



Town of Southern Shores

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

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

www.southernshores-nc.gov

REGULAR COUNCIL MEETING- APRIL 13, 2021-5:30 P.M.-PITTS CENTER

1. Opening
 - A. Call Meeting to Order
 - B. Pledge of Allegiance
 - C. Moment of Silence
 - D. Amendments to / Approval of Agenda
 - E. Consent Agenda **TAB 1**
 1. Council Meeting Minutes - March 2, 2021 (emailed to council)
 2. Budget Amendment #22-SERDC Recycling Grant
 3. Budget Amendment#23-SSVFD Radios
 4. Child Abuse Prevention Month, April 2021 Proclamation 2021-04-01
 5. Dominion Power-Right of Way Easement (Phase II)
 6. Emergency Sick leave policy- (amendment to policy to include three new qualifying reasons)
2. Presentation
 - A. Employee Recognition-Presentation by Police Chief David Kole
3. Staff Reports
 - A. Deputy Town Manager/Planning Director
 - B. Police Chief Monthly & Annual Police Report
 - C. Fire Chief, Southern Shores Volunteer Fire Department
 - D. Town Manager's Report
 - E. Town Attorney's Report
4. General Public Comment (Limit: 3 minutes per speaker.)
5. Old Business
6. New Business
 - A. Beach Nourishment Project 2022 **TAB 2**
 1. Exclusion Request-MSD
 2. Ordinance 2021-04-01-MSD First Vote
 - B. CPE-NC -Ken Willson **TAB 3**
 1. Contract
 2. Budget Amendment #24
 - C. Planning Board Appointments **TAB 4**
 - D. Town Code Amendments- TCA-21-02, a Town Code Amendment application submitted by the Town of Southern Shores to amend the Southern Shores Town Code by amending Chapter 4, Animals; Chapter 18, Law Enforcement; and Chapter 22, Offenses and Miscellaneous Provisions as part of the Town Code Update project. **TAB 5**
7. General Public Comment (Limit: 3 minutes per speaker.)
8. Council Business /Comments
9. Adjourn



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 1. E 2

Item Title: Southeast Regional Development Council Grant – Budget Amendment

Item Summary: SERDC has awarded a cash grant to the Town in the amount \$1,700.00 for educational campaign materials (refrigerator magnets). Grant funds paid for education and outreach are based on the total number of households served by Southern Shores' curbside recycling program.

The Town will work closely with SERDC to develop and implement an effective education and outreach campaign and to maximize the educational efforts and materials developed during this campaign. Recycling tonnage will be measured before and after the educational materials are distributed in order to measure the impact of the outreach.

Requested Action: Approval of budget amendment as part of approval of consent agenda.

Attachments: Budget Amendment #22

**Town of Southern Shores
Budget Amendment Number # 22**

Sanitation Increases			Sanitation Decreases		
Account Number	Description	Amount	Account Number	Description	Amount
40-39936	Revenues SERDC Grant	\$1,450			
52-50101	Expenditures Printing	\$1,450			

Explanation: Grant money to cover cost of fridge magnets for recycling

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 1.E 3

Item Title: Southern Shores Volunteer Fire Department Radio – Budget Amendment

Item Summary: A majority of the current fire department radios were purchased over 11 years ago. They are Motorola radios (XTS-5000) and are not capable of working on the Dare County communications system once the system upgrade is completed in 2025, they do not meet the P -25 compliance requirement for the new system. The radio replacement project will ensure that all radios which will be rendered inoperable with the P25 change are replaced prior to the new system being activated in Dare County. This involves replacing 13 portable radios which will place one radio in each riding position on front line structural, rescue, rehab, and chief officers' units. The department has already purchased 19 of the 32 total portable radios that the project requires. Under the current system Southern Shores Fire Department had one portable radio per riding position, giving each individual on an apparatus the ability to contact the incident commander, other units on scene, and the communications center. This was done to follow NFPA 1710 for structural firefighting, and National Institute for Occupational Safety and Health recommendations for personnel safety. A total of 6 mobile radios will also be changed to replace the soon to be obsolete radios. The breakdown of the radio disbursement includes 3 structural fire suppression apparatus, 1 aerial apparatus, 2 Command vehicles and 1 rehab unit. The other Fire Department vehicles are already equipped with the P25 radios. This purchase will improve the department's interoperability and make it easier and safer to work with all our mutual aid partners in Dare and Currituck Counties.

The total amount of this purchase is \$152,000. At its October 2020 Workshop meeting staff proposed to bring a budget amendment before the Council in the amount of \$51,000 this fiscal year and budget the remaining amount over the next two annual budgets.

Due to the fact that a full year of debt service for the Fire Department was budget this year and only three payment were required, staff is recommending that the 4th

payment in the amount of \$75,000 be transferred at this time. \$25,000 will be budgeted in FY 22 and \$52,000 will be budget in FY 23 for this expenditure.

The SSVFD staff has applied for an Assistance to Firefighters Grant through FEMA but has not hear on the status of the application at this time. An application will be resubmitted during the next grant cycle if this application is not successful. Any grant award amount will reduce the Town's contribution.

Staff Recommendation: Staff recommends Council approval.

Requested Action: Approve with approval of the consent agenda.

Attachments: Budget Amendment #23

**Town of Southern Shores
Budget Amendment Number # 23**

**Fire Service
Increases**

**Fire Service
Decreases**

Account Number	Description	Amount	Account Number	Description	Amount
54-50410	Radio Appropriation	\$75,000	54-50404	Construction Debt Service	\$75,000

Explanation: 3 out of 4 debt payments will be due this fiscal year. The money for the 4th debt payment will be paid to SSVFD for future radio appropriations.

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date



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Child Abuse Prevention Month, April 2021 Proclamation

PROCLAMATION #2021-04-01

Whereas, children are vital to our state's future success, prosperity and quality of life as well as being our most vulnerable assets;

Whereas, all children deserve to have safe, stable, nurturing homes and communities they need to foster their healthy growth and development;

Whereas, child abuse and neglect is a community responsibility affecting both the current and future quality of life of a community;

Whereas, communities that provide parents with the social support, knowledge of parenting and child development and resources they need to cope with stress and nurture their children ensure all children grow to their full potential;

Whereas, effective child abuse prevention strategies succeed because of partnerships created among citizens, human service agencies, schools, faith communities, health care providers, civic organizations, law enforcement agencies, and the business community;

Therefore, we, the Town of Southern Shores do hereby proclaim

April as Child Abuse Prevention Month and call upon all citizens, community agencies, faith groups, medical facilities, elected leaders and businesses to increase their participation in our efforts to support families, thereby preventing child abuse and strengthening the communities in which we live.

Tom Bennett, Mayor
Town of Southern Shores

Date



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 1.E5

Item Title: Dominion Energy Right of Way Agreement - (WR# 10382040)

Item Summary: Dominion Energy has taken a two phased approach in converting overhead power lines to underground service in a large area near and around Hillcrest/Hickory/Dogwood. The project converts overhead service to underground and removes overhead primary lines out of the canals. Phase 1 is complete, and the Town was asked to sign several easements at that time to assist with the project. Similarly, with Phase 2 there are a few easements on private property that Dominion has not been able to secure and is requesting to use the Town's right of way. Dominion prefers to construct these projects through private easements to avoid any conflict at their expense because of their use of the Town's right of way.

With heavy tree growth and the location of overhead lines, this underground service will provide safe and reliable service during storms.

With the work associated with Phase 1 the town attorney requested, and Dominion Energy agreed to, Exhibit A language which is also included in this easement. Dominion is ready to start this project as soon as possible.

Staff Recommendation: Staff recommends Council approval.

Requested Action: Approve a motion to authorize the Mayor to sign the attached Dominion Energy Right of Way Agreement

Attachments: Dominion Energy Right of Way Agreement



Right of Way Agreement

THIS RIGHT OF WAY AGREEMENT, is made and entered into this _____ day of _____, _____, by and between

TOWN OF SOUTHERN SHORES,
A North Carolina Municipal Corporation

("GRANTOR") and VIRGINIA ELECTRIC AND POWER COMPANY, a Virginia public service corporation, doing business in North Carolina as Dominion Energy North Carolina, with its principal office in Richmond, Virginia ("GRANTEE").

WITNESSETH:

1. That for and in consideration of the sum of One Dollar (\$1.00) cash in hand paid and other good and valuable consideration, the receipt and sufficiency whereof is hereby acknowledged, **GRANTOR** grants and conveys unto **GRANTEE**, its successors and assigns, the perpetual right, privilege and non-exclusive easement over, under, through, upon and across the property described herein, for the purpose of transmitting and distributing electric power by one or more circuits; for its own internal telephone and other internal communication purposes directly related to or incidental to the generation, distribution, and transmission of electricity, including the wires and facilities of any other public service company in aid of or to effectuate such internal telephone or other internal communication purposes; and for lighting purposes; including but not limited to the right:

Initials: _____

This Document Prepared by Virginia Electric and Power Company and should be returned to:
Dominion Energy North Carolina, 304 NC Highway 11N, Ahoskie, NC 27910.

(Page 1 of 7 Pages)
NCROW No(s). 68-20-0041 , 68-20-0047

Right of Way Agreement

6. **GRANTEE** shall repair damage to roads, fences, or other improvements (a) inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and (b) outside the boundaries of the easement and shall repair or pay **GRANTOR**, at **GRANTEE's** option, for other damage done to **GRANTOR's** property inside the boundaries of the easement (subject, however, to **GRANTEE's** rights set forth in Paragraph 4 of this Right of Way Agreement) and outside the boundaries of the easement caused by **GRANTEE** in the process of the construction, inspection, and maintenance of **GRANTEE's** facilities, or in the exercise of its right of ingress and egress; provided **GRANTOR** gives written notice thereof to **GRANTEE** within sixty (60) days after such damage occurs.

7. **GRANTOR**, its successors and assigns, may use the easement for any reasonable purpose not inconsistent with the rights hereby granted, provided such use does not interfere with **GRANTEE's** exercise of any of its rights hereunder. **GRANTOR** shall not have the right to construct any building, structure, or other above ground obstruction on the easement; provided, however, **GRANTOR** may construct on the easement fences, landscaping (subject, however, to **GRANTEE's** rights in Paragraph 4 of this Right of Way Agreement), paving, sidewalks, curbing, gutters, street signs, and below ground obstructions as long as said fences, landscaping, paving, sidewalks, curbing, gutters, street signs, and below ground obstructions do not interfere with **GRANTEE's** exercise of any of its rights granted hereunder. In the event such use does interfere with **GRANTEE's** exercise of any of its rights granted hereunder, **GRANTEE** may, in its reasonable discretion, relocate such of its facilities as may be practicable to a new site designated by **GRANTOR** and acceptable to **GRANTEE**. In the event any such facilities are so relocated, **GRANTOR** shall reimburse **GRANTEE** for the cost thereof and convey to **GRANTEE** an equivalent easement at the new site.

8. **GRANTEE** shall have the right to assign or transfer, without limitation, to any public service company all or any part of the perpetual right, privilege and easement granted herein.

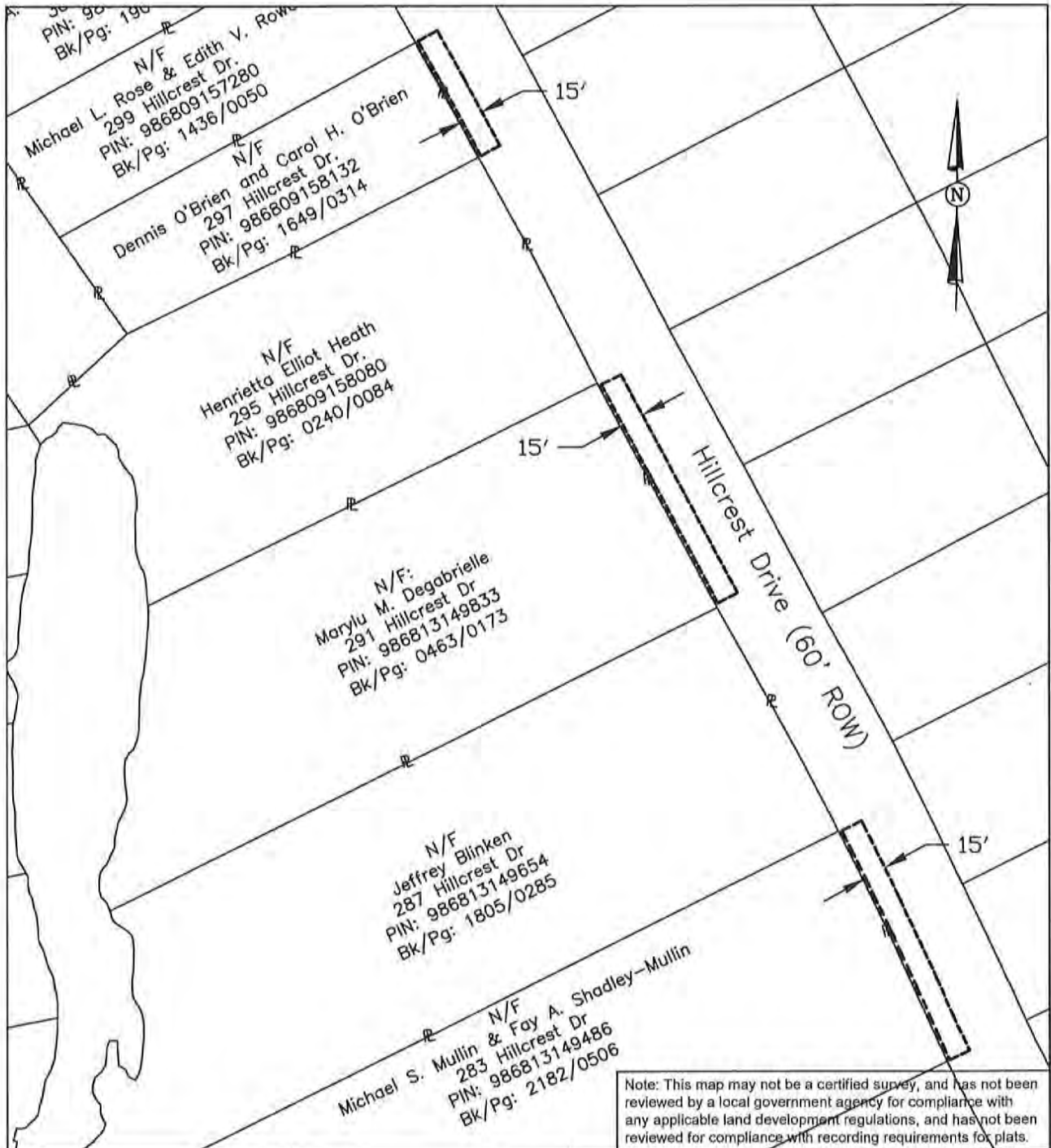
9. If there is an Exhibit A attached hereto, then the easement granted hereby shall additionally be subject to all terms and conditions contained therein provided said Exhibit A is executed by **GRANTOR** contemporaneously herewith and is recorded with and as a part of this Right of Way Agreement.

10. Whenever the context of this Right of Way Agreement so requires, the singular number shall mean the plural and the plural the singular.

Initials: _____

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NCROW No(s). 68-20-0041 , 68-20-0047



LEGEND - - - - Location of Boundary Lines of Right-of-Way 15' in Width. = = = Indicates Property Line is Right-of-Way Boundary 15' in Width.	District	Scale	PLAT TO ACCOMPANY RIGHT-OF-WAY AGREEMENT VIRGINIA ELECTRIC AND POWER COMPANY doing business as Dominion Energy North Carolina Page 5 of 7
	Outer Banks District	NTS	
	District-Township-Borough County-City State		
	South Shores Dare County NC		
	Office	Plat Number	
	Kitty Hawk	68-20-0041	
	Estimate Number	Grid Number	
	10382040	Q1830 F12700	

DATE 7/21/2020

BY Kate Blanton

OWNER INITIALS _____



Right of Way Agreement

EXHIBIT A

This Exhibit A shall be attached to and made a part of the RIGHT OF WAY AGREEMENT executed by the undersigned **GRANTOR**(s) on the _____ day of _____, _____. The following terms and conditions are incorporated therein:

It is the intention of both parties hereto that GRANTOR shall maintain the ability to fulfill its statutory and legal responsibilities regarding the provision of public streets and the maintenance thereof.

Pursuant to that end, this Right of Way Agreement is for the conveyance of underground electrical rights only. GRANTEE shall have the right to lay, construct, operate and maintain said underground facilities, including underground conduits and cables, and all of the following underground equipment and facilities: wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, handholes, connections boxes and other accessories and appurtenances necessary for the distribution and transmission of electricity.

GRANTEE'S right to lay, construct, operate and maintain underground facilities within the designated easement shall not interfere with use of the public street by the GRANTOR or by the general public.

GRANTOR reserves the right to maintain and, if necessary, replace the street paving and street improvements.

(SEAL)
Tom Bennett, Mayor
Town of Southern Shores
(GRANTOR)

(SEAL)
Shaun Reilly, Authorized Representative
Dominion Energy North Carolina
(GRANTEE)

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NCROW No(s). 68-20-0041 , 68-20-0047



Agenda Item Summary Sheet

Date: April 13, 2021

Item #: E. 6

Item Title: Amendment to the Emergency Sick Leave Policy

Item Summary: An amendment to the Emergency Paid Sick Leave (EPSL) and Emergency Family Medical Leave Act (EFMLA) Policy as adopted by Council on 4/7/20 is necessary in order to include three new qualifying reasons for coverage. At the 1/5/21 Town Council Meeting, the Council approved the voluntary continuation of the ESPL and EFMLA through the end of the COVID-19 pandemic. On March 11, 2021, The American Rescue Plan Act of 2021 (ARPA) was signed into law. The adoption of the ARPA adds 3 additional qualifying reasons for use of the ESPL by an employee. The ARPA does not create any new allotment for paid EFML which remains capped at 12 weeks. However, the qualifying reasons for paid family or medical leave will include any of the 8 qualifying reasons listed in the policy for ESPL. Previously, EFML was only mandated for five reasons listed below. Now, however, EFML should be available to any employee who meets any of the 8 circumstances listed below. The ARPA also changes some aspects of the EFMLA as mandated by the FFCRA for this new voluntary leave program. The first two weeks of family leave can be paid, and the tax credits available for such leave have been increased from \$10,000.00 to \$12,000.00 annually per employee.

Guidance from the Town's Personnel Attorney, John Leidy is provided here:

The American Rescue Plan Act of 2021 (ARPA) was signed into law earlier this month and becomes effective March 31, 2021. The ARPA does not mandate any new or additional leave be given to any employee. The Emergency Paid Sick Leave ("EPSL") and Emergency Family Medical Leave Act ("EFMLA") mandated by the Families First Coronavirus Relief Act ("FFCRA") have not been extended as mandates beyond December 31, 2020. However, the ARPA provides certain tax benefits for employers that voluntarily decide to continue providing such leave, as outlined below.

Q - "If the leave benefits are optional, why should we provide them?"

A - Under the ARPA, most employers that have fewer than 500 employees are entitled to an employment tax credit for 100% of wages paid as qualified paid sick leave to employees if the leave was taken between April 1 and September 30, 2021. The credit is limited to the value of 80 hours of wages.

The ARPA also provides an additional tax credit for 100% of wages paid as qualified EFMLA taken during the same period. This credit is limited to either \$200/day per employee or \$12,000.00 in the aggregate for each employee annually.

(Note: any EPSL or EFML that was provided between January 1 and March 31, 2021, was also optional, i.e. not mandated by Federal law, and does not qualify for this payroll tax credit.)

Previously these full payroll tax benefits were only available to private businesses. ARPA now extends credits based on the total amount paid to an employee for leave (not just a credit for the Social Security Disability Insurance paid by the employer for EPSL or EFML under the FFCRA) to local government employers, like counties, municipalities, public schools, community colleges, etc.

Q - "Tax credits for providing our employees leave sounds good. What do we have to do?"

A - You will need to tweak your EPSL and EFMLA policies or program a bit. The ARPA credits are available for employers who allow leave for an employee who:

1. Is subject to a Federal, State or local quarantine or isolation order related to COVID-19.
2. Has been advised by a health care provider to self-quarantine related to COVID-19.
3. Is experiencing COVID-19 symptoms and is seeking a medical diagnosis.
4. Is caring for an individual subject to an order described in 1 above or in self-quarantine as described in 2 above; or
5. Is unable to work because of a need to take leave to care for a child whose school or place of care is closed (or whose childcare provider is unavailable) for reasons related to COVID-19.

The ARPA adds the following additional qualifying reasons for an employee who is:

6. Obtaining a COVID-19 vaccination.
7. Recovering from an injury, disability, illness, or condition related to a COVID-19 vaccination; or

8. Seeking or awaiting results of COVID-19 testing or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

The three new reasons added (6, 7 and 8 above) should be added to any existing EPSL policy that you have adopted. It is important to expand the circumstances under which leave is available to include those three new circumstances in order to be eligible for the tax credits for this voluntary leave program.

Q - "Should these leave benefits be provided to employees who previously took leave? Should we limit the amount of leave available to them based on their prior leave?"

A - The ARPA requires an employer to reload the allotment of 10 days (80 hours) per employee for qualifying paid sick leave. Thus, even if an employee has already taken at least 80 hours of EPSL as mandated under the FFCRA or has taken such leave under your voluntary extension of those leave benefits following the expiration of the FFCRA through March 31, 2021, the employer should "re-set" the employee's paid sick leave allotment effective April 1, 2021. This may allow you to seek a tax credit for an additional 80 hours of paid sick leave.

Q - "Can we limit the leave benefits to certain categories of employees?"

A - The ARPA makes clear that an employer may not discriminate in terms of employee eligibility for paid leave. Thus, an employer cannot qualify for these tax credits if its paid leave program discriminates in favor of certain highly compensated employees, full-time employees, or employees on the basis of seniority or tenure. Thus, the voluntary extension of leave benefits must be broad-based and available to most categories of employees.

Q - "What are my next steps?"

A - You should decide now whether you wish to provide qualifying paid sick leave and family leave to employees, as it should become effective by April 1, 2021, in order to qualify for the potential tax benefits. There is an argument that you must keep the program intact through September 30, 2021, although there are other ways of interpreting the law on this point. It is also unclear whether you can enact a voluntary leave program that will generate the leave benefits available under the ARPA if you did not voluntarily extend the leave program from January 1 through March 31, 2021. However, this is worth considering.

You should also revise your Emergency Sick Leave and Emergency Family Medical Leave policies to reflect the new circumstances under which leave is available.

Staff Recommendation: Staff recommends the adoption of the amended EPSL and EFML policy (retroactive effective date of April 1, 2021) to include the 3 additional qualifying reasons which are:

- Obtaining a COVID-19 vaccination.
- Recovering from an injury, disability, illness, or condition related to a COVID-19 vaccination; or
- Seeking or awaiting results of COVID-19 testing or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

Requested Action: A motion to approve the addition of the 3 additional qualifying reasons as listed above to the Town's Emergency Paid Sick Leave Policy (retroactive effective date of April 1, 2021).



Town of Southern Shores

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

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

info@southernshores-nc.gov

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The Town provides eligible employees with emergency paid sick leave and emergency FMLA leave under certain conditions as required by the Families First Coronavirus Relief Act. These are two separate forms of leave that in some cases are governed by different rules, as set forth below.

Eligibility

All classes of employees are eligible for emergency paid sick leave and emergency FMLA leave. All employees are eligible for emergency paid sick leave under this policy regardless of the length of their employment. To be an "eligible" employee for purposes of emergency family or medical leave available under this policy, the employee must have been employed by the Town for at least 30 calendar days before requesting the leave.

A. Reason for Emergency Paid Sick Leave

You may take Emergency Paid Sick Leave if you are unable to work (or telework, if allowed) due to a need for leave because:

1. You are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. You are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
4. You are caring for an individual who is subject to an order as described in 1, above or who has been advised to quarantine or isolate due to concerns related to COVID-19;
5. You are caring for your own child (i) because their school or place of care is closed, or (ii) because your child's childcare provider is unavailable, due to COVID-19 precautions; or
6. Obtaining a COVID-19 vaccination;
7. Recovering from an injury, disability, illness or condition related to COVID-19 vaccination; or
8. Seeking or awaiting results of COVID-19 testing or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

Duration/Compensation

Employees are entitled to Emergency Paid Sick Leave:

- **Full-time employees:** Up to 80 hours of pay for non-exempt employees, two weeks of pay for exempt employees, or a two-week equivalent of pay for police, at their regular pay rate. However, when caring for a family member (for reasons 4 or 5 above), Emergency Paid Sick Leave is paid at two-thirds the employee's regular rate.
- **Part-time employees:** Emergency Paid Sick Leave provided under this Policy is calculated based on the number of hours the employee works, on average, over a two-week period. Except in extraordinary circumstances, the two-week period used will be the two full weeks immediately preceding the date the leave is requested.
- Paid leave under this shall not exceed \$511 per day (\$5,110 in total) where leave is taken for reasons 1, 2, 3, 6, 7 & 8 described above (generally, an employee is unable to work because of their own illness or quarantine); or \$200 per day (\$2,000 in total) where leave is taken for reasons 4 or 5 (where the employee is unable to work due to a need to care for others or school closures).

Leave Rules

- You may elect to use Emergency Paid Sick Leave before using any accrued paid leave. You are not required to use any other paid leave before using Emergency Paid Sick Leave.
- No leave provided by the Town before April 1, 2020 may be credited against your leave entitlement. In addition, Emergency Paid Sick Leave provided under this Policy cannot be carried over after December 31, 2020 and will not be paid out upon termination.

Requesting Emergency Paid Sick Leave

- If you need to take Emergency Paid Sick Leave, provide notice as soon as possible. Normal call-in procedures apply to all absences from work. You are not required to search for or find a replacement employee to cover the hours during which you are using leave under this policy.

B. Reason for Emergency FMLA Leave

An eligible employee is entitled to Emergency FMLA Leave if the employee is unable to work (or telework, if allowed) due to a need for leave to care for their own child < 18 y.o. because the school or childcare facility for the child has been closed due to public health emergency, or because the childcare provider of such child is unavailable due to a public health emergency.

C. Reason for Emergency FMLA Leave

You may take Emergency FMLA Leave if you are unable to work (or telework, if allowed) due to a need for leave because:

1. You are subject to a federal, state, or local quarantine or isolation order related to COVID-19;
2. You have been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
3. You are experiencing symptoms of COVID-19 and are seeking a medical diagnosis;
4. You are caring for an individual who is subject to an order as described in 1, above or who has been advised to quarantine or isolate due to concerns related to COVID-19;
5. You are caring for your own child (i) because their school or place of care is closed, or (ii) because your child's childcare provider is unavailable, due to COVID-19 precautions; or
6. Obtaining a COVID-19 vaccination;
7. Recovering from an injury, disability, illness or condition related to COVID-19 vaccination; or
8. Seeking or awaiting results of COVID-19 testing or diagnosis because either the employee has been exposed to COVID-19 or the employer requested the test or diagnosis.

Duration/Compensation

- No pay is available for first 10 days of leave unless the employee elects to substitute any accrued vacation leave, sick leave or Emergency Sick Leave.
- After 10 days, part-time and full-time employees will receive two-thirds of the employee's regular rate of pay for the number of hours they would normally be scheduled to work, capped at \$200/day and \$10,000 total.

Leave Rules

You may elect to use any accrued paid leave during the first 10 days of Emergency FMLA Leave.

Requesting Emergency FMLA Leave

Where the need for Emergency FMLA Leave provided for in this policy is foreseeable, the employee must provide their supervisor with as much notice of the leave as is practicable.

Job Restoration

The return to work provision of the Town's FMLA Leave policy shall apply to an employee who takes Emergency FMLA leave under this policy.

D. General Provisions

Retaliation

The Town will not retaliate against any employee who requests or takes Emergency Paid Sick Leave or Emergency FMLA Leave in accordance with this policy.

Expiration

This policy and the leave options provided by it expires on December 31, 2020. On January 5, 2021, Town Council renewed this policy and the leave options provided by it until the end of the COVID-19 pandemic.



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 6 A

Item Title: Beach Nourishment Project 2022

1. Exclusion Request-MSD
2. Ordinance-MSD First Vote

Item Summary:

1. GS 160A-537 (c1) provides owners of properties within the boundaries of a Municipal Service District the opportunity to request their exclusion. Three written requests have been received from:

Mr. Thomas Peabody, 13th Sixth Avenue
Mr. Charles and Janan Usher, 121 Ocean Blvd.
The Southern Shores Civic Association

The General Statute does not explain a required process for deciding these requests.

2. At their March 16 meeting, Town Council held the required public hearing in advance of adopting an ordinance defining new service districts.

NCGS 160A-537(f) states that no ordinance defining a service district as provided for in this section shall be finally adopted until it has been passed at two meetings of the city council by majority vote of the voting members present, and no service district shall be defined except by ordinance.

Staff Recommendation: Staff recommends that the Council not exclude any properties from any of the Municipal Service Districts. In order for the Council to grant these requests they must determine that the property is not in need of the services, facilities, or functions of the proposed district to a demonstrably greater extent than the remainder of the town. Staff finds nothing unique about these properties that distinguishes them from the rest of the district. Granting these requests could imply that those adjacent to these properties were also not in need.

The attached draft ordinance mirrors the report that was prepared for the March 16, 2021 Public Hearing. An alternative to the maps as originally presented could be

considered by the Council. However, some changes may be considered substantive and could require reinitiating the public hearing process.

The ordinance defining the Municipal Service Districts must pass two readings at two separate meetings by a majority vote before it shall be finally adopted. If the first vote passes the second vote would be held at the Town Council's May 4, 2021 regular meeting.

Requested Action: A motion to adopt the draft Ordinance 2021-04-01 – An Ordinance Establishing and creating the Town of Southern Shores Beach Erosion Control and Flood and Hurricane Works Municipal Service Districts.

Attachments:

- Draft Ordinance for first reading
- Copies of the three requests for exclusion from the Municipal Service Districts
- Municipal Service District Report



Town of Southern Shores

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

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Ordinance # 2021-04-01

AN ORDINANCE ESTABLISHING AND CREATING THE SOUTHERN SHORES
BEACH EROSION CONTROL AND FLOOD AND HURRICANE WORKS
MUNICIPAL SERVICE DISTRICTS OF THE TOWN OF SOUTHERN SHORES,
NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, Chapter 160A, Article 23 of the North Carolina General Statutes authorizes towns within North Carolina to define service districts to finance, provide, or maintain for such districts one or more services, facilities, or functions in addition to or to a greater extent than those financed, provided or maintained for the entire town; and

WHEREAS, said statutes further provide that the town may define a service district for the purpose of beach erosion control and flood and hurricane protection works; and

WHEREAS, acting in response to a need for action due to long term erosion of the Town's oceanfront due to storms, tides, sea level rise and wave action, the Town is committed to a beach nourishment project in order to maintain a wide recreation beach strand and protective sandbar system, to protect the public's ability to use the beach, to protect structures of historic significance, to maintain a tax and economic base, and to protect infrastructure including facilities for public recreational access. The Town Council for the Town of Southern Shores has determined that the creation of two (2) municipal service districts for erosion control and hurricane protection works will be for the benefit of those properties located within the service district boundaries which are in need of such services to a demonstrably greater extent than the remainder of the town; and

WHEREAS, the Town Council for the Town of Southern Shores further finds that each of the proposed districts is in need of projects and programs to the standards of N.C.G.S. 160A-537(a) to a demonstrably greater extent than the remainder of the town to meet the needs and goals set forth above due to, among other things, their increased need for beach erosion, flood control and hurricane protection works; their proximity to the Atlantic Ocean; their general elevation and topography; the influence of the ocean on the use of the properties within each district; their substantial tax base; their location seaward of the primary thoroughfare, NC12, and associated infrastructure; and the historic significance of some of area and some of the particular properties within the districts; and

1 **WHEREAS**, pursuant to such determinations and in accordance with applicable
2 provision of the General Statutes, the Town Council for the Town of Southern Shores has
3 defined such districts, and does determine, as a fact, that the proposed districts are in need
4 of one or more of the services, facilities, or functions listed in G.S. 160A-536(a) to a
5 demonstrably greater extent than the remainder of the town; and,
6

7 **WHEREAS**, a map of the proposed districts showing their proposed boundaries,
8 a copy of which is attached hereto and incorporated by reference, a statement showing
9 that the proposed district meets the standards set out in G.S.160A-357(a), and a plan for
10 providing in the district one or more of the services listed in G.S. 160A-536 has been
11 created; all of which has been incorporated into a report which has been available for
12 public inspection in the office of the Town Clerk for four (4) weeks prior to the public
13 hearing on the matter of the establishment of the service districts; and
14

15 **WHEREAS**, the Town Council for the Town of Southern Shores caused a notice
16 of such hearing to be duly published in the Coastland Times, a newspaper having general
17 circulation in the Town of Southern Shores and Dare County, said hearing having been
18 conducted on March 16, 2021, and the Town Clerk duly certified to the Town Council
19 that the required mailing of notice of the hearing was completed, all in conformity to
20 G.S.160A-537(c); and
21

22 **WHEREAS**, pursuant to N.C.G.S. 160A-537(c1), the Town received three (3)
23 timely written requests for exclusion of a tract or parcel from the proposed municipal
24 service districts from the following property owners: (i) Thomas Peabody; (ii) Charles L.
25 and Janan B. Usher; and (iii) the Southern Shores Civic Association. Upon review of the
26 owners' reasons for the associated parcels to be excluded, the Town Council finds that
27 the tracts or parcels requested for exclusion are in need of the services, facilities, or
28 functions of the proposed districts in which they lie to a demonstrably greater extent than
29 the remainder of the town, and the Town Council declines to exclude the requested tracts
30 or parcels from the proposed districts; and
31

32 **WHEREAS**, the Town further finds that in accordance with the findings above it
33 is in the interest of and not contrary to the public's health, safety, morals and general
34 welfare for the Town to adopt this ordinance.
35

36 **ARTICLE II. Ordinance.**
37

38 **NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town
39 of Southern Shores, North Carolina, that:
40

- 41 1. The Town of Southern Shores has fully complied with each and every
42 requirement of Chapter 160A, Article 23 of the North Carolina General
43 Statutes and determines and finds same as a fact.
44
- 45 2. The Southern Shores Beach Erosion Control and Flood and Hurricane Works
46 Municipal Service Districts for erosion control and flood and hurricane works

1 is hereby established and created in accordance with the following
2 description:

3
4 **District 1-**

- 5 i. All properties east of Ocean Blvd/NC 12 beginning at the southern
6 town limit extending to Ocean Blvd; and
7
8 ii. All properties east of Ocean Blvd. from the split at Ocean Blvd/NC
9 12 extending to Hickory Trail; and
10
11 iii. All properties north of Hickory Trail that abut the Atlantic Ocean
12 extending to the northern town limit.

13
14 **District 2-**

- 15 i. All properties in District 1; and
16
17 ii. All properties located east of Ocean Blvd/NC 12 and Duck
18 Road/NC12 beginning at the southern town limit extending north
19 to the northern town line; and
20
21 iii. All properties located west of and abutting Ocean Blvd/NC 12.
22 beginning at the southern town line extending north to 137 Ocean
23 Blvd, and abutting Duck Road/NC 12 beginning at 139 Duck Road
24 extending north to 149 Duck Road.

- 25
26 3. The Town of Southern Shores may levy property taxes within each of the
27 service districts in addition to those throughout the town in order to finance,
28 provide or maintain for the district, services provided therein, in addition to or
29 to a greater extent than those financed, provided or maintained for the entire
30 town.
31
32 4. This ordinance shall take effect at the beginning of fiscal year for 2021-2022
33 on July 1, 2021.
34
35

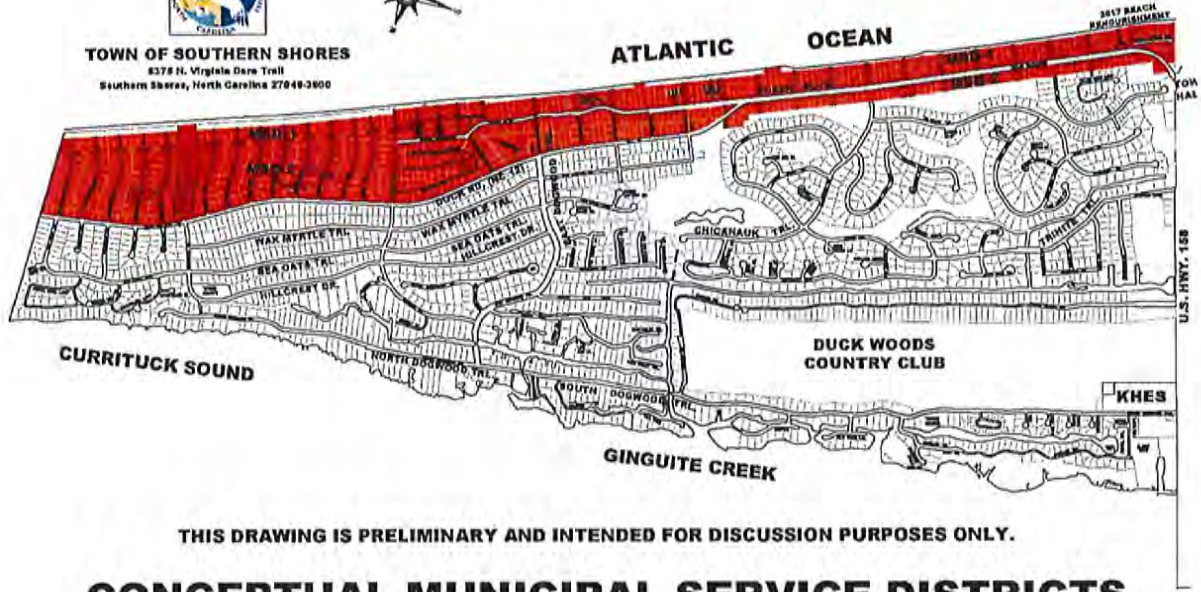
36 **ARTICLE III. Severability.**

37
38 All Town ordinances or parts of ordinances in conflict with this ordinance amendment
39 are hereby repealed. Should a court of competent jurisdiction declare this ordinance or
40 any part thereof to be invalid, such decision shall not affect the remaining provisions of
41 this ordinance nor the Town Code of the Town of Southern Shores, North Carolina which
42 shall remain in full force and effect.
43
44

Municipal Service District 2



TOWN OF SOUTHERN SHORES
8378 N. Virginia Dare Trail
Southern Shores, North Carolina 27969-3800



THIS DRAWING IS PRELIMINARY AND INTENDED FOR DISCUSSION PURPOSES ONLY.

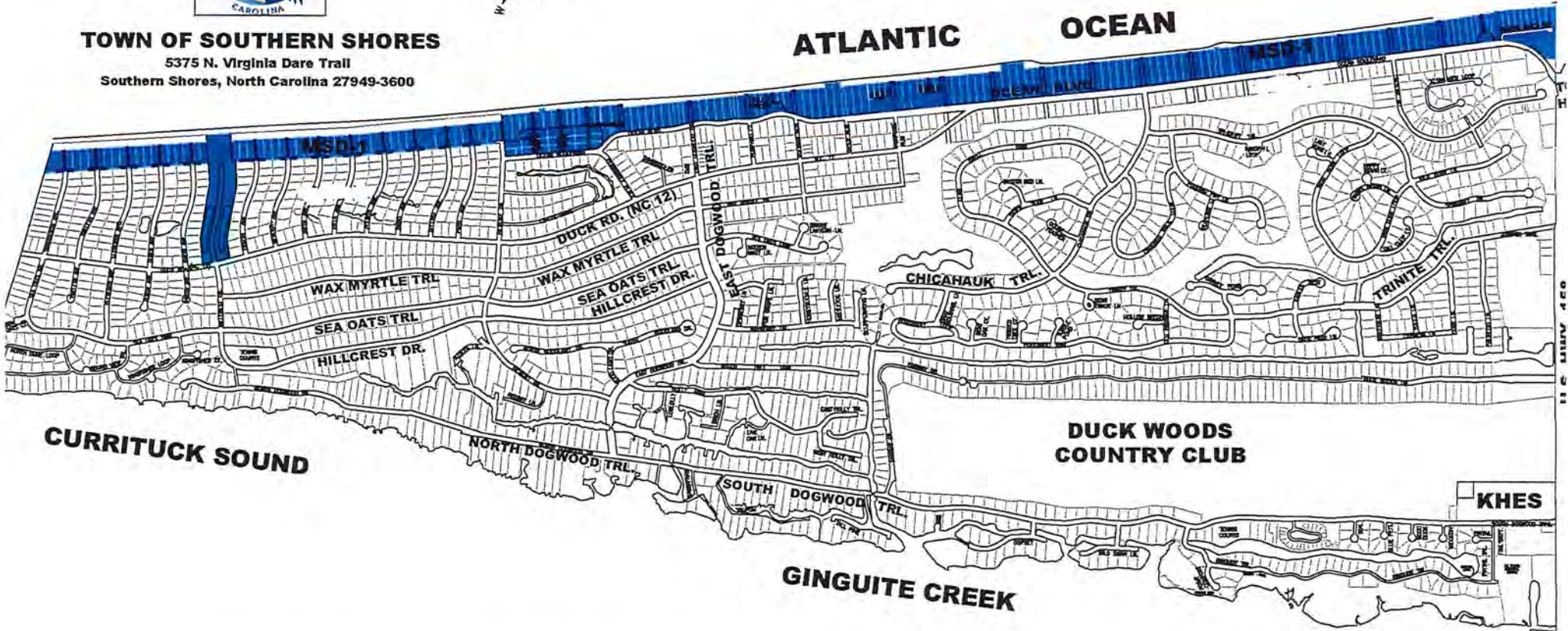
CONCEPTUAL MUNICIPAL SERVICE DISTRICTS



TOWN OF SOUTHERN SHORES

5375 N. Virginia Dare Trail
Southern Shores, North Carolina 27949-3600

ATLANTIC OCEAN



**THIS DRAWING IS PRELIMINARY AND INTENDED FOR DISCUSSION PURPOSES ONLY.
THIS DRAWING DOES NOT REFLECT PROPOSED OR ADOPTED MSD'S.**

CONCEPTUAL MUNICIPAL SERVICE DISTRICTS



TOWN OF SOUTHERN SHORES
5375 N. Virginia Dare Trail
Southern Shores, North Carolina 27949-3600

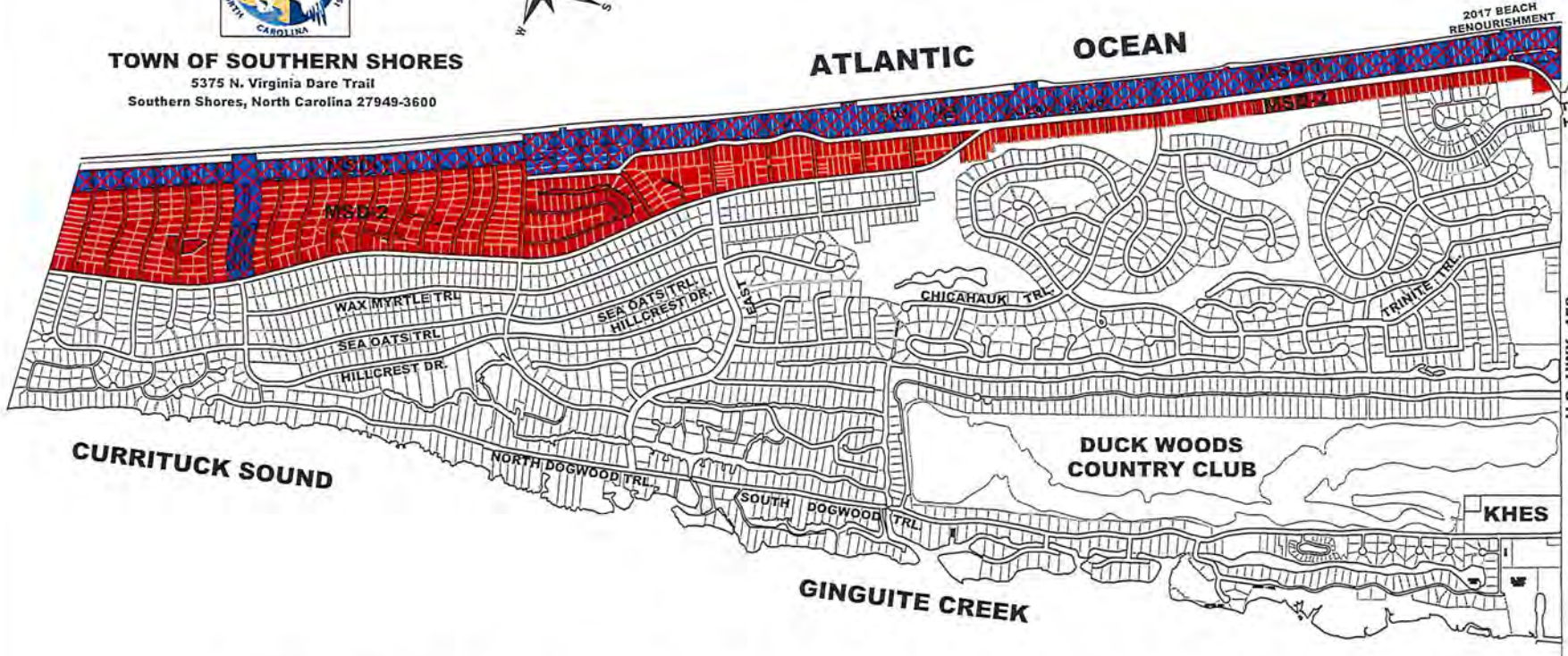
ATLANTIC OCEAN

2017 BEACH RENOURISHMENT

TOWN HALL

U.S. HWY. 158

KHES



**THIS DRAWING IS PRELIMINARY AND INTENDED FOR DISCUSSION PURPOSES ONLY.
THIS DRAWING DOES NOT REFLECT PROPOSED OR ADOPTED MSD'S.**

CONCEPTUAL MUNICIPAL SERVICE DISTRICTS

Sheila Kane

From: Lynn Usher <mrlynnusher@outlook.com>
Sent: Saturday, March 20, 2021 11:56 AM
To: Tom Bennett; Jim Conners; Leo Holland; Elizabeth Morey; Matt Neal
Cc: Cliff Ogburn; Wes Haskett; Sheila Kane; council@southernshores-nc.gov; Janan Usher (jananusher@charter.net)
Subject: Request for Exclusion from MSD-2
Attachments: Usher request for exclusion.pdf

We are submitting the attached written request for exclusion from MSD-2 within the 5-day deadline the Town Manager described in his comments at the March 16 public hearing. If you require further information, please contact us.

Respectfully,

Lynn and Janan Usher

This email has been scanned for spam and viruses by Proofpoint Essentials. Click [here](#) to report this email as spam.

Request to be Excluded from Municipal Service District II
Charles L. and Janan B. Usher
March 20, 2021

We are writing to request that the parcel on which our home at 121 Ocean Boulevard is located (Lots 11 and 12, Block 22, Section Two, Southern Shores Subdivision) be excluded from Municipal Service District II (MSD-2). We were surprised to learn during the public hearing held on March 16 that state statutes require that such requests must be submitted within five days of that hearing. The report mailed to MSD property owners in February labeled the proposed MSDs as "*Conceptual Municipal Service Districts*" (our italics). Also, maps of the proposed MSDs included a footnote stating, "This drawing is preliminary and intended for discussion purposes only." Yet, the short deadline for requesting an exclusion indicates that affected property owners must consider the *proposed* MSDs as, in fact, final.

Under these circumstances, we are making this request to protect our interests while the Council makes a series of decisions in April, May, and June. Key among those decisions are: (1) the final boundaries of MSD-1 and -2; (2) the Town's overall tax rate for fiscal year 2021-22; and (3) tax surcharges for property owners in MSD-1 and -2. Obviously, crucial beach-nourishment policy parameters are unknown at this time, but the 5-day deadline forces us to make this request now.

Background

We outlined our concerns about using MSDs to finance beach nourishment in a statement we submitted on March 8. The following discussion provides additional information pertaining to those concerns. It is based on a closer review of parcel classifications available on the Dare County website.* Our objective was to discern patterns in the assignment of parcels to MSD-1 and -2 using the independent reference points of Oceanfront and Ocean Influence (OI) ratings assigned to parcels by Dare County's property classification system (see our March 8 comments).

The fairness of the MSD financing strategy hinges on strict consistency in assignments within and between the two MSDs and remaining areas of Southern Shores. Thus, our request for exclusion is rooted in our belief that the proposed MSDs were constructed without explicit criteria and, as a result, yielded groups of parcels that are not mutually exclusive and collectively exhaustive. As such, they are inherently inequitable given the significant financial consequences for property owners whose parcels are inappropriately assigned to an MSD or assigned to the wrong MSD. Our review of parcel data revealed the following specific problems.

Inconsistencies in the proposed MSD assignments of OI-A and -B parcels in Seacrest Village compared to similar parcels located east of Ocean Boulevard.

Figure 1 illustrates one of the problems identified in our March 8 statement. All parcels east of Ocean Boulevard were included in MSD-1, including all Oceanfront parcels as well as those with OI-A and -B ratings. In contrast, OI-A and -B parcels in Seacrest Village were omitted from MSD-1 and assigned to MSD-2. Also, "Residential Subdivision" and "Residential Highway Front" Parcels along the east side of Duck Road are included in MSD-2 even though they do not have an OI rating.

* On an introductory webpage, users are advised that "The Dare County GIS Website and Parcel Data Sheet is a working reference and not to be used for legal purposes." see <https://maps.darecountync.gov/> While we were careful in recording OI ratings for individual parcels, our efforts were limited by time and resources. Therefore, if the Town were to use OI ratings in constructing MSDs, it should, of course, conduct its own systematic review of individual parcels drawing on all the data and methods at its disposal.



Figure 1

Legend for Ocean Influence (OI) Ratings (used in all figures)



Figure 1 also illustrates a problem with the classification of OI-B parcels. County guidelines (p. 17) state that such parcels "... adjoin ocean influence 'A' parcels;" however, the map shows that this criterion is met only by OI-B parcels in Seacrest Village and the segment of Ocean Boulevard north of Periwinkle Place. All other OI-B parcels are located on the west side of Ocean Boulevard, none of which adjoin OI-A parcels. Like many parcels fronting Duck Road, these parcels (especially those south of the cell tower) would be more appropriately classified as Residential Highway Front.

Figure 2 shows additional OI-A parcels located in MSD-1. Like the area where Ocean Boulevard terminates at Hickory Trail (shown in Figure 1), these parcels are east of Ocean Boulevard and, by definition, adjoin one or more Oceanfront parcels. Again, similarly classified parcels in Seacrest Village are not proposed to be included in MSD-1.

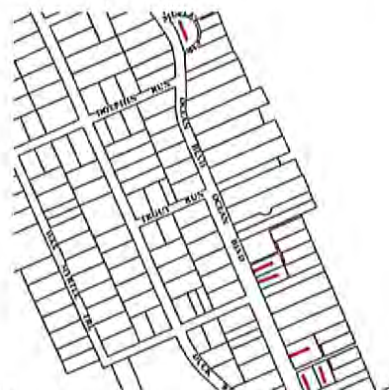


Figure 2

Parcels with OI-C to OI-F ratings in Seacrest Village and in the area between Ocean Boulevard and Duck Road would be included in MSD-2, but similarly rated parcels west of Ocean Boulevard and south of the cell tower would not be included.

At least two areas that include parcels rated from OI-C to OI-F were omitted from the proposed MSD-2. Most obvious are numerous parcels along Skyline Road and Ocean View Loop. Most parcels in these adjoining areas have OI ratings and the number and density are similar to Seacrest Village and the area just south of it between Duck Road and Ocean Boulevard. Given the similarities, it is inconsistent that this area was not included in the proposed MSD-2. Note, as well, that both Skyline and Ocean View have Town beach-access parking, so it is unclear why this area was omitted.



Figure 3

Figure 4 shows Chicahawk parcels rated OI-F that are located on Clam Shell Trail and Spindrift. It is not clear why other parcels on these streets do not have an OI rating.



Figure 4 (Parcels with OI-F ratings are highlighted.)

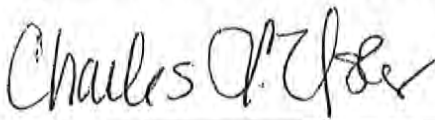
Conclusion

While we remain skeptical of the cost-effectiveness of beach nourishment for Southern Shores, it appears that the Council is determined to move ahead with it, if for no other reason than the Town may forsake immediate and longer-term funding from Dare County. If it is, in fact, your intention to embark on this permanent and expensive program, you must make sure, as we stated in our comments on March 8, that your decisions are:

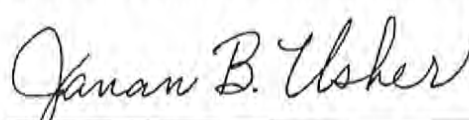
... informed by a full assessment of the allocation of risks, benefits, and costs across three groups: (1) owners of property in MSD-1; (2) owners of property in MSD-2; and (3) owners of Southern Shores parcels located outside an MSD. The assessment also should clarify the criteria used to assign parcels to MSD-1 and -2, and to demonstrate that they were applied consistently across all parcels in the Town.

Our earlier statement also documented ***the substantial beach-access infrastructure created by free Town parking spaces on 23 streets located in the proposed MSDs, more than 30 adjacent Southern Shores Civic Association beach paths and dune crossovers, and several beach paths owned by the Chicahawk Property Owners' Association. These facilities provide every resident of Southern Shores free ocean access while we and other property owners in the proposed MSD-2 would have to pay a tax surcharge for the same degree of beach access.***

Finally, our closer examination of the composition of MSD-1 and -2 reinforces our opinion that ***the proposed delineations of MSD-1 and -2 are not based on consistent application of a clear set of criteria. The arbitrary exclusion of significant groups of OI-rated parcels from MSD-2 and inconsistencies in the assignment of parcels to MSD-1 and -2 will result in an inequitable allocation of costs.*** We are not opposed to paying our fair share of taxes, but for the above reasons, the plan for MSDs outlined in February will be inherently unfair without significant revisions.



Charles L. Usher



Janan B. Usher

March 20, 2021



9001 Hermitage Road
Richmond, VA 23228
(804) 353-6007 / 353-6010 (Fax)
Email: PeabodyT@M-EContractors.com

03-17-21

Town of Southern Shores
5375N. Virginia Dare Trail
Southern Shores, NC 27949
Attn: Cliff Ogburn, Town Manager

**RE: Request for exclusion from MSD-2 for #13 Sixth Ave
03-16-21 Proposed Southern Shores Beach Nourishment MSD Meeting**

Dear Cliff

This is to confirm my request for an exclusion of my property located at #13 Sixth Ave, Southern Shore 27949 from tax liabilities associated with the establishment of Municipal Service District MSD-2 for the stated purpose of generating segregated tax revenues applicable to a professional engineer-recommended Beach Nourishment Need. I am submitting this request in accordance with instructions provided during Southern Shores Town Council meeting on 03-16-21.

The following includes an email I sent to Southern Shores info e-mail address earlier today, and represents justification for my request- namely that the engineering work product as issued by APTIM Titled Town of Southern Shores North Carolina 2019 Beach Assessment report- and identified on SS website as "Final Southern Shores Beach Assessment report Sept 2019" offered three (3) different options for beach replenishment- NONE of which identified a need nor a recommendation for ANY beach nourishment for that portion of Southern Shores beach that lies north of 3rd Ave. It was only in January of 2020 that an amendment to the above report was issued which identified that the Town of Southern Shores had requested that beach replenishment be extended all the way north to the Duck line- theoretically to replenish a beach that the professional engineer hired by Southern Shores had already confirmed did not need any. This was noted within Addenda A-Final from January 2020 as noted below.

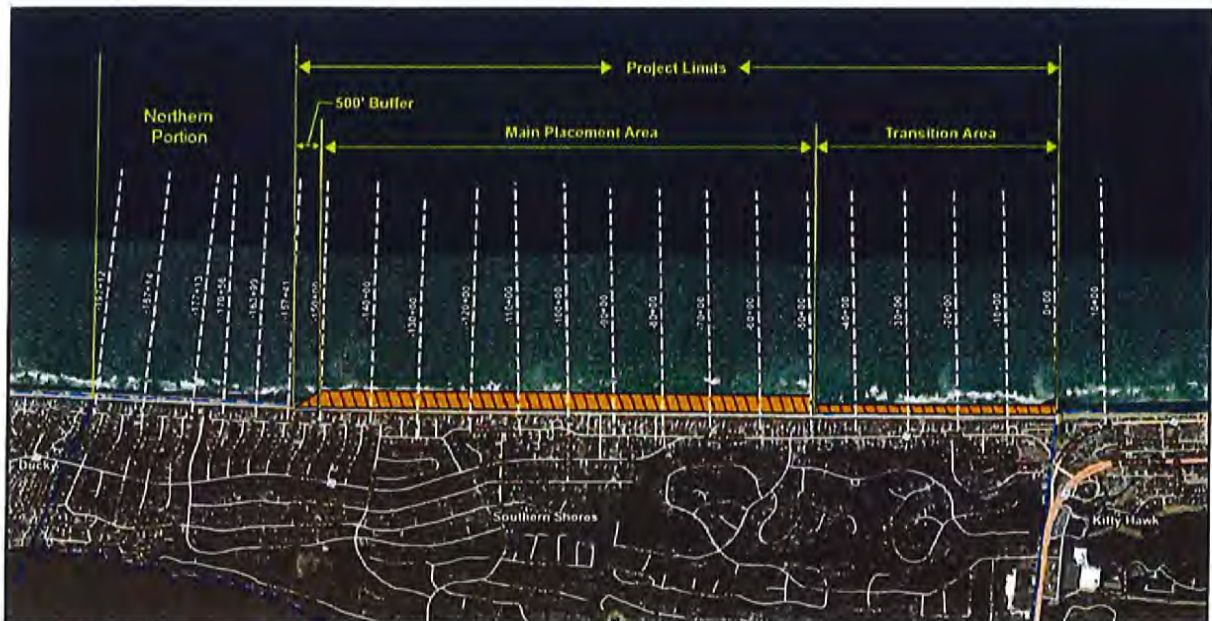
My request for exclusion is based on my objection to the establishment of Municipal Service District MSD-2 to pay for segregated services that are not needed -as defined by State of North Carolina statute with respect to the establishment of MSD's- for that portion of beach north of 3rd Ave. There is a difference between need and benefit- and while I may recognize a benefit from a widened beach near my property (it is a 750' walk from my front door to the dune line crossover at Sixth Ave), I should not be compelled to pay a segregated tax to enjoy it beyond that which all Southern Shores property owners would pay. In other words, I am willing to pay the same flat tax cost increase that may be applied to all Southern Shores property owners, but I am unwilling to pay into an artificially-expanded MSD (MSD-2) to fund a beach nourishment program that has been artificially-expanded beyond the stated need within the original engineering report.

I had submitted my comments regarding the northern nourishment expansion beyond 3rd Ave. in last night's meeting and have previously submitted an e-mail (6-8-20) confirming my opposition to this entire program.

In last night's Public Hearing on Proposed Beach Nourishment Municipal Service Districts, it was mentioned that property owners would have five (5) days to submit a letter requesting exclusion from current proposed MSD designations. Kindly confirm where/how I need to submit an exclusion letter. I will summarize my reason for exclusion request as follows:

My family owns a property on Sixth Ave (that I helped build in 1984) that is within the area designated as MSD-2, and I wish to submit a request for exclusion.

Unless I am mistaken, the consultant hired by Southern Shores Town Council to study the beach and make recommendations had issued their findings in March 2019 which confirmed that beach nourishment was needed and recommended only for the beach from 3rd Ave south to Kitty Hawk line- and no nourishment was needed for the beach north of 3rd Ave -all the way to the Duck line. A photo excerpted from that report is included here:



Subsequent to that study, an Addenda (Add# A-Final) was issued in Jan 2020 which noted that Town Council had requested that beach nourishment be expanded to include the entire beach- all the way to the Duck line- an excerpt is included from page 4 (of 7) of that Addenda as issued in Jan 2020. Note that the consultant confirms that this portion of the beach was determined to be "least vulnerable" and was therefore not included in the nourishment plan.

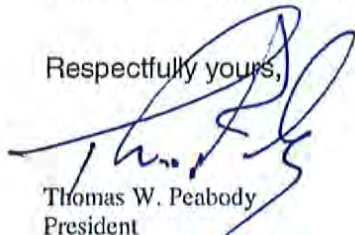
The feedback from Town representatives suggested that the area from the northern Town limit down to approximately 5th Avenue (Station 157+41) was the area in which useable beach was insufficient. Coincidentally, this portion of the Town was the portion that the initial shoreline vulnerability assessment found was least vulnerable to storm impacts, and thus was not included in the initial beach fill options. The average useable beach width along this portion of the Town's oceanfront was 57 ft. based on the May 2019 survey data.

My objection is that- as confirmed by a professional engineering consultant that was hired by Town Council- there is no Need for beach nourishment for the beach due east of my property (6th Ave- which is north of 3rd Ave) and therefore do not see where a special MSD could/should be extended north to apply to my property- or to any property north of 3rd Ave. Expansion of the Buffer/Placement/Transition area to include the entire beach would appear to be a Town decision (contrary to consultant's engineering report) and while it may provide a "benefit" to property owners north of 3rd Ave, it does not appear to comply with my understanding of NC statutory requirements for establishment of Municipal Service Districts based on "need".

I am a contractor- not an attorney- and if I am in error in my summary or understanding of the above information, I would respectfully request someone with knowledge of the circumstances to please explain how and why the nourishment plan was extended to include the entire beach- and how the MSD establishment can be deemed compliant if there is no certified engineering "need". Obviously- it would not be in anyone's best interest to proceed with a flawed plan.

I had submitted my comments via chat during last night's meeting requesting information on the expansion of the nourishment placement area- but understood there was no opportunity for Q&A in last night's format. Please let me know if there is someone I could speak to who can address my questions. Thanks.

Respectfully yours,



Thomas W. Peabody
President



9001 Hermitage Road
Richmond, VA 23228
(804) 353-6007
(804) 353-6010 Fax
(804) 874-2660 mobile



SOUTHERN SHORES CIVIC ASSOCIATION

5377 VIRGINIA DARE TRAIL - SOUTHERN SHORES, NC 27949 (252)-261-0617 - SSCA@OBXBEACH.NET

March 19, 2021

Hand Delivered

Mayor and Town Council of the Town of Southern Shores:

This letter is a written request under NCGS 160A-537(c1) to have the Town Council make a determination to exclude the real property parcels owned by the Southern Shores Civic Association, Inc. ("SSCA") identified below from any municipal service districts ("MSD's) being created by the Town in connection with funding its beach re-nourishment project (the "Project"). As you all know, the SSCA is a North Carolina non-profit corporation and homeowners' association that owns and maintains these properties for purposes of community beach access, recreational purposes and open space generally. These properties are exempt from ad valorem taxation and, therefore, are already recognized as being of a demonstrably different nature than other properties in MSDs used for residential purposes, and the "benefit" of the Project to these common area properties relative to other residential properties in the MSDs is, likewise, very different and tangential at best. Any benefit is derivative of the benefit otherwise provided to the residential properties within the proposed MSDs and to the community as a whole.

Because of the exempt status of these properties from ad valorem taxation, we believe that this request is not necessary, that the properties would not be taxed in any event as part of an MSD or otherwise. However, out of an abundance of caution, and in the alternative, we respectfully submit this request.

Thank you.

Southern Shores Civic Association

LIST OF PROPERTIES:

All SSCA-owned properties within an MSD, including, without limitation, the following:

029702924	156 Ocean Blvd	029702930	0 Ocean Blvd
029702906	0 Eleventh Ave	029702950	0 Ocean Blvd
029702958	228 A Ocean Blvd	029702951	26 A Ocean Blvd
020962008	0 Purple Martin Ln	029702938	0 Ocean Blvd
020962007	0 Sand Piper Ln	029702910	0 Duck Rd
020962006	0 Mockingbird Ln	029702923	72 A Ocean Blvd
029702937	180 A Ocean Blvd	029702940	144 A Ocean Blvd
029702935	208 A Ocean Blvd	029702929	0 Ocean Blvd
029702936	194 Ocean Blvd	029702941	132 A Ocean Blvd
029702911	0 Fifth Ave	029702942	120 A Ocean Blvd
029702922	84 A Ocean Blvd	029702921	96 A Ocean Blvd
029702920	108 A Ocean Blvd	021906000	148 Ocean Blvd
029702909	22A Circle Dr		



Town of Southern Shores

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

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

info@southernshores-nc.gov

www.southernshores-nc.gov

Beach Nourishment Project Report Establishment of Two Municipal Service Districts For Beach Erosion Control and Flood and Hurricane Protection Works In Accordance with GS 160A-535 – 160A-544

1) Map of proposed Municipal Service District(s)

- District 1-**
- i. All properties east of Ocean Blvd/NC 12 beginning at the southern town limit extending to Ocean Blvd. and,
 - ii. All properties east of Ocean Blvd. from the split at Ocean Blvd/NC 12 extending to Hickory Trail, and,
 - iii. All properties north of Hickory Trail that abut the Atlantic Ocean extending to the northern town limit.

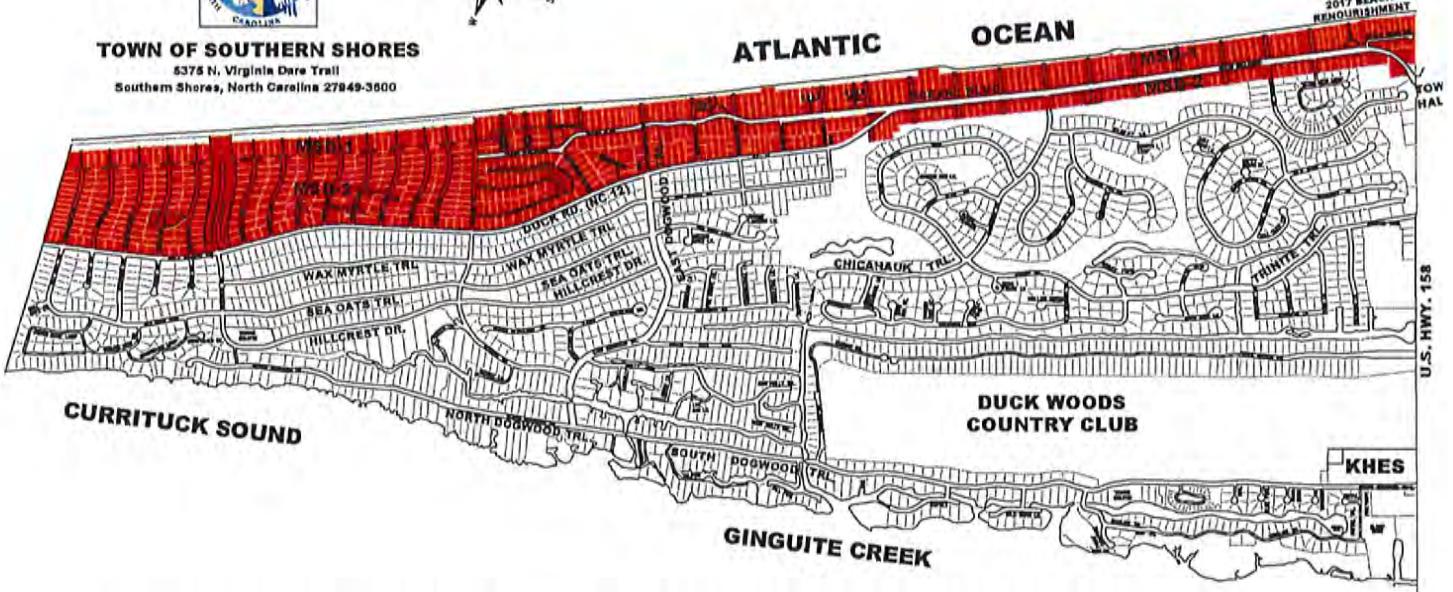
- District 2-**
- i. All properties in District 1, and,
 - ii. All properties located east of Ocean Blvd/NC 12 and Duck Road/NC12 beginning at the southern town limit extending north to the northern town line, and,
 - iii. All properties located west of and abutting Ocean Blvd/NC 12. beginning at the southern town line extending north to 137 Ocean Blvd, and abutting Duck Road/NC 12 beginning at 139 Duck Road extending north to 149 Duck Road,



TOWN OF SOUTHERN SHORES
5375 N. Virginia Dare Trail
Southern Shores, North Carolina 27849-3600

ATLANTIC OCEAN

2017 BEACH
RENOURISHMENT

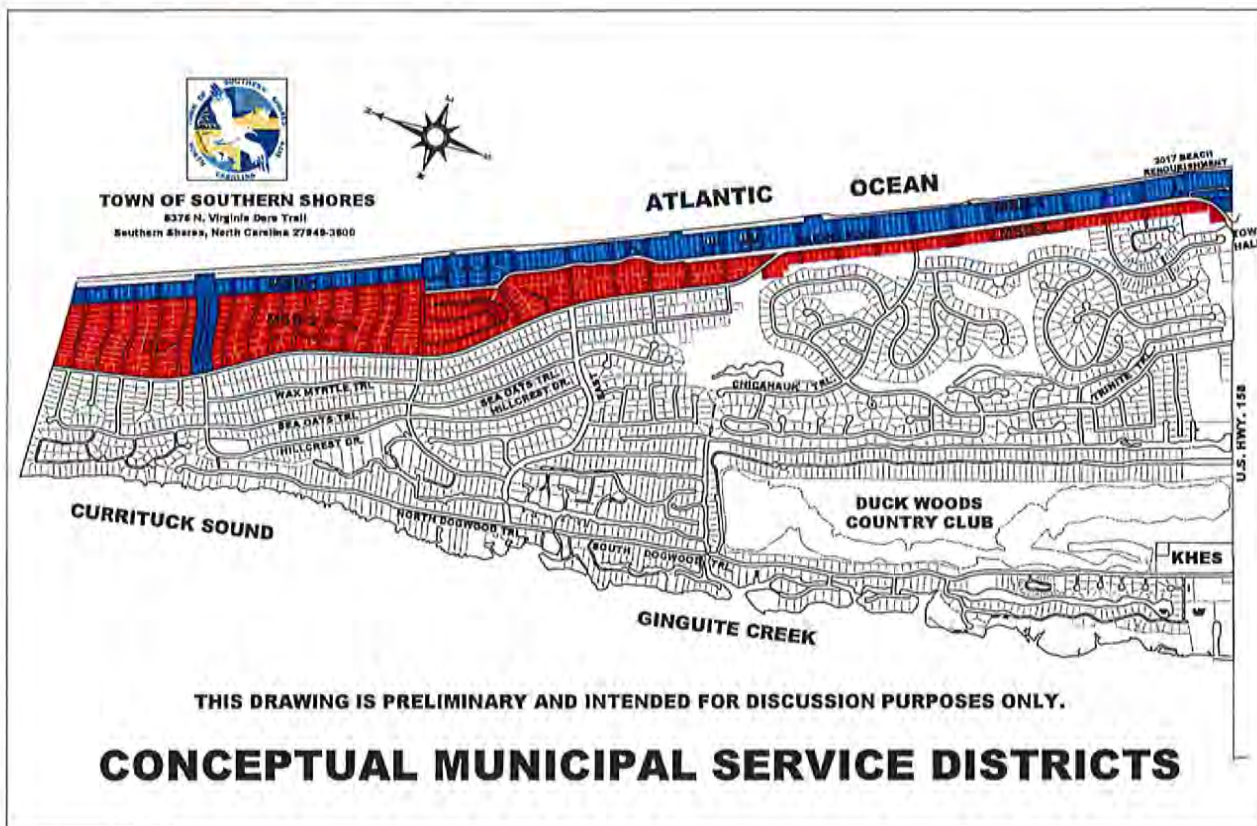


THIS DRAWING IS PRELIMINARY AND INTENDED FOR DISCUSSION PURPOSES ONLY.

CONCEPTUAL MUNICIPAL SERVICE DISTRICTS



Map depicting both Municipal Service Districts



Establishment of Municipal Service Districts allows for an additional levy of property tax rates with a higher rate for those in Districts receiving beach nourishment protection services to a greater extent than the rest of the Town.

- 2) Statement indicating that services are needed in the districts to a demonstrably greater extent than the rest of the Town.

Section 160A-536 of the North Carolina General Statutes authorizes the Town to create one or more Municipal Service Districts (MSDs) to finance, provide, or maintain for the district(s) beach erosion control and flood and hurricane protection works which the Town's beach nourishment project is designed to provide to a demonstrably greater extent than the remainder of the Town.

The Town is committed to beach nourishment to maintain a wide recreation beach strand, to protect structures of historic significance, to maintain a tax and economic base, and to protect infrastructure including facilities for public recreational access. In addition to the consideration of a town wide tax for beach nourishment, The Town Council for the Town of Southern Shores has determined that the creation of two (2) Municipal Service Districts are necessary as those districts receive a greater benefit from the beach nourishment project than the rest of the Town to meet the needs and goals set forth above.

The beach nourishment project is designed to limit damage from erosion and storms, thus protecting structures from this damage in District One and District Two. District One receives

the greatest benefit as it is closest to the ocean, benefits to a greater degree by ocean influence and beach access and is at greater risk of storm damage than those in District Two and the rest of the Town. District Two receives those same benefits but to a lesser extent than District One as it is set back further from the improvements, but to a greater extent than the rest of the Town.

3) Plan for providing proposed services in the Municipal Service Districts.

Numerous studies have focused on evaluating storm vulnerability and useable beach along the Town's oceanfront shoreline to determine where beach nourishment should be considered. Coastal Protection Engineering of North Carolina, Inc. (CPE-NC) developed a series of project options for consideration by the Town of Southern Shores. In July of 2020, the Town authorized CPE-NC to design a beach nourishment project for the Town.

CPE-NC will provide engineering, environmental, and geotechnical services to the Town of Southern Shores 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 Town is attempting to implement a long-term shoreline management program aimed at: 1) Providing and maintaining a reasonable level of storm damage reduction to public and private development; 2) Mitigating long-term erosion that could threaten public and private development, recreational opportunities, and biological resources; and 3) Maintaining a healthy beach that provides sufficient useable beach and supports valuable shorebird and sea turtle nesting habitat. The Town has already adopted an annual beach monitoring plan and recently conducted its third annual beach profile monitoring event that spans the entire Town oceanfront.

A study conducted by the Town's coastal engineering consultant in 2018, and updated most recently in 2020, recommended the construction of a beach fill project to meet the Town's objectives. The Project entails the dredging and placement of sand along the entire ocean beach of 3.7 miles in Southern Shores. Sand is expected to be dredged from an offshore borrow area located in Federal waters that has already been designed and permitted. The proposed project design calls for 30 cubic yards per linear foot of beach compatible sand, or a total volume of 591,000 cy. This sand will be used to construct a variable width berm at elevation +6.0 ft. NAVD88. An additional 286,900 cy is proposed to account for diffusion losses, and advanced fill. The purpose of the advance fill is to maintain the integrity of the project design over a 5-year renourishment interval. The total volume to construct the project is estimated to be 878,300 cy. The project has an estimated cost of between \$14,000,000 - \$16,000,000.



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 6B

Item Title: CPE-NC Contract-Ken Willson

Item Summary: Please find attached a cover letter and proposal for the 2021 Monitoring and the Pre-Construction Services associated with the upcoming 2022 project. This proposal was discussed during the CPE presentation on January 19, 2021 and transitions us into the next phase of the project.

Schedule:

Milestone	Start Date	Completion Date	Number of Months
<u>Phase 1 Permit and Design</u>			
Project Initiation / Interagency Meeting	April 2020	April 2020	1
Borrow Area Development	May 2020	January 2021	9
Engineering Design	June 2020	April 2021	11
Federal Permitting	April 2020	June 2021	15
State Permitting	February 2021	July 2021	6
<u>Phase 2 Pre-Construction</u>			
Development of Construction Plans & Specifications	March 2021	June 2021	4
Solicitation of Bids	June 2021	July 2021	1.5
Award Construction Contract	July 2021	August 2021	1.5
<u>Phase 3 Construction (January 2022)</u>			
Construction	May 2022	October 2022	5

Presently, the Town is still under contract for services to provide the following tasks:

Town of Southern Shores – 2022 Permitting and Design Contract

- | |
|---|
| <ul style="list-style-type: none"> Task 1 – Environmental Documentation and Permitting Task 2 – Engineering and Design Task 3 – Borrow Area Investigations and Design Task 4 – Native Sampling Task 5 – Survey to Quantify 3-Inch Clasts on Native Beach |
|---|

(presently under contract)

Task 1 is near 85% complete, task 2 near 75% complete and tasks 3, 4, and 5 near 100% complete. Permit and design variables as a result of these tasks dictate the next phase of tasks. For example, Tasks 3, 4 and 5 under the new contract are necessary as a result of State agency review of our permitting process thus far.

2021 Annual Monitoring Services / Pre-Construction Services for 2022 Renourishment

TASK	DESCRIPTION
1	2021 Annual Beach Profile Data Acquisition
2	2021 Annual Monitoring Report
3	Borrow Area A Bathymetric Survey and Sediment Sampling
4	Borrow Area Surface Sample Sediment Analysis (Optional)
5	NCDCM Large Sediment (Clast) Survey
6	Construction Plans & Specifications
7	Contractor Bidding, Selection & Negotiations
8	Pre-Construction Coordination

(proposed contract under consideration)

The third and last contract for construction management and oversight should be presented near the beginning of 2022.

Staff Recommendation: Staff recommends approval of the contract to continue progress towards completing the steps necessary to get our project ready for bidding.

Requested Action: A motion to approve the contract and budget amendment as presented.

Attachments:

CPE provided cover letter

Proposal for the 2021 Monitoring and the Pre-Construction Services associated with the upcoming 2022 project

Budget amendment #24



COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC
4038 MASONBORO LOOP ROAD
WILMINGTON, NC 28409
910-399-1905

March 19, 2021

Cliff Ogburn
Interim Town Manager/Planning Director
Town of Southern Shores
5375 N. Virginia Dare Trail
Southern Shores, NC 27949

Re: Proposal: 2021 Annual Monitoring Services / Pre-Construction Services for 2022 Beach Renourishment, Town of Southern Shores, North Carolina

Dear Mr. Ogburn:

Coastal Protection Engineering of North Carolina, Inc. (CPE) is pleased to provide this proposal for professional services to the Town of Southern Shores (TOWN). The proposed services are associated with the 2021 annual beach profile monitoring and pre-construction services associated with the proposed 2022 Beach Renourishment Project. CPE will sub-contract portions of the data acquisition included in Tasks 1 and 3 as described in the respective sections within Exhibit A Scope of Professional Services.

Under this proposal, CPE will conduct 2021 annual monitoring data acquisition and analysis, conduct Borrow Area A bathymetric surveys and sediment sampling, conduct supplemental beach sediment surveys, develop construction plans and specifications, provide bidding assistance, assist with dredge contract negotiations, and provide other pre-construction services leading up to the commencement of the 2022 project.

The Scope of Professional Services (the Services) is attached to this proposal as Exhibit A. The Work included under Tasks 1 – 3 and 5 – 8 will be performed for a lump sum fee of \$107,360.00. Task 4, which is dependent on the results of Task 3, will only be conducted if necessary, and will be completed on a time and materials basis, not to exceed \$4,736.25.

Breakdown of Costs and Schedule of Deliverables:

Exhibit B includes a breakdown of costs by Task. Exhibit C provides a list of deliverables and a schedule for each.

CPE's performance of the proposed Services is conditioned upon negotiation of mutually acceptable contract terms and conditions. In that regard, attached to this proposal is our



standard Services Agreement for your consideration as the terms and conditions that will govern our performance of the proposed Services.

If this proposal is acceptable to you, please have the attached Services Agreement signed, and return it to me. CPE will then sign the Services Agreement and return a fully executed copy to you for your records.

Sincerely,

Ken Willson

Senior Program Manager

Coastal Protection Engineering of North Carolina, Inc

Office: 910-399-1905

Mobile: 910-443-4471

kwillson@coastalprotectioneng.com

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")** agrees to perform for the undersigned CLIENT, engineering and consulting ("Services") described in the attached Proposal and/or as follows:

Proposal: Town of Southern Shores, North Carolina: 2021 Annual Monitoring Services / Pre-Construction Services for 2022 Renourishment

2. **FEES, INVOICES AND PAYMENTS:** The Services associated with Tasks 1 – 3 and 5 – 8 will be performed for the lump sum fee of **\$107,360.00 (One hundred seven thousand, three hundred sixty dollars and zero cents).**

The Services associated with Task 4 will be performed on a time and materials basis not to exceed **\$4,736.25 (Four thousand, seven hundred thirty-six dollars and twenty-five cents).**

Invoices will be submitted by CPE 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 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 in performing the Services, CLIENT shall (i) provide CPE with relevant material, data, and information in its possession pertaining to the specific project or activity, (ii) consult with CPE when requested, (iii) permit CPE reasonable access to relevant project sites, (iv) ensure reasonable cooperation of CLIENT's employees in CPE'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, business or technical information that CLIENT clearly marks in writing as confidential or proprietary, CPE will exercise reasonable efforts to avoid the disclosure of such information to others. Likewise, to the extent that CPE discloses to CLIENT, business or technical information that CPE 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 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; or (vi) any other cause beyond the reasonable control of CPE, then 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) CPE shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on CPE's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.

6. INSURANCE: CPE 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 will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.

7. INDEMNITIES: CPE 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, 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 (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 SHALL BE TO REQUIRE CPE TO REPERFORM ANY DEFECTIVE SERVICES. CPE'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 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 for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay CPE all reasonable costs and expenses incurred by CPE in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.

11. **ASSIGNMENT:** Neither CPE 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 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 to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by CPE, 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 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 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 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 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 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 _____, 2021

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
2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022
RENOURISHMENT

Coastal Protection Engineering of North Carolina, Inc. (hereinafter "CPE") proposes to provide professional services to the Town of Southern Shores (hereinafter the "TOWN"), associated with annual monitoring of the TOWN's beach (Tasks 1 – 2). Pre-construction services associated with the proposed 2022 Beach Nourishment Project (Tasks 3 – 8), are also included in this proposal. CPE will sub-contract portions of the data acquisition included in Tasks 1 and 3 as described in those respective sections of this scope of work.

This proposal includes 2021 annual monitoring data acquisition and analysis, Borrow Area A bathymetric surveys and sediment sampling, development of construction plans and specifications, bidding assistance, dredge contract negotiations, and other pre-construction services leading up to the commencement of the 2022 project. Each task is described in detail in the following sections.

TASK 1 – 2021 ANNUAL BEACH PROFILE DATA ACQUISITION

2021 beach profile data acquisition will be conducted along the TOWN to evaluate volume and shoreline change trends as well as performance of the portion of the TOWN's beach constructed in 2017. Furthermore, these data will be used in the development of the construction plans described under Task 6. The 2020 beach profile data acquisition will be conducted prior to June 15, 2021. Topographic data will be collected along each beach profile to include the dune, berm, and foreshore section of the beach, while bathymetric data will be collected along the offshore portion of the profile. Beach profile data acquisition will be conducted along twenty (20) profiles spaced approximately 1,000 feet apart. These twenty (20) profiles are from approximately baseline station -10+00 (located near Sea Bass Circle) to baseline station 187+14 (near 11th Avenue) within the Town of Southern Shores. Data for the beach profile located at the border of Southern Shores and Kitty Hawk (baseline station 0+00) and at the border of Southern Shores and Duck (baseline station -197+12) by the Towns of Kitty Hawk and Duck, respectively. CPE will sub-contract portions of this work to Aptim Environmental & Infrastructure, LLC (APTIM).

Costs for mobilization of equipment and personnel to and from the project area will be costs shared with the Towns of Duck, Kitty Hawk, and Kill Devil Hills as data acquisition for all four towns will be planned to be conducted concurrently. Additional mobilization costs will be required if monitoring data acquisition is conducted independently of the Towns of Duck, Kitty Hawk, and Kill Devil Hills.

Beach profiles will extend landward from their respective baseline station until a structure is encountered or a range of 25 feet beyond the dune is reached, whichever is seaward. Elevation measurements will also be taken seaward along the profile to a range of 3,000 feet beyond the shoreline or to the -30 NAVD88 contour, whichever is more landward.

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Land-based or "upland" data collection will include all grade breaks and changes in topography to provide a representative description of the conditions at the time of the work. The maximum spacing between data points along individual profiles will be 25 feet. The upland work will extend into wading/swimming depths sufficiently to provide a minimum 50-foot overlap with the offshore data. This overlap between the topographic and bathymetric data acquisition provides quality control and quality assurance.

The hydrographic work or "offshore" portions of the beach profiles will be conducted with industry standard depth sounding equipment and real-time kinematic (RTK) global navigation satellite system (GNSS). Tide corrections will be obtained redundantly with RTK GNSS and a local tide gauge verified to meet the requirements for the specific work. Offshore data points shall also be collected with a maximum spacing of 25 feet.

Horizontal and vertical positioning checks will be conducted at the beginning and end of each day of data acquisition to confirm that control is undisturbed and meets the accuracy standards of this project with a horizontal limit of 0.66 feet and a vertical limit of 0.16 ft. for all electronic equipment. Vertical positioning checks for depth measuring equipment will be conducted at 5 ft. increments between -5 ft. and at least -25 ft. NAVD88. Sound velocity casts will be conducted at the project site at the start and end of each day of data acquisition to calibrate the sounding equipment.

As an appendix to the 2021 monitoring report described under Task 2, CPE will provide the TOWN with a beach profile data appendix. This appendix will include methodology, field notes for the data acquisition, control information, profile plots, cross sections, and digital XYZ data.

TASK 2 – ANNUAL 2021 BEACH PROFILE DATA ANALYSIS AND REPORT

CPE will conduct both shoreline and volume change analysis to evaluate volumetric and shoreline trends along the Town's oceanfront. Furthermore, the data collected will be used to evaluate project performance along the southern 2,500 feet of the Town's oceanfront, which was part of the 2017 project. Analysis will focus on the total shoreline and volume change that has occurred since the initial beach profile data acquisition conducted by CPE in December 2017 as well as short-term changes that have occurred since June 2020.

Results of the analysis will be included in the Year-4 Post-Construction Monitoring Report. Deliverables include two (2) hardcopies of the report with CD or USB drive which will include digital versions of the report, appendices, and data. In addition to the report, one (1) in-person meeting is included to present the findings of the monitoring report to the TOWN.

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TASK 3 – BORROW AREA A BATHYMETRIC SURVEY AND SEDIMENT SURFACE SEDIMENT SAMPLING

Borrow Area A is located on the Outer Continental Shelf between 5.0 and 6.5 miles offshore of the Towns of Kill Devil Hills and Nags head in water depths between 50 to 60 ft (NAVD88). The borrow area was permitted and used in the 2017 beach nourishment project for the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. Post construction surveys from 2017 show that approximately 12.8 million cy of beach compatible sand remains in the borrow area. This sand has been proposed as the source for the 2022 nourishment project.

Through the review process of permit applications, State agencies have raised concerns about previously dredged low areas located in Borrow Area A that may have infilled with sediments since 2017. CPE anticipates that the State will condition the permit to require that if portions of the borrow area previously dredged are to be used for the 2022 project, that a pre-construction bathymetric survey of Borrow Area A will be required to ensure sediment infilling has not occurred. If sediment in-filling has occurred, CPE anticipates the State to require sediment sampling in Borrow Area A to determine sediment compatibility in accordance with the State's Beach fill standards.

To evaluate potential sediment infilling in Borrow Area A, a multi-beam bathymetric survey of the borrow area and collection of additional sediment samples will be conducted. Bathymetric survey and sediment sampling are described below in Sub-task A and B, respectively.

Sub-Task A: Bathymetric Survey: CPE anticipates the State will require a bathymetric survey using multi-beam technology to determine if sediment infilling has occurred. The survey will collect swath bathymetry data in a manner that achieves full seafloor coverage within the footprint of Borrow Area A. Work will be conducted by a subcontractor under the direct supervision of a licensed North Carolina Professional Surveyor and/or a National Society of Professional Surveyors (NSPS) Certified Hydrographer. Surveys will be performed to meet or exceed the minimum performance standards for the Corps of Engineers Hydrographic Surveys, USACE specifications manual EM 1110-2-1003 and reviewed by an ASCM Certified Hydrographer.

The primary data product resulting from the multi-beam bathymetric survey will be ASCII XYZ survey data, which will be provided in North Carolina State Plane US Survey feet relative to the North American Datum of 1983 (2011) and the North American Vertical Datum of 1988 (Geoid18).

Sub-Task B: Surface Sediment Samples: 51 samples will be collected via a grab sampler within Borrow Area A at the same locations at which vibracores were collected in 2014 during initial

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borrow area investigations. A grab sampler is a tethered device that collects sediment from the surface of the seafloor.

CPE will sub-contract the data collection and sediment sampling associated with Task 3 to McKim & Creed.

Task 3 Deliverables: Once collected, the multi-beam survey data will be compared with the 2017 post-construction survey to determine if areas in Borrow Area A have infilled with sediments. A brief letter report will be submitted to the TOWN detailing the results of the survey comparisons. The report will provide graphics sufficient to illustrate changes within the borrow area. As an appendix to this letter report, a signed and sealed survey report will also be provided. The survey report will include a description of the methodology and equipment used, survey chart of the borrow area with contours, and survey notes.

Analysis of surface sediment samples collected within Borrow Area A may be required if significant infilling is determined to have occurred based on the comparison of the 2017 pre-construction bathymetric data and data collected as part of this proposal. The sediment analysis is included and described under Task 4. Should this analysis be required, the results of the analysis will be included in the letter report described herein.

TASK 4 – BORROW AREA SURFACE SAMPLE SEDIMENT ANALYSIS (OPTIONAL)

Sediment analysis will be performed on those grab samples located in areas where infilling has occurred based on the comparison of post-construction multi-beam data and data collected as part of Task 3. Sediment samples will be analyzed for the following sedimentary properties: color, mean grain size, percent fines, percent granular, percent gravel, and sorting.

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, silt/clay percentages for each sample using the moment method.

The number of samples that may require analysis under this Task is dependent upon the results of the survey comparisons and, therefore, CPE proposes to complete this Task on a time and materials basis not to exceed the amount listed in Exhibit B.

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TASK 5 – NCDQM LARGE SEDIMENT (CLAST) SURVEY

In June 2020, CPE conducted a survey to quantify the number of clasts on the project beach, greater than 3-inches in diameter, in accordance with rule amendments that were proposed by the Division of Coastal Management (DCM) at that time. Since the survey, the DCM have modified the recommended amendment to the Technical Standards for Beach Fill Projects (15A NCAC 07H .0312). In February 2021, the recommendation was adopted by the NC Coastal Resources Commission. The adopted amendment to the Technical Standards, requires all sediments greater than or equal to one inch (25.4 millimeters) and shell material greater than or equal to three inches in diameter (76 millimeters) to be quantified on the project beach. In consultation with DCM staff, CPE has been advised that the proposed 2022 nourishment project will have to adhere to the new Standard. The DCM has awarded a grant to the TOWN to pay for the cost of these additional surveys.

Under Task 5, a survey will be performed of the project area to quantify the number of sediments greater than or equal to once inch (25.4 millimeters) in diameter and shell material greater than or equal to three inches (76 millimeters) in diameter. This survey will serve as a baseline for the evaluation of future projects.

The survey will be conducted along six (6) profiles, namely baseline stations -10+00, -50+00, -90+00, -130+00, -170+56, and -197+12. At each location, the linear distance between the toe of dune and MLW contour will be determined. This distance will be used to determine the width of the survey area to establish the required 10,000 square foot area. Sediments greater than or equal to once inch (25.4 millimeters) and shell material greater than or equal to 3 inches (76 millimeters) will be quantified by a systematic visual observation of the 10,000 square foot area along each of the selected transects. Then, a "background" value will be computed for both the sediments and shell material by summing the totals across each transect in the project area and dividing it by the number of transects. Results of this work will be provided in a brief letter report that will include description of methodology, a figure showing the location of the profiles along which surveys were conducted, and a table showing the results and average background values.

TASK 6 – CONSTRUCTION PLANS AND SPECSICATIONS

Construction plans and specifications will be prepared cooperatively for the beach nourishment projects proposed for the Towns of Duck, Southern Shores, Kitty Hawk, and Kill Devil Hills. A separate set of construction plans will be prepared for each of the Town's projects. These plans will include plan views and cross-sections sufficient for the construction of the Project. The Project involves the removal of sand from an offshore borrow area and construction of a beach fill along approximately 9,000 feet of beach at the Duck, 20,000 feet of beach at Southern

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Shores, 20,000 feet of beach at Kitty Hawk, and 14,000 feet at Kill Devil Hills. The plans will provide survey monumentation information which will allow the contractor to control and construct the beach nourishment project. The location and allowable dredge cut depths of the offshore borrow area will be delineated and indicated on the drawings.

The specifications to be developed for the combined project will be divided into two general categories. The first section will include bidding requirements and contract forms for retention of construction contractors. Bidding requirements will include the Invitation to Bid, Instructions to Bidders, Bid Form and other appropriate documents. CPE will develop the bid form. The bidding requirements will also address the bid bond required for the project. This section will also include the contract forms. The section will also include such items as the Certificate of Corporate Authority, Acknowledgments of the Contractor, Performance and Payment Bonds, Final Receipt, and any special instructions.

The second section of the specifications will include General Conditions, Technical Provisions and Environmental Protection. The General Conditions portions of the contract will include information related to the commencement, prosecution and completion of the work. It will address such issues as liquidated damages, performance of work by the contractor and subcontractors, and a designation of certain contractor personnel for tasks such as project superintendent. Supplemental General Conditions are project related and will describe the layout of the beach fill, address mobilization and demobilization from the project area and acceptance sections for beach fill. It will identify the method of payment to the contractor and the clauses for liquidated damages, if necessary. Project details of a general nature will be included in this section. Lastly, this section includes the Owner's right to terminate the contract, liability insurance, liens and other legal issues. CPE will prepare the supplemental General Conditions.

The Technical Provisions will identify the work to be accomplished. It will include the order of work, the project schedule, excavation requirements, beach fill requirements, grading requirements and other issues related to construction. It will address issues such as clean-up, nighttime operations and beach tilling, if required by the State. A QA/QC Plan approved by USACE and DCM will be incorporated into these provisions.

A section on environmental protection will be included in the specifications. This section will identify the important clauses contained in, or anticipated to be included in, the permits. Copies of permits received for the project will also be included. The contractor will be advised that he is required by law to abide by all the conditions provided by Federal and State permits and licenses for the project. Issues to be addressed in this section include turbidity control, protection of environmental resources, restoration of landscape damage, maintenance of pollution control facilities, and a requirement for an environmental protection plan.

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022
RENOURISHMENT

The construction contract, plans, and specifications will be submitted for review to Dare County, who will formally bid the contract, as well as each of the Towns. The draft will also be submitted to the USACE and DCM for review. Upon approval, they will be incorporated into a bid package and solicited to perspective contractors.

TASK 7 – CONTRACTOR BIDDING, SELECTION & NEGOTIATIONS

CPE will assist Dare County and the Towns with the selection of a dredge contractor for the 2022 beach nourishment project. The County's purchasing department will manage the bidding process with assistance from CPE. Plans and specifications will be made available for distribution to all interested contractors. CPE will provide a list of eligible contractors to the Dare County for bidding purposes. In conjunction with Dare County and the Towns, CPE will conduct a pre-bid conference, inviting all contractors, representatives of the USACE, and representatives of the DCM to attend. The pre-bid conference will provide an opportunity to describe the project and to solicit questions from potential contractors. The conference will be conducted at the project site and a tour will be conducted with the potential contractors of the project site to answer any additional questions. Dare County and Town representatives will be on hand to address issues related to infrastructure, Owner requirements and any other issues affecting the local government. The potential contractors will be provided thirty (30) days to submit a bid for the project. CPE will answer questions during bidding and issue addenda as required. CPE will be present for the bid opening and will assist Dare County and the Towns in reviewing the bids and evaluation of the low bidder, taking into consideration the capability of the contractor (low bidder) in constructing the project. CPE will provide Dare County and the Towns a recommendation concerning the selection of the contractor. CPE will assist in negotiating with the low bidder. CPE personnel will be available to appear before the County Commission and or Town Council and answer any questions concerning the contractor recommendation.

TASK 8 – PRE-CONSTRUCTION COORDINATION

CPE will assist Dare County and the Towns during the pre-construction phase of the beach nourishment project. CPE will attend up to five (5) pre-construction coordination meetings (including the pre-construction conference) between the County, Towns, and/or contractor and provide services to coordinate between the entities prior to the commencement of construction operations. Such coordination items include, but are not limited to, design clarifications and consultations, identification assistance of beach accesses and storage areas, borrow area design considerations, permit compliance, interpretation of contract documents, and constructability challenges regarding existing structures.

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022
RENOURISHMENT

CPE will review the construction contractor's work plan, shop drawings and submittals to determine compliance with the plans and specifications. Upon completion of the review, CPE will submit to Dare County and the Towns recommended changes or a written approval of the contractor's work plan, shop drawings, and submittals. The proposed budget for this task also includes review of one round of work plan revisions from the construction contractor. A hard copy of the recommended changes or written approval will be submitted along with a PDF copy of the submittal.

**EXHIBIT B:
BREAKDOWN OF COSTS
TOWN OF SOUTHERN SHORES, NORTH CAROLINA**

2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022 RENOURISHMENT

Table 1. Breakdown of the total cost of the Year-4 (2021) Post-Construction Monitoring Services associated with the Town of Southern Shores (Tasks 1 – 2) and Pre-Construction Services associated with the proposed 2022 renourishment project (Tasks 3 – 8).

TASK	DESCRIPTION	COST
1	2021 Annual Beach Profile Data Acquisition	\$19,734.00
2	2021 Annual Monitoring Report	\$16,908.50
3	Borrow Area A Bathymetric Survey and Sediment Sampling	\$9,381.00
4	Borrow Area Surface Sample Sediment Analysis (Optional)	\$4,736.25
5	NCDCM Large Sediment (Clast) Survey	\$6,168.00
6	Construction Plans & Specifications	\$39,952.00
7	Contractor Bidding, Selection & Negotiations	\$4,500.50
8	Pre-Construction Coordination	\$10,716.00
TOTAL:		\$112,096.25

Tasks 1 – 3 and 5 – 8 will be completed for the lump sum fee of \$107,360.00.

Task 4 is dependent on the results of Task 3. Should Task 4 be required, the services will be completed on a time and materials basis, not to exceed \$4,736.25.

Please note that the Town of Southern Shores has received a grant from the North Carolina Division of Coastal Management to pay for the cost of Task 5.

Table 2. Breakdown of cost showing Southern Shores portion of those Tasks being equally cost shared by the Town of Duck, Southern Shores, Kitty Hawk and Kill Devil Hills.

TASK	DESCRIPTION	TOTAL COST	TOWN OF SOUTHERN SHORES PORTION (25% OF TOTAL COST)
4	Borrow Area A Bathymetric Survey and Sediment Sampling	\$37,524.00	\$9,381.00
5	Borrow Area Surface Sample Sediment Analysis (Optional)	\$18,945.00	\$4,736.25
7	Construction Plans & Specifications	\$159,808.00	\$39,952.00
8	Contractor Bidding, Selection & Negotiations	\$18,002.00	\$4,500.50
9	Pre-Construction Coordination	\$42,864.00	\$10,716.00

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022
RENOURISHMENT**

The following items have been identified by Coastal Protection Engineering of North Carolina, Inc. (hereinafter "CPE") as deliverables to the Town of Southern Shores (hereinafter "TOWN") for the completion of this scope of work.

- Monthly Progress Reports
- Annual Beach Monitoring Report
- Beach Profile Data Appendix
- Borrow Area Bathymetric Survey Report
- NCDCM Large Sediment (Clast) Survey Report
- Draft Construction Plans & Specifications
- Bid Package
- Contractor Recommendation Letter

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

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

Beach Monitoring Report: Upon completion of the beach profile data acquisition described in Task 1 of the Scope of Services, CPE will provide a draft beach monitoring analysis report to the TOWN. The monitoring report will include description of methodology and results of the shoreline change and volume change analysis. Barring any unforeseen circumstances, a draft report will be provided within 120 days following completion of survey operations. Within two weeks following receipt of comments by the Town on the draft report, CPE will prepare a Final report and provide to the TOWN two hardcopies of the report with CD's/USB drives, which will include digital versions of the report, appendices, and data. In addition to the report, one in-person meeting is included to present the findings of the monitoring report to the TOWN.

Beach Profile Data Appendix: Upon completion of the beach profile data acquisition described under Task 1, CPE will provide a record of the methodology used to acquire the data as well as data acquisition notes, control information, profile plots, cross sections, and digital XYZ data. Barring any unforeseen circumstances, a draft of this appendix will be available within 60 days

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022
RENOURISHMENT**

following completion of data acquisition operations. The final appendix will be provided in both hard copy and digital copy along with the Beach Monitoring Report.

Borrow Area Bathymetric Survey Report: Upon completion of the borrow area bathymetric survey, CPE will prepare a brief letter report to be submitted to both the Town and the Division of Coastal Management. The report will provide graphics sufficient to illustrate changes within the borrow area between 2017 (Post-Construction) and the proposed 2021 survey. As an appendix to this letter report, a signed and sealed survey report will also be provided. The survey report will include a description of the methodology and equipment used, survey chart of the borrow area with contours, and survey notes. Depending on the amount of change observed through the comparison of the 2017 and 2021 data, sediment samples collected may undergo grain size analysis. If sediment samples are analyzed, the results of the analysis will also be provided as an appendix to the letter report. Furthermore, conclusions regarding the sediment compatibility of sediment samples analyzed will also be incorporated into the letter report. Barring any unforeseen circumstances, the Letter report will be submitted within 60 days following completion of the survey.

NCDCM Large Sediment (Clast) Survey Report: Upon completion of the Sediment (Clast) Survey, CPE will prepare and submit a report detailing the results of the survey to both the Town and the Division of Coastal Management. The report will include raw and summary data, field documentation, and spatial data that support the calculation of the arithmetic mean for both large sediments and shell material (total count for each divided by the number of transects). The report and deliverable associated with this Task, will carry the following notation:

"This (report, map document, etc.) was prepared by the (local gov't name) under grant award #NA18NOS4190071/#NA19NOS4190082 to the Department of Environmental Quality, Division of Coastal Management from the Office for Coastal Management, National Oceanic and Atmospheric Administration. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of DEQ, OCM or NOAA."

Draft Construction Plans & Specifications: As described in Exhibit A under Task 6, CPE will develop construction plans and specifications for the project. The plans and specifications will be compiled into a formal bidding documents package that can be used by Dare County to solicit bids from contractors to construct the proposed project. The bid documents will include

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2021 ANNUAL MONITORING SERVICES / PRE-CONSTRUCTION SERVICES FOR 2022
RENOURISHMENT**

invitation to bid, instructions to bidders, bid forms, and other bidding requirements. Likewise, the bidding documents will include contract forms for retention of construction contractors, general conditions, technical provisions and environmental protection. A Draft version of the construction plans and specifications will be provided for review. Barring any unforeseen circumstances, the draft construction bid documents will be provided within 4 months following written authorization to proceed.

Bid Package: Upon submittal of the draft construction bid documents to the County and Towns for review, CPE will await comments. Once comments have been received from the County and or Towns, CPE will address comments and finalize the bid package. Barring any unforeseen circumstances, the final bid package will be provided within 2 weeks of receipt of all comments from the County and Towns.

Contractor Recommendation Letter: As described in the Scope of Professional Services under Task 7, CPE will assist in the evaluation of bids received from perspective contractors. CPE will attend the bid opening. Within 2 weeks following the bid opening, CPE will provide a formal recommendation on which contractor is the lowest responsive and responsible bidder.

**Town of Southern Shores
Budget Amendment Number # 24**

Streets 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	\$112,097			
57-50135 57-50161	<u>Expenditures</u> Beach Profile Study BN-Construction Monitoring	\$36,643 \$75,454			

Explanation: 2021 Annual Monitoring Services/Pre-Construction Services for 2022 Beach Nourishment

Recommended By:

Cliff Ogburn, Town Manager

Approved By:

Tom Bennett, Mayor

Date



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 6C

Item Title: Planning Board Appointment

Item Summary: Planning Board member David Neal resigned from the Town Planning Board on March 2, 2021. The term for his position began on July 1, 2018 and will end on June 30, 2021. Alternate member Robert McClendon began serving as an alternate member on January 7, 2020 and is currently the first alternate (in seniority). Mr. McClendon has expressed an interest in filling the vacancy created by Mr. Neal's resignation. There currently are no applications on file from citizens interested in serving on the Town Planning Board.

Staff Recommendation: Appointment of Robert McClendon as a regular member on the Town Planning Board and appointment of alternate member Jan Collins as first alternate.

Requested Action: Motion to appoint Robert McClendon as a regular member on the Town Planning Board and Jan Collins as the first alternate.

Attachments: Planning Board Terms Spreadsheet



Agenda Item Summary Sheet

Date: 4-13-2021

Item #: 6D

Item Title: Town Code Amendments

Item Summary: At the March 2, 2021 Town Council meeting, Council directed Town Staff to take valuable elements out of the adoption draft of the Town Code Update written by CodeWright for review by the Planning Board and the Town Council for future consideration. Town Staff is requesting approval of amendments from the Town Code Update that include Chapter 4, Animals; Chapter 18, Law Enforcement; and Chapter 22, Offenses and Miscellaneous Provisions. The proposed amendment to Chapter 4 originates from changes in State law. The proposed amendments to Chapter 18 and Chapter 22 were initially requested by the Police Department. The proposed amendments do not require Planning Board review prior to Council consideration.

Staff Recommendation: Approval of TCA-21-02.

Requested Action: Motion to approve TCA-21-02.

Attachments: TCA-21-02.

Submitted by: Wes Haskett



Town of Southern Shores

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

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

info@southernshores-nc.gov

www.southernshores-nc.gov

TCA-21-02

Ordinance 2021-04-02

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA

ARTICLE I. Purpose(s) and Authority.

WHEREAS, pursuant to N.C.G.S. Chap. 160A, the Town has duly codified the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, pursuant to North Carolina General Statutes § 160A-174 the Town may enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town, and may define and abate nuisances; and

WHEREAS, the Town further finds that in accordance with the findings above it is in the interest of and not contrary to the public's health, safety and general welfare for the Town to amend the Town Code of Ordinances as stated below.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (underline) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipses ("...") shall remain as they currently exist within the Town Code.

ARTICLE III. Amendment of Town Code.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina, that the Town Code shall be amended as follows:

PART I. That **Chapter 4 Sec. 4-26. TRAPPING OF DOMESTIC OR WILD ANIMALS.** be amended as follows:

1
2 **Sec. 4-26. HUNTING AND TRAPPING OF DOMESTIC OR WILD ANIMALS.**

3
4 It shall be unlawful for any person to hunt or trap domestic or wild animals by the use of
5 animal traps, or to set any animal trap, which may trap domestic or wild animals, not issued
6 by the police department, the county animal control department, or any other organization
7 approved by the police department, within the corporate limits.
8

9 **PART II.** That **Chapter 4 Art. III. BEEKEEPING.** be added as follows:

10
11 **ARTICLE III. - BEEKEEPING**

12
13 **Sec. 4-28 Purpose and Intent.**

14
15 The purpose of this Article is to provide standards for the keeping of bees. It is intended
16 to enable residents to keep an appropriate number of bees on a non-commercial basis while
17 limiting the potential adverse impacts on the surrounding neighborhood. This article is
18 intended to create standards and requirements that ensure that bees kept by residents do not
19 adversely impact the use and enjoyment of neighborhood properties surrounding the
20 property on which the bees are kept.
21

22 **Sec. 4-29. Standards.**

- 23
24 (a) All beekeepers who manage bees within the Town shall be residents of the
25 Town of Southern Shores.
26
27 (b) Bees shall be kept in a manner so as to avoid causing any unhealthy condition
28 or interference with the normal use or enjoyment by humans or animals of any
29 property in the vicinity of the apiary.

30
31 **Sec. 4-30. Written consent required.**

- 32
33 (a) Prior to establishing an apiary, a beekeeper shall obtain written consent from
34 all adjoining landowners and shall provide it to the Town Manager or a
35 designee. The written consent shall include the following:
36
37 (1) Proposed apiary site;
38 (2) Name and address of adjoining landowners;
39 (3) Name and address of the beekeeper;
40 (4) Number of proposed colonies;
41 (5) The date of the consent;
42 (6) Signatures of the beekeeper and adjoining landowner.
43

1 (b) In the absence of such required written consent of all adjoining landowners,
2 beekeeping shall not be permitted in the Town.

3 (c) Written consent from an adjoining landowner is personal to the adjoining
4 landowner and shall not run with the land. It shall be the duty of a beekeeper to
5 obtain written consent from all adjoining landowners in the event that
6 ownership of an adjoining tract changes.

7
8 **Sec. 4-31. Right to inspect.**

9
10 The Town, by and through its employees, shall have the right to inspect any apiary to ensure
11 compliance with this Article.

12
13 **PART III. That Chapter 18 Article II Auxiliary Police.** be deleted as follows:

14
15 **~~Article II. Auxiliary Police~~**

16
17 **~~Sec. 18-39. — Creation; composition.~~**

18
19 ~~There is hereby created a law enforcement unit for the town to be known as the auxiliary~~
20 ~~police. The auxiliary police shall be composed of as many volunteer members as the~~
21 ~~council may, from time to time, deem necessary.~~

22
23 **~~Sec. 18-40. — Control and supervision.~~**

24
25 ~~The auxiliary police shall be under the direct control of the chief of police acting under the~~
26 ~~general supervision of the town manager.~~

27
28 **~~Sec. 18-41. — Appointment, supervision or removal of members.~~**

29
30 ~~All appointments, suspensions and removals of members of the auxiliary police shall be~~
31 ~~made in the same manner and under the same policies and procedures which have been or~~
32 ~~may be established for the appointment, suspension or removal of regular police officers.~~
33 ~~Sec. 18-42. — Officers; rank of members; training.~~

34
35 (a) ~~The auxiliary police shall have no officers, and all members shall bear the~~
36 ~~rank of patrolmen.~~

37
38 (b) ~~The chief of police shall provide for adequate training of members of the~~
39 ~~auxiliary police and candidates for membership therein.~~

40
41 **~~Sec. 18-43. — Duties; obedience to regular police.~~**

1 (a) The duties of the auxiliary police shall be to assist the regular members of the
2 police department in the enforcement of the provisions of this Code, other
3 ordinances of the town and state law and the maintenance of peace and order. The
4 chief of police, with the approval of the mayor and council, may prescribe duties,
5 other than those prescribed in this subsection, to be performed by the auxiliary
6 police.

7
8 (b) Members of the auxiliary police shall obey the instructions of regular police in
9 carrying out their duties.

10
11 **Sec. 18-44. — Powers of arrest.**

12
13 The members of the auxiliary police shall be vested with all the powers of arrest vested in
14 regular police officers by state law and the provisions of this Code and other ordinances of
15 the town.

16
17 **Sec. 18-45. — When powers may be exercised.**

18
19 No member of the auxiliary police shall enforce or attempt to enforce any law except when
20 called to active duty.

21
22 **Sec. 18-46. — Identification.**

23
24 An identification card and such other insignia or evidence of identity as the council may
25 prescribe shall be issued to each member of the auxiliary police. Each member shall carry
26 such identification card and other insignia at all times while on duty and shall surrender
27 them upon termination of his appointment.

28
29 **Sec. 18-47. — Carrying of firearms.**

30
31 No member of the auxiliary police shall, while on duty, carry or use any firearm except
32 upon the express order of the chief of police or the council.

33
34 **PART IV.** That **Chapter 22 Sec. 22-3. Noises Prohibited.** be replaced in its entirety
35 as follows:

36
37 **Sec. 22-3. Noises prohibited.**

38
39 The purpose of these standards is to protect citizens from excessive sound (noise), which
40 is detrimental to the health and peaceful enjoyment of property. No use shall be operated
41 or permitted to be operated in a manner that creates prohibited forms of noise or sound that
42 exceeds the maximum sound levels in this section. Except for uses and activities identified
43 in Section 22-3 (b), the standards in this Section shall apply to all uses and activities taking

1 place on lands and waters located within the corporate limits of the Town and its
2 extraterritorial jurisdiction.

3
4 (a) Definitions. The following definitions shall apply to all portions of the Town
5 Code relating to noises within the Town.

- 6
7 (1) A weighting scale: The sound pressure level, in decibels, as measured with
8 the sound level meter using the "A" weighted network (scale). The standard
9 unit of notation is dB(A).
- 10 (2) Daytime hours: 7:00 a.m. to 10:00 p.m., local time.
- 11 (3) Decibel (dB(A)): The decibel is a unit of measure of sound (noise) level
12 relative to a standard reference sound on a logarithmic scale.
- 13 (4) Electronic sound amplification system: Any radio, tape player, compact
14 disc player, loud speaker or other electronic device used for the
15 amplification of sound.
- 16 (5) Emergency work: Work necessary to restore property to a safe condition
17 following a public calamity or work required to protect persons or property
18 from an imminent exposure to danger by private or public utilities when
19 restoring utility service.
- 20 (6) Motor vehicle: For purposes of this section, the term motor vehicle includes
21 any vehicle which is propelled or drawn on land by a motor, including but
22 not limited to motorcycles, passenger cars, trucks, truck-trailers,
23 semitrailers, campers, go-carts, amphibious craft on land, dune buggies,
24 racing vehicles, mopeds, motorized bicycles or motorized scooters or
25 skateboards.
- 26 (7) Motor boat: Any vessel which operates on water and is propelled by a
27 motor, including, but not limited to, boats, barges, amphibious craft, water
28 ski towing devices, jet skis and hovercraft.
- 29 (8) Muffler or sound dissipating device. An apparatus consisting of a series of
30 chambers or baffled plates designed for the purpose of transmitting gases
31 while reducing sound emanating from such apparatus.
- 32 (9) Nighttime hours: 10:01 p.m. to 6:59 a.m., local time.
- 33 (10) Noise: Any sound which annoys or disturbs humans or which causes or
34 tends to cause an adverse psychological or physiological effect on humans.
- 35 (11) Noise disturbance: Any sound which endangers or injures the safety or
36 health of humans or animals; a noise that disturbs a reasonable person with
37 normal sensitivities; endangers or injures personal or real property; or is
38 unreasonably loud, disturbing or excessive noise.
- 39 (12) Noise sensitive zone: Any area designated by the town for the purpose of
40 ensuring exceptional quiet.
- 41 (13) Owner of real property: The owner or listed owner, of real property as
42 defined in North Carolina General Statute 105-302.

1 (14) Person: A person, firm, association, co-partnership, joint venture,
2 corporation, or any entity, public or private in nature.

3 (15) Real property boundary: A line along the ground surface and its vertical
4 extension, which separates the real property owned by one person from that
5 owned by another, but not including intra-budding real property divisions.

6 (16) Right of way: Any street, avenue, boulevard, highway, sidewalk or alley
7 or similar plan which is owned or controlled by a governmental entity.

8 (17) Sound amplification devices: Any radio, tape player, compact disc player,
9 MP3 player, loud speaker, amplifier, or other device used for the amplification
10 of sound.

11 (18) Sound level (noise level) in decibels: The level measured on the A-
12 weighted scale as defined in the American National Standards S-1.4-1983.

13 (19) Sound level meter: An instrument designed for the measuring of sound
14 levels and a means of displaying the sound level using the A-weighting
15 network.

16 (20) Tenant: One who resides on or has the temporary use or occupancy of real
17 property owned by another person. In the case of residential property, the term
18 “tenant” shall be considered to mean any individual actually residing at the
19 residential location, whether such person is listed on a lease or not.

20 (21) Unreasonably loud, disturbing or excessive noise: Any sound which
21 because of its volume, level, duration or character disturbs, discomforts, injures
22 or endangers the health, peace or safety of a reasonable person with normal
23 sensitivities. For purposes of this chapter, such a sound shall be deemed to be a
24 noise disturbance.

25 (22) Zoning districts: Means land classification within the Town that regulate
26 the uses and the locations of structures. Zoning Districts are established in
27 Chapter 36 of this Code.

28
29 (b) Exemptions.

30
31 The standards in this section shall not apply to the following uses or activities:

32
33 (1) Emergency work;

34 (2) Generators for production of electricity at times when electrical service
35 has been interrupted due to natural calamity or accidental disruption.
36 Generators used for the production of electricity not exempted by this
37 chapter shall be operated in accordance with the maximum decibel
38 requirements of the zoning district where located;

39 (3) Parades, fairs, circuses, or other similar public entertainment, sporting
40 events taking place during the daytime hours in areas set aside for such
41 activities, or any activities normally associated with any of the above,
42 including use of a loud speaker or public address system;

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- (4) Musical chimes or the sounding of bells emanating from a public, educational, or religious institution or facility provided the sound is of reasonable duration and frequency;
 - (5) The intentional sounding or permitting the sounding of any fire, burglar, or civil defense alarm, siren, whistle or similar stationary emergency signaling device for emergency purposes or for routine testing;
 - (6) Any activity to the extent regulation thereof has been pre-empted by State or federal law;
 - (7) Noise resulting from the loading and unloading, opening, closing or other handling of boxes, crates, containers, building materials, or similar objects between the hours of 7:00 a.m. and 10:00 p.m.; and
 - (8) The playing of a musical instrument between the hours of 3:00 p.m. and 7:00 p.m. Monday through Friday and 12:00 p.m. to 7:00 p.m. on Saturdays and Sundays provided said sound does not exceed 65 dB(A) at the property line of the property from which the sound emanates;
 - (9) Agencies of the United States government, law enforcement agencies, fire departments, ocean rescue services, emergency medical services, and Town refuse collection vehicles or apparatuses, engaged in their official duties are exempt from the provisions of this section; and
 - (10) Noises and activity associated with public beach nourishment projects undertaken at the Town's direction.

23 (c) Maximum Sound Levels and Noise Distinguished

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- (1) The standards in this section identify a series of maximum sound levels that may not exceeded by typical uses and activities allowed under this Town Code. Noise levels from these uses and activities shall not exceed the maximum allowable levels.
 - (2) These standards also identify a series of prohibited noises, which are prohibited regardless of the amount of sound they produce.

32 (d) Maximum Permitted Sound Levels

33
34 It shall be unlawful to create, cause, or allow the continuance of a noise disturbance that exceeds the following maximum thresholds:

- 35
36
37 (1) Sounds Affecting Residential and Special Districts:

38
39 In the Single-Family Residential (RS-1), Multifamily (RS-8), Residential (RS-10), Low Density Residential (R-1) and Ocean and Sound Waters (OSW) Districts, it shall be unlawful to create, cause, or allow any mechanical, amplified or sound from any source which registers more than

1 60 dB(A) during daytime hours or 55 dB(A) during nighttime hours at or
2 beyond the property line of the property from which the sound originates.

3 (2) Sounds Affecting Commercial and Institutional Zones:
4

5 In the Government & Institutional (G&I) and General Commercial (C)
6 Districts, it shall be unlawful to create, cause, or allow any mechanical,
7 amplified, or sound from any source which registers more than 75 dB(A)
8 during daytime hours or 65 dB(A) during nighttime hours at or beyond the
9 property line from which the sound originates.

10
11 (3) Sounds Crossing Zoning District Boundaries:
12

13 When the zoning classification of the property where the sound originates
14 differs from the zoning classification of the adjoining sound receiving
15 property, then the maximum permitted sound level which will apply will
16 be the higher of the two.

17
18 (4) Noise Sensitive Zones:
19

20 (a) Notwithstanding their location, rest homes, healthcare facilities, places
21 of worship, educational institutions, and day care facilities are noise
22 sensitive zones and it shall be unlawful for any person to cause or
23 allow the emission of sound onto said facilities during the facilities'
24 operating hours which exceeds the noise limitations or reasonableness
25 standards for sound levels affecting residential zones established by
26 this chapter.

27 (b) For purposes of this section, measurements shall be made at the real
28 property boundary of the noise sensitive zone facility nearest the real
29 property boundary of the property from which the noise originates.
30

31 (e) Prohibited Noise
32

33 It shall be unlawful for any person to engage in the following acts, which are
34 declared to be a prohibited noise in violation of this chapter:
35

36 (1) Prohibited Acts
37

38 (a) The playing of any television set, musical instrument, or other
39 electronic sound amplification system in such a manner or with such
40 volume as to annoy or disturb the quiet, comfort, or repose of a
41 reasonable person with normal sensitivities as determined by the Town
42 Manager (or a designee);

- 1 (b) The keeping of an animal which, by causing frequent or long
2 continued noise, shall disturb the quiet, comfort, or repose of the
3 immediate area to such an extent as to constitute a nuisance;
4 (c) The creation of any noise on any street adjacent to any noise sensitive
5 zone which interferes with the workings of or which disturbs or unduly
6 annoys the citizens;
7 (d) The shouting and crying of solicitors or vendors which disturbs the
8 peace and quiet of the immediate area;
9 (e) The use of any drum, loud speaker, or other instrument or device for
10 the purpose of attracting attention by creation of noise, to any
11 performance, show, sale, or display of merchandise;
12 (f) The use of air-horns, klaxons, or whistles inside any Town facility;
13 (g) The loading, unloading, opening, closing, or other handling of boxes,
14 crates, containers, building materials, garbage cans, dumpsters of
15 similar objects between the hours of 10:00 p.m. to 7:00 a.m. the
16 following day, in such a manner as to cause a noise disturbance across
17 a residential real property boundary or within a noise sensitive zone is
18 prohibited as set forth in the maximum decibel levels set for each zone
19 at the times of day consistent with this chapter;
20 (h) The use of any mechanical device operated by compressed air unless
21 the noise created thereby is effectively muffled and reduced.
22

23 (2) Prohibited Sounds or Music Levels
24

- 25 (a) It shall be unlawful for any person to play, use, or permit to be played
26 any electronic sound amplification system which generates a sound
27 level exceeding the decibel limits set forth in this chapter for the
28 zoning district in which it is located for any of the following:
29
30 i. Any public property including any public street, highway,
31 building, sidewalk, park, or thoroughfare; or
32 ii. Any motor vehicle on a public street, highway, public
33 space, or commercial space.
34
35 (b) Possession by a person of any machines or devices which may be
36 classified as an electronic sound amplification system enumerated and
37 defined in this chapter shall be prima facie evidence that person or
38 those persons operated that machine or device.
39

40 (3) Prohibited Construction Activity
41

- 42 (a) Generally
43

1 i. Except as allowed in this section, the erection (including
2 excavation), demolition, alteration, or repair of any
3 building other than between the hours of 7:00 a.m. and 8:00
4 p.m. on weekdays and Saturdays shall be prohibited.

5
6 (b) Emergencies

7
8 i. Erection, excavation, demolition, alteration, or repair of a
9 building may take place outside the hours of 7:00 a.m. and
10 8:00 p.m. on weekdays or Saturdays, only in the case of
11 urgent necessity in the interest of public health and safety,
12 subject to an emergency construction permit issued by the
13 Town Manager (or a designee).

14 ii. A permit for emergency construction may only be granted
15 for a period of up to three days while the emergency
16 continues.

17 iii. An emergency construction permit may be renewed for
18 periods of three days or less while the emergency
19 continues.

20
21 (c) Non-Emergency

22
23 i. If the inability to erect, demolish, alter, or repair a building
24 or excavate streets and highways between the hours of 8:00
25 p.m. and 7:00 a.m. would result in loss or inconvenience to
26 any party in interest, the Town Manager (or a designee)
27 may permit such work in accordance with Section 22-3
28 (e)(3)(b), Emergencies, provided the public health and
29 safety will not be impaired.

30
31 (4) Prohibited Equipment Noise

32
33 (a) Equipment being used for construction, agricultural, lawn care, vehicle
34 or boat repairs, or the like is prohibited after 8:00 p.m. and cannot
35 commence before 7:00 a.m. Monday through Sunday.

36
37 i. All equipment shall be operated in accordance with the
38 manufacturer's specifications, manufacturers mufflers and
39 noise reducing equipment shall be in use and in proper
40 operating condition.

41 ii. Equipment shall not be used in a manner or with such
42 volume as to indicate an intent to disturb or annoy a
43 reasonable person with normal sensitivities.

1 iii. The Town Manager or a designee may, in the case of
2 urgent necessity and in the interest of public safety issue a
3 permit for other times, which may be renewed for a period
4 of three days or less while the emergency continues.
5

6 (5) Obtaining Warrants
7

8 (a) Nothing in this section shall preclude any citizen, without the benefit
9 of noise measuring equipment or contacting a law enforcement officer,
10 from appearing before a judicial officer to obtain a warrant based on
11 this chapter.
12

13 (f) Motor Vehicles and Motor Boats
14

15 It shall be unlawful to operate or allow the operation of any motor vehicle or
16 motor boat in the Town that:
17

18 (1) Has its muffler, exhaust, and/or other noise-control equipment removed,
19 altered, or maintained in such disrepair as to create unreasonably loud or
20 disturbing noises to a reasonable person with normal sensitivities;

21 (2) Engages in spinning tires, racing engines, or other operations that create
22 unreasonably loud and disturbing noises to a reasonable person with normal
23 sensitivities;

24 (3) Plays or operates any sound system or sound producing instrument, device,
25 or apparatus when the speaker volume is elevated to such an extent that the
26 sound is clearly audible more than 50 feet from the vehicle.
27

28 (a) This provision shall apply regardless of whether the vehicle is
29 traveling upon the streets of the Town, parked on public property, or
30 stopped in traffic.

31 (b) If the vehicle or boat is parked on private property then the restrictions
32 set forth in Section 36.6.5.E, Maximum Permitted Sound Levels, shall
33 also apply; and
34

35 (4) Uses the sounding of any horn or signal so as to create an unreasonably loud
36 or harsh sound for an unreasonable period of time, except upon authorized
37 emergency service vehicles.
38

39 (g) Noise Measurement Techniques
40

41 (1) Sound Level Meters
42

- 1 (a) For the purpose of determining decibels, (dB(A)'s) as referred to in
2 this chapter, noise shall be measured on the A-weighting scale on a
3 sound level meter of standard design and quality having characteristics
4 established by the American National Standards Institute.
5 (b) The sound level meter should be certified to meet or exceed the
6 American National Standards Institute or its successor bodies and shall
7 be serviced, calibrated and operated as recommended by the
8 manufacturer.
9 (c) Persons utilizing the sound level meter for purposes of this chapter
10 shall be familiar with sound level measurement and the operation of
11 sound level measurement equipment, and shall operate the sound level
12 meter in accordance with the manufacturer's instructions.
13

14 (2) Alternative Measurement Techniques

- 15
16 (a) In the event that the noise cannot be measured on a sound level meter
17 operated on the "A" weighting network (scale) or it is otherwise
18 impractical to utilize this measurement technique under the
19 circumstances:
20
21 i. The complaints of numerous persons, at least one of whom
22 resides in a different location from the other complaining
23 person or persons, when combined with the complaint of an
24 authorized investigating officer, shall be prima facie
25 evidence that the sound is unreasonably loud, disturbing, or
26 excessive noise; or
27 ii. If the noise is of such a nature that a reasonable person with
28 normal sensitivities should have known that the noise was
29 creating an unreasonably loud, disturbing or excessive
30 noise the same shall be prima facie evidence of a violation
31 of this chapter.
32
33 (b) Sound emission decibel measurements shall not be required for
34 establishment of a violation under the circumstances set out above and
35 the same shall be deemed to be a noise disturbance.
36
37 (c) In determining whether a noise, under this section, is of such character
38 as to be noise disturbance the investigating officer shall consider the
39 following non-exclusive list of factors:
40
41 i. Whether the noise crosses property lines;
42 ii. Complaints of neighbors regarding the noise;
43 iii. Effect on neighbors complaining of the noise;

- iv. Time of day at which the noise takes place;
- v. The intensity and duration of the noise;
- vi. The type of noise produced;
- vii. The reason or reasons for the noise; and
- viii. The alternative means available which will not produce excessive noise.

(3) Location of Measurement

- (a) Except for noise within multi-family or multi-tenanted structures, all noise measurements shall be made at or beyond the lot line of the property from which the noise originates to determine if the noise creates a noise disturbance. For purposes of measurement, the back of the curb, the outside edges of driveways, fences, hedges or other physical features commonly associated with property boundaries are presumed to be at a point which is at or beyond the lot line.
- (b) In the case of noise within multi-family or multi-tenanted structures, noise measurements shall be made in the complaining unit with all windows and doors closed and at a point that is approximately the center of the room in the complaining unit that is nearest the unit from which the noise originates. If access to the complaining unit is not possible, then the measurement shall be at least 25 feet from the nearest point of habitable space of the unit from which the noise originates.

ARTICLE IV. Severability.

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the Town of Southern Shores, North Carolina which shall remain in full force and effect.

ARTICLE V. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____ day of _____, 2021.

Tom Bennett, Mayor

ATTEST:

1 Town Clerk

2

3

4 APPROVED AS TO FORM:

5

6

7 _____
Town Attorney

8

9 Date adopted:

10

11

12 _____
Motion to adopt by Councilmember:

13

14

15 _____
Motion seconded by Councilmember:

16

17

18

19

Vote: ___AYES___NAYS