



**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](http://www.southernshores-nc.gov)

**PITTS CENTER**

**Tuesday, June 03, 2025 at 5:30 PM**

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## **AGENDA**

### **Call Meeting to Order**

Pledge of Allegiance

Moment of Silence

### **Amendments to / Approval of Agenda**

#### **Consent Agenda**

1. Pickups & Releases (Taxes)

2. Budget Amendment

#### **Staff Reports**

Deputy Town Manager/Planning Director- Monthly Permit Report & Planning Board Update

Police Chief

Fire Chief

Town Manager

Town Attorney

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

#### **Old Business**

#### **New Business**

3. Public Hearing-Town Manager's Recommended Budget FY 2025-2026

4. FY 2025-26 Budget Ordinance #2025-06-01

5. LGC Resolution & Public Hearing Date

6. 2025 Annual Beach Monitoring Proposal and Pre-Permitting/Sediment Analysis Proposal

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

#### **Council Business**

#### **Adjourn**

**TOWN OF SOUTHERN SHORES  
TAX DEPARTMENT**

**6/3/2025**

**PICKUPS**

|               |            |
|---------------|------------|
| November Real | \$9,661.82 |
| December Real | \$6,558.74 |

**RELEASES**

|               |           |
|---------------|-----------|
| November Real | \$ 971.56 |
|---------------|-----------|

**TOTAL**

**\$16,220.56**

**\$ 971.56**

# **Town of Southern Shores Budget Amendment Number #28**

## Admin Increases

## Decreases

[illegible]

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

Recommended By:

Approved By: Town Council

Cliff Ogburn, Town Manager

Elizabeth Morey, Mayor

Date \_\_\_\_\_

# **Town of Southern Shores Budget Amendment Number #29**

| Admin          |                                |           | Streets        |                      |            |
|----------------|--------------------------------|-----------|----------------|----------------------|------------|
| Increases      |                                |           | 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 payment money to CRF to be used for Streets

Recommended By:

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Cliff Ogburn, Town Manager

Approved By: Town Council

Elizabeth Morey, Mayor

Date \_\_\_\_\_

# **Town of Southern Shores Budget Amendment Number #30**

| Streets<br>Increases |                   |         | Streets<br>Decreases |                      |          |
|----------------------|-------------------|---------|----------------------|----------------------|----------|
| Account Number       | Description       | Amount  | Account Number       | Description          | Amount   |
| 10-57-48013          | Canal Maintenance | \$3,505 | 10-57-50197          | Bulkhead Maintenance | \$3,505  |
| TOTAL                |                   | \$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



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# Town of Southern Shores

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

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

info@southernshores-nc.gov

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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           |
| <b>Total General Fund Appropriations</b>                     | <b>\$ 11,796,772</b> |

- 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 | <u>\$90,000</u> |
|  | \$ 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 |
|---------------------------------------|----------|

CEMETERY FUND-UIB (as of 6/30/24) \$ 88,364

**SECTION IV. TAX RATE ESTABLISHED AND 2025 PRPOERTY REAPPRAISAL AND REVENUE NEUTRAL RATE**

State law requires that in the year in which a general appraisal of real property has been conducted, a revenue neutral rate statement shall be included in the budget. The January 2025 Dare County revaluation of real properties produced a tax base of \$2,789,442,912 for the Town of Southern Shores. Using the formula mandated by North Carolina General Statute 159-11(e), the revenue neutral tax rate for the Town of Southern Shores is fourteen point eighty cents (0.1480). This includes townwide beach nourishment tax of two point fifty-one cents (0.0251). The real property tax base within Municipal Service District (MSD) 1 is \$499,263,000, and the revenue neutral rate is four point zero eight cents (0.0408). The real property tax base within Municipal Service District (MSD) 2 is \$1,054,440,000, and the revenue neutral rate is one point seventy-six cents (0.0176).

There is hereby levied a property tax of eighteen point eighty cents (\$0.1880) on each one hundred dollars (\$100) valuation of real and personal taxable property in the Town of Southern Shores, of that amount two point fifty-one cents (\$0.0251) is for beach nourishment 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 "Vehicle Taxes – Current Year" in the General Fund, being Section I. B. of this Ordinance.

The rate of tax is based on an estimated total valuation of real and personal property for the purpose of taxation of \$ 2,789,442,912 (taxable property value) with an estimated collection rate of 99.65%, and an estimated total valuation of vehicles of \$65,392,629 with an estimated

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,

A handwritten signature in black ink, appearing to read "Ken Willson", is written over a light blue 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](mailto: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

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 \_\_\_\_\_, 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    |
|                 | -----<br>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

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

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 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 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**

Item 6.

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

| <b>TASK</b>   | <b>DESCRIPTION</b>                                 | <b>COST</b>        |
|---------------|--|--------------------|
| 1             | 2025 Annual Beach Profile Data Acquisition         | \$19,884.25        |
| 2             | 2025 Annual Beach Profile Data Analysis and Report | \$15,755.00        |
| <b>TOTAL:</b> |  | <b>\$35,639.25</b> |

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

Item 6.

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**

Item 6.

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 granulometric 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,

A handwritten signature in black ink, appearing to read "Ken Willson", 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](mailto: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)



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 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.

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

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**

| <u>Labor Classification</u>      | <u>Bill Rate</u> |
|----------------------------------|------------------|
| 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\***

| <u>Cost Classification</u> | <u>Bill Rate</u>   |
|----------------------------|--------------------|
| 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

Item 7.

## 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

Whaskett  
Signature

4-18-2025  
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

info@southernshores-nc.gov

www.southernshores-nc.gov

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

#### ARTICLE III. Amendment of 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

1 amendment or any part thereof to be invalid, such decision shall not affect the remaining  
2 provisions of this ordinance amendment nor the Zoning Ordinance or Town Code of the  
3 Town of Southern Shores, North Carolina which shall remain in full force and effect.  
4

5 **ARTICLE VI. Effective Date.**  
6

7 This ordinance amendment shall be in full force and effect from and after the \_\_\_\_ day of  
8 \_\_\_\_\_, 2025.  
9

10  
11 \_\_\_\_\_  
Elizabeth Morey, Mayor

12 ATTEST:  
13

14 \_\_\_\_\_  
15 Town Clerk  
16  
17

18 APPROVED AS TO FORM:  
19

20 \_\_\_\_\_  
21 Town Attorney  
22

23 Date adopted:  
24

25 \_\_\_\_\_  
26 Motion to adopt by Councilmember:  
27

28 \_\_\_\_\_  
Motion seconded by Councilmember:  
29

30 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.<sup>[1]</sup> 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.<sup>[2]</sup>

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.<sup>[3]</sup>

*In re Ellis* confirms that this same restriction applies to the governing board.<sup>[4]</sup> 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 unguided 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.<sup>[5]</sup>

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.<sup>[6]</sup> 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.<sup>[7]</sup> 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.<sup>[8]</sup> 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*,<sup>[9]</sup> 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.<sup>[10]</sup>

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

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*<sup>[12]</sup> 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”<sup>[13]</sup> 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.<sup>[14]</sup>

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.<sup>[15]</sup>

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).<sup>[16]</sup>

[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).

[Accessibility](#)  
[UNC Privacy Policy](#)

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