



**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

May 20, 2021

Jennifer Everett, Rulemaking Coordinator  
Department of Environmental Quality  
**Sent via email only: [Jennifer.Everett@ncdenr.gov](mailto:Jennifer.Everett@ncdenr.gov)**

Re: 01 NCAC 41D .0101 and .0302

Dear Ms. Everett:

At its meeting this morning, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The RRC objected to the Rules for lack of necessity. Specifically, the RRC found for Rule 41D .0101 that as written, the Rule does not appear to set any requirements, but instead, partially recites two statutes. For Rule 41D .0302, the RRC found that as written, the Rule does not appear to set any requirements that are not governed by statute. As such, the RRC found that both rules were unnecessary.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amanda J. Reeder  
Commission Counsel

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

**Linda T. Worth**  
Deputy Director

*An Equal Employment Opportunity Employer*

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**STATE OF NORTH CAROLINA  
OFFICE OF ADMINISTRATIVE HEARINGS**

May 21, 2021

Jennifer Everett  
Rulemaking Coordinator, Coastal Resources Commission  
**Sent via email only to: [jennifer.everett@ncdenr.gov](mailto:jennifer.everett@ncdenr.gov)**

Re: Objection to Rules 15A NCAC 07J .0403, .0404, .0405, .0407, .0410, and 07K .0207

Dear Ms. Everett:

At its May 2021 meeting, the Rules Review Commission objected to the above-referenced rules in accordance with G.S. 150B-21.10.

The Commission objected to 15A NCAC 07J .0403, .0404, and .0405 for failure to comply with the APA. The rules contain changes that were not published in the Register, were not subject to public comment, and were not included in the changes approved by the Coastal Resources Commission at adoption. Further, the changes rise to the level of a “substantial change” as defined in G.S. 150B-21.2(g) because they address a subject matter not addressed in the proposed rule or produce an effect that could not reasonably have been expected. The APA has no procedure to add “amendments” to a rule after publication of notice in the Register and after the agency’s final action to adopt a rule. G.S. 150B-21.2 specifically states: “When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part.” In short, the Commission objected for failure to comply with the APA because the rules contain changes that are substantial, did not meet the notice and comment requirements of the permanent rulemaking process, and that were not adopted by the agency.

The Commission objected to 15A NCAC 07J .0405 on the additional ground of lack of statutory authority based upon the \$400 fee added post-publication to Paragraph (d). The agency provided a 2001 MOA between the Division of Coastal Management and the Department of Environment and Natural Resources, which references G.S. 143-215.3D, as authority for the fee. G.S. 143-215.3D is not listed in the History Note as statutory authority for the Rule. Additionally, the statute grants the authority to establish a fee to the Secretary, not the Coastal Resources Commission. There was no indication in the filing before RRC that the Secretary adopted this Rule. Therefore, the Commission objected for lack of statutory authority.

**Julian Mann, III**, Director  
*CHIEF ADMINISTRATIVE LAW JUDGE*

**Fred G. Morrison, Jr.**  
*Senior Administrative Law Judge*

**Linda T. Worth**  
*Deputy Director*

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The Commission objected to 15A NCAC 07J .0407 for lack of clarity. Subparagraph (e)(2) says the Division may suspend or revoke the right to a project if “there has been a change of conditions in the area, or facts that would justify denial of a permit due to additional impacts to coastal resources...” It is unclear under what circumstances “facts” would justify permit denial or under what circumstances “impacts to coastal resources” would justify a permit denial.

The Commission objected to 15A NCAC 07J .0410 for lack of statutory authority. Commission staff could not locate, and the agency did not provide, authority for the agency, instead of a court, to order restoration of sites to pre-development conditions. 113A-126 allows court-ordered restoration.

The Commission objected to 15A NCAC 07K .0207 for ambiguity. It is unclear how the agency determines when alterations are “necessary” and “possible.” It is also unclear when a dune’s capacity as a protective barrier against flooding and erosion is “significantly” diminished.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission’s actions, please let me know.

Sincerely,

Ashley Snyder  
Commission Counsel

Cc: Mike Lopazanski  
Christine Goebel

**Julian Mann, III**, Director  
CHIEF ADMINISTRATIVE LAW JUDGE

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

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May 20, 2021

Hannah Jernigan  
Department of Transportation, Division of Motor Vehicles  
**Sent via email only to: [hjernigan@ncdot.gov](mailto:hjernigan@ncdot.gov)**

Re: Extension of the Period of Review for Rule 19A NCAC 03I .0307; Objection to Rules 19A NCAC 03F .0201, .0202, and .0203

Dear Ms. Jernigan:

At its meeting this morning, the Rules Review Commission extended the period of review for 19A NCAC 03I .0307 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review in order to allow the agency to address the requested technical changes and submit the rewritten rule at a later meeting. Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

In addition, the Commission objected to 19A NCAC 03F .0201, .0202, and .0203 in accordance with G.S. 150B-21.10 for lack of necessity. G.S. 20-166.1(j) states: "The Division may periodically publish statistical information on motor vehicle accidents based on information in accident reports." These rules are purely informational, restating the information contained in the Division's statistical reports. Further, these rules do not affect the procedural or substantive rights of the public. As a result, the Commission objected for lack of necessity because the contents of .0201, .0202, and .0203 do not meet the definition of a "rule" in 150B-2(8a). Please respond to this letter in accordance with the provisions of G.S. 150B-21.12.

If you have any questions regarding the Commission's actions, please let me know.

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

**Linda T. Worth**  
Deputy Director

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Sincerely,

Ashley Snyder  
Commission Counsel

Cc: Helen Landi, [hlandi@ncdot.gov](mailto:hlandi@ncdot.gov)

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
Senior Administrative Law Judge

**Linda T. Worth**  
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**STATE OF NORTH CAROLINA  
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May 20, 2021

Melissa Vuotto  
Real Estate Commission  
**Sent via email only to: [melissa@ncrec.gov](mailto:melissa@ncrec.gov)**

Re: Extension of the Period of Review for Rules 21 NCAC 58A and 58H

Dear Ms. Vuotto:

At its meeting this morning, the Rules Review Commission extended the period of review for the above-captioned rules in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period of review in order to allow the agency to address the requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

Ashley Snyder  
Commission Counsel

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
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May 20, 2021

Carl Martin, Rulemaking Coordinator  
Building Code Council  
**Sent via email only: [carl.martin@doi.gov](mailto:carl.martin@doi.gov)**

Re: Residential Code, N1101.13(R401.2)

Dear Mr. Martin:

At its meeting this morning, the Rules Review Commission objected to the above-captioned rule in accordance with G.S. 150B-21.10.

The RRC objected to this Rule for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required for the Rule in its Notice of Text, published August 17, 2020. Pursuant to G.S. 150B-21.9(a), following a request from the public, the RRC sent the rule to the Office of State Budget Management (OSBM) to determine if the Rule created a substantial economic impact. In a letter dated May 6, 2021, OSBM stated that fiscal note was required for this Rule.

Therefore, pursuant to G.S. 150B-21.4(b1) and 150B-21.9(a)(4), the RRC found that the agency did not comply with the APA.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's action, please let me know.

Sincerely,

Amanda J. Reeder  
Commission Counsel

**Julian Mann, III**, Director  
Chief Administrative Law Judge

**Fred G. Morrison, Jr.**  
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**Linda T. Worth**  
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