

1 15A NCAC 07H .0501 is readopted as published in 34:09 NCR 757 as follows:

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3

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

4

15A NCAC 07H .0501 GENERAL

6 The fourth and final group of AECs is gathered under the heading of fragile coastal natural and cultural resource areas
7 and is defined as areas containing environmental, natural or cultural resources of more than local significance in which
8 uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural
9 resources, scientific, educational, or associative values, or aesthetic qualities.

10

11 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4e) to (b)(4g);*

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113A-124;

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Eff. September 9, 1977;

14

Amended Eff. June 1, 1979;

15

Readopted Eff. August 1, 2022.

1 15A NCAC 07H .0502 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0502 SIGNIFICANCE**

4 (a) Fragile coastal natural resource areas are generally recognized to be of educational, scientific, or cultural value
5 because of the natural features of the particular site. These features in the coastal area serve to distinguish the area
6 designated from the vast majority of coastal landscape and therein establish its value. Such areas may be key
7 components of systems unique to the coast which act to maintain the integrity of that system.

8 (b) Areas that contain outstanding examples of coastal processes or habitat areas of significance to the scientific or
9 educational communities are a second type of fragile coastal natural resource area. These areas are essentially
10 self-contained units or "closed systems" minimally dependent upon adjoining areas.

11 (c) Finally, fragile areas may be particularly important to a locale either in an aesthetic or cultural sense.

12 (d) Fragile coastal cultural resource areas are generally recognized to be of educational, associative, scientific,
13 aesthetic, or cultural value because of their special importance to our understanding of past human settlement of and
14 interaction with the coastal zone. Their importance serves to distinguish the designated areas as significant among
15 the historic architectural or archaeological remains in the coastal zone, and therein established their value.

16

17 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4g); 113A-124;*

18 *Eff. September 9, 1977;*

19 *Amended Eff. June 1, 1979;*

20 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0503 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0503 NOMINATION AND DESIGNATION PROCEDURES**

4 (a) Special Designation Process. The nomination and designation of a coastal complex natural area, a unique coastal
5 geologic formation, a coastal area that sustains remnant species, a significant coastal archaeological resource, or a
6 significant coastal historic architectural resource area of environmental concern shall follow the procedures set forth
7 in this Rule and in GS 113A-115.

8 (b) Nomination. An area may be nominated by any person or group at any time for Coastal Resources Commission
9 (CRC) consideration. Nominations may, for example, be made by citizens, interest groups, local governments, or
10 state and federal agencies. Nominations shall be on a standard form and shall be submitted to the Division of Coastal
11 Management (DCM). The nomination shall include information relating to the location, size, importance, ownership,
12 and uniqueness of the proposed site. Nomination forms are available from the Division of Coastal Management.

13 (c) Preliminary Evaluation. After receipt of a nomination, the Division of Coastal Management shall conduct a
14 preliminary evaluation of the proposed site. The land owner, local government, and CRC and CRAC members in
15 whose jurisdiction the site is located shall be informed of the proposed nomination. Representatives of these groups
16 shall meet to discuss the proposed nomination and shall complete a preliminary evaluation within 60 days after receipt
17 of the nomination. Various protection methods shall be examined to determine if AEC designation is appropriate.

18 (d) CRC Endorsement. A report on the preliminary evaluation shall be presented to the CRC so that it may determine
19 whether to endorse the evaluations and proceed with a more detailed analysis of the site. This report shall be made at
20 the first CRC meeting after the preliminary evaluation is completed. All parties involved in the nomination and
21 preliminary evaluation shall be informed, in writing, of the Commission's decision to proceed or not to proceed with
22 a detailed review of the site in question. For sites that do not receive CRC endorsement for detailed review,
23 recommendations for some other form of protection may be discussed with the landowner. Other forms of protection
24 include, registry with the North Carolina Natural Heritage Program, conservation easement to a public agency or to a
25 local conservation foundation, donation or acquisition of title, or other strategies.

26 (e) Detailed Review. A detailed review of the proposed site shall be initiated under DCM supervision after CRC
27 endorsement. This shall include the development of a management plan, if applicable, or site specific use standards.
28 Opportunity shall be given to local government officials, interest groups, and those with scientific expertise to
29 comment on the specific biological/physical or cultural values of the site together with appropriate management
30 strategies to safeguard the values identified. This review shall be completed within 90 days, starting from the date of
31 the official CRC endorsement. At the conclusion of this review, the report on the detailed review shall be presented
32 to the CRC for their consideration.

33 (f) Public Hearing. If, after receiving the detailed review, the CRC decides to consider formal designation of the site
34 as an AEC and adopt the particular management plan or use standards developed, a public hearing or hearings shall
35 be conducted and notice of hearing published and distributed in accordance with the requirements of G.S. 113A-115
36 and G.S. 150B-21.2. Copies of the site description and of any proposed rules shall be made available for public
37 inspection at the county courthouse in each affected county and at the Morehead City Office of the Division of Coastal

1 Management. At the hearing(s) the CRC shall present the documentation and recommendations in support of the
2 designation decision.

3 (g) Formal Designation. After consideration of all comments, the Commission shall make its final judgment. If the
4 site is designated as an AEC, the CRC shall also adopt a management strategy or use standards applicable to the AEC.

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6 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e,f,g, and h; 113A-124;*

7 *Eff. September 9, 1977;*

8 *Amended Eff. June 1, 2005; May 1, 1988; May 1, 1985; February 1, 1982; June 1, 1979;*

9 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0504 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0504 AECS WITHIN CATEGORY**

4 The description, significance, and management objectives for each AEC (coastal complex natural areas, coastal areas
5 that sustain remnant species, unique coastal geologic formations, significant coastal architectural resources, and
6 significant coastal historic architectural resources) within the grouping of fragile coastal natural and cultural resource
7 areas follows in Rules .0505, .0506, .0507, .0509, and .0510 of this Section.

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9 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4) e., f., g., and h.; 113A-124;*

10 *Eff. September 9, 1977;*

11 *Amended Eff. December 1, 1991; June 1, 1979;*

12 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0505 is readopted as published in 34:09 NCR 757 as follows:

2

3 **15A NCAC 07H .0505 COASTAL AREAS THAT SUSTAIN REMNANT SPECIES**

4 (a) Description. Coastal areas that sustain remnant species are those areas that support native plants or animals
5 determined to be rare or endangered (synonymous with threatened and endangered), within the coastal area. Such
6 places provide habitats necessary for the survival of existing populations or communities of rare or endangered species
7 within the coastal area. Determination will be made by the Commission based upon the listing adopted by the North
8 Carolina Wildlife Resources Commission or the federal government listing; upon written reports or testimony of
9 experts indicating that a species is rare or endangered within the coastal area; and upon consideration of written
10 testimony of local government officials, interest groups, and private land owners.

11 (b) Significance. The continued survival of certain habitats that support native plants and animals in the coastal area
12 is vital for the preservation of our natural heritage and for the protection of natural diversity which is related to
13 biological stability. These habitats and the species they support provide a valuable educational and scientific resource
14 that cannot be duplicated.

15 (c) Management Objective. To protect unique habitat conditions that are necessary to the continued survival of
16 threatened and endangered native plants and animals and to minimize land use impacts that might jeopardize these
17 conditions.

18

19 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)f; 113A-124;*

20

Eff. September 9, 1977;

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Readopted Eff. August 1, 2022.

1 15A NCAC 07H .0506 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0506 COASTAL COMPLEX NATURAL AREAS**

4 (a) Description. Coastal complex natural areas are defined as lands that support native plant and animal communities
5 and provide habitat qualities which have remained essentially unchanged by human activity. Such areas may be either
6 significant components of coastal systems or especially notable habitat areas of scientific, educational, or aesthetic
7 value. They may be surrounded by landscape that has been modified but does not drastically alter conditions within
8 the natural area. Such areas may have been altered by human activity and/or subject to limited future modifications,
9 e.g. the placement of dredge spoil, if the CRC determines that the modifications benefit the plant or animal habitat or
10 enhance the biological, scientific or educational values which will be protected by designation as an AEC.

11 (b) Significance. Coastal complex natural areas function as key biological components of natural systems, as
12 important scientific and educational sites, or as valuable scenic or cultural resources. Often these natural areas provide
13 habitat suitable for threatened or endangered species or support plant and animal communities representative of
14 pre-settlement conditions. These areas help provide a historical perspective to changing natural habitats in the coastal
15 area and together are important and irreplaceable scientific and educational resources. The CRC may determine
16 significance of a natural area by consulting the Natural Heritage Priority List maintained by the Natural Heritage
17 Program within the Division of Parks and Recreation. The CRC will establish a standing committee, composed of
18 two or more members of the CRC, one or more members of the CRAC, and three or more members of the Natural
19 Area Advisory Committee, to evaluate areas not included in the Natural Heritage Priority List.

20 (c) Management Objectives. The management objectives of this Rule are to protect the features of a designated
21 coastal complex natural area in order to safeguard its biological relationships, educational and scientific values, and
22 aesthetic qualities. Specific objectives for each of these functions shall be related to the following policy statement
23 either singly or in combination:

- 24 (1) To protect the natural conditions or the sites that function as key or unique components of coastal
25 systems. The interactions of various life forms are the foremost concern and include sites that are
26 necessary for the completion of life cycles, areas that function as links to other wildlife areas
27 (wildlife corridors), and localities where the links between biological and physical environments are
28 most fragile.
- 29 (2) To protect the identified scientific and educational values and to ensure that the site will be
30 accessible for related study purposes.
- 31 (3) To protect the values of the designated coastal complex natural area as expressed by the local
32 government and citizenry. These values should be related to the educational and aesthetic qualities
33 of the feature.

34
35 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e; 113A-24;*
36 *Eff. September 9, 1977;*
37 *Amended Eff. October 1, 1988; February 1, 1982;*
38 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0507 is readopted as published in 34:09 NCR 757 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 otherwise significant components of coastal systems, or that are especially notable examples of geologic
6 formations or processes in the coastal area. Such areas will be evaluated by the Commission after identification by the
7 State Geologist.

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 policy statements
13 either singly or in combination:

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

21 (2) To ensure that the designated geologic feature or process will be preserved for and be accessible to
22 the scientific and educational communities for related study purposes.

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

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

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

- 1 (1) Development which requires the removal of greater than ten cubic yards of sand per year from the
2 area within the AEC boundary shall require a permit;
- 3 (2) All sand which is removed from the area within the AEC boundary in accordance with 7H
4 .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the
5 Division of Coastal Management in consultation with the Division of Parks and Recreation;
- 6 (3) Development activities shall not significantly alter or retard the free movement of sand except when
7 necessary for the purpose of maintaining or constructing a road, residential/commercial structure,
8 accessway, lawn/garden, or parking area.

9

10 *History Note:* *Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;*
11 *Eff. September 9, 1977;*
12 *Amended Eff. March 1, 1988;*
13 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0508 is readopted as published in 34:09 NCR 757 as follows:

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

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

6 (1) The proposed design and location will cause no major or irreversible damage to the stated values of
7 a particular resource. One or more of the following values must be considered depending upon the
8 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 adversely affect the values of the resource as a unique scientific,
12 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 reasonable alternative sites are available outside the designated AEC.

16 (3) Reasonable mitigation measures have been considered and incorporated into the project plan. These
17 measures shall include consultation with recognized authorities and with the CRC.

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

20 (5) Use standards will not address farming and forestry activities that are exempted in the definition of
21 development (G.S. 113A-103(5)a.4).

22

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

24 *Eff. September 9, 1977;*

25 *Amended Eff. February 1, 1982; June 1, 1979;*

26 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0509 is readopted as published in 34:09 NCR 757 as follows:

2
3 **15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES**

4 (a) Description. Significant coastal archaeological resources are defined as areas that contain archaeological remains
5 (objects, features, and/or sites) that have more than local significance to history or prehistory. Such areas will be
6 evaluated by the North Carolina Historical Commission in consultation with the Commission as part of the procedure
7 set forth in Rule .0503 of this Section.

8 (b) Significance. Significant coastal archaeological resources are important educational, scientific, or aesthetic
9 resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general, significant
10 archaeological resources possess integrity of location, design, setting, workmanship, materials, and association and:

- 11 (1) are associated with events that have made a significant contribution to the broad patterns of history;
12 or
13 (2) are associated with the lives of persons significant in history; or
14 (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a
15 significant and distinguishable entity whose components may lack individual distinction; or
16 (4) have yielded, or may be likely to yield, information important in history or prehistory.

17 (c) Management Objectives. The CRC's objective is to conserve coastal archaeological resources of more than local
18 significance to history or prehistory that constitute important scientific sites, or are valuable educational, associative,
19 or aesthetic resources. Specific objectives for each of these functions shall be related to the following policy
20 statements either singly or in combination:

- 21 (1) to give the highest priority to the development of a preservation management plan to provide
22 long-term, effective management of the archaeological resource; only that development which
23 would have minimal adverse effects on the archaeological resource will be acceptable;
24 (2) to conserve significant archaeological resources, including their spatial and structural context and
25 characteristics through in-situ preservation and/or scientific study;
26 (3) to insure that the designated archaeological resource, or the information contained therein, be
27 preserved for and be accessible to the scientific and educational communities for related study
28 purposes;
29 (4) to protect the values of the designated archaeological resource as expressed by the local government
30 and citizenry; these values should be related to the educational, associative, or aesthetic qualities of
31 the resource.

32 (d) General Use Standards.

- 33 (1) Significant concentrations of archaeological material, preferably reflecting a full range of human
34 behavior, should be preserved in-situ for future research by avoidance during planned construction
35 activities. Areas for avoidance should be selected only after sufficient archaeological investigations
36 have been made. See Subparagraph (d)(2)(B) of this Rule to determine the nature, extent, conditions

1 and relative significance of the cultural deposits. Three avoidance measures should be considered,
2 preferably in combination:

- 3 (A) incorporation of "no impact" spaces in construction plans such as green spaces between
4 lots;
- 5 (B) definition of restrictions limiting specific types of ground disturbing activities;
- 6 (C) donation of preservation easements to the state or, upon approval by the N.C. Division of
7 Archives and History, a legitimate historic preservation agency or organization.

8 (2) Any activities which would damage or destroy the fragile contents of a designated site's surface or
9 subsurface shall be expressly prohibited until an archaeological investigation and subsequent
10 resource management plan has been implemented. Such investigation and management plan shall
11 be developed in full consultation with the North Carolina Division of Archives and History. In this
12 way, potentially damaging or destructive activities (e.g., construction, roads, sewer lines,
13 land-scaping) may be managed both during initial phases of construction and after the development
14 is completed. Such archaeological investigations shall comply with the following criteria:

- 15 (A) all archaeological work will be conducted by an experienced professional archaeologist;
- 16 (B) initial archaeological investigations conducted as part of the permit review process will be
17 implemented in three parts: Phase I, a reconnaissance level investigation to determine the
18 nature and extent of archaeological materials over the designated area; Phase II, an
19 intensive level investigation which represents a direct outgrowth of Phase I findings and
20 through systematic data recovery assesses the potential importance of identified
21 concentrations of archaeological materials; Phase III, mitigation of adverse effects to
22 recognized areas of importance. Evaluations of research potential will be made and
23 prioritized in order of importance, based upon the status of previous research in the area
24 and the integrity of the remains;
- 25 (C) an archaeological research design will be required for all archaeological investigations. All
26 research designs will be subject to the approval of the North Carolina Division of Archives
27 and History prior to conducting the work. A research proposal must allow at least 30 days
28 for review and comment by the North Carolina Division of Archives and History;
- 29 (D) data will be collected and recorded accurately and systematically and artifacts will be
30 curated according to accepted professional standards at an approved repository.

31 (e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal
32 archaeological resource area of environmental concern. Permuda Island is a former barrier island located within
33 Stump Sound in southwestern Onslow County. The island is 1.2 miles long and .1 - .25 miles wide. Archaeological
34 evidence indicates earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late
35 Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological
36 remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and

1 postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains. The resources
2 offer extensive research opportunities.

3

4 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*

5 *Eff. June 1, 1979;*

6 *Amended Eff. October 1, 1988; January 1, 1985;*

7 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0510 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0510 SIGNIFICANT COASTAL HISTORIC ARCHITECTURAL RESOURCES**

4 (a) Description. Significant coastal historic architectural resources are defined as districts, structures, buildings, sites
5 or objects that have more than local significance to history or architecture. Such areas will be evaluated by the North
6 Carolina Historical Commission in consultation with the Commission as part of the procedure set forth in Rule .0503
7 of this Section.

8 (b) Significance. Significant coastal historic architectural resources are important educational, scientific, associative,
9 or aesthetic resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general,
10 significant historic architectural resources possess integrity of design, setting, workmanship, materials, and association
11 and:

- 12 (1) are associated with events that have made a significant contribution to the broad patterns of history;
13 or
14 (2) are associated with the lives of persons significant in history; or
15 (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a
16 significant and distinguishable entity whose components may lack individual distinction; or
17 (4) have yielded, or may be likely to yield, information important in history.

18 (c) Management Objectives. The CRC's objective is to conserve coastal historic architectural resources of more than
19 local significance which are valuable educational, scientific, associative or aesthetic resources. Specific objectives
20 for each of these functions shall be related to the following policy statements either singly or in combination:

- 21 (1) to conserve historic architectural resources as a living part of community life and development,
22 including their structural and environmental characteristics, in order to give a sense of orientation
23 to the people of the state;
24 (2) to insure that the designated historic architectural resource be preserved, as a tangible element of
25 our cultural heritage, for its educational, scientific, associative or aesthetic purposes;
26 (3) to protect the values of the designated historic architectural resource as expressed by the local
27 government and citizenry; these values should be related to the educational, scientific, associative
28 or aesthetic qualities of the resource.

29
30 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
31 *Eff. June 1, 1979;*
32 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0601 is readopted as published in 34:09 NCR 758 as follows:

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3

SECTION .0600 - DEVELOPMENT STANDARDS APPLICABLE TO ALL AECS

4

5

15A NCAC 07H .0601 NO VIOLATION OF ANY RULE

6

No development shall be allowed in any AEC which would result in a contravention or violation of any rules, regulations, or laws of the State of North Carolina or of local government in which the development takes place.

7

8

9

History Note: Authority G.S. 113A-107(a),(b); 113A-124;

10

Eff. September 9, 1977;

11

Readopted Eff. August 1, 2022.

1 15A NCAC 07H .0602 is readopted as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .0602 POLLUTION OF WATERS**

4 No development shall be allowed in any AEC which would have a substantial likelihood of causing pollution of the
5 waters of the state in which shellfishing is an existing use to the extent that such waters would be officially closed to
6 the taking of shellfish. This rule shall also apply to development adjacent to or within closed shellfish waters when a
7 use attainability study of those waters documents the presence of a significant shellfish resource in an area that could
8 be expected to be opened for shellfishing given reasonable efforts to control the existing sources of pollution.

9

10 *History Note: Authority G.S. 113A-107(a),(b); 113A-124;*

11 *Eff. September 9, 1977;*

12 *Amended Eff. July 1, 1987;*

13 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0603 is readopted as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .0603 MINIMUM ALTITUDES**

4 No development involving airspace activity shall be allowed in any AEC which would result in violation of minimum
5 altitude standards adopted by the Federal Aviation Administration and codified at 14 CFR Part 91.79. Future
6 amendments by the Federal Aviation Administration shall be deemed to be incorporated into this Rule pursuant to
7 G.S. 150B-14(c) unless the Commission objects within 90 days of publication of the action in the Federal Register.
8 Upon objection by the Commission to a change, the Commission shall initiate rule-making proceedings on
9 incorporation of the amendment into this Rule. The amendment will not be incorporated into this Rule pending a
10 rule-making hearing and final action by the Commission on the proposed amendment.

11

12 *History Note: Authority G.S. 113A-107(a),(b);*

13 *Eff. March 1, 1990;*

14 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0604 is readopted as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .0604 NOISE POLLUTION**

4 Except as required for safe aircraft takeoff and landing operations, airspace activity associated with coastal
5 development shall not impose an increase in average noise exceeding 10 dBA above background levels. Noise
6 measurements shall be normalized Ldn as set forth by the Environmental Protection Agency in its report 550/9-74-004
7 entitled Information on Levels of Environmental Noise Requisite to Protect the Public Health and Welfare with an
8 Adequate Margin of Safety. The maximum noise level associated with any single event shall not exceed 85 dBA.
9 These limits shall not apply where noise impacts are confined to surface areas owned or controlled by the project's
10 proponent. Any noise monitoring required to ensure compliance with this Rule shall be the responsibility of the
11 proponent.

12

13 *History Note: Authority G.S. 113A-107(a),(b);*

14

Eff. March 1, 1990;

15

Readopted Eff. August 1, 2022.

1 15A NCAC 07I .0204 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0204 LOCAL ORDINANCE REQUIRED**

4 Each local government applying for an implementation and enforcement grant shall have adopted local ordinance(s)
5 necessary to give effect to the local implementation and enforcement plan that has been approved by the Commission
6 for its jurisdiction.

7

8 *History Note: Authority G.S. 113A-112; 113A-124;*

9

Eff. December 10, 1977;

10

Readopted Eff. August 1, 2022.

1 15A NCAC 07I .0302 is readopted as published in 34:09 NCR 761 as follows:

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3 **15A NCAC 07I .0302 APPLICATION PROCESS**

4 (a) An application form is not required for local governments having entered into previous agreements with the
5 Department for reimbursement under this Rule. Local governments without previous agreements shall contact the
6 Division of Coastal Management at 400 Commerce Avenue, Morehead City, NC 28557.

7 (b) The geographic jurisdiction shall be the same as identified in the local Implementation and Enforcement Program.
8 Where two or more local governments are combined for grant administration, a written statement to this effect shall
9 be submitted to the Division of Coastal Management and signed by local officials.

10 (c) Based on the availability of state or federal funds, agreements shall be renewed on an annual basis. The grant
11 year runs from July 1 through June 30, and local governments may receive amendments to their contracts after the
12 end of each grant year updating the previous agreements.

13

14 *History Note: Authority G.S. 113A-112; 113A-124;*

15 *Eff. December 10, 1977;*

16 *Amended Eff. June 1, 2005; October 1, 1988; October 1, 1982; May 20, 1980;*

17 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0305 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0305 GRANT ADMINISTRATION**

4 (a) Reimbursement shall be made quarterly upon submittal of composite records after the last day of the last month
5 of the relevant quarter. Composite records will include each applicant's name, the date of the application, the date of
6 public notice, the relevant AEC type, the permit decision, the decision date and any vouchers for training expenses,
7 special projects or other documents as required by the contract between the locality and the Department of
8 Environment and Natural Resources.

9 (b) Grant Contract. Prior to the disbursement of funds, the locality and the Department shall become parties to a
10 contract.

11

12 *History Note: Authority G.S. 113A-112; 113A-124;*

13 *Eff. August 1, 1978;*

14 *Amended Eff. June 1, 2006; May 1, 1990; November 1, 1984; October 1, 1982; May 20, 1980;*

15 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0306 is readopted as published in 34:09 NCR 761 as follows:

2
3 **15A NCAC 07I .0306 GRANT CONDITIONS**

4 (a) All contracts shall provide notice of any conditions which affect the quarterly grant payments.

5 (b) At a minimum, the following conditions will apply:

6 (1) Per permit reimbursements will only be made after certification is received by the secretary (from
7 the local permit officer) that all CAMA standards have been observed when the permitted activity
8 is completed;

9 (2) Final quarterly payment for a given fiscal year will be withheld pending receipt by the secretary of
10 an annual permit summary, said summary to consist of a description of all permits processed in the
11 locality by the applicant's name, address, date of application, AEC type, permit decision, and
12 decision date;

13 (3) Quarterly verification from the relevant field office/CAMA field consultant specified in the contract
14 that the following permit information has been received for each permit processed in the quarter:

15 (A) one copy of the permit application mailed to the appropriate field consultant or field office
16 of the Division of Coastal Management within five working days of acceptance by the local
17 government,

18 (B) one copy of the legal notice associated with the application,

19 (C) one copy of the final decision and any associated permit conditions;

20 (4) Approval of any special project necessitates compliance with conditions deemed necessary by the
21 secretary to ensure compliance with the standards and policies of this Subchapter.

22 (c) No quarterly payment will be made until all applicable grant conditions are met. Local governments not meeting
23 the timetable specified in Subparagraph (b)(3) of this Rule will not be reimbursed for the permits in question.

24
25 *History Note: Authority G.S. 113A-124;*

26 *Eff. May 20, 1980;*

27 *Amended Eff. May 1, 1990; June 12, 1981;*

28 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0401 is readopted as published in 34:09 NCR 761 as follows:

2
3 **SECTION .0400 - GENERALLY APPLICABLE STANDARDS**

4
5 **15A NCAC 07I .0401 PROGRAM COSTS**

6 (a) Costs associated with the management of a local Implementation and Enforcement Program shall be recovered on
7 a per permit basis unless specified elsewhere in this Rule.

8 (b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies,
9 copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates
10 are set as follows:

11 (1) All county permit-letting authorities are eligible to receive seventy-five dollars (\$75.00) for each
12 processed permit.

13 (2) All municipal permit-letting authorities are eligible to receive fifty-five dollars (\$55.00) for each
14 processed permit.

15 (3) For multi-unit programs involving a county and a municipality, the higher county rate applies;
16 however, programs involving two or more municipalities shall use the municipal rate.

17 (4) Follow-up inspections are required when the permitted activity is completed, and such inspections
18 shall be documented on a form provided by the Division; the follow-up inspection fee received by
19 all local governments is set at forty dollars (\$40.00).

20 (c) Training costs for Local Permit Officers (LPOs) at the Department of Environment and Natural Resources annual
21 training session are limited to a maximum two hundred dollars (\$200.00/LPO) for up to three LPOs per local
22 government upon submittal of proper receipts. No funds will be provided for attendance at Coastal Resources
23 Commission meetings.

24
25 *History Note: Authority G.S. 113A-112; 113A-124;*

26 *Eff. December 10, 1977;*

27 *Amended Eff. July 1, 2013; May 1, 1990; October 1, 1982; May 20, 1980; August 1, 1978;*

28 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0402 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0402 INELIGIBLE ACTIVITIES**

4 (a) Costs not associated with CAMA permit letting are not eligible for reimbursement.

5 (b) The following costs are presumed not to be eligible:

- 6 (1) the costs of local appeal,
- 7 (2) attorneys fees,
- 8 (3) bookkeeping or accountant costs,
- 9 (4) fines and penalties.

10

11 *History Note: Authority G.S. 113A-112; 113A-124;*

12 *Eff. December 10, 1977;*

13 *Amended Eff. August 1, 1978;*

14 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0406 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0406 APPLICATION FEES**

4 The application fees collected by the locality shall be used only to defray the administrative costs associated with the
5 processing of a CAMA minor permit development application. Deficits resulting from administrative costs exceeding
6 amounts received from application fees shall be recovered from permit reimbursements. The application fee shall be
7 consistent with 15A NCAC 07J .0204(b)(6)(B).

8

9 *History Note: Authority G.S. 113A-112; 113A-119; 113A-124;*

10 *Eff. December 10, 1977;*

11 *Amended Eff. July 1, 2013; October 1, 1982; May 20, 1980; August 1, 1978;*

12 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0504 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0504 RECORD OF HEARINGS AND COMMENTS**

4 Each permit-letting agency must compile and maintain a complete record of the public hearing on its proposed
5 management plan and comments received pursuant to G.S. 113A-117. The record of the public hearing, written
6 comment, and any documentation filed with the local permit-letting agency as to the proposed management plan must:

7 (1) consist of a written account from the minutes or transcribed from an electronic recording, and all
8 written documents;

9 (2) remain open for 15 days after the hearing;

10 (3) be available to the Commission upon request.

11

12 *History Note: Authority G.S. 113A-117(b); 113A-124(c)(5);*

13 *Eff. November 1, 1984;*

14 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0505 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0505 CONTENT OF PLAN**

4 (a) The plan for the local implementation and enforcement program shall include the following elements:

5 (1) the geographic extent of jurisdiction of the local management program;

6 (2) a description of the criteria to be used in choosing the permit officer;

7 (3) methods of permit processing and coordinating procedures;

8 (4) methods for identifying and taking into account projects and impacts of regional, state and national
9 concern;

10 (5) a copy of all existing or proposed local ordinances relating to zoning and land use in areas of
11 environmental concern or any other relevant subject in order that the Commission may determine:

12 (A) whether there is sufficient authority to enforce the program described in the local
13 management plan;

14 (B) whether any local ordinances are inconsistent with the approved land use plan. No plan
15 will be approved for any county or city if the Commission determines either that the local
16 government unit lacks sufficient authority to enforce the program or that the local
17 government unit has an ordinance or ordinances inconsistent with its land use plan.

18 (b) The plan may also include the following elements for the remainder of the zoning jurisdiction of the county or
19 city:

20 (1) a copy of all local ordinances relating to land use or any other subject relevant to land use;

21 (2) procedures for assuring consistency of governmental actions with the approved land use plan for the
22 entire jurisdiction.

23 (c) The remaining rules within this Section provide criteria which shall act as guidelines for cities and counties in
24 drafting the local management plan describing their local management program.

25

26 *History Note: Authority G.S. 113A-117; 113A-124(c);*

27 *Eff. November 1, 1984;*

28 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0506 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0506 ALLOCATION OF AUTHORITY**

4 (a) A county may establish permit-letting authority for any city or part thereof that lies within said county if such city
5 does not submit a letter of intent to the Coastal Resources Commission or states to the Coastal Resources Commission
6 its intent not to become a local permit-letting agency.

7 (b) A city management plan shall be limited to its corporate boundaries and to any extra-territorial zoning area over
8 which it may have established control at the time it requested authority to act as a permit-letting agency or over which
9 it later gains control.

10 (c) A county implementation and enforcement plan shall be limited to areas not covered by any city plans unless the
11 county acts as the permit-letting agency for a city or cities. A county shall begin such duties only after the county's
12 implementation and enforcement plan has been amended to include such areas.

13 (d) In any city in which neither the city nor the county elects to become the permit-letting agency, the secretary shall
14 have that duty.

15 (e) Only the Department of Environment and Natural Resources shall issue a permit for major development.

16

17 *History Note: Authority G.S. 113A-117(b); 113A-124(c)(5);*

18 *Eff. November 1, 1984;*

19 *Amended Eff. June 1, 2006; May 1, 1990;*

20 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0507 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0507 LOCAL PERMIT OFFICER**

4 (a) The local plan shall designate an existing official or create a new position for an official who shall receive, review
5 and take all appropriate action as to applications for minor development permits. The locality shall inform the
6 Department of all permit officers who will implement or enforce the local management plan.

7 (b) The plan shall specify the job requirements as mandated by these criteria.

8 (c) The permit officer shall attend the department's training course within one year of his appointment. The officer
9 shall also attend those regular regional work sessions held by the Department to inform and coordinate the activities
10 of the local permit officers in each region.

11 (d) In order to continue to process permits in a timely fashion and to avoid the issuance of passive grants, eligible
12 permit-letting agencies shall immediately notify the Commission in writing when the local permit officer resigns or is
13 for any reason unable to perform his or her duties.

14 (e) This notice shall indicate the method or methods by which the locality will continue to process permits in a
15 thorough and timely fashion. Such methods can include, but are not limited to, the following:

16 (1) The appointment of a temporary local permit officer (LPO) until such time as a permanent
17 replacement is selected.

18 (2) The appointment of one or more LPO(s).

19 (3) Evidence that an agreement exists between the locality and another appropriate agency for the
20 assumption of the permit program.

21 (4) A formal request that the secretary assume the permit function for the locality.

22 (f) From date of receipt and acceptance of application and/or decision on an application, the local permit officer must
23 within five workings days mail and/or submit copies of same to the appropriate field consultant or the nearest field
24 office of the Division of Coastal Management.

25 (g) The permit officer shall, on a quarterly basis, summarize for the commission the receipt and disposition of all
26 permit applications for the immediately preceding quarter.

27

28 *History Note: Authority G.S. 113A-121(b); 113A-117; 113A-124;*

29 *Eff. November 1, 1984;*

30 *Amended Eff. May 1, 1990;*

31 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0508 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0508 CONSIDERATION OF APPLICATION BY PERMIT OFFICER**

4 (a) The method of consideration of minor development permit requests by the permit officer must be uniform in
5 application and must be set out in writing and available for public inspection. The permit officer shall use only forms
6 approved by the Commission in its handling of any minor development permit application.

7 (b) The local management plan shall specify the procedures which will be followed in the handling and consideration
8 of all applications for a minor development permit, including appropriate response to receipt of an application for a
9 major development permit.

10 (c) The permit officer shall maintain a record of all applications, correspondence, public notices, responses from
11 public notices, and a copy of his final disposition for all permit applications whether issued or denied.

12 (d) The permit officer, in his handling of all minor development permit applications, must use a numbering system
13 which will be developed by the Commission in consultation with local government.

14 (e) It is the policy of the Coastal Resources Commission to allow local government the greatest flexibility in
15 coordinating minor development permits with all other local permits and approvals. The Commission requires,
16 however, that the plan eventually submitted state how this coordination will be accomplished.

17

18 *History Note: Authority G.S. 113A-124(c)(5);*

19 *Eff. November 1, 1984;*

20 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0509 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0509 NOTICE OF CIVIL ACTION**

4 Local permit officers shall notify the Division of Coastal Management of any civil action undertaken by or against
5 them under the Coastal Area Management Act as soon as they become aware of such action.

6

7 *History Note: Authority G.S. 113A-117; 113A-126(b);*

8 *Eff. November 1, 1984;*

9 *Amended Eff. June 1, 2006; May 1, 1990;*

10 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0510 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0510 COMMISSION REVIEW AND ACCEPTANCE OF THE LOCAL PLAN**

4 The local management plan adopted by any local permit-letting agency must be submitted to the Commission for
5 review. The Commission will evaluate the proposed local management plan as required in G.S. 113A-117(c) and will
6 assess the plan in terms of the local land use plan, the CAMA Land Use Planning Guidelines described in 15A NCAC
7 7B .0100, the Coastal Area Management Act and these rules.

8

9 *History Note: Authority G.S. 113A-117(c); 113A-124;*

10 *Eff. November 1, 1984;*

11 *Amended Eff. October 1, 1988;*

12 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0511 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0511 COMMITMENT TO ADOPT LOCAL MANAGEMENT PLAN AS ORDINANCE**

4 The local governing body shall enter into a commitment to accept the local management plan as part of the city or
5 county code of ordinances within a three-month period.

6

7 *History Note: Authority G.S. 113A-117(c); 113A-124(c)(5);*

8

Eff. November 1, 1984;

9

Readopted Eff. August 1, 2022.

1 15A NCAC 07I .0601 is readopted as published in 34:09 NCR 761 as follows:
2

3 **SECTION .0600 - AMENDMENT OF LOCAL MANAGEMENT PLAN**
4

5
6 **15A NCAC 07I .0601 NOTICE AND PUBLIC HEARING REQUIREMENT**

7 Amendment of the local management plan shall follow the notice and public hearing requirements set forth in the
8 Coastal Area Management Act and these Rules pertaining to the adoption of the original program.
9

10 *History Note: Authority G.S. 113A-117(b);*

11 *Eff. November 1, 1984;*

12 *Amended Eff. December 1, 1991;*

13 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0602 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0602 COASTAL RESOURCES COMMISSION APPROVAL**

4 An amendment of a local plan shall be submitted to the Coastal Resources Commission for approval in the same
5 manner in which the original management plan is submitted.

6

7 *History Note: Authority G.S. 113A-124(c)(5);*

8

Eff. November 1, 1984;

9

Readopted Eff. August 1, 2022.

1 15A NCAC 07I .0701 is readopted as published in 34:09 NCR 761 as follows:

2
3 **SECTION .0700 - FAILURE TO ENFORCE AND ADMINISTER PLAN**

4
5
6 **15A NCAC 07I .0701 SANCTION FOR VIOLATIONS BY THE LOCAL PERMIT-LETTING AGENCY**

7 (a) When the local permit-letting agency fails to administer or enforce the local management plan submitted to the
8 Commission and approved by it, the Commission shall:

- 9 (1) notify the local permit-letting agency in writing that it is in violation of the provisions of its local
10 management plan and specify the grounds for such charges of violations;
- 11 (2) inform the local permit-letting agency of specific deficiencies in administration and enforcement;
- 12 (3) inform the local permit-letting authority of its opportunity to request a hearing before the
13 Commission at which time it may make any presentation or present any arguments relevant to the
14 issue raised in the Commission letter to the local agency. The Commission may at its sole discretion
15 hear from any other affected person at the hearing.

16 (b) If the conditions are not remedied or corrected within 90 days after receipt of commission notification of such
17 violation, the Commission shall assume the duties of the local permit-letting agency until the local permit-letting
18 agency indicates to the Commission in writing its willingness and/or ability to perform in conformance with its
19 approved local management plan. Any changes in circumstances affecting the agency's willingness and/or ability to
20 properly administer the local management plan also shall be substantiated in writing to the Commission.

21
22 *History Note: Authority G.S. 113A-117(d); 113A-124;*
23 *Eff. November 1, 1984;*
24 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07I .0702 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0702 WHEN AN ACTION EXCEEDS THE LOCAL AUTHORITY**

4 When the local permit-letting agency exceeds the scope and extent of its authority, which is limited to consideration
5 of applications proposing minor development as defined in the Coastal Area Management Act, that action shall be
6 null, void and of no effect. The determinations of the commission shall be binding on the local permit-letting agency
7 as to questions of such jurisdiction.

8

9 *History Note: Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5);*

10 *Eff. November 1, 1984;*

11 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0102 is readopted as published in 34:09 NCR 761 as follows:

2
3 **15A NCAC 07J .0102 GENERAL DEFINITIONS**

4 The following definitions apply whenever these words are used in this Subchapter:

- 5 (1) "Areas of Environmental Concern" (AECs) means geographic areas within the coastal area which
6 the Coastal Resources Commission chooses to designate for special environmental and land use
7 regulations. The types of areas which may be designated as AECs are described in G.S. 113A-113.
8 Areas which have already been designated are defined in 15A NCAC 7H, "State Guidelines for
9 Areas of Environmental Concern."
- 10 (2) "Department" (DENR) means the North Carolina Department of Environment and Natural
11 Resources.
- 12 (3) "Excavation Project" means any moving, digging, or exposing of bottom materials, marshland
13 substrate or root or rhizome matter in the estuarine waters, tidelands, marshlands and state-owned
14 lakes, regardless of the equipment or method used.
- 15 (4) "Filling Project" means the placing of any materials in estuarine waters, tidelands, marshlands and
16 state-owned lakes so as to raise the elevation of the area upon which the material is placed. Structure
17 placement does not constitute a filling or excavation project. The placement of shell material
18 specifically for the purpose of oyster culture also shall not be considered a filling project.
- 19 (5) "Local Management Program" means the local implementation and enforcement program of a
20 coastal city or county that has undertaken to administer a permit program for minor development in
21 areas of environmental concern located within such city or county.
- 22 (6) "Local Permit Officer" refers to the locally designated official who will administer and enforce the
23 minor development permit program in areas of environmental concern and all parts of the land use
24 plan which the local government may wish to enforce over the entire planning area.
- 25 (7) "Division" means the Division of Coastal Management.
- 26 (8) "Permit" refers to CAMA major development permits, CAMA minor development permits and
27 dredge and fill permits unless the context clearly indicates otherwise.
- 28 (9) "Secretary" refers to the Secretary of Environment and Natural Resources.

29
30 *History Note: Authority G.S. 113-229; 113A-116; 113A-117; 113A-118;*
31 *Eff. March 15, 1978;*
32 *Amended Eff. June 1, 2006; April 1, 1997; May 1, 1990; November 1, 1984;*
33 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0201 is readopted as published in 34:09 NCR 761 as follows:

2

3

SECTION .0200 - APPLICATION PROCESS

4

15A NCAC 07J .0201 PERMIT REQUIRED

6 After March 1, 1978, every person wishing to undertake any development in an area of environmental concern shall
7 obtain a permit from the Department, in the case of a major development or dredge and fill permit, or from the local
8 permit officer, in the case of a minor development permit, unless such development is exempted by the Commission.

9

10 *History Note: Authority G.S. 113-229; 113A-118; 113A-124;*

11 *Eff. March 15, 1978;*

12 *Amended Eff. November 1, 1984;*

13 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0203 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0203 PREPARATION OF WORK PLATS**

4 (a) General. Project plans or work plats must include a top or planview, a cross-sectional view, and a location map.
5 All plats must have the standard north arrow. North should be at the top of the plat. The prints must be neat and
6 sufficiently clear to permit photographic reproduction. Originals are preferred as copies are often found to be
7 unacceptable. The applicant should use as few sheets as necessary to show clearly what is proposed. Work plats must
8 be accurately drawn to scale. A scale of 1" = 200' or less is normally required in order that project detail can be easily
9 understood.

10 (b) Details of Work Plats

11 (1) Topview or Planview Plats. Such drawings must show existing and proposed features such as dune
12 systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type
13 and location of sewage treatment facilities and effluent outlets. Existing water depths must be
14 indicated using mean low water as base or zero. These can be shown either as contours or spot
15 elevation. Care should be used in indicating which features are existing and which are proposed.
16 Property boundaries, as they appear on the deed, and the names of adjacent property owners must
17 be shown on the detailed plat. The work plat must clearly show any areas to be excavated and exact
18 locality for disposal of the excavated material. When fill material is to be placed behind a bulkhead
19 or dike, the plan must be sufficiently detailed to show the exact location of such bulkheads or dikes,
20 and the adequacy of the bulkhead or dike to confine the material. Drawings must indicate
21 approximate mean low and mean high water lines and the presence of marsh in the area of proposed
22 work. In areas where the difference in daily low and high tides is less than six inches, only an
23 average water level must be indicated.

24 (2) Cross-Section Drawing. A cross-sectional diagram showing depth and elevation of proposed work
25 relative to existing ground level -- mean low and mean high water line must be included in the plan.
26 The mean low water must be the reference for water depths and land elevations (i.e., mean low water
27 should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea level must
28 be shown for any proposed buildings.

29 (3) Location Map. A map of small scale showing the location of the proposed work is also required.
30 The location map must provide adequate information to locate the project site.

31 (4) Title of Drawing. Each drawing must have a simple title block to identify the project or work, and
32 shall include name of applicant, date the plat was prepared, and scale of the plat. The date of any
33 revisions must be clearly noted. The applicant must also include the name of the person who drew
34 the plat.

35 (c) Applications are often made for permits to authorize projects that have a portion of the development outside Areas
36 of Environmental Concern. Some information concerning plans for development outside AECs is necessary to
37 determine compatibility with the local Land Use Plan and to be reasonably sure that such development will not

1 adversely impact AECs. Therefore, any application for a CAMA or Dredge and Fill permit shall include, at a
2 minimum, the following information:

- 3 (1) detailed information on any development located in or directly impacting an AEC;
- 4 (2) a plat showing the entire tract of land to be developed and possible access or roadway locations;
- 5 (3) maps or statements concerning the location of wetlands within the project area to the extent that a
6 wetlands examination has been made by a private consultant or government agency. Each developer
7 of a project is urged, for his own protection and planning, to procure such information prior to
8 submission for a CAMA permit;
- 9 (4) a narrative description of the proposed development that shall include, at a minimum, the following
10 information:
 - 11 (A) the character of the development (i.e. residential, commercial, recreational, etc.);
 - 12 (B) the maximum number of residential living units that will be permitted;
 - 13 (C) the maximum acreage that will be utilized for non-residential purposes;
 - 14 (D) a statement as to whether wastewater treatment is to be by municipal system, septic tank,
15 or other on-site treatment system. A general description of any on-site treatment system
16 shall be included;
 - 17 (E) a statement that access, as required by all land use regulations, is available through the site
18 to the Area of Environmental Concern without crossing any Section +404= wetland or, if
19 such a crossing is required, a statement that said crossing is properly authorized. If the site
20 contains significant wetlands, such statement may be required from a qualified private
21 consultant or government agency, based on an examination of the property by such private
22 consultant or government agency. The CAMA permit when issued may be conditioned
23 upon the procurement of any required wetlands permit, if the need for such is disclosed by
24 such statement;
- 25 (5) any maps or plans that have been prepared to meet other regulatory requirements such as stormwater
26 management and sedimentation and erosion control.

27 Following review of the permit application, including the aforementioned supporting data (Subparagraphs 1-5), a
28 permit may be issued conditioned upon compliance with the development parameters provided in the narrative
29 statement accompanying the application. Any subsequent violation of these narrative standards as incorporated
30 within the permit shall be a permit violation. No subsequent permit, permit modification, or other agency approval
31 shall be required for any subsequent work performed outside the Area of Environmental Concern as long as such
32 work is within the parameters described in the narrative statement presented with the permit, and included in the
33 permit conditions. Any subsequent change in the development which changes the parameters of the narrative,
34 statement shall be submitted to the staff, but no new permit or permit modification shall be required unless staff
35 finds that the changes would have reasonable expectation of adversely affecting an Area of Environmental Concern
36 or rendering the project inconsistent with Local Land Use Plans. Nothing in this Rule would prohibit an applicant
37 from proceeding with work outside an AEC that cannot reasonably be determined to have a direct adverse impact on
38 the AEC while a permit application for work in the AEC is pending provided that all other necessary local, state, and
39 federal permits have been obtained.

40
41 *History Note: Authority G.S. 113A-119; 113A-124;*
42 *Eff. March 15, 1978;*

- 1 *Amended Eff. July 1, 1989;*
- 2 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0204 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0204 PROCESSING THE APPLICATION**

4 (a) On receipt of a CAMA major development and/or dredge and fill permit application by the Department, a letter
5 shall be sent to the applicant acknowledging receipt.

6 (b) Application processing shall begin when an application is accepted as complete. Before an application will be
7 accepted as complete, the following requirements must be met;

- 8 (1) a current application form must be submitted;
- 9 (2) all questions on the application form must be completed or the letters "N/A" must be placed in each
10 section that does not apply;
- 11 (3) an accurate work plan as described in 15A NCAC 7J .0203 herein must be attached to all CAMA
12 major development and/or dredge and fill permit applications;
- 13 (4) a copy of a deed or other instrument under which the applicant claims title must accompany a
14 CAMA major development and/or dredge and fill permit application;
- 15 (5) notice to adjacent riparian landowners must be given as follows:
 - 16 (A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian
17 landowners (as identified in the permit application) have been sent a copy of the application
18 for the proposed development must be included in a CAMA major development and/or
19 dredge and fill permit application. Said landowners have 30 days from the date of
20 notification in which to comment. Such comments will be considered by the Department
21 in reaching a final decision on the application.
 - 22 (B) For CAMA minor development permits, the applicant must give actual notice of his
23 intention to develop his property and apply for a CAMA minor development permit to all
24 adjacent riparian landowners. Actual notice can be given by sending a certified letter,
25 informing the adjoining property owner in person or by telephone, or by using any other
26 method which satisfies the Local Permit Officers that a good faith effort has been made to
27 provide the required notice;
- 28 (6) the application fee must be paid as set out in this Subparagraph:
 - 29 (A) Major development permit - Application fees shall be in the form of a check or money
30 order payable to the Department. The application fee for private, non-commercial
31 development shall be two hundred fifty dollars (\$250.00). The application fee for a public
32 or commercial project shall be four hundred dollars (\$400.00).
 - 33 (B) Minor development permit - Application fees shall be in the form of a check or money
34 order payable to the permit-letting agency in the amount of one hundred dollars (\$100.00).
35 Monies so collected may be used only in the administration of the permit program;
- 36 (7) any other information the Department or local permit officer deems necessary for a review of the
37 application must be provided. Any application not in compliance with these requirements will be

1 returned to the applicant along with a cover letter explaining the deficiencies of the application and
2 will not be considered accepted until it is resubmitted and determined to be complete and sufficient.
3 If a local permit officer receives an application for a permit that the local permit officer lacks
4 authority to grant, the permit officer shall return the application with information as to how the
5 application may be properly considered; and

6 (8) for development proposals subject to review under the North Carolina Environmental Policy Act
7 (NCEPA), G.S. 113A-100 et. seq., the permit application will be complete only on submission of
8 the appropriate environmental assessment document.

9 (c) Upon acceptance of a major development and/or dredge and fill permit as complete, the Department shall send a
10 letter to the applicant setting forth the data on which acceptance was made.

11 (d) If the application is found to be incomplete or inaccurate after processing has begun or if additional information
12 from the applicant is necessary to adequately assess the project, the processing shall be terminated pending receipt of
13 the necessary changes or necessary information from the applicant. During the pendency of any termination of
14 processing, the permit processing period shall not run. If the changes or additional information significantly alters the
15 project proposal, the application shall be considered new and the permit processing period will begin to run from that
16 date.

17 (e) Any violation occurring at a proposed project site for which an application is being reviewed shall be processed
18 according to the procedures in 15A NCAC 7J .0408 - 0410. If the violation substantially altered the proposed project
19 site, and restoration is deemed necessary, the applicant shall be notified that processing of the application will be
20 suspended pending compliance with the notice of required restoration. Satisfactory restoration of any unauthorized
21 development that has substantially altered a project site is deemed necessary to allow a complete review of the
22 application and an accurate assessment of the project's potential impacts. The applicant shall be notified that permit
23 processing has resumed, and that a new processing deadline has been established once the required restoration has
24 been deemed satisfactory by the Division of Coastal Management or Local Permit Officer.

25 (f) If during the public comment period a question is raised as to public rights of access across the subject property,
26 the Division of Coastal Management shall examine the access issue prior to making a permit decision. Any individual
27 or governmental entity initiating action to judicially recognize a public right of access must obtain a court order to
28 suspend processing of the permit application. Should the parties to legal action resolve the issue, permit processing
29 shall continue.

30
31 *History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;*

32 *Eff. March 15, 1978;*

33 *Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;*

34 *Temporary Amendment Eff. September 2, 1998;*

35 *Temporary Amendment Expired June 28, 1999;*

36 *Amended Eff. August 1, 2000;*

37 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0206 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0206 PUBLIC NOTICE OF THE PROPOSED DEVELOPMENT**

4 Within a reasonable time after receiving an application for a major development permit, a significant modification to
5 an application for a major permit, or an application to modify substantially a previously issued major permit, the
6 Division of Coastal Management shall issue public notice of the proposed development as provided in G.S.
7 113A-119(b). Any citizen or group will, upon request, be promptly sent a copy of the application upon payment of a
8 reasonable fee to cover costs of copying, handling, and posting.

9

10 *History Note: Authority G.S. 113A-119(b);*

11 *Eff. March 15, 1978;*

12 *Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983;*

13 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0207 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0207 AGENCY REVIEW/COMMENTS: MAJOR DEVELOPMENT/DREDGE AND**
4 **FILL**

5 (a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major
6 development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an
7 on-site investigation is made, preferably in the presence of the applicant or his agent. The report will include such
8 topics as project location, environmental setting, project description and probable environmental impact but will not
9 include recommendations of the office.

10 (b) The Department will circulate major development permit applications to the several state review agencies having
11 expertise in the criteria enumerated in G.S. 113A-120.

12 (c) The Department will circulate dredge and fill permit applications to the several state review agencies having
13 expertise in those matters enumerated in G.S. 113- 229(e) (1) - (5).

14 (d) Each reviewing agency may make an independent analysis of the application and submit recommendations and
15 comments to the Department. Such recommendations and comments will be considered by the Department in taking
16 action on a permit application.

17 (e) Each reviewing agency may request additional information (including Stormwater Management Plans) from the
18 applicant through the Division of Coastal Management if such information is deemed necessary for a thorough and
19 complete review of the application. The applicant will be notified of the requirement for additional information and
20 permit processing will be suspended according to 15A NCAC 7J .0204(d).

21 (f) The Division of Coastal Management is one of the state agencies that comments on dredge and fill project
22 applications. In its role as a commenting agency the Division will use criteria in 15A NCAC 7H and local land use
23 plans to assess whether to recommend permit issuance, permit issuance with conditions, or permit denial. Other
24 commenting state agencies will make assessments, in accordance with Paragraph (c) of this Rule.

25

26 *History Note: Authority G.S. 113-229; 113A-124(a)(1);*

27 *Eff. March 15, 1978;*

28 *Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984;*

29 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0209 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0209 ISSUANCE OF PERMITS**

4 (a) The Commission hereby delegates to the department the authority to issue or deny CAMA permits. The decision
5 to issue or deny the permit will be based on the applicable criteria set forth in G.S. 113A-120, the applicable standards
6 for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the
7 Commission. The Department may condition issuance of permits on such conditions as are considered necessary to
8 ensure compliance with the applicable criteria and standards. The Department's decisions to grant or deny CAMA
9 permits may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

10 (b) The Department will make a final decision with respect to a dredge and fill permit application as provided in G.S.
11 113-229(e) upon considering the field investigation report, the comments of all interested state agencies, the comments
12 of adjacent riparian landowners and the comments of other interested parties. The Department's decisions to grant or
13 deny dredge and fill permits may be appealed as provided in G.S. Chapter 150B, G.S. 113-229, and 15A NCAC 7J
14 Section .1000.

15 (c) In cities and counties that have developed local management programs, applications for minor development
16 permits shall be considered by the local permit officer. The decision to issue or deny the permit will be based on the
17 applicable criteria set forth in G.S. 113A-120, the applicable standards for development set forth in 15A NCAC,
18 Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The local permit officer may
19 condition issuance of a permit on such conditions as are considered necessary to ensure compliance with applicable
20 criteria and standards. A city's or county's decision to grant or deny a CAMA minor development permit may be
21 appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

22

23 *History Note: Authority G.S. 113-229; 113A-118(c); 113A-122(c); 113A-124;*

24 *Eff. March 15, 1978;*

25 *Amended Eff. October 1, 1988; November 1, 1984; September 6, 1979; March 5, 1979;*

26 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0210 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES**

4 Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered
5 development and requires CAMA permits. Replacement of structures shall be permitted if the replacements is
6 consistent with current CRC rules. Repair of structures damaged by natural elements, fire or normal deterioration is
7 not considered development and shall not require CAMA permits. The CRC shall use the following criteria to
8 determine whether proposed work is considered repair or replacement.

9 (1) NON-WATER DEPENDENT STRUCTURES. Proposed work is considered replacement if the
10 cost to do the work exceeds 50 percent of the market value of an existing structure immediately
11 prior to the time of damage or the time of request. Market value and costs are determined as follows:

12 (a) Market value of the structure does not include the value of the land, value resulting from
13 the location of the property, value of accessory structures, or value of other improvements
14 located on the property. Market value of the structure shall be determined by the Division
15 based upon information provided by the applicant using any of the following methods:

- 16 (i) appraisal;
- 17 (ii) replacement cost with depreciation for age of the structure and quality of
18 construction; or
- 19 (iii) tax assessed value.

20 (b) The cost to do the work is the cost to return the structure to its pre-damaged condition,
21 using labor and materials obtained at market prices, regardless of the actual cost incurred
22 by the owner to restore the structure. It shall include the costs of construction necessary to
23 comply with local and state building codes and any improvements that the owner chooses
24 to construct. The cost shall be determined by the Division utilizing any or all of the
25 following:

- 26 (i) an estimate provided by a North Carolina licensed contractor qualified by license
27 to provide an estimate or bid with respect to the proposed work;
- 28 (ii) an insurance company's report itemizing the cost, excluding contents and
29 accessory structures; or
- 30 (iii) an estimate provided by the local building inspections office.

31 (2) WATER DEPENDENT STRUCTURES. The proposed work is considered replacement if it
32 enlarges the existing structure. The proposed work is also considered replacement if:

33 (a) in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing
34 moorings, more than 50 percent of the framing and structural components (beams, girders,
35 joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage
36 condition. Water dependent structures that are structurally independent from the principal

1 pier or dock, such as boatlifts or boathouses, are considered as separate structures for the
2 purpose of this Rule;

3 (b) in the case of boat ramps and floating structures such as docks, piers, platforms, and
4 modular floating systems, more than 50 percent of the square feet area of the structure must
5 be rebuilt in order to restore the structure to its pre-damage condition;

6 (c) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50
7 percent of the linear footage of the structure must be rebuilt in order to restore the structure
8 to its pre-damage condition.

9

10 *History Note: Authority G.S. 113A-103(5)b.5.; 113A-107(a),(b);*

11 *Eff. July 1, 1990;*

12 *Amended Eff. August 1, 2007.*

13

14

1 15A NCAC 07J .0211 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0211 NON-CONFORMING DEVELOPMENT**

4 A non-conforming structure is any structure within an AEC other than Ocean Hazard and Inlet Hazard AECs that is
5 inconsistent with current CRC rules, and, was built prior to the effective date(s) of the rule(s) with which it is
6 inconsistent. Replacement of such structures shall be allowed when all of the following criteria are met:

- 7 (1) the structure will not be enlarged beyond its original dimensions;
- 8 (2) the structure will serve the same or similar use;
- 9 (3) there are no practical alternatives for replacing the structure to provide the same or similar benefits
10 in compliance with current rules; and
- 11 (4) the structure will be rebuilt so as to comply with current rules to the maximum extent possible.

12

13 *History Note: Authority G.S. 113A-107(a),(b);*

14 *Eff. July 1, 1990;*

15 *Amended Eff. December 1, 1991;*

16 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0301 is readopted as published in 34:09 NCR 762 as follows:

2
3 **SECTION .0300 - HEARING PROCEDURE**
4

5 **15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING**

6 (a) Under G.S. 113A-121.1(a), only the following persons are entitled to appeal a permit decision by filing a petition
7 for a contested case hearing as provided in 15A NCAC 07J .0302:

- 8 (1) any applicant for a minor or major development permit; and
9 (2) the Secretary in the case of a decision by a local official on a minor development permit.

10 (b) Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision
11 under Paragraph (a) of this Rule may file a request for such a hearing with the Chairman of the Coastal Resources
12 Commission. The hearing request shall be filed with the Director, Division of Coastal Management, Department of
13 Environment and Natural Resources (DENR), 400 Commerce Avenue, Morehead City, NC 28557, and a copy thereof
14 shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The
15 Commission hereby delegates to the Chairman the authority to determine whether persons other than those entitled to
16 a hearing shall be granted a hearing. The Chairman shall grant a hearing upon finding that the criteria in G.S. 113A-
17 121.1(b) have been satisfied. A person whose hearing request is granted may file a petition for a contested case
18 hearing as provided in 15A NCAC 07J .0302. A denial of a request for a hearing may be appealed as provided in G.S.
19 113A-121.1(b).

20
21 *History Note: Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 113A-124;*
22 *Eff. March 15, 1978;*
23 *Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984;*
24 *RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;*
25 *Amended Eff. March 31, 1992;*
26 *RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;*
27 *Amended Eff. June 1, 2005; April 1, 1992;*
28 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0302 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0302 PETITION FOR CONTESTED CASE HEARING**

4 (a) Any person who is entitled or authorized to appeal a permit decision under Rule .0301(a) may file a petition for a
5 contested case hearing with Office of Administrative Hearings, 6714 Mail Service Center, Raleigh NC 27699-6714.

6 The petition shall be filed within 20 days of the permit decision being appealed as provided in G.S. 113A-121.1(a).

7 (b) Any person who has been granted a hearing by the Chairman of the Coastal Resources Commission under Rule
8 .0301(b) may file a petition for a contested case hearing with the Office of Administrative Hearings, 6714 Mail Service
9 Center, Raleigh, NC 27699-6714. The petition shall be filed within 20 days after the Chairman's decision on the
10 hearing request as provided in G.S. 113A-121.1(b).

11 (c) Any petition shall conform to the requirements of G.S. 150B-23. A copy of the petition shall be served on the
12 Director, Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557, and on the Attorney
13 General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. If a minor development permit is appealed, a
14 copy of the petition shall also be served on the local permit officer. Failure to file any petition within the time period
15 in G.S. 113A-121.1 (a) and (b) constitutes a waiver of the opportunity for a contested case hearing.

16 (d) Upon the request of the Director, the local permit officer shall submit a certified copy of the entire record of any
17 minor permit decision which is being appealed to the Director. The record shall include the elements indicated in 15A
18 NCAC 07I .0508(c).

19

20 *History Note: Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 113A-124;*

21 *Eff. March 15, 1978;*

22 *Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984; July 1, 1982;*

23 *RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;*

24 *Amended Eff. March 31, 1992;*

25 *RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;*

26 *Amended Eff. June 1, 2005; April 1, 1992;*

27 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0312 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0312 SETTLEMENT**

4 (a) Whenever possible, the Commission encourages the resolution of disputes over the grant or denial of CAMA
5 permits and dredge and fill permits.

6 (b) The Commission hereby delegates to the director the authority to enter into settlements of appeals concerning
7 CAMA permits and dredge and fill permits prior to the time the administrative law judge opens the hearing on the
8 permit appeal. The director may enter into a settlement without the Commission's approval. Such a settlement shall
9 not be considered a final commission decision, but shall be subject to appeal pursuant to G.S. 113A-121.1 and G.S.
10 113-229(f). The Department shall provide public notice of any settlement entered into prior to the opening of the
11 administrative hearing in the same manner as it provides public notice of permit decisions.

12 (c) The Commission further delegates to the director the authority to enter into negotiations concerning the settlement
13 of any permit appeal after the opening of the hearing on it. Any settlement after the opening of the hearing on an
14 appeal must be submitted to the Commission for adoption or rejection. All parties to a proposed settlement agreement
15 shall waive the time limitation in G.S. 113A-122(c) so as to prevent the decision being appealed from becoming
16 effective before the Commission's consideration of the proposed settlement. The Commission's adoption of any
17 settlement shall constitute a final commission decision under G.S. 113A-123.

18

19 *History Note: Authority G.S. 113A-120; 113A-122; 113A-124;*

20 *Eff. April 1, 1987;*

21 *Amended Eff. July 1, 1989; October 1, 1988;*

22 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0602 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**

4 (a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department
5 of Environment and Natural Resources (DENR), 400 Commerce Avenue, Morehead City NC 28557, and also the
6 Attorney General's Office, 9001 Mail Service Center, Raleigh NC 27699-9001. All requests shall include the
7 following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a
8 statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or
9 statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that
10 is the subject of the declaratory ruling.

11 (b) A request for a ruling on the applicability of a rule, order, or statute shall include a description of the factual
12 situation on which the ruling is to be based. A request for a ruling on the validity of a commission rule shall state the
13 aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a
14 single request. A request for a ruling shall include or be accompanied by:

- 15 (1) a statement of facts proposed for adoption by the Commission; and
- 16 (2) a draft of the proposed ruling.

17

18 *History Note: Authority G.S. 113A-124; 150B-4;*

19 *Eff. June 1, 1979;*

20 *Amended Eff. June 1, 2005; October 1, 1992; November 1, 1991; July 1, 1990; May 1, 1990;*

21 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0603 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS**

4 (a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings
5 and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent
6 property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall
7 prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether
8 for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory
9 ruling on finding that:

- 10 (1) the requesting party, any other directly affected persons, and the Division of Coastal Management
11 cannot agree on a set of undisputed facts sufficient to support a meaningful ruling;
12 (2) the matter is the subject of a pending contested case hearing; or
13 (3) no genuine controversy exists as to the application of a statute or rule to a proposed project or
14 activity.

15 (b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next
16 regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the
17 requesting party, the adjacent property owners and other persons to whom the Commission decides to give notice no
18 less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to
19 whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed
20 declaratory ruling.

21 (c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party
22 requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider
23 such factors as: whether additional public participation would aid the Commission in reaching a decision; whether
24 any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal
25 rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would
26 affect the application and interpretation of a rule in which other persons might be interested. All persons receiving
27 notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed
28 ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to
29 Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be
30 provided to the Commission and shall be included in the record of the declaratory ruling.

31 (d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling.
32 The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the
33 Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The
34 declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.

35 (e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following
36 items:

- 37 (1) the request for a ruling;

- 1 (2) any written comments by interested parties;
- 2 (3) the statement of undisputed facts on which the ruling was based;
- 3 (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- 4 (5) any other matter considered by the Commission in making the decision; and
- 5 (6) the declaratory ruling together with the reasons therefore.

6 (f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by
7 the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the
8 Commission from prospectively changing a ruling.

9 (g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a
10 contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the
11 merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the
12 merits of the request and shall be subject to judicial review.

13
14 *History Note: Authority G.S. 113A-124; 150B-4;*
15 *Eff. June 1, 1979;*
16 *Amended Eff. October 1, 1992; October 1, 1988;*
17 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0604 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0604 FEDERAL ACTIVITIES**

4 (a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written
5 concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a
6 proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman
7 determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.

8 (b) The request for ruling shall include:

- 9 (1) a statement identifying the rule, statute or order at issue;
- 10 (2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of
11 property adjacent to the property on which the proposed federal activity will take place;
- 12 (3) a statement of facts proposed for adoption by the Commission and any documentary evidence
13 supporting the proposed statement of facts;
- 14 (4) a draft of the proposed ruling;
- 15 (5) a statement indicating that the Division of Coastal Management has preliminarily determined that
16 the project may be inconsistent with a coastal management statute or regulation; and
- 17 (6) a statement identifying the factual issues in dispute between the Department and the federal agency.

18 (c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent property owners and to
19 persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation
20 in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling.
21 Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the
22 Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be
23 included in the record of the declaratory ruling.

24 (d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission.
25 Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for
26 declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

27

28 *History Note: Authority G.S. 113A-124; 150B-4;*

29 *Eff. November 30, 1992;*

30 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0605 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0605 PETITIONS FOR RULEMAKING**

4 (a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition
5 addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and
6 shall contain the following information:

7 (1) either a draft of the proposed rule or a summary of its contents;

8 (2) a statement of reasons for adoption of the proposed rule(s);

9 (3) a statement of the effect on existing rules or orders;

10 (4) any data in support of the proposed rule(s);

11 (5) a statement of the effect of the proposed rule on existing practices; and

12 (6) the name and address of the petitioner.

13 (b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least
14 four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the
15 Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

16

17 *History Note: Authority G.S. 113A-124; 150B-20;*

18 *Eff. January 1, 1989;*

19 *Amended Eff. October 1, 1992;*

20 *Readopted Eff. August 1, 2022.*

1 15 NCAC 07J .0701 is readopted as published in 34:09 NCR 762 as follows:
2

3 **SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS**
4

5 **15 NCAC 07J .0701 VARIANCE PETITIONS**

6 (a) Any person whose application for a CAMA major or minor development permit has been denied or issued with
7 condition(s) that the person does not agree with may petition for a variance from the Commission by means of the
8 procedure described in this Section. Before filing a petition for a variance from a rule of the Commission, the person
9 must seek relief from local requirements restricting use of the property, and there must not be pending litigation
10 between the petitioner and any other person which may make the request for a variance moot.

11 (b) The procedure in this Section shall be used for all variance petitions except when:

- 12 (1) the Commission determines that more facts are necessary; or
- 13 (2) there are controverted facts that are necessary for a decision on the variance petition.

14 (c) Variance petitions shall be submitted on forms provided by the Department of Environment and Natural
15 Resources. The following information shall be submitted before a variance petition is considered complete:

- 16 (1) the case name and location of the development as identified on the denied permit application;
- 17 (2) a copy of the deed to the property on which the proposed development would be located;
- 18 (3) a copy of the permit application and denial for the development in question;
- 19 (4) the date of the petition, and the name, address, and phone number of the petitioner and his or her
20 attorney, if applicable;
- 21 (5) a complete description of the proposed development, including a site drawing with topographical
22 and survey information;
- 23 (6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks
24 a variance;
- 25 (7) notice of the variance petition sent certified mail, return receipt requested to the adjacent property
26 owners and persons who submitted written comments to the Division of Coastal Management or the
27 Local Permit Officer during the permit review process and copies of the documents which indicate
28 that the certified mail notices were received or that deliveries were attempted;
- 29 (8) an explanation of why the petitioner believes that the Commission should make the following
30 findings, all of which are necessary for a variance to be granted:
 - 31 (A) that unnecessary hardships would result from strict application of the development rules,
32 standards, or orders issued by the Commission;
 - 33 (B) that such hardships result from conditions peculiar to the petitioner's property such as the
34 location, size, or topography of the property;
 - 35 (C) that such hardships did not result from actions taken by the petitioner; and

1 (D) that the requested variance is consistent with the spirit, purpose and intent of the
2 Commission's rules, standards or orders; will secure the public safety and welfare; and will
3 preserve substantial justice.

4 (9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in
5 the petitioner's explanation as to why he meets the criteria for a variance; and

6 (10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to
7 consider.

8 (d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of Environment and
9 Natural Resources, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural Resources Section,
10 Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

11 (e) A variance petition shall be considered by the Commission at a scheduled meeting. Petitions shall be scheduled
12 in chronological order based upon the date of receipt of a complete variance petition by the Division of Coastal
13 Management. A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the
14 Division of Coastal Management at least six weeks in advance of a scheduled Commission meeting to be considered
15 by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request,
16 the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for
17 hearing after all then pending variance requests.

18 (f) Written notice of a variance hearing or Commission consideration of a variance petition shall be provided to the
19 petitioner and the permit officer making the initial permit decision.

20
21 *History Note: Authority G.S. 113A-120.1; 113A-124;*
22 *Eff. December 12, 1979;*
23 *Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983;*
24 *Temporary Amendment Eff. December 20, 2001;*
25 *Temporary Amendment Expired October 12, 2002;*
26 *Temporary Amendment Eff. December 1, 2002;*
27 *Amended Eff. March 1, 2009; June 1, 2005; August 1, 2004;*
28 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0702 is readopted as published in 34:09 NCR 762 as follows:

2
3 **15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS**

4 (a) The Division of Coastal Management, as staff to the Commission, shall review petitions to determine whether
5 they are complete according to the requirements set forth in Rule .0701. Incomplete petitions and a description of the
6 deficiencies shall be returned to the petitioner. Complete variance petitions shall be scheduled for the appropriate
7 Commission meeting.

8 (b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the
9 variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall
10 be prepared and signed by both parties.

11 (c) After the facts agreed upon by the petitioner and staff, the staff shall prepare a written recommendation which
12 shall be submitted to the Commission before the petition is considered. The staff recommendation shall include:

- 13 (1) a description of the property in question;
- 14 (2) a description of how the use of the property is restricted or otherwise affected by the applicable
15 rules;
- 16 (3) the Stipulated Facts;
- 17 (4) staff's position on whether the petition meets or does not meet each of the requirements for a
18 variance; and
- 19 (5) petitioner's position on each of the variance criteria.

20 Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit
21 decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four
22 weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the
23 next scheduled Commission meeting.

24 (d) If the staff determines that agreement cannot be reached on sufficient facts on which to base a variance decision,
25 the petition shall be considered by means of an administrative hearing to determine the relevant facts.

26
27 *History Note: Authority G.S. 113A-120.1; 113A-124;*
28 *Eff. December 12, 1979;*
29 *Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988;*
30 *Temporary Amendment Eff. December 20, 2001;*
31 *Temporary Amendment Expired October 12, 2002;*
32 *Temporary Amendment Eff. December 1, 2002;*
33 *Amended Eff. July 3, 2008; August 1, 2004;*
34 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07J .0703 is readopted as published in 34:09 NCR 762 as follows:

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3 **15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS**

4 (a) The Commission may review the variance petition and staff recommendation and hear oral presentation by the
5 petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members
6 are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

7 (b) The Commission or its appointed member or members shall be provided with copies of the petition, the stipulated
8 facts, and the staff recommendation before considering the petition.

9 (c) At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s)
10 and shall present comments concerning whether the Commission should make the findings necessary for granting the
11 variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission
12 may set time limits on such oral presentations.

13 (d) The final decision of the Commission may be made at the meeting at which the matter is heard or in no case later
14 than the next scheduled meeting. The final decision shall be transmitted to the petitioner by certified mail, return
15 receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the
16 Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the
17 matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a
18 hearing in the Office of Administrative Hearings.

19 (e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the
20 Commission.

21 (f) To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).

- 22 (1) that unnecessary hardships would result from strict application of the development rules, standards,
23 or orders issued by the Commission;
- 24 (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size,
25 or topography;
- 26 (3) that such hardships did not result from actions taken by the petitioner; and
- 27 (4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules,
28 standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

29
30 *History Note: Authority G.S. 113A-120.1;*
31 *Eff. December 12, 1979;*
32 *Amended Eff. December 1, 1991; March 3, 1981;*
33 *Temporary Amendment Eff. December 20, 2001;*
34 *Temporary Amendment Expired October 12, 2002;*
35 *Temporary Amendment Eff. December 1, 2002;*
36 *Amended Eff. March 1, 2009; August 1, 2004;*
37 *Readopted Eff. August 1, 2022.*