

ROY COOPER
Governor
ELIZABETH S. BISER
Secretary
BRAXTON DAVIS
Director



October 28, 2021

MEMORANDUM

CRC-21-40

TO: Coastal Resources Commission
FROM: Ken Richardson, *Shoreline Management Specialist*

SUBJECT: Consider Approval of Fiscal Analysis Associated with Amendments to 15A NCAC 07H. 0308 and 7H .1800 – General Permit for Beach Bulldozing

As you may recall from your September meeting, a property owner is not eligible for a General Permit for beach bulldozing 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 at most inlets to 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 issue General Permits for beach bulldozing in the expanded IHAs has been a recurring concern expressed by town staff and property owners.

To address this concern, the Commission is proposing to amend rules 15A NCAC 07H .0308 and 15A NCAC 07H. 1800, and DCM Staff have prepared a fiscal analysis that has been submitted and approved by the Department of Environmental Quality (DEQ) and the NC Office of State Budget and Management (OSBM) on October 28, 2021.

Fiscal Analysis Summary:

The primary purposes of the proposed amendments to Rules 15A NCAC 7H .0308 and 15A NCAC 7H .1800 are to clarify existing rules, and 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

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.



boundary for the first time and retain the ability to utilize the beach bulldozing general permit. 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 uncommon, 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, and an estimated increase in permit fees of \$4,000 for the Division of Coastal Management. If local governments or NC DOT 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.

Recommendation:

DCM Staff are seeking the Commission's approval of the fiscal analysis associated with rule amendments to 15A NCAC 07H.1800 and 15A NCAC 07H.0308 to allow the use of a CAMA General Permit for beach bulldozing.



ATTACHMENT A:

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



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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 acres² 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.

² 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.



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 of “new dune creation” versus “dune repair” and “dune restoration.” Dune repair or restoration of an existing dune is currently allowed inside and 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
Shalotte Inlet - Ocean Isle	0	53
Shalotte 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



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

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

(a) Ocean Shoreline Erosion Control Activities:

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

- (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, unless specifically authorized under the Coastal Area Management Act, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.
- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(h) of this Section.
- (E) Project construction shall be timed to minimize adverse effects on biological activity.
- (F) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (G) Permanent erosion control structures that would otherwise be prohibited by these standards may be permitted on finding by the Division that:
 - (i) the erosion control structure is necessary to protect a bridge that provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
 - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
 - (iii) the proposed erosion control structure will have no adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (H) 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 protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in Part (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) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.



- (I) 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 have significant adverse impacts on fisheries or other public trust resources; and
 - (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) 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
 - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

- (A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. 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. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under Rule .0309 of this Section as an exception to the erosion setback requirement.



- (D) Temporary erosion control structures may be placed waterward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet waterward of the structure to be protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or the Director's designee in accordance with Part (A) of this Subparagraph.
- (F) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, a bridge or a road. The property owner shall be responsible for removal of any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.
- (G) An imminently threatened structure or property may be protected only once, regardless of ownership, unless the threatened structure or property is located in a community that is actively pursuing a beach nourishment project, or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure or property being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Part (H) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control structure was installed. For the purpose of this Rule:
 - (i) a building and its septic system shall be considered separate structures,
 - (ii) a road or highway may be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of temporary erosion control structure shall begin at the time that the initial section was installed, in accordance with Part (F) of this Subparagraph.
- (H) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 if it:
 - (i) has been issued an active CAMA permit, where necessary, approving such project; or
 - (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S.



Army Corps of Engineers and a commitment of local or federal money, when necessary; or

- (iii) has received a favorable economic evaluation report on a federal project; or
- (iv) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and initiated by a local government or community with a commitment of local or state funds to construct the project or the identification of the financial resources or funding bases necessary to fund the beach nourishment, inlet relocation or stabilization project.

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

- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.
- (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

(3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.

(4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:



- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization.

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Subchapter and within an inlet hazard area is permissible.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(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) 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 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 Rule .0309(a) of this Section.

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

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

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

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

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

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;



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;
RRC Objection Eff. November 19, 1992 due to ambiguity;
RRC Objection Eff. January 21, 1993 due to ambiguity;
Amended Eff. March 1, 1993; December 28, 1992;
RRC Objection Eff. March 16, 1995 due to ambiguity;
Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;
Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006;
August 1, 2002;
Readopted Eff. December 1, 2020.



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

SECTION .1800 - GENERAL PERMIT TO ALLOW BEACH BULLDOZING IN THE OCEAN HAZARD AEC

15A NCAC 07H .1801 PURPOSE

This permit will allow beach bulldozing needed to reconstruct or repair dune systems, as defined in Rule .0305 of this Subchapter. For the purpose of this general permit, "beach bulldozing" is defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to repair damage to frontal or primary dunes. This general permit is subject to the procedures outlined in Subchapter 07J .1100, and shall not apply where a town or community has a Major Permit for either an ongoing beach bulldozing project, or project completed within thirty days of a request for a general permit, 07J .1100 and shall apply only to the Ocean Erodeable AEC. This general permit shall not apply to the Inlet Hazard AEC.

*History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Amended Eff. September 1, 2016.*

15A NCAC 07H .1802 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management at the address provided in 15A NCAC 07A .0101 and complete an application requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and their name and address.

(b) The applicant shall provide:

(1) confirmation that a written statement, signed by the adjacent riparian property owners, stating that they have no objections to the proposed work, has been obtained; or

(2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the DCM within 10 days of receipt of the notice, and state that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based upon their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM staff determines that the project exceeds the Rules established for the General Permit process, DCM shall notify the applicant that an application for a major permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and DCM representative. All bulldozing shall be completed within 30 days of the date of permit issuance.

*History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Amended Eff. September 1, 2016; January 1, 1990.*

15A NCAC 07H .1803 PERMIT FEE

The applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order payable to the Department.

*History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1;
Eff. December 1, 1987;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991.*



15A NCAC 07H .1804 GENERAL CONDITIONS

- (a) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights. If a shipwreck is unearthed, all work shall stop and the Division of Coastal Management shall be contacted immediately.
- (b) This permit shall not eliminate the need to obtain any other required state, local or federal authorization.
- (c) Development carried out under this permit shall be consistent with all local requirements, Commission rules, and local Land Use Plans in effect at the time of authorization.

History Note: Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. September 1, 2016; August 1, 1998; July 1, 1994.

15A NCAC 07H .1805 SPECIFIC CONDITIONS

- (a) The area where this activity is being performed shall maintain a slope that follows the pre-emergency slopes as closely as possible so as not to endanger the public or the public's use of the beach. The movement of material by a bulldozer, front-end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation.
- (b) The activity shall not exceed the lateral bounds of the applicant's property without the written permission of the adjoining landowner(s).
- (c) The permit shall not authorize movement of material from seaward of the mean low water line.
- (d) The activity shall not increase erosion on neighboring properties.
- (e) Adding sand to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. Upon completion of the project, the fill areas shall be replanted with native vegetation, such as Sea Oats (*Uniola paniculata*), or if outside the planting season, shall be stabilized with sand fencing until planting can occur.
- (f) In order to minimize adverse impacts to threatened and endangered species ~~nesting sea turtles~~, no bulldozing shall occur inside the Ocean Hazard AEC within the period of April 1 through November 15 of any year, or anytime inside an Inlet Hazard AEC without the prior approval of the Division of Coastal Management, in coordination with the North Carolina Wildlife Resources Commission, the United States Fish and Wildlife Service, and the United States Army Corps of Engineers. ~~Engineers, that the work can be accomplished without significant adverse impact to sea turtle nests or suitable nesting habitat.~~
- (g) If one contiguous acre or more of oceanfront property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with the Division of Energy, Mineral, and Land Resources, or appropriate local government having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

History Note: Authority G.S. 113-229(cl); 113A-107; 113A-113(b); 113A-118.1;
Eff. December 1, 1987;
Temporary Amendment Eff. September 2, 1998;
Amended Eff. September 1, 2016; August 1, 2012 (see S.L. 2012-143, s.1.(f)); August 1, 2000.

