



EMERGENCY RULE-MAKING FINDINGS OF NEED [G.S. 150B-21.1A]


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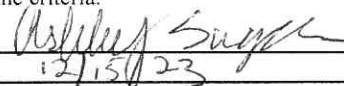
VOLUME:

ISSUE:

1. Rule-Making Agency: Coastal Resources Commission (CRC)	
2. Rule citation(s): 15A NCAC 07H .0507, .0508, .0509, 15A NCAC 07I .0702; 15A NCAC 07J.0203, .0204, .0206, .0207, .0208; 15A NCAC 07M.0401, .0402, .0403, .0701, .0703, .0704, .1101,	
3. Adoption by agency on: December 13, 2023	4. Date agency requests entry of emergency rule in the Code: December 14, 2023
5. What is the need for an emergency rule? The Rules Review Commission (RRC) returned certain of the CRC's rules pursuant to S.L. 2023-134 on October 5, 2023, and the Codifier of Rules removed those rules from the North Carolina Administrative Code (Code) the same day. The rules that are the subject of this finding of need were among the rules removed from the Code. At a hearing on the CRC's request for a Temporary Restraining Order hearing on November 7, 2023 in CRC v. RRC, File No. 23CV031533-910 and in a letter dated November 8, 2023, RRC Counsel suggested that emergency and temporary rules may provide an avenue for the expedited return of the CRC's rules to the Code. To ensure the stability and effectiveness of the coastal rules for the benefit of the regulated public, and to ensure the CRC's compliance with statutory mandates for rule promulgation under N.C. Gen. Stat. Chapter 113A, Article 7, the Coastal Area Management Act, the CRC seeks the immediate return of the rules listed above to the Code.	
6. Has the agency provided the public with abbreviated notice? If so, describe. No.	
7. Why is adherence to notice and hearing requirements contrary to the public interest and that the immediate adoption of the rule required by a serious and unforeseen threat to the public health or safety? First, adherence to notice and hearing requirements is contrary to the public interest as a delay for public notice and hearing is unnecessary given that the rules the CRC seeks to promulgate have been included in the Code for decades and more recently, the public was provided an opportunity to comment during the periodic readoption process. Second, the State of North Carolina cannot rely on these rules to issue permits for development in the coastal counties, make enforcement decisions, and can no longer review certain federal projects for consistency with State law pursuant to these rules. The removal of the rules from the Code, severely impacts the commission's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. Additionally, the removal of these rules poses 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). Given the threats to public safety and the unnecessary and redundant public notice requirement, the emergency rule making process is appropriate to restore the CRC's rules to the Code.	

[Emergency Rule-making Findings of Need Continued]

<p>8. Does the agency have specific statutory authority for the adoption of an emergency rule? If so, has the agency met the statutory criteria for adoption? (attach copy of statutory authority) No.</p>	
<p>9. Has the agency submitted the proposed temporary rule for publication on the Internet in accordance with G.S. 150B-21.1(a3)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>10. Rule establishes or increases a fee? (See G.S. 12-3.1) <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: Only Rule 07J .0204 establishes a fee as authorized by N.C. Gen. Stat. 113A-119.1 <input type="checkbox"/> No</p>	
<p>11. Rule-making Coordinator: Jennifer Everett Phone: 919-707-8595 E-Mail: jennifer.everett@deq.nc.gov</p>	<p>12. Signature of Agency Head*:  <hr/> * If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Renee Cahoon Title: CRC Chair E-Mail: Renee.Cahoon@deq.nc.gov</p>
<p>Agency contact, if any: Mary Lucasse Phone: 919-716-6962 E-Mail: mlucasse@ncdoj.gov</p>	

REVIEW BY THE CODIFIER OF RULES	
Approved. Entered into the North Carolina Administrative Code on: _____	
Reviewed By: _____ Date: _____	
Comments:	
Statement does not meet the criteria.	
Reviewed By:  Date: 12/15/23	
Comments: See attached letter. 2nd letter issued 12/19/23. ABS	

JOSH STEIN
ATTORNEY GENERAL



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

Memorandum

To: *Via email submission: ashley.snyder@oah.nc.gov & oah.rules@oah.nc.gov*
Ashley Synder, NC Codifier of Rules
North Carolina Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

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

Date: December 14, 2023

Re: Request for waiver from 26 N.C. Admin. Code 02C.0111 to reuse numbers for 16
Emergency and Temporary Rules: 15A NCAC 07H.0507, .0508, .0509, 15A
NCAC 07I.0702, 15A NCAC 07J.0203, .0204, .0206, .0207, .0208, 15A NCAC
07M.0401, .0402, .0403, .0701, .0703, .0704, .1101

And

Request for waiver from 26 NCAC 02C.0206 for 15A NCAC 07J .0204

Along with this memorandum, the NC Coastal Resources Commission (CRC) is submitting the sixteen emergency/temporary rules listed above.

A. Request for a Waiver from 26 N.C. Admin. Code 02C.0111.

The Rules Review Commission (RRC) returned certain of the CRC's rules pursuant to S.L. 2023-134 on October 5, 2023, and the Codifier of Rules removed those rules from the North Carolina Administrative Code (Code) the same day. The rules that are the subject of this memorandum were among the rules removed from the Code. The procedures for submitting rules and other documents for inclusion in the North Carolina Register provides that "[w]hen a rule is repealed, that rule number shall not be used again." 26 N.C. Admin. Code 02C.0102(13). Instead, "[t]he number, rule name, and final history note remain in the Code permanently for publication and reference purposes." *Id.*

The CRC is requesting a waiver from this prohibition pursuant to 26 N.C. Admin. Code 02C.0111 in order to reuse the numbers of the rules that were removed from the Code on October 5, 2023. In support of this request, the CRC shows the following:

- (1) There is no anticipated disruption to Office of Administrative Hearing (OAH) publication and work schedule. Specifically, upon submission of these sixteen

emergency and temporary rules, the NC Administrative Code sets the timeline for publication. The use of the previous rule numbers instead of new rule numbers should not impact the OAH publication and work schedule.

- (2) There is no anticipated increase in cost to OAH. As mentioned above, the emergency and temporary rules will move forward regardless of the use of the previous rule numbers instead of new rule numbers. Thus, there should not be any costs associated with use of the previous rule numbers.
- (3) The CRC anticipates there will be a substantial benefit to the public by continuing to use the rule numbers and titles that are already familiar to the regulated public. Since these rules and the rule numbers were only removed from the Code a few months ago, it would be confusing to have the same or substantially similar rules identified by new rule numbers.
- (4) The CRC did not have control of the circumstances that led to the removal of the rules from the Code. Prior to S.L. 2023-134 becoming law, only an agency could request to have its rules returned, and thus have them removed from the Code. S.L. 2023-134 now requires the RRC to return rules to the agency during the Periodic Review process where the RRC and the agency disagree as to the basis of an RRC objection to a proposed rule and no progress on resolving the disagreement has been made for more than 60 days. Due to S.L. 2023-134, the RRC returned these 16 rules to the CRC on October 5, 2023, and the Codifier of Rules removed those rules from the Code the same day. The CRC did not seek the removal of the rules from the Code and thus did not control the circumstances that require the requested waiver;
- (5) Through the temporary rule process, the public will receive notice that the CRC plans to use the previous rule numbers (if this waiver is granted). The CRC is not aware of any opposition by the public to the re-use of these 16 rule numbers;
- (6) The CRC asserts that there is a need for the waiver to allow it to re-use the previous rule numbers in order to avoid confusion to the regulated public; and
- (7) The CRC is not aware of any previous requests for waivers submitted by the agency.

B. Request for a waiver from 26 NCAC 02C.0206.

The Rule that addresses how to organize the subdivisions of a rule provides, "For rules adopted by an agency on or after July 1, 2004, an agency shall subdivide a rule containing more than one idea into paragraphs labeled: (a), (b), (c), Any subdivided paragraphs shall be labeled: (1), (2), (3), ...; (A), (B), (C)." 26 NCAC 02C .0206(b) From

this, it appears that in order to adopt a rule with more than three subdivisions, an agency must receive a waiver from this rule.

The CRC requests a waiver so that In 15A NCAC 07J .0204(b)(1)(O), the agency can use four levels to subdivide the Rule. In support of this request, the CRC shows the following:

(1) There is no anticipated disruption to Office of Administrative Hearing (OAH) publication and work schedule. Specifically, upon submission of this emergency and temporary rule, the NC Administrative Code sets the timeline for publication. The use of four levels instead of combining ideas into three levels, should not impact the OAH publication and work schedule.

(2) There is no anticipated increase in cost to OAH. As mentioned above, the emergency and temporary Rule will move forward regardless of the number of subdivisions in the rule. Thus, there should not be any costs associated with this waiver.

(3) The CRC anticipates there will be a substantial benefit to the public by using four subdivisions of the Rule to separate each idea and to match the levels used in the electronic application form. Using this level of subdivision results in clarity and prevents applicants from being confused over any perceived differences between the language in the rule and the form.

(4) The CRC believes that the waiver it requests it requests for four levels is the result of the electronic form requirements and is not caused by the CRC;

(5) Through the temporary rule process, the public will receive notice of the form of Rule (if this waiver is granted). The CRC is not aware of any opposition by the public to the use of four levels subdividing the ideas included in this Rule;

(6) The CRC asserts that there is a need for the waiver to allow it to structure the rule language to conform to the electronic application and to avoid confusion to the regulated public; and

(7) The CRC is not aware of any previous requests for waivers submitted by the agency.

* * * * *

The CRC respectfully requests that the RRC approve its requests for waivers to re-use the previous rule numbers and substantially similar titles for the sixteen rules that are the subject of this memorandum and its request to subdivide the ideas in 07J .0204(1)(O) to four levels. Please do not hesitate to let me know if there are any questions regarding this request.

1 15A NCAC 07H .0507 is adopted under emergency procedures as follows:
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3 **15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS**

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

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

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

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

19 (2) To ensure that the designated geologic feature or process shall be preserved for and be accessible to
20 the scientific and educational communities for study purposes.

21 (3) To protect the values of the designated geologic feature as expressed by the local government and
22 citizenry. These values shall be related to the educational and aesthetic qualities of the feature.

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

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

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

1 (2) All sand which is removed from the area within the AEC boundary in accordance with 15A NCAC
2 07H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by
3 the Division of Coastal Management in consultation with the Division of Parks and Recreation;

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

7
8 *History Note:* Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;
9 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07H .0508 is adopted under emergency procedures as follows:

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

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

6 (1) The proposed design and location shall not cause significant adverse impacts to the stated values of
7 a particular resource. One or more of the following values shall be considered in making a permit
8 decision depending upon the stated significance of the resource:

9 (a) Development shall preserve the values of the individual resource as it functions as a critical
10 component of a natural system.

11 (b) Development shall not cause significant adverse impacts to the values of the resource as a
12 unique scientific, associative, or educational resource.

13 (c) Development shall be consistent with the aesthetic values of a resource as identified by the
14 local government and citizenry.

15 (2) No alternative sites are available outside the designated AEC.

16 (3) Mitigation measures shall be incorporated into the project plan. These measures shall include
17 consultation with the CRC.

18 (4) The project shall be of equal or greater public benefit than those benefits lost or damaged through
19 development.

20
21 History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;
22 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07H .0509 is adopted under emergency procedures as follows:

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

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

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

10 (1) are associated with historic events; or

11 (2) are associated with the lives of persons significant in history; or

12 (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a
13 significant and distinguishable entity whose components may lack individual distinction; or

14 (4) have yielded, or may yield, information important in history or prehistory.

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

18 (1) development of a preservation management plan to provide long-term management of the
19 archaeological resource; and development which shall not have significant adverse impacts on the
20 archaeological resource;

21 (2) to conserve significant archaeological resources, including their spatial and structural context and
22 characteristics through in-situ preservation or scientific study;

23 (3) to ensure that the designated archaeological resource be preserved for and be accessible to the
24 scientific and educational communities for study purposes;

25 (4) to protect the values of the designated archaeological resource as expressed by the local government
26 and citizenry; these values shall be related to the educational, associative, or aesthetic qualities of
27 the resource.

28 (d) General Use Standards.

29 (1) Significant concentrations of archaeological material, reflecting a full range of human behavior,
30 shall be preserved in-situ for future research by avoidance during development activities. Areas for
31 avoidance shall be selected after archaeological investigations have been made. Subparagraph
32 (d)(2)(B) of this Rule outlines the nature, extent, conditions and significance of the cultural deposits.
33 The following avoidance measures shall be considered:

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

36 (B) limiting specific types of ground disturbing activities;

1 (C) donation of preservation easements to the State or, upon approval by the Department of
2 Natural and Cultural Resources, a historic preservation agency or organization.

3 (2) Activities which would damage or destroy the contents of a designated site's surface or subsurface
4 shall be prohibited until an archaeological investigation and resource management plan has been
5 implemented by the applicant. The investigation and management plan shall be developed in
6 consultation with the Department of Natural and Cultural Resources. Such archaeological
7 investigations shall comply with the following criteria:

8 (A) archaeological investigations conducted as part of the permit review process shall be
9 implemented in three parts: Phase I, a reconnaissance level investigation to determine the
10 nature and extent of archaeological materials over the designated area; Phase II, an
11 intensive level investigation which represents a direct outgrowth of Phase I findings and
12 through systematic data recovery assesses the potential importance of identified
13 concentrations of archaeological materials; Phase III, mitigation of significant adverse
14 impacts to recognized areas of importance. Evaluations of research potential shall be made
15 and prioritized in order of importance, based upon the status of previous research in the
16 area and the integrity of the remains;

17 (B) an archaeological research design shall be required for all archaeological investigations.
18 All research designs shall be subject to the approval of the Department of Natural and
19 Cultural Resources prior to conducting the work. A research proposal shall allow at least
20 30 days for review and comment by the Department of Natural and Cultural Resources;

21 (C) data shall be collected and recorded and artifacts shall be curated according to accepted
22 standards at an approved repository in consultation with the Department of Natural and
23 Cultural Resources.

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

31 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*
32 *Emergency Adoption Eff. January 2, 2024.*
33

1 15A NCAC 07I .0702 is adopted under emergency procedures as follows:

2
3 **15A NCAC 07I .0702 WHEN THE LOCAL PERMITTING AGENCY EXCEEDS LOCAL AUTHORITY**

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

8
9 *History Note: Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5);*

10 *Emergency Adoption Eff. January 2, 2024.*

1 15A NCAC 07J .0203 is adopted under emergency procedures as follows:

2
3 **15A NCAC 07J .0203 STANDARDS FOR WORK PLATS**

4 (a) General. Project plans or work plats shall include a top or plan view and a cross-sectional view. All plats shall
5 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'
6 or less.

7 (b) Details of Work Plats

8 (1) Top View or Plan View Work Plats. Such drawings shall show existing and proposed features such
9 as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas,
10 type and location of sewage treatment facilities, effluent outlets, shoreline length, upland vegetation,
11 coastal wetlands and/or 404 wetlands, house, septic tanks, septic fields, existing structures on
12 adjacent property (i.e. shoreline stabilization, docking facility), Areas of Environmental Concern
13 shall be labeled, the 30' buffer or DWR buffers as applicable, US Army Corps of Engineers setbacks
14 and lines, First Line of Stable Natural Vegetation, development setbacks, pre-project vegetation
15 line, north arrow, Submerged Aquatic Vegetation, shellfish, navigation markers, hydraulic dredge
16 pipe alignment, spoil disposal location, dune elevations or contours and adjacent waterbody name.
17 Existing water depths shall be indicated as Normal Water Level or Normal High Water Level unless
18 work plats are by a professional surveyor or engineer where water depths can be indicated using
19 mean low water as base or zero and shall be shown either as contours or spot elevation. In areas
20 where the difference in daily low and high tides is less than six inches, mean water level as certified
21 by a professional surveyor or engineer or normal water level shall be used. Work plats shall indicate
22 which features are existing and which are proposed. Property boundaries, as they appear on the
23 deed, and the names of adjacent property owners shall be shown on the work plat with Riparian
24 Lines and 15' riparian setback. The work plat shall show areas to be excavated and the exact site
25 for disposal of the excavated material unless outside of the Area of Environmental Concern, then an
26 address may be provided. When fill material is to be placed behind a bulkhead or dike, the plan shall
27 show the exact location of such bulkheads, dikes and fill areas and calculations showing that the
28 bulkhead or dike has the capacity to confine the material. Work plats shall indicate the presence of
29 wetlands in the area of proposed work.

30 (2) Cross-Section Work Plats. A cross-sectional diagram showing depth and elevation of proposed
31 work relative to Normal Water Level or Normal High Water Level unless certified by a professional
32 surveyor or engineer where water depths can be shown as mean low and mean high water, shall be
33 included in the plan. First floor elevations shall be shown for any proposed structures.

34 (3) Title of Work Plats. Each work plat shall be numbered, have a title block to identify the project or
35 work, and shall include name of applicant or project, date the plat was prepared, and scale of the
36 plat. The date of any revisions shall be noted. The applicant shall also include the name or initials
37 of the person who drew the plat.

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

3 (A) the character of the development (i.e. residential, commercial, recreational, etc.);

4 (B) a description of the development activities proposed; and

5 (C) the amount of ground disturbance in the AEC measured in acres or square feet.

6 (d) Following review of the permit application, a permit may be issued conditioned in accordance with G.S.143B-
7 279.4. Any subsequent violation of these conditions shall be a permit violation. Any subsequent change in the
8 development which changes the parameters of the project shall be submitted to the Division of Coastal Management.
9 Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that is determined by
10 the Division of Coastal Management to not have a direct impact on the AEC while a permit application for work in
11 the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

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

13 Emergency Adoption Eff. January 2, 2024.
14

1 15A NCAC 07J .0204 is adopted under emergency procedures as follows:
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3 **15A NCAC 07J .0204 PROCESSING THE APPLICATION**

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

6 (b) Processing for a Major Permit or Major Modification to a Major Permit application shall begin when an application
7 is accepted as complete. Before an application is accepted as complete, the requirements as listed in 15A NCAC 07J
8 .0204(b)(1) through (b)(5) shall be met. Any application not in compliance with these requirements shall be returned
9 to the applicant along with a notification explaining the deficiencies of the application and shall not be accepted as
10 complete until all required information is submitted.

11 (1) a current application form shall be submitted. The application form shall contain:

12 (A) application type (major, modification or general)

13 (B) name of entity on deed or first, middle, and last name(s) referenced on deed;

14 (C) phone number and email;

15 (D) physical and mailing address;

16 (E) project type and location;

17 (F) authorized agent contact information;

18 (G) description of existing conditions and development on the project location including lot
19 size, shoreline length, vegetation and erosion details;

20 (H) total ground disturbance resulting from the proposed development including clearing and
21 grading;

22 (I) applicable dimensions of proposed development activity including quantity, length, width,
23 elevation, slope, area, volume, distance waterward of NWL or NHW, average existing
24 depth, proposed final depth, impervious coverage, and sediment characteristics;

25 (J) applicable erosion and sedimentation control measures, fill source and environmental
26 mitigation efforts for the proposed development activity;

27 (K) general information concerning the use of the proposed development activity, including
28 boat type and length, proximity of structures to adjacent properties and other structures,
29 and waterbody width;

30 (L) type of proposed impacts and dimensions (i.e. shading, filling, excavating) to coastal
31 wetlands, submerged aquatic vegetation, shell bottom, non-coastal wetlands, and open
32 water from the proposed development activities;

33 (M) project narrative that includes a brief description of the project and any previous or active
34 state or federal permits issued on the property;

35 (N) a signed AEC Hazard Notice if the project is in the Ocean Hazard AEC if applicable; and

36 (O) acknowledgements to be attested to before submitting the application;

- 1 (i) I understand that any permit issued in response to this application will allow only
- 2 the development described in the application. The project will be subject to the
- 3 conditions and restrictions contained in the permit;
- 4 (ii) I certify that I am authorized to grant, and do in fact grant permission to
- 5 representatives of state and federal review agencies to enter on the aforementioned
- 6 lands in connection with evaluating information related to this permit application
- 7 and follow-up monitoring of the project;
- 8 (iii) I further certify that the information provided in this application is truthful to the
- 9 best of my knowledge; and
- 10 (iv) I certify that by clicking the submit button on this NC Division of Coastal
- 11 Management application I acknowledge that I am signing and dating the
- 12 application submitted therein.
- 13 (2) a work plan as described in 15A NCAC 07J .0203 shall be attached to all CAMA major development
- 14 or dredge and fill permit applications;
- 15 (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA
- 16 major development or dredge and fill permit application;
- 17 (4) notice to adjacent riparian landowners of a CAMA Major Permit applicant shall be given as follows:
- 18 Certified return mail receipts (or copies thereof) indicating that adjacent riparian landowners (as
- 19 identified in the permit application) have been sent a copy of the application for the proposed
- 20 development for a CAMA major development and/or dredge and fill permit application. Said
- 21 landowners have 30 days from the date of notification in which to comment. Such comments shall
- 22 be considered by the Department in reaching a final decision on the application.
- 23 (5) the application fee shall be paid as set out in this Subparagraph: Major development permit
- 24 application fees shall be in the form of an electronic funds transfer or check or money order payable
- 25 to the Department. The application fee for private, non-commercial for-profit development shall be
- 26 two hundred fifty dollars (\$250.00). The application fee for a public or commercial for-profit project
- 27 shall be four hundred dollars (\$400.00).
- 28 (c) Minor permit application processing shall begin when an application is accepted as complete. Before an
- 29 application is accepted as complete, the requirements as listed in 15A NCAC 07J .0204(c)(1) through (c) (4) shall be
- 30 met. Any application not in compliance with these requirements shall be returned to the applicant along with a
- 31 notification explaining the deficiencies of the application and shall not be accepted as complete until all required
- 32 information is submitted.
- 33 (1) a current application form shall be submitted. The application form shall contain:
- 34 (A) first, middle, and last name of landowner;
- 35 (B) phone number and email;
- 36 (C) physical and mailing address;
- 37 (D) authorized agent first and last name and contact information;

- 1 (E) location of project including address, street name, directions to site and adjacent
2 waterbody;
- 3 (F) description of the proposed project, including a list of all proposed construction and land
4 disturbance within the Coastal Shorelines Area of Environmental Concern (AEC) and
5 associated 30- foot buffer;
- 6 (G) size of lot or parcel in square feet and acres;
- 7 (H) proposed use, if residential, single-family or multi-family, commercial, industrial or other;
- 8 (I) if proposed development is located in the Ocean Hazard Area of Environmental Concern,
9 total floor area of structure in square feet including air conditioned living space, parking
10 elevated above ground level, non-conditioned space elevated above ground level but
11 excluding non-load bearing attic space;
- 12 (J) project drawing that includes the details stated in 15A NCAC 07J .0204(2);
- 13 (K) if proposed development is located in the Coastal Shoreline AEC, size of building footprint
14 and other impervious or built upon surfaces in square feet including the area of the
15 foundation of all buildings, driveways, covered decks,
16 concrete or masonry patios that are within the AEC. Calculations shall be attached to
17 project drawings;
- 18 (L) if the development is located in an area subject to a State stormwater management permit
19 issued by the NC Division of Energy, Mineral and Land Resources, the total built upon
20 area and impervious surfaces allowed for the lot or parcel in square feet; and
- 21 (M) indication that the applicant is an owner of the property.
- 22 (N) Minor development permit application fees shall be in the form of an electronic funds
23 transfer or check or money order payable to the permit-letting agency in the amount of one
24 hundred dollars (\$100.00). Monies so collected shall be used only in the administration of
25 the permit program.
- 26 (2) a work plan shall be attached to all CAMA minor permit applications that includes:
- 27 (A) Work plats shall include a top or planview and a cross-sectional view. All plats shall have
28 the standard north arrow. North should be at the top of the plat. Work plats shall be
29 accurately drawn to scale. A scale of 1" = 200' or less is required.
- 30 (B) Such drawings shall show existing and proposed features such as dune systems,
31 shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type
32 and location of sewage treatment facilities and effluent outlets. Work Plats shall show
33 shoreline length, upland vegetation, coastal wetlands and/or 404 wetlands, house, septic
34 tanks, septic fields, existing structures on adjacent property (i.e.. shoreline stabilization),
35 Areas of Environmental Concern shall be labeled, the 30' buffer or DWR buffers (as
36 applicable), USACE setbacks and lines, First Line of Stable Natural Vegetation,
37 development setbacks, pre-project vegetation line, north arrow, dune elevations or

1 contours and adjacent waterbody name. Property boundaries, as they appear on the deed,
2 and the names of adjacent property owners shall be shown on the detailed plat.

3 (C) Cross-Section Drawing. A cross-sectional diagram showing elevation of proposed work
4 relative to existing ground level. Mean low and mean high water line shall be included in
5 the plan. The mean low water shall be the reference land elevations (i.e., mean low water
6 should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea
7 level shall be shown for any proposed buildings.

8 (D) Title of Drawing. Each drawing shall have a simple title block to identify the project or
9 work, and shall include name of applicant, date the plat was prepared, and scale of the
10 plat. The date of any revisions shall be clearly noted. The applicant shall also include the
11 name of the person who drew the plat.

12 (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA
13 minor permit application.

14 (4) notice to adjacent property landowners of a CAMA Minor Permit application shall be given as
15 follows:

16 (A) For CAMA minor development permits, the applicant shall give actual notice of his or her
17 intention to develop his or her property and apply for a CAMA minor development permit
18 to all adjacent riparian property owners. Actual notice can be given by sending a certified
19 letter, informing the adjoining property owner in person or by telephone, or by using any
20 other method which satisfies the Local Permit Officers that a good faith effort has been
21 made to provide the required notice.

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

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

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

6
7 History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;
8 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07J .0206 is adopted under emergency procedures as follows:

2

3 **15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS**

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

6

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

8

Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07J .0207 is adopted under emergency procedures as follows:

2
3 **15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL**
4 **APPLICATIONS**

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

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

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

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

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

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

24
25 History Note: Authority G.S. 113-229; 113A-120, 113A-124(a)(1); 113A-127;
26 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07J .0208 is adopted under emergency procedures as follows:

2
3 **15A NCAC 07J .0208 PERMIT CONDITIONS**

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

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

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

20
21 History Note: Authority G.S. 113-229; 113A-120(b); 113A-124(a)(1); 113A-127;
22 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0401 is adopted under emergency procedures as follows:
2

3 **SECTION .0400 - COASTAL ENERGY DEVELOPMENT – GENERAL POLICIES**
4

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

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

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

15 (1) protect coastal resources; and

16 (2) preserve access to and utilization of public trust resources, the planning of future uses affecting both
17 land and public trust resources,

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

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

30
31 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;*

32 *Emergency Adoption Eff. January 2, 2024.*

1 15A NCAC 07M .0402 is adopted under emergency procedures as follows:

2
3 **15A NCAC 07M .0402 DEFINITIONS**

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

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

12 (1) An analysis of the preferred sites for those elements of the project affecting the use of public trust
13 waters, adjacent lands and the coastal resources:

14 (A) In all cases where the preferred site is located within an area of environmental concern
15 (AEC) or on a barrier island, the applicant shall identify alternative sites considered and
16 present a full analysis in terms of Subparagraphs (b)(2) through (b)(9) of this Rule of the
17 reasons why the chosen location was deemed more suitable than another feasible alternate
18 site;

19 (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall
20 present an analysis to support the proposed location over an alternate site.

21 (2) An analysis of the economic impacts, both positive and negative, of the proposed project. The
22 analysis shall focus on economic impacts to the public, not on matters that are purely internal to the
23 corporate operation of the applicant. No proprietary or confidential economic data shall be required.
24 This analysis shall include potential adverse impacts upon the ability of any governmental unit to
25 furnish necessary services or facilities as well as other secondary impacts.

26 (3) An analysis of potential adverse impacts on coastal resources, including marine and estuarine
27 resources and wildlife resources, as defined in G.S. 113-129;

28 (4) An analysis of potential adverse impacts on existing industry and potential limitations on the
29 availability of, and accessibility to, coastal resources, including beach compatible sand and water,
30 for future use or development;

31 (5) An analysis of potential significant adverse impacts on recreational uses and scenic, archaeological
32 and historic resources;

33 (6) An analysis of potential risks to human life or property;

34 (7) An analysis of the impacts on the human environment including noise, vibration and visual impacts;

35 (8) An analysis of the procedures and time needed to secure an energy facility in the event of severe
36 weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;

1 (9) Other specific data required for the various state and federal agencies and commissions with
2 jurisdiction to evaluate the consistency of the proposed project with relevant standards and
3 guidelines;

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

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

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

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

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

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

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

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

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

28 (6) Thermal energy generation;

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

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

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

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

36 (e) "Significant" as used in this section includes consideration of both context and intensity. Context means that the
37 impact or effect shall be analyzed from several perspectives that include society as a whole

1 (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly
2 affected parties. Both short-and long-term effects are relevant. Intensity refers to the severity of impact or effect.

3 The following shall be considered in evaluating intensity:

- 4 (1) Both adverse impacts as defined in Paragraph (a) of this Rule and impacts that promote or enhance
5 the goals of the Coastal Area Management Act as found in G.S. 113A-102(b);
- 6 (2) The degree to which the proposed action affects public health or safety;
- 7 (3) Unique characteristics of the geographic area;
- 8 (4) The degree to which the possible effects on the environment are uncertain or involve unique or
9 unknown risks;
- 10 (5) The degree to which the CRC's permit decisions may establish a precedent for future CRC permit
11 decisions;
- 12 (6) The degree to which the CRC's permit decisions are related to other CRC permit decisions with
13 individually insignificant but cumulatively significant impacts. Significance cannot be avoided by
14 termining an action temporary or by breaking it down into small component parts; and
- 15 (8) The degree to which the CRC's permit decision may cause the loss or destruction of scientific,
16 cultural, historical, and environmental resources as those terms are commonly defined and
17 understood.

18
19
20 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-119.2; 113A-124;

21 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0403 is adopted under emergency procedures as follows:

2
3 **15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT - SPECIFIC POLICY STATEMENTS**

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

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

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

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

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

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

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

- 1 (1) Activities that may result in significant adverse impacts on coastal resources, including marine and
2 estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse
3 impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided;
- 4 (2) For petroleum facilities, data and information required for State permits and federal consistency
5 reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate
6 possible trajectories, and enumerate response and mitigation measures employing the best available
7 technology to be followed in the event of a release or spill. The information shall demonstrate that
8 the potential for petroleum release or spills and ensuing damage to coastal resources has been
9 minimized and shall factor environmental conditions, currents, winds, and inclement events such as
10 northeasters and hurricanes, in trajectory scenarios. This same data and information shall be
11 required for facilities requiring an Oil Spill Response Plan;
- 12 (3) Dredging, spoil disposal, and construction of structures that are likely to have significant adverse
13 impacts on the use of public trust waters and adjacent lands or coastal resources shall be avoided;
- 14 (4) Significant adverse impacts to existing or traditional uses, such as fishing, navigation and access to
15 public trust areas, and areas with high biological or recreational value such as those listed in Parts
16 (10)(A) through (10)(K) of this Paragraph, shall be avoided;
- 17 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
18 shall be avoided if the siting of structures will have significant adverse impacts on the use of public
19 trust waters, adjacent lands or coastal resources;
- 20 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
21 extreme wind, currents, and waves due to northeasters and hurricanes, shall be initiated to ensure
22 that significant adverse impacts on the use of public trust waters, adjacent lands and coastal
23 resources;
- 24 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
- 25 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
26 environmental or natural resources of more than local significance, as defined in G.S. 113A-
27 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- 28 (9) Energy facilities shall not be sited in areas where they pose a threat to the integrity of the facility
29 and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of
30 overwash or inlet formation, and Inlet Hazard Areas identified in 15A NCAC 07H .0304;
- 31 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
32 areas shall be avoided:
- 33 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
34 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
35 spawning areas and essential fish habitat areas of particular concern as designated by the
36 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic

1 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
2 migratory bird routes;

3 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
4 for registration or dedication by the North Carolina Natural Heritage Program;

5 (C) crossings of streams, rivers, and lakes except for existing corridors;

6 (D) anchorage areas and port areas;

7 (E) artificial reefs, shipwrecks, and submerged archaeological resources;

8 (F) Ocean Dredged Material Disposal Sites;

9 (G) primary dunes and frontal dunes;

10 (H) established recreation or wilderness areas, such as federal, state and local parks, forests,
11 wildlife refuges;

12 (I) military air space, training or target area and transit lanes;

13 (J) cultural or historic sites of more than local significance; and

14 (K) segments of Wild and Scenic River System.

15 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
16 Nesting and spawning periods shall be avoided; and

17 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
18 existing prior to construction shall be restored following abandonment. For abandoned facilities
19 outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions
20 if the abandonment of the structure is likely to have significant adverse impacts on the use of public
21 trust waters, adjacent lands or coastal resources.

22
23 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;

24 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0701 is adopted under emergency procedures as follows:
2

3 **SECTION .0700 – MITIGATION - GENERAL POLICY**

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

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

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

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

19
20 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;
21 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0703 is adopted under emergency procedures as follows:

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

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

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

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

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

12 (A) if publicly funded, creates benefits of national or state importance. This category may
13 include public roadways, navigation projects, state ports, and projects designed to provide
14 public access to public trust waters;

15 (B) if privately funded, provides increased access opportunities to public trust resources to the
16 general public for free or for a nominal fee, or provides economic benefits to the State or
17 community and is consistent with the local land use plan.

18 (b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC
19 07M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the
20 environment outweigh environmental losses based on the criteria set out in 15A NCAC 07M .0703(d).

21 (c) Mitigation projects may be considered by the CRC during the permit processing time prescribed in 15A NCAC
22 07J .0204, in accordance with the procedures set out in 15A NCAC 07J .0600 concerning declaratory rulings. The
23 applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 07M
24 .0703(a) provided that the applicant agrees that the permit processing time period set out in 15A NCAC 07J .0600 will
25 not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to
26 the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission in
27 obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior to
28 presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be
29 introduced at the meeting. CRC approval of the mitigation project is binding on the Commission and the applicant in
30 accordance with 15A NCAC 07J .0603(e).

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

35
36 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;

37 Emergency Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0704 is adopted under emergency procedures as follows:
2

3 **15A NCAC 07M .0704 MITIGATION - SPECIFIC POLICIES**

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

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

9 (1) Enhancement of coastal resources with created or restored systems determined to be more
10 productive of the resources characteristic of unaltered North Carolina ecosystems than those
11 destroyed.

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

14 (3) Creation or restoration of an area with a different ecological function or potential than that destroyed
15 or altered.

16 (4) The following forms of mitigation shall be considered by the Division of Coastal Management and
17 may be used in combination with Subparagraphs (1) through (3) of this Paragraph to achieve the
18 stated goal set forth in 15A NCAC 07M .0703(d).

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

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

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

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

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

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

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

34 *History Note:* Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126;

36 Emergency Adoption January 2, 2024.

1 15A NCAC 07M .1101 is adopted under emergency procedures as follows:
2

3 **SECTION .1100 - BENEFICIAL USE OF DREDGED MATERIALS FROM NAVIGATIONAL CHANNEL**
4 **MAINTENANCE AND EXCAVATION – GENERAL POLICIES**
5

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

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

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

17 *History Note: Authority G.S. 113A-107; 113-229;*

18 *Emergency Adoption Eff. January 2, 2024.*
19

McGhee, Dana

From: Snyder, Ashley B
Sent: Thursday, December 14, 2023 4:23 PM
To: Everett, Jennifer; Lucasse, Mary L
Cc: Lopazanski, Mike; Willis, Angela; Goebel, Christine A; Young, Elizabeth S; Rules, Oah
Subject: RE: Emergency and Temp rules filing
Attachments: Forms - CRC.pdf

Jennifer and Mary,

Based on an initial review of the filing, I have a question. Have you consulted with the Joint Legislative Commission on Governmental Operations pursuant to G.S. 12-3.1 regarding the \$250, \$400, and \$100 fees set in 15A NCAC 07J .0204 (b)(5) and (c)(1)(N), respectively? G.S. 113A-119.1 grants authority to establish fees, but I do not see an exemption from the consultation requirement in G.S. 12-3.1. Exemptions from G.S. 12-3.1 are usually explicit. *See e.g.* S.L. 2023-134, Sec 5.2(a) (“Notwithstanding G.S. 12-3.1, an agency is not required to consult with the Joint Legislative Commission on Governmental Operations prior to establishing or increasing a fee to the level authorized or anticipated in this act.”)

To establish any fee, the statute has to “expressly provide[] for the grant of authority to establish a fee or charge.” G.S. 12-3.1(a). In other words, a grant of authority to establish a fee is not tantamount to an exemption from G.S. 12-3.1.

In fact, in rules approved by the Rules Review Commission this morning, the Coastal Resources Commission relied upon the same statute, G.S. 113A-119.1, to establish or increase fees in 15A NCAC 07H. The attached forms submitted by the Coastal Resources Commission show the Commission consulted with the Joint Legislative Commission on Governmental Operations regarding the establishment of those fees.

A rule adopted to establish a fee cannot become effective until the consultation request has been satisfied. G.S. 12-3.1(a), 150B-21.c(c1), 150B-21.19. If you have consulted with the Joint Legislative Commission on Governmental Operations, please provide a copy of the consultation.

Thank you,

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

From: Everett, Jennifer <jennifer.everett@deq.nc.gov>
Sent: Thursday, December 14, 2023 12:27 PM
To: Snyder, Ashley B <ashley.snyder@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>
Cc: Lucasse, Mary L <mlucasse@ncdoj.gov>; Lopazanski, Mike <mike.lopezanski@deq.nc.gov>; Willis, Angela <angela.willis@deq.nc.gov>; Goebel, Christine A <Christine.Goebel@deq.nc.gov>; Young, Elizabeth S <esyong@ncdoj.gov>
Subject: Emergency and Temp rules filing

Hi Ashley,

Attached are Emergency and Temporary rule filings from the Coastal Resources Commission.

These include:

- 16 Emergency rules and the associated Findings of Need form.
- 16 Temporary rules including the Publication on the OAH website form.
- An attachment regarding the public hearing locations for the temporary form (block 3).
- A memo pertaining to both the Emergency and Temporary rules for waiver requests.

Let us know if you have any questions.

Thanks.


Jennifer

Jennifer Everett
DEQ Rulemaking Coordinator
N.C. Depart. Of Environmental Quality
Office of General Counsel
1601 Mail Service Center
Raleigh, NC 27699-1601
Tele: (919)-707-8595
<https://deq.nc.gov/permits-rules/rules-regulations/deq-proposed-rules>


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

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


SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .1103 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 09/01/23 Link to Agency notice: https://www.deq.nc.gov/accessdeq/rules-regulations/deq-proposed-rules/proposed-rules Hearing on: 09/21/23 Adoption by Agency on: 11/09/23 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: 9/01/23 Consultation not required. Cite authority: <input type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: These amendments increase fees for most Coastal Area Management Act (CAMA) permit actions including increasing fees for all General Permits.	
10. Rulemaking Coordinator: Jennifer Everett Phone: 919-707-8595 E-Mail: Jennifer.Everett@deq.nc.gov Additional agency contact, if any: Mike Lopazanski Phone: 252-515-5400 E-Mail: Mike.Lopazanski@deq.nc.gov	11. Signature of Agency Head* or Rule-making Coordinator:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Jennifer Everett Title: DEQ Rulemaking Coordinator
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	


SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .1203 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
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SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .1303 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
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SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .1403 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
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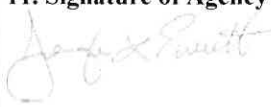
SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .1503 Application Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
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RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	


SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .1903 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
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7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: 9/01/23 Consultation not required. Cite authority: <input type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
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Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	


SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .2003 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
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7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: 9/01/23 Consultation not required. Cite authority: <input type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
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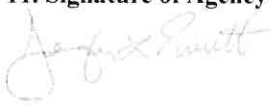
SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .2103 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 09/01/23 Link to Agency notice: https://www.deq.nc.gov/accessdeq/rules-regulations/deq-proposed-rules/proposed-rules Hearing on: 09/21/23 Adoption by Agency on: 11/09/23 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: 9/01/23 Consultation not required. Cite authority: <input type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: These amendments increase fees for most Coastal Area Management Act (CAMA) permit actions including increasing fees for all General Permits.	
10. Rulemaking Coordinator: Jennifer Everett Phone: 919-707-8595 E-Mail: Jennifer.Everett@deq.nc.gov Additional agency contact, if any: Mike Lopazanski Phone: 252-515-5400 E-Mail: Mike.Lopazanski@deq.nc.gov	11. Signature of Agency Head* or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Jennifer Everett Title: DEQ Rulemaking Coordinator
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .2403 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 09/01/23 Link to Agency notice: https://www.deq.nc.gov/accessdeq/rules-regulations/deq-proposed-rules/proposed-rules Hearing on: 09/21/23 Adoption by Agency on: 11/09/23 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: 9/01/23 Consultation not required. Cite authority: <input type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input checked="" type="checkbox"/> This Rule was part of a combined analysis. <input checked="" type="checkbox"/> State funds affected <input checked="" type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input checked="" type="checkbox"/> Approved by OSBM <input type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
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Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Coastal Resources Commission	
2. Rule citation & name (name not required for repeal): 15A NCAC 07H .2703 Permit Fee	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 09/01/23 Link to Agency notice: https://www.deq.nc.gov/accessdeq/rules-regulations/deq-proposed-rules/proposed-rules Hearing on: 09/21/23 Adoption by Agency on: 11/09/23 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
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Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

December 15, 2023

Chair Renee Cahoon
Coastal Resources Commission
Sent via email only: renee.cahoon@deq.nc.gov

Re: Emergency Rule Filing, 15A NCAC 07H, 07I, 07J, 07M

Dear Chair Cahoon:

G.S. 150B-21.1A sets forth a two-part test to engage in emergency rulemaking: (1) adherence to the notice and hearing requirements of G.S. 150B, Article 2A, Part 2 are contrary to the public interest and (2) the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety. I find the rules filed by the Coastal Resources Commission (“CRC”) do not meet the criteria required in G.S. 150B-21.1A.

These rules originated as readoptions during the decennial periodic review process. The Rules Review Commission (“RRC”) objected to these rules in September 2022. The CRC did not satisfy the RRC’s objections and did not request the return of the rules. As a result of the CRC’s failure to act, the rules remained pending on RRC’s agenda for over a year until the General Assembly stepped in. Session Law 2023-134, Sec. 21.2(m) required these rules to “immediately be returned to the agency” and therefore removed from the Code.

In its findings of need, the agency points to the return and the removal of these rules from the Code as the basis for emergency rulemaking. The agency argues that since the public knows about these rules and is familiar with them, that public notice and comment is not required.

CRC fails to show that the notice and hearing requirements of temporary and permanent rulemaking are contrary to the public interest. Entering the rules into

Donald R. van der Vaart, Director
Chief Administrative Law Judge

John C. Evans
Senior Administrative Law Judge

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the Code without public notice or comment would be in direct conflict with Session Law 2023-134 and is not in the public's interest.

Moreover, waiving notice and comment evades, and potentially obviates, the well-established statutory process in G.S. 150B-21.12 whereby following the RRC's objection to a rule, the agency is provided an opportunity to respond.

Since the filing fails the first part of the test, there is no need to engage in any further analysis. The rules filed by CRC do not meet the criteria for emergency rulemaking required in G.S. 150B-21.1A. Please respond to this letter in accordance with the provisions of G.S. 150B-21.1A(b).

Sincerely,

A handwritten signature in black ink that reads "Ashley Snyder". The signature is written in a cursive, flowing style.

Ashley Snyder
Codifier of Rules

cc: Jennifer Everett, jennifer.everett@deq.nc.gov
Mary Lucasse, mlucasse@ncdoj.gov

JOSH STEIN
ATTORNEY GENERAL



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

December 15, 2023

Via email: ashley.snyder@oah.nc.gov & oah.rules@oah.nc.gov
Ashley Synder, NC Codifier of Rules
North Carolina Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

Re: Emergency and Temporary Rule 15A NCAC 07J .0204

Dear Codifier Synder,

In your email of December 14, 2023, 4:23 PM, you asked whether the N.C. Coastal Resources Commission (“CRC”) had consulted with the Joint Legislative Commission on Governmental Operations (“JLCGO”) pursuant to N.C. Gen. Stat. § 12-3.1 regarding the \$250, \$400, and \$100 fees set in 15A NCAC 07J .0204 (b)(5) and (c)(1)(N), respectively. In short, the CRC is exempt from these requirements or, in the alternative, the CRC will meet the statutory requirements for requesting consultation. Let me explain.

“Only the General Assembly has the power to authorize an agency to establish or increase a fee or charge for the rendering of any service or fulfilling of any duty to the public.” N.C. Gen. Stat. § 12-3.1. The North Carolina Court of Appeals held, “[t]he clear purpose of this statute is to eliminate any inherent power of state agencies to impose fees for rendering public services or fulfilling public duties that might be construed as part of the agency's rule-making power granted under the APA[.]” *Griffith v. N.C. Dep’t of Corr.*, 210 N.C. App. 544, 709 S.E.2d 412 (2011) (emphasis added). As acknowledged in your email, “G.S. [§] 113A-119.1 grants [the CRC] authority to establish fees.” Thus, by statute, the General Assembly has provided an explicit grant of authority for the CRC to establish a fee schedule.

In your email, you wonder whether this statutory authority is sufficient to exempt the CRC from the consultation requirement in N.C. Gen. Stat. § 12-3.1, because exemptions “are usually explicit.” It is the CRC’s position that by statute, the General Assembly did explicitly exempt the CRC from the consultation requirement through the specific grant of authority to the CRC to establish by rule a “graduated fee schedule for the processing of applications for permits, renewals of permits, modifications of permits or transfers of permits” not to “exceed four hundred dollars.” N.C. Gen. Stat. § 113A-119.1(a). Accordingly, consultation under N.C. Gen. Stat. § 12-3.1 is not required and the Codifier must enter the emergency rule in the Code pursuant to 150B-21.1A(b) and publish the proposed temporary rule and notice of public hearing pursuant to N.C. Gen. Stat. § 150B-21.1(a3).

In the alternative, N.C. Gen. Stat. § 12-3.1 states that its requirements apply “unless that construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute.” If the Codifier is asserting that an emergency rule not be entered into the Code on an expedited basis until consultation with the JLCGO is complete, that would be “inconsistent with the manifest intent of the General Assembly [and] repugnant to the context of the statute.” N.C. Gen. Stat. § 150B-21.1A is written to allow agencies to immediately

Ashley Synder, N.C. Codifier of Rules

December 15, 2023

Page 2 of 2

get necessary rules on the books. For the Codifier to require that the agency have completed the consultation contemplated by N.C. Gen. Stat. § 12-3.1, which could result in a 90-day delay for the JLCGO to hold a hearing, is repugnant to and inconsistent with the manifest intent of the General Assembly which provides for emergency rulemaking. Likewise, temporary rulemaking pursuant to N.C. Gen. Stat. § 150B-21.1 provides an expedited process for entering rules into the Administrative Code, and a potential 90-day delay for the JLCGO to hold a hearing is similarly repugnant to and inconsistent with the manifest intent of the General Assembly providing for this expedited rulemaking process.

Instead, a fair reading of the statutory requirements in the context of the temporary and emergency provisions of the APA, is that “compliance” with N.C. Gen. Stat. § 12-3.1 requires only that the CRC “shall submit a request for consultation to all members of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly on the same date the notice of text of the rule is published.” N.C. Gen. Stat. § 12-3.1(a) (emphasis added). Once the CRC submits a request for consultation, which it plans to do without waiving any argument that the provisions of N.C. Gen. Stat. § 12-3.1 do not apply as described above, even if the Codifier is correct that the CRC’s authorizing statute is not a sufficient explicit exemption from the requirements of N.C. Gen. Stat. § 12-3.1, the CRC will have satisfied the requirement for compliance under N.C. Gen. Stat. §150B-21.1A(b) and -21.1(a4).

In order to remove any possible impediment to the Codifier entering the emergency rule in the Code pursuant to N.C. Gen. Stat. § 150B-21.1A(b) and publishing the proposed temporary rule and notice of public hearing pursuant to N.C. Gen. Stat. § 150B-21.1(a3), the CRC plans to submit “a request for consultation to all members of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly on the same date the notice of text of the rule is published.” N.C. Gen. Stat. § 12-3.1(a). See attached request that we plan to submit upon publication. If you have any additional questions, please do not hesitate to let us know.

Sincerely,



Mary L. Lucasse, Special Deputy Attorney General
Elizabeth S. Young, Assistant Attorney General

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

BRAXTON DAVIS
Director



Add date - to be sent upon publication of the emergency rule

To: Members of the Commission, the Commission Assistant, and the Fiscal Research Division of the General Assembly

Re: Consultation Request regarding fees in 15A NCAC 07J .0204

Pursuant to N.C. Gen. Stat. § 12-3.1(a), this is a request for consultation on the emergency and temporary rule 15A NCAC 07J .0204. Specifically, the CRC requests confirmation that this rule is consistent with the statutory authority provided by the General Assembly for the CRC to set fees in N.C. Gen. Stat. § 113A-119.1(a). Please do not hesitate to let us know if you have any questions.

Background

As the Coastal Resources Commission (CRC) has worked through the readoption of its coastal development rules as part of the legislatively required periodic rules review process, there have been several issues with proposed amendments submitted to the Rules Review Commission (RRC).

The Division of Coastal Management addressed many of the RRC's technical change requests, however, the RRC continued its objections to 30 of the 132 rules submitted for review. Until Session Law 2023-134 became effective on October 3, 2023, a rule could not be returned to an agency without the agency requesting return. At their October 5, 2023, meeting, the RRC voted to return these 30 rules to the CRC. As a result, the Codifier removed these rules from the NC Administrative Code.

The CRC filed a declaratory judgment complaint in Wake Co. Superior Court on November 8, 2023, requesting the court resolve the dispute between the CRC and RRC over these rules. During and following the TRO hearing, counsel for the RRC suggested that the CRC consider emergency and temporary rulemaking as a means to reinstate these rules in the NC Administrative Code. The Division of Coastal Management was directed by the CRC to pursue this course of action.

At a December 13, 2023, specially called meeting, the CRC approved emergency and temporary rulemaking for 16 rules which the Division considers critical to the day-to-day administration of the NC Coastal Program. These rules focus primarily on the Coastal Area Management Act (CAMA) permit application process. Amendments included in the emergency rules address the



North Carolina Department of Environmental Quality | Division of Coastal Management
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252.515.5400

RRC objections which include vague and ambiguous language, clarifying procedures, citations addressing statutory authority, and clarify definitions. The Division does not believe these amendments impose additional requirements on the regulated community as these are rules that were in existence as of October 5, 2023, and for decades prior to that.

Fiscal Analysis

Included in the emergency rules approved by the CRC is **15A NCAC 7J .0204 Processing The Application** for CAMA major and minor permits. Since 1989, the CRC has had legislative authority under N.C. Gen. Stat. § 113A-119.1 of CAMA to establish fees for various permit actions at a cost of up to \$400 per permit. The CRC is not proposing any fee increase for CAMA major or minor permit as part of this emergency and temporary rulemaking—rather, the CRC is simply seeking to replace the rule that established fees that had been in use for years and was removed from the Code under S.L. 2023-134. The Commission’s permit fees are based on administrative and personnel cost, complexity of development as well as the maximum fee for any given permit, which is statutorily limited to \$400.

A graduated fee schedule was originally adopted in 1989 and has not been changed since 2006. Major development permit application fees for private, non-commercial for-profit development are \$250.00 and the application fee for a public or commercial for-profit project is \$400.00. The Minor permit application processing fee is \$100.00. Below is a table outlining the number of permits issued in 2022 and fees collected by the Division of Coastal Management.

Projected CAMA Permit Fee Revenue by Permit Type, Impacted Party (based on Calendar Year 2022 permitting data)

Permit Type/Permit Action	# Issued CY22	Current Fee CY22	Amount of Fees Collected CY22
Minor Permits	350	\$100	\$35,000
Major Permits (private)	59	\$250	\$14,750
Major Permits (public)*	6	\$400	\$2,400

In summary, and pursuant to the requirements of N.C. Gen. Stat. § 12-3.1(a), S.L. 2023-134 caused the CRC’s rule establishing permitting fees to be removed from the Code on October 5, 2023. The CRC is now requesting that the same fees that were previously in the Code be re-established through emergency and temporary rulemaking such that minor permits incur a \$100 fee, major private permits incur a \$250 fee, and major public permits incur a \$400 fee. N.C. Gen. Stat. § 113A-119.1 gives the CRC the explicit statutory authority to set these fees. These



fees are necessary to ensure the stability and effectiveness of the coastal rules for the benefit of the regulated public, and to ensure the CRC's compliance with statutory mandates for rule promulgation under N.C. Gen. Stat. Chapter 113A, Article 7, the Coastal Area Management Act.



North Carolina Department of Environmental Quality | Division of Coastal Management
Morehead City Office | 400 Commerce Avenue | Morehead City, North Carolina 28557
252.515.5400

JOSH STEIN
ATTORNEY GENERAL



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

December 19, 2023

Via email: ashley.snyder@oah.nc.gov & oah.rules@oah.nc.gov
Ashley Synder, NC Codifier of Rules
North Carolina Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

Re: Emergency Rules Filing, 15A NCAC 07H, 07I, 07J, 07M

Dear Codifier Synder,

At the request of Chair Renee Cahoon, North Carolina Coastal Resources Commission (“CRC”), I am writing to respond to your December 15, 2023 letter regarding the emergency rules the CRC submitted on December 14, 2023 in accordance with the provisions of G.S. 150B-21.1A(b).

In your letter, you explain that “G.S. 150B-21.1A sets forth a two-part test to engage in emergency rulemaking” and conclude that the rules filed by the CRC do not meet the first part of the two-part test based on your assessment that the “CRC fails to show that the notice and hearing requirements of temporary and permanent rulemaking are contrary to the public interest.” You indicated that you did not assess the second part of the test required by G.S. 150B-21.1A.

However, without considering all of the information provided by the CRC, including the current and ongoing serious impacts to the North Carolina coastal management program resulting from the unilateral removal of these rules from the North Carolina Administrative Code (“Code”) and any delay in returning the rules to the Code, it is impossible to assess the full import of the CRC’s claim that the adherence to the notice and hearing requirements of temporary and permanent rulemaking is contrary to the public interest.

Specifically, the CRC asserts that it is contrary to the public interest to delay return of these rules to the Code in order to provide a notice period because the public is already aware of and have been operating under these rules for decades. Any delay in returning the rules to the Code would result in a serious threat to public safety based on 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). Without these rules, the CRC, and its staff at the North Carolina Division of Coastal Management (“DCM”), cannot rely on these rules to issue permits for development in the coastal counties and make 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. Any delay for hearings and comments seriously impacts DCM’s ability to protect Areas of Environmental Concern, which establish the CRC’s jurisdiction, including Jockey’s Ridge and Permuda Island. The removal of rules from the Code

Ashley Synder, N.C. Codifier of Rules

December 19, 2023

Page 2 of 2

severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. Any delay in returning the rules to the Code in order to adhere to the public hearing and comments provisions for temporary and permanent rules is against the public interest.

The CRC believes that these emergency rules should be immediately returned to the Code. If you have any additional questions about our position, please do not hesitate to let me know.

Sincerely,

A handwritten signature in cursive script that reads "Mary L. Lucasse".

Mary L. Lucasse
Special Deputy Attorney General and Commission Counsel



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

December 19, 2023

Chair Renee Cahoon
Coastal Resources Commission
Sent via email only: renee.cahoon@deq.nc.gov

Re: Emergency Rule Filing, 15A NCAC 07H, 07I, 07J, 07M

Dear Ms. Cahoon:

This morning, the Coastal Resources Commission (“CRC”) submitted a new statement following my objection to the CRC’s emergency rule filing. Pursuant to G.S. 150B-21.1A(b), I am required to evaluate the new statement in accordance with the two-part test to engage in emergency rulemaking: (1) adherence to the notice and hearing requirements of G.S. 150B, Article 2A, Part 2 are contrary to the public interest and (2) the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety.

For the same reasons set forth in my December 15, 2023 letter and following consideration of the public comment received, I find the rules filed by the Coastal Resources Commission (“CRC”) do not meet the criteria required in G.S. 150B-21.1A.

If the CRC decides to overrule my objection, I will not have statutory authority to enter 15A NCAC 07J .0204 into the Code unless and until CRC satisfies the fee consultation requirement in G.S. 12-3.1. “Notwithstanding any other provision of this subsection, if the agency has not complied with the provisions of G.S. 12-3.1, the Codifier of Rules shall not enter the rule into the Code.” G.S. 150B-21.1A(b); *see also* G.S. 12-3.1(a), 150B-21.3(c1), 150B-21.19(5).

Following an increase in emergency rule filings in the wake of COVID, a bill was introduced to specifically exempt emergency and temporary rules from the requirements of G.S. 12-3.1. *See* Senate Bill 513, Sec. 5 (2021). The bill died in committee and the consultation requirement remains in place for all rules.

Donald R. van der Vaart, Director
Chief Administrative Law Judge

John C. Evans
Senior Administrative Law Judge

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www.oah.nc.gov

Sincerely,

A handwritten signature in black ink that reads "Ashley Snyder". The signature is written in a cursive, flowing style.

Ashley Snyder
Codifier of Rules

cc: Jennifer Everett, jennifer.everett@deq.nc.gov
Mary Lucasse, mlucasse@ncdoj.gov

December 18, 2023

VIA EMAIL (ashley.snyder@oah.nc.gov)

Ms. Ashley Snyder
Codifier of Rules
NC Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

Mary Katherine Stukes
Attorney at Law

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Moore & Van Allen PLLC

100 North Tryon Street
Suite 4700
Charlotte, NC 28202-4003

Re: Bridgeview Subdivision, 1180 Cedar Point Boulevard, Cedar Point, Carteret County, NC

Dear Ms. Snyder,

We represent Cedar Point Developers, LLC (“Cedar Point”) related to a proposed residential development at 1180 Cedar Point Boulevard in Carteret County, North Carolina. As you know, the North Carolina Coastal Resources Commission (“CRC”) called a December 13, 2023 Special Meeting (the “Meeting”) to evaluate and pass an emergency rulemaking for sixteen rules which were then submitted to you on December 14, 2023 (the “Rules”). Cedar Point’s proposed development is subject to a CAMA Major Permit and is therefore impacted by the status of the Rules and CRC’s implementation of them.

Pursuant to NCGS 150B-21.1A(b), you are charged with evaluating the CRC’s statement of need for passing the emergency rulemaking and determining whether the statement meets the criteria for adoption of an emergency rule under that section. NCGS 150B-21.1A(b) states that, in connection with her consideration of an emergency rulemaking, the Codifier of Rules may consider any information submitted by the agency or another person. As such, we are writing to submit comments on the emergency rulemaking, and to notify you of our position that the emergency rulemaking does not meet either of the criteria set forth in NCGS 150B-21.1A(a). Further, we do not believe that approval of the emergency rulemaking during the Meeting was proper because many CRC Commissioners (some of whom were attending their first meeting on the CRC) were unfamiliar with the issues and the apparent reasoning for the rulemaking on which they were voting.

The Rules do not meet the statutory criteria for an emergency rulemaking. As you know, an agency may adopt an emergency rule without prior notice or hearing when it finds that: (1) “adherence to the notice and hearing requirements ... would be contrary to the public interest” and (2) “the immediate adoption of the rule is required by a serious and unforeseen threat to the public health or safety.” NCGS 150B-21.1A(a). The emergency rulemaking does not meet either of these criteria and is therefore inconsistent with the process set forth under state law.

North Carolina law requires an agency to demonstrate that an emergency rulemaking is necessary because a situation exists where rulemaking through the typical process would be “contrary to the public interest.” NCGS 150B-21.1A(a). However, the CRC’s statement of need fails to articulate how the public interest would be harmed or otherwise impacted by evaluation of the Rules through the normal rulemaking process. Moreover, the CRC has not provided such justification for each specific rule proposed.

First, the CRC argues that public notice and a public hearing are unnecessary because the Rules “have been included in the Code for decades and more recently, the public was provided an opportunity to comment during the periodic readoption process.” This statement assumes that the rules being considered for emergency rulemaking are identical to those that existed in the Code prior to October 5, 2023. However,

this argument is disingenuous and inaccurate. The Rules contained in the proposed emergency rulemaking contain several revisions and edits that could have a significant impact on both the regulated community and on how the agency carries out its statutory mandate for rule promulgation. Thus, codification of emergency rules *without* time for the public to adequately evaluate and comment on these changes would be decidedly contrary to the public interest. CRC's statement of need does not provide any substantive basis as to why adherence to the process set forth under state law would be "contrary to the public interest." Even assuming that the rules do not change the status quo (which we dispute), such a status does not make the rulemaking process contrary to the public interest.

Second, the CRC argues that an emergency rulemaking is necessary to bypass adherence to the notice and hearing requirements because the state "cannot rely on these rules to issue permits for development in the coastal counties, make enforcement decisions, and can no longer review certain federal projects for consistency with State law pursuant to these rules." However, the CRC's statement of need fails to substantiate this assertion that its authority has or will be limited in the absence of the emergency rulemaking. The rule giving DCM authority to issue permits, 15A NCAC 07J .0201, is unchanged and in full force and effect. The CRC's statement does not include examples of situations where the agency was unable to issue or enforce a permit. Nor does it provide any detail on the "certain federal projects" that it is allegedly unable to review (for example, what federal agencies are involved, what types of projects are at issue, whether those projects involve issuance of permits or enforcement-related issues, etc.). As of the date of this letter, the Rules have not been part of the Code for approximately seventy days, and their status has been in question for over a year. A cursory review of publicly available information from the past seventy days indicates just the opposite, as the agency has in fact continued to issue major CAMA permits and conduct enforcement actions since the rules were removed from the Code on October 5, 2023.

The CRC goes on to argue that the removal of the Rules from the Code "severely impacts the commission's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public." Again, the CRC has not provided any examples of instances during the last seventy days when there has been confusion related to the permitting procedures, or incidences when the commission's rules were "severely impact[ed]." Potential confusion does not equate to a justification for circumventing rulemaking procedures. These broad and general assertions do not provide sufficient justification for the emergency rulemaking pursuant to North Carolina law.

In addition to demonstrating that adherence to the typical notice and hearing requirements for rulemaking is contrary to the public interest, the statement of need must explain why the agency believes the emergency rulemaking is necessary to address "a serious and unforeseen threat to the public health or safety." NCGS 150B-21.1A(a). In their statement of need, the CRC merely argues that it believes the emergency rulemaking is necessary "[t]o ensure the stability and effectiveness of the coastal rules for the benefit of the regulated public, and to ensure the CRC's compliance with statutory mandates for rule promulgation under N.C. Gen. Stat. Chapter 113A, Article 7, the Coastal Area Management Act." However, the CRC does not point to any examples of "serious" or "unforeseen" threats to public health or safety that have resulted during the last seventy days, or that would result in the future, from the rejection of the emergency rules. Further, such justification should be enumerated for each specific rule proposed. This detail is critical, as the purported basis presumably would differ from rule to rule.

The CRC notes that removal of the rules would "pose a serious threat to public safety regarding the loss of protection of coastal lands and waters." While we acknowledge that protection of coastal lands and waters is essential to preserve our state's natural resources, the CRC has not provided in its statement of need any justification for its statement that the removal of such protections would pose a serious threat to public (human) health or public safety. Indeed, the statement does not even allege that the threat is unforeseen, as required by 150B-21.1A(a). Similarly, 15A NCAC 07H .0509 regarding archeological resources deals entirely with inert cultural resources, not protection of public health or safety. Again, the CRC has not

shown how emergency enactment of this rule is required because of a serious and unforeseen threat to the public health or safety.

Nor does the statement of need provide any explanation of how the stability and effectiveness of the coastal rules is or will be jeopardized. For instance, and as previously noted, the statement of need does not state that the CRC has lost its permitting authority entirely or provide details from instances when the CRC was unable to comply with statutory mandates for rule promulgation. Thus, it is our belief that the statement of need does not meet the statutory requirement to address a serious or unforeseen threat to public health or safety.

For the reasons stated herein, the emergency rulemaking passed on December 13, 2023 by the CRC does not meet either of the criteria set forth in NCGS 150B-21.1A(a) and therefore should not be codified as an emergency rule.

We appreciate your consideration of these comments. Please let us know if you have any questions about this submittal or if you would like to discuss.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Katherine H. Stukes". The signature is fluid and cursive, with the first name "Mary" being the most prominent.

Mary Katherine H. Stukes
Moore & Van Allen PLLC

Cc: Christine Goebel, Esq., NCDEQ Assistant General Counsel
Phil Feagan, Esq., NCDNCR General Counsel
Roy Brownlow, Tidewater Associates Inc.
Steven Kellum, Cedar Point Developers, LLC

JOSH STEIN
ATTORNEY GENERAL



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

December 20, 2023

Via email: ashley.snyder@oah.nc.gov & oah.rules@oah.nc.gov
Ashley Snyder, NC Codifier of Rules
North Carolina Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609

Re: Emergency Rules Filing, 15A NCAC 07H, 07I, 07J, 07M

Dear Codifier Snyder,

At the request of Chair Renee Cahoon, North Carolina Coastal Resources Commission (“CRC”), I am writing to respond in accordance with the provisions of G.S. § 150B-21.1A(b) to your December 19, 2023 letter regarding the emergency rules submitted by the CRC on December 14, 2023.

As required by the statute, the CRC is hereby providing notice that it will not provide additional findings or a new statement in response to your letter.

Moreover, since the duty to consult does not arise under G.S. § 12-3.1(a) until the “date the notice of the text of the rule is published,” and there is no notice provision in emergency rulemaking pursuant to G.S. § 150B-21.1A, there is no basis for you to conclude that “the agency has not complied with the provisions of G.S. § 12-3.1(a)” as they relate to 15A NCAC 07J .0204 (one of the emergency rules submitted).

Accordingly, please proceed to enter all the emergency rules submitted by the CRC on December 14, 2023 in the North Carolina Administrative Code pursuant to G.S. § 150B-21.1A(b). Thank you for your attention to this matter.

Sincerely,

Mary L. Lucasse
Special Deputy Attorney General
Counsel to the NC Coastal Resources Commission



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

December 20, 2023

Chair Renee Cahoon and Ms. Mary Lucasse
Coastal Resources Commission

Sent via email only: renee.cahoon@deq.nc.gov and mlucasse@ncdoj.gov

Re: Emergency Rule Filing, 15A NCAC 07H, 07I, 07J, 07M

Dear Ms. Cahoon and Ms. Lucasse:

As requested in your letter this morning, I will enter the Coastal Resources Commission's filed emergency rules into the Code over my objection effective January 3, 2024, the sixth business day after receiving your notice.

For the reasons stated in my December 14, 2023 email and December 19, 2023 letter, I do not have statutory authority to enter 15A NCAC 07J .0204 into the Code unless and until CRC satisfies the fee consultation requirement in G.S. 12-3.1. "Notwithstanding any other law, a rule adopted by an agency to establish or increase a fee or charge shall not go into effect until the agency has consulted with the Joint Legislative Commission on Governmental Operations on the amount and purpose of the fee or charge to be established or increased." G.S. 12-3.1. Granting your request would require me to violate multiple statutes. *See, e.g.* G.S. 12-3.1, 150B-21.1A(b), 150B-21.3(c1), 150B-21.19(5). As a result, I will not enter 15A NCAC 07J .0204 into the Code until the consultation requirement in G.S. 12-3.1 has been satisfied.

Sincerely,

Ashley Snyder
Codifier of Rules

Donald R. van der Vaart, Director
Chief Administrative Law Judge

John C. Evans
Senior Administrative Law Judge

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cc: Jennifer Everett, jennifer.everett@deq.nc.gov
Elly Young, esyong@ncdoj.gov