



Town of Southern Shores
Regular Council Meeting
July 7, 2020

The Town of Southern Shores Town Council met in the Pitts Center located at 5377 N. Virginia Dare Trail at 5:30 p.m. on Tuesday, July 7, 2020.

COUNCIL MEMBERS PRESENT: Mayor Bennett, Mayor pro tem Elizabeth Morey and Councilman Matt Neal, Jim Conners, and Leo Holland

COUNCIL MEMBERS PARTICIPATING REMOTELY: None

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Town Attorney Ben Gallop, Town Manager Cliff Ogburn, Finance Officer/ HR Director Bonnie Swain, Town Clerk Sheila Kane, Deputy Town Manager/Planning Director Wes Haskett, Police Chief David Kole, and Fire Chief Ed Limbacher

CALL TO ORDER / PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE

Mayor Bennett called the meeting to order at 5:30 p.m., led the Pledge of Allegiance, and held a moment of silence.

Mayor Bennett thanked Deputy Town Manager/Planning Director Wes Haskett for doing an excellent job as Interim Town Manager while a manager search was being conducted. Mayor Bennett also welcomed new Town Manager Cliff Ogburn.

AMENDMENTS / APPROVAL OF AGENDA

Mayor Bennett requested to amend the agenda to include a closed session.

MOTION: Councilman Holland moved to approve the agenda with an amendment to add a closed session. The motion was seconded by Councilman Neal. The motion passed unanimously (5-0).

CONSENT AGENDA

The consent agenda consisted of the following items:

- Council Meeting Minutes Regular Mtg. 6/1, Special Mtg. 5/1 & 4/20 & Workshop 4/21

MOTION: Mayor pro tem Morey moved to approve the consent agenda as presented. The motion was seconded by Councilman Connors. The motion passed unanimously (5-0).

EMPLOYEE RECOGNITION

Mayor Bennett recognized Cpl. Darrell Brickhouse for his fifteen years of service with the Town of Southern Shores Police Department.

STAFF REPORTS

The following Department Heads presented department reports for the month:

- Deputy Town Manager/Planning Director Wes Haskett provided a department permit report for the month of June:
 - Thank You-First I'd like to just again say welcome to our new Town Manager, Cliff Ogburn. I'm confident that he will do an excellent job and I look forward to working with him. I'd also like to say thank you, to all of our Town Staff for their support, efforts, and dedication while I was Interim Manager that helped us get to this point.
 - Permitting in June
 - -9 Zoning Permits
 - -19 building permits
 - -28 trade permits
 - -4 lot disturbance permits
 - -Total amount of fees collected in June was \$15,275.30.
 - -I'll also note that a building permit and zoning permit for Taco Bell to remodel the existing drive-through facility or establishment (small) located at 5415 N. Croatan Hwy. (which was formerly Nu Quality Ice Cream) were issued on June 29th which entails new kitchen equipment and replacement of existing signage. No structural or framing modifications are involved.
 - Planning Board-The Town Planning Board held a Special Meeting on July 2nd to consider ZTA-20-01, a Zoning Text Amendment application directed by Council to remove the 30-day requirement for the Planning Board to consider ZTAs and to allow for temporary zoning accommodations during a declared State of Emergency. The Board recommended approval of the ZTA with one minor revision and your consideration of the application has been added to the July 21st Council meeting agenda.
 - Bay Disposal Recycling Contract-As directed by Council at the May 5th Council meeting, the Town Attorney (Andrew Howle with HREM) and I had been working with RDS (Recycling Disposal Solutions) and Bay Disposal to have our recyclables collected and processed at RDS's MRF in Portsmouth, rather than taken to the Wheelabrator facility in Portsmouth. We were working on an amended contract with Bay Disposal for collection and delivery and a separate contract with RDS for processing, as requested by RDS. However, I was recently notified that RDS and Bay Disposal had established an agreement, where Bay Disposal collects and delivers recyclables from Newport News, to RDS for processing. I've talked to

representatives from RDS and Bay Disposal and they've both confirmed that they can enter into a similar agreement so that our recyclables can be collected and delivered by Bay Disposal to RDS for processing. For us, this would only require one contract and we would only receive one invoice from Bay Disposal for the services provided by both companies. I've asked the Town Attorney to revise our draft amended contract with Bay Disposal to reflect this situation and at the same time, Bay Disposal and RDS will work on their agreement. I'm hoping that we can finalize the contract so that it can be considered by Council at the August 4th Town Council meeting. Josh Smaltz with Bay Disposal told me this morning that they were testing this setup by delivering one load per day to RDS for processing, and that there haven't been any issues with unacceptable materials or residue.

- Town Manager Cliff Ogburn thanked Council and staff for the opportunity.
- Police Chief David Kole presented the Police Department's report for June.
- Fire Chief Ed Limbacher presented the Fire Department's report for June.

GENERAL PUBLIC COMMENT

Mayor Bennett called for public comment and the following citizens provided public comment:

Public Comment-Wendy Hawkins-submitted by email-The cut through traffic during the past two weekends, in my opinion, was much lighter on S. Dogwood Trail. The weekend before when I believe it was mentioned the NCDOT had agreed to limit the left turn arrow to allow approximately 4-5 vehicles through on each segment. If this is was the case, in my opinion it worked very well. My thought was perhaps that would be a solution. The traffic was going by smoothly on my street both days. Usually about 5 vehicles would pass by in a cluster. I don't believe it ever backed up. Perhaps this would be a temporary solution and there is no cost involved.

Public Comment-Steve House-appreciates the new walking path on South Dogwood Trail but the curbing is very sharp, and street is narrow. He recently had to replace a rim on his vehicle. South Dogwood Trail needs to be widened.

Hearing no other citizens wishing to speak, Mayor Bennett closed public comment.

CLOSED SESSION

MOTION: Mayor Bennett moved to go into closed session pursuant to NCGS §143-318.11(a)(3) attorney-client privilege. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

OLD BUSINESS

Upon returning to open session, Council addressed the budget amendments under agenda items 5A.

Budget Amendments

Motion: Councilman Neal moved to approve budget amendment #1 for No Left Turn Weekends. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Motion: Councilman Neal moved to approve budget amendments #3, #4, and #5

- #3 Budget Amendment-SSVFD Fence Installation
- #4 Budget Amendment-Painting of Police Department Building
- #5 Budget Amendment-Crosswalk at Hickory Trail & Woodland Dr.

The motion was seconded by Mayor pro tem Morey. The motion passed unanimously (5-0).

Beach Nourishment

Town Manager Cliff Ogburn explained the purpose of the CPE-NC contract for the design and environmental permitting of the 2022 project which is planned in conjunction with the other three towns (Duck, Kitty Hawk and Kill Devil Hills). There are five tasks associated with this project, some of the costs are shared equally by each town and some are shared based on the percentage of the project that is being designed. The first task is equally shared and related to environmental documentation and permitting. All four towns will pay that same amount. The engineering and design task are where it varies. Each town will pay its portion based on the percentage of the design for their project. Obviously, each project is not designed equally. The task associated with borrow area investigation is equally shared at a cost of \$201,000 for each town, which is the most expensive task of the project. One thing to keep in mind about the work involved in the investigation of the borrow area is that it is extremely dangerous. The mobilization can be expensive and dangerous and that's why it costs more. But the hope is, they find a borrow area that is much closer to Southern Shores that can be permitted and therefore it's going to reduce the cost of our project. The closer it is, the less mobilization it takes to get that material there.

Mr. Ogburn continued by stating there is one task that Southern Shores must do separate from the other towns which is a survey to quantify the native beach at \$18,310. The other three towns have already performed that task. We did not do that as part of our project in 2017 and the other projects did, so they don't share that cost. That is unique to us. And then there is a task related to a rule that is pending at the Coastal Resources Commission which would require us to resurvey the native beach to ensure sand compatibility at a cost of \$5,958. The town may not have to do that and obviously if not, it will save the town money.

The Town Manager further stated he is comfortable with recommending that Council approves this contract in moving forward. It's also important to note that \$187,676 is coming from Southern Shores unassigned fund balance, and the contribution from Dare County Occupancy Beach Fund is \$250,000. Southern Shores' share of this proposal is less than half the total cost. Once we get to the point where we are financing the projects, we can reimburse ourselves for some of these costs. At some point, we may have to do a reimbursement resolution once we receive the Counties contribution, ½ the cost of the project, is received. The revenue generated from the municipal service district can go back to offset some of these costs at a later date.

MOTION: Mayor pro tem Morey moved to approve the CPE-NC contract with the understanding that Southern Shores will pursue a memorandum of understanding (MOU) with Dare County, that they will partner with us on this project, and that the CPE-NC contract is contingent upon Dare County agreeing to the MOU. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

MOTION: Mayor pro tem Morey moved to have Council direct the Town Manager and the Town Attorney to pursue a memorandum of understanding with the County of Dare to support the Town of Southern Shores with the funding of a beach nourishment project to include the debt servicing portion of that beach nourishment project and the Mayor is to submit the request to the County Manager. The motion was seconded by Councilman Neal. The motion passed unanimously (5-0).

MOTION: Mayor pro tem Morey moved that Council approve budget amendment #2 in the amount of \$437,676.00 as presented in the meeting packet. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Dewberry Lane

Town Manager Cliff Ogburn stated if Council is inclined to do the project now, there are funds in the amount of \$198,759 for infrastructure improvements in the budget. RPC Contracting will honor the price until the end of the calendar year.

Mayor pro tem Morey stated she would like to see more revenue data before moving forward.

Councilman Connors stated he would like to see the project initiated sooner than later, and the funds are in the budget.

Councilman Neal was fine either moving forward or waiting longer on revenue data.

Councilman Holland stated Dewberry Lane has a storm water issue that needs to be addressed.

Motion: Councilman Holland moved to proceed forward with Dewberry Lane. The motion was seconded by Councilman Connors. The motion passed unanimously (5-0).

Resolution 2020-07-01 (Traffic in Southern Shores)

As part of the traffic initiative, and in an effort to reduce the cut thru traffic in Southern Shores created by traffic apps, Councilman Neal requested a resolution supporting this effort.

Town Attorney Gallop stated this resolution can be sent to the surrounding authorities, other jurisdictions and traffic mapping application providers letting them know about the dates the Town plans on having the events at HWY 158 and Dogwood Trail. It lays out the history, concept, and reasoning of the no left turn events.

MOTION: Councilman Neal moved to adopt Resolution 2020-07-01. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

Appointment of A Deputy Finance Officer

Town Manager Cliff Ogburn stated this was a housekeeping item, allowing the flow of business to continue in the absence of the Finance Officer.

MOTION: Mayor pro tem Morey moved to adopt resolution 2020-07-02 Appointment of a Deputy Finance Officer. The motion was seconded by Councilman Holland. The motion passed unanimously (5-0).

GENERAL PUBLIC COMMENT

Mayor Bennett called for public comment and the following citizens spoke:

1. Michael Barkley-Public Comment via Zoom-Dewberry Lane is the last road off of Bayberry. All branches off of Bayberry Lane should have road improvements completed.
2. Ann Sjoerdsma-Public Comment via Zoom-It is disrespectful and inappropriate to have a closed session in the middle of the meeting for an hour and is assuming there will not be one conducted now at the end of the meeting. The public has evenings and plans to follow.

Hearing no citizen wishing to speak, Mayor Bennett closed public comment.

MAYOR COMMENTS & COUNCIL COMMENTS

All Council Members welcomed new Town Manager Cliff Ogburn and thanked Deputy Town Manager/Planning Director Wes Haskett for doing a great job when serving as Interim Town Manager.

Councilman Holland also provided a brief report from the Tourism Board. The Tourism Board approved their budget at the June meeting. There is a separate line item of \$20,000 to help offset the costs for having police officers working the intersection of Hwy 158 & NC12 through the summer weekends. The July Tourism Board meeting has been cancelled.

CLOSED SESSION

MOTION: Mayor Bennett moved to go into closed session pursuant to North Carolina General Statute 143-318.11(a)(6) personnel matter. The motion was seconded Mayor pro tem Morey. The motion passed unanimously (5-0).

ADJOURN

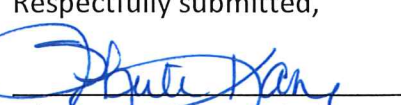
MOTION: Upon returning to open session and hearing no other business, Councilman Holland moved to adjourn the meeting. The motion was seconded Councilman Neal. The motion passed unanimously (5-0). The time was 8:25 PM.

ATTEST:


Thomas G. Bennett, Mayor



Respectfully submitted,


Sheila Kane, Town Clerk

**Town of Southern Shores
Budget Amendment Number # 1**

**Police & Streets
Increases**

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
40-39909	Revenues Unassigned Fund Balance	\$19,500			
59-50120	Expenditures PW Contracted Services	\$11,100			
51-50010	Police Salaries	8,400			
	TOTAL			TOTAL	\$ -

Explanation: Cost associated with No Left Turn on South Dogwood for three weekends (Barrels \$3,700 x 3 weekends, Police Salaries o/t rate \$70.00x10 hours = \$700 x 2 days = \$1,400 x 2 Officers+ \$2800 x 3 weekends= \$8,400)

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Tom Bennett, Mayor

Date

**Town of Southern Shores
Budget Amendment Number # 3**

**Fire Department
Increases**

**Streets
Decreases**

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
40-39909	<u>Revenues</u> Unassigned Fund Balance	\$10,000			
54-50405	<u>Expenditures</u> Fence	\$10,000			
	TOTAL			TOTAL	\$ -

Explanation: To reappropriate money for fence at new station on South Dogwood

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Coucil

Tom Bennett , Mayor

Date

**Town of Southern Shores
Budget Amendment Number # 4**

**Public Works
Increases**

**Police
Decreases**

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
40-39909	Revenues Unassigned Fund Balance	\$8,265			
59-50927	Expenditures Town Buildings Maintenance	\$8,265			

Explanation: To reappropriate money from FY 19-20 budget to paint Police building

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date

**Town of Southern Shores
Budget Amendment Number #2**

**Streets
Increases**

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
	<u>Revenues</u>				
40-39909	Unassigned Fund Balance	\$187,676			
40-39933	Due from Dare County	\$250,000			
	<u>Expenditures</u>				
57-50154	Beach Nourishment Engineering	\$437,676			

Explanation: Cost of design of 2022 beach nourishment project

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date

COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.
SERVICES AGREEMENT
FIXED PRICE BASIS

All in accordance with the following terms and conditions.

1. **SCOPE OF SERVICES:** **COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC. ("CPE-NC")** agrees to perform for the undersigned CLIENT, engineering and consulting ("Services") described in the attached Proposal and/or as follows:

Proposal: Design and Environmental Permitting Services 2022 Beach Nourishment, Town of Southern Shores, North Carolina

2. **FEES, INVOICES AND PAYMENTS:** The Services will be performed for the lump sum fee of **\$437,675.75 (Four hundred thirty-seven thousand, six hundred seventy-five dollars and seventy-five cents).**

Invoices will be submitted by CPE-NC no more frequently than every month, with payment due upon CLIENT'S receipt of invoice. Payment shall be in U.S. Dollars. CLIENT shall be responsible for payments (without deduction or offset from the total invoice amount) of any and all sales, use, value added, gross receipts, franchise and like taxes, tariffs and duties levied against CPE-NC or its employees by any government or taxing authority. A service charge equal to one-half percent (1/2 %) per month, or the maximum rate permitted by law, whichever is less, will be added to all accounts which remain unpaid for more than thirty (30) calendar days beyond the date of the invoice. Should there be any dispute as payments to be made on a percent complete basis to any portion of an invoice, the undisputed portion shall be promptly paid.

3. **CLIENTS COOPERATION:** To assist CPE-NC in performing the Services, CLIENT shall (i) provide CPE-NC with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with CPE-

NC when requested, (iii) permit CPE-NC reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in CPE-NC's activities, and (v) notify and report to all regulatory agencies as required by such agencies.

4. **CONFIDENTIALITY:** In the course of performing Services, to the extent that CLIENT discloses to CPE-NC, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, CPE-NC will exercise reasonable efforts to avoid the disclosure of such information to others. Likewise, to the extent that CPE-NC discloses to CLIENT, business or technical information that CPE-NC clearly marks in writing as confidential or proprietary, CLIENT will exercise reasonable efforts to avoid the disclosure of such information to others.

Nothing herein is meant to prevent nor shall be interpreted as preventing either party from disclosing and/or using any information or data (i) when the information or data are actually known to the receiving party before being obtained or derived from the transmitting party, (ii) when information or data are generally available to the public without the receiving party's fault at any time before or after it is acquired from the transmitting party; (iii) where the information or data are obtained or acquired in good faith at any time by the receiving party from a third party who has the same in good faith and who is not under any obligation to the transmitting party in respect thereto; (iv) where a written release is obtained by the receiving party from the transmitting party; (v) three (3) years from the date of receipt of such information; or (vi) when required by process of law; or by North Carolina Public Records Law; provided, however, upon service of such process, the recipient thereof shall use reasonable efforts to

notify the other party and afford it an opportunity to resist such process.

5. **DELAYS AND CHANGES IN CONDITIONS:** If CPE-NC is delayed or otherwise in any way hindered or impacted at any time in performing the Services by (i) an act, failure to act or neglect of CLIENT or CLIENT's employees or any third parties; (ii) changes in the scope of the work; (iii) unforeseen, differing or changed circumstances or conditions including differing site conditions, acts of force majeure (such as fires, floods, riots, and strikes); (iv) changes in government acts or regulations; (v) delay authorized by CLIENT and agreed to by CPE-NC; or (vi) any other cause beyond the reasonable control of CPE-NC, then 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) CPE-NC shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on CPE-NC's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.
6. **INSURANCE:** CPE-NC is presently protected by Worker's Compensation Insurance as required by applicable law and by General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage. Insurance certificates will be furnished to CLIENT on request. If the CLIENT requires further insurance coverage, CPE-NC will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.
7. **INDEMNITIES:** CPE-NC shall defend, indemnify and hold harmless CLIENT and its officers and employees from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CPE-NC, its borrowed servants and their employer and its subcontractors, and their respective employees and agents acting in the course and scope of their employment. CLIENT shall defend, indemnify and save harmless CPE-NC (including its

borrowed servants and their employers and its officers, and employees) from and against, any loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CLIENT, its officers and employees.

8. **LIMITATIONS OF LIABILITY:**

- a. GENERAL LIMITATION - CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY BY CPE-NC SHALL BE TO REQUIRE CPE-NC TO RE-PERFORM ANY DEFECTIVE SERVICES. CPE-NC'S LIABILITY AND CLIENT'S REMEDIES FOR ALL CAUSES OF ACTION ARISING HEREUNDER WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE, , OR ANY OTHER CAUSE OF ACTION, SHALL NOT EXCEED EXCEPT FOR THE MUTUAL INDEMNIFICATIONS SET FORTH IN SECTION 7 ABOVE. IN THE CUMULATIVE AGGREGATE (INCLUDING ANY INSURANCE PROCEEDS) WITH RESPECT TO ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHATEVER MINIMUM AMOUNT MAY BE REQUIRED BY LAW OR, IF NONE, THE AMOUNT OF COMPENSATION FOR SUCH SERVICES,
- b. CONSEQUENTIAL DAMAGES: FURTHER AND REGARDLESS OF ANY OTHER PROVISION HEREIN, CPE-NC SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DECLINE IN PROPERTY VALUE, REGULATORY AGENCY FINES, LOST PRODUCTION OR LOSS OF USE) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY OCCASIONED BY THE SERVICES OR BY APPLICATION OR USE OF REPORTS OR OTHER WORK PERFORMED HEREUNDER.

9. **GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina.

10. **TERMINATION:** Either party may terminate this Agreement with or without cause upon forty five (45) days' written notice to the other party. Upon such termination, CLIENT shall pay CPE-NC for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay CPE-NC all reasonable costs and expenses incurred by CPE-NC in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

11. **ASSIGNMENT:** Neither CPE-NC nor CLIENT shall assign any right or delegate any duty under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CPE-NC may, upon notice to CLIENT, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement.

12. **MISCELLANEOUS:**

a. **ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by CPE-NC to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by CPE-NC, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated by reference herein. In the event of conflict, the three pages of this Agreement shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing CPE-NC to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the

CLIENT is hereby expressly objected to by CPE-NC and shall not operate to modify the Agreement.

b. **DISPUTES, ATTORNEY FEES** – Any dispute regarding this Agreement or the Services shall be resolved first by exchange of documents by senior management of the parties, who may be assisted by counsel. Any thereafter unresolved disputes shall be litigated in the state whose law governs under Section 9 hereunder. In any litigation, the Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial) to settle such litigation.

c. **WAIVER OF TERMS AND CONDITIONS** - The failure of CPE-NC or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by CPE-NC or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.

d. **NOTICES** – Any notices required hereunder may be sent by orally confirmed US Mail, courier service (e.g. FedEx), orally confirmed telecopy (fax) or orally confirmed email (further confirmed by US Mail) to the addresses set forth below.

e. **SEVERABILITY AND SURVIVAL** - Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement.

Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the parties' intent. The terms and conditions set forth herein shall survive the termination of this Agreement.

CLIENT and CPE-NC agree to the foregoing **(INCLUDING THE LIMITATIONS ON LIABILITY IN SECTIONS herein)** and have caused this Agreement to be executed by their duly authorized representatives as of the date set forth below.

Executed on June _____, 2020

COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.

By (Sign): _____

Print Name: Kenneth Willson

Title: President

Address: 4038 Masonboro Loop Road,

 Wilmington, North Carolina, 28409

Phone: (910) 399-1905

Fax: N/A

E-mail: kwillson@coastalprotectioneng.com

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

By (Sign): _____

Print Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

Coastal Protection Engineering of North Carolina, Inc. (CPE-NC) will provide engineering, environmental, and geotechnical services to the Town of Southern Shores (TOWN) in support of a beach nourishment project scheduled for 2022. The specific services include project management, environmental documentation and permitting, engineering design, borrow area investigations and design, and a baseline survey of the native beach.

The CPE-NC project manager will be responsible for project administration of the Scope of Work with assistance from other senior staff as appropriate. Administration includes coordination with the client, progress meetings and status updates, budget control, scheduling, planning, internal meetings, managing sub-contractors, and other associated management tasks required to complete the project according to the scope in a timely manner. Five (5) in-person project meetings between CPE-NC and the TOWN are anticipated over the anticipated 12 months to complete this Scope of Work. Four (4) of the meetings are assumed to be multi-Town meetings, for which costs will be shared among the Towns. The fifth meeting is intended to be an update to Town Council to provide project updates and to answer any questions from staff or elected officials. In addition to these meetings, CPE-NC will provide the TOWN with a monthly 1-page summary of activities via e-mail. Costs associated with Project Management have been incorporated into each of the project tasks, which are described in detail below.

TASK 1: Environmental Documentation and Permitting

Sub-Task A: Permitting

The construction of the beach nourishment project along portions of the TOWN's shoreline will require permits from the Department of the Army (U.S. Corps of Engineers, or USACE) in order to satisfy the National Environmental Policy Act (NEPA). In addition, a Coastal Area Management Act (CAMA) Major Permit will be required by the North Carolina Division of Coastal Management (NC DCM). Major permits are necessary for activities that require other state or Federal permits, for projects that cover more than 20 acres, or for construction covering more than 60,000 square feet. Applications for CAMA Major Permits are reviewed by ten (10) state and four (4) Federal agencies before a decision is made.

The USACE will issue the Department of the Army (DA) permit, but project planning and formulation during the preparation of the environmental documents will also include consultation with other Federal agencies including, but not necessarily limited to, the U.S. Fish and Wildlife Service (USFWS), National Marine Fisheries Service (NMFS), Bureau of Ocean and Energy Management (BOEM), and the Environmental Protection Agency (EPA). The lead State agency will be the NC DCM who will issue the CAMA Major Permit, but coordination will involve other State agencies including, but not limited to, the North Carolina Division of Marine Fisheries (NC DMF), North Carolina Wildlife Resources Commission (NC WRC), North Carolina Division of Water Resources, (NC DWR), and North Carolina Division of Water Quality (NC DWQ).

Task 1 includes the development and submittal of the complete Department of Army (DA) Individual Permit (IP) application and the CAMA Major Permit application directly to the respective agencies.

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

The CAMA Major Permit application package will include the required MP-1 and MP-2 forms along with plan drawings and adequate additional information that will serve to satisfy the various divisions and agencies who will review the application. This will include information pertaining to borrow area sediment characteristics, threatened and endangered species (marine and terrestrial), essential fish habitat (EFH), and other natural resources. Similar information will be provided in an IP application to the USACE Regulatory Division. Four (4) hard copies and ten (10) CDs of the CAMA Major Permit application, project drawings, and other attachments will be produced and provided to NC DCM for dissemination to the resource agencies for review. Additionally, four (4) hard copies and four (4) CDs of the DA IP application and attachments will be provided to USACE for review and dissemination to federal resource agencies. A \$400 permit fee will be required to submit the CAMA Major Permit application. This cost is not included in the cost of CPE-NC's proposal and will be requested from the TOWN at the time the application is to be submitted.

The permitting process for both the USACE and NC DCM will facilitate the issuance of additional approvals required by federal and state agencies prior to the implementation beach nourishment project. These include:

- NEPA Compliance
- NC DCM Coastal Area Management Act (CAMA) Major Permit
- NC DWR General Water Quality Certification
- NC State Historic Preservation Office's concurrence
- DA Individual Permit in compliance with Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act
- USFWS and NMFS concurrence with Section 7 of the Endangered Species Act (ESA).
- NMFS concurrence with the Magnuson-Stevens Fishery Conservation and Management Act.
- US EPA concurrence with the Clean Water Act (CWA)

CPE-NC proposes participation in up to two (2) additional meetings with the various agencies/stakeholders during the permit application development and review. Additional coordination with resource agencies/stakeholders will be conducted via telephone and email correspondences as needed. The submittal of the CAMA Major Permit application and DA IP application will serve as project deliverables.

CPE-NC will, in good faith, submit complete DA IP and CAMA Major Permit applications; however, the USACE and/or NC DCM may issue a Request for Additional Information (RAI) in response to these permit applications. Should this occur, an additional task order will be submitted to the Town under a separate Scope of Work to address the specific RAI requirements.

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

Sub-Task B: BOEM Lease Request

The use of borrow material obtained from within federal waters on the Outer Continental Shelf (OCS) requires the issuance of a lease agreement from BOEM under the auspices of the Outer Continental Shelf Lands Act (OCSLA). It is expected that material for this proposed project will be obtained from Borrow Area A (one of the two areas included in the lease agreement between Dare County and BOEM issued to support the 2017 nourishment event) or a new yet-to-be-defined borrow area in the OCS. A request for a new non-competitive negotiated lease agreement that will allow for the use of borrow material from within federal waters will be developed and submitted to BOEM for their consideration. Elements included in the lease request may include:

1. A detailed description of the proposed project and how it qualifies under Section 8(k) of the OCSLA
2. A description of the proposed borrow area(s) and placement area(s) including digital maps and ESRI shapefiles and metadata depicting the same, navigation features, geologic sampling locations, and any hard or live-bottom benthic habitat
3. Any geological data (such as sediment sample locations and grain size data, core logs, photographs, *etc.*) and geophysical data (such as sub-bottom profiler, marine magnetometer, sidescan sonar, and bathymetric data, *etc.*) used in borrow area selection and design
4. Any other known uses of the OCS or other infrastructure in the borrow area
5. A description of the environmental evaluations and corresponding documents that have been completed or are being prepared for offshore and onshore components of the project, including any NEPA documentation
6. A target date or range of dates when the resources will be needed
7. A description of the person or government entities undertaking the project
8. A list of any permits, licenses, or authorizations required for the project and their current status
9. Any known potential inconsistencies with state or local statutes, regulations, or ordinances
10. The name, title, telephone number, mailing address and email address of any points of contact for any federal agencies, state, or local governments, and contractor(s) with whom the applicant has contracted or intends to contract
11. A statement explaining who authorized the project, and whether it is federally authorized
12. A statement explaining how the project is to be funded, indicating whether it is federally funded in whole or in part

The submittal of the aforementioned information to BOEM will serve as a project deliverable.

Sub-Task C: Environmental Documentation

Prior to the 2017 nourishment event, the USACE determined that an Environmental Assessment (EA) was required from each applicant associated with the multi-town cooperative project. In addition, a single “Batched” Biological Assessment (BA) and a single Programmatic Essential Fish Habitat (EFH) assessment covering the proposed action of all four towns was required. An interagency meeting was held on April 29, 2020, to determine the necessary environmental documentation that would meet NEPA requirements and support the permitting approach

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

associated with this proposed maintenance project. During that meeting it was determined that a single comprehensive EA covering the actions of all four beach projects could be developed. A new Programmatic EFH would not be required and, rather, the existing Programmatic EFH from the 2017 project could be supplemented with updated information as needed. Finally, it was determined that the proposed project should be covered by the recently revised South Atlantic Regional Biological Opinion (SARBO) and, therefore, a new or supplemental BA would not be necessary. Rather, to ensure compliance with Section 7 of the Endangered Species Act, CPE-NC will coordinate with BOEM and USACE to ensure all relevant information is provided to USFWS and NMFS during their consultation efforts.

CPE-NC does not anticipate the need for field studies to collect any additional environmental data; therefore, this cost proposal does not reflect any additional field studies. In the event such field studies are determined to be necessary, a change order will be requested with a modified Scope of Work. The costs associated with these environmental documents, their scopes provided in greater detail below, have been developed under the assumption that each of the four towns associated with the multi-town cooperative beach nourishment project will cost share the expense equally. It is possible that a resource or regulatory agency will issue a RAI in response to these environmental documents. Should this occur, an additional task order will be submitted to the Town under a separate Scope of Work to address the specific RAI requirements.

A description of the environmental documentation efforts are as follows:

Environmental Assessment (EA):

An EA under NEPA is a concise public document that provides sufficient evidence and analysis for determining whether USACE should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an EIS. It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. The core elements of an EA in 40 CFR § 1508.9:

1. The need for the proposal,
2. Alternatives as required by NEPA § 102(2)(E),
3. The environmental impacts of your proposed action and the alternatives, and
4. The agencies and persons consulted.

CPE-NC will utilize the existing EA developed for the TOWN along with the information drafted in the EAs previously developed for the other towns associated with the 2017 multi-town cooperative project to create a new comprehensive EA that assesses the impacts of the actions proposed by all four towns collectively. This single document will include a description of the specific actions proposed for each of the four towns and will be utilized by the USACE and BOEM to ensure NEPA requirements are met.

A Preliminary Draft EA will be submitted to the USACE Regulatory Division and the BOEM for internal editing. Once all comments from USACE Regulatory have been addressed, a notification

EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT

to the Federal Register will declare the release of the Draft EA to the public. Following a 30-day commenting period, CPE-NC will address all comments received by the USACE. A Final EA will then be developed and released again via an announcement to the Federal Register. Ten (10) printed copies and ten (10) digital copies of the Final EA will be produced and submitted to the USACE and BOEM.

The submittal of the Final EA will serve as a project deliverable.

Supplemental Programmatic Essential Fish Habitat (EFH) Assessment: The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) was enacted by the U.S. Congress to protect marine fish stocks and their habitat, prevent and stop overfishing and minimize bycatch. Congress defined EFH as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The MSFCMA requires that EFH be identified for all fish species federally managed by the Fishery Management Councils (FMCs) and NMFS.

CPE-NC will supplement the Programmatic EFH utilized by NMFS for the 2017 multi-town cooperative beach nourishment project with additional information, newly designated EFH constituents (should they exist), and updated biological data relevant to the project area. Furthermore, should new borrow area(s) be delineated, information on those sites will also be included. The Supplemental Programmatic EFH assessment will be submitted by CPE-NC on behalf of the four towns to the USACE and BOEM. The USACE and BOEM will then enter consultation with NMFS Habitat Conservation Division (HCD) who will review the document to ensure it is comprehensive and complete. Once determined that the document is comprehensive and complete, NMFS HCD is anticipated to issue their concurrence to the USACE fulfilling this aspect of the NEPA requirement.

The submittal of the Final Supplemental Programmatic EFH assessment will serve as a project deliverable.

Biological Assessment (BA): As mentioned above, based on communications with USACE and BOEM, it is presumed that due to the issuance of the 2020 SARBO, this project will not require the submittal of a BA. However, under Section 7 of the ESA, federal agencies must consult with USFWS and NMFS Protected Resource Division (PRD) on activities that may affect ESA-listed species. These federal agency consultations are designed to help federal agencies in fulfilling their duty to ensure that their actions do not jeopardize the continued existence of a species or destroy or adversely modify designated critical habitat. As such, to ensure compliance with Section 7 requirements, CPE-NC will facilitate the consultation process between the USACE and BOEM and the federal resource agencies to ensure that they are provided adequate information regarding the anticipated project-related impacts as they pertain to protected species. CPE-NC will also respond to additional data requests by USFWS and NMFS PRD as needed.

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

TASK 2: Engineering and Design

In 2018 and 2019, CPE-NC conducted a series of studies focused on evaluating storm vulnerability along the Town’s oceanfront shoreline and determining where beach nourishment should be considered. CPE-NC developed a series of project options for consideration by the Town of Southern Shores. In late 2019, the Town requested that CPE-NC also evaluate the amount of “useable” beach in addition to storm vulnerability. In January 2020, CPE-NC provided additional project options for the Town to consider that took into consideration storm vulnerability, useable beach, and measured volumetric change rates. To date, CPE-NC has estimated the average fill density recommended for each of the project options and provided cost estimates.

At present, the Town has yet to decide on a beach nourishment option. Once that decision is made, and in preparation of an anticipated 2022 project, CPE-NC will refine the project design to 1) conduct detailed design analysis focused on finalizing the established beach design, 2) optimize fill distribution along the project area, and 3) update advanced fill quantities based on the latest beach profile data.

Beach Profile Data: CPE-NC has conducted annual monitoring surveys of the Town’s oceanfront beach since 2017. CPE-NC is currently under contract with the Town of Southern Shores to collect beach profile data in June 2020. These data will be used to evaluate the design recommendations described in the following paragraphs.

Beach Fill Performance Evaluation and Modeling. The project design will be based on analyses previously conducted by CPE-NC during the vulnerability and beach management plan development conducted in 2018 and 2019 as well as numerical modeling analysis of future project performance. In the previously conducted engineering assessments conducted by CPE-NC, the storm simulation model SBEACH was used to evaluate vulnerability of existing conditions and to determine the estimated quantity of fill to provide storm damage reduction expected to occur under conditions similar to the design storm (Hurricane Isabel).

It is well known that any beach fill placed along a shoreline will be subject to gradual loss of material due to background erosion, i.e., the observed historic rate of shoreline change in the project area, as well as diffusion losses due to the alongshore spreading of the fill material out of the placement area. This will be the first town wide beach nourishment project for Southern Shores, therefore, diffusion losses from the fill are unknown and will need to be estimated using analytical calculations (i.e. Dean and Yoo, 1992) and advanced numerical modeling.

In order to further evaluate the beach nourishment design alternatives and lateral diffusion losses, we will employ the highly advanced process-based model Delft3D. Delft3D is a world leading 3D modeling suite used to investigate hydrodynamics, sediment transport and morphology (beach and dune erosion) and water quality for coastal environments. The software has proven its capabilities on many coastal engineering projects and coastal research initiatives around the world and has been extensively used in the U.S. to evaluate beach nourishment performance. Our lead numerical modeler, Dr. Lindino Benedet, was one of the first coastal scientists to utilize Delft3D to evaluate

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

beach nourishment performance in the U.S. in the early 2000s. Additional details of the model can be found at: <https://oss.deltares.nl/web/delft3d/about>.

In the spirit of collaboration among the four northern Dare County Towns to achieve project cost savings and efficiencies, CPE-NC will develop a regional wave and flow model that can be utilized by all four of the Towns to evaluate project specific engineering alternatives. Existing datasets of bathymetric and topographic data for the project area, coupled with hydrodynamic measurements from the USACE FRF will be the main sources of data for the numerical modeling. A regional flow and wave grid will be developed for the region extending from the northern end of the Town of Duck to the southern end of the Town of Kill Devil Hills project area. The regional Delft3D WAVES and FLOW will be calibrated to wave measurements conducted at the FRF.

The regional grid will provide boundary conditions to the nested detailed modeling grids that will be used to cover project specific areas of investigation for each of the four Towns. The highest resolution for the TOWN project-specific nested grid will be in the areas in the wave breaking zone and beach within the TOWN nourishment project area. The nested morphology model will include the Town of Southern Shores nourishment segment.

After model calibration and following consultation with the TOWN, the Delft3D model will be used to estimate nourishment volume losses for different nourishment designs. We anticipate simulating up to four (4) beach re-nourishment design configurations aimed at optimizing project performance. These alternatives may include variations in nourishment volume density (cy per length of shoreline) and various taper configurations. These alternatives will be simulated using the Delft3D model for periods of one (1) year and five (5) years. The results of the model will be evaluated in terms of annual volumetric losses from the project area.

The Delft3D numerical model developed to support the nourishment project will be a “working model” for the TOWN to be used as a tool over the long-term to evaluate the project and improve project performance. Specifically, the model may be used to evaluate episodic alongshore losses following the impacts of hurricanes and nor’easters. It could also be used to evaluate the potential for dune overtopping and flooding. Furthermore, considering borrow area investigations included in this proposal and likely necessary over the long-term management of the TOWN’s project, new borrow areas identified directly offshore of the project can be modeled to evaluate borrow area impacts to the project or adjacent shorelines and support borrow area permitting efforts.

Storm Vulnerability Analysis. In addition to the Delft3D modeling, conducted to evaluate long term fill volume losses (lateral losses), we will utilize a cross-shore storm response model such as SBeach or C-Shore to evaluate the ability of various beach fill profile designs to mitigate for the predicted impact of the design storm (Hurricane Isabel).

We will utilize the existing cross-shore model calibration conducted by CPE-NC using FRF data in the vicinity of the project area. Production runs of profile response will be conducting using the most recent profile and offshore bathymetric data to a depth of -40 feet for modeling purposes. The

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

wave boundary conditions for the cross-shore model will be obtained from the calibrated regional Delft3D model.

The Cross-shore model will be used to evaluate the ability of various beach fill profile designs to mitigate for the predicted impact of the design storm. The beach fill designs will include beach fills with variable width berms and elevations, as well as design profiles that include both berms and variable width and elevation of dunes. Each design profile will be evaluated using the same design storm(s) used for the without project condition.

Advanced Fill Volume Analysis. A key component of a beach fill design is an assessment of periodic nourishment requirements needed to maintain the design profile during the interim period between nourishment events. This quantity of fill placed to maintain the design fill during the interim period between nourishment cycles is referred to as advanced fill.

CPE-NC will evaluate volumetric change rates measured since the 2017 beach nourishment project as well as previously reported historic shoreline and volumetric changes. CPE-NC will also use the results of the numerical modeling to better resolve expected diffusion losses. Through these analyses, volumes for advanced fill will be calculated. These values will be incorporated into the Town's beach maintenance plan to better predict future maintenance costs.

Berm Height Elevation Analysis. The initial beach fill design for the projects constructed at Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills in 2017 called for a variable width berm constructed at +6.0 ft. NAVD88. During construction of the projects, the constructed berm was overtopped during several high-water events. Water that overtopped the berm infiltrated the sand as water levels subsided, and eventually, the wave climate re-shaped the beach profile into a more natural configuration.

CPE-NC will evaluate the various beach profile data sets collected since the projects were constructed in order to evaluate whether the +6.0 ft. NAVD88 elevation is the optimal elevation to construct the berm for the TOWNS proposed project. When a beach project is constructed with a berm elevation that is too low, there is a risk that frequent overtopping of the berm can result in ponding of water on the berm, which can impact recreational users of the beach. Furthermore, if a berm is constructed at too high an elevation, increased and more severe scarping can occur as the profile is evolving in response to wave forces. The analysis will focus on optimizing the berm elevation to minimize both the risk of ponding and the risk of scarping.

Engineering Plans. Once CPE-NC has completed the analyses and established a recommended design, a set of engineering plans will be developed. The plans will include detailed plan view and cross section view drawings of both the borrow areas and the proposed beach fill, including allowable dredge cut depths, berm elevation, berm width, and project extent. These plans will be incorporated into the permitting applications discussed under Task 1.

Engineering Report. CPE-NC will prepare an engineering report that documents the process employed to develop the recommended design. The report will include a description of data used, detailed description of the setup and calibration of the Delft3D model and cross shore model,

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

descriptions and results of the various design analyses conducted, and recommended design adaptations.

TASK 3: Borrow Area Investigations and Design

As part of the agreement between CPE-NC and the TOWN executed on May 8, 2020, a sand search desktop study was conducted to evaluate the potential presence/absence of sand resources in state and federal waters offshore the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. Based on the information compiled and evaluated, several areas have been identified for further investigation. Available geophysical and geotechnical data in the region indicates that there is a potential sand deposit south of previously defined Area C and north of Kill Devil Hills.

In order to further evaluate these potential sediment resources, CPE-NC will work with our sub-contractor, Aptim Environmental & Infrastructure, LLC (APTIM), to collect additional geophysical and geotechnical data in the area south of Borrow Area C to Kitty Hawk. Exhibit D includes a map showing the location identified for further investigation under Task 3. The Modern Sand Isopach developed by the U.S. Geological Survey (USGS) and historic seismic data and vibracores provide a baseline for the potential sand deposit. CPE-NC will conduct a two-phase survey plan, with Phase 1 consisting of a reconnaissance-level geophysical and geotechnical survey, followed immediately by a Phase 2 design and cultural resource geophysical and geotechnical survey. The investigations will include data acquisition, data processing and interpretation, borrow area design, compatibility analysis, and production of a final geotechnical report.

During the Phase 1 reconnaissance-level geophysical survey, a single-beam echosounder, sidescan sonar, chirp sub-bottom, and magnetometer systems will be used to collect four (4) days of geophysical data on widely-spaced intervals over the entire investigation area. The data will be reviewed in real time to determine the best potential areas to focus the design level investigation and to select up to 15 reconnaissance-level vibracores to be collected within the investigation area. This determination will primarily be based on correlating the historic geotechnical data to the subsurface geophysical data to identify the thickest, coarsest sand deposit possible that is free of incompatible material and obstructions, and that avoids impacts to protected resources. Once vibracore sites have been selected, the geophysical data will be used to conduct a cultural resource clearance of the proposed vibracore locations. At that point, vibracore collection will commence at the cleared locations. Once the Phase 1 vibracores have been collected, the vibracores will be split to evaluate the quality of the sand deposits. Areas to be investigated during Phase 2 (Design Level) will be delineated based on the preliminary evaluation of the Phase 1 vibracores.

The design-level geophysical survey will consist of collecting sidescan sonar, chirp sub-bottom, and magnetometer data at a 30-meter (m) line spacing across the selected area, together with perpendicular tie lines to satisfy the requirements of both borrow area design considerations, as well as cultural resource identification and avoidance criteria. After the completion of the design-level geophysical survey, field operations will transition to geotechnical operations to collect up to 30 vibracores, with one core for up to 23 acres throughout the design-level investigation area.

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

Vibracores will be collected to sufficient depths such that they extend at least two feet below the maximum dredge depth (up to 20 ft. long). Vibracores will be sited such that the chirp sub-bottom lines can be used to correlate the area between vibracores for a better understanding of the relationship between compatible and non-compatible sediment layers. In addition, full-swath multi-beam echosounder, at a tighter line spacing to achieve full seafloor coverage, will be collected over the initially delineated borrow area (after design-level investigations are complete) to provide full seafloor elevations.

All sidescan sonar and seismic reflection data will be processed using the SonarWiz.MAP software package developed by Chesapeake Technologies Inc. This software package allows for advanced processing, interpretation, and digital mosaic output and can produce georeferenced HTML's viewable in generic web-browser software programs. SonarWiz.MAP also produces digital geographic information for both sub-bottom and sidescan data that are exportable for incorporation into a GIS database. All sidescan sonar, sub-bottom profile, magnetometer, and bathymetric data collected during the course of the preliminary and design level geophysical survey will be processed and interpreted. In addition, the magnetometer data will be reviewed by a qualified archaeologist for cultural resource interpretation.

Upon completion of field operations, all vibracores will be logged by describing sedimentary properties by layer in terms of layer thickness, color, texture (grain size), composition and presence of clay, silt, gravel, or any other identifying features. The vibracores will be photographed in 2.0 ft. intervals. Sediment samples will be extracted from the vibracores at irregular intervals based on distinct stratigraphic layers in the sediment sequence. The vibracores will then be wrapped and archived. CPE-NC will store cores until the time of construction. After this time, cores may either be relinquished to the client or stored for an additional annual cost of \$25 per core.

The sediment samples will be analyzed to determine color and grain size distribution. During sieve analysis, the wet, dry, and washed Munsell colors will be noted. Sieve analysis of the sediment samples will be performed in accordance with the American Society for Testing and Materials (ASTM) Standard Methods Designation D 422-63 for particle size analysis of soils. This method covers the quantitative determination of the distribution of sand size particles. For sediment finer than the No. 230 sieve (4.0 phi) the ASTM Standard Test Method, Designation D 1140-00 will be followed. Weights retained on each sieve will be recorded cumulatively. Grain size results will be entered into the gINT® software program, which computes the mean and median grain size, sorting, and silt/clay percentages for each sample using the moment method.

Samples will also be tested for carbonate content. Carbonate content will be determined by percent weight using the acid leaching methodology described in "Methods of Study of Sediments" (Twenhofel and Tyler, 1941).

A compatibility analysis will be conducted to match the borrow area(s) and beach for optimum project performance and to satisfy the Technical Standards for Beach Fill Projects (15A NCAC 07H.0312). Composite values for mean grain size, percent silt, percent gravel, and percent carbonate will be calculated for the sediment contained in each borrow area. These composite

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

values for the borrow areas will be compared to composite values for the native beach. CPE-NC will determine composite sediment characteristics for the native beach using a combination of samples taken prior to the 2017 beach fill project at the south end of the TOWN and samples to be collected as part of this Scope of Services under Task 4. The results of the analysis of both borrow area and native beach samples will be included along with the results of the compatibility analysis as part of the final geotechnical report.

A preliminary draft geotechnical report will be prepared and submitted to the TOWN in digital format for review and comment. This report will include project results, including bathymetric and isopach (sediment thickness) maps, sub-bottom (seismic) survey profiles, vibrocore logs, vibrocore photographs, granulometric reports, and grain size distribution curves. The TOWN will identify any revisions that may be necessary and provide recommendations for the final draft report. The final draft report will be submitted to state and federal resource agencies. In the event that comments are provided by the resource agencies, CPE-NC will amend the draft report to address those comments. Addressing comments does not include the collection of additional field data. In the event that additional field data is required, CPE-NC will submit a separate proposal for the work.

A final report summarizing the results of the geotechnical investigation will be prepared and submitted to the TOWN as well as to state and federal resource agencies as an addendum to the Final EA.

Task 4 - Native Sampling

In order to obtain a state permit from the NC DCM, sediment characterization of both the native beach and borrow area must be conducted to determine if the sand source is compatible with the beach. The Technical Standards for Beach Fill Projects (15A NCAC 07H.0312) defines the requirements of data collection and the procedure in which compatibility will be determined. Characterization of the offshore Borrow Area A was conducted in 2014, and characterization of additions borrow areas proposed for investigation under Task 3 of this Scope of Services, will be completed in a way that satisfies the State Technical Standards. Task 4 of this Scope of Services includes characterization of Southern Shores native beach in accordance with the state Technical Standards.

The North Carolina Coastal Resources Commission is currently evaluating modification to the State Technical Standards for Beach Fill Projects (15A NCAC 07H.0312)(1)(c and d). CPE-NC had developed the following scope based on the proposed changes to the state standards and our understanding that these will be in effect when the NC DCM permits are reviewed. In that regard, CPE-NC will collect 13 samples along five (5) profiles within the proposed project area to characterize the TOWN's native beach. Specifically, samples will be collected along profiles as baseline stations -50+00, -90+00, -130+00, -170+56, and -197+12. Sample distribution along the profiles will include six (6) samples landward and six (6) samples seaward of the mean low water (MLW) line and 1 additional sample at the MLW line. Mechanical sieve analysis will be conducted on each sample and a composite grain size will be calculated for each profile. A

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

composite sample for each profile will be prepared by mixing equal parts of samples from each sample location along a profile. The composite sample generated for each profile will be analyzed for calcium carbonate content using an acid digestion process.

Results of the characterization of the native beach will be incorporated into the borrow area design and sediment compatibility report described under Task 3.

Task 5: Baseline Survey to Quantify 3-Inch Clasts on Native Beach

Part of the sediment compatibility determination required by the state Standards require the determination of a baseline value for the number of clasts larger than 3-inches in diameter present on the surface of the native beach. Such a survey was not required for the small project constructed in 2017 within the TOWN. The State is currently considering re-adoption of the Standards with several changes including changes to section (1) (h), which deals with quantifying the number of sediments and shell material greater than or equal to 3 inches in diameter. In consultation with NC DCM staff, CPE-NC is under the impression that the proposed 2022 project will have to adhere to the new Standards.

Under Task 5, a survey will be performed of the project area to quantify the number of clasts > 3 inches in diameter present within the survey area. This survey will serve as a baseline and will be duplicated upon completion of the beach nourishment project (under a separate work assignment). This proposal includes the baseline survey to quantify clasts > 3 inches in diameter and does not include any post-construction surveys.

The survey will be conducted along six (6) profiles that include the five (5) that will be sampled under Task 4, and one additional profile along baseline station -10+00, which was sampled in preparation for the 2017 project. At each location, the linear distance between the toe of dune and MLW contour will be determined. Based on this linear distance, an area of approximately 10,000 ft² will be established and centered along the profile. All clasts greater than 3 inches in diameter within this area will be counted. The sum of all clasts counted within the areas surveyed at each of the six (6) profiles will be determined and this number will serve as the baseline value for the Standards.

CAVEATS

CPE-NC proposes to perform the marine sand search to the industry standard of care and will coordinate the investigations with state and federal regulatory agencies as required. While the regulatory agencies may agree with the scope of the investigations, it is possible that beach compatible sand may not be located, regulatory agencies may not approve the sand source(s) that are located, or regulatory agencies may impose a sand placement QA/QC requirement that would be difficult to meet with the identified sand sources. If any of these situations arise, it may be necessary to locate additional beach compatible sand sources at additional cost. CPE-NC will also make reasonable attempts to determine if other entities are exploring the same sand sources or have authorization (permit or BOEM lease) to use the same sand we intend to investigate. Despite these efforts, it is possible that others may claim the sand that we find, and negotiations and/or

**EXHIBIT A:
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

further exploration may be required if that occurs. Lastly, during the investigations, cultural and/or environmental resources may be found to exist in or near the investigated borrow area that would limit or preclude a portion or all of its use.

CPE-NC will attempt to avoid these issues, but there may be unavoidable circumstances that are beyond the control of CPE-NC and may result in the need for additional services. The TOWN herein recognizes the above referenced risks and agrees to work with CPE-NC to complete the work, which may include contracting for additional services for sand investigations as needed.

**EXHIBIT B:
BREAKDOWN OF COSTS
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

Table 1. Breakdown of the total cost of the Design and Environmental Permitting Services for the proposed 2022 Beach Nourishment Project.

TASK	DESCRIPTION	Cost
1	Environmental Documentation and Permitting	\$70,579.50
2	Engineering and Design	\$141,018.75
3	Borrow Area Investigations and Design	\$201,809.50
4	Survey to Quantify 3-Inch Clasts on Native Beach	\$18,310.00
5	Survey to Quantify 3-Inch Clasts on Native Beach	\$5,958.00
TOTAL:		\$437,675.75

Some costs associated with Task 1, Task 2, and Task 3 are being cost shared between the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. In the event that any of the Towns decide not to move forward with the design and permitting of the project, the other 3 Towns' costs would necessarily increase.

Costs associated with Task 4 are associated with the re-surveying of the beach due to proposed changes in the State Technical Standards for Beach Fill Projects. The changes have not yet been adopted by the NC Coastal Resources Commission but are expected to be adopted by the end of the year. In developing this proposal and consulting with NC Division of Coastal Management Staff, we have been led to believe that communities required to re-survey their beaches due to these rule changes may be eligible for reimbursement of the cost to conduct such surveys. It is less clear as to whether communities that are conducting the survey for the first time for their projects will also be reimbursed. However, it may be possible for the Town to be reimbursed \$5,958 for the completion of this work.

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
2022 BEACH NOURISHMENT**

The following items have been identified as deliverables for the completion of this scope of work.

- Monthly progress reports;
- Major CAMA Permit Application;
- Dept. of the Army Permit Application;
- BOEM Lease Request Packet
- Final Environmental Assessment;
- Final Supplemental Essential Fish Habitat Assessment;
- Engineering Report;
- Borrow Area Design Report

A detailed description and an individual schedule for each deliverable are provided below.

Monthly Progress Reports: CPE-NC will provide the Town with a 1 page, summary of the project status via e-mail approximately every 30 days during the course of the anticipated 12-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

Major CAMA Permit Application: The Scope of Work includes the development and submittal of the complete Major CAMA permit application directly to the NC Division of Coastal Management. Barring any unforeseen circumstances, the Major CAMA Permit Application will be provided along with other final deliverables within 6 months following written authorization to proceed.

Dept. of the Army Permit Application: The Scope of Work includes the development and submittal of the Dept. of the Army Individual Permit Application directly to the U.S. Army Corps of Engineers. Barring any unforeseen circumstances, the Dept. of the Army Individual Permit Application will be provided along with other final deliverables within 6 months following written authorization to proceed.

BOEM Lease Request Packet: The Scope of Work includes the development and submittal of a request to BOEM for a new non-competitive negotiated lease agreement that will allow for the use of borrow material from within federal waters. Barring any unforeseen circumstances, the BOEM Lease Request Packet will be provided within 6 months following written authorization to proceed.

Final Environmental Assessment (EA): An EA under NEPA is a concise public document that provides sufficient evidence and analysis for determining whether the U. S. Army Corps of Engineers should issue a Finding of No Significant Environmental Impact (FONSI) or prepare an

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
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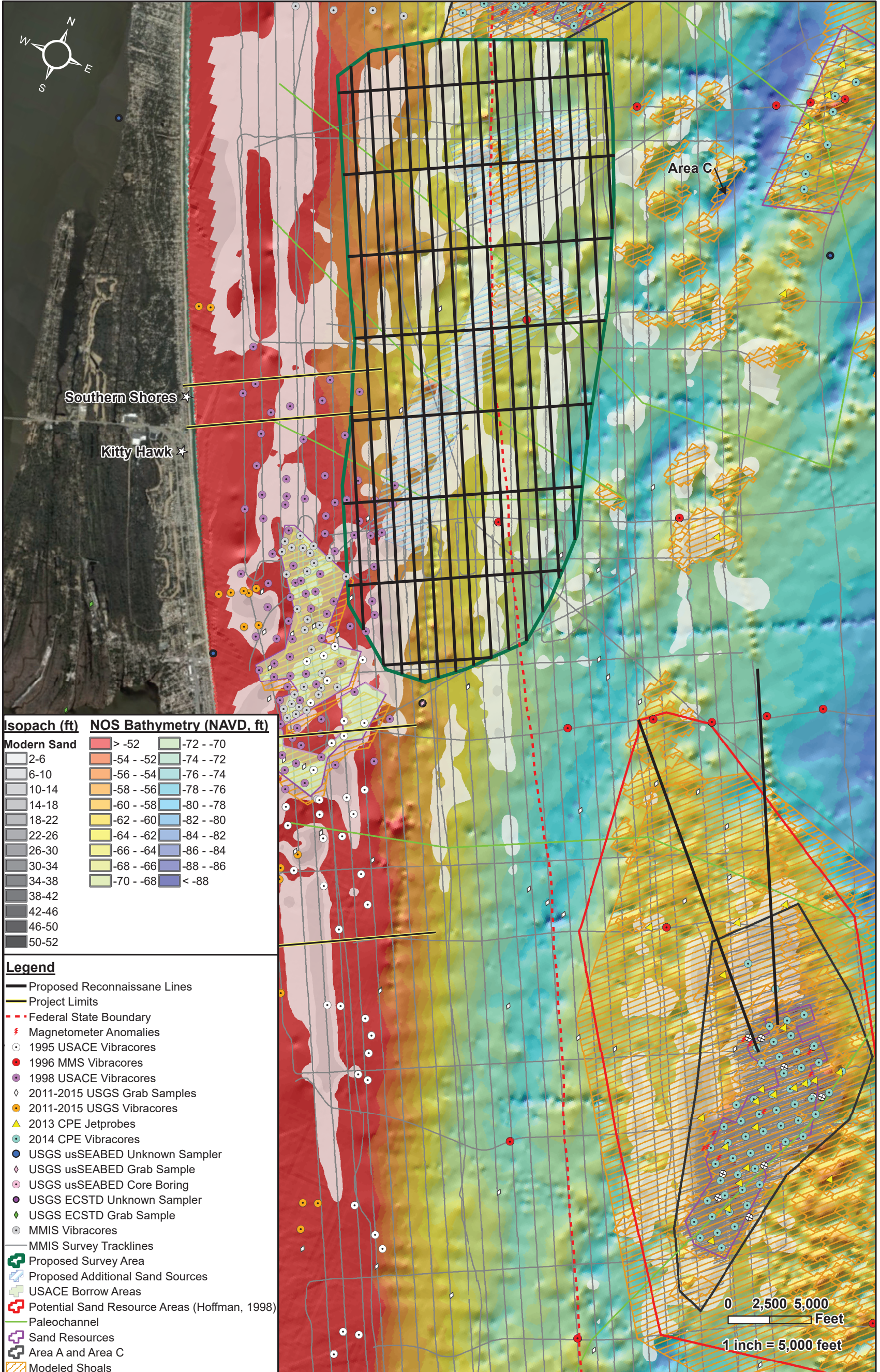
Environmental Impact Statement (EIS). It is designed to help public officials make decisions that are based on an understanding of the human and physical environmental consequences of the proposed project and take actions, in the location and design of the project, that protect, restore and enhance the environment. Barring any unforeseen circumstances, the EA will be provided along with other final deliverables within 6 months following written authorization to proceed.

Final Essential Fish Habitat (EFH) Assessment: The EFH assessment is utilized by the National Marine Fisheries Service (NMFS) to ensure that the project will identify and protect important marine and estuarine fish habitat in accordance to the amended Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), which was enacted by the U.S. Congress to protect marine fish stocks and their habitat, prevent and stop overfishing and minimize bycatch. Congress defines Essential Fish Habitat (EFH) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The MSFCMA requires that EFH be identified for all fish species federally managed by the Fishery Management Councils (FMCs) and the NMFS. This document will evaluate the potential impacts to the various essential fish habitats within the designated Permit Area. Barring any unforeseen circumstances, the EFH will be provided along with other final deliverables within 6 months following written authorization to proceed.

Engineering Report: An engineering report will be provided to the Town as an appendix to the Environmental documentation developed to support a permit decision. The engineering report will also serve as a record for the Town of the engineering analysis that were conducted to arrive at the recommended design. This document will be requested in the event the Town were to request FEMA funding for damage repairs. The Engineering Report shall include the results of the beach fill performance modeling, the advanced fill evaluation, the berm height analysis, record of plan formulation, and final description of the proposed beach design. Barring any unforeseen circumstances, the Engineering Report will be provided within 6 months following written authorization to proceed.

Borrow Area Design Report: A borrow area design report will be provided to the Town as an appendix to the Environmental documentation developed to support a permit decision. This report will include project results, including bathymetric and isopach (sediment thickness) maps, a description of the proposed borrow area sediments, maps showing the limits of the borrow areas, results of the sediment compatibility analysis and volume contained within the designed borrow area. The report will also include the following as appendices: sub-bottom (seismic) survey profiles, vibrocore logs, vibrocore photographs, granulometric reports and grain size distribution curves for borrow area and native beach sediment samples. Barring any unforeseen circumstances, the borrow area design report will be provided within 9 months following written authorization to proceed.

EXHIBIT D:
 MAP OF INVESTIGATION AREA FOR SAND RESOURCE INVESTIGATION
 TOWN OF SOUTHERN SHORES, NORTH CAROLINA
 DESIGN AND ENVIRONMENTAL PERMITTING SERVICES
 2022 BEACH NOURISHMENT





Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

Phone 252-261-2394 / Fax 252-255-0876

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www.southernshores-nc.gov

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA PROVIDING NOTICE OF TRAFFIC CONTROL ON CERTAIN STREETS AND SPECIFIC DAYS DURING THE SUMMER OF 2020

(Resolution #2020-07-01)

WHEREAS, the Town of Southern Shores (the “Town”) may regulate and enact ordinances to protect the health, safety, and welfare of its citizens under North Carolina General Statutes § 160A-174; and

WHEREAS, the Town has general authority and control over and has the power to regulate the use of all public streets, sidewalks, alleys, bridges and other ways of passage within its corporate limits and may enact ordinances regulating the same under North Carolina General Statutes § 160A-296 within the bounds of the North Carolina and United States Constitutions; and

WHEREAS, the popularity of the Outer Banks, including Dare County and its towns, Currituck County and the Town of Southern Shores, continues to grow, resulting in an ever increasing number of residents and visitors to the Outer Banks, particularly the northern Outer Banks; and

WHEREAS, the volume of traffic traveling through the Town increases greatly on Saturdays and Sundays during the summer vacation season beginning approximately on Memorial Day and ending approximately on Labor Day (the “Summer Season”) and the traffic traveling through Town increases each Summer Season; and

WHEREAS, a significant amount of the increased traffic travels from North Carolina Highway 158 (“NC158”) along the southern border of the Town northward along residential streets, including South Dogwood Trail and Juniper Trail, to North Carolina Highway 12 (“NC12”) to reach the northern border of the Town; and

WHEREAS, the Town’s residential streets are all classified as local streets under the North Carolina Department of Transportation (“NCDOT”) and Federal Highway Administration (“FHWA”) Highway Functional Classification. As such, they are not intended for use in long distance travel, except at the origin or destination end of the trip, due to their provision of direct access to abutting land and design to discourage through traffic; and

WHEREAS, the residential streets used for travel through the Town between the northern and southern borders of the Town were not constructed in such a manner so as to be able to safely and efficiently support the increased traffic volume due to their

narrow widths, low speed limits and the use of such streets by the citizens and visitors of the Town and their children for recreational purposes such as walking and bicycling; and

WHEREAS, the residential streets used for travel through the Town between the northern and southern borders of the Town were not constructed to handle the increasing amount of traffic and that such traffic will cause early deterioration of the roadways and increased maintenance costs to the Town; and

WHEREAS, the volume of traffic causes extreme congestion and delays for travel upon the residential roads within the Town such that homeowners are often unable to leave their driveways and police, fire and emergency response ability is often limited. Similarly, public works and other services of the Town are limited by the congestion; and

WHEREAS, in addition to congestion and delays, the increased traffic on residential streets often results in violations of set speed limits, running of stop signs and other traffic violations which create dangerous conditions for those drivers and their passengers as well as other users of the roadways including, but not limited to, pedestrians, cyclists and other vehicle drivers and passengers; and

WHEREAS, a substantial amount of the increased traffic upon residential streets within the Town is driven by mapping and traffic direction applications which use GPS, mapping data and real time traffic data to direct travelers upon the residential streets in an attempt to increase traffic flow for the application's individual users. In doing so, the increased traffic creates the public safety, navigational and infrastructure issues stated above and typically does not result in substantial benefits to the individual application user's travel time; and

WHEREAS, the purpose of the future Mid-Currituck Bridge is to substantially improve traffic flow and reduce travel times to the northern Outer Banks for persons traveling from the Currituck County mainland; to reduce the amount of traffic coming through the Towns of Southern Shores and Duck to reach the northern Outer Banks; and to substantially reduce the hurricane and disaster evacuation time for citizens of and visitors to the northern Outer Banks; and

WHEREAS, the future of the Mid-Currituck Bridge remains uncertain and under the current best case scenarios will not begin to alleviate the substantial traffic through the Town for multiple future Summer Seasons; and

WHEREAS, NC12 and NC158 are the only roadways not classified as local roads within the Town and as such NC12 remains the most suitable means of motor vehicle travel through the Town from NC158 to the northern border of the Town and vice versa; and

WHEREAS, the Town has previously requested that the NCDOT prohibit left hand turns from NC158 onto South Dogwood Drive ("No Left Turn Event"), NCDOT allowed for testing of such a restriction, and such a restriction may have reduced the amount of traffic using residential streets within the Town during Summer Season weekends when it was tested by directing such traffic to NC12; and

WHEREAS, the Town desires for the NCDOT to have No Left Turn Events during certain weekends this Summer Season; and

WHEREAS, the Town desires to ensure that surrounding jurisdictions are aware of any restrictions placed upon traffic through the Town by the upcoming No Left Turn Events and that mapping and traffic direction application vendors are aware of the upcoming No Left Turn Events so as to direct their users to use NC158 and NC12 to travel through the Town on all weekends during the current and future Summer Seasons, in particular those weekends noted herein as being No Left Turn Events; and

WHEREAS, regulation and limitation of the traffic traveling between the northern border of the Town and NC158 by the No Left Turn Events will increase the safety of the citizens and visitors of the Town and decrease the deterioration of the residential streets commonly used for travel through the Town; and

WHEREAS, it is in the interest of the public's health, safety, morals and general welfare that the Town of Southern Shores execute upon a plan to provide for No Left Turn Events on certain dates during the 2020 Summer Season and provide notice of the change in traffic pattern to third parties and appropriate authorities.

NOW, THEREFORE BE IT RESOLVED, as follows:

1. The Town has approved implementation of No Left Turn Events for eastbound traffic at the intersection of U.S. Highway 158 and South Dogwood Trail on the following dates from 11:00 a.m. to 8:00 p.m.:
 - a. June 20th,
 - b. June 21st,
 - c. June 27th (cancelled),
 - d. June 28th (cancelled),
 - e. July 4th,
 - f. July 5th,
 - g. July 25th,
 - h. July 26th,
 - i. August 1st, and
 - j. August 2nd
2. All users of Town streets, neighboring jurisdictions and mapping and traffic application providers are hereby provided notice of the above referenced No Left Turn Events so that they may act accordingly.
3. The Town may change the dates and/or times of the remaining scheduled No Left Turn Events and all users of Town streets, neighboring jurisdictions and mapping and traffic application providers should monitor the Town's website for additional information.

Adopted this 7th day of July, 2020.

Thomas S Bennett
Bennett, Mayor

Attest:

Sheila Kane
Sheila Kane, Town Clerk



Date adopted: 7/7/2020

Motion to adopt by Councilmember: Neal

Motion seconded by Councilmember: Howard

Vote: 5 AYES 0 NAYS



Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949

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Resolution 2020-07-02

RESOLUTION APPOINTING A DEPUTY FINANCE OFFICER

WHEREAS, the Town Council of the Town of Southern Shores has, pursuant to North Carolina General Statute (NCGS) §159-24 of *The Local Government Budget and Fiscal Control Act*, appointed a Finance Officer who currently serves the Town with the powers and duties enumerated in NCGS §159-25; and

WHEREAS, NCGS §159-25 (b) states: "*Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer and countersigned by another official of the local government or public authority designated for this purpose by the governing board.*"; and

WHEREAS, it has been recommended that the Council properly designate and duly appoint a Deputy Finance Officer to serve the Town with the power and duty enumerated in NCGS §159-25 (b) when necessary and in the absence of the Finance Officer.

NOW, THEREFORE BE IT RESOLVED that Town Manager Cliff Ogburn is hereby designated and appointed Deputy Finance Officer to serve the Town with the power and duty enumerated in NCGS §159-25 (b) when necessary and in the absence of the Finance Officer.

This the 7th day of July 2020.



Thomas G. Bennett, Mayor

Attest:

Sheila Kane, Town Clerk