



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. **Rule-Making Agency:** Coastal Resources Commission

2. **Rule citation & name:** 15A NCAC 07H .0507 Unique Coastal Geologic Formations

3. **Action:**  Adoption  Amendment  Repeal

4. **Was this an Emergency Rule:**  Yes  No **Effective date:** January 3, 2024

5. **Provide dates for the following actions as applicable:**

- a. **Proposed Temporary Rule submitted to OAH:** December 14, 2023
- b. **Proposed Temporary Rule published on the OAH website:** December 20, 2023
- c. **Public Hearing date:** January 9 and 10, 2024
- d. **Comment Period:** January 3, 2024 through February 22, 2024
- e. **Notice pursuant to G.S. 150B-21.1(a3)(2):** December 19, 2023
- f. **Adoption by agency on:** March 13, 2024
- g. **Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:**

6. **Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.**

- A serious and unforeseen threat to the public health, safety or welfare.**
- The effective date of a recent act of the General Assembly or of the U.S. Congress.**  
Cite: S.L. 2023-134 s 21.2(m)  
Effective date: October 3, 2023
- A recent change in federal or state budgetary policy.**  
Effective date of change:
- A recent federal regulation.**  
Cite:  
Effective date:
- A recent court order.**  
Cite order:
- Other:**

**Explain:** Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. The removal of the rules causes a serious threat to public safety and welfare because without this rule, the NC Coastal Management Program has lost the ability to protect coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In particular, this rule provides protection for unique coastal geologic formations. In this rule, the CRC designated the Jockey's Ridge Area of Environmental Concern. Without this rule, neither the CRC or DCM has jurisdiction to issue permits under the minimum use standards or take enforcement actions to protect this unique example of a medano, a large, isolated hill of sand, which has been designated a National Natural Landmark by the U.S. Department of the Interior.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of this rule is required to designate Jockeys' Ridge as an Area of Environmental Concern within the CRC's jurisdiction and protect this important natural resource.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

Yes

Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

**9. Rule-making Coordinator:** Jennifer Everett

**Phone:** 919-707-8595

**E-Mail:** [Jennifer.Everett@deq.nc.gov](mailto:Jennifer.Everett@deq.nc.gov)

**Agency contact, if any:** Mike Lopazanski

**Phone:** 252-515-5400

**E-Mail:** [Mike.Lopazanski@deq.nc.gov](mailto:Mike.Lopazanski@deq.nc.gov)

**10. Signature of Agency Head\*:**



**\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

**Typed Name:** Renee Cahoon

**Title:** CRC Chair

**E-Mail:** [Renee.Cahoon@deq.nc.gov](mailto:Renee.Cahoon@deq.nc.gov)

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

## RRC STAFF OPINION

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

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0507

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

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

COMMENT:

The above-captioned temporary rule purports to describe “unique coastal geological formations”, explain their “significance”, lay out the CRC’s “objectives” for management of these formations, designate Jockey’s Ridge, a large sand dune in Nags Head, North Carolina, as a unique coastal geological formation, and finally to lay out specific use standards for development within the Jockey’s Ridge area of environmental concern (“AEC”). In addition to staff’s objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule on all four grounds of G.S. 150B-21.9.

In paragraph (a), the agency attempts to define “unique coastal geologic formations”, which are a type of AEC enumerated by the legislature in the Coastal Area Management Act. However, the definition offered is almost entirely self-referential: unique coastal geologic formations are “sites that contain *geologic formations* that are *unique* or significant

components of *coastal* systems, or that are notable examples of *geologic formations* or processes in the coastal area.” The rule does not explain what is and is not considered a “geologic formation”, does not define what degree of exclusivity transforms an ordinary geologic formation into a “unique” geologic formation, and does not define the coastal area in which these formations must be found. Further, to the extent that the definition contains words other than those in the term being defined, those words are equally vague and may impermissibly expand the statutory term. The agency does not explain what makes a geologic formation “notable” or “significant”, or how those qualifiers are different from “unique”. Nor does the agency explain how a geologic “process” differs from a “formation”. Without defining these terms, it is impossible for the regulated public, the agency, or a reviewing judge to determine whether the description offered in this rule remains within the meaning of “unique geologic formation” as used in G.S. 113A-113(b)(4)g.

Paragraph (b) purports to describe the significance of “unique coastal geological areas,” again using vague and ambiguous terms such as “unique,” “important,” “uncontrolled,” and “incompatible.” Without further specificity, this paragraph appears to be a mere policy statement, as opposed to a “regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly . . . or that describes the procedure or practice requirements of an agency.” G.S. 150B-2(8a) (2023).

Similarly, paragraph (c) lays out the CRC’s objectives in preserving unique coastal geologic areas in impermissibly vague and unclear terms that are more akin to policy than rule. The agency states that its objective is to “preserve unique resources of more than local significance that function as key physical components of natural systems, as important scientific and educational sites, or as valuable scenic resources.” Terms such as “unique”, “more than local significance,” “key”, “important”, “valuable”, and even “scenic” are all undefined and as such are entirely subjective. Additionally, with the exception of the verb “preserve”, none of this sentence actually expresses an objective; to the contrary, it appears to continue to define—in equally vague terms as in paragraph (a)—what the CRC considers a “unique coastal geologic formation.”

Items (c)(1)-(3) contain the agency’s specific objectives for the functions of a unique coastal geologic formation. The CRC wishes that the formulation be able to “interact with other components of the identified systems”, “be preserved for study purposes”, and be preserved to “protect the values” of the feature “as expressed by the local government and

citizenry”. Again, the language used is vague, subjective, and appears to describe the agency’s policy preferences, rather than specific enactments of the Coastal Area Management Act or the CRC’s procedure or practice requirements. Moreover, there is no process specified for how the local government or citizenry is to express the “values” that are sought to be preserved.

Paragraph (d) is a designation of Jockey’s Ridge as a unique coastal geologic formation AEC. While portions of this paragraph meet the definition of a rule, namely the identification and location of the feature, lines 32-37, which include interesting facts about Jockey’s Ridge are “not statements of general applicability interpreting or implementing an act of the General Assembly or U.S. Congress” and as such are inappropriate for inclusion in a Rule.

In Paragraph (e)(1), the CRC requires developers seeking the removal of more than ten cubic yards of sand per year to seek “a permit” without specifying whether that is a CAMA major, minor, or general permit, or a fill and dredge permit under G.S. 113-229.

\* \* \* \* \*

G.S. 150B-19.1(a)(1) states, “An agency may adopt only *rules* that are expressly authorized by federal and State law and that are necessary to serve the public interest” (emphasis added). The APA draws a bright line between a rule and a policy, defining the latter as:

Any nonbinding interpretative statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

G.S. 150B-2(7a) (2023). On the other hand, the APA defines a “rule” as:

Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. . . . The term does not include the following:

- a. Statements concerning only the internal management of an agency . . . including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency . . .

....

- c. nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

Thus, the APA explicitly commands that policies are not rules, and as such, may not be adopted in the North Carolina Administrative Code.

To the extent this Rule does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency, it does not meet the definition of a “Rule” pursuant to G.S.150B-2(8a).

Consequently, staff recommends that the RRC object to this Rule pursuant to G.S. 150B-21.9(a)(1), as the CRC lacks statutory authority to adopt anything other than a “Rule”; pursuant to G.S. 150B-21.9(a)(2) as the rule contains extensive use of vague and ambiguous language; pursuant to G.S. 150B-21.9(a)(3) as policy language by definition cannot be “reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and pursuant to G.S. 150B-21.9(a)(4) as adoption of policy language as a rule violates Part 2 of Article 2A of the APA, given that G.S. 150B-21.1(a) states that the agency may only adopt a temporary “rule.”

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

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

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

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

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

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

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

## § 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

....

- (7a) Policy. – Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

....

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



- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed G.S. 150B-2 Page 3 by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

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

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

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

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

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

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

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

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

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

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

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

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

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

**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
  - a. No wake zones.
  - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
  - c. Hunting or fishing bag limits.
  - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
  - a. In accordance with the provisions of G.S. 163-22.2.
  - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
  - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

- (17) To maximize receipt of federal funds for the Medicaid program within existing State appropriations, to reduce Medicaid expenditures, and to reduce Medicaid fraud and abuse.

1 15A NCAC 07H .0507 is adopted under temporary procedures as follows:

2  
3 **15A NCAC 07H .0507 UNIQUE COASTAL GEOLOGIC FORMATIONS**

4 (a) Description. Unique coastal geologic formations are defined as sites that contain geologic formations that are  
5 unique or significant components of coastal systems, or that are notable examples of geologic formations or processes  
6 in the coastal area. Such areas shall be evaluated by the Commission after identification by the State Geologist pursuant  
7 to G.S. 113A-113.

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

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

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

19 (2) To ensure that the designated geologic feature or process shall be preserved for and be accessible to  
20 the scientific and educational communities for study purposes.

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

23 (d) Designation. The Coastal Resources Commission hereby designates Jockey's Ridge as a unique coastal geologic  
24 formation area of environmental concern. The boundaries of the area of environmental concern shall be as depicted  
25 on a map approved by the Coastal Resources Commission on December 4, 1987, and on file with the Division of  
26 Coastal Management, available at 400 Commerce Ave., Morehead City, NC 28557. This area includes the entire rights  
27 of way of US 158 Bypass, SR 1221 (Sound Side Road), Virginia Dare Trail, and Conch Street where these roads  
28 bound this area. Jockey's Ridge is the tallest active sand dune along the Atlantic Coast of the United States. Located  
29 within the Town of Nags Head in Dare County, between US 158 and Roanoke Sound, the Ridge represents the  
30 southern extremity of a back barrier dune system which extends north along Currituck Spit into Virginia. Jockey's  
31 Ridge is an example of a medano, a large isolated hill of sand, asymmetrical in shape and lacking vegetation. Jockey's  
32 Ridge is the largest medano in North Carolina and has been designated a National Natural Landmark by the U.S.  
33 Department of the Interior.

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

36 (1) Development which requires the removal of greater than ten cubic yards of sand per year from the  
37 area within the AEC boundary shall require a permit;

- 1           (2) All sand which is removed from the area within the AEC boundary in accordance with 15A NCAC  
2           07H .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by  
3           the Division of Coastal Management in consultation with the Division of Parks and Recreation;  
4           (3) Development activities shall not significantly alter or retard the free movement of sand except when  
5           necessary for the purpose of maintaining or constructing a road, residential/commercial structure,  
6           accessway, lawn/garden, or parking area.

7  
8           *History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4)g.; 113A-124;*  
9           *Temporary Adoption Eff. April 5, 2024.*



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency:</b> Coastal Resources Commission
<b>2. Rule citation &amp; name:</b> 15A NCAC 07H .0508 Use Standards
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date:</b> January 3, 2024
<b>5. Provide dates for the following actions as applicable:</b> a. <b>Proposed Temporary Rule submitted to OAH:</b> December 14, 2023 b. <b>Proposed Temporary Rule published on the OAH website:</b> December 20, 2023 c. <b>Public Hearing date:</b> January 9 and 10, 2024 d. <b>Comment Period:</b> January 3, 2024 through February 22, 2024 e. <b>Notice pursuant to G.S. 150B-21.1(a3)(2):</b> December 19, 2023 f. <b>Adoption by agency on:</b> March 13, 2024 g. <b>Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:</b>
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input checked="" type="checkbox"/> <b>A serious and unforeseen threat to the public health, safety or welfare.</b> <input checked="" type="checkbox"/> <b>The effective date of a recent act of the General Assembly or of the U.S. Congress.</b> Cite: S.L. 2023-134 s 21.2(m) Effective date: October 3, 2023 <input type="checkbox"/> <b>A recent change in federal or state budgetary policy.</b> Effective date of change: <input type="checkbox"/> <b>A recent federal regulation.</b> Cite: Effective date: <input type="checkbox"/> <b>A recent court order.</b> Cite order: <input type="checkbox"/> <b>Other:</b>  <b>Explain:</b> Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In particular, this rule provides minimum use standards (i.e. requirements) for development within a designated fragile coastal natural or cultural resource area. To date, the CRC has designated the Jockey's Ridge Area of Environmental Concern. Without this rule, there are no requirements for development permits for that designated Area of Environmental Concern.



**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of this rule is required to provide use standards for the Jockeys' Ridge AEC and protect this important natural resource.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

**Yes**  
Agency submitted request for consultation on:  
Consultation not required. Cite authority:

**No**

**9. Rule-making Coordinator:** Jennifer Everett

**Phone:** 919-707-8595

**E-Mail:** [Jennifer.Everett@deq.nc.gov](mailto:Jennifer.Everett@deq.nc.gov)

**Agency contact, if any:** Mike Lopazanski

**Phone:** 252-515-5400

**E-Mail:** [Mike.Lopazanski@deq.nc.gov](mailto:Mike.Lopazanski@deq.nc.gov)

**10. Signature of Agency Head\*:**



**\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

**Typed Name:** Renee Cahoon

**Title:** CRC Chair

**E-Mail:** [Renee.Cahoon@deq.nc.gov](mailto:Renee.Cahoon@deq.nc.gov)

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

## RRC STAFF OPINION

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

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0508

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

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

COMMENT:

The above-captioned temporary rule lays out use standards for development permits in fragile coastal resource areas. In addition to staff's objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule on all four grounds of G.S. 150B-21.9.

Item (1) and subitems (a)-(c) contain "policy" terms, as they give vague and unspecific terms for approval of permits. For instance, (a) states that "Development shall preserve the values of the individual resource as it functions as a critical component of a natural system." Similarly, in (b) and (c), the Rule seeks to preserve "values of the resource as a unique scientific, associative, or educational resource" and "the aesthetic values of a resource as identified by the local government and citizenry." The reference to "values" which are undefined and ultimately subjective turns this from a rule to a mere statement of policy.

Brian Liebman  
Commission Counsel

Moreover, in item (1)(c), there is no process specified for how the local government or citizenry is to express the “values” that are sought to be preserved.

In item (4), the CRC states that development shall be approved only if it finds that the project is “of equal or greater public benefit than those benefits lost or damaged through development.” Because the terms used throughout this rule are so vague, it appears as if this language allows the CRC to essentially pick and choose winners at whim. The rule conditions granting of a permit on the CRC’s finding that an applicant’s project will be equally or more beneficial to the public than whatever portion of the area of environmental concern is damaged by its construction, without defining the contours of “public benefit” and without providing any guidance as to how the CRC will quantify and weigh these subjective “benefits” against each other.

\* \* \* \* \*

G.S. 150B-19.1(a)(1) states, “An agency may adopt only *rules* that are expressly authorized by federal and State law and that are necessary to serve the public interest” (emphasis added). The APA draws a bright line between a rule and a policy, defining the latter as:

Any nonbinding interpretative statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

G.S. 150B-2(7a) (2023). On the other hand, the APA defines a “rule” as:

Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. . . . The term does not include the following:

- a. Statements concerning only the internal management of an agency . . . including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency . . .

....

- c. nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

Thus, the APA explicitly commands that policies are not rules, and as such, may not be adopted in the North Carolina Administrative Code.

To the extent this Rule does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency, it does not meet the definition of a “Rule” pursuant to G.S.150B-2(8a).

Consequently, staff recommends that the RRC object to this Rule pursuant to G.S. 150B-21.9(a)(1), as the CRC lacks statutory authority to adopt anything other than a “Rule”; pursuant to G.S. 150B-21.9(a)(2) as the rule contains extensive use of vague and ambiguous language; pursuant to G.S. 150B-21.9(a)(3) as policy language by definition cannot be “reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and pursuant to G.S. 150B-21.9(a)(4) as adoption of policy language as a rule violates Part 2 of Article 2A of the APA, given that G.S. 150B-21.1(a) states that the agency may only adopt a temporary “rule.”

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

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

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

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

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

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

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

## § 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

....

- (7a) Policy. – Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

....

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

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed G.S. 150B-2 Page 3 by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

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

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

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

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

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

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

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

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

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

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



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

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

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

**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
  - a. No wake zones.
  - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
  - c. Hunting or fishing bag limits.
  - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
  - a. In accordance with the provisions of G.S. 163-22.2.
  - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
  - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

- (17) To maximize receipt of federal funds for the Medicaid program within existing State appropriations, to reduce Medicaid expenditures, and to reduce Medicaid fraud and abuse.

1 15A NCAC 07H .0508 is adopted under temporary procedures as follows:

2  
3 **15A NCAC 07H .0508 USE STANDARDS**

4 Permits for development in designated fragile coastal natural or cultural resource areas shall be approved upon finding  
5 that:

6 (1) The proposed design and location shall not cause significant adverse impacts to the stated values of  
7 a particular resource. One or more of the following values shall be considered in making a permit  
8 decision depending upon the stated significance of the resource:

9 (a) Development shall preserve the values of the individual resource as it functions as a critical  
10 component of a natural system.

11 (b) Development shall not cause significant adverse impacts to the values of the resource as a  
12 unique scientific, associative, or educational resource.

13 (c) Development shall be consistent with the aesthetic values of a resource as identified by the  
14 local government and citizenry.

15 (2) No alternative sites are available outside the designated AEC.

16 (3) Mitigation measures shall be incorporated into the project plan. These measures shall include  
17 consultation with the CRC.

18 (4) The project shall be of equal or greater public benefit than those benefits lost or damaged through  
19 development.

20  
21 History Note: Authority G.S. 113A-107(a),(b); 113A-113(b)(4e) to (b)(4h); 113A-124;

22 Temporary Adoption Eff. April 5, 2024.



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

<b>1. Rule-Making Agency:</b> Coastal Resources Commission
<b>2. Rule citation &amp; name:</b> 15A NCAC 07H .0509 Significant Coastal Archeological Resources
<b>3. Action:</b> <input checked="" type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal
<b>4. Was this an Emergency Rule:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <b>Effective date:</b> January 3, 2024
<b>5. Provide dates for the following actions as applicable:</b> a. <b>Proposed Temporary Rule submitted to OAH:</b> December 14, 2023 b. <b>Proposed Temporary Rule published on the OAH website:</b> December 20, 2023 c. <b>Public Hearing date:</b> January 9 and 10, 2024 d. <b>Comment Period:</b> January 3, 2024 through February 22, 2024 e. <b>Notice pursuant to G.S. 150B-21.1(a3)(2):</b> December 19, 2023 f. <b>Adoption by agency on:</b> March 13, 2024 g. <b>Proposed effective date of temporary rule if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3:</b>
<b>6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.</b> <input checked="" type="checkbox"/> <b>A serious and unforeseen threat to the public health, safety or welfare.</b> <input checked="" type="checkbox"/> <b>The effective date of a recent act of the General Assembly or of the U.S. Congress.</b> Cite: S.L. 2023-134 s 21.2(m) Effective date: October 3, 2023 <input type="checkbox"/> <b>A recent change in federal or state budgetary policy.</b> Effective date of change: <input type="checkbox"/> <b>A recent federal regulation.</b> Cite: Effective date: <input type="checkbox"/> <b>A recent court order.</b> Cite order: <input type="checkbox"/> <b>Other:</b>  <b>Explain:</b> Pursuant to NC Session Law 2023-134, the Rules Review Commission returned rules to the CRC on October 5, 2023 and the Codifier removed those rules from the Code the same day. Until the effective date of this session law, only an agency could request the return of its rules. As a result, the State of North Carolina cannot not rely on the rules removed from the Code for permitting and enforcement decisions. In addition, the State of North Carolina can no longer review certain federal projects for consistency with State law based on these rules. The removal of the rules from the Code severely impacts the CRC's rules and creates confusion related to permitting procedures for the State's coastal management program and the regulated public. In addition, there is a serious threat to public safety and welfare because the removal of these rules results in the loss of protection of coastal lands and waters, which the General Assembly has deemed "among North Carolina's most valuable resources." N.C. Gen. Stat. 113A-102(a). In particular, this rule provides protection for significant coastal archaeological resources and CRC designated the Permuda Island as an ACE and established management objectives and general and specific use standards for activities within the AEC. Without this rule, neither the CRC or DCM has jurisdiction to regulate activities or take enforcement actions to protect the significant archeological evidence indicating occupation of the island from 300 B.C. and others predating the Revolutionary War.

**7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?**

The CRC incorporates the explanation provided in response in Block 6 of this form. In addition, the CRC contends that immediate adoption of the rule is required instead of a more extended notice and hearing requirements. The CRC has received numerous public comments with the significant majority in favor of adopting the temporary rules. Specifically, the CRC has held three public hearings and extended the public comment period to February 22, 2024 in order to widely solicit comments not only from the general public and the regulated public but also through a direct appeal to the Coastal Resources Advisory Council. The CRC has received comments from a diverse group of commenters including, among others coastal towns and counties, civic groups, environmental groups, businesses, visitors' bureaus, a group of high school students, and numerous private citizens. During the public comment period, the CRC received 239 comments including 1 petition with 651 signatures in support of adopting the rules. Of the comments received 3 were neutral, 6 included concerns, 2 provided recommendations for changes which the CRC has decided to consider during permanent rulemaking, and the remaining 228 comments were in support of adopting the rules. Immediate adoption of the rule is required to designate Permuda Island as an Area of Environmental Concern within the CRC's jurisdiction, establish development standards for that AEC, and protect this important natural resource.

**8. Rule establishes or increases a fee? (See G.S. 12-3.1)**

Yes  
Agency submitted request for consultation on:  
Consultation not required. Cite authority:

No

**9. Rule-making Coordinator:** Jennifer Everett

**Phone:** 919-707-8595

**E-Mail:** [Jennifer.Everett@deq.nc.gov](mailto:Jennifer.Everett@deq.nc.gov)

**Agency contact, if any:** Mike Lopazanski

**Phone:** 252-515-5400

**E-Mail:** [Mike.Lopazanski@deq.nc.gov](mailto:Mike.Lopazanski@deq.nc.gov)

**10. Signature of Agency Head\*:**



**\* If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.**

**Typed Name:** Renee Cahoon

**Title:** CRC Chair

**E-Mail:** [Renee.Cahoon@deq.nc.gov](mailto:Renee.Cahoon@deq.nc.gov)

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

Date returned to agency:

## **RRC STAFF OPINION**

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

AGENCY: North Carolina Coastal Resources Commission

RULE CITATION: 15A NCAC 07H .0509

DATE ISSUED: April 5, 2024

RECOMMENDED ACTION:

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

COMMENT:

The above-captioned temporary rule purports to define “significant coastal archaeological resources”, explain their “significance”, lay out the CRC’s “objectives” for management of these resources, describe specific use standards for development within such areas of environmental concern (“AEC”), and finally to designate Permuda Island as a significant coastal archaeological resource AEC. In addition to staff’s objection to this rule for failure to show justification for temporary rulemaking, staff recommends objection to this rule on all four grounds of G.S. 150B-21.9.

In paragraph (a), the agency attempts to define “significant coastal archaeological resources”, which are a type of AEC enumerated by the legislature in the Coastal Area Management Act. However, the definition offered is self-referential: significant coastal archaeological resources are “areas that contain *archaeological* remains (objects, features,

Brian Liebman  
Commission Counsel

and/or sites) that have more than local *significance* to history or prehistory.” The rule fails to define the term “more than local significance”, and as such offers no way for the regulated public, the agency, or a reviewing judge to determine whether a particular resource meets the description offered here or in G.S. 113A-113(b)(4)h.

Additionally, paragraph (a) delegates authority to “evaluate” significant coastal archaeological resources to the Department of Natural and Cultural Resources. Although the text of the Rule states that this is “in accordance with G.S. 113A-113”, that statute contains no mention of the Department of Natural and Cultural Resources and gives it no role in determining what shall be designated as an AEC. Beyond this apparent lack of statutory authority, the Rule does not say for what reasons DNCR would evaluate these resources, or what standards DNCR would use to perform such an evaluation.

Paragraph (b), like many of the “significance” paragraphs contained within Section .0500, is a blend of ambiguous or subjective terms and policy language. The rule states that these are “important educational, scientific, or aesthetic resources,” which would be “jeopardized” by “uncontrolled or incompatible development.” They are also “associated” with historic events or with the lives of historical figures. No detail as to the degree of association necessary is included here. The rule goes on to state that these resources “may yield” or have yielded “important” historical information. None of these terms are defined in this Rule, any statute in the History Note, or any other portion of Subchapter 07H. Without further specificity, this paragraph appears to be a mere policy statement, as opposed to a “regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly . . . or that describes the procedure or practice requirements of an agency.” G.S. 150B-2(8a) (2023).

Similarly, paragraph (c) lays out the CRC’s objectives in preserving significant coastal archaeological resources in impermissibly vague and unclear terms that are more akin to policy than rule. The agency states that its objective is to “conserve coastal archaeological resources of more than local significance to history or prehistory that constitute important scientific sites or are valuable educational, associative, or aesthetic resources.” Terms such as “more than local significance”, “important”, and “valuable” are all undefined and as such are entirely subjective. Additionally, with the exception of the verb “conserve”, none of this sentence actually expresses an objective; to the contrary, it appears to continue to define—in equally



vague terms as in paragraph (a)—what the CRC considers a “significant coastal archaeological resource.”

In paragraph (d), the CRC sets out the general use standards for development in a significant coastal archaeological resource AEC. In Subparagraph (d)(1), the CRC requires applicants to consider one of three avoidance measures. The first requires use of “no impact” spaces in construction plans. However, the term “impact” is not defined, and as such, it is not clear what activities or effects would be prohibited in those spaces. The second would require the developer to limit “ground disturbing activities,” again without defining the term. Finally, the developer could donate a preservation easement to the State or “upon approval by the Department of Natural and Cultural Resources, [to] a historic preservation agency or organization.” None of the statutes cited in this Rule’s History Note give either the CRC or the DNCR authority to restrict the donation of private property. Subparagraph (d)(2) requires applicants to implement an “investigation and resource management plan,” which “*shall* be developed in consultation with the Department of Natural and Cultural Resources.” It is unclear what the CRC is asking applicants to do by requiring them to “consult” with DNCR, and how extensive that process may be. Subparagraph (d)(2)(B) requires an archaeological research design as part of any archaeological investigation. Those designs are “subject to the approval of the Department of Natural and Cultural Resources,” which is provided 30 days for “review and comment”. Finally, Subparagraph (d)(2)(C) requires that any data shall be recorded, and artifacts curated at “an approved repository in consultation with the Department of Natural and Cultural Resources.” While it may be good policy to involve a government agency such as DNCR in the investigation and preservation of archaeological resources, none of the statutes cited in this Rule’s History Note permit DNCR involvement in the designation of AECs or in the issuance of permits for development therein, and no statute cited provides the CRC with authority to delegate such authority to DNCR.

Paragraph (e) designates Permuda Island as a significant coastal archaeological resource area of environmental concern. While portions of this paragraph meet the definition of a rule, namely the identification and location of the feature, lines 7-11 on page 3, which include interesting facts about Permuda Island are not statements of general applicability interpreting or implementing an act of the General Assembly or U.S. Congress, and as such may not be adopted as a rule.

\* \* \* \* \*

Brian Liebman  
Commission Counsel

G.S. 150B-19.1(a)(1) states, “An agency may adopt only *rules* that are expressly authorized by federal and State law and that are necessary to serve the public interest” (emphasis added). The APA draws a bright line between a rule and a policy, defining the latter as:

Any nonbinding interpretative statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

G.S. 150B-2(7a) (2023). On the other hand, the APA defines a “rule” as:

Any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. . . . The term does not include the following:

- a. Statements concerning only the internal management of an agency . . . including policies and procedures manuals, if the statement does not directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency . . .

. . . .

- c. nonbinding interpretative statements within the delegated authority of an agency that merely define, interpret, or explain the meaning of a statute or rule.

Thus, the APA explicitly commands that policies are not rules, and as such, may not be adopted in the North Carolina Administrative Code.

To the extent this Rule does not implement or interpret an enactment of the General Assembly, establish any requirements upon any person or entity not employed by the agency, directly or substantially affect the procedural or substantive rights or duties of a person not employed by the agency, it does not meet the definition of a “Rule” pursuant to G.S.150B-2(8a).

Consequently, staff recommends that the RRC object to this Rule pursuant to G.S. 150B-21.9(a)(1), as the CRC lacks statutory authority to adopt anything other than a “Rule”; pursuant to G.S. 150B-21.9(a)(2) as the rule contains extensive use of vague and ambiguous language; pursuant to G.S. 150B-21.9(a)(3) as policy language by definition cannot be

“reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency; and pursuant to G.S. 150B-21.9(a)(4) as adoption of policy language as a rule violates Part 2 of Article 2A of the APA, given that G.S. 150B-21.1(a) states that the agency may only adopt a temporary “rule.”

Independently, staff recommends that the RRC object to this Rule pursuant to G.S. 150B-21.9(a)(1), as the CRC lacks statutory authority to allow DNCR involvement in the designation of AECs or in the issuance of permits for development therein.

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

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

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

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

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

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

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

## § 150B-2. Definitions.

As used in this Chapter, the following definitions apply:

....

- (7a) Policy. – Any nonbinding interpretive statement within the delegated authority of an agency that merely defines, interprets, or explains the meaning of a statute or rule. The term includes any document issued by an agency that is intended and used purely to assist a person to comply with the law, such as a guidance document.

....

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

- i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Human Resources Commission.
- j. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.21.
- k. The State Medical Facilities Plan, if the Plan has been prepared with public notice and hearing as provided in G.S. 131E-176(25), reviewed G.S. 150B-2 Page 3 by the Commission for compliance with G.S. 131E-176(25), and approved by the Governor.
- l. Standards adopted by the State Chief Information Officer and applied to information technology as defined in G.S. 143B-1320.

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

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

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

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

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

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

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

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

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

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

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

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

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



**§ 150B-21.1. Procedure for adopting a temporary rule.**

(a) Adoption. – An agency may adopt a temporary rule when it finds that adherence to the notice and hearing requirements of G.S. 150B-21.2 would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

- (1) A serious and unforeseen threat to the public health, safety, or welfare.
- (2) The effective date of a recent act of the General Assembly or the United States Congress.
- (3) A recent change in federal or State budgetary policy.
- (4) A recent federal regulation.
- (5) A recent court order.
- (6) The need for a rule establishing review criteria as authorized by G.S. 131E-183(b) to complement or be made consistent with the State Medical Facilities Plan approved by the Governor, if the rule addresses a matter included in the State Medical Facilities Plan, and the proposed rule and a notice of public hearing is submitted to the Codifier of Rules prior to the effective date of the Plan.
- (7) The need for the Wildlife Resources Commission to establish any of the following:
  - a. No wake zones.
  - b. Hunting or fishing seasons, including provisions for manner of take or any other conditions required for the implementation of such season.
  - c. Hunting or fishing bag limits.
  - d. Management of public game lands as defined in G.S. 113-129(8a).
- (8) The need for the Secretary of State to implement the certification technology provisions of Article 11A of Chapter 66 of the General Statutes, to adopt uniform Statements of Policy that have been officially adopted by the North American Securities Administrators Association, Inc., for the purpose of promoting uniformity of state securities regulation, and to adopt rules governing the conduct of hearings pursuant to this Chapter.
- (9) The need for the Commissioner of Insurance to implement the provisions of G.S. 58-2-205.
- (10) The need for the State Chief Information Officer to implement the information technology procurement provisions of Article 15 of Chapter 143B of the General Statutes.
- (11) The need for the State Board of Elections to adopt a temporary rule after prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical for one or more of the following:
  - a. In accordance with the provisions of G.S. 163-22.2.
  - b. To implement any provisions of state or federal law for which the State Board of Elections has been authorized to adopt rules.
  - c. The need for the rule to become effective immediately in order to preserve the integrity of upcoming elections and the elections process.
- (12) Repealed by Session Laws 2015-264, s. 22, effective October 1, 2015.
- (13), (14) Reserved.
- (15) Expired pursuant to Session Laws 2002-164, s. 5, effective October 1, 2004.
- (16) Expired pursuant to Session Laws 2003-184, s. 3, effective July 1, 2005.

- (17) To maximize receipt of federal funds for the Medicaid program within existing State appropriations, to reduce Medicaid expenditures, and to reduce Medicaid fraud and abuse.

1 15A NCAC 07H .0509 is adopted under temporary procedures as follows:

2  
3 **15A NCAC 07H .0509 SIGNIFICANT COASTAL ARCHAEOLOGICAL RESOURCES**

4 (a) Description. Significant coastal archaeological resources are defined as areas that contain archaeological remains  
5 (objects, features, and/or sites) that have more than local significance to history or prehistory. Such areas shall be  
6 evaluated by the Department of Natural and Cultural Resources in accordance with G.S. 113A-113.

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

10 (1) are associated with historic events; or

11 (2) are associated with the lives of persons significant in history; or

12 (3) embody the distinctive characteristics of a type, period, or method of construction, or represent a  
13 significant and distinguishable entity whose components may lack individual distinction; or

14 (4) have yielded, or may yield, information important in history or prehistory.

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

18 (1) development of a preservation management plan to provide long-term management of the  
19 archaeological resource; and development which shall not have significant adverse impacts on the  
20 archaeological resource.

21 (2) to conserve significant archaeological resources, including their spatial and structural context and  
22 characteristics through in-situ preservation or scientific study;

23 (3) to ensure that the designated archaeological resource be preserved for and be accessible to the  
24 scientific and educational communities for study purposes;

25 (4) to protect the values of the designated archaeological resource as expressed by the local government  
26 and citizenry; these values shall be related to the educational, associative, or aesthetic qualities of  
27 the resource.

28 (d) General Use Standards.

29 (1) Significant concentrations of archaeological material, reflecting a full range of human behavior,  
30 shall be preserved in-situ for future research by avoidance during development activities. Areas for  
31 avoidance shall be selected after archaeological investigations have been made. Subparagraph  
32 (d)(2)(B) of this Rule outlines the nature, extent, conditions and significance of the cultural deposits.  
33 The following avoidance measures shall be considered:

34 (A) incorporation of "no impact" spaces in construction plans such as green spaces between  
35 lots;

36 (B) limiting specific types of ground disturbing activities;

1                   (C) donation of preservation easements to the State or, upon approval by the Department of  
2                   Natural and Cultural Resources, a historic preservation agency or organization.

3           (2) Activities which would damage or destroy the contents of a designated site's surface or subsurface  
4           shall be prohibited until an archaeological investigation and resource management plan has been  
5           implemented by the applicant. The investigation and management plan shall be developed in  
6           consultation with the Department of Natural and Cultural Resources. Such archaeological  
7           investigations shall comply with the following criteria:

8           (A) archaeological investigations conducted as part of the permit review process shall be  
9           implemented in three parts: Phase I, a reconnaissance level investigation to determine the  
10           nature and extent of archaeological materials over the designated area; Phase II, an  
11           intensive level investigation which represents a direct outgrowth of Phase I findings and  
12           through systematic data recovery assesses the potential importance of identified  
13           concentrations of archaeological materials; Phase III, mitigation of significant adverse  
14           impacts to recognized areas of importance. Evaluations of research potential shall be made  
15           and prioritized in order of importance, based upon the status of previous research in the  
16           area and the integrity of the remains;

17           (B) an archaeological research design shall be required for all archaeological investigations.  
18           All research designs shall be subject to the approval of the Department of Natural and  
19           Cultural Resources prior to conducting the work. A research proposal shall allow at least  
20           30 days for review and comment by the Department of Natural and Cultural Resources;

21           (C) data shall be collected and recorded and artifacts shall be curated according to accepted  
22           standards at an approved repository in consultation with the Department of Natural and  
23           Cultural Resources.

24 (e) Designations. The Coastal Resources Commission hereby designates Permuda Island as a significant coastal  
25 archaeological resource area of environmental concern. Permuda Island is a former barrier island located within  
26 Stump Sound in southwestern Onslow County. The island is 1.2 miles long and 1.25 miles wide. Archaeological  
27 evidence indicates the earliest occupation from the Middle Woodland Period (300 B.C. - 800 A.D.) through the late  
28 Woodland Period (800 A.D. - 1650 A.D.) and historic occupations predating the Revolutionary War. Archaeological  
29 remains on the island consist of discrete shell heaps, broad and thick layers of shell midden, prehistoric refuse pits and  
30 postholes, as well as numerous ceramic vessel fragments and well-preserved animal bone remains.

31  
32 History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b)(4h); 113A-124;

33 Temporary Adoption Eff. April 5, 2024.