

Burgos, Alexander N

Subject: FW: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Wednesday, December 17, 2025 4:45 PM
To: Zambon, Sarah <szambon@ncdoj.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

Thank you.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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From: Zambon, Sarah <szambon@ncdoj.gov>
Sent: Wednesday, December 17, 2025 3:11 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

CAUTION: External email. Do not click links or open attachments unless verified. Report suspicious emails with the Report Message button located on your Outlook menu bar on the Home tab.

Seth,

Please see attached with the change you suggested and thank you for the heads up on the Commissioner's potential question. I will see you tomorrow at the meeting.

Thanks,
Sarah

1 15A NCAC 07H .0508 is amended with changes as published in 39:19 NCR 1267-1268 and address RRC objection
2 as follows:

3
4 **15A NCAC 07H .0508 ~~USE STANDARDS~~ JOCKEY'S RIDGE AREA OF ENVIRONMENTAL**
5 **CONCERN**

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

- 8 (1) ~~The proposed design and location will cause no major or irreversible damage to the stated values of~~
9 ~~a particular resource. One or more of the following values must be considered depending upon the~~
10 ~~stated significance of the resource:~~
- 11 (a) ~~Development shall preserve the values of the individual resource as it functions as a critical~~
12 ~~component of a natural system.~~
- 13 (b) ~~Development shall not adversely affect the values of the resource as a unique scientific,~~
14 ~~associative, or educational resource.~~
- 15 (c) ~~Development shall be consistent with the aesthetic values of a resource as identified by the~~
16 ~~local government and citizenry.~~
- 17 (2) ~~No reasonable alternative sites are available outside the designated AEC.~~
- 18 (3) ~~Reasonable mitigation measures have been considered and incorporated into the project plan. These~~
19 ~~measures shall include consultation with recognized authorities and with the CRC.~~
- 20 (4) ~~The project will be of equal or greater public benefit than those benefits lost or damaged through~~
21 ~~development.~~
- 22 (5) ~~Use standards will not address farming and forestry activities that are exempted in the definition of~~
23 ~~development (G.S. 113A-103(5)a.4).~~

24 (a) [Description. Jockey's Ridge is the tallest active sand dune (medano) along the Atlantic Coast of the United States.
25 Located within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, Jockey's Ridge
26 represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into
27 Virginia.] Designation. Given the status of Jockey's Ridge as a State Park, State Nature Preserve, complex natural
28 area, and an area containing a unique geological formation as identified by the State Geologist, the [Cestal] Coastal
29 Resources Commission hereby designates Jockey's Ridge as an Area of Environmental Concern pursuant to G.S.
30 113A-113.

31 (b) The boundaries of the Jockey's Ridge AEC shall be as depicted on a map approved by the Coastal Resources
32 Commission on [adoption date] August 27, 2025, and can be found at the Division of Coastal Management, 400
33 Commerce Ave., Morehead City, NC [28557 or at the Division of Coastal Management's website at
34 https://www.deq.nc.gov/about/divisions/division-coastal-management.] 28557. The AEC is located within the Town
35 of Nags Head in Dare County, between US 158 and Roanoke Sound, and includes the entire rights of way of US 158
36 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound this area.

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

- (1) Development that requires the removal of greater than ten cubic yards of sand per year from the area within the AEC boundary shall require a Coastal Area Management Act minor or major permit from the Division of Coastal Management or designated local official;
- (2) All sand that is removed from the area within the AEC boundary in accordance with Subparagraph (1) of this Paragraph shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the NC Department of Natural and Cultural Resources Division of Parks and Recreation;
- (3) Development activities within Jockey's Ridge AEC shall not alter or retard the free movement of sand except when necessary for the purpose of maintaining or constructing a road, residential or commercial structure, accessway, lawn, garden, or parking area unless allowed by Jockey's Ridge State Park's Management Plan. Jockey's Ridge State Park's Management Plan can be found at the Division of Parks and Recreation's website at <https://www.neparks.gov>.] Plan including subsequent amendments and editions. Jockey's Ridge State Park's Management Plan is incorporated by reference, including subsequent amendments and editions. This document may be accessed for free at 300 W. Carolina Dr., Nags Head, NC 27959.

History Note: Authority G.S. 113A-107(a),(b); 113A-113(a); (b)(4a); (b)(4e); (b)(4g); 113A-124; Eff. September 9, 1977;
Amended Eff. February 1, 1982; June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;
Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;
Emergency Adoption Eff. January 3, 2024;
Emergency Rule Expired Eff. May 13, 2024;
Returned to Code pursuant to order of Wake County Superior Court, currently under appeal, Eff. March 3, 2025;
RRC objection October 30, 2025;
Amended Eff. January 1, 2026.

Burgos, Alexander N

Subject: FW: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, December 16, 2025 4:32 PM

To: Zambon, Sarah <szambon@ncdoj.gov>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

Sarah,

Two things came up regarding this rule:

1. Pursuant to G.S. 150B-21.6, the incorporation on p. 2 line 16 and 17 needs to indicate "the cost on the date the rule is adopted of a copy of the material". Assuming that it is free, that would be as simple as adding on line 17 "for free" between "accessed" and "at". Please update and send me a new version of the rule by 4 PM tomorrow. If that is not possible, my recommendation will likely be to approve the rule contingent on that technical change.
2. A commissioner potentially had a question about the changes you made removing the links from the rule. There is nothing that needs to be done at this stage, but I wanted to give you a heads up in case it came up on Thursday.

Happy to discuss further if there are any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>

Sent: Tuesday, November 25, 2025 4:49 PM

To: Zambon, Sarah <szambon@ncdoj.gov>

Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

Thank you Sarah.

I believe this resolves the Commission's objection and I anticipate recommending approval of the revised rule at the December 18th RRC meeting. I'll let you know if anything comes up before then.

Sincerely,

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

From: Zambon, Sarah <szambon@ncdoj.gov>
Sent: Tuesday, November 25, 2025 12:30 PM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyoun@ncdoj.gov>
Subject: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

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Good Afternoon Seth,

I am attaching rule 15A NCAC 07H .0508 that the Coastal Resources Commission approved at its meeting last Thursday in response to the RRC's objection. Please let me know if you need anything further from me prior to the December RRC meeting.

Thanks- Happy Thanksgiving!
Sarah

Burgos, Alexander N

Subject: FW: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>

Sent: Wednesday, November 26, 2025 4:14 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Zambon, Sarah <szambon@ncdoj.gov>

Cc: Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyoung@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Howell, Jonathan <jonathan.howell@deq.nc.gov>

Subject: RE: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

Thanks for letting us know, Seth!

See ya in December.

Happy Thanksgiving!

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)-707-8595

<https://www.deq.nc.gov/accessdeq/rules-regulations>

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Burgos, Alexander N

Subject: FW: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection
Attachments: 15A NCAC 07H .0508 _addressing RRC objection_25_Nov_2025.docx

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, November 25, 2025 4:49 PM
To: Zambon, Sarah <szambon@ncdoj.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

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Sincerely,

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

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To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>
Subject: [External] CRC Rule 15A NCAC 07H .0508 addressing the RRC November Objection

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Thanks- Happy Thanksgiving!
Sarah

1 15A NCAC 07H .0508 is amended with changes as published in 39:19 NCR 1267-1268 and address RRC objection
2 as follows:

3
4 **15A NCAC 07H .0508 ~~USE STANDARDS~~ JOCKEY'S RIDGE AREA OF ENVIRONMENTAL**
5 **CONCERN**

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

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9 ~~a particular resource. One or more of the following values must be considered depending upon the~~
10 ~~stated significance of the resource:~~
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12 ~~component of a natural system.~~
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14 ~~associative, or educational resource.~~
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16 ~~local government and citizenry.~~
- 17 (2) ~~No reasonable alternative sites are available outside the designated AEC.~~
- 18 (3) ~~Reasonable mitigation measures have been considered and incorporated into the project plan. These~~
19 ~~measures shall include consultation with recognized authorities and with the CRC.~~
- 20 (4) ~~The project will be of equal or greater public benefit than those benefits lost or damaged through~~
21 ~~development.~~
- 22 (5) ~~Use standards will not address farming and forestry activities that are exempted in the definition of~~
23 ~~development (G.S. 113A-103(5)a.4).~~

24 (a) [Description. Jockey's Ridge is the tallest active sand dune (medano) along the Atlantic Coast of the United States.
25 Located within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, Jockey's Ridge
26 represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into
27 Virginia.] Designation. Given the status of Jockey's Ridge as a State Park, State Nature Preserve, complex natural
28 area, and an area containing a unique geological formation as identified by the State Geologist, the [Costal] Coastal
29 Resources Commission hereby designates Jockey's Ridge as an Area of Environmental Concern pursuant to G.S.
30 113A-113.

31 (b) The boundaries of the Jockey's Ridge AEC shall be as depicted on a map approved by the Coastal Resources
32 Commission on [adoption date] August 27, 2025, and can be found at the Division of Coastal Management, 400
33 Commerce Ave., Morehead City, NC [28557 or at the Division of Coastal Management's website at
34 https://www.deq.nc.gov/about/divisions/division-coastal-management.] 28557. The AEC is located within the Town
35 of Nags Head in Dare County, between US 158 and Roanoke Sound, and includes the entire rights of way of US 158
36 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound this area.

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

3 (1) Development that requires the removal of greater than ten cubic yards of sand per year from the
4 area within the AEC boundary shall require a Coastal Area Management Act ~~minor or major~~
5 permit from the Division of Coastal Management or designated local official;

6 (2) All sand that is removed from the area within the AEC boundary in accordance with Subparagraph
7 (1) of this Paragraph shall be deposited at locations within the Jockey's Ridge State Park
8 designated by the Division of Coastal Management in consultation with the NC Department of
9 Natural and Cultural Resources Division of Parks and Recreation;

10 (3) Development activities within Jockey's Ridge AEC shall not alter or retard the free movement of
11 sand except when necessary for the purpose of maintaining or constructing a road, residential or
12 commercial structure, accessway, lawn, garden, or parking area unless allowed by Jockey's Ridge
13 State Park's Management [Plan. Jockey's Ridge State Park's Management Plan can be found at
14 the Division of Parks and Recreation's website at <https://www.neparks.gov>.] Plan including
15 subsequent amendments and editions. Jockey's Ridge State Park's Management Plan is
16 incorporated by reference, including subsequent amendments and editions. This document may be
17 accessed at 300 W. Carolina Dr., Nags Head, NC 27959.

18
19 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(a); (b)(4a); (b)(4e); (b)(4g); 113A-124;*
20 *Eff. September 9, 1977;*
21 *Amended Eff. February 1, 1982; June 1, 1979;*
22 *RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;*
23 *Codifier determined that agency's findings of need did not meet criteria for emergency rule on*
24 *December 20, 2023;*
25 *Emergency Adoption Eff. January 3, 2024;*
26 *Emergency Rule Expired Eff. May 13, 2024;*
27 *Returned to Code pursuant to order of Wake County Superior Court, currently under appeal, Eff.*
28 *March 3, 2025;*
29 *RRC objection October 30, 2025;*
30 *Amended Eff. January 1, 2026.*

Burgos, Alexander N

From: Ascher, Seth M
Sent: Thursday, October 30, 2025 2:48 PM
To: Zambon, Sarah
Cc: Young, Elizabeth S; Everett, Jennifer; Burgos, Alexander N
Subject: 15A NCAC 07H .0508 Objection Letter
Attachments: CRC Objection Letter.docx

Sarah,

Attached is a letter memorializing the action taken by the RRC at today's meeting. Let me know if you have any questions.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

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Burgos, Alexander N

Subject: FW: [External] CRC Rule .0209 for October RRC
Attachments: 15A NCAC 07H .0209 for Code with technical changes.docx

From: Zambon, Sarah <szambon@ncdoj.gov>
Sent: Thursday, October 23, 2025 10:21 AM
To: Ascher, Seth M <seth.ascher@oah.nc.gov>
Cc: Willis, Angela <angela.willis@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>
Subject: [External] CRC Rule .0209 for October RRC

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Good morning Seth,

Thank you for your suggested changes; we very much appreciate your input and willingness to work with us. Attached is an updated rule based on your suggestions with a few minor tweaks.

Please note that the changes made to this rule do not constitute a waiver of the CRC's position in the litigation between the CRC and RRC, COA25-747 and 23CV031553-910. The CRC maintains that the legislature has required the CRC to implement policy statements in rule pursuant to G.S. 113A-107 and G.S. 113A-113. As described in further detail in the CRC's written filings in the Wake County Superior Court, the CRC's implementation of policy statements in rule may be done in accordance with all relevant provisions of the APA.

Please let us know if you need anything else from us or have any further comments/questions about .0209.

Thanks,

Sarah Zambon

1 15A NCAC 07H .0209 is amended with changes as published in 39:24 NCR 1609-1614 as follows:

2
3 **15A NCAC 07H .0209 COASTAL SHORELINES**

4 (a) Description. The Coastal Shorelines category includes the estuarine shorelines and public trust shorelines.
5 shorelines Area of Environmental Concern (AEC).

- 6 (1) Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water
7 level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish
8 waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources
9 Commission and the Department of Environmental Quality [described in Rule .0206(a) of this
10 Section, 15A NCAC 03Q .0202 for a distance of 75 feet landward. For those estuarine shorelines
11 immediately contiguous to waters classified as Outstanding Resource Waters (ORW) by the
12 Environmental Management Commission (EMC), the estuarine shoreline AEC shall extend to 575
13 feet landward from the normal high water level or normal water level, unless the Coastal Resources
14 Commission establishes the boundary at a greater or lesser extent following required public
15 hearing(s) within the affected county or counties.
- 16 (2) Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust
17 areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between
18 coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet
19 landward of the normal high water level or normal water level.

20 (b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is
21 subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands
22 contained within them serve as barriers against flood damage and control erosion between the estuary and the
23 uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean
24 system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are
25 among the most productive natural environments of North Carolina and they support the functions of and habitat for
26 many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality
27 and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains,
28 bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife. When
29 the Commission or the Department evaluate a project in the Coastal Shoreline AECs, such as permitting, variance
30 requests, or federal consistency reviews, they shall consider efforts to avoid and minimize the impacts to the
31 following:

- 32 (1) The quality of estuarine and ocean life,
33 (2) Shore front erosion and flooding,
34 (3) The productivity of the natural environments, such as those which support commercial and sport
35 fisheries, and
36 (4) Features that provide important habitat areas for fish and wildlife, such as wetlands, flood plains,
37 bluff shorelines, mud and sand flats, and forested shorelines.

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

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

- (1) All development projects, proposals, and designs shall preserve natural barriers to erosion, including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to service the primary purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of ~~1973;~~ **1973 pursuant to G.S. 113A-50 through 113A-67:**
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water that is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall propose an angle for graded slopes or fill that is greater than an angle that can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs that involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; unless the project involves clearing land for the purpose of forming a reservoir later to be inundated.

- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.
- (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters or public resources.
- (6) No public facility shall be permitted if such a facility is likely to require public expenditures for maintenance and continued use, unless it can be shown that the public purpose served by the facility outweighs the required public expenditures for construction, maintenance, and continued use.
- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as ORW by the EMC, no CAMA permit shall be approved for any project that would be inconsistent with rules adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
- (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
 - (B) Pile-supported signs (in accordance with local regulations);
 - (C) Post- or pile-supported fences;
 - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
 - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
 - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
 - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;

- (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased;
- (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development shall be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:
- (i) Development shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities, such as water and sewer; and
 - (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0201 07J .0210 and .0211; and
- (J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development shall be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
 - (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
 - (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
 - (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
 - (iii) Placement of the residential structure and pervious decking shall be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
 - (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design

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

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

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

(f) Specific Use Standards for ORW Coastal Shorelines.

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

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

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

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

(g) Urban Waterfronts.

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

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

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

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

Department evaluate a project in Urban Waterfronts, such as permitting, variance requests, or federal consistency reviews, they shall consider efforts to avoid and minimize the impacts to the following:

(A) The cultural, historical, and economic significance of the area.

(B) Maritime traditions and longstanding development patterns.

(C) Planning and stormwater management, and

(D) The local aesthetics.

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

- (4) Use Standards:

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

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

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

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

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

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

- (ii) For the purposes of this Rule, existing enclosed structures may be replaced or expanded vertically provided that vertical expansion does not exceed the original footprint of the structure, is limited to one additional story over the life of the structure, and is consistent with local requirements or limitations.
- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
- (I) shall provide for enhanced public access to the shoreline;
 - (II) may be roofed, ~~but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;~~ but solid walls and permanent windows are prohibited. Non-permanent enclosures shall be limited to materials that are consistent with this Rule and shall be non-permanent and attached to the structure in a manner that allows removal;
 - (III) the decks and boardwalks shall not have permanent or attached heating or air conditioning;
 - ~~(III)~~(IV) shall require no filling of coastal wetlands, estuarine waters or public trust areas;
 - ~~(IV)~~(V) shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - ~~(V)~~(VI) shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - ~~(VI)~~(VII) shall have no more than six feet of any dimension extending over coastal wetlands;
 - ~~(VII)~~(VIII) shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;

1 ~~(VIII)~~(IX) shall be consistent with the US Army Corps of Engineers setbacks
2 along federally authorized waterways;
3 ~~(IX)~~(X) shall have no significant adverse impacts [impacts, as defined in 15A
4 NCAC 07H .0208(a)(7) and (a)(8),] on fishery resources, water quality
5 or adjacent wetlands and there shall be no alternative that would avoid
6 wetlands. Significant adverse impacts include the development that
7 would impair water quality standards, increase shoreline erosion, alter
8 coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit
9 spoils waterward of normal water level or normal high water level, or
10 cause degradation of shellfish beds;
11 ~~(X)~~(XI) shall not degrade waters classified as SA or High Quality Waters or
12 ORW as defined by the EMC;
13 ~~(XI)~~(XII) shall not degrade Critical Habitat Areas or Primary Nursery Areas as
14 defined by the NC Marine Fisheries Commission; and
15 ~~(XII)~~(XIII) shall not pose a threat to navigation.
16

17 *History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*
18 *Eff. September 1, 1977;*
19 *Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990;*
20 *October 1, 1989;*
21 *Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142);*
22 *Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494);*
23 *Amended Eff. April 1, 2019; March 1, 2010; April 1, 2008; August 1, 2002;*
24 *Readopted Eff. July 1, 2020;*
25 *Amended Eff. November 1, 2025.*

Burgos, Alexander N

Subject: FW: RFC for October 2025 CRC Rules

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>

Sent: Tuesday, October 21, 2025 4:08 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Miller, Tancred <tancred.miller@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Richardson, Ken <ken.richardson@deq.nc.gov>; Zambon, Sarah <szambon@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Howell, Jonathan <jonathan.howell@deq.nc.gov>

Subject: RE: RFC for October 2025 CRC Rules

Thanks Seth received, will be in touch asap!

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
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Burgos, Alexander N

Subject: FW: RFC for October 2025 CRC Rules
Attachments: CRC idea.docx

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Tuesday, October 21, 2025 3:31 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Miller, Tancred <tancred.miller@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Richardson, Ken <ken.richardson@deq.nc.gov>; Zambon, Sarah <szambon@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Howell, Jonathan <jonathan.howell@deq.nc.gov>
Subject: Re: RFC for October 2025 CRC Rules

Good afternoon,

I have reviewed the CRC's updated submissions. Thank you for your work on these, I believe we are close.

For 15A NCAC 07H .0309 and 15A NCAC 07H .0508 I anticipate recommending approval as rewritten.

For 15A NCAC 07H .0209, it is my opinion that the rewritten significance sections ((b) and (g)(2)) are still objectionable on clarity and necessity grounds. However, I believe I understand what you are trying to do and see a possible fix, which I have roughly written out in the attached document. It is my opinion that the remaining issues raised in my RFC for .0209 have been resolved by your updates.

To be clear, I am not saying that this is the only way forward or that I have correctly captured your substantive intent. But I find it is often helpful to make this kind of suggestion to move the conversation forward. I also cannot speak for the Commission as to what they would approve, but I think this will give you a sense of something I could recommend approval of.

I'm happy to discuss this further with you if that would be helpful.

Seth Ascher

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984) 236-1934

15A NCAC 07H .0209

(b) When Commission and the Department evaluate a project in the Coastal Shoreline AEC, such as permitting, variance requests, or federal consistency review, they shall consider the impact to the following:

- The quality of estuarine and ocean life

- Shore front erosion and flooding

- Barriers against flood damage and erosion upland.

- Productivity of the natural environments, such as for commercial and sport fisheries

- Features that provide important habitat areas for fish and wildlife, such as wetlands, flood plains, bluff shorelines, mud and sand flats, and forested shorelines.

(g)(2) When Commission and the Department evaluate a project in Urban Waterfronts, such as permitting, variance requests, or federal consistency review, they shall consider the impact to the following:

- The cultural, historical, and economic significance of the area

- Maritime traditions and longstanding development patterns

- Stormwater management

- Local aesthetics

Burgos, Alexander N

Subject: FW: RFC for October 2025 CRC Rules
Attachments: 15A NCAC 07H .0209 for Code with technical changes.docx; 15A NCAC 07H .0309 for Code with technical changes.docx; 15A NCAC 07H .0508 for Code with technical changes.docx; AEC_Jockeys_Ridge_202510 MAP.pdf; CRC RFC October 2025 15A NCAC 07H .0209 Responses.docx; CRC RFC October 2025 15A NCAC 07H .0309 Responses.docx; CRC RFC October 2025 15A NCAC 07H .0508 Responses.docx

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>

Sent: Thursday, October 16, 2025 1:32 PM

To: Ascher, Seth M <seth.ascher@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>; Miller, Tancred <tancred.miller@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Richardson, Ken <ken.richardson@deq.nc.gov>; Zambon, Sarah <szambon@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Govoni, Daniel <daniel.govoni@deq.nc.gov>; Howell, Jonathan <jonathan.howell@deq.nc.gov>

Subject: RE: RFC for October 2025 CRC Rules

Hi Seth –

Attached are agency responses and rewritten rules for your review regarding CRC tech requests. Oh!, and a map! Let us know if you need anything further.

Thanks.



Jennifer Everett
DEQ Rulemaking Coordinator
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NC CGIA, Maxar, Microsoft

Legend

-  Jockey's Ridge Park Boundary
-  Jockey's Ridge AEC

On December 4, 1987, The Coastal Resources Commission designated Jockey's Ridge as a unique coastal geologic formation Area of Environmental Concern (AEC). This area includes Jockey's Ridge State Park boundaries and the entire rights of way of US 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound this area.

NC Division of Coastal Management



1 15A NCAC 07H .0209 is amended with changes as published in 39:24 NCR 1609-1614 as follows:

2
3 **15A NCAC 07H .0209 COASTAL SHORELINES**

4 (a) Description. The Coastal Shorelines category includes the estuarine shorelines and public trust shorelines.
5 shorelines Area of Environmental Concern (AEC).

- 6 (1) Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water
7 level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish
8 waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources
9 Commission and the Department of Environmental Quality [described in Rule .0206(a) of this
10 Section 15A NCAC 03Q .0202 for a distance of 75 feet landward. For those estuarine shorelines
11 immediately contiguous to waters classified as Outstanding Resource Waters (ORW) by the
12 Environmental Management Commission (EMC), the estuarine shoreline AEC shall extend to 575
13 feet landward from the normal high water level or normal water level, unless the Coastal Resources
14 Commission establishes the boundary at a greater or lesser extent following required public
15 hearing(s) within the affected county or counties.
- 16 (2) Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust
17 areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between
18 coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet
19 landward of the normal high water level or normal water level.

20 (b) Significance. Due to the significance of the Coastal Shoreline AEC, the Commission and the Department shall
21 evaluate a project's impact in accordance with the following principles to ensure development within Coastal
22 Shoreline AECs avoids and minimize impacts to these coastal resources. Projects to be evaluated in accordance with
23 the following principles for Coastal Shoreline AECs include, but are not limited to , permitting, variance requests, and
24 federal consistency reviews. In order to avoid and minimize impacts, it is essential to consider that development
25 Development-within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging
26 processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as
27 barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the
28 intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from
29 both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments
30 of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of
31 the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important
32 features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines
33 and other important habitat areas for fish and wildlife.

34 (c) Management Objective. Objectives. All shoreline development shall be compatible with the dynamic nature of
35 coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other
36 objectives Included in management objectives are the necessity to conserve and manage the important natural features
37 of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic

values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

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

development ~~Development~~ shall comply with the following standards:

- (1) All development projects, proposals, and designs shall preserve natural barriers to erosion, including peat marshland, resistant clay shorelines, and cypress-gum protective fringe areas adjacent to vulnerable shorelines.
- (2) All development projects, proposals, and designs shall limit the construction of impervious surfaces and areas not allowing natural drainage to only so much as is necessary to service the primary purpose or use for which the lot is to be developed. Impervious surfaces shall not exceed 30 percent of the AEC area of the lot, unless the applicant can demonstrate, through innovative design, that the protection provided by the design would be equal to or exceed the protection by the 30 percent limitation. Redevelopment of areas exceeding the 30 percent impervious surface limitation shall be permitted if impervious areas are not increased and the applicant designs the project to comply with the rule to the maximum extent feasible.
- (3) All development projects, proposals, and designs shall comply with the following mandatory standards of the North Carolina Sedimentation Pollution Control Act of ~~1973~~: 1973 pursuant to G.S. 113A-50 through 113A-67:
 - (A) All development projects, proposals, and designs shall provide for a buffer zone along the margin of the estuarine water that is sufficient to confine visible siltation within 25 percent of the buffer zone nearest the land disturbing development.
 - (B) No development project proposal or design shall propose an angle for graded slopes or fill that is greater than an angle that can be retained by vegetative cover or other erosion-control devices or structures.
 - (C) All development projects, proposals, and designs that involve uncovering more than one acre of land shall plant a ground cover sufficient to restrain erosion within 30 working days of completion of the grading; unless the project involves clearing land for the purpose of forming a reservoir later to be inundated.
- (4) Development shall not have a significant adverse impact on estuarine and ocean resources. Significant adverse impacts include development that would directly or indirectly impair water quality increase shoreline erosion, alter coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit spoils waterward of normal water level or normal high water, or cause degradation of shellfish beds.

- 1 (5) Development shall not interfere with existing public rights of access to, or use of, navigable waters
2 or public resources.
- 3 (6) No public facility shall be permitted if such a facility is likely to require public expenditures for
4 maintenance and continued use, unless it can be shown that the public purpose served by the facility
5 outweighs the required public expenditures for construction, maintenance, and continued use.
- 6 (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological
7 resources as documented by the local historic commission or the North Carolina Department of
8 Natural and Cultural Resources.
- 9 (8) Established common-law and statutory public rights of access to the public trust lands and waters
10 in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public
11 accessways nor shall it limit the use of the accessways.
- 12 (9) Within the AECs for shorelines contiguous to waters classified as ORW by the EMC, no CAMA
13 permit shall be approved for any project that would be inconsistent with rules adopted by the CRC,
14 EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities
15 not covered by specific use standards, no permit shall be issued if the activity would, based on site-
16 specific information, degrade the water quality or outstanding resource values.
- 17 (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new
18 development shall be located a distance of 30 feet landward of the normal water level or normal
19 high water level, with the exception of the following:
- 20 (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
- 21 (B) Pile-supported signs (in accordance with local regulations);
- 22 (C) Post- or pile-supported fences;
- 23 (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width
24 or less. The boardwalk may be greater than six feet in width if it is to serve a public use or
25 need;
- 26 (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces
27 except those necessary to protect the pump;
- 28 (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that
29 shall not singularly or collectively exceed 200 square feet;
- 30 (G) Grading, excavation and landscaping with no wetland fill except when required by a
31 permitted shoreline stabilization project. Projects shall not increase stormwater runoff to
32 adjacent estuarine and public trust waters;
- 33 (H) Development over existing impervious surfaces, provided that the existing impervious
34 surface is not increased;
- 35 (I) Where application of the buffer requirement would preclude placement of a residential
36 structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior

1 to June 1, 1999, development shall be permitted within the buffer as required in
2 Subparagraph (d)(10) of this Rule, providing the following criteria are met:

- 3 (i) Development shall minimize the impacts to the buffer and reduce runoff by
4 limiting land disturbance to only so much as is necessary to construct and provide
5 access to the residence and to allow installation or connection of utilities, such as
6 water and sewer; and
- 7 (ii) The residential structure development shall be located a distance landward of the
8 normal high water or normal water level equal to 20 percent of the greatest depth
9 of the lot. Existing structures that encroach into the applicable buffer area may be
10 replaced or repaired consistent with the criteria set out in 15A NCAC ~~07J .0201~~
11 ~~07J .0210~~ and .0211; and

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

- 18 (i) The lot on which the proposed residential structure is to be located, is located
19 between:
 - 20 (I) Two existing waterfront residential structures, both of which are within
21 100 feet of the center of the lot and at least one of which encroaches into
22 the buffer; or
 - 23 (II) An existing waterfront residential structure that encroaches into the
24 buffer and a road, canal, or other open body of water, both of which are
25 within 100 feet of the center of the lot;
- 26 (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff
27 by limiting land disturbance to only so much as is necessary to construct and
28 provide access to the residence and to allow installation or connection of utilities;
- 29 (iii) Placement of the residential structure and pervious decking shall be aligned no
30 further into the buffer than the existing residential structures and existing pervious
31 decking on adjoining lots;
- 32 (iv) The first one and one-half inches of rainfall from all impervious surfaces on the
33 lot shall be collected and contained on-site in accordance with the design
34 standards for stormwater management for coastal counties as specified in 15A
35 NCAC 02H .1005. The stormwater management system shall be designed by an
36 individual who meets applicable State occupational licensing requirements for the
37 type of system proposed and approved during the permit application process. If

the residential structure encroaches into the buffer, then no other impervious surfaces shall be allowed within the buffer; and

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

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

(f) Specific Use Standards for ORW Coastal Shorelines.

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

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

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

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

(g) Urban Waterfronts.

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

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

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

- (2) Significance. Due to the significance of urban waterfronts, the Commission and the Department shall evaluate a project's impacts in accordance with the following principles to ensure development within urban waterfronts avoids and minimizes impacts to the cultural, historical, and economic integrity of these areas. Projects to be evaluated in accordance with the following principles include, but are not limited to, permitting, variance requests, and federal consistency reviews. In order to avoid and minimize impacts, it is essential to consider that urban Urban waterfronts are recognized as having cultural, historical and economic significance for many coastal municipalities. Maritime traditions and longstanding development patterns make these areas suitable for maintaining or promoting dense development along the shore. With proper planning and stormwater management,

1 these areas may continue to preserve local historical and aesthetic values while enhancing the
2 economy.

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

9 (4) Use Standards:

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

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

13 (ii) Impervious surfaces shall not exceed 30 percent of the AEC area of the lot.
14 Impervious surfaces may exceed 30 percent if the applicant can demonstrate,
15 through a stormwater management system design, that the protection provided by
16 the design would be equal to or exceed the protection by the 30 percent limitation.
17 The stormwater management system shall be designed by an individual who
18 meets any North Carolina occupational licensing requirements for the type of
19 system proposed and approved during the permit application process.
20 Redevelopment of areas exceeding the 30 percent impervious surface limitation
21 shall be permitted if impervious areas are not increased and the applicant designs
22 the project to comply with the intent of the rule to the maximum extent feasible;
23 and

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

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

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

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

- (iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:
- (I) shall provide for enhanced public access to the shoreline;
 - (II) may be roofed, ~~but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;~~ but solid walls and permanent windows are prohibited. Non-permanent enclosures shall be limited to materials that are consistent with this rule and shall be non-permanent and attached to the structure in a manner that allows removal;
 - (III) the decks and boardwalks shall not have permanent or attached heating or air conditioning;
 - ~~(III)(IV)~~ shall require no filling of coastal wetlands, estuarine waters or public trust areas;
 - ~~(IV)(V)~~ shall not extend more than 20 feet waterward of the normal high water level or normal water level;
 - ~~(V)(VI)~~ shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;
 - ~~(VI)(VII)~~ shall have no more than six feet of any dimension extending over coastal wetlands;
 - ~~(VII)(VIII)~~ shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
 - ~~(VIII)(IX)~~ shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
 - ~~(IX)(X)~~ shall have no significant adverse impacts [impacts, as defined in 15A NCAC 07H .0208(a)(7) and (a)(8),] on fishery resources, water quality

1 or adjacent wetlands and there shall be no alternative that would avoid
2 wetlands. Significant adverse impacts include the development that
3 would impair water quality standards, increase shoreline erosion, alter
4 coastal wetlands or Submerged Aquatic Vegetation (SAV), deposit
5 spoils waterward of normal water level or normal high water level, or
6 cause degradation of shellfish beds;

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

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

11 ~~(XII)~~(XIII) shall not pose a threat to navigation.
12

13 *History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*

14 *Eff. September 1, 1977;*

15 *Amended Eff. April 1, 2001; August 1, 2000; August 3, 1992; December 1, 1991; May 1, 1990;*
16 *October 1, 1989;*

17 *Temporary Amendment Eff. October 15, 2001 (exempt from 270 day requirement-S.L. 2000-142);*

18 *Temporary Amendment Eff. February 15, 2002 (exempt from 270 day requirement-S.L. 2001-494);*

19 *Amended Eff. April 1, 2019; March 1, 2010; April 1, 2008; August 1, 2002;*

20 *Readopted Eff. July 1, 2020;*

21 *Amended Eff. November 1, 2025.*

1 15A NCAC 07H .0309 is amended **with changes** as published in 39:24 NCR 1614-1616 as follows:

2
3 **15A NCAC 07H .0309 USE STANDARDS FOR OCEAN HAZARD AREAS: EXCEPTIONS**

4 (a) The following types of development shall be permitted seaward of the oceanfront setback requirements of Rule
5 .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:

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

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

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

- 28 (1) The development is set back from the ocean the maximum feasible distance ~~possible~~ on the existing
29 lot and the development is designed to minimize encroachment into the setback area;
- 30 (2) The development is at least 60 feet landward of the vegetation line, measurement line, or pre-project
31 vegetation line, whichever is applicable;
- 32 (3) The development is not located on or oceanward of a frontal dune, but is entirely behind the
33 landward toe of the frontal ~~dune;~~ dune; dune at the lowermost point along the profile of the dune's slope;
- 34 (4) The development incorporates each of the following design standards, which are in addition to those
35 required by Rule .0308(d) of this Section;
 - 36 (A) All pilings shall have a tip penetration that extends to at least four feet below mean sea
37 level;

- 1 (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor
2 area of the structure shall be no more than ~~2,000~~ 2,500 square feet. For the purpose of this
3 Section, roof-covered decks and porches that are structurally attached shall be included in
4 the calculation of footprint;
- 5 (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in
6 those cases where the development does not abut the ocean and is located landward of a
7 paved public street or highway currently in use. In those cases, other material may be used;
8 and
- 9 (D) No portion of a building's total floor area, including elevated portions that are cantilevered,
10 knee braced, or otherwise extended beyond the support of pilings or footings, may extend
11 oceanward of the total floor area of the landward-most habitable building or structure. The
12 alignment shall be measured from the most oceanward point of the adjacent building or
13 structure's roof line, including roofed decks. An "adjacent" property is one that shares a
14 boundary line with the site of the proposed development. When no adjacent building or
15 structure exists, or the geometry or orientation of a lot or shoreline precludes the placement
16 of a building in line with the landward most adjacent structure of similar use, an average
17 line of construction shall be determined by the Director of the Division of Coastal
18 Management based on an approximation of the average seaward-most positions of the
19 rooflines of adjacent structures along the same shoreline, extending 500 feet in either
20 direction. If no structures exist within this distance, the proposed structure shall meet the
21 applicable setback from the Vegetation Line but shall not be held to the landward-most
22 adjacent structure or an average line of structures. The ocean hazard setback shall extend
23 landward of the vegetation line, static vegetation line or measurement line, whichever is
24 applicable, a distance no less than 60 feet.
- 25 (5) All other provisions of this Subchapter and other state and local regulations are met. If the
26 development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such
27 a system shall be submitted as part of the CAMA permit application.
- 28 (c) The following types of water dependent development shall be permitted seaward of the oceanfront setback
29 requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local
30 regulations are met:
- 31 (1) piers providing public access; and
32 (2) maintenance and replacement of existing state-owned bridges, and causeways and accessways to
33 such bridges.
- 34 (d) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the
35 following conditions is met:
- 36 (1) The ocean pier provides public access for fishing and other recreational purposes whether on a
37 commercial, public, or nonprofit basis;

- (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
- (3) The pier house shall be limited to a maximum of two stories;
- (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
- (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
- (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
- (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.

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

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

- (1) The transmission lines are buried under the ocean beach, nearshore area, and primary and frontal dunes, all as defined in Rule .0305 of this Section, in such a manner so as to ensure that the placement of the transmission lines involves no alteration or removal of the primary or frontal dunes; and
- (2) The design and placement of the transmission lines shall be performed in a manner so as not to endanger the public or the public's use of the beach.

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

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a; 113A-113(b)(6)b; 113A-113(b)(6)d; 113A-124;
Eff. February 2, 1981;*

1 *Amended Eff. April 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to S.L.*
2 *2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993; January*
3 *1, 1991; April 1, 1987;*
4 *Readopted Eff. December 1, 2020;*
5 *Amended Eff. November 1, 2025; August 1, 2022.*

1 15A NCAC 07H .0508 is amended **with changes** as published in 39:19 NCR 1267-1268 as follows:

2
3 **15A NCAC 07H .0508 ~~USE—STANDARDS~~ JOCKEY’S RIDGE AREA OF ENVIRONMENTAL**
4 **CONCERN**

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

- 7 (1) ~~—The proposed design and location will cause no major or irreversible damage to the stated values of~~
8 ~~a particular resource. One or more of the following values must be considered depending upon the~~
9 ~~stated significance of the resource:~~
- 10 (a) ~~—Development shall preserve the values of the individual resource as it functions as a critical~~
11 ~~component of a natural system.~~
- 12 (b) ~~—Development shall not adversely affect the values of the resource as a unique scientific,~~
13 ~~associative, or educational resource.~~
- 14 (c) ~~—Development shall be consistent with the aesthetic values of a resource as identified by the~~
15 ~~local government and citizenry.~~
- 16 (2) ~~—No reasonable alternative sites are available outside the designated AEC.~~
- 17 (3) ~~—Reasonable mitigation measures have been considered and incorporated into the project plan. These~~
18 ~~measures shall include consultation with recognized authorities and with the CRC.~~
- 19 (4) ~~—The project will be of equal or greater public benefit than those benefits lost or damaged through~~
20 ~~development.~~
- 21 (5) ~~—Use standards will not address farming and forestry activities that are exempted in the definition of~~
22 ~~development (G.S. 113A-103(5)a.4).~~

23 (a) Description. Jockey’s Ridge is the tallest active sand dune (medano) along the Atlantic Coast of the United States.
24 Located within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, Jockey’s Ridge
25 represents the southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia.
26 Given the status of Jockey’s Ridge as a State Park, State Nature Preserve, complex natural area, and an area containing
27 a unique geological formation as identified by the State Geologist, the Coastal Resources Commission hereby
28 designates Jockey’s Ridge as an Area of Environmental Concern pursuant to G.S. 113A-113.

29 (b) The boundaries of the Jockey’s Ridge AEC shall be as depicted on a map approved by the Coastal Resources
30 Commission on **[adoption date] August 27, 2025,** and can be found at the Division of Coastal Management, 400
31 Commerce Ave., Morehead City, NC [**28557 or at the Division of Coastal Management’s website at**
32 **<https://www.deq.nc.gov/about/divisions/division-coastal-management>**] **28557.** The AEC includes the entire rights of
33 way of US 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads bound
34 this area.

35 (c) Use Standards. Development within the Jockey’s Ridge AEC shall be consistent with the following use
36 standards:

- (1) Development that requires the removal of greater than ten cubic yards of sand per year from the area within the AEC boundary shall require a Coastal Area Management Act minor or major permit from the Division of Coastal Management or designated local official;
- (2) All sand that is removed from the area within the AEC boundary in accordance with Subparagraph (1) of this Paragraph shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the NC Department of Natural and Cultural Resources Division of Parks and Recreation;
- (3) Development activities within Jockey's Ridge AEC shall not alter or retard the free movement of sand except when necessary for the purpose of maintaining or constructing a road, residential or commercial structure, accessway, lawn, garden, or parking area unless allowed by Jockey's Ridge State Park's Management Plan. Jockey's Ridge State Park's Management Plan can be found at the Division of Parks and Recreation's website at <https://www.neparks.gov>.] Plan including subsequent amendments and editions. Jockey's Ridge State Park's Management Plan is incorporated by reference, including subsequent amendments and editions. This document may be accessed at 300 W. Carolisa Dr., Nags Head, NC 27959.

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

Amended Eff. February 1, 1982; June 1, 1979;

RRC objection September 17, 2022 and rule returned to agency on October 5, 2023;

Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023;

Emergency Adoption Eff. January 3, 2024;

Emergency Rule Expired Eff. May 13, 2024;

Returned to Code pursuant to order of Wake County Superior Court, currently under appeal, Eff. March 3, 2025;

Amended Eff. November 1, 2025.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0209

DEADLINE FOR RECEIPT: **October 17, 2025**

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Where is the acronym AEC defined? It is throughout these rules, but first appears on line 5.

Agency Response: The acronym AEC has been spelled out (Area of Environmental Concern) where it is first referenced in Rule 07H .0209 on line 4.

On lines 8 and 9, could the reference to .0206(a) be simplified by pointing directly to 15A NCAC 3Q .0202?

Agency Response: Yes. Citation language has been updated to point directly to 15A NCAC 03Q .0202.

On its face, paragraph (b), lines 19-27, appears to be a “nonbinding interpretative statement” under G.S. 150B-2(8a)c, rather than a rule “implementing or interpreting” another law or describing “the procedure or practice requirements of an agency” under G.S. 150B-2(8a). How does paragraph (b) meet the definition of a rule?

Agency Response: The Coastal Area Management Act (CAMA) requires the CRC to adopt state guidelines consisting of “statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area.” N.C. Gen. Stat. § 113A-107(a), (b). Paragraph (b) of Rule 07H .0209 is consistent with CAMA’s directive to the CRC to adopt guidelines, including statements of objectives, policies, and standards, for Areas of Environmental Concern, specifically here, Coastal Shorelines. See N.C. Gen. Stat. § 113A-113(a) (requiring the CRC to designate AECs in rule). These guidelines and standards are binding on the Commission and DCM when considering, among other items, permitting development in Coastal Shoreline AECs and reviewing requests for variances in Coastal Shoreline AECs. The CRC has added language to Paragraph (b) to clarify the binding nature of Paragraph (b).

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2025

On line 29, what are the “management objectives”? Are they different from the “other objectives” later in paragraph (c)?

Agency Response: No. The objectives (management or otherwise) are intended to be the same. The rule has been revised to clarify that there are not differing objectives.

On p. 2, line 1, how are the efforts “to avoid or minimize adverse impact” different from the specific standards that are laid out in the remainder of paragraph (d)

Agency Response: The standards set out in the Subparagraphs of Paragraph (d) are designed to ensure a project avoids and minimizes adverse impacts to Coastal Shoreline AECs. However, that list is not exhaustive, and there may be other measures a development could take to ensure that the project has a minimum impact. Language has been added to Paragraph (d) to clarify that the Subparagraphs must be complied with at a minimum to avoid adverse impacts, but the Subparagraphs are not intended to limit avoidance measures to those set out in Paragraph (d).

On p 2., line 15, what is the “North Carolina Sedimentation Pollution Control Act of 1973”? Is there a code citation for this law somewhere?

Agency Response: The code citation N.C. Gen. Stat. § 113A-50 through 113A-67” has been added in line.

On its face, item (g)(2), p. 5 lines 24-28, appears to be a “nonbinding interpretative statement” under G.S. 150B-2(8a)c, rather than a rule “implementing or interpreting” another law or describing “the procedure or practice requirements of an agency” under G.S. 150B-2(8a). How does item (g)(2) meet the definition of a rule?

Agency Response: As noted above, CAMA requires the CRC to adopt state guidelines consisting of “statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area.” N.C. Gen. Stat. § 113A-107(a), (b). Subparagraph (g)(2) of Rule 07H .0209 is consistent with CAMA’s directive to the CRC to adopt guidelines, including statements of objectives, policies, and standards, for Areas of Environmental Concern, specifically here, Urban Waterfronts as a subcategory of Coastal Shorelines. See N.C. Gen. Stat. § 113A-113(a) (requiring the CRC to designate AECs in rule). These guidelines and standards are binding on the Commission and DCM when considering, among other items, permitting development and reviewing requests for variances in Urban Waterfronts. The CRC has added language to Subparagraph (g)(2) to clarify the Paragraph’s binding nature.

In (g)(4)(B)(X), p 7 lines 23-24, you reference the definition for significant adverse impact earlier in this subchapter. You do not include this cross reference in other uses of the phrase; i.e. p. 2 line 26. It appears to me that 15A NCAC 07H .0208 applies to this whole section, so you do not have to include the cross reference. However, if you want to include the cross reference to the definition it should be done consistently. Otherwise, it suggests a different meaning might apply.

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2025

Agency Response: The cross reference in (g)(4)(B)(X) has been removed for consistency across the Rule.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0309

DEADLINE FOR RECEIPT: October 17, 2025

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

On line 33, what is a landward toe? Is it defined somewhere?

Agency Response: The landward toe is the lowermost point along the profile of the dune's slope. The change has been made to add "at the lowermost point along the profile of the dune's slope" to the end of line 33 to clarify.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0508

DEADLINE FOR RECEIPT: October 17, 2025

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

Can you provide a more direct link to the map referenced on line 32? I do not see where it is on the indicated website.

Agency Response: We have provided a physical address where individuals can come view the map in lieu of a website link to ensure consistent access to the map.

Additionally, at least one of our commissioners appreciates having a referenced map as an attached document for his review. Please provide that if possible.

Agency Response: We have attached a reference map for commissioners for their review.

On p. 2, line 2, is there only one kind of CAMA permit? If not, which permit is required here?

Agency Response: There are two kinds of CAMA permits- major and minor permits. We have added “minor or major” to page 2, line 2.

On p. 2, line 12, incorporate the Jockey’s Ridge State Park’s Management Plan pursuant to G.S. 150B-21.6, unless it is incorporated elsewhere. Item 11.1 in the RRC style guide has example language:
<https://www.oah.nc.gov/documents/rules/administrative-rule-style-guide-updated-april-2021/download>

Agency Response: We have made the change and added “Jockey’s Ridge State Park’s Management Plan is incorporated by reference, including subsequent amendments and editions.”

On p. 2, line 12, provide a more direct link to the Management Plan.

Agency Response: The Jockey’s Ridge State Park’s Management Plan is currently on the N.C. State Park’s website. As we do not control their website or any changes they may make to their website, we will instead provide a physical address where individuals can view the Jockey’s Ridge State Park’s Management Plan to ensure consistent access.

Seth Ascher
Commission Counsel

Date submitted to agency: October 9, 2025

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

Seth Ascher
Commission Counsel
Date submitted to agency: October 9, 2025

Burgos, Alexander N

From: Everett, Jennifer
Sent: Thursday, October 9, 2025 5:46 PM
To: Ascher, Seth M; Luck, Cameron A
Cc: Burgos, Alexander N
Subject: RE: RFC for October 2025 CRC Rules

Thanks Seth! Will be in touch.

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)-707-8595
<https://www.deq.nc.gov/accessdeq/rules-regulations>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

From: Ascher, Seth M <seth.ascher@oah.nc.gov>
Sent: Thursday, October 9, 2025 3:00 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Luck, Cameron A <Cameron.Luck@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RFC for October 2025 CRC Rules

Good afternoon,

I'm the attorney who reviewed the Rules submitted by the Coastal Resources Commission for the October 2025 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, October 30, 2025, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Attached is my initial Request for Changes Pursuant to G.S. 150B-21.10. Please submit your responses, the revised Rules, and forms to me via email, no later than 5 p.m. on October 17, 2025. Given the context of these rules, it is more likely than usual that Commissioners will have additional questions between now and the meeting. If so, I will get them to you as quickly as possible. As always, I am happy to discuss an extension should your agency believe that will be necessary.

Please let me know if you have any questions or concerns.

Seth Ascher

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