shall be set at least 10 feet from any sea turtle nest or dune vegetation.</p>

Summary of Local Beach Ordinances			
Town/County	Definition of Beach	Beach Driving/Exception for Government Vehicles	Equipment
Sunset Beach	<p>BEACH STRAND. All land between the low watermark of the Atlantic Ocean and the first line of stable vegetation as defined in the regulations of the North Carolina Coastal Resources Commission. Ord 95-01.</p>	<p>Except as otherwise provided herein, it shall be unlawful to place, park or operate any automobile, off-road vehicle, dune buggy, motorcycle, golf cart or other motor-powered vehicle, battery-powered vehicle or electric-powered vehicle on the beachstrand within the town limits. It is also unlawful for any person who owns any of said vehicles to allow it to be placed or operated in violation of this section.</p> <p>The provisions of this section shall not apply to:</p> <p>(1) Police, fire, rescue or other municipal vehicles and employees while in the performance of their duties. (2) Handicapped persons.</p> <p>Ord 95-03.</p>	<p>Ord 95-07 prohibits unattended beach equipment remaining on the beach strand between 7:00 pm and 6:00 am.</p> <p>All beach equipment shall be set at least 10 feet from any sea turtle nest.</p> <p>No beach equipment may be placed within a 30-foot perimeter of an emergency access or any public beach access.</p>

Sec. 6-23. - Vehicles on beaches.

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

Barrier dune means the easternmost sand dune or system of sand dunes which lies just west of the mean high-water mark of the Atlantic Ocean and forms a protective barrier from the actions of the Atlantic Ocean.

Beach means all that area from the easternmost edge of the barrier dune line eastward and protruding into the Atlantic Ocean for a distance of 100 yards east of the mean low-water mark.

Toe of slope means that point between the ocean and the barrier sand dune where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change of angle of direction upward and becomes the slope of the barrier dune.

Vehicle means any motor-driven or wind-powered vehicle, including any fishing boat or amphibious vehicle but excluding any sailboat used for sport, surfboard and amphibious vehicle which is afloat and no portion of which is aground and operating on wheels or tracks.

- (b) Except as otherwise provided in this section, it shall be unlawful to operate any automobile, off-the-road vehicle, motorcycle, wind-powered or motor-powered vehicle or other vehicle on the beaches, foreshore and barrier dunes of the town. It is unlawful for any person who owns a vehicle to allow it to be operated in violation of any of the provisions of this section.
- (c) The provisions of this section shall not apply to:
- (1) Commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.
 - (2) Town employees, town vehicles or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties.
 - (3) A governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work.
 - (4) Drivers who are participating in town-approved civic, governmental, or charitable events utilizing the ocean beach and fishing tournaments authorized by the town council provided the motor vehicle operated on the town ocean beach occurs only during the posted hours of the special event or tournament and the operator complies with all regulations adopted by the town with respect to driving on the beach during special events and tournaments.
- (d) If the county or any municipality within the county shall adopt an ordinance regulating the operation of vehicles on its beaches, the town council may enter into a reciprocity agreement with same; provided the town council finds that the ordinance contains similar provisions as this section.

(Code 1990, § 4-16; Ord. No. 85-6, §§ 1.01—1.04, 2.01, 5-20-1985; Ord. No. 94-19, 9-6-1994)

State Law reference— Municipal authority to prohibit vehicles on beaches, G.S. 160A-308.

Sec. 8-8. - Unattended and unsafe equipment, personal property and debris on the ocean beach prohibited.

- (a) It shall be prohibited for any person to leave unattended equipment, personal property, or debris, including, but not limited to, beach tents, canopies, umbrellas, awnings, chairs, and sporting nets, on the ocean beaches of the Town between 8 p.m. and 7 a.m. daily.
- (b) It shall be prohibited for any person to place any item on the beach which:
 - (1) Unreasonably restricts, prevents or disrupts the passage of public works, emergency or ocean rescue vehicles, or the public; or
 - (2) Impedes or obstructs the line of sight to the Atlantic Ocean from lifeguard stands or other surveillance areas used by ocean rescue personnel.
- (c) *Remedies.* Violations of this section shall be subject to the penalties described in Town Code section 1-6 (b). Additionally, violations of this section shall result in the classification of unattended equipment, personal property or debris as abandoned property, litter or unsafe property and said property may be removed by the Town.
- (d) *Exceptions.* The town manager may grant exceptions to this section for limited duration special events or other reasons in the general public interest upon presentation of a written request outlining the reasons for the exception and providing a plan for addressing safety issues associated with the request. This section shall not be applicable to development, beach restoration or nourishment, construction or similar activities occurring upon the ocean beach pursuant to and in compliance with all necessary permits issued by the local, state and/or federal agencies having jurisdiction over the work. This section shall not be construed to apply to the removal of permanent residential or commercial structures and appurtenances thereto.

(Ord. No. 14-09-023, Pt. I, 9-17-2014)

Sec. 8-81. - Definitions.

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

Barrier dune means the easternmost sand dune or system of sand dunes which lies just west of the mean high water mark of the Atlantic Ocean and forms a protective barrier from the actions of the Atlantic Ocean.

Beach means all that area from the easternmost edge of the barrier dune line eastward and protruding into the Atlantic Ocean for a distance of 100 yards east of the mean low water mark.

Bona fide fishing tournament means a fishing tournament sponsored by a nonprofit organization or by any other group, where a minimum of \$500.00 is given to a recognized charity. Any such organization or group must have existed for more than the calendar year preceding the submission of their application for beach driving permits. Such tournament must have a minimum number of 25 participants.

Toe of slope means that point between the ocean and the barrier sand dune where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change of angle of direction upward and becomes the slope of the barrier dune.

Vehicle means all kinds of motor-driven and 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.

Vehicular beach access point means an access maintained by the town for use by vehicles at a designated location, usually on a town street. Vehicle access is permitted at these points and at no other location.

(Code 1990, § 5-61; Ord. No. 12-10-031, Pt. I, 10-17-2012)

Cross reference— Definitions generally, § 1-2.

Sec. 8-82. - Generally.

Except as provided in this division, it shall be unlawful to operate any automobile, "off the road" vehicle, motorcycle, wind-powered or motor-powered vehicle or other vehicle on the beaches of the town. Notwithstanding the provisions governing permits as provided in this division, no vehicle shall be operated on the beach of the town between 12:01 a.m. on May 1 and 12:00 midnight on September 30 of each and every year.

(Code 1990, § 5-62)

Sec. 8-86. - Exceptions.

- (a) The provisions of this division shall not apply to municipal employees, municipal vehicles or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties nor shall this division apply to a governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work. The provisions of this division shall also not apply to authorized military personnel, public safety personnel or authorized persons conducting scientific research or animal preservation studies or operations.
- (b) The date and time limitation provided in sections 8-82 and 8-83 shall not apply to commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.
- (c) The town manager shall have the authority to close any portion of the beach or all of the beach at such times and places that extensive beach erosion occurs. This authority may be exercised by the town manager when, as a result of inspections by him or the town employees subject to his authority, it is determined that the width of the beach between the toe of the slope of the dune and the area affected by ocean wash and waves is such that driving would either be dangerous or increase the effects of

erosion, or the beach is not sufficiently wide or stable to support vehicular traffic. At any time that the ocean wave wash is less than 40 feet eastward of the "toe of the slope" that portion of the beach shall be closed. The closure area shall extend to the next beach access point in each direction. Any person operating a vehicle on the beach in a closed area shall be subject to the penalties provided in this division.

- (d) The town manager, on a case by case basis, shall have the authority to review and decide written requests for temporary beach driving permits submitted by individuals seeking to perform specific construction activities requiring access to the beach by vehicles when access by such vehicles is otherwise prohibited by this chapter. Written requests for temporary beach driving permits shall include the following information:
- (1) Address of the construction site and identification of the beach access location.
 - (2) The start date and ending date of requested beach access.
 - (3) Copy of the issued building permit for the construction project and copies of any other local, state and/or federal permits and authorizations as may be required to lawfully conduct the described construction and access onto the beach.
 - (4) A description as to the hardship that will be created if the temporary permit is not authorized and how such hardship is not the result of the applicant's own actions or inactions to perform the work in strict compliance with this chapter.
 - (5) Any other information as may be deemed necessary by the town manager for proper consideration of the request.

Upon finding that the permit request has (i) secured all necessary local, state, and federal permit approvals and authorizations; (ii) that the strict application of this chapter would create an undue and unnecessary hardship created by no fault of the applicant; and (iii) that the approval of the request would not be contrary to the public interest, the town manager may issue the temporary beach driving permit. The town manager shall have the authority to approve the request as presented or with modifications and shall furthermore have the authority to impose conditions in connection with such approval. The written permit authorization shall include the name of the property owner, the address of the construction site, the approved beach access location, date(s) and time(s) for which access onto the beach has been temporarily authorized, and any conditions of the permit approval. The permit approval must be kept by the vehicle operator during the conduct of work and available for inspection by town enforcement officials upon demand.

(Code 1990, § 5-65; Ord. No. 05-10-041, § I, 10-5-2005; Ord. No. 09-10-039, Pt. II, 10-7-2009)

Sec. 12-26. - Definitions.

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

Beach and sand dunes area shall mean all sand landward of the low-water mark of the Atlantic Ocean and the low-water mark of Bogue Sound, to include single sand dunes, dune ridges, dune systems and any part thereof, both old and new, including the vegetative cover related to these dunes. However, public streets and highways and private streets for access to property from public streets or highways are expressly excluded in such definition. Further, the areas of the front, side and rear yards of a residence or business which are not a part of a sand dune, dune ridge or dune system, and which are covered by vegetative cover, gravel, rock, asphalt, cement or similar material, are excluded from the definition herein.

Bogue Banks shall mean that island or strip of land approximately 26 miles in length and bounded on the south by the Atlantic Ocean, on the east by Beaufort Inlet, on the north by Bogue Sound, and on the west by Bogue Inlet. The areas located within the municipal limits of municipalities located on Bogue Banks are expressly excluded from the territory covered by this article.

Licensing agency shall mean the county shoreline protection officer and any other officer or agent for the county designated by the board of county commissioners to issue permits for the county pursuant to this office, to include any municipal office or offices designated by the county to issue permits pursuant to this article.

Limited access ways shall mean those designated areas whereby legal access to the permitted driving area may be achieved. A map of those areas shall be given to each licensee as hereinafter provided.

Permitted driving area shall mean that area on Bogue Banks consisting primarily of hard-packed sand and lying between the waters of the Atlantic Ocean and Bogue Sound and the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound.

Vehicular traffic shall mean the use, other than upon public highways or private ways devoted to the use of the public, of any vehicle, whether motorized or not, and without regard to weight, number of wheels or other variances among vehicles.

(Ord. of 12-12-79, § 1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 12-30. - Summer use prohibited.

It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes of Bogue Banks between June 1 and Labor Day of each year. This section shall not apply to vehicles operated by commercial fishing activities.

(Ord. of 12-12-79, § II)

Sec. 12-28. - Exceptions from article.

Fire equipment, rescue equipment and vehicles of an emergency nature shall be excepted from the application of this article. There is further excepted the use of vehicles in an emergency situation wherein the protection of property or a person's well-being and health is involved. There is further excepted from the application of this article the use of vehicles in carrying out work or development authorized by a sand dunes permit so long as such work is within the scope and limitations of the sand dunes permit.

(Ord. of 12-12-79, § V)

Sec. 12-32. - Permitted uses.

Upon application to the licensing agencies designated by the board of county commissioners, such licensing agencies may issue annual permits for vehicles and vehicular traffic to enter the beach and sand dune area through the limited access ways and to drive in the permitted driving areas for the following purposes and no other:

- (1) *Commercial fishing.* Applicant must present valid North Carolina commercial fishing license to the licensing agency.
- (2) *Sports fishing.* Applicant may request the licensing agency to issue a permit for sports fishing including surf casting, fishing by net, spear, hook or other means of sports fishing.
- (3) *Surfing.* An applicant may request the designated licensing agency to issue a permit for vehicles and vehicular traffic to enter the beach and sand dune areas through the limited access ways as designated herein and to drive in the permitted driving areas for surfing.

(Ord. of 12-12-79, § VI(A)—(C))

Sec. 5-21. - Definitions.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Beach and sand dunes area means all land landward of the low water mark of the Atlantic Ocean and the low water mark of Bogue Sound, to include the foreshore beach strand, barrier dune system, single sand dunes, dune ridges, dune systems, and any part thereof, both old and new, including the vegetative cover relating to these dunes. However, public streets and highways are expressly excluded in this definition. Further, the areas of the front, side, and rear yards of a residence or business which is not part of a sand dune, dune ridge, or dune system, and which is covered by vegetative cover, gravel, rock, asphalt, cement, or similar material, is excluded from this definition.

Licensing agency means the town clerk, police department and any other officer or agency of the town designated by the board of commissioners to issue permits for the town pursuant to this article.

Limited accessways means those areas designated by posted signs whereby legal access to the permitted driving area as hereafter defined may be achieved.

Permitted driving area means the foreshore and area within the town consisting of hardpacked sand and lying between the water of the Atlantic Ocean and a point ten (10) feet seaward from the foot or toe of the dune closest to the waters of the Atlantic Ocean or ten (10) feet from any bulkhead which ever point of demarkation is closer to the waters of the Atlantic Ocean.

Vehicular traffic means the use, other than upon public highways or private ways devoted to the use of the public, of any vehicle, whether motorized or not, and without regard to weight, number of wheels, or other variances among vehicles.

(Ord. of 10-20-86(1), § 1010)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 5-22. - Driving on beach and sand dunes prohibited; exceptions.

It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes located within the town between mid-March and October 1 of each and every year. This section shall not apply to vehicles operated by commercial fishermen issued a valid state fishing license while engaged in commercial fishing activities and while being operated exclusively within the permitted driving area. Driving at other times on the beach strand shall be lawful only for vehicles which shall display a duly authorized permit as hereafter provided.

(Ord. of 10-20-86(1), § 1020; Ord. of 7-18-94(2))

Sec. 5-23. - Driving on designated areas only.

It shall be unlawful for any vehicular traffic holding and displaying a duly authorized permit issued pursuant to this article to travel on any portion of the beach and sand dune areas other than those areas designated herein as permitted driving areas and the limited accessways as defined in section 5-27.

(Ord. of 10-20-86(1), § 1030)

Sec. 5-29. - Time limit.

Except for police and emergency vehicles performing law enforcement or emergency services, it shall be unlawful for any person to drive, park, or have a vehicle on any beach or beach access area between sunset and sunrise of any day without specific written authority to do so from the town's police department.

(Ord. of 10-20-86(1), § 1090; Ord. of 10-17-94; Ord. No. 14-11-04, 11-24-2014)

Sec. 5-31. - Exceptions.

Fire equipment, police vehicles, rescue equipment, town maintenance and inspection department vehicles, and vehicles of an emergency nature shall be excepted from the application of this article. There is further excepted the use of vehicles in emergency situations wherein the protection of property or a person's well-being and health is involved. There is further excepted from the application of this article the use of vehicles in carrying out work or development authorized by a sand dunes permit issued by the building inspector or other official for the town, so long as the work is within the scope and limitations of the sand dunes permit.

(Ord. of 10-20-86(1), § 1110)

Sec. 46-21. - Definitions.

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

Beach and sand dune area means and includes all or any part of:

- (1) The "ocean beaches" as this term is defined in G.S. 77-20(e);
- (2) The Bogue Sound Beach seaward of the highwater mark; and
- (3) All property adjacent to the Atlantic Ocean Beach owned by the town, or under control of the town as a result of a lease, easement, or other instrument affecting the title or use of real property, and designated by the town for public beach access, or parking appurtenant to public beach access.

Commercial fisherman means any individual actively engaged in fishing for the purposes of generating income and revenue to the fisherman, and who uses a commercial fishing net (including a flounder net) as his primary tool of fishing apparatus.

Designated swimming area means a demarked portion of the public trust beach and adjoining portion of the Atlantic Ocean that extends from the shoreline seaward for 100 yards and up to 100 yards to the east and to the west of the following locations: Iron Steamer public beach access, the Memorial Park public beach access, the Ocean Park private beach access, the Hammer Park private beach access, the Knollwood public beach access, the Beacon's Reach West public beach access, the Beacon's Reach East public beach access, the Atlantis Lodge, the Seahawk Inn and Villas, and the Windjammer Inn.

Licensing agency means the Town Clerk of the Town of Pine Knoll Shores or, if designated by the Town of Pine Knoll Shores, the Carteret County Shoreline Protection Officer.

Noncommercial fisherman means any fisherman or other person not defined as a "commercial fisherman".

Permitted driving area means that area on Bogue banks consisting primarily of hard-packed sand and lying between the waters of the Atlantic Ocean and Bogue Sound and the foot or toe of the dune closest to the waters of the Atlantic Ocean and Bogue Sound.

Vehicular traffic means the use, other than upon public highways or private ways devoted to the use of the public, of any vehicle whether motorized or not, and without regard to weight, number of wheels, or other variances among vehicles.

(Code 2001, § 17-1; Ord. of 8-10-1982, § 1; Ord. No. 2001-7, 6-12-2001; Ord. No. 2015-10, 7-13-2015)

Sec. 46-22. - Permit required to drive on beach and sand dunes.

- (a) *Driving without permit prohibited.* It shall be unlawful for any vehicular traffic to travel upon the beach and sand dunes of the town unless such vehicle is operated by a commercial fisherman duly licensed under this chapter.
- (b) *Display of permit.* No commercial fisherman duly licensed shall drive a vehicle upon the beach and sand dunes area of the town without displaying visibly on his vehicle a permit issued under this chapter, which is valid and in effect at the time of utilization.
- (c) *Driving in permitted areas only.* It shall be unlawful for any vehicular traffic, whether holding or displaying a duly authorized permit issued pursuant to this chapter or not, to travel on any portion of the beach and sand dunes areas other than those areas designated herein as permitted driving areas or limited accessways.

- (d) *Exception for emergency vehicles and other authorized vehicles.* There is excepted from the application of this chapter any fire equipment, rescue equipment, or other vehicles of an emergency nature which find it necessary to utilize the beach and/or dune area. There is further excepted from the application of this chapter the use of vehicle in carrying out work or development authorized by a sand dunes permit issued by the shoreline protection office for the county so long as this work is within the scope and limitation of the sands permit.
- (e) *Licensing agency to issue permits annually.* Upon application to the licensing agency designated by the board of commissioners, the licensing agency may issue annual permits for vehicles and vehicular traffic to enter the beach and sand dune areas through the limited accessways as defined herein and to drive in the permitted driving areas as herein defined, for the sole purpose of commercial fishing with a net.
- (f) *Requirements for applicants.* Each applicant for a vehicle permit under this chapter shall satisfy the permitting officer of the following facts:
- (1) That the applicant has in effect a valid driver's license and a valid registration card for the vehicle for which the permit is issued.
 - (2) The vehicle shall be, in the opinion of the permitting officer, safe for utilization on the beach.
 - (3) The applicant shall demonstrate to the permitting agent that he is seeking the permit for the purpose of commercial fishing within the town, and that he is a commercial fisherman. The permitting officer may require verification that the permittee is actively engaged in commercial fishing, the verification to be either by production of validly executed income tax returns showing substantial income from commercial fishing, or a valid affidavit from a wholesale commercial fish purchaser verifying that the commercial fisherman has been, within the past 12 months, actively engaged in the sale of fish to the commercial fishing establishment.
- (g) *Requirements for vehicles.* All vehicles granted permits to use the permitted driving areas and the limited accessways as allowed by this chapter shall be self-propelled, mounted upon at least three wheels, shall be insured to meet the minimum liability insurance limit provided in G.S. 20-279, as the same may be amended, and shall display thereon a valid inspection sticker if registered in North Carolina. In addition thereto, each vehicle shall have a valid motor vehicle license plate and a valid registration card on the vehicle at all times.
- (h) *Fishing equipment required to be in vehicle when driving on beach.* It shall be unlawful for any licensed vehicle to travel on the beach strand or dunes unless the primary reason for driving in this area is to engage in commercial fishing with a net on the beach strand or in the Atlantic Ocean. It shall be conclusive evidence of a violation of this chapter if the vehicle, when examined, does not contain a commercial fishing net and all other necessary appurtenant equipment for utilization in commercial net fishing.
- (i) *Manner of driving.* It shall be unlawful for any vehicular traffic to travel on any permitted driving area or accessway:
- (1) At a speed in excess of ten miles per hour;
 - (2) Carelessly and heedlessly in willful or wanton disregard of the rights of safety of others; or
 - (3) Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property.
- (j) *Revocation of permit.* The town shall revoke a permit issued to an applicant for the permitted use specified herein if the municipality (or its enforcement agent) finds that the applicant to whom the license has been issued is in violation of this chapter or is engaged in activities within the permitted driving area and limited accessways which are not directly related to commercial fishing. Furthermore, the permit shall be revoked for a period of five years if any applicant places any litter upon the beach strand or beach dunes.
- (k) *Issuance of permits.* The town clerk is hereby authorized to issue permits in accordance with this chapter. The town may designate, in writing, authority to one or more offices, agents or employees of the county to issue permits pursuant to this chapter.

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~~46-22~~

(l) *Penalties.* If any person shall violate subsection ~~46-22~~(i), he shall be guilty of a class 3 misdemeanor and shall be fined not more than \$100.00. Further, the town may assess a civil penalty in the amount of \$50.00 for the first offense, and \$100.00 for each subsequent offense for violation of said section. Payment of a civil penalty shall not be admissible as evidence in any criminal prosecution for violation of the sections of this chapter. (Code 2001, § 17-2; Ord. of 8-10-1982, §§ 2—11; Ord. No. 1989-2; Ord. No. 1998-2, 6-9-1998; Ord. No. 2001-6, 3-13-2001; Ord. No. 2001-7, 6-12-2001)

Town of North Topsail Beach

Daniel Tuman, Mayor
Tom Leonard, Mayor Pro Tem
Aldermen:
Suzanne Gray
Don Harte
Richard Macartney
Richard Peters



Stuart Turille
Town Manager
Carin Z. Faulkner, MPA
Town Clerk

Winner of 2014 Best Restored Beaches Award

ORDINANCE NO. 2014-8

**AN ORDINANCE AMENDING SECTIONS 10-31 AND 10-32
OF THE NORTH TOPSAIL BEACH CODE OF ORDINANCES**

BE IT ORDAINED BY the Mayor and Board of Aldermen of the Town of North Topsail Beach, North Carolina, that the following Sections shall be amended as follows (omitted text stricken through, new text underlined, notes for codification purposes, which are to be left out of the ordinance are between < > symbols):

Section One:

Sec. 10-31 DEFINITIONS

Beach strand (~~permitted driving area~~): The area of the beach ~~more than twenty-five (25) feet seaward from the frontal dune~~ considered public trust area.

Estuarine Area: The public trust area bordering the New River as measured by the Mean High Water line.

Joyriding: Operating a motor powered vehicle carelessly and heedlessly in willful or want disregard of the rights or safety of others and/or without due caution and circumspection at a speed or in a manner so as to endanger or be likely to endanger any person or property.

Permissible Driving Area: The public trust area bordering the New River that has been designated as an area in which 4-wheel drive vehicles are allowed to drive. This area is:

Commencing at a point in the intersection of the centerline of River Road and the approximate mean high waterline of the New River Inlet, said point having coordinates of North = 287928.76 and East = 2498718.99 NAD83(2011), said point being THE TRUE POINT OF BEGINNING: thence from the above described true point of beginning and leaving said River Road centerline and along the approximate mean high water line the following courses and distances: South 24 degrees 53 minutes 10 seconds East 223.60 feet, South 48 degrees 55 minutes 21 seconds East 152.08 feet and South 64 degrees 46 minutes 12 seconds East 306.85 feet to a point in said approximate mean high water line, thence leaving said approximate mean high water line South 75 degrees 54 minutes 38 seconds West 517.88 feet to a point, thence North 24 degrees 53 minutes 10 seconds West 407.95 feet to a point in the centerline of River Road, thence leaving said centerline point North 24 degrees 53 minutes 10 seconds West 1,520.72 feet to a post on the southern margin of the existing Bird Sanctuary, thence along said southern margin North 64 degrees 48 minutes 20 seconds East 250.00 feet to a point in the approximate mean high water line of New River Inlet, thence along said approximate mean highwater line South 24 degrees 53 minutes 10 seconds East 1429.07 feet to a point in the centerline of River Road and being the point and place of beginning and containing 12.029 acres as surveyed by Charles Francis Riggs,

P.L.S. L-2981 on July 24, 2014. The courses contained within are correct in angular relationship and are referenced to NAD83(2011).

Section Two:

Sec. 10-32 BEACH ACCESS DRIVING REGULATIONS

- (a) No motor-driven vehicles shall be allowed on the beach or sand dunes of North Topsail Beach ~~and on any point landward of twenty-five (25) feet seaward from the frontal dune (except on a public or private road, driveway, parking lot or the yard of a developed lot, exclusive of any sand dune)~~; other than Town, County, State or federally authorized vehicles. The only exception is the "Permissible Driving Area." ~~<This was 10-32 (c)>~~
- (b) Permitted vehicles shall operate only during the hours between sunrise and sunset.
- (c) Four-wheel drive vehicles only shall be allowed ~~on~~ in the ~~beach strand~~ area designated as "Permissible Driving Area" ~~"Onslow County Beach Access #3."~~ Vehicles within this designated area require no vehicle permit. ~~<This was 10-32 (a)>~~
- (d) No motor-driven vehicle shall be allowed on the beach strand unless the vehicle is a factory manufactured four-wheel drive vehicle (exception: farm tractors used by commercial fishermen). Certain specialized vehicles (see section 10-36) may be driven on the beach strand by handicapped persons. The police chief shall decide if a person is handicapped according to the definition in section 10-36.
- (e) The speed of any motor-driven vehicle operating on the beach strand at North Topsail Beach shall not exceed ten (10) miles per hour.
- (f) No motor-driven vehicle shall at any time cross to the beach strand unless crossing is at accessways designated by the board of aldermen as vehicular crossings, public or private.
- (g) Pedestrians, swimmers and sunbathers shall have the right-of-way over all vehicles being operated on the beach strand.
- (h) It shall be illegal to ride or walk horses on the beach strand and sand dune area of North Topsail Beach (unless on a public or private road, developed lot, or parking lot).
- (i) No joyriding shall be allowed on the beach strand ~~and~~ sand dune area, and on any public trust area, including the "Permissible Driving Area" of North Topsail Beach at any time. Violation of this section shall be treated as a civil penalty under the law and enforceable by North Topsail Beach Police Department.

Section Three: This ordinance shall be effective the 9th of July, 2014.

Adopted this the 9th day of July, 2014.

APPROVED:

Daniel Tuman, Mayor

ATTEST:

Carin Z. Faulkner, Town Clerk

Town of North Topsail Beach

Daniel Tuman, Mayor
Tom Leonard, Mayor Pro Tem
Aldermen:
Suzanne Gray
Don Harte
Richard Macartney
Richard Peters



Stuart Turille
Town Manager
Carin Z. Faulkner, MPA
Town Clerk

Winner of 2014 Best Restored Beaches Award

ORDINANCE NO. 2014-9

**AN ORDINANCE AMENDING CHAPTER 10 TO INCLUDE
AN ORDINANCE PROHIBITING UNATTENDED BEACH EQUIPMENT AND PLACING
OBSTRUCTIONS ON THE BEACH**

BE IT ORDAINED BY the Mayor and Board of Aldermen of the Town of North Topsail Beach, North Carolina, that the following Sections in Chapter 10 be amended as follows:

Section One:

ADD Sec. 10-24. Unattended beach equipment prohibited.

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

Awning means a roof-like covering extending over a certain area and used as a shelter.

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 with limitations: chairs, lounges, umbrellas, cabanas, tents, canopies awnings, horseshoes and stakes, sailboats, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers and other personal effects. Beach equipment shall not include municipal trash containers, signage or structures placed by a governmental agency, items placed by a bona fide conservation agency or organization (such as signs or protection devices for turtle nests or equipment approved for use by duly licensed mobile vendors).

Beach Strand means the area of the beach considered public trust area.

Cabana means a collapsible shelter resembling a cabin with at least one (1) open side.

Canopy means an ornamental roof-like structure supported by more than one (1) pole providing shade and/or protection from weather events.

Tent means a collapsible shelter of fabric stretched and sustained by poles and used for camping or other recreational outdoor activities.

Umbrella means a collapsible shade for protection against weather consisting of fabric stretched over hinged ribs radiating from a center pole.

Section Two:

ADD Sec. 10-25. Placing obstructions on beach.

(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 beach strand between 9:00 p.m. and 7:00 a.m. will be classified as abandoned property and will be removed and disposed of by the town. This section is in effect year round.

(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 policies as outlined within this section.

(c) All beach equipment shall be set at least twenty (20) feet from any sea turtle nest. No beach equipment shall be placed seaward of a sea turtle nest for a distance of ten (10) feet north and south of a direct line between the sea turtle nest and the Atlantic Ocean.

(d) No beach equipment may be placed within a twenty-five (25) foot perimeter of an emergency access or any beach strand access point.

Section Three:

ADD Sec. 10-26 Penalties.

Any person who shall violate this article shall be subject to a civil penalty in an amount of fifty dollars (\$50.00) for each offense. Each day that a person is in violation of this article shall constitute a new and separate offense.

Section Four:

REPEAL Sec. 10-44 Storage of Sailboats.

Section Five:

This ordinance shall be effective on the 7th of August, 2014.

Adopted this the 7th day of August, 2014.

APPROVED:

(Seal)

Daniel Tuman, Mayor

ATTEST:

Carin Z. Faulkner, Town Clerk

[Print](#)

Surf City, NC Code of Ordinances

Sec. 4-1. Beach defined.

The word "beach," for the purposes of this chapter, shall be construed to mean the strand between the dunes and the water's edge and all approaches thereto, including boardwalks erected by the town on town-owned property and any portion of the strand, and including the water for a distance of one thousand (1,000) feet seaward and any structure erected thereon.

(Code 1977, § 6-1)

Cross reference— Definitions and rules of construction generally, § 1-2.

Sec. 4-13. Placing obstructions on beach.

(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 between sunset and sunrise will be classified as abandoned property and will be removed and disposed of by the town. This section is in effect year round.

(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 policies as outlined within this section.

(c) All beach equipment shall be set at least twenty (20) feet from any sea turtle nest. No beach equipment shall be placed seaward of a sea turtle nest for a distance of ten (10) feet north and south of a direct line between the sea turtle nest and the Atlantic Ocean.

(d) No beach equipment may be placed within a twenty-five (25) foot perimeter of an emergency access or any public beach access point. Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis.

(e) Handicap persons that wish assistance should contact the police department.

(Ord. No. 2013-06, 10-1-13)

Sec. 4-34. When and where vehicles permitted.

The following limitations shall apply to the use of vehicles on the beach by those persons who have obtained vehicle permits for same.

(1) No vehicles shall be allowed on the beach strand within the corporate limits from May 15 in any one year through September 10 of the same year, except that vehicles transporting persons with disabilities shall be allowed to drive to the beach year around in an area from the designated crossing area to a point one thousand (1,000) feet south.

(2) No vehicles shall be allowed on the beach except in the beach area between the 1300 block of South Shore on the south and Dolphin Street on the north. Vehicle use may also be barred in additional areas if the town manager finds that beach erosion and/or high tides have rendered an area of the beach unsafe for vehicle use.

(3) Night driving shall be allowed for fishing purposes only during the dates of October 1st through May 1st of each year and in the same area described in section 4-34(2), except that commercial fishing activities specifically allowed by law shall be permitted.

(Code 1977, § 6-13; Ord. No. 1992-6, § 1, 3-10-92; Ord. No. 1992-10, § 1, 6-2-92; Ord. No. 2001-11, § 1, 4-3-01; Ord. No. 2011-01, 2-1-11)

Sec. 4-37. Exemptions and exceptions.

Police, fire, and rescue vehicles, town maintenance vehicles, vehicles of contractors performing work for the town, and vehicles performing storm recovery or beach restore work under proper permits from the town and the state are exempt from this article. The town council may permit, by issuance of special permission with any conditions it deems appropriate, vehicle use on the beach in any part of the corporate limits, for special event.

(Code 1977, § 6-16; Ord. No. 2001-11, § 2, 4-3-01)

Sec. 22-66. - Beach access driving regulations.

- (a) No person shall park, operate or otherwise allow their motor-driven vehicle to be parked located upon or driven over the beach strand, sand dune areas, frontal dunes and any area between the beach strand and frontal dune and/or sand dune area within the town at any time between April 1 or the Thursday before Easter at 12:01 a.m. (whichever is earlier) and September 30 at 12:00 midnight of each year. Provided, however, that the restrictions contained in this subsection shall not apply to handicapped persons as defined herein.
- (b) Four-wheel drive vehicles possessing valid town permits shall be allowed on the beach strand at any time, 24 hours a day, during the period beginning at 12:01 a.m. October 1; of each year and ending at 12:00 midnight on March 31 or the Thursday before Easter of the next year (whichever is earlier). Provided, further, that motor-driven vehicles operated by handicapped persons as defined herein and possessing valid town permits shall be allowed on the beach strand as provided in this division at all times of the year; provided, however, that during the periods of April 1 through September 30, motor-driven vehicles operated by handicapped persons shall only be allowed on the beach strand between sunrise and sunset.
- (c) No motor-driven vehicle shall be allowed on any portion of the beach strand adjacent to the Atlantic Ocean and lying north of Drum Avenue.
- (d) No motor-driven vehicle shall be allowed on the following:
 - (1) The sand dune area;
 - (2) Closer than ten feet to the front toe of a frontal dune.
- (e) No motor-driven vehicle shall be allowed on the beach strand unless the vehicle is a factory manufactured four-wheel drive vehicle; provided, however, that the restrictions contained in this subsection shall not apply to handicapped persons as defined herein.
- (f) The speed of any motor-driven vehicle operating on the beach strand shall not exceed 15 miles per hour.
- (g) Any motor vehicle on the strand must be engaged in either a commercial fishing, sports fishing or construction capacity. There shall be no joyriding allowed. The possession of fishing equipment or construction equipment shall be required; provided, however, that the restrictions contained in this subsection shall not apply to handicapped persons as defined herein.
- (h) No motor-driven vehicles shall at any time cross to the beach strand unless crossing is at accessways designated by the board as vehicular crossings.
- (i) Pedestrians, swimmers and sunbathers shall have the right-of-way over all vehicles being operated on the beach strand.
- (j) Police vehicles, ambulances, municipal vehicles and fire vehicles are exempt from this division.
- (k) No motor vehicle is allowed to park at any point north of the designated marker located on the beach strand. This marker shall be located approximately 0.5 miles south of the Drum Avenue vehicle access.
- (l)

Town officials may restrict or close the beach to vehicular access at any time for safety reasons, or to protect the dune structure during unusually high tides.

(Code 1979, § 7-1073; Code 1990, § 10-73; Ord. of 10-20-1988; Ord. No. 93-001, § 2, 1-13-1993; Ord. No. 00-008, §§ 1—4, 9-27-2000; Ord. No. 04-05, § 1, 11-10-2004)

Sec. 24-36. - Definitions.

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

Awning means a roof-like covering extending over a certain area and used as a shelter.

Beach equipment.

- (1) The term "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, tents, horseshoes and stakes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers and other personal effects.
- (2) The term "beach equipment" shall not include municipal trash containers, signage or structures placed by a governmental agency or its contractor, items placed by a bona fide conservation agency or organization (such as signs or protection devices for turtle nests or equipment approved for use by duly licensed mobile vendors).

Nonmotorized sailboats and catamarans shall be permitted to remain on the strand overnight from May 15 through September 15.

Cabana means a collapsible shelter resembling a cabin with at least one open side.

Canopy means an ornamental roof-like structure supported by more than one pole, providing shade and/or protection from weather events.

Public beach means the dry sand lying between the Atlantic Ocean and the toe of the dune.

Tent means a collapsible shelter of fabric stretched and sustained by poles and used for camping or other recreational outdoor activities.

Umbrella means a collapsible shade for protection against weather consisting of fabric stretched over hinged ribs radiating from a central pole.

(Ord. of 10-20-2010)

Sec. 24-37. - Placing obstructions on beach.

-App. 34-

- (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. The owner of any personal items and beach equipment unattended and remaining on the public beach between the hours of 7:00 p.m. through 7:00 a.m. shall be subject to fines as described in section 24-38. All personal items and beach equipment unattended and remaining on the public beach will 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 policies as outlined in subsection (a) of this section.
- (c) All beach equipment (including catamarans and sailboats) shall be set at least 20 feet from any sea turtle nest or dune vegetation. With regard to a sea turtle nest, no beach equipment shall be placed seaward of the nest.
- (d) No beach equipment may be placed within a 25-foot perimeter of an emergency access or any public beach access.

(Ord. of 10-20-2010)

Sec. 53-31. - Definitions.

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

Dune area means all land situated in this county and lying within 750 feet of the low-water mark of the Atlantic Ocean or inlets adjacent thereto.

(Code 1978, § 10-16; Ord. of 8-6-2001)

Cross reference— Definitions generally, § 1-2.

Sec. 53-32. - Exceptions.

The provisions of this article shall not be applicable to emergency vehicles, including ambulances, rescue and firefighting vehicles, when operated for emergency purposes to save or protect human life or property.

(Code 1978, § 10-17)

Sec. 53-33. - Limitation.

No person shall operate a motor vehicle in the dune area for the purpose of racing, for hire or for commercial purposes, or for any purpose other than transportation.

(Code 1978, § 10-18)

Sec. 53-34. - Restrictions.

No motor vehicles may be operated in the dune area except as follows:

- (1) By a person licensed to drive a motor vehicle on the public highways;
- (2) Either below the high water mark or on property within 25 feet adjacent thereto, or on platted roadways;
- (3) If on private property, with permission of the owner of the property;
- (4) A motor vehicle weighing less than 5,000 pounds, except that no all-terrain vehicles (ATVs), motor homes, travel trailers, or other trailers of any kind including personal watercraft trailers, shall be allowed;
- (5) At a speed of 15 miles per hours or below; and
- (6) In such a manner as not to endanger persons in the dune areas, adjoining areas, or in the water.

(Code 1978, § 10-19; Ord. of 8-6-2001)

Sec. 53-61. - Definitions.

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

Masonboro Island means that island or strip of land approximately nine miles in length, bounded on the north by Masonboro Inlet, on the south by Carolina Beach Inlet, on the east by the Atlantic Ocean, and on the west by Old Shinn Creek.

Motor vehicle means any and every vehicle which is self-propelled, including but not limited to dune buggies, beach buggies, motorcycles and mopeds, and having two, three, four or more wheels.

(Code 1978, § 10-26)

Cross reference— Definitions generally, § 1-2.

Sec. 53-62. - Limitation and restriction.

It shall be unlawful for any person to operate a motor vehicle upon the beach, sand dunes or any other area of Masonboro Island except as provided in this division.

(Code 1978, § 10-27)

Sec. 53-63. - Exceptions.

- (a) The provisions of this division shall not be applicable to emergency vehicles when operated for emergency purposes to save or protect human life or property.
- (b) The provisions of this division shall not be applicable to vehicles whose use is required by agencies and institutions engaged in activities of promoting and protecting the sand dunes, vegetation and wildlife on Masonboro Island, such agencies and institutions having first applied to and obtained approval from the county manager.

(Code 1978, § 10-28)

[Print](#)

Wrightsville Beach, North Carolina Code of Ordinances

Sec. 7.4. Vehicles on beaches.

Notwithstanding the provisions of G.S. 160A-308, the Town Board is authorized to enact ordinances to regulate, restrict and prohibit the use of dune or beach buggies, jeeps, motorcycles, cars, trucks, or any other form of power-driven vehicle specified by the Board on the foreshore, beach strand and barrier dune system by commercial fishermen for commercial activities.

§ 92.05 USE OF MOTOR VEHICLE BY HANDICAPPED PERSONS TO ENTER OCEAN.

The Board of Aldermen or Town Manager may grant authorization to a handicapped person to use a motor vehicle for the purpose of ingress and egress to the Atlantic Ocean. The vehicle must be approved by the Board of Aldermen or the Town Manager. A permit, issued by the Wrightsville Beach Police Department, must accompany vehicles accessing the beach stand. The permit will specify the date and location where the vehicle will be operated.

('72 Code, § 13-4) (Am. Ord. 1531, passed 3-15-07)

§ 92.09 TENTS, UMBRELLAS AND CANOPIES ON BEACH STRAND.

It shall be unlawful for any person to leave tents, canopies or umbrellas on the beach strand adjacent to the waters of the Atlantic Ocean overnight without prior approval of the Town Manager or his or her authorized designee.

(Ord. 1548, passed 9-13-07)

§ 92.18 USE OF VEHICLES ON BEACH PROHIBITED.

No vehicle as defined in Chapter 70 of the town code shall be permitted on the foreshore, breach strand or barrier dune system within the town limits of the town except as follows:

(A) Vehicles owned and/or operated by employees and agents of the town, county, the state, and the U.S. Government while engaged in official duties shall not be subject to the provisions of this section.

(B) The Board of Aldermen or Town Manager may approve the operation of vehicles on the areas described hereinabove pursuant to the provisions of an activity or event approved by the Board of Aldermen or Town Manager. A permit, issued by the Wrightsville Beach Police Department, must accompany vehicles accessing the beach strand. The permit will specify the date and location where the vehicle will be operated.

(C) Handicapped persons shall be permitted to use vehicles on the areas described above in accordance with the provisions of § 92.05 hereinabove.

(Ord. 1105, passed 10-21-89; Am. Ord. 1531, passed 3-15-07; Am. Ord. 1626, passed 4-22-10)

Sec. 28-63. - Operation of motor vehicles on beach.

- (a) *Allowed in certain areas.* Legally licensed private vehicles shall be permitted to drive within designated areas of the public beach strand north of the terminus of Canal Drive. No vehicles shall be allowed west of any protected area within the barrier dune system. Local, county, state and federal government vehicles and emergency vehicles engaged in official duties are not subject to these restrictions.
- (b) *Handicapped persons.* Handicapped persons shall be permitted to use specially approved vehicles on the beach strand area, provided said vehicle has been approved by and a special permit obtained from the police department. Only handicapped persons shall be allowed to apply for such special permits.
- (c) *Special purposes.* Private vehicles may be permitted for special purposes by special permit obtained from the Town Manager.

(Code 1986, § 9-54)

Sec. 28-118. - Definitions.

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

Awning means a rooflike covering extending over a certain area and used as a shelter.

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, with limitations, chairs, lounges, umbrellas, cabanas, tents, canopies, awnings, horseshoes and stakes, sailboats, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers and other personal effects. Beach equipment shall not include municipal trash containers, signage or structures placed by a governmental agency, items placed by a bona fide conservation agency or organization (such as signs or protection devices for turtle nests or equipment approved for use by duly licensed mobile vendors).

Cabana means a collapsible shelter resembling a cabin with at least one open side.

Canopy means an ornamental rooflike structure supported by more than one pole providing shade and/or protection from weather events.

Public beach means that area lying between the Atlantic Ocean and the Carolina Beach Building line, lying closest in proximity to the Atlantic Ocean, except where there is a street or public beach access leading toward the Atlantic Ocean; the term "public beach" at these points means the area lying between the easternmost edges of the public street right-of-way or access and the Atlantic Ocean. The term "public beach" for Freeman Park means that area that includes the sand portion of the beach from the easternmost fenced area to the Atlantic Ocean or Carolina Beach Inlet.

Tent means a collapsible shelter of fabric stretched and sustained by poles and used for camping or other recreational outdoor activities.

Umbrella means a collapsible shade for protection against weather consisting of fabric stretched over hinged ribs radiating from a center pole.

(Code 1986, § 10-75; Ord. No. 08-755, 9-9-2008)

Sec. 28-119. - Placing obstructions on beach.

- (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 between sunset and sunrise will be classified as abandoned property and will be removed and disposed of by the town.
- (b) So as not to impede or restrict the free and unconstrained use and occupancy of the public beach by the public and in order to assist police, lifeguards and fire personnel in responding to emergency calls, absolutely no beach equipment is allowed on the beach at any time within 20 feet from the easternmost edge of the dune slope or vegetative line. Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis.
- (c) 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 policies as outlined within this section.
- (d) All beach equipment shall be set at least 20 feet from any sea turtle nest. No beach equipment shall be placed seaward of a sea turtle nest for a distance of ten feet north and south of a direct line between the sea turtle nest and the Atlantic Ocean.
- (e) No beach equipment may be placed within a 25-foot perimeter of an emergency access or any public beach access point. Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis.
- (f) No beach equipment may be placed directly in front of a lifeguard stand seaward of the stand for a distance of ten feet north and south of a direct line between the stand and the Atlantic Ocean.
Depending on conditions, emergency personnel may impose greater setbacks on a case-by-case basis.

(Code 1986, § 10-76; Ord. No. 08-755, 9-9-2008)

Sec. 10-103. - Definitions.

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

Approved handicapped vehicle shall mean a factory-manufactured motorized wheelchair or similar vehicle not exceeding one thousand (1,000) pounds gross weight which is designed for and intended to be used as a means of transportation for a person with a mobility impairment, or who uses the device for mobility enhancement, is suitable for use both inside and outside a building, including on sidewalks, and is limited by design to fifteen (15) miles per hour when the device is being operated by a person with a mobility impairment or who uses the device for mobility enhancement. This includes an electric personal assistive mobility device as defined in G.S. § 20-4.01(7a).

Beach strand shall mean the area of the beach more than twenty (20) feet seaward from the frontal dune.

Frontal dune shall mean the easternmost sand dune or system of sand dunes, which lies just west of the mean high water mark of the Atlantic Ocean.

Handicapped person shall mean a person with a mobility impairment within the meaning of G.S. § 20-37.5 and has been issued a state handicapped permit and/or a permanent handicapped registration plate.

Prohibited area shall mean the area between the water line and the high tide crest.

(Ord. of 4-17-07)

Sec. 10-104. - Vehicles on strand prohibited.

It shall be unlawful for any person to operate a motor driven vehicle upon the beach strand within the corporate limits of the town, except as hereinafter specified.

(Ord. of 4-17-07)

Sec. 10-105. - Exception for handicapped vehicles.

Handicapped persons may operate an approved handicapped vehicle used for pedestrian purposes subject to the conditions imposed on other exempted vehicles.

(Ord. of 4-17-07)

Sec. 10-106. - Other vehicle exceptions.

By permit of the chief of police or designee:

- (1) A governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work.
- (2) Drivers who are participating in town approved civic, governmental, or charitable events authorized by the town council provided the motor vehicle operated on the town beach strand occurs only during the posted hours of the event and the operator complies with all regulations adopted by the town with respect to driving on the beach.

(Ord. of 4-17-07)

Sec. 10-107. - Emergency vehicle exceptions.

The provisions of this division shall not apply to:

- (1) Police, fire, ambulance and municipal vehicles that may be required to enter upon the beach in the performance of their duties.
- (2) Other governmental agencies operating under a mutual aid agreement during time of natural or manmade disaster.

(Ord. of 4-17-07)

Sec. 10-108. - Permit requirements.

- (a) Prior to any motor driven vehicle being driven, parked or otherwise located on the beach strand, the owner or operator shall first obtain a permit to do so. This permit shall be issued at a cost in accordance with the regularly adopted fee schedule of the town at the time of issuance of the permit and the owner or operator will receive a device or insignia which must be displayed only on the vehicle as designated in the permit, which permit shall not be transferable to any other vehicle or person. If any person drives or leaves a vehicle parked on the beach strand, which does not have the required permit, then that person shall be in violation of this division.
- (b) Handicapped vehicles, as defined in this division, shall be fee-exempt.
- (c) All vehicles granted permits to be on the beach strand shall have currently valid state license, registration and inspection if required by law.
- (d) All vehicles granted permits to be on the beach strand shall have in full force and effect the financial responsibility if required by G.S. § 20-309.
- (e) All permits to drive on the beach strand shall be issued by the Kure Beach Police Department or designated administrative department.
- (f) Permits shall be issuable for a limited time period, based on the work requirement or event.

(Ord. of 4-17-07)

Sec. 10-109. - Beach strand driving regulations.

-App. 42-

- (a) The speed of any motor driven vehicle operating on the beach strand in Kure Beach shall not exceed ten (10) miles per hour.
- (b) No motor driven vehicle shall be operated between the water line and the high tide crest (commonly referred to as the "wet sand" area).
- (c) No motor driven vehicle shall be operated on any vegetation area or closer than twenty (20) feet to the front of the frontal dune, except that vehicles engaged in repair of walkovers and/or stairs to the beach may proceed landward provided they do not drive on any portion of the frontal dune.
- (d) No motor driven vehicle shall at any time cross to the beach strand unless crossing is at access-ways designated by the town council as vehicular crossings.
- (e) Pedestrians, swimmers and sunbathers shall have the right-of-way over all vehicles being operated on the beach strand.
- (f) Motor driven vehicle operators will, at all times, operate their vehicles in a safe and prudent manner; will give warning before starting, stopping and/or turning the vehicle.
- (g) Motor driven vehicle operators will remain clear of federally-protected turtle nesting areas.

(Ord. of 4-17-07)

Sec. 12-42. - Definitions.

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

Beach means the area of sand that extends landward from the mean low water line to the stable line of natural vegetation.

Beach equipment means any apparatus or paraphernalia that is designed or manufactured for use, or is actually used, on the beach or in adjacent tidal waters. Examples include without limitations: chairs, lounges, umbrellas, cabanas, tents, horseshoes and stakes, sailboats, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers, other personal effects and equipment used by concessionaires, such as tables, podiums, booths or storage boxes. Beach equipment shall not include municipal trash containers, signage or structures placed by a governmental agency, items placed by a bona fide conservation agency or organization (such as signs or protection devices for turtle nests or equipment approved for use by duly licensed concessionaires).

(Ord. of 6-17-08(2))

Sec. 12-43. - Placement of beach equipment.

- (a) Unless allowed by a specific provision of this Code, or unless it is in the active use and personal presence of the owner or a permitted user, beach equipment must be removed by its owner or permitted user from the beach between the hours of 7:00 p.m. to 8:00 a.m. year-round, and placed in a

lawful location. All personal items and beach equipment unattended and remaining on the beach between the aforementioned hours will be classified as abandoned property and will be removed and disposed of by the town.

- (b) A business that rents beach equipment shall abide by all rules and regulations pertaining to the license that has been issued and must adhere to the installation and removal policies as outlined in subsection (a) of this section.
- (c) All beach equipment shall be at least fifteen (15) feet from any marked or staked sea turtle nest or dune vegetation.
- (d) No beach equipment may be placed within a twenty-five-foot perimeter of an emergency access or any public beach access.

(Ord. of 6-17-08(2))

[Print](#)

Bald Head Island, NC Code of Ordinances

Sec. 10-164. Definitions.

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

Beach means the area of sand that extends landward from the mean low water line to the stable line of natural vegetation.

Beach equipment means any apparatus or paraphernalia that is designed or manufactured for use, or actually used, on the beach, or in the adjacent tidal waters. Examples include, without limitation: chairs, tables, lounges, umbrellas, tents, boats or sailboats, personal watercraft, trailers, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, flotation devices, beach toys, baskets, bags, towels, coolers, other personal effects, vehicles allowed on the beach (see section 28-34), and equipment used by concessionaires, such as tables, podiums, booths, or storage boxes. Beach equipment shall not include municipal trash containers, signage or structures, or items placed by a bona fide nature conservation agency or organization, such as signs or turtle nest protection.

(Ord. of 4-20-2007)

Sec. 10-165. Placement and storage of beach equipment.

(a) Unless allowed by a specific provision of this Code, or unless it is in the active use and personal presence of the owner or a permitted user, beach equipment must be removed by its owner or permitted user from the beach between the hours of 9:00 p.m. and 8:00 a.m., year around, and placed in a lawful location.

(b) Vehicular traffic on the beach is regulated by section 28-34. Vehicles that are not in use may not be stored on the beach at any time.

(c) A business that rents beach furniture may place one freestanding structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must be removed by its owner from the beach after business hours to a lawful location.

(d) All beach equipment shall be set at least ten feet from any sea turtle nest or dune vegetation.

(e) The village manager, upon advance request, may grant a variance from section 10-165 in appropriate cases for bona fide recreational, scientific, environmental or educational purposes.

(Ord. of 4-20-2007)

Sec. 28-33. Driving motor vehicles on beaches.

(a) *Prohibited.* It shall be unlawful for any person to drive a motor vehicle on the beaches within the village, except in the mission of the Bald Head Island Conservancy or an emergency or service vehicle operating for benefit of the village.

(b) *Violation.* Any person who shall violate this section shall be required to pay a penalty in the amount of \$50.00 pursuant to G.S. 160A-175. Any individual cited for violation of this section shall pay the civil penalty at the office of the village clerk within 48 hours following receipt of the citation. Violation of this article shall be exempt from prosecution pursuant to G.S. 14-4.

(c) *Warning.* The public safety officer shall make every reasonable effort to warn a motor vehicle operator that appears to be destined for the beach before he or she reaches the dunes area and violates this

section.

(Ord. No. 14A, §§ 1—4, 2-20-1998; Ord. No. 2010-0902, 9-24-2010)

[Print](#)

Caswell Beach, NC Code of Ordinances

§ 70.01 MOTOR VEHICLES ON STRAND AND DUNE AREAS.

(A) *Definition.* For the purposes of this chapter, the words **STRAND OF THE BEACH** shall mean all that area lying east, and south and southeast of the high water mark of the Atlantic Ocean.

(B) No person, firm or corporation shall operate any motor vehicle (automobile, off the road vehicle, motorcycle, wind-powered, motor-powered) on the beach strand and the dune areas of the town.

(C) Nothing in this section shall be construed to prohibit the operation of police cars, fire trucks, emergency rescue equipment or other official vehicles while on official duty on the beach strand. Nor shall this section apply to a governmental agency, its employees, agents, contractors and subcontractors and their vehicles when engaged in beach restoration or protection work. Nor shall this section apply to persons with disabilities and their vehicles or devices designed to propel the persons with disabilities on the strand of the beach area. Such vehicles or devices, however, are not permitted in the dune areas.

('75 Code, § 3-7-1) Penalty, see § 70.99

§ 92.01 STRAND DEFINED.

For the purpose of this chapter, the words **STRAND OF THE BEACH** shall mean all that area lying east, and south and southeast of the high water mark of the Atlantic Ocean.

('75 Code, § 3-6-2)

§ 97.02 REMOVAL OF PRIVATE PROPERTY FROM TOWN PUBLIC AREAS.

(A) Abandoned property located on town public roads, public right-of-ways and/or the public beach shall only be removed by town personnel and shall be disposed of in a manner to be determined by the Town Administrator or his or her designee.

(B) It shall be unlawful for any person, other than the owner of the private property or town employees, to remove or attempt to remove private property and/or beach equipment from any town public location without the owner's consent.

(Ord. 2014-005-O, passed 6-12-14) Penalty, see § 10.99

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. 14-143. - 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.

(Ord. of 7-13-2010; Amend. of 11-12-2013; Amend. of 2-10-2015)

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. 28-5. - Restricted areas designated; exceptions.

No person shall operate any motor vehicle on the beach strand facing the Atlantic Ocean and Lockwood Folly Inlet or the sand dunes within the town limits. Exceptions: police car, fire truck, emergency rescue equipment or other official vehicles in the performance of their duties.

(Ord. of 10-10-2000(3), § 1(e); Amend. of 1-12-2005)

[Print](#)

Holden Beach Code of Ordinances

§ 94.01 OFFICIAL VEHICLES ALLOWED ON STRAND.

This chapter shall not be construed in any manner to prohibit the use of law enforcement, beach patrol, rescue squad, Fire Department or other public or official vehicles in the performance of their duties, upon the beach strand or vehicular accessways to the beach strand, or wetlands.

('85 Code, § 11-1.1) (Ord. 6-83, passed - -)

§ 94.02 PRIVATELY-OWNED VEHICLES PROHIBITED.

Except as noted in § 94.01 of this chapter, no motor vehicles or other motor or engine-drive vehicles, or wind-powered wheeled vehicles, licensed or unlicensed, shall be allowed at any time upon the wetlands, beach strand, beach strand vehicular accessways, or the dunes adjoining the strand and accessways.

('85 Code, § 11-1.2) (Ord. 6-83, passed - -) Penalty, see § 94.99

§ 94.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or implies a different meaning.

BEACH. The area between the mean low water mark of the Atlantic Ocean and the seaward toe of the frontal dune.

BEACH EQUIPMENT. 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, tents, horseshoes and stakes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, floatation 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 (for example signs or protection devices for turtle nests).

SAND RENOURISHMENT. The placement and maintenance of sand onto the beach in order to nourish, renourish, protect, operate and maintain a public beach, including the right to deposit sand, alter the contour of the land, construct dunes and berms, plant vegetation on and prohibit access to the dunes and berms, to erect protective silt screens and fences, and to perform any other work necessary and incident to the maintenance of the dune system.

(Ord. 02-08, passed 5-27-02; Am. Ord. 10-08, passed 9-14-10)

§ 94.06 PLACING OBSTRUCTIONS ON THE BEACH.

(A) 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 beach between the hours of 6:00 p.m. and 7:00 a.m. will be classified as abandoned property and shall be removed and disposed of by the town.

(B) All beach equipment shall be set at least ten feet from any sea turtle nest or dune vegetation.

(Ord. 10-08, passed 9-14-10)

§ 95.01 - DEFINITIONS.

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

AUTHORIZED EMERGENCY VEHICLE. Vehicles of the Fire Department, police vehicles and such ambulances designated or authorized by the Chief of Police.

BEACH STRAND. All land between the low watermark of the Atlantic Ocean and the first line of stable vegetation as defined in the regulations of the North Carolina Coastal Resources Commission.

DUNE. A mound of sand located landward of the Atlantic Ocean.

DUNE SYSTEM, FRONTAL DUNE. The first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus six feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

EMERGENCY ACCESS. A roadway or path identified and used only by emergency vehicles and other authorized vehicles to access the beach strand from the public street system.

ESCARPMENT. The vertical drop or steep slope in the beach profile separating two comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion. Escarpments for the purposes of this chapter shall only be determined to exist in areas where the height and slope of the escarpment would preclude reasonable pedestrian access to the beach without causing an adverse impact to the dune structure.

ESTABLISHMENT OF NAVIGATIONAL CHANNEL(S). A 30-foot navigational channel is hereby established in the feeder canal from Cobia Street eastwardly to a line extended across said canal, which line is perpendicular to the northern line of Lot 22, Block 14-R, Sunset Beach, as shown in Map Book H at Page 358 of the Brunswick County Registry and which line begins at the mid-point of said northern line of Lot 22. A 40-foot navigational channel is hereby established from said line eastwardly to Jinx Creek.

EXPOSE HER BREASTS. The revealing of the female breast with less than a fully opaque covering on any portion thereof lower than the top of any part of the areola.

OBSTRUCTIONS. Any personal items 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, tents, shading devices, canopies, horseshoes and stakes, volleyball nets, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, rafts, floatation devices, beach toys, baskets, bags, towels,

coolers and any other personal property items. Obstructions shall not include municipal trash containers, signage or structures or any items placed or permitted by a governmental agency (for example signs or protection devices for turtle nests).

PERSONAL WATERCRAFT. A small vessel that uses an outboard or propeller-driven motor, or an inboard motor powering a water jet pump, as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel G.S. § 75A-13.3(a).

PUBLIC BEACH ACCESS. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system or a sand walkway or path used for the purposes of providing pedestrian access to the beach which is located in an area where there is no escarpment present between the dune structure and the beach.

SAND RENOURISHMENT. The placement and maintenance of sand onto the beach in order to nourish, re-nourish, protect, operate and maintain a public beach, including the right to deposit sand, alter the contour of the land, construct dunes and berms, plant vegetation on and prohibit access to the dunes and berms, to erect protective silt screens and fences, and to perform any other work necessary and incident to the maintenance of the dune system.

SEA TURTLE NEST. An area located on the beach strand that has been marked by officials as a sea turtle nest.

VEHICLE. Any device in, upon or by which any person or property is or may be transported.

(Am. Ord. of 3-18-2014(1))

§ 95.03 - VEHICLES ON THE STRAND PROHIBITED.

Except as otherwise provided herein, it shall be unlawful to place, park or operate any automobile, off-road vehicle, dune buggy, motorcycle, golf cart or other motor-powered vehicle, battery-powered vehicle or electric-powered vehicle on the beach strand within the town limits. It is also unlawful for any person who owns any of said vehicles to allow it to be placed or operated in violation of this section.

The provisions of this section shall not apply to:

- (1) Police, fire, rescue or other municipal vehicles and employees while in the performance of their duties.
- (2) Handicapped persons (which shall mean a person with a mobility impairment within the meaning of G.S. § 20-37.5) who may operate a factory-manufactured motorized wheelchair or similar vehicle not exceeding 600 pounds gross weight designed for and intended to be used as a means of

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transportation for a person with a mobility impairment, or a golf cart for which has been issued a permanent handicapped registration plate, as long as such person has received a permit issued by the Town of Sunset Beach Police Department.

- (3) Any motorized wheelchair, similar vehicle or golf cart operating on the beach strand pursuant to the above subsection (2) exception for handicapped persons shall comply with the following provisions and regulations:
- i. The speed of any motorized wheelchair, similar vehicle or golf cart operating on the beach strand shall not exceed five miles per hour.
 - ii. No motorized wheelchair or similar vehicle shall at any time cross to the beach strand unless crossing at access-ways designated by the town.
 - iii. Pedestrians, swimmers and sunbathers shall have the right-of-way at all times while on the beach strand.
 - iv. Operators of motorized wheelchairs, similar vehicles or golf carts will at all times operate their vehicles in a safe and prudent manner and will give warning before starting, stopping and/or turning the vehicle.
 - v. Operators of motorized wheelchairs, similar vehicles or golf carts will remain clear of and not otherwise disturb federally-protected turtle nesting areas.
 - vi. In the case of a golf cart being used for a handicapped child's access to the beach strand, only the parent or guardian may operate the vehicle.
 - vii. In the case of a golf cart being used, access of the beach strand can be made only at the emergency vehicle access-ways.

(Am. Ord. of 3-18-2014(1))

§ 95.07 - PLACING OBSTRUCTIONS ON THE BEACH STRAND.

Obstructions placed on the beach strand must abide by the following regulations:

- a. No obstruction may be placed within a 30-foot perimeter of any emergency access or any public beach access.
- b. Tents, shading devices and canopies shall be erected in a single line parallel to the ocean, and shall not extend more than 24 feet from the front dune line towards the ocean.
- c. Tents, shading devices and canopies shall be no larger than 12 feet by 12 feet.
- d. Tents, shading devices and canopies shall not be tied together.
- e. Tents, shading devices and canopies shall be separated by a minimum of ten feet.
- f. Anchors or tie downs for tents, shading devices, canopies and athletic equipment must be located within the footprint.
- g. Athletic equipment, such as volleyball nets, shall remain erected only while in use or attended.

- h. Obstructions shall be set at least ten feet from any sea turtle nest.
- i. All tents, shading devices, canopies and umbrellas shall be collapsed and secured when the sustained wind speed is 17 mph or greater.
- j. No tents, shading devices or canopies shall be erected before 6:00 a.m. and all tents, shading devices and canopies shall be removed from the beach strand by 7:00 p.m.
- k. Obstructions remaining on the beach strand after 7:00 p.m. will be considered abandoned and removed by town officials.

(Am. Ord. of 3-18-2014(1); Am. Ord. of 2-2-2015; Am. Ord. of 3-2-2015)

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 2000-67
HOUSE BILL 1840

AN ACT TO MODIFY THE CURRENT OPERATIONS AND CAPITAL
IMPROVEMENTS APPROPRIATIONS ACT OF 1999 AND TO MAKE OTHER
CHANGES IN THE BUDGET OPERATION OF THE STATE.

The General Assembly of North Carolina enacts:

PART I. INTRODUCTION AND TITLE OF ACT

INTRODUCTION

Section 1. The appropriations made in this act are for maximum amounts necessary to provide the services and accomplish the purposes described in the budget. Savings shall be effected where the total amounts appropriated are not required to perform these services and accomplish these purposes and, except as allowed by the Executive Budget Act, or this act, the savings shall revert to the appropriate fund at the end of each fiscal year.

TITLE OF ACT

Section 1.1. This act shall be known as "The Current Operations and Capital Improvements Appropriations Act of 2000."

PART II. CURRENT OPERATIONS/GENERAL FUND

Section 2. Appropriations from the General Fund of the State for the maintenance of the State departments, institutions, and agencies, and for other purposes as enumerated are made for the fiscal year ending June 30, 2001, according to the schedule that follows. Amounts set out in brackets are reductions from General Fund appropriations for the 2000-01 fiscal year.

<u>Current Operations - General Fund</u>	<u>2000-01</u>
General Assembly	\$ (272,500)
Judicial Department	14,289,072
Office of the Governor	
01. Office of State Budget and Management	200,000

shall include in its report recommendations regarding permit time frames for all major permits issued by the Department. The Department shall report to both the House of Representatives and the Senate Appropriations Subcommittees on Natural and Economic Resources, the Fiscal Research Division, and the Environmental Review Commission regarding the results of the pilot project by April 1, 2001.

Section 13.7.(f) The Department may adopt temporary rules to implement this section.

Requested by: Representatives Fox, Owens, Warren, Easterling, Redwine, Smith, Senators Martin of Pitt, Weinstein, Plyler, Perdue, Odom

BEACH MANAGEMENT PLAN/FEDERAL FUNDS

Section 13.9.(a) The General Assembly makes the following findings:

- (1) North Carolina has 320 miles of ocean beach, including some of the most pristine and attractive beaches in the country.
- (2) The balance between economic development and quality of life in North Carolina has made our coast one of the most desirable along the Atlantic Seaboard.
- (3) North Carolina's beaches are vital to the State's tourism industry.
- (4) North Carolina's beaches belong to all the State's citizens and provide recreational and economic benefits to our residents statewide.
- (5) Beach erosion can threaten the economic viability of coastal communities and can significantly affect State tax revenues.
- (6) The Atlantic Seaboard is vulnerable to hurricanes and other storms, and it is prudent to take precautions such as beach nourishment that protect and conserve the State's beaches and reduce property damage and flooding.
- (7) Beach renourishment as an erosion control method provides hurricane flood protection, enhances the attractiveness of beaches to tourists, restores habitat for turtles, shorebirds, and plants, and provides additional public access to beaches.
- (8) Federal policy previously favored and assisted voluntary movement of structures threatened by erosion, but this assistance is no longer available.
- (9) Relocation of structures threatened by erosion is sometimes the best available remedy for the property owner and is in the public interest.
- (10) Public parking and public access areas are needed for use by the general public to enable their enjoyment of North Carolina's beaches.
- (11) Acquisition of high erosion hazard property by local or State agencies can reduce risk to citizens and property, reduce costs to insurance policyholders, improve public access to beaches and waterways, and protect the environment.
- (12) Beach nourishment projects such as those at Wrightsville Beach and Carolina Beach have been very successful and greatly reduced property damage during Hurricane Fran.

- (13) Because local beach communities derive the primary benefits from the presence of adequate beaches, a program of beach management and restoration should not be accomplished without a commitment of local funds to combat the problem of beach erosion.
- (14) The State of North Carolina prohibits seawalls and hardening the shoreline to prevent destroying the public's beaches.
- (15) Beach nourishment is encouraged by both the Coastal Resources Commission and the U.S. Army Corps of Engineers as a method to control beach erosion.
- (16) The Department of Environment and Natural Resources has statutory authority to assist local governments in financing beach nourishment projects and is the sponsor of several federal navigation projects that result in dredging beach-quality sand.
- (17) It is declared to be a necessary governmental responsibility to properly manage and protect North Carolina's beaches from erosion and that good planning is needed to assure a cost-effective and equitable approach to beach management and restoration, and that as part of a comprehensive response to beach erosion, sound policies are needed to facilitate the ability of landowners to move threatened structures and to allow public acquisition of appropriate parcels of land for public beach access.

Section 13.9.(b) The Department of Environment and Natural Resources shall compile and evaluate information on the current conditions and erosion rates of beaches, on coastal geology, and on storm and erosion hazards for use in developing a State plan and strategy for beach management and restoration. The Department of Environment and Natural Resources shall make this information available to local governments for use in land-use planning.

Section 13.9.(c) The Department of Environment and Natural Resources shall develop a multiyear beach management and restoration strategy and plan that does all of the following:

- (1) Utilizes the data and expertise available in the Divisions of Water Resources, Coastal Management, and Land Resources.
- (2) Identifies the erosion rate at each beach community and estimates the degree of vulnerability to storm and hurricane damage.
- (3) Uses the best available geological and geographical information to determine the need for and probable effectiveness of beach nourishment.
- (4) Provides for coordination with the U.S. Army Corps of Engineers, the North Carolina Department of Transportation, the North Carolina Division of Emergency Management, and other State and federal agencies concerned with beach management issues.
- (5) Provides a status report on all U.S. Army Corps of Engineers' beach protection projects in the planning, construction, or operational stages.

- (6) Makes maximum feasible use of suitable sand dredged from navigation channels for beach nourishment to avoid the loss of this resource and to reduce equipment mobilization costs.
- (7) Promotes inlet sand bypassing where needed to replicate the natural flow of sand interrupted by inlets.
- (8) Provides for geological and environmental assessments to locate suitable materials for beach nourishment.
- (9) Considers the regional context of beach communities to determine the most cost-effective approach to beach nourishment.
- (10) Provides for and requires adequate public beach access, including handicapped access.
- (11) Recommends priorities for State funding for beach nourishment projects, based on the amount of erosion occurring, the potential damage to property and to the economy, the benefits for recreation and tourism, the adequacy of public access, the availability of local government matching funds, the status of project planning, the adequacy of project engineering, the cost-effectiveness of the project, and the environmental impacts.
- (12) Includes recommendations on obtaining the maximum available federal financial assistance for beach nourishment.
- (13) Is subject to a public hearing to receive citizen input.

Section 13.9.(d) Each plan shall be as complete as resources and available information allow. The Department of Environment and Natural Resources shall revise the plan every two years and shall submit the revised plan to the General Assembly no later than March 1 of each odd-numbered year. The Department may issue a supplement to the plan in even-numbered years if significant new information becomes available.

Section 13.9.(e) The Department of Environment and Natural Resources shall submit the first plan required by this act, no later than May 1, 2001. With the first plan, the Department shall:

- (1) Provide to the General Assembly a report on alternative State and local government sources of funding for beach nourishment.
- (2) Review State, federal, and local policies on enabling and assisting property owners to move structures that are threatened by imminent erosion damage and shall recommend policies, legislative changes, and actions to make moving structures more feasible for landowners.
- (3) Review existing programs for the acquisition and management of public land for beach access areas and open space, including identifying high-hazard, erosion-prone, or unbuildable parcels of land that may be used for this purpose, and shall recommend any policy and legislative changes needed to improve public beach access. The Department shall recommend priorities for land acquisition for public beach access, open space, and hazard-reduction purposes.

Section 13.9.(f) In the event that federal funds become available for planning and developing shore protection projects, the State shall match those funds in accordance with the funding guidelines set out in G.S. 143-215.71.

Requested by: Representatives Fox, Owens, Warren, Easterling, Redwine, Senators Martin of Pitt, Weinstein, Plyler, Perdue, Odom

STUDY WATER CAPACITY USE AREA ISSUES

Section 13.10. The Natural and Economic Resources Appropriations Subcommittees in both the House of Representatives and the Senate shall study the proposed rules that provide for the delineation of a water capacity use area encompassed by the following 15 North Carolina counties and adjoining creeks, streams, and rivers: Beaufort, Carteret, Craven, Duplin, Edgecombe, Greene, Jones, Lenoir, Martin, Onslow, Pamlico, Pitt, Washington, Wayne, and Wilson. The Appropriations Subcommittees shall consider the economic impact that the proposed rules would have on the fifteen county area and shall also consider what alternate water sources may be available to the fifteen county area.

The Appropriations Subcommittees on Natural and Economic Resources in both the House of Representatives and the Senate may obtain assistance from any resources outside the General Assembly that the Subcommittees determine are needed to adequately perform their study. The Subcommittees shall report their findings and recommendations, including any legislative proposals, to the 2001 General Assembly.

PART XIV. DEPARTMENT OF COMMERCE

Requested by: Representatives Fox, Owens, Warren, Easterling, Redwine, Hunter, Senators Martin of Pitt, Weinstein, Plyler, Perdue, Odom

AUTHORIZATION TO REALLOCATE PREVIOUSLY APPROPRIATED PETROLEUM OVERCHARGE FUNDS

Section 14. Section 16.9A of S.L. 1999-237 reads as rewritten:

"Section 16.9A. Funds previously appropriated to the Department of Commerce from the case of United States v. Exxon and from the United States Department of Energy's Stripper Well Litigation for projects under the State Energy Conservation Plan, the Energy Extension Service Program, or the Institutional Conservation Program may be reallocated by the Department of Commerce to be used for projects under the State Energy Efficiency ~~Programs~~-Programs and Residential Energy Conservation Assistance Program (RECAP)."

Requested by: Representatives Fox, Owens, Warren, Easterling, Redwine, Senators Martin of Pitt, Weinstein, Plyler, Perdue, Odom

ENERGY CONSERVATION PROJECTS IN STATE-OWNED BUILDINGS

Section 14.1. Of the funds previously appropriated to the Department of Commerce from the case of United States v. Exxon and from the United States Department of Energy's Stripper Well Litigation, the Energy Division shall use up to one million dollars (\$1,000,000) to implement energy conservation projects in State-

Requested by: Representatives Easterling, Redwine, Senators Plyler, Perdue, Odom

EFFECTIVE DATE

Section 28.5. Except as otherwise provided, this act becomes effective July 1, 2000.

In the General Assembly read three times and ratified this the 30th day of June, 2000.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 9:30 p.m. this 30th day of June, 2000



Executive Summary

Background

North Carolina is renowned for its 326 miles of ocean shoreline, barrier islands and 19 active inlet complexes. North Carolina beaches and inlets have tremendous economic value and serve as important habitat for fish and wildlife resources. Beaches and inlets support millions of recreational visitors every year, provide billions of dollars in economic value through business and tourism, provide ocean access for commercial and recreational fishermen, and are an integral part of the state's history, culture, identity, and way of life.

However, without effective planning and management, the future of the state's coastal communities and a significant part of the state's economic base could be adversely affected by storms, sea-level rise, shifting shorelines, and erosion. The North Carolina Department of Environment and Natural Resources (DENR) is committed to the long-term conservation and management of the state's beaches and inlets. As part of this commitment, the Beach and Inlet Management Plan (BIMP) was developed by the Division of Water Resources (DWR) and the Division of Coastal Management (DCM) in order to provide the necessary information to address the natural resources, funding mechanisms and strategies for the comprehensive management of the state's ocean and inlet shorelines. The BIMP is the first statewide compilation of data and issues related to managing the beaches and inlets.

The framework for development of the BIMP is the culmination of past efforts, legislative actions, studies and recommendations. The most pertinent action was House Bill 1840 (Session Law 2000-67), passed in 2000. The Bill required DENR to develop a state beach management and restoration strategy that could also be used for local government planning purposes. The Bill declared that it is a necessary governmental responsibility to properly manage and protect North Carolina's beaches from erosion and that good planning is needed to assure a cost-effective and equitable approach to beach management and restoration. The Bill also states that as part of a comprehensive response to beach erosion, sound policies are needed to facilitate the ability of landowners to move threatened structures and to allow public acquisition of appropriate parcels of land for public beach access. A BIMP was specifically recommended in the N.C. Coastal Habitat Protection Plan (CHPP) completed in 2005. With the overall intent of preserving and enhancing recreational and commercial fisheries, the CHPP recommended that the state "[p]repare and implement a comprehensive beach and inlet management plan that addresses ecologically based guidelines, socio-economic concerns, and fish habitat."



tourism demand.¹ In addition to the beaches of the municipalities, the Cape Hatteras National Seashore is a draw for tourists, with over 415,700 people visiting the Seashore during the month of August 2008 alone.

In the Town of Oak Island (Brunswick County), the summer population (June to September) typically swells 500 percent, from a year-round level of about 8,300 to a peak of more than 49,000, averaging more than 36,000 people.

In 2000, the permanent population of Carteret County was 59,405 but, during the summer season, the population more than tripled to over 194,000. In 2025, it is projected that the county's permanent population will reach 70,765 but its seasonal population will exceed a quarter million, reaching 254,586.² On Bogue Banks, comprised of the Towns of Atlantic Beach, Pine Knoll Shores, Indian Beach, Salter Path and Emerald Isle, the summertime population will typically grow from about 5,000 to more than 50,000. In Emerald Isle alone, the population grows from 3,855 in the off-season to about 40,000 at the peak of the summer, averaging about 30,000 throughout the summer.³

Topsail Island (Pender and Onslow Counties) comprised of the Towns of North Surf City and Topsail Beach, has a similar summertime population surge that averages more than 75,000 daily residents over the course of the summer. The Town of Surf City (Pender County) specifically, has a permanent population of just over 1,800 residents, that grows to 20,000 people in town each day of the summer season. Over a single summer season, more than 500,000 visitors will make their way to Surf City.

In Wrightsville Beach (New Hanover County), the population increases from approximately 2,700 to a summertime peak population of 50,000.

Coastal tourism, and specifically beach-oriented tourism, is quite possibly the single greatest contributor to the state's tourism economy, accounting for more than \$2.6 billion in economic activity in 2009. In his 2000 testimony before the Coastal Beach Movement, Beach Renourishment, and Storm Mitigation Committee, Dr. Richard Levin, Professor of Economics at the UNC Kenan-Flagler School of Business, testified that beaches are the number one tourist destination in the United States, accounting for \$195 billion in tourism expenditures and supporting 2.82 million jobs in 1999. In North Carolina, Levin concluded that coastal tourism expenditures were \$2.9 billion per year and supported 50,000 jobs. With respect to beach nourishment projects, Levin testified that North Carolina would see a return on investment of \$386 for every dollar spent to nourish the state's beaches.

¹ "The Outer Banks Economy," Dr. James Kleckley, Director, Bureau of Business Research, College of Business, East Carolina University, 2007 (Outer Banks Chamber of Commerce Website).

⁴ "An Economic and Demographic Profile for North Carolina's Eastern Region," December 2003, Market Street Services, Inc.