15A NCAC 07H .1705 IS PROPOSED FOR AMENDMENT AS FOLLOWS:

15A NCAC 07H .1705 SPECIFIC CONDITIONS

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

1. Permissible 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 shall 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. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission’s rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no farther oceanward than the most landward adjacent temporary erosion control 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 as an exception to the erosion setback requirement.

4. Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

5. Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee in accordance with Subparagraph (1) of this Paragraph.

6. Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5,000 square feet or less and its...
associated septic system, or for up to five years for a building with a total floor area of more than
5,000 square feet and its associated septic system. Temporary erosion control structures may remain
in place for up to five years if they are protecting a bridge or a road. The termination date of all
permits for contiguous temporary erosion control structures on the same property shall be the same
and shall be the latest termination date of any of the permits. The property owner shall be
responsible for removal of the temporary structure within 30 days of the end of the allowable time
period.

(7) Temporary sandbag erosion control structures may remain in place for up to eight years from the
date of approval if they are located in a community that is actively pursuing a beach nourishment
project, or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is
actively pursuing an inlet relocation or stabilization project in accordance with G.S. 113A-115.1 For
purposes of this Rule, a community is considered to be actively pursuing a beach nourishment, inlet
relocation or stabilization project if it has:

(A) an active CAMA permit, where necessary, approving such project; or
(B) 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) 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 and 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 Subparagraph (6) of this Paragraph. The termination date of all permits for contiguous
temporary erosion control structures on the same property shall be the same and shall be the latest
termination date of any of the permits.

(8) Once the temporary erosion control structure is determined by the Division of Coastal Management
to be unnecessary due to relocation or removal of the threatened structure, a storm protection project
constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, an inlet
relocation or stabilization project, it 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.
 Removal of temporary erosion control structures is not required if they are covered by dunes with stable and natural vegetation.

(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 height shall not exceed 6 feet.

(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 only once regardless of ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures may be eligible for an additional eight year permit extension 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, 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) shall begin at the time the initial most recent erosion control structure is installed. For the purpose of this Rule:

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

(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 the most recent section is installed in accordance with Subparagraph (6) or (7) of this Rule.

(15) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule. Existing sandbag structures that were legally placed but have expired permits may be replaced, repaired or modified within their permit dimensions, if the status of the permit is being litigated by the property owner in state or federal court.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:
(1) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

(2) 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 seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission’s rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further oceanward than the most landward adjacent temporary erosion control structure.

(3) 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.

(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 seaward 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 designee in accordance with Subparagraph (a)(1) of this Rule. Temporary erosion control structures may be used to protect properties that are experiencing erosion when there are no imminently threatened structures on the property if an adjacent property has an existing temporary erosion control structure that is in compliance with the Commission’s rules. Temporary erosion control structures used to protect property without imminently threatened structures shall be sited to align with and be no further oceanward than the most landward adjacent temporary erosion control structure;
(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 7H.0208; 7H.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.

(2) 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.

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;