

Fiscal Analysis

**Rule Amendments: General Permit to Allow Beach Bulldozing in Inlet Hazard Areas of
Environmental Concern**

15A NCAC 07H .0308 & 15A NCAC 07H.1800

Prepared by

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October 25, 2021

Basic Information

Agency	Department of Environmental Quality (DEQ), Division of Coastal Management (DCM), Coastal Resources Commission (CRC)
Title	CAMA GENERAL PERMIT FOR BEACH BULLDOZING WITHIN THE BOUNDS OF AN INLET HAZARD AREA OF ENVIRONMENTAL CONCERN (AEC)
Citation	15A NCAC 7H .0308(b)(5), 15A NCAC 07H .1801, and 15A NCAC 7H .1805(f)
Description of the Proposed Rule	Amendments to 7H.0308(b)(5) would clarify the distinction between new oceanfront sand dune creation and dune repair or restoration. Amendments to 7H.1800 would extend the use of a beach bulldozing General Permit (GP) and Emergency GP to Inlet Hazard Areas (IHA).
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Authority	G.S. 113A-107; 113A-113; 113A-124
Necessity	The Coastal Resources Commission proposed amendments to 15A NCAC 7H .0308(b)(5), 15A NCAC 07H .1801, and 15A NCAC 7H .1805(f), would extend use of a beach bulldozing GP or Emergency GP to oceanfront areas inside an IHA. Currently, a property owner can request a beach bulldozing GP for property inside an Ocean Hazard Area, but this activity is currently not permissible inside an IHA.
Impact Summary	State government: Yes Local government: No Private Property Owners: Yes Substantial impact: No Federal government: No

Introduction and Purpose

Beach bulldozing is a method of oceanfront erosion management within the Ocean Hazard Area of Environmental Concern that moves beach sand from areas seaward of the first line of stable and natural vegetation (FLSNV) to repair or stabilize an existing dune damaged by erosion, or to create a protective berm for an imminently threatened structure. This activity can be authorized through the Coastal Area Management Act (CAMA) permit process. In many cases, General Permits (GP) are issued to individual property owners for a one-time beach “push” following a storm event, either under GP 15A NCAC 07H .1800 or GP 15A NCAC 07H .2500.

Currently, beach bulldozing is not eligible for a General Permit within the boundaries of a designated Inlet Hazard Area of Environmental Concern. The Commission’s proposed updated Inlet Hazard Areas boundaries, as recommended by the CRC Science Panel, extend farther away from inlet channels along the ocean-inlet shorelines and encompass an approximate 1,819 acres¹ of additional land area as compared with the existing IHA boundaries. As noted during the IHA update public hearings and workshops, the inability to permit beach bulldozing in the expanded IHAs has been a recurring concern expressed by town staff and property owners.

Description of Rule & Amendments

15A NCAC 07H .1800

CAMA General Permit (GP) 15A NCAC 07H.1800 authorizes the bulldozing of sand from the beach area between Mean Low Water Line (MLWL) and the FLSNV within the Ocean Hazard Area of Environmental Concern (AEC) but does not apply within the boundaries of a designated Inlet Hazard AEC. To minimize adverse impacts to nesting sea turtles, bulldozing within the period of April 1 through November 15 requires additional coordination with the N.C. Wildlife Resources Commission, U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers (15A NCAC 07H.1805(f)). 15A NCAC 07H. 2500 authorizes emergency general permits, however, all projects authorized under the 07H .2500 must also conform to the specific standards in other General Permits, including GP 15A NCAC 07H .1800; therefore, beach bulldozing is also not authorized in Inlet Hazard Areas under the GP 15A NCAC 07H .2500. For property owners within the boundary of an Inlet Hazard Area, these amendments would offer the ability to request a CAMA beach bulldozing GP or Emergency GP if needed; and require coordination with both State and Federal agencies for any beach bulldozing activity regardless of the time of year.

15A NCAC 07H .0308(b)(5)

15A NCAC 07H.0308 rules pertain to specific use standards for Ocean Hazard Areas. The activity of new dune creation is restricted by Subparagraph (b)(5) of this rule. When the Coastal Resources Commission held public hearings in association with updated Inlet Hazard Area boundaries and rule amendments, there were many questions and concerns raised in regards to the interpretation

¹ Fiscal Analysis: 2019 Update of Inlet Hazard Area Boundaries, Setback Factors, & Rule Amendments 15A NCAC 07H .0304, 15A NCAC 07H .0306, 15A NCAC 07H .0309, 15A NCAC 07H .0310, June 24, 2019, Table 1., page 6.

of “new dune creation” versus “dune repair” and “dune restoration.” Dune repair or restoration of an existing dune is currently allowed inside an IHA, however, the current rule as written does not clearly make this distinction. Therefore, this rule is being amended for clarification purposes.

Beach Bulldozing in the Ocean Hazard Area

Currently, property owners in an Ocean Hazard Area can request a CAMA beach bulldozing GP or Emergency GP if needed, and if they are not located inside an Inlet Hazard Area. Historically, some local governments have pursued CAMA Major Permits for beach bulldozing activities in the aftermath of major storms or other significant weather events. A Major Permit for the purpose of beach bulldozing for dune rehabilitation, or new dune construction, can be authorized for the local government’s entire Ocean Erodible Area, including the IHA where a previous dune existed. Presently, seven (7) local governments or communities (Ocean Isle Beach, Oak Island, Sunset Beach, Wrightsville Beach, Figure Eight Island, Surf City, and North Topsail Beach) have active CAMA Major Permits for beach bulldozing.

If a local government has an active beach bulldozing CAMA Major Permit, property owners can coordinate with the town to request use of the local government’s permit from the Division of Coastal Management, provided that the property is within the town’s legal jurisdiction, and the property owner has received authorization from the local government. If approved by the Division, the property owner(s) could then bulldoze under the same conditions specified in the local government’s Major permit. The following are existing use standards and general conditions for the purpose of dune repair and stabilization (15A NCAC 07H.0308(a)(4)):

- The project should maintain a slope similar to normal conditions. The slope, or grade, of the project must not be so steep that it endangers the public or interferes with public use of the beach.
- The beach profile may not be lowered more than one foot as measured from the existing surface elevation.
- Beach bulldozing must not extend past the lateral boundary of your property, unless you have permission from the neighboring landowner.
- Beach bulldozing must not significantly increase erosion on neighboring properties or adversely affect important natural or cultural resources.
- The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure’s foundation.

The Coastal Area Management Act exempts beach bulldozing from the permit process when it is done to protect imminently threatened structures (including septic systems) through the creation of protective sand dunes. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp.

Property owners who believe their structure is imminently threatened must contact a CAMA representative for consultation and a site visit prior to beginning work. Although a State CAMA permit is not required, any work performed below the Mean High Water Line still may need federal authorization so the Division recommends that property owners consult with the U.S. Army Corps of Engineers.

Under 15A NCAC 7K .0103 Maintenance and Repair, this CAMA statutory exemption can be utilized to create dunes to protect imminently threatened structures with following stipulations:

- The area on which this activity is being performed must maintain a slope that follows the pre-emergency slope as closely as possible so as not to endanger the public or hinder the public's use of the beach. All mechanically disturbed areas shall be graded smooth of ruts and spoil berms that are perpendicular to the shoreline. The movement of material utilizing a bulldozer, front-end loader, back hoe, scraper or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the surface elevation.
- The activity shall not exceed the lateral bounds of the applicant's property without written permission of adjoining landowners.
- Movement of material from seaward of the mean low water line shall not be permitted under this exemption.
- The activity shall not significantly increase erosion on neighboring properties and shall not have a significant adverse effect on natural or cultural resources.

As previously stated, the primary issue is that current rules do not allow for use of a CAMA General Permit for purposes of beach bulldozing within the boundaries of an Inlet Hazard Area. Given the proposed expansion of the updated IHA boundaries along the oceanfront at specific inlets, there is potential for future GP request denials should oceanfront property owners who are not currently in an IHA but would when the new boundaries go into effect.

Cost or Neutral Impacts

Private Property Owners:

Currently, there are 273 oceanfront structures inside existing IHAs and 555 inside proposed updated IHAs (Table 1). Once the updated IHAs boundaries go into effect there would be property owners who are currently not inside an IHA but would be. If a town or community does not already have a beach bulldozing CAMA Major Permit, this could result in limiting newly added property owners from potentially utilizing a CAMA beach bulldozing GP if needed. Since private property owners can request authorization for beach bulldozing under the local government's major permit, the need for beach bulldozing CAMA GPs is intermittent, and the Division estimates an additional

5-10 general permits (\$400 permit fee) could be permitted annually (depending upon storm events) at a total estimated cost of \$4,000 to private entities.

Table 1: Summary of the number of structures inside the current and proposed updated Inlet Hazard Areas.

Inlet Area	Oceanfront Structures Inside Current IHA	Oceanfront Structures Inside Updated IHA
Tubbs Inlet - Sunset Beach	66	16
Tubbs Inlet - Ocean Isle	39	31
Shallotte Inlet - Ocean Isle	0	53
Shallotte Inlet - Holden Beach	31	168
Lockwood Folly Inlet - Holden Beach	4	34
Lockwood Folly Inlet - Oak Island	21	53
Carolina Beach Inlet - Carolina Beach	0	4
Masonboro Inlet - Wrightsville Beach	N/A	2
Mason Inlet - Wrightsville Beach	1	1
Mason Inlet - Figure Eight	6	20
Rich Inlet - Figure Eight	24	43
New Topsail Inlet - Topsail Beach	16	16
New River Inlet - N. Topsail Beach	29	52
Bogue Inlet - Emerald Isle	36	62
TOTAL:	273	555

NC Department of Transportation (DOT):

Pursuant to G.S. 150B-21.4, DCM DOT permitting staff reported that the proposed amendments to 7H.1800 and 7H.0308 will not affect environmental permitting for the NC Department of Transportation. NC DOT does not own oceanfront property instead operates along roadway easements, and beach bulldozing is not an activity the agency typically undertakes. In the event NC DOT needs to build or replace a road located within an Inlet Hazard AEC, DOT actions regarding the roadbed would likely be considered maintenance and repair and not affected by these amendments.

Local Government:

If local governments need to replace or rebuild public infrastructure within an Inlet Hazard AEC, the proposed amendments to 7H.1800 and 7H.0308 will not change the CRC's approach to permitting that activity. As mentioned, a local government or community can request a Major

Permit for the purpose of beach bulldozing for dune rehabilitation, or new dune construction, can be authorized for the local government's entire Ocean Erodible Area, including the IHA where a previous dune existed.

Division of Coastal Management:

The Division of Coastal Management's permit review process will not be changed by these amendments to 7H.1800 and 7H.0308, as most beach bulldozing can be authorized under a local government's major permit. The Division estimates an additional 5-10 general permits (\$400 permit fee) could be permitted annually (depending upon storm events) with an estimated increase in permit fees of \$4,000 associated with this proposed action.

Benefits

Private Property Owners:

Property owners within existing Inlet Hazard Areas have historically been prohibited from requesting a CAMA GP due to the highly dynamic nature of areas adjacent to inlets out of concern that beach bulldozing and new dune creation could potentially degrade habitat, accelerate erosion on adjacent properties, and establish a false sense of erosion protection. However, where long- or short-term accelerated erosion (> 2 feet/year) has resulted in loss of beach and dune system, repair or restoration of existing dune can be authorized and coordinated under the town's CAMA Major Permit (Ocean Isle Beach, Oak Island, Sunset Beach, Wrightsville Beach, Figure Eight Island, and North Topsail Beach). In addition, should a structure become imminently threatened (pg. 3), beach bulldozing is exempt from the CAMA permitting process altogether. Although current rules do not allow individual property owners within current IHA boundaries to request a CAMA GP for the purpose of bulldozing, they can utilize the mentioned alternatives if needed.

Property owners not currently inside an Inlet Hazard Area, but would be once the updated IHAs go into effect would no longer have the option to request a CAMA GP for the purpose of beach bulldozing. As stated, because the need for beach bulldozing under a CAMA GP is intermittent and unpredictable, there may be a modest increase in cost to private property owners. However, it can be assumed that no rule amendments would add new restrictions to those property owners not currently inside an IHA; thus, resulting in a negative option value for those property owners. With amendments to 7H.1800 and 7H.0308 it is estimated that this is potentially a positive net influence for those property owners by increasing this permits availability, particularly in areas where the IHA is expanding.

In addition to potential degradation of habitat or cause of accelerated erosion, the primary concern with beach bulldozing in IHAs is the creation of new dunes where they did not previously exist, and how this may alter the siting of structures in these dynamic areas. While reconstruction or repair of existing dune systems as defined in Rule 7H .0305 within an inlet hazard area is permissible, the existing rule language has not been clear. Amendments have been proposed to

clarify the distinction between the creation of new dunes and the reconstruction/repair of existing dunes.

Cost/Benefit Summary

The primary purpose of amending Rules 15A NCAC 7H .0308 and 15A NCAC 7H .1800 is to add clarification to reduce confusion, and to allow use of CAMA GPs for the purpose of beach bulldozing inside Inlet Hazard Areas. If a town or community does not already have a CAMA Major Permit for this activity, the primary benefit to those who are not currently in an IHA, but would be at the time when the updated boundaries go into effect in 2022, is that they would have the option to utilize a beach bulldozing CAMA GP or Emergency GP if needed. These amendments do not have an overall quantifiable impact to property owners, as most of the beach bulldozing activity can take place under the local government's major permit. However, it can be estimated that this is potentially a positive net influence for property owners who will be within an IHA boundary for the first time in retaining the ability to utilize the beach bulldozing general permit.

ATTACHMENT A: Proposed Rule Amendments to 15A NCAC 07H. 0308

ATTACHMENT B: Proposed Rule Amendments to 15A NCAC 07H. 1800