

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0501, 15A NCAC 07H .0502, 15A NCAC 07H .0503, 15A NCAC 07H .0505, 15A NCAC 07H .0506, 15A NCAC 07H .0507, 15A NCAC 07H .0508, 15A NCAC 07H .0509, and 15A NCAC 07H .0510 (Liebman); 15A NCAC 07M .0201; 15A NCAC 07M .0202; 15A NCAC 07M .0401; 15A NCAC 07M .0701; 15A NCAC 07M .1001; and 15A NCAC 07M .1101 (Peaslee).

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
 - Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

Following the Commission's objection at the September meeting, the agency requested the return of Rules 15A NCAC 07H .0504, 15A NCAC 07M .0801 and 07M .0802, which had been covered by a joint staff opinion issued on July 7, 2022. Staff sent a letter to the agency officially returning these three rules on December 6, 2022.

The agency submitted revisions for all of the remaining above-captioned rules. However, it is staff's opinion that the agency's revisions do not satisfy the Commission's objections to these rules, and that the Commission should continue to object to the revised rules.

Moreover, with respect to 15A NCAC 07H .0508, the agency revised the Rule to add language ("significant adverse impact") which was specifically objected to in Rule 07H .2305. Thus, to that extent, staff recommends an additional objection to Rule 07H .0508 for ambiguity as the phrase "significant adverse impact" is undefined and susceptible to multiple conflicting interpretations.

Thus, staff recommends continuing the existing objections to each of the above-captioned Rules, and adding an objection to the new language of Rule 07H .0508 for ambiguity.

Brian Liebman & William W. Peaslee
Commission Counsel
Issued 12/14/22

§ 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
 - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
 - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
 - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
 - e. Statements of agency policy made in the context of another proceeding, including:
 - 1. Declaratory rulings under G.S. 150B-4.
 - 2. Orders establishing or fixing rates or tariffs.
 - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
 - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
 - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

§ 150B-19.1. Requirements for agencies in the rule-making process.

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.

- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

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

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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~~ **Natural** and cultural
7 resource areas **and is** are defined as areas containing environmental, natural or cultural resources of more than local
8 significance in which uncontrolled or incompatible development could result in major or irreversible damage to natural
9 systems or cultural resources, scientific, educational, or associative values, or aesthetic qualities.

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

12

113A-124;

13

Eff. September 9, 1977;

14

Amended Eff. June 1, 1979;

15

Readopted Eff. January 1, 2023.

1 15A NCAC 07H .0502 is readopted as published **with changes** 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 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.

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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. January 1, 2023.*

1 15A NCAC 07H .0503 is readopted as published with changes 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, may~~ be made by citizens, interest groups, local governments,
10 or state and federal agencies. Nominations shall be on a standard ~~form form,~~ available from the Division of Coastal
11 Management and shall be submitted to the Division of Coastal Management (DCM) at 400 Commerce Ave., Morehead
12 City NC 28557. (DCM). The nomination shall include information relating to the location, size, importance,
13 ownership, and uniqueness of the proposed site. ~~Nomination forms are available from the Division of Coastal~~
14 ~~Management.~~

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

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

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

35 (f) Public Hearing. If, after receiving the detailed review, the CRC decides to consider formal designation of the site
36 as an AEC and adopt the particular a management plan or use standards developed, a public hearing or hearings shall
37 be conducted and notice of hearing published and distributed in accordance with the requirements of G.S. 113A-115

1 and G.S. 150B-21.2. Copies of the site description and of any proposed rules shall be made available for public
2 inspection at the county courthouse in each affected county and at the Morehead City Office of the Division of Coastal
3 Management. At the hearing(s) the CRC shall present the documentation and recommendations in support of the
4 designation decision.

5 (g) Formal Designation. ~~After consideration of all comments, the Commission shall make its final judgment.~~ If the
6 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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8 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e,f,g, and h; 113A-124;*

9 *Eff. September 9, 1977;*

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

11 *Readopted Eff. January 1, 2023.*

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

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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-shall** be made by the Commission based upon the listing adopted by the
8 North Carolina Wildlife Resources Commission or the federal government listing; upon written reports or testimony
9 of 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 the State's** natural heritage and for the protection of natural diversity which is related
13 to biological stability. These habitats and the species they support provide a valuable educational and scientific
14 resource 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.

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

20

Eff. September 9, 1977;

21

Readopted Eff. January 1, 2023.

1 15A NCAC 07H .0506 is readopted as published **with changes** 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** **These** natural areas
13 provide habitat **suitable** for threatened or endangered species or support plant and animal communities representative
14 of pre-settlement conditions. These areas **help** provide a historical perspective to changing natural habitats in the
15 coastal area and **together** are important and irreplaceable scientific and educational resources. The CRC may
16 determine significance of a natural area by consulting the Natural Heritage Priority List maintained by the Natural
17 Heritage Program within **the Department of Natural and Cultural Resources, the Division of Parks and Recreation.**
18 **The CRC will establish a standing committee, composed of two or more members of the CRC, one or more members**
19 **of the CRAC, and three or more members of the Natural Area Advisory Committee, to evaluate areas not included in**
20 **the Natural Heritage Priority List.**

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

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

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

1 15A NCAC 07H .0507 is readopted as published **with changes** in 34:09 NCR 757 as follows:

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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 shall** be evaluated by the Commission after identification
7 by the 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-shall** be able to **freely** interact with other
15 components of the identified systems. These interactions are often the natural forces acting to
16 maintain the unique qualities of the site. The primary concern is the relationship between the
17 geologic feature and the accompanying biological component associated with the feature. Other
18 interactions which may be of equal concern are those relating the geologic feature to other physical
19 components, specifically the relationship of the geologic feature to the hydrologic elements; ground
20 water and surface runoff.

21 (2) To ensure that the designated geologic feature or process **will-shall** be preserved for and be
22 accessible to 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 shall** be related to the educational and aesthetic qualities of the
25 feature.

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

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

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

5 (2) All sand which is removed from the area within the AEC boundary in accordance with 7H
6 .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the
7 Division of Coastal Management in consultation with the Division of Parks and Recreation;

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

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12 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;*
13 *Eff. September 9, 1977;*
14 *Amended Eff. March 1, 1988;*
15 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07H .0508 is readopted as published with changes 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-shall be approved upon
5 finding that:

- 6 (1) The proposed design and location will-shall not cause no major or irreversible damage significant
7 adverse impacts to the stated values of a particular resource. One or more of the following values
8 must-shall be considered depending upon the stated significance of the resource:
- 9 (a) Development shall preserve the values of the individual resource as it functions as a critical
10 component of a natural system.
 - 11 (b) Development shall not adversely affect cause significant adverse impacts to the values of
12 the resource as a unique scientific, associative, or educational resource.
 - 13 (c) Development shall be consistent with the aesthetic values of a resource as identified by the
14 local government and citizenry.
- 15 (2) No reasonable alternative sites are available outside the designated AEC.
- 16 (3) Reasonable mitigation Mitigation measures have been-shall be considered and incorporated into the
17 project plan. These measures shall include consultation with recognized authorities and with the
18 CRC.
- 19 (4) The project will-shall be of equal or greater public benefit than those benefits lost or damaged
20 through development.
- 21 ~~(5) Use standards will not address farming and forestry activities that are exempted in the definition of~~
22 ~~development (G.S. 113A-103(5)a.4).~~

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24 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;*
25 *Eff. September 9, 1977;*
26 *Amended Eff. February 1, 1982; June 1, 1979;*
27 *Readopted Eff. January 1, 2023.*

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

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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-shall
6 be evaluated by the North Carolina Historical Commission Department of Natural and Cultural Resources in
7 consultation with the Commission as part of the procedure 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 historic events; events that have made a significant contribution to the broad
12 patterns of history; 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 long-term management of the archaeological resource; only that and
23 development which would-shall not have minimal significant adverse effects impacts on the
24 archaeological resource. resource will be acceptable;
- 25 (2) to conserve significant archaeological resources, including their spatial and structural context and
26 characteristics through in-situ preservation and/or scientific study;
- 27 (3) to insure ensure that the designated archaeological resource resource, or the information contained
28 therein, be preserved for and be accessible to the scientific and educational communities for related
29 study purposes;
- 30 (4) to protect the values of the designated archaeological resource as expressed by the local government
31 and citizenry; these values should-shall be related to the educational, associative, or aesthetic
32 qualities of the resource.

33 (d) General Use Standards.

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

1 ~~to determine~~ outlines the nature, extent, conditions and ~~relative~~ significance of the cultural deposits.

2 Three avoidance measures ~~should~~ shall be ~~considered; considered, 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~~ State or, upon approval by the ~~N.C. Division~~
7 ~~of Archives and History; Department of Natural and Cultural Resources,~~ a legitimate
8 historic preservation agency or organization.

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

16 Such archaeological investigations shall comply with the following criteria:

17 (A) all archaeological work ~~will~~ shall be conducted ~~by an experienced professional~~
18 ~~archaeologist; in consultation by the Department of Natural and Cultural Resources;~~

19 (B) ~~initial~~ archaeological investigations conducted as part of the permit review process
20 ~~will~~ shall be implemented in three parts: Phase I, a reconnaissance level investigation to
21 determine the nature and extent of archaeological materials over the designated area; Phase
22 II, an intensive level investigation which represents a direct outgrowth of Phase I findings
23 and through systematic data recovery assesses the potential importance of identified
24 concentrations of archaeological materials; Phase III, mitigation of ~~significant~~ adverse
25 ~~effects~~ impacts to recognized areas of importance. Evaluations of research potential ~~will~~
26 ~~shall~~ be made and prioritized in order of importance, based upon the status of previous
27 research in the area and the integrity of the remains;

28 (C) an archaeological research design ~~will~~ shall be required for all archaeological
29 investigations. All research designs ~~will~~ shall be subject to the approval of the ~~North~~
30 ~~Carolina Division of Archives and History; Department of Natural and Cultural Resources~~
31 prior to conducting the work. A research proposal ~~must~~ shall allow at least 30 days for
32 review and comment by the ~~North Carolina Division of Archives and History; Department~~
33 ~~of Natural and Cultural Resources;~~

34 (D) data ~~will~~ shall be collected and recorded ~~accurately and systematically~~ and artifacts ~~will~~
35 ~~shall~~ be curated according to accepted ~~professional~~ standards at an approved ~~repository.~~
36 ~~repository in consultation with the Department of Natural and Cultural Resources.~~

37

1 (e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal
2 archaeological resource area of environmental concern. Permuda Island is a former barrier island located within
3 Stump Sound in southwestern Onslow County. The island is 1.2 miles long and .1 - .25 miles wide. Archaeological
4 evidence indicates earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late
5 Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological
6 remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and
7 postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains. The resources
8 offer extensive research opportunities.

9
10 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
11 *Eff. June 1, 1979;*
12 *Amended Eff. October 1, 1988; January 1, 1985;*
13 *Readopted Eff. January 1, 2023.*

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

2
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~~ shall be evaluated by the
6 ~~North Carolina Historical Commission~~ Department of Natural and Cultural Resources in consultation with the Coastal
7 Resources Commission as part of the procedure set forth in Rule .0503 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~~ Significant historic architectural resources possess integrity of design, setting, workmanship, materials,
11 and association and:

- 12 (1) are associated with historic events; ~~events that have made a significant contribution to the broad~~
13 ~~patterns of history;~~ 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 and~~ to give a sense of
23 orientation to the people of the ~~state;~~ State;
24 (2) to ~~insure~~ ensure that the designated historic architectural resource be preserved, as a tangible element
25 of 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. January 1, 2023.*

1 15A NCAC 07M .0201 is readopted **with changes** as published in 34:09 NCR 764 as follows:

2

3

SECTION .0200 - SHORELINE EROSION POLICIES

4

15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY

6 It is hereby declared that the general welfare and public interest require that development along the ocean and
7 estuarine shorelines be conducted in a manner that avoids loss of life, property and amenities. It is also declared
8 that protection of the recreational use of the shorelines of the state is in the public interest. In order to accomplish
9 these public purposes, the planning of future land uses, **reasonable** rules and public expenditures **should shall** be
10 created or accomplished in a coordinated manner so as to minimize the likelihood of damage to private and
11 public resources resulting from **recognized** coastal hazards.

12

13 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*

14

Eff. March 1, 1979;

15

RRC Objection due to lack of necessity Eff. October 17, 1991;

16

Amended Eff. March 1, 1992;

17

Readopted Eff. October 1, 2023.

1 15A NCAC 07M .0202 is readopted **with changes** as published in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0202 POLICY STATEMENTS**

4 (a) Pursuant to Section 5, Article 14 of the North Carolina Constitution, proposals for shoreline erosion response
5 projects shall avoid **losses impacts** to North Carolina's natural heritage. All means **should shall** be taken to identify
6 and develop response measures that will not adversely affect estuarine and marine productivity. The public right to
7 use and enjoy the ocean beaches **must shall** be protected. The protected uses include traditional recreational uses (such
8 as walking, swimming, surf-fishing, and sunbathing) as well as commercial fishing and emergency access for beach
9 rescue services. Private property rights to oceanfront properties including the right to protect that property in ways
10 that are consistent with public rights **should shall** be protected.

11 (b) Erosion response measures designed to minimize the loss of private and public resources to erosion should be
12 economically, socially, and environmentally justified. Preferred response measures for shoreline erosion shall include
13 **but not be limited to** AEC rules, land use planning and land classification, establishment of building setback lines,
14 building relocation, subdivision regulations and management of vegetation.

15 (c) The replenishment of sand on ocean beaches can provide storm protection and a viable alternative to allowing the
16 ocean shoreline to migrate landward threatening to degrade public beaches and cause the loss of public facilities and
17 private property. Experience in North Carolina and other states has shown that beach restoration projects can present
18 **a feasible an** alternative to the loss or massive relocation of oceanfront development. **In light of this experience, beach**
19 **Beach** restoration and sand renourishment and disposal projects may be allowed when:

- 20 (1) Erosion threatens to degrade public beaches and to damage public and private properties;
21 (2) Beach restoration, renourishment or sand disposal projects are determined to be socially and
22 economically feasible and cause no significant adverse **environmental** impacts;
23 (3) The project is determined to be consistent with state policies for shoreline erosion response and state
24 use standards for Ocean **hazard Hazard** and Public Trust Waters Areas of Environmental Concern
25 and the relevant rules and guidelines of state and federal review agencies.

26 When the conditions set forth in this Paragraph can be met, the Coastal Resources Commission supports, within
27 overall budgetary constraints, state financial participation in Beach Erosion Control and Hurricane Wave Protection
28 projects that are cost-shared with the federal government and affected local governments pursuant to the federal
29 Water Resources Development Act of 1986 and the North Carolina Water Resources Development Program (G.S.
30 143-215.70-73).

31 (d) The following are required with state involvement (funding or sponsorship) in beach restoration and sand
32 renourishment projects:

- 33 (1) The entire restored portion of the beach shall be in permanent public ownership;
34 (2) It shall be a local government responsibility to provide **adequate** parking, public access, and services
35 for public recreational use of the restored beach.

36 (e) Temporary measures to counteract erosion, such as the use of sandbags and beach **pushing, bulldozing should**
37 **may** be allowed, but only to the extent necessary to protect property for a short period of time until threatened

1 structures may be relocated or until the effects of a short-term erosion event are reversed. In all cases, temporary
2 stabilization measures must be compatible with public use and enjoyment of the beach.

3 (f) Efforts to permanently stabilize the location of the ocean shoreline with seawalls, groins, shoreline hardening,
4 sand trapping or similar protection devices shall not be allowed except when the project meets one of the specific
5 exceptions set out in 15A NCAC 7H .0308.

6 (g) The State of North Carolina ~~will~~ shall consider innovative institutional programs and scientific research that will
7 provide for effective management of coastal shorelines. The development of innovative measures that will lessen or
8 slow the effects of erosion while minimizing the adverse impacts on the public beach and on nearby properties is
9 encouraged.

10 (h) The planning, development, and implementation of erosion control projects will be coordinated with appropriate
11 planning agencies, affected governments and the interested public. Maximum efforts will be made by the state to
12 accommodate the interest of each interested party consistent with the project's objectives. Local, state, and federal
13 government activity in the coastal area should reflect an awareness of the natural dynamics of the ocean front.
14 Government policies ~~should shall~~ not only address existing erosion problems but ~~should shall~~ aim toward minimizing
15 future erosion problems. ~~Actions required to deal with erosion problems are very expensive.~~ In addition to the direct
16 costs of erosion abatement measures, many other costs, such as maintenance of projects, disaster relief, and
17 infrastructure repair will be borne by the public sector. Responses to the erosion ~~should shall~~ be designed to limit
18 these public costs.

19 (i) The ~~state State will~~ shall promote education of the public on the dynamic nature of the coastal zone and on effective
20 measure to cope with ~~our~~ ever changing ~~shorelines, shorelines of the coastal area.~~

21
22 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);*
23 *Eff. March 1, 1979;*
24 *Amended Eff. March 1, 1985;*
25 *RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;*
26 *Amended Eff. March 1, 1992;*
27 *RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;*
28 *Amended Eff. May 4, 1995;*
29 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0401 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2
3 **SECTION .0400 - COASTAL ENERGY POLICIES**
4

5 **15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY**

6 (a) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made
7 available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy
8 resources within the state and in offshore waters can serve important regional and national interests. However, unwise
9 development of energy facilities or energy resources can conflict with the recognized and equally important public
10 interest that rests in conserving and protecting the **valuable** land and water resources of the state and nation, particularly
11 coastal lands and waters. Therefore, in order to balance the public benefits of **necessary** energy development with the
12 need to:

- 13 (1) protect **valuable** coastal resources; and
14 (2) preserve access to and utilization of public trust resources, the planning of future uses affecting both
15 land and public trust resources,

16 the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management
17 Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse
18 impact upon **vital** coastal resources or uses, public trust areas and public access rights.

19 (b) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential
20 to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing
21 actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of
22 the federally approved North Carolina Coastal Management Program, and that exploration, development and
23 production activities associated with such leases comply with those enforceable policies. Enforceable policies
24 applicable to OCS activities include all the provisions of this Subchapter as well as any other **applicable** federally
25 approved components of the North Carolina Coastal Management Program. All permit applications, plans and
26 assessments related to exploration or development of OCS resources and other **relevant** energy facilities shall contain
27 **sufficient** information to allow analysis of the consistency of all proposed activities with these Rules.

28
29 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;*
30 *Eff. March 1, 1979;*
31 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*
32 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*
33 *Amended Eff. February 1, 2011; August 1, 2000;*
34 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0701 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2
3 **SECTION .0700 - MITIGATION POLICY**

4
5 **15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY**

6 (a) It is the policy of the State of North Carolina to require that adverse impacts to coastal lands and waters be
7 mitigated or minimized through **proper** planning, site selection, compliance with standards for development, and
8 creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained as complete and
9 functional systems by mitigating the adverse impacts of development **as much as feasible** by ~~enhancing,~~ **enhancing,**
10 creating, or restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.

11 (b) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies and
12 objectives set forth in the Coastal Area Management Act for coastal resource management and development.
13 Mitigation shall be used to enhance coastal resources and offset any potential losses occurring from **approved**
14 **permitted** and **unauthorized unpermitted** development. Proposals to mitigate losses of coastal resources shall be
15 considered only for **those projects development** shown to be in the public interest, as defined by the standards in **15A**
16 **NCAC 07M .0703. 15A NCAC 7M .0703, and only after all other reasonable means of avoiding or minimizing such**
17 **losses have been exhausted.**

18
19 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;*
20 *Eff. January 1, 1984;*
21 *Amended Eff. September 1, 1985;*
22 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .1001 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2

3 **SECTION .1000 - POLICIES ON WATER AND WETLAND BASED TARGET AREAS FOR MILITARY**
4 **TRAINING ACTIVITIES**

5

6 **15A NCAC 07M .1001 DECLARATION OF GENERAL POLICY**

7 The use of water and wetland-based target areas for military training purposes may result in adverse impacts on coastal
8 resources and on the exercise of public trust rights. The public interest requires that, to the maximum extent
9 practicable, use of such targets not infringe on public trust rights, cause damage to public trust **and coastal** resources,
10 violate **existing** water quality standards or result in public safety hazards.

11

12 *History Note: Authority G.S. 113A-102(b); 113A-107;*

13

Eff. March 1, 1990;

14

Readopted Eff. January 1, 2023.

1 15A NCAC 07M .1101 is readopted as published with changes in 34:09 NCR 764 as follows:

2
3 **SECTION .1100 - POLICIES ON BENEFICIAL USE AND AVAILABILITY OF MATERIALS**
4 **RESULTING FROM THE EXCAVATION OR MAINTENANCE OF NAVIGATIONAL CHANNELS**

5
6 **15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY**

7 ~~Certain dredged~~ Dredged material disposal practices may result in removal of material important to the sediment
8 budget of ocean and inlet beaches. This activity may, particularly over time, may adversely impact important natural
9 beach functions especially during storm events and may increase long term erosion rates. Ongoing channel
10 maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal
11 sites as existing sites fill. ~~This is a financially and environmentally costly undertaking.~~ In addition, new sites for
12 disposal are increasingly harder to find because of due to competition from development interests for suitable sites.
13 Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of
14 navigation channels be used in a beneficial way wherever practicable.

15
16 *History Note: Authority G.S. 113A-107; 113-229;*
17 *Eff. October 1, 1992;*
18 *Readopted Eff. January 1, 2023.*