

Agenda
Town of Duck Council
Paul F. Keller Meeting Hall
January 4, 2023
6:00 p.m.
Regular Meeting

1. Call to Order
 - A. Pledge of Allegiance
 - B. Moment of Silence
2. Public Comments
3. Consent Agenda
 - A. Minutes from the December 7, 2022, Regular Meeting
 - B. Resolution 23-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting and Authorizing Submission of a Paved Trails and Sidewalk Feasibility Study Grant for a Sidepath Along the West Side of N.C. Highway 12 South of Duck Village
4. Special Presentations
 - A. None at This Time
5. Quasi-Judicial Public Hearing
 - A. None at This Time
6. Legislative Public Hearing
 - A. Public Hearing/Discussion/Consideration of Ordinance 22-10, Regulatory Standards for Dune Walkover Structures
7. Old Business/Items Deferred from Previous Meetings
 - A. None at This Time

8. New Business
 - A. None at This Time
9. Items Referred to and Presentations from the Town Attorney
10. Items Referred to and Presentations from the Town Manager
 - A. Departmental Updates
 - B. December FY 2023 Financial Presentation
11. Mayor's Agenda
12. Council Member's Agenda
13. Other Business
 - A. Additional Public Comments
14. Closed Session
15. Adjournment

AGENDA: January 4, 2023

Regular Meeting

ITEM #1:

Call to Order

- A. Pledge of Allegiance
- B. Moment of Silence

RECOMMENDED ACTION:

- Call the Town Council to Order
- Conduct the Pledge of Allegiance
- Hold a Moment of Silence

SUMMARY OF INFORMATION:

The Mayor will call the Council to order and the Council will lead the audience in the recitation of the Pledge of Allegiance and will hold a Moment of Silence.

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #2:

Public Comments

RECOMMENDED ACTION:

- None required.

SUMMARY OF INFORMATION:

The Council will receive comments from the public.

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #3:

Consent Agenda

- A. Minutes from the December 7, 2022, Regular Meeting
- B. Resolution 23-01, a Resolution of the Town Council of the Town of Duck, North Carolina, Supporting and Authorizing Submission of a Paved Trails and Sidewalk Feasibility Study Grant for a Side path along the West Side of N.C. Highway 12 South of Duck Village

RECOMMENDED ACTION:

- Approve the Consent Agenda

(As a reminder, the Consent Agenda is intended to be voted on and approved as one motion. If discussion is required on individual items, a motion must be made to remove that item from the Consent Agenda and add it to the Regular Agenda.)

SUMMARY OF INFORMATION:

The Consent Agenda includes minutes from the December 7, 2022, regular meeting and Resolution 23-01, supporting and authorizing the submission of a paved trails and sidewalk feasibility study grant. Council is asked to approve the minutes and the resolution.

ATTACHMENTS:

- December 7, 2022, Minutes
- Resolution 23-01

**TOWN OF DUCK
TOWN COUNCIL
REGULAR MEETING
December 7, 2022**

The Town Council for the Town of Duck convened at the Paul F. Keller Meeting Hall at 6:00 p.m. on Wednesday, December 7, 2022.

COUNCIL MEMBERS PRESENT: Mayor Don Kingston; Mayor Pro Tempore Monica Thibodeau; Councilor Sandy Whitman; Councilor Rob Mooney; and Councilor Tony Schiano.

COUNCIL MEMBERS ABSENT: None.

OTHERS PRESENT: Town Manager Drew Havens; Director of Community Development Joseph Heard; Police Chief Jeffrey Ackerman; Fire Chief Donna Black; Town Attorney Robert Hobbs; Public Information and Events Assistant Betsy Trimble; Senior Planner Sandy Cross; Finance and Human Resources Administrator Jessica Barnes; and Town Clerk Lori Ackerman.

OTHERS ABSENT: Public Information and Events Director Kristiana Nickens.

Mayor Kingston called the meeting to order at 6:01 p.m. He noted that the Town was not broadcasting or video recording due to technical difficulties.

Mayor Kingston asked Councilor Tony Schiano to lead the Pledge of Allegiance. Mayor Kingston led the moment of silence.

PUBLIC COMMENTS

Mayor Kingston opened the floor for public comments. He noted that comments will be limited to three minutes as there was a timer for the time limit.

Deanna Beacham of 1444 Duck Road was recognized to speak. Ms. Beacham stated she was asked by several property owners to let Council know that the Duck property owners were not happy about the thought of people driving on the beach. She understood it was a big issue that had been brought up and would be discussed at Council's Retreat. She stated that because the property owners knew she would be attending this meeting, they had asked her to speak.

Dale Bryansmith of 137 Seabreeze Drive was recognized to speak. Mr. Bryansmith stated that he was opposed to any kind of beach driving in Duck. He thought driving on the beach stopped being fun back in 1962 and now it was just a nuisance because the beach was very fragile. He stated that beach driving is allowed in New Jersey, but they were very specific as to where one could drive on the beach and it required a permit. He

stated that the beach in his area was pretty narrow and he thought it would be hard for vehicles to maneuver the beach.

There being no one else wishing to speak, Mayor Kingston closed the time for public comments.

CONSENT AGENDA

Minutes from the October 5, 2022, Regular Meeting; Minutes from the October 19-20, 2022, 2032 Vision Retreat; Minutes from the November 2, 2022, Regular Meeting; Resolution 22-17, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring Certain Property Surplus, and Authorizing the Transfer of Said Property; Resolution 22-18, a Resolution of the Town Council of the Town of Duck, North Carolina, Declaring Certain Property Surplus, and Authorizing the Transfer of Sale of Said Property at Auction; Interlocal Agreement between the Town of Duck and Dare County for the Motorola FLEX Public Safety System

Councilor Schiano moved to approve the consent agenda as presented.

Motion carried 5-0.

SPECIAL PRESENTATIONS

Presentation of the Town's Fiscal Year 2021-2022 Audit Report

Lisa Murphy from Johnson, Mizelle, Straub and Murphy was recognized to speak. Ms. Murphy went on to give an overview of the Town's financial statements for the year ended June 30, 2022 to Council and the audience.

Mayor Pro Tempore Thibodeau moved to accept the FY 2022 Audit as presented.

Motion carried 5-0.

Mayor Kingston thanked Lisa Murphy for her presentation.

QUASI-JUDICIAL PUBLIC HEARING

There were no quasi-judicial public hearings at this time.

LEGISLATIVE PUBLIC HEARINGS

There were no Legislative Public Hearings at this time.

OLD BUSINESS/ITEMS DEFERRED FROM PREVIOUS MEETINGS

Discussion/Consideration of Authorizing the Town Manager to Enter into a Contract with Emerald Forest for Sand Fencing

Town Manager Drew Havens was recognized to speak. Town Manager Havens stated that staff was recommending adding in a second row of sand fencing in the nourishment areas as well as up to two rows of sand fencing in the Southern Shores taper area. He explained that the Southern Shores taper area travels northward into Duck and, according to staff, the way it has been constructed would lend itself to getting some protection from sand fencing.

Town Manager Havens stated that he was not recommending sending it out to bid because Weeks Marine had selected Emerald Forest as their contractor. He noted that the Town uses Emerald Forest for sand fencing and recommended that Council authorize the sole source for the contract to Emerald Forest. He stated that the total cost for the fencing was \$43,702.92 and there was \$47,000 budgeted in the General Fund.

Mayor Kingston asked if the Town of Southern Shores had any responsibility for the taper area. Town Manager Havens stated that they do not.

Councilor Whitman asked if the prices were good until Weeks Marine finishes the beach nourishment project. Town Manager Havens stated that it was.

Councilor Mooney asked if the work would be completed by Southern Shores where the other business starts. Town Manager Havens stated that it would.

Mayor Kingston asked if there was currently any sand fencing where the taper came in. Town Manager Havens was not aware if there was. Mayor Kingston asked if there were one or two rows in that area. Senior Planner Sandy Cross was recognized to speak. Senior Planner Cross explained that there was currently one row that extends from south of the Town to 111 Ocean Crest. She added that easements were obtained through Tides Drive. Mayor Kingston asked if the dune was built up when they completed the taper. Senior Planner Cross stated that the taper does not build up the dune.

Mayor Pro Tempore Thibodeau moved to authorize the Town Manager to enter into a contract with Emerald Forest as presented for the sand fencing with the cap of the amount to be determined by Town staff.

Motion carried 5-0.

NEW BUSINESS

Discussion/Consideration of Authorizing a Public Hearing on Ordinance 22-10, Regulatory Standards for Dune Walkover Structures

Senior Planner Cross stated that Council and the Planning Board recently approved a zoning text amendment that clarified the elevation of dune walkover structures in all

situations and under what circumstances minimum setback exemptions can be granted. She stated that during the discussion, the Planning Board questioned the need for the minimum 18-inch elevation, as noted in Chapter 94 and Subsection 156.124 of the Town Code and suggested that one size does not fit all. She added that a request was made that Council consider this for further consideration and discussion by the Planning Board, adding that Council sent the issue back to the Board for further review concerning the issue.

Senior Planner Cross stated that the Planning Board held a special meeting on August 19, 2022 to drive on the beach and view various conditions and situations where the 18-inch elevation may or may not be ideal. She stated that at the Planning Board's September 14, 2022 meeting, staff presented several options to the Board to address concern that dune walkover elevation requirements should be unique to the area in which they are developed. She pointed out that at the conclusion of the meeting, staff offered to bring the matter back to them after an upcoming CAMA training. She added that since CAMA regulations are ambiguous, staff suggested they would see why and whether there was any consensus as to a more suitable option. She stated that when posed with the question regarding dune walkover elevations to CAMA District Manager Ron Renaldi, they were provided with the following comment: "CAMA elevation requirements of beach walkways/crossovers are meant to be vague to allow for the Local Permit Officer to make the final determination on what is permissible in their locality. This allows us to appropriately handle dynamic situations/environment."

Senior Planner Cross stated that after considering the history behind the development of the applicable code sections, the intent of the CAMA regulations as well as the Comprehensive Land Use Plan and its Tools for Managing Development, staff offered a variety of options to the Planning Board. She stated that, in keeping with the concern that different areas may require different regulations based on dune height and conditions, staff presented an option that tied the elevation of the dune walkovers to the dune elevation, distinguishing between primary and frontal dunes. She explained that if a dune is a frontal dune, its elevation is lower and therefore affords less protection, adding that the Town would encourage elevating the walkover to allow for vegetation and dune growth below it. She noted that if the dune is a primary dune, its elevation is equivalent to the base flood elevation, normally 11 or 12 plus six feet, equating to an elevation of 17 or 18 feet above sea level. She stated that at this elevation, the dune offers more protection, and perhaps a minimum elevation requirement above the dune is not needed as the owner would need to maintain a maximum elevation above the dune. She pointed out that this would potentially result in an expense to the property owner to determine the dune elevation. She stated that staff has added "dune elevations may be determined through use of current contour data or surveyed elevations" in the draft ordinance for clarification purposes.

Senior Planner Cross pointed out that one other revision staff proposed was the removal of the phrase "and shall extend east of the seaward vegetation line" at the end of Subsection 94.04. She explained that when staff meets with contractors, they try to keep the walkover terminus in line with the vegetation line and not extending east of the line.

She noted that this helps protect dune walkover structures from storm damage and reduce encroachments onto the wet sand beach.

Senior Planner Cross stated that another important question staff presented the Planning Board was how “grade” is defined. She stated that staff has discussed the challenges and interpretations when applying these standards to areas that aren’t flat. She noted that recently, staff asked Building Inspector Steven McMurray for his comments as to where he measures grade when determining whether handrails and stair kicks are needed. She added that staff discussed his comments with the Planning Board and explained how that is typically determined, noting that staff conveyed his comments to the Planning Board and explained how that was typically determined. She stated that staff stated that they would include that explanation in the draft ordinance that was being developed related to dune walkover accessways; however, the Planning Board did not feel that an ordinance amendment was needed.

Senior Planner Cross stated that staff was of the opinion that the ordinance amendment reflected the requested desire for flexibility in certain situations while still maintaining a quantifying standard, removing the potential for subjectivity from the equation. She stated that the Planning Board discussed the issue at their November 9, 2022 meeting and voted unanimously to recommend approval of the zoning text amendment.

Councilor Schiano understood the difference between the primary and frontal dune and a lot of times with the primary dune, the walkway was lower than the height of the dune. He asked if the walkway has to be replaced, it will not need to be elevated. Senior Planner Cross stated he was correct.

Mayor Pro Tempore Thibodeau clarified that, ultimately, it would be the local CAMA officer that would use the guidelines to keep a consistent policy in effect. Senior Planner Cross stated she was correct, adding that it would be addressed by her, Community Planner Jim Gould, or Building Inspector Steven McMurray.

Councilor Schiano stated that it seemed to be a reasonable solution that stops a lot of concerns and issues that come up after a storm.

Mayor Pro Tempore Thibodeau thought it was hard to perceive any issues. She asked if there were, it would come back to Council. Senior Planner Cross stated that it would.

Councilor Mooney moved to authorize a public hearing on Ordinance 22-10 as presented.

Motion carried 5-0.

Discussion/Consideration of 2023 Council Meeting Date Schedule

Town Clerk Lori Ackerman was recognized to speak. Town Clerk Ackerman stated that the draft 2023 Council meeting date schedule was before Council. She pointed out that

Council has a goals planning session at their January mid-month meeting and then their annual Retreat at their February mid-month meeting.

Mayor Kingston asked if there were any conflicts to the schedule with regard to holidays. Town Clerk Ackerman stated that there were not. Mayor Kingston asked if the 4th of July parade would be held on July 4, 2023. Town Clerk Ackerman stated that it would.

Mayor Pro Tempore Thibodeau clarified that the meetings would still be at 6:00 p.m. for the regular meeting and 1:00 p.m. for the mid-month meetings. Town Clerk Ackerman stated that she was correct. Mayor Pro Tempore Thibodeau pointed out that she would be out of town for the January 18, 2023 meeting, adding that she would give her input to Town Manager Havens before that meeting.

Mayor Pro Tempore Thibodeau moved to adopt the schedule as presented.

Motion carried 5-0.

Discussion/Consideration of an Amendment to the Contract between Weeks Marine and Dare County to Extend the Completion Date of the Beach Nourishment Contract until May 25, 2023

Town Manager Havens stated that the Town was notified in mid-November that Weeks Marine, the contractor doing the four-town beach nourishment project, intended to delay work in Duck until mid-March. He stated that, due to equipment issues, minor weather-related delays, and a commitment to another time-sensitive job, Weeks Marine has fallen behind on the original schedule. He stated that Dare County, the coastal engineers, Weeks Marine staff members and Town staff worked on the contract modification document that attempts to ensure that the project is properly constructed in the spring while ensuring that Town is made whole in terms of any additional costs associated with the delay.

Town Manager Havens stated that the action requested from Council was to consider a request to modify the beach nourishment contract and direct him to transmit Council's recommendations to Dare County Manager Bobby Outten. He noted that the following would be stipulated in order for Weeks Marine to make the Town whole:

1. Contractor to perform additional pre-construction survey no more than 60 days before the beginning of construction.
2. Contractor to conduct interim borrow area survey as requested by BOEM.
3. Replace all lost sand in the Duck project area as determined by the initial and subsequent pre-construction survey.
4. Repair damage caused, as a result of any erosive events which occur between November 28, 2022 and the time the contractor substantially completes the project, including but not limited to, damage to oceanfront homes, pools, loss of vegetation, loss of sand fencing, and/or loss of beach access structures. The

- contractor shall repair, replace, and otherwise remedy all of the interim damage not otherwise fully covered by insurance.
5. Contractor responsible for additional engineering fees.
 6. Contractor responsible for additional legal fees.
 7. Contractor responsible for additional sea turtle monitoring costs.
 8. Contractor responsible to secure necessary permits and easements to complete the work under the contract.
 9. All provisions of the amendment are at no cost to the owner.
 10. Contractor responsible for lost FEMA revenue if Kill Devil Hills does not get their grant extension. Duck received its extension.
 11. Contractor responsible for additional interest costs for Duck's Special Obligation Bond.
 12. Liquidated damages of \$4,000 per day from January 1, 2023 until the project is substantially complete. If not done by May 25, 2023, liquidated damages will be \$8,000 per day for each day the project is not complete.
 13. Contractor to pay the greater of the total liquidated damages or the actual expenses incurred by the owner.
 14. Contractor responsible for other expenses attributable to the delay that are not yet identified or listed.

Councilor Schiano thought if Council was going to vote yes or no, they should go into closed session to discuss the issue. He added that if not, then Council would be revealing its negotiating position and strategy to the party that Duck will be negotiating with.

Town Attorney Robert Hobbs was recognized to speak. Town Attorney Hobbs stated that if Council needed to seek advice from him on privileged matters, a closed session would be appropriate. He stated that the one potential action Council could take if they agreed with the concepts that Town Manager Havens presented was that they could approve the amendment in principal and authorize the Town Manager and Town Attorney to continue negotiations through Dare County with Weeks Marine to reach a final agreement. He thought that, typically he would ask that as far as non-substantive changes, but it could get more involved. He thought if Council wanted to proceed in that direction, they would need to trust Town Manager Havens and him with making a judgement call as to whether they need to bring it back to Council for a special meeting or an emergency meeting to discuss what he considered fundamental substantive changes to what Council had been briefed on. He added that if it was a matter of non-substantive changes and possibly some wording changes, he thought it could be delegated to him and Town Manager Havens to move forward with it. He noted it was up to Council's level of comfort.

Town Manager Havens explained that the alternative was the Town could enforce the provisions of the contract. He pointed out that there was a clause in the contract regarding breach, so the Town could declare Weeks Marine of breaching the contract, contact the surety that holds the performance bond, and the surety has some obligations to try to get the project completed.

Town Manager Havens explained that the reason he was recommending that Council discuss the issue and get the terms to the point where the Town is made whole, was because the practicality of it was if the Town declares Weeks Marine in breach and then goes through the process, the likelihood of getting sand on the beach in the next 12 months was a 50/50 chance. He noted that there were very few contractors that could do this type of work and it was a small job – less than a half million cubic yards of sand.

Mayor Kingston agreed with Town Attorney Hobbs' comments, adding that he knew that Town Attorney Hobbs, Town Manager Havens, and Dare County Manager Bobby Outten had been in discussions with Weeks Marine. He asked if there was anything in the amendment that would be due to Weeks Marine. He pointed out that Weeks Marine completed the analysis and then left to go north. He asked if there was anything in the amendment that would be a surprise to Weeks Marine. Town Manager Havens stated that there wasn't, adding that Weeks Marine has the document and has been involved in the discussions. He stated that before the amendment was introduced, they had some candid conversations with Weeks Marine.

Mayor Kingston asked if anything in the way of damages over and above what the Town was covered for would go back to Dare County's beach nourishment fund. He explained that Weeks Marine could come back in and the Town has liquidated damages but the expenses have all been covered and now there was the liquidated damages. He assumed it would go back to the Dare County beach nourishment fund. Town Manager Havens stated that any funding in excess would go back to the beach nourishment fund with Dare County.

Councilor Whitman asked if Weeks Marine does not perform or fix any damages, the property owner would go to Dare County and not the Town. Town Manager Havens stated he was correct.

Councilor Schiano agreed with Mayor Kingston and Town Attorney Hobbs regarding proceeding with the issue. He thought Weeks Marine had some sophistication and completed a cost benefit analysis as to what hurts the most – continuing in Duck or going elsewhere. He noted that it was obviously less painful financially for them to go elsewhere instead of staying in Duck. He suspected that Weeks Marine may be able to deal with the Town's request. Town Manager Havens agreed. Councilor Schiano thought the Town was on the right path. Town Manager Havens didn't think the Town was in a weak negotiating position.

Mayor Pro Tempore Thibodeau agreed with the direction that Council seems to be taking, which was to allow Town Attorney Hobbs and Town Manager Havens to pursue the issue on Council's behalf. She stated that she didn't hear when the start date would be. She added that, initially Weeks Marine was going to return to Duck in March because they had some equipment that needed work done to it. She asked if there was anything preventing Weeks Marine from starting the project in January. Town Manager Havens stated that they would have the equipment then. Mayor Pro Tempore Thibodeau asked if Weeks Marine had the equipment ready, they could start whenever they wanted. Town

Manager Havens stated she was correct. Mayor Pro Tempore Thibodeau clarified that in this scenario, they would have to be finished by May 25, 2023. Town Manager Havens stated she was correct, adding that the plan was to start in mid-March. He noted that Weeks Marine has not given a definitive start date.

Mayor Pro Tempore Thibodeau stated that Coastal Planning Engineering had to add to their work the monitoring. She asked if they were completing the surveying. Town Manager Havens explained that Weeks Marine contracts with a licensed surveyor to complete the surveys and are analyzed by Coastal Planning Engineering. Mayor Pro Tempore Thibodeau clarified that Coastal Planning Engineering was the Town's engineer and they have an independent surveyor to validate it, with Weeks Marine paying for the extra work. Town Manager Havens stated she was correct, adding that it included any hours for Coastal Planning Engineering.

Mayor Kingston thought Weeks Marine's reputation was on the line and this would not be good for them if they pulled out of the project completely. He stated that the positive aspect was that the dredges were close to Duck. He stated that he was trying to stay positive with Weeks Marine coming back to Town, adding that even if the date was extended, the last time beach nourishment was completed was in June and the Town dealt with it. He stated that even if there was some slippage, he thought it was to the Town's advantage because Duck would probably get more sand on the beach. Town Manager Havens stated that there was some slippage, adding that Weeks Marine was committed to coming back.

Mayor Pro Tempore Thibodeau asked if the lead negotiator was Dare County Manager Bobby Outten. She clarified that there wasn't a separate attorney taking care of things. Town Manager Havens stated that it has been Dare County Manager Bobby Outten, Dare County Finance Officer David Claussen, Adam Priest and Ken Willson of Coastal Planning Engineering, as well as couple of executives from Weeks Marine.

Town Attorney Hobbs noted that once the terms are worked out, the draft will be sent to him for review and then sent to Weeks Marine through Dare County for review.

Mayor Kingston clarified that there was no pushback anticipated from the Town of Southern Shores regarding access to the beach. Town Manager Havens stated that he wasn't sure but it was not Duck's issue.

Mayor Kingston moved to approve in concept the terms of the proposed amendment to the contract with Weeks Marine and delegate to the Town Manager and Town Attorney the authority to negotiate the final terms of the amendment, including a determination by the Town Manager and Town Attorney whether to bring any substantive changes back to the Council to consider.

Motion carried 5-0.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN ATTORNEY

Town Attorney Hobbs stated that starting January 1, 2023 Lauren Womble, an attorney in Elizabeth City, would be joining his firm as a partner. He noted that Ms. Womble has completed some work in Duck with the Town's Board of Adjustment.

ITEMS REFERRED TO AND PRESENTATIONS FROM THE TOWN MANAGER

Departmental Updates

Police Chief Jeffrey Ackerman was recognized to speak. Police Chief Ackerman gave a brief overview of the past month's police activities to Council and the audience.

Fire Chief Donna Black was recognized to speak. Fire Chief Black gave a brief overview of the past month's fire activities to Council and the audience.

Director of Community Development Joseph Heard was recognized to speak. Director Heard gave an overview of the past month's permit activities to Council and the audience.

Public Information and Events Assistant Betsy Trimble was recognized to speak. Assistant Trimble gave a brief overview of activities to Council and the audience.

November FY 2023 Financial Presentation

Finance and Human Resources Administrator Jessica Barnes was recognized to speak. Administrator Barnes gave a short presentation on the November Fiscal Year 2023 financials to Council and the audience.

MAYOR'S AGENDA

Mayor Kingston stated that the mayors/chairmen meeting will be on December 20, 2022 in Kitty Hawk. He stated that he has stepped down as president for the North Carolina Local Leadership Foundation but is acting in an advisory capacity. He stated that the DCBA has their annual meeting on December 10, 2022 to which he would be presenting Town activities to them. He stated that he participated in the OBX Leadership session the week prior held by the Outer Banks Chamber of Commerce. He thanked Fire Chief Black for the Duck Volunteer Fire Department party. He thanked Assistant Trimble and Town staff for the Yuletide Celebration and wished everyone a Happy Holiday.

COUNCIL MEMBER'S AGENDA

Mayor Pro Tempore Thibodeau stated that she was sorry she missed the Fire Department party and the Yuletide Celebration. She gave a short Visitors Bureau meeting update to Council and the audience.

Councilor Mooney thanked everyone for a great year and wished everyone a Merry Christmas and Happy New Year.

Councilor Whitman thanked Town staff for the Yuletide Celebration. He thanked Fire Chief Black for the Fire Department party. He wished everyone a Merry Christmas and Happy New Year.

Councilor Schiano wished everyone a Merry Christmas and Happy New Year.

OTHER BUSINESS

Additional Public Comments

Mayor Kingston opened the floor for public comments. There being no one wishing to comment, Mayor Kingston closed the time for public comments.

Mayor Kingston noted that the next meeting would be the Regular meeting on Wednesday, January 4, 2023 at 6:00 p.m.

CLOSED SESSION

Mayor Pro Tempore Thibodeau moved to enter closed session pursuant to §143-318.11(5) to establish or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property located at 1165 Duck Road, owned by Larry Herron, Thomas Herron, Deborah Herron, Vicky Herron, and Catherine Herron, by purchase, option, exchange, or lease.

Motion carried 5-0.

The time was 7:39 p.m.

Upon return from closed session, Town Attorney Hobbs stated that the Council authorized the Town Manager to further explore the possible purchase of the property listed as 1165 Duck Road.

ADJOURNMENT

Councilor Schiano moved to adjourn the meeting.

Motion carried 5-0.

The time was 8:12 p.m.

Lori A. Ackerman, Town Clerk

Approved: _____

Don Kingston, Mayor

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF DUCK, NORTH CAROLINA,
SUPPORTING AND AUTHORIZING SUBMISSION OF A PAVED TRAILS AND SIDEWALK
FEASIBILITY STUDY GRANT FOR A SIDE PATH ALONG THE WEST SIDE OF N.C. HIGHWAY
12 SOUTH OF DUCK VILLAGE**

Resolution No. 23-01

WHEREAS, the Town of Duck Comprehensive Pedestrian Plan, developed with the assistance of a citizen steering committee and input from over 600 business and property owners, was approved by the North Carolina Department of Transportation and adopted by the Duck Town Council in October 2014; and

WHEREAS, the proposed side path along the west side of N.C. Highway 12 south of Duck Village is specifically recommended in the adopted Comprehensive Pedestrian Plan. The proposed feasibility study is the initial step toward implementation of this recommendation; and

WHEREAS, the Town Council for the Town of Duck, North Carolina developed its 2032 Vision with a general goal of enhancing movability by being "... a pedestrian first community that is safe and easy to navigate by walking and cycling" and included a specific action item to "analyze, investigate and plan the westside multi-use trail"; and

WHEREAS, the Town of Duck has received support for this project from adjoining neighborhoods, the business community, and other stakeholders in the community.

NOW, THEREFORE, BE IT RESOLVED that that the Town Council for the Town of Duck, North Carolina wholeheartedly supports the proposed N.C. Highway 12 West Side path Feasibility Study as it implements goals and recommendations of the Town's adopted plans and vision as noted above; and

BE IT FURTHER RESOLVED that the Town Council for the Town of Duck, North Carolina authorizes the Town Manager of the Town of Duck to submit a Paved Trails and Sidewalk Feasibility Study Grant to the North Carolina Department of Transportation; and

BE IT FURTHER RESOLVED that the Town Council for the Town of Duck, North Carolina commits to providing the necessary matching funds and staff resources in support of the proposed N.C. Highway 12 West Side path Feasibility Study.

Adopted this 4th day of January 2023.

Mayor

ATTEST:

Clerk

AGENDA: January 4, 2023

Regular Meeting

ITEM #4:

Special Presentations

A. None at This Time

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #5:

Quasi-Judicial Public Hearing

A. None at This Time

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #6:

Legislative Public Hearings

- A. Public Hearing/Discussion/Consideration of Ordinance 22-10,
 Regulatory Standards for Dune Walkover Structures

RECOMMENDED ACTION:

- See Attachments

SUMMARY OF INFORMATION:

- See Attachments

ATTACHMENTS:

- See Attachments

AGENDA: January 4, 2023

Regular Meeting

ITEM #6:

Legislative Public Hearings

- A. Public Hearing/Discussion/Consideration of Ordinance 22-10, Regulatory Standards for Dune Walkover Structures

RECOMMENDED ACTION:

- Conduct the Public Hearing
- Discuss & Consider Approval of Ordinance 22-10

SUMMARY OF INFORMATION:

- The proposed text amendment is intended to provide flexibility in certain situations while still maintaining a quantifying standard, removing potential subjectivity to the equation when dealing with regulatory standards for dune walkover structures. At its public meeting on November 9, 2022, the Duck Planning Board voted unanimously (5-0) to recommend APPROVAL of proposed Ordinance 22-10.

ATTACHMENTS:

- Staff Report
- Letter of Transmittal to Town Council
- Ordinance 22-10



TO: Mayor Don Kingston and Duck Town Council
FROM: Sandy Cross, Senior Planner
Joe Heard, AICP, Director of Community Development
DATE: December 30, 2022
RE: Text Amendment: Regulatory Standards for Dune Walkover structures

Public Hearing Notice

Public Meeting Advertised: December 18 and 28, 2022(Coastland Times)
Public Hearing Town Website: December 9, 2022
Public Hearing Town Hall Posted: December 9, 2022

Proposal

The Planning Board and Town Council recently approved a zoning text amendment that clarified the elevation of dune walkover structures in all situations (minimum 18 inches) and under what circumstances minimum setback exemptions can be granted. During that discussion, the Planning Board questioned the need for the minimum 18-inch elevation, as noted in Chapter 94 and Subsection 156.124 of the Town Code, and suggested that one size does not fit all. A request was made that Town Council consider this for further consideration and discussion by the Planning Board. Town Council voted to send it back for further review concerning this issue.

Following Council's directive, the Planning Board held a special meeting on August 19, 2022 to drive the beach and view various conditions and situations where the 18-inch elevation may or may not be ideal. Approved summary minutes from that meeting were provided for background context at the Planning Board's September meeting.

At the Planning Board's September 14, 2022 meeting, Town Staff presented several options to the Planning Board to address concern that dune walkover elevation requirements should be unique to the area in which they are developed. At the conclusion of that meeting, staff offered to bring this matter back to the Board after an upcoming CAMA training. Since the CAMA regulations are ambiguous, staff suggested they would see why and whether there was any consensus as to a more suitable option. A CAMA training was held on October 25, 2022 at the Duck Town Hall. When posed with the question regarding dune walkover elevations, we were provided with the following comment from District Manager, Ron Renaldi,

CAMA elevations requirements of beach walkways/crossovers are meant to be vague to allow for the LPO (Local Permit Officer) to make the final determination on what is permissible in their locality. This allows us to appropriately handle dynamic situations/environment.



This information was presented to the Planning Board at their November meeting.

Staff Analysis

After considering the history behind the development of the applicable code sections (Chapter 94 and Subsection 156.125), the intent of the CAMA regulations as well as the Comprehensive Land Use Plan and its Tools for Managing Development, Staff offered a variety of options to the Planning Board. Keeping with the concern that different areas may require different regulations based on dune height and conditions, Staff presented an option that tied the elevation of dune walkovers to the dune elevation, distinguishing between primary and frontal dunes. If the dune is a frontal dune, its elevation is lower and therefore affords less protection. As such, we would encourage elevating the walkover to allow for vegetation and dune growth below it. If the dune is a primary dune, its elevation is equivalent to the based flood elevation (BFE), normally 11 or 12 plus 6 feet, equating to an elevation of 17 or 18 feet above sea level. At this elevation, the dune offers more protection, and perhaps a minimum elevation requirement above the dune is not needed and we only need to maintain a maximum elevation above the dune. This would, however, potentially result in an expense to the property owner to determine the dune elevation. We have added “dune elevations may be determined through use of current contour data or surveyed elevations” in the draft language for clarification purposes.

One other revision that Staff proposed was the removal of the phrase “and shall extend east of the seaward vegetation line” at the end of Subsection 94.04. In practice, when Staff meets with contractors, we try to keep the walkover terminus in line with the vegetation line, not extending east of that line. This practice helps protect dune walkover structures from storm damage and reduce encroachments onto the wet sand beach.

Lastly, another important question that Staff presented was how we define “grade”. Staff has talked about the challenges and interpretations when applying these standards to areas that aren’t flat. Recently, we asked the building inspector for his comments as to where he measures grade from when determining whether handrails and stair kicks are needed. Staff discussed his comments with the Planning Board and explained how that is typically determined. Staff conveyed that they would include that explanation in the draft template that is being developed related to dune walkover accessways. The Board did not think that an ordinance amendment was needed.

Staff Recommendation

Staff is of the opinion that the attached Ordinance amendment reflects the requested desire for flexibility in certain situations while still maintaining a quantifying standard, removing the potential for subjectivity from the equation.

Planning Board Recommendation

The Planning Board discussed this issue at its November 9, 2022 meeting and voted unanimously (5-0) to recommend the approval of the attached zoning text amendment.



Consistency w/ Land Use Plan

The Town of Duck's adopted CAMA Land Use Plan does not contain recommendations relating to the specific amendment being proposed but contains the following goals, policies, and objectives that address the general development intensity and stormwater management issues:

Land Use Compatibility Management Goal:

Ensure that development and use of resources or preservation of land balance protection of natural resources and fragile areas with economic development, and avoids risks to public health, safety, and welfare.

Natural Hazard Areas Management Goal:

Conserve and maintain the barrier dune system, beaches, flood plains, and other coastal features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

Public Access Management Goal:

Maximize access to the beaches and the public trust waters of the coastal region.

Policy 1: Preserve, protect, and enhance the Atlantic Ocean Shoreline and ensure future generations are able to enjoy its beauty and bounty and can continue to use the beach and water for active and passive recreation and leisure activities.

1.3: Preserve the natural value and ecosystem services of the beach and dunes.

1.3.1: Conserve and maintain barrier dunes, beaches, and other coastal features for their natural storm protection functions and their innate beauty and recreational value.

As part of its recommendation, the Planning Board members unanimously found that the proposed text amendment is consistent with the adopted Comprehensive & Land Use Plan.

ATTACHMENTS

- A. Planning Board Transmittal Letter to Town Council
- B. Draft Ordinance 22-10
- C. Chapter 94, Beach and Dune Management.
- D. Subsection 156.124, Structures Within the Primary and Frontal Dunes.
- E. CAMA Regulations, Sections 07H.0308, 07H.0309 & 07K.0209



December 2, 2022

RE: Zoning Text Amendment Ordinance
Dune Walkover Elevation Regulatory Standards

Dear Mayor Kingston and Duck Town Council Members:

At its public meeting on November 9, 2022, the Planning Board reviewed a proposed text amendment intended to establish standards for the appropriate elevation of dune walkover structures above the dune, understanding that one size does not always fit all.

Following discussion and consideration, the Duck Planning Board voted unanimously (5-0) to recommend approval of the proposed text amendments amendments to Chapters 94, Beach and Dune Management, 94.04 Definitions and Subsection 156.124(C)(1)(b) of the Duck Town Code, Regulatory Standards for Structures within the Primary and Frontal Dunes. As part of its recommendation, the Planning Board found that the proposed text amendment is consistent with the Town of Duck's adopted Comprehensive & Land Use Plan.

Sincerely,

/s/

James Cofield, Chair
Town of Duck Planning Board

**AN ORDINANCE AMENDING THE REGULATORY STANDARDS
FOR DUNE WALKOVER STRUCTURES**

Ordinance 22-10

WHEREAS, the Duck Town Council has found it to be in the Town’s interest to amend the regulatory standards related to dune walkover construction standards; and

WHEREAS, these amendments are intended to amend the construction standards established for dune walkover structures to minimize their impact on the dune; and

WHEREAS, the Duck Planning Board thoroughly reviewed these standards and voted to recommend approval of this ordinance at its public meeting on November 9, 2022; and

WHEREAS, the Duck Town Council found these amendments to be consistent with the goals and objectives of the Town of Duck Comprehensive & CAMA Land Use Plan.

NOW THEREFORE BE IT ORDAINED by the Town Council for the Town of Duck, North Carolina:

PART I. The definition in Section 94.04 of the Duck Town Code shall be amended to read as follows:

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, and shall be elevated at least 18 inches above the dune when the dune is determined to be a frontal dune. ~~and shall extend east of the seaward vegetation line.~~ If the walkover structure extends over a primary dune, no elevation above the dune is required. Dune elevations may be determined through use of current contour data or surveyed elevations.

PART II. Subsection 156.124(C)(1)(b) of the Duck Town Code shall be amended to read as follows:

(b) The underside of the dune walkover structure across a the frontal or primary dune shall be a minimum of 18 inches and a maximum of 30 inches above grade. The underside of the dune walkover structure across a primary dune shall be a maximum of 30 inches above grade.

PART II. This ordinance shall be effective upon its adoption.

Don Kingston, Mayor

ATTEST:

Lori Ackerman, Town Clerk

Date adopted: _____

Motion to adopt by: _____

Vote: _____AYES _____NAYS

DRAFT

CHAPTER 94: BEACH AND DUNE MANAGEMENT

Section

- 94.01 Purpose
- 94.02 Conflicts with state rules
- 94.03 Territorial applicability
- 94.04 Definitions
- 94.05 Beach and dune protection
- 94.06 Beach driving regulations
- 94.07 Protection of wildlife and marine life
- 94.08 Protection of cultural resources

- 94.99 Penalty

§ 94.01 PURPOSE.

The purpose of this chapter is to preserve and enhance the natural function, aesthetic value, and protective qualities of the town's barrier beach and dune system. This chapter hereby establishes regulations to permit reasonable uses and intrusions into the dune system and the ocean beach, consistent with sound beach and dune conservation practices. This chapter also restricts or prohibits activities which are known to be detrimental to the structural integrity of the primary and frontal dunes, the profile of the ocean beach, and the biological and cultural resources that are present in these areas. Furthermore, this chapter establishes regulations to improve the safety of the general public on the town's ocean beaches and facilitates ocean rescue and emergency response operations.

(Ord. 09-04, passed 4-8-2009)

§ 94.02 CONFLICTS WITH STATE RULES.

If any provision of this chapter is in conflict with a rule adopted by the State Coastal Resources Commission dealing with oceanfront erosion control or regulation of development as contained in 15A NCAC 07H.300, then the rule or regulation shall control and apply in lieu of the provision of this chapter in conflict therewith.

(Ord. 09-04, passed 4-8-2009)

§ 94.03 TERRITORIAL APPLICABILITY.

This chapter shall apply to the primary and frontal dune systems as defined in § 94.04 and to the ocean beaches located within the corporate limits of the town.

(Ord. 09-04, passed 4-8-2009)

§ 94.04 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADVERSE IMPACT. Anything that would destroy, harm, impair, diminish, or degrade the value or integrity of a sand dune for storm protection or wildlife habitat.

BARRIER DUNE. The easternmost sand dune or system of sand dunes which lies just west of the mean high water mark of the Atlantic Ocean and forms a protective barrier from the actions of the Atlantic Ocean.

BEACH. The lands consisting of unconsolidated soil materials that extend for a distance of 100 yards east of the mean low water mark into the Atlantic Ocean landward to a point where either the growth of stable natural vegetation occurs or a distinct change in slope or elevation alters the configuration, whichever is farther landward.

DUNE SYSTEM, FRONTAL DUNE. The first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus 6 feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

DUNE WALKOVER ACCESS, IMPROVED. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system. Improved walkover structures shall be no more than 4 feet in width for single-family dwellings and 6 feet in width for commercial or publicly owned structures. Dune walkover structures shall be constructed without a roof or walls, shall be elevated at least 18 inches above the dune, and shall extend east of the seaward vegetation line.

DUNE WALKOVER ACCESS, UNIMPROVED. A sand walkway or path used for the purposes of providing pedestrian access to the beach which is no more than 6 feet in width and located in an area where there is no escarpment present between the dune structure and the beach.

ESCARPMENT. The vertical drop or steep slope in the beach profile separating 2 comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion. ESCARPMENTS for the purposes of this chapter shall only be determined to exist

in areas where the height and slope of the escarpment would preclude reasonable pedestrian access to the beach without causing an adverse impact to the dune structure.

INVASIVE EXOTIC SPECIES. A non-native or invasive vegetation, which, if left undisturbed by manmade forces, will create a landscape comprised of a singular plant species.

SHIPWRECK. The remains of a ship, in whole or in part, which was wrecked or destroyed upon the water and subsequently abandoned, to which title voluntarily has been given up by the owner with the intent of never claiming a right or interest in the future and without vesting ownership in any other person, that is discovered or identified by some archaeological endeavor, natural exposure, or documented archeological site number.

TENTS. A portable shelter supported by a framework of multiple poles (this is not to include umbrellas, which have 1 supporting pole in the center of the shelter).

TOE OF SLOPE. That point between the beach and the dune system where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change upward and becomes the slope of the barrier dune.

VEHICLE. Motor-driven or wind-powered vehicles, including fishing boats and amphibious vehicles, but excluding sailboats used for sport, surfboards and amphibious vehicles which are afloat and no portion of which is beached, aground, or operating on wheels or tracks.

VEHICULAR BEACH ACCESS POINT.

(1) An access for use by vehicles at a designated location on a town street. Vehicle access is permitted at these points and at no other location.

(2) If the vehicular beach access point is not maintained by the town, users must have and possess written permission from the entity that owns or maintains the vehicular beach access point before using the vehicular beach access point.

(Ord. 09-04, passed 4-8-2009; Am. Ord. 13-04, passed 7-17-2013)

§ 94.05 BEACH AND DUNE PROTECTION.

(A) The following activities shall be considered unlawful within the dune system:

(1) Walking or traversing on the dunes outside of an improved or unimproved dune walkover access as defined in § 94.04;

(2) Utilizing an improved dune walkover structure that has been damaged and officially posted by the town's Building Inspector as an unsafe structure;

(3) Removing, damaging, or destroying healthy, non-invasive dune plant species including, but not limited to, Sea Oats (*Uniola paniculata*), Bitter Panicum (*Panicum amarum*), Seashore Elder (*Iva imbricata*), and American Beachgrass (*Ammophila breviligulata*);

(4) Installation of vegetation inconsistent with sand dune systems, such as lawn grasses or sod, or herbaceous varieties that are not commonly known as “salt-tolerant” dune varieties or that may be determined to be “invasive exotic species”;

(5) Degrading, disturbing, or compromising the integrity of the dune structure. These prohibited activities include, but shall not be limited to:

(a) Digging, shelling, mining, or mechanical alteration of the dune topography;

(b) Playing, sliding, climbing, or rappelling on the frontal or primary dune or the dune escarpment; and

(c) Discharging water into the dune where it will cause significant scouring or erosion or otherwise affect the integrity of the dune.

(6) Development activities without a valid building permit, Health Department approval, or CAMA authorization;

(7) Storing objects or construction materials; and

(8) Littering.

(B) The following activities shall be considered unlawful on the beach, as defined in § 94.04:

(1) Erection of a tent, cabana, or sunshade that meets any of the following conditions as determined by Ocean Rescue Personnel:

(a) When, due to beach width, tide levels, crowd conditions, or other factors, placement of tents or similar devices will obstruct the passage of emergency or ocean rescue vehicles or the line of sight from lifeguard stands or other surveillance areas.

1. In such instances, areas may be designated by Ocean Rescue Personnel where the use of tents or similar devices shall be temporarily prohibited.

2. At any time when tents or similar devices are prohibited in designated areas, an identifier shall be placed at each end of the subject area so as to be readily visible to all person within the area.

3. To allow for emergency vehicle access, tents or similar devices shall not be placed within 15 feet of the base of the seaward toe of the primary dune.

(b) Tents, cabanas, and sunshades shall not be greater than 12 feet by 12 feet in area or higher than 9 feet above the surface of the beach when installed.

(c) Tents, cabanas, and sunshades shall not be tied together and shall be placed no closer than 10 feet apart.

(2) Leaving unattended personal articles on the beach between the hours of 5:00 p.m. and 8:00 a.m. These items may include, but shall not be limited to, volleyball, badminton and tennis nets, poles, tents, chairs, cabanas, sunshades, horseshoe stakes, croquet courses,

umbrellas or any other personal property items. Unattended items left on the beach between these hours shall be considered litter and may be subject to removal and disposal.

(3) Beach fires as prohibited in § 91.21.

(4) Substantially altering the contour or shape of the flat beach area by excessive digging or mounding of sand whereby, in the opinion of Public Safety Personnel, such alteration presents a dangerous condition. Persons responsible for altering the contour or shape of the beach to any extent shall restore the beach to its original condition prior to leaving the area unattended for any period of time.

(5) Littering.

(6) Violations of § 90.06 related to mandatory removal of dog feces on the ocean beach.

(C) Beach Vitex (*Vitex rotundifolia*). The plant known as Beach Vitex (*Vitex rotundifolia*) is hereby found and declared to be a public nuisance due to the significant negative impacts this plant will have upon the beaches and dune system, nesting sea turtles, and native vegetation such as Sea Oats, Bitter Panicum, Seashore Elder, and American Beachgrass. It shall be unlawful for any person to plant or cause to be planted Beach Vitex (*Vitex rotundifolia*) on any property located within the corporate limits of the town.

(D) Exemptions: The town hereby encourages responsible dune management activities including proper construction and maintenance of improved dune walkover structures, the use of shared and/or community beach accesses, the proper installation and maintenance of sand fencing, and planting of native, salt-tolerant dune vegetation. Therefore, this section shall not apply to the following activities:

(1) Development activities authorized or permitted by the town, the Dare County Department of Environmental Health, or CAMA;

(2) Dune or property maintenance activities including planting or fertilization of vegetation, sand fence installation, minor dune repairs, and removal of litter or debris;

(3) Activities within the developed portion of the dune system;

(4) Federal, state, and local officials engaged in official regulatory activities; and

(5) Persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

(Ord. 09-04, passed 4-8-2009; Am. Ord. 11-02, passed 3-2-2011; Am. Ord. 13-03, passed 4-3-2013) Penalty, see § 94.99

§ 94.06 BEACH DRIVING REGULATIONS.

(A) General regulations.

(1) Except as hereinafter provided, it shall be unlawful to operate any vehicle on the beaches of the town.

(2) Vehicles may be operated on the beaches of the town between 12:01 a.m. on October 1 until 11:59 p.m. on April 30 of each and every year, subject to the regulations and rules of operation contained in this chapter.

(B) Rules of operation. When permitted by division (A)(2) above, vehicles shall be operated on the beaches of the town in accordance with the following rules:

(1) No vehicle shall be operated on the beach at a speed in excess of 20 mph;

(2) Vehicles shall be operated on the beach only during the period set out in division (A)(2) above;

(3) No vehicle shall be operated west of the toe of slope of the dune except in going to and from the beach area at authorized vehicular beach access points. However, nothing contained herein shall be construed to permit driving on the barrier dunes or driving on private property without the express permission of the owner, even though the toe of slope may be located west of the eastern boundary line of the private property;

(4) Vehicles going to and from the beach area shall use as an entrance and exit only the vehicular beach access points designated by the town;

(5) Vehicles may be operated on the beach only from one-half hour prior to sunrise to one-half hour following sunset daily;

(6) Pedestrians, swimmers, and bathers shall have the right-of-way over all vehicles being operated on the beach;

(7) Any person who drives any vehicle upon the beach area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others or who drives any vehicle upon the beach without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving;

(8) Any person who is under the influence of intoxicating liquor or other drug or who has a blood alcohol level of 0.08% or more by weight, who drives on the beach area or going to and from the beach, shall be guilty of driving while under the influence of intoxicating liquor or other drug; and

(9) Any operator of any vehicle on the beach area or going to and from the beach must have a current and valid motor vehicle operator's license issued by the state of his or her residence.

(C) Exceptions.

(1) The provisions of this chapter shall not apply to municipal employees, municipal vehicles, or emergency vehicles or the drivers thereof, which may be required to enter upon the beach in the performance of their duties nor shall this division apply to a

governmental agency, its employees, agents, contractors, and subcontractors and their vehicles when engaged in beach restoration or protection work or scientific research.

(2) The date and time limitation provided in division (A)(2) above shall not apply to commercial fishermen holding a valid state commercial fishermen's license when engaged in commercial fishing activities.

(3) The Town Manager shall have the authority to close any portion of the beach or the entire beach at the times and places where extensive beach erosion occurs. This authority may be exercised by the Town Manager when, as a result of inspections by the Town Manager or the town employees subject to the Town Manager's authority, it is determined that the width of the beach between the toe of the slope of the dune and the area affected by ocean wash and waves is such that driving would either be dangerous or increase the effects of erosion, or the beach is not sufficiently wide or stable to support vehicular traffic.

(4) At any time that the ocean wave wash is less than 40 feet eastward of the toe of the slope that portion of the beach shall be closed. The closure area shall extend to the next beach access point in each direction. Any person operating a vehicle on the beach in a closed area shall be subject to the penalties provided in this chapter.

(5) The provisions of this section shall not apply to persons engaged in research, conservation, or extension activities as authorized by the Town Manager.

(Ord. 09-04, passed 4-8-2009) Penalty, see § 94.99

§ 94.07 PROTECTION OF WILDLIFE AND MARINE LIFE.

It shall be unlawful for any person to willfully harm, harass, or otherwise disturb any sea turtles, sea turtle nests or eggs; or beached or stranded whales, dolphins, seals, sharks, or other wildlife or marine life. Violations shall be reported immediately to the town.

(Ord. 09-04, passed 4-8-2009) Penalty, see § 94.99

§ 94.08 PROTECTION OF CULTURAL RESOURCES.

(A) It shall be unlawful to disturb, destroy, or remove in whole or in part any exposed or unburied shipwreck.

(B) Any authority to disturb, collect, or remove such artifacts shall be obtained in writing from the North Carolina Office of State Archeology (G.S. Ch. 121, Art. 3; Abandoned Shipwreck Act of 1987 [P.L. 100-298]).

(Ord. 09-04, passed 4-8-2009) Penalty, see § 94.99

§ 94.99 PENALTY.

Any person violating the provisions of this chapter shall be subject to a civil penalty in the amount of \$50 per violation. The person cited for the violation must pay the civil penalty within five day of being cited for the violation. In the event that the person cited for the violation does not pay the civil penalty within the prescribed time, the town may bring a civil action to recover the penalty and the associated court costs.

(Ord. 09-04, passed 4-8-2009; Am. Ord. 19-06, passed 11-6-2019)

§ 156.124 STRUCTURES WITHIN THE PRIMARY AND FRONTAL DUNES.

(A) Purpose. It is the purpose of this section to develop regulatory standards which will assist with the preservation of a continuous dune system within the town, acknowledging the protective and aesthetic values that this feature provides. Regulations are hereby established to limit structures within the dune system that are known to weaken its structural integrity. Further, construction standards are established for dune walkover structures to minimize their impact on the dune, recognizing that these structures provide a safe and responsible mechanism to access the ocean beach.

(B) Definitions.

DUNE SYSTEM, FRONTAL DUNE. The first mound of sand located landward of the beach having sufficient vegetation, height, continuity, and configuration to offer protective value.

DUNE SYSTEM, PRIMARY DUNE. The first mounds of sand located landward of the beach having an elevation equal to the mean flood level for the area plus 6 feet. The primary dune extends landward to the lowest elevation in the depression behind the same mound of sand.

DUNE WALKOVER STRUCTURE. A raised walkway constructed for the purpose of providing access to the beach from points landward of the dune system.

ESCARPMENT. The vertical drop or steep slope in the beach profile separating 2 comparatively level or more gentle sloping surfaces caused from high tide or storm tide erosion.

FIRST LINE OF STABLE NATURAL VEGETATION. This line represents the boundary between the normal dry sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line, based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes, rather than planted individual rooted sets. The vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

POST-AND-RAIL STRUCTURE. A single top rail mounted on imbedded posts. To minimize the impact of the structure, a POST-AND-RAIL STRUCTURE shall not include additional structural or decorative elements such as cross-bracing, other horizontal railing,

or balusters. For structural support, posts must be embedded at least 4 feet in the ground. The rails shall have a span no less than 6 feet and no greater than 10 feet.

POST-AND-ROPE STRUCTURE. A structure consisting of a single strand of rope strung between imbedded posts typically serving to guide people to a certain location traversing a dune. The span between posts shall be no less than 6 feet and no greater than 10 feet.

STATIC VEGETATION LINE. In areas within boundaries of a large-scale beach fill project, the first line of stable natural vegetation that existed prior to the onset of project construction shall be defined as the **STATIC VEGETATION LINE**. The "onset of project construction" shall be defined as the date sediment placement begins. A **STATIC VEGETATION LINE** shall be established in coordination with the N.C. Division of Coastal Management using on-ground observation and surveys of existing conditions for all areas of the oceanfront that undergo a large-scale beach fill project. Once a static vegetation line is established, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the first line of stable natural vegetation. In all locations where the first line of stable natural vegetation is landward of the static vegetation line, the first line of stable natural vegetation shall be used as the reference point for measuring oceanfront setbacks.

TOE OF SLOPE. That point between the beach and the dune system where the uniform line of slope from the ocean toward the barrier dune begins an abrupt change upward and becomes the slope of the barrier dune.

(C) Regulatory standards.

(1) Dune walkover structures. Dune walkover structures shall be constructed to entail negligible alteration of the dune. The following construction standards shall apply:

(a) Dune walkover structures for residential use shall be no wider than 4 feet and shall be constructed on raised posts or pilings embedded no less than 4 feet and no greater than 5 feet below grade. Walkover structures for commercial or public use may be constructed up to 6 feet in width and shall utilize piling embedment criteria consistent with the North Carolina Building Code.

(b) The underside of the dune walkover structure across the frontal or primary dune shall be a minimum of 18 inches and a maximum of 30 inches above grade.

(c) Dune walkover structures shall be located such that the first step down to the beach is placed no farther seaward than the beginning of the downward slope of the dune.

(d) Dune walkover structures shall be constructed so that the staircase turns parallel to the dune if there is more than a 12-foot-vertical rise in the staircase required to provide access to the surface of the beach. The requirement to turn the stairs shall not apply in instances where it would preclude the placement of the stairs entirely within the subject property.

(e) Within the beach nourishment project area, dune walkover structures must be constructed to meet the following standards:

1. A dune walkover structure on the western side of the dune may consist of a hardened structure (ramp/stairway), beach access matting, or any material consistent with the standards of this chapter.

2. A dune walkover extending over the top of a dune or on the eastern side of a dune may include the installation of beach access matting.

3. A dune walkover may include the installation of a single post-and-rail structure over the top and on the eastern side of the dune. A second post-and-rail structure will be permitted at a common dune walkover owned and maintained by a neighborhood association or similar entity. The post-and-rail structure(s) may extend down the eastern side of the dune from the top of the dune to the toe of the dune.

4. A dune walkover may include the installation of post-and-rope structures over the top and on the eastern side of a dune. The post-and-rope structures may extend down the eastern side of the dune from the top of the dune to the toe of the dune.

5. If erosion, migration of the dune, or other forces cause any portion of a post-and-rail or post-and-rope structure to extend eastward of the toe of the dune or expose the supporting posts, that section of the structure must be removed by the owner.

6. Any portion of a post-and-rail or post-and-rope structure within the area of a beach renourishment or dune maintenance project must be removed by the owner upon notice from the town prior to initiation of the project.

(f) Where a lawful dune walkover structure exists on July 5, 2017 within the beach nourishment project area that could not be built under the terms of division (e) above, the structure may be continued so long as it remains lawful, subject to the following provisions.

1. The non-conforming dune walkover structure may not be enlarged or altered in a way which increases its non-conformity, but any structure or portion thereof may be altered to decrease its non-conformity.

2. Should the non-conforming portion of a dune walkover structure be destroyed by any means to an extent of more than 50% of its replacement cost at the time of destruction, it shall not be reconstructed, except in conformity with the provisions of this chapter.

3. If located at an elevation higher than the top of the dune, an extension of the non-conforming dune walkover structure, not exceeding 5 feet in length, may be added to lower the walkover structure to the elevation at the top of the dune.

(2) Setbacks established for dune protection.

(a) Development shall be regulated in accordance with the setback criteria established by the Coastal Area Management Act (CAMA) as defined in 15A NCAC 07H .0306.

(b) Accessory structures that are exempt from the CAMA setback criteria shall not be located within 30 feet of the first line of stable natural vegetation or static vegetation line. This shall include decks, gazebos, pools and any other structure which meets the exception

criteria establish by the Coastal Area Management Act (CAMA) in 15A NCAC 07H.0309. This setback shall not apply to dune walkover structures as defined in this section. Additionally, one dune deck per lot may be allowed no closer than 15 feet to the first line of stable natural vegetation or static vegetation line provided that the dune deck does not exceed 8 feet measured in any dimension, including the area that is combined with or adjacent to any dune walkover structure that may be present, and also provided that the dune deck is no higher than 30 inches above grade. In cases where the first line of stable natural vegetation is not evident on the subject property, this line shall be determined by interpolating a straight line between nearest identifiable first line of stable natural vegetation on the adjacent properties directly to the north and south of the subject property (this clause does not apply to properties subject to the static vegetation line).

(c) Existing structures which do not meet the setback criteria established by this section shall be regulated in accordance with the standards applicable to nonconforming structures established in § 156.073. For the purposes of determining replacement cost, the value of each accessory structure shall be considered individually and shall not be combined with the value of any other structure.

(d) Pools within the OCEAN HAZARD SETBACK (as defined by 15A NCAC 07H.0306) shall be constructed such that the top of the pool structure is flush with the adjacent grade and shall not be supported on a piling foundation. In addition, pools within the OCEAN ERODIBLE AREA (as defined by CAMA in 15A NCAC 07H.0304) and where the pre-disturbance grade elevation is below the regulatory flood protection elevation shall be constructed such that the top of the pool structure is flush with the adjacent grade and shall not be supported on a piling foundation.

(3) Nothing in this section shall preclude the removal of any structure which violates § 156.063, Encroachment of Structures on the Ocean Beach.

(Ord. 13-04, passed 7-17-2013; Am. Ord. 17-05, passed 7-5-2017; Am. Ord. 17-06, passed 7-5-2017; Am. Ord. 19-10, passed 2-5-2020; Am. Ord. 21-01, passed 6-2-2021; Am. Ord. 21-03, passed 6-2-2021)

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**(a) Ocean Shoreline Erosion Control Activities:**

- (1) Use Standards Applicable to all Erosion Control Activities:
 - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
 - (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
 - (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
 - (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by State or federal natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
 - (E) Project construction shall be timed to minimize adverse effects on biological activity.
 - (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
 - (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
 - (H) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
 - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
 - (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
 - (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
 - (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
 - (ii) dredging alone is not practicable to maintain safe access to the affected channel;
 - (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
 - (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for

mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.

- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
 - (i) the structure will not be enlarged beyond the dimensions set out in the permit;
 - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
 - (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
 - (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
 - (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.
 - (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
 - (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.
 - (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
 - (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion

control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:

- (i) a building and its septic system shall be considered separate structures,
 - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
- (i) has been issued an active CAMA permit, where necessary, approving such project; or
 - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
 - (iii) has received a favorable economic evaluation report on a federal project; or
 - (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

If beach nourishment, inlet relocation, or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the

temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.

(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

(A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

(B) The activity shall not exceed the lateral bounds of the applicant's property unless permission is obtained from the adjoining land owner(s);

(C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;

(D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Protection, Establishment, Restoration and Stabilization.

(1) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.

(2) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.

(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(4) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.

(5) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.

(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.

(7) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.

(8) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

(1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.

(2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:

- (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) Except in the case of beach matting for a local, State, or federal government's public access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune, in accordance with any more restrictive local, State, or federal building requirements. Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are allowed provided all other applicable standards of this Rule are met.
 - (4) In order to preserve the protective nature of primary and frontal dunes, a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
 - (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in Rule .0309(a) of this Section.
- (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:
- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
 - (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
 - (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
 - (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements of this Part or shall be designed to break-away without structural damage to the main structure.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979; Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989; RRC Objection Eff. November 19, 1992 due to ambiguity; RRC Objection Eff. January 21, 1993 due to ambiguity; Amended Eff. March 1, 1993; December 28, 1992; RRC Objection Eff. March 16, 1995 due to ambiguity; Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995; Temporary Amendment Eff. July 3, 2000; May 22, 2000; Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1, 2002;

Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022; December 1, 2021.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

- (1) campsites;
- (2) driveways and parking areas with clay, packed sand, or gravel;
- (3) elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
- (4) beach accessways consistent with Rule .0308(c) of this Section;
- (5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
- (6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
- (7) temporary amusement stands consistent with Section .1900 of this Subchapter;
- (8) sand fences;
- (9) swimming pools; and
- (10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of a structure on a lot existing as of June 1, 1979, the structure shall be permitted seaward of the applicable setback line in Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not Unvegetated Beach Areas if each of the following conditions are met:

- (1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;
- (2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project vegetation line, whichever is applicable;
- (3) The development is not located on or oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;
- (4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section:
 - (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;
 - (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
 - (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases, other material may be used; and
 - (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but

shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:
- (1) piers providing public access; and
 - (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.
- (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:
- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
 - (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
 - (3) The pier house shall be limited to a maximum of two stories;
 - (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
 - (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
 - (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
 - (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 15A NCAC 07K .0203.
- (f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:
- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
 - (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.
- (g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124; Eff. February 2, 1981;

Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022.

15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED

(a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural pedestrian accessways, including beach matting installed by a local, State, or federal government to provide public access over primary and frontal dunes when such accessways can be shown to meet the following criteria:

- (1) The accessway shall not exceed six feet in width and shall be for private residential or for public access to an ocean beach. This exemption does not apply to accessways for commercial use or for motor-powered vehicular use.
- (2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that the accessway shall be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish its capacity as a protective barrier against flooding and by not reducing the volume of the dune. Driving of pilings into the dune or a local, State, or federal government's use of beach matting for public access that is installed at grade and involves no excavation or fill shall not be considered alteration of a frontal dune for the purposes of this Rule.
- (3) The accessway shall conform with any applicable local or State building code standards.
- (4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in 15A NCAC 07H .0309(a).
- (5) Damaged, non-functioning, or portions of accessways that become non-compliant with Subparagraph (4) of this Paragraph shall be removed by the property owner.

(b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environmental Quality representative shall be notified of the proposed activity to allow on-site review of the proposed accessway. Notification can be by telephone, in person, or in writing and must include:

- (1) name, address, and telephone number of landowner and location of work including county and nearest community; and
- (2) the dimensions of the proposed structural accessway.

*History Note: Authority G.S. 113A-103(5)c;
Eff. November 1, 1984;
Amended Eff. December 1, 1991; May 1, 1990;
Readopted Eff. August 1, 2021;
Amended Eff. December 1, 2021.*

AGENDA: January 4, 2023

Regular Meeting

ITEM #7:

Old Business/Items Deferred from Previous Meetings

- A. None at This Time

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #8:

New Business

- A. None at This Time

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #9:

Items Referred to and Presentations from the Town Attorney

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #10:

Items Referred to and Presentations from the Town Manager

- A. Departmental Updates
- B. December FY 2023 Financial Presentation

RECOMMENDED ACTION:

- See attachments

SUMMARY OF INFORMATION:

- See attachments

ATTACHMENTS:

- See attachments

AGENDA: January 4, 2023

Regular Meeting

ITEM #10A:

Items Referred to and Presentations from the Town Manager

- A. Departmental Updates

RECOMMENDED ACTION:

- None required.

SUMMARY OF INFORMATION:

The Town Council will receive an update on departmental activities.

ATTACHMENTS:

- None.

AGENDA: January 4, 2023

Regular Meeting

ITEM #10B:

Items Referred to and Presentations from the Town Manager

B. December FY 2023 Financial Presentation

RECOMMENDED ACTION:

- None required

SUMMARY OF INFORMATION:

A financial summary will be available at the Town Council meeting.

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #11:

Mayor's Agenda

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #12:

Council Members' Agenda

RECOMMENDED ACTION:

- None

SUMMARY OF INFORMATION:

- None

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #13:

Other Business

A. Additional Public Comments

RECOMMENDED ACTION:

- None required

SUMMARY OF INFORMATION:

- Council will take additional comments from the public.

ATTACHMENTS:

- None

AGENDA: January 4, 2023

Regular Meeting

ITEM #14:

Closed Session

RECOMMENDED ACTION:

- Enter into closed session pursuant to §143-318.11(5) to establish, or instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating the price and other material terms of a contract or proposed contract for the acquisition of real property located at 1165 Duck Road owned by Larry Herron, Thomas Herron, Deborah Herron, Vicky Herron, and Catherine Herron, by purchase, option, exchange, or lease, and other similar matters related to the acquisition of real property.

SUMMARY OF INFORMATION:

- None.

ATTACHMENTS:

- None.

AGENDA: January 4, 2023

Regular Meeting

ITEM #15:

Adjournment

RECOMMENDED ACTION:

- Per discussion

SUMMARY OF INFORMATION:

The next scheduled meeting will be the Mid-Month Meeting on Wednesday, January 18, 2023 at 1:00 p.m.

ATTACHMENTS:

- None