

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

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

4 (a) For purposes of this Rule, the following definitions apply:

- 5 (1) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an
6 effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S.
7 113A-102(b) and with the provisions of G.S. 113-229(e).
- 8 (2) "Significant" as used in this Section includes consideration of both context and intensity. Context
9 means that the impact or effect shall be analyzed from several perspectives that include society as a
10 whole (human, national), the affected subregion of the North Carolina coast, the local area and all
11 directly and indirectly affected parties. Both short- and long-term effects are relevant. Intensity
12 refers to the severity of impact or effect. The following shall be considered in evaluating intensity:
- 13 (A) both adverse impacts as defined in Subparagraph (a)(1) of this Rule and impacts that
14 promote or enhance the goals of the Coastal Area Management Act as set out at G.S. 113A-
15 102(b);
- 16 (B) the degree to which the proposed action affects public health or safety;
- 17 (C) unique characteristics of the geographic area;
- 18 (D) the degree to which the effects on the quality of the human environment are likely to be
19 disagreed upon;
- 20 (E) the degree to which the possible effects on the environment are uncertain or involve unique
21 or unknown risks;
- 22 (F) the degree to which the CRC's permit decisions may establish a precedent for future CRC
23 permit decisions;
- 24 (G) the degree to which the CRC's permit decisions are related to other CRC permit decisions
25 with individually insignificant but cumulatively significant impacts. Significance cannot
26 be avoided by terming an action temporary or by breaking it down into small component
27 parts; and
- 28 (H) the degree to which the CRC's permit decision may cause the loss or destruction of
29 scientific, cultural, historical, and environmental resources as those terms are commonly
30 defined and understood.

31 (b) Ocean Shoreline Erosion Control Activities:

- 32 (1) Use Standards Applicable to all Erosion Control Activities:
- 33 (A) All oceanfront erosion response activities shall be consistent with 15A NCAC 07H .0308
34 and G.S.113A-115.1.
- 35 (B) Permanent erosion control structures may cause significant adverse impacts on the value
36 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,
37 therefore, unless specifically authorized under the Coastal Area Management Act, are

1 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins, and
2 breakwaters.

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

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

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

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

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

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

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

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

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

24 (i) the structure is necessary to protect a State or federally registered historic site that
25 is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this
26 Rule;

27 (ii) the erosion response measures of relocation, beach nourishment or temporary
28 stabilization are not adequate and practicable to protect the site;

29 (iii) the structure is limited in extent and scope to that necessary to protect the site; and

30 (iv) a permit for a structure under this Part may be issued only to a sponsoring public
31 agency for projects where the public benefits outweigh the significant adverse
32 impacts. Additionally, the permit shall include conditions providing for mitigation
33 or minimization by that agency of significant adverse impacts on adjoining
34 properties and on public access to and use of the beach.

35 (I) Structures that would otherwise be prohibited by these standards may also be permitted on
36 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 alternative to replacing the structure that will provide the same or similar benefits as determined by DCM based on costs and engineering options; 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

1 be imminently threatened when site conditions, such as a flat beach profile or accelerated
2 erosion, increase the risk of imminent damage to the structure.

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

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

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

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

27 (G) An imminently threatened structure or property may be protected only once, regardless of
28 ownership, unless the threatened structure or property is located in a community that is
29 actively pursuing a beach nourishment project or an inlet relocation or stabilization project
30 in accordance with Part (H) of this Subparagraph. Existing temporary erosion control
31 structures may be permitted for additional eight-year periods provided that the structure or
32 property being protected is still imminently threatened, the temporary erosion control
33 structure is in compliance with requirements of this Subchapter, and the community in
34 which it is located is actively pursuing a beach nourishment or an inlet relocation or
35 stabilization project in accordance with Part (H) of this Subparagraph. In the case of a
36 building, a temporary erosion control structure may be extended, or new segments
37 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 3 to 5 feet wide and 7 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 6 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.

(O) Sandbags used to construct temporary erosion control structures to protect public roads are not subject to the color and size limitations in 07H .0308(b)(2)(L) Base width of the temporary erosion control structures to protect public roads shall not exceed 30 feet, and the total height shall not exceed 10 feet, as measured from the bottom of the lowest bag.

(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 is defined as the process of moving natural beach material from any point seaward of the vegetation line to create a protective sand dike or to obtain material for any other purpose is considered 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 permission is obtained from 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 as identified by the NC Department of Natural and Cultural Resources.

(E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(c) Dune Protection, Establishment, Restoration and Stabilization.

(1) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or vegetation that would adversely affect the integrity of the dune's function as a protective barrier against flooding and erosion. Other dunes within the ocean hazard area shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these other dunes shall be allowed only to the extent permitted by this Rule.

(2) 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.

(3) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.

(4) 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.

(5) 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.

(6) No new dunes shall be created in inlet hazard areas. Reconstruction or repair of existing dune systems as defined in Rule .0305 of this Section and within the Inlet Hazard Area may be permitted.

(7) 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.

(8) 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.

(d) 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 does not alter 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) Except in the case of beach matting, 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, in accordance with any more restrictive local, State, or federal building requirements. Beach matting shall be installed at grade and not involve any excavation or fill of the dune; 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 allowed 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 and beach matting 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 and beach matting are not restricted by the requirement to be landward of the First Line of Stable and Natural Vegetation as described in Rule .0309(a) of this Section. A local, State, or federal entity may install beach matting farther seaward to enhance handicap accessibility at a public beach access, subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service to determine whether the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.
- (e) Building Construction Standards. New building construction and any construction identified in Rule .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.

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

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

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8 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
9 *Eff. June 1, 1979;*
10 *Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17,*
11 *1989;*
12 *Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*
13 *RRC Objection Eff. November 19, 1992 due to ambiguity;*
14 *RRC Objection Eff. January 21, 1993 due to ambiguity;*
15 *Amended Eff. March 1, 1993; December 28, 1992;*
16 *RRC Objection Eff. March 16, 1995 due to ambiguity;*
17 *Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*
18 *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*
19 *Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1,*
20 *2002;*
21 *Readopted Eff. December 1, 2020;*
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