

## SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

### SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

#### 15A NCAC 07H .0101 INTRODUCTION

- (a) One of the basic purposes of North Carolina's Coastal Area Management Act (CAMA or the act) is to establish a state management plan that is capable of rational and coordinated management of coastal resources. The act recognizes that the key to more effective protection and use of the land and water resources of the coast is the development of a coordinated approach to resource management. The Coastal Area Management Act provides two principal mechanisms to accomplish this purpose. First, the formulation of local land use plans articulating the objectives of local citizens and translating these objectives into future desired land use patterns; and second, the designation of areas of environmental concern for the protection of areas of statewide concern within the coastal area.
- (b) Both the development of local land use plans and the designation and regulation of critical resource areas contribute to rational management by encouraging local and state governments to exercise their full authorities over coastal resources and to express their management goals in a comprehensible and uniform manner. Local objectives benefit through their incorporation into a state management scheme, and the statewide objectives of resource protection and development benefit through an integrated and comprehensive management approach. It is the purpose of the state guidelines to ensure this uniformity and consistency in the local land use plans and the regulation of critical resource areas, or areas of environmental concern (AECs), through the establishment of unified policies, criteria, standards, methods, and processes.
- (c) These state guidelines are designed to provide individuals and governmental agencies with a complete statement of the uniform policies and standards adopted by the Coastal Resources Commission (CRC or the Commission) for areas of environmental concern, as mandated by the act.

*History Note:* Authority G.S. 113A-101; 113A-102; 113A-124(c)(5);  
Eff. September 9, 1977.

#### 15A NCAC 07H .0102 CAMA PROVISIONS FOR AECS

- (a) The Coastal Area Management Act requires that these state guidelines "shall give particular attention to the nature of development which shall be appropriate within the various types of areas of environmental concern that may be designated by the Commission."
- (b) The act further provides that local land use plans "shall give special attention to the protection and appropriate development of areas of environmental concern."
- (c) The 1974 Legislature found that "the coastal area, and in particular the estuaries, are among the most biologically productive regions of this state and of the nation," but in recent years the area "has been subjected to increasing pressures which are the result of the often conflicting needs of society expanding in industrial development, in population, and in the recreational aspirations of its citizens."
- (d) "Unless these pressures are controlled by coordinated management," the act states, "the very features of the coast which make it economically, aesthetically, and ecologically rich will be destroyed."
- (e) To prevent this destruction, the act charges the Coastal Resources Commission with the responsibility for identifying types of areas -- water as well as land -- in which uncontrolled or incompatible development might result in irreversible damage. It further instructs the Commission to determine what types of development activities are appropriate within such areas, and it calls on local government to give special attention to these environmentally fragile and important areas in developing their land use plans. Also, the act provides that upon establishing the types of development activities appropriate within areas of environmental concern, the CRC should implement a permit program capable of controlling any inappropriate or damaging development activities within the AECs. The intent of this authority is not to stop development, but rather to ensure the compatibility of development with the continued productivity and value of certain critical land and water areas.
- (f) The act divides the implementation responsibilities of the permit program between local governments and the CRC. Individuals proposing "minor development" activities [defined in G.S. 113A-118(d)(2)] within an AEC will be required to receive permits from a local permit officer, while individuals undertaking "major development" activities [defined in G.S. 113A-118(d)(1)] will seek permits directly from the CRC. In either case, the criteria and standards determining permit approval as described in this Subchapter of the guidelines will be identical.

*History Note:* Authority G.S. 113A-102(a); 113A-106; 113A-107; 113A-113(a); 113A-118; 113A-124;  
Eff. September 9, 1977;  
Amended Eff. December 1, 1985.

#### **15A NCAC 07H .0103 SELECTION OF PROPOSED AREAS FOR AEC DESIGNATION**

(a) The selection of proposed AEC categories was made after several months of consideration by local government, the Coastal Resources Commission, and the Coastal Resources Advisory Council (CRAC). The act specified the potential AEC categories from which the Commission was to choose a mix of AECs that would most effectively achieve the goals of the Coastal Area Management Act. Local governments played a major role in the selection process by identifying AEC categories they considered to be appropriate for their jurisdictions. These recommendations formed the basis for selecting interim areas of environmental concern (IAECs) after which the categories were once again reviewed by the Commission and further narrowed in scope. Thirteen categories were proposed for final designation.

(b) As presented in these guidelines, the 13 categories of AECs are separated into four broad groupings. The broad breakdowns include categories of AECs that are either interrelated components of an ecological system or a collection of AECs with similar management objectives. The purposes in presenting the material in this manner is not only to create a logical organization, but also to emphasize the relationship of one AEC category to another and the interactive nature of AECs with the total coastal environment.

*History Note: Authority G.S. 113A-124;  
Eff. September 9, 1977.*

#### **15A NCAC 07H .0104 DEVELOPMENT INITIATED PRIOR TO ADOPTION BY THE CRC**

(a) Development on lots created after January 29, 2004 shall comply with the current erosion rates established pursuant to 15A NCAC 07H .0304.

(b) Development on lots created between June 1, 1979 and January 29, 2004 must comply with the current rates to the maximum extent feasible and have a minimum setback equal to the rates in effect at the time the lots were created, or, those rates in effect at the time of issuance of any active CAMA permit for development on those lots, whichever is more restrictive.

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

*History Note: Authority G.S. 113A-107; 113A-113; 113A-124;  
Eff. September 15, 1979;  
Amended Eff. April 1, 2004; April 1, 1997; April 1, 1995; May 1, 1990; November 1, 1988; September 1, 1988.*

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

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

*History Note: Authority G.S. 113A-107; 113A-124;  
Eff. December 1, 1982.  
Eff. September 9, 1977;  
Amended Eff. May 1, 1990; January 24, 1978.*

#### **15A NCAC 07H .0106 GENERAL DEFINITIONS**

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

- (1) "Normal High Water" is the ordinary extent of high tide based on site conditions such as presence and location of vegetation, which has its distribution influenced by tidal action, and the location of the apparent high tide line.

- (2) "Normal Water Level" is the level of water bodies with less than six inches of lunar tide during periods of little or no wind. It can be determined by the presence of such physical and biological indicators as erosion escarpments, trash lines, water lines, marsh grasses and barnacles.
- (3) Unless specifically limited, the term Astructures@ includes, but is not limited to, buildings, bridges, roads, piers wharves and docks (supported on piles), bulkheads, breakwaters, jetties, mooring pilings and buoys, pile clusters (dolphins), navigational aids and elevated boat ramps.
- (4) "Mining" is defined as:
  - (a) The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of mineral, ores, or other solid matter.
  - (b) Any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, soils, and other solid matter from their original location.
  - (c) The preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use.

This definition applies regardless of whether the mining activity is for a commercial or noncommercial purpose, and regardless of the size of the affected area. Activities such as vibracoring, box coring, surface grab sampling, and other drilling and sampling for geotechnical testing, mineral resource investigations, or geological research are not considered mining. Excavation of mineral resources associated with the construction or maintenance of an approved navigation project in accordance with 15A NCAC 7B .0200 of this Chapter is not considered mining.

*History Note: Authority G.S. 113A-102; 113A-107;  
Eff. June 1, 1995;  
Amended Eff. August 1, 1998; October 1, 1996.*

## SECTION .0200 – THE ESTUARINE AND OCEAN SYSTEMS

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

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

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

### 15A NCAC 07H .0202 SIGNIFICANCE OF THE SYSTEMS APPROACH IN ESTUARIES

The management program must embrace all characteristics, processes, and features of the whole system and not characterize individually any one component of an estuary. The AECs are interdependent and ultimately require management as a unit. Any alteration, however slight, in a given component of the estuarine and ocean system may result in unforeseen consequences in what may appear as totally unrelated areas of the estuary. For example, destruction of wetlands may have harmful effects on estuarine waters which are also areas within the public trust. As a unified system, changes in one AEC category may affect the function and use within another category.

*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-124;  
Eff. September 9, 1977;  
Amended Eff. August 1, 1998.

### 15A NCAC 07H .0203 MANAGEMENT OBJECTIVE OF THE ESTUARINE AND OCEAN SYSTEM

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

*History Note:* Authority G.S. 113A-102(b)(1); 113A-102(b)(4); 113A-107(a); 113A-107(b); 113A-124;  
Eff. September 9, 1977;  
Amended Eff. August 1, 2000; October 1, 1993; September 1, 1985.

### 15A NCAC 07H .0204 AECS WITHIN THE ESTUARINE AND OCEAN SYSTEM

The following regulations in this Section define each AEC within the estuarine and ocean system, describe its significance, articulate the policies regarding development, and state the standards for development within each AEC.

*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-124;  
Eff. September 9, 1977;  
Amended Eff. August 1, 1998.

### 15A NCAC 07H .0205 COASTAL WETLANDS

(a) Description. Coastal wetlands are defined as any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides (whether or not the tide waters reach the marshland areas through natural or artificial watercourses), provided this shall not include hurricane or tropical storm tides. Coastal wetlands contain some, but not necessarily all, of the following marsh plant species:

- (1) Cord Grass (*Spartina alterniflora*),
- (2) Black Needlerush (*Juncus roemerianus*),
- (3) Glasswort (*Salicornia* spp.),