

ORDINANCE NO. 2016-00_

Board of Commissioners

Town of Topsail Beach, North Carolina

Date:

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE TOWN OF TOPSAIL BEACH, NORTH CAROLINA THAT (1) AMENDS DIVISION 6 (ZONING DISTRICTS AND REGULATIONS) OF ARTICLE IV (ZONING) OF CHAPTER 16 (LAND DEVELOPMENT) OF THE TOWN’S CODE OF ORDINANCES; (2) ADOPTS AN OCEANFRONT PROTECTIVE DUNE SYSTEM OVERLAY ZONING DISTRICT WITH ASSOCIATED STANDARDS; AND (3) REPLACES AND REPEALS DIVISION 1 OF ARTICLE V (DUNE PROTECTION) OF CHAPTER 6 (BUILDINGS AND BUILDING REGULATIONS)

The Board of Commissioners of the Town of Topsail Beach, North Carolina at its duly noticed and conducted public hearing and meeting held _____, 2016 ordains as follows:

¶1. Division 6 of Article IV of Chapter 16 of the Town Code of Ordinances is amended by adding an Oceanfront Protective Dune System Overlay District with associated regulations as follows:

a. Section 16-378 is amended to establish a zoning overlay district as follows:

OPDS-OD	Oceanfront Protective Dune System Overlay District
---------	--

(Ord. No. 95-008, § 8.1, 12-13-1995; Ord. of 3-9-2005; Ord. No. 2016-00_ , ¶1a)

b. Section 16-383 is amended by adding a new Subsection (j) as follows:

(j) Oceanfront Protective Dune System Overlay District

(1) Area of Oceanfront Protective Dune System Overlay District (OPDS-OD). The Oceanfront Protective Dune System Overlay District is within the following area:

BEGINNING AT THE POINT where the eastern edge of Anderson Boulevard intersects with the northern limits of the town;

Thence from the POINT OF BEGINNING proceeding southwardly along the eastern edge of Anderson Boulevard to the intersection with the northern edge Davis Drive;

Thence with the northern edge of Davis Drive eastwardly to its intersection with the eastern edge of Ocean Boulevard;

Thence southwardly and then westwardly to the point at which Ocean Boulevard intersects the southernmost point of Inlet Drive;

Thence southwardly with the extension of the center line of Inlet Drive to the high-water mark of Topsail Inlet;

Thence easterly towards the Atlantic Ocean to the easternmost extension of the seven (7) feet North American Vertical Datum of 1988 (NAVD88) contour line;

Thence northwardly following said seven (7) feet NAVD88 contour to the northern boundary of the Town of Topsail Beach

Thence westwardly to the POINT OF BEGINNING.

(2) Applicable Definitions and Purpose of the Oceanfront Protective Dune System Overlay District:

(a) Definitions – The following words and phrases as used in the standards and regulations applicable that apply to the Oceanfront Protective Dune System Overlay District mean:

1. “NAVD88” means the North American Vertical Datum of 1988.
2. “OPDS-OD” or “District” means the Oceanfront Protective Dune System Overlay District whose geographic area is defined in this Section.
3. “Protective dune area” or “protective dune areas” means the protective oceanfront sand deposits, formations and dunes in the OPDS-OD that have an elevation of at least seven (7) feet NAVD88.

4. “Survey Profile” means a line on which data is collected running perpendicular to the baseline Baseline (as hereinafter defined) for the applicable property representing a two dimensional view of the property.

5. “Total Excavation Area” is the cross-sectional area of sand proposed to be moved to or moved from any Survey Profile.

6. “Official” means the town manager or the town manager’s designee with the primary responsibility for issuing the permits described below and enforcing the provisions of this ordinance.

(b) Purpose - The purpose of this district is to preserve the protective dune area within the district.

(3) Relationship between the Oceanfront Protective Dune System Overlay District (OPDS-OD) and underlying districts - The requirements of the Oceanfront Protective Dune System Overlay District (OPDS-OD) shall be in addition to those of the applicable underlying districts. Any parcel of land lying in the OPDS-OD may also lie in one or more of the zoning districts provided for by this article. The development of all uses permitted by right or by conditional use permit in the underlying district, if any, shall be subject to the requirements of both the OPDS-OD and the underlying district. In the event OPDS-OD requirements conflict with the underlying district requirements and uses, the OPDS-OD requirements shall take precedence. If standards or requirements for particular uses or items are not addressed in the OPDS-OD requirements but are addressed by the underlying district standards or requirements, then the standards or requirements of the underlying district shall be followed.

(4) Findings Relative to Oceanfront Protective Dune System Overlay District –

The Town Board of Commissioners does hereby find, determine and declare that:

- (a) The oceanfront in Topsail Beach is substantially vulnerable to storms, the erosive effects of the ocean, and associated coastal hydrogeological dynamics;
- (b) Protective dune areas are capable of sustaining natural vegetation with root structures that stabilize the underlying sand deposits, formations and dunes, and typically mark the landward limits of the “ocean beaches” as defined by N.C.G.S. § 77-20(e).
- (c) Protective dune areas provide vital protection to persons and property from ocean and severe weather forces;
- (d) Among the most important features of protective dune areas that provide the vital protection are (i) the total volume of sand within them, which provide a buffer against storms, the erosive effects of the ocean, and associated coastal hydrogeological dynamics, and (ii) natural vegetation on protective dune areas, which provides stability for the underlying sand deposits, formations and dunes;
- (e) The best interest of the town, its citizens, its visitors and the owners of property in the town is to preserve the volume of sand within the protective dune areas in the District and the natural vegetation atop those protective dune areas;
- (f) Implementation of a program for preserving the protective dune areas in the district:
 - a. will work to preserve lives and property in the town;
 - b. will work to protect buildings and other properties on the oceanfront in the district, as well as on adjacent properties;
 - c. will work to protect public streets, utilities and other infrastructure within the town;
 - d. will create a greater awareness on the part of residents and property owners within the town of the effects of uncontrolled alterations of protective dune areas in the district;
 - e. will improve the town's ability to control alteration of protective dune areas in the district; and
 - f. will create a system of enforcing the regulations governing alterations of the protective dune areas in the district that will be equitable, understandable and applied in uniform manner.
- (g) In order to increase public safety, health and welfare, and to reduce the likelihood of damage to persons and property, development on and alteration of protective

dune areas in the district should be further regulated so that the protective dune areas in the district continue to provide protection; and

- (h) The regulations applicable to the Oceanfront Protective Dune System Overlay District are adopted pursuant to the authority granted the town under G.S. 160A-174 and other applicable provisions of G.S. ch. 160A.
- (i) The Oceanfront Protective Dune System Overlay District requirements adopted herein with respect to development on and alteration of protective dune areas in the district **(i)** will not conflict with the requirements established by the state under the State of North Carolina Coastal Area Management Act and regulations promulgated thereunder (“CAMA”), but rather **(ii)** will create a regulatory system consistent with CAMA, will operate to make CAMA **and the Town’s compliance with the National Flood Insurance Program and the Town’s Flood Damage Prevention Ordinance** more effective.

(5) Prohibition against altering protective dune areas in district without a permit -

It shall be unlawful for any person, firm, ~~or~~ corporation or other legal entity in any manner to alter, damage, destroy or remove any protective dune area in the District without having first acquired a —Development Permit. Such Development Permit shall be in addition to any other permit or variance as may be required by federal, state or local laws, ordinances and regulations and it shall be a requirement of such Development Permit that the applicant obtain and maintain all such other permits or variances.

(6) OPDS-OD Development Permit Application Requirements

Every application for an OPDS-OD Development permit shall:

- a. be made upon forms provided by the Town;
- b. be submitted together with the applicable CAMA permit, Flood Damage Prevention Permit required by Chapter 14 of the Town Code, and the payment of the Overlay District application fee as provided in the Town fee schedule;
- c. indicate the total volume of sand from the lot that is to be displaced or moved on or about the lot
- d. indicate the total volume of sand from the lot that is to be removed from the lot;
- e. indicate the total volume of sand to be restored to the lot and the source and specifications of the sand to be used for restoration or repair of displaced or removed sand;
- f. indicate the lowest elevation of the lot where the septic tank can be located and the means the septic tank is to be anchored;
- g. be accompanied by a set of topographic maps including both plan and profile views of the existing and proposed conditions, compiled in accord with the following provisions below:

(1) Required Topographic Map Features and Methods

- a. Data on maps shall be collected by methods and extents described in this Section.
- b. All maps shall be drawn such that they remain clearly legible when photographically reproduced in black and white (greyscale).
- c. The maps shall consist of the following individual sheets set forth below:
 1. Existing Condition Map - a plan view map showing the existing contours of the protective dune area at 1.0 ft. intervals referenced vertically to NAVD88. Drawing scale shall not be greater than 1" = 10'. If multiple sheets are required to show the entire lot area at this scale, then an overall map of appropriate scale is required showing the complete property and match lines for the individual sheets.

The Existing Condition Map shall clearly show the protective dune area and:

- a. the property boundaries;
- b. the first line of stable vegetation;
- c. the CAMA required setback;
- d. seaward edge of the adjacent vehicular access road, right of way or easement;
- e. proposed location of any construction, including, but not limited to, the dwelling, driveway, retention walls, and septic system;
- f. location and name of each ~~survey~~ Survey profile ~~Profile~~ conducted.

2. Proposed Condition Map - a plan view map showing the proposed final grade of the protective dune area at 1.0 foot intervals referenced vertically to NAVD88. Drawing scale shall not be greater than 1" = 10'. The scale used shall be the same as the Existing Condition Map. If multiple sheets are required to show the entire lot area at this scale, then an overall map of appropriate scale is required showing the complete property and match lines for the individual sheets.

The Proposed Condition Map shall clearly show the protective dune area and:

- a. the property boundaries;
- b. the first line of stable vegetation;

- c. the required CAMA setback;
- d. the seaward edge of the adjacent vehicular access road, right of way or easement;
- e. proposed location of any construction, including, but not limited to, the dwelling, driveway, retention walls, and septic system;
- f. proposed grading activity, showing the cut and fill areas clearly delineated through either hatching or shading of the affected areas. Grading area shall include any grading planned in the adjacent vehicular access road, right of way or easement;
- g. proposed landscape plan, including plant types. Native dune species shall be used to restore vegetation over the entirety of the areas disturbed more than five (5) feet seaward of the habitable portion of the proposed development;
- h. tabulation of areas of excavation and fill in square feet and percentage of protective dune area, including total square footage of the protective dune area, total area of excavation, total area of fill, and total area disturbed.

3. Survey Profile Section Drawings – A Survey Profile profile shall be drawn at each of the profile-Survey Profile locations specified in the above drawings. Survey Profile sections shall be drawn at scales of 1"=20' horizontally and 1"=5' vertically. A drawing sheet may contain multiple elevation views. Each view shall clearly show and label the following items

- a. Each profile-Survey Profile shall be drawn (elevation view) showing the existing grade and proposed final grade of the protective dune area. Horizontal distance along a Survey Profile profile shall be referenced to the baseline-Baseline as determined in this Section's Location of Survey Lines requirements set forth herein;
- b. the roadside property boundary;
- c. the location where the existing Survey Profile profile crosses the most seaward 7.0 feet NAVD88 contour;
- d. the first line of stable vegetation;
- e. the CAMA required setback;
- f. seaward edge of the adjacent vehicular access road, right of way or easement;

g. proposed location of any construction along the [Survey Profile](#), including, but not limited to, the dwelling, driveway, retention walls, and septic system;

h. proposed grading activity, showing the cut and fill areas clearly delineated through either hatching or shading of the affected areas. Grading area shall include any grading planned in the adjacent vehicular access road, right of way or easement;

i. [all Total Excavation Areas, including a](#) tabulation of cross-sectional areas of excavation and fill in square feet, including total cross-sectional area of excavation and total cross-sectional area of fill.

4. Retention Wall Design – Should retention walls exceeding three (3) feet in height from above the lowest adjacent grade be used to control the elevation and grade on the lot, then detailed sealed engineering plans of all retention structures shall be submitted with the required topographic maps.

(2) Required Data Collection Procedures for Topographic Maps

a. Surveyor Qualifications – All topographic maps submitted pursuant to the requirements of this Section shall be prepared under the direction and supervision of a Professional Licensed Surveyor with a minimum five (5) years current experience in ocean beach dune profiling.

b. Survey Method - All topographic survey data shall be collected using real time kinematic GPS or an electronic total station with a data collector. Level and Rod, LIDAR, or other remote sensing techniques shall not be used.

c. Tolerances - Topographic surveys shall be conducted using procedures and methodology that meet or exceed accuracy tolerances of +/- 0.10 feet in the vertical and +/- 0.50 feet in the horizontal.

d. Survey Timeframe – All survey data points must be collected not more than 60 days before submission of the permit application. Survey data points cannot be considered if, between the time the data points were collected and the time the application is submitted, a storm which results in a storm warning (gale, tropical storm, or hurricane warning) by the National Weather Service took place.

e. Locations of Survey Lines - Pre-placement and post-placement condition surveys at the locations of the [Survey Profiles](#) must be performed as prescribed below.

1. Baseline - A ~~baseline~~ [Baseline](#) for the survey shall be created by a line from a point located at the intersection of the southerly property line

with the vehicular access road, right of way or easement (generally the Southwest corner) to a point at the intersection of the northerly property line with the said vehicular access road, right of way or easement (generally the Northwest corner). Station 0+00 and Range 0.0 shall be referenced at the SW corner with stations increasing along the baseline in a northward direction and ranges shall increase heading seaward.

2. Survey Profiles – Survey ~~profile~~ Profile lines shall be run perpendicular to the ~~baseline~~ Baseline. One Survey Profile ~~survey profile~~ shall be conducted five (5) feet north of the southerly property line and one profile shall be conducted five (5) feet south of the northerly property line. Additional Survey Profiles ~~profiles~~ shall be spaced evenly between the beginning and end Survey Profile ~~profile~~ and shall not be separated by more than 20 feet. Enough Survey Profiles ~~profiles~~ shall be taken to clearly delineate both existing and proposed conditions. No less than a total of three (3) Survey Profiles ~~profiles~~ shall be required to delineate conditions.
 3. Data Collection - Elevations shall be taken along the Survey Profiles ~~profiles~~ at a maximum of ten (10) feet intervals and at all breaks in grade and as necessary to describe all topographic features. Data points shall be collected within 2.0 feet of the Survey Profile ~~profile~~ line.
- (3) Cut and Fill Volume Calculation Procedures for the Protective Dune Area
- a. Volumes of sand within the protective dune area to be displaced, removed and restored shall be calculated using the average end area method.
 - b. End areas shall be created and calculated by electronic or manual methods using the following method:
 1. All data points for the existing condition of each Survey Profile ~~profile~~ shall be plotted using range(x) and elevation(y) using US Survey Feet as the unit of measure.
 2. Create a Maximum Cut Line (MCL). A Maximum Cut Line (MCL) shall be drawn on the Survey Profile ~~profile~~ from the elevation and range of the seaward edge of the adjacent road, right of way or easement to the most seaward point where the existing Survey Profile ~~profile~~ crosses the 7.0 ft. NAVD88 contour.
 3. The area(s) encompassed by the Survey Profile ~~profile~~ above the MCL and the void area(s) below the MCL shall be calculated using square feet as the unit of measure. The area(s) above the MCL shall have a positive (+) value and the areas below shall be denoted as negative (-). All areas

calculated shall be summed, resulting in a cross-sectional area for the [Survey Profile](#) profile.

4. The processes in 1, 2 and 3 above shall be repeated for the proposed as-built conditions.

c. For each [Survey Profile](#) profile, the total area calculated for the existing condition shall be subtracted from the total area calculated for the proposed final condition. This is the Total Excavation Area.

(7) OPDS-OD Development Application Review and Action

(a) Upon receipt of a completed application for an OPDS-OD Development Permit as set forth above, the Official shall review the materials and make an on-site inspection to ascertain the completeness and accuracy of the application.

(b) In the event the Official determines that the application is incomplete or inaccurate, the Official shall inform the applicant in writing of the deficiencies found.

(c) The Official shall deny the permit application in the following circumstances:

1. If the excavation and grading will result in the removal or loss from the lot of more than 1.0 cubic yard of sand from the protective dune area.

2. If the excavation and grading will reduce the elevation of any portion of the protective dune area at any point greater than 5.0 feet seaward of the proposed habitable portion of the proposed development.

3. **If excavation is planned to occur below the Maximum Cut Line as specified herein; or if the road elevation be in excess of 7 ft. NAVD88, and the excavation is planned to take place below the road elevation.**

4. **If the Total Excavation Area for any Survey Profile is greater than 5.0 square feet.**

5. **If the sum of any two adjacent Total Excavation Areas is greater than 1.0 square feet.**

6. If the vegetation restoration does not consist of native dune species as defined by regulations promulgated under CAMA.

(d) Any permit shall provide for the following conditions:

1. Any [excavation](#) work requiring a permit under the terms of this Section may only be carried out during daylight hours on Monday through Friday. No [excavation](#) work of any kind whatsoever pursuant to the terms of the permit issued in accordance with

this Section shall take place on Saturday, Sunday or any holiday recognized by the town.

2. The permit shall expire three months from the date of issuance and may be renewed by the Official for an additional three months upon a determination that the proposed work should receive approval under current standards and conditions.
- (e) The Official shall retain a copy of all permit applications and documents associated with the permit application for a period of not less than three years following the date of submission of the permit application.

(8) Exemptions from Oceanfront Protective Dune System Overlay District Regulations and Certain Activities That Are Not Prohibited

(a) The following are exempt from Oceanfront Protective Dune System Overlay District standards and regulations:

(1) Altering no more than one cubic yard of sand on a lot within any 30-day period.

(2) Activities by the town, the state or any agency of the federal government, their contractors and subcontractors, while engaged in beach restoration efforts on that portion of the beach lying within the boundaries of the town and adjacent to the waters of the Atlantic Ocean, such beach restoration efforts to include, but not be limited to, beach bulldozing and the pumping or placing of sand on the beach strand.

[\(3\) All existing structures and any rebuilding, restoration, modification or alteration of any structure in existence on the date this Ordinance is adopted.](#)

(b) Nothing in the Oceanfront Protective Dune System Overlay District standards and regulations prohibits the development of:

(1) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less to the extent exempt from CAMA permitting requirements under 15A N.C.A.C. § 07H .0309 of the CAMA regulations;

(2) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, marl, packed sand, or gravel, and a footprint of 200 square feet or less to the extent exempt under 15A N.C.A.C. § 07H .0309;

(3) structural accessways constructed according to CAMA regulations in 15A N.C.A.C. §§7H .0308 and 7K .0207; and

(4) sand fences to the extent exempt under 15A N.C.A.C. § 07H .0309.

(9) Compliance Monitoring.

(a) The applicant shall provide an As-Built Conditions Map prepared by a surveyor in accord with the requirements of this Section for review prior to obtaining a certificate of occupancy or completion. The map shall show the final grade of the lot at 1.0 foot intervals referenced vertically to NAVD88. Drawing scale shall not be greater than 1" = 10'. The scale used shall be the same as the Existing Condition Map and Proposed Condition Map. If multiple sheets are required to show the entire lot area at this scale, then an overall map of

appropriate scale to show the complete property and match lines for the individual sheets is required. The As-Built Conditions Map shall clearly show the protective dune area and:

- (1) the property boundaries;
- (2) the first line of stable vegetation;
- (3) the required CAMA setback;
- (4) the seaward edge of the adjacent vehicular access road, right of way or easement;
- (5) the location of any construction, including, but not limited to, the dwelling, driveway, retention walls, and septic system;
- (6) the grading activity, showing the cut and fill areas clearly delineated through either hatching or shading of the affected areas. Grading area shall include any grading in the adjacent vehicular access road, right of way or easement;
- (7) the landscaping, including plant types [Native dune species shall be used to restore vegetation over the entirety of the areas disturbed more than five (5) feet seaward of the habitable portion of the proposed development];
- (8) tabulation of areas of excavation and fill in square feet and percentage of the protective dune area, including the total area of the protective dune, the total area of excavation, the total area of fill, and the total area disturbed;
- (9) drawings of ~~profile~~ Survey Profile sections drawn at each of the Survey Profile locations specified in the above drawings. Survey Profile sections shall be drawn at scales of 1"=20' horizontally and 1"=5' vertically. A drawing sheet may contain multiple elevation views. Each view shall clearly show and label the following items
 - a. Each Survey Profile shall be drawn (elevation view) showing the as-built grade on the lot. Horizontal distance along a Survey Profile shall be referenced to the ~~baseline~~ Baseline as determined in accord with this Section;
 - b. the roadside property boundary;
 - c. the location where the existing Survey Profile crosses the most seaward 7.0 ft. NAVD88 contour;
 - d. the first line of stable vegetation;
 - e. the CAMA required setback;
 - f. seaward edge of the adjacent vehicular access road, right of way or easement;

g. location of any construction along the [Survey Profile](#)~~profile~~, including, but not limited to, the dwelling, driveway, retention walls, and septic system;

h. grading activity, showing the cut and fill areas clearly delineated through either hatching or shading of the affected areas. Grading area shall include any grading planned in the adjacent vehicular access road, right of way or easement;

i. tabulation of cross-sectional areas of excavation and fill in square feet, including total cross-sectional area of excavation and total cross-sectional area of fill;

(b) The ~~official~~[Official](#) may conduct an on-site inspection at any time to determine compliance with the requirements and standards of this Section.

(10) In the event of a conflict between the OPDS-OD standards and standards set forth in CAMA, whichever are the more restrictive of those standards will apply.

(11) Sanctions and Remedial Measures

(c) Failure to comply with this Section, or with the provisions of a OPDS-OD Development Permit, or to perform the work as proposed by the permit application, constitutes a situation and condition within the meaning of this article, and shall subject the person liable to all enforcement mechanisms, remedies, and procedures provided in this article, including, but not limited to, site inspections at any time, stop-work orders, withholding of any pending approvals, civil charges, penalties, performance bonds, approval revocation procedures, civil actions, imposition of liens, and all other remedies available under law.

(d) In the event of alteration of a protective dune area in the District that is in violation of this Section, the official shall determine the restorative steps required and the time period within which such restoration shall be implemented.

(f) Restorative steps required in consequence of alteration of sand in violation of this Section may include:

- (i) restoration of altered sand;
- (ii) replacement of altered sand with beach-compatible sand obtained from locations other than the lot on which the work was permitted; and
- (iii) the addition of sand over and above the altered sand volume by as much as 20% of the volume of the altered sand.

(g) Failure of a permit holder to comply with the restoration plan determined by the official shall be a violation of the terms of this article and constitutes a situation and condition for which all enforcement mechanisms, remedies, and procedures provided in this article are available.

(12) Appeals and variance requests to board of adjustment.

(a) If an applicant objects to a denial of an application for an OPDS-OD Development permit, or a permittee objects to any provision in a permit or to the provisions of a restoration order, or other decision by the official, the permittee or applicant may file an administrative appeal to the board of adjustment according the applicable provisions of this article. A timely appeal to the board of adjustment in accordance with the provisions of this article is a condition precedent to judicial review of the subject of the appeal.

(b) Any applicant may seek a variance from the board of adjustment from the terms of this Section where, owing to special conditions, a literal enforcement of the provisions of this Section will, in an individual case, result in practical difficulty or unnecessary hardship so that the spirit of the Section shall be observed, public safety and welfare secured, and substantial justice done. The presence of prior development of neighboring land, buildings or structures in the same area which do not meet the requirements of this article shall not constitute a reason for the requested variance. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the board of adjustment that all of the following conditions exist:

(1) There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same area; and

(2) A literal interpretation of the provisions of this Section would deprive the applicant of rights commonly enjoyed by other residents of the area in which the property is located; and

(3) The requested variance will be in harmony with the purpose and intent of this Section and will not materially weaken the protective dune area on the lot; and

(4) The special circumstances which form the basis for the request for a variance are not the result of the actions of the applicant; and

(5) The variance requested is the minimum variance that will make possible the legal use of the land, building or structure; and

(c) Upon a request issued to the board of adjustment for a variance, the procedures for variance requests set forth in this article and Quasi-Judicial Hearing Procedural Guidelines adopted by the board of commissioners and as may be amended shall apply to the extent they do not conflict with the Chapter 160A of the N.C. General Statutes.

(Ord. No. 2016-00_ , ¶1b)

c. Section 16-384 entitled “Table of permitted and conditional uses” is amended to add new subsection (7) as follows:

(7) With respect to lots located in zoning districts named in the above table of uses that are also located in the Oceanfront Protective Dune Systems Overlay District, the specified permitted and conditional uses for the applicable underlying district in the above table of uses apply to those lots, except to the extent those uses conflict with the standards and requirements of the Oceanfront Protective

Dune Systems Overlay District, in which event the said Overlay District standards and requirements control.

(Ord. No. 95-008, § 8.7, 12-13-1995; Ord. No. 96-004, §§ 1, 2, 7-10-1996; Ord. of 7-10-1996, § 2; Ord. No. 97-002, § 2, 8-13-1997; Ord. No. 98-004, § 1, 5-13-1998; Ord. No. 98-007, § 1, 6-10-1998; Ord. No. 9-003, § 1, 12-9-2009; Ord. No. 10-001, § 1, 1-13-2010; Ord. of 8-8-2012; Ord. of 1-9-2013(2), §§ 1—3; Ord. of 6-12-2013; Ord. of 11-20-2013, § 3; Ord. No. 2016-00_ , ¶1c)

d. Section 16-385 entitled “Dimensional requirements by districts” is amended as follows:

1. The table is amended to add an additional row at the end so that the last row reads as follows:

OPDS-OD ***	See underlying district				
-------------	-------------------------	-------------------------	-------------------------	-------------------------	-------------------------

2. A sentence preceded by a triple asterisk (“***”) is added that reads as follows:

***See Oceanfront Protective Dune Systems Overlay District requirements in Section 16-383(j).

(Ord. No. 95-008, § 8.8, 12-13-1995; Ord. No. 2016-00_ , ¶1d)

¶2. Division 1 of Article V of Chapter 6 of the Town Code of Ordinances is repealed.

(Code 1990, § 4-131; Ord. No. 94-003, § 1, 4-13-1994; Ord. No. 2015-001, ¶1; Ord. No. 2016-00_ , ¶2)

¶3. Division 2 of Article V of Chapter 6 of the Town Code of Ordinances is amended as set forth below:

a. Section 6-202 is amended so that it reads as follows:

Sec. 6-202. - Prohibitions.

(a) The prohibitions set forth in this section shall apply to all dunes regardless of their size lying within (1) the Oceanfront Protective Dune System Overlay District set forth in Article IV

of Chapter 16 of the Town Code of Ordinances, and (2) that area lying south of the southern most point of Inlet Drive, north of the high-water mark of Topsail Inlet and bounded on the east by the high-water mark of the Atlantic Ocean and on the west by the high-water mark of Banks Channel.

(b) No person shall walk on any dune except at an authorized and marked beach access area; provided, however, that the provisions of this subsection shall not apply to the owners of the dune, their guests, invitees and tenants.

(c) It shall be unlawful for any person to damage or remove any vegetation growing on any dune except in the following locations:

(1) The area within the foundation perimeter of any existing structure or any new structure as shown on a survey or site plan submitted to the building inspector in connection with application for a building permit or to the planning board as part of a site plan review process.

(2) The area around the perimeter of an existing building or proposed principal building not to exceed a width of 12 feet from the building foundation.

(3) The area within the boundaries of existing driveways and parking areas or driveways and parking areas to be constructed in accordance with a survey or site plan approved by an appropriate agency or official of the town.

(4) Those areas designated on site plans for commercial or multifamily development as approved for land disturbing activities under CAMA and as shown on site plans approved by appropriate officials of the town.

(5) In approved hard surfaced recreation areas.

(6) Areas designated in connection with approved residential or commercial facilities for the installation of water and sewage systems.

(7) Activities authorized by the town for beach renourishment and protection to include the placement of any pipe lines required to permit the pumping of sand onto the beach.

(8) Any vegetation growing more than 3 feet from the surface of any dune may be trimmed to a point that is 3 feet from the surface of such dune.

(d) Any person who violates this section shall under section 1-6(g) be deemed in violation of G.S. 14-4 and such violation is a misdemeanor subject to penalty as set forth in table 2 in section 1-8.

(e) To the extent the provisions of this Section conflict with any CAMA regulations or other acts of the General Assembly, then such rules or regulations adopted pursuant to such state statutes shall control.

(Code 1990, § 4-145; Ord. No. 97-001, § 2, 3-12-1997; Ord. No. 2015-001 ¶1; Ord. No. 2016-00_ , ¶3a)

b. Section 6-203 is repealed, as it is replaced by new Section 6-202(d) above.

(Code 1990, § 4-146; Ord. No. 97-001, § 2, 3-12-1997; Ord. No. 2012-001, § 1(9), 3-14-2012; Ord. No. 2016-00_ , ¶3b)

¶4. In conformity with N.C.G.S. §160A-383, the Board of Commissioners of the Town of Topsail Beach finds that the provisions set forth in ¶¶1- 3 above are:

- a. consistent with the policies of the Town as expressed in its CAMA Core Land Use Plan as amended 2015 and its Flood Damage Prevention Ordinance as follows:
 - (1) “To ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impact, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and man-made features.” Town of Topsail Beach Core Land Use Plan – 2015; page 71; B) Land Use Compatibility Goal & Policies
 - (2) “To conserve and maintain barrier dunes, 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.” [Town of Topsail Beach Core Land Use Plan – 2015; page 72; (D) Natural Hazards Areas Goal & Policies]
 - (3) “Development does not involve the significant removal or relocation of frontal sand or vegetation thereon.” [Town of Topsail Beach Core Land Use Plan – 2015; page 65]
 - (4) To “conserve and maintain barrier dunes...and other coastal features for their natural storm protection functions.... [Town of Topsail Beach Core Land Use Plan – 2015; page 87]
 - (5) “The best methods of mitigating and preventing damage from erosion are... dune protection and maintenance”. [Town of Topsail Beach Core Land Use Plan – 2015; page 70]
 - (6) The Town “employs the use of dune protection regulations.” [Town of Topsail Beach Core Land Use Plan – 2015; page 4]
 - (7) “[T]here shall be no alteration of sand dunes which would increase potential flood damage.” Town Flood Damage Prevention Ordinance, sec. 14-75(7).
- b. reasonable and in the public interest because they (i) increase public safety, health and welfare through reduction of the likelihood of damages to persons and property within the Oceanfront Protective Dune System Overlay District and areas immediately adjacent thereto; (ii) clarify the powers of the Town staff to enforce various ordinances governing oceanfront dunes; (iii) make clearer the administrative remedies available to the Town and any persons aggrieved by decisions of the Town in enforcing the Ordinance; (iv) balance the interests of landowners in the Oceanfront Protective Dune System Overlay District with the

concerns of risk of damage to persons and property; **and (v) better assure compliance with the National Flood Insurance Program and the Town Flood Damage Prevention Ordinance.**

- c. Consistent with the statutory powers of the Town conferred upon it by the General Assembly of the State of North Carolina, said statutes including but not being limited to N.C.G.S. §§ 160A-174 to -177, -205, -360, -360.1, -363, -365, -381, -384, -385, -388 to -393.

¶5. This ordinance is adopted in the interest of public health, safety and general welfare of the inhabitants of the Town of Topsail Beach, North Carolina, and shall be in full force and effect as of _____, 2016.

This the ___ day of _____, 2016.

Howard Braxton, Mayor

ATTEST:

Christina Watkins, Town Clerk