

1 15A NCAC 07H .0308 is proposed for amendment as follows:

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3 **15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

4 (a) Ocean Shoreline Erosion Control Activities:

5 (1) Use Standards Applicable to all Erosion Control Activities:

6 (A) All oceanfront erosion response activities shall be consistent with the general policy  
7 statements in 15A NCAC 07M .0200.

8 (B) Permanent erosion control structures may cause significant adverse impacts on the value  
9 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,  
10 therefore, unless specifically authorized under the Coastal Area Management Act, are  
11 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and  
12 breakwaters.

13 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront  
14 properties without regard to the size of the structure on the property or the date of its  
15 construction.

16 (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that  
17 sustain substantial habitat for fish and wildlife species, as identified by natural resource  
18 agencies during project review, unless mitigation measures are incorporated into project  
19 design, as set forth in Rule .0306(h) of this Section.

20 (E) Project construction shall be timed to minimize adverse effects on biological activity.

21 (F) Prior to completing any erosion response project, all exposed remnants of or debris from  
22 failed erosion control structures must be removed by the permittee.

23 (G) Permanent erosion control structures that would otherwise be prohibited by these standards  
24 may be permitted on finding by the Division that:

25 (i) the erosion control structure is necessary to protect a bridge that provides the only  
26 existing road access on a barrier island, that is vital to public safety, and is  
27 imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;

28 (ii) the erosion response measures of relocation, beach nourishment or temporary  
29 stabilization are not adequate to protect public health and safety; and

30 (iii) the proposed erosion control structure will have no adverse impacts on adjacent  
31 properties in private ownership or on public use of the beach.

32 (H) Structures that would otherwise be prohibited by these standards may also be permitted on  
33 finding by the Division that:

34 (i) the structure is necessary to protect a state or federally registered historic site that  
35 is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this  
36 Rule;

- 1 (ii) the erosion response measures of relocation, beach nourishment or temporary  
2 stabilization are not adequate and practicable to protect the site;
- 3 (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- 4 (iv) a permit for a structure under this Part may be issued only to a sponsoring public  
5 agency for projects where the public benefits outweigh the significant adverse  
6 impacts. Additionally, the permit shall include conditions providing for mitigation  
7 or minimization by that agency of significant adverse impacts on adjoining  
8 properties and on public access to and use of the beach.
- 9 (I) Structures that would otherwise be prohibited by these standards may also be permitted on  
10 finding by the Division that:
- 11 (i) the structure is necessary to maintain an existing commercial navigation channel  
12 of regional significance within federally authorized limits;
- 13 (ii) dredging alone is not practicable to maintain safe access to the affected channel;
- 14 (iii) the structure is limited in extent and scope to that necessary to maintain the  
15 channel;
- 16 (iv) the structure shall not have significant adverse impacts on fisheries or other public  
17 trust resources; and
- 18 (v) a permit for a structure under this Part may be issued only to a sponsoring public  
19 agency for projects where the public benefits outweigh the significant adverse  
20 impacts. Additionally, the permit shall include conditions providing for mitigation  
21 or minimization by that agency of any significant adverse impacts on adjoining  
22 properties and on public access to and use of the beach.
- 23 (J) The Commission may renew a permit for an erosion control structure issued pursuant to a  
24 variance granted by the Commission prior to 1 July 1995. The Commission may authorize  
25 the replacement of a permanent erosion control structure that was permitted by the  
26 Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the  
27 Commission finds that:
- 28 (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- 29 (ii) there is no practical alternative to replacing the structure that will provide the same  
30 or similar benefits; and
- 31 (iii) the replacement structure will comply with all applicable laws and with all rules,  
32 other than the rule or rules with respect to which the Commission granted the  
33 variance, that are in effect at the time the structure is replaced.
- 34 (K) Proposed erosion response measures using innovative technology or design shall be  
35 considered as experimental and shall be evaluated on a case-by-case basis to determine  
36 consistency with 15A NCAC 07M .0200 and general and specific use standards within this  
37 Section.

1 (2) Temporary Erosion Control Structures:

2 (A) Permittable temporary erosion control structures shall be limited to sandbags placed  
3 landward of mean high water and parallel to the shore.

4 (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be  
5 used to protect only imminently threatened roads and associated right of ways, and  
6 buildings and their associated septic systems. A structure is considered imminently  
7 threatened if its foundation, septic system, or right-of-way in the case of roads, is less than  
8 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from  
9 the erosion scarp or in areas where there is no obvious erosion scarp may also be found to  
10 be imminently threatened when site conditions, such as a flat beach profile or accelerated  
11 erosion, increase the risk of imminent damage to the structure.

12 (C) Temporary erosion control structures shall be used to protect only the principal structure  
13 and its associated septic system, but not appurtenances such as pools, gazebos, decks or  
14 any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion  
15 setback requirement.

16 (D) Temporary erosion control structures may be placed waterward of a septic system when  
17 there is no alternative to relocate it on the same or adjoining lot so that it is landward of or  
18 in line with the structure being protected.

19 (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of  
20 the structure to be protected except to align with temporary erosion control structures on  
21 adjacent properties, where the Division has determined that gaps between adjacent erosion  
22 control structures may result in an increased risk of damage to the structure to be protected.  
23 The landward side of such temporary erosion control structures shall not be located more  
24 than 20 feet waterward of the structure to be protected, or the right-of-way in the case of  
25 roads. If a building or road is found to be imminently threatened and at an increased risk  
26 of imminent damage due to site conditions such as a flat beach profile or accelerated  
27 erosion, temporary erosion control structures may be located more than 20 feet waterward  
28 of the structure being protected. In cases of increased risk of imminent damage, the location  
29 of the temporary erosion control structures shall be determined by the Director of the  
30 Division of Coastal Management or the Director's designee in accordance with Part (A) of  
31 this Subparagraph.

32 (F) Temporary erosion control structures may remain in place for up to eight years for a  
33 building and its associated septic system, a bridge or a road. The property owner shall be  
34 responsible for removal of any portion of the temporary erosion control structure exposed  
35 above grade within 30 days of the end of the allowable time period.

36 (G) An imminently threatened structure or property may be protected only once, regardless of  
37 ownership, unless the threatened structure or property is located in a community that is

1 actively pursuing a beach nourishment project, or an inlet relocation or stabilization project  
2 in accordance with Part (H) of this Subparagraph. Existing temporary erosion control  
3 structures may be permitted for additional eight-year periods provided that the structure or  
4 property being protected is still imminently threatened, the temporary erosion control  
5 structure is in compliance with requirements of this Subchapter, and the community in  
6 which it is located is actively pursuing a beach nourishment or an inlet relocation or  
7 stabilization project in accordance with Part (H) of this Subparagraph. In the case of a  
8 building, a temporary erosion control structure may be extended, or new segments  
9 constructed, if additional areas of the building become imminently threatened. Where  
10 temporary structures are installed or extended incrementally, the time period for removal  
11 under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control  
12 structure was installed. For the purpose of this Rule:

- 13 (i) a building and its septic system shall be considered separate structures,
- 14 (ii) a road or highway may be incrementally protected as sections become imminently  
15 threatened. The time period for removal of each contiguous section of temporary  
16 erosion control structure shall begin at the time that the initial section was  
17 installed, in accordance with Part (F) of this Subparagraph.

18 (H) For purposes of this Rule, a community is considered to be actively pursuing a beach  
19 nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-  
20 115.1 if it:

- 21 (i) has been issued an active CAMA permit, where necessary, approving such  
22 project; or
- 23 (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment  
24 Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage  
25 Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of  
26 Engineers and a commitment of local or federal money, when necessary; or
- 27 (iii) has received a favorable economic evaluation report on a federal project; or
- 28 (iv) is in the planning stages of a project designed by the U.S. Army Corps of  
29 Engineers or persons meeting applicable State occupational licensing  
30 requirements and initiated by a local government or community with a  
31 commitment of local or state funds to construct the project or the identification of  
32 the financial resources or funding bases necessary to fund the beach nourishment,  
33 inlet relocation or stabilization project.

34 If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency  
35 or community, or ceases to be actively planned for a section of shoreline, the time extension  
36 is void for that section of beach or community and existing sandbags are subject to all  
37 applicable time limits set forth in Part (F) of this Subparagraph.

- 1 (I) Once a temporary erosion control structure is determined by the Division of Coastal  
2 Management to be unnecessary due to relocation or removal of the threatened structure, it  
3 shall be removed to the maximum extent practicable by the property owner within 30 days  
4 of official notification from the Division of Coastal Management regardless of the time  
5 limit placed on the temporary erosion control structure. If the temporary erosion control  
6 structure is determined by the Division of Coastal Management to be unnecessary due to  
7 the completion of a storm protection project constructed by the U.S. Army Corps of  
8 Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization  
9 project, any portion of the temporary erosion control structure exposed above grade shall  
10 be removed by the property owner within 30 days of official notification from the Division  
11 of Coastal Management regardless of the time limit placed on the temporary erosion control  
12 structure.
- 13 (J) Removal of temporary erosion control structures is not required if they are covered by sand.  
14 Any portion of the temporary erosion control structure that becomes exposed above grade  
15 after the expiration of the permitted time period shall be removed by the property owner  
16 within 30 days of official notification from the Division of Coastal Management.
- 17 (K) The property owner shall be responsible for the removal of remnants of all portions of any  
18 damaged temporary erosion control structure.
- 19 (L) Sandbags used to construct temporary erosion control structures shall be tan in color and  
20 three to five feet wide and seven to 15 feet long when measured flat. Base width of the  
21 temporary erosion control structure shall not exceed 20 feet, and the total height shall not  
22 exceed six feet, as measured from the bottom of the lowest bag.
- 23 (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- 24 (N) Existing sandbag structures may be repaired or replaced within their originally permitted  
25 dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- 26 (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size  
27 and in accordance with Rule .0312 of this Section.
- 28 (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from  
29 any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain  
30 material for any other purpose) is development and may be permitted as an erosion response if the  
31 following conditions are met:
- 32 (A) The area on which this activity is being performed shall maintain a slope of adequate grade  
33 so as to not endanger the public or the public's use of the beach and shall follow the pre-  
34 emergency slope as closely as possible. The movement of material utilizing a bulldozer,  
35 front end loader, backhoe, scraper, or any type of earth moving or construction equipment  
36 shall not exceed one foot in depth measured from the pre-activity surface elevation;

- 1 (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has  
2 permission of the adjoining land owner(s);
- 3 (C) Movement of material from seaward of the mean low water line will require a CAMA  
4 Major Development and State Dredge and Fill Permit;
- 5 (D) The activity shall not increase erosion on neighboring properties and shall not have an  
6 adverse effect on natural or cultural resources;
- 7 (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well  
8 as the threatened structure's foundations.

9 (b) Dune Establishment and Stabilization.

- 10 (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent  
11 dune ridges and shall be of the same configuration as adjacent natural dunes.
- 12 (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency  
13 situations, be broadened or extended in an oceanward direction.
- 14 (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is  
15 minimized. The filled areas shall be replanted or temporarily stabilized until planting can be  
16 completed.
- 17 (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand  
18 in the area in which it is to be placed.
- 19 (5) No new dunes shall be created in inlet hazard areas.
- 20 (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or  
21 tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard  
22 AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present,  
23 or the crest of a frontal dune.
- 24 (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized  
25 and alternative site locations exist to avoid dune impacts.

26 (c) Structural Accessways:

- 27 (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed  
28 and constructed in a manner that entails negligible alteration of the primary or frontal dune.  
29 Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a)  
30 of this Rule.
- 31 (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided  
32 that:
- 33 (A) The accessway is exclusively for pedestrian use;
- 34 (B) The accessway is a maximum of six feet in width;
- 35 (C) ~~The~~ Except in the case of beach matting for a local, state or federal government's public  
36 access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever  
37 possible only the posts or pilings touch the dune. Where this is deemed by the Division of

1 Coastal Management to be impossible due to any more restrictive local, state, and/or  
2 federal building requirements, the structure shall touch the dune only to the extent  
3 ~~necessary; and necessary.~~ Beach matting for a local, state or federal government's public  
4 access shall be installed at grade and not involve any excavation or fill of the dune; and

5 (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

6 (3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it  
7 meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this  
8 Paragraph. Public fishing piers are not prohibited provided all other applicable standards of this  
9 Rule are met.

10 (4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such  
11 as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access.  
12 Such accessways shall be no greater than 15 feet in width and may be constructed of wooden  
13 sections fastened together, or other materials approved by the Division, over the length of the  
14 affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the  
15 dune's function as a protective barrier against flooding and erosion by not reducing the volume of  
16 the dune.

17 (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the  
18 frontal or primary dune, provided they do not interfere with public trust rights and emergency access  
19 along the beach. Structural accessways are not restricted by the requirement to be landward of the  
20 FLSNV as described in Rule .0309(a) of this Section.

21 (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of  
22 this Section and 15A NCAC 07J .0210 shall comply with the following standards:

23 (1) In order to avoid danger to life and property, all development shall be designed and placed so as to  
24 minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any  
25 building constructed within the ocean hazard area shall comply with relevant sections of the North  
26 Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local  
27 flood damage prevention ordinance as required by the National Flood Insurance Program. If any  
28 provision of the building code or a flood damage prevention ordinance is inconsistent with any of  
29 the following AEC standards, the more restrictive provision shall control.

30 (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if  
31 round or eight inches to a side if square.

32 (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation  
33 under the structure. For those structures so located on or seaward of the primary dune, the pilings  
34 shall extend to five feet below mean sea level.

35 (4) All foundations shall be designed to be stable during applicable fluctuations in ground elevation and  
36 wave forces during a 100-year storm. Cantilevered decks and walkways shall meet the requirements  
37 of this Part or shall be designed to break-away without structural damage to the main structure.

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