

Burgos, Alexander N

Subject: FW: CRC 07H, 07I, 07J
Attachments: 09.2022 - CRC 07J .0204 Staff Opinion.doc; 09.2022 - CRC 07J .0210 Staff Opinion.doc

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Monday, September 12, 2022 4:03 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CRC 07H, 07I, 07J

Hi Jennifer,

Thanks for sending this over. A few things. First, pursuant to 26 NCAC 05 .0107, an agency may withdraw a Rule only if there is no staff recommendation to object to the rule or if the recommendation to object applies only to an amendment, rather than the existing language. Thus, Rules 07H .0601, .0603, and .0604 as well as Rule 07I .0511 may not be withdrawn, as there are pending staff opinions recommending objection to existing language. That said, Rules 07H .0602 and 07J .0604 may be withdrawn, and I will advise the Commission accordingly.

Second, following review of CRC's responses, I've issued two additional staff opinions recommending objection to Rules 07J .0204 and 07J .0210. I've attached them here.

Finally, with respect to the remaining rules that are not otherwise withdrawn or subject to staff opinions recommending objection, I have several follow up questions/edits before I can recommend approval.

07I .0302

In (b), line 10, it is not necessary to strike "officials."

07I .0305

In (a), line 6, although the response said a comma had been added, it is not in the Rule. Please add.

07I .0401

In (c), line 20-21, I believe the wrong parenthetical was deleted. I was asking for the "/LPO" to be deleted from the parenthetical following "two hundred dollars" on line 21. Please correct.

07I .0402

The Rule still uses "ineligible" and "not eligible" between paragraphs (a) and (b). Please just be consistent with your terms.

07I .0505

I had asked for the agency to add either an "and" or an "or" between items (a)(5)(A) and (B) on line 13. "And" has been added but it's struck-through. Please correct.

Also, please add either an "and" or "or" to (b)(1) on line 21.

07J .0204

In the event the Commission decides not to follow my recommendation and approves the Rule, add a 0 to "7J" in (e), line 19.

07J .0209

In (a), line 8, did the agency mean to state "these" criteria and standards? Please clarify.

07J .0603

Please clarify in (b) that the "other persons to whom the Commission decides to give notice" and the timeframe for submitting comments is pursuant to the guidelines in (c). I think adding that bit of clarity will clear up my concern with the existing language.

In (f), please replace "court" with "General Courts of Justice" for clarity.

Thanks,
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.

From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Thursday, September 1, 2022 4:51 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: CRC 07H, 07I, 07J

Brian,

Attached are the rewritten rules and responses to your technical change requests and objections regarding:

15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0602, .0603, .0604; 07I .0204, .0302, .0305, .0306, .0401, .0402, .0406, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0601, .0602, .0701, .0702; 07J .0102, .0201, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0312, .0602, .0603, .0604, .0605, .0701, .0702, .0703

In addition, the CRC is requesting to withdraw 15A NCAC 07H .0601 - .0604, 15A NCAC 07I .0511 and 15A NCAC 07J .0604, pursuant to 26 NCAC 05 .0107(3).

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>

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: CRC 07H, 07I, 07J

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, September 1, 2022 4:57 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Willis, Angela <angela.willis@ncdenr.gov>; Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CRC 07H, 07I, 07J

Hi Jennifer,

Thanks for this. I'll review and get back to you as soon as I can.

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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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
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To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
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Subject: CRC 07H, 07I, 07J

Brian,

Attached are the rewritten rules and responses to your technical change requests and objections regarding:

15A NCAC 07H .0501, .0502, .0503, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0601, .0602, .0603, .0604; 07I .0204, .0302, .0305, .0306, .0401, .0402, .0406, .0504, .0505, .0506, .0507, .0508, .0509, .0510, .0511, .0601, .0602, .0701, .0702; 07J .0102, .0201, .0203, .0204, .0206, .0207, .0208, .0209, .0210, .0211, .0301, .0302, .0312, .0602, .0603, .0604, .0605, .0701, .0702, .0703

In addition, the CRC is requesting to withdraw 15A NCAC 07H .0601 - .0604, 15A NCAC 07I .0511 and 15A NCAC 07J .0604, pursuant to 26 NCAC 05 .0107(3).

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
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**Request for Changes Pursuant to
N.C. Gen. Stat. § 150B-21.10**

Staff reviewed these Rules to ensure that each Rule is within the agency's statutory authority, reasonably necessary, clear and unambiguous, and adopted in accordance with Part 2 of the North Carolina Administrative Procedure Act. Following review, staff has issued this document that may request changes pursuant to G.S. 150B-21.10 from your agency or ask clarifying questions.

If the request includes questions, please contact the reviewing attorney to discuss.

In order to properly submit rewritten rules, please refer to the following Rules in the NC Administrative Code:

- Rule 26 NCAC 02C .0108 – The Rule addresses general formatting.
- Rule 26 NCAC 02C .0404 – The Rule addresses changing the introductory statement.
- Rule 26 NCAC 02C .0405 – The Rule addresses properly formatting changes made after publication in the NC Register.

Note the following general instructions:

1. You must submit the revised rule via email to oah.rules@oah.nc.gov. The electronic copy must be saved as the official rule name (XX NCAC XXXX).
2. For rules longer than one page, insert a page number.
3. Use line numbers; if the rule spans more than one page, have the line numbers reset at one for each page.
4. Do not use track changes. Make all changes using manual strikethroughs, underlines and highlighting.
5. You cannot change just one part of a word. For example:
 - Wrong: “~~a~~Association”
 - Right: “~~association~~ Association”
6. Treat punctuation as part of a word. For example:
 - Wrong: “day;; and”
 - Right: “~~day,~~ day, and”
7. Formatting instructions and examples may be found at:
www.ncoah.com/rules/examples.html

If you have any questions regarding proper formatting of edits after reviewing the rules and examples, please contact the reviewing attorney.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Please change any instance of “will” or “must” to “shall.”

Please update any reference to the “Department of Environmental and Natural Resources” to the “Department of Environmental Quality.”

Please be consistent across your Rules with the use of terms such as “Commission” or “CRC”, or “Coastal Area Management Act” or “CAMA.”

With respect to any rule setting or otherwise describing permit fees, please state whether the agency is in compliance with G.S. 113A-119.1’s requirement that funds collected from fees authorized by the Commission not exceed 33 1/3% of total personnel and admin costs.

Because many of these rules have not been reviewed since the 1970s or 1980s, please check the accuracy of all addresses, department/section names, or any other similar information that has been subject to change since the last review.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0602

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On line 4, please delete or define “substantial likelihood.”

On line 5, please capitalize “state” if referring only to the State of North Carolina.

On line 6, please define “adjacent to”.

On line 7, please define or delete “significant”.

On line 8, please define or delete “reasonable”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0204

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In your History Note, I do not understand the reference to G.S. 113A-112. Did you mean to cite to G.S. 113A-111?

Added G.S. 113A-117. Under local implementation programs, the Commission allows for the reimbursement of participating local govts for issuing permits.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0302

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5, you require local governments to “contact” the Division, but do not specify the purpose of the contact. I assume from the context of the Rule that it would be to obtain an application form, but this is not clear.

Clarified.

In (b), line 9, who are the “local officials” that need to sign the statement?

Clarified.

In (c), line 10, capitalize “state” if referring only to the State of North Carolina.

Done.

Based upon subparagraph (a), I assume there is an application form. Are its contents described in another rule or in a statute, as required by G.S. 150B-2(8a)d?

There is no application form. Local governments submit a Local Implementation and Enforcement Plan according to 15A NCAC 7I .0501.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0305

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 5, delete or define "relevant."

Done.

In (a), line 6, add an oxford comma between "date" and "and".

Done.

In (a), line 6, what kind of permits does this apply to?

Local Permit Officers can only issue Minor permits (as defined in 113A-118(d)) under local implementation and enforcement programs.

In (b), the Rule states that the locality and the Department shall become parties to a contract, but it doesn't specify to what this contract covers. If this is the same contract referenced in R. 0306, please add a cross reference.

Done.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0306

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Throughout, please change "will" to "shall."

Done.

Throughout, please capitalize "Secretary".

Done.

In (b), line 5, is "At a minimum" necessary? Rules by their nature set minimum requirements.

Deleted.

Is (b)(2) not duplicative of Rule .0305(a)? Both require quarterly submissions of information prior to disbursement of grant payments.

This rule states that the final quarterly payment will be withheld until the annual summary is submitted. 7I .0305 just references quarterly payments.

In (b)(3), line 13, please delete or define "relevant."

Done.

In (b)(3)(A), line 15, please delete or define "appropriate".

Deleted.

In (b)(3)(A), line 16, I'm assuming "working days" are the same as "business days"? Please be consistent throughout.

Correct.

In(b)(4), line 20, what is a "special project"?

Deleted. "Special Projects" are handled through a separate grant process.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0401

DEADLINE FOR RECEIPT: TBD

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In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 7, do you mean to say "Section" rather than Rule?

Changed.

In (c), line 20, please update the name of the Department from DENR to DEQ.

Done.

In (c), line 21, please delete "/LPO" from the parenthetical.

Done.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0402

DEADLINE FOR RECEIPT: TBD

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On lines 4 and 5, please consider “ineligible” rather than “not eligible” or “not to be eligible.”

Done.

In (b)(1), line 6, to what does “local appeal” refer to?

Costs associated with the appeal of a minor permit at the local level.

In (b), when you say costs are “presumed” ineligible, do you mean that they simply are ineligible, or is there a way to rebut these presumptions?

Deleted “presumed”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0505

DEADLINE FOR RECEIPT: TBD

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a)(4), line 8, add the oxford comma following “state”. Also capitalize “state” if referring only to the State of North Carolina.

Done.

In (a)(5), line 11, please delete or define “relevant.”

Deleted.

In (a)(5)(A), line 13, add an “and” or an “or” as appropriate at the end of the line.

Done.

Please delete (c), as it does not meet the definition of a “Rule.”

Done.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0507

DEADLINE FOR RECEIPT: TBD

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In reviewing this Rule, the staff recommends the following changes be made:

In (a), line 4, please specify which “plan” this Rule governs.

Done.

In (a), line 4, add the oxford comma following “review.”

Done.

In (b), line 7, what “criteria” are you referring to?

Clarified.

In (c), line 8, does “permit officer” mean “Local Permit Officer” as used in the title and elsewhere in these Rules? If so, please be consistent, and also make sure you’re using the acronym correctly.

Clarified.

In (c), line 8, please capitalize Department.

Done.

In (c), line 8, please change to “his or her”.

Done.

In (c) generally, where is your statutory authority to require permit officers to attend training and work sessions?

113A-117

In (d), line 11, what is a “passive grant”? I don’t see that term anywhere in Chapter 113A of the G.S. or in any of the subchapters of 15A NCAC 07.

Deleted.

In (e)(3), line 19, please define or delete “appropriate.”

Deleted.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

In (e)(4), line 21, please capitalize “Secretary.”
Done.

In (f), lines 22 and 23, please delete “and/or” and revise accordingly.
Done.

In (f), line 23, are working days and business days equivalent? Please be consistent.
Clarified.

In (f), line 23, please define or delete “appropriate.”
Done.

In (g), line 25, please capitalize “Commission.”
Done.

In your History Note, please place the statutes in numerical order.
Done.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0510

DEADLINE FOR RECEIPT: TBD

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is this Rule necessary? I am not sure it does much more than restate the content of G.S. 113A-117 and the rules referenced herein.

Requires the Commission to evaluate the program for consistency with the CAMA land use plan.

Assuming it is necessary, please change all instances of "will" and "must" to "shall."

On line 7, please add the oxford comma following "Act".

Done

On line 7, to what does "these Rules" refer?

Deleted.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0601

DEADLINE FOR RECEIPT: TBD

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In reviewing this Rule, the staff recommends the following changes be made:

On line 8, to what does "these Rules" refer?
Clarified

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0701

DEADLINE FOR RECEIPT: TBD

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In reviewing this Rule, the staff recommends the following changes be made:

In (a)(3), line 15, what is an "affected person"?
Clarified.

In (b), line 16, to what does "conditions" refer?
Clarified.

In (b), line 16, please capitalize "commission."
Done.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0102

DEADLINE FOR RECEIPT: TBD

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In reviewing this Rule, the staff recommends the following changes be made:

In (1), line 8, change “7H” to “07H”.

Done

In (2) and in (9), update the name of the Department from DENR to DEQ.

Done

In (3), line 13, add the oxford comma following “substrate” and also after “marshlands”.

Done

In (3), line 13, capitalize “state” if referring only to the State of North Carolina.

Done

In (4), line 15, add the oxford comma following “marshlands.”

Done

In (4), line 16, capitalized “state” if referring only to the State of North Carolina.

Done

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0204

DEADLINE FOR RECEIPT: TBD

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In reviewing this Rule, the staff recommends the following changes be made:

Paragraph (a) is written in the passive tense. Please consider re-writing in the active tense.

Done

In (b)(1), line 8, are the contents of the form described in another Rule or statute?

No. The form is available on the DEQ website or from Local Permit Officers. The form has space for the applicant to fill out information about themselves, the proposed project and site, and details the information required to be submitted under these Rules.

In (b)(3), line 11, please delete "herein."

Done

In (b)(3) and (b)(4), lines 12 and 14, please revise "and/or" as appropriate.

Done

In (b)(5)(B), lines 22 and 23, please add "or her" following "his".

Done

In (b)(6), do the fees collected comply with G.S. 113A-119.1's requirement that the total funds collected from fees not exceed 33 1/3% of total personnel and administrative costs?

Yes.

In (b)(6)(A), what is the definition of a "commercial" or "non-commercial" project?

Clarified.

In (b)(7), lines 36-37, what "other information" are you requiring?

This would be a catch-all for information that is not typical and may not be included in the standard form, but necessary for DCM and other review agencies to review the

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

project. An example would be a survey which is not typically required in the application but may be necessary to determine riparian ownership/corridors.

In (b)(8), G.S. 113A-100 is the Coastal Area Management Act, rather than the North Carolina Environmental Policy Act. Please correct.

Done

In (b)(8), line 8, please define the “appropriate environmental assessment document”. The appropriate environmental assessment document will be determined by whether the applicant is subject to the North Carolina Environmental Policy Act, so it is impossible to define in these rules what that environmental assessment document would be. This is outside the authority of DCM or the CRC.

Deleted appropriate.

In (d), lines 11-12, what kind of “additional information” is required? On line 13, what are “necessary changes” or necessary information?”

Clarified. This would be a catch-all for information that is not typical and may not be included in the standard form, but necessary for DCM and other review agencies to review the project.

In (d), line 14, please define or delete “significant”.

Clarified. Deleted significant.

In (e), line 17, what violations are you referring to?

Clarified by adding “CAMA” and “Dredge and Fill”.

In (e), lines 18-19, please define “substantially altered” and “deemed necessary”.

Deleted “substantially” and “deemed necessary”. Added citation.

In (e), lines 20-22, please define “satisfactory” and explain whom the applicant must satisfy. Also, please define “unauthorized development,” and “substantially altered.”

Clarified.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0209

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is most of this Rule necessary? Other than the delegation of authority, is there anything here that isn't a restatement of other statutes or rules?

This part of the rule explains the statutes related to appeal to applicants. DCM prefers to retain this language to assist the regulated public who may appeal a permit decision to know what rules and laws are considered and can be helpful in permit denial letters.

In (a), line 4, capitalize "department."

Done

In (a), lines 5-7, the Rule repeatedly uses the term "applicable" with respect to criteria and standards. Please clarify what these are.

Deleted.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0210

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

What is a “water dependent structure” vs. a “non water dependent structure”? Are these terms defined?

Water dependent structure v. non-water dependent structure is defined in 15A NCAC 7H .0208(a)(1),

In (1), lines 10-11, what does “immediately prior” mean? Please clarify.

The common definition of both words – without lapse of time and before. So here, this means without lapse of time before the structure was damaged or destroyed to the point of needing to be replaced.

In (1), line 11, who decides whether the structure is valued prior to the time of the damage or the time of the request?

The Division or the Local Permit Officer which ever has the permitting authority over the proposed development. See 113A-118(d). Major permits and General Permits are always issued by DCM but Minor permits can be either DCM or the LPO if the relevant local government has a delegated program or not.

In (1)(b), the Rule defines “cost” as the cost to return the structure to it’s “pre-damaged condition” but then goes on to say that “cost” shall include the cost necessary to make “any improvements that the owner chooses to construct.” This seems to conflict. Please clarify.

Property owners may choose in the course of repairs to make improvements/additions to structures that have been damaged. If this is the case, these costs need to be included. After repairing due to a storm, a property owner may decide to include additions during the repair process.

In (1)(b)(i), line 26, please clarify “North Carolina licensed contractor qualified by license to provide...”

There are different types of contractor licenses in NC depending on work provided i.e., electrical, plumbing, structural. Depending on the proposed work on the structure, different contractors may be qualified.

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In (2), line 32, how is it determined whether a structure is enlarged? Is this a two-dimensional calculation (i.e. just the footprint of the structure) or would adding height to the existing footprint be an enlargement as well?

Clarified.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0211

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Do you have any other statutory authority for this Rule beyond 113A-107(a) and (b)? While these two provisions direct CRC to develop “guidelines”, I don’t see anything in these two paragraphs that speaks directly to the contents of this Rule.

GS 113A-118 requires a permit for “development” as defined at 113A-103(5)a. in a designated AEC (see 113A-113 and -115). When rules change (when first adopted in 1979 or since then) over time and a structure becomes non-conforming, either through the new rules or from changed site conditions, it generally can’t be built back because it can’t get a permit based on its now-non-conforming status. This provision (called guidelines in CAMA but are the CRC’s administrative rules) is the CRC making a guideline for when to allow non-conforming development to be built back even if it doesn’t meet all current rules (a grandfathering clause as they used to be known). The CRC has authorization in -107 and -124(c)(8) to adopt guidelines/rules about how to allow or not non-conforming development.

On line 5, eliminate the commas around “and”.

Done

In (2), line 8, please define “similar.”

Similar here means the same as its common meaning: having a likeness or resemblance. Thus, even if the use is not exactly the same as it was previously, a use

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Commission Counsel

Date submitted to agency: July 14, 2022

that resembles the original use would meet this criterion. For example, a house that had previously been used as a residential property could meet this criterion if it were going to be used as a rental property.

In (3) line 9, please define “practical” and “similar”. Additionally, what do you mean by “benefits”? Benefits to whom? The owners? The community?

Clarified.

In (4), line 11, please define “maximum extent possible.” Who makes this determination, and based on what criteria?

This determination would be made by DCM or the LPO- whichever has permitting authority for a proposed development. The limitations on allowing non-conforming development to be built back is fairly limited by paragraphs 1-3 in the lines above. As it is non-conforming development, it cannot meet all current rules, so this standard requires it to meet all other requirements possible besides the one which makes it non-conforming. An example would be a pier that exceeds the allowable distance offshore and has 3’ NLW. If the applicant requested to decrease the distance offshore but the pier still exceeded the allowable distance offshore at the 3’ NLW contour, DCM could permit the dock using this rule because the applicant is meeting the rule to the “maximum extent possible”.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0301

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Is paragraph (a) necessary? Similarly, are the last three sentences of (b) necessary? Both seem to only restate material from G.S. 113A-121.

Deleted.

In (b), lines 11 and 12, you instruct the public to file hearing requests "with" first the Chairman of CRC, and then the Director of DCM. Please clarify.

Clarified.

On line 12-13, please update the name of the Department.

Done

On line 13, please delete "therof" and revise accordingly.

Done

On line 14, please confirm that the address for DOJ is correct.

This is the mailing address for DOJ.

In your History Note, can you explain the references to G.S. 113A-118(c) and 113A-122? Neither seem apposite. 118(c) is used for the proposition that a permit is required for coastal development and should be changed to 118(a). -122 can be deleted.

118(c) is used for the proposition that a permit is required for coastal development and has been changed to 118(a). 113A-122 has been deleted.

Please address whether the RRC objections for lack of statutory authority made on February 20, 1992 and March 19, 1992 have been satisfied.

We are unable to locate record of those objections from 30 years ago. Do you have them?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0302

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Are paragraphs (a), (b), and (c) necessary? They mainly appear to repeat material in your statutes.

We have deleted a and b and renumbered c and d.

In your History Note, can you explain the references to G.S. 113A-118(c) and 113A-122? Neither seem apposite.

118(c) is used for the proposition that a permit is required for coastal development and has been changed to 118(a). 113A-122 has been deleted.

Please address whether the RRC objections for lack of statutory authority made on February 20, 1992 and March 19, 1992 have been satisfied.

We are unable to locate record of those objections from 30 years ago. Do you have them?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0602

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On lines 4-5, please update the name of the Department.

Done

On line 12, please capitalize "Commission."

Done

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J.0602 0603

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), lines 5-6, where is your statutory authority to delegate the determination with regard to notice?

113A-124(c)(7) grants the Commission the power to grant or deny requests for declaratory rulings under GS 150B-4. Standard practice is for adjacent property owners to receive notice of the declaratory ruling request, but there may be circumstances.

In (a)(1), lines 10-11, please define “directly affected” and “sufficient to support a meaningful ruling.” These terms are objectionably vague.

Delete “directly affected”. “Sufficient to support a meaningful ruling” has been clarified.

In (b), line 17, please add the oxford comma following “owners.”

Done

In (b), line 17-18, the phrase “and other persons to whom the Commission decides to give notice...” is permissive, and seems to be outside the definition of a “rule” under G.S. 150B-2(8a). Please revise.

(c) describes how the Commission determines who, besides adjacent property owners, should receive notice of the request for declaratory ruling.

Furthermore, in (b), lines 18-20, no time frame for submitting comments is provided, unlike earlier in (b) and in (c).

(c) provides the time frame for submission of comments under (b) at lines 26 to 29.

In (c), lines 26-29, is the sentence “All persons receiving notice date of the proposed ruling;” necessary? This seems to repeat (b).

Yes. (b) describes when the declaratory hearing will be heard, who will receive notice of the declaratory ruling proceeding and when they should receive that notice, and that persons who receive notice can submit written comments. (c) describes what the Commission will consider when determining who should receive notice of the request for declaratory ruling and the timeline for those persons to submit comments.

Brian Liebman

Commission Counsel

Date submitted to agency: July 14, 2022

*In (f) p.2, line 7, what “court” are you referring to? The General Courts of Justice?
Yes. Declaratory rulings by the Commission are subject to judicial review in the same
manner as an agency final decision or order in contested case, as described in (g).*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0604 **Repeal**

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Why is a separate Rule necessary for a request for a declaratory ruling by the federal government?

In (a), line 4, please capitalize "state" if referring only to the State of North Carolina.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0605

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (b), lines 13-14, with respect to the “if received at least four weeks prior to the meeting” language, is this in compliance with 150B-20(b)’s requirement that petitions be granted or denied within 120 days?

The Commission meets 5 times/year regularly and occasionally has special/emergency meetings as needed. This makes it very likely that the 120 day requirement of 150B-20(b) can be met at a regular meeting. If not, the Commission can call a special meeting to ensure it meets 150B.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0701

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), lines 8-10, where is your statutory authority to require a person to seek relief from local requirements before seeking a variance from CRC?

113A-124(c)(8) which authorizes the Commission to pass guidelines/rules related to this Act. Also, 120.1(b) authorizes the Commission to impose reasonable and appropriate conditions on variances, and this requirement to seek local relief before coming to the Commission for a variance is a pro-active condition done through a guideline/rulemaking.

In (c), lines 14-15 and (d), p.2, lines 8-9, please update the name of the Department.
Done

In (c)(7), line 25, suggest adding "via" prior to "certified."
Done

In (d), please confirm the accuracy of both addresses.
Done

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0702

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 6, delete or define "appropriate."
Changed to "within two."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0703

DEADLINE FOR RECEIPT: TBD

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (a), lines 4-5, when may the Commission review the petition or appoint members? What guides their decision to delegate? Do they have statutory authority to delegate? This is controlled by the Commission's by-laws which would allow the Commission to hear variances by a sub-committee with a recommendation to the full commission, though the full commission has opted to hear them for the past 20 years.

In (f), it is unnecessary to repeat the statutory guidelines, particularly after referencing the statute in the text.
Removed

In your History Note, I think you will need a reference to G.S. 113A-124.
Done

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

In response to the federal Coastal Zone Management Act the North Carolina General Assembly passed the Coastal Area Management Act (CAMA) in 1974. § 113A-113 describes the authority given to the Coastal Resources Commission to designate geographic areas of the coastal areas and areas of environmental concern. Additionally, § 113A-115 provides specific procedures for the Coastal Resources Commission to designate an area of environmental concern. Furthermore, 113A-113 (a) states that “The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.”. In order to address § 113A-113 (b)(4) “Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:”, the CRC adopted 7H 0500 rules for AEC nominations. See below for clarity:

§ 113A-113. Areas of environmental concern; in general.

(a) The Coastal Resources Commission shall by rule designate geographic areas of the coastal area as areas of environmental concern and specify the boundaries thereof, in the manner provided in this Part.

(b) The Commission may designate as areas of environmental concern any one or more of the following, singly or in combination:

(1) Coastal wetlands as defined in G.S. 113-229(n)(3) and contiguous areas necessary to protect those wetlands;

(2) Estuarine waters, that is, all the water of the Atlantic Ocean within the boundary of North Carolina and all the waters of the bays, sounds, rivers, and tributaries thereto seaward of the dividing line between coastal fishing waters and inland fishing waters, as set forth in the most recent official published agreement adopted by the Wildlife Resources Commission and the Department of Environmental Quality;

(3) Renewable resource areas where uncontrolled or incompatible development which results in the loss or reduction of continued long-range productivity could jeopardize future water, food or fiber requirements of more than local concern, which may include:

a. Watersheds or aquifers that are present sources of public water supply, as identified by the Department or the Environmental Management Commission, or that are classified for water-supply use pursuant to G.S. 143-214.1;

b. Capacity use areas that have been declared by the Environmental Management Commission pursuant to G.S. 143-215.13(c) and areas wherein said Environmental Management Commission (pursuant to G.S. 143-215.3(d) or 143-215.3(a)(8)) has determined that a generalized condition of water depletion or water or air pollution exists;

c. Prime forestry land (sites capable of producing 85 cubic feet per acre-year, or more, of marketable timber), as identified by the Department.

(4) Fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, where uncontrolled or incompatible development could result in major or irreversible damage to important historic, cultural, scientific or scenic values or natural systems, which may include:

a. Existing national or State parks or forests, wilderness areas, the State Nature and Historic Preserve, or public recreation areas; existing sites that have been acquired for any of the same, as identified by the Secretary; and proposed sites for any of the same, as identified by the Secretary, provided that the proposed site has been formally designated for acquisition by the governmental agency having jurisdiction;

b. Present sections of the natural and scenic rivers system;

c. Stream segments that have been classified for scientific or research uses by the Environmental Management Commission, or that are proposed to be so classified in a proceeding that is pending before said Environmental Management Commission pursuant to G.S. 143-214.1 at the time of the designation of the area of environmental concern;

d. Existing wildlife refuges, preserves or management areas, and proposed sites for the same, as identified by the Wildlife Resources Commission, provided that the proposed site has been formally designated for acquisition (as hereinafter defined) or for inclusion in a cooperative agreement by the governmental agency having jurisdiction;

e. Complex natural areas surrounded by modified landscapes that do not drastically alter the landscape, such as virgin forest stands within a commercially managed forest, or bogs in an urban complex;

f. Areas that sustain remnant species or aberrations in the landscape produced by natural forces, such as rare and endangered botanical or animal species;

g. Areas containing unique geological formations, as identified by the State Geologist; and

h. Historic places that are listed, or have been approved for listing by the North Carolina Historical Commission, in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966; historical, archaeological, and other places and properties owned, managed or assisted by the State of North Carolina pursuant to Chapter 121; and properties or areas that are or may be designated by the Secretary of the Interior as registered natural landmarks or as national historic landmarks;

(5) Areas such as waterways and lands under or flowed by tidal waters or navigable waters, to which the public may have rights of access or public trust rights, and areas which the State of North Carolina may be authorized to preserve, conserve, or protect under Article XIV, Sec. 5 of the North Carolina Constitution;

- (6) Natural-hazard areas where uncontrolled or incompatible development could unreasonably endanger life or property, and other areas especially vulnerable to erosion, flooding, or other adverse effects of sand, wind and water, which may include:
- a. Sand dunes along the Outer Banks;
 - b. Ocean and estuarine beaches and the shoreline of estuarine and public trust waters;
 - c. Floodways and floodplains;
 - d. Areas where geologic and soil conditions are such that there is a substantial possibility of excessive erosion or seismic activity, as identified by the State Geologist;
 - e. Areas with a significant potential for air inversions, as identified by the Environmental Management Commission.

(7) Areas which are or may be impacted by key facilities.

(8) Outstanding Resource Waters as designated by the Environmental Management Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary for the purpose of maintaining the exceptional water quality and outstanding resource values identified in the designation.

(9) Primary Nursery Areas as designated by the Marine Fisheries Commission and such contiguous land as the Coastal Resources Commission reasonably deems necessary to protect the resource values identified in the designation including, but not limited to, those values contributing to the continued productivity of estuarine and marine fisheries and thereby promoting the public health, safety and welfare.

(c) In those instances where subsection (b) of this section refers to locations identified by a specified agency, said agency is hereby authorized to make the indicated identification from time to time and is directed to transmit the identification to the Commission; provided, however, that no designation of an area of environmental concern based solely on an agency identification of a proposed location may remain effective for longer than three years unless, in the case of paragraphs (4)a and d of subsection (b) of this section, the proposed site has been at least seventy-five percent (75%) acquired. Within the meaning of this section, "formal designation for acquisition" means designation in a formal resolution adopted by the governing body of the agency having jurisdiction (or by its chief executive, if it has no governing body), together with a direction in said resolution that the initial step in the land acquisition process be taken (as by filing an application with the Department of Administration to acquire property pursuant to G.S. 146-23).

(d) Additional grounds for designation of areas of environmental concern are prohibited unless enacted into law by an act of the General Assembly. (1973, c. 476, s. 128; c. 1262, ss. 23, 86; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 518, s. 1; 1989, c. 217, s. 1; c. 727, s. 128; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(u).)

§ 113A-114. Repealed by Session Laws 1983, c. 518, s. 2, effective June 13, 1983.

§ 113A-115. Designation of areas of environmental concern.

(a) Prior to adopting any rule permanently designating any area of environmental concern the Secretary and the Commission shall hold a public hearing in each county in which lands to be affected are located, at which public and private parties shall have the opportunity to present comments and views. Hearings required by this section are in addition to the hearing required by Article 2A of Chapter 150B of the General Statutes. The following provisions shall apply for all such hearings:

(1) Notice of any such hearing shall be given not less than 30 days before the date of such hearing and shall state the date, time and place of the hearing, the subject of the hearing, and the action to be taken. The notice shall specify that a copy of the description of the area or areas of environmental concern proposed by the Secretary is available for public inspection at the county courthouse of each county affected.

(2) Any such notice shall be published at least once in one newspaper of general circulation in the county or counties affected at least 30 days before the date on which the public hearing is scheduled to begin.

(3) Any person who desires to be heard at such public hearing shall give notice thereof in writing to the Secretary on or before the first date set for the hearing. The Secretary is authorized to set reasonable time limits for the oral presentation of views by any one person at any such hearing. The Secretary shall permit anyone who so desires to file a written argument or other statement with him in relation to any proposed plan any time within 30 days following the conclusion of any public hearing or within such additional time as he may allow by notice given as prescribed in this section.

(4) Upon completion of the hearing and consideration of submitted evidence and arguments with respect to any proposed action pursuant to this section, the Commission shall adopt its final action with respect thereto and shall file a duly certified copy thereof with the Attorney General and with the board of commissioners of each county affected thereby.

(b) In addition to the notice required by G.S. 113A-115(a)(2) notice shall be given to any interested State agency and to any citizen or group that has filed a request to be notified of a public hearing to be held under this section.

(c) The Commission shall review the designated areas of environmental concern at least biennially. New areas may be designated and designated areas may be deleted, in accordance with the same procedures as apply to the original designations of areas under this section. Areas shall not be deleted unless it is found that the conditions upon which the original designation was based shall have been found to be substantially altered. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1975, 2nd Sess., c. 983, s. 78; 1981, c. 932, s. 2.1; 1987, c. 827, s. 135; 2000-189, s. 11.)

JOSH STEIN
ATTORNEY GENERAL



REPLY TO:
MARY L. LUCASSE
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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.

RRC Counsel objects to 7J .0203 in that it requires information be submitted as part of the application materials for areas outside an Area of Environmental Concern (AEC). RRC Counsel notes that 113A-118 (a) requires a CAMA permit for development within an AEC and uses that as a basis for objection against a rule asking for basic information about the portions of a project site which do not fall within an AEC.

The Commission notes that the CAMA was enacted to develop a "comprehensive plan for the protection, preservation, orderly development, and management of the coastal area (later defined as the 20 coastal counties in 113A-103(2)) of North Carolina." GS 113A-101. Two pillars of the coastal program are the permitting requirement for "development" within an AEC and coastal land use planning with county/municipal governments (NOT limited to those areas within an AEC). GS 113A-120(a) requires denial of a CAMA permit if it does not meet state guidelines and also if the cumulative effects of the proposed development and similar developments do not meet state guidelines.

While 113A-118(a) limits the need for a CAMA permit to development within the AEC, requiring some basic information to be included in a permit application showing area outside an AEC is needed to show the setting of the proposed development-- it is not a requirement for permit authorization for those portions outside the AEC. This information about the setting of the project will help staff make a determination regarding the compliance with the CAMA Land Use Plan. Information about setting outside the AEC will also assist in a determination regarding cumulative effects. This information is also helpful to permitting staff to know if they need to do a site visit (allowed by 113A-124(a)) and if so, at what stage of the various permitting processes is it needed, helping to make the permitting process more efficient and allowing an earlier permitting decision for the applicant.

The use of "adversely impact" is a term of art along with "significant adverse impacts" known to our regulated public and fellow resource agencies who participate in the CAMA Major permit process.

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

2

3

SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

4

15A NCAC 07H .0501 GENERAL

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

10

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

12

113A-124;

13

Eff. September 9, 1977;

14

Amended Eff. June 1, 1979;

15

Readopted Eff. October 1, 2022.

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

2

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

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

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

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

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

16

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

18 *Eff. September 9, 1977;*

19 *Amended Eff. June 1, 1979;*

20 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07H .0503 NOMINATION AND DESIGNATION PROCEDURES**

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

8 (b) Nomination. An area may be nominated by any person or group at any time for Coastal Resources Commission
9 (CRC) consideration. Nominations ~~may, for example, may~~ be made by citizens, interest groups, local governments,
10 or state and federal agencies. Nominations shall be on a standard ~~form form,~~ available from the Division of Coastal
11 Management and shall be submitted to the Division of Coastal Management (DCM) at 400 Commerce Ave., Morehead
12 City NC 28557. ~~(DCM).~~ The nomination shall include information relating to the location, size, importance,
13 ownership, and uniqueness of the proposed site. ~~Nomination forms are available from the Division of Coastal~~
14 ~~Management.~~

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

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

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

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

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

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

7

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

9 *Eff. September 9, 1977;*

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

11 *Readopted Eff. October 1, 2022.*

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

2

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

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

8

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

10 *Eff. September 9, 1977;*

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

12 *Readopted Eff. October 1, 2022.*

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

2

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

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

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

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

18

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

20 *Eff. September 9, 1977;*

21 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07H .0506 COASTAL COMPLEX NATURAL AREAS**

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

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

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

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

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

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

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

4 (a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are
5 unique or **otherwise** significant components of coastal systems, or that are **especially** notable examples of geologic
6 formations or processes in the coastal area. Such areas **will shall** be evaluated by the Commission after identification
7 by the State Geologist.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23
24 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;*
25 *Eff. September 9, 1977;*
26 *Amended Eff. February 1, 1982; June 1, 1979;*
27 *Readopted Eff. October 1, 2022.*

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

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

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

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

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

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

- 21 (1) to give the highest priority to the development of a preservation management plan to provide
22 long term, effective long-term management of the archaeological resource; only that and
23 development which would-shall not have minimal significant adverse effects impacts on the
24 archaeological resource, resource will be acceptable;
25 (2) to conserve significant archaeological resources, including their spatial and structural context and
26 characteristics through in-situ preservation and/or scientific study;
27 (3) to insure that the designated archaeological resource resource, or the information contained therein,
28 be preserved for and be accessible to the scientific and educational communities for related study
29 purposes;
30 (4) to protect the values of the designated archaeological resource as expressed by the local government
31 and citizenry; these values should-shall be related to the educational, associative, or aesthetic
32 qualities of the resource.

33 (d) General Use Standards.

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

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

2 Three avoidance measures should shall be considered; considered, preferably in combination;

3 (A) incorporation of "no impact" spaces in construction plans such as green spaces between
4 lots;

5 (B) definition of restrictions limiting specific types of ground disturbing activities;

6 (C) donation of preservation easements to the state State or, upon approval by the N.C. Division
7 of Archives and History, Department of Natural and Cultural Resources, a legitimate
8 historic preservation agency or organization.

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

16 Such archaeological investigations shall comply with the following criteria:

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

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

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

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

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

9
10 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
11 *Eff. June 1, 1979;*
12 *Amended Eff. October 1, 1988; January 1, 1985;*
13 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07H .0510 SIGNIFICANT COASTAL HISTORIC ARCHITECTURAL RESOURCES**

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

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

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

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

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

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

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

2

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

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

7

8 *History Note: Authority G.S. 113A-112; 113A-124; **113A-117;***

9

Eff. December 10, 1977;

10

Readopted Eff. October 1, 2022.

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

2

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

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

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

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

15

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

17 *Eff. December 10, 1977;*

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

19 *Readopted Eff. October 1, 2022.*

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

2

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

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

9 (b) Grant Contract. Prior to the disbursement of funds, the locality and the Department shall become parties to a
10 ~~contract.~~ contract in accordance with 15A NCAC 7I .0306.

11

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

13 *Eff. August 1, 1978;*

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

15 *Readopted Eff. October 1, 2022.*

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

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

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

5 (b) ~~At a minimum, the~~ **The** following conditions **will shall** apply:

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

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

13 (3) Quarterly verification from the **relevant field** **Division of Coastal Management district office**
14 **office/CAMA** field **consultant representative** specified in the contract that the following permit
15 information has been received for each permit processed in the quarter:

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

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

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

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

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

26
27 *History Note: Authority G.S. 113A-124;*

28 *Eff. May 20, 1980;*

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

30 *Readopted Eff. October 1, 2022.*

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

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

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

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

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

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

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

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

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

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

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

26 *Eff. December 10, 1977;*

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

28 *Readopted Eff. October 1, 2022.*

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

2

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

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

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

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

10

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

12 *Eff. December 10, 1977;*

13 *Amended Eff. August 1, 1978;*

14 *Readopted Eff. October 1, 2022.*

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

2

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

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

8

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

10 *Eff. December 10, 1977;*

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

12 *Readopted Eff. October 1, 2022.*

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

2

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

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

- 8 (1) consist of a written account from the minutes or transcribed from an electronic recording, and all
9 written documents;
- 10 (2) remain open for 15 days after the hearing;
- 11 (3) be available to the Commission upon request.

12

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

14 *Eff. November 1, 1984;*

15 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07I .0505 CONTENT OF PLAN**

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

- 5 (1) the geographic extent of jurisdiction of the local management program;
- 6 (2) a description of the criteria to be used in choosing the **local** permit officer;
- 7 (3) methods of permit processing and coordinating procedures;
- 8 (4) methods for identifying and taking into account projects and impacts of regional, **state State,** and
9 national concern;
- 10 (5) a copy of all existing or proposed local ordinances relating to zoning and land use in areas of
11 environmental concern or any other **relevant** subject in order that the Commission may determine:
 - 12 (A) whether there is sufficient authority to enforce the program described in the local
13 **management implementation and enforcement** plan; **and**
 - 14 (B) whether any local ordinances are inconsistent with the approved land use plan. No
15 **implementation and enforcement** plan **will shall** be approved for any county or city if the
16 Commission determines either that the local government unit lacks sufficient authority to
17 enforce the program or that the local government unit has an ordinance or ordinances
18 inconsistent with its land use plan.

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

- 21 (1) a copy of all local ordinances relating to land use or any other subject relevant to land use;
- 22 (2) procedures for assuring consistency of governmental actions with the approved land use plan for the
23 entire jurisdiction.

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

26
27 *History Note: Authority G.S. 113A-117; 113A-124(c);*
28 *Eff. November 1, 1984;*
29 *Readopted Eff. October 1, 2022.*

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

2

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

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

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

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

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

16 (e) Only the Department of Environment and Natural Resources Environmental Quality shall issue a permit for major
17 development.

18

19 *History Note: Authority G.S. 113A-117(b); 113A-124(c)(5);*
20 *Eff. November 1, 1984;*
21 *Amended Eff. June 1, 2006; May 1, 1990;*
22 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07I .0507 LOCAL PERMIT OFFICER**

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

8 (b) The implementation and enforcement plan shall specify the job requirements of the LPO as mandated by these
9 criteria: this Section.

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

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

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

- 18 (1) The appointment of a temporary local permit officer (LPO) until such time as a permanent
19 replacement is selected.
- 20 (2) The appointment of one or more LPO(s).
- 21 (3) Evidence that an agreement exists between the locality and another appropriate agency for the
22 assumption of the permit implementation and enforcement program.
- 23 (4) A formal request that the secretary Secretary assume the permit function for the locality.

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

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

29
30 *History Note: Authority G.S. 113A-117; 113A-121(b); 113A-117; 113A-124;*
31 *Eff. November 1, 1984;*
32 *Amended Eff. May 1, 1990;*
33 *Readopted Eff. October 1, 2022.*

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 Commission in ~~its~~ handling of any minor
7 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 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 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 Commission requires,
17 however, that the local implementation and enforcement plan ~~eventually~~ submitted state how this coordination will be
18 accomplished.

19

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

21 *Eff. November 1, 1984;*

22 *Readopted Eff. October 1, 2022.*

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

2

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

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

6

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

8 *Eff. November 1, 1984;*

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

10 *Readopted Eff. October 1, 2022.*

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

2

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

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

10

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

12

Eff. November 1, 1984;

13

Amended Eff. October 1, 1988;

14

Readopted Eff. October 1, 2022.

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

2

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

5

6

7 **15A NCAC 07I .0601 NOTICE AND PUBLIC HEARING REQUIREMENT**

8 Amendment of the local management implementation and enforcement plan shall follow the notice and public hearing
9 requirements set forth in the Coastal Area Management Act and ~~these Rules~~ rules of this Section pertaining to the
10 adoption of the original program.

11

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

13 *Eff. November 1, 1984;*

14 *Amended Eff. December 1, 1991;*

15 *Readopted Eff. October 1, 2022.*

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

2

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

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

6

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

8

Eff. November 1, 1984;

9

Readopted Eff. October 1, 2022.

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

2
3 **SECTION .0700 - FAILURE TO ENFORCE AND ADMINISTER A LOCAL IMPLEMENTATION AND**
4 **ENFORCEMENT PLAN**

5
6
7 **15A NCAC 07I .0701 SANCTION FOR VIOLATIONS BY THE LOCAL PERMIT-LETTING AGENCY**

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

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

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

25
26 *History Note: Authority G.S. 113A-117(d); 113A-124;*
27 *Eff. November 1, 1984;*
28 *Readopted Eff. October 1, 2022.*

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

2

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

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

8

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

10 *Eff. November 1, 1984;*

11 *Readopted Eff. October 1, 2022.*

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

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

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

- 5 (1) "Areas of Environmental Concern" (AECs) means geographic areas within the coastal area which
6 the Coastal Resources Commission chooses to designate for special environmental and land use
7 regulations. The types of areas which may be designated as AECs are described in G.S. 113A-113.
8 Areas which have already been designated are defined in 15A NCAC ~~7H~~, **07H**. "State Guidelines
9 for Areas of Environmental Concern."
- 10 (2) "Department" ~~(DENR)~~ **(DEQ)** means the North Carolina Department of **Environment and Natural**
11 **Resources, Environmental Quality.**
- 12 (3) "Excavation Project" means any moving, digging, or exposing of bottom materials, marshland
13 **substrate** ~~substrate~~, or root or rhizome matter in the estuarine waters, tidelands, marshlands and
14 **state-owned** ~~State-owned~~ lakes, regardless of the equipment or method used.
- 15 (4) "Filling Project" means the placing of any materials in estuarine waters, tidelands, **marshlands**
16 **marshlands**, and ~~state-owned~~ **State-owned** lakes so as to raise the elevation of the area upon which
17 the material is placed. Structure placement does not constitute a filling or excavation project. The
18 placement of shell material specifically for the purpose of oyster culture also shall not be considered
19 a filling project.
- 20 (5) "Local Management Program" means the local implementation and enforcement program of a
21 coastal city or county that has undertaken to administer a permit program for minor development in
22 areas of environmental concern located within such city or county.
- 23 (6) "Local Permit Officer" refers to the locally designated official who will administer and enforce the
24 minor development permit program in areas of environmental concern and all parts of the land use
25 plan which the local government may wish to enforce over the entire planning area.
- 26 (7) "Division" means the Division of Coastal Management.
- 27 (8) "Permit" refers to CAMA major development permits, CAMA minor development permits and
28 dredge and fill permits unless the context clearly indicates otherwise.
- 29 (9) "Secretary" refers to the Secretary of Environment and Natural Resources.

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

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, a cross-sectional view, and a location
5 map. All plats must shall have the standard north arrow. North should shall be at the top of the plat. The prints must
6 shall be neat and sufficiently clear enough 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 a scale. A scale of 1" = 200' or less is normally required in order so that
9 project detail can be easily understood.

10 (b) Details of Work Plats

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

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

28 (c) Following review of the permit application, including the aforementioned supporting data (Subparagraphs 1-59),
29 a permit may be issued conditioned upon compliance with the development parameters provided in the narrative
30 statement accompanying the application. Any subsequent violation of these narrative standards as incorporated
31 within the permit shall be a permit violation. No subsequent permit, permit modification, or other agency approval
32 shall be required for any subsequent work performed outside the Area of Environmental Concern as long as such
33 work is within the parameters described in the narrative statement presented with the permit, and included in the
34 permit conditions. Any subsequent change in the development which changes the parameters of the narrative,
35 statement shall be submitted to the staff, but no new permit or permit modification shall be required unless staff
36 finds that the changes would have reasonable expectation of adversely affecting an Area of Environmental Concern
37 or rendering the project inconsistent with Local Land Use Plans. Nothing in this Rule would prohibit an applicant
38 from proceeding with work outside an AEC that cannot reasonably be determined to have a direct adverse impact on
39 the AEC while a permit application for work in the AEC is pending provided that all other necessary local, state, and
40 federal permits have been obtained.

41
42 *History Note: Authority G.S. 113A-119; 113A-124;*

- 1 *Eff. March 15, 1978;*
- 2 *Amended Eff. July 1, 1989;*
- 3 *Readopted Eff. October 1, 2022.*

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 following requirements must be met;

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

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

6 (8) for development proposals subject to review under the North Carolina Environmental Policy Act
7 (NCEPA), G.S. ~~113A-100~~ ~~113A-1~~ ~~et. et~~ seq., the permit application will be complete only on
8 submission of the ~~appropriate~~ environmental assessment document.

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

11 (d) If the application is found to be incomplete or inaccurate after processing has begun or if ~~based on review by the~~
12 ~~Division or other State and federal review agencies~~ additional information ~~regarding the scale or scope of the project~~
13 from the applicant is necessary to ~~adequately~~ assess the project, the processing shall be ~~terminated in abeyance~~ pending
14 receipt of the ~~additional necessary changes or necessary~~ information from the applicant. During the pendency of any
15 termination of processing, the permit processing period shall not run. If the changes or additional information
16 ~~significantly~~ alters the ~~scale or scope of the~~ project proposal, the application shall be considered new and the permit
17 processing period will begin to run from that date.

18 (e) Any ~~CAMA or Dredge and Fill~~ violation occurring at a proposed project site for which an application is being
19 reviewed shall be processed according to the procedures in 15A NCAC 7J .0408 - 0410. If the violation ~~substantially~~
20 altered the proposed project site, and restoration is ~~deemed necessary, required in accordance with G.S. 113A-126.~~
21 the applicant shall be notified that processing of the application will be suspended pending compliance with the notice
22 of required restoration. ~~Satisfactory restoration~~ ~~Restoration~~ of any ~~unpermitted unauthorized~~ development ~~that has~~
23 ~~substantially altered a~~ ~~at the~~ project site is ~~required~~ ~~deemed necessary~~ to allow a complete review of the application
24 and an accurate assessment of the project's potential impacts. The applicant shall be notified that permit processing
25 has resumed, and that a new processing deadline has been established once the required restoration has been deemed
26 satisfactory by the Division of Coastal Management or Local Permit Officer.

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

32
33 *History Note:* Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;
34 Eff. March 15, 1978;
35 Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;
36 Temporary Amendment Eff. September 2, 1998;
37 Temporary Amendment Expired June 28, 1999;

- 1 *Amended Eff. August 1, 2000;*
- 2 *Readopted Eff. October 1, 2022.*

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

2
3 **15A NCAC 07J .0209 ISSUANCE OF PERMITS**

4 (a) The Commission hereby delegates to the **department** **Department** the authority to issue or deny CAMA permits.
5 The decision to issue or deny the permit will be based on the **applicable** criteria set forth in G.S. 113A-120, the
6 **applicable** standards for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules
7 adopted by the Commission. The Department may condition issuance of permits on such conditions as are considered
8 necessary to ensure compliance with the **applicable** criteria and standards. The Department's decisions to grant or
9 deny CAMA permits may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section
10 .0300.

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

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

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

Eff. March 15, 1978;

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

Readopted Eff. October 1, 2022.

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

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

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

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

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

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

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

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

31 (2) WATER DEPENDENT STRUCTURES. The proposed work is considered replacement if it
32 enlarges the existing ~~structure.~~ **structure in any dimension.** The proposed work is also considered
33 replacement if:

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

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

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

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

9

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

11 *Eff. July 1, 1990;*

12 *Amended Eff. August 1, 2007;*

13 *Readopted October 1, 2022.*

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

2

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

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

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

12

13 *History Note: Authority G.S. 113A-107(a),(b);*
14 *Eff. July 1, 1990;*
15 *Amended Eff. December 1, 1991;*
16 *Readopted Eff. October 1, 2022.*

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

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

4
5 **15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING**

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

8 (1) ~~any applicant for a minor or major development permit; and~~

9 (2) ~~the Secretary in the case of a decision by a local official on a minor development permit.~~

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

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

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

2

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

4 ~~(a) Any person who is entitled or authorized to appeal a permit decision under Rule .0301(a) may file a petition for a~~
5 ~~contested case hearing with Office of Administrative Hearings, 6714 Mail Service Center, Raleigh NC 27699 6714.~~
6 ~~The petition shall be filed within 20 days of the permit decision being appealed as provided in G.S. 113A 121.1(a).~~

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

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

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

19

20 *History Note:* Authority G.S. 113-229; 113A-118~~(e)(a)~~; 113A-121.1; ~~113A-122~~; 113A-124;
21 Eff. March 15, 1978;

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

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

24 Amended Eff. March 31, 1992;

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

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

27 Readopted Eff. October 1, 2022.

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

2

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

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

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

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

17

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

19 *Eff. June 1, 1979;*

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

21 *Readopted Eff. October 1, 2022.*

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

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

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

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

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

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

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

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

- 37 (1) the request for a ruling;

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

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

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

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

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

2

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

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

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

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

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

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

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

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

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

16

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

18 *Eff. January 1, 1989;*

19 *Amended Eff. October 1, 1992;*

20 *Readopted Eff. October 1, 2022.*

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

2
3 **SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS**

4
5 **15 NCAC 07J .0701 VARIANCE PETITIONS**

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

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

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

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

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

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

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

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

8 (d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of **Environment and**
9 **Natural Resources, Environmental Quality**, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural
10 Resources Section, Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC
11 27699-9001.

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

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

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

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

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

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

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

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

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

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

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

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

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

2
3 **15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS**

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

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

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

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

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

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

22 ~~(1) that unnecessary hardships would result from strict application of the development rules, standards,~~
23 ~~or orders issued by the Commission;~~

24 ~~(2) that such hardships result from conditions peculiar to the petitioner's property such as location, size,~~
25 ~~or topography;~~

26 ~~(3) that such hardships did not result from actions taken by the petitioner; and~~

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

29
30 *History Note: Authority G.S. 113A-120.1; **113A-124**;*
31 *Eff. December 12, 1979;*
32 *Amended Eff. December 1, 1991; March 3, 1981;*
33 *Temporary Amendment Eff. December 20, 2001;*
34 *Temporary Amendment Expired October 12, 2002;*
35 *Temporary Amendment Eff. December 1, 2002;*
36 *Amended Eff. March 1, 2009; August 1, 2004;*
37 *Readopted Eff. October 1, 2022.*

Burgos, Alexander N

Subject: FW: RRC Extension Letter - 15A 07H, 07I, 07J, 07M
Attachments: 07.2022 CRC Extension Letter.pdf

From: Liebman, Brian R
Sent: Thursday, July 21, 2022 4:23 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>; Duke, Lawrence <lawrence.duke@oah.nc.gov>
Subject: RRC Extension Letter - 15A 07H, 07I, 07J, 07M

Good afternoon,

Attached, please find a letter of extension for the above captioned rules. Please let me know if you have any questions or concerns.

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

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: 15A NCAC 07H, 07I, and 07J Change Requests and Additional Staff Opinions
Attachments: 2022.7 - CRC 07H, I , J Request for Change .docx; 07.2022 - CRC 07I .0406 Staff Opinion.doc; 07.2022 - CRC 07I .0504 Staff Opinion.doc

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, July 14, 2022 4:31 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 15A NCAC 07H, 07I, and 07J Change Requests and Additional Staff Opinions

Hi Jennifer,

Attached, please find a copy of my change requests for any rule not subject to a staff opinion. I've not set a due date in the document, as we usually would, since you've already requested an extension. Once the Commission rules on your request, we'll work out a due date for responses.

Further, I've attached copies of staff opinions recommending objection to Rules 07I .0406 and .0504.

Please let me know if you have any questions, concerns, etc.

Thanks!
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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Burgos, Alexander N

From: Liebman, Brian R
Sent: Friday, July 8, 2022 3:52 PM
To: Everett, Jennifer; Rules, Oah
Cc: Lopazanski, Mike; Burgos, Alexander N; Lucasse, Mary L; Goebel, Christine A; Willis, Angela; Wright, Alyssa N
Subject: RE: 15A NCAC 07H, 07I, and 07J Staff Opinions

Hi Jennifer,

Thank you for letting me know. I will recommend that RRC approve your request at the upcoming meeting.

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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From: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Sent: Friday, July 8, 2022 3:39 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Lucasse, Mary L <mlucasse@ncdoj.gov>; Goebel, Christine A <Christine.Goebel@NCDENR.GOV>; Willis, Angela <angela.willis@ncdenr.gov>; Wright, Alyssa N <Alyssa.Wright@ncdenr.gov>
Subject: RE: 15A NCAC 07H, 07I, and 07J Staff Opinions

Hello,

We are kindly requesting an extension for the period of review for 15A NCAC 07H, 07I and 07J. This extension will allow staff additional time to address your technical change requests.

Thank you.

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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From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, July 7, 2022 6:03 PM
To: Everett, Jennifer <jennifer.everett@ncdenr.gov>
Cc: Lopazanski, Mike <mike.lopezanski@ncdenr.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 15A NCAC 07H, 07I, and 07J Staff Opinions

Good afternoon,

I'm the attorney who reviewed Section .0500 and .0600 of Subchapter 07H, and Subchapters 07I and 07J of the rules submitted by CRC for the July 2022 RRC meeting. After review, I have issued the attached staff opinions. Additionally, I've attached a staff opinion co-signed by Bill Peaslee and I that covers several rules across subchapters 07H and 07M for which we identified the same issue.

For the Rules I have reviewed that are not subject to staff opinion, I will be issuing requests for changes within the next few days.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

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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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.