

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0501, 15A NCAC 07H .0502, 15A NCAC 07H .0503, 15A NCAC 07H .0504, 15A NCAC 07H .0505, 15A NCAC 07H .0506, 15A NCAC 07H .0507, 15A NCAC 07H .0509, and 15A NCAC 07H .0510 (Liebman); 15A NCAC 07M .0201; 15A NCAC 07M.0202; 15A NCAC 07M 0401; 15A NCAC 07M.0701; 15A NCAC 07M, .0801, 15A NCAC 07M.0802; 15A NCAC 07M .1001; and 15A NCAC 07M .1101 (Peaslee).

### RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☒ Unnecessary
  - ☒ Failure to comply with the APA
- ☐ Extend the period of review

### COMMENT:

*G.S. 150B-19.1(a)(1) states, "An agency may adopt only **rules (emphasis added)** that are expressively authorized by federal and State law and that are necessary to serve the public interest."*

*Each of the above captioned Rules do not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, each of the above captioned Rules do not meet the definition of a "Rule" pursuant to G.S.150B-2(8a).*

*As each of the above captioned rules fail to meet the definition of a "Rule", the agency lacks statutory authority to adopt them.*

*The adoption of each of the above captioned Rules is not in accordance with Article 2A of G.S.150B as only "Rules" can be adopted. Lastly, as each of the above captioned Rules is not a "Rule" it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

Brian Liebman & William W. Peaslee  
Commission Counsel

*Assuming arguendo that that one or more of the above captioned Rules meets the definition of a "Rule", each of the above captioned Rules, as written, is unclear and ambiguous, pursuant to G.S. 150B-21.9(a)(2).*

*Accordingly, staff counsel recommends that the Rules Review Commission object to 15A NCAC 07H .0501, 15A NCAC 07H .0502, 15A NCAC 07H .0503, 15A NCAC 07H .0504, 15A NCAC 07H .0505, 15A NCAC 07H .0506, 15A NCAC 07H .0507, 15A NCAC 07H .0509, 15A NCAC 07H .0510; 15A NCAC 07M .0201, 15A NCAC 07M .0202, 15A NCAC 07M .0401, 15A NCAC 07M.0701, 15A NCAC 07M .0801, 15A NCAC 07M .0802, 15A NCAC 07M .1001, AND 15A NCAC 07M .1101.*

## **§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
  - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
  - b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
  - c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
  - d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
  - e. Statements of agency policy made in the context of another proceeding, including:
    - 1. Declaratory rulings under G.S. 150B-4.
    - 2. Orders establishing or fixing rates or tariffs.
  - f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
  - g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
  - h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.
- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.

- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.

- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07H .0501 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **SECTION .0500 - NATURAL AND CULTURAL RESOURCE AREAS**

4  
5 **15A NCAC 07H .0501 GENERAL**

6 The fourth and final group of AECs is gathered under the heading of fragile coastal natural and cultural resource areas  
7 and is defined as areas containing environmental, natural or cultural resources of more than local significance in which  
8 uncontrolled or incompatible development could result in major or irreversible damage to natural systems or cultural  
9 resources, scientific, educational, or associative values, or aesthetic qualities.

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11 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4e) to (b)(4g);*  
12 *113A-124;*  
13 *Eff. September 9, 1977;*  
14 *Amended Eff. June 1, 1979;*  
15 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0502 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0502 SIGNIFICANCE**

4 (a) Fragile coastal natural resource areas are generally recognized to be of educational, scientific, or cultural value  
5 because of the natural features of the particular site. These features in the coastal area serve to distinguish the area  
6 designated from the vast majority of coastal landscape and therein establish its value. Such areas may be key  
7 components of systems unique to the coast which act to maintain the integrity of that system.

8 (b) Areas that contain outstanding examples of coastal processes or habitat areas of significance to the scientific or  
9 educational communities are a second type of fragile coastal natural resource area. These areas are essentially  
10 self-contained units or "closed systems" minimally dependent upon adjoining areas.

11 (c) Finally, fragile areas may be particularly important to a locale either in an aesthetic or cultural sense.

12 (d) Fragile coastal cultural resource areas are generally recognized to be of educational, associative, scientific,  
13 aesthetic, or cultural value because of their special importance to our understanding of past human settlement of and  
14 interaction with the coastal zone. Their importance serves to distinguish the designated areas as significant among  
15 the historic architectural or archaeological remains in the coastal zone, and therein established their value.

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17 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4g); 113A-124;*  
18 *Eff. September 9, 1977;*  
19 *Amended Eff. June 1, 1979;*  
20 *Readopted Eff. August 1, 2022.*



1 15A NCAC 07H .0503 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0503 NOMINATION AND DESIGNATION PROCEDURES**

4 (a) Special Designation Process. The nomination and designation of a coastal complex natural area, a unique coastal  
5 geologic formation, a coastal area that sustains remnant species, a significant coastal archaeological resource, or a  
6 significant coastal historic architectural resource area of environmental concern shall follow the procedures set forth  
7 in this Rule and in GS 113A-115.

8 (b) Nomination. An area may be nominated by any person or group at any time for Coastal Resources Commission  
9 (CRC) consideration. Nominations may, for example, be made by citizens, interest groups, local governments, or  
10 state and federal agencies. Nominations shall be on a standard form and shall be submitted to the Division of Coastal  
11 Management (DCM). The nomination shall include information relating to the location, size, importance, ownership,  
12 and uniqueness of the proposed site. Nomination forms are available from the Division of Coastal Management.

13 (c) Preliminary Evaluation. After receipt of a nomination, the Division of Coastal Management shall conduct a  
14 preliminary evaluation of the proposed site. The land owner, local government, and CRC and CRAC members in  
15 whose jurisdiction the site is located shall be informed of the proposed nomination. Representatives of these groups  
16 shall meet to discuss the proposed nomination and shall complete a preliminary evaluation within 60 days after receipt  
17 of the nomination. Various protection methods shall be examined to determine if AEC designation is appropriate.

18 (d) CRC Endorsement. A report on the preliminary evaluation shall be presented to the CRC so that it may determine  
19 whether to endorse the evaluations and proceed with a more detailed analysis of the site. This report shall be made at  
20 the first CRC meeting after the preliminary evaluation is completed. All parties involved in the nomination and  
21 preliminary evaluation shall be informed, in writing, of the Commission's decision to proceed or not to proceed with  
22 a detailed review of the site in question. For sites that do not receive CRC endorsement for detailed review,  
23 recommendations for some other form of protection may be discussed with the landowner. Other forms of protection  
24 include, registry with the North Carolina Natural Heritage Program, conservation easement to a public agency or to a  
25 local conservation foundation, donation or acquisition of title, or other strategies.

26 (e) Detailed Review. A detailed review of the proposed site shall be initiated under DCM supervision after CRC  
27 endorsement. This shall include the development of a management plan, if applicable, or site specific use standards.  
28 Opportunity shall be given to local government officials, interest groups, and those with scientific expertise to  
29 comment on the specific biological/physical or cultural values of the site together with appropriate management  
30 strategies to safeguard the values identified. This review shall be completed within 90 days, starting from the date of  
31 the official CRC endorsement. At the conclusion of this review, the report on the detailed review shall be presented  
32 to the CRC for their consideration.

33 (f) Public Hearing. If, after receiving the detailed review, the CRC decides to consider formal designation of the site  
34 as an AEC and adopt the particular management plan or use standards developed, a public hearing or hearings shall  
35 be conducted and notice of hearing published and distributed in accordance with the requirements of G.S. 113A-115  
36 and G.S. 150B-21.2. Copies of the site description and of any proposed rules shall be made available for public  
37 inspection at the county courthouse in each affected county and at the Morehead City Office of the Division of Coastal

1 Management. At the hearing(s) the CRC shall present the documentation and recommendations in support of the  
2 designation decision.

3 (g) Formal Designation. After consideration of all comments, the Commission shall make its final judgment. If the  
4 site is designated as an AEC, the CRC shall also adopt a management strategy or use standards applicable to the AEC.

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6 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e,f,g, and h; 113A-124;*

7 *Eff. September 9, 1977;*

8 *Amended Eff. June 1, 2005; May 1, 1988; May 1, 1985; February 1, 1982; June 1, 1979;*

9 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0504 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0504 AECS WITHIN CATEGORY**

4 The description, significance, and management objectives for each AEC (coastal complex natural areas, coastal areas  
5 that sustain remnant species, unique coastal geologic formations, significant coastal architectural resources, and  
6 significant coastal historic architectural resources) within the grouping of fragile coastal natural and cultural resource  
7 areas follows in Rules .0505, .0506, .0507, .0509, and .0510 of this Section.

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9 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4) e., f., g., and h.; 113A-124;*

10 *Eff. September 9, 1977;*

11 *Amended Eff. December 1, 1991; June 1, 1979;*

12 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0505 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0505 COASTAL AREAS THAT SUSTAIN REMNANT SPECIES**

4 (a) Description. Coastal areas that sustain remnant species are those areas that support native plants or animals  
5 determined to be rare or endangered (synonymous with threatened and endangered), within the coastal area. Such  
6 places provide habitats necessary for the survival of existing populations or communities of rare or endangered species  
7 within the coastal area. Determination will be made by the Commission based upon the listing adopted by the North  
8 Carolina Wildlife Resources Commission or the federal government listing; upon written reports or testimony of  
9 experts indicating that a species is rare or endangered within the coastal area; and upon consideration of written  
10 testimony of local government officials, interest groups, and private land owners.

11 (b) Significance. The continued survival of certain habitats that support native plants and animals in the coastal area  
12 is vital for the preservation of our natural heritage and for the protection of natural diversity which is related to  
13 biological stability. These habitats and the species they support provide a valuable educational and scientific resource  
14 that cannot be duplicated.

15 (c) Management Objective. To protect unique habitat conditions that are necessary to the continued survival of  
16 threatened and endangered native plants and animals and to minimize land use impacts that might jeopardize these  
17 conditions.

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19 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)f; 113A-124;*  
20 *Eff. September 9, 1977;*  
21 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0506 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0506 COASTAL COMPLEX NATURAL AREAS**

4 (a) Description. Coastal complex natural areas are defined as lands that support native plant and animal communities  
5 and provide habitat qualities which have remained essentially unchanged by human activity. Such areas may be either  
6 significant components of coastal systems or especially notable habitat areas of scientific, educational, or aesthetic  
7 value. They may be surrounded by landscape that has been modified but does not drastically alter conditions within  
8 the natural area. Such areas may have been altered by human activity and/or subject to limited future modifications,  
9 e.g. the placement of dredge spoil, if the CRC determines that the modifications benefit the plant or animal habitat or  
10 enhance the biological, scientific or educational values which will be protected by designation as an AEC.

11 (b) Significance. Coastal complex natural areas function as key biological components of natural systems, as  
12 important scientific and educational sites, or as valuable scenic or cultural resources. Often these natural areas provide  
13 habitat suitable for threatened or endangered species or support plant and animal communities representative of  
14 pre-settlement conditions. These areas help provide a historical perspective to changing natural habitats in the coastal  
15 area and together are important and irreplaceable scientific and educational resources. The CRC may determine  
16 significance of a natural area by consulting the Natural Heritage Priority List maintained by the Natural Heritage  
17 Program within the Division of Parks and Recreation. The CRC will establish a standing committee, composed of  
18 two or more members of the CRC, one or more members of the CRAC, and three or more members of the Natural  
19 Area Advisory Committee, to evaluate areas not included in the Natural Heritage Priority List.

20 (c) Management Objectives. The management objectives of this Rule are to protect the features of a designated  
21 coastal complex natural area in order to safeguard its biological relationships, educational and scientific values, and  
22 aesthetic qualities. Specific objectives for each of these functions shall be related to the following policy statement  
23 either singly or in combination:

- 24 (1) To protect the natural conditions or the sites that function as key or unique components of coastal  
25 systems. The interactions of various life forms are the foremost concern and include sites that are  
26 necessary for the completion of life cycles, areas that function as links to other wildlife areas  
27 (wildlife corridors), and localities where the links between biological and physical environments are  
28 most fragile.
- 29 (2) To protect the identified scientific and educational values and to ensure that the site will be  
30 accessible for related study purposes.
- 31 (3) To protect the values of the designated coastal complex natural area as expressed by the local  
32 government and citizenry. These values should be related to the educational and aesthetic qualities  
33 of the feature.

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35 *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)e; 113A-24;*  
36 *Eff. September 9, 1977;*  
37 *Amended Eff. October 1, 1988; February 1, 1982;*  
38 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0507 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS**

4 (a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are  
5 unique or otherwise significant components of coastal systems, or that are especially notable examples of geologic  
6 formations or processes in the coastal area. Such areas will be evaluated by the Commission after identification by the  
7 State Geologist.

8 (b) Significance. Unique coastal geologic areas are important educational, scientific, or scenic resources that would  
9 be jeopardized by uncontrolled or incompatible development.

10 (c) Management Objectives. The CRC's objective is to preserve unique resources of more than local significance that  
11 function as key physical components of natural systems, as important scientific and educational sites, or as valuable  
12 scenic resources. Specific objectives for each of these functions shall be related to the following policy statements  
13 either singly or in combination:

14 (1) To ensure that the designated geologic feature will be able to freely interact with other components  
15 of the identified systems. These interactions are often the natural forces acting to maintain the  
16 unique qualities of the site. The primary concern is the relationship between the geologic feature  
17 and the accompanying biological component associated with the feature. Other interactions which  
18 may be of equal concern are those relating the geologic feature to other physical components,  
19 specifically the relationship of the geologic feature to the hydrologic elements; ground water and  
20 surface runoff.

21 (2) To ensure that the designated geologic feature or process will be preserved for and be accessible to  
22 the scientific and educational communities for related study purposes.

23 (3) To protect the values of the designated geologic feature as expressed by the local government and  
24 citizenry. These values should be related to the educational and aesthetic qualities of the feature.

25 (d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic  
26 formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted  
27 on a map approved by the Coastal Resources Commission on December 4, 1987, and on file with the Division of  
28 Coastal Management. This area includes the entire rights of way of US 158 Bypass, SR 1221 (Sound Side Road),  
29 Virginia Dare Trail, and Conch Street where these roads bound this area. Jockey's Ridge is the tallest active sand dune  
30 along the Atlantic Coast of the United States. Located within the Town of Nags Head in Dare County, between US  
31 158 and Roanoke Sound, the Ridge represents the southern extremity of a back barrier dune system which extends  
32 north along Currituck Spit into Virginia. Jockey's Ridge is an excellent example of a medano, a large isolated hill of  
33 sand, asymmetrical in shape and lacking vegetation. Jockey's Ridge is the largest medano in North Carolina and has  
34 been designated a National Natural Landmark by the U.S. Department of the Interior.

35 (e) Use Standards. Jockey's Ridge. Development within the Jockey's Ridge AEC shall be consistent with the  
36 following minimum use standards:

- (1) Development which requires the removal of greater than ten cubic yards of sand per year from the area within the AEC boundary shall require a permit;
- (2) All sand which is removed from the area within the AEC boundary in accordance with 7H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the Division of Coastal Management in consultation with the Division of Parks and Recreation;
- (3) Development activities shall not significantly alter or retard the free movement of sand except when necessary for the purpose of maintaining or constructing a road, residential/commercial structure, accessway, lawn/garden, or parking area.

*History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;  
Eff. September 9, 1977;  
Amended Eff. March 1, 1988;  
Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0509 is readopted as published in 34:09 NCR 757 as follows:

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3 **15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES**

4 (a) Description. Significant coastal archaeological resources are defined as areas that contain archaeological remains  
5 (objects, features, and/or sites) that have more than local significance to history or prehistory. Such areas will be  
6 evaluated by the North Carolina Historical Commission in consultation with the Commission as part of the procedure  
7 set forth in Rule .0503 of this Section.

8 (b) Significance. Significant coastal archaeological resources are important educational, scientific, or aesthetic  
9 resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general, significant  
10 archaeological resources possess integrity of location, design, setting, workmanship, materials, and association and:

- 11 (1) are associated with events that have made a significant contribution to the broad patterns of history;  
12 or  
13 (2) are associated with the lives of persons significant in history; or  
14 (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a  
15 significant and distinguishable entity whose components may lack individual distinction; or  
16 (4) have yielded, or may be likely to yield, information important in history or prehistory.

17 (c) Management Objectives. The CRC's objective is to conserve coastal archaeological resources of more than local  
18 significance to history or prehistory that constitute important scientific sites, or are valuable educational, associative,  
19 or aesthetic resources. Specific objectives for each of these functions shall be related to the following policy  
20 statements either singly or in combination:

- 21 (1) to give the highest priority to the development of a preservation management plan to provide  
22 long-term, effective management of the archaeological resource; only that development which  
23 would have minimal adverse effects on the archaeological resource will be acceptable;  
24 (2) to conserve significant archaeological resources, including their spatial and structural context and  
25 characteristics through in-situ preservation and/or scientific study;  
26 (3) to insure that the designated archaeological resource, or the information contained therein, be  
27 preserved for and be accessible to the scientific and educational communities for related study  
28 purposes;  
29 (4) to protect the values of the designated archaeological resource as expressed by the local government  
30 and citizenry; these values should be related to the educational, associative, or aesthetic qualities of  
31 the resource.

32 (d) General Use Standards.

- 33 (1) Significant concentrations of archaeological material, preferably reflecting a full range of human  
34 behavior, should be preserved in-situ for future research by avoidance during planned construction  
35 activities. Areas for avoidance should be selected only after sufficient archaeological investigations  
36 have been made. See Subparagraph (d)(2)(B) of this Rule to determine the nature, extent, conditions



and relative significance of the cultural deposits. Three avoidance measures should be considered, preferably in combination:

- (A) incorporation of "no impact" spaces in construction plans such as green spaces between lots;
- (B) definition of restrictions limiting specific types of ground disturbing activities;
- (C) donation of preservation easements to the state or, upon approval by the N.C. Division of Archives and History, a legitimate historic preservation agency or organization.

(2) Any activities which would damage or destroy the fragile contents of a designated site's surface or subsurface shall be expressly prohibited until an archaeological investigation and subsequent resource management plan has been implemented. Such investigation and management plan shall be developed in full consultation with the North Carolina Division of Archives and History. In this way, potentially damaging or destructive activities (e.g., construction, roads, sewer lines, land-scaping) may be managed both during initial phases of construction and after the development is completed. Such archaeological investigations shall comply with the following criteria:

- (A) all archaeological work will be conducted by an experienced professional archaeologist;
- (B) initial archaeological investigations conducted as part of the permit review process will be implemented in three parts: Phase I, a reconnaissance level investigation to determine the nature and extent of archaeological materials over the designated area; Phase II, an intensive level investigation which represents a direct outgrowth of Phase I findings and through systematic data recovery assesses the potential importance of identified concentrations of archaeological materials; Phase III, mitigation of adverse effects to recognized areas of importance. Evaluations of research potential will be made and prioritized in order of importance, based upon the status of previous research in the area and the integrity of the remains;
- (C) an archaeological research design will be required for all archaeological investigations. All research designs will be subject to the approval of the North Carolina Division of Archives and History prior to conducting the work. A research proposal must allow at least 30 days for review and comment by the North Carolina Division of Archives and History;
- (D) data will be collected and recorded accurately and systematically and artifacts will be curated according to accepted professional standards at an approved repository.

(e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal archaeological resource area of environmental concern. Permuda Island is a former barrier island located within Stump Sound in southwestern Onslow County. The island is 1.2 miles long and .1 - .25 miles wide. Archaeological evidence indicates earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and

1 postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains. The resources  
2 offer extensive research opportunities.

3  
4 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*  
5 *Eff. June 1, 1979;*  
6 *Amended Eff. October 1, 1988; January 1, 1985;*  
7 *Readopted Eff. August 1, 2022.*

1 15A NCAC 07H .0510 is readopted as published in 34:09 NCR 757 as follows:

2  
3 **15A NCAC 07H .0510 SIGNIFICANT COASTAL HISTORIC ARCHITECTURAL RESOURCES**

4 (a) Description. Significant coastal historic architectural resources are defined as districts, structures, buildings, sites  
5 or objects that have more than local significance to history or architecture. Such areas will be evaluated by the North  
6 Carolina Historical Commission in consultation with the Commission as part of the procedure set forth in Rule .0503  
7 of this Section.

8 (b) Significance. Significant coastal historic architectural resources are important educational, scientific, associative,  
9 or aesthetic resources. Such resources would be jeopardized by uncontrolled or incompatible development. In general,  
10 significant historic architectural resources possess integrity of design, setting, workmanship, materials, and association  
11 and:

- 12 (1) are associated with events that have made a significant contribution to the broad patterns of history;  
13 or  
14 (2) are associated with the lives of persons significant in history; or  
15 (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a  
16 significant and distinguishable entity whose components may lack individual distinction; or  
17 (4) have yielded, or may be likely to yield, information important in history.

18 (c) Management Objectives. The CRC's objective is to conserve coastal historic architectural resources of more than  
19 local significance which are valuable educational, scientific, associative or aesthetic resources. Specific objectives  
20 for each of these functions shall be related to the following policy statements either singly or in combination:

- 21 (1) to conserve historic architectural resources as a living part of community life and development,  
22 including their structural and environmental characteristics, in order to give a sense of orientation  
23 to the people of the state;  
24 (2) to insure that the designated historic architectural resource be preserved, as a tangible element of  
25 our cultural heritage, for its educational, scientific, associative or aesthetic purposes;  
26 (3) to protect the values of the designated historic architectural resource as expressed by the local  
27 government and citizenry; these values should be related to the educational, scientific, associative  
28 or aesthetic qualities of the resource.

29  
30 *History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;*  
31 *Eff. June 1, 1979;*  
32 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0601

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☒ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*This Rule states only that development within an AEC that is in violation of “any rules, regulations, or laws of the State of North Carolina or of local government in which the development takes place” is not allowed.*

*Pursuant to G.S. 113A-124(c)(8), CRC may adopt “rules to implement **this article**.” To the extent that this Rule seeks to enforce rules adopted under authority other than Article 7 of Chapter 113A of the General Statutes, or laws outside that Article, it is staff’s opinion that the agency lacks statutory authority. As the language herein contains no limitations (“contravention or violation of **any** rules, regulations, or laws of the State of North Carolina **or of local government**”), it is staff’s opinion that the Rule reaches outside the boundaries of Article 7 of Chapter 113A, and thus is outside of the statutory authority relied upon by the agency.*

*As it pertains to rules, regulations, and statutes within the ambit of Article 7 of Chapter 113A, this Rule is unnecessary, as it merely repeats in a general way the more specific proscriptions pertaining to development within an AEC contained in these Rules and within Article 7.*

*Finally, because the Rule does not specify what rules, regulations, or laws it seeks to enforce, and because the Rule would proscribe development that would be in “contravention **or** violation” of these rules, regulations, or laws, without articulating the difference between “contravention” and “violation,” it is staff’s opinion that the Rule is unclear and ambiguous.*

*Accordingly, staff recommends that RRC object to 15A NCAC 07H .0601.*

Brian Liebman  
Commission Counsel

#### **§ 150B-19. Restrictions on what can be adopted as a rule.**

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).
- (5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following: a. A service to a State, federal, or local governmental unit. b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both. c. A transcript of a public hearing. NC General Statutes - Chapter 150B 11 d. A conference, workshop, or course. e. Data processing services.
- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.
- (7) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a); 2011-13, s. 1; 2011-398, s. 61.2.)

#### **§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07H .0601 is readopted as published in 34:09 NCR 758 as follows:

2  
3 **SECTION .0600 - DEVELOPMENT STANDARDS APPLICABLE TO ALL AECS**

4  
5 **15A NCAC 07H .0601 NO VIOLATION OF ANY RULE**

6 No development shall be allowed in any AEC which would result in a contravention or violation of any rules,  
7 regulations, or laws of the State of North Carolina or of local government in which the development takes place.

8  
9 *History Note: Authority G.S. 113A-107(a),(b); 113A-124;*

10 *Eff. September 9, 1977;*

11 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0603

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☐ Unnecessary
- ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*This Rule limits development involving airspace over an AEC, and appears to attempt to incorporate a portion of the Code of Federal Regulation pertaining to minimum altitude standards. N.C. Gen. Stat. 150B-21.6 permits an agency to incorporate portions of the CFR by reference, but requires that the agency designate whether the incorporation includes subsequent amendments and editions of the referenced material.*

*In relevant part, the Rule states that future amendments "shall be deemed to be incorporated into this Rule pursuant to G.S. 150B-14(c) **unless the Commission objects within 90 days of publication of the action in the Federal Register.**" At which point, the Commission "shall initiate rulemaking proceedings on incorporation of the amendment into this Rule."*

*Because this Rule creates a procedure for incorporating future amendments to the relevant portion of the CFR that deviate from those stated in G.S. 150B-21.6, and does not state where copies of the CFR can be obtained and at what cost, it is staff's opinion that this Rule fails to comply with Part 2 of Article 2 of the APA.*

*Moreover, to the extent that this Rule can be read to give CRC the authority to limit minimum altitudes contrary to federal law, it is staff's opinion that the agency lacks statutory authority under the provisions of the General Statutes quoted by the agency.*

*Accordingly, staff recommends that RRC object to 15A NCAC 07H .0603.*

Brian Liebman  
Commission Counsel



#### **§ 150B-21.6. Incorporating material in a rule by reference.**

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Repealed by Session Laws 1997-34, s. 5.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1; 1997-34, s. 5.)

#### **§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this

determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07H .0603 is readopted as published in 34:09 NCR 758 as follows:

2  
3 **15A NCAC 07H .0603 MINIMUM ALTITUDES**

4 No development involving airspace activity shall be allowed in any AEC which would result in violation of minimum  
5 altitude standards adopted by the Federal Aviation Administration and codified at 14 CFR Part 91.79. Future  
6 amendments by the Federal Aviation Administration shall be deemed to be incorporated into this Rule pursuant to  
7 G.S. 150B-14(c) unless the Commission objects within 90 days of publication of the action in the Federal Register.  
8 Upon objection by the Commission to a change, the Commission shall initiate rule-making proceedings on  
9 incorporation of the amendment into this Rule. The amendment will not be incorporated into this Rule pending a  
10 rule-making hearing and final action by the Commission on the proposed amendment.

11  
12 *History Note: Authority G.S. 113A-107(a),(b);*  
13 *Eff. March 1, 1990;*  
14 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0604

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- X Object, based on:
  - ☐ Lack of statutory authority
  - X Unclear or ambiguous
  - ☐ Unnecessary
  - X Failure to comply with the APA
  - ☐ Extend the period of review

COMMENT:

*This Rule limits development resulting in noise pollution within an AEC, and appears to attempt to incorporate by reference a report issued by the Environmental Protection Agency regarding the measurement of noise.*

*In staff's opinion, the text of the Rule is unclear and ambiguous as to the extent of the Rule's reach. While the Rule's first sentence governs noise associated with "airspace activity," it is unclear whether the rest of the Rule's requirements pertain to "airspace activity" or any activity whatsoever within an AEC. Moreover, critical terms used in the Rule such as "average noise," "event," or "noise impact" are not defined, creating further ambiguity as to enforcement.*

*Further, it is staff's opinion that the Rule does not comply with Article 2, Part 2 of Chapter 150B. While N.C. Gen. Stat. 150B-21.6 permits an agency to incorporate a "standard" adopted by the federal government by reference, the statute requires that the agency designate whether the incorporation includes subsequent amendments and editions of the referenced material, and requires that the agency state where the material can be located and at what cost.*

*Because this Rule appears to incorporate the EPA report without following the procedure required by G.S. 150B-21.6, it is staff's opinion that this Rule fails to comply with Part 2 of Article 2 of the APA.*

*Accordingly, staff recommends that RRC object to 15A NCAC 07H .0604.*

Brian Liebman  
Commission Counsel

### **§ 150B-21.6. Incorporating material in a rule by reference.**

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

- (1) Another rule or part of a rule adopted by the agency.
- (2) All or part of a code, **standard**, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.
- (3) Repealed by Session Laws 1997-34, s. 5.

**In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.**

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 64; 1981 (Reg. Sess., 1982), c. 1359, s. 5; 1983, c. 641, s. 3; c. 768, s. 19; 1985, c. 746, s. 1; 1987, c. 285, s. 13; 1991, c. 418, s. 1; 1997-34, s. 5.)

### **§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.**
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.**

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note.

The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07H .0604 is readopted as published in 34:09 NCR 758 as follows:

2  
3 **15A NCAC 07H .0604 NOISE POLLUTION**

4 Except as required for safe aircraft takeoff and landing operations, airspace activity associated with coastal  
5 development shall not impose an increase in average noise exceeding 10 dBA above background levels. Noise  
6 measurements shall be normalized Ldn as set forth by the Environmental Protection Agency in its report 550/9-74-004  
7 entitled Information on Levels of Environmental Noise Requisite to Protect the Public Health and Welfare with an  
8 Adequate Margin of Safety. The maximum noise level associated with any single event shall not exceed 85 dBA.  
9 These limits shall not apply where noise impacts are confined to surface areas owned or controlled by the project's  
10 proponent. Any noise monitoring required to ensure compliance with this Rule shall be the responsibility of the  
11 proponent.

12  
13 *History Note: Authority G.S. 113A-107(a),(b);*

14 *Eff. March 1, 1990;*

15 *Readopted Eff. August 1, 2022.*

### **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0406

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
- X Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*This Rule re-states material regarding permit fees that is repeated in G.S. 113A-119.1 and in 15A NCAC 07J .0204. It is staff's opinion that RRC should object to this Rule on the basis that it is unnecessary.*

#### **§ 150B-19. Restrictions on what can be adopted as a rule.**

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).
- (5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following: a. A service to a State, federal, or

Brian Liebman  
Commission Counsel



- local governmental unit. b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both. c. A transcript of a public hearing. NC General Statutes - Chapter 150B 11 d. A conference, workshop, or course. e. Data processing services.
- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.
  - (7) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a); 2011-13, s. 1; 2011-398, s. 61.2.)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0406 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0406 APPLICATION FEES**

4 The application fees collected by the locality shall be used only to defray the administrative costs associated with the  
5 processing of a CAMA minor permit development application. Deficits resulting from administrative costs exceeding  
6 amounts received from application fees shall be recovered from permit reimbursements. The application fee shall be  
7 consistent with 15A NCAC 07J .0204(b)(6)(B).

8  
9 *History Note: Authority G.S. 113A-112; 113A-119; 113A-124;*

10 *Eff. December 10, 1977;*

11 *Amended Eff. July 1, 2013; October 1, 1982; May 20, 1980; August 1, 1978;*

12 *Readopted Eff. August 1, 2022.*

**RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0504

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*This Rule requires permit-letting agencies to compile and maintain records of public hearings related to proposed management plans under G.S. 113A-117.*

*This Rule relies on G.S. 113A-117(b) and 113A-124(c)(5) as its sources of statutory authority.*

*G.S. 113A-124(c)(5) has been repealed by the General Assembly. The remaining statute, G.S. 113A-117(b) is still in effect but is inapposite, as it requires public hearings and specifies the notice requirements, but is silent regarding any aspects of the record of such meetings.*

*As the agency has provided no other source of authority for this Rule, it is staff's opinion that RRC should object to this Rule for lack of statutory authority.*

*Accordingly, staff recommends that RRC object to 15A NCAC 07I .0504.*

**§ 113A-117. Implementation and enforcement programs.**

(a) The Secretary shall develop and present to the Commission for consideration and to all cities and counties and lead regional organizations within the coastal area for comment a set of criteria for local implementation and enforcement programs. In the preparation of such criteria, the Secretary shall emphasize the necessity for the expeditious processing of permit applications. Said criteria may contain recommendations and guidelines as to the procedures to be followed in developing local implementation and enforcement programs, the scope and coverage of said programs, minimum standards to be prescribed in said programs, staffing of permit-letting agencies, permit-letting procedures, and priorities of regional or statewide concern. Within 20 months after July 1, 1974, the Commission shall adopt and transmit said criteria (with any revisions) to each coastal-area county and city that has filed an applicable letter of intent, for its guidance.

(b) The governing body of each city in the coastal area that filed an affirmative letter of intent shall adopt an implementation and enforcement plan with respect to its zoning area within 36 months after July 1, 1974. The board of commissioners of each coastal-area county that filed an affirmative letter of intent shall adopt an implementation plan with respect to portions of the county outside city zoning areas within 36 months after July 1, 1974, provided, however, that a county implementation and enforcement plan may also cover city jurisdictions for those cities within the counties that have not filed affirmative letters of intent pursuant to G.S. 113A-116. Prior to adopting the implementation and enforcement program the local governing body shall hold a public hearing at which public and private parties shall have the opportunity to present comments and views. Notice of the hearing shall be given not less than 15 days before the date of the hearing, and shall state the date, time and place of the hearing, the subject of the hearing, and the action which is to be taken. The notice shall state that copies of the proposed implementation and enforcement program are available for public inspection at the county courthouse. Any such notice shall be published at least once in one newspaper of general circulation in the county at least 15 days before the date on which the public hearing is scheduled to begin.

(c) Each coastal-area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

(d) If the Commission determines that any local government is failing to administer or enforce an approved implementation and enforcement program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 90 days of receipt of notification from the Commission, the Commission shall assume enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program. (1973, c. 1284, s. 1; 1975, c. 452, s. 3; 1977, c. 771, s. 4; 1989, c. 727, s. 130.)

**§ 113A-124. Additional powers and duties.**

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules

adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0504 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0504 RECORD OF HEARINGS AND COMMENTS**

4 Each permit-letting agency must compile and maintain a complete record of the public hearing on its proposed  
5 management plan and comments received pursuant to G.S. 113A-117. The record of the public hearing, written  
6 comment, and any documentation filed with the local permit-letting agency as to the proposed management plan must:

- 7 (1) consist of a written account from the minutes or transcribed from an electronic recording, and all  
8 written documents;  
9 (2) remain open for 15 days after the hearing;  
10 (3) be available to the Commission upon request.

11  
12 *History Note: Authority G.S. 113A-117(b); 113A-124(c)(5);*  
13 *Eff. November 1, 1984;*  
14 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0506

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
- X Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*This Rule re-states material regarding allocation of permit-letting authority that is contained in G.S. 113A-116, 113A-118, and 113A-121. It is staff's opinion that RRC should object to this Rule on the basis that it is unnecessary.*

### **§ 150B-19. Restrictions on what can be adopted as a rule.**

An agency may not adopt a rule that does one or more of the following:

- (1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.
- (2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.
- (3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.
- (4) Repeats the content of a law, a rule, or a federal regulation. A brief statement that informs the public of a requirement imposed by law does not violate this subdivision and satisfies the "reasonably necessary" standard of review set in G.S. 150B-21.9(a)(3).
- (5) Establishes a fee or other charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following: a. A service to a State, federal, or

Brian Liebman  
Commission Counsel



local governmental unit. b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both. c. A transcript of a public hearing. NC General Statutes - Chapter 150B 11 d. A conference, workshop, or course. e. Data processing services.

- (6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.
- (7) Repealed by Session Laws 2011-398, s. 61.2, effective July 25, 2011. (1973, c. 1331, s. 1; 1985, c. 746, s. 1; 1991, c. 418, s. 1; 1996, 2nd Ex. Sess., c. 18, s. 7.10(a); 2011-13, s. 1; 2011-398, s. 61.2.)

#### **§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0506 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0506 ALLOCATION OF AUTHORITY**

4 (a) A county may establish permit-letting authority for any city or part thereof that lies within said county if such city  
5 does not submit a letter of intent to the Coastal Resources Commission or states to the Coastal Resources Commission  
6 its intent not to become a local permit-letting agency.

7 (b) A city management plan shall be limited to its corporate boundaries and to any extra-territorial zoning area over  
8 which it may have established control at the time it requested authority to act as a permit-letting agency or over which  
9 it later gains control.

10 (c) A county implementation and enforcement plan shall be limited to areas not covered by any city plans unless the  
11 county acts as the permit-letting agency for a city or cities. A county shall begin such duties only after the county's  
12 implementation and enforcement plan has been amended to include such areas.

13 (d) In any city in which neither the city nor the county elects to become the permit-letting agency, the secretary shall  
14 have that duty.

15 (e) Only the Department of Environment and Natural Resources shall issue a permit for major development.

16  
17 *History Note: Authority G.S. 113A-117(b); 113A-124(c)(5);*

18 *Eff. November 1, 1984;*

19 *Amended Eff. June 1, 2006; May 1, 1990;*

20 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0508

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☒ Unnecessary
  - ☒ Failure to comply with the APA
  - ☐ Extend the period of review

COMMENT:

*This Rule relies on G.S. 113A-124(c)(5) as its sole source of statutory authority. This subparagraph was repealed by the General Assembly in SL 1987-827. As the agency has provided no other source of authority for this Rule, it is staff's opinion that RRC should object to this Rule for lack of statutory authority.*

*Moreover, to the extent the agency does have statutory authority for this Rule, subparagraph (e) explicitly defines agency policy. As such, this Rule does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, this Rule does not meet the definition of a "Rule" pursuant to G.S. 150B-2(8a).*

*To the extent that this Rule does not meet the statutory definition of a "Rule", the agency lacks statutory authority to adopt it, and the adoption of the Rule was not in accordance with Article 2A of G.S. 150-B as only "Rules" can be adopted.*

*Lastly, to the extent that this Rule is not a "Rule," it cannot be "reasonably necessary" pursuant to G.S. 150B-21.9(a)(3) as only "Rules" can be reasonably necessary.*

*Accordingly, staff recommends that RRC object to 15A NCAC 07I .0508.*

Brian Liebman  
Commission Counsel

**§ 113A-124. Additional powers and duties.**

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

**§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

- a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.
- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
  - 1. Declaratory rulings under G.S. 150B-4.
  - 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.

- l.* Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0508 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0508 CONSIDERATION OF APPLICATION BY PERMIT OFFICER**

4 (a) The method of consideration of minor development permit requests by the permit officer must be uniform in  
5 application and must be set out in writing and available for public inspection. The permit officer shall use only forms  
6 approved by the Commission in its handling of any minor development permit application.

7 (b) The local management plan shall specify the procedures which will be followed in the handling and consideration  
8 of all applications for a minor development permit, including appropriate response to receipt of an application for a  
9 major development permit.

10 (c) The permit officer shall maintain a record of all applications, correspondence, public notices, responses from  
11 public notices, and a copy of his final disposition for all permit applications whether issued or denied.

12 (d) The permit officer, in his handling of all minor development permit applications, must use a numbering system  
13 which will be developed by the Commission in consultation with local government.

14 (e) It is the policy of the Coastal Resources Commission to allow local government the greatest flexibility in  
15 coordinating minor development permits with all other local permits and approvals. The Commission requires,  
16 however, that the plan eventually submitted state how this coordination will be accomplished.

17  
18 *History Note: Authority G.S. 113A-124(c)(5);*

19 *Eff. November 1, 1984;*

20 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0511

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☐ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*This Rule states that a local governing body shall enter into a commitment to accept a local management plan as part of the city or county's code of ordinances. In support of this Rule, the agency cites to G.S. 113A-117(c) and to 113A-124(c)(5).*

*G.S. 113A-117(c) discusses the process by which a city or county shall submit its implementation and enforcement program to the Commission for review and the standards and timetable for the Commission's review. It does not explicitly give the Commission the authority to require a local government to adopt particular ordinances.*

*G.S. 113A-124(c)(5) was repealed by the General Assembly by SL 1987-827.*

*As the agency has provided no other source of authority for this Rule, it is staff's opinion that RRC should object to this Rule for lack of statutory authority.*

Brian Liebman  
Commission Counsel



**§ 113A-117. Implementation and enforcement programs.**

(c) Each coastal-area county and city shall transmit its implementation and enforcement program when adopted to the Commission for review. The Commission shall afford interested persons an opportunity to present objections and comments regarding the program, and shall review and consider each local implementation and enforcement program submitted in light of such objections and comments, the Commission's criteria and any general standards of review applicable throughout the coastal area as may be adopted by the Commission. Within 45 days after receipt of a local implementation and enforcement program the Commission shall either approve the program or notify the county or city of the specific changes that must be made in order for it to be approved. Following such changes, the program may be resubmitted in the same manner as the original program.

**§ 113A-124. Additional powers and duties.**

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0511 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0511 COMMITMENT TO ADOPT LOCAL MANAGEMENT PLAN AS ORDINANCE**

4 The local governing body shall enter into a commitment to accept the local management plan as part of the city or  
5 county code of ordinances within a three-month period.

6  
7 *History Note: Authority G.S. 113A-117(c); 113A-124(c)(5);*

8 *Eff. November 1, 1984;*

9 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0602

RECOMMENDED ACTION:

- Approve, but note staff's comment
- X Object, based on:
  - X Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
  - Failure to comply with the APA
- Extend the period of review

COMMENT:

*This Rule relies on G.S. 113A-124(c)(5) as its sole source of statutory authority. This subparagraph was repealed by the General Assembly in SL 1987-827. As the agency has provided no other source of authority for this Rule, it is staff's opinion that RRC should object to this Rule for lack of statutory authority.*

Brian Liebman  
Commission Counsel

**§ 113A-124. Additional powers and duties.**

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

**§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules

adopted by the agency related to the specific purpose for which the rule is proposed.

(4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0602 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0602 COASTAL RESOURCES COMMISSION APPROVAL**

4 An amendment of a local plan shall be submitted to the Coastal Resources Commission for approval in the same  
5 manner in which the original management plan is submitted.

6  
7 *History Note: Authority G.S. 113A-124(c)(5);*

8 *Eff. November 1, 1984;*

9 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0702

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☐ Unclear or ambiguous
  - ☒ Unnecessary
  - ☐ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*This Rule governs situations wherein a local permit letting agency takes action outside the scope and extent of its authority under Article 7 of Chapter 113A of the General Statutes. Pursuant to the Rule, such actions are "null, void, and of no effect." Moreover, the Rule goes on to state that "the determinations of the commission [sic] shall be binding on the local permit-letting agency as to questions of such jurisdiction.*

*This Rule relies on G.S. 113A-118(e), 113A-120(c), and 113A-124(c)(5) as its sources of statutory authority.*

*Both G.S. 113A-120(c) and 113A-124(c)(5) have been previously repealed by the General Assembly. The remaining statute, G.S. 113A-118(e) is still in effect but is inapposite, as it refers only to the siting of utility facilities for the development, generation, or transmission of energy.*

*As the agency has provided no other source of authority for this Rule, it is staff's opinion that RRC should object to this Rule for lack of statutory authority.*

*Moreover, to the extent that the Rule merely repeats the well-established provision of black-letter law and case law, that government action outside the scope of statutory authority is null and void, it is staff's opinion that the Rule is unnecessary, and that RRC should object on that basis.*

*Accordingly, staff recommends that RRC object to 15A NCAC 07I .0702.*

Brian Liebman  
Commission Counsel



**§ 113A-118. Permit required.**

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

**§ 113A-120. Grant or denial of permits.**

- (a) The responsible official or body shall deny an application for a permit upon finding:
- (1) In the case of coastal wetlands, that the development would contravene an order that has been or could be issued pursuant to G.S. 113-230.
  - (2) In the case of estuarine waters, that a permit for the development would be denied pursuant to G.S. 113-229(e).
  - (3) In the case of a renewable resource area, that the development will result in loss or significant reduction of continued long-range productivity that would jeopardize one or more of the water, food or fiber requirements of more than local concern identified in subdivisions a through c of G.S. 113A-113(b)(3).
  - (4) In the case of a fragile or historic area, or other area containing environmental or natural resources of more than local significance, that the development will result in major or irreversible damage to one or more of the historic, cultural, scientific, environmental or scenic values or natural systems identified in subdivisions a through h of G.S. 113A-113(b)(4).
  - (5) In the case of areas covered by G.S. 113A-113(b)(5), that the development will jeopardize the public rights or interests specified in said subdivision.
  - (6) In the case of natural hazard areas, that the development would occur in one or more of the areas identified in subdivisions a through e of G.S. 113A-113(b)(6) in such a manner as to unreasonably endanger life or property.
  - (7) In the case of areas which are or may be impacted by key facilities, that the development is inconsistent with the State guidelines or the local land-use plans, or would contravene any of the provisions of subdivisions (1) to (6) of this subsection.
  - (8) In any case, that the development is inconsistent with the State guidelines or the local land-use plans.
  - (9) In any case, that considering engineering requirements and all economic costs there is a practicable alternative that would accomplish the overall project purposes with less adverse impact on the public resources.
  - (10) In any case, that the proposed development would contribute to cumulative effects that would be inconsistent with the guidelines set forth in subdivisions (1) through (9) of this subsection. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity.
- (b) In the absence of such findings, a permit shall be granted. The permit may be conditioned upon the applicant's amending his proposal to take whatever measures or agreeing to carry out

whatever terms of operation or use of the development that are reasonably necessary to protect the public interest with respect to the factors enumerated in subsection (a) of this section.

(b1) In addition to those factors set out in subsection (a) of this section, and notwithstanding the provisions of subsection (b) of this section, the responsible official or body may deny an application for a permit upon finding that an applicant, or any parent or subsidiary corporation if the applicant is a corporation:

- (1) Is conducting or has conducted any activity causing significant environmental damage for which a major development permit is required under this Article without having previously obtained such permit or has received a notice of violation with respect to any activity governed by this Article and has not complied with the notice within the time specified in the notice;
- (2) Has failed to pay a civil penalty assessed pursuant to this Article, a local ordinance adopted pursuant to this Article, or Article 17 of Chapter 113 of the General Statutes which is due and for which no appeal is pending;
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-126, G.S. 113-229(k), or any criminal provision of a local ordinance adopted pursuant to this Article; or
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article or with other federal and state laws, regulations, and rules for the protection of the environment.

(b2) For purposes of subsection (b1) of this section, an applicant's record may be considered for only the two years prior to the application date.

(c) Repealed by Session Laws 1989, c. 676, s. 7. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1981, c. 932, s. 2.1; 1983, c. 518, ss. 4, 5; 1987, c. 827, s. 138; 1989, c. 51; c. 676, s. 7; 1997-337, s. 2; 1997-456, s. 55.2B; 1997-496, s. 2; 2000-172, s. 2.1.)

#### **§ 113A-124. Additional powers and duties.**

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.
- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.

(5) Repealed by Session Laws 1987, c. 827, s. 141.

- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

#### **§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the

second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07I .0702 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07I .0702 WHEN AN ACTION EXCEEDS THE LOCAL AUTHORITY**

4 When the local permit-letting agency exceeds the scope and extent of its authority, which is limited to consideration  
5 of applications proposing minor development as defined in the Coastal Area Management Act, that action shall be  
6 null, void and of no effect. The determinations of the commission shall be binding on the local permit-letting agency  
7 as to questions of such jurisdiction.

8  
9 *History Note: Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5);*

10 *Eff. November 1, 1984;*

11 *Readopted Eff. August 1, 2022.*

## **RRC STAFF OPINION**

*PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.*

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0203

RECOMMENDED ACTION:

- ☐ Approve, but note staff's comment
- ☒ Object, based on:
  - ☒ Lack of statutory authority
  - ☒ Unclear or ambiguous
  - ☒ Unnecessary
  - ☒ Failure to comply with the APA
- ☐ Extend the period of review

COMMENT:

*This Rule governs the preparation of plats to be submitted by an applicant for a permit under the Coastal Area Management Act ("CAMA"). The Rule contains numerous undefined key terms regarding the scope of the Rule and the requirements for a complete application which, in staff's opinion, render the Rule impermissibly unclear and ambiguous. For instance, the Rule requires that a plat be drawn to scale, but qualifies the requirement by saying that a scale of one inch to 200 feet is "normally required" without stating when such a scale would not be required.*

*Additionally, significant portions of the Rule are devoted to applications for permits "that authorize projects that have a **portion** of the development **outside** Areas of Environmental Concern." According to the Rule, "**some information**" about "**development outside** AECs is necessary to determine compatibility with the local Land Use Plan and to be **reasonably** sure that such development will not **adversely impact** AECs." While the Rule goes on to specify what information should be provided, it again qualifies the enumerated list by saying that this list is the "minimum" required, suggesting that other information not included in the Rule is also required.*

*Further, it is staff's opinion that the agency lacks statutory authority to implement this Rule to the extent that the Rule requires a permit for projects that are outside an AEC. Pursuant to G.S. 113A-118(a), CAMA permits are required only "before undertaking any development **in any area of environmental concern**." The language of the Rule is ambiguous as to whether CRC is requiring a permit for a project that straddles the border of an AEC, which would fall under 113A-118(a), or*

Brian Liebman  
Commission Counsel

*whether CRC is requiring a permit for a project merely adjacent to an AEC which the agency believes might “adversely impact [an] AEC[].”*

*Moreover, among the enumerated requirements for a permit application for development outside an AEC, the agency includes the following:*

*(3) maps or statements concerning the location of wetlands within the project area to the extent that a wetlands examination has been made by a private consultant or government agency. **Each developer of a project is urged, for his own protection and planning, to procure such information prior to submission for a CAMA permit;***

*It is staff’s opinion that the bolded statement is subject to objection under all four bases identified by G.S. 150B-21.9. First, while CRC is permitted by G.S. 113A-119(a) to set the “form and content” of the application, the agency provides no statutory authority for requiring an applicant to procure and submit the results of a wetlands examination. Moreover, to the extent that the agency “urges” an applicant to undertake an action, the Rule does not implement or interpret an enactment of the General Assembly, establish any requirement upon any person or entity not employed by the agency, nor does it directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency. Accordingly, because this Rule does not meet the definition of a “Rule” pursuant to G.S.150B-2(8a), and the agency lacks the statutory authority to adopt it. Furthermore, the adoption of this Rule is not in accordance with Article 2A of G.S. 150B, as only “Rules” can be adopted. Finally, because the Rule does not meet the statutory definition of a “Rule” can be reasonably necessary pursuant to G.S. 150B-21.9(a)(3).*

*Accordingly, staff recommends that RRC object to 15A NCAC 07J .0203.*

**§ 113A-118. Permit required.**

(a) After the date designated by the Secretary pursuant to G.S. 113A-125, every person before undertaking any development in any area of environmental concern shall obtain (in addition to any other required State or local permit) a permit pursuant to the provisions of this Part.

(b) Under the expedited procedure provided for by G.S. 113A-121, the permit shall be obtained from the appropriate city or county for any minor development; provided, that if the city or county has not developed an approved implementation and enforcement program, the permit shall be obtained from the Secretary.

(c) Permits shall be obtained from the Commission or its duly authorized agent.

(d) Within the meaning of this Part:

(1) A "major development" is any development which requires permission, licensing, approval, certification or authorization in any form from the Environmental Management Commission, the Department of Environmental Quality, the Department of Administration, the North Carolina Oil and Gas Commission, the North Carolina Pesticides Board, the North Carolina Sedimentation Control Board, or any federal agency or authority; or which occupies a land or water area in excess of 20 acres; or which contemplates drilling for or excavating natural resources on land or under water; or which occupies on a single parcel a structure or structures in excess of a ground area of 60,000 square feet.

(2) A "minor development" is any development other than a "major development."

(e) If, within the meaning of G.S. 113A-103(5)b3, the siting of any utility facility for the development, generation or transmission of energy is subject to regulation under this Article rather than by the State Utilities Commission or by other law, permits for such facilities shall be obtained from the Coastal Resources Commission rather than from the appropriate city or county.

(f) The Secretary may issue special emergency permits under this Article. These permits may only be issued in those extraordinary situations in which life or structural property is in imminent danger as a result of storms, sudden failure of man-made structures, or similar occurrence. These permits may carry any conditions necessary to protect the public interest, consistent with the emergency situation and the impact of the proposed development. If an application for an emergency permit includes work beyond that necessary to reduce imminent dangers to life or property, the emergency permit shall be limited to that development reasonably necessary to reduce the imminent danger; all further development shall be considered under ordinary permit procedures. This emergency permit authority of the Secretary shall extend to all development in areas of environmental concern, whether major or minor development, and the mandatory notice provisions of G.S. 113A-119(b) shall not apply to these emergency permits. To the extent feasible, these emergency permits shall be coordinated with any emergency permits required under G.S. 113-229(e1). The fees



associated with any permit issued pursuant to this subsection or rules adopted pursuant to this subsection shall be waived. (1973, c. 476, s. 128; c. 1282, ss. 23, 33; c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1979, c. 253, s. 5; 1981, c. 932, s. 2.1; 1983, c. 173; c. 518, s. 3; 1987, c. 827, s. 136; 1989, c. 727, s. 131; 1997-443, s. 11A.119(a); 2007-485, s. 5; 2012-143, s. 1(d); 2014-4, s. 4(c); 2015-241, s. 14.30(u).)

#### **§ 113A-119. Permit applications generally.**

(a) Any person required to obtain a permit under this Part shall file with the Secretary and (in the case of a permit sought from a city or county) with the designated local official an application for a permit in accordance with the form and content designated by the Secretary and approved by the Commission. The applicant must submit with the application an electronic payment, check, or money order payable to the Department or the city or county, as the case may be, constituting a fee set by the Commission pursuant to G.S. 113A-119.1.

(b) Upon receipt of any application, a significant modification to an application for a major permit, or an application to modify substantially a previously issued major permit, the Secretary shall issue public notice of the proposed development (i) with the exception of minor permit applications, by posting or causing to be posted a notice at the location of the proposed development stating that an application, a modification of an application for a major permit, or an application to modify a previously issued major permit for development has been made, where the application or modification may be inspected, and the time period for comments; and (ii) with the exception of minor permit applications, by publishing notice of the application or modification at least once in one newspaper of general circulation in the county or counties wherein the development would be located at least 20 days before final action on a major permit or before the beginning of the hearing on a permit under G.S. 113A-122. The notice shall set out that any comments on the development should be submitted to the Secretary by a specified date, not less than 15 days from the date of the newspaper publication of the notice or 15 days after mailing of the mailed notice, whichever is later.

(c) Within the meaning of this Part, the "designated local official" is the official who has been designated by the local governing body to receive and consider permit applications under this Part. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1983, c. 307; 1985, c. 372; 1989, c. 53; c. 727, s. 132; 1989 (Reg. Sess., 1990), c. 987, s. 1; 2013-413, s. 30; 2017-209, s. 5(b); 2020-74, s. 2; 2021-158, s. 2(a).)

#### **§ 113A-124. Additional powers and duties.**

(c) The Commission shall have the following additional powers and duties under this Article:

- (1) To recommend to the Secretary the acceptance of donations, gifts, grants, contributions and appropriations from any public or private source to use in carrying out the provisions of this Article.

- (2) To recommend to the Secretary of Administration the acquisition by purchase, gift, condemnation, or otherwise, lands or any interest in any lands within the coastal area.
- (3) To hold such public hearings as the Commission deems appropriate.
- (4) To delegate the power to conduct a hearing, on behalf of the Commission, to any member of the Commission or to any qualified employee of the Department. Any person to whom a delegation of power is made to conduct a hearing shall report his recommendations with the evidence and the record of the hearing to the Commission for decision or action.
- (5) Repealed by Session Laws 1987, c. 827, s. 141.
- (6) To delegate the power to determine whether a contested case hearing is appropriate in accordance with G.S. 113A-121.1(b).
- (7) To delegate the power to grant or deny requests for declaratory rulings under G.S. 150B-4 in accordance with standards adopted by the Commission.
- (8) To adopt rules to implement this Article.
- (9) To delegate the power to approve land-use plans in accordance with G.S. 113A-110(f) to any qualified employee of the Department.

(d) The Attorney General shall act as attorney for the Commission and shall initiate actions in the name of, and at the request of, the Commission, and shall represent the Commission in the hearing of any appeal from or other review of any order of the Commission. (1973, c. 1284, s. 1; 1975, c. 452, s. 5; 1977, c. 771, s. 4; 1981, c. 932, s. 2.1; 1987, c. 827, ss. 125, 141; 1989, c. 727, s. 135; 1991 (Reg. Sess., 1992), c. 839, s. 2; 1997-443, s. 11A.119(a); 2015-241, s. 14.30(v); 2017-209, s. 5(a); 2021-158, s. 2(b).)

#### **§ 150B-2. Definitions.**

As used in this Chapter, the following definitions apply:

- (8a) Rule. - Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:
  - a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143A-11 or 143B-6, including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency or group of agencies.

- b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, or by an occupational licensing board, as defined by G.S. 93B-1.
- c. Nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.
- d. A form, the contents or substantive requirements of which are prescribed by rule or statute.
- e. Statements of agency policy made in the context of another proceeding, including:
  - 1. Declaratory rulings under G.S. 150B-4.
  - 2. Orders establishing or fixing rates or tariffs.
- f. Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities.
- g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of cases.
- h. Scientific, architectural, or engineering standards, forms, or procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries.
- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

**§ 150B-19.1. Requirements for agencies in the rule-making process.**

(a) In developing and drafting rules for adoption in accordance with this Article, agencies shall adhere to the following principles:

- (1) An agency may adopt only rules that are expressly authorized by federal or State law and that are necessary to serve the public interest.

- (2) An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule.
- (3) Rules shall be written in a clear and unambiguous manner and must be reasonably necessary to implement or interpret federal or State law.
- (4) An agency shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed. The agency shall not adopt a rule that is unnecessary or redundant.
- (5) When appropriate, rules shall be based on sound, reasonably available scientific, technical, economic, and other relevant information. Agencies shall include a reference to this information in the notice of text required by G.S. 150B-21.2(c).
- (6) Rules shall be designed to achieve the regulatory objective in a cost-effective and timely manner.

(b) Each agency subject to this Article shall conduct an annual review of its rules to identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the principles set forth in subsection (a) of this section. The agency shall repeal any rule identified by this review.

(c) Each agency subject to this Article shall post on its Web site, no later than the publication date of the notice of text in the North Carolina Register, all of the following:

- (1) The text of a proposed rule.
- (2) An explanation of the proposed rule and the reason for the proposed rule.
- (3) The federal certification required by subsection (g) of this section.
- (4) Instructions on how and where to submit oral or written comments on the proposed rule, including a description of the procedure by which a person can object to a proposed rule and subject the proposed rule to legislative review.
- (5) Any fiscal note that has been prepared for the proposed rule.

If an agency proposes any change to a rule or fiscal note prior to the date it proposes to adopt a rule, the agency shall publish the proposed change on its Web site as soon as practicable after the change is drafted. If an agency's staff proposes any such change to be presented to the rule-making agency, the staff shall publish the proposed change on the agency's Web site as soon as practicable after the change is drafted.

(d) Each agency shall determine whether its policies and programs overlap with the policies and programs of another agency. In the event two or more agencies' policies and programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid unnecessary, unduly burdensome, or inconsistent rules.

(e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to the greatest extent possible. Prior to submission of a proposed rule for publication in accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note

prepared in connection with the proposed rule and approve the fiscal note before submission.

(f) If the agency determines that a proposed rule will have a substantial economic impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to the proposed rule. The alternatives may have been identified by the agency or by members of the public.

(g) Whenever an agency proposes a rule that is purported to implement a federal law, or required by or necessary for compliance with federal law, or on which the receipt of federal funds is conditioned, the agency shall:

- (1) Prepare a certification identifying the federal law requiring adoption of the proposed rule. The certification shall contain a statement setting forth the reasons why the proposed rule is required by federal law. If all or part of the proposed rule is not required by federal law or exceeds the requirements of federal law, then the certification shall state the reasons for that opinion.
- (2) Post the certification on the agency Web site in accordance with subsection (c) of this section.
- (3) Maintain a copy of the federal law and provide to the Office of State Budget and Management the citation to the federal law requiring or pertaining to the proposed rule.

(h) Repealed by Session Laws 2014-120, s. 6(a), effective September 18, 2014, and applicable to proposed rules published on or after that date. (2011-398, s. 2; 2012-187, s. 3; 2013-143, s. 1.1; 2014-120, s. 6(a).)

#### **§ 150B-21.9. Standards and timetable for review by Commission.**

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 15A NCAC 07J .0203 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0203 PREPARATION OF WORK PLATS**

4 (a) General. Project plans or work plats must include a top or planview, a cross-sectional view, and a location map.  
5 All plats must have the standard north arrow. North should be at the top of the plat. The prints must be neat and  
6 sufficiently clear to permit photographic reproduction. Originals are preferred as copies are often found to be  
7 unacceptable. The applicant should use as few sheets as necessary to show clearly what is proposed. Work plats must  
8 be accurately drawn to scale. A scale of 1" = 200' or less is normally required in order that project detail can be easily  
9 understood.

10 (b) Details of Work Plats

11 (1) Topview or Planview Plats. Such drawings must show existing and proposed features such as dune  
12 systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas, type  
13 and location of sewage treatment facilities and effluent outlets. Existing water depths must be  
14 indicated using mean low water as base or zero. These can be shown either as contours or spot  
15 elevation. Care should be used in indicating which features are existing and which are proposed.  
16 Property boundaries, as they appear on the deed, and the names of adjacent property owners must  
17 be shown on the detailed plat. The work plat must clearly show any areas to be excavated and exact  
18 locality for disposal of the excavated material. When fill material is to be placed behind a bulkhead  
19 or dike, the plan must be sufficiently detailed to show the exact location of such bulkheads or dikes,  
20 and the adequacy of the bulkhead or dike to confine the material. Drawings must indicate  
21 approximate mean low and mean high water lines and the presence of marsh in the area of proposed  
22 work. In areas where the difference in daily low and high tides is less than six inches, only an  
23 average water level must be indicated.

24 (2) Cross-Section Drawing. A cross-sectional diagram showing depth and elevation of proposed work  
25 relative to existing ground level -- mean low and mean high water line must be included in the plan.  
26 The mean low water must be the reference for water depths and land elevations (i.e., mean low water  
27 should be depicted as "Elevation 0.0 MLW"). First floor elevations relative to mean sea level must  
28 be shown for any proposed buildings.

29 (3) Location Map. A map of small scale showing the location of the proposed work is also required.  
30 The location map must provide adequate information to locate the project site.

31 (4) Title of Drawing. Each drawing must have a simple title block to identify the project or work, and  
32 shall include name of applicant, date the plat was prepared, and scale of the plat. The date of any  
33 revisions must be clearly noted. The applicant must also include the name of the person who drew  
34 the plat.

35 (c) Applications are often made for permits to authorize projects that have a portion of the development outside Areas  
36 of Environmental Concern. Some information concerning plans for development outside AECs is necessary to  
37 determine compatibility with the local Land Use Plan and to be reasonably sure that such development will not

adversely impact AECs. Therefore, any application for a CAMA or Dredge and Fill permit shall include, at a minimum, the following information:

- (1) detailed information on any development located in or directly impacting an AEC;
- (2) a plat showing the entire tract of land to be developed and possible access or roadway locations;
- (3) maps or statements concerning the location of wetlands within the project area to the extent that a wetlands examination has been made by a private consultant or government agency. Each developer of a project is urged, for his own protection and planning, to procure such information prior to submission for a CAMA permit;
- (4) a narrative description of the proposed development that shall include, at a minimum, the following information:
  - (A) the character of the development (i.e. residential, commercial, recreational, etc.);
  - (B) the maximum number of residential living units that will be permitted;
  - (C) the maximum acreage that will be utilized for non-residential purposes;
  - (D) a statement as to whether wastewater treatment is to be by municipal system, septic tank, or other on-site treatment system. A general description of any on-site treatment system shall be included;
  - (E) a statement that access, as required by all land use regulations, is available through the site to the Area of Environmental Concern without crossing any Section +404= wetland or, if such a crossing is required, a statement that said crossing is properly authorized. If the site contains significant wetlands, such statement may be required from a qualified private consultant or government agency, based on an examination of the property by such private consultant or government agency. The CAMA permit when issued may be conditioned upon the procurement of any required wetlands permit, if the need for such is disclosed by such statement;
- (5) any maps or plans that have been prepared to meet other regulatory requirements such as stormwater management and sedimentation and erosion control.

Following review of the permit application, including the aforementioned supporting data (Subparagraphs 1-5), a permit may be issued conditioned upon compliance with the development parameters provided in the narrative statement accompanying the application. Any subsequent violation of these narrative standards as incorporated within the permit shall be a permit violation. No subsequent permit, permit modification, or other agency approval shall be required for any subsequent work performed outside the Area of Environmental Concern as long as such work is within the parameters described in the narrative statement presented with the permit, and included in the permit conditions. Any subsequent change in the development which changes the parameters of the narrative, statement shall be submitted to the staff, but no new permit or permit modification shall be required unless staff finds that the changes would have reasonable expectation of adversely affecting an Area of Environmental Concern or rendering the project inconsistent with Local Land Use Plans. Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that cannot reasonably be determined to have a direct adverse impact on the AEC while a permit application for work in the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

*History Note: Authority G.S. 113A-119; 113A-124;*  
*Eff. March 15, 1978;*



- 1 *Amended Eff. July 1, 1989;*
- 2 *Readopted Eff. August 1, 2022.*