



Town of North Topsail Beach
Board of Aldermen

Agenda	V. A.
Item:	
Date:	8/10/2023

Issue: Proposed Text Amendments to Wetland Regulations and Enforcement: Uniform Development Ordinance §10.07.05 Install and maintain effective sedimentation and erosion control measures; §10.07.06 Wetland Protection; and §11.01.12 Definitions. Wetlands.

Department: Planning

Prepared by: Deborah J. Hill MPA AICP CFM CZO

Presentation: Yes

BACKGROUND The Planning Director works with NC Division of Coastal Management and the U.S. Army Corps of Engineers in processing subdivision, zoning and floodplain applications, as well as responding to violations of local, state and federal regulations. Most wetland disturbance has resulted from lot-clearing without a permit or excavation not consistent with a permit. Violations are referred to the the appropriate jurisdictional authority, with mandated remediation, typically without fines.

UNIFIED DEVELOPMENT ORDINANCE

Flood Damage Prevention

Coastal wetlands dampen the impact of storm surge and reduce flood risk. The Floodplain Administrator is responsible for reviewing all proposed development within special flood hazard areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

An application for a floodplain development permit requires a plot plan drawn to scale which shall include, but shall not be limited to, zoning district, setbacks, percentage impervious surface, building height, area of environmental concern, CAMA setbacks, wetland delineation and the following specific details of the proposed floodplain development:

The nature, location, dimensions and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities and other development; copies of all other local, state and federal permits required prior to floodplain development permit issuance (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.).

The floodplain administrator advises the permittee if additional federal or state permits (wetlands, endangered species, erosion and sedimentation control, CAMA, riparian buffers, mining, etc.) are required, and assures that copies of such permits are provided and maintained on file with the floodplain development permit.

4. ZFP22-000165 - Indicate proposed percentage impervious surface on site plan, as measured from NORMAL HIGH WATER LINE, TO BE UPDATED AND VERIFIED BY DCM.
5. ZFP22-000165 - Indicate OUTSTANDING RESOURCE WATER (ORW) Area of Environmental Concern (AEC) on site plan.
6. ZFP22-000165 - Indicate CAMA setbacks on site plan.
7. ZFP22-000165 - Provide current wetland delineation by bearings and distance and date confirmed by USACE on site plan. Reference to wetland delineation on MB 43 P 235 is 20 years old and no longer valid. An AJD is only valid for 5 years from the date of issuance.
8. ZFP22-000165 - Indicate statement that the entire lot is within the SPECIAL FLOOD HAZARD AREA on site plan.

Figure 1. Example Zoning/Floodplain application review, requiring updated wetland delineation by bearings and distance and confirmation by USACE.

Zoning

Open space management practices are consistent with the goals of reducing hazard losses, such as the preservation of wetlands or other flood-prone areas in their natural state in perpetuity. In addition to the Conservation District, the purpose of R-A (residential-agricultural) zoning district is to set aside and protect those lands which are primarily suited for agriculture, forestry, wetlands and agricultural-related uses. Ashe Island is an example.

Subdivision

All subdivision applications must indicate any wetlands on the sketch plan or site plan. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.

CAMA LAND USE PLAN

The current CAMA Land Use Plan states, “North Topsail Beach accepts state and federal law regarding land uses and development in AEC’s (Areas of Environmental Concern), including all NCAC 7H standards. By reference, all applicable state and

federal regulations are incorporated into this document. No policies exceed the use standards and permitting requirements found in Subchapter 7H, State Guidelines for Areas of Environmental Concern.”

STATE LAW

Coastal Area Management Act (CAMA) regulations (attachment 1) do not permit development in 401 wetlands except water dependent structures. The effects of Session Law 2023-63 Senate Bill 582 - which was passed, vetoed by Governor Cooper and recently overridden June 27, 2023 - are uncertain at this time.

FEDERAL LAW

The U.S. Army Corps of Engineers (USACE or the Corps) regulates activities in waterways and wetlands under the authority of several Federal laws. Permits issued by the Corps authorize various types of development projects in wetlands and other waters of the United States. On September 1, 2023, the Corps is expected to respond to the ruling May 25, 2023, by the U.S. Supreme Court (SCOTUS) in Sackett v. Environmental Protection Agency (EPA).

ACTION REQUIRED The Board of Aldermen directed the Planning Board to review wetland regulations and submit a proposal for increased wetland protection and enforcement.

RECOMMENDATION that the Planning Board recommends that the Board of Aldermen conducts a public hearing on September 6, 2023, and adopts attachments 3 and 4.

ATTACHMENT

1. 15A NCAC 07H .0205 Coastal Wetlands
2. Session Law 2023-63 Senate Bill 582, Section 15 Clarify Definition Of Wetlands
3. An Ordinance Amending the Unified Development Ordinance of the Town Of North Topsail Beach, North Carolina by Updating Standards for Protecting Wetlands Pursuant to North Carolina Senate Bill 582 and Providing for Certain Enforcement Penalties for Unpermitted Disturbance. (draft)
4. Amendment to Town of North Topsail Beach FY 2023-2024 Fee Schedule Planning & Zoning Fees

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Definition. "Coastal Wetlands" are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (*Littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*);
- (2) Black Needlerush (*Juncus roemerianus*);
- (3) Glasswort (*Salicornia* spp.);
- (4) Salt Grass (*Distichlis spicata*);
- (5) Sea Lavender (*Limonium* spp.);
- (6) Bulrush (*Scirpus* spp.);
- (7) Saw Grass (*Cladium jamaicense*);
- (8) Cat-tail (*Typha* spp.);
- (9) Salt Meadow Grass (*Spartina patens*); or
- (10) Salt Reed Grass (*Spartina cynosuroides*).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113-230(a).

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal wetlands. Without the wetlands, the high productivity levels and complex food chains typically found in the estuaries could not be maintained. Additionally, coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource necessary to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. First priority of use shall be allocated to the conservation of existing coastal wetlands. Secondary priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways, and factories. Acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law, G.S. 113-229, or applicable local, state, and federal laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

- (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
 - (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
 - (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
 - (C) Alteration of the substrate is not allowed;
 - (D) All cuttings or clippings shall remain in place as they fall;
 - (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
 - (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
- (2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and

Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have a significant adverse impact on the habitat or fisheries resources.

History Note: Authority G.S. 113A-107; 113A-113(b)(1); 113A-124;
Eff. September 9, 1977;
Amended Eff. September 1, 2016; November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978;
Readopted Eff. July 1, 2020.

CLARIFY DEFINITION OF WETLANDS

SECTION 15.(a) Definitions. – For purposes of this section and its implementation, "Wetlands Definition" means 15A NCAC 02B .0202 (Definitions).

SECTION 15.(b) Wetlands Definition Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission (Commission) is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Wetlands Definition Rule as provided in subsection (c) of this section.

SECTION 15.(c) Implementation. – Wetlands classified as waters of the State are restricted to waters of the United States as defined by 33 C.F.R. § 328.3 and 40 C.F.R. § 230.3. Wetlands do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, which is hereby incorporated by reference, not including subsequent amendments and editions.

SECTION 15.(d) Additional Rulemaking Authority. – The Commission shall adopt a rule to amend the Wetlands Definition Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 15.(e) Sunset. – This section expires when permanent rules adopted as required by subsection (d) of this section become effective.

**AN ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE
OF THE TOWN OF NORTH TOPSAIL BEACH, NORTH CAROLINA BY
UPDATING STANDARDS FOR PROTECTING WETLANDS PURSUANT TO SENATE
BILL 582 AND PROVIDING FOR CERTAIN ENFORCEMENT PENALTIES FOR
UNPERMITTED DISTURBANCE**

Ordinance 23-__

WHEREAS, N.C. Session Law 2023-63 created new definitions for wetlands that apply throughout North Carolina; and

WHEREAS, the Planning Board has reviewed the proposed standards and recommended approval of this ordinance; and

WHEREAS, the Board of Aldermen has found this ordinance to be consistent with the Town's adopted CAMA Land Use Plan; and

WHEREAS, the Board of Aldermen acknowledges the importance of wetlands in reducing flood risk; and

WHEREAS, the Board of Aldermen affirms that open space management practices are consistent with the goals of reducing hazard losses, such as the preservation of wetlands or other flood-prone areas in their natural state in perpetuity; and

WHEREAS, the Board of Aldermen has determined that is in public interest to update standards for protecting wetlands in the Unified Development Ordinance consistent with North Carolina Senate Bill 582 and in compliance with the N.C. General Statutes 160D.

NOW THEREFORE BE IT ORDAINED by the Board of Aldermen for the Town of North Topsail Beach, North Carolina that the Unified Development Ordinance shall be amended as follows:

PART I. That Subsection of the Unified Development Ordinance be amended with the addition of the following:

§10.07.05 INSTALL AND MAINTAIN EFFECTIVE SEDIMENTATION AND EROSION CONTROL MEASURES

(A) All unconsolidated material resulting from associated grading and landscaping shall be retained on site by effective sedimentation and erosion control measures.

(B) Disturbed areas shall be vegetated and stabilized (planted and mulched) within 14 days of construction completion.

- (C) It shall be the responsibility of the property owner to ensure the installation and maintenance of effective sedimentation and erosion control measures and to stabilize disturbed areas within 14 days of construction completion.
- (D) Failure to install and maintain effective sedimentation and erosion control measures during construction or stabilize disturbed areas after construction are in violation of this ordinance shall be subject to a fine in accordance with the Planning and Zoning Fee Schedule for Code Enforcement Civil Citations, as adopted by the Board of Aldermen.

§10.07.06 WETLAND PROTECTION.

- (A) Any wetlands, as defined in Chapter 11, damaged during construction, or damage occurring as a result of such construction, or excavated in violation of this ordinance shall be restored to its original state using similar materials and stabilizing vegetation.
- (B) It shall be the responsibility of the property owner to guarantee the protection of all identified wetlands and not allow the natural wetland hydrology of the lot to be altered beyond that which has been authorized in the permit.
- (C) Wetland grass planting or wetland reforestation shall be the ultimate responsibility of the property owner.
- (D) Any wetlands, as defined in Chapter 11, in the required natural area that has been damaged or excavated in violation of this ordinance shall be subject to a fine in accordance with the the Planning and Zoning Fee Schedule for Code Enforcement Civil Citations for this section, as adopted by the Board of Aldermen and restored within 7 days of notice.
- (E) Failure to repair damage to wetlands and vegetation after 7 days, shall constitute a separate violation for each day that such failure continues after written notification pursuant to §2.17.01.

§11.01.12 DEFINITIONS.

WETLANDS. "Waters" as defined by G.S. 143-212(6) that are inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do not include prior converted cropland as defined in the National Food Security Act Manual, Fifth Edition, which is hereby incorporated by reference, not including subsequent amendments and editions, and is available free of charge at <https://directives.sc.egov.usda.gov/RollupViewer.aspx?hid=29340>.

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

**Town of North Topsail Beach
FY 2023-2024
Fee Schedule**

Attachment 4 p. 1

PLANNING & ZONING FEES

Fees effective 7-1-2022

Development

Re-inspection Fee	\$75.00 for 1st Re-Inspection; \$100 for 2nd Re-Inspection and \$100 for all other additional Re-Inspections (Applied if Inspection NOT READY or FAILS)
Floodplain Development Permit Fee	\$50.00
Zoning Permit Fee(unless otherwise listed)	\$75.00
Special Requirement Site Plans (includes CUP fee)	\$750.00
Commercial Site Plan Review (includes CUP fee)	\$750.00
NTB Driveway Permit (NCDOT separate fee)	\$50.00
Telecommunications Facility - Co-location	\$400.00
Telecommunications Facility - New	\$2,000.00
Accessory Structures	\$50.00

Quasi-Judicial Public Hearings*

Variance Request	\$350.00
Appeals	\$350.00
Conditional Use Permit/Special Use Permit	\$350.00

Legislative Hearings

Map Amendment (Rezone)	\$500.00
Text Amendment	\$500.00

Other Fees

Home Occupation Permit	\$50.00
Land Disturbance	\$50.00
Signs	\$50.00
Zoning Letter of Compliance	\$100.00
Mobile Food Vendor - ANNUAL	\$500.00
Mobile Food Vendor - Special Event	\$100.00
Pushcart - ANNUAL	\$75.00
Pushcart - Special Event	\$25.00

Re-Inspections	\$75.00 for 1st Re-Inspection; \$100 for 2nd Re-Inspection and \$100 for all other additional Re-Inspections (Applied if Inspection NOT READY or FAILS)
Work Done without Permit	Double permit fee + \$200 fine
Failure to get final inspection prior to expiration of permit	\$100.00

**Town of North Topsail Beach
FY 2023-2024
Fee Schedule**

Attachment 4 p. 2

Major Subdivision/Planned Unit Developments

Sketch, Preliminary and Final	\$300/\$300/\$150
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Minor Subdivision

Sketch & Final	\$200/\$200
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Exemptions (Review Required)	\$50.00
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Code Enforcement

Civil Citations	First Offense \$50.00 Second Offense \$100.00 Third & Subsequent Offenses \$200.00 each
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Civil Citations: § 10.07.02 REBUILDING OF DAMAGED DUNES.	First Offense & Subsequent Offenses \$10,000.00.00 each
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Civil Citations: §10.07.06 WETLAND PROTECTION.	First Offense & Subsequent Offenses \$1,000.00.00 each
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*** Applicant is responsible for all transcript expenses. In addition to the fee, a \$150 deposit for transcript is required. All cancellations must be received at least 48 hours before the start of the public hearing and refunds are subject to a \$150 cancellation fee.**