

ROY COOPER

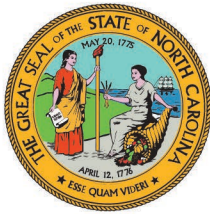
Governor

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 13<sup>th</sup>.



## 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.