



**RESOLUTION OF THE TOWN OF NAGS HEAD, NORTH CAROLINA,
AUTHORIZING AN AMENDMENT TO THE CAMA CORE LAND USE PLAN**

WHEREAS, the Town of Nags Head (herein "The Town") desires to amend its 2010 Land Use Plan, specifically the policies related to protection of the oceanfront Area of Environmental Concern; and

WHEREAS, in accordance with Article VII, Coastal Area Management 113A-110, Land Use Plans, the Town's Land Use Plan "shall give special attention to the protection and appropriate development of areas of environmental concern ... (and)... be consistent with the goals of the coastal area management system as set forth in G.S. 113A-102 and with the State guidelines adopted by the Commission under G.S. 113A-107"; and

WHEREAS, the Town has carried out the 2010 Land Use Plan goal of beach nourishment through a locally funded project of Major Development in an Area of Environmental Concern pursuant to NCGS 113A-118 and permitted through the State of North Carolina; and

WHEREAS, in accordance with CAMA Rules and Policies, Section 15A NCAC 7H .0305, the vegetation line that existed within one year prior to the onset of initial project construction was defined as the "static vegetation line" in coordination with the Division of Coastal Management and established on an aerial map that went into effect on August 18, 2011; and

WHEREAS, Beach fill is considered a "temporary response to coastal erosion and compatible beach fill as defined in 15A NCAC 07H .0312 can be expected to erode at least as fast as, if not faster than, the pre-project beach," and therefore "development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line;" and

WHEREAS, the Town desires to amend its 2010 Land Use Plan to ensure consistent use of the term "ocean beach" in a manner consistent with existing North Carolina General Statutes and case law; and

WHEREAS, the Planning Board identified concerns related to access, safety, public health, and the ability of the Town to pursue future re-nourishment where sandbags or septic systems are present on the ocean beaches; and

WHEREAS, the Town of Nags Head conducted a duly advertised public hearing on the draft amendment to the Land Use Plan at the Meeting of the Board of Commissioners on July 17, 2013; and

WHEREAS, the Town has evaluated the proposed amendments for their consistency with other existing policies within the 2010 Land Use Plan and no internal inconsistencies exist; and

WHEREAS, the amendment is consistent with the currently approved North Carolina Coastal Management Program and the rules of the Coastal Resources Commission;

NOW THEREFORE BE IT RESOLVED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the 2010 Land Use Plan shall be amended as follows (amendments are underlined and in red):

PART I. That **Page 6 and 87 Vision Statement** be amended as follows:

* A healthy, well-maintained oceanfront beach that is accessible, safe and usable; not blocked or made unsafe by large structures, sandbags and/or septic systems which negatively impact the recreational value and aesthetics of the beach and which create public health and safety hazards.

PART II. That **Page 36 Coastal Erosion** be amended as follows:

In May of 2011, the Town began its first beach nourishment project. The project plan called for widening the beach an average of 50 feet to 150 feet depending on the erosion rate of the beach being nourished and entailed dredging and placement of about 4 million cubic yards of sand. The project stretched from Bonnett Street at mile Post 11 south to Mile Post 21 at the town line and was funded in part by: the Dare County Beach Nourishment Fund, property assessments, and a revenue bond for which Dare County gave the Town \$2 million per year for 5 years to pay down the debt on the bond. The total cost of the project was projected to be approximately \$36 million and came in under the projected budget at \$34.2 million.

Sandbags

In the early 1980's, the Coastal Resources Commission allowed property owners to temporarily protect imminently threatened structures on the oceanfront with sandbags. However, there were limits placed on how long they could be utilized because the Coastal Resources Commission was also charged with protecting access to the public beach area. Sandbags left in place for too long can block public access to the beach, be harmful to nesting habitats of sea turtles and can worsen erosion on neighboring properties. Additionally, sandbags can inhibit emergency and public works vehicle access.

In 2000, the Coastal Resources Commission passed a rule which allowed property owners in communities actively seeking beach nourishment to keep their sandbags for five years from the date they were installed or until May 1, 2008, whichever was later. However, sandbags which were covered with sand and stabilized with natural vegetation were allowed to remain in place until they were uncovered by a storm or other natural event. Despite continued efforts by the Division of Coastal Management, enforcement of sandbag removal requirements has been unsuccessful.

Essentially, sandbags which previously have been allowed by the Coastal Resources Commission as temporary erosion control structures, over time, become harmful permanent "hardened" structures

which are not permitted by Coastal Resources Commission and have been banned by the State since 1985. Such sandbags reduce the width of the beach, deflect wave energy and increase erosion on adjacent properties. Such actions are a detriment to the Town's beaches and the completed nourishment project, as well as future re-nourishment efforts. With the completion of a locally funded beach nourishment project that must be monitored and maintained in the future, the Town opposes any new installation of sandbags seaward of the static vegetation line or the first line of stable natural vegetation.

PART III. That **Page 37 Sewage Treatment Plants and Septic Systems**, be amended as follows:

Septic systems

Septic systems located seaward of the static vegetation line or the first line of stable natural vegetation have a high likelihood and tendency to be destroyed, damaged or exposed during storm events and often restrict emergency vehicle and public works vehicle access as well as private access along the ocean beach. Storm damaged and improperly maintained septic systems located seaward of the vegetation line have long been suspected of being non-point sources of sewage pollution which degrade water quality of the Atlantic Ocean within the Town. Exposed septic tanks also act as permanent hardened structures which reduce the width of the beach, deflect wave energy and increase erosion on adjacent properties. Such actions are a detriment to the Town's beaches and completed nourishment project as well as future re-nourishment efforts. Therefore, septic systems located seaward of the static vegetation line or the first line of stable vegetation represent a public health and safety hazard and the Town opposes the permitting, construction or placement of such septic systems.

PART IV. That **Page 39 Beach**, be amended as follows:

As mentioned in the introduction, Nags Head has over 11 miles of oceanfront shoreline. The land area between the ocean and NC 12 or NC 1243 is composed of several distinct natural habitats. Pursuant to North Carolina law, the Town's "ocean beaches" are the area adjacent to the Atlantic Ocean that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach (the "wet sand beach") that is subject to regular flooding by tides and the dry sand area of the beach (the "dry sand beach") that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. The "ocean beach" is sometimes called the "public beach" or "public trust area."

The ocean beaches within the Town consist of a combination of State owned public land and privately owned property. Typically, the State owned public land is located seaward of the mean high water mark, and the privately owned portion of the ocean beach is located between the mean high water mark and the landward extent of the ocean beach. However, portions of the ocean beach in or immediately along the Atlantic Ocean which have been raised above the mean high water mark by a publicly financed beach nourishment project are public land owned by the State even though actually located landward of the mean high water mark following the beach

nourishment project. In most cases, the location of the boundary between State owned lands and the private property following such a beach nourishment project will be delineated by the mean high water mark survey performed at the beginning of the nourishment project. The land which becomes State owned public land pursuant to such a nourishment project may return to private ownership if the actual mean high water mark erodes to an extent landward of the area that had been raised above the mean high water mark by the nourishment project.

The entirety of the ocean beach whether State owned public lands or privately owned property is subject to public trust rights. Such rights include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches. The Town opposes development upon the ocean beach. The land area from the mean low water mark to the mean high tide line (wet sand beach) is sometimes called the "public beach" where the public has a legal right to use that portion of the beach. The area between the high tide line to the base of the dune is often referred to as the "dry sand beach." While this area in many instances may be in private ownership with property boundary lines extending landward to the mean high water line, the courts have generally held that the public has the right to travel across this "dry sand beach" area. The "dry sand beach" areas will not be developed.

Depending upon the time of year and the occurrence of recent storms and hurricanes, the ocean beach (both wet and dry) ranges from 100 feet wide to several hundred feet wide. In areas where there has been extensive sandbagging, the portion of the ocean beach that can be traversed safely and without restriction can be non-existent during high tide.

During the spring and summer various species of sea turtles are found swimming in the area with some coming ashore to deposit their eggs in the sand near the toe of the frontal dunes. Turtle species known to be in the area include: Loggerhead sea turtle, Kemp's Ridley sea turtle, Green sea turtle, Hawksbill sea turtle and the Leatherneck sea turtle. Currently the turtle nesting period runs from May 1 to November 15. During this time period certain beach development or protection activities such as sand bagging and beach bulldozing are prohibited by the US Corps of Engineers and CAMA to avoid destroying the buried eggs.

PART V. That **Page 40 Public Property and Public Trust**, be amended as follows:

Pursuant to North Carolina law, Areas of Environmental Concern (AECs) are areas of natural importance and may be easily destroyed by erosion or flooding; or may have environmental, social, economic or aesthetic values that make it valuable to our state. The Ocean Hazard System AEC is made up of oceanfront lands and the inlets that connect the ocean to the sounds. The Ocean Erodible AEC is that part of the Ocean Hazard System that covers North Carolina's beaches and any other oceanfront lands that are subject to long-term erosion and significant shoreline changes. The seaward boundary of this AEC is the mean low water line. The landward limit of the AEC is measured from the first line of stable natural vegetation and is determined by adding a distance equal to 60 times the long-term, average annual erosion rate for that stretch of shoreline to the distance of erosion expected during a major storm.

The Town's "ocean beaches" are the area adjacent to the Atlantic Ocean that is subject to public trust rights. This area is in constant flux due to the action of wind, waves, tides, and storms and includes the wet sand area of the beach (the "wet sand beach") that is subject to regular flooding by tides and the dry sand area of the beach (the "dry sand beach") that is subject to occasional flooding by tides, including wind tides other than those resulting from a hurricane or tropical storm. Natural indicators of the landward extent of the ocean beaches include, but are not limited to, the first line of stable, natural vegetation; the toe of the frontal dune; and the storm trash line. The "ocean beach" is sometimes called the "public beach" or "public trust area."

The ocean beaches within the Town consist of a combination of State owned public land and privately owned property. Typically, the State owned public land is located seaward of the mean high water mark, and the privately owned portion of the ocean beach is located between the mean high water mark and the landward extent of the ocean beach. However, portions of the ocean beach in or immediately along the Atlantic Ocean which have been raised above the mean high water mark by a publicly financed beach nourishment project are public land owned by the State even though actually located landward of the mean high water mark following the beach nourishment project. In most cases, the location of the boundary between State owned lands and the private property following such a beach nourishment project will be delineated by the mean high water mark survey performed at the beginning of the nourishment project. The land which becomes State owned public land pursuant to such a nourishment project may return to private ownership if the actual mean high water mark erodes to an extent landward of the area that had been raised above the mean high water mark by the nourishment project.

The entirety of the ocean beach whether State owned public lands or privately owned property is subject to public trust rights. Such rights include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches. On the ocean beach there is a generally "wet sand" area and a "dry sand" area. While subject to legal debate, the interface between the wet sand and dry sand is the mean high water line. The mean high water line (MHW) is expressed as an elevation above the 1988 baseline for mean sea level. While this 1929 surveyed MHW line represents an average of long term data, it does not fully reflect the influence of non-tidal factors such as sea level rise. The land area waterward of the MHW line, as well as the navigable waters to the east, is in trust for public use. "On many oceanfront properties, the easternmost private property line is the mean high water line, a line which can change over time to reflect the shift in the mean high water." There are a number of state statutes (and cases from other states) that indicate that the dry sand beach up to the vegetation line is also public area (David Owens, Beach Liability Report, 1988).

Local governments commonly exercise day-to-day control over the ocean beaches within and adjacent to their jurisdiction. Local governments typically exercise police power over the ocean beaches public trust areas and provide services such as police, fire, rescue and garbage collection. Under North Carolina law, local governments, such as Nags Head, are authorized to regulate (with special legislation) certain water activities such as swimming, surfing and personal water craft.

PART VI. That **Page 43 Ocean Hazard Areas of Environmental Concern (AEC's)**, be amended as follows:

The placement of new structures in this ocean hazard area requires that the structures be placed westward of the static line or the first line of stable natural vegetation whichever applies. The static line was established prior to beach nourishment and mapped. The distance of setback west from the first line of natural, stable vegetation or static line is based on regulations in place at the time of permit application. Annual erosion rates in Nags Head range from two feet near the northern Town limits to six feet in South Nags Head. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line or the first line of stable natural vegetation as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern.

PART VII. That **Page 44 Town Code Regulations**, be amended as follows:

Under general police power authority and other authority, the Town can regulate numerous activities and uses along the oceanfront and throughout the Town. For example, by local regulation the Town regulates the use of personal watercraft in waterways adjacent to the Town, prohibits surfing within 300 feet of fishing piers, and regulates driving on the beach and riding horses on the beach. The Town can also prohibit swimming during dangerous beach and weather conditions when the ocean conditions are unsafe for swimming. Additionally, the Town has enacted and taken action to enforce nuisance ordinance provisions to address the effects of storm and erosion damaged structures.

~~In an attempt to keep the beaches free of debris, the Town can declare structures which are storm damaged and in danger of collapsing a public nuisance. In addition, any structure which is located in whole or part in the public trust area can be declared a public nuisance and abatement procedures can be initiated by the Town.~~

PART VIII. That **Page 47 Town Code Regulations**, be amended as follows:

- Town Code Regulations

Under general police power authority, the Town can regulate numerous activities and uses along the estuarine shoreline and throughout the Town. For example, by local regulation the Town regulates the use of personal watercraft in waterways adjacent to the Town. Additionally, the Town has enacted and taken action to enforce nuisance ordinance provisions to address the effects of storm and erosion damaged structures.

~~In an attempt to keep the beaches free of debris, the Town can declare structures which are storm damaged and in danger of collapsing a public nuisance. In addition, any structure which is located in whole or part in the public trust area can be declared a public nuisance and abatement procedures can be initiated by the Town.~~

PART IX. That **Page 89 Policies**, be amended as follows:

As required by CAMA, following are polices which may already exceed, or will if implemented, State and Federal requirements:

1. Land Use Capability #4c, #1b
2. Natural Hazard Areas #2
3. Local Areas of Concern #1b, #7c
4. Public Access #1e, #10d

PART X. That **Page 91 Public Access**, be amended as follows:

The Town of Nags Head wishes to maintain a viable beach and to provide substantial opportunity for public access to the beach. ~~Pursuant to North Carolina law, the Town considers The entirety of the ocean beach whether State owned public lands or privately owned property is subject to public trust rights to the extent allowed by law,~~ the Town considers the entirety of the ocean beach, whether State owned public lands or privately owned property, to be subject to public trust rights to the extent allowed by law. both the wet sand beach and the dry sand beach east of the first line of vegetation to represent public land available for public and private access and The Town will actively oppose any unreasonable restriction of those rights any action to restrict public access to and across the beach and will protect and promote public access of the ocean beach.

1. The Town recognizes that the ocean beaches are our single greatest asset. Fundamental elements important to the Town include, clean and safe beaches, public and private access, ample recreational access opportunities, no commercialization, reasonable beach driving regulations and the prompt resolution of user conflicts as they arise.

Planning Objective:

- A. The Town will not allow or permit any commercialization of the Town's ocean beaches (Highest Priority)
- B. When the opportunity arises, the Town will acquire oceanfront property for access and open space. (Highest Priority)
- C. The Town will make a financial commitment including additional personnel and equipment if needed to keep our ocean beaches clean of debris and litter. (Highest Priority)
- D. The Town shall continue to require non-oceanfront hotels and motels to provide private oceanfront beach access facilities for their guests (Highest Priority).
- E. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (Highest Priority)

PART XI. That **Page 94 under Land Use Plan Management Topics, Public Access** be amended as follows:

~~10. Pursuant to North Carolina law, the Town considers the entirety of the ocean beach to be subject to public trust use rights and to the extent allowed by law, the Town will actively oppose any unreasonable restriction of those rights. It is the position of the Town that both the wet sand beach and the dry sand beach east of the first line of vegetation represents public land available for public access and the Town will actively oppose any action to restrict public access to and across the ocean beach.~~

Planning Objective:

A. The Town will continue to apply for grants for ocean and sound access sites. (High Priority)

B. The Town will not allow or permit any commercialization of the Town's ocean beaches (Highest Priority)

C. The Town may acquire oceanfront property when the opportunity arises. (High priority)

~~D. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation, whichever applies, is contrary to public health, safety and welfare. The Town opposes the permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (High Priority)~~

~~E. The Town will strive to protect and promote public access to the ocean beach. (High Priority)~~

PART XII. That **Page 94 under Land Use Plan Management Topics, Land Use Capability** be amended as follows:

1. The Town views the preservation of dunes, vegetation and topography as an important component in the Nags Head image and shall strictly enforce the existing applicable rules and regulations and seek additional measures as needed to preserve these elements as much as possible.

Planning Objective:

A. The Town will consider applying rules and regulations in the commercial districts for the preservation of dunes, topography, and vegetation. (High Priority)

~~B. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation, whichever may apply, is contrary to public health, safety and welfare. The Town opposes the~~

permitting, construction or placement of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (High Priority)

C. The Town will strive to protect and promote public access to the ocean beach (High Priority).

PART XIII. That **Page 99 Natural Hazard Areas** be amended as follows:

2. The Town recognizes beach nourishment and re-nourishment as our preferred alternative for addressing the impacts from barrier island migration and ocean erosion. However, the Town also supports a variety of methods to abate the impacts to ocean erosion, these include, but are not limited to acquisition of threatened structures, relocation of threatened structures and the establishment of innovative technology or designs which may be considered experimental, which can be evaluated by the CRC to determine consistency with 15A NCAC 7M.0200 and the other general and specific use standards with the CAMA rules. The Town opposes the permitting or construction of permanent hardened structures, such as sea walls and bulkheads on the oceanfront and the permitting, construction or placement of septic systems and/or sandbags seaward of the static vegetation line or the first line of stable natural vegetation, whichever may apply. Such permitting, construction or placement is and always will remain inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. The Town, however, is opposed to and will not permit hard structures such as sea walls and bulkheads on the oceanfront regardless of federal or state policies. The Town fully supports the protection of North Carolina's shorelines and the construction of terminal groin and jetty pilot projects along the entire coast of North Carolina as proposed in Senate Bill 599 Session 2007. The proposed bill is currently not consistent with State rules.

PART XIV. That **Page 104 Local Areas of Concern** be amended as follows:

7. The Town recognizes that damaged homes and structures on the oceanfront represent a nuisance eyesore and visual blight and the Town may take appropriate measures to abate this nuisance and will seek changes in NFIP regulations to establish regulations for declaration of destroyed structures.

Planning Objective:

A. The Town will take a more proactive approach to condemning these structures and taking prompt action including the issuance of civil citations to abate the nuisance. (Highest Priority)

B. The Town will petition FEMA through our state and regional FIP representatives to consider adopting regulations regarding the determination of destroyed structures. (Highest Priority)

C. Allowing for the repair, replacement or installation of septic systems and/or sandbags seaward of the static vegetation line as delineated by the Division of Coastal Management on maps effective August 18, 2011 or the first line of stable natural vegetation, whichever may apply, is contrary to public health, safety and welfare. The Town opposes the

permitting of such septic systems and/or sandbags and finds that such permitting would be inconsistent with the Town's planning for the Ocean Hazard Area of Environmental Concern. (Highest Priority)

BE IT FURTHER RESOLVED THAT the Board of Commissioners of The Town of Nags Head, in Dare County, North Carolina, has unanimously adopted the proposed Land Use Plan amendments; and

BE IT FURTHER RESOLVED that the Town Manger of the Town of Nags Head is hereby authorized to submit these adopted Land Use Plan amendments to the State for certification as described above.

Adopted this 7th day of August 2013.



Robert O. Oakes, Jr., Mayor
Town of Nags Head

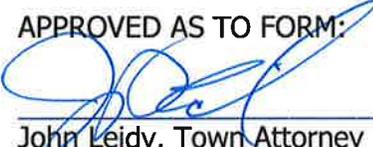
ATTEST:



Carolyn F. Morris, Town Clerk



APPROVED AS TO FORM:



John Leidy, Town Attorney

Date adopted: August 7, 2013

Motion to adopt by Mayor Bob Oakes

Motion seconded by Comr. Renée Cahoon

Vote: 5 AYES 0 NAYS