

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Please ensure that the correct rule making body is noted on the form in accordance with the cited statutory authority.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0101 is repealed as published in 31:07 NCR 529 as follows:

2

3 **07 NCAC 04R .0101 STATEMENT OF PURPOSE**

4

5 *History Note: Authority G.S. 150B-10;*

6 *Eff. February 1, 1985;*

7 *Amended June 1, 1989;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

9 *Repealed Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0201

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*As there are no other Paragraphs being retained, please delete the (a) on line 4.*

*On line 6, do you mean "shall", or should it actually be "may"? Is the intent that applicants be required to contact you for assistance as a step in the process or is it simply an option should they need help? As written, it is a mandatory requirement.*

*In this History Note, was 42 U.S.C. 4321 intended to be stricken? I see that it has been deleted elsewhere in these Rules.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0201 is amended as published in 31:07 NCR 530 as follows:

2  
3 **07 NCAC 04R .0201 PURPOSE**

4 ~~(a) The State Historic Preservation Officer (SHPO) assists applicants~~ Applicants seeking for state State or federal  
5 funding, licenses, ~~or permits~~ permits, or approval in developing ~~projects~~ undertakings that are environmentally sound  
6 with respect to historic, archaeological, and architectural resources shall seek assistance from the HPO and OSA, as  
7 staff to the State Historic Preservation Officer (SHPO) and the North Carolina Historical Commission, pursuant to  
8 this Section. ~~by providing comments early in the project planning to help applicants avoid project delays, and by~~  
9 ~~informing them of the federal and state laws requiring their compliance.~~

10 ~~(b) The Director, Division of Archives and History, as SHPO establishes environmental review procedures pertinent~~  
11 ~~to historical, archaeological (prehistoric, historic, and underwater), and architectural resources in North Carolina.~~  
12 ~~When federally involved projects are reviewed, the Archaeology and Historic Preservation Section acts as the staff of~~  
13 ~~the SHPO; when state involved projects are reviewed, the section acts as the staff of the North Carolina Historical~~  
14 ~~Commission.~~

15 ~~(c) Projects are received through the State Clearinghouse from various federal, state, municipal and county agencies~~  
16 ~~and planning boards, and directly from applicants.~~

17 ~~(d) All projects received by the SHPO are reviewed for their possible effect on historically, architecturally, or~~  
18 ~~archaeologically significant structures, sites, districts, or objects. All projects affecting the submerged lands of the~~  
19 ~~State of North Carolina are reviewed to determine the effect on submerged cultural resources.~~

20  
21 *History Note: Authority G.S. ~~113-229(e); 113A-4(2); 113A-107(d); 121-4(13); 121-8; 121-9; 121-12(a); 121-23;~~*  
22 *~~136-42.1; 143B-62(1)f,(3); 143B-62; Executive Order XVI (1976); 16 U.S.C. 470; 16 U.S.C. 1451;~~*  
23 *~~42 U.S.C. 4321; 54 U.S.C. 302301; 302303; 15 C.F.R. 923; 36 C.F.R. 69; 36 C.F.R. 800;~~*  
24 *~~Eff. February 1, 1985;~~*  
25 *~~Amended Eff. June 1, 2017; June 1, 1989;~~*  
26 *~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,~~*  
27 *~~2015.~~*  
28

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0202

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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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:

*Line 12, what do you mean by “unless otherwise indicated”? Do you mean “unless otherwise indicated within the Rules”?*

*In (5), for purposes of consistency with (6), please consider changing “The OSA protects archaeological” to “THE OSA is responsible for protecting”*

*In (5), why is it necessary to include “THE OSA include an Underwater Archeology Branch”? Would it be appropriate to make this its own definition?*

*In (6), please delete “applicable”*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

07 NCAC 04R .0202 is amended as published in 31:07 NCR 530 as follows:

**07 NCAC 04R .0202 INFORMATION NEEDED FOR REVIEW DEFINITIONS**

Project proposals received for review by the Archaeology and Historic Preservation Section shall include:

- (1) a description of the exact project location, location;
- (2) a map clearly indicating this location,
- (3) the project area size in acreage,
- (4) a description of the action proposed, and
- (5) the applicant's name, address and telephone number.

Applicants may also receive a questionnaire requesting information on structures presently located in the project area and previous land use practices.

The following definitions apply to this Sub-Chapter unless otherwise indicated:

- (1) "Adverse Effect" is defined as in 36 C.F.R. 800.5(a)(1).
- (2) "Area of Potential Effects" is defined as in 36 C.F.R. 800.16(d).
- (3) "Effect" is defined as in 36 C.F.R. 800.16(i).
- (4) "Historic property" is defined as in 36 C.F.R. 800.16(l).
- (5) "Office of State Archaeology" (OSA) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The OSA protects archaeological sites in North Carolina. The OSA includes an Underwater Archaeology Branch.
- (6) "State Historic Preservation Office" (HPO) is a section of the Division of Historical Resources, North Carolina Department of Natural and Cultural Resources. The HPO is responsible for administering applicable historic preservation programs pursuant to State and federal law.
- (7) "State Historic Preservation Officer" (SHPO) is the Deputy Secretary, Office of Archives and History, North Carolina Department of Natural and Cultural Resources, and is further defined in 36 C.F.R. 800.16(v).
- (8) "Undertaking" means any project, activity, or program that can result in changes in the character or use of historic properties located in the area of potential effects. The project, activity, or program must be under the direct or indirect jurisdiction of a Federal or State agency, including those carried out by or on behalf of a Federal or State agency; those carried out with Federal or State financial assistance; and those requiring a Federal or State permit, license, or approval. Undertakings include new and continuing projects, activities, or programs and any of their elements, including changes to the project's scope and location.

*History Note:* Authority ~~G.S. 113-229(e); 113A-42; 113A-107(d); 121-4(13); 121-8; 121-12(a); 121-23; 136-42.1; 143B-62(1)f.(3); 143B-62; Executive Order XVI (1976); 16 U.S.C. 470; 16 U.S.C. 1451 et. seq.; 42 U.S.C. 4321; 54 U.S.C. 302301, 302303, 306108; 15 C.F.R. 923; 36 C.F.R. 69; 36 C.F.R. 800; 36 C.F.R. 800.3-800.6, 800.16;~~

1                   *Eff. February 1, 1985;*  
2                   *Amended Eff. June 1, 2017; June 1, 1989;*  
3                   *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*  
4                   *2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0203

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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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:

*I see that this Rule tells folks how to submit proposed undertakings for review, but it is unclear whether it actually requires your regulated public to do so? Was that the intent of this Rule? What undertakings shall be submitted for review? All that meet the definition contained within .0202?*

*In (a), is there a form required for submission of review? If not, must it be in writing? Please clarify.*

*In (a)(6), line 10, please consider deleting "old"*

*Why is (c) necessary? This seems to address the inner workings of the agency. Further, when read with (d) and (e), it is not clear who is responsible for doing what. In (c), there is a reference to both the HPO and OSA, acting as staff for the SHPO or the Historical Commission, to be responsible for review; however, the standards to be used set forth in (d), only are applicable when review is occurring by the OSA. What will the HPO use for his or her review? If you keep this Paragraph, please make the process clear.*

*If (c) is determined to be necessary, will staff be using the guidelines referenced in (d) to make the determination of the effect? If so, please make this more clear.*

*In (c), is "archaeologically significant structures" defined elsewhere in Rule or Statute? If not, please change to "archaeological structures."*

*In (d), please incorporate the guidelines by reference in accordance with N.C.G.S 150B-21.6. Also, please consider simplifying this Paragraph.*

*In (e), what is meant by "project-specific response"?*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017



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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

07 NCAC 04R .0203 is readopted as published in 31:07 NCR 530–531 as follows:

**07 NCAC 04R .0203      ARCHAEOLOGICAL REVIEW SUBMISSIONS FOR REVIEW**

~~(a) Projects are reviewed for archaeological concerns whenever ground disturbing activity is involved. Examples of ground disturbance include, but are not limited to, construction of dikes, clearing and grubbing of forests, subsurface alterations around standing structures, borrow pits, trenching for water and sewer lines, utility line construction or improvements requiring excavation; construction, widening or improvements of highways; and airport expansions, bridge replacements, housing developments, boat basins and channels, and placement of fill or spoil dirt.~~

~~(b) Evaluation of potential effects on archaeological resources is made by staff archaeologists, taking into consideration known site locations, historical maps and documents, results of previous surveys in the area or similar areas, past and present land uses, the area's topography and hydrology, predictive models of archaeological site locations, and type and extent of proposed land modification activities.~~

~~(c) After staff evaluation, recommendations are made by the SHPO within the state or federally mandated deadline for review comments:~~

~~(1) Clearance. If it is determined that the project area is unlikely to contain significant archaeological remains, the written response is no comment.~~

~~(2) Archaeological Survey Recommended. If it is determined that the project area is likely to contain significant archaeological sites and there is no record of systematic archaeological surveys in the project area, an archaeological survey is recommended prior to any ground disturbing activity to determine the presence and significance of archaeological sites that may be damaged or destroyed by the proposed action.~~

~~(3) Testing Recommended. If a known site is within the project boundaries, archaeological testing is recommended to determine its significance.~~

~~(4) Survey and Testing Recommended. If a project area contains known sites but has not been completely surveyed, testing of the sites and a survey of the remaining project area are recommended.~~

~~(5) Avoidance. If archaeological sites listed in or determined eligible for inclusion in the National Register of Historic Places are located in the project area, avoidance by adjustment of the project plans is recommended. New project locations are subject to the review process.~~

~~(d) All archaeological reports submitted to the SHPO in compliance with federal and state historic preservation legislation are reviewed by the Archaeology Branch using standards established by the Department of Cultural Resources outlined in "Guidelines for the Preparation of Reports of Archaeological Surveys and Evaluations". The guidelines:~~

~~(1) ensure compliance with pertinent legislation;~~

~~(2) ensure fulfillment of contract sponsor needs with regard to archaeology; and~~

~~(3) permit the effective and speedy review of compliance surveys and evaluation reports. Reports submitted for review which do not satisfy the requirements defined in the guidelines are considered incomplete and returned for revision and resubmission. Copies of the guidelines are available from the Archaeology and Historic Preservation Section.~~

1 ~~(e) When an archaeological survey report indicates that a site within a project's area of environmental impact is eligible~~  
2 ~~for inclusion in the National Register of Historic Places, the procedures outlined at 36 CFR 800.5-6 (regulations of the~~  
3 ~~Advisory Council on Historic Preservation) are followed.~~

4 (a) Proposed undertakings submitted for review to the HPO shall include:

5 (1) a description of the project location;

6 (2) a description of the actions(s) proposed;

7 (3) the applicant's name, address, telephone number, and email address, if available;

8 (4) a map indicating the project's location, including named or numbered roads;

9 (5) the project area size in acres; and

10 (6) photographs of any buildings 50 years old or older within the area of potential effects.

11 (b) Proposed undertakings submitted for review shall be submitted in one of the following methods:

12 (1) by mail addressed to the HPO, Attention Environmental Review Coordinator, 4617 Mail Service Center,  
13 Raleigh, NC 27601;

14 (2) by internal State mail to the HPO, Attention Environmental Review Coordinator, 4617 Mail Service  
15 Center; or

16 (3) by email to [environmental.review@ncdcr.gov](mailto:environmental.review@ncdcr.gov).

17 (c) All undertakings submitted for review shall be reviewed by the HPO and OSA as staff of the SHPO for their effect on  
18 submerged cultural resources as well as historically, architecturally, or archaeologically significant structures, sites  
19 districts, or objects. When federally-involved undertakings are reviewed, the HPO and the OSA act as the staff of the  
20 SHPO. When State-involved undertakings are reviewed, the HPO and the OSA act as the staff of the North Carolina  
21 Historical Commission.

22 (d) The OSA shall review all archaeological reports, including documentary research and archaeological investigations,  
23 submitted to the SHPO for review in compliance with federal and State historic preservation law by employing the  
24 Secretary of the Interior's Standards and Guidelines for Archeological Documentation, available at  
25 [https://www.nps.gov/history/local-law/arch\\_stnds\\_0.htm](https://www.nps.gov/history/local-law/arch_stnds_0.htm), and the Abandoned Shipwreck Act Guidelines, available at  
26 <https://www.nps.gov/archeology/submerged/intro.htm>.

27 (e) The HPO shall issue a project-specific response within 30 days of receipt of the submission.

28  
29 *History Note: Authority G.S. ~~113-229(e); 113-4(2); 113A-107(d); 121-4(13); 121-8; 121-9; 121-12(a); 136-42.1;~~*  
30 *~~143B-62(1)f,(3); 143B-62; Executive Order XVI (1976); 16 U.S.C. 470; 16 U.S.C. 1451 et. seq.; 42~~*  
31 *~~U.S.C. 4321; 15 C.F.R. 923; 54 U.S.C. 302301; 302303; 36 C.F.R. 69; 36 C.F.R. 800;~~*  
32 *Eff. February 1, 1985;*  
33 *Amended Eff. June 1, 1989;*  
34 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. July 26, 2015;*  
35 *Readopted Eff. June 1, 2017.*  
36

1 07 NCAC 04R .0204 is repealed through readoption as published in 31:07 NCR 531–532:

2

3 **07 NCAC 04R .0204 UNDERWATER ARCHAEOLOGICAL REVIEW**

4

5 *History Note: Authority G.S. 121-22 through 121-28; 143B-62(2)g; 16 U.S.C. 470; 36 C.F.R. 800;*

6 *Eff. February 1, 1985;*

7 *Amended Eff. June 1, 1989;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. July 26, 2015;*

9 *Repealed Eff. June 1, 2017.*

10

1 07 NCAC 04R .0205 is repealed through readoption as published in 31:07 NCR 532:

2

3 **07 NCAC 04R .0205 ARCHITECTURAL REVIEW**

4

5 *History Note: Authority G.S. 113-229(e); 113A-4(2); 121-4(13); 136-42.1; 143B-62(1)(f)(3 16 U.S.C. 470; 36 C.F.R.*  
6 *63; 36 C.F.R. 800.*

7 *Eff. February 1, 1985;*

8 *Amended Eff. June 1, 1989;*

9 *Pursuant to G.S. 150B-21.3A, rules are necessary with substantive public interest Eff. July 26, 2015;*

10 *Repealed Eff. June 1, 2017.*

11

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0206

DEADLINE FOR RECEIPT: Friday, February 10, 2017

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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:

*What is the overall intent of this Rule? Is it that a state agency must get approval for an undertaking that will adversely affect a property listed on the national register or is it only meets (e)? Please rework this Rule to clarify what the process is, when it will be needed, what is expected of the state agency making the request, and how the decisions will be made and what factors will be used.*

*In (a), under what circumstances is a state-owned property allocated to a state agency?*

*In (a), why is “whether publicly or privately owned” necessary? Doesn’t “any property listed” capture these already? This appears to be superfluous language.*

*What exactly is (a) requiring? It appears as though the state agency is required to identify National Register properties by GIS system on lines 6-7, but lines 5-6 seems to indicate that they are responsible for already knowing? It seems as though this Paragraph could be read to contradict itself. What is expected of the agency in identifying the properties? Please clarify.*

*(b) appears to be a recitation of N.C.G.S. 121-12. Why is it necessary to be put in rule verbatim? If it needs to be kept in Rule, please provide some additional clarifying information, rather than just repeating statute.*

*In (b), what is a “state-assisted” undertaking?*

*In (c), for what are the state funds? What is the process for the approval of the funds? Is this something that you all are responsible for? Is there a cross-reference available? Depending upon the answer to these questions, it is possible that adding some clarifying language as to what this Rule is doing may address this issue.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (c) what if the undertaking is found to have an effect upon a property listed? Is the agency prohibited from moving forward with the undertaking?*

*In (c)(2), by “effect” do you mean “adverse effect”? I understand that the statute uses “effect”, rather than “adverse effect”, but is it the same thing?*

*In (c)(2), must the state agency do anything with the review and comments from the SHPO?*

*In (d), requiring review by whom? It is also unclear who will make the determination that the undertaking will create an adverse effect.*

*In (d), what is meant by “adequate conditions or restrictions regarding preservation, maintenance, or use” of the property? Please give some additional meaning to the word “adequate.”*

*In (e), please delete “is” before “shall be”*

*In (e), how is the determination to be made whether the repair would affect the façade or the integrity – my question goes more to the integrity of the structure? Is this an industry standard?*

*What is the process for a state agency to get approval? Is the request submitted to SHPO, then the SHPO will look for an adverse effect, then if it is found, the SHPO will send it onto the Historical Commission?*

*In (f), line 16, please change “he” to “he or she”*

*In (f), what meeting is referred to by “the meeting”? Will the review after the referral of the SHPO to the Historical Commission occur at their next regularly scheduled meeting? This is not clear. Please clarify the process within the Rules.*

*In (f), line 21, how is the request for the approval to address an emergency to be made? What is required?*

*In (g), line 27, please change “which” to “that”*

*In (g), by “effect” do you mean “adverse effect”?*

*Just so I understand correctly, the Commission may only provide a recommendation to the state agency, but the agency may proceed as it wishes so long as it provides its intent to the Commission? Is there any other authority on point other than G.S. 121-12?*

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 the Agency: January 30, 2017

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017



1 07 NCAC 04R .0206 is readopted as published in 31:07 NCR 532–533 as follows:

2  
3 **07 NCAC 04R .0206**     ~~ARCHITECTURAL REVIEW~~   **PROCEDURES FOR STATE UNDERTAKINGS**  
4                                   **AFFECTING A NATIONAL REGISTER-LISTED PROPERTY**

5 (a) State agencies to which ~~own~~ State-owned property is allocated or whose undertaking may affect any property, whether  
6 publicly or privately owned, nominated to listed in the National Register of Historic Places shall identify those National  
7 Register-listed properties through use of the HPO’s Geographic Information System HPOWEB located at  
8 http://gis.ncdcr.gov/hpoweb or use of the North Carolina Listings in the National Register located at  
9 http://www.hpo.ncdcr.gov/NR-PDFs.html. receive notification from the SHPO when the property is nominated, and a  
10 certificate when the property has been listed in the National Register. A roster of properties listed in the National Register  
11 of Historic Places from North Carolina is distributed to appropriate state agencies at least biennially.

12 (b) The head of any ~~state~~ State agency having direct or indirect jurisdiction over a proposed State-assisted ~~state assisted~~  
13 ~~undertaking, undertaking~~ or the head of any ~~state~~ State department, board, commission, or independent agency having  
14 authority to build, construct, operate, license, authorize, assist, or approve any ~~state~~ State or ~~state assisted~~ State-assisted  
15 undertaking, shall, prior to the approval of ~~state~~ State funds or action for the ~~undertaking, undertaking~~ take into account  
16 consider its effect on any district, site, building, structure, or object ~~which is~~ listed in the National Register of Historic  
17 Places. ~~Undertakings include, but are not limited to:~~

- 18           (1) ~~any alteration, demolition, neglect, repair, renovation, move or other change to a building owned by the~~  
19                                   ~~State of North Carolina, or to any building in which state assistance or funds are involved;~~  
20           (2) ~~any state or state assisted project which will affect buildings not owned by the State of North Carolina;~~  
21                                   ~~or~~  
22           (3) ~~any state or state assisted project which will involve ground disturbance.~~

23 (c) Prior to the approval of any ~~state~~ State funds and prior to any approval, license, or ~~authorization~~ permit for any State  
24 or State-assisted undertaking covered under Paragraph (b) of this Rule, the head of the agency concerned shall:

- 25           (1) submit a statement to the ~~Director, Division of Archives and History~~ SHPO that the undertaking will  
26 have no effect upon a property listed in the National Register of Historic Places; or  
27           (2) submit a statement that the undertaking will have an effect upon a property listed in the National Register  
28 of Historic Places, justify describe the proposed undertaking, and invite review and comment from the  
29 ~~Division of Archives and History~~ SHPO.

30 (d) ~~An~~ For purposes of this Rule, an undertaking shall be deemed to have an adverse effect requiring review is defined  
31 when the undertaking creates an effect which meets the definition of “adverse effect” in Rule .0202 of this Section or when  
32 the undertaking includes the transfer or sale of a State-owned property listed in the National Register without adequate  
33 conditions or restrictions regarding preservation, maintenance, or use of the National Register property, as an adverse effect  
34 occurring under conditions which include, but are not limited to:

- 35           (1) ~~destruction or alteration of all or part of a property;~~  
36           (2) ~~isolation from or alteration of a property's surrounding environment;~~

1           ~~(3) — introduction of visual, audible or atmospheric elements that are out of character with the property or alter~~  
2           ~~its setting;~~

3           ~~(4) — transfer or sale of a State owned property listed in the National Register without adequate conditions or~~  
4           ~~restrictions regarding preservation, maintenance, or use; and~~

5           ~~(5) — neglect of a property resulting in its deterioration or destruction.~~

6 (e) ~~These requirements will not apply to~~ Review under this Rule is shall be required if any minor repair that does not affect  
7 affects the facade of a building or its structural or overall architectural integrity. Window replacement of existing windows  
8 shall be subject to review under this Rule.

9 ~~(f) Upon receipt of notice that a proposed undertaking will have an effect upon a property listed in the National Register~~  
10 ~~of Historic Places, the Director or his designee shall determine whether the undertaking has an effect which will require~~  
11 ~~review by the North Carolina Historical Commission. Upon receipt of a notice of no effect or upon receiving information~~  
12 ~~that an undertaking is taking place which might have an effect upon a property listed in the National Register of Historic~~  
13 ~~Places, the Director or his designee shall determine whether the undertaking has an effect which will require review by the~~  
14 ~~North Carolina Historical Commission (Commission).~~

15 ~~(g)(f) If the Director, Division of Archives and History, SHPO finds that an undertaking will have an adverse effect which~~  
16 ~~requires review, review by the Historical Commission, he shall transmit a notice to the Chairman of the Historical~~  
17 ~~Commission, who has the authority to call a meeting of the Historical Commission to discuss the undertaking with the~~  
18 ~~agency head concerned or his designee. The Director, as ex officio Secretary of the Commission shall transmit a notice of~~  
19 ~~the meeting to the agency head. From the time of receipt of the notice until the conclusion of the Historical Commission~~  
20 ~~meeting, the agency shall take no action which would affect a property listed in the National Register of Historic Places~~  
21 ~~without the approval of the Director SHPO acting for and in on behalf of the Historical Commission. Such approval shall~~  
22 ~~only be granted in the case of an emergency. emergency threatening public health and safety.~~

23 ~~(h) If the Commission determines that the agency involved has not adequately considered the effect of its undertaking,~~  
24 ~~and the Commission needs more time to comment upon the proposed undertaking in order that the agency involved may~~  
25 ~~realize all of the competing public interests involved, the Commission may order that the undertaking not take place until~~  
26 ~~it has a reasonable time to comment, the reasonable time to be specified in the order.~~

27 ~~(g)~~ Members of the public who have knowledge of any undertaking by a State agency which would have an effect upon  
28 a property listed in the National Register of Historic Places may comment in writing to the Director, Division of Archives  
29 and History SHPO, Department of Natural and Cultural Resources, MSC 4617, Raleigh, North Carolina 27611 27699.

30 (h) The Commission shall provide its recommendation(s) on the undertaking to the agency head within 30 days following  
31 the Commission's meeting.

32 (i) The agency head shall respond to the Commission's recommendation in writing and inform the Commission of what  
33 action the agency will take with regard to the historic property.

34  
35 *History Note: Authority G.S. 121-12(a); ~~143B-62(1),f(3); Executive Order XVI (1976); 143B-62;~~*  
36 *Eff. February 1, 1985;*  
37 *Amended Eff. June 1, 1989;*

1  
2  
3

*Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. July 26, 2015;  
Readopted Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0301

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Just to be clear, the NRAC is serving as the State Historic Review Board as required by 54 U.S.C. 302301? Is it your opinion that this Rule is necessary, and not just the internal workings of your agency, based upon the reading of 54 U.S.C. 300318 and 302301?*

*54 U.S.C. 300318 references a "State historic preservation review board." Is the NRAC intended to be the same?*

*How is the requirement that the majority of the members be professionals in accordance with 54 U.S.C. 300318 implemented?*

*Is (b), is the SHPO bound by the recommendation of the Committee? If so, "should" is not accurate.*

*I would suggest breaking Paragraph (b) into shorter Paragraphs or at least more sentences with fewer words.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .0301 is amended as published in 31:07 NCR 534 as follows:

2  
3 **07 NCAC 04R .0301 STATE HISTORIC PRESERVATION OFFICER NATIONAL REGISTER ADVISORY**  
4 **COMMITTEE**

5 ~~(a) The State Historic Preservation Officer (SHPO) is the Director, Division of Archives and History.~~

6 ~~(b) The North Carolina Historical Commission with the addition of an architect, an architectural historian, a prehistoric~~  
7 ~~archaeologist, and a historic archaeologist shall serve as the State Professional Review Committee (SPRC) to fulfill the~~  
8 ~~requirements of the National Park Service, Department of the Interior. The SHPO shall appoint twelve members to the~~  
9 ~~National Register Advisory Committee (NRAC), which serves as the State historic preservation review board required by~~  
10 ~~54 U.S.C. 302301(2). The NRAC's membership shall include five members of the North Carolina Historical Commission~~  
11 ~~and seven members of the general public. The following professions shall be represented in the membership:~~

12 (1) architect;

13 (2) architectural historian;

14 (3) professional historian;

15 (4) prehistoric archaeologist; and

16 (5) historic archaeologist.

17 ~~(b) The State Professional Review Committee NRAC reviews North Carolina nominations to the National Register of~~  
18 ~~Historic places Places (Register) and makes a recommendation to the SHPO on whether the property nominated is eligible~~  
19 ~~for the register meets the National Register criteria for nomination as set forth in 36 C.F.R. 60.4 and whether the nomination~~  
20 ~~should be signed by the SHPO and forwarded to the U.S. Department of the Interior, which maintains the National Register~~  
21 ~~of Historic Places. Meetings of the committee are called by the SHPO. A majority (~~50 percent plus 1~~) of the committee~~  
22 ~~constitutes shall constitute a quorum. ~~Other members may be added as required or as determined appropriate.~~~~

23  
24 *History Note: Authority G.S. 121-8(b); 143B-62(1)b,(3); 16 U.S.C. 470a(a)(1); 36 C.F.R. 60.3; 36 C.F.R. 800.1-10,*  
25 *~~3(k); 143B-62; 54 U.S.C. 300318, 302104, 302301; 36 C.F.R. 60.3(o), 60.4, 60.6.~~*

26 *Eff. February 1, 1985;*

27 *Amended Eff. June 1, 2017; June 1, 1989;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

29

1 07 NCAC 04R .0302 is repealed as published in 31:07 NCR 534 as follows:

2

3 **07 NCAC 04R .0302 PUBLIC SUGGESTIONS FOR NATIONAL REGISTER**

4

5 *History Note: Authority G.S. 121-8(b); 143B-62(1),(3);*

6 *Eff. February 1, 1985;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

8 *Repealed Eff. June 1, 2017.*

9

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0303

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Overall, this Rule needs to be more clear as to what the intent of it actually is. Please simplify where possible keeping in mind to give the who, the what, and the how. Although I'm sure that it is simply a misunderstanding on my part of how the process works, this Rule seems to contradict itself as far as whether it is the NRAC, the SHPO, or the HPO that is going to be making the determinations. On line 4, rather than saying "the process of nomination to the National Register... requires..." indicate who is responsible for doing what. Something like "XXXXX (whomever may submit nominations – are these listed on lines 7-8 of .0304?) submitting nominations of property to the National Register of Historic Places shall:"*

*In (1), line 7, what is meant by a "completed nomination"? By completed do you mean that the nomination must contain the information set forth in .0304? Also, is this a form or just a written request? Pursuant to 36 C.F.R. 60.5(a), it appears to be a form. Is this correct or this request something different? Is this request the same form in (2)? If so, could you combine (1) and (2) to make clear that these are not 2 different processes?*

*In (1), who are those "in compliance with State, local, and federal law"? Do you mean in accordance with "State, local, and federal law"? I realize that this language was taken from pre-review notes; however, I'm not exactly sure what this means without some additional meaning. Is this saying that other people must comply with applicable laws in order to supervise preparation? It looks to me like 36 C.F.R. 60.6(a) requires that Nominations be prepared under the supervision of the SHPO?*

*In (1), what does it mean that draft nominations must be prepared under supervision? I realize that this language comes from 36 C.F.R. 60.6(a), but what exactly is expected of your regulated public? Please make this more clear.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (2), it appears as though you are intending to incorporate these standards by reference. If that correct, please do so in accordance with 150B-21.6.*

*In (3), is it the HPO or the SHPO who will nominate the property? Is this process that the HPO will make a recommendation to the SHPO and then the SHPO will send it onto the National level? This Rule on its own doesn't make this process clear, but then when 36 CFR 60.6 is read, it is extremely confusing.*

*In (3), the way this Paragraph is written, it appears as though your regulated public could go to 36 C.F.R. 60.6 to determine what information the HPO will use in order to make the decision.*

*In (3), please change "C.F,R" to "C.F.R" on line 19.*

*In (3), how are property owners notified of the intent to nominate their property? I see that 36 CFR 60.6(g) says that "upon notification", any owner may submit the objection, but who is responsible for notifying them? Is this the responsibility of the nominator or the HPO?*

*In (4), again, what are "completed nomination forms"? It is not necessary to put this information in multiple places, but it does need to be clear somewhere.*

*In (4), what is the address of the NRAC? Do you have an address Rule somewhere? If so, there is no need to put this information here, if not, please provide the information.*

*In (5), is the intent to include comments from anyone or is it truly limited to those entities listed? This appears to include everyone. Could you simplify this Paragraph to say "Comments regarding proposed nominations shall be provided to the SHPO..." Also, what is meant by "in advance"? Can this be sent to the SHPO 30 seconds before the NRAC meeting is to begin? You may want to take a look at 26 NCAC 05 .0103 for an example setting forth time limits.*

*In (6), what is meant by "proponents"? Do you mean those submitting the nominations? Please be consistent in your terms.*

*In (6), what are the options regarding the action that can be taken? What is the difference between a deferral and a denial letter?*

*In (6), please delete or define "valid."*

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 the Agency: January 30, 2017



Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0303 is amended as published in 31:07 NCR 534 as follows:

2  
3 **07 NCAC 04R .0303 NOMINATION PROCEDURES**

4 The process of nomination to the National Register of Historic Places (Register) requires the following steps:

- 5 (1) ~~Nomination forms are prepared under the supervision of the SHPO, or by property owners, municipal~~  
6 ~~agencies, federal agencies, or other constituents in compliance with state, local and federal guidelines.~~  
7 Before a completed nomination to the National Register of Historic Places (Register) may be submitted  
8 for review pursuant to Paragraph (4) of this Rule, a draft of the nomination shall be submitted for review  
9 as set forth in 07 NCAC 04R .0304. Draft nominations may be prepared under the supervision of the  
10 SHPO or by property owners, municipal agencies, federal agencies, or any person, in compliance with  
11 State, local, and federal law.
- 12 (2) ~~Nominations submitted for review shall submit a form in accordance with the standards set forth in the~~  
13 ~~National Register Bulletin, "How to Complete the National Register Form," available at~~  
14 ~~<https://www.nps.gov/nr/publications/bulletins/nrb16a/>.~~
- 15 (2) (3) ~~Notice is provided of the intent to nominate the property and written comments are solicited by the SHPO~~  
16 ~~in accord with federal regulations. Owners may object to the listing of private property in a written and~~  
17 ~~notarized statement. The HPO shall provide notice of the intent to nominate a property will in~~  
18 ~~accordance with 36 CFR 60.6. Owners may object to the listing of private property by submitting a~~  
19 ~~written and notarized statement in accordance with 36 C.F.R. 60.6(g). Statements of objection on the~~  
20 ~~part of owners of private property which the SHPO finds to meet objection criteria set forth in 36 C.F.R.~~  
21 ~~60.6(g) will be forwarded within ten (10) business days of SHPO receipt for consideration by the Keeper~~  
22 ~~of the National Register.~~
- 23 (3) (4) ~~Completed nomination forms are shall be submitted to the SPRC National Register Advisory Committee~~  
24 ~~(NRAC) for approval prior to submission to the National Register. review pursuant to 36 C.F.R. 60.6(j).~~
- 25 (4) (5) ~~Nomination forms approved by the SPRC are signed by the SHPO. Individuals, local governments, or~~  
26 ~~local government entities such as historic preservation commissions or historic landmark commissions~~  
27 ~~created under the authority of G.S. 160A-400.7 may provide comments on a proposed nomination to the~~  
28 ~~SHPO in advance of the NRAC meeting. Following NRAC review of nominations, the SHPO reviews~~  
29 ~~the nominations and may submit nominations to the Keeper of the National Register pursuant to 36~~  
30 ~~C.F.R. 60.6(k) and (l).~~
- 31 (5) (6) ~~The SHPO submits the completed nomination and comments concerning the significance of the property~~  
32 ~~to the Keeper of the National Register, Department of the Interior, National Park Service, Washington,~~  
33 ~~D.C. 20240. Notification letters to property owners and proponents shall be prepared and sent to~~  
34 ~~confirm the action taken by the NRAC and SHPO in regards to the nomination. Deferral or denial letters~~  
35 ~~shall be accompanied by an explanation of why the action was deferred or denied and what steps might~~  
36 ~~be taken to make a valid re-submission of the nomination, if any.~~

1 ~~(6) Notice is provided in the Federal Register that the nominated property is being considered for listing in the National~~  
2 ~~Register of Historic Places; comments are solicited concerning the significance of the property; and 15 days are allowed~~  
3 ~~for further owner objection or comment.~~

4 ~~(7) Nominations must be reviewed by the National Register within 45 days from the date of receipt by the National Register~~  
5 ~~Office.~~

6 ~~(8) Owners and interested parties may petition the Keeper, either in support of or in opposition to the nomination. The~~  
7 ~~petitioner must state the grounds of the petition and request in writing that the Keeper substantively review the nomination.~~  
8 ~~The petition must be received before the property is listed.~~

9  
10 *History Note: Authority G.S. 121-8(b); 143B-62; ~~143B-62(1)g,(3); 16 U.S.C. 470a; 36 C.F.R. 60.2-6; 54 U.S.C.~~*  
11 *302104; 36 C.F.R. 60.5, 60.6, 60.9;*  
12 *Eff. February 1, 1985;*  
13 *Amended Eff. June 1, 2017; June 1, 1989;*  
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*  
15

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0304

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*How do .0303 and .0304 go together? It appears as though some different reorganization of these Rules may make them more clear.*

*In (a), is this actually a form? If so, please also indicate how it may be obtained?*

*In (b), it appears as though there is a phrase missing. Should something like "determine" be included in between "to" and "whether"? If you do that, please delete "as"*

*In (b), what "information" will be presented? Is the process actually that the NRAC will review the information provided in accordance with Paragraph (a) of this Rule? If so, why is it necessary to put that Staff will present the information - this seems to be internal management.*

*In (b), please delete "appears to be potentially" and in (b) and (c) delete "should be placed." Instead please indicate what the NRAC will actually be doing in more definitive terms. It appears to me that they will be making a determination based on the information provided to them by the applicant whether they will recommend that the SHPO nominate the property? If this is correct, say that.*

*Also, please provide what factors the NRAC will be using in making that determination (I assume that this is set forth in the 36 CFR 60.4.)*

*In (d), please change "his" to "his or her"*

*In (d), what does it mean to "study the property." What are the potential outcomes? If you include what actions may be taken in .0303 (6), this question may be addressed.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (d), what is meant by “the effects of listing the property”? What are these?*

*In (d), please delete or define “relevant”*

*Where in the process will (e) occur? It seems as though this is something that will happen in the beginning and may be more clear elsewhere. Also, what is this bulletin doing? Why are you giving it to applicants?*

*(f) seems to come out of nowhere and seems to miss several steps. Is it necessary? If so, please bridge the gap.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0304 is readopted as published in 31:07 NCR 535 as follows:

2  
3 **07 NCAC 04R .0304 REVIEW AND PROCESSING**

4 ~~The following steps assure that North Carolina's procedures for nomination to the National Register of Historic Places are~~  
5 ~~in compliance with the federal requirements:~~

6 ~~(4) (a) Requests for consideration by the SPRC National Register Advisory Committee (NRAC) of a property's eligibility~~  
7 ~~for the National Register may originate with a staff member, SPRC NRAC member, governmental agency, property owner,~~  
8 ~~or any interested citizen. The report request must shall be in written form and include a slide of the property, the following:~~

- 9 (1) the property name;  
10 (2) property location;  
11 (3) ownership information;  
12 (4) applicant contact information;  
13 (5) reason for the request;  
14 (6) physical description and brief history of the property;  
15 (7) a map or site plan; and  
16 (8) photographs.

17 ~~(2) Staff begins a file on the site or property, including the information supplied, initial staff opinion concerning the~~  
18 ~~property's eligibility under National Register criteria and any other pertinent material.~~

19 ~~(3) The SHPO and appropriate (b) HPO staff shall present information on the site or property to the SPRC NRAC for~~  
20 ~~review and recommendation as to whether the site or property appears to be potentially eligible for the National Register~~  
21 ~~and should be placed on a list for study.~~

22 ~~(c) The NRAC shall make a recommendation to the SHPO as to whether the site or property should be placed on a list for~~  
23 ~~study.~~

24 ~~(4) (d) The SHPO notifies shall notify the site owner or, if a district, the executive officer of the municipality or affected~~  
25 ~~area, by mail of his intent to study the property. The owner is advised of the effects of listing to the property. The owner~~  
26 ~~is encouraged to submit written questions and comments. The owner is urged to send any relevant information concerning~~  
27 ~~the property's significance for use in study of the property. The owner or executive officer shall be advised of the effects~~  
28 ~~of listing the property. The owner or executive officer may submit written questions, comments, and other relevant~~  
29 ~~information concerning the property's significance for use in studying the property.~~

30 ~~(5) Work is done by staff (e) HPO staff shall provide nomination proponents with an electronic copy of the National~~  
31 ~~Register Bulletin "How to Apply the National Register Criteria for Evaluation," available at~~  
32 ~~https://www.nps.gov/nr/publications/bulletins/nrb15/ to complete a nomination or to and shall review a completed~~  
33 ~~nomination-nomination drafts.~~

34 ~~(6) — Not less than 30 nor more than 75 days prior to the SPRC meeting at which the property or district will be~~  
35 ~~reviewed, the SHPO sends a letter, the criteria for evaluating property to be nominated to the National Register, and a~~  
36 ~~statement of the effects of listing in the National Register of Historic Places to the property owner. The text of the letter~~  
37 ~~must be approved by the National Register Office. The chief executive officer of the local governmental unit is also notified~~

1 ~~by mail of the intent to nominate, as are local historic properties commissions. The letter will notify the person when the~~  
2 ~~SPRC meeting is to be held and will solicit written comments. The owner is also advised that he may object to the~~  
3 ~~nomination of the property to the National Register. In the case of a historic district, each owner must be notified by mail~~  
4 ~~if there are fewer than 50 property owners within the district. If there are more than 50 owners in the district, the SHPO~~  
5 ~~provides legal notice in a local newspaper worded in accordance with a notice provided by the National Register of Historic~~  
6 ~~Places. If a property owner objects to the nomination of his property, or if a majority of owners within a proposed historic~~  
7 ~~district object to the nomination, the SPRC and the SHPO may decide to send the nomination to the National Register of~~  
8 ~~Historic Places for a determination of eligibility.~~

9 ~~(7)——SPRC meets and nominations are considered for approval. A majority of the committee must be present, and a~~  
10 ~~majority of the entire committee must vote to approve.~~

11 ~~(8)——SHPO signs nomination forms approved by the SPRC.~~

12 ~~(9)——SHPO submits the nominations and written comments received concerning the significance of a property to the~~  
13 ~~Keeper of the National Register of Historic Places, National Park Service, Department of the Interior, Washington, D.C.~~  
14 ~~20240.~~

15 ~~(10)(f) Following review by the Keeper of the National Register, Register and receipt by the SHPO from that office of~~  
16 ~~notice of approval or rejection of the nomination, the SHPO ~~sends~~ shall send to the property owner and chief executive~~  
17 ~~officer of the local governmental unit notification of the disposition of the ~~nomination,~~ nomination and, if approved, a~~  
18 ~~certificate signed by the SHPO stating that the property is listed in the National Register of Historic Places.~~

19  
20 *History Note: Authority G.S. 121-8(b); ~~143B-62(1)g,(3); 143B-62; 16 U.S.C. 470a; 36 C.F.R. 60.6, 60.11;~~*  
21 *Eff. February 1, 1985;*

22 *Amended Eff. June 1, 1989;*

23 *Pursuant to G.S. 150B-21.3A, rule is necessary with substantive public interest Eff. July 26, 2015;*

24 *Readopted Eff. June 1, 2017.*

25

1 07 NCAC 04R .0305 is repealed as published in 31:07 NCR 536 as follows:

2

3 **07 NCAC 04R .0305 NATIONAL REGISTER NOMINATION PRIORITIES**

4

5 *History Note: Authority G.S. 121-8(b); 143B-62(3); 36 C.F.R. 60.11;*

6 *Eff. February 1, 1985;*

7 *Amended Eff. June 1, 1989;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

9 *Repealed Eff. June 1, 2017.*

10



REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0501

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*On line 11, should there be another word after “local preservation”?*

*On line 12, what is required in the request? Are there any specifics? Is there a form? If not, it's ok as written.*

*On line 15, who is the local government coordinator? Is this an employee in the HPO? Please provide some additional information.*

*160A-400.4 references a “municipal governing board.” Is this the same thing as “local governments and local preservation, historic district, or landmark commissions”? If so, please make clear in Rule that this is the same thing. You may want to consider using the statute language.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0501 is amended as published in 31:07 NCR 536 as follows:

2  
3 **SECTION .0500 – ~~HISTORIC PROPERTIES AND HISTORIC DISTRICTS COMMISSIONS~~ HISTORIC**  
4 **PRESERVATION COMMISSIONS**

5  
6 **07 NCAC 04R .0501 REVIEW OF COMMISSION REPORTS**

7 ~~(a) Historic properties and historic district commissions are required to submit reports on the proposed designation of~~  
8 ~~historic properties and historic districts, and on proposed changes in the boundaries of existing historic districts, to the~~  
9 ~~Department of Cultural Resources for review. The Department review is intended to provide technical assistance and~~  
10 ~~ongoing support for the work of historic properties and historic district commissions.~~

11 ~~(b) Historic properties or historic district~~ Local governments and local preservation, historic district, or landmark  
12 commissions (“commissions”) shall submit requests for review of reports pursuant to G.S. 160A-400.4(b) and 160A-  
13 400.6(2)-(3) to the Director, Division of Archives and History, State Historic Preservation Officer (SHPO) in care of the  
14 State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, Resources, 4617  
15 MSC, Raleigh, NC 27699 or emailed to the Local Government Coordinator. The review may be made by an employee of  
16 ~~the Division designated by the Secretary of the North Carolina Historical Commission. The Division submits its comments~~  
17 ~~to the historic properties or historic district commission within 30 days.~~

18  
19 *History Note: Authority G.S. ~~160A-395(1); 160A-399.5(2); 121-8(e); 160A-400.4(b)(2); 160A-400.6 (2,3);~~*  
20 *Eff. February 1, 1985;*

21 *Amended Eff. June 1, 2017; June 1, 1989.*

22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0502

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*On line 10, please delete or define "brief"*

*Please consider including a cross-reference to 160A-400.9(f) as this Statute sets forth the standards to be used by the SHPO in rendering his or her decision.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0502 is amended as published in 31:07 NCR 536 as follows:

2

3 **07 NCAC 04R .0502 REVIEW OF APPEALS**

4 The State of North Carolina ~~and its agencies~~ may appeal decisions of local historic ~~district~~ preservation commissions to  
5 the North Carolina Historical Commission. ~~Agencies shall submit requests~~ Requests for appeals ~~by the state are submitted~~  
6 to the Chairman, North Carolina Historical ~~Commission,~~ Commission c/o ~~Division of Archives and History~~ State Historic  
7 Preservation Office, North Carolina Department of Natural and Cultural Resources, ~~Resources,~~ 4617 MSC, Raleigh, NC  
8 27699. ~~The Chairman calls a meeting of the Commission, at which the Commission considers the appeal of the state~~  
9 ~~agency. The Commission renders its decision within 30 days of receiving the notice of appeal from the State agency.~~  
10 Agencies shall submit a copy of the record and decision from the local preservation commission as well as a brief  
11 explanation of the grounds for appeal. The Commission may reverse, sustain, or modify the decision of the local  
12 commission.

13

14 *History Note: Authority G.S. 143B-62; 160A-400.9(f);~~160A-398.1;~~*

15 *Eff. February 1, 1985;*

16 *Amended Eff. June 1, 2017; June 1, 1989;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0503

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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:

*This appears to be within the authority of the Department, rather than the Historical Commission pursuant to the cited authority of 121-8(e) and 160A-400.9. Should 143B-62 be added to give the Historical Commission authority over this? Please verify.*

*I'm sorry about this request as I realize that this change was made as a result of the pre-review, but I agree that the Rule should be more of a directive to your local preservation commissions and should use "may." As such, please change "seeking" to "may seek" and also indicate when they may do so. Is this totally discretion? Under what circumstances might they wish to do that?*

*On line 8, please provide a cross reference to 160A-400.9 regarding the certificates of appropriateness. Also, should certificates of appropriateness be capitalized?*

*On line 11, what is the email address of the local government coordinator? What will the review of the Director or Staff be based upon? Also, who is the "Director"? Do you mean the SHPO?*

*On line 13, what will be conveyed? The recommendation?*

*In (b), is there anything else required for this review other than the application?*

*In (b), I see that an application for a certificate of appropriateness is required by 160A-400.9. Are the contents of that application left to the local preservation commissions, such that the application may be different depending upon which municipality makes the request?*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .0503 is amended as published in 31:07 NCR 536–537 as follows:

2  
3 **07 NCAC 04R .0503 CERTIFICATES OF APPROPRIATENESS**

4 (a) ~~Historic properties and historic district commissions may seek the advice of the Department of Cultural Resources as~~  
5 ~~they consider applications for certificates of appropriateness. The advice offered by the Department is intended to provide~~  
6 ~~technical assistance and ongoing support for the work of historic properties and historic district commissions.~~

7 (b) Local preservation commissions seeking the advice of the Department of Natural and Cultural Resources for and  
8 Requests for requesting review of applications for certificates of appropriateness by the Department of Cultural Resources  
9 are submitted shall submit such requests in writing to the Director, Division Office of Archives and History, in care of the  
10 State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, Resources, 4617  
11 MSC, Raleigh, NC 27699, or by email to the Local Government Coordinator. The review may be made by the director  
12 Director or HPO staff as his the Director’s designee. The review will be completed within a reasonable period of time 30  
13 days of receipt and conveyed in writing to the Commission requesting the review.

14 (b) Requests for review of applications for certificates of appropriateness shall include a copy of the certificate of  
15 appropriateness application.

16  
17 *History Note: Authority G.S. 121-8(e); 160A-400.9(d); 160A-397; 160A-399.6;*

18 *Eff. February 1, 1985;*

19 *Amended Eff. June 1, 2017; June 1, 1989;*

20 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.*

21

1 07 NCAC 04R .0504 is repealed as published in 31:07 NCR 537 as follows:

2

3 **07 NCAC 04R .0504 ADEQUATE INFORMATION**

4

5 *History Note: Authority G.S. 160A-395(2); 160A-397; 160A-398.1; 160A-399.5(2); 160A-399.6.*

6 *Eff. February 1, 1985;*

7 *Amended Eff. June 1, 1989;*

8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

9 *Repealed Eff. June 1, 2017.*

10



REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0601

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*This appears to be within the authority of the Department, rather than the Historical Commission pursuant to the cited authority of 121-8. Should 143B-62 be added to give the Historical Commission authority over this? Please verify.*

*Why is this Rule necessary?*

*If this Rule is determined to be necessary, please rewrite to provide information to your regulated public, rather than your SHPO. The way this is written, it makes it sound as though the SHPO, on his or her own, will seek to identify historically significant properties, without any sort of application by the public.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0601 is amended as published in 31:07 NCR 537 as follows:

2

3 **SECTION .0600 – DESIGNATION OF HISTORIC PROPERTIES UNDER THE STATE BUILDING CODE**

4

5 **07 NCAC 04R .0601 STATEMENT OF PURPOSE**

6 The State Historic Preservation Officer (SHPO) ~~(the Director, Division of Archives and History, Department of Cultural~~  
7 ~~Resources)~~ may ~~designate~~ identify buildings that possess historic and architectural significance as historic properties for  
8 building code ~~purposes.~~ purposes in accordance with the rules of this Section. ~~This designation entitles the owners of such~~  
9 ~~significant buildings to "special consideration" in relation to certain building code requirements if the buildings are adapted~~  
10 ~~for public exhibition or commercial use.~~

11

12 *History Note: Authority G.S. 121-8; ~~Building Code Authority Chapter 10, Sec. 1009.1(a)(1), 1010.1(a)(1); 2012 North~~*  
13 *Carolina Rehab Code, Sec. 1.33; 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202; 54*  
14 *U.S.C. 302303;*  
15 *Eff. February 1, 1985;*  
16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
17 *Amended Eff. June 1, 2017.*

18

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0602

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*This appears to be within the authority of the Department, rather than the Historical Commission pursuant to the cited authority of 121-8. Should 143B-62 be added to give the Historical Commission authority over this? Please verify.*

*Why are the Rehab Code and the Building Code listed as authority? These don't seem to give you all the authority to do anything. Do you instead mean to incorporate these by reference?*

*I'm not sure that it is clear to me why you need this or .0605. Is the process for being designated for purposes of the Building Code different than the process for being designated otherwise? It seems to me that the rehab code just says that if your building meets those things set forth in (a)(1) through (a)(4), then you've got to comply with the rehab and building code and as such no different process is required to be designated as falling into one of those categories. Is there a specific designation only for building code purposes? Please clarify.*

*In (a), line 8, what is the email address of the Supervisor? How is your regulated public supposed to know who this is and how to find him or her?*

*In (a), what are the actual contents of the application? .0602 indicates that the contents are in .0605; however, .0605 seems to only indicate what must accompany the application and does not set forth the contents of the application itself.*

*In (a)(3), please change "which" to "that"*

*In (a)(3), what does it mean to "substantially meet" the Criteria? Are you using this language because of the use of the term in 36 CFR 67.9?*

*In (a)(4), what is the “list for study”? I do not see a reference to this list in 07 NCAC 04R .0304.*

*In (a)(4), please change “qualifies” to “shall qualify”*

*(a)(5) does not seem as though it is appropriate to be a sub-paragraph. Please consider making it its own Paragraph.*

*In (b), what is the “State Study List”? What happens once a property is put on the list?*

*Also, how do the meetings of the review committee work? Are they their own entity or are they a part of the Historical Commission?*

*In (c), please change “is” to “shall be”*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

07 NCAC 04R .0602 is amended as published in 31:07 NCR 537 as follows:

**07 NCAC 04R .0602 GENERAL APPLICATION PROCESS PROCESS; CRITERIA FOR DESIGNATION**

(a) Applications for designation of buildings as historic properties for building code purposes may be obtained from the Director, Division of Archives and History State Historic Preservation Officer (SHPO), Attention Preservation Planner Survey and National Register Branch, State Historic Preservation Office (HPO), North Carolina Department of Natural and Cultural Resources, 409 East Jones Street 4617 MSC, Raleigh, N. C. 27614, 27699, or by email to the Supervisor of the Survey and National Register Branch of the Historic Preservation Office. Applications shall include the contents required by Rule .0605 of this Section. Applications are submitted to the Director (SHPO) and are reviewed by him or his designee, and division professional staff. The SHPO or his designee shall sign the application form, indicating whether or not the property is determined historic. The SHPO forwards the application to the Engineering Division, North Carolina Department of Insurance, with copies to the local building inspector and the property owner, deeming the property historic for the purposes of either the North Carolina Rehab Code or the 2015 North Carolina Existing Building Code if it meets one or more of the following criteria:

- (1) It is listed in the North Carolina or National Registers of Historic Places either individually or as a contributing building to a historic district;
- (2) It has been issued a Determination of Eligibility pursuant to 36 C.F.R. part 63 by the Keeper of the National Register of Historic Places;
- (3) It is identified as a contributing building to a local historic district which has been certified by the Keeper of the National Register as substantially meeting the National Register Criteria under 36 C.F.R. 67.9; or
- (4) It is certified by the State Historic Preservation Officer using criteria set forth in 36 C.F.R. 60.4, as eligible to be listed on the National Register of Historic Places either individually or as a contributing building to a historic district; property included in the "list for study" under 07 NCAC 04R .0304 qualifies under this category.
- (5) The SHPO shall forward the application with a determination of whether the property has been deemed historic to the property owner, with copies to the local building inspector and the HPO's Restoration Branch.

(b) Any building determined by the SHPO to be individually eligible for listing in the National Register of Historic Places pursuant to Paragraph (a)(4) of this Rule shall be presented for addition to the State Study List at the next meeting of the State Professional Review Committee.

(c) The SHPO's determination of whether the property is designated historic for purposes of the building codes is a final agency decision.

*History Note: Authority G.S. 121-8; ~~Building Code Authority Chapter 10, Sec. 1009.1(a)(1), 1010.1(a)(1); 2012 North Carolina Rehab Code, Sec. 1.33; 2015 North Carolina Existing Building Code, Chapter 2, Sec. 202; 54 U.S.C. 302303;~~  
Eff. February 1, 1985;*

1                    *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*  
2                    *Amended Eff. June 1, 2017.*

1 07 NCAC 04R .0603-.0604 are repealed as published in 31:07 NCR 537–538 as follows:

2

3 **07 NCAC 04R .0603 CRITERIA FOR DESIGNATION**

4 **07 NCAC 04R .0604 DESIGNATING BUILDINGS AS HISTORIC FOR BUILDING CODE PURPOSES**

5

6 *History Note:* Authority G.S. 121-8(a),(c), and (f); Building Code Authority Chapter 1009.1(a)(1),

7 1010.1(a)(1);

8 *Eff. February 1, 1985;*

9 *Amended Eff. June 1, 1989;*

10 *Pursuant to G.S. 150B-21.3A, rules are necessary without substantive public interest Eff. July 26, 2015;*

11 *Repealed Eff. June 1, 2017.*

12

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0605

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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:

*This appears to be within the authority of the Department, rather than the Historical Commission pursuant to the cited authority of 121-8. Should 143B-62 be added to give the Historical Commission authority over this? Please verify.*

*Why are the Rehab Code and the Building Code listed as authority? These don't seem to give you all the authority to do anything. Do you instead mean to incorporate these by reference?*

*What are the actual contents of the application? .0602 indicates that the contents are in .0605; however, .0605 seems to only indicate what must accompany the actual application. This information does not need to be in both Rules, but it needs to be in either.*

*You may want to consider listing the requirements in Items (1), (2), and (4) as you have in Item (3).*

*In (3)(d), please delete or define "brief."*

*In (3)(d), what is a "pivotal building"? I don't see this referenced anywhere else. What does it mean that a building is "contributing to the National Register district"?*

*I'm not sure that I understand why (1), (2), and (3) are separated out. It appears as though (3) incorporates the requirements of (1) and (2) for buildings listed on the national register and those designated locally. I don't see that (1) or (2) adds any additional requirement to (3). As such, it appears to be duplicative unless (3) is not referring to the building being on the National register, but instead to the district. If (3) is referring to the district, and not the building, please make this more clear.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017



*In (4), do you mean why or how?*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

07 NCAC 04R .0605 is amended as published in 31:07 NCR 538 as follows:

**07 NCAC 04R .0605 DOCUMENTATION REQUIRED**

~~The following documentation must accompany applications for historic designation for building code purposes:~~ In addition to the application required by Rule .0602 of this Section, the following documentation shall be submitted for historic designations for purposes of the 2015 North Carolina Existing Building Code:

- (1) For ~~buildings~~ a building individually listed in the National Register, the applicant ~~must~~ shall submit a photograph of the building and cite the nomination by name and county.
- (2) For ~~buildings~~ a building individually designated locally by historic properties commissions, the applicant ~~must~~ shall submit a photograph of the building, a copy of the local designation report, and a letter from the local designating authority certifying that the property is ~~locally listed~~, designated as a local historic landmark or is in a local historic district.
- (3) For ~~buildings on~~ a building in a historic district that is listed in the National Register, Register or listed on the State Study List, or in that is in a locally designated historic district, districts, the applicant ~~must~~ shall provide provide: ~~the name of the district and indicate whether it is National Register, Study List, or local level;~~ a photograph of the building; ~~the address of the building;~~ a brief statement of its significance as a contributing or pivotal building in the district a map of the district showing the location of the building. For buildings in local districts, the applicant must also provide a copy of the ordinance designating the district and the material under Subparagraphs (1) and (2) of this Rule relating to the specific property. However, the certification letter from the local designating authority under Subparagraph (2) of this Rule must certify that the property lies within the boundary of a locally designated district.
  - (a) the name of the district and shall indicate whether the building is designated in the National Register, on the State Study List, or locally;
  - (b) a photograph of the building;
  - (c) the address of the building;
  - (d) a brief statement of the building's significance as a contributing or pivotal building in the district, pursuant to 36 C.F.R. 60.4 or G.S. 160A-400.4 or 160A-400.5;
  - (e) whether the building is contributing to the National Register district;
  - (f) a map of the district showing the location of the building; and
  - (g) for a building in a locally designated district, the applicant shall also provide a copy of the ordinance designating the district and the material required by Items (1) and (2) of this Rule relating to the property. The certification letter from the local designating authority required by Item (2) of this Rule shall certify that the property lies within the boundary of a locally designated district.
- (4) For ~~buildings~~ a building not falling into any of the categories in this Rule, the applicant ~~must~~ shall submit photographs of the building (including ~~significant~~ interior features), a statement of the historical

1 associations and significance of the building, an architectural description of the building, and a statement  
2 of ~~which~~ the National Register criteria under 36 C.F.R. 60.4 it meets and why.

3  
4 *History Note:* ~~Authority G.S. 121-8(a), (e), and (f); Building Code Authority Chapter 1009.1(a)(1), 1010.1(a)(1);~~  
5 ~~121-8; 2012 North Carolina Rehab Code, Sec. 1.33; 2015 North Carolina Existing Building Code,~~  
6 ~~Chapter 2, Sec. 202; 54 U.S.C. 302303;~~  
7 ~~Eff. February 1, 1985;~~  
8 ~~Amended Eff. June 1, 2017; June 1, 1989;~~  
9 ~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015.~~

10

1 07 NCAC 04R .0606 is repealed as published in 31:07 NCR 538–539 as follows:

2

3 **07 NCAC 04R .0606 APPEALS PROCEDURE**

4

5 *History Note: Authority G.S. 121-8(a),(c), and (f); 143B-62; Building Code Authority Chapter 1009.1(a)(1),*  
6 *1010.1(a)(1);*

7 *Eff. February 1, 1985;*

8 *Amended Eff. June 1, 1989;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

10 *Repealed Eff. June 1, 2017.*

11

1 07 NCAC 04R .0801 is readopted as a repeal as published in 31:07 NCR 539 as follows:

2

3 **07 NCAC 04R .0801 OPERATING HOURS**

4

5 *History Note: Authority G.S. 121-5(b); 121-8(b),(f);*

6 *Eff. February 1, 1985;*

7 *Amended Eff. April 1, 2001;*

8 *Repealed Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0802

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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:

*This appears to be within the authority of the Department, rather than the Historical Commission pursuant to the cited authority of 121-8. Should 143B-62 be added to give the Historical Commission authority over this? Please confirm the rule-making body and update the form, if necessary.*

*I realize that this is statute language, but what does it mean when an artifact is "accessioned"? I assume that this is a term with which your regulated public is familiar?*

*In (a), just to be clear, the Commission must consider (a)(1) and (a)(2) when determining whether an artifact no longer has value?*

*In (a)(2), please delete or define "legitimate"*

*In (b), it might be helpful to separate the entities who are eligible to borrow the artifacts and there are a lot of "ors" in the sentence. I would suggest either separating by semi-colons or putting these entities into a list.*

*(c) seems to be addressing several different issues. As such, you may want to consider breaking this Paragraph up into additional paragraphs.*

*In (c), how is the fair market value determined?*

*Also in (c), do you mean the "date of loss" or do you mean "the date the artifact was delivered"? How would someone know ahead of time what the value would be at the date of loss, when the date of loss is unknown (and may never occur).*

*In (c), what is meant by "packaged in a manner"? Is this just when being shipped or does include the time that it is displayed?*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (c), line 17, please change “remain” to “shall remain”*

*In (c), under what circumstances may the artifacts be removed?*

*In (d), how is this authorization to be sought by your regulated public? I assume that you don't mean that the OSA will issue the authorization, no matter what the circumstance (that's how it could be read as written). You may want to consider rewriting this Paragraph to provide a directive to your regulated public rather than saying that the OSA must issue written authorization.*

*In (e) line 24, please delete the “of” after “before”*

*In (e), what is required to be in the request? Also, is there an address rule for the state archaeologist? If not, please indicate the address of where this should be sent.*

*In (f), what are the time periods and the conditions of the loan? I assume that the time periods may vary, how is this determined?*

*In your History Note, why have you included 70-18?*

*In your History Note, did you mean 121-5(b), rather than (d)?*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .0802 is readopted as published in 31:07 NCR 539 as follows:

2  
3 **07 NCAC 04R .0802 LOAN OF ARTIFACTS DISPOSITION OF ARTIFACTS; LOANS**

4 (a) Accessioned archaeological artifacts shall not be deaccessioned unless they have been certified by the North Carolina  
5 Historical Commission to have no further value for scientific research and reference purposes. The Commission must  
6 consider:

7 (1) whether the artifacts possess any new or undiscovered historical or archaeological information to add to  
8 the scientific community; and

9 (2) whether other comparable artifacts exist, so that there is no legitimate reason to retain the artifacts for  
10 future scientific research and reference purpose.

11 ~~(a)~~ (b) Artifacts possessed by the Division of Archives and History in the custody of the Office of State Archaeology shall  
12 not be loaned for uses other than be loaned only for museum purposes, research purposes, or non-museum public display  
13 by local, state, or federal agencies or institutions ~~where the use is intended~~ for the purpose of public education.

14 ~~(b)~~ (c) Loaned artifacts, specimens, documents, and records shall remain be maintained in the condition in which they were  
15 delivered. The borrower shall insure the articles against loss or damage for two times the amount of its fair market value  
16 as of the date of loss. The artifacts ~~must be protectively packaged~~ shall be packaged in a manner that protects them from  
17 damage. The artifacts remain the property of the ~~Division of Archives and History~~ State of North Carolina and ~~can~~ may be  
18 ~~withdrawn~~ removed by the State with ~~45~~ 10 days' written notice ~~upon presentation of a written communication by the~~  
19 ~~lender or its duly authorized representative.~~ to the borrower.

20 ~~(c)~~ (d) Written authorization must be issued by the Office of State Archaeology to permit photography or duplication of  
21 any artifact of any kind. An acknowledgment credit shall identify each artifact image with the Office of State Archaeology,  
22 North Carolina Division of Archives and History.

23 ~~(d)~~ (e) All requests for loans of artifacts shall be submitted in writing to the State Archaeologist at least 30 days in advance  
24 before of the requested loan period.

25 ~~(e)~~ (f) A written contract between the borrower and the Division of Archives and History containing the period and  
26 conditions of the loan shall be signed prior to the lending of any artifact.

27  
28 *History Note: Authority G.S. 70-18; 121-2(8); 121-4(12); 121-5(d); 121-7; 121-8;*  
29 *Eff. February 1, 1985;*  
30 *Amended Eff. April 1, 2001; June 1, 1989;*  
31 *Readopted Eff. June 1, 2017.*



REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .0803

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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), why is it necessary to say “temporarily or permanently”? Wouldn’t all requests fall into one of these categories? Could you simply say “all requests to store...”*

*In (a), is there an address rule for the state archaeologist? If not, please indicate the address of where this should be sent. Please note this does not need to be in every rule, but does need to be somewhere.*

*In (a)(3), I assume that your regulated public knows the meaning of “provenience”?*

*In (b), do you mean the decisions will be provided in writing, rather than “made”?*

*In (b), I’m not sure that the factors listed in (b)(1) and (b)(3) are actually factors, but requirements to even be considered. I would imagine that factors would be things such as the space available in the OSA curation facilities, etc. What exactly does “the condition of the materials” in (b)(2) mean?*

*Why have you deleted 121-4(14)? This seems to give you the authority to charge the applicable fee. I see that 121-4(8) gives the authority to charge a fee to the Department, not the Commission – please see the note below for additional information on this. As written, I don’t see where you have the authority to charge the \$200. Also, is it the intent that this fee is charged one time. That is how it is written. Further, unless you can show explicit authority allowing you to change the fee outside of rule-making, please delete “Fees may be increased on a biennial basis, adjusted pursuant to the rate of inflation...”*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*Please delete “the revenue arising from these services shall be used to support the activities of the OSA’s curation facilities.” This is internal management and does not impact the regulated public.*

*In your history note, you have several references to statutes that give the Department rule-making authority (not the Commission). Did the Historical Commission engage in dual-rule making with the Department? If so, this needs to be reflected in your Form. If not and you only want to make reference to these statutes, without using them as underlying authority to the Rule itself (which I’m not sure would be appropriate in this Rule), then they belong in the text of the Rule rather than the history note. The addition of these statutes in the history note for Historical Commission Rules is creating some confusion as to whether the statutory authority is correct and whether you all have complied with the APA in having the correct body adopt the Rule. Please revise the history note or the form accordingly.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

07 NCAC 04R .0803 is readopted as published in 31:07 NCR 539-540 as follows:

**07 NCAC 04R .0803 CURATION OF ARCHAEOLOGICAL COLLECTIONS**

(a) All requests to temporarily or permanently store archaeological, archival, and photographic collections at OSA curation facilities shall be submitted in writing to the State Archaeologist. All requests shall include:

- (1) a declaration or statement of ownership of the collection;
- (2) the name, address, phone number, and email address of the person or agency submitting the collection;
- (3) the provenience information for the collection;
- (4) the storage size of the collection in cubic feet or by archival boxes measuring 12 x 15 x 10 inches or 6 x 15 x 10 inches; and
- (5) the number of items to be stored.

(b) Decisions on ~~the acceptance of collections will~~ storage requests shall be made in writing by the State Archaeologist, in consultation with the ~~division director~~ Director of the Office of Archives and History, North Carolina Department of Natural and Cultural Resources, based on factors such as: ~~and other division staff members.~~

- (1) information submitted in the request under Paragraph (a);
- (2) the condition of the materials contained in the collection; and
- (3) the payment of applicable fees.

~~(c) Requests may be approved or denied, depending on available storage space, the condition of the materials, payment of applicable fees.~~

~~(d)~~ (c) Fees may be charged for curation and conservation services in the amount of two hundred dollars (\$200.00) per cubic foot of materials, and the revenue arising from these services shall be used to support the activities of the OSA's curation facilities. Fees may be increased on a biennial basis, adjusted pursuant to the rate of inflation established by the Consumer Price Index.

~~(e) Charges for the conservation, stabilization, analysis, inventory, repackaging, or other treatment of materials may be negotiated on a case by case basis, and set forth in service contracts mutually agreed upon between the OSA and a requesting party, if materials exceed the two hundred dollar (\$200.00) per cubic foot curation fee.~~

*History Note: Authority G.S. 70-11; 121-4(8), (9), (13), (14); ~~121-4(14)~~; 121-8(b),(f); 143B-62; Eff. February 1, 1985; Amended Eff. April 1, 2001; June 1, 1989; Readopted Eff. June 1, 2017.*

1 07 NCAC 04R .0804 is readopted as a repeal as published in 31:07 NCR 540 as follows:

2

3 **07 NCAC 04R .0804 DEACCESSIONS**

4

5 *History Note: Authority G.S. 121-8(b),(f); 132-1(a); 132-3(a);*

6 *Eff. February 1, 1985;*

7 *Amended Eff. April 1, 2001; June 1, 1989;*

8 *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .0805 - .0806 are readopted as a repeal as published in 31:07 NCR 540 as follows:

2

3 **07 NCAC 04R .0805 ACCESS TO ARCHAEOLOGICAL COLLECTIONS**

4 **07 NCAC 04R .0806 ARCHAEOLOGICAL SITE FILES**

5

6 *History Note: Authority G.S. 70-18; 121-8(b),(d),(e),(f); 132-1(a); 132-2; 132-9;*

7 *Eff. February 1, 1985;*

8 *Amended Eff. April 1, 2001; June 1, 1989;*

9 *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .0807 is readopted as a repeal as published in 31:07 NCR 540 as follows:

2

3 **07 NCAC 04R .0807 PUBLIC ACCESS TO EXCAVATIONS**

4

5 *History Note: Authority G.S. 121-4(9); 143B-62(2)d;*

6 *Eff. February 1, 1985;*

7 *Amended Eff. April 1, 2001; June 1, 1989;*

8 *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .0808 is readopted as a repeal as published in 31:07 NCR 540 as follows:

2

3 **07 NCAC 04R .0808      ARCHAEOLOGICAL SURVEY AND EVALUATION REPORT GUIDELINES**

4

5 *History Note:*      *Authority G.S. 143B-62(2)(g);*

6                              *Eff. February 1, 1985;*

7                              *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .1002 - .1003 are proposed for readoption as a repeal as published in 31:07 NCR 540-541 as follows:

2

3 **07 NCAC 04R .1002 DEFINITIONS**

4 **07 NCAC 04R .1003 DEPARTMENT AUTHORIZED TO GRANT PERMITS AND LICENSES**

5

6 *History Note: Authority G.S. 121-22; 121-23; 121-25;*

7 *Eff. February 1, 1985;*

8 *Amended Eff. June 1, 1989;*

9 *Repealed Eff. June 1, 2017.*



1 07 NCAC 04R .1004 is readopted as a repeal as published in 31:07 NCR 541 as follows:

2

3 **07 NCAC 04R .1004 EXCEPTIONS**

4

5 *History Note: Authority G.S. 121-24;*

6 *Eff. February 1, 1985;*

7 *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .1005 - .1012 are readopted as a repeal as published in 31:07 NCR 541-542 as follows:

2

3 **07 NCAC 04R .1005 PERMIT FOR EXPLORATION: RECOVERY OR SALVAGE**

4 **07 NCAC 04R .1006 TERMS AND CONDITIONS OF PERMITS**

5 **07 NCAC 04R .1007 APPEALS RELATING TO PERMITS**

6 **07 NCAC 04R .1008 OWNERSHIP AND DIVISION OF RECOVERED ITEMS**

7 **07 NCAC 04R .1009 PROTECTED AREAS**

8 **07 NCAC 04R .1010 SPECIAL AREAS FOR SPORT AND HOBBY OPERATIONS**

9 **07 NCAC 04R .1011 REPORTING REQUIREMENTS**

10 **07 NCAC 04R .1012 REPORT REVIEW**

11

12 *History Note: Authority G.S. 121-23; 121-25; 150B;*

13 *Eff. February 1, 1985;*

14 *Amended Eff. June 1, 1989;*

15 *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .1013 is readopted as a repeal as published in 31:07 NCR 542 as follows:

2

3 **07 NCAC 04R .1013      TERMINATION OF PERMIT**

4

5 *History Note:*      *Authority G.S. 121-23; 121-25;*

6                              *Eff. February 1, 1985;*

7                              *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .1501 is readopted as a repeal as published in 31:07 NCR 542-543 as follows:

2

3 **07 NCAC 04R .1501 OPERATING HOURS**

4

5 *History Note: Authority G.S. 121-4; 121-8(b),(c),(f); 143B-62(2d); 150B-2(8a);*

6 *Eff. April 1, 2001;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*

8 *2015;*

9 *Repealed Eff. June 1, 2017.*

1 07 NCAC 04R .1502 is readopted as a repeal as published in 31:07 NCR 543 as follows:

2

3 **07 NCAC 04R .1502 HISTORIC STRUCTURE SITE FILES AND MAPS**

4

5 *History Note: Authority G.S. 70-18; 121-2(8); 121-4(13),(14); 121-4.1(a); 121-5(d); 121-8(b),(c),(f); 143B-62(2b);*  
6 *Eff. April 1, 2001;*

7 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

8 *Repealed Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .01503

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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), line 6, please add “the” in between “to” and “Survey”*

*Please indicate how the Branch may be contacted within Rule since you are creating a requirement through Rule that they be contacted to set up an appointment. Also, do you mean “appointment” if it’s just a “proposed visit”? It seems as though inconsistent terms are being used. Please be consistent.*

*In (b)(1), to what “agency” is this referring? The Department as a whole or just the Branch?*

*(b)(4) does not seem to fit with “the files if” on line 13. You may want to either change “the files if” to something like “the branch supervisor or his or her designee may limit access based upon the following factors:” and then change*

*(b)(1) through (b)(3) accordingly. Alternatively, you may want to consider changing (b)(4) to fit with the current language. Also, please provide some examples of what circumstances these may be. It doesn’t have to be an extensive, all-inclusive list, but some sort of idea to your regulated public as to what these may be.*

*In your history note, you have several references to statutes that give the Department rule-making authority (not the Commission). Did the Historical Commission engage in dual-rule making with the Department? If so, this needs to be reflected in your Form. If not and you only want to make reference to these statutes, without using them as underlying authority to the Rule itself (which I’m not sure would be appropriate in this Rule), then they belong in the text of the Rule rather than the history note. The addition of these statutes in the history note for Historical Commission Rules is creating some confusion as to whether the statutory authority is correct and whether you all have complied with the APA*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*in having the correct body adopt the Rule. Please revise the history note or the form accordingly.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .1503 is amended with changes as published in 31:07 NCR 543 as follows:

2  
3 **07 NCAC 04R .1503 VISITATION POLICY**

4 (a) The Survey and National Registry Branch is the repository of photographs, field notes, research reports, drawings,  
5 National Register of Historic Places nominations, maps, computer databases, and other materials related to the North  
6 Carolina inventory of historic structures. Visitors seeking access to Survey and ~~Planning~~ National Register Branch ~~maps~~  
7 and files shall make an appointment through the branch supervisor or his or her designee at least 24 hours in advance of  
8 the time of the ~~proposed~~ visit. ~~Information on how to contact the Survey and National Register Branch may be found at~~  
9 <http://www.hpo.dcr.state.nc.us/spbranch.htm>.

10 ~~(b) Appointments for the map collection and the file collection shall be made separately.~~

11 ~~(b)~~ (b) When multiple visitors seek access to the ~~maps or~~ files on the same day, the branch supervisor or his or her designee  
12 may limit duration of visits and limit the number of visitors using the ~~map collection and~~ file collection. The branch  
13 supervisor or his or her designee may limit access to the files if:

14 (1) the files are in use by the Agency;

15 (2) space is unavailable to view the files;

16 (3) the files would be damaged or harmed by exposure to environmental elements, such as air, light, or  
17 moisture; and

18 (4) any other circumstances that will ensure the preservation of the files, as determined by the branch  
19 supervisor or his or her designee.

20 ~~(c)~~ (c) Visitors shall switch off cell phones, pagers, and other electronic ~~communication~~ devices in the office area.

21 ~~(d)~~ (d) Survey and ~~Planning~~ National Register Branch staff shall have priority ~~for~~ in using the copy machine usage.

22  
23 *History Note: Authority G.S. 121-4(13); 121-8(b),(c),(f); 143B-62(3);*

24 *Eff. April 1, 2001;*

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26, 2015;*

26 *Amended Eff. June 1, 2017.*



REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: Section .1600

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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:

*G.S. 70-12 indicates that DNCR must consult with the DoA for application information. Please confirm that this was done.*

*G.S. 70-14 requires that the Historical Commission consult with the Department of Administration regarding rules implemented for archaeological resources removed from State lands. Please confirm that this was done.*

*In the History Note, please provide the specific provision in 121-4 giving you authority over this subject. While I realize that some of 121-4 does give the Historical Commission some authority, overall, this statute refers to the powers and duties of the Department, not the Historical Commission. Further, Article 3 of Chapter 131 governs "Salvage of Abandoned Shipwrecks and Other Underwater Archaeological Sites." Specifically, 121-23 indicates that the Department "may adopt rules necessary to preserve, protect, recover, and salvage any or all of [shipwrecks, vessels, cargoes, tackle, and underwater and archaeological artifacts]." Please confirm the adopting body of these Rules and update the form where appropriate.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1601

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Why do these definitions apply to Section .800? Section .800 and Section .1600 seem to be dealing with different subject matter.*

*Please see the note above regarding (1) as I do not think that the Historical Commission has authority over shipwrecks.*

*If the Historical Commission does have the statutory authority to regulate shipwrecks, what does it mean that the owner has "relinquished ownership rights with no retention"? Please consider using the statutory reference to 10 years contained within 121-22.*

*In (2), please see my note above regarding the Historical Commission's statutory authority over shipwrecks.*

*In (3)(b), please delete "but not limited to"*

*In (4), line 19, please delete "but not limited to"*

*Also, in (4), please don't use the same term to define the term, i.e. "ground disturbance" to define "ground disturbance"*

*In (6), by "under law" do you mean "in accordance with these rules"? Are there other permits that may be issued to conduct archaeological investigations that are not issued by the Department?*

*In (7), how is the public made aware of the protected areas? Are these available on a website somewhere?*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (8), why are you defining “qualified archaeologist”? It seems as though the requirements are already set forth in .1604, assuming that .1604 is for both specific and general permits. If you decide that it is also needed here, please add 70-13 to your history note.*

*Regarding (11), State lands is defined in G.S. 70-12 as “any lands controlled, occupied, or controlled by the State of North Carolina.” There is no mention of waters (or submerged lands) in that definition. I see that .1601 is attempting to essentially redefine “state lands” to include “submerged lands” by referencing a definition contained in 146-64; however, I do not believe that you have the authority to expand the definition and override the statutory definition contained in the appropriate article through Rule.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .1601 is adopted as published in 31:07 NCR 543-544 as follows:

2  
3 **07 NCAC 04R .1601 DEFINITIONS**

4 The following definitions, as well as the definitions set forth in G.S. 70-12, shall apply to Section .0800 and Section .1600  
5 of this Subchapter, unless otherwise indicated:

6 (1) "Abandoned shipwrecks" means sunken vessels, ships, boats, and other watercraft and their associated  
7 cargoes, tackle, and materials to which the owner has relinquished ownership rights with no retention.

8 (2) "Applicant" means a person or entity applying for a permit or license to conduct any archaeological  
9 investigations on State lands or archeological sites, or any type of exploration, recovery, or salvage  
10 operations of any part of an Abandoned shipwreck or its contents.

11 (3) "Emergency archaeological investigation" means any surface collection, subsurface test, excavation, or  
12 other activity that results in the disturbance or removal of archaeological resources undertaken because  
13 of:

14 (a) the accidental discovery of archaeological resources during construction or other ground  
15 disturbing activities; or

16 (b) threat of damage or destruction to archaeological resources caused by events including, but not  
17 limited to, vandalism, fire, erosion, land clearing, road construction, dredging, flood, or  
18 hazardous contamination.

19 (4) "Ground disturbance" means any activity that compacts or disturbs the ground including, but not limited  
20 to, ground disturbance related to the construction, alteration, trenching or expansion of dikes, borrow  
21 pits, utility lines, airports, bridges, housing developments, boat basins and channels, and the placement  
22 of fill or spoil dirt.

23 (5) "Land controlling agency" means the State agency with management responsibilities for State land.

24 (6) "Permit" means written authorization under law to conduct archaeological investigation on state lands.

25 (7) "Protected Area" means an area identified by the Department of Natural and Cultural Resources as  
26 having scientific, archaeological, or historical value, as evaluated by criteria set forth in 36 C.F.R. 60.4.

27 (8) "Qualified archaeologist" means a person possessing the following:

28 (a) a postgraduate degree or equivalent training and experience in archaeology, anthropology,  
29 history, or another related field with a specialization in archaeology;

30 (b) a minimum of one year's experience in conducting archaeological field research; and

31 (c) a minimum of five years' experience in theoretical and methodological design and in  
32 collecting, handling, analyzing, evaluating, and reporting archaeological data.

33 (9) "Risk of harm" means any disclosure of the nature or location of any archaeological resource that results  
34 or may result in the loss or destruction of archaeological context or information or the loss of historical,  
35 scientific, environmental, monetary, or religious attributes and values attributable to in archeological  
36 sites and artifacts.

1           (10) "State Archaeologist" means the head of the Office of State Archaeology (Archaeology Section),  
2           Division of Historical Resources, Office of Archives and History, Department of Natural and Cultural  
3           Resources.

4           (11) "State lands" shall mean "land" as defined in G.S. 146-64.

5           (12) "Archaeological artifacts" means those materials showing human workmanship or modification or  
6           having been used or intended to be used or consumed by humans, including relics, monuments, tools  
7           and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials  
8           including gold, silver, bullion, pottery, ceramic, and similar or related materials.

9

10       *History Note: Authority G.S. 70-12; 70-14; 121-4; 121-22; 121-23;*

11       *Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1602

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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 see my concern in .1601 regarding shipwrecks and underwater archaeological artifacts.*

*Please consider breaking (a) into three Paragraphs. One with lines 4 through 9, another with lines 9 (“No person, firm...” through 12), and another with the last sentence.*

*In (a), line 9, rather than saying “no person, firm, corporation, institution, or agency shall conduct any archaeological...”, why not just say “no archaeological investigation, exploration... or salvage operations shall be conducted on State lands.” Specifying “person, firm, corporation...” seems superfluous. Also, since “state lands” is a defined term why is there a need to say “terrestrial state lands, or State-owned bottoms of navigable waters...”*

*In (b)(1), please delete or define “directly.” Also, I assume that you want to add “in accordance with the Rules of this Section” at the end?*

*In (b)(2), is there not a requirement that a person be a “qualified archaeologist” for specific permits also? Given .1604, I think that there is. If that is correct, why not include that requirement here as you have in (b)(1) for general permits.*

*In (c), please change “is” to “shall be”*

*In (c), what do you mean by “official”?*

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 the Agency: January 30, 2017

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .1602 is adopted as published in 31:07 NCR 544 as follows:

2  
3 **07 NCAC 04R .1602 ARCHAEOLOGICAL INVESTIGATIONS ON STATE LANDS**

4 (a) Any person conducting archeological investigations on State lands shall obtain a permit. Upon consultation with the  
5 Department of Administration and subject to the criteria and discretion set forth in this Section, Article 2 of G.S. 70 and  
6 Article 3 of G.S. 121, the State Archaeologist, as designee of the Secretary of the Department of Natural and Cultural  
7 Resources, may grant permits to any person wishing to conduct terrestrial or underwater archaeological investigations on  
8 State lands, the exploration, recovery, or salvage of abandoned shipwrecks, and of underwater archaeological artifacts of  
9 state-owned bottoms in navigable waters. No person, firm, corporation, institution, or agency shall conduct any  
10 archaeological investigation, exploration, recovery, or salvage operations on terrestrial State lands, or State-owned bottoms  
11 of navigable waters during which abandoned shipwrecks or underwater archaeological artifacts may be removed,  
12 displaced, or destroyed, without having first received a permit from the Department of Natural and Cultural Resources.  
13 After issuance, no permit or any part thereof shall be assigned or sublet.

14 (b) Permits shall be either General or Specific, as follows:

15 (1) General Permits shall be issued to those land controlling agencies that employ qualified archaeologists  
16 on a full time permanent basis to conduct archaeological investigations on state lands directly under the  
17 agency's control; and

18 (2) All other permits shall be Specific Permits.

19 (c) No permit is required for employees of the Department of Natural and Cultural Resources to conduct investigations  
20 being conducted as part of the Department's official responsibilities.

21  
22 History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10;

23 Eff. June 1, 2017.



REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1603

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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 provide the factors under which the general permit may be issued. Alternatively, since you have already indicated in .1602 when the general would be appropriate, there is no need to say it again. As such, you may want to consider formatting (a) as you have (b) and just say "Applications for a general permit shall include the following:"*

*In (a), is there no timeline required as there is for the specific permit in (b)?*

*In (a), please delete or define "directly"*

*In (a), since general permits can only be issued to land controlling agencies, there is no need to say that on line 6. Just say "The General Permit application shall include:"*

*In (a)(2), please delete or define "general"*

*In (3), is the "principal investigator archaeologist" the same as a "qualified archaeologist"? If so, please use consistent terms. If not, who is this? Please give more meaning to the term.*

*In (a)(5), please delete the comma after "procedures" and after "artifacts"*

*In (a)(5), is this essentially just a copy of the protocols and procedures of the facility? Just to be clear, this is not something that the applicant has to create. It seems as though (a)(5) and (a)(6) should be switched.*

*In (a)(8), please remove the comma following "and" and "records"*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (a)(9), please see the above note about the “principal investigator” If additional information needs to be provided, it is only necessary to do it in one place.*

*In (b), who can apply for a specific permit? Is it correct that an agency may only apply for a general permit or any qualified person may apply for a general permit?*

*How do the 30 days in (b) and the total 90 days go together in (4)? Can they start the process for review and comment before the submission of the application? Is the comment period required elsewhere in rule or statute?*

*In (b)(5), please see the comment above regarding the principal investigator.*

*In (b)(8), what would be considered “evidence”? Please provide some examples.*

*In (b)(9), what is the “written criteria”? Is this essentially a copy of the policies of the facility?*

*In (b)(11), is there a requirement elsewhere in rule or statute that requires this “concurrence”*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

07 NCAC 04R .1603 is adopted as published in 31:07 NCR 544-545 as follow:

**07 NCAC 04R .1603 APPLICATION FOR ARCHAEOLOGICAL PERMITS**

**(a) General Permit.** A General Permit may be issued to a land controlling agency to conduct archaeological investigations and emergency archaeological investigations on land directly controlled by that agency. Each General Permit application for a land controlling agency shall include the following information:

- (1) a written description of the lands controlled by the agency, including the county and township;
- (2) a general description of the nature and objectives of the investigation(s);
- (3) the name, address, telephone number, and qualifications of the principal investigator archaeologist;
- (4) evidence that the requirements of Rule .1604 of this Section are met;
- (5) written protocols and procedures, for access to records and artifacts, of the facility where such records and artifacts are to be curated;
- (6) the facility identified for curation of all artifacts, records, data, photographs, and other documents or information resulting from the investigations;
- (7) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- (8) the person or position in the institution or agency with responsibility for curation of artifacts and, records, and other documentation or information as to who shall determine access to this material; and
- (9) the principal investigator's plans, if any, for dissemination of the results of the investigation in addition to the reporting requirements of Rule .1611 of this Section.

**(b) Specific Permit.** Applicants for Specific Permits shall submit applications to the State Archaeologist at least 30 days prior to the proposed start date of the archaeological investigations. Each Specific Permit application shall include:

- (1) a written description of the location of the proposed investigation, including the county and township;
- (2) a 1: 24,000 or larger scale map depicting the location of the proposed investigation;
- (3) a description of the nature, objectives and scope of the proposed investigation, including the methods to be employed and the requirements for clearing of vegetation;
- (4) the schedule for the investigation, including hours of the day and days of the week, as well as beginning and completion dates. The schedule shall include 60 days for review and comment of the draft report by the State Archaeologist and the land-controlling agency and a maximum of 30 days for response, revisions, and submittal of the final report by the applicant;
- (5) the name, address, telephone number, institutional affiliation, and qualifications of the principal investigator archaeologist;
- (6) the name, address, telephone number, and qualifications of the field director, if different from the principal investigator;
- (7) the approximate number of people proposed to carry out the investigation;
- (8) evidence of the applicant's capability to initiate, conduct, and complete the proposed investigation;

- 1       (9) written criteria for evaluation of requests for access to records and artifacts at the facility where the  
2       records and artifacts are to be curated;
- 3       (10) the facility identified for curation of all artifacts, records, data, photographs, and other documents or  
4       information resulting from the investigation;
- 5       (11) written concurrence from the land-controlling agency regarding the applicant's proposed curatorial  
6       arrangements;
- 7       (12) facilities and plans for stabilization and preservation of perishable or unstable artifacts;
- 8       (13) the person or position in the institution or agency with responsibility for curation of artifacts and records,  
9       and other documentation or information as to who will determine access to this material;
- 10      (14) a description of the type and timing of all access needs on State property, vehicular or otherwise, required  
11      to conduct the investigations;
- 12      (15) a description of how the project will be coordinated with the site-specific land manager, including the  
13      applicant's documentation that initial contact has been made and the name of the person contacted;
- 14      (16) a description of the provisions to be made to secure the permit area to assure the safety of non-project  
15      personnel who may visit the permit area during and after project hours;
- 16      (17) an indication of the length of time each excavation unit will be open and a schedule for reclaiming all  
17      areas disturbed by any aspect of the archaeological investigations; and
- 18      (18) the applicant's plans, if any, for dissemination of the results of the investigations in addition to the  
19      reporting requirements noted in Rule .1612 of this Section.

20 (c) Applications shall be sent to the State Archaeologist, Office of State Archaeology, 4619 MSC, Raleigh, NC 27699-  
21 4619, via U.S. Mail.

22  
23 History Note: Authority G.S. 70-13; 70-14; 121-4(13); 121-23; 121-25; 143B-10;  
24 Eff. June 1, 2017.

## REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1604

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Not all of the sub-paragraphs of (a) seems to go together. For example, (6) and (7) seem to be what is required after the application is approved. Please clarify. Clarification may require some rearranging of this Rule.*

*Is (a) the application process for both specific and general permits? If so, how is an agency going to meet the requirements in (a)(1) through (a)(4)? Does the agency need to have someone employed and actually making application who meets these qualifications? Do you need this here given .1602(b)(1) and your definition of "qualified archaeologist"?*

*In (a)(4), how is it determined whether any of these requirements are met? Also, what are the professional standards? Are they incorporated by reference elsewhere? How can I find these? Is there a cross-reference available? What is meant by "other professional archaeological organizations?"*

*How is (a)(5) determined?*

*In (a)(6), what are the accepted techniques? Are those by the NPS, etc. incorporated by reference? Where can I find them? Is there a cross-reference available? What is meant by "other professional archaeological organizations?"*

*What is meant by (a)(7)? This is unclear as written.*

*(a)(8) does not seem to go with (a). Is there a word missing at the beginning of the sub-paragraph?*

*In (a)(8), rather than saying "particular project", say "proposed archaeological investigation" for purposes of consistency.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (a)(8), please delete or define “successful”*

*In (a)(8), please delete or define “similar”*

*Why are (b) and (c) written differently? Won't you issue specific permits so long as the terms and requirements of the rules of this Section are fulfilled? If so, please say that.*

*Please be consistent in your capitalization of “application” in (b) and (c). .1609 is a bit confusing as to who can conduct emergency investigations. .1609 makes it seem as though only land controlling agencies may perform these investigations, but (d) of this Rule refers to “anyone.” Please clarify. Please note that making who may conduct these more clear in .1609 will likely address this issue.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

07 NCAC 04R .1604 is adopted as published in 31:07 NCR 545-546 as follows:

**07 NCAC 04R .1604 REQUIREMENTS FOR AND ISSUANCE OF PERMITS**

(a) Applicants for permits to conduct archaeological investigations shall:

- (1) have a postgraduate degree, or equivalent training and experience, in archaeology, anthropology, history, or another related field with a specialization in archaeology;
- (2) have a minimum of one year's experience in conducting archaeological field research;
- (3) have obtained and submitted for review by the State Archaeologist a criminal record check by the State Bureau of Investigation as set forth in G.S. 70-13.1 and G.S. 121-25.1;
- (4) have funds, equipment, and facilities to undertake and complete the operation, provide supervision of all phases of the operation, and demonstrate the ability to carry out acceptable investigations that meet current professional standards, including those promulgated by the National Park Service, Society for American Archaeology, and other professional archaeology organizations;
- (5) undertake the proposed activity for the purpose of furthering archaeological knowledge;
- (6) employ accepted techniques of survey, excavation, recovery, recording, preservation, and analysis used in investigations, including those promulgated by the National Park Service, Society for American Archaeology, and other professional archaeology organizations;
- (7) conserve the archaeological artifacts recovered during the proposed project and ensure that those artifacts and all original archaeological records and data associated with the undertaking shall be conserved and curated in an acceptable manner; at a minimum, artifacts and associated records are conserved and maintained in accordance with professionally-accepted curation standards or in the absence of such standards by the National Park Service as set forth in 36 CFR 79; and
- (8) any other qualification deemed necessary by the State Archaeologist as dictated by the particular project, such as documented expertise in subfields of archaeology (prehistory, history, maritime, forensic), professional publications, and evidence of successful completion of similar investigations in North Carolina or in the southeastern United States.

(b) General Permits shall be issued to a land-controlling agency within 90 days following submission of the completed Application provided the terms and requirements of the rules in this Section pertaining to General Permits are fulfilled.

(c) The Specific Permit shall be issued or denied within 90 days after submission of the completed application. The reason for the denial shall be specified in the denial notice.

(d) Specific Permits shall not be issued to any person who has conducted emergency archaeological investigations until the State Archaeologist receives and accepts a final report pursuant to Rule .1612 of this Section.

*History Note:* Authority G.S. 70-11; 70-13; 70-13.1; 121-4(13); 121-23; 121-25; 121-25.1; 143B-10; Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1605

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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), I don't see that .1604 sets forth "procedures" for a renewal or extension. What exactly is required of someone to receive one of these? What is the difference in the procedures of a renewal or an extension? It appears as though one is simply a request and the other is an application. I assume that the Department would need different information depending upon the request – that is not clear. How much of an extension may be given? Additional information needs to be provided.*

*In (b), what does "Evaluation of past performance of the applicant" mean? What will the Department be looking for in its review of "extension requests or renewal application"? Please add some additional information and also consider putting this in list form.*

*In (c), how is it determined for how long the permit will be issued and also for how long the extension or renewal will last? Is this something that the Department will decide? If so, how?*

*In (c), who is the "principal investigator archaeologist"? Is this the same "qualified archaeologist" required elsewhere in Rule? If so, please be consistent in your terminology.*

*In (c), who may be the "other designated permit applicant"? Is this left to the applicant or does the Department have any say in it?*

*In (d), just so I understand the process, once the Department issues the permit, then investigator must then sign it and return it to the Department? Where is the requirement on the investigator that he or she do this?*

*Please confirm the desired effective date in the history note.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017



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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .1605 is adopted as published in 31:07 NCR 546 as follows:

2

3 **07 NCAC 04R .1605 DURATION, EXTENSION, AND RENEWAL OF PERMITS**

4 (a) Permits shall be renewed or extended pursuant to the procedures set forth in Rule .1604 of this Section.

5 (b) General Permits shall be valid for a period of five years from the date of issuance. General Permits may be renewed  
6 for a period of five years, after review of extension requests or renewal applications and evaluation of the past performance  
7 of the applicant.

8 (c) Specific Permits shall be issued for a period not to exceed three years. Specific Permits may be extended for up to  
9 six months or renewed for up to three additional years. Specific Permits may be extended only once, but may be renewed  
10 any number of times.

11 (d) No General or Specific Permit shall be considered valid until a signed and dated original copy is returned to the State  
12 Archaeologist by the Principal Investigator Archaeologist or other designated permit applicant.

13

14 History Note: Authority G.S. G.S. 70-13; 70-14; 121-23; 121-25;

15 Eff. February 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1606

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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)(1), how is the time, duration, scope, and purpose determined? Is this information from the application? If so, it's ok as written, I just want to verify that this is not something that is being determined by the Department.*

*In (a)(4), are the requirements as set forth in .1611 and .1612?*

*In (b), what are these terms and conditions? Are these standard or will they change based upon the project? This seems as though there is a potential for rule-making outside of rule-making if the intent is to change the requirements on your regulated public through language on a permit. Please clarify.*

*In (c), what is "any agency involved..." Is this DoA, DNCR, and the Historical Commission? Why not just say "Inspections may occur at the archaeological investigation site to ensure" Also, when will these occur? After a complaint? At random?*

*In (d), what is your authority for this? It seems as though this is a legal issue and conclusion and goes beyond your authority.*

*In (d), if you do have the authority, what is meant by "secure"?*

*In (e), what is meant by "rules and regulations of the land-controlling agency"? If this is only attempting to get to general permits, why is it necessary to have this spelled out? If this is also applicable to specific permits, will there always be a land controlling agency involved? Further, wouldn't the "regulations of land controlling agencies" be included in "applicable state... rules" making this language superfluous?*

*In (f), who is the site specific land manager?*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .1606 is adopted as published in 31:07 NCR 546 as follows:

2  
3 **07 NCAC 04R .1606 TERMS AND CONDITIONS OF PERMITS**

4 (a) All permits shall specify:

5 (1) the nature and extent of the investigations allowed under the permit, including the time, duration, scope,  
6 location, and purpose of the investigations;

7 (2) the name of the individual responsible for conducting the investigations and, if different, the name of the  
8 individual responsible for carrying out the terms and conditions of the permit;

9 (3) the name of the land-controlling agency, university, museum, or other scientific or educational institution  
10 in which any collected materials and data will be deposited; and

11 (4) the reporting requirements and schedule.

12 (b) All permits shall specify terms and conditions necessary to ensure public safety, protect natural and cultural resources,  
13 safeguard legitimate land uses, and limit activities incidental to investigations authorized under the permit.

14 (c) Any agency involved in consultation or approval of a permit under this Section may make inspections at the location  
15 specified in the permit as necessary to ensure that the terms and conditions of the permit are being met.

16 (d) The permittee shall secure the project area and shall hold the State harmless from all claims arising out of the project,  
17 including any claims of trespass or damage to adjacent private property caused by the permittee related to the permit. The  
18 permittee shall also:

19 (1) sign a waiver of claims against the State;

20 (2) be held responsible for damage to State property resulting from the permitted investigations; and

21 (3) submit evidence of liability insurance upon acceptance of the terms and conditions of a permit.

22 (e) Archaeological investigations conducted under a permit shall comply with all applicable state, federal, and local  
23 regulations and the rules and regulations of the land-controlling agency, including its management plans and operation  
24 practices.

25 (f) All access to State-owned lands during permitted investigations shall be controlled by and coordinated with the land-  
26 controlling agency and the site-specific land manager.

27 (g) Applicants shall restore all project lands to their pre-project condition by the conclusion of the field investigations.

28  
29 History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25;

30 Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1607

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*How are any of the factors contained within (a)(1) through (3) determined?*

*(b)(4) makes it seem as though all sites are confidential; however, 70-18 says the opposite, unless DNCR determines that disclosure would create a risk of harm. Please clarify the Rule.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .1607 is adopted as published in 31:07 NCR 546-547 as follows:

2  
3 **07 NCAC 04R .1607 PERMIT DENIAL, SUSPENSION AND REVOCATION**

4 (a) A permit may be denied if the State Archaeologist, in consultation with the Department of Administration, finds that:

- 5 (1) the proposed investigations would represent an adverse effect to a unique or fragile natural resource;
- 6 (2) the proposed investigations would interfere with the operation and management of an area;
- 7 (3) the proposed investigations would pose a threat to public safety;
- 8 (4) the applicant has not completed the terms and conditions of a previous permit; or
- 9 (5) the results of the required criminal record check reveal one or more convictions listed in G.S. 70-13.1 or  
10 G.S. 125-25.1.

11 (b) A permit may be suspended or revoked if the State Archaeologist, in consultation with the Department of  
12 Administration, finds that:

- 13 (1) the terms and conditions of the permit have been or are being violated;
- 14 (2) the permit applicant is convicted of a crime enumerated in G.S. 70-13.1 or G.S. 125-25.1;
- 15 (3) the permit holder fails to comply with the rules in this Section or applicable State or federal laws; or
- 16 (4) the confidentiality of information relating to the nature and location of the archaeological resources is  
17 not maintained in accordance with G.S. 70-18.

18  
19 History Note: Authority G.S. 70-13; 70-14; 121-23; 121-24; 121-25; 143B-10;  
20 Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1608

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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:

*Please add a comma after "suspension"*

*Why is this Rule necessary? What does it do that the Statute does not?*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017



1 07 NCAC 04R .1608 is adopted as published in 31:07 NCR 547 as follows:

2

3 **07 NCAC 04R .1608 APPEALS RELATING TO PERMITS**

4 An applicant or permittee may appeal the denial, suspension or revocation of a permit as set forth in Article 3 of G.S. 150B.

5

6 History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 150B-23;

7 Eff. June 1, 2017.

UNREVIEWED DRAFT

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1609

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Who may conduct an emergency investigation? The reference to a “specific permit” is confusing. Would it be appropriate to say “Emergency archaeological investigations on State Lands shall not require a permit if...”*

*In (a), please change “do not” to “shall not”*

*In (a), please change “are” to “shall be”*

*In (b), please change “remain” to “shall remain”*

*In (b), is there a cross-reference available to repositories that are approved by the State Archaeologist? Where can these be found? What is the process? How will it be determined?*

*In (b), are the repositories for artifacts found as a result of emergency investigations different than for those found under a regular general or specific permit? I don't recall there being an approval process for repositories elsewhere.*

*In (b), line 10, please change “must” to “shall”*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .1609 is adopted as published in 31:07 NCR 547 as follows:

2

3 **07 NCAC 04R .1609 EMERGENCY ARCHAEOLOGICAL INVESTIGATIONS**

4 (a) Emergency archaeological investigations on State lands do not require a Specific Permit if the person conducting the  
5 investigation meets the qualifications of Rule .1604 of this Section and the land-controlling agency has notified the  
6 Department of Administration and the State Archaeologist of the emergency investigation. Reporting requirements for  
7 emergency archaeological investigations are those set forth in Rule .1612.

8 (b) All artifacts and associated records recovered during emergency archaeological investigations remain the property of  
9 the State of North Carolina and shall be maintained in a repository approved by the State Archaeologist. Facilities where  
10 State-owned collections are maintained must comply federal curation standards as set forth at 36 C.F.R. 79.

11

12 History Note: Authority G.S. 70-13; 70-14; 121-23; 123-25; 143B-10;

13 Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1610

DEADLINE FOR RECEIPT: Friday, February 10, 2017

**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:

*Please delete or define “formally.” Is there a cross-reference available for the authority of a Secretary to designate an area as protected?*

*Under what circumstances will the permits be issued for those protected areas?*

*Are the requirements, the process, and the determinations made the same as for areas without the designation? If so, please add “in accordance with the Rules of this Section” at the end of the first sentence.*

*On line 6, please change “remain” to “shall remain”*

*In (b), are the repositories for artifacts found on protected areas different than for those found under a regular general or specific permit? I don't recall there being an approval process for repositories elsewhere.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .1610 is adopted as published in 31:07 NCR 547 as follows:

2

3 **07 NCAC 04R .1610 PROTECTED AREAS**

4 The Department of Natural and Cultural Resources may issue permits for the archaeological investigation of sites formally  
5 designated as protected areas by the Secretary of a State agency. All artifacts and associated records recovered from  
6 protected areas remain the property of the State of North Carolina and shall be maintained in a repository approved by the  
7 State Archaeologist and in compliance with federal curation standards set forth at 36 C.F.R. 79.

8

9 History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143-10;

10 Eff. June 1, 2017.

UNOFFICIAL DRAFT

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1611

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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 (b), is the report required by the permit or by this Rule?*

*Also in (b), please move reference to the summary requirement to (f) which appears to say what the report must include.*

*Does (c) belong in this Rule? It seems misplaced as this Rule seems to show. Also in (c), who is the field director? I don't recall this mentioned elsewhere.*

*In (d), how often must reports be submitted to the OSA? Shall it just occur at the completion of the project or must it occur annually?*

*In (e), do you mean "shall" or "may"? It appears as though "may" would be appropriate here.*

*Also in (e), what is meant by "consultation with the State Archaeologist"? Is this actually an approval process and this is attempting to provide an extension of the report due date? Please rewrite this Paragraph to make it more clear as to what it is actually doing.*

*In (f), please give some meaning to "OSA" One option would be to change "state archaeologist" in (a) to "State Archaeologist (OSA)"*

*In (f)(1), please delete or define "permanent" Also, by "permanent physical location", are you referring to the facility previously mentioned in Rule?*

*In (f)(2) and (f)(3), please delete or define "permanent" unless this is a term of art used by your regulated public.*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (g), what does “in consultation mean”? What is the process? Also, it appears as though you are incorporating the Secretary of Interior’s Standards by reference. Please do so in accordance with 150B-21.6.*

*In (h) and (i), are the “comments” regarding the revisions in (g)?*

*In (i), what is meant by “taking into account”? What is expected to occur after the requested revisions?*

*In (i), what is meant by the “final report”? Is this the report at the conclusion of the project or is this the report after revisions are made following the SA’s review?*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04R .1611 is adopted as published in 31:07 NCR 547 as follows:

2  
3 **07 NCAC 04R .1611 REPORTING REQUIREMENTS FOR GENERAL PERMITS; REVIEW**

4 (a) Reports of archaeological investigations conducted under the terms of a General Permit shall be submitted to the State  
5 Archaeologist.

6 (b) The principal investigator archaeologist shall submit a summary of the results of all archaeological investigations as  
7 part of the report(s) required by the permit.

8 (c) The land-controlling agency shall report in writing to the Secretary of the Department of Administration and State  
9 Archaeologist any change in either the principal investigator archaeologist or the field director named in a General Permit  
10 within 10 days of that change.

11 (d) Final reports concerning archaeological investigations and emergency archaeological investigations shall be submitted  
12 by the end of the calendar year that immediately follows the year in which the archaeological investigations were  
13 conducted.

14 (e) The principal investigator archaeologist, in consultation with the State Archaeologist, shall delay the submission of a  
15 final report, under circumstances described in this Paragraph, until an agreed-upon date is determined with the land-  
16 controlling agency. Delays shall be considered for events including environmental changes, changes in project  
17 specifications by the project sponsor, or unforeseen discoveries of complex or fragile archaeological materials, including  
18 human remains.

19 (f) The principal investigator archaeologist shall provide in the report to OSA:

20 (1) information concerning the permanent physical location of artifacts, records, and all other documentation  
21 for all archaeological investigations;

22 (2) itemized list of all recovered archaeological resources by type, variety, material, or other description and  
23 a list of accession numbers or other permanent identifiers applied to the recovered resources; and

24 (3) an itemized list of records, photographs, and other documents and a list of accession numbers or other  
25 permanent identifiers applied to the records and data.

26 (g) The State Archaeologist, in consultation with the Department of Administration and head of the land-controlling  
27 agency or designee, shall review at least once a year the permittee's performance under any General Permit issued for a  
28 period greater than one year. The State Archaeologist shall review the final reports for General Permits to ensure that the  
29 reports meet the federal Secretary of the Interior's Standards for Archaeological Documentation and may requests revisions  
30 of the final report if said standards are not met.

31 (h) The State Archaeologist shall have 60 days following receipt of any report to review and return written comments on  
32 the report to the land-controlling agency and the principal investigator archaeologist.

33 (i) Taking into account the State Archaeologist's written comments, the principal investigator shall revise and submit the  
34 final report within 30 days of receipt of review and comments by the State Archaeologist.

35  
36 *History Note: Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143-10;*

37 *Eff. June 1, 2017.*



REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1612

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Overall, is this Rule attempting to say what the reporting requirements are for both specific permits AND for those emergency investigations conducted in accordance with .1609?*

*Please consider breaking (b) into 2 sentences.*

*In (c), line 9, please delete "from"*

*In (c), what is a preliminary field report? What is to be included? How do the field reports specify the date for the draft report?*

*In (d), how is this schedule established? Is there a cross-reference to a rule or statute?*

*In (f), how is this determined?*

*In (g), when will this request be made by the SA? Also, what is (g) intending to do? I'm not sure that I understand the reference to emergency investigations within the context of this Paragraph.*

*In (g)(1), please delete or define "permanent" Are you referring to the facility previously mentioned?*

*In (h), please change "is" to "shall be"*

*Please consider rewriting (i), (j), (k) and (l) to further delineate the process to make it more clear. For example, it seems as though (k) and (l) would occur before parts of (j).*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

*In (i), should the “or” on line 29 be “and”?*

*In (i), what does “in consultation mean”? What is the process?*

*In (j), it appears as though you are incorporating the Secretary of Interior’s Standards by reference. Please do so in accordance with 150B-21.6.*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .1612 is adopted as published in 31:07 NCR 547-548 as follows:

2  
3 **07 NCAC 04R .1612 REPORTING REQUIREMENTS FOR SPECIFIC PERMITS; REVIEW**

4 (a) Permittees shall prepare and submit to the State Archaeologist and the head of the land-controlling agency reports for  
5 all archaeological investigations conducted under Specific Permits.

6 (b) The permittee shall maintain a daily log of all project activities, including the types of equipment used and site  
7 conditions, and provide copies to the State Archaeologist upon request.

8 (c) The permittee shall submit a preliminary field report within 60 days after completion of the on-site archaeological  
9 investigation. Preliminary field reports of from emergency archaeological investigations shall specify the date for  
10 submission of the draft report.

11 (d) The permittee shall submit draft reports according to the schedule established in the permit or, in the case of emergency  
12 archaeological investigations, by the date specified in the preliminary field report. Draft reports submitted for emergency  
13 archaeological investigations shall include information on storage and curation of artifacts, records, and other data in  
14 accordance with the specifications in Rule .1603(b)(9) through (13) of this Section.

15 (e) The permittee shall submit final reports no later than 90 days after submission of the draft report.

16 (f) If the specified submission date for a draft report of emergency archaeological investigations extends beyond one year  
17 from the date of submission of the preliminary field report, progress reports shall be submitted annually.

18 (g) Upon request by the State Archaeologist, the permittee or, in the case of an emergency archaeological investigation,  
19 the principal investigator shall provide in the final report the following information:

20 (1) the permanent physical location of artifacts, records, and all other documentation;

21 (2) an itemized list of all recovered archaeological resources by type, variety, material, or other description  
22 and a list of accession numbers or other permanent identifiers applied to the recovered resources; and

23 (3) an itemized list of records, photographs, and other documents and a list of accession numbers or other  
24 permanent identifiers applied to the records and data.

25 (h) The permittee is responsible for the accuracy and validity of the data contained in the final report submitted to the  
26 Department of Natural and Cultural Resources.

27 (i) For any Specific Permit issued for a period greater than one year, the State Archaeologist, in consultation with the  
28 Department of Administration and head of the land-controlling agency or designee, shall review at least once a year the  
29 permittee's performance through interim reports submitted by the permittee or compliance inspections conducted at the  
30 investigation location.

31 (j) The State Archaeologist and the land-controlling agency shall review all draft and final reports for Specific Permits to  
32 ensure that the investigations serve the public interest and the reports meet the federal Secretary of the Interior's Standards  
33 for Archaeological Documentation. The State Archaeologist may request revisions of the draft or final reports. Terms  
34 and conditions of a Specific Permit shall be considered satisfied only after report revisions, if requested by the State  
35 Archaeologist, have been completed and the report has been accepted by the State Archaeologist.

36 (k) The State Archaeologist and the land-controlling agency have 60 days after receipt to review and comment on draft  
37 reports and return written comments to the permittee.

1 (l) Taking into account the State Archaeologist's written comments, the permittee shall revise and submit the final report  
2 within 30 days of receipt of review and comments by the State Archaeologist.

3

4 History Note: Authority G.S. 70-13; 70-14; 121-4; 121-23; 121-25; 143B-10;

5 Eff. June 1, 2017.

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04R .1613

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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 change "which" to "that"*

*In (b), what about the records and dates pertaining to shipwrecks? Is there a reason that (a) and (b) have been separated out? Is this because of the authority regarding the two?*

*In (c), what is the process to change the approved location? I assume this is the facility referenced previously?*

*In (c), line 10, please change "does not" to "shall not"*

*In (c), would it be appropriate to cross-reference Section .800?*

*In (c)(1), please delete or define "direct"*

*In (c)(2), was this already approved in the permit? I don't see that this was required to be provided pursuant to .1603.*

*In (d), what is the approval process and how will the determination be made?*

*In (d), line 20, please delete "However"*

*How are the requirements of (e) determined?*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

1 07 NCAC 04R .1613 is adopted as published in 31:07 NCR 548 as follows:

2  
3 **07 NCAC 04R .1613 CUSTODY OF RESOURCES UNDER TERMS OF PERMITS**

4 (a) The archaeological resources which are collected, excavated, or removed from State lands and related records and  
5 data shall remain the property of the State of North Carolina.

6 (b) All abandoned shipwrecks and underwater archaeological artifacts recovered in the waters of the State of North  
7 Carolina shall remain the property of the State of North Carolina.

8 (c) The location of all records, artifacts, or other materials shall not be changed from that approved in the permit without  
9 prior approval of the State Archaeologist and, in the case of Specific Permits, the land-controlling agency. This restriction  
10 does not apply to the temporary removal and relocation of artifacts or records for the purposes of scientific, historical, or  
11 educational research nor for purposes of public display or education, so long as the artifacts or records remain:

12 (1) In the case of General Permits, under the direct custody or control of the principal investigator  
13 archaeologist or the land-controlling agency; or

14 (2) In the case of Specific Permits, under the custody or control of the museum, university, or  
15 scientific or educational institution approved in the permit.

16 (d) Transfers or loans of records and artifacts between universities, museums, and scientific or educational institutions  
17 shall be approved by the State Archaeologist and shall be preceded with written affirmation from the principal investigator  
18 or permittee that the receiving institution conforms to the conditions set forth in this Rule. In addition, the permittee shall  
19 provide the State Archaeologist with information outlined in Rule .1603(a) of this Section for General Permits and in Rule  
20 .1603(b) of this Section for Specific Permits. However, in the case of General Permits this Paragraph shall not apply to  
21 the movement of artifacts in the custody of a land-controlling agency so long as the artifacts remain under the control of  
22 the principal investigator archaeologist and the land-controlling agency.

23 (e) All records and artifacts shall be accessible for scientific, historical, or educational research if such access does not  
24 compromise the confidentiality of the nature and location of any archaeological resources or pose a risk of harm to the  
25 resources or site. The principal investigator archaeologist, in consultation with the State Archaeologist, shall determine  
26 when items under this section can be accessed.

27  
28 *History Note: Authority G.S. 70-13; 70-14; 121-23; 121-25; 143B-10;*

29 *Eff. June 1, 2017.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Historical Commission

RULE CITATION: 07 NCAC 04T .0104

DEADLINE FOR RECEIPT: Friday, February 10, 2017

***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:

*Pursuant to 121-4(7) (the cited authority), the Department, not the Historical Commission, appears to have authority over historical markers. I see that the Secretary may appoint an advisory committee to create criteria. Is there a delegation that places this Committee within the Historical Commission or is there some additional authority not cited? Please confirm the rule-making body that adopted this Rule and update the form accordingly, if necessary.*

*In (a), how by whom is it determined whether there is "statewide significance"?*

*In (a), what is required of the applicant in the application? How is the application to be made? I see .0103 gives the where, but now the how or what. Is there another cross-reference available? If not, this information needs to be provided.*

*In (b), please change "is" to "shall be"*

*Please consider simplifying (b). A suggested rewrite would be as follows: (b) An individual [is] shall be eligible for consideration of a historical marker [only after a waiting period of] twenty-five years following [that individual's] his or her death. ~~No marker will be erected for an individual within 25 years of his death.~~*

*Also in (b), what additional requirements are there for a person to receive a historical marker? Must they be dead for 25 years and then also meet some sort of other criteria? Perhaps providing the factors as asked above in (a) may address this issue.*

*Please change (c) into what shall be rather than what shall not be. A suggested rewrite with a list would be as follows:*

*(c) Markers for representatives in ~~the~~ U.S. Congress shall be approved if the*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017

~~nominee: not be approved automatically; [automatically. The nominee must have]~~  
(1) ~~served [at least] two terms; [terms, or]~~  
(2) ~~served as a chairman of a standing committee; [committee or]~~  
(3) ~~sponsored key legislation; or [legislation, or have]~~  
(4) ~~has been recognized as having served with distinction elsewhere, such as in the military, as an ambassador, as a member or volunteer in a social, civic or political organization. in addition to serving in Congress the individual must have served with distinction elsewhere.~~

*In (c), what is meant by “key legislation”?*

*In (c), just to be sure that I am clear on the intent of the Rule, a congressman may be eligible so long as he meets ONE of the things set forth in (c)? For example, so long as he or she has been served with distinction, he or she could have only served a half of a term.*

*Why is (d) necessary? Wouldn't houses of worship fall into places as set forth in (a)? If (d) is necessary, please rewrite to be a directive to your regulate public.*

*In (e), what is meant by “a number of persons” Please provide some meaning to this phrase.*

*In (e), how and by whom is it determined whether a person has “statewide historical significance”? Perhaps providing the factors as asked above in (a) may address this issue.*

*In (f), please rewrite this Paragraph to provide a directive to your regulated public. A suggested rewrite would be “~~Markers will not be approved for [The committee shall not approve markers]~~ Markers for cities or towns, former county seats, abandoned courthouses, jails, jail sites, post offices, former building sites, colleges or universities shall be approved for a historical marker if they are determined to have unless [they are] of statewide historical significance.*

*Why is are (f) and (g) necessary? Wouldn't “cities, towns, county seats, abandoned courthouses...” and “stagecoach roads, king's highways, stagecoach stops, plank roads, old brick roads..” be considered “places, events, or persons” in (a)? (f) and (g) seem duplicative of (a), just written in a different way.*

*Why is (h) necessary? I assume that these sites will only be eligible if they are determined to be historically significant. If that's correct, wouldn't these sites fall into (a)? If (h) is necessary, please change this directive into what shall be rather than what shall not be. Also, why is it that these particular people have been included?*

*For the same reasons above, is (j) necessary?*

Amber Cronk May  
Commission Counsel

Date Submitted to the Agency: January 30, 2017



*In (j), line 34 what if a public school is determined to be of historical significance?*

*In (j), please delete the commas surrounding “of local importance.”*

*In (j), please add a “be” in between “not” and “approved.”*

*In (j), on line 35, judge to be what? Of historical significance?*

*In (k), please underline “shall”*

*In (k), under what circumstances will be it “impossible to authenticate or verify the documentation” Also, please consider rewriting this Paragraph to read “Marker requests ~~will shall be rejected~~ not be approved when supporting documentation provided in accordance with this Rule cannot be authenticated or verified, where it is impossible to authenticate or verify the documentation to the satisfaction of the committee. Please note that the suggested rewrite assumes that you put supporting documentation as a requirement somewhere in this Rule.*

*In (k), please delete “to the satisfaction of the committee”*

*In (k), the sentence beginning with “’First’s” does not seem to fit here. Is this necessary given (a)? It seems as though it would be appropriate for this to be its own Paragraph (assuming that it is necessary). Also, please change “shall not be automatically approved” to “shall be approved” and say when. I assume that it is when they are determined to be historically significant.*

*In (l) rather than saying what the committee shall not do, say what will happy to the individuals. A suggested rewrite is as follows: [The committee shall not single out individuals to mark when many persons have shared equally in an event of historical importance.] Individuals will shall not be singled out for marking if they shared equally were part of a group involved in a historical event.*

*In (l), what does “shared equally” mean?*

*In (n), what is a person is listed on a marker as a support person (e.g. spouse, parent), but is historical significant his or herself? Would the inclusion as a support person truly make him or her ineligible for their own marker?*

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

Of course, this will also require conforming changes to the attached copies of the rule. Please check to see that this paperwork is in order and is returned along with the revised rule.

1 07 NCAC 04T .0104 is amended with changes as published in 31:07 NCR 548-549 as follows:

2  
3 **07 NCAC 04T .0104 CRITERIA**

4 (a) All highway historical markers shall designate ~~places~~ places, events, or persons of statewide significance. Subjects of  
5 local or regional importance shall not be approved for highway historical markers. No highway historical markers,  
6 markers will be approved for subjects of local or regional importance. Statewide historical significance must be  
7 documented by the ~~presenter,~~ applicant.

8 (b) An individual is eligible for consideration of a historical marker only after a waiting period of twenty-five years following  
9 that individual's death. No marker will be erected for an individual within 25 years of his death.

10 (c) Markers for representatives in ~~the~~ U.S. Congress shall not be approved ~~automatically;~~ automatically. The nominee  
11 must have served at least two terms, or served as a chairman of a standing committee or sponsored key legislation, or have been recognized  
12 as having served with distinction elsewhere, such as in the military, as an ambassador, as a member or volunteer in a social, civic or  
13 political organization. in addition to serving in Congress the individual must have served with distinction elsewhere.

14 (d) Houses of worship are primarily of local importance. For the marking of Protestant churches, the date of establishment is key to  
15 consideration: in the East congregations established prior to 1776; in the Piedmont prior to 1800; and in the West prior to 1820. African  
16 American churches and Roman Catholic churches shall be judged by dates that are relevant to the development of the denomination. The  
17 age of a congregation alone does not mean that the committee will approve a marker. Other evidence of significance must be presented,  
18 such as notable ministers or other worship leaders, important events, and the age and architectural importance of the religious building.  
19 The same criteria shall apply to brush arbors and religious campgrounds. Brush arbors, religious campgrounds, schools, and  
20 academies will not be considered unless established prior to the following dates: coastal plains—1776; piedmont—  
21 1800; mountain region—1820. Churches established after the dates set out in this Paragraph generally do not have  
22 statewide historical significance.

23 (e) Cemeteries shall not ~~Markers for cemeteries will not be approved~~ for a historical marker unless a number of persons of  
24 statewide historical significance are buried there.

25 (f) ~~Markers will not be approved for~~ The committee shall not approve markers for cities or towns, former county seats,  
26 abandoned courthouses, jails, jail sites, post offices, former building sites, colleges or universities unless they are of  
27 statewide historical significance.

28 (g) Stagecoach roads, king's highways, stagecoach stops, plank roads, old brick roads, baggage roads, Indian trails,  
29 trails, ferries, and military routes will not be marked unless of statewide historical significance.

30 (h) Visits to a site by George Washington, the Marquis de Lafayette, Nathanael Greene, Lord Cornwallis, William  
31 T. Sherman, George Stoneman, Francis Asbury, Griffith Rutherford, or other historical figures will not automatically  
32 make the site eligible for a marker.

33 (i) ~~Markers will not be erected to mark a town or solely to list its date of incorporation.~~

34 (j) Public schools, of local importance, shall not approved for state markers. Private schools and academies shall be  
35 judged based on the date of establishment, length of operation, employment of prominent teachers, enrollment of  
36 prominent graduates, and if the region served is of statewide historical significance. No marker will be approved for  
37 individual sites within a historical complex which has its own marker system.

1 (k) Marker requests ~~will~~ shall be rejected where it is impossible to authenticate or verify the documentation to the  
2 satisfaction of the committee. "Firsts" and other superlatives ~~will shall~~ not be automatically approved, marked  
3 ~~unless there is sufficient documentary evidence to establish unquestionable authenticity.~~

4 (l) The committee shall not single out individuals to mark when many persons have shared equally in an event of  
5 historical importance. ~~Individuals will not be singled out for marking if they were part of a group involved in a~~  
6 ~~historical event.~~

7 (m) If an individual appears on an existing North Carolina Highway Historical Marker, that individual shall not be  
8 considered for a second marker. ~~An individual will not be marked a second time if his birthplace has been marked, except~~  
9 ~~in cases of statewide historical significance.~~

10 (n) ~~If a person is cited on one marker, no individual marker will be approved except in cases of special historical~~  
11 ~~significance.~~ If a person is named in the text of a marker, that individual will not be approved as the subject of a  
12 separate marker.

13

14 *History Note: Authority G.S. 100-8; 121-4(7);*  
15 *Eff. June 1, 1989;*  
16 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 26,*  
17 *2015;*  
18 *Amended Eff June 1, 2017.*