

APPENDIX D
INTERLOCAL AGREEMENT

**INTERLOCAL AGREEMENT REGARDING LONG TERM BEACH NOURISHMENT
BETWEEN CARTERET COUNTY, NORTH CAROLINA,
AND THE MUNICIPALITIES OF ATLANTIC BEACH, PINE KNOLL SHORES,
INDIAN BEACH, AND EMERALD ISLE**

This Interlocal Agreement is made for purposes of reference MARCH 15, 2010 by and between the County of Carteret, North Carolina, a body corporate and politic (hereinafter referred to as the "County"), and the Municipalities of Atlantic Beach, Pine Knoll Shores, Indian Beach, and Emerald Isle, bodies politic and corporate (hereinafter referred to as the "Towns").

PURPOSE

Whereas, County and Towns are jointly seeking approval by State and Federal Agencies of a 30-year Nourishment Plan for the Bogue Banks Beaches, and the State in anticipation of such a plan is prepared to complete/review one Environmental Impact Study, and State and Federal Agencies involved in the funding have indicated that they strongly prefer and require that Bogue Banks units of local government work on and submit one mutual plan for beach nourishment without individual towns seeking separate funding or individual beach nourishment projects except in emergencies approved in accordance with this Agreement;

Whereas, it is within the contemplation of the Parties hereto and State agencies involved in the approval process that the U.S. Army Corps of Engineers and other federal

approval agencies will issue one permit for the Bogue Banks beaches valid for 30 years and it is anticipated the permit will be constantly updated and amended based upon numerous factors including hurricanes, severe erosion, availability of funding, etc;

Whereas, County and Towns now desire to enter into an agreement that provides a planning mechanism, plan, and compact among the parties for a multi-decadal beach nourishment program for Bogue Banks (hereinafter referred to as the "Master Nourishment Plan", "Master Plan", or "Plan"), which utilizes available funds from the County's occupancy tax administered and collected under S.L. 2007-112, or future modifications to this law, and any State and Federal funding secured for the Master Nourishment Plan;

Whereas, under this Agreement it is contemplated the County as the lead sponsor, with the assistance of its Shore Protection Office, the Carteret County Beach Commission, and consultants hired by the County, in consultation with the Towns, will prepare the Master Nourishment Plan for approval by the Towns which upon approval will then be implemented under this Agreement with the County being the designated permittee for beach nourishment on Bogue Banks under the auspices of the County Beach Commission and Shore Protection Office.

NOW THEREFORE, County and Towns pursuant to NCGS 153A-13, NCGS 160A-17 and NCGS 160A-460, hereby contract and agree as follows:

1. Purpose. County and Towns enter into this Agreement in order to approve, carry out and complete under a common plan, one permit and a common source of tax funding and revenues for the Master Beach Nourishment Plan in accordance with the terms and conditions set forth herein.
2. Participation of the Town of Atlantic Beach. It is contemplated the Town of Atlantic Beach will remain eligible for and continue to receive satisfactory sand for its beaches based upon past years from the dredging of the Morehead City Harbor Federal Navigation Project, and will therefore only be involved in the Master Beach Nourishment Plan if the availability of dredged sand is terminated or cut off. The plan will provide for the contingency of providing beach nourishment to the ocean beaches of the Town of Atlantic Beach under the Master Plan and using available revenue sources if the dredged sand currently provided by the US Army Corps becomes unavailable or are restricted or terminated. The Master Plan will provide alternatives if the provision of sand becomes unavailable or insufficient to provide for the needs of the entire ocean shoreline of Atlantic Beach.

3. Development of Master Beach Nourishment Plan. The County, using available occupancy tax revenues will over the next 18 to 36 months develop the Master Plan in consultation with State and Federal Agencies, the Towns, consulting engineers, the Shore Protection Office and the County Beach Commission, and submit the same to the Towns for consideration and approval. Concurrently the County will submit for a State and Federal permit to carry out and complete the plan.

The final approved plan will contain the following principles and encompass and cover the following subjects, goals and objectives:

- a. Beneficiaries. The Towns of Emerald Isle, Indian Beach, and Pine Knoll Shores understand they are the primary beneficiaries of the Master Beach Nourishment Plan and that the Town of Atlantic Beach will be a contingent beneficiary should sand from the Morehead City Harbor Federal Navigation Project and other past sources become unavailable or insufficient to provide for the needs of the entire ocean shoreline of Atlantic Beach.
- b. Easements and Rights-of-Way. Each Town shall be responsible for providing the staging areas, sites or necessary lands, easements, and rights-of-way required for the development, construction, and maintenance of those elements of the Master Beach

Nourishment Plan to be implemented within the Town.

No Town will be obligated to provide sites, staging areas or facilities for nourishment that will take place in another party's jurisdiction. However, the plan will provide that Towns may cooperate in providing staging areas and access to the beach for beach construction equipment regardless of where the beach construction activity is taking place when joint nourishment projects are undertaken.

- c. Public Beach Access and Parking. The Towns shall be responsible for securing, constructing, and maintaining any and all access/parking facilities stipulated as a condition of receiving State or Federal funding. All public beach accesses and parking facilities must be secured prior to issuing a notice to proceed for each construction event.
- d. Funding Contingency. Each party's participation in a nourishment project associated with the Master Beach Nourishment Plan will be contingent on such party being able, in its sole discretion, to fund its portion of the project. Each Town is required to anticipate the need for the local funding share and to either budget for the same over a period of years, provide for and conduct elections in approval of bonds or borrowing under LGC approvals,

or put in place tax districts or similar means of funding the local share. Failure to meet local funding needs by one or more Towns could result in the Beach Commission passing over a project of a Town due to lack of funding.

- e. Inventory of Present Beaches. The Master Plan will inventory, map, survey, describe, and highlight in detail data regarding the Bogue Banks Beaches' ocean shoreline, the heights and elevations of the public trust areas, the elevations of dunes, the location of first lines of vegetation, low areas, "hot spots", and the like.
- f. Sand Resources. The Master Plan will provide a survey of the location, quality, quantity, and usefulness of sand resources which may be selected.
- g. Time Frame and Budget Estimates. The Master Plan will estimate the cost of dredging and the placement of sand within each Town which will be constantly updated, and further provide a time frame and schedule for dredging and the placement of sand on the oceanfront beaches of the participating units of local government over the 30-year plan which may be reasonably relied upon by the Towns so that each Town will be able to fund its local share.

- h. Triggers. The Master Plan will provide a method for the immediate dredging and placement of sand when sand along the oceanfront beaches falls below specified minimum levels or parameters (herein "triggers"). The plan will also provide a mechanism for emergency dredging and placement of spoils when the need arises as a result of hurricanes, natural disasters, and similar acts of God so that hot spots or specified areas of need receive immediate and emergency nourishment to prevent loss of human life, property, structures, and the like.
- i. Methods of Nourishment. The Master Plan will specify the method of nourishment for the beaches within each Town, the probable sources of sand, estimated schedule, estimated cost, and similar details.
- j. Environmental Impact Statement. The Master Plan will include the completion of the Environmental Impact Statements required by State and Federal permitting agencies as a condition of issuing the long term beach nourishment permit covering the 30 year plan.
- k. Construction Administration. The County or a Town may serve in the role as lead administrator for any nourishment event associated with the Master Beach

Nourishment Plan, and accordingly prior to the construction of any nourishment event, the County and Town(s) involved with the project will determine which entity or entities will serve in this capacity (lead administrator). All State and/or Federal funding secured for each nourishment event will be distributed to the lead administrator.

1. Project Cost-Sharing. Cost sharing for the Master Plan as approved and adopted will be implemented generally along the following principles:

- (1) By the Town or Towns receiving sand within its or their city limit(s), and the County for unincorporated areas of Bogue Banks receiving sand, on a prorata basis, and the plan will set out the recommended basis for establishing the formula to be used.
- (2) If only one Town, or the County alone, is scheduled to receive sand in a project, that Town or the County will bear all costs of the same.
- (3) If two or more parties are scheduled to receive sand in a joint project, then it is anticipated that a separate interlocal agreement would be coordinated and executed among the parties involved detailing how

project costs (unit and fixed) would be allocated, sequencing of nourishment, payment responsibilities, etc.

- (4) The Master Plan will provide that project costs to be included in any specific nourishment project will include but not being limited to planning, permitting, engineering, environmental, legal, accounting, administration, construction, mobilization and demobilization. While project costs may include financing costs, each Town, and the County for projects in the un-incorporated areas of Bogue Banks, will bear its own financing costs and any costs relating thereto.

4. Indemnity. The Towns agree to indemnify and save the County harmless from any claim, suit, administrative proceeding, judgment or penalty, including attorneys' fees and other costs incurred in defending the same, of whatsoever nature or kind arising out of or in any way relating to the Master Beach Nourishment Plan, or this Interlocal Agreement including but not being limited to contract claims relating to the Master Beach Nourishment Plan, tort claims from third parties, damages arising from violation of laws protecting endangered species, and contamination claims. This indemnity provision is

- applicable to all phases of the Master Beach Nourishment Plan and regardless of which entity serves as lead administrator for individual construction events. Excluded from the indemnity will be claims relating to any of the above arising out of a nourishment project occurring in the un-incorporated areas of Bogue Banks over which the County has exclusive jurisdiction.
5. Withdrawal from Compact. The commitment of each Town to provide public beach access, parking, any other lands or rights-of-way, or any rules or regulations with respect to use of the same, as a party to this agreement, is expressly conditioned on Federal and State laws, regulations, or interpretations thereof, as of the date of approval of this agreement by the signatories herewith, and if there are amendments, changes or interpretations to Federal or State law, regulations, which are more stringent provisions than are currently in effect, after this Agreement is approved, any party that chooses not to meet the requirements shall have a right to withdraw from the same at any time.
6. "Least Cost Method of Disposing of Dredge Spoils." Each party is free to either defend or seek amendments to the policy or practice of the U.S. Army Corps of Engineers in using the "least cost" method of disposing of dredge spoils as such practice impacts the depositing of sand on the beaches of any of the parties to the Plan.

7. Role of the Carteret County Beach Commission. The Parties hereto recognize that the Carteret County Beach Commission is representative of each Town and County. The Commission is directly involved in the promotion of a stable beach shoreline, has oversight in the spending of tax revenues from the occupancy tax on beach nourishment, and has the resources to assist with the formulation and administration of the Plan.

The Parties agree that the Beach Commission shall be the final authority on the scheduling and timing of beach nourishment events for each Town under the following circumstances:

- A. In those circumstances where there are hot spots due to severe erosion, hurricanes, coastal storms, and the like, and there is an immediate need for the placement of spoils and action, the Commission shall have the authority to delay scheduled nourishment under the Plan's approved 30 year plan and schedule for one or more Towns, and to move up and approve beach nourishment for the hot spots or areas in immediate need. In such an event the Commission shall confer with all necessary parties, and have the authority to revise the Plan's schedule.
- B. In the event a Town lacks the necessary local funding for its nourishment event, the Commission

after consultation with the Town, may revise the Plan's schedule and move up one or more Towns in the approved schedule.

- C. When circumstances, the availability of funding, unanticipated spoils, timing or similar factors affecting the overall protection and soundness of Bogue Banks oceanfront beaches, arise, which in the opinion of the Beach Commission justify and require a change in the schedule and timing of the Plan's nourishment events and projects, then the Commission following consultation with the Towns and County, may revise the Plan's schedule, and approve alternate nourishment events.
8. Arbitration. In those circumstances where one or more Towns are dissatisfied with decisions made by an event's lead administrator or the Beach Commission, the Town may request arbitration by notifying the County in writing, specifying the reason and requesting a review or arbitration of the decision. Upon such a request, the Town and County shall each appoint one disinterested representative with an extensive education, background, and experience in ocean sciences and engineering, ocean studies, and related fields. The Town and County will subsequently agree upon a third arbitrator. The Town and County shall then present the factors and circumstances leading to the decision in dispute to the panel, and the

majority decision reached by the panel shall be binding on the parties. The County shall have the authority as the lead agency to establish the time frame, to set the meetings, establish the format and rules, and determine the qualifications of each representative.

9. Withdrawal, Termination, Modifications, Amendments, and Binding Effect. Until the Plan has been carried out and completed as modified and amended from time to time, this Agreement will remain in effect and be binding on the Parties regardless of changes in the composition of boards of the respective units of local government that are parties hereto. This Agreement is a continuing contract until the purposes herein have been completed. No party may withdraw except that a Town upon 12 months written notice to the County following adoption of its own plan providing for its own funding sources may withdraw. Upon such withdrawal the Town shall have the responsibility on its own to provide all sources of funding for beach nourishment by procuring the same from State and Federal agencies and providing the local match other than from County occupancy tax revenues and receipts.

Any amendment or modification to this Agreement shall require the written consent of all Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement.

COUNTY OF CARTERET

By: *D. W. Hain*
Chairman of the Board

Attest:

Jenette Duse
County Clerk

TOWN OF ATLANTIC BEACH

By: *A. B. ...*
Mayor

Attest:

Kelly J. Capras
Town Clerk

TOWN OF PINE KNOLL SHORES

By: *[Signature]*
Mayor

Attest:

Janet H. Thomas
Town Clerk

TOWN OF INDIAN BEACH

By: *Frederic V. Vickert*
Mayor

Attest:

Ronda Lambert
Town Clerk

TOWN OF EMERALD ISLE

By: *Arthur B. Schoeb*
Mayor

Attest:

[Signature]
Town Clerk