

ROY COOPER
Governor

ELIZABETH S. BISER
Secretary

TANCRED MILLER
Director



March 4, 2024

MEMORANDUM

TO: Coastal Resources Commission

FROM: Daniel Govoni

SUBJECT: Summary of Temporary Rules, Public Comments, and Consideration of Adoption

As has been discussed at recent CRC meetings, the Commission has had several issues related to the readoption of your coastal development rules through the legislatively required periodic rules review process as well as proposed amendments submitted to the Rules Review Commission (RRC). You will recall that the RRC continued its objections to 30 of the rules submitted for review and at their October 5, 2023, meeting, returned these 30 rules to the CRC. As a result, the Codifier removed these rules from the Administrative Code.

As outlined in CRC memo CRC-23-25 (attached), you began temporary rule making for 16 of these 30 rules that the Division considered critical to the day-to-day administration of the NC Coastal Program. Three public hearings were conducted in Dare, Carteret and Onslow Counties and the public comment period was extended to February 22, 2024. A summary of the temporary rules is attached for reference.

The Division received 239 comments and all except 11 were in support of restoring the temporary rules and the AEC status for Jockey's Ridge. Three comments were neither for nor against the readoption of the temporary rules. One comment was received from Cedar Point Developers accompanied by five comments supporting the Cedar Point Developers' comments. Cedar Point Developers filed a lawsuit against the CRC pertaining to the temporary rules. Their concerns are more specifically described in their complaint dated January 3, 2024.

While the majority of the comments supported reinstatement of the rules, the Division did receive some comments that included recommendations that are summarized below. The below recommendations reference existing elements within your rules and in the general permitting procedures of the state's coastal program and CAMA. The Division recommends restoring these sixteen rules that are critical to the Division's operations. These temporary rules address the RRC objections regarding "vague and ambiguous language," clarify procedures and definitions, and include citations providing statutory authority. The Division recommends addressing additional changes to the rule language in response to these comments during permanent rulemaking.



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Corolla Civic Association

- 15A NCAC 07H .0508 USE STANDARDS: Recommends insertion of the words “reasonable and equivalent” such that the paragraph reads “No alternative, reasonable, and equivalent sites are available outside the designated AEC”.
- 15A NCAC 07J .0204 PROCESSING THE APPLICATION: Recommends a liaison from either NCDEQ or CRC is made available to organizations working on a permit.
- 15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS: Recommends the required methods to achieve the goal of this paragraph are specified. This would include but is not limited to: e-mail to distribution lists of citizens who have specified a general interest, web announcements for appropriate sites, Facebook announcements on appropriate pages, X announcements to followers, Instagram announcements to followers, physical signs, and local radio and print media.
- 15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL 3 APPLICATIONS: Recommends adding “When a reviewing agency recommends disapproval, they will also specify what should, or could, be done to gain their approval”
- 15A NCAC 07M .0401 COASTAL ENERGY DEVELOPMENT-DECLARATION OF GENERAL POLICY: Recommends adding subparagraph (b)(3) “preserve the residents’, owners’, businesses’ and visitors’ use of the natural resources.”
- 15A NCAC 07M .0402 COASTAL ENERGY DEVELOPMENT-DEFINITIONS: Recommends adding the following words at the end of the first sentence “...done in conjunction with the residents, property owners, business, and visitors that create the economic engine and societal fabric of a given area.”
- 15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT-SPECIFIC POLICY STATEMENTS: Recommends adding a paragraph “(g)(10)(L) natural resources residents, owners, businesses and tourists define as vital to enjoyment of the proposed area.”

Corolla Light Board of Directors

- 15A NCAC 07H .0508 USE STANDARDS: Suggests adding a provision to encourage mitigation in proximity to the proposed permit.
- 15A NCAC 07J .0204 TECHNICAL STANDARDS FOR APPLICATION CONTENT: suggests providing organizations like theirs with effective participation in these proceedings and communicating the availability of such assistance.
- 15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS: Urge better documentation of contemporary means to reach those likely to be interested in applications and obtaining needed information, including community organizations like theirs.
- 15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL APPLICATIONS: Suggest internal assistance from NCDEQ is provided.
- 15A NCAC 07J .0208 PERMIT CONDITIONS: Comments that this empowers a variety of specialized agencies to impede permit issuance, imposing our community to dangerous economic



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vulnerability. Suggests help in the form of identification of inclusion of agencies with economic development, outdoor recreation and tourism expertise and a balanced process able to allow deserving proposals to reach a positive outcome without unneeded conditions.

- SECTION.0400-COASTAL ENERGY DEVELOPMENT-GENERAL POLICIES: Permits for associated land-based services must protect the economic basis for our community-outdoor recreation and tourism-as well as the environment.
- 15A NCAC 07M .0402 COASTAL ENERGY DEVELOPMENT-DEFENITIONS: The economic risks to outdoor recreation and tourism must be defined and considered.
- 15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT-SPECIFIC POLICY STATEMENTS: Provisions include turtle nesting area protections, fishing, but no specific consideration of areas vital to tourism and recreation, or actions which jeopardize existing and planned state/local investments.
- 15A NCAC 07M .0701 DECLERATION OF GENERAL POLICY: Urges language requiring protection of recreational and tourism uses and asserting that recreation and tourism can be sustainable uses.
- 15A NCAC 07M .0703 MITIGIATION PROJECTS: Urges that improved access to public lands and waters are appropriate and allowed mitigation steps.
- 15A NCAC 07M .0704 MITIGATION SPECIFIC POLICIES: Urges inclusion of language that ties mitigation to unwanted consequences and to the scope of the impact. In many cases, development activities are unlikely to create impacts which will be naturally mitigated within the broad ecosystem of Currituck Sound.

Staff is recommending approval of the temporary rules. If adopted, they will be submitted to the RRC and that Commission will have 15 days from receipt to either object or approve. I look forward to discussing this issue on the 13th.



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ELIZABETH S. BISER
Secretary

BRAXTON DAVIS
Director



NORTH CAROLINA
Environmental Quality

CRC-23-25

December 7, 2023

MEMORANDUM

TO: Coastal Resources Commission
FROM: Mike Lopazanski
SUBJECT: Proposed Emergency and Temporary Rules

As was discussed at the November CRC meeting, the Commission has had several issues related to the readoption of your coastal development rules through the legislatively required periodic rules review process as well as proposed amendments submitted to the Rules Review Commission (RRC).

DCM Staff has worked through many of the RRC's technical change requests. However, the RRC continued its objections to 30 of the 132 rules submitted for review. Until Session Law 2023-134 became effective on October 3, 2023, a rule could not be returned to an agency without the agency requesting return. At their October 5, 2023, meeting, the RRC voted to return these 30 rules to the CRC. As a result, the Codifier removed these rules from the Administrative Code.

The CRC filed a declaratory judgment complaint in Wake Co. Superior Court, File No. 23CV031553-910 requesting the court resolve the dispute between the CRC and RRC over these rules.

During litigation, counsel for the RRC has suggested that the CRC may consider emergency and temporary rulemaking as a means to reinstate these rules in the NC Administrative Code. At your November 2023 meeting, the CRC directed DCM Staff to pursue this course of action.

Attached are 16 of your rules (a clean version and tracked change version) which the Division considers critical to the day-to-day administration of the NC Coastal Program. While these rules are not new, Staff has included amendments that address the RRC objections. The amendments focus on what the RRC considers vague and ambiguous language, clarify procedures, citations addressing statutory authority, and clarify definitions. The Division does not believe these amendments impose additional requirements on the regulated community as these are rules that were in existence as of October 5, 2023. At our upcoming meeting on December 13, 2023, I will briefly summarize the amendments.

Staff is recommending approval of these proposed rules for emergency and temporary rulemaking. I look forward to discussing any questions you may have on the 13th.



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Summary of Amendments

15A NCAC 7H .0507 Unique Coastal Geologic Formations (Jockeys Ridge)

- APA compliance.
- Statutory citations.

15A NCAC 7H .0508 Use Standards

- APA compliance.
- Reference significant adverse impacts.

15A NCAC 7H .0509 Significant Coastal Archaeological Resources AEC

- APA compliance.
- Statutory citations.
- Coordination with Department of Cultural Resources.

15A NCAC 7I .0702 When the Local Permitting Agency Exceeds Local Authority

- APA compliance.
- Statutory citations.
- Title change.

15A NCAC 7J .0203 Standards for Work Plats

- APA compliance.
- Statutory citations.
- Clarifying how drawing are to be scaled.
- Clarifying information to be included in site plans (based on existing application)
- Clarifies surveyor and engineer role in establishing water depths and references Normal Water Level and Normal High Water (current rules).
- Clarifies development outside of an AEC may proceed provided DCM determines there is no direct impact on AECs
- Title change.

15A NCAC 7J .0204 Application Processing

- APA compliance.
- Statutory citations.
- APA requires applications to be included in rule. Since DCM has moved to an electronic permit application system, these requirements represent the fields addressed in the electronic permit application.
- Minor Permits still utilize a paper form. These requirements represent the information include on the Minor Permit application form.

15A NCAC 7J .0206 Public Notice Requirements

- APA compliance (repeats statute).
- Statutory citations.
- Title change.

15A NCAC 7J .0207 Review of Major Development and Dredge and Fill Applications

- APA compliance.
- Statutory citations (Both CAMA and Dredge & Fill involve state agencies in reviews).
- Title change.

15A NCAC 7J .0208 Permit Conditions

- APA compliance.
- Statutory citations.
- Clarifying language.

15A NCAC 7M .0401 Coastal Energy Development – General Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “polices, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .0402 Coastal Energy Development – Definitions

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “polices, guidelines and standards” in administration of the coastal program.
- Strike language referring to areas outside the CRC’s jurisdiction.
- Add definition of significant adverse impacts.
- Title change.

15A NCAC 7M .0403 Coastal Energy Development – Specific Policy Statements

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “polices, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .0701 Mitigation – General Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “polices, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .0703 Mitigation Projects

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional language clarify how the Division has reviewed mitigation projects for approval.
- Title change.

15A NCAC 7M .0704 Mitigation – Specific Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Additional statement on how policy statements are to be used. CAMA authorizes the CRC to establish “polices, guidelines and standards” in administration of the coastal program.
- Title change.

15A NCAC 7M .1101 Beneficial Use of Dredged Materials From Navigation Channel Maintenance – General Policies

- APA compliance.
- Statutory citations.
- Clarifying language.
- Title change.