

**Note from the Codifier:** The OAH website includes notices and the text of proposed temporary rules as required by G.S. 150B-21.1(a1). Prior to the agency adopting the temporary rule, the agency must hold a public hearing no less than five days after the rule and notice have been published and must accept comments for at least 15 business days. For questions, you may contact the Office of Administrative Hearings at 984-236-1850 or email oah.postmaster@oah.nc.gov.

## TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

*Notice is hereby given in accordance with G.S. 150B-21.1 that the Coastal Resources Commission intends to adopt the rules cited as 15A NCAC 07H .0507-.0509; 07I .0702; 07J .0203, .0204, .0206-.0208; 07M .0401-.0403, .0701, .0703, .0704, and .1101.*

**Codifier of Rules** received for publication the following notice and proposed temporary rules on: December 14, 2023.

### **Public Hearing:**

**Date:** January 9, 2024

**Time:** 1:00 p.m.

**Location:** Dare County Government Center, 954 Marshall C. Collins Drive Manteo, NC 27954, Board of Commissioners Room

**Date:** January 9, 2024

**Time:** 1:00 p.m.

**Location:** NC Division of Coastal Management, 400 Commerce Avenue Morehead City, NC 28557, Upstairs Conference Room

**Date:** January 10, 2024

**Time:** 1:00 p.m.

**Location:** Onslow County Public Library, 1330 Hwy 210 Sneads Ferry, NC 28460, Room #105

**Reason for Proposed Temporary Action:** A serious and unforeseen threat to the public health, safety or welfare. The effective date of a recent act of the General Assembly or of the U.S. Congress, cite: S.L. 2023-134 s. 21.2.(m), effective date: October 3, 2023. Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety regarding the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a).

**Comment Procedures:** Comments from the public shall be directed to: Mike Lopazanski, Deputy Director, NC DEQ, Division of Coastal Resources Commission, 400 Commerce Ave., Morehead City, NC 28557. The comment period begins January 3, 2024 and ends February 22, 2024.

## CHAPTER 07 - COASTAL MANAGEMENT

### SUBCHAPTER 07H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS

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

**(a) Description.** Unique coastal geologic formations are defined as sites that contain geologic formations that are unique or significant components of coastal systems, or that are notable examples of geologic formations or processes in the coastal area. Such areas shall be evaluated by the Commission after identification by the State Geologist pursuant to G.S. 113A-113.

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

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

- (1) To ensure that the designated geologic feature shall be able to interact with other components of the identified systems. These interactions are often the natural forces acting to maintain the unique qualities of the site. The primary concern is the relationship between the geologic feature and the accompanying biological component associated with the feature. Other interactions which may be of equal concern are those relating the geologic feature to other physical components, specifically the relationship of the geologic feature to the hydrologic elements; ground water and surface runoff.
- (2) To ensure that the designated geologic feature or process shall be preserved for and be accessible to the scientific and educational communities for study purposes.
- (3) To protect the values of the designated geologic feature as expressed by the local government and citizenry. These values shall be related to the educational and aesthetic qualities of the feature.

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

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

- (1) Development which requires the removal of greater than ten cubic yards of sand per year from the area within the AEC boundary shall require a permit;
- (2) All sand which is removed from the area within the AEC boundary in accordance with 15A NCAC 07H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the Division of Parks and Recreation;
- (3) Development activities shall not significantly alter or retard the free movement of sand except when necessary for the purpose of maintaining or constructing a road, residential/commercial structure, accessway, lawn/garden, or parking area.

Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124.

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

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

- (1) The proposed design and location shall not cause significant adverse impacts to the stated values of a particular resource. One or more of the following values shall be considered in making a permit decision depending upon the stated significance of the resource:
  - (a) Development shall preserve the values of the individual resource as it functions as a critical component of a natural system.
  - (b) Development shall not cause significant adverse impacts to the values of the resource as a unique scientific, associative, or educational resource.
  - (c) Development shall be consistent with the aesthetic values of a resource as identified by the local government and citizenry.
- (2) No alternative sites are available outside the designated AEC.
- (3) Mitigation measures shall be incorporated into the project plan. These measures shall include consultation with the CRC.
- (4) The project shall be of equal or greater public benefit than those benefits lost or damaged through development.

Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124.

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

(a) Description. Significant coastal archaeological resources are defined as areas that contain archaeological remains (objects, features, and/or sites) that have more than local significance to history or prehistory. Such areas shall be evaluated by the Department of Natural and Cultural Resources in accordance with G.S. 113A-113.

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

- (1) are associated with historic events; or
- (2) are associated with the lives of persons significant in history; or
- (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a significant and distinguishable entity whose components may lack individual distinction; or
- (4) have yielded, or may yield, information important in history or prehistory.

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

- (1) development of a preservation management plan to provide long-term management of the archaeological resource; and development which shall not have significant adverse impacts on the archaeological resource.
- (2) to conserve significant archaeological resources, including their spatial and structural context and characteristics through in-situ preservation or scientific study;
- (3) to ensure that the designated archaeological resource be preserved for and be accessible to the scientific and educational communities for study purposes;
- (4) to protect the values of the designated archaeological resource as expressed by the local government and citizenry; these values shall be related to the educational, associative, or aesthetic qualities of the resource.

(d) General Use Standards.

- (1) Significant concentrations of archaeological material, reflecting a full range of human behavior, shall be preserved in-situ for future research by avoidance during development activities. Areas for avoidance shall be selected after archaeological investigations have been made. Subparagraph (d)(2)(B) of this Rule outlines the nature, extent, conditions and significance of the cultural deposits. The following avoidance measures shall be considered:
  - (A) incorporation of "no impact" spaces in construction plans such as green spaces between lots;
  - (B) limiting specific types of ground disturbing activities;
  - (C) donation of preservation easements to the State or, upon approval by the Department of Natural and Cultural Resources, a historic preservation agency or organization.
- (2) Activities which would damage or destroy the contents of a designated site's surface or subsurface shall be prohibited until an archaeological investigation and resource management plan has been implemented by the applicant. The investigation and management plan shall be developed in consultation with the Department of Natural and Cultural Resources. Such archaeological investigations shall comply with the following criteria:
  - (A) archaeological investigations conducted as part of the permit review process shall be implemented in three parts: Phase I, a reconnaissance level investigation to determine the nature and extent of archaeological materials over the designated area; Phase II, an intensive level investigation which represents a direct outgrowth of Phase I findings and through systematic data recovery assesses the potential importance of identified concentrations of archaeological materials; Phase III, mitigation of significant adverse impacts to recognized areas of importance. Evaluations of research potential shall be made and prioritized in order of importance, based upon the status of previous research in the area and the integrity of the remains;
  - (B) an archaeological research design shall be required for all archaeological investigations. All research designs shall be subject to the approval of the Department of Natural and Cultural Resources prior to conducting the work. A research proposal shall allow at least 30 days for review and comment by the Department of Natural and Cultural Resources;
  - (C) data shall be collected and recorded and artifacts shall be curated according to accepted standards at an approved repository in consultation with the Department of Natural and Cultural Resources.

(e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal archaeological resource area of environmental concern. Permuda Island is a former barrier island located within Stump Sound in southwestern Onslow County. The island is 1.2 miles long and 1.25 miles wide. Archaeological evidence indicates the earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains.

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

## **SUBCHAPTER 07I - SECRETARY'S GRANT CRITERIA AND PROCEDURES FOR LOCAL IMPLEMENTATION AND ENFORCEMENT PROGRAMS UNDER THE COASTAL AREA MANAGEMENT ACT**

### **SECTION .0700 - FAILURE TO ENFORCE AND ADMINISTER A LOCAL IMPLEMENTATION AND ENFORCEMENT PLAN**

#### **15A NCAC 07I .0702 WHEN THE LOCAL PERMITTING AGENCY EXCEEDS LOCAL AUTHORITY**

When the local permit-letting agency exceeds the scope and extent of its authority pursuant to G.S. 113A-117, which is limited to consideration of applications proposing minor development as defined in the Coastal Area Management Act, that action shall be null, void and of no effect. The determinations of the Commission shall be binding on the local permit-letting agency as to questions of such jurisdiction.

Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5).

## **SUBCHAPTER 07J - PROCEDURES FOR PROCESSING AND ENFORCEMENT OF MAJOR AND MINOR DEVELOPMENT PERMITS, VARIANCE REQUESTS, APPEALS FROM PERMIT DECISIONS, DECLARATORY RULINGS, AND STATIC LINE EXCEPTIONS**

### **SECTION .0200 - APPLICATION PROCESS**

#### **15A NCAC 07J .0203 STANDARDS FOR WORK PLATS**

(a) General. Project plans or work plats shall include a top or plan view and a cross-sectional view. All plats shall have the standard north arrow. North shall be at the top of the plat. Work plats shall be drawn to a scale of 1" = 200' or less.

#### (b) Details of Work Plats

- (1) Top View or Plan View Work Plats. Such drawings shall show existing and proposed features such as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type and location of sewage treatment facilities and effluent outlets. Existing water depths shall be indicated as Normal Water Level or Normal High Water Level unless work plats are by a professional surveyor or engineer where water depths can be indicated using mean low water as base or zero and shall be shown either as contours or spot elevation. Work plats shall indicate which features are existing and which are proposed. Property boundaries, as they appear on the deed, and the names of adjacent property owners shall be shown on the work plat. The work plat shall show areas to be excavated and the

exact site for disposal of the excavated material unless outside of the Area of Environmental Concern, then an address may be provided. When fill material is to be placed behind a bulkhead or dike, the plan shall show the exact location of such bulkheads, dikes and fill areas and calculations showing that the bulkhead or dike has the capacity to confine the material. Work Plats shall indicate Normal Water Level or Normal High-Water Level unless certified by a professional surveyor or engineer where water depths can be shown as mean low and mean high water lines. Work plats shall indicate the presence of wetlands in the area of proposed work. In areas where the difference in daily low and high tides is less than six inches, mean water level as certified by a professional surveyor or engineer or normal water level shall be used.

- (2) Cross-Section Work Plats. A cross-sectional diagram showing depth and elevation of proposed work relative to Normal Water Level or Normal High Water Level unless certified by a professional surveyor or engineer where water depths can be shown as mean low and mean high water, shall be included in the plan. First floor elevations shall be shown for any proposed structures.
- (3) Title of Work Plats. Each work plat shall have a title block to identify the project or work, and shall include name of applicant or project, date the plat was prepared, and scale of the plat. The date of any revisions shall be noted. The applicant shall also include the name or initials of the person who drew the plat.

(c) Any application for a CAMA Major or Dredge and Fill permit shall include a narrative of the proposed development that shall include the following information:

- (1) the character of the development (i.e. residential, commercial, recreational, etc.);
- (2) a description of the development activities proposed; and
- (3) the amount of ground disturbance in the AEC measured in acres or square feet.

(d) Following review of the permit application, a permit may be issued conditioned in accordance with G.S.143B-279.4. Any subsequent violation of these conditions shall be a permit violation. Any subsequent change in the development which changes the parameters of the project shall be submitted to the Division of Coastal Management. Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that is determined by the Division of Coastal Management to not have a direct impact on the AEC while a permit application for work in the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

Authority G.S. 113-229(n)(3); 113-230(a); 113A-119; 113A-124.

#### **15A NCAC 07J .0204 PROCESSING THE APPLICATION**

(a) On receipt of a CAMA major development and/or dredge and fill permit application the Department shall send a notification to the applicant acknowledging receipt.

(b) Processing for a Major Permit or Major Modification to a Major Permit application shall begin when an application is accepted as complete. Before an application is accepted as complete, the requirements as listed in 15A NCAC 07J .0204(b)(1) through (b)(5) shall be met. Any application not in compliance with these requirements shall be returned to the applicant along with a notification explaining the deficiencies of the application and shall not be accepted as complete until all required information is submitted.

- (1) a current application form shall be submitted. The application form shall contain:
  - (A) application type (major, modification or general)
  - (B) name of entity on deed or first, middle, and last name(s) referenced on deed;
  - (C) phone number and email;
  - (D) physical and mailing address;
  - (E) project type and location;
  - (F) authorized agent contact information;
  - (G) description of existing conditions and development on the project location including lot size, shoreline length, vegetation and erosion details;
  - (H) total ground disturbance resulting from the proposed development including clearing and grading;
  - (I) applicable dimensions of proposed development activity including quantity, length, width, elevation, slope, area, volume, distance waterward of NWL or NHW, average existing depth, proposed final depth, impervious coverage, and sediment characteristics;
  - (J) applicable erosion and sedimentation control measures, fill source and environmental mitigation efforts for the proposed development activity;
  - (K) general information concerning the use of the proposed development activity, including boat type and length, proximity of structures to adjacent properties and other structures, and waterbody width;
  - (L) type of proposed impacts and dimensions (i.e. shading, filling, excavating) to coastal wetlands, submerged aquatic vegetation, shell bottom, non-coastal wetlands, and open water from the proposed development activities;
  - (M) project narrative that includes a brief description of the project and any previous or active state or federal permits issued on the property;
  - (N) a signed AEC Hazard Notice if the project is in the Ocean Hazard AEC if applicable; and
  - (O) acknowledgements to be attested to before submitting the application:
    - (i) I understand that any permit issued in response to this application will allow only the development described in the application. The project will be subject to the conditions and restrictions contained in the permit;
    - (ii) I certify that I am authorized to grant, and do in fact grant permission to representatives of state and federal review agencies to enter on the aforementioned lands in connection with evaluating information related to this permit application and follow-up monitoring of the project;

- (iii) I further certify that the information provided in this application is truthful to the best of my knowledge; and
- (iv) I certify that by clicking the submit button on this NC Division of Coastal Management application I acknowledge that I am signing and dating the application submitted therein.
- (2) a work plan as described in 15A NCAC 07J .0203 shall be attached to all CAMA major development or dredge and fill permit applications;
- (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA major development or dredge and fill permit application;
- (4) notice to adjacent riparian landowners of a CAMA Major Permit applicant shall be given as follows:
  - (A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as identified in the permit application) have been sent a copy of the application for the proposed development for a CAMA major development and/or dredge and fill permit application. Said landowners have 30 days from the date of notification in which to comment. Such comments shall be considered by the Department in reaching a final decision on the application.
- (5) the application fee shall be paid as set out in this Subparagraph:
  - (A) Major development permit application fees shall be in the form of an electronic funds transfer or check or money order payable to the Department. The application fee for private, non-commercial for-profit development shall be two hundred fifty dollars (\$250.00). The application fee for a public or commercial for-profit project shall be four hundred dollars (\$400.00).

(c) Minor permit application processing shall begin when an application is accepted as complete. Before an application is accepted as complete, the requirements as listed in 15A NCAC 07J .0204(c)(1) through (c)(4) shall be met. Any application not in compliance with these requirements shall be returned to the applicant along with a notification explaining the deficiencies of the application and shall not be accepted as complete until all required information is submitted.

- (1) a current application form shall be submitted. The application form shall contain:
  - (A) first, middle, and last name of landowner;
  - (B) phone number and email;
  - (C) physical and mailing address;
  - (D) authorized agent first and last name and contact information;
  - (E) location of project including address, street name, directions to site and adjacent waterbody;
  - (F) description of the proposed project, including a list of all proposed construction and land disturbance;
  - (G) size of lot or parcel in square feet and acres;
  - (H) proposed use, if residential, single-family or multi-family, commercial, industrial or other;
  - (I) if proposed development is located in the Ocean Hazard Area of Environmental Concern, total floor area of structure in square feet including air conditioned living space, parking elevated above ground level, non-conditioned space elevated above ground level but excluding non-load bearing attic space;
  - (J) project drawing that includes the details stated in 15A NCAC 07H .0204(2);
  - (K) if proposed development is located in the Coastal Shoreline Area of Environmental Concern (AEC), size of building footprint and other impervious or built upon surfaces in square feet including the area of the foundation of all buildings, driveways, covered decks, concrete or masonry patios that are within the AEC. Calculations shall be attached to project drawings;
  - (L) if the development is located in an area subject to a State stormwater management permit issued by the NC Division of Energy, Mineral and Land Resources, the total built upon area and impervious surfaces allowed for the lot or parcel in square feet; and
  - (M) indication that the applicant is an owner of the property.
  - (N) Minor development permit application fees shall be in the form of an electronic funds transfer or check or money order payable to the permit-letting agency in the amount of one hundred dollars (\$100.00). Monies so collected shall be used only in the administration of the permit program.
- (2) a work plan shall be attached to all CAMA minor permit applications that includes:
  - (A) Work plats shall include a top or planview, a cross-sectional view. All plats shall have the standard north arrow. North should be at the top of the plat. Work plats shall be accurately drawn to scale. A scale of 1" = 200' or less is required.
  - (B) Such drawings shall show existing and proposed features such as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type and location of sewage treatment facilities and effluent outlets. Property boundaries, as they appear on the deed, and the names of adjacent property owners shall be shown on the detailed plat.
  - (C) Cross-Section Drawing. A cross-sectional diagram showing elevation of proposed work relative to existing ground level. Mean low and mean high water line shall be included in the plan. The mean low water shall be the reference land elevations (i.e., mean low water should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea level shall be shown for any proposed buildings.
  - (D) Title of Drawing. Each drawing shall have a simple title block to identify the project or work, and shall include name of applicant, date the plat was prepared, and scale of the plat. The date of any revisions shall be clearly noted. The applicant shall also include the name of the person who drew the plat.
- (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA minor permit application.
- (4) notice to adjacent property landowners of a CAMA Minor Permit application shall be given as follows

(A) the applicant shall provide Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as identified in the permit application) have been sent a copy of the application for the proposed development for a CAMA minor development permit application. Said landowners have 30 days from the date of notification in which to comment. Such comments shall be considered by the Department in reaching a final decision on the application.

(d) If the application is found to be incomplete or inaccurate after processing has begun by the Division of Coastal Management, the Division of Coastal Management shall notify the applicant of the deficiency or inaccuracy and processing shall be in abeyance pending receipt of the necessary information from the applicant. During the pendency of any termination of processing, the permit processing period shall not run. If the changes or additional information alters the scale or scope of the project proposal, the application shall be considered new and a new permit processing period will commence on the date that the additional information is accepted as complete.

(e) Any CAMA or Dredge and Fill violation occurring at a proposed project site for which an application is being reviewed shall be processed according to the procedures in 15A NCAC 07J .0409 through .0410. If the violation altered the project site and restoration is required in accordance with G.S. 113A-126, the Division of Coastal Management shall notify the applicant that processing of the application will be suspended pending compliance with the notice of required restoration. Restoration of any unpermitted development at the project site shall require a complete review of the application and an assessment of the project's potential impacts. The Division of Coastal Management shall notify the applicant when permit processing has resumed, and of the new processing deadline that has been established once the Division of Coastal Management or Local Permit Officer verifies that the required restoration has been completed.

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

Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124.

#### **15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS**

In accordance with G.S. 113A-119(b) the Division of Coastal Management shall issue public notice of proposed development.

Authority G.S. 113A-119(b).

#### **15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL APPLICATIONS**

(a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an on-site investigation is completed. The report shall include project location, environmental setting, project description and probable environmental impact.

(b) In order to comply with G.S. 113A-120(a)(4), the Department shall circulate major development permit applications to the State review agencies having expertise in the criteria enumerated in G.S. 113A-113(b)(1) through (b)9.

(c) In order to comply with G.S. 113A-120(a)(2), the Department shall circulate dredge and fill permit applications to the State review agencies having expertise in those matters enumerated in G.S. 113- 229(e)(1) through (e)(5).

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

(e) Each reviewing agency may request additional information related to the scale and scope of the projects, such as Stormwater Management Plans, from the applicant through the Division of Coastal Management if such information is deemed necessary for a complete review of the application. The applicant shall be notified of the requirement for additional information and permit processing will be suspended according to 15A NCAC 07J .0204(d).

(f) The Division of Coastal Management is one of the State agencies that comments on permit applications. In its role as a commenting agency the Division shall use criteria in 15A NCAC 07H and local land use plans to assess whether to recommend permit issuance, permit issuance with conditions, or permit denial.

Authority G.S. 113-229; 113A-120, 113A-124(a)(1); 113A-127.

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

(a) In compliance with G.S. 113A-120(a)(4) and G.S. 113A-120(a)(2), each of the State, federal and local reviewing agencies may submit specific recommendations regarding the manner in which the proposed development should be accomplished including limitations on the development in order to protect the public interest with respect to the factors enumerated in G.S. 113A-113(b)(1) through (b)(9) and 113-229(e)(1) through (e)(5). The State, federal and local reviewing agencies also may submit specific recommendations regarding limitations to be placed on the operation and maintenance of the completed project, to ensure continued protection of the public interest with respect to those factors. Such limitations may be imposed by the Department on the project in the form of "permit conditions". Upon the failure of the applicant to appeal a permit condition, the applicant shall be deemed to have amended his or her permit to conform to the conditions imposed by the Department. Compliance with operational and maintenance conditions shall continue for the life of the project.

(b) The local permit officer may condition a minor development permit upon amendment of the proposed project to protect the public interest with respect to the factors enumerated in G.S. 113A-120. The applicant shall sign the conditioned permit as an indication of amendment of the proposed project in a manner consistent with the conditions set out by the local permit officer before the permit shall become effective.

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

## **SUBCHAPTER 07M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA**

### **SECTION .0400 - COASTAL ENERGY DEVELOPMENT – GENERAL POLICIES**

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

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

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

- (1) protect coastal resources; and
- (2) preserve access to and utilization of public trust resources, the planning of future uses affecting both land and public trust resources, the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse impact upon coastal resources or uses, public trust areas and public access rights.

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

Authority G.S. 113A-102(b); 113A-107; 113A-124.

#### **15A NCAC 07M .0402 DEFINITIONS**

(a) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact that is opposed to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and with the provisions of G.S. 113-229(e).

(b) "Impact Assessment" is an analysis of the potential environmental, economic, and social consequences, including cumulative and secondary impacts of a proposed major energy facility. An Impact Assessment includes the following and for each of the following assess the effects the project will have on the use of public trust waters, adjacent lands, and on the coastal resources, including the effects caused by activities related to exploration or development of OCS resources and other energy facilities outside the coastal area:

- (1) An analysis of the preferred sites for those elements of the project affecting the use of public trust waters, adjacent lands and the coastal resources:
  - (A) In all cases where the preferred site is located within an area of environmental concern (AEC) or on a barrier island, the applicant shall identify alternative sites considered and present a full analysis in terms of Subparagraphs (b)(2) through (b)(9) of this Rule of the reasons why the chosen location was deemed more suitable than another feasible alternate site;
  - (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall present an analysis to support the proposed location over an alternate site.
- (2) An analysis of the economic impacts, both positive and negative, of the proposed project. The analysis shall focus on economic impacts to the public, not on matters that are purely internal to the corporate operation of the applicant. No proprietary or confidential economic data shall be required. This analysis shall include potential adverse impacts upon the ability of any governmental unit to furnish necessary services or facilities as well as other secondary impacts.
- (3) An analysis of potential adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129;
- (4) An analysis of potential adverse impacts on existing industry and potential limitations on the availability of, and accessibility to, coastal resources, including beach compatible sand and water, for future use or development;
- (5) An analysis of potential significant adverse impacts on recreational uses and scenic, archaeological and historic resources;
- (6) An analysis of potential risks to human life or property;
- (7) An analysis of the impacts on the human environment including noise, vibration and visual impacts;
- (8) An analysis of the procedures and time needed to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;
- (9) Other specific data required for the various state and federal agencies and commissions with jurisdiction to evaluate the consistency of the proposed project with relevant standards and guidelines;

(10) A plan regarding the action to be taken upon the decommissioning and removal of the facility and related structures. The plan shall include an estimate of the cost to decommission and remove the energy facility including a discussion of the financial instrument(s) used to provide for the decommissioning and the removal of the structures that comprise the energy facility. The plan shall also include a proposed description of the condition of the site once the energy facility has been decommissioned and removed; and

(11) An analysis that the proposed project is consistent with local land use plans.

An impact analysis for a proposed major energy facility shall include the items described in Subparagraphs (b)(1) through (b)(11) of this Rule for the associated energy exploration or development activities related to exploration or development of OCS resources and other energy facilities, including all foreseeable assessments of resource potential, the gathering of scientific data, exploration wells, and any delineation activities that are likely to follow development, production, maintenance, and decommissioning.

(c) "Major energy facilities" are those energy facilities, including those described in G.S. 113A-119.2(3), which have the potential to negatively impact any land or water use or coastal resource of the coastal area. For purposes of this definition, major energy facilities shall include the following:

(1) Any facility refining petroleum consistent with G.S. 143-215.77;

(2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum products or synthetic gas as defined in G.S. 143-215.96;

(3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;

(4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;

(5) Wind energy facilities, including turbines, accessory buildings, transmission facilities, and other equipment necessary for the operation of a wind generating facility that cumulatively, with any other wind energy facility whose turbines are located within one-half mile of one another, are capable of generating three megawatts or larger;

(6) Thermal energy generation;

(7) Pipelines 12 inches or more in diameter that carry petroleum products or synthetic gas;

(8) Structures, including drillships and floating platforms located in offshore waters for the purposes of energy exploration, development, or production; and

(9) Onshore support or staging facilities related to offshore energy exploration, development, or production.

(d) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which development activities may impact any land or water use or natural resource of the state's coastal area.

(e) "Significant" as used in this section includes consideration of both context and intensity. Context means that the impact or effect shall be analyzed from several perspectives that include society as a whole (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly affected parties. Both short-and long-term effects are relevant. Intensity refers to the severity of impact or effect.

The following shall be considered in evaluating intensity:

(1) Both adverse impacts as defined in Paragraph (a) of this Rule and impacts that promote or enhance the goals of the Coastal Area Management Act as found in G.S. 113A-102(b);

(2) The degree to which the proposed action affects public health or safety;

(3) Unique characteristics of the geographic area;

(4) The degree to which the possible effects on the environment are uncertain or involve unique or unknown risks;

(5) The degree to which the CRC's permit decisions may establish a precedent for future CRC permit decisions;

(6) The degree to which the CRC's permit decisions are related to other CRC permit decisions with individually insignificant but cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts; and

(8) The degree to which the CRC's permit decision may cause the loss or destruction of scientific, cultural, historical, and environmental resources as those terms are commonly defined and understood.

Authority G.S. 113A-102(b); 113A-107; 113A-119.2; 113A-124.

### **15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT - SPECIFIC POLICY STATEMENTS**

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

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

(c) Proposals, plans, and permit applications for major energy facilities to be sited in or impacting any land or water use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated with the project. This disclosure shall be prepared in the form of an impact assessment as defined in 15A NCAC 07M .0402 prepared by the applicant. If environmental documents are prepared and reviewed under the provisions of the National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review shall satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents are submitted to review state permit applications for the project or consistency determinations.

(d) Local governments shall not restrict the development of energy facilities; however, they may develop siting measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities. This Section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility in accordance with land use regulations authorized under



Chapter 160A, Chapter 153A, and 160D of the General Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate compliance with any local ordinance concerning land use and any applicable permitting process.

(e) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. When the siting of energy facilities along shorelines of the coastal zone area are necessary, shoreline siting shall be acceptable only if it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the public's right to access will not be restricted, and all mitigating measures have been taken to minimize impacts to AECs. Mitigating measures shall be determined after consideration of economics, technical feasibility, areal extent of impacts, and impacted area.

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

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

- (1) Activities that may result in significant adverse impacts on coastal resources, including marine and estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided;
- (2) For petroleum facilities, data and information required for State permits and federal consistency reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate possible trajectories, and enumerate response and mitigation measures employing the best available technology to be followed in the event of a release or spill. The information shall demonstrate that the potential for petroleum release or spills and ensuing damage to coastal resources has been minimized and shall factor environmental conditions, currents, winds, and inclement events such as northeasters and hurricanes, in trajectory scenarios. This same data and information shall be required for facilities requiring an Oil Spill Response Plan;
- (3) Dredging, spoil disposal, and construction of structures that are likely to have significant adverse impacts on the use of public trust waters and adjacent lands or coastal resources shall be avoided;
- (4) Significant adverse impacts to existing or traditional uses, such as fishing, navigation and access to public trust areas, and areas with high biological or recreational value such as those listed in Parts (10)(A) through (10)(K) of this Paragraph, shall be avoided;
- (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults, shall be avoided if the siting of structures will have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources;
- (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated to ensure that significant adverse impacts on the use of public trust waters, adjacent lands and coastal resources;
- (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
- (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing environmental or natural resources of more than local significance, as defined in G.S. 113A-113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- (9) Energy facilities shall not be sited in areas where they pose a threat to the integrity of the facility and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of overwash or inlet formation, and Inlet Hazard Areas identified in 15A NCAC 07H .0304;
- (10) In the siting of energy facilities and related structures, significant adverse impacts to the following areas shall be avoided:
  - (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or spawning areas and essential fish habitat areas of particular concern as designated by the appropriate fisheries management agency, oyster sanctuaries, submerged aquatic vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and migratory bird routes;
  - (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible for registration or dedication by the North Carolina Natural Heritage Program;
  - (C) crossings of streams, rivers, and lakes except for existing corridors;
  - (D) anchorage areas and port areas;
  - (E) artificial reefs, shipwrecks, and submerged archaeological resources;
  - (F) Ocean Dredged Material Disposal Sites;
  - (G) primary dunes and frontal dunes;
  - (H) established recreation or wilderness areas, such as federal, state and local parks, forests, wildlife refuges;
  - (I) military air space, training or target area and transit lanes;
  - (J) cultural or historic sites of more than local significance; and
  - (K) segments of Wild and Scenic River System.
- (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability. Nesting and spawning periods shall be avoided; and
- (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that existing prior to construction shall be restored following abandonment. For abandoned facilities outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions if the abandonment of the structure is likely to have significant adverse impacts on the use of public trust waters, adjacent lands or coastal resources.

## SECTION .0700 – MITIGATION - GENERAL POLICY

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

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) It is the policy of the Coastal Resources Commission to require that adverse impacts to coastal lands and waters be mitigated or minimized through planning, site selection, compliance with Commission's standards for development, and creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained as complete and functional systems by mitigating the adverse impacts of development by enhancing, creating, or restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.

(c) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies and objectives set forth in G.S. 113A-102 for coastal resource management and development. Mitigation shall be used to enhance coastal resources and offset any potential losses occurring from permitted and unpermitted development. Proposals to mitigate losses of coastal resources shall be considered only for development shown to be in the public interest, as defined by the standards in 15A NCAC 07M .0703.

Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229.

### **15A NCAC 07M .0703 MITIGATION PROJECTS**

(a) Before the CRC may approve a development project for mitigation the applicant shall demonstrate that all of the following criteria are met:

- (1) there is no alternate design or location for the project that would avoid the losses to be mitigated;
- (2) the entire project for which the permit is requested is dependent upon being located within or in proximity to public trust waters and coastal wetlands;
- (3) benefits to the public interest will outweigh adverse impacts to the environment. A benefit to the public interest may be established by a project which has been shown to be the least damaging alternative and which:
  - (A) if publicly funded, creates benefits of national or state importance. This category may include public roadways, navigation projects, state ports, and projects designed to provide public access to public trust waters;
  - (B) if privately funded, provides increased access opportunities to public trust resources to the general public for free or for a nominal fee, or provides economic benefits to the State or community and is consistent with the local land use plan.

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

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

(d) In determining whether to approve an application for development for which mitigation is proposed, the Division of Coastal Management shall consider the scope of the project, the site of the proposed mitigation, the amount of mitigation proposed, the historic uses of the development site and mitigation site, the public trust, and significant adverse impacts.

Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229.

### **15A NCAC 07M .0704 MITIGATION - SPECIFIC POLICIES**

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) The Division of Coastal Management shall consider mitigation requests based on the following order of preference:

- (1) Enhancement of coastal resources with created or restored systems determined to be more productive of the resources characteristic of unaltered North Carolina ecosystems than those destroyed.
- (2) Creation or restoration of an area of similar ecological utility and potential biological value than that destroyed or altered.
- (3) Creation or restoration of an area with a different ecological function or potential than that destroyed or altered.
- (4) The following forms of mitigation shall be considered by the Division of Coastal Management and may be used in combination with Subparagraphs (1) through (3) of this Paragraph to achieve the stated goal set forth in 15A NCAC 07M .0703(d).

- (A) Acquisition for public ownership of unique and ecologically important systems not protected by state or federal regulatory programs. The type of impacts to be mitigated and the quality of the area to be acquired will be considered on a case-by-case basis.
- (B) Transfer of privately owned lands subject to state and federal regulation into public ownership.
- (C) Provisions of funds for State, federal or accredited institution research or management programs.
- (D) Increased public access to public trust resources for recreational use.

(c) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general or specific use standards set forth in 15A NCAC 07H .0208.

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

(e) Approved mitigation proposals for all categories of development shall become a part of permit conditions according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126.

Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126.

## **SECTION .1100 - BENEFICIAL USE OF DREDGED MATERIALS FROM NAVIGATIONAL CHANNEL MAINTENANCE AND EXCAVATION – GENERAL POLICIES**

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

(a) The policy statements in this Section are enforceable and shall be considered by local governments and DCM when issuing permits and implementing the coastal management program under this Subchapter and commenting on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

(b) Dredged material disposal practices may result in removal of material important to the sediment budget of ocean and inlet beaches. This activity may adversely impact natural beach functions especially during storm events and may increase long term erosion rates. Ongoing channel maintenance requirements throughout the coastal area also lead to the need to construct new or expanded disposal sites as existing sites fill. In addition, new sites for disposal are increasingly harder to find due to competition from development interests for suitable sites. Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or maintenance of navigation channels be used in a beneficial way wherever practicable.

Authority G.S. 113A-107; 113-229.