

Topic:	Sea Level Rise Adaptation; Coastal Protection; Overlay District
Resource Type:	Regulations
State:	New York
Jurisdiction Type:	Municipal
Municipality:	Town of East Hampton
Year (adopted, written, etc.):	2006
Community Type – applicable to:	Suburban; Rural
Title:	Town of East Hampton Policy Statement & Coastal Overlay District Ordinance
Document Last Updated in Database:	April 14, 2017

Abstract

The Town of East Hampton acknowledges that, while the extent of future sea level rise and increased storm activity may be uncertain, “it is well established that present sea level is rising and statistically certain that storms will be an ever-present threat to the Town’s coastal zone.” By enacting the coastal flooding and erosion control recommendations of the Town’s Local Waterfront Revitalization Program, Policies 11-17, the Town’s Coastal Overlay District (COD) is intended to improve protection of coastal resources in East Hampton. The COD establishes four overlay zones, adopted from the Town’s Use District Map. Protective measures in the COD include requirements that all structures except coastal structures be located and constructed to minimize property damage and risk to human life. Regulations on erosion control measures vary by zone, but generally, construction of erosion control structures is prohibited in all zones except zone 4, where new erosion control structures may be installed if a Natural Resources Special Permit is obtained. Additionally, the COD amendment authorizes limited emergency actions that are exempt from the Natural Resource Special Permit review process where immediate action is needed to prevent substantial damage to private property, authorizing (1) moving the threatened structure landward; (2) making structural repairs; (3) depositing sand in front of the structure; or (4) installing temporary geotextile or sandbag erosion control structures.

Resource

Policy Statement

Editor’s Note: The text below contains relevant provisions excerpted from the Town of East Hampton, Local Waterfront Revitalization Program, Appendix G, Local Erosion Law. The remaining provisions of these sections have been omitted due to length.

WHEREAS, a public hearing was held by the Town Board of the Town of East Hampton on August 17, 2006 regarding the amendment of Chapter 255 ("Zoning") of the East Hampton Town Code in order to better protect the Town's coastline, by implementing the coastal erosion recommendations of the Local Waterfront Revitalization Program ("LWRP") and creating the Coastal Erosion Overlay District to regulate projects which are designed to control or prevent flooding and erosion of the coastline and adjacent upland areas or which may impact coastal resources, all as more fully set forth in the text of the Local Law; and

WHEREAS, such public hearing was held open and public comment was accepted until September 18, 2006;

WHEREAS, the Town Board considered the comments of all persons regarding this Local Law, both as submitted in writing and as presented orally at the public hearing; and

WHEREAS, the adoption of this local law is a Type I action pursuant to the State Environmental Quality State Environmental Quality Review Act (SEQRA); and

WHEREAS, the Town Board has prepared and considered an Environmental Assessment Form which evaluates the potential environmental impacts of the proposed amendment; and

WHEREAS, the Board has determined that the adoption of this Local Law will not have a significant negative impact upon the environment;

NOW, THEREFORE, BE IT RESOLVED, that a negative declaration is hereby made pursuant to the State Environmental Quality Review Act (SEQRA); be it further

RESOLVED, that the said Local Law is hereby enacted to read as follows:

LOCAL LAW NO. 14 OF 2007

INTRODUCTORY NO. 25 OF 2006

A Local Law providing for the amendment of Chapter 255 ("Zoning") of the East Hampton Town Code in order to better protect the Town's coastline, by implementing the coastal erosion recommendations of the Local Waterfront Revitalization Program ("LWRP") and creating the Coastal Erosion Overlay District to regulate projects which are designed to control or prevent flooding and erosion of the coastline and adjacent upland areas or which may impact coastal resources, said Local Law to read as follows:

BE IT ENACTED by the Town Board of the Town of East Hampton as follows:

SECTION I. - FINDINGS AND OBJECTIVES:

This Local Law is intended to provide better protection of the Town's shorelines, dunelands, bluffs, beaches, and other coastal resources by enacting the recommendations for coastal flooding and erosion control which are found in Policies #11-17 of the Town's Local Waterfront Revitalization Program ("LWRP").

The Town of East Hampton has a tradition dating back to its colonial origins of maintaining coastal resources for all its citizens. For the most part, the beaches in East Hampton are owned by the Town Trustees under the colonial patents, or in Montauk, have been historically open to public use.

It is the Town Board's intention in adopting this Local Law to preserve and reaffirm the established powers, rights and privileges of the Town Trustees with respect to the management and regulation of the beaches, bottomlands and other lands that they own. Nothing in this Local Law shall be construed as diminishing in any way these powers, rights, and privileges of the Town Trustees.

East Hampton's north and south shores have greatly differing geography and geology with different weather exposures. The Town's south shore Atlantic Ocean beaches are generally more dynamic because of the higher wave energies and greater quantities of sediment being transported. The Town's northerly bay beaches, while more protected, are narrower and more fragile and take longer to recover from storms. They are mostly fed by sediment from bluffs and headlands. Where attempts have been made to stabilize bluffs with hard structures, these sand sources have been restricted, and the resulting deficit in the local sediment budget has led to further narrowing or elimination of beaches.

On undeveloped shores, natural coastal processes, including storm flooding and erosion, establish a dynamic equilibrium of shoreline accretion and recession. Natural protective features such as beaches, dunes, bluffs, sand spits, and wetlands enable the shoreline to absorb and recover from the force of storms. Changes in climate (global warming and the "greenhouse effect") may exert an influence on future storm activity and also cause sea-level to rise, with profound effects on the Town's coast. Such changes would render these natural protective features all the more important. In any case, while future sea level rise and increased storm activity may be uncertain, it is well established that present sea level is rising and statistically certain that storms will be an ever-present threat to the Town's coastal zone.

In the past, siting of development often failed to take into account potential damage from flooding, erosion and coastal storms. Following major storms, homeowners recognizing their precarious predicament built so-called erosion protection structures to protect their property. However, groins, bulkheads and other hard structures have had detrimental effects on adjoining beaches or neighboring property and have often aggravated the erosion problems they were designed to prevent. Their legacy is a disappearance of sandy beaches in many locations, a significant loss for a Town whose way of life and resort economy depend on public access to unspoiled beaches.

The Town's primary objectives in enacting this Local Law are to maintain the public

interest in its coastal resources and to protect the health and safety of its residents by preserving, protecting and enhancing the natural protective features of its coast, with due regard for the needs of individual property owners. In practice, this approach to flooding and erosion leads to an emphasis on non-structural or "soft" solutions which will not disrupt coastal processes or damage natural protective features.

This Local Law establishes a coastal erosion overlay district consisting of four zones covering the Town's coastline. It also establishes regulations for each of four coastal erosion overlay zones. These regulations govern projects which are designed to control or prevent flooding and erosion of the coastline and adjacent upland areas, or which may impact coastal resources.

The Local Law amends the Zoning Code to specifically authorize private property owners to take emergency action, in certain situations, to protect privately-owned structures from damage caused by coastal flooding or erosion. These emergency activities, which are exempt from the normal Natural Resources Special Permit review process, are authorized only in very limited circumstances where immediate action is necessary to prevent substantial damage to a privately-owned structure, and are restricted to only four types of actions: (1) moving the structure landward, (2) making repairs or providing structural support to a damaged structure, (3) depositing sand on the beach in front of the structure, or (4) installing -- on a temporary basis only -- a geotextile tube or sandbag erosion control structure.

With respect to the emergency authorization for geotextile tube or sandbag systems, the Town Board finds that such temporary authorization appropriately balances the difficult and conflicting interests of shorefront property owners and the general public. The Town Board finds that the public's rights to use of the foreshore are paramount, but that emergency measures to protect private buildings and structures are in the overall best interests of the public as well as shorefront land owners. In making this legislative determination, the Town Board specifically finds that the long-term effects of erosion control structures -- including geotextile tube or sandbag systems -- are highly detrimental to East Hampton's environment and economy, and that the use of geotextile tubes or sandbag systems, on a short-term basis only, is warranted only in emergency situations because they offer a somewhat smaller prospect of harm than other types of erosion control structures and are more easily removed.

With respect to downtown Montauk, specifically the hotel and business district, the Board recognizes that it is within an exceptional geological location given its proximity to the Atlantic Ocean and its low elevation and consequent vulnerability to flooding. The Board also recognizes that the Town's economic stability is linked to the survival and prosperity of its business districts. Accordingly, the Board concludes that the downtown Montauk area comprises a unique concentration of economic assets vital to the Town's tourist economy that warrants further study and a long-term solution for coastal erosion.

SECTION II. - TOWN CODE AMENDED:

Chapter 255 ("Zoning") of the East Hampton Town Code is hereby amended in part to read as follows:

Editors Note: The text below contains relevant definitions excerpted from Section 225-1-20. The remaining definitions have been omitted due to length.

ARTICLE I General Provisions

§ 255-1-20. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AREA OF SHALLOW FLOODING: A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one-percent or greater annual chance of flooding to an average annual depth of one foot to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

[Added 9-8-2009 by L.L. No. 23-2009]

AREA OF SPECIAL FLOOD HAZARD: The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the "base floodplain" or "one-hundred-year floodplain." For purposes of this local law, "*This local law*" refers to L.L. No. 23-2009, adopted 9-8-2009. the term "special flood hazard area (SFHA)" is synonymous in meaning with the phrase "area of special flood hazard." [Added 10-16-1987 by L.L. No. 15-1987; amended 5-15-1998 by L.L. No. 20-1998; 9-8-2009 by L.L. No. 23-2009]

BEACH: All land lying between a body of fresh or salt water and the base of a bluff or dune. In cases where there is no bluff or dune present, then the "beach" shall be all land lying between such body of water and the naturally occurring beach grass, or the upland vegetation if no naturally occurring beach grass is present. [Amended 8-16-1985 by L.L. No. 8-1985]

BERM: A structure greater than one foot high made of earth, earthen or similar materials intended for defense, security, enclosure, screening or other similar purposes.

BEACH VEGETATION: Beach grass (*Ammophila breviligulata*), as well as the following plants or lichens: beach heather (*Hudsonia tomentosa*), beach plum (*Prunus maritima*), beach pea (*Lathyrus maritimus*), bearberry (*Arctostaphylos uva-ursi*), bayberry (*Myrica pensylvanica*), **dusty miller (*Artemissia stellariana*)**, seaside goldenrod (*Solidago sempervirens*), pine barren sandwort (*Arenaria caroliniana*), and reindeer lichen (*Cladonia* species).

BEACH GRASS: See "beach vegetation."

BLUFF: A bank or cliff with a precipitous or steeply sloped face lying landward of a beach or body of water, and having a bluff line at least two (2) feet higher than its base or toe. A "bluff" may extend across all or part of a parcel. For the purposes of this chapter, a "bluff" shall not be considered to encompass barrier sand dunes.

BLUFF LINE: The natural land contour running along the top of a bluff beyond which to landward the natural land contours resume a gradual slope.

COASTAL EROSION CONTROL STRUCTURE: See "erosion control structure."

COASTAL EROSION HAZARD AREA MAP (or "CEHA" MAP): The map issued by the Commissioner of the New York State Department of Environmental Conservation ("DEC") pursuant to Article 34 of the Environmental Conservation Law ("ECL"), as the same may be amended from time to time. Said map delineates the boundaries of erosion hazard areas subject to regulation under Article 34 of the ECL.

COASTAL HIGH-HAZARD AREA: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V1-V30, VE, VO or V.

COASTAL RESTORATION PROJECT: The deposit of sand or soil on a beach, dune, or the face of a bluff, in order to restore or replace similar material lost to erosion, and the stabilization of such material by planting beach vegetation. This definition shall include the installation of snow fencing or permeable mesh fencing, the placement of biodegradable fabric mesh or biodegradable gels, and the installation of drains and pipes for the control of water runoff, if these devices are designed and used to allow vegetation to grow upon and stabilize the deposited materials.

COASTAL STRUCTURE: Every coastal erosion control structure plus all caissons, catwalks, docks, floating docks, floats, piers, pilings, wharves and other fabrications designed to give access to or through, permit work on or in or facilitate the use of any wetland, barrier dune, bluff or water body. Moorings shall not be included in this definition. Compare "coastal erosion control structure."

DUNE (or SAND DUNE): A naturally occurring accumulation of sand in wind-formed ridges or mounds landward of the beach, often characterized by the natural growth of beach grass (*Ammophila breviligulata*). This definition shall, however, include man-made deposits of sand placed on or landward of a beach for the purpose of "dune" construction.

DUNE, BARRIER: The dune or line or system of dunes which is located immediately landward of the beach and which forms the first line of defense against flooding caused by abnormally high tides and/or surf. Occasionally one or more relatively small dune forms exist on the seaward side of the barrier dune. For the purposes of this chapter, such dune

forms shall be considered to be a subordinate part of the barrier dune. The seaward limit of a barrier dune is the landward limit of its fronting beach. For the purposes of implementing §§ 255-3-40 through 255-3-45, the inland limit of the primary frontal dune occurs at the point where there is distinct change from a relatively steep slope to a relatively mild slope.

DUNE CREST: The highest line or ridge along the top of the barrier dune.

EROSION: As applied to coastal areas of the Town or to coastal processes, the loss or displacement of land along the coastline from the action of waves, currents, tides, wind-driven water, waterborne ice, or other effects of storms, as well as the loss or displacement of such land from the action of wind, rain, runoff of surface waters, or groundwater seepage.

EROSION CONTROL STRUCTURE (or **COASTAL EROSION CONTROL STRUCTURE**): Every structure sited in or under any body of water, or on or near any shoreline, wetland, beach, or bluff adjacent thereto, which is designed to reduce, retard or prevent erosion of the shoreline or the silting or filling in of a natural or dredged harbor or channel. This definition shall be deemed to include all groins, jetties, seawalls, revetments, bulkheads, breakwaters, gabions, and riprap, as well as any other manmade fabrication or device, including one made of geotextile tubes or sandbags, which is designed to reduce, retard or prevent erosion and which is not included in the definition of "coastal restoration project" found herein. An "erosion control structure" shall constitute a "coastal structure" as defined herein.

FLOOD or FLOODING:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

B. "Flood" or "flooding" also means the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in Subsection A(1) above.

GEOTEXTILE TUBE OR SANDBAG SYSTEM: An erosion control structure consisting of one (1) or more synthetic textile tubes or cylinders, or sandbag systems which are filled with sand of grain size and composition compatible with surrounding area beaches, sealed, and placed in or on the beach or shore. This term shall specifically refer to such a structure consisting of not more than two (2) tiers of such tubes or bags, layered one atop the other

and placed parallel to the shoreline, and having a finished height of no more than six (6) feet above natural grade.

MEAN SEA LEVEL: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum of 1988 (NAVD 88), or other datum to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NEARSHORE AREAS: All lands under salt water which extend seaward from the mean low water line, in a direction perpendicular to the shoreline, for a horizontal distance of one thousand (1,000) feet or to a point where mean low water depth is fifteen (15) feet, whichever is greater.

PRIMARY FRONTAL DUNE: See "dune, barrier."

RECONSTRUCTION: The removal and replacement, in place and in kind, of all or a substantial part of a preexisting building or structure. The rebuilding in place and in kind of all or a substantial part of a building or structure which has been damaged or destroyed shall be included in this definition. If the cost of the work in question exceeds fifty percent (50%) of the full replacement cost of the structure as estimated by the Building Inspector, it shall be deemed to involve a "substantial part" of the building or structure. The word "reconstruct" in its various modes and tenses and its participle form refers to the undertaking of a "reconstruction."

REGULATORY FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height as determined by the Federal Emergency Management Agency in a Flood Insurance Study or by other agencies as provided in § 255-3-43D(2) of this chapter.

SAND DUNE: See "dune."

STRUCTURE: Anything, including any building, which is constructed or erected on or under the ground or the water or upon another structure or building, including driveways, walkways, decks, patios (whether or not constructed of brick and sand), parking areas (whether or not surfaced or improved), fences, walls, berms, tennis courts, swimming pools, sewage disposal and drainage devices, bulkheads, jetties, docks, piers and any other improvement, fabrication, impervious surface or other construction, whether or not intended to be temporary, seasonal or permanent. See "building." For the purposes of implementing the regulations of the Flood Hazard Overlay District, a "structure" shall mean a walled and roofed building, including a gas or liquid storage tank, that is principally above the ground, as well as a manufactured home.

TIDAL WATERS: The Atlantic Ocean and any sound, bay, harbor, creek, or other body of salt or brackish water lying within the bounds of the Town, including all waters within

the Town which are regularly or periodically subject to fluctuations in depth due to normal tidal action or peak lunar tides, and all lands beneath the same.

TOWN TRUSTEES (or TRUSTEES): The Trustees of the Freeholders and Commonalty of the Town of East Hampton, the independent public body established pursuant to a patent granted by Governor Thomas Dongan in 1686.

UNDERWATER LAND: Land which is ordinarily submerged beneath the waters of a brook, run, creek, or pond, other watercourse or body of freshwater, and all land lying seaward of the mean high-water line of any tidal waters.

WATERCOURSE: Any natural or man-made water body other than tidal waters and any ordinary surface water drainage channel, whether wet or dry on any particular occasion, including any freshwater brook, run, spring, dreen, creek, rain runoff course or channel, and any permanent or seasonal pond, whether natural or man-made. The underwater land beneath the foregoing water bodies shall be deemed included in this definition. Artificial lined ponds of less than one acre in size which are not situate in the groundwater table shall be deemed excluded from this definition.

WETLANDS: All natural and man-made tidal wetlands, freshwater wetlands, and underwater lands as defined herein including all swamps, bogs, kettlehole bogs and the like, regardless of the particular types or amounts of vegetation growing thereon or therein or the absence of same. Artificial lined ponds of less than one acre in size which are not situate in the groundwater table shall be deemed excluded from this definition.

WETLANDS, FRESHWATER: All lands lying within the boundaries of any watercourse; all fresh marshes, swamps, bogs, kettlehole bogs and the like, regardless of the particular types or amounts of vegetation growing thereon or therein or the absence of same; and all lands upon which grow one or more of the following plant species or associations: red maple, tupelo, black willow, shining willow, Atlantic white cedar, swamp cottonwood, swamp azalea, sweet pepperbush, winterberry holly, leatherleaf, swamp sweetbells, sheep laurel, cranberries, skunk cabbage, jack-in-the-pulpit, cinnamon fern, royal fern, marsh fern, chain ferns, sensitive fern, wetland sedges (*Carex* species), wetland bulrushes (*Scirpus* species), wetland spike rushes (*Eleocharis* species), wetland soft rushes (*Juncus* species), wetland beak rushes (*Rhynchospora* species), wetland grasses (e.g., *Phragmites*), wetland and aquatic herbs, cattails and sphagnum moss. This term shall also be deemed to include all freshwater wetlands lying within the Town of East Hampton, exclusive of the incorporated villages therein, which are shown or designated on the Freshwater Wetlands Map for Suffolk County, promulgated by the New York State Department of Environmental Conservation, effective May 26, 1993, as the same may be from time to time amended.

WETLANDS, TIDAL: All lands lying in the area inundated by tidal action and/or peak lunar tides; all lands exhibiting salt marsh peat and saline or brackish soils at their undisturbed surface; all estuaries, salt meadows, tidal flats, and littoral zones; and all lands upon which grow one or more of the following plant species or associations: salt marsh hay (*Spartina patens*), spike-grass (*Distichlis spicata*), black grass (*Juncus gerardi*), saltwater

cordgrass (*Spartina alterniflora*), saltwort, glasswort (*Salicornia* species), sea lavender (*Limonium carolinianus*), salt marsh bulrush or chairmaker's rush (*Scirpus* species), sand spurry (*Spergularia marina*), groundsel bush (*Baccharis halimifolia*), high tide bush or marsh elder (*Iva frutescens*), cattail (*Typha* species), spikerush (*Eleocharis* species), bent grass (*Agrostis* species), rockweed (*Fucus* species), reed (*Phragmites* species), marsh pink (*Sabatia* species), sea blite (*Suaeda* species), umbrella sedges (*Fimbristylis* species), marsh mallow (*Hibiscus* species), and Triglochin species. Lands lying within or beneath tidal waters shall also be deemed to be "tidal wetlands," regardless of the type or amount of vegetation growing thereon or the absence of the same.

§ 255-1-40. Nonconforming uses.

[Amended 4-13-2007 by L.L. No. 14-2007]

The following provisions shall apply to and govern all nonconforming uses, as the same are defined herein, wherever located:

(A) Nonconforming uses permitted to continue.

Every nonconforming use may be continued in the building or structure or upon the lot or land which it occupies after the effective date of this chapter or after the effective date of the amendment or revision thereof which rendered the use nonconforming, unless this chapter or such amendment or revision includes explicit language providing for the limitation or termination of such use.

(B) Prohibition on physical expansion.

No building or structure or part thereof which is used by a nonconforming use shall be enlarged or added to; nor shall such building, structure or part thereof be reconstructed, altered, restored or repaired such that the gross floor area after such reconstruction alteration, restoration or repair exceeds 100% of the gross floor area of the building, structure, or part thereof on the date the use became nonconforming.

(C) No nonconforming use shall be changed, unless such change is to a conforming use.

(D) Abandonment.

A nonconforming use which is abandoned shall be deemed to have ceased to exist for all purposes hereunder and shall not thereafter be carried on. Such abandonment of a nonconforming use shall occur:

(1) When the use is changed to a conforming use.

(2) In the case where the use occupied a building or structure designed primarily to accommodate or facilitate such use, when the use is discontinued for any reason for a period of 36 consecutive months or voluntarily for 18 months.

(3) In the case where the use occupied any other building or structure, when the use is discontinued for any reason for a period of 24 months or voluntarily for 12 months.

(4) In the case where the use was carried out on a lot upon which there was located no consequential building or structure devoted to the discontinued use, when the use is discontinued for any reason for a period of 12 months or voluntarily for six months.

(E) Determination of a nonconforming use.

The following procedures must be followed prior to the determination of a legally preexisting, nonconforming use by the Chief Building Inspector:

[Added 12-16-2004 by L.L. No. 35-2004]

(1) At least 10 days prior to the issuance of a certificate of occupancy for a legally preexisting, nonconforming use, the Building inspector shall cause the application filed by the applicant to be published in the official newspaper of the Town. The notice shall state that comments or objections to a finding of a legally preexisting, nonconforming use shall be made no later than 10 days from the date of the appearance of the notice in the official newspaper (the "notice date").

(2) The applicant must send a copy of the application filed with the Building Department to the owners of record of every property which touches or abuts the applicant's property and to the owners of record of every property which is directly across any public or private street from the property involved in the application. This provision shall require that such notice be given to all such owners, including the owners of underwater land or within another governmental jurisdiction, excepting only the following entities: the State of New York, the County of Suffolk, the Town of East Hampton, the Metropolitan Transportation Authority (Long Island Railroad) and the owners of subdivision reserved areas other than agricultural reserved areas (the owners of agricultural reserved areas must receive notice). Such notice shall be made by certified mail, return receipt requested, posted at least 10 days prior to the date upon which such a determination is to be made and addressed to the owners of record at the latest addresses listed for them in the Town Assessor's office. The applicant shall file with the Building Department an affidavit stating that she has complied with this provision, together with the postal receipts evidencing notification of the property owners.

(3) No less than 10 days after the completion of these requirements, the Chief Building Inspector shall make a determination as to the status of the applicant's application.

§ 225-1-42. Nonconforming buildings and structures.

[Added 11-15-1995 by L.L. No. 19-1996; amended 4-13-2007 by L.L. No. 14-2007]

The following provisions shall apply to and govern all nonconforming buildings and structures, as the same are defined herein, wherever located.

(A) Expansion of nonconforming structures generally.

A nonconforming building or structure lawfully existing on any lot, or a building or structure which lawfully exists on a nonconforming lot, may be enlarged, reconstructed, altered, restored, or repaired, in whole or part, provided that the "degree of nonconformity" is not thereby increased. For the purposes of this subsection, an increase in the "degree of nonconformity" shall include an increase in the amount of a nonconforming building's or structure's gross floor area which is located within a required setback area, or an increase in any portion of a building or structure located above the maximum height permitted or within the required pyramid law setback.

(B) Rule governing nonconforming uses.

The provisions of this section do not apply to a building or structure which is used for a nonconforming use. The enlargement, reconstruction, alteration, restoration, or repair of a building or structure used by a nonconforming use shall be governed by the provisions of § 255-1-40 hereof.

(C) Limitations on reconstruction.

Reconstruction of a legally preexisting nonconforming building or structure shall be limited as follows:

(1) Reconstruction of a nonconforming building or structure shall require the issuance of a natural resources special permit if such is mandated by § 255-4-20 and § 255-4-21 hereof.

(2) Reconstruction of a nonconforming building or structure shall require a bluff line or dune crest setback variance if such is mandated by § 255-4-40 hereof unless such reconstruction is required as a result of accidental cause, including fire. "Accidental cause" shall not include flooding or erosion.

ARTICLE III: Overlay Districts

§ 255-3-80. Coastal Erosion Overlay District.

[Added 4-13-2007 by L.L. No. 14-2007]

§ 255-3-81. Purpose.

The purpose of the Coastal Erosion Overlay District is the protection of the Town's natural shoreline and coastal resources. These features require protection because of their important flooding and erosion prevention functions, their scenic qualities, their value for

public recreation and water access, and their value as wildlife habitat. The overlay district is divided into four coastal erosion zones, each of which covers sections of the Town's coast which have similar features, characteristics, and storm exposures. The district establishes rules and standards for erosion control structures and projects, which may differ from one zone to the next.

§ 255-3-82. Boundaries.

The Coastal Erosion Overlay District shall encompass all lands, including underwater lands, which are located within any of the following areas: (i) landward of the mean high water line of any tidal waters within the Town, to a line which is two hundred (200) feet landward of said mean high water line, (ii) seaward of said mean high water line, to a line which is one thousand (1,000) feet seaward of the mean low water line of any tidal waters within the Town, or (iii) seaward of the mean high water line, to the contour line at which mean low water depth is fifteen (15) feet. The overlay district shall consist of four coastal erosion zones as shown on the Use District map. The coastal erosion zones constituting the Coastal Erosion Overlay District shall be identified as follows:

- (A) Coastal Erosion Overlay Zone 1. Ocean coastal zone, including bluffs, dunes, beaches, and nearshore areas. This zone is predominantly free of erosion control structures.
- (B) Coastal Erosion Overlay Zone 2. Bay coastal zone, including bluffs, dunes, beaches, and nearshore areas, which is predominantly free of erosion control structures.
- (C) Coastal Erosion Overlay Zone 3. Bay coastal zone, including bluffs, dunes, beaches, and nearshore areas, which contains erosion control structures which are isolated and discontinuous, or which have no substantial flooding or erosion protection function.
- (D) Coastal Erosion Overlay Zone 4. Bay coastal zone, including any remaining bluffs, dunes, beaches, and nearshore areas, which contains numerous erosion control structures. Within this zone the loss of natural resources and features such as bluffs, dunes, and beaches means that in many cases erosion control structures provide the only remaining protection against flooding and erosion.

§ 255-3-85. Regulations.

In addition to any other provisions of this chapter which may apply to them, lots, lands, buildings, structures, uses, and activities within the Coastal Erosion Overlay District shall be subject to the following restrictions and regulations:

- (A) Coastal Erosion Overlay Zones, generally.
 - (1) All buildings and other structures, except coastal structures, shall be located and constructed so as to minimize the damage to property and risk to human life which may be caused by flooding and erosion.

(2) All construction and related activities, including the clearing and grading of land, shall be undertaken in a manner which minimizes the damage caused to wetlands, beaches, bluffs, dunes, and vegetation growing thereon by flooding and erosion.

(B) Regulation of erosion control structures.

(1) In Coastal Erosion Overlay Zone 1:

(a) The construction, placement, or installation of new erosion control structures is prohibited.

(b) The repair, reconstruction, or alteration of all lawfully existing erosion control structures shall require the issuance of a natural resources special permit.

(c) Notwithstanding the provisions of the foregoing Subsection B(1)(b), the repair, reconstruction, or alteration of existing erosion control structures which are constructed perpendicular to the shoreline, such as groins and jetties, is prohibited. The construction, placement, or installation of any such new erosion control structure built perpendicular to the shoreline is also prohibited.

(d) Notwithstanding the provisions of the foregoing Subsection B(1)(c), the alteration or removal of groins, jetties, or other existing erosion control structure constructed perpendicular to the shoreline, is permitted upon issuance of a building permit when such alteration would result in a reduction of the size or length of the structure and a public or environmental benefit. The Building Inspector may consult with other Town agencies and the Town Trustees to ensure that the alteration would result in a public or environmental benefit.

(2) In Coastal Erosion Overlay Zone 2:

(a) The construction, placement, or installation of new erosion control structures is prohibited.

(b) Subject to the exception set forth in Subsection B(2)(c) below, the repair, reconstruction, or alteration of existing erosion control structures is prohibited. This prohibition shall not apply to erosion control structures installed to ensure the safe navigability of boat channels; the construction, repair, reconstruction, or alteration of any such structure shall require the issuance of a natural resources special permit.

(c) Notwithstanding the provisions of the foregoing Subsection B(2)(b), the alteration or removal of groins, jetties, or other existing erosion control structure constructed perpendicular to the shoreline, is permitted upon issuance of a building permit when such alteration would result in a reduction of the size or length of the structure and a public or environmental benefit. The Building Inspector may consult with other Town agencies and the Town Trustees to ensure that the alteration

would result in a public or environmental benefit.

(3) In Coastal Erosion Overlay Zone 3:

- (a) The construction, placement, or installation of new erosion control structures is prohibited.
- (b) Subject to the exception set forth in Subsection B(3)(c) below, the repair, reconstruction, or alteration of existing erosion control structures which are constructed perpendicular to the shoreline, such as groins and jetties, is prohibited. This prohibition shall not apply to erosion control structures installed to ensure the safe navigability of boat channels; the construction, repair, reconstruction, or alteration of any such structure shall require the issuance of a natural resources special permit.
- (c) Notwithstanding the provisions of the foregoing Subsection B(3)(b), the alteration or removal of groins, jetties, or other existing erosion control structure constructed perpendicular to the shoreline, is permitted upon issuance of a building permit when such alteration would result in a reduction of the size or length of the structure and a public or environmental benefit. The Building Inspector may consult with other Town agencies and the Town Trustees to ensure that the alteration would result in a public or environmental benefit.
- (d) The repair, reconstruction, or alteration of all other lawfully preexisting erosion control structures shall require the issuance of a natural resources special permit.

(4) In Coastal Erosion Overlay Zone 4:

- (a) Subject to the exception set forth in Subsection B(4)(d) below, the construction, placement, or installation of new erosion control structures shall require the issuance of a natural resources special permit.
- (b) Subject to the exception set forth in Subsection B(4)(d) below, the alteration of existing erosion control structures shall require the issuance of a natural resources special permit.
- (c) Subject to the exception set forth in Subsection B(4)(d) below, the repair or reconstruction of existing erosion control structures shall require the issuance of a natural resources special permit. If such structures are lawfully preexisting, repair or reconstruction may be authorized by means of an expedited administrative natural resources special permit, pursuant to § 255-4-28 hereof.
- (d) Notwithstanding the provisions of the foregoing Subsection B(4)(a) through (c) and subject to the exception set forth in Subsection B(4)(e) below, the repair, reconstruction, or alteration of existing erosion control structures which are constructed perpendicular to the shoreline, such as groins and jetties, is prohibited.

The construction, placement, or installation of any such new erosion control structure built perpendicular to the shoreline is also prohibited. These prohibitions shall not apply to erosion control structures installed to ensure the safe navigability of boat channels, but work on any such structure shall require the issuance of a natural resources special permit.

(e) Notwithstanding the provisions of the foregoing Subsection B(4)(d), the alteration or removal of groins, jetties, or other existing erosion control structure constructed perpendicular to the shoreline, is permitted upon issuance of a building permit when such alteration would result in a reduction of the size or length of the structure and a public or environmental benefit. The Building Inspector may consult with other Town agencies and the Town Trustees to ensure that the alteration would result in a public or environmental benefit.