

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0909

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), does the SHPO make recommendations to the Secretary of the Interior and then the Secretary of the Interior has the final say regarding the federal tax incentives? Is there a cross-reference available to further explain this process?*

*Given that Articles 3D and 3H of the Chapter 105 of the General Statutes have sunset, does (b) only apply to those projects performed prior to January 1, 2015? Please consider providing this information by adding something along the lines of "The rules .0909 - .0915 of this Section are applicable to these certifications for projects in which qualified rehabilitation expenditures and expenses were incurred prior to January 1, 2015 under Articles 3D and for rehabilitation projects for which an application was submitted prior to January 1, 2015 under 3H of Chapter 105 of the General Statutes." Of course, this is assuming that this statement is correct and accurate. Please note that this is only a suggestion.*

*In (c), is the sufficiency of the documentation based on these rules? If so, please say so. A suggestion for this language would be "Owners wishing certifications shall provide sufficient documentation to the SHPO to make certification ~~decisions.~~ decisions based on these Rules."*

*In (d), please consider adding language similar to that suggested above in (c).*

*In (e), please consider adding language similar to that suggested above in (b).*

*As it is simply an overview of what particular rules are doing and not actually giving any directive, why is this Rule necessary? Is it necessary in order to assist your regulated public in understanding the process?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources	
2. Rule citation & name: 07 NCAC 04R .0909 (amendment)	
3. Action: <input type="checkbox"/> Adoption <input checked="" type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncder.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncder.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncder.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R .0909 Scope of Rules and Overview of Statutory Authority is amended under temporary procedures as follows:

**07 NCAC 04R .0909 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY**

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of income-producing historic properties.

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of non-income-producing historic properties. The rules .0909 - .0915 of this Section are applicable to these certifications under Articles 3D and 3H of Chapter 105 of the General Statutes.  
~~certifications.~~

(c) The procedures for obtaining certifications under Articles 3D and 3H of Chapter 105 of the General Statutes are set forth in Rules .0909 - .0915 of this Section. Owners wishing certifications shall provide sufficient documentation to the SHPO to make certification decisions. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions shall be made by the SHPO based upon review by HPO staff of the application and supporting documentation.

(e) Rule .0916 of this Section relates to fees charged for reviewing income-producing and nonincome-producing rehabilitation certification requests under Articles 3D and 3H of Chapter 105 of the General Statutes. ~~requests.~~

(f) The SHPO makes certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of income-producing historic properties. Rule .0917 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification requests under Articles 3D and 3H of Chapter 105 of the General Statutes. ~~requests.~~

*History Note: Authority G.S. 105-129.35; 105-129.36A; 105-129.74; 105-130.42; 105-151.23;*  
*Temporary Adoption Eff. January 1, 1998;*  
*Eff. August 1, 1998;*  
*Amended Eff. November 1, 2004;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*  
*2015.*  
*Temporary Amendment Eff. January 1, 2016.*

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0918

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

**NOTE WELL:** *This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), what is the process for federal approval? Is there a cross-reference to a CFR available?*

*In (b), please consider adding clarifying language such as the following: "The rules .0918 - .0924 of this Section are applicable to these certifications for projects in which qualified rehabilitation expenditures and rehabilitation expenses are incurred on or after January 1, 2016 under Article 3L of Chapter 105 of the General Statutes." Of course this is only if this is an accurate and correct statement and is only a suggestion.*

*In (c), is the sufficiency of the documentation based on these rules? If so, please say so.*

*In (d), is the certification decision also based upon these rules? If so, please say so.*

*As it is simply an overview of what particular rules are doing and not actually giving any directive, why is this Rule necessary? Is it necessary in order to assist your regulated public in understanding the process?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources	
2. Rule citation & name: 07 NCAC 04R .0918	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R. 0918 Scope of Rules and Overview of Statutory Authority under Article 3L of Chapter 105 of the General Statutes is adopted under temporary procedures as follows:

**07 NCAC 04R .0918 SCOPE OF RULES AND OVERVIEW OF STATUTORY AUTHORITY UNDER ARTICLE 3L OF CHAPTER 105 OF THE GENERAL STATUTES**

(a) Rules .0901 - .0908 of this Section relate to recommendations made by the State Historic Preservation Officer (SHPO) to the Secretary of the Interior in connection with federal tax incentives involving the rehabilitation of income-producing historic properties. A taxpayer who is allowed a federal income tax credit under section 47 of the Internal Revenue Code for making qualified rehabilitation expenditures for an income-producing certified historic structure located in this State is allowed a state tax credit as set forth in Article 3L of Chapter 105 of the General Statutes, and federal approval of said rehabilitation is required for the Article 3L state tax credit.

(b) The SHPO makes certifications of historic significance and certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of historic properties. The rules .0918 - .0924 of this Section are applicable to these certifications under Article 3L of Chapter 105 of the General Statutes.

(c) The procedures for obtaining certifications under Article 3L of Chapter 105 of the General Statutes are set forth in Rules .09018 - .0924 of this Section. Owners wishing certifications shall provide sufficient documentation to the SHPO to make certification decisions. These procedures shall be applicable to future and pending certification requests except as otherwise provided herein.

(d) Requests for certifications and approvals of proposed rehabilitation work shall be sent by an owner to the SHPO for review. All certification decisions shall be made by the SHPO based upon review by HPO staff of the application and supporting documentation.

(e) Rule .0925 of this Section relates to fees charged for reviewing income-producing and nonincome-producing rehabilitation certification requests.

(f) The SHPO makes certifications of rehabilitation in connection with state tax incentives involving the rehabilitation of income-producing historic properties. Rule .0926 of this Section is applicable to the coordination with the Federal Certified Historic Rehabilitation Program for these rehabilitation certification requests.

*History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;*

*Temporary Adoption Eff. January 1, 2016.*



TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0919

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*For purposes of consistency with Item (2), please move the "is" in (3)(A) and (3)(B) to the end of Item (3) and add a colon.*

*In (3)(A), please change the comma to a semi-colon.*

*In (8), you have used "HPO", but in most other places you have used "SHPO." Was this intentional? Please be sure to be consistent in your terms throughout these rules.*

*In (14), do you mean "and" or "or" by "and/or"? Please use whichever you mean.*

*In (17), are you intending to incorporate the Standards of Rehabilitation by reference? If so, please do so in accordance with G.S. 150B-21.6.*

*In (18), you have used the acronym "HPO" for "State Historic Preservation Office"; however, you appear to use "SPHO" throughout the Rules. Please be consistent in order to provide clarity.*

*In (19), please move the hyphen from after nonincome to in between "non" and "income."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources	
2. Rule citation & name: 07 NCAC 04R .0919	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R. 0919 Definitions is adopted under temporary procedures as follows:

#### **07 NCAC 04R .0919 DEFINITIONS**

For purposes of Rules .0918 through .0925 of this Section, the following definitions shall apply:

- (1) “Certification” means the process established by these Rules to determine the historic significance of properties within National Register or certified historic districts as well as to approve proposed and completed rehabilitation work.
- (2) “Certified Historic District” means any district which is:
  - (A) designated under a local ordinance which has been certified by the Secretary of the Interior as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district; and
  - (B) certified by the Secretary of the Interior as meeting substantially all of the requirements for the listing of districts in the National Register of Historic Places.
- (3) “Certified Historic Structure” means any building (and its structural components) which
  - (A) is listed in the National Register of Historic Places, or
  - (B) is located in a registered historic district and is certified by the Secretary of the United States Department of the Interior to the Secretary of the United States Department of the Treasury as being of historic significance to the district. Portions of larger buildings, such as single condominium apartment units, shall not be considered to be individual structures for purposes of income-producing rehabilitation certifications. Rowhouses, even with abutting or party walls, shall be considered as separate buildings. For purposes of the certification decisions set forth in these Rules, a certified historic structure encompasses the historic building and its site, landscape features, and environment, generally referred to herein as a "property" as defined in this Rule.
- (4) “Certified rehabilitation” means repairs or alterations consistent with the Secretary of the Interior’s Standards for Rehabilitation and certified as such by the State Historic Preservation Officer.
- (5) “Department of the Interior” means the United States Department of the Interior.
- (6) “Discrete property parcel” means a lot or tract described by metes and bounds, a deed or plat of which has been recorded in the deed records of the county in which the property is located, and on which a State-certified historic structure is located, or a single condominium unit in a State-certified historic structure.
- (7) “Historic District” means a geographically definable area, urban or rural, possessing a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

- (8) “Inspection” means a visit by the HPO to a historic structure for the purposes of reviewing and evaluating the significance of the structure and the proposed, ongoing, or completed rehabilitation work.
- (9) “National Park Service” (NPS) means the division within the United States Department of the Interior responsible for administering national parks and historic preservation programs.
- (10) “National Register Historic District” means any historic district listed in the National Register of Historic Places.
- (11) “National Register Nomination” means the documentation for a resource that includes the National Register Nomination Form NPS 10-900 with accompanying continuation sheets, maps, and photographs and that is prepared in accord with requirements and guidance in the NPS publication How to Complete the National Register Registration Form: Bulletin 16A and in other NPS technical publications on the subject.
- (12) “National Register of Historic Places” means the official federal roster of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary of the Interior is authorized to expand and maintain pursuant to the National Historic Preservation Act of 1966, as amended (often referred to as the “National Register”).
- (13) “Owner” means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the North Carolina Department of Revenue for purposes of the applicable tax benefits.
- (14) “Property” means a building(s) and/or structure and its site and landscape features.
- (15) “Rehabilitation” means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the SHPO.
- (16) “Secretary of the Interior” means the Secretary of the United States Department of the Interior or the designee authorized to carry out his/her responsibilities.
- (17) “Standards for Rehabilitation” means the Secretary of the Interior’s “Standards for Rehabilitation” as cited in the Code of Federal Regulations, 36 CFR 67.
- (18) “State Historic Preservation Office” (HPO) means the section within the North Carolina Office of Archives and History responsible for administering historic preservation programs.
- (19) “State-certified historic structure” means a structure that is individually listed in the National Register of Historic Places or is certified by the State Historic Preservation Officer as contributing to the historic significance of a National Register Historic District or a locally designated historic district certified by the United States Department of the Interior. For purposes of nonincome-producing rehabilitation certifications, a single condominium unit in a State-certified historic structure will be considered an individual structure and a discrete property parcel.

(20) "Structure" means a building created to shelter any form of human activity, such as a house, barn, church, hotel, warehouse, mill, or similar structure. However, sites and objects as defined in 36 CFR 60.3 do not qualify as structures.

*History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;*  
*Temporary Adoption Eff. January 1, 2016.*

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0920

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

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The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (b), line 16, please change "will" to "shall."*

*In (b), line 18, please delete "similarly. You may want to make the sentence beginning with "Similarly, if a property located in a National Register..." a separate paragraph.*

*In (b), what is a "period of significance"? Is this defined elsewhere in rule, statute, or federal regulation?*

*In (c), are the contents of the application set forth elsewhere in rule or statute?*

*In (d), is the application available online? If so, please provide the web information. If not, do you have an address rule elsewhere that provides notice to your regulated public of where you're located? This is also a question for (e).*

*If (f), please define "adequate."*

*In (g), please change "his/her" to "his or her."*

*In (g), what "other available information" will be considered in making the certification decision?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources

2. Rule citation & name: 07 NCAC 04R .0920

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: October 26, 2015
- b. Proposed Temporary Rule published on the OAH website: November 2, 2015
- c. Public Hearing date: November 20, 2015
- d. Comment Period: November 2, 2015 through November 25, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015
- f. Adoption by agency on: December 11, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a).  
Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program.

- ☐ A recent change in federal or state budgetary policy.

Effective date of change:

- ☐ A recent federal regulation.

Cite:

Effective date:

- ☐ A recent court order.

Cite order:

- ☐ State Medical Facilities Plan.

- ☐ Other:

**Explain:** Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.



**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

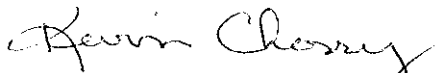
E-Mail: joshua.davis@ncdcr.gov

**Agency contact, if any: Ramona Bartos, Deputy State Historic Preservation Officer**

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R. 0920 Introduction to Historic Preservation Certifications and Information Collection is adopted under temporary procedures as follows:

**07 NCAC 04R .0920 INTRODUCTION TO HISTORIC PRESERVATION CERTIFICATIONS AND INFORMATION COLLECTION**

(a) Ordinarily, only the fee-simple owner of the property in question may apply for the historic preservation certifications described in Rules .0921 and .0923 in this Section. If an application for a certification is made by someone other than the fee-simple owner, however, the application must be accompanied by a written statement from the fee-simple owner indicating that he or she is aware of the application and has no objection to the request for certification.

(b) Owners of properties which are not yet individually listed in the National Register of Historic Places or which are in areas that are not yet National Register or certified historic districts may obtain certifications from the SHPO on whether or not rehabilitation proposals meet the "Standards for Rehabilitation" and proceed with the rehabilitation prior to the listing of the individual property or district in the National Register. Because final certifications of rehabilitation will be issued only to owners of certified historic structures, properties must be individually listed in the National Register or be located within National Register or certified historic districts by the time a request for final certification is submitted to the SHPO. Similarly, if a property is located in a National Register or certified historic district but outside the district's period of significance, the National Register nomination or certification report for the district must be amended to expand the period of significance by the time a request for final certification is submitted to the SHPO.

(c) Applications for certifications of proposed rehabilitation, historic significance, and completed rehabilitation shall be submitted on the Historic Preservation Certification Application. Two copies of the application and supporting documentation such as photographs and plans are required. The applicant may obtain a preliminary and non-binding determination of a property's historic significance within a National Register or certified historic district prior to undertaking a rehabilitation project.

(d) Applications are available from the HPO.

(e) Requests for certifications and approvals of proposed rehabilitation projects shall be sent to the HPO.

(f) Where adequate documentation is not provided, the owner will be notified in writing of the additional information needed to undertake or complete the review. At such time the application shall be placed on hold pending the receipt of complete information. If complete information is not received within 30 days from the date of the request to the owner, the application shall be returned to the owner due to insufficient documentation.

(g) Approval of applications and amendments to applications shall be conveyed to the owner only in writing by the SHPO or his/her duly authorized representative. Decisions with respect to certifications shall be made on the basis of the descriptions contained in the application forms and other available information. In the event of any discrepancy between the application and other supplementary material submitted with it (such as architectural plans, drawings,

1 specifications, etc.), the applicant shall be requested to resolve the discrepancy in writing. In the event the discrepancy  
2 is not resolved, the description in the application shall take precedence.

3

4 *History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;*

5 *Temporary Adoption Eff. January 1, 2016.*

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0921

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), to whom shall the requests be made?*

*In (c)(1) through (c)(5), please end the sub-paragraphs with semi-colons, and add an "and" at the end of (c)(4).*

*In (e), how is the determination whether a denial of a certification after moving a building will occur? Is this based on the information contained in Sub-paragraphs (1) and (2)? Some additional clarifying information is needed.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources	
2. Rule citation & name: 07 NCAC 04R .0921	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

**Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer**

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R. 0921      Certifications of Historic Significance is adopted under temporary procedures as follows:

**07 NCAC 04R .0921      CERTIFICATIONS OF HISTORIC SIGNIFICANCE**

(a) Requests for determinations of historic significance for properties within National Register or certified historic districts shall be made by the owner to determine:

(1) that a property located within a National Register or a certified historic district contributes to the historic significance to the district and is, therefore, a "certified historic structure"; or

(2) that a property located within a National Register or certified historic district is not of historic significance to the district.

(b) The owner may contact the HPO to determine whether or not a property is individually listed in the National Register of Historic Places or is located within a National Register or certified historic district.

(c) If a property is located within the boundaries of a National Register or certified historic district and the owner seeks certification by the SHPO that the property contributes to the historic significance of the district, the owner must provide the following documentation for determination of historic significance and submit it with the request for final certification:

(1) Name and address of property.

(2) Current photographs of property including photographs of the building and its site and landscape features; photograph(s) showing the property along with adjacent properties and structures on the street; and photographs of interior features and spaces adequate to document significance.

(3) Brief written description of physical appearance including distinctive features and spaces, any alterations, and date(s) of construction.

(4) Brief statement of significance summarizing how the property does or does not reflect the values that give the district its distinctive historical and visual character, and explaining any significance attached to the property itself (e.g., unusual building techniques, important event that took place there, etc.).

(5) Map of the historic district clearly delineating property's location within the district.

(d) Properties in National Register or certified historic districts containing more than one building where the buildings are judged by the SHPO to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, shall be treated as a single certified historic structure when rehabilitated as part of an overall project. Buildings that are functionally related historically are those which have functioned together to serve an overall purpose during the property's period of significance. An evaluation shall be made to determine whether the component buildings contribute to the historic significance of the property and whether the property contributes to the significance of the historic district.

(e) If a building is to be moved as part of a rehabilitation for which certification is sought, the owner must follow the procedures outlined in this Paragraph. When a building is moved, every effort shall be made to re-establish its historic

1 orientation, immediate setting, and general environment. Moving a building within a National Register or certified  
2 historic district may result in denial of a certification of historic significance.

3 (1) Documentation must be submitted that demonstrates:

4 (A) the effect of the move on the building's integrity and appearance (any demolition, changes  
5 in foundations, etc.);

6 (B) photographs of the original site and general environment of the new site;

7 (C) evidence that the new site does not possess historical significance that would be adversely  
8 affected by the moved building;

9 (D) the effect of the move on the distinctive historical and visual character of the district, where  
10 applicable; and

11 (E) the method of moving the building.

12 (2) If an owner moves a building into a National Register or certified historic district or moves a  
13 building elsewhere within a district, the required information described in Subparagraph (e)(1) of  
14 this Rule shall be included. The moved building shall be evaluated to determine if it contributes to  
15 the historic significance of the district both before and after the move as in Paragraph (f) of this  
16 Rule. The owner may obtain a preliminary and non-binding determination that a building proposed  
17 to be moved will contribute to the historic significance of the district after the move.

18 (f) Properties within National Register or certified historic districts shall be evaluated to determine if they contribute  
19 to the historic significance of the district by application of the "Standards for Evaluating Significance within National  
20 Register or Certified Historic Districts" as set forth in Rule .0922 of this Section.

21 (g) Once the significance of a property located within a National Register or certified historic district has been  
22 determined by the SHPO, written notification shall be sent to the owner.

23  
24 History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;

25 Temporary Adoption Eff. January 1, 2016.



TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0922

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), please add a colon at the end of this Paragraph.*

*Please also change the periods at the end of (a)(1), (a)(2), and (a)(3) to semi-colons and add an "and" at the end of (a)(2).*

*In (b), when will it be necessary for the owner to remove the surface material as part of the rehabilitation so that a determination of significance can be made? Please add clarifying language as to when an individual may expect this to occur.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources	
2. Rule citation & name: 07 NCAC 04R .0922	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R.0922 Standards for Evaluating Significance Within National Register or Certified Historic Districts is adopted under temporary procedures as follows:

**07 NCAC 04R.0922 STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL REGISTER OR CERTIFIED HISTORIC DISTRICTS**

(a) Properties located within National Register or certified historic districts shall be reviewed by the SHPO to determine if they contribute to the historic significance of the district by applying the following Standards for Evaluating Significance within National Register or Certified Historic Districts.

(1) A building contributing to the historic significance of a district is one which by location, design, setting, materials, workmanship, feeling, and association adds to the district's sense of time and place and historical development.

(2) A building not contributing to the historic significance of a district is one which does not add to the district's sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling, and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.

(3) Ordinarily buildings that have been built within the past 50 years do not meet the National Register Criteria for Evaluation and are not considered to contribute to the significance of a district. Buildings less than 50 years old are considered to contribute to the significance of a district if the period of significance specified in the National Register nomination (or Certified Historic District designation report) includes the date of the building, or if the nomination (or designation report) establishes that the building individually meets the National Register Criteria Exception for properties less than 50 years old.

(b) If non-historic surface material obscures a facade, it may be necessary for the owner to remove the surface material as part of the rehabilitation so that a determination of significance can be made. If the previously obscured facade has retained substantial historic integrity and the property otherwise contributes to the historic district, it will be determined to be a certified historic structure.

*History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;  
Temporary Adoption Eff. January 1, 2016.*

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0923

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a) by "in this Rule", do you mean "the following procedures" so as to encompass (a)(1) and (a)(2)? If so, please change the periods at the end of (a)(1) and (a)(2) to semi-colons and add an "and" at the end of (a)(1).*

*In (a)(1), is this referring to the same application that was found in 07 NCAC 04R .0920? Where can this application be found? Are the contents of this application set forth elsewhere in rule or statute?*

*In (a)(1), please change "must" to "shall."*

*In (a)(1), when will other documentation be required?*

*You may want to consider providing the information contained in (a)(1) in a list form for reading ease.*

*In (a)(2), is the "request for final certification" a form provided by DNCR? If so, where can this be found? Are the contents required set forth elsewhere in rule or statute?*

*In (b), how are the site and environment determined by the SHPO?*

*Please add a semi-colon at the end of (b)(2)(A) before the "and."*

*In (b)(2)(B), please define "inappropriate" in "inappropriate rehabilitation, construction, or demolition."*

*In (d), please delete or define "substantive."*

*In (f), please change "his/her" to "his or her."*

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015

In (f), is there a specific CFR that you can reference? Is this contained somewhere in 36 CFR 67?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources

2. Rule citation & name: 07 NCAC 04R .0923

3. Action: ☒ Adoption ☐ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☒ No Effective date:

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: October 26, 2015
- b. Proposed Temporary Rule published on the OAH website: November 2, 2015
- c. Public Hearing date: November 20, 2015
- d. Comment Period: November 2, 2015 through November 25, 2015
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015
- f. Adoption by agency on: December 11, 2015
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.  
Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a).  
Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program.

- ☐ A recent change in federal or state budgetary policy.

Effective date of change:

- ☐ A recent federal regulation.

Cite:

Effective date:

- ☐ A recent court order.

Cite order:

- ☐ State Medical Facilities Plan.

- ☐ Other:

**Explain:** Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:



07 NCAC 04R. 0923      Certifications of Rehabilitation is adopted under temporary procedures as follows:

**07 NCAC 04R .0923      CERTIFICATIONS OF REHABILITATION**

(a) Owners who want rehabilitation projects for certified historic structures to be certified by the SHPO as being consistent with the "Standards for Rehabilitation" shall comply with the procedures listed in this Rule.

(1) To initiate review of a rehabilitation project for certification purposes, an owner shall submit an application to the SHPO. In all cases, documentation, including photographs adequate to document the appearance of the structure(s), both on the exterior and on the interior, and its site and environment prior to rehabilitation must accompany the application. The social security or taxpayer identification number(s) of all owners must be provided in the application. Other documentation, such as cleaning specifications, surveys of window conditions, or documentation of deterioration, may be required by the SHPO to evaluate rehabilitation projects. Plans for any attached, adjacent, or related new construction must also accompany the application. Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to their projects.

(2) A project does not become a certified rehabilitation until it is completed by the owner and certified by the SHPO. The owner shall submit the request for final certification and provide the project completion date and a signed statement that the completed rehabilitation project meets the "Standards for Rehabilitation" and is consistent with project work previously approved. Also required in requesting certification of a completed rehabilitation project are costs attributed to the rehabilitation, photographs adequate to document the completed rehabilitation, and the social security or taxpayer identification number(s) of all owners.

(b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment as determined by the SHPO, as well as related demolition, new construction or rehabilitation work which may affect the historic qualities, integrity or landscape features, and environment of the certified historic structure(s). More specific considerations in this regard are as follows:

(1) In order to receive certification, all elements of the rehabilitation project must meet the "Standards for Rehabilitation." Portions of the rehabilitation project not in conformance with the "Standards for Rehabilitation" shall not be exempted and certification shall be denied. An owner undertaking a rehabilitation project shall not be held responsible for prior work not part of the current project and undertaken prior to January 1, 2016. An owner undertaking a rehabilitation project shall not be held responsible for work that was undertaken by previous owners or third parties, who have no business or immediate family relationship to the owner either at the time of the previous work or at the time the application is made.

- (2) If the SHPO has reason to believe that a project submitted for certification does not include the entire rehabilitation project subject to review hereunder, the SHPO may choose to withhold a decision on such a certification until such time as the proper scope of the rehabilitation project to be reviewed has been determined. Factors to be taken into account by the SHPO in this regard include, but are not limited to, the facts and circumstance of each application, and:
- (A) whether previous demolition, construction, or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and
- (B) whether property conveyances, reconfigurations, ostensible ownership transfers, or other transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the SHPO without substantially altering beneficial ownership or control of the property. The fact that a property may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction, or demolition work does not preclude the SHPO from determining that such inappropriate work is part of the rehabilitation project to be reviewed.
- (3) Conformance to the "Standards for Rehabilitation" shall be determined on the basis of the application documentation and other available information by evaluating the property as it existed prior to the commencement of the rehabilitation project.
- (4) For rehabilitation projects involving more than one certified historic structure where the structures are judged by the SHPO to have been functionally related historically to serve an overall purpose, such as a mill complex or a residence and carriage house, rehabilitation certification shall be issued on the merits of the overall project rather than for each structure or individual component. For rehabilitation projects where there is no historic functional relationship among the structures, the certification decision shall be made for each separate certified historic structure regardless of how they are grouped for ownership or development purposes.
- (5) Demolition of a building as part of a rehabilitation project involving multiple buildings may result in denial of certification of the rehabilitation. In projects where there is no historic functional relationship among the structures being rehabilitated, related new construction which physically expands one certified historic structure undergoing rehabilitation and, therefore, directly causes the demolition of an adjacent structure will generally result in denial of certification of the rehabilitation unless a determination has been made that the building to be demolished is not a certified historic structure. In rehabilitation projects where the structures have been determined to be functionally related historically, demolition of a component may be approved, in limited circumstances, when:
- (A) the component is outside the period of significance of the property;
- (B) the component is so deteriorated or altered that its integrity has been irretrievably lost; or

(C) the component is a secondary one that generally lacks historic, engineering, or architectural significance or does not occupy a major portion of the site and persuasive evidence is present to show that retention of the component is not technically or economically feasible.

(6) In situations involving the rehabilitation of a certified historic structure in a historic district, the SHPO shall review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and make a certification decision accordingly.

(7) In the event that an owner of a portion of a certified historic structure requests certification for a rehabilitation project related only to that portion of the structure, but there is or was a larger related rehabilitation project(s) occurring with respect to other portions of the certified historic structure, the SHPO's decision on the requested certification shall be based on review of the overall rehabilitation project(s) for the certified historic structure.

(c) Upon receipt of a complete application describing the rehabilitation project, the SHPO shall determine if the project is consistent with the "Standards for Rehabilitation." If the proposed project does not meet the "Standards for Rehabilitation," the owner shall be advised of that fact in writing and, where possible, shall be advised of necessary revisions, in the form of conditions that will bring the proposed rehabilitation project into compliance with the Standards.

(d) Once a proposed project has been approved, substantive changes in the work as described in the application must be brought promptly to the attention of the SHPO by written statement to ensure continued conformance to the Standards. The SHPO shall notify the owner in writing whether the revised project continues to meet the Standards. Oral approvals of revisions are not authorized or valid.

(e) Completed projects may be inspected by the HPO to determine if the work meets the "Standards for Rehabilitation."

(f) If a completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter from the SHPO or his/her duly authorized representative shall be sent to the owner. If a property was not rehabilitated in conformance with the "Standards for Rehabilitation" and the nonconforming work appears to have resulted in the loss of the qualities for which the property or the district in which it is located was listed in the National Register, the SHPO, as administrator of the National Register program in North Carolina, shall notify the National Register of Historic Places in accord with the Code of Federal Regulations.

History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;

Temporary Adoption Eff. January 1, 2016.

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0924

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a), do you mean improper by "inappropriate"? Also, is it intended that "non-conforming" be included as "improperly applied"? If so, please be consistent in your terms. If not, please define "improperly applied." You may also want to consider providing the information contained in this Paragraph (including the information beginning on line 16) in list form for reading ease.*

*In (a), line 12, have you or are you attempting to incorporate the Guidelines for Rehabilitating Historic Buildings by reference? Where can these be found?*

*Has the language contained in (b) to mirror the language contained in 36 CFR 67.7?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

**OAH USE ONLY**

**VOLUME:**

**ISSUE:**

1. Rule-Making Agency: Department of Natural and Cultural Resources	
2. Rule citation & name: 07 NCAC 04R .0924	
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:	
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R. 0924 Standards for Rehabilitation is adopted under temporary procedures as follows:

**07 NCAC 04R .0924 STANDARDS FOR REHABILITATION**

(a) The North Carolina Historical Commission interprets the "Standards for Rehabilitation" to require that the quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: damaging masonry repointing techniques; exterior cleaning methods such as sandblasting or damaging water pressure; or the introduction of sealers or "non-breathable" materials on masonry surfaces, insulation, storm windows, and epoxy where the application of such treatments or materials does not conform to NPS Guidelines for Rehabilitating Historic Buildings and NPS "Preservation Briefs." Nonconforming use of these materials and treatments may result in denial of certification. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure shall result in denial of certification.

Other typical denial issues in which the historic integrity of the structure is compromised include but are not limited to the following: removal of character defining historic exterior/interior materials and features such as doors, windows, woodwork, and significant landscape features; excessive site paving; installing undocumented or non-period features; excessive alteration of exterior/interior features or spaces; removal of plaster from interior masonry walls to expose underlying masonry surface; installation of inappropriate replacement doors and windows such as metal or vinyl clad windows in place of wood windows; replacement of non-deteriorated or repairable materials such as windows or millwork; painting unpainted masonry surfaces; installation of artificial siding.

(b) In limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the SHPO shall consider such extreme intervention as part of a certified rehabilitation if:

- (1) the necessity for dismantling is justified in supporting documentation;
- (2) significant architectural features and overall design are retained; and
- (3) adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure. The "Standards for Rehabilitation" require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, i.e., external walls that detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the "Standards for Rehabilitation."

*History Note: Authority G.S. 105-129.100; 105-129.101; 105-129.102;*

*Temporary Adoption Eff. January 1, 2016.*

TEMPORARY RULE - REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 07 NCAC 04R .0925

**DEADLINE FOR RECEIPT: Tuesday, December 15, 2015**

***NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*In (a) by "with the schedule below" do you mean "the schedule provided in Paragraph (e) of this Rule."?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber Cronk May  
Commission Counsel  
Date submitted to agency: December 14, 2015





# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

**OAH USE ONLY**

VOLUME:

ISSUE:

<b>1. Rule-Making Agency: Department of Natural and Cultural Resources</b>	
<b>2. Rule citation &amp; name: 07 NCAC 04R .0925</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal	
<b>4. Was this an Emergency Rule:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>Effective date:</b>	
<b>5. Provide dates for the following actions as applicable:</b> a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:	
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:	
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.	

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No

**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncdcr.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncdcr.gov

**10. Signature of Agency Head\*:**



\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncdcr.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R.0925 Fees for Processing Rehabilitation Certification Requests is adopted under temporary procedures as follows:

**07 NCAC 04R.0925 FEES FOR PROCESSING REHABILITATION CERTIFICATION REQUESTS**

(a) The North Carolina Department of Natural and Cultural Resources shall charge fees for reviewing income-producing and nonincome-producing rehabilitation certification requests in accordance with the schedule below.

(b) Payment shall be made payable to: North Carolina Department of Natural and Cultural Resources. A certification decision by the State Historic Preservation Office shall not be issued on an application until the appropriate remittance is received by the department. Fees are nonrefundable.

(c) No fee shall be charged for rehabilitations under twenty five thousand dollars (\$25,000).

(d) The fee for review of proposed rehabilitation projects over twenty five thousand dollars (\$25,000) is two hundred fifty dollars (\$250.00). The initial fee for review of a proposed rehabilitation project shall be deducted from the final review fee.

(e) The fees for review of completed rehabilitation projects are based on the dollar amount of the costs attributed solely to the rehabilitation of the certified historic structure as provided by the owner in the Historic Preservation Certification Application, Request for Certification of Completed Work, in accordance with the schedule below.

<u>Completed Qualifying Rehabilitation Expenditures</u>	<u>Fee</u>
<u>\$10,000 - \$24,999</u>	<u>\$0</u>
<u>\$25,000 - \$49,999</u>	<u>\$250</u>
<u>\$50,000 - \$99,999</u>	<u>\$500</u>
<u>\$100,000 - \$149,999</u>	<u>\$750</u>
<u>\$150,000 - \$199,999</u>	<u>\$1,000</u>
<u>\$200,000 - \$299,999</u>	<u>\$1,250</u>
<u>\$300,000 - \$399,999</u>	<u>\$1,750</u>
<u>\$400,000 - \$499,999</u>	<u>\$2,250</u>
<u>\$500,000 - \$999,999</u>	<u>\$2,750</u>
<u>\$1,000,000 - \$4,999,999</u>	<u>\$5,250</u>
<u>\$5,000,000 or more</u>	<u>\$7,750</u>

(f) In the following cases the fee for preliminary review is two hundred fifty dollars (\$250.00) and the fee for final review is computed on the basis of the total completed qualifying rehabilitation expenditures.

(1) In the case of a rehabilitation project which includes more than one certified historic structure where the structures are judged by the reviewing authority to have been functionally related historically to serve an overall purpose; or

(2) In the case of multiple building projects where:

- 1           (A)     there is no historic functional relationship among the structures and which are under the  
2           same ownership;  
3           (B)     are located in the same historic district;  
4           (C)     are adjacent or contiguous;  
5           (D)     are of the same architectural type (e.g., rowhouses, loft buildings, commercial buildings);  
6           and  
7           (E)     are submitted by the owner for review at the same time.  
8

9    *History Note:     Authority G.S. 105-129.100; 105-129.101; 105-129.102;*

10   *Temporary Adoption Eff. January 1, 2016.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

ORIGINAL 12/11/15

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: Department of Natural and Cultural Resources
2. Rule citation & name: 07 NCAC 04R .0926
3. Action: <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
4. Was this an Emergency Rule: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Effective date:
5. Provide dates for the following actions as applicable: a. Proposed Temporary Rule submitted to OAH: October 26, 2015 b. Proposed Temporary Rule published on the OAH website: November 2, 2015 c. Public Hearing date: November 20, 2015 d. Comment Period: November 2, 2015 through November 25, 2015 e. Notice pursuant to G.S. 150B-21.1(a3)(2): October 27, 2015 f. Adoption by agency on: December 11, 2015 g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]: January 1, 2016 h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:
6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review. <input type="checkbox"/> A serious and unforeseen threat to the public health, safety or welfare. <input checked="" type="checkbox"/> The effective date of a recent act of the General Assembly or of the U.S. Congress. Cite: Current Operations and Capital Improvements Appropriations Act of 2015 (SL 2015-241), Section 32.3.(a). Effective date: September 18, 2015 for SL 2015-241; January 1, 2016 for new Article 3L historic tax credit program. <input type="checkbox"/> A recent change in federal or state budgetary policy. Effective date of change: <input type="checkbox"/> A recent federal regulation. Cite: Effective date: <input type="checkbox"/> A recent court order. Cite order: <input type="checkbox"/> State Medical Facilities Plan. <input type="checkbox"/> Other:
<b>Explain:</b> Following sunset (not repeal) of the state historic tax credit set forth in Articles 3D and 3H of Chapter 105, a new state historic tax credit was created in Article 3L with an effective date of January 1, 2016, necessitating adoption of new rules prior to said effective date for this new program. The new Article 3L program requires federal approval for income-producing historic rehabilitation projects in order for a taxpayer to be allowed a state credit, and continues with the same "piggybacking" relationship between the federal and state credits as set out in the Articles 3D and 3H programs. The State Historic Preservation Office has a role under federal law in cooperation with the National Park Service for federal historic tax credit review; the National Park Service has final approvals for the federal program with the State Office making recommendations and first level reviews. Please note that the Articles 3D and 3H programs were not repealed, and we anticipate continued review of legacy projects for rehabilitation expenses incurred prior to January 1, 2015. Certain projects eligible for the Article 3H program have a special grandfathering provision for rehabilitation expenses incurred through January 1, 2023. The proposed change to 07 NCAC 04R .0909 clarifies the separate nature of the rules for the Articles 3D and 3H programs, and adoption of new rules (07 NCAC 04R .0919 through .0926) for the Article 3L program.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

With a program effective date of January 1, 2016, sufficient time was not granted between the effective date of SL 2015-241 and the start of the new program to accommodate permanent rule making before January 1. We want to have rules in place by the program effective date, and will pursue adoption of permanent rules immediately afterwards.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**☒ Yes

Agency submitted request for consultation on:

Consultation not required. Cite authority: G.S. 105-129.102.

☐ No**9. Rule-making Coordinator: Joshua Davis**

Phone: 919 807 7277

E-Mail: joshua.davis@ncder.gov

Agency contact, if any: Ramona Bartos, Deputy State  
Historic Preservation Officer

Phone: 919.807.6583

E-Mail: ramona.bartos@ncder.gov

**10. Signature of Agency Head\*:**


\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.

Typed Name: Kevin Cherry

Title: Deputy Secretary, Department of Natural and  
Cultural Resources

E-Mail: kevin.cherry@ncder.gov

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

07 NCAC 04R. 0926 Coordination with the Federal Income-Producing Historic Preservation Rehabilitation Program is adopted under temporary procedures as follows:

**07 NCAC 04R .0926 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC PRESERVATION REHABILITATION PROGRAM**

(a) A taxpayer is not required to apply for or pay the state fee for reviewing an income-producing rehabilitation certification request if the taxpayer is not going to utilize the state tax incentive.

(b) National Park Service certification of a property as historically significant shall be deemed to be certification of a property as historically significant by the State Historic Preservation Officer.

(c) The State Historic Preservation Officer shall certify and forward income-producing rehabilitation projects to the National Park Service for review, and National Park Service review shall constitute final certification. The National Park Service certification shall not be deemed to be project certification by the State Historic Preservation Officer.

(d) Taxpayers are cautioned that deadlines and requirements for state certifications may differ from deadlines and requirements for federal certifications.

*History Note: Authority G.S. 105-129.100; 105-129.102;*

*Temporary Adoption Eff. January 1, 2016.*