

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

***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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*In all forms, please correct the Rule-Making Agency.*

*Pursuant to 150B-21.1(d), temporary rules shall expire “270 days from the date the temporary rule was published in the North Carolina Register, unless the permanent rule adopted to replace the temporary rule has been submitted to the Commission.” 150B-2(1d) defines “Commission” as “the Rules Review Commission.” The publication of these temporary Rules in the Register occurred on January 15, 2016. 270 days from January 15, 2016 was October 11, 2016. The permanent rules were submitted to the Commission on October 17, 2016. As such, the temporary versions of these Rules have expired. Please add “Temporary adoption [or amendment for .0909] expired Eff. October 11, 2016” to the History Note of all Rules.*

*Please be consistent in your use of “owner” and “applicant” given the definition in 36 CFR 67.2, they have different meanings. I believe that applicant would be correct – at least regarding the certifications.*

*Please remember to write rules as if the title of the rule was not present. Because titles can be changed without going through rule-making, rules are read without the title. Please make sure that the body of the rule makes it clear what the rule is regarding.*

*What exactly is the process for these rules? Are applicants to provide the application to the SHPO who will then make a recommendation for the Secretary of the Interior who will ultimately make the decision, then if the Secretary certifies the property, then the applicant will be eligible for the tax credit? With the intermingling of the state and federal processes, this is confusing and needs to be set forth clearly in Rule. This may impact the necessity of some of these Rules. If this is the process then many of these Rules seem unnecessary.*

Amber Cronk May  
Commission Counsel

Date submitted to agency: Tuesday, November 1, 2016

*If there are 2 separate processes, then these rules appear to be conflating the requirements. I understand that perhaps there was a concern regarding the duplication of the CFR (and the necessity standard of the RRC pursuant to 150B-21.9), but if there are 2 different processes, then it needs to be spelled out in rule.*

*When writing rules, please use concise sentences for purposes of clarity.*

*There is too much “incorporation by reference” language in these Rules to clearly articulate the requirements of your regulated public. Please provide some additional information regarding the requirements of your regulated public within your rules.*

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: Tuesday, November 1, 2016







## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0918

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*In (a), why is "Article 3L of G.S. 105 authorizes... certified historic structures" necessary? It appears to be simply summarizing the Statutes.*

*In (a), please make it clear that these are for projects after January 1, 2015.*

*In (a), what is meant by "These procedures shall be applicable to future and pending Article 3L certification requests except as otherwise provided herein"? This does not seem to be adding anything to the requirements already in place and seems unnecessary.*

*The first sentence of (b) appears to be a summary of G.S. 105-129.105(a). Why is this necessary?*

*Lines 11-12 ("Federal approval of said rehabilitation... state tax credit") also appear to summarize G.S. 105-129.105(a). Why is this necessary?*

*Is the intent of the remainder to incorporate the pertinent CFRs (it seems to me that all of 36 CFR 67 is pertinent) by reference? If so, please do so in accordance with 150B-21.6 and include information on where the materials may be obtained, the cost, and whether you are including subsequent amendments and additions. Please be sure to indicate the specific CFRs that you are intending to incorporate (seems to me like all of 36 CFR 67). Please note that you may provide the website address to the CFR and indicate that it can be found there for free, but you also must have it available for inspection.*

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: Tuesday, November 1, 2016

1 07 NCAC 04R. 0918 is adopted as published in 31:03 NCR 136 as follows:

2

3 **07 NCAC 04R .0918 PURPOSE**

4 (a) Article 3L of G.S. 105 authorizes a state historic rehabilitation tax credit program for rehabilitation of both income-  
5 producing and non-income-producing certified historic structures. The purpose of Rules .0918 - .0924 set forth the  
6 procedures for obtaining certifications for the state historic rehabilitation tax credits provided by Article 3L of G.S.  
7 105. These procedures shall be applicable to future and pending Article 3L certification requests except as otherwise  
8 provided herein.

9 (b) Pursuant to G.S. 105-129.105(a), a taxpayer who is allowed a federal income tax credit under section 47 of the  
10 Internal Revenue Code for making qualified rehabilitation expenditures for an income-producing certified historic  
11 structure located in this State is allowed a state tax credit as set forth in Article 3L of G.S. 0105. Federal approval of  
12 said rehabilitation is required to receive the Article 3L state tax credit, and Code of Federal Regulations' definitions  
13 and procedures are hereby incorporated by reference for state certifications related to income-producing certified  
14 historic structures with substitutions for corresponding state officials and entities in lieu of federal counterparts.

15

16 *History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;*

17 *Temporary Adoption Eff. January 1, 2016;*

18 *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0919

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Please consider adding definitions for income-producing rehabilitation projects, non income-producing rehabilitation projects, and historically significant.*

*In (a) (2), why are you including a reference to G.S. 105-129.105(c)(1) when all that does is refer back to the US Code. Please delete.*

*In (a)(3)(A), please provide a cross-reference as to what is meant by “and is further certified by the SHPO...”*

*In (a)(8), please change lines 16-18 as follows: “Authorized Representative of the Secretary” ~~exclusively means, in the context of the state historic tax credit program,~~ means a representative of the State Historic Preservation Officer and/or HPO staff members.” Also, this seems like it could be redundant. Are there circumstances in which a representative of the SHPO would not be HPO staff? Also change and/or to “and” or “or.” Whichever is applicable.*

*In (a)(9), (a)(12), and (a)(15)), are you incorporating this by reference? If so, please do so in accordance with 150b-21.6. How can this publication be found? Is it available online?*

*In (a)(18), please change “his/her” to “his or her”*

*In (a)(23), please delete “but is not limited . Please also delete “However,” On line 13, please change “do not” to “shall not”*

Amber Cronk May  
Commission Counsel  
Date submitted to agency: Tuesday, November 1, 2016



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: Tuesday, November 1, 2016

07 NCAC 04R. 0919 is adopted as published in 31:03 NCR 136-137 as follows:

**07 NCAC 04R .0919 DEFINITIONS**

(a) For purposes of Rules .0918 through .0925 of this Section:

- (1) "Certified historic district" is defined in 36 C.F.R. 67.2 and 26 USCS § 47.
- (2) "Certified historic structure" is defined in 36 C.F.R. 67.2 and Section 47 of United States Code, and is synonymous with "certified historic structure" as defined in G.S. 105-129.105(c)(1).
- (3) "Certified rehabilitation" is defined in:
  - (A) 36 C.F.R. 67.2, and as further certified by the State Historic Preservation Officer to the North Carolina Department of Revenue for income-producing structures; and
  - (B) G.S. 105-129.106(c)(1) for non-income-producing structures.
- (4) "C.F.R." means the Code of Federal Regulations.
- (5) "Department of the Interior" means the United States Department of the Interior.
- (6) "Discrete property parcel" is defined in G.S. 105-129.106(c)(2).
- (7) "Historic district" is defined in 36 C.F.R. 67.2.
- (8) "Inspection" is defined in 36 C.F.R. 67.2. "Representative of the Secretary" exclusively means, in the context of the state historic tax credit program, a representative of the State Historic Preservation Officer and/or HPO staff members.
- (9) "Integrity" means "historic integrity" as defined in NPS publication How to Apply the National Register Criteria for Evaluation: Bulletin 15.
- (10) "National Park Service" (NPS) means the division within the United States Department of the Interior responsible for administering national parks and historic preservation programs.
- (11) "National Register Historic District" means any historic district listed in the National Register of Historic Places.
- (12) "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, 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.
- (13) "National Register of Historic Places" is defined in 36 C.F.R. 67.2.
- (14) "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.
- (15) "Period of significance" is defined in NPS publication How to Complete the National Register Registration Form: Bulletin 16A.
- (16) "Property" is defined in 36 C.F.R. 67.2.
- (17) "Rehabilitation" is defined in 36 C.F.R. 67.2.

1           (18) "Secretary of the Interior" means the Secretary of the United States Department of the Interior or  
2           the designee authorized to carry out his/her responsibilities.

3           (19) "Standards for Rehabilitation" means the Secretary of the Interior's "Standards for Rehabilitation"  
4           as cited in the Code of Federal Regulations, 36 C.F.R. 67.

5           (20) "State Historic Preservation Office (HPO)" means the section within the North Carolina Office of  
6           Archives, History, and Parks responsible for administering historic preservation programs.

7           (21) "State Historic Preservation Officer (SHPO)" is defined in G.S. 105-129.105(c)(7) for income-  
8           producing rehabilitation projects, and G.S. 105-129.106(c)(6) for non-income-producing  
9           rehabilitation projects.

10          (22) "State-certified historic structure" is defined in G.S. 105-129.106(c)(5).

11          (23) "Structure" means "building" as defined by 36 C.F.R. 60.3(a), and includes but is not limited to  
12          houses, barns, churches, hotels, warehouses, mills. However, objects and sites as defined in 36  
13          C.F.R. 60.3(j) and (l) do not qualify as structures.

14          (b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of  
15          Federal Regulations shall apply unless specifically stated otherwise in a particular rule.

16  
17          *History Note:     Authority G.S. 105-129.105; 105-129.106; 105-129.107; 121-4(13); 121-8;*  
18                            *Temporary Adoption Eff. January 1, 2016;*  
19                            *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0920

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Overall, please simplify this Rule – I have included some suggestions. Please note that if you use the suggestions, you may eliminate the need to address some of the other requests contained within this document.*

*Please consider deleting the lead in clauses (e.g. Who may apply, how to apply, submissions).*

*In (a), say something that provides some additional information or clarity as you've already seemingly incorporated 36 CFR 67.3 by reference in .0918. You may also want to combine (a) and (b). A suggestion would be: "~~Who may apply. 36 CFR 67.3(a)(1), (4), and (5) are incorporated by reference to establish who may apply for state historic tax credit under Article 3L of G.S. 105. A property owner or any other person with the property owner's knowledge and consent, may request certification of historic significance and rehabilitation in accordance with Rules .0921 and .0923 of this Section. This request shall be made on the Historic Preservation Certification Application, which is available upon request from the HPO or may be found online at www....~~" Please verify that this is the correct name of this Form – I did a quick search on your website and it appears as though it may be called something different. Please also provide the website of where this can be found (if it is available online). If you use something like this suggestion, please then delete (b).*

*Are the contents of the application set forth elsewhere in rule or statute? If not, please provide the substantive requirements of the Form. A suggestion would be to include the contents in the form in one Paragraph and then set forth any additional requirements (including photographs, plans, and the written statement from an owner indicating that he or she is aware of the request if he or she is not the one making the request) in*

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Commission Counsel

Date submitted to agency: Tuesday, November 1, 2016

another. I would suggest making these requirements (b) and (c) and moving your current (c) down to (d).

In (a), lines 5-7, how would an applicant obtain a determination? Is there a specific form for the request? Does it need to be in writing? What information is required to be provided? Under what circumstances would an applicant obtain a preliminary and non-binding determination of a property's historic significance? Is this a requirement? Just so I understand - when in the process would this occur? Before an actual application? Depending on what you do with the suggestion above, it may be necessary to move this part of (a) elsewhere in this Rule.

In (b), do you actually certify "**proposed** rehabilitations"? I only see references to certification regarding rehabilitations.

In (c) please consider simplifying this Paragraph and just say: Applications shall be sent to the Tax Credit Coordinator, State Historic Preservation Office, 4617 Mail Service Center, Raleigh, NC 27699-4617.

In (d), I don't see that Rules .0921 nor .0923 provide any definition regarding "documentation" This seems to be an inaccurate statement. Please consider a rewrite as follows: (d) ~~Incomplete application. Where documentation as defined in Rules .0921 and .0923 of this Section is not provided, the owner~~ If the application is incomplete in accordance with this Rule, the applicant will be notified in writing of the information necessary to complete the review. The application shall be placed on hold pending the receipt of complete information. If the requested information is not received within 30 days from the date of the request to the applicant, to the owner, the application shall be returned to the owner due to insufficient documentation.

I took out references to the "owner" as 36 CFR 67.3(a)(1) allows others to apply. Please note that this rewrite only works if you provide the contents of the form and any other requirements in this Rule. If you don't include them here, then cross-reference the appropriate rule. For example, if the applications for certification of historical significance and rehabilitation are different, it might be more appropriate to include the application contents there. They don't have to be in this Rule, but they do have to be somewhere.

In (e), what is meant by "any amendments"?

In (e), should "owner" be "applicant" in light of 36 CFR 67.3(a)(1)?

In (e), please delete "only" on line 20

In (e), who is "his or her duly authorized representative"

In (e), are there other decisions that this Rule is governing? Please consider changing this as follows: .Certification decisions ~~Decisions with respect to certifications shall be made on the basis of the descriptions contained in the application, including additional~~

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Commission Counsel  
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*requirements as set forth by this Rule, and the applicable state and federal laws. ~~additional documentation as required by this Rule and other documentation as defined in Rule .0923(a)(1) of this Section.~~*

*In (e), line 22, is the reference to .0923(a)(1) correct? This Paragraph appears to apply for certifications of historical significance and to certifications of rehabilitation; however, .0923(a)(1) refers to 36 CFR 67.6, which only addresses certifications of rehabilitation.*

*In (e), line 24, please change “shall be requested to resolve” to “shall resolve”*

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: Tuesday, November 1, 2016

1 07 NCAC 04R. 0920 is adopted as published in 31:03 NCR 137 as follows:

2

3 **07 NCAC 04R .0920 APPLICATIONS**

4 (a) Who may apply. 36 CFR 67.3(a)(1), (4), and (5) are incorporated by reference to establish who may apply for  
5 state historic tax credit under Article 3L of G.S. 105. An applicant may obtain a preliminary and non-binding  
6 determination of a property's historic significance within a National Register or certified historic district prior to  
7 undertaking a rehabilitation project by submitting a written request to the HPO.

8 (b) How to apply. Applications for certifications of proposed rehabilitation, historic significance, and completed  
9 rehabilitation as set forth by Rules .0921 and .0923 of this Section shall be submitted on the State's Historic  
10 Preservation Certification Application, available upon request from the HPO. Two copies of the application and  
11 supporting documentation, including photographs and plans are required.

12 (c) Submissions. Requests for certifications and approvals of proposed rehabilitation projects shall be mailed to the  
13 HPO at the following address: Attention: Tax Credit Coordinator, State Historic Preservation Office, 4617 Mail  
14 Service Center, Raleigh, NC 27699-4617.

15 (d) Incomplete application. Where documentation as defined in Rules .0921 and .0923 of this Section is not provided,  
16 the owner will be notified in writing of the information necessary to complete the review. The application shall be  
17 placed on hold pending the receipt of complete information. If complete information is not received within 30 days  
18 from the date of the request to the owner, the application shall be returned to the owner due to insufficient  
19 documentation.

20 (e) Approvals. Approval of applications and any amendments shall be conveyed to the owner only in writing by the  
21 SHPO or his or her duly authorized representative. Decisions with respect to certifications shall be made on the basis  
22 of the descriptions contained in the application and other documentation as defined in Rule .0923(a)(1) of this Section.  
23 In the event of any discrepancy between the application and other supplementary material submitted with it (such as  
24 architectural plans, drawings, specifications, etc.), the applicant shall be requested to resolve the discrepancy in  
25 writing. In the event the discrepancy is not resolved, the description in the application shall take precedence.

26 (f) 36 CFR 67.3(b)(7) is incorporated by reference for State income-producing historic tax credit projects. Reviews  
27 of State historic tax credit projects will not be undertaken if the owner has objected to the listing of the property in the  
28 National Register of Historic Places.

29

30 *History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;*

31 *Temporary Adoption Eff. January 1, 2016;*

32 *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0921

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

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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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Please consider deleting the lead in clauses.*

*What is the intent of this Rule? What is it actually doing? I assume that this Rule is to be used by applicants who wish to obtain certifications of historical significance for purposes of the state tax credit, but it is unclear what requirements are actually being imposed on the applicant by this Rule. For example, if they need to apply for this certification to obtain the state tax credit, then say that. Say under what circumstances they should apply and what is to be contained in the application. You seem to already have the how covered in .0920. Some of this information was included in the temporary rule, but has been taken out. In this case, the cross-references to the CFRs are unclear. You have seemingly already incorporated the pertinent CFRs by reference so they don't seem to add any value here. It may fine to say something like "In accordance with 36 CFR 67.xx,..." or "as set forth in 36 CFR 67.xx" but then an actual requirement needs to also be spelled out.*

*In (a), just for my understanding, why would someone contact you to determine whether or not a property is listed? Is contacting you the only way to do this? Is it available online? If so, please provide the website where this information is available.*

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

*In (f), how will the significance be determined by the SHPO? What factors will be used?*

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: Tuesday, November 1, 2016



1 07 NCAC 04R. 0921 is proposed for adoption as follows:

2

3 **07 NCAC 04R .0921 CERTIFICATIONS OF HISTORIC SIGNIFICANCE**

4 (a) Applicant request for certification of historic significance. 36 C.F.R. 67.4(a) is incorporated by reference for an  
5 applicant's request to the SHPO for certifications of historic significance. The owner may contact the HPO to  
6 determine whether or not a property is already individually listed in the National Register of Historic Places or located  
7 within a National Register or certified historic district.

8 (b) Determination of historic significance. 36 C.F.R. 67.4(c) is incorporated by reference for determinations of historic  
9 significance in the case of a property located within the boundaries of a historic district and the owner wishes to  
10 determine if the property is a certified historic structure or a preliminary determination of significance under Rule  
11 .0920(a) of this Section.

12 (c) Historically functionally related structures. 36 C.F.R. 67.4(d)(2) and (e) are incorporated by reference for  
13 historically functionally related structures, and references in these cited C.F.R. sections to the "Secretary" shall mean  
14 "SHPO".

15 (d) Moved structures. If a structure is to be moved as part of a rehabilitation for which certification is sought, the  
16 owner must follow the procedures outlined in 36 C.F.R. 60 and 36 C.F.R. 67.4(h), or risk denial of a certification of  
17 historic significance.

18 (e) Contributing properties. Properties within historic districts shall be evaluated to determine if they contribute to  
19 the historic significance of the district by application of the standards set forth in Rule .0922 of this Section.

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

22

23 *History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;*

24 *Temporary Adoption Eff. January 1, 2016;*

25 *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

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RULE CITATION: 07 NCAC 04R .0922

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*What is the intent of this Rule? What is it actually doing? I assume that this Rule is to be used to set the standards that the SHPO will use to determine certification, but it is unclear what those standards actually are. If that's correct, say what the standards will be. In this case, the cross-references to the CFRs are unclear. You have seemingly already incorporated the pertinent CFRs by reference so they don't seem to add any value here. It may be fine to say something like "In accordance with 36 CFR 67.xx,..." or "as set forth in 36 CFR 67.xx" but then an actual requirement needs to also be spelled out.*

*In (b), what is meant by "non-historic surface material"? I assume this is any material that was added because of renovations, repairs, etc? Please define this.*

*In (b), the reference to 36 CFR 67.5(e) does not appear to provide the factors.*

*In (b), where can the NPS publication be found? Are you intending to incorporate this by reference?*

*In (c), to what is "certification report" referring? This is the first mention of this throughout the rules and it is unclear what this report is.*

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: Tuesday, November 1, 2016

1 07 NCAC 04R. 0922 is adopted as published in 31:03 NCR 137 as follows:

2

3 **07 NCAC 04R .0922 STANDARDS FOR EVALUATING SIGNIFICANCE WITHIN NATIONAL**  
4 **REGISTER OR CERTIFIED HISTORIC DISTRICTS**

5 (a) 36 C.F.R. 67.5(a) is incorporated by reference to evaluate significance within National Register or certified historic  
6 districts, and references in these cited C.F.R. sections to the "Secretary" shall mean "SHPO". Structures that contribute  
7 to the historic significance of a district are certified historic structures.

8 (b) If non-historic surface material obscures a facade, the owner shall remove the surface material as part of the  
9 rehabilitation so that a determination of significance in accord with 36 C.F.R. 67.5(e), can be made. If the previously  
10 obscured facade has retained historic integrity and the property contributes to the historic district in accord with the  
11 NPS publication How to Apply the National Register Criteria for Evaluation: Bullet 15, it will be deemed a certified  
12 historic structure.

13 (c) If a property is located in a National Register or certified historic district but outside the district's period of  
14 significance, the National Register nomination or certification report for the district must be amended in accord with  
15 National Register amended procedures set forth in NPS publication How to Complete the National Register  
16 Registration Form: Bullet 16A to expand the period of significance before a request for final certification is submitted  
17 to the SHPO.

18

19 *History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;*  
20 *Temporary Adoption Eff. January 1, 2016;*  
21 *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0923

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In reviewing these rules, the staff determined that the following technical changes need to be made. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*(a)(1) and (2) do not appear to be procedures; therefore, please consider rewriting (a) to read as follows:*

*(a) Applicants seeking certifications of rehabilitation shall submit an application to the SHPO. Applications are available upon request from the HPO and shall include the following: Owners seeking to have their State rehabilitation project certified as meeting the Standards for Rehabilitation shall comply with the procedures below.*

*(1) ~~To initiate review of a rehabilitation project for certification purposes, an owner shall submit an application to the SHPO. Applications are available upon request from the HPO. Information and documentation as set forth in 36 C.F.R. 67.6(a)(1) shall accompany the application. Substituting a State form for the federal Part 2 of the Historic Preservation Certification Application, 36 C.F.R. 67.6(a)(1) is otherwise incorporated by reference and applies.~~*

*After, "shall include the following", indicate what is to be in the State form. Please also indicate what is required to accompany the form in a list format.*

*In (a)(1) and (a)(2), what does "Substituting a State form for the federal Part 2 of the Historic Preservation Certification Application, 36 C.F.R. 67.6(a)(1)[and(2)] is otherwise incorporated by reference and applies" mean? Rather than providing a cross-reference here, just say what is required for your purposes.*

*In (a)(2), please change "does not" to "shall not". Also, how will the decision as to whether certification will be granted be made? Please provide some factors.*

Amber Cronk May  
Commission Counsel  
Date submitted to agency: Tuesday, November 1, 2016

*In (b), please change “encompasses” to “shall encompass.” Also, how will the SHPO make this determination? Will the decision be made based on the demolition, new construction, etc. as set forth in lines 16-18? If so, say that. Also, please change More specific considerations in this regard are set forth in 36 C.F.R. 67.2 and 36 C.F.R. 67.6(b)(1) through (7), and incorporated by reference, and references in these cited C.F.R. sections to the “Secretary” shall mean “SHPO”, and to “Internal Revenue Service” shall mean “Department of Revenue” to what will actually be considered.*

*In (b), what is meant by “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”? What shall he or she not be held responsible for?*

*In (c), I assume these standards are those that are set forth in 07 NCAC 04 R .0924? If so, please provide a cross-reference.*

*In (c), what is the form of conditions?*

*In (d), please change “must” to “shall.”*

*In (d), please consider deleting “oral approvals of revisions are not authorized or valid.” This seems to be an internal management issue and also potentially a legal conclusion.*

*In (f), please change “his/her” to “his or her”. Also, who is considered to be a “duly authorized representative”? What does that mean?*

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

1 07 NCAC 04R. 0923 is adopted as published in 31:03 NCR 137-138 as follows:

2  
3 **07 NCAC 04R .0923 CERTIFICATIONS OF REHABILITATION**

4 (a) Owners seeking to have their State rehabilitation project certified as meeting the Standards for Rehabilitation shall  
5 comply with the procedures below.

6 (1) To initiate review of a rehabilitation project for certification purposes, an owner shall submit an  
7 application to the SHPO. Applications are available upon request from the HPO. Information and  
8 documentation as set forth in 36 C.F.R. 67.6(a)(1) shall accompany the application. Substituting a  
9 State form for the federal Part 2 of the Historic Preservation Certification Application, 36 C.F.R.  
10 67.6(a)(1) is otherwise incorporated by reference and applies.

11 (2) A project does not become a certified rehabilitation until it is completed by the owner and certified  
12 by the SHPO. Substituting State forms for the NPS Part 2 of the Historic Preservation Certification  
13 Application and NPS Request for Certification of Completed Work, 36 C.F.R. 67.6(a)(2) is  
14 otherwise incorporated by reference and applies.

15 (b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified  
16 historic structure(s) and its site and environment as determined by the SHPO, as well as related demolition, new  
17 construction or rehabilitation work that affects the historic qualities, integrity or landscape features, and environment  
18 of the certified historic structure(s). More specific considerations in this regard are set forth in 36 C.F.R. 67.2 and 36  
19 C.F.R. 67.6(b)(1) through (7), and incorporated by reference, and references in these cited C.F.R. sections to the  
20 "Secretary" shall mean "SHPO", and to "Internal Revenue Service" shall mean "Department of Revenue". An owner  
21 undertaking a rehabilitation project shall not be held responsible for prior work not part of the current project and  
22 undertaken prior to January 1, 2016.

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

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

32 (e) To facilitate project review, the SHPO, by and through HPO staff, reserves the right to conduct on-site inspections  
33 of completed or pending projects to confirm matters represented in applications, to review any alterations, and to  
34 determine if the work meets the "Standards for Rehabilitation."

35 (f) If a completed rehabilitation project does not meet the "Standards for Rehabilitation," an explanatory letter from  
36 the SHPO or his/her duly authorized representative shall be sent to the owner.

- 1 *History Note:* Authority G.S. 105-129.105; 105-129.106; 105-129.107;
- 2 *Temporary Adoption Eff. January 1, 2016;*
- 3 *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0924

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

***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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*On line 10, please change “do not” to “shall not.”*

*In (a)(1), what is meant by “character defining”? I assume this is referring to things like the age of the property, etc. Please indicate what is meant.*

*In (a)(2), please define “excessive” in “excessive site paving” and “excessive alteration” Please also change “exterior/interior to “exterior or interior”*

*In (a)(4), please change “contraindicated” to “as set forth” Please also indicate where the Briefs can be found.*

*In (a)(5), please delete or define “inappropriate”*

*In (b), please change “does not” to “shall not”*

*In (b), what does “The Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property, and where, applicable, the district in which it is located” mean? Please change “take precedence” to “shall take precedence.” Please note that depending upon what you mean, there may be an authority issue with this statement. I’m not sure that you all have the authority to make a legal conclusion in this regard.*

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: Tuesday, November 1, 2016



1 07 NCAC 04R. 0924 is proposed for adoption as follows:

2

3 **07 NCAC 04R .0924 STANDARDS FOR REHABILITATION**

4 (a) 36 C.F.R. 67.7(a) - (d), (f) are incorporated by reference and set forth the Standards for Rehabilitation and criteria  
5 used to determine if a rehabilitation project qualifies as a certified rehabilitation; references in these cited C.F.R.  
6 sections to the "Secretary" shall mean "SHPO". For further information on treatments that comply with the Standards,  
7 applicants are encouraged to consult NPS Guidelines for Rehabilitating Historic Building and NPS Preservation Briefs  
8 can be found at the following website: <https://www.nps.gov/tps/standards/rehabilitation/rehab/> and  
9 <https://www.nps.gov/tps/how-to-preserve/briefs.htm>. In addition to those treatments outlined in 36 C.F.R. 67.7, other  
10 treatments that do not comply with the Standards for Rehabilitation include the following:

11 (1) removal of character-defining historic exterior or interior materials and features, such as doors,  
12 windows, woodwork, and significant landscape features;

13 (2) excessive site paving; installing undocumented or non-period features; excessive alteration of  
14 exterior/interior features or spaces; removal of plaster from interior masonry walls to expose  
15 underlying masonry surface;

16 (3) using sandblasting or damaging water pressure as an exterior cleaning method;

17 (4) introduction of sealers or non-breathable materials on masonry surface, insulation, storm windows,  
18 and epoxy as contraindicated by NPS Guidelines for Rehabilitating Historic Buildings and NPS  
19 Preservation Briefs;

20 (5) installation of inappropriate replacement doors and windows such as metal or vinyl clad windows  
21 in place of wood windows; or

22 (6) replacement of non-deteriorated or repairable materials such as windows or millwork; painting  
23 unpainted masonry surfaces; and installation of artificial siding.

24 (b) Prior approval of a project by local agencies and organizations does not ensure certification by the SHPO for State  
25 tax credit purposes. The Standards for Rehabilitation take precedence over other regulations and codes in determining  
26 whether the rehabilitation project is consistent with the historic character of the property, and where, applicable, the  
27 district in which it is located.

28

29 *History Note: Authority G.S. 105-129.105; 105-129.106; 105-129.107;*

30 *Temporary Adoption Eff. January 1, 2016;*

31 *Eff. December 1, 2016.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Historical Commission

RULE CITATION: 07 NCAC 04R .0925

**DEADLINE FOR RECEIPT: Thursday, November 10, 2016**

***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. Approval of any rule is contingent upon making technical changes as set forth in G.S. 150B-21.10.

*Is this rule only for rehabilitation certifications? Are there no fees for certifications of historical significance?*

*In (a), please set forth the requirement of your regulated public, rather than the requirement of DNCR. As such, please change "The North Carolina Department of Natural and Cultural Resources shall charge a fee..." to "Upon submission of the application for certification pursuant to the Rules of this Section, the applicant shall pay a fee as set forth in Paragraph (e) of this Rule."*

*Why is (c) necessary? Paragraph (e) seems to set forth the fees clearly.*

*Please delete the lead in clauses in (d) and (e).*

*What is the difference in (d) and (e)? Is (d) really an application fee as allowed by G.S. 105-129.107 and (e) is the fee for review after completion of the project? If that's the case, say that. Also, please be sure to track statute language for these fees (such as the use of application fee).*

*In (e), please delete or define "solely"*

*In (e), do you mean owner or applicant?*

*In (e) are the certification application and the request for certification of completed work 2 different forms? If so, please make that more clear and also make sure that the contents of these are set forth elsewhere.*

Amber Cronk May  
Commission Counsel  
Date submitted to agency: Tuesday, November 1, 2016

*What is meant by lines 19-21? What is meant by “discrete property parcel”? Also, please verify the cross-referenced statute. G.S. 105-129.101 appears to be reserved for future codification.*

*How are the fees in (f) different than those set forth in the schedule? Is this a way of including the certifications of historic significance? The fees do not appear to be different. If that is the case, please just include both kinds of certifications throughout the rule and change the title.*

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: Tuesday, November 1, 2016

07 NCAC 04R. 0925 is adopted as published in 31:03 NRC 138-139 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 non-income-producing rehabilitation certification requests in accordance with the schedule in Paragraph (e) of this Rule.

(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) Initial fee for proposed rehabilitation project. The fee to initiate review of a proposed rehabilitation project 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 credited towards and deducted from the final review fee.

(e) Final review fee. 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 following schedule.

<b>Completed Qualifying Rehabilitation Expenditures</b>	<b>Fee</b>
\$5,000 - \$25,000	\$0
\$25,001 - \$50,000	\$250
\$50,001 - \$75,000	\$500
\$75,001 - \$100,000	\$750
\$100,001 - \$150,000	\$1,000
\$150,001 - \$200,000	\$1,500
\$200,001 - \$300,000	\$1,750
\$300,001 - \$400,000	\$2,000
\$400,001 - \$500,000	\$2,250
\$500,001 - \$1,000,000	\$2,750
\$1,000,001 - \$5,000,000	\$5,750
\$5,000,001 or more	\$8,750

Fees for review of non-income-producing projects shall not exceed one thousand dollars (\$1,000) per discrete property parcel every five years, as qualifying rehabilitation expenditures for purposes of a tax credit are limited to one hundred fifty thousand dollars (\$150,000) per G.S. 105-129.101(b).

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

- (1) In the case of a rehabilitation project that 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 per Rule .0921(c) of this Section; or
- (2) In the case of multiple building projects where:

- 1                   (A) there is no historic functional relationship among the structures that are under the same
- 2                               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. 105-129.105; 105-129.106; 105-129.107;*

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

11                   *Eff. December 1, 2016.*



1 07 NCAC 04R. 0926 is adopted as published in 31:03 NCR 139 as follows:  
2

3 **07 NCAC 04R .0926 COORDINATION WITH THE FEDERAL INCOME-PRODUCING HISTORIC**  
4 **PRESERVATION REHABILITATION PROGRAM**

5 A taxpayer is not required to apply for or pay the State fee for reviewing an income-producing rehabilitation  
6 certification request if the taxpayer is not going to utilize the State tax incentive.

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

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

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

14  
15 *History Note:* Authority: S. 105-129.100-105-129.107;  
16 *Temporary Adoption Effective January 1, 2016;*  
17 *Eff. December 1, 2016.*