TOWN OF KURE BEACH, NC
BEACH MANAGEMENT PLAN

DRAFT REPORT
November 21, 2023

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Prepared For: Town of Kure Beach, NC

TOWN OF KURE BEACH · NORTH CAROLINA ·

Table of Contents

List of Figures

List of Tables

1.0 PURPOSE

The North Carolina Coastal Resources Commission (CRC) recently amended Title 15A of North Carolina Administrative Code (NCAC) Subchapter 7H .0304;.0305; .0306; .0308; .0309; .0310 and Subchapter 7J.1200; .1202; .1203; .1204; .1205; .1206; and repealed Subchapter 7H .1301 through .1303 to replace and streamline the previously existing Development Line and Static Line Exemption rules under the Ocean Hazard Areas of Environmental Concern. The amended code went into effect on August 1, 2022. Relevant procedural rules are presented in Appendix A.

The Town of Kure Beach (Town) originally applied for and received approval of a development line in accordance with procedures outlined in 15A NCAC 07J.1300 from the North Carolina Coastal Resources Commission on November 8, 2017. A development line was established along 2.9 miles of shoreline from the northern Town boundary at Alabama Avenue to the southern Town boundary adjacent to the Fort Fisher rock revetment. The amended CRC rules have eliminated the use of a development line as of August 1, 2022, requiring the Town to revert back to the pre-project vegetation line (formerly static vegetation line) from which to measure construction setbacks. The pre-project line was determined by DCM Staff using 1994 aerial photographs and staff located the first line of stable vegetation shown on those photographs. The current average annual erosion setback factor for the affected area, as determined by DCM and approved by the CRC, is 2.0 feet per year along the northern 2.45 miles of shoreline followed by a small 0.25 mile section with a setback factor of 3 feet per year and the remaining 0.2 miles of beach at the southernmost end with a setback factor of 4 feet per year. Based on January 2023 aerial photographs overlain with parcel boundaries, the affected area is a highly developed area with an estimated thirteen vacant oceanfront lots.

The intent of the recently amended CRC rules is to provide an approach for local communities to utilize local and subregional Beach Management Plans to support delineation of the vegetation line (VL) that considers the communities long-term commitment to maintaining the beach through a managed beach nourishment plan. With an approved CRC Beach Management Plan in hand, communities can define oceanfront setbacks measured from the existing vegetation line rather than by the more restrictive pre-project vegetation line. In order to utilize the less restrictive existing vegetation line as a baseline for measuring oceanfront setbacks, the Town will need to develop a beach management plan (BMP) and have it approved by the CRC. The CRC's rules, specifically 15A NCAC 07J.1200, require the BMP to consist of a long-term (minimum of 30 years) maintenance plan that addresses the anticipated maintenance event volume triggers and schedules, long-term sand needs, and annual monitoring protocols, as well as identification of financial resources and/or funding sources necessary to fund these long-term nourishment activities.

This document has been created for submittal to the NC Division of Coastal Management for review and subsequent evaluation by the NC Coastal Resources Commission for approval of conditions as it relates to the Town's Beach Management Plan.

2.0 SUMMARY OF FILL PROJECTS

Kure Beach has had a long history of oceanfront development, and of beach fill as well. The Kure Beach CSRM project (also referred to as Area South of Carolina Beach) was originally authorized by Congress in 1962 within the same legislation that authorized the adjacent

Carolina Beach CSRM project, PL 87-874 (House Document Number 418, 87th Congress, 2nd Session). The original authorization divided the 25,800 ft long project into two separate elements, namely Carolina Beach and the Area South of Carolina Beach. The Area South of Carolina Beach included two previously unincorporated areas known as Wilmington Beach and Hanby Beach and the incorporated area of Kure Beach. Wilmington Beach was subsequently annexed by Caorline Beach while Kure Beach annexed Hanby Beach; however, both beach segments remain part of the USACE Kure Beach (Area South of Carolina Beach) project with the Town of Kure Beach serving as the local sponsor.

Although authorized in 1962, initial construction of the Kure Beach portion of the project did not begin until June 1997, following the passage of Hurricane Fran, and was completed in February 1998. Therefore, the project is currently authorized through 2047. Borrow Areas A-North and A-South, located one to two miles offshore of southern Kure Beach, and Borrow Areas B-East and B-West, located one to two miles offshore of northern Carolina Beach, were identified for the Kure Beach CSRM project by the USACE. Since 1998, projects have been constructed every three years in conjunction with the Carolina Beach CSRM project equating to eight maintenance events since initial construction and eight more anticipated under the current authorization. Appendix B contains the Local Cooperation Agreement between the USACE and Town of Kure Beach.

2.1 Nourishment History (1997 – 2023)

Historical Kure Beach nourishment projects are summarized in Table 2-1 and presented spatially in Figure 2-1. The primary borrow area from initial construction through the 2010 nourishment event was Offshore Area A – South with the exception of the 2001 event in which used material from a confined disposal facility (CDF)-4 as part of the Cape Fear River -42' Project. Subsequent events from 2013 to 2022 have used Offshore Borrow Area B – East & West which is anticipated to be the borrow area for future projects. Borrow area details are presented in Section 2.3.

Table 2-1. Summary of Historical Beach Nourishment Projects

Date	Borrow Area	Placement Area	Pay Yardage (cy)
1997-1998	Offshore Area A - South	0 to 180	3,384,854
2001	Wilmington Harbor	0 to 180	1,034,458
2004	Offshore Area A - South	5 to 45 & 130 to 180	278,161
2006 - 2007	Offshore Area A - South	5 to 45 & 130 to 180	262,790
2010	Offshore Area A - South	9 to 43 & 132 to 180	450,000
2013 - 2014	Offshore Area B - East & West	15 to 40 & 135 to 180	557,702
2016	Offshore Area B - East & West	15 to 75 & 125 to 180	655,000
2019	Offshore Area B - East & West	0 to 100 & 130 to 180	824,216
2022	Offshore Area B - East & West	0 to 180	963,000

It should be noted that typical placement extents do not always cover the entire authorized project. Placement often occurs in the northern (Sta 5+00 to 45+00) and southern (Sta 130+00 to 180+00) portions of the project when monitoring determines that the portion of the beach in the middle of the project is healthy.

2.1.1 1997 - 1998

Initial construction of the Kure Beach project occurred between June 1997 and February 1998. The initiation of construction during the summer of 1997 was unusual as the normal environmental dredging window for beach nourishment projects extends from November 16 to April 30. The exception for the Kure Beach project (Carolina Beach and Vicinity - Area South Project) was granted due to the severe impacts Hurricane Fran had on the area in September 1996. Given the deteriorated condition of the beach, federal and state resource protection agencies granted the exception to work through the summer months. During the initial construction approximately 3,385,000 cy of sand was dredged from Borrow Area A-South and placed along the entire project area (Stations 0+00 through 180+00).

2.1.2 2001

The first periodic maintenance event occurred between April and May 2001 and used material removed from the Wilmington Harbor confined disposal facility (CDF)-4 located adjacent to the river navigation channel just south of the Military Ocean Terminal – Sunny Point (MOTSU). Approximately 1,034,458 cy of material was placed along the entire 18,000 feet of the project, as was the case during initial construction.

2.1.3 2004 - 2010

As a result of the design template's response to the 2001 project, three subsequent periodic maintenance operations (2004, 2006/2007, and 2010) generally placed material between Stations 5+00 and 45+00 on the north end of the project and between Stations 130+00 and 180+00 on the south end of the project. The average beach fill volume placed on the beach during these three events was approximately 330,000 cy with 278,161 cy placed in 2003, 262,790 cy placed in 2006/2007, and 450,000 cy placed in 2010. These three maintenance events utilized offshore Borrow Area A-South.

2.1.4 2013 - 2019

In 2013, the USACE conducted the fifth periodic maintenance event of the Kure Beach project. Due to a reduced volume of compatible material in Borrow Area A-South, the USACE used Borrow Area B to dredge and place approximately 557,702 cy of material and placed it along along similar extents to the previous three projects (Sta 9+00 to 43+00 and Sta 132+00 to 180+00). The 2013 maintenance event was followed by two more maintenance events in 2016 and 2019 which also used Borrow Area B to place approximately 655,000 cy and 824,216 cy, respectively, along the Kure Beach shoreline. The shoreline extents for placement during the 2016 and 2019 events where slightly larger than the previous events but still omitted placement along a portion of shoreline in the middle of Kure Beach. The 2016 event placed sand from Sta 15+00 to Sta 75+00 and Sta 125+00 to Sta 180+00 and the 2019 event placed sand from Sta 0+00 to 100+00 and Sta 130+00 to 180+00.

2.1.5 2022

The most recent CSRM maintenance event took place in 2022 during which approximately 963,000 cy was placed along the entire authorized extent from Sta 0+00 to Sta 180+00 using material from Borrow Area B. It should be noted that the adjacent Carolina Beach project also used material from Borro Area B during this event due to reinterpretation of the CBRA rules

concerning use of material from Carolina Beach Inlet, the historical source for the Carolina Beach portion of the joint project.

Plans from the most recent USACE Coastal Storm Risk Management (CSRM) project constructed in Spring 2022 are presented in Appendix C. The next project is currently scheduled for the Spring 2025 dredging window.

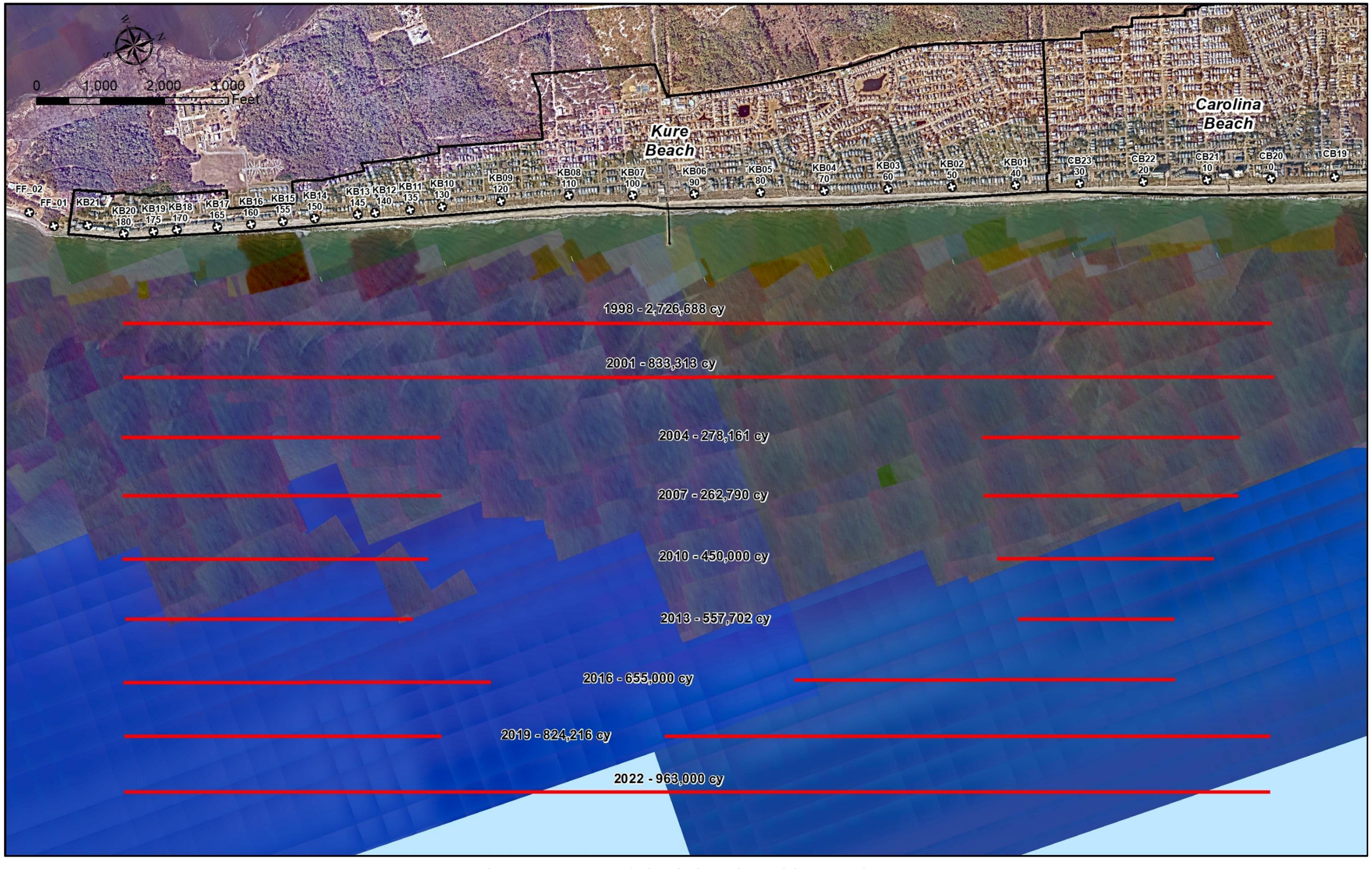


Figure 2-1. Summary of Historical Beach Nourishment Projects

2.2 Project Design Template & Nourishment Cycle

2.2.1 Project Design Template

The Kure Beach Federal storm damage reduction project was originally authorized under PL 87-874 (House Document Number 418, 87th Congress, 2nd Session). The project covers 18,000 feet of ocean shoreline, including a 1,500 foot transition section at the southern end. The northern project extent begins within the municipal boundary of Carolina Beach between Carolina Sands Drive and Tennessee Avenue, connecting directly to the southern terminus of the Carolina Beach CSRM project and covering the southernmost 3,500 feet of shoreline within the municipal boundary of Carolina Beach. The project then extends south into Kure Beach where the southern terminus of the project ends approximately 1,000 feet north of the developed portion of Kure Beach thereby avoiding the existence of a natural coquina rock outcrop which has been designated as environmentally sensitive. Figure 2-2 presents the authorized placement limits for the Kure Beach CSRM project. It should be noted that placement extents do not always cover the entire length of the authorized project. Based on monitoring, there have been several years where the middle portion of Kure Beach (approximately KB03 to KB11) did not receive placement due to its healthy condition.

Figure 2-2. Kure Beach Authorized Project Limits

The cross-sectional configuration of the authorized project consists of a 25-foot wide dune at elevation 12.5 feet above NAVD fronted by a 10:1 (H:V) slope down to a 50-foot wide storm berm at elevation 8.0 feet above NAVD. Construction of the authorized project then utilizes a 10:1 (H:V) slope down to a construction berm of varying width (approximately 100 ft) at elevation 5.5 feet above NAVD, which slopes down to existing ground offshore at 15:1 (H:V). A typical cross-section is presented in Figure 2-3. A plan layout of the project showing its footprint is provided in Figure 2-4.

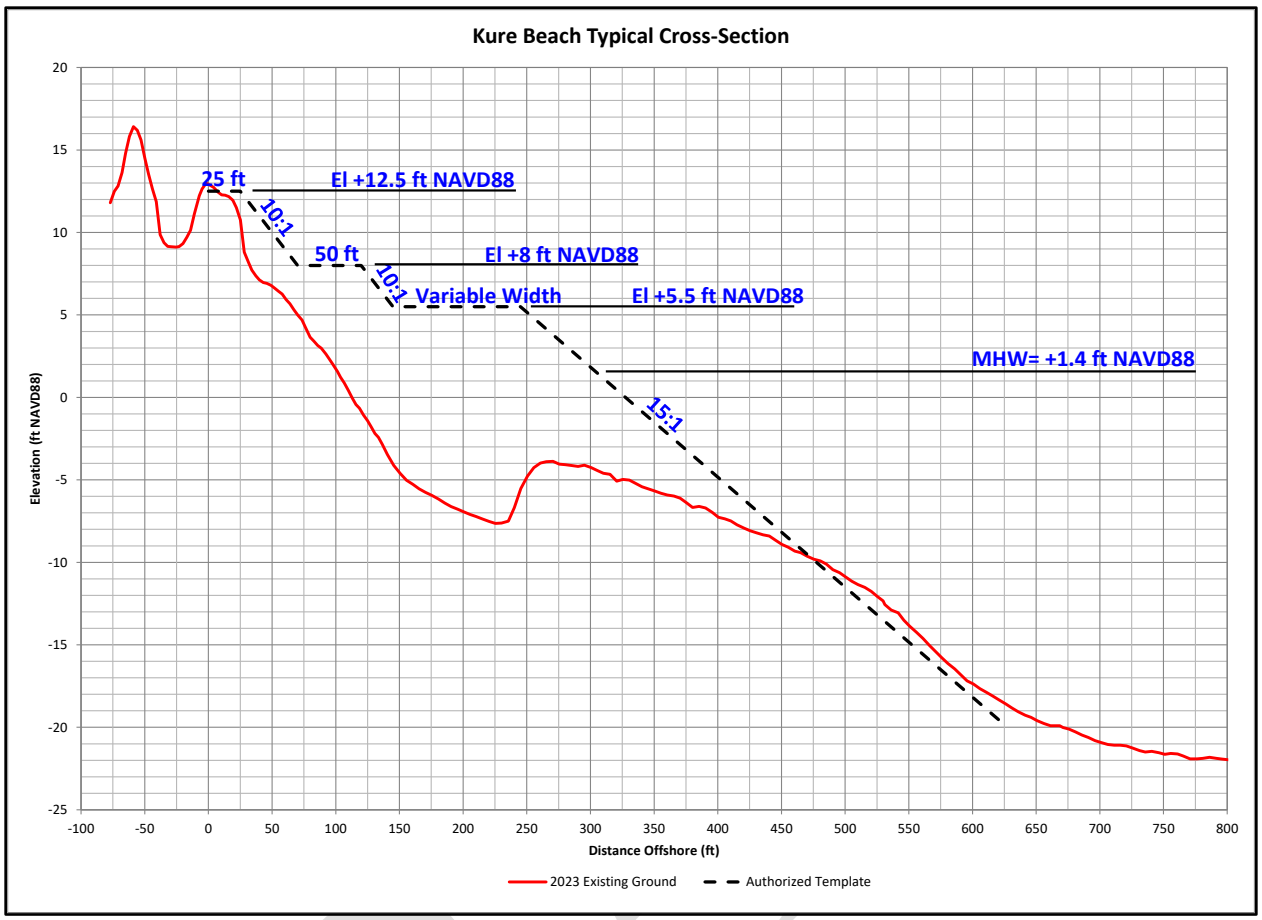


Figure 2-3. Kure Beach Authorized Template Cross-Section

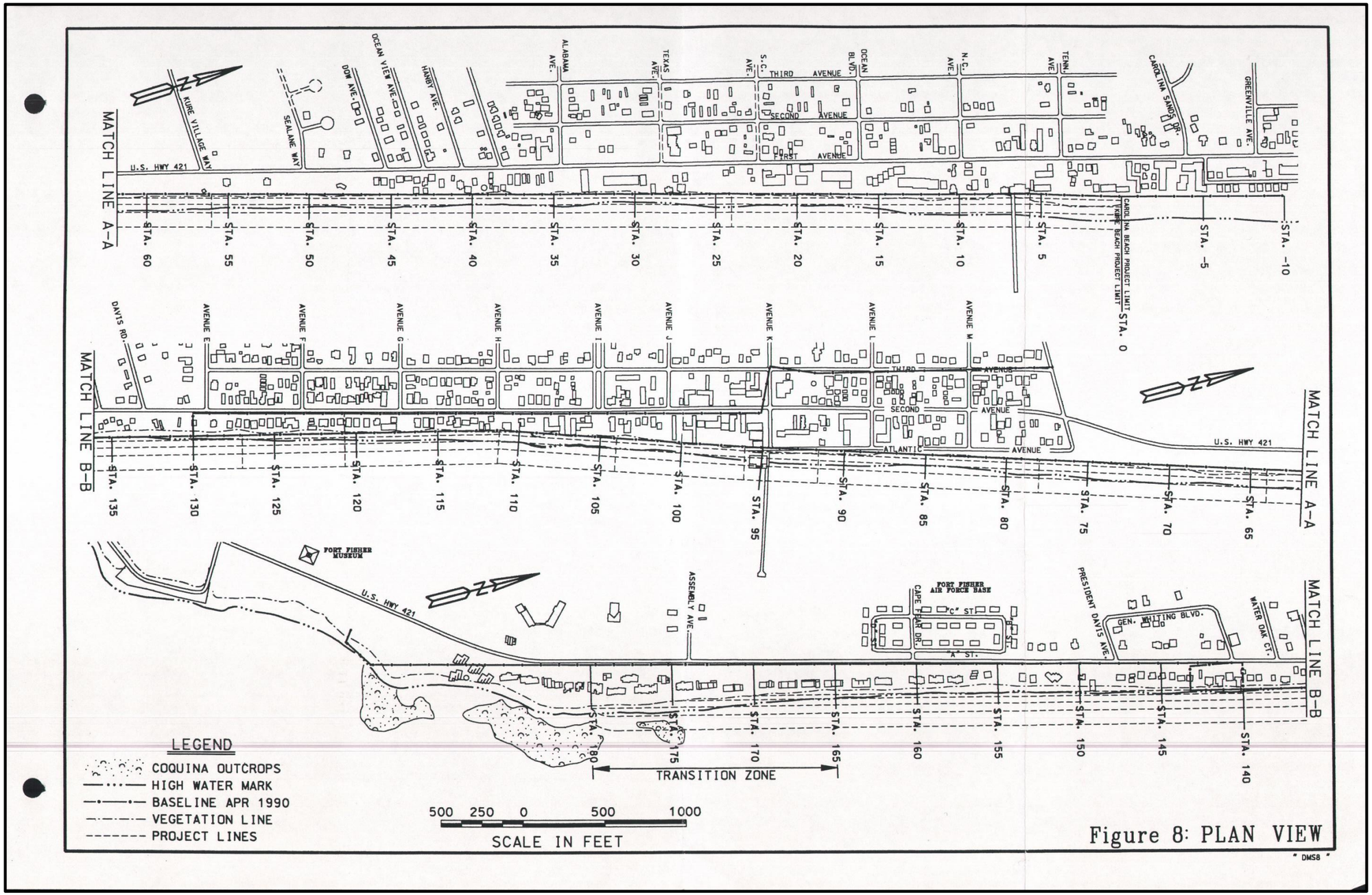


Figure 2-4. Kure Beach Authorized Template Plan View (USACE, 1993)

2.2.2 Project Nourishment Cycle

The Local Cooperation Agreement between the USACE and Town of Kure Beach (Appendix B) states that "periodic beach renourishment is estimated to be undertaken every three years unless, based on information gathered during the beach monitoring program, the Government and the Town determine that such beach nourishment is engineeringly necessary and economically justified on a different schedule". Since initial construction was completed in 1998, periodic nourishment of the project has been performed every three years, with eight projects having been completed under the current authorization. It is expected that the nourishment interval will remain at three years throughout the remaining life of the authorization (2047). Based on this, there are currently eight additional projects anticipated under the current authorization.

2.3 Borrow Area Information

The Kure Beach CSRM project has historically used two different offshore borrow sources (Offshore Area A and Offshore Area B) which have met State sediment criteria in all projects to date. The adjacent Carolina Beach CSRM project has historically used Carolina Beach Inlet as a borrow source with the exception of the recent 2022 nourishment event in which both the Kure Beach and Carolina Beach CSRM projects used Offshore Area B due to complications regarding reinterpretation of CBRA rules and use of Carolina Beach Inlet. It should be noted that Carolina Beach Inlet could be used as a supplemental sand source in the future for the Kure Beach CSRM project as the offshore area becomes depleted. Figure 2-5 presents an overview of the location of the historical borrow areas.

Figure 2-5. Borrow Area Overview

During the development of the Federal CSRM project, Panamarican Consultants, Inc. conducted a cultural resource survey for the USACE of Offshore Area A and Offshore Area B identified for the project. The final report was submitted to the USACE in March 1993 (*Remote Sensing Survey, South of Carolina Beach Renourishment Borrow Areas Vicinity of Wilmington, North Carolina Contract No. DACW54-D-0010, Delivery Order 0002*) recommending no further archeological investigations were warranted. In a letter dated December 4, 1992, from the North Carolina Department of Cultural Resources (NC DCR) to the Environmental Resource Branch of the Wilmington District USACE, the NC DCR concurred with the findings of the Panamerican report.

The following sections will detail the native beach characteristics, borrow area compatibility, future availability, and intentions for these borrow areas as they pertain to the Kure Beach CSRM project.

2.3.1 Native Beach

It has historically been excepted that the demonstrated quality and performance of the material removed from Offshore Borrow Areas A and B and deposited on Kure Beach has implicitly satisfied the sediment criteria stipulated in 15A NCAC 07H.0312.

Recently, in an effort by the County to obtain State and Federal permits for the New Hanover County CSRM Project in Kure Beach, Coastal Planning and Engineering (CPE-NC) performed a sediment compatibility analysis to show that the current offshore borrow area (Borrow Area B) is in compliance with State sediment criteria rules. The beach characterization was accomplished using a combination of samples collected by the USACE in 1993 and samples collected by CPE-NC in 2013 and 2014. Native beach data was collected by CPE-NC in 2013 and 2014 within the USACE CSRM project area at five locations along the wet and dry beach as shown in Figure 2-6. CPE-NC collected beach samples and nearshore sediment samples along five (5) profiles (KB030, KB055, KB083, KB133, KB175). A total of 35 new samples were collected to complement existing beach samples collected by the USACE in 1993. The combined data sets provide a profile of the beach with samples taken from the Dune, Toe of Dune, Midberm, Berm Crest, Mean High Water (MHW), Mean Tide Level (MTL), Mean Low Water (MLW), Trough, Bar Crest, and four (4) additional depths evenly spaced between the Bar Crest and -20 ft. NAVD.

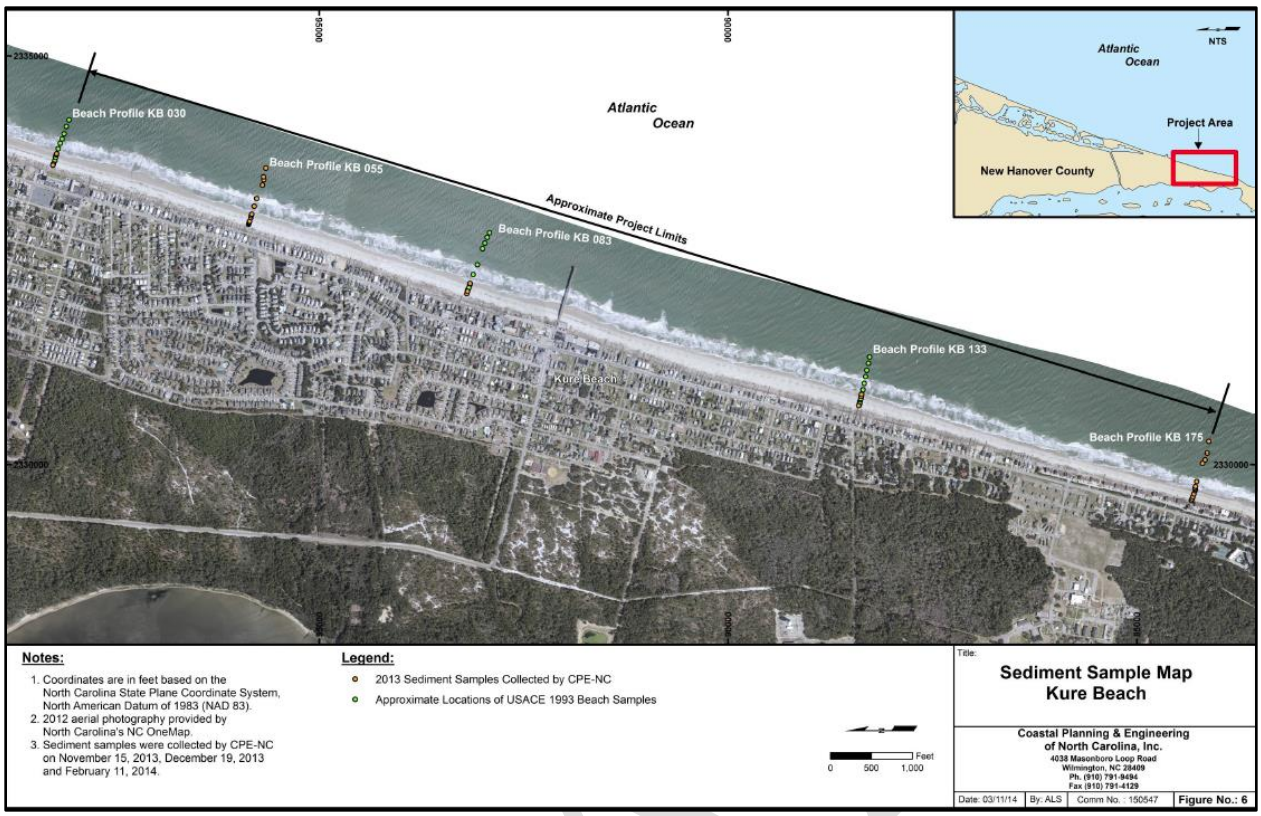


Figure 2-6. Kure Beach Native Beach Sediment Sampling Locations (CPE-NC, 2014)

Samples from the beach collected by CPE-NC in 2013 and 2014 were combined with samples collected by the USACE in 1993 to characterize the project area beach. Composite results indicate that sediment within the Kure Beach project area has a composite mean grain size of 0.32 mm. The composite silt content throughout the project area is 1.02%. The composite granular and gravel fraction for the project area is 2.13% and 0.64%, respectively. The composite carbonate content is 9% for the project area. The composite wet Munsell Color value ranges from 6 to 7, with a typical composite value of 6. The composite dry Munsell Color value is 7. These characteristics represent the existing beach. Table 2-2 provides the native beach characteristics as determined by the sediment sampling analysis along with the parameters identified by the NCAC.

Table 2-2. Native Beach Characteristics and NCAC Compatibility Parameters

Characteristic	1993/2014 Native	NCAC Requirements	Required Borrow Site Parameters
Fines (<#230)	1.02%	1.02% + 5%	**≤ 6.02%**
Sand (>#230 & <#10)	96.21%	-	-
Granular (>#10 & <#4)	2.13%	2.13% + 10%	**≤ 12.13%**
Gravel (<#4)	0.64%	0.64% + 5%	**≤ 5.64%**
Calcium Carbonate	9.00%	9% + 15%	**≤ 24%**

In 2014, CPE also conducted a clast survey in accordance with the NCAC code within the project area. The survey recorded 130 clasts greater than 3 inches, allowing a clast count of 260 (2 times

the surveyed value) for the project. As a result of rule changes to 15A NCAC 07H .0312 in February 2021, the clast survey was re-performed in March 2021 to survey sediments greater than or equal to one inch and shells greater than or equal to three inches. Six transects were surveyed along the Kure Beach CSRM project area, within a delineated area of 10,000 ft^2 at each transect. A total of 63 sediments greater than or equal to one inch and 176 shells greater than or equal to three inches were counted across all six transects surveyed along the Kure Beach CSRM project area. Table 2-3 presents a summary of the results along all of Kure Beach as well as within the CSRM project area and the southern area of Kure Beach outside the project area. As can be seen, an average of 10.5 large sediments (≥ 1 inch) and 29.3 shells (≥3 inches) were located across all transects. The Kure Beach CSRM project area itself had an average of 3.6 large sediments (≥ 1 inch) and 4.0 shells (≥3 inches) located at each transect while the southern portion of Kure Beach outside the project area had an average of 45.0 large sediments (≥ 1 inch) and 156.0 shells (≥3 inches) located at each transect.

Table 2-3. Kure Beach Large Sediment Sampling Summary (CPE-NC, 2021)

Stations	Arithmetic Mean		Total	
	Sediment ≥ 1 Inch	Shell ≥ 3 Inch	Sediment ≥ 1 Inch	Shell ≥ 3 Inch
All Transects (CB-22, KB-01, KB-05, KB-09, KB-15, KB-21)	10.5	29.3	63.0	176.0
CSDR Project Area (CB-22, KB-01, KB-05, KB-09, KB-15)	3.6	4.0	18.0	20.0
Area South of CSDR Project (KB-21)	45.0	156.0	45.0	156.0

Despite the State sediment criteria, it should be noted that typical USACE contract specifications for renourishment projects generally recognize suitable beach material as Poorly Graded Sand (SP), or Poorly Graded Sand with Silt (SP-SM) per the Unified Soil Classification System (USCS), as long as the portion of material meets these criteria:

- Less than 10 percent, by weight, material passes #200 sieve over weighted average
- Less than 10 percent, by weight, material retained on the #4 sieve over weighted average
- Material retained on the 3/4 inch sieve does not exceed, by percentage or size that found on the native beach
- Contains no construction debris, toxic material, or other foreign matter
- Contains no clasts of lithified rock

2.3.2 Offshore Borrow Areas A & B

Borrow Area A – South (see Figure 2-5) was used for the initial construction of the Kure Beach CSRM project as well as three (3) maintenance events (2004, 2006/2007, and 2010). Borrow Area A-South is located between one (1) and two (2) nautical miles directly offshore of Kure Beach. The borrow area was divided into six different cells based on depths of material found to be compatible by the USACE during the project formulation. However, the borrow area was eventually depleted of suitable sand resources. As a result, Borrow Area B was identified as a new potential sand source based on limited vibracoring activities which had occurred in 1991 during formulation of the project. Therefore, the USACE Wilmington District initiated design level investigations during 2012 for Borrow Areas B-East and B-West which were subsequently used for the 2013 and 2016 CSRM events. Further vibracore investigations were performed by the

USACE in 2018 and the USACE continued use of the borrow area for the 2019 and most recent 2022 CSRM events. Figure 2-7 presents an overview of the vibracore locations within Borrow Area B.

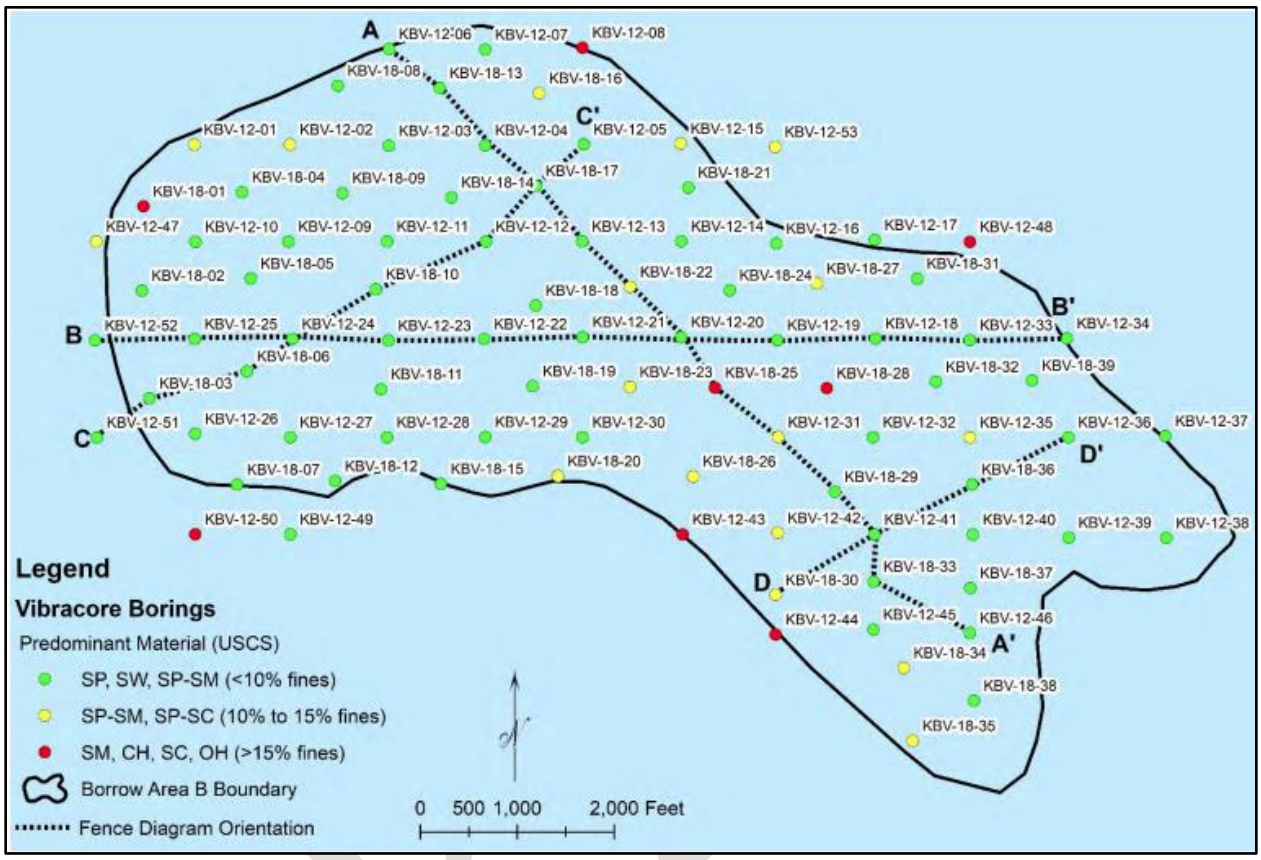


Figure 2-7. USACE Borrow Area B Vibracore Locations (USACE, 2019)

In 2019, the USACE performed the most recent compatibility analysis of Borrow Area B as part of the Carolina Beach CSRM project validation study (USACE, 2019). Based on the 2012 and 2018 vibracores, the mean fines content within Borrow Area B is 3.6 percent, which is well below the desired fines percentage of 10 or less. Average shell content within Borrow Area B is 3.0 percent. Additionally, suitable renourishment sediment occurs throughout the entire borrow area. However, recoverable volumes are greatest in the northwestern half of the borrow site, which is closer to the beach than other portions of the borrow site. Figure 2-8 presents the thickness of compatible material within Borrow Area B.

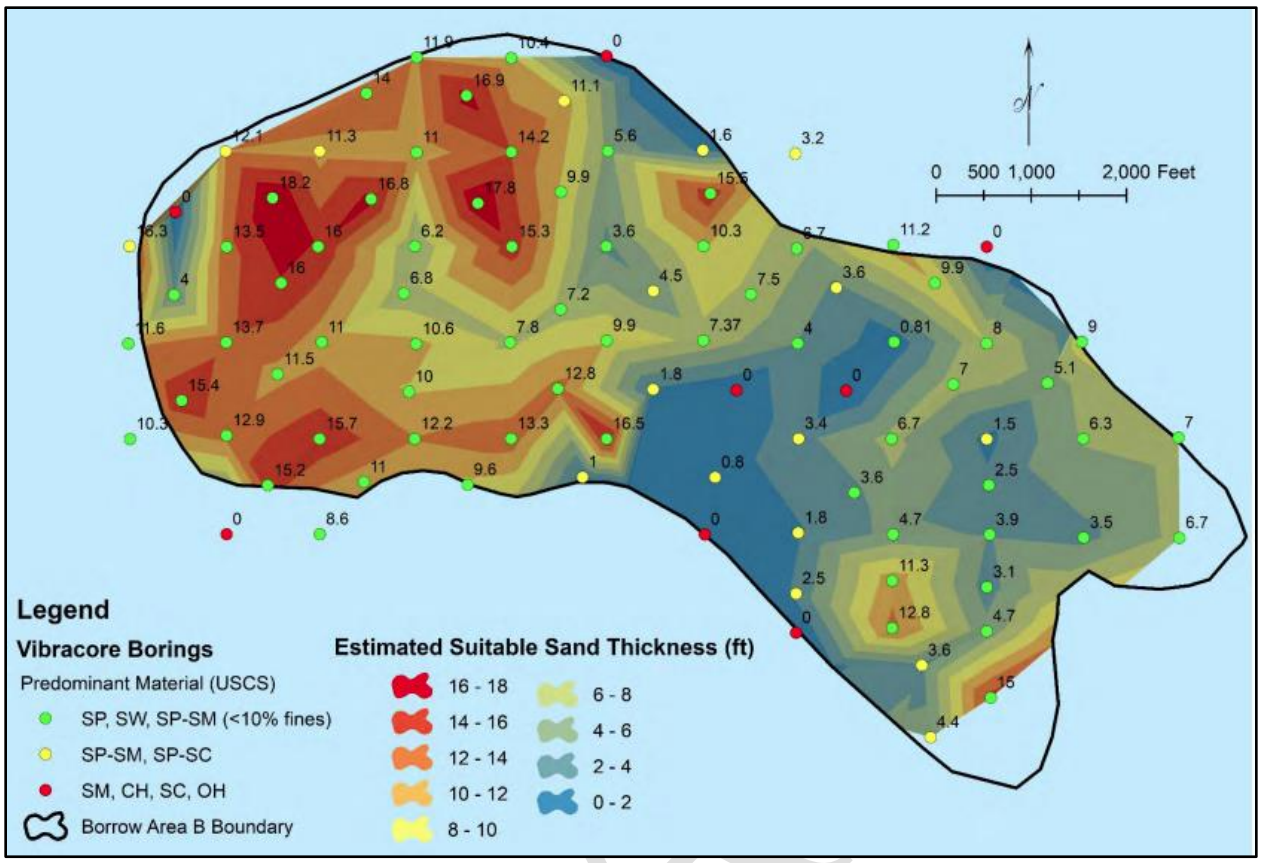


Figure 2-8. Borrow Area B Isopach Map of Compatible Material (USACE, 2019)

Median and mean grain sizes for the suitable material within Borrow Area B were determined to be 0.36 mm and 0.51 mm, respectively. The mean grain size from this data set matches well with the mean value of 0.31 mm, as determined from a 1970 prenourishment beach sampling event. Additionally, the 2019 study estimated the volume of suitable material to be 12.6 Mcy. This estimate considered the post-2016 CSRM dredging conditions of the borrow source, since it had been used to support renourishment activities at Carolina Beach and Kure Beach during 2013 and 2016. Approximately 1.0 Mcy of material was removed during the 2019 dredging event for Kure Beach placement and approximately 1.9 Mcy was removed during the 2022 dredging event for Kure Beach and Carolina Beach placements. This puts the current volume estimate for Borrow Area B at approximately 9.7 Mcy.

After the 2016 dredging event, which accidently uncovered some rocky material in the southeastern portion of the site when the dredge cutter head was lowered below the suitable material elevation, new dredge cut elevation limits were established for future renourishment contracts to reduce the likelihood that new dredging will entrain lithified material. Figure 2-9 and Table 2-4 present the existing parameters for dredging of Borrow Area B.

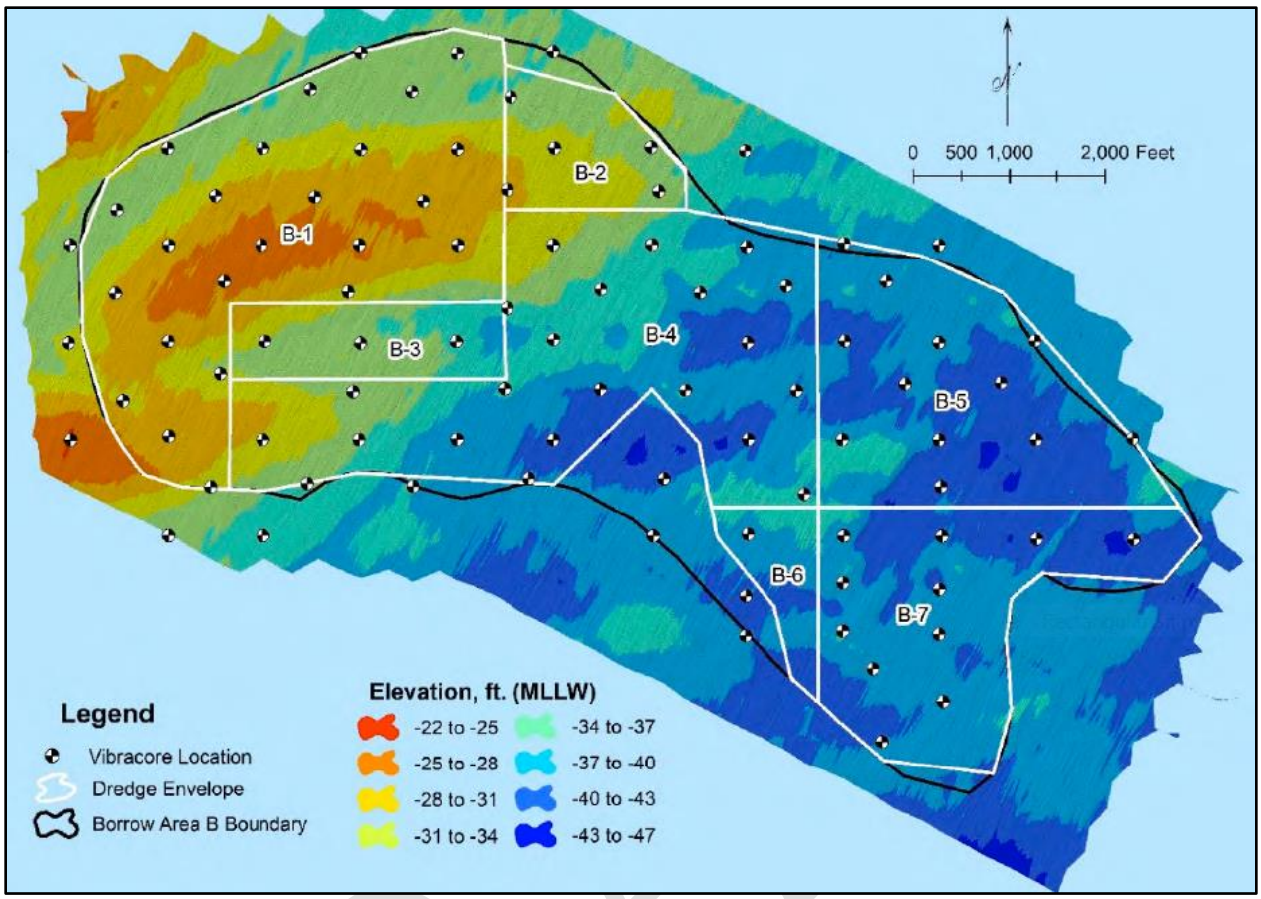


Figure 2-9. Borrow Area B Dredge Cut Zones (USACE, 2019)

Table 2-4. Borrow Area B Maximum Dredge Depths (USACE, 2019)

Zone Name	Maximum Dredging Depth (Elevation, ft. NAVD88)	Maximum Dredging Depth (Elevation, ft. MLLW)
B-1	-44	-41
B-2	-38	-35
B-3	-46	-43
B-4	-48	-45
B-5	-51	-48
B-6	-45	-42
B-7	-47	-44

Future maintenance events for the Kure Beach project are proposed to use Borrow Area B-East and B-West. The average maintenance placement throughout the eight maintenance events since 1997 is approximately 628,000 cy. This indicates that the borrow area could be viable for 15 additional maintenance events, lasting well beyond the current authorization period. It is anticipated that the Carolina Beach CSRM project will return to using Carolina Beach Inlet as Congress is currently considering rule HR 524 to grandfather in borrow areas within the CBRA zone that have been in use for 15 years or more.

2.3.3 Carolina Beach Inlet

While it is assumed Offshore Area B will continue to be the borrow source for the USACE CSRM project for the foreseeable future, Carolina Beach Inlet provides a potential for supplemental material depending on the needs of the adjacent Carolina Beach CSRM project. Carolina Beach Inlet contains a naturally replenishing Inshore Dredge Material Management Site (IDMMS) from which material has been dredged and placed along the extents of the Carolina Beach CSRM project since 1981. Longshore transport delivers sand back into the IDMMS between nourishment cycles which can then be used for the next nourishment event. The IDMMS was also recently established as a sand repository to store material that had been dredged for nearby inlet channel maintenance.

The 2019 USACE study (USACE, 2019) indicated that inlet sand recharge, specifically into the IDMMS, is evident when analyzing bathymetric survey data from pre- and post- dredging conditions. They evaluated pre- and post-dredge surveys for the 2001, 2007, 2010, 2013, and 2016 nourishment events. Each of the pre-dredging surveys showed a borrow area which had already "recovered" from a previous triennial dredging and renourishment project. Carolina Beach Inlet, and specifically the IDMMS, has served as a consistent and reliable source area for beach renourishment sand. It should be noted that the IDMMS currently has an authorized cut depth of -40 ft MLLW.

In 2019, the USACE performed the most recent compatibility analysis of Carolina Beach Inlet as part of the Carolina Beach CSRM project validation study (USACE, 2019). Prior vibracore records and laboratory data from 1997 through 2014 were reviewed to assess the historical consistency of sand resources within the Inshore Dredge Material Management Site (IDMMS), as well as other parts of the Section 934 limits. Historical vibracore locations are shown in Figure 2-10.

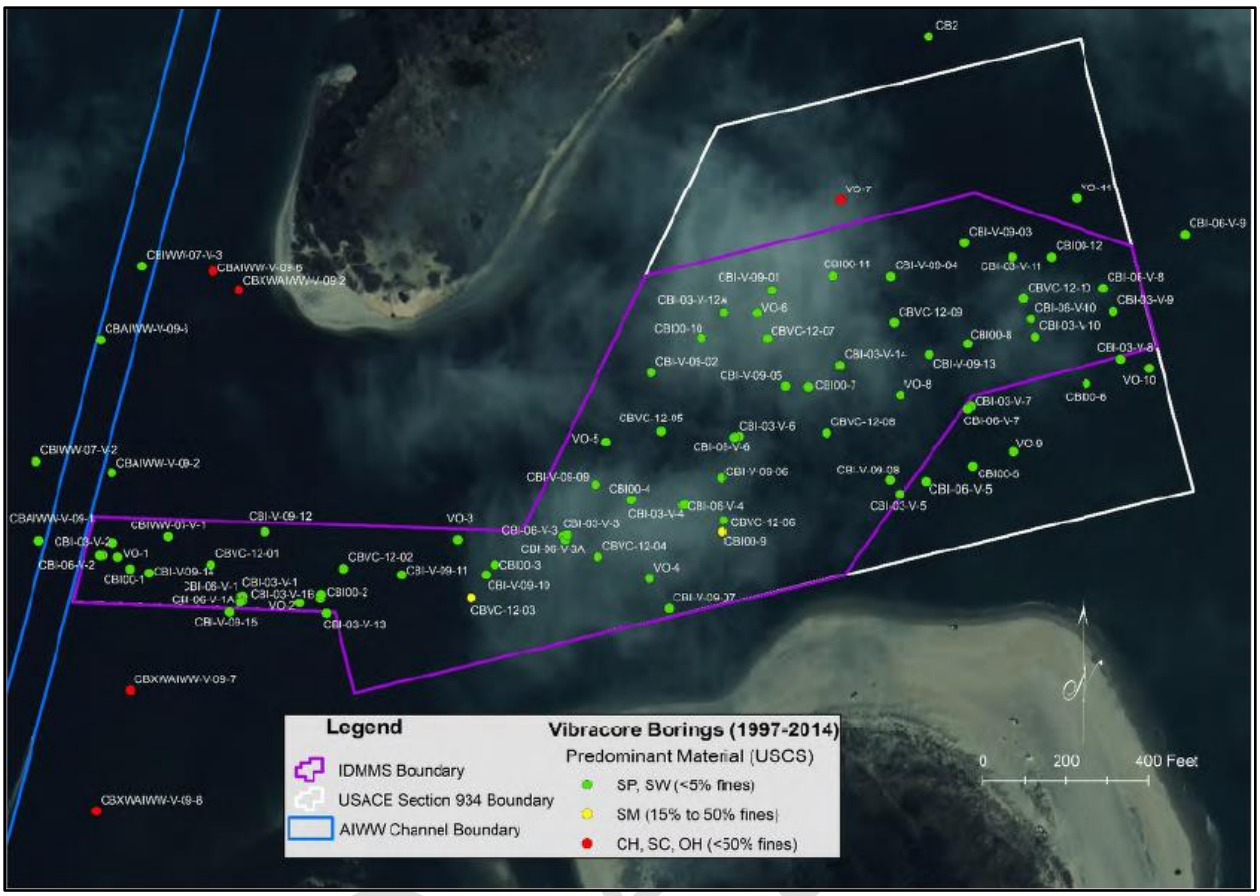


Figure 2-10. USACE Carolina Beach Inlet IDMMS Vibracore Locations (USACE, 2019)

Analysis of historical vibracores shows that material within the IDMMS generally ranges from SP to SW (Well Graded Sand), with a mean fine-grained content of 1.8 percent and a mean shell content of 5.8 percent. Although a few cores yielded sand with a classification ranging from SP-SC (Clayey Sand and Sand-Clay Mixtures) or SP-SM (Silty Sands and Sand-Silt Mixtures) overall, composite fine-grained content within these samples was still below the 10 percent threshold for beach nourishment. Therefore, sediment confined to the footprint of the existing authorized borrow area within Carolina Beach Inlet has remained compatible throughout historical dredging events followed by natural replenishment in accordance with Rule 15A NCAC 07H.0312 Section (3) (a), which states that "Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system shall be considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent" (Appendix A).

2.4 Project Monitoring and Performance

2.4.1 Historical Monitoring (USACE)

Beach profile monitoring along Kure Beach is performed under the auspices of the project, with surveys conducted at least annually and sometimes twice a year depending on storm activity. Over the 26 year history of the project, the dune at +12.5 ft NAVD88 has generally remained intact and

renourishment efforts have focused on replacement of the storm berm and construction berm. The south end of the project, on occasion, has experienced some escarpment of the primary dune. Annual monitoring showed volumetric losses from the middle and northern portion of the project area were significantly smaller than the south end, guiding the USACE to focus a majority of placement and largest fill density from Sta 130 to Sta 180 at the southern end of the project with a smaller fill density in the northern portion of the project from Sta 5 to Sta 40. However, these extents vary from project to project depending on monitoring results, placing material where and when it's needed. The most recent CSRM project placed material along the entire length of the authorized template for the first time since initial construction in 1997/1998 and the subsequent 2001 maintenance event.

2.4.2 New Hanover County Shoreline Mapping Program (2014 – Present)

The New Hanover County Shoreline Mapping Program (NHCSMP), established in 2014, monitors the shoreline along several municipalities and State owned lands within New Hanover County, including Kure Beach. Each year, profiles are analyzed to determine gains and losses in material to the system which helps assess beach conditions and form strategies for future beach nourishment projects. Currently, surveys are performed annually during the spring/summer timeframe. In addition, and with County concurrence, after large storm events surveying could be performed along Kure Beach to assess losses. Funding for the program is derived from the County's occupancy taxes designated for beach nourishment activities. It should be noted that annual survey data from the NHCSMP is routinely provided to the USACE at their request for help with monitoring the status of the CSRM projects.

The NHCSMP uses 21 transects in municipal Kure Beach (KB01-KB21) and 4 transects in municipal Carolina Beach (CB20-CB23) that were developed in 1965 for planning of the initial USACE CSRM project to better track sand movement in this project area. Figure 2-11 shows the location of the transects surveyed along the Carolina and Kure Beach CSRM project shorelines. The municipal Kure Beach oceanfront shoreline has been divided into three reaches (Kure Beach – North, Kure Beach – Central, and Kure Beach – South) to help assess varying trends along the shoreline. The adjacent Carolina Beach shoreline has also been divided into three reaches (Carolina Beach – North, Carolina Beach – Central, and Carolina Beach – South). Accounting for statistics along both portions of the joint Carolina/Kure CSRM project helps to determine the sediment transport patterns of material placed during each CSRM event.

Figure 2-11. NHCSMP Annual Monitoring Transects

The annual survey data is used to compute shoreline change at +1.4 ft NAVD88 which is designated as Mean High Water (MHW) and volume change above MHW, -4 ft NAVD88 (wading

depth), -14 ft NAVD88 (outer bar), -20 ft NAVD88 (approximate closure), and -30 ft NAVD88 (offshore) for subsequent years. Volume changes are calculated for five different extents in order to better understand the processes occurring onshore and offshore of the Kure Beach area, allowing for the tracking of sand movement along the profile. Figure 2-12 presents a graphic showing the various calculation lenses.

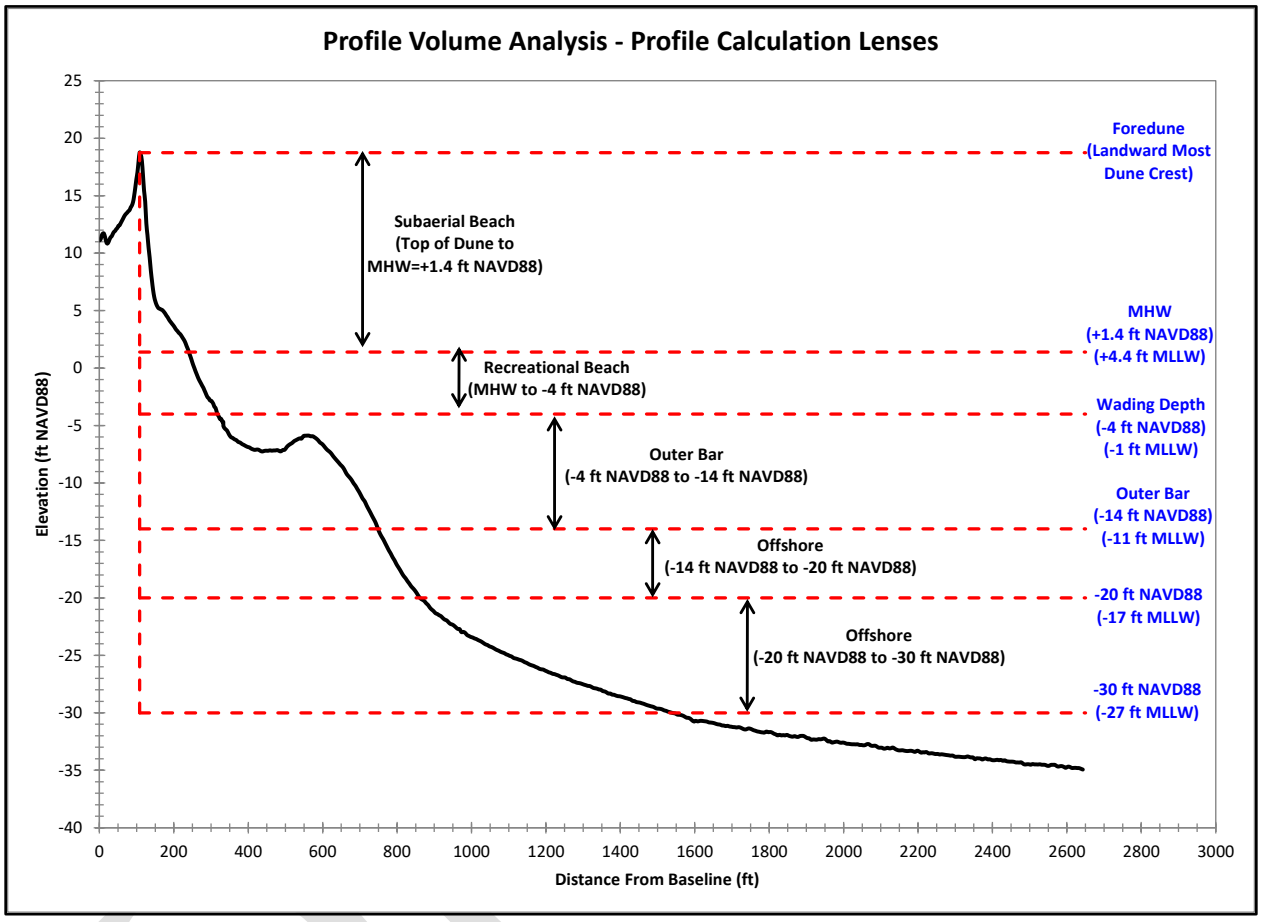


Figure 2-12. Profile Volume Calculation Lenses (M&N, 2022)

From these calculations, summary tables of statistics showing the changes that occurred since the previous monitoring survey are developed. The statistics indicate which areas gained or lost material and the spatial distribution of these gains or losses along the profile from the peak of the dune out to depth of closure. Table 2-5 shows an example summary statistics table from the 2022 NHCSMP monitoring report which shows the changes in each reach for the spring/summer 2021 through spring/summer 2022 timeframe. Figure 2-13 presents a plot of the volume change statistics at each transect along the Kure Beach oceanfront for the spring/summer 2021 through spring/summer 2022 timeframe. The annual monitoring program has determined that historically, Kure Beach – South has the highest erosion rates followed by Kure Beach – North. Conversely, Kure Beach – Central has a very low erosion rate. This justifies the reasoning behind altering the Kure Beach placement extents during several projects to omit placement in a portion of Kure Beach – Central that did not need material. It should be noted that Kure Beach generally benefits from placement of material on the adjacent Carolina Beach as longshore transport in this area conveys material to the South.

Table 2-5. Example Shoreline and Volume Change Statistics (M&N, 2022)

2021 vs. 2022 (Total Change)	Transects	Reach Length	avg shoreline change @ +5 ft NAVD88	avg shoreline change @ +1.4 ft NAVD88	avg volume change above +1.4 ft NAVD88	cumulative volume change above +1.4 ft NAVD88	avg volume change above -4 ft NAVD88	cumulative volume change above -4 ft NAVD88	avg volume change above -14 ft NAVD88	cumulative volume change above -14 ft NAVD88	avg volume change above -20 ft NAVD88	cumulative volume change above -20 ft NAVD88	avg volume change above -30 ft NAVD88	cumulative volume change above -30 ft NAVD88
Reach	#	ft	ft	ft	cy/ft	cy	cy/ft	cy	cy/ft	cy	cy/ft	cy	cy/ft	cy
Kure Beach-North	1-6	6,017	101.2	96.7	17.1	102,972	36.6	220,222	45.6	274,191	43.8	263,550	45.2	271,847
Kure Beach-Central	7-10	3,731	64.5	65.4	9.8	36,731	24.2	90,318	31.0	115,549	31.1	116,173	49.6	185,156
Kure Beach-South	11-21	5,594	94.7	116.1	20.5	114,917	44.2	247,115	52.7	294,830	53.6	299,694	61.8	345,869
	Transects	Reach Length	weighted avg	weighted avg	weighted avg	total	weighted avg	total	weighted avg	total	weighted avg	total	weighted avg	total
Kure Beach	1-21	15,342	89.9	96.1	16.6	254,620	36.3	557,654	44.6	684,570	44.3	679,418	52.3	802,872

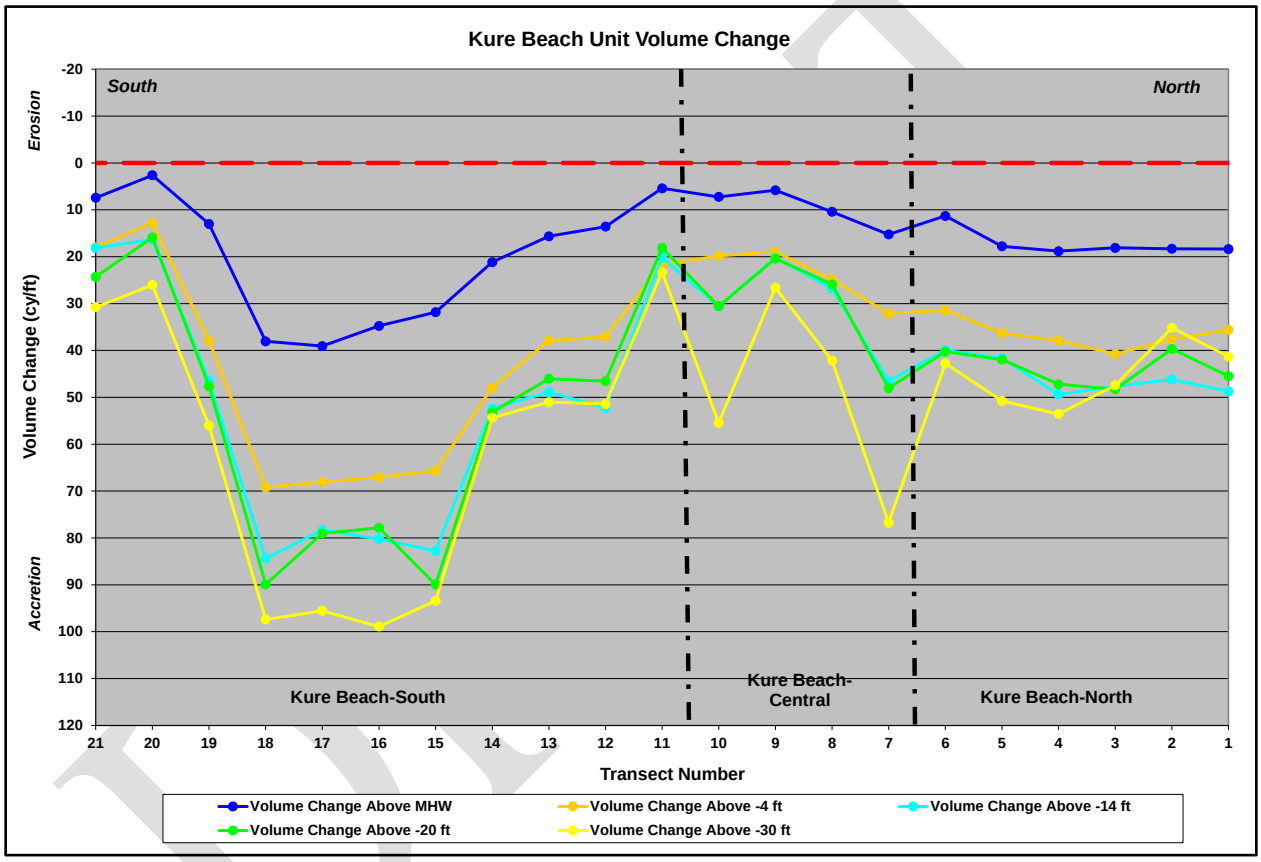


Figure 2-13. Example Shoreline and Volume Change Plot (M&N, 2022)

The annual monitoring report also assesses the performance of the USACE CSRM project throughout its life cycle by compiling annual losses as compared to placement volumes. Table 2-6 presents an example of tracking the performance of the 2019 CSRM project throughout its lifecycle up until the 2022 CSRM project was constructed.

Table 2-6. Example USACE CSRM Project Performance Analysis (M&N, 2022)

KURE BEACH 2019 CSDR PROJECT = 625,502 cy		
Monitoring Period	**Volume Loss (cy)**	**Percent of Fill Lost**
2019 - 2020	-207,195	33.12%
2020 - 2021	-152,157	24.33%
2021 - 2022	-91,154	14.57%
2019 - 2022 Losses =	***-450,506***	***72.02%***

In addition, the County annual monitoring tracks the volume of sand in Carolina Beach Inlet, one of the potential sediment sources for the Kure Beach CSRM project. Figure 2-14 presents the inlet conditions as of Spring 2023, indicating approximately 1.2 Mcy of material was available within the authorized borrow area, fully replenishing itself from dredging during the 2019 Carolina Beach CSRM project. Monitoring data suggests an infill rate of approximately 300,000 cy/yr.

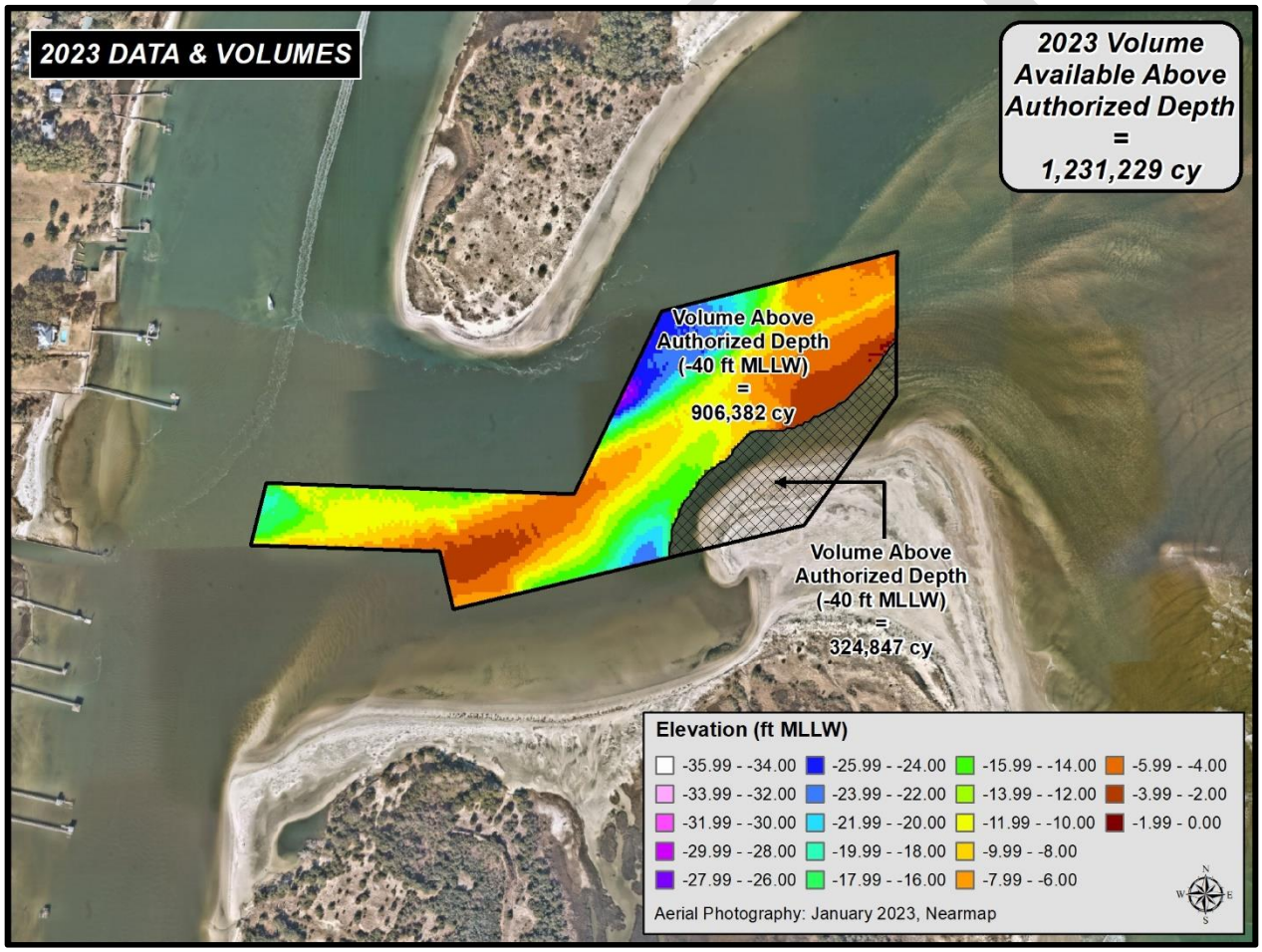


Figure 2-14. Spring 2023 Carolina Beach Inlet Conditions

3.0 ESTABLISHMENT OF PRE-PROJECT VEGETATION LINE

Currently, the pre-project line, formerly the static line, extends for approximately 2.9 miles from the northern Town boundary at Alabama Avenue to the southern Town boundary adjacent to the Fort Fisher rock revetment. The pre-project line was determined by DCM Staff using 1994 aerial photographs and staff located the first line of stable vegetation shown on those photographs. The current average annual erosion setback factor for the affected area, as determined by DCM and approved by the CRC, is 2.0 feet per year along the northern 2.45 miles of shoreline followed by a small 0.25 mile section with a setback factor of 3 feet per year and the remaining 0.2 miles of beach at the southernmost end with a setback factor of 4 feet per year. Based on January 2023 aerial photographs overlain with parcel boundaries, the affected area is a highly developed area with an estimated thirteen vacant oceanfront lots.

The existing pre-project vegetation line along Kure Beach is shown in Figure 3-1 to Figure 3-6 overlain on January 2023 aerials.

Figure 3-1. Kure Beach Pre-Project Vegetation Line (1 of 6)

Figure 3-2. Kure Beach Pre-Project Vegetation Line (2 of 6)

Figure 3-3. Kure Beach Pre-Project Vegetation Line (3 of 6)

Figure 3-4. Kure Beach Pre-Project Vegetation Line (4 of 6)

Figure 3-5. Kure Beach Pre-Project Vegetation Line (5 of 6)

Figure 3-6. Kure Beach Pre Project Vegetation Line (6 of 6)

4.0 FUTURE NOURISHMENT PLANS

4.1 USACE Project Continuation

The current authorization, which was originally approved in 1962 but not constructed until 1997, extends through 2047. Therefore, there are currently eight more projects to be completed under the current authorization. Projects are anticipated in 2025, 2028, 2031, 2034, 2037, 2040, 2043, and 2046. **The Town plans to cooperate with the USACE on extension of the Federal project past its current 2047 deadline**.

4.2 Town/County Additional Management Efforts

Recent Federal processes and priorities have prompted New Hanover County to investigate alternative measures of assuring the CSRM project remains a priority, even if Federal participation wavers. As a supplemental management tool, New Hanover County has investigated volumetric nourishment triggers to indicate when and where nourishment should be considered rather than relying on a set nourishment cycle and full template buildout as has been historically constructed. Volumetric nourishment triggers are designed to maintain an equivalent level of protection along the beachfront which is determined by the ability of the beach profile to protect the first row of infrastructure from a storm of a specified return period (i.e. 2-yr, 5-yr, 20-yr, 25-yr, 50-yr, and 100-yr storms). SBEACH, which simulates cross-shore sediment transport and morphology processes during a storm, was used to determine the existing and design level of protection from which to determined nourishment triggers. For Kure Beach, nourishment triggers were developed for a 25-year level of protection and consist of the minimum volume required to maintain that design level of protection from the first line of structures out to -14 ft NAVD88, which encompasses the extents of the nourishment template. Several representative transects were modeled across the oceanfront and the results were averaged together to develop a nourishment trigger for each monitoring reach along the oceanfront as presented in Table 4-1. It should also be noted that due to the condition of the beach and seaward location of structures in the southern portion of Kure Beach, a 25-yr level of protection was not able to be established south of the confines of the currently permitted CSRM template.

Table 4-1. Minimum Volume Requirements to Maintain a 25-yr Level of Protection for Kure Beach (M&N, 2022)

Representative Transect	Shoreline Reach	25-yr Trigger Volume (cy/ft)	Weighted Trigger Volume (cy/ft)
KB-03	Kure Beach – North	254	**260**
KB-05		270	
KB-09	Kure Beach – Central	285	**285**
KB-11	Kure Beach – South	305	**281**
KB-15		266	
KB-18		NA	**NA**
KB-20		NA	**NA**

Figure 4-1 shows the historical average profile volumes from the NHCSMP in each monitoring reach as compared to the nourishment triggers developed to maintain a 25-yr level of protection. Kure Beach – North and Kure Beach – Central consistently maintain volumes well above the amount required to maintain the 25-yr level of protection. Historically, the northern portion of Kure Beach - South has come closest to approaching the 25-yr nourishment trigger towards the end of a nourishment cycle. On a profile by profile basis, Transects 15 through 17 in Kure Beach – South have, on several occasions, fallen below the 25-yr nourishment trigger as they approach the end of the nourishment cycle. While no trigger was developed for the southern portion of Kure Beach - South, it is apparent that profile volumes in this area are the smallest and would likely be well below the nourishment trigger, assuming it would be a similar order of magnitude to the northern portion of Kure Beach - South.

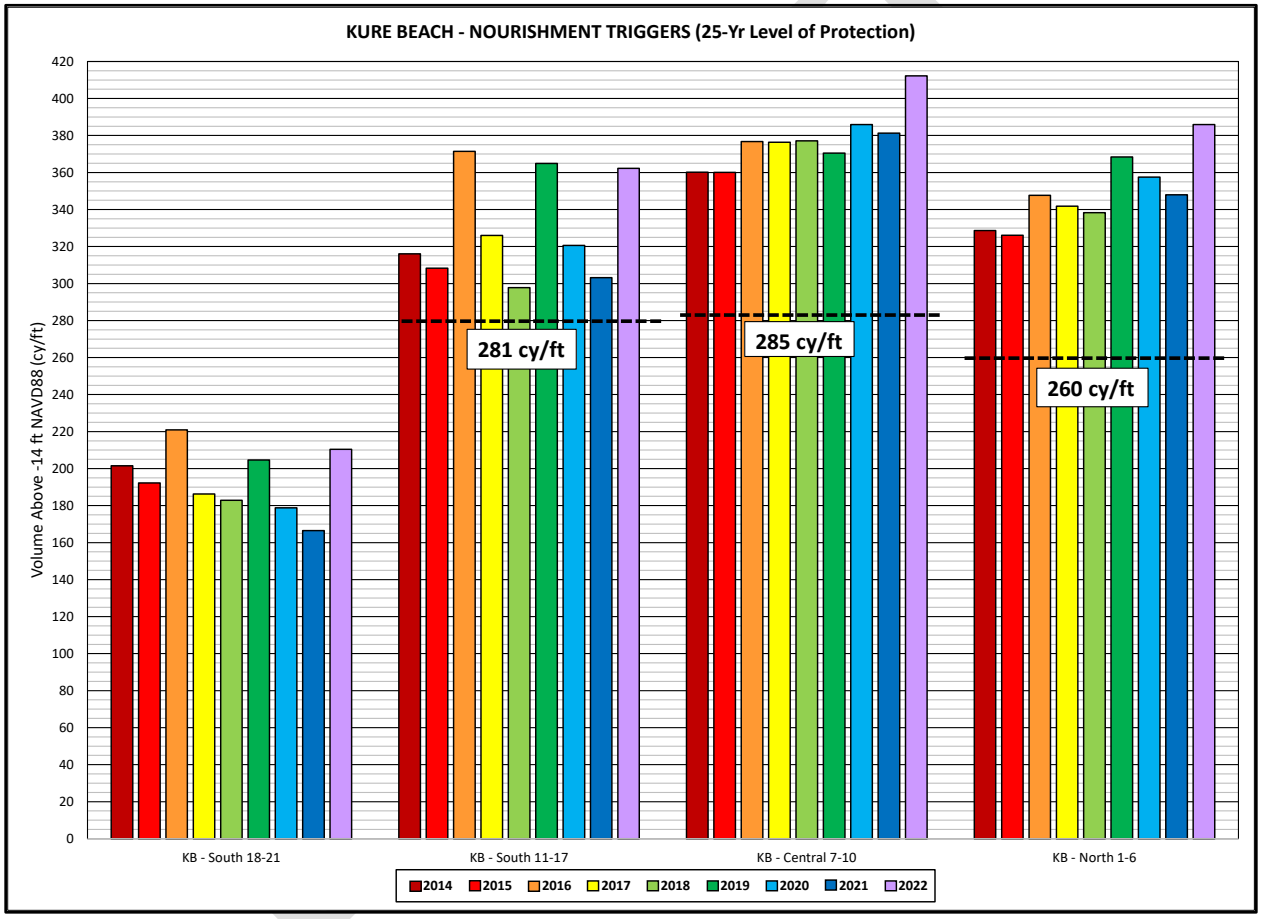


Figure 4-1. Profile Volumes and Nourishment Triggers for Kure Beach (2014 – 2022) (M&N, 2022)

The County also holds a current set of State and Federal permits which mirror the USACE CSRM project permits in case a locally sponsored project was necessary for any reason. With the annual monitoring and nourishment trigger analysis already completed, a locally sponsored project could be planned to ensure storm protection along Kure Beach is maintained.

5.0 FINANCIAL RESOURCES

Renourishment of the Kure Beach project, in conjunction with the Carolina Beach project, has been accomplished every three years since 1998 using a combination of Federal O&M funds,

Federal Construction General Funds, and non-Federal cost share contributions from the State and New Hanover County. New Hanover County funds are derived from the room occupancy tax while State funds are appropriated by the N.C. General Assembly. The New Hanover County Board of County Commissioners (Board) established the New Hanover County Ports Waterways and Beach Commission (PW&B Commission) to manage the beach nourishment funds and make recommendations to the Board on the use of the funds. In addition to the Kure Beach project, New Hanover County has two other Federal storm damage reduction projects it supports; namely, Carolina Beach and Wrightsville Beach.

New Hanover County has a six percent (6%) room occupancy tax (ROT) that is used to fund beach nourishment and tourism activities in the county. Sixty percent (60%) of the first three percent (3%) of funds collected go toward beach nourishment. At the present time, the balance in the fund is approximately $51.3 million with annual ROT collections totaling around $6.1 million in 2022 for CSRM projects. The fund has historically grown by approximately 3% per year since 1991.

The current funding scenario for the USACE CSRM project at Kure Beach includes the Federal government covering 65% of the cost of periodic nourishment and non-Federal interests are responsible for the remaining 35%. The non-Federal share is normally provided by the State and New Hanover County. The State's share of the non-Federal portion is 50% or 17.5% of the overall project. Thus, the local (County) share has been the other 50% of the non-Federal portion or 17.5% of the overall project.

The average annual cost of the local (County) share since 1991 is $1.9 million, increasing to an average of $3.6 million per year over the last 10 years. The average annual ROT revenue allocated towards beach nourishment, including interest, since 1991 is $3.4 million, increasing to an average of $4.7 million per year over the last 10 years. To date, average annual ROT revenues have been greater than average annual nourishment expenditures. The additional annual ROT revenue allocated for the beach nourishment fund beyond average annual nourishment costs combined with intertest accrued and Mason Inlet relocation reimbursements has allowed the fund to accumulate to $51.3 million since 1984 which can also be used to make up any shortfalls in Federal funding. While the primary funding mechanism (Federal Project Cooperation Agreement) remains current for the Kure Beach Coastal Storm Risk Management Project (Appendix B), a second Federal funding mechanism is now in place in the form of contributing authority approved by Congress in 2012. The contributing authority option allows the non-Federal sponsor the option of augmenting Federal funding shortfalls. As a local funding strategy, an Inter-local agreement has been approved between New Hanover County and each beach community. The agreement sets percentages of financial participation in the event shortfalls occur within Federal and State budgets. New Hanover County interlocal agreement is presented in Appendix D.

Figure 5-1 presents the annual ROT collections allocated to beach nourishment, the fiscal year beach nourishment expenditures, and the total nourishment fund balance for the last 10 years from 2013 to 2022. As can be seen, in most years the ROT collections for nourishment are higher than the nourishment expenditures. During years in which USACE CSRM projects are constructed, the nourishment expenditures typically are greater than the ROT collections for nourishment but the overages in other years, which are compounded with interest on the account and Mason Inlet

reimbursement funds, make up for this and still allow the overall nourishment fund to grow over time.

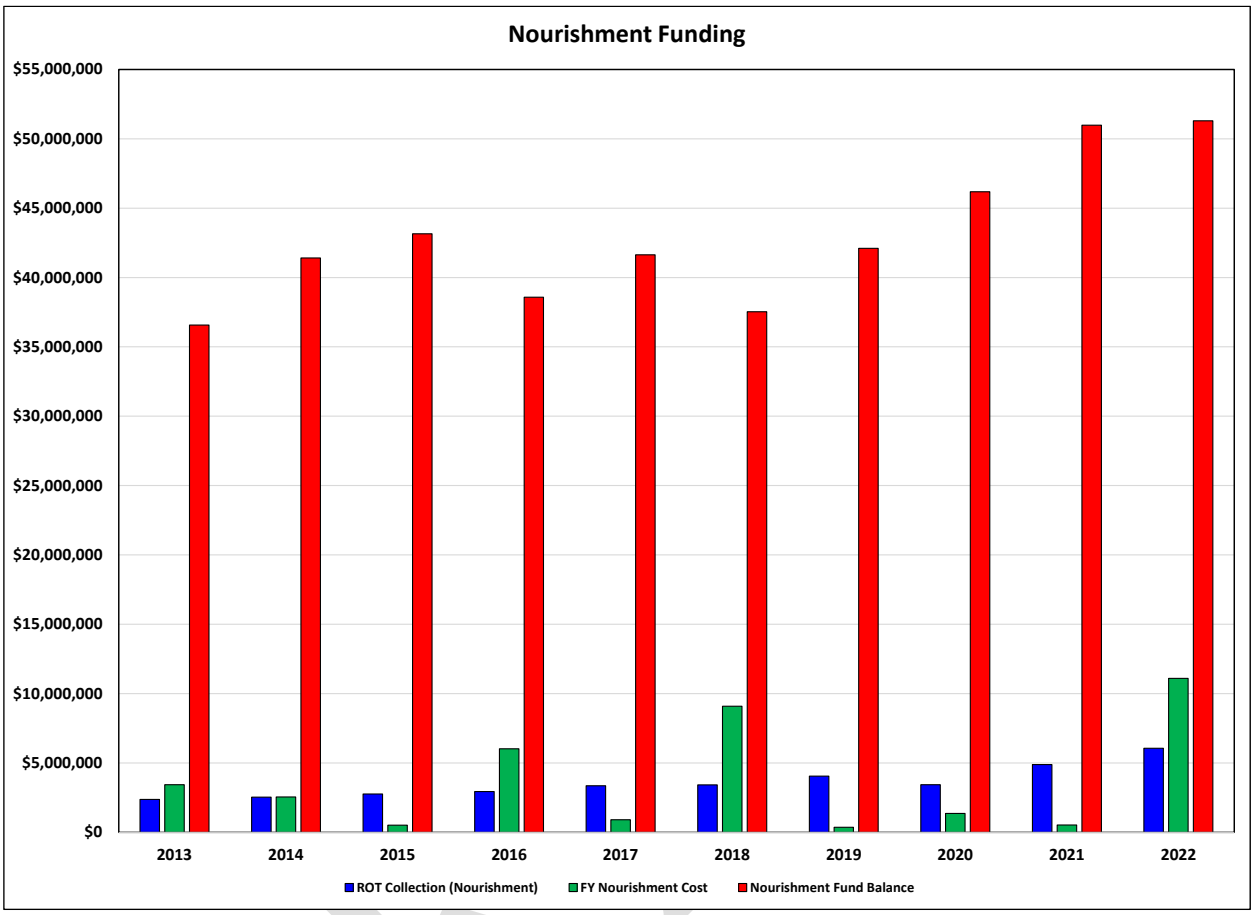


Figure 5-1. Nourishment Funding (2013 – 2022)

Considering funding at current intervals and historical placement volumes, ample funding should be available for the Kure Beach Coastal Storm Damage Reduction Project for the foreseeable future (greater than 30 years) as occupancy tax revenue has continued to exceed nourishment expenditures and there is a healthy balance in the beach nourishment fund to make up any shortfalls in Federal funding. While 30 years of funding must be shown through this process, the Commission will have the opportunity to re-evaluate the beach management plan and the necessary requirements every five years, at which time the opportunity will exist to address major changes in future funding. It should also be noted that the current beach nourishment fund contains enough money to fully fund each of the County CSRM projects one time, if needed, while other funding mechanisms are developed.

6.0 PUBLIC INVOLVEMENT PROCESS

15A NCAC 07J 1201(e) requires that the Town provide the opportunity for public comment on this Beach Management Plan. On [INSET DATE], a public information and comment session was held at the Kure Beach Town Hall. This public information and comment session was advertised in the [INSERT NAME] newspaper on [INSERT DATE] and a copy of the draft report was posted on the Town of Kure Beach website for download. Proof of publication is presented in Appendix

E. The public comment period began at the date of first notice on [INSERT DATE] and ran through the Town meeting on [INSERT DATE] with an option for written or electronic comments to be received at any time by the Town or in person comments to be received at the Town meeting on [INSERT DATE]. [INSERT NUMBER] written and/or electronic comments were received throughout the public comment period. [INSERT NUMBER] in-person comments were received at the Town meeting on [INSERT DATE]. These comments are summarized in the draft meeting minutes in Appendix E.

7.0 SUMMARY

By virtue of this report, the Town of Kure Beach has provided information satisfying the requirements for review of the beach management plan stipulated in 15A NCAC 07J .1200. The present Beach Management Plan document is structured to address the plan elements as required by the State to obtain a State-approved plan for the Town of Kure Beach, which include:

- Review of Beach Fill Projects/Background
- Review of Design and Monitoring
- Review of Sediment Sources
- Review of Financial Plan
- Review of Public Comments

The Kure Beach CSRM project (also referred to as Area South of Carolina Beach) was originally authorized by Congress in 1962 within the same legislation that authorized the adjacent Carolina Beach CSRM project, PL 87-874 (House Document Number 418, 87th Congress, 2nd Session). Although authorized in 1962, initial construction of the Kure Beach portion of the project did not begin until June 1997, following the passage of Hurricane Fran, and was completed in February 1998. Borrow Areas A-North and A-South, located one to two miles offshore of southern Kure Beach, and Borrow Areas B-East and B-West, located one to two miles offshore of northern Carolina Beach, were identified for the Kure Beach CSRM project by the USACE. Since 1998, maintenance projects have been constructed every three years in conjunction with the Carolina Beach CSRM project equating to eight maintenance events since initial construction and eight more anticipated under the current authorization which is valid until 2047. Beach fill projects have occurred using a combination of Federal, State and local funding sources. The next project is expected to occur during the Spring 2025 dredging window. It is anticipated that seven more additional projects will occur under the current authorization in 2028, 2031, 2034, 2037, 2040, 2043, and 2046.

Project design consists of cross-sectional configuration containing a 25-foot wide dune at elevation 12.5 feet above NAVD fronted by a 10:1 (H:V) slope down to a 50-foot wide storm berm at elevation 8.0 feet above NAVD. Construction of the authorized project then utilizes a 10:1 (H:V) slope down to a construction berm of varying width (approximately 100 ft) at elevation 5.5 feet above NAVD, which slopes down to existing ground offshore at 15:1 (H:V). The Local Cooperation Agreement between the USACE and Town of Kure Beach states that "periodic beach renourishment is estimated to be undertaken every three years unless, based on information gathered during the beach monitoring program, the Government and the Town determine that such beach nourishment is engineeringly necessary and economically justified on a different schedule.

Annual monitoring by the USACE and the NHCSMP shows that the project has been maintained in accordance with the established template.

The historical borrow areas for Kure Beach (Borrow Area A and Borrow Area B) have been located offshore in State waters. Offshore Borrow Area A was exhausted after the 2010 maintenance event at which point the USACE switched to Offshore Borrow Area B which was used for the 2016, 2019, and 2022 maintenance events. It is expected that this will remain the primary borrow area for the Kure Beach CSRM project for the foreseeable future. A recent 2019 study performed by the USACE analyzed several historical vibracore datasets and concluded that the mean fines content within Borrow Area B is 3.6 percent, which is well below the desired fines percentage of 10 or less. They also concluded that recoverable volumes are greatest in the northwestern half of the borrow site and re-evaluated the maximum dredge cut depths to avoid any rocky material below the compatible material. The USACE volume analysis of Borow Area B puts the current volume estimate at approximately 9.7 Mcy. This indicates that the borrow area could be viable for 15 additional maintenance events, lasting well beyond the current authorization period. In addition, the USACE also analyzed Carolina Beach Inlet in their recent 2019 study. It is currently the primary source of sand for the Carolina Beach CSRM project but could be used as supplemental material in the future. The USACE looked at several historical vibracore datasets and pre- and post-dredge surveys. They concluded that material within the IDMMS has a mean fine-grained content of 1.8 percent which is well below the 10 percent threshold for beach nourishment and the inlet has successfully replenished itself in between nourishment events since it started being used in 1981.

New Hanover County has a six percent (6%) room occupancy tax that is used to fund beach nourishment and tourism activities in the county. Sixty percent (60%) of the first three percent (3%) of funds collected go toward beach nourishment. At the present time, the balance in the beach nourishment fund is approximately $51.3 million with annual ROT collections totaling around $6.1 million in 2022 for CSRM projects. The fund has historically grown by approximately 3% per year since 1991. The current funding scenario for the USACE CSRM projects in New Hanover County includes the Federal government covering 65% of the cost of periodic nourishment and non-Federal interests are responsible for the remaining 35%. The State has been funding 50% of the non-Federal portion or 17.5% of the overall project. Thus, the local (County) share has been the other 50% of the non-Federal portion or 17.5% of the overall project. The average annual cost of the local (County) share since 1991 is $1.9 million, increasing to an average of $3.6 million per year over the last 10 years. The average annual ROT revenue allocated towards beach nourishment, including interest, since 1991 is $3.4 million, increasing to an average of $4.7 million per year over the last 10 years. To date, average annual ROT revenues have been greater than average annual nourishment expenditures. The additional annual ROT revenue allocated for the beach nourishment fund beyond average annual nourishment costs combined with intertest accrued and Mason Inlet relocation reimbursements has allowed the fund to accumulate to $51.3 million since 1984 and can also be used to make up any shortfalls in Federal funding.

The Town held a public information and comment session on [INSERT DATE], where comments were recorded and have been included in Appendix E in accordance with 15A NCAC 07J 1201(e).

8.0 REFERENCES

CPE, 2014. Geotechnical and Geophysical Investigation of Offshore Borrow Area for the Kure Beach Coastal Storm Damage Reduction Project: New Hanover County, NC, Prepared for New Hanover County by Coastal Planning and Engineering of North Carolina, inc.

CPE, 2021. Native Beach Large Sediment and Shell Material Characterization Report: Towns of Wrightsville Beach, Carolina Beach, and Kure Beach, New Hanover County, NC, Prepared for New Hanover County by Coastal Protection Engineering of North Carolina, inc.

M&N, 2022. New Hanover County Shoreline Mapping Program, Prepared for New Hanover County by Moffatt & Nichol, Raleigh, North Carolina.

USACE, 1993. Design Memorandum Supplement, Carolina Beach and Vicinity – Area South Portion North Carolina (Kure Beach), U.S. Army Corps of Engineers, Wilmington District, January 1993.

USACE, 2019. Carolina Beach, NC Beach Renourishment Evaluation Report, U.S. Army Corps of Engineers, Wilmington District, June 2019.

APPENDIX A

Procedural Rules

a) 15A NCAC 07H
b) 15A NCAC 07J

a) 15A NCAC 07H

SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

15A NCAC 07H .0101 INTRODUCTION
15A NCAC 07H .0102 CAMA PROVISIONS FOR AECS
15A NCAC 07H .0103 SELECTION OF PROPOSED AREAS FOR AEC DESIGNATION

History Note: *Authority G.S. 113A-101; 113A-102; 113A-102(a); 113A-106; 113A-107; 113A-113(a); 113A-118; 113A-124; 113A-124(c)(5);*
Eff. September 9, 1977;
Amended Eff. December 1, 1985;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS

History Note: *Authority G.S. 113A-107; 113A-113; 113A-124;*
Eff. September 15, 1979;
Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988;
Readopted Eff. July 1, 2020;
Repealed Eff. August 1, 2022.

15A NCAC 07H .0105 EFFECTIVE DATE OF RULE AMENDMENTS
Unless explicitly stated otherwise, the Coastal Resources Commission guidelines for Areas of Environmental Concern and local land use plans in effect at the time of permit decision shall be applied to all development proposals covered by this Subchapter.

History Note: *Authority G.S. 113A-107; 113A-124;*
Eff. December 1, 1982;
Readopted Eff. July 1, 2020.

15A NCAC 07H .0106 GENERAL DEFINITIONS
The following definitions apply whenever these terms are used in this Chapter:

(1) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence and location of vegetation which has its distribution influenced by tidal action, and the location of the apparent high tide line.

(2) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during periods of little or no wind. It can be determined by the presence of such physical and biological indicators as erosion escarpments, trash lines, water lines, marsh grasses, and barnacles.

(3) Unless specifically limited, the term "structures" includes, but is not limited to, buildings, bridges, roads, piers wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring pilings and buoys, pile clusters (dolphins), navigational aids, and elevated boat ramps.

(4) "Mining" is defined as:
  (a) the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of mineral, ores, or other solid matter;
  (b) any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original Location; or
  (c) the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.

  This definition applies regardless of whether the mining activity is for a commercial or noncommercial purpose, and regardless of the size of the affected area. Activities such as vibracoring, box coring, surface grab sampling, and other drilling and sampling for geotechnical testing, mineral resource investigations, or geological research are not considered mining. Excavation of mineral resources associated with the construction or maintenance of an approved

navigation project in accordance with 15A NCAC 7B .0200 of this Chapter is not considered mining.

(5) "Wind Energy Facility" means the turbines, accessory buildings, transmission facilities, and any other equipment necessary for the operation of the facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, have a rated capacity of three megawatts or more of energy.

History Note: *Authority G.S. 113A-102; 113A-107;*
Eff. June 1, 1995;
Amended Eff. February 1, 2011; August 1, 1998; October 1, 1996;
Readopted Eff. July 1, 2020.

SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

15A NCAC 07H .0201 ESTUARINE AND OCEAN SYSTEM CATEGORIES

Included within the estuarine and ocean system are the following AEC categories:

(a) estuarine waters;
(b) coastal wetlands;
(c) public trust areas; and
(d) estuarine and public trust shorelines.

Each of the AECs is either geographically within the estuary or, because of its location and nature, may affect the estuarine and ocean system.

History Note: *Authority G.S. 113A-113(b)(1); 113A-113(b)(2); 113A-113(b)(5); 113A-113(b)(6)b; 113A-124;*
Eff. September 9, 1977;
Amended Eff August 1, 2000; August 1, 1998;
Readopted Eff. July 1, 2020.

15A NCAC 07H .0202 SIGNIFICANCE OF THE SYSTEMS APPROACH IN ESTUARIES

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-124;*
Eff. September 9, 1977;
Amended Eff. August 1, 1998;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07H .0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE AND OCEAN SYSTEM

It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private property and public resources. Furthermore, it is the objective of the Coastal Resources Commission to protect present common-law and statutory public rights of access to the lands and waters of the coastal area.

History Note: *Authority G.S. 113A-102(b)(1); 113A-102(b)(4); 113A-107(a); 113A-107(b); 113A-124;*
Eff. September 9, 1977;
Amended Eff. August 1, 2000; October 1, 1993; September 1, 1985;
Readopted Eff. July 1, 2020.

15A NCAC 07H .0204 AECS WITHIN THE ESTUARINE AND OCEAN SYSTEM

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-124;*
Eff. September 9, 1977;
Amended Eff. August 1, 1998;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07H .0205 COASTAL WETLANDS

(a) Definition. "Coastal Wetlands" are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses, provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established through field indicators, including the observation of tidal water on the site, changes in elevation, presence of periwinkle (littoraria spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or more of the following marsh plant species:

(1) Cord Grass (Spartina alterniflora);
(2) Black Needlerush (Juncus roemerianus);
(3) Glasswort (Salicornia spp.);
(4) Salt Grass (Distichlis spicata);
(5) Sea Lavender (Limonium spp.);
(6) Bulrush (Scirpus spp.);
(7) Saw Grass (Cladium jamaicense);
(8) Cat-tail (Typha spp.);
(9) Salt Meadow Grass (Spartina patens);or
(10) Salt Reed Grass (Spartina cynosuroides).

The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113-230(a).

(b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant material) and nutrients that are exported from the coastal wetlands. Without the wetlands, the high productivity levels and complex food chains typically found in the estuaries could not be maintained. Additionally, coastal wetlands serve as barriers against flood damage and control erosion between the estuary and the uplands.

(c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource necessary to the functioning of the entire estuarine system.

(d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. First priority of use shall be allocated to the conservation of existing coastal wetlands. Secondary priority of coastal wetland use shall be given to those types of development activities that require water access and cannot function elsewhere.

Unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking lots, private roads, highways, and factories. Acceptable land uses include utility easements, fishing piers, docks, wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under North Carolina's Dredge and Fill Law, G.S. 113-229, or applicable local, state, and federal laws.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

(e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state resource management agencies as a part of planned resource management activities is exempt from the requirements of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

(1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area Management Act (CAMA) when conducted in accordance with the following criteria:
    (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured from the coastal wetland substrate, at any time and at any frequency throughout the year;
    (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, once between each December 1 and March 31;
    (C) Alteration of the substrate is not allowed;
    (D) All cuttings or clippings shall remain in place as they fall;
    (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured from the coastal wetland substrate, to create an access path four feet wide or less on waterfront lots without a pier access; and
    (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility easements.
(2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA permit. CAMA permit applications for coastal wetland alterations are subject to review by the North Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and

Wildlife Service, and National Marine Fisheries Service in order to determine whether or not the proposed activity will have a significant adverse impact on the habitat or fisheries resources.

History Note: *Authority G.S. 113A-107; 113A-113(b)(1); 113A-124;*
Eff. September 9, 1977;
Amended Eff. September 1, 2016; November 1, 2009; August 1, 1998; October 1, 1993; May 1, 1990; January 24, 1978;
Readopted Eff. July 1, 2020.

15A NCAC 07H .0206 ESTUARINE WATERS

(a) Definition. "Estuarine Waters" are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

(b) Significance. Estuarine waters are the dominant component and bonding element of the entire estuarine and ocean system, integrating aquatic influences from both the land and the sea. Estuaries are among the most productive natural environments of North Carolina. They support the valuable commercial and sports fisheries of the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and reproduce. Of the 10 leading species in the commercial catch, all but one are dependent on the estuary.

This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy, fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The circulation of estuarine waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish, flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats, eel grass beds, salt marshes, submerged vegetation flats, clam and oyster beds, and important nursery areas.

Secondary benefits include the stimulation of the coastal economy from the spin off operations required to service commercial and sports fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations, and tourist related industries. In addition, there is considerable nonmonetary value associated with aesthetics, recreation, and education.

(c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine and ocean system.

(d) Use Standards. Suitable land and water uses shall be those consistent with the management objectives in this Rule. Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second priority of estuarine waters use shall be given to those types of development activities that require water access and use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation channels; boat docks, marinas, piers, wharfs, and mooring pilings.

In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(2); 113A-124;*
Eff. September 9, 1977;
Amended Eff. August 1, 1998; October 1, 1993; November 1, 1991; May 1, 1990; October 1, 1988;
Readopted Eff. July 1, 2020.

15A NCAC 07H .0207 PUBLIC TRUST AREAS

(a) Definition. "Public trust areas" are all waters of the Atlantic Ocean and the lands thereunder from the mean high water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which the public has no right of access; all water in artificially created bodies of water containing public fishing

resources or other public resources which are accessible to the public by navigation from bodies of water in which the public has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights in artificially created bodies of water, the following factors shall be considered:

(1) the use of the body of water by the public;
(2) the length of time the public has used the area;
(3) the value of public resources in the body of water;
(4) whether the public resources in the body of water are mobile to the extent that they can move into natural bodies of water;
(5) whether the creation of the artificial body of water required permission from the state; and
(6) the value of the body of water to the public for navigation from one public area to another public area.

(b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

(c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used by the public for navigation or other public trust rights which the public may be found to have in these areas shall not be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion, and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas, provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water quality standards, or cause degradation of shellfish waters are considered incompatible with the management policies of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with the general use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(5); 113A-124;*
Eff. September 9, 1977;
Amended Eff. February 1, 2006; October 1, 1993;
Readopted Eff. July 1, 2020.

15A NCAC 07H .0208 USE STANDARDS

(a) General Use Standards

(1) Uses that are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads, factories, and parking lots are examples of uses that are not water dependent. Uses that are water dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging, bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring pilings, navigational channels, access channels and drainage ditches;
(2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant has complied with the following standards:
    (A) The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas;
    (B) Development shall comply with State and federal water and air quality rules, statutes and regulations;
    (C) Development shall not cause irreversible damage to documented archaeological or historic resources as identified by the N.C. Department of Cultural resources;
    (D) Development shall not increase siltation;

(E) Development shall not create stagnant water bodies;
(F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine and ocean resources; and
(G) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(3) When the proposed development is in conflict with the general or specific use standards set forth in this Rule, the CRC may approve the development if the applicant can demonstrate that the activity associated with the proposed project will have public benefits as identified in the findings and goals of the Coastal Area Management Act, that the public benefits outweigh the long range adverse effects of the project, that there is no reasonable alternate site available for the project, and that all reasonable means and measures to mitigate adverse impacts of the project have been incorporated into the project design and shall be implemented at the applicant's expense. Measures taken to mitigate or minimize adverse impacts shall include actions that:
(A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;
(B) restore the affected environment; or
(C) compensate for the adverse impacts by replacing or providing substitute resources.

(4) "Primary nursery areas" are defined as those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. Primary nursery areas are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC) at 15A NCAC 03R .0103;

(5) "Outstanding Resource Waters" (ORW) are defined as those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC, or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site specific information, degrade the water quality or outstanding resource values; and

(6) Beds of "submerged aquatic vegetation" (SAV) are defined as those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).

(b) Specific Use Standards

(1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
(A) Navigation channels and canals may be allowed through fringes of regularly and ir-regularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
(B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
(C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);
(D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;

(E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;

(F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;

(G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;

(H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and

(I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:

(i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;

(ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;

(iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and

(iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

(2) Hydraulic Dredging

(A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;

(B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment if the material is suitable in accordance with the rules in this Subchapter, except as provided in Part (G) of this Subparagraph;

(C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;

(D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;

(E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;

(F) A water control structure shall be installed at the intake end of the effluent pipe;

(G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and

(H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.

(3) Drainage Ditches

(A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;

(B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur.

Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites;

(C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and

(D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.

(4) Nonagricultural Drainage

(A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;

(B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth; and

(C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.

(5) Marinas. "Marinas" are defined as any publicly or privately owned dock, basin or wet boat storage facility constructed to accommodate more than 10 boats and providing any of the following services: permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities, and repair service. Excluded from this definition are boat ramp facilities allowing access only, temporary docking, and none of the preceding services. Expansion of existing facilities shall comply with the standards of this Subparagraph for all development other than maintenance and repair necessary to maintain previous service levels. Marinas shall comply with the following standards:

(A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging) and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the MFC, or wetland habitats, except for dredging necessary for access to high-ground sites. The following four alternatives for siting marinas are listed in order of preference for the least damaging alterative; marina projects shall be designed to have the highest of these four priorities that is deemed feasible by the permit letting agency:

(i) an upland basin site requiring no alteration of wetland or estuarine habitat and providing flushing by tidal or wind generated water circulation or basin design characteristics;

(ii) an upland basin site requiring dredging for access when the necessary dredging and operation of the marina will not result in significant adverse impacts to existing fishery, shellfish, or wetland resources and the basin design shall provide flushing by tidal or wind generated water circulation;

(iii) an open water site located outside a primary nursery area which utilizes piers or docks rather than channels or canals to reach deeper water; and

(iv) an open water marina requiring excavation of no intertidal habitat, and no dredging greater than the depth of the connecting channel.

(B) Marinas that require dredging shall not be located in primary nursery areas nor in areas which require dredging through primary nursery areas for access. Maintenance dredging in primary nursery areas for existing marinas shall comply with the standards set out in Part (b)(1)(I) of this Rule;

(C) To minimize coverage of public trust areas by docks and moored vessels, dry storage marinas shall be used where feasible;

(D) Marinas to be developed in waters subject to public trust rights (other than those created by dredging upland basins or canals) for the purpose of providing docking for residential developments shall be allowed no more than 27 square feet of public trust areas for every one linear foot of shoreline adjacent to these public trust areas for construction of docks and mooring facilities. The 27 square feet allocation does not apply to fairway areas between parallel piers or any portion of the pier used only for access from land to the docking spaces;

(E) To protect water quality in shellfishing areas, marinas shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and North Carolina Water Quality Standards (15A NCAC 02B .0200) adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Coastal Management shall consult with the Division of Marine Fisheries regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(F) Marinas shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;

(G) Marina basins shall be designed to promote flushing through the following design criteria:

(i) the basin and channel depths shall gradually increase toward open water and shall never be deeper than the waters to which they connect; and

(ii) when possible, an opening shall be provided at opposite ends of the basin to establish flow-through circulation;

(H) Marinas shall be designed so that the capability of the waters to be used for navigation or for other public trust rights in estuarine or public trust waters are not jeopardized while allowing the applicant access to deep waters;

(I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels and their boundaries as designated by the US Army Corps of Engineers. This includes permanent or temporary mooring sites; speed or traffic reductions; or any other device, either physical or regulatory, that may cause a federally maintained channel to be restricted;

(J) Open water marinas shall not be enclosed within breakwaters that preclude circulation sufficient to maintain water quality;

(K) Marinas that require dredging shall provide areas in accordance with Part (b)(1)(B) of this Rule to accommodate disposal needs for future maintenance dredging, including the ability to remove the dredged material from the marina site;

(L) Marina design shall comply with all applicable EMC requirements (15A NCAC 02B .0200) for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);

(M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;

(N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;

(O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;

(P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and

(Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.

(6) Piers and Docking Facilities.

(A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;

(B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;

(C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;

(D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls as measured from the Normal Water Level or Normal High Water and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline, except that structural boat covers utilizing a frame-supported fabric covering may be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls. Size restrictions do not apply to marinas;

(E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;

(F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;

(G) Pier and docking facility length shall be limited by:

(i) not extending beyond the established pier or docking facility length along the same shoreline for similar use. This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public;

(ii) not extending into the channel portion of the water body; and

(iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals, or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.

(H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;

(I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the pier. Application of this Rule may be aided by reference to the

approved diagram in 15A NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable as determined by the Director of the Division of Coastal Management; and

(J) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(7) Bulkheads

(A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the location of normal high water or normal water level;

(B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant adverse impacts to the resources;

(C) Bulkhead backfill material shall be obtained from an upland source approved by the Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a permitted project involving excavation from a non-upland source, the material so obtained may be contained behind the bulkhead;

(D) Bulkheads shall be permitted below normal high water or normal water level only when the following standards are met:

(i) the property to be bulkheaded has an identifiable erosion problem, whether it results from natural causes or adjacent bulkheads, or it has unusual geographic or geologic features, e.g. steep grade bank, which will cause the applicant unreasonable hardship under the other provisions of this Rule;

(ii) the bulkhead alignment extends no further below normal high water or normal water level than necessary to allow recovery of the area eroded in the year prior to the date of application, to align with adjacent bulkheads, or to mitigate the unreasonable hardship resulting from the unusual geographic or geologic features;

(iii) the bulkhead alignment will not adversely impact public trust rights or the property of adjacent riparian owners;

(iv) the need for a bulkhead below normal high water or normal water level is documented by the Division of Coastal Management; and

(v) the property to be bulkheaded is in a non-oceanfront area.

(E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.

(8) Beach Nourishment

(A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:

(i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;

(ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;

(iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;

(iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;

(v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review; and

(vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.

(B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;

(C) Material from dredging projects may be used for beach nourishment if:

(i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule;
(ii) it is allowed to dry prior to being placed on the beach; and
(iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.

(D) Beach construction shall comply with State and federal water quality standards;

(E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and

(F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.

(9) Groins

(A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;

(B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin;

(C) Groins shall pose no threat to navigation;

(D) The height of groins shall not exceed one foot above normal high water or normal water level;

(E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant provides evidence that more structures are needed for shoreline stabilization.

(F) "L" and "T" sections shall not be allowed at the end of groins; and

(G) Riprap material used for groin construction shall be free from loose dirt or any other pollutant and of a size sufficient to prevent its movement from the site by wave and current action.

(10) "Freestanding Moorings".

(A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling as long as the piling is not associated with an existing or proposed pier, dock, or boathouse;

(B) Freestanding moorings shall be permitted only:
(i) to riparian property owners within their riparian corridors; or
(ii) to any applicant proposing to locate a mooring buoy consistent with a water use plan that is included in either the local zoning or land use plan.

(C) All mooring fields shall provide an area for access to any mooring(s) and other land based operations that shall include wastewater pumpout, trash disposal and vehicle parking;

(D) To protect water quality of shellfishing areas, mooring fields shall not be located within areas where shellfish harvesting for human consumption is a significant existing use or adjacent to such areas if shellfish harvest closure is anticipated to result from the location of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted pursuant to that section, shellfish harvesting is a significant existing use if it can be established that shellfish have been regularly harvested for human consumption since November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable habitat and are available and suitable for harvesting for the purpose of human consumption. The Division of Marine Fisheries shall be consulted regarding the significance of shellfish harvest as an existing use and the magnitude of the quantities of

shellfish that have been harvested or are available for harvest in the area where harvest will be affected by the development;

(E) Moorings shall not be located without written consent from the leaseholders or owners of submerged lands that have been leased from the state or deeded by the State;

(F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation throughout all federally maintained channels. This includes permanent or temporary mooring sites, speed or traffic reductions, or any other device, either physical or regulatory, which may cause a federally maintained channel to be restricted;

(G) Open water moorings shall not be enclosed within breakwaters that preclude circulation and degrade water quality in violation of EMC standards;

(H) Moorings and the associated land based operation design shall comply with all applicable EMC requirements for management of stormwater runoff;

(I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of any waste from boat toilets or any other discharge and listing the availability of local pump-out services and waste disposal;

(J) Freestanding moorings associated with commercial shipping, public service, or temporary construction or salvage operations may be permitted without a public sponsor;

(K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the length of the vessel to be moored. Moorings and the attached vessel shall not interfere with the access of any riparian owner nor shall it block riparian access to channels or deep water, which allows riparian access. Freestanding moorings shall not interfere with the ability of any riparian owner to place a pier for access;

(L) Freestanding moorings shall not be established in submerged cable or pipe crossing areas or in a manner that interferes with the operations of an access through any bridge;

(M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard and the WRC requirements and the required marking maintained for the life of the mooring(s); and

(N) The type of material used to create a mooring must be free of pollutants and of a design and type of material so as to not present a hazard to navigation or public safety.

(11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if all of the following conditions are met:

(A) the area to be filled was not created by excavating lands which were below the normal high water or normal water level;

(B) if the area was created from wetlands, the elevation of the proposed filling does not exceed the elevation of said wetlands so that wetland function will be restored;

(C) the filling will not adversely impact any designated primary nursery area, shellfish bed, submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right or public trust usage; and

(D) the filling will not adversely affect the value and enjoyment of property of any riparian owner.

(12) "Submerged Lands Mining"

(A) Development Standards. Mining of submerged lands shall meet all the following standards:

(i) The biological productivity and biological significance of mine sites, or borrow sites used for sediment extraction, shall be evaluated for significant adverse impacts and a protection strategy for these natural functions and values provided with the State approval request or permit application;

(ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;

(iii) Mining shall avoid significant archaeological resources as defined in Rule .0509 of this Subchapter; shipwrecks identified by the Department of Cultural Resources; and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

(iv) Mining activities shall not be conducted on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. "High relief" is defined for this Part as relief greater than or equal to one-half meter per five meters of horizontal distance;

(v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine or ocean resources; and

(vi) Mining activities shall not affect potable groundwater supplies, wildlife, freshwater, estuarine, or marine fisheries.

(B) Permit Conditions. Permits for submerged lands mining may be conditioned on the applicant amending the mining proposal to include measures necessary to ensure compliance with the provisions of the Mining Act and the rules for development set out in this Subchapter. Permit conditions shall also include:

(i) Monitoring by the applicant to ensure compliance with all applicable development standards; and

(ii) A determination of the necessity and feasibility of restoration shall be made by the Division of Coastal Management as part of the permit or consistency review process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;

(D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and

(E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

(13) "Wind Energy Facilities"

(A) An applicant for the development and operation of a wind energy facility shall provide:

(i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;

(ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;

(iii) an evaluation of avian and bat impacts of the proposed facility;

(iv) an evaluation of viewshed impacts of the proposed facility;

(v) an evaluation of potential user conflicts associated with development in the proposed project area; and

(vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.

(B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:

(i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;

(ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC, such as high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;

(iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);

(iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;

(v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and

(vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.

(C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to ensure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and

(D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

History Note: *Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*
Eff. September 9, 1977;
Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;
RRC Objection due to ambiguity Eff. March 21, 1996;
Amended Eff. August 1, 2012(see S.L. 2012-143, s.1.(f)); February 1, 2011; August 1, 2010;
June 1, 2010; August 1, 1998; May 1, 1996;
Readopted Eff. July 1, 2020;
Amended Eff. August 1, 2022.

15A NCAC 07H .0209 COASTAL SHORELINES

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines.

(1) Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters (ORW) by the Environmental Management Commission (EMC), the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties.

(2) Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. All shoreline development shall be compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to avoid or minimize adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. Development shall comply with the following standards:

(1) All development projects, proposals, and designs shall preserve natural barriers to erosion, including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.

(2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to service the primary purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible.

(3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973:

(A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water that is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.

(B) No development project proposal or design shall propose an angle for graded slopes or fill that is greater than an angle that can be retained by vegetative cover or other erosion-control devices or structures.

(C) All development projects, proposals, and designs that involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; unless the project involves clearing land for the purpose of forming a reservoir later to be inundated.

(4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.

(5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.

(6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use.

(7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.

(8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the use of the accessways.

(9) Within the AECs for shorelines contiguous to waters classified as ORW by the EMC, no CAMA permit shall be approved for any project that would be inconsistent with rules adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development

activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.

(10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:

(A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;

(B) Pile-supported signs (in accordance with local regulations);

(C) Post- or pile-supported fences;

(D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;

(E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;

(F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;

(G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

(H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased;

(I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development shall be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

(i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities, such as water and sewer; and

(ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0201 and .0211; and

(J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development shall be permitted within the buffer if all the following criteria are met:

(i) The lot on which the proposed residential structure is to be located, is located between:

(I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or

(II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;

(ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;

(iii) Placement of the residential structure and pervious decking shall be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;

(iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design

standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces shall be allowed within the buffer; and

(v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Marine Fisheries of the Department of Environmental Quality.

(e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the EMC has adopted rules that contain buffer standards.

(f) Specific Use Standards for ORW Coastal Shorelines.

(1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:

(A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line; and

(B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.

(2) Single-family residential lots that would not be buildable under the low-density standards defined in Subparagraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.

(g) Urban Waterfronts.

(1) Definition. Urban Waterfronts are waterfront areas, not adjacent to ORW, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met:

(A) the area lies wholly within the corporate limits of a municipality; and

(B) the area has a central business district or similar commercial zoning classification where there are mixed land uses, and urban level services, such as water, sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.

(2) Significance. Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management, these areas may continue to preserve local historical and aesthetic values while enhancing the economy.

(3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment facilitate efficient use of already urbanized areas and reduce development pressure on surrounding areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean systems. While recognizing that opportunities to preserve buffers are limited in highly developed urban areas, they are encouraged where practical.

(4) Use Standards:

(A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule shall not apply to development within Urban Waterfronts that meets the following standards:

(i) The development shall be consistent with the locally adopted land use plan;

(ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot. Impervious surfaces may exceed 30 percent if the applicant can demonstrate, through a stormwater management system design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. The stormwater management system shall be designed by an individual who meets any North Carolina occupational licensing requirements for the type of system proposed and approved during the permit application process. Redevelopment of areas exceeding the 30 percent impervious surface

limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the intent of the rule to the maximum extent feasible; and

(iii) The development shall meet all state stormwater management requirements as required by the EMC;

(B) Non-water dependent uses over estuarine waters, public trust waters and coastal wetlands shall be allowed only within Urban Waterfronts as set out below.

(i) Existing structures over coastal wetlands, estuarine waters or public trust areas may be used for commercial non-water dependent purposes. Commercial, non-water dependent uses shall be limited to restaurants and retail services. Residential uses, lodging and new parking areas shall be prohibited.

(ii) For the purposes of this Rule, existing enclosed structures may be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure, and is consistent with local requirements or limitations.

(iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:

(I) shall provide for enhanced public access to the shoreline;

(II) may be roofed, but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;

(III) shall require no filling of coastal wetlands, estuarine waters or public trust areas;

(IV) shall not extend more than 20 feet waterward of the normal high water level or normal water level;

(V) shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;

(VI) shall have no more than six feet of any dimension extending over coastal wetlands;

(VII) shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;

(VIII) shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;

(IX) shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there shall be no alternative that would avoid wetlands. Significant adverse impacts include the development that would impair water quality standards, increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water level, or cause degradation of shellfish beds;

(X) shall not degrade waters classified as SA or High Quality Waters or ORW as defined by the EMC;

(XI) shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and

(XII) shall not pose a threat to navigation.

History Note: *Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*
Eff. September 1, 1977;
Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990; October 1, 1989;
Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142);
Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494);
Amended Eff. April 1, 2019; March 1, 2010; April 1, 2008; August 1, 2002;
Readopted Eff. July 1, 2020.

SECTION .0300 - OCEAN HAZARD AREAS

15A NCAC 07H .0301 OCEAN HAZARD CATEGORIES

The Ocean Hazard categories of AECs encompass the natural hazard areas along the Atlantic Ocean shoreline where, because of their vulnerability to erosion or other adverse effects of sand, wind, and water, uncontrolled or incompatible development could endanger life or property. Ocean hazard areas include beaches, frontal dunes, inlet lands, and other areas in which geologic, vegetative and soil conditions may subject the area to erosion or flood damage.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6a); 113A-113(b)(6b); 113A-113(b)(6d); 113A-124;*
Eff. September 9, 1977;
Readopted Eff. December 1, 2020.

15A NCAC 07H .0302 SIGNIFICANCE OF THE OCEAN HAZARD CATEGORY

(a) Hazards associated with ocean shorelines are due to the constant forces exerted by waves, winds, and currents upon the unstable sands that form the shore. During storms, these forces are intensified and can cause changes in the bordering landforms and to structures located on them. Ocean hazard area property is in the ownership of a large number of private individuals as well as several public agencies and is used by a vast number of visitors to the coast. Ocean hazard areas are critical due to both the severity of the hazards and the intensity of interest in these areas.
(b) The location and form of the various hazard area landforms, in particular the beaches, dunes, and inlets, are in a permanent state of flux, responding to meteorologically induced changes in the wave climate. For this reason, the siting of development on and near these landforms shall be subject to the provisions in this Section in order to avoid their loss or damage. The flexible nature of these landforms presents hazards to development situated immediately on them and offers protection to the land, water, and structures located landward of them. The value of each landform lies in the particular role it plays in affording protection to life and property. Development shall not diminish the energy dissipation and sand storage capacities of the landforms essential to the maintenance of the landforms' protective function.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6a); 113A-113(b)(6b); 113A-113(b)(6d); 113A-124;*
Eff. September 9, 1977;
Amended Eff. October 1, 1992;
Readopted Eff. December 1, 2020.

15A NCAC 07H .0303 MANAGEMENT OBJECTIVE OF OCEAN HAZARD AREAS

(a) The CRC recognizes that absolute safety from the destructive forces of the Atlantic Ocean shoreline is an impossibility for development located adjacent to the coast. The loss of life and property to these forces, however, can be greatly reduced by the proper location and design of structures and by care taken in prevention of damage to natural protective features particularly primary and frontal dunes. Therefore, it is the CRC's objective that development in ocean hazard areas shall be sited to minimize danger to life and property and achieve a balance between the financial, safety, and social factors that are involved in hazard area development.
(b) The rules set forth in this Section shall further the goals set out in G.S. 113A-102(b), to minimize losses to life and property resulting from storms and long-term erosion, prevent encroachment of permanent structures on public

beach areas, preserve the natural ecological conditions of the barrier dune and beach systems, and reduce the public costs of development within ocean hazard areas, and protect common-law and statutory public rights of access to and use of the lands and waters of the coastal area.

History Note: *Authority G.S. 113A-107(b); 113A-113(b)(6) a.; 113A-113(b)(6) b.;113A-113(b)(6)d.; 113A-124; Eff. September 9, 1977;*
Amended Eff. October 1, 1992; December 1, 1991; September 1, 1985; February 2, 1981;
Readopted Eff. December 1, 2020.

15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS

The ocean hazard AECs contain all of the following areas:

(1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low water line. The landward extent of this area is the distance landward from the vegetation line as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by multiplying the long-term annual erosion rate times 90; provided that, where there has been no long-term erosion or the rate is less than two feet per year, this distance shall be set at 180 feet landward from the vegetation line. For the purposes of this Rule, the erosion rates are the long-term average based on available historical data. The current long-term average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled "North Carolina 2019 Oceanfront Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the Coastal Resources Commission on February 28, 2019 (except as such rates may be varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate of shoreline change shall be no less than two feet of erosion per year. The maps are available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at http://www.nccoastalmanagement.net.

(2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to dynamic ocean inlets. This area extends landward from the mean low water line a distance encompassing that area within which the inlet migrates, based on statistical analysis, and shall consider such factors as previous inlet territory, structurally weak areas near the inlet, and external influences such as jetties, terminal groins, and channelization. The areas on the maps identified as Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS, The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby designated as Inlet Hazard Areas, except for:

(a) the location of a former inlet which has been closed for at least 15 years;

(b) inlets that due to shoreline migration, no longer include the current location of the inlet; and

(c) inlets providing access to a State Port via a channel maintained by the United States Army Corps of Engineers.

In all cases, the Inlet Hazard Area shall be an extension of the adjacent ocean erodible areas and in no case shall the width of the inlet hazard area be less than the width of the adjacent ocean erodible area. This report is available for inspection at the Department of Environmental Quality, Division of Coastal Management, 400 Commerce Avenue, Morehead City, North Carolina or at the website referenced in Item (1) of this Rule.

(3) Unvegetated Beach Area. Beach areas within the Ocean Hazard Area where no stable and natural vegetation is present may be designated as Unvegetated Beach Areas on either a permanent or temporary basis as follows:

(a) An area appropriate for permanent designation as an Unvegetated Beach Area is a dynamic area that is subject to rapid unpredictable landform change due to wind and wave action. The areas in this category shall be designated following studies by the Division of Coastal Management. These areas shall be designated on maps approved by the Coastal Resources Commission and available without cost from any Local Permit Officer or the Division of Coastal Management on the internet at the website referenced in Item (1) of this Rule.

(b) An area that is unvegetated as a result of a hurricane or other major storm event may be designated by the Coastal Resources Commission as an Unvegetated Beach Area for a specific period of time, or until the vegetation has re-established in accordance with 15A NCAC 07H .0305(a)(5). At the expiration of the time specified or the re-establishment of the vegetation, the area shall return to its pre-storm designation.

(c) The Commission designates as temporary unvegetated beach areas those oceanfront areas of:

(i) Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018; and

(ii) Oak Island in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration and Geological Survey imagery dated August 4, 2020 was destroyed as a result of Hurricane Isaias in August 2020.

The designation AEC boundaries can be found on the Division's website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unvegetated_beach_aec.pdf and https://files.nc.gov/ncdeq/Coastal%20Management/GIS/unveg_beachAEC_Oak_Island.zip. This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item (3)(a) of this Rule.

(4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the Unites States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources Commission and available without cost from the Division of Coastal Management, and on the internet at the website at https://files.nc.gov/ncdeq/Coastal%20Management/GIS/state_port_aec.pdf.

History Note: *Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. April 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013; January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022; September 1, 2021.

15A NCAC 07H .0305 DEFINITION AND DESCRIPTION OF LANDFORMS

This Rule describes natural and man-made features that are found within the ocean hazard area of environmental concern.

(1) Ocean Beaches. Ocean beaches are lands consisting of unconsolidated soil materials that extend from the mean low water line landward to a point where either:

(a) the growth of vegetation occurs; or

(b) a distinct change in slope or elevation alters the configuration of the landform, whichever is farther landward.

(2) Nearshore. The nearshore is the portion of the beach seaward of mean low water that is characterized by dynamic changes both in space and time as a result of storms.

(3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches having an elevation equal to the mean flood level (in a storm having a one percent chance of being equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward

to the lowest elevation in the depression behind that same mound of sand commonly referred to as the "dune trough".

(4) Frontal Dunes. The frontal dune is the first mound of sand located landward of ocean beaches that has stable and natural vegetation present.

(5) Vegetation Line. The vegetation line refers to the first line of stable and natural vegetation, which shall be used as the reference point for measuring oceanfront setbacks. This line represents the boundary between the normal dry-sand beach, which is subject to constant flux due to waves, tides, storms and wind, and the more stable upland areas. The vegetation line is generally located at or immediately oceanward of the seaward toe of the frontal dune or erosion escarpment. The Division of Coastal Management or Local Permit Officer shall determine the location of the stable and natural vegetation line based on visual observations of plant composition and density. If the vegetation has been planted, it may be considered stable when the majority of the plant stems are from continuous rhizomes rather than planted individual rooted sets. Planted vegetation may be considered natural when the majority of the plants are mature and additional species native to the region have been recruited, providing stem and rhizome densities that are similar to adjacent areas that are naturally occurring. In areas where there is no stable and natural vegetation present, this line may be established by interpolation between the nearest adjacent stable natural vegetation by on-ground observations or by aerial photographic interpretation.

(6) Pre-project Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the vegetation line that existed within one year prior to the onset of project construction shall be defined as the "pre-project vegetation line". The "onset of project construction" shall be defined as the date sediment placement begins, with the exception of projects completed prior to the original effective date of this Rule, in which case the award of the contract date will be considered the onset of construction. A pre-project vegetation line shall be established in coordination with the Division of Coastal Management using on-ground observation and survey or aerial imagery for all areas of oceanfront that undergo a large-scale beach fill project. Once a pre-project vegetation line is established, and after the onset of project construction, this line shall be used as the reference point for measuring oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations where the vegetation line as defined in this Rule is landward of the pre-project vegetation line, the vegetation line shall be used as the reference point for measuring oceanfront setbacks. A pre-project vegetation line shall not be established where a pre-project vegetation line is already in place, including those established by the Division of Coastal Management prior to the effective date of this Rule. A record of all pre-project vegetation lines, including those established by the Division of Coastal Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal Management for determining development standards as set forth in Rule .0306 of this Section. Because the impact of Hurricane Floyd in September 1999 caused significant portions of the vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated landward of its pre-storm position, the pre-project line for areas landward of the beach fill construction in the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000, shall be defined by the general trend of the vegetation line established by the Division of Coastal Management from June 1998 aerial orthophotography.

(7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment used solely to establish or strengthen dunes shall not be considered a beach fill project under this Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of Engineers.

(8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm tide erosion.

(9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of this Section is measured in the unvegetated beach area of environmental concern as described in Rule .0304(3) of this Section. In areas designated pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a measurement line by:

(a) determining the average distance the pre-storm vegetation line receded at the closest vegetated site adjacent to the area designated by the Commission as the unvegetated beach AEC; and

(b) mapping a line equal to the average recession determination in Part (a) of this Subparagraph, measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;
Temporary Amendment Eff. October 10, 1996;
Amended Eff. January 1, 1997;
Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;
Temporary Amendment Eff. October 22, 1997;
Amended Eff. April 1, 2020; April 1, 2016; April 1, 2008; August 1, 2002; August 1, 1998;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022.

15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS

(a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is applicable:

(1) The ocean hazard setback for development shall be measured in a landward direction from the vegetation line, the pre-project vegetation line, or the measurement line, whichever is applicable.

(2) The ocean hazard setback shall be determined by both the size of development and the shoreline long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by total floor area for structures and buildings or total area of footprint for development other than structures and buildings. Total floor area includes the following:

(A) The total square footage of heated or air-conditioned living space;

(B) The total square footage of parking elevated above ground level; and

(C) The total square footage of non-heated or non-air-conditioned areas elevated above ground level, excluding attic space that is not designed to be load-bearing.

Decks, roof-covered porches, and walkways shall not be included in the total floor area unless they are enclosed with material other than screen mesh or are being converted into an enclosed space with material other than screen mesh.

(3) With the exception of those types of development defined in 15A NCAC 07H .0309(a), no development, including any portion of a building or structure, shall extend oceanward of the ocean hazard setback. This includes roof overhangs and elevated structural components that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The ocean hazard setback shall be established based on the following criteria:

(A) A building or other structure less than 5,000 square feet requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;

(D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;

(E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;

(F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;

(G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;

(H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;

(I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;

(J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;

(K) Notwithstanding any other setback requirement of this Subparagraph, construction of a new building or other structure greater than or equal to 5,000 square feet in a community with an unexpired static line exception or Beach Management Plan approved by the Commission in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the vegetation line or measurement line, whichever is farthest landward; and

(L) Notwithstanding any other setback requirement of this Subparagraph, replacement of a structure with a total floor area no greater than 10,000 square feet shall be allowed provided that the structure meets the following criteria:

(i) the structure is in a community with an unexpired static line exception, Beach Management Plan approved by the Commission, or was originally constructed prior to August 11, 2009;

(ii) the structure as replaced does not exceed the original footprint or square footage;

(iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;

(iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater; and

(v) the structure is rebuilt as far landward on the lot as feasible.

(4) If a primary dune exists in the AEC, on or landward of the lot where the development is proposed, the development shall be landward of the applicable ocean hazard setback and the crest of the primary dune. For existing lots where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, and shall not be located on or oceanward of a frontal dune. For the purposes of this Rule, "existing lots" shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.

(5) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune or ocean hazard setback, whichever is farthest from the vegetation line, pre-project vegetation line, or measurement line, whichever is applicable.

(6) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically but not be structurally attached to an existing structure that does not conform with current setback requirements.

(7) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted, nor shall such development increase the risk of damage to public trust areas. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.

(8) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the pre-project vegetation line as defined in this Section, unless an unexpired static line exception or Beach Management Plan approved by the

Commission has been approved for the local jurisdiction by the Coastal Resources Commission in accordance with 15A NCAC 07J .1200.

(9) A local government, group of local governments involved in a regional beach fill project, or qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources Commission for approval of a "Beach Management Plan" in accordance with 15A NCAC 07J .1200. If the request for a Beach Management Plan is approved, the Coastal Resources Commission shall allow development setbacks to be measured from a vegetation line that is oceanward of the pre-project vegetation line under the following conditions:

(A) Development meets all setback requirements from the vegetation line defined in Subparagraphs (a)(1) and (a)(3) of this Rule;

(B) Development setbacks shall be calculated from the shoreline erosion rate in place at the time of permit issuance;

(C) No portion of a building or structure, including roof overhangs and elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, extends oceanward of the landward-most adjacent habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks, if applicable. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent buildings or structures exist, or the configuration of a lot, street, or shoreline precludes the placement of a building or structure in line with the landward-most adjacent building or structure, an average line of construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure must meet the applicable setback from the Vegetation Line and will not be held to the landward-most adjacent structure or an average line of structures.

(D) With the exception of swimming pools, the exceptions defined in Rule .0309(a) of this Section shall be allowed oceanward of the pre-project vegetation line.

(b) Development shall not cause irreversible damage to historic architectural or archaeological resources as documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or the National Historical Registry.

(c) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks existing as of June 1, 1979.

(d) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These measures shall be implemented at the applicant's expense and may include actions that:

(1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

(2) restore the affected environment; or

(3) compensate for the adverse impacts by replacing or providing substitute resources.

(e) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks associated with development in this hazardous area and the limited suitability of this area for permanent structures. The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the development and assumes no liability for future damage to the development.

(f) The relocation or elevation of structures shall require permit approval.

(1) Structures relocated landward with public funds shall comply with the applicable ocean hazard setbacks and other applicable AEC rules.

(2) Structures relocated landward entirely with non-public funds that do not meet current applicable ocean hazard setbacks may be relocated the maximum feasible distance landward of its present location. Septic tanks shall not be relocated oceanward of the primary structure.

(3) Existing structures shall not be elevated if any portion of the structure is located seaward of the vegetation line.

(g) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any

such structure shall be relocated or dismantled within eight years of the time when it becomes imminently threatened, and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place within eight years of the time the structure becomes imminently threatened, so that the structure is no longer imminently threatened, then it need not be relocated or dismantled. This permit condition shall not affect the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC 07H .0308(a)(2).

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;
RRC Objection due to ambiguity Eff. January 24, 1992;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity Eff. May 21, 1992;
Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;
RRC Objection due to ambiguity Eff. May 18, 1995;
Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;
Temporary Amendment Eff. January 3, 2013;
Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022; December 1, 2021.

15A NCAC 07H .0307 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d;*
Eff. September 9, 1977;
Amended Eff. January 24, 1978;
Repealed Eff. September 15, 1979.

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 State or federal 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 vegetation line 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 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;

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

(b) 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. 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.

(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) Except in the case of beach matting for a local, State, or federal government's public access, 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 for a local, State, or federal government's public access 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 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 First Line of Stable and Natural Vegetation 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;
Amended Eff. August 1, 2022; December 1, 2021.

15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS

(a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

(1) campsites;
(2) driveways and parking areas with clay, packed sand, or gravel;
(3) elevated decks not exceeding a footprint of 500 square feet. Existing decks exceeding a footprint of 500 square feet may be replaced with no enlargement beyond their original dimensions;
(4) beach accessways consistent with Rule .0308(c) of this Section;
(5) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;
(6) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed sand or gravel, and a footprint of 200 square feet or less;
(7) temporary amusement stands consistent with Section .1900 of this Subchapter;
(8) sand fences;
(9) swimming pools; and
(10) fill not associated with dune creation that is obtained from an upland source and is of the same general characteristics as the sand in the area in which it is to be placed.

In all cases, this development shall be permitted only if it is landward of the vegetation line or pre-project vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the integrity of the dune as a protective landform or the dune vegetation; is not essential to the continued existence or use of an associated principal development; and meets all other non-setback requirements of this Subchapter.

(b) Where application of the oceanfront setback requirements of Rule .0306(a) of this Section would preclude placement of a structure on a lot existing as of June 1, 1979, the structure shall be permitted seaward of the applicable setback line in Ocean Erodible Areas, State Ports Inlet Management Areas, and Inlet Hazard Areas, but not Unvegetated Beach Areas if each of the following conditions are met:

(1) The development is set back from the ocean the maximum feasible distance possible on the existing lot and the development is designed to minimize encroachment into the setback area;

(2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project vegetation line, whichever is applicable;

(3) The development is not located on or oceanward of a frontal dune, but is entirely behind the landward toe of the frontal dune;

(4) The development incorporates each of the following design standards, which are in addition to those required by Rule .0308(d) of this Section;

(A) All pilings shall have a tip penetration that extends to at least four feet below mean sea level;

(B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;

(C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases, other material may be used; and

(D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most habitable building or structure. The alignment shall be measured from the most oceanward point of the adjacent building or structure's roof line, including roofed decks. An "adjacent" property is one that shares a boundary line with the site of the proposed development. When no adjacent building or structure exists, or the geometry or orientation of a lot or shoreline precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Director of the Division of Coastal Management based on an approximation of the average seaward-most positions of the rooflines of adjacent structures along the same shoreline, extending 500 feet in either direction. If no structures exist within this distance, the proposed structure shall meet the applicable setback from the Vegetation Line but shall not be held to the landward-most adjacent structure or an average line of structures. The ocean hazard setback shall extend landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.

(5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.

(c) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

(1) piers providing public access; and

(2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to such bridges.

(d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

(1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;

(2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;

(3) The pier house shall be limited to a maximum of two stories;

(4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;

(5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;

(6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and

(7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

(e) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted in the Ocean Hazard Area along those portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 15A NCAC 07K .0203.

(f) Transmission lines necessary to transmit electricity from an offshore energy-producing facility may be permitted provided that each of the following conditions is met:

(1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and

(2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

(g) Existing stormwater outfalls as of the last amended date of this rule within the Ocean Hazard AEC that are owned or maintained by a State agency or local government, may be extended oceanward subject to the provisions contained within 15A NCAC 07J .0200. Outfalls may be extended below mean low water and may be maintained in accordance with 15A NCAC 07K .0103. Shortening or lengthening of outfall structures within the authorized dimensions, in response to changes in beach width, is considered maintenance under 15A NCAC 07K .0103. Outfall extensions may be marked with signage and shall not prevent pedestrian or vehicular access along the beach. This Paragraph does not apply to existing stormwater outfalls that are not owned or maintained by a State agency or local government.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;*
Eff. February 2, 1981;
Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January 1, 1991; April 1, 1987;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022.

15A NCAC 07H .0310 USE STANDARDS FOR INLET HAZARD AREAS

(a) Inlet Hazard Areas of Environmental Concern as defined by Rule .0304 of this Section are subject to inlet migration, rapid and severe changes in watercourses, flooding and strong tides. Due to the extremely hazardous nature of the Inlet Hazard Areas, all development within these areas shall be permitted in accordance with the following standards:

(1) All development in the inlet hazard area shall be set back from the vegetation line a distance equal to the setback required in the adjacent ocean hazard area;

(2) Permanent structures shall be permitted at a density of no more than one commercial or residential unit per 15,000 square feet of land area on lots subdivided or created after July 23, 1981;

(3) Only residential structures of four units or less or non-residential structures of less than 5,000 square feet total floor area shall be allowed within the inlet hazard area, except that access roads to those areas and maintenance and replacement of existing bridges shall be allowed;

(4) Established common-law and statutory public rights of access to the public trust lands and waters in Inlet Hazard Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways; and

(5) All other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the Inlet Hazard Areas.

(b) The inlet hazard area setback requirements shall not apply to the types of development exempted from the ocean setback rules in 15A NCAC 07H .0309(a), or to the types of development listed in 15A NCAC 07H .0309(c).

(c) In addition to the types of development excepted under Rule .0309 of this Section, small scale development that does not induce further growth in the Inlet Hazard Area, such as the construction of single-family piers and small scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated Inlet Hazard Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200, and 07K .0203.

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-124;*
Eff. December 1, 1981;
Emergency Rule Eff. September 11, 1981, for a period of 120 days to expire on January 8, 1982;
Temporary Amendment Eff. October 30, 1981, for a period of 70 days to expire on January 8, 1982;
Amended Eff. April 1, 1999; April 1, 1996; December 1, 1992; December 1, 1991; March 1, 1988;
Readopted Eff. December 1, 2020;
Amended Eff. August 1, 2022.

15A NCAC 07H .0311 INSTALLATION AND MAINTENANCE OF SAND FENCING

(a) Sand fencing may only be installed for the purpose of building sand dunes by trapping windblown sand, for the protection of the dune(s) and vegetation (planted or existing).
(b) Sand fencing shall not impede existing public access to the beach, recreational use of the beach, or emergency vehicle access. Sand fencing shall not be installed in a manner that impedes or restricts established common law and statutory rights of public access and use of public trust lands and waters.
(c) Sand fencing shall not be installed in a manner that impedes, traps or otherwise endangers sea turtles, sea turtle nests or sea turtle hatchlings. CAMA permit applications for sand fencing shall be subject to review by the Wildlife Resources Commission and the U.S. Fish and Wildlife Service in order to determine whether or not the proposed design or installation will have an adverse impact on sea turtles or other threatened or endangered species.
(d) Non-functioning, damaged, or unsecured sand fencing shall be removed by the property owner.
(e) Sand fencing shall not be placed on the wet sand beach area.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6);*
Eff. August 1, 2002;
Readopted Eff. December 1, 2020.

15A NCAC 07H .0312 TECHNICAL STANDARDS FOR BEACH FILL PROJECTS

Placement of sediment along the oceanfront shoreline is referred to in this Rule as "beach fill." Sediment used solely to establish or strengthen dunes shall conform to the standards contained in 15A NCAC 07H .0308(b). Sediment used to re-establish state-maintained transportation corridors across a barrier island breach in a disaster area as declared by the Governor is not considered a beach fill project under this Rule. Beach fill projects including beach nourishment, dredged material disposal, habitat restoration, storm protection, and erosion control may be permitted under the following conditions:

(1) The applicant shall characterize the recipient beach according to the following methodology. Initial characterizations of the recipient beach shall serve as the baseline for subsequent beach fill projects:
    (a) Characterization of the recipient beach is not required for the placement of sediment directly from and completely confined to a cape shoal system, or maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system. For purposes of this Rule, "cape shoal systems" include Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras;
    (b) Sediment sampling and analysis shall be used to capture the spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system;
    (c) Shore-perpendicular transects shall be established for topographic and bathymetric surveying of the recipient beach. Topographic and bathymetric surveying shall occur along a minimum of five shore-perpendicular transects evenly spaced throughout the

entire project area with spacing not to exceed 5,000 feet (1,524 meters) in the shore-parallel direction. Each transect shall extend from the frontal dune crest seaward to a depth of 20 feet (6.1 meters) or to the shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. Elevation data for all transects shall be compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. These Rules are hereby incorporated by reference, including subsequent amendments;

(d) Along each transect, at least one sample shall be taken from each of the following morphodynamic zones where present: frontal dune, frontal dune toe, mid berm, mean high water (MHW), mid tide (MT), mean low water (MLW), trough, bar crest and at even depth increments from 6 feet (1.8 meters) to 20 feet (6.1 meters) or to a shore-perpendicular distance 2,400 feet (732 meters) seaward of mean low water, whichever is in a more landward position. The total number of samples taken landward of MLW shall equal the total number of samples taken seaward of MLW;

(e) For the purpose of this Rule, "sediment grain size categories" are defined as "fine" (less than 0.0625 millimeters), "sand" (greater than or equal to 0.0625 millimeters and less than 2 millimeters), "granular" (greater than or equal to 2 millimeters and less than 4.76 millimeters) and "gravel" (greater than or equal to 4.76 millimeters and less than 76 millimeters). Each sediment sample shall report percentage by weight of each of these four grain size categories;

(f) A composite of the simple arithmetic mean for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule shall be calculated for each transect. A grand mean shall be established for each of the four grain size categories by summing the mean for each transect and dividing by the total number of transects. The value that characterizes grain size values for the recipient beach is the grand mean of percentage by weight for each grain size category defined in Sub-Item (1)(e) of this Rule;

(g) Percentage by weight calcium carbonate shall be calculated from a composite of all sediment samples. The value that characterizes the carbonate content of the recipient beach is a grand mean calculated by summing the average percentage by weight calcium carbonate for each transect and dividing by the total number of transects;

(h) The number of sediments greater than or equal to one inch (25.4 millimeters) in diameter, and shell material greater than or equal to three inches (76 millimeters) in diameter shall be differentiated and calculated through visual observation of an area of 10,000 square feet centered on each transect, and between mean tide level (MTL) and the frontal dune toe within the beach fill project boundaries. A simple arithmetic mean shall be calculated for both sediments and shell by summing the totals for each across all transects and dividing by the total number of transects, and these values shall be considered representative of the entire project area, and referred to as the "background" values for large sediment and large shell material;

(i) Beaches that received sediment prior to the effective date of this Rule shall be characterized in a way that is consistent with Sub-Items (1)(a) through (1)(h) of this Rule and may use data collected from the recipient beach prior to the addition of beach fill where data are available, and in coordination with the Division of Coastal Management; and

(j) All data used to characterize the recipient beach shall be provided in digital and hardcopy format to the Division of Coastal Management upon request.

(2) Characterization of borrow areas is not required if completely confined to a cape shoal system. For the purposes of this Rule, "cape shoal systems" include the Frying Pan Shoals at Cape Fear, Lookout Shoals at Cape Lookout, and Diamond Shoals at Cape Hatteras. The applicant shall characterize the sediment to be placed on the recipient beach according to the following methodology:

(a) The characterization of borrow areas including submarine sites, upland sites, and dredged material disposal areas shall be designed to capture the spatial variability of the sediment characteristics including grain size, sorting and mineralogy within the natural system or dredged material disposal area;

(b) The characterization of borrow sites may include historical sediment characterization data where available and collected using methods consistent with Sub-Items (2)(c) through (2)(g) of this Rule, and in coordination with the Division of Coastal Management.

(c) Seafloor surveys shall measure elevation and capture acoustic imagery of the seafloor. Measurement of seafloor elevation shall cover 100 percent, or the maximum extent practicable as determined in consultation with the Division of Coastal Management, of each submarine borrow site and use survey-grade swath sonar (e.g. multibeam or similar technologies). Seafloor imaging without an elevation component (e.g. sidescan sonar or similar technologies) shall also cover 100 percent, or the maximum extent practicable, of each site. Because shallow submarine areas can provide technical challenges and physical limitations for acoustic measurements, seafloor imaging without an elevation component may not be required for water depths less than 10 feet (3 meters). Alternative elevation surveying methods for water depths less than 10 feet (3 meters) may be evaluated on a case-by-case basis by the Division of Coastal Management. Elevation data shall be tide- and motion-corrected and compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. Seafloor imaging data without an elevation component shall also be compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600. For offshore dredged material disposal sites, only one set of imagery without elevation is required. Sonar imaging of the seafloor without elevation is also not required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system;

(d) Geophysical imaging of the seafloor subsurface shall be used to characterize each borrow site. Because shallow submarine areas can pose technical challenges and physical limitations for geophysical techniques, subsurface data may not be required in water depths less than 10 feet (3 meters), and the Division of Coastal Management shall evaluate these areas on a case-by-case basis. Subsurface geophysical imaging shall not be required for borrow sites completely confined to maintained navigation channels, and for sediment deposition basins within the active nearshore, beach or inlet shoal system, or upland sites. All final subsurface geophysical data shall use accurate sediment velocity models for time-depth conversions and be compliant with Standards of Practice for Land Surveying in North Carolina pursuant to 21 NCAC 56 .1600;

(e) With the exception of upland borrow sites, sediment sampling of all borrow sites shall use a vertical sampling device no less than 3 inches (76 millimeters) in diameter. Characterization of each borrow site shall use no fewer than five evenly spaced cores or one core per 23 acres (grid spacing of 1,000 feet or 305 meters), whichever is greater. Characterization of borrow sites completely confined to maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system shall use no fewer than five evenly spaced vertical samples per channel or sediment basin, or sample spacing of no more than 5,000 linear feet (1,524 meters), whichever is greater. Two sets of sampling data (with at least one dredging event in between) from maintained navigation channels or sediment deposition basins within the active nearshore, beach or inlet shoal system, or offshore dredged material disposal site (ODMDS) may be used to characterize material for subsequent nourishment events from those areas if the sampling results are found to be compatible with Sub-Item (3)(a) of this Rule. Vertical sampling shall penetrate to a depth equal to or greater than permitted dredge or excavation depth or expected dredge or excavation depths for pending permit applications. Because shallow submarine areas completely confined to a maintained navigation channel or associated sediment basins within the active nearshore, beach or inlet shoal system can pose technical challenges and physical limitations for vertical sampling techniques, geophysical data of and below the seafloor may not be required in water depths less than 10 feet (3 meters), and shall be evaluated by the Division of Coastal Management on a case-by-case basis;

(f) Grain size distributions shall be reported for all sub-samples taken within each vertical sample for each of the four grain size categories defined in Sub-Item (1)(e) of this Rule. Weighted averages for each core shall be calculated based on the total number of samples

and the thickness of each sampled interval. A simple arithmetic mean of the weighted averages for each grain size category shall be calculated to represent the average grain size values for each borrow site. Vertical samples shall be geo-referenced and digitally imaged using scaled, color-calibrated photography;

(g) Percentage by weight of calcium carbonate shall be calculated from a composite sample of each core. A weighted average of calcium carbonate percentage by weight shall be calculated for each borrow site based on the composite sample thickness of each core. Carbonate analysis is not required for sediment confined to maintained navigation channels or associated sediment deposition basins within the active nearshore, beach or inlet shoal system; and

(h) All data used to characterize the borrow site shall be provided in digital and hardcopy format to the Division of Coastal Management.

(3) Compliance with these sediment standards shall be certified by an individual licensed pursuant to Chapter 89C or 89E of the N.C. General Statutes. Sediment compatibility shall be determined according to the following criteria:

(a) Sediment completely confined to the permitted dredge depth of a maintained navigation channel or associated sediment deposition basins within the active nearshore, beach or inlet shoal system shall be considered compatible if the average percentage by weight of fine-grained (less than 0.0625 millimeters) sediment is less than 10 percent;

(b) The average percentage by weight of fine-grained sediment (less than 0.0625 millimeters) in each borrow site shall not exceed the average percentage by weight of fine-grained sediment of the recipient beach characterization plus five percent;

(c) The average percentage by weight of granular sediment (greater than or equal to 2 millimeters and less than 4.76 millimeters) in a borrow site shall not exceed the average percentage by weight of coarse-sand sediment of the recipient beach characterization plus 10 percent;

(d) The average percentage by weight of gravel (greater than or equal to 4.76 millimeters and less than 76 millimeters) in a borrow site shall not exceed the average percentage by weight of gravel-sized sediment for the recipient beach characterization plus five percent;

(e) The average percentage by weight of calcium carbonate in a borrow site shall not exceed the average percentage by weight of calcium carbonate of the recipient beach characterization plus 15 percent; and

(f) Techniques that take incompatible sediment within a borrow site or combination of sites and make it compatible with that of the recipient beach characterization shall be evaluated on a case-by-case basis by the Division of Coastal Management.

(4) Excavation and placement of sediment shall conform to the following criteria:

(a) In order to protect threatened and endangered species, and to minimize impacts to fish, shellfish and wildlife resources, no excavation or placement of sediment shall occur within the project area during any seasonal environmental moratoria designated by the Division of Coastal Management in consultation with other State and Federal agencies, unless specifically approved by the Division of Coastal Management in consultation with other State and Federal agencies. The time limitations shall be established during the permitting process and shall be made known prior to permit issuance; and

(b) The total sediments with a diameter greater than or equal to one inch (25.4 millimeters), and shell material with a diameter greater than or equal to three inches (76 millimeters) is considered incompatible if it has been placed on the beach during the beach fill project, is observed between MTL and the frontal dune toe, and is in excess of twice the background value of material of the same size along any 10,000 square feet section of beach within the beach fill project boundaries. In the event that more than twice the background value of incompatible material is placed on the beach, it shall be the permittee's responsibility to remove the incompatible material in coordination with the Division of Coastal Management and other State and Federal resource agencies.

History Note: *Authority G.S. 113-229; 113A-102(b)(1); 113A-103(5)(a); 113A-107(a); 113A-113(b)(5); 113A-113(b)(6); 113A-118; 113A-124;*
Eff. February 1, 2007;

Amended Eff. August 1, 2014; September 1, 2013; April 1, 2008;
Readopted December 1, 2020;
Amended Eff. September 1, 2021.

15A NCAC 07H .0313 USE STANDARDS FOR STATE PORTS INLET MANAGEMENT AREAS

(a) Development within State Ports Inlet Management Areas are defined by Rule .0304 of this Section in accordance with the standards in this Rule.

(b) All development in the State Ports Inlet Management Areas shall be set back from the first line of stable and natural vegetation, static vegetation line, or measurement line at a distance in accordance with Rule .0305(a)(5) of this Section, except for development exempted under Rule .0309 of this Section.

(c) Notwithstanding the use standards for temporary erosion control structures described in Rule .0308(a)(2) of this Section, a local government or State government agencies may apply for a permit to seek protection of an imminently threatened frontal or primary dune, public and private structures and infrastructure within a State Ports Inlet Management Area. For the purpose of this Rule, a frontal or primary dune, structure, or infrastructure shall be considered imminently threatened in a State Ports Inlet Management Area if:

(1) its foundation, septic system, right-of-way in the case of roads, or waterward toe of the dune is less than 20 feet away from the erosion scarp;

(2) site conditions, such as flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure as determined by the Director of the Division of Coastal Management;

(3) the frontal or primary dune or infrastructure will be imminently threatened within six months as certified by persons meeting all applicable State occupational licensing requirements; or

(4) the rate of erosion from the erosion scarp or shoreline within 100 feet of the infrastructure, structure, frontal or primary dune was greater than 20 feet over the preceding 30 days.

Permit applications to protect property where no structures are imminently threatened require consultation with the US Army Corps of Engineers.

(d) Temporary erosion control structures constructed by a local or state government shall have a base width not exceeding 20 feet, and a height not to exceed six feet. Individual sandbags shall be tan in color and be a minimum of three feet wide and seven feet in length when measured flat.

(e) Established common-law and statutory public rights of access to the public trust lands and waters in State Ports Inlet Management Areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.

(f) Except where inconsistent with the above standards, all other rules in this Subchapter pertaining to development in the ocean hazard areas shall be applied to development within the State Ports Inlet Management Areas.

(g) In addition to the types of development excepted under Rule .0309 of this Section, small-scale, non-essential development that does not induce further growth in the State Ports Inlet Management Areas, such as the construction of single-family piers and small-scale erosion control measures that do not interfere with natural inlet movement, may be permitted on those portions of shoreline within a designated State Ports Inlet Management Area that exhibit features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small-scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100 and .1200.

History Note: *Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*
Eff. April 1, 2020.

SECTION .0400 - PUBLIC WATER SUPPLIES

15A NCAC 07H .0401 PUBLIC WATER SUPPLY CATEGORIES

Public water supply AECs include the following categories: valuable small surface water supply watersheds and public water supply well fields.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*
Eff. September 9, 1977;
Readopted Eff. June 1, 2021.

15A NCAC 07H .0402 SIGNIFICANCE

(a) These vulnerable, critical water supplies, if degraded, could adversely affect public health or require substantial monetary outlays by affected communities for alternative water source development.
(b) Uncontrolled development within the designated boundaries of a watershed or well field site could cause significant changes in runoff patterns or water withdrawal rates that may adversely affect the quantity and quality of the raw water supply. Also, incompatible development could adversely affect water quality by introducing a wide variety of pollutants from homes, businesses, or industries, either through subsurface discharge, surface runoff, or seepage into the vulnerable water supply.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*
Eff. September 9, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07H .0403 MANAGEMENT OBJECTIVE FOR PUBLIC WATER SUPPLIES
The CRC objective in regulating development within critical water supply areas is the protection and preservation of public water supply well fields and A-II streams and to coordinate and establish a management system capable of maintaining public water supplies so as to perpetuate their values to the public health, safety, and welfare.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*
Eff. September 9, 1977;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07H .0404 AECS WITHIN PUBLIC WATER SUPPLIES

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*
Eff. September 9, 1977;
Amended Eff. May 1, 1990; November 1, 1984; January 24, 1978;
Repealed Eff. June 1, 2021.

15A NCAC 07H .0405 SMALL SURFACE WATER SUPPLY WATERSHEDS
(a) Description. Small surface water supply watersheds are catchment areas situated only within the coastal area which contain a water body classified as WS-III by the Environmental Management Commission. These bodies of water serve as supply for drinking, culinary, or food processing purposes.
(b) Use Standards. The CRC or local permitting officer shall approve a CAMA permit upon finding that the project is in accord with the following standards:
(1) Ground absorption sewage disposal systems shall be located a minimum of 100 feet from WS-III surface waters.
(2) A national pollution discharge elimination system (NPDES) permit shall be secured if required.
(3) Land-disturbing activities including land clearing, grading, and surfacing shall be in compliance with the mandatory standards of G.S. 113A-57.
(c) Designated Small Surface Water Supply Watersheds AECs shall follow the standards set forth in this Paragraph. The Fresh Pond located between Kill Devil Hills and Nags Head on Bodie Island and adjacent catchment area.
(1) The lake is approximately one-quarter mile west of the U.S. 158 bypass.
(2) To protect the water quality of Fresh Pond, the construction of septic tanks and other sources of pollution shall be regulated as follows:
(A) Within 500 feet, horizontal distance of the edge of the pond, no construction of sewers, septic tanks nitrification fields or other possible sources of pollution shall be permitted.
(B) Between the distances of 500 feet and 1200 feet from the edge of the pond, construction of septic tank systems shall be limited to one single septic tank system serving a single family residence not to exceed four bedrooms or its equivalent volume of sewage, on a lot or tract of land not less than 40,000 square feet.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*
Eff. September 9, 1977;
Amended Eff. May 1, 1990; September 1, 1988; November 1, 1984; February 18, 1980;

Readopted Eff. June 1, 2021.

15A NCAC 07H .0406 PUBLIC WATER SUPPLY WELL FIELDS

(a) Description. Public water supply well fields are areas of well-drained sands that extend downward from the surface into the shallow ground water table that supplies the public with potable water. These surficial well fields are confined to a definable geographic area identified by the North Carolina Department of Environmental Quality and can be found at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=26f4e2b3140f4e58825e48781ccebf5e.

(b) Use Standards. Development within these AECs shall be consistent with the following standards:

(1) No ground absorption sewage disposal or subsurface pollution injection systems shall be placed within the designated AEC boundary except to replace systems existing as of July 24, 1987;

(2) Development shall not limit the quality or quantity of the public water supply or the amount of rechargeable water;

(3) The development shall not cause salt water intrusion or result in the discharge of contaminants, as defined in 15A NCAC 02L .0202, into standing or groundwater; and

(4) Groundwater absorption sewage treatment systems may also be used within the AEC boundary if the following provisions are met:

(A) the system is serving development on a lot that was platted as of July 24, 1987;

(B) there is no other viable method of waste treatment for the permittable development of such lot;

(C) there is no space outside the boundaries of the AEC on the lot upon which the treatment system could be located; and

(D) the Environmental Health Section of the North Carolina Department of Health and Human Services, prior to the permit decision by the Division of Coastal Management under G.S. 113A-118, 113A-119, and 113A-120, reviews and approves the proposed system as complying with existing rules.

(c) Designated public water supply well field. The CRC has designated Cape Hatteras Well Field as a public water supply well field which shall be subject to the use standards as set out in Paragraph (b) of this Rule. The County of Dare is supplied with raw water from a well field located south of N.C. 12 on Hatteras Island between Frisco and Buxton. The area of environmental concern is bounded by a line located 1,000 feet from the centerlines of three tracts. The first tract is identified as "well field" on maps entitled "Cape Hatteras Wellfield Area of Environmental Concern" approved by the Coastal Resources Commission on July 24, 1987, and extends approximately 12,000 feet west from Water Association Road. The second tract is conterminous with the first tract, is identified as "future well field" on said maps and extends approximately 8,000 feet to the east of Water Association Road. The third tract is identified as "future well field" on said maps and extends approximately 6,200 feet along the National Park Service boundary east of Water Association Road. A map of the Cape Hatteras Well Field AEC is available from the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a.; 113A-124; 113A-124(c)(8);*
Eff. September 9, 1977;
Amended Eff. December 1, 1997; April 1, 1995; May 1, 1990; October 1, 1987;
November 1, 1984;
Readopted Eff. June 1, 2021.

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

15A NCAC 07H .0501 GENERAL

The fourth and final group of AECs is gathered under the heading of fragile coastal natural and cultural resource areas and is defined as areas containing environmental, natural or cultural resources of more than local significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4e) to (b)(4g);*
113A-124;
Eff. September 9, 1977;
Amended Eff. June 1, 1979;

RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0502 SIGNIFICANCE

(a) Fragile coastal natural resource areas are generally recognized to be of educational, scientific, or cultural value because of the natural features of the particular site. These features in the coastal area serve to distinguish the area designated from the vast majority of coastal landscape and therein establish its value. Such areas may be key components of systems unique to the coast which act to maintain the integrity of that system.

(b) Areas that contain outstanding examples of coastal processes or habitat areas of significance to the scientific or educational communities are a second type of fragile coastal natural resource area. These areas are essentially self-contained units or "closed systems" minimally dependent upon adjoining areas.

(c) Finally, fragile areas may be particularly important to a locale either in an aesthetic or cultural sense.

(d) Fragile coastal cultural resource areas are generally recognized to be of educational, associative, scientific, aesthetic, or cultural value because of their special importance to our understanding of past human settlement of and interaction with the coastal zone. Their importance serves to distinguish the designated areas as significant among the historic architectural or archaeological remains in the coastal zone, and therein established their value.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4g); 113A-124;*
Eff. September 9, 1977;
Amended Eff. June 1, 1979;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0503 NOMINATION AND DESIGNATION PROCEDURES

(a) Special Designation Process. The nomination and designation of a coastal complex natural area, a unique coastal geologic formation, a coastal area that sustains remnant species, a significant coastal archaeological resource, or a significant coastal historic architectural resource area of environmental concern shall follow the procedures set forth in this Rule and in GS 113A-115.

(b) Nomination. An area may be nominated by any person or group at any time for Coastal Resources Commission (CRC) consideration. Nominations may, for example, be made by citizens, interest groups, local governments, or state and federal agencies. Nominations shall be on a standard form and shall be submitted to the Division of Coastal Management (DCM). The nomination shall include information relating to the location, size, importance, ownership, and uniqueness of the proposed site. Nomination forms are available from the Division of Coastal Management.

(c) Preliminary Evaluation. After receipt of a nomination, the Division of Coastal Management shall conduct a preliminary evaluation of the proposed site. The land owner, local government, and CRC and CRAC members in whose jurisdiction the site is located shall be informed of the proposed nomination. Representatives of these groups shall meet to discuss the proposed nomination and shall complete a preliminary evaluation within 60 days after receipt of the nomination. Various protection methods shall be examined to determine if AEC designation is appropriate.

(d) CRC Endorsement. A report on the preliminary evaluation shall be presented to the CRC so that it may determine whether to endorse the evaluations and proceed with a more detailed analysis of the site. This report shall be made at the first CRC meeting after the preliminary evaluation is completed. All parties involved in the nomination and preliminary evaluation shall be informed, in writing, of the Commission's decision to proceed or not to proceed with a detailed review of the site in question. For sites that do not receive CRC endorsement for detailed review, recommendations for some other form of protection may be discussed with the landowner. Other forms of protection include, registry with the North Carolina Natural Heritage Program, conservation easement to a public agency or to a local conservation foundation, donation or acquisition of title, or other strategies.

(e) Detailed Review. A detailed review of the proposed site shall be initiated under DCM supervision after CRC endorsement. This shall include the development of a management plan, if applicable, or site specific use standards. Opportunity shall be given to local government officials, interest groups, and those with scientific expertise to comment on the specific biological/physical or cultural values of the site together with appropriate management strategies to safeguard the values identified. This review shall be completed within 90 days, starting from the date of the official CRC endorsement. At the conclusion of this review, the report on the detailed review shall be presented to the CRC for their consideration.

(f) Public Hearing. If, after receiving the detailed review, the CRC decides to consider formal designation of the site as an AEC and adopt the particular management plan or use standards developed, a public hearing or hearings shall be conducted and notice of hearing published and distributed in accordance with the requirements of G.S. 113A-115 and G.S. 150B-21.2. Copies of the site description and of any proposed rules shall be made available for public inspection at the county courthouse in each affected county and at the Morehead City Office of the Division of Coastal Management. At the hearing(s) the CRC shall present the documentation and recommendations in support of the designation decision.
(g) Formal Designation. After consideration of all comments, the Commission shall make its final judgment. If the site is designated as an AEC, the CRC shall also adopt a management strategy or use standards applicable to the AEC.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e,f,g, and h; 113A-124;*
Eff. September 9, 1977;
Amended Eff. June 1, 2005; May 1, 1988; May 1, 1985; February 1, 1982; June 1, 1979;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0504 AECS WITHIN CATEGORY

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4) e., f., g., and h.; 113A-124;*
Eff. September 9, 1977;
Amended Eff. December 1, 1991; June 1, 1979;
RRC objection September 16, 2022 and rule returned to agency on December 7, 2022.

15A NCAC 07H .0505 COASTAL AREAS THAT SUSTAIN REMNANT SPECIES
(a) Description. Coastal areas that sustain remnant species are those areas that support native plants or animals determined to be rare or endangered (synonymous with threatened and endangered), within the coastal area. Such places provide habitats necessary for the survival of existing populations or communities of rare or endangered species within the coastal area. Determination will be made by the Commission based upon the listing adopted by the North Carolina Wildlife Resources Commission or the federal government listing; upon written reports or testimony of experts indicating that a species is rare or endangered within the coastal area; and upon consideration of written testimony of local government officials, interest groups, and private land owners.
(b) Significance. The continued survival of certain habitats that support native plants and animals in the coastal area is vital for the preservation of our natural heritage and for the protection of natural diversity which is related to biological stability. These habitats and the species they support provide a valuable educational and scientific resource that cannot be duplicated.
(c) Management Objective. To protect unique habitat conditions that are necessary to the continued survival of threatened and endangered native plants and animals and to minimize land use impacts that might jeopardize these conditions.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)f; 113A-124;*
Eff. September 9, 1977;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0506 COASTAL COMPLEX NATURAL AREAS
(a) Description. Coastal complex natural areas are defined as lands that support native plant and animal communities and provide habitat qualities which have remained essentially unchanged by human activity. Such areas may be either significant components of coastal systems or especially notable habitat areas of scientific, educational, or aesthetic value. They may be surrounded by landscape that has been modified but does not drastically alter conditions within the natural area. Such areas may have been altered by human activity and/or subject to limited future modifications, e.g. the placement of dredge spoil, if the CRC determines that the modifications benefit the plant or animal habitat or enhance the biological, scientific or educational values which will be protected by designation as an AEC.
(b) Significance. Coastal complex natural areas function as key biological components of natural systems, as important scientific and educational sites, or as valuable scenic or cultural resources. Often these natural areas

provide habitat suitable for threatened or endangered species or support plant and animal communities representative of pre-settlement conditions. These areas help provide a historical perspective to changing natural habitats in the coastal area and together are important and irreplaceable scientific and educational resources. The CRC may determine significance of a natural area by consulting the Natural Heritage Priority List maintained by the Natural Heritage Program within the Division of Parks and Recreation. The CRC will establish a standing committee, composed of two or more members of the CRC, one or more members of the CRAC, and three or more members of the Natural Area Advisory Committee, to evaluate areas not included in the Natural Heritage Priority List.

(c) Management Objectives. The management objectives of this Rule are to protect the features of a designated coastal complex natural area in order to safeguard its biological relationships, educational and scientific values, and aesthetic qualities. Specific objectives for each of these functions shall be related to the following policy statement either singly or in combination:

(1) To protect the natural conditions or the sites that function as key or unique components of coastal systems. The interactions of various life forms are the foremost concern and include sites that are necessary for the completion of life cycles, areas that function as links to other wildlife areas (wildlife corridors), and localities where the links between biological and physical environments are most fragile.

(2) To protect the identified scientific and educational values and to ensure that the site will be accessible for related study purposes.

(3) To protect the values of the designated coastal complex natural area as expressed by the local government and citizenry. These values should be related to the educational and aesthetic qualities of the feature.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e; 113A-24;*
Eff. September 9, 1977;
Amended Eff. October 1, 1988; February 1, 1982;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS

(a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are unique or otherwise significant components of coastal systems, or that are especially notable examples of geologic formations or processes in the coastal area. Such areas will be evaluated by the Commission after identification by the State Geologist.

(b) Significance. Unique coastal geologic areas are important educational, scientific, or scenic resources that would be jeopardized by uncontrolled or incompatible development.

(c) Management Objectives. The CRC's objective is to preserve unique resources of more than local significance that function as key physical components of natural systems, as important scientific and educational sites, or as valuable scenic resources. Specific objectives for each of these functions shall be related to the following policy statements either singly or in combination:

(1) To ensure that the designated geologic feature will be able to freely interact with other components of the identified systems. These interactions are often the natural forces acting to maintain the unique qualities of the site. The primary concern is the relationship between the geologic feature and the accompanying biological component associated with the feature. Other interactions which may be of equal concern are those relating the geologic feature to other physical components, specifically the relationship of the geologic feature to the hydrologic elements; ground water and surface runoff.

(2) To ensure that the designated geologic feature or process will be preserved for and be accessible to the scientific and educational communities for related study purposes.

(3) To protect the values of the designated geologic feature as expressed by the local government and citizenry. These values should be related to the educational and aesthetic qualities of the feature.

(d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted on a map approved by the Coastal Resources Commission on December 4, 1987, and on file with the Division of Coastal Management. This area includes the entire rights of way of US 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound this area. Jockey's Ridge is the tallest active sand

dune along the Atlantic Coast of the United States. Located within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, the Ridge represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia. Jockey's Ridge is an excellent example of a medano, a large isolated hill of sand, asymmetrical in shape and lacking vegetation. Jockey's Ridge is the largest medano in North Carolina and has been designated a National Natural Landmark by the U.S. Department of the Interior.

(e) Use Standards. Jockey's Ridge. Development within the Jockey's Ridge AEC shall be consistent with the following minimum use standards:

(1) Development which requires the removal of greater than ten cubic yards of sand per year from the area within the AEC boundary shall require a permit;

(2) All sand which is removed from the area within the AEC boundary in accordance with 7H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the Division of Parks and Recreation;

(3) Development activities shall not significantly alter or retard the free movement of sand except when necessary for the purpose of maintaining or constructing a road, residential/commercial structure, accessway, lawn/garden, or parking area.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;*
Eff. September 9, 1977;
Amended Eff. March 1, 1988;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0508 USE STANDARDS

Permits for development in designated fragile coastal natural or cultural resource areas will be approved upon finding that:

(1) The proposed design and location will cause no major or irreversible damage to the stated values of a particular resource. One or more of the following values must be considered depending upon the stated significance of the resource:

(a) Development shall preserve the values of the individual resource as it functions as a critical component of a natural system.

(b) Development shall not adversely affect the values of the resource as a unique scientific, associative, or educational resource.

(c) Development shall be consistent with the aesthetic values of a resource as identified by the local government and citizenry.

(2) No reasonable alternative sites are available outside the designated AEC.

(3) Reasonable mitigation measures have been considered and incorporated into the project plan. These measures shall include consultation with recognized authorities and with the CRC.

(4) The project will be of equal or greater public benefit than those benefits lost or damaged through development.

(5) Use standards will not address farming and forestry activities that are exempted in the definition of development (G.S. 113A-103(5)a.4).

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;*
Eff. September 9, 1977;
Amended Eff. February 1, 1982; June 1, 1979;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES

(a) Description. Significant coastal archaeological resources are defined as areas that contain archaeological remains (objects, features, and/or sites) that have more than local significance to history or prehistory. Such areas will be evaluated by the North Carolina Historical Commission in consultation with the Commission as part of the procedure set forth in Rule .0503 of this Section.

(b) Significance. Significant coastal archaeological resources are important educational, scientific, or aesthetic resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general,

significant archaeological resources possess integrity of location, design, setting, workmanship, materials, and association and:

(1) are associated with events that have made a significant contribution to the broad patterns of history; or

(2) are associated with the lives of persons significant in history; or

(3) embody the distinctive characteristics of a type, period, or method of construction, or represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) have yielded, or may be likely to yield, information important in history or prehistory.

(c) Management Objectives. The CRC's objective is to conserve coastal archaeological resources of more than local significance to history or prehistory that constitute important scientific sites, or are valuable educational, associative, or aesthetic resources. Specific objectives for each of these functions shall be related to the following policy statements either singly or in combination:

(1) to give the highest priority to the development of a preservation management plan to provide long-term, effective management of the archaeological resource; only that development which would have minimal adverse effects on the archaeological resource will be acceptable;

(2) to conserve significant archaeological resources, including their spatial and structural context and characteristics through in-situ preservation and/or scientific study;

(3) to insure that the designated archaeological resource, or the information contained therein, be preserved for and be accessible to the scientific and educational communities for related study purposes;

(4) to protect the values of the designated archaeological resource as expressed by the local government and citizenry; these values should be related to the educational, associative, or aesthetic qualities of the resource.

(d) General Use Standards.

(1) Significant concentrations of archaeological material, preferably reflecting a full range of human behavior, should be preserved in-situ for future research by avoidance during planned construction activities. Areas for avoidance should be selected only after sufficient archaeological investigations have been made. See Subparagraph (d)(2)(B) of this Rule to determine the nature, extent, conditions and relative significance of the cultural deposits. Three avoidance measures should be considered, preferably in combination:

(A) incorporation of "no impact" spaces in construction plans such as green spaces between lots;

(B) definition of restrictions limiting specific types of ground disturbing activities;

(C) donation of preservation easements to the state or, upon approval by the N.C. Division of Archives and History, a legitimate historic preservation agency or organization.

(2) Any activities which would damage or destroy the fragile contents of a designated site's surface or subsurface shall be expressly prohibited until an archaeological investigation and subsequent resource management plan has been implemented. Such investigation and management plan shall be developed in full consultation with the North Carolina Division of Archives and History. In this way, potentially damaging or destructive activities (e.g., construction, roads, sewer lines, land-scaping) may be managed both during initial phases of construction and after the development is completed. Such archaeological investigations shall comply with the following criteria:

(A) all archaeological work will be conducted by an experienced professional archaeologist;

(B) initial archaeological investigations conducted as part of the permit review process will be implemented in three parts: Phase I, a reconnaissance level investigation to determine the nature and extent of archaeological materials over the designated area; Phase II, an intensive level investigation which represents a direct outgrowth of Phase I findings and through systematic data recovery assesses the potential importance of identified concentrations of archaeological materials; Phase III, mitigation of adverse effects to recognized areas of importance. Evaluations of research potential will be made and prioritized in order of importance, based upon the status of previous research in the area and the integrity of the remains;

(C) an archaeological research design will be required for all archaeological investigations. All research designs will be subject to the approval of the North Carolina Division of Archives and History prior to conducting the work. A research proposal must allow at

least 30 days for review and comment by the North Carolina Division of Archives and History;

(D) data will be collected and recorded accurately and systematically and artifacts will be curated according to accepted professional standards at an approved repository.

(e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal archaeological resource area of environmental concern. Permuda Island is a former barrier island located within Stump Sound in southwestern Onslow County. The island is 1.2 miles long and .1 - .25 miles wide. Archaeological evidence indicates earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains. The resources offer extensive research opportunities.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
Eff. June 1, 1979;
Amended Eff. October 1, 1988; January 1, 1985;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07H .0510 SIGNIFICANT COASTAL HISTORIC ARCHITECTURAL RESOURCES

(a) Description. Significant coastal historic architectural resources are defined as districts, structures, buildings, sites or objects that have more than local significance to history or architecture. Such areas will be evaluated by the North Carolina Historical Commission in consultation with the Commission as part of the procedure set forth in Rule .0503 of this Section.

(b) Significance. Significant coastal historic architectural resources are important educational, scientific, associative, or aesthetic resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general, significant historic architectural resources possess integrity of design, setting, workmanship, materials, and association and:

(1) are associated with events that have made a significant contribution to the broad patterns of history; or

(2) are associated with the lives of persons significant in history; or

(3) embody the distinctive characteristics of a type, period, or method of construction, or represent a significant and distinguishable entity whose components may lack individual distinction; or

(4) have yielded, or may be likely to yield, information important in history.

(c) Management Objectives. The CRC's objective is to conserve coastal historic architectural resources of more than local significance which are valuable educational, scientific, associative or aesthetic resources. Specific objectives for each of these functions shall be related to the following policy statements either singly or in combination:

(1) to conserve historic architectural resources as a living part of community life and development, including their structural and environmental characteristics, in order to give a sense of orientation to the people of the state;

(2) to insure that the designated historic architectural resource be preserved, as a tangible element of our cultural heritage, for its educational, scientific, associative or aesthetic purposes;

(3) to protect the values of the designated historic architectural resource as expressed by the local government and citizenry; these values should be related to the educational, scientific, associative or aesthetic qualities of the resource.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
Eff. June 1, 1979;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

SECTION .0600 - DEVELOPMENT STANDARDS APPLICABLE TO ALL AECS

15A NCAC 07H .0601 NO VIOLATION OF ANY RULE

History Note: *Authority G.S. 113A-107(a),(b); 113A-124;*
Eff. September 9, 1977;
RRC objection September 16, 2022 and rule returned to agency on December 7, 2022.

15A NCAC 07H .0602 POLLUTION OF WATERS

No development shall be allowed in any AEC which would have a substantial likelihood of causing pollution of the waters of the state in which shellfishing is an existing use to the extent that such waters would be officially closed to the taking of shellfish. This rule shall also apply to development adjacent to or within closed shellfish waters when a use attainability study of those waters documents the presence of a significant shellfish resource in an area that could be expected to be opened for shellfishing given reasonable efforts to control the existing sources of pollution.

History Note: *Authority G.S. 113A-107(a),(b); 113A-124;*
Eff. September 9, 1977;
Amended Eff. July 1, 1987.

15A NCAC 07H .0603 MINIMUM ALTITUDES

History Note: *Authority G.S. 113A-107(a),(b);*
Eff. March 1, 1990;
RRC objection September 16, 2022 and rule returned to agency on December 7, 2022.

15A NCAC 07H .0604 NOISE POLLUTION

History Note: *Authority G.S. 113A-107(a),(b);*
Eff. March 1, 1990;
RRC objection September 16, 2022 and rule returned to agency on December 7, 2022.

SECTION .0700 - TECHNICAL APPENDIX 1: DEFINITIONS FOR PUBLIC TRUST AREAS

15A NCAC 07H .0701 MEAN HIGH WATER
15A NCAC 07H .0702 MEAN WATER LEVEL

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(5);*
Eff. September 9, 1977;
Repealed Eff. November 1, 1984.

SECTION .0800 - TECHNICAL APPENDIX 2: OCEAN HAZARD AREAS

15A NCAC 07H .0801 PHYSICAL PROCESSES IN OCEAN HAZARD AREAS
15A NCAC 07H .0802 DYNAMIC EQUILIBRIUM
15A NCAC 07H .0803 BEACHES
15A NCAC 07H .0804 SAND DUNES
15A NCAC 07H .0805 SEDIMENT TRANSPORT
15A NCAC 07H .0806 INLETS
15A NCAC 07H .0807 WASHOVER AREAS

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(6)a,(b)(6)b; (b)(6)d;*
Eff. September 9, 1977;
Repealed Eff. November 1, 1984.

SECTION .0900 - TECHNICAL APPENDIX 3: INLET LANDS

15A NCAC 07H .0901 IDENTIFICATION PROCEDURE FOR INLET LANDS
15A NCAC 07H .0902 DESIGNATION OF NON-STABILIZED INLETS

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b)(6)d;*

Eff. September 9, 1977;
Amended Eff. January 24, 1978;
Repealed Eff. September 15, 1979.

SECTION .1000 - TECHNICAL APPENDIX 4: PUBLIC WATER SUPPLIES

15A NCAC 07H .1001 SMALL SURFACE WATER SUPPLY WATERSHEDS
15A NCAC 07H .1002 PUBLIC WATER SUPPLY WELL FIELDS
15A NCAC 07H .1003 BIBLIOGRAPHY

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(a),(b)(3)a;*
Eff. September 9, 1977;
Amended Eff. February 18, 1980;
Repealed Eff. November 1, 1984.

SECTION .1100 - GENERAL PERMIT FOR CONSTRUCTION OF BULKHEADS AND RIPRAP REVETMENTS FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1101 PURPOSE

A permit for construction of bulkheads and riprap revetments under this Section shall allow the construction of bulkheads and riprap revetments for shoreline protection in the public trust waters and estuarine waters AECs subject to the procedures outlined in Subchapter 07J, Section .1100 and according to the Rules in this Section. This permit shall not apply to shoreline protection along the oceanfront or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjoining Ocean Erodible Area.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; 113-229;*
Eff. March 1, 1984;
Amended Eff. July 1, 2009; April 1, 2003;
Readopted Eff. April 1, 2022.

15A NCAC 07H .1102 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development.
(b) The applicant shall provide:
(1) provide site location, dimensions of the project area, and the applicant's name and address, confirmation that the applicant has obtained a written statement, signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
(2) confirmation that the applicant has notified adjacent riparian property owners by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide written comments on the proposed development to DCM within 10 days of receipt of the notice and indicate that no response shall be interpreted as no objection. DCM shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If DCM determines that the project exceeds the guidelines established by the General Permit process provided in 15A NCAC 07J .1100, DCM shall notify the applicant that an application for a major development permit shall be required.

(c) No work shall begin until an on-site meeting is held with the applicant and a DCM representative so that the proposed alignment may be marked. A General Permit to proceed with the proposed development shall be issued if the DCM representative finds that the application meets all the requirements of this Rule. Construction of the bulkhead or riprap revetment shall be completed within 120 days of the issuance of the general permit or the authorization shall expire and it shall be necessary to re-examine the structure alignment to determine if the general permit may be reissued.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; 113A-118; 113A-120; 113-229;*
Eff. March 1, 1984;
Amended Eff. July 1, 2009; October 1, 2007; September 1, 2006; January 1, 1990; December 1, 1987;
Readopted Eff. April 1, 2022.

15A NCAC 07H .1103 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) for riprap revetments sited at or above normal high water or normal water level, or a permit fee of four hundred dollars ($400.00) for riprap revetments sited below normal high water or normal water level. The applicant shall pay a permit fee of four hundred dollars ($400.00) for bulkheads. Permit fees shall be paid by check or money order payable to the Department.

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124; 113-229;*
Eff. March 1, 1984;
Amended Eff. October 5, 2009; September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. April 1, 2022.

15A NCAC 07H .1104 GENERAL CONDITIONS

(a) This permit authorizes only the construction of bulkheads and riprap revetments conforming to the standards in this Section.
(b) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
(c) There shall be no interference with the use of the waters by the public by the existence of the bulkhead or the riprap revetment authorized herein. Bulkheads and riprap revetments authorized in this Section shall not interfere with the established or traditional rights of navigation of the waters by the public.
(d) This permit shall not be applicable to proposed construction where the Division of Coastal Management 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.
(e) This permit shall not eliminate the need to obtain any other required State, local, or federal authorization.
(f) Development carried out under permit set forth in this Section shall be consistent with all State, federal, local requirements, and local land use plans current at the time of authorization.
Development carried out under the permit set forth in this Section shall be consistent with all State, federal, local requirements, and local land use plans current at the time of authorization.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; 113-229;*
Eff. March 1, 1984;
Amended Eff. May 1, 1990; December 1, 1987;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. July 1, 2009; August 1, 1998; July 1, 1994;
Readopted Eff. April 1, 2022.

15A NCAC 07H .1105 SPECIFIC CONDITIONS

(a) Along shorelines void of wetland vegetation:
(1) New bulkheads shall have an average approximation of normal high water or normal water level. The bulkhead position shall not exceed a distance of five feet waterward of normal high water or normal water level at any point along its alignment.
(2) New bulkheads or riprap revetments on shorelines within manmade upland basins, canals, and ditches, shall be positioned so as not to exceed an average distance of two feet and maximum distance of five feet waterward of normal high water or normal water level.
(3) When replacing an existing bulkhead, the new alignment shall be positioned so as not to exceed a maximum distance of two feet waterward of the current bulkhead alignment. To tie into a like structure on the adjacent property, replacement bulkhead position shall not exceed a maximum

distance of five feet waterward of the current bulkhead alignment. When replacing a bulkhead where lands landward of the bulkhead were lost in the last year, bulkheads shall be positioned a maximum of two feet waterward of the original or existing alignment.

(4) Riprap revetments shall be positioned so as not to exceed a maximum distance of 10 feet waterward of the normal high water or normal water level at any point along its alignment.

(b) Along shorelines with wetland vegetation, bulkheads and riprap revetments shall be positioned so that all construction is to be accomplished landward of such vegetation.

(c) Bulkheads shall be constructed of vinyl, steel sheet pile, concrete, stone, timber, or other materials approved by the Division of Coastal Management.

(d) Riprap revetments shall be constructed of granite, marl, concrete without exposed rebar, or other materials approved by the Division of Coastal Management.

(e) Revetment material shall be free from loose dirt or other materials not approved by the Division of Coastal Management.

(f) Revetment material shall be of size approved by the Division of Coastal Management to prevent movement of the material from the site by wave action or currents.

(g) Construction design for riprap revetments shall take into consideration the height of the area to be protected i.e., bulkhead height, escarpment height, water depth, and the alignment shall allow for a slope no flatter than three feet horizontal per one foot vertical and no steeper than 1½ feet horizontal per one foot vertical.

(h) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead or riprap revetment shall be constructed prior to any backfilling activities and shall be structurally tight so as to prevent seepage of backfill materials through the structure.

(i) No excavation, grading or fill shall be permitted except for that which may be required for the construction of the bulkhead or riprap revetment. This permit shall not authorize any excavation waterward of the approved alignment.

(j) Runoff from construction shall not increase the amount of suspended sediments in adjacent waters. Sedimentation and erosion control devices, measures, or structures shall be implemented to ensure that eroded materials do no enter adjacent wetlands, watercourses and property, e.g. silt fence, diversion swales or berms, sand fence, etc.

(k) If one contiguous acre or more of property is to be excavated or filled, an erosion and sedimentation control plan shall be filed with and approved by the Division of Energy, Mineral, and Land Resources, or local government having and a delegated program prior to commencing the land-disturbing activity.

(l) For the purposes of these Rules, the Atlantic Intracoastal Waterway (AIWW) is considered a natural shoreline.

(m) Construction authorized by this general permit shall be limited to a maximum shoreline length of 500 feet.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; 113-229;*
Eff. March 1, 1984;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f)); July 1, 2009; April 1, 2005; December 1, 1991; January 1, 1989; December 1, 1987;
Readopted Eff. April 1, 2022.

SECTION .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS AND DOCKING FACILITIES: IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1201 PURPOSE

A permit under this Section shall allow the construction of piers and docking facilities, including pile supported or floating, in the Estuarine and Public Trust Waters AECs and construction of piers and docks within Coastal Wetland AECs according to the authority provided in Subchapter 07J .1100 and according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. July 1, 2009; April 1, 2003;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1202 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development.

(b) The applicant shall provide:

(1) the site location, dimensions of the project area and name, and his or her address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response will be interpreted as no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction shall be completed within 120 days of the issuance of the general permit or the authorization shall expire and it shall be necessary to re-examine the proposed development to determine if the general permit may be reissued.

(d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. October 1, 2007; August 1, 1998; January 1, 1990;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1203 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) by check or money order payable to the Department.

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1204 GENERAL CONDITIONS

(a) Piers and docking facilities authorized by the general permit set forth in this Section shall be for the exclusive use of the land owner or occupant and shall not be leased, rented, or used for any commercial purpose. Piers and docking facilities shall provide docking space for no more than two boats. Docking facilities providing docking space for more than two boats shall be reviewed through the major permitting process due to their greater potential for adverse impacts and, therefore, are not authorized by this general permit, excluding the exceptions described in Rule .1205 of this Section.

(b) Individuals shall allow representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under the authority of the general permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public through the existence of piers and docking facilities.

(d) The permit set forth in this Section shall not be applicable to proposed construction where the Department determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural, scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

(e) The permit set forth in this Section does not eliminate the need to obtain any other required State, local, or federal authorization.
(f) Development carried out under the permit set forth in this Section shall be consistent with all State, federal, local requirements, and local land use plans current at the time of authorization.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 2014; July 1, 2009; August 1, 1998; July 1, 1994;
Readopted Eff. December 1, 2021.

15A NCAC 07H .1205 SPECIFIC CONDITIONS

(a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
(b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties as determined by the Division of Coastal Management. The length of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.
(c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking facility lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body.
(d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
(e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total.
(f) The maximum size of any individual component of the docking facility authorized by this general permit shall not exceed 400 square feet.
(g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water at normal low water level or normal water level under the general permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.
(h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation as defined by the Marine Fisheries Commission may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

(1) Water depth at the docking facility location is equal to or greater than two feet of water at normal low water level or normal water level; and
(2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or shellfish beds under the structure as determined by the Division of Coastal Management.

(i) Floating piers and floating docking facilities located in Primary Nursery Areas, over shellfish beds, or over submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and the substrate is at least 18 inches at normal low water level or normal water level.
(j) Docking facilities shall have no more than six feet of any horizontal dimension extending over coastal wetlands and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
(k) The width requirements established in Paragraph (d) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms and piers.
(l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header to the Normal

Water Level or Normal High Water and only covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Structural boat covers, utilizing frame-supported fabric covering, can be permitted on properties with less than 75 linear feet of shoreline when using screened fabric for side walls.

(m) The area enclosed by a boat lift shall not exceed 400 square feet.

(n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

(o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers regulations for construction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

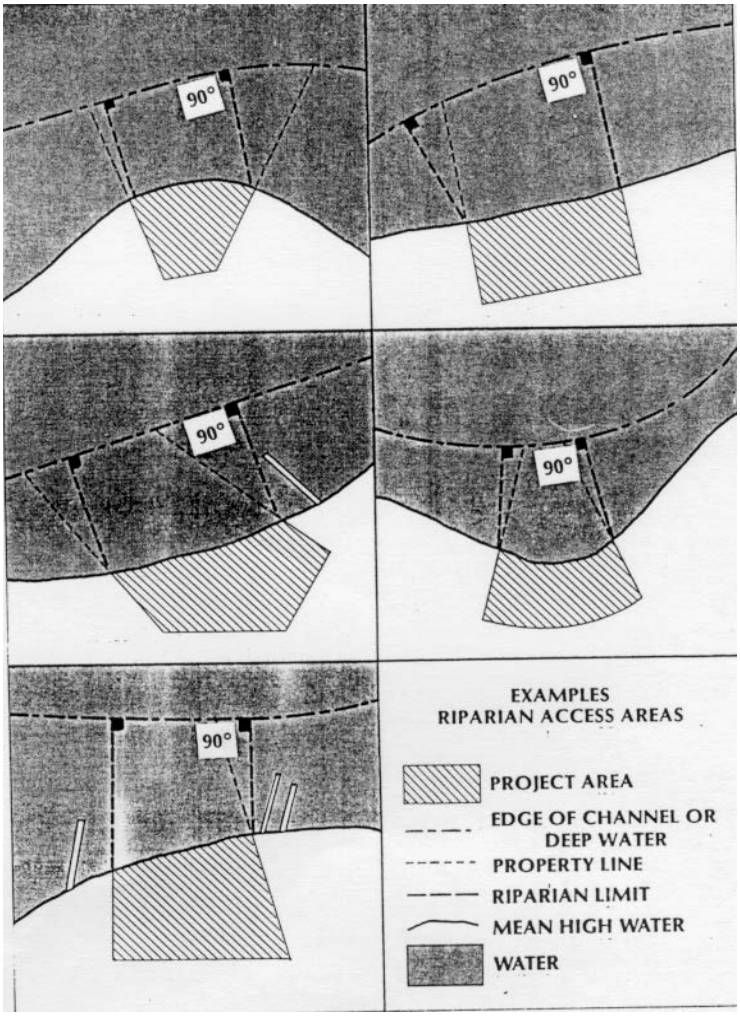
(p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made canal, or basin. Measurements to determine widths of the water body, human-made canals, or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line established by the adjacent piers and docking facilities or longer than 1/3 the width of the water body.

(q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in this Paragraph may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the diagram in Paragraph (t) of this Rule illustrating the Rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management website at http://www.nccoastalmanagement.net.When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the intent of this Rule to the maximum extent practicable.

(r) Piers and docking facilities shall provide docking space for no more than two boats, as defined in 15A NCAC 07M .0602(a), except when stored on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.

(s) Applicants for authorization to construct a pier or docking facility shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed pier or docking facility would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.

(t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed, provided that in addition to complying with Paragraphs (a) through (t) of this Rule the following shall also apply:

(1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line;

(2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats;

(3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using Paragraph (e) of this Rule and in addition shall allow for combined shoreline of both properties;

(4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each other as described in Paragraph (q) of this Rule as is applies to the shared riparian line for any work associated with the shared pier, provided that the title owners of both properties have executed a shared pier agreement that has become a part of the permit file; and

(5) The construction of a second access pier or docking facility not associated with the shared pier shall not be authorized under the general permit set forth in this Section.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;
RRC Objection due to ambiguity Eff. March 18, 1993;
Amended Eff. August 1, 1998; April 23, 1993;
Temporary Amendment Eff. December 20, 2001;

Amended Eff. August 1, 2014; July 1, 2009; April 1, 2003;
Readopted Eff. December 1, 2021;
Amended Eff. August 1, 2022.

SECTION .1300 – GENERAL PERMIT TO CONSTRUCT BOAT RAMPS ALONG ESTUARINE AND PUBLIC TRUST SHORELINES AND INTO ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .1301 PURPOSE

A person requesting the construction of boat ramps along estuarine and public trust shorelines and into Estuarine and Public Trust Waters AECs shall apply for a General Permit according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. April 1, 2003; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1302 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within ten days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. August 1, 2007; September 1, 2006; January 1, 1990;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1303 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) by check or money order payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;

Readopted Eff. October 1, 2022.

15A NCAC 07H .1304 GENERAL CONDITIONS

(a) Structures authorized by this permit shall be non-commercial boat ramps constructed of acceptable material and conforming to the standards herein.

(b) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public through the existence of boat ramps.

(d) The permit set forth in this Section 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 required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1305 SPECIFIC CONDITIONS

(a) Boat ramps shall be no wider than 15 feet and shall not extend more than 20 feet waterward of the normal high water level or normal water level.

(b) Excavation and ground disturbing activities above and below the normal high water level or normal water level will be limited to that necessary to establish ramp slope and provide a ramp no greater in size than specified by this general permit.

(c) Placement of fill materials below normal high water level, or normal water level, will be limited to the ramp structure and any associated riprap groins. Boat ramps may be constructed of concrete, wood, steel, clean riprap, marl, or any other suitable equivalent materials approved by the Division of Coastal Management. No coastal wetland vegetation shall be excavated or filled at any time during construction.

(d) The permit set forth in this Section allows for up to a six-foot wide launch access dock, fixed or floating, immediately adjacent to a new or existing boat ramp. The length shall be limited to the length of the permitted boat ramp with a maximum length of 20 feet waterward of the normal high water level or normal water level. No permanent slips are authorized by this permit.

(e) Groins shall be allowed as a structural component on one or both sides of a new or existing boat ramp to reduce scouring. The groins shall be limited to the length of the permitted boat ramp with a maximum length of 20 feet waterward of the normal high water level or normal water level.

(f) The height of sheetpile groins shall not exceed one foot above normal high water level or normal water level and the height of riprap groins shall not exceed two feet above normal high water level or normal water level.

(g) Riprap groins shall not exceed a base width of five feet.

(h) Material used for groin construction shall be free from loose dirt or any other pollutant. Riprap material must be of sufficient size to prevent its movement from the approved alignment by wave action or currents.

(i) "L" and "T" sections shall not be allowed at the end of groins.

(j) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile, or other suitable equivalent materials approved by the Division of Coastal Management.

(k) Boat ramps and their associated structures authorized under this permit shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the boat ramp or associated structures and the adjacent property owners' areas of riparian access. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owners, or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the boat ramp or associated structures commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the boat ramp or associated structures authorized under this permit.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. August 1, 2014;
Readopted Eff. October 1, 2022.

SECTION .1400 - GENERAL PERMIT FOR CONSTRUCTION OF GROINS IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .1401 PURPOSE

A person requesting the construction of groins in the Estuarine and Public Trust Waters AECs shall apply for a General Permit according to the rules in this Section. This general permit shall not apply to the oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124(c);*
Eff. March 1, 1984;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. February 1, 2009; August 1, 2004; April 1, 2003;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1402 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and shall indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff of Coastal Management shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

(d) Any modification or addition to the authorized project shall require approval from the Division of Coastal Management in accordance with 15A NCAC 07J .0405.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. February 1, 2009; October 1, 2007; August 1, 2004; May 1, 1990; January 1, 1990;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1403 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) by check or money order payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1404 GENERAL CONDITIONS

(a) Structures authorized by a General Permit in this Section shall be timber, sheetpile, or riprap groins.
(b) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(c) The placement of groins authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.
(d) The permit set forth in this Section 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 required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 16, 1994;
Amended Eff. August 1, 1998; July 1, 1994;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. February 1, 2009; August 1, 2004;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1405 SPECIFIC CONDITIONS

(a) Groins shall be perpendicular to the shoreline and shall not extend more than 25 feet waterward of the normal high water or normal water level.
(b) Riprap groins shall not exceed a base width of 10 feet.
(c) Groins shall be set back at least 15 feet from the riparian access dividing line as measured from the closest point of the structure. This setback may be waived by written agreement of the adjacent riparian owners or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the groin.
(d) The height of sheetpile groins shall not exceed one foot above normal high water or the normal water level and the height of riprap groins shall not exceed two feet above normal high water or the normal water level.
(e) Material used for groin construction shall be free from loose dirt. Groin material must be of sufficient size to prevent its movement from the site by wave action or currents.
(f) Structure spacing shall be two times the groin length as measured from the centerline of the structure. Spacing may be less than two times the groin length around channels, docking facilities, boat lifts, or boat ramps and when positioned to prevent sedimentation or accretion around channels, docking facilities, boat lifts, or boat ramps.
(g) "L" and "T" sections shall not be allowed at the end of groins.
(h) Groins shall be constructed of granite, marl, concrete without exposed rebar, timber, vinyl sheet pile, steel sheet pile, or other suitable equivalent materials approved by the Division of Coastal Management.

History Note: *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
Eff. March 1, 1984;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. February 1, 2009; August 1, 2004;
Readopted Eff. October 1, 2022.

SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC TRUST WATERS, AND COASTAL SHORELINE AECS

15A NCAC 07H .1501 PURPOSE

A person requesting excavation within or connecting to existing canals, channels, basins, or ditches in Estuarine Waters, Public Trust Waters, and Coastal Shorelines AECs for the purpose of maintaining water depths and creating new boat basins from non-wetland areas that will be used for private, non-commercial activities shall apply for a General Permit according to the rules of this Section.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. July 1, 1984;
Amended Eff. July 1, 2015; December 1, 1987;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1502 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within ten days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A Permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of the date of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

History Note: *Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. July 1, 1984;
Amended Eff. July 1, 2015; January 1, 1990; December 1, 1987;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1503 APPLICATION FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) for maintenance excavation of 100 cubic yards or less or four hundred dollars ($400.00) for maintenance excavation of 100 to 1,000 cubic yards. Permit fees shall be paid by check or money order payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. July 1, 1984;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1504 GENERAL CONDITIONS

(a) Permittees shall allow representatives of the Department of Environmental Quality to make inspections at any time to ensure that the activity being performed under authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(b) The permit set forth in this Section 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 required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.
(c) No new basins shall be allowed that result in closure of shellfish waters according to the closure policy of the Division of Marine Fisheries, 15A NCAC 18A .0911.

History Note: *Authority G.S. 113A-107(a),(b); G.S. 113A-108; 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. July 1, 1984;
Amended Eff. May 1, 1990; December 1, 1987;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. July 1, 2015; August 1, 1998; July 1, 1994;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1505 SPECIFIC CONDITIONS

Proposed maintenance excavation shall meet each of the following specific conditions to be eligible for authorization by this general permit.

(1) New basins shall be allowed only when they are located entirely in highground and join existing man-made canals or basins.
(2) New basins shall be no larger than 50 feet in either length or width and no deeper than the waters they join.
(3) New basins shall be for the private non-commercial use of the land owner.
(4) Maintenance excavation shall involve the removal of no more than 1,000 cubic yards of material as part of a single and complete project.
(5) All excavated material shall be placed entirely on high ground above the mean high tide or ordinary high water line, and above any marsh, or other wetland.
(6) All spoil material shall be stabilized or retained so as to prevent any excavated material from re-entering the surrounding waters, marsh, or other wetlands.
(7) The proposed project shall not involve the excavation of any marsh, submerged aquatic vegetation as defined at 15A NCAC 03I .0101 by the Marine Fisheries Commission, or other wetlands.
(8) Maintenance excavation shall not exceed the original dimensions of the canal, channel, basin, or ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor deeper than connecting channels.
(9) Proposed excavation in existing channels and basins shall not allow for a public or commercial use.
(10) Maintenance excavation as well as excavation of new basins shall not be allowed within or with connections to primary nursery areas without prior approval from the Division of Marine Fisheries or Wildlife Resources Commission.
(11) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin to stabilize the shoreline from erosion.
(12) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or normal water level at any point along its alignment.
(13) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other materials approved by the Division of Coastal Management.
(14) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208. The bulkhead shall be constructed prior to any backfilling activities and shall be constructed so as to prevent seepage of backfill materials through the structure.
(15) Construction of bulkhead authorized by this general permit in conjunction with bulkhead authorized under 15A NCAC 07H .1100 shall be limited to a combined maximum shoreline length of 500 feet.

History Note: *Authority G.S. 113A-107(a),(b); 113A-108; 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. July 1, 1984;
Amended Eff. July 1, 2015; September 1, 1988; December 1, 1987;
Readopted Eff. October 1, 2022.

SECTION .1600 - GENERAL PERMIT FOR THE INSTALLATION OF AERIAL AND SUBAQUEOUS UTILITY LINES WITH ATTENDANT STRUCTURES IN COASTAL WETLANDS: ESTUARINE WATERS: PUBLIC TRUST WATERS AND ESTUARINE SHORELINES

15A NCAC 07H .1601 PURPOSE

A person requesting the installation of utility lines both aerially and subaqueously in the Coastal Wetland, Estuarine Waters, Public Trust Areas, and Estuarine and Public Trust Shoreline AECs shall apply for a General Permit according to rules in this Section. This general permit shall not apply to the ocean hazard AECs.

History Note: *Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. March 1, 1985;
Amended Eff. August 1, 2000; August 1, 1998;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1602 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within ten days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A Permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall begin within twelve months of the date of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

History Note: *Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. March 1, 1985;
Amended Eff. January 1, 1990;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1603 PERMIT FEE

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

History Note: *Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1; 113-229(c1);*
Eff. March 1, 1985;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1604 GENERAL CONDITIONS

(a) Utility lines for the purpose of this General Permit are any pipes or pipelines for the transportation of potable water, domestic sanitary sewage, natural gas, and any cable, line, or wire for the transmission, of electrical energy, telephone and telegraph messages, and radio and television communication.
(b) There shall be no alteration of preconstruction bottom contours. Fill authorized by a permit set forth in this Section shall include only that necessary to backfill or bed the utility line. Any excess material shall be removed to an upland disposal area.
(c) The utility line crossing shall not adversely affect a public water supply intake.
(d) The utility line route or construction method shall not disrupt the movement of those species of aquatic life indigenous to the waterbody.
(e) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time to ensure that the activity being performed under authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(f) The permit set forth in this Section 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 required because there are unresolved questions concerning the proposed activity impact on Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. March 1, 1985;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. August 1, 1998; July 1, 1994;
Readopted Eff. October 1, 2022.

15A NCAC 07H .1605 SPECIFIC CONDITIONS

Proposed utility line installations shall meet each of the following specific conditions to be eligible for authorization by this General Permit:

(1) All domestic sanitary sewer line requests must be accompanied by a statement of prior approval from the NC Division Water Quality.
(2) All spoils which are permanently removed must be placed on a high ground disposal site and stabilized so as not to return to waters, marsh, or other wetlands.
(3) Any additional backfill material required shall consist of sand or rock and not contain organic matter.
(4) Finished grades or subaqueous or wetland crossing must be returned to preproject contours.
(5) There can be no work within any productive shellfish beds.
(6) No excavation or filling activities will be permitted between April 1 and September 30 of any year within any designated primary nursery area.
(7) Subaqueous lines must be placed at a depth of six feet below the project depth of federal projects. For non-federal projects, subaqueous lines shall be installed at a minimum depth of two feet below the bottom contour.
(8) The minimum clearance for aerial communication lines or any lines not transmitting electricity shall be 10 feet above the clearance required for bridges in the vicinity.
(9) The minimum clearance for aerial electrical transmission lines shall be consistent with those established by the US Army Corps of Engineers and US Coast per 33 CFR 322.5 (i).
(10) The installation of a utility line on pipe bents or otherwise above the elevation of mean high or mean ordinary water must be of sufficient height to allow for traditional navigation in the water body. The utility line shall not interfere with the waterflow of normal or flood waters.
(11) Natural gas lines shall not exceed 11 inches in diameter.

History Note: *Authority G.S. 113A-107(a)(b); 113A-113(b); 113A-118.1; 113-229(c1);*
Eff. March 1, 1985;
Amended Eff. August 1, 1998;
Readopted Eff. October 1, 2022.

SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT

15A NCAC 07H .1701 PURPOSE

This permit allows work necessary to protect property or prevent further damage to property caused by a sudden or unexpected natural event or structural failure which imminently endangers life or structure. For the purposes of this general permit, major storms such as hurricanes, northeasters, or southwesters may be considered a sudden unexpected natural event although such storms may be predicted and publicized in advance.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1;*
Eff. November 1, 1985;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1702 APPROVAL PROCEDURES

(a) Any person wishing to undertake development in an area of environmental concern necessary to protect life or endangered structures will notify the Division of Coastal Management or Local Permit Office (LPO) when a possible emergency situation exists.

(b) The applicant may qualify for approval of work described in this permit after an onsite inspection by the LPO or Division of Coastal Management Field Consultant and upon his or her findings that the proposed emergency work requires a CAMA or Dredge and Fill permit. The LPO shall issue the permit if the required emergency measures constitute minor development in accordance with G.S. 113A-118(2).

(c) Once the LPO or Consultant determines that the applicant's proposed project may qualify for an emergency permit, he or she shall consult with the applicant and assist him or her in preparing an application. The applicant shall include a sketch showing existing conditions and the proposed work.

(d) The applicant for an emergency permit shall take all reasonable steps to notify adjacent riparian landowners of the application, and prior to receiving a permit will certify by signing the permit the following:

(1) that a copy of the application and sketch has been served on all adjacent riparian landowners, or if service of a copy was not feasible, that the applicant has explained the project to all adjacent riparian landowners;

(2) that the applicant has explained to all adjacent riparian landowners that they have a right to oppose the issuance of a permit by filing objections with the local CAMA permit officer or with the Secretary of the Department of Environmental Quality; and

(3) that, as to adjacent riparian landowners not contacted, the applicant has made a reasonable attempt to contact them and furnish them with the required information.

(e) All work authorized by this general permit will cease after thirty days from the date of issuance.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1;*
Eff. November 1, 1985;
Amended Eff. May 1, 1990;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1703 PERMIT FEE

The agency shall not charge a fee for permitting work necessary to respond to emergency situations except in the case when a temporary erosion control structure is used. In those cases, the applicant shall pay a permit fee of four hundred dollars ($400.00) by check or money order made payable to the Department.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1; 113A-119;*
Eff. November 1, 1985;
Amended Eff. September 1, 2006; August 1, 2002; March 1, 1991; October 1, 1993;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1704 GENERAL CONDITIONS

(a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

(1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the scope of the proposed emergency work can be delineated.

(2) No work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish public facilities or transportation corridors.

(3) Any permitted temporary erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case of roads, except as provided under 15A NCAC 07H .0308. If a building or road is found to be imminently threatened and at 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.

(4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(5) This emergency general permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

(b) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections to ensure that the activity being performed under authority of this emergency general permit is in accordance with these Rules.

(c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(d) 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.

(e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.

(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118; 113A-118.1;*
Eff. November 1, 1985;
Amended Eff. December 1, 1991; May 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. April 1, 2019; May 1, 2010; August 1, 1998; July 1, 1994;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

(1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph 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 the Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(3) 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 15A NCAC 07H .0309 as an exception to the erosion setback requirement.

(4) 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.

(5) 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 being 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 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.

(6) Temporary erosion control structures may remain in place for up to eight years for a building and its associated septic system, or 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.

(7) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or an inlet relocation or stabilization project if it:

(A) has an active CAMA permit, where necessary, approving such project;

(B) 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

(C) has received a favorable economic evaluation report on a federal project; or

(D) 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 or 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 shall be subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.

(8) 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 by the property owner to the maximum extent practicable 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 permittee within 30 days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(9) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of a 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.

(10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(11) 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 structure shall not exceed 20 feet, and the total height shall not exceed 6 feet, as measured from the bottom of the lowest bag.

(12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(14) An imminently threatened structure may be protected by a temporary erosion control structure only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph. Existing temporary erosion control structures may be permitted for additional eight-year periods provided that the structure being protected is

still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph, and the community in which it is located is actively pursuing a beach nourishment or an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph. 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 Subparagraph (6) or (7) of this Paragraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

(A) a building and its associated septic system shall be considered as separate structures; and

(B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each contiguous section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Paragraph.

(15) Existing temporary erosion control structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Paragraph.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this Rule shall be subject to the following limitations:

(1) The erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore 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.

(2) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors. This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

(1) Work permitted by this general permit shall be subject to the following limitations:

(A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet waterward of the facility or corridor 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 Subparagraph (a)(1) of this Rule;

(C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC 07H .0208; and

(D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

History Note: *Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1;*
Eff. November 1, 1985;
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;

Temporary Amendment Eff. July 3, 2000; May 22, 2000;
Amended Eff. April 1, 2019; May 1, 2013; May 1, 2010; August 1, 2002;
Readopted Eff. July 1, 2022.

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 30 days of a request for a General Permit.

History Note: *Authority G.S. 113-229(cl); 113A-107;113A-113(b); 113A-118.1;*
Eff. December 1, 1987;
Amended Eff. September 1, 2016;
Readopted Eff. April 1, 2022;
Amended Eff. August 1, 2022.

15A NCAC 07H .1802 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and request approval for development.

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and their name and address;

(2) Confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting official to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response wil be interpreted as no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff determines that the project exceeds the guidelines established by the General Permit process provided in 15A NCAC 07J .1100, Division staff shall notify the applicant that they must submit an application for a major development permit.

(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); 113-229(c2); 113A-107; 113A-113(b); 113A-118.1;113A-120;*
Eff. December 1, 1987;
Amended Eff. September 1, 2016; January 1, 1990;
Readopted Eff. April 1, 2022.

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;
Readopted Eff. April 1, 2022.

15A NCAC 07H .1804 GENERAL CONDITIONS

(a) This General Permit shall not be applicable to proposed construction where the Division of Coastal Management 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 immediately and the Division of Coastal Management shall be contacted.
(b) This General Permit shall not eliminate the need to obtain any other required State, local, or federal authorization.
(c) Development carried out under a permit as set forth in this Section shall be consistent with all State, federal and local requirements, and local Land Use Plans in effect at the time of authorization.

History Note: *Authority G.S. 113-229(c1); 113A-102(b)(4)(e); 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;
Readopted Eff. April 1, 2022.

15A NCAC 07H .1805 SPECIFIC CONDITIONS
(a) The area where beach bulldozing 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) 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.
(e) In order to minimize adverse impacts to threatened and endangered species, 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.
(f) 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 and approved by the Division of Energy, Mineral, and Land Resources, or local government having jurisdiction. This plan must be approved prior to commencing the land disturbing activity.

History Note: *Authority G.S. 113-229(c1); 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;
Readopted Eff. April 1, 2022;
Amended Eff. September 1, 2022.

SECTION .1900 – GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN THE ESTUARINE AND OCEAN SYSTEMS AECS

15A NCAC 07H .1901 PURPOSE
A permit under this Section shall allow for the placement of temporary structures within the estuarine and ocean systems AECs according to the provisions provided in 15A NCAC 07J .1100 and according to the rules in this Section.

History Note: *Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*
Eff. March 1, 1989;
Amended Eff. April 1, 2020; August 1, 2000;

Readopted Eff. July 1, 2022.

15A NCAC 07H .1902 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. For temporary structures associated with scientific research, permit applicants shall be lead investigators on behalf of accredited educational institutions, or state or federal agencies.

(b) If a temporary structure is to be located less than 400 feet waterward of normal high water or normal water level, or within the established pier head line as determined by the Division of Coastal Management, the applicant shall provide:

(1) a written statement signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or

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

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to inspect and mark the site of construction of the proposed development. Temporary structures authorized by this General Permit may remain in place for a maximum of one year from the date of issuance. The project site shall be restored to pre-development conditions and all structures shall be removed within one year of permit issuance, or by the date specified with the General Permit.

History Note: *Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1;*
Eff. March 1, 1989;
Amended Eff. April 1, 2020; January 1, 1990;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1903 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) 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. March 1, 1989;
Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1904 GENERAL CONDITIONS

(a) Temporary structures for the purpose of this general permit are those which are constructed or installed within the estuarine and ocean system AECs and because of their dimensions or functions cannot be authorized by another General Permit within this Subchapter.

(b) There shall be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC except for the placement of auxiliary structures such as signs, fences, posts, or pilings.

(c) There shall be no fill or excavation activity below normal high water or normal water level.

(d) This permit shall not be applicable to proposed development where the Division of Coastal Management determines that the proposed activity would endanger adjoining properties or significantly affect historic, cultural, scenic, conservation, or recreation value, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

(e) Individuals shall allow authorized representatives of the Department of Environmental Quality to make periodic inspections at any time necessary to ensure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.

(f) This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by rules or regulations adopted by any federal, state, or local agency.

(g) Development carried out under this permit shall be consistent with all local requirements and local land use plans current at the time of authorization.

History Note: *Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*
Eff. March 1, 1989;
Amended Eff. May 1, 1990; March 1, 1990;
RRC Objection due to ambiguity Eff. May 19, 1994;
Amended Eff. April 1, 2020; August 1, 1998; July 1, 1994;
Readopted Eff. July 1, 2022.

15A NCAC 07H .1905 SPECIFIC CONDITIONS

Proposed temporary structures shall meet each of the following specific conditions to be eligible for authorization by the general permit:

(1) All aspects of the structure shall be removed and the site returned to pre-project conditions at the expiration of this general permit.
(2) There shall be no work within any productive shellfish beds without authorization from the Division of Marine Fisheries.
(3) The proposed structure shall not involve the disturbance of any marsh, submerged aquatic vegetation, or other wetlands including excavation or filling of these areas.
(4) The proposed activity shall not disrupt navigation and transportation channels and shall be marked to prevent being a hazard to navigation.
(5) The proposed structure shall not impede public access or other public trust uses.
(6) The proposed structure shall not be habitable.
(7) There shall be no disturbance of existing dunes.
(8) Temporary structures authorized by this permit shall not individually or cumulatively exceed 100 square meters in size.
(9) Structures shall not be constructed in a designated Primary Nursery Area without approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

History Note: *Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*
Eff. March 1, 1989;
Amended Eff. April 1, 2020; May 1, 1990;
Readopted Eff. July 1, 2022.

SECTION .2000 - GENERAL PERMIT FOR AUTHORIZING MINOR MODIFICATIONS AND REPAIR TO EXISTING PIER/MOORING FACILITIES IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .2001 PURPOSE

A person requesting reconfiguration, minor modifications, repair, or improvements to existing pier and mooring facilities in estuarine waters and public trust areas shall apply for a General Permit according to the rules in this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. October 1, 1993;
Amended Eff. April 1, 2003;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2002 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at

https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) information on site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. January 1, 1994;
Amended Eff. August 1, 2007;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2003 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00) by check or money order payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
Eff. October 1, 1993;
Amended Eff. September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2004 GENERAL CONDITIONS

(a) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under the authority of the General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(b) There shall be no interference with navigation or use of the waters by the public by the existence of piers or mooring pilings.

(c) The permit set forth in this Section 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 required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

(d) This permit shall not be applicable where the Department determines that the proposed modification will result in closure of waters to shellfishing under rules adopted by the Commission for Public Health.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. January 1, 1994;
Amended Eff. August 1,1998;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2005 SPECIFIC CONDITIONS

(a) All proposed work must be carried out within the existing footprint of the development with no increase in the number of slips and no change in the existing use. "Existing footprint" is defined as the area delineated by the outer most line of tie pilings, ends of piers, and upland basin or area within an enclosing breakwater, whichever is greater.

(b) Modifications to piers and mooring facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or pilings and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owners, or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier or pilings commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to a line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this rule to the maximum extent practicable.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. October 1, 1993;
Readopted Eff. October 1, 2022.

SECTION .2100 - GENERAL PERMIT FOR CONSTRUCTION OF SHEETPILE SILL FOR SHORELINE PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS

15A NCAC 07H .2101 PURPOSE

Persons seeking to construct offshore parallel sheetpile sills constructed from timber, vinyl, or steel sheetpiles for shoreline protection in conjunction with existing or created coastal wetlands shall apply for a general permit under this Section. This permit shall only be applicable in Estuarine Waters and Public Trust Areas. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. June 1, 1994;
Amended Eff. February 1, 2009; April 1, 2003; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2102 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) information on site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of the permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.
(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-118.1(a)(4);*
Eff. June 1, 1994;
Amended Eff. February 1, 2009; October 1, 2007; September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2103 PERMIT FEE
The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
Eff. June 1, 1994;
Amended Eff. September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2104 GENERAL CONDITIONS
(a) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(b) The placement of sills authorized in this Rule shall not interfere with the established or traditional rights of navigation of the water by the public.
(c) The permit set forth in this Section 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 required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
RRC Objection due to ambiguity Eff. May 19, 1994;
Eff. July 1, 1994;
Amended Eff. February 1, 2009; August 1, 1998;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2105 SPECIFIC CONDITIONS
(a) The sill shall be positioned no more than 20 feet waterward of the normal high water or normal water level or 20 feet waterward of the waterward edge of existing wetlands at any point along its alignment. For narrow waterbodies (canals, creeks, etc.), the sheet pile sill shall not be positioned offshore more than one sixth (1/6) the width of the waterbody at any point along its alignment.
(b) Sills authorized under this General Permit shall be allowed only in waters that average less than three feet in depth along the proposed alignment as measured from the normal high water or normal water level.
(c) Construction authorized by this General Permit shall be limited to a maximum length of 500 feet.
(d) The sill shall be constructed with an equal gap between each sheathing board totaling at least one inch of open area every linear foot of sill. The sill shall have at least one five-foot opening at every 100 feet. The sill sections shall be staggered and overlap as long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.
(e) The height of the sill shall not exceed six inches above normal high water or the normal water level.
(f) Offshore sill sections shall be set back 15 feet from the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland

property line meets the water's edge. The set back may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the sill begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the sill.
(g) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above mean high water.
(h) No backfill of the sill or any other fill of wetlands, estuarine waters, public trust areas, or highground is authorized by this general permit.
(i) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.
(j) The sill shall be constructed of vinyl or steel sheet pile, formed concrete, timber, or other suitable equivalent materials approved by the Division of Coastal Management.
(k) Perpendicular sections, return walls, or sections that would enclose estuarine waters or public trust areas shall not be allowed under this permit.
(l) The permittee will maintain the sill in conformance with the terms and conditions of this permit or the remaining sill structure shall be removed within 90 days of notification from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-108; 113A-118.1;*
Eff. June 1, 1994;
Amended Eff. February 1, 2009; August 1, 2000;
Readopted Eff. October 1, 2022.

SECTION .2200 – GENERAL PERMIT FOR CONSTRUCTION OF FREESTANDING MOORINGS AND BIRD NESTING POLES IN ESTUARINE WATERS AND PUBLIC TRUST AREAS AND OCEAN HAZARD AREAS

15A NCAC 07H .2201 PURPOSE

Persons wishing to place freestanding moorings or bird nesting poles in the Estuarine Waters and Public Trust Areas AECs shall apply for a General Permit according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. February 1, 1996;
Amended Eff. January 1, 2018; April 1, 2003;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2202 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).
(b) The applicant shall provide:
(1) information on site location, dimensions of the project area, and his or her name and address; and
(2) confirmation that a written statement has been obtained, signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments

are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of the permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

(d) Any modification or addition to the permitted project shall require prior approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. February 1, 1996;
Amended Eff. January 1, 2018; August 1, 2007;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2203 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1;*
Eff. February 1, 1996;
Amended Eff. September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2204 GENERAL CONDITIONS

(a) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure, or other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling (as long as the piling is not associated with an existing or proposed pier, dock, or boathouse).

(b) A "bird nesting pole" is any pole or piling erected, with a platform on top, for the purpose of attracting birds for nesting.

(c) Freestanding moorings and bird nesting poles authorized by this permit shall be for the exclusive use of the riparian landowner(s) in whose name the permit is issued and shall not provide either leased or rented moorings or any other commercial services.

(d) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under the authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(e) Freestanding moorings or bird nesting poles authorized by this permit shall not interfere with navigation or use of the waters by the public.

(f) The permit set forth in this Section may not be applicable to proposed construction when the Department has determined that based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. February 1, 1996;
Amended Eff: January 1, 2018;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2205 SPECIFIC CONDITIONS

(a) Freestanding moorings and bird nesting poles may be located up to a maximum of 400 feet from the mean high water line or the normal water line.

(b) Freestanding moorings in no case shall extend more than 1/4 the width of a natural water body or man-made canal or basin.

(c) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing including the vessel to be moored. Moorings and the attached vessel shall not interfere with the access to any riparian property, and shall

have a minimum setback of 15 feet from the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in this Rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of freestanding moorings. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge.

(d) The total number of docking or mooring facilities to be authorized by this General Permit shall not exceed two per property.

(e) Bird nesting poles shall be limited to one per property. Any proposal to change the location of a permitted bird nesting pole shall require additional authorization from the Division of Coastal Management.

(f) Freestanding moorings and bird nesting poles shall not interfere with shellfish franchises or leases. Applicants for authorization to construct freestanding moorings and bird nesting poles shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed installation would extend.

(g) Freestanding moorings shall not be constructed in a designated Primary Nursery Area as defined in 15A NCAC 07H .0208(a)(4) with less than two feet of water at normal low water level or normal water level under the General Permit set forth in this Section without prior approval from the Division of Marine Fisheries or the Wildlife Resources Commission.

(h) Freestanding moorings located over shellfish beds or submerged aquatic vegetation as defined by the Marine Fisheries Commission may be constructed without prior consultation from the Division of Marine Fisheries or the Wildlife Resources Commission if the following two conditions are met:

(1) water depth at the freestanding mooring location is equal to or greater than two feet of water at normal low water level or normal water level; and

(2) the freestanding mooring is located to minimize the area of submerged aquatic vegetation or shellfish beds impacted under the structure as determined by the Division of Coastal Management.

(i) Freestanding moorings and bird nesting poles shall not be established in submerged utility crossing areas or in a manner that interferes with the operation of an access through any bridge.

(j) Freestanding moorings and bird nesting poles shall be marked or colored for the life of the moorings and poles in compliance with G.S. 75A-15 and the applicant shall contact the U.S. Coast Guard and N.C. Wildlife Resources Commission to ensure compliance. Permanent reflectors shall be attached to the structure in order to make it more visible during hours of darkness or inclement weather.

(k) Freestanding moorings shall bear owner's name, vessel State registration numbers, or U.S. Customs Documentation numbers. Required identification shall be legible for the life of the moorings.

(l) The type of material used to anchor a proposed mooring buoy shall be non-polluting and of sufficient weight and design to anchor the buoy and vessel.

(m) Mooring buoys authorized by this General Permit shall be a minimum 12" in diameter or otherwise be designed to be recognized and not present a hazard to navigation.

(n) The platform located at the apex of the bird nesting pole shall not exceed three feet by three feet and shall not have sides.

(o) This permit does not relieve the permit holder of the responsibility to ensure that all other State and Federal permit requirements are met prior to implementation of the project, including G.S. 113A-107(a), G.S. 113A-118(d)(1) or G.S. 113A-120(b1)(4).

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. February 1, 1996;
Amended Eff. January 1, 2018;
Readopted Eff. October 1, 2022.

SECTION .2300 - GENERAL PERMIT FOR REPLACEMENT OF EXISTING BRIDGES AND CULVERTS IN ESTUARINE WATERS, ESTUARINE AND PUBLIC TRUST SHORELINES, PUBLIC TRUST AREAS, AND COASTAL WETLANDS

15A NCAC 07H .2301 PURPOSE

A person wishing to replace existing bridges and culverts in estuarine waters, estuarine and public trust shorelines, public trust areas, and coastal wetlands AECs, shall apply for a General Permit pursuant to the rules in this Section.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
Eff. June 1, 1996;
Amended Eff. August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2302 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued. Pursuant to G.S. 136-44.7B, permits issued to the North Carolina Department of Transportation for projects identified in the Transportation Improvement Program shall not expire.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
Eff. June 1, 1996;
Amended Eff. May 1, 2010;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2303 PERMIT FEE

The applicant shall pay a permit fee of four hundred dollars ($400.00). This fee shall be paid by inter-departmental fund transfer, check, or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119; 113A-119.1; 113A-124;*
Eff. June 1, 1996;
Amended Eff. May 1, 2010; September 1, 2006; August 1, 2000;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2304 GENERAL CONDITIONS

(a) Projects authorized by this permit shall be demolition, removal, and replacement of existing bridges and culverts along the existing alignment and conforming to the standards in this Rule. This permit shall be applicable only to single bridge and culvert projects and shall not authorize temporary fill causeways or temporary bridges that may be associated with bridge replacement projects.

(b) The permittee shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit is in accordance with the terms and conditions prescribed herein.
(c) The permit set forth in this Section shall not be applicable to proposed construction where the Department determined based on an initial review of the application that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.
(d) Review of individual project requests shall be coordinated with the Division of Marine Fisheries (DMF) and the Wildlife Resources Commission (WRC). This may result in a construction moratorium during periods of significant biological productivity or critical life stages as determined by the WRC and DMF.
(e) Development under this permit shall be carried out within Department of Transportation (DOT) right-of-ways or on lands under the ownership of the applicant in the case of a non-DOT project.
(f) Bridge and culvert replacements shall be designed to minimize any adverse impacts to potential navigation or use of the waters by the public.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
Eff. June 1, 1996;
Amended Eff. May 1, 2010;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2305 SPECIFIC CONDITIONS
(a) This general permit is applicable to bridge replacement projects spanning no more than 400 feet of estuarine water, public trust area, and coastal wetland AECs.
(b) Existing roadway deck width shall not be expanded to create additional lanes, with the exception that an existing one lane bridge may be expanded to two lanes where the Department of Environment and Natural Resources determines that authorization is warranted and the proposed project does not significantly affect the quality of the human and natural environment or unnecessarily endangers adjoining properties.
(c) Replacement of existing bridges with new bridges shall not reduce vertical or horizontal navigational clearances.
(d) All demolition debris shall be disposed of landward of all wetlands and the normal water level (NWL) or normal high water (NHW) level (as defined in 15A NCAC 07H .0106), and shall employ soil stabilization measures to prevent entry of sediments in the adjacent water bodies or wetlands.
(e) Bridges and culverts shall be designed to allow passage of anticipated high water flows.
(f) Measures sufficient to restrain sedimentation and erosion shall be implemented at each site.
(g) Bridge or culvert replacement activities involving excavation or fill in wetlands, public trust areas, and estuarine waters shall meet the following conditions:

(1) Replacing bridges with culverts shall not be allowed in primary nursery areas as defined by the Marine Fisheries or Wildlife Resources Commissions.
(2) The total area of public trust area, estuarine waters, and wetlands to be excavated or filled shall not exceed 2,500 square feet except that the coastal wetland component shall not exceed 750 square feet.
(3) Culverts shall not be used to replace bridges with open water spans greater than 50 feet.
(4) There shall be no temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands.
(5) No excavated or fill material shall be placed in any wetlands or surrounding waters outside of the alignment of the fill area indicated on the work plat(s).
(6) All excavated materials shall be confined above NWL or NHW and landward of any wetlands behind dikes or other retaining structures to prevent spill-over of solids into any wetlands or surrounding waters.
(7) No bridges with a clearance of four feet or greater above the NWL or NHW shall be allowed to be replaced with culvert(s) unless the culvert design maintains the existing water depth, vertical clearance and horizontal clearance.
(8) If a bridge is being replaced by a culvert(s) then the width of the waterbody shall not be decreased by more than 40 percent.
(9) All pipe and culvert inverts placed within the Public Trust or the Estuarine Waters AECs shall be buried at least one foot below normal bed elevation to allow for passage of water and aquatic life. Culverts placed in wetlands are not subject to this requirement.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124;*
Eff. June 1, 1996;
Amended Eff. May 1, 2010.
RRC objection due to ambiguity Eff. September 17, 2022.

SECTION .2400 - GENERAL PERMIT FOR PLACEMENT OF RIPRAP REVETMENTS FOR WETLAND PROTECTION IN ESTUARINE AND PUBLIC TRUST WATERS

15A NCAC 07H .2401 PURPOSE

Persons wishing to construct riprap revetments for wetland protection in estuarine and public trust waters, immediately adjacent to and waterward of the wetland toe, shall apply for a General Permit under this Section. This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. August 1, 2000;
Amended Eff. February 1, 2009; April 1, 2003;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2402 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners shall be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. August 1, 2000;
Amended Eff. February 1, 2009; October 1, 2007;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2403 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
Eff. August 1, 2000;
Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2404 GENERAL CONDITIONS

(a) This permit authorizes only the construction of wetland protection structures conforming to the standards herein.
(b) Permittees shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(c) The placement of riprap revetments authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.
(d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. August 1, 2000;
Amended Eff. February 1, 2009;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2405 SPECIFIC CONDITIONS

(a) This General Permit shall only be applicable along shorelines possessing wetlands, which exhibit an identifiable escarpment.
(b) The structure shall be constructed of granite, marl, riprap, concrete without exposed rebar, or other suitable equivalent materials approved by the Division of Coastal Management.
(c) The height of the erosion escarpment shall not exceed three feet.
(d) The riprap shall be placed immediately waterward of the erosion escarpment.
(e) The riprap revetment shall be positioned so as not to exceed a maximum of six feet waterward of the erosion escarpment at any point along its alignment with a slope no flatter than three feet horizontal per one foot vertical and no steeper than one and one half feet horizontal per one foot vertical.
(f) The riprap shall be positioned so as not to exceed a maximum of six inches above the elevation of the adjacent wetland substrate or escarpment.
(g) Construction authorized by this general permit will be limited to a maximum length of 500 feet.
(h) No backfill or any other fill of wetlands, submerged aquatic vegetation, estuarine waters, public trust areas, or highground areas is authorized by this general permit.
(i) No excavation of the shallow water bottom, any wetlands, or high ground is authorized by this general permit.
(j) Riprap material used for revetment construction shall be free from loose dirt or any pollutant and be of a size sufficient to prevent its movement from the site by wave action or currents.
(k) If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, temporary construction mats shall be utilized for the area to be crossed. The temporary mats shall be removed immediately upon completion of construction of the riprap structure.
(l) The permittee shall maintain the structure in conformance with the terms and conditions of this permit or the remaining riprap revetment shall be removed within 90 days of notification from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-107; 113A-108; 113A-118.1;*
Eff. August 1, 2000;
Amended Eff. February 1, 2009;
Readopted Eff. October 1, 2022.

SECTION .2500 - EMERGENCY GENERAL PERMIT, TO BE INITIATED AT THE DISCRETION OF THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR REPLACEMENT OF STRUCTURES, THE RECONSTRUCTION OF PRIMARY OR FRONTAL DUNE SYSTEMS, AND THE MAINTENANCE EXCAVATION OF EXISTING CANALS, BASINS, CHANNELS, OR DITCHES, DAMAGED, DESTROYED, OR FILLED IN BY HURRICANES OR TROPICAL STORMS, PROVIDED ALL REPLACEMENT, RECONSTRUCTION AND MAINTENANCE EXCAVATION ACTIVITIES CONFORM TO ALL CURRENT STANDARDS

15A NCAC 07H .2501 PURPOSE

Following damage to coastal North Carolina due to hurricanes or tropical storms, the Secretary may, based upon an examination of the extent and severity of the damage, implement any or all provisions of this Section. Factors the Secretary may consider in making this decision include, but are not limited to, severity and scale of property damage, designation of counties as disaster areas, reconnaissance of the impacted areas, or discussions with staff, state, or federal emergency response agencies. This permit shall allow for:

(1) the replacement of structures that were located within the estuarine system or public trust Areas of Environmental Concern and that were destroyed or damaged beyond 50 percent of the structures value as a result of any hurricane or tropical storm;

(2) a one time per property fee waiver for the reconstruction or repair by beach bulldozing of hurricane or tropical storm damaged frontal or primary dune systems; and

(3) a one time per property fee waiver for maintenance dredging activities within existing basins, canals, channels, and ditches. Structure replacement, dune reconstruction, and maintenance excavation activities authorized by this permit shall conform with all current use standards and regulations. The structural replacement component of this general permit shall only be applicable where the structure was in place and serving its intended function at the time of the impacting hurricane or storm, and shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2022.

15A NCAC 07H .2502 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and request approval for structural replacement, dune reconstruction, or maintenance excavation.

(b) The applicant shall provide:

(1) the site location, dimensions of the project area including shoreline length, a description of the repair, replacement, reconstruction, or maintenance excavation needed, and his or her name and address. In the case of structural replacements, any additional documentation confirming the existence of the structure prior to the hurricane or tropical storm, such as surveys, previous permits, photographs or videos; and

(2) Description of the extent of repair, replacement, reconstruction, or maintenance excavation needed, including dimensions and shoreline length.

(c) For projects involving the excavation or filling of any area of estuarine water, the applicant must provide 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 Division of Coastal Management within 10 days of receipt of the notice, and, indicate that no response shall be interpreted as no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she shall submit an application for a major development permit.

(d) No work shall begin until a meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development may be issued during this meeting if the Division representative finds that the application meets all the requirements of this Subchapter.
(e) Replacement, reconstruction, or maintenance excavation activities must be completed within one year of each activation by the Secretary of this general permit.
(f) Authorizations under this General Permit shall not be issued more than one year following each activation by the Secretary of this general permit.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2022.

15A NCAC 07H .2503 PERMIT FEE
The standard permit fee of two hundred dollars ($200.00) has been waived for this General Permit.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Amended Eff. September 1, 2006;
Readopted Eff. July 1, 2022.

15A NCAC 07H .2504 GENERAL CONDITIONS
(a) This permit shall only become available following a written statement by the Secretary that, based upon hurricane or tropical storm related damage, implementation of the provisions of this Section are warranted.
(b) Based upon an examination of the specific circumstances following a specific hurricane or tropical storm, the Secretary may choose to activate any or all of the components of this Section. The Secretary may also limit the geographic service area of this permit.
(c) This permit authorizes only the replacement of damaged or destroyed structures, the reconstruction of frontal or primary dunes, and maintenance excavation activities conforming to the standards described in this Section.
(d) This permit does not authorize the replacement of any structure within any Ocean Hazard Area of Environmental Concern, with the exception of those portions of shoreline within the Ocean Hazard AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.
(e) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections at any time in order to be sure that the activity being performed under authority of the general permit set forth in this Section is in accordance with the terms and conditions prescribed herein.
(f) The permit set forth in this Section shall not be applicable to proposed construction where the Department determines that the proposed activity would endanger adjoining properties or significantly affect historic, cultural, scenic, conservation, or recreational values identified in G.S. 113A-102 and G.S 113A-113(b)(4).
(g) This permit does not eliminate the need to obtain any other required State, local, or federal authorization.
(h) This permit does not preclude an individual from applying for other authorizations for structure replacement that may be available under the Coastal Area Management Act and the Rules of the Coastal Resources Commission. However, application fees for any such authorization shall not be waived or deferred.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Readopted Eff. July 1, 2022.

15A NCAC 07H .2505 SPECIFIC CONDITIONS

(a) The replacement of a damaged or destroyed structure shall take place within the footprint and dimensions that existed immediately prior to the damaging hurricane or tropical storm. No structural enlargement or additions shall be allowed.
(b) Structure replacement, dune reconstruction, and maintenance excavation authorized by this permit shall conform to the existing use standards and regulations for exemptions, minor development permits, and major development permits, including general permits. These use standards include, but are not limited to:

(1) 15A NCAC 07H .0208(b)(6) for the replacement of docks and piers;
(2) 15A NCAC 07H .0208(b)(7) for the replacement of bulkheads and shoreline stabilization measures;
(3) 15A NCAC 07H .0208(b)(9) for the replacement of wooden and riprap groins;
(4) 15A NCAC 07H .1500 for maintenance excavation activities; and
(5) 15A NCAC 07H .1800 for beach bulldozing in the Ocean Hazard AEC.

(c) The replacement of an existing dock or pier facility, including associated structures, marsh enhancement breakwaters, or groins shall be set back 15 feet from the adjoining property lines and the riparian access dividing line. The line of division of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in 15A NCAC 07H .1205, illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable. The setback may be waived by written agreement of the adjacent riparian owner(s) or when the two adjoining riparian owners are co-applicants. Should the adjacent property be sold before replacement of the structure begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any construction of the structure.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. October 2, 1999;
Temporary Adoption Expired on July 28, 2000;
Eff. April 1, 2001;
Amended Eff. September 1, 2016;
Readopted Eff. July 1, 2022.

SECTION .2600 – GENERAL PERMIT FOR CONSTRUCTION OF MITIGATION BANKS AND IN-LIEU FEE MITIGATION PROJECTS

15A NCAC 07H .2601 PURPOSE

Persons seeking to construct mitigation banks and in-lieu fee mitigation projects shall apply for a General Permit according to the rules in this Section. This permit shall be applicable only for activities resulting in net increases in aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136. These activities include:

(1) restoration;
(2) enhancement;
(3) establishment of tidal and non-tidal wetlands and riparian areas;
(4) restoration and enhancement of non-tidal streams and other non-tidal open waters; and
(5) rehabilitation or enhancement of tidal streams, tidal wetlands, and tidal open waters.

This permit shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. October 1, 2004;
Amended Eff. October 1, 2014;

Readopted Eff. October 1, 2022.

15A NCAC 07H .2602 APPROVAL PROCEDURES

(a) The applicant shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until a meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction of the mitigation site permitted under this Section shall start within 365 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit shall be reissued.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. October 1, 2004;
Amended Eff. October 1, 2014;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2603 PERMIT FEE

The applicant shall pay a permit fee of four hundred dollars ($400.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
Eff. October 1, 2004;
Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2604 GENERAL CONDITIONS

(a) The permit in this Section authorizes only those activities associated with the construction of mitigation banks and in-lieu fee mitigation projects.

(b) Permittees shall allow representatives of the Department of Environmental Quality to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(c) There shall be no interference with navigation or use of the waters by the public. No attempt shall be made by the permittee to prevent the use by the public of all navigable waters at or adjacent to the development authorized pursuant to the rules of this Section.

(d) This permit shall not be applicable to proposed construction where the Division of Coastal Management has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is required because there are unresolved questions concerning the proposed activity's impact on Areas of Environmental Concern.

(e) At the discretion of the Division of Coastal Management, review of individual project requests shall be coordinated with the Department of Environmental Quality to determine if a construction moratorium during periods of significant biological productivity or critical life stages of fisheries resources is necessary to protect those resources.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. October 1, 2004;
Amended Eff. October 1, 2014;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2605 SPECIFIC CONDITIONS

(a) The General Permit in this Section shall be applicable only for the construction of mitigation banks or in-lieu fee mitigation projects.
(b) No excavation or filling of any submerged aquatic vegetation shall be authorized by this general permit.
(c) The crossing of wetlands in transporting equipment shall be avoided or minimized to the maximum extent practicable. If the crossing of wetlands with mechanized or non-mechanized construction equipment is necessary, track and low-pressure equipment or temporary construction mats shall be utilized for the area to be crossed. The temporary mats shall be removed immediately upon completion of construction.
(d) No permanent structures shall be authorized by this general permit, except for signs, fences, water control structures, or those structures needed for site monitoring or shoreline stabilization.
(e) The use of any portion of the site as compensatory mitigation for future projects shall be determined in accordance with applicable regulatory policies and procedures.
(f) The development authorized pursuant to this general permit shall result in a net increase in aquatic resource functions and services per 73 FR 19670 and federal Clean Water Act, at 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; and Pub. L. 108-136.
(g) The entire mitigation bank or in-lieu fee project site shall be protected in perpetuity in its mitigated state through conservation easement, deed restriction, or other appropriate instrument attached to the title for the subject property and shall be owned by the permittee or its designee.
(h) The Division of Coastal Management shall be provided copies of all monitoring reports prepared by the permittee or its designee for the authorized mitigation bank or in-lieu fee project site.
(i) If water control structures or other hydrologic alterations are proposed, such activities shall not increase the likelihood of flooding any adjacent property.
(j) Appropriate sedimentation and erosion control devices, measures, or structures such as silt fences, diversion swales or berms, and sand fences shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses, and property.
(k) If one or more contiguous acre of property is to be graded, excavated, or filled, the applicant shall submit an erosion and sedimentation control plan with the Division of Energy, Mineral, and Land Resources, Land Quality Section. The plan shall be approved prior to commencing the land-disturbing activity.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Eff. October 1, 2004;
Amended Eff. October 1, 2014; August 1, 2012 (see S.L. 2012-143, s.1.(f));
Readopted Eff. October 1, 2022.

SECTION .2700 – GENERAL PERMIT FOR THE CONSTRUCTION OF MARSH SILLS

15A NCAC 07H .2701 PURPOSE

Persons seeking to construct marsh sills for wetland enhancement and shoreline stabilization in estuarine and public trust waters shall apply for a General Permit according to the rules in this Section. Marsh sills are defined as sills that are shore-parallel structures built in conjunction with existing, created, or restored wetlands. This general permit shall not apply within the Ocean Hazard System AECs or waters adjacent to these AECs with the exception of those portions of shoreline within the Inlet Hazard Area AEC that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area. A Division of Coastal Management representative will make the determination whether the site features characteristics of the Estuarine Shoreline at the time of permit application.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Temporary Amendment Eff. April 1, 2019;
Amended Eff. July 1, 2019;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2702 APPROVAL PROCEDURES

(a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management at the Regional Office indicated on the map located at https://ncdenr.maps.arcgis.com/apps/webappviewer/index.html?id=1a5881ec85ca40679988982e02665b51 and request approval for development as defined in G.S. 113A-130(5).

(b) The applicant shall provide:

(1) the site location, dimensions of the project area, and his or her name and address; and

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

(3) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. The notice shall instruct adjacent property owners to provide any comments on the proposed development in writing for consideration to the Division of Coastal Management within 10 days of receipt of the notice and indicate that no response by the adjacent property owners will be interpreted as the adjacent property owners having no objection. Division staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit. If Division staff finds that the comments are worthy of more in-depth review, the Division shall notify the applicant that he or she must submit an application for a major development permit.

(c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management representative to review the proposed development. A permit to proceed with the proposed development shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter. Construction permitted under this Section shall be completed within 120 days of permit issuance or such permit shall expire. If the applicant seeks a new permit under this Section, the Division of Coastal Management shall re-examine the proposed development to determine if the General Permit may be reissued.

(d) Any modification or addition to the permitted project shall require approval from the Division of Coastal Management.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Amended Eff. October 1, 2007;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2703 PERMIT FEE

The applicant shall pay a permit fee of two hundred dollars ($200.00). This fee shall be paid by check or money order made payable to the Department of Environmental Quality.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-119.1;*
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Amended Eff. September 1, 2006;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2704 GENERAL CONDITIONS

(a) Permittees shall allow authorized representatives of the Department of Environmental Quality (DEQ) to make inspections at any time in order to ensure that the activity being performed under authority of this General Permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

(b) The placement of marsh sills authorized in these Rules shall not interfere with the established or traditional rights of navigation of the waters by the public.

(c) The permit set forth in this Section 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 because there are unresolved questions concerning the proposed activity's impact Areas of Environmental Concern.

History Note: *Authority G.S. 113A-107; 113A-118.1;*
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Temporary Amendment Eff. April 1, 2019;
Amended Eff. July 1, 2019;
Readopted Eff. October 1, 2022.

15A NCAC 07H .2705 SPECIFIC CONDITIONS

(a) A General Permit issued pursuant to this Section shall be applicable only for the construction of marsh sill structures built in conjunction with existing, created, or restored wetlands. Planted wetland vegetation shall consist only of native species per G.S. 113A-113(b)(1).
(b) The landward edge of the sill shall be positioned no greater than 30 feet waterward of the normal high water or normal water level or five feet waterward of the existing wetlands, whichever distance is greater.
(c) The permittee shall maintain the authorized sill, including wetlands and tidal inundation, in conformance with the terms and conditions of this permit, or the remaining sill structures shall be removed within 90 days of notification of noncompliance from the Division of Coastal Management.
(d) The height of sills shall not exceed 12 inches above normal high water, normal water level, or the height of the adjacent wetland substrate, whichever is higher.
(e) Sill construction authorized by this permit shall be limited to a maximum length of 500 feet.
(f) The sills shall have at least one five-foot opening every 100 feet and may be staggered, overlapped, or left open as long as the five-foot separation between sections is maintained. Overlapping sections shall not overlap more than 10 feet.
(g) The sill structure shall not exceed a slope of a one and a half foot horizontal distance over a one foot vertical rise. The width of the structure on the bottom shall not exceed 12 feet.
(h) For water bodies narrower than 150 feet, no portion of the structures shall be positioned offshore more than one sixth (1/6) the width of the waterbody at any point along its alignment.
(i) The sill shall not be within a navigation channel or associated setbacks marked or maintained by a state or federal agency.
(j) The sill shall not interfere with leases or franchises for shellfish culture.
(k) All structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor, unless either a signed waiver statement is obtained from the adjacent property owner or the portion of the structure within 15 feet of the adjacent riparian access corridor is located no more than 25 feet from the normal high or normal water level. The riparian access corridor line is determined by drawing a line parallel to the channel, then drawing a line perpendicular to the channel line that intersects with the shore at the point where the upland property line meets the water's edge, as illustrated in 15A NCAC 07H .1205(t). Additionally, the sill shall not interfere with the exercise of riparian rights by adjacent property owners, including access to navigation channels from piers, or other means of access.
(l) Sills shall be marked at 50-foot intervals with yellow reflectors extending at least three feet above normal high water or normal water level and shall be maintained for the life of the structure.
(m) If the crossing of wetlands with mechanized construction equipment is necessary, temporary construction mats shall be utilized for the areas to be crossed. The temporary mats shall be removed upon completion of the construction of the sill structure. Material used to construct the sill shall not be stockpiled on existing wetlands or in open water unless contained in a containment structure supported by construction mats.
(n) Sedimentation and erosion control measures shall be implemented to ensure that eroded materials do not enter adjacent wetlands or waters.
(o) No excavation or filling, other than that necessary for the construction and bedding of the sill structure, is authorized by this general permit.
(p) Sills shall not be constructed within any native submerged aquatic vegetation. If submerged aquatic vegetation is present within a project area, a submerged aquatic vegetation survey shall be completed during the growing season of April 1 through September 30. All sills shall have a minimum setback of 10 feet from any native submerged aquatic vegetation as defined by the N.C. Marine Fisheries Commission.

(q) Sills shall not be constructed within any habitat that includes oyster reefs or shell banks. All sills shall have a minimum setback of 10 feet from any oysters, oyster beds, or shell banks.
(r) No excavation of the shallow water bottom or any wetland is authorized by this general permit.
(s) The sill material shall consist of clean rock, marl, oyster shell, or masonry materials such as granite or broken concrete, or other similar materials that are approved by the N.C. Division of Coastal Management. Sill material shall be free of loose sediment or exposed rebar. The sill material shall be of sufficient size and slope to prevent its movement from the approved alignment by wave or current action.

History Note: *Authority G.S. 113A-107; 113A-113(b)(1); 113A-118.1;*
Temporary Adoption Eff. June 15, 2004;
Eff. April 1, 2005;
Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1.(f));
Temporary Amendment Eff. April 1, 2019;
Amended Eff. July 1, 2019;
Readopted Eff. October 1, 2022.

b) 15A NCAC 07J

SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, DECLARATORY RULINGS, AND STATIC LINE EXCEPTIONS

SECTION .0100 - DEFINITIONS

15A NCAC 07J .0101 STATUTORY DEFINITIONS

All definitions set out in G.S. 113A-100 through -128 and in G.S. 113-229 apply herein.

History Note: *Authority G.S. 113-229; 113A-103(5)(a); 113A-118; 113A-124;*
Eff. March 15, 1978;
Amended Eff. November 1, 1984;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0102 GENERAL DEFINITIONS

The following definitions apply whenever these words are used in this Subchapter:

(1) "Areas of Environmental Concern" (AECs) means geographic areas within the coastal area which the Coastal Resources Commission chooses to designate for special environmental and land use regulations. The types of areas which may be designated as AECs are described in G.S. 113A-113. Areas which have already been designated are defined in 15A NCAC 07H, "State Guidelines for Areas of Environmental Concern."

(2) "Department" (DEQ) means the North Carolina Department of Environmental Quality.

(3) "Excavation Project" means any moving, digging, or exposing of bottom materials, marshland substrate, or root or rhizome matter in the estuarine waters, tidelands, marshlands and State-owned lakes, regardless of the equipment or method used.

(4) "Filling Project" means the placing of any materials in estuarine waters, tidelands, marshlands, and State-owned lakes so as to raise the elevation of the area upon which the material is placed. Structure placement does not constitute a filling or excavation project. The placement of shell material specifically for the purpose of oyster culture also shall not be considered a filling project.

(5) "Local Management Program" means the local implementation and enforcement program of a coastal city or county that has undertaken to administer a permit program for minor development in areas of environmental concern located within such city or county.

(6) "Local Permit Officer" refers to the locally designated official who will administer and enforce the minor development permit program in areas of environmental concern and all parts of the land use plan which the local government may wish to enforce over the entire planning area.

(7) "Division" means the Division of Coastal Management.

(8) "Permit" refers to CAMA major development permits, CAMA minor development permits and dredge and fill permits unless the context clearly indicates otherwise.

(9) "Secretary" refers to the Secretary of Environment and Natural Resources.

History Note: *Authority G.S. 113-229; 113A-116; 113A-117; 113A-118;*
Eff. March 15, 1978;
Amended Eff. June 1, 2006; April 1, 1997; May 1, 1990; November 1, 1984;
Readopted Eff. October 1, 2022.

SECTION .0200 - APPLICATION PROCESS

15A NCAC 07J .0201 PERMIT REQUIRED

After March 1, 1978, every person wishing to undertake any development in an area of environmental concern shall obtain a permit from the Department, in the case of a major development or dredge and fill permit, or from the local permit officer, in the case of a minor development permit, unless such development is exempted by the Commission.

History Note: *Authority G.S. 113-229; 113A-118; 113A-124;*
Eff. March 15, 1978;
Amended Eff. November 1, 1984;

Readopted Eff. October 1, 2022.

15A NCAC 07J .0202 PERMIT APPLICATIONS

(a) Any person seeking to obtain a permit for a major development and/or dredge and fill project is required to file with the Department an application completed in accordance with 15A NCAC 07J .0204(b)(1) through (7).

(b) Any person seeking to obtain a permit for a minor development project is required to file with the local permit officer a completed application form as adopted and approved by the Coastal Resources Commission and in accordance with the minor permit provisions in 15A NCAC 07J .0204.

(c) Regardless of whether any advice or information was provided by other persons, including department officials, the applicant is responsible for the accuracy and completeness of the information provided in the application.

History Note: *Authority G.S. 113-229; 113A-119; 113A-124(b);*
Eff. March 15, 1978;
Amended Eff. December 1, 1985; May 1, 1985; November 1, 1984; November 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0203 PREPARATION OF WORK PLATS

(a) General. Project plans or work plats must include a top or planview, a cross-sectional view, and a location map. All plats must have the standard north arrow. North should be at the top of the plat. The prints must be neat and sufficiently clear to permit photographic reproduction. Originals are preferred as copies are often found to be unacceptable. The applicant should use as few sheets as necessary to show clearly what is proposed. Work plats must be accurately drawn to scale. A scale of 1" = 200' or less is normally required in order that project detail can be easily understood.

(b) Details of Work Plats

(1) Topview or Planview Plats. Such drawings must show existing and proposed features such as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type and location of sewage treatment facilities and effluent outlets. Existing water depths must be indicated using mean low water as base or zero. These can be shown either as contours or spot elevation. Care should be used in indicating which features are existing and which are proposed. Property boundaries, as they appear on the deed, and the names of adjacent property owners must be shown on the detailed plat. The work plat must clearly show any areas to be excavated and exact locality for disposal of the excavated material. When fill material is to be placed behind a bulkhead or dike, the plan must be sufficiently detailed to show the exact location of such bulkheads or dikes, and the adequacy of the bulkhead or dike to confine the material. Drawings must indicate approximate mean low and mean high water lines and the presence of marsh in the area of proposed work. In areas where the difference in daily low and high tides is less than six inches, only an average water level must be indicated.

(2) Cross-Section Drawing. A cross-sectional diagram showing depth and elevation of proposed work relative to existing ground level -- mean low and mean high water line must be included in the plan. The mean low water must be the reference for water depths and land elevations (i.e., mean low water should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea level must be shown for any proposed buildings.

(3) Location Map. A map of small scale showing the location of the proposed work is also required. The location map must provide adequate information to locate the project site.

(4) Title of Drawing. Each drawing must have a simple title block to identify the project or work, and shall include name of applicant, date the plat was prepared, and scale of the plat. The date of any revisions must be clearly noted. The applicant must also include the name of the person who drew the plat.

(c) Applications are often made for permits to authorize projects that have a portion of the development outside Areas of Environmental Concern. Some information concerning plans for development outside AECs is necessary to determine compatibility with the local Land Use Plan and to be reasonably sure that such development will not adversely impact AECs. Therefore, any application for a CAMA or Dredge and Fill permit shall include, at a minimum, the following information:

(1) detailed information on any development located in or directly impacting an AEC;

(2) a plat showing the entire tract of land to be developed and possible access or roadway locations;

(3) maps or statements concerning the location of wetlands within the project area to the extent that a wetlands examination has been made by a private consultant or government agency. Each developer of a project is urged, for his own protection and planning, to procure such information prior to submission for a CAMA permit;

(4) a narrative description of the proposed development that shall include, at a minimum, the following information:

(A) the character of the development (i.e. residential, commercial, recreational, etc.);

(B) the maximum number of residential living units that will be permitted;

(C) the maximum acreage that will be utilized for non-residential purposes;

(D) a statement as to whether wastewater treatment is to be by municipal system, septic tank, or other on-site treatment system. A general description of any on-site treatment system shall be included;

(E) a statement that access, as required by all land use regulations, is available through the site to the Area of Environmental Concern without crossing any Section +404= wetland or, if such a crossing is required, a statement that said crossing is properly authorized. If the site contains significant wetlands, such statement may be required from a qualified private consultant or government agency, based on an examination of the property by such private consultant or government agency. The CAMA permit when issued may be conditioned upon the procurement of any required wetlands permit, if the need for such is disclosed by such statement;

(5) any maps or plans that have been prepared to meet other regulatory requirements such as stormwater management and sedimentation and erosion control.

Following review of the permit application, including the aforementioned supporting data (Subparagraphs 1-5), a permit may be issued conditioned upon compliance with the development parameters provided in the narrative statement accompanying the application. Any subsequent violation of these narrative standards as incorporated within the permit shall be a permit violation. No subsequent permit, permit modification, or other agency approval shall be required for any subsequent work performed outside the Area of Environmental Concern as long as such work is within the parameters described in the narrative statement presented with the permit, and included in the permit conditions. Any subsequent change in the development which changes the parameters of the narrative, statement shall be submitted to the staff, but no new permit or permit modification shall be required unless staff finds that the changes would have reasonable expectation of adversely affecting an Area of Environmental Concern or rendering the project inconsistent with Local Land Use Plans. Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that cannot reasonably be determined to have a direct adverse impact on the AEC while a permit application for work in the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

History Note: *Authority G.S. 113A-119; 113A-124;*
Eff. March 15, 1978;
Amended Eff. July 1, 1989;
RRC objection due to lack of statutory authority, ambiguity, lack of necessity, and failure to comply with the APA Eff. September 17, 2022.

15A NCAC 07J .0204 PROCESSING THE APPLICATION

(a) On receipt of a CAMA major development and/or dredge and fill permit application by the Department, a letter shall be sent to the applicant acknowledging receipt.

(b) Application processing shall begin when an application is accepted as complete. Before an application will be accepted as complete, the following requirements must be met;

(1) a current application form must be submitted;

(2) all questions on the application form must be completed or the letters "N/A" must be placed in each section that does not apply;

(3) an accurate work plan as described in 15A NCAC 7J .0203 herein must be attached to all CAMA major development and/or dredge and fill permit applications;

(4) a copy of a deed or other instrument under which the applicant claims title must accompany a CAMA major development and/or dredge and fill permit application;

(5) notice to adjacent riparian landowners must be given as follows:

(A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as identified in the permit application) have been sent a copy of the application for the proposed development must be included in a CAMA major development and/or dredge and fill permit application. Said landowners have 30 days from the date of notification in which to comment. Such comments will be considered by the Department in reaching a final decision on the application.

(B) For CAMA minor development permits, the applicant must give actual notice of his intention to develop his property and apply for a CAMA minor development permit to all adjacent riparian landowners. Actual notice can be given by sending a certified letter, informing the adjoining property owner in person or by telephone, or by using any other method which satisfies the Local Permit Officers that a good faith effort has been made to provide the required notice;

(6) the application fee must be paid as set out in this Subparagraph:

(A) Major development permit - Application fees shall be in the form of a check or money order payable to the Department. The application fee for private, non-commercial development shall be two hundred fifty dollars ($250.00). The application fee for a public or commercial project shall be four hundred dollars ($400.00).

(B) Minor development permit - Application fees shall be in the form of a check or money order payable to the permit-letting agency in the amount of one hundred dollars ($100.00). Monies so collected may be used only in the administration of the permit program;

(7) any other information the Department or local permit officer deems necessary for a review of the application must be provided. Any application not in compliance with these requirements will be returned to the applicant along with a cover letter explaining the deficiencies of the application and will not be considered accepted until it is resubmitted and determined to be complete and sufficient. If a local permit officer receives an application for a permit that the local permit officer lacks authority to grant, the permit officer shall return the application with information as to how the application may be properly considered; and

(8) for development proposals subject to review under the North Carolina Environmental Policy Act (NCEPA), G.S. 113A-100 et. seq., the permit application will be complete only on submission of the appropriate environmental assessment document.

(c) Upon acceptance of a major development and/or dredge and fill permit as complete, the Department shall send a letter to the applicant setting forth the data on which acceptance was made.

(d) If the application is found to be incomplete or inaccurate after processing has begun or if additional information from the applicant is necessary to adequately assess the project, the processing shall be terminated pending receipt of the necessary changes or necessary information from the applicant. During the pendency of any termination of processing, the permit processing period shall not run. If the changes or additional information significantly alters the project proposal, the application shall be considered new and the permit processing period will begin to run from that date.

(e) Any violation occurring at a proposed project site for which an application is being reviewed shall be processed according to the procedures in 15A NCAC 7J .0408 - 0410. If the violation substantially altered the proposed project site, and restoration is deemed necessary, the applicant shall be notified that processing of the application will be suspended pending compliance with the notice of required restoration. Satisfactory restoration of any unauthorized development that has substantially altered a project site is deemed necessary to allow a complete review of the application and an accurate assessment of the project's potential impacts. The applicant shall be notified that permit processing has resumed, and that a new processing deadline has been established once the required restoration has been deemed satisfactory by the Division of Coastal Management or Local Permit Officer.

(f) If during the public comment period a question is raised as to public rights of access across the subject property, the Division of Coastal Management shall examine the access issue prior to making a permit decision. Any individual or governmental entity initiating action to judicially recognize a public right of access must obtain a court order to suspend processing of the permit application. Should the parties to legal action resolve the issue, permit processing shall continue.

History Note: *Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;*
Eff. March 15, 1978;
Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;

Temporary Amendment Eff. September 2, 1998;
Temporary Amendment Expired June 28, 1999;
Amended Eff. August 1, 2000;
RRC objection due to ambiguity Eff. September 17, 2022.

15A NCAC 07J .0205 ACCEPTANCE OF AN APPLICATION

History Note: *Authority G.S. 113A-118(c); 113A-122(a);*
Eff. March 15, 1978;
Amended Eff. August 1, 1983; May 1, 1983;
Repealed Eff. November 1, 1983.

15A NCAC 07J .0206 PUBLIC NOTICE OF THE PROPOSED DEVELOPMENT

Within a reasonable time after receiving an application for a major development permit, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Division of Coastal Management shall issue public notice of the proposed development as provided in G.S. 113A-119(b). Any citizen or group will, upon request, be promptly sent a copy of the application upon payment of a reasonable fee to cover costs of copying, handling, and posting.

History Note: *Authority G.S. 113A-119(b);*
Eff. March 15, 1978;
Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983;
RRC objection due to lack of statutory authority, ambiguity, and lack of necessity Eff. September 17, 2022.

15A NCAC 07J .0207 AGENCY REVIEW/COMMENTS: MAJOR DEVELOPMENT/DREDGE AND FILL

(a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an on-site investigation is made, preferably in the presence of the applicant or his agent. The report will include such topics as project location, environmental setting, project description and probable environmental impact but will not include recommendations of the office.
(b) The Department will circulate major development permit applications to the several state review agencies having expertise in the criteria enumerated in G.S. 113A-120.
(c) The Department will circulate dredge and fill permit applications to the several state review agencies having expertise in those matters enumerated in G.S. 113- 229(e)(1) - (5).
(d) Each reviewing agency may make an independent analysis of the application and submit recommendations and comments to the Department. Such recommendations and comments will be considered by the Department in taking action on a permit application.
(e) Each reviewing agency may request additional information (including Stormwater Management Plans) from the applicant through the Division of Coastal Management if such information is deemed necessary for a thorough and complete review of the application. The applicant will be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 7J .0204(d).
(f) The Division of Coastal Management is one of the state agencies that comments on dredge and fill project applications. In its role as a commenting agency the Division will use criteria in 15A NCAC 7H and local land use plans to assess whether to recommend permit issuance, permit issuance with conditions, or permit denial. Other commenting state agencies will make assessments, in accordance with Paragraph (c) of this Rule.

History Note: *Authority G.S. 113-229; 113A-124(a)(1);*
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984;
RRC objection due to lack of statutory authority Eff. September 17, 2022.

15A NCAC 07J .0208 PERMIT CONDITIONS

(a) Each of the several state review agencies may submit specific recommendations regarding the manner in which the requested work should be carried out and suggest reasonable limitations on the work in order to protect the

public interest with respect to the factors enumerated in G.S. 113A-120 and/or G.S. 113-229(c). The several state review agencies also may submit specific recommendations regarding limitations to be placed on the operation and/or maintenance of the completed project, as necessary to ensure continued protection of the public interest with respect to those factors. Such limitations may be recommended by the Department or commission to be imposed on the project in the form of "permit conditions". Upon the failure of the applicant to appeal a permit condition, the applicant will be deemed to have amended his permit to conform to the conditions imposed by the Department. Compliance with operational and/or maintenance conditions must continue for the life of the project.

(b) The local permit officer may condition a minor development permit upon amendment of the proposed project to take whatever measures may be reasonably necessary to protect the public interest with respect to the factors enumerated in G.S. 113A-120. The applicant must sign the conditioned grant as an indication of amendment of the proposed project in a manner consistent with the conditions set out by the local permit officer before the permit shall become effective.

(c) Failure to comply with permit conditions constitutes a violation of an order of the Commission under G.S. 113A-126.

History Note: *Authority G.S. 113A-120(b); 113A-124(a)(1); 113A-124(c)(5);*
Eff. March 15, 1978;
Amended Eff. March 1, 1985; November 1, 1984;
RRC objection due to lack of statutory authority Eff. September 17, 2022.

15A NCAC 07J .0209 ISSUANCE OF PERMITS

(a) The Commission hereby delegates to the Department the authority to issue or deny CAMA permits. The decision to issue or deny the permit will be based on the criteria set forth in G.S. 113A-120, the standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The Department may condition issuance of permits on such conditions as are considered necessary to ensure compliance with these criteria and standards. The Department's decisions to grant or deny CAMA permits may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

(b) The Department will make a final decision with respect to a dredge and fill permit application as provided in G.S. 113-229(e) upon considering the field investigation report, the comments of all interested state agencies, the comments of adjacent riparian landowners and the comments of other interested parties. The Department's decisions to grant or deny dredge and fill permits may be appealed as provided in G.S. Chapter 150B, G.S. 113-229, and 15A NCAC 7J Section .1000.

(c) In cities and counties that have developed local management programs, applications for minor development permits shall be considered by the local permit officer. The decision to issue or deny the permit will be based on the applicable criteria set forth in G.S. 113A-120, the applicable standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The local permit officer may condition issuance of a permit on such conditions as are considered necessary to ensure compliance with criteria and standards. A city's or county's decision to grant or deny a CAMA minor development permit may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

History Note: *Authority G.S. 113-229; 113A-118(c); 113A-122(c); 113A-124;*
Eff. March 15, 1978;
Amended Eff. October 1, 1988; November 1, 1984; September 6, 1979; March 5, 1979;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES

Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered development and requires CAMA permits. Replacement of structures shall be permitted if the replacement is consistent with current CRC rules. Repair of structures damaged by natural elements, fire or normal deterioration is not considered development and shall not require CAMA permits. The CRC shall use the following criteria to determine whether proposed work is considered repair or replacement.

(1) NON-WATER DEPENDENT STRUCTURES. Proposed work is considered replacement if the Department determines that the cost to do the work exceeds 50 percent of the market value of an existing structure either prior to a catastrophic event such as a fire or hurricane or if there is no catastrophic event, at the time of the request market value and costs are determined as follows:

(a) The market value of the structure shall be determined by the Division based on information provided by the applicant that is no more than one year old as of the date the request is made. The market value of the structure shall not include the value of the land or value resulting from the location of the property, the value of accessory structures, or the value of other improvements located on the property. The information provided by the applicant may include any of the following:
    (i) an appraisal;
    (ii) the replacement cost with depreciation for age of the structure and quality of construction; or
    (iii) the tax assessed value.

(b) The cost to do the work is the cost to return the structure to its pre-damaged condition, using labor and materials obtained at market prices, regardless of the actual cost incurred by the owner to restore the structure. It shall include the costs of construction necessary to comply with local and state building codes. The cost shall be determined by the Division utilizing any or all of the following provided by the applicant:
    (i) an estimate provided by a North Carolina licensed contractor qualified by license to provide an estimate or bid with respect to the proposed work;
    (ii) an insurance company's report itemizing the cost, excluding contents and accessory structures; or
    (iii) an estimate provided by the local building inspections office.

(2) WATER DEPENDENT STRUCTURES. The proposed work is considered replacement if it enlarges the existing structure in any dimension. The proposed work is also considered replacement if:

(a) in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing moorings, more than 50 percent of the framing and structural components (beams, girders, joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage condition. Water dependent structures that are structurally independent from the principal pier or dock, such as boatlifts or boathouses, are considered as separate structures for the purpose of this Rule;

(b) in the case of boat ramps and floating structures such as docks, piers, platforms, and modular floating systems, more than 50 percent of the square feet area of the structure must be rebuilt in order to restore the structure to its pre-damage condition;

(c) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50 percent of the linear footage of the structure must be rebuilt in order to restore the structure to its pre-damage condition.

History Note: *Authority G.S. 113A-103(5)b.5.; 113A-107(a),(b);*
Eff. July 1, 1990;
Amended Eff. August 1, 2007;
Readopted Eff. January 1, 2023.

15A NCAC 07J .0211 NON-CONFORMING DEVELOPMENT

A non-conforming structure is any structure within an AEC other than Ocean Hazard and Inlet Hazard AECs that is inconsistent with current CRC rules, and was built prior to the effective date(s) of the rule(s) with which it is inconsistent. Replacement of such structures shall be allowed when all of the following criteria are met:

(1) the structure shall not be enlarged beyond its original dimensions;

(2) the structure shall serve the same or similar use;

(3) there are no alternatives for replacing the structure to provide the same or similar benefits to the structure owner in compliance with current rules; and

(4) the structure will be rebuilt so as to comply with current rules to the maximum extent possible.

History Note: *Authority G.S. 113A-107(a),(b);*
Eff. July 1, 1990;
Amended Eff. December 1, 1991;
Readopted Eff. October 1, 2022.

SECTION .0300 - HEARING PROCEDURE

15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING

Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision under Paragraph (a) of this Rule may file a request for such a hearing and with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City, NC 28557, and a copy shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The Commission hereby delegates to the Chair the authority to determine whether persons other than those entitled to a hearing shall be granted a hearing.

History Note: *Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124;*
Eff. March 15, 1978;
Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984;
RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;
Amended Eff. March 31, 1992;
RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;
Amended Eff. June 1, 2005; April 1, 1992;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0302 PETITION FOR CONTESTED CASE HEARING

(a) Any petition shall conform to the requirements of G.S. 150B-23. A copy of the petition shall be served on the Director, Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557, and on the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. If a minor development permit is appealed, a copy of the petition shall also be served on the local permit officer. Failure to file any petition within the time period in G.S. 113A-121.1 (a) and (b) constitutes a waiver of the opportunity for a contested case hearing.
(b) Upon the request of the Director, the local permit officer shall submit a certified copy of the entire record of any minor permit decision which is being appealed to the Director. The record shall include the elements indicated in 15A NCAC 07I .0508(c).

History Note: *Authority G.S. 113-229; 113A-118(a); 113A-121.1; 113A-124;*
Eff. March 15, 1978;
Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984; July 1, 1982;
RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;
Amended Eff. March 31, 1992;
RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;
Amended Eff. June 1, 2005; April 1, 1992;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0303 CONTESTED CASE HEARING PROCEDURES

(a) All contested case hearings shall be heard before an administrative law judge assigned by the Office of Administrative Hearings.
(b) All contested case hearings shall be governed by the procedures in Article 3 of Chapter 150B of the General Statutes and in Title 26 North Carolina Administrative Code except to the extent and in the particulars that Chapters 113 and 113A of the General Statutes make specific provision to the contrary.

History Note: *Authority G.S. 113-229; 113A-122(b); 113A-124;*
Eff. March 15, 1978;
Amended Eff. January 1, 1989; November 1, 1984; July 1, 1982; October 15, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0304 VENUE

History Note: *Authority G.S. 113A-124(c)(5); 150B-24;*
Eff. March 15, 1978;
Amended Eff. July 1, 1982;

Repealed Eff. August 1, 1988.

15A NCAC 07J .0305 BURDEN OF PROOF

The burden of proof at any hearing on a permit appeal shall be as provided in G.S. 113A-122(b)(7).

History Note: *Authority G.S. 113A-122(b)(7);*
Eff. March 15, 1978;
Amended Eff. October 1, 1988; July 1, 1982; March 30, 1979;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0306 ACTION PENDING FINAL DISPOSITION

Pending the final disposition of a hearing allowed under these rules, no action shall be taken which would be unlawful in the absence of an issued CAMA development and/or dredge and fill permit. In cases where the request for a hearing has been denied under Rule .0301(b), development authorized by the permit may be undertaken unless prohibited by an order of the superior court.

History Note: *Authority G.S. 113A-121.1(d) and (e);*
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; July 1, 1982;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0307 PRE-HEARING CONFERENCES
15A NCAC 07J .0308 PRESENTATION OF EVIDENCE
15A NCAC 07J .0309 CONDUCT OF THE HEARING
15A NCAC 07J .0310 PROCEDURES FOR APPLICATION HEARINGS: NO PARTIES APPEAR
15A NCAC 07J .0311 POST HEARING PROCEDURES

History Note: *Authority G.S. 113A-121(b)(4)(11); 113A-122(b)(3)(4)(8)(9); 113A-122(c)(5); 113A-124(c)(4)(5); 150B-25,24;*
Eff. March 15, 1978;
Repealed Eff. July 1, 1982.

15A NCAC 07J .0312 SETTLEMENT

(a) Whenever possible, the Commission encourages the resolution of disputes over the grant or denial of CAMA permits and dredge and fill permits.

(b) The Commission hereby delegates to the director the authority to enter into settlements of appeals concerning CAMA permits and dredge and fill permits prior to the time the administrative law judge opens the hearing on the permit appeal. The director may enter into a settlement without the Commission's approval. Such a settlement shall not be considered a final commission decision, but shall be subject to appeal pursuant to G.S. 113A-121.1 and G.S. 113-229(f). The Department shall provide public notice of any settlement entered into prior to the opening of the administrative hearing in the same manner as it provides public notice of permit decisions.

(c) The Commission further delegates to the director the authority to enter into negotiations concerning the settlement of any permit appeal after the opening of the hearing on it. Any settlement after the opening of the hearing on an appeal must be submitted to the Commission for adoption or rejection. All parties to a proposed settlement agreement shall waive the time limitation in G.S. 113A-122(c) so as to prevent the decision being appealed from becoming effective before the Commission's consideration of the proposed settlement. The Commission's adoption of any settlement shall constitute a final commission decision under G.S. 113A-123.

History Note: *Authority G.S. 113A-120; 113A-122; 113A-124;*
Eff. April 1, 1987;
Amended Eff. July 1, 1989; October 1, 1988;
RRC objection due to lack of statutory authority Eff. September 17, 2022.

SECTION .0400 - FINAL APPROVAL AND ENFORCEMENT

15A NCAC 07J .0401 FINAL DECISION
15A NCAC 07J .0402 CRITERIA FOR GRANT OR DENIAL OF PERMIT APPLICATIONS

History Note: *Authority G.S. 113-229; 113A-118(c); 113A-120(a)(b), and (c); 113A-122(b); 113A-122(b)(10); 113A-122(c); 113A-124;*
Eff. March 15, 1978;
Amended Eff. January 1, 1992; July 1, 1989; October 1, 1988; September 1, 1988; November 1, 1984; November 1, 1983; August 1, 1983;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION
(a) New dredge and fill permits and CAMA Major permits shall expire five years from the date of permit issuance, with the exception of publicly-sponsored, multi-phased beach nourishment projects, which shall expire 10 years from the date of permit issuance. Minor permits, except those authorizing beach bulldozing when authorized through issuance of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.
(b) CAMA minor permits authorizing beach bulldozing shall expire 30 days from the date of permit issuance. Following permit expiration, the permit holder is entitled to request an extension in accordance with Rule .0404(a) of this Section.
(c) Development After Permit Expiration. Any development undertaken after permit expiration shall be considered unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be undertaken after permit expiration shall require a new permit or review in accordance with 15A NCAC 07J .0404(c) as determined by the Division.
(d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback requirement can be established in accordance with 15A NCAC 07H .0306. When the permit holder or an individual receiving an exception is ready to begin development, they shall arrange an onsite meeting with the Division of Coastal Management or Local Permitting Officer to determine the oceanfront setback. This setback determination shall replace the one completed at the time the permit was processed and approved and development shall begin within 60 days from the date of that meeting. In the case of a shoreline change that reduces the determined setback; a new setback determination may be required. To determine if a new setback is required, additional coordination with the Division of Coastal Management or Local Permitting Officer shall be required before development begins.
(e) Any permit that has been suspended as a result of litigation shall be extended at the permit holder's written request for a period equivalent to the period of permit suspension, but not to exceed the development period authorized under Paragraph (a) of this Rule.

History Note: *Authority G.S. 113A-118; 113A-124(c)(8); 113-229;*
Eff. March 15, 1978;
Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984;
Readopted Eff. August 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION
(a) For CAMA minor permits authorizing beach bulldozing, the permit holder is entitled to request a one-time 30-day permit extension. No additional extensions shall be granted after the 30-day extension has expired. Notwithstanding this Paragraph, the permit holder is eligible to apply for another minor permit authorizing beach bulldozing following expiration of the 30-day permit extension.
(b) All other CAMA permits may be extended where substantial development, either within or outside the AEC, has begun or is continuing. The permitting authority shall grant as many two-year extensions as necessary to complete the initial development, with the exception that multi-phased beach nourishment projects may be granted ten-year extensions to allow for continuing project implementation. Renewals for maintenance of previously approved dredging projects may be granted for periods not to exceed five years, For the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permit holder can show that development has progressed beyond basic site preparation, such as land clearing and grading, and construction has begun and is continuing on the primary structure or structures authorized under the permit. For elevated structures in Ocean

Hazard Areas, substantial development begins with the placement of foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor and foundation inspection. For residential subdivisions, installation of subdivision roads consistent with an approved subdivision plat shall constitute substantial development.

(c) To request an extension pursuant to Paragraphs (a) and (b) of this Rule, the permit holder shall submit a signed and dated request containing the following:

(1) a statement of the completed and remaining work;

(2) a statement that there has been no change of plans since the issuance of the original permit other than changes that would have the effect of reducing the scope of the project, or previously approved permit modifications;

(3) notice of any change in ownership of the property to be developed and a request for transfer of the permit; and

(4) a statement that the project is in compliance with all conditions of the current permit.

(d) For extension requests where substantial development has not occurred in accordance with Paragraph (b) of this Rule, the Division of Coastal Management may circulate the request to the commenting State resource agencies along with a copy of the original permit application. Commenting State resource agencies will be given 30 days in which to comment on the extension request. Upon the expiration of the commenting period the Division of Coastal Management will notify the permit holder of its actions on the extension request.

(e) Notwithstanding Paragraphs (b) and (d) of this Rule, an extension request may be denied on making findings as required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be considered and applied by the Division of Coastal Management in making a decision on an extension request.

(f) The applicant for a major development extension request shall submit, with the request, a check or money order payable to the Department in the sum of one hundred dollars ($100.00).

History Note: *Authority G.S. 113A-119; 113A-119.1; 113A-120; 113A-124(c)(8); 113-229(e);*
Eff. March 15, 1978;
Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985; November 1, 1984;
Readopted Eff. August 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .0405 PERMIT MODIFICATION

(a) A permit holder may modify their permitted major development and/or dredge and fill project only after approval by the Division of Coastal Management. In order to modify a permitted project the permit holder shall make a written request to the Division of Coastal Management showing the proposed modifications. Minor modifications may be shown on the existing approved application and plat. Modification requests which, in the opinion of the Division of Coastal Management are major shall require a new application. Modification requests are subject to the same processing procedure applicable to original permit applications. A permit need not be circulated to all agencies commenting on the original application if the Commission determines that the modification is so minor that circulation would serve no purpose.

(b) Modifications to a permitted project that are imposed or made at the request of the U.S. Army Corps of Engineers or other federal agencies shall be approved by the Division of Coastal Management under provisions of this Rule dealing with permit modification procedures.

(c) Modifications of projects for the benefit of private waterfront property owners that meet the following criteria shall be considered minor modifications and shall not require a new permit application, but shall be approved under the provisions of Paragraph (a) of this Rule:

(1) for bulkheads:

(A) bulkhead shall be positioned so as not to extend more than an average distance of two feet waterward of the mean high water and in no place shall the bulkhead be more than five feet waterward of the mean high water contour;

(B) all backfill must come from an upland source;

(C) no marsh area may be excavated or filled;

(D) work must be undertaken because of the necessity to prevent loss of private residential property due to erosion;

(E) the bulkhead must be constructed prior to any backfilling activities;

(F) the bulkhead must be constructed so as to prevent seepages of backfill materials through the bulkhead; and
(G) the bulkhead may not be constructed in the Ocean Hazard AEC;

(2) for piers, docks and boathouses:
(A) the modification or addition shall not be within 150 feet of the edge of a federally-maintained channel;
(B) the structure, as modified, must be 200 feet or less in total length offshore;
(C) the structure, as modified, must not extend past the four feet mean low water contour line (four feet depth at mean low water) of the waterbody;
(D) the project as modified, must not exceed six feet in width;
(E) the modification or addition must not include an enclosed structure; and
(F) the project shall continue to be used for private, residential purposes;

(3) for boatramps:
(A) the project, as modified, shall not exceed 10 feet in width and 20 feet offshore; and
(B) the project shall continue to be used for private, residential purposes.

(d) An applicant may modify his permitted minor development project only after approval by the local permit-letting authority. In order to modify a permitted project the applicant must make a written request to the local minor permit-letting authority showing in detail the proposed modifications. The request shall be reviewed in consultation with the appropriate Division of Coastal Management field consultant and granted if all of the following provisions are met:

(1) the size of the project is expanded less than 20 percent of the size of the originally permitted project;
(2) a signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications;
(3) the proposed modifications are consistent with all local, State, and federal standards and local Land Use Plans in effect at the time of the modification requests; and
(4) the type or nature of development is not changed.

Failure to meet this Paragraph shall necessitate the submission of a new permit application.

(e) The applicant for a major permit modification shall submit with the request a check or money order payable to the Department in the sum of one hundred dollars ($100.00) for a minor modification and two hundred fifty dollars ($250.00) for a major modification.

History Note: *Authority G.S. 113A-119; 113A-119.1; 113-229;*
Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984;
Readopted Eff. August 1, 2021.

15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER

(a) Upon the approval of an application and the issuance of the permit, the permit shall be delivered to the applicant, or to any person designated by the applicant to receive the permit, by hand, first class mail or any means.

(b) Anyone holding a permit shall not assign, transfer, sell, or otherwise dispose of a permit to a third party, unless approval is granted by the Director of the Division of Coastal Management pursuant to Paragraph (c) of this Rule.

(c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management upon finding each of the following:

(1) a written request from the new owner or developer of the involved properties;
(2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having the sole legal right to develop the project;
(3) that the applicant transferee will use the permit for the purposes for which it was issued;
(4) no change in conditions, circumstances, or facts affecting the project;
(5) no change or modification of the project as proposed in the original application.

(d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by the Coastal Resources Commission as per 15A NCAC 07J .0600.

(e) The applicant for a permit transfer shall submit with the request a check or money order payable to the Department in the sum of one hundred dollars ($100.00).

History Note: *Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1; 113A-124(c)(8);*

Eff. March 15, 1978;
Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981;
Readopted Eff. June 1, 2021.

15A NCAC 07J .0407 PROJECT MAINTENANCE: MAJOR DEVELOPMENT/DREDGE AND FILL

(a) No project previously requiring a major development or dredge and fill permit shall be maintained after the expiration of the authorized development period without approval from the Division of Coastal Management. Permits may contain provisions that allow the applicant to maintain the project after its completion. Persons wishing to maintain a project beyond the development period and whose permit contains no maintenance provision shall apply for a maintenance permit. This Rule does not apply to maintenance required by rule or by permit condition.

(b) Maintenance Request. Persons desiring to initiate maintenance work on a project pursuant to the maintenance provisions of an existing permit shall file a request two weeks prior to the initiation of maintenance work with:

Department of Environmental Quality
Division of Coastal Management
400 Commerce Avenue
Morehead City, NC 28557

(c) Such requests shall include:

(1) the name and address of the permittee;
(2) the number of the original permit;
(3) a description of proposed changes;
(4) in the case of a dredge and fill maintenance request, a statement that no dimensional changes are proposed;
(5) a copy of the original permit plat with cross-hatching indicating the area to be maintained, any area to be used as spoil, and the estimated amount of material to be removed; and
(6) the date of map revision and the applicant's signature shown anew on the original plat.

(d) Conditions for Maintenance. All work undertaken pursuant to the maintenance provisions of a permit shall comply with the following conditions:

(1) Maintenance work under a major development permit shall be limited to activities which are within the exemptions set forth by the Commission.
(2) Maintenance under a dredge and fill permit shall be limited to excavation and filling which is necessary to maintain the project dimensions as found in the original permit.
(3) Maintenance work is subject to all the conditions included in the original permit.
(4) Spoil disposal shall be in the same locations as authorized in the original permit, provided that the person requesting the authority to maintain a project may request a different spoil disposal site if he or she first serves a copy of the maintenance request on all adjoining landowners.
(5) The maintenance work is subject to any conditions determined by the Department to be necessary to protect the public interest with respect to the factors enumerated in G.S. 113A-120 or G.S. 113-229.

(e) The Division of Coastal Management may suspend or revoke the right to maintain a project in whole or in part upon a finding:

(1) that the project area has been put to a different use from that indicated in the original permit application;
(2) that there has been a change in the impacts associated with the permitted development affecting coastal resources listed in G.S. 113A-113 or G.S. 113A-120(a) that would justify denial of a permit; or
(3) that there has been a violation of any of the terms or conditions of the original permit.

(f) Grant or Denial of Maintenance Request

(1) Upon receipt of a complete maintenance request the Division of Coastal Management shall determine if there are grounds for revocation or suspension of the applicant's right to maintain based on the criteria in Paragraph (e) of this Rule. If there are grounds for revocation or suspension the applicant shall be notified of the suspension or revocation by certified mail, return receipt requested setting forth the findings on which the revocation or suspension is based.
(2) If the Division of Coastal Management determines that the right to maintain should not be revoked or based on the criteria in Paragraph (e) of this Rule, a letter shall be issued which shall authorize the applicant to perform maintenance work. The letter shall set forth the terms and conditions under which the maintenance work is authorized.

(3) If the maintenance request discloses changes in the dimensions of the original project, the Division of Coastal Management shall notify the applicant that a permit modification or renewal shall be required pursuant to the procedure set out in 15A NCAC 07J .0404 and .0405.

(4) Appeal of the Division of Coastal Management action under this Section shall be in accordance with 15A NCAC 07J .0302.

History Note: *Authority G.S. 113A-103(5)c; 113A-120(b); 113A-124(c)(8);*
Eff. March 15, 1978;
Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984;
Readopted Eff. August 1, 2021.

15A NCAC 07J .0408 VIOLATION OF A PERMIT

History Note: *Authority G.S. 113A-126;*
Eff. March 15, 1978;
Amended Eff. January 25, 1980;
Repealed Eff. August 1, 1989.

15A NCAC 07J .0409 CIVIL PENALTIES

(a) Purpose and Scope. This Rule provides the procedures and standards governing the assessment, remission, settlement, and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to G.S. 113A-126(d).

(b) Definitions. The terms used in this Rule shall be as defined in G.S. 113A-103 and as follows:

(1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134.

(2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local permit officers to whom the Commission has delegated authority to act pursuant to this Rule.

(3) "Director" means the Director, Division of Coastal Management.

(4) "Respondent" means the person to whom a notice of violation has been issued or against whom a penalty has been assessed.

(c) Investigative costs. In addition to any civil penalty, the costs incurred by the Division for any investigation, inspection, and monitoring associated with assessment the civil penalty may be assessed pursuant to G.S. 113A-126(d)(4a). The amount of investigative costs assessed shall be based upon factors including the amount of staff time required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of the site.

(d) Notice of Violation. The Commission authorizes employees of the Division of Coastal Management to issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a violation for which a civil penalty may be assessed.

(e) Procedures for Notification of Civil Penalty Assessment.

(1) The Commission delegates to the Director the authority to assess civil penalties according to the procedures set forth in Paragraph (g) of this Rule.

(2) If restoration of affected resources is not required, the Director shall issue a civil penalty assessment within 90 days from the date of the Notice of Violation. If restoration of affected resources is required, the Director may issue a civil penalty assessment within 60 days after the Division determines that restoration of the adversely impacted resources is complete or once the date restoration was required has passed without having been completed.

(f) Procedures for Determining the Amount of Civil Penalty Assessment.

(1) Pursuant to G.S. 113A-126(d)(1), penalties for major development violations, including violations of permit conditions, shall be assessed as follows:

(A) Major development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus investigative costs.

(B) Major development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee, plus a penalty pursuant to Schedule A of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern

(AEC) or coastal resource as listed within Schedule A of this Rule, the penalties for each affected AEC shall be combined not to exceed ten thousand dollars ($10,000) per G.S. 113A-126(d)(1). Any structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE A
Major Development Violations

Penalties for Major Development Permit Violations By Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001-15,000	15,001-20,000	20,001-25,000	>25,000
Estuarine Waters or Public Trust Areas (1)	$250	$375	$500	$1,500	$2,000	$3,500	$5,000	$7,000	$9,000	$10,000	$10,000
Primary Nursery Areas	$100	$225	$350	$850	$1,350	$2,850	$4,350	$3,000	$1,000	n/a	n/a
Mudflats and Shell Bottom	$100	$225	$350	$850	$1,350	$2,850	$4,350	$3,000	$1,000	n/a	n/a
Submerged Aquatic Vegetation	$100	$225	$350	$850	$1,350	$2,850	$4,350	$3,000	$1,000	n/a	n/a
Coastal Wetlands	$250	$375	$500	$1,500	$2,000	$3,500	$5,000	$7,000	$9,000	$10,000	$10,000
Coastal Shorelines	$250	$350	$450	$850	$1,250	$2,450	$3,650	$5,250	$7,250	$9,250	$10,000
Wetlands (2)	$100	$200	$300	$700	$1,100	$2,300	$3,500	$4,750	$2,750	$750	n/a
ORW- Adjacent Areas	$100	$200	$300	$700	$1,100	$2,300	$3,500	$4,750	$2,750	$750	n/a
Ocean Hazard System (3)(4)	$250	$350	$450	$850	$1,250	$2,450	$3,650	$5,250	$7,250	$9,250	$10,000
Primary or Frontal Dune	$100	$200	$300	$700	$1,100	$2,300	$3,500	$4,750	$2,750	$750	n/a
Public Water Supplies (5)	$250	$350	$450	$850	$1,250	$2,450	$3,650	$5,250	$7,250	$9,250	$10,000
Natural and Cultural Resource Areas (6)	$250	$350	$450	$850	$1,250	$2,450	$3,650	$5,250	$7,250	$9,250	$10,000

(1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
(2) Wetlands that are jurisdictional by the Federal Clean Water Act.
(3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
(4) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
(5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
(6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(C) Assessments for violations by public agencies, i.e. towns, counties, and State agencies shall be determined in accordance with Parts (1)(A) and (B) of this Paragraph.

(D) Willful and intentional violations. The penalty assessed in accordance with Parts (1)(A) and (B) of this Paragraph. shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed ten thousand dollars ($10,000) or be less than two thousand dollars ($2,000) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:

(i) the person received written instructions from one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;

(ii) the person received written instructions from one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;

(iii) the person committed previous violations of the Commission's rules; or

(iv) the person refused or failed to restore a damaged area as ordered by one of the Commission's delegates.

(E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Assessments for Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease or restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. When resources continue to be affected by the violation, the amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease or restoration to be completed and run until:

(I) the Division determines that the terms of the restoration order are satisfied;

(II) the respondent enters into negotiations with the Division; or

(III) the respondent contests the Division's order in a judicial proceeding.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the Division.

(2) Pursuant to G.S. 113A-126(d)(1), penalties for minor development violations, including violations of permit conditions, shall be assessed as follows:

(A) Minor development that could have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed a penalty equal to two times the relevant CAMA permit application fee, plus investigative costs.

(B) Minor development that could not have been permitted under the Commission's rules at the time the notice of violation is issued shall be assessed an amount equal to the relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus a penalty pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more than one area of environmental concern (AEC) or coastal resource as listed within Schedule B of this Rule, the penalties for each affected AEC shall be combined. Any

structure or part of a structure that is constructed in violation of existing Commission rules shall be removed or modified as necessary to bring the structure into compliance with the Commission's rules.

SCHEDULE B
Penalties for Minor Development Permit Violations By Size of Violation

Size of Violation (sq. ft.)

Area of Environmental Concern Affected	≤ 100	101-500	501-1,000	1001-3000	3001-5000	5001-8000	8001-11,000	11,001 - 15,000	15,001 - 20,000	20,001 - 25,000	>25,000
Coastal Shorelines	$225	$250	$275	$325	$375	$450	$525	$625	$750	$875	$1,000
ORW- Adjacent Areas	$125	$150	$175	$225	$275	$350	$425	$375	$250	$125	n/a
Ocean Hazard System (1)(2)	$225	$250	$275	$325	$375	$450	$525	$625	$750	$875	$1,000
Primary or Frontal Dune	$125	$150	$175	$225	$275	$350	$425	$375	$250	$125	n/a
Public Water Supplies (3)	$225	$250	$275	$325	$375	$450	$525	$625	$750	$875	$1,000
Natural and Cultural Resource Areas (4)	$225	$250	$275	$325	$375	$450	$525	$625	$750	$875	$1,000

(1) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.

(2) If the AEC physically overlaps another AEC, use the greater penalty schedule.

(3) Includes Small Surface Water Supply Watersheds, defined in 15A NCAC 07H .0404 and Public Water Supply Well Fields, defined in 15A NCAC 07H .0406.

(4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources as defined in 15A NCAC 07H .0505, .0506, .0509, and .0510.

(C) Violations by public agencies , e.g., towns, counties, and State agencies, shall be handled by the local permit officer or one of the Commission's delegates within their respective jurisdictions except that in no case shall a local permit officer handle a violation committed by the local government they represent. Penalties shall be assessed in accordance with Parts (A) and (B) of this Subparagraph.

(D) Willful and intentional violations. The penalty assessed under Parts (A) and (B) of this Subparagraph shall be doubled for willful and intentional violations except that the doubled penalties assessed under this Subparagraph shall not exceed one thousand dollars ($1,000.00) for each separate violation. For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful and intentional:

(i) the person received written instructions from the local permit officer or one of the Commission's delegates that a permit would be required for the development and subsequently undertook development without a permit;

(ii) the person received written instructions from the local permit officer or one of the Commission's delegates that the proposed development was not permissible under the Commission's rules, or received denial of a permit application for the proposed activity, and subsequently undertook the development without a permit;

(iii) the person committed previous violations of the Commission's rules; or

(iv) the person refused or failed to restore a damaged area as ordered by the local permit officer or one of the Commission's delegates.

(E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a contractor shall be subject to a notice of violation and assessment of a civil penalty in accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of this Subparagraph and the element of willfulness is present only on the part of the contractor, the landowner shall be assessed the standard penalty and the contractor shall be assessed the doubled penalty.

(F) Assessments of Continuing violations.

(i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the date specified in the notice of violation for the unauthorized activity to cease and restoration to be completed shall be considered a separate violation and shall be assessed an additional penalty.

(ii) Refusal or failure to restore a damaged area as directed in the restoration order shall be considered a continuing violation and shall be assessed an additional penalty. The amount of the penalty shall be determined according to Part (B) of this Subparagraph. The continuing penalty period shall be calculated from the date specified in the restoration order which accompanies the notice of violation for the unauthorized activity to cease and restoration to be completed and run until:

(I) the Division determines that the terms of the restoration order are satisfied;

(II) the respondent enters into negotiations with the local permit officer or the Division; or

(III) the respondent contests the local permit officer's or the Division's order in a judicial proceeding.

The continuing penalty period shall resume if the respondent terminates negotiations without reaching an agreement with the local permit officer or the Division, fails to comply with court ordered restoration, or fails to meet a deadline for restoration that was negotiated with the local permit officer or the Division.

(g) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next regularly scheduled Commission meeting. Such reports shall include information on the following:

(1) respondent(s) against whom penalties have been assessed;

(2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;

(3) respondent(s) who have failed to pay; and

(4) cases referred to the Attorney General for collection.

(h) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of an appeal of a civil penalty at any time prior to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23, and shall not require the approval of the Commission. Any settlement agreement proposed subsequent to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23 shall be submitted to the Commission for approval.

History Note: *Authority G.S. 113A-124; 113A-124(c)(8); 113A-126(d);*
Eff. January 24, 1980;
ARRC Objection August 18, 1988;
Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984;
ARRC Objection Lodged Eff. January 18, 1991;
Amended Eff. September 1, 2019; February 1, 2008; July 1, 1991; June 1, 1991;
Readopted Eff. June 1, 2021.

15A NCAC 07J .0410 RESTORATION/MITIGATION

Any violation involving development that is inconsistent with rules for development within AECs, i.e. wetland fill, improper location of a structure, shall result in a notice of restoration from the Secretary or its delegate or a local government. The notice shall describe the extent of restoration necessary to recover lost resources, or to prevent further resource damage and a time for its completion. Failure to complete the restoration described in the notice

may result in a court order as described in G.S. 113-126(a) and (b). Failure to act to complete the required restoration may be determined to constitute a separate violation, according to G.S. 113-126(d)(2), subject to the penalties in Rule .0409 of this Section. Any resources that cannot be recovered by restoration of the affected site shall be replaced in compliance with the goals of the Commission's mitigation policy described in 15A NCAC 07M .0701.

History Note: *Authority G.S. 113A-126; 113A-124(c); 113A-124(c)(8);*
Eff. July 1, 1985;
Readopted Eff. August 1, 2021.

SECTION .0500 - GENERAL PERMITS

15A NCAC 07J .0501 DEVELOPMENT INITIATED PRIOR TO MARCH 1, 1978

History Note: *Authority G.S. 113A-118.1;*
Eff. April 12, 1978;
Amended Eff. December 1, 1991;
Expired Eff. April 1, 2018 pursuant to G.S. 150B-21.3A.

15A NCAC 07J .0502 UNCONTESTED PERMIT APPLICATIONS

History Note: *Authority G.S. 113A-124(c)(5);*
Eff. April 12, 1978;
Amended Eff. September 11, 1978;
Repealed Eff. September 6, 1979.

SECTION .0600 - DECLARATORY RULINGS AND PETITIONS FOR RULEMAKING

15A NCAC 07J .0601 DECLARATORY RULINGS: GENERALLY

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Coastal Resources Commission may issue a declaratory ruling as provided in G.S. 150B-4.

History Note: *Authority G.S. 113A-124; 150B-4;*
Eff. June 1, 1979;
Amended Eff. October 1, 1992; October 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS

(a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department of Environmental Quality (DEQ), 400 Commerce Avenue, Morehead City NC 28557, and also the Attorney General's Office, 9001 Mail Service Center, Raleigh NC 27699-9001. All requests shall include the following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that is the subject of the declaratory ruling.

(b) A request for a ruling on the applicability of a rule, order, or statute shall include a description of the factual situation on which the ruling is to be based. A request for a ruling on the validity of a Commission rule shall state the aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a single request. A request for a ruling shall include or be accompanied by:

(1) a statement of facts proposed for adoption by the Commission; and
(2) a draft of the proposed ruling.

History Note: *Authority G.S. 113A-124; 150B-4;*
Eff. June 1, 1979;
Amended Eff. June 1, 2005; October 1, 1992; November 1, 1991; July 1, 1990; May 1, 1990;

Readopted Eff. October 1, 2022.

15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS

(a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory ruling on finding that:

(1) the requesting party and the Division of Coastal Management cannot agree on a set of stipulated facts to support a ruling;
(2) the matter is the subject of a pending contested case hearing; or
(3) no genuine controversy exists as to the application of a statute or rule to a proposed project or activity.

(b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the requesting party, the adjacent property owners, and other persons to whom the Commission decides to give notice no less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed declaratory ruling.

(c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider such factors as: whether additional public participation would aid the Commission in reaching a decision; whether any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would affect the application and interpretation of a rule in which other persons might be interested. All persons receiving notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.

(d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.

(e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:

(1) the request for a ruling;
(2) any written comments by interested parties;
(3) the statement of undisputed facts on which the ruling was based;
(4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
(5) any other matter considered by the Commission in making the decision; and
(6) the declaratory ruling together with the reasons therefore.

(f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.

(g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

History Note: *Authority G.S. 113A-124; 150B-4;*
Eff. June 1, 1979;
Amended Eff. October 1, 1992; October 1, 1988;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0604 FEDERAL ACTIVITIES

(a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.
(b) The request for ruling shall include:

(1) a statement identifying the rule, statute or order at issue;
(2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of property adjacent to the property on which the proposed federal activity will take place;
(3) a statement of facts proposed for adoption by the Commission and any documentary evidence supporting the proposed statement of facts;
(4) a draft of the proposed ruling;
(5) a statement indicating that the Division of Coastal Management has preliminarily determined that the project may be inconsistent with a coastal management statute or regulation; and
(6) a statement identifying the factual issues in dispute between the Department and the federal agency.

(c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent property owners and to persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling. Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.
(d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission. Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

History Note: *Authority G.S. 113A-124; 150B-4;*
Eff. November 30, 1992.

15A NCAC 07J .0605 PETITIONS FOR RULEMAKING

(a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and shall contain the following information:

(1) either a draft of the proposed rule or a summary of its contents;
(2) a statement of reasons for adoption of the proposed rule(s);
(3) a statement of the effect on existing rules or orders;
(4) any data in support of the proposed rule(s);
(5) a statement of the effect of the proposed rule on existing practices; and
(6) the name and address of the petitioner.

(b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

History Note: *Authority G.S. 113A-124; 150B-20;*
Eff. January 1, 1989;
Amended Eff. October 1, 1992;
Readopted Eff. October 1, 2022.

SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS

15 NCAC 07J .0701 VARIANCE PETITIONS

(a) Any person whose application for a CAMA major or minor development permit has been denied or issued with condition(s) that the person does not agree with may petition for a variance from the Commission by means of the procedure described in this Section. Before filing a petition for a variance from a rule of the Commission, the person must seek relief from local requirements restricting use of the property, and there must not be pending litigation between the petitioner and any other person which may make the request for a variance moot.
(b) The procedure in this Section shall be used for all variance petitions except when:

(1) the Commission determines that more facts are necessary; or
(2) there are controverted facts that are necessary for a decision on the variance petition.

(c) Variance petitions shall be submitted on forms provided by the Department of Environmental Quality. The following information shall be submitted before a variance petition is considered complete:

(1) the case name and location of the development as identified on the denied permit application;
(2) a copy of the deed to the property on which the proposed development would be located;
(3) a copy of the permit application and denial for the development in question;
(4) the date of the petition, and the name, address, and phone number of the petitioner and his or her attorney, if applicable;
(5) a complete description of the proposed development, including a site drawing with topographical and survey information;
(6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks a variance;
(7) notice of the variance petition sent via certified mail, return receipt requested to the adjacent property owners and persons who submitted written comments to the Division of Coastal Management or the Local Permit Officer during the permit review process and copies of the documents which indicate that the certified mail notices were received or that deliveries were attempted;
(8) an explanation of why the petitioner believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
    (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
    (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
    (C) that such hardships did not result from actions taken by the petitioner; and
    (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the public safety and welfare; and will preserve substantial justice.
(9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in the petitioner's explanation as to why he meets the criteria for a variance; and
(10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to consider.

(d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of Environmental Quality, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

(e) A variance petition shall be considered by the Commission at a scheduled meeting. Petitions shall be scheduled in chronological order based upon the date of receipt of a complete variance petition by the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the Division of Coastal Management at least six weeks in advance of a scheduled Commission meeting to be considered by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request, the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for hearing after all then pending variance requests.

(f) Written notice of a variance hearing or Commission consideration of a variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

History Note: *Authority G.S. 113A-120.1; 113A-124;*
Eff. December 12, 1979;
Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983;
Temporary Amendment Eff. December 20, 2001;
Temporary Amendment Expired October 12, 2002;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. March 1, 2009; June 1, 2005; August 1, 2004;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the Commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete petitions and a description of the deficiencies shall be returned to the petitioner. Complete variance petitions shall be scheduled within two Commission meetings.
(b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall be prepared and signed by both parties.
(c) After the facts agreed upon by the petitioner and staff, the staff shall prepare a written recommendation which shall be submitted to the Commission before the petition is considered. The staff recommendation shall include:

(1) a description of the property in question;
(2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;
(3) the Stipulated Facts;
(4) staff's position on whether the petition meets or does not meet each of the requirements for a variance; and
(5) petitioner's position on each of the variance criteria.

Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next scheduled Commission meeting.
(d) If the staff determines that agreement cannot be reached on sufficient facts on which to base a variance decision, the petition shall be considered by means of an administrative hearing to determine the relevant facts.

History Note: *Authority G.S. 113A-120.1; 113A-124;*
Eff. December 12, 1979;
Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988;
Temporary Amendment Eff. December 20, 2001;
Temporary Amendment Expired October 12, 2002;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. July 3, 2008; August 1, 2004;
Readopted Eff. October 1, 2022.

15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS

(a) The Commission may review the variance petition and staff recommendation and hear oral presentation by the petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members are appointed, they shall report a summary of the facts and a recommended decision to the Commission.
(b) The Commission or its appointed member or members shall be provided with copies of the petition, the stipulated facts, and the staff recommendation before considering the petition.
(c) At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s) and shall present comments concerning whether the Commission should make the findings necessary for granting the variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission may set time limits on such oral presentations.
(d) The final decision of the Commission may be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by certified mail, return receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a hearing in the Office of Administrative Hearings.
(e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the Commission.

History Note: *Authority G.S. 113A-120.1; 113A-124;*
Eff. December 12, 1979;
Amended Eff. December 1, 1991; March 3, 1981;
Temporary Amendment Eff. December 20, 2001;
Temporary Amendment Expired October 12, 2002;

Temporary Amendment Eff. December 1, 2002;
Amended Eff. March 1, 2009; August 1, 2004;
Readopted Eff. October 1, 2022.

SECTION .0800 - DREDGE AND FILL: PERMIT PROCESSING PROCEDURE: STANDARD

15A NCAC 07J .0801 DEFINITIONS
15A NCAC 07J .0802 APPLICATION FORMS
15A NCAC 07J .0803 PREPARATION OF WORK PLATS: GENERAL
15A NCAC 07J .0804 PREPARATION OF WORK PLATS: SPECIFIC
15A NCAC 07J .0805 ADJACENT RIPARIAN LANDOWNER NOTIFICATION
15A NCAC 07J .0806 APPLICATION PROCESSING
15A NCAC 07J .0807 FIELD INVESTIGATION
15A NCAC 07J .0808 AGENCY REVIEW AND COMMENTS
15A NCAC 07J .0809 CRITERIA FOR PROJECT PLANNING AND EVALUATION
15A NCAC 07J .0810 FINAL ACTION
15A NCAC 07J .0811 NOTICE OF DENIAL
15A NCAC 07J .0812 APPEAL OF DEPARTMENTAL ACTION
15A NCAC 07J .0813 PERMIT ISSUANCE AND TRANSFER
15A NCAC 07J .0814 PERMIT EXPIRATION
15A NCAC 07J .0815 PERMIT RENEWAL
15A NCAC 07J .0816 PERMIT MODIFICATION
15A NCAC 07J .0817 PERMIT CONDITIONS
15A NCAC 07J .0818 PROJECT MAINTENANCE
15A NCAC 07J .0819 MAINTENANCE REQUEST
15A NCAC 07J .0820 CONDITIONS FOR MAINTENANCE
15A NCAC 07J .0821 GRANT OR DENIAL OF MAINTENANCE REQUEST
15A NCAC 07J .0822 VIOLATION OF PERMIT

History Note: *Authority G.S. 113A-118(c); 113A-119(a); 113A-124(c)(5); 113-229;*
Eff. February 1, 1976;
Amended Eff. January 1, 1984; August 1, 1983; October 15, 1981; August 30, 1980;
Repealed Eff. July 1, 1989.

SECTION .0900 - DREDGE AND FILL: EMERGENCY PERMIT PROCEDURE

15A NCAC 07J .0901 PURPOSE
15A NCAC 07J .0902 DEFINITIONS
15A NCAC 07J .0903 INITIATION OF EMERGENCY PROCESS: ON-SITE INVESTIGATION
15A NCAC 07J .0904 PROCEDURES FOR EXEMPTING EMERGENCY MAINTENANCE: REPAIRS
15A NCAC 07J .0905 APPLICABILITY OF EMERGENCY CAMA: DREDGE AND FILL PERMITS
15A NCAC 07J .0906 PREPARATION OF EMERGENCY PERMIT APPLICATION
15A NCAC 07J .0907 NOTIFICATION OF ADJACENT RIPARIAN LANDOWNERS

History Note: *Authority G.S. 113A-103(5)b.5; 113A-118 1.c.; 113-229 (e1);*
Eff. February 1, 1976;
Amended Eff. December 1, 1985; August 1, 1983; September 8, 1980; July 31, 1980;
Repealed Eff. July 1, 1989.

15A NCAC 07J .0908 REVIEW AND ISSUANCE OF EMERGENCY PERMIT
15A NCAC 07J .0909 LIMITATION OF EMERGENCY WORK

History Note: *Authority G.S. 113A-118 1.c.; 113A-119; 113A-229(e1);*
Eff. September 8, 1980;
Amended Eff. December 1, 1985; September 1, 1983; August 1, 1983;
Repealed Eff. July 1, 1989.

SECTION .1000 - DREDGE AND FILL: REVIEW HEARING PROCEDURES

15A NCAC 07J .1001 WHO IS ENTITLED TO HEARING
15A NCAC 07J .1002 PARTIES
15A NCAC 07J .1003 PROCEDURES

History Note: *Authority G.S. 113-229; 150B, Article 3; 150B-26;*
Eff. February 1, 1976;
Amended Eff. December 1, 1982; August 30, 1980;
Repealed Eff. July 1, 1989.

15A NCAC 07J .1004 HEARING OFFICER
15A NCAC 07J .1005 REQUEST FOR HEARING
15A NCAC 07J .1006 TIME FOR HEARING
15A NCAC 07J .1007 VENUE
15A NCAC 07J .1008 PARTIES
15A NCAC 07J .1009 INTERVENTION
15A NCAC 07J .1010 NOTICE
15A NCAC 07J .1011 HEARING OPEN TO PUBLIC
15A NCAC 07J .1012 PRE-HEARING CONFERENCE
15A NCAC 07J .1013 SIMPLIFICATION OF ISSUES
15A NCAC 07J .1014 STIPULATIONS
15A NCAC 07J .1015 SUBPOENAS
15A NCAC 07J .1016 DEPOSITIONS AND DISCOVERY
15A NCAC 07J .1017 BURDEN OF PROOF
15A NCAC 07J .1018 NO EX PARTE COMMUNICATION: EXCEPTIONS
15A NCAC 07J .1019 PRESENTATION OF EVIDENCE
15A NCAC 07J .1020 CONDUCT OF THE HEARING
15A NCAC 07J .1021 POST HEARING PROCEDURE
15A NCAC 07J .1022 DECISION
15A NCAC 07J .1023 RECORD OF DEPARTMENT ACTION AND HEARING
15A NCAC 07J .1024 JUDICIAL REVIEW

History Note: *Authority G.S. 113-229; 150B-23 through 150B-28;*
150B-31 through 150B-36; 150B-43;
Eff. February 1, 1976;
Amended Eff. August 30, 1980; January 1, 1979;
Repealed Eff. December 1, 1982.

SECTION .1100 - GENERAL PERMIT PROCEDURE

15A NCAC 07J .1101 PURPOSE

The purpose of this Section is to establish a procedure for issuing general permits for development having insignificant impacts on areas of environmental concern and which should not require public review and comment. These Rules are established according to G.S. 113A-118.1 and G.S. 113-229(C)(1) and will apply to projects requiring either Dredge and Fill and/or CAMA Major or Minor development permits. The CRC may, after following the procedures set forth in these Rules, issue general permits for certain catagories of development which require Dredge and Fill and/or CAMA Major or Minor development permits. After a general permit is issued, individual activities falling within these categories may be further authorized by the procedures set forth in these Rules.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113-229(c1);*
Eff. September 1, 1983;
Amended Eff. December 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .1102 CATEGORIES OF DEVELOPMENT

The Commission shall include as candidates for general permits only those activities that are substantially similar in nature that cause only minimal adverse environmental impacts when performed separately, and that will have only a minimal adverse cumulative effect on the environment. In identifying these categories, the Commission shall consider:

(1) the size of the development;
(2) the impact of the development on areas of environmental concern;
(3) how often the class of development is carried out;
(4) the need for on-site oversight of the development; and
(5) the need for public review and comment on individual development projects.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*
Eff. September 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .1103 DESIGNATION PROCEDURES

The staff shall prepare all information needed to establish each category of general permit. This may include a generic description of the development, anticipated cumulative impacts, projected number of individual projects, and permit histories. The staff shall prepare a draft permit to include a clear and accurate description of the development to be authorized, implementation or processing procedures, general conditions, and special conditions. The draft permit shall be reviewed and issued according to provisions in in G.S. 113A-107.

Recommendations for consideration of specific activities for inclusion in a general permit category may be made in writing to the Commission by any individual, organization, or agency. The Commission will assign the request to the staff for evaluation according to the procedures of this Rule within 90 days of its receipt.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*
Eff. September 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .1104 PERMIT MODIFICATION

The Commission may modify at any time any category of general permit. Modification shall be made according to the provisions of G.S. 113A-107. The Commission may also revoke any general permit at any time according to the provisions of G.S. 113A-107 if it is determined that the permit is no longer in the public interest.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*
Eff. September 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

15A NCAC 07J .1105 APPLICATION PROCEDURES

Authorization to initiate development covered by the general permit shall comply with the procedures outlined in each permit. The procedures shall be established to explain in detail the application process, notification requirements, and permit fees.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113-229(c2);*
Eff. September 1, 1983;
Readopted Eff. December 1, 2021.

15A NCAC 07J .1106 PERMIT CONDITIONS

Each general permit shall have a set of general and specific conditions. Additionally, the Division of Coastal Management may add conditions to each instrument of authorization if necessary to protect the public interest. The Division of Coastal Management may, on a case-by-case basis, override the general permit and require an individual application and review if this individual review is deemed to be in the public interest. Provisions for individual

review by State agencies of requests for general permit authorization may be made for each category if this review is deemed necessary to protect coastal resources or other aspects of public interest.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113-229(c2); 113-229(e); 113A-120(b);*
Eff. September 1, 1983;
Readopted Eff. December 1, 2021.

15A NCAC 07J .1107 PERMIT COMPLIANCE

All development authorized through the general permit must be done in compliance with all conditions listed on the permit. Development undertaken without a Coastal Area Management Act or Dredge and Fill permit or in violation of permit conditions or failure to comply with operational permit conditions shall be a violation subject to the penalties set out in G.S. 113A-126 or G.S. 113-229.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113-229(c2);*
Eff. September 1, 1983;
Amended Eff. March 1, 1985;
Readopted Eff. December 1, 2021.

15A NCAC 07J .1108 GENERAL PERMIT REVIEW

The Commission shall review each category of general permit on an annual basis. This review shall include compilation and evaluation of the number of projects approved in each category and the impacts of these projects. The Commission may modify or revoke any permit subject to this review according to the provisions of Rule .1104 of this Section. A written summary of this review shall be sent to each state and federal agency included in the normal permit review process.

History Note: *Authority G.S. 113A-107; 113A-118.1; 113-229(c1);*
Eff. September 1, 1983;
Amended Eff. December 1, 1991;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018.

SECTION .1200 – BEACH MANAGEMENT PLAN APPROVAL PROCEDURES

15A NCAC 07J .1201 BEACH MANAGEMENT PLAN APPROVAL

(a) A petitioner subject to a pre-project vegetation line pursuant to 15A NCAC 07H .0305 may petition the Coastal Resources Commission to approve a Beach Management Plan in accordance with the provisions of this Section. A "petitioner" shall be defined as:

(1) Any local government;
(2) Any group of local governments involved in a regional beach fill project; or
(3) Any qualified homeowner's association defined in G.S. 47F-1-103(3) that has the authority to approve the locations of structures on lots within the territorial jurisdiction of the association, and has jurisdiction over at least one mile of ocean shoreline.

(b) A petitioner shall be eligible to submit a request to approve a Beach Management Plan after the completion of construction of the initial large-scale beach fill project(s) as defined in 15A NCAC 07H .0305 that required the creation of a pre-project vegetation line(s). For a pre-project vegetation line in existence prior to the effective date of this Rule, the award-of-contract date of the initial large-scale beach fill project, or the date of the aerial photography or other survey data used to define the pre-project vegetation line, whichever is most recent, shall be used in lieu of the completion of construction date.

(c) A A Beach Management Plan applies to all pre-project vegetation lines within the Ocean Hazard Area of the petitioner's jurisdiction.

(d) A complete Beach Management Plan shall consist of a comprehensive document with supporting appendices and data that includes the following:

(1) A review of all beach fill projects in the area of the Beach Management Plan including the initial large-scale beach fill project associated with the pre-project vegetation line, subsequent maintenance of the initial large-scale project(s), and beach fill projects occurring prior to the initial large-scale projects(s). To the extent historical data allows, the summary shall include construction

dates, contract award dates, volume of sediment excavated, total cost of beach fill project(s), funding sources, maps, design schematics, pre-and post-project surveys, and a project footprint;

(2) A review of the maintenance needed to achieve a design life of no less than 30 years of shore protection. The plan shall include anticipated maintenance event volume triggers and schedules, long-term volumetric sand needs, annual monitoring protocols, an analysis of the impacts or any erosion control structures, and any relevant maps, tables, diagrams, studies, or reports. The plans and related materials shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work;

(3) Documentation, including maps, geophysical, and geological data, to delineate the planned location and volume of compatible sediment as defined in 15A NCAC 07H .0312 necessary to construct and maintain the large-scale beach fill project defined in Subparagraph (d)(2) of this Rule over its design life. This documentation shall be designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for said work; and

(4) Identification of the financial resources or funding sources necessary to fund the large-scale beach fill project, over the project design life, such as a dedicated percentage of occupancy taxes, special tax districts, or anticipated federal funding.

(e) Public Comment Requirements. The local jurisdiction shall provide an opportunity for public comments on the Beach Management Plan prior to submission to the Coastal Resources Commission for approval. Written comments on the Beach Management Plan shall be submitted by the local jurisdiction to the Division along with the request to approve the Beach Management Plan.

(f) A request to approve a Beach Management Plan shall be submitted to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed request, including notification of the date of the meeting at which the request will be considered by the Coastal Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

(g) The Coastal Resources Commission shall consider a request to approve a Beach Management Plan no later than the second scheduled meeting following the date of receipt of a complete request by the Division of Coastal Management, except when the petitioner and the Division of Coastal Management agree upon a later date.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. March 23, 2009;
Amended Eff. April 1, 2016;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .1202 REVIEW OF THE BEACH MANAGEMENT PLAN APPROVAL REQUEST

(a) The Petitioner shall provide a summary of the Beach Management Plan to be presented to the Coastal Resources Commission. This summary shall include all of the elements required in 15A NCAC 07J .1201.

(b) The Division of Coastal Management shall provide the Commission a review of the Beach Management Plan including a recommendation to grant or deny the request. The Division shall provide the petitioner requesting the approval of a Beach Management Plan an opportunity to review the recommendation prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .1203 PROCEDURES FOR APPROVING A BEACH MANAGEMENT PLAN

(a) At the meeting at which approval of a Beach Management Plan is considered by the Coastal Resources Commission, the following shall occur:

(1) The Petitioner shall orally present a summary of the Beach Management Plan described in 15A NCAC 07J .1202; and

(2) The Division of Coastal Management shall orally present its review of the Beach Management Plan and its recommendation to grant or deny the approval request.

(b) The Coastal Resources Commission shall approve a Beach Management Plan if the request contains the information required and meets the criteria presented in 15A NCAC 07J .1201(d)(1) through (d)(4), the Division of Coastal Management recommendation, and public comments on the Beach Management Plan submitted with the request to approve the Beach Management Plan. The final decision of the Coastal Resources Commission shall be made at the meeting at which the matter is heard or in no case later than the next scheduled meeting. The final decision shall be transmitted to the petitioner by registered mail within 10 business days following the meeting at which the decision is reached.
(c) The decision to approve or deny a Beach Management Plan is a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .1204 REVIEW OF BEACH MANAGEMENT PLANS
(a) Progress Reports. The petitioner that received a Beach Management Plan approval shall provide a progress report to the Coastal Resources Commission every five years from date the Beach Management Plan is approved. The progress report shall address the criteria defined in 15A NCAC 07J .1201(d)(1) through (d)(4) and be submitted in writing to the Director of the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. The Division of Coastal Management shall provide the petitioner with written acknowledgement of the receipt of a completed progress report, including notification of the meeting date at which the report will be presented to the Coastal Resources Commission.
(b) The Coastal Resources Commission shall review a Beach Management Plan approved under 15A NCAC 07J .1203 every five years from the initial authorization in order to renew its findings for the conditions defined in 15A NCAC 07J .1201(d) through (e). The Coastal Resources Commission shall also consider the following conditions:

(1) Updates to the Beach Management Plan, including performance of past projects and maintenance events, changes in conditions, and design changes to future projects, provided that the changes are designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work;
(2) Design changes to the location and volume of compatible sediment, as defined by 15A NCAC 07H .0312, necessary to construct and maintain the large-scale beach fill project defined in 15A NCAC 07J .1201(d)(2), including design changes defined in this Rule provided that the changes have been designed and prepared by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements for the work; and
(3) Changes in the financial resources or funding sources necessary to fund the large-scale beach fill project(s)defined in 15A NCAC 07J .1201(d)(2). If the project has been amended to include design changes defined in this Rule, then the Coastal Resources Commission shall consider the financial resources or funding sources necessary to fund the changes.
(4) Local governments with an unexpired Static Line Exception approved by the Commission may petition the Commission for approval of a Beach Management Plan by supplementing information required under the Static Line Exception to be compliant with the provisions of 15A NCAC 07J .1200 prior to or upon the expiration of the previously approved Static Line Exception.

(c) The Petitioner shall orally present a summary of the progress report the Coastal Resources Commission no later than the second scheduled meeting following the date the report was received, except when a later meeting is agreed upon by the local government or community submitting the progress report and the Division of Coastal Management. The Division of Coastal Management shall provide the Coastal Resources Commission with a review and recommendation of the progress report on whether the conditions defined in 15A NCAC 07J .1201(d)(1) through (d)(4) have been met. The petitioner submitting the progress report shall be provided an opportunity to review the recommendation prepared by the Division of Coastal Management no less than 10 days prior to the meeting at which it is to be considered by the Coastal Resources Commission.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .1205 REVOCATION AND EXPIRATION OF BEACH MANAGEMENT PLAN APPROVAL

(a) Beach Management Plan approval shall be revoked if the Coastal Resources Commission determines, after the review of the petitioner's progress report identified in 15A NCAC 07J .1204, that any of the criteria under which the Beach Management Plan is authorized, as defined in 15A NCAC 07J .1201(d)(1) through (d)(4), are not being met.

(b) In the event a progress report is not received by the Division of Coastal Management five years from either the initial approval of the Beach Management Plan or the previous progress report, the Beach Management Plan approval shall be revoked automatically at the end of the five-year interval defined in 15A NCAC 07J .1204(b) for which the progress report was not received.

(c) The revocation or expiration of a Beach Management Plan approval shall be a final agency decision and is subject to judicial review in accordance with G.S. 113A-123.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

15A NCAC 07J .1206 LOCAL GOVERNMENTS AND COMMUNITIES WITH APPROVED BEACH MANAGEMENT PLANS

A list of CRC approved Beach Management Plans and the conditions under which the pre-project vegetation lines exist, including the date(s) the pre-project vegetation line was defined, shall be maintained by the Division of Coastal Management. A list of Beach Management Plans and the conditions under which the Plans exist, including the date the Plan was approved, the dates the progress reports were received, the design life of the large-scale beach fill project, and the potential expiration dates for the Beach Management Plans shall be maintained by the Division of Coastal Management. Both the pre-project vegetation line list and the Beach Management Plan list shall be available for inspection at the Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. March 23, 2009;
Readopted Eff. September 1, 2021;
Amended Eff. August 1, 2022.

SECTION .1300 – DEVELOPMENT LINE PROCEDURES

15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE
15A NCAC 07J .1302 PROCEDURES FOR APPROVING THE DEVELOPMENT LINE
15A NCAC 07J .1303 LOCAL GOVERNMENTS AND COMMUNITIES WITH DEVELOPMENT LINES

History Note: *Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
Eff. April 1, 2016;
Amended Eff. September 1, 2017;
Readopted Eff. September 1, 2021;
Amended Eff. December 1, 2021;
Repealed Eff. August 1, 2022.

APPENDIX B
Local Cooperation Agreement

PROJECT COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
TOWN OF KURE BEACH, NORTH CAROLINA
FOR CONSTRUCTION OF THE
CAROLINA BEACH & VICINITY -AREA SOUTH PORTION
HURRICANE WAVE AND SHORE PROTECTION PROJECT

THIS AGREEMENT is entered into this 26TH day of SEPTEMBER, 1995, by and between the DEPARTMENT OF THE ARMY (hereinafter the "Government"), acting by and through the U. S. Army Engineer, Wilmington District (hereinafter the "District Engineer"), and the Town of Kure Beach, North Carolina (hereinafter the "Non-Federal Sponsor") acting by and through the town mayor.

WITNESSETH, THAT:

WHEREAS, construction of the Carolina Beach & Vicinity - Area South Portion Hurricane Wave and Shore Protection Project at Kure Beach, North Carolina was authorized by Section 203 of the Flood Control Act of 1962, Public Law 87-874;

WHEREAS, the Government and the Non-Federal Sponsor desire to enter into a project cooperation agreement for construction and periodic renourishment at Carolina Beach & Vicinity - Area South Portion (hereinafter the "Project", as defined in Article I.A. of this Agreement);

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, specifies the cost-sharing requirements applicable to the Project;

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91-611, as amended, and Section 103 of the Water Resources Development Act of 1986, Public Law 99-662, as amended, provide that the Secretary of the Army shall not commence construction of any water resources project, or separable element thereof, until each non-Federal sponsor has entered into a written agreement to furnish its required cooperation for the project or separable element;

WHEREAS, the Government and Non-Federal Sponsor have the full authority and capability to perform as hereinafter set forth and intend to cooperate in cost-sharing and financing of the Project in accordance with the terms of this Agreement.

NOW, THEREFORE, the Government and the Non-Federal Sponsor agree as follows:

ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

For purposes of this Agreement:

A. The term "Project" shall mean initial construction and periodic nourishment, as generally described in the Design Memorandum Supplement and Environmental Impact Statement, dated January 1993, revised April 1993 and approved by Headquarters, United States Army Corps of Engineers, Washington, DC on March 3, 1994 (hereinafter the "DM").

B. The term "initial construction" shall mean the placement of suitable beach fill to form a 25 foot wide dune with a crest elevation of 13.5 feet National Geodetic Vertical Datum (NGVD), fronted by a 50 foot wide storm berm at elevation 9.0 feet NGVD on that portion of the beach from the coquina rock outcrop located approximately 1,000 feet north of the property line of Ft. Fisher State Park north along the unincorporated areas and through the Town of Kure Beach for a total distance of 18,000 lineal feet of ocean shoreline. The slope of the beach fill will be 1V:10H from the top of the dune to the top of the berm and 1V:10H from the top of the berm to mean low water. Below mean low water, the beach fill will assume the natural existing slope which will vary depending on the wave climate during construction. The initial construction is as generally described in the DM.

C. The term "periodic nourishment" shall mean the placement after the end of the period of initial construction of suitable beach and dune fill material within the area of the initial construction, or any functional portion of the initial construction, as generally described in the DM. Periodic nourishment shall occur in distinct iterations.

D. The term "total project costs" shall mean all costs incurred by the Non-Federal Sponsor and the Government in accordance with the terms of this Agreement directly related to initial construction and periodic nourishment of the Project. Subject to the provisions of this Agreement, the term shall include, but is not necessarily limited to: continuing planning and engineering costs incurred after October 1, 1985; advanced engineering and design costs; preconstruction engineering and design costs; engineering and design costs during construction; the costs of investigations to identify the existence and extent of hazardous substances in accordance with Article XV.A. of this Agreement; costs of historic preservation activities in accordance with Article XVIII.A. of this Agreement; actual construction costs, including the costs of alteration, lowering, raising, or replacement and attendant removal existing railroad bridges and approaches thereto; supervision and administration costs; costs of participation in the Project Coordination Team in accordance with Article V of this Agreement; costs of contract dispute settlements or awards; the value of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas for which the Government affords credit in accordance with Article IV of this Agreement; and costs of audit in accordance with Article X.B. and X.C. of this Agreement. The term does not include any costs for operation, maintenance, repair, replacement, or rehabilitation; any costs due to betterments; or any costs of

dispute resolution under Article VII of this Agreement.

E. The term "total costs of initial construction" shall mean that portion of total project costs allocated by the Government to initial construction.

F. The term "total costs of periodic nourishment" shall mean that portion of total project costs allocated by the Government to periodic nourishment.

G. The term "financial obligation for initial construction" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total costs of initial construction.

H. The term "financial obligation for periodic nourishment" shall mean a financial obligation of the Government, other than an obligation pertaining to the provision of lands, easements, rights-of-way, relocations, and borrow and dredged or excavated material disposal areas, that results or would result in a cost that is or would be included in total costs of periodic nourishment.

I. The term "non-Federal proportionate share" with respect to initial construction, shall mean the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.D.2. of this Agreement to total financial obligations for initial construction, as projected by the Government. The term shall mean, with respect to periodic nourishment, the ratio of the Non-Federal Sponsor's total cash contribution required in accordance with Article II.G.2. of this Agreement to total financial obligations for periodic nourishment, as projected by the Government.

J. The term "period of initial construction" shall mean the time from the date the Government first notifies the Non-Federal Sponsor in writing, in accordance with Article VI.B. of this Agreement, of the scheduled date for issuance of the solicitation for the first contract for initial construction to the date that the U.S. Army Engineer for the Wilmington District (hereinafter the "District Engineer") notifies the Non-Federal Sponsor in writing of the Government's determination that initial construction of the Project is complete.

K. The term "authorized periodic nourishment period" shall mean the authorized duration for Federal participation in periodic nourishment for a period of 50 years from the commencement of the period of initial construction.

L. The term "highway" shall mean any public highway, roadway, street, or way, including any bridge thereof.

M. The term "relocation" shall mean providing a functionally equivalent facility to the

owner of an existing utility, cemetery, highway or other public facility, or railroad (excluding existing railroad bridges and approaches thereto) when such action is authorized, as between the Non-Federal Sponsor and the facility owner, in accordance with applicable legal principles of just compensation or as otherwise provided in the authorizing legislation for the Project or any report referenced therein. Providing a functionally equivalent facility may take the form of alteration, lowering, raising, or replacement and attendant removal of the affected facility or part thereof.

N. The term "fiscal year" shall mean one fiscal year of the Government. The Government fiscal year begins on October 1 and ends on September 30.

O. The term "functional portion of the Project" shall mean a portion of the Project that is suitable for tender to the Non-Federal Sponsor to operate and maintain in advance of completion of the entire Project. For a portion of the Project to be suitable for tender, the District Engineer must notify the Non-Federal Sponsor in writing of the Government's determination that the portion of the Project is complete and can function independently and for a useful purpose, although the balance of the Project is not complete.

P. The term "betterment" shall mean a change in the design and construction of an element of the Project resulting from the application of standards that the Government determines exceed those that the Government would otherwise apply for accomplishing the design and construction of that element.

ARTICLE II - OBLIGATIONS OF THE GOVERNMENT AND THE NON-FEDERAL SPONSOR

A. The Government, subject to receiving funds appropriated by the Congress of the United States (hereinafter, the "Congress") and using those funds and funds provided by the Non-Federal Sponsor, shall expeditiously construct the Project (including alteration, lowering, raising, or replacement and attendant removal of existing railroad bridges and approaches thereto and including periodic nourishment at such times during the authorized periodic nourishment period as the Government, after consultation with the Non-Federal Sponsor, determines such placement to be necessary and economically justified), applying those procedures usually applied to Federal projects, pursuant to Federal laws, regulations, and policies.

1. The Government shall afford the Non-Federal Sponsor the opportunity to review and comment on the solicitations for all contracts, including relevant plans and specifications, prior to the Government's issuance of such solicitations. The Government shall not issue the solicitation for the first construction contract until the Non-Federal Sponsor has confirmed in writing its willingness to proceed with the Project. To the extent possible, the Government shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract modifications, including change orders, prior to the issuance to the contractor of a Notice to Proceed. In any instance where providing the Non-Federal Sponsor with notification of

a contract modification or change order is not possible prior to issuance of the Notice to Proceed, the Government shall provide such notification in writing at the earliest date possible. To the extent possible, the Government also shall afford the Non-Federal Sponsor the opportunity to review and comment on all contract claims prior to resolution thereof. The Government shall consider in good faith the comments of the Non-Federal Sponsor, but the contents of solicitations, award of contracts, execution of contract modifications, issuance of change orders, resolution of contract claims, and performance of all work on the Project (whether the work is performed under contract or by Government personnel), shall be exclusively within the control of the Government.

2. Throughout the period of construction, the District Engineer shall furnish the Non-Federal Sponsor with a copy of the Government's Written Notice of Acceptance of Completed Work for each contract for the Project.

3. Notwithstanding paragraph A.1. of this Article, if, upon the award of any contract, cumulative financial obligations for initial construction would exceed $_____, or cumulative financial obligations for periodic nourishment would exceed $_____, the Government and the Non-Federal Sponsor agree to defer award of that contract and all subsequent contracts until such time as the Government and the Non-Federal Sponsor agree to proceed with further contract awards for the Project, but in no event shall the award of contracts be deferred for more than three years. Notwithstanding this general provision for deferral of contract awards, the Government, after consultation with the Non-Federal Sponsor, may award a contract or contracts after the Assistant Secretary of the Army (Civil Works) makes a written determination that the award of such contract or contracts must proceed in order to comply with law or to protect life or property from imminent and substantial harm.

B. The Non-Federal Sponsor may request the Government to accomplish betterments during the period of initial construction. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

C. When the District Engineer determines that the entire Project is complete or that a portion of the Project has become a functional portion of the Project, the District Engineer shall so notify the Non-Federal Sponsor in writing and furnish the Non-Federal Sponsor with an Operation, Maintenance, Repair, Replacement, and Rehabilitation Manual (hereinafter the "OMRR&R Manual") and with copies of all of the Government's Written Notices of Acceptance of Completed Work for all contracts for the Project or the functional portion of the Project that have not been provided previously. Upon such notification, the Non-Federal Sponsor shall

operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project in accordance with Article VIII of this Agreement.

D. The Non-Federal Sponsor shall contribute 35 percent of the total costs of initial construction assigned by the Government to hurricane and storm damage reduction plus 50 percent of the separable costs of initial construction assigned by the Government to recreation, plus 100 percent of the total costs of initial construction assigned by the Government to privately owned shores (where use of such shores is limited to private interests) (hereinafter the "non-Federal share of initial construction"), in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the initial construction, operation, and maintenance of the Project, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the initial construction, operation, and maintenance of the Project.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph D. 1. of this Article and the Non-Federal Sponsor's contributions attributable to initial construction under Articles V, X, and XV.A. of this Agreement will be less than the non-Federal share of initial construction, the Non-Federal Sponsor shall provide a cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to the non-Federal share of initial construction.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs D. 1. and D.2. of this Article and the Non-Federal Sponsor's contributions attributable to initial construction under Articles V, X, and XV.A. of this Agreement has exceeded the non-Federal share of initial construction, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal share of initial construction. After such a determination, the Government, in its sole discretion may provide any remaining Project lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining Project relocations on behalf of the Non-Federal Sponsor.

E. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the period of initial construction. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The

Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

F. The Government shall perform a final accounting in accordance with Article VI.D. of this Agreement to determine the contributions provided by the Non-Federal Sponsor in accordance with paragraphs B., D., and E. of this Article and the Non-Federal Sponsor's contributions attributable to initial construction under Articles V, X, and XV.A. of this Agreement and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs B., D., and E. of this Article.

G. For each iteration of periodic nourishment, the Non-Federal Sponsor shall contribute 35 percent of the total costs of periodic nourishment assigned by the Government to hurricane and storm damage reduction plus 50 percent of the separable costs of periodic nourishment assigned by the Government to recreation, plus 100 percent of the total costs of periodic nourishment assigned by the Government to privately owned shores (where use of such shores is limited to private interests) (hereinafter the "non-Federal share of periodic nourishment") in accordance with the provisions of this paragraph.

1. In accordance with Article III of this Agreement, the Non-Federal Sponsor shall provide all lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Government determines the Non-Federal Sponsor must provide for the iteration of periodic nourishment, and shall perform or ensure performance of all relocations that the Government determines to be necessary for the iteration of periodic nourishment.

2. If the Government projects that the value of the Non-Federal Sponsor's contributions under paragraph G 1. of this Article and the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X and XV.A. of this Agreement, will be less than the non-Federal shares of periodic nourishment, the Non-Federal Sponsor shall provide an additional cash contribution, in accordance with Article VI.B. of this Agreement, in the amount necessary to make the Non-Federal Sponsor's total contribution equal to the non-Federal shares of periodic nourishment.

3. If the Government determines that the value of the Non-Federal Sponsor's contributions provided under paragraphs G.1. and G.2. of this Article and the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X and XV.A. of this Agreement, has exceeded the non-Federal shares of periodic nourishment, the Government, subject to the availability of funds, shall reimburse the Non-Federal Sponsor for any such value in excess of the non-Federal shares of periodic nourishment. After such a determination, the

Government, in its sole discretion, may provide any remaining periodic nourishment lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas and perform any remaining periodic nourishment relocations on behalf of the Non-Federal Sponsor.

H. The Government shall assign all costs included or to be included in total project costs, including all contributions provided by the Non-Federal Sponsor, to hurricane and storm damage reduction, recreation, or privately owned shores (where use of such shores is limited to private interests).

I. The Non-Federal Sponsor may request the Government to accomplish betterments during the authorized periodic nourishment period. Such requests shall be in writing and shall describe the betterments requested to be accomplished. If the Government in its sole discretion elects to accomplish the requested betterments or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs due to the requested betterments and shall pay all such costs in accordance with Article VI.C. of this Agreement.

J. The Non-Federal Sponsor may request the Government to provide lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or perform relocations on behalf of the Non-Federal Sponsor during the authorized periodic nourishment period. Such requests shall be in writing and shall describe the services requested to be performed. If in its sole discretion the Government elects to perform the requested services or any portion thereof, it shall so notify the Non-Federal Sponsor in a writing that sets forth any applicable terms and conditions, which must be consistent with this Agreement. In the event of conflict between such a writing and this Agreement, this Agreement shall control. The Non-Federal Sponsor shall be solely responsible for all costs of the requested services and shall pay all such costs in accordance with Article VI.C. of this Agreement. Notwithstanding the provision of lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas or performance of relocations by the Government, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of cleanup and response in accordance with Article XV.C. of this Agreement.

K. For each iteration of periodic nourishment, the Government shall perform a final accounting in accordance with Article VI.F. of this Agreement to determine the contributions provided by the Non-Federal Sponsor toward the total costs of periodic nourishment and costs due to betterments in accordance with paragraphs G., I., and J. of this Article and the Non-Federal Sponsor's contributions attributable to periodic nourishment under Articles X and XV.A. of this Agreement, and to determine whether the Non-Federal Sponsor has met its obligations under paragraphs G., I., and J. of this Article.

L. In the event the completed initial construction, or any functional portion of the initial construction, is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds and Article II.A. of this Agreement, shall place suitable beach and dune fill material within the area of the completed initial construction, or the functional portion of the initial construction, as periodic nourishment. The costs of such placement shall be included in the total costs of periodic nourishment and cost shared in accordance with Article II.G. of this Agreement. In the event an uncompleted portion of the initial construction is damaged or destroyed by a storm or other natural forces, the Government, subject to the availability of funds, shall place suitable beach and dune fill material within the area of the uncompleted initial construction as initial construction. The costs of such placement shall be included in the total costs of initial construction and cost shared in accordance with Article II.D. of this Agreement. Nothing in this paragraph shall relieve the Non-Federal Sponsor of its obligations under Article VIII of this Agreement. Nothing in this paragraph shall preclude the Government from using Public Law 84-99 to accomplish any emergency repair and restoration work of the completed initial construction, or a functional portion of the initial construction.

M. The Non-Federal Sponsor shall not use Federal funds to meet the non-Federal share of initial construction or the non-Federal share of periodic nourishment under this Agreement unless the Federal granting agency verifies in writing that the expenditure of such funds is expressly authorized by statute.

N. The Non-Federal Sponsor agrees to participate in and comply with applicable Federal floodplain management and flood insurance programs.

O. Not less than once each year the Non-Federal Sponsor shall inform affected interests of the extent of protection afforded by the Project.

P. The Non-Federal Sponsor shall publicize flood plain information in the area concerned and shall provide this information to zoning and other regulatory agencies for their use in preventing unwise future development in the flood plain and in adopting such regulations as may be necessary to prevent unwise future development and to ensure compatibility with protection levels provided by the Project.

Q. The Non-Federal Sponsor shall ensure to the extent of its powers that water pollution which would endanger the health of bathers will not be permitted.

R. The Non-Federal Sponsor shall ensure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based during the economic life of the project.

S. The Non-Federal Sponsor shall, to the extent of its powers, prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation or maintenance of the Project.

T. The Non-Federal Sponsor shall provide and maintain necessary access roads, parking areas and other public use facilities open and available to all on equal terms.

ARTICLE III - LANDS, RELOCATIONS, DISPOSAL AREAS, AND PUBLIC LAW 99-46 COMPLIANCE

A. The Government, after consultation with the Non-Federal Sponsor, shall determine the lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those required for relocations, borrow materials, and dredged or excavated material disposal. The Government shall delineate which of the required lands, easements, and rights-of-way are required for hurricane and storm damage reduction, which are required solely for recreation, and which are required solely for privately owned shores (where use of such shores is limited to private interests). The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of the lands, easements, and rights-of-way that the Government determines the Non-Federal Sponsor must provide, in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with acquisition of such lands, easements, and rights-of-way. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the initial construction, operation, or maintenance of the Project set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall acquire all lands, easements, and rights-of-way required for the periodic nourishment, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each contract for the initial construction or periodic nourishment, the Non-Federal Sponsor shall provide the Government with authorization for entry to all lands, easements, and rights-of-way the Government determines the Non-Federal Sponsor must provide for that contract. For so long as the Project remains authorized, the Non-Federal Sponsor shall ensure that lands, easements, and rights-of-way that the Government determines to be required for the operation and maintenance of the Project and that were provided by the Non-Federal Sponsor are retained in public ownership for uses compatible with the authorized purposes of the Project.

B. The Government, after consultation with the Non-Federal Sponsor, shall determine the improvements required on lands, easements, and rights-of-way to enable the proper disposal of dredged or excavated material associated with the initial construction, periodic nourishment, operation, and maintenance of the Project. Such improvements may include, but are not necessarily limited to, retaining dikes, wasteweirs, bulkheads, embankments, monitoring features, stilling basins, and de-watering pumps and pipes. The Government shall delineate which of the required improvements are associated with hurricane and storm damage reduction, which are associated solely with recreation, and which are associated solely with privately owned shores (where use of such shores is limited to private interests). The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions of such improvements in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph,

and shall provide the Non-Federal Sponsor with a written notice to proceed with construction of such improvements. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall provide all improvements required for the initial construction, operation, and maintenance of the Project set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall provide all improvements required for the periodic nourishment, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for initial construction or periodic nourishment, the Non-Federal Sponsor shall prepare plans and specifications for all improvements the Government determines to be required for the proper disposal of dredged or excavated material under that contract, submit such plans and specifications to the Government for approval, and provide such improvements in accordance with the approved plans and specifications.

C. The Government, after consultation with the Non-Federal Sponsor, shall determine the relocations necessary for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those necessary to enable the removal of borrow materials and the proper disposal of dredged or excavated material. The Government shall delineate which of the necessary relocations are necessary for hurricane and storm damage reduction, which are necessary solely for recreation, and which are necessary solely for privately owned shores (where use of such shores is limited to private interests). The Government in a timely manner shall provide the Non-Federal Sponsor with general written descriptions, including maps as appropriate, of such relocations in detail sufficient to enable the Non-Federal Sponsor to fulfill its obligations under this paragraph, and shall provide the Non-Federal Sponsor with a written notice to proceed with such relocations. Prior to the end of the period of initial construction, the Non-Federal Sponsor shall perform or ensure the performance of all relocations necessary for the initial construction, operation, or maintenance of the Project as set forth in such descriptions. Prior to the end of the authorized periodic nourishment period, the Non-Federal Sponsor shall perform or ensure the performance of all relocations required for the periodic nourishment, as set forth in such descriptions. Furthermore, prior to issuance of the solicitation for each Government contract for initial construction or periodic nourishment, the Non-Federal Sponsor shall prepare or ensure the preparation of plans and specifications for, and perform or ensure the performance of, all relocations the Government determines to be necessary for that contract.

D. The Non-Federal Sponsor in a timely manner shall provide the Government with such documents as are sufficient to enable the Government to determine the value of any contribution provided pursuant to paragraphs A., B., or C. of this Article. Upon receipt of such documents the Government, in accordance with Article IV of this Agreement and in a timely manner, shall determine the value of such contribution, include such value in total project costs, and afford credit for such value toward the non-Federal share of initial construction or the non-Federal share of periodic nourishment.

E. The Non-Federal Sponsor shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-46, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance

Act of 1987 (Public Law 100-17), and the Uniform Regulations contained in 49 C.F.R. Part 24, in acquiring lands, easements, and rights-of-way required for the initial construction, periodic nourishment, operation, and maintenance of the Project, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, and shall inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - CREDIT FOR VALUE OF LANDS, RELOCATIONS, AND DISPOSAL AREAS

A. The Non-Federal Sponsor shall receive credit toward the hurricane and storm damage reduction portion of the non-Federal share of initial construction, the recreation portion of the non-Federal share of initial construction, and the privately owned shores (where use of such shores is limited to private interests) portion of the non-Federal share of initial construction, respectively, for the value of the lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for the hurricane and storm damage reduction portion of the initial construction, operation, and maintenance of the Project, the recreation portion of the initial construction, operation, and maintenance of the Project and the privately owned shores (where use of such shores is limited to private interests) portion of the initial construction, operation, and maintenance of the Project, pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for the hurricane and storm damage reduction portion of the initial construction, operation, and maintenance of the Project, the recreation portion of the initial construction, operation, and maintenance of the Project and the privately owned shores (where use of such shores is limited to private interests) portion of the initial construction, operation, and maintenance of the Project, pursuant to Article III of this Agreement. The Non-Federal Sponsor shall receive credit toward the hurricane and storm damage reduction portion of the non-Federal share of periodic nourishment, the recreation portion of the non-Federal share of periodic nourishment, and the privately owned shores (where use of such shores is limited to private interests) portion of the non-Federal share of periodic nourishment, respectively, for the value of the additional lands, easements, rights-of-way, and suitable borrow and dredged or excavated material disposal areas that the Non-Federal Sponsor must provide for the hurricane and storm damage reduction portion of the periodic nourishment of the Project, the recreation portion of the periodic nourishment of the Project, and the privately owned shores (where use of such shores is limited to private interests) portion of the periodic nourishment of the Project, pursuant to Article III of this Agreement, and for the value of the relocations that the Non-Federal Sponsor must perform or for which it must ensure performance for the hurricane and storm damage reduction portion of the periodic nourishment of the Project, the recreation portion of the periodic nourishment of the Project, and the privately owned shores (where use of such shores is limited to private interests) portion of the periodic nourishment of the Project, pursuant to Article III of this Agreement. However, the Non-Federal Sponsor shall not receive credit for the value of any lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas that have been provided previously as an item of

cooperation for another Federal project. The Non-Federal Sponsor also shall not receive credit for the value of lands, easements, rights-of-way, relocations, or borrow and dredged or excavated material disposal areas to the extent that such items are provided using Federal funds unless the Federal granting agency verifies in writing that such credit is expressly authorized by statute.

B. For the sole purpose of affording credit in accordance with this Agreement, the value of lands, easements, and rights-of-way, including those necessary for relocations, borrow materials, and dredged or excavated material disposal, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined in accordance with the provisions of this paragraph.

1. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsor on the effective date of this Agreement shall be the fair market value of such real property interests as of the date the Non-Federal Sponsor provides the Government with authorization for entry thereto. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsor after the effective date of this Agreement shall be the fair market value of such real property interests at the time the interests are acquired.

2. General Valuation Procedure. Except as provided in paragraph B.3. of this Article, the fair market value of lands, easements, or rights-of-way shall be determined in accordance with paragraph B.2.a. of this Article, unless thereafter a different amount is determined to represent fair market value in accordance with paragraph B.2.b. of this Article.

a. The Non-Federal Sponsor shall obtain, for each real property interest, an appraisal that is prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsor and the Government. The appraisal must be prepared in accordance with the applicable rules of just compensation, as specified by the Government. The fair market value shall be the amount set forth in the Non-Federal Sponsor's appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's appraisal, the Non-Federal Sponsor may obtain a second appraisal, and the fair market value shall be the amount set forth in the Non-Federal Sponsor's second appraisal, if such appraisal is approved by the Government. In the event the Government does not approve the Non-Federal Sponsor's second appraisal, or the Non-Federal Sponsor chooses not to obtain a second appraisal, the Government shall obtain an appraisal, and the fair market value shall be the amount set forth in the Government's appraisal, if such appraisal is approved by the Non-Federal Sponsor. In the event the Non-Federal Sponsor does not approve the Government's appraisal, the Government, after consultation with the Non-Federal Sponsor, shall consider the Government's and the Non-Federal Sponsor's appraisals and determine an amount based thereon, which shall be deemed to be the fair market value.

b. Where the amount paid or proposed to be paid by the Non-Federal Sponsor for the real property interest exceeds the amount determined pursuant to paragraph

B.2.a. of this Article, the Government, at the request of the Non-Federal Sponsor, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consultation with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to paragraph B.2.a. of this Article, but not to exceed the amount actually paid or proposed to be paid. If the Government approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to paragraph B.2.a. of this Article.

3. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsor shall, prior to instituting such proceedings, submit to the Government notification in writing of its intent to institute such proceedings and an appraisal of the specific real property interests to be acquired in such proceedings. The Government shall have 60 days after receipt of such a notice and appraisal within which to review the appraisal, if not previously approved by the Government in writing.

a. If the Government previously has approved the appraisal in writing, or if the Government provides written approval of, or takes no action on, the appraisal within such 60-day period, the Non-Federal Sponsor shall use the amount set forth in such appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

b. If the Government provides written disapproval of the appraisal, including the reasons for disapproval, within such 60-day period, the Government and the Non-Federal Sponsor shall consult in good faith to promptly resolve the issues or areas of disagreement that are identified in the Government's written disapproval. If, after such good faith consultation, the Government and the Non-Federal Sponsor agree as to an appropriate amount, then the Non-Federal Sponsor shall use that amount as the estimate of just compensation for the purpose of instituting the eminent domain proceeding. If, after such good faith consultation, the Government and the Non-Federal Sponsor cannot agree as to an appropriate amount, then the Non-Federal Sponsor may use the amount set forth in its appraisal as the estimate of just compensation for the purpose of instituting the eminent domain proceeding.

c. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted in accordance with sub-paragraph B.3. of this Article, fair market value shall be either the amount of the court award for the real property interests taken, to the extent the Government determined such interests are required for the construction, operation, and maintenance of the Project, or the amount of any stipulated settlement or portion thereof that the Government approves in writing.

4. Incidental Costs. For lands, easements, or rights-of-way acquired by the Non-Federal Sponsor within a five-year period preceding the effective date of this Agreement, or at any time after the effective date of this Agreement, the value of the interest shall include the documented incidental costs of acquiring the interest, as determined by the Government, subject

to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowableness of costs. Such incidental costs shall include, but not necessarily be limited to, closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91-646 relocation assistance benefits provided in accordance with Article III.E. of this Agreement.

C. After consultation with the Non-Federal Sponsor, the Government shall determine the value of relocations in accordance with the provisions of this paragraph.

1. For a relocation other than a highway, the value shall be only that portion of relocation costs that the Government determines is necessary to provide a functionally equivalent facility, reduced by depreciation, as applicable, and by the salvage value of any removed items.

2. For a relocation of a highway, the value shall be only that portion of relocation costs that would be necessary to accomplish the relocation in accordance with the design standard that the State of North Carolina would apply under similar conditions of geography and traffic load, reduced by the salvage value of any removed items.

3. Relocation costs shall include, but not necessarily be limited to, actual costs of performing the relocation; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with performance of the relocation, but shall not include any costs due to betterments, as determined by the Government, nor any additional cost of using new material when suitable used material is available. Relocation costs shall be subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowableness of costs.

D. The value of the improvements made to lands, easements, and rights-of-way for the proper disposal of dredged or excavated material shall be the costs of the improvements, as determined by the Government, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowableness of costs. Such costs shall include, but not necessarily be limited to, actual costs of providing the improvements; planning, engineering and design costs; supervision and administration costs; and documented incidental costs associated with providing the improvements, but shall not include any costs due to betterments, as determined by the Government.

ARTICLE V - PROJECT COORDINATION TEAM

A. To provide for consistent and effective communication, the Non-Federal Sponsor and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. Thereafter, the Project Coordination Team shall meet regularly until the end of the period of initial construction. The

Government's Project Manager and a counterpart named by the Non-Federal Sponsor shall co-chair the Project Coordination Team.

B. The Government's Project Manager and the Non-Federal Sponsor's counterpart shall keep the Project Coordination Team informed of the progress of construction and of significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

C. Until the end of the period of initial construction, the Project Coordination Team shall generally oversee the Project, including issues related to design; plans and specifications; scheduling; real property and relocation requirements; real property acquisition; contract awards and modifications; contract costs; the Government's cost projections; final inspection of the initial construction or functional portions of the initial construction; preparation of the proposed OMRR&R Manual; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement, and rehabilitation of the Project; and other related matters. This oversight shall be consistent with a project management plan developed by the Government after consultation with the Non-Federal Sponsor.

D. The Project Coordination Team may make recommendations that it deems warranted to the District Engineer on matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. The Government in good faith shall consider the recommendations of the Project Coordination Team. The Government, having the legal authority and responsibility for construction of the Project, has the discretion to accept, reject, or modify the Project Coordination Team's recommendations.

E. The costs of participation in the Project Coordination Team shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE VI - METHOD OF PAYMENT

A. The Government shall maintain current records of contributions provided by the parties and current projections of total project costs, total costs of initial construction, total costs of periodic nourishment and costs due to betterments. At least quarterly, the Government shall provide the Non-Federal Sponsor with a report setting forth all contributions provided to date and the current projections of total project costs, of total costs of initial construction, of total costs of periodic nourishment, of total costs due to betterments, of the components of total project costs, of the non-Federal share of initial construction, of the non-Federal share of periodic nourishment, of the Non-Federal Sponsor's total cash contributions required in accordance with Articles II.B., II.D., II.E., II.G., II.I., and II.J. of this Agreement, of the non-Federal proportionate shares, and of the funds the Government projects to be required from the Non-Federal Sponsor for the upcoming fiscal year. On the effective date of this Agreement, total project costs are projected to be $228,400,000. The Non-Federal Sponsor's cash contribution required under Article II.D. of

this Agreement is projected to be $79,327,000. The Non-Federal Sponsor's cash contribution required under Article II.G. of this Agreement is projected to be $_____. Such amounts are estimates subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsor.

B. The Non-Federal Sponsor shall provide the cash contribution required under Article II.D.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 45 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for the initial construction, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction through the first fiscal year of initial construction, including the non-Federal proportionate share of financial obligations for initial construction incurred prior to the commencement of the period of initial construction. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Wilmington" to the District Engineer.

2. For the second and subsequent fiscal years of initial construction, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for initial construction for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article VI.B.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for initial construction incurred prior to the commencement of the period of initial construction; and (b) the non-Federal proportionate share of financial obligations for initial construction as they are incurred during the period of initial construction.

4. If at any time during the period of initial construction the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for initial construction for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 30 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.B.1. of this Agreement.

C. In advance of the Government incurring any financial obligation associated with additional work under Article II.B., II.E., II.I., or II.J. of this Agreement, the Non-Federal Sponsor shall provide the Government with the full amount of the funds required to pay for such additional work by delivering a check payable to "FAO, USAED, Wilmington" to the District Engineer. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover the Government's financial obligations for such additional work as they are incurred. In the event the Government determines that the Non-Federal Sponsor must provide additional funds to meet its cash contribution, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required. Within 30 calendar days thereafter, the Non-Federal Sponsor shall provide the Government with a check for the full amount of the additional required funds.

D. Upon completion of the initial construction or termination of this Agreement during the period of initial construction, and upon resolution of all claims and appeals relevant to the initial construction, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs of initial construction, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the period of initial construction and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.B. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the non-Federal share of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of initial construction plus costs due to any betterments provided in accordance with Article II.B. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

E. The Non-Federal Sponsor shall provide the cash contribution required under Article II.G.2. of this Agreement in accordance with the provisions of this paragraph.

1. Not less than 45 calendar days prior to the scheduled date for issuance of the solicitation for the first contract for periodic nourishment, the Government shall notify the Non-Federal Sponsor in writing of such scheduled date and the funds the Government determines

to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment through the first fiscal year of the authorized periodic nourishment period, including the non-Federal proportionate share of financial obligations for periodic nourishment incurred prior to the commencement of the authorized periodic nourishment period. Not later than such scheduled date, the Non-Federal Sponsor shall provide the Government with the full amount of the required funds by delivering a check payable to "FAO, USAED, Wilmington" to the District Engineer.

2. For the second and subsequent fiscal years of periodic nourishment, the Government shall notify the Non-Federal Sponsor in writing, no later than 60 calendar days prior to the beginning of that fiscal year, of the funds the Government determines to be required from the Non-Federal Sponsor to meet the non-Federal proportionate share of projected financial obligations for periodic nourishment for that fiscal year. No later than 30 calendar days prior to the beginning of the fiscal year, the Non-Federal Sponsor shall make the full amount of the required funds for that fiscal year available to the Government through the funding mechanism specified in Article VI.E.1. of this Agreement.

3. The Government shall draw from the funds provided by the Non-Federal Sponsor such sums as the Government deems necessary to cover: (a) the non-Federal proportionate share of financial obligations for periodic nourishment incurred prior to the commencement of the authorized periodic nourishment period; and (b) the non-Federal proportionate share of financial obligations for periodic nourishment as they are incurred during the authorized periodic nourishment period.

4. If at any time during the authorized periodic nourishment period the Government determines that additional funds will be needed from the Non-Federal Sponsor to cover the non-Federal proportionate share of projected financial obligations for periodic nourishment for the current fiscal year, the Government shall notify the Non-Federal Sponsor in writing of the additional funds required, and the Non-Federal Sponsor, no later than 60 calendar days from receipt of such notice, shall make the additional required funds available through the payment mechanism specified in Article VI.E.1. of this Agreement.

F. Upon completion of each iteration of periodic nourishment or termination of this Agreement during the authorized periodic nourishment period, and upon resolution of all claims and appeals relevant to the periodic nourishment, the Government shall conduct a final accounting and furnish the Non-Federal Sponsor with the results of the final accounting. The final accounting shall determine total costs or periodic nourishment, each party's contribution provided thereto, and each party's required share thereof. The final accounting also shall determine costs due to betterments during the authorized periodic nourishment period and the Non-Federal Sponsor's cash contribution provided pursuant to Article II.I. of this Agreement.

1. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor is less than the non-Federal share of periodic nourishment plus costs

due to any betterments provided in accordance with Article II.I. of this Agreement, the Non-Federal Sponsor shall, no later than 90 calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required to meet the non-Federal share of periodic nourishment plus costs due to any betterments provided in accordance with Article II.I. of this Agreement.

2. In the event the final accounting shows that the total contribution provided by the Non-Federal Sponsor exceeds the non-Federal share of periodic nourishment plus costs due to any betterments provided in accordance with Article II.I. of this Agreement, the Government shall, subject to the availability of funds, refund the excess to the Non-Federal Sponsor no later than 90 calendar days after the final accounting is complete. In the event existing funds are not available to refund the excess to the Non-Federal Sponsor, the Government shall seek such appropriations as are necessary to make the refund.

ARTICLE VII - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

ARTICLE VIII - OPERATION, MAINTENANCE, REPAIR, REPLACEMENT, AND REHABILITATION (OMRR&R)

A. Upon notification in accordance with Article II.C. of this Agreement and for so long as the Project remains authorized, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the entire Project or the functional portion of the Project, at no cost to the Government, in a manner compatible with the Project's authorized purposes and in accordance with applicable Federal and State laws as provided in Article XI of this Agreement and specific directions prescribed by the Government in the OMRR&R Manual and any subsequent amendments thereto.

1. At least annually the Non-Federal Sponsor shall monitor the beach and dune profile to determine losses of nourishment material from the Project design section and provide the results of such monitoring to the Government.

2. The Non-Federal Sponsor shall grade and reshape the beach and dune

profile using material within the Project area and maintain vegetation, fencing, dune cross-overs, and other Project features associated with the beach and dune.

B. The Non-Federal Sponsor hereby gives the Government a right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of inspection and, if necessary, for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. If an inspection shows that the Non-Federal Sponsor for any reason is failing to perform its obligations under this Agreement, the Government shall send a written notice describing the non-performance to the Non-Federal Sponsor. If, after 30 calendar days from receipt of notice, the Non-Federal Sponsor continues to fail to perform, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for access to the Project for the purpose of completing, operating, maintaining, repairing, replacing, or rehabilitating the Project. No completion, operation, maintenance, repair, replacement, or rehabilitation by the Government shall operate to relieve the Non-Federal Sponsor of responsibility to meet the Non-Federal Sponsor's obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to ensure faithful performance pursuant to this Agreement.

ARTICLE IX - INDEMNIFICATION

The Non-Federal Sponsor shall hold and save the Government free from all damages arising from the initial construction, periodic nourishment, operation, maintenance, repair, replacement, and rehabilitation of the Project and any Project-related betterments, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

A. Not later than 60 calendar days after the effective date of this Agreement, the Government and the Non-Federal Sponsor shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the Non-Federal Sponsor shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after completion of the accounting for which such books, records, documents, and other evidence were required. To the extent permitted under applicable Federal laws and regulations, the Government and the Non-Federal Sponsor shall each allow the other to inspect such books, documents, records, and other evidence.

B. Pursuant to 32 C.F.R. Section 33.26, the Non-Federal Sponsor is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-128 and Department of Defense Directive 7600.10. Upon request of the Non-Federal Sponsor and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the Non-Federal Sponsor and independent auditors any information necessary to enable an audit of the Non-Federal Sponsor's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-128, and such costs as are allocated to the Project shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

C. In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the Non-Federal Sponsor is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations. The costs of Government audits performed in accordance with this paragraph shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XI - FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsor and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), as implemented by Department of Defense Directive 5500.11 and Army Regulation 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army".

ARTICLE XII - RELATIONSHIP OF PARTIES

A. In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsor each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. In the exercise of its rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such

contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE XIII - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XIV - TERMINATION OR SUSPENSION

A. If at any time the Non-Federal Sponsor fails to fulfill its obligations under Article II.B., II.D., II.E., II.G., II.I., II.J., VI, or XVIII.C. of this Agreement, the Assistant Secretary of the Army (Civil Works) shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States or is necessary in order to satisfy agreements with any other non-Federal interests in connection with the Project.

B. If the Government fails to receive annual appropriations in amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Non-Federal Sponsor in writing, and 60 calendar days thereafter either party may elect without penalty to terminate this Agreement or to suspend future performance under this Agreement. In the event that either party elects to suspend future performance under this Agreement pursuant to this paragraph, such suspension shall remain in effect until such time as the Government receives sufficient appropriations or until either the Government or the Non-Federal Sponsor elects to terminate this Agreement.

C. In the event that either party elects to terminate this Agreement pursuant to this Article or Article XV of this Agreement, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI.D. or VI.F. of this Agreement.

D. Any termination of this Agreement or suspension of future performance under this Agreement in accordance with this Article or Article XV of this Agreement shall not relieve the parties of liability for any obligation previously incurred. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

ARTICLE XV - HAZARDOUS SUBSTANCES

A. After execution of this Agreement and upon direction by the District Engineer, the Non-Federal Sponsor shall perform, or cause to be performed, any investigations for hazardous substances that the Government or the Non-Federal Sponsor determines to be necessary to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter "CERCLA"), 42 U.S.C. Sections 9601-9675, that may exist in, on, or under lands, easements, and rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the Project. However, for lands that the Government determines to be subject to the navigation servitude, only the Government shall perform such investigations unless the District Engineer provides the Non-Federal Sponsor with prior specific written direction, in which case the Non-Federal Sponsor shall perform such investigations in accordance with such written direction.

1. All actual costs incurred by the Non-Federal Sponsor or the Government during the period of initial construction for such investigations for hazardous substances shall be included in the total costs of initial construction and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowableness of costs.

2. All actual costs incurred by the Non-Federal Sponsor or the Government during the authorized periodic nourishment period for such investigations for hazardous substances shall be included in the total costs of periodic nourishment and cost shared in accordance with the provisions of this Agreement, subject to an audit in accordance with Article X.C. of this Agreement to determine reasonableness, allocability, and allowableness of costs.

B. In the event it is discovered through any investigation for hazardous substances or other means that hazardous substances regulated under CERCLA exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and maintenance of the Project, the Non-Federal Sponsor and the Government shall provide prompt written notice to each other, and the Non-Federal Sponsor shall not proceed with the acquisition of the real property interests until both parties agree that the Non-Federal Sponsor should proceed.

C. The Government and the Non-Federal Sponsor shall determine whether to initiate initial construction or periodic nourishment of the Project, or, if already in initial construction or periodic nourishment, whether to continue with work on the Project, suspend future performance under this Agreement, or terminate this Agreement for the convenience of the Government, in any case where hazardous substances regulated under CERCLA are found to exist in, on, or under any lands, easements, or rights-of-way that the Government determines, pursuant to Article III of this Agreement, to be required for the initial construction, periodic nourishment, operation, and

maintenance of the Project. Should the Government and the Non-Federal Sponsor determine to initiate or continue with initial construction or periodic nourishment after considering any liability that may arise under CERCLA, the Non-Federal Sponsor shall be responsible, as between the Government and the Non-Federal Sponsor, for the costs of clean-up and response, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total project costs. In the event the Non-Federal Sponsor fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge the Non-Federal Sponsor's responsibilities under this paragraph upon direction by the Government, the Government may, in its sole discretion, either terminate this Agreement for the convenience of the Government, suspend future performance under this Agreement, or continue work on the Project.

D. The Non-Federal Sponsor and the Government shall consult with each other in accordance with Article V of this Agreement in an effort to ensure that responsible parties bear any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph C. of this Article shall not relieve any third party from any liability that may arise under CERCLA.

E. As between the Government and the Non-Federal Sponsor, the Non-Federal Sponsor shall be considered the operator of the Project for purposes of CERCLA liability. To the maximum extent practicable, the Non-Federal Sponsor shall operate, maintain, repair, replace, and rehabilitate the Project in a manner that will not cause liability to arise under CERCLA.

ARTICLE XVI - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the Non-Federal Sponsor:

Town of Kure Beach
Attn: Ms. F. Jones, Town Clerk
P.O. Box 3
Kure Beach, North Carolina 28440

If to the Government:

District Engineer, USAED, Wilmington
Attn: CESAWDP/Mr. C. E. Shuford, Jr.
69 Darlington AvenueWilmington, North Carolina 28402-1890

B. A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

C. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at the earlier of such time as it is actually received or seven calendar days after it is mailed.

ARTICLE XVII - CONFIDENTIALITY

To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XVIII - HISTORIC PRESERVATION

A. The costs of identification, survey and evaluation of historic properties shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

B. As specified in Section 7(a) of Public Law 93-291 (16 U.S.C. Section 469c(a)), the costs of mitigation and data recovery activities associated with historic preservation shall be borne entirely by the Government and shall not be included in total project costs, up to the statutory limit of one percent of the total amount authorized to be appropriated for the Project.

C. The Government shall not incur costs for mitigation and data recovery that exceed the statutory one percent limit specified in paragraph B. of this Article unless and until the Assistant Secretary of the Army (Civil Works) has waived that limit in accordance with Section 208(3) of Public Law 96-515 (16 U.S.C. Section 469c-2(3)). Any costs of mitigation and data recovery that exceed the one percent limit shall be included in total project costs and cost shared in accordance with the provisions of this Agreement.

ARTICLE XIX - OBLIGATIONS OF FUTURE APPROPRIATIONS

Nothing herein shall constitute, nor be deemed to constitute, an obligation of future appropriations by the legislature of the State of North Carolina.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

BY: _____
Robert J. Sperberg
Colonel, U.S. Army
District Engineer

DATE: 26 Sep 95

THE TOWN OF KURE BEACH, NC

BY: Betty L. Medlin
Betty L. Medlin
Mayor, Town of Kure Beach

DATE: Sept. 26, 1995

CERTIFICATE OF AUTHORITY

I, Andrew A. Canoutas, do hereby certify that I am the principal legal officer of the Town of Kure Beach, North Carolina, that the Town of Kure Beach, North Carolina is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Town of Kure Beach, North Carolina in connection with the Carolina Beach & Vicinity -Area South Portion Hurricane Wave and Shore Protection Project, and to pay damages in accordance with the terms of this Agreement, if necessary, in the event of the failure to perform, as required by Section 221 of Public Law 91-611 (42 U.S.C. Section 1962d5b), and that the persons who have executed this Agreement on behalf of the Town of Kure Beach, North Carolina have acted within their statutory authority.

IN WITNESS WHEREOF, I have made and executed this certification this 26th day of September 1995.

Andrew A. Canoutas
Town Attorney

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Betty L. Medlin

Betty L. Medlin
Mayor, Town of Kure Beach

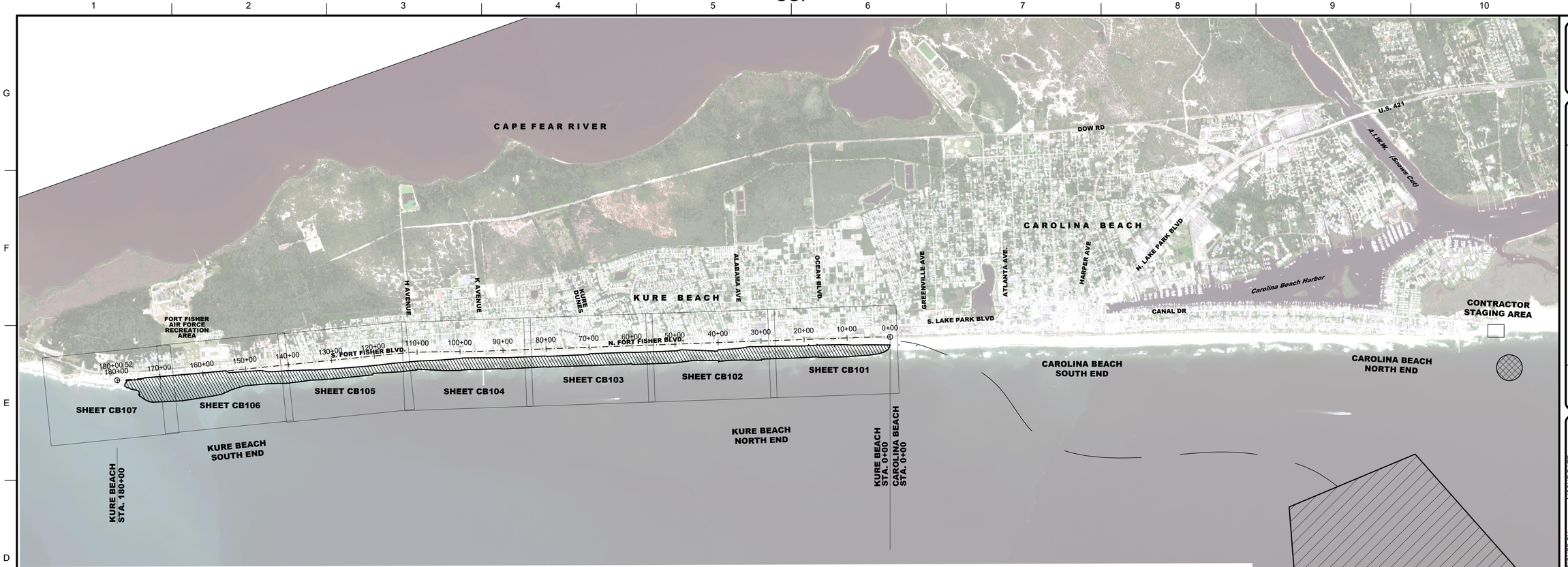
DATE: Sept. 26, 1995

CERTIFICATION OF LEGAL REVIEW

The draft Project Cooperation Agreement for the Carolina Beach & Vicinity Area South Portion Project has been fully reviewed by the Office of Counsel, USAED, Wilmington.

James W. Stirling
District Counsel

APPENDIX C
2022 CSRM
Construction Plans



NOTES:

1. THE APPROXIMATE LOCATION OF THE PIPELINE ROUTE USED BY CONTRACTORS DURING PAST COASTAL STORM RISK MANAGEMENT CONTRACTS IS AS IDENTIFIED ABOVE.
2. THE CONTRACTOR SHALL NOTIFY THE TOWN OF KURE BEACH NO LESS THAN 15 DAYS PRIOR TO COMMENCEMENT OF PIPELINE PLACEMENT ON THE BEACH. POINT OF CONTACT WITH THE TOWN OF KURE BEACH IS MANDY SANDERS, TOWN CLERK, PHONE NO. 910-707-2012. ALTERNATE POINT OF CONTACT IS BETH CHASE, DEPUTY TOWN CLERK, PHONE NO. 910-707-2010. AT LEAST 10 DAYS PRIOR TO PLACEMENT OF PIPE ON THE BEACH, THE CONTACTOR SHALL MEET ONSITE WITH THE CONTRACTING OFFICER'S DESIGNATED REPRESENTATIVE AND A REPRESENTATIVE OF THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION TO DETERMINE THE EXACT PIPELINE ROUTE.
3. KURE BEACH IS CONSIDERED SUITABLE NESTING HABITAT FOR SEA TURTLES. SEE PARAGRAPH, ENVIRONMENTAL WINDOWS OF SECTION 01 57 19 OF THE SPECIFICATIONS FOR ENVIRONMENTAL WINDOWS AND RESTRICTIONS.
4. SAND RAMPS SHALL BE CONSTRUCTED OVER PIPE ALONG PIPELINE ROUTE AT EACH BEACH ACCESS. IN NO CASE SHALL DISTANCE BETWEEN RAMPS EXCEED 400 FEET. CONTRACTOR MAY BE REQUIRED TO BURY PIPE AT HANDICAPPED RAMPS OR VEHICULAR BEACH ACCESS POINTS.
5. IMAGERY DATE: JULY 14, 2020 COURTESY DIGITAL GLOBE..

ARCHAEOLOGICAL / CULTURAL RESOURCE SITE NOTES

THE CONTRACTOR SHALL AVOID THE ARCHAEOLOGICAL/ CULTURAL RESOURCE SITES IDENTIFIED ON THE PLANS. THE CONTACTOR SHALL NOT DISTURB OR CAUSE ADVERSE IMPACTS TO THE HISTORICAL AND CULTURAL RESOURCES. TO ASSURE THE RISK OF POTENTIAL IMPACTS TO CULTURAL RESOURCES ARE AVOIDED WITHIN NEARSHORE AREAS SUBJECT TO PUMPOUT ACTIVITIES (I.E. ANCHOR POINTS), THE CONTRACTOR SHALL CONDUCT SURVEYS FOR CULTURAL RESOURCES AND AVOID ANY DOCUMENTED FEATURES OF POTENTIAL CULTURAL SIGNIFICANCE.

LEGEND

- APPROX. PIPELINE ROUTE
- BORROW AREA
- BEACH FILL AREA
- ARCHAEOLOGICAL/ CULTURAL RESOURCE SITES

SCALE: 1" = 1200'

0 600 1200 2400

SCALE IN FEET

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY: J. CARTER	ISSUE DATE: TBD
DRAWN BY: J. MITCHELL	SOLICITATION NO.: TBD
CHECKED BY: S. STELLO	CONTRACT NO.: TBD
SUBMITTED BY: J. MANNING	DRAWING CODE: KB 00453-61
SIZE: 22"x34"	FILE NAME: KB_G02.dwg

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

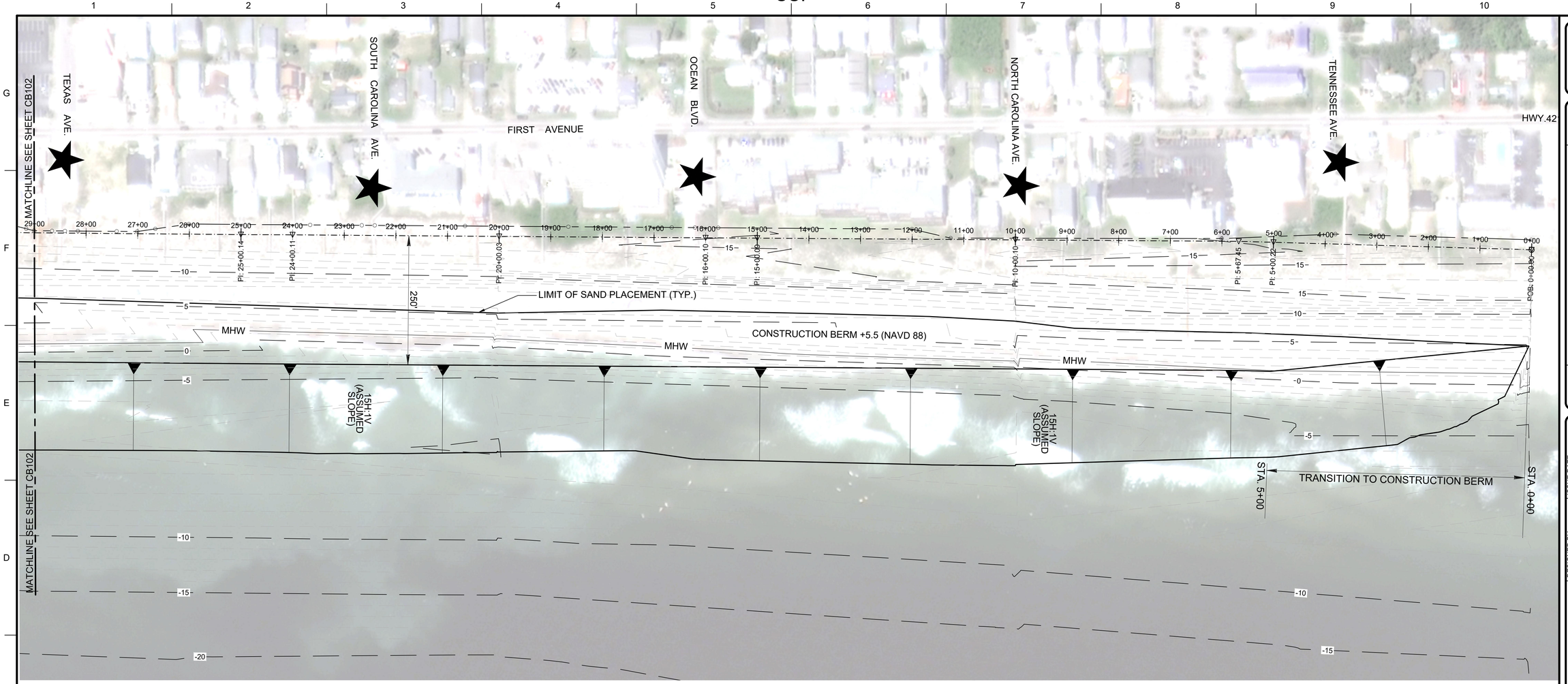
COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

PROJECT OVERVIEW PLAN

SHEET ID

GI02-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)



NOTES:

1. HORIZONTAL DATUM IS NAD 83 AND VERTICAL DATUM IS NAVD 88.
2. EXISTING BEACH SURVEY BY NEW HANOVER COUNTY IN MAY 2020 AND JANUARY 2021.
3. FOR OVERALL SITE MAP AND GENERAL NOTES SEE SHEET GI02.
4. THE WIDTH OF THE CONSTRUCTION BERM IS DEPENDENT UPON THE PROPORTIONAL QUANTITY OF SAND TO BE PLACED AT THE TIME OF CONSTRUCTION. THE WIDTH OF THE CONSTRUCTION BERM MAY BE ADJUSTED DURING CONSTRUCTION BASED ON THE CONTRACT BEACH PROFILE SURVEY AND THE SLOPE OF THE MATERIAL DURING PLACEMENT.
5. THE CONSTRUCTION BERM SLOPE IS DEPENDENT UPON MATERIAL PROPERTIES AND WAVE ENVIRONMENT DURING PLACEMENT.
5. THE BORROW SOURCE SHALL BE OFFSHORE BORROW AREA B AS SHOWN ON SHEETS B101 AND V101.
6. SAND RAMPS SHALL BE CONSTRUCTED OVER PIPE ALONG PIPELINE ROUTE AT EACH BEACH ACCESS. IN NO CASE SHALL DISTANCE BETWEEN RAMPS EXCEED 400 FEET. CONTRACTOR MAY BE REQUIRED TO BURY PIPE AT HANDICAPPED RAMPS OR VEHICULAR BEACH ACCESS POINTS.
7. EXISTING DUNES AND BEACH GRASS SHALL BE PROTECTED FROM DAMAGE DUE TO CONSTRUCTION. THE CONTRACTOR SHALL PROTECT ALL EXISTING STRUCTURES ON THE BEACH, INCLUDING ACCESS RAMPS, SIGNAGE, FENCES, ETC. FROM DAMAGE DUE TO CONSTRUCTION.
8. NO BEACH FILL MATERIAL SHALL BE PLACED LANDWARD OF THE EXISTING BUILDING LINE AS SHOWN OR WITHIN 10 FEET OF OR UNDERNEATH OF ANY RESIDENTIAL OR COMMERCIAL BUILDINGS. THE CONTRACTOR SHALL BE REQUIRED TO SLOPE (5H:1V) THE LANDWARD SIDE OF THE BERM WHERE NECESSARY TO AVOID PLACING BEACH FILL MATERIAL LANDWARD OF THE EXISTING BUILDING LINE OR WITHIN 10 FEET OF OR UNDERNEATH OF ANY COMMERCIAL OR RESIDENTIAL BUILDING.
8. THE CONTRACTOR SHALL CONTINUALLY CONDUCT DAILY OPERATIONS TO CLEAN UP TRASH AND DEBRIS PUMPED ON TO THE BEACH BY DREDGING OPERATIONS AND/OR FOUND ON THE BEACH WITHIN THE LIMITS OF CONSTRUCTION. DEBRIS AND WASTE SHALL BE PROPERLY SECURED AND DISPOSED OF ON A WEEKLY BASIS.
9. THE CONTRACTOR SHALL PERFORM SAFETY PATROL THROUGHOUT THE LIFE OF THE CONTRACT TO PREVENT PEDESTRIAN TRAFFIC THRU THE LIMITS OF CONSTRUCTION A MINIMUM OF 500' AHEAD AND BEHIND THE DREDGE DISCHARGE POINT. SAFETY MEASURES SHALL INCLUDE KEEP OUT SIGNS EVERY 100-FT AT THESE LMITS TO EXTEND FROM DUNE TO THE WATERS EDGE, CLOSURE OF ANY PEDESTRIAN ACCESS RAMPS WITHIN THE DIRECT VICINITY OF THE DREDGING OPERATIONS, AND WARNING SIGNS AT ALL PEDESTRIAN RAMPS AND PUBLIC ACCESS WAYS.
10. AERIAL IMAGERY DATE AND SOURCE: JULY 14, 2020 COURTESY DIGITAL GLOBE.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- MHW — EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- PUBLIC BEACH ACCESS (STAR)
- IF VEHICLE ACCESS (V)

0 50 100 200
SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY: J. CARTER	ISSUE DATE: TBD
DRAWN BY: J. MITCHELL	SOLICITATION NO.: TBD
CHECKED BY: S. STELLO	CONTRACT NO.: TBD
SUBMITTED BY: S. MANNING	DRAWING CODE: KB 100-03-61
SIZE: 22"x34"	FILE NAME: KB_CB101.dwg

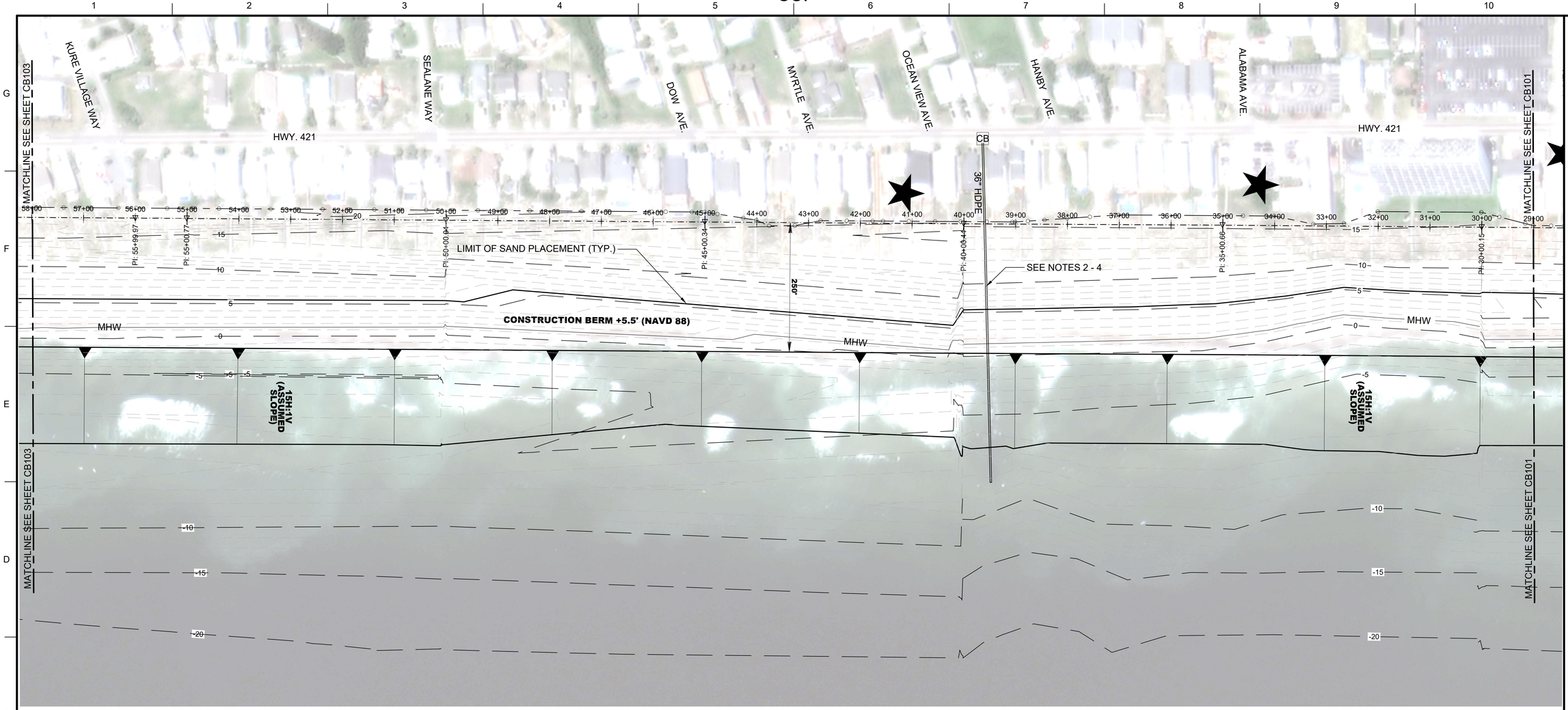
U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

KURE BEACH SITE PLAN
STA. 0+00 TO STA. 29+00

SHEET ID
CB101-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)



NOTES:

1. FOR SITE PLAN NOTES SEE SHEETS GI02-K AND CB101-K.
2. CONTRACTOR TO VERIFY LOCATION AND REMOVE OR PROTECT EXISTING STORMWATER PIPES PRIOR TO SAND PLACEMENT.
3. AFTER SAND PLACEMENT, EXISTING STORMWATER PIPES SHALL BE EXTENDED TO ALLOW STORMWATER TO DRAIN ONTO THE SAND.
4. SEE DETAIL ON SHEET CB301-K TITLED "TYPICAL STORM DRAIN TIE-DOWN SUPPORTS" FOR PIPE EXTENSION AND SUPPORT DETAIL.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- MHW — EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- PUBLIC BEACH ACCESS (STAR)
- IF VEHICLE ACCESS (V)

0 50 100 200

SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY: J. CARTER	ISSUE DATE: TBD
DRAWN BY: J. MITCHELL	SOLICITATION NO.: TBD
CHECKED BY: S. STELLO	CONTRACT NO.: TBD
SUBMITTED BY: S. MANNING	DRAWING CODE: KB 100-03-61
SIZE: 22"x34"	FILE NAME: KB_CB102.dwg

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

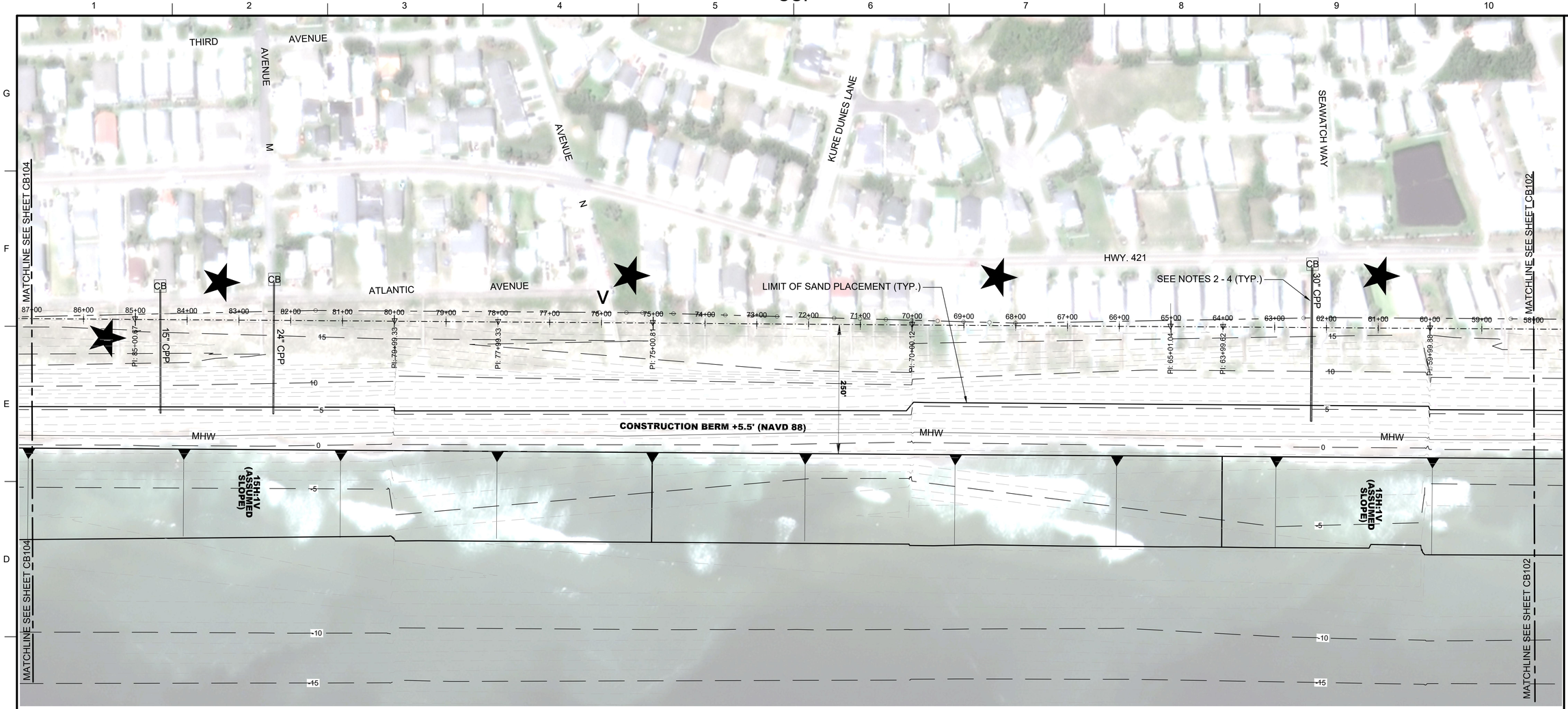
COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

KURE BEACH SITE PLAN
STA. 29+00 TO STA. 58+00

SHEET ID
CB102-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)

CUI



NOTES:

1. FOR SITE PLAN NOTES SEE SHEETS GI02-K AND CB101-K.
2. CONTRACTOR TO VERIFY LOCATION AND REMOVE OR PROTECT EXISTING STORMWATER PIPES PRIOR TO SAND PLACEMENT.
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4. SEE DETAIL ON SHEET CB301-K TITLED "TYPICAL STORM DRAIN TIE-DOWN SUPPORTS" FOR PIPE EXTENSION AND SUPPORT DETAIL.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- MHW — EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- ★V — PUBLIC BEACH ACCESS (STAR) IF VEHICLE ACCESS (V)

0 50 100 200
SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

DESIGNED BY:	ISSUE DATE:
J. CARTER	TBD
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J. MANNING	KB 100-03-61
SIZE:	FILE NAME:
22"x34"	KB_CB103.dwg

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

KURE BEACH SITE PLAN
STA. 58+00 TO STA. 87+00

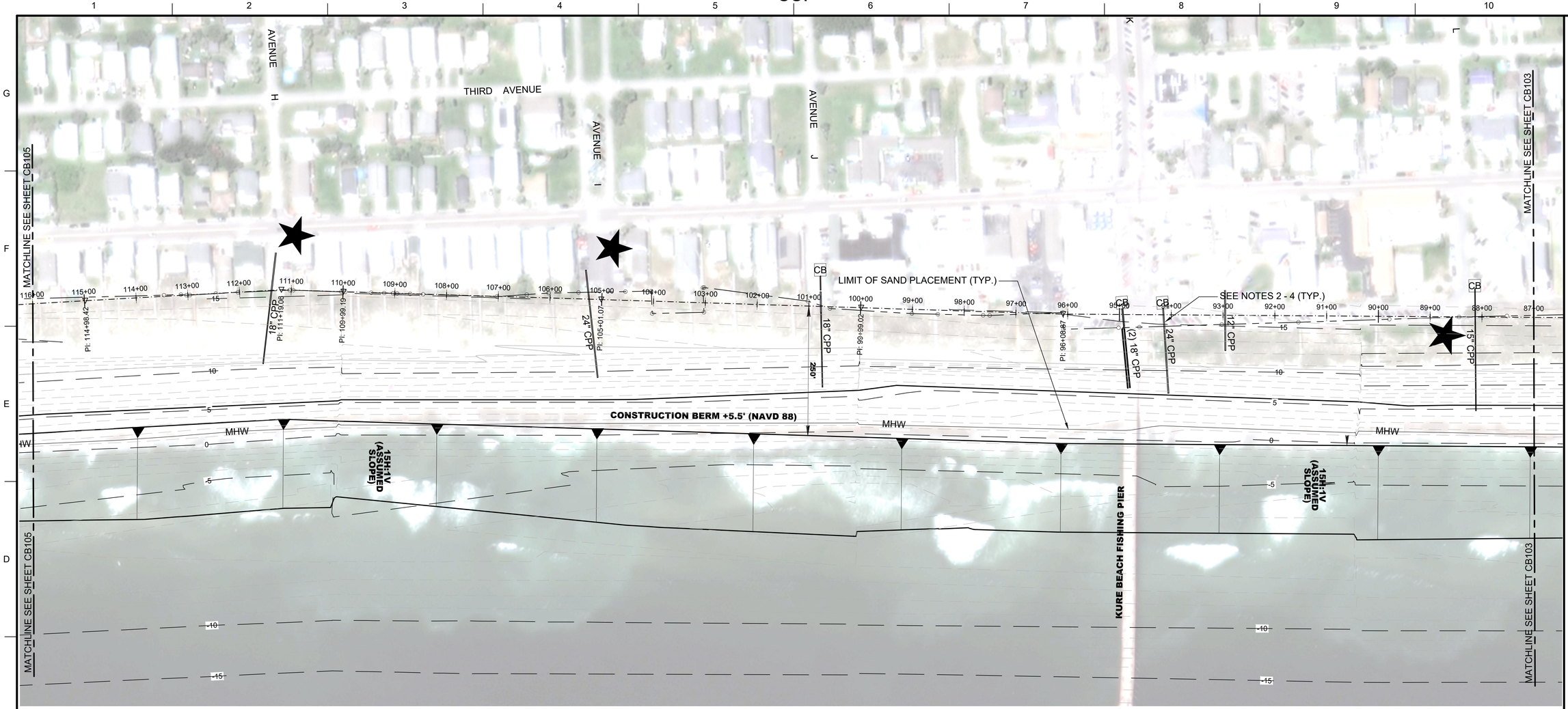
SHEET ID
CB103-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)

CUI

RTA

CUI



NOTES:

1. FOR SITE PLAN NOTES SEE SHEETS GI02-K AND CB101-K.
2. CONTRACTOR TO VERIFY LOCATION AND REMOVE OR PROTECT EXISTING STORMWATER PIPES PRIOR TO SAND PLACEMENT.
3. AFTER SAND PLACEMENT, EXISTING STORMWATER PIPES SHALL BE EXTENDED TO ALLOW STORMWATER TO DRAIN ONTO THE SAND.
4. SEE DETAIL ON SHEET CB301-K TITLED "TYPICAL STORM DRAIN TIE-DOWN SUPPORTS" FOR PIPE EXTENSION AND SUPPORT DETAIL.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- PUBLIC BEACH ACCESS (STAR)
- IF VEHICLE ACCESS (V)

0 50 100 200

SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY:	ISSUE DATE:
J. CARTER	TBD
DRAWN BY:	SOLICITATION NO.:
J. MITCHELL	TBD
CHECKED BY:	CONTRACT NO.:
S. STELLO	TBD
SUBMITTED BY:	DRAWING CODE:
J. MANNING	KB 100-03-61
SIZE:	FILE NAME:
22"x34"	KB_CB104.dwg

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

KURE BEACH SITE PLAN
STA. 87+00 TO STA. 116+00

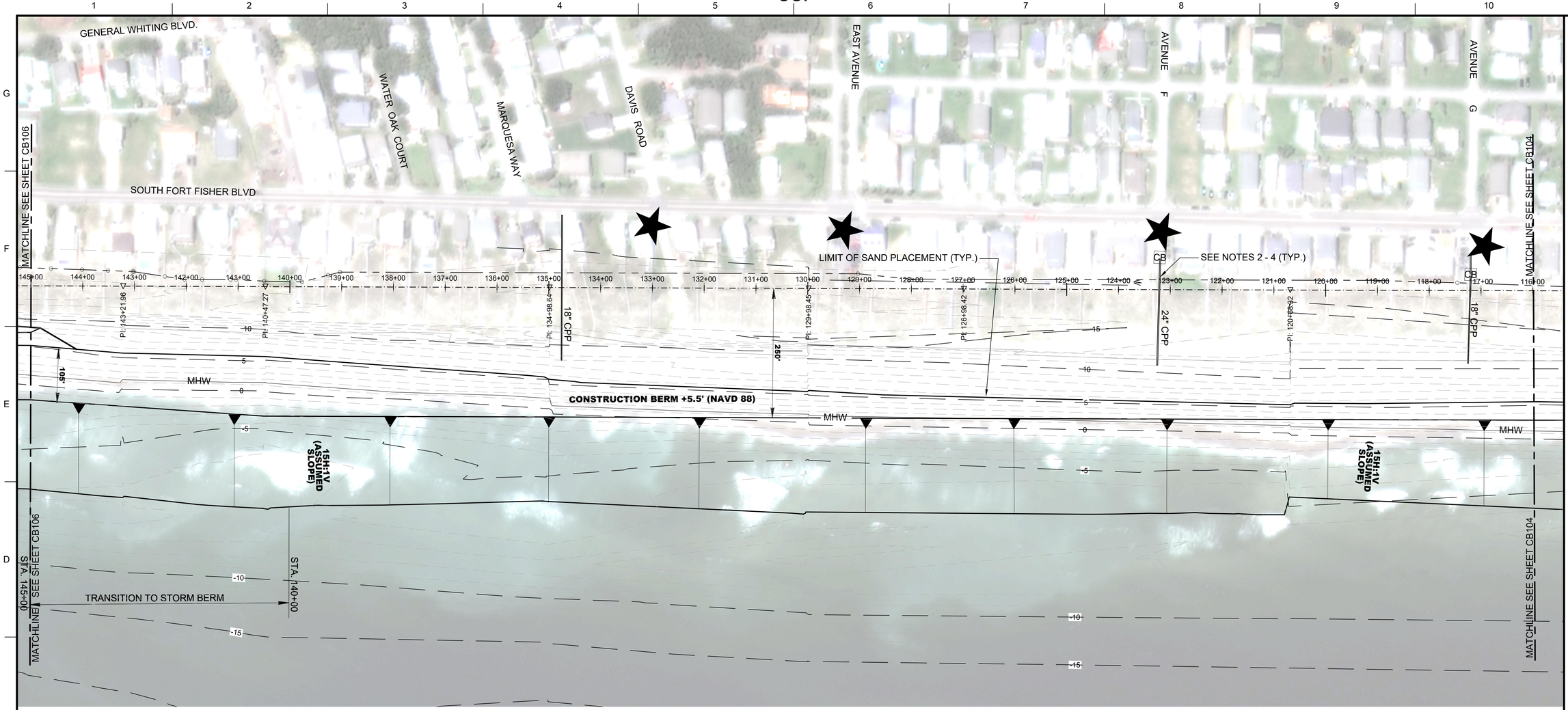
SHEET ID
CB104-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)

CUI

RTA

CUI



NOTES:

1. FOR SITE PLAN NOTES SEE SHEETS GI02-K AND CB101-K.
2. CONTRACTOR TO VERIFY LOCATION AND REMOVE OR PROTECT EXISTING STORMWATER PIPES PRIOR TO SAND PLACEMENT.
3. AFTER SAND PLACEMENT, EXISTING STORMWATER PIPES SHALL BE EXTENDED TO ALLOW STORMWATER TO DRAIN ONTO THE SAND.
4. SEE DETAIL ON SHEET CB301-K TITLED "TYPICAL STORM DRAIN TIE-DOWN SUPPORTS" FOR PIPE EXTENSION AND SUPPORT DETAIL.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- MHW — EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- PUBLIC BEACH ACCESS (STAR)
- IF VEHICLE ACCESS (V)

0 50 100 200
SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY:	J. CARTER
DRAWN BY:	J. MITCHELL
CHECKED BY:	S. STELLO
SUBMITTED BY:	J. MANNING
SIZE:	22"x34"
ISSUE DATE:	TBD
SOLICITATION NO.:	TBD
CONTRACT NO.:	TBD
DRAWING CODE:	KB 100-03-61
FILE NAME:	KB_CB105.dwg

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

KURE BEACH SITE PLAN
STA. 116+00 TO STA. 145+00

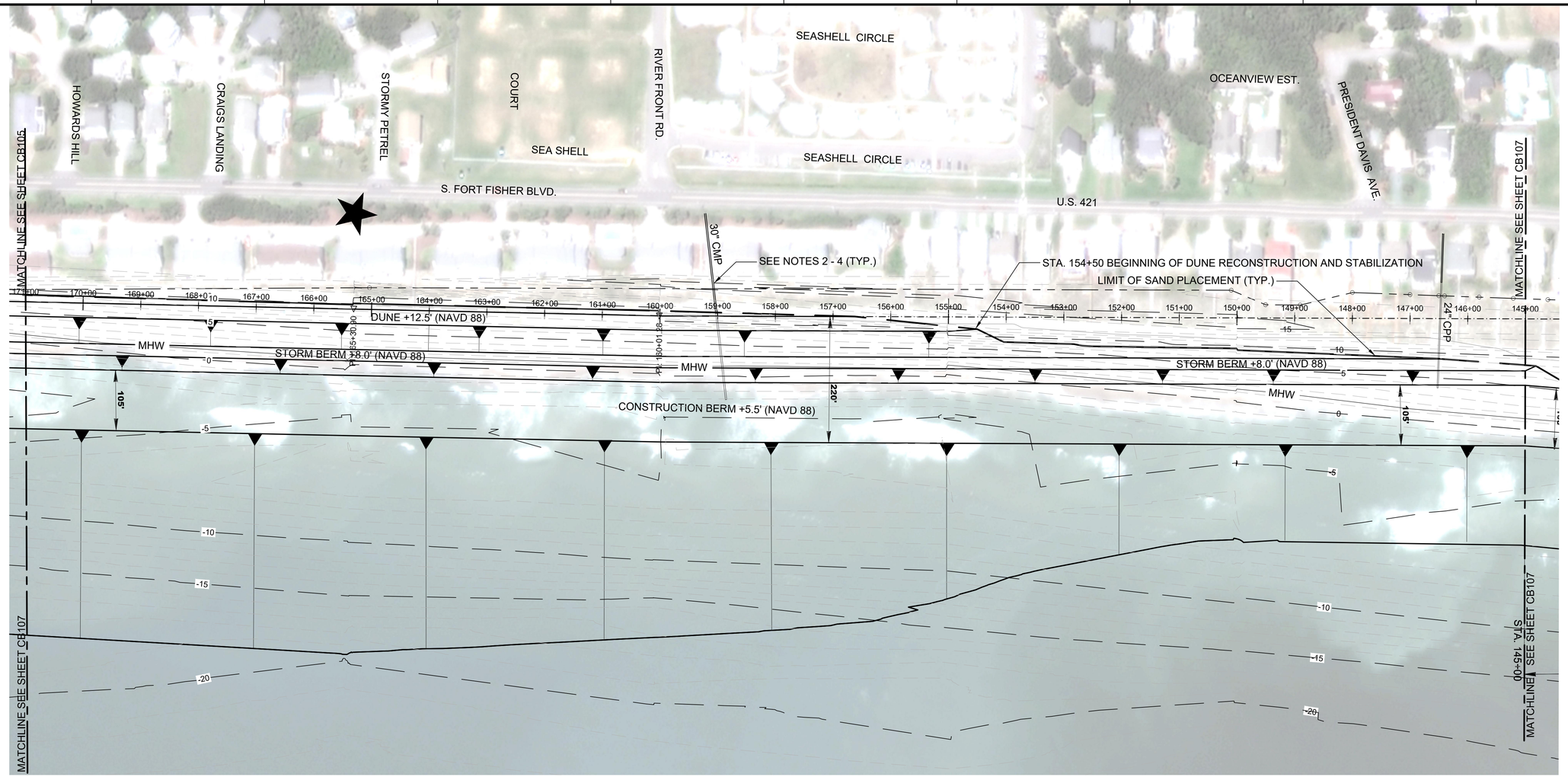
SHEET ID
CB105-K

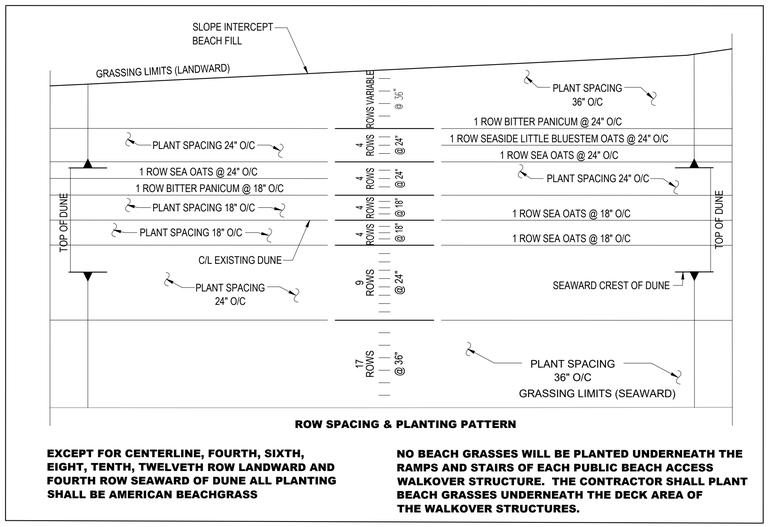
CONTROLLED UNCLASSIFIED INFORMATION (CUI)

CUI

RTA

CUI





ROW SPACING & PLANTING PATTERN

EXCEPT FOR CENTERLINE, FOURTH, SIXTH, EIGHT, TENTH, TWELVETH ROW LANDWARD AND FOURTH ROW SEAWARD OF DUNE ALL PLANTING SHALL BE AMERICAN BEACHGRASS

NO BEACH GRASSES WILL BE PLANTED UNDERNEATH THE RAMPS AND STAIRS OF EACH PUBLIC BEACH ACCESS WALKOVER STRUCTURE. THE CONTRACTOR SHALL PLANT BEACH GRASSES UNDERNEATH THE DECK AREA OF THE WALKOVER STRUCTURES.

NOTES:

1. FOR SITE PLAN NOTES SEE SHEETS GI02-K AND CB101-K.
2. CONTRACTOR TO VERIFY LOCATION AND REMOVE OR PROTECT EXISTING STORMWATER PIPES PRIOR TO SAND PLACEMENT.
3. AFTER SAND PLACEMENT, EXISTING STORMWATER PIPES SHALL BE EXTENDED TO ALLOW STORMWATER TO DRAIN ONTO THE SAND.
4. SEE DETAIL ON SHEET CB301-K TITLED "TYPICAL STORM DRAIN TIE-DOWN SUPPORTS" FOR PIPE EXTENSION AND SUPPORT DETAIL..
5. DUNE STABILIZATION TO BE ACCOMPLISHED DURING PLANTING SEASON FOR BEACH GRASSES AS INDICATED BELOW:

   - AMERICAN BEACHGRASS - (NOVEMBER TO MARCH
   - SEA OATS - (MARCH TO MAY 15)
   - BITTER PANICUM - (MARCH 15 TO MAY 15)

6. DUNE STABILIZATION MAY BE ACCOMPLISHED FOLLOWING SAND PLACEMENT ASSOCIATED WITH DUNE RECONSTRUCTION IN AN AREA AND WITHIN THE APPLICABLE PLANTING SEASON FOR THE PARTICULAR BEACH GRASS.
7. THE AREAS TO BE GRASSED SHALL BE THE AREA FROM THE LANDWARD TOE OF THE NEW DUNE AND BETWEEN THE SEAWARD TOE OF THE DUNE.
8. BEACH GRASSES SHALL BE PLANTED IN ACCORDANCE WITH THE ROW SPACING & PLANTING PATTERN DETAIL THIS SHEET.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- MHW — EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- PUBLIC BEACH ACCESS (STAR)
- IF VEHICLE ACCESS (V)

0 50 100 200

SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY:	J. CARTER
DRAWN BY:	J. MITCHELL
CHECKED BY:	S. STELLO
SUBMITTED BY:	J. MANNING
SIZE:	22"x34"

ISSUE DATE: TBD
SOLICITATION NO.: TBD
CONTRACT NO.: TBD
DRAWING CODE: KB 100-43-61
FILE NAME: KB_CB106.dwg

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

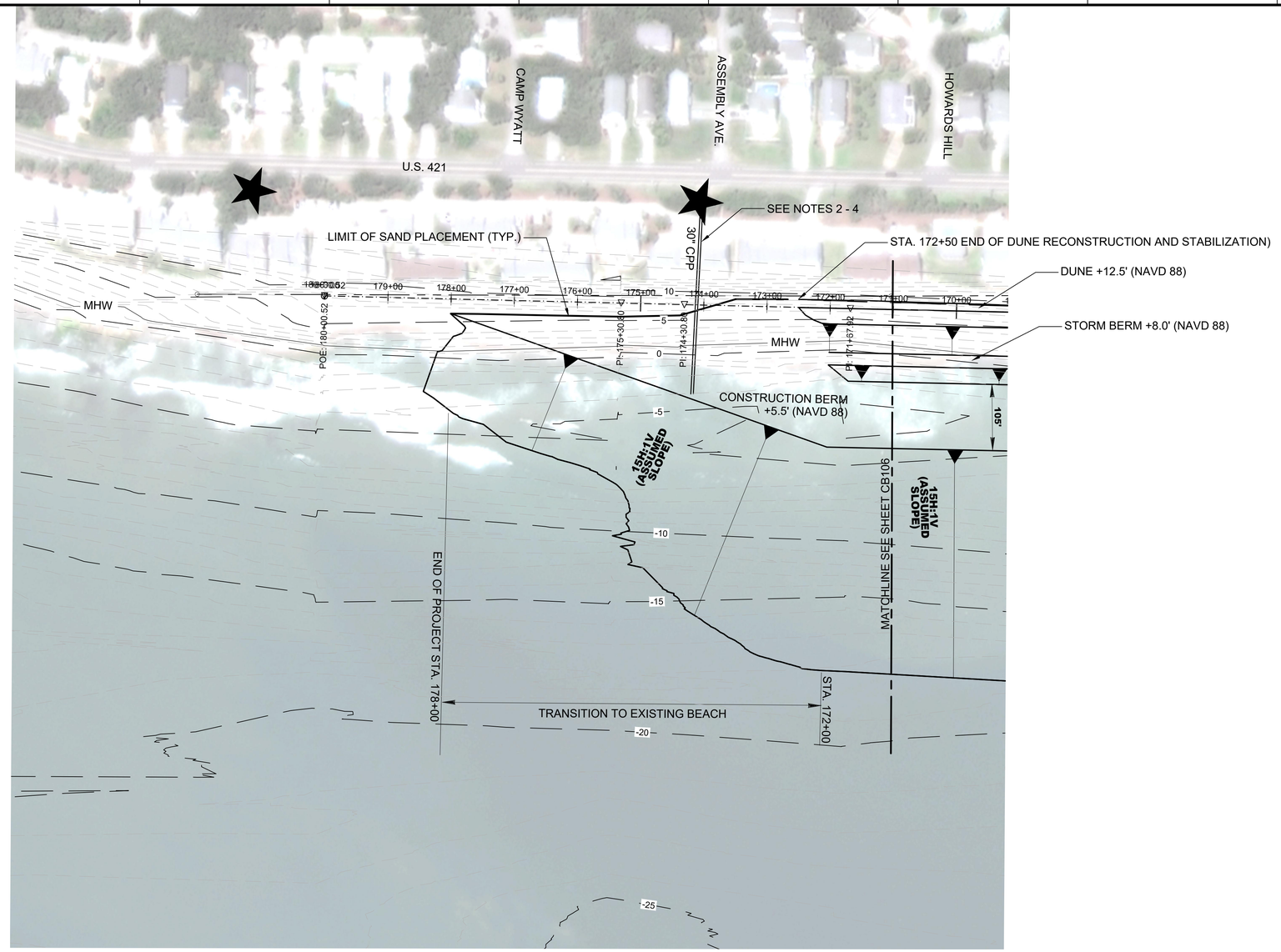
KURE BEACH SITE PLAN
STA. 145+00 TO STA. 171+00

SHEET ID
CB106-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)

CUI

RTA



NOTES:

1. FOR SITE PLAN NOTES SEE SHEETS GI02-K AND CB101-K.
2. CONTRACTOR TO VERIFY LOCATION AND REMOVE OR PROTECT EXISTING STORMWATER PIPES PRIOR TO SAND PLACEMENT.
3. AFTER SAND PLACEMENT, EXISTING STORMWATER PIPES SHALL BE EXTENDED TO ALLOW STORMWATER TO DRAIN ONTO THE SAND.
4. SEE DETAIL ON SHEET CB301-K TITLED "TYPICAL STORM DRAIN TIE-DOWN SUPPORTS" FOR PIPE EXTENSION AND SUPPORT DETAIL.
5. SANDBAGS HAVE BEEN PLACE IN FRONT OF EXISTING STRUCTURES BETWEEN STA. 170+00 TO STA. 180+00. THE CONTRACTOR SHALL NOT DIRECTLY PLACE SAND, EITHER HYDRAULICALLY OR MECHANICALLY, ON ANY EXPOSED SAND BAGS. PRIOR TO BEGINNING WORK ON KURE BEACH, THE CONTRACTOR SHALL CONDUCT AN ONSITE MEETING WITH THE CONTRACTING OFFICER OR HIS/HER REPRESENTATIVE AND A REPRESENTATIVE FROM THE NC DIVISION OF COASTAL MANAGEMENT TO IDENTIFY AND DISCUSS NECESSARY MEASURES TO BE TAKEN REGARDING WORK AROUND THE SAND BAGS.
6. FOR DUNE RECONSTRUCTION AND STABILIZATION NOTES AND DETAILS SEE SHEET CB106-K.

LEGEND

- EXISTING BUILDING LINE
- EXISTING CONSTRUCTION BASELINE
- EXISTING INDEX CONTOURS
- EXISTING INTERMEDIATE CONTOURS
- MHW — EXISTING MEAN HIGH WATER LINE (APPROX.)
- APPROXIMATE SLOPE INTERCEPT
- BEACH FILL (NEW WORK)
- PUBLIC BEACH ACCESS (STAR)
- IF VEHICLE ACCESS (V)

0 50 100 200

SCALE: 1" = 100'

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

DESIGNED BY:	J. CARTER
DRAWN BY:	J. MITCHELL
CHECKED BY:	S. STELLO
SUBMITTED BY:	J. MANNING
SIZE:	22"x34"
ISSUE DATE:	TBD
SOLICITATION NO.:	TBD
CONTRACT NO.:	TBD
DRAWING CODE:	KB 100-43-61
FILE NAME:	KB_CB107.dwg

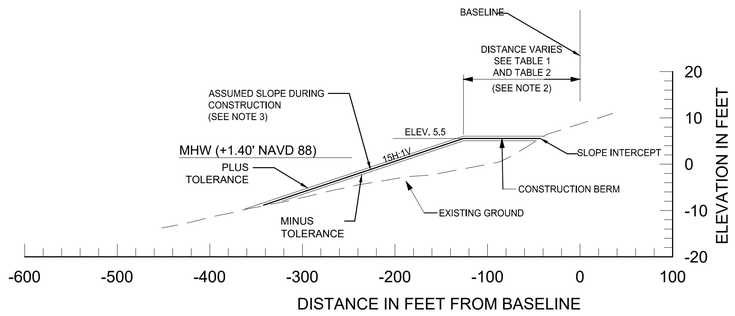
U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

KURE BEACH SITE PLAN
STA. 171+00 TO STA. 180+00

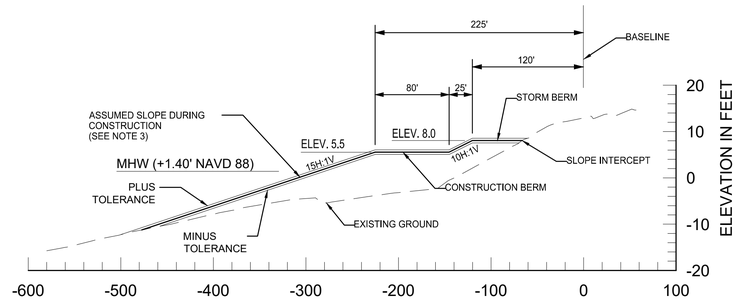
SHEET ID
CB107-K

CONTROLLED UNCLASSIFIED INFORMATION (CUI)



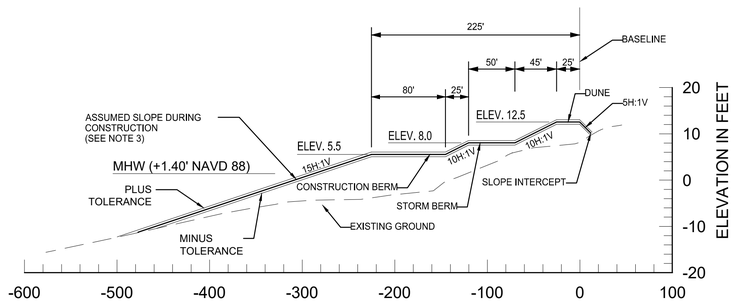
TYPICAL SECTION TRANSITION BERM

STATIONS 01+00 TO 15+50, 40+50 TO 44+50 AND 50+00 TO 95+00 (NORTH AREA)
STATIONS 130+00 TO 143+00 AND 171+00 TO 180+00 (SOUTH AREA)
NOT TO SCALE



TYPICAL BEACH SECTION W/STORM BERM (8.0 NAVD88)

STATIONS 16+00 TO 39+50 (NORTH AREA)
STATIONS 45+00 TO 50+00 (NORTH AREA)
STATIONS 136+00 TO 144+00 (SOUTH AREA)
STATIONS 166+00 TO 170+00 (SOUTH AREA)
NOT TO SCALE



TYPICAL BEACH SECTION W/DUNE (12.5 NAVD88)

STATIONS 153+50 TO 165+00
NOT TO SCALE

TABLE 1 NORTH AREA - *
TRANSITION / CONSTRUCTION BERM OFFSET DISTANCES
NORTH END

STATION	DIST. TO LT. EDGE BERM
0+00	-200.0
1+00	-200.0
2+00	-200.0
3+00	-200.0
4+00	-200.0
5+00	-200.0
6+00	-200.0
7+00	-200.0
8+00	-200.0
9+00	-200.0
10+00	-200.0
11+00	-200.0
12+00	-205.0
13+00	-210.0
14+00	-215.0
15+00	-220.0
15+50	-222.5
16+00	-225.0
MIDDLE AREA	
STATION	DIST. TO LT. EDGE BERM
40+50	-225.0
41+00	-225.0
42+00	-225.0
43+00	-225.0
44+00	-225.0
44+50	-225.0

* SEE NOTE 2

TABLE 1 NORTH AREA - *
TRANSITION / CONSTRUCTION BERM OFFSET DISTANCES
SOUTH END

STATION	DIST. TO LT. EDGE BERM
50+00	-225.0
50+50	-220.5
51+00	-216.0
52+00	-207.0
53+00	-198.0
54+00	-189.0
55+00	-180.0
56+00	-180.0
57+00	-180.0
58+00	-180.0
59+00	-180.0
60+00	-180.0
61+00	-180.0
62+00	-180.0
63+00	-180.0
64+00	-180.0
65+00	-180.0
66+00	-180.0
67+00	-180.0
68+00	-180.0
69+00	-180.0
70+00	-180.0
71+00	-180.0
72+00	-180.0

* SEE NOTE 2

TABLE 1 NORTH AREA - *
TRANSITION / CONSTRUCTION BERM OFFSET DISTANCES
SOUTH END

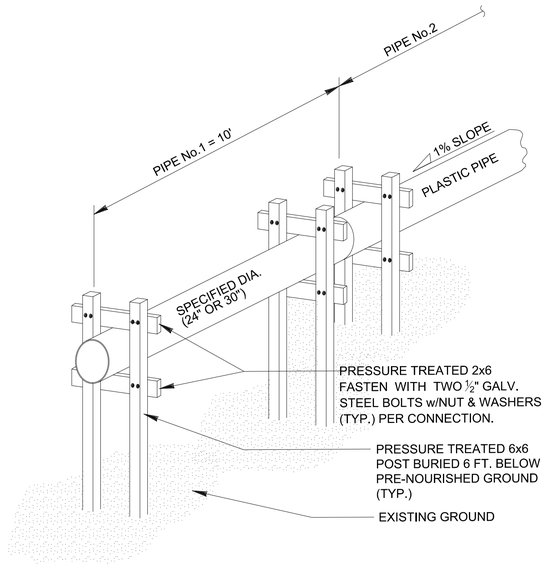
STATION	DIST. TO LT. EDGE BERM
73+00	-180.0
74+00	-180.0
75+00	-180.0
76+00	-180.0
77+00	-180.0
78+00	-180.0
79+00	-180.0
80+00	-180.0
81+00	-180.0
82+00	-180.0
83+00	-180.0
84+00	-180.0
85+00	-180.0
86+00	-180.0
87+00	-180.0
88+00	-180.0
89+00	-180.0
90+00	-180.0
91+00	-172.3
92+00	-164.6
93+00	-156.8
94+00	-149.1
95+00	-141.4

* SEE NOTE 2

TABLE 2 SOUTH AREA - *
TRANSITION BERM OFFSET DISTANCES
NORTH END

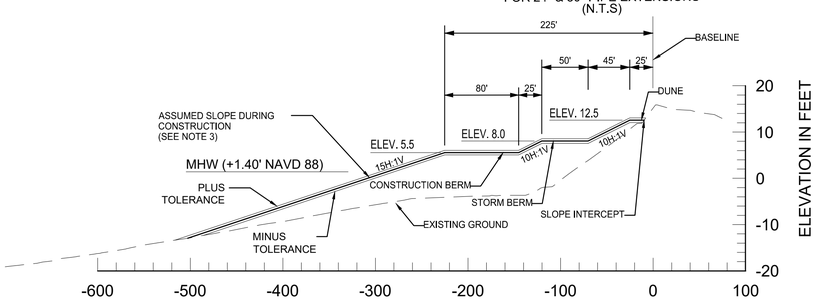
STATION	DIST. TO LT. EDGE BERM
130+00	-148.5
131+00	-162.4
132+00	-176.3
133+00	-190.2
134+00	-204.1
135+00	-218.0
135+50	-225.0
SOUTH END	
STATION	DIST. TO LT. EDGE BERM
170+50	-225.0
171+50	-203.7
172+00	-193.0
173+00	-171.6
174+00	-150.3
175+00	-128.9
176+00	-107.6
177+00	-86.2
178+00	-64.9
179+00	-43.5
180+00	-22.2

* SEE NOTE 2



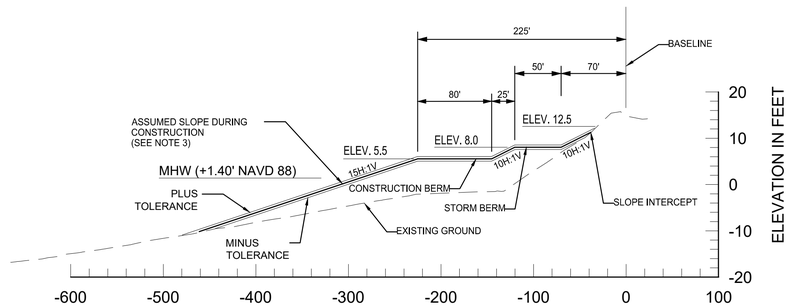
TYPICAL STORM DRAIN TIE-DOWN SUPPORTS

FOR 24" & 30" PIPE EXTENSIONS
(N.T.S)



TYPICAL BEACH SECTION W/DUNE (12.5 NAVD88)

STATIONS 151+00 TO 153+00
NOT TO SCALE



TYPICAL BEACH SECTION W/DUNE (12.5 NAVD88)

STATIONS 144+50 TO 150+50
NOT TO SCALE

NOTES:

1. THE WIDTH OF THE CONSTRUCTION BERM IS DEPENDENT UPON THE PROPORTIONAL QUANTITY OF SAND TO BE PLACED AT THE TIME OF CONSTRUCTION. THE BASIS FOR DETERMINING THE WIDTH OF THE CONSTRUCTION BERM WILL BE THE GOVERNMENT'S INTERPRETATION OF THE BORROW AREA AND BEACH PROFILE SURVEY, AND THE SLOPE OF THE MATERIAL DURING PLACEMENT.
2. THE WIDTH OF THE STORM BERM AND THE DUNE IS DEPENDENT UPON THE CONDITION OF THE BEACH PROFILE AT TIME OF BEACH FILL PLACEMENT. THE BASIS FOR DETERMINING THE WIDTH OF THE STORM BERM AND THE DUNE WILL BE THE GOVERNMENT'S INTERPRETATION OF THE PREPLACEMENT BEACH SURVEY.
3. THE CONSTRUCTION BERM SLOPE IS DEPENDENT UPON MATERIAL PROPERTIES AND WAVE ENVIRONMENT DURING PLACEMENT. THE 15H:1V SEAWARD SLOPE IS THE INITIAL ASSUMED SLOPE FOR PAYMENT AND QUANTITY PURPOSES.
4. EXISTING BEACH SURVEY BY NEW HANOVER COUNTY MAY 2020 & JAN 2021 HORIZONTAL DATUM IS NAD 83 AND VERTICAL DATUM IS NAVD 88.
5. PRIOR TO ANY BEACH FILL CONSTRUCTION ACTIVITY, THE CONTRACTOR SHALL NOT REMOVE OR RELOCATE ANY EXISTING BEACH MATERIAL THAT IS ABOVE THE BEACH FILL PROFILE.
6. AS AN OPTION TO THE CONTRACT AND AT THE DIRECTION OF THE CONTRACTING OFFICER, THE CONTRACTOR SHALL TILL ANY FILL AREAS IDENTIFIED BY THE CONTRACTING OFFICER. BEACH TILLING LIMITS SHALL BE ALONG THE ENTIRE LENGTH OF THE BEACH FILL AREA FROM THE SEAWARD TOE OF THE STORM BERM TO MEAN HIGH WATER (ELEV. +1.4 FT NAVD 88).
7. A VERTICAL TOLERANCE OF +/- 0.5' ABOVE AND BELOW THE PRESCRIBED BERM AND DUNE GRADE AND SLOPES LINE SHALL BE PERMITTED IN THE FINISHED SURFACE. BELOW THE MEAN HIGH WATER LINE (+1.40' NAVD88) THE FILL MATERIAL SHALL BE ALLOWED TO ASSUME ITS NATURAL SLOPE RESULTING FROM THE EFFECTS OF WAVE AND WATER LEVEL CONDITIONS. FOR PAYMENT PURPOSES, THE TOLERANCE LINE SHALL EXTEND THE ENTIRE DUNE, STORM BERM, BERM AND SLOPES (LANDWARD, INTERMEDIATE, AND ASSUMED SEAWARD SLOPE) TO INTERSECTION OF THE LANDWARD AND ASSUMMED SEAWARD SLOPE AND PRE-CONSTRUCTION SURVEYED CONDITION. SEE SPECIFICATION SECTION 35 20 23 FOR MEASUREMENT AND PAYMENT AND ALLOWABLE TOLERANCE.

US Army Corps of Engineers®

MARK	DESCRIPTION	DATE

ISSUE DATE:	TBD
SOLICITATION NO.:	TBD
CONTRACT NO.:	TBD
DRAWING CODE:	KB 100-45-61
FILE NAME:	KB_CB301.dwg
DESIGNED BY:	J. CARTER
DRAWN BY:	J. MITCHELL
CHECKED BY:	S. STELLO
SUBMITTED BY:	J. MANNING
SIZE:	22"x34"

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403

COASTAL STORM RISK MANAGEMENT
KURE BEACH
NEW HANOVER COUNTY,
NORTH CAROLINA

TYPICAL SECTIONS

SHEET ID
CB301-K

APPENDIX D
Interlocal Agreement

STATE OF NORTH CAROLINA
NEW HANOVER COUNTY

INTERLOCAL AGREEMENT FOR CONTINGENCY PLAN BEACH NOURISHMENT

This Interlocal Agreement ("Agreement") is made Dec 8, 2011 by and between the County of New Hanover, North Carolina, a body corporate and politic (hereinafter referred to as the "County") and the Municipalities of Wrightsville Beach, Carolina Beach, and Kure Beach, bodies politic and corporate (hereinafter referred to as the "Towns").

PURPOSE

WHEREAS, the ocean beaches located within the corporate boundaries of Wrightsville Beach, Carolina Beach and Kure Beach (herein collectively the "Town Beaches") are a valuable resource bringing economic, environmental, cultural and recreational benefits to people of the United States, including those in the State of North Carolina; and

WHEREAS, the financing and maintenance of the Town Beaches has been and remains an appropriate function of the Federal and State governments; and

WHEREAS, maintenance of the Town Beaches through United States Army Corps of Engineers nourishment projects funded primarily by the Federal and State governments has accordingly been successfully performed for many decades; and

WHEREAS, the maintenance of Town Beaches is vital to continued economic, environmental and cultural well-being of the County and Town; and

WHEREAS, critical to the Municipalities of Wrightsville Beach, Carolina Beach, and Kure Beach is demonstrating the long-term feasibility of financing plans for the maintenance of their ocean beaches, in order to preserve their status as or to establish eligibility for designation as a Static Vegetation Line Exception community under regulations promulgated by the State's Coastal Area Management Act; and

ORIGINAL

WHEREAS, the ongoing availability of Federal and State funding for Corps of Engineers managed beach nourishment projects remains uncertain; and

WHEREAS, County and Towns accordingly seek to establish contingency plans to address various scenarios wherein Federal or State monies may not be available for beach nourishment; and

WHEREAS, County and Towns also seek to provide for the potential use of sixty percent (60%) of the first three percent (3%) of the Room Occupancy Tax available for beach nourishment (subsequent references to the "use of Room Occupancy Tax" shall mean use of the portion of the Room Occupancy Tax available for beach nourishment as defined hereinabove) and local general revenues, as necessary, for funding of either a portion of Corps managed beach nourishment or County managed beach nourishment projects if Federal or State funds are unavailable or insufficient for such purposes; and

WHEREAS, County and Towns are jointly seeking approval by State and Federal Agencies of a contingent Nourishment Plan for the Town Beaches, and the State, in anticipation of such a plan, is prepared to complete/review any necessary environmental studies, and State and Federal Agencies involved in the funding have indicated that they strongly prefer and require that units of local government work on and submit one mutual plan for beach nourishment without individual towns seeking separate funding or individual beach nourishment projects except in emergencies. Provided that nothing contained in this Agreement shall be construed to limit or restrict the authority of Wrightsville Beach, Carolina Beach, and Kure Beach to continue to participate in and seek funding for their existing Corps managed beach nourishment programs; and

WHEREAS, it is within the contemplation of the Parties hereto and State agencies involved in the approval process that the U.S. Army Corps of Engineers and other Federal approval agencies will issue one permit for the Town Beaches. Use of said permit is contingent upon Federal and/or State funding being unavailable or insufficient for Corps managed projects; and

ORIGINAL

WHEREAS, County and Towns now desire to enter into an agreement that provides a planning mechanism, plan, and compact among the parties for a contingent beach nourishment program for the Town Beaches (hereinafter referred to as the "Master Nourishment Plan", "Master Plan" or "Plan"), which utilizes available funds from the County's Room Occupancy Tax together with the general revenue of the respective locality and any State and Federal funding secured for the Master Nourishment Plan; and

WHEREAS, County and Towns now desire to enter into an agreement addressing local funding sources should Federal and State monies be unavailable or insufficient to finance nourishment projects for the Town Beaches; and

WHEREAS, under this Agreement it is contemplated that the County as the lead sponsor, with the assistance of its Wilmington/New Hanover County Port, Waterway and Beach Commission, and consultants hired by the County, in consultation with the Towns, will prepare the Master Nourishment Plan for approval by the Towns. Upon written approval by all of the Towns of such Plan, the Plan will then be implemented under this Agreement with the County being the designated permittee for beach nourishment; and

WHEREAS, notwithstanding this Agreement or any provisions therein, the Parties agree to support and continue efforts to procure Federal and State funding for beach nourishment projects.

NOW THEREFORE, County and Towns pursuant to NCGS 160A-17 and Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes, hereby contract and agree as follows:

1. Purpose. This agreement seeks to address the following different potential scenarios:
   a. Those situations in which Federal or State funding for beach nourishment for Corps managed projects for Town Beaches is reduced.
   b. Those situations in which no Federal or State funding for beach nourishment for Town Beaches is available. In such event the County and Towns would proceed under the contingent plan and permit process set-forth herein.

   County and Towns enter into this Agreement in order to prepare, approve and carry out the Master Nourishment Plan providing for acquisition of one permit for

ORIGINAL

nourishment of the Town Beaches and identification of the source of tax funds and other revenues to be used to implement such plan. The Master Nourishment Plan shall not include navigational or harbor dredging where the dredged materials is not used for beach nourishment.

2. Development of Master Nourishment Plan. The County, using available Room Occupancy Tax revenues, will over the next 18 to 36 months develop the Master Plan in consultation with State and Federal Agencies, the Towns, consulting engineers, and the Wilmington/New Hanover County Port, Waterway and Beach Commission, and submit the same to the Towns for consideration and approval by all of the Towns. Concurrently the County will submit for a State and Federal permit to carry out and complete the Plan. The Master Plan shall not be effective until approved by all of the Towns in writing. The final approved plan will contain the following principles and encompass and cover the following subjects, goals and objectives:

   a. Easements and Rights-of-Way. Each Town shall be responsible for providing the staging areas, sites or necessary lands, easements, and rights-of-way required for the development, construction, and maintenance of those elements of the Master Nourishment Plan to be implemented within the Town. No Town will be obligated to provide sites, staging areas or facilities for nourishment that will take place in another party's jurisdiction. However, the plan will provide that Towns may cooperate in providing staging areas and access to the beach for beach construction equipment regardless of where the beach construction activity is taking place when joint nourishment projects are undertaken.

   b. Public Beach Access and Parking. The Towns shall be responsible for securing, constructing, and maintaining any and all access/parking facilities stipulated as a condition of receiving State or Federal funding. All public beach accesses and parking facilities must be secured prior to issuing a notice to proceed for each construction event.

   c. Funding Contingency. Each party's participation in a nourishment project associated with the Master Nourishment Plan will be contingent on such party, in its sole discretion, being able to fund its portion of the project. Each

ORIGINAL

Town is required to anticipate the need for the local funding share and to either budget for the same over a period of years, provide for and conduct elections to approve of bonds or borrowing pursuant to State law , or put in place tax districts or similar means of funding the local share. Failure to meet local funding needs by one or more Towns could result in the County passing over a project of the Town due to lack of funding.

d. Construction Administration. The County may serve in the role as lead administrator for any nourishment event associated with the Master Nourishment Plan.

3. Cost-sharing for Corps-Managed Projects or Projects Implemented Under the Master Nourishment Plan. In the event Federal and State funding is insufficient to pay the costs of any beach nourishment project, the Room Occupancy Tax will pay any shortfall in funding for such project up to a maximum of 82.5% of the total project costs. If after payment of Room Occupancy Tax funds in an amount equal to 82.5% of the total project costs a shortfall remains, such shortfall shall be paid by the Town in which such project is located up to a maximum of 17.5% of the total project costs.

4. Ownership and Use of Nourished Beaches. The ownership and use of beaches nourished under this Agreement are subject to the State Lands Act.

5. Withdrawal, Termination, Modifications, Amendments, and Binding Effects. The commitment of each Town to provide public beach access, parking or any other lands or rights-of way, or any rules or regulations with respect to use of the same, as a party to this agreement, is expressly conditioned on Federal and State laws, regulations, or interpretations thereof, as of the date of approval of this agreement by signatories herewith. If there are amendments, changes or interpretations to Federal or State law or regulations, which are adopted after this Agreement is approved which affect a party's rights and obligations in this Agreement, any party that chooses not to meet the requirements shall have a right to withdraw from this Agreement at any time.

ORIGINAL

Once approved by the County and all of the Towns, this Agreement shall remain in effect until June 30, 2015 and be binding on the Parties regardless of changes in the composition of boards of the respective units of local government that are parties hereto. This Agreement shall automatically renew for subsequent periods of four years unless any party gives notice in writing to all other parties at least 180 days before the expiration of the then current term of its desire that the Agreement not renew at its termination. In such event, the Agreement shall terminate at the end of its then current term.

Once approved, no party may withdraw except that a Town upon twelve (12) months written notice to the County and other Towns may withdraw. Withdrawal of a party as provided in this paragraph shall not cause the Agreement to terminate. The Agreement shall only be terminated as provided in the preceding paragraph.

6. Any amendment of modification to this Agreement shall require the written consent of all Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement.

COUNTY OF NEW HANOVER

ATTEST:

By: Ted Davis Jr
Chairman of the Board

Sheila L. Schult
Clerk to the Board

TOWN OF WRIGHTSVILLE BEACH

ATTEST:

By:
Mayor

Sylvia J. Holleman
Town Clerk

Approved as to form/County Attorney

Kenneth Myers

ORIGINAL

TOWN OF CAROLINA BEACH

ATTEST: By: _____
Mayor

_____
Town Clerk

TOWN OF KURE BEACH

ATTEST: By: _____
Mayor

_____
Town Clerk

NORTH CAROLINA

NEW HANOVER COUNTY

I, Teresa P. Elmore, a Notary Public of the State and County aforesaid certify that Sheila L. Schult acknowledged that she is Clerk to the Board of Commissioners of New Hanover County and that by authority duly given and as the act of the Board the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal this 8 day of Dec, 2011.

Teresa P Elmore
Notary Public

My commission expires: TERESA P. ELMORE
NOTARY PUBLIC - NORTH CAROLINA
NEW HANOVER COUNTY
My Commission Expires 4/15

ORIGINAL

NORTH CAROLINA

NEW HANOVER COUNTY

I, Virginia A. Houser, a Notary Public of the State and County aforesaid certify that Sylvia J. Holleman acknowledged that she is Clerk to the Board of Alderman of Wrightsville Beach and that by authority duly given and as the act of the Board the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal this 17th day of November, 2011.

Virginia A. Houser
Notary Public

VIRGINIA A. HOUSER NOTARY PUBLIC NEW HANOVER COUNTY, NC

My commission expires: 5/3/12

NORTH CAROLINA

NEW HANOVER COUNTY

I, Iris D. Salke ~~Melinda N. Prusa~~, a Notary Public of the State and County aforesaid certify that Melinda N. Prusa acknowledged that she is Clerk to the Town Council of Carolina Beach and that by authority duly given and as the act of the Council the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal this 15 day of November, 2011.

Iris D. Salke
Notary Public

OFFICIAL SEAL
Notary Public, North Carolina
County of New Hanover
IRIS D. SALKE
My Commission Expires 2-3-2014

My commission expires: 2-3-2014

ORIGINAL

NORTH CAROLINA

NEW HANOVER COUNTY

I, Sheila L. Schult, a Notary Public of the State and County aforesaid certify that Nancy Avery acknowledged that she is Clerk to the Town Council of Kure Beach and that by authority duly given and as the act of the Council the foregoing instrument was signed in its name by its Mayor, sealed with its corporate seal and attested by herself as its Clerk.

WITNESS my hand and official seal this 15th day of December, 2011.

SHEILA L. SCHULT NOTARY PUBLIC NEW HANOVER CO. NC

Sheila L. Schult
Notary Public

My commission expires: 3/17/2013

ORIGINAL