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

Town Council Regular Meeting
June 3, 2025, 5:30 PM
Pitts Center-5375 N. Virginia Dare Trail, Southern Shores NC 27949

Present
Mayor Morey
Mayor pro tem Neal
Council Member Sherlock
Council Member Batenic
Absent: Council member Neilson

Call Meeting to Order-June 3, 2025
Mayor Elizabeth Morey called the meeting to order at 5:30 PM and led the Pledge of Allegiance.

Amendments to / Approval of Agenda
Council member Batenic **moved** to approve the agenda as presented, Seconded by Council member Sherlock. The motion passed unanimously.

Consent Agenda
The consent agenda consisted of the following:

1. Tax Pickups and Releases
3. Budget Amendment #28-#30

Mayor Morey presented the consent agenda. Council member Sherlock **moved** to approve the consent agenda as presented, Seconded by Council member Batenic. The motion passed unanimously.

Staff Reports
Planning/Deputy Town Manager
Planning Director/Deputy Town Manager Wes Haskett provided a brief report for the month of May. He announced that the next regular Planning Board meeting is scheduled for June 16th at 5:00 p.m. here in the Pitts Center.

Police Chief
Police Chief Kole presented the May police report, annual report and a brief update on staffing. One new police officer will begin on June 6, two more recruits to start after July 1. He also shared success of the new Flock LPR camera system aiding in suspect identification and arrests. A

"Coffee with a Cop" event is planned for June 27 at Shoreside Plaza. Chief Kole also expressed satisfaction with the new town hall complex security system upgrades.

Town Manager
Town Manager Ogburn presented the following operational highlights:

- The contractor for the Sea Oats project was approved to work on Saturday to get the work completed due to previous weather delays.

- The porch replacement at Town Hall is complete; the remaining renovations start post July 4th. $14,400 in additional costs absorbed within the $231,690 approved in April.

- The Trinitie Trail Bridge reopened ahead of Memorial Day; the project is tracking to be completed under budget. Future plantings are planned near the Chicahauk sign and community input will be sought.

The council by consensus acknowledged and approved spending $14,400 on additional costs for the town hall renovation, as it still is within the budgeted amount.

Council expressed their satisfaction with the Trinitie Trail Bridge project; Mayor Morey calling it a success.

Town Attorney
Town Attorney Robert Hobbs provided no formal report but was present to answer questions.

General Public Comment
None

Old Business
None

New Business
Public Hearing-Town Manager's Recommended Budget FY25-26
Town Attorney Robert Hobbs opened the required annual hearing on the proposed budget presented on May 6, 2025

Town Manager Ogburn noted one change to the recommended budget; there is more beach nourishment municipal service district money being brought in than anticipated, primarily due to the tax increase for the town wide portion located within the municipal service district and the debt payment decreasing each year. The excess money of $90,000 is being moved to the capital reserve fund for beach nourishment. This transfer results in additional fund balance use of $90,000

Town Manager Ogburn expressed that no services are being cut; additional services include transitioning to a paid fire department.

Town Attorney Hobbs called on the public for comment. The hearing opened and closed with no speakers.

Mayor Morey stated the budget has been talked about over several meetings. Council discussion reflected support.

Mayor pro tem Neal expressed his appreciation of staff for keeping the council so well informed and walking through some of the changes faced this year.

Council member Sherlock commented that townwide taxes have not been raised since 2012 and asked Finance Officer Bonnie Swain to comment on the small tax increase, as it would apply to the average homeowner in Southern Shores. Finance Officer Bonnie Swain clarified that the $0.04 townwide tax increase would result in approximately $400/year for a $1 million home.

Council member Batenic stated the budget was well put together, meeting the needs and the future needs of the town.

Hearing no further discussion, Mayor Morey called for two motions.
MOTION: Mayor pro tem Neal moved to adopt budget ordinance 2025.06.01, Seconded by Council member Batenic. The motion passed unanimously.

MOTION: Council member Sherlock moved to approve the new fire department positions, the organizational chart, and the pay scale as part of the approval of budget ordinance #2025.06.01, Seconded by Council member Batenic. The motion passed unanimously.

LGC Resolution & Public Hearing Date
The North Carolina Local Government Commission requires that before a unit of local government may borrow in excess of $1,000,000 the unit's governing board must adopt a resolution giving their approval to proceed. This resolution makes the necessary findings required by the LGC. The Town of Southern Shores must adopt a resolution and hold a public hearing prior to assuming responsibility for an existing $1M+ fire station loan previously held by the Southern Shores Volunteer Fire Department. This change is due to the department's transition into a municipal function.

Attorney Robert Hobbs explained that while the debt service remains the same ($314,000), the Town's name will be added to the loan. The public hearing and resolution are required by the Local Government Commission.

MOTION: Council member Batenic moved to set a public hearing for consideration of a resolution authoring the application to the LGC for July 8, 2025, Seconded by Council member Sherlock. The motion passed unanimously.

The council also agreed to approve the public hearing minutes at the July 8 meeting to expedite submission to the LGC.

2025 Annual Beach Monitoring Proposal and Pre-Permitting/Sediment Analysis Proposal
Town Manager Ogburn explained that Coastal Protection Engineering has submitted their proposal for the third year of monitoring the beach after the most recent beach nourishment project. Year one monitoring cost $33,475, year three cost $34,882, and the third year is proposed to be $35,639.

The second proposal is regarding pre-planning for the 2027 project. The work has been separated into two proposals to better track services directly related to the 2027 Project.

The town has implemented a long-term beach management program to sustain its beach. The 2022/2023 beach nourishment project added approximately 1,048,400 cy of sand to the beach. The town must monitor this project to measure its performance and to evaluate potential future project goals. It is also important that property owners know where the "sand is" that was placed on the beach. To be eligible for potential FEMA reimbursement to replace sand loss after a declared storm, FEMA must determine that we have established and adhered to a maintenance program involving periodic renourishment to preserve the original design. For these reasons, the staff's recommendation is to accept both proposals.

Mayor Morey asked if these tasks are being contracted by the other towns too. Town manager Ogburn stated the costs are split between the towns, this is Southern Shores share. The council will have an opportunity in the fall to decide whether to accept a formal proposal with Ken Willson to design the 2027 project.

Mayor Morey asked if at some point Ken Willson would be able to tell if Southern Shores needs to move forward with another project or not. Town Manager Ogburn felt he would be close after these current tasks are complete.

Mayor pro tem Neal felt the annual monitoring should be a necessity, whether Southern Shores pursues another project or not.

Council member Sherlock asked if the cuts to FEMA would affect the reimbursement. Town manager Ogburn was uncertain.

Town manager Ogburn stated the monitoring report should be completed by October, if not sooner.

MOTION: Mayor pro tem Neal moved to accept both proposals and permit the town manager to sign the associated proposal agreements, Seconded by Council member Sherlock. The motion passed unanimously.

Public Hearing-ZTA-25-03, a Zoning Text Amendment application submitted by the Town of Southern Shores to amend Town Code Section 36-300

Town Attorney Robert Hobbs opened the public hearing for Zoning Text Amendment 25-03, an application submitted by the Town of Southern Shores to amend Town Code Section 36-300

Planning Director Haskett stated at the May 6, 2025 Town Council meeting, Council directed Town Staff to draft Town Code amendments to modernize the Town Code. Town Code Section 36-300

establishes the procedures for consideration of Special Use Permits. On March 12, 2024, Council adopted ZTA-24-01, which included several amendments to Section 36-300, including the removal of the guiding standards that had to be satisfied to grant a Special Use Permit. According to guidance from the UNC School of Government, zoning regulations should include adequate guiding standards for Special Use Permit decisions. As a result, Town Staff has drafted ZTA-25-03, which includes a proposed amendment to reestablish guiding standards for Special Use Permit decisions:

> a. The applicant has met the requirements of the applicable provisions of the town chapter pertaining to zoning, subdivision chapter, and all other applicable ordinances.
>
> b. That the use as proposed will conform with the town's comprehensive land use plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in the chapter and additionally required by the town council as authorized by the chapter.
>
> c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
>
> d. That the use as proposed will not overburden the town fire department fire-fighting capabilities and the county water supply capacity to the town, as said facilities and capabilities will exist on the completion date of the special use for which the application is made.
>
> e. That the use will not substantially injure the value of adjoining property, unless the use is a public necessity.

All of the proposed guiding standards were in Section 36-300 prior to adoption of ZTA-24-01 except for the standard that addresses the value of adjoining property.

Mayor pro tem Neal stated his understanding is that when they were taken out, he thought It was under advice to keep it vague and not have a specific list of design of standards. Planning Director Haskett stated that it was to follow what was in in the statute, but we are following this guidance from the NC School of Government at this point.

Mayor pro tem Neal felt there could be more particular standards added. Planning Director Haskett stated staff could certainly look to see if there should be more but felt this is adequate as far as the minimum.

Council member Batenic was in support of adding other standards as needed.

Mayor Morey asked if this has anything to do with the legislature and downzoning. Planning Director Haskett felt there was no conflict with the downzoning language.

Town Attorney Hobbs called on the public for comment. Hearing no comment, he closed the public hearing.

MOTION: Mayor pro tem Neal moved to adopt Zoning Text Amendment ZTA-25-03, Seconded by Council member Batenic. The motion passed unanimously.

Council Business

Mayor pro tem Neal stated the Entry Corridor Enhancement Committee held an open house which was well attended. The participants were enthusiastic and provided good direction. He added that he attended a two-day conference, a second layer of an 18-month project, with the UNC Chapel Hill School of Government and members of the Dare County Housing Task Force. Some productive conversations were had exploring different nonprofit organizations and housing techniques to try to alleviate some of the stresses that are here in the county. Mayor Morey requested the link to the survey be provided in the next newsletter.

Council member Sherlock stated there was an impressive Memorial Day ceremony at the cemetery which was well attended.

Council member Batenic provided a brief Dare County Tourism Board report. Occupancy is down 2.5% and meals are up 1%. It is expected to be a leveling out year and there is a movement toward partial week rentals.

Mayor Morey announced she will be attending a Long-Range Committee meeting on June the 11th. The next council meeting will be held July 8th. She added there are some issues coming at federal and state level in which the town may want to consider adopting resolutions in opposition to Offshore Drilling/Leasing, and Ferry Tolls in June. Two people attended the last Mayor's Chat. Conversations included SSFD and road improvements.

The council commended staff for the well-prepared budget and transparency during the process. Discussion included adding a summary to the town newsletter explaining expanded services and the impact of the modest tax increase. Also noting that this was the first tax increase since 2012.

Adjourn
Hearing no further business, Mayor Morey called for a motion to adjourn, Seconded by Council member Batenic. The motion passed unanimously.

ATTEST:

Elizabeth Morey, Mayor

TOWN OF SOUTHERN SHORES SEAL NC

Respectfully submitted,

Sheila Kane, Town Clerk

TOWN OF SOUTHERN SHORES
TAX DEPARTMENT

6/3/2025

PICKUPS		**RELEASES**	
November Real	$9,661.82	November Real	$ 971.56
December Real	$6,558.74		
TOTAL	**$16,220.56**		**$ 971.56**

Town of Southern Shores
Budget Amendment Number #28

Admin

Increases			Decreases		
Account Number	**Description**	**Amount**	**Account Number**	**Description**	**Amount**
	Revenues				
10-40-39909	Unassigned Fund Balnce	$75,000			
	Expenditures				
10-42-50104	Legal Services	$70,000			
10-42-50119	Insurance & Bonds	$5,000			
	TOTAL			**TOTAL**	$ -

Explanation: The cost of additional legal services provided to the Town.

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date

Town of Southern Shores
Budget Amendment Number #29

Admin Increases			Streets Decreases		
Account Number	**Description**	**Amount**	**Account Number**	**Description**	**Amount**
10-42-59998	Transfer OUT to other Fund-CRF	$578,469	10-57-50711	Pavement Plan Year 4	$578,469
	TOTAL	$578,469		**TOTAL**	$ 578,469

Explanation: To move remaining street pavment money to CRF to be used for Streets

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date

Town of Southern Shores
Budget Amendment Number #30

Streets
Increases

Account Number	Description	Amount
10-57-48013	Canal Maintenance	$3,505
	TOTAL	$3,505

Streets
Decreases

Account Number	Description	Amount
10-57-50197	Bulkhead Maintenance	$3,505
	TOTAL	$ 3,505

Explanation: Repairs to channel markers

Recommended By:

Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date

Agenda Item Summary Sheet

Date: **6/3/25**

Item #: **3 & 4**

Item Title: Public Hearing – Town Manager's Recommended Budget FY 25-26

Item Summary: The North Carolina General Statutes require the governing board to hold at least one public hearing on the recommended budget. The recommended budget was presented to the Town Council at the May 6, 2025, Council meeting with a copy filed and made available with the Town Clerk and on the town's website providing the public four weeks of review.

Staff Recommendation:

Staff notes one change to the recommended budget; there is more beach nourishment municipal service district money being brought in than anticipated, primarily due to the tax increase for the town wide portion located within the municipal service district and the debt payment decreasing each year. The excess money of $90,000 is being moved to the CRF for beach nourishment. This transfer results in additional fund balance use of $90,000

Requested Action: If appropriate upon the completion of the public hearing, staff requests a motion to adopt the attached budget ordinance #2025.06.01.

Attachments: FY 2025-2026 Budget Ordinance #2025.06.01

Agenda Item Summary Sheet

Date: **6/3/25**

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Town of Southern Shores

5375 N. Virginia Dare Trail, Southern Shores, NC 27949
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Ordinance No. 2025-06-01

An Ordinance of the Southern Shores Town Council Adopting a Budget and Tax Rate for FY 2025-26

BE IT ORDAINED by the Town Council of the Town of Southern Shores, North Carolina that the following be the various budgets for FY 2025-26:

SECTION I. GENERAL FUND

A. Appropriations: The following amounts are appropriated for the operation of the Town Government and its activities for the fiscal year beginning July 1, 2025, and ending June 30, 2026:

Administration Department	$ 1,738,582
Code Enforcement & Inspections Department	$ 447,755
Fire Department	$ 1,982,515
Ocean Rescue Services	$ 237,245
Police Department	$ 2,586,153
Public Works Department	$ 961,361
Public Works Department – Streets, Bridges, Beaches & Canals	$ 2,630,161
Sanitation Services	$ 1,048,000
Contribution to Capital Reserve Fund for Canals	$ 165,000
Total General Fund Appropriations	**$ 11,796,772**

B. Estimated Revenues: It is estimated that the following revenues will be available during the fiscal year beginning July 1, 2025, and ending June 30, 2026 to meet foregoing appropriations:

Property Taxes- Current Year	$ 4,421,947
NCVTS- Current Year	$ 124,352
MSD 1 Taxes	$ 203,167
MSD 2 Taxes	$ 185,200
Town Wide – Beach Nourishment	$ 698,105
Property & Vehicle Taxes- Prior Years, Penalties and Interest	$ 8,000
Subtotal: Property and Vehicle Taxes	$ 5,640,771
Land Transfer	$ 375,000
Local Option Sales Tax	$ 1,765,792
Occupancy Tax	$ 1,717,566
Other Intergovernmental Revenues	$ 1,002,398
Building Permits & Fees	$ 196,750
Unassigned Fund Balance	$ 317,395
Other Revenues	$ 781,100
	$ 6,156,001
Total General Fund Revenues	**$ 11,796,772**

SECTION II. CAPITAL RESERVE FUND AND EXPENDITURES

FY 25-26 Appropriations Authorized:	
Addition to Canal Maintenance Reserves	$75,000
Addition to Beach Nourishment Reserves	$90,000
	$ 165,000

FY 25-26 Revenues Anticipated:	
Transfer IN from General Fund for "Canal Maintenance"	$75,000
Transfer IN from General Fund for "Beach Nourishment	$90,000
	$ 165,000

****

SECTION III. CEMETERY FUND

Appropriations Authorized:	
Cemetery Maintenance, Beautification, software license and water	$6,200
Revenues Anticipated:	
Proceeds from Sales of Cemetery Plots	$ 6,200

>>>

collection rate of 99.96%. The estimated rate of collection is based on the fiscal year 2023-24 collection rate pursuant to NCGS §159-13(b)(6).

There is hereby levied a property tax of four point zero eight cents ($0.0408) on each one hundred ($100) valuation of real and personal taxable property located in MSD 1 in the Town of Southern Shores for beach nourishment, one point seventy-six cents ($0.0176) on each one hundred ($100) valuation of real and personal taxable property located in MSD 2 in the Town of Southern Shores, as listed for taxes as of January 1,2025 by the Dare County Tax Department, for the purpose of raising revenue included in "Property Taxes-Current Year" and "NCVTS" in the General Fund, being Section I.B. of this ordinance.

SECTION V. EXPENDITURES

All expenditures must be made in accordance with governing North Carolina General Statutes and adopted Town policies regarding purchasing and bidding. The Budget Officer is authorized to expend funds consistent with the governmental functions and amounts shown as appropriated and to execute such documents necessary for same.

Notwithstanding Town policies regarding purchasing and bidding, the Budget Officer is authorized to execute documents for the following items or services in accordance with the specific appropriations established by this Ordinance or as the budget may be amended during the fiscal year: multi-year lease, lease-purchase, or purchase of vehicles and equipment.

In accordance with G.S. 143-64.32 and as outlined in Town Council Resolution #2024-03-01, the Budget Officer is authorized to exempt contracts for design services from the qualifications-based selection requirements of G.S. 143-64.31 if the estimated fee is less than $50,000 and provided that exemption be in writing.

SECTION VI. LEASE REVENUES

The Budget Officer is hereby authorized to negotiate in the best interest of the Town and execute such documents necessary for the realization of revenues or other consideration from lease or use of any Town property with a term not to exceed three years.

SECTION VII. BUDGET OFFICER LINE TRANSFER AUTHORIZATION

The Budget Officer is authorized to re-allocate intra-departmental appropriations among the various objects of expenditures as he considers necessary for effective budget performance and is also authorized to affect inter-departmental transfers within the same Fund for effective budget performance. The Budget Officer is also authorized to affect, within the same Fund, intra-departmental and inter-departmental transfers from a Departmental contingency line appropriation established in accordance with NCGS §159-13(b)(3), with such contingency line transfers being in accordance with NCGS §159-13(b)(3).

SECTION VIII. BUDGET OFFICER RESTRICTIONS

No salary increases may be made without approval of the Town Council. Inter-fund transfers not established in this budget document may only be performed by authorization of the Town Council.

SECTION IX. UTILIZATION OF BUDGET AND BUDGET ORDINANCE

This Ordinance and the Budget Document shall be the basis of the financial plan for operations of the Town of Southern Shores, North Carolina Municipal Government during the fiscal year 2025-26. Copies of this Budget Ordinance shall be furnished to the Clerk of the Town Council and to the Budget Officer and Finance Officer and is to be kept on file by them for their direction in the disbursement of funds.

ADOPTED this _____ day of June, 2025.

_____
Mayor Elizabeth Morey

ATTEST:

_____
Sheila Kane, Town Clerk

seal

Agenda Item Summary Sheet

Date: 6/3/25

Item #: 5

Item Title: LGC Resolution & Public Hearing Date

Item Summary:

The North Carolina Local Government Commission requires that before a unit of local government may borrow in excess of $1,000,000 the unit's governing board must adopt a resolution giving their approval to proceed. This resolution makes the necessary findings required by the LGC. Before the resolution can be approved, a public hearing must be held to consider both the resolution and the application for funding. Staff is requesting the Town Council set this public hearing for its July 8 Council meeting.

This application is necessary as a result of the Town and the Southern Shores Volunteer Fire Departments agreement to transition to a municipal fire department. The Town's previous contract with the SSVFD for fire service protection required the town to pay the SSVFD $314,000 annually for the debt service on the fire station. The Town will save a considerable amount of interest due to the present low interest rate on this loan by having its name added to the loan documents rather than refinancing a new loan. Because the Town will now pay the bank directly, the LGC must grant its approval. The debt payment will remain the same.

Requested Action: A motion to set a public hearing for consideration of a resolution authoring the application to the LGC for July 8, 2025.

Attachments: sample resolution

SAMPLE

RESOLUTION

RESOLUTION AUTHORIZING THE FILING OF AN APPLICATION FOR APPROVAL OF A FINANCING AGREEMENT AUTHORIZED BY NORTH CAROLINA GENERAL STATUTE 160A-20

WHEREAS, the [City/Town/County/Authority] of Anywhere, North Carolina desires to [*Describe the undertaking and terms of the proposed contract*] (the "Project") to better serve the citizens of Anywhere; and

WHEREAS, The [City/Town/County/Authority] of Anywhere desires to finance the Project by the use of an installment contract authorized under North Carolina General Statute 160A, Article 3, Section 20; and

WHEREAS, findings of fact by this governing body must be presented to enable the North Carolina Local Government Commission to make its findings of fact set forth in North Carolina General Statute 159, Article 8, Section 151 prior to approval of the proposed contract;

NOW, THEREFORE, BE IT RESOLVED that the Board of [Commissioners/Aldermen/ Directors] of Anywhere, North Carolina, meeting in [regular/special] session on the _____ day of _____, 20____, make the following findings of fact:

1. The proposed contract is necessary or expedient because [*State facts supporting a conclusion that the undertaking is necessary and/or expedient for the contracting unit.*]

2. The proposed contract is preferable to a bond issue for the same purpose because [*State facts supporting a conclusion that the proposed contract or agreement, under the circumstances, is preferable to a general obligation or revenue bond issue for the same purpose. Specifically, (i) show that the cost of the proposed undertaking exceeds the amount that can be prudently raised from currently available appropriations, unappropriated fund balances, and non-voted bonds that could be issued by the contracting unit in the current fiscal year pursuant to Article V, Section 4, of the North Carolina Constitution (the "two-thirds limitation"); (ii) cite reasons and justifications for choosing the contract method of financing rather than a non-voted general obligation bond issue, a voted general obligation bond issue, or a revenue bond issue.]*

3. *(For all issues marketed publicly.)* The cost of financing under the proposed contract is greater than the cost of issuing general obligation bonds. [*Include justification for using this method of financing.*]

4. The sums to fall due under the contract are adequate and not excessive for the proposed purpose because [*State facts supporting a conclusion that the sums to fall due under the contract are not excessive for its stated purpose.*]

5. The [City/Town/County/Authority] of Anywhere's debt management procedures and policies are good because [*State facts supporting a conclusion that the debt management policies of the contracting unit have been carried out in strict compliance with law, or provide assurances that debt management will hence forth be so carried out.*]

6. The increase in taxes necessary to meet the sums to fall due under the proposed contract will be _____ cents per $100 valuation and is not deemed to be excessive.

7. The [City/Town/County/Authority] of Anywhere is not in default in any of its debt service obligations.

8. The attorney for the [City/Town/County/Authority] of Anywhere has rendered an opinion that the proposed Project is authorized by law and is a purpose for which public funds may be expended pursuant to the Constitution and laws of North Carolina.

9. *(If project is for utility of public service enterprise you must include this finding.)* The probable net revenues of the project to be financed will be sufficient to meet the sums to fall due under the proposed contract.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the [Mayor/Manager/Finance Officer] is hereby authorized to act on behalf of the [City/Town/County/Authority] of Anywhere in filing an application with the North Carolina Local Government Commission for approval of the Project and the proposed financing contract and other actions not inconsistent with this resolution.

This resolution is effective upon its adoption this _____ day of _____, 20____.

The motion to adopt this resolution was made by [Commission/Alderman/Director] _____, seconded by [Commissioner/Alderman/Director] _____ and passed by a vote of _____ to _____.

_____
[Mayor/Chairman]

ATTEST:

_____
[Clerk/Secretary]

This is to certify that this is a true and accurate copy of Resolution No._____ Adopted by the Anywhere Board of [Commissioners/Aldermen/Directors] on the _____ day of _____, 20____.

_____ _____
[Clerk/Secretary] Date

Agenda Item Summary Sheet

Date: **6/3/25**

Item #: **6**

Item Title: 2025 Annual Beach Monitoring Proposal and Pre-Permitting/Sediment Analysis Proposal

Item Summary:

Staff from each of the four towns that are part of the collaborative beach nourishment Plan recently submitted Request for Qualifications for an Engineering Consultant. The last time this process was done was in 2020. Three proposals were submitted and all three were interviewed. Each town submitted their score cards and Coastal Protection and Engineering were selected.

Coastal Protection Engineering has submitted their proposal for the third year of monitoring the beach after the most recent beach nourishment project. Year one monitoring cost $33,475, year three cost $34,882, and the third year is Proposed to be $35,639.

The second proposal is regarding pre-planning for the 2027 project.

The work has been separated into two proposals to better track services directly related to the 2027 Project.

Staff Recommendation: The town has implemented a long-term beach management program to sustain its beach. The 2022/2023 beach nourishment project added approximately 1,048,400 cy of sand to the beach. The town must monitor this project to measure its performance and to evaluate potential future project goals. It is also important that property owners know where the "sand is" that was placed on the beach. To be eligible for potential FEMA reimbursement to replace sand loss after a declared storm, FEMA must determine that we have established and adhered to a maintenance program involving periodic renourishment to preserve the original design. For these reasons, the staff's recommendation is to accept both proposals.

Requested Action: A Motion to accept the 2025 Annual Beach Monitoring Proposal

and Pre-Permitting/Sediment Analysis Proposal from CSE and
authorize the town manager to sign the associated Service Agreements.

Attachments:

Proposal: 2025 Annual Monitoring Services CSE Service Agreement2025

Pre-Permitting/Sediment Analysis Proposal

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

May 6, 2025

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

Re: Proposal: 2025 Annual Monitoring Services, Town of Southern Shores, North Carolina

Dear Mr. Ogburn:

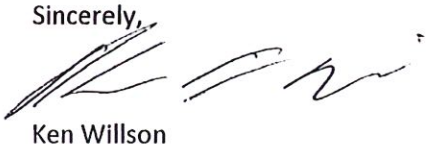
Coastal Protection Engineering of North Carolina, Inc. (CPE) is pleased to provide this proposal for professional services to the Town of Southern Shores (TOWN). The proposed services are associated with the 2025 Annual Beach Monitoring. Under this proposal, CPE will conduct 2025 beach monitoring data acquisition, determine volumetric and shoreline changes, evaluate project performance, and update the Town's Beach Maintenance Plan. CPE will sub-contract portions of the data acquisition included in Task 1 to McKim & Creed.

The Scope of Professional Services (the Services) is attached to this proposal as Exhibit A. The work included under Tasks 1 – 2 will be performed for a lump sum fee of $35,639.25. Exhibit B includes a breakdown of costs by Task, while 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: 2025 ANNUAL BEACH MONITORING SERVICES

2. **FEES, INVOICES AND PAYMENTS**: The Services associated with Tasks 1 – 2 will be performed for the lump sum fee of **$35,639.25 (Thirty-five thousand, six hundred thirty-nine 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

CPE _____/CLIENT _____

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 RE-PERFORM 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.

CPE _____/CLIENT _____

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.

CPE _____/CLIENT _____

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 _____, 2025

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:_____

Attachments: Exhibit A – Scope of Professional Services
Exhibit B – Breakdown of Cost
Exhibit C – Schedule of Deliverables

EXHIBIT A
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2025 ANNUAL BEACH MONITORING SERVICES

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 Renourishment Project constructed in 2022/2023. CPE will sub-contract portions of the data acquisition included in Task 1, as described herein.

This proposal includes 2025 beach monitoring data acquisition and analysis and updating the TOWN's Beach Maintenance Plan. Each Task is described in detail in the following sections.

TASK 1 – 2025 BEACH PROFILE DATA ACQUISITION

The standard method used to monitor beach nourishment projects is to collect topographic and bathymetric data along a series of beach profiles on an annual or bi-annual basis. Comparison of this data can be used to track volumetric changes of sand along the beach and changes in the shoreline position. Furthermore, in order to be eligible for disaster assistance through the Federal Emergency Management Agency (FEMA), local sponsors of beach nourishment projects are encouraged to monitor the beach annually to document conditions of the project prior to the impact of a storm.

The 2025 beach profile surveys will be conducted along the TOWN to evaluate volume and shoreline change trends as well as performance of the TOWN's beach nourishment project constructed in 2022/2023. 2025 beach profile data acquisition will be conducted prior to June 30, 2025. 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-two (22) profiles (See Table 1), spaced approximately 1,000 feet apart from station -197+12 (located at the northern Town boundary) to station -10+00 (near Sea Bass Circle) within the Town of Southern Shores. While data for the beach profile located at the border of Southern Shores & Kitty Hawk (baseline station 0+00) will be used in the analysis of the Southern Shores beach, the cost of data acquisition for this profile is included in a separate agreement with the Town of Kitty Hawk. CPE will sub-contract portions of this work to McKim & Creed.

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

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

EXHIBIT A
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2025 ANNUAL BEACH MONITORING SERVICES

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.

Table 1. Monitoring Survey Baseline and Azimuth

Town	Station	Easting	Northing	Azimuth
Southern Shores	-197+12	2962839.6	889616.1	70
	-187+14	2963230.4	888697.7	70
	-177+13	2963619	887775.8	70
	-170+56	2963880.5	887172.9	66.6
	-163+99	2964142	886569.9	66.6
	-157+41	2964403.5	885966.9	66.6
	-153+05	2964579	885562.3	66
	-150+00	2964665	885364	65.3
	-140+00	2965116	884444	65.3
	-130+00	2965239	883452	65.3
	-120+00	2965920	882604	65.3
	-110+00	2966366	881697	62.6
	-100+00	2966790	880778	62.6
	-90+00	2967110	879895	62.6
	-80+00	2967533	878988	62.6
	-70+00	2967951	878106	62.6
	-60+00	2968381	877175	62.6
	-50+00	2968838	876228	62.6
	-40+00	2969249	875440	62.6
	-30+00	2969731.6	874496.1	62.6
	-20+00	2970189.7	873607.2	62.6
	-10+00	2970653	872721	62.6
---------	0+00	2971224.2	871890.8	62.6

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 2025 Post-Construction Monitoring Report described under Task 2, CPE will provide the TOWN with a survey report. This appendix will include methodology, field notes for the data acquisition, control information, profile plots, cross sections, and digital XYZ data.

TASK 2 – 2025 POST-CONSTRUCTION MONITORING REPORT

CPE will conduct both shoreline and volume change analysis to evaluate project performance. Analysis will focus on the total shoreline and volume change that has occurred since project construction represented by data collected post project in 2022.

Given the contiguous nature of the beach nourishment project constructed from the north end of Southern Shores to approximately Prospect Avenue in Kill Devil Hills, CPE will prepare a comprehensive shoreline and volume change monitoring report that includes the Towns of Southern Shores, Kitty Hawk, and Kill Devil Hills. The report will include details on data collection and methods used as well as results of the various analyses. The results will be reported in terms of the project area in total and broken up into Town-specific sections. The report will also include a discussion section and recommendations based on the findings of the analyses. Deliverables will 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.

Costs associated with the 2025 monitoring report will be costs shared with the Towns of Kill Devil Hills and Kitty Hawk. This not only provides each Town with a broader view of how their Town's project fits into the overall project length, but it also provides cost efficiencies by reducing redundancy. Additional costs may be applied if the Town prefers to have a sperate report prepared that only includes their Town's portion of the project.

CPE will also update the TOWN's Beach Maintenance Plan as needed. The update will include project and planning features to document compliance with FEMA guidance for disaster assistance. The Beach Maintenance Plan will be developed in a way consistent with the Public Assistance Program and Policy Guide –FP-104-009-2 (June 2020). Specifically, the costs and

EXHIBIT A
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2025 ANNUAL BEACH MONITORING SERVICES

volume of fill placement will be updated along with re-nourishment requirements. CPE will coordinate with TOWN staff to identify current and future funding sources and document these in the maintenance plan. The future cost will be estimated on a 5-year horizon and will be categorized as Planning & Design, Construction, or Monitoring efforts. This task assumes there are no 'new' project initiatives for the TOWN project and assumes the existing maintenance plan is only being updated.

EXHIBIT B:
BREAKDOWN OF COSTS
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2025 ANNUAL BEACH MONITORING SERVICES

Table 1. Breakdown of the total cost of the 2025 Beach Monitoring Services associated with the Town of Southern Shores (Tasks 1 and 2).

TASK	DESCRIPTION	COST
1	2025 Annual Beach Profile Data Acquisition	$19,884.25
2	2025 Annual Beach Profile Data Analysis and Report	$15,755.00
	TOTAL:	**$35,639.25**

EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2025 ANNUAL BEACH MONITORING SERVICES

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
- Beach Maintenance Plan Update

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

Monthly Progress Reports: CPE will provide a summary of the project status via e-mail approximately every 30 days during the anticipated 8-month contract period. The letter will describe activities completed throughout the month and update the anticipated schedule of milestones as appropriate.

2025 Annual Beach Monitoring Report: Upon completion of the beach profile data acquisition described in Task 1 of Exhibit A - Scope of Services, CPE will provide a 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 of the 2025 Annual Beach Monitoring Report will be provided within 120 days following completion of data acquisition 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 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.

EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2025 ANNUAL BEACH MONITORING SERVICES

Beach Maintenance Plan Update: Along with the Beach Monitoring Report, an updated Beach Maintenance Plan will be provided to the TOWN as part of the Scope of Services associated with Task 2. The update will include relevant aspects of the project and future planning to document compliance with FEMA guidance for disaster assistance. Barring any unforeseen circumstances, the draft update will be provided within 120 days following completion of survey operations. Once comments are received from the TOWN on the Draft update, a final update will be provided. The final update will be provided in digital form only.

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

May 6, 2025

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

Re: Proposal: Pre-Permitting Coordination and Native Beach Sediment Analysis, Town of Southern Shores

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 initial coordination for the permitting of the 2027 Dare County 4-Towns Renourishment project. Task 1, includes services associated with Pre-Permitting Coordination, while Task 2 is associated with recharacterizing the beaches within the Southern Shores Project area in terms of grain size. Each task is described in detail in the following sections.

TASK 1 – PRE-PERMITTING COORDINATION

In order to maintain a schedule that will allow the proposed beach nourishment project to be constructed in the Summer of 2027, CPE proposes to initiate pre-permitting coordination with regulatory and resource agencies. This coordination may include discussions with the 4-Towns about various options, internal discussions with CPE staff about various approaches and project specifics, and initial regulatory and resource agency coordination.

As part of Task 1, CPE will coordinate with the 4-Towns as well as State and Federal regulatory and resource agencies to convene an interagency scoping meeting to present the fundamental aspects of the proposed 2026/2027 4 Towns Beach Nourishment Project. In preparation for this meeting, CPE, in consultation with the 4-Towns, will develop a project narrative that will provide overall project history and context and outline the scope of the proposed project. These details will include estimates of volume, length of the various beach fill segments, and proposed borrow sites. The narrative will also present a proposed method for permitting the projects. The narrative will be provided to meeting participants no less than one week prior to the meeting. Representatives from the relevant federal and state regulatory and resource agencies will be invited to the meeting along with representatives from each of the four towns and the County.

During the meeting, CPE will present the scope of the project based on the available information at the time of the meeting. This information will include the preliminary anticipated volume of material that will

be placed along each town's oceanfront shoreline, the location of the borrow area(s), preliminary geotechnical data, anticipated impacts to natural and cultural resources, the proposed permitting approach, and other elements of the project. CPE will engage agency representatives to provide feedback and concerns during the meeting. Following the meeting, CPE will prepare meeting minutes. These meeting minutes will then be distributed to all meeting participants.

CPE expects that the work associated with Task 1 will span over the course of approximately 6 to 8 weeks. During that time, CPE will submit a more comprehensive proposal to the TOWN that will cover the additional services to obtain permits and to conduct the engineering analysis associated with the 2027 project. Task 1 of this proposal is intended to facilitate initial coordination while the scope of this more comprehensive proposal is being developed. Once the more comprehensive proposal is approved, CPE will operate under the new proposal. Given the uncertainty of when the new proposal will be approved, and the need to continue coordination on this time sensitive process, ***CPE will complete Task 1 on a Time & Materials basis, not to exceed $3,335.00***, in accordance with the rate sheet included in Exhibit A.

TASK 2 – NATIVE BEACH SEDIMENT ANALYSIS

Prior to the initial 2022 project, CPE conducted extensive sampling and analysis to determine sediment characteristics of the beach where the beach nourishment project was proposed. The data generated from that initial sampling was used in the permitting and design of the first project. While historic data can be used to determine compatibility in accordance with the Technical Standards for Beach Fill Projects in North Carolina (15A NCAC 07H .0312), over repeated beach nourishment events, the sediment characteristics of the recipient beach can change.

In order to update the available data for the native beach sediment characteristics, CPE will collect 13 samples along six (6) profiles within the proposed 2027 project area. Specifically, samples will be collected along profiles at baseline stations -197+12, -170+56, -130+00, -90+00, -50+00, and -20+00. These are the same transects that were sampled prior to the 2022 beach nourishment project. Sample distribution along the profiles will include six (6) samples landward and six (6) samples seaward of the mean low water (MLW) line and 1 additional sample at the MLW line, in compliance with 15A NCAC 07H .0312. Mechanical sieve analysis will be conducted on each sample and a composite grain size will be calculated for each profile. Furthermore, composites sediment characteristics will be developed for the entire project area using these data.

Results of the analysis completed as part of Task 2 will be provided to the Town in a summary letter report along with composite tables and individual and composite granularmetric reports and grain size distribution curves. This information will also be incorporated into the design report that will be developed for the 2027 project, which will be included in a subsequent proposal.

CPE will complete Task 2 for the lump sum fee of $19,300.00

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

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: Pre-Permitting Coordination & Native Beach Sediment Analysis

   FEES, INVOICES AND PAYMENTS: The Services associated with Tasks 1 will be performed on a time and materials basis in accordance with the rate schedule included in Exhibit A, not to exceed **$3,335.00 (Three thousand, three hundred thirty-five dollars and zero cents).**

   The Services associated with Tasks 2 will be performed for the lump sum fee of **$19,300.00 (Nineteen thousand, three hundred dollars and zero 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.

2. **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.

3. **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)

CPE _____/CLIENT _____

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.

4. **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.

5. **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.

6. **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.

7. **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 RE-PERFORM 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

CPE _____/CLIENT _____

REPORTS OR OTHER WORK PERFORMED HEREUNDER.

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

9. **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.

10. **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.

11. **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

CPE _____/CLIENT _____

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 _____, 2025

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:
STANDARD RATE SCHEDULE
SOUTHERN SHORES, NORTH CAROLINA
PRE-PERMITTING COORDINATION AND NATIVE BEACH SEDIMENT ANALYSIS

I. Labor Rates

Labor Classification	Bill Rate
Principal Engineer	$295.00
Principal Coastal Scientist	$295.00
Principal Marine Engineer	$295.00
Program Manager	$230.00
Senior Project Manager	$230.00
Senior Civil Engineer	$210.00
Senior Coastal Scientist	$210.00
Senior Coastal Engineer	$210.00
Marine Structural Engineer	$210.00
Senior Marine Biologist	$190.00
Project Manager	$175.00
Senior Coastal Modeler	$175.00
Coastal Engineer III	$165.00
Marine Geologist	$160.00
Coastal Engineer II	$145.00
Coastal Modeler	$135.00
Coastal Engineer I	$130.00
Structural Designer	$125.00
Coastal Scientist	$120.00
Junior Coastal Engineer	$115.00
Junior Coastal Modeler	$115.00
Environmental Scientist	$110.00
Junior Marine Biologist	$110.00
Junior Coastal Scientist	$105.00
CAD / GIS Operator	$105.00
Engineering Technician	$85.00
Clerical	$85.00
Project Intern	$75.00

II. Reimbursable Costs*

Cost Classification	Bill Rate
Mileage	$0.70 / mile
Equipment	Per Purchase Order
Direct Costs	Per Purchase Order
Sub-Consultants	10% of Cost

**Subject to terms and conditions of governing agreement.*

AGENDA ITEM SUMMARY FORM

MEETING DATE: June 3, 2025

ITEM TITLE: Public Hearing ZTA-25-03

ITEM SUMMARY:

At the May 6, 2025 Town Council meeting, Council directed Town Staff to draft Town Code amendments to modernize the Town Code. Town Code Section 36-300 establishes the procedures for consideration of Special Use Permits. On March 12, 2024, Council adopted ZTA-24-01, which included several amendments to Section 36-300, including the removal of the guiding standards that had to be satisfied to grant a Special Use Permit. According to guidance from the UNC School of Government (see attached), zoning regulations should include adequate guiding standards for Special Use Permit decisions. As a result, Town Staff has drafted ZTA-25-03, which includes a proposed amendment to reestablish guiding standards for Special Use Permit decisions:

a. The applicant has met the requirements of the applicable provisions of the town chapter pertaining to zoning, subdivision chapter, and all other applicable ordinances.
b. That the use as proposed will conform with the town's comprehensive land use plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in the chapter and additionally required by the town council as authorized by the chapter.
c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
d. That the use as proposed will not overburden the town fire department fire-fighting capabilities and the county water supply capacity to the town, as said facilities and capabilities will exist on the completion date of the special use for which the application is made.
e. That the use will not substantially injure the value of adjoining property, unless the use is a public necessity.

All of the proposed guiding standards were in Section 36-300 prior to adoption of ZTA-24-01 except for the standard that addresses the value of adjoining property.

STAFF RECOMMENDATION:

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Comprehensive Land Use Plan and Town Staff recommends approval of the application. The Town Planning Board unanimously (5-0) recommended approval of the application at the May 19, 2025 Planning Board meeting.

REQUESTED ACTION:

Motion to approve ZTA-25-03.

STAFF REPORT

To: Southern Shores Town Council
Date: June 3, 2025
Case: ZTA-25-03
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores
Requested Action: Amendment of Town Code Section 36-300

ANALYSIS

At the May 6, 2025 Town Council meeting, Council directed Town Staff to draft Town Code amendments to modernize the Town Code. Town Code Section 36-300 establishes the procedures for consideration of Special Use Permits. On March 12, 2024, Council adopted ZTA-24-01, which included several amendments to Section 36-300, including the removal of the guiding standards that had to be satisfied to grant a Special Use Permit. According to guidance from the UNC School of Government (see attached), zoning regulations should include adequate guiding standards for Special Use Permit decisions. As a result, Town Staff has drafted ZTA-25-03, which includes a proposed amendment to reestablish guiding standards for Special Use Permit decisions:

a. The applicant has met the requirements of the applicable provisions of the town chapter pertaining to zoning, subdivision chapter, and all other applicable ordinances.
b. That the use as proposed will conform with the town's comprehensive land use plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in the chapter and additionally required by the town council as authorized by the chapter.
c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
d. That the use as proposed will not overburden the town fire department fire-fighting capabilities and the county water supply capacity to the town, as said facilities and capabilities will exist on the completion date of the special use for which the application is made.
e. That the use will not substantially injure the value of adjoining property, unless the use is a public necessity.

All of the proposed guiding standards were in Section 36-300 prior to adoption of ZTA-24-01 except for the standard that addresses the value of adjoining property.

The Town's current Comprehensive Land Use Plan contains the following Policy that is applicable to the proposed ZTA:

- LUC 3.1: Support development design and approvals that reinforce the low-density nature of the community and are at an appropriate scale for the commercial district.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Comprehensive Land Use Plan and Town Staff recommends approval of the application. The Town Planning Board unanimously (5-0) recommended approval of the application at the May 19, 2025 Planning Board meeting.

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

PLANNING BOARD
GENERAL APPLICATION FORM
TOWN OF SOUTHERN SHORES, NC 27949

Date: 4 / 18 / 2025 Filing Fee: $200 Receipt No.: N/A Application No.: ZTA-25-03

NOTE: The Planning Board will follow the specific provisions of the Zoning Ordinance Chapter 36. Article X Administration and Enforcement, Section 36-299.

Please check the applicable Chapter/Article:

- ☐ **Chapter 30. Subdivisions-Town Code**
- ☐ **Chapter 36. Article VII. Schedule of District Regulations. Section 36-207 C-General Commercial District**
- ☐ **Chapter 36. Article IX. Planned Unit Development (PUD)**
- ☐ **Chapter 36. Article X. Administration and Enforcement, Section 36-299 (b) Application for Building Permits and Site Plan Review other than one and two family dwelling units ***
- ☐ **Chapter 36. Article X. Section 36-300-Application for Permit for Conditional Use**
- ☐ **Chapter 36. Article X. Section 36-303 Fees**
- ☐ **Chapter 36. Article X. Section 36-304-Vested Rights**
- ☑ **Chapter 36. Article XIV. Changes and Amendments**

Certification and Standing: As applicant of standing for project to be reviewed I certify that the information on this application is complete and accurate.

Applicant

Name *Town of Southern Shores*

Address: *5375 N. Virginia Dare Trl.*
Southern Shores, NC 27949

Phone *(252) 261-2394* Email *whaskett@southernshores-nc.gov*

Applicant's Representative (if any)

Name _____
Agent, Contractor, Other (Circle one)
Address _____
_____
Phone _____ Email _____

Property Involved: ___Southern Shores ___Martin's Point (Commercial only)

Address: _____ Zoning district _____

Section _____ Block _____ Lot _____ Lot size (sq.ft.) _____

Request: __ Site Plan Review __Final Site Plan Review __Conditional Use __Permitted Use
__PUD (Planned Unit Development) __ Subdivision Ordinance __Vested Right __ Variance

Change To: __Zoning Map **X**__ Zoning Ordinance

Signature _____ Date 4-18-2025

*** Attach supporting documentation.**

Town of Southern Shores
5375 N. Virginia Dare Trail, Southern Shores, NC 27949
Phone 252-261-2394 / Fax 252-255-0876
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ZTA-25-03
5-13-2025
Ordinance 2025-XX-XX

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. § 160D-701, the Town of Southern Shores (the "Town") may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures, and land. Pursuant to this authority and the additional authority granted by N.C.G.S. § 160D-702, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 36 of the Town's Code of Ordinances (the "Town Code"); and

WHEREAS, the Town desires to reinstate adequate guiding standards for Special Use Permit decisions in the Town's Zoning Ordinance; and

WHEREAS, the Town's currently adopted Comprehensive Land Use Plan contains the following Policy that is applicable to the proposed amendments,

> LUC 3.1: Support development design and approvals that reinforce the low-density nature of the community and are at an appropriate scale for the commercial district.

WHEREAS, in accordance with the findings above, the amendment of the Town's Zoning Ordinance as stated below will serve a public purpose and advance the public health, safety and general welfare.

ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (<u>underline</u>) 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 Zoning Ordinance.

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 **Sec. 36-300. Application for permit for special uses.** Be amended as follows:

Sec. 36-300. Application for permit for special uses.

...

(12) In granting any special use permit, the town council may prescribe appropriate conditions and safeguards to ensure the use is in conformity with this article. Violation of such conditions and safeguards, when made a part of the terms under which the special use permit is granted, shall be deemed a violation of this article and punishable under article XI of this chapter. Conditions and safeguards imposed under this subsection shall not include requirements for which the town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by the town, including, without limitation, taxes, impact fees, building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

(13) Before they may grant any special use permit or vested right, the town council shall make affirmative findings that the applicant has shown:

a. The applicant has met the requirements of the applicable provisions of the town chapter pertaining to zoning, subdivision chapter, and all other applicable ordinances.
b. That the use as proposed will conform with the town's comprehensive land use plan, and will be compatible with the area in which it is to be located, if developed in accordance with the conditions specified in the chapter and additionally required by the town council as authorized by the chapter.
c. That the use will not materially endanger the public health and safety if located where proposed and developed according to the plan submitted.
d. That the use as proposed will not overburden the town fire department fire-fighting capabilities and the county water supply capacity to the town, as said facilities and capabilities will exist on the completion date of the special use for which the application is made.
e. That the use will not substantially injure the value of adjoining property, unless the use is a public necessity.

(134)The town council shall determine contested facts and make its decision within a reasonable time. The decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the town council's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the mayor or other duly authorized member of the council. The decision is effective upon filing the written decision with the town clerk. The decision of the town council shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(145)Special use permits issued pursuant to this section shall be recorded by the applicant in the county registry.

(156)Upon final approval of a special use permit application and accompanying site plan by the town council, the building inspector and zoning administrator, upon application for a building permit and zoning permit, shall issue a building permit and zoning permit within one year from the date of such approval, provided that all other requirements are met. If a building permit and zoning permit are not applied for and issued within one year from the date of final approval of the special use permit application and accompanying site plan, the special use permit approval and site plan expire and the applicant must submit a new special use permit application and accompanying site plan, conforming to the then current provisions of the zoning chapter and all other applicable ordinances, for review by the planning board and town council and pay the applicable fees. If any of the conditions of approval or any part of them should be held invalid or void, the entire permit shall be void immediately.

ARTICLE IV. Statement of Consistency with Comprehensive Plan and Reasonableness.

The Town's adoption of this ordinance amendment is consistent with the Town's adopted comprehensive zoning ordinance, comprehensive land use plan and any other officially adopted plan that is applicable; for all the above-stated reasons, including but not limited to it encourages the use of low impact development techniques and sound environmental preservation practice, encourages lot preparation methods that preserve natural vegetation and minimize clear cutting and furthers the founder's original vision for Southern Shores of a low-density residential community served by a small commercial district. The Town considers the adoption of this ordinance amendment to be reasonable and in the public interest.

ARTICLE V. 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 VI. Effective Date.

This ordinance amendment shall be in full force and effect from and after the ____day of _____, 2025.

_____
Elizabeth Morey, Mayor

ATTEST:

_____
Town Clerk

APPROVED AS TO FORM:

_____
Town Attorney

Date adopted:

_____
Motion to adopt by Councilmember:

_____
Motion seconded by Councilmember:

Vote:___AYES___NAYS

Planning and Development Regulation

Special Use Permits: Need for Adequate Guiding Standards

David W. Owens

[Adapted from Owens, Land Use Law in North Carolina (4th ed. 2023)]

Since decisions on special use permits involve applying legislatively established standards to individual applications, it is essential that the zoning regulation itself include adequate guiding standards for quasi-judicial decisions.[1] It would be illegal to provide for a special use permit without including standards to guide decision-making for those permits. Adequate guiding standards are required even where the governing board is making the quasi-judicial decision.[2]

If there are no standards, or if the standard provided is so general as to leave the board unbridled discretion in its decision, the courts will invalidate the ordinance provision as an unlawful delegation of legislative authority. A board may not legislate through ad hoc quasi-judicial decision-making.

Zoning-regulation provisions that have decision standards for special use permits that are so general as to offer little practical guidance for individual decisions are invalid. *Jackson* sets the basic rule:

> Delegation to an administrative officer, or board, of authority to issue or refuse a permit for the erection of a specified type of structure in a given area, dependent upon whether such officer, or board, considers such structure in such area, under prevailing conditions, conducive to or adverse to the public interest or welfare is a different matter. Such delegation makes the determinative factor the opinion of such officer, or board, as to whether such structure in such area, under prevailing conditions, would be desirable or undesirable, beneficial to the community or harmful to it. This is a delegation of the power to make a different rule of law, case by case. This power may not be conferred by the legislative body upon an administrative officer or board. . . .
>
> So much of . . . this ordinance as requires the Board of Adjustment to deny a permit . . . unless it finds "that the granting of the special exception will not adversely affect the public interest" is, therefore, beyond the authority of the Board of County Commissioners to enact and so is invalid.[3]

In re Ellis confirms that this same restriction applies to the governing board.[4] In response to the adverse ruling in the *Jackson* case, the Guilford County Board of Commissioners adopted a resolution moving special use permit decision-making from the board of adjustment to the governing board. The commissioners subsequently denied the applicant's request for a special use permit for a mobile-home park under the "public interest" standard, making no findings of fact and stating no reasons for their decision. On appeal the court ruled that governing boards have no more discretionary power for individual special use permits than does a board of adjustment:

Like the board of adjustment, the commissioners cannot deny applicants a permit in their unguide discretion or, stated differently, refuse it solely because, in their view, a mobile-home park would "adversely affect the public interest." The commissioners must also proceed under standards, rules, and regulations, uniformly applicable to all who apply for permits.[5]

Thus, it is clearly the nature of the zoning decision, not the identity of the decision maker, that determines what procedures and standards must be applied. When a governing board acts in a quasi-judicial capacity, it must observe quasi-judicial, not legislative, standards.

Continuing with the line of cases that have held various standards to be so general as to offer inadequate guidance to decision makers, the North Carolina Supreme Court held a requirement that a special use be consistent with the "purpose and intent" of the zoning ordinance to be an insufficient standard and thus an unlawful delegation of authority.[6] In another case the court ruled that it was improper for the Nags Head governing board to deny a special use permit for a planned-unit development on the grounds that it was inconsistent with the goals and objectives of the land use plan, even though the ordinance specifically listed the plan as one of the factors in determining the suitability of a special use permit.[7] The state appeals court also held that it was improper to deny a special use permit for an adult bookstore on the grounds that it would be incompatible with the character and use of surrounding buildings.[8] Its inclusion as a special use by the ordinance is conclusive on the policy question of general use compatibility, the court concluded.

Even so, it is permissible to use relatively general standards for decisions. In a key decision, *Kenan v. Board of Adjustment*,[9] the court of appeals approved the use of four fairly general standards for special use permits. Many North Carolina zoning ordinances now incorporate these same standards, which require that the use

1. does not materially endanger the public health or safety,
2. does meet all required conditions and specifications,
3. will not substantially injure the value of adjoining property or be a public necessity, and
4. will be in harmony with the area in which it is located and in general conformity with the comprehensive plan.[10]

Some zoning ordinances also add more detailed, specific standards for particular uses and often apply those in combination with these general standards.[11]

The standards to be applied in particular quasi-judicial decisions must be clearly identified as such by the regulation. Only those standards specifically listed as applicable may be applied when making special use permit decisions. Additional standards may not be developed on an ad hoc basis.

C.C. & J. Enterprises, Inc. v. City of Asheville[12] illustrates this rule. The city council there denied a special use permit after finding the application met all of the technical requirements and development standards in the regulation, basing the denial on a general concern about impacts on health and safety (citing street conditions, topography, access, flooding potential, and proposed density). The court held that since the ordinance did not in fact list promotion of the public health, safety, and welfare as a standard for special use permit decisions (though it would have been permissible to do so), it was inappropriate for the city council to use it as a standard in reviewing the application. A general statement of intent that "adequate standards will be maintained pertaining to the public health, safety, welfare, and convenience"[13] was not a permit standard and could not be used in decision-making. Similarly, in *PHG Asheville, LLC v. City of*

Asheville, the court held that an applicant for a special use permit is not required to rebut concerns raised by board members that are not within the range of issues and data required by the relevant standards in the regulation.[14]

The same rule applies to imposition of conditions on special use permits. Only the standards actually in the regulation can be used as the basis for imposition of conditions on a special use permit that is issued. The authority to impose appropriate conditions and safeguards "cannot be used to justify unbridled discretion" in framing permit conditions.[15]

In making its decision, the board must clearly state whether each of the applicable standards has been met. A board may vote on each standard separately or on a single motion that specifies which standards have been met (so long as the board's conclusions about each standard are clearly discernable).[16]

[1]. Evidence must be presented that the standards used to make the decision are actually included in the regulation. Jubilee Carolina, LLC v. Town of Carolina Beach, 268 N.C. App. 90, 834 S.E.2d 665 (2019).

[2]. In re Ellis, 277 N.C. 419, 178 S.E.2d 77 (1970). *See also* Town of Spruce Pine v. Avery Cnty., 346 N.C. 787, 488 S.E.2d 144 (1997) (upholding water-supply-watershed-protection statute, noting guiding standards need be only as specific as circumstances permit); Adams v. N.C. Dep't of Nat. & Econ. Res., 295 N.C. 683, 249 S.E.2d 402 (1979) (upholding delegation of rulemaking and quasi-judicial authority to state Coastal Resources Commission); City of Roanoke Rapids v. Peedin, 124 N.C. App. 578, 478 S.E.2d 528 (1996) (impermissible for county board of health to make legislative judgments in its rulemaking).

[3]. 275 N.C. at 165–167, 166 S.E.2d at 85–87. *See also* Howard v. City of Kinston, 148 N.C. App. 238, 246, 558 S.E.2d 221, 227 (2002).

[4]. 277 N.C. 419, 178 S.E.2d 77.

[5]. *Id.* at 425, 178 S.E.2d at 81.

[6]. Keiger v. Bd. of Adjustment, 278 N.C. 17, 23, 178 S.E.2d 616, 620 (1971). *See also* Nw. Fin. Grp., Inc. v. Cnty. of Gaston, 329 N.C. 180, 190, 405 S.E.2d 138, 144 (1991) (holding approvals under mobile-home-park ordinance may not be based on general concern about hazards to public welfare).

[7]. Woodhouse v. Bd. of Comm'rs, 299 N.C. 211, 261 S.E.2d 882 (1980).

[8]. Harts Book Stores, Inc. v. City of Raleigh, 53 N.C. App. 753, 281 S.E.2d 761 (1981).

[9]. 13 N.C. App. 688, 187 S.E.2d 496, cert. denied, 281 N.C. 314, 188 S.E.2d 897 (1972).

[10]. Kenan, 13 N.C. App. at 692–93, 187 S.E.2d at 499.

[11]. A 2005 survey of North Carolina local governments by the School of Government indicated widespread use of these four general standards. Eighty-nine percent of the responding jurisdictions use the standard of public health and safety; 92 percent use the standard of meeting all required conditions; 84 percent use the standard of not injuring adjoining property values; and 90 percent use the standard of maintaining harmony with the surrounding area. (Sixty-nine percent also require conformity with a comprehensive plan.) Thirty-six percent of the responding jurisdictions also included more-specific standards for particular special uses.

[12]. 132 N.C. App. 550, 512 S.E.2d 766 (1999). *See also* MCC Outdoor, LLC v. Town of Franklinton, 1 N.C. App. 809, 813, 610 S.E.2d 794, 797, review denied, 359 N.C. 634, 616 S.E.2d 539 (2005) (denial of special use permit for sign cannot be based on findings not related to ordinance standards for decision); Knight v. Town of Knightdale, 164 N.C. App. 766, 596 S.E.2d 881 (2004) (applying rule to quasi-judicial site-plan approval). This same rule applies to subdivision-plat approvals. Nazziola v. Landcraft Props., Inc., 143 N.C. App. 564, 545 S.E.2d 801 (2001).

[13]. C.C. & J. Enterprises, 132 N.C. App. at 553, 512 S.E.2d at 769 (quoting Asheville, N.C., City Code § 30-6-1 (1993)).

[14]. 374 N.C. 133, 839 S.E.2d 755 (2020).

[15]. Hewett v. Cnty. of Brunswick, 155 N.C. App. 138, 146, 573 S.E.2d 688, 694 (2002).

[16]. Richardson v. Union Cnty. Bd. of Adjustment, 136 N.C. App. 134, 523 S.E.2d 432 (1999) (permissible for board to combine two of four standards in their vote on a special use permit).

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