

RESOLUTION 19-01
RESOLUTION OF TOWN OF HOLDEN BEACH AUTHORIZING FILING OF
CONDEMNATION ACTIONS TO ACQUIRE PERPETUAL EASEMENTS FOR THE
TOWN'S EASTERN REACH SHORE PROTECTION PROJECT

WITNESSETH

WHEREAS, the Town of Holden Beach (THB) is embarking upon its Eastern Reach Shore Protection Project (ERSPP), in order to engage in acquiring, constructing, reconstructing, extending or otherwise building or improving beach erosion control or flood and hurricane protection works; and

WHEREAS, the project work under the ERSPP necessarily requires the Town to obtain easements applicable to those portions of the ocean beaches in front of ocean front properties more particularly described as that part of the beach which is seaward of the following locations, whichever is most landward: the Vegetation Line, the seaward toe of the Frontal Dune or Primary Dune or the Erosion Escarpment of the Frontal Dune or Primary Dune, as the same shall be determined by the North Carolina Division of Coastal Management (“the portion of the property being the “Easement Area”).

WHEREAS, the project work necessary to engage in acquiring, constructing, reconstructing, extending or otherwise building or improving beach erosion control or flood and hurricane protection works (the “Project”) includes evaluating, surveying, inspecting, constructing, preserving, patrolling, protecting, operating, maintaining, repairing, rehabilitating, nourishing, renourishing and replacing any portion of any adjacent ocean beach, submerged lands, public beach, dune or other similar landforms which are intended to provide Grantor(s) and other members of the public with valuable public trust benefits, including but not limited to, public beach recreation, erosion control, shoreline protection and storm damage protection and reduction, together with all appurtenances thereto, with such permitted activities, specifically including the right to deposit sand together with the right of public use and access over such deposited sand; accomplishing any alterations of contours within the Easement Area; constructing berms and dunes; planting vegetation on berms and dunes; erecting, maintaining and removing silt screens and sand fences; facilitating preservation of dunes and vegetation through limitation of public access to dune areas; trimming, cutting, felling and removing from said Easement Area all trees, underbrush, debris, obstructions, and any other vegetation, structures and obstacles within said Easement Area; (“Activities”).

WHEREAS, THB is specifically authorized to conduct the project under N.C.G.S. §§160A-4 and -240.1; and

WHEREAS, THB is specifically authorized under N.C.G.S. § 40A-3(b1) (10) to possess and exercise the power of eminent domain for the purpose of “Engaging in or participating with other governmental entities in acquiring, constructing, reconstructing, extending or otherwise building or improving beach erosion control or flood and hurricane protection works, including but not limited to, the acquisition of any property that may be required as a source for beach nourishment”

WHEREAS, exercising the power of eminent domain to acquire easements in order to accomplish the Project falls within the scope of N.C.G.S. § 40A-3 (b1) (10) above; and

WHEREAS, the THB Board of Commissioners (“Board”) has approved the Project, and has directed various Town Officials, Officers, Staff and employees to take all necessary actions to obtain the Permits, embark upon, and accomplish the Project; and

WHEREAS, the Board has authorized the obtaining of all Permits and executing agreements in order to accomplish and complete the Project; and

WHEREAS, the Town has made requests to those ocean front property owners known to the Town to execute a Deed of Easement authorizing Project work on the Easement Area at locations in which the Owners may or may not have an ownership interest and has sent said easement to them for execution; and

WHEREAS, not all persons who have been sent a Deed of Easement have returned the same fully executed in a timely manner; and

WHEREAS, with respect to those beach front property owners who have not delivered to the Town an executed Deed of Easement, the Town authorizes herein the serving of a **NOTICE OF INTENT TO ENTER UPON LANDS AND TO FILE EMINENT DOMAIN/CONDEMNATION ACTION [N.C.G.S. §§40A-11 & 40] TO ACQUIRE EASEMENT FOR BEACH RENOURISHMENT PROJECT (“Notice of Intent”)** in the form and manner required by law, and in the discretion of Town staff, another copy of the Deed of Easement document which the Town previously sent to said applicable owners with a request for the applicable owners to execute same, which would render the filing of an eminent domain action unnecessary as to the owners executing the easement; and

WHEREAS, with respect to owners who have not signed the Deed of Easement and who have been sent the Notice of Intent, then it would be in the public interest for the Town, upon more than 30 days having elapsed since mailing the Notice of Intent to the particular owners and no injunctive relief having been entered during that 30 day period restricting the filing of an eminent domain action against applicable owners, to file an eminent domain action against applicable owners to acquire the needed easement interest in order to fulfill the public purpose of the Project;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

- 1.** The Town of Holden Beach shall acquire by condemnation a perpetual easement and right of way in, on, over and across the Easement Area, for the purposes of the Project and use by the Town of Holden Beach, North Carolina, its representatives, agents, employees, officials, engineers, consultants, surveyors, contractors, subcontractors, permittees, invitees and assigns, to enter the Easement Area in order to carry out the Project and to perform the Activities thereon.
- 2.** The owners of ocean front properties with Easement Areas to be condemned who as of the date of this Resolution have not delivered to the Town a Deed of Easement are

to be sent in the manner required by Chapter 40A of the North Carolina General Statutes a Notice of Intent.

- 3.** The attorneys representing the Town of Holden Beach are directed to institute the necessary proceedings under Chapter 40A of the North Carolina General Statutes **on or after February 28, 2019** to acquire the easement interest in the Easement Area on the applicable properties.

Adopted this the 15th day of January 2019, by the unanimous vote of the Commissioners during a duly noticed meeting held on that date.