

1 **15A NCAC 07H .0308 IS PROPOSED FOR AMENDMENT AS FOLLOWS:**

2
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, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties,
11 groins and breakwaters.
- 12 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront
13 properties without regard to the size of the structure on the property or the date of its
14 construction.
- 15 (D) All permitted oceanfront erosion response projects, other than beach bulldozing and
16 temporary placement of sandbag structures, shall demonstrate sound engineering for their
17 planned purpose.
- 18 (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that
19 sustain substantial habitat for fish and wildlife species, as identified by natural resource
20 agencies during project review, unless mitigation measures are incorporated into project
21 design, as set forth in Rule .0306(i) of this Section.
- 22 (F) Project construction shall be timed to minimize adverse effects on biological activity.
- 23 (G) Prior to completing any erosion response project, all exposed remnants of or debris from
24 failed erosion control structures must be removed by the permittee.
- 25 (H) Erosion control structures that would otherwise be prohibited by these standards may be
26 permitted on finding by the Division that:
- 27 (i) the erosion control structure is necessary to protect a bridge which provides the
28 only existing road access on a barrier island, that is vital to public safety, and is
29 imminently threatened by erosion as defined in provision (a)(2)(B) of this Rule;
- 30 (ii) the erosion response measures of relocation, beach nourishment or temporary
31 stabilization are not adequate to protect public health and safety; and
- 32 (iii) the proposed erosion control structure will have no adverse impacts on adjacent
33 properties in private ownership or on public use of the beach.
- 34 (I) Structures that would otherwise be prohibited by these standards may also be permitted on
35 finding by the Division that:

- (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this Rule;
- (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
- (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

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

- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
- (ii) dredging alone is not practicable to maintain safe access to the affected channel;
- (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
- (iv) the structure shall not adversely impact fisheries or other public trust resources; and
- (v) any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.

(K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:

- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and

1 (iii) the replacement structure will comply with all applicable laws and with all rules,
2 other than the rule or rules with respect to which the Commission granted the
3 variance, that are in effect at the time the structure is replaced.

4 (L) Proposed erosion response measures using innovative technology or design shall be
5 considered as experimental and shall be evaluated on a case-by-case basis to determine
6 consistency with 15A NCAC 07M .0200 and general and specific use standards within this
7 Section.

8 (2) Temporary Erosion Control Structures:

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

11 (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall
12 be used to protect only imminently threatened roads and associated right of ways, and
13 buildings and their associated septic systems. A structure is considered imminently
14 threatened if its foundation, septic system, or right-of-way in the case of roads, is less than
15 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from
16 the erosion scarp or in areas where there is no obvious erosion scarp may also be found to
17 be imminently threatened when site conditions, such as a flat beach profile or accelerated
18 erosion, increase the risk of imminent damage to the structure.

19 (C) Temporary erosion control structures shall be used to protect only the principal structure
20 and its associated septic system, but not appurtenances such as pools, gazebos, decks or
21 any amenity that is allowed as an exception to the erosion setback requirement.

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

25 (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of
26 the structure to be protected. The landward side of such temporary erosion control
27 structures shall not be located more than 20 feet seaward of the structure to be protected or
28 the right-of-way in the case of roads. If a building or road is found to be imminently
29 threatened and at an increased risk of imminent damage due to site conditions such as a flat
30 beach profile or accelerated erosion, temporary erosion control structures may be located
31 more than 20 feet seaward of the structure being protected. In cases of increased risk of
32 imminent damage, the location of the temporary erosion control structures shall be
33 determined by the Director of the Division of Coastal Management or their designee in
34 accordance with Part (2)(A) of this Subparagraph.

35 (F) Temporary erosion control structures may remain in place for up to two years after the date
36 of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less
37 and its associated septic system, or, for up to five years for a building with a total floor area

1 of more than 5000 sq. ft. and its associated septic system. Temporary erosion control
2 structures may remain in place for up to five years if they are protecting a bridge or a road.
3 The property owner shall be responsible for removal of the temporary structure within 30
4 days of the end of the allowable time period.

5 (G) Temporary sandbag erosion control structures may remain in place for up to eight years
6 from the date of approval if they are located in a community that is actively pursuing a
7 beach nourishment project, or if they are located in an Inlet Hazard Area adjacent to an
8 inlet for which a community is actively pursuing an inlet relocation or stabilization project
9 in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered
10 to be actively pursuing a beach nourishment, inlet relocation or stabilization project if it
11 has:

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

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

28 (H) Once the temporary erosion control structure is determined by the Division of Coastal
29 Management to be unnecessary due to relocation or removal of the threatened structure, a
30 storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale
31 beach nourishment project, an inlet relocation or stabilization project, it shall be removed
32 by the property owner within 30 days of official notification from the Division of Coastal
33 Management regardless of the time limit placed on the temporary erosion control structure.

34 (I) Removal of temporary erosion control structures is not required if they are covered by
35 dunes with stable and natural vegetation.

36 (J) The property owner shall be responsible for the removal of remnants of all portions of any
37 damaged temporary erosion control structure.

- 1 (K) Sandbags used to construct temporary erosion control structures shall be tan in color and
2 three to five feet wide and seven to 15 feet long when measured flat. Base width of the
3 structure shall not exceed 20 feet, and the height shall not exceed six feet.
- 4 (L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- 5 (M) An imminently threatened structure may be protected only once, regardless of ownership,
6 unless the threatened structure is located in a community that is actively pursuing a beach
7 nourishment project, or in an Inlet Hazard Area and in a community that is actively
8 pursuing an inlet relocation or stabilization project in accordance with (G) of this
9 Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas
10 may be eligible for an additional ~~eight-year~~ eight-year permit extension provided that the
11 structure being protected is still imminently threatened, the temporary erosion control
12 structure is in compliance with requirements of this Subchapter and the community in
13 which it is located is actively pursuing a beach nourishment, inlet relocation or stabilization
14 project in accordance with Part (G) of this Subparagraph. In the case of a building, a
15 temporary erosion control structure may be extended, or new segments constructed, if
16 additional areas of the building become imminently threatened. Where temporary
17 structures are installed or extended incrementally, the time period for removal under Part
18 (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure
19 is installed. For the purpose of this Rule:
- 20 (i) a building and septic system shall be considered as separate structures.
- 21 (ii) a road or highway shall be allowed to be incrementally protected as sections
22 become imminently threatened. The time period for removal of each section of
23 sandbags shall begin at the time that section is installed in accordance with Part
24 (F) or (G) of this Subparagraph.
- 25 (N) Existing sandbag structures may be repaired or replaced within their originally permitted
26 dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- 27 (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size
28 and in accordance with 15A NCAC 07H .0312.
- 29 (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from
30 any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain
31 material for any other purpose) is development and may be permitted as an erosion response if the
32 following conditions are met:
- 33 (A) The area on which this activity is being performed shall maintain a slope of adequate grade
34 so as to not endanger the public or the public's use of the beach and shall follow the pre-
35 emergency slope as closely as possible. The movement of material utilizing a bulldozer,
36 front end loader, backhoe, scraper, or any type of earth moving or construction equipment
37 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. ~~Activities to establish dunes shall be allowed so long as the following~~
10 ~~conditions are met:~~

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

27 (c) Structural Accessways:

- 28 (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed
29 and constructed in a manner that entails negligible alteration ~~on~~ of the primary or frontal dune.
30 Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a)
31 of this Rule.
- 32 (2) An accessway shall be ~~conclusively presumed~~ considered to entail negligible alteration of a primary
33 or frontal dune provided that:
- 34 (A) The accessway is exclusively for pedestrian use;
- 35 (B) The accessway is ~~less than~~ a maximum of six feet in width;
- 36 (C) 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 ~~frontal~~ dune. Where this is deemed impossible,

1 the structure shall touch the dune only to the extent ~~absolutely necessary. In no case shall~~
2 ~~an accessway be permitted if it will diminish the dune's capacity as a protective barrier~~
3 ~~against flooding and erosion; necessary; and~~

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

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

9 (4) In order to ~~avoid weakening~~ preserve the protective nature of primary and frontal dunes a structural
10 accessway (such as a "Hatteras ramp") shall may be provided for any off-road vehicle (ORV) or
11 emergency vehicle access. Such accessways shall be no greater than ~~40~~ 15 feet in width and shall
12 may be constructed of wooden sections fastened ~~together together,~~ or other materials approved by
13 the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done
14 in a manner that will preserve the dune's function as a protective barrier against flooding and erosion
15 by not reducing the volume of the dune.

16 (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the
17 frontal or primary dune, provided they do not interfere with public trust rights and emergency access
18 along the beach. Structural accessways are not restricted by the requirement to be landward of the
19 FLSNV as described in 07H .0309(a).

20 (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and
21 07J .0210 shall comply with the following standards:

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

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

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

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

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1 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
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