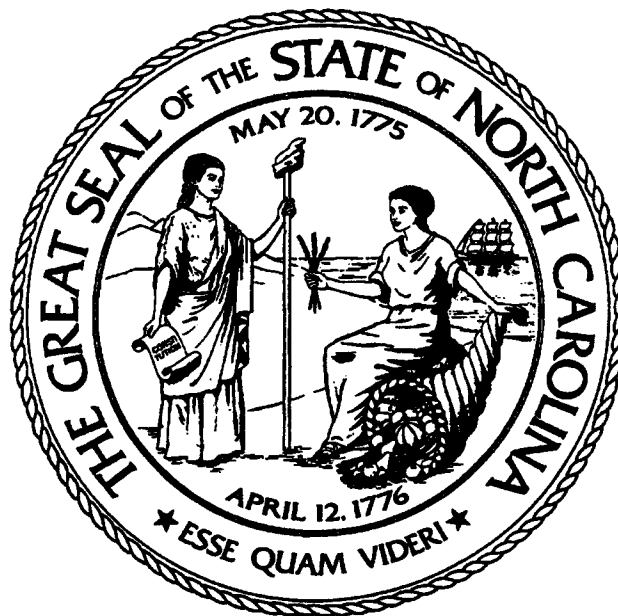


**JOINT LEGISLATIVE COMMISSION
ON MUNICIPAL INCORPORATIONS**



**REPORT TO THE
GENERAL ASSEMBLY
OF NORTH CAROLINA**

Proposed Town of Duck

March 21, 2001

REPORT TO THE GENERAL ASSEMBLY

Proposed Incorporation of the Town of Duck March 21, 2001

The Joint Legislative Commission on Municipal Incorporations was created in 1986 by the General Assembly to conduct an independent review and evaluation of proposed municipal incorporations. This evaluation, to be conducted in accordance with a statutory set of objective criteria, is designed to allow the General Assembly to see the feasibility of the proposed new municipality. The Commission consists of four members of the General Assembly, one city official, and one county official. A list of members appears as Appendix A.

The statutory criteria require a review of community support, (a petition is required) population, land development, nearness to other urban areas, and ability to provide municipal services at a reasonable tax rate. A copy of the statutes authorizing the Commission and setting up the review standards is attached as Appendix B.

The Commission received a petition proposing the incorporation of the Town of Duck in Dare County on November 13, 2000. A copy of the petition is attached as Appendix C.

The Commission, pursuant to G.S. 120-161, asked the Division of Community Assistance of the Department of Commerce to evaluate the petition. The Division conducted the evaluation and, based upon its report, the Commission on January 17, 2001 found that the requirements of G.S. 120-163 and G.S. 120-164 had been met (a copy of the report is attached as Appendix D).

The Commission further asked the Division of Community Assistance to evaluate the proposed Town's petition for incorporation under G.S. 120-166 (a copy of the report is attached as Appendix E) and G.S. 120-167 through G.S. 120-170 (a copy of the report is attached as Appendix F). The Division conducted the evaluations and determined that all statutory requirements had been met.

On March 9, 2001, the Commission held a public hearing on the incorporation of the Town of Duck in Duck, North Carolina. At least ten people spoke in favor of incorporation of the Town and five spoke in opposition.

Pursuant to G.S. 120-169.1, the Commission requested that the Fiscal Research Department provide data that shows the impact on other municipalities and counties of the diversion of already levied taxes or State-shared revenues to

support services in the proposed Town of Duck (a copy of the report is attached as Appendix G). The data provided by the Department (based upon figures from 1998-99) shows that sales tax revenues in Dare County are distributed on an ad valorem basis. If the proposed Town of Duck had been incorporated at that time, it would have received \$365,989 in sales tax revenues, resulting in a decrease in revenues for Dare County and the municipalities in the county. The incorporation of Duck would have a marginal impact on the distribution of Powell Bill funds in the State. No shift of utility excise taxes is expected since the incorporation of Duck would encompass areas that are not currently part of another municipality. Although in its petition, the proposed Town makes reference to obtaining a share of the local occupancy tax and land transfer revenue, this cannot be done without a change in the legislation that authorizes these taxes.

The Commission finds that the proposed Town of Duck meets the standards required by Article 20 of Chapter 160A of the General Statutes, and therefore the Commission recommends incorporation of the area as the Town of Duck.

APPENDIX A

JOINT LEGISLATIVE COMMISSION ON
MUNICIPAL INCORPORATIONS

2000-2001

Membership

President Pro Tem's Appointments

Senator Fletcher Hartsell
P. O. Box 368
Concord, NC 28026-0368

Senator Kay R. Hagan
305 Meadowbrook Terrace
Greensboro, NC 27408

Mr. Ronald R. Kimble, Asst. Manager
Charlotte-Mecklenburg Gov Center
600 East 4th Street
Charlotte, NC 28202

Staff

Gerry Cohen, Director
Bill Drafting Division

Gayle L. Moses, Staff Attorney
Bill Drafting Division

Speaker's Appointments

Representative Mary L. Jarrell
Legislature Building, Room 2219
Raleigh, NC 27603

Representative John W. Hurley
P. O. Box 714
Fayetteville, NC 28303

Mr. Jerry Ayscue
Vance County Manager
Vance County Courthouse
Young Street
Henderson, NC 27536

Legislative Assistant

Allison Towe
1113 Legislative Building

APPENDIX B

Article 20.

Joint Legislative Commission on Municipal Incorporations.

Part 1. Organization.

§ 120-158. Creation of Commission.

(a) There is created the Joint Legislative Commission on Municipal Incorporations, referred to in this Article as "Commission".

(b) The Commission shall consist of six members, appointed as follows:

- (1) Two Senators appointed by the President Pro Tempore of the Senate;
- (2) Two House members appointed by the Speaker;
- (3) One city manager or elected city official, appointed by the President Pro Tempore of the Senate from a list of three eligible persons nominated by the North Carolina League of Municipalities; and
- (4) One county commissioner or county manager, appointed by the Speaker from a list of three eligible persons nominated by the North Carolina Association of County Commissioners.

§ 120-159. Terms.

Members shall be appointed for terms ending June 30, 1987, and subsequently for two-year terms beginning July 1, 1987, and biennially thereafter. A member eligible when appointed may continue for the remainder of the term regardless of the member's continued eligibility for the category. The Commission shall elect a chairman from its membership for a one-year term.

§ 120-160. Compensation.

Members of the Commission who are members of the General Assembly shall receive subsistence and travel allowances as provided by G.S. 120-3.1. Members who are State officers or employees shall receive subsistence and travel allowances as provided by G.S. 138-6. All other members shall receive per diem, subsistence, and travel allowances as provided by G.S. 138-5.

§ 120-161. Facilities and staff.

The Commission may meet in the Legislative Building or the Legislative Office Building. Staff for the Commission shall be provided by the Legislative Services Commission. The Commission may contract with the Institute of Government, the Local Government Commission, the Department of Environment and Natural Resources, or other agencies as may be necessary in completing any required studies, within the funds appropriated to the Commission.

Part 2. Procedure for Incorporation Review.

§ 120-163. Petition.

(a) The process of seeking the recommendation of the Commission is commenced by filing with the Commission a petition signed by fifteen percent (15%) of the registered voters of the area proposed to be incorporated, but by not less than 25 registered voters of that area, asking for incorporation.

(b) The petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt.

(c) The petition must include a proposed name for the city, a map of the city, a list of proposed services to be provided by the proposed municipality, the names of three persons to serve as interim governing board, a proposed charter, a statement of the estimated population, assessed valuation, degree of development, population density, and recommendations as to the form of government and manner of election. The petition must contain a statement that the proposed municipality will have a budget ordinance with an ad valorem tax levy of at least five cents (5¢) on the one hundred dollar (\$100.00) valuation upon all taxable property within its corporate limits. The petition must contain a statement that the proposed municipality will offer four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (i) police protection; (ii) fire protection; (iii) solid waste collection or disposal; (iv) water distribution; (v) street maintenance; (vi) street construction or right-of-way acquisition; (vii) street lighting; and (viii) zoning. In order to qualify for providing police protection, the proposed municipality must propose either to provide police service or to have services provided by contract with a county or another municipality that proposes that the other government be compensated for providing supplemental protection. The proposed municipality may not contain any noncontiguous areas.

(d) The petitioners must present to the Commission the verified petition from the county board of elections.

(e) A petition must be submitted to the Commission at least 60 days prior to convening of the next regular session of the General Assembly in order for the Commission to make a recommendation to that session.

§ 120-164. Notification.

(a) Not later than five days before submitting the petition to the Commission, the petitioners shall notify:

- (1) The board or boards of county commissioners of the county or counties where the proposed municipality is located;
- (2) All cities within that county or counties; and
- (3) All cities in any other county that are within five miles of the proposed municipality of the intent to present the petition to the Commission.

(b) The petitioners shall also publish, one per week for two consecutive weeks, with the second publication no later than seven days before submitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission.

§ 120-165. Initial inquiry.

(a) The Commission shall, upon receipt of the petition, determine if the requirements of G.S. 120-163 and G.S. 120-164 have been met. If it determines that those requirements have not been met, it shall return the petition to the petitioners. The Commission shall also publish in the North Carolina Register notice that it has received the petition.

(b) If it determines that those requirements have been met, it shall conduct further inquiry as provided by this Part.

§ 120-166. Additional criteria; nearness to another municipality.

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999, or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget, Planning, and Management if the municipality was incorporated since the return of that census.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

- (1) The proposed municipality is entirely on an island that the nearby city is not on;
- (2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;
- (3) The municipalities within the distances described in subsection (a) of this section by resolution express their approval of the incorporation; or
- (4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved.

§ 120-167. Additional criteria; population.

The Commission may not make a positive recommendation unless the proposed municipality has a permanent population of at least 100 and a population density (either permanent or seasonal) of at least 250 persons per square mile.

§ 120-168. Additional criteria; development.

The Commission may not make a positive recommendation unless forty percent (40%) of the area is developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning

ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants.

§ 120-169. Additional criteria; area unincorporated.

The Commission may not make a positive recommendation if any of the proposed municipality is included within the boundary of another incorporated municipality, as defined by G.S. 153A-1(1).

§ 120-169.1. Additional criteria; level of development, services; financial impact on other local governments.

(a) Repealed by Session Laws 1999-458, s. 4.

(b) Services. – The Commission may not make a positive recommendation unless the area to be incorporated submits a plan for providing a reasonable level of municipal services. This plan shall be based on the proposed services stated in the petition under G.S. 120-163(c).

(c) The Commission in its report shall indicate the impact on other municipalities and counties of diversion of already levied local taxes or State-shared revenues from existing local governments to support services in the proposed municipality.

§ 120-170. Findings as to services.

The Commission may not make a positive recommendation unless it finds that the proposed municipality can provide at a reasonable tax rate the services requested by the petition, and finds that the proposed municipality can provide at a reasonable tax rate the types of services usually provided by similar municipalities. In making findings under this section, the Commission shall take into account municipal services already being provided.

§ 120-171. Procedures if findings made.

(a) If the Commission finds that it may not make a positive recommendation because of the provisions of G.S. 120-166 through G.S. 120-170, it shall make a negative recommendation to the General Assembly. The report to the General Assembly shall list the grounds on which a negative recommendation is made, along with specific findings. If a negative recommendation is made, the Commission shall notify the petitioners of the need for a legally sufficient description of the proposed municipality if the proposal is to be considered by the General Assembly. At the request of a majority of the members of the interim board named in the petition, the Commission may conduct a public hearing and forward any comments or findings made as a result of that hearing along with the negative recommendation.

(b) If the Commission determines that it will not be barred from making a positive recommendation by G.S. 120-166 through G.S. 120-170, it shall require that petitioners have a legally sufficient description of the proposed municipality prepared at their expense as a condition of a positive recommendation.

(c) If the Commission determines that it is not barred from making a positive recommendation, it shall make a positive recommendation to the General Assembly for incorporation.

(d) The report of the Commission on a petition shall be in a form determined by the Commission to be useful to the General Assembly.

§ 120-172. Referendum.

Based on information received at the public hearing, the Commission may recommend that any incorporation act passed by the General Assembly shall be submitted to a referendum, except if the petition contained the signatures of fifty percent (50%) of registered voters the Commission shall not recommend a referendum.

§ 120-173. Modification of petition.

With the agreement of the majority of the persons designated by the petition as an interim governing board, the Commission may submit to the General Assembly recommendations based on deletion of areas from the petition, as long as there are no noncontiguous areas.

§ 120-174. Deadline for recommendations.

If the petition is timely received under G.S. 120-163(e), the Commission shall make its recommendation to the General Assembly no later than 60 days after convening of the next regular session after submission of the petition.

APPENDIX C

PETITION FOR THE INCORPORATION

OF

DUCK AS A MUNICIPALITY

NORTH CAROLINA)
)
)
)
)
DARE COUNTY)

PETITION FOR THE INCORPORATION
OF
DUCK AS A MUNICIPALITY

It is proposed that Duck be incorporated as a municipality on the following terms:

1. The proposed name shall be the Town of Duck.
2. A map of the proposed Town is attached as Exhibit A.
3. The list of proposed services to be provided by the Town is as follows:
 - a. Police Protection
 - b. Fire Protection
 - c. Garbage and refuse collection or disposal
 - d. Administrative services
 - e. Town wide planning and zoning
4. The names of the persons to serve as an interim governing body are:
 - a. Allan W. Beres
 - b. Nancy R. Caviness
 - c. Paul F. Keller
 - d. Manfred E. Schwarz
 - e. Judith L. Wessel
5. The proposed Charter for the Town is attached hereto as Exhibit B.
6. The estimated population of the Town is five hundred sixty (560) residents.
7. The estimated assessed property valuation for the Town is Five Hundred Eighty-Five Million Dollars (\$585,000,000).

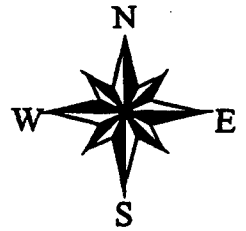
8. Approximately eighty percent (80%) of the area within the Town is developed for residential, commercial, institutional or governmental uses or dedicated as public right-of-way:

<u>Land Use</u>	<u>Acres</u>
Residential	765.29
Commercial	74.30
Institutional/Government	163.46
Public Rights of Way	193.18
Undeveloped	289.77
Total	1,486.00
Total Acreage Developed	1,193.23
Percent Developed	80%

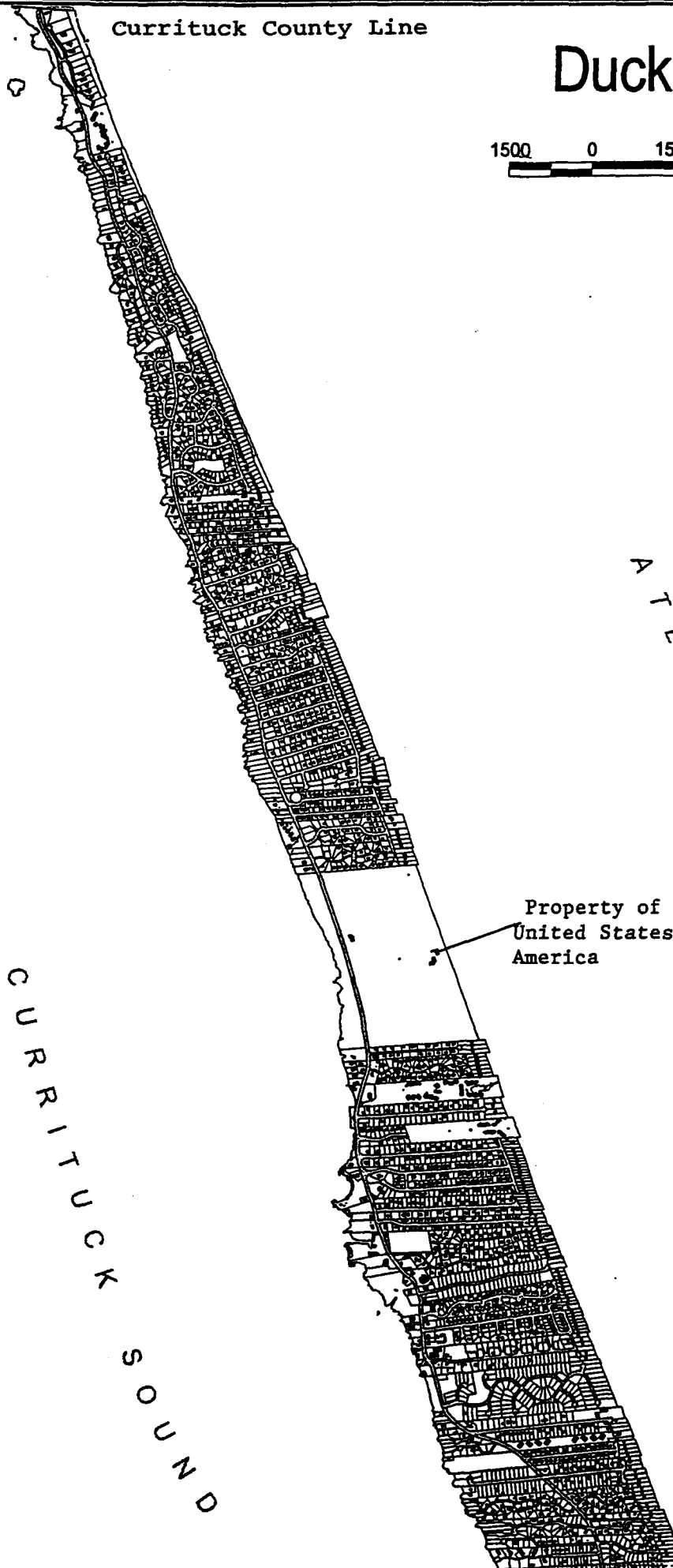
9. The estimated seasonal population density for the Town is four hundred sixty (460) persons per square mile.
10. The recommended governing body is the mayor-council form consisting of a five (5) member Town Council. All candidates for the Town Council shall be elected by all qualified voters on a nonpartisan basis. The Mayor shall be selected by and from members of the Town Council at the organizational meeting. Members of the Town Council are to be elected to two (2) year terms.
11. The proposed budget ordinance provides for an ad valorem tax levy of at least five cents (\$0.05) on the one hundred dollars (\$100.00) valuation upon all taxable property within the Town's corporate limits.
12. The proposed Town does not contain any non-contiguous areas.
13. Attached in support of this petition are the following documents:
- (a) Rationale and objectives for incorporation as Exhibit C;
 - (b) Statement of statistics as Exhibit D;
 - (c) Pro-forma budget for fiscal years 2001-2002 and 2002-2003 as Exhibit E;
 - (d) Statement of services as Exhibit F;
 - (e) Notifications to municipal and county officials as Exhibit G;
 - (f) Publishers' affidavits evidencing publication of notice as Exhibit H;
 - (g) Verification of signatures to Petition for Municipal Incorporation as Exhibit I; and
 - (h) Petition for Municipal Incorporation signed by registered voters as Exhibit J.

Currituck County Line

Duck, NC



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Southern Shores Town Line

HORNTHAL, RILEY, ELLIS & MALAND, L.L.P.
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ELIZABETH CITY, NORTH CAROLINA 27909

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ROBERT B. HOBBS, JR.
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February 2, 2001

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OFFICES ALSO IN NAGS HEAD, NC

Mr. Gerry F. Cohen, Director
Bill Drafting Division
Suite 401, Legislative Office Building
300 N. Salisbury Street
Raleigh, NC 27603-5925

Re: Petition to Incorporate Duck as a Municipality
Amended Exhibit B - Proposed Charter

Dear Mr. Cohen:

In recent conversation with John Corellus we have determined that it is advisable to amend Exhibit B to the Petition to Incorporate Duck as a Municipality. The amended Exhibit B reduces the proposed town's corporate limits from 5,280 feet into the Atlantic Ocean and Currituck Sound to 1,000 feet into those bodies of water. The northern corporate limit line is also changed from "Currituck County - Dare County boundary line" to "Dare County boundary line" as John Correllus informs that the Currituck and Dare boundary lines do match. Enclosed is the amended Exhibit B.

Please contact me if I may provide you with further information supporting Duck's Petition.

Yours sincerely,



Donald I. McRee, Jr.

Enclosure

cc: Paul F. Keller (w/enclosure)
F:\USERS\IKE\Duck Proposal\cohen ltr 020201

AMENDED EXHIBIT B
CHARTER OF THE TOWN OF DUCK

CHARTER OF
THE TOWN OF DUCK

Chapter I

Incorporation and Corporate Powers

- 1.1 Incorporation and corporate powers. The inhabitants of the Town are a body corporate and politic under the name "Town of Duck." The Town of Duck has all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

Chapter II

Corporate Boundaries

- 2.1 Town Boundaries. Until modified in accordance with law, the boundaries of the Town of Duck are as follows:

Beginning at the point of intersection of the northeast corner of the corporate limits of the Town of Southern Shores in Dare County, North Carolina with the mean high water mark of the Atlantic Ocean; thence along a line in a general easterly direction for a distance of ~~five thousand two hundred eighty (5,280)~~ one thousand (1,000) feet to a point along an eastern projection of the northern Town of Southern Shores limit line to a point in the Atlantic Ocean; thence, in a northwesterly direction along a line ~~five thousand two hundred eighty (5,280)~~ one thousand (1,000) feet parallel to the mean high water mark of the Atlantic Ocean until such line forms a point of intersection with another line, such line being the projection of the ~~Currituck County-~~ Dare County boundary line ~~five thousand two hundred eighty (5,280)~~ one thousand (1,000) feet easterly from the mean high water mark of the Atlantic Ocean; thence, in a westerly direction along the projected line to the intersection of the ~~Currituck County-~~ Dare County boundary line with the mean high water mark of the Atlantic Ocean; thence, in a westerly direction along the ~~Currituck County-~~ Dare County boundary line to the point of

intersection of the ~~Currituck County~~-Dare County boundary line with the mean high water mark of the Currituck Sound; thence, along a line in a general westerly direction for a distance of ~~five thousand two hundred eighty (5,280)~~ one thousand (1,000) feet to a point along a western projection of the ~~Currituck County~~-Dare County boundary line to a point in the Currituck Sound; thence, in a southeasterly direction along a line ~~five thousand two hundred eighty (5,280)~~ one thousand (1,000) feet parallel to the mean high water mark of the Currituck Sound until such line forms a point of intersection with another line, such line being the projection of the northern line of the Town of Southern Shores corporate limits ~~five thousand two hundred eighty (5,280)~~ one thousand (1,000) feet westerly from the mean high water mark of the Currituck Sound; thence, in an easterly direction along the projected line to the intersection of the northwest corner of the Town of Southern Shores corporate limits with the mean high water mark of the Currituck Sound; thence, in an easterly direction along the northern line of the Town of Southern Shores corporate limits to the place of beginning.

Chapter III

Governing Body

- 3.1 Structure of Governing Body and Number of Members. The governing body of the Town of Duck shall be the Town Council which shall have five (5) members.
- 3.2 Transitional Government. Until the Members of the Town Council are elected in 2001, in accordance with the Town Charter and the law of North Carolina, the following persons shall serve as the interim governing body until the results of the 2001 election are certified and the newly elected successors take office: Allan W. Beres, Nancy R. Caviness, Paul F. Keller, Manfred E. Schwarz and Judith L. Wessel. The interim mayor and interim mayor pro tempore shall be elected from and by Members of the interim governing board. Vacancies in the interim governing board shall be filled by appointment made by the remaining Members.

- 3.3 Manner of Electing Council and Terms of Office of Council Members. The qualified voters of the Town of Duck shall elect from the town at large five (5) Members of the Town Council. To be eligible for election to the Town Council, an individual must reside in the Town of Duck. Members of the Town Council shall be elected to two (2) year terms. Vacancies in the Town Council shall be filled by appointment made by the remaining Members.
- 3.4 Election of Mayor, Term of Office and Duties. The Mayor shall be elected from among the Members of the Town Council at the Town Council's organizational meeting for a term of two (2) years. The Mayor shall attend and preside over meetings of the Town Council, shall advise the Town Council from time to time as to matters involving the Town of Duck, and shall have the right to vote as a Town Council Member on all matters before the Town Council, but shall have no right to break a tie vote in which the Mayor has participated.
- 3.5 Election of Mayor Pro Tempore: Term of Office and Duties. The Mayor Pro Tempore shall be elected from among the Members of the Town Council at the Town Council's organizational meeting for a term of two (2) years. The Mayor Pro Tempore shall act in the absence or disability of the Mayor. If the Mayor and Mayor Pro Tempore are both absent from a meeting of the Town Council, the Members of Town Council present may elect from its Members a temporary chairman to preside in such absence. The Mayor Pro Tempore shall have the right to vote on all matters and shall be considered a Member of Town Council for all purposes.
- 3.6 Compensation of Mayor and Town Council. The Mayor and Members of Town Council shall be reimbursed for ordinary and necessary expenses. The Mayor and Members of Town

Council may receive salary and honoraria only upon majority vote of the qualified voters of the Town of Duck who vote in a special referendum with respect thereto.

Chapter IV

Elections

- 4.1 Conduct of Town Elections. Members of the Town Council shall be nominated and elected on a nonpartisan basis using the plurality method as provided in Section 163-292 of the General Statutes of North Carolina.
- 4.2 Date of Election. Elections shall be conducted in accordance with Chapter 163 of the General Statutes of North Carolina with the first election of Members of the Town Council on November 6, 2001.
- 4.3 Special Elections and Referenda. Special elections and referenda may be held only as provided by the law of the State of North Carolina, local acts of the North Carolina General Assembly or as provided for in this Charter.

Article V

Organization and Administration

- 5.1 Form of Government. The Town of Duck will operate under the Council-Manager plan as provided in Chapter 160A, Article 7, Part 2 of the General Statutes of North Carolina and any other Charter provision not in conflict therewith.
- 5.2 Town Manager; Appointment; Power and Duties. The Town Council may appoint a Town Manager who shall be responsible for all operating departments of the Town of Duck government except as the Town Council otherwise directs. The Town Manager shall have all the powers and duties conferred by the law of North Carolina, except as expressly limited

the provisions of this Charter, and additional powers and duties conferred by the Town Council.

5.3 Town Manager's Authority Over Personnel; Role of Elected Officials. As chief administrative officer, the Town Manager shall have the power to appoint, suspend, and remove all officers, department heads, and employees in the administrative service of the Town of Duck, with the exception of the Town Attorney, Town Clerk, and any other official whose appointment or removal is vested in the Town Council by this Charter or by law of the State of North Carolina. Neither the Town Council nor any of its members shall take part in the appointment or removal of officers or employees in the administrative service of the Town of Duck, except as provided by this Charter. Except for the purpose of inquiry, or for consultation with the Town Attorney, the Town Council and its Members shall deal with the administrative service employees solely through the Town Manager or Acting Town Manager, and neither the Town Council nor any of its Members shall give any specific orders to any subordinates of the Town Manager or Acting Town Manager, either publicly or privately.

5.4 Town Attorney. The Town Council shall appoint a Town Attorney licensed to practice law in the State of North Carolina. It shall be the duty of the Town Attorney to represent the Town of Duck, advise Town of Duck officials and perform other duties required by law or as the Town Council may direct.

5.5 Town Clerk. The Town Council shall appoint a Town Clerk to keep a journal of the proceedings of the Town Council, to maintain official records and documents, to give notice of meetings and to perform such other duties as required by law or as the Town Council may

direct.

- 5.6 Other Administrative Officers and Employees. The Town Council may authorize other offices and positions, appoint persons to fill such offices and positions, or authorize such offices and positions to be filled by appointment by the Town Manager, and may organize the Town of Duck government as deemed appropriate, subject to the requirement of the law of the State of North Carolina.
- 5.7 Consolidation of Functions. Where the positions are not incompatible, the Town Council may combine in one person the powers and duties of two or more officers created or authorized by this charter.

Chapter VI

Taxes and Budget Ordinance

- 6.1 Powers of the Town Council. The Town Council may levy those taxes and fees authorized by law. An affirmative vote equal to a majority of all the Members of Town Council shall be required to change the ad valorem tax rate from that rate established during the prior fiscal year.
- 6.2 Commencement of Tax Collection. From and after July 1, 2001, the citizens and property in the Town of Duck shall be subject to municipal taxes levied for the fiscal year beginning July 1, 2001 and for that purpose, the Town of Duck shall obtain from Dare County a record of property in the area herein incorporated which was listed for taxes as of January 1, 2001.
- 6.3 Budget. The Town of Duck may adopt a budget ordinance for fiscal year 2001-2002 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the Act insofar as is practical. The fiscal year

2001-2002 ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule set forth in Section 105-360 of the General Statutes of North Carolina as if the taxes had been due and payable on September 1, 2001.

Article VII

Ordinances

- 7.1 Ordinances. Except as otherwise provided in this Charter, the Town of Duck is authorized to adopt such ordinances as the Town Council deems necessary for the governance of the Town of Duck in accordance with the provisions of Chapter 160A, Article 8 of the General Statutes of North Carolina.

Article VIII

Miscellaneous

- 8.1 Conflicts of Interest. No person or immediate family member of such person who is employed by or is an official of the Town of Duck shall do business with the Town of Duck unless the Town Council specifically approves such activity. All appointed officials of the Town of Duck must inform the Town Council of any conflict of interest with the failure to so inform constituting grounds for immediate dismissal for cause. No official of the Town of Duck may accept any gratuity from any business, person or other official when such gratuity is related to his official duties.
- 8.2 Enlargement of Town Council. The qualified voters of the Town of Duck may seek to enlarge the number of Members to the Town Council by submitting a petition to that effect signed by twenty percent (20%) of the qualified voters of the Town of Duck. Upon the

passage of a resolution or the receipt of a valid petition, the Town Council shall immediately implement proceedings as provided by Chapter 160A, Article 5, Part 4 of the General Statutes of North Carolina to determine by referendum whether the number of Members to the Town Council should be increased. If the majority of qualified voters voting in such referendum vote in the affirmative, a special election shall be held at the earliest possible date to elect the number of additional Members to the Town Council required to enlarge the Town Council membership to that set forth in the referendum.

8.3 Amendments to Charter. The Town Council may propose and enact amendments to the Charter in accordance with Chapter 160A, Article 5, Part 4 of the General Statutes of North Carolina. No amendment to the Charter shall become effective until public notice shall be given and public hearing held to receive comments on the Charter amendment. Notwithstanding the provisions of Section 160A-103 of the General Statutes of North Carolina, upon receipt of a referendum petition bearing the signatures and residence addresses of a number of qualified voters of the Town of Duck equal to twenty percent (20%) of the whole number of voters registered to vote in Town of Duck elections, the Town Council shall submit an ordinance adopted under Section 160A-102 of the General Statutes of North Carolina to a vote of the people.

8.4 Provision of Services and Administration of Functions. The Town Council may enter into agreements with other governmental bodies and private enterprises for the provision of services and the administration of corporate functions in order to provide such services and administer such functions in the most efficient and cost effective manner.

Article IX

Special Provisions

- 9.1 Ad valorem Taxes. The Town Council shall not increase the ad valorem tax rate more than ten cents (\$.10) per one hundred dollars (\$100.00) of valuation above the ad valorem tax rate established on the date of incorporation of the Town of Duck without the vote or consent of a majority of the qualified voters of the Town of Duck.
- 9.2 Fire Protection. The Town of Duck shall contract with the Duck Volunteer Fire Department, Inc. to provide fire protection for the Town of Duck. The contract terms and amount paid by the Town of Duck to Duck Volunteer Fire Department, Inc. shall be mutually agreed upon and annually renewed by the Board of Directors for the Duck Volunteer Fire Department, Inc. and the Town Council.

RATIONALE AND OBJECTIVES

For decades Duck was a small fishing community located between Caffey's Inlet and Martin's Point. Its name originated with the establishment of the Duck Post Office on June 29, 1909. This post office was eventually abandoned and the services provided by the Kitty Hawk Post Office.

As the Outer Banks developed south of the Wright Memorial Bridge, Duck remained a quiet village. However, in the past two decades, the community was "discovered" and its development moved forward quite rapidly.

Today Duck is a family-oriented residential community that is approximately 70 per cent developed. The village area along Duck Road in the center of the community is home to many small business establishments, almost all of which are owned by local Dare County residents. These unique stores and restaurants have become a favorite destination for tourists as well as for other Dare County residents.

In the past few years the need for an incorporated governing body has become apparent. This step will assure that the town maintains its character, which is so appealing to visitors, while at the same time assuring that full-time and part-time residents can fully enjoy the amenities of the Outer Banks, in a small community which provides gracious living conditions.

The movement toward incorporation grew out of a survey conducted by the Duck Civic Association (DCA) early in 2000. Survey material and a ballot were sent to every property owner within the boundaries of the Duck Beautification District - approximately 2400 in all. After reviewing the material, the recipients were asked to vote in one of six categories: (1) strongly favor, (2) favor, (3) strongly opposed, (4) oppose, (5) neutral, and (6) undecided. A total of 1051 returns were received. The breakdown of the voting showed that 72% were in favor or strongly in favor, 22% were opposed or strongly opposed, and 6% were neutral or undecided.

Some factors entering into the decision to seek General Assembly approval for incorporation of the Town of Duck include the following:

- It is the community's desire to preserve its identity and have some control over its destiny.
- An official identity and local control are likely to assist in maintaining Duck's property values.
- Because Duck is a unique community, with a nationwide reputation as a great place to visit, joining with any of the surrounding municipalities is impractical.
- The community's population includes many professionally experienced individuals with significant leadership talents. This reservoir of capabilities will be most beneficial in the original establishment of the Town of Duck and its subsequent growth activities.
- The aforementioned survey indicates a large majority of residents and property owners solidly in favor of making this community a legally incorporated town.

**TOWN OF DUCK
STATEMENT OF STATISTICS
October 12, 2000**

Total Acreage: 1,486

Population:

Permanent: 560

Seasonal Average: 4,752

Seasonal Peak: 10,325

Population Density: 460 seasonal residents
per square mile

Total Number of Dwellings (approximately) 1,800

Assessed Valuation: \$585,000,000

Information based on data provided by the Dare County Planning Department
and GIS data provided by Dare County

Pro-Forma Budget

Following is a pro-forma budget for the proposed Town of Duck for the fiscal years 2001/2002 and 2002/2003.

Please note that the proposed revenues are based on an assumed property tax rate of \$0.19 per \$100 assessed valuation. Dare County currently levies a property tax of \$0.49 for all Dare property owners and in addition levies a \$0.19 property tax on all Duck property owners for fire protection, sanitation, ocean rescue, and sidewalk/trail maintenance. We will request legislation to consider this \$0.19 tax levy as the town levy for purposes of obtaining our share of the occupancy tax, local sales tax and land transfer tax in fiscal year 2001-02 and beyond.

Duck Budget

Tax Rate: \$0.19/\$100

Fiscal Year	<u>2001-02</u>	<u>2002-03</u>
REVENUES		
Property Tax	1,094,965	1,116,864
Motor Vehicle Tax	10,278	10,484
Local Option Sales Tax	372,732	380,186
Occupancy Tax	368,512	375,882
Utility Franchise Tax	79,000	80,580
Land Transfer Tax	151,185	154,209
Other Revenues (1)	<u>160,000</u>	<u>163,200</u>
TOTAL REVENUE	2,236,672	2,281,405

(1) Includes building permits, Powell Bill revenue, ABC revenue, beer and wine tax, sales tax refund, plan review fees, and any required municipal or anticipated revenue.

EXPENSES

Administration	450,000	400,000
Police	- 0 -	540,000
Sanitation	703,000	717,060
Fire	235,000	239,700
Ocean Rescue	118,000	120,360
Zoning/Inspections	150,000	153,000
Streets	50,000	50,000
Grounds & Beautification	59,000	60,180
Contingency Reserves	471,672	1,105
TOTAL EXPENSES	2,236,672	2,281,405

Detail of Expenses for Administration and Zoning/Inspections

<u>Fiscal Year</u>	<u>2001-02</u>	<u>2002-03</u>
<u>Administration Expenses</u>		
Salaries (Managerial, Clerk, Financial)	180,000	180,000
Benefits (1/3 Salary)	60,000	60,000
Office Space	30,000	30,000
Printing, Travel, Legal, Audit	40,000	30,000
Office Equipment	75,000	15,000
Telephone & Postage	8,000	8,000
Office Supplies	15,000	5,000
Insurance & Bonds	12,000	12,000
Misc./Contingency	30,000	60,000
Total Administration	450,000	400,000
<u>Zoning/Inspections</u>		
Salaries (<u>2@\$42,000</u>)	84,000	84,000
Benefits (1/3 of salary)	28,000	28,000
Training, printing, supplies	12,000	12,000
Travel	4,000	4,000
Telephone	2,000	2,000
Consultant Services	10,000	10,000
Office Equipment	5,000	5,000
Misc./Contingency	5,000	8,000
Total Zoning/Inspections	150,000	153,000

TOWN OF DUCK STATEMENT OF SERVICES

As provided by Section 120-163 of the General Statutes of North Carolina, the proposed Town of Duck must offer at least four of the following services no later than the first day of the third fiscal year following the effective date of the incorporation: (1) police protection; (2) fire protection; (3) solid waste collection or disposal; (4) water distribution; (5) street maintenance; (6) street construction or right-of-way acquisition; (7) street lighting; and (8) zoning. The following section describes the proposed Town of Duck's plan for the provision of services. In addition to the above services, the Town of Duck will also provide two special services that are related to the community's status as an oceanfront vacation destination: (1) ocean rescue and (2) maintenance of a multi-purpose trail.

Police protection: Initially, the Town of Duck will ask Dare County to offer the level of service currently provided by the Dare County Sheriff's Department. Once the town is established, and as the receipt of revenues permit, the level of police service will be increased. This will be done by (1) contracting with Dare County, (2) contracting with a nearby town, or (3) developing a town police force. Initially, the increased police activity will be directed toward increasing traffic safety in the town and along the bike path, as well as taking steps to relieve traffic bottlenecks along North Carolina Highway 12, especially during the tourist season.

Fire protection: As stated in the Town Charter, "The Town of Duck shall contract with the Duck Volunteer Fire Department, Inc. to provide fire protection for the Town of Duck. The terms and contract amount shall be annually renewable and mutually agreed upon between the Board of Directors of the Duck Volunteer Fire Department, Inc. and the Town Council." The Duck Volunteer Fire Department currently enjoys an excellent reputation in the community, both for its level of service and by acting as a central part of community life through its fund-raising activities and volunteer opportunities. Currently this service is provided through a four-cent ad valorem tax.

Ambulance and other emergency services are provided by Dare County as part of the 49-cent tax paid by all county residents. This service will continue unchanged after incorporation.

Solid waste collection and disposal: At least initially, the Town of Duck will contract with Dare County to offer the level of solid waste collection service currently provided by the county. At present, the county provides twice-weekly automated curbside pick up of roll-out containers. Recycling is now offered at the Duck Recycling Center. Solid waste collection and disposal is currently provided through a 12-cent ad valorem tax.

Water distribution: Water distribution will continue to be offered through participation in the Dare County water system.

Street maintenance: Almost all of the streets in the proposed Town of Duck are privately owned by individual neighborhood associations, which are responsible for their maintenance. The main road through the community is North Carolina Highway 12, which is maintained by the State of North Carolina. A limited number of streets in individual residential developments are state maintained. If state maintained streets are turned over to the Town of Duck following incorporation, the town will take appropriate steps to finance and provide for their continued maintenance.

Street construction or right-of-way acquisition: No new streets are anticipated for the town. There are a few small parcels of land still to be developed, but any new streets would be the responsibility of the developer and the neighborhood association.

Street lighting: The Duck community does not prefer lighting on any of its side streets, nor does it desire special lighting on North Carolina Highway 12. Being primarily a bedroom community, the populace enjoys seeing the stars at night and walking the beach without the intrusion of artificial light.

Zoning: As provided in Section 160A-360(f) of the General Statutes of North Carolina, the Dare County planning and zoning regulations will remain in effect for a period of 60 days or until the Town of Duck adopts its own planning and zoning regulations, whichever is sooner. It is the full intent of the town to install and implement its own planning and zoning regulations within 60 days of incorporation.

Ocean Rescue: This service for the Duck community is currently provided by Dare County through a private contractor. It is expected that this arrangement will be continued until at least December 31, 2001. The service is currently provided through a two-cent ad valorem tax.

Maintenance of multi-purpose trail: Trail maintenance is currently managed by the Trail Committee of the Duck Civic Association, through an agreement with Dare County. The Trail Committee employs the services of a private contractor to carry out this work. The effort is financed by a one-cent ad valorem tax, which is collected by the county and passed along to the Trail Committee. This, or a similar arrangement, will continue after incorporation.

Administrative services: During the earliest phases of incorporation, many of the administrative services will be provided through volunteer staffing. The first hires are expected to be a town manager, town clerk, planner/zoning person and a building inspector. The town office is expected to be located in rented space in the "village" or business area of the town.

NOTIFICATION TO CITY AND COUNTY OFFICIALS

DUCK CIVIC ASSOCIATION

**P. O. Box 8002
Duck, NC 27949**

October 11, 2000

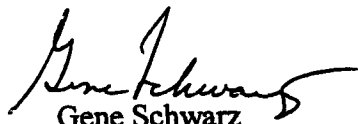
The Honorable Stan White, Chair
Dare County Commissioners
P. O. Box 1000
Manteo, NC 27954

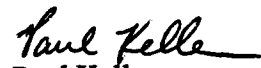
Dear Chairman White:

This letter is written to inform Dare County that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck by the 2001 North Carolina General Assembly.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working with Dare County Commissioners and officials for our mutual benefit and for the maintenance and enhancement of Dare County attractions.

Sincerely,


Gene Schwarz
Chairman
Incorporation Committee


Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION
P. O. Box 8002
Duck, NC 27949

October 11, 2000

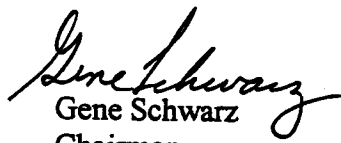
The Honorable Paul Sutherland
Mayor, Southern Shores
6 Skyline Drive
Southern Shores, NC 27949


Dear Mayor Sutherland:

This letter is written to inform the Town of Southern Shores that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck by the 2001 Session of the North Carolina General Assembly.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Southern Shores for the mutual benefit of both towns and for the maintenance and enhancement of Dare County attractions.

Sincerely,


Gene Schwarz
Chairman
Incorporation Committee


Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION

**P. O. Box 8002
Duck, NC 27949**

October 11, 2000

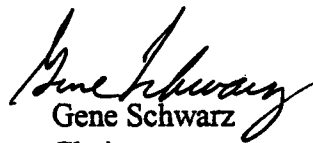
The Honorable Clifton Perry
Mayor, Kitty Hawk
P. O. Box 549
Kitty Hawk, NC 27949

Dear Mayor Perry:

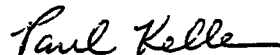
This letter is written to inform the Town of Kitty Hawk that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck by the 2001 Session of the North Carolina General Assembly.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Kitty Hawk for the mutual benefit of both towns and for the maintenance and enhancement of Dare County attractions.

Sincerely,



Gene Schwarz
Chairman
Incorporation Committee



Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION

**P. O. Box 8002
Duck, NC 27949**

October 11, 2000

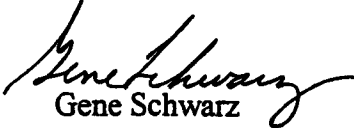
The Honorable William R. Morris, Jr.
Mayor Pro Tempore
Kill Devil Hills
P. O. Box 1719
Kill Devil Hills, NC 27948


Dear Mayor Pro Tempore Morris:

This letter is written to inform the Town of Kill Devil Hills that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck by the 2001 Session of the North Carolina General Assembly.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Kill Devil Hills for the mutual benefit of both towns and for the maintenance and enhancement of Dare County attractions.

Sincerely,


Gene Schwarz
Chairman
Incorporation Committee


Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION

**P. O. Box 8002
Duck, NC 27949**

October 11, 2000

The Honorable Renee Cahoon
Mayor, Nags Head
P. O. Box 99
Nags Head, NC 27959

Dear Mayor Cahoon:

This letter is written to inform the Town of Nags Head that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck by the 2001 Session of the North Carolina General Assembly.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Nags Head for the mutual benefit of both towns and for the maintenance and enhancement of Dare County attractions.

Sincerely,


Gene Schwarz
Chairman
Incorporation Committee


Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION
P. O. Box 8002
Duck, NC 27949

October 11, 2000

The Honorable Lee Tugwell
Mayor, Manteo
P. O. Box 246
Manteo, NC 27954

Dear Mayor Tugwell:

This letter is written to inform the Town of Manteo that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck by the 2001 Session of the North Carolina General Assembly.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Manteo for the mutual benefit of both towns and for the maintenance and enhancement of Dare County attractions.

Sincerely,



Gene Schwarz
Chairman
Incorporation Committee



Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION

**P. O. Box 8002
Duck, NC 27949**

October 11, 2000

The Honorable S. Paul O'Neal
Chairman
Currituck County Commissioners
893 Waterlily Road
Coinjock, NC 27923

Dear Chairman O'Neal:

This letter is written to inform Currituck County that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck (in Dare County) by the 2001 Session of the North Carolina General Assembly.

The northernmost boundary of the Town of Duck will directly abut the southern boundary of the Currituck County Outer Banks. This boundary is currently a part of unincorporated Dare County.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Currituck County for the mutual benefit of both parties.

Sincerely,



Gene Schwarz
Chairman
Incorporation Committee



Paul Keller
President
Duck Civic Association

DUCK CIVIC ASSOCIATION
P. O. Box 8002
Duck, NC 27949

October 11, 2000

The Honorable S. Paul O'Neal
Chairman
Currituck County Commissioners
893 Waterlily Road
Coinjock, NC 27923

Dear Chairman O'Neal:

This letter is written to inform Currituck County that a petition will be presented to the Joint Legislative Commission on Municipal Incorporation for the incorporation of the Town of Duck (in Dare County) by the 2001 Session of the North Carolina General Assembly.

The northernmost boundary of the Town of Duck will directly abut the southern boundary of the Currituck County Outer Banks. This boundary is currently a part of unincorporated Dare County.

The Duck community is excited about the prospect of becoming a self-governing town and looks forward to working together with Currituck County for the mutual benefit of both parties.

Sincerely,



Gene Schwarz
Chairman
Incorporation Committee



Paul Keller
President
Duck Civic Association



DARE COUNTY
BOARD OF ELECTIONS

MANTEO, NORTH CAROLINA 27954

P.O. BOX 1000
PHONE (919) 473-1101
EXT. 319

CERTIFICATION OF
THE DARE COUNTY BOARD OF ELECTIONS
VERIFYING SIGNATURES TO THE PETITION FOR
THE INCORPORATION OF DUCK AS A MUNICIPALITY

I, Melva B. Garrison, Director, of the Dare
County Board of Elections, certify that the petition herein contains 25 pages, with 214 signatures to
request the incorporation of Duck as a municipality. The Board of Elections hereby certifies that
209 signatures belong to registered voters in the Duck Precinct of Dare County.

Invalid signatures are denoted by marking with a red "x".

This the 15 day of November, 2000.

DARE COUNTY BOARD OF ELECTIONS

By: Melva B. Garrison

Title: Director of Elections

AFFIDAVITS OF PUBLICATION

NOTICE

Notice is hereby given that a petition will be presented to the Joint Legislative Commission on Municipal Incorporations during the 2001 General Assembly for the Incorporation of the Town of Duck.

NORTH CAROLINA
DARE COUNTY.

AFFIDAVIT OF PUBLICATION

Before the undersigned, a Notary Public of said County and State, duly commissioned, qualified, and authorized by law to administer oaths, personally appeared

Susan M. Simpson, treasurer

....., who being first duly sworn, deposes and says: that he (she) is of The Times Printing Co., Inc., engaged in the publication of a newspaper known as THE COASTLAND TIMES, published, issued, and entered as second class mail in the Town of Manteo, in said County and State; that he is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a true copy of which is attached hereto, was published in THE COASTLAND TIMES on the following dates:

October 17 and 24, 2000

.....; and that the said newspaper in which said notice, paper, document, or legal advertisement was published was, at the time of each and every such publication, a newspaper meeting all of the requirements and qualifications of Sections 1-596 and 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

This 2nd day of November, 2000

[Handwritten Signature]

Sworn to and subscribed to before me, this 2nd

day of November, 2000

Tatricia A. McCleary
Notary Public

My Commission expires: August 12, 2005

CLIPPING OF LEGAL
ADVERTISEMENT
ATTACHED HERE

PUBLIC NOTICE:

Notice is hereby given that a petition will be presented to the Joint Legislative Commission on Municipal Incorporations during the 2001 General Assembly for the Incorporation of the Town of Duck.

STATE of NORTH CAROLINA
COUNTY of DARE

AFFIDAVIT OF PUBLICATION

Before the undersigned, a Notary Public of said county and state, duly commissioned, qualified, and authorized by law to administer oaths, personally appeared dates:

Kevin Schwartz

who, being first duly sworn, deposes and says: that he (she) is publisher or General Manager of *The Outer Banks Sentinel*, a newspaper published, issued, and entered as periodical class mail in the City of Nags Head in said County and State; that he (she) is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a true copy of which is attached here to, was published in *The Outer Banks Sentinel* on the following dates:

OCTOBER 19 + 26, 2000

and that the said newspaper in which such notice, paper, document, or legal advertisement was published, was at the time of each and every such publication, a newspaper meeting all of the requirements of Section 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

This 27 day of Oct 20 00

[Signature]
(Signature of person making affidavit)

Sworn to and subscribed before me,

This 27 day of Oct 20 00

Karen P. [Signature]
DARE COUNTY, NC

(Notary Public)

My commission expires: March 7 2005

APPENDIX D

**Assessment of Petition
by
Town of Duck
for
Incorporation**

Relative to NC G.S. 120-163 and NC G.S. 120-164

**North Carolina Department of Commerce
Division of Community Assistance**

Division of Community Assistance staff has reviewed the petition for incorporation from the Town of Duck as it relates to NC G.S. 120-163 and NC G.S. 120-164. These sections of the General Statutes refer to the petition and notification requirements.

G.S. 120-163 (a) requires that a petition be signed by 15% of the registered voters (but by not less than 25 voters) of the area asking for incorporation. The proposed Town of Duck has submitted a petition with the required signatures.

G.S. 120-163 (b) requires that "[t]he petition must be verified by the county board of elections of the county where the voter is alleged to be registered. The board of elections shall cause to be examined the signature, shall place a check mark beside the name of each signer who is qualified and registered to vote in that county in the area proposed to be incorporated, and shall attach to the petition a certificate stating the number of voters registered in that county in the area proposed to be incorporated, and the total number of registered voters who have been verified. The county board of elections shall return the petition to the person who presented it within 15 working days of receipt." G.S. 120-163 (d) requires that the petitioners must present to the Commission the verified petition from the county board of elections. The Duck petition has been certified by the Dare County Board of Elections.

G.S. 120-163 (c) requires that the petition must include a number of items. These are:

- A proposed name for the city. The petition of the Town of Duck does include a proposed name.
- A map of the city. The petition of the Town of Duck does include a map.
- A list of proposed services to be provided by the proposed municipality. The petition of the Town of Duck does include a list of proposed services.
- The names of three persons to serve as interim governing board. The petition of the Town of Duck includes the names of three persons to serve as an interim council.
- A proposed charter. The petition of the Town of Duck does include a proposed charter.
- A statement of the estimated population. The petition of the Town of Duck does include a statement of the estimated population.
- Assessed valuation. The petition of the Town of Duck does include an estimate of assessed valuation.
- Degree of development. The petition of the Town of Duck does include degree of development.
- Population density. The petition of the Town of Duck does include population density.
- Recommendations as to form of government and manner of election. The petition of the Town of Duck does include recommendations as to form of government and manner of election.

According to G.S. 120-163, the proposed municipality may not contain any non-contiguous areas. According to an examination of the map presented with the petition, the proposed Town of Duck does not contain any non-contiguous areas.

According to G.S. 120-164, not later than five days before submitting the petition to the Commission, the petitioners shall notify:

- (1) The board or boards of county commissioners of the county or counties where the proposed municipality is located.
- (2) All cities within that county or counties.
- (3) All cities in any other county that are within five miles of the proposed municipality of the intent to present the petition to the Commission.

An example notification letter, and copies of return receipts for Dare County, Kill Devil Hills, Kitty Hawk, Nags Head, Manteo, and Southern Shores were included in the petition. Therefore, all required notification letters have been sent.

According to G.S. 120-164, "[t]he petitioners shall also publish, one per week for two consecutive weeks, with the second publication no later than seven days before submitting the petition to the Commission, notice in a newspaper of general circulation in the area proposed to be incorporated of the intent to present the petition to the Commission."

Copies of notice published in The Coastland Times for Tuesday, October 17, 2000 and Tuesday, October 24, 2000 were included. Also, copies of notice published in The Outer Banks Sentinel for Thursday, October 19, 2000 and Thursday, October 26 were included.

APPENDIX E

**Assessment of Petition
by
Town of Duck
for
Incorporation**

Relative to NC G.S. 120-166.

**North Carolina Department of Commerce
Division of Community Assistance**

Division of Community Assistance staff has reviewed the petition for incorporation from Duck as it relates to NC G.S. 120-166. That section of the General Statute refers to the nearness of the proposed new 'Town of Duck' to other municipalities. Part (a) of that section sets criteria based on the nearness of the proposed new town to existing municipalities and their respective populations. Note that the General Statute requires that the population values be in accordance with the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census. These relationships are presented in the following table.

Critical Distance	Population of Neighboring Municipality
1 mile	5,000 to 9,999
3 miles	10,000 to 24,999
4 miles	25,000 to 49,999
5 miles	50,000 and over

The Town of Southern Shores (population 1,447) is within one mile (1) of the proposed boundaries for Duck, but does not exceed the neighboring municipal population threshold. There are no additional municipalities with three (3) miles of the proposed Town of Duck. The Town of Kitty Hawk (population 1,937) is within four (4) miles of the proposed boundaries of Duck, but does not exceed the neighboring municipal population threshold. There are no additional municipalities within five (5) miles of the proposed Town of Duck.

The proposed new Town of Duck is not entirely on an island so Subsection (b)(1) does not apply. Duck is not separated by a major river or other natural feature from the Town of Southern Shores so Subsection (b)(2) does not apply. Finally, the petition indicated no evidence that Subsection (b)(4) applies (a petition for annexation to nearby city that was not approved).

Please note that a boundary description was included in the petition, however the proposed Town of Duck may need to amend the corporate limits to comply with the development criteria in NC G.S. 120-168.

The Commission is not precluded from making a positive recommendation on the petition for incorporation relative to the proposed Town of Duck, in accordance with NC G.S. 120-166.(a).

Information sources: The foregoing assessment was based on information contained in the petition, GIS data provided by the Dare County GIS Department, and the most recently updated DOT GIS data that was provided by NC CGIA. A buffer analysis (an ArcView GIS utility) was performed on the proposed boundary that was presented on the map attached to the petition. The 1990 Census population values were retrieved from the NC Office of State Planning web site (www.ospl.state.nc.us/demog/muntot99.html).

Note: 1

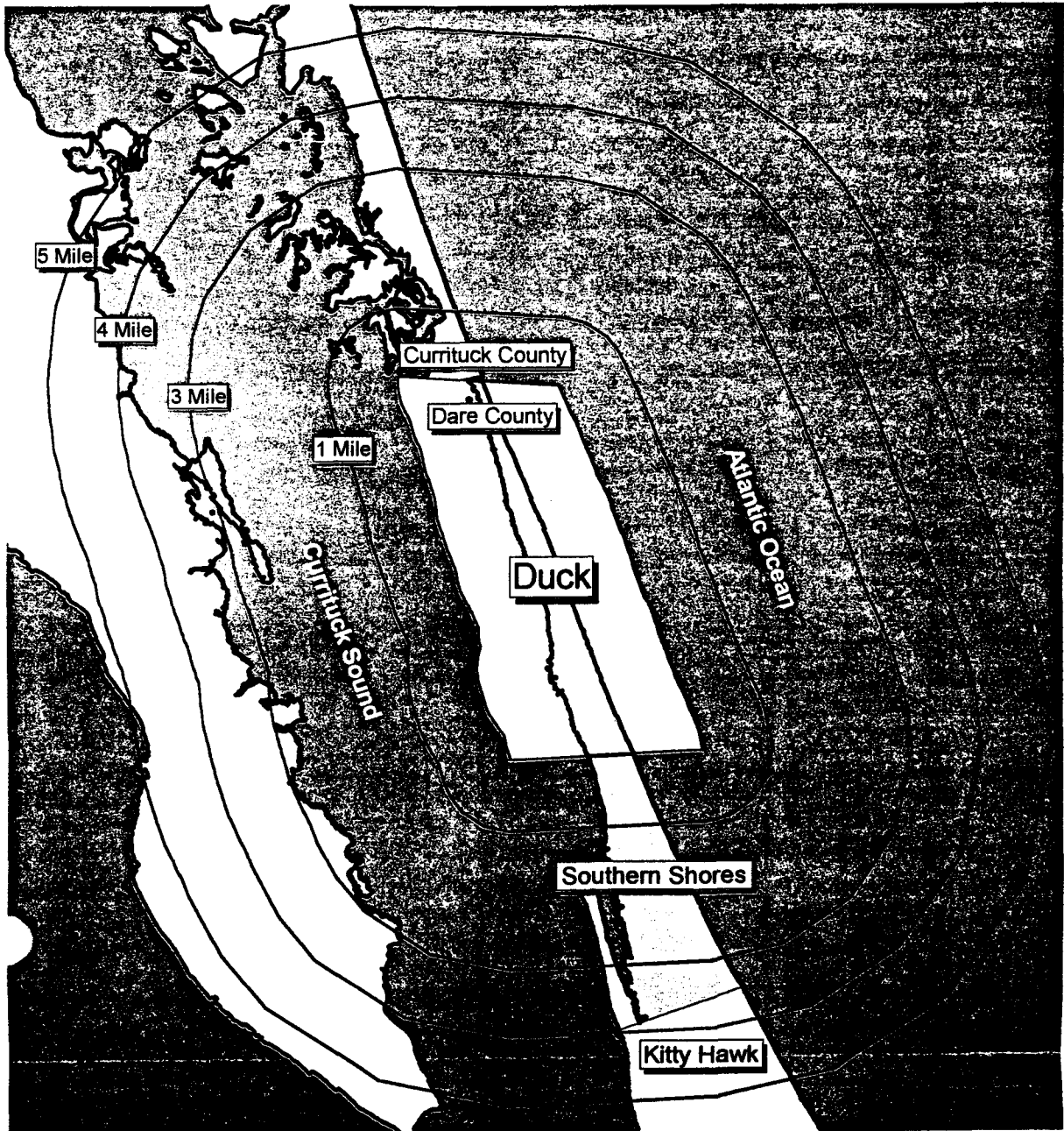
§ 120-166. Additional criteria; nearness to another municipality.

(a) The Commission may not make a positive recommendation if the proposed municipality is located within one mile of a municipality of 5,000 to 9,999, within three miles of a municipality of 10,000 to 24,999, within four miles of a municipality of 25,000 to 49,999; or within five miles of a municipality of 50,000 or over, according to the most recent decennial federal census, or according to the most recent annual estimate of the Office of State Budget and Management if the municipality was incorporated since the return of that census.

(b) Subsection (a) of this section does not apply in the case of proximity to a specific municipality if:

- (1) The proposed municipality is entirely on an island that the nearby city is not on;
- (2) The proposed municipality is separated by a major river or other natural barrier from the nearby city, such that provision of municipal services by the nearby city to the proposed municipality is infeasible or the cost is prohibitive, and the Commission shall adopt policies to implement this subdivision;
- (3) The nearby municipality by resolution expresses its approval of the incorporation; or
- (4) An area of at least fifty percent (50%) of the proposed municipality has petitioned for annexation to the nearby city under G.S. 160A-31 within the previous 12 months before the incorporation petition is submitted to the Commission but the annexation petition was not approved. (1985 (Reg. Sess., 1986), c. 1003, s. 1; 1989 (Reg. Sess., 1990), c. 1024, s. 25.)

Proposed Town of Duck Dare County Municipal Incorporation Study Phase 1



Legend

	Duck Area
	Buffers
	County Line
	Kitty Hawk
	Southern Shores



0 2 Miles

North Carolina
 Department of
 Community
 Assistance
 Map prepared 01/01

APPENDIX F

**Assessment of Petition
by
Duck
(Dare County)
for
Incorporation**

**Relative to NC G.S. 120-167
through NC G.S. 120-170**

**North Carolina Department of Commerce
Division of Community Assistance**

Division of Community Assistance (DCA) staff has reviewed the petition for incorporating the Town of Duck relative to NC G.S. 120-167 through G.S. 120-170. The following discussion addresses each of these sections of the General Statutes.

NC G.S. 120-167 Additional criteria; population.

NC G.S. 120-167 refers to population and requires that the permanent population must be at least 100 and a population density of at least 250 persons per square mile. The petition indicates an estimated permanent population of 560. This seems to be a reasonable estimate when comparing this figure to the 377 registered voters in the area. The petition indicates a population density of 460 persons per square mile. The Division of Community Assistance performed a land use survey of the subject area, identifying 1,981 dwelling units in the subject area. The 1990 US Census Bureau data indicates an average of 2.41 persons per household for Dare County and an occupancy rate of 43.34 percent. This suggests that 2,069 persons are likely to reside in those 1,981 dwellings with a population density of 452 persons per square mile. This estimate may not be completely reflective of the seasonal peak, during which the total population could exceed 4,774. It appears that NC G.S. 120-167 is satisfied.¹

NC G.S. 120-168 Additional criteria; development.

NC G.S. 120-168 refers to development and requires that at least 40 percent of the area must be "developed for residential, commercial, industrial, institutional, or governmental uses, or is dedicated as open space under the provisions of a zoning ordinance, subdivision ordinance, conditional or special use permit, or recorded restrictive covenants." (1985 (Reg. Sess., 1986), c. 1003, s. 1.)

DCA used a land use survey combined with an analysis of available tax information to determine the degree of development. The survey considered parcels as "developed" if they had land use characteristics that were residential, commercial, institutional or governmental, industrial, or dedicated open spaces. Vacant parcels, forested parcels, or agricultural parcels were considered "undeveloped."²

DCA's analysis indicated that 40.42 percent of the subject area is developed (see Table 1 and Map A). It appears that NC G.S. 120-168 is satisfied.

¹ It is difficult to determine population estimates due to the large influx of seasonal residents and visitors. But, the proposed Town of Duck does clearly satisfy the requirements of NC G.S. 120-167.

² The Atlantic Ocean and Currituck Sound are considered undeveloped for the purpose of this study.

Table 1:
Development Relative to NC G.S. 120-168

Land Use	Acres
Commercial	109
Industrial	0
Institutional/Governmental	358
Residential	719
Undeveloped	1,748
Dedicated Open Space	0
Total	2,934
Total Developed Acreage	1,186
% Developed	40.42%

NC G.S. 120-169 Additional criteria; area unincorporated.

NC G.S. 120-169 requires that none of the area proposed for incorporation may be included within the boundary of another incorporated municipality. DCA compared the proposed boundary for the Town of Duck with the most recently updated Dare County (GIS) data as well as the NC DOT (GIS) data that was provided by NC CGIA and found no evidence that any of the subject area is part of an incorporated municipality. It appears that NC G.S. 120-169 is satisfied.

NC G.S. 120-169.1 Additional criteria; services.

NC G.S. 120-169.1(b) requires that the area to be incorporated submit a plan for a reasonable level of municipal services. To meet the requirements of this section, the persons submitting the plan for incorporation must propose to provide at least four of the following services:

- 1) Police protection.
- 2) Fire protection.
- 3) Solid waste collection or disposal.
- 4) Water distribution.
- 5) Street maintenance.
- 6) Street construction or right-of-way acquisition.
- 7) Street lighting.
- 8) Zoning.

The petition does include a plan for providing four out of eight of the above services. It does propose to provide zoning, solid waste collection, fire protection, and police protection. Initially it is Duck's intent to provide solid waste collection and police protection through arrangements with Dare County. Duck will provide fire protection through arrangements with the Duck Volunteer Fire Department. It appears that NC G.S.

20-169.1(b) is satisfied.

NC G.S. 120-170 Findings as to services.

NC G.S. 120-170 requires that the proposed municipality provide, at a reasonable tax rate, the services requested by the petition, and that the proposed municipality can provide at a reasonable tax rate the types of services usually provided by similar municipalities. To help quantify this requirement DCA considered the gross property assessment value of the proposed municipality as its tax base. DCA compared the property tax rates, and property tax revenues of five municipalities that have a population size and characteristics similar to that of the proposed Town of Duck.

For fiscal year 1997-98 the average property tax rate and revenue for the comparison communities were \$0.35/\$100 assessment and \$1,531,903, respectively. In order for the proposed Town of Duck to generate similar revenues it would have to levy a property tax rate of \$0.246/\$100 assessment (assuming a total assessment of \$635,020,300 and a collection rate of 98 percent).³

**Table 2:
Property Tax Rate and Revenues Comparison**

Municipality	Population 1995	Tax Rate/\$100 FY1997-98	Property Tax Revenue
Atlantic Beach	2,266	.34	\$1,955,745
Kitty Hawk	2,329	.29	\$1,249,011
Nags Head	2,029	.348	\$2,746,896
Southern Shores	1,786	.22	\$1,046,583
Southport	2,540	.53	\$661,282
	Average Tax Rate \$0.35/\$100		
	Average Property Tax Revenue \$1,531,903		

The proposed Town of Duck can provide at a reasonable tax rate the types of services usually provided by similar municipalities. It appears that NC G.S. 120-170 is satisfied.

Conclusion

It appears that the proposed Town of Duck does satisfy the North Carolina General Statutes 120-167 – 120-170. **The Commission is not precluded from making a positive recommendation on the incorporation of the proposed Town of Duck relative to General Statute 120-167 through 120-170.**

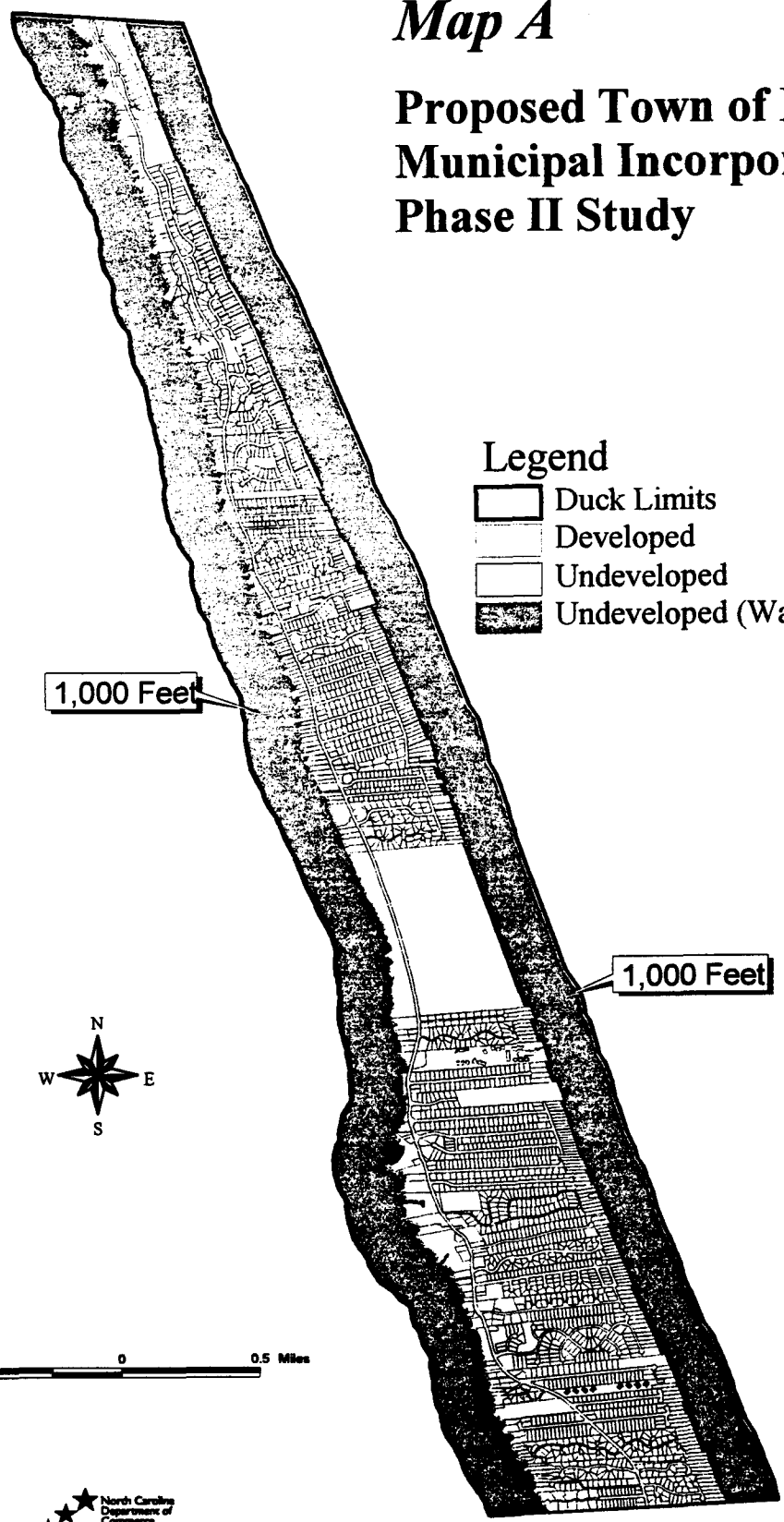
³ In reality, the actual amount of revenue needed by the proposed municipality could be either higher or lower than this estimate.

Information sources:

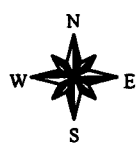
Petition for Incorporation of the Town of Duck
1990 US Census Summary Tape File 1A (referenced 01/01)
Dare County GIS Department, Parcel Data and Assessment Data
North Carolina League of Municipalities (referenced 01/01)
<http://nclmorg.coolwebhosting.com/General/Reports/TaxRate/Tax97tab.txt>
North Carolina Office of State Treasurer (referenced 01/01)
<http://www.treasurer.state.nc.us/frlgc.html>
NC DOT GIS Data Layers, Distributed by NC CGIA (2000)

Map A

Proposed Town of Duck Municipal Incorporation Phase II Study



- Legend**
- Duck Limits
 - Developed
 - Undeveloped
 - Undeveloped (Water Features)



0.5 0 0.5 Miles

Fiscal Research Analysis of Duck Incorporation
(G.S. 120-169.1(c))

1. Sales Tax Revenue Change:

Dare County distributes sales tax revenues on an ad valorem basis. This analysis uses the ad valorem amounts certified by county, city, and town officials to the Department of Revenue for 1998-99 to show how that distribution would have changed had Duck been incorporated at that time.

Current

County	Municipalities	Ad Valorem Asses.	% Levy	Sales Tax Distribution	% Distribution
Dare		27,978,430	75.1%	9,486,518	74.0%
	Kill Devil Hills	3,240,360	8.7%	1,179,957	9.2%
	Kitty Hawk	1,269,437	3.4%	457,597	3.6%
	Manteo	756,947	2.0%	249,994	2.0%
	Nags Head	2,969,154	8.0%	1,070,503	8.4%
	Southern Shores	1,037,101	2.8%	372,623	2.9%
TOTAL		37,251,429	100%	12,817,193	100%

With Incorporation

County	Municipalities	Ad Valorem Levy	% Levy	Sales Tax Distribution	Change (Approx)
Dare		27,978,430	73.0%	9,351,725	(134,793)
	Kill Devil Hills	3,240,360	8.5%	1,083,083	(96,874)
	Kitty Hawk	1,269,437	3.3%	424,306	(33,291)
	Manteo	756,947	2.0%	253,008	3,014
	Nags Head	2,969,154	7.7%	992,433	(78,071)
	Southern Shores	1,037,101	2.7%	346,649	(25,974)
	<i>Duck</i>	1,094,965	2.9%	365,989	365,989
TOTAL		38,346,394	100%	12,817,193	0

* Variance due to rounding.

2. Powell Bill Allocation Change

Annually state street aid or Powell Bill allocations are made to incorporated municipalities which establish their eligibility and qualify as provided by G.S. 136-41.1-.3.

Fiscal Research Analysis of Duck Incorporation
(G.S. 120-169.1(c))

The amount allocated to each municipality is based on both population and qualifying street miles within the municipality.

FY 1999-00 populations based allocations assumed a total, statewide municipal population of 3,937,293 and available funds of \$99,886,364.46. This created a per capita distribution rate of \$ 25.37.

Adding the new population of Duck (2069) to the statewide total creates a new population of 3,939,362 and a per capita allocation of \$25.36. The impact of this change on Dare municipalities is as follows:

Municipalities	Population	Original Allocation	New Allocation	Change
Kill Devil Hills				
Kitty Hawk	5600	142,072	142,016	(56)
Manteo	2571	65,226	65,201	(26)
Nags Head	2118	53,734	53,712	(21)
Southern Shores	2287	58,021	57,998	(23)
<i>Duck</i>	1987	50,410	50,390	(20)
	2069		52,470	52,470

The incorporation could also have a marginal impact on the distribution of funds based on mileage. However, Fiscal Research is not aware of the number of qualifying miles in Duck. Therefore, no estimate is available on this portion of the Powell Bill allocation.

3. Utility Excise Tax:

Of the 3.22% state excise tax rate on the in-state gross receipts of gas, power and light and telephone companies, 3.09 percentage points (or 96% of collections) are distributed to the respective municipalities within which these services took place. In 1998-99 the statewide total was \$161.1 million.

Because Duck only incorporates new areas (areas not currently a part of another municipalities) no revenue shift is expected. Any revenue received by Duck from this tax would be new or drawn from the NC General Fund.

Fiscal Research Analysis of Duck Incorporation
(G.S. 120-169.1(c))

4. Other Local Taxes:

Duck's petition makes direct reference to obtaining a share of the local occupancy tax and land transfer tax revenue. Under S.L. 91-177 Dare County is to distribute 2/3 of the net proceeds of the occupancy tax to the towns of Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores. S.L. 85- 525 states that 1/3 of land transfer tax revenues must be distributed to the same municipalities. Duck's application for incorporation assumes that they will receive a portion of these funds. However, such a change would require legislation and is not automatic.

In 1998-99 Dare County collected \$6,846,292 in occupancy taxes. Of this amount approximately \$4,564,195 was available for distribution to municipalities. In 1996-97 Dare collected \$2,448,353 in local transfer taxes. One-third or \$816,117 was available for municipal distribution.