

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

BRAXTON DAVIS
Director



CRC-22-17

August 19, 2022

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Amendments to 15A NCAC 7K .0207 & 7H .0308 – Beach Mats

Last year, the Commission amended the rules that established specific use standards for structural pedestrian accessways (dune crossovers) that allow for public access to the beach. You will recall that the use standards previously limited these accessways to elevated, piled-supported structures terminating on the beach near the seaward toe of the frontal dune. Due to numerous local governments expressing interest in using synthetic or wooden roll-out matting as a handicap-accessible alternative for beach access, the accessway rules were amended to allow the use of these types of mats for public beach access. However, the use these materials was limited to State, federal or local governments due to concerns expressed by the NC Wildlife Resources Commission (NC WRC) and the U.S. Fish & Wildlife Service (USFWS) about potential adverse impacts on sea turtle habitat resulting from their use waterward of the frontal dune.

Since the amendments went into effect, Staff has had further discussion regarding the use of beach matting for residential applications as an alternative to structural accessways. As you are aware, during storms, dune crossovers (including stairways) can account for a great deal of the debris that wind up scattered across beaches and in waterways. Staff believes that by limiting matting to the same general standards that apply to structural accessways (six feet wide and no farther waterward than six feet from the toe of the dune), public access and wildlife protection goals will be met while reducing debris on the state’s beach during storm events. Residential application of matting material would adhere to the same standards previously approved including installation at grade and prohibiting extension onto the public trust beach.

In addition, in recent years the Commission has approved three petitions for variances from local governments (Carolina Beach, Topsail Beach and Kure Beach) seeking to install beach mats on the dry sand beach (seaward of the frontal or primary dune and vegetation line) in support of enhanced handicap accessibility. The Division and Commission have supported both variance petitions, and in both cases, efforts were taken to minimize risks to sea turtles, including changes in siting, size, and orientation of the proposed structures. However, following the Commission’s variance and issuance of a CAMA Minor Permit to the Town for installation of beach mats, the Town still assumes some liability for any “takes” of threatened or endangered species under the



federal Endangered Species Act. For this reason, DCM has advised the Towns to consult directly with the U.S. Fish and Wildlife Service to resolve this situation, potentially through the development of “Habitat Conservation Plans” or other formal approvals that can be issued by the USFWS for non-federal entities in accordance with the Endangered Species Act.

Staff are proposing a change to 07H.0308(c)(2)(C) to potentially allow beach mats on the dry sand beach without the need for a variance from the Commission, where they are sponsored by a local government for the purpose of enhanced handicap accessibility and are subject to review by the NC WRC and USFWS. The proposed amendments to 07K .0207 would also add residential use of matting material to the exemption language for beach accessways.

I look forward to discussing this proposal at our upcoming meeting in Wilmington.

Proposed Amendments to 15A NCAC 07K .0207 & 7H .0308(c) August 19, 2022

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

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

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

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

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

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

15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
 - (A) The accessway is exclusively for pedestrian use;
 - (B) The accessway is a maximum of six feet in width;
 - (C) Except in the case of beach matting, matting for a local, State, or federal government's public access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune, in accordance with any more restrictive local, State, or federal building requirements. Beach matting for a local, State, or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and
 - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are allowed provided all other applicable standards of this Rule are met.
- (4) In order to preserve the protective nature of primary and frontal dunes, a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
- (5) Structural accessways and beach matting may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways and beach matting are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in Rule .0309(a) of this Section. A local, State, or federal entity may install beach matting farther seaward to enhance handicap accessibility at a public beach access, subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service to determine whether the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.