

Burgos, Alexander N

Subject: FW: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

From: Goebel, Christine A <Christine.Goebel@deq.nc.gov>

Sent: Thursday, October 12, 2023 12:22 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>

Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

Just a correction- the CRC's meeting is actually 11/9 not 11/8. CG

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, October 12, 2023 11:25 AM

To: Lucasse, Mary L <mlucasse@ncdoj.gov>

Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

Good morning,

Yes, because the CRC is a commission, it has until 10 days after its next regularly scheduled meeting to either change the rule to satisfy the Commission's objection and submit the revised rule to the Commission, or submit a written response indicating that the agency has decided not to change the rule.

If the CRC's next regularly scheduled meeting is on November 8, I will expect its response to the Commission's objections by November 18, 2023.

Since the time to respond has not expired, I anticipate this will be a no-action item at the October meeting.

Thank you,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

Burgos, Alexander N

Subject: FW: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Thursday, October 12, 2023 11:25 AM

To: Lucasse, Mary L <mlucasse@ncdoj.gov>

Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

Good morning,

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If the CRC's next regularly scheduled meeting is on November 8, I will expect its response to the Commission's objections by November 18, 2023.

Since the time to respond has not expired, I anticipate this will be a no-action item at the October meeting.

Thank you,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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(984)236-1948
brian.liebman@oah.nc.gov

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From: Lucasse, Mary <MLucasse@ncdoj.gov>

Sent: Wednesday, October 11, 2023 11:50 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>; Reynolds, Phillip T <preynolds@ncdoj.gov>

Subject: [External] 15A NCAC 07H .0208, .0308, and 07M .0603

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Hi Brian,

Please confirm that under 150B-21.12(b) the CRC has until 10 days after its regularly scheduled Nov 8, 2023 meeting to respond to your August 21, 2023 letter forwarding the RRC's objections to these 3 rules. Accordingly, please confirm that I am correct that these three rules will not be considered by the RRC at its October 19, 2023 meeting.

Please include Phillip Reynolds on your response to this email (copied here) as I will be out on leave and unable to attend the October 19, 2023 meeting. Thank you. ~ Mary



Mary L. Lucasse (she/her)
Special Deputy Attorney General
NCDOJ - Environmental Division
PO Box 629
Raleigh, NC 27602
Direct: 919.716.6962
mlucasse@ncdoj.gov
www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Thursday, October 5, 2023 1:53 PM
To: Snyder, Ashley B; Liebman, Brian R; Peaslee, William W; Burgos, Alexander N
Cc: Everett, Jennifer
Subject: [External] Coastal Resources Commission

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I am the counsel for the CRC. Please include me on any correspondence regarding that Commission's rules. Thank you. ~ Mary



Mary L. Lucasse (she/her)
Special Deputy Attorney General
NCDOJ - Environmental Division
PO Box 629
Raleigh, NC 27602
Direct: 919.716.6962
mlucasse@ncdoj.gov
www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

Subject: FW: 15A NCAC 07H, I, J, M - Return Letter
Attachments: 15A NCAC 07H .0501.docx; 15A NCAC 07H .0502.docx; 15A NCAC 07H .0503.docx; 15A NCAC 07H .0505.docx; 15A NCAC 07H .0506.docx; 15A NCAC 07H .0507.docx; 15A NCAC 07H .0508.docx; 15A NCAC 07H .0509.docx; 15A NCAC 07H .0510.docx; 15A NCAC 07H .2305.docx; 15A NCAC 07I .0406.docx; 15A NCAC 07I .0506.docx; 15A NCAC 07I .0702.docx; 15A NCAC 07J .0203.docx; 15A NCAC 07J .0204.docx; 15A NCAC 07J .0206.docx; 15A NCAC 07J .0207.docx; 15A NCAC 07J .0208.docx; 15A NCAC 07J .0312.docx; 15A NCAC 07M .0201.docx; 15A NCAC 07M .0202.docx; 15A NCAC 07M .0401.docx; 15A NCAC 07M .0402.docx; 15A NCAC 07M .0403.docx; 15A NCAC 07M .0701.docx; 15A NCAC 07M .0703.docx; 15A NCAC 07M .0704.docx; 15A NCAC 07M .1001.docx; 15A NCAC 07M .1002.docx; 15A NCAC 07M .1101.docx

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>

Sent: Thursday, October 5, 2023 12:17 PM

To: Everett, Jennifer <jennifer.everett@deq.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>

Subject: RE: 15A NCAC 07H, I, J, M - Return Letter

Jennifer,

See attached proofs reflecting the return of the CRC's readoptions. We are working on pushing the changes to the Code now.

Ashley Snyder

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

15A NCAC 07H .0501 GENERAL

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4e) to (b)(4g); 113A-124;
Eff. September 9, 1977;
Amended Eff. June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .0502 SIGNIFICANCE

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4g); 113A-124;
Eff. September 9, 1977;
Amended Eff. June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .0503 NOMINATION AND DESIGNATION PROCEDURES

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e,f,g, and h; 113A-124;
Eff. September 9, 1977;
Amended Eff. June 1, 2005; May 1, 1988; May 1, 1985; February 1, 1982; June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

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

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)f; 113A-124;
Eff. September 9, 1977;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .0506 COASTAL COMPLEX NATURAL AREAS

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e; 113A-24;
Eff. September 9, 1977;
Amended Eff. October 1, 1988; February 1, 1982;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;
Eff. September 9, 1977;
Amended Eff. March 1, 1988;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .0508 USE STANDARDS

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;
Eff. September 9, 1977;
Amended Eff. February 1, 1982; June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;
Eff. June 1, 1979;
Amended Eff. October 1, 1988; January 1, 1985;
RRC September 17, 2022 and rule returned to agency on October 5, 2023.*

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

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;
Eff. June 1, 1979;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07H .2305 SPECIFIC CONDITIONS

*History Note: Authority G.S. 113A-107; 113A-118.1; 113A-124;
Eff. June 1, 1996;
Amended Eff. May 1, 2010.
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07I .0406 APPLICATION FEES

*History Note: Authority G.S. 113A-112; 113A-119; 113A-124;
Eff. December 10, 1977;
Amended Eff. July 1, 2013; October 1, 1982; May 20, 1980; August 1, 1978;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07I .0506 ALLOCATION OF AUTHORITY

*History Note: Authority G.S. 113A-117(b); 113A-124(c)(5);
Eff. November 1, 1984;
Amended Eff. June 1, 2006; May 1, 1990;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

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

History Note: *Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5);
Eff. November 1, 1984;
RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07J .0203 PREPARATION OF WORK PLATS

*History Note: Authority G.S. 113A-119; 113A-124;
Eff. March 15, 1978;
Amended Eff. July 1, 1989;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07J .0204 PROCESSING THE APPLICATION

*History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;
Eff. March 15, 1978;
Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;
Temporary Amendment Eff. September 2, 1998;
Temporary Amendment Expired June 28, 1999;
Amended Eff. August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

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

*History Note: Authority G.S. 113A-119(b);
Eff. March 15, 1978;
Amended Eff. January 1, 1990; October 1, 1988; November 1, 1983;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

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

*History Note: Authority G.S. 113-229; 113A-124(a)(1);
Eff. March 15, 1978;
Amended Eff. July 1, 1989; October 1, 1988; September 1, 1985; November 1, 1984;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07J .0208 PERMIT CONDITIONS

*History Note: Authority G.S. 113A-120(b); 113A-124(a)(1); 113A-124(c)(5);
Eff. March 15, 1978;
Amended Eff. March 1, 1985; November 1, 1984;
RRC objection Eff. September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07J .0312 SETTLEMENT

*History Note: Authority G.S. 113A-120; 113A-122; 113A-124;
Eff. April 1, 1987;
Amended Eff. July 1, 1989; October 1, 1988;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

SECTION .0200 - SHORELINE EROSION POLICIES

15A NCAC 07M .0201 DECLARATION OF GENERAL POLICY

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1979;
RRC Objection due to lack of necessity Eff. October 17, 1991;
Amended Eff. March 1, 1992;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07M .0202 POLICY STATEMENTS

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124; 16 U.S.C. Sec. 1453 (12);
Eff. March 1, 1979;
Amended Eff. March 1, 1985;
RRC Objection due to lack of necessity and unclear language Eff. October 17, 1991;
Amended Eff. March 1, 1992;
RRC Objection due to ambiguity and lack of necessity Eff. March 16, 1995;
Amended Eff. May 4, 1995;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

SECTION .0400 - COASTAL ENERGY POLICIES

15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07M .0402 DEFINITIONS

History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. October 1, 1988;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. March 1, 2011; August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.

15A NCAC 07M .0403 POLICY STATEMENTS

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;
Eff. March 1, 1979;
Amended Eff. April 1, 1992;
Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;
Temporary Amendment Eff. July 8, 1999; December 22, 1998;
Amended Eff. February 1, 2011; August 1, 2000;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

SECTION .0700 - MITIGATION POLICY

15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1985;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07M .0703 MITIGATION CANDIDACY

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984;
Amended Eff. September 1, 1985;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07M .0704 POLICY STATEMENTS

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124;
Eff. January 1, 1984;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

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

15A NCAC 07M .1001 DECLARATION OF GENERAL POLICY

*History Note: Authority G.S. 113A-102(b); 113A-107;
Eff. March 1, 1990.
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

15A NCAC 07M .1002 POLICY STATEMENTS

*History Note: Authority G.S. 113A-102(b); 113A-107;
Eff. March 1, 1990;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

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

15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY

*History Note: Authority G.S. 113A-107;
Eff. October 1, 1992;
RRC objection September 17, 2022 and rule returned to agency on October 5, 2023.*

Burgos, Alexander N

From: Liebman, Brian R
Sent: Thursday, October 5, 2023 11:36 AM
To: Everett, Jennifer
Cc: Snyder, Ashley B; Burgos, Alexander N; Peaslee, William W
Subject: 15A NCAC 07H, I, J, M - Return Letter
Attachments: 10.05.2023 Coastal Resources Commission Return Letter 07H, I, J, M.pdf

Good morning,

Attached, please find a letter formally returning the CRC's rules pursuant to S.L. 2023-134, s. 21.2.(m).

Please let me know if you have any further questions or concerns.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] RE: RRC October 2023 Special Meeting - Staff Opinion - 15A NCAC 07H, I, J, and M

From: Lucasse, Mary <MLucasse@ncdoj.gov>
Sent: Tuesday, October 3, 2023 1:58 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Everett, Jennifer <jennifer.everett@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: RRC October 2023 Special Meeting - Staff Opinion - 15A NCAC 07H, I, J, and M

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Received. ~ Mary

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, October 3, 2023 1:52 PM
To: Everett, Jennifer <jennifer.everett@deq.nc.gov>; Lucasse, Mary <MLucasse@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RRC October 2023 Special Meeting - Staff Opinion - 15A NCAC 07H, I, J, and M

Good afternoon,

Attached please find a staff opinion concerning the above captioned rules from the Coastal Resources Commission which will be considered at the RRC Special meeting Thursday, October 5, 2023.

If you have any questions or concerns, please do not hesitate to contact me.

Best,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: RRC Objections

From: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Sent: Thursday, August 17, 2023 2:07 PM
To: Willis, Angela <angela.willis@deq.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: RRC Objections

Good afternoon, Angela,

Are you asking whether these rules will be removed from the Code for failure to comply with the Periodic Review process? If so, I think that question is moot at this point. The rules will continue to appear on RRC's agenda until the agency either satisfies the objections or requests the rules be returned. If the agency satisfies the objections, then the rules will appear in the Code as readoptions. If the agency requests the rules be returned, then any rule with an objection to existing language will be removed from the Code. This would result from the return, not the Periodic Review process.

Ashley Snyder
Codifier of Rules
Office of Administrative Hearings
(984) 236-1941

Burgos, Alexander N

Subject: FW: RRC Objections

From: Willis, Angela <angela.willis@deg.nc.gov>
Sent: Wednesday, August 16, 2023 2:08 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: RRC Objections

Good afternoon Ashley,

The Division's leadership just met to discuss recent RRC objections. A question arose that I am hoping you can answer for us. During the Periodic Review process, we had several rules that received objections from the RRC. The history notes have been updated in the Code to reflect the objection. Since there is no "readoption" date in the history note due to an impasse with the RRC attorneys, have we satisfied the requirements for the readoption process? Thank you for any information you can provide. I look forward to hearing from you and I hope you have a great afternoon.

Angela

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Burgos, Alexander N

From: Liebman, Brian R
Sent: Wednesday, February 22, 2023 4:22 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N
Subject: February 2022 Continuing Objections
Attachments: CRC Combined Staff Opinions.pdf; 02.2023 CRC Continuing Objection Letter 15A NCAC 07H, I , J.pdf

Good afternoon, Jennifer,

Attached, please find a letter regarding the continuing objections to CRC's 15A 07H, 07I, and 07J rules from last Thursday's meeting.

Please let me know if you have any questions.

Thanks,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

Subject: FW: [External] FW: follow-up

From: Lucasse, Mary <MLucasse@ncdoj.gov>

Sent: Tuesday, February 21, 2023 5:43 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] FW: follow-up

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Thanks, Brian. I will discuss with the Commission and get back to you. ~ Mary

Burgos, Alexander N

Subject: FW: [External] FW: follow-up

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Tuesday, February 21, 2023 11:42 AM

To: Lucasse, Mary L <mlucasse@ncdoj.gov>

Cc: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] FW: follow-up

Hi Mary, Jennifer,

As I said to Mary when we briefly spoke after the hearing, I believe the Commission's objections for lack of necessity can be satisfied fairly easily. As was noted in my memo to the Commission, G.S. 150B-19(4) allows for "[a] brief statement that informs the public of a requirement imposed by law," and is contrasted against language that "repeats the content of a law, a rule, or a federal regulation." I think here, and in the other rules subject to similar objections, CRC can meet that standard by merely making a statutory reference and not repeating the language of the statute, while preserving whatever language is not repeating the statute.

As an example, in 07I .0506, paragraph (a) restates part of G.S. 113A-118, and paragraphs (d) and (e) repeat portions of 113A-116, 113A-118, and 113A-121. Paragraphs (b) and (c), on the other hand, state conclusions that can be drawn from the statutory language. I think the objection could be satisfied by preserving paragraphs (b) and (c), but deleting (a), (d), and (e), and stating in a new paragraph (a) something along the lines that permit letting authority shall be allocated as provided in G.S. 113A-116, 113A-118, and 113A-121. To my reading, that wouldn't change the meaning or intent of the rule, but would say the same thing without repeating the statute.

I think using that principle to amend the 4 rules subject to necessity objections (07I .0406, 07I .0506, 07I .0702, and 07I .0206) would bring you more in line with the "brief standard that informs the public of a requirement imposed by law", and would likely satisfy the Commission's objections.

Hope that is helpful,
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
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thorized state official.

Burgos, Alexander N

Subject: FW: Coastal Resources Commission rules

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, January 18, 2023 1:31 PM

To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>

Subject: RE: Coastal Resources Commission rules

Thank you for your email in which the CRC attempts to file revisions to its rules subject to September 2022 objection the day before the RRC's February meeting. This email will only address those rules assigned to me, and will largely echo Mr. Peaslee's email.

Regarding rules 07I .0508 and .0511, as well as 07J .0203, .0204, .0206, .0207, and .0208, the CRC has already filed rules pursuant to G.S. 150B-21.12(a)(1) in response to the RRC's objections from September 2022. At its December 2022 meeting the RRC tabled consideration of the rules submitted pursuant to G.S. 150B-21.12(a)(1). There is no avenue for an agency to continue to file multiple G.S. 150B-21.12(a)(1) submissions of the same rule in the absence of an RRC request or its statement of continuing objection pursuant to G.S. 150B-21.12(c). Depending on the RRC's actions tomorrow, the CRC may be able to submit these revisions for future consideration pursuant to G.S. 150B-21.12(a)(1).

Thank you,

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, January 18, 2023 11:38 AM
To: Rules, Oah; Peaslee, William W; Liebman, Brian R; Duke, Lawrence
Cc: Burgos, Alexander N; Lucasse, Mary L; Goebel, Christine A; Lopazanski, Mike; Wright, Alyssa N; Willis, Angela; Davis, Braxton C
Subject: Coastal Resources Commission rules
Attachments: 2023-01-18 Ltr to RRC re remaining rules v. 2 with .0402 an .1102.pdf; 15A NCAC 07I .0508 with tech changes (mll) Jan 2023.docx; 15A NCAC 07I .0511 (mll) Jan 2023.docx; 15A NCAC 07J .0203 (mll) with tech changes v.2Jan 23.docx; 15A NCAC 07J .0204 (mll) with tech changes Jan 2023 v 2.docx; 15A NCAC 07J .0206 (mll rev)with tech changes Jan 2023 v2.docx; 15A NCAC 07J .0207 (mll) with tech changes Jan 2023.docx; 15A NCAC 07J .0208 (mll) with tech changes Jan 2023.docx; 15A NCAC 07M .0402 with tech changes Jan 2023 v2.docx; 15A NCAC 07M .0704 (mll) with tech changes Jan 2022 v3.docx; 15A NCAC 07M .1102 with tech changes (rev) Jan 2023 v3.docx

Attached are CRC's rewritten rules and a memo addressing the objections for review at tomorrow's RRC meeting.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

January 18, 2023

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

Re: CRC's Response to RRC's Objections for the following rules:
07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305;
07I .0406, .0504, .0506, .0508, .0511, .0602, .0702;
07J .0203, .0204; .0206, .0207, .0208, .0312;
07M .0201, .0202, .0401, .0402; .0403; .0701, .0703, .0704, .1001, .1002,
.1101, and .1102

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Resources Commission ("CRC"), please accept this letter as a follow-up to comments provided at the December 15, 2022 RRC meeting. Note, some of the rules are addressed in more than one category.

First, as set forth in more detail in our November 23, 2022 letter, RRC counsel continued to recommend the RRC object to the CRC's rules at **15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07I .0504, .0508, .0511, .0602, .0702, 07J .0203, .0206, .0207, .0208, .0312, 07M .0201, .0202, .0401, .0403, .0701, .0704, .1001, .1002, and .1101** based on the allegation that "each of [these] . . . rules do not meet the definition of a "Rule" pursuant to G.S. 150B-2(8a)" and therefore the agency lacks the statutory authority to adopt these rules based on N.C. Gen. Stat. 150B-19.1(a)(1). This argument is simply incorrect. The CRC has authority to adopt "guidelines for the coastal area" through rulemaking consisting of "objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area" as recognized by the NC Supreme Court in *Adams v. Dept. of N.E.R.*, 295 N.C. 683, 249 S.E.2d 402 (1978). The CRC respectfully requests the Commission approve these rules based on authority in Chapter 113A, Article 7 and the North Carolina Supreme Court's decision.

Second, following receipt of our November 23, 2022 letter, RRC counsel continued to recommend that the RRC object to the use of the term "significant adverse impact" as ambiguous. This recommendation should be rejected. The phrase "significant adverse impact" has been recently approved by the RRC in other CRC rules. Furthermore, the North Carolina appellate courts understand this term of art (*see, e.g., Shell Island Homeowners Assoc. v. Tomlinson*, 134 N.C. App. 217 (1999) and the General Assembly has authorized the application of this standard (using the very same phrase). *See* N.C.G.S. § 113-229(e). For these reasons, the CRC respectfully requests the RRC approve the following rules which include that phrase: **07H .0508; .2305, 07J .0203; 07M .0402; .0703.**

North Carolina Rules Review Commission

January 18, 2023

Page 2

Third, following receipt of our November 23, 2022 letter, RRC counsel again recommended the RRC object to the following rules as unnecessary: **07I .0406; .0506; .0702**. These rules synthesize different sections of statutes as allowed under G.S. § 150B-19(4) and/or include additional information. I urge this Commission not to accept the Staff's recommendation for these rules. Specifically: The middle sentence in 07I .0406 regarding "deficits resulting from administrative costs" is not contained in statute. This sentence in the Rule addresses a situation that can arise when a local government handling the CAMA minor permits incurs costs greater than the permit fee collected from the applicant. This sentence allows the local program to cover that amount from other CAMA permit reimbursements. Similarly, 07I .0506 combines and consolidates the various requirements imposed by law for the benefit of the regulated public. The rule also includes additional information regarding extra-territorial areas which is not in the statute and is necessary to implement the article as allowed by G.S. § 113A-124(c)(5). Finally, 7I .0702 provides something more than is contained in case law or black letter law by specifying that the CRC, not a court or the OAH, determines whether a local permit-letting agency exceeds its authority. For these reasons, the CRC respectfully requests that the RRC determine these three rules are necessary and approve the rules.

Finally, the CRC has provided additional authority and/or technical changes to address the previous objections raised by RRC Staff Counsel in September and December, 2022 for the following rules: 07I .0508; .0511; 07J .0203; .0204; .0206; .0207; .0208 and 07M .0402, .0704, and .1102.

For the above stated reasons, we respectfully request the RRC approve the remaining re-adopted rules addressed in this letter pursuant to G.S. § 150B-21.3A. Thank you for your consideration of this request.

Sincerely,



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

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

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

2
3 **15A NCAC 07I .0508 CONSIDERATION OF APPLICATION BY LOCAL PERMIT OFFICER**

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

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

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

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

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

20
21 *History Note:* Authority G.S. 113A-117(c); 113A-124(e)(5);
22 Eff. November 1, 1984;
23 Readopted Eff. February 1, 2023.

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

2

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

4 **In order for the Commission to approve a local implementation and enforcement program the** The local governing
5 body shall enter into a commitment to accept the local management plan as part of the city or county code of ordinances
6 within a three-month period.

7

8 *History Note:* Authority G.S. 113A-111; 113A-117(c); ~~113A-124(e)(5)~~;

9

Eff. November 1, 1984;

10

Readopted Eff. February 1, 2023.

1 15A NCAC 07J .0203 is readopted as published with changes 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 shall include a top or planview, plan view, a cross-sectional view, and
5 a location map. All plats must shall have the standard north arrow. North should shall be at the top of the plat. The
6 prints must be neat and sufficiently clear to permit photographic reproduction. Originals are preferred as copies are
7 often found to be unacceptable. The applicant should use as few sheets as necessary to show clearly what is proposed.
8 Work plats must shall be accurately drawn to scale. A scale of 1" = 200' or less is normally required, required, in order
9 that project detail can be easily understood.

10 (b) Details of Work Plats

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

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

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

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

36 (c) Applications are often made for permits to authorize projects that have a portion of the development outside Areas
37 of Environmental Concern. Some Basic information concerning plans for development outside AECs is necessary to

1 determine compatibility with the local Land Use Plan and to demonstrate be reasonably sure that such development
2 will not adversely impact AECs. Therefore, any Any application for a CAMA or Dredge and Fill permit shall include,
3 at a minimum, include the following information:

- 4 (1) detailed information on any development located in or directly impacting an AEC;
- 5 (2) a plat showing the entire tract of land to be developed and possible access or roadway locations;
- 6 (3) maps or statements or government agency concerning identifying the location of wetlands within
7 the project area or indicating that there are no wetlands within the project area. to the extent that a
8 wetlands examination has been made by a private consultant or government agency. Each developer
9 of a project is urged, for his own protection and planning, to procure such information prior to
10 submission for a CAMA permit;
- 11 (4) a narrative description of the proposed development that shall include include, at a minimum, the
12 following information:
 - 13 (A) the character of the development (i.e. residential, commercial, recreational, etc.);
 - 14 (B) the maximum number of residential living units that will be permitted;
 - 15 (C) the maximum acreage that will be utilized for non-residential purposes; and,
 - 16 (D) a statement as to whether wastewater treatment is to be by municipal system, septic tank,
17 or other on-site treatment system. A general description of any on-site treatment system
18 shall be included, included;
 - 19 (E) — a statement that access, as required by all land use regulations, is available through the site
20 to the Area of Environmental Concern without crossing any Section +404= wetland or, if
21 such a crossing is required, a statement that said crossing is properly authorized. If the site
22 contains significant wetlands, such statement may be required from a qualified private
23 consultant or government agency, based on an examination of the property by such private
24 consultant or government agency. The CAMA permit when issued may be conditioned
25 upon the procurement of any required wetlands permit, if the need for such is disclosed by
26 such statement;
- 27 (5) any maps or plans that have been prepared to meet other regulatory requirements such as stormwater
28 management and sedimentation and erosion control.

29 (d) Following review of the permit application, including the aforementioned supporting data (Subparagraphs 1-59),
30 a permit may be issued conditioned upon compliance with the development parameters provided in the narrative
31 statement accompanying the application. Any subsequent violation of these narrative standards as incorporated
32 within the permit shall be a permit violation. No subsequent permit, permit modification, or other agency approval
33 shall be required for any subsequent work performed outside the Area of Environmental Concern as long as such
34 work is within the parameters described in the narrative statement presented with the permit, and included in the
35 permit conditions. Any subsequent change in the development which changes the parameters of the narrative,
36 statement shall be submitted to the staff, Division of Coastal Management, but no new permit or permit modification
37 shall be required unless staff the Division of Coastal Management finds that the changes would have the potential

1 ~~for significant adverse impact to reasonable expectation of adversely affecting~~ an Area of Environmental Concern or
2 rendering the project inconsistent with Local Land Use Plans. Nothing in this Rule would prohibit an applicant from
3 proceeding with work outside an AEC that cannot reasonably be determined to have a direct significant adverse
4 impact on the AEC while a permit application for work in the AEC is pending provided that all other necessary
5 local, state, and federal permits have been obtained.

6
7 *History Note: Authority G.S. 113-229(n)(3); 113-230(a); 113A-119; 113A-124;*
8 *Eff. March 15, 1978;*
9 *Amended Eff. July 1, 1989;*
10 *Readopted Eff. February 1, 2023.*

1 15A NCAC 07J .0204 is readopted as published with changes 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, the~~
5 Department shall send a letter ~~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 applicant [must] shall ~~submit the following: following requirements must be met;~~

8 (1) a current application form available from the Division of Coastal Management located at 400
9 Commerce Avenue, Morehead City, North Carolina, 28557. The substantive requirements of the
10 form shall include the name and contact information of the applicant, the name and contact
11 information for the agent and contractor, the project location and site description, a description of
12 the purpose, the daily use of the proposed development, and a description of the proposed
13 construction methodology; must be submitted;

14 (2) all questions on the application form must be completed or the letters "N/A" must be placed in each
15 section that does not apply;

16 (3) an accurate work ~~plan plat~~ as described in 15A NCAC 07J .0203 15A NCAC 7J .0203 herein must
17 shall be attached to all CAMA major development ~~and/or or~~ dredge and fill permit applications;

18 (4) a copy of a deed or other instrument under which the applicant claims title must accompany a
19 CAMA major development ~~and/or or~~ dredge and fill permit application;

20 (5) notice to adjacent riparian landowners must be given as follows:

21 (A) For CAMA major development permits, the applicant must provide the certified Certified
22 return mail receipts (or copies thereof) indicating that the adjacent riparian landowners who
23 share a property line with the site of the proposed development (as identified in the permit
24 application) have been sent have received a copy of the application for the proposed
25 development must be included in a CAMA major development and/or dredge and fill
26 permit application. Said landowners have 30 days from the date of notification in which
27 to comment. Such comments will be considered by the Department in reaching a final
28 decision on the application.

29 (B) For CAMA minor development permits, the applicant must shall give actual notice to all
30 adjacent riparian landowners who share a property line with the site of the proposed
31 development of his or her intention to develop his or her property and apply for a CAMA
32 minor development permit, permit to all adjacent riparian landowners. Actual notice can
33 be given by sending a certified letter, informing the adjoining property owner in person or
34 by telephone, or by using any other method which satisfies the Local Permit Officers that
35 a good faith effort has been made to provide the required notice;

36 (6) the application fee must be paid as set out in this Subparagraph:

1 (A) Major development permit - Application fees shall be in the form of a check or money
2 order payable to the Department. The application fee for private, non-commercial for profit
3 development shall be two hundred fifty dollars (\$250.00). The application fee for a public
4 or commercial for profit project shall be four hundred dollars (\$400.00).

5 (B) Minor development permit - Application fees shall be in the form of a check or money
6 order payable to the permit-letting agency in the amount of one hundred dollars (\$100.00).
7 Monies so collected may be used only in the administration of the permit program;

8 (7) any other information the Department or local permit officer deems necessary to review the
9 application and make a balanced judgment per G.S.113A-124(a)(1), on whether to issue the
10 requested permit. ~~for a review of the application must be provided. Any application not in~~
11 ~~compliance with these requirements will be returned to the applicant along with a cover letter~~
12 ~~explaining the deficiencies of the application and will not be considered accepted until it is~~
13 ~~resubmitted and determined to be complete and sufficient.~~ If a local permit officer receives an

14 application for a permit that the local permit officer lacks authority to grant, the permit officer shall
15 return the application with information as to how the application may be properly considered; and
16 (8) for development proposals subject to review under the North Carolina Environmental Policy Act
17 (NCEPA), G.S. ~~113A-100~~ 113A-1 ~~et. et~~ seq., the permit application will be complete only on
18 submission of the appropriate environmental assessment document.

19 (9) Any application not in compliance with the requirements in this Rule will be returned to the
20 applicant along with a cover letter explaining why it is not considered complete.

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

23 (d) If the application is found to be incomplete or inaccurate after processing has begun or if based on review by the
24 Division or other State and federal review agencies additional information regarding the scale or scope of the project
25 from the applicant is necessary to adequately assess the project, the processing shall be terminated held in abeyance
26 pending receipt of the additional necessary changes or necessary information from the applicant. During the pendency
27 of any termination of processing, While permit processing is suspended, the time to process the permit processing
28 period shall not run. If the changes or additional information significantly alters the scale or scope of the project
29 proposal, the application shall be considered new and the permit processing period will begin to run from that date.

30 (e) Any CAMA or Dredge and Fill violation occurring at a proposed project site for which an application is being
31 reviewed shall be processed according to the procedures in 15A NCAC 07J .0408 through 0410. ~~15A NCAC 7J~~
32 ~~.0408—0410.~~ If the violation substantially altered the proposed project site, and restoration is deemed necessary,
33 required in accordance with G.S. 113A-126. the applicant shall be notified that processing of the application will be
34 suspended pending compliance with the notice of required restoration. Satisfactory restoration Restoration of any
35 unpermitted unauthorized development that has substantially altered a at the project site is required ~~deemed necessary~~
36 to allow a complete review of the application and an accurate assessment of the project's potential impacts. The
37 applicant shall be notified that permit processing has resumed, and that a new processing deadline has been established

1 once the required restoration has been deemed satisfactory by the Division of Coastal Management or Local Permit
2 Officer.

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

8

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

10 *Eff. March 15, 1978;*

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

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

13 *Temporary Amendment Expired June 28, 1999;*

14 *Amended Eff. August 1, 2000;*

15 *Readopted Eff. February 1, 2023.*

1 15A NCAC 07J .0206 is readopted with changes 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 No later than 45 days after receiving ~~an~~ a complete application for a major development
5 permit, a significant modification to an application for a major permit, or an application to modify substantially a
6 previously issued major permit, the Division of Coastal Management shall issue public notice of the proposed
7 development as provided in G.S. 113A-119(b). Any citizen or group will, upon request, be promptly sent a copy of
8 the application upon payment of a reasonable fee to cover costs of copying, handling, and ~~posting.~~ posting as
9 authorized by G.S.132-6.2.

10

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

12 *Eff. March 15, 1978;*

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

14 *Readopted Eff. February 1, 2023.*

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 shall** include
8 such topics as project location, environmental setting, project description and probable environmental impact but will
9 not include recommendations of the office.

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

12 (c) The Department **will shall** 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 shall** be considered by the Department in
16 taking 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 **based on the criteria for granting or denying permits set for in G.S. 113A-120**. The
20 applicant **will shall** be notified of the requirement for additional information and permit processing will be suspended
21 according to 15A NCAC 7J .0204(d).

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

26
27 *History Note: Authority G.S. 113-229; 113A-124(a)(1); **113A-127**;*

28 *Eff. March 15, 1978;*

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

30 *Readopted Eff. February 1, 2023.*

1 15A NCAC 07J .0208 is readopted **with changes** as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0208 PERMIT CONDITIONS**

4 (a) Each of the ~~several state review~~ **State, federal and local reviewing** agencies may submit specific recommendations
5 regarding the manner in which the requested work should be carried out and suggest **reasonable** limitations on the
6 work in order to protect the public interest with respect to the factors enumerated in G.S. 113A-120 and/or G.S.
7 113-229(c). The ~~several state review~~ **State, federal and local reviewing** agencies also may submit specific
8 recommendations regarding limitations to be placed on the operation and/or maintenance of the completed project, as
9 necessary to ensure continued protection of the public interest with respect to those factors. Such limitations may be
10 ~~recommended by the Department or commission to be~~ imposed **by the Department** on the project in the form of "permit
11 conditions". Upon the failure of the applicant to appeal a permit condition, the applicant **will shall** be deemed to have
12 amended his permit to conform to the conditions imposed by the Department. Compliance with operational and/or
13 maintenance conditions **must shall** continue for the life of the project.

14 (b) The local permit officer may condition a minor development permit upon amendment of the proposed project to
15 take whatever measures may be **reasonably** necessary to protect the public interest with respect to the factors
16 enumerated in G.S. 113A-120. The applicant **must shall** sign the conditioned **grant permit** as an indication of
17 amendment of the proposed project in a manner consistent with the conditions set out by the local permit officer before
18 the permit shall become effective.

19 (c) Failure to comply with permit conditions constitutes a violation of an order of the Commission under G.S.
20 113A-126.

21

22 *History Note: Authority G.S. **113-229; 113A-120(b); 113A-124(a)(1); ~~113A-124(e)(5); 113A-127; 150B-19.1(d)~~***

23 *Eff. March 15, 1978;*

24 *Amended Eff. March 1, 1985; November 1, 1984.*

25 *Readopted Eff. February 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: CRC rules addressing objections Part 1 of 2

From: Lucasse, Mary <MLucasse@ncdoj.gov>

Sent: Thursday, December 15, 2022 7:01 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Willis, Angela <angela.willis@ncdenr.gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Everett, Jennifer <jennifer.everett@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>

Subject: [External] RE: CRC rules addressing objections Part 1 of 2

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Good morning,

After reviewing the RRC Staff Opinions provided on December 14, 2022, I am requesting RRC Staff Counsel recommend that the RRC defer consideration of the following rules to allow the CRC an opportunity to provide additional information and/or technical changes. Specifically, considering the information received today, the CRC would like to provide additional changes for 7I .0508, 07I .0511, 07J .0203, 07J .0204, 07J .0206, 07J .0207, 07J .0208, and 07M .0704 for consideration.

I look forward to your response. Thank you. ~ Mary



Mary L. Lucasse

Special Deputy Attorney General

NCDOJ - Environmental Division

PO Box 629

Raleigh, NC 27602

Direct: 919.716.6962

mlucasse@ncdoj.gov

www.ncdoj.gov

Please note messages to or from this address may be public records.

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 14, 2022 3:39 PM
To: Everett, Jennifer
Cc: Burgos, Alexander N; Lucasse, Mary L
Subject: 15A NCAC 07M .0703
Attachments: 12.2022 - CRC 15A NCAC 07M .0703 Staff Opinion.doc

Attached please find a recommendation for objection on the above captioned rule. I apologize for the late notice.

As always if you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 14, 2022 11:06 AM
To: Everett, Jennifer
Cc: Burgos, Alexander N; Lucasse, Mary L; Lopazanski, Mike; Davis, Braxton C; Goebel, Christine A; Willis, Angela; Miller, Tancred; Wright, Alyssa N
Subject: 15A NCAC 07M .403, .1002, and .1102
Attachments: 12.2022 - CRC 15A NCAC 07M .1002 and .1102 Staff Opinion.doc; 12.2022 - CRC 15A NCAC 07M .0403 Staff Opinion.doc

Follow Up Flag: Follow up
Flag Status: Completed

Good morning,

Attached please find the staff opinions on the CRC's submissions of November 23, 2022 concerning the above captioned rules. The RRC will review the submissions this Thursday, December 15, 2022 at 9:00 am.

As always if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Wednesday, November 23, 2022 1:14 PM
To: Rules, Oah <oah.rules@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Willis, Angela <angela.willis@ncdenr.gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: CRC rules addressing objections Part 1 of 2

Hello,

Attached are rules and a letter from the Coastal Resources Commission in response to objections. This email addresses rules:

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305;

15A NCAC 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702;

15A NCAC 07J .0203, .0206, .0207, .0208, .0210, .0312;

15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, .1102

Jennifer Everett

DEQ Rulemaking Coordinator

N.C. Depart. Of Environmental Quality

Office of General Counsel

1601 Mail Service Center

Raleigh, NC 27699-1601

Tele: (919)-707-8614

<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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Burgos, Alexander N

Subject: FW: CRC rules addressing objections Part 1 of 2
Attachments: 12.2022 - CRC 15A NCAC 07M .0704 Staff Opinion.doc

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, December 13, 2022 9:44 AM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; McGhee, Dana <dana.McGhee@oah.nc.gov>
Subject: RE: CRC rules addressing objections Part 1 of 2

Good morning,

Please find the staff opinion on 15A NCAC 07M .0704.

It is my intention to recommend approval of Rules .0601 and .0603 as amended.

As always, if you have any questions or concerns, please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

Subject: FW: CRC rules addressing objections -Part 2 of 2
Attachments: 12.2022 CRC Rules Return Letter 07H and 07M.pdf

From: Peaslee, William W <bill.peaslee@oah.nc.gov>
Sent: Tuesday, December 6, 2022 3:20 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Davis, Braxton C <Braxton.Davis@NCDENR.Gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Miller, Tancred <tancred.miller@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>; Snyder, Ashley B <ashley.snyder@oah.nc.gov>
Subject: RE: CRC rules addressing objections -Part 2 of 2

Good afternoon:

Attached please find the return of the following rules pursuant to G.S. 150B-21.12(d).

15A NCAC 07H .0504, .0601, .0603, .0604, and
15A NCAC 07M .0503, .0801, .0802, .1201, .1202.

Always, if you have any questions or concerns please do not hesitate to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
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(984) 236-1939
Bill.Peaslee@oah.nc.gov

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, November 23, 2022 1:19 PM
To: Rules, Oah; Peaslee, William W; Liebman, Brian R; Duke, Lawrence
Cc: Lucasse, Mary L; Davis, Braxton C; Lopazanski, Mike; Willis, Angela; Miller, Tancred; Goebel, Christine A; Burgos, Alexander N; Wright, Alyssa N
Subject: CRC rules addressing objections -Part 2 of 2
Attachments: 15A NCAC 07H .0504 repeal for RRC Nov 23 2022.docx; 15A NCAC 07H .0601 repeal for RRC Nov 23 2022.docx; 15A NCAC 07H .0603 repeal for RRC Nov 23 2022.docx; 15A NCAC 07H .0604 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .0503 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .0801 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .0802 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .1201 repeal for RRC Nov 23 2022.docx; 15A NCAC 07M .1202 repeal for RRC Nov 23 2022.docx; 2022-11-23 CRC Letter requesting repeal (signed).pdf

Hello,

Attached are rules and a second letter from the Coastal Resources Commission in response to objections. This email addresses rules:

15A NCAC 07H .0504, .0601, .0603, .0604, and
15A NCAC 07M .0503, .0801, .0802, .1201, .1202.

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
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Tele: (919)-707-8614
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>

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Burgos, Alexander N

From: Everett, Jennifer
Sent: Wednesday, November 23, 2022 1:14 PM
To: Rules, Oah; Peaslee, William W; Liebman, Brian R; Duke, Lawrence
Cc: Burgos, Alexander N; Lucasse, Mary L; Lopazanski, Mike; Davis, Braxton C; Goebel, Christine A; Willis, Angela; Miller, Tancred; Wright, Alyssa N
Subject: CRC rules addressing objections Part 1 of 2
Attachments: 15A NCAC 07H .0501 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0502 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0503 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0505 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0506 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0507 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0508 with tech change Nov 23 2022.docx; 15A NCAC 07H .0509 with tech changes Nov 23 2022.docx; 15A NCAC 07H .0510 with tech changes Nov 23 2022.docx; 15A NCAC 07H .2305 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0406 Nov 23 2022.docx; 15A NCAC 07I .0504 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0506 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0508 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0511 Nov 23 2022.docx; 15A NCAC 07I .0602 with tech changes Nov 23 2022.docx; 15A NCAC 07I .0702 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0203 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07J .0204 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0206 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0207 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0208 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0210 with tech changes Nov 23 2022.docx; 15A NCAC 07J .0312 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0201 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0202 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0401 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0403 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0601 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .0603 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .0701 with tech changes Nov 23 2022.docx; 15A NCAC 07M .0703 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .0704 (mll) with tech changes Nov 23 2022.docx; 15A NCAC 07M .1001 with tech changes Nov 23 2022.docx; 15A NCAC 07M .1002 with tech changes Nov 23 2022.docx; 15A NCAC 07M .1101 with tech changes Nov 23 2022.docx; 15A NCAC 07M .1102 with tech changes Nov 23 2022.docx; 2022-11-23-CRC Letter responding to RRC Objections (signed with attachment).pdf

Hello,

Attached are rules and a letter from the Coastal Resources Commission in response to objections. This email addresses rules:

15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305;
15A NCAC 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702;
15A NCAC 07J .0203, .0206, .0207, .0208, .0210, .0312;
15A NCAC 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, .1102

Jennifer Everett
DEQ Rulemaking Coordinator
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<https://deg.nc.gov/permits-rules/rules-regulations/deg-proposed-rules>

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JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

November 23, 2022

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

**Re: CRC's Response to RRC's Objections to Rules 15A NCAC
07H .0504, .0601, .0603, .0604, and
07M .0503, .0801, .0802, .1201, .1202.**

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Management Commission ("CRC) and pursuant to N.C. Gen. Stat. § 150B-21.12(d), please accept this letter as the CRC's partial written response to the North Carolina Rules Review Commission ("RRC") September 17, 2022 letter objecting to the above referenced rules (the "Objection Letter"). The CRC submitted a letter dated November 22, 2022 addressing the remaining rules included in the Objection Letter.

During the periodic review process and in considering the Objection Letter, the CRC has identified the above referenced rules as ones that the CRC believes are no longer necessary. At its recent November 17, 2022 meeting, the CRC moved to repeal the above-referenced rules. Therefore, the CRC is submitting this written request to the RRC pursuant to N.C. Gen. Stat. § 150B-21.12(d) requesting the return of the above referenced rules. Specifically, the CRC is requesting the following rules be removed from the North Carolina Administrative Code in response to the RRC's Objections:

15A NCAC 07H .0504, .0601, .0603, .0604

15A NCAC 07M .0503, .0801, .0802, .1201, .1202

If there are any questions regarding this request, please do not hesitate to let us know.

Sincerely,

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

North Carolina Rules Review Commission

November 23, 2022

Page 2

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

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
(919) 716-6962
MLUCASSE@NCDOJ.GOV

November 23, 2022

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

Re: CRC's Response to RRC's Objections to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305, 07I .0406, .0504, .0506, .0508, .0511, .0602, .0702; 07J .0203, .0206, .0207, .0208, .0210, .0312; 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, .1102.

Dear Chair Doran and Commission Members:

On behalf of the North Carolina Coastal Resources Commission ("CRC") and pursuant to N.C. Gen. Stat. § 150B-21.12(a)(1) and (2), please accept this letter as the CRC's partial written response to the North Carolina Rules Review Commission ("RRC") September 17, 2022 letter objecting to the above referenced rules (the "Objection Letter"). The CRC will be submitting a second letter (dated November 23, 2022) addressing the remaining rules included in the Objection Letter.

While the CRC disagrees with the RRC's objections, this written response is not intended to be—and should not be interpreted as—a written request to return the above-referenced rules pursuant to N.C. Gen. Stat. § 150B-21.12(d). The CRC is not seeking the return of these rules at this time and, instead, appreciates the opportunity to continue working with the RRC and its staff to resolve the RRC's objections.

At its recent November 17, 2022 regularly scheduled meeting, the CRC decided to submit additional technical changes as allowed by N.C. Gen. Stat. § 150B-21.12(a)(1) to the following rules: 07H .0501, .0506, .0508, .0509, .0510, 07I .0504, .0508, .0511, .0602, .0702, 07J .0203, .0204, .0206, .0207, .0208, .0210, .0312, 07M .0601, .0603, .0703, and .0704. While the CRC disagrees with the RRC's objections to these rules, we have attempted to resolve the RRC's concerns through additional technical changes and are submitting the revised rules to the RRC along with this Response. Please do not hesitate to let us know if there are any additional technical changes requested.

In addition, the CRC decided not to submit changes as allowed by N.C. Gen. Stat. § 150B-21.12(a)(2), for the following rules: 15A NCAC 07H .0502, .0503, .0505, .0507, .2305, 07I .0406, .0506, 07M .0201, .0202, .0401, .0402, .0403, .0701, .1001, .1002, .1101, .1102. The CRC disagrees with the RRC's objections to these rules.

The CRC is submitting the following additional information in an effort to resolve the concerns raised in RRC Objection Letter to all the above-referenced rules.

1.C RC’s Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(1).

In its Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07I .0504, .0508, .0511, .0602, .0702, 07J .0203, .0206, .0207, .0208, .0312, 07M .0201, .0202, .0401, .0403, .0701, .0704, .1001, .1002, and .1101 based on the allegation that “each of [these] . . . rules do not meet the definition of a “Rule” pursuant to G.S. 150B-2(8a)” and therefore the agency lacks the statutory authority to adopt these rules based on N.C. Gen. Stat. 150B-19.1(a)(1). *See* Objection Letter and attached RRC Staff Opinions. This argument is incorrect.

The CRC’s authority and duty to adopt “guidelines for the coastal area” consisting of “statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area . . . consistent with the goals . . . in G.S. 113A-102” is well established and uniquely provided for under its enabling statute. N.C. Gen. Stat. § 113A-107. In 1978, the North Carolina Supreme Court concluded that “the Act properly delegates authority to the CRC to develop, adopt and amend State guidelines for the coastal area.” *Adams v. NC Dep’t of Natural & Economic Resources*, 295 N.C. 683, 698, 249 S.E. 2d 402, 411 (1978). The Commission provided an initial response on this issue in its September 1, 2022 Memorandum to Brian Liebman and William W. Peaslee, RRC Commission Counsel attached is a copy for your convenience.

During the RRC’s September 15, 2022 meeting, RRC counsel was asked by one of the Commissioners for a response to the CRC’s claim that that it has authority to adopt rules to set policies and guidelines. RRC counsel responded that the CRC could set policies and guidelines as contemplated by statute—just not by rulemaking. This response completely misunderstands the authority provided by the legislature to the CRC. As explained by the North Carolina Supreme Court, “amendments to the State guidelines by the CRC are considered administrative rule-making.”¹ *Adams*, 295 N.C. at 702, 249 S.E.2d at 413. (Emphasis added). This is consistent with the requirement that the CRC “shall not seek to implement or enforce against any person a policy, guideline, or other interpretive statement” unless it has “been adopted as a rule in accordance with this Article.” N.C. Gen. Stat. § 150B-18. Thus, as authorized by the North Carolina General Assembly in the CRC’s enabling statute and confirmed by the North Carolina Supreme Court, the CRC is authorized to set guidelines (including objectives, policies, and standards) regulating the public and private use of land and waters within the coastal area through rule-making.

These rules are not newly adopted but have been in existence for decades as part of the North Carolina Administrative Code pursuant to the very same statutory authority. This creates “a rebuttable presumption that” each “rule was adopted in accordance with Part 2 of the Article.” *See* N.C. Gen. Stat. § 150B-21.9(a1). For the RRC to change course in 2022 and now assert that the CRC’s long-standing rules are not within the authority

¹ This case was decided under an earlier iteration of the Administrative Procedure Act at N.C. Gen. Stat. 150A.

delegated to the agency by the General Assembly, is arbitrary and capricious and contrary to the North Carolina Supreme Court precedent.

In addition to addressing the RRC's generic objection regarding whether the rules are "Rules," the CRC has provided additional authority for specific rules that the RRC identified as lacking authority. For example, the RRC objected to 15A NCAC 07J .0208 claiming that CAMA does not authorize the circulation of CAMA permit application to other state agencies for review. However, the CRC was instructed by the General Assembly "to coordinate the issuance of permits" and consideration of variances under the Dredge & Fill Act and the Coastal Area Management Act "to avoid duplication and to create a single, expedited permitting process." N.C. Gen. Stat. § 113-229(e). Both statutes also provide for the CRC to adopt rules to implement these articles. *See* N.C. Gen. Stat. § 113-229(e) ("The CRC may adopt rules interpreting and applying the provisions of this section and rules specifying the procedures for obtaining a permit under this section.") and N.C. Gen. Stat. § 113A-124(c)(8) (The CRC has additional authority "[t]o adopt rules to implement this Article."). As noted by RRC counsel, a dredge and fill permit application is required to be circulated among State agencies and may be submitted to federal agencies. *See* RRC Staff opinion for 15A NCAC 07J .0208 attached to Objection Letter. Given the authority from the legislature requiring that the CRC create a single, expedited permitting process, this provision in the Dredge and Fill Act is sufficient to provide authorization for the CAMA permit applications to be circulated to state and federal agencies for review.

Based on the clarification provided in this letter, as well as the information previously submitted to the RRC, the CRC respectfully requests that the RRC rescind its earlier objection to these rules based on Section 150B-21.9(1).

2.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(2).

In its Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, .2305, 07J .0203, .0204, .0206, .0210, 07M .0201, .0202, .0401, .0402, .0403, .0601, .0603, .0701, .0703, .0704, .1001, .1002, .1101, and .1102 based on the claim that these rules were ambiguous. The majority of the RRC's objection to these rules is not specific to individual rules. To the extent that specific words or phrases were identified as ambiguous by the Objection Letter, the CRC has attempted to provide further clarifying language. *See e.g.*, technical changes provided for 15A NCAC 07J .0203, .0204, .0206, .0210, .0601, .0603, .0703, .0704. If there are other technical changes that the RRC believes would resolve any remaining ambiguity, the CRC is willing to consider further changes.

The perceived ambiguity that the RRC has identified in 15A NCAC 07H .2305 regarding the use of the phrase "significant adverse impact" continues to puzzle the CRC. The General Assembly has authorized denial of "an application for a dredge or fill permit upon finding . . . that there will be significant adverse effect" as a result of the proposed dredging and filling. N.C. Gen. Stat. §113-229(e) (emphasis added). The General Assembly clearly understands that determining whether there is a significant adverse impact is not ambiguous. As the CRC has previously explained, this phrase is "a term of art used in other rules and understood by the courts. *See, e.g., Shell Island Homeowners Assoc. v. Tomlinson*, 134 NC App. 217 (1999). The CRC has used this phrase, or similar phrase,

throughout its rules to require an assessment of the impact of the development on the natural resources. *See e.g.*, 15A NCAC 07H .0209 (throughout), 07H .0308, 07J .1101, .1102, 1201, 07K .0202, 07M .0402. Many, if not most, of these rules were recently readopted or amended without the RRC objecting to the rule language requiring an assessment of the impact. It is arbitrary and capricious for the RRC to claim the use of this phrase in one rule is ambiguous when that objection has not been consistently asserted by the RRC.

Based on the changes provided, as well as the clarifying information provided above, the CRC respectfully requests that the RRC rescind its earlier objection based on Section 150B-21.9(2).

3.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(3).

In its Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07I .0406, .0506, 07J .0203, .0206, 07M .0201, .0202, .0401, .0403, .0701, .1001, .1101 on the grounds these rules were not “reasonably necessary” pursuant to N.C. Gen. Stat. §150B-21.9(3). The majority of these rules are those the RRC contends are not “Rules” and therefore, it also objects under section 3 claiming “only ‘Rules’ can be reasonably necessary.” *See* Objection Letter and attachments. In response, the CRC incorporates and relies on the arguments set forth above in Section 1 relating to N.C. Gen. Stat. § 150B-21.9(a)(1).

In its Objection Letter, the RRC objects to 15A NCAC 07I .0406 claiming that this rule simply restates information from “G.S. 113A-119.1 and in 15A NCAC 07J .0204.” *See* RRC Staff Opinion for 15A NCAC 07I .0406 attached to the Opinion Letter. Even if true, this does not provide a basis for rejecting the rule as unnecessary. The General Assembly provides that “a brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the “reasonably necessary” standard of review.” N.C. Gen. Stat. § 150B-19(4). In this rule, the CRC has provided a brief statement synthesizing information regarding the fee requirement found in two separate places. This is allowable under the Administrative Procedure Act. Moreover, the information included the middle sentence relating to “deficits” is not included elsewhere. Therefore, this rule is necessary, and the CRC respectfully requests the RRC rescind its earlier objection.

In its Objection Letter, the RRC also objects to 15A NCAC 07I .0506 on the basis that the rule is not reasonably necessary as it “re-states material regarding allocation of permit-letting authority that is contained in G.S. 113A-116, -118, and -121.” *See* RRC Staff Opinion for 15A NCAC 07I .0506 attached to Objection Letter (cleaned up). Even if true, this does not provide a basis for rejecting the rule as unnecessary. The General Assembly has provided that “a brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the “reasonably necessary” standard of review.” N.C. Gen. Stat. § 150B-19(4). Moreover, this rule provides additional clarifying information regarding boundaries and the extra-territorial zoning area subject to permit letting authority, and timeframes. This rule does not simply re-state material in the statute. Therefore, the rule is necessary, and the CRC respectfully requests the RRC rescind its earlier objection.

4.C RC's Response to Objections based on N.C. Gen. Stat. § 150B-21.9(a)(4).

In the Objection Letter, the RRC objected to Rules 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510, 07J .0203, .0204, 07M .0201, .0202, .0401, .0403, .0701, .1001, .1101, .1102 for “failure to comply with the Part 2 of Article 2A of the Administrative Procedure Act pursuant to G.S. 150B-21.9(4).” This section of the NC Administrative Procedure Act provides procedures for the adoption of temporary rules, emergency rules, permanent rules, and the periodic review of existing rules. In the Objection Letter and the attachments to the Objection Letter, the RRC has not identified the manner in which it alleges the CRC failed to follow the rulemaking procedures set forth in Part 2 of this Article during its periodic review and re-adoption of these rules.

Moreover, if this objection is merely intended to indicate that the RRC does not believe these rules meet the definition of a “Rule,” that objection is based on N.C. Gen. Stat. § 150B-19 which lists restrictions on what can be adopted as a rule in Part 1 of Article 2A of the Administrative Procedure Act—not in Part 2 of Article 2A. Therefore, a reference to Part 1 of Article 2A is not a proper basis for alleging that the rules were not adopted in accordance with Part 2 of Article 2A as required by N.C. Gen. Stat. § 150B-21.9(a)(4).

To the extent that the RRC is objecting to the procedure by which these rules were adopted by the CRC, we are providing the following information to address any such concern. As required by N.C. Gen. Stat. § 150B-21.3A(c), the CRC conducted an analysis of each existing rule and made an “initial determination as to whether the rule is necessary or unnecessary.” The classifications were posted for public comment and submitted to the Office of Administrative Hearings for posting on its Web site. The CRC accepted public comment for sixty days after the determination was posted from February 20–April 20, 2017. The agency amended classifications, responded to all objections, and sent a final report to the RRC, including the public comments. Thereafter, the CRC re-adopted these rules as required by July 31, 2020 and sent them out for public comment. Twenty public hearings were held between November 17 and December 10, 2019 throughout the twenty coastal counties included within the Coastal Area Management Act. The public comment period ended December 31, 2019. No public comments were received, no changes were proposed, and no fiscal analysis was required. The CRC re-adopted the rules at its regularly scheduled meeting on February 12, 2020. Thereafter, the CRC began submitting its re-adopted rules to the RRC in manageable groupings. At the RRC's request, the last 132 re-adopted rules were submitted in one large group in June 2022. The RRC objected to 47 of the 132 rules in its September 2022 Objection Letter.

There are fifteen remaining rules for which the RRC's objection is based, in part, on an alleged failure to comply with Part 2 of Article 2A. However, the RRC has not identified any procedural flaws in the process used by the CRC to re-adopt these rules pursuant to the requirements for the periodic review of rules in Part 2 of Article 2A of the Administrative Procedure Act. In addition, an attachment to the specific objection for 15A NCAC 07M .1102 includes a highlighted reference to the procedures for adopting a permanent rule. Since the relevant procedure here relates to the periodic review of rules, the relevance of this attachment is unclear.

North Carolina Rules Review Commission

November 23, 2022

Page 6 of 6

If our understanding of the substance of this objection is incorrect, please provide specific information identifying the procedure established in N.C. Gen. Stat. § 150B-21.3A for the periodic review of existing rules or some other section included in Part 2 of Article 2A on which the RRC bases its objection. If there is no alleged flaw in the procedure by which these rules were re-adopted, the CRC respectfully requests that this objection be withdrawn.

In conclusion and based on the clarification provided in this letter, as well as the information previously submitted to the RRC, the CRC respectfully requests that the objections to each of the 38 rules addressed in this letter be withdrawn.

Sincerely,



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

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

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
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Memorandum

To: Brian Liebman & William W. Peaslee, Commission Counsel
North Carolina Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

From: Mary L. Lucasse,
Special Deputy Attorney General & Counsel for Coastal Resources Commission

Date: September 1, 2022

Re: 15A NCAC 07H .0501, .0502, .0503, ~~.0504~~, .0505, .0506, .0507, .0508, .0509, .0510
15A NCAC 07M .0201, .0202, .0401, .0403,¹ .0503, .0701, ~~.0801~~, ~~.0802~~², .1001, .1101,
1201, .1202

On July 14, 2022, Counsel for the Rules Review Commission (“RRC”) provided an opinion to the NC Coastal Resources Commission (“CRC”) that all of the above-listed rules “do not meet the definition of a “Rule” pursuant to G.S. 150B-2(8a) because they “do not implement or interpret an enactment of the General Assembly”, establish any requirements upon any persons or entities not employed by the agency”, or “affect the procedural or substantive rights or duties of a person not employed by the agency.” As a result, RRC Counsel asserts that the CRC “lacks statutory authority to adopt [these rules,]” they are not in accordance with Article 2A of the Administrative Procedure Act and are not “reasonably necessary pursuant to G.S. 150B-21.9(a)(3) as only “rules” can be reasonably necessary. In addition, “assuming arguendo that one or more of the above-captioned Rules meets the definition of a “Rule”, RRC counsel asserts that each of the rules, as written, is unclear and ambiguous pursuant to 150B-21.9(a)(2). For these reasons, RRC counsel recommends the RRC object to the rules.

The CRC respectfully disagrees and requests that the RRC approve these rules because they are required by federal statute and the General Assembly provided specific authority to the CRC, upheld by the North Carolina Supreme Court, requiring the adoption of these rules as described in more detail below.

¹ The underlined rules (15A NCAC 07H .0508, 07M .0403, .0503, .1201, and .1202) were not included in the Omnibus July 14, 2022 Staff Opinion from RRC Counsel regarding multiple rules. However, individual Staff Opinions on the underlined rules also recommended the RRC object to these rules on the basis they did not meet the definition of a “Rule.” For that reason, they are included in this memo.

² The CRC intends to respond to any objection by the RRC to the rules that have been struck through (15A NCAC 07H .0504, and 07M .0602, .0802 and .0802) by repealing these four rules.

I. Description of the Rules.

In general, the rules at issue here establish the CRC's Areas of Environmental Concern—which are the geographic areas over which the CRC has jurisdiction—and, as required by the General Assembly, set policies through rulemaking to guide the implementation of the coastal management program. Such policies are general in nature and provide direction to both the regulated public and the Commission's staff at the Division of Coastal Management to whom the CRC has delegated the day-to-day work of implementing the policies articulated by the CRC.

II. The General Assembly provided specific authority to adopt these rules.

The Coastal Area Management Act of 1974 ("CAMA") provides clear guidance by the General Assembly to the CRC authorizing it to adopt the rules at issue here. Specifically, the General Assembly directed the CRC to adopt "guidelines for the coastal area" consisting of "statements of objectives, policies, and standards to be followed in public and private use of land and water areas within the coastal area . . . consistent with the goals . . . in G.S. 113A-102." N.C. Gen. Stat. § 113A-107 (emphasis added). In *Adams v. N.C. Dep't of Natural and Economic Resources*, the North Carolina Supreme Court held that the General Assembly's delegation "to the CRC to develop, adopt, and amend 'State guidelines' for the coastal area" is constitutional. *Id.*, 295 N.C. 683, 696-99, 249 S.E.2d 402, 410-11 (1978).

Each rule at issue in the RRC Staff Opinion provides a policy statement regarding a specific aspect of the North Carolina coastal management program (for example, the shoreline, coastal energy, mitigation, ocean mining, etc.) as authorized by G.S. § 113A-102(b). Additional authority is given to the CRC to designate geographic areas and areas of environmental concern in N.C. G. S. § 113A-103, -107, -113, -115, -119, and/or -124(b). The basic rule of statutory construction is that when a statute is clear and unambiguous, the language must be given its plain meaning. *See In re J.C.*, 372 N.C. 203, 208 (2019); *State v. Womble*, 277 N.C. App. 164, 176 (2021); *In re Spencer*, 140 N.C. App. 776, 778 (2000). These rules provide the CRC's policies for the use of our State's natural resources in the coastal area. As such, these rules implement or interpret an enactment of the General Assembly and meet the definition of a "Rule" in the Administrative Procedure Act on that basis alone.

To the extent that RRC Counsel interprets the CAMA authorization for the CRC to establish guidelines for the coastal area as somehow inconsistent with the requirements of the Administrative Procedure Act, the CRC disagrees. The North Carolina Supreme Court recognizes that since "amendments to the State guidelines by the CRC are considered administrative rule-making," the rule-making requirements in the Administrative Procedure Act "[complement] the procedural safeguards in [CAMA]." *Adams*, 295 N.C. at 702, 249 S.E.2d at 413. The North Carolina Supreme Court has consistently applied the principles of statutory construction to hold that "[w]here one of two statutes might apply to the same situation, the statute which deals more directly and specifically with the situation controls over the statute of more general applicability," *Fowler v. Valencourt*, 334 N.C. 345, 349, 435 S.E.2d 530, 533 (1993) (quoting *Trs. of Rowan Tech. Coll. v. J. Hyatt Hammond Assocs.*, 313 N.C. 230, 238, 328 S.E.2d 274, 279 (1985)), and that, "[w]hen two statutes apparently overlap, it is well established that the statute special and particular shall control over the statute general in nature, even if the general statute is more recent, unless it clearly appears that the legislature intended the general statute to control," *id.* at 349, 435 S.E.2d at 534 (quotation omitted). In this case, the CAMA

directly and specifically authorizes the CRC to establish guidelines for the coastal area through its rules. The specific provisions in CAMA establish the intent of the General Assembly and control over the general provisions of the Administrative Procedure Act relating to rulemaking. Therefore, the RRC should approve these rules as authorized by the specific provisions of CAMA.

III. Federal Statute requires the adoption of these rules for consistency reviews.

The Coastal Zone Management Act (CZMA) of 1972 was enacted to address national coastal issues and establishes a voluntary partnership between the federal government and U.S. coastal and Great Lakes states, including North Carolina. 16 U.S.C. § 1451, *et. seq.* The federal statute requires each participating state to adopt its own coastal management program. In 1974, the General Assembly met this requirement by adopting the North Carolina coastal management program, which delegates the implementation of the program to the CRC and is administered by the Division of Coastal Management within what is now known as the Department of Environmental Quality. The CZMA allows North Carolina to ensure that any "federal activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." *See* 16 U.S.C. § 1456. Coordination and Cooperation (Section 307) (emphasis added). The federal statute authorizes the State of North Carolina to review and determine whether a proposed federal project is consistent with CZMA-approved state "enforceable policies," including the ones articulated by the CRC in these rules. Because the federal consistency process involves a negotiation between the State and the federal agency, these rules are sometimes written in more general terms and do not include specific or quantitative standards that must apply to all projects. However, without these rules, North Carolina may not have an opportunity to review large-scale federal coastal projects for potential impacts to natural, economic, and social resources in accordance with the federal consistency review process provided under the federal CZMA. This could impact a wide range of federal project reviews, including offshore energy proposals, large-scale dredging and beach nourishment projects undertaken by the U.S. Army Corps of Engineers, military activities, management of federal lands, changes to federal navigation channels, federal permits that do not trigger state CAMA permits, federal rule changes that may impact North Carolina, federal grants, and other federal actions in the 20 coastal counties.

IV. The CRC has submitted technical corrections to address any remaining issues.

As explained above, each of these rules is consistent with the definition of a "Rule" set forth in G.S. 150B-2(8a) because they implement or interpret "an enactment of the General Assembly or Congress" or describe the procedure or practice requirements of the CRC for the State's Coastal Management Program. RRC Counsel has raised concerns that assuming *arguendo* the RRC agrees with the CRC's position, the rules are objectionable because they are "unclear and ambiguous." To the extent that RRC counsel has identified specific words or phrases they consider "unclear and ambiguous", the CRC has provided technical corrections that address these concerns. Specifically, with the exception of the rules identified in footnote 2, the CRC has provided revised language to address concerns for 15A NCAC 07H .0501, .0502, .0503, .0505, .0506, .0507, .0508, .0509, .0510. 15A NCAC 07M .0201, .0202, .0401, .0403, .0701, .1001, .1101, 1201, and .1202. With these technical changes, any concerns over lack of clarity and ambiguity have been addressed. The CRC respectfully requests these rules be approved.

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 .0403 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0403 POLICY STATEMENTS**

4 (a) The **placement siting** and operations of major energy facilities **in or affecting impacting** the use of public trust
5 waters and adjacent lands or coastal resources of North Carolina shall be done in a manner that allows for protection
6 of the environment and local and regional socio-economic goals as set forth in the local land-use plan(s) and **state**
7 **guidelines** in 15A NCAC 07H and 07M. The placement and operation of such facilities shall be consistent with state
8 rules and statutory standards and shall comply with local land use plans and with use standards for development within
9 AECs, as set forth in 15A NCAC 07H.

10 (b) Proposals, plans and permit applications for major energy facilities to be **located sited** in or **affecting impacting**
11 any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and
12 benefits associated with the project. This disclosure shall be prepared **at the earliest feasible stage in planning for the**
13 **project and shall be** in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant.
14 If **appropriate** environmental documents are prepared and reviewed under the provisions of the National
15 Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review **will shall**
16 satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are
17 submitted **in sufficient time to be used** to review state permit applications for the project or **subsequent** consistency
18 determinations.

19 (c) Local governments shall not **unreasonably** restrict the development of **necessary** energy facilities; however, they
20 may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for
21 energy facilities. This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind
22 energy facility in accordance with land-use regulations authorized under Chapter 160A and Chapter 153A of the
23 General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall
24 demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

25 (d) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. **In instances**
26 **when** **When the siting of energy facilities along shorelines shoreline portions** of the coastal zone area are **necessary**
27 **necessary locations**, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant
28 adverse impacts to coastal resources, public trust waters, and the public's right to access **and passage** will not be
29 **unreasonably** restricted, and all **reasonable** mitigating measures have been taken to minimize impacts to AECs.
30 **Whether restrictions or mitigating Mitigating** measures **are reasonable** shall be determined after consideration **of of,**
31 **as appropriate,** economics, technical feasibility, **aerial areal** extent of impacts, **uniqueness of and** impacted **area. area,**
32 **and other relevant factors.**

33 (e) The scenic and visual qualities of coastal areas shall be considered and protected as **important** public **resources**
34 **consistent with G.S. 113A-1-2(b)(4)(a). resources.** Energy development shall be sited and designed to provide
35 maximum protection of views to and along the ocean, sounds and scenic coastal areas, and to minimize the alteration
36 of natural landforms.

1 (f) All energy facilities in or ~~affecting impacting~~ the use of public trust waters and adjacent lands or coastal ~~resource~~
2 ~~resources~~ shall be sited and operated so as to comply with the following criteria:

- 3 (1) Activities that ~~could may~~ result in significant adverse impacts on ~~coastal resources, resources of the~~
4 ~~coastal area,~~ including marine and estuarine resources and wildlife resources, as defined in G.S.
5 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the
6 coastal area shall be ~~avoided avoided. unless site specific information demonstrates that each such~~
7 ~~activity will result in no significant adverse impacts on the use of public trust waters and adjacent~~
8 ~~lands or coastal resources;~~
- 9 (2) For petroleum facilities, ~~necessary~~ data and information required ~~by the state~~ for ~~state State~~ permits
10 and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum
11 release or spills, evaluate possible trajectories, and enumerate response and mitigation measures
12 employing the best available technology to be followed in the event of a release or spill. The
13 information ~~must shall~~ demonstrate that the potential for petroleum release or spills and ensuing
14 damage to coastal resources has been minimized and shall factor environmental conditions, currents,
15 winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. ~~For This~~
16 ~~same data and information shall be required for~~ facilities requiring an Oil Spill Response ~~Plan; Plan;~~
17 ~~this information shall be included in such a plan;~~
- 18 (3) Dredging, spoil disposal and construction of ~~related~~ structures that are likely to have significant
19 adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be
20 ~~avoided; minimized, and any unavoidable actions of this sort shall minimize damage to the marine~~
21 ~~environment;~~
- 22 (4) ~~Damage to or interference with Significant adverse impacts to~~ existing or traditional uses, such as
23 fishing, navigation and access to public trust areas, and areas with high biological or recreational
24 value such as those listed in Subparagraphs (f)(10)(A) and (H) of this Rule, shall be ~~avoided; avoided~~
25 ~~to the extent that such damage or interference is likely to have significant adverse impacts on the~~
26 ~~use of public trust waters and adjacent lands or coastal resources;~~
- 27 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
28 shall be avoided ~~to the extent that damage to such structures resulting from geological phenomena~~
29 ~~is likely to if the siting of structures will~~ have significant adverse impacts on the use of public trust
30 waters, adjacent lands or coastal resources;
- 31 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
32 extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated ~~sufficiently~~
33 ~~in advance of the commencement of severe weather~~ to ensure that significant adverse impacts on
34 the use of public trust waters, adjacent lands and coastal ~~resources; resources shall be avoided;~~
- 35 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;

- 1 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
2 environmental or natural resources of more than local significance, as defined in G.S. 113A-
3 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- 4 (9) ~~No energy~~ Energy facilities shall ~~not~~ be sited in areas where they pose a threat to the integrity of the
5 facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a
6 history of overwash or inlet formation, and ~~areas in the vicinity of existing inlets; Inlet Hazard Areas~~
7 ~~identified in 15A NCAC 07H .0304;~~
- 8 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
9 areas shall be avoided:
- 10 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
11 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
12 spawning areas and essential fish habitat areas of particular concern as designated by the
13 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic
14 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
15 migratory bird routes;
- 16 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
17 for registration or dedication by the North Carolina Natural Heritage Program;
- 18 (C) crossings of streams, rivers, and lakes except for existing ~~readily accessible~~ corridors;
- 19 (D) anchorage areas and port areas;
- 20 (E) artificial reefs, shipwrecks, and submerged archaeological resources;
- 21 (F) ~~dump sites; Ocean Dredged Material Disposal Sites;~~
- 22 (G) primary dunes and frontal dunes;
- 23 (H) established recreation or wilderness areas, such as federal, ~~state~~ State and local parks,
24 forests, wildlife ~~refuges; refuges and other areas used in a like manner;~~
- 25 (I) military air space, training or target area and transit lanes;
- 26 (J) cultural or historic sites of more than local significance; and
- 27 (K) segments of Wild and Scenic River System.
- 28 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
29 Nesting and spawning periods shall be avoided; and
- 30 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
31 existing prior to construction shall be restored ~~as soon as practicable~~ following abandonment. For
32 abandoned facilities outside the coastal area, habitat in the areas shall be restored to its
33 preconstruction state and functions ~~as soon as practicable~~ if the abandonment of the structure is
34 likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal
35 resources.
- 36

37 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;*

1 *Eff. March 1, 1979;*
2 *Amended Eff. April 1, 1992;*
3 *Amended Eff. November 3, 1997 pursuant to E.O. 121, James B. Hunt Jr., 1997;*
4 *Temporary Amendment Eff. July 8, 1999; December 22, 1998;*
5 *Amended Eff. February 1, 2011; August 1, 2000;*
6 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0503 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2

3 **15A NCAC 07M .0503 POLICY STATEMENTS**

4

5 *History Note: Authority G.S. 113A-119; 113A-124(b);*

6

Eff. October 1, 1982;

7

Amended Eff. May 1, 1990;

8

Repealed Eff. January 1, 2023.

1 15A NCAC 07M .0601 is readopted as published **with changes** in 34:09NCR 764 as follows:

2

3

SECTION .0600 - FLOATING STRUCTURE POLICIES

4

15A NCAC 07M .0601 DECLARATION OF GENERAL POLICY

6 It is hereby declared that the general welfare and public interest require that floating **structures, structures as defined**
7 **in G.S. 113A-103(5a)**, to be used for residential or commercial purposes not **infringe encroach** upon the public **trust**
8 **rights trust, except as allowed by Rule .0603 of this Section**, nor discharge into the public trust waters of the coastal
9 area of North Carolina.

10

11 *History Note: Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); **113A-103; 113A-***
12 ***113(5); ~~113A-124(e)(5)~~**;*
13 *Eff. July 1, 1983;*
14 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0603 is readopted as published with changes in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .0603 POLICY STATEMENTS**

4 (a) It is the policy of the State of North Carolina that floating structures shall not be allowed or permitted within the
5 public trust waters of the coastal area except in a marina permitted as development pursuant to the Coastal Area
6 Management Act of 1974. permitted marinas.

7 (b) All floating structures shall be in conformance with local regulations for on-shore sewage treatment.

8 (c) A boat shall be deemed a floating structure when its means of propulsion has been removed or rendered inoperative
9 and it contains at least 200 square feet of living space area.

10

11 *History Note:* Authority G.S. 113A-102; 113A-107; 113A-108; 113A-118; 113A-120(a)(8); 113A-103; 113A-

12 119.2(a)(2); ~~113A-124(e)(5);~~

13 *Eff. July 1, 1983;*

14 *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 .0703 is readopted as published with changes in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0703 MITIGATION CANDIDACY PROJECTS**

4 (a) Before the The CRC may approve a development project for mitigation candidacy if the applicant shall can
5 demonstrate that all of the following criteria can be are met:

6 (1) there is no reasonable or prudent alternate design or location for the project that would avoid the
7 losses to be mitigated;

8 (2) the entire project for which the permit is requested is dependent upon being located within or in
9 close proximity to public trust waters and coastal wetlands;

10 (3) benefits to the public interest will clearly outweigh the long range adverse impacts effects to the
11 environment. A benefit to the public interest may be established by a project which has been clearly
12 shown to be the least damaging alternative and which:

13 (A) if publicly funded funded, creates benefits of national or state importance. This category
14 may include but is not limited to public roadways, navigation projects, state ports, and
15 projects designed to provide public access to the water; public trust waters;

16 (B) if privately funded funded, provides increased access opportunities to public trust resources
17 available to the general public for free or for a nominal fee, or provides significant
18 economic benefits to the state or community in accord and is consistent with the local land
19 use plan; plan.

20 (4) all reasonable means and measures to lessen the impacts of the project have been incorporated into
21 the project design.

22 (b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC
23 7M-07M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the
24 environment overwhelmingly outweigh environmental losses based on the criteria set out in 15A NCAC 07M
25 .0703(d).

26 (c) Mitigation candidacy projects may be considered by the CRC during the permit processing time prescribed in 15A
27 NCAC 7J .0204, in accordance with the procedures set out in 15A NCAC 7J .0600 concerning declaratory rulings.
28 The applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC
29 7M .0703(a) provided that the applicant agrees that the permit processing time period set out in 15A NCAC 07J .0600
30 will not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant
31 to the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission
32 in obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior
33 to presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be
34 introduced at the meeting. CRC approval of the mitigation candidacy project is binding on the Commission and the
35 person applicant requesting it, in accordance with 15A NCAC 7J-07J .0603(e).

36 (d) In determining whether to approve an application for development for which mitigation is proposed, the Division
37 of Coastal Management shall consider the scope of the project, the site of the proposed mitigation, the amount of

1 mitigation proposed, the historic uses of the development site and mitigation site, the public trust, and significant
2 adverse impacts.

3
4 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;*
5 *Eff. January 1, 1984;*
6 *Amended Eff. September 1, 1985;*
7 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0704 is readopted as published with changes in 34:09 NCR 764 as follows:

2
3 **15A NCAC 07M .0704 POLICY STATEMENTS**

4 (a) The Division of Coastal Management shall consider following forms of mitigation requests based on the following
5 are ranked in order of preference:

6 (1) Enhancement of coastal resources with created or restored systems determined to be potentially
7 more productive of the resources characteristic of unaltered North Carolina ecosystems than those
8 destroyed.

9 (2) Creation or restoration of an area of similar ecological utility and potential biological value than that
10 destroyed or altered.

11 (3) Creation or restoration of an area with a desirable but different ecological function or potential than
12 that destroyed or altered.

13 (4) The following forms of mitigation will shall be considered by the Division of Coastal Management
14 even though they do not meet the definition in 15A NCAC 7M .0702. They are actions which by
15 themselves shall not be deemed adequate to offset habitat losses, but and may be used in
16 combination with Subparagraphs (a) (1) through (3) to achieve the stated goal set forth in 15A
17 NCAC 07M .0703(d). of these Rules.

18 (A) Acquisition for public ownership of unique and ecologically important systems not
19 protected by state and/or or federal regulatory programs. The type of impacts to be
20 mitigated and the quality of the area to be acquired will be considered on a case-by-case
21 basis.

22 (B) Transfer of privately owned lands subject to state and federal regulatory control regulation
23 into public ownership.

24 (C) Provisions of funds for State, federal or accredited institution research or for management
25 programs.

26 (D) Increased public access to public trust resources for recreational use.

27 (b) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general
28 or specific use standards set forth in 15A NCAC 7H 07H .0208. If a development represents no significant loss to
29 coastal resources, the mitigation proposal must be on site, or proximate thereto, and must be designed to enhance the
30 coastal environment.

31 (c) Mitigation proposals to offset losses of coastal resources associated with due to publicly funded projects shall be
32 reviewed by the staff Division of Coastal Management with the sponsoring agency and incorporated into the project
33 plans. by the State or federal agency.

34 (d) Approved mitigation proposals for all categories of development shall become a part of permit conditions
35 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126. G.S.
36 113A-126 and shall be memorialized in a mitigation agreement which will constitute a contract between the applicant
37 and the CRC.

1 ~~(e) Those projects consistent with the review criteria for permit approval shall be exempt from mitigation~~
2 ~~requirements.~~

3
4 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126;*
5 *Eff. January 1, 1984;*
6 *Readopted Eff. January 1, 2023.*

1 15A NCAC 07M .0801 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2

3

SECTION .0800 - COASTAL WATER QUALITY POLICIES

4

5 15A NCAC 07M .0801 DECLARATION OF GENERAL POLICIES

6

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

8

Eff. November 1, 1985;

9

Repealed Eff. January 1, 2023.

1 15A NCAC 07M .0802 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2

3 **15A NCAC 07M .0802 POLICY STATEMENTS**

4

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

6

Eff. November 1, 1985;

7

Amended Eff. October 1, 1988;

8

Repealed 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 .1002 is readopted as published **with changes** in 34:09 NCR 764 as follows:

2

3 **15A NCAC 07M .1002 POLICY STATEMENTS**

4 (a) It is the policy of the State of North Carolina that all public trust waters subject to surface water restrictions
5 pursuant to 33 USCS 3 for use in military training shall be opened to commercial fishing at established times
6 **appropriate** for harvest of the fisheries resources **consistent with state and federal regulations** within those areas.

7 (b) Where laser weaponry is used, the area of restricted surface waters shall be at least as large as the recommended
8 laser safety **~~zone~~-zone under 33 USCS 3.**

9 (c) Water quality shall be tested periodically in the surface water restricted areas surrounding such targets and results
10 of such testing shall be reported to the ~~Department.~~ **Department of Environmental Quality.**

11

12 *History Note:* Authority G.S. 113A-102(b); 113A-107; **113A-124;**

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.*

1 15A NCAC 07M .1102 is readopted as published **with changes** in 34:09 NCR 765 as follows:

2

3 **15A NCAC 07M .1102 POLICY STATEMENTS**

4 (a) Clean, beach quality material dredged from navigation channels within the active nearshore, beach, or inlet shoal
5 systems **must shall** not be removed permanently from the active nearshore, beach or inlet shoal system unless no
6 practicable alternative exists. Preferably, this dredged material will be disposed of on the ocean beach or shallow
7 active nearshore area where environmentally acceptable and compatible with other uses of the beach.

8 (b) Research on the beneficial use of dredged material, particularly poorly sorted or fine grained materials, and on
9 innovative ways to dispose of this material so that it is more readily accessible for beneficial use is encouraged.

10 (c) Material in disposal sites not privately owned shall be available to anyone proposing a beneficial use not
11 inconsistent with Paragraph (a) of this Rule.

12 (d) Restoration of estuarine waters and public trust areas adversely impacted by existing disposal sites or practices is
13 in the public interest and shall be **encouraged at every opportunity, consistent with G.S. 113A-18(f)**

14

15 *History Note: Authority G.S. 113A-107; **113A-118(f); 113-229***

16

Eff. October 1, 1992;

17

Readopted Eff. January 1, 2023.

1 15A NCAC 07M .1201 is readopted as published in 34:09 NCR 757 and is now repealed as follows::

2

3

SECTION .1200 - POLICIES ON OCEAN MINING

4

5 15A NCAC 07M .1201 DECLARATION OF GENERAL POLICY

6

7 *History Note: Authority G.S. 113A-102; 113A-103; 113A-107;*

8

Eff. August 1, 1998;

9

Repealed Eff. January 1, 2023.

1 15A NCAC 07M .1202 is readopted as published in 34:09 NCR 757 and is now repealed as follows:

2

3 **15A NCAC 07M .1202 POLICY STATEMENTS**

4

5 *History Note: Authority G.S. 113A-102; 113A-107;*

6

Eff. August 1, 1998;

7

Repealed Eff. January 1, 2023.