



Town of Southern Shores

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RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA AUTHORIZING LITIGATION TO CONFIRM AND, IF NECESSARY, CONDEMN BEACH NOURISHMENT EASEMENTS

(Resolution #2022-3-02)

WHEREAS, the Town of Southern Shores (the “Town”) is located adjacent to the Atlantic Ocean; and

WHEREAS, due to erosion, both constant and sudden, the Town plans to construct beach erosion control or flood and hurricane protection works, including beach renourishment upon the ocean beaches located within the Town (collectively “Beach Protection”); and

WHEREAS, the Town has engaged in and is participating with other governmental entities in acquiring, constructing, reconstructing, extending, or otherwise building or improving Beach Protection via beach nourishment scheduled to occur in the summer of 2022 pursuant to United States Army Corp. of Engineers Permit SAW-2021-00569 (the “2022 Beach Nourishment Project”) including, but not limited to, the acquisition of any property that may be required as a source for beach nourishment; and

WHEREAS, for the purposes allowed by North Carolina General Statute Section 40A-3(b1)(10) and particularly in connection with the 2022 Beach Nourishment Project beach nourishment project to be undertaken, the Southern Shores Town Council hereby determines that it is desirable, necessary and in the public interest to ensure that the Town has acquired a limited easement over certain portions of each oceanfront property in the nourishment project area, which extends from southern boundary of the Town along the Atlantic Ocean and ocean beach to the northern boundary of the Town (“the Project Area”); and

WHEREAS, under North Carolina law and pursuant to various legal theories, the Town may maintain the public’s public trust easement in the privately owned portion of the State’s ocean beaches via the nourishment and renourishment of said ocean beaches. However, some permitting agencies continue to require the Town to provide voluntary beach nourishment easements documents or beach nourishment easements documented by action of the judicial system in order to issue and allow use of permits for beach nourishment projects; and

WHEREAS, the Town finds that it is prudent to obtain beach nourishment easements by voluntary conveyance to the greatest extent possible prior to the implementation of the 2022 Beach Protection Project; and

WHEREAS, the Town believes that any easement interest needed in each oceanfront property is of minimal or *de minimis* value and is worth considerably less than the amount by which work done in connection with the 2022 Beach Nourishment Project will preserve, enhance or increase the value of each affected property; and

WHEREAS, the Town anticipates that it may be unable to obtain documentation that the Town has acquired the necessary easement rights in some of the properties in the Project Area by the owners' voluntary conveyance; and

WHEREAS, it is necessary that the Town confirm or otherwise obtain documentation that it holds the necessary limited easement rights on properties within the Project Area so that the Project may proceed without undue delay; and

WHEREAS, the Town finds that it is in the interest of the public's health, safety, morals and general welfare that the Town should move forward to obtain voluntary conveyance of beach nourishment easements verified by documentation or judicial process in support of future Beach Protection projects.

NOW, THEREFORE BE IT RESOLVED, that the Town Council provides as follows:

1. The Town Manager and Town Attorney or their designees are authorized and directed to procure beach nourishment easements sufficient to perform the 2022 Beach Nourishment Project from the owners of the affected properties and may negotiate easement reasonable accommodations satisfactory to the Town and its consultants.
2. The Town Manager and Town Attorney or their designees are authorized and directed to procure such easements or documentation thereof: (i) voluntarily, if possible; (ii) through litigation confirming public authority to perform the 2022 Beach Nourishment Project upon the ocean beaches of the Town; or (iii) through the use of eminent domain via the necessary proceedings under Chapter 40A of the North Carolina General Statutes to the extent that the Town does not already possess the rights to perform the 2022 Beach Nourishment Project upon the ocean beaches of the Town. In so doing, the Town Manager and Town Attorney or their designees may take any actions necessary in connection with the acquisition process.
3. For each ocean front property in the Project Area, the acquisition, by condemnation if necessary, shall be for purposes allowed by North Carolina General Statute Section 40A-3(b1)(10) and particularly as and to the extent needed in connection with the 2022 Beach Nourishment Project, an easement in each such property over the ocean beach area of the property extending landward from the mean high water mark to the following locations, whichever is most waterward: the Vegetation Line; the toe of the Frontal or Primary Dune; or the Erosion Escarpment of the Frontal or Primary Dune. As used herein, the capitalized terms shall have the meaning as set forth in 15A of the North Carolina Administrative Code, Section

7H.0305. Such easement shall be effective immediately upon acquisition and may be perpetual or limited in duration so long as sufficient to perform the 2022 Beach Nourishment Project and, if possible, future maintenance thereof.

4. The recording with the Dare County Register of Deeds by the Town Manager or his designee of a beach nourishment easement negotiated by the Town Manager and/or Town Attorney or their designee acts an acceptance of the beach nourishment easement and rights granted therein by the Town of Southern Shores.

Adopted this 15 day of March, 2022.

Elizabeth Morey, Mayor

Attest:

Sheila Kane, Town Clerk