

# ***NORTH CAROLINA REGISTER***

**VOLUME 27 • ISSUE 08 • Pages 784 - 850**

**October 15, 2012**

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## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

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**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2012 – December 2012

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule 31st legislative day of the session beginning:	270 <sup>th</sup> day from publication in the Register
26:13	01/03/12	12/08/11	01/18/12	03/05/12	03/20/12	05/01/12	05/16/12	09/29/12
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## **EXPLANATION OF THE PUBLICATION SCHEDULE**

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

### **GENERAL**

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

**COMPUTING TIME:** In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

### **FILING DEADLINES**

**ISSUE DATE:** The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

**LAST DAY FOR FILING:** The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

### **NOTICE OF TEXT**

**EARLIEST DATE FOR PUBLIC HEARING:** The hearing date shall be at least 15 days after the date a notice of the hearing is published.

**END OF REQUIRED COMMENT PERIOD**  
An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

**DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:** The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.

**FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:** This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.

**NOTICE**

**NORTH CAROLINA RATE BUREAU**

Notice is hereby given pursuant to NCGS 58-36-120 that on or about Oct. 1, 2012 the North Carolina Rate Bureau filed for an increase in homeowners insurance rates. Public notice of the filing was given in two newspapers with statewide distribution, and information was posted on the web sites of the Rate Bureau and the North Carolina Department of Insurance. The Commissioner of Insurance may or may not schedule and conduct a hearing with respect to the filing.

27:08

**The 2013 Low-Income Housing Tax Credit Qualified Allocation Plan  
For the State of North Carolina**

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## **I. INTRODUCTION**

The 2013 Qualified Allocation Plan (the Plan) has been developed by the North Carolina Housing Finance Agency (the Agency) as administrative agent for the North Carolina Federal Tax Reform Allocation Committee (the Committee) in compliance with Section 42 of the Internal Revenue Code of 1986, as amended (the Code). For purposes of the Plan, the term "Agency" shall mean the Agency acting on behalf of the Committee, unless otherwise provided.

The Plan was reviewed in one public hearing and met the other legal requirements prior to final adoption by the Committee. The staff of the Agency was present at the hearing to take comments and answer questions.

The Agency will only allocate low-income housing tax credits in compliance with the Plan. The Code requires that the Plan contain certain elements. These elements, and others added by the Committee, are listed below.

A. Selection criteria to be used in determining the allocation of ~~federal low-income housing tax credits~~:

- Project location and site suitability.
- Market demand and local housing needs.
- Serving the lowest income tenants.
- Serving qualified tenants for the longest periods.
- Design and quality of construction.
- Financial structure and long-term viability.
- Use of federal project-based rental assistance.
- Use of mortgage subsidies.
- Experience of development team and management agent(s).
- Serving persons with disabilities and the homeless.
- Willingness to solicit referrals from public housing waiting lists.
- Tenant populations of individuals with children.
- Projects intended for eventual tenant ownership.
- Projects that are part of a community redevelopment effort.
- Energy efficiency.
- Historic nature of the buildings.

B. Threshold, underwriting and process requirements ~~for project applications and tax credit awards~~.

C. Description of the Agency's compliance monitoring program, including procedures to notify the Internal Revenue Service of noncompliance with the requirements of the program.

In the process of administering the ~~low-income housing tax credit~~ and Rental Production Program (RPP), the Agency will make decisions and interpretations regarding project applications and the Plan. Unless otherwise stated, the Agency is entitled to the full discretion allowed by law in making all such decisions and interpretations. The Agency reserves the right to amend, modify, or withdraw provisions contained in the Plan that are inconsistent or in conflict with state or federal laws or regulations. In the event of a major:

- natural disaster,
- disruption in the financial markets, or
- reduction in subsidy resources available, including tax credits and RPP funding,

the Agency may disregard any section of the Plan, including point scoring and evaluation criteria, that interferes with an appropriate response.

## II. SET-ASIDES, AWARD LIMITATIONS AND COUNTY DESIGNATIONS

The Agency will determine whether applications are eligible under Section II(~~AB~~) or II(~~BC~~). This Section II only applies to 9% ~~Tax~~ ~~e~~Credit applications.

A. ~~[reserved]~~

### BA. REHABILITATION SET-ASIDE

The Agency will award up to ten percent (10%) of tax credits available after forward commitments to projects proposing rehabilitation of existing housing. In the event eligible requests exceed the amount available, the Agency will determine awards based on the evaluation criteria in Section IV(H)(3).

1. ~~The following will be considered new construction under Section II(~~BC~~) below:~~

- (a) ~~adaptive reuse projects,~~
- (b) ~~entirely vacant residential buildings,~~
- (e) ~~proposals to increase and/or substantially re-configure residential units.~~

2. ~~[the following has moved to subsection (C) below] Up to \$750,000 of the rehabilitation set-aside will be awarded to projects identified by the U.S. Department of Agriculture, Rural Development (RD) state office as a priority. The maximum award to any one Principal will be one project. Other projects with RD financing will be considered under the regular rehabilitation set-aside.~~

### CB. NEW CONSTRUCTION SET-ASIDES

The Agency will award tax credits remaining after awards described above and any under Section II(G)(2) to other new construction projects, starting with those earning the highest scoring totals within each of the following four geographic set-asides and continuing in descending score order through the last project that can be fully funded. The Agency reserves the right to revise the available credits in each set-aside in order to award the next highest scoring application statewide under Section II(G)(1).

WEST <del>17</del> 19%		CENTRAL <del>24</del> 35%		METRO <del>36</del> 19%	EAST <del>23</del> 27%	
Alexander	Jackson	Alamance	Lee	<del>Buncombe</del>	Beaufort	Johnston
Alleghany	Lincoln	Anson	Montgomery	<del>Cumberland</del>	Bertie	Jones
Ashe	Macon	Cabarrus	Moore	<del>Durham</del>	Bladen	Lenoir
Avery	Madison	Caswell	Orange	<del>Forsyth</del>	Brunswick	Martin
<del>Buncombe</del>	McDowell	Chatham	Person	<del>Guilford</del>	Camden	Nash
Burke	Mitchell	Davidson	Randolph	Mecklenburg	Carteret	New Hanover
Caldwell	Polk	Davie	Richmond	Wake	Chowan	Northampton
Catawba	Rutherford	<del>Durham</del>	Rockingham		Columbus	Onslow
Cherokee	Surry	<del>Forsyth</del>	Rowan		Craven	Pamlico
Clay	Swain	Franklin	Scotland		<del>Cumberland</del>	Pasquotank
Cleveland	Transylvania	Granville	Stanly		Currituck	Pender
Gaston	Watauga	<del>Guilford</del>	Stokes		Dare	Perquimans
Graham	Wilkes	Harnett	Union		Duplin	Pitt
Haywood	Yadkin	Hoke	Vance		Edgecombe	Robeson
Henderson	Yancey	Iredell	Warren		Gates	Sampson
					Greene	Tyrrell
					Halifax	Washington
					Hertford	Wayne
					Hyde	Wilson

**C. USDA RURAL DEVELOPMENT**

Up to \$750,000 will be awarded to eligible rehabilitation and/or new construction project(s) identified by the U.S. Department of Agriculture, Rural Development (RD) state office as a priority. These projects will count towards the applicable set-asides and limits. The maximum award under this set-aside to any one Principal will be one project. Other RD applications will be considered under the applicable set-asides.

**D. NONPROFIT AND CHDO SET-ASIDES AND LIMITS**

**1. SET-ASIDES**

If necessary, the Agency will adjust the awards under the Plan to ensure that the overall allocation results in

- ten percent (10%) of the state's federal tax credit ceiling being awarded to projects involving tax exempt organizations (nonprofits) and
- fifteen percent (15%) of the Agency's HOME funds being awarded to projects involving Community Housing Development Organizations certified by the Agency (CHDOs).

Specifically, tax credits that would have been awarded to the lowest ranking project(s) that do(es) not fall into one of these categories will be awarded to the next highest ranking project(s) that do(es) until the overall allocation(s) reach(es) the necessary percentage(s). The Agency may make such adjustment(s) in any set-aside.

**(a) Nonprofit Set-Aside**

In order to qualify as a nonprofit application, the proposed project must either:

- not involve any for-profit Principals or
- comply with the material participation requirements of the Code, applicable federal regulations and Section VI(A)(2).

**(b) CHDO Set-Aside**

In order to qualify as a CHDO application,

- the proposed project must meet the requirements of subsection (D)(1)(a) above and 24 CFR 92.300(a)(1),
- as of the full application deadline, the applicant, any Principal, or any affiliate must not undertake any choice-limiting activity prior to successful completion of the U.S. Department of Housing and Urban Development (HUD) environmental clearance review, and
- the project and owner must comply with regulations regarding the federal CHDO set-aside.

The Agency may determine that the requirements of the federal CHDO set-aside have been or will be met without implementing subsection (D)(1)(b).

**2. LIMITS**

No more than twenty percent (20%) of the overall allocation will be awarded to projects where a nonprofit organization (or its qualified corporation) is the applicant under Section III(C)(5). New construction awards will be counted towards this limitation first (in score order, excluding mortgage subsidy), then rehabilitation awards.

**E. PRINCIPAL AND PROJECT AWARD LIMITS; ~~30% BASIS BOOST~~**

**1. PRINCIPAL LIMITS**

- (a) The maximum awards to any one Principal will be a total of \$1,800,000 in tax credits, including all set-asides. New construction awards will be counted towards this limitation first (in score order, ~~excluding mortgage subsidy~~), then rehabilitation awards.
- (b) The Agency may further limit awards based on unforeseen circumstances.
- (c) For purposes of the maximum allowed in this subsection (E)(1), the Agency may determine that a person or entity not included in an application is a Principal for the proposed project. Such determination would include consideration of relationships between the parties in previously awarded projects and other common interests. Standard fee for service contract relationships (such as accountants or attorneys) will not be considered.

## 2. PROJECT LIMIT

The maximum award to any one project will be \$1,000,000.

## 3. REDEVELOPMENT PROJECTS

- (a) ~~The Agency may determine that fifty percent (50%) of the tax credits awarded to a Redevelopment Project does not count against some or all of the Principals involved for the purpose of subsection (E)(1) above. This determination will be based on the Principal's role in the project and overall development capacity. The allowance in this subsection (E)(3)(a) will apply to a maximum of one (1) project per Principal. In the event a Principal is involved in multiple Redevelopment Projects, this exemption will apply to the one with the smallest award of 9% tax credits.~~

[the Redevelopment Project criteria have moved to Section IV(A)(1)(c)]

- (b) The following are required to qualify as a Redevelopment Project:
  - (i) ~~The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.~~
  - (ii) ~~The application proposes adaptive reuse with historic rehabilitation credits and/or new construction.~~
  - (iii) ~~Any required demolition has been completed or is scheduled for completion in 2013 (not including the project buildings).~~
  - (iv) ~~A unit of local government initiated the project and has invested community development resources in the Half Mile area within the last ten years.~~
  - (v) ~~As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration in the Half Mile area and approved one or more of the following for the project:
 
    - donation of at least one parcel of land,
    - waiver of impact, tap, or related fees normally charged, or
    - commitment to lend/grant at least \$75,000 of its housing development funds.~~

~~The Agency will require official documentation of each element of local government participation.~~

## 4. AGENCY DESIGNATED BASIS BOOST

~~The Agency may boost the eligible basis of projects awarded in 2013 by up to fifteen percent (15%) if the deadline for the flat nine percent tax credit rate in Section 42(b)(2)(A) is not extended (excluding projects using the DDA or QCT basis increase).~~

## F. COUNTY AWARD LIMITS AND INCOME DESIGNATIONS

### FIRST DRAFT 2013 QUALIFIED ALLOCATION PLAN

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**1. AWARD LIMITS**

- (a) No county will be awarded more than one project under the rehabilitation set-aside. Other than the Metro region, no county will be awarded more than one project under the new construction set aside. Each county in the Metro region will be awarded a minimum of two new construction projects.

\$2,000,000 in the Metro region, and

\$1,000,000 in the East, Central, and West regions,

unless doing so is necessary to meet another set-aside requirement of this Plan. No county will be awarded more than one project under the rehabilitation set-aside. The Agency may further limit awards based on unforeseen circumstances. The Agency may waive the county-based limits for revitalization efforts characterized by a high degree of committed public subsidies.

- (b) The Agency will not accept applications in the following counties: Carteret, Columbus, Davie, Duplin, Edgecombe, Halifax, Hoke, Lee, Macon, and Wilkes. ~~Alexander, Avery, Bladen, Brunswick, Lincoln, Moore, Orange, Pasquotank, Pitt, Randolph, Rockingham, Scotland, Stanly, Transylvania, and Wayne.~~

**2. INCOME DESIGNATIONS**

Pursuant to N.C.G.S. § 105-129.42(c) the Agency is responsible for designating each county as High, Moderate or Low Income. Five criteria were used for making this determination: (a) county median income; (b) poverty rate; (c) percent of population in rural areas; (d) regional growth patterns; (e) N.C. Department of Commerce tier (one, two or three).

Each county was considered as a whole and evaluated relative to others in the state. Based on this process, the Agency designates counties as follows:

HIGH	MODERATE		LOW		
Alamance	Alexander	Lincoln	Alleghany	Graham	Pasquotank
Buncombe	Brunswick	Moore	Anson	Greene	Pender
Cabarrus	Burke	Nash	Ashe	Halifax	Perquimans
Catawba	Carteret	Onslow	Avery	Hertford	Richmond
Chatham	Cleveland	Person	Beaufort	Hoke	Robeson
Durham	Craven	Pitt	Bertie	Hyde	Rutherford
Forsyth	Cumberland	Polk	Bladen	Jackson	Sampson
Gaston	Dare	Randolph	Caldwell	Jones	Scotland
Guilford	Davidson	Rockingham	Camden	Lenoir	Surry
Iredell	Davie	Rowan	Caswell	Macon	Swain
Johnston	Franklin	Stanly	Cherokee	Madison	Transylvania
Mecklenburg	Granville	Stokes	Chowan	Martin	Tyrrell
New Hanover	Harnett	Watauga	Clay	McDowell	Vance
Orange	Haywood	Wayne	Columbus	Mitchell	Warren
Union	Henderson	Wilson	Currituck	Montgomery	Washington
Wake	Lee	Yadkin	Duplin	Northampton	Wilkes
			Edgecombe	Pamlico	Yancey
			Gates		

**G. OTHER AWARDS AND EXCEEDING LIMITATIONS**

1. The Agency may award tax credits remaining from the ~~four~~ geographic set-asides to the next highest scoring (excluding mortgage subsidy)-eligible new construction application(s) in the East, Central,

and West regions statewide and/or one or more eligible rehabilitation applications. The Agency may also carry forward any amount of tax credits to the next year.

2. The Agency may award 2013 tax credits outside of the normal process to projects that: a) allow the Agency to comply with HUD regulations regarding timely commitment of funds, b) prevent the loss of state or federal investment, c) provide housing for underserved populations or d) are part of a settlement agreement of legal action brought against a local government. The total amount of such awards(s) shall not exceed \$1,000,000.
3. The Agency may also make a forward commitment of the next year's tax credits in an amount necessary to fully fund project(s) with a partial award or to any project application that was submitted in a prior year if such application meets all the minimum requirements of the Plan. In the event that credits are returned or the state receives credits from the national pool, the Agency may elect to carry such credits forward, make an award to any project application (subject only to the nonprofit set aside), or a combination of both.
4. The Agency may exceed the limitations on awards contained in Sections II(A)(B), II(F)(1) and this Section II(G) in order to completely fund a project request.

### III. DEADLINES, APPLICATION AND FEES

#### A. APPLICATION AND AWARD SCHEDULE

The following schedule will apply to the 2013 application process for 9% ~~tax~~ eCredits and the first round of ~~tax-exempt~~ bond volume and 4% ~~tax~~ eCredits. The Agency will announce the application schedule for a second round of bond volume and 4% ~~tax~~ eCredits at a later time.

January 25 <del>13</del>	Deadline for submission of preliminary applications (12:00 noon)
March 18 <del>5</del>	Market analysts will mail studies to the Agency and aApplicants
March 29 <del>16</del>	Notification of final site scores
April 8 <del>March 26</del>	Deadline for market-related project revisions
April 15 <del>2</del>	Deadline for the Agency and aApplicant to receive a hard copy of the revised market study, if applicable
May 17 <del>4</del>	Deadline for full applications (12:00 noon)
August	Notification of tax credit awards

The Agency reserves the right to change the schedule to accommodate weather events or other unforeseen circumstances.

#### B. APPLICATION, ALLOCATION, MONITORING AND PENALTY FEES

1. All aApplicants are required to pay a nonrefundable fee of \$5,540~~20~~ at the submission of the preliminary application. This fee covers the cost of the market study or physical needs assessment and a \$1,240~~20~~ preliminary application processing fee (which will be assessed for every electronic application submitted). The Agency may charge additional fee(s) to cover the cost of direct contracting with other providers (such as appraisers).
2. All aApplicants are required to pay a nonrefundable processing fee of \$1, 240~~20~~ upon submission of the full application.
3. Entities receiving tax credit awards, including those involving tax-exempt bond volume, are required to pay a nonrefundable allocation fee equal to 0.70~~68~~% of the project's total qualified basis.

4. The allocation fee will be due at the time of either the carryover allocation or bond volume award. Failure to return the required documentation and fee by the date specified may result in cancellation of the allocation. The Agency may assess other fees for additional monitoring responsibilities.
5. Owners must pay a monitoring fee of \$78060 per unit (includes all units, qualified, unrestricted and employee) prior to issuance of the project's IRS Form 8609.
6. If expenses for legal services are incurred by the Committee or Agency to correct mistakes of the Owner which jeopardize use of the tax credits, such legal costs will be paid by the Owner in the amount charged to the Agency or the Committee.
7. The Agency may assess aApplicants or owners a fee of up to \$2,000 for each instance of failure to comply with a written requirement, whether or not such requirement is in the Plan. The Agency will not process applications or other documentation relating to any Principal who has an outstanding balance of fees owed; such a delay in processing may result in disqualification of application(s).
8. The Agency will assess \$1,500 for closing a state tax credit loan and \$2,000 for an RPP closing.

#### C. APPLICATION PROCESS AND REQUIREMENTS

1. The Agency may require aApplicants to submit any information, letter, or representation relating to Plan requirements or point scoring as part of the application process.
2. Any failure to comply with an Agency request under subsection (C)(1) above or any misrepresentation, false information or omission in any application document may result in disqualification of that application and any other involving the same owner(s), Principal(s), consultant(s) and/or application preparer(s). Any misrepresentation, false information or omission in the application document may also result in a revocation of a tax credit allocation.
3. The Agency may elect to treat applications involving more than one site, population type (family/elderly) or activity (new/rehabilitation) as separate for purposes of the Agency's application process. Each application would require a separate initial application fee. The Agency may allow such applications to be considered as one for the full application underwriting if all sites are secured by one permanent mortgage and are not intended for separation and sale after the tax credit allocation.
4. The Agency will notify the appropriate unit of government about the project after submission of the full application.
5. For each application one individual or validly existing entity must be identified as the aApplicant and execute the preliminary and full applications. An entity may be one of the following:
  - (a) corporation, including nonprofits,
  - (b) limited partnership, or
  - (c) limited liability company.

Only the identified aApplicant will have the ability to make decisions with regard to that application and be considered under Section IV(D)(1). The aApplicant may enter into joint venture or other agreements but the Agency will not be responsible for evaluating those documents to determine the relative rights of the parties. If the application receives an award the aApplicant must become a managing member or general partner of the ownership entity.

#### IV. SELECTION CRITERIA AND THRESHOLD REQUIREMENTS

Applications must meet all applicable threshold requirements to be considered for award and funding. Scoring and threshold determinations made in prior years are not binding on the Agency for the 2013 cycle. ~~[the following has moved to Section IV(E)(1)]Penalties and limitations for market rate units will not apply for~~

applications with a commitment for a grant or no payment financing equal to at least the amount of foregone federal tax credit equity and state tax credits.

**A. SITE AND MARKET EVALUATION**

The Agency will not accept a full application where the preliminary application does not meet all site and market threshold requirements.

**1. SITE EVALUATION (MAXIMUM 60 POINTS)**

**(a) General Site Requirements:**

- (i) Sites must be sized to accommodate the number and type of units proposed. The aApplicant or a Principal must have site control by the preliminary application deadline, which may be as evidenced by an option, contract or deed. The documentation of site control must include a plot plan.
- (ii) Required zoning must be in place by the full application submission date, including special/conditional use permits, and any other discretionary land use approval required (includes all legislative or quasi-judicial decisions).
- (iii) Utilities (water, sewer and electricity) must be available with adequate capacity to serve the site. Sites should be accessed directly by existing paved, publicly maintained roads. If not, it will be the owner's responsibility to extend utilities and roads to the site. In such cases, the aApplicant must explain and budget for such plans at the preliminary application stage and document the right to perform such work.
- (iv) In order to be eligible for RPP funds, the preliminary application must contain the Agency's "Notice of Real Property Acquisition" form.

**(b) Criteria for Site Score Evaluation:**

Site scores will be based on the following factors. Each will also serve as a threshold requirement; the Agency may remove an application from consideration if the site is sufficiently inadequate in one of the categories.

**(i) NEIGHBORHOOD CHARACTERISTICS (MAXIMUM 18 POINTS)**

**Good:** 18 points if structures within a Half Mile are well maintained or the site qualifies as a Redevelopment Project (see Ssubsection (A)(1)(c) below H(E)(3)(b))

**Fair:** 9 points if structures within a Half Mile are not well maintained and there are visible signs of deterioration

**Poor:** 0 points if structures within a Half Mile are Blighted or have physical security modifications (e.g. barbed wire fencing or bars on windows)

**Half Mile:** The half mile radius from the approximate center of the site (does not apply to Amenities below).

**Blighted:** A structure that is abandoned, deteriorated substantially beyond normal wear and tear, a public nuisance, or appears to violate minimum health and safety standards.

**(ii) AMENITIES (MAXIMUM 27 POINTS)**

Points will be determined according to the matrix below. The amenity must be open for business as of the preliminary application ~~deadline~~date to be considered.

	driving distance in miles				
	≤ 0.5	≤ 1.0	≤ 1.5	≤ 2.0	> 2.0
Grocery	18 pts.	14 pts.	10 pts.	6 pts.	0 pts.
Shopping or pharmacy	9 pts.	7 pts.	5 pts.	3 pts.	0 pts.



For example, an application will receive 7 points if the driving distance between the site and either Shopping or a pharmacy is greater than 0.5 miles but not more than 1 mile.

The driving distance will be the mileage as calculated by Google Maps and must be a drivable route as of the preliminary application deadline. The measurement will be from:

- the point closest to the site entrance to or from
- the point closest to the amenity entrance.

Driveways, access easements, and other distances in excess of 500 feet between the nearest residential building of the proposed project and road shown on Google Maps will be included in the driving distance. For scattered site projects, the measurement will be from the location with the longest driving distance(s).

The following establishments qualify as a Grocery:

Aldi	The Fresh Market	Kroger	<del>Super Kmart</del>
Bi-Lo	Harris Teeter	Lowes Foods	Super Target
Bloom	IGA	Piggly Wiggly	Trader Joe's
		<del>Red &amp; White</del>	
Compare Foods	Ingle's Market	<del>Sav-Mor</del>	<u>Walmart Express</u>
Earth Fare	Just Save	Save-A-Lot	Walmart Super Center
Food Lion			Whole Foods

The following establishments qualify as Shopping:

Big Lot's	Family Dollar	Target	<u>Walmart Express</u>
Dollar General	Kmart	<u>Super Target</u>	<u>Super Walmart</u>
Dollar Tree	Roses'	Walmart	

To qualify as a pharmacy the establishment must have general merchandise items for sale.

(iii) SITE SUITABILITY (MAXIMUM 15 POINTS)

6 points if there is no Incompatible Use, which includes the following activities, conditions, or uses within the distance ranges specified:

Half Mile

- airports
- chemical or hazardous materials storage/disposal
- industrial or agricultural activities with environmental concerns (such as odors or pollution)
- commercial junk or salvage yards
- landfills currently in operation
- sources of excessive noise
- wastewater treatment facilities

A parcel or right of way within 500 feet containing any of the following:

- adult entertainment establishment
- electrical utility substation, whether active or not
- distribution facility
- factory or similar operation
- frequently used railroad tracks
- high traffic corridor
- jail or prison
- large swamp
- power transmission lines and tower

- 3 points if there are no negative features, design challenges, physical barriers, or other unusual and problematic circumstances that would impede project construction or adversely affect future tenants, including but not limited to: power transmission lines and towers, flood hazards, steep slopes, large boulders, ravines, year-round streams, wetlands, and other similar features (for adaptive reuse projects: suitability for residential use and difficulties posed by the building(s), such as limited parking, environmental problems or the need for excessive demolition)
- 3 points if the project would be visible to potential tenants using normal travel patterns and is within 500 feet of a building that is currently in use for residential, commercial, educational, or governmental purposes (excluding Blighted structures or Incompatible Uses)
- 3 points if traffic controls allow for safe and convenient access to the site; for example right turn only, limited sight distance (blind curve), or having to cross three or more lanes of traffic going the same direction when exiting the site would not receive points.

(c) Redevelopment Projects:

The following are required to qualify as a Redevelopment Project:

- (i) The site currently contains or contained at least one structure used for commercial, residential, educational, or governmental purposes.
- (ii) The application proposes adaptive reuse with historic rehabilitation credits and/or new construction.
- (iii) Any required demolition has been completed or is scheduled for completion in 2013 (not including the project buildings).
- (iv) A unit of local government initiated the project and has invested community development resources in the Half Mile area within the last ten years.
- (v) As of the preliminary application deadline, a unit of local government formally adopted a plan to address the deterioration in the Half Mile area and approved one or more of the following for the project:
  - donation of at least one parcel of land,
  - waiver of impact, tap, or related fees normally charged, or
  - commitment to lend/grant at least \$75,000 of its housing development funds.

The Agency will require official documentation of each element of local government participation

2. MARKET ANALYSIS

The Agency will administer the market study process based on this Section and the terms of **Appendix A** (incorporated herein by reference).

- (a) The Agency will contract directly with market analysts to perform studies. Applicants may interact with market analysts and will have an opportunity to revise their project (unit mix, targeting). Any revisions must be submitted in writing to both the market analyst and to the Agency, following the schedule in Section III(A), and will be binding on the ~~a~~Applicant for the full application.
- (b) The Agency will limit the number of projects awarded in the same application round to those that it determines can be supported in the market.
- (c) The following four criteria are threshold requirements for new construction applications:
  - (i) the project's capture rate,
  - (ii) the project's absorption rate,

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- (iii) the vacancy rate at comparable properties (what qualifies as a comparable will vary based on the circumstances), and
- (iv) the project's effect on existing or awarded properties with 9% ~~†Tax e~~Credits or Agency loans.  
~~Applicants may not increase rents or the number of units~~
- (d) ~~a~~After the deadline for completing market-related project revisions Applicants may not increase:
  - (i) rents, irrespective of a decrease in utility allowances,
  - (ii) the total number of units, or
  - (iii) the number of units in any bedroom type.
- (e)The Agency is not bound by the conclusions or recommendations of the market analyst(s), and will use its discretion in evaluating the criteria listed in this subsection (A)(2).
- (f)Projects may not give preferences to potential tenants based on:
  - (i) residing in the jurisdiction of a particular local government,
  - (ii) having a particular disability, or
  - (iii) being part of a specific occupational group (e.g. artists).

## B. RENT AFFORDABILITY

### 1. FEDERAL RENTAL ASSISTANCE

- (a)——Applicants proposing to convert tenant-based Housing Choice Vouchers (Section 8) to a project-based subsidy (pursuant to 24 CFR Part 983) must submit a letter from the issuing authority in a form approved by the Agency. Conversion of vouchers will be treated as a funding source under Section VI(B)(6)(d); a project will be ineligible for an allocation if it does not meet requirements set by the Agency as part of the application and award process. Such requirements may involve the public housing authority's (PHA's) Annual Plan, selection policy, and approval for advertising.
- (b) ~~Applicants must include a written agreement between the owner and all PHAs and Section 8 providers with jurisdiction inside the project's primary market area. The agreement must commit the PHAs to include the project in any listing of housing opportunities where households with tenant-based subsidies are welcome, and the project's management agent to actively seek referrals from the PHAs to apply for units at the proposed project. If one or more of the PHAs refuses to cooperate for any reason, an explanation must be submitted as well as a statement of commitment by the applicant to seek referrals from the PHA(s). This requirement does not apply to projects with rental assistance provided through RD or if one hundred percent (100%) of the units have project-based subsidy.~~

### 2. ~~MORTGAGE SUBSIDIES AND LEVERAGING (MAXIMUM 10 POINTS)~~

- (a) ~~Eligibility:~~  
Only loans or grants from the following sources will qualify for points under this subsection (B)(2):
    - (i) ~~HOPE VI,~~
    - (ii) ~~Community Development Block Grant (CDBG) program funds,~~
    - (iii) ~~HUD Section 202 or 811,~~
    - (iv) ~~established local government housing development funds, and~~
    - (v) ~~RD Section 515.~~
- ~~Other sources of funding may qualify PROVIDED THEY ARE APPROVED IN WRITING IN ADVANCE by the Agency prior to the preliminary application deadline. (Approval of a particular source in prior years does not meet this requirement.) Applications including market-~~

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rate units will be ineligible for points under subsection (B)(2) unless the total housing expense for all market rate units are at least twenty percent (20%) higher than the maximum allowed for a unit at 60% area median income. Adjustments to the purchase price of the land by the seller, Agency loans, state credits and bond financing are not sources of mortgage subsidy.

(b) Required Terms:

In order to qualify for points under subsection (B)(2), loans must be listed as a source in the full application, comply with the requirements of Section VI(B)(6)(b), and have a term of at least twenty (20) years and an interest rate less than or equal to two percent (2%). See Section IV(C)(2) for a restriction on RPP loans for applications with local government financing.

(c) Metro Region:

Applications will earn points based on the total amount of qualifying funds committed per unit (excluding an employee/manager's unit), as described below:

Funds/Unit	Points
\$6,000	—6
\$8,000	—8
\$10,000	—10

The calculation includes all units and amounts will not be rounded up. The funds to unit ratio approved by the lending source determines the score. The amount provided by a local government will be reduced by the amount included in the project budget for any impact, tap, or related fees charged by that local government and the cost of land sold by that local government.

23. TENANT RENT LEVELS (MAXIMUM 5 POINTS)

The application may earn points under one of the following scenarios:

(a) If the project is in a High Income county:

- Five (5) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below thirty percent (30%) of county median income.
- Two (2) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)

(b) If the project is in a Moderate Income county:

- Five (5) points will be awarded if at least twenty-five percent (25%) of qualified low-income units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- Two (2) points will be awarded if at least fifty percent (50%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

(The two options for point scoring in this subsection are mutually exclusive.)

(c) If the project is in a Low Income county, five (5) points will be awarded for projects in which at least forty percent (40%) of qualified low-income units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income.

(d) Five (5) points will be awarded if the application does not list the state tax credit as a funding source. This option is mutually exclusive with those in subsections (a), (b), and (c) above.

Five (5) points will be awarded to applications for new construction tax exempt bond projects that meet one of the following requirements:

- at least twenty percent (20%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
  - at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
- (The two options for point scoring in this subsection are mutually exclusive.)

**C. PROJECT DEVELOPMENT COSTS AND RPP LIMITATIONS**

**1. MAXIMUM PROJECT DEVELOPMENT COSTS (NEGATIVE 20 POINTS)**

The Agency will assess negative points to applications listing more than the following in lines 5 and 6 of the Project Development Cost (PDC) description, as outlined in Chart A below. The point structure in Chart B will apply to the following:

- (a) all units are detached single family houses or duplexes,
- (b) serving persons with severe mobility impairments,
- (c) development challenges resulting from being within or adjacent to a central business district,
- (d) public housing redevelopment projects, or
- (e) building(s) with both steel and concrete construction and at least four stories of housing.

The per-unit amount calculation includes all items covered by the construction contract, building permits, Energy Star, certifications for green programs, and any other costs not unique to the specific proposal.

Chart A		Chart B	
\$60,000	-10	\$71,000	-10
\$69,000	-20	\$85,000	-20

The Agency will review proposed costs for historic adaptive re-use projects and approve the amount during the application review process.

See Sections VI(B)(7), (8), and (9) for other cost restrictions.

**2. RESTRICTIONS ON RPP AWARDS**

- (a) Projects requesting RPP funds must submit the Agency's "Notice of Real Property Acquisition" form with the preliminary application and may not:
  - (i) request RPP ~~loan~~ funds in excess of the following amounts per unit- \$15,000 in High Income counties; \$20,000 in Moderate Income counties; \$25,000 in Low Income counties,
  - (ii) include market-rate units,
  - (iii) involve Principals who have entered into a workout or deferment plan within the previous year for an RPP loan awarded after January 1, 2004~~3~~,
  - (iv) request less than \$150,000 or more than \$1,080,000 per project, or
  - (v) have a commitment of funds from a local government under terms that will result in more repayment than the RPP ~~loan financing~~ (see description in subsection (C)(2)(b) below).

The maximum award of RPP funds to any one Principal will be a total of \$1,600,000. Requesting an RPP loan may result in an application being ineligible under Section VI(B)(6)(d) if the Agency has inadequate funds.

- (b) Projects may only request an RPP loan if the principal and interest payments for RPP and any local government financing will be equal to the anticipated net operating income divided by 1.15, less conventional debt service:

Repayment of RPP and local government loans = (NOI / 1.15) – conventional debt service.

The amount of repayment will be split between the RPP loan and local government lenders based on their relative percentage of loan amounts. For example:

RPP Loan = \$400,000

local government loan = \$200,000

	Year 1	Year 2	Year 3	Year 4
Anticipated amount available for repayment	\$10,000	\$8,000	\$6,000	\$4,000
RPP principal and interest payments	\$6,667	\$5,333	\$4,000	\$2,667
local government P&I payments	\$3,333	\$2,667	\$2,000	\$1,333

- (c) Loan payments made to the aApplicant, any Principal, member or partner of the ownership entity, or any affiliate thereof, will be taken out of cash flow remaining after RPP payments.

#### D. CAPABILITY OF THE PROJECT TEAM

##### 1. DEVELOPMENT EXPERIENCE (MAXIMUM 5 POINTS)

(a) In order to be eligible for an award of 9% Tax Credits, At least one Principal must have successfully developed, operated and maintained in compliance one 9% Tax Credit project in (1) North Carolina (excluding any Applicant eligible in the 2012 cycle by virtue of a waiver) low-income housing tax credit project. The project must have been placed in service between December 1, 2006 and January 1, 2012. ~~(The Agency may waive this requirement for applicants with adequate experience in the North Carolina tax credit program.)~~ Such Principal must:

- (i) be identified in the preliminary application as the aApplicant under Section III(C)(5),
- (ii) become a general partner or managing member of the ownership entity, and
- (iii) remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.

The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

- (b) All owners and Principals must disclose all previous participation in the low-income housing tax credit program. Additionally, owners and Principals that have participated in an out of state tax credit allocation may be required to complete an Authorization for Release of Information form.
  - (c) The Agency reserves the right to determine that a particular development team does not meet the threshold requirement of subsection (D)(1)(a) due to differences between its prior work and the proposed project. Particularly important in this evaluation is the type of subsidy program used in the previous experience (such as tax-exempt bonds, RD).
  - (d) Five (5) points will be awarded if the Principal meeting the eligibility requirement in subsection (D)(1)(a) either:
    - (i) was a Principal in ten awards of 9% ~~t~~Tax ~~e~~Credits in North Carolina from 2006 through 2012, or
    - (ii) has her/his/its principal office in North Carolina (see Appendix J for guidance).
- ~~In making this determination the Agency may consider Appendix C form(s) submitted in prior cycles.~~

##### 2. MANAGEMENT EXPERIENCE

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The management agent must have at least:

- (a) one similar tax credit project in their current portfolio, and
- (b) one staff person serving in a supervisory capacity with regard to the project who has been certified as a tax credit compliance specialist.

Such certification must be from an organization accepted by the Agency (refer to the list in **Appendix C**). None of the persons or entities serving as management agent may have in their portfolio a project with material or uncorrected non-compliance beyond the cure period. The management agent listed on the application must be retained by the ownership entity for at least two (2) years after project completion, unless the agent is guilty of specific nonperformance of duties.

### 3. PROJECT TEAM DISQUALIFICATIONS

The Agency may disqualify any owner, Principal or management agent, who:

- (a) has been debarred or received a limited denial of participation in the past ten years by any federal or state agency from participating in any development program;
- (b) within the past ten years has been in a bankruptcy, an adverse fair housing settlement, an adverse civil rights settlement, or an adverse federal or state government proceeding and settlement;
- (c) has been in a mortgage default or arrearage of three months or more within the last five years on any publicly subsidized project;
- (d) has been involved within the past ten years in a project which previously received an allocation of tax credits but failed to meet standards or requirements of the tax credit allocation or failed to fulfill one of the representations contained in an application for tax credits;
- (e) has been found to be directly or indirectly responsible for any other project within the past five years in which there is or was uncorrected noncompliance more than three months from the date of notification by the Agency or any other state allocating agency;
- (f) interferes with a tax credit application for which it is not an owner or Principal at a public hearing or other official meeting;
- (g) has outstanding flags in HUD's national 2530 National Participation system;
- (h) has been involved in any project awarded 9% ~~†Tax eCredits in 2012†~~ for which either the equity investment has not closed as of the full application deadline or the "10% test" has not been met;
- (i) has been involved in any project awarded tax credits after 2000 where there has been a change in general partners or managing members during the last five years that the Agency did not approve in writing beforehand;
- (j) would be removed from the ownership of a project that is the subject of an application under the rehabilitation set-aside in the current cycle; or
- (k) is not in good standing with the Agency.

A disqualification under this subsection (D)(3) will result in the individual or entity involved not being allowed to participate in the 2013 cycle and removing from consideration any application where they are identified.

### E. UNIT MIX AND PROJECT SIZE

1. Ten (-10) points will be subtracted from any full application that includes market-rate units. This penalty will not apply where ~~either, as of the full application,~~
  - the rents for all market rate units are at least five percent (5%) higher than the maximum allowed for a unit at 60% AMI and the market study indicates that such rents are feasible, or

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- there is a commitment for a grant or no-payment financing equal to at least the amount of foregone federal tax credit equity and state tax credits.
2. New construction 9% ~~tax~~ eCredit projects may not exceed one hundred and twenty (120) units.
  3. New construction tax-exempt bond ~~financed~~ projects may not exceed two hundred (200) units.
  4. All projects must have at least twenty four (24) qualified low-income units.

The Agency reserves the right to waive the penalties and limitations in this Section IV(E) for proposals that reduce low-income and minority concentration, including public housing projects, and subsection (E)(2) for proposals that are within a transit station area as defined by the Charlotte Region Transit Station Area Joint Development Principles and Policy Guidelines or adaptive re-use projects where made necessary by the building(s) physical structure.

**F. SPECIAL CRITERIA AND TIEBREAKERS**

**1. ENERGY STAR**

New construction residential buildings must comply with all Energy Star standards as defined in **Appendix B** (incorporated herein by reference). Adaptive re-use and rehabilitation projects must comply to the extent doing so is economically feasible and as allowed by historic preservation rules.

**2. GENERAL CONTRACTOR (MAXIMUM 2 POINTS)**

Two (2) points will be awarded if the general contractor listed in the full application has its principal office in North Carolina (see **Appendix J** for guidance).

**3. UNITS FOR THE MOBILITY IMPAIRED**

Five percent (5%) of all units in new construction projects must meet the accessibility standards as defined in **Appendix B** (incorporated herein by reference). **THESE UNITS ARE IN ADDITION TO MOBILITY IMPAIRED UNITS REQUIRED BY FEDERAL AND STATE LAW (INCLUDING BUILDING CODES).** Units for the mobility impaired should be available to all tenants who would benefit from their design and are not necessarily reserved under the Targeting Plan requirements of subsection (F)(4).

**4. TARGETING PLANS**

All projects will be required to target ten percent (10%) of the total units to persons with disabilities or homeless populations. Projects with federal project-based rental assistance must target at least five (5) units regardless of size. Projects that are targeting units under this subsection are not required to provide onsite supportive services or a service coordinator.

Owners must demonstrate a partnership with a local lead agency and submit a Targeting Plan for review and certification by the N.C. Department of Health and Human Services (DHHS). At a minimum, Targeting Plans must include:

- (a) A description of how the project will meet the needs of the targeted tenants including access to supportive services, transportation, proximity to community amenities, etc.
- (b) A description of the experience of the local lead agency and their capacity to provide access to supportive services, and to maintain relationships with the management agent and community service providers for the duration of the compliance period.
- (c) A Memorandum of Understanding (MOU) between the developer(s), management agent and the lead local agency. The MOU will include-
  - (i) A commitment from the local lead agency to provide, coordinate and/or act as a referral agent to assure that supportive services will be available to the targeted tenants.



- (ii) The referral and screening process that will be used to refer tenants to the project, the screening criteria that will be used, and the willingness of all parties to negotiate reasonable accommodations to facilitate the admittance of persons with disabilities into the project.
- (iii) A communications plan between the project management and the local lead agency that will accommodate staff turnover and assure continuing linkages between the project and the local lead agency for the duration of the compliance period.
- (d) Certification that participation in supportive services will not be a condition of tenancy.
- (e) Agreement that for a period of ninety (90) days after certificate of occupancy, the required number of units for persons with disabilities will be held vacant other than for such population(s).
- (f) Agreement to maintain a separate waiting list for persons with disabilities and prioritizing these individuals for any units that may become vacant after the initial rent-up period, up to the required number of units.
- (g) Agreement to affirmatively market to persons with disabilities.
- (h) Agreement to include a section on reasonable accommodation in property management's application for tenancy.
- (i) Agreement to accept Section 8 vouchers or certificates (or other rental assistance) as allowable income as part of property management income requirement guidelines for eligible tenants and not require total income for persons with rental assistance beyond that which is reasonably available to persons with disabilities currently receiving SSI and SSDI benefits.
- (j) A description of how the project will make the targeted units affordable to persons with extremely low incomes. NOTE: Key Program assistance is only available to persons receiving income based upon a disability. Projects targeting units to non-disabled homeless populations or persons in recovery with only a substance abuse diagnosis must have an alternative mechanism to assure affordability.

The requirements of this subsection (F)(4) may be fully or partially waived to the extent the Agency determines that they are not feasible. A Targeting Plan template and other documents related to this subsection are included in **Appendix D** (incorporated herein by reference). Owners will agree to complete the requirements of this subsection (F)(4) and **Appendix D** by the earlier of July 18<sup>9</sup>, 2014<sup>3</sup> or four months prior to the project's placed in service date. (The Agency may set additional interim requirements.) This subsection (F)(4) does not apply to tax-exempt bond applications.

#### 5. SECTION 1602 EXCHANGE PROJECTS (-40 POINT DEDUCTION)

The Agency may deduct up to forty (-40) points from any application if the aApplicant, any owner, Principal or affiliate thereof is also involved in a Section 1602 Exchange project with uncorrected material noncompliance.

#### 6. TIEBREAKER CRITERIA

The following will be used to award tax credits in the event that the final scores of more than one project are identical.

First Tiebreaker: The project requesting the least amount of federal tax credits per unit based on the Agency's equity needs analysis.

Second Tiebreaker: Tenants with Children: Projects that can serve tenant populations with children. Projects will qualify for this designation if at least twenty-five (25%) of the units are three or four bedrooms. This tiebreaker will only apply where the market study shows a clear demand for this population (as determined by the Agency).

Third Tiebreaker: Tenant Ownership: Projects that are intended for eventual tenant ownership. Such projects must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 30-year compliance period.

In the event that a tie remains after considering the above tiebreakers, the project requesting the least amount of federal tax credits will be awarded.

#### G. DESIGN STANDARDS

All proposed measures must be shown in the application in order to receive points.

##### 1. THRESHOLD REQUIREMENTS

The minimum threshold requirements for design are found in **Appendix B** (incorporated herein by reference) and must be used for all projects receiving tax credits or RPP funding.

##### 2. CRITERIA FOR SCORE EVALUATION (MAXIMUM OF 30 POINTS)

The Agency will determine points based on the following criteria as applied to the site drawings submitted with the full application.

###### (a) Site Layout

The Agency will award up to five (5) points based on its evaluation of the site layout. The following characteristics will be considered.

- (i) The location of residential buildings in relation to parking, site amenities, community building, postal facilities and trash collection areas.
- (ii) The degree to which site layout ensures a low, controlled traffic speed through the project.

###### (b) Quality of Design and Construction

(The points in this subsection are mutually exclusive with Section IV(G)(2)(c) below.)

The Agency will award up to twenty five (25) points for new construction projects based on its evaluation of the quality of the building design, and the materials and finishes specified. The following characteristics will be considered:

- (i) The extent to which the design uses multiple roof lines, gables, dormers and similar elements to break up large roof sections.
- (ii) The extent to which the design uses multiple types, styles, and colors of siding and brick veneer to add visual appeal to the building elevations.
- (iii) The level of detail that is achieved through the use of porches, railings, and other exterior features.
- (iv) Use of brick veneer or masonry products on building exteriors.

###### (c) Adaptive Re-Use

(The points in this subsection are mutually exclusive with Section IV(G)(2)(b) above.)

The Agency will award up to twenty five (25) points based on the following characteristics:

- (i) The extent to which the building(s) fit with surrounding streetscape after adaptation or have problems with orientation, sightlines, bulk and scale.
- (ii) Aesthetics after adaptation.
- (iii) Presence of special design elements or architectural features that may not be physically or financially available if new construction was introduced on the same site.

#### H. CRITERIA FOR SELECTION OF REHABILITATION PROJECTS

**FIRST DRAFT 2013 QUALIFIED ALLOCATION PLAN**

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1. GENERAL THRESHOLD REQUIREMENTS

In order to be eligible for funding under Section II(AB), a project must:

- (a) have either (i) received a tax credit allocation or (ii) federal project-based rental assistance for at least thirty percent (30%) of the total units,
- (b) have been placed in service on or before December 31, 1997~~6~~,
- (c) require rehabilitation expenses in excess of \$15,000 per unit (as supported by a physical needs assessment conducted or approved by the Agency),
- (d) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
- (e) not be feasible using tax-exempt bonds (as determined by the Agency),
- (f) not have received an Agency loan in the last five years,
- (g) not be deteriorated to the point of requiring demolition,
- (h) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
- (i) have total replacement costs of less than \$120,000 per unit, including all Agency-required rehabilitation work.

Rehabilitation expenses include hard construction costs directly attributable to the project, excluding costs for a new community building, as calculated using lines 2 through 7 (less line 6) in the PDC description.

2. THRESHOLD DESIGN REQUIREMENTS

In addition to the relevant sections of **Appendix B**, the Agency will require owners to complete the following as appropriate for their project.

- (a) Improve site amenities and common areas by upgrading or adding a freestanding community building, making repairs and additions to landscaping, adding new site amenities such as playgrounds, and repairing parking areas.
- (b) Improve building exteriors by replacing deteriorated siding, replacing aged roofing, adding gutters and downspouts, and adding new architectural features to improve appearance.
- (c) Upgrade unit interiors by replacing flooring, installing new cabinets and countertops, replacing damaged interior doors, replacing light fixtures, and repainting units.
- (d) Replace and upgrade mechanical systems and appliances including HVAC systems, water heaters and plumbing fixtures, electrical panels, refrigerators, and ranges.
- (e) Improve energy efficiency by replacing inefficient doors and windows, adding additional insulation in attics, and upgrading the efficiency of mechanical systems and appliances.
- (f) Improve site and unit accessibility for persons with disabilities by making necessary alterations at common areas, alterations at single story ground floor units, adding or improving handicapped parking areas, and repairing or replacing sidewalks along accessible routes.

3. EVALUATION CRITERIA

The Agency will evaluate applications under Section II(AB) based on the following criteria, which are listed in order of importance. Each one will serve both to determine awards and as a threshold requirement; the Agency may remove an application from consideration if the proposal is sufficiently inadequate in any of the categories. For purposes of making awards, the Agency will not consider subsections (d) through (fg) below if the outcome is determined by the criteria in subsections (a) through (c).

- (a) The Agency will give the highest priority to applications proposing to rehabilitate the state's most distressed federally subsidized existing housing, particularly buildings with accessibility or life, health and safety problems.
- (b) Applications will have a reduced likelihood of being awarded tax credits to the extent that the purpose is to subsidize an ownership transfer.
- (c) Shortcomings in the above criteria will be mitigated to the extent that a tax credit allocation is necessary to prevent (i) conversion of units to market rate rents or (ii) loss of government resources (including past, present and future investments).
- (d) ~~The Agency will give priority to applications that have mortgage subsidy resources committed as part of the application.~~
- (e) Applications will have priority to the extent that the rehabilitation improvements are a part of a community revitalization plan or will benefit the surrounding community. However, projects in severely distressed areas will have a reduced likelihood of being awarded tax credits.
- (f) Applications will have a reduced likelihood of being awarded tax credits based on the number of tenants that would be permanently relocated (including market-rate).
- (g) While the rehabilitation set-aside is not subject to any regional set-aside, the Agency will consider the geographic distribution of this resource and will attempt to avoid a concentration of awards in any one area of the state.

## **V. ALLOCATION OF BOND CAP**

### **A. ORDER OF PRIORITY**

The Committee will allocate the multifamily portion of the state's tax-exempt bond authority in the following order of priority:

1. Projects that serve as a component of an overall ~~public housing~~HOPE VI revitalization effort.
2. Rehabilitation of existing rent restricted housing.
3. Rehabilitation of projects consisting of entirely market-rate units.
4. Adaptive reuse projects.
5. Other new construction projects.

Applications will only be allocated bond authority if there is enough remaining after awarding all eligible applications in higher priority levels. Within each category, applications seeking the least amount of authority per low-income unit will have priority.

### **B. ELIGIBILITY FOR AWARD**

Except as otherwise indicated, owners of projects with tax-exempt bonds and 4% Tax eCredits must meet all requirements of the Plan. Even with an allocation of bond authority, projects must meet the threshold requirements to be eligible for tax credits.

1. All projects must meet one of the following requirements:
  - (a) at least ten percent (10%) of total units will be affordable to and occupied by households with incomes at or below fifty percent (50%) of county median income, or
  - (b) at least five percent (5%) of total units will be affordable to and occupied by households with incomes at or below forty percent (40%) of county median income.
2. Rehabilitation applications must:

- (a) have been placed in service on or before December 31, 1997~~6~~,
  - (b) require rehabilitation expenses in excess of \$10,000 per unit,
  - (c) not have an acquisition cost in excess of sixty percent (60%) of the total replacement costs,
  - (d) not have begun or completed a full debt restructuring under the Mark to Market process (or any similar HUD program) within the last five years, and
  - (e) not be deteriorated to the point of requiring demolition.
3. The inducement resolution must be submitted with the full application.
4. In order to be eligible for an award of tax-exempt bond volume, at least one Principal must have successfully developed, operated and maintained in compliance either one 9% Tax Credit project in North Carolina or two tax-exempt bond projects. The project(s) must have been placed in service between December 1, 2006 and January 1, 2012. Such Principal must:
- be identified in the preliminary application as the Applicant under Section III(C)(5),
  - become a general partner or managing member of the ownership entity, and
  - remain responsible for overseeing the project and operation of the project for a period of two (2) years after placed in service.
- The Agency will determine what qualifies as successful and who can be considered as involved in a particular project.

## **VI. GENERAL REQUIREMENTS**

### **A. GENERAL THRESHOLD REQUIREMENTS FOR PROJECT PROPOSALS**

#### **1. PROJECTS WITH HISTORIC TAX CREDITS**

Buildings either must be on the National Register of Historic Places or approved for the State Housing Preservation Office's study list at the time of the full application. Evidence of meeting this requirement should be provided.

#### **2. NONPROFIT SET-ASIDE**

For purposes of being considered as a nonprofit sponsored application under Section II(D)(1)(a), at least one nonprofit entity (or, where applicable, its qualified corporation) involved in a project must:

- (a) be qualified under Section 501(c)(3) or (4) of the Code,
- (b) materially participate, as defined under federal law, in the acquisition, development, ownership, and ongoing operation of the property for the entire compliance period,
- (c) have as one of its exempt purposes the fostering of low-income housing,
- (d) be a managing member or general partner of the ownership entity.

The Agency reserves the right to make a determination that the nonprofit owner is not affiliated with or controlled by a for-profit entity or entities other than a qualified corporation. There can be no identity of interest between any nonprofit owner and for-profit entity, other than a qualified corporation.

#### **3. ENVIRONMENTAL HAZARDS**

All projects involving use of existing structures must submit a hazardous material report which provides the results of testing for asbestos containing materials, lead based paint, Polychlorinated Biphenyls (PCBs), underground storage tanks, petroleum bulk storage tanks, Chlorofluorocarbons (CFCs), and other hazardous materials. The testing must be performed by professionals licensed to

do hazardous materials testing. A report written by an architect or building contractor or developer will not suffice. A plan and projected costs for removal of hazardous materials must also be included.

**4. APPRAISALS**

The Agency will not allow the project budget to include more for land costs than the lesser of its appraised market value or the purchase price. ~~Any project involving an existing structure or budgeting more than \$15,000 per acre toward land costs.~~ Applicants must submit with the full application a real estate "as is" appraisal that is a) dated no more than six (6) months from the full application deadline, b) prepared by an independent, state certified appraiser and c) complies with the Uniform Standards of Professional Appraisal Practice. The Agency may order an additional appraisal with costs to be paid by the applicant. Appraisals for rehabilitation and adaptive reuse projects must break out the land and building values from the total value.

**5. CONCENTRATION**

Projects cannot be in areas of minority and low-income concentration (measured by comparing the percentage of minority and low-income households in the site's census tract with the community overall). The Agency may make an exception for projects in economically distressed areas which have community revitalization plans with public funds committed to support the effort.

**6. DISPLACEMENT**

For rehabilitation projects and in every other instance of tenant displacement, including temporary, the applicant must supply with the full application a plan describing how displaced persons will be relocated, including a description of the costs of relocation. The owner is responsible for all relocation expenses, which must be included in the project's development budget. Owners must also comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as revised in 49 C.F.R. Part 24.

**7. FEASIBILITY**

The Agency will not allocate tax credits or RPP funding to applications that may have difficulty being completed or operated for the compliance period. Examples include projects that may not secure an equity investment or a Principal that has inadequate capacity to successfully carry out the development process.

**B. UNDERWRITING THRESHOLD REQUIREMENTS**

The following minimum financial underwriting requirements apply to all projects. Projects that cannot meet these minimum requirements, as determined by the Agency, will not receive tax credits or RPP funding.

**1. LOAN UNDERWRITING STANDARDS**

- (a) Projects applying for tax credits only will be underwritten with rents escalating at two percent (2%) and operating expenses escalating at three percent (3%).
- (b) All projects will be underwritten assuming a constant seven percent (7%) vacancy and must reflect a 1.15 Debt Coverage Ratio (DCR) for twenty (20) years.
- (c) Applications requesting RPP funds may be required to comply with HOME program requirements, including 42 U.S.C. 12701 et seq., 24 C.F.R. Part 92 and all relevant administrative guidance. Projects awarded RPP funds must also comply with the RPP Guidelines in Appendix G.
- (d) The Agency may determine that the interest rate on a loan must be reduced where an application shows an excessive amount accruing towards a balloon payment.

2. OPERATING EXPENSES

- (a) New construction (excluding adaptive reuse): minimum of \$3,200 per unit per year not including taxes, reserves and resident support services.
- (b) Renovation (includes rehabilitation and adaptive reuse): minimum of \$3,400 per unit per year not including taxes, reserves and resident support services. For projects with RD loans, the operating expenses will be based upon the current RD approved operating budget.
- (c) The proposed management agent (or management staff if there is an identity of interest) must sign a statement (to be submitted with the full application) agreeing that the operating expense projections are reasonable.

3. EQUITY PRICING

- (a) The Agency will conduct a survey of tax credit equity investors to determine appropriate pricing assumptions. Projects will be underwritten using the greater of this amount and the aApplicant's projection. The Agency may also set a maximum price. The Agency will announce these amounts by the deadline for market analysts to mail studies. The tax credit rates used for underwriting will be those in effect for the months before the preliminary and full application deadlines.
- (b) Equity should be calculated net of any syndication fees. Bridge loan interest typically incurred by the syndicator to enable an up front payment of equity should not be charged to the project directly, but be reflected in the net payment of equity. Equity should be based on tax credits to be used by the investor(s), excluding those allocated to the Principals unless these entities are making an equity contribution in exchange for the tax credits.

4. RESERVES

- (a) Rent-up Reserve: Required for all except tax-exempt bond ~~financed~~ projects. A reasonable amount must be established based on the projected rent-up time considering the market and target population, but in no event shall be less than \$300 per unit. These funds must be available to the management agent to pay rent-up expenses incurred in excess of rent-up expenses budgeted for in the PDC description. The funds are to be deposited in a separate bank account and evidence of such transaction provided to the Agency ninety (90) days prior to the expected placed in service date. All funds remaining in the rent-up reserve at the time the project reaches ninety-three (93%) occupancy must be transferred to the project replacement reserve account.

For those projects receiving loan funds from RD, the 2% initial operating and maintenance capital established by RD will be considered the required rent-up reserve deposit.

- (b) Operating Reserve: Required for all projects except those receiving loan funds from RD. The operating reserve will be the greater of a) \$1,500 per unit or b) six month's debt service and operating expenses (four months for tax-exempt bond projects), and must be maintained for the duration of the low-income use period.

The operating reserve can be funded by deferring the developer fees of the project. If this method is utilized, the deferred amounts owed to the developer can only be repaid from cash flow if all required replacement reserve deposits have been made. For tax credit projects where no RPP loan applies, the operating reserve can be capitalized by an equity pay in up to one year after certificate of occupancy is received. This will be monitored by the Agency.

- (c) Replacement Reserve: All new construction projects must budget replacement reserves of \$250 per unit per year. Rehabilitation and adaptive reuse projects must budget replacement reserves of \$350 per unit per year. The replacement reserve must be capitalized from the project's operations, escalating by four percent (4%) annually.

In both types of renovation projects mentioned above, the Agency reserves the right to increase the required amount of annual replacement reserves if the Agency determines such an increase is warranted after a detailed review of the project's physical needs assessment.

For those projects receiving RD loan funds, the required funding of the replacement reserve will be established, administered and approved by RD.

#### 5. DEFERRED DEVELOPER FEES

Developer fees can be deferred to cover a gap in funding sources as long as:

- (a) the entire amount will be paid within fifteen years and meets the standards required by the IRS to stay in basis,
- (b) the deferred portion does not exceed fifty percent (50%) of the total amount as of the full application, and
- (c) payment projections do not negatively impact the operation of the project.

Each of these will be determined by the Agency. Nonprofit organizations must include a resolution from the Board of Directors allowing such a deferred payment obligation to the project. The developer may not charge interest on the deferred amount in excess of the long term AFR.

#### 6. FINANCING COMMITMENT

- (a) For all projects proposing private permanent financing, a letter of intent is required. This letter must clearly state the term of the permanent loan is at least eighteen years, how the interest rate will be indexed and the current rate at the time of the letter, the amortization period, any prepayment penalties, anticipated security interest in the property and lien position. The interest rate must be fixed and no balloon payments may be due for eighteen years.
- (b) For all projects proposing public permanent financing, binding commitments are required to be submitted by the full application ~~deadline~~due date. Local governments also must identify the source of funding (e.g. HOME, trust fund). All loans must have a fixed interest rate and no balloon payments for at least eighteen (18) years after project completion. A binding commitment is defined as a letter, resolution or binding contract from a unit of government. The same terms described for the letter of intent (using the format approved by the Agency) from a private lender must be included in the commitment.
- (c) The Agency may request a letter from a construction lender documenting the loan amount, interest rate, and any origination fees.
- (d) Applications may only include one set of proposed funding sources; the Agency will not consider multiple financial scenarios. A project will be ineligible for allocation if any of the listed funding sources will not be available in an amount or under the terms described in the application. The Agency may waive this limitation if the project otherwise demonstrates financial feasibility. Project cash flow may not be used as a source of funds.

#### 7. DEVELOPER FEES AND ADDITIONAL CONTINGENCY

- (a) Developer fees shall be \$12,000 per unit for new construction projects and twenty-eight percent (28%) of PDC line item 4 for rehabilitation projects.
- (b) Notwithstanding the amount calculated in subsection (7)(a), the developer fee for any project shall be a maximum of \$1,000,000 (the maximum for projects with tax-exempt bonds is \$1,500,000).
- (c) Builder's general requirements shall be limited to six percent (6%) of hard costs.



- (d) Builder's profit and overhead shall be limited to ten percent (10%) (8% profit, 2% overhead) of total hard costs, including general requirements.
  - (e) Where an identity of interest exists between the owner and builder, the builder's profit and overhead shall be limited to eight percent (8%) (6% profit, 2% overhead).
  - (f) The application may include up to the greater of \$500 per unit or \$30,000 in additional contingency to cover overruns in any project development cost. To the extent this amount is not used for cost overruns it may be taken as additional developer fee.
8. CONSULTING FEES
- The total amount of any consulting fees and developer fees shall be no more than the maximum developer fee allowed to that project.
9. ARCHITECTS' FEES
- The architects' fees, including design and inspection fees, shall be limited to three percent (3%) of the total hard costs plus general requirements, overhead, profit and construction contingency (total of lines 2 through 10 on the PDC description). This amount does not include engineering costs.
10. INVESTOR SERVICES FEES
- Investor services fees must be paid from net cash flow and not be calculated into the minimum debt coverage ratio.
11. PROJECT CONTINGENCY FUNDING
- All new construction projects shall have a hard cost contingency line item of NO MORE THAN five percent (5%) of total hard costs, including general requirements, builder profit and overhead. Rehabilitation and adaptive reuse projects shall include a hard cost contingency line item of NO MORE THAN ten percent (10%) of total hard costs.
12. PROJECT OWNERSHIP
- There must be common ownership between all units and buildings within a single project for the duration of the compliance period.
13. SECTION 8 PROJECT-BASED RENTAL ASSISTANCE
- For all new construction projects that propose to utilize Section 8 project-based rental assistance, the Agency will underwrite the rents according to the tax credit and HOME limits. These limits are based on data published annually by HUD. If the Section 8 contract administrator is willing to allow rents above these limits, the project may receive the additional revenue in practice, but Agency underwriting will use the lower revenue projections regardless of the length of the Section 8 contract.
- Given the uncertainty of long-term federal commitment to Section 8 rental assistance, the Agency considers underwriting to the more conservative revenue levels to best serve the project's long-term financial viability.
14. WATER, SEWER, AND TAP FEES
- Any water, sewer, and tap fees charged to the project must be entered on a separate line item of the PDC description. ~~Any applications that does not include these costs must provide a letters from the local provider(s) that documenting either the amounts or if no fees will be charged.~~

**VII. POST-AWARD PROCESSES AND REQUIREMENTS**

**A. ALLOCATION TERMS AND REVOCATION**

1. At any time between award and issuance of the Form 8609, owners must have written approval from the Agency prior to:
  - (a) changing the anticipated or final sources (amount or provider), including equity;
  - (b) increasing the anticipated or final uses by more than two percent (2%);
  - (c) altering the designs approved by
    - the Agency at full application, or
    - local building code office,including amenities, site layout, floor plans and elevations (“Approved Design”);
  - (d) starting construction, including sitework; or
  - (e) increasing rents for low-income units (does not apply to tax-exempt bonds).

If an increase in uses or design alteration is due to a local government requirement, owners do not need prior approval but rather must provide the Agency with prompt written notice. Failure to comply with a requirement of this subsection may result in a fine of up to \$25,000, revocation of the reservation or allocation, future disqualification under Section IV(D)(3) of any Principal involved, or other recourse available to the Agency.

2. Ownership entities must submit a completed carryover agreement and expend at least ten percent (10%) of the project’s reasonably expected basis, both by dates to be determined by the Agency.
3. A federal form 8609 will not be issued until:
  - (a) submission of a Final Cost Certification that complies with the Agency’s requirements, including a listing of the name and address for all contractors and subcontractors;
  - (b) the owner and management company document attendance at an Agency sponsored or approved tax credit compliance seminar sponsored within the previous 12 months;
  - (c) monitoring fees have been paid;
  - (d) the project has been built according to the Approved Design;
  - (e) the Agency determines the project has adhered to all representations made in the approved application and will meet all relevant Plan requirements; and
  - (f) documentation of the ownership entity having paid all applicable state and local taxes for the most recent year due.
4. The actual tax credits allocated will be the lesser of the tax credits reserved, the applicable rate multiplied by qualified basis (as approved by the Agency), or the amount determined by the Agency pursuant to its evaluation as required under Section 42(m)(2) of the Code. Projects will be required to elect a project-based allocation. An allocation does not constitute a representation or warranty by the Agency or Committee that the ownership entity or its owners will qualify for the tax credits. The Agency’s interpretation of the Code, regulations, notices, or other guidance is not binding on the federal government.
5. Owners must record a thirty (30) year Declaration of Land Use Restrictive Covenants for Low-Income Housing Tax Credits (Extended Use Agreement) stating that the owner will not apply for relief under Section 42(h)(6)(E)(i)(II) of the Code and will comply with other requirements under the Code, Plan, other relevant statutes and regulations and all representations made in the approved application. The Extended Use Agreement also may contain other provisions as determined by the Agency. The owner must have good and marketable title and obtain the consent of any prior recorded lienholder (other than for construction financing) to be bound by the Extended Use Agreement terms.

6. The Agency may revoke an allocation if the owner fails to implement all representations in the approved application. In addition to the terms of Section VII(A)(1), owners will acknowledge that the following constitute conditions to their allocation:
  - (a) accuracy of all representations made to the Agency, including exhibits and attachments,
  - (b) adherence to the Plan and all applicable federal, state and local laws and ordinances, including the Code and Fair Housing Act,
  - (c) provision and maintenance of amenities for the benefit of the tenants, and
  - (d) not incurring a penalty under N.C.G.S. § 105-236 for failure to file a return, failure to pay taxes, or having a large tax deficiency (as defined under N.C.G.S. § 105-236). The Agency may request documentation demonstrating all project related taxes have been paid.

An owner's or project's failure to comply with all such conditions without written authorization from the Agency will entitle the Agency, in its discretion, to deem the allocation to be cancelled by mutual consent. After any such cancellation, the owner will acknowledge that neither it nor the project will have any right to claim tax credits pursuant to the allocation. The Agency reserves the right, in its discretion, to modify or waive any such failed condition.

#### **B. STATE TAX CREDITS**

As the administrative agent for state credit refunds issued under N.C.G.S. § 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

1. Loan Option: Loans made by the Agency pursuant to N.C.G.S. § 105-129.42(d) will not be closed until the outstanding balance on the first-tier construction financing exceeds fifty percent (50%) of the state credit amount; the entire loan must be used to pay down a portion of the then existing construction debt.
2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under N.C.G.S. § 105-129.42(g)(1) will not occur until all of the following requirements have been met:
  - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
  - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
  - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with the Plan, to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

#### **C. COMPLIANCE MONITORING**

1. Owners must comply with Section 42 of the Code, IRS regulations, rulings, procedures, decisions and notices, state statutes, the Fair Housing Act, state laws, local codes, Agency loan documents,

**Appendix F** (incorporated herein by reference), and any other legal requirements. The Agency may treat any failure to do so as a violation of the Plan.

2. The Agency will adopt and revise standards, policies, procedures, and other requirements in administering the tax credit program. Examples include training and on-line reporting. Owners must comply with all such requirements regardless of whether or not they expressly appear in the Plan or **Appendix F**. The Agency will have access to any project information, including physical access to the property, all financial records and tenant information.

### VIII. DEFINITIONS

The terms listed below will be defined in the Plan as indicated below regardless of capitalization, unless the context clearly indicates otherwise. Terms used in the Plan but not defined below will have the same meaning as under the Code and IRS regulations.

4% Tax Credit: Low-income housing tax credits available pursuant to Section 42(h)(4) of the Code.

9% Tax Credit: Low-income housing tax credits available for allocation under the state's volume cap pursuant to Section 42(h)(3) of the Code.

Affiliate: As to any person or entity (i) any entity of which a majority of the voting interest is owned by such person or entity, (ii) any person or entity directly or indirectly controlling (10% or more) such person or entity, (iii) any person or entity under direct or indirect common control with any such person or entity, or (iv) any officer, director, employee, manager, stockholder (10% or more), partner or member of any such person or entity or of any person or entity referred to in the preceding clauses (i), (ii) or (iii).

Applicant: The entity considered under Section III(C)(5)that is applying for the tax credits and/or any RPP loan funds, as applicable.

Choice-Limiting Activity: Includes leasing or disposition of real property and any activity that will result in a physical change to the property, including acquisition, demolition, movement, rehabilitation, conversion, repair, or construction.

Community Service Facility: Any building or portion of building that qualifies under Section 42(d)(4)(C)(iii) of the Code, Revenue Ruling 2003-77, and any Agency requirements for such facilities (which may be published as part of the Plan, an Appendix or separately).

Developer: Any individual or entity responsible for initiating and controlling the development process and ensuring that all, or any material portion of all, phases of the development process are accomplished. Furthermore, the developer is the individual or entity identified as such in the Ownership Entity Agreement and any and all Development Fee Agreements.

Displacement: The moving of a person or such person's personal property from their current residence.

Entity: Without limitation, any general partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, public agency or other entity, other than a human being.

Homeless Populations: People who are living in places not meant for habitation (such as streets, cars, parks), emergency shelters, or in transitional or temporary housing but originally came from places not meant for habitation or emergency shelters.

Management Agent: Individual(s) or Entity responsible for the day to day operations of the project, which may or may not be related to the Owner(s) or ownership entity.

Market-Rate Units: Units that are not subject to tax credit restrictions; does not include manager units.

Material Participation: Involvement in the development and operation of the project on a basis which is regular, continuous and substantial throughout the compliance period as defined in Code Sections 42 and 469(h) and the regulations promulgated thereunder.

Net Square Footage: The outside to outside measurements of all finished areas that are heated and cooled (conditioned). Examples include hallways, community and office buildings, dwelling units, meeting rooms, sitting areas, recreation rooms, game rooms, etc. Breezeways, stairwells, gazebos and picnic shelters are examples of unconditioned outside structures that may not be used as net square footage.

Owner(s): Person(s) or entity(ies) that own an equity interest in the Ownership Entity.

Ownership Entity: The ownership entity to which tax credits and/or any RPP loan funds will be awarded.

Ownership Entity Agreement: A written, legally binding agreement describing the rights, duties and obligations of owners in the ownership entity.

Person: Any individual or Entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.

Person with a Disability: An adult who has a permanent physical or mental impairment which substantially limits one or more major life activities as further defined in North Carolina's Persons with Disabilities Protection Act (N.C.G.S. § 168A-3 (7a)).

Principal: Principal includes (1) all persons or entities who are or who will become partners or members of the ownership entity, (2) all persons or entities whose affiliates are or who will become partners or members of the ownership entity, (3) all persons or entities who directly or indirectly earn a portion of the development fee for development services with respect to a project and/or earn any compensation for development services rendered to such project, which compensation is funded directly or indirectly from the development fee of such project, and such amount earned exceeds the lesser of twenty-five percent (25%) of the development fee for such project or \$100,000, and (4) all affiliates of such persons or entities in clause (3) who directly or indirectly earn a portion of the development fee for development services with respect to any project in the current year and/or earn any compensation for development services rendered to any project in the current year, which compensation is funded directly or indirectly from the development fee of any such project, and such amount earned exceeds the lesser of twenty-five percent 25% of the development fee for such project or \$100,000. For purposes of determining Principal status the Agency may disregard multiple layers of pass-through or corporate entities. A partner or member will not be a Principal where its only involvement is that of the tax credit equity investor.

Qualified Corporation: Any corporation if, at all times such corporation is in existence, 100% of the stock of such corporation is held by a nonprofit organization that meets the requirements under Code Section 42(h)(5).

Rental Production Program (RPP): Agency loan program for multifamily affordable rental housing.

Stabilized Occupancy: Maintenance of at least ninety percent (90%) occupancy for three consecutive months.

**Note from the Codifier:** The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.

Statutory reference: G.S. 150B-21.2.

## TITLE 12 – DEPARTMENT OF JUSTICE

**Notice** is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0226-.0227, .0232-.0233; 09E .0104-.0105; and 09F .0102.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://ncdoj.gov/About-DOJ/Law-Enforcement-Training-and-Standards/Criminal-Justice-Education-and-Training-Standards/Forms-and-Publications.aspx>

**Proposed Effective Date:** February 1, 2013

**Public Hearing:**

**Date:** November 15, 2012

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

**Location:** Wake Technical Community College Public Safety Center, 321 Chapanoke Road, Raleigh, NC 27603

**Reason for Proposed Action:**

**12 NCAC 09B .0226, .0227, .0232, .0233** – Proposed amendment will eliminate requirement for specialized instructor students to have CPR certification prior to taking a specialized instructor course. Only those students who pass a specialized instructor course and apply for certification as a specialized instructor will be required to have CPR certification.

**12 NCAC 09E .0104, .0105** – Proposed amendments allow for greater use of online instruction for the annual in-service training program. Officers will be required to complete 24 credits of training vs. 24 hours of training. One credit shall be equal to one hour of traditional classroom instruction, with the understanding that officers taking online instruction may complete the training topics in less or more time than required by traditional classroom training. A short end-of-topic test will be administered for each training topic and procedures to follow if a test is failed are outlined in the rules. Topics of instruction for 2013 are: Firearms Training and Qualifications 4 credits; Legal Update 4 credits; Domestic Violence: The Children are Watching 2 credits; Juvenile Minority Sensitivity Training: Don't Press Send 2 credits; Department Topic of Choice 12 credits.

**12 NCAC 09F .0102** – Proposed amendment eliminates the requirement for concealed carry handgun instructors to show a video produced by the NC Justice Academy because the video has become obsolete.

**Procedure by which a person can object to the agency on a proposed rule:** The objection, reasons for the objection, and the clearly identified portion of the rule to which the objection

pertains, must be submitted in writing to Richard Squires, Department of Justice, Criminal Justice Standards Division, Post Office Drawer 149, Raleigh, NC 27602.

**Comments may be submitted to:** Richard Squires, Criminal Justice Standards Division, Post Office Drawer 149, Raleigh, NC 27602; phone (919) 661-5980; email [rsquires@ncdoj.gov](mailto:rsquires@ncdoj.gov)

**Comment period ends:** December 14, 2012

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ **State funds affected** 12 NCAC 09E .0104 and .0105
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

## CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

### SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

#### SECTION .0200 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

**12 NCAC 09B .0226 SPECIALIZED FIREARMS INSTRUCTOR TRAINING**

(a) The instructor training course requirement for specialized firearms instructor certification shall consist of a minimum of 83 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' In-Service Firearms Training and Qualification Program".

(c) Each applicant for specialized firearms instructor training shall:

- (1) have completed the criminal justice general instructor training course; and
- (2) present a written endorsement by either
  - (A) a certified school director indicating the student will be utilized to instruct firearms in the Basic Law Enforcement Training Course; or
  - (B) a department head, certified school director, or in-service training coordinator, indicating the student will be utilized to instruct firearms in a "Law Enforcement Officers' In-Service Firearms Training and Qualification Program"; ~~and Program."~~
- ~~(3) possess a valid CPR Certification that included cognitive and skills testing.~~

(d) Each specialized firearms instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- |      |  |          |
|------|--|----------|
| (1)  | Orientation/Pretest                        | 8 Hours  |
| (2)  | Range Operations                           | 38 Hours |
| (3)  | Civil Liability                            | 4 Hours  |
| (4)  | Night Firing                               | 2 Hours  |
| (5)  | Combat Shooting                            | 8 Hours  |
| (6)  | Mental Conditioning                        | 1 Hours  |
| (7)  | Shotgun Operation and Firing               | 4 Hours  |
| (8)  | Service Handgun - Operation and Use        | 5 Hours  |
| (9)  | Rifle - Operation and Maintenance          | 4 Hours  |
| (10) | Service Handgun - Maintenance and Cleaning | 2 Hours  |
| (11) | Range Medical Emergencies                  | 2 Hours  |
| (12) | In-Service Firearms Requirements           | 2 Hours  |
| (13) | BLET Lesson Plan Review/Post Test          | 3 Hours  |

(e) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized firearms instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division

North Carolina Department of Justice  
~~114 West Edenton Street~~ 1700 Tryon Park Drive  
~~Old Education Building~~  
 Post Office Drawer 149  
 Raleigh, North Carolina ~~27602~~ 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
 Post Office Box 99

Salemberg, North Carolina 28385

(f) ~~The~~ Commission-certified ~~schools~~ school that ~~are~~ is certified to offer the "Specialized Firearms Instructor Training" course ~~are; is The the~~ North Carolina Justice Academy.

*Authority G.S. 17C-6.*

**12 NCAC 09B .0227 SPECIALIZED DRIVER INSTRUCTOR TRAINING**

(a) The instructor training course required for specialized driver instructor certification shall consist of a minimum of 35 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized driver instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice driver instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized driver instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a written endorsement by either
  - (A) a certified school director indicating the student will be utilized to instruct driving in Basic Law Enforcement Training Courses; or
  - (B) a department head, certified school director, or in-service training coordinator, indicating the student will be utilized to instruct driver training in the "Law Enforcement Officer's Annual In-Service Training Program"; and
- (3) possess a valid operator driver's license; and
- (4) maintain a safe driving record where no more than four points have been assigned against the driving record within the past three ~~years; and~~ years.
- ~~(5) possess a valid CPR Certification that included cognitive and skills testing.~~

(d) Each specialized driver instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- |     |   |         |
|-----|---|---------|
| (1) | Orientation                                       | 1 Hours |
| (2) | Lesson Plan Review (BLET)                         | 4 Hours |
| (3) | General Mechanical Knowledge                      | 1 Hour  |
| (4) | Before - Operation Inspection                     | 1 Hours |
| (5) | Laws of Natural Force & Operating Characteristics | 2 Hours |

- (6) Driver Practicum/Pre-Test 19 Hours
- (7) Fundamentals of Professional Liability for Trainers 4 Hours
- (8) Course Review/State Exam 3 Hours

(e) The "Specialized Driver Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized driver instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
~~114 West Edenton Street~~ 1700 Tryon Park Drive  
~~Old Education Building~~  
Post Office Drawer 149

Raleigh, North Carolina ~~27602~~ 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(f) Commission-certified schools that are certified to offer the "Specialized Driver Instructor Training" course are: The North Carolina Justice Academy and The North Carolina State Highway Patrol.

*Authority G.S. 17C-6.*

### **12 NCAC 09B .0232 SPECIALIZED SUBJECT CONTROL ARREST TECHNIQUES INSTRUCTOR TRAINING**

(a) The instructor training course required for specialized subject control arrest techniques instructor certification shall consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized subject control arrest techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice subject control arrest techniques instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized subject control arrest techniques instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course;
- (3) present a written endorsement by either
  - (A) a certified school director indicating the student will be utilized to instruct subject control arrest techniques in Basic Law Enforcement Training Courses; or
  - (B) a department head, certified school director, or in-service training coordinator indicating the student will be utilized to instruct Subject Control Arrest Techniques for the "Law

Enforcement Officers' In-Service Training Program"; and Program."

~~(4) — possess a valid CPR Certification that included cognitive and skills testing.~~

(d) Each specialized subject control arrest techniques instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation 1 Hour
- (2) Skills Pre-Test 1 Hour
- (3) Student Instructional Practicum 3 Hours
- (4) Practical Skills Evaluation 3 Hours
- (5) Response to Injury 4 Hours
- (6) Combat Conditioning 12 Hours
- (7) Safety Guidelines/Rules 2 Hours
- (8) Practical Skills Enhancement 4 Hours
- (9) Subject Control/Arrest Techniques Practical Skills and Instructional Methods 44 Hours
- (10) Fundamentals of Professional Liability For Law Enforcement Trainers 4 Hours
- (11) State Comprehensive Examination/Course Closing 2 Hours
- TOTAL 80 Hours

(e) The "Specialized Subject Control Arrest Techniques Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized subject control arrest techniques instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
~~114 West Edenton Street~~ 1700 Tryon Park Drive  
~~Old Education Building~~  
Post Office Drawer 149  
Raleigh, North Carolina ~~27602~~ 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
Post Office Box 99  
Salemberg, North Carolina 28385

(f) ~~The~~ Commission-certified ~~schools~~ school that ~~are~~ is certified to offer the "Specialized Firearms Instructor Training" course ~~are: is The the~~ North Carolina Justice Academy.

*Authority G.S. 17C-6.*

### **12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING**

(a) The instructor training course required for specialized physical fitness instructor certification shall consist of a minimum of 60 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized physical fitness instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice physical fitness instructor in a Basic Law Enforcement Training Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized physical fitness training shall:



- (1) qualify through one of the following three options:
    - (A) have completed the criminal justice general instructor training course; or
    - (B) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be teaching in physical education topics; or
    - (C) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education;
  - (2) present a written endorsement by either
    - (A) a school director indicating the student will be utilized to instruct physical fitness in Basic Law Enforcement Training Courses; or
    - (B) a certified school director, or in-service training coordinator indicating the student will be utilized to instruct physical fitness for the "Law Enforcement Officers' In-Service Training Program";
  - (3) present a letter from a physician stating fitness to participate in the ~~course; and course.~~
  - ~~(4) possess a valid CPR Certification that included cognitive and skills testing.~~
- (d) Each specialized physical fitness instructor training course shall include the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	5 Hours
(2)	Lesson Plan Review	4 Hours
(3)	Physical Fitness Assessments, Exercise Programs and Instructional Methods	31 Hours
(4)	Injury Care and Prevention	4 Hours
(5)	Nutrition	6 Hours
(6)	Civil Liabilities for Trainers	2 Hours
(7)	CVD Risk Factors	2 Hours
(8)	Developing In-Service Wellness Programs and Validating Fitness Standards	4 Hours
(9)	State Examination	2 Hours
	<b>TOTAL</b>	<b>60 Hours</b>

(e) The "Physical Fitness Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized physical fitness instructor training courses. Copies of this publication may be inspected at the agency:

Criminal Justice Standards Division  
 North Carolina Department of Justice  
~~114 West Edenton Street~~ 1700 Tryon Park Drive  
~~Old Education Building~~  
 Post Office Drawer 149  
 Raleigh, North Carolina ~~27602~~ 27610

and may be obtained at no cost to the student from the Academy at the following address:

North Carolina Justice Academy  
 Post Office Box 99  
 Salemburg, North Carolina 28385

(f) ~~The~~ Commission-certified ~~schools~~ school that ~~are~~ is certified to offer the "Specialized Firearms Instructor Training" course ~~are: is The the~~ North Carolina Justice Academy.

*Authority G.S. 17C-6.*

## **SUBCHAPTER 09E – IN-SERVICE TRAINING PROGRAMS**

### **SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM**

#### **12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING**

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306, except for instructors delivering Incident Command System training for NIMS (National Incident Management System) compliance. Those instructors must be certified through FEMA as Incident Command Instructors. In addition, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.
- ~~(2)~~ Instructors who teach a required in-service training topic must achieve a passing grade on a topic specific test developed by the North Carolina Justice Academy or by the agency delivering the training. Instructors who teach a required in-service training topic online, in addition to meeting the above testing requirement, must also complete the in-service training for the topic he or she will be teaching. Instructors who teach an in-service training topic in a traditional classroom format will receive credit toward their own in-service training requirements, provided that they pass all required tests and have their instruction documented once completed.
- ~~(2)(3)~~ The instructor shall deliver the training consistent with the specifications as established in Rules 09E .0105 and .0106.
- ~~(3)(4)~~ The instructor shall report the successful or unsuccessful completion of training for each officer to the Department head. Such reporting shall be on a Commission form.

- ~~(4)~~(5) Where the officer fails to successfully qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

*Authority G.S. 17C-6; 17C-10.*

**12 NCAC 09E .0105 MINIMUM TRAINING**

**SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING**

(a) The following topical areas and specifications are established as minimum topics, specifications and ~~hours~~ credits to be included in each law enforcement officers' annual in-service training courses. For the purposes of this Subchapter, a credit shall be equal to one hour of traditional classroom instruction. These specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms ~~(4); Training and Qualification (4 credits);~~
  - (A) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials;
  - (B) Safety:
    - (i) range rules and regulations;
    - (ii) handling of a firearm; and
    - (iii) malfunctions;
  - (C) Review of Basic Marksmanship Fundamentals:
    - (i) grip, stance, breath control and trigger squeeze;
    - (ii) sight and alignment/sight picture; and
    - (iii) nomenclature; and
- (2) Legal Update ~~(4); (4 credits);~~
- (3) ~~Career Survival: Social Networking and Digital Communications (4); Domestic Violence: The Children are Watching (2 credits);~~
- (4) Juvenile Minority Sensitivity Training: ~~Interaction Skills in Building Rapport (2); Don't Press Send (2 credits); and~~
- ~~(5) Awareness of Issues Surrounding Returning Military Personnel (2); and~~
- ~~(6)~~(5) Department Topics of Choice ~~(8); (12 credits).~~

(b) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Raleigh, North Carolina 27610

(c) The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

Criminal Justice Standards Division  
North Carolina Department of Justice  
1700 Tryon Park Drive  
Raleigh, North Carolina 27610

and may be obtained at cost from the Academy at the following address:

North Carolina Justice Academy  
Post Office Drawer 99  
Salemberg, North Carolina 28385

(d) Lesson plans are designed to be delivered in approximate hourly increments; however, a student who completes an online in-service training topic in less than or more than the hourly increment shall receive the number of credits that correspond to the number of hours of traditional classroom training.

(e) Successful completion of training will be demonstrated by passing a written test for each in-service training topic.

- (1) A written test comprised of at least five questions per credit shall be developed by the delivering agency, or the agency may use the written test developed by the North Carolina Justice Academy, for each in-service training topic.
- (2) A student shall pass each test by achieving 70 percent correct answers.
- (3) A student who completes a topic of in-service training online and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student must complete the in-service training topic in a traditional classroom setting before taking the exam a third time.
- (4) A student who completes a topic of in-service training in a traditional classroom setting and fails the end of topic exam shall be given one attempt to re-test. If the student fails the exam a second time, the student must complete the in-service training topic in a traditional classroom setting again before taking the exam a third time.

*Authority G.S. 17C-6; 17C-10.*

**SUBCHAPTER 09F - CONCEALED HANDGUN  
TRAINING**

**SECTION .0100 - CONCEALED HANDGUN TRAINING  
PROGRAM**

**12 NCAC 09F .0102 TOPICAL AREAS**

The course entitled "Concealed Carry Handgun Training" shall consist of eight hours of instruction and shall include the following identified topical areas:

- (1) Legal Issues (two hours): The student shall be able to demonstrate a general knowledge of North Carolina law on concealed handguns, handgun safety, and use of deadly force. The instructor shall use the lesson plan ~~and training videos~~ produced by the North Carolina Justice Academy. The instructor shall determine the student's level of understanding of the relevant legal issues by a written examination.
- (2) Handgun Nomenclature: The students shall be able to either verbally or in writing list the primary parts of their personal handgun.
- (3) Handgun Safety: The students shall be able to:
  - (a) list at least four rules of safe gun handling and demonstrate all of these procedures during range exercises;
  - (b) list four methods of safely storing the handgun and choose the method most appropriate for their personal use;
  - (c) describe safety issues relating to the safe carry of a handgun; and
  - (d) determine the proper storage of their weapon when there are minors in the home.
- (4) Handgun Fundamentals: The students shall be able to:
  - (a) demonstrate how to properly load both a revolver and a semiautomatic handgun;
  - (b) demonstrate how to properly unload both a revolver and a semiautomatic handgun;
  - (c) describe the operational characteristics of their handgun; and
  - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105.
- (5) Marksmanship Fundamentals: The student shall be able to:
  - (a) demonstrate a proper handgun grip;
  - (b) demonstrate either the Weaver or Isosceles Stance;
  - (c) describe the elements of sight alignment and sight picture; and
  - (d) demonstrate trigger control in a dry fire exercise.
- (6) Presentation Techniques: The students shall be able to demonstrate the draw or presentation with their handgun.
- (7) Cleaning and Maintenance: The students shall be able to:
  - (a) demonstrate how to "field strip" the handgun if their weapon can be field stripped;

- (b) describe how to perform a "Function Check" on their personal handgun; and
- (c) based on the manufacturer's recommendations, list the lubrication points of their specific handgun.
- (8) Ammunition: The students shall be able to list the four components of handgun ammunition.
- (9) Proficiency Drills: The students shall be able to:
  - (a) demonstrate how to properly check the handgun in order to ensure that it is safe;
  - (b) demonstrate how to fire the weapon from a ready position;
  - (c) demonstrate the ability to fire the handgun from various distances; and
  - (d) successfully complete a proficiency test administered by the instructor as prescribed in 12 NCAC 09F .0105(7).

*Authority G.S. 14-415.12.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Coastal Resources Commission intends to amend the rules cited as 15A NCAC 07H .0308 and .1705.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://portal.ncdenr.org/web/cm/rules>

**Proposed Effective Date:** *February 1, 2013*

**Public Hearing:**

**Date:** *November 15, 2012*

**Time:** *5:00 p.m.*

**Location:** *Vernon James Research & Extension Center, 207 Research Station Road, Plymouth, NC 27962*

**Reason for Proposed Action:**

*15A NCAC 07H .0308, .1705 – The Coastal Resources Commission proposes to amend its administrative rules in order to uniformly manage temporary erosion control structures (sandbags) along oceanfront shorelines and to allow permit expirations that more accurately reflect timeframes necessary for local governments to pursue long-term solutions to chronic erosion issues. These changes will serve the public interest by allowing oceanfront property owners to protect their structures in manner coordinated with the efforts of local governments. The amendments will reflect the current realities of shoreline management in NC and provide uniformity in administration of the sandbag rules while still serving to protect life and property from the destructive forces indigenous to the Atlantic shoreline. Comments will be accepted on both the rule language as well as*

the Fiscal Analysis which can be reviewed at <http://portal.ncdenr.org/web/cm/rules>.

**Procedure by which a person can object to the agency on a proposed rule:** *Objections may be filed in writing and addressed to the Director, NC Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557.*

**Comments may be submitted to:** *Braxton Davis, Director, 400 Commerce Avenue, Morehead City, NC 28557; phone (252) 808-2808; fax (252) 247-3330*

**Comment period ends:** *December 14, 2012*

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☒ **State funds affected**
- ☐ **Environmental permitting of DOT affected**
- ☐ **Analysis submitted to Board of Transportation**
- ☐ **Local funds affected**
- ☐ **Date submitted to OSBM:**
- ☐ **Substantial economic impact (≥\$500,000)**
- ☒ **Approved by OSBM**
- ☐ **No fiscal note required**

**CHAPTER 07 - COASTAL MANAGEMENT**

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

**SECTION .0300 - OCEAN HAZARD AREAS**

**15A NCAC 07H .0308 SPECIFIC USE STANDARDS FOR OCEAN HAZARD AREAS**

**(a) Ocean Shoreline Erosion Control Activities:**

- (1) Use Standards Applicable to all Erosion Control Activities:
  - (A) All oceanfront erosion response activities shall be consistent with the general policy statements in 15A NCAC 07M .0200.
  - (B) Permanent erosion control structures may cause significant adverse

impacts on the value and enjoyment of adjacent properties or public access to and use of the ocean beach, and, therefore, are prohibited. Such structures include bulkheads, seawalls, revetments, jetties, groins and breakwaters.

- (C) Rules concerning the use of oceanfront erosion response measures apply to all oceanfront properties without regard to the size of the structure on the property or the date of its construction.
- (D) All permitted oceanfront erosion response projects, other than beach bulldozing and temporary placement of sandbag structures, shall demonstrate sound engineering for their planned purpose.
- (E) Shoreline erosion response projects shall not be constructed in beach or estuarine areas that sustain substantial habitat for fish and wildlife species, as identified by natural resource agencies during project review, unless mitigation measures are incorporated into project design, as set forth in Rule .0306(i) of this Section.
- (F) Project construction shall be timed to minimize adverse effects on biological activity.
- (G) Prior to completing any erosion response project, all exposed remnants of or debris from failed erosion control structures must be removed by the permittee.
- (H) Erosion control structures that would otherwise be prohibited by these standards may be permitted on finding that:
  - (i) the erosion control structure is necessary to protect a bridge which provides the only existing road access on a barrier island, that is vital to public safety, and is imminently threatened by erosion as defined in provision (a)(2)(B) of this subchapter;
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate to protect public health and safety; and
  - (iii) the proposed erosion control structure will have no

- adverse impacts on adjacent properties in private ownership or on public use of the beach.
- (I) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
- (i) the structure is necessary to protect a state or federally registered historic site that is imminently threatened by shoreline erosion as defined in provision (a)(2)(B) of this subchapter; and
  - (ii) the erosion response measures of relocation, beach nourishment or temporary stabilization are not adequate and practicable to protect the site; and
  - (iii) the structure is limited in extent and scope to that necessary to protect the site; and
  - (iv) any permit for a structure under this Part (I) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (J) Structures that would otherwise be prohibited by these standards may also be permitted on finding that:
- (i) the structure is necessary to maintain an existing commercial navigation channel of regional significance within federally authorized limits; and
  - (ii) dredging alone is not practicable to maintain safe access to the affected channel; and
  - (iii) the structure is limited in extent and scope to that necessary to maintain the channel; and
  - (iv) the structure shall not adversely impact fisheries or other public trust resources; and
- any permit for a structure under this Part (J) may be issued only to a sponsoring public agency for projects where the public benefits outweigh the short or long range adverse impacts. Additionally, the permit shall include conditions providing for mitigation or minimization by that agency of any unavoidable adverse impacts on adjoining properties and on public access to and use of the beach.
- (K) The Commission may renew a permit for an erosion control structure issued pursuant to a variance granted by the Commission prior to 1 July 1995. The Commission may authorize the replacement of a permanent erosion control structure that was permitted by the Commission pursuant to a variance granted by the Commission prior to 1 July 1995 if the Commission finds that:
- (i) the structure will not be enlarged beyond the dimensions set out in the permit;
  - (ii) there is no practical alternative to replacing the structure that will provide the same or similar benefits; and
  - (iii) the replacement structure will comply with all applicable laws and with all rules, other than the rule or rules with respect to which the Commission granted the variance, that are in effect at the time the structure is replaced.
- (L) Proposed erosion response measures using innovative technology or design shall be considered as experimental and shall be evaluated on a case-by-case basis to determine consistency with 15A NCAC 07M .0200 and general and specific use standards within this Section.
- (2) Temporary Erosion Control Structures:
- (A) Permittable temporary erosion control structures shall be limited to sandbags

- placed landward of mean high water and parallel to the shore.
- (B) Temporary erosion control structures as defined in Part (2)(A) of this Subparagraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure ~~shall be~~ is considered imminently threatened if its foundation, septic system, or right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.
- (C) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (D) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (E) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at an increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or their designee.
- (F) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 sq. ft. or less and its associated septic system, or, for up to five years for a building with a total floor area of more than 5000 sq. ft. and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (G) Temporary sandbag erosion control structures may remain in place for up to ~~five~~ eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, ~~and for up to eight years from the date of approval~~ or if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation project or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment or~~ nourishment, or inlet relocation or stabilization project if it has:
- (i) an active CAMA permit, where necessary, approving such project; or
  - (ii) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
  - (iii) received a favorable economic evaluation report on a federal project or,
  - (iv) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been

initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach ~~nourishment or nourishment~~, inlet relocation or stabilization project.

If beach ~~nourishment or nourishment~~, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Part (F) of this Subparagraph.

- (H) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large-scale beach nourishment ~~project or project~~, an inlet relocation or stabilization project, it shall be removed by the property owner within 30 days of official notification from the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (I) Removal of temporary erosion control structures ~~shall not be~~ is not required if they are covered by dunes with stable and natural vegetation.
- (J) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (K) Sandbags used to construct temporary erosion control structures shall be tan in color and three to five feet wide and seven to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed six feet.
- (L) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (M) An imminently threatened structure may be protected only once, regardless of ~~ownership~~ ownership.

unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with (G) of this Subparagraph. Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subchapter and the community in which it is located is actively pursuing ~~an a~~ a beach nourishment, inlet relocation or stabilization project in accordance with Part (G) of this Subparagraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Part (F) or (G) of this Subparagraph shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

- (i) a building and septic system shall be considered as separate structures.
- (ii) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Part (F) or (G) of this Subparagraph.
- (N) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Part (F) or (G) of this Subparagraph.
- (3) Beach Nourishment. Sand used for beach nourishment shall be compatible with existing grain size and ~~type~~ in accordance with 15A NCAC 07H .0312. ~~Sand to be used for beach nourishment shall be taken only from those~~

~~areas where the resulting environmental impacts will be minimal.~~

- (4) Beach Bulldozing. Beach bulldozing (defined as the process of moving natural beach material from any point seaward of the first line of stable vegetation to create a protective sand dike or to obtain material for any other purpose) is development and may be permitted as an erosion response if the following conditions are met:

- (A) The area on which this activity is being performed shall maintain a slope of adequate grade so as to not endanger the public or the public's use of the beach and shall follow the pre-emergency slope as closely as possible. The movement of material utilizing a bulldozer, front end loader, backhoe, scraper, or any type of earth moving or construction equipment shall not exceed one foot in depth measured from the pre-activity surface elevation;
- (B) The activity shall not exceed the lateral bounds of the applicant's property unless he has permission of the adjoining land owner(s);
- (C) Movement of material from seaward of the mean low water line will require a CAMA Major Development and State Dredge and Fill Permit;
- (D) The activity shall not increase erosion on neighboring properties and shall not have an adverse effect on natural or cultural resources;
- (E) The activity may be undertaken to protect threatened on-site waste disposal systems as well as the threatened structure's foundations.

(b) Dune Establishment and Stabilization. Activities to establish dunes shall be allowed so long as the following conditions are met:

- (1) Any new dunes established shall be aligned to the greatest extent possible with existing adjacent dune ridges and shall be of the same general configuration as adjacent natural dunes.
- (2) Existing primary and frontal dunes shall not, except for beach nourishment and emergency situations, be broadened or extended in an oceanward direction.
- (3) Adding to dunes shall be accomplished in such a manner that the damage to existing vegetation is minimized. The filled areas shall be immediately replanted or temporarily stabilized until planting can be successfully completed.

- (4) Sand used to establish or strengthen dunes shall be of the same general characteristics as the sand in the area in which it is to be placed.
- (5) No new dunes shall be created in inlet hazard areas.
- (6) Sand held in storage in any dune, other than the frontal or primary dune, may be redistributed within the AEC provided that it is not placed any farther oceanward than the crest of a primary dune or landward toe of a frontal dune.
- (7) No disturbance of a dune area shall be allowed when other techniques of construction can be utilized and alternative site locations exist to avoid unnecessary dune impacts.

(c) Structural Accessways:

- (1) Structural accessways shall be permitted across primary dunes so long as they are designed and constructed in a manner that entails negligible alteration on the primary dune. Structural accessways shall not be considered threatened structures for the purpose of Paragraph (a) of this Rule.
- (2) An accessway shall be conclusively presumed to entail negligible alteration of a primary dune provided that:
  - (A) The accessway is exclusively for pedestrian use;
  - (B) The accessway is less than six feet in width;
  - (C) The accessway is raised on posts or pilings of five feet or less depth, so that wherever possible only the posts or pilings touch the frontal dune. Where this is deemed impossible, the structure shall touch the dune only to the extent absolutely necessary. In no case shall an accessway be permitted if it will diminish the dune's capacity as a protective barrier against flooding and erosion; and
  - (D) Any areas of vegetation that are disturbed are revegetated as soon as feasible.
- (3) An accessway which does not meet Part (2)(A) and (B) of this Paragraph shall be permitted only if it meets a public purpose or need which cannot otherwise be met and it meets Part (2)(C) of this Paragraph. Public fishing piers shall not be deemed to be prohibited by this Rule, provided all other applicable standards are met.
- (4) In order to avoid weakening the protective nature of primary and frontal dunes a structural accessway (such as a "Hatteras ramp") shall be provided for any off-road vehicle (ORV) or emergency vehicle access. Such accessways shall be no greater than 10 feet in width and shall be constructed of



wooden sections fastened together over the length of the affected dune area.

(d) **Building Construction Standards.** New building construction and any construction identified in .0306(a)(5) and 07J .0210 shall comply with the following standards:

- (1) In order to avoid danger to life and property, all development shall be designed and placed so as to minimize damage due to fluctuations in ground elevation and wave action in a 100-year storm. Any building constructed within the ocean hazard area shall comply with relevant sections of the North Carolina Building Code including the Coastal and Flood Plain Construction Standards and the local flood damage prevention ordinance as required by the National Flood Insurance Program. If any provision of the building code or a flood damage prevention ordinance is inconsistent with any of the following AEC standards, the more restrictive provision shall control.
- (2) All building in the ocean hazard area shall be on pilings not less than eight inches in diameter if round or eight inches to a side if square.
- (3) All pilings shall have a tip penetration greater than eight feet below the lowest ground elevation under the structure. For those structures so located on or seaward of the primary dune, the pilings shall extend to five feet below mean sea level.
- (4) All foundations shall be adequately designed to be stable during applicable fluctuations in ground elevation and wave forces during a 100-year storm. Cantilevered decks and walkways shall meet this standard or shall be designed to break-away without structural damage to the main structure.

*Authority* G.S. 113A-107(a); 113A-107(b); 113A-113(b)(6)a.,b.,d.; 113A-124.

## **SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A DREDGE AND FILL PERMIT**

### **15A NCAC 07H .1705 SPECIFIC CONDITIONS**

(a) **Temporary Erosion Control Structures in the Ocean Hazard AEC.**

- (1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.
- (2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure ~~shall be~~ is considered imminently threatened if its foundation, septic

system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

- (3) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.
- (4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.
- (5) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal management or designee.
- (6) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 square feet or less and its associated septic system, or for up to five years for a building with a total floor area of more than 5000 square feet and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.
- (7) Temporary sandbag erosion control structures may remain in place for up to ~~five~~ eight years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, ~~and up to eight years from the date of approval~~ or if they are located in an Inlet Hazard Area adjacent to an inlet for

which a community is actively pursuing an inlet relocation ~~project~~ or stabilization project in accordance with G.S. 113A-115.1. For purposes of this Rule, a community is considered to be actively pursuing a beach ~~nourishment~~ or nourishment, inlet relocation or stabilization project if it has:

- (A) an active CAMA permit, where necessary, approving such project, or
- (B) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (C) received a favorable economic evaluation report on a federal project; or
- (D) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach ~~nourishment~~ or nourishment, inlet relocation or stabilization project.

If beach ~~nourishment~~ or nourishment, inlet relocation or stabilization is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.

- (8) Once the temporary erosion control structure is determined by the Division of Coastal Management to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment ~~project or project~~, an inlet relocation or stabilization project, it shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.
- (9) Removal of temporary erosion control structures ~~shall not be~~ is not required if they

are covered by dunes with stable and natural vegetation.

- (10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.
- (11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed 6 feet.
- (12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.
- (13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.
- (14) An imminently threatened structure may be protected only once regardless of ~~ownership~~ ownership, unless the threatened structure is located in a community that is actively pursuing a beach nourishment project, or in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation or stabilization project in accordance with Subparagraph (7). Existing temporary erosion control structures ~~located in Inlet Hazard Areas~~ may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph and the community in which it is located is actively pursuing a beach nourishment, an inlet relocation or stabilization project in accordance with Subparagraph (7) of this Paragraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:
  - (A) a building and septic system shall be considered as separate structures.
  - (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Rule.
- (15) Existing sandbag structures may be repaired or replaced within their originally permitted

dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
- (2) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee.
- (3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

- (1) Work permitted by this general permit shall be subject to the following limitations:
  - (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;
  - (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined

by the Director of the Division of Coastal Management or designee;

- (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC 07H .0208;
  - (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.
- (2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

*Authority* G.S. 113-229(cl); 113A-107(a),(b); 113A-113(b); 113A-118.1.

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

### **CHAPTER 38 - BOARD OF OCCUPATIONAL THERAPY**

*Notice* is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Occupational Therapy intends to amend the rules cited as 21 NCAC 38 .0301, .0802 and .0803.

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
[www.ncbot.org](http://www.ncbot.org)

**Proposed Effective Date:** April 01, 2013

**Public Hearing:**

**Date:** November 12, 2012

**Time:** 11:00 a.m.

**Location:** Wells Fargo Capitol Center, 150 Fayetteville Street, 13<sup>th</sup> Floor Conference Room, Raleigh, NC 27601

**Reason for Proposed Action:**

**21 NCAC 38 .0301, .0802, .0803 -** These amendments are being submitted to clarify continuing competence activity requirements and as requested by health care providers who do not want to wear name tags with their last name on them.

**Procedure by which a person can object to the agency on a proposed rule:** *Any person may object to either of these proposed rule changes by submitting a written statement to Charles P. Wilkins at P.O. Box 2280, Raleigh, NC 27602, postmarked on or before January 28, 2013.*

**Comments may be submitted to:** *Charles P. Wilkins, P.O. Box 2280, Raleigh, NC 27602; phone (919) 832-1380; fax (919) 833-1059; email cwilkins@bsw-law.com*

**Comment period ends:** *January 28, 2013*

**Procedure for Subjecting a Proposed Rule to Legislative Review:** If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

**Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☐ Substantial economic impact (≥\$500,000)
- ☐ Approved by OSBM
- ☒ No fiscal note required

**SECTION .0300 - LICENSING**

**21 NCAC 38 .0301 LICENSE NUMBER: DISPLAY OF LICENSE AND IDENTIFICATION BADGE**

(a) Each individual who is issued a license shall be issued a license number. Should that number be retired for any reason (such as death, failure to renew the license, or any other reason) that number shall not be reissued. The license and current renewal card must be available for inspection at the licensee's principal place of business.

(b) Persons licensed under G.S. 90-270.65 et seq. shall be required to comply with the provisions of G.S. 90-640.

(c) A licensed or registered person may be exempted from this requirement either partially or completely if such person, or such person's employer, shows to the Board that the person's or patient's safety or some therapeutic concern requires that an identification badge not be worn or that only a first name be displayed.

*Authority G.S. 90-270.69(4); 90-270.73.*

**SECTION .0800 - CONTINUING COMPETENCE ACTIVITY**

**21 NCAC 38 .0802 CONTINUING COMPETENCE REQUIREMENTS FOR LICENSURE**

(a) Effective for the renewal period July 1, 2008 through June 30, 2009 and each renewal thereafter, licensed occupational therapists and occupational therapy assistants applying for license renewal shall document having earned a minimum of 15 points for approved continuing competence activities between June 1 of the preceding licensure period and May 31 of the current licensure period. Documentation of each continuing competence activity shall comply with Rule .0805.

(b) ~~Every two years all licensees shall document completion of at least one contact hour of an ethics course related to the practice of occupational therapy, which shall be included in the total points for the year.~~ Each renewal period licensees shall document completion of at least one contact hour of a qualified activity for maintaining continuing competence related to ethics in the practice of occupational therapy, which shall be included in the total points for the year. Continuing competence activities in ethics shall be related to developing the licensee's ability to reflect on, determine, and act on the moral aspects of practice as required by Rule .0308.

(c) Continuing competence contact hours exceeding the total needed for renewal shall not be carried forward to the next renewal period.

(d) Continuing competence activities shall not include new employee orientation or annual training required by the employer.

(e) Licensees shall not receive credit for the same continuing competence activity more than once during a renewal period.

(f) Licensees shall be charged a late fee of fifty dollars (\$50.00) if they fail to obtain their continuing competency activities within the appropriate time period.

*Authority G.S. 90-270.69; 90-270.75(a).*

**21 NCAC 38 .0803 APPROVAL OF ACTIVITIES FOR MAINTAINING CONTINUING COMPETENCE**

(a) Provided that the activities are consistent with the provisions of rules in this Section, the Board shall grant pre-approval to:

- (1) Continuing competence activities sponsored ~~or approved~~ by the North Carolina Occupational Therapy Association,
- (2) Continuing competence activities sponsored ~~or approved~~ by the American Occupational Therapy Association, Association.
- (3) ~~Continuing competence activities sponsored by AOTA approved providers.~~

(b) A provider who wishes to obtain Board approval of activities for maintaining continuing competence, consistent with Rule .0804 of this Section, shall submit to the Board, at least 90 days in advance of the ~~program~~, planned activity, the following:

- (1) course description;
- (2) learning outcomes;
- (3) target audience;
- (4) content focus;

- (5) agenda for the activity;
- (6) amount of contact hours;
- (7) qualifications for the presenter(s);
- (8) sample documentation for demonstrating satisfactory completion by course participants such as certificate of ~~completion~~ completion; and
- (9) a fee of two hundred fifty dollars (\$250.00) for the review and processing of the provider's application.

(c) Upon review of the completed application, the Board shall notify the provider as to whether or not the program has been approved.

(d) A provider of a continuing competence activity shall furnish documentation for demonstrating completion to all participants, specifying the following information:

- (1) name of the participant;
- (2) name of the provider;
- (3) dates of the activity and completion;
- (4) title and location of the activity;
- (5) number of contact hours; and
- (6) signature of the provider or representative.

*Authority G.S. 90-270.69; 90-270.75(a).*

## TITLE 25 – OFFICE OF STATE PERSONNEL

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01H .0902.*

**Link to agency website pursuant to G.S. 150B-19.1(c):**  
<http://www.osp.state.nc.us/Guide/SPC/Spc.htm>

**Proposed Effective Date:** February 1, 2013

**Public Hearing:**

**Date:** November 1, 2012

**Time:** 10:00 a.m.

**Location:** 116 West Jones Street, Large Conference Room, Third Floor, Raleigh, NC 27603

**Reason for Proposed Action:** *The rule is being amended in order to reflect the recent amendments to G.S. 126-7.1 by the 2011 legislative session. The statutory changes: eliminated the requirement that an employee receiving priority consideration must receive the same salary grade (or salary grade equivalency), salary rate, and appointment status, and provide that a "substantially equally qualified" employee with a RIF priority is entitled to be selected, unless another applicant has a priority under G.S. 126-5(e)(1).*

**Procedure by which a person can object to the agency on a proposed rule:** *A public hearing will be held on November 1, 2012 at 10:00 a.m. The hearing will be held in the third floor conference room, Administrative Building, 116 West Jones Street, Raleigh, NC. The purpose of the hearing is to receive*

*oral and written comments/objections regarding the proposed amendments of the following rule: 25 NCAC 01H .0902. Written comments/objections not submitted during the public hearing should be sent to: Ms. Lynn Floyd, Human Resources Partner, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. The public comment period will end on December 14, 2012.*

**Comments may be submitted to:** Lynn Floyd, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27603; phone (919) 807-4800; email [lynn.floyd@osp.nc.gov](mailto:lynn.floyd@osp.nc.gov)

**Comment period ends:** December 14, 2012

### **Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

### **Fiscal impact (check all that apply).**

- ☐ State funds affected
- ☐ Environmental permitting of DOT affected
- ☐ Analysis submitted to Board of Transportation
- ☐ Local funds affected
- ☐ Date submitted to OSBM:
- ☒ Substantial economic impact (≥\$500,000)
- ☒ Approved by OSBM
- ☐ No fiscal note required

## CHAPTER 01 - STATE PERSONNEL COMMISSION

### SUBCHAPTER 01H – RECRUITMENT AND SELECTION

#### SECTION .0900 – REDUCTION-IN-FORCE – PRIORITY REEMPLOYMENT

#### **25 NCAC 01H .0902 REQUIREMENTS FOR REDUCTION-IN-FORCE PRIORITY CONSIDERATION (EFFECTIVE TO RIFS THE NOTIFICATION FOR WHICH OCCURRED AFTER JULY 1, 2011)**

Upon written notification of imminent separation through reduction in force (RIF), an employee shall receive priority consideration for a period of 12 months pursuant to ~~G.S. 126-7.1(e)~~ G.S. 126-7.1(f). The following conditions apply:

- (1) ~~If the applicants for reemployment for a position include State employees currently possessing priority consideration as a result of~~

~~RIF, a RIF employee with more than 10 years of service shall receive priority consideration over a RIF employee having less than 10 years of service in the same or related position classification;~~

(1)(2) For employees receiving notification of separation from trainee or flat rate positions, the salary grade for which priority is to be afforded shall be determined as follows: For employees in flat rate positions, the salary grade shall be the grade which has as its maximum a rate nearest to the flat rate salary of the eligible employee. For eligible employees in trainee status, the salary grade shall be the salary grade of the full class;

(3) ~~An employee notified of imminent separation through reduction in force while actively possessing priority consideration from a previous reduction in force shall retain the initial priority for the remainder of the 12-month priority period. A new priority consideration period shall then be afforded at the salary grade (or salary grade equivalency), salary rate and appointment status of the position held at the most recent notification of separation;~~

(2)(4) An employee who, after receiving formal notice of impending reduction in force, retires or applies for retirement prior to the separation date waives the right to priority consideration. An employee who applies for retirement after being separated through reduction in force may exercise priority consideration;

(3)(5) ~~Priority consideration is intended to provide employment at an equal appointment status to that held at the time of notification. Acceptance of a position at a lower appointment status shall not affect priority. Employees notified of separation from permanent full-time positions shall have priority consideration to permanent full-time and permanent part-time positions. Employees notified of separation from permanent part-time positions shall have priority consideration to permanent part-time positions only; only. Employees with career status who have been officially notified of reduction in force have priority consideration for permanent full-time or part-time positions at the same salary grade/salary grade equivalency and lower. Under merit based hiring practices, if it is determined that an eligible employee and any other applicant have substantially equal qualifications, then the eligible RIF employee shall receive the job offer unless the other applicant is an employee with a reemployment priority under G.S. 126-5(e)(1);~~

(4)(6) Employees who have priority status at the time of application for a vacant position, and who

apply during the designated agency recruitment period, and are included among the pool of most qualified applicants, shall be continued as priority applicants until the selection process is complete;

(5)(7) An employee with priority status may not decline interviews or offers for positions ~~within 35 miles of the employee's original work station for which they have applied~~ without losing priority and any remaining severance salary continuation, if the position is at an appointment status, and salary grade (or salary grade equivalency), ~~and salary rate equal to or greater lower~~ than that held at the time of notification;

(6)(8) An employee with priority status may accept a temporary position at any level and retain priority consideration and severance salary continuation. An employee receiving severance salary continuation shall not be employed under a contractual arrangement in any State agency, other than State universities and community colleges, until 12 months have elapsed since the separation as provided by G.S. 143-27.2;

(9) ~~When priority has been granted for a lower salary grade (or salary grade equivalency) or salary rate than that held at the time of notification, the employee retains priority for higher salary grades (or salary grade equivalencies) and salary rate up to and including that held at the time of the notification of separation;~~

(7)(40) An employee with priority consideration may accept employment outside State government or in a State position not subject to the State Personnel Act and retain such consideration through the 12-month priority period;

(8)(44) Priority consideration is terminated when an eligible employee:

(a) refuses an interview or offer for a permanent position for which the employee applied; within 35 miles of the employee's original workstation if the position is at an appointment status and salary grade (or salary grade equivalency) and salary rate equal to or greater than that held at the time of notification;

(b) accepts a permanent position for which the employee applied; or equal to or greater than the salary grade (or salary grade equivalency), salary rate and appointment status of the position held at the time of notification; or

(c) ~~has received 12 months priority consideration;~~

(c) declines a permanent position, within 35 miles of the original work station,

- before being separated as a result of reduction in force;
- (d) accepts a permanent position, within 35 miles of the original work station, before being separated as a result of reduction in force; or
- (e) has received 12 months priority consideration.
- (9)(12) Priority consideration for employees notified of or separated through reduction in force does not include priority to any exempt positions;
- (13) ~~When an employee with priority status accepts a position at a lower salary grade (or salary grade equivalency) or salary rate and is subsequently terminated by disciplinary action, any remaining priority consideration ceases; and~~
- (10)(14) An employee with priority status may be required to serve a new probationary period only when:
- (a) the essential duties and responsibilities of the position into which the employee is being reemployed are significantly different from those of the position held at the time of reduction-in-force notification;
- (b) the prior, documented performance history of the employee indicates performance failings; or
- (c) the prior, documented unacceptable personal conduct of the employee would make a probationary period a prudent protection of agency interests.
- ~~A decision by an agency to require a new probationary period shall not, however, nullify the employee's right to a future period of priority reemployment status should that employee receive reduction in force notification again while serving in probationary status.~~
- (11) An employee claiming priority cannot be offered a salary that exceeds the maximum of the salary grade;
- (12) RIF employees are considered agency employees when the agency from which they were reduced in force posts a position which is open Internal to Agency Only;
- (13) RIF employees are considered to be state employees when applying for a posted position which is open Internal to State Employees Only.

*Authority G.S. 126-4(6),(10).*

**Note from the Codifier:** The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270<sup>th</sup> day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270<sup>th</sup> day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

## TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS

### CHAPTER 58 – REAL ESTATE COMMISSION

**Rule-making Agency:** NC Real Estate Commission

**Rule Citation:** 21 NCAC 58A .0108, .2201, .2202

**Effective Date:** October 1, 2012

**Date Approved by the Rules Review Commission:** September 20, 2012

**Reason for Action:** Session Law 2012-163, which was enacted July 12, 2012 with an effective date of October 1, 2012, adds Article 6, 93A-82 and 83, to Chapter 93A of the General Statutes. The new Article 6 authorizes real estate brokers to perform broker price opinions ("BPO") and Comparative Market Analyses ("CMA") for a fee subject to certain restrictions and requirements. G.S. 93A-83(d) authorizes the Real Estate Commission ("Commission") to adopt rules not inconsistent with the provisions of Article 6. The Commission is filing these temporary rules in the public interest to establish minimum standards for BPOs and CMAs prepared pursuant to Article 6 in time to meet the October 1, 2012 effective date. The Commission will not be able to adopt permanent rules in time to meet the October 1, 2012 effective date.

#### SUBCHAPTER 58A - REAL ESTATE BROKERS

##### SECTION .0100 - GENERAL BROKERAGE

##### 21 NCAC 58A .0108 RETENTION OF RECORDS

Licensees shall retain records of all sales, rental, and other transactions conducted in such capacity, whether the transaction is pending, completed or terminated prior to its successful conclusion. The licensee shall retain such records for three years after all funds held by the licensee in connection with the transaction have been disbursed to the proper party or parties or until the successful or unsuccessful conclusion of the transaction, whichever occurs later. ~~Such records shall include contracts of sale, written leases, agency contracts, options, offers to purchase, trust or escrow records, earnest money receipts, disclosure documents, closing statements, brokerage cooperation agreements, declarations of affiliation, [broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation,] and any other records pertaining to real estate transactions.~~ Such records shall include the following:

- (1) contracts of sale,

- (2) written leases,
- (3) agency contracts,
- (4) options,
- (5) offers to purchase,
- (6) trust or escrow records,
- (7) earnest money receipts,
- (8) disclosure documents,
- (9) closing statements,
- (10) brokerage cooperation agreements,
- (11) declarations of affiliation,
- (12) broker price opinions and comparative market analyses prepared pursuant to G.S. 93A, Article 6, including any notes and supporting documentation, and
- (13) any other records pertaining to real estate transactions.

All such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

**History Note:** Authority G.S. 93A-3(c); 93A-9;

Eff. February 1, 1976;

Readopted Eff. September 30, 1977;

Amended Eff. July 1, 2004; September 1, 2002; August 1, 1998;

February 1, 1989; February 1, 1998;

Temporary Amendment Eff. October 1, 2012.

#### SECTION .2200 – BROKER PRICE OPINIONS AND COMPARATIVE MARKET ANALYSES

##### 21 NCAC 58A .2201 APPLICABILITY

This ~~section~~ Section applies to ~~only those~~ broker price opinions and comparative market analyses provided for a fee by a real estate broker whose license is not on provisional status pursuant to Article 6, Chapter 93A of the General Statutes.

**History Note:** Authority G.S. 93A-83(d);

Temporary Adoption Eff. October 1, 2012.

##### 21 NCAC 58A .2202 STANDARDS

(a) A broker performing a broker price opinion or comparative market analysis for a fee shall comply with all the requirements ~~stated in G.S. 93A-83 and the additional standards described in this Rule.~~

(b) A broker shall only accept an assignment to provide a broker price opinion or comparative market analysis for a property if the broker has knowledge of the real estate market, direct access to real estate market sales or leasing data, and brokerage or appraisal experience in the subject property's geographic location.



(c) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker can exercise objective, independent judgment free of any influence from any interested party in the performance of his or her analysis of the facts relevant to determination of a probable selling or leasing price.

(d) A broker shall not provide a broker price opinion or comparative market analysis for a property unless the broker has personally inspected the exterior and interior of that property, provided, however, that an inspection of the exterior or interior ~~shall not be~~ is not required if this is ~~specifically~~ waived in writing by the party for whom the opinion or analysis is being performed.

(e) When developing a broker price opinion or comparative market analysis for a ~~particular~~ property or interest therein, a broker shall utilize methodology such as analysis of sales or income of ~~recently~~ sold or leased properties comparable to the subject property or ~~capitalization~~, capitalization as is appropriate for the ~~particular~~ assignment and type of subject property.

(f) When analyzing sales of properties comparable to the property that is the subject of a broker price opinion or comparative market analysis assignment, a broker shall comply with the following standards:

- (1) The broker shall select from reliable information sources a minimum of three ~~recently~~ sold or leased comparable properties for use in his or her analysis that are similar to the subject property with regard to characteristics such as property type, use, location, age, size, design, physical features, amenities, utility, property condition and conditions of sale. ~~Comparables~~ The comparable properties selected shall reflect the prevailing factors or ~~local~~ market conditions influencing the sale or lease prices ~~of the comparables~~. of similar properties in the subject property's local market.

- (2) The broker shall make adjustments to the selling or leasing price of selected comparable properties for differences between the characteristics of the comparable properties and the subject property ~~that would significantly impact the~~ as necessary to produce a credible estimate of the probable selling or leasing ~~price if no adjustment is made.~~ price. Adjustments shall be considered for differences in property characteristics such as location, age, size, design, physical features, amenities, utility, condition, economic or functional obsolescence and conditions of sale. The amounts of adjustments shall reflect the values that the local real estate market places on the differences in the characteristics in question.

(g) A broker price opinion or comparative market analysis provided to a client shall address, in addition to matters required to be addressed by G.S. 93A-83 and other provisions of this section, ~~a description of the comparable properties used in the analysis (including any unsold properties listed for sale or rent~~

~~that were used as comparables), the adjustments made to the selling or leasing prices of comparable properties, local real estate market conditions, and each method used in deriving the estimate of probable selling or leasing price.~~ Rule, the following items:

- (1) a description of the comparable properties used in the analysis (including any unsold properties listed for sale or rent that were used as comparable properties).
- (2) the adjustments made to the selling or leasing prices of comparable properties.
- (3) local real estate market conditions, and
- (4) each method used in deriving the estimate of probable selling or leasing price.

(h) In connection with a broker price opinion or comparative market analysis, an estimated probable leasing price may be reported by a broker as a lease rate and an estimated probable selling or leasing price may be reported by a broker either as a single figure or as a price range. When the estimated probable selling or leasing price is stated as a price range and the higher figure ~~[is more than one hundred ten percent of the lower figure,]~~ exceeds the lower figure by more than 10 percent, the broker shall include an explanation of why the higher figure exceeds the lower figure by more than 10 percent.

*History Note: Authority G.S. 93A-83(d);  
Temporary Adoption Eff. October 1, 2012.*

## NORTH CAROLINA BUILDING CODE COUNCIL

**Rule-making Agency:** *North Carolina Building Code Council*

**Rule Citation:** *Table 603.4 and R602.10*

**Effective Date:** *October 1, 2012*

**Date Approved by the Rules Review Commission:** *September 20, 2012*

**Reason for Action:**

**Table 603.4 - Delayed adoption of this rule may result in occupancy delays in a recovering economy.**  
*The material cost of the additional duct metal thickness will add to the cost of construction during the 8-months until Permanent Rule adoption. Those costs will be passed on to the public. The US seasonally adjusted annual value of construction was \$834,384,000,000 in July 2012 (NC approximately 5 percent - \$41,719,000,000). HVAC as the percent of total construction cost ranges from about 5 percent to 10 percent in the most affected buildings. Sheet metal material cost change ranges from 10 percent to 20 percent for the affected gages. The BCC Mechanical Ad Hoc Committee reviewed and recommended adoption of the 2009 IMC Duct Construction requirements for the 2012 NC Residential Code without recognizing that the duct thicknesses had been increased. The IMC has been subsequently further amended to reduce the thicknesses to the prior requirements.*

**R602.10** - Delayed adoption of this rule may result in permitting and construction delays in a recovering economy. Time loss equals money loss. Work crews may remain idle for longer periods during the 8-months until Permanent Rule adoption. There were 24,863 single-family housing unit starts in 2011 (2100 permits/month). This rule affects primarily the 71-counties in the 90-and 100-mph wind zones (1500 permits/month). The BCC Residential Ad Hoc Committee

reviewed and recommended adoption of the 2009 IRC Wall Bracing requirements for the 2012 NC Residential Code recognizing that it was reformatted and provided more options for the designer. It was not obvious at the time of adoption that these options would require more design and permitting time at the front end of the construction process.

**2012 NC Mechanical Code**

**603.4 Duct Construction. (120611 Item B-22)**

**TABLE 603.4**

**DUCT CONSTRUCTION MINIMUM SHEET METAL THICKNESS FOR SINGLE DWELLING UNITS**

DUCT SIZE	GALVANIZED		ALUMINUM
	Minimum thickness (in.)	Equivalent galvanized gage no.	Brown & Sharpe gage ALUMINUM MINIMUM THICKNESS (in.)
Round ducts and Enclosed rectangular ducts			
14 inches or less	0.013 0.0157	30 28	26 0.0175
Over 14 inches 16 and 18 inches	0.016 0.0187	28 26	24 0.018
20 inches and over	0.0236	24	0.023
Exposed rectangular ducts			
14 inches or less	0.016 0.0157	28	24 0.0175
Over 14 inches <sup>a</sup>	0.019 0.0187	26	22 0.018

For SI: 1 inch = 25.4 mm, 1 inch water gage = 249 Pa.

a. For duct gages and reinforcement requirements at static pressure of 1/2 inch, 1 inch and 2 inch w.g., SMACNA HVAC Duct Construction Standards, Tables 2-1, 2-2, and 2-3, shall apply.

The effective date of this Temporary Rule is October 1, 2012.  
The Statutory authority for Rule-making is G.S. 143-136; 143-138.

**2012 NC Residential Code**

**R602.10 Wall Bracing. (120611 Item B-21)**

**R602.10 Wall bracing.** Buildings shall be braced in accordance with this section. Where a building, or portion thereof, does not comply with one or more of the bracing requirements in this section, those portions shall be designed and constructed in accordance with Section R301.1.

**Exceptions:**

1. Detached one- and two-family dwellings located in Seismic Design Category C are exempt from the seismic bracing requirements of this section. Wind speed provisions for bracing shall be applicable to detached one- and two-family dwellings.
2. In lieu of the wall bracing requirements of Section 602.10, all stories shall be sheathed with wood structural sheathing panels. Blocking shall be installed if less than 50 percent of the wall

length is sheathed. Where blocking is required, all panels shall be fastened at three inches (76 mm) on center along the edges and 6 inches (152 mm) on center at intermediate framing. If a wall is sheathed less than 25 percent of its length, then that wall shall be designed in accordance with accepted engineering practice. Portal openings designed and constructed in accordance with any of the following shall be acceptable:

- a. Method CS-PF in accordance with Section R602.10.4.1.1, Figure R602.10.4.1.1 and the minimum panel widths in Table R602.10.4.2.
- b. Method CS-G in accordance with Table R602.10.4.1 using the nailing pattern above and the minimum panel widths in Table R602.10.4.2.
- c. Accepted Engineering Practice.

The effective date of this Temporary Rule is October 1, 2012.  
The Statutory authority for Rule-making is G.S. 143-136; 143-138.

*This Section contains information for the meeting of the Rules Review Commission on Thursday September 20, 2012 at 1711 New Hope Church Road, RRC Commission Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-431-3000. Anyone wishing to address the Commission should notify the RRC staff and the agency no later than 5:00 p.m. of the 2<sup>nd</sup> business day before the meeting. Please refer to RRC rules codified in 26 NCAC 05.*

**RULES REVIEW COMMISSION MEMBERS****Appointed by Senate**

Addison Bell  
Margaret Currin  
Pete Osborne  
Bob Rippy  
Faylene Whitaker

**Appointed by House**

Ralph A. Walker  
Anna Baird Choi  
Jeanette Doran  
Garth K. Dunklin  
Stephanie Simpson

**COMMISSION COUNSEL**

Joe Deluca (919)431-3081  
Bobby Bryan (919)431-3079

**RULES REVIEW COMMISSION MEETING DATES**

October 18, 2012      November 15, 2012  
December 20, 2012      January 17, 2013

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**RULES REVIEW COMMISSION****September 20, 2012****MINUTES**

The Rules Review Commission met on Thursday, September 20, 2012, in the Commission Room at 1711 New Hope Church Road, Raleigh, North Carolina. Commissioners present were: Addison Bell, Margaret Currin, Jeanette Doran, Garth Dunklin, Pete Osborne, Bob Rippy, Stephanie Simpson, Ralph Walker; Faylene Whitaker.

Staff members present were: Joe DeLuca and Bobby Bryan, Commission Counsel; Dana Vojtko; Julie Edwards; and Tammara Chalmers.

The meeting was called to order at 10:01 a.m. with Chairman Walker presiding. He reminded the Commission members that they have a duty to avoid conflicts of interest and the appearances of conflicts as required by NCGS 138A-15(e).

**APPROVAL OF MINUTES**

Chairman Walker asked for any discussion, comments, or corrections concerning the minutes of the August 16, 2012 meeting. There were none and the minutes were approved as distributed.

Chairman Walker recognized Andrew Baird, an Extern with the Office of Administrative Hearings.

**FOLLOW-UP MATTERS**

10A NCAC 09 .0901, .0902, .1702, .1706, .1718 – Child Care Commission – The Commission objected to these rules based on ambiguity. It is unclear whether the opt-out provisions apply to only the entire supplemental nutrition program or whether a parent may opt-out of individual components of the program.

Jani Kozlowski from the agency addressed the Commission.

Lexi Gruber from the agency addressed the Commission.

12 NCAC 09E .0102 – Criminal Justice Education and Training Standards Commission. The Commission approved the rewritten rule submitted by the agency.

**LOG OF FILINGS**

Chairman Walker presided over the review of the log of permanent rules.

**Department of Health and Human Services**

All rules were approved unanimously.

**Commission for Public Health**

All rules were approved unanimously.

**Department of Environment and Natural Resources**

Jennifer Everett from the agency addressed the Commission.

15A NCAC 01A .0102 was approved contingent on receiving a technical change. The technical change has been subsequently received.

**Commission for Public Health**

15A NCAC 18A .2528 was approved contingent on receiving a technical change. The technical change has been subsequently received.

Commissioner Bell was not present for the vote on these rules.

Prior to the discussion of this Rule, Commissioner Rippy recused himself and did not participate in any discussion or vote concerning these rules because he owns public swimming pools.

**Board of Architecture**

All rules were approved unanimously.

Commissioners Osborne and Bell were not present during the vote on these rules.

**Board of Cosmetic Art Examiners**

Lynda Elliot from the Board addressed the Commission.

All rules were approved unanimously. 21 NCAC 14T .0612 and 21 NCAC 14T .0701 were approved contingent on receiving a technical change. The technical change has been subsequently received.

**Board of Podiatry Examiners**

Penny DePas addressed the Commission.

All rules were approved unanimously with the following exceptions:

21 NCAC 52 .0208 was objected to based on lack of statutory authority. There is no authority for the requirement in the first sentence that an applicant for podiatric licensure complete a "practice and ethics orientation" prior to granting the applicant a license.

**Social Work Certification and Licensure Board**

All rules were approved unanimously.

**TEMPORARY LOG OF FILINGS**

**Real Estate Commission**

All rules were approved unanimously.

Prior to the discussion of these rules, Commissioner Currin recused herself and did not participate in any discussion or vote concerning these rules because she holds an inactive real estate broker's license.

Prior to the discussion of these rules, Commissioner Dunklin recused himself and did not participate in any discussion or vote concerning these rules because he practices before the North Carolina Real Estate Commission.

Commissioner Dunklin was not present for the vote on these rules.

**Building Code Council**

All rules were approved unanimously.

Prior to the discussion of these rules, Commissioner Doran recused herself and did not participate in any discussion or vote concerning these rules because her spouse works in the construction industry for a general contractor.

Prior to the discussion of these rules, Commissioner Osborne recused himself and did not participate in any discussion or vote concerning these rules because he is employed by a general contractor.

**RRC CERTIFICATION****Criminal Justice Education and Training Standards Commission**

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09H .0101, .0102, .0103, .0104 and .0105.

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09F .0102, 09B .0226, .0227, .0232 and .0233.

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09B .0202, .0304, .0414 and .0415.

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09A .0103, 09G .0101, .0102, .0202, .0203, .0204, .0205, .0206, .0301, .0302, .0303, .0304, .0306, .0412, .0413, .0415, .0416, 0504 and .0602.

The Commission certified that the agency adhered to the principles in G.S. 150B-19.1 for proposed rules 12 NCAC 09E .0104, .0105 and .0106.

**OTHER BUSINESS**

The staff reviewed Andy Willis' response to the letter sent to him in September explaining the May letter to the General Assembly. It was announced that the Office of State Budget and Management would do a presentation following the October RRC meeting on how it analyses and evaluates costs in its review of fiscal notes.

The staff reviewed its response to Representative Chuck McGrady's letter expressing concern that the RRC attorneys were overstepping their bounds.

Staff shared a copy of the complaint in a case where several environmental groups sued the Wildlife Resources Commission over temporary rules allowing the hunting of coyotes with lights. The RRC had approved those rules at its August meeting.

The meeting adjourned at 12:03 p.m.

The next scheduled meeting of the Commission is Thursday, October 18th at 10:00 a.m.

There is a digital recording of the entire meeting available from the Office of Administrative Hearings / Rules Division.

Respectfully Submitted,

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Julie Edwards  
Editorial Assistant

Rules Review Commission  
Meeting  
Please **Print** Legibly

**SEPTEMBER 20, 2012**

Name	Agency
JENNIFER MACFARQUHAR	NC DPH
BARRY GUNTON	NCDOI/NCBCC
hynda Elliott	NC Bd of Cosmetic Arts
Teresa Mastella	CJ Commission
Curtis Aldeanfer	NC REC
CONNIE JONES	NC DPH
Micki Lilly	NC Social Work Bd.
Jani Kocowski	Div. of Child Development
Alexandra Grober	NC Dept of Justice
THE EVANS	NC Bd ARCHITECTURE
Bob Martin	NC DPH
David McGowan	NCAE
Lisa Martin	NCHBA
Doris Ann	DCOE
Re:ne Duffy	DOA <del>exam</del>
William Crech	DOA
Ivy Enay	NC OPH
Megan Camphore	NC DHR
Glenda Artis	NC Division of Aging & Adult Services
ROBERT PRIVITT	NCHBA
Andrew Baird	NC DPH/UNC

Rules Review Commission  
Meeting  
Please **Print** Legibly

**27:08**

**LIST OF APPROVED PERMANENT RULES  
September 20, 2012 Meeting**

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

<u>Scope and Definitions</u>	10A NCAC 14D .0101
<u>Definitions</u>	10A NCAC 14D .0102
<u>Submission of Information to the Division of Health Servi...</u>	10A NCAC 14D .0201
<u>Capacity</u>	10A NCAC 14D .0202
<u>Design and Construction</u>	10A NCAC 14D .0203
<u>Location</u>	10A NCAC 14D .0204
<u>Living Arrangement</u>	10A NCAC 14D .0205
<u>Living Room</u>	10A NCAC 14D .0206
<u>Dining Room</u>	10A NCAC 14D .0207
<u>Kitchen</u>	10A NCAC 14D .0208
<u>Bedrooms</u>	10A NCAC 14D .0209
<u>Bathroom</u>	10A NCAC 14D .0210
<u>Storage Areas</u>	10A NCAC 14D .0211
<u>Corridor</u>	10A NCAC 14D .0212
<u>Outdoor Entrance and Exits</u>	10A NCAC 14D .0213
<u>Laundry Room</u>	10A NCAC 14D .0214
<u>Floors</u>	10A NCAC 14D .0215
<u>Housekeeping and Furnishings</u>	10A NCAC 14D .0216
<u>Fire Safety and Disaster Plan</u>	10A NCAC 14D .0217
<u>Building Service Equipment</u>	10A NCAC 14D .0218
<u>Outside Premises</u>	10A NCAC 14D .0219
<u>Planning Program Activities</u>	10A NCAC 14D .0301
<u>Administrator</u>	10A NCAC 14D .0302
<u>Supervisor in Charge</u>	10A NCAC 14D .0303
<u>Enrollment of Residents</u>	10A NCAC 14D .0401
<u>Planning Services for Individual Residents</u>	10A NCAC 14D .0402
<u>Staffing</u>	10A NCAC 14D .0501
<u>Staff</u>	10A NCAC 14D .0502
<u>Medication Administration</u>	10A NCAC 14D .0601
<u>Medication Administration Competency Evaluation</u>	10A NCAC 14D .0602
<u>Medication Administration Policies and Procedures</u>	10A NCAC 14D .0603
<u>Food Procurement and Safety</u>	10A NCAC 14D .0701
<u>Food Preparation and Services</u>	10A NCAC 14D .0702
<u>Menus</u>	10A NCAC 14D .0703
<u>Food Requirements</u>	10A NCAC 14D .0704
<u>Therapeutic Diets</u>	10A NCAC 14D .0705
<u>Feeding Assistance</u>	10A NCAC 14D .0706
<u>Accommodation of Resident Needs and Preferences</u>	10A NCAC 14D .0707
<u>Activities Program</u>	10A NCAC 14D .0801

**PUBLIC HEALTH, COMMISSION FOR**

<u>Reporting of Healthcare Associated Infections</u>	10A NCAC 41A .0106
<u>Incorporation by Reference: 7 C.F.R. Part 225</u>	10A NCAC 43I .0101



<u>Incorporation by Reference: 7 C.F.R. Part 226</u>	10A NCAC 43J .0101
<b>CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION</b>	
<u>Required Annual In-Service Training Topics</u>	12 NCAC 09E .0102
<b>ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF</b>	
<u>How to Contact the Department</u>	15A NCAC 01A .0102
<b>PUBLIC HEALTH, COMMISSION FOR</b>	
<u>Fences</u>	15A NCAC 18A .2528
<b>ARCHITECTURE, BOARD OF</b>	
<u>Definitions</u>	21 NCAC 02 .0109
<u>Definitions</u>	21 NCAC 02 .0902
<u>Requirements</u>	21 NCAC 02 .0903
<u>Determination of Credit</u>	21 NCAC 02 .0904
<u>Record Keeping</u>	21 NCAC 02 .0905
<u>Exceptions</u>	21 NCAC 02 .0906
<u>Forms</u>	21 NCAC 02 .0909
<u>Non-Compliance</u>	21 NCAC 02 .0910
<b>COSMETIC ART EXAMINERS, BOARD OF</b>	
<u>Definitions</u>	21 NCAC 14A .0101
<u>Duplicate Licenses</u>	21 NCAC 14A .0402
<u>Additional Salon Chairs</u>	21 NCAC 14A .0403
<u>Natural Hair Care Schools</u>	21 NCAC 14T .0205
<u>Equipment for Esthetics Schools</u>	21 NCAC 14T .0303
<u>Equipment for Manicuring Schools</u>	21 NCAC 14T .0304
<u>Equipment for Natural Hair Care Styling Schools</u>	21 NCAC 14T .0305
<u>Cosmetology Curriculum</u>	21 NCAC 14T .0602
<u>Instruction Guidelines</u>	21 NCAC 14T .0612
<u>Uniforms and Identification</u>	21 NCAC 14T .0613
<u>School Operations/Licensure Maintenance</u>	21 NCAC 14T .0701
<b>PODIATRY EXAMINERS, BOARD OF</b>	
<u>Continuing Education</u>	21 NCAC 52 .0208
<u>Payment of Fees</u>	21 NCAC 52 .0612
<b>SOCIAL WORK CERTIFICATION AND LICENSURE BOARD</b>	
<u>Definitions</u>	21 NCAC 63 .0102
<u>Provisional Licenses</u>	21 NCAC 63 .0210
<u>Work Experience</u>	21 NCAC 63 .0211

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**LIST OF APPROVED TEMPORARY RULES**  
**September 20, 2012 Meeting**

**REAL ESTATE COMMISSION**

<u>Retention of Records</u>	21 NCAC 58A .0108
<u>Applicability</u>	21 NCAC 58A .2201
<u>Standards</u>	21 NCAC 58A .2202

**BUILDING CODE COUNCIL**

<u>2102 NC Residential Code/Wall Bracing</u>	R602.10
<u>2012 NC Mechanical Code/Duct Construction</u>	Table 603.4

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 431-3000. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**OFFICE OF ADMINISTRATIVE HEARINGS**

**Chief Administrative Law Judge**  
**JULIAN MANN, III**

**Senior Administrative Law Judge**  
**FRED G. MORRISON JR.**

**ADMINISTRATIVE LAW JUDGES**

Beecher R. Gray  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Randall May  
A. B. Elkins II  
Joe Webster

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>DATE</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u></b>			
James Ivery Smith, Ivy Lee Armstrong v. ABC Commission	11 ABC 08266	04/12/12	
Trawick Enterprises LLC v. ABC Commission	11 ABC 08901	05/11/12	27:01 NCR 39
Dawson Street Mini Mart Lovell Glover v. ABC Commission	11 ABC 12597	05/23/12	
ABC Commission v. Christian Broome Hunt T/A Ricky's Sports Bar and Grill	11 ABC 13161	05/03/12	
Alabarati Brothers, LLC T/A Day N Nite Food Mart, v. ABC Commission	11 ABC 13545	05/01/12	
Playground LLC, T/A Playground v. ABC Commission	11 ABC 14031	05/16/12	27:01 NCR 64
ABC Commission v. Quick Quality, Inc., T/A Rock Star Grill and Bar	11 ABC 14036	07/05/12	
ABC Commission v. D's Drive Thru Inc. T/A D's Drive Thru	12 ABC 00060	05/29/12	
ABC Commission v. Choudhary, LLC T/A Speedway	12 ABC 00721	05/01/12	
ABC Commission v. Dos Perros Restaurant LLC T/A Dos Perros Restaurant	12 ABC 05312	09/25/12	
<b><u>DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY</u></b>			
Teresa Herbin v. Department of Public Safety Victim Services	12 CPS 03680	08/10/12	
<b><u>DEPARTMENT OF HEALTH AND HUMAN SERVICES</u></b>			
Bright Haven Residential and Community Care d/b/a New Directions Group Home v. Division of Medical Assistance, DHHS	10 DHR 00232	04/27/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home, v. DHHS/Division of Health Service Regulation, Adult Care Licensure Section	10 DHR 01666	05/18/12	
Warren W Gold, Gold Care Inc. d/b/a Hill Forest Rest Home v. DHHS, Division of Health Service Regulation, Adult Care Licensure and Certification Section	10 DHR 05801	05/18/12	
Gold Care Inc. Licensee Hill Forest Rest Home Warren W. Gold v. DHHS, Adult Care Licensure Section	10 DHR 05861	05/18/12	
Mary Ann Barnes v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 6488	07/16/12	
Powell's Medical Facility and Eddie N. Powell, M.D., v. DHHS, Division of Medical Assistance	11 DHR 01451	03/05/12	27:01 NCR 75
Julie Sadowski v. DHHS, Division of Health Service Regulation	11 DHR 01955	04/03/12	
Cherry's Group Home, Alphonso Cherry v. DHSR Michelle Elliot	11 DHR 09590	07/12/12	
Teresa Diane Marsh v. DHHS, Division of Health Service Regulation	11 DHR 11456	04/27/12	
Betty Parks v. Division of Child Development, DHHS	11 DHR 11738	06/20/12	
Lorrie Ann Varner v. DHHS, Regulation Health Care Personnel Registry Section	11 DHR 11867	08/02/12	
Timothy John Murray v. DHHS, Division of Health Service Regulation	11 DHR 12594	06/15/12	

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**CONTESTED CASE DECISIONS**

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Holly Springs Hospital II, LLC v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Harnett Health System, Inc. and WakeMed	11 DHR 12727	04/12/12	27:04 NCR 486
Rex Hospital, Inc., v. DHHS, Division of Health Service Regulation, CON Section and WakeMed, Holly Springs Hospital II, LLC, and Harnett Health System, Inc.	11 DHR 12794	04/12/12	27:04 NCR 486
Harnett Health System, Inc., v. DHHS, Division of Health Service Regulation, CON Section and Rex Hospital, Inc., Holly Springs Hospital II, LLC, and WakeMed	11 DHR 12795	04/12/12	27:04 NCR 486
WakeMed v. DHHS, Division of Health Service Regulation, CON Section and Holly Springs Hospital II, LLC, Rex Hospital, Inc., and Harnett Health System, Inc	11 DHR 12796	04/12/12	27:04 NCR 486
Sandra Ellis v. DHHS	11 DHR 12959	07/11/12	
Vendell Haughton v. DHHS, Division of Medical Assistance	11 DHR 13616	07/05/12	
Tarsand Denise Morrison v. DHHS, Division of Health Service Regulation	11 DHR 13906	07/11/12	
Care Well of Charlotte Inc, Joy Steele v. DHHS	11 DHR 13909	08/02/12	
Michael Timothy Smith, Jr. v. DHHS, Division of Health Service Regulation	11 DHR 14184	08/01/12	
Cynthia Tuck Champion v. DHHS, Division of Health Service Regulation	11 DHR 14283	06/15/12	
Lauren Stewart v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	11 DHR 14570	06/08/12	
Alice M. Oakley v. Division of Child Development, DHHS	11 DHR 14571	05/15/12	27:04 NCR 508
Althea L. Flythe v. Durham County Health Department	12 DHR 00242	05/17/12	
Jerri Long v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry	12 DHR 00361	07/06/12	
Jessica Lynn Ward v. DHHS	12 DHR 00643	05/17/12	
Trinity Child Care II & I v. DHHS, Division of Public Health, Child and Adult Care Food Program	12 DHR 00861	04/20/12	27:04 NCR 518
Dr. Karen J. Williams, LPC v. DHHS, Division of Medical Assistance	12 DHR 00926	09/18/12	
Faith Home Care of NC, Bonita Wright v. DHHS, DMA	12 DHR 00928	07/25/12	
Angela C Jackson v. DHHS	12 DHR 01097	06/19/12	
Paula N Umstead v. DHHS	12 DHR 01098	05/11/12	
ACI Support Specialists Inc. Case #2009-4249 v. DHHS	12 DHR 01141	06/06/12	
AriLand Healthcare Service, LLC, NCMHL #018-092, Shawn Kuhl Director of Operations v. DHHS, Emery E. Milliken, General Counsel	12 DHR 01165	05/25/12	
Kenneth Holman v. DHHS	12 DHR 01244	06/05/12	
Hillcrest Resthome Inc. (\$2000 penalty) v. DHHS	12 DHR 01289	05/30/12	
Hillcrest Resthome Inc. (\$4000 penalty) v. DHHS	12 DHR 01290	05/30/12	
Vivian Barrear v. DHHS, Division of Medical Assistance DHHS	12 DHR 01296	06/06/12	
Patricia Satterwhite v. DHHS	12 DHR 01338	07/23/12	
Timothy L Durham v. DHHS, Division of Health Services Regulation	12 DHR 01396	09/04/12	
Clydetta Dickens v. Nash Co DSS	12 DHR 01625	05/15/12	
Robert Lee Raines v. DHHS	12 DHR 01736	05/30/12	
Ms. Antoinette L. Williams v. DHHS	12 DHR 01739	06/15/12	
Tricia Watkins v. DHHS, Division of Medical Assistance, Office of Medicaid TLW-Auditing Office	12 DHR 01807	06/01/12	
First Path Home Care Services Gregory Locklear v. DHHS	12 DHR 01878	06/22/12	
Patriotic Health Care Systems, LLC v. DHHS	12 DHR 02105	09/19/12	
John and Christina Shipman v. DHHS	12 DHR 02107	07/24/12	
Leslie Taylor, Octavia Carlton, Paula Carlton	12 DHR 02217	08/31/12	
Madeline Brown v. DHHS, Division of Health Service Regulation	12 DHR 02257	06/01/12	
Evelyn Evans v. DHHS, Division of Health Service Regulation	12 DHR 02258	07/02/12	
Precious Haven Inc. Melissa McAllister v. DHHS, Program Integrity	12 DHR 02430	05/18/12	
Michael and Jamie Hart v. Davidson County, Department of Social Services	12 DHR 02542	07/03/12	
Jessica L Thomas v. Randolph County DSS	12 DHR 02955	07/24/12	
Moses E Shoffner v. DHHS, Division of Child Development	12 DHR 03459	08/15/12	
Marco Evans v. DHHS, Division of Health Service Regulation	12 DHR 04110	07/30/12	
James C. Bartley v. DHHS, DMA	12 DHR 04116	07/25/12	
LaBrenda Jane Elliot v. DHHS, Division of Medical Assistance	12 DHR 04993	09/24/12	
James Johnson v. DHHS, Division of Health Service Regulation	12 DHR 05148	09/11/12	
Cathy Crosland v. DHHS, Division of Health Service Regulation	12 DHR 05610	08/06/12	
Beverly Coleman v. DHHS, Division of Health Service Regulation, Health Care Personnel Registry Section	12 DHR 05961	09/05/12	
Dwight William Osborne v. Glana M Surles, DHHS (Medicaid)	12 DHR 05693	09/14/12	
Gregory Howard v. Health Care Personnel Registry	12 DHR 06157	09/07/12	
Harrison E Shell Jr v. Wake County Human Services	12 DHR 06203	08/28/12	
Valtina Bronson v. DHHS, Division of Health Service Regulation	12 DHR 06365	08/29/12	
Angela Mackey v. DHHS, Division of Health Service Regulation	12 DHR 07619	10/05/12	

**DEPARTMENT OF CORRECTIONS**

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**CONTESTED CASE DECISIONS**

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Myron Roderick Nunn v. Jennifer O'Neal, Accountant DOC 12 DOC 01022 07/12/12

**DEPARTMENT OF JUSTICE**

Tommy Keith Lymon v. Criminal Justice Education and Training Standards Commission 09 DOJ 03751 07/30/12 27:06 NCR 649

Greary Michael Chlebus v. Criminal Justice Education and Training Standards Commission 11 DOJ 4829 04/27/12

Dillan Nathaniel Hymes v. Criminal Justice Education and Training Standards Commission 11 DOJ 10315 07/23/12 27:06 NCR 661

Barbara Renay Whaley v. Criminal Justice Education and Training Standards Commission 11 DOJ 10316 04/25/12

Robert Kendrick Mewborn v. Criminal Justice Education and Training Standards Commission 11 DOJ 10318 04/23/12

Athena Lynn Prevatte v. Sheriffs' Education and Training Standards Commission 11 DOJ 13148 05/25/12 27:04 NCR 529

Shatel Nate Coates v. Sheriffs' Education and Training Standards 11 DOJ 13151 07/05/12

James Lee Ray v. Sheriffs' Education Training Standards 11 DOJ 13152 08/27/12

Ko Yang v. Sheriff's Education and Training Standards Commission 11 DOJ 13153 06/14/12

Dustin Edward Wright v. Sheriffs' Education and Training Standards Commission 11 DOJ 13154 08/08/12

Walter Scott Thomas v. Sheriff's Education and Training Standards Commission 11 DOJ 13155 05/10/12

Darryl Howard v. Criminal Justice Education and Training Standards Commission 11 DOJ 13157 04/12/12

John Jay O'Neal v. Criminal Justice Education and Training Standards Commission 11 DOJ 13158 07/06/12 27:07 NCR 749

Charlesene Cotton v. Criminal Justice Education and Training Standards Commission 11 DOJ 13159 06/05/12 27:04 NCR 538

William James Becker v. Criminal Justice Education and Training Standards Commission 11 DOJ 13160 08/16/12

Steve Michael Galloway, Jr, Private Protective Services Board 11 DOJ 14434 04/23/12

Justin Thomas Medlin v. Alarm Systems Licensing Board 11 DOJ 14493 04/23/12

Bruce Clyde Shoe v. Private Protective Services Board 12 DOJ 00556 09/26/12

Angela Louise Giles v. Private Protective Services Board 12 DOJ 00557 04/18/12

Marshall Todd Martin v. Sheriffs' Education 12 DOJ 00650 07/13/12

Frances Gentry Denton v. Sheriffs' Education and Training Standards Commission 12 DOJ 00651 08/30/12

Alvin Louis Daniels v. Criminal Justice Education and Training Standards Commission 12 DOJ 00654 08/17/12

Michael Wayne McFalling v. Private Protective Services Board 12 DOJ 00814 05/21/12

Robert John Farmer v. Alarm Systems Licensing Board 12 DOJ 00887 05/04/12

Ricky Lee Ruhlman v. Private Protective Services Board 12 DOJ 01211 04/18/12

Leroy Wilson Jr., Private Protective Services Board 12 DOJ 01293 04/18/12

Clyde Eric Lovette v. Alarm Systems Licensing Board 12 DOJ 01498 05/02/12

Vincent Tyron Griffin v. Alarm Systems Licensing Board 12 DOJ 01663 09/27/12

Andre Carl Banks Jr., v. Alarm Systems Licensing Board 12 DOJ 01695 06/22/12

Ryan Patrick Brooks v. Private Protective Services Board 12 DOJ 01696 06/05/12

Dustin Lee Chavis v. Private Protective Services Board 12 DOJ 01697 06/01/12

Jeffrey Adam Hopson v. Sheriffs' Education and Training Standards Commission 12 DOJ 01761 06/07/12

John Henry Ceaser v. Sheriffs' Education and Training Standards Commission 12 DOJ 01762 06/18/12

Jerome Douglas Mayfield v. Private Protective Services Board 12 DOJ 02381 06/15/12

Elijah K. Vogel v. Private Protective Services Board 12 DOJ 02619 06/05/12

Carlito Soler v. Alarm Systems Licensing Board 12 DOJ 03457 09/26/12

Raymond Louis Soulet v. Sheriffs' Education and Training Standards Commission 12 DOJ 05142 08/27/12

Lawrence W. Sitgraves v. Private Protective Services 12 DOJ 06059 09/13/12

**DEPARTMENT OF STATE TREASURER**

Ella Joyner v. Department of State Treasurer Retirement System Division 11 DST 02437 07/12/12 27:07 NCR 758

Brenda C. Hemphill v. Department of Treasurer, Retirement System Division 11 DST 10252 09/26/12

Russell E. Greene v. Department of State Treasurer Retirement Systems Division 11 DST 10875 06/14/12 27:04 NCR 543

Marsha W Lilly, Robert L Hinton v. Retirement System 12 DST 01108 05/22/12

**STATE BOARD OF EDUCATION**

Louis A. Hrebar v. State Board of Education 11 EDC 01445 07/27/12

Delene Huggins v. Department of Public Instruction 11 EDC 08899 06/28/12

Myra F. Moore v. NC Board of Education 11 EDC 11927 05/01/12

Dwayne White v. Department of Public Instruction, NC State Board of Education 11 EDC 11864 07/18/12 27:07 NCR 769

North Carolina Learns Inc. d/b/a North Carolina Virtual Academy 12 EDC 01801 05/18/12

Katherine Kwesell Harris v. Public Schools, Board of Education 12 EDC 06520 09/05/12

**DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Pamlico-Tar River Foundation, NC Coastal Federation, Environmental Defense Fund, and Sierra Club v. DENR, Division of Water Quality and PCS Phosphate Company, Inc 09 EHR 1839 04/26/12 27:01 NCR 87

Don Hillebrand v. County of Watauga County Health Dept	10 EHR 00933	05/10/12	
House of Raeford Farms, Inc., v. DENR	10 EHR 05508	05/31/12	27:01 NCR 99
Lacy H Caple DDS v. Division of Radiation Protection Bennifer Pate	11 EHR 11454	05/09/12	
Holmes Development & Realty, LLC, and H.L. Homes v. DENR – Land Quality Section (Re: LQS 11-018)	11 EHR 13208	06/29/12	27:07 NCR 774
Save Mart of Duplin LLC v. DENR	12 EHR 02328	07/25/12	

**DIVISION OF EMPLOYMENT SECURITY**

Dwight Marvin Wright v. Department of Commerce, Division of Employment Security	12 ESC 05042	07/27/12	
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**MISCELLANEOUS**

Richard Lee Taylor v. City of Charlotte	11 MIS 14140	05/15/12	
Lloyd M Anthony v. New Hanover County Sheriff Office	12 MIS 01803	06/07/12	

**OFFICE OF STATE PERSONNEL**

Amanda Thaxton v. State Ethics Commission	09 OSP 03754	09/20/12	
Dorothy H. Williams v. DHHS, Central Regional Hospital	10 OSP 5424	03/28/12	27:01 NCR 119
Larry F. Murphy v. Employment Security Commission of North Carolina	10 OSP 03213	06/04/12	
Walter Bruce Williams v. Dept. of Crime Control and Public Safety Butner Public Safety Division	10 OSP 03551	04/23/12	27:01 NCR 148
Daniel Chase Parrott v. Crime Control and Public Safety, Butner Public Safety Division	10 OSP 04792	05/30/12	
Steven M Mukumgu v. DAG	10 OSP 05199	08/07/12	
Beatrice T. Jackson v. Durham County Health Department	11 OSP 3835	06/08/12	
Brenda D. Triplett v. DOC	11 OSP 4605	03/20/12	27:06 NCR 669
Tommie J. Porter v. DOC	11 OSP 5352	06/05/12	27:06 NCR 678
Fortae McWilliams v. DOC	11 OSP 06236	05/30/12	27:06 NCR 684
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