

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0304

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

In your Submission for Permanent Rule form, why are there two Notice of Text dates listed? Was this intentional?

At line 4, what is an ocean hazard area? Is this the same as or a type of natural hazard area as used in G.S. 113A-113(b)(6)?

In (1), define "substantial possibility," "excessive erosion," and "significant shoreline fluctuation?" Who makes these determinations? Does your regulated public understand the meaning of these terms?

At line 12, what are "long-term" erosion rates?

At lines 14-19, you are incorporating an internal document by reference. Generally, agencies cannot incorporate internal policy documents. Is this document exempt from the definition of a "rule" pursuant to G.S. 150B-2(8a)(h) for being a scientific standard?

In (2), line 21, please delete or define "especially."

In (2), what are "adverse effects?" Does your regulated public know?

At line 23, please delete or define "sufficient."

At line 25, does your regulated public understand the meaning of a "structurally weak area?"

At lines 26-30, you are incorporating an internal document by reference. Generally, agencies cannot incorporate internal policy documents. Is this document exempt from the definition of a "rule" pursuant to G.S. 150B-2(8a)(h) for being a scientific standard?

In (2)(a), is it necessary to say "at least?" Rules always set minimum requirements.

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

In (3)(a), what do you mean by “The areas in this category shall be designated following studies by the Division of Coastal Management?” Is there a specific map you can incorporate as you have done at lines 14-19 and 26-30 on page 1 of this Rule? If not, does this mean this map changes outside the rulemaking process? Does this comply with the requirement in G.S. 113A-113(a) to designate areas of environmental concern by rule?

In (3)(b), please delete or define “suddenly.”

At line 28, do you mean “is” instead of “us?”

At lines 28-29, do you go through the rulemaking process to change the area from a temporary unvegetated beach area to a permanent unvegetated beach area?

In (4), are the state ports inlet management areas considered natural hazard areas under G.S. 113A-113(b)(6)?

At line 34, do you mean “may” or do you mean “These areas require?” If you mean may, under what circumstances do they require specific management strategies?

At line 34, what are the “specific management strategies” you are referring to? If you are referring to Rule .0313 of this Section please consider adding a cross reference.

At line 36, is there a specific map you can incorporate as you have done at lines 14-19 and 26-30 on page 1 of this Rule? If not, does this mean this map changes outside the rulemaking process? Does this comply with the requirement in G.S. 113A-113(a) to designate areas of environmental concern by rule?

On page 3, line 2, did you intend to reference “Sub-item(1)” instead of “Sub-item(1)(a)?”

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .0304 is amended as published in 34:01 NCR 11-13 and 34:06 NCR 491-492 as follows:

3 **15A NCAC 07H .0304 AECS WITHIN OCEAN HAZARD AREAS**

4 The ocean hazard AECs contain all of the following areas:

- 5 (1) Ocean Erodible Area. This is the area where there exists a substantial possibility of excessive
6 erosion and significant shoreline fluctuation. The oceanward boundary of this area is the mean low
7 water line. The landward extent of this area is the distance landward from the first line of stable and
8 natural vegetation as defined in 15A NCAC 07H .0305(a)(5) to the recession line established by
9 multiplying the long-term annual erosion rate times 90; provided that, where there has been no
10 long-term erosion or the rate is less than two feet per year, this distance shall be set at ~~120~~ 180 feet
11 landward from the first line of stable and natural vegetation. For the purposes of this Rule, the
12 erosion rates are the long-term average based on available historical data. The current long-term
13 average erosion rate data for each segment of the North Carolina coast is depicted on maps entitled
14 ~~"2011 Long Term Average Annual Shoreline Rate Update"~~ "North Carolina 2019 Oceanfront
15 Setback Factors & Long-Term Average Annual Erosion Rate Update Study" and approved by the
16 Coastal Resources Commission on ~~May 5, 2011~~ February 28, 2019 (except as such rates may be
17 varied in individual contested cases or in declaratory or interpretive rulings). In all cases, the rate
18 of shoreline change shall be no less than two feet of erosion per year. The maps are available without
19 cost from any Local Permit Officer or the Division of Coastal Management on the internet at
20 <http://www.nccoastalmanagement.net>.
- 21 (2) Inlet Hazard Area. The inlet hazard areas are natural-hazard areas that are especially vulnerable to
22 erosion, flooding, and other adverse effects of sand, wind, and water because of their proximity to
23 dynamic ocean inlets. This area extends landward from the mean low water line a distance sufficient
24 to encompass that area within which the inlet migrates, based on statistical analysis, and shall
25 consider such factors as previous inlet territory, structurally weak areas near the inlet, and external
26 influences such as ~~jetties~~ jetties, terminal groins, and channelization. The areas on the maps
27 identified as ~~suggested~~ Inlet Hazard Areas included in the report entitled INLET HAZARD AREAS,
28 The Final Report and Recommendations to the Coastal Resources Commission, 1978, as amended
29 in 1981, by Loie J. Priddy and Rick Carraway are incorporated by reference and are hereby
30 designated as Inlet Hazard Areas, except for:
- 31 (a) ~~the Cape Fear Inlet Hazard Area as shown on the map does not extend northeast of the Bald~~
32 ~~Head Island marina entrance channel; and~~
- 33 (b) ~~the former location of Mad Inlet, which closed in 1997.~~
- 34 (a) the location of a former inlet which has been closed for at least 15 years;
- 35 (b) inlets that due to shoreline migration, no longer include the current location of the inlet;
36 and

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

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

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

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

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

The Commission designates as temporary unvegetated beach areas those oceanfront areas of Surf City and North Topsail Beach in which the vegetation line as shown on the United States National Oceanic and Atmospheric Administration imagery dated September 17, 2018 was destroyed as a result of Hurricane Florence in September 2018. The designation AEC boundaries can be found on the Division's website referenced in Item (1) of this Rule. This designation shall continue until such time as the stable and natural vegetation has reestablished, or until the area is permanently designated as an unvegetated beach area pursuant to Sub-Item 3(a) of this Rule.

(4) State Ports Inlet Management Area. These are areas adjacent to and within Beaufort Inlet and the mouth of the Cape Fear River, providing access to a State Port via a channel maintained by the United States Army Corps of Engineers. These areas are unique due to the influence of federally-maintained channels, and the critical nature of maintaining shipping access to North Carolina's State Ports. These areas may require specific management strategies not warranted at other inlets to address erosion and shoreline stabilization. State Ports Inlet Management Areas shall extend from the mean low water line landward as designated on maps approved by the Coastal Resources

1 Commission and available without cost from the Division of Coastal Management, and on the
2 internet at the website referenced in Sub-item (1)(a) of this Rule.

3
4 *History Note: Authority G.S. 113A-107; 113A-107.1; 113A-113; 113A-124;*
5 *Eff. September 9, 1977;*
6 *Amended Eff. December 1, 1993; November 1, 1988; September 1, 1986; December 1, 1985;*
7 *Temporary Amendment Eff. October 10, 1996;*
8 *Amended Eff. April 1, 1997;*
9 *Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;*
10 *Temporary Amendment Eff. October 22, 1997;*
11 *Amended Eff. February 1, 2020; July 1, 2016; September 1, 2015; May 1, 2014; February 1, 2013;*
12 *January 1, 2010; February 1, 2006; October 1, 2004; April 1, 2004; August 1, 1998.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0305

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

In (3), please remove the parentheses and incorporate the parenthetical phrases into the text of the Rule.

In (4), line 18, you say "landward of the ocean beach" but at line 13 you say "landward of the ocean beaches." Was this intentional?

At lines 37-page 2, line 1, which "effective date of this Rule" are you referring to? The Rule's original effective date or the last amended date?

At page 2, line 14, please remove the parentheses and incorporate the parenthetical into the text of the Rule.

At lines 14-19, is this still necessary since you are referring to events in 1999?

In (a)(9)(A), does this refer to the area designated in accordance with .0304(3)?

In (b), what is the "designated minor development permit-letting agency?"

At line 20, please change "must" to "shall."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .0305 is amended with changes as published in 34:06 NCR 493-494 as follows:

2
3 **15A NCAC 07H .0305 GENERAL IDENTIFICATION AND DESCRIPTION OF LANDFORMS**

4 (a) This Paragraph describes natural and man-made features that are found within the ocean hazard area of
5 environmental concern.

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

8 (A) the growth of vegetation occurs; or

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

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

13 (3) Primary Dunes. Primary dunes are the first mounds of sand located landward of the ocean beaches
14 having an elevation equal to the mean flood level (in a storm having a one percent chance of being
15 equaled or exceeded in any given year) for the area plus six feet. Primary dunes extend landward
16 to the lowest elevation in the depression behind that same mound of sand (commonly referred to as
17 the "dune trough.")

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

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

34 (6) Static Vegetation Line. In areas within the boundaries of a large-scale beach fill project, the
35 vegetation line that existed within one year prior to the onset of project construction shall be defined
36 as the "static vegetation line". The "onset of project construction" shall be defined as the date
37 sediment placement begins, with the exception of projects completed prior to the effective date of

1 this Rule, in which case the award of the contract date will be considered the onset of construction.
2 A static vegetation line shall be established in coordination with the Division of Coastal
3 Management using on-ground observation and survey or aerial imagery for all areas of oceanfront
4 that undergo a large-scale beach fill project. Once a static vegetation line is established, and after
5 the onset of project construction, this line shall be used as the reference point for measuring
6 oceanfront setbacks in all locations where it is landward of the vegetation line. In all locations
7 where the vegetation line as defined in this Rule is landward of the static vegetation line, the
8 vegetation line shall be used as the reference point for measuring oceanfront setbacks. A static
9 vegetation line shall not be established where a static vegetation line is already in place, including
10 those established by the Division of Coastal Management prior to the effective date of this Rule. A
11 record of all static vegetation lines, including those established by the Division of Coastal
12 Management prior to the effective date of this Rule, shall be maintained by the Division of Coastal
13 Management for determining development standards as set forth in Rule .0306 of this Section.
14 Because the impact of Hurricane Floyd (September 1999) caused significant portions of the
15 vegetation line in the Town of Oak Island and the Town of Ocean Isle Beach to be relocated
16 landward of its pre-storm position, the static line for areas landward of the beach fill construction in
17 the Town of Oak Island and the Town of Ocean Isle Beach, the onset of which occurred in 2000,
18 shall be defined by the general trend of the vegetation line established by the Division of Coastal
19 Management from June 1998 aerial orthophotography.

- 20 (7) Beach Fill. Beach fill refers to the placement of sediment along the oceanfront shoreline. Sediment
21 used solely to establish or strengthen dunes shall not be considered a beach fill project under this
22 Rule. A "large-scale beach fill project" shall be defined as any volume of sediment greater than
23 300,000 cubic yards or any storm protection project constructed by the U.S. Army Corps of
24 Engineers.
- 25 (8) Erosion Escarpment. The normal vertical drop in the beach profile caused from high tide or storm
26 tide erosion.
- 27 (9) Measurement Line. The line from which the ocean hazard setback as described in Rule .0306(a) of
28 this Section is measured in the unvegetated beach area of environmental concern as described in
29 Rule .0304(3) of this Section. ~~Procedures for determining the measurement line in areas designated~~
30 ~~pursuant to Rule .0304(3) of this Section shall be adopted by the Commission for each area where~~
31 ~~such a line is designated pursuant to the provisions of G.S. 150B. These procedures shall be~~
32 ~~available from any local permit officer or the Division of Coastal Management.~~ In areas designated
33 pursuant to Rule .0304(3)(b) of this Section, the Division of Coastal Management shall establish a
34 measurement line that approximates the location at which the vegetation line is expected to
35 reestablish by:

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

(B) ~~locating the line of stable and natural vegetation on the most current pre-storm aerial photography of the proposed development site and moving this line landward the distance determined in Subparagraph (a)(1) of this Rule.~~ mapping a line equal to the average recession determination in Part (A) of this Subparagraph, measured in a landward direction from the first line of stable and natural vegetation line on the most recent pre-storm aerial photography in the area designated as an unvegetated beach AEC.

~~The measurement line established pursuant to this process shall in every case be located landward of the average width of the beach as determined from the most current pre-storm aerial photography.~~

(10) Development Line. The line established in accordance with 15A NCAC 07J .1300 by local governments representing the seaward-most allowable location of oceanfront development. In areas that have development lines approved by the CRC, the vegetation line or measurement line shall be used as the reference point for measuring oceanfront setbacks instead of the static vegetation line, subject to the provisions of Rule .0306(a)(2) of this Section.

(b) For the purpose of public and administrative notice and convenience, each designated minor development permitting agency with ocean hazard areas may designate, subject to CRC approval in accordance with the local implementation and enforcement plan as defined in 15A NCAC 07I .0500, an identifiable land area within which the ocean hazard areas occur. This designated notice area must include all of the land areas defined in Rule .0304 of this Section. Natural or man-made landmarks may be considered in delineating this area.

History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;

Eff. September 9, 1977;

Amended Eff. December 1, 1992; September 1, 1986; December 1, 1985; February 2, 1981;

Temporary Amendment Eff. October 10, 1996;

Amended Eff. January 1, 1997;

Temporary Amendment Eff. October 10, 1996 Expired on July 29, 1997;

Temporary Amendment Eff. October 22, 1997;

Amended Eff. February 1, 2020; April 1, 2016; April 1, 2008; August 1, 2002; August 1, 1998.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0309

DEADLINE FOR RECEIPT: January 10, 2020

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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 call our office to inquire concerning the staff recommendation.

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

Throughout this Rule, please capitalize "State" if you are referring to North Carolina and do not capitalize "state" if you are referring to any state.

In (a)(2), please add a comma after "sand."

In (a)(7), define "temporary."

At line 18, what is considered an "alteration?" Does your regulated public understand the meaning of this term?

At line 20, define "essential." Does your regulated public understand the meaning of this term?

In (b), line 24, define "permanent substantial structure."

At line 24 does the lot have to exist as of June 1, 1979 or does the structure have to exist as of June 1, 1979? As I read this, it requires the lot to exist as of June 1, 1979.

In (b)(1), what is the "maximum feasible distance possible?" How is this determined and who makes this determination?

In (b)(4)(C), line 7, please add a comma after "asphalt."

In (b)(5), what is a CAMA permit? Can you provide a cross reference?

In (c)(1), what "applicable exception" are you referring to? Is it the 60 ft. requirement?

In (c)(2), define "adverse environmental consequences." Does your regulated public understand the meaning of this term?

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

In (d)(2), are you referring to only state-owned causeways and accessways or any causeways and accessways, including privately owned causeways and accessways that provide access to state-owned bridges?

In (g)(1), how are the transmission lines buried under primary and frontal dunes if no alteration to the primary and frontal dunes is allowed?

In (h), does your regulated public understand the meaning of “stormwater outfalls?”

At line 33, do you mean “may” or “shall?”

At lines 34-35, what do you mean by “existing stormwater outfalls that are not allowed?” Are you grandfathering in existing outfalls? If so, do the outfalls have to exist before a certain date?

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

1 15 NCAC 07H .0309 is amended as published in 34:01 NCR 11-13 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 ~~the Subchapter~~ this Section if all other provisions of this Subchapter and other state and local regulations
6 are met:

- 7 (1) campsites;
- 8 (2) driveways and parking areas with clay, packed sand or gravel;
- 9 (3) elevated decks not exceeding a footprint of 500 square feet;
- 10 (4) beach accessways consistent with Rule .0308(c) of this ~~Subchapter~~ 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;
- 15 (8) sand fences; and
- 16 (9) swimming pools.

17 In all cases, this development shall be permitted only if it is landward of the vegetation line or static vegetation line,
18 whichever is applicable; involves no alteration or removal of primary or frontal dunes which would compromise the
19 integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any existing dunes; is
20 not essential to the continued existence or use of an associated principal development; is not required to satisfy
21 minimum requirements of local zoning, subdivision or health regulations; and meets all other non-setback
22 requirements of this Subchapter.

23 (b) Where application of the oceanfront setback requirements of Rule .0306(a) of this ~~Subchapter~~ Section would
24 preclude placement of permanent substantial structures on lots existing as of June 1, 1979, buildings shall be permitted
25 seaward of the applicable setback line in ocean erodible ~~areas, areas and State Ports Inlet Management Areas~~, but not
26 inlet hazard areas or unvegetated beach areas, if each of the following conditions are met:

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

- (B) The footprint of the structure shall be no more than 1,000 square feet, and the total floor area of the structure shall be no more than 2,000 square feet. For the purpose of this Section, roof-covered decks and porches that are structurally attached shall be included in the calculation of footprint;
- (C) Driveways and parking areas shall be constructed of clay, packed sand or gravel except in those cases where the development does not abut the ocean and is located landward of a paved public street or highway currently in use. In those cases concrete, asphalt or turfstone may also be used;
- (D) No portion of a building's total floor area, including elevated portions that are cantilevered, knee braced or otherwise extended beyond the support of pilings or footings, may extend oceanward of the total floor area of the landward-most adjacent building. When the geometry or orientation of a lot precludes the placement of a building in line with the landward most adjacent structure of similar use, an average line of construction shall be determined by the Division of Coastal Management on a case-by-case basis in order to determine an ocean hazard setback that is landward of the vegetation line, static vegetation line or measurement line, whichever is applicable, a distance no less than 60 feet.
- (5) All other provisions of this Subchapter and other state and local regulations are met. If the development is to be serviced by an on-site waste disposal system, a copy of a valid permit for such a system shall be submitted as part of the CAMA permit application.
- (c) Reconfiguration and development of lots and projects that have a grandfather status under Paragraph (b) of this Rule shall be allowed provided that the following conditions are met:
- (1) Development is setback from the first line of stable natural vegetation a distance no less than that required by the applicable exception;
- (2) Reconfiguration shall not result in an increase in the number of buildable lots within the Ocean Hazard AEC or have other adverse environmental consequences.
- For the purposes of this Rule, an existing lot is a lot or tract of land which, as of June 1, 1979, is specifically described in a recorded plat and which cannot be enlarged by combining the lot or tract of land with a contiguous lot(s) or tract(s) of land under the same ownership. The footprint is defined as the greatest exterior dimensions of the structure, including covered decks, porches, and stairways, when extended to ground level.
- (d) The following types of water dependent development shall be permitted seaward of the oceanfront setback requirements of Rule .0306(a) of this Section if all other provisions of this Subchapter and other state and local regulations are met:
- (1) piers providing public access; and
- (2) maintenance and replacement of existing state-owned bridges and causeways and accessways to such bridges.
- (e) Replacement or construction of a pier house associated with an ocean pier shall be permitted if each of the following conditions is met:

- (1) The ocean pier provides public access for fishing and other recreational purposes whether on a commercial, public, or nonprofit basis;
 - (2) Commercial, non-water dependent uses of the ocean pier and associated pier house shall be limited to restaurants and retail services. Residential uses, lodging, and parking areas shall be prohibited;
 - (3) The pier house shall be limited to a maximum of two stories;
 - (4) A new pier house shall not exceed a footprint of 5,000 square feet and shall be located landward of mean high water;
 - (5) A replacement pier house may be rebuilt not to exceed its most recent footprint or a footprint of 5,000 square feet, whichever is larger;
 - (6) The pier house shall be rebuilt to comply with all other provisions of this Subchapter; and
 - (7) If the pier has been destroyed or rendered unusable, replacement or expansion of the associated pier house shall be permitted only if the pier is being replaced and returned to its original function.
- (f) In addition to the development authorized under Paragraph (d) of this Rule, small scale, non-essential development that does not induce further growth in the Ocean Hazard Area, such as the construction of single family piers and small scale erosion control measures that do not interfere with natural oceanfront processes, shall be permitted on those non-oceanfront portions of shoreline that exhibit features characteristic of an Estuarine Shoreline. Such features include the presence of wetland vegetation, and lower wave energy and erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small scale is defined as those projects which are eligible for authorization under 15A NCAC 07H .1100, .1200 and 15A NCAC 07K .0203.
- (g) 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 ~~07H-.0305~~, .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.
- (h) Existing stormwater outfalls 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 allowed or maintained by a State agency or local government.

1 *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;*
2 *113A-124;*
3 *Eff. February 2, 1981;*
4 *Amended Eff. February 1, 2020; June 1, 2010; February 1, 2006; September 17, 2002 pursuant to*
5 *S.L. 2002-116; August 1, 2000; August 1, 1998; April 1, 1996; April 1, 1995; February 1, 1993;*
6 *January 1, 1991; April 1, 1987.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0313

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

Please consider formatting this Rule as a list by indenting beginning at line 6 and making (a), (b), (c) into (1), (2), (3), etc. If you do this, (b)(1)-(4) would become (2)(a)-(d).

At lines 10 and 24, please capitalize "State" if you are referring to North Carolina and do not capitalize "state" if you are referring to any state.

At line 10, please delete or define "imminently."

A line 11, please change "and/or" to either "and" or "or."

At the end of (b)(1) and (b)(2), please delete "or." The "or" at the end of (b)(3) applies to the entire list.

In (b)(2) how does the Director make this determination? What factors are considered?

In (b)(3), please delete or define "imminently."

In (b)(3), what "persons" are you referring to at line 19?

At lines 22-23, are you able to provide a cross reference to federal regulations governing this process?

In (f), line 35, do you mean "may" or "shall?" If you mean "may," under what circumstances will small-scale, non-essential development be permitted?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .0313 is adopted as published in 34:01 NCR 13 as follows:

2
3 **15A NCAC 07H .0313 USE STANDARDS FOR STATE PORTS INLET MANAGEMENT AREAS**

4 Development within State Ports Inlet Management areas, as defined by Rule .0304 of this Section, shall be permitted
5 in accordance with the following standards:

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

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

- 14 (1) its foundation, septic system, right-of-way in the case of roads, or waterward toe of the dune is less
15 than 20 feet away from the erosion scarp; or
16 (2) site conditions, such as flat beach profile or accelerated erosion, increase the risk of imminent
17 damage to the structure as determined by the Director of the Division of Coastal Management; or
18 (3) the frontal or primary dune or infrastructure will be imminently threatened within six months as
19 certified by persons meeting all applicable State occupational licensing requirements; or
20 (4) the rate of erosion from the erosion scarp or shoreline within 100 feet of the infrastructure, structure,
21 frontal or primary dune was greater than 20 feet over the preceding 30 days.

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

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

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

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

32 (f) In addition to the types of development excepted under Rule .0309 of this Section, small-scale, non-essential
33 development that does not induce further growth in the State Ports Inlet Management Areas, such as the construction
34 of single-family piers and small-scale erosion control measures that do not interfere with natural inlet movement,
35 may be permitted on those portions of shoreline within a designated State Ports Inlet Management Area that exhibit
36 features characteristic of Estuarine Shoreline. Such features include the presence of wetland vegetation, lower wave
37 energy, and lower erosion rates than in the adjoining Ocean Erodible Area. Such development shall be permitted under

1 the standards set out in Rule .0208 of this Subchapter. For the purpose of this Rule, small-scale is defined as those
2 projects which are eligible for authorization under 15A NCAC 07H .1100 and .1200.

3
4 *History Note:* Authority G.S. 113A-107, 113A-107.1; 113A-113; 113A-124;
5 *Eff. February 1, 2020.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1901

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

At line 7, define "temporary structures."

At line 9, please capitalize "Rules."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .1901 is amended as published in 34:05 NCR 396 as follows:

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

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

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

10
11 *History Note:* Authority *G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*

12 *Eff. March 1, 1989;*

13 *Amended Eff. February 1, 2020; August 1, 2000.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1902

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

At line 5, are the contents or substantive requirements of the application in rule in accordance with G.S. 150B-2(8a)(d)? (b) provides the application if the structure is less than 400 feet of water level. Is there an application for structures more than 400 feet from water level?

At lines 22-23, just to be sure, DCM makes this determination based upon the conditions set forth in the permit at issue, correct?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .1902 is amended as published in 34:05 NCR 396 as follows:

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

4 (a) The applicant ~~must~~ shall contact the Division of Coastal Management ~~and complete a general permit application~~
5 ~~form at the address provided in 15A NCAC 07A .0101 and complete an application~~ requesting approval for
6 development. ~~Applicants shall provide information on site location, dimensions of the project area, proposed activity,~~
7 ~~name, address, and telephone number. For temporary structures associated with scientific research, permit applicants~~
8 ~~shall be lead investigators on behalf of accredited educational institutions, or state or federal agencies.~~

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

- 12 (1) ~~confirmation that a written statement has been obtained~~ signed by the adjacent riparian property
13 owners indicating that they have no objections to the proposed work; or
14 (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
15 proposed work. Such notice should instruct adjacent property owners to provide any comments on
16 the proposed development in writing for consideration by permitting officials to the Division of
17 Coastal Management within ten days of receipt of the ~~notice, and, notice, and~~ indicate that no
18 response will be interpreted as no objection. DCM staff will review all comments and determine,
19 based on their relevance to the potential impacts of the proposed project, if the proposed project can
20 be approved by a General Permit. ~~If DCM staff finds that the comments are worthy of more in depth~~
21 ~~review, the applicant will be notified that he must submit an application for a major development~~
22 ~~permit. If DCM determines that the project exceeds the conditions established by this General~~
23 ~~Permit, DCM shall notify the applicant that a Major Permit application shall be required.~~

24 (c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management
25 representative to inspect and mark the site of construction of the proposed development. ~~Written authorization to~~
26 ~~proceed with the proposed development may be issued by the Division during this visit. All work must be completed~~
27 ~~and the structure removed within 180 days following the day written authorization is issued. Temporary structures~~
28 ~~authorized by this General Permit may remain in place for a maximum of one year from the date of issuance. The~~
29 ~~project site shall be restored to pre-development conditions and all structures shall be removed within one year of~~
30 ~~permit issuance, or by the date specified with the General Permit.~~

31
32 *History Note: Authority G.S. 113-229(cl); 113A-107(a)(b); 113A-113(b); 113A-118.1;*
33 *Eff. March 1, 1989;*
34 *Amended Eff. February 1, 2020; January 1, 1990.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1904

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

At lines 5-6, are you missing a "that" between "functions" and "cannot?"

At line 13, just to be clear, is this the application described in .1902(b)?

In (e), who are the "authorized representatives?" Are you referring to Department staff?

In (e), are inspections conducted during the permit application process or after the permit is issued to ensure compliance with the permit?

In (f), line 21, please consider referring to "rules or regulations."

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .1904 is amended as published in 34:05 NCR 396-397 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 ~~ocean hazard or~~ estuarine and ocean system AECs and because of dimensions or functions ~~do not meet the criteria of~~
6 ~~the existing general permits (i.e. are not a bulkhead, pier, rip rap, groin, etc.).~~ cannot be authorized by another General
7 Permit within this Subchapter.

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

10 (c) There shall be no fill or excavation activity below ~~the plane of mean normal~~ high water ~~associated with the~~
11 ~~structure. or normal water level.~~

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

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

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

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

24
25 *History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*

26 *Eff. March 1, 1989;*

27 *Amended Eff. May 1, 1990; March 1, 1990;*

28 *RRC Objection due to ambiguity Eff. May 19, 1994;*

29 *Amended Eff. February 1, 2020; August 1, 1998; July 1, 1994.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1905

DEADLINE FOR RECEIPT: January 10, 2020

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

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

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

In (6), what do you mean by the structure shall not "be habitable?"

In (8), does the size restriction apply per application, per property, or per structure?

In (9), just to be sure, at lines 22-23, approval from either agency is acceptable, correct?

How do rules .1904 and .1905 work together?

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

Ashley Snyder
Commission Counsel
Date submitted to agency: December 30, 2019

1 15A NCAC 07H .1905 is amended as published in 34:05 NCR 397 as follows:

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

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

- 6 (1) All aspects of the structure shall be removed and the site returned to pre-project conditions at the
7 ~~termination~~ expiration of this general permit.
- 8 (2) There shall be no work within any productive shellfish ~~beds~~, beds without authorization from the
9 Division of Marine Fisheries.
- 10 (3) The proposed ~~project~~ structure shall not involve the disturbance of any marsh, submerged aquatic
11 vegetation, or other wetlands including excavation ~~and/or~~ or filling of these areas.
- 12 (4) The proposed activity shall not ~~involve the disruption of normal~~ disrupt navigation and
13 transportation channels and shall be ~~properly~~ marked to prevent being a hazard to navigation.
- 14 (5) The proposed structure shall not impede public access or other public trust uses.
- 15 (5) (6) The proposed ~~project~~ structure shall not ~~serve as a habitable place of residence~~, be habitable.
- 16 (6) (7) There shall be no ~~adverse~~ disturbance of existing ~~dune structures~~, dunes.
- 17 (7) (8) ~~Development carried out under~~ Temporary structures authorized by this permit shall not individually
18 or cumulatively exceed ~~one acre in size in accordance with 15A NCAC 2H .1002(1) and 15A NCAC~~
19 ~~2H .1003(a)(1)~~, 100 square meters in size.
- 20 (8) (9) ~~No sewage disposal system will be allowed without a permit authorized by either the Division of~~
21 ~~Environmental Health or the Division of Environmental Management~~, Structures shall not be
22 constructed in a designated Primary Nursery Area without approval from the Division of Marine
23 Fisheries or the Wildlife Resources Commission.

24
25 *History Note: Authority G.S. 113-229(c1); 113A-107(a)(b); 113A-113(b); 113A-118.1;*
26 *Eff. March 1, 1989;*
27 *Amended Eff. February 1, 2020; May 1, 1990.*