

SUNSET BEACH TAXPAYERS ASSOCIATION

P. O. Box 6053

Ocean Isle Beach, NC 28469

NEWSLETTER

August 2016

The mission of the SBTA is:

To foster growth within the town of Sunset Beach while preserving its unique, unspoiled non-commercial character; To press for responsible, efficient government; To prevent the extravagant wasteful expenditure of public funds; And to provide absentee, nonvoting property owners a voice in community affairs affecting their interests.

LABOR DAY MEETING

The Labor Day meeting will be at the home of Bruce and Katie Hovermale

1429 Bay Street

September 3rd, 2016

Social time 10:00 Meeting starts at 10:30

Easter Meeting

The Easter meeting was held at the home of Bruce and Katie Hovermale on Bay Street.

There were 39 members present.

1. President Ray Puknys introduced the Board members:
President – Ray Puknys
Vice-President – Richard Hilderman
Secretary/Treasurer – Bruce Hovermale
Board Members: Nina Marable, John Hutchinson (not present), Erik Jensen (not present)
2. Announced that the federal government has decided not to allow offshore drilling off North and South Carolina.
3. Richard Hilderman gave an update on the Sunset Beach West development. The Town attorney advised his opinion that the Town owns the Sunset Beach West property. The matter will be determined in court.
4. Drew Taylor, a member, made a motion that the SBTA be more assertive in support of the defense of Sunset Beach West. The motion was tabled by a majority vote of those present.

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5. Nina Marable gave an update on Palm Cove.
6. Ray Puknys and Jan Harris led a discussion on Riverside Drive development. There is a boardwalk under construction on the property that was properly permitted by the Town. Councilmen Mark Benton and Rich Cerrato as private citizens (i.e., not representing the Town) have scheduled a meeting in April with the State land management officials to discuss the State ownership of Riverside Drive.
7. Ray Puknys discussed the Main Street paving project and parking. NC DOT are planning to re-pave Main Street after Easter. The Town has funded the NC DOT to add 5 feet of pavement on each side up to 12th St, then 4 feet eastward to the end, to allow for bicycle paths and safer vehicle access. Parking is being held in abeyance for the moment. Paid parking is also on hold to allow a bill to be introduced in the State legislature to allow the Town to keep any revenue derived from paid parking. As it currently stands, the only allowed use of paid parking revenue is for parking enforcement.
8. Pete Scott, a member, made a motion for the SBTA to write a letter to the appropriate officials in the State to ask them to take appropriate action to establish State ownership of the Riverside Drive land. The motion was seconded and approved by the members present. Nina Marable will prepare the letter.
9. A motion was made to make Frank Nesmith a member emeritus of the SBTA. This status will convey life time membership and exempt him from the requirement to pay dues. The motion was seconded and approved by the members present.
10. Brooke Triplett updated the membership on the Town Park.

Current Issues and Items of Interest to Members

SBTA Website

The SBTA website is up and running. Please check it out at ninam25.wix.com/sbta for news and updates.

Sunset Beach West Development

Earlier this year CAMA approved the permit by Sunset Beach West, LLC to develop a 21 lot residential subdivision with associated amenities at the west end of Sunset Beach island. The US Coast Guard also approved a permit for a bridge to be constructed from Main Street to the Sunset Beach West property. One of the conditions that CAMA incorporated into the permit is

“If a court of competent jurisdiction determines that a party other than the permittee has legal rights to any part of the area approved under this permit, this permit shall be null and void as to the area the court determines is not owned by the permittee. This

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condition shall take effect on the date such court judgment becomes final. In such event, the permittee shall consult DCM prior to initiating or continuing any further development.”

Shortly after these two permits were approved, the Town of Sunset Beach filed an action in Brunswick County Superior Court claiming that the Town of Sunset Beach owned the property where the Sunset Beach West development is proposed and also requested the Court to approve an injunction on any development of Sunset Beach West until the ownership issue has been resolved. It is my understanding that a hearing date could be scheduled as early as January. In addition, on behalf of the Sunset Beach Taxpayers Association and the North Carolina Coastal Federation (referred to hereafter as the “petitioners”), the Southern Environmental Law Center was recently granted an appeal to the CAMA permit. This appeal will be heard in an administrative court as discussed below.

— Richard Hilderman, Ph.D.

Third Party Challenge to the CAMA permit for Sunset Beach West

On July 22, 2016, Renee Cahoon, The Vice-Chair of the North Carolina Coastal Resource Commission granted, in part, the SBTA’s joint request for a third-party hearing to challenge CAMA’s permit to allow the development of Sunset Beach West. The proposed development infrastructure consists of a 21 lot residential project including an elevated wooden bridge, bulkhead, kayak docking facility, boardwalk, gazebo, dune crossovers and a walkway. This decision, however, denied a hearing of the contested ownership issue, which is currently before the Brunswick County Superior Court.

In reviewing our request, the Vice-Chair considered, in part, affidavits submitted by three of our officers: Richard Hilderman, Raymond Puknys, and Nina Marable; comments in opposition from co-petitioner the NC Coastal Federation; and numerous letters submitted by interested citizens.

The appropriateness of the appeal is based on the determination of

1. an allegation that the determination below is contrary to a statute or rule, and
2. the third-party is directly affected by the decision, and
3. the alleged facts or legal argument demonstrate that the requested hearing is not frivolous.

Without getting into the specifics of the allegations, it is sufficient to note that the Vice-Chair found that we met these requirements of;

1. identifying those sections of statutes or rules on which the decision was made contrary thereof, and
2. the three affidavit testimonies submitted by three individuals explaining their membership

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and work for the SBTA provided sufficient claims as to how they will be directly affected by the issuance of the permit, and

3. Petitioners have alleged facts and made legal arguments sufficient to demonstrate that petitioners are entitled to a case hearing, but not on the issue of title.

Accordingly, with the exception of the contested title issue, the petitioners have demonstrated all the three factors upon which they are entitled to a third-party hearing on the following issues:

1. Whether the Permit Decision was consistent with the 7H.0200 Rules-Estuarine Side?
2. Whether the Permit Decision was consistent with the 7H.0300 Rules-Oceanside?
3. Whether the proposed development is consistent with the Town's Land Use Plan.

The petitioners filed for a contested case hearing with the Office of Administrative Hearings on August 11th. A hearing date is yet to be set.

Summary of the Petition for a Contested Case Rehearing

On August 11, 2016 the Southern Environmental Law Center (SELC) filed, on our behalf, a Petition for a Contested Case Hearing before the Office of Administrative Hearings. The petition was filed in a timely matter, describing the petitioners as two organizations that have worked to protect Sunset Beach for decades and are substantially prejudiced by the issuance of the Permit. Petitioners together represent thousands of members, many of whom live, visit, or vacation on Sunset Beach. The petition points out that the property in question is located in the Ocean Erodible Area, High Hazard Flood Area, Coastal Wetlands, Estuary Shoreline, Public Trust Shoreline, Estuarine Waters, and Public Trust Areas of environmental concern. It is also part of the Federal Coastal Barrier Resource System (CBRS). As a result, no public assistance can be provided to the site through utilities, flood insurance, or disaster assistance. The latter raises an interesting issue as to post-hurricane relief, as FEMA cannot participate therein.

Among the many issues raised by the Petition are the following:

1. pollution resulting from storm water runoff and septic system use;
2. damage to dune structure and natural vegetation communities resulting from land cover changes associated with infrastructure and development;
3. disturbance to wildlife in and adjacent to the Bird Island Reserve;
4. the Project exceeds the research-based recommendation for impervious surface coverage;
5. has the potential to negatively impact surface or ground water quality as a result of storm water runoff;
6. septic systems have shown to be a major source of microbial pollution in coastal areas and that the placement of septic systems in an area considered to be at risk for shoreline

change of up to 440 feet during a storm and subject to flood water of 17-20 feet dramatically increase the risk of septic failure, displacement or destruction during storm or flood conditions;

7. the configuration of the project area and lots will place all of the residential units well oceanward and in a position of greater hazard than all of the existing structures on Sunset Beach, where existing dune fields and vegetation offer protection to residential units;
8. because the dune system, vegetation communities and wildlife that currently occur west of 40th street have previously existed as a largely intact barrier island community, the Sunset Beach West project will have significant impacts on the Bird Island Reserve.

Objections to the Permit

1. The Project failed to minimize the adverse impacts as required by CAMA standards.
2. The Permit violates Ocean Hazard AEC guidelines by permitting development oceanward of the crest of primary dunes and that the permittee has not demonstrated and cannot demonstrate that the approved dune destruction is essential to any development of the property or that the adverse impacts have been minimized.
3. The Permit violates Public Trust Area guidelines in that the Project's bridge would extend across navigable, public trust waters in such a manner as to interfere with public access to and use of the affected waters in violation of state guidelines.
4. The Permit violates the Town of Sunset Beach Land Use Plan (LUP), which states that "for all oceanfront residential structures, the allowable building area shall be measured from the property line abutting Main Street heading oceanward a maximum of 150 feet". Moreover, because of the proposed location and nature of development, it is not compatible with Sunset Beach's existing coastal town and residential character.
5. The proposed development is also inconsistent with the LUP's sewer connection requirements. Research in North Carolina, and in Brunswick County specifically, has shown that installing septic systems on barrier islands creates potential for significant pollution.
6. Finally, the Project is in conflict with the LUP's public trust policy. The LUP states that "in the absence of overriding public benefit, any use which significantly interferes with the public right of navigation or other public trust rights which apply in the area shall not be allowed". Moreover, because of the encroachment into the marsh by the bridge, walkway and dock, the Project is not consistent with Policy 31(B), which states "projects which would directly block or impair navigational channels, increase shoreline erosion, deposit spoils below mean high tide causing adverse water circulation patterns, directly cause a violation in water quality standards, or cause degradation of open shellfish waters shall not be allowed".

— Ray Puknys

Palm Cove

Since our spring newsletter, which you can see on the SBTA website (ninam25.wix.com/sbta), house construction has progressed and more lots have been cleared. In the pictures below you can see how dunes have been destroyed and how much fill has been added. Please note in the article on Senate Bill 875 that negotiations with Palm Cove resulted in allowing them to build "swimming pools" (12x40'?) instead of "spas" (MUCH smaller). That will undoubtedly result in more dune clearing. Look at the pictures and try to visualize where the pools will be. If you want more information, email ninam@atmc.net. For this newsletter, I think the pictures tell quite a tale.



View looking east toward Ocean Isle



Easternmost tip of Palm Cove looking east



View looking west over Palm Cove

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Closer view looking west over Palm Cove



Current houses and cleared lots looking south



Cleared lots looking east



Cleared lots showing location relative to the island

— *Nina Marable*

Riverside Drive

Since our spring newsletter, which you can see on the SBTA website, things have changed at Riverside Drive, which is under new ownership (The Waterway Group) and is now referred to as Ocean Club Estates. A marsh island north of Riverside Drive is referred to as Cedar Point. This island may not have been part of the sale.

You can view a promotional site for "Riverside Drive" at <http://oceanclubnc.com/>. In that site, click on Gallery to view still photos. As the video plays, listen carefully to the amenities discussed.

The pictures below show the current stage of development at Ocean Club and Cedar Point.



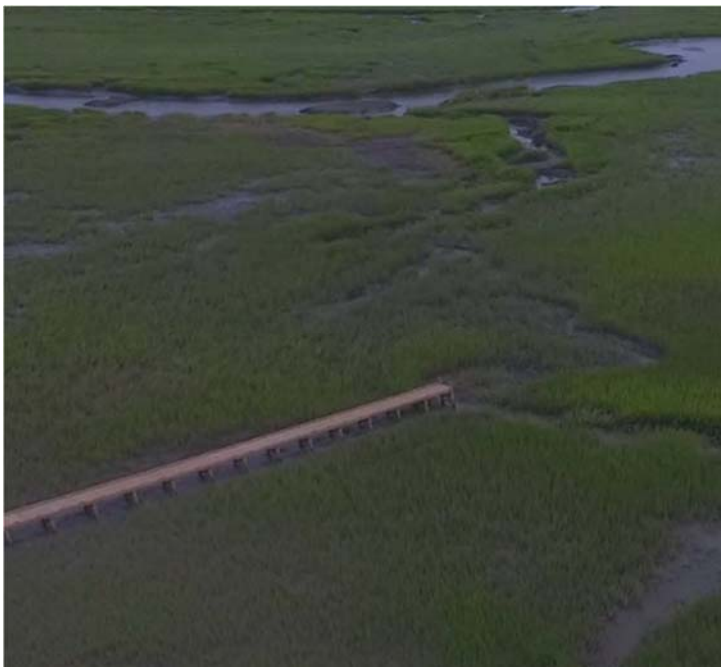
View of entire area looking east.



View of entire area looking west.



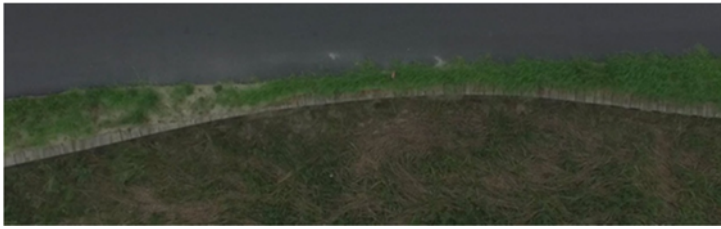
Cedar Point with observation platform and with what may be an intended kayak launch.



Note below that the walkway ends in dry marsh.



View of the connection of Cedar Point to Riverside Drive.



Note how close the road is to the bulkhead



Private beach?



Note the elevation of the lots relative to the "ditches" between them. Unless this is changed, storm water will run off into the feeder canal.

— Nina Marable

Senate Bill 875

Timeline of events

May 11, 2016. As you may know, Senator Bill Rabon introduced Senate Bill 875 in the North Carolina Senate. The bill calls for the de-annexation of three tracts of land from the Town of Sunset Beach. If passed, the bill would transfer the tracts to County jurisdiction. One tract is on the mainland – on NC Highway 904 near the Methodist Church – where retirement apartments are being built in a project known as Sunset Creek Commons. The two other tracts are the east and west ends of the island. The east end, known as Palm Cove, is already under development. The proposed west end development is known as Sunset Beach West. SBTA members circulated the picture below, showing the locations of the island tracts, and solicited signers for a petition opposing the de-annexation. Jan Harris developed the petition, and with a large

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team, eventually had collected over 4,200 signatures at the time it was presented to the Mayor. Believe it or not, the signatures are still coming in.

This bill was conceived and filed after developers for the three tracts approached Rabon, alleging mistreatment by the Town and a "small vocal minority." Rabon gave no notice of the creation of the bill – he called the Mayor to notify Watts only after the filing.



June 2, 2016. The bill moved quickly through the Senate from the State and Local Government committee to the Finance committee, and then to the Senate floor, where it passed on June 2, 2016.

Also on June 2, 2016, the Town Council held a special meeting to decide how to respond to the bill. Approximately 50 people attended, including some developers.



Greg Gore, left in blue shirt, and Sammy Varnam, right in plaid shirt, attended the meeting. Photo: Mark Hibbs

In its June 3rd publication, Coastal Review Online (published by NC Coastal Federation) quotes Varnam: " 'We hope in the future going forward the Senate Bill 875 is a wakeup call for town leaders to join us in conversations that will accomplish a final plan that the majority will agree on,' Varnam said." Both Rabon and Representative Iler have made it clear that the purpose of the bill was to attempt to force the Town to negotiate with developers. At this stage the Town was indeed already negotiating with the developers.

On June 4th, Council announced the failure of these negotiations. The Town hired a lobbyist, Ches McDowell, to help in Raleigh.

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On June 7th, Council directed the Town Attorney, Grady Richardson, to reach out again to the developers involved with the properties to be de-annexed. Subsequently, on June 21st, Council approved an agreement with Palm Cove to allow swimming pools in the development. In exchange, Palm Cove would withdraw as a participant in Senate Bill 875. At the June 21st meeting, Council also approved taking legal action to assert its ownership of the land involved with Sunset Beach West.

June 28, 2016. After passage in the Senate, the bill moved to the House, where it was assigned to the Rules, Calendar & Operations Committee. After about 3 weeks the bill was withdrawn from this committee and sent to the House Finance Committee on June 28th.

On June 29th, Laura Lewis reported the Finance Committee's action in the Brunswick Beacon: "Seven weeks after Senate Bill 875 was filed in Raleigh, a majority of the North Carolina House Finance Committee has voted (22-8) against the controversial measure to de-annex three parcels in Sunset Beach." Finance committee members reportedly asked questions about the petition that many of you signed. Clearly, the strength of your response was important to the vote of the Finance Committee. Some committee members urged the Town to negotiate with the developers. Councilman Rich Cerrato has repeatedly wondered why we should negotiate. Cerrato was quoted in the Beacon (June 21, 2016) as follows: "I have publicly stated this town has done nothing morally and legally wrong," [Cerrato] wrote in an email to the Beacon. "I also stated there was no reason to compromise with developers who schemed behind closed doors with a senator without either of them having the courtesy of informing the administration, the council, the county and the taxpayers of Sunset Beach."

June 30 – July 1, 2016. That should have been the end of the saga, at least for this legislative session. However, Senator Rabon was not finished. Late on the night of June 30th, Mayor Watts was told (not by Rabon) that the bill had reappeared on a committee agenda for July 1st. Watts drove to Raleigh, carrying, as requested by someone in Raleigh, the petitions that Jan Harris and others had collected. As reported by Laura Lewis in the Brunswick Beacon (July 2, 2016), "The official story was that it was mistakenly put on the agenda," Watts wrote in an email Friday afternoon to fellow town officials." Lewis also reported that Watts wrote,

"Rabon was behind this effort and continued his efforts through the morning even after we spoke... . He was very clear with me on his position: 'You all have six months to satisfy the developers. If they aren't satisfied, I'm not satisfied.' "

"The Southport senator told Watts he had a new draft of a new bill on his desk that is ready for introduction in the General Assembly in January.

'And it will pass,' Rabon said."

— *Nina Marable*

Town Government Changes

Mayor Resigns

Mayor Ron Watts has resigned. He sold his home in Sunset Beach and is moving his family to Wilmington NC. Sunset Beach residency is a requirement for his position as mayor. The position of mayor remains vacant as of this writing. The Town has requested an opinion from the University of North Carolina School of Government whether this position must be filled ASAP or, if it can remain open until the next election, which would occur in November 2017. The Town has not received an answer as of this writing. Volunteers for the position of mayor have been asked to submit resumes by August 19, 2016 and several have been received as of this writing. Council member Carol Scott is filling the position as Mayor-Pro-Tem until such time as the position is filled.

— *Ray Puknys*

Town Councilman Lou DeVita Resigns

Town Councilman Lou DeVita has also resigned. His resignation letter was dated August 8th, but the resignation will not become effective until the Town Council accepts it, likely at its monthly meeting on September 6th. Mr. DeVita's resignation letter said the he could no longer devote the amount of time and energy that he felt was required to adequately represent the citizens of the community.

Main Street Widening and Parking Plans

Main Street Widening



The paving of Main Street, as widened for bicycle lanes, is completed with the exception of storm drain grates. The drains, which are located in the bicycle lanes, are to be covered with bicycle friendly grates. The grates have been backordered, and the Town is awaiting delivery. Homeowners are asked to please keep the bicycle lanes clear of sand and debris. Sweeping of the bicycle lanes is done by the Town on a weekly basis, usually on Friday nights.

Main Street looking west

Parking

1. There is no new news on parking on the island with the exception that parking may not occupy any part of the bicycle lanes. The police will ticket any vehicle that has any part overlapping the lanes.

2. There is nothing new on parking fees on the island. Parking fees are authorized by North Carolina Laws, but if implemented, they must be used in connection with improvements to the areas affected by the fees, such as; maintenance, landscaping, seating, lighting, etc.

— *Ray Puknys*

Public Works

Storm Water Plan

The Town has authorized the study of a Storm Water Plan. Run-off and standing water is a major issue in the Town, as it was developed before any storm water control was a requirement for development. When implemented, the Plan will be used in connection with the 5 and 10-year capital improvement plans.

Beach Access

A new ADA compatible beach access is under construction at the end of 1st street. When completed, we will have three ADA compatible beach accesses on the island: 1st Street, 3rd Street and the gazebo area.

— *Ray Puknys*

Proposed Dredging of the Jinks Creek area

The Town of Sunset Beach plans to dredge approximately 2.8 miles of canals and feeder channels to support recreational use and tidal flushing. The proposed work area includes Jinks Creek which connects the Intracoastal Waterway with Tubbs Inlet and also includes dredging Mary's Creek, Turtle Creek, the feeder canal adjacent to East North Shore Drive, Canal Drive adjacent to what is commonly referred to as "the bay," along with the connecting finger canals adjacent to Marlin, Sailfish, Dolphin and Cobia Streets.

In March, the Town requested a scoping meeting with various State and Federal agencies to discuss this proposed project. In June, the Town approved a contract of \$212,154 with the firm Moffatt & Nichol for a project entitled "2016 Shoreline Management & Pre-Dredge Analysis: Phase 2-Design Scope of Work."

In July, the Council created a citizen Environmental Resource Committee (ERC) to advise the Council on environmental issues. The two initial appointees to this committee are Jan Harris and Richard Hilderman. The Town Council hopes to appoint at least one more member in the near future. The Town is in the process of developing a link for the ERC on their web page.

The first charge for the ERC is to research the impact the proposed dredging of the Jinks Creek area will have on the environment. The initial ERC meeting, which is open to public, was held

on August 16th at the Sunset Beach Town Hall.

The Town Council of Sunset Beach has scheduled a Community Meeting on October 6th to obtain citizen input on the proposed dredging project. After the Community Meeting the ERC will draft a final report for the Town Council.

The estimated cost of the dredging project is \$4.2 million dollars. The Town has received a grant from the State for \$2.8 million dollars. It is our understanding that the rest of the cost will be paid for individuals who own property on Mary's Creek, Turtle Creek, the feeder canal adjacent to East North Shore Drive, on Canal Drive adjacent to what is commonly referred to as "the bay," along with the connecting finger canals adjacent to Marlin, Sailfish, Dolphin and Cobia Streets.

— *Richard Hilderman, Ph.D.*

Bird Island Nature Trail



Entrance to Bird Island Nature Trail

Walking on the beaches of Sunset Beach and Bird Island is a favorite activity for many of us. Walking keeps us moving which keeps us healthy. And thanks to the dedication and efforts of the NC Coastal Reserve Program (Thank you, Hope and Team!) and Bird Island stewards, we can now pursue that activity on a beautiful new trail within the Bird Island Reserve. Not only does the trail provide a beautiful walk, it provides many outdoor learning opportunities as well. The trail is a little over a mile in length round-trip from the trailhead. It is well-marked with many directional arrows. Give yourself at least an hour to enjoy a simple walk. Spend more time on the trail by lingering over the QR Information Stations (more about those later) to learn about the many ecosystems present!

Preparing to Hike

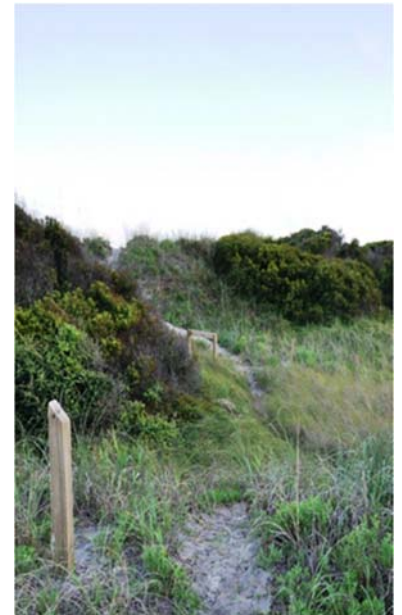
During the summer and fall seasons, I recommend you wear a hat, use bug repellent and sunscreen, and bring water to stay hydrated. I also recommend that you wear sturdy shoes due to soft sand, long sleeves and long pants to protect you from thorny plants and mosquitoes. You may also want to bring a picnic or snacks to enjoy the scenery a little longer. There is a pretty view of the marsh and Intracoastal Waterway at the end. And don't forget your smartphone! See "QR Information Markers" below.

Let's Go!

Entering the Nature Trail from the beach about 200 feet east of The Kindred Spirit mailbox, the trail leads you over the dune into another world. You are leaving the Upper Beach Ecosystem! Careful as you hike down the dune as it was pretty steep on my first visit, and enter Grasslands and Shrub Thicket Ecosystems. As the ocean roar diminishes, take a moment to look around and orient yourself. You will see markers indicating trail direction as well as another type of marker – QR Codes!

QR Information Markers

As you walk along the trail you will see plenty of markers guiding you along, plus some QR codes mounted on QR information markers throughout the trail. QR, or Quick Response code, is a type of barcode which, when used with a QR Reader app on your smartphone, will allow you to access information about Bird Island and each of its ecosystems as you encounter them on the trail. If you don't already have a QR scanner on your smartphone, download one from your app supplier while you have Wi-Fi access at home. To get the information at each marker, align the brackets on your QR scanner around the QR code square on the marker post. It will automatically read the code and pull up the information about Bird Island.



Backside of Dune Showing Trail with Markers

Information via QR Reader



The topics you can access with the QR Code and your QR scanner are available for your use while on the trail, but if you don't have time to read each topic, or you want to study them further, scan the code anyway and view the webpage at your leisure.

Topics you can access are:

- Overview of Bird Island History
- Plant Adaptations at the Bird Island Reserve
- Connect. Explore. Protect. Guidelines for protecting Bird Island
- Grasslands Ecosystem

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- Shrub Thicket Ecosystem
- Tracking Wildlife
- Marsh Overlook
- What is an estuary?
- Salt Marsh Ecosystem



Trail in Grasslands Ecosystem

Close

I hope you take some time to explore the Bird Island Nature Trail with your friends and family. Having a bit of “wilderness” so close to us is remarkable. Enjoy!

Photos from the Bird Island Nature Trail



Nice Place to View Wildlife at
End of Trail



Marsh Overlook



View of Ocean from Trail on
Way Back to Beach

— *Brooke Triplett*