

1 15A NCAC 07M .0703 is proposed for adoption as follows:

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3 **15A NCAC 07M .0703 MITIGATION PROJECTS**

4 (a) Before the CRC may approve a development project for mitigation the applicant shall demonstrate that all of the
5 following criteria are met:

6 (1) there is no alternate design or location for the project that would avoid the losses to be mitigated;

7 (2) the entire project for which the permit is requested is dependent upon being located within or in
8 proximity to public trust waters and coastal wetlands;

9 (3) benefits to the public interest will outweigh adverse impacts to the environment. A benefit to the
10 public interest may be established by a project which has been shown to be the least damaging
11 alternative and which:

12 (A) if publicly funded, creates benefits of national or state importance. This category may
13 include public roadways, navigation projects, state ports, and projects designed to provide
14 public access to public trust waters;

15 (B) if privately funded, provides increased access opportunities to public trust resources to the
16 general public for free or for a nominal fee, or provides economic benefits to the state or
17 community and is consistent with the local land use plan.

18 (b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC
19 07M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the
20 environment outweigh environmental losses based on the criteria set out in 15A NCAC 07M .0703(d).

21 (c) Mitigation projects may be considered by the CRC during the permit processing time prescribed in 15A NCAC
22 07J .0204, in accordance with the procedures set out in 15A NCAC 07J .0600 concerning declaratory rulings. The
23 applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 07M
24 .0703(a) provided that the applicant agrees that the permit processing time period set out in 15A NCAC 07J .0600 will
25 not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to
26 the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission in
27 obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior to
28 presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be
29 introduced at the meeting. CRC approval of the mitigation project is binding on the Commission and the applicant in
30 accordance with 15A NCAC 07J .0603(e).

31 (d) In determining whether to approve an application for development for which mitigation is proposed, the Division
32 of Coastal Management shall consider the scope of the project, the site of the proposed mitigation, the amount of
33 mitigation proposed, the historic uses of the development site and mitigation site, the public trust, and significant
34 adverse impacts.

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36 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229.