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**CRC-20-19**

**TO:** Coastal Resources Commission

**FROM:** Heather Coats, DCM Beach & Inlet Management Project Coordinator

**SUBJECT:** Use of Matting Material for Beach Access – Proposed Amendments to NCAC 7H.0308 and 7K .0207 Structural Accessways

The Division is seeing the increased use of beach matting material to facilitate access to and on the beach at both public pedestrian accessways and for handicap access. This accessway matting has ranged from 6' wide mats placed over wooden structural accessways, to matting rolled out over paths through the dunes, to an installation exceeding a total of 3,000 square feet in area on the dry sand beach for handicap use. These accessways are usually anchored into the sand in some way and are often left in place for extended periods of time.

The NC Wildlife Resources Commission (NCWRC) and U.S. Fish & Wildlife Service (USFWS) have expressed concerns about the use of these mats on the beach, particularly when installed waterward of the frontal dune, in that they may adversely impact sea turtles during nesting season (May 1-November 15). In one such case, these two agencies recommended that if the matting is to be utilized during turtle nesting season, it should be removed nightly (and could be stored landward of the frontal dune). NCWRC also provided a photo of a “false crawl” this past June where a turtle failed to nest upon encountering matting at a beach access. Such interactions between beach matting and nesting sea turtles raise concerns about potential violations of the federal Endangered Species Act (ESA).

Your current rules regulating structural accessways (15A 07H .0308(c)) require that “structural accessways shall be permitted across primary and frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune” (0308(c)(1)), that they are “exclusively for pedestrian use” (c)(2)(A), a maximum of six feet in width (c)(2)(B), “raised on posts or pilings of five feet or less in depth, so that wherever possible only the posts or pilings touch the dune...” (c)(2)(C), that “any areas of vegetation that are disturbed are revegetated as soon as feasible” (c)(2)(D), and that they “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” (0308(c)(5)).

Private and public structural accessways that meet these standards and do not cross a primary dune are eligible for a permit exemption under 15A NCAC 7K .0207. Based on this exemption,

DCM has not been requiring Minor Permits for beach mats that meet the width (6') and length (no > 6' seaward of dune toe) standards associated with structural accessways. The proposed rules are intended to clarify and reinforce that beach matting is exempt from permitting only if they meet specific standards in 07K. 0207.

This is a challenging issue given the parallel goals of enhancing handicap access and protecting threatened and endangered species. The Coastal Area Management Act and Commission's Rules are intended to balance these kinds of issues. In consideration of current rules and agency concerns, Staff recommends the Commission consider creating a specific permit exemption for the use of these mats in limited circumstances. Specifically, allowing only local, state, and federal governments to install 6' wide mats over frontal dunes at public accessways. Mats would need to terminate "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," which is consistent with the standards for structural accessways. This would require a modification of 15A 07K .0207 and 15A 07 .0308(c).

Staff is looking forward to discussing this matter at the upcoming meeting in September.

*Proposed amendments to NCAC 7H .0308 and 7K .0207 – Structural Accessways*

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

(a) Ocean Shoreline Erosion Control Activities: ...

(b) Dune Establishment and Stabilization...

(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) 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. Where this is deemed by the Division of Coastal Management to be impossible due to any more restrictive local, state, and/or federal building requirements, the structure shall touch the dune only to the necessary; 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 not prohibited provided all other applicable standards of this Rule are met.
- (4) An accessway consisting of beach matting for a local, state or federal government's public access that cannot meet Part (2)(c) of this Paragraph shall also be considered to entail negligible alteration of the primary or frontal dune provided the matting meets Part (2)(A), (2)(B), and (6) of this Paragraph, is installed at grade and does not involve any excavation or fill of the dune.
- ~~(4)~~(5) 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)~~(6) 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 FLSNV as described in .0309(a) of this Section.

(d) Building Construction Standards...

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124; Eff. June 1, 1979; Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17, 1989; Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*

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

(a) The N.C. Coastal Resources Commission hereby exempts from the CAMA permit requirement all structural pedestrian accessways, including beach matting installed by a local, state, or federal government to provide public access over primary and frontal dunes when such accessways ~~which~~ can be shown to meet the following criteria:

- (1) The accessway must not exceed six feet in width and must 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 must be constructed so as to make no alterations to the frontal dunes that are not necessary to construct the accessway. This means that wherever possible the accessway must be constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to significantly diminish its capacity as a protective barrier against flooding and erosion. Driving of pilings into the dune or a local, state or federal government's use of beach matting for a 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 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 FLSNV as described in 15A 07H .0309(a).

(b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environment, Health, and Natural Resources representative must 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;
- (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.*