# AGENDA

**TOWN OF NAGS HEAD BOARD OF COMMISSIONERS**
**NAGS HEAD MUNICIPAL COMPLEX - BOARD ROOM**
***WEDNESDAY, JUNE 3, 2020; 9:00 A.M.***

*In order to view and listen to the Board meeting remotely, please register here:*
*https://nagsheadnc.zoom.us/webinar/register/WN_fwSm-NDdTH6NMcr5oibp2Q*

*Please email your comments for the Public Comment portion or for the Public Hearings here:*
*publiccomment060320@nagsheadnc.gov*

*(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting AND up to 24 hours after each Public Hearing is concluded*

*for comments related to any of the Public Hearings)*
*Comments should include your name and address and*
*Should be limited to five minutes when read aloud.*

*If you would like to participate in any of the Public Hearings, please contact Carolyn F Morris at carolyn.morris@nagsheadnc.gov or at 252-449-2009 until 9 am on June 3, 2020*

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**A. CALL TO ORDER / MOMENT OF SILENCE/PLEDGE OF ALLEGIANCE**

**B. ADOPTION OF AGENDA**

**C. PUBLIC COMMENT**

**D. CONSENT AGENDA**

1. Consideration Of Tax Adjustment Report

   Documents:

   6 D1 TAX ADJUST REPORT SUMMARY.PDF
   6 D1 TOWN-WIDE TAX ADJ REPORT.PDF
   6 D1 MSD TAX ADJ REPORT.PDF

2. Approval Of Minutes

   Documents:

   6 D2 MINUTES SUMMARY.PDF
   6 D2 MINUTES JAN 23-24 2020 BOC RETREAT MINS.PDF
   6 D2 MINUTES MAY 6 2020 BOC MINS.PDF
   6 D2 MINUTES MAY 20 2020 BOC MINS1.PDF

3. Consideration Of Resolution Authorizing

water payment plans resulting from State Executive Order #124

Documents:

6 D3 AUTH WATER PAYMENT PLANS SUMMARY.PDF
6 D3 AUTH WATER PAYMENT PLANS RES.PDF

## E. PUBLIC HEARINGS

1. Public Hearing To Consider Citizen Comment On The Town Manager's Proposed Operating Budget
   for July 1, 2020 – June 30, 2021 and the updated Consolidated Fee Schedule

   Documents:

   6 E1 PH BUDGET PUBLIC HEARING SUMMARY1.PDF
   6 E1 PH BUDGET PUBLIC HEARING PN.PDF
   6 E1 PH ITEMS CUT JUNE 10 WORKSHOP1.PDF

2. Public Hearing To Consider A Text Amendment To The UDO
   submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District

   Documents:

   6 E2 PH LEARNING CENTER SUMMARY.PDF
   6 E2 PH LEARNING CENTER PN.PDF
   6 E2 PH LEARNING CENTER MEMO APP ORD.PDF

3. Public Hearing To Consider A Text Amendment To The UDO
   pertaining to temporary uses or temporary alteration of uses related to declared emergencies

   Documents:

   6 E3 PH UDO TEMP USE PERMIT SUMMARY.PDF
   6 E3 PH TEMP USE PERMIT DURING EMER PN.PDF
   6 E3 PH UDO TEMP USE PERMIT MEMO ORD.PDF

## F. REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR

1. Update From Planning Director

   Documents:

   6 F1 PLNG DIRECTOR UPDATE SUMMARY.PDF
   6 F1 PLNG DIRECTOR UPDATE MEMO.PDF

## G. OLD BUSINESS TABLED FROM PREVIOUS MEETINGS

1. From May 6th Board Meeting
   - Consideration of numerous text amendments to the Unified Development Ordinance as it pertains to updated Flood Maps; Consideration of update to the Flood Damage Prevention Ordinance (Public Hearing held May 6, 2020)

   Documents:

6 G1 FLOOD ORDINANCE SUMMARY.PDF
6 G1 FLOOD ORDINANCE WITH ATTACH.PDF

2. From May 6th Board Meeting
   – Discussion of scope of work from Moffat & Nichol - Beach Nourishment Project Coastal Engineering and Design

   Documents:

   6 G2 BN COASTAL ENG AND DESIGN SUMMARY.PDF
   6 G2 BN COASTAL ENGINEERING SVCS PROPOSAL.PDF
   6 G2 BN MONITORING SURVEY PROPOSAL.PDF

3. Major Site Plan For Gone Coastal Shopping Center
   From May 6th Board meeting - Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann

   **The Applicant has requested a Continuance to the July 1, 2020 BOC meeting**

4. Preliminary Plat For A Major Subdivision, Known As Coastal Villas
   From May 6th Board meeting - Continued consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements

   **The Applicant has requested a Continuance to the July 1, 2020 BOC meeting**

## H. NEW BUSINESS

1. Committee Reports

   Documents:

   6 H1 COMMITTEE REPORTS SUMMARY.PDF

## I. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

## J. ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

1. From May 20, 2020 Board Meeting - Recycling

   Documents:

   6 J1 TM RECYCLING DECISION SUMMARY.PDF
   6 J1 TM RECYCLING DECISION MEMO.PDF

## K. BOARD OF COMMISSIONERS AGENDA

## L. MAYOR'S AGENDA

1. Future Town Envision

   Documents:

6 L1 MAYOR ENVISION THE TOWN SUMMARY.PDF

2. Request For Closed Sessions
   to discuss personnel matter in accordance with GS 143-318.11(a)(6) and
   to consult with the attorney and protect attorney/client privilege in accordance with GS 143-318.11(a)(3)

   Documents:

   6 L2 MAYOR REQ CLOSED SESSIONS SUMMARY.PDF

**M. OTHER BUSINESS**

**N. ADJOURNMENT**

**O. FULL AGENDA In .PDF Format With Bookmarks**

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**5401 S. Croatan Hwy, Nags Head, NC 27959**
**252-441-5508**

# Agenda Item Summary Sheet

Item No: **D-1**
Meeting Date: **June 3, 2020**

**Item Title**: Consideration of Tax Adjustment Reports

**Item Summary**:

Attached please find the list of adjustments to the 2019 Tax Levy (per information received from Dare County) for Property and for MSD valuations.

These reports are submitted for your approval at the June 3rd Board of Commissioners meeting.

Number of Attachments: 2

**Specific Action Requested**:

Tax reports provided for Board review and approval.

Submitted By: Linda Bittner, Tax Collector Date: May 28, 2020

**Finance Officer Comment**:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

I concur with staff.

Signature: Cliff Ogburn Date: May 28, 2020

**Town of Nags Head, North Carolina**
**ANALYSIS OF CURRENT 2019 TAX LEVY**
**As of May 28, 2020 for the June 3, 2020 BOC Mtg**

| | Town-Wide Tax | | | Total Levy | |
|---|---|---|---|---|---|
| | Property Valuation | Rate | Total Levy | Property Excluding Registered Motor Vehicles | Registered Motor Vehicles |
| **Original levy:** | | | | | |
| Property taxed at current year's rate | 2,383,436,490 | 0.00317 | 7,555,496.64 | 7,555,496.64 | |
| Registered Motor Vehicles at current year's rate | 28,295,614.00 | 0.00317 | 88,974.44 | | 88,974.44 |
| Registered Motor Vehicles at 2018 year's rate | 9,502,329.00 | 0.00307 | 29,172.15 | | 29,172.15 |
| Registered Motor Vehicles at 2017 year's rate | 69,970.00 | 0.00297 | 207.81 | | 207.81 |
| Registered Motor Vehicles at 2015 year's rate | (2,011.00) | 0.00267 | (5.37) | | (5.37) |
| Penalties | | | 5,460.81 | 5,460.81 | |
| **Total** | **2,421,302,392** | | **7,679,306.48** | **7,560,957.45** | **118,349.03** |
| **Discoveries & Adjustments:** | | | | | |
| Current year discoveries & adjustments tax | 1,686,283.00 | | 4,309.89 | 4,309.89 | |
| Town wide beach nourishment tax | | | 455.29 | 455.29 | |
| Corporate Utilities discoveries & tax | 22,078,064.00 | | 64,026.38 | 64,026.38 | |
| Corporate Utilities beach nourishment tax | | | 5,961.09 | 5,961.09 | |
| Penalty Discoveries | | | 2,075.47 | 2,075.47 | |
| **Total** | **23,764,347** | | **76,828.12** | **76,828.12** | |
| **Releases & Adjustments:** | | | | | |
| Current year releases & adjustments | (309,694.00) | | (898.12) | (898.12) | |
| Town wide beach nourishment | | | (83.60) | (83.60) | |
| Penalty Releases | | | (574.94) | (574.94) | |
| **Total** | **(309,694)** | | **(1,556.66)** | **(1,556.66)** | |
| **Write-offs or Adjustments:** | | | 0.00 | 0.00 | |
| **Total Property Valuation** | **2,444,757,045** | | | | |
| **Net levy** | | **7,754,577.94** | | **7,636,228.91** | **118,349.03** |
| Uncollected Taxes | | (15,017.95) | | (15,017.95) | 0.00 |
| Uncollected Town Wide Beach Nourishment | | (1,385.87) | | (1,385.87) | 0.00 |
| **TOTAL UNCOLLECTED TAXES AS OF 05/28/20:** | | **(16,403.82)** | | **(16,403.82)** | **0.00** |
| **CURRENT YEAR TAXES COLLECTED:** | | **7,738,174.12** | | **7,619,825.09** | **118,349.03** |
| **CURRENT LEVY COLLECTION PERCENTAGE:** | | **99.788%** | | **99.785%** | **100.000%** |

**Town of Nags Head, North Carolina**
**ANALYSIS OF CURRENT 2019 MSD TAX LEVY**
**As of May 28, 2020 for the June 3, 2020 BOC Mtg**

| | BEACH NOURISHMENT DISTRICT | | | | |
|---|---|---|---|---|---|
| | MSD Valuation | Rate | Total Levy | MSD Excluding Registered Motor Vehicles | Registered Motor Vehicles |
| **Original MSD Levy:** | | | | | |
| MSD Beach Nourishment at current year's rate | 809,869,299 | 0.00175 | 1,417,272.90 | 1,417,272.90 | |
| Registered Motor Vehicles at current year's rate | 1,614,681.00 | 0.00175 | 2,811.91 | | 2,811.91 |
| Registered Motor Vehicles at 2018 year's rate | 767,675.00 | 0.00175 | 1,343.43 | | 1,343.43 |
| Registered Motor Vehicles at 2017 year's rate | 66,748.00 | 0.00175 | 116.81 | | 116.81 |
| Penalties | | | 0.00 | 0.00 | |
| **Total** | **812,318,403** | | **1,421,545.05** | **1,417,272.90** | **4,272.15** |
| **Discoveries & Adjustments:** | | | | | |
| Current year discoveries & adjustments | 0.00 | | 0.00 | 0.00 | |
| Town wide beach nourishment | | | 0.00 | 0.00 | |
| Penalty Discoveries | | | 0.00 | 0.00 | |
| **Total** | | | **0.00** | **0.00** | |
| **Releases & Adjustments:** | | | | | |
| Current year releases & adjustments | 0.00 | | 0.00 | 0.00 | |
| Town wide beach nourishment | | | 0.00 | 0.00 | |
| Penalty Releases | | | 0.00 | 0.00 | |
| **Total** | | | **0.00** | **0.00** | |
| **Write-offs or Adjustments:** | | | 0.00 | 0.00 | |
| **Total MSD Valuation** | **812,318,403** | | | | |
| **Net levy** | | **1,421,545.05** | | **1,417,272.90** | **4,272.15** |
| **TOTAL UNCOLLECTED MSD AS OF 05/28/20:** | | **(613.72)** | | **(613.72)** | **0.00** |
| **CURRENT YEAR MSD COLLECTED:** | | **1,420,931.33** | | **1,416,659.18** | **4,272.15** |
| **CURRENT MSD COLLECTION PERCENTAGE:** | | **99.957%** | | **99.957%** | **100.000%** |

# Agenda Item Summary Sheet

Item No: **D-2**
Meeting Date: **June 3, 2020**

**Item Title**: Approval of minutes from Board of Commissioners meetings/workshops

**Item Summary**:

Attached for Board review and approval are the following Board of Commissioners meeting minutes:

January 23-24, 2020 BOC Retreat Workshop minutes

May 6, 2020 Regular Session

May 20, 2020 Recessed Session

Number of Attachments: 3

**Specific Action Requested**:

Provided for Board review and approval.

Submitted By: Carolyn F. Morris, Town Clerk Date: May 27, 2020

**Finance Officer Comment**:

No unbudgeted costs associated with this agenda item.

Signature: Amy Miller Date: May 27, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 27, 2020

**Town Manager Comment and/or Recommendation**:

N/A

Signature: Cliff Ogburn Date: May 27, 2020

*DRAFT* MINUTES
TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
RETREAT WORKSHOP
**JANUARY 23 - 24, 2020**

The Nags Head Board of Commissioners met in the Villas Clubhouse located at 500 Villa Dunes Drive in Nags Head, North Carolina on Thursday, January 23, 2020 at 8:30 a.m. for a Board Retreat Workshop.

| | |
|---|---|
| Board members Present: | Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley |
| Board members Absent: | None |
| Others present: | Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; Carolyn F. Morris; Michael Zehner; Ralph Barile; Amy Miller; and Facilitators Susannah Childers and Warren Miller of Fountain Works. |

**Day 1**

Welcome
Mayor Cahoon thanked everyone for taking time out of their schedules for the retreat.

Outcomes, Agenda, Ground Rules – Facilitation Team (Warren Miller and Susannah Childers)
Facilitator Warren Miller asked what was liked best about the off season and Board members responded that they liked being able to take a breather and enjoy other locals.

Mr. Miller reviewed the retreat agenda with Board members; he made sure he, co-facilitator Susannah Childers, and Board members were on the same page with the Retreat objectives/expectations.
Board member comments on what they would like to accomplish include:

- Less talking and more results, to include actual dates when projects will happen
- Confirmation of what projects are already being worked on
- Resolution of past projects
- How to best work together and not take anything personal

Reflections
What is one thing you've seen in Nags Head over the past year that exemplifies how the community is living its values?

Board member responses include:
- Beach Nourishment
- Stormwater projects
- Unified Development Ordinance (UDO)
- Multi-use paths

- NOT passing accessory dwellings
- Successful event sites
- Benefit from economic stability
- Not having giant house discussions
- Re-elected Comr. Renée Cahoon
- Elected Comr. Kevin Brinkley
- Moved Jockey's Ridge sand
- Outer Banks Hospital is growing and thriving

Review Board's Roles and Expectations
Roles and Expectations from the last two years

Mayor Cahoon discussed Roles and Expectations with Board members from the last two retreats - he distributed a list – a list to be revisited and refined. The list is attached to and made a part of these minutes as shown in **Addendum "A"**.

Responses from Board members include the following:

- Placing items on the agenda - Board members agreed that each can place an item on the agenda; concern was mentioned about staff working on an item that only one Board member is interested in; Attorney Leidy suggested that Board members place any item of interest under their own agenda and then the entire Board can decide, at the Board meeting, whether or not to move forward with direction to staff.

- Any topic legitimate for Board discussion can be put on the agenda
- Anyone can make a motion to amend the agenda
- Want public to be aware ahead of time – always

Additional Reflections
- Both resident and nonresident taxpayers are important to us
- Visitors are here because they share our values
- We are attractive to the "individually oriented"

Mayor Cahoon asked if more residents than non-resident property owners have the potential to change the configuration of the town; he feels that the "commodification" of short term rentals have changed the town.

Comr. Renée Cahoon feels there are more party houses with huge amounts of people which has also changed the town. Concern was expressed re: special events such as a large private party spilling over onto public property; why do private parties (such as a wedding reception) not need a permit for having over 100 persons in attendance - only commercial events expecting more than 100 persons require a crowd gathering permit. Staff does notify Town departments when informed of such events.

Need to discuss: Large private events on private properties that sometimes spill over onto public property

Town Goals
Ms. Childers listed the Town's goals and accomplishments as they pertained to each specific goal.

Goals listed:
- Preserve our community's distinctive heritage and unique lifestyle
- Protect our critical natural resources and coastal ecosystem
- Build and promote a sustainable economy that supports residents and visitors
- Plan for orderly and sustainable growth

- Maintain a well-run and efficient government that provides high quality and cost effective services

Values listed:
- Unique coastal community built on a legacy of shared values
- Common bond is a love for the Outer Banks
- Protect Nags Head character, environment, tourism-based economy and sense of place
- Memorable family vacation experience for present and future generations
- A good place to live and to visit
- High quality of life for residents
- We realistically and fairly allocate costs and benefits of public projects

Dare County Control Group MOU
Updates – Town Attorney

Town Manager Ogburn stated that the MOA between the County and all municipalities was signed/sealed by former Mayor Robert Edwards but was never considered/adopted by the Board.

Attorney Leidy said that the MOA is not enforceable and is more of a statement although it does reference the Dare County Emergency Management Plan. He stated further that Dare County Attorney/Manager Bobby Outten is not interested in making any modifications to the MOA. From a legal perspective, Attorney Leidy said that he has no major concern with the document; the Board can:

- Do nothing, it is not binding the Town in any way
- Go to the County identifying specific changes
- Ratify the MOU making it official and binding

**ACTION:** It was Board consensus to prepare a resolution to clarify the Dare County Control Group MOA - after conversation with Dare County – for consideration at the February 5th Board meeting.

Working with the Planning Board
Introduced by Planning Director and Planning Board Chair
Discussion - How does the Planning Board apply Nags Head values to decision making?

Planning Director Michael Zehner introduced Planning Board Chair Megan Vaughan and Vice-Chair Meade Gwinn.

Board members felt that the Planning Board should be well informed on issues; It was felt that there should be more open communication between Board members and Planning Board members on Town issues.

On another subject, i.e. applicants with text amendment requests, Board members agreed that staff should not assist with individual text amendments but should be up-front with applicants.

**ACTION:** Representatives of the Planning Board and the Board of Commissioners agreed that the Planning Board would:

- Generally continue the practice of reviewing development proposals based on code, land use plan, and technical compliance,
- Be proactive in raising awareness of land use issues to the Board of Commissioners,

- Solicit input and feedback from the Board of Commissioners before expending too much time and effort on investigating matters,
- Be an advisor to the Board of Commissioners raising awareness of issues and intended impacts,
- Develop recommendations for fiscal year work plans on land use matters,
- Be on top of emerging issues with a recognition of the Board of Commissioner's long-term goals, and
- Develop a regular line of communication between the leadership of both boards.

Lunch Break at 12:00 noon

Cart Rollback and Recycling
What are our options? (Franchising services, do nothing, or get rid of ordinance)
How to gain cooperation from rental management, homeowners and others?

A Review Summary was provided by Town Manager Ogburn. He said the real reason for this discussion is to find out if the Board is interested in a franchise to roll carts back – or is the ordinance even needed?

Comr. Fuller – nothing will be solved until trash pickup and dumping is authorized to take place on Sundays.

**ACTION:** After discussion, it was Board consensus to rescind the ordinance requiring cart rollback – for consideration at the February 5th Board meeting. Inform all homeowner associations of this change, if adopted.

Recycling

Town Manager Ogburn - Bay Disposal is in breach of the contract with the town - He questioned if the Board was agreeable to allowing recycling to be incinerated for waste to energy, and if the contract is amended to that effect, will the price stay the same?

It was Board consensus to:
- Make sure all changes to agreement are in writing
- Modify all verbiage for "recycling" to "waste to energy"
- Keep looking for better options
- Determine if there is an option to crush glass at Dare County

Comr. Fuller feels that this would be an honest way to deal with the situation – a situation the Town is being put in.

**ACTION:** It was Board consensus to direct staff to bring back a proposal at the February 5th meeting to modify the trash/recycling pickup schedule during the off season (Oct through Apr) for the west side of US 158 to: one day/week trash/recycle pickup using one truck; Beach Road trash/recycle pickup is to remain.

Reduce carbon footprint - Sustainability
Reducing carbon footprint should start with the Town. Items listed by the Board include:

- Start with ourselves – "It's a cultural shift"
- Set a goal by reducing Power Consumption, Gas/fuel, Plastics, Conservation in general, Ask staff for ideas
- Look into Town-wide compost: Get baselines, Share with staff/Share expectation

**ACTION:** It was Board consensus to reduce carbon footprint starting with the Town by adding to the Town's goals to reduce fuel/power/plastic consumption - Utilize the Town committee to review this and come up with ideas; In addition, a town-wide compost is to be researched.

Pavement Condition
Present plan – Dep Town Manager and Public Works Director

Dep Town Manager Andy Garman reviewed with Board members the most cost-effective way to improve the pavement condition Town-wide in accordance with the pavement condition study which was presented to the Board at the September 2019 Board Retreat. The plan presented is based on a neighborhood by neighborhood approach that is less disruptive to each community.

**ACTION:** The Board agreed to move forward with budget recommendations for streets and stormwater which would combine Powell Bill Funds, stormwater capital reserve funds, and additional revenue into one streets and stormwater fund. This would allow the town to adequately budget for a 20-year street maintenance plan and incorporate drainage system maintenance projects into the plan. The plan included projects that would be completed this year (Year 00) as well as over the next five years. The Board agreed conceptually with a neighborhood by neighborhood approach to street paving that is less disruptive and more adequately addresses pavement needs over a 20 year timeframe.

Stormwater Ordinance
Presented by Planning and Development Director – he noted that this spring Flood Damage Ordinance changes will be presented to the Board.

Mr. Zehner reviewed all slides provided in background materials; he responded to Board inquiries re: stormwater drainage vs quality of drinking water.

Mayor Pro Tem Siers said he was looking not for drastic changes but more for common sense changes; Comr. Fuller said he did not want to change any natural landscape and did not want to put a burden on an individual property owner to change their lot; the town should pay attention to those places which have issues and make a distinction between nuisance and problem stormwater issues.

**ACTION:** Residential Stormwater Ordinance - The Board discussed the following list as guiding principles for review and consideration of the residential stormwater ordinance:

- Can our rules acknowledge that there are different conditions – a system with flexibility
- Retain form of landscape/minimize impact to landscape
- Look for common sense solutions
- Don't place unjust burden on property owner
- Can we offer a "carrot" to go with a stick
- Do we as a Board need to define flooding – separate between "Nuisance" and "Problem Stormwater" issues
- Should not create additional problems
- Should define problem we are trying to solve

The Board agreed to refer the ordinance, and potential options, to the Planning Board for review and consideration, requesting that the Planning Board report back with any feedback. The Board of Commissioners is to ratify the list at the February 5th Board meeting.

Future Revenue for Beach Nourishment Projects – Funding and MSD's
Town Manager Ogburn presented slides – he suggested the Board needs to consider additional revenue sources – visitors, state, county? Mayor Pro Tem Siers emphasized that at some point you have to start charging those who actually use the property to pay.

Discussion of schedule for adoption of new MSD; Statutes determine schedule; Report to the Board (made up of a Map, Statement, and a Plan for extending services). Include historical perspective on Reach vs MSD lines in the report.

**ACTION:** New MSD creation/modification Report – for future Beach Nourishment Projects – is to be presented at the February 5th Board meeting along with the MSD Schedule (with required public hearings, etc.) for Board review with the goal of a Board vote at the June 2020 meeting.

Day 1 Adjournment – the Board adjourned from Day 1 of the Retreat at 4:40 p.m.

**Day 2**

Mayor Cahoon welcomed everyone to Day 2 of the Retreat.

Review Agenda

Facilitator Susannah Childers reviewed yesterday's thoughts and noted that Day 2 would involve more looking to the future for Nags Head.

Reflections from yesterday

Beach Nourishment Funding

Mayor Pro Tem Siers reiterated that he would like to see research into more ways to push the economy to find more of the necessary funds from those that visit the Town; he expressed concern about placing more financial burden on current residents.

Comr. Fuller felt a good opportunity was coming up with the Legislative Breakfast with Sen. Steinburg to press upon him to help with a State pot of funds to draw from. Comr. Renée Cahoon noted that further south in the State they inlet dredge, which Nags Head does not do and therefore does not qualify for State funds. She also said that the Board needs to have a discussion of not what we WANT to nourish but what can we AFFORD to nourish; Comr. Fuller feels that we should ask what CAN'T we afford to lose.

**ACTION:** Beach Nourishment Funding - Upcoming Legislative Breakfast would be a good time to speak with Sen. Steinburg re: State funds for Beach Nourishment; Mayor Cahoon said that he will get the ball rolling re: Beach Nourishment Funds from the State; other Towns east of I-95 and the County are in the same boat as Nags Head and may be able to join in with this effort. An additional step may include speaking with the restaurant/lodging associations to get more funds into this area. In addition the Board needs to discuss what we can AFFORD to nourish or what we CAN'T afford to lose.

Visioning exercise - Envisioning our legacy for the Town of Nags Head – 2030 and Beyond

Facilitator Warren Miller presented this item and asked Board members to associate values with goals.

Mr. Miller asked Board members to envision the future of Nags Head and what they want their legacy to be – and how to pull these values forward in Nags Head; he asked Board members to each come up with eight ideas when envisioning Nags Head in ten years; these ideas were then shared with each other.

Board members spoke of their visions for the Town for 2030 and beyond:

Leader Innovative
Creative Thinking
Competitive in Workforce
Coastal town model that all others model after
"Cool" Food and Art

Visitor destination – Outdoor recreation economy

Creative ways to deal with natural hardships (sea level rise) – *managing flooding*

Superior service – what we do, we do really well, funded, committed
*Garbage truck is the cleanest vehicle in town*
*Well-maintained parks and infrastructure*

Home to a creative workforce year-round

Solid infrastructure – Quality of living – internet – cultural – health care
*- Be ahead of septic*
*- Supporting primary, secondary, or tertiary care (Facilities and Doctors)*

Public Art
- Gallery Row
- Draw people in
- Implement
- Cool place to live

Diverse – housing, social, people, lifestyle
*- Not 1000 8+ bedroom houses used only 4/months/year*
*- Encourage multi family housing understand current situation/numbers*
*- affordable*
*- Not just old people*
*- artists, dogwalkers*
*- limited party houses (size and offsite outside impact)*

Wide Beaches – Not commercial
*- Get ahead of it – not every year*
*- Maintained – not groomed – no trash*

158 Greenway w/Spurs
*- Greenways / Outdoors*
*- Pathways (well-maintained parks and paths)*
*- Walkable and Bikes ("uptown Nags Head" and Whalebone)*

*- People out*
*- Antithesis of a gated community*

There were several "WOW" ideas:
- Being the leader again among Dare County towns
- To be the Coastal Town that the rest (coastal towns) model themselves after
- There's even a cool food and art scene

Organizational Best Practices

Best practices for planning cycles include:

- Stakeholder Input
- Community assessment
- Business practices assessment
- Employee engagement

Next Steps

- An Action Plan is not just for the budget
- Work Sessions – the second meeting of the month
- Proactive strategic thinking for the future by staff
- Request to staff to bring forward projects – spending from previously approved projects
- Accountability for project implementation

Wrap Up

The pictures/posters developed during the retreat are attached to and made a part of these minutes as shown in **Addendum "B"**.

Adjournment

The Board Retreat was adjourned at 11:45 a.m.

_____
Carolyn F. Morris, Town Clerk

Date Approved: _____

Mayor: _____
Benjamin Cahoon

***DRAFT*** **MINUTES**
**TOWN OF NAGS HEAD**
**BOARD OF COMMISSIONERS**
**REGULAR MEETING** ***(COVID-19)***
**WEDNESDAY, MAY 6, 2020**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, May 6, 2020 at 9:00 a.m. The following instructions were provided to the public for meeting participation – in response to the COVID-19 pandemic:

*In order to view and listen to the Board meeting remotely, please register here:*
*https://nagsheadnc.zoom.us/webinar/register/WN_X3rSOv97QACYiHGinxB1Qw*

*Please email your comments for the Public Comment portion or for the Public Hearings here:*
*publiccomment050620@nagsheadnc.gov*
*(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting or up until each Public Hearing is closed)*

*Comments should include your name and address and Should be limited to five minutes when read aloud.*

*If you would like to participate in any of the Public Hearings, please contact Carolyn F Morris at carolyn.morris@nagsheadnc.gov or at 252-449-2009 until 9 am on May 6, 2020*
*(The town will provide a means to participate in the meeting remotely using video conferencing software)*
*If you need special accommodations, please contact Carolyn F Morris*

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| Board members Present: | Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley (all present in the Board Room) |
| Board members Absent: | None |
| Others present: | Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; and Karen Snyder (all present in the Board Room) |
| Present Electronically: | Planning Director Michael Zehner; Town Engineer David Ryan; Dep Planning Director Kelly Wyatt; Principal Planner Holly White; Assistant Engineering Technician Kate Jones; Johnny Martin and Brian Joyner of Moffat and Nichol; Jay Overton of Outer Banks Homebuilders Association; Porter Graham of Outer Banks Association of Realtors; and Town Clerk Carolyn Morris; Registered attendee list is provided as Addendum "A". |

**CALL TO ORDER**
Mayor Cahoon called the meeting to order at 9:00 a.m. A moment of silent meditation was followed by the Pledge of Allegiance.

**ADOPTION OF AGENDA**

**MOTION:** Comr. Brinkley made a motion to approve the May 6th agenda as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

**PUBLIC COMMENT**

Mayor Cahoon read the three comments that were submitted via email for today's meeting:

PUBLIC COMMENT – DAN HUDSON
"Way too much attention has been paid to projections and models which have been inaccurate. Open up and give continued guidance to Seniors and those with pre-existing conditions to stay at home. If people don't feel safe they can choose to shelter in place. Otherwise its time to get the economy back on track for those who are ready to work and those who want to live normal lives. Government all over the country is now over-reaching - let's roll!

'Dan Hudson
Nags Head Property Owner since 2003"

PUBLIC COMMENT – CLINT SORRELL
"Good Morning, I am emailing to help drive the opening of Dare County, NC to visitors as soon as possible. For many families, this is there one get-away for the year. With all of the stresses put on people this year, many need this get-away.

'Dare County, NC remains the one of the only beach counties to not allow visitors. People who frequently utilize the beach know it's not difficult to maintain 6-ft from other people at all times. With all the additional measures in place at retail stores, I'm not sure why Dare County is preventing visitors at this time.

'Please open the county to visitors
Thank you"

PUBLIC COMMENT – DAVID BRAGG
"Good Morning, I have additional comments on each option, but will limit my comments and make a summary statement. Since I was not able to preview the results of the meeting that took place on May 5, I would only say the following. Unless that meeting resulted in a net zero cost or a net gain for the town for the recycling program, then the contract should be terminated. The town should focus on providing essential services to the residents and visitors during these financially difficult times. Recycling/Incineration of garbage are not essential to the town of Nags Head. The funds saved should be used to ensure that the police, fire fighters, or any other valued town employee would not be furloughed, fired, or have their hours reduced during the budget shortfall. The can has been kicked down the road long enough and a final vote on this matter should be taken today. Thank you."

**PROCLAMATION – MAY 10 – 16, 2020 POLICE WEEK**
Mayor Cahoon read the proposed Proclamation declaring May 10 - 16, 2020 as Police Week as follows:

"WHEREAS, The Congress and President of the United States have designated May 15th as Peace Officers' Memorial Day, and the week in which May 15th falls is National Police Week; AND

'WHEREAS, The members of the Nags Head Police Department play an essential role in safeguarding the rights and freedoms of the residents and visitors of the Town of Nags Head; AND

'WHEREAS, It is important that all citizens know and understand the duties, responsibilities, hazards, and sacrifices of their law enforcement agency, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and by protecting the innocent against deception and the weak against oppression; AND

'WHEREAS, The men and women of the Nags Head Police Department unceasingly provide a vital public service; AND

'WHEREAS, Let each of us take the time to reflect on the ultimate sacrifice Sgt. Earl Murray, Jr. made for the Town of Nags Head on May 15, 2009 and the rest of the officers that have done so nationwide. And let each of us keep their family, friends, and all fellow officers in our thoughts and prayers.

'NOW, THEREFORE, the Nags Head Board of Commissioners calls upon all citizens of the Town of Nags Head and upon all patriotic, civic, and educational organizations to observe the week of May 10 - 16, 2020 as Police Week with appropriate ceremonies and observances in which all our people may join in commemorating law enforcement officers, past and present, who, by their faithful and loyal devotion to their responsibilities, have rendered a dedicated service to their community and, in so doing, have established for themselves an enviable and enduring reputation for preserving the rights and security of all citizens.

'THEREFORE, we do hereby proclaim the week of May 10 - 16, 2020, as Police Week and call upon all citizens of Nags Head to observe the 15th day of May 2020, as Peace Officers' Memorial Day in honor of those law enforcement officers who, through their courageous deeds, have made the ultimate sacrifice in service to their community or have become disabled in the performance of duty, and let us recognize and pay respect to the survivors of our fallen heroes."

**MOTION:** Comr. Brinkley made a motion to approve the Police Week Proclamation as presented. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

Comr. Brinkley asked the public and the Board to keep the Murray family in their thoughts and prayers. Peace Memorial Day family members are usually in Washington, D.C. for this but this year it has been cancelled due to COVID-19 and it will be a difficult time for them.

**CONSENT AGENDA**
The Consent Agenda consisted of the following items:

Consideration of Tax Adjustment Report

Approval of minutes

Request for Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, proposed CIP requests for FY 20/21 through FY 24/25, and updated Consolidated Fee Schedule

Request for Public Hearing to consider a text amendment to the UDO submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District

**MOTION:** Comr. Renée Cahoon made a motion to approve the Consent Agenda with the March 4th Board meeting minutes amended to include additional detail re: Outer Banks Visitors Bureau Executive Director Lee Nettles presentation re: The Event Site during Public Comment. The motion was seconded by Comr. Brinkley which passed unanimously.

The Tax Adjustment Report, as approved, is attached to and made a part of these minutes as shown in Addendum "B".

The request for Public Hearing re: FY 20/21 through FY 24/25 Budget, as approved, read in part as follows:

"Request that a Public Hearing be scheduled for the June 3rd Board of Commissioners meeting to consider citizen comment on the following:

- Town Manager's proposed operating budget for fiscal year July 1, 2020 – June 30, 2021,
- Proposed Capital Improvement Program (CIP) requests for FY 20/21 through FY 24/25, and
- Updated Consolidated Fee Schedule"

The request for Public Hearing re: a Tutoring Facility/Learning Center", as approved, read in part as follows:

"Kim Cowen and Megan Dixon have submitted a text amendment request to the Unified Development Ordinance which, if adopted, would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District. The applicants would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up.

'Staff Recommendation/Planning Board Recommendation
Planning staff finds that the proposal is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend that the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

*'Tutoring Facility/Learning Center means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test preparation, or the teaching music and visual arts.*

'Staff recommends adoption of the proposed amendment as presented. At their April 21, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as presented."

**PUBLIC HEARINGS**

Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Attorney John Leidy opened the Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities. The time was 9:10 a.m.

Planning Director Michael Zehner summarized the agenda summary sheet which read in part as follows:

"The proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) is seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2). The original proposal sought to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities; the applicant had explained that a vendor had approached the Outlets about the idea of having a kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Based upon input from the Planning Board, the original proposal was revised to the current version. The attached adoption ordinance and markup are as prepared by the applicant, with Staff's recommendations incorporated and highlighted.

'Planning Board/Staff Recommendation
Staff recommended to the Planning Board that the amendment be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff recommended that the definition of Outdoor Stand be amended consistent with the amendment of Section 7.76.1.

'The Planning Board, at their February 18, 2019 meeting, voted 6-0 to recommend amendments to the UDO as recommended by Staff. In making their recommendation, the Planning Board acknowledged their opinion that the proposed amendments were consistent with the relevant policies contained in the Comprehensive Plan."

Planning Director Michael Zehner summarized Planning staff's memo which read in part as follows:

"The proposed text amendment (the applicant for the amendment is Kate Creef, Assistant General Manager, on behalf of Outlets Nags Head) is seeking to amend Section 7.76.1 to expand the principal sale items allowed to be sold from outdoor stands to include "reservations or ticket sales," and to amend Section 7.76.2. to increase the number of outdoor stands allowed per site from one (1) to two (2). Initially, as discussed with the Planning Board on January 21, 2020, the proposal sought to amend the UDO to allow "outdoor kiosks" for the sale of tickets and reservations for on-site and off-site recreational facilities. Mrs. Creef had explained to the Board that a vendor had approached the Outlets about the idea of having a

kiosk located on the property to allow patrons to book charter fishing excursions, a concept which was believed would enhance the customers' shopping experience. Mrs. Creef indicated that there would be a preference to allow two outdoor stands (where the regulations only allow for one) and confirmed for the Board that the plan was to locate the kiosk in the terrace area.

'Based upon the discussion and feedback provided by the Planning Board, the applicant modified the original proposal (consistent with the version before the Board) and returned to the Planning Board meeting on February 18, 2020. The Planning Board recommended approval, with changes recommend by Staff, detailed below.

'BACKGROUND
The current version of the allowances and standards for *Outdoor Stands, Accessory to Shopping Center & Group Development* are the result of numerous changes over the course of the last ten (10) years; actions of note are as follows:

- The allowance of outdoor fresh produce stands as an accessory use to shopping centers was first established in mid-2009;
- In late-2009, an amendment was adopted to allow hotdog vending stands as an accessory use to shopping centers;
- In early-2010, an amendment was adopted to allow coffee vending stands as an accessory use to shopping centers;
- In mid-2010, recognizing that one of each of the aforementioned stands could be permitted at any given shopping center, an amendment was adopted to limit the number of accessory outdoor stands at any shopping center site to one (1); additionally, the various stand uses were consolidated under a single use (Outdoor Stands);
- In late-2010, the Ordinance was amended to allow Italian ice and fudge sales;
- In early-2013 ice cream was added as an allowed sale item; additionally, in 2013, a request to expand the allowable number of stands from one (1) to (2) was denied; and
- The provisions were last amended in 2014 when the allowed locations for outdoor stands were expanded to allow as accessory to Group Development (aka Office/Retail Group Development).

'POLICY CONSIDERATIONS
There are no direct policies concerning outdoor stands. However, certainly economic development objectives and policies encouraging and supporting small businesses and the viability of existing commercial properties are applicable, and need to be balanced with objectives and policies focused on maintaining the Town's character.

'Generally, Staff believes that the request to allow the sale of tickets and reservations is consistent with applicable policies; however, Staff would suggest that the standards be clarified to require that the sale and advertisement of items be confined to stands. With respect to the number of allowed stands on any particular site, Staff would support a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge.

'PLANNING BOARD RECOMMENDATION - The Planning Board, at their February 18, 2019 meeting, voted 6-0 to recommend amendments to the UDO as recommended by Staff. In making their recommendation, the Planning Board acknowledged their opinion that the proposed amendments were consistent with the relevant

policies contained in the Comprehensive Plan.

'STAFF RECOMMENDATION - Staff recommends that the amendments be adopted with modifications to the standards to require that the sale and advertisement of items be confined to stands and to allow a maximum of two (2) stands, with no more than one (1) stand selling fresh produce, hot dogs, coffee, ice cream or Italian ice, and/or fudge. Additionally, it is suggested that Sections 7.76.3 and 7.76.4. also be amended to provide for a maximum stand area and any time limitations, respectively, for the sale of tickets and reservations; a limitation of 150 square feet and a time limitation consistent with produce stands are likely sufficient. Finally, Staff would recommend that the current definition of Outdoor Stand, as follows, be amended consistent with the amendment of Section 7.76.1."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, April 27, 2020 and on Sunday, May 3, 2020 as required by law.

Applicant Kate Creef spoke electronically on behalf of the Outlet Center Nags Head; they had been asked about interest in providing a space for displaying fishing photographs and taking reservations for inshore and offshore fishing trips; they felt this would be a great opportunity to enhance the offerings at the Outlet Center and could also apply to other recreational activities that would appeal to their shoppers such as dolphin tours.

Comr. Fuller confirmed with Planning Director Zehner that 11 shopping centers would be affected/eligible for the outdoor stands under this ordinance modification. It was noted that in 2013 the Planning Board turned down a similar request it was believed because it was related to multiple food stands. Comr. Fuller also confirmed with staff that currently some items can be sold in the requested manner in accordance with current ordinance.

Attorney Leidy confirmed that there were no other public comments on this text amendment and he concluded the Public Hearing at 9:23 a.m.

Comr. Fuller spoke in opposition to the request as he feels the service being requested already exists and has for years; he expressed concern that it in effect only adds more signage – signage for these types of businesses tend to look carnival-like and additional signage is not what the town is after right now. He also feels that the building itself would be used as signage.

Comr. Brinkley spoke indicating that he does not share the same concerns as Comr. Fuller and in addition he does not feel that it would create an increase in traffic or trash.

Mayor Pro Tem Siers said that he looks on it as an opportunity for others to experience more about the Outer Banks that they may not be aware of – he has no issues with the request.

Comr. Renée Cahoon discussed parking and Director Zehner stated that no additional parking spaces will be needed if 50 spaces are already provided.

Mayor Cahoon said that he had one reservation and that is adding another freestanding sign to the parking lot.

In response to a question from Comr. Renée Cahoon re: removal of the outdoor stands, Director Zehner said that the structure would essentially be permanent but would not be able to operate year-round.

Mayor Cahoon summarized some modifications as discussed such as location on site, visual impact, signage, and parking.

**MOTION:** Comr. Fuller made a motion to deny the request for outdoor stands as presented. Comr. Renée Cahoon seconded the motion with the friendly amendment (accepted by Comr. Fuller) that the proposal be sent back to the Planning Board for review and recommendation re: today's comments made by Board members.

**WITHDRAWAL OF MOTION:** Comr. Fuller withdraw his motion; Comr. Renée Cahoon withdrew her second.

**MOTION:** Comr. Brinkley made a motion to table the discussion and refer the outdoor stands proposal, along with the issues expressed today by Board members [re: location on site, visual impact, signage, and parking] back to the Planning Board for review and recommendation. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors

Attorney John Leidy opened the Public Hearing to consider a text amendment to the Unified Development Ordinance to correct identified errors. The time was 9:43 a.m.

Planner Holly White summarized her memo which read in part as follows:

"OVERVIEW - Since the adoption of the Unified Development Ordinance (UDO) on August 7, 2019, staff has located minor typographical errors throughout the document. This amendment will address minor numbering, punctuation, grammar, and contextual issues. Additional similar amendments will be necessary to address any other outstanding issues in the future.

'PLANNING BOARD RECOMMENDATION - The Planning Board recommended unanimous approval of this text amendment at their February 18, 2020 meeting.

'STAFF RECOMMENDATION - Staff recommends that the amendments be adopted as proposed."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, April 27, 2020 and on Sunday, May 3, 2020 as required by law.

Comr. Fuller confirmed no substitive changes in the ordinance; Comr. Renée Cahoon confirmed that all proposed changes were highlighted in red.

Comr. Fuller asked if the elimination of section 7.33.4 is substitive. Planning Director Zehner said that the change made to the UDO is part of the parking requirement for accessory dwellings – this IS more restrictive but there was an inconsistency in the code – the intent was to correct a discrepancy or lack of consistency between the two sections.

Comr. Fuller confirmed with Planning Director Zehner that there were no other substitive changes in the document.

There being no one present who wished to speak, Attorney Leidy concluded the Public Hearing at 9:49 a.m.

**MOTION:** Comr. Fuller made a motion to adopt the ordinance amending the UDO to correct the identified errors as presented. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

The ordinance, as adopted, is attached to and made a part of these minutes as shown in Addendum "C".

Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to the updated flood maps and update of the Flood Damage Prevention Ordinance

Attorney John Leidy opened the Public Hearing to consider numerous text amendments to the Unified Development Ordinance as it pertains to the updated flood maps and update of the Flood Damage Prevention Ordinance. The time was 9:50 a.m.

Comr. Fuller disclosed that he listened to an interested party concerning this issue; Attorney Leidy said that since this is a legislative matter, that would not be a problem.

Planning Director Michael Zehner summarized the agenda summary sheet which read in part as follows:

"The proposed text amendments serve to adopt the updated Flood Insurance Rate Maps and Flood Insurance Study by amendment of the Flood Damage Prevention Ordinance; additionally, amendments are included to Article 4, Development Review Process, Section 8.6.4., Building Height, Section 11.5.3. Standard for Depth or Elevation of Fill, and Appendix A. Definitions. In addition to the Ordinance, also attached is the PowerPoint presentation made to the Planning Board at the meeting on April 1, 2020 and a letter from the Outer Banks Home Builders Association providing comments on the draft ordinance that was submitted during the Planning Board's meeting.

'Planning Board/Staff Recommendation - Staff recommended to the Planning Board that the text amendments be adopted as proposed, with changes requested by the State's NFIP Office. The Planning Board recommended unanimous approval at their meeting on April 1, 2020, with the incorporation of those requested changes. The attached draft of the Ordinance includes these changes. The Planning Board meeting materials and a recording of the meeting are available at www.nagsheadnc.gov/floodmaps."

The Planning staff memo was presented to the Board and read in part as follows:

"OVERVIEW - As the Board of Commissioners is aware, the Town received the Letter of Final Determination concerning the updated FEMA Flood Insurance Rate Map (F.I.R.M.) as of December 19, 2019. As previously relayed, the updated F.I.R.M. becomes effective no later than 6 months after receipt of the letter (June 19, 2020), requiring local adoption by the Town prior to this date.

'The schedule for adoption is as follows:

- ~~Early March 2020 - Community Information Meeting; information materials made available online~~
- ~~April 1, 2020 - Planning Board Meeting; consider recommendation~~
- ~~April 15, 2020 - Board of Commissioners Consent Agenda; request to schedule public hearing~~
- May 6, 2020 - Board of Commissions Public Hearing; Final Action (or continued consideration to June 3, 2020 meeting)
- June 19, 2020 - Effective Date (no later than)

'BACKGROUND - The Board of Commissioners and Planning Board met jointly at the Planning Board's meeting on February 18, 2020 to review and discuss an initial draft of the updated Flood Damage Prevention Ordinance, along with updated building height measurement and fill provisions, to be considered in concert with the updated F.I.R.M. covering the Town. Additionally, a Community Informational Meeting was held on Monday, March 9, 2020. The Planning Board considered the proposed text amendments at a meeting on April 1, 2020; the Planning Board recommended unanimous approval of the draft flood maps and flood damage prevention ordinance with the incorporation of requested changes from the State's NFIP Office (which have been incorporated in the version of the ordinance before the Board). Meeting materials presented to the Planning Board and a draft of the ordinance are available at www.nagsheadnc.gov/floodmaps.

'SUMMARY OF MAP CHANGES - The preliminary F.I.R.M., released in June of 2016, revealed that many areas of the Town will be removed from the Special Flood Hazard Area. There is an overall reduction of properties located in flood zones in the Town on the preliminary F.I.R.M. This includes fewer properties in AE and VE flood zones and an overall increase in properties located in X flood zones, even on the oceanfront. Further, mapped base flood elevations (BFE's) are being reduced from a current BFE of 8-10' in the AE flood zone to 4-5' on the preliminary F.I.R.M. In addition, a new AO flood zone has been added to the area west of the primary frontal dune. Staff does not believe that the F.I.R.M. accurately represents the overall risk of flooding in the Town.

'SUMMARY OF ORDINANCE CHANGES - In conjunction with the updated F.I.R.M. and flood insurance study, the Town is required to update its Flood Damage Prevention Ordinance consistent with the most recent version of the State Model Ordinance for Coastal Areas. There are changes in the State Model Ordinance that the Town must adopted in order to remain in the National Flood Insurance Program (NFIP). These changes are reflected in the attached Adoption Ordinance for the Flood Damage Prevention Ordinance. In conjunction with amendment of the Flood Damage Prevention Ordinance, it will also be necessary to update relevant portions of Article 4. *Development Review Process*, concerning Floodplain Development Permits; Article 8. *District Development Standards*, concerning the measurement of height; and Article 11. *Environmental Provisions*, Part 1 *Stormwater, Fill, and Runoff Management,* concerning the regulation of fill. These changes are also represented in the Attached Adoption Ordinance for the Flood Damage Prevention Ordinance.

'Due to a significant number of properties with known flooding histories becoming X or Shaded X on the preliminary maps, a local elevation standard ("LES") is proposed as part of the Flood Damage Prevention Ordinance adoption. The development of the local elevation standard has been a joint effort between Dare County and the Towns of Manteo, Nags Head, Kill Devil Hills, Kitty Hawk, Southern Shores, and Duck. The LES is a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. For properties east of NC 12 and SR 1243, the LES is 12' and development in this coastal high hazard area would have to comply with the standards for VE construction. For properties west of NC 12 or SR 1243, the LES is 10' and the standards that apply to development in this area would be like those that apply in the AE flood zone now.

'Since currently there are no regulations that apply to properties in X flood zones, a key part of the ordinance development and new LES language had to be written that applies to properties in Shaded X and X flood zones. There are a set of new, additional standards developed to specifically apply to areas mapped as Shaded X or X. In these areas:

- Substantial improvement/damage definitions (the 50% rule) does not apply;
- Remodeling/renovations of existing habitable area are allowed as long as footprint of the structure does not increase;

- Areas within existing structures cannot be converted for use as conditioned, temperature-controlled space unless the reference level is located to or above the RFPE; and
- Lateral additions - structures located west of NC 12 and SR 1243 (where the reference level of existing conditioned, temperature-controlled space is located below the RFPE)-may be increased by 25% at the same level, without having to be elevated to or above the RFPE.

'These standards would apply in addition to other specific standards.

'ADDITIONAL CONSIDERATIONS - The Outer Banks Home Builders Association submitted a letter to the Planning Board, dated April 1, 2020, which has been provided to the Board of Commissioners. The Association raised the following points, with Staff responses for consideration:

A. OBHA:
*OBHBA members began working in early 2017 with the surveying and engineering community to assist local planning staff in designing new flood prevention measures to address an anticipated reduction in the 2006 FIRM's flood zone elevations in Dare County. Extensive consideration of historical flooding, previous FIRMs, and topographical data informed a consensus among county and municipal planning staff that administration of eight-foot standards to a revised reference level, the bottom of the lowest floor or utility, would ensure adequate flood protection in X and Shaded X zones.*

Staff Response:
Town Staff participated in meetings beginning in 2017 with Dare County, other municipalities, and OBHBA representatives. However, during this process, Nags Head Staff did not commit that administration of an eight-foot standard would ensure adequate flood protection in X and Shaded X zones within the Town.

The Town has been documenting rainfall-based flood occurrences for the past 20-years. Staff has observed an increase in the frequency and intensity of rainfall events, whether it be a series of events or a single event. Significant rainfall-based flood events have been documented in the Town 11 out of the past 20 years and more importantly, every year for the last 4 years.

In addition to documenting areas of flooding throughout Town, we have also documented flood depths, relative to mean sea level (msl). Hurricane Matthew was documented at a maximum flood elevation of 10' msl. Areas of flooding in the Vista Colony Subdivision were measured as much as 11.25' msl in 2012 from a series of rainfall events. Other smaller scale rainfall-based events have resulted in flood depths exceeding 8' msl.

Noting Commissioners' previous concerns that the maps are flawed, Staff has attempted to address this concern by proposing an LES of 10' west of NC 12 and SR 1234. In Staff's opinion, an LES of 8' would not be responsive to these concerns; based upon analysis, an LES of 8' would result in approximately 36% (1,916) of the properties in Town being regulated to a lesser standard than they are presently. In contrast, an LES of 10' west of NC 12 and SR 1234, would result in approximately 2% (133) of the properties being regulated less stringently than under current regulations

B. OBHA:
*Section 11.42.3.1.2. of Nags Head's draft ordinance proposes a 10 foot RFPE for properties west of NC HWY 12. While we recognize that each jurisdiction must determine RFPEs and other important planning objectives on localized bases, the OBHBA urges planning board members' attention to the potential consequences Nags Head's proposed ten foot RFPE poses in light of additional proposed*

*restrictions on lateral additions. Section 11.44.2.7.9.2. would require that lateral additions to nonconforming structures in X and Shaded X zones be elevated to the proposed ten foot RFPE if they would increase the square footage of the adjacent floor by 25% or more. This presents a problem for homeowners interested both in usably enlarging a floor that falls below the proposed RFPE and in maintaining a level floor.*

Staff Response: Based upon analysis completed by Staff, there are currently an estimated 1,004 (19%) structures that are FEMA non-compliant with respect to elevation. If a proposed LES of 10' is adopted, the number of FEMA non-compliant structures would increase by 174 (3%). Of the proposed FEMA non-compliant structures with an LES of 10', seventy-eight percent (78%) will be located in a flood zone X, all having ground elevations of less than 11'. In contrast, Staff's analysis indicates that 4,514 (85%) of the 5,277 structures in Nags Head have estimated first floor elevations of 10' or greater.

Given the significant number of existing FEMA non-compliant structures that will now be located within an X flood zone, coupled with the effect of establishing an LES of 8' versus 10' (and vice versa), staff believes that a 10' LES results in better protection of existing and proposed development, and is more consistent with current regulation.

C. OBHA:
*The OBHBA respectfully requests that you allow existing maximum lot coverage restrictions to regulate additions and remove the arbitrary 25% threshold.*

Staff Response: Staff believes that allowing maximum lot coverage restrictions to regulate additions will not comprehensively address additions below RFPE in the town. Based upon analysis by staff, there are existing structures with floor area below the current RFPE, but which would now be in an X flood zone, where as much as 1,800 square feet (16%) of lot coverage is still available. The 25% percent threshold was intended to allow small additions at the same level for homes that have heated area below the RFPE in the X flood zone.

D. OBHA:
*We believe that the category of possible lateral additions that would expand properties with a demonstrated flood history, that would conform to maximum lot coverage, and that would be large enough to constitute a compelling regulatory interest is almost vanishingly narrow.*

Staff Response: Assuming an LES of 10' (areas west of NC 12 and SR 1243), and without a limit on lateral additions, approximately 622 of existing non-compliant structures would be eligible to maximize lot coverage, where they are currently precluded from doing so under current regulations.

E. OBHA:
*We believe that the size of lateral additions to the many moderately sized homes in Nags Head should not be rigorously constrained by a regulation with such a limited intended function.*

Staff Response: The goal of the National Flood Insurance Program and the Flood Damage Prevention Ordinance is to protect human life, safety, and health as well as to minimize damage to private and public property due to flooding. The regulations proposed are consistent with these goals. The proposed regulations do not preclude lateral additions, rather, they would limit additions below the 10' LES in a shaded X or X flood zone to 25% of the existing floor area below the LES; lateral additions in excess of this limit could maximize allowable lot coverage if elevated to meet the LES.

'POLICY CONSIDERATIONS - The most direct policies and actions in the Comprehensive Plan pertaining to floodplain management are contained in Section 3.3.2 Hazard Mitigation as follows:

'NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.

'NR-11i: Explore resilient construction techniques and higher regulatory standards to protect existing and future development from frequent localized flooding events.

'NR-13 Support the town's continued participation in the National Flood Insurance Program (NFIP) and Community Rating System (CRS). Participation in the NFIP is key in making federally backed flood insurance available within the town and to improve the town's CRS rating.

'PLANNING BOARD RECOMMENDATION - At their meeting on April 1, 2020, the Planning Board recommended unanimous approval of the text amendments as proposed, with incorporation of changes recommended by Staff as requested by the State's NFIP Office.

'STAFF RECOMMENDATION - Staff recommends adoption of the text amendments as proposed."

Notice of the Public Hearing was published in the *Coastland Times* on Sunday, April 27, 2020 and on Sunday, May 3, 2020 as required by law.

Planner Holly White presented the powerpoint slides associated with this item which are attached to and made a part of these minutes as shown in Addendum "D".

Mayor Cahoon pointed out that if there was no limit to build below 10' local elevation standards then theoretically they could add 1800 sq ft lot coverage; Ms. White said that due to standards for parking they would not be able to use all 1800 square feet.

Director Zehner mentioned staff's concern that lateral additions could be built without any LES limitations – these are structures with floors that are currently below the 10' BFE.

Board members questioned where the 25% figure came from. Director Zehner said that staff and representatives from Outer Banks Homebuilders and Association of Realtors got together and discussed what would be a reasonable figure; they felt that 25% would not preclude someone from meeting the local elevation standard (LES). Director Zehner stated that he did not base what he is recommending on sea level rise data – he based it on actual flood figures from the last five years.

Director Zehner said they would need to see some positive outcomes before making it a regulatory standard.

Attorney Leidy asked if there were any public comments.

Planning Director Zehner read the Outer Banks Association of Realtors letter dated May 6, 2020 which is attached to and made a part of these minutes as shown in Addendum "E".

Planning Director Zehner read the Outer Banks Homebuilders Association letter dated May 1, 2020 which is attached to and made a part of these minutes as shown in Addendum "F".

Jay Overton, spoke on behalf of the Outer Banks Homebuilders Association; he thanked staff here and throughout the County for working together for the past three years; he feels fortunate to be able to live in a community where everyone can work together; he feels property owners will see restricting uses of their property in more ways than intended; he asked that if possible to delay action so everyone can come together one more time for discussion; to make sure everyone can continue what they have been doing for the past three years.

Porter Graham, spoke on behalf of the Outer Banks Association of Realtors; he expressed appreciation for Director Zehner's continued availability to discuss the ordinance with them; this whole process was a response to the revision of the 2006 flood rate map and reduction of the base flood zones – he wanted to emphasize to the Board that the June 19th date feels like it is approaching fast but the ordinance doesn't have to be codified today – he feels that there is additional opportunity to consult with staff and others.

As there were no other public comments, Attorney Leidy concluded the Public Hearing at 10:50 a.m.

Mayor Cahoon said that he feels staff has done a good job - the 25% lot coverage figure is always going to be an arbitrary number.

Comr. Renée Cahoon said that her two major areas of concern are the LES reference point with a difference of one foot – and the arbitrary 25% lot coverage which she feels is restrictive.

Mayor Pro Tem Siers said that the 8' elevation is most likely going to be 10' elevation due to freeboard – he expressed concern that a lot of the character between the highways in Nags Head is the single-family, one-level home and when you start adding space for stairs – it could change the whole look/architecture of the beach.

Comr. Fuller feels that a lot of square footage could be added with the 25% figure. There may end up being a lot of houses torn down and re-built.

Mayor Cahoon confirmed that it was Board consensus to table the discussion for more information and discussion that would help with the decision making.

Comr. Fuller confirmed with the attorney that the two controlling items – 10' to 8' LES and the 25% lot coverage - are not substitive changes and would therefore not need to go back to the Planning Board.

**MOTION:** Comr. Renée Cahoon made a motion to table the Flood Map and the Flood Damage Prevention ordinance discussions to the June 3rd Board of Commissioners meeting. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**MOTION:** Comr. Renée Cahoon made a motion that the action taken at the June 3rd Board of Commissioners meeting concerning Flood Maps be a standalone motion and not tied to the Flood Damage Prevention ordinance. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

## REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE PLANNING AND DEVELOPMENT DIRECTOR

Update from Planning Director

Planning Director Michael Zehner summarized his report for the Board; the memo portion of his report read in part as follows:

"This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on May 6, 2020.

'Monthly Activity Report - Attached for the Board's review is the *Planning and Development Monthly Report for March 2020*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Wednesday, March 4, 2020 - Board of Commissioners Meeting
- Friday, March 6, 2020 - NC State Sustainability Studio Midsemester Review
- Monday, March 9, 2020 - Flood Map/Ordinance Community Information Meeting
- Tuesday, March 10, 2020 - Flood Map/Ordinance Meeting with OBHB Association representatives
- Wednesday, March 11, 2020 - Outer Banks 2020 (J-1) Community & Employer Forum
- Wednesday, March 11, 2020 - Arts & Culture Committee Meeting
- Thursday, March 12, 2020 - Mayors J-1 Housing Discussion with Dan Bullock
- Tuesday, March 17, 2020 - Planning Board Meeting Cancelled
- Wednesday, March 18, 2020 - CRS Pre-Planning Meeting
- Monday, March 30, 2020 - NCDOT Great Trails State Plan - Division 1 Stakeholder Meeting

'Impact of Coronavirus on Permitting - As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and in March 2019. With regard to permits applied for since March 16 through April 23, 66 permits were applied for in 2019 and 72 were applied for in 2020; in the most recent two weeks, there were 23 permits applied for in 2020 and 9 permits applied for in 2019.

'Our previous reporting on permit numbers did not include trade permits. For comparison purposes, a total of 202 trade permits were issued in March and April 2019; at present, from March 1 through April 23, a total of 110 trade permits have been applied for.

'With the opening of the County to non-resident property owners, Staff does have an expectation that the number of permit-eligible projects will increase as owners begin to prepare properties for the season. We will continue to monitor and report any impacts to permitting.

'Online Permitting - As previously reported, as of April 15, 2020, online permitting has been activated for the following additional permit types:

- Sign permits
- Commercial and residential repair permits
- Residential demolition permits
- Residential remodel permits (without additional heated square footage)

'Staff is working to activate online permitting for all other permits by the week of May 4, 2020.

'Building Code Effectiveness Grading - The Town recently received the attached Building Code Enforcement Evaluation Report from the Insurance Services Office (ISO). The Building Code Effectiveness Grading

Schedule ("BCEGS") evaluates the building codes adopted in a community and the community's enforcement of these codes. BCEGS particularly emphasize building-code requirements designed to mitigate losses from natural hazards. The Town received a classification of 3 for 1- and 2-family residential property and 3 for commercial and industrial property; the classification range is 1-10, with class 1 representing "exemplary commitment."

'As noted by Cory Tate, the Town's Chief Building Official, "the Town of Nags Head scored slightly higher than the other jurisdictions on the Outer Banks mainly due to the amount of experience and levels of certification of our inspections staff. All jurisdictions received nearly the same amount of credit for the edition of codes enforced, having an all hazards approach in our collective hazard mitigation plans (including similar flood damage prevention ordinances), and similar requirements for staff members to obtain continuing education credit as mandated by the state. Where Nags Head exhibited a slight edge over other jurisdictions on the Outer Banks comes from a higher level of experience and professional certifications. Both full-time inspectors have level 3 certifications from the NC Code Officials Qualification Board in building, electrical, plumbing, and mechanical trades. Both full-time inspectors are Certified Floodplain Managers. Additionally, Steve Szymanski has level 2 certification in fire prevention, and I have level 3 certification in fire prevention. We also received additional credit for the fact that I have a bachelor's degree and a building contractor's license from the NC Licensing Board for General Contractors, and that Steve and I both have an electrical contractor's license from the NC Board of Examiners of Electrical Contractors. We also scored higher because the Town of Nags Head inspectors have more years of experience as building inspectors, compared to most full-time inspection staff members employed by other jurisdictions on the Outer Banks."

'Outer Banks Beachcomber Museum - The Town's Arts & Culture Committee recently agreed to request that the Board of Commissioners discuss the status and future of Mattie Midgette's store and house at 4008 South Virginia Dare Trail, more popularly known as the Outer Banks Beachcomber Museum (http://www.osob.net/). As the Board may be aware, the current owners, Dorothy Hope and Chaz Winkler, have expressed an intent in selling the property, and at least last year, there was an active listing for the property on the Preservation North Carolina website. A recent article in the Outer Banks Voice (https://www.outerbanksvoice.com/2020/04/09/out-of-the-woods/) documented the historic value of the property.

'In short, the Arts & Culture Committee believes that the property and Museum are both an important and unique historic resource, as well as a collection, and are concerned that the store, house, and/or collection could be lost, no longer serving as an important contributor to the character of the Town of Nags Head and the Nags Head Beach Cottage Row Historic District. The Committee would strongly encourage the Board of Commissioners to discuss the property, including any options or interest for the acquisition and preservation of the property and collection, either directly or indirectly involving the Town. If the Board has an interest, Staff could further explore partnerships or grants that may support the preservation of the property.

'Planning Board - Pending Applications and Discussions - The April 21, 2020 meeting of the Planning Board was held virtually on the Zoom platform, as was the April 1, 2020 meeting of the Planning Board. The agenda for the April 21 meeting included consideration of a revised plan for the preliminary subdivision plat for Coastal Villas (a new street is now proposed to access the subdivision from US 158/S. Croatan Highway and provide connection to the paper street known as Fourth Street), and consideration of a text amendment to add the use "Learning Center" as a permitted use in the C-2 zoning district; the Planning Board recommended approval of both items, with the Board noting that they did have a preference for the earlier iteration of the preliminary plat without access from US 158. The agenda also included further consideration of options and recommendations pertaining to legacy establishments/structures, residential stormwater regulations, and the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, but those items

were continued to the Board's May meeting due to technical difficulties with the Zoom platform.

'The Planning Board's next meeting is scheduled for May 19, 2020. At present, the agenda is expected to include previously discussed and considered items noted above, as well as continued discussion regarding the regulation of events within residential dwelling units and the regulation of large occupancy homes.

'Additional Updates

- 2020 Census - The 2020 Census is open and collecting responses. As of April 13, 2020, the self-response rate for the Town of Nags Head was 13%, compared to a 22% response rate for Dare County and 45.4% response rate for the State. As of April 28, 2020, the self-response rate for the Town was 14.5%, compared to a 24.8% response rate for Dare County and a 49.4% response rate for the State.

'Staff has been in communication with Census officials who have offered guidance and suggestions for increasing the Town's response rate. Additionally, Census officials have noted that the number/percentage of vacant vacation/rental homes in Town would skew the response rate, as the rate is not adjusted at this time to account for those homes. As an example, if the Town's actual occupancy rate is 30%, and the reported response rate is 15%, then the actual response rate for occupied homes would be 50%.

- Town Workforce Housing Study & Plan - Phase 1 Report presented to the Board of Commissioners for the February 5, 2020 meeting. Further action on this project is on hold pending direction from the Board of Commissioners; however, it is important to note that funds associated with this project have been liquidated due to budgetary constraints associated with the Covid-19 Pandemic.

- Septic Health - Staff intends to prepare and present a draft project scope for the update of the Decentralized Wastewater Plan to the Commissioners, likely later in May or in June.

- Hazard Mitigation Plan - As of April 28, 2020, the final Plan has received approval from the State. Minor changes were necessary (and updated draft is available here: http://www.obx-hmp.com/draftDocuments.html), and the Plan will be sent to FEMA for review soon. Final consideration and adoption by the County and towns anticipated in June/July 2020.

- Grants - A request is pending under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan.

- Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration.

- An LOI has been submitted for a National Fish and Wildlife Foundation – National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan. Additionally, a preapplication has been submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project, to cover or supplement costs.

- Staff intends to submit a CAMA Access Grant preapplication for improvements to the Huron Street Beach Access.

- Staff is reviewing additional grant opportunities for prioritized projects, including an AARP Community

Challenge Grant.

- UDO - Staff continues to develop Reference Manual materials. Publishing on the Municode platform has been completed. Staff is assessing the budget for printing hardcopies of UDO; however, this would likely wait to include incorporation of the updated Flood Prevention Ordinance.

- Permitting - Staff had previously contacted representatives of the Outer Banks Home Builders Association to coordinate a schedule for a workshop/forum for the building community. However, given current circumstances, this effort will be placed on hold. Staff has begun an email distribution to contractors registered with the Town to provide updates on changes to permitting and inspection procedures associated with the Coronavirus Pandemic and response. Staff intends to send a further update before the end of the week to publicize the new online permitting options.

'Upcoming Meetings and Other Dates

- Tuesday, April 28 - P&D Staff Meeting
- Thursday, April 29 - Septic Tipping Points Discussion
- Monday, May 4 - NC State Sustainability Studio Project Presentations
- Wednesday, May 6 - Board of Commissioners Meeting
- Wednesday, May 13 - Arts & Culture Committee Meeting
- Tuesday, May 19 - Planning Board Meeting"

Continued - Consideration of a Major Site Plan for Gone Coastal Shopping Center, 7531 S Virginia Dare Trail, submitted by Jim and Stephanie Selckmann

The applicant has requested a continuance to the June 3, 2020 Board of Commissioners meeting.

Continued - Consideration of a Preliminary Plat for a Major Subdivision, known as Coastal Villas, for an approximately 9.86 acre property, zoned R-2, Medium Density Residential, owned by Nags Head Construction (Applicant), located on the west side of US 158, approximately 300 feet south of the intersection of W. Soundside Road and US 158 (Parcel # 006749004; PIN # 989108886987); the revised Preliminary Plat proposes to create 17 lots, along with an associated street and other required improvements

The applicant has requested a continuance to the June 3, 2020 Board of Commissioners meeting.

**OLD BUSINESS/ITEMS TABLED FROM PREVIOUS MEETING**

From Mar 4th Board meeting – Beach Nourishment Coastal Engineering and Design Services presentation from Moffatt & Nichol

The memo from Town Manager Ogburn was presented to the Board and read in part as follows:

"At its March regular meeting, the Board of Commissioners passed a motion to invite Moffat & Nichol to make a presentation to the Board, and to authorize the Town Manager to enter into contractual negotiations for coastal engineering services with all relevant material to come back to the Board. The Board also passed a

motion to authorize the Town Manager to enter into contractual negotiations with McKim & Creed for beach surveying services.

'At the upcoming meeting, the Board will hear a presentation from Johnny Martin of Moffat & Nichol which will outline the general services and qualifications of his firm as well as the anticipated services that may be provided to support the town in its shoreline management efforts. Staff is recommending that the Board consider a limited scope of services this year, to include surveying services and preparation of a beach monitoring report as well as preliminary engineering to support future modeling and project alternatives analysis. This work could be completed utilizing the existing project ordinance and budgeted funds. The presentation will also describe potential master planning efforts that would be part of future phases of work. It is anticipated that this phase of work would require a new project ordinance and budget which could be considered with the FY 2021/22 budget or at any point deemed necessary by the board.

'Staff is coordinating the development of the scope of services and contracts with McKim and Creed and Moffatt and Nichol and anticipates presenting those to the Board in June. This would allow us to get underway in time for our summertime pre-hurricane survey efforts and preparation of the annual monitoring report. Attached is the presentation provided by Moffat and Nichol as well as the proposals submitted by Moffat and Nichol and McKim and Creed in response to the town's two RFQs."

Dep Town Manager Andy Garman introduced Johnny Martin and Brian Joyner of Moffatt & Nichol.

Johnny Martin and Brian Joyner of Moffatt & Nichol summarized their slide presentations which are attached to and made a part of these minutes as shown in Addendum "G".

Their presentations were well received by the Board.

<u>From Apr 15th Board meeting - Discussion of 2020 Fireworks</u>

Town Manager Ogburn summarized the discussion from the last Board meeting concerning 2020 fireworks. Comr. Renée Cahoon said she wants to be very cautious with this decision. Comr. Fuller said the only responsible thing to do is to cancel this year's fireworks display and follow the federal/state recommendations. Comr. Brinkley agreed stating that with the amount of people on the beach and everywhere else, there will not be opportunity for social distancing.

Mayor Cahoon said he would be voting with his heart, for once during this entire pandemic process, instead of his head, for this one vote.

**<u>MOTION:</u>** Comr. Renée Cahoon made a motion that staff notify the Town's fireworks vendor to cancel this year's Fourth of July fireworks display – with a return to fireworks in 2021. The motion was seconded by Comr. Fuller which passed 4 – 1 (Mayor Cahoon cast the NO vote.).

<u>From Apr 15th Board meeting – Discussion of status of recycling program</u>

Town Manager Ogburn summarized his memo re: recycling which read in part as follows:

"At your May 6 meeting, I will ask the Board to render a decision on the town's recycling program. As the Board is aware, the town amended its contract with Bay Disposal earlier this year to allow for the incineration

of recycling materials. This resulted from the changes to the recycling market and the substantial increases in costs to process recycling materials. At your April 15 meeting, I shared that the NC State Department of Environmental Quality has found a processing facility with reasonable costs that could serve northeastern North Carolina communities. Details about this continue to evolve. Since our last meeting, we have been offered a combination of pricing from the new processing facility, RDS of Portsmouth, VA, and Bay Disposal which is equivalent to the pricing of our current contract. This would allow us to continue with our current program as is. I have included a brief pricing analysis in the sidebar on the following page. I have concerns about the RDS contract since it includes penalties for contaminated loads which would create uncertainty as to how this would increase our costs. Additionally, RDS would like us to execute a five-year contract, which I would not recommend, primarily since our current hauling contract expires in 2022. I believe the town would need to align these contract terms and our preference would be to contract with one vendor for these services.

'On Monday, May 4th, Bay Disposal is meeting with RDS to discuss a contract between the two entities. The goal of this discussion would be to provide Bay Disposal with terms that would allow the town to contract solely with them for recycling hauling and processing. We think this would eliminate the concerns about the misalignment of contract timelines as well as surcharges for contaminated loads. My intent is to provide the Board with these additional details as soon as they are available in advance of the meeting.

'If Bay is successful in negotiating this contract the Board will need to determine if it wishes to continue recycling at the same price or suspend the program to realize a cost savings.

If the Board chooses to suspend the program to realize a cost savings, all material would be diverted to the Dare County Transfer Station @ $76 per ton. Several adjustments to our program need to be considered with this option. This would include any schedule changes and how we would treat the existing blue recycling carts. Our initial thought is that we will treat the blue carts as trash carts. If the schedule is not changed, we would be collecting trash two days in a row on the red and green routes, since the blue recycling carts are collected one day after the green trash carts.

'Staff feels as though the best option regarding the schedule would include very limited changes to avoid confusion so close to the season. Staff recognizes the inefficiency of collections two days in a row on these routes; we believe we have the capacity to collect both green and blue carts on the same day however this would create a change to the schedule on two of our routes. The Board would need to determine if it is better to leave things the way they are this summer in order to maintain continuity, or to eliminate a day of back to back service. If we decide it is better to eliminate the back to back collection, we would recommend collecting both carts on Tuesday on the red and green routes. We recognize that now the

**Option A – Recycle w/ Bay and RDS**
Recycling Processing with RDS = $57 per ton
Approximately 902 tons @ $57 = $51,414
Hauling w/ Bay Disposal = $162,810
Additional Bay hauling charge per ton = $23
Approximately 902 tons @ $23 per ton = $20,746
**Total cost for both contracts = $234,970**
($51,414 + $162,810 + $20,746)
*(*Does not include any charges for contaminated loads; this could add an additional $121 per contaminated ton)*

**Option B –Current contract w/ Incineration**
Previous contract pricing:
Hauling = $195,000 (includes processing of materials collected by Bay Disposal)
Processing for materials delivered by town forces = $70 per ton; 579 tons at 70 per ton = $40,530
**Total cost for current contract = $235,530**
($195,000 + $40,530)

**Option C – Eliminate Recycling**
Bay contract price for hauling and processing of materials collected by Bay Disposal = $195,000
Bay collects approximately 323 tons which are included in their price; 323 tons diverted to Dare County @ $76 per ton = $24,548
579 tons collected by the town @ $70 per ton would increase to $76 per ton = $3,420
**Total savings over current costs = $167,032**
($195,000 - $24,548 - $3,420)

green route would essentially receive one day of trash service, however they would have additional cart capacity since the recycling carts would be used for trash. I think the Board and staff believe that a suspension of this service would be temporary due to the current economic circumstances, and that our program could be reinitiated at some point in the future."

Board members discussed recycling material currently being incinerated or recycled for other purposes and noted that while committed to recycling for many years, the Town is looking for ways to lessen the financial impact to the Town and its services due to the COVID-19 pandemic.

**MOTION:** Comr. Fuller made a motion to suspend the Town's recycling program to be revisited at a future date. The motion was seconded by Comr. Brinkley.

Comr. Brinkley confirmed with the Board that this is a suspension, not an elimination, of the recycling program.

**CONTINUATION OF MOTION:** The motion passed unanimously.

Trash schedule was also discussed and Town Manager Ogburn is to make sure everyone is aware of the two sites (Town Hall and Public Works) available for people to take their recycling; property managers are to be notified of these changes.

**NEW BUSINESS**

Committee Reports

Comr. Fuller - Dare County Tourism Board (DCTB) – Grants Committee – the Tourism Board sent the grants back to the Grants Committee to be reduced; many agencies won't be receiving the grants they thought they were going to receive due to the COVID-19 impacts. Comr. Fuller said that he would like to tell the Grants Committee to take the fireworks funds that the town won't be using to more fully fund other grants.

Mayor Cahoon – Dare County Bulletin – Mayor Cahoon reported on a just-received email with the latest Bulletin announcing that visitors would be allowed entry into Dare County at 12:01 a.m. on Sat, May 16th.

Comr. Brinkley – Jennette's Pier Advisory Committee – Comr. Brinkley stated that he would be following up on an upcoming meeting via Zoom with the Jennette's Pier Advisory Committee.

Comr. Renée Cahoon – She thanked Mayor Cahoon for providing the COVID-19 updates from the Dare County Control Group to Board members in a very timely manner to Board members.

Consideration of Board/Committee appointments

The agenda summary sheet was presented to the Board and read in part as follows:

"At the May 6th Board of Commissioners meeting, request appointments/reappointments be made to the following:

| | |
|---|---|
| 'Planning Board | David Elder – term expires 5/3/20 |
| Board of Adjustment | Don Milbrath (ALT) – term expires 6/7/20 |

| | |
|---|---|
| Personnel Grievance Panel | Jean Flanigan (ALT) – term expires 6/7/20 |
| Firemen's Relief Fund Board | Annette Ratzenberger – term expires 6/20 |
| Firemen's Relief Fund Board | Rose Lay – term expires 5/20 |

'All have indicated their interest in being reappointed.

'Attached please find the Candidate Charts of those interested in serving on the Planning Board, Board of Adjustment and Firemen's Relief Fund Board. Also attached are tracking charts with current rosters for each."

**MOTION:** Comr. Renée Cahoon made a motion to reappoint David Elder to another three-year term on the Planning Board. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

**MOTION:** Comr. Brinkley made a motion to reappoint Don Milbrath to another three-year term as Alternate on the Board of Adjustment. The motion was seconded by Comr. Fuller which passed unanimously.

**MOTION:** Comr. Fuller made a motion to reappoint Jean Flanigan to another three-year term as an Alternate on the Personnel Grievance Panel. The motion was seconded by Comr. Brinkley which passed unanimously.

**MOTION:** Mayor Pro Tem Siers made a motion to reappoint Annette Ratzenberger and Rose Lay to additional terms on the Firemen's Relief Fund Board. The motion was seconded by Comr. Renée Cahoon which passed unanimously.

## ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Attorney Leidy - Discussion of legislation re: participation in open meetings during state of emergencies

Attorney Leidy discussed with the Board new legislation re: regulation of remote participation in open meetings – during State of Emergencies – in House Bill 1043/Senate Bill 704. The bill was signed by Governor Cooper on May 4th and became effective immediately; it is only effective during states of emergency declared by the Governor or Legislature; requires all votes to be by roll call; and requires the meeting notice to include that comments on public hearings will be allowed to be submitted up to 24 hours AFTER the public hearing.

Attorney Leidy pointed out that the Town is currently already doing what is required except for allowing public comment for 24 hours after each public hearing.

## ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Update on plans for summer 2020 re: tents on the beach, lifeguards, and enforcement of social distancing on the beach

Town Manager Ogburn reviewed his memo with Board members – his memo read in part as follows:

"At Commissioner Fuller's request, I will update and discuss with the Board plans for the upcoming summer (2020) to include tents on the beach, lifeguards, and enforcement of social distancing as part of relevant state and local orders.

'As of May 1, 2020, the Town of Nags Head is under a State of Emergency Order with restrictions to maintain the public's health, safety, and welfare due to the impacts of COVID-19. The Governor's Executive Order No. 121, issued on March 27, 2020, prohibits gatherings of more than 10 people and requires social distancing to the extent individuals are using shared or outdoor spaces outside their residence. All individuals must keep a six-foot distance between one another unless they are part of the same family.

'Dare County's Stay at Home Order, which the Town included in its most recent State of Emergency proclamation, further requires that all individuals are required to wear a mask or cloth face covering in public settings where other social distancing measures are difficult to maintain. This requirement is in place, currently, until May 22. The earliest a decision will be made regarding visitor entry into Dare County is May 8.

'On April 23, 2020, NC Governor Cooper held a press conference to announce several important updates regarding the stay at home order and plans to reopen the state. First, he announced that the original stay at home order from Executive Order 121, which was set to expire on April 29th, has now been extended through Friday, May 8th. Governor Cooper also laid out a multistep plan for reopening the state in phases after May 8th, provided that certain metrics are met pertaining to the trajectory of cases, the ability to test and trace, and the availability of personal protective equipment. If and when those metrics are met, the state's reopening would impact the town's beach as follows:

'Beginning May 8 - Phase 1

- Continue to limit gatherings to no more than 10 people.
- Continue to recommend face coverings in public spaces when 6 feet of social distancing isn't possible, which is required as part of the Dare County Order.
- Encourage employers to continue teleworking policies.
- Continue rigorous restrictions on nursing homes and other congregant care settings.
- Local emergency orders with more restrictive measures may remain in place.

At least 2-3 weeks after Phase 1 (May 22-29) - Phase 2

- Lift Stay at Home order with strong encouragement for vulnerable populations to continue staying at home to stay safe.
- Increase the number of people allowed at gatherings.

At least 4-6 weeks after Phase 2 (June 19 – July 3) - Phase 3

- Lessen restrictions for vulnerable populations with encouragement to continue practicing physical distancing and minimizing exposure to settings where distancing isn't possible.
- Further increase the number of people allowed at gatherings.

'Ocean Rescue Staffing for Summer 2020

At the present time, the status of 16 of our 22 J-1 Visa Ocean Rescue staff is uncertain. The earliest date they may enter the US for employment has been moved from May 15 to June 15. Six of these guards have confirmed that they will not be able to wait until the June 15th date, seven are undecided, and nine are committed to coming at that time. Captain Motz has been able to recruit a few guards locally. At this time, it is unknown when visitors will be permitted entry into Dare County or what the beach population will be this summer. Ocean Rescue must be prepared ahead of a re-entry decision for visitors due to the need for advance training and education. Guards will be prepared for Memorial Day but with a reduction in the number

of Lifeguard stands from 15-10. In addition to the guards assigned to those stands, six guards will patrol the beach via ATV, four supervisors will be split coverage on the beach and one Captain will be assigned daily, bringing the total daily staffing number to 21 guards for 11 miles of beach. This is a process that is continuously evaluated with the goal of having a highly trained and capable Ocean Rescue staff ready when the visitors are allowed reentry. Guards will train in groups of 10 or less. They will undergo daily health screenings to include temperature checks. Guards will be instructed to adhere to social distancing restrictions as much as possible.

'Additionally, we will be following the suggestions made by Peter Wernicki, Medical Advisor of the USLA:

•Follow the directives of your employing agency, which should be informed by and consistent with the directives of state and local public health authorities.

•Use social distancing at work, avoiding large meetings, close training, and close proximity to others (example: one guard per stand/tower).

•Practice good personal hygiene, including regular hand washing.

•Use universal precautions when providing medical aid. Avoid mouth to mouth or mouth to mask resuscitation. Use a bag-valve-mask or positive pressure ventilator.

•Regularly clean the surfaces with which you, your fellow lifeguards, and the public come in contact.

•Avoid touching other people, including your fellow lifeguards, unless necessary.

•Consider regular temperature checks by lifeguards.

•If you feel ill, advise your supervisor.

'Tent Monitoring and Removal
The Public Works Facilities Maintenance Division will conduct beach monitoring & removal of unattended equipment from 5am to 7am, Monday thru Saturday, from May 23, 2020 to September 7, 2020. Ocean Rescue staff will tag tents on Sunday and Public Works will tag tents Monday to Saturday. All tagged tents will be photo documented and logged. Tagged tents will be removed by FM staff Monday through Saturday. Staff will hand out pamphlets explaining the rules and providing visitors with town staff contact info if they have any questions. If the collection crews are stopped by an owner prior to the removal of a tent, staff would leave the equipment, provide the owner with the pamphlet, and answer any questions they may have. Large umbrellas are included in the monitoring and removal process. After collection, all items are treated as trash and disposed of. No retrieval is possible.

Two trucks will be used for the process; one will run north to south beginning at Eighth Street and another will run south to north beginning at McCall Court. Facilities Maintenance will adjust the process as necessary to develop a successful and consistent program.

'Social Distancing – Enforcement on the Beach
While these requirements remain in effect per state and local orders, the Town's Beach Ambassador and Ocean Rescue staff will educate and inform our beach goers of the importance of gathering in groups of less than 10 individuals while maintaining a six-foot distance between parties. Obviously, enforcement will be nuanced and it is impractical to enforce distancing requirements on related or affiliated groups. Where we see

the greatest potential for conflict is when someone establishes their location on the beach and another party places their equipment too close. While the town's beaches are spacious and most beachgoers are at least six feet apart, occasionally this may happen and someone may become uncomfortable and ask for assistance; most likely from our Ocean Rescue staff. Our protocol will be to ask the offending party for voluntary compliance followed by a response from the Town's Beach Ambassador or other Police staff if necessary. Our efforts will be strongly focused on compelling compliance through education and signage; not with heavy-handed enforcement. We do understand that even after the social distancing and mass gathering mandate is lifted, we may still receive calls from concerned citizens. We will play a role in mediating any disputes in order to provide a safe environment for our residents and visitors. Police staff will be training our Ocean Rescue staff in conflict resolution and de-escalation techniques to help them in these situations until LE arrive.

'I am concerned that the public will expect that we strictly enforce this requirement. If visitation resumes before state and local orders are lifted, it will create practical difficulties with enforcement of these requirements. A clear effort from our staff to educate the public will hopefully show that we are making an attempt to inform the public of the social distancing requirements.

'It is important to note that the town has not increased staffing levels to enforce social distancing and we will do our best to keep the beaches safe and our visitors compliant while maintaining a friendly visitor experience. We do not plan to try and limit beach populations via partial beach access closures or using any other means, as has been done in southern beach communities. If there is an inherent conflict between local and state orders, additional limitations may be something that the board should discuss.

'Public beach bathhouse facilities will remain closed at this time until further guidance is received from Health Department officials regarding their safe opening.

'I have attached a rendering of a potential sign for education purposes that will be placed at beach accesses and on lifeguard stands."

Town Manger Ogburn pointed out that lifeguards will have some responsibility to communicate social distancing; in addition, emphasis will be placed on making sure lifeguards stay healthy.

Town Manager Ogburn - Request for Closed Session

Town Manager Ogburn requested a Closed Session to discuss a personnel matter.

**BOARD OF COMMISSIONERS AGENDA**

Comr. Renée Cahoon – Encourage use of facial masks

Comr. Renée Cahoon noted that since more people are now starting to come back to the area that it would be smart to continue to encourage everyone to wear their face masks. The Town should encourage this via its social media pages as should others such as the Chamber of Commerce.

Comr. Renée Cahoon – Thank you to community

Comr. Renée Cahoon thanked the community for their response in opposition to the letter that was being placed on out of town vehicle windshields, posted on Facebook, etc. with rude comments re: out of town property owners. She appreciated that people realized that the letter does not define the character of those living on the Outer Banks.

Mayor Pro Tem Siers – Emergency alerts not received

Mayor Pro Tem Siers stated that he has not received any emergency alerts from the County – his cellular phone company is Verizon - Mayor Cahoon said that he would follow up on this with the County.

**MAYOR'S AGENDA**

Mayor Cahoon – Outdoor dining for restaurants

Mayor Cahoon said that the potential in the near future may be for restaurants to be allowed to re-open with minimal indoor dining and the ability to establish outdoor dining. It was Board consensus to agree to have Planning staff provide some information concerning flexibility in accommodating outdoor dining for restaurants, to include food trucks, at the June 3rd Board meeting.

**CLOSED SESSION**

**MOTION:** Comr. Fuller made a motion to enter Closed Session to discuss a personnel matter in accordance with GS 143-318.11(a)(6). The motion was seconded by Mayor Pro Tem Siers which passed unanimously. The time was 12:43 p.m.

**OPEN SESSION**

The Board re-entered Open Session at 12:59 p.m. Attorney Leidy reported that the Board did take action during Closed Session but there was nothing to report at this time.

**ADJOURNMENT**

**MOTION**: Comr. Renée Cahoon made a motion to recess to the May 20th Board mid-month meeting at 9 a.m. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 1:03 p.m.

_____
Carolyn F. Morris, Town Clerk

Date Approved: _____

Mayor: _____
Benjamin Cahoon

**DRAFT MINUTES**
**TOWN OF NAGS HEAD**
**BOARD OF COMMISSIONERS**
**RECESSED MEETING *(COVID-19)***
**WEDNESDAY, MAY 20, 2020**

The Nags Head Board of Commissioners met in the Board Room of the Nags Head Municipal Complex located at 5401 S Croatan Highway in Nags Head, North Carolina on Wednesday, May 20, 2020 at 9:00 a.m. The following instructions were provided to the public for meeting participation – in response to the COVID-19 pandemic:

*In order to view and listen to the Board meeting remotely, please register here:*
*https://nagsheadnc.zoom.us/webinar/register/WN_jlicFozNRWGf7jWCx87jkw*

*Please email your comments for the Public Comment portion here:*
*publiccomment052020@nagsheadnc.gov*
*(Emailed comments will also be accepted during the Board meeting until the end of the Public Comment portion of the meeting)*

*Comments should include your name and address and*
*Should be limited to five minutes when read aloud.*

| | |
|---|---|
| Board members Present: | Mayor Ben Cahoon; Mayor Pro Tem Michael Siers; Comr. Renée Cahoon; Comr. Webb Fuller; and Comr. Kevin Brinkley (all present in the Board Room) |
| Board members Absent: | None |
| Others present: | Town Manager Cliff Ogburn; Attorney John Leidy; Andy Garman; and Karen Snyder Planning Director Michael Zehner (all present in the Board Room) |
| Present Electronically: | NPS Outer Banks Superintendent Dave Hallac; Dep Planning Director Kelly Wyatt Town Clerk Carolyn F. Morris; Registered attendee list provided as Addendum "A" |

**CALL TO ORDER**
Mayor Cahoon called the meeting to order at 9:00 a.m. This meeting was recessed from the May 6th Board of Commissioners meeting.

**ADOPTION OF AGENDA**

**MOTION:** Comr. Fuller made a motion to adopt the May 20th agenda as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

**NATIONAL PARK SERVICE** YEAR IN REVIEW

National Park Service, Outer Banks Group, Superintendent Dave Hallac presented an update of the past year via the Zoom platform and a powerpoint presentation. His presentation is attached to and made a part of these minutes as shown in Addendum "B".

Some highlights from Superintendent Hallac's presentation:

- Visitor level is up at Wright Brothers Memorial they feel because of the renovated exhibits
- Increase in visitor level at Wright Brothers Memorial from 2014 and 2019 of almost half million visitors

Next year:

- Continue with Hurricane Dorian recovery efforts
- Staff Housing improvements
- Ground modernization at campground

Superintendent Hallac described the a phased reopening plan similar to other national parks and under the State of North Carolina phased guidelines due to COVID-19.

Board members thanked Superintendent Hallac for his presentation.

**PUBLIC COMMENT**

Mayor Cahoon read the emails (total of 36 were received) that had been forwarded to Commissioners re: recycling during the Public Comment period. All emails forwarded are attached to and made a part of these minutes as shown in Addendum "C".

Town Manager Ogburn read one email received during the Public Comment period re: restaurant dining during the pandemic which is also attached to and made a part of these minutes as shown in Addendum "D".

**OLD BUSINESS**

<u>From May 6th Board meeting – Report from Planning Dept re: plans for restaurant outdoor dining/food trucks for the Phase II re-opening of the State's Stay at Home Order; Request for public hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies</u>

Planning Director Michael Zehner was present in the Board Room and presented this item to the Board. The agenda summary sheet read in part as follows:

"In response to communication from the Outer Banks Restaurant Association, as well as discussion with other businesses, Planning Staff has prepared the proposed text amendment intending to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies.

'Planning Board/Staff Recommendation
Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration questions and feedback from the boards.

'The Planning Board is reviewing the proposed text amendment on May 19, 2020."

Director Zehner summarized his memo to the Planning Board which read in part as follows:

"The proposed text amendment is intended to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies. As the Board may be aware, Dan Lewis, President of the Outer Banks Restaurant Association, had emailed the mayors of the towns of Nags Head, Duck, Kill Devil Hills, Kitty Hawk, Manteo, and Southern Shores (attached) requesting the towns' consideration of regulatory changes that would allow for flexibility in restaurant operations in response to the COVID-19 Pandemic. This proposed text amendment is in response to that request, but has also been informed by further discussions between Staff and Mr. Lewis, Mark Ballog (owner of Lucky 12), and John Harris (owner of Kitty Hawk Kites); additionally, while in response to this immediate emergency, Staff believes that this provision will have application during other emergencies.

'In short, this text amendment would allow for the issuance of a Temporary Use Permit only during an emergency declared by the Mayor (pursuant to Town and State laws) or due to impacts associated with a declared emergency. In these instances, Temporary Use Permits would be authorized to be issued jointly by the Town Manager and UDO Administrator for temporary uses or the temporary modification of uses; the drafted provisions allow for broad latitude in their application, however, there are limitations on eligible uses and modifications, and ultimately, a Permit could be rejected for any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare.

'Obviously, the Town of Nags Head and the other Outer Banks' municipalities are not unique in the need to address this issue. Please find attached a blog post from the American Planning Association titled *7 Ways to Respond to Regulation Rollbacks*, intended to present perspectives and options for municipalities to address the Pandemic, while complying with applicable regulations and statutes.

'POLICY CONSIDERATIONS
The most direct policy in the Comprehensive Plan pertaining to the proposed text amendment and the basis for the amendment is policy NR-11, as follows:

*'NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.*

'In Staff's opinion, the proposed amendment is consistent with the intent of this policy, despite a lack of expectation for the current circumstances.

'STAFF RECOMMENDATION
Staff intends to review the provisions in more detail with the Board at their meeting on May 19, 2020. Staff is scheduled to present the proposed amendments to the Board of Commissioners or May 20, 2020, and if the Planning Board has issued a recommendation, request that the Board of Commissioners consider the scheduling of a public hearing for June 3, 2020. Planning Staff recommends adoption of the amendments as proposed, but welcomes and will take into consideration the Planning Board's questions and feedback.

'With regard to the Planning Board and Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

*3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

*3.5.4. Action by the Board of Commissioners.*
*Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

*3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

*3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

*3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.*

*3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.3. A statement approving the amendment and containing at least all of the following:*

*3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.*

*3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.*

*3.5.4.5.3.3. Why the action was reasonable and in the public interest.*

*3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

*3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

It was Board consensus to waive the $75 fee for a temporary use permit and to align with the other towns to not allow issuance of a temporary use permit if reduction of required parking is greater than 25%. Board members also agreed the ordinance should be in effect for 90 days.

**MOTION:** Comr. Renée Cahoon made a motion to authorize the temporary use of food trucks and outdoor dining via the Town's Crowd Gathering Permit process, waiving the permit fee, between now and June 3rd. The motion was seconded by Comr. Brinkley which passed unanimously.

**MOTION:** Comr. Fuller made a motion to schedule the proposed ordinance concerning temporary use permits for Public Hearing at the June 3rd Board of Commissioners meeting, as presented, with the amendments discussed today re: waiving the $75 fee and by aligning with the other towns to not allow issuance of temporary use permits if reduction of required parking is greater than 25%. The motion was seconded by Mayor Pro Tem Siers which passed unanimously.

Mayor Pro Tem Siers thanked the public/citizens/business owners who worked with staff on the proposed ordinance.

**NEW BUSINESS**

Consideration of NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017)

Town Manager Ogburn summarized the agenda summary sheet which read in part as follows:

"Attached please find the latest version of the NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017) provided for Board consideration at the May 20, 2020 Board of Commissioners meeting.

'The agreement, if adopted, encourages the coordination of mutual aid between the State and local governments when appropriate – such as in an emergency/disaster situation."

Comr. Renée Cahoon asked Town Manager Ogburn to verify the correct date is on the agreement.

**MOTION:** Mayor Pro Tem Siers made a motion to approve the NC Statewide Emergency Management Mutual Aid and Assistance Agreement (Revision 2017) as presented. The motion was seconded by Comr. Brinkley which passed unanimously.

The amendment as approved and executed is on file in the Town Clerk's office.

## ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN ATTORNEY

Request for Closed Session to confer with the Town Attorney regarding a matter within attorney/client privilege in accordance with GS 143-318.11(a)(3)

Mayor Cahoon confirmed with Attorney Leidy that his requested Closed Session concerning an attorney/client matter in accordance with GS 143-318.11(a)(3) is the only item under his agenda – to be addressed at the appropriate time at the end of the meeting.

## ITEMS REFERRED TO AND PRESENTATIONS FROM TOWN MANAGER

Town Manager Ogburn - Distribution/Presentation of Recommended FY 20/21 Budget

Town Manager Ogburn presented his recommended budget for the FY 20/21 year; Finance Officer Amy Miller distributed the budget document to Board members.

Some highlights of the proposed budget as presented by Town Manager Ogburn:

- Revenue neutral budget
- No employee COLA or Merit; no change to 401K
- Budget focuses on maintenance and repair
- Public Hearing on the proposed budget scheduled for Jun 3rd
- Budget workshop scheduled for next Wed, May 27th at 9 am

Town Manager Ogburn - Discussion of parking at Little Bridge site

Town Manager Ogburn brought forward for the Board's information the parking on the east side of the Little Bridge where people fish from the rocks. He is not proposing any action at this time – this is just for the Board's information as at some point No Parking designation may need to be made.

Comr. Brinkley noted that in the past two weeks he only saw two cars parked in that area and they were well off the road.

Mayor Cahoon noted that it is an area that needs to continue to be monitored.

Town Manager Ogburn - Request for Closed Session

Town Manager Ogburn requested a Closed Session for a personnel matter in accordance with GS 143-318.11(a)(6) at the appropriate time at the end of the meeting.

**BOARD OF COMMISSIONERS AGENDA**

Comr. Webb Fuller – Discussion about the Town allowing for an individual subscription for recycling

Comr. Fuller asked the Board if they would be interested in facilitating a subscription service for Nags Head residents for curbside recycling – similar to a program the Town had years ago prior to its curbside recycling program. This is currently being offered in Kitty Hawk, Kill Devil Hills, Manteo and in unincorporated Dare County. Vendors will do this type of service at a cost of approximately $15 to $20 per month. He noted that the Town continues to offer recycling centers. He feels that the Town can coordinate better than an individual – the vendor would be looking at around 300 people to participate to make it worth their while.

Comr. Fuller also stressed that the Town is strongly in favor of recycling and that more accurate information needs to be issued to the public.

Comr. Renée Cahoon considered the recycling comments that were received today – suspending recycling was not a decision the Board made lightly and as options come up the Town will reconsider. She emphasized that it's not that the Town does not want to recycle, there's no market for recycling materials. The Board cares very much about recycling.

Comr. Brinkley agrees with Comr. Renée Cahoon's comments and he thinks it would be beneficial for the Town to put more accurate and thorough information out to the public concerning this issue.

**MOTION:** Mayor Cahoon made a motion that staff a) Look into facilitating subscriptions for a curbside recycling service for residents that are interested – equivalent to that being done in the Towns of Kitty Hawk, Kill Devil Hills, and Manteo and in mainland Dare County, b) Develop an information campaign to further describe the decision-making process and what's currently available as well as all the conditions around recycling and, c) Develop a program (or at least an outline) to encourage reduction, re-use, and recycling as well as other environmentally-friendly approaches to waste to be brought back to the Board. The motion was seconded by Comr. Fuller which passed unanimously.

**MAYOR'S AGENDA**

Mayor Cahoon – Dare County Control Group

Mayor Cahoon reported that after this Friday, May 22nd, after the Governor announces the steps in the Phase II re-opening, that the Dare County Control Group will most likely stop meeting three times/week and will be meeting on an as-needed basis.

Comr. Renée Cahoon – Request that Dare County Tourism Board encourage wearing masks

Comr. Renée Cahoon asked Comr. Fuller to ask the DCTB to issue a message re: the importance of wearing face masks especially as more stores, restaurants, etc. open up as a way to be proactive and safe. Comr. Fuller said that they meet tomorrow (Thursday) and he will be glad to bring this up as the Tourist Bureau has the widest platform to get the information out.

Comr. Renée Cahoon – US Census

Comr. Renée Cahoon observed last week that US Census staff were doing their job and placing census information at houses that were unfortunately rental houses and the papers being left were being blown out into the street. It was emphasized that they should be concentrating on the west side of US 158 where most of the full-time residents live.

Town Manager Ogburn – Fund Balance figures

In response to an inquiry from Comr. Fuller, Town Manager Ogburn reported that the Town's Fund Balance Policy is 50% of expenditures less bond debt but not less than $5 million. The Town has $6.9 million in the Fund Balance which is 39% of the total budget.

**CLOSED SESSION**

**MOTION:** Comr. Brinkley made a motion to enter Closed Session in accordance with GS 143-318.11(a)(3) to confer with the Town Attorney concerning attorney/client privilege and to preserve that privilege, and in accordance with GS 143-318.11(a)(6) concerning a personnel matter. The motion was seconded by Comr. Fuller which passed unanimously. The time was 11:10 a.m.

**OPEN SESSION**

The Board re-entered Open Session at 11:58 a.m.

Attorney Leidy stated that the Board did discuss a confidential matter with the Town Attorney, as well as an attorney/client privilege item. He reported that the Board received and accepted the resignation of Town Manager Ogburn to be effective June 19, 2020.

**APPRECIATION OF TOWN MANAGER OGBURN**

All Board members expressed their appreciation of Town Manager Ogburn for all he has done for the Town; they wished him well in his new position as Town of Southern Shores Town Manager.

Mayor Cahoon expressed his appreciation to Town Manager Ogburn for his help when he was a newcomer to the Mayor position – he appreciated his guidance and the sharing of information on various issues. Mayor Cahoon said Town Manager Ogburn will be missed very much as he is a very caring manager – caring about Town citizens, his staff – and he wished him well in his future endeavors.

Comr. Brinkley said that while his time on the Board has been limited, as the Town's former Police Chief they did a lot of great things together and he feels Town Manager Ogburn will have the support of the Southern Shores Police Chief also. He expressed his appreciation for all Town Manager Ogburn has done for the Town and for him and he wished him well.

Comr. Renée Cahoon said she has enjoyed working with Town Manager Ogburn and wishes him well.

Mayor Pro Tem Siers wished Town Manager Ogburn well in his future endeavors.

Comr. Fuller thanked Town Manager Ogburn and felt what he has learned in Nags Head will also help him in Southern Shores.

**ADJOURNMENT**

**MOTION:** Comr. Renée Cahoon made a motion to adjourn. The motion was seconded by Comr. Brinkley which passed unanimously. The time was 12:02 p.m.

_____
Carolyn F. Morris, Town Clerk

Date Approved: _____

Mayor: _____
Benjamin Cahoon

# Agenda Item Summary Sheet

Item No: **D-3**
Meeting Date: **June 3, 2020**

**Item Title**: Consideration of resolution authorizing water payment plans – in accordance with State Executive Order #124

**Item Summary**:

Governor Cooper's Executive Order #124 authorized local government to assist water customers during the COVID-19 pandemic re: past due accounts and reconnection fees. Reconnection fees may be waived and water service will not be disconnected due to non-payment until June 2, 2020.

In accordance with the Governor's Executive Order #124, the attached resolution is provided for your consideration on June 3rd.

Number of Attachments: 1

**Specific Action Requested**:

Resolution provided for Board consideration of adoption.

Submitted By: Amy Miller, Finance Director Date: May 27, 2020

**Finance Officer Comment**:

Authorization is for a six-month repayment plan of six equal monthly installments for water balances that became delinquent between March 31, 2020 and June 1, 2020 – the resolution requires the balance to be paid in full by December 2, 2020.

Signature: Amy Miller Date: May 27, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 27, 2020

**Town Manager Comment and/or Recommendation**:

I concur.

Signature: Cliff Ogburn Date: May 27, 2020

**Resolution Authorizing Water Payment Plans From COVID-19**

**WHEREAS**, on March 10, 2020, Roy Cooper, Governor of North Carolina, issued Executive Order No. 116 which declared a State of Emergency to establish the State's response and protective actions to address the Coronavirus Disease 2019 (COVID-19) public health emergency and to provide for the health, safety, and welfare of residents and visitors located in North Carolina; AND

**WHEREAS**, on March 13, 2020, the President of the United States declared that the COVID-19 pandemic in the United States constitutes a national emergency, retroactive to March 1, 2020; AND

**WHEREAS**, on March 19, 2020, the North Carolina Utilities Commission issued an Order Suspending Utility Disconnections for Non-Payment, Allowing Reconnection, and Waiving Certain Fees; AND

**WHEREAS**, on March 31, 2020, Executive Order No. 124 issued by Governor Roy Cooper, prohibits shut-offs, late fees, and reconnection fees of utilities; AND

**WHEREAS**, on April 15, 2020 in accordance with the Governor's Executive Order No. 124, the Town of Nags Head authorized fees related to water past due accounts and reconnection fees be waived and water service will not be disconnected due to non-payment until June 2, 2020; AND

**WHEREAS,** if a delinquency occurred between March 31, 2020 and June 1, 2020, the Town of Nags Head authorizes a 6-month repayment plan of 6 equal monthly installments for past due water account balances caused during the COVID-19 pandemic only; AND

**WHEREAS,** any water service balance that became delinquent between March 31, 2020 and June 1, 2020 must be paid in full by December 2, 2020; AND

**WHEREAS,** if the water service balance isn't paid according to the payment plan terms, the whole amount under the payment plan becomes due, the payment plan becomes void, and the Town of Nags Head has the right to disconnect the service and apply a late fee penalty; AND

**WHEREAS,** all water service account balances that become delinquent after June 1, 2020 must be paid within noted due dates or the Town of Nags Head has the right to disconnect the service and apply a late fee penalty; AND

**WHEREAS,** all payments received by the Town of Nags Head will be applied to the oldest outstanding balance first in accordance with existing policies.

**NOW THEREFORE BE IT RESOLVED** that the Nags Head Board of Commissioners hereby authorizes a 6-month repayment plan of 6 equal monthly installments for water balances that became delinquent between March 31, 2020 and June 1, 2020 and must be paid in full by December 2, 2020.

This the 3rd day of June 2020.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST:

_____
Carolyn F Morris, Town Clerk

# Agenda Item Summary Sheet

Item No: **E-1**
Meeting Date: **June 3, 2020**

**Item Title**: Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, and the updated Consolidated Fee Schedule

**Item Summary**:

At the May 20th Board of Commissioners meeting, Town Manager Ogburn presented highlights of his recommended FY 20/21 Budget. At that time the proposed budget was distributed to Board members. A Public Hearing was subsequently scheduled for the June 3rd Board meeting.

Attached please find the Public Notice of Public Hearing which includes cost figures for the FY 20/21 Operating Budget.

Number of Attachments: 2

**Specific Action Requested**:

Public Hearing to be conducted on the FY 20/21 proposed budget.

Submitted By: Administration Date: May 28, 2020

**Finance Officer Comment**:

I will be available to answer any questions.

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

During discussions at its May 27th Budget Workshop, the Board directed the Town Manager to present a list of expenditures for the Board to consider funding in the FY 21 budget based on revenues anticipated to be higher than originally thought due to COVID-19. The Board also asked that this list include items the Board may wish to consider in the fall based on projected revenue at that time. These recommendations are included in your packet.

Signature: Cliff Ogburn Date: May 28, 2020

**Ben Cahoon**
Mayor

**Michael Siers**
Mayor Pro Tem

**Cliff Ogburn**
Town Manager

**Town of Nags Head**
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Nags Head, North Carolina 27959
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FAX (252) 441-0776
www.nagsheadnc.gov

**M. Renée Cahoon**
Commissioner

**J. Webb Fuller**
Commissioner

**Kevin Brinkley**
Commissioner

**TOWN OF NAGS HEAD - PUBLIC HEARING NOTICE**
**PROPOSED OPERATING BUDGET FOR FY 2020– 2021**
**AND UPDATED CONSOLIDATED FEE SCHEDULE**

Notice is hereby given that the Town Manager's proposed operating budget for fiscal year July 1, 2020 - June 30, 2021, has been presented to the Governing Body. The Town of Nags Head Board of Commissioners will conduct a PUBLIC HEARING on the proposed budget in the Board Room of the Nags Head Municipal Complex located at 5401 S. Croatan Highway on **Wednesday, June 3, 2020** at 9:00 a.m.

Public Hearing is to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021 and updated Consolidated Fee Schedule.

A copy of the proposed budget and CIP requests are available for public inspection in the Town Clerk's Office, Monday through Friday from 8:30 a.m. until 5:00 p.m. Copies of the proposed budget may be purchased at $10.00 each. Proposed budget, CIP requests, and Consolidated Fee Schedule may also be viewed on the Town's web site at www.nagsheadnc.gov.

All interested persons are invited/urged to make written or oral comments. A summary of the proposed budget follows:

| | | |
|---|---|---|
| **REVENUES** | | |
| TAXES (Ad Valorem) | $ | 9,161,401 |
| OTHER TAXES & LICENSES | | 5,330,391 |
| INTERGOVERNMENTAL REVENUE | | 2,127,475 |
| PERMITS & FEES | | 312,175 |
| INVESTMENT EARNINGS | | 140,000 |
| OTHER/MISCELLANEOUS REVENUE | | 281,750 |
| OTHER FINANCE SOURCES | | 3,988,364 |
| APPROPRIATION/FUND BALANCE | | - |
| WATER FUND REVENUE | | 3,323,211 |
| **TOTAL REVENUES** | **$** | **24,664,767** |
| **EXPENDITURES** | | |
| GOVERNING BODY | $ | 129,605 |
| BOND DEBT | | 2,521,353 |
| TOWN MANAGER/CLERK | | 947,280 |
| LEGAL | | 94,480 |
| ADMINISTRATIVE SERVICES | | 987,470 |
| IT | | 356,873 |
| PLANNING AND DEVELOPMENT | | 1,270,709 |
| PUBLIC WORKS | | 4,274,257 |
| STORMWATER | | 496,258 |
| PUBLIC SAFETY – Police | | 2,652,007 |
| PUBLIC SAFETY - Fire/Ocean Rescue | | 3,695,922 |
| CONTINGENCY | | 125,000 |
| INTERFUND TRANSFERS | | 3,790,342 |
| WATER FUND | | 3,323,211 |
| **TOTAL EXPENDITURES** | **$** | **24,664,767** |

This the 22nd day of May 2020.
Carolyn F. Morris, Town Clerk

Town of Nags Head June 3, 2020 Board of Commissioners meeting General Fund

| **CIP items cut from requested budget:** | **FY 2021 budgetary impact** | |
|---|---|---|
| Unmanned aircraft system | $ 23,000 | |
| Soundside boardwalk design and constructic | 85,000 | |
| Facilities master plan for Public Works | 50,000 | Revisit a discussion in the fall |
| Skate park | 90,000 | |
| **Stand on sprayer/spreader** | **13,500** | **add back** |

| **New debt payments cut from requested bu** | **FY 2021 budgetary impact** | | |
|---|---|---|---|
| Building security retrofits | 59,250 | ($1,250 is LGC fee) | Revisit a discussion in the fall |
| Replacement boom truck | 39,596 | | |
| **Replacement residential truck** | **67,592** | **(net $5000 capital reserve funding) add back** | |
| (Stormwater) Project area 12 | 45,000 | | |
| (Stormwater) Project area 13 | 115,000 | | |
| **Facilities maintenance pickup** | **11,781** | **add back** | |
| **Police vehicles (3)** | **51,123** | **add back** | |
| Fire brush truck | 22,002 | | |

| **Capital outlay cut from requested budget:** | **FY 2021 budgetary impact** | |
|---|---|---|
| general fund repayment to water fund | 76,886 | |
| master mower | 11,760 | |
| Police mobile radar trailer | 18,564 | |
| Sanitation Kubota RTV | 15,000 | can possibly be removed all together-was for Part Time cart roll back employee |

Town of Nags Head June 3, 2020 Board of Commissioners meeting General Fund

| **Personnel not included in requested budge** | **FY 2021 budgetary impact** | |
|---|---|---|
| cart roll back (2) | 16,860 | Part time (net of cart rollback service) |
| **cut hours part time office assistant** | **11,300** | **add back** |
| cut PT building inspector | 10,569 | Part time |
| lifeguard $1/hour increase | 37,516 | Part time |
| **COLA increases** | **170,845** | **just the General Fund cost-use funds for COLA/within grade increase combination** |
| merit increases | 26,504 | just the General Fund cost |
| within grade increases | 125,293 | |
| Christmas bonus | 15,000 | |
| Sanitation superintendent | 90,730 | |
| Sanitation supervisor | 93,335 | |

Town of Nags Head June 3, 2020 Board of Commissioners meeting General Fund

| **Operations cut from requested budget:** | **FY 2021 budgetary impact** | |
|---|---|---|
| recycling | 165,000 | |
| **Dowdy Park special events** | **5,000** | **add back $5000 cut by $6000** |
| BOC meetings videoed in house | 19,200 | |
| fireworks | 12,500 | |
| BOC retreat facilitator | 4,700 | |
| Christmas party | 5,000 | reduced by $5,000 |
| Employee survey | 9,000 | Revisit a discussion in the fall |
| Pay and class study | 25,000 | |
| On call services | 40,000 | reduced by $40,000 for engineer, architect, etc. |
| Fire unmanned aircraft | 4,000 | |
| Fire enclosed trailer | 4,500 | |
| Fire water rescue equipment | 2,500 | |
| Ocean Rescue replacement ice machine | 3,000 | |
| Coyote trapping | 5,100 | |
| Lighting for crosswalks on beach road | 26,700 | |
| Milepost 10.5 sidewalk | 50,000 | Revisit a discussion in the fall |
| Replace windows at Town Hall | 10,000 | |
| Bay heat replacement Station 16 | 20,000 | |
| Station 20 building evaluation | 20,000 | |
| Station 16 interior painting | 20,000 | |
| **Facilities Maintenance contract-HVAC spec** | **4,200** | **add back** |
| **Facilities Maintenance HVAC agreement at** | **3,900** | **add back** |
| | | |
| **Cost to add back items** | **339,241** | **add back** |

Town of Nags Head June 3, 2020 Board of Commissioners meeting General Fund

| | | |
|---|---|---|
| **Adjustment items to Manager's Recommended Budget** | | |
| seasonal facilities maintenance worker | 17,640 | |
| IT coordinator cell stipend | 420 | |
| Cart roll back contract increase to actual | 1,710 | |
| NCLM membership increase | 130 | |
| Postage decrease per workshop request | (3,395) | Admin. Services |
| Postage decrease per workshop request | (1,500) | Planning |
| **Total adjustments** | **15,005** | |
| | | |
| **Adjustment for revenue assumptions** | | |
| Sales tax | 200,625 | Adjust to 75% July, 80% Aug., 80% Sept. |
| Contribution to MSD for excess sales tax | (31,192) | Interfund |
| Occupancy tax | 184,813 | Adjust to 75% July, 80% Aug., 80% Sept. |
| **Total adjustments for revenue assumptior** | **354,246.00** | |
| | | |
| **Net budgetary impact** | | |
| **items added back and adjustments** | - | |

Town of Nags Head June 3, 2020 Board of Commissioners meeting Water Fund

| **CIP items cut:** | **FY 2021 budgetary impact** | |
|---|---|---|
| Eighth Street water tower rehabilitation | $ 320,886 | Revisit a discussion in the fall |
| **Water tower and tank maintenance con** | **91,948** | **add back** |
| Digital water meter switch out | 341,786 | |

| **New debt payments cut:** | **FY 2021 budgetary impact** |
|---|---|
| Operations pickup | 12,127 |
| Distribution pickup | 12,474 |

| **Capital outlay cut:** | **FY 2021 budgetary impact** | |
|---|---|---|
| **South Nags Head tank mixer motor** | **15,000** | **add back** |

(broke in FY 2020, might need to replace in current fiscal year if repair does not work)

| | **FY 2021 budgetary impact** | |
|---|---|---|
| **Personnel not included in requested budget:** | | |
| **COLA/within grade increase combinatio** | **18,308** | **add back** |

| | |
|---|---|
| **Cost to add back items** | **125,256** |
| **Adjustment for revenue assumptions** | **125,256** |

# Agenda Item Summary Sheet

Item No: **E-2**
Meeting Date: **June 3, 2020**

**Item Title**: Public Hearing to consider a text amendment to the Unified Development Ordinance to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District

**Item Summary**:
Kim Cowen and Megan Dixon have submitted a text amendment request to the Unified Development Ordinance which, if adopted, would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District. The applicants would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up.

Staff Recommendation/Planning Board Recommendation
Planning staff finds that the proposal is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community. Staff would recommend that the use be listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

*Tutoring Facility/Learning Center means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test preparation, or the teaching of music and visual arts.*

Staff recommends adoption of the proposed amendment as presented. At their April 21, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as presented.

Number of Attachments: 2

**Specific Action Requested**:
Conduct the Public Hearing.

Submitted By: Planning and Development Date: May 26, 2020

**Finance Officer Comment**:

Signature: Amy Miller Date: May 26, 2020

**Town Attorney Comment**:

Signature: John Leidy Date: May 26, 2020

**Town Manager Comment and/or Recommendation**:

Signature: Cliff Ogburn Date: May 26, 2020

**Town of Nags Head**
Post Office Box 99
Nags Head, North Carolina 27959
Telephone 252-441-5508
Fax 252-441-0776
www.nagsheadnc.gov

**NOTICE OF PUBLIC HEARINGS**
**TOWN OF NAGS HEAD BOARD OF COMMISSIONERS**

NOTICE IS HEREBY GIVEN that the Nags Head Board of Commissioners will conduct public hearings on **Wednesday, June 3, 2020** beginning at 9:00 am in the Board Room of the Municipal Complex, 5401 S. Croatan Highway, Nags Head, NC to consider and take action upon the following requests:

**1)** Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, proposed CIP requests for FY 20/21 through FY 24/25, and updated Consolidated Fee Schedule

Anyone wishing to be heard concerning the proposed budget may appear in person at the date/time specified or may speak via the Zoom platform/app.

**2)** Public Hearing to consider a text amendment to the UDO submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Anyone wishing to be heard concerning the text amendment to the UDO may speak via the Zoom platform/app.

**3)** Public Hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

Anyone wishing to be heard concerning the text amendment to the UDO may speak via the Zoom platform/app.

A copy of the application requests are available for public inspection at the Office of the Town Clerk, Town Municipal Complex, 5401 S. Croatan Hwy, Nags Head, NC 27959, telephone (252) 441-5508 during normal business hours.

As a result of these hearings substantial changes may be made in the proposals as advertised to reflect objections, debate and discussion at the hearings.

This the 18th day of May 2020.

Carolyn F. Morris
Town Clerk

# MEMORANDUM
# Town of Nags Head
# Planning & Development Department

To: Board of Commissioners

From: Kelly Wyatt, Deputy Planning Director
Michael Zehner, Director of Planning and Development

Date: May 22, 2020

Subject: Public Hearing to consider a text amendment to the UDO submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District. *(Attachment E-2)*

**OVERVIEW & BACKGROUND**

Megan Dixon and Kim Cowen have submitted the attached text amendment request to the Unified Development Ordinance, which, if adopted would permit "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District.

The applicants have provided a detailed explanation of the nature and reason for their request. They would like to offer tutoring, both part- and full-time, to registered homeschooled children, ages 6 and up. Ms. Cowen has spoken with both me and the Senior Building Inspector, Steve Szymanski, about the proposed business use. In looking at the current UDO, similar uses include Child Care Facility and School, however, by definition, the proposed use would not meet either of these use classifications. Therefore, it was recommended to Ms. Cowen that a text amendment request to consider establishing this new use would be necessary.

**POLICY CONSIDERATIONS**

Planning Staff finds the proposed use is consistent with the 2017 Comprehensive Land Use Plan and the desire to encourage land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community.

**PLANNING BOARD RECOMMENDATION**

At their April 21, 2020 meeting the Planning Board voted unanimously to recommend adoption of the text amendment as recommended by Staff.

**STAFF RECOMMENDATION:**

Staff recommends adoption of the proposed amendment as presented, with the use listed under the *Service* category in the Table of Uses and Activities and be defined as follows:

> ***Tutoring Facility/Learning Center*** means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test-preparation, or the teaching of music and visual arts.

**(DRAFT)**
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO PROPOSED NEW USE "TUTORING FACILITY/LEARNING CENTER"**

**ARTICLE I. Purpose(s) and Authority.**

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (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. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

**WHEREAS**, a text amendment application has been submitted requesting consideration be given to permitting "tutoring facility/learning center" within the C-2, General Commercial Zoning District' and

**WHEREAS**, the Town of Nags Head 2017 Comprehensive Plan includes policies supporting land uses that serve the needs of both year-round and seasonal residents in support of the town's overall vision for the community and to support and foster small, local businesses that preserve and uphold the vision and legacy of the town.

**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 ellipsis ("...") shall remain as they currently exist within the Town Code.

**ARTICLE III. Amendment of the Unified Development Ordinance.**

PART I. That **Section 6.6 Table of Uses and Activities** be amended as follows:

| | | **Residential Districts** | | | **Commercial Districts** | | | | |
|---|---|---|---|---|---|---|---|---|---|
| **Use Category/Class** | **Use Type** | **R-1** | **R-2** | **R-3** | **CR** | **C-1*** | **C-2** | **C-3** | **C-4** |
| Service | Tutoring Facility/Learning Center | | | | | | P | | |

PART II. That **Section 10.16 Required Parking by Use** be amended as follows:

| Use Category/Class | Use Type | Required Parking |
|---|---|---|
| Service | Tutoring Facilities/Learning Center | One parking space for each 300 square feet of gross floor area. |

PART III. That Appendix A Definitions, be amended as follows:

Section A.4 – Definitions

***Tutoring Facility/Learning Center*** means a private, for profit or non-profit, use for the instruction of students in subjects and materials commonly taught in primary and secondary schools, for test-preparation, or the teaching of music and visual arts.

PART IV. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the ___ day of ____ 2020.

_____

Benjamin Cahoon, Mayor

ATTEST:

_____

Town Clerk

APPROVED AS TO FORM:

_____

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner_____

Vote: _____ AYES _____ NAYS

App # 202010230

# ZONING AMENDMENT APPLICATION
# TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant Outer Banks Montessori Collective

Mailing address 202 Shallow Street KDH 27948

Explanation of request

☐ Zoning Ordinance - Section(s) _____
Attach amendment in ordinance form.

☐ Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

A text amendment to create a new use category for a learning center in C-2 Zone in Nags Head

Reason for request

We are an academic service business - we provide tutoring, part & full time, to homeschool families. Each child we serve (ages 6+) is a registered homeschool child. Families can choose from a range of services - from 1 hour sessions up to 6 hours/day, 5 days a week & everything in between (3x/week, 1 week in 3/week off, 9-1, etc) We use the Montessori methodology as the bases of our services. Montessori includes the use of didactic, hands on learning materials that homeschool families might not have at home. We will have anywhere from 1-25 students in our space at one time.

We are not a school, we don't fit into any of the existing use categories (school, childcare, etc), And so we propose a new use that would accomodate us as a learning center / academic services, specifically to serve local homeschool families.

Applicant (Megan Dixon) & (Kim Cowen)

2/18/20
Date

757-613-1873

# Agenda Item Summary Sheet

Item No: **E-3**
Meeting Date: **June 3, 2020**

**Item Title**: Public Hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

**Item Summary**:
In response to communication from the Outer Banks Restaurant Association, as well as discussion with other businesses, Planning Staff has prepared the proposed text amendment intending to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies. The proposed text amendment has been updated to reflect feedback received from the Board of Commissioners.

**Planning Board/Staff Recommendation**
Planning Staff recommends approval of the text amendments as provided in the attached ordinance. As requested, Staff has made modifications to the proposed amendments with respect to allowed parking reductions and to improve the clarity of provisions addressing the expiration of temporary use permits; these changes are discussed in detail within Staff's memorandum.

The Planning Board reviewed the proposed text amendment at their meeting on May 19, and voted 6-0 (with one abstention) to recommend adoption as proposed.

Number of Attachments: 4

**Specific Action Requested**:

Hold public hearing and consider action on UDO text amendment

Submitted By: Planning and Development Date: May 27, 2020

**Finance Officer Comment**:

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

Signature: Cliff Ogburn Date: May 28, 2020

**Town of Nags Head**
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**NOTICE OF PUBLIC HEARINGS**
**TOWN OF NAGS HEAD BOARD OF COMMISSIONERS**

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**1)** Public Hearing to consider citizen comment on the Town Manager's proposed operating budget for July 1, 2020 – June 30, 2021, proposed CIP requests for FY 20/21 through FY 24/25, and updated Consolidated Fee Schedule

Anyone wishing to be heard concerning the proposed budget may appear in person at the date/time specified or may speak via the Zoom platform/app.

**2)** Public Hearing to consider a text amendment to the UDO submitted by Kim Cowen and Megan Dixon to allow "Tutoring Facility/Learning Center" as a permitted use within the C-2, General Commercial Zoning District Public Hearing to consider a text amendment to the Unified Development Ordinance submitted by a property owner to expand the principal sale items from outdoor stands to include reservations and tickets for events/activities

Anyone wishing to be heard concerning the text amendment to the UDO may speak via the Zoom platform/app.

**3)** Public Hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies

Anyone wishing to be heard concerning the text amendment to the UDO may speak via the Zoom platform/app.

A copy of the application requests are available for public inspection at the Office of the Town Clerk, Town Municipal Complex, 5401 S. Croatan Hwy, Nags Head, NC 27959, telephone (252) 441-5508 during normal business hours.

As a result of these hearings substantial changes may be made in the proposals as advertised to reflect objections, debate and discussion at the hearings.

This the 18th day of May 2020.

Carolyn F. Morris
Town Clerk

# MEMORANDUM
# Town of Nags Head
# Planning & Development Department

To: Board of Commissioners

From: Michael Zehner, Director of Planning & Development

Kelly Wyatt, Deputy Director of Planning & Development

Date: May 27, 2020

Subject: Public Hearing to consider a text amendment to the UDO pertaining to temporary uses or temporary alteration of uses related to declared emergencies (Attachment E-3)

## OVERVIEW AND BACKGROUND

The proposed text amendment is intended to enact provisions within the Unified Development Ordinance allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies. As the Board may be aware, Dan Lewis, President of the Outer Banks Restaurant Association, had emailed the mayors of the towns of Nags Head, Duck, Kill Devil Hills, Kitty Hawk, Manteo, and Southern Shores (attached) requesting the towns' consideration of regulatory changes that would allow for flexibility in restaurant operations in response to the COVID-19 Pandemic. This proposed text amendment is in response to that request, but has also been informed by further discussions between Staff and Mr. Lewis, Mark Ballog (owner of Lucky 12), and John Harris (owner of Kitty Hawk Kites); additionally, while in response to this immediate emergency, Staff believes that this provision will have application during other emergencies.

In short, this text amendment would allow for the issuance of a Temporary Use Permit only during an emergency declared by the Mayor (pursuant to Town and State laws) or due to impacts associated with a declared emergency. In these instances, Temporary Use Permits would be authorized to be issued jointly by the Town Manager and UDO Administrator for temporary uses or the temporary modification of uses; the drafted provisions allow for broad latitude in their application, however, there are limitations on eligible uses and modifications, and ultimately, a Permit could be rejected for any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare.

Obviously, the Town of Nags Head and the other Outer Banks' municipalities are not unique in the need to address this issue. Please find attached a blog post from the American Planning Association titled *7 Ways to Respond to Regulation Rollbacks*, intended to present perspectives and options for municipalities to address the Pandemic, while complying with applicable regulations and statutes.

The Planning Board reviewed the proposed text amendment at their meeting on May 19, 2020 and forwarded their recommendation in support to the Board of

Commissioners. The Board of Commissioners discussed the proposed text amendment at their meeting on May 20, 2020, in consideration of scheduling a public hearing. The Board voted to schedule a public hearing for June 3, and requested that Staff incorporate changes into the proposed text amendment that would allow for parking to be reduced by up to 25%, and make changes to proposed Section 4.11.5.3. to improve clarity consistent with intent.

## POLICY CONSIDERATIONS

The most direct policy in the Comprehensive Plan pertaining to the proposed text amendment and the basis for the amendment is policy NR-11, as follows:

> *NR-11 Ensure that the town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster event.*

In Staff's opinion, the proposed amendment is consistent with the intent of this policy, despite a lack of expectation for the current circumstances.

## PLANNING BOARD RECOMMENDATION

The Planning Board reviewed the proposed text amendment at their meeting on May 19, and voted 6-0 (with one abstention) to recommend adoption as proposed.

One member of the Board did request, without objection from other members, that Staff verify that appropriate allowances were in place for businesses to display menu signs, and if not, request consideration of this aspect by the Board of Commissioners. The proposed text amendments allow for provisions of the Sign Ordinance to be waived, but limit additional temporary signs to no more than one. Additionally, the Sign Ordinance does not require a permit for signs less than 3 square feet in area. Staff believes these two provisions appropriately accommodate menu signage.

## STAFF RECOMMENDATION

Staff recommends approval of the text amendments as provided in the attached ordinance. As requested, Staff has made the following modifications of the text amendments:

- Generally, the allowed maximum parking reduction within Section 4.11.5.2. has been increased from 20% to 25%; however, Staff recommends that it be an allowed reduction of existing parking versus required parking. Given parking requirements for some use categories, particularly shopping centers, administration and compliance could prove difficult. The attached ordinance includes the following amended provision:
    - The reduction of ~~required~~ **existing** parking by greater than ~~twenty (20%)~~ **twenty-five percent (25%)**;

- Section 4.11.5.3. of the attached ordinance has been amended as shown to improve clarity consistent with intent:

    - 4.11.5.3. Duration and Extension. Temporary Use Permits shall be issued with an expiration date, not to exceed ninety (90) days from the date of issuance. Generally, at the discretion of the Town Manager and UDO Administrator, such temporary use permits shall expire upon the termination of the declaration of emergency, the end of the circumstances under **or impacts associated with** the declaration causing the need for the accommodations, or upon the timeframe set by the Mayor, whichever is ~~sooner~~ **later**. Upon expiration, all temporary accommodations shall cease or otherwise be considered violations of the UDO, as applicable. Subject to the same limitations and discretion, the expiration date of a Temporary Use Permit may be extended, with such requests submitted no later than ten (10) business days prior to the pending expiration date.

With regard to the Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

*3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

*3.5.4. Action by the Board of Commissioners.*
*Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

*3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

*3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

*3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.*

*3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.3. A statement approving the amendment and containing at least all of the following:*

*3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.*

*3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.*

*3.5.4.5.3.3. Why the action was reasonable and in the public interest.*

*3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

*3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

**Attachments:**

1. Proposed Text Amendment Ordinance;
2. Email from Dan Lewis, President, Outer Banks Restaurant Association; and
3. American Planning Association blog post *7 Ways to Respond to Regulation Rollbacks*

**(DRAFT)**
**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO TEMPORARY USE PERMITS DURING DECLARED EMERGENCIES**

## ARTICLE I. Purpose(s) and Authority.

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town of Nags Head (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. Chap. 160A, Art. 19 et. seq, the Town has adopted comprehensive zoning regulations and has codified the same within the Unified Development Ordinance, Part II of the Town Code, adopted pursuant to N.C.G.S. § 160A-363, which allows the Town to combine certain land development ordinances into a unified ordinance; and

**WHEREAS**, pursuant to applicable provisions of Chapter 14, Emergency Management, of the Nags Head Town Code, and N.C.G.S. § 166A, the Town, through the Mayor, has the authority to declare the existence of state of emergency; and

**WHEREAS**, the Board of Commissioners find that it is necessary to enact provisions allowing for temporary uses or the temporary modification of uses to address conditions during declared states of emergency or resulting from such emergencies; and

**WHEREAS**, the Town of Nags Head 2017 Comprehensive Plan includes policies that seek to ensure that the Town is a disaster resilient community that can survive, recover from, and thrive after a disaster event; and

**WHEREAS**, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Town's Unified Development Ordinance as stated below.

## ARTICLE II. Construction.

For purposes of this ordinance amendment, underlined words (<u>underline</u>) shall be considered as additions to existing Town Code language and strikethrough words (~~strikethrough~~) shall be considered deletions to existing language. Any portions of the adopted Town Code which are not repeated herein, but are instead replaced by an ellipsis ("...") shall remain as they currently exist within the Town Code.

## ARTICLE III. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Section A.4, Definitions, of Appendix A, Definitions, of the UDO**, be amended by adding the following term and definition in the appropriate alphabetical order:

***Temporary use permit*** means a permit issued by the Town Manager and UDO Administrator that allows for reasonable accommodations in zoning regulations for the temporary use or temporary modification of use of property.

PART II. That the definition of **Site Plan, and specifically Site Plan, Minor, as contained in Section A.4, Definitions, of Appendix A, Definitions, of the UDO,** be amended as follows:

***Site plan*** means a plan provided that reflects existing and proposed conditions on a site that is intended for construction. This may include but is not limited to topography, structures or additions, grading, drainage, erosion control measures, trees to be saved or planted to comply with the applicable standards of this UDO as well as other requirements of the Town Code of Ordinances.

(1) ***Site plan, major*** means all site plans not meeting the requirements for a minor site plan.

(2) ***Site plan, minor*** includes the following: increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development, and/or any temporary changes to sites as part of activities eligible for and subject to the issuance of a Temporary Use Permit.

PART III. That **Section 3.8.6., Binding Effect, as contained in Article 3., Legislative/Quasi-Judicial Procedures, Part III., Quasi-Judicial Procedures, Section 3.8, Conditional Use Permits, of the UDO,** be amended as follows:

***3.8.6. Binding Effect.***
Any conditional use permit shall be binding to the property included in the permit unless subsequently changed or amended by the Board of Commissioners. Uses subject to a conditional use permit and the conditions thereof may be temporarily modified pursuant to Section 4.11.5. and Section 6.4.6. in a manner that would not be in compliance with the issued conditional use permit; such temporary modification shall not constitute a modification or change of the conditional use permit pursuant to Section 3.8.8., Change in Conditional Use Permit.

PART IV. That **Section 4.4., Applications Reviewed by Staff, as contained in Article 4., Development Review Process, Part II., Development Review Process, of the UDO,** be amended as follows:

SECTION 4.4 APPLICATIONS REVIEWED BY STAFF

Administrative approval includes the following types of development:

- Minor Site Plans (increases in lot coverage or building floor area not greater than 1,000 square feet, changes to stormwater management measures, landscape buffering, vegetation preservation area, signage, or site lighting for existing development, and/or any temporary changes to sites as part of activities eligible for and subject to the issuance of a Temporary Use Permit).

- Change of use applications not involving establishment of a new conditional use.

- Administrative Adjustments (see Section 4.14).

- Temporary Use Permits (see Section 4.11.5).

- Minor Subdivisions.

- Major Subdivision Final Plats.

The UDO Administrator has the authority to determine when projects meeting the above requirements shall require Major Site Plan review due to other project activities or unique circumstances; the UDO Administrator shall make such a determination in writing.

PART V. That **Section 4.9., Purpose and Intent, as contained in Article 4., Development Review Process, Part III., Development Permitting Requirements, of the UDO,** be amended by adding a thirteenth bullet to the bulleted list, as follows:

- Temporary uses or temporary modification of uses.

PART VI. That **Section 4.11., Permit Types, as contained in Article 4., Development Review Process, Part III., Development Permitting Requirements, of the UDO,** be amended by adding Section 4.11.5., as follows:

4.11.5. Temporary Use Permit.
In the event of an emergency declared by the Mayor pursuant to Chapter 14, Emergency Management , of the Nags Head Town Code and/or NCGS 166A-19.22, or owing to impacts associated with a declared emergency, the Mayor may authorize the Town Manager and UDO Administrator, jointly, or their designees, to allow for reasonable temporary accommodations in zoning regulations consistent with and furthering the purposes of the emergency declaration and in the interests of public health, safety, and welfare. Such

accommodations shall be in the form of the issuance of a Temporary Use Permit.

4.11.5.1. Applicability. Temporary accommodations eligible for the issuance of a Temporary Use Permit include:

- The allowance of uses on a temporary basis, pursuant to Section 6.4., and specifically Section 6.4.6.1.;
- The modification of uses on a temporary basis, pursuant to Section 6.4., and specifically Section 6.4.6.2.; and/or
- The waiving or varying of any applicable provision contained in Article 8, Article 9, or Article 10 of the UDO, except as limited by Section 4.11.5.2.

4.11.5.2. Prohibited Activities. The following activities or accommodations are ineligible for the issuance of a Temporary Use Permit:

- The increase of floor area and/or the construction or installation of permanent structures or buildings;
- The reduction of existing parking by greater than twenty-five percent (25%);
- The elimination of required landscaping or trees;
- The installation of more than one (1) additional temporary sign, limited in size and location pursuant to Part III., Sign Regulations, of Article 10, or signage beyond that which is necessary to provide for traffic control or public notices;
- The elimination, modification, or installation of driveways, except as necessary in the opinion of the Town Manager and UDO Administrator to accommodate the safe and efficient circulation of vehicles;
- The commencement of any water-dependent uses or activities;
- Any activity or accommodation, in the opinion of the Town Manager and UDO Administrator, that would be contrary to the purposes of the emergency declaration and/or the interests of the public health, safety, and welfare; and/or
- Any activity or accommodation that would not comply with applicable local, State, or Federal laws and regulations.

4.11.5.3. Duration and Extension. Temporary Use Permits shall be issued with an expiration date, not to exceed ninety (90) days from the date of issuance. Generally, at the discretion of the Town Manager and UDO Administrator, such temporary use permits shall expire upon the termination of the declaration of emergency, the end of the circumstances under or impacts associated with the declaration causing the need for the accommodations, or upon the timeframe set by the Mayor, whichever is later. Upon expiration, all temporary accommodations shall cease or otherwise be considered violations of the UDO, as applicable. Subject to

the same limitations and discretion, the expiration date of a Temporary Use Permit may be extended, with such requests submitted no later than ten (10) business days prior to the pending expiration date.

PART VII. That **Section 5.1., Intent, as contained in Article 5., Nonconformities, of the UDO,** be amended by adding Section 5.1.5., as follows:

5.1.5. Temporary uses or uses modified on a temporary basis subject to a Temporary Use Permit as authorized and limited by Section 4.11.5. shall have no effect on nonconforming status as established by the sections of this Article.

PART VIII. That **Section 6.4., Permitted Types, as contained in Article 6., Zoning Districts, of the UDO,** be amended as follows:

SECTION 6.4 PERMITTED TYPES.

Zoning districts have uses specified as permitted by right, conditional uses, and uses permitted with supplemental regulations. Detailed use tables are provided in Section 6.6, Table of Uses and Activities, showing the uses allowed in each district. Additionally, as authorized under Section 4.11.5., and Section 6.4.6. herein, uses may be temporarily permitted or modified on a temporary basis subject to a Temporary Use Permit. The following describes the processes of each of the categories that the uses are subject to:

PART IX. That **Section 6.4., Permitted Types, as contained in Article 6., Zoning Districts, of the UDO,** be amended by adding Section 6.4.6., as follows:

***6.4.6. Uses or Modification of Uses with Temporary Use Permit.***
As authorized under and limited by Section 4.11.5., uses may be temporarily permitted or modified on a temporary basis, subject to a Temporary Use Permit, as follows:

***6.4.6.1. Temporary Use.*** Any use identified in Section 6.6, Table of Uses and Activities, may be temporarily permitted pursuant to Section 4.11.5. in any zoning district, except that uses not identified as Residential or Residential - Group in Section 6.6. may not be permitted in the Residential Districts or Special Districts identified in Table 6-1, Zoning Districts Established, unless otherwise permitted or allowed with a conditional use permit within such districts.

***6.4.6.2. Temporary Modification of Use.*** Any use identified in Section 6.6., Table of Uses and Activities, as requiring a conditional use permit or being subject to supplemental regulations outlined in Article 7, Supplemental Regulations, may be temporarily modified pursuant to Section 4.11.5. in manner that would not be in compliance with any issued conditional use permit and/or supplemental standards, as applicable.

PART X. That **Part I., Introduction, as contained in Article 7., Supplemental Regulations, of the UDO,** be amended as follows:

PART I. INTRODUCTION

The following supplemental regulations shall pertain to the uses listed in the Table of Uses and Activities located in Article 6, Zoning Districts which are identified as a permitted use with supplemental regulations (PS) or a conditional use with supplemental regulations (CS).

For any use which requires the issuance of a conditional use permit, the supplemental use regulations listed herein may be in addition to any other conditions placed on the use by the Board of Commissioners in accordance with the standards in Section 3.8, Conditional Use Permits. The conditions may impose greater restrictions on a particular use than those which are listed herein.

Notwithstanding the foregoing, any use identified in Section 6.6., Table of Uses and Activities, as being subject to supplemental regulations listed herein, may be temporarily modified pursuant to and limited by Sections 4.11.5 and 6.4.6. in a manner that would not be in compliance these supplemental standards, as applicable.

All uses include in these supplemental regulations must also comply with all other requirements of this UDO. Where the requirements of these supplemental regulations may conflict with other provisions of the UDO, the requirements contained within the supplemental regulations shall prevail.

PART XI. That the **Table of Contents to Article 4 and Article 6 be updated to reflect Parts VI and IX of the Ordinance, respectively**.

**ARTICLE IV. Severability.**

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

**ARTICLE V. Effective Date.**

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS

## Michael Zehner

**From:** Michael Zehner
**Sent:** Friday, May 15, 2020 1:17 PM
**To:** Michael Zehner
**Subject:** RE: Control Group

**From:** dlewis coastalprovisionsmarket.com <dlewis@coastalprovisionsmarket.com>
**Date:** May 3, 2020 at 12:25:13 PM EDT
**To:** Don Kingston <don.kingston@townofduck.com>, Tom Bennett <tbennett@southernshores-nc.gov>, Ben Cahoon <ben.cahoon@nagsheadnc.gov>, Benjamin Sproul <ben.sproul@kdhnc.com>, Gary Perry <gperry@kittyhawktown.net>, Bobby Owens <owens@townofmanteo.com>
**Cc:** Sheila Davies <sheila.davies@darenc.com>, "dcboc@darenc.com" <dcboc@darenc.com>
**Subject: COVID Recovery Ordinance Compatibility**

First, I would like to thank you all for you efforts on the Control Board in seeing our community through this current crisis. I'm sure it has been difficult balancing a variety of concerns and not being able to please everyone with these tough decisions.

I am reaching out to you all as head of the Outer Banks Restaurant Association (OBRA), a member of the NC Restaurant & Lodging Association's (NCRLA) Government Affairs Committee, and a member of the recently formed NCRLA COVID-19 Recovery Task Force. NCRLA has been in daily contact with Governor Cooper's office since the crisis began, and is now working with them on a reopening timeline and procedures, including the NC Restaurant Promise and COVID-19 training programs for restaurant personnel in conjunction with DHHS and NCSU Extension. Based on the task force's recent recommendation to the governor's office, we are expecting NC phase two to occur in late May, and will include among other things, restaurants opening at 50% capacity seating inside and on patios, and/or maintaining separation of tabes/chairs to comply with social distancing expectations. This would be expected to last at least 4-6 weeks in a best case scenario. Regardless of the timeline, our industry expects that outdoor dining, takeout and curbside delivery options will continue to play a much larger role in our business model for a much longer time. And the fact of the matter is, without other support or stimulus options, many restaurants here and across the country with not make it through this crisis.

With that said, I ask that all our municipalities take a look at two areas in their zoning that may work against efforts to service our guests in options other than inside dining. First is the itinerant/mobile vending ordinances that prohibit the use of carts, kiosks, and food trucks in most towns. I fully understand and agree with the intent of these ordinances: to not allow just anyone set up shop anywhere. But, especially now, with the tremendous need to serve guests for takeout, I would ask that all towns create an exception for restaurants to be able to use their own carts/kiosks/trucks on their own operational premises.

The second area of concern is the outdoor dining ordinances, many of which set a limited amount of square footage based on things such as lot coverage, parking, etc...., but don't necessarily take into account the number of people. In our new era, I would ask that all towns consider modifications to those limits in order to allow restaurants to space their tables in compliance with social distancing standards while still maintaining a viable number of seats with those spacing expectations.

I understand that most of these asks require either a text amendment, a zoning variance, and/or a conditional use application, along with a fee and a timeline that may take 2-3 months for any movement. But during these extremely trying times, I would ask if there is any way to expedite the

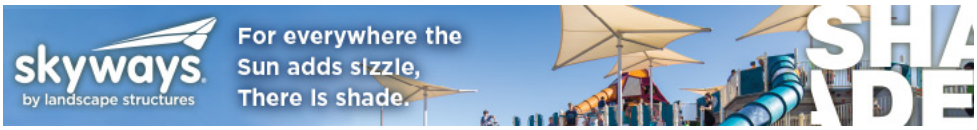
process, and the possibility of waving any fees that might be incurred. I would also be happy to have an OBRA member point person from each town work with all of you individually on these matters.

As many are having upcoming town council meetings shortly, I ask that the above be read in public comments, or added to the agenda, with exception of Town of Duck, as I have my own specific business interest there and will draft a separate version for their meeting on May 6.

Thank you again for your service to our community, and your consideration.

Dan Lewis

Daniel Lewis, CS, CSW
Chef/Owner, Coastal Provisions Restaurants
President, Outer Banks Restaurant Association
252-489-3171



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# 7 Ways to Respond to Regulation Rollbacks

Recently, a friend and colleague called me up and asked my advice. My ears perked up when he said that maybe I could help him before he lost his job. He was getting serious pressure from his elected officials to circumvent or roll back land use regulations to help local businesses impacted by the pandemic-induced economic downturn.

My colleague said that a quarter to a third of local businesses were projected to fold, and the local government was losing millions of dollars in revenue every month. Understandably, these were issues of the highest concern to local leaders.

> In his efforts to uphold the community's land-use requirements and the importance of public involvement, my colleague was at risk of being viewed as an obstacle to mitigating them.

How then can we offer strategies to be part of the solution, without exceeding our statutory and regulatory authority and while ensuring we do so in a manner consistent with our ethical principles?

Here are seven suggestions to consider:

### 1. PRIORITIZE MEASURES THAT ARE EASY FOR CUSTOMERS TO ACT ON

Planners can work with elected officials and community leaders in an expeditious manner to modify requirements, while still following procedural rules.

Simpler measures such as expanding the uses allowed in home occupations to enable businesses to work out of the home until social distancing requirements can be relaxed are often easier for businesses to act on and translate into meaningful economic activity that can help them stay afloat. Then, if these strategies yield positive benefits with limited side effects, communities can continue them after the crisis is over.

Planners should consider resisting efforts to waive design and development standards for projects that won't be completed for another 12 to 24 months. Such waivers may have limited value in helping businesses weather the short-term economic crisis. If inconsistent with community goals, such waivers could compromise the quality and functionality of the built environment for years to come.

### 2. IMPLEMENT IMPACTFUL ADMINISTRATIVE SOLUTIONS

Instead of changing their rules, some communities are taking action administratively wherever they can. For example, the City of Wilson, North Carolina, has stepped up its customer service (https://www.wilsonnc.org/home/showdocument?id=2761) with measures such as encouraging clients to schedule one-on-one phone calls with staff, opening a drive-through permitting window, and repurposing on-street parking spaces to facilitate pick-up of restaurant take-out orders.

In addition, planners should consider using appropriate administrative authority to prioritize projects and code revisions needed to protect the health, safety, and welfare of community members.

For example, we might prioritize the review of site plans needed to authorize drive-through testing sites and emergency housing. It may be prudent to work with the city or county manager's office to vet these in an expedited manner with governing boards and key stakeholders to confirm support.

Then, once the new administrative procedures are in place, planners should publicize them broadly to inform community stakeholders of the temporary change in operations. A good example of this is provided by the City of Portland's Planning and Sustainability Department (https://www.portlandoregon.gov/bds/article/756804).

### 3. FIND WAYS TO IMPLEMENT ONLINE PERMITTING

A potentially more complicated project is moving to online permitting. Yet, even if you have not had the time or money to implement such a system in the past (and have even less time or money in the present), there may be simple ways to begin shifting planning functions online.

For example, the City of Wilson, North Carolina, has made online forms "fillable" electronically so that customers don't have to print them out and instead can submit them digitally. In addition, software licenses for other functions such as online plan intake and electronic plan review can cost less than $1,000 a year and be installed relatively easily, while improving customer convenience and keeping development projects moving forward while social distancing measures are in place.

While lower in cost, such solutions often require good internal project management as well as strong collaboration with the Information Technology Department and may necessitate more trouble-shooting over time to configure and integrate future modules.

The City of Asheville has done a nice job building its own online permitting system (https://develop.plans.ashevillenc.gov/) one component at a time and creating a simple interface that guides users through the steps they need to take to make an electronic submittal. The city now handles about 90 percent of its plan reviews electronically.

> A full-service software vendor can provide an integrated solution for online permitting, including online plan intake and fee payment, internal workflow management, activity tracking by property, and ready integration with GIS.

While more comprehensive, such solutions can cost tens or hundreds of thousands of dollars and take six to 18 months, depending on whether or not your module is part of a larger organization-wide financial management system.

Even so, now may be the time when your organization is willing to make this investment. With the possibility of future waves of infection and more social distancing until a vaccine is developed, it may be worth the effort.

### 4. ADJUST PLANS TO RESPOND TO CHANGING NEEDS, BUT RESIST MEASURES THAT WILL UNDERMINE STILL-DESIRABLE LONG-TERM COMMUNITY GOALS

Flexibility is important to respond to changing community needs. Sometimes this can spark a long-needed reevaluation of long-term goals and strategies. However, rushed actions that undermine a still-desirable community vision can set back civic progress in significant ways.

### 5. MAKE SURE TO EVALUATE PROPOSED MEASURES FROM A DIVERSITY OF STAKEHOLDER PERSPECTIVES

Chances are, if a measure was unpopular before the pandemic, it will still be unpopular afterwards.

Efforts to overturn hard-earned community solutions may bring political consequences once the crisis is over, especially if they leave unpopular and lasting changes to the built environment. If pressure continues for such measures, we might work to implement a multi-channel public involvement strategy to give stakeholders as much opportunity as possible to provide input within the constraints of social distancing.

### 6. REMIND OTHERS THAT THE RULE OF LAW IS A FUNDAMENTAL ASPECT OF OUR DEMOCRACY

If the governing board is willing to tap emergency powers that it may possess to circumvent current development standards, then it is free to do so. Otherwise, we as planners need to stay within the limits of our authority, carry out our responsibilities, and work to maintain the integrity of local laws, despite the pressure we might experience to circumvent them.

### 7. ADVANCE EXPERIMENTAL MEASURES THAT COULD HELP DURING THE PANDEMIC AND BEYOND

The disruption to traditional operating procedures caused by the pandemic can also create a window of opportunity to advance new measures you have always wanted to try that are consistent with good planning principles. The best initiatives to advance may be those that help with short-term pandemic-related issues *and* bring lasting community benefits.

> Have you always wanted to expand administrative review of proposed development projects, especially for less-controversial decisions, to improve the efficiency of the development review process and free up public resources to handle other community planning needs?

Now might be the time for a pilot project, both to streamline review processes during the pandemic and to test this as a long-term procedural change.

Have you always wanted to allow a demonstration project for package delivery by aerial or terrestrial drones? Now might be a good time to try it, with social distancing measures heightening demand for home delivery, and fewer people on the roads.

Have you always wanted to create more safe places for pedestrians and bicyclists in your community? Now may be your chance. Seattle, for example, has just announced that it is making at least 20 miles of streets in its Stay Healthy Streets pilot initiative permanently car-free (https://sdotblog.seattle.gov/2020/05/07/2020-bike-investments-to-accelerate-including-20-miles-of-stay-healthy-streets-to-become-permanent-in-seattle/).

Pressure to roll back development standards in times of crisis can trap planners between professional ethics and political efficacy. With luck, these suggestions can help you focus the discussion on solutions that address the challenge at hand without creating lasting harmful impacts on the community or ethical dilemmas for public servants. And maybe the pandemic will even create an opportunity for you to try some thoughtful experiments that bring lasting improvements.

***Top image:*** *Getty Images photo.*

**ABOUT THE AUTHOR**

Ben Hitchings, FAICP, CZO, is principal of Green Heron Planning based in Durham, North Carolina, and is a member of the APA Board of Directors.

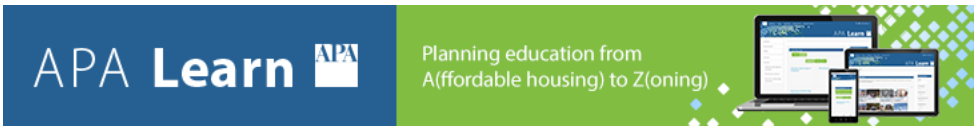
**MAY 12, 2020**

## By Benjamin Hitchings, FAICP

**Tags:** COVID-19, (/blog/?tags=1982) Health, (/blog/?tags=108) Plans, (/blog/?tags=1226) Zoning and Ordinances (/blog/?tags=101)

**< Previous (/blog/9200053/reopening-retail-districts-safely/)**

**Next >**



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ways-to-respond-to-regulation-rollbacks%2f&go=https%3a%2f%2flearn.planning.org%2fcatalog%2f)



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# Agenda Item Summary Sheet

Item No: **F-1**
Meeting Date: **June 3, 2020**

**Item Title**: Update from Planning Director

**Item Summary**:

Attached please find a monthly update from Planning Director Michael Zehner.

Number of Attachments: 1

**Specific Action Requested**:

Provided for Board information and update.

Submitted By: Planning and Development Date: May 28, 2020

**Finance Officer Comment**:

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

The report provided by the Planning and Development Director is intended to update the Board and public on items that you have prioritized, such as building permit review and turnaround time. Staff's intent is to provide you with the attached report as well as an opportunity for Board members to ask any questions or for clarifications on any of the items in the report. A verbal presentation is not planned to accompany the attached report. Ordinarily, unless there is a specific item to be heard under this agenda item, nothing takes place.

Signature: Cliff Ogburn Date: May 28, 2020

# MEMORANDUM
# Town of Nags Head
# Planning & Development Department

To: Board of Commissioners
Planning Board
From: Michael Zehner, Director of Planning & Development
Date: May 28, 2020
Subject: Planning and Development Director's Report

This memo provides an overview of selected Planning and Development Department activities, projects, and initiatives. If requested, Staff will be prepared to discuss any of this information in detail at the Board of Commissioners meeting on June 3, 2020.

**Monthly Activity Report**

Attached for the Board's review is the *Planning and Development Monthly Report for April 2020*. In addition to permitting, inspections, code enforcement, and Todd D. Krafft Septic Health Initiative activities, Staff was involved in the following meetings or activities of note during the month:

- Wednesday, April 1 - Planning Board Meeting
- Monday, April 6 - Munis - CSS Training
- Tuesday, April 7 - Technical Review Committee Meeting
- Wednesday, April 8 - Arts & Culture Committee Meeting
- Wednesday, April 15 - Board of Commissioners Meeting
- Tuesday, April 21 - Planning Board Meeting
- Wednesday, April 29 to Friday, May 1 - American Planning Association Virtual National Conference

**Impact of Coronavirus on Permitting**

As previously reported, a total of 67 building permits (non-trade) were applied for in both March 2020 and March 2019. For April, 48 building permits were applied for in both 2020 and 2019. Finally, between May 1 and May 28, a total of 53 building permits were applied for in 2020, compared to 39 in 2019. With regard to permits applied for since March 16 through May 28, 114 permits were applied for in 2019 and 136 were applied for in 2020.

With regard to trade permits, a total of 363 were issued in March, April, and May of 2019; from March 1 through May 28 of 2020, a total of 182 trade permits have been applied for.

We will continue to monitor and report any impacts to permitting.

**Online Permitting**

As of May 8, 2020, online permitting has been activated for all residential and commercial building and trade permit types, with the exception of permits for moving of residential or commercial structures; moving permits are expected to be added when updated fees are approved. Staff will continue to work to make improvements to the platform, publicize the availability of the resource, and refine documents providing guidance to the Town's customers.

**Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan**

As discussed at the Board of Commissioners retreat in January, Staff has prepared a Work Plan for the next fiscal year, the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan* ("Plan"; attached). The Plan was discussed with the Planning Board, and while there were delays due to the Pandemic, the Board indicated their support for the Plan at their meeting on May 19, 2020, with a request that an Electric Vehicle Action Plan be added; the attached Plan has been updated to include this project.

Based upon this Plan, Staff prepared consistent budget narratives for the Department and Septic Health Division (with the Electric Vehicle Action Plan needing to be added), which are helpful to review in conjunction with the Plan, as well as the most recent memo to the Planning Board (attached) which provides an overview of the considerations in developing the Plan. As noted in the memo, Staff is cognizant that this Plan will be affected by the Coronavirus Pandemic and impacts to the Town's budget. However, for those projects most dependent on funding, Staff is actively exploring and applying for grants and assistance to offset budget shortfalls, and looking for opportunities to phase certain projects with initial tasks being performed internally.

**Hazard Mitigation Plan Update**

As noted in my last Report, we were notified on April 28, 2020, that the final Hazard Mitigation Plan received approval from the State and would soon be reviewed by FEMA. Based upon the State's review, minor changes were necessary (an updated draft is available here: http://www.obx-hmp.com/draftDocuments.html), and the Plan will be sent to FEMA for review soon. Due to a backlog of reviews, the project consultant expects FEMA's approval to be delayed beyond June/July. Therefore, given the June 11, 2020 expiration of the Plan currently covering the Town, it would be prudent to consider adoption of the Plan by resolution at the Board's July 1 meeting.

**Planning Board - Pending Applications and Discussions**

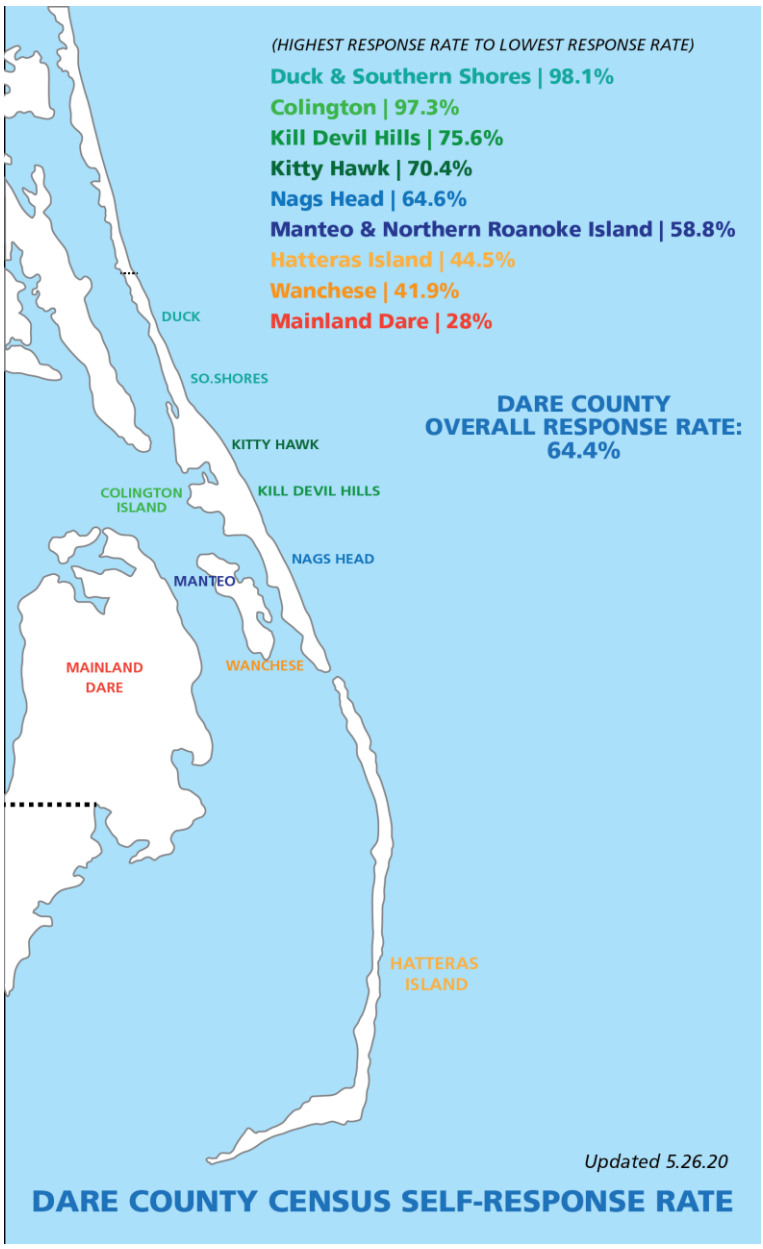
The May 19, 2020 meeting of the Planning Board was held virtually on the Zoom platform (as were the April 1 and April 21 meetings of the Board). The agenda included reconsideration of a text amendment regarding the allowed principal sale items from outdoor stands, consideration of a text amendment regarding temporary uses related to declared emergencies, continued consideration of options and recommendations pertaining to legacy establishments/structures and residential stormwater regulations,

and review of the *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*.

In addition, the Planning Board did express their willingness to assist the Board of Commissioners in developing a plan to address recycling within Town, if the Board of Commissioners determined that further consideration was necessary.

The Planning Board's next meeting is scheduled for June 16, 2020. At this time, the agenda is expected to include continued consideration of legacy establishments/structures, residential stormwater regulations, the regulation of events within residential dwelling units, and the regulation of large occupancy homes, as well as reconsideration of the preliminary plat for the Coastal Villas subdivision.

**Additional Updates**




- **2020 Census** - The 2020 Census is open and collecting responses. As of April 13, 2020, the self-response rate for the Town of Nags Head was 13%; as of April 28, the self-response rate for the Town was 14.5%; as of May 27, the self-response rate for the Town was 16.7%.

  As previously indicated, the number/percentage of vacant vacation/rental homes in Town would skew the response rate, as the rate is not adjusted at this time to account for those homes. Dare County has begun releasing the information on the rate depicting more accurate response rates based upon the number of occupied homes in the various communities.

- **Town Workforce Housing Study & Plan** - Phase 1 Report presented to the Board of Commissioners for the February 5, 2020 meeting. Further action on this project is on hold pending direction from the Board of Commissioners; however, it is important to note that funds associated with this

project have been liquidated due to budgetary constraints associated with the Covid-19 Pandemic.

- **Skate Park Renovation - Phase 1** - Staff is working to prepare a survey and other outreach methods to determine community preferences for any future renovation of the Skate Park. Staff has also discussed the project with the Arts & Culture Committee, who are supportive of incorporating public art within the Park. Finally, Staff is working to identify funding opportunities to support the project.

- **CAMA Land Use Plan Update** - Staff has prepared and submitted responses and proposed draft revisions responding to comments issued by DCM staff. A determination of Plan completeness is pending, which is required before further review is initiated.

- **UDO Reference Manual & Permitting Workflow** - Staff continues to develop Reference Manual materials, including identifying and refining workflows, to be brought to the Board of Commissioners for approval at a later date.

- **Art Masts** - The Art Mast project, coordinated with the Arts & Culture Committee, has resulted in three completed art panels. Kerry Sanders completed her mast last summer, depicting lifeguards and thus it was displayed at Bonnet Street Beach House; it is hoped to be reinstalled soon. Rob Snyder completed an Art Mast this month depicting a Bodie Island Lighthouse Rescue scene that we also hope to have displayed soon. James Melvin also completed his Art Mast this month, it is in honor of the work of Glenn Eure including references to his "Stations of the Cross", "Clowning Around", "Monument to a Century of Flight," and his boat paintings. Artist Taylor Williams is currently working on completing a fifth Art Mast. The Arts & Culture Committee will soon be discussing where best to locate the new Art Masts, and is excited for the community to get to see and enjoy the beautiful pieces that have been created.

- **Decentralized Wastewater Master Plan** - Staff intends to prepare and present a draft project scope for the update of the Decentralized Wastewater Plan to the Commissioners at an appropriate meeting in June.

- **Islington Street Beach Access** - Subject to DCM/CAMA and CIP funds to improve the access, Staff will be working to prepare plans for permitting, with the review process expected to be initiated in July 2020.

- **Legacy Establishments/Structures** - Staff continues to discuss options with the Planning Board. Draft options are expected to be presented to the Planning Board in June 2020.

- **Review of Residential Stormwater Regulations** - Staff continues to work with the Planning Board. At the Planning Board's May 2020 meeting, the Board requested that Staff return with some explicit actions for improved education surrounding the regulations, as well as additional or altered incentives.

- **NC Marine Debris Action Plan** - Kate Jones, Engineer Technician, will be participating on a Public and Local Government Subcommittee to advance strategies and actions laid out within Goal 2 of the NC Marine Debris Action Plan (https://www.nccoast.org/wp-content/uploads/2020/03/N.C.-Marine-Debris-Action-Plan-FINAL.pdf)

- **Dowdy Park Farmer's Market** - The Arts & Culture Committee has completed their selection of vendors for the 2020 Dowdy Park Farmers Market. The Market is scheduled to run every Thursday in the months of July and August with a wide range of vendors including fresh produce, local honey, seafood, wood carving, ceramics, pottery and other handmade crafts. Staff is working to determine and establish appropriate protocols related to social distancing and general measures to ensure the public's health and safety.

- **Permitting** - Staff had previously contacted representatives of the Outer Banks Home Builders Association to coordinate a schedule for a workshop/forum for the building community. However, given current circumstances, this effort will be placed on hold.

  Staff has begun an email distribution to contractors registered with the Town to provide updates on changes to permitting and inspection procedures associated with the Coronavirus Pandemic and response. Staff sent a further update in early May to publicize the new online permitting options.

- **Grants and Assistance**

  - Staff had submitted a request under the Hazard Mitigation Grant Program (Tropical Storm Michael) to update the Town's Emergency Operations Plan. Staff recently learned that funding under that event was no longer being considered, but that the request was being considered under funding decisions related to Hurricane Dorian,

  - Staff submitted a Letter of Interest ("LOI") under the Hazard Mitigation Grant Program related to Hurricane Dorian for the acquisition of property, and assisted Fire Chief Wells in the submission of an LOI for replacement of a generator; we have been notified that the generator request has been selected for further consideration, and have also learned that the request for funds for property acquisition also continues to be considered.

  - An LOI has been submitted for a National Fish and Wildlife Foundation – National Coastal Resilience Fund grant to develop an Estuarine Shoreline Management Plan. Additionally, a preapplication was submitted for the 2020 North Carolina Attorney General Environmental Enhancement Grant for the same project, for which the Town was approved to submit a full application, which was submitted on May 28, 2020.

  - Staff submitted a CAMA Access Grant preapplication for improvements to the Huron Street Beach Access on May 15, 2020.

- Staff is reviewing additional grant and assistance opportunities for prioritized projects, including NCDOT's CASSI Autonomous Shuttle Pilot and the National Endowment for the Arts Our Town Grant.

**Upcoming Meetings and Other Dates**

- Wednesday, June 3 - Board of Commissioners Meeting
- Monday, June 8 - P&D Staff Meeting
- Wednesday, June 10 - Board of Commissioners Budget Workshop
- Wednesday, June 10 - Arts & Culture Committee Meeting
- Tuesday, June 16 - Planning Board Meeting
- Wednesday, June 17 - Board of Commissioners Budget Meeting

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT**
**MONTHLY REPORT**
**APRIL 2020**

DATE SUBMITTED: May 7, 2020

| | Apr-20 | Apr-19 | Mar-20 | 2019-2020 FISCAL YTD | 2018-2019 FISCAL YTD | FISCAL YEAR INCREASE/ DECREASE |
|---|---|---|---|---|---|---|
| **BUILDING PERMITS ISSUED - RESIDENTIAL** | | | | | | |
| New Single Family | 0 | 2 | 2 | 7 | 16 | (9) |
| New Single Family, 3000 sf or > | 1 | 1 | 0 | 6 | 8 | (2) |
| Duplex - New | 0 | 0 | 0 | 0 | 0 | 0 |
| Sub Total - New Residential | 1 | 3 | 2 | 13 | 24 | (11) |
| Miscellaneous (Total) | 26 | 32 | 64 | 359 | 370 | (11) |
| *Accessory Structure* | *1* | *3* | *9* | 37 | *44* | (7) |
| *Addition* | *1* | *1* | *3* | 16 | *17* | (1) |
| *Demolition* | *0* | *1* | *0* | 2 | *6* | (4) |
| *Move* | *0* | *0* | *0* | 0 | *0* | 0 |
| *Remodel* | *11* | *7* | *7* | 81 | *79* | 2 |
| *Repair* | *13* | *20* | *45* | 223 | *224* | (1) |
| **Total Residential** | **27** | **35** | **66** | **372** | **394** | (22) |
| **BUILDING PERMITS ISSUED - COMMERCIAL** | | | | | | |
| Multi-Family - New | 0 | 0 | 0 | 0 | 0 | 0 |
| Motel/Hotel - New | 0 | 0 | 0 | 0 | 0 | 0 |
| Business/Govt/Other - New | 0 | 0 | 1 | 2 | 4 | (2) |
| Subtotal - New Commercial | 0 | 0 | 1 | 2 | 4 | (2) |
| Miscellaneous (Total) | 7 | 9 | 9 | 75 | 94 | (19) |
| *Accessory Structure* | *0* | *1* | *3* | 17 | *20* | (3) |
| *Addition* | *0* | *0* | *0* | 0 | *1* | (1) |
| *Demolition* | *0* | *0* | *1* | 4 | *4* | 0 |
| *Move* | *0* | *0* | *0* | 0 | *0* | 0 |
| *Remodel* | *4* | *2* | *3* | 25 | *27* | (2) |
| *Repair* | *3* | *6* | *2* | 29 | *42* | (13) |
| **Total Commercial** | **7** | **9** | **10** | **77** | **98** | (21) |
| **Grand Total** | **34** | **44** | **76** | **449** | **492** | (43) |
| **SUB-CONTRACTOR PERMITS** | | | | | | |
| Electrical | 20 | 65 | 40 | 360 | 364 | (4) |
| Gas | 1 | 6 | 3 | 18 | 22 | (4) |
| Mechanical | 23 | 65 | 30 | 274 | 315 | (41) |
| Plumbing | 15 | 17 | 9 | 81 | 81 | 0 |
| Sprinkler | 0 | 1 | 0 | 1 | 4 | (3) |
| **VALUE** | | | | | | |
| New Single Family | $0 | $338,000 | $572,000 | $1,864,797 | $3,346,000 | ($1,481,203) |
| New Single Family, 3000 sf or > | $150,000 | $930,000 | $0 | $3,982,561 | $5,380,460 | ($1,397,899) |
| Duplex - New | $0 | $0 | $0 | $0 | $0 | $0 |
| Misc (Total Residential) | $482,560 | $456,559 | $1,242,053 | $8,225,149 | $8,126,767 | $98,382 |
| **Sub Total Residential** | **$632,560** | **$1,724,559** | **$1,814,053** | **$14,072,507** | **$16,853,227** | ($2,780,720) |
| Multi-Family - New | $0 | $0 | $0 | $0 | $0 | $0 |
| Motel/Hotel - New | $0 | $0 | $0 | $0 | $0 | $0 |
| Business/Govt/Other - New | $0 | $0 | $650,000 | $1,030,000 | $3,646,975 | ($2,616,975) |
| Misc (Total Commercial) | $678,489 | $205,500 | $497,155 | $3,690,386 | $3,798,690 | ($108,304) |
| **Sub Total Commercial** | **$678,489** | **$205,500** | **$1,147,155** | **$4,720,386** | **$7,445,665** | ($2,725,279) |
| **Grand Total** | **$1,311,049** | **$1,930,059** | **$2,961,208** | **$18,792,893** | **$24,298,892** | **($5,505,999)** |

**TOWN OF NAGS HEAD PLANNING AND DEVELOPMENT**
**MONTHLY REPORT**
**APRIL 2020**

DATE SUBMITTED: May 7, 2020

| | Apr-20 | Apr-19 | Mar-20 | 2019-2020 FISCAL YTD | 2018-2019 FISCAL YTD | FISCAL YEAR INCREASE/ DECREASE |
|---|---|---|---|---|---|---|
| **ZONING** | | | | | | |
| Zoning Permits | 31 | 26 | 45 | 269 | 265 | 4 |
| **CAMA** | | | | | | |
| CAMA LPO Permits | 2 | 13 | 0 | 29 | 56 | (27) |
| CAMA LPO Exemptions | 5 | 5 | 22 | 95 | 78 | 0 |
| Sand Relocations | 46 | N/A | 89 | 143 | N/A | N/A |
| **CODE COMPLIANCE** | | | | | | |
| CCO Inspections | 193 | 100 | 124 | 631 | 825 | (194) |
| Cases Investigated | 19 | 74 | 9 | 95 | 506 | (411) |
| Warnings | 5 | 13 | 3 | 219 | 77 | 142 |
| NOVs Issued | 14 | 60 | 5 | 39 | 407 | (368) |
| Civil Citations (#) | 0 | 0 | 0 | 0 | 0 | 0 |
| Civil Citations ($) | $0 | $0 | $0 | $0 | $0 | $0 |
| **SEPTIC HEALTH** | | | | | | |
| Tanks inspected | 0 | 20 | 18 | 32 | 197 | (165) |
| Tanks pumped | 5 | 5 | 5 | 125 | 65 | 60 |
| Water quality sites tested | 23 | 23 | 0 | 121 | 161 | (40) |
| Personnel Hours in Training/School | 21 | 0 | 29 | 71 | 213 | (142) |

Michael D. Zehner, Director of Planning & Development

**COMMENTS:**

**Planning & Development Department and Septic Health**
**FY2020-2021 Strategic Work Plan**

## Activity Categories

- Community Character
- Sustainability & Resiliency
- Economic & Cultural Development
- Hazard & Emergency Planning
- Responsive & Transparent Government

## Current FY Projects

- Skate Park Renovation; Phase 1, Assessment of Preferences (Pre-Planning)
- Updated Flood Maps & Ordinance
- UDO Cleanup
- Online Permitting
- Hazard Mitigation Plan Update
- Workforce Housing
- CAMA Land Use Plan Update
- UDO Reference Manual & Permitting Workflow Development
- Art Mast Project
- Decentralized Wastewater Master Plan Update
- Islington Street Beach Access
- Legacy Establishments/Structures
- Review of Residential Stormwater Regulations

## FY20-21 Projects

- Estuarine Shoreline Master Plan
- Emergency Operations Plan Update
- Skate Park Renovation; Phase 2, Design & Construction
- Records Management/Digitization, Phase 1
- Whalebone Park; Phase 1
- UDO Update for N.C.G.S. 160D
- Fitness-Focused Enhancements at Dowdy Park (Biba Interactive Playground and multi-generational opportunities)
- Development of Complete Streets Policy
- GIS Platform Update, Phase 1
- CAMA Access Grant - Huron Street
- Workforce Shuttle Coordination; Project CASSI Pilot
- Water Quality Testing
- Develop Business Retention & Succession Resources
- LID Stormwater Demonstration Project
- Update Sign Ordinance
- Electric Vehicles Action Plan

## Future Projects

- Implementation of Estuarine Shoreline Master Plan
- Records Management/Digitization, Phase 2
- GIS Platform Update, Phase 2
- CAMA Access Grant
- Skate Park Renovation; Phase 3, Design & Construction
- Whalebone Park; Phase 1
- Weather Station Installation
- Soundside Tidal/Flood Gauges
- Wayfinding Signage Plan

# MEMORANDUM
# Town of Nags Head
# Planning & Development Department

To: Planning Board

From: Michael Zehner, Director of Planning & Development

Date: April 17, 2020**; updated May 15, 2020**

Subject: Discussion of FY20-21 Planning & Land Use Work Plan

**Updated content in **bold underline**, deleted material in ~~strikethrough~~**

In discussions with members of the Planning Board at their retreat in January 2020, the Board of Commissioners encouraged the Planning Board and Staff to work jointly on the development of a Work Plan for the next fiscal year in conjunction with the development of the budget, to establish priorities relating to planning and land use; in short, this Work Plan would be a collection of prioritized actions and activities serving as a strategic plan to implement various initiatives and plans.

Staff presented the concept of this Work Plan at the Planning Board's February 18, 2020 meeting; the Board indicated their support for the effort. Following the meeting, Staff developed an initial *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, **and then subsequent revisions,** ~~which is~~ **the most recent** attached for the Board's review and input. This ~~initial draft~~ ***Strategic Work Plan*** was developed based upon the considerations discussed below, and identified activity categories intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes. **In addition to the *Strategic Work Plan*, a *Budget Overview* was also developed for the Department as part of the development of the FY20-21 Budget; this *Budget Overview* is also attached, and has been prepared to align with the *Strategic Work Plan*.**

For the Board's consideration:

- **Plan Implementation:** Staff would suggest that activities included in the Work Plan focus on implementing the following four (4) plans; implementation matrixes from each are attached:

  - *Town of Nags Head Comprehensive Plan*, July 5, 2017 LINK
  - *Vulnerability, Consequences, Adaptation, Planning Scenarios (VCAPS) Report*, August 2017 LINK
  - *Town of Nags Head Parks and Recreation Plan*, January 25, 2012 LINK
  - *Nags Head Pedestrian Plan*, July 16, 2014 LINK

  Additional consideration should be given to activities contained in the Town's *Decentralized Wastewater Management Plan* (2005) and *Hazard Mitigation Plan* (2015); however, an updated Hazard Mitigation Plan is expected to be presented for adoption in June/July 2020 and the update of the *Decentralized Wastewater*

*Management Plan* is an active project, expected to be initiated in the current fiscal year.

- **Vision & Goals:** As noted, the Work Plan should serve as a strategic plan to implement various initiatives and plans, but activities in the Work Plan should also work towards achieving the accepted vision and goals for the Town. The following are the vision and goals established within the Comprehensive Plan:

  *VISION*

  *The Town of Nags Head is a unique coastal community built upon a legacy rooted in shared values, including our most recognized common bond – a love for the Outer Banks. We recognize that the town must be a good place to live before it can be a good place to visit. We strive to preserve and protect the Nags Head character, environment, tourism based economy, and sense of place in order to ensure a high quality of life for residents and a memorable family vacation experience for present and future generations.*

  *We uphold our legacy by protecting and promoting our small town character that includes a sustainable local economy based on family vacation tourism, a high quality beach experience, and small, locally owned businesses. Fundamental to our legacy and quality of life are preserving the historic architecture and culture that distinguishes our town; providing residents and visitors with excellent public services and well-maintained recreational amenities; and ensuring access to a well-protected natural coastal environment.*

  *Our legacy will be strengthened and preserved by a focused, transparent decision making process that is comprehensive and consistent with the community's vision. In order to maintain that focus, our decisions are directed by the five goals described below.*

  *GOALS*

  1. *Preserve our community's distinctive heritage and unique lifestyle*

     a. *A relaxed-paced, family beach community comprised primarily of low-density development and open spaces.*
     b. *A healthy, well-maintained oceanfront beach that is visually and physically accessible and usable; not blocked by large structures.*
     c. *An environment that reflects the heritage of "Old Nags Head" with unique and eclectic architectural styles, scenic views, and coastal landscapes.*

  2. *Protect our critical natural resources and coastal ecosystem*

     a. *Build and promote a sustainable economy that supports residents and visitors.*

b. *A natural environment typified by clean water and a coastal barrier landscape with noninvasive, salt tolerant vegetation.*
c. *Ocean and estuarine shorelines that are carefully managed to preserve the natural and beneficial functions of the environment while balancing the need to respect private property rights and public access.*
d. *Plan for the future impacts of sea level rise; ensuring proper policies, plans, and practices for stormwater and wastewater management are in place to sustain the natural environment and maintain a viable family, tourism-based economy.*

3. *Build and promote a sustainable economy that supports residents and Visitors*

   a. *A diverse supply of housing, including single-family homes and multi-family dwelling units, that meet the needs of residents in all phases of life and for varying income levels.*
   b. *A diverse supply of visitor accommodations, including single-family homes, hotels, cottage courts, and multi-family dwelling units for visitors who desire both short-term and long-term stays.*
   c. *A thriving local business community that offers a wide range of goods and services available to residents and visitors.*
   d. *A premier family beach destination on the Outer Banks, providing an enjoyable and memorable experience.*

4. *Plan for orderly and sustainable growth and redevelopment*

   a. *A well-organized and compatible pattern of land development and redevelopment through proactive land use and transportation policies.*
   b. *Development that is designed to reduce private property damage and loss of life from major storm events and natural hazards.*
   c. *Safe connectivity and accessibility between neighborhoods, businesses, and recreational opportunities for a variety of travel modes, lessening traffic congestion, and enabling an active and healthy lifestyle for residents and visitors.*
   d. *A place with active and passive recreational opportunities that serve all ages and abilities, creating opportunities for community interaction and healthy living.*
   e. *Preservation and maintenance of legacy commercial businesses.*

5. *Maintain a well-run and efficient government that provides high quality and cost effective services*

   a. *Develop, fund, and prioritize the Capital Improvement Plan annually to provide for the infrastructure, equipment, and facility needs of the community.*
   b. *Provide the highest quality public safety services possible, and routinely review the public safety needs of the community to ensure that resources are available to meet these needs.*
   c. *Provide friendly and accommodating customer service.*

d. *Communicate town information to residents and visitors through a variety of media that demonstrates the results of measurable goals and objectives.*
e. *Advocate for the provision of high quality, responsive services, legislation, resources, and policies from government partners and other organizations that further the vision of the Town of Nags Head.*

- **Key Concerns & Guiding Themes**: In the process to develop the Comprehensive Plan, both *Key Concerns* and *Guiding Themes* were identified. These are referenced below, and further expanded upon the Comprehensive Plan.

| **Key Concerns** | | | |
|---|---|---|---|
| Embracing the Town's Vision | Sustaining the Beach Road's Commercial Character | Diversifying Housing Options | Educating Residents on Regulatory Realities |
| Preserving Commercial Character | Connecting Key Town Destinations | Adapting to Sea Level Rise | |

| **Guiding Themes** | | |
|---|---|---|
| Architectural Integrity | Beach Road vs Bypass | Protecting Conversion of Commercial Property to Residential |
| Shopping Centers and Large Format Development | Character Areas | Oceanfront |
| Preservation of Existing Business | Greater Diversity in Housing and Accommodations | Connectivity |
| Healthy Small, Local Business Economy | Arts and Cultural Resources | Environmental Quality |

- **Work Plan Categories:** For the purpose of the Work Plan, and intended to highlight as well as focus the implementation of specific plans, the Vision, Goals, Key Concerns, and Guiding Themes, Staff is suggesting that Work Plan activities be categorized in at least one of five categories, as follows:

  - Community Character
  - Sustainability & Resiliency
  - Economic & Cultural Development
  - Hazard & Emergency Planning
  - Responsive & Transparent Government

It is likely that many activities will qualify for more than one category. ~~Staff will expand on the criteria for each category within the Work Plan~~ **These categories have been incorporated into the *Budget Overview* for the Department and serve as the basis for the Department's objectives for the next Fiscal Year.**

Despite the above and previous work to establish this Work Plan, Staff is cognizant that this Plan will be affected by the Coronavirus Pandemic and impacts to the Town's budget. Operating or CIP funds were anticipated to be used or sought for several projects, but there is obvious uncertainly with respect to the availability of these funds. Projects impacted most are the Workforce Housing, Estuarine Shoreline Master Plan, and Skate Park Renovation projects. Some aspects of these projects may be able to move forward with the use of internal resources, but there will likely be extended timelines. Staff is actively exploring and applying for grants to offset budget shortfalls.

Staff would recommend that the Planning Board review the information outlined above, and specifically the implementation matrixes from the four (4) plans, as well as the initial *Planning & Development Department and Septic Health FY2020-2021 Strategic Work Plan*, and provide feedback as to whether the Plan sufficiently implements and advances specific plans, the Vision, Goals, Key Concerns, and Guiding Themes in a strategic manner. At the Board's meeting Staff will be prepared to discuss ongoing projects, tentatively identified priorities, and timeline and resource limitations.

# Agenda Item Summary Sheet

Item No: **G-1**
Meeting Date: **June 3, 2020**

**Item Title**: Consideration of numerous text amendments to the Unified Development Ordinance as it pertains to updated Flood Maps; Consideration of update to the Flood Damage Prevention Ordinance

**Item Summary**:
The proposed text amendments serve to adopt the updated Flood Insurance Rate Maps and Flood Insurance Study by amendment of the Flood Damage Prevention Ordinance; additionally, amendments are included to Article 4, Development Review Process, Section 8.6.4., Building Height, Section 11.5.3. Standard for Depth or Elevation of Fill, and Appendix A. Definitions. The Board continued consideration of these amendments from the meeting on May 6, 2020.

**Planning Board/Staff Recommendation**
Staff recommended to the Planning Board that the text amendments be adopted as proposed, with changes requested by the State's NFIP Office. The Planning Board recommended unanimous approval at their meeting on April 1, 2020, with the incorporation of those requested changes. The attached draft of the Ordinance includes these changes.

Number of Attachments: 7

**Specific Action Requested**:
Adoption of text amendment.

Submitted By: Planning and Development Date: May 27, 2020

**Finance Officer Comment**:

Signature: Amy Miller Date: May 27, 2020

**Town Attorney Comment**:

Signature: John Leidy Date: May 27, 2020

**Town Manager Comment and/or Recommendation**:

Signature: Cliff Ogburn Date: May 27, 2020

# MEMORANDUM
# Town of Nags Head
# Planning & Development Department

To: Board of Commissioners

From: Michael Zehner, Director of Planning & Development

Holly White, Principal Planner

Date: May 27, 2020

Subject: Consideration of numerous text amendments to the Unified Development Ordinance as it pertains to updated Flood Maps; Consideration of update to the Flood Damage Prevention Ordinance (Attachment G-1)

Staff wishes to reiterate its previous recommendation, presented to the Board at the meeting on May 6, 2020, that the text amendments to the Unified Development Ordinance to affect the updated Flood Maps be adopted as proposed; the text amendment ordinance, as previously provided to the Board, is attached for review and consideration. Staff also wishes to reiterate the information supporting the amendments, as previously relayed to the Board in the memo dated April 27, 2020 and the presentation made to the Board at the May 6 meeting. Additionally, as previously noted, the Planning Board (at their meeting on April 1, 2020) recommended unanimous approval of the text amendments as proposed, with incorporation of changes recommended by Staff as requested by the State's NFIP Office (incorporated within the attached).

Following the May 6, 2020 Board meeting, Staff received a few inquiries from property owners regarding the effect of current flood regulations compared to proposed regulations. Additionally, Staff received the attached email from Sue Rice (including Staff's response) with more general comments and questions regarding the proposed Flood Maps and Ordinance being considered. Staff will be happy to expand on or clarify the responses to Mrs. Rice comments and questions.

Based upon the discussion on May 6, 2020, Staff understands that the two aspects of the proposed Ordinance subject to further consideration by the Board are the 10' Local Elevation Standard for areas west of NC12 and NC1243 and the limitation on the lateral addition of floor area located below the Local Elevation Standard. With respect to both aspects, as well as the entire proposed Ordinance, Staff's intent was to develop regulations that were as equally stringent as possible compared to current regulations and mapping; it is an option to make the regulations more stringent or less stringent with respect to either of these aspects.

It is important to note that Staff's intent was understood to be consistent with a resolution adopted by the Board of Commissioners on March 1, 2017 (attached) that noted that the preliminary Flood Insurance Rate Maps "underrepresented the flood risk for a significant portion of the Town," potentially resulting in, without the adoption of more stringent local regulations (compared to minimum requirements), "new construction and/or improvements to existing buildings that would be at risk of

flooding....” At least one additional impact beyond flooding, also cited in the resolution, concerned the potential future increase in insurance premiums, as “buildings constructed outside of the Special Flood Hazard Area are not grandfathered for flood insurance purposes and, if later mapped into a flood zone, may realize significant flood insurance premium increases if not constructed in compliance with new flood damage prevention regulations.”

**Proposed 10’ LES**

In determining the recommended 10’ LES for areas west of NC12 and NC1243, Staff concluded that it was appropriate based upon property elevations/grades, the elevation of structures, the heights of flood waters associated with recent events, and the effect of existing regulations; with respect to this last consideration, it is notable that AE flood zones in this area provide for Base Flood Elevations of 8’, 9’, 10’, or 11’. Based upon the intent of ensuring that regulations are as equally stringent as possible compared to current regulations, Staff determined that a 10’ LES would meet this intent, compared to an 8’ LES. An 8’ LES would essentially regulate property similarly to an AE-7, of which there are no areas within the Town. An LES of 8’ is an option, which would result in the 2,498 properties located in an AE-8, AE-9, AE-10, or AE-11 being regulated less stringently than they are currently. By contrast, an LES of 10’ would regulate 20 properties more stringently, 952 properties equally as stringently, and 1,526 less stringently.

Staff also noted that it may be helpful to visualize current regulations compared to proposed regulations. Attached are diagrams indicating the effect of current AE-9 and AE-10 regulations compared to the proposed 10’ LES. Essentially, the proposed 10’ LES regulates properties in AE-9 equally. As depicted, the reference level (a point discussed at the Board’s May 6 meeting) is identified as being the same between current and proposed regulations; due to both Flood Ordinance and Building Code requirements for the use of flood resistant materials and/or floodproofing, there is no functional difference in the location of the reference level between current and proposed regulations.

**Lateral Additions**

Currently, within regulated flood zones and with respect to post-FIRM structures, no lateral addition is allowed below the Regulatory Flood Protection Elevation (“RFPE”; the Base Flood Elevation plus 1’ freeboard). Additionally, within these zones, conditioned space below the RFPE would be considered noncompliant; Staff estimates that approximately 622 structures currently within regulated flood zones have conditioned space below the RFPE. Under the new Flood Map, most of these properties would now be in an X flood zone. With the proposed 10’ LES, these structures would have been precluded from making a lateral addition of current conditioned space without the exemption proposed by Staff.

The exemption proposed by Staff would allow, where there is existing conditioned space below the 10’ LES, this conditioned space to be expanded by up to 25%.

Currently, when located within a regulated flood zone, conditioned space below the RFPE would not be allowed to be expanded. Staff proposed a limit of 25% to allow for some flexibility, but to limit potential exposure and risk from loss as many of these properties continue to be susceptible to flooding. This concern is potentially exacerbated by these properties no longer being required to maintain flood insurance due to their location in the X flood zone.

**Staff Recommendation**

Staff continues to recommend adoption of the text amendments as proposed, based upon the intent to regulate properties as close as possible to current regulations. The Board certainly has the latitude to consider adopting regulations which are less stringent than current with respect to these aspects of the Ordinance. As a reminder, reiterated in the attached letter from FEMA dated May 15, 2020, the Town has until June 19, 2020 to adopt an updated Flood Damage Prevention Ordinance meeting minimum NFIP requirements.

With regard to the Board of Commissioners' review and action, Staff recommends consideration of the following UDO provisions:

*3.5.3. Action by the Planning Board.*

*3.5.3.1. Every proposed amendment, UDO text amendment or zoning map amendment, shall be referred to the Planning Board for its recommendation and report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.*

*3.5.3.2. Prior to the consideration by the Board of Commissioners of a proposed UDO text amendment or zoning map amendment, the Planning Board shall advise and comment on whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Board shall provide a written recommendation, certified by the UDO Administrator, to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the Comprehensive Plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.*

*3.5.3.3. Members of the Planning Board shall not vote on recommendations regarding any UDO text amendment or zoning map amendment where the outcome of the mater being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.*

*3.5.4. Action by the Board of Commissioners.*

*Action upon an UDO text amendment or zoning map amendment, including the scheduling of a public hearing, will be at the discretion of the Board of Commissioners.*

*3.5.4.1. Before an item is placed on the consent agenda to schedule a public hearing, the Planning Board's recommendation on each proposed amendment must be received by the Board of Commissioners. If no recommendation is received from the Planning Board within 30 days from the date when submitted to the Planning Board, the petitioner may take the proposal to the Board of Commissioners without a recommendation from the Planning Board. However, the Planning Board may request the Board of Commissioners to delay final action on the amendment until such time as the Planning Board can present its recommendations. No such limitations shall apply to applications or requests submitted by Town staff or any Town Board.*

*3.5.4.2. After receiving a recommendation from the Planning Board on a proposed amendment, the Board of Commissioners may proceed to vote on the proposed ordinance, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.*

*3.5.4.3. The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time. Final action on an UDO text amendment or zoning map amendment submitted by third parties will be taken within a reasonable time. Final action taken within 90 days of the public hearing before the Board of Commissioners shall be presumptively reasonable.*

*3.5.4.4. No member of the Board of Commissioners shall vote on any zoning map amendment or UDO text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact.*

*3.5.4.5. Prior to adopting or rejecting any UDO text and/or map amendment, the Board of Commissioners shall adopt one of the following statements which shall not be subject to judicial review.*

*3.5.4.5.1. A statement approving the amendment and describing its consistency with the adopted Comprehensive Plan and explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.2. A statement rejecting the amendment and describing its inconsistency with the adopted Comprehensive Plan and*

*explaining why the action taken is reasonable and in the public interest.*

*3.5.4.5.3. A statement approving the amendment and containing at least all of the following:*

*3.5.4.5.3.1. A declaration that the approval is also deemed an amendment to the Comprehensive Plan. The Board of Commissioners shall not require any additional request or application for amendment to the Comprehensive Plan.*

*3.5.4.5.3.2. An explanation of the change in conditions the Board of Commissioners took into account in amending the UDO to meet the development needs of the community.*

*3.5.4.5.3.3. Why the action was reasonable and in the public interest.*

*3.5.4.6. In deciding whether to adopt a proposed amendment to this UDO, the central issue before the Board of Commissioners is whether the proposed amendment advances the public health, safety, or welfare. When considering proposed map amendments:*

*3.5.4.6.1. The Board of Commissioners shall consider the entire range of permitted uses in the requested classification.*

**Attachments:**

1. Proposed Text Amendment Ordinance;
2. Email from Sue Rice;
3. Resolution No. 17-03-005;
4. Diagrams comparing AE-9 and AE-10 to 10’ LES; and
5. Letter from Rachel Sears, Director, FEMA Floodplain Management Division, dated May 15, 2020

**AN ORDINANCE AMENDING THE CODE OF ORDINANCES OF THE TOWN OF NAGS HEAD, NORTH CAROLINA PERTAINING TO FLOOD DAMAGE PREVENTION**

## ARTICLE I. Purpose(s) and Authority.

**WHEREAS**, The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

**WHEREAS**, The Town of Nags Head desires to protect human life, safety and health; minimize expenditure of public money for costly flood control projects; minimize the need for rescue and relief efforts associated with flooding; minimize prolonged business losses and interruptions; minimize damage to public facilities and utilities; minimize damage to private and public property due to flooding; maintain the natural and beneficial functions of floodplains; and mitigate flood risks in Nags Head by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X flood zones.

**WHEREAS**, The Town of Nags Head 2017 Comprehensive Plan includes goals and policies that support the Town's continued participation in the National Flood Insurance Program (NFIP) and ensure the Town is a disaster resilient community that can survive, recover from, and thrive after a natural or man-made disaster; and

**WHEREAS**, the Board of Commissioners finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Comprehensive Plan, and that this action is reasonable and in the public interest, and is in the interest of and not contrary to the public's health, safety, morals and general welfare for the Town to amend the Towns Unified Development Ordinance as stated below.

## ARTICLE II. Amendment of the Unified Development Ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Unified Development Ordinance of the Town Code shall be amended as follows:

PART I. That **Article 11, Environmental Regulations**, **Part III. Flood Damage Prevention** shall be deleted in its entirety and replaced with the following:

### PART III. FLOOD DAMAGE PREVENTION

#### SECTION 11.41 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

***11.41.1. Statutory Authorization.***
The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners does ordain as follows in this Article 11, Part III.

***11.41.2. Findings of Fact.***

> ***11.41.2.1.*** The flood prone areas of the Town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
>
> ***11.41.2.2.*** These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

***11.41.3. Statement of Purpose.***
It is the purpose of this Article 11, Part III to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

> ***11.41.3.1.*** Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
>
> ***11.41.3.2.*** Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
>
> ***11.41.3.3.*** Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
>
> ***11.41.3.4.*** Control filling, grading, dredging and other development which may increase erosion or flood damage; and
>
> ***11.41.3.5.*** Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

***11.41.4. Objectives.***
The objectives of this article are to:

> ***11.41.4.1.*** Protect human life, safety and health;

***11.41.4.2.*** Minimize expenditure of public money for costly flood control projects;

***11.41.4.3.*** Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

***11.41.4.4.*** Minimize prolonged business losses and interruptions;

***11.41.4.5.*** Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges, located in flood prone areas;

***11.41.4.6.*** Minimize damage to private and public property due to flooding;

***11.41.4.7.*** Make flood insurance available to the community through the National Flood Insurance Program (NFIP);

***11.41.4.8.*** Maintain the natural and beneficial functions of floodplains;

***11.41.4.9.*** Help maintain a stable tax base by providing for the sound use and development of flood-prone areas; and

***11.41.4.10.*** To ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area (SFHA) or other areas prone to flooding.

***11.41.4.11.*** Mitigate flood risks in Nags Head by implementing local elevation standards for all Special Flood Hazards Areas and Shaded X and X flood zones.

## SECTION 11.42 GENERAL PROVISIONS.

### *11.42.1. Lands to Which this Article 11, Part III Applies.*

This Article 11, Part III shall apply to all areas within the jurisdiction of the Town, including Extra-Territorial Jurisdictions (ETJs) as allowed by law.

### *11.42.2. Basis for Establishing the Special Flood Hazard Areas.*

The special flood hazard areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated June 19, 2020 for Town of Nags Head, Dare County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of Nags Head are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

### *11.42.3. Establishment of a Local Elevation Standard (LES)*

*The Local Elevation Standard means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding. Therefore, an elevation standard and other floodplain development standards are needed to meet the objectives of this Section as identified in 11.41.4.*

***11.42.3.1. In Nags Head the RFPE is as defined as:***

***11.42.3.1.1. Coastal High Hazard Areas (CHHA)-*** Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.

***11.42.3.1.2. Properties west of NC 12 and SR 1243-*** The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 10 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.

***11.42.4. Establishment of Floodplain Development Permit.***
A floodplain development permit shall be required in conformance with the provisions of this Part prior to the commencement of any development activities within the AE, AO, VE, Shaded X or X zone.

***11.42.5. Compliance.***
No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this Part and other applicable regulations.

***11.42.6. Abrogation and Greater Restrictions.***
This Part is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Part and another provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

***11.42.7. Interpretation.***
In the interpretation and application of this Part, all provisions shall be considered as minimum requirements; liberally construed in favor of the Board of Commissioners; and deemed neither to limit nor repeal any other powers granted under state statutes.

***11.42.8. Warning and Disclaimer of Liability.***
The degree of flood protection required by this Part is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; actual flood heights may be increased by manmade or natural causes. This Part does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood

damages. This Part shall not create liability on the part of the Town or by an officer or employee thereof for any flood damages that result from reliance on this Part or any administrative decision lawfully made thereunder.

***11.42.9. Penalties for Violations.***
Violation of the provisions of this Part or failure to comply with of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $500.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as it necessary to prevent or remedy any violation. Other lawful actions may include, but shall not be limited to, those provisions in Section 1.10, Violation of UDO Regulations.

**SECTION 11.43 ADMINISTRATION.**

***11.43.1. Designation of Floodplain Administrator.***
The Chief Building Inspector or his designee, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this Part. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

***11.43.2. Duties and Responsibilities of the Floodplain Administrator.***
Duties of the floodplain administrator shall include, but not be limited to:

> ***11.43.2.1.*** Review all floodplain development applications and issue permits for all proposed development Shaded X, X, AE, AO, and VE flood zones to assure that all requirements of this Part have been satisfied.
>
> ***11.43.2.2.*** Review all proposed development to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
>
> ***11.43.2.3.*** Notifying adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alterations or relocation of a watercourse and submitting evidence of such notification to FEMA.
>
> ***11.43.2.4.*** Assuring that maintenance is provided within the altered or relocated portion of such watercourse so that the flood-carrying capacity is maintained.

***11.43.2.5.*** Obtaining the actual elevation (in relation to NAVD 1988) of the reference level (including the basement) and all attendant utilities of all new or substantially improved structures in accordance with subsection 11.43.5.1 of this section.

***11.43.2.6.*** Obtaining the actual elevation (in relation to NAVD 1988) to which all new or substantially improved structures and utilities have been floodproofed in accordance with subsection 11.43.5.1 of this section.

***11.43.2.7.*** Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with subsection 11.43.5.1 of this section.

***11.43.2.8.*** When floodproofing is utilized for a particular structure, the floodplain administrator shall obtain certifications from a registered professional engineer or architect in accordance with subsection 11.43.5.2 of this section and subsection 11.44.2.2.

***11.43.2.9.*** Where interpretation is needed as to the exact location of the boundaries of the special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) or Shaded X or X flood zones, the floodplain administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Part.

***11.43.2.10.*** When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel or structure in a special flood hazard area is above the base flood elevation, advise the property owner of the option to apply for a letter of map amendment (LOMA) from FEMA. However, if the property is to be removed from the V Zone it must not be located seaward of the landward toe of the primary frontal dune. Maintain a copy of the letter of map amendment (LOMA) issued by FEMA in the floodplain development permit file.

***11.43.2.11.*** Making on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this article and terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the Town at any reasonable hour for the purposes of inspection or other enforcement action.

***11.43.2.12.*** Issue stop work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this Part, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons(s) for the stoppage, and the conditions(s) under

which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

***11.43.2.13.*** Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of any applicable state or local law may be revoked.

***11.43.2.14.*** Permanently maintain all records pertaining to the administration of this Part and making these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

***11.43.2.15.*** Providing the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program with two copies of the maps delineating new corporate limits within six months from date of annexation or change in corporate boundaries.

***11.43.2.16.*** Make periodic inspections throughout the jurisdiction of the Town. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

***11.43.2.17.*** Follow through with corrective procedures of subsection 11.43.6.

***11.43.2.18.*** Review, provide input, and make recommendations for variance requests.

***11.43.2.19.*** Maintain a current map repository to include, but not limited to, historical and effective FIS report, historical and effective FIRM and other official flood maps and studies adopted in accordance with subsection 11.42.2 of this Part, including any revisions thereto including letters of map change, issued by FEMA. Notify state and FEMA of mapping needs.

***11.43.2.20.*** Coordinate revisions to FIS reports and FIRMS, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

***11.43.3. Floodplain Development Application Requirements.***
Application for a floodplain development permit shall be made to the floodplain administrator on forms prior to any development activities. The following items shall

be presented to the floodplain administrator to apply for a floodplain development permit:

***11.43.3.1.*** Two copies of a plot plan drawn to scale, along with an electronic version, which shall include, but shall not be limited to, the following specific details of the proposed floodplain development; at the discretion of the floodplain administrator, such plot plans shall be certified by a North Carolina registered land surveyor or professional engineer:

***11.43.3.1.1.*** The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, location of fill materials, storage areas, drainage facilities, and other development;

***11.43.3.1.2.*** The boundary of any special flood hazard area or any Shaded X or X Zone as delineated on the FIRM or other flood map as determined in subsection 11.42.2 or a statement that the entire lot is within the special flood hazard area;

***11.43.3.1.3.*** Flood zone(s), including any Shaded X or X zone, designation of the proposed development area as determined on the FIRM or other flood map as determined in subsection 11.42.2;

***11.43.3.1.4.*** The base flood elevation (BFE) and/or the Regulatory Flood Protection Elevation (RFPE) where provided as set forth in subsection 11.42.2;

***11.43.3.1.5.*** The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

***11.43.3.1.6.*** The boundary and designation date of the CBRS area or OPA, if applicable.

***11.43.3.2.*** Proposed elevation, and method thereof, of all development including but not limited to:

***11.43.3.2.1.*** The elevation in relation to NAVD 1988 of the proposed reference level (including the basement) of all new and substantial improvements; and

***11.43.3.2.2.*** Elevation in relation to NAVD 1988 to which any non-residential structure in zone AE, AO, Shaded X, or X Zone will be floodproofed; and

***11.43.3.2.3.*** Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

***11.43.3.3.*** If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance

plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

***11.43.3.4.*** A foundation plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this Part are met. These details include but are not limited to:

***11.43.3.4.1.*** The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation, open foundation on columns/posts/piers/piles/shear walls).

***11.43.3.4.2.*** Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with subsection 11.44.2.4 when solid foundation perimeter walls are used in zones AE or Shaded X or X Zone.

***11.43.3.4.3.*** The following, in coastal high hazard areas, in accordance with subsection 11.44.2.4.4 and subsection 11.44.3:

***11.43.3.4.3.1.*** V-Zone certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs (breakaway wall designs are only for accessory structures). In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to certify that the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

***11.43.3.4.3.2.*** Plans for open wood lattice or insect screening, if applicable.

***11.43.3.4.3.3.*** Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must demonstrate through coastal engineering analysis that the proposed fill would not result in any increase in the base flood elevation or otherwise cause adverse impacts by wave ramping and deflection onto the subject structure or adjacent properties.

***11.43.3.5.*** Usage details of any enclosed areas below the regulatory flood protection elevation.

***11.43.3.6.*** Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

***11.43.3.7.*** Certification that all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered

species, erosion and sedimentation control, Coastal Area Management Act (CAMA), riparian buffers, mining, etc.) have been received.

***11.43.3.8.*** Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure subsections 11.44.2.3 and 11.44.2.5 of this Part are met.

***11.43.3.9.*** A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects on properties located both upstream and downstream; and a map (if not shown on the plot plan) showing the location of the proposed watercourse alteration and relocation.

***11.43.3.10.*** In Shaded X and X zones, a survey prepared by a licensed North Carolina surveyor may be used to demonstrate the natural grades of the parcel relative to the RFPE.

***11.43.4. Floodplain Development Permit Requirements.***
The Floodplain Development Permit shall include, but not be limited to:

***11.43.4.1.*** A complete description of all the development to be permitted under the floodplain development permit. (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

***11.43.4.2.*** The flood zone determination for the proposed development per available data specified in subsection 11.42.2.

***11.43.4.3.*** The regulatory flood protection elevation required for the reference level and all attendant utilities.

***11.43.4.4.*** The regulatory flood protection elevation required for the protection of all public utilities.

***11.43.4.5.*** All certification submittal requirements with timelines.

***11.43.4.6.*** The flood openings requirements, if in zones AE, Shaded X, or X Zone.

***11.43.4.7.*** Limitations of use of the enclosures below the lowest floor, not to exceed 300 square feet in area, (i.e. parking, building access and limited storage only).

***11.43.4.8.*** A statement, if in zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

***11.43.4.9.*** A statement, if in zone VE, that there shall be no fill used for structural support.

**11.43.4.10** A statement, that all materials below BFE/RFPE must be flood resistant materials.

### *11.43.5. Floodplain Development Certification Requirements.*

#### *11.43.5.1. Elevation Certificates for AE, AO, VE, Shaded X, and X Zones.*

***11.43.5.1.1.*** An elevation certificate (FEMA Form 086-0-33) may be required prior to the actual start of any new construction if determined necessary by the floodplain administrator. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of elevation of the reference level, in relation to NAVD 1988. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

***11.43.5.1.2.*** An elevation certificate (FEMA 086-0-33) is required after the reference level is established. Within 21 calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the 21 calendar-day-period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make the required corrections shall be cause to issue a stop-work order for the project.

***11.43.5.1.3.*** A final Finished Construction elevation certificate (FEMA 086-0-33) is required after construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance to a certificate of compliance/occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the

extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.

***11.43.5.1.4.*** For Shaded X and X flood zones east of NC 12 and SR 1243, the submission of the under construction elevation certificate may be waived if a survey of the parcel was used to certify the natural grade of the parcel was to or above 12 feet at the time of permit application. For Shaded X and X flood zones west of NC 12 and SR 1243, the submission of the under construction elevation certificate may be waived if a survey of the parcel was used to certify the natural grade of the parcel was to or above 10 feet at the time of permit application. In all cases, a finished construction elevation certificate is required at the completion of the project.

***11.43.5.2. Floodproofing Certificate.*** If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA 086-0-33), with supporting data, an operational plan, and an inspection and maintenance plan is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

***11.43.5.3.*** A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in

accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

***11.43.5.4.*** If a watercourse is to be altered or relocated, a description of the extent of the watercourse alteration or relocation, a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall be submitted by the permit applicant prior to issuance of a floodplain development permit.

***11.43.5.5. Certification Exemptions.*** The following structures, if located within zones AE, AO, and Shaded X or X, are exempt from the elevation/floodproofing certification requirements specified in subsections 11.43.5.1.1 and 11.43.5.1.2 above:

> ***11.43.5.5.1.*** Recreational vehicles meeting requirements of subsection 11.44.2.3;
>
> ***11.43.5.5.2.*** Temporary structures meeting requirements of subsection 11.44.2.5; and
>
> ***11.43.5.5.3.*** Accessory structures less than 150 square feet meeting or $5,000 or less and meeting requirements of requirements of subsection 11.44.2.6.

***11.43.5.6.*** A V-Zone certification with accompanying design plans and specifications is required prior to issuance of a floodplain development permit within coastal high hazard areas. It shall be the duty of the permit applicant to submit to the floodplain administrator said certification to ensure the design standards of this Part are met. A registered professional engineer or architect shall develop or review the structural design, plans and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Part. This certification is not a substitute for an elevation certificate. In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to shall certify that the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

***11.43.5.7.*** Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

**11.43.5.7.1.** Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

**11.43.5.7.2.** Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

**11.43.5.7.3** Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

**11.43.5.7.4.** Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

***11.43.6. Corrective Procedures.***

***11.43.6.1.*** Violations to be corrected. When the floodplain administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

***11.43.6.2.*** Actions in event of failure to take corrective action. If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail, to his last known address or by personal service that:

***11.43.6.2.1.*** The building or property is in violation of the flood damage prevention regulations;

***11.43.6.2.2.*** A hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) working days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

***11.43.6.2.3.*** Following the hearing, the floodplain administrator may issue such order to alter, vacate or demolish the building; or to remove fill as appears appropriate.

***11.43.6.3.*** Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the

building or development is in violation of this Part, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within such period not less than sixty (60) days, nor more than one hundred and eighty (180) calendar days, as the floodplain administrator may prescribe; provided, however, that where the floodplain administrator finds that there is imminent danger to life or other property, he or she may issue an order that corrective action be taken in such lesser period as may be feasible.

***11.43.6.4.*** Appeal. Any owner who has received an order to take corrective action may appeal the order to the board of adjustment by giving notice of appeal in writing to the floodplain administrator and the Town Clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

***11.43.6.5.*** Failure to comply with order. If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the board of adjustment following an appeal, the owner shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

***11.43.7. Variance Procedures.***

Variance procedures shall be applied in AE, AO, VE, and Shaded X and X flood zones in accordance with Section 3.10, Variances of this UDO and the following additional provisions:

***11.43.7.1.*** The Board of Adjustment, as established by the Town, shall hear and decide requests for variances from the requirements of this Part.

***11.43.7.2.*** Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to superior court, as provided in NCGS Chapter 7A.

***11.43.7.3.*** Variances may be issued for:

***11.43.7.3.1.*** The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

***11.43.7.3.2.*** Functionally dependent facilities if determined to meet the definition as stated in Appendix A, provided provisions of subsections 11.43.7.10.2 and 11.43.7.10.3 have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

***11.43.7.3.3.*** Any other type of development provided it meets the requirements stated in this section.

***11.43.7.4.*** In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Part and the:

***11.43.7.4.1.*** Danger that materials may be swept onto other lands to the injury of others;

***11.43.7.4.2.*** Danger to life and property due to flooding or erosion damage;

***11.43.7.4.3.*** Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

***11.43.7.4.4.*** Importance of the services provided by the proposed facility to the community;

***11.43.7.4.5.*** Necessity to the facility of a waterfront location as defined under Appendix A as a functionally dependent facility, where applicable;

***11.43.7.4.6.*** Availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

***11.43.7.4.7.*** Compatibility of the proposed use with existing and anticipated development;

***11.43.7.4.8.*** Relationship of the proposed use to the Town's Comprehensive Plan and floodplain management program for that area;

***11.43.7.4.9.*** Safety of access to the property in times of flood for ordinary and emergency vehicles;

***11.43.7.4.10.*** Expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

***11.43.7.4.11.*** Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

***11.43.7.5.*** A written report addressing each of the above factors shall be submitted with the application for a variance.

***11.43.7.6.*** Upon consideration of the factors listed in subsection 11.43.7.4 of this Part and the purposes of this Part, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Part.

***11.43.7.7.*** Any applicant to whom a variance is granted shall be given written notice specifying the difference between the RFPE and the elevation to which the structure is to be built and that such construction below the RFPE increases risks to life and property, and that the issuance of a variance to construct a structure below the RFPE will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their insurance.

***11.43.7.8.*** The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

***11.43.7.9. Conditions for variances.***

***11.43.7.9.1.*** Variances shall not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

***11.43.7.9.2.*** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

***11.43.7.9.3.*** Variances shall only be issued prior to development permit approval.

***11.43.7.9.4.*** Variances shall only be issued upon:

***11.43.7.9.4.1.*** A showing of good and sufficient cause;

***11.43.7.9.4.2.*** A determination that failure to grant the variance would result in exceptional hardship; and

***11.43.7.9.4.3.*** A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances

***11.43.7.10.*** A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following conditions are met:

***11.43.7.10.1.*** The use serves a critical need in the community;

***11.43.7.10.2.*** No feasible locations exist for the use outside the SFHA;

***11.43.7.10.3.*** The reference level of any structure is elevated or floodproofed to at least the RFPE;

***11.43.7.10.4.*** The use complies with all other applicable federal, state and local laws; and

***11.43.7.10.5.*** The Town has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

## SECTION 11.44 PROVISIONS FOR FLOOD HAZARD REDUCTION.

***11.44.1. General Standards.***
The following provisions are required in Shaded X, X, AE, AO, and VE flood zones:

***11.44.1.1.*** All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure.

***11.44.1.2.*** All new construction or substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

***11.44.1.3.*** All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

***11.44.1.4.*** All new electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be located at or above the RFPE or designed and/or installed so as to prevent water from entering or accumulating within the components during occurrence of base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility, cable boxes, appliances (washers, dryers, refrigerators, freezers, freezers, etc.), hot water heaters, and electric outlets/switches.

***11.44.1.4.1.*** Replacements that are part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

***11.44.1.4.2.*** Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the

standards for new construction consistent with the code and requirements for the original structure.

***11.44.1.5.*** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.

***11.44.1.6.*** New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

***11.44.1.7.*** On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

***11.44.1.8.*** Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

***11.44.1.9.*** New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance as specified in subsection 11.43.7.10. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in an SFHA only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to subsection 11.43.5 of this Part.

***11.44.1.10.*** All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

***11.44.1.11.*** All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

***11.44.1.12.*** All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

***11.44.1.13.*** All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. 1334.

***11.44.1.14.*** When a structure is partially located in a Special Flood Hazard Area or Shaded X or X flood zone, the entire structure shall meet the requirements for new construction and substantial improvements.

***11.44.1.15.*** When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest RFPE shall apply.

***11.44.2. Specific Standards.***
In Shaded X, X, AE, AO, and VE flood zones as set forth in subsection 11.42.2 and 11.42.3, the following provisions, in addition to subsection 11.44.1 of this section are required:

***11.44.2.1. Residential Construction.*** New construction or substantial improvement of any residential structure shall have the reference level, including the basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A.

***11.44.2.2. Non-Residential Construction.*** New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Appendix A. Structures located in AE, AO, Shaded X, and X zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance Section 11.44.3. and 11.44.5. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the floodplain administrator as set forth in subsection 11.43.5, along with the operational and the inspection and maintenance plan.

***11.44.2.3. Recreational Vehicles.*** Recreational vehicles placed on sites shall either:

***11.44.2.3.1.*** Be on-site for fewer than 180 days; or

***11.44.2.3.2.*** **Be** fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities, and has no permanently attached additions); or

***11.44.2.3.3.*** Meet all the requirements for new construction, including anchoring and elevation requirements of subsection 11.42.3 and subsections 11.44.1 of this section.

***11.44.2.4. Elevated Buildings.*** Fully enclosed areas of new construction and substantially improved structures, which are below the regulatory flood protection elevation in AE, AO, Shaded X, or X Zones:

***11.44.2.4.1.*** Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

***11.44.2.4.2.*** Shall not be temperature-controlled or conditioned Non-temperature controlled dehumidifiers may be used in enclosed areas and shall not result in the enclosed area being determined to be conditioned space;

***11.44.2.4.3***. Shall be constructed entirely of flood-resistant materials, up to the regulatory flood protection elevation;

***11.44.2.4.4.*** Shall not, in areas governed by the local elevation standard, exceed 300 "square feet in area" below the reference level with the exception of crawl space construction, and shall also include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. For the purposes of this requirement, enclosures shall be measured to the outside of the wall framing (to calculate floor area) excluding the thickness of sheathing, siding, or trim applied to the outside of the framing. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

> ***11.44.2.4.4.1.*** A minimum of two flood openings on different sides of each enclosed area subject to flooding;
>
> ***11.44.2.4.4.2.*** The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding or a minimum of one engineered square inch for each square foot of enclosed area for an engineered opening;
>
> ***11.44.2.4.4.3.*** If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
>
> ***11.44.2.4.4.4.*** The bottom of all required flood openings shall be no higher than one foot above the adjacent grade;

***11.44.2.4.4.5.*** Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

***11.44.2.4.4.6.*** Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

***11.44.2.4.5.*** Shall allow, in coastal high hazard areas (zones VE), open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building.

***11.44.2.4.6.*** Property owners shall be required to execute and record a non-conversion agreement prior to issuance of a building permit declaring that the area below the lowest floor shall not be improved, finished or otherwise converted to habitable space; The Town of Nags Head will have the right to inspect the enclosed area .This agreement shall be recorded with the Dare County Register of Deeds and shall transfer with the property in perpetuity.

***11.44.2.4.7****.* Release of restrictive covenant. If a property which is bound by a non-conversion agreement is modified to remove enclosed areas below BFE, then the owner may request release of restrictive covenant after staff inspection and submittal of confirming documentation.

***11.44.2.5. Temporary Non-Residential Structures.*** Prior to the issuance of a floodplain development permit, for a temporary structure, all applicants must submit to the floodplain administrator a plan for the removal of such structures in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

***11.44.2.5.1.*** A specified time period for which the temporary use will be permitted. The time specified should not exceed three months, renewable up to one year;

***11.44.2.5.2.*** The name, address and phone number of the individual responsible for the removal of the temporary structure;

***11.44.2.5.3.*** The time frame prior to the event at which a structure will be removed (i.e.: minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

***11.44.2.5.4.*** A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and

***11.44.2.5.5.*** Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

***11.44.2.6. Accessory Structure.*** Accessory structures (sheds, detached garages, etc.), shall meet the following criteria:

***11.44.2.6.1.*** Accessory structures with floor area located below the regulatory flood protection elevation shall not be used for human habitation, (including working, sleeping, living, cooking or restroom areas).

***11.44.2.6.2.*** Accessory structures shall not be temperature controlled.

***11.44.2.6.3.*** Any portion of an accessory structure located below the regulatory flood protection elevation shall not exceed 300 "square feet in area."

***11.44.2.6.4.*** Accessory structures shall be designed to have low flood damage potential.

***11.44.2.6.5.*** Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

***11.44.2.6.6.*** Accessory structures shall be firmly anchored in accordance with subsection 11.44.1.1 of this section.

***11.44.2.6.7.*** All service facilities such as electrical and heating equipment shall be installed in accordance with subsection 11.44.1.4 of this section.

***11.44.2.6.8.*** Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with subsection 11.44.2.4.3 of this section.

***11.44.2.6.9.*** An accessory structure with a footprint less than 150 square feet or that is a minimal investment of $5,000 or less and that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with subsection 11.43.5.

***11.44.2.6.10.*** Other secondary structures located on the same parcel, in

addition to a principal use structure, which feature conditioned, temperature-controlled areas elevated above the regulatory flood protection elevation shall be constructed consistent with Section 11.44.1. General Standards and 11.44.2. Specific Standards. The certification requirements of 11.43.5.1. Elevation Certificates shall apply.

***11.44.2.6.11.*** Accessory structures, regardless of the size or cost, shall not be placed below elevated buildings in Coastal High Hazard Areas (CHHA).

***11.44.2.7. Additions/Improvements/Conversions.***

***11.44.2.7.1.*** Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

***11.44.2.7.1.1.*** Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

***11.44.2.7.1.2.*** A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

***11.44.2.7.2.*** Additions to pre-FIRM or post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

***11.44.2.7.3.*** Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

***11.44.2.7.3.1.*** Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

***11.44.2.7.3.2.*** A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

***11.44.2.7.4.*** Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s)

shall be considered a separate building and only the addition must comply with the standards for new construction.

***11.44.2.7.5.*** Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a 365 day period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the 365 day period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

***11.44.2.7.6.*** Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

***11.44.2.7.7.*** Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

***11.44.2.7.8.*** Areas in existing structures shall not be converted for use as conditioned, temperature controlled space unless the reference level is located to or above the RFPE.

***11.44.2.7.9. Additional Standards in Shaded X and X Flood Zones***

***11.44.2.7.9.1.*** The substantial improvement/substantial damage definitions as established in Appendix A, Definitions, do not apply to Shaded X and X zones.

***11.44.2.7.9.2.*** In structures located west of NC 12 and SR 1243 where the reference level of existing conditioned, temperature controlled space is located below the RFPE, such space may be increased by 25% at the same level, without having to be elevated to or above the RFPE.

***11.44.2.7.9.3.*** Remodeling or renovations of existing habitable area in structures with the reference level located below the current applicable RFPE that do not increase the footprint of the structure may be authorized at the existing reference level or higher.

***11.44.2.7.9.4.*** Reconstruction of damaged portions of a structure may be authorized at the existing reference level or higher. However, if a structure is entirely demolished, for

whatever reason, the replacement structure shall be constructed to or above the RFPE.

***11.44.2.7.9.5.*** Structures that are relocated on the same site or to another site shall be elevated to or above the applicable RFPE of the lot or to or above the RFPE of the new site.

***11.44.2.7.9.6.*** Areas in existing structures shall not be converted for use as conditioned, temperature controlled space unless the reference level is located to or above the RFPE.

***11.44.2.8. Tanks***. When gas and liquid storage tanks are to be placed within the Shaded X, X, AE, AO, or VE flood zones, the following criteria shall be met:

***11.44.2.8.1.*** **Underground tanks.** Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

***11.44.2.8.2.*** **Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

***11.44.2.8.3.*** **Above-ground tanks, not elevated.** Above-ground tanks that do not meet the elevation requirements of Section 11.44.2.2. of this ordinance shall not be permitted in V or VE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

***11.44.2.8.4.*** **Tank inlets and vents.** Tank inlets, fill openings, outlets and vents shall be:

***11.44.2.8.4.1.*** At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

***11.44.2.8.4.2.*** Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects

of buoyancy, during conditions of the design flood.

***11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.***

Coastal high hazard areas are special flood hazard areas established in subsection 11.42.2 and designated as zones VE.–Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, in addition to meeting all requirements of Part III Flood Damage Prevention, the following provisions shall apply:

***11.44.3.1*** All new construction and substantial improvements shall:

***11.44.3.1.1.*** Be located landward of the reach of mean high tide;

***11.44.3.1.2.*** Be located landward of the first line of stable natural vegetation; and

***11.44.3.1.3.*** Comply with all applicable Coastal Area Management Act (CAMA) setback requirements.

***11.44.3.2.*** All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in VE zones to satisfy the regulatory flood protection elevation requirements."

***11.44.3.3.*** All new construction and substantial improvements, including properties with elevations above the regulatory flood protection elevation, shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with open wood latticework or insect screening so as not to impede the flow of floodwaters, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building in accordance with subsection 11.43.3. The following design specifications shall be met:

***11.44.3.3.1.*** Design plans shall be submitted in accordance with subsection 11.43.3.

***11.44.3.3.2.*** Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or insect screening.

***11.44.3.4.*** All new construction and substantial improvements shall be securely anchored to an open "pile or column foundation" to allow floodwaters and waves to pass beneath the structure. "All pilings and columns and the structures attached thereto shall be anchored to resist flotation, collapse and lateral movement due to the effect of wind and water loads acting simultaneously on all building components."

> ***11.44.3.4.1.*** Water loading values used shall be those associated with the base flood.
>
> ***11.44.3.4.2.*** Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.

***11.44.3.5.*** All new construction, initiated after the adoption of this UDO, located east of NC 12 and SR 1243 shall limit the total enclosed habitable living space of individual structures to 5,000 square feet. Enclosed habitable living space for large residential dwellings shall also include any enclosed habitable space that may be present in any accessory structure or accessory dwelling that is located on the same lot as the principal structure.

***11.44.3.6.*** For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:

> ***11.44.3.6.1.*** Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
>
> ***11.44.3.6.2.*** Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and
>
> ***11.44.3.6.3.*** Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
>
> ***11.44.3.6.4.*** Pad thickness shall not exceed 4 inches; or
>
> ***11.44.3.6.5.*** Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

***11.44.3.7.*** For swimming pools and spas, the following is required:

> ***11.44.3.7.1.*** Be designed to withstand all flood-related loads and load combinations.

***11.44.3.7.2.*** Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or

***11.44.3.7.3.*** Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or

***11.44.3.7.4.*** Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.

***11.44.3.7.5.*** Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.

***11.44.3.7.6.*** Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

***11.44.3.8.*** All elevators, vertical platform lifts, chair lifts, etc., the following is required:

***11.44.3.8.1.*** Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.

***11.44.3.8.2.*** Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.

***11.44.3.8.3.*** The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.

***11.44.3.8.4.*** Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.

***11.44.3.8.5.*** Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.

***11.44.3.8.6.*** If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

***11.44.3.9.*** Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.

**11.44.3.10.** A registered professional engineer, professional land surveyor, or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions contained in subsection 11.43.2, subsections 11.44.3.1 and 11.44.3.2, subsection 11.44.3.4 and subsection 11.44.3.6 of this Part on the current version of the North Carolina "National Flood Insurance Program V-Zone Certification" form or equivalent local version. In addition, prior to the Certificate of Compliance/Occupancy issuance, the floodplain administrator may require a registered professional engineer or architect to-certify the finished construction is compliant with the design, specifications and plans for VE Zone construction if determined necessary.

***11.44.3.11. Fill/Grading***

***11.44.3.11.1.*** The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent elevated buildings and structures. Excavated material moved or relocated onsite is considered fill.

***11.44.3.11.2.*** The fill material must be similar and consistent with the natural soils in the area.

***11.44.3.11.3.*** Minor grading and the placement of minor quantities of nonstructural fill, outside the areas referenced in 11.44.3.11.1., may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.

***11.44.3.11.4.*** Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent elevated buildings and structures.

***11.44.3.12.*** There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.

***11.44.3.13***. Recreational vehicles may be permitted in coastal high hazard areas provided that they meet the recreational vehicle criteria of subsection 11.44.2.3 of this section and the temporary structure provisions of subsection 11.44.2.5 of this section.

***11.44.3.14.*** A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under Section 11.43.5.6.

***11.44.3.15.*** A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

***11.44.3.16.*** In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave deflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

***11.44.3.16.1.*** Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

***11.44.3.16.2.*** Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

***11.44.3.16.3.*** Docks, piers, and similar structures.

***11.44.3.17.*** No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

***11.44.5. Standards for Areas Of Shallow Flooding (Zone AO).*** Located within the Special Flood Hazard Areas established in Article 3, Section B, are areas

designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections 11.44.1. and 11.44.2., all new construction and substantial improvements shall meet the requirements of Section 11.44.3. Coastal High Hazard Areas (Zones VE) and Properties East of NC 12 and SR 1243.

**SECTION 11.45 REMEDIES.**

Any violation of this Article 11, Part III shall be subject to the remedies as stated in Section 1.10, Violation of UDO Regulations of this UDO.

**SECTION 11.46 LEGAL STATUS PROVISIONS.**

***11.46.1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance.***

This Article 11, Part III in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted February 3, 1975 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this Article 11, Part III shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Nags Head enacted on February 3, 1975, as amended, which are not reenacted herein are repealed.

***11.46.2. Effect Upon Outstanding Floodplain Development Permits.***
Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his or her authorized agents before the time of passage of this Article 11, Part III; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Article 11, Part III.

***11.46.3. Severability.***
If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

**SECTION 11.47 EFFECTIVE DATE.**
This ordinance shall become effective June 19, 2020.

**SECTION 11.48 ADOPTION CERTIFICATION.**
I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the Board of Commissioners of the Town of Nags Head, North Carolina, on the Day (number or text) day of Month, 2020.

WITNESS my hand and the official seal of insert Name, Title, this the Day (number or text) day of Month, 2020.

_____

*(signature)*

**<u>SECTION 11.49 – 11.50 RESERVED.</u>**

PART II. That **Appendix A. Definitions** be amended with the addition of the following new terms and definitions in appropriate alphabetical order:

***Breakaway wall*** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system (for the purposes of Article 11, Part III, Flood Damage Prevention).

***Enclosure/Enclosed Area*** means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid/solid walls and is located either partially or fully below the RFPE.

***Local Elevation Standard*** means a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.

***Map Repository*** means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (http://FRIS.NC.GOV/FRIS) is the map repository, and for historical flood hazard data the FloodNC website (http://FLOODNC.GOV/NCFLOOD) is the map repository.

***Secondary Structure*** means a structure that features habitable conditioned space above the RFPE located on the same parcel as a primary use structure. A secondary structure is not an accessory structure as defined in this section. A secondary structure is subject to the same standards as a primary use structure.

***Shaded X Zone*** means areas of moderate flood hazard shown on the FIRM and are the areas between the limits of the base flood and the 0.2% annual chance for flood. Also commonly referred to as the 500-year flood.

***X Zone*** means the areas of minimal flood hazard shown on the FIRM which are areas outside of the Special Flood Hazards Areas and higher than the elevation of the 0.2% annual flood chance. Also referred to as Unshaded X zone.

PART III. That **Appendix A. Definitions** be amended by deleting the existing definitions for the following terms and replacing with the definitions as provided:

***Building*** means any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other purposes. For the purposes of Article 11, Part III, Flood Damage Prevention, see the definition for Structure.

***Coastal high hazard area*** means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 11, Part III, Flood Damage Prevention, as Zone VE, or any property east of NC 12 and SR 1243.

***Development*** means any land disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil or any man-made change to improved or unimproved real estate including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, not including existing residential or commercial development already in place.

***Existing building and existing structure*** means any building and/or structure for which the “start of construction” commenced before the community entered the NFIP, dated November 10, 1972.

***Fill*** is the depositing of soil, rock or other earthen materials by artificial means, but not including poured slab, asphalt, porous pavement, Turfstone™, or other manmade materials or surfaces designed in association with construction. Excavated material moved or relocated onsite is considered fill.

***Flood Insurance Rate Map (FIRM)*** means an official map of a community issued by the Federal Emergency Management Agency on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated (also see DFRIM).

***Floodway encroachment analysis*** means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirement of the National Flood Insurance Program.

***Freeboard*** means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge

or culvert openings, storm surge or precipitation exceeding the base flood and the hydrological effects of urbanization on the watershed. The base flood elevation plus the freeboard establishes the "regulatory flood protection elevation."

***Height*** means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

- In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, as defined in 11.42.3.1.2, height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.

- In coastal high hazard areas and VE zones east of NC 12 and SR 1243 as defined in 11.42.3.1.1., height shall be measured from regulatory flood protection elevation (lowest horizontal structural member). In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure (free-of-obstruction).

***Existing manufactured home park or manufactured home subdivision*** means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets) was completed before February 3, 1975 (for the purposes of Article 11, Part III, Flood Damage Prevention).

***Post-FIRM*** means construction or other development for which the start of construction occurred on or after December 31, 1974, the effective date of the initial Flood Insurance Rate Map.

***Pre-FIRM*** means construction or other development for which the start of construction occurred before November 10, 1972, the effective date of the initial Flood Insurance Rate Map.

***Recreational vehicle (RV)*** means a vehicle which is built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light-duty truck; designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use; and is fully licensed and ready for highway use.

***Reference level*** is:

(1) The reference level is the bottom of the lowest floor or the bottom of the lowest attendant utility including ductwork, whichever is lower, with only

flood resistant materials located below the reference level west of NC 12 and SR 1243.

(2) The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures in Coastal High Hazard Areas (CHHA) east of NC 12 and SR 1243.

***Regulatory flood protection elevation*** means the Local Elevation Standard (LES). *The Local Elevation Standard is a locally adopted elevation level used as the Regulatory Flood Protection Elevation (RFPE) to mitigate flood hazards in the Shaded X, X, AE, AO, VE, as depicted on the FIRMs for Nags Head. These areas may be vulnerable to flooding from storm surge, wind-driven tides, and excessive rainfall. Many of these areas have repetitively flooded and continue to remain at risk to flooding.*

*Coastal High Hazard Areas (CHHA)* - Properties located to the east of NC 12 and SR 1243 are located in an active oceanfront environment that is vulnerable to storm surge, erosion, sea level rise, and other hazards. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, the RFPE is 12 feet NAVD 1988.

*Properties west of NC 12 and SR 1243* - The RFPE for properties located west of NC 12 and SR 1243 and in flood zones Shaded X, X, or AE, is 10 feet NAVD 1988. This includes properties abutting US 64, also known as the Causeway.

***Substantial improvement*** means any combination of repairs, reconstruction, rehabilitation, addition or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

(1) Any correction of existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to 11.43.7. Variance Procedures.

***Technical bulletin and technical fact sheet*** mean a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members

of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations. It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

PART IV. That **Article 4. Development Review Process, Section 4.11 Permit Types** be deleted and replaced with the following:

***4.11.3. Floodplain Development Permit.***
Floodplain Development Permits are can be issued in combination with a zoning, land disturbance, and/or building permit or as a stand-alone permit for any development within the Special Flood Hazard Area (SFHA) Shaded X, X, AE, AO, and VE flood zones.

PART V. That **Section 4.12.2.1., For All Types of Development Activity**, be deleted and replaced with the following:

***4.12.2.1 For All Types of Development Activity.***

- Site plan/survey
  - Property information- address, ownership, lot number/map book/page reference
  - Existing and proposed development including but not limited to streets, topographic and natural features, and drainage
- Coastal Area Management Act (CAMA) Permit.
- Wastewater approval from Dare County Health Department or NC Department of Environmental Quality.
- Erosion control approval is issued with general development for projects disturbing more than 5,000 square feet (see Article 11, Part II).
- Flood (if in a Special Flood Hazard Area, Shaded X, or X Zone, see Article 11, Part III).
- Stormwater management (for projects which propose filling greater than one foot or for all new commercial construction, see Article 11, Part I).

- Architecture (for residential structures greater than 3,500 square feet, see UDO Section 7.4., Dwelling, Large Residential).

- Utility connections (see Town Code Chapter 44).

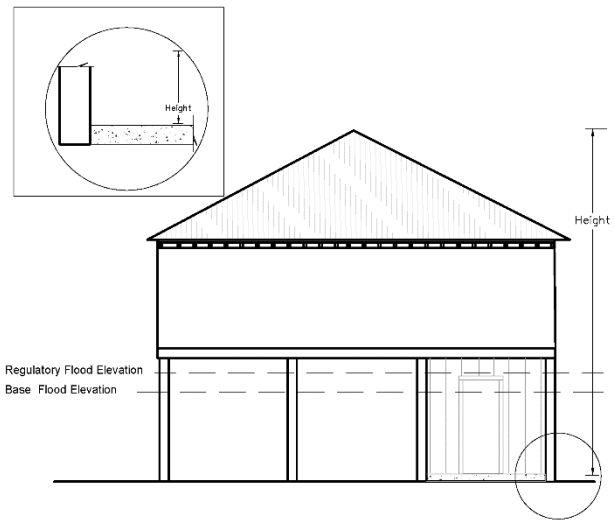
- Any other State or Federal Permits

PART VI. That **Section 8.6.4. Building Height and the subsections thereof** be deleted and replaced with the following:

***8.6.4. Building Height.***

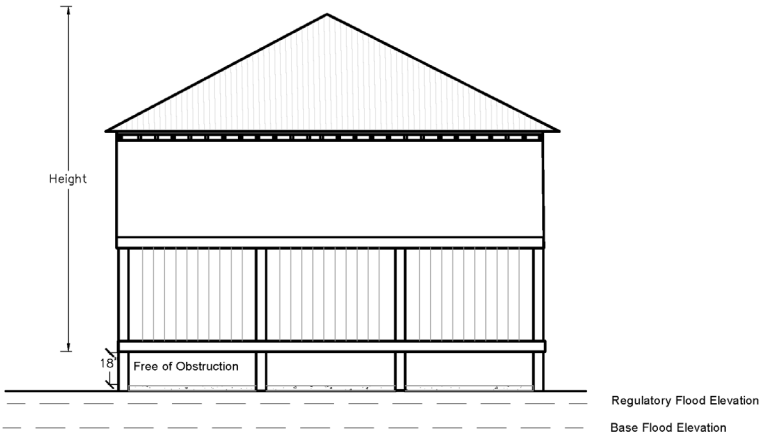
***8.6.4.1. Measurement of height***. Height means the vertical distance measured from the tallest part of a building to the ground at the base of the building. Typically, height is measured from the tallest portion of the roof to the top of the concrete slab. In cases where a concrete slab is not present, height is measured from the tallest part of the roof to the average finished grade using the corners at the base of the building.

***8.6.4.1.1.*** In Shaded X, X, or AE special flood hazard area west of NC 12 and SR 1243, as defined in 11.42.3.1.2., height will be measured from the regulatory flood protection elevation or finished grade, whichever is higher. In cases where there is a ground floor enclosure below the regulatory flood protection elevation, height shall be measured from finished grade.




**8.6.4.1.1. West of NC 12 and SR 1243: Flood Zone- Height**

***8.6.4.1.2.*** In coastal high hazard areas and VE zones east of NC 12 and SR 1243 in as defined in 11.42.3.1.1., height shall be measured from regulatory flood protection elevation (lowest horizontal structural member). In cases where the finished grade elevation is above the regulatory flood protection elevation, height shall be measured at approximately eighteen (18) inches above the highest, undisturbed, finished grade directly beneath the structure (free-of-obstruction).




**8.6.4.1.2. East of NC 12 and SR 1243: Flood Zone- Height**

PART VII. That **Section 11.5.3. Standard for Depth or Elevation of Fill and the subsections thereof** be deleted and replaced with the following:

***11.5.3. Standard for Depth or Elevation of Fill.***
Any residential or duplex development or redevelopment which utilizes fill shall be limited to the following standards:

***11.5.3.1. Properties East of NC 12 and SR 1243.***

***11.5.3.1.1.*** Fill shall be subject to the provisions of Section 11.44.3.11.

***11.5.3.1.2.*** Areas of fill exceeding the height of existing grade shall not exceed ten (10) percent of the lot area (see Article 8, District Development Standards), excluding the footprint of the active drainfield and septic system as approved by the Dare County Health Department in accordance with the septic permit. Lot area is defined as that portion of the lot landward of the first line of stable vegetation as defined by CAMA.

***11.5.3.1.3.*** No bulkheads are allowed.

***11.5.3.2. Properties West of NC 12 and SR 1243.***

***11.5.3.2.1.*** In areas where the most recent Flood Insurance Rate Map (FIRM) provides a base flood elevation for a subject property, fill shall not be permitted to exceed the base flood elevation except in cases where it is placed directly beneath a slab that is designed to meet the base flood

elevation depicted on the FIRM. In these instances, fill may exceed the base flood elevation by up to twelve inches (12”) to support a turn-down or thickened edge slab or beneath a slab that is supported by a ring-wall style foundation. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab.

***11.5.3.2.1.*** In areas where the most recent Flood Insurance Rate Map (FIRM) provides no base flood elevation, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet (2’) above pre-development surface elevation, whichever is greater.

**ARTICLE III. Severability.**

All Town ordinances or parts of ordinances in conflict with this ordinance amendment are hereby repealed. Should a court of competent jurisdiction declare this ordinance amendment or any part thereof to be invalid, such decision shall not affect the remaining provisions of this ordinance amendment nor the Unified Development Ordinance or Town Code of the Town of Nags Head, North Carolina which shall remain in full force and effect.

**ARTICLE IV. Effective Date.**

This ordinance amendment shall be in full force and effect upon the date of adoption by the Board of Commissioners.

_____
Benjamin Cahoon, Mayor
Town of Nags Head

ATTEST: _____
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:
Town Attorney
Date adopted: _____
Motion to adopt by Commissioner _____
Motion seconded by Commissioner _____
Vote: ____ AYES ____ NAYS

**From:** Michael Zehner
**To:** srice@ricesterling.com
**Cc:** Cliff Ogburn; Ben Cahoon
**Subject:** RE: Thank you
**Date:** Wednesday, May 20, 2020 4:52:00 PM
**Attachments:** 2020 May letter from FEMA.pdf
image003.png

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Hello Sue,
I hope you are well. Mayor Cahoon suggested that I respond to your questions, as my staff and I have been working on the update of the Flood Maps and the Town's Flood Ordinance. First, let me say that I greatly appreciate your interest and concerns. If you need me to clarify anything, because there are a lot of factors at play, please do not hesitate to let me know. I'm happy to discuss by phone as well. I've included your comments and questions below, with my response in red:

1. "one issue seems to be cause for concern among the property owners is the proposed change in the flood plan elevation." Why is Nags Head proposing a regulation different from the county? That is not making sense to us.

   We (Town Staff) are proposing a 10' Local Elevation Standard for areas west of NC12 and NC1243, and a 12' Local Elevation Standard for areas east (i.e. oceanfront). Essentially, the Local Elevation Standard serves the same purpose as the current Base Flood Elevation; for example an AE-9 flood zone has a Base Flood Elevation of 9'. Currently, an AE-9 flood zone would require a 1' freeboard, so the habitable area (and any elements that could not be floodproofed, would need to be elevated to at least 10'. So, the proposed 10' Local Elevation Standard has the same regulatory impact as a current AE-9 flood zone. As you note, the County and other municipalities, with the exception of Nags Head and Duck, are considering (or have adopted) a Local Elevation Standard of 8' for area west of the Beach Road (they are considering the same 12' Local Elevation Standard for areas east). A Local Elevation Standard of 8' would be equivalent to the regulation of an AE-7 flood zone.

   In proposing the 10' Local Elevation Standard west of NC12 , we have taken into account existing flood zones within this area of the Town, existing elevations of properties and structures, and flooding events and heights that have occurred within recent years. Additionally, we are of the opinion that the mapping of flood zones on the new Flood Maps are less accurate in terms of their protection of properties from flooding, and are therefore proposing regulations that are intended to regulate properties as close as possible to current regulations, not more so or less so. In our opinion, a Local Elevation Standard of 8' would result in a significant reduction in the number of properties protected. This is in large part to the fact that we have seen regular and recent flooding events in these areas of Town up to an elevation of 10', but also because the majority of the properties in this area of Town have an elevation of 10' or greater if currently in an X zone, or are currently subject to a flood zone of AE-9, AE-10, or AE-11 (we have a small area of AE-8 on the backside of Jockey's Ridge that extends northward along the Sound).

   I cannot speak for the rational of the County and other towns in considering an 8' Local Elevation Standard, presumably they took the same factors into consideration. However, it is

notable that between Kill Devil Hills, Kitty Hawk, and Southern Shores, there are no AE-11 zones, only a small area of AE-10 within Kitty Hawk, the majority of properties in Kill Devil Hills and Kitty Hawk are in an AE-8, and the majority of properties in Southern Shores are in an AE-7. In short, a Local Elevation Standard of 10' more closely matches our existing regulatory conditions, and perhaps a Local Elevation Standard of 8' more closely matches the regulatory conditions in those towns.

It may also be helpful for me to relate this to your own property. Your property is currently located within an AE-10 and, with a 1' freeboard, would be required to have an elevation of 11'. The proposed 10' Local Elevation Standard would actually regulate your property less stringently than current regulations.

2. Given how little time NRPO's were allowed on the beach this spring we are requesting that this decision be moved to the fall so we can have adequate time to meet with our insurance agents in the fall and understand this completely.

   Unfortunately, delaying adoption of the Town's updated Flood Ordinance later than June 18 would have numerous negative impacts, including suspension from the National Flood Insurance Program. The attached letter that we received from FEMA this week does a better job than I could in explaining the impacts that this would have on both the Town and property owners.

   Not that it is any great consolation, but we shared your concern and attempted in mid-March, when we began to see how the Pandemic would impact our ability to hold meetings and hearings, to have the June 19 effective date of the new Flood Maps extended. I personally reached out to one of our U.S. Senator's offices to ask for some consideration, to no avail. Eventually, our message back from FEMA and the State NFIP Coordinators was that the process to put the maps into effect had been set in motion, that the process to reverse course or extend would be more complicated and not a priority, and that, regardless, there were protocols in place to allow our boards to meet and hold public hearings with remote participation. I think I would agree that we have had to proceed under less than ideal circumstances, but, as the attached letter indicates, to not do so would result in perhaps greater costs and impacts.

   I also want to mention that the adoption of the proposed updated Ordinance should not have any impact on your insurance rate, at least not a negative impact. The Town participates in the Community Rating System which provides insurance premium rate discounts based on our regulations and program meeting certain *points*. The proposed Ordinance attempts to maintain our standing in this program, resulting in lower rates than other communities might see. In any case, the requirement for insurance is based on the Flood Map, rather than the Town's regulations; this is another point of concern because so many properties currently in a flood zone will no longer be in a mapped flood zone, and therefore not likely required by their mortgage company to hold flood insurance. But, the mapping of flood zones is not something that our local regulations would dictate or change; ultimately, the mapping of zones, and therefore any insurance requirements, is determined

by FEMA. Any delay by the Town to adopt the new Flood Ordinance would not result in a change to the Flood Map; in other words (ignoring the effects of not meeting the deadline), a delay would not likely result in any change with respect to insurance.

3. It also seems that many of the business trade groups are opposed to this regulation. Why is this necessary at this time when we are recovering from the pandemic to change this regulation and add extra burdens on the Owners.

   You are correct, both the Outer Banks Home Builders and Realtors have indicated their objection to the proposed 10' Local Elevation Standard and are advocating for a standard that would be identical for all jurisdictions. I do not think I could accurately explain their motivations. But, given the reasons I've noted above, I think the positions of these groups fail to recognize the conditions and factors present in the Town. We have unique topographic, drainage, and regulatory conditions, as do all of the other municipalities. I am not sure I would serving the Town well if I did not take these conditions and factors into account, or if I were to recommend regulations solely on the basis that it is what other jurisdictions were doing.

   Hopefully my answer to point 2 addresses why it is necessary for us to proceed now, despite the conditions resulting from the Pandemic, and hopefully all of my answers clearly show that the proposed regulations do not necessarily result in a change to existing regulations or an extra burden compared to current regulations.

I hope I have been able to address your concerns and questions. Again, please do not hesitate to let me know if you have any further questions or would like any clarifications.

Best,
Michael

**Michael Zehner, AICP**
**Director of Planning & Development**
**Town of Nags Head, NC**

Phone: 252-449-6044
Email: michael.zehner@nagsheadnc.gov

DARECOUNTS
CENSUS 2020 | NATIONAL CENSUS DAY | APRIL 1ST
my2020census.gov/

**From:** Susan Rice <srice@ricesterling.com>
**Date:** May 20, 2020 at 1:47:42 PM EDT
**To:** Ben Cahoon <Ben.Cahoon@nagsheadnc.gov>
**Subject: Re: Thank you**

Mayor Cahoon,

In my new found role of being more involved in the Outer Banks Government since the NRPO decision one issue seems to be cause for concern among the property owners is the proposed change in the flood plan elevation.

We are not experts in his field and we are attempting to educate our owner friends on the importance of this issue. Given that we have three questions and concerns:

1. Why is Nags Head proposing a regulation different from the county? That is not making sense to us.

2. Given how little time NRPO's were allowed on the beach this spring we are requesting that this decision be moved to the fall so we can have adequate time to meet with our insurance agents in the fall and understand this completely.

3. It also seems that many of the business trade groups are opposed to this regulation. Why is this necessary at this time when we are recovering from the pandemic to change this regulation and add extra burdens on the Owners.

As always thank you for your service. I know it is not easy.

Regards,

Sue Rice

**RESOLUTION REQUESTING THAT THE FEDERAL EMERGENCY MANAGEMENT AGENCY REVISE THE COASTAL FLOODPLAIN MAPPING MODEL AND CONSIDER SHALLOW FLOODING AND OTHER SOURCES OF FLOOD RISK AS PART OF THE PROCESS TO UPDATE FLOOD INSURANCE RATE MAPS**

**WHEREAS**, the Town of Nags Head has been a member of the National Flood Insurance Program since 1972; AND

**WHEREAS**, the Town of Nags Head strongly believes that the National Flood Insurance Program, through the use of Flood Insurance Rate Maps and associated regulations, has been one of the primary and most effective ways to minimize flood damage to properties within the Town and communicate flood risk to the general public; AND

**WHEREAS**, the Town of Nags Head received preliminary Flood Insurance Rate Maps on June 30, 2016 as part of the North Carolina Floodplain Mapping Program's most recent effort to update flood maps in partnership with the Federal Emergency Management Agency (FEMA); AND

**WHEREAS**, the Town has compared the proposed Special Flood Hazard Areas and associated Base Flood Elevations to previous maps as well as local historical storm records and documented flooding; AND

**WHEREAS**, a large portion of the Town has been removed from the Special Flood Hazard Area and the remaining non-VE zone Special Flood Hazard Areas have a Base Flood Elevation of 4 feet above mean sea level, which is generally lower than the land surface elevations in much of the Town; AND

**WHEREAS**, based on this analysis, the Town has determined that the preliminary Flood Insurance Rate Maps underrepresent the flood risk for a significant portion of the Town, including areas flooded and/or damaged in Hurricanes Isabel, Irene, Matthew as well as Tropical Storm Beryl; AND

**WHEREAS**, the preliminary maps, if adopted without modification, would allow new construction and/or improvements to existing buildings that would be at risk of flooding from storms of similar intensity and/or duration as the aforementioned events; AND

**WHEREAS**, buildings constructed outside of the Special Flood Hazard Area are not grandfathered for flood insurance purposes and, if later mapped into a flood zone, may realize significant flood insurance premium increases if not constructed in compliance with new flood damage prevention regulations; AND

**WHEREAS**, the Town has consulted with North Carolina Emergency Management, the North Carolina Floodplain Mapping Program, NC Sea Grant and conducted other research to collect information on how the maps were developed including the models and analyses used to develop Special Flood Hazard Areas and associated Base Flood Elevations; AND

**WHEREAS**, the Town believes that the coastal models used by FEMA to develop Flood Insurance Rate Maps has inherent flaws which are reflected in the Special Flood Hazard Areas and Base Flood Elevations shown on the preliminary maps; AND

**WHEREAS**, the modeling process is highly quantitative and dependent on simulations which reduces the ability to make inferences from historical storm and storm gage records; AND

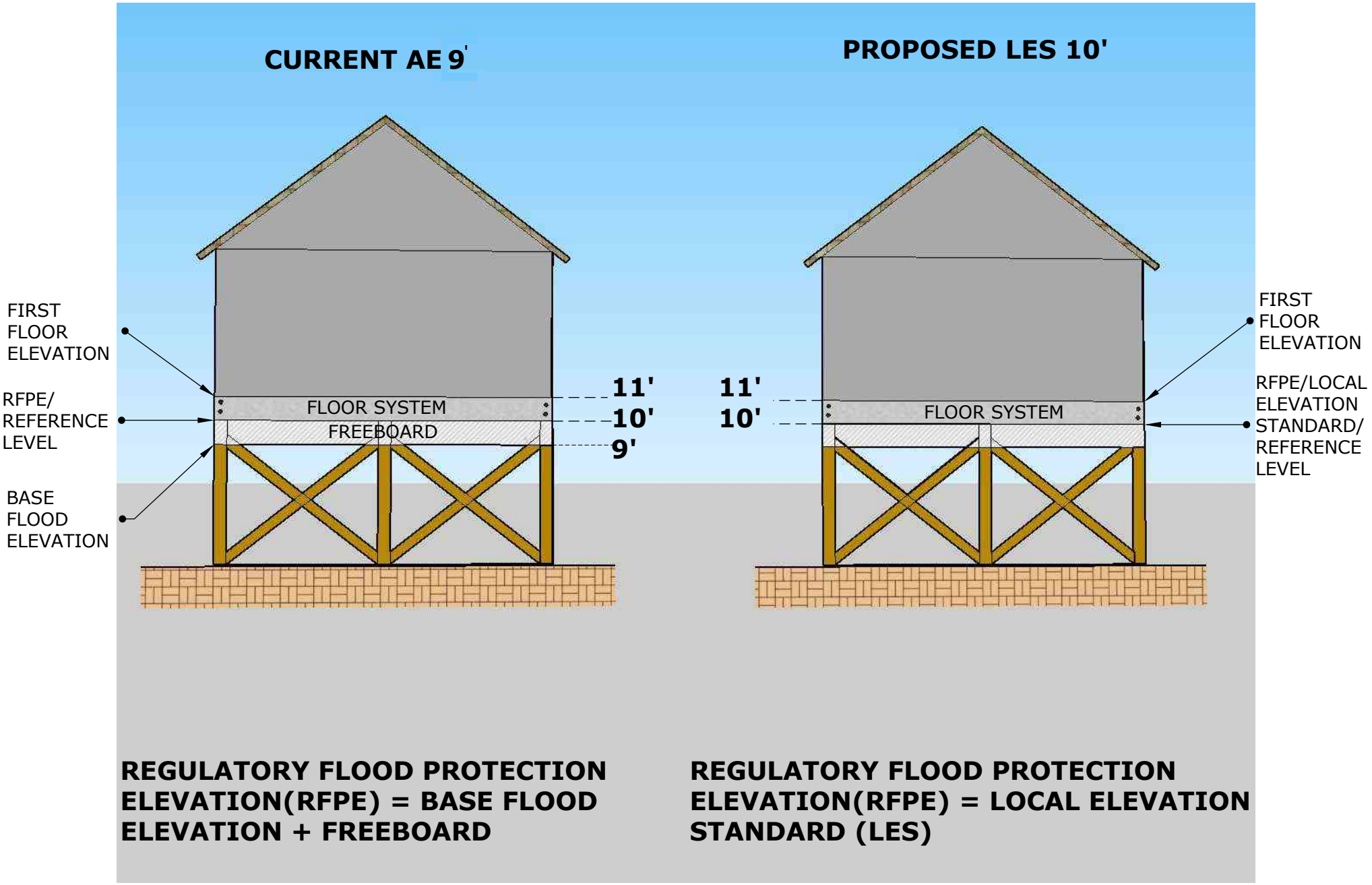
**WHEREAS**, the key to improving coastal flood maps lies in improving the coastal flood models that are used to calculate the areas subject to flood inundation, Base Flood Elevations, as well as improving estimates of storm return period and consideration of areas of shallow flooding.

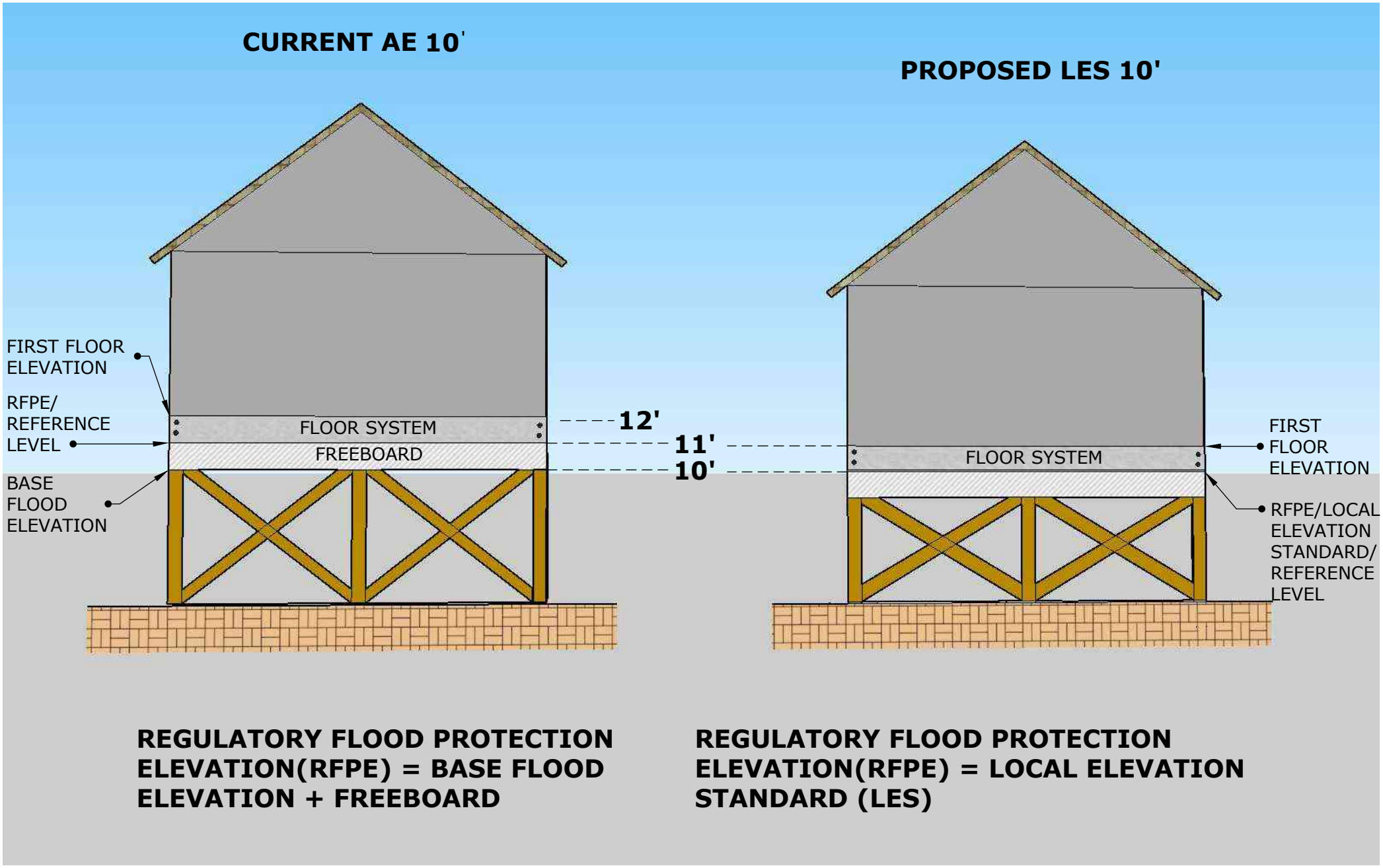
**NOW, THEREFORE BE IT RESOLVED** that the Nags Head Board of Commissioners calls upon our Federal and State representatives to request that the Federal Emergency Management Agency revise the models used to generate the Flood Insurance Rate Maps and consider all appropriate sources of flooding to better and more accurately reflect the risk from flooding and storm surge, particularly in coastal communities.

This the 1st day of March 2017.

Robert C. Edwards, Mayor
Town of Nags Head

ATTEST:
Carolyn F. Morris, Town Clerk


CURRENT AE 9'
PROPOSED LES 10'
FIRST FLOOR ELEVATION
RFPE/ REFERENCE LEVEL
BASE FLOOD ELEVATION
FLOOR SYSTEM
FREEBOARD
11'
10'
9'
11'
10'
FLOOR SYSTEM
FIRST FLOOR ELEVATION
RFPE/LOCAL ELEVATION STANDARD/ REFERENCE LEVEL
REGULATORY FLOOD PROTECTION ELEVATION(RFPE) = BASE FLOOD ELEVATION + FREEBOARD
REGULATORY FLOOD PROTECTION ELEVATION(RFPE) = LOCAL ELEVATION STANDARD (LES)


CURRENT AE 10'
PROPOSED LES 10'
FIRST FLOOR ELEVATION
RFPE/ REFERENCE LEVEL
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RFPE/LOCAL ELEVATION STANDARD/ REFERENCE LEVEL
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REGULATORY FLOOD PROTECTION ELEVATION(RFPE) = LOCAL ELEVATION STANDARD (LES)

**U.S. Department of Homeland Security**
500 C Street, SW
Washington, DC 20472

FEMA

May 15, 2020

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Ben Cahoon
Mayor, Town of Nags Head
Post Office Box 99
Nags Head, North Carolina 27959

Dear Mayor Cahoon:

I am writing this letter as an official reminder that the Town of Nags Head, North Carolina, has until June 19, 2020, to adopt and have the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office approve floodplain management measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.3(e) of the National Flood Insurance Program (NFIP) regulations.

The Town of Nags Head must adopt floodplain management measures, such as a floodplain management ordinance, that meet or exceed the minimum NFIP requirements (copy enclosed) by June 19, 2020, to avoid suspension from the NFIP. If suspended, your community becomes ineligible for flood insurance through the NFIP, new insurance policies cannot be sold, and existing policies cannot be renewed.

Under the Flood Disaster Protection Act of 1973, as amended, flood insurance must be purchased by property owners seeking any Federal financial assistance for construction or acquisition of buildings in Special Flood Hazard Areas (SFHAs). This financial assistance includes certain federally guaranteed mortgages and direct loans, federal disaster relief loans and grants, as well as other similarly described assistance from FEMA and other agencies.

In addition, all loans individuals obtain from Federally regulated, supervised, or insured lending institutions that are secured by improved real estate located in SFHAs are also contingent upon the borrower obtaining flood insurance coverage on the building. However, purchasing and maintaining flood insurance coverage on a voluntary basis is frequently recommended for properties located outside SFHAs.

Your NFIP State Coordinator and FEMA would like to assist the Town of Nags Head to ensure it remains in good standing with the NFIP and avoids suspension from the Program. If your community is suspended, it may regain its eligibility in the NFIP by enacting the floodplain management measures established in 44 CFR Section 60.3 of the NFIP regulations. As stated in my previous correspondence, I recommend you contact your NFIP State Coordinator or the FEMA Regional Office if the Town of Nags Head is encountering difficulties in enacting its measures.

I recognize that your community may be in the final adoption process or may have recently adopted the appropriate floodplain management measures. Please submit these measures to the Floodplain Management Program at the North Carolina Department of Public Safety, Risk Management Section. John D. Brubaker, P.E., CFM, the NFIP State Coordinator, is accessible by telephone at (919) 825-2300, in writing at 4218 Mail Service Center, Raleigh, North Carolina 27699-4218, or by electronic mail at dan.brubaker@ncdps.gov.

The FEMA Regional staff in Atlanta, Georgia, is also available to assist you with your floodplain management measures. The FEMA Regional Office may be contacted by telephone at (770) 220-5200 or in writing. Please send your written inquiries to the Director, Mitigation Division, FEMA Region IV, at 3003 Chamblee Tucker Road, Atlanta, Georgia 30341.

In the event your community does not adopt and/or submit the necessary floodplain management measures that meet or exceed the minimum NFIP requirements, I must take the necessary steps to suspend your community from the NFIP. This letter is FEMA's final notification before your community is suspended from the Program.

Sincerely,

Rachel Sears

Rachel Sears, Director
Floodplain Management Division
Mitigation Directorate | FEMA

Enclosure

cc: Gracia Szczech, Regional Administrator, FEMA Region IV
John D. Brubaker, P.E., CFM, NFIP State Coordinator, North Carolina Department of Public Safety, Risk Management Section
Cory Tate, Chief Building Inspector, Town of Nags Head

# Agenda Item Summary Sheet

Item No: **G-2**
Meeting Date: **June 3, 2020**

**Item Title**: From May 6th Board meeting – Discussion of scope of work from Moffat & Nichol – Beach Nourishment Project Coastal Engineering and Design

**Item Summary**:

Attached please see professional service proposals from Moffat & Nichol related to the Beach Nourishment Coastal Engineering and Design Services and McKim & Creed for Beach Surveying Services. The fee proposals are being provided in response to the Request for Qualifications the Town had recently advertised. The Beach Monitoring Surveys, Summer 2020 submitted by McKim & Creed encompasses services necessary to complete the annual beach condition survey in accordance with the Town's Beach Monitoring and Maintenance Plan. The scope of work includes the base project data acquisition of 126 profiles in conjunction with additional transect information data acquisition north of the project area, south of the project area and within reaches 3 and 4. Acquisition of the additional survey information will provide a more comprehensive data set for modelling and planning of future nourishment projects.

The Year 1 (2020) Coastal Engineering and Consulting Proposal submitted by Moffat & Nichol divides the proposal into four main tasks: Task 1- Annual Beach Monitoring and Analysis (Year 1), Trask 2-Beach Nourishment Master Plan (Year 1), Task 3-Coastal Storm Damage Mitigation Grant Application support and Task 4-Post-Dorian Beach Restoration Engineering Services.

Available funding can support the 2020 Beach Monitoring Survey and Tasks 1-3 of the Coastal Engineering Proposal. Task 4 will be considered at a later date, once the new Beach Nourishment Capital Budget Ordinance has been established.

Number of Attachments: 2

**Specific Action Requested**: Authorize the Town Manager to execute professional service contracts with McKim & Creed totaling $63,100 and with Moffat & Nichol totaling $279,499, (Tasks 1,2 and 3), upon review from the Town Attorney.

Submitted By: David Ryan, Town Engineer Date: May 27, 2020

**Finance Officer Comment**: Budgeted funds from the current open beach nourishment capital project ordinance will be used to fund tasks 1-3. Capital monitoring, mitigation, and a beach study were all planned for and budgeted items under this current ordinance. No amendment is necessary; however, contract approval is requested for these items.

A new capital project ordinance for Hurricane Dorian beach nourishment restoration will be brought for Board consideration and approval along with task 4 contract approval tentatively set for July 1, 2020.

Signature: Amy Miller Date: May 27, 2020

**Town Attorney Comment**:

Signature: John Leidy Date: May 27, 2020

**Town Manager Comment and/or Recommendation**:

Signature: Cliff Ogburn Date: May 27, 2020

moffatt & nichol

4700 Falls of Neuse Road, Ste 300
Raleigh, NC 27609

(919) 781-4626 Fax (919) 781-4869
www.moffattnichol.com

May 27, 2020

Mr. David Ryan, PE
Town Engineer, Town of Nags Head
PO Box 99
Nags Head, NC 27959

RE: Work Order Proposal: Year 1 (2020) Coastal Engineering and Consulting Services for the Town of Nags Head, NC

Dear Mr. Ryan:

Moffatt & Nichol (M&N) presents this proposal to the Town of Nags Head, NC, to provide professional services for a range of tasks assisting the Town to maintain and enhance the protective and recreational capacity of its beach and dune system. As requested, this proposal includes a group of four main Tasks that each have a distinct focus, timeframe and sets of deliverables. The four Tasks are described briefly below:

1. Task 1 – Annual Beach Monitoring and Analysis program for 2020. Task 1 includes the preparation of the annual beach monitoring report, with all associated shoreline and volume change calculations, analysis of beach system performance and its relationship to long-term trends, along with recommendations for future actions. The primary purpose of the beach monitoring is to determine the condition of the beaches, measure shoreline change and volumetric rates of erosion and accretion, and evaluate the performance of beach nourishment and other restoration efforts.
    - Please note that Task 1 includes optional subtasks for post-storm monitoring surveys, and preparation of documentation for FEMA requesting post-storm beach restoration funds. These subtasks would only be utilized, and their associated fees would only be billed, if the Town chooses and provides written authorization to conduct these tasks in the event of a hurricane or other severe coastal storm erosion event. These tasks provide for expedited authorization for M&N to conduct post-storm beach monitoring analysis and subsequent support to the Town in coordinating with the Federal Emergency Management Agency (FEMA) following a significant coastal storm event.
2. Task 2 – Multi-Decadal Beach Nourishment Master Plan (Year 1). Task 2 provides the professional services for the first year of preparation of a Master Plan for beach nourishment in the Town of Nags Head. Year 1 tasks generally include project planning, meetings and coordination, data collection and review, and initial modeling and development of preliminary nourishment trigger estimates.
3. Task 3 – Coastal Storm Damage Mitigation (CSDM) Fund Grant Application Support. Task 3 provides professional services to compile necessary documents and technical data, maps

and tables required by the State's CSDM application form to support the Town's request for CSDM funds. The CSDM request is for funds to supplement expected Federal funding of the Town's beach nourishment and repair project for damages incurred by Hurricane Dorian.

4. Task 4 – Post-Dorian Restoration Beach Nourishment Engineering Services. Task 4 provides the engineering design, permitting coordination, preparation of construction documents and bidding and construction phase engineering support to the Town as it implements its Post-Dorian beach restoration project.

Detailed scopes of work for each main Task, along with schedules and a breakdown of the fees for each Task, are provided in the attachments to this letter.

M&N fees for Task 1, 2, 3 and 4 services are lump sum by Task, and the fee for each task is summarized in the table below. M&N proposed to invoice the Town monthly on a percent complete basis by Task. Our invoice format can be tailored to meet the Town's requirements and preferences, and the invoice would generally be accompanied by a cover letter or cover sheet summarizing progress on each Task during the invoice period.

| **Task** | **M&N Fee** |
|---|---|
| Task 1: Beach Monitoring Analysis, Reporting and Post-Storm FEMA Support (2020) | |
| Task 1.1 – Completion of Annual Monitoring Report | $57,119 |
| Task 1.2 – Completion of Post Storm Survey and Report (OPTIONAL) | $57,119 |
| Task 1.3 – Documentation for FEMA Category G Project Funding (OPTIONAL) | $33,660 |
| Task 2: Multi-decadal Beach Nourishment Master Plan – Year 1 | $208,100 |
| Task 3: Coastal Storm Damage Mitigation (CSDM) Grant Application Support (2020) | $14,280 |
| Task 4: Post-Dorian Beach Renourishment Design and Construction Phase Support | $717,512 |
| **Total for Tasks 1 through 4 (Excluding Optional Tasks)** | **$997,011** |
| **Total Optional Tasks Only** | **$90,779** |

Brian Joyner and I will be the Town's primary points of contact for this contract. Please don't hesitate to reach out to either or both of us by phone or email at the numbers and addresses provided below. We are excited to begin providing services to the Town and look forward to continue developing our partnership.

Sincerely,
**MOFFATT & NICHOL**

Johnny Martin, P.E.
Vice President
(919) 781-4626 (office)
(919) 538-6033 (cell)
jmartin@moffattnichol.com

Brian Joyner, P.E.
Senior Engineer
(757) 271-1063 (office)
(757) 613-4020 (cell)
bjoyner@moffattnichol.com

Attachments: Detailed scopes of work and fee tables for Tasks 1, 2, 3 and 4

## TASK 1 INTRODUCTION

Task 1 includes professional services to conduct the Town of Nags Head Beach Monitoring and Analysis program for one year, generally including the summer 2020 annual monitoring survey period and the 2020 hurricane season to early 2021 winter storm season. The Town's Beach Monitoring and Analysis program represents a continued effort of conducting beach monitoring surveys and providing analyses, building upon past efforts by Town of Nags Head from 2012 through 2019 in association with the 2011 and 2019 Nags Head Beach Nourishment post-construction monitoring. The primary purpose of the beach monitoring is to determine the condition of the beaches, measure shoreline change and volumetric rates of erosion and accretion, maintain eligibility for designation as a FEMA engineered beach, estimate when future maintenance activities may be warranted, and evaluate the performance of beach nourishment and other restoration efforts.

In addition to the primary Annual (Summer 2020) monitoring analysis and report, this Scope of Work includes two optional tasks to conduct, if necessary, analysis and reporting on post-storm monitoring surveys, and preparation of documentation to FEMA requesting post-storm beach restoration funds.

It is understood that McKim & Creed will be conducting the monitoring surveys under a separate contract with the Town. M&N has been coordinating with McKim & Creed to ensure that their survey scope and M&N's analysis scope are in alignment. Under this proposed scope of work, M&N will be responsible for receiving the survey data products from McKim & Creed, writing and production of the reports, and the shoreline/volumetric analyses associated with the reports.

## TASK 1 SCOPE OF WORK

As stated above, the proposed Scope of Work is for the 2020 Town of Nags Head Beach Monitoring and Analysis. In general, the tasks include preparation of an annual report and presentation to summarize the shoreline and volume change analysis of 174 profiles along the Town of Nags Head shoreline that will be surveyed under a separate contract between the Town and McKim & Creed. Those surveying efforts include capturing topographic data at 126 transects that have been part of the 2011 through 2019 beach monitoring and analysis. After discussions with the Town it has been decided that an additional 48 transects will be surveyed to capture a better understanding of the project area and longshore transport outside the project area. Two optional tasks have been developed to supplement the annual beach profile analysis including (1) a post-storm survey and analysis and (2) preparation of documentation in support of application for FEMA post-storm beach restoration funds which would only be completed if authorized in writing by Town staff. A more detailed outline of project tasks is as follows.

### Task 1.1 – Completion of Annual Surveys and Report

(A) Survey Scheduling and Client Coordination - The monitoring schedule for each year typically includes a comprehensive survey of the transects conducted by late spring/early summer to ensure seasonal differences in the beach profile are consistently measured from year to year,

and to document annual pre-hurricane season beach conditions. **M&N** will coordinate with **McKim & Creed** and the Town to verify that the surveys are collected during this time period. The project team will coordinate with the Town concerning the time and approaches to be followed for each survey.

(B) Survey Profiles – Survey transect stationing established in 2012 for the 2011 Nags Head Beach Nourishment post-construction monitoring along 126 transects will be used to ensure continuity of comparison with future surveys. **M&N** has coordinated with the Town and with McKim & Creed to introduce 48 additional transects to better track sand movement at southern and northern end of the beach nourishment project and hotspots.

(C) Data Analysis and Reporting - Using data provided by **McKim & Creed**, **M&N** will perform the following annual monitoring analysis:

Annual Shoreline Change

**M&N** will compute shoreline changes between subsequent surveys for the MHW elevation of +1.18 ft NAVD88. **M&N** will report these results at each transect as well as the average changes for each of the previously established subreaches.

Annual Volume Change

**M&N** will compute volume changes above several strategically selected elevations to ensure the complete tracking of sand movement along the profile. **M&N** expects to calculate these volume changes in accordance with previous monitoring efforts from 2012 through 2019 from a landward point on the back of the dune out to the seaward edge of the nourishment berm (+6 ft NAVD88), above -6 ft NAVD (wading depth), and above -19 ft NAVD (depth of closure). M&N intends to add additional calculation lenses above MHW (+1.18 ft NAVD88), approximately above -14 ft NAVD88 (capturing the offshore bar), and above -30 ft NAVD (seaward extent of surveys). M&N may revise these elevations after the historical data and trends have been reviewed. The Town will be consulted concerning these elevations for final approval prior to completion of the calculations for the monitoring report. **M&N** will report these results at each transect as well as the overall changes for each of the previously established subreaches.

Beach Nourishment Project Performance

The volumetric change calculations performed during the annual analyses will be used to track the performance of any Beach Nourishment or other maintenance projects. Annual changes from each placement area will be documented throughout the nourishment cycle to gain an understanding of actual volume lost, providing insight into future volume need. Upon development of nourishment triggers (covered under a separate task order), comparisons will be made between the current condition of the beach and the calculated triggers, allowing for estimates of when the next nourishment will be needed.

Background Erosion Rates

The volumetric change calculations performed during the annual analyses will be used to determine the background erosion or accretion rates. These are erosion rates that would be expected if no Beach nourishment or maintenance projects were to occur.

Dune Behavior
The volumetric change calculations performed during the annual analyses will be used to determine the dune growth/erosion trends, allowing for identification of areas vulnerable to overwash or exhibiting significant dune growth.

Long-term Trends
The volumetric change calculations performed during the annual analyses will be used to develop long term trends by incorporating the current datasets with those acquired during the 2012 through 2019 monitoring efforts. Annual volume changes from each year (excluding nourishment) will be averaged and plotted for each transect, allowing for identification of long-term stable locations and erosional hotspots in each survey reach as compared to annual changes that may vary significantly from year to year.

In addition, nodal zones established during previous modeling efforts will be analyzed with respect to volume changes in these areas, providing insight into longshore sediment transport patterns and optimal future nourishment placement locations.

Reporting
Once all of the analyses are completed, the resulting calculations and analysis will be included within the annual report. One (1) copy of the draft report will be submitted to the Town by September 15, 2020 (or six weeks after receiving all survey products from **McKim & Creed**) for Town review and comment. The report will include sections such as introduction, methodology, results/conclusions, and appendices. **M&N** will submit four (4) hard copies of the final report (including profiles print outs) to the Town by October 15, 2020. **M&N** will also develop, attend and provide a presentation to the Town's Board of Commissioners at one of their monthly, regularly scheduled meetings. Eight (8) hard copies of the report (including profiles print outs) and one (1) electronic copy of the report, the annual presentation, and all data collected for each survey event, etc. will also be provided on a USB flash drive.

**Task 1.2 – Completion of Post Storm Survey and Report (OPTIONAL TASK)**

**This task will only be completed if authorized by Town staff.**

In the event of a significant coastal storm, and if authorized by the Town, **M&N** will complete a post-storm field reconnaissance trip to document storm effects. It is understood that McKim & Creed will provide post-storm surveying under separate contract between the Town and McKim & Creed. **M&N** will assist the Town to coordinate the survey with McKim & Creed. Following receipt of the survey data products from McKim & Creed, M&N will prepare a Post-Storm monitoring report documenting the shoreline and volume change due to the storm, and making recommendations on needs for renourishment to address the storm impacts. Shoreline and volume changes will be calculated to assess storm related damages.

**Task 1.3 – Preparation of Documentation for FEMA Category G Project Funding (OPTIONAL TASK)**

**This task will only be completed if authorized by Town staff.**

In the event of a significant coastal storm and a subsequent Federal disaster declaration that provides for Category G Public Assistance, and if authorized by the Town, **M&N** will prepare the supporting documents to show eligibility of the beach for the FEMA Category G post storm restoration funding, reporting previous beach monitoring and maintenance efforts, storm event volume losses, potential sand sources, restoration project cost estimates and schedule. M&N will utilize the post-storm survey and analysis report resulting from Task 1.3 above to support the preparation of documents for FEMA submittal. In association with this subtask, M&N anticipates attending up to two additional in-person meetings in Nags Head and up to four (4) virtual meetings or teleconferences with Federal, State and Town representatives to coordinate the agencies' review of the Category G funding request.

## TASK 1 PROJECT COST

The total estimated fee for the 2020 Town of Nags Head Beach Monitoring and Analysis is a lump sum of **$57,119,** including expenses for travel for a site visit and reproduction. If a storm event were to occur, post storm monitoring and analysis would total a lump sum of **$57,119,** including expenses for travel for a site visit and reproduction, and support for FEMA post-storm beach restoration funds would total a lump sum **$33,660** in the event that these tasks were authorized by the Town.

M&N proposes to invoice the Town monthly on a percent complete basis by Task. Our invoice format can be tailored to meet the Town's requirements and preferences, and the invoice would generally be accompanied by a cover letter or cover sheet summarizing progress on the Task during the invoice period.

The fees for each of these subtasks are summarized below:

| **Task 1**: **Beach Monitoring Analysis, Reporting and Post-Storm FEMA Support (2020)** | **M&N Fee** |
|---|---|
| Task 1.1 – Completion of Annual Surveys and Report | $57,119 |
| Task 1.2 – Completion of Post Storm Survey and Report (OPTIONAL TASK) | $57,119 |
| Task 1.3 – Preparation of Documentation for FEMA Category G Project Funding (OPTIONAL TASK) | $33,660 |

## TASK 2 INTRODUCTION

**Moffatt & Nichol (M&N)** is pleased to present this scope of work and fee estimate for Year 1 services needed for the Multi-Decadal Master Plan. Although the Master Plan is expected to take three to five years to complete, the following Scope of Work details services to be completed during the 2020-2021 fiscal year, and this Year 1 effort will provide the basis for outlining efforts for subsequent years.

The scope of work below is focused on developing preliminary estimates of the following items after data collection and review are completed:

1) revised beach reaches (based on dune/berm shape and morphology as well as documented erosional/accretional trends),
2) the level of protection currently provided along these reaches as well as the volumes needed to provide different levels of protection in various storm events, in order to determine preliminary nourishment triggers, and
3) estimates of long-term sand needs over 50 years.

The above items will initially be estimated based upon analytical calculations and preliminary modeling that will be refined during later design phases. After discussions with Town staff, M&N believes that it is important to complete this work initially in a preliminary and cost-effective manner so that the Town can see the potential implications of this master plan approach before significant investments are made in more detailed modeling and engineering as well as field investigations and environmental studies, documentation and permitting.

It is currently estimated that the master plan process as a whole could cost between $1M-$3M depending on alternatives developed (and the level of environmental documentation/permitting needed for these alternatives), the overall sand volume needed for the 50 year horizon, and the amount of additional field work (geotechnical and environmental clearances) needed for the borrow sites to permit that 50 year volume of material. The products from this proposed Year 1 scope of work will provide a preliminary road map for the Town to see what the potential range of those volumes are, the locations where the sand is needed and how often, and the potential effects of this master plan approach on current and future funding options for projects.

## TASK 2 SCOPE OF WORK

This Scope of Work defines the services to be provided during Year 1 of the multi-year Master Plan process. These tasks generally include project planning, meetings and coordination, data collection and review, and initial modeling and development of preliminary nourishment trigger estimates.

### Task 2.1 – Project Planning, Meetings and Coordination – YEAR 1

M&N will attend meetings and provide coordination services for the project as needed. It is intended that the meetings and coordination included in Task 2.1 will discuss progress, findings and recommendations related to Task 2.2, Task 2.3 and Task 2.4 work items. As part of the project, M&N expects the following in-person meetings and virtual meetings / teleconferences to occur in Year 1 of the Master Plan process (Town fiscal year 2020-2021):

- Four (4) in-person meetings in Nags Head with Town staff to discuss the various coastal engineering professional services tasks
- Attendance and presentation at two (2) Board of Commissioners meetings to update the Board on

the progress of the various engineering, monitoring and master plan tasks

- Standing one-hour progress calls / virtual meetings with Town staff, anticipated to occur in months without in-person meetings, for a total of eight (8) such calls.

It is expected that each in-person meeting will include two M&N staff attendance in Nags Head along with their time and supporting staff time to prepare materials for the meetings and to provide meeting notes and summaries.

It is expected that the calls and virtual meetings will include more of the M&N project team and any number of Town staff or other stakeholders that the Town decides to invite to those calls.

This anticipated number of in-person meetings and standing calls does not exclude or limit additional calls between the Town and M&N's points of contact as specific questions and coordination needs arise.

## Task 2.2 –Data Collection and Review of Existing Engineered Beach Monitoring/Maintenance Plan and Triggers– YEAR 1

M&N will gather and assess the available relevant data for the Town of Nags Head to provide a basis for understanding historical beach and shoreline behaviors and trends. M&N will collect and review the following data:

- Wave and Water Levels (Normal and Storm) – (as available from NOAA & USACE)
- Available Sediment Resource Data
- Engineering Activities (Nourishment/Dredging/Etc. – Volumes and Extents) – (as available from Town & other Consultants)
- Monitoring Data – (as available from Town & other Consultants)
- Current Engineered Beach Monitoring and Maintenance Plan
- Project Aerials – (as available from Town & other Consultants)

As applicable, selected available geo-referenced mapped data will be placed by M&N in GIS format for ease of analysis and future tasks. As part of this effort, M&N will also review the data for quality and applicability for use in study modeling and analyses. M&N will import these datasets into formats appropriate for our inclusion within our modeling packages and well as analytical spreadsheet and other tools.

In addition, M&N will review the Town's current Engineered Beach Monitoring/Maintenance Plan and current triggers. M&N will evaluate the plan and maintenance triggers versus the preliminary ones developed in Task 2.3 below.

## Task 2.3 – Initial Modeling and Development of Preliminary Nourishment Triggers – YEAR 1

1. Develop and Calibrate Cross-Shore Beach Profile Models for Town of Nags Head – M&N will use available offshore wave data and beach profiles taken from the survey monitoring data to develop and calibrate cross-shore models in USACE's CSHORE software. Alternatively, the XBEACH software may be used, and the decision on model software will be made during the initial setup and calibration of the models. CSHORE and XBEACH simulate erosion of the beach and dune profile caused by storm surge and waves, including dune overwash. M&N will employ a combination of storm conditions for model calibration/verification and sensitivity analysis to provide assurance of the necessary robustness for the models' applicability for a wide range of conditions for the Level of Protection assessment. For the CSHORE/XBEACH model, up to twenty (20) representative survey profile sections will be used by M&N to estimate cross-shore transport and profile change during storms. The representative profiles will be

developed considering variations in existing profiles (i.e. beach width, dune height, etc.) and in existing apparent vulnerability of landward areas to storm impacts; these choices will be discussed and confirmed with Town staff.

2. Confirm Background Erosion Rates – M&N will use a combination of data evaluation / analytical techniques and the available beach profile monitoring data to determine background erosion rates, and erosion rates immediately subsequent to beach nourishment projects, within the Town of Nags Head.
3. Determine Current Level of Protection Provided by the Beach Profiles – M&N will use historical storm data to develop a suite of design storms (return periods of 2 yr, 5 yr, 10 yr, 25 yr, 50 yr, and 100 yr) from which to determine the current level of protection from storm surge and waves afforded by the dune and berm system in the Town of Nags Head. The representative survey profile sections utilized in Task 2.3.2 above will be used for these analyses. The extent of damages from each return period storm will be qualified at each representative transect to determine the largest return period storm for which the existing system is providing adequate protection to the first row of structures. It is expected that the level of protection currently provided by the beach and dune will vary throughout the Town of Nags Head, and this stage of the analysis will document which reaches have greater and lesser protection to inform subsequent tasks in the master plan workflow.
4. Determine Desired Level of Protection – Based on the current level of protection analysis, M&N will discuss with the Town if they desire to increase the current level of protection across the whole project or in any specific areas by developing some estimates of what volume and cost would be required to increase and maintain the additional level of protection.
5. Development of Optimal Nourishment Triggers - Once the desired level of protection is determined, M&N will use the calibrated CSHORE/XBEACH cross-shore profile models to determine the minimum volume required at each representative transect to provide adequate protection to the first row of infrastructure. In cases where the existing level of protection is equal or greater than the desired level of protection, the minimum volume will be calculated by "eroding" the profile in the model until it just provides protection against the desired level of design storm – this provides an estimate of how low the profile volume could get before the desired level of protection would be lost. In cases where the existing level of protection is desired to be increased above current levels, the profiles will be "built out" in the model until they just provide the desired level of protection. These minimum volumes will then be used to define nourishment triggers by which to determine the need for a project and a maintenance criteria by which to maintain and describe the Town's "engineered beach" plan to FEMA. These triggers may be adjusted throughout the course of the Master Plan development if additional modeling (longshore transport, 2D/3D nearshore models, etc.) or statistical analysis indicates a need to adjust. During later project phases, M&N will assist the Town to coordinate with FEMA representatives to discuss how the proposed nourishment triggers will be incorporated into the engineered beach maintenance.
6. Develop and Calibrate a GENCADE Longshore Transport and Shoreline Change Model - M&N will use available offshore wave data and shoreline positions taken from the survey monitoring data to develop and calibrate a GENCADE model covering the limits of the Town of Nags Head and a sufficient distance north and south of the Town to account for model boundary effects. The purpose of developing and calibrating the model in YEAR 1 is to have this model ready to utilize early in YEAR 2 to begin evaluating the relative benefits of different beach nourishment phasing strategies. This can include looking at optimizing hot spot management in collaboration with neighboring towns, or otherwise staging different reaches of the beach to receive nourishment on different cycles, with the intent to

optimize long-term spending on dredge mobilization and other fixed costs. This evaluation is also useful for illustrating the benefits to each reach and subreach for developing funding and financing plans. M&N will employ a combination of long-term and storm conditions for model calibration/verification and sensitivity analysis to provide assurance of the necessary robustness for the models' applicability for a wide range of conditions for the alternatives assessment.

7. Estimate Long Term Sand Needs – M&N will use the results of the prior subtasks to develop an initial estimate of the long-term needs for nourishment sand to provide the discussed levels of protection while keeping up with anticipated background erosion rates, expected significant storm events. M&N will use analytical / statistical techniques – such as the Oracle Crystal Ball techniques M&N has utilized successfully elsewhere – to project out sand needs based on the historical erosion rates calculated from the historical beach monitoring data. These estimates will be confirmed in later project phases with detailed modeling.

### Task 2.4 – YEAR 1 Interim Report

At the conclusion of Task 2.3, M&N will prepare an interim report that documents YEAR 1 findings and recommendations. This report will serve as the basis for future master planning efforts and include recommendations regarding additional field data to be collected and the steps necessary to acquire permits. Draft and final versions will be submitted to the Town.

## TASK 2 PROJECT COST

The total estimated fee for the project for Master Plan Year 1 tasks inclusive of all efforts is lump sum of **$208,100,** including expenses for travel to the Town for meetings and reproduction.

M&N proposes to invoice the Town monthly on a percent complete basis by Task. Our invoice format can be tailored to meet the Town's requirements and preferences, and the invoice would generally be accompanied by a cover letter or cover sheet summarizing progress on the Task during the invoice period.

The fees for each of these subtasks are summarized below:

| **Task 2: Master Plan Year 1 (2020-2021)** | **M&N Fee** |
|---|---|
| Task 2.1 – Project Planning, Meetings, and Coordination | $38,520 |
| Task 2.2 – Data Collection and Review of Existing Engineered Beach Monitoring/Maintenance Plan and Triggers | $52,920 |
| Task 2.3 – Initial Modeling and Development of Preliminary Nourishment Triggers | $96,340 |
| Task 2.4 – Year 1 Interim Report | $20,320 |
| **Total for Task 2** | **$208,100** |

## TASK 3 INTRODUCTION

**Moffatt & Nichol (M&N)** is pleased to present this scope of work to support the Town's application for Coastal Storm Damage Mitigation (CSDM) application for funding due to damages to the beach from Hurricane Dorian.

## TASK 3 SCOPE OF WORK

This Scope of Work defines the services to be provided in support of the Town's Coastal Storm Damage Mitigation Fund application to support funding of a beach nourishment and repair project for damages incurred by Hurricane Dorian.

Additional meeting time and coordination is included to allow for review of documents by the Town.

### Task 3.1 – CSDM Application Support

M&N will prepare the CSDM application package for submittal to NC Department of Environmental Quality (DEQ). The application package will include documents collected during Task 1. Additional documents to be prepared include project maps, identification of borrow area, opinion of probable cost, and project schedule.

## TASK 3 PROJECT COST

The total estimated fee for the project for the CSDM Application Support tasks inclusive of all efforts is lump sum of **$14,280**.

M&N proposes to invoice the Town monthly on a percent complete basis by Task. Our invoice format can be tailored to meet the Town's requirements and preferences, and the invoice would generally be accompanied by a cover letter or cover sheet summarizing progress on the Task during the invoice period.

The fees for each of these subtasks are summarized below:

| **Task 3: CSDM Application Support** | **M&N Fee** |
|---|---|
| Task 3.1 – CSDM Application Support | $14,280 |

## TASK 4 INTRODUCTION

The Town of Nags Head incurred damages to its recently constructed beach nourishment project when Hurricane Dorian impacted the area in September 2019. Approximately 508,070 cubic yards (cy) of sand volume was lost from the project area, and the Town submitted a request to FEMA for Category G reimbursement. In addition, the Town has submitted an application for funding from the State Coastal Storm Damage Mitigation (CSDM) grant program to augment the post-Dorian restoration project with an additional 141,150 cy. If both funding requests are granted in full, the Town plans to construct a beach nourishment project in the summer of 2022 that would place approximately 650,000 cy within a 10-mile long project area, for an average profile volume nourishment of approximately 12.3 cy/ft. The scope of Task 4 is proposed to provide for the engineering design, permitting coordination, preparation of construction documents and bidding and construction phase engineering support to the Town as it implements this Post-Dorian beach restoration project.

## TASK 4 SCOPE OF WORK

**M&N** will provide professional services as described in the subtasks below to assist the Town to execute its Nags Head Post-Dorian Category G Restoration Project in accordance with FEMA guidelines for federal cost reimbursement. The project requires the following tasks:

### Task 4.1 – Meetings and Coordination with Agencies and Stakeholder Groups

In addition to the specific meetings and standing calls with Town staff and elected officials described under the Task 2, M&N will attend meetings and provide coordination services for the Post-Dorian nourishment project as needed for project development, acquiring the necessary permits and addressing citizen and other stakeholder concerns. These will include meetings with Town staff and elected officials, regulatory and other governmental agencies such as NCDCM, USACE, NCDEM and FEMA, potential construction contractors, as well as interested or concerned citizens. M&N's proposed fee for Task 4 includes an assumption of up to four (4) in-person meetings in Nags Head or in Washington and up to four (4) virtual meetings during the course of the Post-Dorian project development. Time to develop presentations for some of these meetings (when needed) are included.

### Task 4.2 – Coastal Engineering, Design, Environmental Permitting and Preliminary Plan Development

M&N will compile existing data available for the project including available beach surveys and geotechnical information collected by others.

M&N will perform one site visit to determine the current condition of the beach and shorefront properties throughout the Post-Dorian Category G Restoration Project area. M&N will first develop a new digital elevation model of the current survey at the time (expected to be the summer 2020 annual monitoring survey) to serve as the base map for the permit drawings and preliminary construction drawings. M&N will then develop the permit drawings consisting of preliminary plans and typical cross-sections for a proposed project that restores the berm with an equal fill density of material along the Project area. The proposed berm width will vary along the Project area to achieve this equal distribution of alongshore fill density.

M&N will utilize the after-dredge survey from the 2019 Nags Head Beach Renourishment Project to verify the remaining volume of beach compatible material available for use from the Borrow Area 3A and Borrow Area 4 as borrow sources for the Restoration Project.

M&N will also be responsible for preparing application packages for the Town to acquire state and federal permits for the project. Agency coordination and stakeholder interaction is expected to be an important part of this project. M&N will participate in an agency pre-project scoping meeting to determine appropriate documentation necessary to support permitting and regulatory review. M&N staff will be available for one additional agency meeting, if necessary, as the project progresses, or for public input.

M&N will work with the Town and with the U.S. Army Corps of Engineers, NC Division of Coastal Management and NC Division of Water Resources to obtain a permit modifications to existing permits to allow the Project to proceed more quickly. The design of the berm restoration and the construction procedures to be followed will be in accordance with agency requirements. M&N will work closely with permit personnel to identify their requirements and restrictions.

Deliverables from Task 4.2 to the Town will include:

- Permit drawings consisting of preliminary plans and typical cross-sections and construction notes, along with a project narrative for coordination with permitting agencies
- Notes / minutes of meetings and coordination with permitting agencies
- Applications / letters requesting permit modification
- Preliminary construction plans and specifications at an approximate 70% level of completion, for Town review and comment prior to preparation of final plans and specifications for project bidding.

## Task 4.3 – Final Plans and Specifications and Bid Documents

M&N will develop a complete set of bid documents for advertisement by the Town. This will include a complete set of construction drawings, technical specifications, general provisions, and other necessary documents that form the complete bid package, and the Engineer's Opinion of Probable Cost confirming M&N's opinion that the project can be constructed within the Town's available funds for the project. The preliminary plans will be revised based on the updated monitoring survey from summer 2021. It is assumed that the Town will be responsible for any right-of- way/easement acquisitions as well as identification of staging areas.

Deliverables from Task 4.3 to the Town will include:

- A Prefinal set of plans and specifications for final review by the Town before submittal of the Final signed and sealed bid documents.
- Final bid documents, signed and sealed as necessary by a licensed North Carolina Professional Engineer, for the Town to use in project bidding and construction.

### Task 4.4 – Project Bidding, Negotiation and Award

M&N will lead coordination with contractors, with assistance from the Town, during the bidding/construction award phase of the project. These tasks will include: leading an industry day virtual conference 2-3 months before the bid announcement, developing a bid announcement, advertising the bid in local papers and with known contractors and plan rooms, leading a pre-bid conference with the Town, providing construction bid packages to the various contractors and plan rooms, answering bidding contractors' questions, providing addendums, and helping the Town evaluate bids and providing a bid tab and summary with recommendations concerning the contract award. In the event that the bids exceed the project budget, M&N will assist the Town in negotiating with the apparent low bid contractor to evaluate options that will meet the project budget.

### Task 4.5 – Construction Observations and Administration

After contract award, M&N will provide construction observation and assist the Town with administrative services for the project. M&N will lead a pre-construction meeting with the Town, resource and permit agency representatives, stakeholders and the selected contractor to go over the project reporting and pay request protocols as well as operational expectations and permitting compliance items that must be completed by the contractor. M&N will also go over the contractor requirement for a pre-construction survey to be submitted before contractor mobilization so that M&N can, if needed, revise the beach placement plan based on significant changed conditions between the beach profiles that were the basis for the design and the actual conditions at the start of the project.

M&N will also review contractor submittals (such as the QA/QC Plan, Work Plan, Environmental Plan, etc.) and address contractor Requests For Information (RFIs). It is expected that the construction period will require approximately three months during May 2022-July 2022. Because of the rapid pace of construction activities that we are expecting and based on our successful experience in other NC beach communities, we anticipate having M&N staff on-site for construction observation during two to three days per week, with weekly contractor meetings occurring during those two to three days. M&N will also coordinate with the contractor to facilitate having required environmental submittals and reports provided to agencies within appropriate timeframes.

M&N will review regular interim construction surveys and post-construction surveys, to be provided by the contractor, and M&N will compute pay volumes to verify that the fill is placed in accordance with the bid documents. M&N will also work with the contractor to make "real-time" adjustments to the nourishment template if needed. It has been established through experience that this real-time check and adjustment is necessary to avoid construction delays and volume over-runs, to keep the possibilities of contract conflicts to a minimum and to work through issues in an efficient, but adaptive way. M&N will also review and approve contractor pay requests and will coordinate with the contractor as needed.

Lastly, M&N will develop a final report summarizing the project, field visits, meetings, pay requests and other applicable project documentation and lessons learned for submittal to the Town and FEMA. M&N will also provide a final presentation to the Town summarizing the project.

## TASK 4 PROJECT COST

The total estimated fee for the project for Post-Dorian Category G Restoration Project tasks inclusive of all efforts is lump sum of **$717,512,** including expenses for reproduction and travel to the Town for meetings, site visits, and construction observation. This fee excludes additional geotechnical or environmental field investigations. If these are deemed necessary during design and permitting of the project, an additional scope and fee will be submitted to the Town for review and approval.

M&N proposes to invoice the Town monthly on a percent complete basis by Task. Our invoice format can be tailored to meet the Town's requirements and preferences, and the invoice would generally be accompanied by a cover letter or cover sheet summarizing progress on the Task during the invoice period.

The fees for each of these subtasks are summarized below:

| **Task 4: Post-Dorian Category G Restoration Project** | **M&N Fee** |
|---|---|
| Task 4.1 – Meetings and Coordination with Agencies and Stakeholder Groups | $77,004 |
| Task 4.2 – Coastal Engineering, Design, Environmental Permitting and Preliminary Plan Development | $253,238 |
| Task 4.3 – Final Plans and Specifications and Bid Documents | $97,730 |
| Task 4.4 – Project Bidding, Negotiation and Award | $39,530 |
| Task 4.5 – Construction Observations and Administration | $250,010 |
| **Total for Task 4** | **$717,512** |

## TASK 4 PROJECT SCHEDULE

The total project duration is expected to be approximately **18-21 months** to complete design, permitting, bidding and award, and construction with an end date of July 2022.

McKIM&CREED

ENGINEERS

SURVEYORS

PLANNERS

May 20, 2020 192690_1

David Ryan, PE
Town Engineer
Town of Nags Head
PO Box 99
Nags Head, NC 27959

**Re: Town of Nags Head – Beach Monitoring Surveys, Summer 2020**

David,

McKim & Creed would like to present our proposal for professional surveying services in connection with the referenced project. We understand the scope of work from our conversations with your coastal engineer, Moffatt & Nichol. Our Scope of work is based on performing a beach monitoring profile survey this summer for the base bid and 3 options.

We understand the the profiles generally begin at the landward toe of the primary dune or historic baseline and extend across the dunes and beach face to distance of approximately three thousand five hundred feet or -30 ft NAVD 88, whichever is achieved first.

This project includes 174 beach profile monitoring lines; Base bid includes 126, Option 1 includes 13, Option 2 include 14, Option 3 includes 21.

In the event of a Post-Storm survey, we can mobilize within 48 hours or as soon as safely possible with a minimum of one land crew and one hydrographic survey crew.

243 North Front Street

Wilmington, NC 28401

910.343.1048

Fax 910.251.8282

www.mckimcreed.com

**<u>Scope of Work</u>**

- All survey work will be performed to the Standards of Practice for Land Surveying in North Carolina.

- Hydrographic surveys will be performed to meet or exceed the minimum performance standards for the Corps of Engineers Hydrographic Surveys, USACE specifications manual EM 1110-2-1003.
- Horizonatal data will be referenced to NC Grid NAD83/2011 or to existing control datum and Vertical datum will be NAVD88.
- Conduct a coordination meeting with the Town of Nags Head and Moffatt & Nichol prior to beginning work. We will maintain open communication in addition to weekly project progress reports and updates.
- Over land data will be captured using Trimble R8/R10 dual frequency GNSS receivers beginning at the Landward toe of the Primary dune and extend out to the surf zone at wading depth (wading will occur at low tide). Land survey crews will survey grade GNSS receivers mounted on fixed height rover poles that are equipped with topo shoes (flat rod tips that do not sink in the sand). The data collectors are clamped onto the pole; the system is lightweight and ideal for one person. To move up and down the beach efficiently, we will use Side by Side utility vehicles (Kawasaki Mule). Crew trucks are painted with our company logo, field crews wear highly visible orange/yellow shirts and vests.
- Hydrographic surveys will be collected from -30 ft NAVD88 to the surf zone (during the high tide cycle) to achieve overlapping data as weather/sea conditions allow. Our survey vessels ranged from 22' to 28' in length and are equipped with Inertial Navigation systems that include survey grade dual frequency sonar, IMU, VRS RTK GNSS and sound velocity probes, all of which compensates for depth, heave, pitch, roll, positon, heading and the speed of sound. Prior to beginning work, we perform a bar check to insure the accuracy of our sonar and we perform a sound velocity checks periodically during the survey.
- Hydrographic survey vessesls are fully equipped to meet USACE specifications manual EM 1110-2-1003 including sonar, imu, position, heading and sound velocity.
- We will provide the following deliverables:
    - AutoCAD Civil 3D file
    - XYZ files of the Land, Wade, and Hydro data
    - Signed and Sealed PDF of Final Survey Data Set on Title Block
    - Survey Report detailing the project understanding, planning, methods and procedures used, communication between teams, QA/QC checksand final results
    - Digital text file with (alongshore) Station and/or Profile ID, coordinates X,Y,Z, and Distance to Baseline (DBL).
    - Digital text file in BMAP direct import format.

- ESRI GIS format floating-point grid or TIN file of the Digital Elevation Model (DEM, surface file), with one combined surface made from all the survey data (on land and underwater).
- Mean High Water (MHW) contour extracted from the DEM, in ESRI GIS shapefile or geodatabase.

**Accuracy**

- Land: The integrated GNSS system (Trimble R8) that we use is rated at a precision of .02' horizontal and .05' vertically. Based on the conditions and stability of the sand, we can provide an accuracy of 0.1' horizontally and less than 0.2' vertically.
- Hydro: Our equipment is well within the requirements of the USACE Hydrographic Survey Standards. Our soundings will be accurate to within 3' horizontal and 0.25' vertically.

**Schedule**

We estimate approximately 3-4 weeks to collect all data sets. We can provide the final deliveries and reports within 2-3 weeks of completion of field work.

For services described in the above Scope of Work, the lump sum fee will be **$63,100.00** *(Sixty-three thousand One-hundred dollars)* inclusive of reimbursable expenses. The option fees are based on performing them at the same time as the base bid.

Base Bid (126 profiles) ……..$47,000.00
Option 1 (13 profiles) ……$4,400.00
Option 2 ( 14 profiles) …….$4,700.00
Option 3 ( 21 profiles) …….$7,000.00
***Total……...$63,100.00***

Post-storm survey……..$63,100.00 per event
*(Includes same scope of work and detail of the annual survey)*

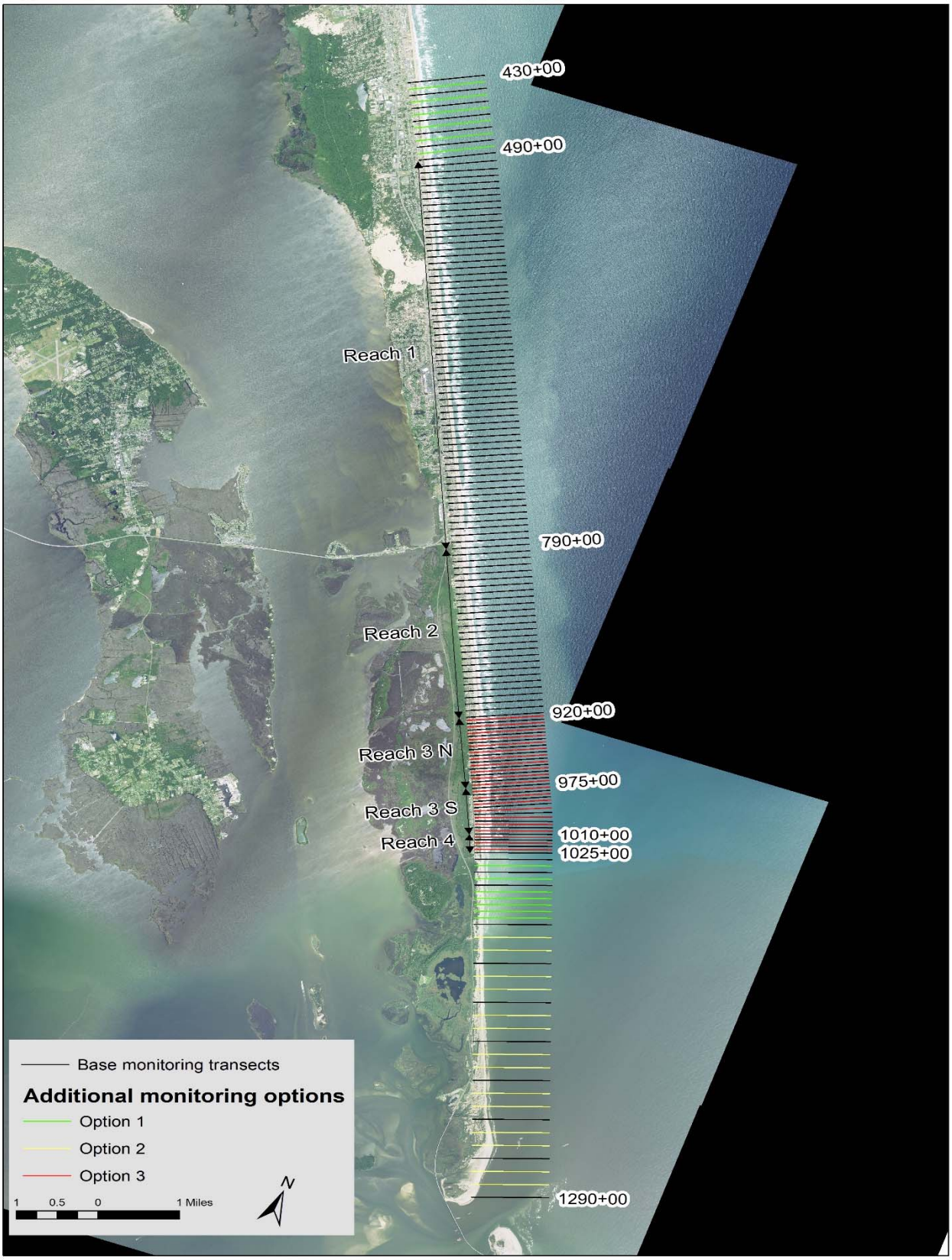
This proposal is submitted contingent upon the negotiation of a contract with mutually acceptable terms and conditions prior to the commencement of any work.

We appreciate the opportunity to provide this proposal to you and look forward to working on the project with you.

Sincerely,

McKIM & CREED, INC.

David Jones, PLS
Geomatics Regional Manager/VP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# Agenda Item Summary Sheet

Item No: **H-1**
Meeting Date: **June 3, 2020**

**Item Title**: Committee Reports

**Item Summary**:

At the June 3rd Board of Commissioners meeting, Board members will provide reports from meetings they have attended on behalf of the Town.

Number of Attachments: 0

**Specific Action Requested**:

Provided for Board update.

Submitted By: Administration Date: May 28, 2020

**Finance Officer Comment**:

No unbudgeted fiscal impact.

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

N/A

Signature: Cliff Ogburn Date: May 28, 2020

# Agenda Item Summary Sheet

Item No: **J-1**
Meeting Date: **June 3, 2020**

**Item Title**: Town Manager Cliff Ogburn – From May 20th Board meeting – Recycling

**Item Summary**:

At the May 20th Board of Commissioners meeting, Town Manager Ogburn was asked to look into response to the Board's recycling inquiries – from the Board actions:

Comr. Fuller – Recycling subscription – The Board unanimously passed a motion that staff:

a) Look into facilitating subscriptions for a curbside recycling service for residents that are interested – equivalent to that being done in the Towns of Kitty Hawk, Kill Devil Hills, and Manteo and in mainland Dare County,

b) Develop an information campaign to further describe the decision-making process and what's currently available as well as all the conditions around recycling and,

c) Develop a program (or at least an outline) to encourage reduction, re-use, and recycling as well as other environmentally-friendly approaches to waste to be brought back to the Board.

Attached please find Town Manager Ogburn's memo in response to the Board's inquiries on May 20th.

Number of Attachments: 1

**Specific Action Requested**:

Provided for Board information and discussion.

Submitted By: Administration Date: May 28, 2020

**Finance Officer Comment**:

I will be available to answer any questions.

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

The Finance Officer and I will be available to answer any questions.

Signature: Cliff Ogburn Date: May 28, 2020

**Ben Cahoon**
Mayor

**Michael Siers**
Mayor Pro Tem

**Cliff Ogburn**
Town Manager

**Town of Nags Head**
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Nags Head, North Carolina 27959
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**M. Renée Cahoon**
Commissioner

**J. Webb Fuller**
Commissioner

**Kevin Brinkley**
Commissioner

# MEMORANDUM

**TO**: Board of Commissioners

**FROM**: Cliff Ogburn, Town Manager

**DATE**: May 28, 2020

**SUBJECT**: Residential Recycling

a. Subscription Service

At the May 20, 2020 Board of Commissioners meeting, the Board discussed the recent decision to suspend the Town's curbside recycling program. At the request of the Board, we have been working to determine if it is feasible to initiate a subscription recycling service within the Town. We have learned that Bay Disposal would consider but has not committed to a subscription program if the Town can compile a list of at least 300 potential subscribers. The cost for this service is estimated at $15-$25 per month per household. Property owners and residents would contact the Town to be placed on a list. Once we reach the minimum number of subscribers, the list would be provided to the vendor and they would reach out to each subscriber directly to create an account and establish service. The day of the week is yet to be determined. Bay Disposal would provide their own cart to provide the service. The Town may need to enter into a franchise agreement with Bay Disposal before the service can begin. This program will take time to initiate and the Town will need to make a concerted effort to advertise the service and solicit subscribers. It is unlikely that this program could be initiated by the end of the summer season; however, this will depend on the time required to generate the list of subscribers and establish accounts.

b. Information on Decision to Suspend Curbside Recycling

Below is information that staff has compiled to educate Town residents and property owners on the Board's decision to suspend the curbside recycling program. After the Board's review, staff will continue to work to develop this into a format for public consumption and distribution.

Included below is a timeline that shows the progression of recycling services in the Town from initiation of the original subscription service in 2011 through the decision in May of 2020 to suspend the curbside program. Numerous changes have occurred over the years; many of these changes were made to enhance the Town's services and improve the recycling collection rate within the community. After the Town initiated the curbside program in 2016, there were several changes that led to cost increases, some of which were done deliberately to provide desired service levels; others were the result of changing market conditions associated with the increased cost to process materials.

While the budgetary conditions associated with COVID were a consideration in the decision to suspend the Town's recycling service, contractual issues, rising costs since the program began, uncertainty in the recycling market, and the lack of processing options were all factors in the decision. In the timeline and data provided on the following pages, you will note that the cost per ton for trash has remained relatively fixed since FY 2017 ($143 and $157 per ton respectively). The cost for recycling has increased during this same time frame from $297 to $439 per ton (see table on page 4; the cost per ton for the vendor only portion of this service went from $221 per ton to $604 per ton from FY 2017 to FY 2019). This is largely due to a change in 2019 to move the schedule on the Beach Road to Monday as well as the increase in cost for processing materials from $0 per ton to $70 per ton. An important consideration in the decision, which is reflected in the timeline, is the rapidly changing conditions that affect the ability to establish predictable costs.

The Board has received numerous comments from residents and property owners recently and over the last several years regarding recycling. Some comments reflect a strong desire to maintain the Town's curbside program and continue to absorb the costs within the town-wide tax base. Others believe that, largely because of the problems that the Town has experienced associated with costs and lack of bona fide processing options, the program should be offered on a subscription basis with the costs borne solely by those who wish the service.

The Board may wish to consider a process after the summer season to collect further input on the future of the recycling program. The process would assist the Board in determining community values related to recycling to establish a balance between cost, benefits, and service levels. The Board's decision has been to temporarily suspend the program. This still leaves opportunity to consider a wide range of options based on the Town's values refined by community input.

Recycling Timeline

April 2011 – Town initiates a franchise agreement for recycling subscription services.

May 2014 – Town initiates Beach Road pilot program that provides curbside services to all residences along NC 12 and SR 1243.

January 2016 – Town initiates town-wide curbside recycling service which supersedes the pilot and subscription programs – initial cost = $88,480 for collection; the Town was paying $0 per ton for processing the material. This cost does not include internal costs for hauling by town forces or the cost of recycling carts.

January 2017 – Town modifies schedule to Friday only – cost was reduced to $77,980. Again, this does not include internal costs for hauling by town forces or any cart costs.

January 2019 – Town modifies schedule to Monday and Friday – cost was increased to $195,000. This cost included the tonnage collected by the hauler. The cost for tonnage collected by the Town increased from $0 to $70 per ton. With 522 tons collected by the Town, this increased the cost to $231,540 ($195,000 + $36,540). The increased tonnage price was a result of failing market conditions for recycling.

December 2019 – Hauler notifies Town that materials are being incinerated rather than recycled due to market conditions. Hauler offers to continue recycling at $130 per ton or incinerate at $70 per ton. The Town amends its contract to allow for incineration on a temporary basis rather than paying for the increased processing cost.

Spring of 2020 – Town and NC DEQ continue to search for a vendor to process rather than incinerate recycling materials. The Town learns that a new vendor, RDS of Portsmouth, VA, can process recycling for $70 per ton. The Town would now need two agreements, one for hauling and one for processing. The processing contract would require the Town to pay an additional $121 per ton for contaminated loads. Based on discussions with the processor and hauler, it was estimated that up to 18% of tonnage could be considered contaminated. The Town's hauler and RDS continued negotiations to allow for the hauler to contract directly with the Town for both hauling and processing at a fixed price. As of May 2020, these negotiations were ongoing, and the Town was unable to secure favorable terms that would provide a predictable fixed rate for service.

In May of 2020, the Town temporarily suspends the recycling program prior to the summer season as well as the commencement of the annual vendor service contract.

Recycling/Sanitation Data and Information

**Recycling FY 2017**

| | # Tons Collected | Cost to Process | Cost to Haul | Total Cost | Cost Per Ton |
|---|---|---|---|---|---|
| Vendor* | 371.1 | $0 | $82,180 | $82,180 | $221 |
| Town | 446.4 | $0 | $160,650 | $160,650 | $360 |
| Totals | 817.5 | $0 | $242,830 | $242,830 | **$297** |

*Includes two months at 2016 contract price of $88,480 and three months of 2017 contract price at $77,980

**Trash FY 2017**

| | # Tons Collected | Cost to Process | Cost to Haul | Total Cost | Cost Per Ton |
|---|---|---|---|---|---|
| Town | 4,382 | $319,886 | $310,590 | $630,476 | **$143** |

**Recycling FY19**

| | # Tons Collected | Cost to Process | Cost to Haul | Total Cost | Cost Per Ton |
|---|---|---|---|---|---|
| Vendor* | 322.89 | Included in contract | $195,000 (contract) | $195,000 | $604 |
| Town | 579.14 | $40,540 | $160,650 | $201,190 | $347 |
| Totals | 902 | $40,540 | $355,650 | $396,190 | **$439** |

**Trash FY 2019**

| | # Tons Collected | Cost to Process | Cost to Haul | Total Cost | Cost Per Ton |
|---|---|---|---|---|---|
| Town* | 3,717.83 | $271,959 | $310,590 | $582,549 | **$157** |

*Vendor collects recycling on NC 12 and NC1243 May 1 through September 30
**includes cost of staff, fuel, and equipment

FY 19 Recycling processing cost per ton - $70
FY 19 Residential trash tipping fee cost per ton - $73.15

| | |
|---|---|
| Savings from suspending the contract with Bay | $195,000 |
| Add back 322.89 tons that we are not putting in landfill @ $77/ton | -$22,602 |
| Add back 579.14 tons we pay $7 more to dump in landfill | -$4,054 |
| **Total Savings** | $168,344 |

*Cost of Recycling Carts*

Total spent on carts and bins (including financing) = $221,626.60
Less Grant = $30,000
Cost to Town = $191,626.60

Additional carts purchased for resale total 1,788 or $103,704. We sell them for $75 and have sold 1,372 which equals $102,900. We have 416 left unsold at PW.

*FY 2017 Recycling Data by Month*

| | Bay Collected | Town Collected | Total Recycling Residential |
|---|---|---|---|
| July-16 | 116.29 | 43.35 | 159.64 |
| August-16 | 108.68 | 71.75 | 180.43 |
| September-16 | 49.87 | 31.96 | 81.83 |
| October-16 | | 35.14 | 35.14 |
| November-16 | | 36.44 | 36.44 |
| December-16 | | 27.2 | 27.2 |
| January-17 | | 21.45 | 21.45 |
| February-17 | | 27.95 | 27.95 |
| March-17 | | 43.5 | 43.5 |
| April-17 | | 31.12 | 31.12 |
| May-17 | 22.5 | 39.44 | 61.94 |
| June-17 | 73.78 | 37.07 | 110.85 |
| **Total** | **371.12** | **446.37** | **817.49** |

*FY 2019 Recycling Data by Month*

| | Bay Collected | Town Collected | Total Recycling Residential |
|---|---|---|---|
| July-18 | 74.48 | 68.73 | 143.21 |
| August-18 | 89.05 | 76.00 | 166.04 |
| September-18 | 48.46 | 37.93 | 86.39 |
| October-18 | 0 | 67.17 | 67.17 |
| November-18 | 0 | 48.23 | 48.23 |
| December-18 | 0 | 43.45 | 43.45 |
| January-19 | 0 | 50.91 | 50.91 |
| February-19 | 0 | 33.2 | 33.2 |
| March-19 | 0 | 41.16 | 41.16 |
| April-19 | 0 | 58.93 | 58.93 |
| May-19 | 42.64 | 59.45 | 102.11 |
| June-19 | 68.26 | 53.57 | 121.83 |
| Total | **322.89** | **579.14** | **962.63** |

Recycling Tons Collected by Town:
343.49 tons – (Oct - Apr)
235.65 tons – (May – Sept)

c. Develop a program (or at least an outline) to encourage reduction, re-use, and recycling as well as other environmentally friendly approaches to waste to be brought back to the Board.

**GOAL (DRAFT)**
**Develop Program to Encourage Waste Reducing, Reusing, and Recycling**

Potential Components:

*Oversight:*
Create a Nags Head Reduces, Re-Uses, and Recycles Committee for assistance with following through with the ideas presented here and for developing new ideas and public policies. Become a facilitator for progressive ideas that can enhance recycling and waste reduction efforts.

*Education:*
- Contact North Carolina Department of Environmental Quality about holding a recycling workshop in Nags Head or having a booth at a Dowdy Park Farmer's Market to better educate residents and visitors about recycling.
- Campaign: Recycling: Update curbside recycling program suspension education campaign to include:
    - status of nationwide and local recycling industry
    - curbside recycling program cost versus landfill use cost
    - other recycling options available in Nags Head
- Campaign: "Rethink the Way You Consume" Apply to NC DEQ for grant funds to create a video regarding this topic.
- Research working with Dare County Schools, UNC Coastal Studies Institute, or NC State Extension on developing and/or testing emerging and eco-friendly approaches to waste management such as vermicomposting (earthworm composting). Hold competition for best approach to reducing waste.
- Campaign: "Emerging and Eco-Friendly Approaches to Waste Management" - Apply to NC DEQ for grant funds to create a video regarding this topic.
- Campaign: "Residential Composting" - Apply to NC DEQ for grant funds to create a video regarding this topic.

*Facilities and Services:*
- Research the Town' ability to distribute for free or sell, at reduced rates, compost bins. The Town can pilot this idea at the Dowdy Park Farmer's Markets.
- Recycling: Identify Town facilities where recycling and composting stations can be installed.
- Reduce: Research installation of composting bins at select Town facilities.
- Recycle: Add electronics drop-off program at a Town facility.
- Continue to explore options for recycling processing for Town recycling services.
- Explore partnerships with Dare County and other agencies to improve regional capacity for recycling collection and processing.

# Agenda Item Summary Sheet

Item No: **L-1**
Meeting Date: **June 3, 2020**

**Item Title**: Mayor Ben Cahoon – Future of Nags Head - from the Jan 23-24, 2020 Board Retreat

**Item Summary**:

One of the topics of discussion at the January 2020 Board of Commissioners Retreat concerned envisioning the future of Nags Head.

While this item will remain as a standing agenda item, discussion will continue once the Board can resume normal meetings.

Number of Attachments: 0

**Specific Action Requested**:

Provided for Board discussion.

Submitted By: Administration Date: May 28, 2020

**Finance Officer Comment**:

Insufficient information to determine fiscal impact.

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

I will participate in the discussion as necessary.

Signature: Cliff Ogburn Date: May 28, 2020

# Agenda Item Summary Sheet

Item No: **L-2**
Meeting Date: **June 3, 2020**

**Item Title**: Mayor Ben Cahoon – Request for Closed Sessions

**Item Summary**:

At the June 3rd Board of Commissioners meeting, Mayor Cahoon will request two Closed Sessions:

1) To discuss a personnel matter in accordance with GS 143-318.11(a)(6), and
2) To consult with the attorney and protect attorney/client privilege in accordance with GS 143-318.11(a)(3)

Number of Attachments: 0

**Specific Action Requested**:

Provided for Board discussion.

Submitted By: Administration Date: May 28, 2020

**Finance Officer Comment**:

N/A

Signature: Amy Miller Date: May 28, 2020

**Town Attorney Comment**:

N/A

Signature: John Leidy Date: May 28, 2020

**Town Manager Comment and/or Recommendation**:

N/A

Signature: Cliff Ogburn Date: May 28, 2020