



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

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6700

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

January 17, 2019

Jennifer Everett  
Department of Transportation  
**Sent via email only to: [Jennifer.everett@ncdenr.gov](mailto:Jennifer.everett@ncdenr.gov)**

Re: Extension of the Period of Review for Rules 15A NCAC 07H .0209, .0308, .1704,  
and .1705

Dear Ms. Everett:

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

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

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

Sincerely,

Amber C. May  
Commission Counsel

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

## Burgos, Alexander N

---

**Subject:** FW: Technical Change Requests  
**Attachments:** 15A NCAC 07B .0803 for Code with Technical Changes.docx; 15A NCAC 07K .0103 for Code with Technical Changes.docx

---

**From:** Willis, Angela <[angela.willis@ncdenr.gov](mailto:angela.willis@ncdenr.gov)>  
**Sent:** Friday, January 11, 2019 10:22 AM  
**To:** Everett, Jennifer <[jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)>; May, Amber Cronk <[amber.may@oah.nc.gov](mailto:amber.may@oah.nc.gov)>  
**Cc:** Miller, Tancred <[tancred.miller@ncdenr.gov](mailto:tancred.miller@ncdenr.gov)>; Lopazanski, Mike <[mike.lopezanski@ncdenr.gov](mailto:mike.lopezanski@ncdenr.gov)>  
**Subject:** RE: Technical Change Requests

Please find attached technical change requests for 15A NCAC 07B .0803 and 07K .0103. We would like to request an extended review period for 15A NCAC 07H .0209, 07H .0308, 07H .1704 and 07H .1705. We need more time to work through the tech change requests and determine whether these rules need to be reviewed/re-approved by the CRC. Jennifer is correct in that we need to request the extension for 7H .1704 and .1705 as they accompany 7H .0308.

So, for the January RRC meeting, we would like to move forward with 7B .0802 (no changes requested), 7B .0803 (tech changes attached), 7K .0103 (tech changes attached) and 7K .0208 (no changes requested).

Amber, thank you for helping us work through these and let me know if you have any additional questions or concerns.

Angela Willis, Asst. to the Director  
NC Division of Coastal Management  
NC Department of Environmental Quality  
400 Commerce Avenue  
Morehead City, NC 28557  
(252) 808-2808 ext. 201



*Email Correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.*

Amber

---

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

1 **15A NCAC 07B .0802 IS AMENDED AS PUBLISHED IN 32:18 NCR 1752-1753 AS FOLLOWS:**

2  
3 **15A NCAC 07B .0802 PUBLIC HEARING AND LOCAL ADOPTION REQUIREMENTS**

4 (a) Notice of Public Hearing. The local government shall provide the Secretary or his or her designee written notice  
5 of the public hearing for local adoption and a copy of the proposed land use plan or comprehensive plan, hereinafter  
6 referred to as "the plan", or amendment no less than five business days prior to publication of a public hearing notice.  
7 The public hearing notice shall include, as set forth in Rule .0803(a)(2) of this Section, disclosure of the public's  
8 opportunity to provide written comment to the Secretary following local adoption of the plan.

9 (b) Final Plan Content. The final plan or amendment shall be adopted by the elected body of each participating local  
10 government.

11 (c) Transmittal to the Division for Certification. The local government shall provide the Executive Secretary of the  
12 CRC or his or her designee the locally adopted plan, a certified statement of the local government adoption action,  
13 and documentation that it has followed the public hearing process required in G.S. 113A-110. ~~The locally adopted~~  
14 ~~plan or amendment shall be submitted at least 45 calendar days prior to the CRC meeting on which it will be considered~~  
15 ~~for certification.~~

16 (d) For joint plans originally adopted by each participating jurisdiction, each government retains its sole and  
17 independent authority to make amendments to the plan as it affects its jurisdiction.

18  
19 *History Note: Authority G.S. 113A-107(a); 113A-110; 113A-124;*  
20 *Eff. August 1, 2002;*  
21 *Amended Eff. January 1, 2007; February 1, 2006;*  
22 *Readopted Eff. February 1, 2016;*  
23 *Amended Eff. February 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07B .0803

**DEADLINE FOR RECEIPT: Friday, January 11, 2019**

**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 that the following technical changes be made:

*In (a)(3), line 21, should "plans" be plural? Everywhere else it is singular.*

*(a)(3) appears to be missing a word in the introductory language. Do you mean something like "and that the plan and amendments meet the following conditions:"?*

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

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

1 **15A NCAC 07B .0803 IS AMENDED AS PUBLISHED IN 32:18 NCR 1753 AS FOLLOWS:**

2  
3 **15A NCAC 07B .0803 CERTIFICATION AND USE OF THE PLAN**

4 (a) ~~CRC~~ Certification of Plans and Amendments: This Rule outlines the certification procedures and conditions for  
5 locally adopted land use plans or comprehensive plans, hereinafter referred to as "~~the plan~~", "the plan." or plan  
6 amendments. The procedures ~~are~~ shall be as follows:

7 (1) The Division District Planner shall submit a written report to the CRC, or qualified employee of the  
8 Department pursuant to G.S. 113A-124(c)(9). on the locally adopted plan or amendment and either  
9 recommend certification or identify how the plan or amendment does not meet the procedures and  
10 conditions for certification as set forth in Subparagraph (a)(3) of this Rule.

11 (2) The public shall have an opportunity to submit written objections or comments on the locally  
12 adopted plan or amendment prior to ~~action by the CRC.~~ certification pursuant to G.S. 113A-110(e).  
13 Written objections or comments shall be received by the Division no more than 30 calendar days  
14 after local adoption of the plan or amendment. Written objections shall be limited to the criteria for  
15 certification as defined in Subparagraph (a)(3) of this Rule, and shall identify the specific plan  
16 elements that are opposed. Written objections or comments shall be sent by the Division to the local  
17 government submitting the plan or amendment. Written objections or comments shall be considered  
18 ~~by the CRC~~ in the certification of the local plan or amendment.

19 (3) The CRC or qualified employee of the Department, pursuant to G.S. 113A-124(c)(9), shall certify  
20 plans and amendments following the procedures and conditions specified in this ~~Rule.~~ The CRC  
21 shall certify plans and amendments which: Rule, and that:

22 (A) are consistent with the ~~current federally approved North Carolina Coastal Management~~  
23 Program; Coastal Area Management Act G.S. 113A-110;

24 (B) are consistent with the rules of the CRC;

25 (C) do not violate ~~state~~ State or federal law; and

26 (D) contain policies that address each management topic as set forth in Rule .0702(d)(2) of this  
27 Subchapter.

28 (4) If the plan or amendment does not meet certification requirements, ~~the CRC shall~~ the applicant shall  
29 be informed by the Division of Coastal Management within 45 calendar days ~~inform the local~~  
30 government regarding how the plan or amendment does not meet the procedures and conditions for  
31 certification.

32 (b) Copies of the Plan. Within 90 calendar days of certification of the plan or an amendment, the local government  
33 shall provide one printed and one digital copy of the plan to the Division. Amendments shall be incorporated in all  
34 copies of the plan. The dates of local adoption, certification, and amendments shall be published on the cover.

35 (c) Use of the Plan. Once certified, the plan shall be utilized in the review of the CAMA permits in accordance with  
36 G.S. 113A-111. Local governments shall have the option to exercise their enforcement responsibility by choosing  
37 from the following:

- 1           (1)     Local administration: The local government reviews the CAMA permits for consistency with the  
2                     plan;  
3           (2)     Joint administration: The local government identifies policies, including the future land use map  
4                     and implementation actions that will be used by the Division for the CAMA permit consistency  
5                     reviews or;  
6           (3)     Division administration: The Division reviews the CAMA permits for consistency with the plan  
7                     policies, including the future land use map and implementation actions.  
8   (d) Plan updates and Amendments. Local governments shall determine the scope, timing, and frequency of plan  
9   updates and amendments.  
10

11 *History Note:*     *Authority G.S. 113A-107(a); 113A-110; 113-111; 113A-124;*  
12                     *Eff. August 1, 2002;*  
13                     *Amended Eff. April 1, 2008; September 1, 2006;*  
14                     *Readopted Eff. February 1, 2016;*  
15                     *Amended Eff. February 1, 2019.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0209

**DEADLINE FOR RECEIPT: Friday, January 11, 2019**

**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 that the following technical changes be made:

*Overall, I think that this Rule could be simplified. In some instances, the actual intent and requirements get lost.*

*Throughout this Rule you have used both "environmental Management Commission" and "EMC" I would suggest that the very first time you use it (which is currently in (a)), say "Environmental Management Commission (EMC)" then everywhere else just say "EMC"*

*Is the intent of (a) to provide some sort of definition for each category? If so, please consider breaking each kind of category out into a separate subparagraph for purposes of clarity.*

*Is (b) necessary for purposes of rulemaking?*

*I Initially questioned the necessity of (c) for rulemaking purposes, but upon a second reading, these actually appear to be factors that you all will use in making decisions or are otherwise requirements of your regulated public. If that is correct, this needs to be much more clear in your Rule. Rather than "the management objective is to ensure", could you say something like "All shoreline development shall..." While I do think that some of the language in (c) is unnecessary, I think that I understand the intent behind some of it. Please review and clarify. Please also look at (d) with this in mind.*

*In (d), by "In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards..." do you simply mean "All projects shall comply with Rule .0208 of this Section"? If so, is this language necessary given .0208?*

*In (d), page 2, line 2 - what is meant by "Development shall be compatible"? Do you just mean that "development shall comply with the following"? I don't understand the use of "compatible" here.*

*In (d)(1), please consider deleting "and not weaken or eliminate" as this language is superfluous to "shall preserve"*

Amber May  
Commission Counsel

Date submitted to agency: Friday, January 4, 2018

*In (d)(1), please add a comma in between “barriers to erosion” and “including”*

*What is the intent of (d)(2)? Is the first sentence necessary? It appears as though the rest of the subparagraph sets forth the actual requirement. If it is necessary, please delete or define “adequately” and “major” Also, how is this determined? Is this at the developer’s discretion?*

*In (d)(2), line 10, delete or define “effectively”*

*In (d)(2), line 13, by “limitation may be permitted if”, do you mean “shall be permitted if”?*

*In (d)(2), line 14, what is meant by “the intent of the rule to the maximum extent feasible”? I have no idea what this means. Do you simply mean that you will accept an alternative if it complies with your Rules? If so, say that. Alternatively, consider deleting this language.*

*In (d)(3), are (A), (B), and (C), already in the Sedimentation Pollution Control Act? Are developers not already subject to this? If so, is it necessary to spell out these requirements again?*

*In (d)(3)(A), please change “which” to “that” in “which is sufficient”*

*In (d)(3)(B), what is meant by “shall permit”? Is “permit” an accurate verb here?*

*In (d)(3)(B), please change “which” to “that” in “which is greater”*

*In (d)(3)(B), what is meant by “... an angle which can be retained by vegetative cover...”?*

*In (d)(3)(C), please change “which” to “that” in “which involve”*

*In (d)(3)(C), what is meant by “provided that this shall not apply to clearing land for the purposes of forming a reservoir later to be inundated”? Do you mean something like “unless the development project involves clearing land for purposes of forming a reservoir”?*

*In (d)(4), please consider deleting “directly or indirectly”*

*In (d)(6), please review and clarify where you can. Do you need both the definition for “public facility” and “if such a facility is likely to require public expenditures for maintenance and continued use”? Given the definition, please consider deleting this language.*

*In (d)(8), what is the “intended use” of accessways? Please consider deleting “intended”*

*In (d)(9), please change “which” to “that” on line 9.*

*In (d)(9), what are the “applicable use standards”? Do you mean Rules?*

*In (d)(10), what if the development falls into one of these categories? What is the requirement then?*



*In (d)(10)(H), line 32, what is meant by “the intent of the rule to the maximum extent feasible”? Do you simply mean that you will accept an alternative if it complies with your Rules? If so, say that. Alternatively, consider deleting this language.*

*In (d)(10)(I), line 36, by “development may be permitted”, do you mean “shall be permitted” assuming the necessary criteria are met? The question here is will you deny a permit even if all of the criteria set forth in (d)(10)(I) are met?*

*In (d)(10)(I)(ii), line 4, please add a comma in between “utilities” and “such as”*

*In (d)(10)(J), line 14, by “development may be permitted”, do you mean “shall be permitted” assuming the necessary criteria are met?*

*In (d)(10)(J)(ii), by “may be aligned”, do you mean “shall be aligned”*

*In (d)(10)(J)(iv), please change “will be allowed” to “shall be allowed”*

*What is the intent of (e)? This appears to be saying the same thing in two different ways? Is the intent here just to get to current and future rules of EMC? If so, please make that more clear.*

*Please provide some sort of introductory language in (f) and (g) to the Subparagraphs of each.*

*Please add “and” after the semi-colon in (f)(1)(A).*

*Do you still need the language in (f)(2)? Would there be a permit application in proress from June 1, 1989 still?*

*In (f)(2), please add a comma in between “water line” and “but within” and between “1989” and “shall be”*

*In (f)(2), where can the “rules and standards in effect as of June 1, 1989” be found? We do not have these available in the official code. Please provide this information.*

*In (f)(2)(B), please change the comma in between “in process” and “or” to a semi-colon.*

*Overall, what is the intent of (f)(3)? Also, what is meant by “so long as the development complies with those standards to the maximum extent possible”? How is this determined?*

*What is the intent of (f)(4)?*

*In (g)(1), delete “as of the effective date of this Rule”*

*In (g)(1)(A), please make “The” in “The are” begin with a lower case t.*

*In (g)(1)(B), what is meant by “minimal undeveloped land” Please delete or define.*

*In (g)(2)(B), please add a comma in between “level services” and “such as”*

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

*Are (g)(2) and (3) necessary?*

*In (g)(4)(A), please change “is not required” to “shall not be required”*

*I don’t think you need as many levels as you have here. Please consider deleting “Use standards” in (4) and make (g)(4)(A) into (g)(4) and (g)(4)(B) into (g)(5). That is assuming that you don’t have cross-references to these in other Rules.*

*In (g)(4)(a)(ii), delete or define “effectively”*

*In (g)(4)(a)(ii), by “limitation may be permitted if”, do you mean “shall be permitted if”?*

*In (g)(4)(a)(ii), what is meant by “the intent of the rule to the maximum extent feasible”? I have no idea what this means. Do you simply mean that you will accept an alternative if it complies with your Rules? If so, say that. Alternatively, consider deleting this language.*

*Have the EMC Stormwater Rules already been incorporated by reference elsewhere in your Rules (I assume that they have, but wanted to verify)?*

*In (g)(4)(B), by “may be allowed only within...”, do you mean something like “non-water dependent uses over estuarine waters, public trust waters, and coastal wetlands within urban waterfronts shall comply with the following:”?*

*What is the intent of (g)(4)(B)(i)? Is it just to say that only existing structures serving as restaurants and retail services may be over coastal wetlands, etc? If so, say that.*

*In (g)(4)(B)(i), how and by whom is it determined whether the existing structures “promotes, fosters, enhances, or accommodates public benefit”? What does this mean?*

*In (g)(4)(B)(ii), line 3, please change “and/or” to “and” or “or.” Whichever you mean.*

*In (g)(4)(B)(iii), do you need the word “structures” before each subpart? It appears to be included in (g)(4)(B)(iii)*

*In (g)(4)(B)(iii)(I), what is meant by “enhanced public access”? How is this determined?*

*In (g)(4)(B)(iii)(II), please add a comma in between “roofed” and “but shall”*

*In (g)(4)(B)(iii)(II), since you already have the single story requirement in (g)(4)(B)(iii), please delete “and shall be limited to a single story”*

*In (g)(4)(B)(iii)(III), since you already have the pile-supported requirement in (g)(4)(B)(ii), please delete “shall be pile supported”*

*In (g)(4)(B)(iii)(IX), please delete or define “reasonable” in “reasonable alternative” Please also consider deleting “directly or indirectly”*

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

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

**15A NCAC 07H .0209 IS AMENDED AS PUBLISHED IN 32:18 NCR 1754-1759 WITH CHANGES AS FOLLOWS:**

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

(a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines. Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources Commission and the Department of ~~Environment and Natural Resources~~ Environmental Quality [described in Rule .0206(a) of this Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous to waters classified as Outstanding Resource Waters by the Environmental Management Commission, the estuarine shoreline AEC shall extend to 575 feet landward from the normal high water level or normal water level, unless the Coastal Resources Commission establishes the boundary at a greater or lesser extent following required public hearing(s) within the affected county or counties. Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet landward of the normal high water level or normal water level.

(b) Significance. Development within coastal shorelines influences the quality of estuarine and ocean life and is subject to the damaging processes of shore front erosion and flooding. The coastal shorelines and wetlands contained within them serve as barriers against flood damage and control erosion between the estuary and the uplands. Coastal shorelines are the intersection of the upland and aquatic elements of the estuarine and ocean system, often integrating influences from both the land and the sea in wetland areas. Some of these wetlands are among the most productive natural environments of North Carolina and they support the functions of and habitat for many valuable commercial and sport fisheries of the coastal area. Many land-based activities influence the quality and productivity of estuarine waters. Some important features of the coastal shoreline include wetlands, flood plains, bluff shorelines, mud and sand flats, forested shorelines and other important habitat areas for fish and wildlife.

(c) Management Objective. The management objective is to ensure that shoreline development is compatible with the dynamic nature of coastal shorelines as well as the values and the management objectives of the estuarine and ocean system. Other objectives are to conserve and manage the important natural features of the estuarine and ocean system so as to safeguard and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management system capable of conserving and utilizing these shorelines so as to maximize their benefits to the estuarine and ocean system and the people of North Carolina.

(d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by the permit applicant to ~~avoid, mitigate or reduce~~ avoid or minimize adverse impacts of development to estuarine and coastal systems through the planning and design of the development project. In every instance, the particular location, use, and design characteristics shall comply with the general use and specific use standards for coastal

shorelines, and where applicable, the general use and specific use standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section. Development shall be compatible with the following standards:

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

the purpose of this standard, "public facility" means a project that is paid for in any part by public funds.

- (7) Development shall not cause irreversible damage to valuable, historic architectural or archaeological resources as documented by the local historic commission or the North Carolina Department of Natural and Cultural Resources.
- (8) Established common-law and statutory public rights of access to the public trust lands and waters in estuarine areas shall not be eliminated or restricted. Development shall not encroach upon public accessways nor shall it limit the intended use of the accessways.
- (9) Within the AECs for shorelines contiguous to waters classified as Outstanding Resource Waters by the EMC, no CAMA permit shall be approved for any project which would be inconsistent with applicable use standards adopted by the CRC, EMC or MFC for estuarine waters, public trust areas, or coastal wetlands. For development activities not covered by specific use standards, no permit shall be issued if the activity would, based on site-specific information, degrade the water quality or outstanding resource values.
- (10) Within the Coastal Shorelines category (estuarine and public trust shoreline AECs), new development shall be located a distance of 30 feet landward of the normal water level or normal high water level, with the exception of the following:
  - (A) Water-dependent uses as described in Rule 07H .0208(a)(1) of this Section;
  - (B) Pile-supported signs (in accordance with local regulations);
  - (C) Post- or pile-supported fences;
  - (D) Elevated, slatted, wooden boardwalks exclusively for pedestrian use and six feet in width or less. The boardwalk may be greater than six feet in width if it is to serve a public use or need;
  - (E) Crab Shedders, if uncovered with elevated trays and no associated impervious surfaces except those necessary to protect the pump;
  - (F) Decks/Observation Decks limited to slatted, wooden, elevated and unroofed decks that shall not singularly or collectively exceed 200 square feet;
  - (G) Grading, excavation and landscaping with no wetland fill except when required by a permitted shoreline stabilization project. Projects shall not increase stormwater runoff to adjacent estuarine and public trust waters;
  - (H) Development over existing impervious surfaces, provided that the existing impervious surface is not increased and the applicant designs the project to comply with the intent of the rules to the maximum extent feasible;
  - (I) Where application of the buffer requirement would preclude placement of a residential structure with a footprint of 1,200 square feet or less on lots, parcels and tracts platted prior to June 1, 1999, development may be permitted within the buffer as required in Subparagraph (d)(10) of this Rule, providing the following criteria are met:

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

(J) Where application of the buffer requirement set out in 15A NCAC 07H .0209(d)(10) Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development may be permitted within the buffer if all the following criteria are met:

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

- (v) The lots ~~must~~ shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Environmental Health Marine Fisheries of the Department of ~~Environment and Natural Resources~~. Environmental Quality.
- (e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the Environmental Management Commission (EMC) has adopted rules that contain buffer standards, or to Coastal Shorelines where the EMC adopts such rules, upon the effective date of those rules.
- (f) Specific Use Standards for Outstanding Resource Waters (ORW) Coastal Shorelines.
- (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
- (A) ~~have no stormwater collection system;~~
- (B)(A) provide a buffer zone of at least 30 feet from the normal high water line or normal water line;
- (C)(B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
- (2) Development (other than single-family residential lots) more than 75 feet from the normal high water line or normal water line but within the AEC as of June 1, 1989 shall be permitted in accordance with rules and standards in effect as of June 1, 1989 if:
- (A) the development has a CAMA permit application in process, or
- (B) the development has received preliminary subdivision plat approval or preliminary site plan approval under applicable local ordinances, and in which financial resources have been invested in design or improvement.
- (3) Single-family residential lots that would not be buildable under the low-density standards defined in Paragraph Subparagraph (f)(1) of this Rule may be developed for single-family residential purposes so long as the development complies with those standards to the maximum extent possible.
- (4) For an ORW nominated subsequent to June 1, 1989, the effective date in Paragraph Subparagraph (f)(2) of this Rule shall be the dates of nomination by the EMC.
- (g) Urban Waterfronts.
- (1) Description. Urban Waterfronts are waterfront areas, not adjacent to Outstanding Resource Waters, in the Coastal Shorelines category that lie within the corporate limits of any municipality duly chartered within the 20 coastal counties of the state. In determining whether an area is an urban waterfront, the following criteria shall be met as of the effective date of this Rule:
- (A) The area lies wholly within the corporate limits of a municipality; and
- (B) the area has a central business district or similar commercial zoning classification where there is minimal undeveloped land, mixed land uses, and urban level services such as water,

sewer, streets, solid waste management, roads, police and fire protection, or in an area with an industrial or similar zoning classification adjacent to a central business district.

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

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

(4) Use Standards:

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

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

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

(iii) The development shall meet all state stormwater management requirements as required by the NC Environmental Management Commission;

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

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



- 1 (ii) For the purposes of this Rule, existing enclosed structures may be replaced ~~and or~~  
2 ~~and/or~~ expanded vertically provided that vertical expansion does not exceed the  
3 original footprint of the structure, is limited to one additional story over the life  
4 of the ~~structure structure~~, and is consistent with local requirements or limitations.
- 5 (iii) New structures built for non-water dependent purposes are limited to pile-  
6 supported, single-story, unenclosed decks and boardwalks, and shall meet the  
7 following criteria:
- 8 (I) The proposed development shall provide for enhanced public access to  
9 the shoreline;
- 10 (II) Structures may be roofed but shall not be enclosed by partitions, plastic  
11 sheeting, screening, netting, lattice or solid walls of any kind and shall  
12 be limited to a single story;
- 13 (III) Structures shall be pile supported and require no filling of coastal  
14 wetlands, estuarine waters or public trust areas;
- 15 (IV) Structures shall not extend more than 20 feet waterward of the normal  
16 high water level or normal water level;
- 17 (V) Structures shall be elevated at least three feet over the wetland substrate  
18 as measured from the bottom of the decking;
- 19 (VI) Structures shall have no more than six feet of any dimension extending  
20 over coastal wetlands;
- 21 (VII) Structures shall not interfere with access to any riparian property and  
22 shall have a minimum setback of 15 feet between any part of the structure  
23 and the adjacent property owners' areas of riparian access. The line of  
24 division of areas of riparian access shall be established by drawing a line  
25 along the channel or deep water in front of the properties, then drawing  
26 a line perpendicular to the line of the channel so that it intersects with  
27 the shore at the point the upland property line meets the water's edge.  
28 The minimum setback provided in the rule may be waived by the written  
29 agreement of the adjacent riparian owner(s) or when two adjoining  
30 riparian owners are co-applicants. Should the adjacent property be sold  
31 before construction of the structure commences, the applicant shall  
32 obtain a written agreement with the new owner waiving the minimum  
33 setback and submit it to the permitting agency prior to initiating any  
34 development;
- 35 (VIII) Structures shall be consistent with the US Army Corps of Engineers  
36 setbacks along federally authorized waterways;

- 1 (IX) Structures shall have no significant adverse impacts on fishery resources,  
2 water quality or adjacent wetlands and there ~~must~~ **shall** be no reasonable  
3 alternative that would avoid wetlands. Significant adverse impacts  
4 include the development that would directly or indirectly impair water  
5 quality standards, increase shoreline erosion, alter coastal wetlands or  
6 Submerged Aquatic Vegetation (SAV), deposit spoils waterward of  
7 normal water level or normal high water level, or cause degradation of  
8 shellfish beds;
- 9 (X) Structures shall not degrade waters classified as SA or High Quality  
10 Waters or Outstanding Resource Waters as defined by the NC  
11 Environmental Management Commission;
- 12 (XI) Structures shall not degrade Critical Habitat Areas or Primary Nursery  
13 Areas as defined by the NC Marine Fisheries Commission; and
- 14 (XII) Structures shall not pose a threat to navigation.
- 15

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

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0308

**DEADLINE FOR RECEIPT: Friday, January 11, 2019**

**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 that the following technical changes be made:

*I'm a bit confused as to what (a)(1) applies to. This references permanent control measures, but says it applies to "all." Then, (a)(2) refers specifically to temporary control measures. What is the requirement here. Would it make sense to say that (a)(1) applies to permanent structures, then in (a)(2), say that temporary structures shall comply with all requirements of permanent structures set forth in (a)(1)?*

*Please confirm that "significant adverse impact" is defined somewhere in rule or statute.*

*What are the actual requirements of (a)(1)(A)? Do you mean something like "all oceanfront response activities shall comply with the Rules in 15A NCAC 07M Section .0200? Please note that "policies" are defined as "nonbinding interpretive statements" per the APA.*

*I don't think that most of (a)(1)(B) is necessary. Please consider revising as follows (please see my note below regarding (a)(1)(G) before making any decisions on this:*

- (B) Permanent erosion control structures may cause significant adverse impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, [unless specifically authorized under the Coastal Area Management Act,] are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters. —No permanent erosion control structure , such as bulkheads, seawalls, revetments, jetties, groins, or breakwaters, shall be erected (or whatever the correct verb is), unless permitted by the Division pursuant to the Coastal Area Management Act and this Rule.

*In (a)(1)(G), (H), and (I), what is meant by "these standards" on line 27? In (a)(1)(B), you've said that the Coastal Area Management Act is the loadstar, is that what is meant by "Standards" or do you mean the Coastal Area Management Act and this Rule (as I've said in my suggestion above)? Do these actually go together, such that it should read something like "*

Amber May  
Commission Counsel

Date submitted to agency: Friday, January 4, 2018

*Why are (a)(1)(G), (H), and (I) separated out? I read these as being the factors that you all will use in determining whether to grant a permit for a permanent erosion control structure. Is that correct? Would it be appropriate to combine these? Alternatively, if these are different kinds of factors used in different circumstances (for example, (a)(1)(H) is used when considered permanent erosion control measures for historic properties, please make that clear in the part (for example, (a)(1)(H)), rather than the subpart ((a)(1)(H)(i).)*

*What is the intent of (a)(1)(J)? I assume that this is still needed as you may have some permits from 1995 that may need to be renewed? Under what circumstances would a renewal need to take place? Also, how will it be determined whether it will be granted? By using the same factors set forth in (a)(1)(J)(i) through (iii)? Please review and clarify.*

*What is the difference between (a)(2) and Rule .1705? They appear to be addressing temporary control measures for ocean hazards. If this is correct, you do not need all of this language in both places. Would it be appropriate to simply cross-reference .1705, rather than repeating all of this information? If these are addressing different situations, please incorporate all pertinent technical change requests in .1705.*

*How is (a)(4) different than 07K .0103(b)? Are both necessary? They appear to provide the same information.*

*In (b)(1) and (b)(4), please delete "general"*

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

*In (c)(1), what is meant by "negligible alteration"? Is this determined based on the factors in (c)(2)? Please confirm.*

*In (c)(1), I don't see referenced to a "threatened structure" in Paragraph (a). Please review.*

*In (c)(1), you've said "the primary", in (c)(2), you've said "a primary." Please be consistent.*

*In (c)(2)(C), what is meant by "deemed impossible"? By whom? How?*

*In (c)(3), please change "which" to "that" in "which does not"*

*In (c)(3), what are all "applicable standards"?*

*In (c)(4), how will it be determined whether "other materials" will be approved? What factors will be used?*

*In (c)(4), is a Hatteras Ramp the only option? Based upon the language on line 12, it appears to be an example of an accessway, but line 15 makes it look like it's the only kind of accessway allowed. Then (a)(5), uses "structural accessway." Are the requirements different for Hatteras Ramps and other structural accessways? Please review and clarify.*

*Please delete “adequate” in (d)(4).*

*In (d)(4), what is meant by “this standard”? Do you mean the requirements of this Part?*

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

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

1 15A NCAC 07H .0308 is amended as published in 32:18 NCR 1759 and 33:02 NCR 97 with changes as follows:

2  
3 **15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

4 (a) Ocean Shoreline Erosion Control Activities:

5 (1) Use Standards Applicable to all Erosion Control Activities:

6 (A) All oceanfront erosion response activities shall be consistent with the general policy  
7 statements in 15A NCAC 07M .0200.

8 (B) Permanent erosion control structures may cause significant adverse impacts on the value  
9 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,  
10 therefore, unless specifically authorized under the Coastal Area Management Act, are  
11 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and  
12 breakwaters.

13 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront  
14 properties without regard to the size of the structure on the property or the date of its  
15 construction.

16 ~~(D) All permitted oceanfront erosion response projects, other than beach bulldozing and~~  
17 ~~temporary placement of sandbag structures, shall demonstrate sound engineering for their~~  
18 ~~planned purpose.~~

19 ~~(E)(D)~~ Shoreline erosion response projects shall not be constructed in beach or estuarine areas that  
20 sustain substantial habitat for fish and wildlife species, as identified by natural resource  
21 agencies during project review, unless mitigation measures are incorporated into project  
22 design, as set forth in Rule ~~.0306(i)~~ .0306(h) of this Section.

23 ~~(F)(E)~~ Project construction shall be timed to minimize adverse effects on biological activity.

24 ~~(G)(F)~~ Prior to completing any erosion response project, all exposed remnants of or debris from  
25 failed erosion control structures must be removed by the permittee.

26 ~~(H)(G)~~ ~~Erosion~~ Permanent erosion control structures that would otherwise be prohibited by these  
27 standards may be permitted on finding by the Division that:

28 (i) the erosion control structure is necessary to protect a bridge ~~which~~ that provides  
29 the only existing road access on a barrier island, that is vital to public safety, and  
30 is imminently threatened by erosion as defined in ~~provision~~ Part (a)(2)(B) of this  
31 Rule;

32 (ii) the erosion response measures of relocation, beach nourishment or temporary  
33 stabilization are not adequate to protect public health and safety; and

34 (iii) the proposed erosion control structure will have no adverse impacts on adjacent  
35 properties in private ownership or on public use of the beach.

36 ~~(H)(H)~~ Structures that would otherwise be prohibited by these standards may also be permitted on  
37 finding by the Division that:

- 1 (i) the structure is necessary to protect a state or federally registered historic site that  
2 is imminently threatened by shoreline erosion as defined in ~~provision~~ Part  
3 (a)(2)(B) of this Rule;
- 4 (ii) the erosion response measures of relocation, beach nourishment or temporary  
5 stabilization are not adequate and practicable to protect the site;
- 6 (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- 7 (iv) ~~any~~ a permit for a structure under this Part ~~(H)~~ may be issued only to a sponsoring  
8 public agency for projects where the public benefits outweigh the ~~short or long~~  
9 ~~range~~ significant adverse impacts. Additionally, the permit shall include  
10 conditions providing for mitigation or minimization by that agency of ~~any~~  
11 ~~unavoidable~~ significant adverse impacts on adjoining properties and on public  
12 access to and use of the beach.

13 ~~(H)~~(I) Structures that would otherwise be prohibited by these standards may also be permitted on  
14 finding by the Division that:

- 15 (i) the structure is necessary to maintain an existing commercial navigation channel  
16 of regional significance within federally authorized limits;
- 17 (ii) dredging alone is not practicable to maintain safe access to the affected channel;
- 18 (iii) the structure is limited in extent and scope to that necessary to maintain the  
19 channel;
- 20 (iv) the structure shall not ~~adversely impact~~ have significant adverse impacts on  
21 fisheries or other public trust resources; and
- 22 (v) ~~any~~ a permit for a structure under this Part ~~(I)~~ may be issued only to a sponsoring  
23 public agency for projects where the public benefits outweigh the ~~short or long~~  
24 ~~range~~ significant adverse impacts. Additionally, the permit shall include  
25 conditions providing for mitigation or minimization by that agency of any  
26 ~~unavoidable~~ significant adverse impacts on adjoining properties and on public  
27 access to and use of the beach.

28 ~~(K)~~(J) The Commission may renew a permit for an erosion control structure issued pursuant to a  
29 variance granted by the Commission prior to 1 July 1995. The Commission may authorize  
30 the replacement of a permanent erosion control structure that was permitted by the  
31 Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the  
32 Commission finds that:

- 33 (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- 34 (ii) there is no practical alternative to replacing the structure that will provide the same  
35 or similar benefits; and

(iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.

~~(L)~~(K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

(2) Temporary Erosion Control Structures:

(A) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(B) Temporary erosion control structures as defined in Part ~~(2)~~(A) of this Subparagraph ~~shall~~ may be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed under 15A NCAC 07H Rule .0309 of this Section as an exception to the erosion setback requirement.

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

(E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be ~~protected~~. protected except to align with temporary erosion control structures on adjacent properties, where the Division has determined that gaps between adjacent erosion control structures may result in an increased risk of damage to the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet ~~seaward~~ waterward of the structure to be ~~protected~~ protected, or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control



1 structures shall be determined by the Director of the Division of Coastal Management or  
2 ~~their~~ the Director's designee in accordance with Part ~~(2)~~(A) of this Subparagraph.

3 (F) Temporary erosion control structures may remain in place for up to ~~two years after the date~~  
4 ~~of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less~~  
5 ~~and its associated septic system, or, for up to five eight years for a building with a total~~  
6 ~~floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion~~  
7 ~~control structures may remain in place for up to five years if they are protecting system, a~~  
8 bridge or a road. The property owner shall be responsible for removal of ~~the temporary~~  
9 ~~structure~~ any portion of the temporary erosion control structure exposed above grade  
10 within 30 days of the end of the allowable time period.

11 (G) An imminently threatened structure or property may be protected only once, regardless of  
12 ownership, unless the threatened structure or property is located in a community that is  
13 actively pursuing a beach nourishment project, or an inlet relocation or stabilization project  
14 in accordance with Part (H) of this Subparagraph. Existing temporary erosion control  
15 structures may be permitted for additional eight-year periods provided that the structure or  
16 property being protected is still imminently threatened, the temporary erosion control  
17 structure is in compliance with requirements of this Subchapter, and the community in  
18 which it is located is actively pursuing a beach nourishment or an inlet relocation or  
19 stabilization project in accordance with Part (H) of this Subparagraph. In the case of a  
20 building, a temporary erosion control structure may be extended, or new segments  
21 constructed, if additional areas of the building become imminently threatened. Where  
22 temporary structures are installed or extended incrementally, the time period for removal  
23 under Part (F) or (H) of this Subparagraph shall begin at the time the initial erosion control  
24 structure was installed. For the purpose of this Rule:

25 (i) a building and its septic system shall be considered separate structures,

26 (ii) a road or highway may be incrementally protected as sections become imminently  
27 threatened. The time period for removal of each contiguous section of temporary erosion  
28 control structure shall begin at the time that the initial section was installed, in accordance  
29 with Part (F) of this Subparagraph.

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

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

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

18 ~~(H)~~(I) Once ~~the~~ a temporary erosion control structure is determined by the Division of Coastal  
19 Management to be unnecessary due to relocation or removal of the threatened structure, it  
20 shall be removed to the maximum extent practicable by the property owner within 30 days  
21 of official notification from the Division of Coastal Management regardless of the time  
22 limit placed on the temporary erosion control structure. If the temporary erosion control  
23 structure is determined by the Division of Coastal Management to be unnecessary due to  
24 the completion of a storm protection project constructed by the U.S. Army Corps of  
25 Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization  
26 project, ~~if any portion of the temporary erosion control structure exposed above grade~~ shall  
27 be removed by the property owner within 30 days of official notification from the Division  
28 of Coastal Management regardless of the time limit placed on the temporary erosion control  
29 structure.

30 ~~(H)~~(J) Removal of temporary erosion control structures is not required if they are covered by  
31 ~~dunes with stable and natural vegetation sand. Any portion of the temporary erosion~~  
32 control structure that becomes exposed above grade after the expiration of the permitted  
33 time period shall be removed by the property owner within 30 days of official notification  
34 from the Division of Coastal Management.

35 ~~(J)~~(K) The property owner shall be responsible for the removal of remnants of all portions of any  
36 damaged temporary erosion control structure.

1           ~~(K)~~(L) Sandbags used to construct temporary erosion control structures shall be tan in color and  
2           three to five feet wide and seven to 15 feet long when measured flat. Base width of the  
3           temporary erosion control structure shall not exceed 20 feet, and the total height shall not  
4           exceed six ~~feet~~ feet, as measured from the bottom of the lowest bag.

5           ~~(L)~~(M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

6           ~~(M)~~ — ~~An imminently threatened structure may be protected only once, regardless of ownership,~~  
7           ~~unless the threatened structure is located in a community that is actively pursuing a beach~~  
8           ~~nourishment project, or in an Inlet Hazard Area and in a community that is actively~~  
9           ~~pursuing an inlet relocation or stabilization project in accordance with (G) of this~~  
10           ~~Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas~~  
11           ~~may be eligible for an additional eight year permit extension provided that the structure~~  
12           ~~being protected is still imminently threatened, the temporary erosion control structure is in~~  
13           ~~compliance with requirements of this Subchapter and the community in which it is located~~  
14           ~~is actively pursuing a beach nourishment, inlet relocation or stabilization project in~~  
15           ~~accordance with Part (G) of this Subparagraph. In the case of a building, a temporary~~  
16           ~~erosion control structure may be extended, or new segments constructed, if additional areas~~  
17           ~~of the building become imminently threatened. Where temporary structures are installed~~  
18           ~~or extended incrementally, the time period for removal under Part (F) or (G) of this~~  
19           ~~Subparagraph shall begin at the time the initial erosion control structure is installed. For~~  
20           ~~the purpose of this Rule:~~

21           ~~(i) — a building and septic system shall be considered as separate structures.~~

22           ~~(ii) — a road or highway shall be allowed to be incrementally protected as sections~~  
23           ~~become imminently threatened. The time period for removal of each section of~~  
24           ~~sandbags shall begin at the time that section is installed in accordance with Part~~  
25           ~~(F) or (G) of this Subparagraph.~~

26           (N) Existing sandbag structures may be repaired or replaced within their originally permitted  
27           dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.

28           (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size  
29           and in accordance with 15A NCAC 07H .0312, Rule .0312 of this Section.

30           (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from  
31           any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain  
32           material for any other purpose) is development and may be permitted as an erosion response if the  
33           following conditions are met:

34           (A) The area on which this activity is being performed shall maintain a slope of adequate grade  
35           so as to not endanger the public or the public's use of the beach and shall follow the pre-  
36           emergency slope as closely as possible. The movement of material utilizing a bulldozer,

- front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.
- (b) Dune Establishment and Stabilization. ~~Activities to establish dunes shall be allowed so long as the following conditions are met:~~
- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be ~~successfully~~ completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary ~~dune or landward toe dune, if present, or the crest~~ of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid ~~unnecessary~~ dune impacts.
- (c) Structural Accessways:
- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration ~~on~~ of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be ~~conclusively presumed~~ considered to entail negligible alteration of a primary or frontal dune provided that:
- (A) The accessway is exclusively for pedestrian use;
- (B) The accessway is ~~less than~~ a maximum of six feet in width;

- (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the ~~frontal~~ dune. Where this is deemed impossible, the structure shall touch the dune only to the extent ~~absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion;~~ necessary; and
- (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers ~~shall not be deemed to be~~ are not prohibited by this Rule, provided all other applicable standards are met.
- (4) In order to ~~avoid weakening~~ preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") ~~shall~~ may be provided for ~~any~~ off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than ~~40~~ 15 feet in width and ~~shall~~ may be constructed of wooden sections fastened ~~together~~ together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.
- (5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in [15A NCAC 07H .0309(a),] .0309(a) of this Section.
- (d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and ~~07J-.0210~~ 15A NCAC 07J .0210 shall comply with the following standards:
- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

- 1           (4)     All foundations shall be adequately designed to be stable during applicable fluctuations in ground  
2                   elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet  
3                   this standard or shall be designed to break-away without structural damage to the main structure.  
4

5     *History Note:     Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*  
6                   *Eff. June 1, 1979;*  
7                   *Filed as a Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on*  
8                   *December 17, 1989;*  
9                   *Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*  
10                  *RRC Objection Eff. November 19, 1992 due to ambiguity;*  
11                  *RRC Objection Eff. January 21, 1993 due to ambiguity;*  
12                  *Amended Eff. March 1, 1993; December 28, 1992;*  
13                  *RRC Objection Eff. March 16, 1995 due to ambiguity;*  
14                  *Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*  
15                  *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*  
16                  *Amended Eff. February 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August*  
17                  *1, 2002.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1704

**DEADLINE FOR RECEIPT: Friday, January 11, 2019**

**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 that the following technical changes be made:

*Should the title of this Rule be General Conditions of Emergency General Permits? Generally speaking, we do not read titles of rules since they can be changed without going through the rulemaking process, so I'm asking to be sure that I understand what is being addressed by this Rule.*

*In (a)(1), line 6, what is meant by "proposed emergency work can be delineated"? What actually happens here?*

*In (a)(1), how will it be determined whether the authorization to proceed will be issued during the visit? What factors will be used in making this determination?*

*In (a)(2), line 9, what is meant by "imminent danger"? Is this defined elsewhere in rule or statute? I see that "imminently threatened" is defined in .1705, but not "imminent danger (or damage as used in (a)(3) of this Rule). Would it be helpful to include a definition of "imminent" somewhere to address all of these terms (if it's not already been done)? Alternatively, could you delete "imminent" as you have in (a)(5) of .1705.*

*In (a)(2), line 10, what are "necessary public facilities or transportation corridors"? Please delete or define "necessary."*

*Given 07H .0308(a)(2)(B), is all of (a)(3) necessary? It appears to repeat some information.*

*In (a)(3), line 15, please add a comma in between "site conditions" and "such as"*

*In (a)(3), line 17, what is "imminent damage"?*

*In (a)(3), line 18, how will it be determined where the erosion control structures will be located? What factors will be used?*

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

*In (a)(4), how will it be determined whether excavation will be permitted? Is this at your discretion or do you mean something like "Material to fill sandbags for emergency protection may be obtained by excavation below MSW in the Ocean Hazard AEC"?*

*In (a)(5), what are "sound engineering practices"?*

*In (a)(6), what is "this permit"? Please be consistent in your language.*

*In (b), please consider changing "to be sure" to "to ensure"*

*In (b), what is meant by "this general permit"? Do you mean "an emergency general permit" or "then emergency general permit"?*

*In (b), please delete "the terms and conditions" on line 27 so that it reads "... in accordance with these Rules"*

*Out of curiosity, in (c), what are "other public trust rights"?*

*Please add 113A-118 to your History Note.*

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



1 15A NCAC 07H .1704 is amended as published in 33:02 NCR 102-103 as follows:

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

26 (b) Individuals shall allow authorized representatives of the Department of ~~Environment and Natural Resources~~  
27 Environmental Quality to make inspections ~~at any time deemed necessary~~ to be sure that the activity being performed  
28 under authority of this general permit is in accordance with the terms and conditions in these Rules.

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

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

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

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

1  
2  
3  
4  
5  
6

*History Note:* Authority G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1;  
Eff. November 1, 1985;  
Amended Eff. December 1, 1991; May 1, 1990;  
RRC Objection due to ambiguity Eff. May 19, 1994;  
Amended Eff. February 1, 2019; May 1, 2010; August 1, 1998; July 1, 1994.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1705

**DEADLINE FOR RECEIPT: Friday, January 11, 2019**

**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 that the following technical changes be made:

*In (a)(2), what is meant by "imminent damage" on line 14. Please delete or define "imminent." I note that imminent is not used in "risk of damage" on line 24, (a)(5) of this Rule.*

*In (a)(5), please add a comma in between "protected" and "except" and delete the comma after "properties"*

*In (a)(5), line 27, please delete or define "imminent" in "imminent damage." No need to do it in multiple places, just please make sure it's defined somewhere if you choose to keep this language.*

*In (a)(5), lines 30-32, how will it be determined where the erosion control structures will be located? What factors will be used? I don't understand the cross-reference to (a)(1) here. Please review and clarify.*

*Just to be clear, the timeline set forth in (a)(6) does not apply to work done in accordance with (b) and (c)?*

*In (a)(6), is the "building" referenced on line 35 the same as the "principal structure" referenced on line 15 of (a)(3)? If so, please be consistent in your language.*

*In (a)(6), is the intent to allow the temporary measure to stay in place for 8 years for a building and its associated system, or a bridge or road? I think you may need an "or" after "system."*

*In (a)(6), just to make sure that I understand – owners are not responsible for removing control structures **below** grade? How does this go with (a)(9) and (10)?*

*In (a)(7), page 2, line 8, and page 2, line 21, and (a)(14), please delete or define "actively" Please note that it only needs to be done once if you define it.*

*Please delete "or" at the end of (a)(7)(A) and (B).*

Amber May  
Commission Counsel

Date submitted to agency: Friday, January 4, 2018

*In (a)(7)(D), what are the “applicable State occupational licensing requirements”? I’m not sure that a change is necessary, but is this saying that if, for example, the project requires a licensed general contractor, then a licensed general contractor is involved in the planning stages?*

*In (a)(7), what “time extension” will be void on line 21? I don’t understand what is going on here with the deletion of lines 3-6.*

*In (a)(7), line 23, please change “are subject” to “shall be subject”*

*In (a)(8), what is meant by “the maximum extent practicable”?*

*In (a)(8), please add a comma after “Division of Coastal Management” on line 27*

*In (a)(13), is this a discretionary thing or do you mean something like “Excavation below mean high water in the Ocean Hazard AEC may be used to obtain...” The use of “allow” makes it look like an approval process where y’all have discretion to approve or deny. If that’s the case, we need factors as to how you will make this determination.*

*In (a)(14), line 15, by “may be permitted”, do you mean “shall be permitted” so long as the conditions are met?*

*In (a)(14), line 20, how will the determination be made whether to allow the structure to be extended? Based upon this Rule?*

*Please end (a)(14)(A) with a semi colon and “and” or “or”, whichever you mean.*

*In (a)(15), by “may be repaired”, do you mean “shall”? If you do mean “may”, I assume that the discretion lies with the owner? If so, I think it’s fine as written, I just want to verify.*

*In (b), what is meant by “this General Permit”? Is this a permit specific to Estuarine Shoreline, waters, and Public Trust AECs? If so, please make that more clear.*

*How is (b)(1) different than .1704(a)(2)? Are these talking about different kinds of permits? I read .1704 to be applicable to emergencies, but this also references emergencies. I think this could be more clear. I have the same question regarding (b)(2) and .1704(a)(3) and (b)(3) and .1704(a)(4). Also, this is*

*In (a)(2), how it the Director to determine the location of the structure?*

*In (c)(1), what is meant by “this general permit”? Is this specific to protection, rehab, or relocation of temporary facilities of transportation corridors? Would it be helpful to merge (c)(2) and (c) to provide some additional information as to when this kind of permit would be appropriate?*

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

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

1 15A NCAC 07H .1705 is amended as published in 33:02 NCR 103-105 with changes 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 ~~shall~~ may be  
8 used to protect only imminently threatened roads and associated right of ways, and buildings and  
9 their associated septic systems. A structure is considered imminently threatened if its foundation,  
10 septic system, ~~or, or~~ right-of-way in the case of ~~roads, roads~~ roads is less than 20 feet away from the  
11 erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas  
12 where there is no obvious erosion scarp may also be found to be imminently threatened when the  
13 Division determines that site conditions, such as a flat beach profile or accelerated erosion, increase  
14 the risk of imminent 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 ~~seaward~~ waterward of a septic system when  
19 there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line  
20 with the 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~~. protected except to align with temporary erosion control structures on adjacent  
23 properties, where the Division has determined that gaps between adjacent erosion control structures  
24 may result in an increased risk of damage to the structure being protected. The landward side of  
25 such temporary erosion control structures shall not be located more than 20 feet ~~seaward~~ waterward  
26 of the structure to be protected or the right-of-way in the case of roads. If a building or road is found  
27 to be imminently threatened and at increased risk of imminent damage due to site conditions such  
28 as a flat beach profile or accelerated erosion, temporary erosion control structures may be located  
29 more than 20 feet ~~seaward~~ waterward of the structure being protected. In cases of increased risk of  
30 imminent damage, the location of the temporary erosion control structures shall be determined by  
31 the Director of the Division of Coastal Management or the Director's designee in accordance with  
32 Subparagraph (1) of this Paragraph.
- 33 (6) Temporary erosion control structures may remain in place for up to ~~two years after the date of~~  
34 ~~approval if they are protecting a building with a total floor area of 5000 square feet or less and its~~  
35 ~~associated septic system, or for up to five eight years for a building with a total floor area of more~~  
36 ~~than 5000 square feet and its associated septic system. Temporary erosion control structures may~~  
37 ~~remain in place for up to five years if they are protecting~~ system, a bridge or a road. The property

owner shall be responsible for removal of ~~the temporary structure~~ any portion of the temporary erosion control structure exposed above grade within 30 days of the end of the allowable time period.

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

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

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

- (8) ~~Once the a~~ a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed by the property owner to the maximum extent practicable within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project, or an inlet relocation or stabilization project, it any portion of the temporary erosion control structure exposed above grade shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

- (9) Removal of temporary erosion control structures is not required if they are covered by ~~dunes with stable and natural vegetation.~~ sand. Any portion of a temporary erosion control structure that

1 becomes exposed after the expiration of the permitted time period shall be removed by the property  
2 owner within 30 days of official notification from the Division of Coastal Management.

3 (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged  
4 temporary erosion control structure.

5 (11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet  
6 wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet,  
7 and the total height shall not exceed 6 ~~feet~~, feet, as measured from the bottom of the lowest bag.

8 (12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

9 (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to  
10 fill sandbags used for emergency protection.

11 (14) An imminently threatened structure may be protected only once regardless of ownership, unless the  
12 threatened structure is located in a community that is actively pursuing a beach nourishment project,  
13 ~~or in an Inlet Hazard Area and in a community that is actively pursuing~~ an inlet relocation or  
14 stabilization project in accordance with Subparagraph ~~(7)~~, (7) of this Paragraph. Existing temporary  
15 erosion control structures may be ~~eligible~~ permitted for ~~an~~ additional eight-year ~~permit extension~~  
16 periods provided that the structure being protected is still imminently threatened, the temporary  
17 erosion control structure is in compliance with requirements of this ~~Subparagraph~~ Subparagraph,  
18 and the community in which it is located is actively pursuing a beach ~~nourishment~~, nourishment or  
19 an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph.  
20 In the case of a building, a temporary erosion control structure may be extended, or new segments  
21 constructed, if additional areas of the building become imminently threatened. Where temporary  
22 structures are installed or extended incrementally, the time period for removal under Subparagraph  
23 (6) or (7) of this Paragraph shall begin at the time the initial erosion control structure is installed.

24 For the purpose of this Rule:

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

26 (B) a road or highway shall be allowed to be incrementally protected as sections become  
27 imminently threatened. The time period for removal of each contiguous section of  
28 sandbags shall begin at the time that section is installed in accordance with Subparagraph  
29 (6) or (7) of this ~~Rule~~, Paragraph.

30 (15) Existing ~~sandbag~~ temporary erosion control structures may be repaired or replaced within their  
31 originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of  
32 this ~~Rule~~, Paragraph.

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

35 (1) No work shall be permitted other than that which is necessary to ~~reasonably~~ protect against or reduce  
36 the imminent danger caused by the emergency or to restore the damaged property to its condition  
37 immediately before the emergency;

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

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

10 (c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

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

12 (A) no work shall be permitted other than that which is necessary to protect against or reduce  
13 the imminent danger caused by the emergency or to restore the damaged property to its  
14 condition immediately before the emergency;

15 (B) the erosion control structure shall be located no more than 20 feet waterward of the  
16 imminently threatened structure or the right-of-way in the case of roads. If a public facility  
17 or transportation corridor is found to be imminently threatened and at increased risk of  
18 imminent damage due to site conditions such as a flat shore profile or accelerated erosion,  
19 temporary erosion control structures may be located more than 20 feet ~~seaward~~ waterward  
20 of the facility or corridor being protected. In cases of increased risk of imminent damage,  
21 the location of the temporary erosion control structures shall be determined by the Director  
22 of the Division of Coastal Management or the Director's designee in accordance with  
23 Subparagraph (a)(1) of this Rule.

24 (C) any fill materials used in conjunction with emergency work for storm or erosion control  
25 shall be obtained from an upland source except that dredging for fill material to protect  
26 public facilities or transportation corridors shall be considered in accordance with standards  
27 in 15A NCAC 07H .0208; and

28 (D) all fill materials or structures associated with temporary relocations which are located  
29 within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after  
30 the emergency event has ended and the area restored to pre-disturbed conditions.

31 (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of  
32 existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent  
33 with local governments' post-disaster recovery plans and policies which are part of their Land Use  
34 Plans.

36 *History Note:* Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-115.1; 113A-118.1;  
37 Eff. November 1, 1985;



1                    *Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;*  
2                    *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*  
3                    *Amended Eff. February 1, 2019; May 1, 2013; May 1, 2010; August 1, 2002.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0103

**DEADLINE FOR RECEIPT: Friday, January 11, 2019**

**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 that the following technical changes be made:

*In (b)(3), please change "will not" to "shall not" on line 29.*

*In (b)(4), please delete or define "significantly" and "significant adverse"*

*In (b)(4), what is considered to be "important natural or cultural resources"?*

*Please add an "and" or "or" at the end of (b)(4).*

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

Amber May  
Commission Counsel  
Date submitted to agency: Friday, January 4, 2018

1 15A NCAC 07K .0103 IS AMENDED AS PUBLISHED IN 32:18 NCR 1764-1765 WITH CHANGES AS  
2 **FOLLOWS:**

3  
4 **15A NCAC 07K .0103 MAINTENANCE AND REPAIR**

5 (a) ~~Maintenance and repairs~~ “Maintenance and “repairs” are specifically excluded from the definition of ~~development~~  
6 “development” under the conditions and in the circumstances set out in G.S. 113A-103(5)(b)(5). Individuals required  
7 to take such measures within an AEC shall contact the local CAMA representative for consultation ~~and advice~~ before  
8 beginning work.

9 ~~Property may be considered to be imminently threatened for the purpose of the exclusion for maintenance and~~  
10 ~~repairs when it meets the criteria for an imminently threatened structure as set out in 15A NCAC 07H .0308(a), which~~  
11 ~~provides that a structure will be considered to be imminently threatened by erosion when the foundation, septic~~  
12 ~~system or right of way in the case of roads is less than 20 feet from the erosion scarp. Buildings and roads located~~  
13 ~~more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be~~  
14 ~~imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, tend to increase the~~  
15 ~~risk of imminent damage to the structure.~~

16 (b) Beach bulldozing, defined as the process of moving natural beach material from any point seaward of the first line  
17 of stable vegetation, for the purpose of preventing damage to imminently threatened ~~structures, structures as defined~~  
18 in 15A NCAC 07H .0308(a), by the creation of protective sand dunes shall qualify for an exclusion under G.S.  
19 113A-103(5)(b)(5) subject to the following limitations:

- 20 (1) The area on which this activity is being performed must maintain a slope ~~of adequate grade so as~~  
21 ~~not to endanger the public or the public's use of the beach and should follow the natural that follows~~  
22 ~~the pre-emergency slope as closely as possible. possible so as not to endanger the public or hinder~~  
23 ~~the public's use of the beach. All mechanically disturbed areas [must] shall be graded smooth of~~  
24 ~~ruts and spoil berms that are perpendicular to the shoreline.~~ The movement of material utilizing a  
25 bulldozer, front-end loader, back hoe, scraper or any type of earth moving or construction equipment  
26 shall not exceed one foot in depth measured from the ~~preactivity~~ surface elevation;
- 27 (2) The activity must shall not exceed the lateral bounds of the applicant's property ~~unless he has~~  
28 ~~without written~~ permission of adjoining landowners;
- 29 (3) Movement of material from seaward of the mean low water line will not be permitted under this  
30 exemption;
- 31 (4) The activity must shall not significantly increase erosion on neighboring properties and must shall  
32 not have a significant adverse effect on important natural or cultural resources;
- 33 (5) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the  
34 threatened structure's foundations.

35 (c) Redistribution of sand that results from storm overwash or aeolian transport around buildings, pools, roads, parking  
36 areas and associated structures is considered maintenance so long as the sand remains within the Ocean Hazard AEC.

1 Individuals proposing ~~other~~ such activities ~~must~~ shall consult with the Division of Coastal Management or the local  
2 permit officer to determine whether the proposed activity qualifies for the exclusion under G.S. 113A-103(5)(b)(5).

3  
4 *History Note:* Authority G.S. 113A-103(5)(b)(5); 113A-118(a);  
5 Eff. November 1, 1984;  
6 Amended Eff. March 1, 1985;  
7 RRC Objection Eff. January 18, 1996 due to ambiguity;  
8 Amended Eff. February 1, 2018; March 1, 1996.

1 **15A NCAC 07K .0208 IS AMENDED AS PUBLISHED IN 32:18 NCR 1765 AS FOLLOWS:**

2  
3 **15A NCAC 07K .0208 SINGLE FAMILY RESIDENCES EXEMPTED**

4 (a) All single family residences constructed within the Coastal ~~Shoreline~~ Shorelines Area of Environmental Concern  
5 that are more than 40 feet landward of normal high water or normal water level, and involve no land disturbing activity  
6 within the 40 feet buffer area are exempted from the CAMA permit requirement as long as this exemption is consistent  
7 with all other applicable CAMA permit standards and local land use plans and rules in effect at the time the exemption  
8 is granted.

9 (b) This exemption allows for the construction of a generally shore perpendicular access to the water, provided that  
10 the access shall be no wider than six feet. The access may be constructed out of materials such as wood, composite  
11 material, gravel, paver stones, concrete, brick, or similar materials. Any access constructed over wetlands shall be  
12 elevated at least three feet above any wetland substrate as measured from the bottom of the decking.

13 (c) Within the AEC for estuarine shorelines contiguous to waters classified as Outstanding Resource Waters (ORW),  
14 no CAMA permit shall be required if the proposed development is a single-family residence that has a built upon area  
15 of 25 percent or less ~~and~~ and is at least 40 feet from waters classified as ORW.

16 (1) ~~has no stormwater collection system; and~~

17 (2) ~~is at least 40 feet from waters classified as ORW.~~

18 (d) Before beginning any work under this exemption, the CAMA local permit officer or the Department of  
19 Environment and Natural Resources Environmental Quality representative shall be notified of the proposed activity  
20 to allow on-site review. Notification may be by telephone at (252) 808-2808, in person, or in writing to the North  
21 Carolina Division of Coastal Management, 400 Commerce Ave., Morehead City, NC 28557. Notification shall  
22 include:

23 (1) the name, address, and telephone number of the landowner and the location of the work, including  
24 the county, nearest community, and water body; and

25 (2) the dimensions of the proposed project, including proposed landscaping and the location of normal  
26 high water or normal water level.

27 (e) In eroding areas, this exemption shall apply only when the local permit officer has determined that the house has  
28 been located the maximum feasible distance back on the lot but not less than forty feet.

29 (f) Construction of the structure authorized by this exemption shall be completed by December 31 of the third year  
30 of the issuance date of this exemption.

31  
32 *History Note: Authority G.S. 113A-103(5)c;*

33 *Eff. November 1, 1984;*

34 *Amended Eff. February 1, 2019; May 1, 2015; December 1, 2006; December 1, 1991; May 1, 1990;*

35 *October 1, 1989.*