



TOWN OF SOUTHERN SHORES
TOWN COUNCIL REGULAR MEETING

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

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

www.southernshores-nc.gov

PITTS CENTER

Tuesday, April 09, 2024 at 5:30 PM

AGENDA

Call Meeting to Order

Pledge of Allegiance

Moment of Silence

Amendments to / Approval of Agenda

Consent Agenda

- [1.](#) Minutes Approval- March 12, 2024
- [2.](#) Budget Amendment #25
- [3.](#) Tax Pickups & Releases

Staff Reports

- Deputy Town Manager/Planning Director-Monthly Permit Report & Planning Board Update
- Police Chief -Monthly Report
- Fire Chief-Monthly Report
- Town Manager
 - Southern Shores Landing WWTP – rate increases
 - Earth Day Events
 - Flat Top Tour
 - Chicahawk Sidewalk relocation
 - TOSS Cemetery Maintenance
 - Channel Markers relocated
- Town Attorney

General Public Comment (Limit: 3 minutes per speaker.)

Old Business

New Business

- [4.](#) Discussion of a Potential Ordinance Banning the Release of Balloons
- [5.](#) Public Hearing-ZTA-24-02
- [6.](#) 2024 Southern Shores Beach Monitoring Proposal

General Public Comment (Limit: 3 minutes per speaker.)

Council Business

Adjourn



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PITTS CENTER
Tuesday, March 12, 2024 at 5:30 PM

MINUTES

1

2 **Call Meeting to Order**

3 Pledge of Allegiance

4 Moment of Silence

5 **Present**

6 Mayor Elizabeth Morey

7 Mayor pro tem Matt Neal

8 Council Member Paula Sherlock

9 Council Member Robert Neilson

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11 **Absent**

12 Council Member Mark Batenic

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14 **Amendments to / Approval of Agenda**

15 **Motion** made by Council Member Sherlock to approve the March 12, 2024 agenda as presented,
16 Seconded by Council Member Neilson. The motion passed unanimously.

17 Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member Neilson

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19 **Consent Agenda**

20 **Motion** made by Council Member Sherlock to approve the consent agenda as presented, Seconded by
21 Council Member Neilson. The motion passed unanimously.

22 Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member Neilson

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24 1. Minute Approval- February 6, 2024 Council Mtg. & Closed Session

25 2. Government & Education Access Channels proposed budget for 2024-2025

26 **Presentations**

27 3. Recognition (Town Hall Little Free Library)-Eagle Scout Austin Bellinger

28 Town Manager Ogburn recognized Eagle Scout Austin Bellinger for his achievements and
29 presented him with a Certificate of Appreciation for his community service.

30 4. Juniper Trinitie Culvert Bridge Replacement Design-Kimley Horn

31 Andrew Phillips, project manager and engineer for Kimley Horn, provided an update on
 32 the progress, permitting, and design of the core slab bridge to replace the Juniper/Trinitie
 33 culvert. He stated headway is being made with the design, all permits have been
 34 submitted and are currently in review, and Kimley Horn is getting ready to submit 65%
 35 completed plans to the town for review. These plans would include all roadway and
 36 roadside drainage. The design plans are a bit behind but will be submitted and hopefully
 37 to everyone's liking. The bridge will be lowered to provide a better line of sight for
 38 vehicles all while not losing much of a vertical clearance for the boats navigating the
 39 canal.

41 Staff Reports

- 42 • Deputy Town Manager/Planning Director-Monthly Permit Report & Planning Board Update
 - 43 ○ December, January, and February monthly permit reports.
 - 44 ○ **Dare County EMS/Fire Station 4 at 28 E. Dogwood Trl.** -The Building Inspector issued
 45 the Certificate of Occupancy yesterday. An open house will be held on Friday from
 46 2:00 to 6:00 p.m. which will also include guided tours of the new facility as well as free
 47 blood pressure checks provided by Dare County EMS staff members.
 - 48 ○ **Land Use Plan Update** -The draft plan is currently being reviewed by other State and
 49 Federal agencies and comments are being accepted from adjoining jurisdictions. All
 50 comments are supposed to be sent to the Town no later than April 1st.
 - 51 ○ **Planning Board**-The Town Planning Board meets on March 18th at 5:00 p.m. here in
 52 the Pitts Center. The purpose of the meeting is for the Board to reconsider ZTA-23-03,
 53 a Zoning Text Amendment application submitted by the Town of Southern Shores to
 54 amend the Town's current lot width requirements. The Board will also consider ZTA-
 55 24-02, a Zoning Text Amendment application submitted by the Town of Southern
 56 Shores to amend the Town's lot disturbance/stormwater management permit
 57 requirements by establishing that a lot disturbance/stormwater management permit
 58 is required to remove trees greater than 6 inches in diameter, measured at 4.5 feet
 59 above the ground, within a front, side or rear yard (setback) on any unimproved lot in
 60 the general commercial zoning district and the penalty for noncompliance.
 - 61 ○ **Historic Landmarks Commission**-The Town Historic Landmarks Commission may meet
 62 on March 26th at 9:00 a.m. here in the Pitts Center (still waiting on confirmation if all
 63 or most members can attend). If the meeting is held, the purpose of the meeting is for
 64 the Commission to hold a hearing to consider an application for a Certificate of
 65 Appropriateness submitted by Clayton Small to replace the garage windows, garage
 66 doors, and siding shingles at 116 Ocean Blvd.
- 68 • Police Chief - January and February monthly report.
- 69 • Fire Chief- February monthly report and annual end of year report.
- 70 • Town Manager-FY2024-25 Budget Planning
 - 71 ○ Town Manager Ogburn reviewed the proposed budget planning schedule and the list
 72 of potential capital improvements for FY 2024-25

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Budget Calendar

March 7 Department Head Budgets Due to the Town Manager

April 9 Regular Monthly Council Meeting. 5:30

April 16 Mid-month meeting. 9:00

Preliminary budget discussion to receive Town Council input.

May 7 Regular Council Meeting and
 Manager’s Recommended Budget Presented to Town Council. 5:30

TBA Council Workshop to discuss recommended budget (if necessary).

~~May 21 Mid-month meeting. 9:00~~

TBA Council Workshop to discuss recommended budget (if necessary).

June 4 Regular Council Meeting and Public Hearing on the Budget and
 potential adoption of the budget.

*Budget must be adopted no later than June 30.

Potential Capital Improvement Estimates

Culvert replacement	\$1,600,000
Duck Rd. multi-use-path ext.	\$325,000
Multi-use-path repairs	\$150,000
Document scanning	\$180,000
Building renovation	\$250,000

TOTAL \$2,505,000

- Town Attorney-no report

General Public Comment

None

Old Business

5. Consideration of File Room Addition & Document Scanning

Town Manager Ogburn stated the Planning Department file room is no longer manageable, it is lacking space, and the floor structure is compromised by the weight. The council previously expressed interest in having the documents scanned, to protect the public records and provide a more efficient way for the public to access the documents. To still maintain the paper copies, an addition to the room will be required. There is also a need for some town hall improvements and security upgrades. Town Manager Ogburn would like to bid on a couple of options and come back to the council for consideration. He felt including all improvements, security upgrades, and a file room addition bid together as a package would be cost effective.

Council Member Neilson asked if the documents would then be available electronically to the public. Town Manager Ogburn stated it would. The town already has the software necessary to accomplish this.

Mayor pro tem Neal stated bidding everything together is a good cost-effective way to look at the project.

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By consensus of all council- direct the town manager to bid out the full package (file room addition and needed renovations/security upgrades) and go out to bid with the projects.

Mayor Morey called for a five-minutes recess (6:30 p.m.)

Meeting Reconvened (6:36 p.m.)

New Business

6. Public Hearing-Consideration of ZTA-24-01

Town Attorney Lauren Arizaga-Womble opened the public hearing and called on staff for a report.

Planning Director Haskett staff presented his staff report. At the February 6, 2024 Town Council meeting, the Town Council directed Town Staff to draft Town Code amendments to modernize the Town Code. As a result, Town Staff has drafted ZTA-24-01 which includes proposed amendments to one Section in Chapter 24, Planning and several Sections in Chapter 36, Zoning. The proposed amendments are as follows:

Part I, Section 24-27, Powers and Duties:

- Removes the previous statutory reference that grants authority for Planning Boards and replaces it with the new reference (160D-301).
- Replaces the powers and duties of the Planning Board so that they are consistent with G.S. 160D-301(b).

Part II, Section 36-203, RS-8 Multifamily Residential District:

- Establishes a 40 percent lot coverage requirement for multifamily dwellings.

Part III, Section 36-207, C General Commercial District:

- Removes multifamily dwellings from the list of Permitted Uses (use by right).
- Establishes a 100-foot setback requirement for restaurants without a drive-through or with a drive through facility from residential districts and residential uses and 50 feet from planned unit developments (PUDS).
- Establishes a 100-foot setback for drive-through facilities or establishments (small) from residential districts and residential uses and 50 feet from PUDs.
- Establishes to establish a 50-foot setback requirement for buildings and other facilities associated with mixed use group development of commercial and residential buildings from residential districts, residential uses, and PUDs.
- Establishes a 20-foot buffer requirement where a mixed-use group development abuts a residential district, residential use, or PUD.
- Establishes multifamily dwellings according to the density and dimensional requirements of the RS-8 multifamily residential district as a Special Use.

- 153 • Establishes a 50 ft. setback requirement for commercial buildings and facilities from
154 residential
155 districts, residential uses, and PUDs.
- 156 • Establishes a 20-foot buffer requirement where a commercial use or district abuts a
157 residential district, residential use, or planned unit development and to require replanting of
158 dead vegetation in buffers

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160 Part IV, Section 36-209, Prohibited Uses in all Districts:

- 161 • Establishes miniature golf courses, storage units, warehouses, and wind farms as
162 prohibited uses in all zoning districts.

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164 Part V, Section 36-297, Building and Zoning Permits Required; Time Limitations for Site Plans,
165 Building Permits and Zoning Permits:

- 166 • Establishes that approved site plans expire if a building permit and zoning permit are not
167 issued within one year of approval.
- 168 • Establishes that only building permits expire if construction has not commenced within
169 180 days of issuance of a building permit and zoning permit.
- 170 • Establishes that building permits, zoning permits, and site plan approvals expire if work is
171 discontinued for one year.
- 172 • Establishes that if an application made in accordance with approved regulation is
173 submitted for a development approval and a development regulation change between the
174 time the application was submitted and a decision is made, the applicant may choose
175 which version of the development regulation will apply to the application. If the
176 development permit applicant chooses the version of the rule or ordinance applicable at
177 the time of the permit application, the development permit applicant shall not be
178 required to await the outcome of the amendment to the rule, map, or ordinance prior to
179 acting on the development permit.

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181 Part VI, Section 36-299, Application for Building Permits, Zoning Permits and Site Plan
182 Requirements:

- 183 • Requires showing the proposed to scale architectural elevations of the front, sides, rear
184 and rooflines of proposed structures shown on site plans.
- 185 • Removes submittal of the proposed method for treating wastewater, location of all
186 wastewater collection and treatment facilities (including any applicable property to be
187 reserved for possible future wastewater use), name of any regulatory agency that must
188 approve wastewater system, name of and written approval for connection from any
189 organization that will collect or dispose of wastewater as requirement for site plan
190 approval and establishes it as a requirement prior to issuance of a building permit and
191 zoning permit.
- 192 • Requires a rendering showing the proposed front, sides, and rear appearances of the
193 structures relative to views from adjacent properties, including retained vegetation,
194 proposed landscaping and other site elements.
- 195 • Requires showing the number of bedrooms and/or occupants.
- 196 • Establishes that improvements that require a new wastewater treatment facility, or
197 connection to an existing wastewater treatment facility, documentation from the North
198 Carolina Utilities Commission certifying that the owner of the wastewater treatment

- 199 facility is an approved public utility; is the utility franchise holder; and is the permit holder
- 200 issued by the North Carolina Department of Environmental Quality. All documentation of
- 201 these requirements shall be submitted with the site plan application.
- 202 • Establishes that improvements that require connection to an existing wastewater treatment
- 203 facility, documentation from the North Carolina Department of Environmental Quality
- 204 certifying that the wastewater treatment facility is in compliance with all applicable
- 205 requirements must be submitted with the site plan application, including adherence to permit
- 206 conditions issued by the North Carolina Department of Environmental Quality.
- 207

208 Part VII, Section 36-300, Application for Permit for Special Uses:

- 209 • Establishes that written applications for Special Use Permits shall be submitted to the
- 210 Planning and Code Enforcement Department instead of the Town Planning Board no later
- 211 than 30 days prior to the Planning Board meeting at which the plan is to be reviewed.
- 212 • Establishes that no Special Use Permit application shall be deemed complete unless it is
- 213 accompanied by a site plan drawn to scale which complies with the site plan requirements
- 214 contained in section 36-299.
- 215 • Establishes that the Town Planning Board shall review Special Use Permit applications and
- 216 recommend approval, conditional approval, or rejection of applications to Town Staff
- 217 instead of the Town Council.
 - 218 • 160D-301(b)(6) allows Planning Boards to provide a preliminary forum for
 - 219 review of quasi-judicial decisions, provided that no part of the forum or
 - 220 recommendation may be used as a basis for the deciding board.
- 221 • Reorganizes the Section so that it follows the Special Use Permit process chronologically.
- 222 • Establishes requirements for transmitting Special Use Permit applications, reports, and
- 223 written materials to the Town Council.
- 224 • Establishes procedural requirements for evidentiary hearings held by the Town Council
- 225 when considering Special Use Permits.
- 226 • Establishes that approved Special Use Permits shall be recorded by the applicant in the
- 227 county registry.
- 228 • Establishes that a building permit and zoning permit must be issued within one year of
- 229 approval of a Special Use Permit application and accompanying site plan. If a building
- 230 permit and zoning permit are not applied for and issued within one year from the date of
- 231 final approval of the Special Use Permit application and accompanying site plan, the
- 232 Special Use Permit approval and site plan expire and the applicant must submit a new
- 233 Special Use Permit application and accompanying site plan.
- 234

235 Part VIII, Section 36-304, Vested Right:

- 236 • Revises the Section title to Vested Rights – Site Specific Vesting Plans.
- 237 • Deletes the Section in its entirety and replaces it with the requirements established in G.S.
- 238 160D-108.1
- 239

240 **STAFF RECOMMENDATION:**

241 Approval of ZTA-24-01 with the exception of moving Section 36-299(b)(2)c.5. to 36-299(6)g.

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243 Town Attorney Lauren Arizaga-Womble addressed her concerns with the term “residential use”
 244 because it is permitted in the commercial district, it will actually become a moving target when it
 245 comes to non-conformities.

246 Town Attorney Lauren Arizaga-Womble also addressed the Planning Board’s review of a special use
 247 permit and making recommendations to staff rather than Town Council. 160D-301(b)(6) allows
 248 Planning Boards to provide a preliminary forum for review of quasi-judicial decisions, provided that no
 249 part of the forum or recommendation may be used as a basis for the deciding board.

250 Mayor Morey stated a quasi-judicial hearing does not allow general public comment. She felt it was
 251 important for members of the public to make comments and this process would provide that
 252 opportunity through the Planning Board.

253 The council extensively reviewed each section, noting any corrections or modifications required.

254 Attorney Womble called on members of the public for comment.

255 Matt Huband-110 Landing Trail- thanked staff for this ZTA and asked council to pass the ZTA for the
 256 betterment of the community.

257 Mike Stone-8 Sandfiddler Ct-family owns several commercial parcels and felt this would prevent the
 258 parcel from being developed to its highest and best use.

259 Staphanie Huband-110 landing Trail-thought they had bought with the residential 50 ft. protection.
 260 The adjacent commercial parcel was given extra lot coverage. The goal of Southern Shores seems to be
 261 to protect a lot of the vegetation and not all properties will be built to its full commercial use.

262 Andy Ward- The most recent special use proceedings have shown several apparent vulnerabilities in
 263 our ordinance pertaining to buffers, setbacks, and wastewater treatment. This ZTA tonight is good
 264 solid work from both town staff, town attorneys, and the Planning Board. He urged the council to
 265 approve the ZTA.

266 Hearing no further comments, Town Attorney Lauren Arizaga-Womble closed the public hearing.

267 Hearing no further comments, and having already reviewed each section, **Motion** made by Mayor
 268 pro tem Neal to adopt ZTA 24-01 with the following changes:

- 269 1. page 3, section 6 strike quasi judicial decision.
- 270 2. page 5-6, strike part 3, residential uses within description (found on line 4, 11, 23, 25,
 271 and following page line 5, and 7.
- 272 **3. page 10, section 5 which has been stricken, replace in entirety.**
- 273 4. page 13, strike line 5 through "propose to wastewater"
- 274 5. page 14, line 15 should read " The town planning board shall provide a preliminary
 275 review on a special use permit application. The board shall submit the findings of the
 276 review to town staff.

277 Motion Seconded by Council Member Sherlock. The motion passed unanimously.
 278 Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member
 279 Neilson

280 **MOTION:** Mayor pro tem Neal moved to consider agenda item #8 before agenda item #7,
 281 Seconded by mayor Morey. The motion passed unanimously.

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8. Consideration of Resolution 2024-03-02 Opposing the Release of Helium Balloons

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Southern Shores resident Debbie Swick is heading up a campaign to educate all of Dare

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County about the detrimental impacts' helium balloons have on our fragile coastal

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environment. Attached for your consideration is a Resolution Opposing the Release of Helium

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Balloons.

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Council Member Sherlock supports the resolution but felt further discussion and information would be needed to consider an ordinance.

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Mayor Morey stated this is not about selling or purchasing balloons but rather using them wisely and safely.

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Consensus of the Council to direct staff to present 3-5 examples of ordinances that other coastal towns have adopted, and council will then have further discussions about the potential of an ordinance.

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Motion made by Mayor pro tem Neal to adopt Resolution # 2024-03-02 Opposing the release of Helium Balloons, Seconded by Council Member Neilson. The motion passed unanimously. Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member Neilson

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7. Mini-Brooks Exception Policy Approval-Pursuant to G.S.143-64.32

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The agenda summary read as, G.S. 143-64.32 authorizes a unit of local government to exempt itself from the Mini-Brooks Act, which means that it will not be required to use the Qualification Based Services process and may select an architect, engineer, surveyor, or alternative construction delivery method firm by whatever method it chooses (or no method at all). The statute does not impose much by way of requirements for utilizing the exemption – it simply requires the unit to put the exemption in writing. However, the exemption is capped at \$50,000, meaning the estimated cost of the contract cannot exceed this amount. Contracts with an estimated cost of \$50,000 or more cannot be exempted and the QBS process must be used.

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Throughout the fiscal year, the town needs the services of an engineer for project design such as street improvements, smaller stormwater projects, multi-use-paths and sidewalk extensions. Most of, if not all, these projects have come at a cost well below the \$50,000 required for exemption.

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The process for hiring an engineering firm for projects such as the culvert replacement on Juniper/Trinitie Trail would require a formal QBS process.

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Rather than securing these engineering services via a yearly contract or going through the lengthy and time consuming QBS process, staff is requesting the Council adopt the attached

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321 resolution which gives the town manager the authority to contract for architectural,
322 engineering, and surveying services for certain small projects.

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324 **Motion** made by Mayor Morey to adopt the attached, Resolution #2024-03-01, Seconded by
325 Council Member Sherlock. The motion passed unanimously.

326 Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member
327 Neilson

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329 9. Historic Landmarks Commission Reappointment-Wanda Brett-Jordan

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331 Council appointed Wanda Brett-Jordan as the alternate member on the Town Historic
332 Landmarks Commission on May 2, 2023 with a term that was effective immediately and
333 expired on February 3, 2024. Ms. Brett-Jordan has indicated she would like to continue
334 serving on the Commission.

335 **Motion** made by Mayor Morey to Reappointment-Wanda Brett-Jordan, Seconded by Council
336 Member Neilson. The motion passed unanimously.

337 Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member
338 Neilson

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340 10. Planning Board Appointment

341 Alternate Planning Board member Dan Fink (first position) resigned from the Board on
342 February 12, 2024. Town Staff has two applications to serve on the Board on file from Charles
343 Ries and Richard Filling.

344 Staff recommends moving Michael Zehner from the second alternate position to the first
345 alternate position on the Town Planning Board and appointment of Mr. Ries or Mr. Filling as
346 an alternate member in the second position on the Town Planning Board with a term that
347 begins immediately and ends on June 30, 2024.

348 Council Member Sherlock stated it was an abundance of riches to have these citizen's
349 volunteer.

350 Mayor Morey felt the applications were equally impressive and in the absence of flipping a
351 coin, **Motion** made by Mayor Morey to appoint Charles Reis as second alternate, Seconded by
352 Council Member Sherlock. The motion passed unanimously. Voting Yea: Mayor Morey, Mayor
353 pro tem Neal, Council Member Sherlock, Council Member Neilson

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355 **General Public Comment**

356 None

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358 **Council Business**

359 Council Member Neilson thanked the council for passing the Government Access Channel budget.

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361 Mayor pro tem Neal stated the Housing Taskforce last scheduled meeting was canceled, but one is
362 scheduled for next week. He hopes to have an update at that point.

363 Mayor Morey stated the next council meeting is April 9th and a workshop on April 16th at 9:00 am. She
364 encouraged residents to reach out if they have any questions, concerns, or priorities about the budget.
365 The Flat-Top tour is scheduled for April 27th and the town's own 13 Skyline will be included in that tour.
366 This Friday is the grand opening of the new Fire/EMS Station at East Dogwood.

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368 **Adjourn**

369 Hearing no further business, **Motion** made by Council Member Sherlock to adjourn the meeting at 8:04
370 p.m., Seconded by Mayor pro tem Neal. The motion passed unanimously.

371 Voting Yea: Mayor Morey, Mayor pro tem Neal, Council Member Sherlock, Council Member Neilson

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DRAFT

**Town of Southern Shores
Budget Amendment Number # 25**

Public Works

Increases

Decreases

<u>Account Number</u>	<u>Description</u>	<u>Amount</u>	<u>Account Number</u>	<u>Description</u>	<u>Amount</u>
	Revenues				
40-39930	OB Community Foundation Grant	\$3,518			
40-32900	Interest Income	\$12,232			
	Expenditures				
57-50994	13 Skyline Property	\$15,750			
	TOTAL			TOTAL	\$ -

Explanation: The cost of electrical work, power washing, painting, replacing rot where needed and glazing windows at 13 Skyline Property.

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date

**TOWN OF SOUTHERN SHORES
TAX DEPARTMENT**

4/9/2024

PICKUPS

RELEASES

January Real \$ 293.02
February Real \$ 100.75

TOTAL \$0.00

\$ 393.77



Date: 4/9/24

Agenda Item Summary Sheet

Item #: 4

Item Title: Discussion of a Potential Ordinance Banning the Release of Balloons

Item Summary: At the March 12, 2024, Town Council meeting, resident Debbie Swick spoke about the negative impacts that releasing balloons into the air has on the environment and wildlife. Mrs. Swick urged the Council to take action that would prohibit the release of balloons. After discussion, the Council unanimously passed a resolution opposing the release of balloons. After further discussion, the Council directed staff to provide examples of ordinances from other North Carolina coastal communities so that the item could be considered again at a future meeting.

Requested Action: If the Town Council chooses to consider the adoption of an ordinance that would ban the release of balloons in the Town, staff asks that direction be given to present a draft ordinance for possible adoption at the May 7, 2024 regular Town Council meeting.

Attachment: Examples of related ordinances from the towns of Duck, Surf City, Topsail, Wrightsville, Swansboro.

Town of Duck

The Code of Ordinances, Town of Duck, North Carolina, is hereby amended by adding a section, to be numbered 130.05, Unlawful to Release Balloons within the Town, which section shall read as follows:

Sec. 130.05. Unlawful to Release Balloons within the Town.

A. It shall be unlawful for any person, firm, nonprofit organization, or corporation to knowingly and intentionally release, participate in the release of, intentionally cause to be released, to litter by abandoning and not properly disposing of all waste material, any type of balloon inflated with a liquid, air, or gas within the Town limits, any waters within the zoning jurisdiction of the Town, or the beach and/or dune areas within the Town.

B. The following are not violations of this Section:

- (1) Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes.
- (2) Hot air balloons that are recovered after launching.
- (3) Balloons released inside a building or structure do not make their way into the open air.

C. The following definitions apply to this Section:

“Balloon” means a flexible, nonporous bag made from materials such as, but not limited to, rubber, latex, polychloroprene, mylar, or nylon fabric that can be inflated or filled with gas or fluid, such as helium, hydrogen, nitrous oxide, oxygen, air, or water, and then sealed at the neck of the bag. The Town does not recognize any balloon as “biodegradable or photodegradable”.

“Litter” includes all waste materials resulting from the outdoor release or abandonment of a balloon.

D. Penalty for violations of this Section:

Any person violating the provisions of this section shall be subject to a civil penalty in the amount of \$250 to be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within ten days after having been cited for violation of the ordinance.

Town of Surf City

Sec. 12-16. Unlawful to release balloons within the town.

(a) It shall be unlawful for any person, firm, nonprofit organization, or corporation to knowingly and intentionally release, participate in the release of, intentionally cause to be released, to litter by abandoning and not properly disposing of all waste material, any type of balloon inflated with a liquid, air, or gas within the town limits, any waters within the zoning jurisdiction of the town, or the beach front. Any person violating the provisions of this section shall be subject to a civil penalty in the amount of \$250 to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within ten days after having been cited for violation of the ordinance.

(b) Except for:

(1) Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes.

(2) Hot air balloons that are recovered after launching.

(3) Balloons released inside a building or structure do not make their way into the open air.

(c) Definitions.

“Balloon” means a flexible, nonporous bag made from materials such as, but not limited to, rubber, latex, polychloroprene, mylar, or nylon fabric that can be inflated or filled with gas or fluid, such as helium, hydrogen, nitrous oxide, oxygen, air or water, and then sealed at the neck of the bag. The town does not recognize any balloon as “biodegradable or photodegradable”.

“Litter” includes all waste materials resulting from the outdoor release or abandonment of a balloon.

Town of Topsail Beach

§ Sec. 24-18. UNLAWFUL TO RELEASE BALLOONS WITHIN THE TOWN.

(a) It shall be unlawful for any person, firm, nonprofit organization, or corporation to knowingly and intentionally release, participate in the release of, intentionally cause to be released, to litter by abandoning and not properly disposing of all waste material, any type of balloon inflated with a liquid, air, or gas within the town limits, any waters within the zoning jurisdiction of the town, or the beach front.

(b) The following are not violations of this Section:

- 1) Balloons released by a person on behalf of a governmental agency or pursuant to a governmental contract for scientific or meteorological purposes.
- 2) Hot air balloons that are recovered after launching.
- 3) Balloons released inside a building or structure do not make their way into the open air.

(c) The following definitions apply to this Section:

Balloon means a flexible, nonporous bag made from materials such as, but not limited to, rubber, latex, polychloroprene, mylar, or nylon fabric that can be inflated or filled with gas or fluid, such as helium, hydrogen, nitrous oxide, oxygen, air or water, and then sealed at the neck of the bag. The Town does not recognize any balloon as "biodegradable or photodegradable".

Litter includes all waste materials resulting from the outdoor release or abandonment of a balloon.

(d) Any person violating the provisions of this section shall be subject to a civil penalty as set forth in Sec. 1-7 and Table 1 thereof.

Town of Wrightsville Beach**§ 92.31 UNLAWFUL TO RELEASE BALLOONS ON TOWN PROPERTY, BEACH FRONT AND WATERS SURROUNDING THE TOWN.**

It shall be unlawful for any person to litter by releasing inflated balloons in or on or by discarding balloons in or on any property owned by the town, any waters within the zoning jurisdiction of the town as established pursuant to the provisions of G.S. § 160A-360 or the beach front as defined in this chapter of the Town Code. Any person violating the provisions of this section shall be subject to a civil penalty in the amount of \$250 to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within ten days after having been cited for violation of the ordinance. In accordance with G.S. § 160A-175(b), any person violating the provisions of this section shall not be subject to the penalty provisions of G.S. § 14-4 and such action shall not be considered a breach of the penal laws of the state.

(Ord. 1642, passed 11-18-10)

Town of Swansboro**§ 92.16 UNLAWFUL TO RELEASE BALLOONS WITHIN THE TOWN'S CORPORATE LIMITS.**

It shall be unlawful for any person to litter by releasing inflated balloons or by discarding balloons in or on any property within the town's corporate limits. Any person violating the provisions of this section shall be subject to a civil penalty, in accordance with G.S. § 160A-175, in the amount of \$250 to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within ten days after having been cited for violation of this section.

(Ord. 2018-O10, passed 8-14-18)



AGENDA ITEM SUMMARY FORM

MEETING DATE: April 9, 2024

ITEM TITLE: Public Hearing-ZTA-24-02

ITEM SUMMARY:

At the February 6, 2024 Town Council meeting, Council directed Town Staff to draft Town Code amendments to modernize the Town Code. At the March 12, 2024 Town Council meeting, the Council adopted ZTA-24-01 (with revisions) which included amendments to Chapter 24, Planning and several sections in Chapter 36, Zoning. The initial draft of ZTA-24-01 included amendments to Section 36-171, Lot Disturbance and Stormwater Management which were withdrawn by Town Staff prior to the February 21, 2024 Planning Board meeting. Town Staff is now proposing similar amendments to Section 36-171, Lot Disturbance and Stormwater Management which if approved, would do the following:

- Establish that a Lot Disturbance/Stormwater Management Permit is required to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in the general commercial zoning district.
- Establish the penalty for not obtaining a Lot Disturbance/Stormwater Management Permit to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in the general commercial zoning district.
 - It would be an offense for any person to remove a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district without first obtaining a Lot Disturbance/Stormwater Management Permit.
 - It would be an offense for a property owner to employ, authorize or direct any third person or entity to remove a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district without first obtaining a Lot Disturbance/Stormwater Management Permit.
 - A separate offense shall be deemed to have been committed for each tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district that is removed without first obtaining a Lot Disturbance/Stormwater Management Permit.
 - When a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district is removed without first obtaining a Lot Disturbance/Stormwater Management Permit, a warning citation would be issued to

the offender allowing 30 days to abate the violation. A replacement tree similar in size would be required to abate the violation. If the violation is not abated within 30 days, the offender would be subject to a civil penalty in accordance with Town Code Section 1-6(d).

STAFF RECOMMENDATION:

Town Staff has determined that the proposed amendments are consistent with the Town’s currently adopted Land Use Plan and Town Staff recommends approval of the application. The Town Planning Board recommended approval (4-1) of the application at the March 18, 2024 Planning Board meeting. The Board also recommended by consensus directing Town Staff to draft another ZTA that would apply the proposed amendments to all other zoning districts.

REQUESTED ACTION:

Motion to approve ZTA-24-02.

STAFF REPORT

To: Southern Shores Town Council
Date: April 9, 2024
Case: ZTA-24-02
Prepared By: Wes Haskett, Deputy Town Manager/Planning Director

GENERAL INFORMATION

Applicant: Town of Southern Shores
Requested Action: Amendment of the Town Code by amending Town Code Section 36-171

ANALYSIS

At the February 6, 2024 Town Council meeting, Council directed Town Staff to draft Town Code amendments to modernize the Town Code. At the March 12, 2024 Town Council meeting, the Council adopted ZTA-24-01 (with revisions) which included amendments to Chapter 24, Planning and several sections in Chapter 36, Zoning. The initial draft of ZTA-24-01 included amendments to Section 36-171, Lot Disturbance and Stormwater Management which were withdrawn by Town Staff prior to the February 21, 2024 Planning Board meeting. Town Staff is now proposing similar amendments to Section 36-171, Lot Disturbance and Stormwater Management which if approved, would do the following:

- Establish that a Lot Disturbance/Stormwater Management Permit is required to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in the general commercial zoning district.
- Establish the penalty for not obtaining a Lot Disturbance/Stormwater Management Permit to remove trees greater than 6 inches in diameter, measured at 4.5 feet above the ground, within a front, side or rear yard (setback) on any unimproved lot in the general commercial zoning district.
 - It would be an offense for any person to remove a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district without first obtaining a Lot Disturbance/Stormwater Management Permit.
 - It would be an offense for a property owner to employ, authorize or direct any third person or entity to remove a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district without first obtaining a Lot Disturbance/Stormwater Management Permit.
 - A separate offense shall be deemed to have been committed for each tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district that is removed without first obtaining a Lot Disturbance/Stormwater Management Permit.
 - When a tree greater than 6 inches in diameter, measured at 4.5 feet above the ground within a front, side or rear yard (setback) on any unimproved lot within the general commercial zoning district is removed without first obtaining a Lot

Disturbance/Stormwater Management Permit, a warning citation would be issued to the offender allowing 30 days to abate the violation. A replacement tree similar in size would be required to abate the violation. If the violation is not abated within 30 days, the offender would be subject to a civil penalty in accordance with Town Code Section 1-6(d).

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

- **Policy 2:** The community values and the Town will continue to comply with the founder's original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small commercial district for convenience shopping and services located at the southern end of the Town. This blueprint for land use naturally protects environmental resources and fragile areas by limiting development and growth.
- **Policy 26:** Promote open space, tree protection, and natural vegetation diversity.
 - **Action Item 26-b** Encourage lot preparation methods that preserve natural vegetation and minimize clear cutting.

RECOMMENDATION

Town Staff has determined that the proposed amendments are consistent with the Town's currently adopted Land Use Plan and Town Staff recommends approval of the application. The Town Planning Board recommended approval (4-1) of the application at the March 18, 2024 Planning Board meeting. The Board also recommended by consensus directing Town Staff to draft another ZTA that would apply the proposed amendments to all other zoning districts.



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: 3 / 11 / 2024 Filing Fee: \$200 Receipt No.: N/A Application No.: ZTA-24-02

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]
Signature

3-11-24
Date

* 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-24-02

3-18-24

Ordinance 2024-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, in accordance with the finding above, the amendment of the Town’s Zoning Ordinance and Town Code Ordinances as stated below will serve a public purpose and advances the public health, safety and general welfare.

WHEREAS, the North Carolina General Assembly adopted 2019 N.C. Sess. Law 111 to clarify and change the land-use regulatory laws of the State, including the recodification of many existing land-use regulatory laws in a newly created N.C.G.S. Chap. 160D pursuant to 2019 N.C. Sess. Law 111, Part II; and

WHEREAS, the Town desires to amend its Town Code to conform to N.C.G.S. Chap. 160D as provided in these ordinance amendments; and

WHEREAS, the amendment of the Town’s Zoning Ordinance and Town Code Ordinances as stated below is based on reasonable consideration, among other things, as to the character of the district, suitability for uses in the area, conserving value of buildings and encouraging the most appropriate use of land throughout the Town.

WHEREAS, the Town’s currently adopted Land Use Plan contains Policies and Action Items that are applicable to the amendments, including but not limited to the following:

Policy 2: The community values and the Town will continue to comply with the founder’s original vision for Southern Shores: a low-density residential community comprised of single-family dwellings on large lots (served by a small

1 commercial district for convenience shopping and services located at the southern
2 end of the Town). This blueprint for land use naturally protects environmental
3 resources and fragile areas by limiting development and growth.

4
5 **Policy 26:** Promote open space, tree protection, and natural vegetation diversity.

6
7 **Action Item 26-b:** Encourage lot preparation methods that preserve natural
8 vegetation and minimize clear cutting.

9
10 **ARTICLE II. Construction.**

11
12 For purposes of this ordinance amendment, underlined words (underline) shall be
13 considered as additions to existing Town Code language and strikethrough words
14 (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the
15 adopted Town Code which are not repeated herein but are instead replaced by an ellipses
16 (“...”) shall remain as they currently exist within the Town Code.

17
18 **ARTICLE III. Amendment of Zoning Ordinance.**

19
20 **NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of
21 Southern Shores, North Carolina, that the Town Code shall be amended as follows:

22
23 **PART I.** That **Sec. 36-171. Lot disturbance and stormwater management.** Be
24 amended as follows:

25
26 **Sec. 36-171. Lot disturbance and stormwater management.**

27 Subject to the requirements of G.S. ~~460A-417(b)~~ 160D-1110(e), if applicable, in all
28 town zoning districts, ~~including all areas within the extraterritorial jurisdiction,~~ no
29 grading, filling, or other alteration of the topography or elevation of any unimproved lot,
30 or demolition and clearing of improved property, nor any manmade change to any
31 improved real estate resulting in the discharge of stormwater onto adjacent property and
32 requiring a building permit, shall be undertaken prior to the issuance of a lot disturbance-
33 stormwater management permit by the zoning administrator.

- 34 (1) All applications for lot disturbance and stormwater management shall be
35 accompanied by a survey and site plan of the proposed improvements prepared
36 by a state licensed professional surveyor, engineer, architect or other person
37 duly authorized by the state to prepare such plans showing the actual
38 dimensions and shape of the lot, and showing the surveyed pre-disturbance
39 ground elevation at the corners of the proposed structure referenced to mean
40 sea level. The application shall also describe the disturbance or development
41 activity which is proposed for the lot. The application and accompanying
42 survey shall be sufficiently detailed for the zoning administrator to confirm that
43 following construction of the proposed improvements the property will retain
44 all stormwater generated by a one and one-half inch rain event and will not
45 adversely affect any stormwater management system previously constructed by

1 the town or on adjacent properties. No fill material may be re-distributed or
2 placed on a lot in the rear or side setback areas unless the final horizontal-to-
3 vertical slope is equal to or less than 3:1. This shall be calculated from the
4 finished final grade to the rear and side property lines. The burden shall be on
5 the applicant to make such a showing, and the zoning administrator, in his
6 discretion, may request reasonable additional information to make a decision on
7 the application.

8
9 (2) Upon inspection, the zoning administrator shall confirm that the survey detail
10 submitted conforms generally to the pre-disturbance condition of the lot with
11 respect to its elevations, and that the proposed disturbance activity will not
12 create any hazards or disturb land or lots other than that owned by the applicant
13 or his agent. The zoning administrator shall make such notation or comments
14 on the permit as needed to further establish the pre-disturbance topography and
15 elevation of the lot for later use in determining the permitted height of any
16 structures subsequently constructed on said lot. The zoning administrator may
17 modify an existing lot disturbance and stormwater management permit
18 requirement during the construction process.

19 (3) The zoning administrator is hereby authorized to include requirements in the
20 permit which minimize the disturbance or damage of any adjacent lots or land,
21 including any reasonable conditions meeting current best management practices
22 for retaining all stormwater generated by a one and one-half inch rain event. All
23 required stormwater improvements shall be maintained in a manner that
24 ensures that the improvements will continue to satisfy all applicable
25 requirements in the issued permit. When required by the zoning administrator, a
26 certification executed by the person duly authorized by the state to prepare such
27 plans attesting to compliance with all applicable stormwater requirements shall
28 be shown on the survey.

29
30 (4) In addition to the provisions above, in the general commercial district, no
31 removal of trees greater than 6 inches in diameter, measured at 4.5 feet above
32 the ground, within a front, side or rear yard (setback) on any unimproved lot,
33 shall be undertaken prior to the issuance of a lot disturbance-stormwater
34 management permit by the zoning administrator.

35
36 a. It shall be an offense for any person to remove a tree in violation of the
37 provisions of this section. It shall be an offense for a property owner to
38 employ, authorize or direct any third person or entity to remove a tree in
39 violation of the provisions of this section.

40
41 b. A separate offense shall be deemed to have been committed for each tree
42 removed in violation of the provisions of this section.
43

c. When a tree is removed in violation of this ordinance, a warning citation shall be issued to the offender allowing 30 days to abate the violation. A replacement tree similar in size shall be required to abate the violation. If the violation is not abated within 30 days, the offender shall be subject to a civil penalty in accordance with town code section 1-6(d).

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, 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 _____, 2024.

Elizabeth Morey, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted:

1
2
3
4
5
6

Motion to adopt by Councilmember:

Motion seconded by Councilmember:

Vote: __AYES__ NAYS



Date: 4/9/24

Agenda Item Summary Sheet

Item #: 6

Item Title: 2024 Beach Monitoring Proposal

Item Summary: Coastal Protection Engineering has submitted their proposal for the second year of monitoring the beach after the most recent beach nourishment project. Year one monitoring cost \$33,475. The cost of year two monitoring is \$34,882, amounting to an increase of \$1,407 or approximately 4.2%.

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 this proposal.

Requested Action: A Motion to accept the monitoring proposal from CSE and authorize the town manager to sign the associated Service Agreement.

Attachments: Proposal: 2024 Annual Monitoring Services
CSE Service Agreement



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

March 25, 2024

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

Re: Proposal: 2024 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 2024 annual beach profile monitoring associated with the Town's beach nourishment project. Under this proposal, CPE will conduct 2024 beach monitoring data acquisition, analysis, and update the TOWN's Beach Maintenance Plan. CPE will sub-contract portions of the data acquisition included under 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 \$34,882.00. Exhibit B includes a breakdown of costs by Task. Exhibit C provides a list of deliverables and a schedule for each.

CPE's performance of the proposed Services is conditioned upon negotiation of mutually acceptable contract terms and conditions. In that regard, attached to this proposal is our standard Services Agreement for your consideration as the terms and conditions that will govern our performance of the proposed Services.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Willson", is written over a horizontal line.

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: 2024 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 **\$34,882.00 (Thirty-four thousand, eight hundred eighty-two 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.

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

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

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

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

5. DELAYS AND CHANGES IN CONDITIONS:

If CPE is delayed or otherwise in any way hindered or impacted at any time in performing the Services by (i) an act, failure to act or neglect of CLIENT or CLIENT's employees or any third parties; (ii) changes in the scope of the work; (iii) unforeseen, differing or changed circumstances or conditions including differing site conditions, acts of force majeure (such as fires, floods, riots, and strikes); (iv) changes in government acts or regulations; (v) delay authorized by CLIENT and agreed to by CPE; or (vi) any other cause beyond the reasonable control of CPE, then 1) the time for completion of the Services shall be extended based upon the impact of the delay, and 2) CPE shall receive an equitable compensation adjustment. Any such equitable adjustment shall be based on CPE's then current Time and Material Rates, as may be provided in a Rate sheet attached hereto.

6. INSURANCE: CPE is presently protected by Worker's Compensation Insurance as required by applicable law and by General Liability and Automobile Liability Insurance (in the amount of \$1,000,000 combined single limit) for bodily injury and property damage. Insurance certificates will be furnished to CLIENT on request. If the CLIENT requires further insurance coverage, CPE will endeavor to obtain said coverage, and CLIENT shall pay any extra costs therefor.

7. INDEMNITIES: CPE shall defend, indemnify and hold harmless CLIENT and its officers and employees from and against loss or damage to tangible property, or injury to persons, to the extent arising from the negligent acts or omissions or willful misconduct of CPE, its borrowed servants and their employer and its subcontractors, and their respective employees and agents acting in the course and scope of their employment. CLIENT shall defend, indemnify and save harmless CPE (including its borrowed servants and their employers and its officers, and employees) from and against, any loss or damage to tangible property, or injury to persons, to the

extent arising from the negligent acts or omissions or willful misconduct of CLIENT, its officers and employees.

8. LIMITATIONS OF LIABILITY:

a. GENERAL LIMITATION - CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY ALLEGED BREACH OF WARRANTY BY CPE SHALL BE TO REQUIRE CPE TO REPERFORM ANY DEFECTIVE SERVICES. CPE'S LIABILITY AND CLIENT'S REMEDIES FOR ALL CAUSES OF ACTION ARISING HEREUNDER WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE, , OR ANY OTHER CAUSE OF ACTION, SHALL NOT EXCEED EXCEPT FOR THE MUTUAL INDEMNIFICATIONS SET FORTH IN SECTION 7 ABOVE. IN THE CUMULATIVE AGGREGATE (INCLUDING ANY INSURANCE PROCEEDS) WITH RESPECT TO ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHATEVER MINIMUM AMOUNT MAY BE REQUIRED BY LAW OR, IF NONE, THE AMOUNT OF COMPENSATION FOR SUCH SERVICES,

b. CONSEQUENTIAL DAMAGES: FURTHER AND REGARDLESS OF ANY OTHER PROVISION HEREIN, CPE SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, DECLINE IN PROPERTY VALUE, REGULATORY AGENCY FINES, LOST PRODUCTION OR LOSS OF USE) INCURRED BY CLIENT OR FOR WHICH CLIENT MAY BE LIABLE TO ANY THIRD PARTY OCCASIONED BY THE SERVICES OR BY APPLICATION OR USE OF REPORTS OR OTHER WORK PERFORMED HEREUNDER.

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

10. **TERMINATION:** Either party may terminate this Agreement with or without cause upon forty five (45) days' written notice to the other party. Upon such termination, CLIENT shall pay CPE for all Services performed hereunder up to the date of such termination. In addition, if CLIENT terminates, CLIENT shall pay CPE all reasonable costs and expenses incurred by CPE in effecting the termination, including, but not limited to non-cancelable commitments and demobilization costs.
11. **ASSIGNMENT:** Neither CPE nor CLIENT shall assign any right or delegate any duty under this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, CPE may, upon notice to CLIENT, assign, pledge or otherwise hypothecate the cash proceeds and accounts receivable resulting from the performance of any Services or sale of any goods pursuant to this Agreement.
12. **MISCELLANEOUS:**
- a. **ENTIRE AGREEMENT, PRECEDENCE, ACCEPTANCE MODIFICATIONS:** The terms and conditions set forth herein constitute the entire understanding of the Parties relating to the provisions of the Services by CPE to the CLIENT. All previous proposals, offers, and other communications relative to the provisions of these Services by CPE, oral or written, are hereby superseded, except to the extent that they have been expressly incorporated by reference herein. In the event of conflict, the three pages of this Agreement shall govern. CLIENT may accept these terms and conditions by execution of this Agreement or by authorizing CPE to begin work. Any modifications or revision of any provisions hereof or any additional provisions contained in any purchase order, acknowledgement or other document issued by the CLIENT is hereby expressly objected to by CPE and shall not operate to modify the Agreement.
- b. **DISPUTES, ATTORNEY FEES** – Any dispute regarding this Agreement or the Services shall be resolved first by exchange of documents by senior management of the parties, who may be assisted by counsel. Any thereafter unresolved disputes shall be litigated in the state whose law governs under Section 9 hereunder. In any litigation, the Prevailing Party shall be entitled to receive, as part of any award or judgment, eighty percent (80%) of its reasonable attorneys' fees and costs incurred in handling the dispute. For these purposes, the "Prevailing Party" shall be the party who obtains a litigation result more favorable to it than its last formal written offer (made at least twenty calendar days prior to the formal trial) to settle such litigation.
- c. **WAIVER OF TERMS AND CONDITIONS** - The failure of CPE or CLIENT in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by CPE or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such failure to enforce had occurred.
- d. **NOTICES** – Any notices required hereunder may be sent by orally confirmed US Mail, courier service (e.g. FedEx), orally confirmed telecopy (fax) or orally confirmed email (further confirmed by US Mail) to the addresses set forth below.
- e. **SEVERABILITY AND SURVIVAL** - Each provision of this Agreement is severable from the others. Should any provision of this Agreement be found invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement.
- Further, to the extent permitted by law, any provision found invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable

consistent with the parties' intent. The terms and conditions set forth herein shall survive the termination of this Agreement.

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

Executed on _____, 2024

COASTAL PROTECTION ENGINEERING OF NORTH CAROLINA, INC.

By (Sign): _____

Print Name: Kenneth Willson

Title: President

Address: 4038 Masonboro Loop Road,

Wilmington, North Carolina, 28409

Phone: (910) 399-1905

Fax: N/A

E-mail: kwillson@coastalprotectioneng.com

TOWN OF SOUTHERN SHORES, NORTH CAROLINA

By (Sign): _____

Print Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

E-mail: _____

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2024 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 Nourishment Project constructed in 2022 and 2023. CPE will sub-contract portions of the data acquisition included in Tasks 1 as described in the respective sections of this scope of work.

This proposal includes 2024 annual monitoring data acquisition, analysis, and updating the TOWN's Beach Maintenance Plan. Each task is described in detail in the following sections.

TASK 1 – 2024 ANNUAL 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 2024 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. Beach profile data acquisition will be conducted along twenty-two (22) profiles, which are listed in Table 1. The northernmost profile (-197+12) is located near 11th Avenue. The southernmost profile (-10+00) is located near Sea Bass Circle. While data for the beach profile located at the border of Southern Shores and Kitty Hawk (baseline station 0+00) will be used in the analysis described under Task 2, the data will be collected by CPE under a separate contract with the Town of Kitty Hawk. 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. 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 costs shared with the Towns of Duck, Kitty Hawk, and Kill Devil Hills as data acquisition for all four towns are anticipated to be conducted concurrently. Additional mobilization costs will be required if monitoring data acquisition is conducted independently of the Towns of Duck, Kitty Hawk, and Kill Devil Hills.

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

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2024 ANNUAL BEACH MONITORING SERVICES

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.

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2024 ANNUAL BEACH MONITORING SERVICES

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 2024 Post-Construction Monitoring Report described under Task 2, CPE will provide the TOWN with a survey report as an appendix. This appendix will include methodology, field notes for the data acquisition, control information, profile plots, cross sections, and digital XYZ data.

TASK 2 – 2024 ANNUAL BEACH PROFILE DATA ANALYSIS AND REPORT

CPE will conduct both shoreline and volume change analysis to evaluate volumetric and shoreline trends along the Town's oceanfront. Furthermore, the data collected will be used to evaluate project performance of the 2022/2023 project. Analysis will focus on the total shoreline and volume change that has occurred since the project was constructed in 2022 and 2023.

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 of 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 report findings. 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 2024 monitoring report will be costs shared with the Towns of Kitty Hawk and Kill Devil Hills. 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 redundancies. Additional costs will be required if the Town prefers to have a separate 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 any necessary updates to the project description, description of planning efforts, and monitoring methods or events to document compliance with FEMA guidance for disaster

EXHIBIT "A"
SCOPE OF PROFESSIONAL SERVICES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2024 ANNUAL BEACH MONITORING SERVICES

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 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
2024 ANNUAL BEACH MONITORING SERVICES

Table 1. Breakdown of the total cost of the 2024 Beach Monitoring Services associated with the Town of Southern Shores (Tasks 1 and 2).

TASK	DESCRIPTION	COST
1	2024 Annual Beach Profile Data Acquisition	\$19,217.00
2	2024 Annual Beach Profile Data Analysis and Report	\$15,665.00
	TOTAL:	\$34,882.00

EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2024 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 one (1) page 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.

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 report will be provided within 120 days following completion of survey operations. Within two weeks following receipt of comments by the Town on the draft report, CPE will prepare a Final report and provide the TOWN with 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.

Beach Maintenance Plan Update: Along with the Beach Monitoring Report, an updated Beach Maintenance Plan will be provided to the TOWN. The update will include relevant aspects of the project and future planning to document compliance with FEMA guidance for disaster

**EXHIBIT C:
LIST OF DELIVERABLES
TOWN OF SOUTHERN SHORES, NORTH CAROLINA
2024 ANNUAL BEACH MONITORING SERVICES**

Item 6.

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.