

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0306

DEADLINE FOR RECEIPT: Friday, November 12, 2021

NOTE: This request when viewed on computer extends 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 the Submission for Permanent Rule form, you state that this affects State funds. I just want to confirm – it does not affect local funds, and that mark in the Register is because this was part of a combined analysis?

In the Introductory Statement, please insert the page numbers for the publication in the Register. Since you are not amending any text of the Rule, do not add “with changes”

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 .0306 is amended as published in 35:20 NCR # as follows:

2
3 **15A NCAC 07H .0306 GENERAL USE STANDARDS FOR OCEAN HAZARD AREAS**

4 (a) In order to protect life and property, all development not otherwise specifically exempted or allowed by law or
5 elsewhere in the Coastal Resources Commission's rules shall be located according to whichever of the following is
6 applicable:

7 (1) The ocean hazard setback for development shall be measured in a landward direction from the
8 vegetation line, the static vegetation line, or the measurement line, whichever is applicable.

9 (2) In areas with a development line, the ocean hazard setback shall be set in accordance with
10 Subparagraphs (a)(3) through (9) of this Rule. ~~In~~ With the exception of those types of
11 development defined in 15A NCAC 07J .1301(d), in no case shall new development be sited
12 seaward of the development line. In areas with a Static Line Exception approved in accordance
13 with 15A NCAC 07J .1200 and a Development Line approved in accordance with 15A NCAC 07J
14 .1300, the petitioner shall notify the Division of Coastal Management which one of the two
15 approaches will be utilized and applied to the entire large-scale project area as defined in 15A
16 NCAC 07H .0305(a)(7).

17 (3) In no case shall a development line be created or established on State-owned lands or oceanward
18 of the mean high water line or perpetual property easement line, whichever is more restrictive.

19 (4) The ocean hazard setback shall be determined by both the size of development and the shoreline
20 long term erosion rate as defined in Rule .0304 of this Section. "Development size" is defined by
21 total floor area for structures and buildings or total area of footprint for development other than
22 structures and buildings. Total floor area includes the following:

23 (A) The total square footage of heated or air-conditioned living space;

24 (B) The total square footage of parking elevated above ground level; and

25 (C) The total square footage of non-heated or non-air-conditioned areas elevated above
26 ground level, excluding attic space that is not designed to be load-bearing.

27 Decks, roof-covered porches, and walkways shall not be included in the total floor area unless
28 they are enclosed with material other than screen mesh or are being converted into an enclosed
29 space with material other than screen mesh.

30 (5) With the exception of those types of development defined in 15A NCAC 07H .0309, no
31 development, including any portion of a building or structure, shall extend oceanward of the ocean
32 hazard setback. This includes roof overhangs and elevated structural components that are
33 cantilevered, knee braced, or otherwise extended beyond the support of pilings or footings. The
34 ocean hazard setback shall be established based on the following criteria:

35 (A) A building or other structure less than 5,000 square feet requires a minimum setback of
36 60 feet or 30 times the shoreline erosion rate, whichever is greater;

- (B) A building or other structure greater than or equal to 5,000 square feet but less than 10,000 square feet requires a minimum setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (C) A building or other structure greater than or equal to 10,000 square feet but less than 20,000 square feet requires a minimum setback of 130 feet or 65 times the shoreline erosion rate, whichever is greater;
- (D) A building or other structure greater than or equal to 20,000 square feet but less than 40,000 square feet requires a minimum setback of 140 feet or 70 times the shoreline erosion rate, whichever is greater;
- (E) A building or other structure greater than or equal to 40,000 square feet but less than 60,000 square feet requires a minimum setback of 150 feet or 75 times the shoreline erosion rate, whichever is greater;
- (F) A building or other structure greater than or equal to 60,000 square feet but less than 80,000 square feet requires a minimum setback of 160 feet or 80 times the shoreline erosion rate, whichever is greater;
- (G) A building or other structure greater than or equal to 80,000 square feet but less than 100,000 square feet requires a minimum setback of 170 feet or 85 times the shoreline erosion rate, whichever is greater;
- (H) A building or other structure greater than or equal to 100,000 square feet requires a minimum setback of 180 feet or 90 times the shoreline erosion rate, whichever is greater;
- (I) Infrastructure that is linear in nature, such as roads, bridges, pedestrian access such as boardwalks and sidewalks, and utilities providing for the transmission of electricity, water, telephone, cable television, data, storm water, and sewer requires a minimum setback of 60 feet or 30 times the shoreline erosion rate, whichever is greater;
- (J) Parking lots greater than or equal to 5,000 square feet require a setback of 120 feet or 60 times the shoreline erosion rate, whichever is greater;
- (K) Notwithstanding any other setback requirement of this Subparagraph, a building or other structure greater than or equal to 5,000 square feet in a community with a static line exception in accordance with 15A NCAC 07J .1200 requires a minimum setback of 120 feet or 60 times the shoreline erosion rate in place at the time of permit issuance, whichever is greater. The setback shall be measured landward from either the static vegetation line, the vegetation line, or measurement line, whichever is farthest landward; and
- (L) Notwithstanding any other setback requirement of this Subparagraph, replacement of single-family or duplex residential structures with a total floor area greater than 5,000 square feet, and commercial and multi-family residential structures with a total floor area

- no greater than 10,000 square feet, shall be allowed provided that the structure meets the following criteria:
- (i) the structure was originally constructed prior to August 11, 2009;
 - (ii) the structure as replaced does not exceed the original footprint or square footage;
 - (iii) it is not possible for the structure to be rebuilt in a location that meets the ocean hazard setback criteria required under Subparagraph (a)(5) of this Rule;
 - (iv) the structure as replaced meets the minimum setback required under Part (a)(5)(A) of this Rule; and
 - (v) the structure is rebuilt as far landward on the lot as feasible.
- (6) If a primary dune exists in the AEC on or landward of the lot where the development is proposed, the development shall be landward of the crest of the primary dune, the ocean hazard setback, or development line, whichever is farthest from vegetation line, static vegetation line, or measurement line, whichever is applicable. For existing lots, however, where setting the development landward of the crest of the primary dune would preclude any practical use of the lot, development may be located oceanward of the primary dune. In such cases, the development may be located landward of the ocean hazard setback, but shall not be located on or oceanward of a frontal dune or the development line. The words "existing lots" in this Rule shall mean a lot or tract of land that, as of June 1, 1979, is specifically described in a recorded plat and cannot be enlarged by combining the lot or tract of land with a contiguous lot or tract of land under the same ownership.
- (7) If no primary dune exists, but a frontal dune does exist in the AEC on or landward of the lot where the development is proposed, the development shall be set landward of the frontal dune, ocean hazard setback, or development line, whichever is farthest from the vegetation line, static vegetation line, or measurement line, whichever is applicable.
- (8) If neither a primary nor frontal dune exists in the AEC on or landward of the lot where development is proposed, the structure shall be landward of the ocean hazard setback or development line, whichever is more restrictive.
- (9) Structural additions or increases in the footprint or total floor area of a building or structure represent expansions to the total floor area and shall meet the setback requirements established in this Rule and 15A NCAC 07H .0309(a). New development landward of the applicable setback may be cosmetically, but shall not be structurally, attached to an existing structure that does not conform with current setback requirements.
- (10) Established common law and statutory public rights of access to and use of public trust lands and waters in ocean hazard areas shall not be eliminated or restricted. Development shall not encroach upon public accessways, nor shall it limit the intended use of the accessways.
- (11) Development setbacks in areas that have received large-scale beach fill as defined in 15A NCAC 07H .0305 shall be measured landward from the static vegetation line as defined in this Section,

1 unless a development line has been approved by the Coastal Resources Commission in accordance
2 with 15A NCAC 07J .1300.

3 (12) In order to allow for development landward of the large-scale beach fill project that cannot meet
4 the setback requirements from the static vegetation line, but can or has the potential to meet the
5 setback requirements from the vegetation line set forth in Subparagraphs (a)(1) and (a)(5) of this
6 Rule, a local government, group of local governments involved in a regional beach fill project, or
7 qualified "owners' association" as defined in G.S. 47F-1-103(3) that has the authority to approve
8 the locations of structures on lots within the territorial jurisdiction of the association and has
9 jurisdiction over at least one mile of ocean shoreline, may petition the Coastal Resources
10 Commission for a "static line exception" in accordance with 15A NCAC 07J .1200. The static line
11 exception shall apply to development of property that lies both within the jurisdictional boundary
12 of the petitioner and the boundaries of the large-scale beach fill project. This static line exception
13 shall also allow development greater than 5,000 square feet to use the setback provisions defined
14 in Part (a)(5)(K) of this Rule in areas that lie within the jurisdictional boundary of the petitioner,
15 and the boundaries of the large-scale beach fill project. If the request is approved, the Coastal
16 Resources Commission shall allow development setbacks to be measured from a vegetation line
17 that is oceanward of the static vegetation line under the following conditions:

18 (A) Development meets all setback requirements from the vegetation line defined in
19 Subparagraphs (a)(1) and (a)(5) of this Rule;

20 (B) Development setbacks shall be calculated from the shoreline erosion rate in place at the
21 time of permit issuance;

22 (C) No portion of a building or structure, including roof overhangs and elevated portions that
23 are cantilevered, knee braced, or otherwise extended beyond the support of pilings or
24 footings, extends oceanward of the landward-most adjacent building or structure. When
25 the configuration of a lot precludes the placement of a building or structure in line with
26 the landward-most adjacent building or structure, an average line of construction shall be
27 determined by the Division of Coastal Management on a case-by-case basis in order to
28 determine an ocean hazard setback that is landward of the vegetation line, a distance no
29 less than 30 times the shoreline erosion rate or 60 feet, whichever is greater;

30 (D) With the exception of swimming pools, the development defined in Rule .0309(a) of this
31 Section shall be allowed oceanward of the static vegetation line; and

32 (E) Development shall not be eligible for the exception defined in Rule .0309(b) of this
33 Section.

34 (b) No development shall be permitted that involves the removal or relocation of primary or frontal dune sand or
35 vegetation thereon that would adversely affect the integrity of the dune. Other dunes within the ocean hazard area
36 shall not be disturbed unless the development of the property is otherwise impracticable. Any disturbance of these
37 other dunes shall be allowed only to the extent permitted by 15A NCAC 07H .0308(b).

1 (c) Development shall not cause irreversible damage to historic architectural or archaeological resources as
2 documented by the local historic commission, the North Carolina Department of Natural and Cultural Resources, or
3 the National Historical Registry.

4 (d) Development shall comply with minimum lot size and set back requirements established by local regulations.

5 (e) Mobile homes shall not be placed within the high hazard flood area unless they are within mobile home parks
6 existing as of June 1, 1979.

7 (f) Development shall comply with the general management objective for ocean hazard areas set forth in 15A
8 NCAC 07H .0303.

9 (g) Development shall not interfere with legal access to, or use of, public resources, nor shall such development
10 increase the risk of damage to public trust areas.

11 (h) Development proposals shall incorporate measures to avoid or minimize adverse impacts of the project. These
12 measures shall be implemented at the applicant's expense and may include actions that:

13 (1) minimize or avoid adverse impacts by limiting the magnitude or degree of the action;

14 (2) restore the affected environment; or

15 (3) compensate for the adverse impacts by replacing or providing substitute resources.

16 (i) Prior to the issuance of any permit for development in the ocean hazard AECs, there shall be a written
17 acknowledgment from the applicant to the Division of Coastal Management that the applicant is aware of the risks
18 associated with development in this hazardous area and the limited suitability of this area for permanent structures.
19 The acknowledgement shall state that the Coastal Resources Commission does not guarantee the safety of the
20 development and assumes no liability for future damage to the development.

21 (j) All relocation of structures shall require permit approval. Structures relocated with public funds shall comply
22 with the applicable setback line and other applicable AEC rules. Structures, including septic tanks and other
23 essential accessories, relocated entirely with non-public funds shall be relocated the maximum feasible distance
24 landward of the present location. Septic tanks shall not be located oceanward of the primary structure. All relocation
25 of structures shall meet all other applicable local and state rules.

26 (k) Permits shall include the condition that any structure shall be relocated or dismantled when it becomes
27 imminently threatened by changes in shoreline configuration as defined in 15A NCAC 07H .0308(a)(2)(B). Any
28 such structure shall be relocated or dismantled within two years of the time when it becomes imminently threatened,
29 and in any case upon its collapse or subsidence. However, if natural shoreline recovery or beach fill takes place
30 within two years of the time the structure becomes imminently threatened, so that the structure is no longer
31 imminently threatened, then it need not be relocated or dismantled at that time. This permit condition shall not affect
32 the permit holder's right to seek authorization of temporary protective measures allowed pursuant to 15A NCAC
33 07H .0308(a)(2).

34
35 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*

36 *Eff. September 9, 1977;*

37 *Amended Eff. December 1, 1991; March 1, 1988; September 1, 1986; December 1, 1985;*

1 *RRC Objection due to ambiguity Eff. January 24, 1992;*
2 *Amended Eff. March 1, 1992;*
3 *RRC Objection due to ambiguity Eff. May 21, 1992;*
4 *Amended Eff. February 1, 1993; October 1, 1992; June 19, 1992;*
5 *RRC Objection due to ambiguity Eff. May 18, 1995;*
6 *Amended Eff. August 11, 2009; April 1, 2007; November 1, 2004; June 27, 1995;*
7 *Temporary Amendment Eff. January 3, 2013;*
8 *Amended Eff. September 1, 2017; February 1, 2017; April 1, 2016; September 1, 2013;*
9 *Readopted Eff. December 1, 2020;*
10 *Amended Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0308

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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

In (c)(2)(C), line 35, please capitalize "State" if you mean "NC" If you meant to refer to any state, it's fine as written.

Also on line 35, insert a comma after "state"

And please note the same changes for Page 7, line 3.

On Page 7, line 1, please state "and" or "or"

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 29, 2021

1 15A NCAC 07H .0308 is amended as published in 35:20 NCR 2237-2242 as follows:

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

4 (a) Ocean Shoreline Erosion Control Activities:

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

- 6 (A) All oceanfront erosion response activities shall be consistent with the general policy
7 statements in 15A NCAC 07M .0200.
- 8 (B) Permanent erosion control structures may cause significant adverse impacts on the value
9 and enjoyment of adjacent properties or public access to and use of the ocean beach, and,
10 therefore, unless specifically authorized under the Coastal Area Management Act, are
11 prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and
12 breakwaters.
- 13 (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront
14 properties without regard to the size of the structure on the property or the date of its
15 construction.
- 16 (D) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that
17 sustain substantial habitat for fish and wildlife species, as identified by natural resource
18 agencies during project review, unless mitigation measures are incorporated into project
19 design, as set forth in Rule .0306(h) of this Section.
- 20 (E) Project construction shall be timed to minimize adverse effects on biological activity.
- 21 (F) Prior to completing any erosion response project, all exposed remnants of or debris from
22 failed erosion control structures must be removed by the permittee.
- 23 (G) Permanent erosion control structures that would otherwise be prohibited by these standards
24 may be permitted on finding by the Division that:
- 25 (i) the erosion control structure is necessary to protect a bridge that provides the only
26 existing road access on a barrier island, that is vital to public safety, and is
27 imminently threatened by erosion as defined in Part (a)(2)(B) of this Rule;
- 28 (ii) the erosion response measures of relocation, beach nourishment or temporary
29 stabilization are not adequate to protect public health and safety; and
- 30 (iii) the proposed erosion control structure will have no adverse impacts on adjacent
31 properties in private ownership or on public use of the beach.
- 32 (H) Structures that would otherwise be prohibited by these standards may also be permitted on
33 finding by the Division that:
- 34 (i) the structure is necessary to protect a state or federally registered historic site that
35 is imminently threatened by shoreline erosion as defined in Part (a)(2)(B) of this
36 Rule;

- (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site;
- (iii) the structure is limited in extent and scope to that necessary to protect the site; and
- (iv) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding by the Division that:
- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits;
- (ii) dredging alone is not practicable to maintain safe access to the affected channel;
- (iii) the structure is limited in extent and scope to that necessary to maintain the channel;
- (iv) the structure shall not have significant adverse impacts on fisheries or other public trust resources; and
- (v) a permit for a structure under this Part may be issued only to a sponsoring public agency for projects where the public benefits outweigh the significant adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any significant adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
- (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
- (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (K) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.

1 (2) Temporary Erosion Control Structures:

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

4 (B) Temporary erosion control structures as defined in Part (A) of this Subparagraph may be
5 used to protect only imminently threatened roads and associated right of ways, and
6 buildings and their associated septic systems. A structure is considered imminently
7 threatened if its foundation, septic system, or right-of-way in the case of roads, is less than
8 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from
9 the erosion scarp or in areas where there is no obvious erosion scarp may also be found to
10 be imminently threatened when site conditions, such as a flat beach profile or accelerated
11 erosion, increase the risk of imminent damage to the structure.

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

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

19 (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of
20 the structure to be protected except to align with temporary erosion control structures on
21 adjacent properties, where the Division has determined that gaps between adjacent erosion
22 control structures may result in an increased risk of damage to the structure to be protected.
23 The landward side of such temporary erosion control structures shall not be located more
24 than 20 feet waterward of the structure to be protected, or the right-of-way in the case of
25 roads. If a building or road is found to be imminently threatened and at an increased risk
26 of imminent damage due to site conditions such as a flat beach profile or accelerated
27 erosion, temporary erosion control structures may be located more than 20 feet waterward
28 of the structure being protected. In cases of increased risk of imminent damage, the location
29 of the temporary erosion control structures shall be determined by the Director of the
30 Division of Coastal Management or the Director's designee in accordance with Part (A) of
31 this Subparagraph.

32 (F) Temporary erosion control structures may remain in place for up to eight years for a
33 building and its associated septic system, a bridge or a road. The property owner shall be
34 responsible for removal of any portion of the temporary erosion control structure exposed
35 above grade within 30 days of the end of the allowable time period.

36 (G) An imminently threatened structure or property may be protected only once, regardless of
37 ownership, unless the threatened structure or property is located in a community that is

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

- 13 (i) a building and its septic system shall be considered separate structures,
- 14 (ii) a road or highway may be incrementally protected as sections become imminently
15 threatened. The time period for removal of each contiguous section of temporary
16 erosion control structure shall begin at the time that the initial section was
17 installed, in accordance with Part (F) of this Subparagraph.

18 (H) For purposes of this Rule, a community is considered to be actively pursuing a beach
19 nourishment or an inlet relocation or stabilization project in accordance with G.S. 113A-
20 115.1 if it:

- 21 (i) has been issued an active CAMA permit, where necessary, approving such
22 project; or
- 23 (ii) has been identified by a U.S. Army Corps of Engineers' Beach Nourishment
24 Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage
25 Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of
26 Engineers and a commitment of local or federal money, when necessary; or
- 27 (iii) has received a favorable economic evaluation report on a federal project; or
- 28 (iv) is in the planning stages of a project designed by the U.S. Army Corps of
29 Engineers or persons meeting applicable State occupational licensing
30 requirements and initiated by a local government or community with a
31 commitment of local or state funds to construct the project or the identification of
32 the financial resources or funding bases necessary to fund the beach nourishment,
33 inlet relocation or stabilization project.

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

- (I) Once a temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, it shall be removed to the maximum extent practicable by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure. If the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to the completion of a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment project, or an inlet relocation or stabilization project, any portion of the temporary erosion control structure exposed above grade shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (J) Removal of temporary erosion control structures is not required if they are covered by sand. Any portion of the temporary erosion control structure that becomes exposed above grade after the expiration of the permitted time period shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management.
- (K) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (L) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the temporary erosion control structure shall not exceed 20 feet, and the total height shall not exceed six feet, as measured from the bottom of the lowest bag.
- (M) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and in accordance with Rule .0312 of this Section.
- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:
- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;

- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization.

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be replanted or temporarily stabilized until planting can be completed.
- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, shall remain on the lot or tract of land to the maximum extent practicable and may be redistributed within the Ocean Hazard AEC provided that it is not placed any farther oceanward than the crest of a primary dune, if present, or the crest of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary or frontal dunes so long as they are designed and constructed in a manner that entails negligible alteration of the primary or frontal dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be considered to entail negligible alteration of primary or frontal dunes provided that:
- (A) The accessway is exclusively for pedestrian use;
- (B) The accessway is a maximum of six feet in width;
- (C) The Except in the case of beach matting for a local, state or federal government's public access, the accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the dune. Where this is deemed by the Division of

Coastal Management to be impossible due to any more restrictive local, state, and/or federal building requirements, the structure shall touch the dune only to the extent necessary; and necessary. Beach matting for a local, state or federal government's public access shall be installed at grade and not involve any excavation or fill of the dune; and

(D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.

(3) An accessway that does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers are not prohibited provided all other applicable standards of this Rule are met.

(4) In order to preserve the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") may be provided for off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 15 feet in width and may be constructed of wooden sections fastened together, or other materials approved by the Division, over the length of the affected dune area. Installation of a Hatteras ramp shall be done in a manner that will preserve the dune's function as a protective barrier against flooding and erosion by not reducing the volume of the dune.

(5) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the frontal or primary dune, provided they do not interfere with public trust rights and emergency access along the beach. Structural accessways are not restricted by the requirement to be landward of the FLSNV as described in Rule .0309(a) of this Section.

(d) Building Construction Standards. New building construction and any construction identified in .0306(a)(5) of this Section and 15A NCAC 07J .0210 shall comply with the following standards:

(1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.

(2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.

(3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.

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

1
2 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-115.1; 113A-124;*
3 *Eff. June 1, 1979;*
4 *Temporary Amendment Eff. June 20, 1989, for a period of 180 days to expire on December 17,*
5 *1989;*
6 *Amended Eff. August 3, 1992; December 1, 1991; March 1, 1990; December 1, 1989;*
7 *RRC Objection Eff. November 19, 1992 due to ambiguity;*
8 *RRC Objection Eff. January 21, 1993 due to ambiguity;*
9 *Amended Eff. March 1, 1993; December 28, 1992;*
10 *RRC Objection Eff. March 16, 1995 due to ambiguity;*
11 *Amended Eff. April 1, 1999; February 1, 1996; May 4, 1995;*
12 *Temporary Amendment Eff. July 3, 2000; May 22, 2000;*
13 *Amended Eff. April 1, 2019; May 1, 2013; July 1, 2009; April 1, 2008; February 1, 2006; August 1,*
14 *2002;*
15 *Readopted Eff. December 1, 2020;*
16 *Amended Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1201

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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 7, what is "new" here (does it include replacing 90% of an existing pier or docking facility?) Does your regulated public know?

On lines 7 and 8, consider removing the parenthesis and setting this off with commas.

On line 9, "rules" should be lowercase.

On lines 8 and 9, I note that "coastal wetlands AEC" is lowercase, but on lines 10 and 11, the terms "Ocean Hazard AECs" and "Estuarine Shoreline AEC" are capitalized. Is this difference intentional?

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 .1201 is readopted as published in 34:09 NCR 758 as follows:

2
3 **SECTION .1200 - GENERAL PERMIT FOR CONSTRUCTION OF PIERS AND DOCKING FACILITIES:**
4 **IN ESTUARINE AND PUBLIC TRUST WATERS AND OCEAN HAZARD AREAS**
5

6 **15A NCAC 07H .1201 PURPOSE**

7 A permit under this Section shall allow the construction of new piers and docking facilities (including pile supported
8 or floating) in the estuarine and public trust waters AECs and construction of new piers and docks within coastal
9 wetlands AECs according to the authority provided in Subchapter 07J .1100 and according to the Rules in this Section.
10 This permit shall not apply to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC
11 with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features
12 include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean
13 Erodible Area.

14
15 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
16 *Eff. March 1, 1984;*
17 *Amended Eff. July 1, 2009; April 1, 2003;*
18 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1202

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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), line 5, is the "approval" process what is set forth in Paragraph (c)?

On line 5, what is this information? Does your regulated public know?

On line 6, state "his or her" or just "and the applicant's name and address"

In (b)(2), line 13, delete the comma after "and" before "indicate"

Also on line 13, what do you mean by "indicate"? Do you mean "state"?

On lines 14 and 16 (two places), you refer to "DCM" In (a), the term is "Division of Coastal Management" and in (c), line 20, it's "Division" If these all mean the same thing, why not call them the same thing, such as "Division"?

On line 17, state "he or she"

In (c), lines 19 and 21, what is this "authorization"? Is it the permit or is separate from permitting?

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 .1202 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1202 APPROVAL PROCEDURES**

4 (a) An applicant for a General Permit under this Subchapter shall contact the Division of Coastal Management and
5 request approval for development. The applicant shall provide information on site location, dimensions of the project
6 area, and his name and address.

7 (b) The applicant shall provide:

8 (1) confirmation that a written statement has been obtained signed by the adjacent riparian property
9 owners indicating that they have no objections to the proposed work; or

10 (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the
11 proposed work. The notice shall instruct adjacent property owners to provide any comments on the
12 proposed development in writing for consideration by permitting officials to the Division of Coastal
13 Management within 10 days of receipt of the notice, and, indicate that no response will be interpreted
14 as no objection. DCM staff shall review all comments and determine, based on their relevance to
15 the potential impacts of the proposed project, if the proposed project can be approved by a General
16 Permit. If DCM staff finds that the comments are worthy of more in-depth review, DCM shall
17 notify the applicant that he must submit an application for a major development permit.

18 (c) No work shall begin until an on-site meeting is held with the applicant and a Division of Coastal Management
19 representative to review the proposed development. Written authorization to proceed with the proposed development
20 shall be issued if the Division representative finds that the application meets all the requirements of this Subchapter.
21 Construction shall be completed within 120 days of the issuance of the general authorization or the authorization shall
22 expire and it shall be necessary to re-examine the proposed development to determine if the general authorization may
23 be reissued.

24 (d) Any modification or addition to the authorized project shall require prior approval from the Division of Coastal
25 Management.

26
27 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
28 *Eff. March 1, 1984;*
29 *Amended Eff. October 1, 2007; August 1, 1998; January 1, 1990;*
30 *Readopted Eff. December 1, 2021.*

1 15A NCAC 07H .1203 is readopted as published in 34:09 NCR 756 as follows:

2
3 **15A NCAC 07H .1203 PERMIT FEE**

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

6
7 *History Note: Authority G.S. 113A-107; 113A-113(b); 113A-118.1; 113A-119; 113-119.1; 113A-124;*

8 *Eff. March 1, 1984;*

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

10 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1204

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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), line 5, remove the comma after "owner"

I am simply asking – on lines 7 and 8, do you need the language, "because of ... permit"? Could you not just state, "process, unless meeting the exceptions in Rule..."?

In (b), line 10, this is no longer the name of your Department. Please update it.

On line 11, how will this be "deemed necessary"?

In (c), I believe you are saying that the existence of the piers and docking facilities shall not interfere with the navigation or use of the waters by the public. Why not state it more simply? If you want to retain the language as written, please replace the second "by" on line 13 with "through"

In (e), line 18, please capitalize "state" if you mean NC.

In (f), line 21, what are "AEC guidelines"? Where are those located? Are they your rules?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 29, 2021

1 15A NCAC 07H .1204 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1204 GENERAL CONDITIONS**

4 (a) Piers and docking facilities authorized by the general permit set forth in this Section shall be for the exclusive use
5 of the land owner, or occupant and shall not be leased, rented, or used for any commercial purpose. Piers and docking
6 facilities shall provide docking space for no more than two boats. Docking facilities providing docking space for more
7 than two boats shall be reviewed through the major permitting process because of their greater potential for adverse
8 impacts and, therefore, are not authorized by this general permit, excluding the exceptions described in Rule .1205 of
9 this Section.

10 (b) Individuals shall allow representatives of the Department of Environment and Natural Resources to make
11 inspections at any time deemed necessary in order to be sure that the activity being performed under the authority of
12 the general permit set forth in this Section is in accordance with the terms and conditions prescribed herein.

13 (c) There shall be no interference with navigation or use of the waters by the public by the existence of piers and
14 docking facilities.

15 (d) The permit set forth in this Section shall not be applicable to proposed construction where the Department
16 determines that the proposed activity will endanger adjoining properties or significantly affect historic, cultural,
17 scenic, conservation or recreation values, identified in G.S. 113A-102 and G.S. 113A-113(b)(4).

18 (e) The permit set forth in this Section does not eliminate the need to obtain any other required state, local, or federal
19 authorization.

20 (f) Development carried out under the permit set forth in this Section shall be consistent with all local requirements,
21 AEC Guidelines, and local land use plans current at the time of authorization.

22
23 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
24 *Eff. March 1, 1984;*
25 *Amended Eff. May 1, 1990;*
26 *RRC Objection due to ambiguity Eff. May 19, 1994;*
27 *Amended Eff. August 1, 2014; July 1, 2009; August 1, 1998; July 1, 1994;*
28 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .1205

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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 (b), lines 6 and 7, what is "similar use"?

In (c), line 14, delete the comma after "vegetation"

In (f), line 20, why is "General Permit" capitalized here? The term is not capitalized elsewhere it is used in the Rule.

In (h), lines 25 and 26, please remove the parenthesis.

In (p), Page 2, lines 14-15, is it "human-made canal, or basin" or are you referring to both canals and basins being human-made? So, should it read on line 14, "water body or human-made canal or basin" and then on line 15, "water body, or human-made canal or basin"? It is inconsistent as currently written and needs to be consistent.

In (q), line 29, why do you have "approved" here? Since the diagram is in the Rule, I would think this term is unnecessary.

On line 30, capitalize "Rule"

In Paragraph (r), lines 34-36, why are you stating the definition here? Why not state, "for more than two boats, as defined in 15A NCAC 07M .0602(a), except when..."

If you wish to retain it, then please put "boat" in (a boat is defined as...) in quotation marks.

And insert a comma after "paddle" on line 36.

In (u), Page 3, line 11, what do you mean by "encouraged"? And by whom? Why do you need this term?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 29, 2021

1 15A NCAC 07H .1205 is readopted as published in 34:09 NCR 758 as follows:

2
3 **15A NCAC 07H .1205 SPECIFIC CONDITIONS**

4 (a) Piers and docking facilities may extend or be located up to a maximum of 400 feet waterward from the normal
5 high water line or the normal water level, whichever is applicable.

6 (b) Piers and docking facilities shall not extend beyond the established pier length along the same shoreline for similar
7 use. This restriction shall not apply to piers and docking facilities 100 feet or less in length unless necessary to avoid
8 interference with navigation or other uses of the waters by the public such as blocking established navigation routes
9 or interfering with access to adjoining properties as determined by the Division of Coastal Management. The length
10 of piers and docking facilities shall be measured from the waterward edge of any wetlands that border the water body.

11 (c) Piers and docking facilities longer than 200 feet shall be permitted only if the proposed length gives access to
12 deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the
13 additional length is necessary to span some obstruction to navigation. Measurements to determine pier and docking
14 facility lengths shall be made from the waterward edge of any coastal wetland vegetation, that borders the water body.

15 (d) Piers shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate
16 as measured from the bottom of the decking.

17 (e) The total square footage of shaded impact for docks and mooring facilities (excluding the pier) allowed shall be 8
18 square feet per linear foot of shoreline with a maximum of 800 square feet. In calculating the shaded impact,
19 uncovered open water slips shall not be counted in the total.

20 (f) The maximum size of any individual component of the docking facility authorized by this General Permit shall
21 not exceed 400 square feet.

22 (g) Docking facilities shall not be constructed in a designated Primary Nursery Area with less than two feet of water
23 at normal low water level or normal water level under the general permit set forth in this Section without prior approval
24 from the Division of Marine Fisheries or the Wildlife Resources Commission.

25 (h) Piers and docking facilities located over shellfish beds or submerged aquatic vegetation (as defined by the Marine
26 Fisheries Commission) may be constructed without prior consultation from the Division of Marine Fisheries or the
27 Wildlife Resources Commission if the following two conditions are met:

28 (1) Water depth at the docking facility location is equal to or greater than two feet of water at normal
29 low water level or normal water level; and

30 (2) The pier and docking facility is located to minimize the area of submerged aquatic vegetation or
31 shellfish beds under the structure as determined by the Division of Coastal Management.

32 (i) Floating piers and floating docking facilities located in Primary Nursery Areas, over shellfish beds, or over
33 submerged aquatic vegetation shall be allowed if the water depth between the bottom of the proposed structure and
34 the substrate is at least 18 inches at normal low water level or normal water level.

35 (j) Docking facilities shall have no more than six feet of any dimension extending over coastal wetlands and shall be
36 elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.

1 (k) The width requirements established in Paragraph (d) of this Rule shall not apply to pier structures in existence on
2 or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases,
3 pilings and cross bracing may be used to provide structural support as long as they do not extend more than two feet
4 on either side of the principal structure. These modifications shall not be used to expand the floor decking of platforms
5 and piers.

6 (l) Boathouses shall not exceed a combined total of 400 square feet and shall have sides extending no further than
7 one-half the height of the walls as measured in a downward direction from the top wall plate or header and only
8 covering the top half of the walls. Measurements of square footage shall be taken of the greatest exterior dimensions.
9 Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.

10 (m) The area enclosed by a boat lift shall not exceed 400 square feet.

11 (n) Piers and docking facilities shall be single story. They may be roofed but shall not allow second story use.

12 (o) Pier and docking facility alignments along federally maintained channels shall also meet Corps of Engineers
13 regulations for construction pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

14 (p) Piers and docking facilities shall in no case extend more than 1/4 the width of a natural water body, human-made
15 canal or basin. Measurements to determine widths of the water body, human-made canals, or basins shall be made
16 from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation
17 shall not apply when the proposed pier and docking facility is located between longer structures within 200 feet of the
18 applicant's property. However, the proposed pier and docking facility shall not be longer than the pier head line
19 established by the adjacent piers and docking facilities nor longer than 1/3 the width of the water body.

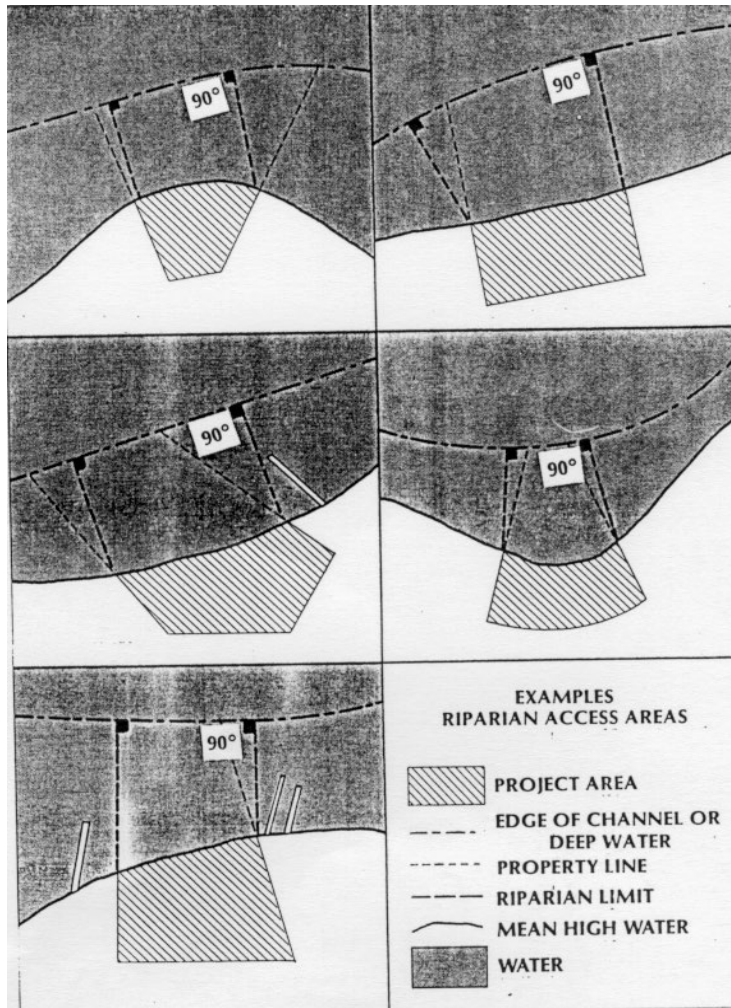
20 (q) Piers and docking facilities shall not interfere with the access to any riparian property, and shall have a minimum
21 setback of 15 feet between any part of the pier and docking facility and the adjacent property lines extended into the
22 water at the points that they intersect the shoreline. The minimum setbacks provided in this Paragraph may be waived
23 by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants.
24 Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written
25 agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management
26 prior to initiating any development of the pier or docking facility. The line of division of areas of riparian access shall
27 be established by drawing a line along the channel or deep water in front of the property, then drawing a line
28 perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets
29 the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (t) of this
30 Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from
31 the Division of Coastal Management website at <http://www.nccoastalmanagement.net>. When shoreline configuration
32 is such that a perpendicular alignment cannot be achieved, the pier or docking facility shall be aligned to meet the
33 intent of this Rule to the maximum extent practicable.

34 (r) Piers and docking facilities shall provide docking space for no more than two boats (a boat is defined in 15A
35 NCAC 07M .0602(a) as a vessel or watercraft of any size or type specifically designed to be self-propelled, whether
36 by engine, sail, oar, paddle or other means, which is used to travel from place to place by water) except when stored

on a platform that has already been accounted for within the shading impacts condition of this general permit. Boats stored on floating or fixed platforms shall not count as docking spaces.

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

(t) The diagram shown below illustrates various shoreline configurations:



(u) Shared piers or docking facilities shall be allowed and encouraged provided that in addition to complying with Paragraphs (a) through (t) of this Rule the following shall also apply:

- (1) The shared pier or docking facility shall be confined to two adjacent riparian property owners and the landward point of origination of the structure shall overlap the shared property line.
- (2) Shared piers and docking facilities shall be designed to provide docking space for no more than four boats.

- 1 (3) The total square footage of shaded impact for docks and mooring facilities shall be calculated using
2 Paragraph (e) of this Rule and in addition shall allow for combined shoreline of both properties.
- 3 (4) The property owners of the shared pier shall not be required to obtain a 15-foot waiver from each
4 other as described in Paragraph (q) of this Rule as is applies to the shared riparian line for any work
5 associated with the shared pier, provided that the title owners of both properties have executed a
6 shared pier agreement that has become a part of the permit file.
- 7 (5) The construction of a second access pier or docking facility not associated with the shared pier shall
8 not be authorized under the general permit set forth in this Section.
- 9

10 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;*
11 *Eff. March 1, 1984;*
12 *Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;*
13 *RRC Objection due to ambiguity Eff. March 18, 1993;*
14 *Amended Eff. August 1, 1998; April 23, 1993;*
15 *Temporary Amendment Eff. December 20, 2001;*
16 *Amended Eff. August 1, 2014; July 1, 2009; April 1, 2003;*
17 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1105

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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 purpose of this Rule? It appears that lines 4-6 simply state that an individual permit will control the project. Why is this a Rule?

And on lines 6 and 7, this sentence simply restates G.S. 113A-118.1(b). Why do you need it here?

In the History Note, 113A-124(c)(5) was repealed by SL 1987-827. Delete the reference.

Als in the History Note, there is no subsection (c)(1) in G.S. 113-229. Did you mean to refer to subsection (c2)?

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

1 15A NCAC 07J .1105 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .1105 APPLICATION PROCEDURES**

4 Authorization to initiate development covered by the general permit shall comply with the procedures outlined in each
5 permit. The procedures shall be established to explain in detail the application process, notification requirements, and
6 permit fees. Individual developments carried out under the provisions of general permits shall not be subject to the
7 mandatory notice provisions of G.S. 113A-119.

8
9 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*

10 *Eff. September 1, 1983;*

11 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1106

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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 purpose of this Rule? It appears to establish that permits will vary depending upon the project. What does this Rule regulate?

On line 4, what is an "implementing authority"?

On line 5, what is "appropriate" here? And what are "special" conditions?

On line 6, what is the "issuing authority"?

On lines 7 and 9, what is "public interest" here? I see the term used in G.S. 113-229, but that is only in reference to special emergency dredge or fill permits.

On line 7, capitalize "State"

In the History Note, 113A-124(c)(5) was repealed by SL 1987-827. Delete the reference.

Als in the History Note, there is no subsection (c)(1) in G.S. 113-229. Did you mean to refer to subsection (c2)?

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

1 15A NCAC 07J .1106 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .1106 PERMIT CONDITIONS**

4 Each general permit shall have a set of general and specific conditions. Additionally, the implementing authority may
5 add appropriate special conditions to each instrument of authorization if necessary to protect the public interest. The
6 issuing authority may, on a case-by-case basis, override the general permit and require an individual application and
7 review if this individual review is deemed to be in the public interest. Provisions for individual review by state agencies
8 of requests for general permit authorization may be made for each category if this review is deemed necessary to
9 protect coastal resources or other aspects of public interest.

10
11 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*

12 *Eff. September 1, 1983;*

13 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1107

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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, why do you need to spell out “general, specific, and special conditions”? Why not just state “in compliance with all conditions listed on the permit”?

Assuming you need to retain it, insert a comma after “specific”

On line 5, what is “proper authorization”?

On lines 5 and 7, do not use “and/or” If you mean X or Y or both (which is what I suspect you mean), then use “or”

In the History Note, 113A-124(c)(5) was repealed by SL 1987-827. Delete the reference.

Als in the History Note, there is no subsection (c)(1) in G.S. 113-229. Did you mean to refer to subsection (c2)?

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

1 15A NCAC 07J .1107 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .1107 PERMIT COMPLIANCE**

4 All development authorized through the general permit must be done in compliance with all general, specific and
5 special conditions. Development undertaken without proper authorization or in violation of permit conditions and/or
6 failure to comply with operational permit conditions shall be a violation subject to the penalties set out in G.S.
7 113A-126 and/or G.S. 113-229.

8
9 *History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124(c)(5); 113-229(c)(1);*

10 *Eff. September 1, 1983;*

11 *Amended Eff. March 1, 1985;*

12 *Readopted Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .1301

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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 the Submission for Permanent Rule form, you state that this affects State funds. I just want to confirm – it does not affect local funds, and that mark in the Register is because this was part of a combined analysis?

In (d), line 20, please capitalize “State” if you mean NC.

In (d)(3) and (4), what is “uninhabitable” here? Does your regulated public know?

In (d)(4), lines 24 and 25, is it packed sand and packed gravel? If so, it’s fine as written, but if it’s packed sand and non-packed gravel, insert a comma after “sand” on line 25.

And in (d)(5), line 26, what is “temporary” here?

On line 28, insert a comma after “measurement line”

On line 29, replace “which” with “that”

On line 31, who will determine whether this is “essential” and based upon what?

On line 32, insert a comma after “subdivision”

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

1 15A NCAC 07J .1301 is amended as published in 35:20 NCR 2242 as follows:

2
3 **SECTION .1300 – DEVELOPMENT LINE PROCEDURES**
4

5 **15A NCAC 07J .1301 REQUESTING THE DEVELOPMENT LINE**

6 (a) Any local government, group of local governments involved in a regional beach fill project, or qualified owner's
7 association with territorial jurisdiction over an area that is subject to ocean hazard area setbacks pursuant to 15A
8 NCAC 07H .0305 may petition the Coastal Resources Commission for a development line for the purpose of siting
9 oceanfront development in accordance with the provisions of this Section. A "qualified owner's association" is an
10 owner's association, as defined in G.S. 47F-1-103(3), that has authority to approve the locations of structures on lots
11 within the territorial jurisdiction of the association and has jurisdiction over at least one mile of ocean shoreline.

12 (b) A development line request shall apply to the entire large-scale project area as defined in 15A NCAC 07H
13 .0305(a)(7) and, at the petitioner's request, may be extended to include the entire oceanfront jurisdiction or legal
14 boundary of the petitioner.

15 (c) In determining where to position a requested development line, the petitioner shall use an adjacent neighbor sight-
16 line approach, resulting in an average line of structures. In areas where the seaward edge of existing development is
17 not linear, the petitioner may determine an average line of construction on a case-by-case basis. In no case shall a
18 development line be established seaward of the most seaward structure within the petitioner's oceanfront jurisdiction.

19 (d) The following types of development shall be permitted seaward of the development line if all other provisions of
20 this Subchapter and other state and local regulations are met:

21 (1) campsites;

22 (2) beach accessways consistent with 15A NCAC 07H .0308(c);

23 (3) unenclosed, uninhabitable gazebos with a footprint of 200 square feet or less;

24 (4) uninhabitable, single-story storage sheds with a foundation or floor consisting of wood, clay, packed
25 sand or gravel, and a footprint of 200 square feet or less;

26 (5) temporary amusement stands; and

27 (6) sand fences consistent with 15A NCAC 07H .0311.

28 In all cases, this development shall be permitted only if it is landward of the vegetation line, measurement line or static
29 vegetation line, whichever is applicable; involves no alteration or removal of primary or frontal dunes which would
30 compromise the integrity of the dune as a protective landform or the dune vegetation; has overwalks to protect any
31 existing dunes; is not essential to the continued existence or use of an associated principal development; and is not
32 required to satisfy minimum requirements of local zoning, subdivision and health regulations.

33 ~~(d)~~(e) An existing structure that is oceanward of an approved development line may remain in place until damaged
34 greater than 50 percent in accordance with Rule .0210 of this Subchapter. At that time it may only be replaced landward
35 of the development line and shall meet the applicable ocean hazard setback requirements as defined in 15A NCAC
36 07H .0306(a).

1 ~~(e)~~(f) A request for a development line or amendment shall be made in writing by the petitioner and submitted to the
2 CRC by sending the written request to the Director of the Division of Coastal Management. A complete request shall
3 include the following:

- 4 (1) A detailed survey of the development line using on-ground observation and survey or aerial imagery
5 along the oceanfront jurisdiction or legal boundary, including;
6 (A) The development line, static vegetation line, mean high water line, and any other
7 information necessary for a review of the petitioner's proposed development line, such as
8 a pre-nourishment project mean high water line, local ordinances, or easements; and
9 (B) Surveyed development line spatial data in a geographic information systems (GIS) format
10 referencing North Carolina State Plane North American Datum 83 US Survey Foot, to
11 include Federal Geographic Data Committee (FGDC) compliant metadata;
12 (2) All local regulations associated with the development line;
13 (3) A record of local adoption of the development line by the petitioner; and
14 (4) Documentation of incorporation of a development line into local ordinances or rules and regulations
15 of an owner's association.

16 ~~(f)~~(g) Once a development line is approved by the Coastal Resources Commission, only the petitioner may request a
17 change or reestablishment of the position of the development line.

18 ~~(g)~~(h) A development line request shall be submitted to the Director of the Division of Coastal Management, 400
19 Commerce Avenue, Morehead City, NC 28557. Written acknowledgement of the receipt of a completed development
20 line request, including notification of the date of the meeting at which the request will be considered by the Coastal
21 Resources Commission, shall be provided to the petitioner by the Division of Coastal Management.

22 ~~(h)~~(i) The Coastal Resources Commission shall consider a development line request no later than the second scheduled
23 meeting following the date of receipt of a complete request by the Division of Coastal Management, unless the
24 petitioner and the Division of Coastal Management agree upon a later date.

25
26 *History Note: Authority G.S. 113A-107; 113A-113(b)(6); 113A-124;*
27 *Eff. April 1, 2016;*
28 *Amended Eff. September 1, 2017;*
29 *Readopted Eff. September 1, 2021;*
30 *Amended Eff. December 1, 2021.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07K .0207

DEADLINE FOR RECEIPT: Friday, November 12, 2021

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), line 6, as well as (a)(2), line 15, please capitalize "state" if you mean NC.

Also on lines 6 and 15, please insert a comma after "state"

In (a)(4), line 22, what is the FLNSV?

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

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 29, 2021

1 15A NCAC 07K .0207 is amended as published in 35:20 NCR 2243 as follows:

2
3 **15A NCAC 07K .0207 STRUCTURAL ACCESSWAYS OVER FRONTAL DUNES EXEMPTED**

4 (a) The North Carolina Coastal Resources Commission exempts from the CAMA permit requirement all structural
5 pedestrian ~~accessways over frontal dunes which can be shown to meet the following criteria:~~ accessways, including
6 beach matting installed by a local, state or federal government to provide public access over primary and frontal dunes
7 when such accessways can be shown to meet the following criteria:

8 (1) The accessway shall not exceed six feet in width and shall be for private residential or for public
9 access to an ocean beach. This exemption does not apply to accessways for commercial use or for
10 motor-powered vehicular use.

11 (2) The accessway shall be constructed so as to make no alterations to the frontal dunes that are not
12 necessary to construct the accessway. This means that the accessway shall be constructed over the
13 frontal dune without any alteration of the dunes. In no case shall the dune be altered so as to diminish
14 its capacity as a protective barrier against flooding and by not reducing the volume of the dune.
15 Driving of pilings into the dune or a local, state or federal government's use of beach matting for
16 public access that is installed at grade and involves no excavation or fill shall not be considered
17 alteration of a frontal dune for the purposes of this Rule.

18 (3) The accessway shall conform with any applicable local or State building code standards.

19 ~~(4) Structural accessways may be constructed no more than six feet seaward of the waterward toe of the~~
20 ~~frontal or primary dune, provided they do not interfere with public trust rights and emergency access~~
21 ~~along the beach. Structural accessways are not restricted by the requirement to be landward of the~~
22 ~~FLSNV as described in 15A NCAC 07H .0309(a).~~

23 ~~(5) Damaged, non-functioning, or portions of accessways that become non-compliant with~~
24 ~~Subparagraph (4) of this Paragraph shall be removed by the property owner.~~

25 (b) Before beginning any work under this exemption the CAMA local permit officer or ~~Division of~~ Department of
26 Environmental Quality representative shall be notified of the proposed activity to allow on-site review of the proposed
27 accessway. Notification can be by telephone, in person, or in writing and must include:

28 (1) name, address, and telephone number of landowner and location of work including county and
29 nearest community; and

30 (2) the dimensions of the proposed structural accessway.

31
32 *History Note: Authority G.S. 113A-103(5)c;*
33 *Eff. November 1, 1984;*
34 *Amended Eff. December 1, 1991; May 1, 1990;*
35 *Readopted Eff. August 1, 2021;*
36 *Amended Eff. December 1, 2021.*