Burgos, Alexander N

From: Leslie Sheffield <lsheffield@bdixon.com>
Sent: Thursday, November 12, 2026 10:29 AM
To: Rules, Oah
Cc: Barney, Meghan E; Burgos, Alexander N; Gray, Jeffrey
Subject: [External] Rule 21 NCAC 26 .0108
Attachments: 21 NCAC 26 .0108 proposed for adoption 111226.doc

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Good morning –

Attached please find the revised Rule 21 NCAC 26 .0108 in Word format. Please let Jeff Gray know if you need anything further. Thank you.

Leslie C. Sheffield
Assistant to Jeffrey P. Gray,
Richard A. Paschal, and Sabra J. Faires

Bailey & Dixon, LLP
PO Box 1351
Raleigh, NC 27602
919-828-0731
919-828-6592 fax
lsheffield@bdixon.com



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21 NCAC 26 .0108 is proposed for adoption as follows:

21 NCAC 26 .0108 DECLARATORY RULING PROCEDURES

(a) All requests for declaratory rulings shall be in writing and mailed to the Board at the Board's address.

(b) Each request for a declaratory ruling shall include the following information:

(1) the name and address of the person requesting the ruling;

(2) the statute or rule to which the request relates;

(3) a concise statement of the manner in which the requesting person is aggrieved by the rule or statute or its potential application to him or her;

(4) names and addresses of additional third persons known to the person aggrieved who may possibly be affected by the requested ruling;

(5) a statement of all material facts;

(6) a statement whether or not the person aggrieved is aware of any pending Board action or court action that may bear on the applicability of the statute or rule to the person's particular situation; and

(7) a statement of the arguments and legal authority supporting the person's position on the applicability of this statute or ~~rule; and~~ rule.

The petitioner shall sign and verify the request before an officer qualified to administer oaths that the information supplied in the request is true and accurate.

(c) Within 30 days of receipt of a request for a declaratory ruling, the Board shall determine whether a ruling is appropriate under the facts stated.

(d) The Board shall proceed to issue a declaratory ruling when the person requesting the rule shows that, with regard to the facts presented:

(1) the rule or statute in question is unclear on its face;

(2) circumstances are so changed since the adoption of a rule that a declaratory ruling is warranted;

(3) the factors specified in the request were not given appropriate consideration by the Board at the time the rule was adopted;

(4) the rule or statute is unclear in its application to the requesting person's facts; or

(5) a fair question exists regarding the validity of the rule because of an absence of authority for the Board's adoption of the rule or other irregularities in the Board's rule-making proceedings.

(e) The Board shall not issue a declaratory ruling when the petitioner or his or her request is the subject of, or materially related to, an investigation by the Board or contested case before the Board.

(f) When the Board determines ~~for good cause~~ that the issuance of a declaratory ruling is unnecessary, the Board shall notify, in writing, the person requesting the ruling, stating the reasons for the denial of the request. The Board ~~will ordinarily~~ shall decline to issue a declaratory ruling when:

(1) there has been a similar controlling factual determination made by the Board;

(2) the rule-making record shows that the factual issues raised by the request were specifically considered prior to, or at the time of adoption of the rule;

(3) the subject matter of the request is involved in pending litigation in any state or federal court in North Carolina, or pending legislation or rulemaking;

(4) the request does not comply with the procedural guidelines within Paragraphs (a) and (b) of this Rule;

(5) the Board has previously issued a declaratory ruling on substantially similar facts;

(6) the Board has previously issued a final agency decision in a contested case on substantially similar facts;

(7) the subject matter is one concerning which the Board is without authority to make a decision binding the Board or the petitioner;

(8) the petitioner is not aggrieved by the rule or statute in question or otherwise has no interest in the subject matter of the request; or

(9) there is reason to believe that the petitioner or some other person or entity materially connected to the subject matter of the request is acting in violation of the G.S. Chapter 89A or the rules adopted by the Board.

The denial of the request is immediately subject to judicial review in accordance with Article 4 of G.S. Chapter 150B.

(g) Prior to issuing a declaratory ruling, the Board may give notice of the declaratory proceedings to any persons it deems appropriate and may direct that fact-finding proceedings appropriate to the circumstances of the particular request be conducted by the Board. The proceedings may consist of written submissions, an oral hearing, or other appropriate procedures. A written ruling on the merits shall be issued within 45 days of the decision to grant the request.

(h) If the Board finds evidence that the factors listed in Subparagraphs (d)(1), (2), or (3) of this Rule exist or potentially exist beyond the specific facts presented in a particular petition for declaratory ruling, the Board shall consider rule-making proceedings on the rule.

(i) A record of each declaratory ruling and the procedures conducted therefor will be maintained by the Board. The record will contain:

(1) the request for a declaratory ruling;

(2) all written submissions filed in the request, whether filed by the person requesting the ruling or by any other person;

(3) a record or summary of oral presentations, if any; and

(4) a copy of the declaratory ruling.

History Note: *Authority G.S. 150B-4;*
Eff. _____.

Burgos, Alexander N

Subject: FW: [External] RE: November RRC Meeting- Request for Technical Changes

From: Gray, Jeffrey <JGray@bdixon.com>
Sent: Tuesday, November 10, 2026 6:46 PM
To: Barney, Meghan E <meghan.barney@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: November RRC Meeting- Request for Technical Changes

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Thank you.

And the rule will be uploaded on Thursday.

Jeffrey P. Gray
Of Counsel
Bailey & Dixon, LLP
434 Fayetteville Street, Suite 2500
P.O. Box 1351
Raleigh, NC 27601 (27602)
Telephone: 919-828-0731
Facsimile: 919-828-6592
E-mail: jgray@bdixon.com

From: Barney, Meghan E <meghan.barney@oah.nc.gov>
Sent: Tuesday, November 10, 2026 9:53 AM
To: Gray, Jeffrey <JGray@bdixon.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: [External] RE: November RRC Meeting- Request for Technical Changes

Jeff,
Thank you for your edits and responses to my questions. I am comfortable with the rule as revised. Please send the final revised rule to oah.rules@oah.nc.gov and cc Mr. Burgos and I (or just reply all). This rule is final for review and can be placed on November's agenda. Please let us know if anyone from your agency will be present for the meeting, in-person or on WebEx.

Thank you,
Meghan

Meghan Barney
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1925
Email: meghan.barney@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] RE: November RRC Meeting- Request for Technical Changes

From: Barney, Meghan E <meghan.barney@oah.nc.gov>
Sent: Tuesday, November 10, 2026 9:53 AM
To: Gray, Jeffrey <JGray@bdixon.com>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
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Thank you,
Meghan

Meghan Barney
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1925
Email: meghan.barney@oah.nc.gov

Email: meghan.barney@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] RE: November RRC Meeting- Request for Technical Changes
Attachments: 20261109125632873.pdf; 21 NCAC 26 .0108 proposed for adoption 110926.doc

From: Gray, Jeffrey <JGray@bdixon.com>
Sent: Monday, November 9, 2026 1:15 PM
To: Barney, Meghan E <meghan.barney@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: November RRC Meeting- Request for Technical Changes

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Ms. Barney:

Below are the responses to your Request for Changes.

Attached is a photograph of the homepage for the Board's website where the rule was posted. (It is a photograph because my attempt to print it only revealed a list of hyperlinks.) Clicking on the "read more" takes you to a copy of the page sent by Samantha prior to publication in the Register. This posting can still be viewed on the agency's website.

(b) line 6: Correction made.

(b) line 17: Correction made.

(b) line 18: This is the correct terminology. A notary public is a public officer qualified to administer oaths pursuant to G.S 10B-3(13). Other such officers include some of those you listed, but this too is established by statute. G.S. 11-7.1 lists all of the officers qualified to administer oaths in North Carolina.

(c) line 20: At this point in the process, it is an internal decision. (f) addresses your question.

(f) lines 33-35: This was written to allow the Board to give some flexibility to persons requesting a declaratory ruling. I have now made it mandatory to avoid having to get into the whole issue of defining "good cause." Change made.

(f) page 12, line 17: Please re-read G.S. 150B-4. The judicial review is governed by Article 4. This subsection is correctly written.

(g) line 22: In a hearing "other appropriate procedures" would be live testimony, affidavits, expert witnesses, and any other form of evidence appropriate to a hearing.

(i) **line 27:** No, they would not be maintained indefinitely. This board is a State agency and the disposition of records for State agencies is subject to a schedule (called the "Functional Schedule") managed through the Department of Natural & Cultural Resources, Division of Archives and Records. *See*, G.S. 121- 5 & G.S. 132-8.

Jeff

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Raleigh, NC 27601 (27602)
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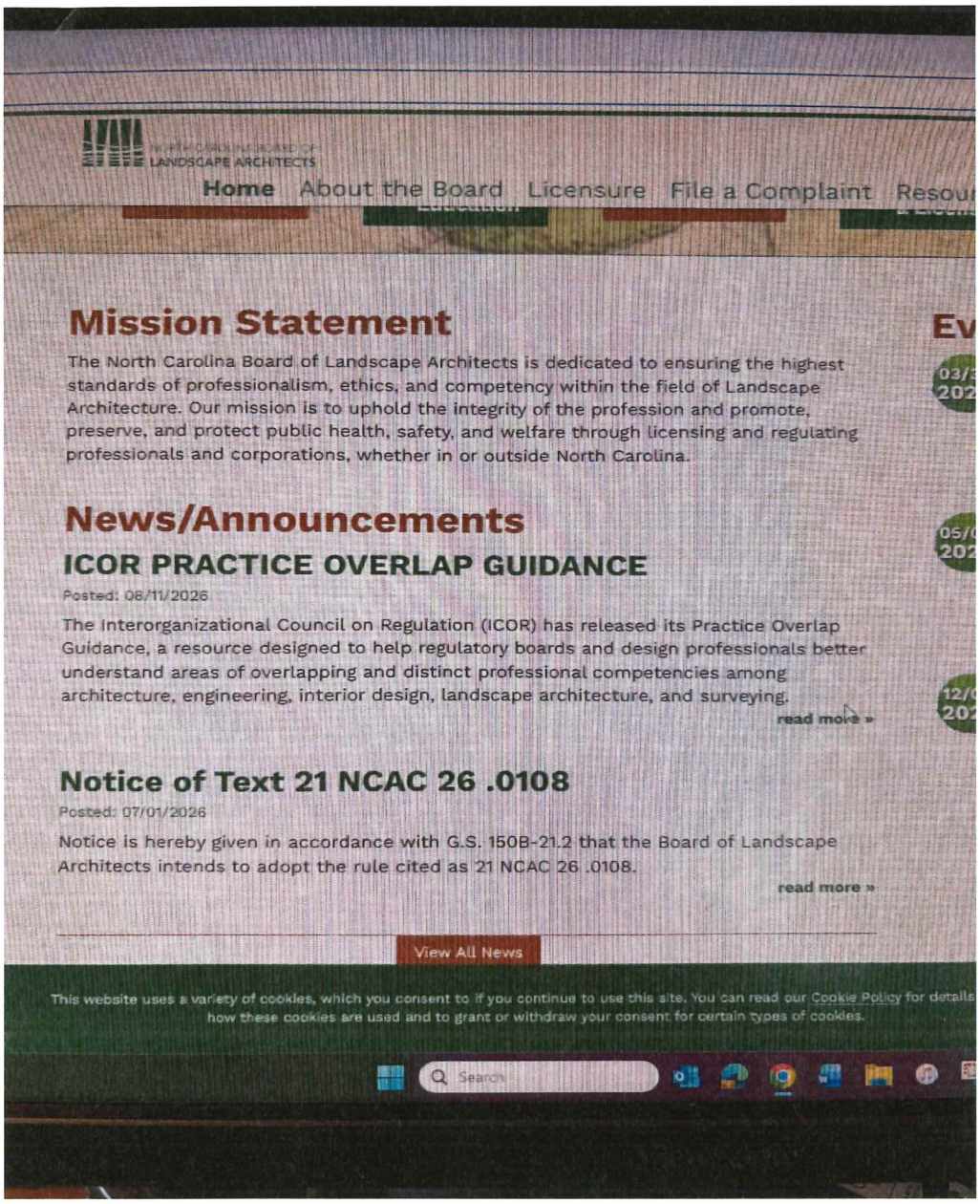
(1) the request for a declaratory ruling;

(2) all written submissions filed in the request, whether filed by the person requesting the ruling or by any other person;

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(4) a copy of the declaratory ruling.

History Note: *Authority G.S. 150B-4;*
Eff. _____.


LANDSCAPE ARCHITECTS
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Mission Statement
The North Carolina Board of Landscape Architects is dedicated to ensuring the highest standards of professionalism, ethics, and competency within the field of Landscape Architecture. Our mission is to uphold the integrity of the profession and promote, preserve, and protect public health, safety, and welfare through licensing and regulating professionals and corporations, whether in or outside North Carolina.
News/Announcements
ICOR PRACTICE OVERLAP GUIDANCE
Posted: 08/11/2026
The Interorganizational Council on Regulation (ICOR) has released its Practice Overlap Guidance, a resource designed to help regulatory boards and design professionals better understand areas of overlapping and distinct professional competencies among architecture, engineering, interior design, landscape architecture, and surveying.
read more »
Notice of Text 21 NCAC 26 .0108
Posted: 07/01/2026
Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Landscape Architects intends to adopt the rule cited as 21 NCAC 26 .0108.
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Burgos, Alexander N

From: Barney, Meghan E
Sent: Friday, October 30, 2026 1:51 PM
To: JGray@bdixon.com
Cc: Burgos, Alexander N
Subject: November RRC Meeting- Request for Technical Changes
Attachments: Request for Changes for 21 NCAC 26 .0108.docx

Good afternoon,

I'm the attorney who reviewed the rule submitted by the North Carolina Board of Landscape Architects for the November 2026 RRC meeting. The RRC will formally review this rule at its meeting on Tuesday, November 24, 2026, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, please let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised rules to me via email, no later than 5 p.m. on November 13, 2026. Let me know if you have any questions.

Thanks,

Meghan

Meghan Barney
Rules Review Commission Counsel
Office of Administrative Hearings
Telephone: 984-236-1925
Email: meghan.barney@oah.nc.gov

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