G.S. 150B-21.3A Report for 15A NCAC SUBCHAPTER 12H, NATURAL HERITAGE PROGRAM

Agency - Department of Environment and Natural Resources - Transferred to Department of Natural and Cultural Resources in SL 2015-241

Comment Period - May 20, 2015 - September 8, 2015

Date Submitted to APO - Filled in by RRC staff

Rule Section	Rule Citation	Rule Name	Date and Last Agency Action on the Rule	Agency Determination [150B-21.3A(c)(1)a]	Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]	Federal Regulation Citation	Public Comment Received [150B-21.3A(c)(1)]	Agency Determination Following Public Comment [150B-21.3A(c)(1)]
SECTION .0100 - GENERAL PROVISIONS	15A NCAC 12H .0101	STATEMENT OF POLICY	Amended Eff. January 1, 1986	Unnecessary	No		Yes	Unnecessary
	15A NCAC 12H .0102	STATEMENT OF PURPOSE	Amended Eff. January 1, 1986	Unnecessary	No		Yes	Unnecessary
	15A NCAC 12H .0103	DEFINITIONS AS USED IN THIS SUBCHAPTER	Amended Eff. August 1, 1988	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0104	RESPONSIBILITIES AND DUTIES OF NATURAL HERITAGE PROGRAM	Amended Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0105	NATURAL HERITAGE ADVISORY COMMITTEE	Amended Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
SECTION .0200 - REGISTRY OF NATURAL HERITAGE AREAS	15A NCAC 12H .0201	OBJECTIVES OF REGISTRY	Eff. April 4, 1979	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0202	CRITERIA FOR ELIGIBILITY	Amended Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0203	REGISTRATION PROCESS	Amended Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0204	REGISTRATION	Amended Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0205	RESCISSION	Amended Eff. August 1, 1988	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0206	PUBLIC ACCESS	Eff. April 4, 1979	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0207	MANAGEMENT OF REGISTERED NATURAL AREAS	Eff. April 4, 1979	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0208	DESIGNATION OF NATURAL AREAS ON STATE LANDS	Amended Eff. October 1, 1984	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
SECTION .0300 - DEDICATION OF NATURE PRESERVES	15A NCAC 12H .0301	OBJECTIVES OF DEDICATION	Amended Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0302	DEDICATION PROCESS	Amended Eff. August 1, 1988	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0303	ARTICLES OF DEDICATION	Amended Eff. August 1, 1988	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest

G.S. 150B-21.3A Report for 15A NCAC SUBCHAPTER 12H, NATURAL HERITAGE PROGRAM								
Agency - Department of Environment and Natural Resources - Transferred to Department of Natural and Cultural Resources in SL 2015-241								
Comment Period - May 20, 2015 - September 8, 2015								
Date Submitted to APO - Filled in by RRC staff								
Rule Section	**Rule Citation**	**Rule Name**	**Date and Last Agency Action on the Rule**	**Agency Determination [150B-21.3A(c)(1)a]**	**Required to Implement or Conform to Federal Regulation [150B-21.3A(d1)]**	**Federal Regulation Citation**	**Public Comment Received [150B-21.3A(c)(1)]**	**Agency Determination Following Public Comment [150B-21.3A(c)(1)]**
	15A NCAC 12H .0304	BUFFER AREAS	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0305	PUBLIC TRUST	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0306	AMENDMENTS	Amended Eff. August 1, 1988	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0307	EXTINGUISHMENT BY THE STATE	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0308	MUTUAL TERMINATION	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
SECTION .0400 - MANAGEMENT: USE: AND PROTECTION OF DEDICATED NATURE PRESERVES	15A NCAC 12H .0401	MANAGEMENT PLAN	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0402	MANAGEMENT PRINCIPLES	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest
	15A NCAC 12H .0403	MANAGEMENT RULES FOR PRESERVES	Eff. January 1, 1986	Necessary with substantive public interest	No		Yes	Necessary with substantive public interest

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 919-967-1450 601 WEST ROSEMARY STREET, SUITE 220 Facsimile 919-929-9421
CHAPEL HILL, NC 27516-2356

September 8, 2015

Via Electronic Submission

DENR Rule Comments
1601 Mail Service Center
Raleigh, NC 27699

Re: Initial Determinations Regarding the Necessity of Rules in 15A NCAC 12H

Dear Sir or Madam:

The Southern Environmental Law Center submits these comments on behalf of MountainTrue, Sound Rivers, and the North Carolina Conservation Network in response to initial determinations by the North Carolina Department of Environment and Natural Resources ("DENR") regarding the necessity of rules governing the Natural Heritage Program ("NHP"). We disagree with the agency's determination that rules stating the NHP's regulatory policy and principal purposes are "unnecessary." As such, in Part I of these comments, we urge the agency to reconsider the underlying conclusion that those two rules are "obsolete, redundant, or otherwise not needed."[1] We also question the agency's conclusion that all other rules administered by the NHP are "necessary with substantive public interest," because that label, if ultimately applied, will require the rules to be re-adopted. As explained in Part II, in the absence of public objection to those twenty-two rules, we believe they should be retained as currently codified.

The NHP performs vital functions to ensure the protection and conservation of North Carolina's natural resources.[2] The Nature Preserves Act, which directed the creation of the NHP, recognized the importance of affording "the people of North Carolina" the opportunity to "benefit from the scientific, aesthetic, cultural, and spiritual values" possessed by natural areas.[3] The rules stating the policy and purpose of the NHP inform the role of the primary entity within state government that ensures the continued availability of that important public opportunity.

In light of the critical importance of the NHP, we are particularly concerned that NHP rules labeled "unnecessary" will expire unless they were "adopted to conform to or implement

[1] N.C. Gen. Stat. § 150B-21.3A(a)(6) (defining "unnecessary").

[2] Of particular importance to our work is the natural resources data collected and made publicly available by the NHP.

[3] N.C. Gen. Stat. § 113A-164.2(b).

federal law."[4] Because the NHP rules were adopted to implement state law, i.e., the Nature Preserves Act,[5] those labeled "unnecessary" are doomed to expiration unless DENR revises its initial determinations.

It bears emphasis that our comments are intended to express *support* for these and other NHP rules. As such, we are very concerned that under the rules review process,[6] comments that *object* to a rule have an automatic effect on the rule's classification, but comments that *support* a rule do not. As the statute is written, a single objection to any part of a rule will force the entire rule to be classified as "necessary with substantive public interest" and require the rule to be re-adopted through the cumbersome rulemaking process. In contrast, one hundred members of the public could write letters supporting the same rule, explaining in great detail its value and necessity, but their letters would not meet the statutory definition of a "public comment" since they did not object to the rule.[7] Thus, those numerous, substantive comments would not give rise to any automatic classification that would preserve the rule without expending taxpayer dollars and agency time to shepherd it through re-adoption. Consequently, the rules review process, as it currently exists, discourages citizens from expressing support for a rule since, at best, their supportive comments would have no automatic effect, and, at worst, their comments could be taken as criticism forcing a rule to be readopted. Such a process, which discourages public participation and skews public commenting, is inherently flawed. Of course, we understand that the General Assembly, rather than DENR, was responsible for creating that flawed process.

Thankfully, however, the process still provides the opportunity for DENR to revise its "initial determination" in response to supportive public comments such as ours, even if that revision is not automatic. We urge DENR to reconsider its decision to label certain NHP rules "unnecessary." Contrary to the agency's initial determination, we believe that these rules are critical to effectuating the intent of state law. In recognition of the importance of, and apparent lack of public objection to,[8] these rules, we urge DENR to classify them as "necessary without substantive public interest."[9]

I. "Statement of Policy" and "Statement of Purpose" rules are not "Unnecessary"

Policy and purpose statements that inform agency staff and the public regarding agency objectives are beneficial to both. DENR has previously recognized the necessity of such statements of regulatory policy and/or purpose during the rules review process. In one instance, DENR opined that a rule establishing regulatory policy or purpose was "necessary with

---

[4] *See* N.C. Gen. Stat. § 150B-21.3A.

[5] *See* N.C. Gen. Stat. §§ 113A-164.1 *et seq.*

[6] N.C. Gen. Stat. § 150B-21.3A

[7] *Id.* § 150B-21.3A(a)(5).

[8] Based on the definitions of the possible labels, had the agency received any "public comment" (defined in N.C. Gen. Stat. § 150B-21.3A(a)(5) to essentially mean a written objection) regarding these rules in the past two years, it could not label them "unnecessary." *See* N.C. Gen. Stat. § 150B-21.3A(a)(3).

[9] *See* N.C. Gen. Stat. § 150B-21.3A(a)(4) (defining "necessary without substantive public interest").

substantive public interest."[10] More commonly, however, DENR policy and purpose rules have been labeled "necessary without substantive public interest." For instance, DENR applied that label to rules stating the underlying policy or purpose of regulations governing the certification of operators of animal waste management systems,[11] the authority of the Water Pollution Control System Operators Certification System,[12]and the development and adoption of a Coastal Area Management Act Land Use Plan.[13] That these rules were deemed necessary "without substantive public interest" is particularly notable because application of that label means the agency's decision was not dictated by public opinion and was instead the agency's true assessment of the importance of such guidelines.[14] Yet, without explanation, DENR now contends that rules stating NHP policy and purpose are "unnecessary."

15A NCAC 12H .0101

The first NHP rule deemed "unnecessary" by DENR is the "Statement of Policy" codified at 15A N.C. Admin Code 12H .0101 (hereinafter "NHP Policy Rule"). The NHP Policy Rule states:

> The policy implemented by this Subchapter is that natural areas important to the maintenance of the state's natural diversity be identified; that agencies, organizations, and individuals be encouraged to protect those natural areas best representing North Carolina's natural heritage; and that natural areas be registered as protected or dedicated as nature preserves for the benefit of the people of present and future generations.[15]

---

[10] 15A N.C. Admin. Code 2R. 0101., which states the purpose of Subchapter 2R of Chapter 15A of the Administrative Code , was labeled "necessary with substantive public interest." *See* G.S. 150B-21.3A Report for 15A NCAC Subchapter 02R, ECOSYSTEM ENHANCEMENT PROGRAM (April 20, 2015), *available at* http://www.oah.state.nc.us/rules/Final%20Reports%20Submitted%20to%20APO/15A%20NCAC%2002R%20report,%20with%20comment%20and%20responses.pdf

[11] *See* G.S. 150B-21.3A Report for 15A NCAC Chapter 08, WATER POLLUTION CONTROL SYSTEM OPERATORS CERTIFICATION COMMISSION (May 26, 2015) (labeling 15A N.C. Admin. Code 08F .0101 "necessary without substantive public interest"), *available at* http://www.oah.state.nc.us/rules/Final%20Reports%20Submitted%20to%20APO/15A%20NCAC%2008%20Report%20with%20comments%20and%20reponses.pdf

[12] *Id.* (labeling 15A N.C. Admin. Code 08G .0101 "necessary without substantive public interest")

[13] G.S. 150B-21.3A Report for 15A NCAC Subchapter 07B, CAMA LAND USE PLANNING (June 22, 2015) (labeling 15A N.C. Admin. Code 07B .0601 "necessary without substantive public interest"), *available at* http://www.oah.state.nc.us/rules/Final%20Reports%20Submitted%20to%20APO/15A%20NCAC%2007B.pdf

[14] Unlike the "necessary with substantive public interest" label, the "necessary without substantive public interest" label cannot be forced by the agency's receipt or anticipation of public objection. As such, a rule deemed "necessary without substantive public interest" is one that the agency itself concedes is necessary.

[15] 15A N.C. Admin. Code 12H .0101.

As noted in the text of the rule itself, it informs the underlying philosophy implemented by all NHP rules. Because the existence of NHP rules is mandated by the Nature Preserves Act,[16] this statement of the overarching policy they implement is not "obsolete." Indeed, as long as NHP Rules are part of the N.C. Administrative Code, the statement of policy they were adopted to implement provides necessary clarity regarding their interpretation.

The Policy Rule is also not "redundant." Although presumably inspired by the "Statement of Policy and Purpose" in the Nature Preserves Act,[17] the rule goes beyond the statutory language to provide important context for the public and the regulated community regarding how the NHP will interpret and implement statutory language. For example, while the statute states that "areas of natural significance" should be identified and preserved,[18] the Policy Rule fleshes out that directive. The Policy Rule directs focus on certain types of "natural significance" by specifically seeking to identify and preserve natural areas "important to the maintenance of the State's natural diversity" or representative of "North Carolina's natural heritage." Accordingly, NHP rules implementing this policy vision define and prioritize "natural diversity"[19] and specify eligibility requirements for an area to be considered representative of the state's "natural heritage."[20]

Finally, the Policy Rule is not "otherwise not needed." To the contrary, it provides DENR's unique interpretation and elaboration of the policy stated in the Nature Preserves Act. Moreover, the agency policy stated in this rule is implemented through an important existing program and therefore useful to inform the content of other NHP Rules. Because the Policy Rule is not "obsolete, redundant, or otherwise not needed," it was incorrect to label it "unnecessary." We support the Policy Rule in its current form, and urge DENR to label it "necessary without substantive public interest."

15A NCAC 12H .0102

The second NHP rule deemed "unnecessary" by DENR is the "Statement of Purpose" codified at 15A N.C. Admin Code 12H .0102 (hereinafter "Purpose Rule"). The Purpose Rule also provides important guidance regarding the role of the NHP in identifying and protecting important natural resources in our state. As DENR is statutorily required to "[m]aintain a

[16] The Nature Preserves Act explicitly mandates DENR to "[m]aintain a Natural Heritage Program" and "[e]stablish by rule the criteria for selection, registration, and dedication of natural areas and nature preserves." N.C. Gen. Stat. § 113A-164.4.

[17] *See* N.C. Gen. Stat. 113-164.2

[1818] *Id.*

[19] *See, e.g.*, 15A N.C. Admin. Code 12H .0103 (defining "natural diversity"); 15A N.C. Admin. Code 12H .0201 ("The Registry of Natural Heritage Areas is a recognition program based upon an official list of significant natural areas derived from the Natural Heritage Program's inventory of elements of natural diversity.").

[20] 15A N.C. Admin. Code 12H .0202.

Natural Heritage Program,"[21] the rule that codifies the "principal purposes"[22] of the Program is not "obsolete."

> As explained in the Purpose Rule, the "principal purposes" of the NHP are to:
> (1) identify through a systematic inventory the special elements of natural diversity and natural areas which best exemplify the state's natural heritage;
> (2) provide inventory information for use in development planning, environmental impact assessment, and resource management decisions;
> (3) establish for present and future generations a statewide system of registered natural areas and dedicated nature preserves;
> (4) develop strategies for active citizen and landowner participation in preserving the state's natural heritage;
> (5) promote public awareness and appreciation of natural diversity, and publish and disseminate information pertaining to natural areas and nature preserves;
> (6) prepare a Natural Heritage Plan that governs the program in the creation of a system of registered and dedicated natural areas.[23]

Some of these "principal purposes" in 15A NCAC 12H .0102 are similar to the NHP "Responsibilities and Duties" stated in 15A NCAC 12H .0104. Notably, DENR declared the latter rule to be "necessary with substantive public interest." It lists actions for which the NHP is "responsible." Importantly, however, a rule addressing implementation measures for which the NHP is responsible does not render "redundant" a separate rule discussing NHP's fundamental purposes, especially when the text of the two rules differs. Although there are varying degrees of similarity in NHP rule language addressing programmatic purposes and responsibilities, substantial variation that exists in some parts of the two rules belies any argument that 12H .0104 renders 12H .0102 "redundant."[24] Even in the one instance where language is very similar,[25] the language is drawn almost verbatim from the Nature Preserves Act.[26] And even then, the context of the rules differs notably.[27] Moreover, certain "principal

---

[21] N.C. Gen. Stat. § 113A-164.4(3).

[22] 15A N.C. Admin. Code 12H .0102.

[23] 15A N.C. Admin. Code 12H .0102.

[24] *Compare* 15A N.C. Admin. Code 12H .0102 (stating NHP purpose to "provide inventory information for use in development planning, environmental impact assessment, and resource management decisions") *with id.* 12H .0104 (making the NHP responsible for "data exchange with other public agencies").

[25] *Compare* 15A N.C. Admin. Code 12H .0102(6) (declaring NHP "purpose" is to "prepare a Natural Heritage Plan that governs the program in the creation of a system of registered and dedicated natural areas") *with id.* 12H .0104 (declaring NHP "responsible" for "maintaining a plan governing the system of registered and dedicated natural areas").

[26] *See* N.C. Gen. Stat. § 113A-164.4(4) (requiring DENR to "[p]repare a Natural Heritage Plan that shall govern the Natural Heritage Program in the creation of a system of registered and dedicated natural areas."). Notably, however,

purposes" of the NHP are *only* stated in the Purpose Rule. Most notably, the Purpose Rule uniquely requires the NHP to encourage public participation in, and increase public awareness of the need for, identification and protection of natural resources.[28]

Because the Purpose Rule establishes distinct and important direction for the statutorily mandated NHP, it is neither "obsolete, redundant," nor "otherwise not needed." We encourage DENR to retain the Purpose Rule in its current form by labeling it "necessary without substantive public interest."

II. Overuse of the "Necessary with Substantive Interest" Label

With the exception of the two rules discussed above, DENR labeled every rule in 15A NCAC 12H "necessary with substantive interest." Fortunately, that means that twenty-two of twenty-four rules administered by the NHP are currently safe from automatic expiration. However, it also means that none of the NHP rules will "be allowed to remain in effect without further action."[29] We hope this means those rules will ultimately be retained. After all, rules labeled necessary with substantive interest" must be "readopted as though the rules were new rules."[30] Yet, we note with concern that DENR has, during the process of rules review, proposed to delete entire rules even after labeling them "necessary with substantive public interest."[31]

To be clear, we do not intend to quibble with the agency's documentation of public objection. As discussed above, a rule must be labeled "necessary with substantive interest" if DENR received "written comments objecting to the rule."[32] However, it is unclear whether the labeling determinations for these twenty-two NHP rules were dictated by public objection or instead made at DENR's discretion. After all, a rule may also be labeled "necessary with substantive public interest" if "the rule affects the property interest of the regulated public *and* the agency knows or suspects that any person may object to the rule."[33] It bears emphasis that

---

the Purpose Rule clarifies, however that the NHP will be the entity within DENR that bears the responsibility of creating the Natural Heritage Plan.

[27] One rule references preparation a specifically named plan governing the creation of a system; the other references maintenance of an unnamed plan governing an already created system.

[28] *See* 15A N.C. Admin. Code 12H .0102(4) (stating NHP purpose to "develop strategies for active citizen and landowner participation in preserving the state's natural heritage"); *id.* .0102(5) (stating NHP purpose to "promote public awareness and appreciation of natural diversity, and publish and disseminate information pertaining to natural areas and nature preserves").

[29] N.C. Gen. Stat. § 150B-21.3A(c)(2)e.

[30] *Id.* § 150B-21.3A(c)(2)g.

[31] *See, e.g.*, DENR, Division of Water Resources, *Rules Review Stakeholder Meeting Schedule and Information* http://portal.ncdenr.org/web/wq/ps/csu/rulesreadoption (last visited Sept 8, 2015) (proposing to delete 15A NCAC 2T .1404 and 15A NCAC 2H .1003 after labeling both rules "necessary with substantive public interest").

[32] N.C. Gen. Stat. § 150B-21.3A(a).

[33] *Id.* (emphasis added).

some NHP rules explicitly disavow any regulatory effect on any property interest.[34] DENR has no authority to label those rules "necessary with substantive public interest" without receipt of written public objection. For any rules that *do* have a regulatory effect on the public's property interest, if DENR has not received, but instead merely anticipates, public objection, we encourage the agency to reconsider its determinations. DENR should not needlessly subject itself to the administratively burdensome rulemaking process.[35] Nor should the agency unreasonably overburden its rulemaking coordinators.[36] DENR may retain an existing rule without undergoing rulemaking by simply labeling the rule "necessary without substantive public interest."[37] So, unless the agency intends to alter its rules, we support re-labeling them. And because the NHP rules in their current form implement important policy objectives, we urge DENR to label them "necessary without substantive public interest" whenever possible.

Conclusion

Subchapter 12H of Title 15A of the North Carolina Administrative Code is replete with important guidance regarding the administration of various natural resources programs under the purview of the Natural Heritage Program. Although the Nature Preserve Act sketched a simple skeletal design for the NHP, the legislature ordered and/or authorized DENR to flesh out the details. Without rules stating the policy and purposes of the NHP, as dictated by DENR in response to statutory direction, North Carolinians will lose important information, elaboration, and clarification regarding a critical program administered with their tax dollars. Similarly, the agency will lose years of institutional expertise memorialized in regulatory guidance. Therefore, we urge the agency to reconsider its initial determination that certain NHP rules discussed above are "unnecessary." And, wherever permitted (i.e., in the absence of written public objection), we urge DENR to allow NHP rules to "remain in effect without further action" by labeling them "necessary without significant public interest."

Respectfully,

Will Hendrick
Associate Attorney
Southern Environmental Law Center

---

[34] *See, e.g.*, 15A N.C. Admin. Code 12H .0201 (The [Registry of Natural Heritage Areas] is a voluntary, non-regulatory, non-binding recognition program.").

[35] *See* N.C. Gen. Stat. § 150B-21.2 (establishing the multi-step process of adopting a permanent rule).

[36] *See* N.C. Gen. Stat. § 150B-21 (requiring "rule-making coordinators" to, *inter alia*, prepare notices of public hearings, ensure compliance with fiscal note requirements, consult with the North Carolina Association of County Commissioners and the North Carolina League of Municipalities, coordinate submission of proposed rules to the Governor, and, for many rules, "lead the agency's efforts in the development and drafting").

[37] N.C. Gen. Stat. § 150B-21.3A(c)(2)e.

Statement concerning proposed revisions of North Carolina Administrative Code chapter 15A, subchapter 12H – Natural Heritage Program

Submitted by Charles E. Roe (June 20, 2015) in public hearing process

I respond to invitation for public comment concerning proposed revisions of North Carolina Administrative Code chapter 15A, subchapter 12H – concerning the North Carolina Natural Heritage Program, now a unit of the N.C. Department of Environment and Natural Resources.

I served as the initial program manager of the N.C. Natural Heritage Program for nearly fifteen years from its inception in June, 1976 until the spring of 1991. The program was initiated by administrative action during the tenure of Governor James Holshauser (R) and was a unit of the N.C. Department of Natural Resources and Community Development (subsequently reorganized and renamed) in which it was assigned as a program unit within the Division of Parks and Recreation.

The North Carolina Nature Preserves Act, which I co-authored with assistance from attorneys associated with State agencies, the UNC School of Government and N.C. General Assembly, served as enabling legislation and mandate for the state's Natural Heritage Program and its Advisory Committee, the state's Registry of voluntarily protected Natural Heritage Areas, and the state's system of Dedicated Nature Preserves. The legislation was introduced to the N.C. General Assembly intentionally with bipartisan co-sponsorship and was enacted by nearly unanimous votes of the members of both the houses of the General Assembly. The legislation had universal support and endorsement from the major business and commercial sectors (particularly from the electric power utilities and forest products industry), from commanding officers of U.S. military bases, and by natural resources management and conservation organizations across the state. The program's services were generally seen as beneficial to the interests and needs of North Carolina business and industry, its public utilities, the military bases, and the general public. In addition to mandating maintenance of a systematic inventory of the sites and status of important natural areas and rare or imperiled biota, The NC Nature Preserves Act emphasized encouraging and recognizing <u>voluntary</u> commitment by landowners to conserve and protect the state's most extraordinary and unique natural places and elements of its exceptional biodiversity.

I was the principal staff author of the Administrative Code provisions for the Natural Heritage Program (15A NCAC 12H.0101 through .0403) and later as well for the Administrative Code section implementing and setting forth procedures of the North Carolina Natural Heritage Trust Fund.

I find the current proposal to eliminate the introductory two sections of the subject 15A Administrative Code 12H -- .0101 Statement of Policy, and .0102 Statement of Purpose will be illogical and harmful, in that deletion of these introductory sections will remove the rationale and the context for the rest of the provisions in the subchapter . Other than as an attempt to generally reduce the total word/line content of the Department's total volume of administrative rules by an arbitrary percentage, the proposed removal of the introductory sections of the section of the code pertaining to the state's Natural Heritage Program will serve no reasonable purpose and will only create confusion and mischief.

From my viewpoint as the original author of these administrative rules and procedures, and from my professional background as a public policy planner and program manager, I strongly recommend retaining the entirety and whole of the present administrative code pertaining to the North Carolina Natural Heritage Program, Registry of Natural Heritage Areas, and Dedicated Nature Preserves.

I offer to meet with current Department administrators for further discussion.

Contact information: croe@conservationsouth.org; tel. 919-600-9893 (c) or 919-500-6598 (o)

Residential address: 6410 Arrington Road, Raleigh NC 27607