



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

March 18, 2021

Jennifer Everett  
Department of Environmental Quality  
**Sent via email only to: Jennifer.Everett@ncdenr.gov**

Re: Extension of the Period of Review for Rules 15A NCAC 07H, 07J, and 07K

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley Snyder  
Commission Counsel

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

**Linda T. Worth**  
Deputy Director

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1711 New Hope Church Road, Raleigh, NC 27609  
Telephone: (984) 236-1850 | Facsimile: (984) 236-1871  
[www.oah.nc.gov](http://www.oah.nc.gov)

## Burgos, Alexander N

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**Subject:** FW: CRC - RRC Request for Technical Changes

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**From:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>

**Sent:** Thursday, March 11, 2021 10:27 AM

**To:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Willis, Angela <[angela.willis@ncdenr.gov](mailto:angela.willis@ncdenr.gov)>; Lopazanski, Mike <[mike.lopezanski@ncdenr.gov](mailto:mike.lopezanski@ncdenr.gov)>

**Subject:** Re: CRC - RRC Request for Technical Changes

Hi Ashley,

We are kindly requesting a period of extension of review in order to allow additional time for staff to address your technical change requests.

Thank you. Let us know if you have any questions.

Jennifer

Jennifer Everett  
DEQ Rulemaking Coordinator  
N.C. Depart. Of Environmental Quality  
Office of General Counsel  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tele: (919)-707-8614

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## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0401

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What do you mean by saying "the third broad grouping?" Remember, rule names are not considered when interpreting a rule. Consider mirroring the language in Rule .0201 of this Subchapter and say something like: "Public water supply AECs include the following categories:"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07H .0401 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **SECTION .0400 - PUBLIC WATER SUPPLIES**  
4

5 **15A NCAC 07H .0401 PUBLIC WATER SUPPLY CATEGORIES**

6 The third broad grouping of AECs includes valuable small surface water supply watersheds and public water supply  
7 well fields.

8  
9 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*

10 *Eff. September 9, 1977;*

11 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0404

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Please review the first sentence. Why is it necessary? It repeats the contents of .0401.*

*At line 5, what is the meaning of the sentence beginning with "The following discussion..."? Is it a "discussion" or a requirement? Does this meet the definition of a "rule" in 150B-2(8a)? Instead, do you mean "Rules .0405 and .0406 of this Section define and set land use standards for each category of public water supplies."*

*At line 6, can you incorporate the maps by reference as you did for maps in Section .0200? Please note G.S. 113A-113(a) requires the geographical areas of AECs to be designated by rule.*

*Do you still need the note beginning at line 7? Are .0405 and .0406 sufficient to cover this information?*

*If you do keep any of the language at lines 7-9, please update the name of the Department at line 8.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07H .0404 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0404 AECS WITHIN PUBLIC WATER SUPPLIES**

4 Public water supplies as a broad category include two AECs: small surface water supply watersheds and public  
5 water supply well fields. The following discussion includes the description and the land use standards for each.

6 Maps of these AECs are available at the CRC and the appropriate local minor development permit office.

7 Note: Rules .0405 and .0406 of this Subchapter contain descriptions of four public water supply areas as identified  
8 by the North Carolina Department of Environment, Health, and Natural Resources, Division of Environmental  
9 Health.

10  
11 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a; 113A-124;*

12 *Eff. September 9, 1977;*

13 *Amended Eff. May 1, 1990; November 1, 1984; January 24, 1978;*

14 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0405

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), remember the rule name is not considered when interpreting a rule. Instead of saying "these are" consider "small surface water supply watersheds are."*

*In (a), please delete or define "entirely."*

*Line 4, what is a "catchment area?" Does your regulated public know?*

*At line 5, what does it mean to be classified as "A-II?" Could you provide a cross reference to that EMC rule or rules?*

*At line 7, please update the Department's name.*

*In (b), what type of application does this govern? Is this for a local building permit?*

*In (b), who is the "local designated official?"*

*In (b) and (b)(1), is it necessary to use the word "minimum?" All rules set minimum requirements.*

*In (b)(2), please replace "will" with "shall."*

*In (b)(3), please remove the parentheses and incorporate the language into the sentence. For example: "Land-disturbing activities including land clearing, grading...."*

*In (b)(3), consider replacing "shall be in compliance" with "shall comply" to be more concise.*

*In (b)(3), please remove the name of the Act and simply refer to "G.S. 113A-57."*

*In (b)(4), delete or define "detailed."*

*In (b)(4), under what circumstances may more detailed standards be applied? What are the more detailed standards? How are they set? Are these standards in rule?*

Ashley Snyder  
Commission Counsel

Date submitted to agency: February 25, 2021

*In (c), instead of saying “the CRC has...developed detailed standards” please set this as a requirement by saying the standards shall be followed. For example: “...watersheds shall follow the requirements set forth in this Paragraph.”*

*In (c)(1), is it necessary to say the Department proposed this area as an AEC since (a) mentions the areas in this rule were identified for designation? If you keep this language, please update the Department’s name.*

*What is the purpose of (c)(1)(A) and (B)? What are you requiring here? Is this purely informational? Does this meet the definition of a “rule” in 150B-2(8a)?*

*In (c)(1)(C), please delete or define “adequately.”*

*In (c)(1)(C), please use active voice and say who shall do what. For example: “Within the cone of depression, septic tanks shall...”*

*In (c)(1)(C), define “cone of depression.”*

*In (c)(2), is it necessary to say the Department proposed this area as an AEC since (a) mentions the areas in this rule were identified for designation? If you keep this language, please update the Department’s name. Similarly, is it necessary to say it is classified A-II since that is mentioned in (a)?*

*In (c)(2), line 14, please do not use “etc.”*

*In (c)(2), is the last sentence purely informational? Does it meet the definition of a “rule” in 150B-2(8a)?*

*In (c)(2), are you requiring anything at Toomers Creek Watershed or just designating it as an AEC?*

*Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07H .0405 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0405 SMALL SURFACE WATER SUPPLY WATERSHEDS**

4 (a) Description. These are catchment areas situated entirely within the coastal area which contain a water body  
5 classified as A-II by the Environmental Management Commission. This means the maximum beneficial use of these  
6 bodies of water is to serve as public water supply areas. The watershed of the A-II water bodies has been identified  
7 by the North Carolina Department of Environment, Health, and Natural Resources for designation by the CRC.

8 (b) Use Standards. The CRC or local designated official shall approve an application upon finding that the project  
9 is in accord with the following minimum standards:

- 10 (1) Ground absorption sewage disposal systems shall be located a minimum of 100 feet from A-II  
11 surface waters.
- 12 (2) Development requiring a national pollution discharge elimination system (NPDES) permit will be  
13 denied an AEC permit until the NPDES permit is secured.
- 14 (3) Land-disturbing activities (land clearing, grading, and surfacing) shall be in compliance with the  
15 mandatory standards of the North Carolina Sedimentation Pollution Control Act of 1973 in G.S.  
16 113A-57.
- 17 (4) In instances where a detailed hydrologic study of a small surface water supply watershed has been  
18 made, more detailed standards may be applied.

19 (c) Designated Small Surface Water Supply Watersheds. The CRC has designated the following small surface  
20 water supply watersheds and developed detailed standards as set out in this Paragraph:

- 21 (1) The fresh pond between Kill Devil Hills and Nags Head on Bodie Island and adjacent catchment  
22 area. The Department of Environment, Health, and Natural Resources proposed the fresh water  
23 lake on Bodie Island in Dare County as an area of environmental concern.
  - 24 (A) Both the towns of Nags Head and Kill Devil Hills have water treatment plants which take  
25 their raw water from the fresh water lake located between the two towns on Bodie Island.  
26 The lake is approximately one-quarter mile west of the U.S. 158 bypass. This fresh water  
27 lake is supplied by groundwater from the surrounding landmass and rainfall.
  - 28 (B) This area is near the Cape Hatteras National Seashore Recreation Area. In addition, Kill  
29 Devil Hills is the site of the Wright Brothers Memorial, a national monument. As a  
30 major tourist attraction this area draws people from across the east coast. Contamination  
31 of the water supply could, therefore, have an effect not only on other areas of the state but  
32 the east coast as well.
  - 33 (C) To adequately protect the fresh pond, it is necessary that construction of septic tanks and  
34 other sources of pollution within the limits of the cone of depression be regulated as  
35 follows:

(i) 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.

(ii) 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.

(2) The Toomers Creek Watershed. The Department of Environment, Health, and Natural Resources proposed the Toomers Creek at Wilmington in New Hanover County as an area of environmental concern. Toomers Creek is a tributary to the Cape Fear River and is classified as Class A-II swamp waters suitable as a source of water supply for drinking, culinary, or food processing purposes after approved treatment equal to coagulation, sedimentation, filtration, and disinfection, etc., and any other usage requiring waters of lower quality. Toomers Creek is utilized by the City of Wilmington as an auxiliary supply of raw water for drinking purposes.

*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. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0406

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Throughout this Rule, please update the Department's name.*

*In (a), line 5, please change "which" to "that."*

*At line 6, what is this "readily definable geographic area?" I understand the Department identifies it...is there somewhere I can find that information? How do I know where this is?*

*In (b), is it necessary to use the word "minimum?" Rules always set minimum requirements.*

*In (b)(2), please delete or define "significantly."*

*In (b)(3), what is considered a "contaminant" and which ones are "toxic?" Are these terms defined?*

*In (b)(4)(A), I assume you mean the sewage treatment system was shown on the plat and not that the lot was identified on a plat as of July 1987, correct? If so, please make that clear.*

*In (b)(4)(B), define "economically viable." How is this determination made?*

*In (b)(4)(D), what is a "CAMA permit?"*

*Please review the list in (c). Since there is only one item in the list, please bring that information into Paragraph (c). You could say, for example, "The CRC designates The Cape Hatteras Well Field as a public water supply well field. The Cape Hatteras Well Field shall be subject to the use standards in Paragraph (b) of this Rule." Alternatively, you could list each identified tract as a separate item in the list.*

*In (c), can you incorporate the maps by reference as you did for maps in Section .0200? Please note G.S. 113A-113(a) requires the geographical areas of AECs to be designated by rule.*

Ashley Snyder  
Commission Counsel

Date submitted to agency: February 25, 2021

*Is the language at page 1, line 36 – page 2, line 5 purely informational? Why is this language necessary? Does it meet the definition of a “rule” in 150B-2(8a)?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07H .0406 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0406 PUBLIC WATER SUPPLY WELL FIELDS**

4 (a) Description. Public water supply well fields are areas of well-drained sands that extend downward from the  
5 surface into the shallow ground water table which supplies the public with potable water. These surficial well fields  
6 are confined to a readily definable geographic area as identified by the North Carolina Department of Environment  
7 and Natural Resources with assistance and support from affected local governments.

8 (b) Use Standards. Development within these AEC's shall be consistent with the following minimum standards:

- 9 (1) No ground absorption sewage disposal or subsurface pollution injection systems shall be placed  
10 within the designated AEC boundary except to replace systems existing as of July 24, 1987;
- 11 (2) Development shall not significantly limit the quality or quantity of the public water supply or the  
12 amount of rechargeable water;
- 13 (3) The development shall not cause salt water intrusion or result in the discharge of toxic or soluble  
14 contaminants into standing or groundwater; and
- 15 (4) Groundwater absorption sewage treatment systems may also be used within the AEC boundary if  
16 each of the following provisions are met:
- 17 (A) the system is serving development on a lot that was platted of record as of July 24, 1987;
- 18 (B) there is no other economically viable method of waste treatment for the permittable  
19 development of such lot;
- 20 (C) there is no space outside the boundaries of the AEC on the lot upon which the treatment  
21 system could be located; and
- 22 (D) the Division of Environmental Health, Department of Environment and Natural  
23 Resources, prior to the CAMA permit decision, reviews and approves the proposed  
24 system as complying with existing rules.

25 (c) Designated public water supply well field. The CRC has designated the following as a public water supply well  
26 field which shall be subject to the use standards as set out in Paragraph (b) of this Rule:

- 27 (1) Cape Hatteras Well Field. The County of Dare is supplied with raw water from a well field  
28 located south of N.C. 12 on Hatteras Island between Frisco and Buxton. The area of  
29 environmental concern is bounded by a line located 1,000 feet from the centerlines of three tracts.  
30 The first tract is identified as "well field" on maps entitled "Cape Hatteras Wellfield Area of  
31 Environmental Concern" approved by the Coastal Resources Commission on July 24, 1987, and  
32 extends approximately 12,000 feet west from Water Association Road. The second tract is  
33 conterminous with the first tract, is identified as "future well field" on said maps and extends  
34 approximately 8,000 feet to the east of Water Association Road. The third tract is identified as  
35 "future well field" on said maps and extends approximately 6,200 feet along the National Park  
36 Service boundary east of Water Association Road. The aquifer beneath the tracts serves as the  
37 sole source of drinking water for the communities of Avon, Buxton, Frisco, and Hatteras as well

1 as the national seashore recreation area. The wetlands, swales, and surface waters adjacent to the  
2 well field provide a large source of recharge and are a potential vehicle for contaminants. Due to  
3 these facts contamination of the water supply could have an adverse effect on people other than  
4 the local residents of Hatteras Island. Water-borne disease organisms could be easily transported  
5 to other areas of the state or the east coast by tourists who are attracted to the area daily.

6  
7 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(3)a.; 113A-124;*  
8 *Eff. September 9, 1977;*  
9 *Amended Eff. December 1, 1997; April 1, 1995; May 1, 1990; October 1, 1987;*  
10 *November 1, 1984;*  
11 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules 15A NCAC 07J

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*What does CAMA stand for? Is this acronym spelled out in one of your existing rules?*

*What is the difference between a major permit and a minor permit? I take it you are referring to the definitions in 113A-118, correct?*

*Throughout these rules, please change "must" to "shall."*

*Please consider adding 113A-124(c)(8) to your history notes if it is not already listed.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0403

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (b), since you already excepted permits for bulldozing from (a), consider deleting "pursuant to Subparagraph (a) of this Rule." If you need to keep that language, please refer to "Paragraph (a)."*

*At line 7, what do you mean by "when issued to a property owner?" Is this repetitive of "the date of permit issuance?"*

*At lines 7-8, consider changing "is entitled to" to "may."*

*At line 11, please delete the comma after "permit."*

*Please review lines 11-12. As it is worded, it sounds like .0404 is about renewals, but .0404 governs extensions.*

*At line 11, if you keep the cross reference to .0404, please insert a "0" before "7J" in the citation.*

*In (d), how is the oceanfront setback established?*

*At line 14, what do you mean by "a ruling of exception?" This does not grammatically fit within the sentence.*

*At line 15, please say "he or she."*

*Line 17, change "must" to "shall."*

*At lines 17-18, what is a "major shoreline change?"*

*At lines 18 and 19, change "will" to "shall."*

*At line 20, please delete or define "proper."*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

*Line 22, define "substantial progress."*

*Does (f) comply with G.S. 113A-121.1 (d)? Even if so, is (f) necessary given G.S. 113A-121.1(d)?*

**§ 113A-121.1. Administrative review of permit decisions.**

(d) A permit challenged under subsection (b) of this section remains in effect unless a stay is issued by the administrative law judge as set forth in G.S. 150B-33 or by a reviewing court as set forth in G.S. 150B-48.

*How does (g) comply with G.S. 113A-121.1(c)? The statute requires automatic suspension.*

*If you keep (g), please remove the capitalization from the beginning of each line in (1)-(4).*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 07J .0403 is readopted as published in 34:22 NCR 2104 as follows:

2  
3 **15A NCAC 07J .0403 DEVELOPMENT PERIOD/COMMENCEMENT/CONTINUATION**

4 (a) New dredge and fill permits and CAMA permits, excepting beach bulldozing when authorized through issuance  
5 of a CAMA minor permit, shall expire on December 31 of the third year following the year of permit issuance.

6 (b) Pursuant to Subparagraph (a) of this Rule, a minor permit authorizing beach bulldozing shall expire 30 days from  
7 the date of permit issuance when issued to a property owner(s). Following permit expiration, the applicant is entitled  
8 to request an extension in accordance with Rule .0404(a) of this Section.

9 (c) Development After Permit Expiration Illegal. Any development done after permit expiration shall be considered  
10 unpermitted and shall constitute a violation of G.S. 113A-118 or G.S. 113-229. Any development to be done after  
11 permit expiration shall require either a new permit, or renewal of the original permit according to 15A NCAC 7J .0404  
12 with the exception of Paragraph (e) of this Rule.

13 (d) Commencement of Development in Ocean Hazard AEC. No development shall begin until the oceanfront setback  
14 requirement can be established. When the possessor of a permit or a ruling of exception is ready to begin construction,  
15 he shall arrange a meeting with the appropriate permitting authority at the site to determine the oceanfront setback.  
16 This setback determination shall replace the one done at the time the permit was processed and approved and  
17 construction must begin within a period of 60 days from the date of that meeting. In the case of a major shoreline  
18 change within that period a new setback determination will be required before construction begins. Upon completion  
19 of the measurement, the permitting authority will issue a written statement to the permittee certifying the same.

20 (e) Continuation of Development in the Ocean Hazard AEC. Once development has begun under proper  
21 authorization, development in the Ocean Hazard AEC may continue beyond the authorized development period if, in  
22 the opinion of the permitting authority, substantial progress has been made and is continuing according to customary  
23 and usual building standards and schedules. In most cases, substantial progress begins with the placement of  
24 foundation pilings, and proof of the local building inspector's certification that the installed pilings have passed a floor  
25 and foundation inspection.

26 (f) Any permit that has been suspended pursuant to G.S. 113A-121.1 as a result of a contested case petition or by  
27 order of superior court for a period longer than six months shall be extended at the applicant's written request for a  
28 period equivalent to the period of permit suspension, but not to exceed the development period authorized under  
29 Paragraph (a) of this Rule.

30 (g) An applicant may voluntarily suspend development under an active permit that is the subject of judicial review  
31 by filing a written notice with the Department once the review has started. An applicant shall obtain an extension of  
32 said permit if the permitting authority finds:

- 33 (1) That the applicant notified the permitting authority in writing of the voluntary suspension;  
34 (2) The period during which the permit had been subject to judicial review is greater than six months;  
35 (3) The applicant filed a written request for an extension of the development period once the judicial  
36 review had been completed; and

1           (4)     The applicant undertook no development after filing the notice of suspension. The period of permit  
2                   extension shall be equivalent to the length of the judicial review proceeding, but not to exceed the  
3                   development period authorized under Paragraph (a) of this Rule.  
4

5     *History Note:     Authority G.S. 113A-118;*

6                   *Eff. March 15, 1978;*

7                   *Amended Eff. August 1, 2002; April 1, 1995; July 1, 1989; March 1, 1985; November 1, 1984;*

8                   *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0404

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), consider changing "is entitled to" to "may."*

*In (b)(1), what is considered to be "a reasonable time." Or can the statement simply say "I will complete the work within a reasonable amount of time?"*

*In (b)(3), please remove the commas surrounding "or."*

*In (b)(4), please add a comma after "permit."*

*At line 22, please put "substantial development" in quotations since you are defining the term.*

*In (c), who are the commenting state agencies? What do you mean by this?*

*In (c), if you are only referring to North Carolina, please capitalize "State." If you are referring to any state, do not capitalize the word.*

*In (d), what do you mean by "the maximum extent practical?" What are you requiring here?*

*In (e), line 36, change "must" to "shall."*

*In (f), do you mean "may" or "shall?"*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0404 is readopted as published in 34:22 NCR 2104 as follows:

2  
3 **15A NCAC 07J .0404 DEVELOPMENT PERIOD EXTENSION**

4 (a) For CAMA minor permits authorizing beach bulldozing, the applicant is entitled to request a one-time 30 day  
5 permit extension. No additional extensions shall be granted after the 30 day extension has expired. Notwithstanding  
6 this Paragraph, the applicant is eligible to apply for another minor permit authorizing beach bulldozing following  
7 expiration of the 30 days permit extension.

8 (b) Where no development has been initiated during the development period, the permitting authority shall extend  
9 the authorized development period for no more than two years upon receipt of a signed and dated request from the  
10 applicant containing the following:

- 11 (1) a statement of the intention of the applicant to complete the work within a reasonable time;
- 12 (2) a statement of the reasons why the project will not be completed before the expiration of the current  
13 permit;
- 14 (3) a statement that there has been no change of plans since the issuance of the original permit other  
15 than changes that would have the effect of reducing the scope of the project, or, previously approved  
16 permit modifications;
- 17 (4) notice of any change in ownership of the property to be developed and a request for transfer of the  
18 permit if appropriate; and
- 19 (5) a statement that the project is in compliance with all conditions of the current permit.

20 Where substantial development, either within or outside the AEC, has begun and is continuing on a permitted project,  
21 the permitting authority shall grant as many two year extensions as necessary to complete the initial development. For  
22 the purpose of this Rule, substantial development shall be deemed to have occurred on a project if the permittee can  
23 show that development has progressed beyond basic site preparation, such as land clearing and grading, and  
24 construction has begun and is continuing on the primary structure or structures authorized under the permit. For  
25 purposes of residential subdivision, installation of subdivision roads consistent with an approved subdivision plat shall  
26 constitute substantial development. Renewals for maintenance and repairs of previously approved projects may be  
27 granted for periods not to exceed 10 years.

28 (c) When an extension request has not met the criteria of Paragraph (b) of this Rule, the Department may circulate  
29 the request to the commenting state agencies along with a copy of the original permit application. Commenting  
30 agencies will be given three weeks in which to comment on the extension request. Upon the expiration of the  
31 commenting period the Department will notify the applicant promptly of its actions on the extension request.

32 (d) Notwithstanding Paragraphs (b) and (c) of this Rule, an extension request may be denied on making findings as  
33 required in either G.S. 113A-120 or G.S. 113-229(e). Changes in circumstances or in development standards shall be  
34 considered and applied to the maximum extent practical by the permitting authority in making a decision on an  
35 extension request.

36 (e) The applicant for a major development extension request must submit, with the request, a check or money order  
37 payable to the Department in the sum of one hundred dollars (\$100.00).

1 (f) Modifications to extended permits may be considered pursuant to 15A NCAC 07J .0405.

2  
3 *History Note: Authority G.S. 113A-119; 113A-119.1; 113A-124(c)(8);*

4 *Eff. March 15, 1978;*

5 *Amended Eff. August 1, 2002; August 1, 2000; April 1, 1995; March 1, 1991; March 1, 1985;*

6 *November 1, 1984;*

7 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0405

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a) and (d), please use "his or her."*

*Throughout this Rule, please change "must" to "shall."*

*At line 6, delete or define "in detail."*

*At line 6, please define "minor modifications."*

*At line 7, please define "major modifications." How does the Department determine which modifications are major? What factors are considered?*

*Line 7, change "will" to "shall."*

*In (b), change "which" to "that."*

*In (b), are such modifications required to be approved in accordance with "Paragraph (a) of this Rule" or "this Rule?"*

*In (c), change "which" to "that."*

*At line 15, please change "must" to "shall."*

*For the lists in (c) and (d), please remove the capitalization from the beginning of each item in the list. Please remove the "and" from the end of every line except the one before the last item in the list. Throughout these lists, also please remove the word "must" and replace it with "shall."*

*In (c)(1)(A), please replace the semicolon at line 19 with an "and" after "contour."*

*In (c)(1)(D), define "significant loss."*

*In (c)(2)(A), do you mean "shall not" instead of "may not?"*

Ashley Snyder  
Commission Counsel

Date submitted to agency: February 25, 2021

*In (c)(3)(A), please replace “would” with “shall” if that was your intent.*

*In (d)(3), capitalize “State” if you are only referring to North Carolina.*

*In (d)(3), why is “Land Use Plans” capitalized?*

*Please fix the spacing at lines 16-17 to make this 1.5 spaced.*

*At line 16, by “these provisions” do you mean “this Paragraph?”*

*In (e), please change “must” to “shall.”*

*In your history note, please delete 113A-124(c)(5) because it has been repealed.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0405 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0405 PERMIT MODIFICATION**

4 (a) An applicant may modify his permitted major development and/or dredge and fill project only after approval by  
5 the Department. In order to modify a permitted project the applicant must make a written request to the Department  
6 showing in detail the proposed modifications. Minor modifications may be shown on the existing approved  
7 application and plat. Modification requests which, in the opinion of the Department, are major will require a new  
8 application. Modification requests are subject to the same processing procedure applicable to original permit  
9 applications. A permit need not be circulated to all agencies commenting on the original application if the Commission  
10 determines that the modification is so minor that circulation would serve no purpose.

11 (b) Modifications to a permitted project which are imposed or made at the request of the U.S. Army Corps of  
12 Engineers or other federal agencies must be approved by the Department under provisions of  
13 Paragraph (a) of this Rule dealing with permit modification procedures.

14 (c) Modifications of projects for the benefit of private waterfront property owners which meet the following criteria  
15 shall be considered minor modifications and shall not require a new permit application, but must be approved under  
16 the provisions of Paragraph (a) of this Rule:

17 (1) for bulkheads:

- 18 (A) Bulkhead must be positioned so as not to extend more than an average distance of two feet  
19 waterward of the mean high water contour; in no place shall the bulkhead be more than  
20 five feet waterward of the mean high water contour; and  
21 (B) All backfill must come from an upland source; and  
22 (C) No marsh area may be excavated or filled; and  
23 (D) Work must be undertaken because of the necessity to prevent significant loss of private  
24 residential property due to erosion; and  
25 (E) The bulkhead must be constructed prior to any backfilling activities; and  
26 (F) The bulkhead must be constructed so as to prevent seepages of backfill materials through  
27 the bulkhead; and  
28 (G) The bulkhead may not be constructed in the Ocean Hazard AEC;

29 (2) for piers, docks and boathouses:

- 30 (A) The modification or addition may not be within 150 feet of the edge of a  
31 federally-maintained channel; and  
32 (B) The structure, as modified, must be 200 feet or less in total length offshore; and  
33 (C) The structure, as modified, must not extend past the four feet mean low water contour line  
34 (four feet depth at mean low water) of the waterbody; and  
35 (D) The project as modified, must not exceed six feet in width; and  
36 (E) The modification or addition must not include an enclosed structure; and  
37 (F) The project shall continue to be used for private, residential purposes;

(3) for boatramps:

(A) The project, as modified, would 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;

and

(2) A signed, written statement is obtained from all adjacent riparian property owners indicating they have no objections to the proposed modifications; and

(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 these provisions shall necessitate the submission of a new permit application.

(e) The applicant for a major permit modification must 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; 113A-124(c)(5); 113-229;*

*Eff. March 15, 1978;*

*Amended Eff. August 1, 2000; March 1, 1991; August 1, 1986; November 1, 1984;*

*Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0406

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*In (a), should this say "issuance of a permit" instead of "the permit?"*

*In (a), is this still sent via first class mail?*

*In (a), what are the other "appropriate means?"*

*In (b), do you mean "shall not" instead of "may not?"*

*Please review (b) and (c). Paragraph (b) says anyone holding a permit shall not transfer it, but (c) says a permit may be transferred.*

*In (c)(4) and (5), define "substantial change."*

*In (d), please add a "0" before "7J" in 15A NCAC 07J .0600.*

*In (d), please delete "et. seq." 15A NCAC 07J .0600 refers to the entire Section.*

*In (e), please change "must" to "shall."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0406 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0406 PERMIT ISSUANCE AND TRANSFER**

4 (a) Upon approval of an application and issuance of the permit, the permit shall be delivered to the applicant, or to  
5 any person designated by the applicant to receive the permit, by first class mail or any appropriate means.

6 (b) Anyone holding a permit may not assign, transfer, sell, or otherwise dispose of a permit to a third party.

7 (c) A permit may be transferred to a new party at the discretion of the Director of the Division of Coastal Management  
8 upon finding each of the following:

9 (1) a written request from the new owner or developer of the involved properties;

10 (2) a deed, a sale, lease, or option to the proposed new party showing the proposed new party as having  
11 the sole legal right to develop the project;

12 (3) that the applicant transferee will use the permit for the purposes for which it was issued;

13 (4) no substantial change in conditions, circumstances, or facts affecting the project;

14 (5) no substantial change or modification of the project as proposed in the original application.

15 (d) A person aggrieved by a decision of the Director as to the transfer of a permit may request a declaratory ruling by  
16 the Coastal Resources Commission as per 15A NCAC 7J .0600, et. seq.

17 (e) The applicant for a permit transfer must submit with the request a check or money order payable to the Department  
18 in the sum of one hundred dollars (\$100.00).

19  
20 *History Note: Authority G.S. 113A-118(c); 113A-119(a); 113A-119.1;*

21 *Eff. March 15, 1978;*

22 *Amended Eff. August 1, 2000; March 1, 1991; March 1, 1990; October 15, 1981;*

23 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0407

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Does a person wishing to maintain a minor project need approval for maintenance? I take it approval is not required based upon the citation of 113A-103(5)c in your history note, but that is not clear based upon the rule's text.*

*At line 5, please change "which" to "that."*

*At line 10, is it necessary to say "at least?" Rules always set minimum requirements.*

*Just to confirm, is the address in (b) still correct? Are such requests handled via email now?*

*In (d)(4), use "he or she."*

*Please delete the "or" at the end of (e)(1). The "or" after (e)(2) applies to the list.*

*In (e)(2), delete or define "newly."*

*In (e)(2), add a comma after "facts."*

*In (e)(2), what do you mean by "newly reached opinions?" Under what circumstances does a new opinion result in suspension or revocation of a permit?*

*In (e)(2), please change "which" to "that."*

*In (f), please make this into a full sentence or introductory statement to introduce the list in (1)-(4).*

*In (1) and (2), how does the Department determine whether there are or are not grounds for revocation or suspension?*

*In (f)(1), line 4, do you still send notice via "registered letter?"*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

*In (f)(4), please capitalize "Department."*

*In your history note, why is only 113A-120(b) cited? Do you rely on (a) for granting permits?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0407 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0407 PROJECT MAINTENANCE: MAJOR DEVELOPMENT/DREDGE AND FILL**

4 (a) No project previously requiring a major development or dredge and fill permit shall be maintained after the expiration  
5 of the authorized development period without approval from the Department. Permits may contain provisions which allow  
6 the applicant to maintain the project after its completion. Persons wishing to maintain a project beyond the development  
7 period and whose permit contains no maintenance provision shall apply for a maintenance permit. This Rule does not apply  
8 to maintenance required by rule or by permit condition.

9 (b) Maintenance Request. Persons desiring to initiate maintenance work on a project pursuant to the maintenance provisions  
10 of an existing permit shall file a request at least two weeks prior to the initiation of maintenance work with:

11 Department of Environment and Natural Resources  
12 Division of Coastal Management  
13 400 Commerce Avenue  
14 Morehead City, NC 28557

15 (c) Such requests shall include:

- 16 (1) the name and address of the permittee;  
17 (2) the number of the original permit;  
18 (3) a description of proposed changes;  
19 (4) in the case of a dredge and fill maintenance request, a statement that no dimensional changes are  
20 proposed;  
21 (5) a copy of the original permit plat with cross-hatching indicating the area to be maintained, any area to be  
22 used as spoil, and the estimated amount of material to be removed; and  
23 (6) the date of map revision and the applicant's signature shown anew on the original plat.

24 (d) Conditions for Maintenance. All work undertaken pursuant to the maintenance provisions of a permit shall comply with  
25 the following conditions:

- 26 (1) Maintenance work under a major development permit shall be limited to activities which are within the  
27 exemptions set forth by the Commission.  
28 (2) Maintenance under a dredge and fill permit shall be limited to excavation and filling which is necessary  
29 to maintain the project dimensions as found in the original permit.  
30 (3) Maintenance work is subject to all the conditions included in the original permit.  
31 (4) Spoil disposal shall be in the same locations as authorized in the original permit, provided that the person  
32 requesting the authority to maintain a project may request a different spoil disposal site if he first serves  
33 a copy of the maintenance request on all adjoining landowners.  
34 (5) The maintenance work is subject to any conditions determined by the Department to be necessary to  
35 protect the public interest with respect to the factors enumerated in G.S. 113A-120 or G.S. 113-229.

36 (e) The Department may suspend or revoke the right to maintain a project in whole or in part upon a finding:

- 37 (1) that the project area has been put to a different use from that indicated in the original permit application;  
38 or  
39 (2) that there has been a change of conditions in the area, newly found facts or newly reached opinions which  
40 would justify denial of a permit; or  
41 (3) that there has been a violation of any of the terms or conditions of the original permit.

1 (f) Grant or Denial of Maintenance Request

- 2 (1) Upon receipt of a complete maintenance request the Department shall determine if there are grounds for  
3 revocation or suspension of the applicant's right to maintain. If there are grounds for revocation or  
4 suspension the applicant shall be notified of the suspension or revocation by registered letter setting forth  
5 the findings on which the revocation or suspension is based.
- 6 (2) If the Department determines that the right to maintain should not be revoked or suspended, a letter shall  
7 be issued which shall authorize the applicant to perform maintenance work. The letter shall set forth the  
8 terms and conditions under which the maintenance work is authorized.
- 9 (3) If the maintenance request discloses changes in the dimensions of the original project, the Department  
10 shall notify the applicant that a permit modification or renewal shall be required pursuant to the procedure  
11 set out in 15A NCAC 07J .0404 and .0405.
- 12 (4) Appeal of department action under this Section shall be in accordance with 15A NCAC 07J .0302.
- 13

14 *History Note: Authority G.S. 113A-103(5)c; 113A-120(b);*

15 *Eff. March 15, 1978;*

16 *Amended Eff. June 1, 2005; December 1, 1991; May 1, 1990; March 1, 1985; November 1, 1984;*

17 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0409

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*At line 5, add a comma after "settlement."*

*In (b)(1), please cite to just "G.S. 113A through 134" instead of referring to the Act by name. Also, if you are referring to the statutes, I do not think it is necessary to say "and amendments."*

*In (d), does this authority need to be delegated? Does the Commission have authority to delegate this power? 113A-126(c) says the written notice comes from the Secretary or a local official, not the Commission.*

### **§ 113A-126. Injunctive relief and penalties.**

(c) Any person who shall be adjudged to have knowingly or willfully violated any provision of this Article, or any rule or order adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates, any such provision, rule or order **after written notice from the Secretary or (in the case of a permit for a minor development issued by a local government) written notice from the designated local official**, the court may determine that each day during which the violation continues or is repeated constitutes a separate violation subject to the foregoing penalties.

*In (d) and (e)(1), consider deleting "hereby."*

*In (e)(1), where is your statutory authority to delegate the authority to assess civil penalties?*

*In Schedule A, where is your authority to charge the penalties set at \$10,000? (f)(1)(B) says violators are charged the fee in Schedule A plus "an amount equal to the relevant CAMA permit application fee," making the total of these fees \$10,400. G.S. 113A-126(d)(1) limits civil penalties for major developments to \$10,000.*

*For the list on page 3, lines 6-8, are each of these categories defined?*

Ashley Snyder  
Commission Counsel

Date submitted to agency: February 25, 2021

*On page 3, in (C), please remove the parentheses and incorporate this language into the sentence.*

*Page 3, (C), please capitalize "State" if you are only referring to North Carolina. If you are referring to any "state" do not capitalize the term.*

*On Page 3, (E), this is only if the contractor also meets one of the criteria in 113A-126(d)(1), correct?*

*On page 4, in (2), line 23, did you intend to refer to 113A-126(d)(1)?*

*In Schedule B, where is your authority to charge the fees set at \$875 and \$1,000? (f)(2)(A) says violators are charged the fee in Schedule B plus "a penalty equal to two times the relevant CAMA permit application fee." Double the permit fee is \$200, making the total of these fees either \$1,075 or \$1,200. Where is your authority to charge over \$1,000 in penalties for minor developments?*

*On page 5, is each category listed at lines 8-10 defined?*

*Page 5, line 11, please remove the parentheses.*

*Page 5, line 11, please capitalize "State" if you are only referring to North Carolina.*

*On page 6, (e), this is only if the contractor also meets one of the criteria in 113A-126(d)(1), correct?*

*In (h), please consider deleting "hereby" at line 9.*

*Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.*

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0409 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0409 CIVIL PENALTIES**

4 (a) Purpose and Scope. This Rule provides the procedures and standards governing the assessment, remission,  
5 settlement and appeal of civil penalties assessed by the Coastal Resources Commission and the Director pursuant to  
6 G.S. 113A-126(d).

7 (b) Definitions. The terms used in this Rule shall be as defined in G.S. 113A-103 and as follows:

8 (1) "Act" means the Coastal Area Management Act of 1974, G.S. 113A-100 through 134, plus  
9 amendments.

10 (2) "Delegate" means the Director or other employees of the Division of Coastal Management, or local  
11 permit officers to whom the Commission has delegated authority to act pursuant to this Rule.

12 (3) "Director" means the Director, Division of Coastal Management.

13 (4) "Respondent" means the person to whom a notice of violation has been issued or against whom a  
14 penalty has been assessed.

15 (c) Investigative costs. In addition to any civil penalty, the costs incurred by the Division for any investigation,  
16 inspection, and monitoring associated with assessment the civil penalty may be assessed pursuant to G.S. 113A-  
17 126(d)(4a). The amount of investigative costs assessed shall be based upon factors including the amount of staff time  
18 required for site visits, investigation, enforcement action, interagency coordination, and for monitoring restoration of  
19 the site.

20 (d) Notice of Violation. The Commission hereby authorizes employees of the Division of Coastal Management to  
21 issue in the name of the Commission notices of violation to any person engaged in an activity which constitutes a  
22 violation for which a civil penalty may be assessed.

23 (e) Procedures for Notification of Civil Penalty Assessment.

24 (1) The Commission hereby delegates to the Director the authority to assess civil penalties according  
25 to the procedures set forth in Paragraph (g) of this Rule.

26 (2) If restoration of affected resources is not required, the Director shall issue a civil penalty assessment  
27 within 90 days from the date of the Notice of Violation. If restoration of affected resources is  
28 required, the Director may issue a civil penalty assessment within 60 days after the Division  
29 determines that restoration of the adversely impacted resources is complete or once the date  
30 restoration was required has passed without having been completed.

31 (f) Procedures for Determining the Amount of Civil Penalty Assessment.

32 (1) Pursuant to G.S. 113A-126(d)(1), penalties for major development violations, including violations  
33 of permit conditions, shall be assessed as follows:

34 (A) Major development that could have been permitted under the Commission's rules at the  
35 time the notice of violation is issued shall be assessed a penalty equal to two times the  
36 relevant CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus  
37 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. 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
<b>Estuarine Waters or Public Trust Areas (1)</b>	\$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
<b>Ocean Hazard System (3)(4)</b>	\$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 (1) Includes the Atlantic Ocean from the normal high water mark to three miles offshore.
- 2 (2) Wetlands that are jurisdictional by the Federal Clean Water Act.
- 3 (3) If the AEC physically overlaps another AEC, use the greater penalty schedule.
- 4 (4) Includes the Ocean Erodible, Inlet Hazard Area, and Unvegetated Beach Area.
- 5 (5) Includes Small Surface Water Supply, Watershed and Public Water Supply Well Fields.
- 6 (6) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique
- 7 Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal
- 8 Historical Architectural Resources.
- 9 (C) Assessments for violations by public agencies (i.e. towns, counties and state agencies) shall
- 10 be determined in accordance with Parts (1)(A) and (B) of this Paragraph.
- 11 (D) Willful and intentional violations. The penalty assessed in accordance with Parts (1)(A)
- 12 and (B) of this Paragraph. shall be doubled for willful and intentional violations except that
- 13 the doubled penalties assessed under this Subparagraph shall not exceed ten thousand
- 14 dollars (\$10,000) or be less than two thousand dollars (\$2,000) for each separate violation.
- 15 For the purposes of G.S. 113A-126(d)(2), the following actions shall be considered willful
- 16 and intentional:
- 17 (i) the person received written instructions from one of the Commission's delegates
- 18 that a permit would be required for the development and subsequently undertook
- 19 development without a permit;
- 20 (ii) the person received written instructions from one of the Commission's delegates
- 21 that the proposed development was not permissible under the Commission's rules,
- 22 or received denial of a permit application for the proposed activity, and
- 23 subsequently undertook the development without a permit;
- 24 (iii) the person committed previous violations of the Commission's rules; or
- 25 (iv) the person refused or failed to restore a damaged area as ordered by one of the
- 26 Commission's delegates.
- 27 (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a
- 28 contractor shall be subject to a notice of violation and assessment of a civil penalty in
- 29 accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that
- 30 assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of

1 this Subparagraph and the element of willfulness is present only on the part of the  
2 contractor, the landowner shall be assessed the standard penalty and the contractor shall be  
3 assessed the doubled penalty.

4 (F) Assessments for Continuing violations.

5 (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the  
6 date specified in the notice of violation for the unauthorized activity to cease or  
7 restoration to be completed shall be considered a separate violation and shall be  
8 assessed an additional penalty.

9 (ii) Refusal or failure to restore a damaged area as as directed in the restoration order  
10 shall be considered a continuing violation and shall be assessed an additional  
11 penalty. When resources continue to be affected by the violation, the amount of  
12 the penalty shall be determined according to Part (B) of this Subparagraph. The  
13 continuing penalty period shall be calculated from the date specified in the  
14 restoration order which accompanies the notice of violation for the unauthorized  
15 activity to cease or restoration to be completed and run until:

16 (I) the Division determines that the terms of the restoration order are  
17 satisfied;

18 (II) the respondent enters into negotiations with the Division; or

19 (III) the respondent contests the Division's order in a judicial proceeding.

20 The continuing penalty period shall resume if the respondent terminates negotiations  
21 without reaching an agreement with the Division, fails to comply with court ordered  
22 restoration, or fails to meet a deadline for restoration that was negotiated with the Division.

23 (2) Pursuant to G.S. 113A-126(d)(2), penalties for minor development violations, including violations  
24 of permit conditions, shall be assessed as follows:

25 (A) Minor development that could have been permitted under the Commission's rules at the  
26 time the notice of violation is issued shall be assessed a penalty equal to two times the  
27 relevant CAMA permit application fee, plus investigative costs.

28 (B) Minor development that could not have been permitted under the Commission's rules at  
29 the time the notice of violation is issued shall be assessed an amount equal to the relevant  
30 CAMA permit application fee as set forth in Rule .0204 of this Subchapter, plus a penalty  
31 pursuant to Schedule B of this Rule, plus investigative costs. If a violation affects more  
32 than one area of environmental concern (AEC) or coastal resource as listed within Schedule  
33 B of this Rule, the penalties for each affected AEC shall be combined. Any structure or  
34 part of a structure that is constructed in violation of existing Commission rules shall be  
35 removed or modified as necessary to bring the structure into compliance with the  
36 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
<b>Ocean Hazard System (1)(2)</b>	\$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
<b>Public Water Supplies (3)</b>	\$225	\$250	\$275	\$325	\$375	\$450	\$525	\$625	\$750	\$875	\$1,000
<b>Natural and Cultural Resource Areas (4)</b>	\$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, Watershed and Public Water Supply Well Fields.

(4) Includes Coastal Complex Natural Areas, Coastal Areas Sustaining Remnant Species, Unique Geological Formations, Significant Coastal Archaeological Resources, and Significant Coastal Historical Architectural Resources.

(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:

- 1 (i) the person received written instructions from the local permit officer or one of the  
2 Commission's delegates that a permit would be required for the development and  
3 subsequently undertook development without a permit;  
4 (ii) the person received written instructions from the local permit officer or one of the  
5 Commission's delegates that the proposed development was not permissible under  
6 the Commission's rules, or received denial of a permit application for the proposed  
7 activity, and subsequently undertook the development without a permit;  
8 (iii) the person committed previous violations of the Commission's rules; or  
9 (iv) the person refused or failed to restore a damaged area as ordered by the local  
10 permit officer or one of the Commission's delegates.

11 (E) Assessments against contractors. Any contractor, subcontractor, or person functioning as a  
12 contractor shall be subject to a notice of violation and assessment of a civil penalty in  
13 accordance with Paragraph (f) of this Rule. Such penalty shall be in addition to that  
14 assessed against the landowner. When a penalty is being doubled pursuant to Part (D) of  
15 this Subparagraph and the element of willfulness is present only on the part of the  
16 contractor, the landowner shall be assessed the standard penalty and the contractor shall be  
17 assessed the doubled penalty.

18 (F) Assessments of Continuing violations.

- 19 (i) Pursuant to G.S. 113A-126(d)(2), each day that the violation continues after the  
20 date specified in the notice of violation for the unauthorized activity to cease and  
21 restoration to be completed shall be considered a separate violation and shall be  
22 assessed an additional penalty.  
23 (ii) Refusal or failure to restore a damaged area as directed in the restoration order  
24 shall be considered a continuing violation and shall be assessed an additional  
25 penalty. The amount of the penalty shall be determined according to Part (B) of  
26 this Subparagraph. The continuing penalty period shall be calculated from the date  
27 specified in the restoration order which accompanies the notice of violation for  
28 the unauthorized activity to cease and restoration to be completed and run until:  
29 (I) the Division determines that the terms of the restoration order are  
30 satisfied;  
31 (II) the respondent enters into negotiations with the local permit officer or  
32 the Division; or  
33 (III) the respondent contests the local permit officer's or the Division's order  
34 in a judicial proceeding.

35 The continuing penalty period shall resume if the respondent terminates negotiations  
36 without reaching an agreement with the local permit officer or the Division, fails to comply

1 with court ordered restoration, or fails to meet a deadline for restoration that was negotiated  
2 with the local permit officer or the Division.

3 (g) Reports to the Commission. Action taken by the Director shall be reported to the Commission at the next regularly  
4 scheduled Commission meeting. Such reports shall include information on the following:

- 5 (1) respondent(s) against whom penalties have been assessed;
- 6 (2) respondent(s) who have paid a penalty, requested remission, or requested an administrative hearing;
- 7 (3) respondent(s) who have failed to pay; and
- 8 (4) cases referred to the Attorney General for collection.

9 (h) Settlements. The Commission hereby delegates to the Director the authority to enter into a settlement of an appeal  
10 of a civil penalty at any time prior to the issuance of a decision by the administrative law judge in a contested case  
11 under G.S. 150B-23, and shall not require the approval of the Commission. Any settlement agreement proposed  
12 subsequent to the issuance of a decision by the administrative law judge in a contested case under G.S. 150B-23 shall  
13 be submitted to the Commission for approval.

14  
15 *History Note: Authority G.S. 113A-124; 113A-126(d);*  
16 *Eff. January 24, 1980;*  
17 *ARRC Objection August 18, 1988;*  
18 *Amended Eff. January 1, 1989; November 1, 1986; November 1, 1984;*  
19 *ARRC Objection Lodged Eff. January 18, 1991;*  
20 *Amended Eff. September 1, 2019; February 1, 2008; July 1, 1991; June 1, 1991*  
21 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0410

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Does the Commission order restoration or does a court order restoration? See 113A-126(b). Where is the Commission's authority to order restoration?*

*At line 4, please change "which" to "that."*

*Line 4, do you mean "rules" instead of "guidelines?"*

*Lines 4-5, please remove the use of parentheses and "etc."*

*At line 5, please change "must" to "shall."*

*At line 7, change "will" to "shall."*

*At line 9, please refer to the rule by citation instead of saying "forgoing." For example, "...subject to the penalties in Rule .0409 of this Section."*

*Line 10, change "which" to "that."*

*At lines 10-11, what are "the goals of the Commission's mitigation policy?" What are you requiring here?*

*In your history note, please delete 113A-124(c)(5) because it has been repealed.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07J .0410 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0410 RESTORATION/MITIGATION**

4 Any violation involving development which is inconsistent with guidelines for development within AECs (i.e.,  
5 wetland fill, improper location of a structure, etc.) must be corrected by restoring the project site to  
6 pre-development conditions upon notice by the Commission or its delegate that restoration is necessary to  
7 recover lost resources, or to prevent further resource damage. Said notice will describe the extent of restoration  
8 necessary and a time for its completion. Failure to act to complete the required restoration may be determined  
9 to constitute a separate violation, according to G.S. 113-126(d)(2), subject to the foregoing penalties. Any  
10 resources which cannot be recovered by restoration of the affected site shall be replaced in compliance with the  
11 goals of the Commission's mitigation policy.

12  
13 *History Note: Authority G.S. 113A-126(d); 113A-124(c); 113A-124(c)(5);*  
14 *Eff. July 1, 1985;*  
15 *Readopted Eff. April 1, 2021.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0207

**DEADLINE FOR RECEIPT: March 12, 2021**

**PLEASE NOTE:** *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

*Throughout this Rule, please change "must" to "shall."*

*In (a), consider deleting "N.C." or spelling out "North Carolina."*

*In (a), please delete "hereby."*

*In (a)(2), who determines whether an alteration is "necessary" to construct the accessway? At line 10, who determines where this is "possible?" In other words, who has the final say here?*

*At line 12, delete or define "significantly."*

*In (a)(3), please capitalize "State" if you are only referring to North Carolina.*

*Please add an "and" after (b)(2).*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Ashley Snyder  
Commission Counsel  
Date submitted to agency: February 25, 2021

1 15A NCAC 07K .0207 is readopted as published in 34:09NCR 763 as follows:

2  
3 **15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED**

4 (a) The N.C. Coastal Resources Commission hereby exempts from the CAMA permit requirement all structural  
5 pedestrian accessways over frontal dunes which can be shown to meet the following criteria:

6 (1) The accessway must not exceed six feet in width and must be for private residential or for public  
7 access to an ocean beach. This exemption does not apply to accessways for commercial use or for  
8 motor-powered vehicular use.

9 (2) The accessway must be constructed so as to make no alterations to the frontal dunes that are not  
10 necessary to construct the accessway. This means that wherever possible the accessway must be  
11 constructed over the frontal dune without any alteration of the dunes. In no case shall the dune be  
12 altered so as to significantly diminish its capacity as a protective barrier against flooding and  
13 erosion. Driving of pilings into the dune shall not be considered alteration of a frontal dune for the  
14 purposes of this Rule.

15 (3) The accessway shall conform with any applicable local or state building code standards.

16 (b) Before beginning any work under this exemption the CAMA local permit officer or Department of Environment,  
17 Health, and Natural Resources representative must be notified of the proposed activity to allow on-site review of the  
18 proposed accessway. Notification can be by telephone, in person, or in writing and must include:

19 (1) name, address, and telephone number of landowner and location of work including county and  
20 nearest community;

21 (2) the dimensions of the proposed structural accessway.

22  
23 *History Note: Authority G.S. 113A-103(5) c;*  
24 *Eff. November 1, 1984;*  
25 *Amended Eff. December 1, 1991; May 1, 1990;*  
26 *Readopted Eff. April 1, 2021.*