



# TOWN COUNCIL MINUTES

**REGULAR MEETING**

**Monday, May 17, 2021 @ 6:00 p.m.**

The Kure Beach Town Council held its regular meeting on Monday, May 17, 2021 at 6:00 p.m. The Town Attorney was present and there was a quorum of Council members present.

**COUNCIL MEMBERS PRESENT**

Mayor Craig Bloszinsky  
Mayor Pro Tem David Heglar  
Commissioner Joseph Whitley  
Commissioner John Ellen  
Commissioner Allen Oliver

**COUNCIL MEMBERS ABSENT**

**STAFF PRESENT**

Town Clerk – Mandy Sanders  
Police Chief – Mike Bowden  
Fire Chief – Ed Kennedy  
Recreation Director – Nikki Keely  
Building Inspector – John Batson  
Finance Officer – Arlen Copenhaver  
Public Works Director – Jimmy Mesimer

Mayor Bloszinsky called the meeting to order at 6:00 p.m. and Commissioner Ellen gave the invocation and Pledge of Allegiance.

**APPROVAL OF CONSENT AGENDA ITEMS**

1. Accept the resignation of Dale Akstin's and Mararuth Capell's from the Community Center Committee
2. Approve the Masonboro contract for the 2021 Hurricane Season
3. Approve Budget Amendment 21-13 totaling \$5,000 for Lifeguard shack renovations
4. Minutes:
  - April 19, 2021 Regular
  - April 16, 2021 Budget

**MOTION-** Commissioner Whitley made a motion approve the consent agenda as presented

**SECOND-** Commissioner Oliver

**VOTE-** Unanimous



# TOWN COUNCIL MINUTES

**REGULAR MEETING**

**Monday, May 17, 2021 @ 6:00 p.m.**

## ADOPTION OF THE AGENDA

**MOTION-** Commissioner Whitley made a motion to amend the agenda to replace Commissioner Oliver's name with MPT Heglar name under item "Resolution for SENC Regional Hazard Mitigation Plan Update" and approve the agenda as amended

**SECOND-** Commissioner Oliver

**VOTE-** Unanimous

## PRESENTATIONS

1. David Parker, Safety Officer, Cape Fear Sail & Power Squadron, National Safe Boating Week May 22-28, 2021

- Approve Proclamation 21-01 for National Safe Boating Week

Cdr Otis White stated:

- Last year had the largest boat sales in 13 years
- Goal as an organization is to bring education and knowledge about safe boating
- On average 613 deaths each year in the United States are from boating accidents with 80% of those deaths caused by drowning
- 86% of those individuals did not have on a life jacket
- May 22<sup>nd</sup> through May 28<sup>th</sup> is national safe boating week and invite all citizens to think about safe boating and the organization offers for free the Coast Guard Vessel safety certificate

**MOTION-** Commissioner Ellen made a motion to approve Proclamation 21-01 for National Safe Boating Week

**SECOND-** Commissioner Oliver

**VOTE-** Unanimous

2. NuShore Beach Mitigation Solution-Stephen Harrington, and Charles Benedict, PhD, PE NuShore, LLC.

Stephen Harrington gave a presentation on the NuShore Beach Mitigation Solution hereby incorporated into the minutes.

## PUBLIC COMMENT

None.



# TOWN COUNCIL MINUTES

**REGULAR MEETING**

**Monday, May 17, 2021 @ 6:00 p.m.**

## DISCUSSION AND CONSIDERATION OF COMMITTEE BUSINESS

### 1. Bike/Ped Committee

Mo Linquist stated:

- The Committee met with Jason at Altago.com, members of Town Staff, Commissioner Oliver, and Abbie with WMPO
- Reviewed the Town google earth map and pointed out places that need help to help make the Town safer for pedestrians
- Town will receive the grant funding from WMPO by June or July and the plan will take 3 months to complete
- Thank you to Town Attorney Eldridge for completing the waiver for the Tour De Blueberry and hopes to have 20 citizens sign up for the race

### 2. Community Center Committee

Mayor Bloszinsky stated the committee will meet next week and appoint new members from the applications received.

### 3. Historical Preservation Commission

Attorney Eldridge stated at the last meeting continued to look at the design standards and examples of minor work. Chairman Galbraith gave a suggestion for the Commission to follow Roberts Rules of Procedure and will discuss at next months meeting.

### 4. Land Use Plan Committee

Commissioner Whitley stated the Town has received over 700 responses from citizens on the Land Use Survey and the Committee will meet next month on June 8<sup>th</sup> at 10:00 a.m.

### 5. Marketing Committee

Commissioner Ellen stated the Committee has not met in this calendar year. The Chairman of the Marketing Committee is moving out of Kure Beach so will need to advertise for new Chairperson for the Committee.

### 6. Planning & Zoning Commission

- Chapter 160D Update and Review  
*Schedule date for Public Hearing*

Attorney Eldridge gave a review on the Chapter 160D ordinances hereby incorporated into the minutes.



# TOWN COUNCIL MINUTES

## REGULAR MEETING

Monday, May 17, 2021 @ 6:00 p.m.

**MOTION-** Commissioner Whitley made a motion to schedule a Public Hearing for the proposed text amendments Chapter 160D on Monday, June 21, 2021 at 5:00 p.m.

**SECOND-** Commissioner Ellen

**VOTE-** Unanimous

**MOTION-** Commissioner Whitley made a motion to schedule a Special Meeting to take action on the Chapter 160D proposed text amendments on Monday, June 17, 2021 at 5:30 p.m.

**SECOND-** Commissioner Ellen

**VOTE-** Unanimous

## DISCUSSION AND CONSIDERATION OF DEPARTMENT HEAD BUSINESS

### 1. Administration

- Schedule date in June for Department Head evaluations

**MOTION-** Commissioner Ellen made a motion to schedule Department Head Evaluations on June 21, 2021 at 12:00 p.m.

**SECOND-** Commissioner Whitley

**VOTE-** Unanimous

### 2. Building Inspections Department

- Approval for Pergola at 429 Settlers Lane

Building Inspector Batson stated:

- Proposal from Pat Martin for additional deck construction
- Last Town Council meeting approved the deck into the easement area
- Requesting a pergola to go over the new deck
- It would not be connected to the deck and would be the same dimensions of the deck with a height of 10 feet
- Letter would need to be rewritten by applicant to change it from 30 days' notice to immediate removal and have the letter mention the pergola

**MOTION-** MPT Heglar made a motion to approve the at Pergola request at 429 Settlers Lane once the letter is amended to include the "Immediate removal" and to include the pergola

**SECOND-** Commissioner Ellen

**VOTE-** Unanimous



# TOWN COUNCIL MINUTES

**REGULAR MEETING**

**Monday, May 17, 2021 @ 6:00 p.m.**

## 3. Finance Department

Presentation of budget message, draft FY21-22 budget ordinance and fee schedule. (Copenhaver)

The proposed budget includes the following highlights:

- 1) Proposed property tax rate of 26.58 cents per \$100 of valuation (1 cent over revenue neutral rate)
- 2) No changes to the water and sewer rate structure
- 3) Changes to the stormwater rate structure:
  - Increase monthly Storm Water fees by 50%
- 4) Addition of two full-time employee in the Fire Department
- 5) Cost of Living adjustment of 1.3 percent for employees
- 6) Merit increase pool of 3 percent to reward employees who are performing above expectation

MOTION- Commissioner Oliver made a motion to direct Town Clerk Sanders to advertise the proposed budget is available for inspection and schedule the Public Hearing for Monday, June 7, 2021 at 6:00 p.m.

SECOND- Commissioner Whitley

VOTE- Unanimous

## DISCUSSION AND CONSIDERATION OF OLD BUSINESS

None.

## DISCUSSION AND CONSIDERATION OF NEW BUSINESS

1. Approve Resolution for SENC Regional Hazard Mitigation Plan Update

MPT Heglar stated:

- The Town works with New Hanover County on SENC Regional Hazard mitigation plan and this resolution is required to be approved every year
- Every 5 years it is reviewed so Town Council needs to authorize and adopt it for the Regional Hazard Mitigation Plan

MOTION- MPT Heglar made a motion to approve Resolution for SENC Regional Hazard Mitigation Plan Update

SECOND- Commissioner Ellen

VOTE- Unanimous



# TOWN COUNCIL MINUTES

## REGULAR MEETING

Monday, May 17, 2021 @ 6:00 p.m.

### 2. Discussion of Tide Gauge

Commissioner Ellen stated:

- At the NCBIWA conference saw a presentation regarding a sensor called a Tide Gauge
- It has a solar panel at the top to keep the battery charged and sends a signal from the lower antenna to water and sends the data to a third party who monitors the height of water and receive data regarding the water
- Discussed putting the Tide Gauge on the pier or on the river side near the ditches to monitor the drainage of stormwater
- He has already paid for the Tide Gauge but will donate it to the Town as there is no additional monthly fees

Commissioner Whitley stated he had a conversation with MOTSU who is concerned regarding shoreline erosion on their side of the river which may affect the Town. If the Town starts gathering the data, it may be useful in the future to see the impacts to the Town.

Commissioner Oliver commented he agrees if the Town can find a secure place to install the tide gauge.

MOTION- Commissioner Whitley made a motion to discuss the best placement for installation of the Tide Gauge and reimburse Commissioner Ellen in the amount of \$500

SECOND- Commissioner

VOTE- Unanimous

### 3. Discussion of Town Ordinance review with input from Building Inspector Batson and Police Chief Bowden

Commissioner Whitley commented the Town Attorney is almost done with Chapter 160D and will be starting the Land Use Plan. Spoke with Building Inspector Batson and Police Chief Bowden and would like them to review the Town ordinances and bring forth a recommendation to the November Town Council meeting.

CONSENSUS- Town Council agreed for Building Inspector Batson and Police Chief Bowden to bring forward code text amendment recommendations to the November Town Council meeting

## ADJOURNMENT

MOTION- Commissioner Ellen made a motion to adjourn the meeting at 9:00 p.m.

SECOND- MPT Heglar

VOTE- Unanimous



# TOWN COUNCIL MINUTES

**REGULAR MEETING**

**Monday, May 17, 2021 @ 6:00 p.m.**

*Mandy Sanders*

ATTEST: Mandy Sanders, Town Clerk

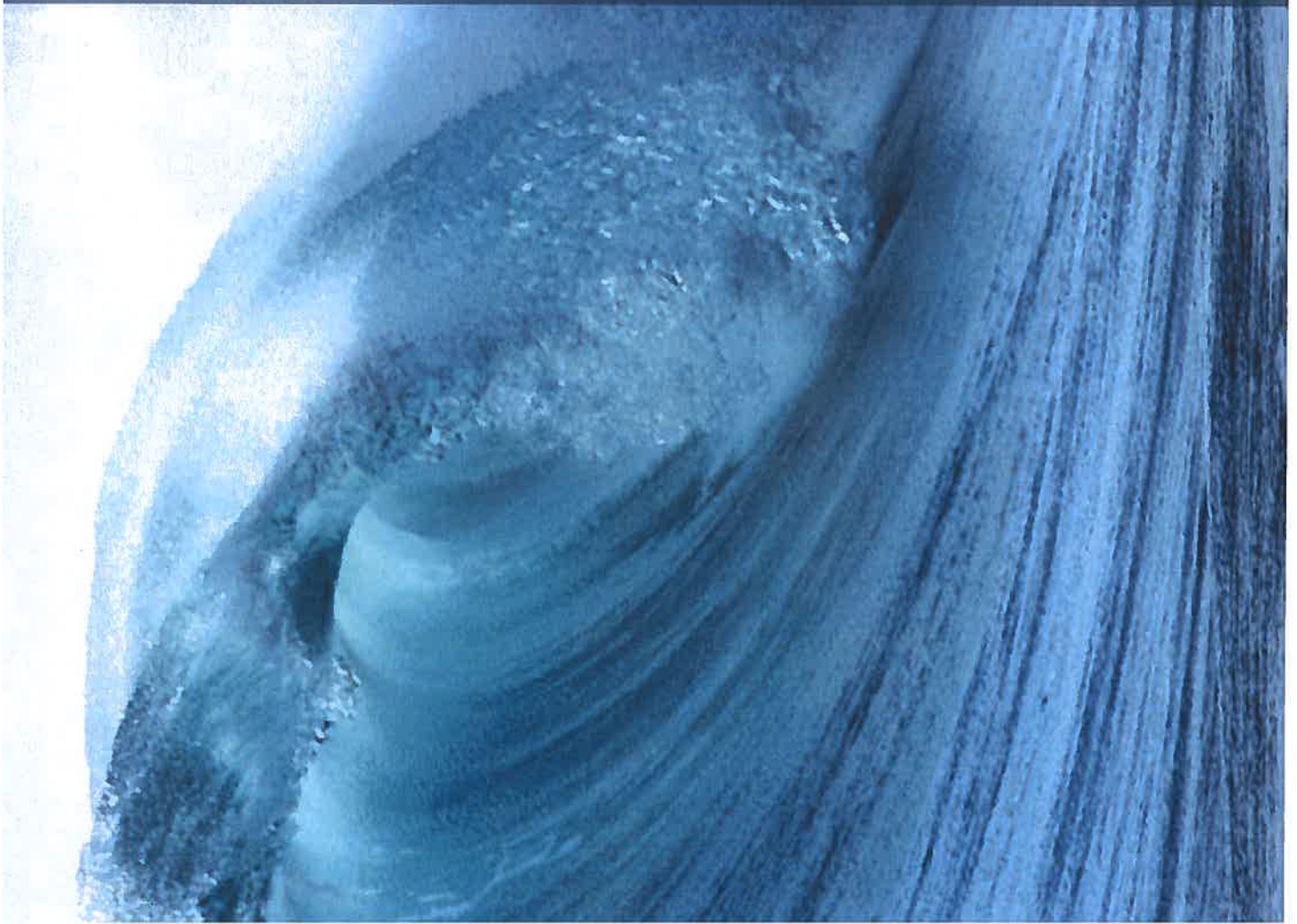
*Craig Bloszinsky*

Craig Bloszinsky, Mayor

NOTE: These are action minutes reflecting items considered and actions taken by Council. These minutes are not a transcript of the meeting. A recording of the meeting is available on the town's website under [government>agendas&minutes](#)

NUSSHOR

MITIGATING EROSION

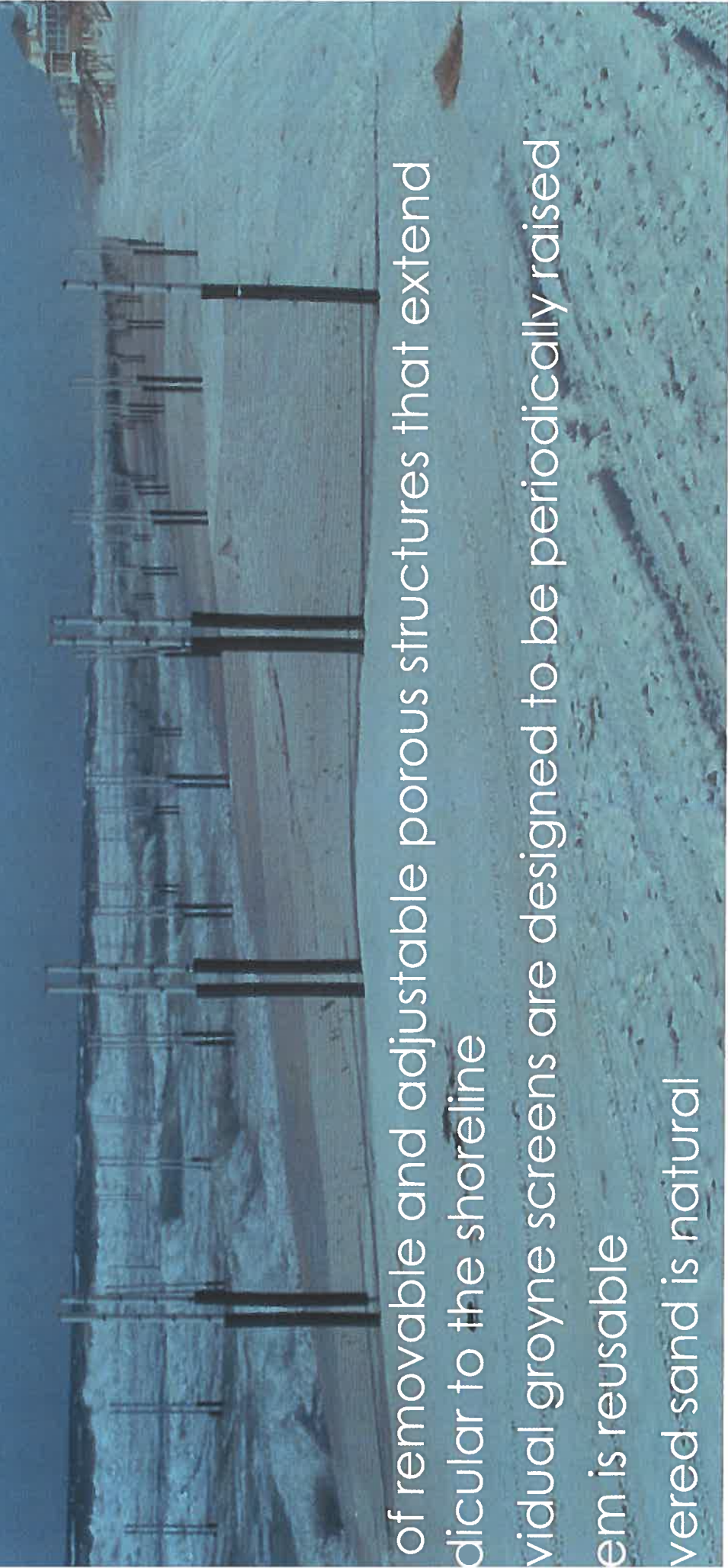




# The NuShore System

uses Nature's own forces to re-nourish beaches

of removable and adjustable porous structures that extend perpendicular to the shoreline  
vidual groyne screens are designed to be periodically raised  
em is reusable  
vered sand is natural



# A Traditional Groin

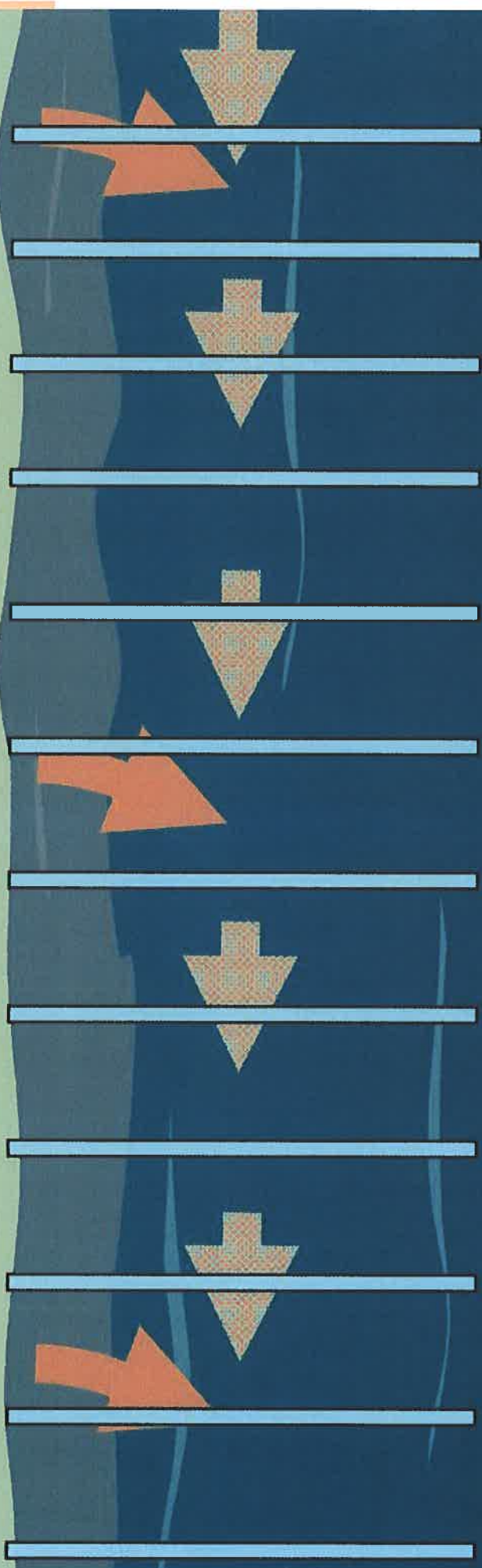
traps waves impound sand on updrift side and erode down



Downdrift erosion

Updrift impounded

# cept of Longshore Currents & Sand Ero



structure placed in flow path decreases energy

Result is:

Decreased Turbulence Near Seabed, Less Sediment Suspension and Reduced Longshore Sand Transport R

# NuShore Projects

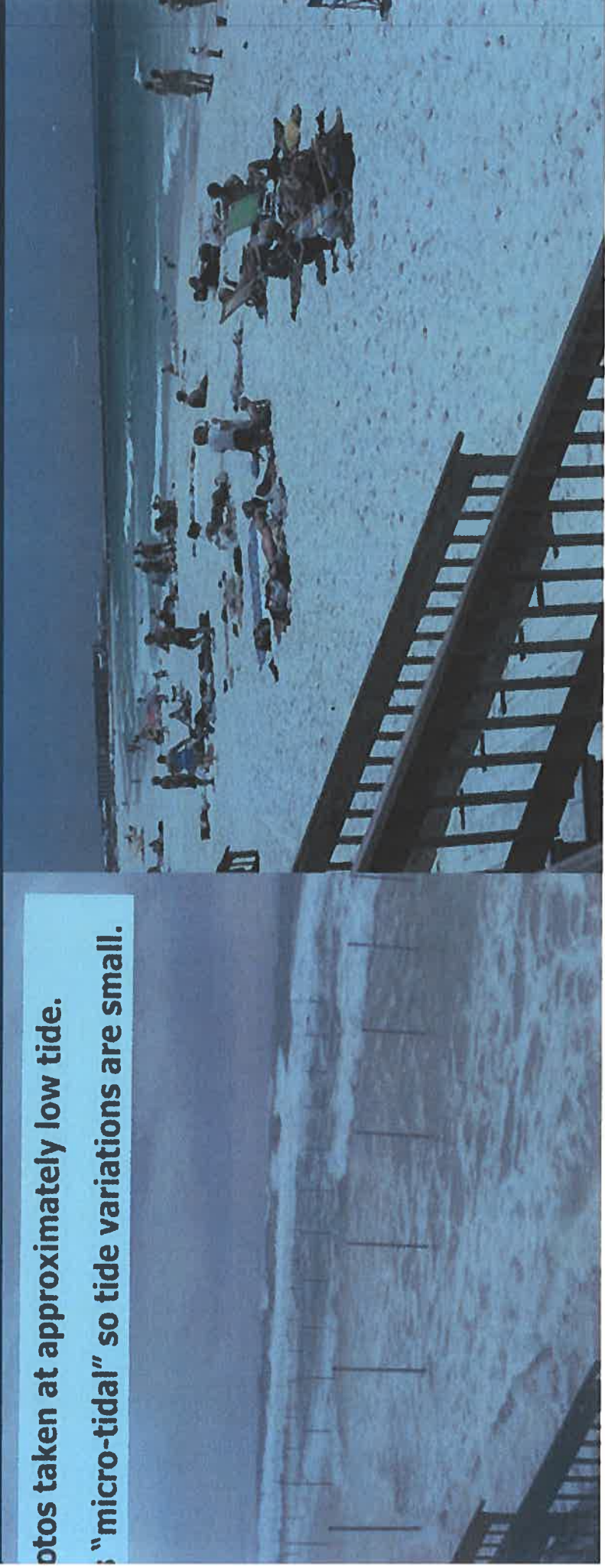
Two Sites at Eglin Air Force Base in  
Okaloosa County

# Site I – The Beach Club Okaloosa County

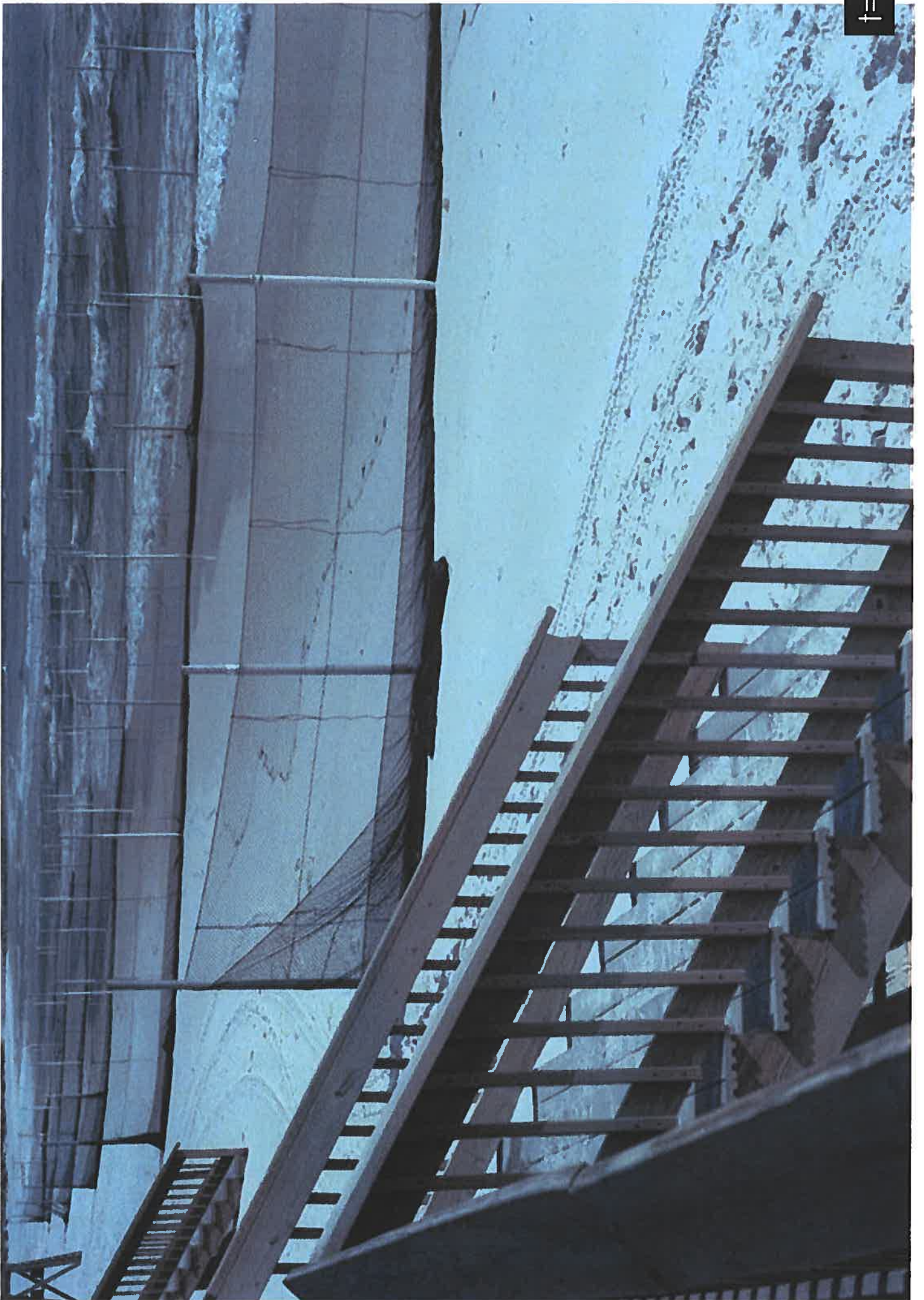
System in place for six months

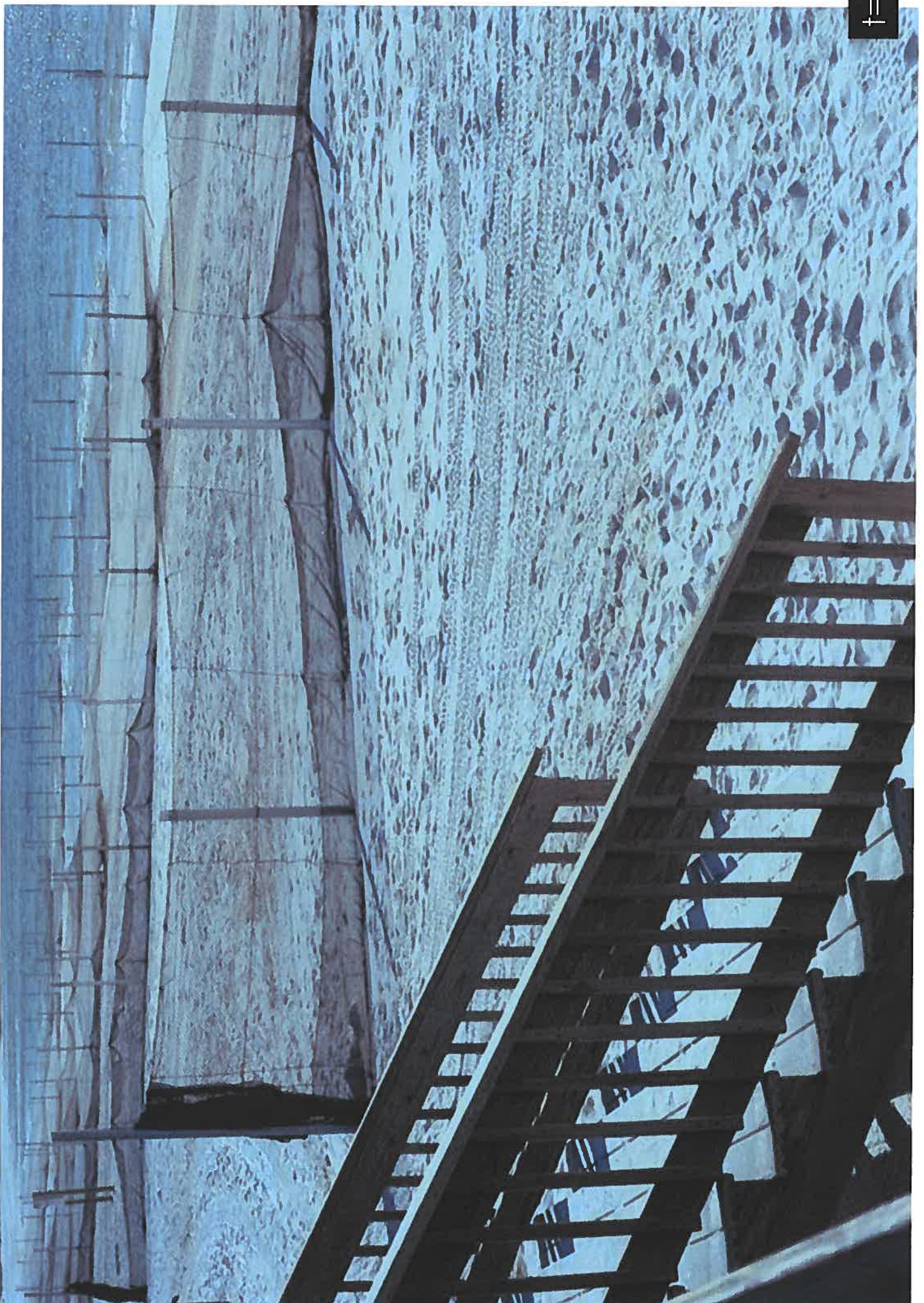
Photos taken at approximately low tide.

“micro-tidal” so tide variations are small.







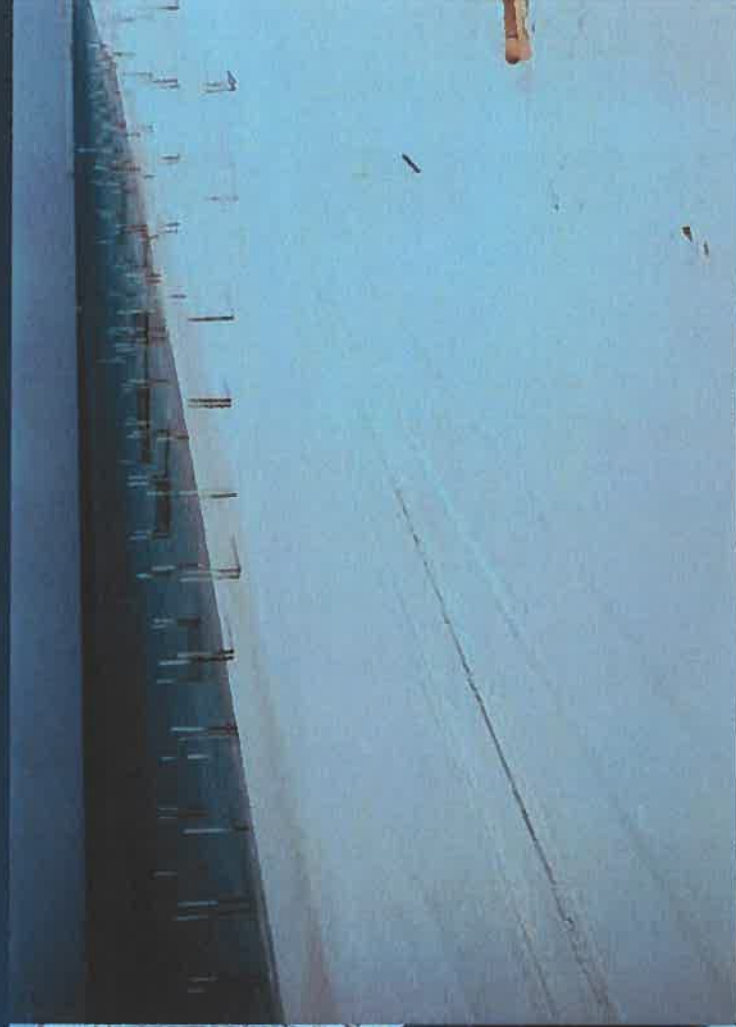


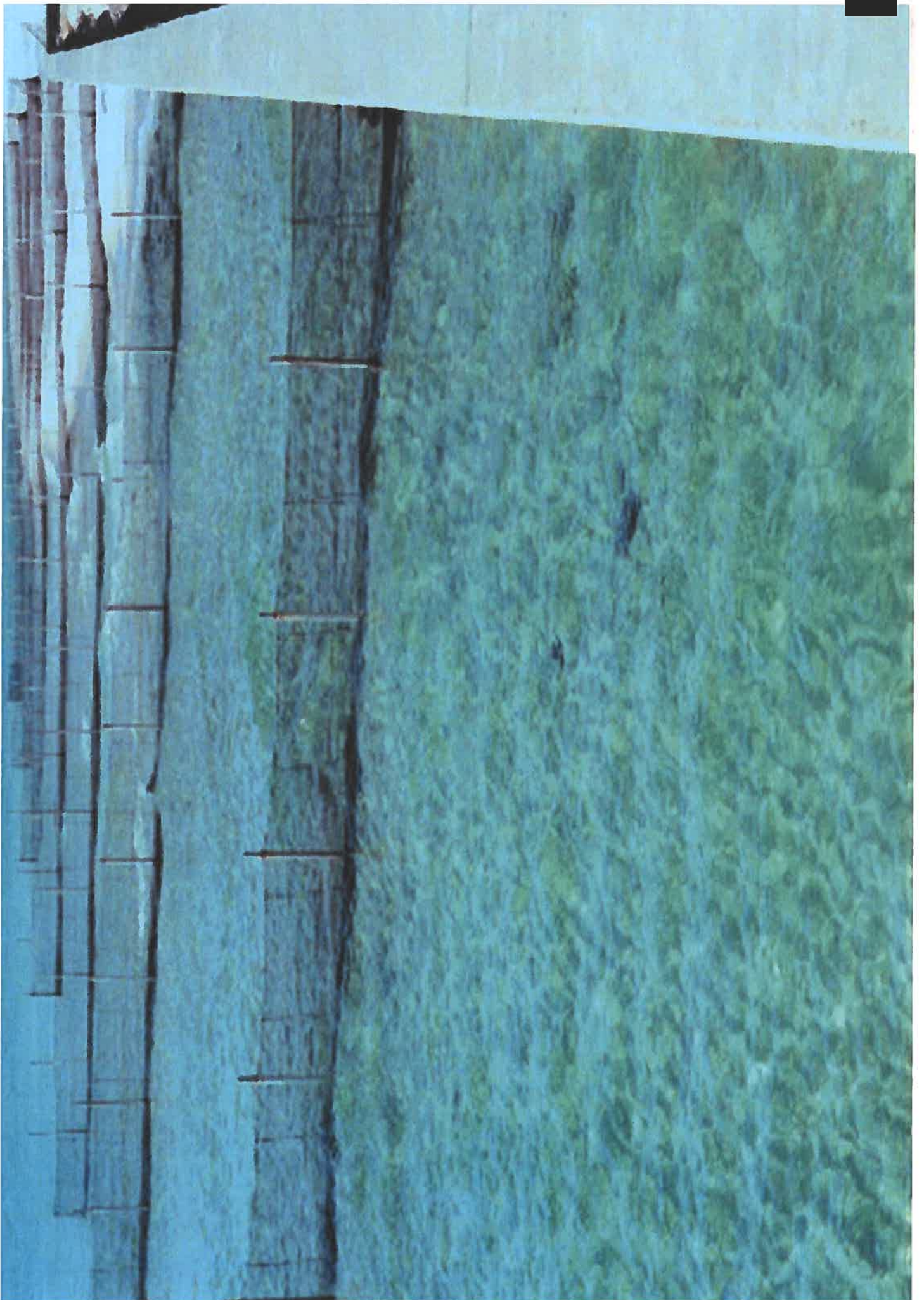


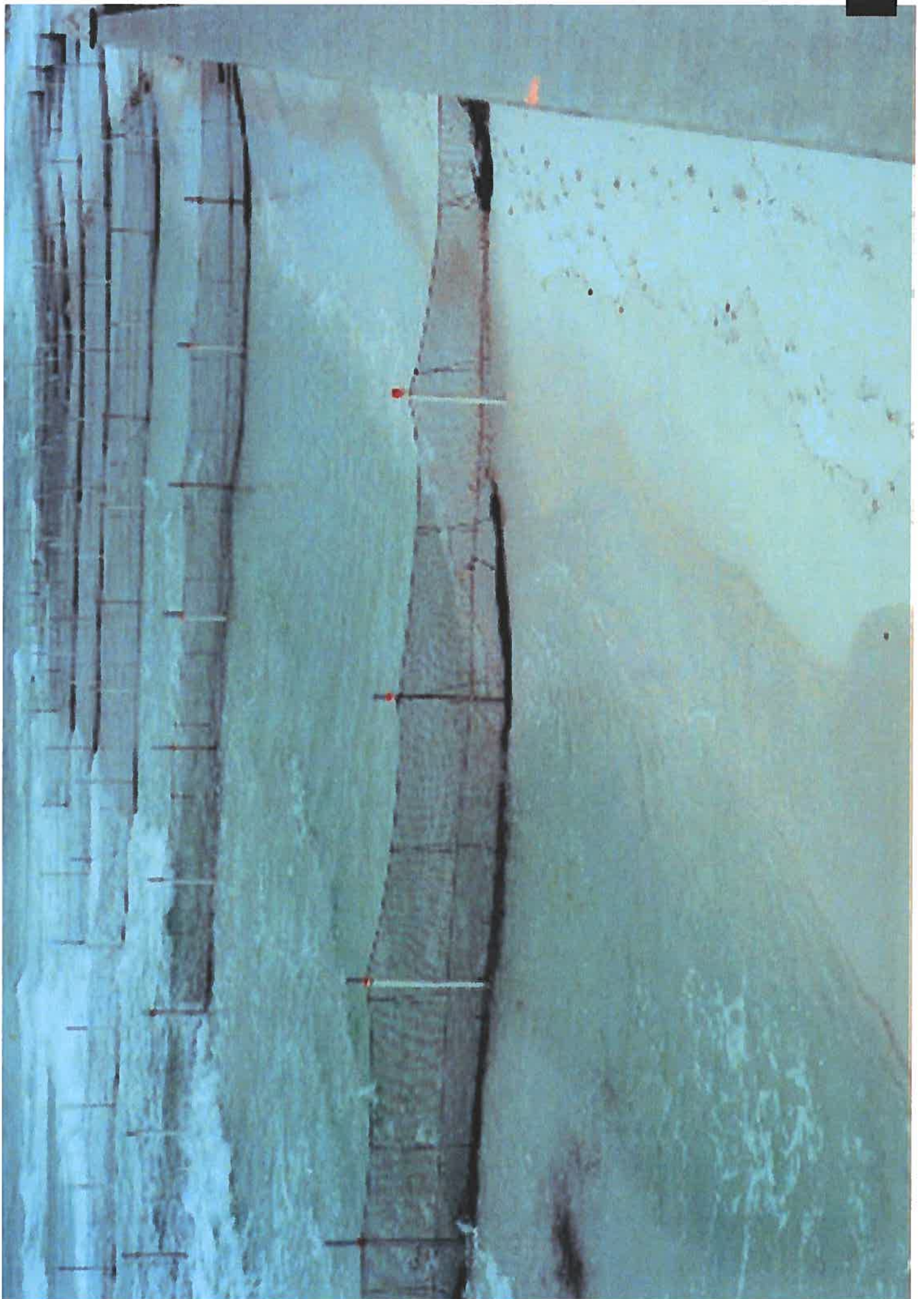


# Site II – The Missile Tracking Station Okaloosa County

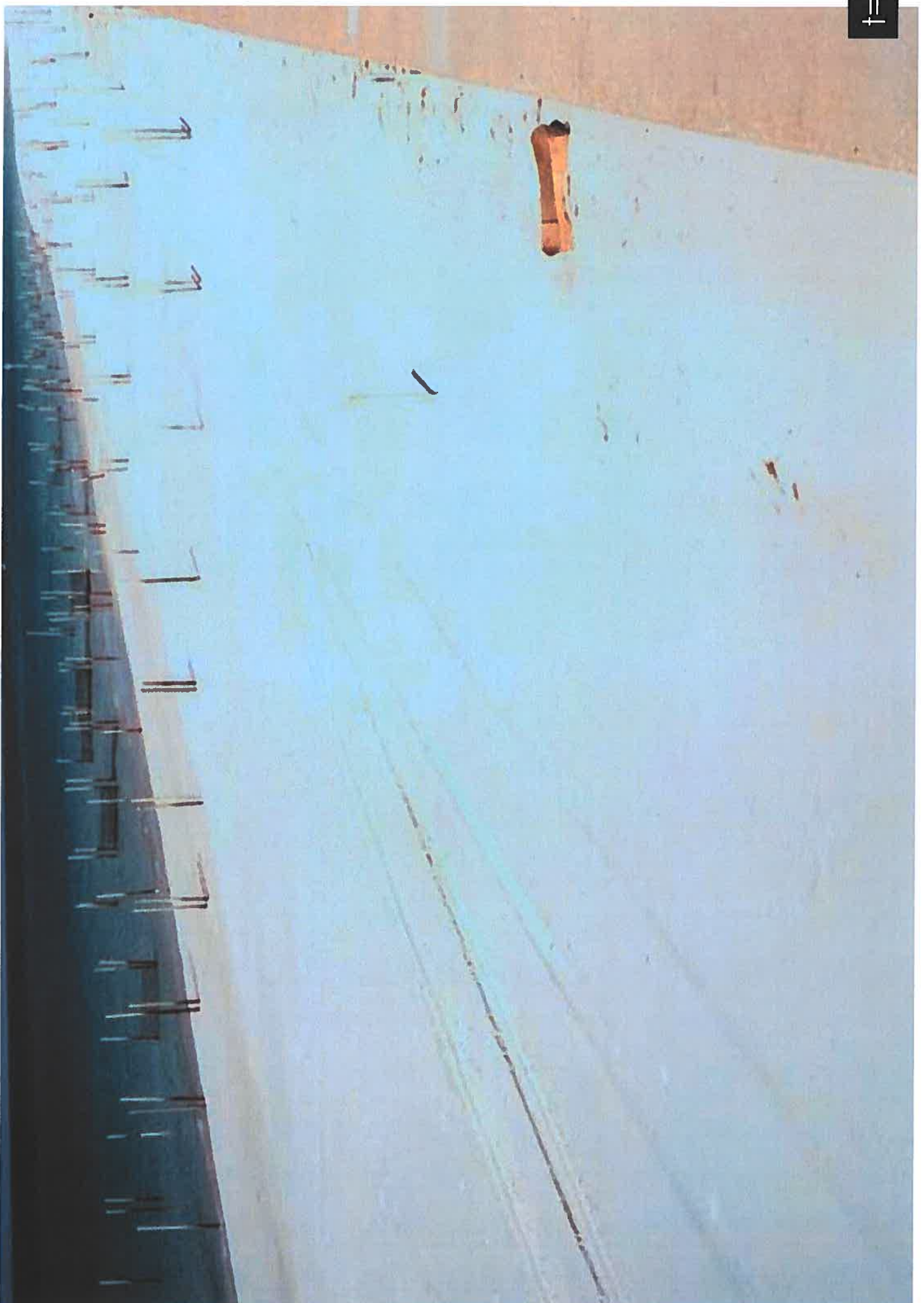
System in place for six months

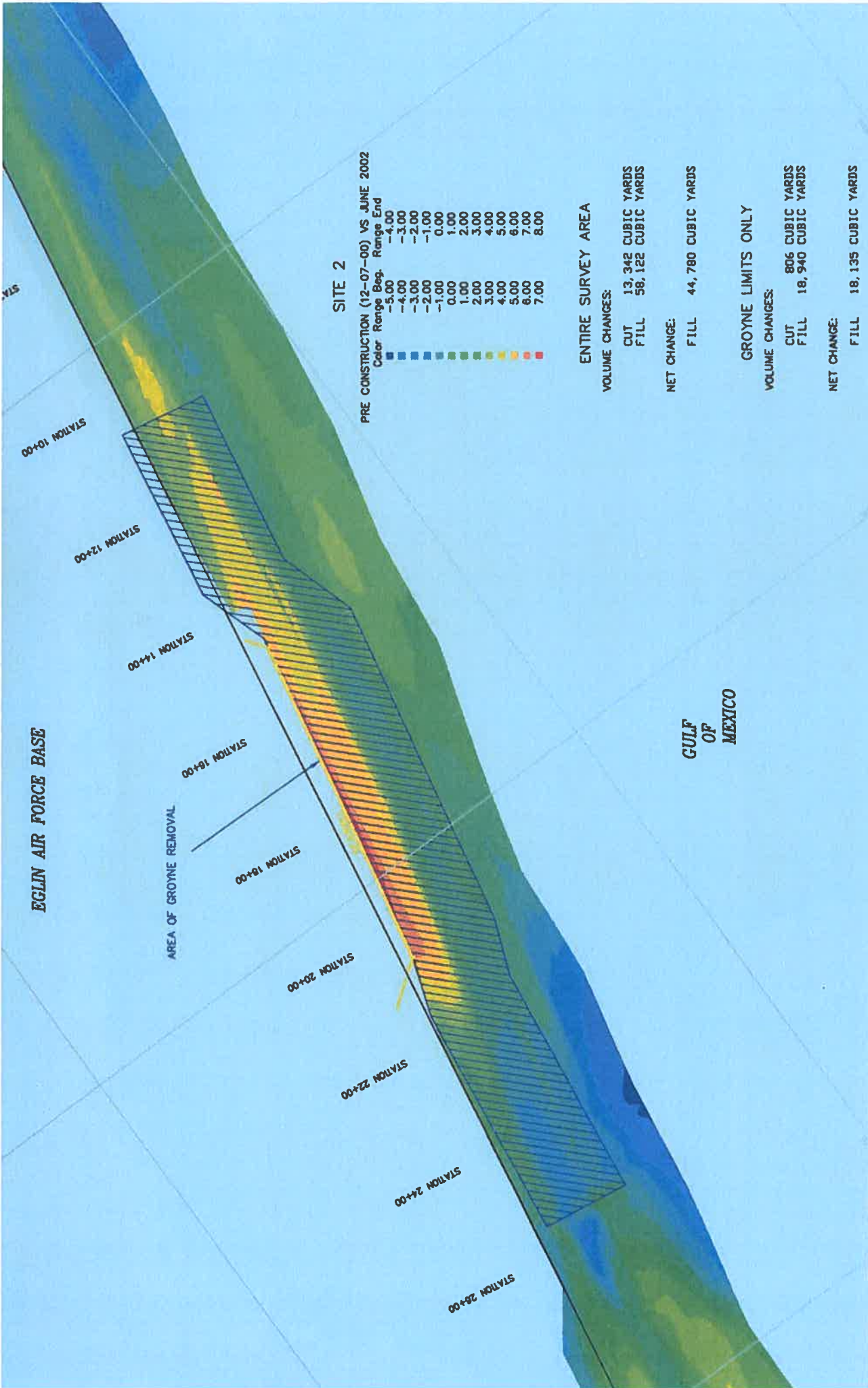












# ification of the location

DIFFERENTIAL CONTOUR MAP PRE CONSTRUCTION  
 JUNE 2002 POST REMOVAL MONITORING  
 FOR SITE 2 OF THE EXPERIMENTAL PORT  
 EGLIN AIR FORCE BASE, OKALOOSA,

MORGAN & EKLUND, INC.  
 PROFESSIONAL SURVEY CONSULTANTS

THIS MAP WAS PREPARED BY MORGAN & EKLUND, INC. FOR THE USE OF THE U.S. ARMY CORPS OF ENGINEERS. THE U.S. ARMY CORPS OF ENGINEERS IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN THIS MAP. THE U.S. ARMY CORPS OF ENGINEERS IS NOT RESPONSIBLE FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, ARISING FROM THE USE OF THIS MAP. THE U.S. ARMY CORPS OF ENGINEERS IS NOT RESPONSIBLE FOR ANY DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, ARISING FROM THE USE OF THIS MAP.

# NuShore Projects for Inlet Beach

Inlet Beach in  
Walton County

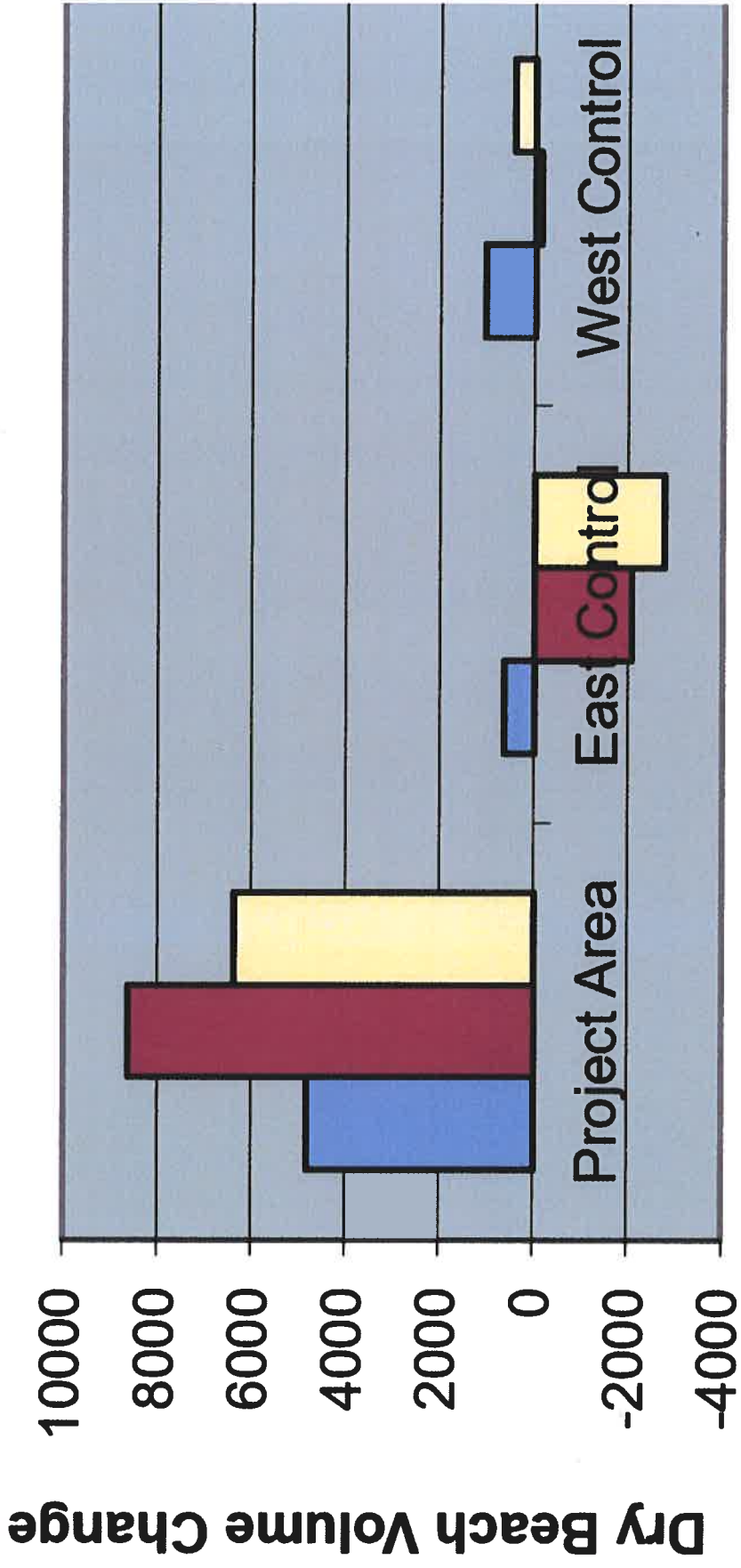








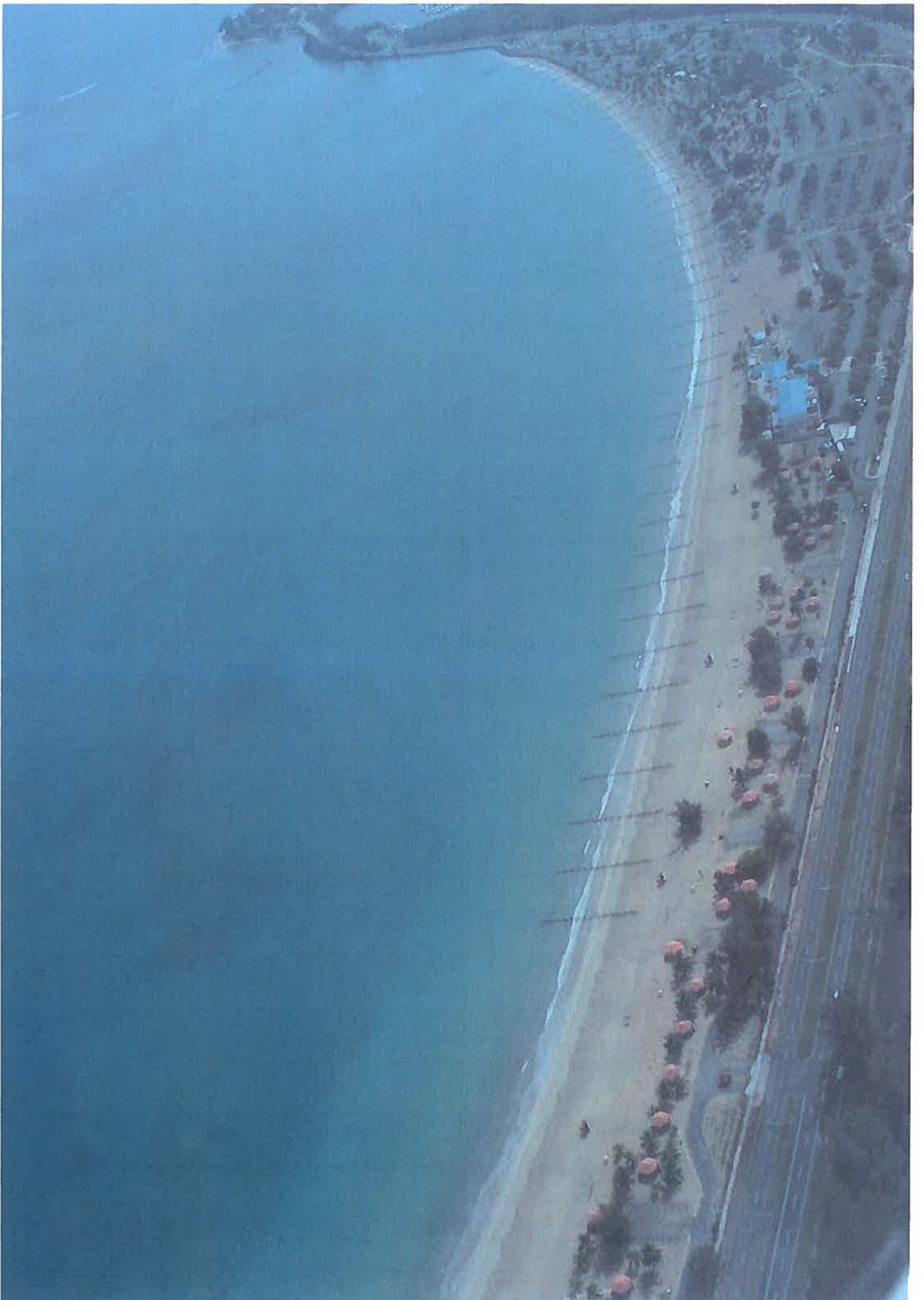
# Inlet Beach Porous Groyne Project



■ Dec 04   ■ Feb 05   ■ Mar 05

# NuShore Projects for Puerto Rico

Balneario de Carolina  
Puerto Rico



## 160D PRESENTATION DOC

1. 160D is a new chapter in the General Statutes that more clearly and completely delegates land use planning and development regulatory authority to local governments.

2. While it impacts multiple chapters in the Town Code, the enactment of 160D did not substantively change existing law.

3. Instead, it consolidates, unifies, and re-organizes existing statutory provisions such as, e.g., combining city and county statutes into one chapter and organizing those statutes into a coherent structure whereas before, multiple statutes applicable to an issue would be scattered throughout Chapter 160A (the previous source of delegated authority to cities). 160D also unifies, and makes applicable to *all* planning and development regulations, certain procedural requirements including the provision of notice for proposed amendments, appealing various decisions, and how, when, and where judicial review of developmental actions, decisions, and appeals may be had.

4. 160D also codifies important elements of planning and development law which were developed by the courts over the past 30 years. Examples of these changes are found in the provisions governing appeals of administrative decisions, the requirements for quasi-judicial proceedings, and judicial review of the same.

5. In moving towards the July 1<sup>st</sup> deadline for conforming the Town Code, KBC Chapters 2, 11, 13, 14, and 15 have been revised and a new Chapter 12 has been created. While copies of the revised chapters have been provided, my focus will be on the new Chapter 12. **[explain revisions to existing]**

6. KBC Chapter 12 is where the bulk of the 160D changes, and the impact they will have on the Town's planning and development authority, show up.

7. As a starting point, Chapter 12's Table of Contents illustrates the organizational approach taken by 160D.

### **12 PLANNING AND DEVELOPMENT REGULATION**

#### **12.02 GENERAL PROVISIONS**

#### **12.04 TOWN BOARDS AND COMMISSIONS**

#### **12.06 ADMINISTRATION, ENFORCEMENT, AND APPEALS**

#### **12.08 ADOPTING, AMENDING, AND REPEALING DEVELOPMENT REGULATIONS**

#### **12.10 JUDICIAL REVIEW**

8. As an aside, Chapter 12 includes a useful provision for determining and "dealing with" conflicts of interest on all levels:

#### **12.02.100 Conflicts of Interest**

- A. *Town Council.* – A Town Council member shall not vote on any legislative decision regarding a development regulation adopted under this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A Town Council member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

## 160D PRESENTATION DOC

- B. *Appointed Boards.* – Members of the Town’s appointed boards shall not vote on any advisory or legislative decision under the Town’s development regulations where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.
- C. *Administrative Staff.* – No member of the Town Staff shall make a final decision on an administrative decision required under the Town’s development regulations if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance. No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his/her duties or with the interest of the Town.
- D. *Quasi-Judicial Decisions.* – A member of any Town board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional due process rights to an impartial decision maker. Impermissible violations of due process include, without limitation, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed *ex parte* communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.
- E. *Resolution of Objection.* – If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself/herself, the remaining members of the board shall by majority vote rule on the objection.
- F. *Familial Relationship.* – For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships.



## 160D PRESENTATION DOC

9. Reviewing the 160D/Chapter 12 definitions is necessary for effectively understanding the impacts of 160D. Staff and the Town's advisory and decision-making boards and commissions should familiarize themselves with this new terminology. For example, there will no longer be notices of "public" or "quasi-judicial" hearings. Instead, there will be notices for "legislative" and "evidentiary" hearings.

### 12.02.020 Definitions

The words and phrases defined in this Section shall have the following meanings when used in this Chapter unless otherwise specifically provided or otherwise clearly required by context.

*Administrative decision.* – Decisions made in the implementation, administration, or enforcement of development regulations involving the determination of facts and the application of objective standards set forth in the Town's development regulations; sometimes referred to as ministerial decisions or administrative determinations.

*Administrative hearing.* – A proceeding to gather facts needed to make an administrative decision.

*Comprehensive plan.* – A comprehensive plan that has been officially adopted by the governing board pursuant to G.S. 160D-501.

*Decision-making board.* – A governing board, planning board, board of adjustment, historic preservation board, or other board assigned to make quasi-judicial decisions under this Chapter.

*Determination.* – A written, final, and binding order, requirement, or determination regarding an administrative decision.

*Developer.* – A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

*Development.* – Any of the following:

- A. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- B. The excavation, grading, filling, clearing, or alteration of land.
- C. The subdivision of land as defined in G.S. 160D-802.
- D. D. The initiation or substantial change in the use of land or the intensity of use of land. This definition does not alter the scope of regulatory authority granted by this Chapter.

*Development approval.* – An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required under the Town's development regulations including plat approvals, permits issued, development agreements entered into, and building permits issued.

## 160D PRESENTATION DOC

*Development permit.* – An administrative or quasi-judicial approval that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal, including any of the following:

- A. Zoning permits.
- B. Site plan approvals.
- C. Special use permits.
- D. Variances.
- E. Certificates of appropriateness.
- F. Plat approvals.
- G. Development agreements.
- H. Building permits.
- I. Subdivision of land.
- J. State agency permits for development.
- K. Driveway permits.
- L. Erosion and sedimentation control permits.
- M. Sign permit.

*Development regulation.* – A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter or a local act or charter regulating land use planning or development.

*Dwelling.* – Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any appurtenances belonging thereto or usually enjoyed therewith. For the purposes of this Chapter, the term does not include any manufactured home, mobile home, or recreational vehicle if used solely for a seasonal vacation purpose.

*Evidentiary hearing.* – A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation.

*Landowner or owner.* – The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his/her agent or representative for the purpose of making applications for development approvals.

*Legislative decision.* – The adoption, amendment, or repeal of a regulation pursuant to this Chapter or an applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Chapter 160D, Article 10 of the General Statutes.

*Legislative hearing.* – A hearing to solicit public comment on a proposed legislative decision.

*Manufactured home or mobile home.* – A structure as defined in G.S. 143-145.

*Person.* – An individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, the State of North Carolina and its agencies and political subdivisions, or other legal entity.

*Planning and development regulation jurisdiction.* – The geographic area within which the Town may undertake planning and apply its development regulations.

*Property.* – All real property subject to land-use regulation by a local government. The term includes any improvements or structures customarily regarded as a part of real property.

## 160D PRESENTATION DOC

*Quasi-judicial decision.* – A decision involving the finding of facts regarding a specific application of a development regulation and requiring the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative decisions. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature only if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

*Site plan.* – A scaled drawing and supporting text showing the relationship between lot lines and existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities which are depicted to show compliance with all legally required development regulations applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision.

*Special use permit.* – A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards and requiring that judgment and discretion be exercised as well as determining compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.

*Subdivision.* – The division of land for the purpose of sale or development as specified in KBC x.x.x. **G.S. 160D-802.**

*Subdivision regulation.* – A subdivision regulation as set forth in KBC Chapter 14.

*Zoning map amendment or rezoning.* – An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes: i) the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations and ii) the application of an overlay zoning district or a conditional zoning district. The term does not include: i) the initial adoption of a zoning map by a local government; ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction; or iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.

*Zoning regulation.* – A zoning regulation as set forth in KBC Chapter 15.

10, Chapter 12 follows 160D's approach of organizing the Town's boards and commissions which have planning and development authority, or duties related thereto, into 1 place [reference again moving BOA and HPC provisions from Chapters 2 and 15 to Chapter 12].

### **12.04 TOWN BOARDS AND COMMISSIONS**

[12.04.010 Planning and Zoning Commission](#)

[12.04.020 Board of Adjustment](#)

[12.04.030 Historic Preservation Commission](#)

[12.04.040 Oaths of Office](#)

## 160D PRESENTATION DOC

11. Article 6 is key to understanding the impact of 160D as shown below.

### 12.06 ADMINISTRATION, ENFORCEMENT, AND APPEALS

#### 12.06.010 Application

#### 12.06.020 Administrative Development Approvals and Determinations

#### 12.06.030 Enforcement

#### 12.06.040 Appeals of Administrative Decisions

#### 12.06.050 Quasi-Judicial Procedure

### 12.06.010 Application

The provisions of this Article shall apply to **all development regulations** adopted by the Town pursuant to this Chapter. The provisions of this Article are supplemental to specific provisions included in other KBC Chapters regulating land use and development. To the extent there is a conflict between the provisions of this Article and the provisions of other applicable KBC Chapters, the more specific provisions shall control.

### 12.06.020 Administrative Development Approvals and Determinations

- A. **Development Approvals.** – To the extent consistent with the scope of regulatory authority granted by this Chapter, no person shall commence or proceed with development without first securing any required development approval from the Town. A development approval shall be in writing and may contain a provision requiring the development to comply with all applicable State, federal, and local laws. The Town may issue development approvals in print or electronic form and any development approval that is issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee, a person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.
- B. **Determinations and Notice of Determinations.** – A development regulation enacted under the authority of this Chapter may designate the Staff member or members charged with making determinations under the development regulation. The officer making the determination shall give written notice to the owner of the property subject to the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class or certified mail. The notice shall be delivered to the last address listed for the owner of the subject property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Absent an applicable provision to the contrary, posting of signs shall not be required.
- C. **Duration of Development Approval.** – Unless a different period is specified by other applicable provisions, including those of a development agreement, a development approval expires 1 year after the date of issuance if the work authorized by the development approval has not been substantially commenced. The Town's development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. The Town's development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under KBC 12.02.070 and 12.02.080.

## 160D PRESENTATION DOC

- D. *Changes.* – After a development approval has been issued, no deviations from the terms of the application or the development approval shall be made until written approval of proposed changes or deviations has been obtained. While the Town may define by ordinance minor modifications to development approvals that can be exempted or administratively approved, the Town shall follow the same development review and approval process required for issuance of the development approval in reviewing and approving major modifications of that approval. [mention HPC; PZC on SUPs]
- E. *Inspections.* – Town Staff may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, Staff are authorized, upon presentation of proper credentials, to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action provided that, however, appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been obtained.
- F. *Revocation of Development Approvals.* – In addition to the enforcement actions under KBC 12.06.030, development approvals may be revoked by the Town by notifying the holder in writing stating the reason for the revocation. The Town shall follow the same review and approval process required for issuing the development approval, including any required notice or hearing, when reviewing and approving any such revocation. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to Town for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by Staff may be appealed pursuant to KBC 12.06.040. [BOA]
- G. *Certificate of Occupancy.* – Upon completion of work or activity undertaken pursuant to a development approval, Town Staff shall make final inspections and issue a certificate of compliance or occupancy if Staff finds that the completed work complies with all applicable State and local laws and with the terms of the approval. No building, structure, or use of land that is subject to a building permit required by KBC Chapter 11 shall be occupied or used until a certificate of occupancy or temporary certificate has been issued.

### 12.06.030 Enforcement

- A. *Notices of Violation.* – When Staff determines work or activity has been undertaken in violation of a development regulation, any State law delegated to the Town for enforcement purposes, or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the owner of the subject property, if the owner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class or certified mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by KBC 11.10.030 or as otherwise provided by law, a notice of violation may be appealed to the Board of Adjustment pursuant to KBC 12.06.040. [BOA]

## 160D PRESENTATION DOC

- B. **Stop Work Orders.** – Whenever any work or activity subject to regulation pursuant to this Chapter, other applicable development regulations, or any State law delegated to the Town for enforcement purposes is undertaken in substantial violation of any State or local law or in a manner that endangers life or property, Staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class or certified mail. The person or persons delivering the stop work order shall certify that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to KBC 12.06.040 [BOA]. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.
- C. **Remedies.** –
1. Subject to the provisions of the development regulation, any development regulation governed by this Chapter may be enforced by any remedy provided by G.S. 160A-175. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of this Chapter or of any development regulation governed by this Chapter, the Town, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; to restrain, correct or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises.
  2. In case any building, structure, site, area, or object designated as a historic landmark or located within a historic district designated by the Town is about to be demolished, whether as the result of deliberate neglect or otherwise, materially altered, remodeled, removed, or destroyed, except in compliance with a development regulation or other applicable code provisions, the Town, the Historic Preservation Commission, or other party aggrieved by such action, may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling, or removal, to restrain, correct, or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area, or object. Such remedies shall be in addition to any others authorized by this Chapter for violation of an ordinance.

## 160D PRESENTATION DOC

**12.06.040 Appeals of Administrative Decisions** [recall definition of admin decisions: “*Administrative decision.* – Decisions made in the implementation, administration, or enforcement of development regulations involving the determination of facts and the application of objective standards set forth in the Town’s development regulations; sometimes referred to as ministerial decisions or administrative determinations”]

- A. Appeals.** – Except as provided in KBC 11.10.030.E (appeals of Building Inspector orders concerning condemned buildings and structures), KBC 15.08.120.G.4 (appeals of administrative decisions for minor work in the Downtown Preservation Overlay District), and KBC14.06.040 (appeals of decisions on preliminary and final subdivision plats), **appeals of administrative decisions/determinations made by Staff under development regulations governed by this Chapter shall be made to the Board of Adjustment** unless a different board is provided as set forth above or as otherwise authorized by statute or ordinance. The procedures and processes of appeals to Town Council under KBC 11.10.030.E and to the Historic Preservation Commission under KBC 15.08.120.G. shall comply with the procedures and processes applicable to the Board of Adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control or a stormwater control regulation shall not be made to the Board of Adjustment unless required by an ordinance or code provision.
- B. Standing.** – The Town or any person having standing under G.S. 160D-1402(c) may appeal an administrative decision/determination to the Board of Adjustment. An appeal is taken by filing a notice of appeal with the Town Clerk. The notice of appeal shall state the grounds for the appeal.
- C. Time to Appeal.** – The owner or other party has 30 days after receiving of the written notice of the decision/determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. In the absence of evidence to the contrary, notice given by first-class mail pursuant to KBC 12.06.020.B is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.
- D. Record of Decision.** – The official who made the decision/determination shall transmit to the Board of Adjustment’s Clerk all documents and exhibits constituting the record upon which the decision/determination appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- E. Stays.** – An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the Board of Adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom, unless the official who made the decision certifies to the Board of Adjustment, after notice of appeal has been filed, that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the development regulation. In such a case, enforcement proceedings are not stayed except by a restraining order granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within 15 days after the request is filed. Notwithstanding any other provision of this section, appeals of decisions/determinations granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use the property; in those situations, the appellant or the Town may

## 160D PRESENTATION DOC

request and the Board of Adjustment may grant a stay of a final decision of development approval applications, including building permits, which are affected by the issue being appealed.

- F. *Alternative Dispute Resolution.* – The parties to an appeal made under this Section may agree to mediation or other forms of alternative dispute resolution.

### **12.06.050 Quasi-Judicial Procedure**

- A. *Process Required.* – Boards shall follow quasi-judicial procedures in determining appeals of administrative decisions, special use permits, certificates of appropriateness, variances, or any other quasi-judicial decision. As used in this Section, “boards” includes the Historic Preservation Commission when determining appeals of administrative decisions for approval of minor work in the Downtown Preservation Overlay District and Town Council in deciding applications for special use permits.
- B. *Notice of Hearing.* – Notice of quasi-judicial evidentiary hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by any other development regulation. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days but not more than 25 days prior to the date of the hearing. Within that same time period, the Town shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board hearing the matter may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular meeting without further advertisement. For purposes of this Section, properties are "abutting" even if separated by a street or other transportation corridor.
- C. *Administrative Materials.* – The clerk to the board hearing the matter shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the property owner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board at the hearing.
- D. *Presentation of Evidence.* – The applicant, the Town, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board hearing the matter. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board to be resolved by a majority vote. These rulings are also subject to judicial review pursuant to G.S. 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.



## 160D PRESENTATION DOC

- E. **Appearance of New Issues.** – The official who made the decision/determination or the person currently occupying that position, if the decision maker is no longer employed by the Town, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.
- F. **Oaths.** – The chair of the board, any member acting as chair, and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board determining a quasi-judicial matter, willfully swears falsely is guilty of a Class 1 misdemeanor.
- G. **Subpoenas.** – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair, may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the Town, and any person with standing under G.S. 160D-1402(c) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled by subpoena. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.
- H. **Appeals in Nature of Certiorari.** – When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).
- I. **Voting.** – The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter under G.S. 160D-109(d) shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- J. **Decisions.** – The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. In doing so, the board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

## 160D PRESENTATION DOC

- K. **Judicial Review.** – Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to KBC 12.10.020. Appeals shall be filed within the times specified in KBC 12.10.050.

12. KBC 12.08 lays out the procedure for adopting, amending, and repealing development regulations. [recall definition of development regulation: “*Development regulation.* – A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to this Chapter or a local act or charter regulating land use planning or development.”]

### **12.08 ADOPTING, AMENDING, AND REPEALING DEVELOPMENT REGULATIONS**

[12.08.010 Procedure for Adopting, Amending, and Repealing Development Regulations](#)

[12.08.020 Notice of Hearing on Proposed Zoning Map Amendments](#)

[12.08.030 Citizen Comments](#)

[12.08.040 Planning and Zoning Commission Review, Comment, and Statement](#)

[12.08.050 Governing Board Action and Statement](#)

13. Judicial Review and KBC 12.10.040 in particular.

### **12.10 JUDICIAL REVIEW**

[12.10.010 Declaratory Judgments](#)

[12.10.020 Appeals in the Nature of Certiorai](#)

[12.10.030 Appeals of Decisions on Subdivision Plats](#)

[12.10.040 Civil Actions for Declaratory Relief, Injunctive Relief, and Other Remedies](#)

[12.10.050 Statutes of Limitations](#)

### **12.10.040 Civil Actions for Declaratory Relief, Injunctive Relief, and Other Remedies [Extract]**

- A. **Civil Action.** – Except as otherwise provided in this section for claims involving questions of interpretation, and in lieu of any remedies available under KBC x.x.x G.S. 160D-405 or KBC x.x.x G.S. 160D-108(h), a person with standing, as defined in subsection B of this Section, may bring an original civil action, in State superior or federal court, seeking declaratory relief, injunctive relief, damages, or any other remedies provided by law or equity to challenge the enforceability, validity, or effect of a local land development regulation for any of the following claims:

1. The ordinance, either on its face or as applied, is unconstitutional.
2. The ordinance, either on its face or as applied, is *ultra vires*, preempted, or otherwise in excess of statutory authority.
3. The ordinance, either on its face or as applied, constitutes a taking of property.

## 160D PRESENTATION DOC

### 14. Attorneys Fees

#### **§ 6-21.7. Attorneys' fees; cities or counties acting outside the scope of their authority.**

**In any action** in which a city or county is a party, upon a finding by the court that the city or county violated a statute or case law setting forth unambiguous limits on its authority, **the court shall award reasonable attorneys' fees and costs to the party who successfully challenged** the city's or county's action. **In any action** in which a city or county is a party, upon finding by the court that the city or county took action inconsistent with, or in violation of, G.S. 160D-108(b) or G.S. 143-755, **the court shall award reasonable attorneys' fees and costs to the party who successfully challenged** the local government's failure to comply with any of those provisions. **In all other matters, the court may award** reasonable attorneys' fees and costs **to the prevailing private litigant**. For purposes of this section, "unambiguous" means that the limits of authority are not reasonably susceptible to multiple constructions.

#### **15. Key Takeaways:**

- 160D changes are useful in that they provide “cookbook recipes” for important requirements such as, e.g., providing notice for text amendments and providing everything Staff needs to know about quasi-judicial procedures.
- 160D substantially expands the scope of BOA’s duties by requiring that (mostly) all administrative decisions are appealed to BOA where previously, such appeals were limited to zoning matters.
- 160D significantly expands the procedure for text amendments since the required procedure (e.g. legislative hearings (formerly public hearings)) applies to amending any development regulation and not just zoning.
- 160D significantly increases the risks of the Town being named as a defendant in “stand alone” litigation challenging the legality of land use planning and development actions. This risk is compounded by G.S. 6-21.7 providing for the mandatory awarding of attorneys fees to the successful litigant (but not to the Town) in such lawsuits.

