

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15 NCAC 07H .1501

**DEADLINE FOR RECEIPT: Friday, June 12, 2015**

**NOTE WELL: 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*Is this Rule necessary?*

*If the Rule is deemed to be necessary, to what permit are you referring on line 9?*

*Please change "will" to "shall" on line 9.*

*Line 9, please add a comma in between "basins" and "and ditches" for purposes of consistency.*

*Line 10, what do you mean by "maintaining previous water depths..." Previous to what?*

*Line 10, what areas are considered to be "non-wetland areas"? Where can wetland areas be found?*

*Line 11, what do you mean by "private, non-commercial activities"? Are "commercial activities" defined somewhere in rule or statute?*

*Lines 11-13, why is the sentence beginning "This general permit was developed according..." necessary?*

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

Amber Cronk May  
Commission Counsel  
Date submitted to agency: May 29, 2015

1 15A NCAC 07H .1501 IS AMENDED AS PUBLISHED IN 29:15 NCR 1740 AS FOLLOWS:

2

3 SECTION .1500 - GENERAL PERMIT FOR EXCAVATION WITHIN OR CONNECTING TO EXISTING  
4 ~~CANALS; CHANNELS; BASINS; OR DITCHES IN ESTUARINE WATERS; PUBLIC TRUST WATERS;~~  
5 ~~AND ESTUARINE~~ CANALS, CHANNELS, BASINS, OR DITCHES IN ESTUARINE WATERS, PUBLIC  
6 TRUST WATERS, AND COASTAL SHORELINE AEC'S AECS

7

8 15A NCAC 07H .1501 PURPOSE

9 This permit will allow excavation within existing canals, channels, basins and ditches in estuarine and public trust  
10 waters for the purpose of maintaining previous water depths and creating new boat basins from non-wetland areas  
11 that will be used for private, non-commercial activities. This general permit ~~is being~~ was developed according to the  
12 procedures outlined in Subchapter 7J .1100, and ~~will apply~~ applies to the estuarine waters and public trust waters  
13 areas of environmental concern.

14

15 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);*  
16 *Eff. July 1, 1984;*  
17 *Amended Eff. July 1, 2015; December 1, 1987.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15 NCAC 07H .1502

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In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), to what applicant are you referring?*

*In (a), please change "must" to "shall."*

*In (a), where can the application form be found? Is all of the information that you require contained in (a) and (b)?*

*In (a), please add a comma in between "site location" and "and the dimensions of the project area."*

*In (b)(1) and (2), in what form do you require the confirmation? Is it simply a checkbox on the application form or do you require some additional proof?*

*In (b)(2), how does DCM staff make the determination whether a proposed project will be approved? I understand that they will review comments and base their decision on the relevance of the potential impacts, but how does that occur? How is it determined whether comments are worthy of more in-depth review? On what factors will they base this decision?*

*In (b)(2), is there a rule or statute that you can cross-reference for application for a major development permit?*

*In (c), line 21, please change "can" to "may." How is it determined whether to issue authorization during the site visit? Are there any other requirements other than those set forth in this Rule?*

*In (c), line 21, please change "must" to "shall."*

*In (c), line 22, how is it determined when the general authorization will expire? Is there a rule or statute that you can cross-reference? Is it provided at the time the general authorization is given?*

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

Amber Cronk May  
Commission Counsel  
Date submitted to agency: May 29, 2015

1 **15A NCAC 07H .1502 IS AMENDED AS PUBLISHED IN 29:15 NCR 1740-1741 AS FOLLOWS:**

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3 **15A NCAC 07H .1502 APPROVAL PROCEDURES**

4 (a) The applicant must contact the Division of Coastal Management and complete an application form requesting  
5 approval for development. Applicants shall provide their name and address, the site location and the dimensions of  
6 the project area.

7 (b) The applicant must provide:

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

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

19 (c) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management  
20 representative to inspect and mark the proposed area of excavation and spoil disposal. Written authorization to  
21 proceed with the proposed development can be issued during this site visit. All excavation must be completed  
22 within ~~90~~ 120 days of the date of permit issuance, or the general authorization expires.

23  
24 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);*  
25 *Eff. July 1, 1984;*  
26 *Amended Eff. July 1, 2015; January 1, 1990; December 1, 1987.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15 NCAC 07H .1504

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In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), who is considered to be "authorized representatives"? Please delete or define "authorized."*

*In (a), to what "general permit" are you referring?*

*In (a), what do you mean by "prescribed herein"? Do you mean "in accordance with the terms and conditions set forth for this Rule," "by this Section," etc.?*

*In (b), line 7, (c), line 9, (d), line 14, please change "will" to "shall." Please also change "does not" to "shall not" in (e), line 16 and "must" to "shall" in (f), line 18.*

*In (b), what do you mean by "adversely affect"? How is it determined whether the proposed activity will adversely affect adjacent property? How is this determined? Are these the same factors used in 15A NCAC 07H .1501 in determining the potential impacts?*

*In (c), how is it determined whether notice and review pursuant to 113A-119 is necessary? Is it simply when it is subject to review pursuant to Part 4 of 113A? If so, why is the last part of the sentence necessary?*

*In (d), where can the policy of the Division of Marine Fisheries be found? Is the closure of shellfish waters not required to be in rule?*

*In (e), is your regulated public familiar with the required state, local, or federal authorization and the regulations adopted by any federal or other state agency?*

*In (f), where are the requirements, rules, and land use plans current at the time of authorization found? Do you have available for inspection at your office*

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

Amber Cronk May  
Commission Counsel  
Date submitted to agency: May 29, 2015

1 **15A NCAC 07H .1504 IS AMENDED AS PUBLISHED IN 29:15 NCR 1741 AS FOLLOWS:**

2  
3 **15A NCAC 07H .1504 GENERAL CONDITIONS**

4 (a) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to  
5 make periodic inspections at any time necessary to ensure that the activity being performed under authority of this  
6 general permit is in accordance with the terms and conditions prescribed herein.

7 (b) This general permit will not be applicable to proposed maintenance excavation when the Department determines  
8 that the proposed activity will adversely affect adjacent property.

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

13 ~~(d) New basins within or with connections to primary nursery areas are not allowed.~~

14 ~~(e)~~ (d) No new basins will be allowed that result in closure of shellfish waters according to the closure policy of the  
15 Division of ~~Environmental Health~~. Marine Fisheries.

16 ~~(e)~~ (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization, ~~nor~~,  
17 nor to abide by regulations adopted by any federal or other state agency.

18 ~~(e)~~(f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and  
19 local Land Use Plans current at the time of authorization.

20  
21 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(cl);*  
22 *Eff. July 1, 1984;*  
23 *Amended Eff. May 1, 1990; December 1, 1987;*  
24 *RRC Objection due to ambiguity Eff. May 19, 1994;*  
25 *Amended Eff. July 1, 2015; August 1, 1998; July 1, 1994.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Coastal Resources Commission

RULE CITATION: 15 NCAC 07H .1505

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In reviewing these rules, the staff determined that the following technical changes need to be made:

*Please change "must" to "shall" on line (4), in (3), (4), (5), (6), (7), (8), (10), and (11). Please change "will" in (1), and (2). In (9), did you mean "shall" rather than "may"?*

*In (1), is your regulated familiar with what constitutes "highground"?*

*In (3), what do you mean by "private non-commercial use"? Is "commercial defined somewhere in rule or statute?*

*In (7), where can the definition be found? Is there a cross-reference that you can provide?*

*In (9), where can the prime shellfish areas be found?*

*In (10), what do you mean? Please consider revising to make more clear.*

*In (11), what are the "required setbacks"? Is there a rule or statute that you can cross-reference?*

*In (12), what is the approval process? Is there a rule or statute that you can cross-reference?*

*In (15), what are "other suitable materials"? What is the approval process? On what factors will the approval be based?*

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

Amber Cronk May  
Commission Counsel  
Date submitted to agency: May 29, 2015

1 **15A NCAC 07H .1505 IS AMENDED AS PUBLISHED IN 29:15 NCR 1741-1742 AS FOLLOWS:**

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3 **15A NCAC 07H .1505 SPECIFIC CONDITIONS**

4 Proposed maintenance excavation must meet each of the following specific conditions to be eligible for  
5 authorization by this general permit.

- 6 (1) New basins will be allowed only when they are located entirely in highground and join existing  
7 man-made canals or basins.
- 8 (2) New basins will be no larger than 50' in either length or width and no deeper than the waters they  
9 join.
- 10 (3) New basins must be for the private non-commercial use of the land owner.
- 11 (4) Maintenance excavation must involve the removal of no more than 1,000 cubic yards of material  
12 as part of a single and complete project.
- 13 (5) All excavated material must be placed entirely on high ground above the mean high tide or  
14 ordinary high water line, and above any marsh or other wetland.
- 15 (6) All spoil material must be stabilized or retained so as to prevent any excavated material from  
16 re-entering the surrounding waters, marsh or other wetlands.
- 17 (7) The proposed project must not involve the excavation of any marsh, submerged aquatic  
18 ~~vegetation~~, vegetation (as defined by the Marine Fisheries Commission), or other wetlands.
- 19 (8) Maintenance excavation must not exceed the original dimensions of the canal, channel, basin or  
20 ditch and in no case be deeper than 6 feet below mean low water or ordinary low water, nor deeper  
21 than connecting channels.
- 22 ~~(9) No excavation may occur during times designated by the N.C. Division of Coastal Management~~  
23 ~~for protection of fish, shellfish or wildlife resources.~~
- 24 ~~(10)~~(9) No maintenance excavation may take place within prime shellfish areas as designated by the N.C.  
25 Division of Marine Fisheries.
- 26 ~~(11)~~(10) Proposed excavation must not promote or provide the opportunity for a change in existing land use  
27 at the time of project review.
- 28 ~~(12)~~(11) New basins and canals must maintain required setbacks between septic tank systems and surface  
29 waters.
- 30 (12) Maintenance excavation as well as excavation of new basins shall not be allowed within or with  
31 connections to primary nursery areas without prior approval from the Division of Marine Fisheries  
32 or Wildlife Resources Commission (whichever is applicable).
- 33 (13) Bulkheads shall be allowed as a structural component on one or more sides of the permitted basin  
34 to stabilize the shoreline from erosion.
- 35 (14) The bulkhead shall not exceed a distance of two feet waterward of the normal high water or  
36 normal water level at any point along its alignment.



1           (15) Bulkheads shall be constructed of vinyl or steel sheet pile, concrete, stone, timber, or other  
2           suitable materials approved by the Division of Coastal Management.

3           (16) All backfill material shall be obtained from an upland source pursuant to 15A NCAC 07H .0208.  
4           The bulkhead shall be constructed prior to any backfilling activities and shall be structurally tight  
5           so as to prevent seepage of backfill materials through the structure.

6           (17) Construction of bulkhead authorized by this general permit in conjunction with bulkhead  
7           authorized under 15A NCAC 07H .1100 shall be limited to a combined maximum shoreline length  
8           of 500 feet.

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10    *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b); 113A-118.1; 113-229(c);*  
11            *Eff. July 1, 1984;*  
12            *Amended Eff. July 1, 2015; September 1, 1988; December 1, 1987.*

13