

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: ALL 15A NCAC 7H RULES UNDER REVIEW

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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:

*Please explain how the readoption of these rules comply with G.S. 150B-21.2, particularly the timeliness of the submission of these rules to RRC.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1701

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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 technical changes be made:

*On line 4, please change “and/or” to another conjunction not requiring a slash.*

*On line 6, please add an oxford comma after “northeasters”.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .1701 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1701 PURPOSE**

4 This permit allows work necessary to protect property and/or prevent further damage to property caused by a sudden  
5 or unexpected natural event or structural failure which imminently endangers life or structure. For the purposes of  
6 this general permit, major storms such as hurricanes, northeasters or southwesters may be considered a sudden  
7 unexpected natural event although such storms may be predicted and publicized in advance.

8  
9 *History Note: Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1;*

10 *Eff. November 1, 1985;*

11 *Readopted Eff. May 1, 2022.*

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1702

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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 technical changes be made:

*In both line 8 and twice on line 12, please add either "or her" or "or she" when using "his" or "he".*

*Also, on line 9 please change "and/or" to another conjunction not requiring a slash.*

*In Paragraph (b), what is the standard used by the LPO to determine whether something constitutes a "minor development"?*

*In Subparagraph (d)(2), please add "and" after the semicolon.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .1702 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1702 APPROVAL PROCEDURES**

4 (a) Any person wishing to undertake development in an area of environmental concern necessary to protect life or  
5 endangered structures will notify the Division of Coastal Management or Local Permit Office (LPO) when a possible  
6 emergency situation exists.

7 (b) The applicant may qualify for approval of work described in this permit after an onsite inspection by the LPO or  
8 Division of Coastal Management Field Consultant and upon his findings that the proposed emergency work requires  
9 a CAMA and/or Dredge and Fill permit. The LPO shall issue the permit if the required emergency measures constitute  
10 minor development.

11 (c) Once the LPO or Consultant determines that the applicant's proposed project may qualify for an emergency permit,  
12 he shall consult with the applicant and assist him in preparing an application. The applicant shall include a sketch  
13 showing existing conditions and the proposed work.

14 (d) The applicant for an emergency permit must take all reasonable steps to notify adjacent riparian landowners of  
15 the application, and prior to receiving a permit will certify by signing the permit the following:

16 (1) that a copy of the application and sketch has been served on all adjacent riparian landowners, or if  
17 service of a copy was not feasible, that the applicant has explained the project to all adjacent riparian  
18 landowners;

19 (2) that the applicant has explained to all adjacent riparian landowners that they have a right to oppose  
20 the issuance of a permit by filing objections with the local CAMA permit officer or with the  
21 Secretary of the Department of Environment, Health, and Natural Resources;

22 (3) that, as to adjacent riparian landowners not contacted, the applicant has made a reasonable attempt  
23 to contact them and furnish them with the required information.

24 (e) All work authorized by this general permit will cease after thirty days from the date of issuance.

25  
26 *History Note: Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-118.1;*

27 *Eff. November 1, 1985;*

28 *Amended Eff. May 1, 1990;*

29 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .1703 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1703 PERMIT FEE**

4 The agency shall not charge a fee for permitting work necessary to respond to emergency situations except in the case  
5 when a temporary erosion control structure is used. In those cases, the applicant shall pay a permit fee of four hundred  
6 dollars (\$400.00) by check or money order made payable to the Department.

7  
8 *History Note: Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1; 113A-119;*  
9 *Eff. November 1, 1985;*  
10 *Amended Eff. September 1, 2006; August 1, 2002; March 1, 1991; October 1, 1993;*  
11 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .1704 is readopted as published in 34:09 NCR 759 as follows:

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3 **15A NCAC 07H .1704 GENERAL CONDITIONS**

4 (a) Work permitted by means of an emergency general permit shall be subject to the following limitations:

- 5 (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal  
6 Management representative so that the scope of the proposed emergency work can be delineated.
- 7 (2) No work shall be permitted other than that which is necessary to protect against or reduce the  
8 imminent danger caused by the emergency, to restore the damaged property to its condition  
9 immediately before the emergency, or to re-establish public facilities or transportation corridors.
- 10 (3) Any permitted temporary erosion control projects shall be located no more than 20 feet waterward  
11 of the imminently threatened structure or the right-of way in the case of roads, except as provided  
12 under 15A NCAC 07H .0308. If a building or road is found to be imminently threatened and at  
13 increased risk of imminent damage due to site conditions, such as a flat beach profile or accelerated  
14 erosion, temporary erosion control structures may be located more than 20 feet waterward of the  
15 structure being protected. In cases of increased risk of imminent damage, the location of the  
16 temporary erosion control structures shall be determined by the Director of the Division of Coastal  
17 Management or the Director's designee.
- 18 (4) Fill materials used in conjunction with emergency work for storm or erosion control shall be  
19 obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed  
20 to obtain material to fill sandbags used for emergency protection.
- 21 (5) This emergency general permit allows the use of oceanfront erosion control measures for all  
22 oceanfront properties without regard to the size of the existing structure on the property or the date  
23 of construction.

24 (b) Individuals shall allow authorized representatives of the Department of Environmental Quality to make inspections  
25 to ensure that the activity being performed under authority of this emergency general permit is in accordance with  
26 these Rules.

27 (c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust  
28 areas including estuarine waters.

29 (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an  
30 initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are  
31 unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality,  
32 coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

33 (e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.

34 (f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local  
35 land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

36  
37 *History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118; 113A-118.1;*

1                   *Eff. November 1, 1985;*  
2                   *Amended Eff. December 1, 1991; May 1, 1990;*  
3                   *RRC Objection due to ambiguity Eff. May 19, 1994;*  
4                   *Amended Eff. April 1, 2019; May 1, 2010; August 1, 1998; July 1, 1994;*  
5                   *Readopted Eff. May 1, 2022.*



**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1705

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

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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 technical changes be made:

*In Part (a)(7)(B), please remove the “or” at the end.*

*In Subparagraph (a)(8), there is an extra “e” floating after “Once”. Please delete.*

*In Subparagraph (b)(2), please add an oxford comma after “Estuarine Waters”.*

*In Part (c)(1)(B), please change the period at the end to a semicolon.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .1705 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1705 SPECIFIC CONDITIONS**

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

- 5 (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of  
6 mean high water and parallel to the shore.
- 7 (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph may be used  
8 to protect only imminently threatened roads and associated right of ways, and buildings and their  
9 associated septic systems. A structure is considered imminently threatened if its foundation, septic  
10 system, or right-of-way in the case of roads is less than 20 feet away from the erosion scarp.  
11 Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no  
12 obvious erosion scarp may also be found to be imminently threatened when the Division determines  
13 that site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent  
14 damage to the structure.
- 15 (3) Temporary erosion control structures shall be used to protect only the principal structure and its  
16 associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that  
17 is allowed under 15A NCAC 07H .0309 as an exception to the erosion setback requirement.
- 18 (4) Temporary erosion control structures may be placed waterward of a septic system when there is no  
19 alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the  
20 structure being protected.
- 21 (5) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure  
22 to be protected except to align with temporary erosion control structures on adjacent properties,  
23 where the Division has determined that gaps between adjacent erosion control structures may result  
24 in an increased risk of damage to the structure being protected. The landward side of such temporary  
25 erosion control structures shall not be located more than 20 feet waterward of the structure to be  
26 protected or the right-of-way in the case of roads. If a building or road is found to be imminently  
27 threatened and at increased risk of imminent damage due to site conditions such as a flat beach  
28 profile or accelerated erosion, temporary erosion control structures may be located more than 20  
29 feet waterward of the structure being protected. In cases of increased risk of imminent damage, the  
30 location of the temporary erosion control structures shall be determined by the Director of the  
31 Division of Coastal Management or the Director's designee.
- 32 (6) Temporary erosion control structures may remain in place for up to eight years for a building and  
33 its associated septic system, or a bridge or a road. The property owner shall be responsible for  
34 removal of any portion of the temporary erosion control structure exposed above grade within 30  
35 days of the end of the allowable time period.
- 36 (7) For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment  
37 or an inlet relocation or stabilization project if it:

- 1 (A) has an active CAMA permit, where necessary, approving such project; or  
2 (B) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment  
3 Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction  
4 Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a  
5 commitment of local or federal money, when necessary; or  
6 (C) has received a favorable economic evaluation report on a federal project; or  
7 (D) is in the planning stages of a project designed by the U.S. Army Corps of Engineers or  
8 persons meeting applicable State occupational licensing requirements and initiated by a  
9 local government or community with a commitment of local or state funds to construct the  
10 project or the identification of the financial resources or funding bases necessary to fund  
11 the beach nourishment or inlet relocation or stabilization project.

12 If beach nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or  
13 community, or ceases to be actively planned for a section of shoreline, the time extension is void  
14 for that section of beach or community and existing sandbags shall be subject to all applicable time  
15 limits set forth in Subparagraph (6) of this Paragraph.

- 16 (8) Once a temporary erosion control structure is determined by the Division of Coastal Management  
17 to be unnecessary due to relocation or removal of the threatened structure, it shall be removed by  
18 the property owner to the maximum extent practicable within 30 days of official notification from  
19 the Division of Coastal Management, regardless of the time limit placed on the temporary erosion  
20 control structure. If the temporary erosion control structure is determined by the Division of Coastal  
21 Management to be unnecessary due to the completion of a storm protection project constructed by  
22 the U.S. Army Corps of Engineers, a large scale beach nourishment project, or an inlet relocation  
23 or stabilization project, any portion of the temporary erosion control structure exposed above grade  
24 shall be removed by the permittee within 30 days of official notification by the Division of Coastal  
25 Management regardless of the time limit placed on the temporary erosion control structure.
- 26 (9) Removal of temporary erosion control structures is not required if they are covered by sand. Any  
27 portion of a temporary erosion control structure that becomes exposed above grade after the  
28 expiration of the permitted time period shall be removed by the property owner within 30 days of  
29 official notification from the Division of Coastal Management.
- 30 (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged  
31 temporary erosion control structure.
- 32 (11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet  
33 wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet,  
34 and the total height shall not exceed 6 feet, as measured from the bottom of the lowest bag.
- 35 (12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- 36 (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to  
37 fill sandbags used for emergency protection.

1 (14) An imminently threatened structure may be protected by a temporary erosion control structure only  
2 once regardless of ownership, unless the threatened structure is located in a community that is  
3 actively pursuing a beach nourishment project, an inlet relocation or stabilization project in  
4 accordance with Subparagraph (7) of this Paragraph. Existing temporary erosion control structures  
5 may be permitted for additional eight-year periods provided that the structure being protected is still  
6 imminently threatened, the temporary erosion control structure is in compliance with requirements  
7 of this Subparagraph, and the community in which it is located is actively pursuing a beach  
8 nourishment or an inlet relocation or stabilization project in accordance with Subparagraph (7) of  
9 this Paragraph. In the case of a building, a temporary erosion control structure may be extended, or  
10 new segments constructed, if additional areas of the building become imminently threatened. Where  
11 temporary structures are installed or extended incrementally, the time period for removal under  
12 Subparagraph (6) or (7) of this Paragraph shall begin at the time the initial erosion control structure  
13 is installed. For the purpose of this Rule:

- 14 (A) a building and its associated septic system shall be considered as separate structures; and  
15 (B) a road or highway shall be allowed to be incrementally protected as sections become  
16 imminently threatened. The time period for removal of each contiguous section of sandbags  
17 shall begin at the time that section is installed in accordance with Subparagraph (6) or (7)  
18 of this Paragraph.

19 (15) Existing temporary erosion control structures may be repaired or replaced within their originally  
20 permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this  
21 Paragraph.

22 (b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted  
23 by this Rule shall be subject to the following limitations:

24 (1) The erosion control structure shall be located no more than 20 feet waterward of the imminently  
25 threatened structure. If a building or road is found to be imminently threatened and at increased risk  
26 of imminent damage due to site conditions such as a flat shore profile or accelerated erosion,  
27 temporary erosion control structures may be located more than 20 feet waterward of the structure  
28 being protected. In cases of increased risk of imminent damage, the location of the temporary  
29 erosion control structures shall be determined by the Director of the Division of Coastal  
30 Management or the Director's designee.

31 (2) Fill material used in conjunction with emergency work for storm or erosion control in the Estuarine  
32 Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

33 (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors. This permit  
34 authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-  
35 term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery  
36 plans and policies which are part of their Land Use Plans.

37 (1) Work permitted by this general permit shall be subject to the following limitations:

- 1 (A) no work shall be permitted other than that which is necessary to protect against or reduce  
2 the imminent danger caused by the emergency or to restore the damaged property to its  
3 condition immediately before the emergency;
- 4 (B) the erosion control structure shall be located no more than 20 feet waterward of the  
5 imminently threatened structure or the right-of-way in the case of roads. If a public facility  
6 or transportation corridor is found to be imminently threatened and at increased risk of  
7 imminent damage due to site conditions such as a flat shore profile or accelerated erosion,  
8 temporary erosion control structures may be located more than 20 feet waterward of the  
9 facility or corridor being protected. In cases of increased risk of imminent damage, the  
10 location of the temporary erosion control structures shall be determined by the Director of  
11 the Division of Coastal Management or the Director's designee in accordance with  
12 Subparagraph (a)(1) of this Rule.
- 13 (C) any fill materials used in conjunction with emergency work for storm or erosion control  
14 shall be obtained from an upland source except that dredging for fill material to protect  
15 public facilities or transportation corridors shall be considered in accordance with standards  
16 in 15A NCAC 07H .0208; and
- 17 (D) all fill materials or structures associated with temporary relocations which are located  
18 within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after  
19 the emergency event has ended and the area restored to pre-disturbed conditions.  
20

21 *History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1;*  
22 *Eff. November 1, 1985;*  
23 *Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;*  
24 *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*  
25 *Amended Eff. April 1, 2019; May 1, 2013; May 1, 2010; August 1, 2002;*  
26 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .1901 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **SECTION .1900 – GENERAL PERMIT TO ALLOW FOR TEMPORARY STRUCTURES WITHIN THE**  
4 **ESTUARINE AND OCEAN SYSTEMS AECS**

5  
6 **15A NCAC 07H .1901 PURPOSE**

7 A permit under this Section shall allow for the placement of temporary structures within the estuarine and ocean  
8 systems AECs according to the provisions provided in 15A NCAC 07J .1100 and according to the rules in this Section.

9  
10 *History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*  
11 *Eff. March 1, 1989;*  
12 *Amended Eff. April 1, 2020; August 1, 2000;*  
13 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .1902 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1902 APPROVAL PROCEDURES**

4 (a) The applicant shall contact the Division of Coastal Management at the address provided in 15A NCAC 07A .0101  
5 and complete an application requesting approval for development. For temporary structures associated with scientific  
6 research, permit applicants shall be lead investigators on behalf of accredited educational institutions, or state or  
7 federal agencies.

8 (b) If a temporary structure is to be located less than 400 feet waterward of normal high water or normal water level,  
9 or within the established pier head line as determined by the Division of Coastal Management, the applicant shall  
10 provide:

11 (1) a written statement signed by the adjacent riparian property owners indicating that they have no  
12 objections to the proposed work; or

13 (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the  
14 proposed work. Such notice should instruct adjacent property owners to provide any comments on  
15 the proposed development in writing for consideration by permitting officials to the Division of  
16 Coastal Management within ten days of receipt of the notice, and indicate that no response will be  
17 interpreted as no objection. DCM staff will review all comments and determine, based on their  
18 relevance to the potential impacts of the proposed project, if the proposed project can be approved  
19 by a General Permit. If DCM determines that the project exceeds the conditions established by this  
20 General Permit, DCM shall notify the applicant that a Major Permit application shall be required.

21 (c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management  
22 representative to inspect and mark the site of construction of the proposed development. Temporary structures  
23 authorized by this General Permit may remain in place for a maximum of one year from the date of issuance. The  
24 project site shall be restored to pre-development conditions and all structures shall be removed within one year of  
25 permit issuance, or by the date specified with the General Permit.

26  
27 *History Note: Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1;*  
28 *Eff. March 1, 1989;*  
29 *Amended Eff. April 1, 2020; January 1, 1990;*  
30 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .1903 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1903 PERMIT FEE**

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

6  
7 *History Note: Authority G.S. 113-229(c1); 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113A-119.1;*

8 *Eff. March 1, 1989;*

9 *Amended Eff. September 1, 2006; August 1, 2000; March 1, 1991;*

10 *Readopted Eff. May 1, 2022.*



## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1904

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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 technical changes be made:

*In Paragraph (d), what does “unresolved questions” mean? By what criteria is this established or measured? What is the standard? This is a broad grant of discretion; what is the statutory authority for such a broad grant?*

*In paragraph (g), is the comma necessary? If not, please delete.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .1904 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1904 GENERAL CONDITIONS**

4 (a) Temporary structures for the purpose of this general permit are those which are constructed or installed within the  
5 estuarine and ocean system AECs and because of their dimensions or functions cannot be authorized by another  
6 General Permit within this Subchapter.

7 (b) There shall be no encroachment oceanward of the first line of stable vegetation within the ocean hazard AEC  
8 except for the placement of auxiliary structures such as signs, fences, posts, or pilings.

9 (c) There shall be no fill or excavation activity below normal high water or normal water level.

10 (d) This permit shall not be applicable to proposed development where the Division of Coastal Management has  
11 determined, based on a review of the application, that notice and review pursuant to G.S. 113A-119 is necessary  
12 because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water  
13 quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.

14 (e) Individuals shall allow authorized representatives of the Department of Environmental Quality to make periodic  
15 inspections at any time necessary to ensure that the activity being performed under authority of this general permit is  
16 in accordance with the terms and conditions prescribed herein.

17 (f) This permit does not eliminate the need to obtain any other state, local or federal authorization, nor, to abide by  
18 rules or regulations adopted by any federal, state, or local agency.

19 (g) Development carried out under this permit shall be consistent with all local requirements, and local land use plans  
20 current at the time of authorization.

21  
22 *History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*  
23 *Eff. March 1, 1989;*  
24 *Amended Eff. May 1, 1990; March 1, 1990;*  
25 *RRC Objection due to ambiguity Eff. May 19, 1994;*  
26 *Amended Eff. April 1, 2020; August 1, 1998; July 1, 1994;*  
27 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .1905 is readopted as published in 34:09 NCR 759 as follows:

2  
3 **15A NCAC 07H .1905    SPECIFIC CONDITIONS**

4 Proposed temporary structures shall meet each of the following specific conditions to be eligible for authorization by  
5 the general permit:

- 6       (1)     All aspects of the structure shall be removed and the site returned to pre-project conditions at the  
7               expiration of this general permit.
- 8       (2)     There shall be no work within any productive shellfish beds without authorization from the Division  
9               of Marine Fisheries.
- 10      (3)     The proposed structure shall not involve the disturbance of any marsh, submerged aquatic  
11               vegetation, or other wetlands including excavation or filling of these areas.
- 12      (4)     The proposed activity shall not disrupt navigation and transportation channels and shall be marked  
13               to prevent being a hazard to navigation.
- 14      (5)     The proposed structure shall not impede public access or other public trust uses.
- 15      (6)     The proposed structure shall not be habitable.
- 16      (7)     There shall be no disturbance of existing dunes.
- 17      (8)     Temporary structures authorized by this permit shall not individually or cumulatively exceed 100  
18               square meters in size.
- 19      (9)     Structures shall not be constructed in a designated Primary Nursery Area without approval from the  
20               Division of Marine Fisheries or the Wildlife Resources Commission.

21  
22 *History Note:*     *Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*  
23                       *Eff. March 1, 1989;*  
24                       *Amended Eff. April 1, 2020; May 1, 1990;*  
25                       *Readopted Eff. May 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2501

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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 technical changes be made:

*In the opening paragraph, please add a conjunction or remove the comma to add clarity to “or discussions with staff, state or federal emergency response agencies.”*

*Please change the commas to semicolons at the end of Items (1) and (2).*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .2501 is readopted as published in 34:09 NCR 760 as follows:

2  
3 **SECTION .2500 - EMERGENCY GENERAL PERMIT, TO BE INITIATED AT THE DISCRETION OF**  
4 **THE SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES FOR**  
5 **REPLACEMENT OF STRUCTURES, THE RECONSTRUCTION OF PRIMARY OR FRONTAL DUNE**  
6 **SYSTEMS, AND THE MAINTENANCE EXCAVATION OF EXISTING CANALS, BASINS, CHANNELS,**  
7 **OR DITCHES, DAMAGED, DESTROYED, OR FILLED IN BY HURRICANES OR TROPICAL STORMS,**  
8 **PROVIDED ALL REPLACEMENT, RECONSTRUCTION AND MAINTENANCE EXCAVATION**  
9 **ACTIVITIES CONFORM TO ALL CURRENT STANDARDS**  
10

11 **15A NCAC 07H .2501 PURPOSE**

12 Following damage to coastal North Carolina due to hurricanes or tropical storms, the Secretary may, based upon an  
13 examination of the extent and severity of the damage, implement any or all provisions of this Section. Factors the  
14 Secretary may consider in making this decision include, but are not limited to, severity and scale of property damage,  
15 designation of counties as disaster areas, reconnaissance of the impacted areas, or discussions with staff, state or  
16 federal emergency response agencies. This permit shall allow for:

- 17 (1) the replacement of structures that were located within the estuarine system or public trust Areas of  
18 Environmental Concern and that were destroyed or damaged beyond 50 percent of the structures  
19 value as a result of any hurricane or tropical storm,  
20 (2) a one time per property fee waiver for the reconstruction or repair by beach bulldozing of hurricane  
21 or tropical storm damaged frontal or primary dune systems, and  
22 (3) a one time per property fee waiver for maintenance dredging activities within existing basins, canals,  
23 channels, and ditches. Structure replacement, dune reconstruction, and maintenance excavation  
24 activities authorized by this permit shall conform with all current use standards and regulations. The  
25 structural replacement component of this general permit shall only be applicable where the structure  
26 was in place and serving its intended function at the time of the impacting hurricane or storm, and  
27 shall not apply within the Ocean Hazard System of Areas of Environmental Concern (AEC) or  
28 waters adjacent to these AECs with the exception of those portions of shoreline that feature  
29 characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation,  
30 lower wave energy, and lower erosion rates than in the adjoining Ocean Erodible Area.

31  
32 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
33 *Temporary Adoption Eff. October 2, 1999;*  
34 *Temporary Adoption Expired on July 28, 2000;*  
35 *Eff. April 1, 2001;*  
36 *Readopted Eff. May 1, 2022.*

## **REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2502

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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 technical changes be made:

*In Paragraph (c), lines 16 and 17, the use of commas surrounding “and” is unclear. Please change.*

*Also in Paragraph (c), by what criteria is the “relevance to the potential impacts of the proposed project” measured? How is this determined?*

*In Paragraph (e), please add an oxford comma after “reconstruction”.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .2502 is readopted as published in 34:09 NCR 760 as follows:

2  
3 **15A NCAC 07H .2502 APPROVAL PROCEDURES**

4 (a) The applicant must contact the Division of Coastal Management and request approval for structural replacement,  
5 dune reconstruction, or maintenance excavation. The applicant shall provide information on site location, dimensions  
6 of the project area, and his or her name and address.

7 (b) The applicant must provide:

8 (1) Description of the extent of repair, replacement, reconstruction, or maintenance excavation needed,  
9 including dimensions and shoreline length; and

10 (2) In the case of structural replacements, any additional documentation confirming the existence of the  
11 structure prior to the hurricane or tropical storm, such as surveys, previous permits, photographs or  
12 videos.

13 (c) For projects involving the excavation or filling of any area of estuarine water, the applicant must provide  
14 confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work.  
15 Such notice shall instruct adjacent property owners to provide any comments on the proposed development in writing  
16 for consideration by permitting officials to the Division of Coastal Management within 10 days of receipt of the notice,  
17 and, indicate that no response shall be interpreted as no objection. DCM staff shall review all comments and  
18 determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be  
19 approved by this General Permit. If DCM staff finds that the comments are worthy of more in-depth review, the  
20 applicant shall be notified that he or she must submit an application for a major development permit.

21 (d) No work shall begin until a meeting is held with the applicant and appropriate Division of Coastal Management  
22 representative. Written authorization to proceed with the proposed development may be issued during this meeting.

23 (e) Replacement, reconstruction or maintenance excavation activities must be completed within one year of each  
24 activation by the Secretary of this general permit.

25 (f) Authorizations under this General Permit shall not be issued more than one year following each activation by the  
26 Secretary of this general permit.

27  
28 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
29 *Temporary Adoption Eff. October 2, 1999;*  
30 *Temporary Adoption Expired on July 28, 2000;*  
31 *Eff. April 1, 2001;*  
32 *Readopted Eff. May 1, 2022.*

1 15A NCAC 07H .2503 is readopted as published in 34:09 NCR 760 as follows:

2  
3 **15A NCAC 07H .2503 PERMIT FEE**

4 The standard permit fee of two hundred dollars (\$200.00) has been waived for this General Permit.

5  
6 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
7 *Temporary Adoption Eff. October 2, 1999;*  
8 *Temporary Adoption Expired on July 28, 2000;*  
9 *Eff. April 1, 2001;*  
10 *Amended Eff. September 1, 2006;*  
11 *Readopted Eff. May 1, 2022.*



## REQUEST FOR § 150B-21.10 CHANGES

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2504

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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 technical changes be made:

*In Paragraph (f), what does “adversely affect” mean? By what criteria is this established or measured? What is the standard? This is a broad grant of discretion; what is the statutory authority for such a broad grant?*

*Similarly, in Paragraph (g), what does “significantly affect” mean? By what criteria is this established or measured? What is the standard? This is a broad grant of discretion; what is the statutory authority for such a broad grant?*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .2504 is readopted as published in 34:09 NCR 760 as follows:

2  
3 **15A NCAC 07H .2504 GENERAL CONDITIONS**

4 (a) This permit shall only become available following a written statement by the Secretary that, based upon hurricane  
5 or tropical storm related damage, implementation of the provisions of this Section are warranted.

6 (b) Based upon an examination of the specific circumstances following a specific hurricane or tropical storm, the  
7 Secretary may choose to activate any or all of the components of this Section. The Secretary may also limit the  
8 geographic service area of this permit.

9 (c) This permit authorizes only the replacement of damaged or destroyed structures, the reconstruction of frontal or  
10 primary dunes, and maintenance excavation activities conforming to the standards described in this Section.

11 (d) This permit does not authorize the replacement of any structure within any Ocean Hazard Area of Environmental  
12 Concern, with the exception of those portions of shoreline within the Ocean Hazard AEC that feature characteristics  
13 of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower  
14 erosion rates than in the adjoining Ocean Erodible Area.

15 (e) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to  
16 make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under  
17 authority of this general permit is in accordance with the terms and conditions prescribed in this Section.

18 (f) This general permit shall not be applicable to proposed construction when the Department determines after any  
19 necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural,  
20 scenic, conservation, or recreational values.

21 (g) This general permit shall not be applicable to proposed construction where the Department determines that  
22 authorization may be warranted, but that the proposed activity might significantly affect the quality of the human  
23 environment, or unnecessarily endanger adjoining properties. In those cases, it shall be necessary to review the  
24 proposed project under the established CAMA Major or Minor Development Permit review procedures.

25 (h) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.

26 (i) This permit does not preclude an individual from applying for other authorizations for structure replacement that  
27 may be available under the Coastal Area Management Act and the Rules of the Coastal Resources Commission.  
28 However, application fees for any such authorization shall not be waived or deferred.

29  
30 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
31 *Temporary Adoption Eff. October 2, 1999;*  
32 *Temporary Adoption Expired on July 28, 2000;*  
33 *Eff. April 1, 2001;*  
34 *Readopted Eff. May 1, 2022.*

**REQUEST FOR § 150B-21.10 CHANGES**

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .2505

**DEADLINE FOR RECEIPT: Thursday, April 14, 2022**

***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:

*In Subparagraph (a)(1) and (b)(2), the first letter for each Part listed as (a)(1)(A) through (J) and (b)(2)(A) through (D) should not be capitalized.*

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

Lawrence R. Duke  
Commission Counsel  
Date submitted to agency: April 7, 2022

1 15A NCAC 07H .2505 is readopted as published in 34:09 NCR 760 as follows:

2  
3 **15A NCAC 07H .2505 SPECIFIC CONDITIONS**

4 (a) The replacement of a damaged or destroyed structure shall take place within the footprint and dimensions that  
5 existed immediately prior to the damaging hurricane or tropical storm. No structural enlargement or additions shall  
6 be allowed.

7 (b) Structure replacement, dune reconstruction, and maintenance excavation authorized by this permit shall conform  
8 to the existing use standards and regulations for exemptions, minor development permits, and major development  
9 permits, including general permits. These use standards include, but are not limited to:

- 10 (1) 15A NCAC 07H .0208(b)(6) for the replacement of docks and piers;  
11 (2) 15A NCAC 07H .0208(b)(7) for the replacement of bulkheads and shoreline stabilization measures;  
12 (3) 15A NCAC 07H .0208(b)(9) for the replacement of wooden and riprap groins;  
13 (4) 15A NCAC 07H .1500 for maintenance excavation activities; and  
14 (5) 15A NCAC 07H .1800 for beach bulldozing in the Ocean Hazard AEC.

15 (c) The replacement of an existing dock or pier facility, including associated structures, marsh enhancement  
16 breakwaters, or groins shall be set back 15 feet from the adjoining property lines and the riparian access dividing line.  
17 The line of division of riparian access shall be established by drawing a line along the channel or deep water in front  
18 of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the  
19 point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the  
20 approved diagram in 15A NCAC 07H .1205, illustrating the rule as applied to various shoreline configurations. Copies  
21 of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that  
22 a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum  
23 extent practicable. The setback may be waived by written agreement of the adjacent riparian owner(s) or when the  
24 two adjoining riparian owners are co-applicants. Should the adjacent property be sold before replacement of the  
25 structure begins, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and  
26 submit it to the Division of Coastal Management prior to initiating any construction of the structure.

27  
28 *History Note: Authority G.S. 113A-107; 113A-118.1;*  
29 *Temporary Adoption Eff. October 2, 1999;*  
30 *Temporary Adoption Expired on July 28, 2000;*  
31 *Eff. April 1, 2001;*  
32 *Amended Eff. September 1, 2016;*  
33 *Readopted Eff. May 1, 2022.*