

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*Please change any instance of “will” or “must” to “shall.”*

*Please update any reference to the “Department of Environmental and Natural Resources” to the “Department of Environmental Quality.”*

*Please be consistent across your Rules with the use of terms such as “Commission” or “CRC”, or “Coastal Area Management Act” or “CAMA.”*

*With respect to any rule setting or otherwise describing permit fees, please state whether the agency is in compliance with G.S. 113A-119.1’s requirement that funds collected from fees authorized by the Commission not exceed 33 1/3% of total personnel and admin costs.*

*Because many of these rules have not been reviewed since the 1970s or 1980s, please check the accuracy of all addresses, department/section names, or any other similar information that has been subject to change since the last review.*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0602

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*On line 4, please delete or define “substantial likelihood.”*

*On line 5, please capitalize “state” if referring only to the State of North Carolina.*

*On line 6, please define “adjacent to”.*

*On line 7, please define or delete “significant”.*

*On line 8, please define or delete “reasonable”.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07H .0602 is readopted as published in 34:09 NCR 758 as follows:

2

3 **15A NCAC 07H .0602 POLLUTION OF WATERS**

4 No development shall be allowed in any AEC which would have a substantial likelihood of causing pollution of the  
5 waters of the state in which shellfishing is an existing use to the extent that such waters would be officially closed to  
6 the taking of shellfish. This rule shall also apply to development adjacent to or within closed shellfish waters when a  
7 use attainability study of those waters documents the presence of a significant shellfish resource in an area that could  
8 be expected to be opened for shellfishing given reasonable efforts to control the existing sources of pollution.

9

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

11 *Eff. September 9, 1977;*

12 *Amended Eff. July 1, 1987;*

13 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0204

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*In your History Note, I do not understand the reference to G.S. 113A-112. Did you mean to cite to G.S. 113A-111?*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

1 15A NCAC 07I .0204 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0204 LOCAL ORDINANCE REQUIRED**

4 Each local government applying for an implementation and enforcement grant shall have adopted local ordinance(s)  
5 necessary to give effect to the local implementation and enforcement plan that has been approved by the Commission  
6 for its jurisdiction.

7

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

9

*Eff. December 10, 1977;*

10

*Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0302

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE:*** *This request may extend to several pages. Please be sure you have reached the end of the document.*

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 5, you require local governments to “contact” the Division, but do not specify the purpose of the contact. I assume from the context of the Rule that it would be to obtain an application form, but this is not clear.*

*In (b), line 9, who are the “local officials” that need to sign the statement?*

*In (c), line 10, capitalize “state” if referring only to the State of North Carolina.*

*Based upon subparagraph (a), I assume there is an application form. Are its contents described in another rule or in a statute, as required by G.S. 150B-2(8a)d?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07I .0302 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0302 APPLICATION PROCESS**

4 (a) An application form is not required for local governments having entered into previous agreements with the  
5 Department for reimbursement under this Rule. Local governments without previous agreements shall contact the  
6 Division of Coastal Management at 400 Commerce Avenue, Morehead City, NC 28557.

7 (b) The geographic jurisdiction shall be the same as identified in the local Implementation and Enforcement Program.  
8 Where two or more local governments are combined for grant administration, a written statement to this effect shall  
9 be submitted to the Division of Coastal Management and signed by local officials.

10 (c) Based on the availability of state or federal funds, agreements shall be renewed on an annual basis. The grant  
11 year runs from July 1 through June 30, and local governments may receive amendments to their contracts after the  
12 end of each grant year updating the previous agreements.

13

14 *History Note: Authority G.S. 113A-112; 113A-124;*

15 *Eff. December 10, 1977;*

16 *Amended Eff. June 1, 2005; October 1, 1988; October 1, 1982; May 20, 1980;*

17 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0305

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In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 5, delete or define "relevant."*

*In (a), line 6, add an oxford comma between "date" and "and".*

*In (a), line 6, what kind of permits does this apply to?*

*In (b), the Rule states that the locality and the Department shall become parties to a contract, but it doesn't specify to what this contract covers. If this is the same contract referenced in R. 0306, please add a cross reference.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022



1 15A NCAC 07I .0305 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0305 GRANT ADMINISTRATION**

4 (a) Reimbursement shall be made quarterly upon submittal of composite records after the last day of the last month  
5 of the relevant quarter. Composite records will include each applicant's name, the date of the application, the date of  
6 public notice, the relevant AEC type, the permit decision, the decision date and any vouchers for training expenses,  
7 special projects or other documents as required by the contract between the locality and the Department of  
8 Environment and Natural Resources.

9 (b) Grant Contract. Prior to the disbursement of funds, the locality and the Department shall become parties to a  
10 contract.

11

12 *History Note: Authority G.S. 113A-112; 113A-124;*

13 *Eff. August 1, 1978;*

14 *Amended Eff. June 1, 2006; May 1, 1990; November 1, 1984; October 1, 1982; May 20, 1980;*

15 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0306

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In reviewing this Rule, the staff recommends the following changes be made:

*Throughout, please change “will” to “shall.”*

*Throughout, please capitalize “Secretary”.*

*In (b), line 5, is “At a minimum” necessary? Rules by their nature set minimum requirements.*

*Is (b)(2) not duplicative of Rule .0305(a)? Both require quarterly submissions of information prior to disbursement of grant payments.*

*In (b)(3), line 13, please delete or define “relevant.”*

*In (b)(3)(A), line 15, please delete or define “appropriate”.*

*In (b)(3)(A), line 16, I’m assuming “working days” are the same as “business days”? Please be consistent throughout.*

*In(b)(4), line 20, what is a “special project”?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07I .0306 is readopted as published in 34:09 NCR 761 as follows:  
2

3 **15A NCAC 07I .0306 GRANT CONDITIONS**

4 (a) All contracts shall provide notice of any conditions which affect the quarterly grant payments.

5 (b) At a minimum, the following conditions will apply:

6 (1) Per permit reimbursements will only be made after certification is received by the secretary (from  
7 the local permit officer) that all CAMA standards have been observed when the permitted activity  
8 is completed;

9 (2) Final quarterly payment for a given fiscal year will be withheld pending receipt by the secretary of  
10 an annual permit summary, said summary to consist of a description of all permits processed in the  
11 locality by the applicant's name, address, date of application, AEC type, permit decision, and  
12 decision date;

13 (3) Quarterly verification from the relevant field office/CAMA field consultant specified in the contract  
14 that the following permit information has been received for each permit processed in the quarter:

15 (A) one copy of the permit application mailed to the appropriate field consultant or field office  
16 of the Division of Coastal Management within five working days of acceptance by the local  
17 government,

18 (B) one copy of the legal notice associated with the application,

19 (C) one copy of the final decision and any associated permit conditions;

20 (4) Approval of any special project necessitates compliance with conditions deemed necessary by the  
21 secretary to ensure compliance with the standards and policies of this Subchapter.

22 (c) No quarterly payment will be made until all applicable grant conditions are met. Local governments not meeting  
23 the timetable specified in Subparagraph (b)(3) of this Rule will not be reimbursed for the permits in question.

24 *History Note: Authority G.S. 113A-124;*

25 *Eff. May 20, 1980;*

26 *Amended Eff. May 1, 1990; June 12, 1981;*

27 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0401

**DEADLINE FOR RECEIPT: TBD**

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 7, do you mean to say "Section" rather than Rule?*

*In (c), line 20, please update the name of the Department from DENR to DEQ.*

*In (c), line 21, please delete "/LPO" from the parenthetical.*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

1 15A NCAC 07I .0401 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **SECTION .0400 - GENERALLY APPLICABLE STANDARDS**

4  
5 **15A NCAC 07I .0401 PROGRAM COSTS**

6 (a) Costs associated with the management of a local Implementation and Enforcement Program shall be recovered on  
7 a per permit basis unless specified elsewhere in this Rule.

8 (b) The per permit reimbursement rate has been set in consideration of local costs, such as salaries, office supplies,  
9 copying, mailing and telephone use, and funds made available to the Division of Coastal Management. These rates  
10 are set as follows:

11 (1) All county permit-letting authorities are eligible to receive seventy-five dollars (\$75.00) for each  
12 processed permit.

13 (2) All municipal permit-letting authorities are eligible to receive fifty-five dollars (\$55.00) for each  
14 processed permit.

15 (3) For multi-unit programs involving a county and a municipality, the higher county rate applies;  
16 however, programs involving two or more municipalities shall use the municipal rate.

17 (4) Follow-up inspections are required when the permitted activity is completed, and such inspections  
18 shall be documented on a form provided by the Division; the follow-up inspection fee received by  
19 all local governments is set at forty dollars (\$40.00).

20 (c) Training costs for Local Permit Officers (LPOs) at the Department of Environment and Natural Resources annual  
21 training session are limited to a maximum two hundred dollars (\$200.00/LPO) for up to three LPOs per local  
22 government upon submittal of proper receipts. No funds will be provided for attendance at Coastal Resources  
23 Commission meetings.

24  
25 *History Note: Authority G.S. 113A-112; 113A-124;*

26 *Eff. December 10, 1977;*

27 *Amended Eff. July 1, 2013; May 1, 1990; October 1, 1982; May 20, 1980; August 1, 1978;*

28 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0402

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In reviewing this Rule, the staff recommends the following changes be made:

*On lines 4 and 5, please consider “ineligible” rather than “not eligible” or “not to be eligible.”*

*In (b)(1), line 6, to what does “local appeal” refer to?*

*In (b), when you say costs are “presumed” ineligible, do you mean that they simply are ineligible, or is there a way to rebut these presumptions?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07I .0402 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0402 INELIGIBLE ACTIVITIES**

4 (a) Costs not associated with CAMA permit letting are not eligible for reimbursement.

5 (b) The following costs are presumed not to be eligible:

- 6 (1) the costs of local appeal,
- 7 (2) attorneys fees,
- 8 (3) bookkeeping or accountant costs,
- 9 (4) fines and penalties.

10

11 *History Note: Authority G.S. 113A-112; 113A-124;*

12 *Eff. December 10, 1977;*

13 *Amended Eff. August 1, 1978;*

14 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0505

**DEADLINE FOR RECEIPT: TBD**

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a)(4), line 8, add the oxford comma following “state”. Also capitalize “state” if referring only to the State of North Carolina.*

*In (a)(5), line 11, please delete or define “relevant.”*

*In (a)(5)(A), line 13, add an “and” or an “or” as appropriate at the end of the line.*

*Please delete (c), as it does not meet the definition of a “Rule.”*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022



1 15A NCAC 07I .0505 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0505 CONTENT OF PLAN**

4 (a) The plan for the local implementation and enforcement program shall include the following elements:

- 5 (1) the geographic extent of jurisdiction of the local management program;
- 6 (2) a description of the criteria to be used in choosing the permit officer;
- 7 (3) methods of permit processing and coordinating procedures;
- 8 (4) methods for identifying and taking into account projects and impacts of regional, state and national
- 9 concern;
- 10 (5) a copy of all existing or proposed local ordinances relating to zoning and land use in areas of
- 11 environmental concern or any other relevant subject in order that the Commission may determine:
  - 12 (A) whether there is sufficient authority to enforce the program described in the local
  - 13 management plan;
  - 14 (B) whether any local ordinances are inconsistent with the approved land use plan. No plan
  - 15 will be approved for any county or city if the Commission determines either that the local
  - 16 government unit lacks sufficient authority to enforce the program or that the local
  - 17 government unit has an ordinance or ordinances inconsistent with its land use plan.

18 (b) The plan may also include the following elements for the remainder of the zoning jurisdiction of the county or  
19 city:

- 20 (1) a copy of all local ordinances relating to land use or any other subject relevant to land use;
- 21 (2) procedures for assuring consistency of governmental actions with the approved land use plan for the
- 22 entire jurisdiction.

23 (c) The remaining rules within this Section provide criteria which shall act as guidelines for cities and counties in  
24 drafting the local management plan describing their local management program.

25

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

27 *Eff. November 1, 1984;*

28 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0507

**DEADLINE FOR RECEIPT: TBD**

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 4, please specify which “plan” this Rule governs.*

*In (a), line 4, add the oxford comma following “review.”*

*In (b), line 7, what “criteria” are you referring to?*

*In (c), line 8, does “permit officer” mean “Local Permit Officer” as used in the title and elsewhere in these Rules? If so, please be consistent, and also make sure you’re using the acronym correctly.*

*In (c), line 8, please capitalize Department.*

*In (c), line 8, please change to “his or her”.*

*In (c) generally, where is your statutory authority to require permit officers to attend training and work sessions?*

*In (d), line 11, what is a “passive grant”? I don’t see that term anywhere in Chapter 113A of the G.S. or in any of the subchapters of 15A NCAC 07.*

*In (e)(3), line 19, please define or delete “appropriate.”*

*In (e)(4), line 21, please capitalize “Secretary.”*

*In (f), lines 22 and 23, please delete “and/or” and revise accordingly.*

*In (f), line 23, are working days and business days equivalent? Please be consistent.*

*In (f), line 23, please define or delete “appropriate.”*

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

*In (g), line 25, please capitalize “Commission.”*

*In your History Note, please place the statutes in numerical order.*

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

1 15A NCAC 07I .0507 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0507 LOCAL PERMIT OFFICER**

4 (a) The local plan shall designate an existing official or create a new position for an official who shall receive, review  
5 and take all appropriate action as to applications for minor development permits. The locality shall inform the  
6 Department of all permit officers who will implement or enforce the local management plan.

7 (b) The plan shall specify the job requirements as mandated by these criteria.

8 (c) The permit officer shall attend the department's training course within one year of his appointment. The officer  
9 shall also attend those regular regional work sessions held by the Department to inform and coordinate the activities  
10 of the local permit officers in each region.

11 (d) In order to continue to process permits in a timely fashion and to avoid the issuance of passive grants, eligible  
12 permit-letting agencies shall immediately notify the Commission in writing when the local permit officer resigns or is  
13 for any reason unable to perform his or her duties.

14 (e) This notice shall indicate the method or methods by which the locality will continue to process permits in a  
15 thorough and timely fashion. Such methods can include, but are not limited to, the following:

16 (1) The appointment of a temporary local permit officer (LPO) until such time as a permanent  
17 replacement is selected.

18 (2) The appointment of one or more LPO(s).

19 (3) Evidence that an agreement exists between the locality and another appropriate agency for the  
20 assumption of the permit program.

21 (4) A formal request that the secretary assume the permit function for the locality.

22 (f) From date of receipt and acceptance of application and/or decision on an application, the local permit officer must  
23 within five workings days mail and/or submit copies of same to the appropriate field consultant or the nearest field  
24 office of the Division of Coastal Management.

25 (g) The permit officer shall, on a quarterly basis, summarize for the commission the receipt and disposition of all  
26 permit applications for the immediately preceding quarter.

27

28 *History Note: Authority G.S. 113A-121(b); 113A-117; 113A-124;*

29 *Eff. November 1, 1984;*

30 *Amended Eff. May 1, 1990;*

31 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0510

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In reviewing this Rule, the staff recommends the following changes be made:

*Is this Rule necessary? I am not sure it does much more than restate the content of G.S. 113A-117 and the rules referenced herein.*

*Assuming it is necessary, please change all instances of "will" and "must" to "shall."*

*On line 7, please add the oxford comma following "Act".*

*On line 7, to what does "these Rules" refer?*

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

1 15A NCAC 07I .0510 is readopted as published in 34:09 NCR 761 as follows:

2

3 **15A NCAC 07I .0510 COMMISSION REVIEW AND ACCEPTANCE OF THE LOCAL PLAN**

4 The local management plan adopted by any local permit-letting agency must be submitted to the Commission for  
5 review. The Commission will evaluate the proposed local management plan as required in G.S. 113A-117(c) and will  
6 assess the plan in terms of the local land use plan, the CAMA Land Use Planning Guidelines described in 15A NCAC  
7 7B .0100, the Coastal Area Management Act and these rules.

8

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

10 *Eff. November 1, 1984;*

11 *Amended Eff. October 1, 1988;*

12 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0601

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In reviewing this Rule, the staff recommends the following changes be made:

*On line 8, to what does "these Rules" refer?*

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

1 15A NCAC 07I .0601 is readopted as published in 34:09 NCR 761 as follows:  
2

3 **SECTION .0600 - AMENDMENT OF LOCAL MANAGEMENT PLAN**  
4

5  
6 **15A NCAC 07I .0601 NOTICE AND PUBLIC HEARING REQUIREMENT**

7 Amendment of the local management plan shall follow the notice and public hearing requirements set forth in the  
8 Coastal Area Management Act and these Rules pertaining to the adoption of the original program.

9  
10 *History Note: Authority G.S. 113A-117(b);*  
11 *Eff. November 1, 1984;*  
12 *Amended Eff. December 1, 1991;*  
13 *Readopted Eff. August 1, 2022.*



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07I .0701

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In reviewing this Rule, the staff recommends the following changes be made:

*In (a)(3), line 15, what is an "affected person"?*

*In (b), line 16, to what does "conditions" refer?*

*In (b), line 16, please capitalize "commission."*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

1 15A NCAC 07I .0701 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **SECTION .0700 - FAILURE TO ENFORCE AND ADMINISTER PLAN**

4  
5  
6 **15A NCAC 07I .0701 SANCTION FOR VIOLATIONS BY THE LOCAL PERMIT-LETTING AGENCY**

7 (a) When the local permit-letting agency fails to administer or enforce the local management plan submitted to the  
8 Commission and approved by it, the Commission shall:

- 9 (1) notify the local permit-letting agency in writing that it is in violation of the provisions of its local  
10 management plan and specify the grounds for such charges of violations;
- 11 (2) inform the local permit-letting agency of specific deficiencies in administration and enforcement;
- 12 (3) inform the local permit-letting authority of its opportunity to request a hearing before the  
13 Commission at which time it may make any presentation or present any arguments relevant to the  
14 issue raised in the Commission letter to the local agency. The Commission may at its sole discretion  
15 hear from any other affected person at the hearing.

16 (b) If the conditions are not remedied or corrected within 90 days after receipt of commission notification of such  
17 violation, the Commission shall assume the duties of the local permit-letting agency until the local permit-letting  
18 agency indicates to the Commission in writing its willingness and/or ability to perform in conformance with its  
19 approved local management plan. Any changes in circumstances affecting the agency's willingness and/or ability to  
20 properly administer the local management plan also shall be substantiated in writing to the Commission.

21  
22 *History Note: Authority G.S. 113A-117(d); 113A-124;*  
23 *Eff. November 1, 1984;*  
24 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0102

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (1), line 8, change “7H” to “07H”.*

*In (2) and in (9), update the name of the Department from DENR to DEQ.*

*In (3), line 13, add the oxford comma following “substrate” and also after “marshlands”.*

*In (3), line 13, capitalize “state” if referring only to the State of North Carolina.*

*In (4), line 15, add the oxford comma following “marshlands.”*

*In (4), line 16, capitalized “state” if referring only to the State of North Carolina.*

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

1 15A NCAC 07J .0102 is readopted as published in 34:09 NCR 761 as follows:

2  
3 **15A NCAC 07J .0102 GENERAL DEFINITIONS**

4 The following definitions apply whenever these words are used in this Subchapter:

- 5 (1) "Areas of Environmental Concern" (AECs) means geographic areas within the coastal area which  
6 the Coastal Resources Commission chooses to designate for special environmental and land use  
7 regulations. The types of areas which may be designated as AECs are described in G.S. 113A-113.  
8 Areas which have already been designated are defined in 15A NCAC 7H, "State Guidelines for  
9 Areas of Environmental Concern."
- 10 (2) "Department" (DENR) means the North Carolina Department of Environment and Natural  
11 Resources.
- 12 (3) "Excavation Project" means any moving, digging, or exposing of bottom materials, marshland  
13 substrate or root or rhizome matter in the estuarine waters, tidelands, marshlands and state-owned  
14 lakes, regardless of the equipment or method used.
- 15 (4) "Filling Project" means the placing of any materials in estuarine waters, tidelands, marshlands and  
16 state-owned lakes so as to raise the elevation of the area upon which the material is placed. Structure  
17 placement does not constitute a filling or excavation project. The placement of shell material  
18 specifically for the purpose of oyster culture also shall not be considered a filling project.
- 19 (5) "Local Management Program" means the local implementation and enforcement program of a  
20 coastal city or county that has undertaken to administer a permit program for minor development in  
21 areas of environmental concern located within such city or county.
- 22 (6) "Local Permit Officer" refers to the locally designated official who will administer and enforce the  
23 minor development permit program in areas of environmental concern and all parts of the land use  
24 plan which the local government may wish to enforce over the entire planning area.
- 25 (7) "Division" means the Division of Coastal Management.
- 26 (8) "Permit" refers to CAMA major development permits, CAMA minor development permits and  
27 dredge and fill permits unless the context clearly indicates otherwise.
- 28 (9) "Secretary" refers to the Secretary of Environment and Natural Resources.

29  
30 *History Note: Authority G.S. 113-229; 113A-116; 113A-117; 113A-118;*  
31 *Eff. March 15, 1978;*  
32 *Amended Eff. June 1, 2006; April 1, 1997; May 1, 1990; November 1, 1984;*  
33 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0204

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*Paragraph (a) is written in the passive tense. Please consider re-writing in the active tense.*

*In (b)(1), line 8, are the contents of the form described in another Rule or statute?*

*In (b)(3), line 11, please delete "herein."*

*In (b)(3) and (b)(4), lines 12 and 14, please revise "and/or" as appropriate.*

*In (b)(5)(B), lines 22 and 23, please add "or her" following "his".*

*In (b)(6), do the fees collected comply with G.S. 113A-119.1's requirement that the total funds collected from fees not exceed 33 1/3% of total personnel and administrative costs?*

*In (b)(6)(A), what is the definition of a "commercial" or "non-commercial" project?*

*In (b)(7), lines 36-37, what "other information" are you requiring?*

*In (b)(8), G.S. 113A-100 is the Coastal Area Management Act, rather than the North Carolina Environmental Policy Act. Please correct.*

*In (b)(8), line 8, please define the "appropriate environmental assessment document".*

*In (d), lines 11-12, what kind of "additional information" is required? On line 13, what are "necessary changes" or necessary information?"*

*In (d), line 14, please define or delete "significant".*

*In (e), line 17, what violations are you referring to?*

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

*In (e), lines 18-19, please define “substantially altered” and “deemed necessary”.*

*In (e), lines 20-22, please define “satisfactory” and explain whom the applicant must satisfy. Also, please define “unauthorized development,” and “substantially altered.”*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

1 15A NCAC 07J .0204 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0204 PROCESSING THE APPLICATION**

4 (a) On receipt of a CAMA major development and/or dredge and fill permit application by the Department, a letter  
5 shall be sent to the applicant acknowledging receipt.

6 (b) Application processing shall begin when an application is accepted as complete. Before an application will be  
7 accepted as complete, the following requirements must be met;

- 8 (1) a current application form must be submitted;
- 9 (2) all questions on the application form must be completed or the letters "N/A" must be placed in each  
10 section that does not apply;
- 11 (3) an accurate work plan as described in 15A NCAC 7J .0203 herein must be attached to all CAMA  
12 major development and/or dredge and fill permit applications;
- 13 (4) a copy of a deed or other instrument under which the applicant claims title must accompany a  
14 CAMA major development and/or dredge and fill permit application;
- 15 (5) notice to adjacent riparian landowners must be given as follows:
  - 16 (A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian  
17 landowners (as identified in the permit application) have been sent a copy of the application  
18 for the proposed development must be included in a CAMA major development and/or  
19 dredge and fill permit application. Said landowners have 30 days from the date of  
20 notification in which to comment. Such comments will be considered by the Department  
21 in reaching a final decision on the application.
  - 22 (B) For CAMA minor development permits, the applicant must give actual notice of his  
23 intention to develop his property and apply for a CAMA minor development permit to all  
24 adjacent riparian landowners. Actual notice can be given by sending a certified letter,  
25 informing the adjoining property owner in person or by telephone, or by using any other  
26 method which satisfies the Local Permit Officers that a good faith effort has been made to  
27 provide the required notice;
- 28 (6) the application fee must be paid as set out in this Subparagraph:
  - 29 (A) Major development permit - Application fees shall be in the form of a check or money  
30 order payable to the Department. The application fee for private, non-commercial  
31 development shall be two hundred fifty dollars (\$250.00). The application fee for a public  
32 or commercial project shall be four hundred dollars (\$400.00).
  - 33 (B) Minor development permit - Application fees shall be in the form of a check or money  
34 order payable to the permit-letting agency in the amount of one hundred dollars (\$100.00).  
35 Monies so collected may be used only in the administration of the permit program;
- 36 (7) any other information the Department or local permit officer deems necessary for a review of the  
37 application must be provided. Any application not in compliance with these requirements will be

1 returned to the applicant along with a cover letter explaining the deficiencies of the application and  
2 will not be considered accepted until it is resubmitted and determined to be complete and sufficient.  
3 If a local permit officer receives an application for a permit that the local permit officer lacks  
4 authority to grant, the permit officer shall return the application with information as to how the  
5 application may be properly considered; and

6 (8) for development proposals subject to review under the North Carolina Environmental Policy Act  
7 (NCEPA), G.S. 113A-100 et. seq., the permit application will be complete only on submission of  
8 the appropriate environmental assessment document.

9 (c) Upon acceptance of a major development and/or dredge and fill permit as complete, the Department shall send a  
10 letter to the applicant setting forth the data on which acceptance was made.

11 (d) If the application is found to be incomplete or inaccurate after processing has begun or if additional information  
12 from the applicant is necessary to adequately assess the project, the processing shall be terminated pending receipt of  
13 the necessary changes or necessary information from the applicant. During the pendency of any termination of  
14 processing, the permit processing period shall not run. If the changes or additional information significantly alters the  
15 project proposal, the application shall be considered new and the permit processing period will begin to run from that  
16 date.

17 (e) Any violation occurring at a proposed project site for which an application is being reviewed shall be processed  
18 according to the procedures in 15A NCAC 7J .0408 - 0410. If the violation substantially altered the proposed project  
19 site, and restoration is deemed necessary, the applicant shall be notified that processing of the application will be  
20 suspended pending compliance with the notice of required restoration. Satisfactory restoration of any unauthorized  
21 development that has substantially altered a project site is deemed necessary to allow a complete review of the  
22 application and an accurate assessment of the project's potential impacts. The applicant shall be notified that permit  
23 processing has resumed, and that a new processing deadline has been established once the required restoration has  
24 been deemed satisfactory by the Division of Coastal Management or Local Permit Officer.

25 (f) If during the public comment period a question is raised as to public rights of access across the subject property,  
26 the Division of Coastal Management shall examine the access issue prior to making a permit decision. Any individual  
27 or governmental entity initiating action to judicially recognize a public right of access must obtain a court order to  
28 suspend processing of the permit application. Should the parties to legal action resolve the issue, permit processing  
29 shall continue.

30  
31 *History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;*

32 *Eff. March 15, 1978;*

33 *Amended Eff. November 1, 1991; March 1, 1991; July 1, 1990; July 1, 1989;*

34 *Temporary Amendment Eff. September 2, 1998;*

35 *Temporary Amendment Expired June 28, 1999;*

36 *Amended Eff. August 1, 2000;*

37 *Readopted Eff. August 1, 2022.*



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0209

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*Is most of this Rule necessary? Other than the delegation of authority, is there anything here that isn't a restatement of other statutes or rules?*

*In (a), line 4, capitalize "department."*

*In (a), lines 5-7, the Rule repeatedly uses the term "applicable" with respect to criteria and standards. Please clarify what these are.*

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

1 15A NCAC 07J .0209 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0209 ISSUANCE OF PERMITS**

4 (a) The Commission hereby delegates to the department the authority to issue or deny CAMA permits. The decision  
5 to issue or deny the permit will be based on the applicable criteria set forth in G.S. 113A-120, the applicable standards  
6 for development set forth in 15A NCAC, Subchapters 7H and 7M, and any other applicable rules adopted by the  
7 Commission. The Department may condition issuance of permits on such conditions as are considered necessary to  
8 ensure compliance with the applicable criteria and standards. The Department's decisions to grant or deny CAMA  
9 permits may be appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

10 (b) The Department will make a final decision with respect to a dredge and fill permit application as provided in G.S.  
11 113-229(e) upon considering the field investigation report, the comments of all interested state agencies, the comments  
12 of adjacent riparian landowners and the comments of other interested parties. The Department's decisions to grant or  
13 deny dredge and fill permits may be appealed as provided in G.S. Chapter 150B, G.S. 113-229, and 15A NCAC 7J  
14 Section .1000.

15 (c) In cities and counties that have developed local management programs, applications for minor development  
16 permits shall be considered by the local permit officer. The decision to issue or deny the permit will be based on the  
17 applicable criteria set forth in G.S. 113A-120, the applicable standards for development set forth in 15A NCAC,  
18 Subchapters 7H and 7M, and any other applicable rules adopted by the Commission. The local permit officer may  
19 condition issuance of a permit on such conditions as are considered necessary to ensure compliance with applicable  
20 criteria and standards. A city's or county's decision to grant or deny a CAMA minor development permit may be  
21 appealed as provided in G.S. Chapter 150B, G.S. 113A-121.1, and 15A NCAC 7J Section .0300.

22

23 *History Note: Authority G.S. 113-229; 113A-118(c); 113A-122(c); 113A-124;*

24 *Eff. March 15, 1978;*

25 *Amended Eff. October 1, 1988; November 1, 1984; September 6, 1979; March 5, 1979;*

26 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0210

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*What is a “water dependent structure” vs. a “non water dependent structure”? Are these terms defined?*

*In (1), lines 10-11, what does “immediately prior” mean? Please clarify.*

*In (1), line 11, who decides whether the structure is valued prior to the time of the damage or the time of the request?*

*In (1)(b), the Rule defines “cost” as the cost to return the structure to its “pre-damaged condition” but then goes on to say that “cost” shall include the cost necessary to make “any improvements that the owner chooses to construct.” This seems to conflict. Please clarify.*

*In (1)(b)(i), line 26, please clarify “North Carolina licensed contractor qualified by license to provide...”*

*In (2), line 32, how is it determined whether a structure is enlarged? Is this a two-dimensional calculation (i.e. just the footprint of the structure) or would adding height to the existing footprint be an enlargement as well?*

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

1 15A NCAC 07J .0210 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0210 REPLACEMENT OF EXISTING STRUCTURES**

4 Replacement of structures damaged or destroyed by natural elements, fire or normal deterioration is considered  
5 development and requires CAMA permits. Replacement of structures shall be permitted if the replacements is  
6 consistent with current CRC rules. Repair of structures damaged by natural elements, fire or normal deterioration is  
7 not considered development and shall not require CAMA permits. The CRC shall use the following criteria to  
8 determine whether proposed work is considered repair or replacement.

9 (1) NON-WATER DEPENDENT STRUCTURES. Proposed work is considered replacement if the  
10 cost to do the work exceeds 50 percent of the market value of an existing structure immediately  
11 prior to the time of damage or the time of request. Market value and costs are determined as follows:

12 (a) Market value of the structure does not include the value of the land, value resulting from  
13 the location of the property, value of accessory structures, or value of other improvements  
14 located on the property. Market value of the structure shall be determined by the Division  
15 based upon information provided by the applicant using any of the following methods:

- 16 (i) appraisal;
- 17 (ii) replacement cost with depreciation for age of the structure and quality of  
18 construction; or
- 19 (iii) tax assessed value.

20 (b) The cost to do the work is the cost to return the structure to its pre-damaged condition,  
21 using labor and materials obtained at market prices, regardless of the actual cost incurred  
22 by the owner to restore the structure. It shall include the costs of construction necessary to  
23 comply with local and state building codes and any improvements that the owner chooses  
24 to construct. The cost shall be determined by the Division utilizing any or all of the  
25 following:

- 26 (i) an estimate provided by a North Carolina licensed contractor qualified by license  
27 to provide an estimate or bid with respect to the proposed work;
- 28 (ii) an insurance company's report itemizing the cost, excluding contents and  
29 accessory structures; or
- 30 (iii) an estimate provided by the local building inspections office.

31 (2) WATER DEPENDENT STRUCTURES. The proposed work is considered replacement if it  
32 enlarges the existing structure. The proposed work is also considered replacement if:

33 (a) in the case of fixed docks, piers, platforms, boathouses, boatlifts, and free standing  
34 moorings, more than 50 percent of the framing and structural components (beams, girders,  
35 joists, stringers, or pilings) must be rebuilt in order to restore the structure to its pre-damage  
36 condition. Water dependent structures that are structurally independent from the principal

1 pier or dock, such as boatlifts or boathouses, are considered as separate structures for the  
2 purpose of this Rule;

3 (b) in the case of boat ramps and floating structures such as docks, piers, platforms, and  
4 modular floating systems, more than 50 percent of the square feet area of the structure must  
5 be rebuilt in order to restore the structure to its pre-damage condition;

6 (c) in the case of bulkheads, seawalls, groins, breakwaters, and revetments, more than 50  
7 percent of the linear footage of the structure must be rebuilt in order to restore the structure  
8 to its pre-damage condition.

9

10 *History Note: Authority G.S. 113A-103(5)b.5.; 113A-107(a),(b);*

11 *Eff. July 1, 1990;*

12 *Amended Eff. August 1, 2007.*

13

14

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0211

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*Do you have any other statutory authority for this Rule beyond 113A-107(a) and (b)? While these two provisions direct CRC to develop "guidelines", I don't see anything in these two paragraphs that speaks directly to the contents of this Rule.*

*On line 5, eliminate the commas around "and".*

*In (2), line 8, please define "similar."*

*In (3) line 9, please define "practical" and "similar". Additionally, what do you mean by "benefits"? Benefits to whom? The owners? The community?*

*In (4), line 11, please define "maximum extent possible." Who makes this determination, and based on what criteria?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07J .0211 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0211 NON-CONFORMING DEVELOPMENT**

4 A non-conforming structure is any structure within an AEC other than Ocean Hazard and Inlet Hazard AECs that is  
5 inconsistent with current CRC rules, and, was built prior to the effective date(s) of the rule(s) with which it is  
6 inconsistent. Replacement of such structures shall be allowed when all of the following criteria are met:

- 7 (1) the structure will not be enlarged beyond its original dimensions;
- 8 (2) the structure will serve the same or similar use;
- 9 (3) there are no practical alternatives for replacing the structure to provide the same or similar benefits  
10 in compliance with current rules; and
- 11 (4) the structure will be rebuilt so as to comply with current rules to the maximum extent possible.

12

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

14 *Eff. July 1, 1990;*

15 *Amended Eff. December 1, 1991;*

16 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0301

DEADLINE FOR RECEIPT: TBD

***PLEASE NOTE:*** *This request may extend to several pages. Please be sure you have reached the end of the document.*

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

In reviewing this Rule, the staff recommends the following changes be made:

*Is paragraph (a) necessary? Similarly, are the last three sentences of (b) necessary? Both seem to only restate material from G.S. 113A-121.*

*In (b), lines 11 and 12, you instruct the public to file hearing requests “with” first the Chairman of CRC, and then the Director of DCM. Please clarify.*

*On line 12-13, please update the name of the Department.*

*On line 13, please delete “therof” and revise accordingly.*

*On line 14, please confirm that the address for DOJ is correct.*

*In your History Note, can you explain the references to G.S. 113A-118(c) and 113A-122? Neither seem apposite.*

*Please address whether the RRC objections for lack of statutory authority made on February 20, 1992 and March 19, 1992 have been satisfied.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022



1 15A NCAC 07J .0301 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **SECTION .0300 - HEARING PROCEDURE**  
4

5 **15A NCAC 07J .0301 WHO IS ENTITLED TO A CONTESTED CASE HEARING**

6 (a) Under G.S. 113A-121.1(a), only the following persons are entitled to appeal a permit decision by filing a petition  
7 for a contested case hearing as provided in 15A NCAC 07J .0302:

- 8 (1) any applicant for a minor or major development permit; and  
9 (2) the Secretary in the case of a decision by a local official on a minor development permit.

10 (b) Under G.S. 113A-121.1(b), persons other than those entitled to a contested case hearing on a permit decision  
11 under Paragraph (a) of this Rule may file a request for such a hearing with the Chairman of the Coastal Resources  
12 Commission. The hearing request shall be filed with the Director, Division of Coastal Management, Department of  
13 Environment and Natural Resources (DENR), 400 Commerce Avenue, Morehead City, NC 28557, and a copy thereof  
14 shall be filed with the Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. The  
15 Commission hereby delegates to the Chairman the authority to determine whether persons other than those entitled to  
16 a hearing shall be granted a hearing. The Chairman shall grant a hearing upon finding that the criteria in G.S. 113A-  
17 121.1(b) have been satisfied. A person whose hearing request is granted may file a petition for a contested case  
18 hearing as provided in 15A NCAC 07J .0302. A denial of a request for a hearing may be appealed as provided in G.S.  
19 113A-121.1(b).

20  
21 *History Note: Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 113A-124;*  
22 *Eff. March 15, 1978;*  
23 *Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984;*  
24 *RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;*  
25 *Amended Eff. March 31, 1992;*  
26 *RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;*  
27 *Amended Eff. June 1, 2005; April 1, 1992;*  
28 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0302

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*Are paragraphs (a), (b), and (c) necessary? They mainly appear to repeat material in your statutes.*

*In your History Note, can you explain the references to G.S. 113A-118(c) and 113A-122? Neither seem apposite.*

*Please address whether the RRC objections for lack of statutory authority made on February 20, 1992 and March 19, 1992 have been satisfied.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07J .0302 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0302 PETITION FOR CONTESTED CASE HEARING**

4 (a) Any person who is entitled or authorized to appeal a permit decision under Rule .0301(a) may file a petition for a  
5 contested case hearing with Office of Administrative Hearings, 6714 Mail Service Center, Raleigh NC 27699-6714.

6 The petition shall be filed within 20 days of the permit decision being appealed as provided in G.S. 113A-121.1(a).

7 (b) Any person who has been granted a hearing by the Chairman of the Coastal Resources Commission under Rule  
8 .0301(b) may file a petition for a contested case hearing with the Office of Administrative Hearings, 6714 Mail Service  
9 Center, Raleigh, NC 27699-6714. The petition shall be filed within 20 days after the Chairman's decision on the  
10 hearing request as provided in G.S. 113A-121.1(b).

11 (c) Any petition shall conform to the requirements of G.S. 150B-23. A copy of the petition shall be served on the  
12 Director, Division of Coastal Management, 400 Commerce Avenue, Morehead City NC 28557, and on the Attorney  
13 General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001. If a minor development permit is appealed, a  
14 copy of the petition shall also be served on the local permit officer. Failure to file any petition within the time period  
15 in G.S. 113A-121.1 (a) and (b) constitutes a waiver of the opportunity for a contested case hearing.

16 (d) Upon the request of the Director, the local permit officer shall submit a certified copy of the entire record of any  
17 minor permit decision which is being appealed to the Director. The record shall include the elements indicated in 15A  
18 NCAC 07I .0508(c).

19

20 *History Note: Authority G.S. 113-229; 113A-118(c); 113A-121.1; 113A-122; 113A-124;*

21 *Eff. March 15, 1978;*

22 *Amended Eff. July 1, 1990; October 1, 1988; November 1, 1984; July 1, 1982;*

23 *RRC Objection due to lack of Statutory Authority Eff. February 20, 1992;*

24 *Amended Eff. March 31, 1992;*

25 *RRC Objection due to lack of Statutory Authority Eff. March 19, 1992;*

26 *Amended Eff. June 1, 2005; April 1, 1992;*

27 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0602

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*On lines 4-5, please update the name of the Department.*

*On line 12, please capitalize "Commission."*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022

1 15A NCAC 07J .0602 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0602 PROCEDURE FOR REQUESTING DECLARATORY RULINGS**

4 (a) All requests for a declaratory ruling shall be filed with the Director, Division of Coastal Management, Department  
5 of Environment and Natural Resources (DENR), 400 Commerce Avenue, Morehead City NC 28557, and also the  
6 Attorney General's Office, 9001 Mail Service Center, Raleigh NC 27699-9001. All requests shall include the  
7 following: the aggrieved person's name and address; the rule, statute or order for which a ruling is desired; and a  
8 statement as to whether the request is for a ruling on the validity of a rule or on the applicability of a rule, order or  
9 statute; and certified mail receipts showing the request was sent to the owners of property adjacent to the property that  
10 is the subject of the declaratory ruling.

11 (b) A request for a ruling on the applicability of a rule, order, or statute shall include a description of the factual  
12 situation on which the ruling is to be based. A request for a ruling on the validity of a commission rule shall state the  
13 aggrieved person's reasons for questioning the validity of the rule. A person may ask for both types of rulings in a  
14 single request. A request for a ruling shall include or be accompanied by:

- 15 (1) a statement of facts proposed for adoption by the Commission; and
- 16 (2) a draft of the proposed ruling.

17

18 *History Note: Authority G.S. 113A-124; 150B-4;*

19 *Eff. June 1, 1979;*

20 *Amended Eff. June 1, 2005; October 1, 1992; November 1, 1991; July 1, 1990; May 1, 1990;*

21 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0603

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), lines 5-6, where is your statutory authority to delegate the determination with regard to notice?*

*In (a)(1), lines 10-11, please define “directly affected” and “sufficient to support a meaningful ruling.” These terms are objectionably vague.*

*In (b), line 17, please add the oxford comma following “owners.”*

*In (b), line 17-18, the phrase “and other persons to whom the Commission decides to give notice...” is permissive, and seems to be outside the definition of a “rule” under G.S. 150B-2(8a). Please revise.*

*Furthermore, in (b), lines 18-20, no time frame for submitting comments is provided, unlike earlier in (b) and in (c).*

*In (c), lines 26-29, is the sentence “All persons receiving notice . . . date of the proposed ruling;” necessary? This seems to repeat (b).*

*In (f) p.2, line 7, what “court” are you referring to? The General Courts of Justice?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07J .0603 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS**

4 (a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings  
5 and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent  
6 property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall  
7 prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether  
8 for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory  
9 ruling on finding that:

- 10 (1) the requesting party, any other directly affected persons, and the Division of Coastal Management  
11 cannot agree on a set of undisputed facts sufficient to support a meaningful ruling;  
12 (2) the matter is the subject of a pending contested case hearing; or  
13 (3) no genuine controversy exists as to the application of a statute or rule to a proposed project or  
14 activity.

15 (b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next  
16 regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the  
17 requesting party, the adjacent property owners and other persons to whom the Commission decides to give notice no  
18 less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to  
19 whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed  
20 declaratory ruling.

21 (c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party  
22 requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider  
23 such factors as: whether additional public participation would aid the Commission in reaching a decision; whether  
24 any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal  
25 rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would  
26 affect the application and interpretation of a rule in which other persons might be interested. All persons receiving  
27 notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed  
28 ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to  
29 Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be  
30 provided to the Commission and shall be included in the record of the declaratory ruling.

31 (d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling.  
32 The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the  
33 Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The  
34 declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.

35 (e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following  
36 items:

- 37 (1) the request for a ruling;

- 1           (2)     any written comments by interested parties;
- 2           (3)     the statement of undisputed facts on which the ruling was based;
- 3           (4)     any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- 4           (5)     any other matter considered by the Commission in making the decision; and
- 5           (6)     the declaratory ruling together with the reasons therefore.

6 (f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by  
7 the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the  
8 Commission from prospectively changing a ruling.

9 (g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a  
10 contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the  
11 merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the  
12 merits of the request and shall be subject to judicial review.

13  
14 *History Note:*     *Authority G.S. 113A-124; 150B-4;*  
15                     *Eff. June 1, 1979;*  
16                     *Amended Eff. October 1, 1992; October 1, 1988;*  
17                     *Readopted Eff. August 1, 2022.*



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0604

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*Why is a separate Rule necessary for a request for a declaratory ruling by the federal government?*

*In (a), line 4, please capitalize "state" if referring only to the State of North Carolina.*

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

1 15A NCAC 07J .0604 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0604 FEDERAL ACTIVITIES**

4 (a) At the request of any federal agency or of any state or local co-sponsor of a federal project with the written  
5 concurrence of the federal agency, the Commission shall issue a declaratory ruling concerning the consistency of a  
6 proposed federal activity with North Carolina's coastal management statutes and regulations unless the Chairman  
7 determines that no genuine controversy exists as to the application of a statute or rule to a proposed federal activity.

8 (b) The request for ruling shall include:

- 9 (1) a statement identifying the rule, statute or order at issue;
- 10 (2) certified mail receipts indicating that notice of the request for ruling was sent to the owners of  
11 property adjacent to the property on which the proposed federal activity will take place;
- 12 (3) a statement of facts proposed for adoption by the Commission and any documentary evidence  
13 supporting the proposed statement of facts;
- 14 (4) a draft of the proposed ruling;
- 15 (5) a statement indicating that the Division of Coastal Management has preliminarily determined that  
16 the project may be inconsistent with a coastal management statute or regulation; and
- 17 (6) a statement identifying the factual issues in dispute between the Department and the federal agency.

18 (c) The Commission shall provide notice of the declaratory ruling proceeding to the adjacent property owners and to  
19 persons who have requested notice of proposed rulings. Notice shall be published in a newspaper of general circulation  
20 in the area of the proposed federal activity 10 days prior to the Commission's consideration of the declaratory ruling.  
21 Any person may submit written comments on the proposed declaratory ruling at least five days prior to the date the  
22 Commission will consider the declaratory ruling; such comments shall be provided to the Commission and shall be  
23 included in the record of the declaratory ruling.

24 (d) The parties to a declaratory ruling shall be allowed 30 minutes to present oral arguments to the Commission.  
25 Unless the Division of Coastal Management waives the opportunity to be heard, it shall be a party to any request for  
26 declaratory ruling. No party may offer testimony or conduct cross-examination before the Commission.

27

28 *History Note: Authority G.S. 113A-124; 150B-4;*  
29 *Eff. November 30, 1992;*  
30 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0605

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (b), lines 13-14, with respect to the “if received at least four weeks prior to the meeting” language, is this in compliance with 150B-20(b)’s requirement that petitions be granted or denied within 120 days?*

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

1 15A NCAC 07J .0605 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0605 PETITIONS FOR RULEMAKING**

4 (a) Any person wishing to request the adoption, amendment, or repeal of a rule shall make this request in a petition  
5 addressed to the Division of Coastal Management. The petition shall specify it is filed pursuant to G.S. 150B-20 and  
6 shall contain the following information:

7 (1) either a draft of the proposed rule or a summary of its contents;

8 (2) a statement of reasons for adoption of the proposed rule(s);

9 (3) a statement of the effect on existing rules or orders;

10 (4) any data in support of the proposed rule(s);

11 (5) a statement of the effect of the proposed rule on existing practices; and

12 (6) the name and address of the petitioner.

13 (b) The petition will be placed on the agenda for the next regularly scheduled commission meeting, if received at least  
14 four weeks prior to the meeting, and the director shall prepare a recommended response to the petition for the  
15 Commission's consideration. Petitions will be considered in accordance with the requirements of G.S. 150B-20.

16

17 *History Note: Authority G.S. 113A-124; 150B-20;*

18 *Eff. January 1, 1989;*

19 *Amended Eff. October 1, 1992;*

20 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0701

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), lines 8-10, where is your statutory authority to require a person to seek relief from local requirements before seeking a variance from CRC?*

*In (c), lines 14-15 and (d), p.2, lines 8-9, please update the name of the Department.*

*In (c)(7), line 25, suggest adding "via" prior to "certified."*

*In (d), please confirm the accuracy of both addresses.*

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

1 15 NCAC 07J .0701 is readopted as published in 34:09 NCR 762 as follows:  
2

3 **SECTION .0700 – PROCEDURES FOR CONSIDERING VARIANCE PETITIONS**  
4

5 **15 NCAC 07J .0701 VARIANCE PETITIONS**

6 (a) Any person whose application for a CAMA major or minor development permit has been denied or issued with  
7 condition(s) that the person does not agree with may petition for a variance from the Commission by means of the  
8 procedure described in this Section. Before filing a petition for a variance from a rule of the Commission, the person  
9 must seek relief from local requirements restricting use of the property, and there must not be pending litigation  
10 between the petitioner and any other person which may make the request for a variance moot.

11 (b) The procedure in this Section shall be used for all variance petitions except when:

- 12 (1) the Commission determines that more facts are necessary; or
- 13 (2) there are controverted facts that are necessary for a decision on the variance petition.

14 (c) Variance petitions shall be submitted on forms provided by the Department of Environment and Natural  
15 Resources. The following information shall be submitted before a variance petition is considered complete:

- 16 (1) the case name and location of the development as identified on the denied permit application;
- 17 (2) a copy of the deed to the property on which the proposed development would be located;
- 18 (3) a copy of the permit application and denial for the development in question;
- 19 (4) the date of the petition, and the name, address, and phone number of the petitioner and his or her  
20 attorney, if applicable;
- 21 (5) a complete description of the proposed development, including a site drawing with topographical  
22 and survey information;
- 23 (6) a stipulation that the proposed project is inconsistent with the rule from which the petitioner seeks  
24 a variance;
- 25 (7) notice of the variance petition sent certified mail, return receipt requested to the adjacent property  
26 owners and persons who submitted written comments to the Division of Coastal Management or the  
27 Local Permit Officer during the permit review process and copies of the documents which indicate  
28 that the certified mail notices were received or that deliveries were attempted;
- 29 (8) an explanation of why the petitioner believes that the Commission should make the following  
30 findings, all of which are necessary for a variance to be granted:
  - 31 (A) that unnecessary hardships would result from strict application of the development rules,  
32 standards, or orders issued by the Commission;
  - 33 (B) that such hardships result from conditions peculiar to the petitioner's property such as the  
34 location, size, or topography of the property;
  - 35 (C) that such hardships did not result from actions taken by the petitioner; and

1 (D) that the requested variance is consistent with the spirit, purpose and intent of the  
2 Commission's rules, standards or orders; will secure the public safety and welfare; and will  
3 preserve substantial justice.

4 (9) a proposed set of stipulated facts, for staff's consideration, containing all of the facts relied upon in  
5 the petitioner's explanation as to why he meets the criteria for a variance; and

6 (10) proposed documents, for the staff's consideration, that the petitioner wants the Commission to  
7 consider.

8 (d) Petitions shall be mailed to the Director of the Division of Coastal Management, Department of Environment and  
9 Natural Resources, 400 Commerce Avenue, Morehead City NC 28557 and to Air and Natural Resources Section,  
10 Environmental Division, Attorney General's Office, 9001 Mail Service Center, Raleigh, NC 27699-9001.

11 (e) A variance petition shall be considered by the Commission at a scheduled meeting. Petitions shall be scheduled  
12 in chronological order based upon the date of receipt of a complete variance petition by the Division of Coastal  
13 Management. A complete variance petition, as described in Paragraph (c) of this Rule, shall be received by the  
14 Division of Coastal Management at least six weeks in advance of a scheduled Commission meeting to be considered  
15 by the Commission at that meeting. If the petitioner seeks to postpone consideration of his or her variance request,  
16 the request shall be treated as though it was filed on the date petitioner requested postponement and scheduled for  
17 hearing after all then pending variance requests.

18 (f) Written notice of a variance hearing or Commission consideration of a variance petition shall be provided to the  
19 petitioner and the permit officer making the initial permit decision.

20  
21 *History Note: Authority G.S. 113A-120.1; 113A-124;*  
22 *Eff. December 12, 1979;*  
23 *Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983;*  
24 *Temporary Amendment Eff. December 20, 2001;*  
25 *Temporary Amendment Expired October 12, 2002;*  
26 *Temporary Amendment Eff. December 1, 2002;*  
27 *Amended Eff. March 1, 2009; June 1, 2005; August 1, 2004;*  
28 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0702

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 6, delete or define "appropriate."*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: July 14, 2022



1 15A NCAC 07J .0702 is readopted as published in 34:09 NCR 762 as follows:

2

3 **15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS**

4 (a) The Division of Coastal Management, as staff to the Commission, shall review petitions to determine whether  
5 they are complete according to the requirements set forth in Rule .0701. Incomplete petitions and a description of the  
6 deficiencies shall be returned to the petitioner. Complete variance petitions shall be scheduled for the appropriate  
7 Commission meeting.

8 (b) The staff and the petitioner shall determine the facts that are relevant to the Commission's consideration of the  
9 variance petition. For all facts upon which staff and the petitioner agree, a document entitled Stipulated Facts shall  
10 be prepared and signed by both parties.

11 (c) After the facts agreed upon by the petitioner and staff, the staff shall prepare a written recommendation which  
12 shall be submitted to the Commission before the petition is considered. The staff recommendation shall include:

- 13 (1) a description of the property in question;
- 14 (2) a description of how the use of the property is restricted or otherwise affected by the applicable  
15 rules;
- 16 (3) the Stipulated Facts;
- 17 (4) staff's position on whether the petition meets or does not meet each of the requirements for a  
18 variance; and
- 19 (5) petitioner's position on each of the variance criteria.

20 Copies of the staff recommendation shall be provided to the petitioner and the permit officer making the initial permit  
21 decision at the same time as it is provided to the Commission. If the Stipulated Facts are not agreed upon at least four  
22 weeks prior to a scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the  
23 next scheduled Commission meeting.

24 (d) If the staff determines that agreement cannot be reached on sufficient facts on which to base a variance decision,  
25 the petition shall be considered by means of an administrative hearing to determine the relevant facts.

26

27 *History Note: Authority G.S. 113A-120.1; 113A-124;*  
 28 *Eff. December 12, 1979;*  
 29 *Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988;*  
 30 *Temporary Amendment Eff. December 20, 2001;*  
 31 *Temporary Amendment Expired October 12, 2002;*  
 32 *Temporary Amendment Eff. December 1, 2002;*  
 33 *Amended Eff. July 3, 2008; August 1, 2004;*  
 34 *Readopted Eff. August 1, 2022.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Coastal Resources Commission

RULE CITATION: 15A NCAC 07J .0703

**DEADLINE FOR RECEIPT: TBD**

***PLEASE NOTE:*** *This request may extend to several pages. Please be sure you have reached the end of the document.*

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

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), lines 4-5, when may the Commission review the petition or appoint members? What guides their decision to delegate? Do they have statutory authority to delegate?*

*In (f), it is unnecessary to repeat the statutory guidelines, particularly after referencing the statute in the text.*

*In your History Note, I think you will need a reference to G.S. 113A-124.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: July 14, 2022

1 15A NCAC 07J .0703 is readopted as published in 34:09 NCR 762 as follows:

2  
3 **15A NCAC 07J .0703 PROCEDURES FOR DECIDING VARIANCE PETITIONS**

4 (a) The Commission may review the variance petition and staff recommendation and hear oral presentation by the  
5 petitioner, if any, in full session or may appoint a member or members to do so. In cases where a member or members  
6 are appointed, they shall report a summary of the facts and a recommended decision to the Commission.

7 (b) The Commission or its appointed member or members shall be provided with copies of the petition, the stipulated  
8 facts, and the staff recommendation before considering the petition.

9 (c) At the Commission's request, staff shall orally describe the petition to the Commission or its appointed member(s)  
10 and shall present comments concerning whether the Commission should make the findings necessary for granting the  
11 variance. The petitioner shall also be allowed to present oral arguments concerning the petition. The Commission  
12 may set time limits on such oral presentations.

13 (d) The final decision of the Commission may be made at the meeting at which the matter is heard or in no case later  
14 than the next scheduled meeting. The final decision shall be transmitted to the petitioner by certified mail, return  
15 receipt requested within 30 days of the meeting at which the Commission reached its decision. In the event that the  
16 Commission cannot reach a final decision because it determines that more facts are necessary, it shall remand the  
17 matter to staff and the petitioner with instructions for the parties to either agree to the necessary fact(s) or to request a  
18 hearing in the Office of Administrative Hearings.

19 (e) Final decisions concerning variance petitions shall be made by concurrence of a majority of a quorum of the  
20 Commission.

21 (f) To grant a variance, the Commission must affirmatively find each of the four factors listed in G.S. 113A-120.1(a).

- 22 (1) that unnecessary hardships would result from strict application of the development rules, standards,  
23 or orders issued by the Commission;
- 24 (2) that such hardships result from conditions peculiar to the petitioner's property such as location, size,  
25 or topography;
- 26 (3) that such hardships did not result from actions taken by the petitioner; and
- 27 (4) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules,  
28 standards or orders; will secure the public safety and welfare; and will preserve substantial justice.

29  
30 *History Note: Authority G.S. 113A-120.1;*  
31 *Eff. December 12, 1979;*  
32 *Amended Eff. December 1, 1991; March 3, 1981;*  
33 *Temporary Amendment Eff. December 20, 2001;*  
34 *Temporary Amendment Expired October 12, 2002;*  
35 *Temporary Amendment Eff. December 1, 2002;*  
36 *Amended Eff. March 1, 2009; August 1, 2004;*  
37 *Readopted Eff. August 1, 2022.*