

Fiscal Analysis

Proposed Changes to Structural Accessways to Include the Use of Beach Mats

15A NCAC 07H .0308

15A NCAC 07K .0207

Prepared by
Mike Lopazanski

NC Division of Coastal
Management
252-553-5431

October 18, 2022

Summary

Agency	DEQ, Division of Coastal Management (DCM) Coastal Resources Commission (CRC)
Title of the Proposed Rules	Specific Use Standards for Ocean Hazard Areas- Structural Accessways - 15A NCAC 07H .0308(c) Structural Accessways Over Frontal Dunes Exempted 15A NCAC 07K .0207
Description of the Proposed Rules	Rule 07H .0308(c) is amended to allow installation by government entities of beach matting further seaward to enhance handicap accessibility at public beach accesses. Rule 07K .0207 establishes a permit exemption for beach matting to include private access.
Agency Contact	Mike Lopazanski Deputy Director Mike.Lopazanski@ncdenr.gov (252) 553-5431
Authority	G.S. 113-229(cl); G.S. 113A-107; 113A-113; 113A-115; 113A-118; 113A-124
Necessity	The Coastal Resources Commission proposes to amend its administrative rules in order to provide greater flexibility to local governments, government agencies and private property owners in constructing accessways and enhanced handicap access to the beach by allowing the use of beach matting.
Impact Summary	State government: No Local government: Yes Private citizens: Yes Substantial impact: No

Introduction and Purpose

Facilitating public access to our state's coastal shorelines while managing development to minimize impacts to the natural environment and our coastal resources are among the central tenets of the Coastal Area Management Act (CAMA) as well as an objective of the rules of NC Coastal Resources Commission.

The CAMA states, "In the implementation of the coastal area management plan, the public's opportunity to enjoy the physical, esthetic, cultural, and recreational qualities of the natural shorelines of the State shall be preserved to the greatest extent feasible; water resources shall be managed in order to preserve and enhance water quality and to provide optimum utilization of water resources; land resources shall be managed in order to guide growth and development and to minimize damage to the natural environment."

15A NCAC 07H .0303 states the management objective of the ocean hazard area is to “further the goals set out in G.S. 113A-102(b), with particular attention to minimizing losses to life and property resulting from storms and long-term erosion, preventing encroachment of permanent structures on public beach areas, preserving the natural ecological conditions of the barrier dune and beach systems, and reducing the public costs of inappropriately sited development. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to and use of the lands and waters of the coastal area.”

Synthetic or wooden material roll-out matting has increasingly been developed and used as a cost-effective and handicap-accessible alternative for beach access. Numerous local governments in North Carolina have expressed interest in using these types of mats for public beach access. However, current Commission rules do not allow these types of mats in all applications.

Additionally, the NC Wildlife Resources Commission (NCWRC) and U.S. Fish & Wildlife Service (USFWS) have expressed concerns about the use of these mats on the beach, particularly when installed waterward of the frontal dune, in that they may adversely impact sea turtles during nesting season (May 1-November 15). Interactions between beach matting and nesting sea turtles raise concerns about potential violations of the federal Endangered Species Act (ESA).

In 2021, the Coastal Resources Commission (CRC) amended the rules that established specific use standards for structural pedestrian accessways (dune crossovers) that allow for public access to the beach. These use standards previously limited these accessways to elevated, piled-supported structures terminating on the beach near the seaward toe of the frontal dune. Due to numerous local governments expressing interest in using synthetic or wooden roll-out matting as a handicap-accessible alternative for beach access, the accessway rules were amended to allow the use of these types of mats for public beach access. However, the use of these materials was limited to State, federal or local governments due to concerns expressed by the NC Wildlife Resources Commission (NC WRC) and the U.S. Fish & Wildlife Service (USFWS) about potential adverse impacts on sea turtle habitat resulting from their use waterward of the frontal dune.

Since the amendments went into effect, Division Staff and the CRC have had further discussion regarding the use of beach matting for residential applications as an alternative to structural accessways. During storms, dune crossovers (including stairways) can account for a great deal of the debris that become scattered across beaches and in waterways. The CRC believes that by limiting matting to the same general standards that apply to structural accessways (six feet wide and no farther waterward than six feet from the toe of the dune), public access and wildlife protection goals will be met while reducing debris on the state’s beach during storm events. Residential application of matting material would adhere to the same standards previously approved including installation at grade and prohibiting extension onto the public trust beach.

In addition, in recent years the Commission has approved three petitions for variances from local governments (Carolina Beach, Topsail Beach and Kure Beach) seeking to install beach mats on the dry sand beach (seaward of the frontal or primary dune and vegetation line) in support of enhanced handicap accessibility. The Division and Commission have supported the variance petitions, and in both cases, efforts were taken to minimize risks to sea turtles, including changes in siting, size, and orientation of the proposed structures. However, following the Commission’s variance and issuance of

a CAMA Minor Permit to the towns for installation of beach mats, each town still assumes some liability for any “takes” of threatened or endangered species under the federal Endangered Species Act. For this reason, the Division has advised the towns to consult directly with the U.S. Fish and Wildlife Service to resolve this situation, potentially through the development of “Habitat Conservation Plans” or other formal approvals that can be issued by the USFWS for non-federal entities in accordance with the Endangered Species Act.

The Commission is now proposing a change to 07H.0308(c)(2)(C) to allow beach mats on the dry sand beach without the need for a variance from the Commission, where they are sponsored by a local government for the purpose of enhanced handicap accessibility and are subject to review by the NC WRC and USFWS. The proposed amendments to 07K .0207 would also add residential use of matting material to the exemption language for beach accessways.

DCM anticipates the effective date of these rule amendments to be April 1, 2023.

Description of the Current and Proposed Rules

The CRC currently offers property owners the ability to install elevated structural accessways for pedestrians to cross over the frontal dune through a permit exemption if the structure is limited to 6’ in width or less. Local governments and state and federal agencies can also install these elevated accessways subject to the same conditions. The majority of structural accessways are constructed under the exemption criteria. Alternatively, property owners may instead opt to leave the accessway to the beach natural with no improvements, which would not qualify as development, and therefore not require any approval from the Division of Coastal Management. DCM currently issues minor permits or exemptions for public accessways pursuant to use standards described in 15A NCAC 07H .0308(c) and 15A NCAC 07K .0207.

The CRC is proposing the following amendments:

- Allow for local governments, and state or federal agencies providing public access to use beach mats 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.
- Allow private property owners to use beach mats for accessways, rather than requiring the access to be elevated on pilings when installed at grade and no excavation or fill is required;
- Allow these mat accessways to be no wider than 6’;
- Allow the permit exemption for structural beach accessways to also apply to the beach mats; and
- The overall requirements for access siting and all other use standards currently in place would still apply.

Figure 1. A typical wooden structural accessway.



Image source: DCM

Figure 2. A typical beach mat accessway.

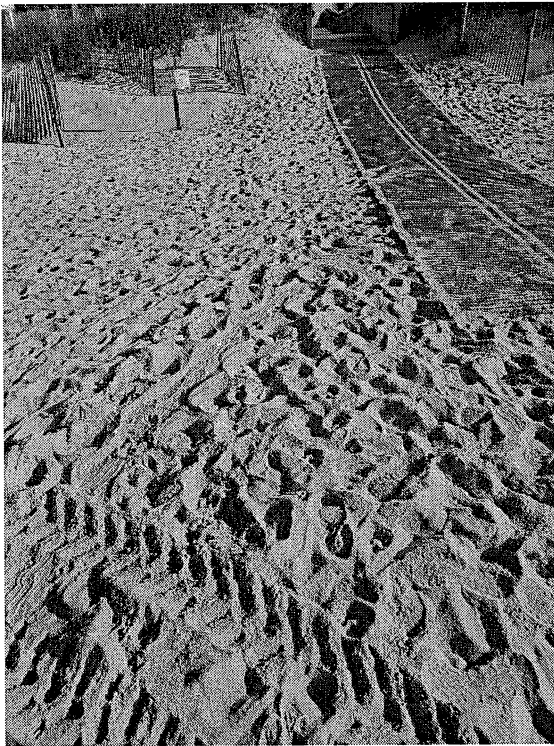


Image source- Ocean Isle Beach Sea Turtle Protection Organization.

Anticipated Impacts

Private Citizens and Natural Resources

Because the overall location and dimensions of structural accessways will remain unchanged and will just allow an expanded use for local governments and government agencies, the proposed amendments will not result in any additional construction costs for private property owners or negatively impact public access to the beach. The proposed amendments are expected

to provide private property owners with an alternative to the traditional piling elevated access structures. The use of beach mats may also serve to enhance access, particularly handicap access in areas using non-structural natural accessway to the beach.

Compared to elevated accessways, beach mats may adversely impact sea turtles during nesting season when installed waterward of the frontal dune, a potential violation of the Endangered Species Act. To balance public access and wildlife protection goals, the Commission is proposing creating a specific permit exemption for the use of these mats in limited circumstances. Specifically, allowing only local, state, and federal governments to install mats more than six feet seaward of the frontal dune only after consultation with State and federal wildlife agencies regarding the size and location of these structures.

As the rule amendments simply provide an alternative to traditional piling supported structural accessways and are not a requirement, it is unknown how many governmental entities or private property owners may utilize this alternative. Based on inquiries by property owners over the past two years, the Division anticipates approximately 75 beach mat requests per year should they gain popularity. These would be a combination of new and replacement accessways; however, any attempt to quantify new versus replacement would be speculative as it is dependent on the frequency and severity of storms as well as the intent of property owners.

These private property owners may see a reduced cost (\$42 per linear foot vs \$333 per linear foot) by using beach matting rather than the traditional piling supported accessways. There is no permit fee associated with the exemption.

Department of Transportation

Pursuant to G.S. 150B-21.4, the agency reports that the proposed amendments to 7H.0308(c) and 7K.0207 will not significantly affect environmental permitting for the NC Department of Transportation (NCDOT). No cost or benefit applicable to NCDOT is anticipated as a result of these rule amendments as NC DOT does not typically construct such facilities.

Local, State and Federal Government

Local, State (NC Division of Parks and Recreation) and Federal (National Park Service) governments are expected to benefit from the increased flexibility in allowing the use of beach mats for the construction of pedestrian beach accessways, particularly when installing handicap-accessible accessways. While the proposed amendments are not expected to affect government entity revenues or expenditures significantly, the ability to provide public access at a reduced cost (\$42 per linear foot vs \$333 per linear foot) and should also reduce maintenance costs of these accessways in addition to potentially allowing them to install more handicap-accessible accessways. However, any attempt to quantify the benefit beyond construction/installation costs would be speculative since the action would be dependent upon the frequency of damaging storm events (for replacement of existing access) and the intentions of these government entities.

Division of Coastal Management

DCM does not anticipate that the proposed action will significantly change operating cost over

what is currently required for permitting, inspecting, and ensuring compliance of structural accessways as request for beach mats would replace requests for traditional accessways. The DCM does not anticipate any significant changes in permitting receipts due to the proposed action as there is no permit fee associated with the exemption.

COST/BENEFIT SUMMARY

Government entities and private property owners will benefit from the proposed rule changes by potentially reducing costs associated with providing public & handicap access to the beach. The proposed rule language would give private property owners and government entities the option to use matting material installed at grade for beach accessways rather than requiring construction of an elevated, pile-supported (typically wooden) accessway. Beach mats provide handicap access at a lower cost compared to wooden accessways. Cost savings are estimated at up to \$291 per linear foot over traditional piling supported accessways. The proposed rule language could also benefit government entities by allowing them to use beach matting further seaward than currently allowed to enhance handicap accessibility at public beach access points.

Compared to elevated accessways, beach mats may adversely impact sea turtles during nesting season and violate the Endangered Species Act. For government entities, the proposed amendments seek to avoid and minimize these potential adverse impacts by requiring review by State and federal wildlife agencies prior to installation of beach mats. For beach mats installed for private access, adverse impacts to sea turtles are possible, but less likely, since mats will be required to terminate no more than six feet seaward of the waterward toe of the frontal or primary dune where sea turtle nesting is uncommon.