



North Carolina Coastal Resources Commission

February 7, 2024

MEMORANDUM

TO: NC Coastal Resources Advisory Council

FROM: M. Renee Cahoon, CRC Chair

SUBJECT: Proposed Temporary Rules
07H .0507, .0508, .0509,
07I .0702, 07J .0203, .0204, .0206, .0207, .0208,
07M .0401, .0402, .0403, .0701, .0703, .0704 and .1101.

ROY COOPER
GOVERNOR

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TANCRED MILLER
EXECUTIVE SECRETARY

Please come to the upcoming February meeting of the Coastal Resources Advisory Council (CRAC) prepared to provide a local perspective on the proposed temporary rules. The CRC values the insights each of you and your local governments may have on the benefit of proceeding with temporary rulemaking. All comments received will be considered during review of the proposed rules.

Enclosed is Memorandum CRC-23-25 and the attached rules that were presented to the CRC during its December 2023 meeting. The CRC held public hearings on Jan. 9 and Jan. 10, 2024, to receive comment on the temporary rules. The CRC has extended the public comment period on the temporary rules until close of business on February 22, 2024.

If you are unable to attend the upcoming February 2024 CRAC, you may submit written comments on these rules by email to Angela.Willis@deq.nc.gov or by US Mail to: Tancred Miller, Director, Division of Coastal Management, 400 Commerce Avenue, Morehead City, NC 28557. Please list "Temporary Rules" in the subject line.

Thank you for your thoughtful consideration of this request as the CRC fulfills its mandate to establish and maintain a comprehensive plan for the protection, preservation, orderly development, and management of the coastal area of North Carolina.



Division of Coastal Management
Department of Environmental Quality
400 Commerce Ave., Morehead City, North Carolina 28557
Phone 252-515-5410

ROY COOPER

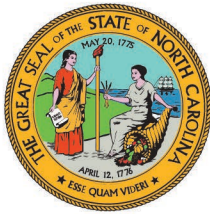
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Director



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.



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 “policies, 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 “policies, 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 “policies, 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 “policies, 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 “policies, 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.

1 15A NCAC 07H .0507 is proposed for adoption under temporary procedures as follows:

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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 per
7 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 07H
2 .0507(e)(1) shall be deposited at locations within the Jockey's Ridge State Park designated by the
3 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. January 1, 2023.

1 15A NCAC 07H .0508 is proposed for adoption under temporary procedures as follows:

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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. January 1, 2023.

1 15A NCAC 07H .0509 is proposed for adoption 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. January 2, 2024.

1 15A NCAC 07I .0702 is proposed for adoption under temporary procedures as follows:

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3 **15A NCAC 07I .0702 WHEN THE LOCAL PERMITTING AGENCY EXCEEDS LOCAL AUTHORITY**

4 When the local permit-letting agency exceeds the scope and extent of its authority per G.S. 113A-117, which is limited
5 to consideration of applications proposing minor development as defined in the Coastal Area Management Act, that
6 action shall be null, void and of no effect. The determinations of the Commission shall be binding on the local
7 permit-letting agency as to questions of such jurisdiction.

8

9 *History Note: Authority G.S. 113A-118(e); 113A-120(c); 113A-124(c)(5);*

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Temporary Adoption Eff. October 1, 2022.

1 15A NCAC 07J .0203 is proposed for adoption under temporary procedures as follows:

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3 **15A NCAC 07J .0203 STANDARDS FOR WORK PLATS**

4 (a) General. Project plans or work plats shall include a top or plan view and a cross-sectional view. All plats shall
5 have the standard north arrow. North shall be at the top of the plat. Work plats shall be drawn to a scale of 1" = 200'
6 or less.

7 (b) Details of Work Plats

8 (1) Top View or Plan View Work Plats. Such drawings shall show existing and proposed features such
9 as dune systems, shorelines, creeks, marshlands, docks, piers, bulkheads, excavated areas, fill areas,
10 type and location of sewage treatment facilities and effluent outlets. Existing water depths shall be
11 indicated as Normal Water Level or Normal High Water Level unless work plats are by a
12 professional surveyor or engineer where water depths can be indicated using mean low water as
13 base or zero and shall be shown either as contours or spot elevation. Work plats shall indicate which
14 features are existing and which are proposed. Property boundaries, as they appear on the deed, and
15 the names of adjacent property owners shall be shown on the work plat. The work plat shall show
16 areas to be excavated and the exact site for disposal of the excavated material unless outside of the
17 Area of Environmental Concern, then an address may be provided. When fill material is to be placed
18 behind a bulkhead or dike, the plan shall show the exact location of such bulkheads, dikes and fill
19 areas and calculations showing that the bulkhead or dike has the capacity to confine the material.
20 Work Plats shall indicate Normal Water Level or Normal High-Water Level unless certified by a
21 professional surveyor or engineer where water depths can be shown as mean low and mean high
22 water lines. Work plats shall indicate the presence of wetlands in the area of proposed work. In
23 areas where the difference in daily low and high tides is less than six inches, mean water level as
24 certified by a professional surveyor or engineer or normal water level shall be used.

25 (2) Cross-Section Work Plats. A cross-sectional diagram showing depth and elevation of proposed
26 work relative to Normal Water Level or Normal High Water Level unless certified by a professional
27 surveyor or engineer where water depths can be shown as mean low and mean high water, shall be
28 included in the plan. First floor elevations shall be shown for any proposed structures.

29 (3) Title of Work Plats. Each work plat shall have a title block to identify the project or work, and
30 shall include name of applicant or project, date the plat was prepared, and scale of the plat. The date
31 of any revisions shall be noted. The applicant shall also include the name or initials of the person
32 who drew the plat.

33 (c) Any application for a CAMA Major or Dredge and Fill permit shall include a narrative of the proposed
34 development that shall include the following information:

35 (A) the character of the development (i.e. residential, commercial, recreational, etc.);

36 (B) a description of the development activities proposed; and

37 (C) the amount of ground disturbance in the AEC measured in acres or square feet.

1 (d) Following review of the permit application, a permit may be issued conditioned in accordance with G.S.143B-
2 279.4. Any subsequent violation of these conditions shall be a permit violation. Any subsequent change in the
3 development which changes the parameters of the project shall be submitted to the Division of Coastal Management.
4 Nothing in this Rule would prohibit an applicant from proceeding with work outside an AEC that is determined by
5 the Division of Coastal Management to not have a direct impact on the AEC while a permit application for work in
6 the AEC is pending provided that all other necessary local, state, and federal permits have been obtained.

7
8 *History Note: Authority G.S. 113-229(n)(3); 113-230(a); 113A-119; 113A-124;*
9 *Temporary Adoption Eff. January 2, 2024.*

1 15A NCAC 07J .0204 is proposed for adoption under temporary procedures as follows:

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3 **15A NCAC 07J .0204 PROCESSING THE APPLICATION**

4 (a) On receipt of a CAMA major development and/or dredge and fill permit application the Department shall send a
5 notification to the applicant acknowledging receipt.

6 (b) Processing for a Major Permit or Major Modification to a Major Permit application shall begin when an application
7 is accepted as complete. Before an application is accepted as complete, the requirements as listed in 15A NCAC 07J
8 .0204(b)(1-5) shall be met. Any application not in compliance with these requirements shall be returned to the
9 applicant along with a notification explaining the deficiencies of the application and shall not be accepted as complete
10 until all required information is submitted.

11 (1) a current application form shall be submitted. The application form shall contain:

12 (A) application type (major, modification or general)

13 (B) name of entity on deed or first, middle, and last name(s) referenced on deed;

14 (C) phone number and email;

15 (D) physical and mailing address;

16 (E) project type and location;

17 (F) authorized agent contact information;

18 (G) description of existing conditions and development on the project location including lot
19 size, shoreline length, vegetation and erosion details;

20 (H) total ground disturbance resulting from the proposed development including clearing and
21 grading;

22 (I) applicable dimensions of proposed development activity including quantity, length, width,
23 elevation, slope, area, volume, distance waterward of NWL or NHW, average existing
24 depth, proposed final depth, impervious coverage, and sediment characteristics;

25 (J) applicable erosion and sedimentation control measures, fill source and environmental
26 mitigation efforts for the proposed development activity;

27 (K) general information concerning the use of the proposed development activity, including
28 boat type and length, proximity of structures to adjacent properties and other structures,
29 and waterbody width;

30 (L) type of proposed impacts and dimensions (i.e. shading, filling, excavating) to coastal
31 wetlands, submerged aquatic vegetation, shell bottom, non-coastal wetlands, and open
32 water from the proposed development activities;

33 (M) project narrative that includes a brief description of the project and any previous or active
34 state or federal permits issued on the property;

35 (N) a signed AEC Hazard Notice if the project is in the Ocean Hazard AEC if applicable; and

36 (O) acknowledgements to be attested to before submitting the application;

1 (i) I understand that any permit issued in response to this application will allow only
2 the development described in the application. The project will be subject to the
3 conditions and restrictions contained in the permit;

4 (ii) I certify that I am authorized to grant, and do in fact grant permission to
5 representatives of state and federal review agencies to enter on the aforementioned
6 lands in connection with evaluating information related to this permit application
7 and follow-up monitoring of the project;

8 (iii) I further certify that the information provided in this application is truthful to the
9 best of my knowledge; and

10 (iv) I certify that by clicking the submit button on this NC Division of Coastal
11 Management application I acknowledge that I am signing and dating the
12 application submitted therein.

13 (2) a work plan as described in 15A NCAC 07J .0203 shall be attached to all CAMA major development
14 or dredge and fill permit applications;

15 (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA
16 major development or dredge and fill permit application;

17 (4) notice to adjacent riparian landowners of a CAMA Major Permit applicant shall be given as follows:

18 (A) Certified return mail receipts (or copies thereof) indicating that adjacent riparian
19 landowners (as identified in the permit application) have been sent a copy of the application
20 for the proposed development for a CAMA major development and/or dredge and fill
21 permit application. Said landowners have 30 days from the date of notification in which
22 to comment. Such comments shall be considered by the Department in reaching a final
23 decision on the application.

24 (5) the application fee shall be paid as set out in this Subparagraph:

25 (A) Major development permit application fees shall be in the form of an electronic funds
26 transfer or check or money order payable to the Department. The application fee for
27 private, non-commercial for-profit development shall be two hundred fifty dollars
28 (\$250.00). The application fee for a public or commercial for-profit project shall be four
29 hundred dollars (\$400.00).

30 (c) Minor permit application processing shall begin when an application is accepted as complete. Before an
31 application is accepted as complete, the requirements as listed in 15A NCAC 07J .0204(c)(1-4) shall be met. Any
32 application not in compliance with these requirements shall be returned to the applicant along with a notification
33 explaining the deficiencies of the application and shall not be accepted as complete until all required information is
34 submitted.

35 (1) a current application form shall be submitted. The application form shall contain:

36 (A) first, middle, and last name of landowner;

37 (B) phone number and email;

- 1 (C) physical and mailing address;
2 (D) authorized agent first and last name and contact information;
3 (E) location of project including address, street name, directions to site and adjacent
4 waterbody;
5 (F) description of the proposed project, including a list of all proposed construction and land
6 disturbance;
7 (G) size of lot or parcel in square feet and acres;
8 (H) proposed use, if residential, single-family or multi-family, commercial, industrial or other;
9 (I) if proposed development is located in the Ocean Hazard Area of Environmental Concern,
10 total floor area of structure in square feet including air conditioned living space, parking
11 elevated above ground level, non-conditioned space elevated above ground level but
12 excluding non-load bearing attic space;
13 (J) project drawing that includes the details stated in NCAC 07H .0204(2);
14 (K) if proposed development is located in the Coastal Shoreline Area of Environmental
15 Concern (AEC), size of building footprint and other impervious or built upon surfaces in
16 square feet including the area of the foundation of all buildings, driveways, covered decks,
17 concrete or masonry patios that are within the AEC. Calculations shall be attached to
18 project drawings;
19 (L) if the development is located in an area subject to a State stormwater management permit
20 issued by the NC Division of Energy, Mineral and Land Resources, the total built upon
21 area and impervious surfaces allowed for the lot or parcel in square feet; and
22 (M) indication that the applicant is an owner of the property.
23 (N) Minor development permit application fees shall be in the form of an electronic funds
24 transfer or check or money order payable to the permit-letting agency in the amount of one
25 hundred dollars (\$100.00). Monies so collected shall be used only in the administration of
26 the permit program.
27 (2) a work plan shall be attached to all CAMA minor permit applications that includes:
28 (A) Work plats must include a top or planview, a cross-sectional view. All
29 plats must have the standard north arrow. North should be at the top of the
30 plat. Work plats must be accurately drawn to scale. A scale of 1" = 200' or
31 less is required.
32 (B) Such drawings must show existing and proposed features such as dune
33 systems, shorelines, creeks, marshlands, docks, piers, bulkheads,
34 excavated areas, fill areas, type and location of sewage treatment facilities
35 and effluent outlets. Property boundaries, as they appear on the deed, and
36 the names of adjacent property owners must be shown on the detailed plat.

1 (C) Cross-Section Drawing. A cross-sectional diagram showing elevation of
2 proposed work relative to existing ground level. Mean low and mean high
3 water line must be included in the plan. The mean low water must be the
4 reference land elevations (i.e., mean low water should be depicted as
5 "Elevation 0.0 MLW"). First floor elevations relative to mean sea level
6 must be shown for any proposed buildings.

7 (D) Title of Drawing. Each drawing must have a simple title block to identify
8 the project or work, and shall include name of applicant, date the plat was
9 prepared, and scale of the plat. The date of any revisions must be clearly
10 noted. The applicant must also include the name of the person who drew
11 the plat.

12 (3) a copy of a deed or other instrument under which the applicant claims title shall accompany a CAMA
13 minor permit application.

14 (4) notice to adjacent property landowners of a CAMA Minor Permit application shall be given as
15 follows

16 (A) the applicant shall provide Certified return mail receipts (or copies thereof) indicating that
17 adjacent riparian landowners (as identified in the permit application) have been sent a copy
18 of the application for the proposed development for a CAMA minor development permit
19 application. Said landowners have 30 days from the date of notification in which to
20 comment. Such comments shall be considered by the Department in reaching a final
21 decision on the application.

22 (d) If the application is found to be incomplete or inaccurate after processing has begun by the Division of Coastal
23 Management, the Division of Coastal Management shall notify the applicant of the deficiency or inaccuracy and
24 processing shall be in abeyance pending receipt of the necessary information from the applicant. During the pendency
25 of any termination of processing, the permit processing period shall not run. If the changes or additional information
26 alters the scale or scope of the project proposal, the application shall be considered new and a new permit processing
27 period will commence on the date that the additional information is accepted as complete.

28 (e) Any CAMA or Dredge and Fill violation occurring at a proposed project site for which an application is being
29 reviewed shall be processed according to the procedures in 15A NCAC 07J .0409 through .0410. If the violation
30 altered the project site and restoration is required in accordance with G.S. 113A-126, the Division of Coastal
31 Management shall notify the applicant that processing of the application will be suspended pending compliance with
32 the notice of required restoration. Restoration of any unpermitted development at the project site shall require a
33 complete review of the application and an assessment of the project's potential impacts. The Division of Coastal
34 Management shall notify the applicant when permit processing has resumed, and of the new processing deadline that

1 has been established once the Division of Coastal Management or Local Permit Officer verifies that the required
2 restoration has been completed.

3 (f) If during the public comment period a question is raised as to public rights of access across the subject property,
4 the Division of Coastal Management shall examine the access issue prior to making a permit decision. Any individual
5 or governmental entity initiating action to judicially recognize a public right of access shall obtain a court order to
6 suspend processing of the permit application. Should the parties to legal action resolve the issue, permit processing
7 shall continue.

8

9 *History Note: Authority G.S. 113-229; 113A-119; 113A-119.1; 113A-122(c); 113A-124;*

10 *Temporary Adoption Eff. January 2, 2024.*

1 15A NCAC 07J .0206 is proposed for adoption under temporary procedures as follows:

2

3 **15A NCAC 07J .0206 PUBLIC NOTICE REQUIREMENTS**

4 In accordance with G.S 113A-119(b) the Division of Coastal Management shall issue public notice of proposed
5 development.

6

7 History Note: Authority G.S. 113A-119(b);

8

Temporary Adoption Eff. January 2, 2024.

1 15A NCAC 07J .0207 is proposed for adoption under temporary procedures as follows:
2

3 **15A NCAC 07J .0207 REVIEW OF MAJOR DEVELOPMENT AND DREDGE AND FILL**
4 **APPLICATIONS**

5 (a) In order to determine the impact of the proposed project, the Department shall prepare a field report on each major
6 development and/or dredge and fill permit application accepted for processing. Such report shall be prepared after an
7 on-site investigation is completed. The report shall include project location, environmental setting, project description
8 and probable environmental impact.

9 (b) In order to comply with G.S. 113A-120(a)(4), the Department shall circulate major development permit
10 applications to the State review agencies having expertise in the criteria enumerated in G.S. 113A-113(b)(1-9).

11 (c) In order to comply with G.S. 113A-120(a)(2), the Department shall circulate dredge and fill permit applications
12 to the State review agencies having expertise in those matters enumerated in G.S. 113- 229(e) (1) - (5).

13 (d) Each reviewing agency may make an independent analysis of the application and submit recommendations and
14 comments to the Department. Such recommendations and comments shall be considered by the Department in taking
15 action on a permit application.

16 (e) Each reviewing agency may request additional information related to the scale and scope of the projects, such as
17 Stormwater Management Plans, from the applicant through the Division of Coastal Management if such information
18 is deemed necessary for a complete review of the application. The applicant shall be notified of the requirement for
19 additional information and permit processing will be suspended according to 15A NCAC 07J .0204(d).

20 (f) The Division of Coastal Management is one of the State agencies that comments on permit applications. In its
21 role as a commenting agency the Division shall use criteria in 15A NCAC 07H and local land use plans to assess
22 whether to recommend permit issuance, permit issuance with conditions, or permit denial.

23 History Note: Authority G.S. 113-229; 113A-120, 113A-124(a)(1); 113A-127;
24 Temporary Adoption Eff. January 2, 2024.
25

1 15A NCAC 07J .0208 is proposed for adoption under temporary procedures as follows:

2
3 **15A NCAC 07J .0208 PERMIT CONDITIONS**

4 (a) In compliance with G.S. 113A-120(a)(4) and G.S. 113A-120(a)(2), each of the State, federal and local reviewing
5 agencies may submit specific recommendations regarding the manner in which the proposed development should be
6 accomplished including limitations on the development in order to protect the public interest with respect to the factors
7 enumerated in G.S. 113A-113(b)(1-9) and 113-229(e)(1-5). The State, federal and local reviewing agencies also may
8 submit specific recommendations regarding limitations to be placed on the operation and maintenance of the
9 completed project, to ensure continued protection of the public interest with respect to those factors. Such limitations
10 may be imposed by the Department on the project in the form of "permit conditions". Upon the failure of the applicant
11 to appeal a permit condition, the applicant shall be deemed to have amended his permit to conform to the conditions
12 imposed by the Department. Compliance with operational and maintenance conditions shall continue for the life of
13 the project.

14 (b) The local permit officer may condition a minor development permit upon amendment of the proposed project to
15 protect the public interest with respect to the factors enumerated in G.S. 113A-120. The applicant shall sign the
16 conditioned permit as an indication of amendment of the proposed project in a manner consistent with the conditions
17 set out by the local permit officer before the permit shall become effective.

18 (c) Failure to comply with permit conditions constitutes a violation of an order of the Commission under G.S.
19 113A-126.

20
21 History Note: Authority G.S. 113-229; 113A-120(b); 113A-124(a)(1); 113A-127;
22 Temporary Adoption Eff. January 1, 2023.

1 15A NCAC 07M .0401 is proposed for adoption under temporary procedures as follows:
2

3 **SECTION .0400 - COASTAL ENERGY DEVELOPMENT – GENERAL POLICIES**
4

5 **15A NCAC 07M .0401 DECLARATION OF GENERAL POLICY**

6 (a) The policy statements in this section are enforceable and shall be considered by local governments and DCM
7 when issuing permits and implementing the coastal management program under this Subchapter and commenting on
8 federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

9 (b) It is hereby declared that the general welfare and public interest require that reliable sources of energy be made
10 available to the citizens of North Carolina. It is further declared that the development of energy facilities and energy
11 resources within the state and in offshore waters can serve important regional and national interests. However, unwise
12 development of energy facilities or energy resources can conflict with the recognized and equally important public
13 interest that rests in conserving and protecting the land and water resources of the state and nation, particularly coastal
14 lands and waters. Therefore, in order to balance the public benefits of energy development with the need to:

15 (1) protect coastal resources; and

16 (2) preserve access to and utilization of public trust resources, the planning of future uses affecting both
17 land and public trust resources,

18 the exercise of regulatory authority, and determinations of consistency with the North Carolina Coastal Management
19 Program shall assure that the development of energy facilities and energy resources shall avoid significant adverse
20 impact upon coastal resources or uses, public trust areas and public access rights.

21 (c) Exploration for the development of offshore and Outer Continental Shelf (OCS) energy resources has the potential
22 to affect coastal resources. The Federal Coastal Zone Management Act of 1972, as amended, requires that leasing
23 actions of the federal government be consistent to the maximum extent practicable with the enforceable policies of
24 the federally approved North Carolina Coastal Management Program, and that exploration, development and
25 production activities associated with such leases comply with those enforceable policies. Enforceable policies
26 applicable to OCS activities include all the provisions of this Subchapter as well as any other federally approved
27 components of the North Carolina Coastal Management Program. All permit applications, plans and assessments
28 related to exploration or development of OCS resources and other energy facilities shall contain information to allow
29 analysis of the consistency of all proposed activities with these Rules.

30
31 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;

32 Temporary Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0402 is proposed for adoption under temporary procedures as follows:

2
3 **15A NCAC 07M .0402 DEFINITIONS**

4 (a) "Adverse impact", "adverse impacts", "adverse effects", or similar formulations, are defined as an effect or impact
5 that is opposed or antagonistic to the goals of the Coastal Area Management Act as found in G.S. 113A-102(b) and
6 with the provisions of G.S. 113-229(3).

7 (b) "Impact Assessment" is an analysis of the potential environmental, economic, and social consequences, including
8 cumulative and secondary impacts of a proposed major energy facility. An Impact Assessment includes the following
9 and for each of the following assess the effects the project will have on the use of public trust waters, adjacent lands,
10 and on the coastal resources, including the effects caused by activities related to exploration or development of OCS
11 resources and other energy facilities outside the coastal area:

12 (1) An analysis of the preferred sites for those elements of the project affecting the use of public trust
13 waters, adjacent lands and the coastal resources:

14 (A) In all cases where the preferred site is located within an area of environmental concern
15 (AEC) or on a barrier island, the applicant shall identify alternative sites considered and
16 present a full analysis [in terms of Subparagraphs (a)(2) through (9) of this Rule] of the
17 reasons why the chosen location was deemed more suitable than another feasible alternate
18 site;

19 (B) If the preferred site is not located within an AEC or on a barrier island, the applicant shall
20 present an analysis to support the proposed location over an alternate site.

21 (2) An analysis of the economic impacts, both positive and negative, of the proposed project. The
22 analysis shall focus on economic impacts to the public, not on matters that are purely internal to the
23 corporate operation of the applicant. No proprietary or confidential economic data shall be required.
24 This analysis shall include potential adverse impacts upon the ability of any governmental unit to
25 furnish necessary services or facilities as well as other secondary impacts.

26 (3) An analysis of potential adverse impacts on coastal resources, including marine and estuarine
27 resources and wildlife resources, as defined in G.S. 113-129;

28 (4) An analysis of potential adverse impacts on existing industry and potential limitations on the
29 availability of, and accessibility to, coastal resources, including beach compatible sand and water,
30 for future use or development;

31 (5) An analysis of potential significant adverse impacts on recreational uses and scenic, archaeological
32 and historic resources;

33 (6) An analysis of potential risks to human life or property;

34 (7) An analysis of the impacts on the human environment including noise, vibration and visual impacts;

35 (8) An analysis of the procedures and time needed to secure an energy facility in the event of severe
36 weather conditions, such as extreme wind, currents and waves due to northeasters and hurricanes;

1 (9) Other specific data required for the various state and federal agencies and commissions with
2 jurisdiction to evaluate the consistency of the proposed project with relevant standards and
3 guidelines;

4 (10) A plan regarding the action to be taken upon the decommissioning and removal of the facility and
5 related structures. The plan shall include an estimate of the cost to decommission and remove the
6 energy facility including a discussion of the financial instrument(s) used to provide for the
7 decommissioning and the removal of the structures that comprise the energy facility. The plan shall
8 also include a proposed description of the condition of the site once the energy facility has been
9 decommissioned and removed; and

10 (11) An analysis that the proposed project is consistent with local land use plans.

11 An impact analysis for a proposed major energy facility shall include the items described in Subparagraphs (a)(1)
12 through (11) of this Rule for the associated energy exploration or development activities related to exploration or
13 development of OCS resources and other energy facilities, including all foreseeable assessments of resource potential,
14 the gathering of scientific data, exploration wells, and any delineation activities that are likely to follow development,
15 production, maintenance, and decommissioning.

16 (c) "Major energy facilities" are those energy facilities, including those described in G.S. 113A-119.2(3), which have
17 the potential to negatively impact any land or water use or coastal resource of the coastal area. For purposes of this
18 definition, major energy facilities shall include the following:

19 (1) Any facility refining petroleum consistent with G.S. 143-215.77;

20 (2) Any terminals (and associated facilities) capable of handling, processing, or storing petroleum
21 products or synthetic gas as defined in G.S 143-215.96;

22 (3) Any petroleum storage facility that is capable of storing 15 million gallons or more on a single site;

23 (4) Gas, coal, oil or nuclear electric generating facilities 300 MGW or larger;

24 (5) Wind energy facilities, including turbines, accessory buildings, transmission facilities, and other
25 equipment necessary for the operation of a wind generating facility that cumulatively, with any other
26 wind energy facility whose turbines are located within one-half mile of one another, are capable of
27 generating three megawatts or larger;

28 (6) Thermal energy generation;

29 (7) Pipelines 12 inches or more in diameter that carry petroleum products or synthetic gas;

30 (8) Structures, including drillships and floating platforms located in offshore waters for the purposes of
31 energy exploration, development, or production; and

32 (9) Onshore support or staging facilities related to offshore energy exploration, development, or
33 production.

34 (d) "Offshore waters" are those waters seaward of the state's three-mile offshore jurisdictional boundary in which
35 development activities may impact any land or water use or natural resource of the state's coastal area.

36 (e) "Significant" as used in this section includes consideration of both context and intensity. Context means that the
37 significance of an adverse impact or effect must be analyzed from several perspectives that include society as a whole

1 (human, national), the affected subregion of the North Carolina coast, the local area and all directly and indirectly
2 affected parties. Both short-and long-term effects are relevant. Intensity refers to the severity of impact or effect.

3 The following shall be considered in evaluating intensity:

4 (1) Both beneficial and adverse impacts;

5 (2) The degree to which the proposed action affects public health or safety;

6 (3) Unique characteristics of the geographic area;

7 (4) The degree to which the effects on the quality of the human environment are likely to be
8 controversial;

9 (5) The degree to which the possible effects on the environment are uncertain or involve unique or
10 unknown risks;

11 (6) The degree to which the action may establish a precedent for future actions;

12 (7) The degree to which the action is related to other actions with individually insignificant but
13 cumulatively significant impacts. Significance cannot be avoided by terming an action temporary or
14 by breaking it down into small component parts;

15 (8) The degree to which the action may cause the loss or destruction of scientific, cultural, historical, and
16 environmental resources and;

17 (9) The impact is more than de minimus, that is, large enough to make a difference.

18
19
20 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-119.2; 113A-124;

21 Temporary Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0403 is proposed for adoption under temporary procedures as follows:

2
3 **15A NCAC 07M .0403 COASTAL ENERGY DEVELOPMENT - SPECIFIC POLICY STATEMENTS**

4 (a) The policy statements in this section are enforceable and shall be considered by local governments and DCM
5 when issuing permits and implementing the coastal management program under this Subchapter and commenting on
6 federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

7 (b) The siting and operations of major energy facilities impacting the use of public trust waters and adjacent lands or
8 coastal resources of North Carolina shall be done in a manner that allows for protection of the environment and local
9 and regional socio-economic goals as set forth in the local land use plans and in 15A NCAC 07H and 07M. The
10 placement and operation of such facilities shall be consistent with state rules and statutory standards and shall comply
11 with local land use plans and with use standards for development within AECs, as set forth in 15A NCAC 07H.

12 (c) Proposals, plans, and permit applications for major energy facilities to be sited in or impacting any land or water
13 use or coastal resource of the North Carolina coastal area shall include a disclosure of all costs and benefits associated
14 with the project. This disclosure shall be prepared in the form of an impact assessment as defined in 15A NCAC 07M
15 .0402 prepared by the applicant. If environmental documents are prepared and reviewed under the provisions of the
16 National Environmental Policy Act (NEPA) or the North Carolina Environmental Policy Act (NCEPA), this review
17 shall satisfy the definition of "impact assessment" if all issues listed in this Rule are addressed and these documents
18 are submitted to review state permit applications for the project or consistency determinations.

19 (d) Local governments shall not restrict the development of energy facilities; however, they may develop siting
20 measures that will minimize impacts to local resources and to identify potential sites suitable for energy facilities.
21 This section shall not limit the ability of a city or county to plan for and regulate the siting of a wind energy facility
22 in accordance with land use regulations authorized under Chapter 160A, Chapter 153A, and 160D of the General
23 Statutes. Wind energy facilities constructed within the planning jurisdiction of a city or county shall demonstrate
24 compliance with any local ordinance concerning land use and any applicable permitting process.

25 (e) Energy facilities that do not require shorefront access shall be sited inland of the shoreline areas. When the siting
26 of energy facilities along shorelines of the coastal zone area are necessary, shoreline siting shall be acceptable only if
27 it can be demonstrated that there are no significant adverse impacts to coastal resources, public trust waters, and the
28 public's right to access will not be restricted, and all mitigating measures have been taken to minimize impacts to
29 AECs. Mitigating measures shall be determined after consideration of economics, technical feasibility, areal extent
30 of impacts, and impacted area.

31 (f) The scenic and visual qualities of coastal areas shall be considered and protected as public resources consistent
32 with G.S. 113A-1-2(b)(4)(a). Energy development shall be sited and designed to provide maximum protection of
33 views to and along the ocean, sounds, and scenic coastal areas, and to minimize the alteration of natural landforms.

34 (g) All energy facilities in or impacting the use of public trust waters and adjacent lands or coastal resources shall be
35 sited and operated so as to comply with the following criteria:

- 1 (1) Activities that may result in significant adverse impacts on coastal resources, including marine and
2 estuarine resources and wildlife resources, as defined in G.S. 113-129, and significant adverse
3 impacts on the use of public trust waters and adjacent lands in the coastal area shall be avoided;
- 4 (2) For petroleum facilities, data and information required for State permits and federal consistency
5 reviews, pursuant to 15 CFR part 930, shall assess the risks of petroleum release or spills, evaluate
6 possible trajectories, and enumerate response and mitigation measures employing the best available
7 technology to be followed in the event of a release or spill. The information shall demonstrate that
8 the potential for petroleum release or spills and ensuing damage to coastal resources has been
9 minimized and shall factor environmental conditions, currents, winds, and inclement events such as
10 northeasters and hurricanes, in trajectory scenarios. This same data and information shall be
11 required for facilities requiring an Oil Spill Response Plan;
- 12 (3) Dredging, spoil disposal, and construction of structures that are likely to have significant adverse
13 impacts on the use of public trust waters and adjacent lands or coastal resources shall be avoided;
- 14 (4) Significant adverse impacts to existing or traditional uses, such as fishing, navigation and access to
15 public trust areas, and areas with high biological or recreational value such as those listed in
16 Subparagraphs (f)(10)(A) and (H) of this Rule, shall be avoided;
- 17 (5) Placement of structures in geologically unstable areas, such as unstable sediments and active faults,
18 shall be avoided if the siting of structures will have significant adverse impacts on the use of public
19 trust waters, adjacent lands or coastal resources;
- 20 (6) Procedures necessary to secure an energy facility in the event of severe weather conditions, such as
21 extreme wind, currents and waves due to northeasters and hurricanes, shall be initiated to ensure
22 that significant adverse impacts on the use of public trust waters, adjacent lands and coastal
23 resources;
- 24 (7) Significant adverse impacts on federally listed threatened or endangered species shall be avoided;
- 25 (8) Major energy facilities are not appropriate uses in fragile or historic areas, and other areas containing
26 environmental or natural resources of more than local significance, as defined in G.S. 113A-
27 113(b)(4), such as parks, recreation areas, wildlife refuges, and historic sites;
- 28 (9) Energy facilities shall not be sited in areas where they pose a threat to the integrity of the facility
29 and surrounding areas, such as ocean front areas with high erosion rates, areas having a history of
30 overwash or inlet formation, and Inlet Hazard Areas identified in 15A NCAC 07H .0304;
- 31 (10) In the siting of energy facilities and related structures, significant adverse impacts to the following
32 areas shall be avoided:
- 33 (A) areas of high biological significance, including offshore reefs, rock outcrops, hard bottom
34 areas, sea turtle nesting beaches, coastal wetlands, primary or secondary nursery areas or
35 spawning areas and essential fish habitat areas of particular concern as designated by the
36 appropriate fisheries management agency, oyster sanctuaries, submerged aquatic

1 vegetation as defined by the Marine Fisheries Commission, colonial bird nesting areas, and
2 migratory bird routes;

3 (B) tracts of maritime forest in excess of 12 contiguous acres and areas identified as eligible
4 for registration or dedication by the North Carolina Natural Heritage Program;

5 (C) crossings of streams, rivers, and lakes except for existing corridors;

6 (D) anchorage areas and port areas;

7 (E) artificial reefs, shipwrecks, and submerged archaeological resources;

8 (F) Ocean Dredged Material Disposal Sites;

9 (G) primary dunes and frontal dunes;

10 (H) established recreation or wilderness areas, such as federal, state and local parks, forests,
11 wildlife refuges;

12 (I) military air space, training or target area and transit lanes;

13 (J) cultural or historic sites of more than local significance; and

14 (K) segments of Wild and Scenic River System.

15 (11) Construction of energy facilities shall occur only during periods of lowest biological vulnerability.
16 Nesting and spawning periods shall be avoided; and

17 (12) If facilities located in the coastal area are abandoned, habitat of value equal to or greater than that
18 existing prior to construction shall be restored following abandonment. For abandoned facilities
19 outside the coastal area, habitat in the areas shall be restored to its preconstruction state and functions
20 if the abandonment of the structure is likely to have significant adverse impacts on the use of public
21 trust waters, adjacent lands or coastal resources.

22
23 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-124;

24 Temporary Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0701 is proposed for adoption under emergency procedures as follows:
2

3 **SECTION .0700 – MITIGATION - GENERAL POLICY**

4
5 **15A NCAC 07M .0701 DECLARATION OF GENERAL POLICY**

6 (a) The policy statements in this section are enforceable and shall be considered by local governments and DCM
7 when issuing permits and implementing the coastal management program under this Subchapter and commenting on
8 federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

9 (b) It is the policy of the Coastal Resources Commission to require that adverse impacts to coastal lands and waters
10 be mitigated or minimized through planning, site selection, compliance with Commission’s standards for
11 development, and creation or restoration of coastal resources. Coastal ecosystems shall be protected and maintained
12 as complete and functional systems by mitigating the adverse impacts of development by enhancing, creating, or
13 restoring areas with the goal of improving or maintaining ecosystem function and areal proportion.

14 (c) The CRC shall apply mitigation requirements as defined in this Section consistent with the goals, policies and
15 objectives set forth in G.S. 113A-102 for coastal resource management and development. Mitigation shall be used to
16 enhance coastal resources and offset any potential losses occurring from permitted and unpermitted development.
17 Proposals to mitigate losses of coastal resources shall be considered only for development shown to be in the public
18 interest, as defined by the standards in 15A NCAC 07M .0703.

19
20 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;*
21 *Temporary Adoption Eff. January 2, 2024.*

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

2
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.

35
36 History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229;
37 Temporary Adoption Eff. January 2, 2024.

1 15A NCAC 07M .0704 is proposed for adoption under temporary procedures as follows:

2
3 **15A NCAC 07M .0704 MITIGATION - SPECIFIC POLICIES**

4 (a) The policy statements in this section are enforceable and shall be considered by local governments and DCM
5 when issuing permits and implementing the coastal management program under this Subchapter and commenting on
6 federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

7 (b) The Division of Coastal Management shall consider mitigation requests based on the following order of
8 preference:

9 (1) Enhancement of coastal resources with created or restored systems determined to be more
10 productive of the resources characteristic of unaltered North Carolina ecosystems than those
11 destroyed.

12 (2) Creation or restoration of an area of similar ecological utility and potential biological value than that
13 destroyed or altered.

14 (3) Creation or restoration of an area with a different ecological function or potential than that destroyed
15 or altered.

16 (4) The following forms of mitigation shall be considered by the Division of Coastal Management and
17 may be used in combination with Subparagraphs (a) (1) through (3) to achieve the stated goal set
18 forth in 15A NCAC 07M .0703(d).

19 (A) Acquisition for public ownership of unique and ecologically important systems not
20 protected by state or federal regulatory programs. The type of impacts to be mitigated and
21 the quality of the area to be acquired will be considered on a case-by-case basis.

22 (B) Transfer of privately owned lands subject to state and federal regulation into public
23 ownership.

24 (C) Provisions of funds for State, federal or accredited institution research or management
25 programs.

26 (D) Increased public access to public trust resources for recreational use.

27 (c) Mitigation proposals may be the basis for approval of a development which is otherwise in conflict with general
28 or specific use standards set forth in 15A NCAC 07H .0208.

29 (d) Mitigation proposals to offset losses of coastal resources due to publicly funded projects shall be reviewed by the
30 Division of Coastal Management with the sponsoring agency and incorporated into the project by the State or federal
31 agency.

32 (e) Approved mitigation proposals for all categories of development shall become a part of permit conditions
33 according to G.S. 113A-120(b) and thereby subject to enforcement authority pursuant to G.S. 113A-126.

34
35 *History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113A-126;*

36 *Temporary Adoption January 2, 2024.*

1 15A NCAC 07M .1101 is proposed for adoption under temporary procedures as follows:
2

3 **SECTION .1100 - BENEFICIAL USE OF DREDGED MATERIALS FROM NAVIGATIONAL CHANNEL**
4 **MAINTENANCE AND EXCAVATION – GENERAL POLICIES**
5

6 **15A NCAC 07M .1101 DECLARATION OF GENERAL POLICY**

7 (a) The policy statements in this section are enforceable and shall be considered by local governments and DCM
8 when issuing permits and implementing the coastal management program under this Subchapter and commenting
9 on federal permits and activities pursuant to Section 307 of the federal Coastal Zone Management Act.

10 (b) Dredged material disposal practices may result in removal of material important to the sediment budget of
11 ocean and inlet beaches. This activity may adversely impact natural beach functions especially during storm
12 events and may increase long term erosion rates. Ongoing channel maintenance requirements throughout the
13 coastal area also lead to the need to construct new or expanded disposal sites as existing sites fill. In addition,
14 new sites for disposal are increasingly harder to find due to competition from development interests for suitable
15 sites. Therefore, it is the policy of the State of North Carolina that material resulting from the excavation or
16 maintenance of navigation channels be used in a beneficial way wherever practicable.

17
18 *History Note: Authority G.S. 113A-107; 113-229;*

19 *Temporary Adoption Eff. January 2, 2024.*