

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
19 that sustain substantial habitat for fish and wildlife species, as identified by natural
20 resource agencies during project review, unless mitigation measures are incorporated into
21 project 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 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
30 subchapter;
- 31 (ii) the erosion response measures of relocation, beach nourishment or temporary
32 stabilization are not adequate to protect public health and safety; and
- 33 (iii) the proposed erosion control structure will have no adverse impacts on adjacent
34 properties in private ownership or on public use of the beach.
- 35 (I) Structures that would otherwise be prohibited by these standards may also be permitted
36 on finding that:

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

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

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

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

- 35 (i) the structure will not be enlarged beyond the dimensions set out in the permit;
36 (ii) there is no practical alternative to replacing the structure that will provide the
37 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.

(L) 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 7M .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 ~~above~~ landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure shall be considered ~~to be~~ 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 ~~such~~ appurtenances such as pools gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(D) Temporary erosion control structures may be placed seaward 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. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward 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 seaward 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 their designee.

(F) ~~A temporary~~ Temporary erosion control ~~structure~~ structures may remain in place for up to two years after the date of approval if ~~it is~~ they are protecting a building with a total floor area of 5000 sq. ft. or ~~less,~~ less and its associated septic system, or, for up to five years ~~if the~~ for a building ~~has~~ with a total floor area of more than 5000 sq. ft. and its

1 associated septic system. ~~A temporary~~ Temporary erosion control structure structures
2 may remain in place for up to five years if ~~it is~~ they are protecting a bridge or a road. The
3 property owner shall be responsible for removal of the temporary structure within 30
4 days of the end of the allowable time period. ~~A temporary sandbag erosion control~~
5 ~~structure with a base width not exceeding 20 feet and a height not exceeding 6 feet may~~
6 ~~remain in place for up to five years or until May 2008, whichever is later regardless of the~~
7 ~~size of the structure if the community in which it is located is actively pursuing a beach~~
8 ~~nourishment project as of October 1, 2001. For purposes of this Rule, a community is~~
9 ~~considered to be actively pursuing a beach nourishment project if it has:~~

10 (G) Temporary sandbag erosion control structures may remain in place for up to five years
11 from the date of approval if they are located in a community that is actively pursuing a
12 beach nourishment project, and for up to eight years from the date of approval if they are
13 located in an Inlet Hazard Area adjacent to an inlet for which a community is actively
14 pursuing an inlet relocation project. For purposes of this Rule, a community is
15 considered to be actively pursuing a beach nourishment or inlet relocation project if it
16 has:

- 17 (i) ~~been issued a~~ an active CAMA permit, where necessary, approving such project;
18 or
19 (ii) ~~been deemed worthy of further consideration~~ identified by a U.S. Army Corps of
20 Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation
21 Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study
22 by the U.S. Army Corps of Engineers and a commitment of local or federal
23 money, when necessary; or
24 (iii) received a favorable economic evaluation report on a federal ~~project approved~~
25 ~~prior to 1986. If beach nourishment is rejected by the sponsoring agency or~~
26 ~~community, or ceases to be actively planned for a section of shoreline, the time~~
27 ~~extension is void and existing sandbags are subject to all applicable time limits~~
28 ~~set forth in Parts (A) through (N) of this Subparagraph. Sandbag structures~~
29 ~~within nourishment project areas that exceed the 20 foot base width and 6 foot~~
30 ~~height limitation may be reconstructed to meet the size limitation and be eligible~~
31 ~~for this time extension: otherwise they shall be removed by May 1, 2000~~
32 ~~pursuant to Part (N) of this Subparagraph.~~ project or,
33 (iv) is in the planning stages of a project that has been designed by the U.S. Army
34 Corps of Engineers or persons meeting applicable State occupational licensing
35 requirements and has been initiated by a local government or community with a
36 commitment of local or state funds to construct the project and the identification

1 of the financial resources or funding bases necessary to fund the beach
2 nourishment or inlet relocation project.

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

7 ~~(G)~~ (H) Once the temporary erosion control structure is determined to be unnecessary due to
8 relocation or removal of the threatened ~~structure or structure~~, a storm protection project
9 constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment,
10 nourishment project or an inlet relocation project, it shall be removed by the property
11 owner within 30 days of official notification from the ~~Division~~, Division of Coastal
12 Management regardless of the time limit placed on the temporary erosion control
13 structure.

14 ~~(H)~~ (I) Removal of temporary erosion control structures shall not be required if they are covered
15 by dunes with stable and natural vegetation.

16 ~~(I)~~ (J) The property owner shall be responsible for the removal of remnants of all portions of
17 any damaged temporary erosion control structure.

18 ~~(J)~~ (K) Sandbags used to construct temporary erosion control structures shall be tan in color and
19 three to five feet wide and seven to 15 feet long when measured flat. Base width of the
20 structure shall not exceed 20 feet, and the height shall not exceed six feet.

21 ~~(K)~~ (L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

22 ~~(L)~~ (M) An imminently threatened structure may be protected only once, regardless of ~~ownership~~.
23 ownership unless the threatened structure is located in an Inlet Hazard Area and in a
24 community that is actively pursuing an inlet relocation project in accordance with (G) of
25 this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard
26 Areas may be eligible for an additional eight year permit extension provided that the
27 structure being protected is still imminently threatened, the temporary erosion control
28 structure is in compliance with requirements of this Subchapter and the community in
29 which it is located is actively pursuing an inlet relocation project in accordance with Part
30 (G) of this Subparagraph. In the case of a building, a temporary erosion control structure
31 may be extended, or new segments constructed, if additional areas of the building
32 become imminently threatened. Where temporary structures are installed or extended
33 incrementally, the time period for removal under Part (F) or (G) of this Subparagraph
34 shall begin at the time the initial erosion control structure is installed. For the purpose of
35 this Rule:

36 (i) a building and septic system shall be considered as separate structures.

- (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.
- ~~(M)~~ (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.
- ~~(N) — Existing sandbag structures that have been properly installed prior to May 1, 1995 shall be allowed to remain in place according to the provisions of Parts (F), (G) and (H) of this Subparagraph with the pertinent time periods beginning on May 1, 1995.~~
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and type. Sand to be used for beach nourishment shall be taken only from those areas where the resulting environmental impacts will be minimal.
- (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. Activities to establish dunes shall be allowed so long as the following conditions are met:
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general 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

1 minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting
2 can be successfully completed.

3 (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand
4 in the area in which it is to be placed.

5 (5) No new dunes shall be created in inlet hazard areas.

6 (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed
7 within the AEC provided that it is not placed any farther oceanward than the crest of a primary
8 dune or landward toe of a frontal dune.

9 (7) No disturbance of a dune area shall be allowed when other techniques of construction can be
10 utilized and alternative site locations exist to avoid unnecessary dune impacts.

11 (c) Structural Accessways:

12 (1) Structural accessways shall be permitted across primary dunes so long as they are designed and
13 constructed in a manner that entails negligible alteration on the primary dune. Structural
14 accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this
15 Rule.

16 (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune
17 provided that:

18 (A) The accessway is exclusively for pedestrian use;

19 (B) The accessway is less than six feet in width;

20 (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever
21 possible only the posts or pilings touch the frontal dune. Where this is deemed
22 impossible, the structure shall touch the dune only to the extent absolutely necessary. In
23 no case shall an accessway be permitted if it will diminish the dune's capacity as a
24 protective barrier against flooding and erosion; and

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

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

30 (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural
31 accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or
32 emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be
33 constructed of wooden sections fastened together over the length of the affected dune area.

34 (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) and
35 07J .0210 shall comply with the following standards:

36 (1) In order to avoid danger to life and property, all development shall be designed and placed so as to
37 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 adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard 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-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; 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, 2009; April 1, 2008; February 1, 2006; August 1, 2002.