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Resolution No. 13-01-001
BOC Meeting January 16, 2013
Municipal Authority on State's ocean beaches

Anna D. Sadler
Commissioner

M. Renée Cahoon
Commissioner

Susie Walters
Commissioner

RESOLUTION REQUESTING STATE LEGISLATION TO CLARIFY MUNICIPAL AUTHORITY ON THE STATE'S OCEAN BEACHES

WHEREAS, North Carolina General Statute 77-20 formally delineates the State's ocean beaches from the dunes to the water as public trust areas; AND

WHEREAS, the North Carolina Constitution and various North Carolina General Statutes provide municipal authority to regulate activities in the public trust areas of ocean beaches; AND

WHEREAS, the Town of Nags Head and the other 20 oceanfront municipalities in North Carolina have historically and continue to regulate activities in the public trust areas of ocean beaches in order to promote and protect the health, safety, and welfare of the public; AND

WHEREAS, the range of activities historically and currently regulated by oceanfront municipalities includes, among others: public access, beach driving, beach horseback riding, dune protection, leash laws, prohibition of litter, prohibition of fires, prohibition of camping, unattended beach equipment, preservation of adequate emergency and public service vehicle travel ways, removal of structures and debris, smoking, prevention of dangerous holes in the sand, environmental habitat protection; AND

WHEREAS, recent Court decisions and legal claims have called into question the authority of North Carolina's oceanfront municipalities to regulate activities in the public trust areas of ocean beaches; AND

WHEREAS, new State legislation to clarify oceanfront municipalities' authority would address these questions and provide clear guidance to oceanfront municipalities, the general public, and private oceanfront property owners.

NOW, THEREFORE, BE IT RESOLVED that the Nags Head Board of Commissioners hereby requests that the North Carolina General Assembly approve legislation to clarify and confirm the authority of oceanfront municipalities to regulate activities in the public trust areas of ocean beaches in order to promote and protect the health, safety, and welfare of the public.

BE IT FURTHER RESOLVED that the following language for new legislation is suggested for consideration by the North Carolina General Assembly:

160A-203 AN ACT TO CLARIFY THE AUTHORITY OF MUNICIPALITIES TO REGULATE THE STATE'S OCEAN BEACHES

1. Pursuant to a municipality's authority to define, regulate, restrict, abate and prohibit acts, omissions, or conditions determined by the municipality to be detrimental to the health, safety, or welfare of its citizens and its peace and dignity, a municipality by ordinance may regulate, restrict and prohibit the placement, development, maintenance, repair, alteration, improvement, location and use of structures, equipment, personal property, and debris upon the barrier dunes or the State's ocean beaches located within or adjacent to the jurisdictional boundaries of the municipality. Pursuant to this authority any such municipality may adopt such an ordinance to prevent or abate the unreasonable restriction of the general public's rights to use the State's ocean beaches. Any such ordinance may provide for summary procedures to remove or abate offending items, except any procedure potentially resulting in the removal of otherwise lawful structures that are not in imminent danger of collapse shall include provisions for notice and hearing before the municipality's governing board and

recovery of the municipality's costs for the same in the manner provided by N.C.G.S. 160A-441 et. seq. Otherwise and additionally, any violation of an ordinance adopted pursuant to this section may be enforced by any remedy available under N.C.G.S. 160A-175. Nothing herein shall preclude a municipality from seeking the removal or abatement of any structure through a court order entered by any court of competent jurisdiction, either as an alternative to or in lieu of any other remedy available to the municipality under this section.

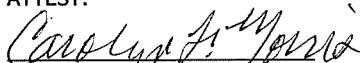
2. Nothing herein shall be deemed to limit other existing authority of municipalities or the authority of the State of North Carolina or its agencies to regulate the State's ocean beaches consistent with the laws of this State. The provisions of this Act shall not be construed to impair the right of the people to the customary free use and enjoyment of the ocean beaches, which rights remain reserved to the people of this State under the common law and are a part of the common heritage of the State recognized by Article XIV, Section 5 of the Constitution of North Carolina. Likewise, nothing herein shall be deemed to interfere with, invalidate or act as a taking of riparian, littoral or other ownership rights of owners of property bounded by the Atlantic Ocean.
3. The term "ocean beaches" as used herein shall be as defined in NCGS 77-20(e).

Adopted this the 16th day of January 2013.



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

ATTEST:


Carolyn F. Morris, Town Clerk