

1 15A NCAC 07H .0104 is readopted as published in 34:09 NCR 756 as follows:

2  
3 **15A NCAC 07H .0104 APPLICATION OF EROSION RATE SETBACK FACTORS**

4 (a) Development on lots created on or after June 1, 1979 shall utilize the current erosion rate setback factor in the  
5 calculation of the development setback pursuant to 15A NCAC 07H .0304. If application of the current erosion rate  
6 setback factor in the calculation of the development setback would preclude the placement of permanent buildings,  
7 then the erosion rate in effect at the time that the lot was created may be utilized in the calculation of the development  
8 setback, provided that the development:

- 9 (1) shall comply with the current erosion rate setback factor to the maximum extent possible;  
10 (2) is located at the landward most position of the lot without violating local zoning requirements;  
11 (3) shall extend no further oceanward than the landward-most adjacent building; and  
12 (4) shall be no more than 2,000 square feet in total floor area.

13 (b) Development on lots created prior to June 1, 1979 shall comply with the provisions of 15A NCAC 07H .0309(b)  
14 and (c).

15  
16 *History Note: Authority G.S. 113A-107; 113A-113; 113A-124;*

17 *Eff. September 15, 1979;*

18 *Amended Eff. August 1, 2010; April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November*  
19 *1, 1988; September 1, 1988;*

20 *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0105

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*On line 4, what are the "state guidelines for Areas of environmental Concern"?  
Are these not your Rules?*

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: June 1, 2020

1 15A NCAC 07H .0105 is readopted as published in 34:09 NCR 756 as follows:

2  
3 **15A NCAC 07H .0105 EFFECTIVE DATE OF RULE AMENDMENTS**

4 Unless explicitly stated otherwise, the state guidelines for Areas of Environmental Concern and local land use plans  
5 in effect at the time of permit decision shall be applied to all development proposals covered by this Subchapter.

6  
7 *History Note: Authority G.S. 113A-107; 113A-124;*

8 *Eff. December 1, 1982;*

9 *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0106

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*In Item (2), please add a comma after "marsh grasses"*

*In Item (3), please put quotation marks around "structure"*

*In Item (3), please add a comma after "navigational aids"*

*Please begin (4)(a) through (c) with lower case letters.*

*In Item (4), please change the periods to semi-colons at the end of (4)(a) and (b), and add either "and" or "or", whichever is appropriate at the end of (4)(b).*

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: June 1, 2020

1 15A NCAC 07H .0106 is readopted as published in 34:09 NCR 756 with changes as follows:

2  
3 **15A NCAC 07H .0106 GENERAL DEFINITIONS**

4 The following definitions apply whenever these terms are used in this Chapter:

- 5 (1) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence  
6 and location of vegetation which has its distribution influenced by tidal action, and the location of  
7 the apparent high tide line.
- 8 (2) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during  
9 periods of little or no wind. It can be determined by the presence of such physical and biological  
10 indicators as erosion escarpments, trash lines, water lines, marsh grasses and barnacles.
- 11 (3) Unless specifically limited, the term structures includes, but is not limited to, buildings, bridges,  
12 roads, piers wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring  
13 pilings and buoys, pile clusters (dolphins), navigational aids and elevated boat ramps.
- 14 (4) "Mining" is defined as:
- 15 (a) The breaking of the surface soil in order to facilitate or accomplish the extraction or  
16 removal of mineral, ores, or other solid matter.
- 17 (b) Any activity or process constituting all or part of a process for the extraction or removal of  
18 minerals, ores, soils, and other solid matter from their original location.
- 19 (c) The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid  
20 matter so as to make them suitable for commercial, industrial, or construction use.
- 21 This definition applies regardless of whether the mining activity is for a commercial or  
22 noncommercial purpose, and regardless of the size of the affected area. Activities such as  
23 vibracoring, box coring, surface grab sampling, and other drilling and sampling for geotechnical  
24 testing, mineral resource investigations, or geological research are not considered mining.  
25 Excavation of mineral resources associated with the construction or maintenance of an approved  
26 navigation project in accordance with 15A NCAC 07B .0200 ~~of this Chapter~~ is not considered  
27 mining.
- 28 (5) "Wind Energy Facility" means the turbines, accessory buildings, transmission facilities, and any  
29 other equipment necessary for the operation of the facility that cumulatively, with any other wind  
30 energy facility whose turbines are located within one-half mile of one another, have a rated capacity  
31 of three megawatts or more of energy.

32  
33 *History Note: Authority G.S. 113A-102; 113A-107;*  
34 *Eff. June 1, 1995;*  
35 *Amended Eff. February 1, 2011; August 1, 1998; October 1, 1996;*  
36 *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0201

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*What is the intent of the second sentence? Please review and revise for clarity.*

*Please consider providing the categories in list form.*

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: June 1, 2020

1 15A NCAC 07H .0201 is readopted as published in 34:09 NCR 756 as follows:

2  
3 **SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS**  
4

5 **15A NCAC 07H .0201 ESTUARINE AND OCEAN SYSTEM CATEGORIES**

6 Included within the estuarine and ocean system are the following AEC categories: estuarine waters, coastal wetlands,  
7 public trust areas, and estuarine and public trust shorelines. Each of the AECs is either geographically within the  
8 estuary or, because of its location and nature, may significantly affect the estuarine and ocean system.  
9

10 *History Note: Authority G.S. 113A-113(b)(1); 113A-113(b)(2); 113A-113(b)(5); 113A-113(b)(6)b; 113A-124;*  
11 *Eff. September 9, 1977;*  
12 *Amended Eff August 1, 2000; August 1, 1998;*  
13 *Readopted Eff. July 1, 2020.*

1 15A NCAC 07H .0203 is readopted as published in 34:09 NCR 756 as follows:

2  
3 **15A NCAC 07H .0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE AND OCEAN SYSTEM**

4 It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands,  
5 public trust areas, and estuarine and public trust shorelines, as an interrelated group of AECs, so as to safeguard and  
6 perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within  
7 these AECs is compatible with natural characteristics so as to minimize the likelihood of significant loss of private  
8 property and public resources. Furthermore, it is the objective of the Coastal Resources Commission to protect present  
9 common-law and statutory public rights of access to the lands and waters of the coastal area.

10  
11 *History Note:* Authority G.S. 113A-102(b)(1); 113A-102(b)(4); 113A-107(a); 113A-107(b); 113A-124;

12 *Eff. September 9, 1977;*

13 *Amended Eff. August 1, 2000; October 1, 1993; September 1, 1985;*

14 *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0205

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*Do you need the descriptors at the beginning of each Paragraph (i.e., Description. Significance. Management objection.)? Please delete them if you don't need them.*

*In (a), please put "Coastal Wetlands" in quotations since you are defining the term.*

*Are (b) and (c) necessary? They do not appear to be. I realize that (d) relates back to (c), but could you combine (c) and (d) and provide a directive to your regulated community in there? Something such as "Suitable land use shall include those..." Alternatively, does the cross reference to .0208 accomplish this same goal?*

*In (d), I note that lines 33-35 are repetitive of .0208(a)(1).*

*Should lines 1 and 2 of page 2 ("in every instance...") go with (d)? They appear to be on a separate line.*

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: June 1, 2020

1 15A NCAC 07H .0205 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0205 COASTAL WETLANDS**

4 (a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional  
5 flooding by tides, including wind tides, that reach the marshland areas through natural or artificial watercourses,  
6 provided this does not include hurricane or tropical storm tides. Regular or occasional flooding shall be established  
7 through field indicators, including the observation of tidal water on the site, changes in elevation, presence of  
8 periwinkle (*littoraria* spp.), presence of crab burrows, staining, or wrack lines. Coastal wetlands may contain one or  
9 more of the following marsh plant species:

- 10 (1) Cord Grass (*Spartina alterniflora*);
- 11 (2) Black Needlerush (*Juncus roemerianus*);
- 12 (3) Glasswort (*Salicornia* spp.);
- 13 (4) Salt Grass (*Distichlis spicata*);
- 14 (5) Sea Lavender (*Limonium* spp.);
- 15 (6) Bulrush (*Scirpus* spp.);
- 16 (7) Saw Grass (*Cladium jamaicense*);
- 17 (8) Cat-tail (*Typha* spp.);
- 18 (9) Salt Meadow Grass (*Spartina patens*); or
- 19 (10) Salt Reed Grass (*Spartina cynosuroides*).

20 The coastal wetlands AEC includes any contiguous lands designated by the Secretary of DEQ pursuant to G.S. 113-  
21 230(a).

22 (b) Significance. The unique productivity of the estuarine and ocean system is supported by detritus (decayed plant  
23 material) and nutrients that are exported from the coastal wetlands. Without the wetlands, the high productivity levels  
24 and complex food chains typically found in the estuaries could not be maintained. Additionally, coastal wetlands serve  
25 as barriers against flood damage and control erosion between the estuary and the uplands.

26 (c) Management Objective. It is the objective of the Coastal Resources Commission to conserve and manage coastal  
27 wetlands so as to safeguard and perpetuate their biological, social, economic and aesthetic values, and to coordinate  
28 and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource  
29 necessary to the functioning of the entire estuarine system.

30 (d) Use Standards. Suitable land uses are those consistent with the management objective in this Rule. First priority  
31 of use shall be allocated to the conservation of existing coastal wetlands. Secondary priority of coastal wetland use  
32 shall be given to those types of development activities that require water access and cannot function elsewhere.

33 Unacceptable land uses include restaurants, businesses, residences, apartments, motels, hotels, trailer parks, parking  
34 lots, private roads, highways, and factories. Acceptable land uses include utility easements, fishing piers, docks,  
35 wildlife habitat management activities, and agricultural uses such as farming and forestry drainage as permitted under  
36 North Carolina's Dredge and Fill Law, G.S. 113-229, or applicable local, state, and federal laws.

1 In every instance, the particular location, use, and design characteristics shall be in accord with the general use  
2 standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

3 (e) Alteration of Coastal Wetlands. Alteration of coastal wetlands includes mowing or cutting of coastal wetlands  
4 vegetation whether by mechanized equipment or manual means. Alteration of coastal wetlands by federal or state  
5 resource management agencies as a part of planned resource management activities is exempt from the requirements  
6 of this Paragraph. Alteration of coastal wetlands shall be governed according to the following provisions:

7 (1) Alteration of coastal wetlands shall be exempt from the permit requirements of the Coastal Area  
8 Management Act (CAMA) when conducted in accordance with the following criteria:

9 (A) Coastal wetlands may be mowed or cut to a height of no less than two feet, as measured  
10 from the coastal wetland substrate, at any time and at any frequency throughout the year;

11 (B) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured  
12 from the coastal wetland substrate, once between each December 1 and March 31;

13 (C) Alteration of the substrate is not allowed;

14 (D) All cuttings or clippings shall remain in place as they fall;

15 (E) Coastal wetlands may be mowed or cut to a height of no less than six inches, as measured  
16 from the coastal wetland substrate, to create an access path four feet wide or less on  
17 waterfront lots without a pier access; and

18 (F) Coastal wetlands may be mowed or cut by utility companies as necessary to maintain utility  
19 easements.

20 (2) Coastal wetland alteration not meeting the exemption criteria of this Rule shall require a CAMA  
21 permit. CAMA permit applications for coastal wetland alterations are subject to review by the North  
22 Carolina Wildlife Commission, North Carolina Division of Marine Fisheries, U.S. Fish and Wildlife  
23 Service, and National Marine Fisheries Service in order to determine whether or not the proposed  
24 activity will have a significant adverse impact on the habitat or fisheries resources.

25  
26 *History Note: Authority G.S. 113A-107;113A-113(b)(1); 113A-124;*

27 *Eff. September 9, 1977;*

28 *Amended Eff. September 1, 2016; November 1, 2009; August 1, 1998; October 1, 1993; May 1,*  
29 *1990; January 24, 1978;*

30 *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0206

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*Do you need the descriptors at the beginning of each Paragraph (i.e., Description. Significance. Management objection.)? Please delete them if you don't need them.*

*In (a), please put "Estuarine waters" in quotations since you are defining the term.*

*Are (b) and (c) necessary? They do not appear to be. I realize that (d) relates back to (c), but could you combine (c) and (d) and provide a directive to your regulated community in there?*

*In (d), please change "land/water" to "land and water"*

*Should lines 35 and 36 of page 1 ("in every instance...") go with (d)? Please remove the extra line.*

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: June 1, 2020

1 15A NCAC 07H .0206 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0206 ESTUARINE WATERS**

4 (a) Description. Estuarine waters are defined in G.S. 113A-113(b)(2) to include all the waters of the Atlantic Ocean  
5 within the boundary of North Carolina and all the waters of the bays, sounds, rivers and tributaries thereto seaward  
6 of the dividing line between coastal fishing waters and inland fishing waters. The boundaries between inland and  
7 coastal fishing waters are set forth in an agreement adopted by the Wildlife Resources Commission and the  
8 Department of Environment and Natural Resources and in the most current revision of the North Carolina Marine  
9 Fisheries Regulations for Coastal Waters, codified at 15A NCAC 3Q .0200.

10 (b) Significance. Estuarine waters are the dominant component and bonding element of the entire estuarine and  
11 ocean system, integrating aquatic influences from both the land and the sea. Estuaries are among the most  
12 productive natural environments of North Carolina. They support the valuable commercial and sports fisheries of  
13 the coastal area which are comprised of estuarine dependent species such as menhaden, flounder, shrimp, crabs, and  
14 oysters. These species must spend all or some part of their life cycle within the estuarine waters to mature and  
15 reproduce. Of the 10 leading species in the commercial catch, all but one are dependent on the estuary.

16 This high productivity associated with the estuary results from its unique circulation patterns caused by tidal energy,  
17 fresh water flow, and shallow depth; nutrient trapping mechanisms; and protection to the many organisms. The  
18 circulation of estuarine waters transports nutrients, propels plankton, spreads seed stages of fish and shellfish,  
19 flushes wastes from animal and plant life, cleanses the system of pollutants, controls salinity, shifts sediments, and  
20 mixes the water to create a multitude of habitats. Some important features of the estuary include mud and sand flats,  
21 eel grass beds, salt marshes, submerged vegetation flats, clam and oyster beds, and important nursery areas.

22 Secondary benefits include the stimulation of the coastal economy from the spin off operations required to service  
23 commercial and sports fisheries, waterfowl hunting, marinas, boatyards, repairs and supplies, processing operations,  
24 and tourist related industries. In addition, there is considerable nonmonetary value associated with aesthetics,  
25 recreation, and education.

26 (c) Management Objective. To conserve and manage the important features of estuarine waters so as to safeguard  
27 and perpetuate their biological, social, aesthetic, and economic values; to coordinate and establish a management  
28 system capable of conserving and utilizing estuarine waters so as to maximize their benefits to man and the estuarine  
29 and ocean system.

30 (d) Use Standards. Suitable land/water uses shall be those consistent with the management objectives in this Rule.  
31 Highest priority of use shall be allocated to the conservation of estuarine waters and their vital components. Second  
32 priority of estuarine waters use shall be given to those types of development activities that require water access and  
33 use which cannot function elsewhere such as simple access channels; structures to prevent erosion; navigation  
34 channels; boat docks, marinas, piers, wharfs, and mooring pilings.

35 In every instance, the particular location, use, and design characteristics shall be in accord with the general use  
36 standards for coastal wetlands, estuarine waters, and public trust areas described in Rule .0208 of this Section.

1    *History Note:*    *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(2); 113A-124;*  
2                            *Eff. September 9, 1977;*  
3                            *Amended Eff. August 1, 1998; October 1, 1993; November 1, 1991; May 1, 1990; October 1,*  
4                            *1988;*  
5                            *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0207

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*Do you need the descriptors at the beginning of each Paragraph (i.e., Description. Significance. Management objection.)? Please delete them if you don't need them.*

*In (a), please put "Public Trust Areas" in quotations since you are defining the term.*

*Are (b) and (c) necessary? They do not appear to be. I realize that (d) relates back to (c), but could you combine (c) and (d) and provide a directive to your regulated community in there?*

*In (d), please reference .0208 for the general use standards.*

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: June 1, 2020

1 15A NCAC 07H .0207 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0207 PUBLIC TRUST AREAS**

4 (a) Description. Public trust areas are all waters of the Atlantic Ocean and the lands thereunder from the mean high  
5 water mark to the seaward limit of state jurisdiction; all natural bodies of water subject to measurable lunar tides and  
6 lands thereunder to the normal high water or normal water level; all navigable natural bodies of water and lands  
7 thereunder to the normal high water or normal water level as the case may be, except privately-owned lakes to which  
8 the public has no right of access; all water in artificially created bodies of water containing public fishing resources  
9 or other public resources which are accessible to the public by navigation from bodies of water in which the public  
10 has rights of navigation; and all waters in artificially created bodies of water in which the public has acquired rights  
11 by prescription, custom, usage, dedication, or any other means. In determining whether the public has acquired rights  
12 in artificially created bodies of water, the following factors shall be considered:

- 13 (1) the use of the body of water by the public;  
14 (2) the length of time the public has used the area;  
15 (3) the value of public resources in the body of water;  
16 (4) whether the public resources in the body of water are mobile to the extent that they can move into  
17 natural bodies of water;  
18 (5) whether the creation of the artificial body of water required permission from the state; and  
19 (6) the value of the body of water to the public for navigation from one public area to another public  
20 area.

21 (b) Significance. The public has rights in these areas, including navigation and recreation. In addition, these areas  
22 support commercial and sports fisheries, have aesthetic value, and are important resources for economic development.

23 (c) Management Objective. To protect public rights for navigation and recreation and to conserve and manage the  
24 public trust areas so as to safeguard and perpetuate their biological, economic and aesthetic value.

25 (d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this  
26 Rule. In the absence of overriding public benefit, any use which jeopardizes the capability of the waters to be used  
27 by the public for navigation or other public trust rights which the public may be found to have in these areas shall not  
28 be allowed. The development of navigational channels or drainage ditches, the use of bulkheads to prevent erosion,  
29 and the building of piers, wharfs, or marinas are examples of uses that may be acceptable within public trust areas,  
30 provided that such uses shall not be detrimental to the public trust rights and the biological and physical functions of  
31 the estuary. Projects which would directly or indirectly block or impair existing navigation channels, increase  
32 shoreline erosion, deposit spoils below normal high water, cause adverse water circulation patterns, violate water  
33 quality standards, or cause degradation of shellfish waters are considered incompatible with the management policies  
34 of public trust areas. In every instance, the particular location, use, and design characteristics shall be in accord with  
35 the general use standards for coastal wetlands, estuarine waters, and public trust areas.

36  
37 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(5); 113A-124;*

1                   *Eff. September 9, 1977;*  
2                   *Amended Eff. February 1, 2006; October 1, 1993;*  
3                   *Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0208

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*In (a)(1), please change "which" to "that"*

*In (a)(2)(B), please capitalize "state." Also, do you "State and Federal water and air quality rules, statutes, and regulations" (or something of the like)?*

*In (a)(4), please put "Primary Nursery Areas" in quotations since you appear to be defining it. Also, I'm not sure that I understand the intent of this here. Is there a directive associated with this? I note that in (b)(1)(I) you've indicated that MFC will define these. With regard to "MFC", do you mean something other than define? Perhaps "set forth." Same comments for (a)(5) and (6). Please consider pulling these definitions out in their own paragraphs entitled "Definitions" (or something like that.)*

*Page 3, line 29, what is meant by "This Part does not affect restrictions placed on permits issued after March 1, 1991"?*

*In (b)(2)(B), please delete the comma after "renourishment" and add one after "Subchapter"*

*In (b)(2)(A), necessary to accomplish what?*

*If you decide to create a definitions Paragraph, please consider including "marinas" there, and deleting the definition in (b)(5). Same for "freestanding morrings" in (b)(10).*

*Please change "which" to "that" in (b)(5)(B).*

*In (b)(5)(C), who determines the feasibility of a dry storage marina?*

*In (b)(5)(E), where can the North Carolina Water Quality Standards be found? Have you otherwise incorporated these in accordance with G.S. 150B-21.6?*

Amber May  
Commission Counsel  
Date submitted to agency: June 1, 2020

*Please capitalize “state” in (b)(5)(F).*

*In (b)(5)(K), please change “which” to “that”*

*In (b)(5)(L), where can the stormwater requirements be found? Have you otherwise incorporated these by reference in accordance with G.S. 150B-21.6?*

*In (b)(5)(O), what are the “applicable standards”? Is there a cross-reference available?*

*In (b)(6)(E), what would constitute a “documented need”?*

*In (b)(6)(G)(i), please change the semi-colon after “similar use” to a period and remove the parenthesis around “This restriction... by the public”*

*In (b)(8)(D), please capitalize “state.” Also, I’m assuming that this is incorporated by reference elsewhere?*

*In (b)(10)(A), please remove the parenthesis around “as long as... boathouse”*

*Capitalize “state” in (b)(10)(E) and (b)(12)(A)(i).*

*Please change “construction/salvage” to “construction and salvage” or “construction or salvage”, whichever is correct in (b)(10)(J). Same for “cable/pipe” in (b)(10)(L).*

*In (b)(10)(M), are the WRC requirements incorporated elsewhere in your Rules?*

*In (b)(12)(A)(iv), please change the semi-colon to a comma after “WRC” and before “such as” Same for (b)(13)(B)(ii).*

*Also in (b)(12)(A)(iv), put “high relief” on line 23 for the definition in quotations. By “this standard”, do you mean this “part”? Same for (b)(13)(B)(ii).*

*In (b)(12)(B), please change “insure” to “ensure” Same for (b)(13)(C).*

*In (b)(12)(B)(i), delete “shall be required” since you already have a “shall” on line 33.*

**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 .0208 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0208 USE STANDARDS**

4 (a) General Use Standards

5 (1) Uses which are not water dependent shall not be permitted in coastal wetlands, estuarine waters, and  
6 public trust areas. Restaurants, residences, apartments, motels, hotels, trailer parks, private roads,  
7 factories, and parking lots are examples of uses that are not water dependent. Uses that are water  
8 dependent include: utility crossings, wind energy facilities, docks, wharves, boat ramps, dredging,  
9 bridges and bridge approaches, revetments, bulkheads, culverts, groins, navigational aids, mooring  
10 pilings, navigational channels, access channels and drainage ditches;

11 (2) Before being granted a permit, the CRC or local permitting authority shall find that the applicant  
12 has complied with the following standards:

13 (A) The location, design, and need for development, as well as the construction activities  
14 involved shall be consistent with the management objective of the Estuarine and Ocean  
15 System AEC (Rule .0203 of this Subchapter) and shall be sited and designed to avoid  
16 significant adverse impacts upon the productivity and biologic integrity of coastal  
17 wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries  
18 Commission, and spawning and nursery areas;

19 (B) Development shall comply with state and federal water and air quality;

20 (C) Development shall not cause irreversible damage to documented archaeological or historic  
21 resources as identified by the N.C. Department of Cultural Resources;

22 (D) Development shall not increase siltation;

23 (E) Development shall not create stagnant water bodies;

24 (F) Development shall be timed to avoid significant adverse impacts on life cycles of estuarine  
25 and ocean resources; and

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

28 (3) When the proposed development is in conflict with the general or specific use standards set forth in  
29 this Rule, the CRC may approve the development if the applicant can demonstrate that the activity  
30 associated with the proposed project will have public benefits as identified in the findings and goals  
31 of the Coastal Area Management Act, that the public benefits outweigh the long range adverse  
32 effects of the project, that there is no reasonable alternate site available for the project, and that all  
33 reasonable means and measures to mitigate adverse impacts of the project have been incorporated  
34 into the project design and shall be implemented at the applicant's expense. Measures taken to  
35 mitigate or minimize adverse impacts shall include actions that:

36 (A) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

37 (B) restore the affected environment; or

- (C) compensate for the adverse impacts by replacing or providing substitute resources.
- (4) Primary nursery areas are those areas in the estuarine and ocean system where initial post larval development of finfish and crustaceans takes place. They are usually located in the uppermost sections of a system where populations are uniformly early juvenile stages. They are designated and described by the N.C. Marine Fisheries Commission (MFC) and by the N.C. Wildlife Resources Commission (WRC);
- (5) Outstanding Resource Waters are those estuarine waters and public trust areas classified by the N.C. Environmental Management Commission (EMC). In those estuarine waters and public trust areas classified as ORW by the EMC no permit required by the Coastal Area Management Act 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; and
- (6) Beds of submerged aquatic vegetation (SAV) are those habitats in public trust and estuarine waters vegetated with one or more species of submergent vegetation. These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the Marine Fisheries Commission. Any rules relating to SAVs shall not apply to non-development control activities authorized by the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et seq.).
- (b) Specific Use Standards
- (1) Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter. Navigation channels, canals and boat basins shall also comply with the following standards:
- (A) Navigation channels and canals may be allowed through fringes of regularly and irregularly flooded coastal wetlands if the loss of wetlands will have no significant adverse impacts on fishery resources, water quality or adjacent wetlands, and if there is no reasonable alternative that would avoid the wetland losses;
- (B) All dredged material shall be confined landward of regularly and irregularly flooded coastal wetlands and stabilized to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
- (C) Dredged material from maintenance of channels and canals through irregularly flooded wetlands shall be placed on non-wetland areas, remnant spoil piles, or disposed of by a method having no significant, long-term wetland impacts. Under no circumstances shall dredged material be placed on regularly flooded wetlands. New dredged material disposal areas shall not be located in the buffer area as outlined in 15A NCAC 07H .0209(d)(10);

- (D) Widths of excavated canals and channels shall be the minimum required to meet the applicant's needs but not impair water circulation;
- (E) Boat basin design shall maximize water exchange by having the widest possible opening and the shortest practical entrance canal. Depths of boat basins shall decrease from the waterward end inland;
- (F) Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters;
- (G) Construction of finger canal systems are not allowed. Canals shall be either straight or meandering with no right angle corners;
- (H) Canals shall be designed so as not to create an erosion hazard to adjoining property. Design may include shoreline stabilization, vegetative stabilization, or setbacks based on soil characteristics; and
- (I) Maintenance excavation in canals, channels and boat basins within primary nursery areas and areas of submerged aquatic vegetation as defined by the MFC shall be avoided. However, when essential to maintain a traditional and established use, maintenance excavation may be approved if the applicant meets all of the following criteria:
- (i) The applicant demonstrates and documents that a water-dependent need exists for the excavation;
  - (ii) There exists a previously permitted channel that was constructed or maintained under permits issued by the State or Federal government. If a natural channel was in use, or if a human-made channel was constructed before permitting was necessary, there shall be evidence that the channel was continuously used for a specific purpose;
  - (iii) Excavated material can be removed and placed in a disposal area in accordance with Part (b)(1)(B) of this Rule without impacting adjacent nursery areas and submerged aquatic vegetation as defined by the MFC; and
  - (iv) The original depth and width of a human-made or natural channel shall not be increased to allow a new or expanded use of the channel.

This Part does not affect restrictions placed on permits issued after March 1, 1991.

(2) Hydraulic Dredging

- (A) The terminal end of the dredge pipeline shall be positioned at a distance sufficient to preclude erosion of the containment dike and a maximum distance from spillways to allow settlement of suspended solids;
- (B) Dredged material shall be either confined on high ground by retaining structures or deposited on beaches for purposes of renourishment, if the material is suitable in accordance with the rules in this Subchapter except as provided in Part (G) of this Subparagraph;

- (C) Confinement of excavated materials shall be landward of all coastal wetlands and shall employ soil stabilization measures to prevent entry of sediments into the adjacent water bodies or coastal wetlands;
- (D) Effluent from diked areas receiving disposal from hydraulic dredging operations shall be contained by pipe, trough, or similar device to a point waterward of emergent vegetation or, where local conditions require, below normal low water or normal water level;
- (E) When possible, effluent from diked disposal areas shall be returned to the area being dredged;
- (F) A water control structure shall be installed at the intake end of the effluent pipe.
- (G) Publicly funded projects shall be considered by review agencies on a case-by-case basis with respect to dredging methods and dredged material disposal in accordance with Subparagraph (a)(3) of this Rule; and
- (H) Dredged material from closed shellfish waters and effluent from diked disposal areas used when dredging in closed shellfish waters shall be returned to the closed shellfish waters.
- (3) Drainage Ditches
- (A) Drainage ditches located through any coastal wetland shall not exceed six feet wide by four feet deep (from ground surface) unless the applicant shows that larger ditches are necessary;
- (B) Dredged material derived from the construction or maintenance of drainage ditches through regularly flooded marsh shall be placed landward of these marsh areas in a manner that will insure that entry of sediment into the water or marsh will not occur. Dredged material derived from the construction or maintenance of drainage ditches through irregularly flooded marshes shall be placed on non-wetlands wherever feasible. Non-wetland areas include relic disposal sites;
- (C) Excavation of new ditches through high ground shall take place landward of an earthen plug or other methods to minimize siltation to adjacent water bodies; and
- (D) Drainage ditches shall not have a significant adverse impact on primary nursery areas, productive shellfish beds, submerged aquatic vegetation as defined by the MFC, or other estuarine habitat. Drainage ditches shall be designed so as to minimize the effects of freshwater inflows, sediment, and the introduction of nutrients to receiving waters. Settling basins, water gates and retention structures are examples of design alternatives that may be used to minimize sediment introduction.
- (4) Nonagricultural Drainage
- (A) Drainage ditches shall be designed so that restrictions in the volume or diversions of flow are minimized to both surface and ground water;
- (B) Drainage ditches shall provide for the passage of migratory organisms by allowing free passage of water of sufficient depth; and

- 1 (C) Drainage ditches shall not create stagnant water pools or changes in the velocity of flow.
- 2 (5) Marinas. Marinas are defined as any publicly or privately owned dock, basin or wet boat storage
- 3 facility constructed to accommodate more than 10 boats and providing any of the following services:
- 4 permanent or transient docking spaces, dry storage, fueling facilities, haulout facilities and repair
- 5 service. Excluded from this definition are boat ramp facilities allowing access only, temporary
- 6 docking and none of the preceding services. Expansion of existing facilities shall comply with the
- 7 standards of this Subparagraph for all development other than maintenance and repair necessary to
- 8 maintain previous service levels. Marinas shall comply with the following standards:
- 9 (A) Marinas shall be sited in non-wetland areas or in deep waters (areas not requiring dredging)
- 10 and shall not disturb shellfish resources, submerged aquatic vegetation as defined by the
- 11 MFC, or wetland habitats, except for dredging necessary for access to high-ground sites.
- 12 The following four alternatives for siting marinas are listed in order of preference for the
- 13 least damaging alternative; marina projects shall be designed to have the highest of these
- 14 four priorities that is deemed feasible by the permit letting agency:
- 15 (i) an upland basin site requiring no alteration of wetland or estuarine habitat and
- 16 providing flushing by tidal or wind generated water circulation or basin design
- 17 characteristics;
- 18 (ii) an upland basin site requiring dredging for access when the necessary dredging
- 19 and operation of the marina will not result in significant adverse impacts to
- 20 existing fishery, shellfish, or wetland resources and the basin design shall provide
- 21 flushing by tidal or wind generated water circulation;
- 22 (iii) an open water site located outside a primary nursery area which utilizes piers or
- 23 docks rather than channels or canals to reach deeper water; and
- 24 (iv) an open water marina requiring excavation of no intertidal habitat, and no
- 25 dredging greater than the depth of the connecting channel.
- 26 (B) Marinas which require dredging shall not be located in primary nursery areas nor in areas
- 27 which require dredging through primary nursery areas for access. Maintenance dredging
- 28 in primary nursery areas for existing marinas shall comply with the standards set out in
- 29 Part (b)(1)(I) of this Rule;
- 30 (C) To minimize coverage of public trust areas by docks and moored vessels, dry storage
- 31 marinas shall be used where feasible;
- 32 (D) Marinas to be developed in waters subject to public trust rights (other than those created
- 33 by dredging upland basins or canals) for the purpose of providing docking for residential
- 34 developments shall be allowed no more than 27 square feet of public trust areas for every
- 35 one linear foot of shoreline adjacent to these public trust areas for construction of docks
- 36 and mooring facilities. The 27 square feet allocation does not apply to fairway areas

1 between parallel piers or any portion of the pier used only for access from land to the  
2 docking spaces;

3 (E) To protect water quality in shellfishing areas, marinas shall not be located within areas  
4 where shellfish harvesting for human consumption is a significant existing use or adjacent  
5 to such areas if shellfish harvest closure is anticipated to result from the location of the  
6 marina. In compliance with 33 U.S. Code Section 101(a)(2) of the Clean Water Act and  
7 North Carolina Water Quality Standards adopted pursuant to that section, shellfish  
8 harvesting is a significant existing use if it can be established that shellfish have been  
9 regularly harvested for human consumption since November 28, 1975 or that shellfish are  
10 propagating and surviving in a biologically suitable habitat and are available and suitable  
11 for harvesting for the purpose of human consumption. The Division of Coastal  
12 Management shall consult with the Division of Marine Fisheries regarding the significance  
13 of shellfish harvest as an existing use and the magnitude of the quantities of shellfish that  
14 have been harvested or are available for harvest in the area where harvest will be affected  
15 by the development;

16 (F) Marinas shall not be located without written consent from the leaseholders or owners of  
17 submerged lands that have been leased from the state or deeded by the state;

18 (G) Marina basins shall be designed to promote flushing through the following design criteria:  
19 (i) the basin and channel depths shall gradually increase toward open water and shall  
20 never be deeper than the waters to which they connect; and  
21 (ii) when possible, an opening shall be provided at opposite ends of the basin to  
22 establish flow-through circulation;

23 (H) Marinas shall be designed so that the capability of the waters to be used for navigation or  
24 for other public trust rights in estuarine or public trust waters are not jeopardized while  
25 allowing the applicant access to deep waters;

26 (I) Marinas shall be located and constructed so as to avoid adverse impacts on navigation  
27 throughout all federally maintained channels and their boundaries as designated by the US  
28 Army Corps of Engineers. This includes mooring sites (permanent or temporary); speed  
29 or traffic reductions; or any other device, either physical or regulatory, that may cause a  
30 federally maintained channel to be restricted;

31 (J) Open water marinas shall not be enclosed within breakwaters that preclude circulation  
32 sufficient to maintain water quality;

33 (K) Marinas which require dredging shall provide areas in accordance with Part (b)(1)(B) of  
34 this Rule to accommodate disposal needs for future maintenance dredging, including the  
35 ability to remove the dredged material from the marina site;

- (L) Marina design shall comply with all applicable EMC requirements for management of stormwater runoff. Stormwater management systems shall not be located within the 30-foot buffer area outlined in 15A NCAC 07H .0209(d);
- (M) Marinas shall post a notice prohibiting the discharge of any waste from boat toilets and listing the availability of local pump-out services;
- (N) Boat maintenance areas shall be designed so that all scraping, sandblasting, and painting will be done over dry land with collection and containment devices that prevent entry of waste materials into adjacent waters;
- (O) All marinas shall comply with all applicable standards for docks and piers, shoreline stabilization, dredging and dredged material disposal of this Rule;
- (P) All applications for marinas shall be reviewed by the Division of Coastal Management to determine their potential impact to coastal resources and compliance with applicable standards of this Rule. Such review shall also consider the cumulative impacts of marina development in accordance with G.S. 113A-120(a)(10); and
- (Q) Replacement of existing marinas to maintain previous service levels shall be allowed provided that the development complies with the standards for marina development within this Section.
- (6) Piers and Docking Facilities.
- (A) Piers shall not exceed six feet in width. Piers greater than six feet in width shall be permitted only if the greater width is necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur;
- (B) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be eight square feet per linear foot of shoreline with a maximum of 2,000 square feet. In calculating the shaded impact, uncovered open water slips shall not be counted in the total. Projects requiring dimensions greater than those stated in this Rule shall be permitted only if the greater dimensions are necessary for safe use, to improve public access, or to support a water dependent use that cannot otherwise occur. Size restrictions shall not apply to marinas;
- (C) Piers and docking facilities over coastal wetlands shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking;
- (D) A boathouse shall not exceed 400 square feet except to accommodate a documented need for a larger boathouse and shall have sides extending no farther than one-half the height of the walls and covering only the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline. Size restrictions do not apply to marinas;

- (E) The total area enclosed by an individual boat lift shall not exceed 400 square feet except to accommodate a documented need for a larger boat lift;
- (F) Piers and docking facilities shall be single story. They may be roofed but shall not be designed to allow second story use;
- (G) Pier and docking facility length shall be limited by:
- (i) not extending beyond the established pier or docking facility length along the same shoreline for similar use; (This restriction does not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public);
  - (ii) not extending into the channel portion of the water body; and
  - (iii) not extending more than one-fourth the width of a natural water body, or human-made canal or basin. Measurements to determine widths of the water body, canals or basins shall be made from the waterward edge of any coastal wetland vegetation that borders the water body. The one-fourth length limitation does not apply in areas where the U.S. Army Corps of Engineers, or a local government in consultation with the Corps of Engineers, has established an official pier-head line. The one-fourth length limitation shall not apply when the proposed pier is located between longer piers or docking facilities within 200 feet of the applicant's property. However, the proposed pier or docking facility shall not be longer than the pier head line established by the adjacent piers or docking facilities, nor longer than one-third the width of the water body.
- (H) Piers or docking facilities longer than 400 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least 1 foot each 100 foot increment of length longer than 400 feet, or, if the additional length is necessary to span some obstruction to navigation. Measurements to determine lengths shall be made from the waterward edge of any coastal wetland vegetation that borders the water body;
- (I) Piers and docking facilities shall not interfere with the access to any riparian property and shall have a minimum setback of 15 feet between any part of the pier or docking facility and the adjacent property owner's areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. If the adjacent property is sold before construction of the pier or docking facility commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the

1 pier. Application of this Rule may be aided by reference to the approved diagram in 15A  
2 NCAC 07H .1205(t) illustrating the rule as applied to various shoreline configurations.  
3 Copies of the diagram may be obtained from the Division of Coastal Management. When  
4 shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier  
5 shall be aligned to meet the intent of this Rule to the maximum extent practicable as  
6 determined by the Director of the Division of Coastal Management; and

7 (J) Applicants for authorization to construct a pier or docking facility shall provide notice of  
8 the permit application to the owner of any part of a shellfish franchise or lease over which  
9 the proposed dock or pier would extend. The applicant shall allow the lease holder the  
10 opportunity to mark a navigation route from the pier to the edge of the lease.

11 (7) Bulkheads

12 (A) Bulkhead alignment, for the purpose of shoreline stabilization, shall approximate the  
13 location of normal high water or normal water level;

14 (B) Bulkheads shall be constructed landward of coastal wetlands in order to avoid significant  
15 adverse impacts to the resources;

16 (C) Bulkhead backfill material shall be obtained from an upland source approved by the  
17 Division of Coastal Management pursuant to this Section, or if the bulkhead is a part of a  
18 permitted project involving excavation from a non-upland source, the material so obtained  
19 may be contained behind the bulkhead;

20 (D) Bulkheads shall be permitted below normal high water or normal water level only when  
21 the following standards are met:

22 (i) the property to be bulkheaded has an identifiable erosion problem, whether it  
23 results from natural causes or adjacent bulkheads, or it has unusual geographic or  
24 geologic features, e.g. steep grade bank, which will cause the applicant  
25 unreasonable hardship under the other provisions of this Rule;

26 (ii) the bulkhead alignment extends no further below normal high water or normal  
27 water level than necessary to allow recovery of the area eroded in the year prior  
28 to the date of application, to align with adjacent bulkheads, or to mitigate the  
29 unreasonable hardship resulting from the unusual geographic or geologic features;

30 (iii) the bulkhead alignment will not adversely impact public trust rights or the  
31 property of adjacent riparian owners;

32 (iv) the need for a bulkhead below normal high water or normal water level is  
33 documented by the Division of Coastal Management; and

34 (v) the property to be bulkheaded is in a non-oceanfront area.

35 (E) Where possible, sloping rip-rap, gabions, or vegetation shall be used rather than bulkheads.

36 (8) Beach Nourishment

- (A) Beach creation or maintenance may be allowed to enhance water related recreational facilities for public, commercial, and private use consistent with the following:
- (i) Beaches may be created or maintained in areas where they have historically been found due to natural processes;
  - (ii) Material placed in the water and along the shoreline shall be clean sand and free from pollutants. Grain size shall be equal to that found naturally at the site;
  - (iii) Beach creation shall not be allowed in primary nursery areas, nor in any areas where siltation from the site would pose a threat to shellfish beds;
  - (iv) Material shall not be placed on any coastal wetlands or submerged aquatic vegetation as defined by MFC;
  - (v) Material shall not be placed on any submerged bottom with significant shellfish resources as identified by the Division of Marine Fisheries during the permit review; and
  - (vi) Beach construction shall not create the potential for filling adjacent navigation channels, canals or boat basins.
- (B) Placing unconfined sand material in the water and along the shoreline shall not be allowed as a method of shoreline erosion control;
- (C) Material from dredging projects may be used for beach nourishment if:
- (i) it is first handled in a manner consistent with dredged material disposal as set forth in this Rule;
  - (ii) it is allowed to dry prior to being placed on the beach; and
  - (iii) only that material of acceptable grain size as set forth in Subpart (b)(8)(A)(ii) of this Rule is removed from the disposal site for placement on the beach. Material shall not be placed directly on the beach by dredge or dragline during maintenance excavation.
- (D) Beach construction shall comply with state and federal water quality standards;
- (E) The renewal of permits for beach nourishment projects shall require an evaluation by the Division of Coastal Management of any adverse impacts of the original work; and
- (F) Permits issued for beach nourishment shall be limited to authorizing beach nourishment only one time.
- (9) Groins
- (A) Groins shall not extend more than 25 feet waterward of the normal high water or normal water level unless a longer structure is justified by site specific conditions and by an individual who meets any North Carolina occupational licensing requirements for the type of structure being proposed and approved during the application process;
  - (B) Groins shall be set back a minimum of 15 feet from the adjoining riparian lines. The setback for rock groins shall be measured from the toe of the structure. This setback may

- 1 be waived by written agreement of the adjacent riparian owner(s) or when two adjoining  
2 riparian owners are co-applicants. Should the adjacent property be sold before construction  
3 of the groin commences, the applicant shall obtain a written agreement with the new owner  
4 waiving the minimum setback and submit it to the permitting agency prior to initiating any  
5 development of the groin;
- 6 (C) Groins shall pose no threat to navigation;
- 7 (D) The height of groins shall not exceed one foot above normal high water or normal water  
8 level;
- 9 (E) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant  
10 provides evidence that more structures are needed for shoreline stabilization;
- 11 (F) "L" and "T" sections shall not be allowed at the end of groins; and
- 12 (G) Riprap material used for groin construction shall be free from loose dirt or any other  
13 pollutant and of a size sufficient to prevent its movement from the site by wave and current  
14 action.
- 15 (10) "Freestanding Moorings".
- 16 (A) A "freestanding mooring" is any means to attach a ship, boat, vessel, floating structure or  
17 other water craft to a stationary underwater device, mooring buoy, buoyed anchor, or piling  
18 (as long as the piling is not associated with an existing or proposed pier, dock, or  
19 boathouse);
- 20 (B) Freestanding moorings shall be permitted only:
- 21 (i) to riparian property owners within their riparian corridors; or
- 22 (ii) to any applicant proposing to locate a mooring buoy consistent with a water use  
23 plan that is included in either the local zoning or land use plan.
- 24 (C) All mooring fields shall provide an area for access to any mooring(s) and other land based  
25 operations that shall include wastewater pumpout, trash disposal and vehicle parking;
- 26 (D) To protect water quality of shellfishing areas, mooring fields shall not be located within  
27 areas where shellfish harvesting for human consumption is a significant existing use or  
28 adjacent to such areas if shellfish harvest closure is anticipated to result from the location  
29 of the mooring field. In compliance with Section 101(a)(2) of the Federal Water Pollution  
30 Control Act, 33 U.S.C. 1251 (a)(2), and North Carolina Water Quality Standards adopted  
31 pursuant to that section, shellfish harvesting is a significant existing use if it can be  
32 established that shellfish have been regularly harvested for human consumption since  
33 November 28, 1975 or that shellfish are propagating and surviving in a biologically suitable  
34 habitat and are available and suitable for harvesting for the purpose of human consumption.  
35 The Division of Marine Fisheries shall be consulted regarding the significance of shellfish  
36 harvest as an existing use and the magnitude of the quantities of shellfish that have been

- 1 harvested or are available for harvest in the area where harvest will be affected by the  
2 development;
- 3 (E) Moorings shall not be located without written consent from the leaseholders or owners of  
4 submerged lands that have been leased from the state or deeded by the state;
- 5 (F) Moorings shall be located and constructed so as to avoid adverse impacts on navigation  
6 throughout all federally maintained channels. This includes mooring sites (permanent or  
7 temporary), speed or traffic reductions, or any other device, either physical or regulatory,  
8 which may cause a federally maintained channel to be restricted;
- 9 (G) Open water moorings shall not be enclosed within breakwaters that preclude circulation  
10 and degrade water quality in violation of EMC standards;
- 11 (H) Moorings and the associated land based operation design shall comply with all applicable  
12 EMC requirements for management of stormwater runoff;
- 13 (I) Mooring fields shall have posted in view of patrons a notice prohibiting the discharge of  
14 any waste from boat toilets or any other discharge and listing the availability of local pump-  
15 out services and waste disposal;
- 16 (J) Freestanding moorings associated with commercial shipping, public service or temporary  
17 construction/salvage operations may be permitted without a public sponsor;
- 18 (K) Freestanding mooring buoys and piles shall be evaluated based upon the arc of the swing  
19 including the length of the vessel to be moored. Moorings and the attached vessel shall not  
20 interfere with the access of any riparian owner nor shall it block riparian access to channels  
21 or deep water, which allows riparian access. Freestanding moorings shall not interfere with  
22 the ability of any riparian owner to place a pier for access;
- 23 (L) Freestanding moorings shall not be established in submerged cable/pipe crossing areas or  
24 in a manner that interferes with the operations of an access through any bridge;
- 25 (M) Freestanding moorings shall be marked or colored in compliance with U.S. Coast Guard  
26 and the WRC requirements and the required marking maintained for the life of the  
27 mooring(s); and
- 28 (N) The type of material used to create a mooring must be free of pollutants and of a design  
29 and type of material so as to not present a hazard to navigation or public safety.
- 30 (11) Filling of Canals, Basins and Ditches - Notwithstanding the general use standards for estuarine  
31 systems as set out in Paragraph (a) of this Rule, filling canals, basins and ditches shall be allowed if  
32 all of the following conditions are met:
- 33 (A) the area to be filled was not created by excavating lands which were below the normal high  
34 water or normal water level;
- 35 (B) if the area was created from wetlands, the elevation of the proposed filling does not exceed  
36 the elevation of said wetlands so that wetland function will be restored;

- 1 (C) the filling will not adversely impact any designated primary nursery area, shellfish bed,  
2 submerged aquatic vegetation as defined by the MFC, coastal wetlands, public trust right  
3 or public trust usage; and
- 4 (D) the filling will not adversely affect the value and enjoyment of property of any riparian  
5 owner.
- 6 (12) "Submerged Lands Mining"
- 7 (A) Development Standards. Mining of submerged lands shall meet all the following  
8 standards:
- 9 (i) The biological productivity and biological significance of mine sites, or borrow  
10 sites used for sediment extraction, shall be evaluated for significant adverse  
11 impacts and a protection strategy for these natural functions and values provided  
12 with the state approval request or permit application;
- 13 (ii) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and  
14 significant benthic communities identified by the Division of Marine Fisheries or  
15 the WRC shall be avoided;
- 16 (iii) Mining shall avoid significant archaeological resources as defined in Rule .0509  
17 of this Subchapter; shipwrecks identified by the Department of Cultural  
18 Resources; and unique geological features that require protection from  
19 uncontrolled or incompatible development as identified by the Division of  
20 Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
- 21 (iv) Mining activities shall not be conducted on or within 500 meters of significant  
22 biological communities identified by the Division of Marine Fisheries or the  
23 WRC; such as high relief hard bottom areas. High relief is defined for this  
24 standard as relief greater than or equal to one-half meter per five meters of  
25 horizontal distance;
- 26 (v) Mining activities shall be timed to minimize impacts on the life cycles of estuarine  
27 or ocean resources; and
- 28 (vi) Mining activities shall not affect potable groundwater supplies, wildlife,  
29 freshwater, estuarine, or marine fisheries.
- 30 (B) Permit Conditions. Permits for submerged lands mining may be conditioned on the  
31 applicant amending the mining proposal to include measures necessary to insure  
32 compliance with the provisions of the Mining Act and the rules for development set out in  
33 this Subchapter. Permit conditions shall also include:
- 34 (i) Monitoring shall be required of the applicant to ensure compliance with all  
35 applicable development standards; and
- 36 (ii) A determination of the necessity and feasibility of restoration shall be made by  
37 the Division of Coastal Management as part of the permit or consistency review

process. Restoration shall be necessary where it will facilitate recovery of the pre-development ecosystem. Restoration shall be considered feasible unless, after consideration of all practicable restoration alternatives, the Division of Coastal Management determines that the adverse effects of restoration outweigh the benefits of the restoration on estuarine or ocean resources. If restoration is determined to be necessary and feasible, then the applicant shall submit a restoration plan to the Division of Coastal Management prior to the issuance of the permit.

(C) Dredging activities for the purposes of mining natural resources shall be consistent with the development standards set out in this Rule;

(D) Mitigation. Where mining cannot be conducted consistent with the development standards set out in this Rule, the applicant may request mitigation approval under 15A NCAC 07M .0700; and

(E) Public Benefits Exception. Projects that conflict with the standards in this Subparagraph, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

(13) "Wind Energy Facilities"

(A) An applicant for the development and operation of a wind energy facility shall provide:

- (i) an evaluation of the proposed noise impacts of the turbines to be associated with the proposed facility;
- (ii) an evaluation of shadow flicker impacts for the turbines to be associated with the proposed facility;
- (iii) an evaluation of avian and bat impacts of the proposed facility;
- (iv) an evaluation of viewshed impacts of the proposed facility;
- (v) an evaluation of potential user conflicts associated with development in the proposed project area; and
- (vi) a plan regarding the action to be taken upon decommissioning and removal of the wind energy facility. The plan shall include estimates of monetary costs, time frame of removal and the proposed site condition after decommissioning.

(B) Development Standards. Development of wind energy facilities shall meet the following standards in addition to adhering to the requirements outlined in Part (a)(13)(A) of this Rule:

- (i) Natural reefs, coral outcrops, artificial reefs, seaweed communities, and significant benthic communities identified by the Division of Marine Fisheries or the WRC shall be avoided;
- (ii) Development shall not be sited on or within 500 meters of significant biological communities identified by the Division of Marine Fisheries or the WRC; such as

- high relief hard bottom areas. High relief is defined for this standard as relief greater than or equal to one-half meter per five meters of horizontal distance;
- (iii) Development shall not cause irreversible damage to documented archeological resources including shipwrecks identified by the Department of Cultural Resources and unique geological features that require protection from uncontrolled or incompatible development as identified by the Division of Energy, Mineral, and Land Resources pursuant to G.S. 113A-113(b)(4)(g);
  - (iv) Development activities shall be timed to avoid significant adverse impacts on the life cycles of estuarine or ocean resources, or wildlife;
  - (v) Development or operation of a wind energy facility shall not jeopardize the use of the surrounding waters for navigation or for other public trust rights in public trust areas or estuarine waters; and
  - (vi) Development or operation of a wind energy facility shall not interfere with air navigation routes, air traffic control areas, military training routes or special use airspace and shall comply with standards adopted by the Federal Aviation Administration and codified under 14 CFR Part 77.13.
- (C) Permit Conditions. Permits for wind energy facilities may be conditioned on the applicant amending the proposal to include measures necessary to insure compliance with the standards for development set out in this Rule. Permit conditions may include monitoring to ensure compliance with all applicable development standards; and
- (D) Public Benefits Exception. Projects that conflict with these standards, but provide a public benefit, may be approved pursuant to the standards set out in Subparagraph (a)(3) of this Rule.

*History Note: Authority G.S. 113A-107(b); 113A-108; 113A-113(b); 113A-124;*  
*Eff. September 9, 1977;*  
*Amended Eff. February 1, 1996; April 1, 1993; February 1, 1993; November 30, 1992;*  
*RRC Objection due to ambiguity Eff. March 21, 1996;*  
*Amended Eff. August 1, 2012 (see S.L. 2012-143, s.1(f)); February 1, 2011; August 1, 2010; June 1, 2010; August 1, 1998; May 1, 1996;*  
*Readopted Eff. July 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0209

**DEADLINE FOR RECEIPT: Friday, June 12, 2020**

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

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

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

*Do you need the descriptors at the beginning of each Paragraph (i.e., Description. Significance. Management objection.)? Please delete them if you don't need them.*

*Are (b) and (c) necessary? They do not appear to be. I realize that (d) relates back to (c), but could you combine (c) and (d) and provide a directive to your regulated community in there?*

*In (g), please put "Urban Waterfronts" in quotations.*

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

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: June 1, 2020

1 15A NCAC 07H .0209 is readopted as published in 34:09 NCR 757 as follows:

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

4 (a) Description. The Coastal Shorelines category includes estuarine shorelines and public trust shorelines.

5 (1) Estuarine shorelines AEC are those non-ocean shorelines extending from the normal high water  
6 level or normal water level along the estuarine waters, estuaries, sounds, bays, fresh and brackish  
7 waters, and public trust areas as set forth in an agreement adopted by the Wildlife Resources  
8 Commission and the Department of Environmental Quality [described in Rule .0206(a) of this  
9 Section] for a distance of 75 feet landward. For those estuarine shorelines immediately contiguous  
10 to waters classified as Outstanding Resource Waters (ORW) by the Environmental Management  
11 Commission (EMC), the estuarine shoreline AEC shall extend to 575 feet landward from the normal  
12 high water level or normal water level, unless the Coastal Resources Commission establishes the  
13 boundary at a greater or lesser extent following required public hearing(s) within the affected county  
14 or counties.

15 (2) Public trust shorelines AEC are those non-ocean shorelines immediately contiguous to public trust  
16 areas, as defined in Rule 07H .0207(a) of this Section, located inland of the dividing line between  
17 coastal fishing waters and inland fishing waters as set forth in that agreement and extending 30 feet  
18 landward of the normal high water level or normal water level.

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

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

34 (d) Use Standards. Acceptable uses shall be those consistent with the management objectives in Paragraph (c) of this  
35 Rule. These uses shall be limited to those types of development activities that will not be detrimental to the public  
36 trust rights and the biological and physical functions of the estuarine and ocean system. Every effort shall be made by

1 the permit applicant to avoid or minimize adverse impacts of development to estuarine and coastal systems through  
2 the planning and design of the development project. Development shall comply with the following standards:

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

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

- (ii) The residential structure development shall be located a distance landward of the normal high water or normal water level equal to 20 percent of the greatest depth of the lot. Existing structures that encroach into the applicable buffer area may be replaced or repaired consistent with the criteria set out in 15A NCAC 07J .0201 and .0211; and
- (J) Where application of the buffer requirement set out in Subparagraph (d)(10) of this Rule would preclude placement of a residential structure on an undeveloped lot platted prior to June 1, 1999 that are 5,000 square feet or less that does not require an on-site septic system, or on an undeveloped lot that is 7,500 square feet or less that requires an on-site septic system, development shall be permitted within the buffer if all the following criteria are met:
- (i) The lot on which the proposed residential structure is to be located, is located between:
- (I) Two existing waterfront residential structures, both of which are within 100 feet of the center of the lot and at least one of which encroaches into the buffer; or
- (II) An existing waterfront residential structure that encroaches into the buffer and a road, canal, or other open body of water, both of which are within 100 feet of the center of the lot;
- (ii) Development of the lot shall minimize the impacts to the buffer and reduce runoff by limiting land disturbance to only so much as is necessary to construct and provide access to the residence and to allow installation or connection of utilities;
- (iii) Placement of the residential structure and pervious decking shall be aligned no further into the buffer than the existing residential structures and existing pervious decking on adjoining lots;
- (iv) The first one and one-half inches of rainfall from all impervious surfaces on the lot shall be collected and contained on-site in accordance with the design standards for stormwater management for coastal counties as specified in 15A NCAC 02H .1005. The stormwater management system shall be designed by an individual who meets applicable State occupational licensing requirements for the type of system proposed and approved during the permit application process. If the residential structure encroaches into the buffer, then no other impervious surfaces shall be allowed within the buffer; and
- (v) The lots shall not be adjacent to waters designated as approved or conditionally approved shellfish waters by the Shellfish Sanitation Section of the Division of Marine Fisheries of the Department of Environmental Quality.
- (e) The buffer requirements in Paragraph (d) of this Rule shall not apply to Coastal Shorelines where the EMC has adopted rules that contain buffer standards.

1 (f) Specific Use Standards for ORW Coastal Shorelines.

- 2 (1) Within the AEC for estuarine and public trust shorelines contiguous to waters classified as ORW by  
3 the EMC, all development projects, proposals, and designs shall limit the built upon area in the AEC  
4 to no more than 25 percent or any lower site specific percentage as adopted by the EMC as necessary  
5 to protect the exceptional water quality and outstanding resource values of the ORW, and shall:
- 6 (A) provide a buffer zone of at least 30 feet from the normal high water line or normal water  
7 line; and
- 8 (B) otherwise be consistent with the use standards set out in Paragraph (d) of this Rule.
- 9 (2) Single-family residential lots that would not be buildable under the low-density standards defined  
10 in Subparagraph (f)(1) of this Rule may be developed for single-family residential purposes so long  
11 as the development complies with those standards to the maximum extent possible.

12 (g) Urban Waterfronts.

- 13 (1) Description. Urban Waterfronts are waterfront areas, not adjacent to ORW, in the Coastal Shorelines  
14 category that lie within the corporate limits of any municipality duly chartered within the 20 coastal  
15 counties of the state. In determining whether an area is an urban waterfront, the following criteria  
16 shall be met:
- 17 (A) the area lies wholly within the corporate limits of a municipality; and
- 18 (B) the area has a central business district or similar commercial zoning classification where  
19 there are mixed land uses, and urban level services, such as water, sewer, streets, solid  
20 waste management, roads, police and fire protection, or in an area with an industrial or  
21 similar zoning classification adjacent to a central business district.
- 22 (2) Significance. Urban waterfronts are recognized as having cultural, historical and economic  
23 significance for many coastal municipalities. Maritime traditions and longstanding development  
24 patterns make these areas suitable for maintaining or promoting dense development along the shore.  
25 With proper planning and stormwater management, these areas may continue to preserve local  
26 historical and aesthetic values while enhancing the economy.
- 27 (3) Management Objectives. To provide for the continued cultural, historical, aesthetic and economic  
28 benefits of urban waterfronts. Activities such as in-fill development, reuse and redevelopment  
29 facilitate efficient use of already urbanized areas and reduce development pressure on surrounding  
30 areas, in an effort to minimize the adverse cumulative environmental effects on estuarine and ocean  
31 systems. While recognizing that opportunities to preserve buffers are limited in highly developed  
32 urban areas, they are encouraged where practical.
- 33 (4) Use Standards:
- 34 (A) The buffer requirement pursuant to Subparagraph (d)(10) of this Rule shall not apply to  
35 development within Urban Waterfronts that meets the following standards:
- 36 (i) The development shall be consistent with the locally adopted land use plan;

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

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

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

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

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

(iii) New structures built for non-water dependent purposes are limited to pile-supported, single-story, unenclosed decks and boardwalks, and shall meet the following criteria:

(I) shall provide for enhanced public access to the shoreline;

(II) may be roofed, but shall not be enclosed by partitions, plastic sheeting, screening, netting, lattice or solid walls of any kind;

(III) shall require no filling of coastal wetlands, estuarine waters or public trust areas;

(IV) shall not extend more than 20 feet waterward of the normal high water level or normal water level;

(V) shall be elevated at least three feet over the wetland substrate as measured from the bottom of the decking;

(VI) shall have no more than six feet of any dimension extending over coastal wetlands;

- (VII) shall not interfere with access to any riparian property and shall have a minimum setback of 15 feet between any part of the structure and the adjacent property owners' areas of riparian access. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the properties, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. The minimum setback provided in the rule may be waived by the written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the structure commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development;
- (VIII) shall be consistent with the US Army Corps of Engineers setbacks along federally authorized waterways;
- (IX) shall have no significant adverse impacts on fishery resources, water quality or adjacent wetlands and there shall be no alternative that would avoid wetlands. Significant adverse impacts include the development that would 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 level, or cause degradation of shellfish beds;
- (X) shall not degrade waters classified as SA or High Quality Waters or ORW as defined by the EMC;
- (XI) shall not degrade Critical Habitat Areas or Primary Nursery Areas as defined by the NC Marine Fisheries Commission; and
- (XII) shall not pose a threat to navigation.

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