

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
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May 7, 2024

Via Email only: oah.rules@oah.nc.gov

North Carolina Rules Review Commission
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, North Carolina 27609

**Re: Supplemental to Statements of Need for
15A N.C. Admin. Code 07H .0507 and .0508,**

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Resources Commission ("CRC") and in accordance with the provisions of N.C. Gen. Stat. 150B-21.1(b1), please accept this letter as the CRC's supplement to the Temporary Rulemaking Findings of Need provided to the North Carolina Rules Review Commission ("RRC") in support of temporary rules 15A N.C. Admin. Code 07H .0507 and .0508 adopted by the CRC on March 13, 2024. For your convenience, attached are the original Temporary Rulemaking Findings of Need which this letter supplements.

Supplemental Background Information in Support CRC's Findings of Need.

In 1987, the CRC received a nomination from the North Carolina Department of Natural Resources and Community Development, Division of Parks and Recreation requesting Jockey's Ridge in Dare County be considered for possible designation as an Area of Environmental Concern ("AEC"). (May 7, 1987 Nomination, June 4, 1987 Preliminary Evaluation, and December 3, 1987 Memo to the CRC). The nomination explained:

Jockey's Ridge, as the tallest active dune along the Atlantic Coast, and represents the southern extremity of a back barrier dune system which extends north along Currituck Spit to the vicinity of False Cape State Park in Virginia. Jockey's Ridge is an excellent example of a medano (a large isolated hill of sand, asymmetrical in profile and lacking vegetation). Jockey's Ridge is unique in that it is the largest medano in North Carolina, and one in which the majority of the surface area is protected by State ownership. This feature may also be classified as a transverse dune (a dune forming a wavelike ridge transverse to the prevailing wind direction). The geological significance of Jockey's Ridge was acknowledged in 1974 when the U. S. Department of the Interior included Jockey's Ridge in the National Registry of Natural Landmarks.

(May 7, 1987 Nomination, p 2)

In 1987, commercial “mining” of sand from the system severely threatened the integrity of Jockey's Ridge. Specifically, sand was being removed from the dune system “[d]uring summer months [when] the southwesterly winds blow tons of sand from Jockey's Ridge onto adjacent privately owned lots. Sand blown on two of these lots is scooped up and trucked away.” (June 4, 1987 Preliminary Evaluation, p 2 (emphasis added)) Without the protection of the CRC's rules designating the AEC and setting use standards for the AEC, the integrity of Jockey's Ridge is again threatened.

In 1987, the CRC agreed that Jockey's Ridge met the requirements for designation as a “Unique Geological Formation AEC” pursuant to the authority provided by G.S. 113A-113(b)(4)(g). Accordingly, the CRC adopted and maintained rules designating the Jockey's Ridge AEC and establishing minimum use standards to protect this unique natural resource in North Carolina. 15A NCAC 07H .0507 and .0508.

As part of the CRC's recent effort to re-establish the Jockey's Ridge AEC through new permanent rulemaking, the State Geologist, Dr. Kenneth Taylor, confirmed in an April 24, 2024 letter, a copy of which is attached, that Jockey's Ridge is unique geological formation – It is “not only the largest medano in North Carolina but is the largest anywhere along the Atlantic and Gulf Coasts, and one in which the majority of the surface area has been protected by the State through its dedication as a State Park.” Dr. Taylor explained, “it is important to prevent incompatible development through the commercial removal of sand from this fragile system as such removal would severely threaten the integrity of Jockey' s Ridge. With no new sand sources to help replenish the system, it is imperative to protect what exists instead of allowing major irreversible damage to occur.” See April 24, 2024 Letter to CRC from Dr. Kenneth Taylor (emphasis added).

For over 35 years, Jockey' s Ridge AEC has been protected by these rules which establish the AEC boundaries and set development standards designed to minimize removal of sand from the system when the natural processes that move and shape the Jockey' s Ridge sand dune move sand outside the park boundary. These two rules provide the necessary authority to allow the Division of Coastal Management to protect the public safety and welfare through the use standards that keep the sand in the dune system when it naturally moves outside the park boundary.

In its April 8, 2024 letter, the RRC adopted and incorporated the opinion of its counsel. In summary, RRC counsel's analysis covered three issues. The CRC addresses each as follows:

1. The CRC's Findings of Need and Supplemental Findings Demonstrate that Adherence to the Notice and Hearing Requirement of Permanent Rulemaking is Contrary to Public Interest.

In their opinion, RRC's counsel asserts that the CRC failed to meet the first prong required by G.S. 150B-21.1(a) (2023) (“that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest”). Specifically, based on comments submitted by Cedar Point Developers, LLC and the North Carolina Homebuilders Association, the RRC dismissed the CRC's claim that once the rules were removed from the Code, the State cannot rely on these rules for permitting and enforcement decisions, and as a direct result the NC Coastal Management Program has lost “the ability to protect coastal lands and waters.”

The comments submitted are not applicable to the Findings of Need for 07H .0507 and .0508 as they refer to the number of permits issued pursuant to rules that are in the Code and do not address the fact that with the removal of these two rules from the Code, the CRC no longer has jurisdiction to protect Jockey's Ridge. The number of permits issued does not address the public's interest in protecting Jockey's Ridge. This protection was removed when the two Jockey's Ridge AEC rules were removed from the Code. It is contrary to the public interest to delay approving rules that provide protections against commercial mining of sand from Jockey's Ridge.

In addition, RRC's counsel asserts that the number of comments received indicates that the notice and hearing requirements of permanent rulemaking should be adhered to. This argument fails to consider that by RRC counsel's own admission, the CRC has already provided more than the minimum time for comments required by permanent rulemaking by extending the public comment period for the temporary rulemaking to 64 days (which is in excess of the minimum 60 days required for permanent rulemaking).

It is contrary to the overwhelming public interest to withhold protection for this unique natural resource to require a further period for notice and hearing. The approval of the CRC's temporary rules designating the Jockey's Ridge AEC and associated use standards would have little or no effect on those who do not intend to export sand from Jockey's Ridge. As is clear from the overwhelming outcry following the removal of these rules from the Code including the hundreds of comments largely in support of a Jockey's Ridge AEC directed to both the CRC and RRC, these rules have the full support of stakeholders, including the NC state parks and the public. It is likely that if the RRC requires the CRC to restart the process to adhere to the notice and hearing requirements of permanent rulemaking, the result will simply be a greater outcry in support of these rules.

Based on this supplemental information and the Findings of Need, the CRC respectfully requests that the RRC consider these additional findings and determine that the CRC has met the first prong required by G.S. 150B-21.1(a).

2. CRC's Supplemental Information and Findings of Need Demonstrate that Immediate Adoption of these Rules is Required Because of a Serious and Unforeseen Threat to Public Safety and Welfare.

In their written opinion, RRC's counsel asserts that the CRC failed to meet the second prong required by G.S. 150B-21.1(a) (2023) ("that the immediate adoption of the rule is required by one or more of a statutorily enumerated list of circumstances or events"). In support, the RRC asserts the session law which changed the process by which rules are removed from the Code cannot constitute an unforeseen threat to the public's health, safety, or welfare allowing an agency to avoid the requirements of permanent rulemaking under the APA because the legislature is presumed to know the law. The CRC disagrees with this analysis since the issue is not whether the change in law was unforeseen by legislature but by the rulemaking agency.

Here the legislature's change to the existing statute was unforeseen by the CRC who is not privy to the behind-the-scenes budget process undertaken by the legislature. What matters is not whether the change was unforeseen by the legislature, but whether it was unforeseen by the CRC, the agency charged with protecting Jockey's Ridge through the AEC designation and rules. Not only was the APA change unforeseen to the CRC, but the

change in statute resulted in the “immediate” removal of the rules. Unlike the deliberate and extensive notice and hearing process required for the development and implementation of both temporary and permanent rules, the statutory change to the process that immediately removed the two rules protecting Jockey’s Ridge happened without any hearings or notice to the CRC or to the public and other stakeholders for Jockey’s Ridge that removal of the rules was imminent.

When 07H .0507 and .0508 were removed from the Code, there resulted a serious and unforeseen threat to the Coastal Management Program and specifically the Jockey’s Ridge AEC. In this case, the serious and unforeseen threat was to a unique environmental resource. This serious and unforeseen threat directly impacts public safety and the welfare of North Carolina citizens, stakeholders, and the public trust rights to use this unique natural resource and was directly caused by the removal of the CRC’s jurisdiction over Jockey’s Ridge. When the CRC lost jurisdiction over Jockey’s Ridge, it lost the ability to prevent commercial mining of the sand which prior to the adoption of the CRC’s rules had been an ongoing threat to this dune system.

The loss of the rules caused an unforeseen threat to the environment. Without these rules, there are no protections against commercial mining of sand from Jockey’s Ridge. In Dr. Taylor’s letter to the CRC, he explains that because “there are no new sand sources to help replenish the system,” “it is important to prevent incompatible development through the commercial removal of sand from this fragile system as such removal would severely threaten the integrity of Jockey’s Ridge.” See April 24, 2024 letter emphasis added. He continues, “it is imperative to protect what exists instead of allowing major irreversible damage to occur.” *Id.*

For the reasons both in the original Findings of Need and based on this supplemental information, the CRC respectfully requests that the RRC find that the immediate adoption of these two rules is “required by” a serious and unforeseen threat to the public safety and welfare.

3. Temporary Rules 07H .0507 and .0508 are consistent with the requirements of N.C. Gen. Stat. 150B-21.9.

The third issue raised by the RRC’s counsel and adopted by the RRC is that the temporary rules do not meet the requirements established in G.S. 150B-21.9. The main focus of this objection appears to be the asserted “ambiguity” of the rules which refer to “unique geological formations.” The RRC adopts the position that words like “unique”, “more than local significance”, “key”, “important”, “valuable”, and “scenic” are too uncertain. Taking the RRC’s position to the extreme, each word in a rule, with special attention to adjectives, would be required to include a definition. This position ignores the use by the legislature of such terms in the CAMA. Moreover, courts routinely discern the plain meaning of these words described in a dictionary.

By statute, the legislature has provided that the CRC may designate an AEC that contains “unique geological formations, as identified by the State Geologist.” 113A-113(b)(4)(g). Dr. Taylor, the current State Geologist, has identified and reconfirmed Jockey’s Ridge as a unique geological formation. See April 24, 2024 letter to CRC from Dr. Taylor. This identification and reconfirmation removes any necessity for the RRC or the

CRC to speculate regarding definitions here. This opinion removes any of the alleged “ambiguity” in the rule language.

Furthermore, for the reasons already addressed by the CRC in its November 23, 2022 letter to the RRC regarding these rules, the legislature provided the CRC with statutory authority to adopt guidelines for the coastal area including “statements of objectives, policies, and standards to be followed in public and private use of land . . . consistent with the goals” in CAMA. G.S. 113A-107. In addition, these temporary rules are statements of general applicability that are reasonably necessary to implement or interpret an enactment of the General Assembly.

* * * * *

In conclusion and based on the supplementation provided in this letter, as well as the information previously submitted to the RRC, the CRC respectfully requests that the RRC find that as to 15A NCAC 07H .0507 and .0508, the CRC has met the criteria listed in G.S. 150B-21.1(a) and the standards in G.S. 150B-21.9.

Sincerely,



Mary L. Lucasse
Special Deputy Attorney General
Counsel to the CRC

Attachments:

1. Temporary Rulemaking Finding of Need for 07H .0507
2. Temporary Rulemaking Finding of Need for 07H .0508
3. May 7, 1987 Nomination
4. June 4, 1987 Preliminary Evaluation
5. December 3, 1987 Memo to the CRC
6. April 24, 2024 letter to CRC from Dr. Kenneth Taylor

cc: M. Renee Cahoon, CRC Chair, electronically
Tancred Miller, DCM Director, electronically
Mike Lopazanski, DCM Deputy Director, electronically
Angela Willis, CRC Rulemaking Coordinator, electronically
Jennifer Everett, DEQ Rulemaking Coordinator, electronically
Brian Liebman, RRC Counsel, electronically
William Peaslee, RRC Counsel, electronically
Alex Burgos, Paralegal, Office of Administrative Hearings, electronically



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name: 15A NCAC 07H .0507 Unique Coastal Geologic Formations	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Effective date: January 3, 2024	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: December 14, 2023 b. Proposed Temporary Rule published on the OAH website: December 20, 2023 c. Public Hearing date: January 9 and 10, 2024 d. Comment Period: January 3, 2024 through February 22, 2024 e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 19, 2023 f. Adoption by agency on: March 13, 2024 g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input checked="" type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: S.L. 2023-134 s 21.2(m) Effective date: October 3, 2023 <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> Other: Explain: Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. The removal of the rules causes a serious threat to public safety and welfare because without this rule, the NC Coastal Management Program has lost the ability to protect coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In particular, this rule provides protection for unique coastal geologic formations. In this rule, the CRC designated the Jockey's Ridge Area of Environmental Concern. Without this rule, neither the CRC or DCM has jurisdiction to issue permits under the minimum use standards or take enforcement actions to protect this unique example of a medano, a large, isolated hill of sand, which has been designated a National Natural Landmark by the U.S. Department of the Interior.	

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of this rule is required to designate Jockeys' Ridge as an Area of Environmental Concern within the CRC's jurisdiction and protect this important natural resource.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8595

E-Mail: Jennifer.Everett@deq.nc.gov

Agency contact, if any: Mike Lopazanski

Phone: 252-515-5400

E-Mail: Mike.Lopazanski@deq.nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Renee Cahoon

Title: CRC Chair

E-Mail: Renee.Cahoon@deq.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 07H .0507 is adopted under temporary procedures as follows:

2
3 **15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS**

4 (a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are
5 unique or significant components of coastal systems, or that are notable examples of geologic formations or processes
6 in the coastal area. Such areas shall be evaluated by the Commission after identification by the State Geologist pursuant
7 to G.S. 113A-113.

8 (b) Significance. Unique coastal geologic areas are important educational, scientific, or scenic resources that would
9 be jeopardized by uncontrolled or incompatible development.

10 (c) Management Objectives. The CRC's objective is to preserve unique resources of more than local significance that
11 function as key physical components of natural systems, as important scientific and educational sites, or as valuable
12 scenic resources. Specific objectives for each of these functions shall be related to the following:

13 (1) To ensure that the designated geologic feature shall be able to interact with other components of the
14 identified systems. These interactions are often the natural forces acting to maintain the unique
15 qualities of the site. The primary concern is the relationship between the geologic feature and the
16 accompanying biological component associated with the feature. Other interactions which may be
17 of equal concern are those relating the geologic feature to other physical components, specifically
18 the relationship of the geologic feature to the hydrologic elements; ground water and surface runoff.

19 (2) To ensure that the designated geologic feature or process shall be preserved for and be accessible to
20 the scientific and educational communities for study purposes.

21 (3) To protect the values of the designated geologic feature as expressed by the local government and
22 citizenry. These values shall be related to the educational and aesthetic qualities of the feature.

23 (d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic
24 formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted
25 on a map approved by the Coastal Resources Commission on December 4, 1987, and on file with the Division of
26 Coastal Management, available at 400 Commerce Ave., Morehead City, NC 28557. This area includes the entire rights
27 of way of US 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads
28 bound this area. Jockey's Ridge is the tallest active sand dune along the Atlantic Coast of the United States. Located
29 within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, the Ridge represents the
30 southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia. Jockey's
31 Ridge is an example of a medano, a large isolated hill of sand, asymmetrical in shape and lacking vegetation. Jockey's
32 Ridge is the largest medano in North Carolina and has been designated a National Natural Landmark by the U.S.
33 Department of the Interior.

34 (e) Use Standards. Jockey's Ridge. Development within the Jockey's Ridge AEC shall be consistent with the
35 following minimum use standards:

36 (1) Development which requires the removal of greater than ten cubic yards of sand per year from the
37 area within the AEC boundary shall require a permit;

1 (2) All sand which is removed from the area within the AEC boundary in accordance with 15A NCAC
2 07H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by
3 the Division of Coastal Management in consultation with the Division of Parks and Recreation;

4 (3) Development activities shall not significantly alter or retard the free movement of sand except when
5 necessary for the purpose of maintaining or constructing a road, residential/commercial structure,
6 accessway, lawn/garden, or parking area.

7
8 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;*
9 *Temporary Adoption Eff. April 5, 2024.*



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Coastal Resources Commission

2. Rule citation & name: 15A NCAC 07H .0508 Use Standards

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☒ Yes ☐ No Effective date: January 3, 2024

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: December 14, 2023
- b. Proposed Temporary Rule published on the OAH website: December 20, 2023
- c. Public Hearing date: January 9 and 10, 2024
- d. Comment Period: January 3, 2024 through February 22, 2024
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): December 19, 2023
- f. Adoption by agency on: March 13, 2024
- g. Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☒ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: S.L. 2023-134 s 21.2(m)
Effective date: October 3, 2023
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ Other:

Explain: Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In particular, this rule provides minimum use standards (i.e. requirements) for development within a designated fragile coastal natural or cultural resource area. To date, the CRC has designated the Jockey's Ridge Area of Environmental Concern. Without this rule, there are no requirements for development permits for that designated Area of Environmental Concern.

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of this rule is required to provide use standards for the Jockeys' Ridge AEC and protect this important natural resource.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Jennifer Everett

Phone: 919-707-8595

E-Mail: Jennifer.Everett@deq.nc.gov

Agency contact, if any: Mike Lopazanski

Phone: 252-515-5400

E-Mail: Mike.Lopazanski@deq.nc.gov

10. Signature of Agency Head*:



*** If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

Typed Name: Renee Cahoon

Title: CRC Chair

E-Mail: Renee.Cahoon@deq.nc.gov

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

1 15A NCAC 07H .0508 is adopted under temporary procedures as follows:

2
3 **15A NCAC 07H .0508 USE STANDARDS**

4 Permits for development in designated fragile coastal natural or cultural resource areas shall be approved upon finding
5 that:

6 (1) The proposed design and location shall not cause significant adverse impacts to the stated values of
7 a particular resource. One or more of the following values shall be considered in making a permit
8 decision depending upon the stated significance of the resource:

9 (a) Development shall preserve the values of the individual resource as it functions as a critical
10 component of a natural system.

11 (b) Development shall not cause significant adverse impacts to the values of the resource as a
12 unique scientific, associative, or educational resource.

13 (c) Development shall be consistent with the aesthetic values of a resource as identified by the
14 local government and citizenry.

15 (2) No alternative sites are available outside the designated AEC.

16 (3) Mitigation measures shall be incorporated into the project plan. These measures shall include
17 consultation with the CRC.

18 (4) The project shall be of equal or greater public benefit than those benefits lost or damaged through
19 development.

20
21 History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;

22 Temporary Adoption Eff. April 5, 2024.

**NOMINATION OF JOCKEY'S RIDGE AS A UNIQUE COASTAL GEOLOGIC FORMATION AREA
OF ENVIRONMENTAL CONCERN**

May 7, 1987

I. PREPARED BY

A. Name Hazard Richard B.

B. Address N.C. Division of Parks and Recreation
P.O. Box 27687
Raleigh, N.C. 27611
919 733-7795

C. Others knowledgeable about area being nominated

William W. Davis, Ph.D. Director, Division of Parks and
Recreation Address above

Chuck Roe, Natural Heritage Program, Division of Park
and Recreation Address Above

Steve Benton Division of Coastal Management Address
above

John Taggart Division of Coastal Management Address
above

II. LOCATION OF AREA BEING NOMINATED

A. County Dare

B. Nearest city Nags Head

C. Approximate size All of the area between Jockey's Ridge State
Park and Soundside Road, including Jockey's
Ridge State Park and the lands proposed for
acquisition -- approximately 413.6 acres.

III. NATURAL SITE DESCRIPTION

A. Current ownership.

Jockey's Ridge State Park - owned by the State of North Carolina, and allocated to the Division of Parks and Recreation for management.	387.9813 acres
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Private lands immediately adjacent to Park proposed for acquisition this year.	16.4040 acres
---	---------------

Remaining private lands (detailed ownership listing for these lands is not currently available.	9.1827 acres
--	--------------

TOTAL	<u>413.5680 acres</u>
-------	-----------------------

B. Current use.

Jockey's Ridge State Park	387.9813 acres
picnicking, photography, hang gliding, dune hiking, sight seeing, scientific research, environmental education, interpretation, and scenic appreciation.	

Private lands proposed for acquisition:

miniature golf course	3.11 acres
commercial sand mining	0.92
residential	4.48
vacant	<u>7.89</u>

16.4040 acres

Remaining private lands:

residential	5.05 acres
vacant	<u>4.13</u>

9.1827 acres

TOTAL 413.5680 acres

C. Ecological, Archaeological, Geological or Historical Significance.

Jockey's Ridge, as the tallest active dune along the Atlantic Coast, and represents the southern extremity of a back barrier dune system which extends north along Currituck Spit to the vicinity of False Cape State Park in Virginia. Jockey's Ridge is an excellent example of a medano (a large isolated hill of sand, asymmetrical in profile and lacking vegetation). Jockey's Ridge is unique in that it is the largest medano in North Carolina, and one in which the majority of the surface area is protected by State ownership. This feature may also be classified as a transverse dune (a dune forming a wavelike ridge transverse to the prevailing wind direction). The geological significance of Jockey's Ridge was acknowledged in 1974 when the U.S. Department of the Interior included Jockey's Ridge in the National Registry of Natural Landmarks.

The history of Jockey's Ridge spans four centuries. Long before the first European settlers, the Algonquin Indians occupied semi-permanent settlements in this portion of the Outer Banks. The Ridge has been a landmark for mariners since the first sightings by Spanish and French explorers. By the mid-1800's, the Nags Head area had become an important resort area, and remained that way until this day. The State of North Carolina acknowledged the geologic and recreational value of Jockey's Ridge by creating Jockey's Ridge State Park in 1975. Since that time, more than 388 acres have been acquired by the Division of Parks and Recreation. In 1986, the Park received more than 325,867 visitors.

D. Vegetation.

Plant communities are poorly developed at Jockey's Ridge, the result of past human disturbance as well as the shifting sands providing an inhospitable substrate for most plant growth. Major cover types are sea oats, shrub thicket, loblolly pine-mixed hardwoods, and tidal marshes.

E. Animals.

No-site specific information is available concerning the fauna of the Jockey's Ridge area.

F. Physical features.

As described above, the landform that is of the greatest significance is Jockey's Ridge, which rises 110-140 feet above sea level. The uniqueness of Jockey's Ridge, its geologic significance, its educational and scientific value, and its scenic and recreational attributes combine to make Jockey's Ridge one of the most important public resources of the coastal region.

IV. MANAGEMENT RECOMMENDATION

A. Lowest priority of use

Adds to the Town of Nags Head zoning of this area - Special Planned Development District 20: commercial and industrial uses of the land and any other uses not compatible with residential/recreational uses should be discouraged. Excavation and removal of sand for commercial purposes should be prohibited. Land uses which retard or alter historical wind patterns, as well as land uses which retard free movement of sand should be discouraged. Finally, land uses which would adversely affect the aesthetics of Jockey's Ridge should be discouraged. Sands which are collected for the purpose of maintaining an existing residence or use should be deposited in Jockey's Ridge State Park.

B. Highest priority of use

The highest priority should be given to open space and recreation land uses. Low density single family residential development and planned unit residential development would be permitted where appropriate.

V. DATA SUPPLEMENT

A. Research studies, inventory reports, surveys

Division of Parks and Recreation, 1976. Master Plan for Jockey's Ridge State Park. Raleigh, N.C.: N. C. Department of Natural Resources and Community Development, Division of Parks and Recreation.

Division of Parks and Recreation, 1982. Jockey's Ridge Natural Area. Compiled by John B. Taggart. Raleigh, N.C.: N. C. Department of Natural Resources and Community Development, Division of Parks and Recreation, Natural Heritage Program.

Eakes, Alan R., 1973. A Detailed Report on Field Investigation October 1973, Jockey's Ridge - Nags Head Woods. Raleigh, N.C.: N. C. Department of Natural Resources and Community Development, Division of Parks and Recreation.

Hazard, Richard B., 1979. Final Environmental Impact Statement for the Jockey's Ridge State Park Master Plan. Raleigh, N.C.: N. C. Department of Natural Resources and Community Development, Division of Parks and Recreation.

B. Contacts

Donald W. Bryan, Mayor, Town of Nags Head. P.O. Box 99, Nags Head, N.C. 27959.

Webb Fuller, Town Manager, Town of Nags Head.

Stephen E. Davenport, Planning and Development Director, Town of Nags Head.

Steve Benton and Melisa McCullough, NRCD Division of Coastal Management. P.O. Box 27687, Raleigh, N.C. 27611

Governor James G. Martin and the Council of State (April 7, 1987 Council of State meeting).

Harold McGrady, N.C. Department of Labor, Mines and Quarries.

Steve Conrad, Director, NRCD Division of Land Resources. P.O. Box 27687, Raleigh, N.C. 27611

C. Additional information

legend



peak of jockeys ridge



hang glider path pattern



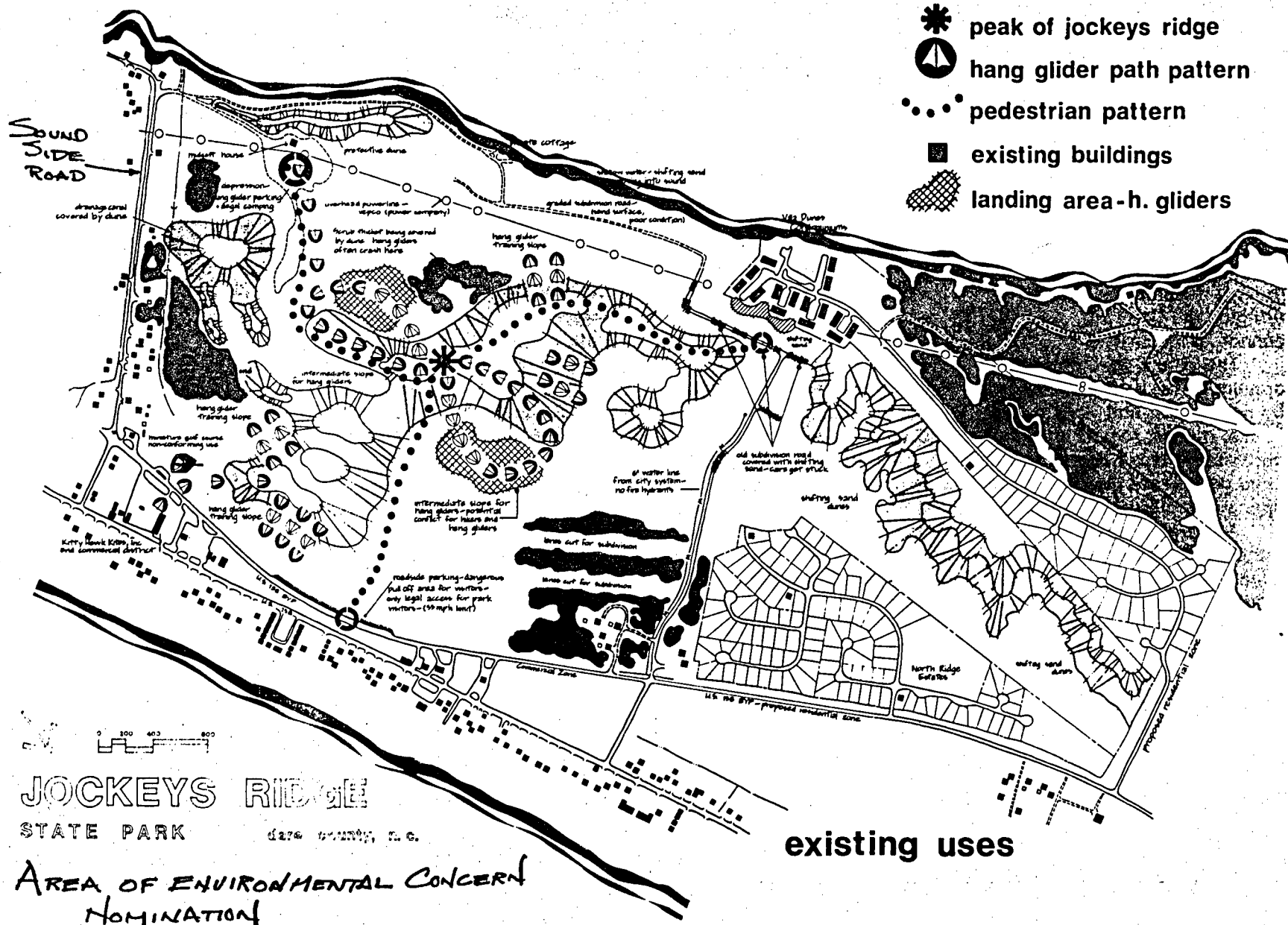
pedestrian pattern



existing buildings



landing area-h. gliders



JOCKEYS RIDGE

STATE PARK

6276 12-25-57 E. C.

AREA OF ENVIRONMENTAL CONCERN NOMINATION

existing uses

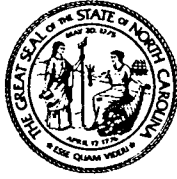
.0507 UNIQUE COASTAL GEOLOGIC FORMATIONS

- (a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are unique or otherwise significant components of coastal systems, or that are especially notable examples of geologic formations or processes in the coastal area. Such areas will be evaluated by the commission after identification by the State Geologist. 77.4
77.5
77.6
77.7
- (b) Significance. Unique coastal geologic areas are important educational, scientific, or scenic resources that would be jeopardized by uncontrolled or incompatible development. 77.8
77.9
- (c) Management Objectives. The CRC's objective is to preserve unique resources of more than local significance that function as key physical components of natural systems, as important scientific and educational sites, or as valuable scenic resources. Specific objectives for each of these functions shall be related to the following policy statements either singly or in combination: 77.10
77.11
77.12
77.13
77.14
- (1) To ensure that the designated geologic feature will be able to freely interact with other components of the identified systems. These interactions are often the natural forces acting to maintain the unique qualities of the site. The primary concern is the relationship between the geologic feature and the accompanying biological component associated with the feature. Other interactions which may be of equal concern are those relating the geologic feature to other physical components, specifically the relationship of the geologic feature to the hydrologic elements; ground water and surface runoff. 77.16
77.17
77.18
77.19
77.20
77.21
77.22
- (2) To ensure that the designated geologic feature or process will be preserved for and be accessible to the scientific and educational communities for related study purposes. 77.23
77.24
- (3) To protect the values of the designated geologic feature as expressed by the local government and citizenry. These values should be related to the educational and aesthetic qualities of the feature. 77.25
77.26
77.27

History Note: Statutory Authority G.S. 113A-107(a), (b); 77.30
113A-113(b) (4) g; 77.31
Eff. September 9, 1977. 77.32

.0508 USE STANDARDS

- Permits for development in designated fragile coastal natural or cultural resource areas will be approved upon finding that: 77.34
77.36
77.37
- (1) The proposed design and location will cause no major or irreversible damage to the stated values of a particular resource. One or more of the following values must be 77.38
77.39



State of North Carolina
Department of Natural Resources and Community Development
Division of Coastal Management
512 North Salisbury Street • Raleigh, North Carolina 27611

James G. Martin, Governor
S. Thomas Rhodes, Secretary

David W. Owens
Director

June 4, 1987

MEMORANDUM

TO: Coastal Resources Commission
FROM: Rich Shaw
SUBJECT: Jockey's Ridge AEC Nomination: Preliminary Evaluation

The N.C. Division of Parks and Recreation has nominated Jockey's Ridge in Dare County to be considered for designation as a Unique Coastal Geologic Formation Area of Environmental Concern (15 NCAC 7H .0507). Attached please find a copy of the nomination (received 5/18/87) along with maps of the nominated area.

Jockey's Ridge is located within the town of Nags Head on the west side of NC 158. The nominated area includes all of the lands between Jockey's Ridge State Park and Soundside Road (S.R. 1221), including 388 acres of existing state parkland, 16 acres of adjacent private lands (commercial/residential/vacant) proposed for Park acquisition, and 9 acres of remaining private lands (residential/vacant)-- approximately 413.6 acres in total.

Jockey's Ridge is a large irregular dune complex with a ridge approximately one mile long and 800 to 1,200 feet wide and a maximum elevation of 110 to 140 feet above sea level. Jockey's Ridge is the tallest active dune system along the Atlantic Coast of the U.S., and is an excellent example of a medano-- a large isolated hill of sand with a characteristic slip face of unconsolidated sand lacking vegetation. Jockey's Ridge is unique in that it is the largest medano in North Carolina, and one in which the majority of the surface area is protected by State ownership. This site's geological significance was acknowledged in 1974 when the U.S. Department of the Interior included Jockey's Ridge in the National Registry of Natural Landmarks.

While the overall physical appearance and location of Jockey's Ridge does not change dramatically from year to year, individual peaks of sand shift position in response to the prevailing winds. Area winds are southwesterly from March through August and northeasterly from September through February,

causing a back-and-forth movement of the ridge within the same fluctuating boundary and a slow net southwesterly movement.

During summer months the southwesterly winds blow tons of sand from Jockey's Ridge onto adjacent privately owned lots. Sand blown on two of these lots is scooped up and trucked away, thus removing the sand from the dune system. The nominators are concerned that the commercial "mining" of sand from the ridge is "severely threatening the integrity of Jockey's Ridge." The Town of Nags Head prohibits sandmining except for the removal of windblown sand above normal grade on private property.

Therefore, the nominator requests the Commission's review of the attached nomination of Jockey's Ridge as a Unique Coastal Geologic Formation. Their stated purpose in this nomination is to protect the dune system from "incompatible land use" pursuant to the following policy statements:

1. to ensure that Jockey's Ridge will be able to freely interact with other components of the immediate area's ecosystem;
2. to ensure that Jockey's Ridge will be preserved for and be accessible to the State's citizenry and to the scientific and educational communities; and
3. to protect the values of Jockey's Ridge as expressed by Dare County, the Town of Nags Head, and the local citizenry.

RECOMMENDATION

Staff feels that Jockey's Ridge clearly fulfills the qualifications for Unique Coastal Geologic Formations as outlined in 7H .0507 (attached). As such, staff recommends that the Commission request a detailed review of the AEC nomination that would include site specific use standards and an analysis of appropriate boundaries for the proposed AEC. This detailed review would be brought to the Commission in July for further action.



CRC 396(a)

State of North Carolina
Department of Natural Resources and Community Development
Division of Coastal Management
512 North Salisbury Street • Raleigh, North Carolina 27611

James G. Martin, Governor
S. Thomas Rhodes, Secretary

December 3, 1987

David W. Owens
Director

MEMORANDUM

TO: Coastal Resources Commission

FROM: Rich Shaw

Subject: Jockey's Ridge AEC Designation

In June of 1987 the Commission received a nomination of Jockey's Ridge in Dare County to be considered for possible designation as an area of environmental concern. The NRCDD Division of Parks and Recreation (DPR) nominated Jockey's Ridge as a unique coastal geological formation (15 NCAC 7H .0507), citing this area as the tallest dune system along the Atlantic and Gulf Coasts (See P&SI-261).

DPR is concerned that the commercial "mining" of sand from the system is severely threatening the integrity of Jockey's Ridge. A detailed review (P&SI-266) of the nomination included proposed AEC boundaries and development standards that are designed to minimize interference with natural processes that move and shape Jockey's Ridge. The proposed boundaries include all lands which staff believes could, over the long-term, affect the shape and movement of the Jockey's Ridge dune system.

The proposed Jockey's Ridge AEC (7H .0507) would prohibit the removal of large quantities of sand from the Jockey's Ridge dune system. The removal of greater than 10 cubic yards (approximately one dump truck load) of sand per year from the areas within the AEC boundary would require a CAMA permit. This sand would have to be deposited at designated locations within Jockey's Ridge State Park.

AEC designation would have little or no effect on those who do not intend to export sand from the ridge. The proposed adoption of 7K .0211 would exempt all development activities within the Jockey's Ridge AEC from CAMA permit requirements provided they do not involve the removal of more than 10 cubic yards of sand per year from the area inside the AEC boundary.

Staff feels that these rules are consistent with the management objectives stated in 7H .0507(c) and are needed to protect Jockey's Ridge as a unique coastal geologic formation. The information presented today is for your decision whether or not to designate Jockey's Ridge an AEC.

Public Hearings

Two public hearings were held on this AEC proposal: one at the September CRC meeting in Wrightsville Beach and the other on October 22, 1987 in Nags Head. All written comments and a transcript of the October hearing are included as CRC-396(b).

While all but two comments support the Jockey's Ridge AEC designation, questions have been raised by the Town of Nags Head and area residents concerning the proposed AEC boundaries and use standards. Residents of the North Ridge and Kitty Dunes Estates subdivisions and The Villas Condominiums feel that their property should not be included in the AEC. They point out that most of these lands are either vegetated or paved at this time, and therefore, have no significant transfer of sand with the unvegetated Jockey's Ridge. The Town of Nags Head concurs and has recommended an alternative boundary (see map) which would exclude those residents as well as other private oceanfront properties northeast of Jockey's Ridge (across US 158 and Beach Road).

The Town also expressed reservations about the potential effects of the proposed use standards on private property owners. Some residents feel that private citizens should be compensated for the sand that they might need to remove from their property and transport to the Park. Others question whether the rules would allow the use of sand fences or the establishment/maintenance of a grass lawn.

Finally, the Town and others feel that the local government should not be responsible for enforcing these rules-- that the Town does not have the resources to catch potential violators who might remove more than 10 cubic yards of sand per year without a permit.

Two property owners are opposed to AEC designation for Jockey's Ridge. The owner of the property known as "undeveloped Midgett property" feels that AEC designation would restrict her family's full enjoyment of their private property. The other opposed party, Mr. Tillet of Nags Head, has been removing sand for years from his two vacant lots on Sound Side Road for use in manufacturing concrete. Mr. Tillet feels that he is removing sand that would otherwise blow onto Sound Side Road and require removal at the public's expense. He also states that AEC designation would reduce the value of his property by changing the "highest and best use" of his land.

AEC Boundaries

The original AEC nomination included all of Jockey's Ridge State Park and the privately owned lands located adjacent to the Park along the west side of Sound Side Road (SR 1221) and the north side of US 158. After a detailed review of the DPR nomination, Staff recommended expanding the nominated boundaries to include more of the private lands to the west, north, and east of the Park (See map). Although the primary input of new sand from the northeast side of the dune has been cut off for years by development and by vegetation which helps to stabilize the sand, these areas might be altered in the future, allowing the underlying sands to interact once again with the more active sand dunes. The inclusion of this additional area would provide long-term protection for the Jockey's Ridge dune system.

Area property owners feel that the developed lands to the west, north, and east of the state park no longer supply or receive significant amounts of sand to or from Jockey's Ridge. The Town of Nags Head has proposed an alternative boundary which would exclude most of these developed lands from the AEC.

Staff Recommendation

The natural processes that once provided sand to this large dune system are no longer operating. With no new sources of sand to replenish the system, it is important to protect what is there. The proposed use standards would minimize the removal of sand from the Jockey's Ridge dune system and minimize any unnecessary interference with the natural processes that move and shape the ridge.

Staff recommends that the Commission designate Jockey's Ridge an Area of Environmental Concern, and in doing so, provide more reliable long-term protection for this unique coastal geologic formation. AEC designation should be accompanied by the adoption of use standards that would minimize the large-scale removal of sand from the Jockey's Ridge dune system. Staff feels that the AEC boundary should include all areas with sand that could contribute to the movement and configuration of the ridge, including some of the developed and/or vegetated lands which today anchor the underlying sand. However, if the Commission feels that it is not necessary to include some of these more stable areas at this time, staff would recommend adopting the boundary proposed by the Town of Nags Head.

The following are a revised set of draft use standards for proposed Jockey's Ridge AEC:

15 NCAC 7H .0507 has been proposed to be amended as follows:

.0507 UNIQUE COASTAL GEOLOGIC FORMATIONS

(d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted on a map approved by the Coastal Resources Commission on December 3, 1987, and on file with the Division of Coastal Management. This area includes the entire rights of way of US 158 Bypass, SR 1221 (Sound Side Road), Villa Dunes Drive, and Hollowell Street where these roads bound this area. Jockey's Ridge is the tallest active sand dune along the Atlantic Coast of the United States. Located within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, the Ridge represents the southern extremity on a back barrier dune system which extends north along Currituck Spit into Virginia. Jockey's Ridge is an excellent example of a medano, a large isolated hill of sand, asymmetrical in shape and lacking vegetation. Jockey's Ridge is the largest medano in North Carolina and has been designated a National Natural Landmark by the U.S. Department of the Interior.

(e) Use Standards. Jockey's Ridge. Development within the Jockey's Ridge AEC shall be consistent with the following minimum use standards:

- (1) Development which requires the removal movement of greater than 10 cubic yards of sand per year from the area within the AEC boundary shall require a permit;
- (2) All sand which is removed collected from the area within the AEC boundary in accordance with 7H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the Division of Parks and Recreation.
- (3) Development activities shall not significantly alter or retard the free movement of sand except when necessary for the purpose of:
 - (A) maintaining or constructing a road, residential/commercial structure, accessway, lawn/garden, or parking area;
 - (B) maintaining or establishing a primary or frontal dune in accordance with 15 NCAC 7H .0308(b).

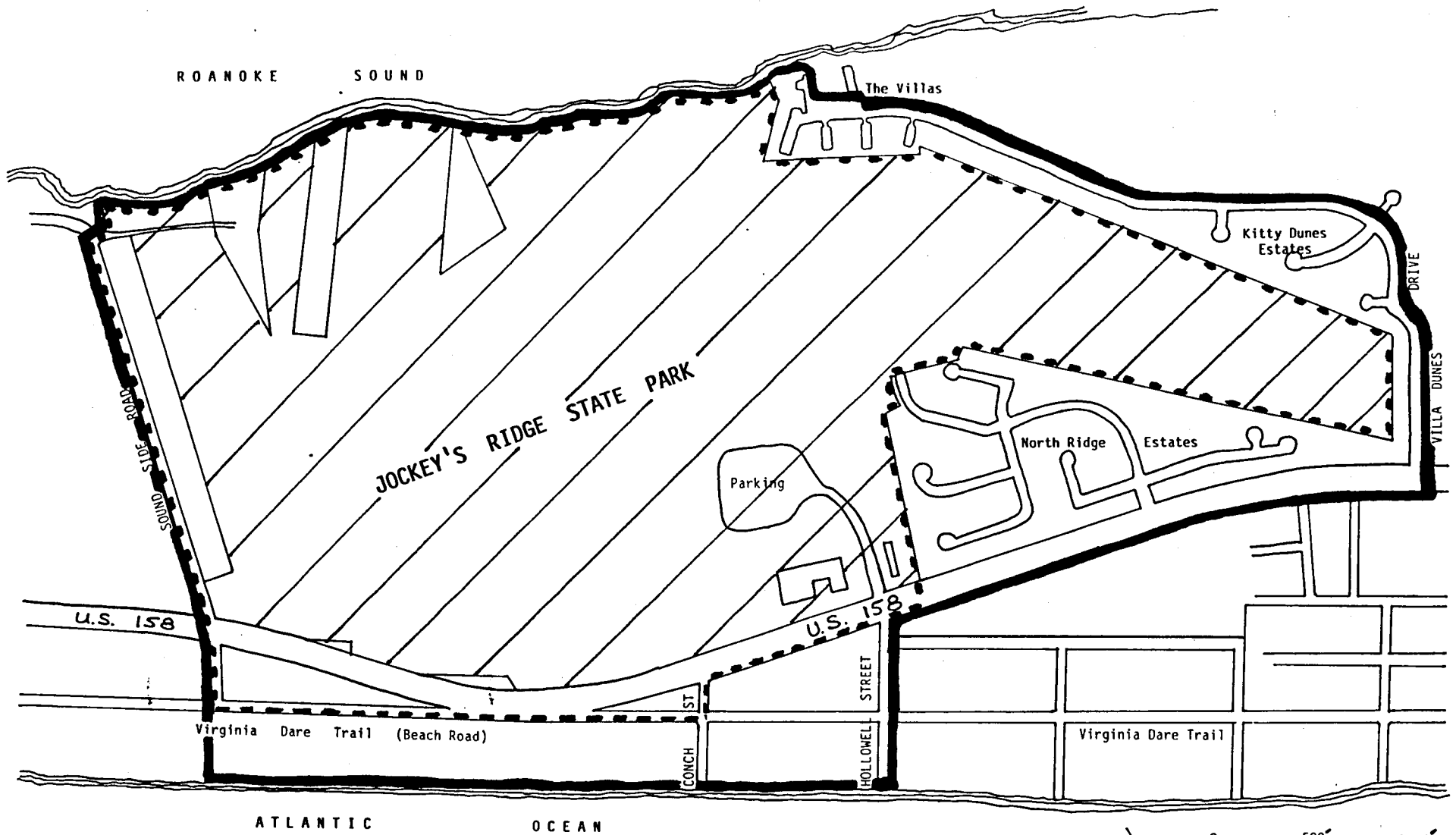
History Note: Statutory Authority G.S. 113A-107(a), (b);
 113A-113(b)(4) g;
 Eff. September 9, 1977.
 Amended Eff. February 1, 1988.

15 NCAC 7K .0211 has been proposed to be adopted as follows:




.0211 JOCKEY'S RIDGE AEC

All development in the Jockey's Ridge area of environmental concern designated pursuant to 15 NCAC 7H .0507 that is not within any other designated area of environmental concern shall be exempt from CAMA major and minor permit requirements provided it does not involve the removal movement of more than 10 cubic yards of sand per year from the area within the AEC boundary.

History Note: Statutory Authority G.S. 113A-103(5)(c);
 Eff. February 1, 1988.



Proposed Jockey's Ridge AEC

-  State Park property
-  Proposed AEC (CRC Staff)
-  Proposed AEC (Town of Nags Head)

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

WILLIAM E. TOBY VINSON, JR.
Interim Director



NORTH CAROLINA
Environmental Quality

April 24, 2024

North Carolina Coastal Resources Commission,

Pursuant to G.S. 113A-113(b)(4)(g), the Coastal Resources Commission is allowed to designate an Area of Environmental Concern when the State Geologist has identified that area as containing unique geological formations.

Jockey's Ridge, located within the Town of Nags Head, is an excellent example of a medano, a large, isolated hill of sand with a characteristic slip face of unconsolidated sand lacking vegetation. In fact, this unique system is not only the largest medano in North Carolina but is the largest anywhere along the Atlantic and Gulf Coasts, and one in which the majority of the surface area has been protected by the State through its dedication as a State Park.

Due to prevailing winds, sand shifts in this area already cause the natural removal of sand from the dune system, including outside the protective boundaries of Jockey's Ridge State Park. As a result, it is important to prevent incompatible development through the commercial removal of sand from this fragile system as such removal would severely threaten the integrity of Jockey's Ridge. With no new sand sources to help replenish the system, it is imperative to protect what exists instead of allowing major irreversible damage to occur. As the State Geologist, it is my opinion that Jockey's Ridge is a unique geological formation that should be designated as an Area of Environmental Concern so as to provide protection to this system and its sand to the maximum extent practicable.

I am happy to explain this issue further or provide additional information needed in your discussions to designate Jockey's Ridge as an AEC. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Dr. Kenneth B. Taylor".

Dr. Kenneth B. Taylor, PG
State Geologist of North Carolina

