

RRC STAFF OPINION

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0501

RECOMMENDATION DATE: February 13, 2023

RECOMMENDED ACTION:

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

COMMENT:

At its September meeting, the Rules Review Commission ("RRC") objected to this Rule on all four bases of G.S. 150B-21.9. Specifically, the RRC found that the language did not meet the definition of a "rule" pursuant to G.S. 150B-2(8a). Accordingly, its adoption as a rule would exceed the agency's authority pursuant to G.S. 150B-21.9(a(1)), it was not reasonably necessary pursuant to G.S. 150B-21.9(a)(3), and its adoption was not in accordance with the Administrative Procedures Act pursuant to G.S. 150B-21.9(a)(4). Additionally, the RRC objected to the language as it was unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2).

Pursuant to G.S. 150B-21.12, on November 23, 2022, the Coastal Resources Commission ("CRC") resubmitted the Rule with changes in an effort to satisfy RRC's objections.

Specifically addressing the language of the Rule, it is best described as both vague and circular. While the Rule purports to define "[n]atural and cultural resource areas," the definition offered is not only self-referential but uses terms that are subjective and susceptible to any reading the agency wishes to give them. In essence, the definition reads that a "natural and cultural resource area" is an "area containing natural or cultural resources" that are "of more than local significance" in which "uncontrolled or incompatible development" could cause damage to those resources or undefined "scientific, educational, or associative values" and "aesthetic qualities" possessed by those resources. The agency does not define these values or qualities or give any explicatory examples. The agency does not explain what kind of development would be "uncontrolled or incompatible" with these "resources". The agency does not state who makes the determination that any particular piece of land or water satisfies the provided definition. No term mentioned herein appears to have a

Brian Liebman
Commission Counsel

settled meaning within Section 07H or within the portions of Ch. 113A cited by the agency in its History Note. Moreover, comparing the language of the Rule to its supporting statutes, it appears that beyond largely repeating G.S. 113A-113(b)(4), other subparagraphs of G.S. 113A-113(b)(4) provide more detail as to what is being regulated than the Rule which must “implement[]or interpret[]” the statute.

While CRC submitted a revised version of this Rule prior to the December 2022 meeting, the revisions leave such significant ambiguity that it is unclear whether CRC is adopting a “rule” as defined in G.S. 150B-2(8a) or a policy statement.

As such, staff recommends that RRC find that CRC has not satisfied the September 2022 objections and continue its existing objections on the basis that the Rule does not meet the statutory definition of a “rule” and alternatively is impermissibly ambiguous under G.S. 150B-21.9(a)(2).

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

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

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

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

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

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

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

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. - When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. - An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. - When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

(d) Return of Rule. - A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

Regulatory Reform (1991, c. 418, s. 1; 1995, c. 415, s. 5; c. 507, s. 27.8(h), (y); 2003-229, s. 10; 2011-291, s. 2.60; 2011-398, s. 8.)

...

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

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

§ 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).)

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
5 **15A NCAC 07H .0501 GENERAL**

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

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. January 1, 2023.*

RRC STAFF OPINION

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

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0510

RECOMMENDATION DATE: February 13, 2023

RECOMMENDED ACTION:

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

COMMENT:

At its September meeting, the Rules Review Commission ("RRC") objected to this Rule on all four bases of G.S. 150B-21.9. Specifically, the RRC found that the language did not meet the definition of a "rule" pursuant to G.S. 150B-2(8a). Accordingly, its adoption as a rule would exceed the agency's authority pursuant to G.S. 150B-21.9(a)(1), it was not reasonably necessary pursuant to G.S. 150B-21.9(a)(3), and its adoption was not in accordance with the Administrative Procedures Act pursuant to G.S. 150B-21.9(a)(4). Additionally, the RRC objected to the language as it was unclear and ambiguous pursuant to G.S. 150B-21.9(a)(2).

Pursuant to G.S. 150B-21.12, on November 23, 2022, the Coastal Resources Commission ("CRC") resubmitted the Rule with changes in an effort to satisfy RRC's objections.

This Rule purports to define "significant coastal historic architectural resources." Again, as in previous rules in Section .0500, the "description" of the term is self-referential and circular; "districts, structures, buildings, sites, or objects that have more than local significance to history or architecture."

Paragraph (b) attempts to explain the significance of these resources. Again, it is a blend of ambiguous or subjective terms and policy language. The rule states that these are "important educational, scientific, associative, or aesthetic resources," which would be "jeopardized" by "uncontrolled or incompatible development." No detail is given as to what kind of development would be "incompatible." Without further specificity, this paragraph appears to be a mere policy statement.

Brian Liebman
Commission Counsel

Paragraph (c) describes the “management objectives” for these resources, and as in Rules .0506., 0507, and .0509, contains self-described “policy statements.” As with numerous other rules in Section .0500, these “policy statements” are expressed in terms of preserving or conserving the vaguely defined “values” of a particular resource. For instance, paragraph (c)(1) states that the agency shall seek to “conserve” these resources as “a living part of community life and development... to give a sense of orientation to the people of the State[.]” This is facially subjective and ambiguous language.

While CRC submitted a revised version of this Rule prior to the December 2022 meeting, the revisions leave such significant ambiguity that it is unclear whether CRC is adopting a “rule” as defined in G.S. 150B-2(8a) or a policy statement.

As such, staff recommends that RRC find that CRC has not satisfied the September 2022 objections and continue its existing objections on the basis that the Rule does not meet the statutory definition of a “rule” and alternatively is impermissibly ambiguous under G.S. 150B-21.9(a)(2).

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

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

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

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

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

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

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

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. - When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. - An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. - When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission shall use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.1(a3) and (b).

(d) Return of Rule. - A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it must notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

Regulatory Reform (1991, c. 418, s. 1; 1995, c. 415, s. 5; c. 507, s. 27.8(h), (y); 2003-229, s. 10; 2011-291, s. 2.60; 2011-398, s. 8.)

...

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

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

§ 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).)

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

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

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

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

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

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

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

29
30 *History Note:* *Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
31 *Eff. June 1, 1979;*
32 *Readopted Eff. January 1, 2023.*