

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: All Rules Submitted in 15A NCAC 12H

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

NOTE WELL: This request when viewed on computer extends several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Submission for Permanent Rule Form, Box 9A, please change the reason to reflect that the determination to readopt rules was made by the agency, not mandated by the Existing Rules Review pursuant to G.S. 150B-21.3A.

In the History Note for all amended rules, thank you for updating the History Note to reflect current statutes. However, you need to show the deletion of the statutes that currently exist.

In the Notice of Text published on August 1, 2016, the Department stated that the effective date of these amendments and repeals would be March 1, 2017. You have asked for a December 1, 2016 effective for every rule. Historically, this has been considered a "substantial change" as defined in G.S. 150B-21.2(g). Please insert the correct effective date in each History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0103

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, replace the semicolon after "143B-135.254" with a comma.

In Item (2), line 7, why is "Natural" capitalized?

Also on line 7, how is this recommendation made? Is it as set forth in the rules of the Section?

On line 9, how may the need be determined? Again, is this in rules of the Section?

In Item (3), line 11, why is "Natural" capitalized?

On line 11, define "distinct"

In the History Note, why are you citing to G.S. 143B-135.252?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0103 is readopted with changes as published in 31: 03 NCR 141 as follows:

2

3 **15A NCAC 12H .0103 DEFINITIONS AS USED IN THIS SUBCHAPTER**

4 In addition to the definitions in G.S. ~~143A-164.3~~; 143B-135.254; the following terms shall apply to this Subchapter:

5 (1) "Natural diversity" means the native ~~range of~~ plant and animal species, geological features, plant
6 communities, ecosystem ~~types~~ types, and other natural features.

7 (2) "Natural Heritage Areas List" means a list of those Natural areas recommended by the Natural
8 Heritage Program that are of special importance to the maintenance of the state's natural diversity
9 and that may warrant protection by registration or dedication.

10 ~~(3) "Registry of Natural Heritage Areas" means a list of registered areas.~~

11 (3) A "Natural community" means any area with a distinct and reoccurring assemblage of plants,
12 animals, bacteria, and fungal species naturally associated with each other and their physical
13 environment.

14

15 *History Note Authority G.S. 143B-135.252; 143B-135.254; 143B-135.256;*

16 *Eff. April 4, 1979;*

17 *Amended Eff. August 1, 1988; January 1, 1986; October 1, 1984; August 30, 1980;*

18 *Readopted Eff. December 1, 2016.*

1 15A NCAC 12H .0104 is repealed as published in 31:03 NCR 141 as follows:

2

3 **15A NCAC 12H .0104 RESPONSIBILITIES AND DUTIES OF NATURAL HERITAGE PROGRAM**

4 ~~The Natural Heritage Program shall be responsible for conducting and maintaining the state's inventory of natural~~
5 ~~areas and natural diversity resources including endangered and threatened species; for identifying the state's most~~
6 ~~important natural areas; for data exchange with other public agencies; for arranging the registration of natural areas~~
7 ~~and dedication of nature preserves; for maintaining a plan governing the system of registered and dedicated natural~~
8 ~~areas; and for establishing means for the protection and management of the state's natural heritage resources, as further~~
9 ~~described in the Division's administrative manual and the program's operations manual and public information~~
10 ~~documents.~~

11

12 *History Note: Authority G.S. 113-3; 113-8; 113A-164.4;*

13 *Eff. April 4, 1979;*

14 *Amended Eff. January 1, 1986; October 1, 1984; August 30, 1980;*

15 *Repealed Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0105

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 5, delete "The Nature Preserves Act" as redundant.

In (b)(2), line 12, (b)(5), line 19, (b)(6), line 21, and (b)(7), line 23, why is "Natural" before "areas" capitalized? It isn't in (b)(1) on line 11, nor (b)(3), line 15.

Also in (b)(2), line 12, and (b)(5), line 19, why is "Nature" capitalized?

In (b)(3), line 15, capitalize "State"

For (b)(1) through (7), G.S. 143B-135.256(6) states:

§ 143B-135.256. Powers and duties of the Secretary.

The Secretary shall:

- (6) Appoint advisory committees composed of representatives of federal, State, and local governmental agencies, scientific and academic institutions, conservation organizations, and private business, to advise him on the identification, selection, registration, dedication, and protection of natural areas and nature preserves.

So, the statutory functions of this Committee is to advise on identification, selection, registration, dedication, and protection of the areas. I read (b)(1) to be identification and selection; (b)(2) is selection and registration; is (b)(3) also selection?; is (b)(6) protection? What are (b)(4), (5) and (7) addressing? Is (b)(7) intended to address part of 143B-135.256(c)(3)?

On line 25, begin the sentence with a capital letter.

Also on line 25, why is "Terms" capitalized?

What is your authority to set further functions and operation outside of rulemaking in the Division's manual?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

Where is this manual located? How does one access it?

In (c), why is this in Rule? Is it not adequately addressed by G.S. 143B-10(d)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0105 is readopted with changes as published in 31:03 NCR 141 as follows:

2

3 **15A NCAC 12H .0105 NATURAL HERITAGE ADVISORY COMMITTEE**

4 (a) ~~There is a~~ The Natural Heritage Advisory Committee shall be composed of nine members appointed by the
5 ~~secretary.~~ Secretary, in accordance with The Nature Preserves Act G.S. 143B-135.256(6).

6 (b) ~~Purpose. The purpose of the committee is to advise the secretary and department on matters concerning the~~
7 ~~identification, selection, registration, dedication, protection, and management of natural areas and preservation of~~
8 ~~North Carolina's natural diversity, and to coordinate and facilitate cooperative efforts among public, private, academic,~~
9 ~~and scientific bodies engaged in natural heritage inventory and protection activities.~~

10 (e)(b) ~~Functions, Composition, Terms of Service.~~ The Natural Heritage Advisory Committee shall:

- 11 (1) advise and make recommendations to the Department on inventory and evaluation of natural areas;
- 12 (2) review and make recommendations for registration, acquisition, and dedication of Natural areas and
13 Nature preserves by the Department;
- 14 (3) review and make recommendations on Department priorities and plans for the selection of particular
15 natural areas for state acquisition and for designation of nature preserves;
- 16 (4) review and make recommendations on master plans, management plans, and other plans and
17 proposals for development and use of ~~natural~~ lands administered by the Department;
- 18 (5) advise the Secretary on policies, rules, and regulations governing management, protection, and use
19 of ~~designated~~ registered Natural areas and dedicated Nature preserves by the Department;
- 20 (6) advise and consult with the Secretary and Department staff on policies and programs relating to
21 preservation of natural diversity and outstanding Natural areas in the state; and
- 22 (7) consult and coordinate with other public agencies, conservation organizations, and scientific bodies
23 on matters concerning natural diversity inventory and Natural areas identification, acquisition,
24 management, and dedication.

25 ~~Specific~~ functions, committee composition, Terms of service, and operation are further described in the Division's
26 administrative manual.

27 (d)(c) ~~Travel Expenses.~~ Members of the committee, except ex-officio members, are entitled to per diem and necessary
28 travel and subsistence expenses in accordance with G.S. 143B-10(d).

29

30 *History Note: Authority G.S. 143B-10; 143B-135.256;*
31 *Eff. April 4, 1979;*
32 *Amended Eff. January 1, 1986; October 1, 1984; March 1, 1983; August 30, 1980;*
33 *Repealed Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0201

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? Is any of this text not addressed by statute? You further note on line 6 that this program is "non-regulatory" so it seems unnecessary to include this in Rule.

Assuming you need to retain this Rule, on line 6, define "elements of natural diversity" (I note that the term "natural diversity" is defined in Rule .0103 of the Subchapter.)

On line 7, state "The objectives" and replace "are" with "is" since there is only one objective.

On line 7, why is "Natural" capitalized?

In the History Note, why are you citing to G.S. 143B-135.254?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0201 is readopted with changes as published in 31:03 NCR 142 as follows:

2

3 **15A NCAC 12H .0201 OBJECTIVES OF REGISTRY**

4 The North Carolina Registry of Natural Heritage Areas is a recognition program based upon the Natural Heritage
5 Areas List ~~an official list of significant natural areas~~ derived from the Natural Heritage Program's inventory of
6 elements of natural diversity. The Registry is a voluntary, non-regulatory, non-binding recognition program.
7 Objectives of the North Carolina Registry of Natural Heritage Areas are ~~to~~ to protect Natural areas as defined in G.S.
8 143B-135.254.

- 9 (1) ~~protect significant examples of the total diversity of natural features occurring in the state;~~
10 (2) ~~establish reserves for breeding stocks of endangered, threatened, or otherwise unique species of~~
11 ~~plants and animals;~~
12 (3) ~~encourage educational activities and scientific research;~~
13 (4) ~~preserve unique and unusual natural features; and~~
14 (5) ~~protect natural areas against uses that would destroy their natural conditions.~~

15

16 *History Note: Authority G.S. 143B-135.254; 143B-135.256;*
17 *Eff. April 4, 1979;*
18 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0202

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please restart line numbers on each page at "1" [See Rule 26 NCAC 02C .0108(1)(f)]

In (a)(1), line 6, how is the danger or threat determined?

In (a)(2), line 7 and (a)(3), line 8, what is "exemplary"? Does your regulated public know?

In (a)(2), line 7, why is "Natural" capitalized? Also, what is a "natural community"?

In (a)(5), lines 11 and 12, what are "ecological features types"? And should it be "feature" (singular)?

In (a)(6), line 14, please underline "significance."

In (b)(1), did you intend this to only apply to registration and not dedicated areas?

In (b)(2), line 19, why is "Natural" capitalized?

In (b)(3), I personally dislike parenthesis in rules and recommend removing them from lines 20 and 21 and stating "features, including self-sufficiency..." However, that is just a recommendation.

On line 21, define "properly"

Also on line 21, remove the comma after "managed" and replace it with "and"

In (b)(4), line 23, why is "Natural" capitalized and what are "natural communities"?

On line 27, what is a "past disturbance"?

In (b)(5), line 29, what is a "defined buffer area"? Is this addressed by Rule .0304 of the Subchapter?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

On line 30, please replace the first “should’ with “shall” and remove the second one altogether. The term “should” is not rule language and is not to be included in a Rule without an explicit statutory mandate to include it.

In (b)(7), line 35, who determines “scientific and educational value”?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0202 is readopted with changes as published in 31:03 NCR 142 as follows:

2
3 **15A NCAC 12H .0202 CRITERIA FOR ELIGIBILITY**

4 (a) For an area to qualify as a Natural Heritage Area and be eligible for registration or dedication, the area shall
5 possess one or more of the following natural values:

- 6 (1) a habitat for individual species of plants or animals that are in danger of or threatened by extirpation;
- 7 (2) an exemplary or rare terrestrial Natural community;
- 8 (3) an exemplary or rare aquatic community;
- 9 (4) ~~outstanding geologic or geomorphic~~ features that ~~illustrates~~ illustrate geologic processes or the
10 history of the earth;
- 11 (5) a unique or unusual ~~natural~~ ecological features ~~such as old growth forest conditions or unusual~~
12 ~~vegetation types; types; or~~
- 13 (6) ~~other~~ biological or ecological phenomena of ~~significance, such as a major bird rookery or bat colony.~~
14 significance.

15 (b) In addition to the criteria stated in Paragraph (a) of this Rule, an area shall be evaluated with respect to the
16 following factors:

- 17 (1) the presence of ecological natural values ~~not adequately~~ represented in previously registered Natural
18 Heritage Areas;
- 19 (2) the Natural diversity of the area; diversity of natural types of flora and fauna;
- 20 (3) the quality and viability of the natural environmental features (i.e., self-sufficiency of the ~~natural~~
21 ecosystem when properly managed; degree of vulnerability to disturbances and intrusions);
- 22 (4) ~~absence of damaging land uses, logging, grazing, erosion, intrusion by exotic species, etc., or the~~
23 extent to which past disturbances or land uses have altered natural features; Natural communities.
24 ~~Considering that nearly all areas of the State have been altered by human intrusions to some extent~~
25 ~~and considering that certain natural elements require manipulative management, an area should not~~
26 ~~be denied recognition solely because of past disturbances; An area may be considered even if it~~
27 shows evidence of past disturbance;
- 28 (5) ~~the capability of being~~ ability to be managed ~~so as~~ to protect and maintain ecological natural features
29 in a natural condition, and a defined buffer area zone is desirable to ensure assure protection. ~~(A~~ A
30 buffer zone, where possible, should follow ~~naturally~~ defensible boundaries and should help protect
31 the site against adverse effects from use and development of adjacent ~~land; land.~~ The buffer zone
32 may be included in the designated area but need not itself possess ~~special natural values~~; any
33 eligibility criteria as set forth in this Rule;
- 34 (6) compatibility of protective management practices with current use practices on adjacent lands; and
35 (7) scientific and educational value.

36
37 *History Note: Authority G.S. 143B-135.256; 143B-135.258;*

38 *Eff. April 4, 1979;*
39 *Amended Eff. January 1, 1986;*
40 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0203

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please restart line numbers on each page at "1" [See Rule 26 NCAC 02C .0108(1)(f)]

In (a)(1), what are the contents needed for a nomination? Is this addressed by another Rule?

In (a)(3), line 16, define "sufficient"

On line 17, what is an "evaluation report"? What is contained in it? Just the information collected and the recommendation?

In (a)(4), this will not apply to recommendations made by program staff or the Committee?

On lines 24 and 25, I suggest stating "Nominations... shall be accepted or rejected by the Department within one year of receipt. Rejections shall include an explanation."

On line 27, who shall forward this? And what is "new" in this context?

In (b), line 31, so that I understand, the owner has two options here – ask for further consideration or for it to stop? So, that is who the "may" refers to?

In (c), it appears that you have lost original language without showing it.

(c) Review Process. All nominations and recommendation statements shall be submitted by the Natural Heritage Program to the Natural Heritage Advisory Committee for its review and approval. The Natural Heritage Advisory Committee shall receive and review nominations at its regularly scheduled meetings. The chairman or acting chairman of the advisory committee, upon committee approval of the nomination, shall sign the statement of recommendation before approval by the Director of the Division of Parks and Recreation and submission to the Secretary or his designee. The Secretary or his designee shall solicit review and comment upon the nomination from all appropriate agencies. Recommendation statements and a report on the owner's willingness to accept registration shall then be forwarded to the Secretary for final decision on eligibility.

Please show all deletions of original text.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

On line 37, you need to show the insertion of the period after “Director.”

On Page 2, lines 38 and 39, please state “his or her”

On line 40, insert a period after “agency”

On line 40, what are “recommendation statements”? Is this a reference back to “statement of recommendation” on Page 1, line 36 and Page 2, line 38? And is it different from “recommendation reports” on line 32?

On line 41, who will submit this?

In (d), how will the Secretary make the determination?

In (e), line 48, define “competent”

Also on line 48, “at least” is generally not a term used in rule, as rules set the minimum requirements. Do you need to retain it here?

On line 49, why is “Registered” capitalized?

What is the point of the final sentence in (e)?

Assuming you need it, what is the “annual status and management report” and what is in it? Who creates it? How can the public access it?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 12H .0203 is readopted with changes as published in 31:03 NCR 142-143 as follows:

2
3 **15A NCAC 12H .0203 REGISTRATION PROCESS**

4 (a) Nomination.

5 (1) Nominations for the Registry of Natural Heritage Areas may be made by the Natural Heritage
6 Program staff, by other public agencies, by members of the Natural Heritage areas Advisory
7 Committee, or ~~and~~ by any other resident or property owner of the State. Nominations shall be
8 ~~submitted~~ submitted, in writing, to the North Carolina Natural Heritage ~~Program.~~ Program, 1651
9 Mail Service Center, Raleigh, North Carolina 27699.

10 (2) ~~The Natural Heritage Areas Nomination Form or equivalent information shall be submitted in order~~
11 ~~to provide the Natural Heritage Program with general information on location, owner or~~
12 ~~administering agency, current use, and natural significance of proposed areas.~~ The Natural Heritage
13 Program staff ~~shall, if necessary,~~ shall conduct an on-site evaluation of a nominated area in order to
14 gather ~~additional information on which~~ to determine that the area meets eligibility criteria. ~~The~~
15 ~~nomination form can be obtained at the address of the Natural Heritage Program.~~

16 (3) After reviewing sufficient information on a nominated area, the Natural Heritage Program staff shall
17 determine if an area qualifies for the registry and shall document its findings in an evaluation report
18 with recommendations for action. ~~For each nominated site worthy of registration worthy for~~
19 ~~registration, the Natural Heritage Program staff coordinator shall prepare a statement of significance~~
20 ~~and shall sign a statement of recommendation that the area is found eligible for the Registry of~~
21 ~~Natural Heritage Areas. The Natural Heritage Program staff coordinator, in cases when a site is~~
22 ~~found not to meet eligibility criteria, shall prepare a negative report explaining the decision. The~~
23 ~~Natural Heritage Advisory Committee shall review both positive and negative recommendations.~~

24 (4) Nominations initiated by the public or other agencies shall be accepted or rejected (with a full an
25 explanation ~~accorded upon~~ of a rejection) by the Department within one year ~~six months~~ of receipt.
26 The nominator may request ~~petition~~ for consideration again if significant ~~significant~~ new information is
27 forwarded to the Natural Heritage Program.

28 (b) Notification of Landowner or Administrator. Once an area is nominated and is ~~appears potentially eligible for~~
29 recommended for registration, the Natural Heritage Program staff shall notify the owner or administering agency.
30 ~~This notification may not be necessary at this point if the owner nominated or knew about the nomination of the~~
31 ~~property.~~The owner may request that the property be or not be considered further for registration.

32 (c) Review Process. All nominations and recommendation ~~statements~~ reports shall be submitted by the Natural
33 Heritage Program to the Natural Heritage Advisory Committee ("Committee"). ~~for its review and approval. The~~
34 ~~Natural Heritage Advisory Committee shall receive and review nominations at its regularly scheduled meetings. Upon~~
35 approval of the nomination by the Committee, the chairman or acting chairman ~~of the advisory committee, upon~~
36 committee approval of the nomination, shall sign the statement of recommendation and before approval ~~submit it for~~
37 review by the Division Director. ~~of the Division of Parks and Recreation and submission. If the Division Director~~

38 approves the statement of recommendation, it shall be submitted to the Secretary or his designee. The Secretary or
39 his designee shall solicit review and comment upon comments about the nomination from the landowner or managing
40 agency all appropriate agencies. Recommendation statements statements, comments, and a report of the owner's
41 willingness to accept registration shall then be forwarded submitted to the Secretary. for final decision on eligibility.
42 (d) Designation. Upon receipt of the recommendations from the Natural Heritage Program and Natural Heritage
43 Advisory Committee and reviews by appropriate divisions and agencies, The Secretary shall decide whether the
44 nominated area is eligible for listing in the Registry of Natural Heritage Areas. The registration of a site shall be the
45 voluntary decision of the landowner or administering agency, pursuant to G.S. 143B-135.258. the Secretary shall have
46 the option of approving or not approving an area as eligible for the registry. The registration of a site is ultimately the
47 voluntary decision of the landowner or administering agency.
48 (e) The owner or a competent volunteer shall annually report to the Natural Heritage Program Director at least once
49 a year on the condition of the Registered area. The Natural Heritage Program shall maintain a file that contains an
50 annual status and management report of each Registered area.

51

52 *History Note: Authority G.S. 143B-135.256; 143B-135.258;*
53 *Eff. April 4, 1979;*
54 *Amended Eff. January 1, 1986; October 1, 1984; August 30, 1980;*
55 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0204

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

When you resubmit the Submission for Permanent Rule Form, please note in Box 3 that this a repeal, not a readoption.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0204 is repealed as published in 31:03 NCR 143 as follows:

2

3 **15A NCAC 12H .0204 REGISTRATION**

4 ~~(a) A natural area shall become officially registered when a voluntary agreement to protect the site for its specified~~
5 ~~natural values has been signed by the owner and the Secretary, according to requirements of this Rule. The owner~~
6 ~~shall be given a certificate signifying the inclusion of the area on the registry.~~

7 ~~(b) After the Secretary approves an area as eligible for registration, the Natural Heritage Program shall offer the owner~~
8 ~~or administering agency the opportunity of placing the designated part of the property on the registry in return for~~
9 ~~signing a non-binding agreement (promise of intent) to manage the site for the protection of the significant natural~~
10 ~~elements. Natural Heritage Area Registry status for an area shall become effective upon the signing of the letter of~~
11 ~~agreement by the Secretary and the landowner or administering agency.~~

12 ~~(c) In cases when an area recommended to the registry is administered by the Department, the Secretary shall have~~
13 ~~the decision of registering or not registering the area, upon receiving the recommendation of the management agency.~~
14 ~~In cases when another public agency other than the Department is the administrator or owner of an area which is~~
15 ~~recommended to the registry, the registration will become effective upon the signing of the agreement by the Secretary~~
16 ~~and the responsible executive of the administering agency.~~

17 ~~(d) Upon signing of the agreement, the Department shall present the owner or administering agency with a certificate~~
18 ~~which indicates the area is a registered natural heritage area. The owner or a competent volunteer shall be requested~~
19 ~~to report to the Natural Heritage Program at least once a year on the condition of the area. The Natural Heritage~~
20 ~~Program shall maintain a file on each registered area that contains complete documentation, annual status report, and~~
21 ~~management reports.~~

22 ~~(e) The owner must be advised that it is his option to publicize the registration.~~

23

24 *History Note: Authority G.S. 113-3; 113-8; 113A-164.4; 113A-164.5;*

25 *Eff. April 4, 1979;*

26 *Amended Eff. January 1, 1986;*

27 *Repealed Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0205

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

This Rule addresses rescission by the Secretary. Is there a different process for the owner to revoke? Is that addressed in another Rule?

In (a), line 11, I suggest stating "... submit a written request..."

On line 12, why is "Registration" capitalized?

On lines 13 and 14, what do you mean by "changes that have occurred since the area was registered"? Do you mean to the area? Or are you asking the individual to state the reason for the request, as set forth on line 14?

On line 14, underline "registered"

Also on line 14, I recommend replacing "for" with "in"

On line 15, I believe you mean "Rule" instead of "Section" and I suggest replacing "must" with "shall"

On line 17, when will the Secretary take this action or not take the action? The Rule needs to establish guidance or reference statutory guidance for the decision.

In (b), line 20, I take it you mean return it to the agency?

I recommend making the language beginning on line 20 "Any person..." a new Paragraph.

The reference on line 23 is incorrect, as that refers to your rulemaking hearings, not contested cases. Please insert a correct rule or statutory reference (such as 150B-23).

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0205 is readopted with changes as published in 31:03 NCR 143-144 as follows:

2

3 **15A NCAC 12H .0205 RESCISSION**

4 ~~(a) The registration agreement may be terminated at any time upon notification by either party. Such termination shall~~
5 ~~remove the area from the Registry.~~

6 ~~(b) The Secretary may rescind recognition if the owner fails to carry out the promised protection practices. The written~~
7 ~~agreement between the landowner and the Department shall request 30 days notification by either party before the~~
8 ~~agreement is terminated. The secretary has the authority to rescind registry status for any area on department~~
9 ~~administered property. Such action should occur only after it has been clearly shown that there is a higher, better and~~
10 ~~more important use for an area. Rescission shall not affect existing statutory protection for an area.~~

11 ~~(c)(a) Any person one may petition submit, in writing, a request to the Department to remove an area from the Registry~~
12 ~~if he or she believes the site no longer deserves recognition meets the criteria for Registration as set forth in Rule .0202~~
13 ~~of this Section. The petition request for removal must shall explain the changes that have occurred since the area was~~
14 ~~registered. registered and why the area no longer meets the criteria for Rule .0202 of this Section. All requests made~~
15 ~~under this Section must be submitted to the North Carolina Natural Heritage Program, 1651 Mail Service Center,~~
16 ~~Raleigh, North Carolina 27699. After considering the petition request, the Secretary, upon recommendation of the~~
17 ~~Natural Heritage Program staff and Natural Heritage Advisory Committee, may order removal by signing a rescission~~
18 ~~order from the Registry.~~

19 ~~(d)(b) Rescission shall remove the area from the Registry of Natural Heritage Areas, and the owner or administering~~
20 ~~agency shall be requested to return the certificate signifying the area's inclusion on the Registry. Any person Anyone~~
21 ~~who is a person aggrieved by any of the steps in the process described in this Rule may seek an administrative hearing~~
22 ~~as set forth provided by the Departmental administrative hearing rules as located in 15A NCAC 1B .0200. 07 NCAC~~
23 ~~01B .0106.~~

24

25 *History Note: Authority G.S. 143B-135.256; 143B-135.258;*
26 *Eff. April 4, 1979;*
27 *Amended Eff. August 1, 1988; January 1, 1986; October 1, 1984;*
28 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0206

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, I recommend either replacing "Registered" with "the registered" or "that"

Why do you need the sentence on line 5 and 6?

If you need it, why is "Registered" capitalized on line 5?

On line 7, what do you mean by "publicity"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0206 is readopted with changes as published in 31:03 NCR 144 as follows:

2

3 **15A NCAC 12H .0206 PUBLIC ACCESS**

4 Registration of a natural area ~~shall not~~ ~~does not provide or require rights~~ create a right of public access to a Registered
5 area. Any person visiting a Registered area ~~Visitors must~~ shall first obtain the permission of the ~~landowner~~ owner or
6 managing agency before entering the property. The landowner or managing agency retains the option to restrict
7 publicity and access to the property.

8

9 *History Note: Authority G.S. 143B-135.256;*

10 *Eff. April 4, 1979;*

11 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0207

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

What is the purpose of this Rule? What guidance does this establish? It seems to set forth purpose statements addressed by G.S. 143B-135.252. It says what "should be encouraged" (and therefore, is not rule language, but aspirational language).

Strike lines 4 through 6. Begin a sentence "Each area shall require..."

Strike the sentence on lines 7 through 8.

On lines 8 through 9, from what I can tell, the Rule is trying to state that someone (but it does not state who) is required to develop site-specific land practices. Who is required to do this?

Once the Department creates the sign on line 9, how is it delivered? What is on the sign?

In (b), what is the use of the advice? And how does one request it?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0207 is readopted with changes as published in 31:03 NCR 144 as follows:

2

3 **15A NCAC 12H .0207 MANAGEMENT OF REGISTERED NATURAL AREAS**

4 (a) The guiding standards for managing and using registered Natural Heritage Areas are to protect their natural values
5 and to maintain the areas in as nearly a natural condition as possible. Because each area is likely to be dissimilar to
6 from all others in the natural elements present and in certain other respects, each area will require ~~different~~ site-specific
7 management practices. Public agencies, especially the Department, administering registered natural areas should be
8 encouraged to develop management plans for the sites. Management of an area shall be in a manner intended to protect
9 or enhance its natural value. The Department shall design a boundary sign for registered natural areas for the optional
10 use by the owner or administering agency.

11 (b) Any owner of a registered Natural Heritage Area may request land management advice from the Department.

12

13 *History Note: Authority G.S. 143B-135.256; 143B-135.258;*

14 *Eff. April 4, 1979;*

15 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0208

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please restart line numbers on each page at "1" [See Rule 26 NCAC 02C .0108(1)(f)]

In (a), line 7, delete "of action"

Also on line 7, what do you mean by "other"? Do you even need it?

In (a)(1), line 9, why is "Natural" before "areas" capitalized?

On lines 10 and 11, I suggest replacing "on" with "upon"

On line 11, what are "exceptional" "unique" and "exemplary"? Does your regulated public know?

On line 12, what are "management" "integrity" and "viability"? Again, does your regulated public know?

On line 14, what are "advisory opinions"? Rule .0203 refers to "recommendation reports" and "recommendation statements"

In (a)(2), line 17, how will the Secretary make the determination?

In (a)(3), line 19, state "his or her"

On line 21, I believe it is now the "State Property Office"

In (a)(4), line 22, state "his or her"

On line 26, replace the semicolon after "Section" with a comma.

On lines 27 through 28, to what Section are you referring to? This Section? If so, what rules are you referring to?

In (a)(5), line 35, who shall provide this?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

In (a)(6), Page 2, line 39, who shall consult and who shall make the request?

In the History Note, why are you citing to G.S. 143B -135.264? That statute applies to dedication, not registration. The rules in Section .0200 apply only to registration.

Please note, if this Rule is intended to also apply to dedication of state lands, then you are missing statutory requirements for approval by the Governor and Council of state.

I also note that the other History Notes in this Section reference G.S. 143B-135.256, but this one does not. Is there a reason for the exclusion here?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0208 is readopted with changes as published in 31:03 NCR 144-145 as follows:

2
3 **15A NCAC 12H .0208 DESIGNATION OF NATURAL AREAS ON STATE LANDS**

4 ~~(a) This Rule establishes procedures for designating Natural Heritage Areas on state lands that are administered by~~
5 ~~agencies other than the Department of Natural Resources and Community Development. Procedures for designating~~
6 ~~such areas on department administered lands are set forth in this Section.~~

7 ~~(b)(a) Sequence.~~ The sequence of action for designating and protecting other State-owned Natural Heritage Areas is
8 as follows:

9 (1) The Natural Heritage Program shall evaluate Natural areas on State lands and determine their
10 qualifications as Natural Heritage ~~Areas,~~ Areas based on consideration of the presence of
11 exceptional, unique, endangered, or exemplary ecological and geomorphic resources, and based on
12 the importance of a candidate site to the management, integrity, and viability of adjacent Natural
13 Heritage Areas. Natural Heritage Program staff ~~will~~ shall consult with the Department's Natural
14 Heritage Advisory Committee for advisory opinions on the qualifications of ~~sites,~~ sites pursuant to
15 ~~according to procedures set forth in Rule .0204-.0203~~ of this Section.

16 (2) Staff shall notify the Secretary when a State-owned site appears to qualify for recognition as a
17 ~~significant natural~~ Natural Heritage Area. The Secretary ~~shall~~ will determine whether to recommend
18 the site as a Natural Heritage Area.

19 (3) If the Secretary decides to recommend a site as a Natural Heritage Area, the Secretary or his designee
20 shall ~~so~~ notify the head of the principal state agency that administers the recommended site and the
21 Director of the Office of State Property in the Department of Administration.

22 (4) The ~~secretary,~~ Secretary, or his designee, may request that the agency administering the
23 recommended site:

24 (A) enter into agreement to designate the site as a Natural Heritage Area, and manage the site
25 ~~in a manner consistent with the maintenance and protection of significant natural resources;~~
26 as required in Rule .0207 of this Section; and arrange for the entry of the site on the
27 Department's Registry of Natural Heritage Areas pursuant to procedures set forth in the
28 Section;

29 (B) enter into a cooperative management agreement whereby the Department assists in
30 coordinated management of the site; or

31 (C) transfer responsibility for management of the site to the Department of ~~Environment and~~
32 ~~Natural and Cultural Resources and Community Development.~~ Resources.

33 (5) If an agreement is reached between the Department and the agency that administers the site in
34 accordance with ~~to actions~~ Subparagraphs (4)(A) and (4)(B) ~~is reached,~~ of this Rule, the Department
35 of Administration shall be informed and provided with a copy of the agreement documents for its
36 approval or disapproval.

37 (6) If an agreement is reached between the Department and the agency that administers the site in
38 accordance with ~~to action~~ Subparagraph (4)(C) ~~is reached~~ of this Rule, the Department of
39 Administration shall be consulted and requested to arrange for transfer of management
40 responsibility.

41 ~~(7) If no agreement can be reached between this Department and the agency that administers the site, the~~
42 ~~secretary may ask the Department of Administration to review the site's qualifications as a Natural Heritage Area and~~
43 ~~to evaluate ways to use and manage the site that will promote and protect the natural heritage resources. The secretary~~
44 ~~may also request the Department of Administration to allocate or reallocate land or certain interests in land to the~~
45 ~~Department of Natural Resources and Community Development for use and management. A request to allocate or~~
46 ~~reallocate land will be made under the rules at 1 NCAC 6A .0400, et. seq.~~

47
48 *History Note: Authority G.S. 143B-135.258; 143B-135.264;*
49 *Eff. March 1, 1983;*
50 *Amended Eff. October 1, 1984;*
51 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0301

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 4, why is "Nature" capitalized?

On lines 4 and 5, put "outstanding natural areas" in quotation marks, given that this is a designation. And is this term being used to be consistent with G.S. 143B-135.260(a)?

On lines 7 and 8, why are you requiring the Governor and Council of State to approve the dedication? G.S. 143B-135.260(c) speaks to that involvement for amendments to the articles of dedication. Is the intent to conform with G.S. 143B-135.260(b)? Or is this to comply with G.S. 146-26?

On lines 8 and 11, I believe the agency is now the "State Property Office"

On line 8, what do you mean by "may recommend"? Do you intend for this Rule to follow a sequence where, once the Secretary makes the recommendation, this is what will occur?

On line 11, why are you changing "counties" to "county" since the statute says it can span multiple counties?

What is the use of Paragraph (b)? What does this accomplish?

In the History Note, there is no statute G.S. 143-135.270? Did you intend to cite to G.S. 143B-135.270? If so, why?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0301 is readopted with changes as published in 31:03 NCR 145 as follows:

2

3 **15A NCAC 12H .0301 OBJECTIVES OF DEDICATION**

4 (a) The State may accept the dedication of Nature preserves on lands deemed by the Secretary to qualify as outstanding
5 natural areas, based on the criteria of eligibility as set forth in Rule .0202 of this Subchapter. ~~The owner of a qualified~~
6 ~~natural area may dedicate a nature preserve by transferring fee simple title or other interest, estate, or right in his land,~~
7 ~~or portion thereof, to the State. Dedicated nature preserves may be acquired by gift, grant, or purchase.~~ The Secretary
8 may recommend to the Governor and Council of State, through the Director of the Office of State Property in the
9 Department of Administration, that an area be dedicated as a nature preserve. Dedication of a preserve becomes
10 effective only upon acceptance of articles of dedication by the Governor and Council of State. Articles of dedication
11 shall be recorded in the ~~county(ies)~~ county in which the nature preserve is located, in the Office of State Property, and
12 in the office of the Natural Heritage Program.

13 (b) ~~Preserves,~~ Nature preserves created by dedication are declared to be at their highest and best use for public benefit
14 if they by serving serve one or more of the ~~following public purposes:~~ purposes described in G.S. 143B-135.252.

15 (1) ~~Contribute to the growth and development of public understanding of and empathy for natural~~
16 ~~systems, and the consequent development of public understanding for the interdependence of all~~
17 ~~forms of life and vital dependence of the health of the human community on the health of other~~
18 ~~natural communities.~~

19 (2) ~~Provide sites for scientific research and examples for scientific comparison with more disturbed~~
20 ~~sites.~~

21 (3) ~~Provide sites for educational activities and places where people may observe Natural biotic~~
22 ~~resources and environmental systems.~~

23 (4) ~~Provide habitat for the survival of rare plants or animals or natural communities or other significant~~
24 ~~biological features.~~

25 (5) ~~Provide opportunities for contemplation or outdoor recreation compatible with the protection of the~~
26 ~~natural area.~~

27 (6) ~~Provide places for the preservation of natural beauty.~~

28

29 *History Note: Authority G.S. 143B-135.252; 143B-135.256; 143B-135.260; 143-135.270;*

30 *Eff. August 30, 1980;*

31 *Amended Eff. January 1, 1986; October 1, 1984;*

32 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0302

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 9, what recommendations are these? Rule .0203 refers to "recommendation reports" and "statement of recognition"

On line 10, underline "determine whether the" since that is new language.

So that I'm clear – the Secretary is going to determine whether the area qualifies under Rule .0202 and determine whether the owner is agreeing to do this? Staff would not have already determined the agreement of the owner?

On lines 11 and 12, what is a "natural area worthy of protection"? Do you mean "outstanding natural area"?

On line 12, why is "Nature" capitalized?

On line 13, why is "Nature" capitalized and please insert the next word. Did you mean to have "preserve." there?

In (b), line 16, why is "Natural" capitalized?

Throughout (b)(1) through (3), please either state "Articles of Dedication" or "articles of dedication" (See lines 17, 18, 23, 24 and 26.)

In (b)(1), line 17, why not strike "a person or other" and just state "the owner"? That would be consistent with line 18.

What is your authority to require the language on lines 18-21? Are you relying upon a specific statute in G.S. 146? Or is this G.S. 143B-135.256(1)?

Assuming you have authority, strike "the Nature Preserves Act" on lines 20-21 and delete the "or" at the end of line 21.

In (b)(2), what is your authority to require the language on lines 23-25?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 27, 2016

In (b)(3), line 28, the agency is now the “State Property Office”

On line 29, why is “Nature” capitalized?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0302 is readopted with changes as published in 31:03 NCR 145-146 as follows:

2

3 **15A NCAC 12H .0302 DEDICATION PROCESS**

4 ~~(a) Each area proposed for dedication as a Nature preserve shall be examined and reported on in writing to the~~
5 ~~Secretary by the Natural Heritage Program or other person or persons designated by the Secretary.~~

6 ~~(b) The report on the proposed area shall include information on its location, legal description, ownership, provision~~
7 ~~for custody and management, general character, natural types, environmental significance, degree of past disturbance,~~
8 ~~relation to adjoining lands, potential as a nature preserve, and interest of the owner in dedication.~~

9 ~~(c)(a) Upon receipt of the report and recommendation from the Natural Heritage Program and recommendation from~~
10 ~~the Natural Heritage Advisory Committee, the Secretary shall make a determination that the determine whether the~~
11 ~~proposed area qualifies under criteria set forth under in Rule .0202 of this Subchapter and constitutes a natural area~~
12 ~~worthy of protection through dedication as a Nature preserve, and if the whether the owner is willing to have the land~~
13 ~~or a portion thereof dedicated as a Nature preserve, preserve. through the Office of State Property to the Governor and~~
14 ~~Council of State.~~

15 ~~(d)(b) A natural area shall become a nature preserve upon acceptance of articles of dedication by the Governor and~~
16 ~~Council of State. Nature preserves are created when Natural areas are dedicated by:~~

17 (1) a person or other owner who transfers to the State the title or other interest in the land with Articles
18 of dedication agreed to by the owner and the State. The Articles of dedication shall include a
19 statement of the public purposes served by the dedication and declare that the State shall hold such
20 title or interests in trust for the public as a dedicated preserve under terms and authority of the Nature
21 Preserves Act, G.S. ~~413A-164.7.~~ 143B-135.262; or

22 (2) any local unit of government that transfers fee simple title or other interest in land to the State
23 through Articles of dedication agreed to by the local government agency and the State. The Articles
24 of dedication shall include a statement of the public purposes served by the dedication and name the
25 State as trustee for the ~~dedication.~~ dedication; or

26 (3) the State itself for State-owned lands through Articles of dedication, and declaring the State as
27 trustee for the dedication, subject to allocation pursuant to the provisions of G.S. 143-341(4)g. The
28 Secretary and Director of the Office of State Property shall make recommendations to the Governor
29 and Council of State for dedicating State-owned lands as Nature preserves.

30

31 *History Note: Authority G.S. 143B-135.256; 143B-135.260; 143B-135.262; 143B-135.264; 143B-135.266; 143B-*
32 *135.268;*

33 *Eff. August 30, 1980;*

34 *Amended Eff. August 1, 1988; January 1, 1986;*

35 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0303

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please restart line numbers on each page at "1" [See Rule 26 NCAC 02C .0108(1)(f)]

In (a), line 4, insert a colon after "include"

You begin (a)(1) with a capital letter; however, you begin (a)(2), (3), and (4) with lowercase letters. Please be consistent.

Throughout this Rule, please state either "articles of dedication" or "Articles of Dedication"

It appears that (a)(1) through (4) is a list. I suggest ending the sentences with semicolons, not periods, and inserting an "and" at the end of (a)(3).

What is your authority for (a)(1)? Are you relying upon G.S. 143B-256(1) or provisions of G.S. 146?

If you are requiring (a) in every Article of Dedication, why are you expressly stating it is required in Rule .0302(b)(1) and (2), but not (3)?

Further, why is the wording slightly different here than it is in Rule .0302 of the Section?

If you wish to retain the language here, I suggest you delete it from Rule .0302.

In (a)(1), line 5, delete "indicating" and state "a statement of the public..."

On line 6, why is "Nature" capitalized?

On line 8, define "adequately"

In (a)(1)(A), line 9, what are "qualifying values"?

I take it that (a)(1)(A) addresses the "varying provisions from one nature preserve to another in accordance with differences in the characteristics and conditions" in G.S. 143B-135.260(b)(4)?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: October 27, 2016

Is (a)(1)(B) necessary? Doesn't (a)(1) address this? If it is needed, shouldn't it be simplified to state "the public purposes set forth in the statement"?

In (a)(2), line 17, why is "Nature" capitalized?

Also on line 17, replace "regulations" with "rules"

In the History Note on Page 2, please replace the commas with semicolons.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0303 is readopted with changes as published in 31:03 NCR 146 as follows:

2
3 **15A NCAC 12H .0303 ARTICLES OF DEDICATION**

4 (a) Articles of dedication shall include ~~be developed and accepted as follows:~~

5 (1) A statement indicating the public purposes served by the dedication and declaring that the State
6 shall hold such title or interest to the area in trust for the public as a dedicated Nature preserve under
7 the terms and authority set forth in G.S. 143B-135.262; and describe the ~~Articles of dedication must~~
8 ~~consist of such rights and restrictions as:~~ as will adequately protect:

9 (A) ~~will adequately protect~~ the qualifying ~~natural features~~ values of the dedicated area
10 consistent with the criteria set forth in ~~of the land under~~ Rule .0202 of this Subchapter; and

11 (B) ~~will provide and protect~~ the public purposes described in the Articles of dedication ~~and~~
12 ~~complying with as set forth~~ in Rule .0301(b) of this Section.

13 ~~(2) — Articles of dedication shall contain provisions relating to the management, use, development,~~
14 ~~transfer, and public access, and may contain any other restrictions and provisions as may be necessary or~~
15 ~~advisable to protect the public purposes described in the articles.~~

16 ~~(3)(2) Articles of dedication shall specify~~ the primary custodian who will be responsible for managing the
17 Nature preserve in accordance with the Articles of dedication and these regulations.

18 ~~(4) — Articles of dedication may define, consistently with the public purposes of the dedication, the~~
19 ~~respective rights and duties of the owner and of the State, and provide procedures to be followed in~~
20 ~~case of violations of the restrictions.~~

21 ~~(5) — Articles of dedication may recognize and create reversionary rights, transfers upon conditions or~~
22 ~~with limitations, and gifts over, as provided by G.S. 113A-164.6(b)(3) and (e).~~

23 ~~(6) — Articles of dedication shall be filed by the State with the county register(s) of deeds in the~~
24 ~~county(ies) where the land lies and shall become and remain part of the deed until and unless~~
25 ~~extinguished by the State under provisions in G.S. 113A-164.6(e).~~

26 ~~(7) — Articles of dedication may be acquired by purchase, gift, or grant, or may be established by the State~~
27 ~~on lands or interests in lands that it holds, however acquired.~~

28 ~~(8) — Articles of dedication may not be accepted and recorded without express approval of the Governor~~
29 ~~and Council of State.~~

30 ~~(9)(3) Articles of dedication shall include~~ the right of the State or its agents to enter the dedicated lands at
31 reasonable times to inspect its condition and to enforce the Articles of dedication ~~dedication.~~ as
32 needed. This right of inspection shall not in and of itself ~~constitute~~ create an automatic right of
33 public access.

34 ~~(10) — Articles of dedication may provide public access. Such access is preferred where it will not interfere~~
35 ~~with the qualities of the natural area or subvert the value of the public purposes served by dedication.~~

36 ~~(11) Articles of dedication may vary in provisions from one nature preserve to another in accordance~~
37 ~~with differences in the characteristics and conditions of the area involved, or for other reasons found~~
38 ~~necessary by the State and the landowner, grantor, deviser, or donor.~~

39 (4) any other provision necessary to carry out the purpose of this Subchapter.

40 (b) Articles of dedication on land remaining in private ownership shall contain a provision notifying the State before
41 any sale or transfer by deed or lease of the land or other interests therein. The State ~~will~~ shall not regulate or prohibit
42 such sale or transfer, but shall ensure that the grantee or lessee is familiar with the Articles of dedication. ~~and~~
43 ~~understands their meaning and that they are binding on him.~~ The Articles of dedication shall contain a provision
44 indicating that any transfer of any interest in the dedicated Nature preserve shall be subject to the conditions set forth
45 in the Articles of dedication. ~~The county register(s) of deeds should notify the State whenever dedicated lands are~~
46 ~~transferred by will or as part of an estate. Local government agencies holding dedicated lands shall notify the State at~~
47 ~~least 30 days before sale or transfer of the lands or interests therein, and such sale or transfer shall not subvert the~~
48 ~~purposes of G.S. 113A-164. Sale or transfer of dedicated preserves in State ownership shall not subvert the purposes~~
49 ~~of G.S. 113A-164.7.~~

50

51 *History Note:* *Authority G.S. 143B-135.260, 143B-135.262, 143B-135.264; 143B-135.266; 143B-135.268;*

52 *Eff. January 1, 1986;*

53 *Amended Eff. August 1, 1988;*

54 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0304

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, why is "Nature" capitalized in "Nature preserves"? (See lines 4, 5, and 10)

On line 5, since it "may" happen, when will this dedication take place? When the buffer is also offered for dedication?

On line 6, delete "should" and replace it with "shall" or "must"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0304 is readopted with changes as published in 31:03 NCR 146-147 as follows:

2

3 **15A NCAC 12H .0304 BUFFER AREAS**

4 (a) For the purpose of protecting a Nature preserve, adjoining land that is not otherwise suitable for dedication as a
5 Nature preserve may be dedicated as a buffer area in the same manner as a Nature preserve under this Section. A
6 buffer area, where possible, should help protect the site against adverse effects from use and development of adjacent
7 land. The buffer area may be included in the designated area but need not itself possess eligibility criteria.

8 ~~(b) The articles of dedication may contain provisions for the management, use, development, and public access of the~~
9 ~~buffer area that differ from those for the adjacent nature preserve.~~ Provisions in the Articles of dedication for the
10 management, use, development, and public access of the buffer area may differ from those used for the adjacent Nature
11 preserve.

12

13 *History Note: Authority G.S. 143B-135.256; 143B-135.260;*

14 *Eff. January 1, 1986;*

15 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0305

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

In (a), line 7, state "his or her"

How is the notice required to be brought to the Secretary?

On line 9, define "ongoing"

Also on line 9, I suggest replacing "Subsequent" with "After"

On line 10, how is the response to the notifying party sent?

Also on line 10, delete or define "appropriate"

On line 14, complete the strikethrough of (3). Since it was published as struck through, you don't need to show it as a change; simply do it.

On line 15, define "reasonable" and tell how these are accessed. If online, give the url. If it's in an office, give the physical address.

On line 15, do you mean "actual cost" to comply with G.S. 132-6.2?

Also on line 15, I suggest replacing "will" with "shall" or "will be" with "are"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0305 is readopted with changes as published in 31:03 NCR 147 as follows:

2

3 **15A NCAC 12H .0305 PUBLIC TRUST**

4 ~~The State holds dedicated lands in trust on behalf of the people of North Carolina.~~

5 (1) ~~The State shall have authority to promulgate such rules, regulations, and policies as are necessary~~
6 ~~to ensure its ability to protect the public purposes served by dedicated preserves.~~

7 ~~(2)(a)~~ Members of the public may bring notice to the Secretary or his agents of suspected violations of terms of
8 dedications. The Natural Heritage Program shall ~~will respond promptly to~~ investigate notices of violations and shall
9 maintain ongoing monitoring of all dedicated preserves. Subsequent to investigation of a notice of violation, the
10 Natural Heritage Program shall respond to the notifying party and recommend appropriate action to the Secretary.
11 ~~The Attorney General may, on his initiative or at the request of the Secretary, Governor, or Council of State, initiate~~
12 ~~actions in equity which may include requests for punitive damages and/or for injunctive relief against violators of the~~
13 ~~articles of dedication on any land so dedicated.~~

14 ~~(3)(b)~~ The Natural Heritage Program shall maintain administrative records for dedicated areas. These shall be
15 available for public review at reasonable times, and copies will be available at cost.

16 ~~(4)(c)~~ The State may enter into contracts and agreements with other agencies and persons to manage ~~and/or~~ and
17 monitor dedicated preserves, but the State ~~may~~ shall not abdicate its trusteeship for dedicated lands through
18 such contracts or agreements.

19

20 *History Note: Authority G.S. 143B-135.256; 143B-135.262;*

21 *Eff. January 1, 1986;*

22 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0306

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, please state either "Articles of Declaration" or "articles of declaration"

In (a), line 8, why are you striking "county(ies)"? The statute allows the dedication to span counties.

On line 9, replace "such" with "the"

Also on line 9, continue the strikethrough of "newspaper(s)" Since it was published correctly, you do not need to show it as a change; simply do it.

And what if the preserve is in more than one county? How will the notice work?

On line 11, please underline "jurisdiction" as that is new language.

In (b), please make it clear that this amendment of the Articles is for disposition or use, because that is the only type of determination that can be inconsistent with the law under G.S. 143B-135.262. Or, practically speaking, are these the only types of amendment that will occur?

In (b)(1), is this intended to serve as the determination is in the best interest of the State, as required by G.S. 143B-135.262?

In (c), line 23, I note that you retained "newspaper(s)" there (unlike on line 9).

Also on line 23, this is not the correct way to change "county(ies)" to "county" Please correctly make the change in accordance with Rule 26 NCAC 02C .0405(b)(2).

On line 24, please state "amended articles of dedication"

Add G.S. 143B-135.262 to the History Note.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0306 is readopted with changes as published in 31:03 NCR 147 as follows:

2

3 **15A NCAC 12H .0306 AMENDMENTS**

4 (a) ~~Articles of dedication may be amended by the State, subject to the approval of the Governor and Council of State~~
5 ~~and with the written concurrence of the owner (if not the State), upon finding that such amendment will not permit an~~
6 ~~impairment, disturbance, use, or development of the area inconsistent with the purposes of G.S. 113A 164.7.~~

7 Amendments that remove some portion of the existing Articles of dedication shall not ~~may~~ be approved until only
8 after a public hearing in the ~~county(ies)~~ county where the dedicated preserve lies. The State shall provide not less than
9 30 days ~~30 day~~ notice of such hearing in the ~~newspaper(s)~~ newspaper of largest circulation in the county where the
10 land lies. The State shall provide not less than 30 days ~~30 day~~ notice to the chief county ~~and/or~~ and municipal
11 administrative officials in the ~~jurisdiction(s)~~ jurisdiction where the land lies.

12 (b) ~~Where purposes of G.S. 113A 164.7 or the purposes of the original dedication will be violated by a proposed~~
13 ~~amendment, the Governor and Council of State must find that the amendment serves a clear and unavoidable public~~
14 ~~necessity and no prudent alternative exists, and but only then only after a public hearing with notice provided in Rule~~
15 ~~.0306(a) of this Section and then only with the concurrence of the Governor and Council of State. Notwithstanding~~
16 ~~the provisions of Paragraph (a) of this Rule, Articles of dedication may be amended even if the purposes of G.S. 143B-~~
17 ~~135.262 or the original dedication will be violated under the following circumstances:~~

- 18 (1) the Governor and Council of State find that an amendment serves a clear and unavoidable public
19 necessity and no prudent alternative exists;
20 (2) after a public hearing with notice provided in Paragraph (a) of this Rule; and
21 (3) with the concurrence of the Governor and Council of State.

22 (c) After the public hearing and finding by the Governor and Council of State, the State shall publish a statement of
23 its findings in the newspaper(s) of largest circulation in the county(~~ies~~) where the land lies at least 30 days before the
24 amended dedication ~~amendment~~ is final.

25

26 *History Note: Authority G.S. 143-135.256; 143B-135.260; 143B-135.268;*

27 *Eff. January 1, 1986;*

28 *Amended Eff. August 1, 1988;*

29 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0307

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

So that I'm clear – once the Articles of Dedication are ended through amendment, what will happen to the property? Is it returned to the owner or heirs?

Throughout this Rule, please state either "Articles of Declaration" or "articles of declaration"

In (a)(1), line 9, define "irretrievably"

In (a)(2), who will determine this? The Secretary or the Governor and Council of State?

In (a)(4), replace "concurrence" with "approval" since that is required by G.S. 143B-135.260(c).

In (b), the language on line 16 through 18 contradicts (a), lines 7-8. What are you trying to say here?

In (b)(1), how will the State (and is it Secretary) determine this?

Also in (b)(1), line 19, define "imperative" and "unavoidable"

On line 20, define "prudent"

In (c), line 23 and 24, this is not the way to properly make "newspaper" and "county" singular. Please correctly make the change in accordance with Rule 26 NCAC 02C .0405(b)(2).

Also in (c), what happens if the preserve is located in more than one county?

In (c), line 24, I take it you need to retain "at least"?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0307 is readopted with changes as published in 31:03 NCR 147-148 as follows:

2

3 **15A NCAC 12H .0307 EXTINGUISHMENT BY THE STATE**

4 ~~(a) Articles of dedication may be extinguished by amendment and the dedication abandoned when the qualifying~~
5 ~~features of the land have been destroyed or irretrievably damaged and the public purposes of the dedication have been~~
6 ~~utterly frustrated and then only after a public hearing with notice provided as described in Rule .0306(a) of this Section~~
7 ~~and only then with the concurrence of the Governor and Council of State. Articles of dedication may be extinguished~~
8 ~~by amendment and the dedication abandoned only under the following circumstances:~~

9 ~~(1) the qualifying features of the land have been destroyed or irretrievably damaged;~~

10 ~~(2) the public purposes of the dedication have been frustrated;~~

11 ~~(3) after a public hearing with notice provided as described in Rule .0306(a) of this Section; and~~

12 ~~(4) with the concurrence of the Governor and Council of State.~~

13 ~~(b) Where articles of dedication are proposed to be extinguished for other reasons, the State must find that the~~
14 ~~extinguishment and abandonment serves an imperative and unavoidable public necessity and that no prudent~~
15 ~~alternative exists, and then only after a public hearing with notice provided as described in Rule .0306(a) and only~~
16 ~~then with the concurrence of the Governor and Council of State. Notwithstanding the provisions of Paragraph (a) of~~
17 ~~this Rule, Articles of dedication may be extinguished by amendment and the dedication abandoned only under the~~
18 ~~following circumstances:~~

19 ~~(1) the State finds that the extinguishment and abandonment serves an imperative and unavoidable~~
20 ~~public necessity and that no prudent alternative exists;~~

21 ~~(2) after a public hearing with notice provided as described in Rule .0306(a) of this Section; and~~

22 ~~(3) with the concurrence of the Governor and Council of State.~~

23 ~~(c) After the public hearing, the State shall publish a statement of its findings in the newspaper(s) of largest circulation~~
24 ~~in the county(ies) where the land lies at least 30 days before the extinguishment is final.~~

25

26 *History Note: Authority G.S. 143B-135.256; 143B-135.260(c);*

27 *Eff. January 1, 1986;*

28 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0308

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Throughout this Rule, please state either "Articles of Declaration" or "articles of declaration"

How does this Rule interact with Rule .0307? Are you treating "extinguishment" differently from termination? I understand that (1) and (2) appear to be contemplated by the document itself, but Item (3) requires affirmative action from the State.

In Item (1), line 5, delete "or"

For Item (3), won't approval by the Governor and Council of State be required?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0308 is readopted with changes as published in 31:03 NCR 148 as follows:

2

3 **15A NCAC 12H .0308 MUTUAL TERMINATION**

4 ~~(a)~~ Articles of dedication ~~may terminate~~ shall terminate only under the following circumstances:

5 (1) in accordance with the terms of the Articles of dedication itself; or

6 (2) in accordance with the nature and duration of the underlying legal interest in the property being
7 placed under the Articles of dedication; or

8 (3) upon mutual written consent executed by and between the owner, its successors or assigns, and the
9 State.

10 ~~(b)~~ ~~Articles of dedication may be terminated upon mutual written consent executed by and between the owner, its~~
11 ~~successors or assigns, and the State.~~

12

13 *History Note:* Authority G.S. 143B-135.256; 143B-135.260(c);

14 Eff. January 1, 1986;

15 Readopted Eff. December 1, 2016.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0401

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

I suggest breaking this into a multiple Paragraph rule. Paragraph (a) would be lines 4-5. Paragraph (b) would be lines 5 (beginning "The Secretary") through line 8. Paragraph (c) would be lines 8 (beginning with "The Secretary") and ending on line 10. Paragraph (d) would be lines 10 (beginning with "In the event") through the rest of the Rule.

Throughout this Rule, please state either "Articles of Declaration" or "articles of declaration"

On line 4, why is "Nature" capitalized?

On line 6 and 8, state "his or her"

On line 8, is this monitoring the same "ongoing monitoring" referred to in Rule .0305 of the Subchapter (line 9)? If so, does it need to be restated? Or should you insert a cross-reference in Rule .0305, since this seems more thorough in explaining the scope?

On line 10, is the "agency" here a State agency?

On line 11, since the Secretary "may" make this request, when will the Secretary not do so? Or do you mean "shall" instead?

On line 12, I suggest deleting "appropriate" and stating "... Department of Administration to take an action such as mediation, reallocation..."

On line 13, what other agency? Another State agency? And what will happen if the land was not from a State agency, but a private agency or local government?

On line 13, so that I am clear, what will the referral to the Attorney General do? I ask because references to the Attorney General were removed from Rule .0305 of the Subchapter. Were those related?

In the History Note, why are you citing to G.S. 143-341 and 342? Did the Governor adopt this Rule?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0401 is readopted with changes as published in 31:03 NCR 148 as follows:

2

3 **15A NCAC 12H .0401 MANAGEMENT PLAN**

4 A management plan shall be prepared for each dedicated Nature preserve. The Articles of dedication shall assign
5 responsibility for the preparation of the management plan. The Secretary of the Department of Natural and Cultural
6 ~~Resources and Community Development~~ or his designee shall ~~have the responsibility for approval of~~ review all
7 management plans and their ~~revisions.~~ revisions, and shall approve those plans that implement the principles set forth
8 in Rule .0402 of this Section. The Secretary or his designee shall monitor all dedicated preserves and report violations
9 of the approved plan, ~~or other~~ situations that may violate the Articles of dedication, or ~~which may be~~ actions harmful
10 to the natural resources of the preserve. In the event that the owner or the agency managing the dedicated preserve
11 does not adopt an approved management plan or does not adhere to the provisions of the plan, the Secretary may
12 request the Department of Administration to take appropriate action, which may include ~~but is not limited to,~~
13 mediation, reallocation of the land to another agency, or referral to the Office of the Attorney General.

14

15 *History Note: Authority G.S. 143B-135.256; 143B-135.262; 143-341; 143-342;*

16 *Eff. January 1, 1986;*

17 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0402

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Please restart line numbers on each page at "1" [See Rule 26 NCAC 02C .0108(1)(f)]

On line 5, please state either "Articles of Dedication" or "articles of dedication"

In Item (1), line 6, define "essential"

In Item (2), line 9, what is "information" in this context? Do you mean for signs?

And who will determine whether this is "necessary"?

In Item (3), line 12, why is "Natural" capitalized?

On line 15, who shall determine this?

In Item (5), so that I'm clear – this is for advertising only? Therefore, it's different from Item (13)?

In Item (5), will these signs be designed by the Department, like the ones for registry in Rule .0207 of the Subchapter?

In Item (6), line 23, define "minimal"

On line 25, this is not the proper way to remove a semicolon. Please correctly make the change in accordance with Rule 26 NCAC 02C .0405(b)(2). And please insert a comma after "observation"

In Item (6), who shall make this determination of compatibility, consistency, and no detrimental effect?

In Item (9), line 31, define "significant"

In Item (10), what are "prescribed fire and necessary fire lines"? Does your regulated public know?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

In Item (11), line 35, I suggest replacing “that which” with “when it”

On lines 35 and 36, you state that the cutting or removal of trees can be allowed when expressly permitted by the approved management plan. But doesn't this restate lines 4 and 5?

And who shall determine the need on line 36?

In Item (12), Page 2, line 38, who is the management agency? DNCR or its assign?

In Item (13), line 39, who determines necessity? And define or delete “feasible” and “clearly”

On line 40, this is not the proper way to change “and/or” to “and” Please correctly make the change in accordance with Rule 26 NCAC 02C .0405(b)(2).

In Item (14), line 42 define “undue”

In Item (15), line 45, I suggest you insert a comma after “allowed”

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 15A NCAC 12H .0402 is readopted with changes as published in 31:03 NCR 148-149 as follows:

2

3 **15A NCAC 12H .0402 MANAGEMENT PRINCIPLES**

4 The following management principles shall apply ~~for~~ to all dedicated preserves, unless exceptions are expressly
5 provided in the Articles of ~~dedication.~~ dedication:

6 (1) the essential natural character of the property shall be ~~maintained.~~ maintained;

7 (2) improvements, including building of all types, trails, parking areas, vehicular roadways, signs,
8 fences, steps, and bridges, shall only be constructed when necessary for the security, safety,
9 information, ~~or~~ access of the public or ~~and those improvements necessary~~ for the maintenance and
10 management of the ~~preserve.~~ preserve;

11 (3) destruction of flora and fauna shall not be permitted except for the purpose of preserving ~~or~~
12 ~~regenerating~~ species and Natural communities of concern, or for the purpose of establishing and
13 maintaining public access facilities. In case of either exception, manipulation of the flora and fauna
14 shall be consistent and compatible with the ecological ~~natural~~ character of the area and shall not be
15 ~~seriously~~ damaging or detrimental to the ~~natural quality of the preserve.~~ preserve;

16 (4) no motorized vehicles shall be permitted on the dedicated property other than those utilized by the
17 owner or the owner's agents in management and protection of the property or used by the general
18 public for ingress and egress to the property in compliance with the management plan for the
19 ~~preserve.~~ preserve;

20 (5) no signs, billboards, or other advertising of any kind shall be erected, with the exception ~~for~~ of
21 informational and directional signs related to the designation of the area as a preserve and public
22 access to the ~~preserve.~~ preserve;

23 (6) no change shall be made in the ~~natural~~ topography of the preserve except for those minimal
24 alterations ~~which that~~ that may be necessary to provide on-foot access to the public for visitation or
25 observation; ~~this shall be done~~ if the change is ~~wholly~~ compatible and consistent with the character
26 of the property, and where no detrimental effect ~~shall result.~~ will result;

27 (7) no activity shall be allowed ~~which might~~ that may pollute any stream or body of water in the
28 ~~preserve.~~ preserve;

29 (8) no stream in the preserve shall be dammed, impounded, or have its course ~~altered.~~ altered as a result
30 of human activity;

31 (9) visitor activities shall be controlled to prevent significant disturbance and environmental
32 degradation ~~to~~ of the ~~preserve.~~ preserve;

33 (10) prescribed fire and necessary fire lines may be used as management tools ~~in such areas or situations~~
34 ~~where needed~~ to maintain or protect the natural community ~~type.~~ type;

35 (11) the cutting or removal of trees, dead or alive, ~~is~~ shall be prohibited, except that which is expressly
36 permitted by an approved management plan or is necessary for public ~~safety.~~ safety;

- 37 (12) persons wishing to engage in scientific research or collection of natural materials within a preserve
38 shall first secure written permission from the owner and the management ~~agency~~-agency;
- 39 (13) when necessary and feasible, boundaries of a preserve shall be made clearly evident by placing
40 markers or boundary signs at corners and ~~or~~ other strategic ~~locations~~-locations;
- 41 (14) control of exotic (non-native) species may be undertaken where eradication ~~can~~-may be
42 accomplished without undue disturbance of the area's natural conditions ~~conditions~~; ~~or without~~
43 ~~requiring relatively long periods of time for natural restoration~~; and
- 44 (15) no other acts or uses ~~which~~ that are detrimental to the maintenance of the property in its natural
45 condition shall be allowed including ~~but not limited to~~ disturbance of the soil, mining, commercial
46 or industrial uses, timber harvesting, ditching and draining, or depositing waste materials.

47

48 *History Note: Authority G.S. 143B-135.256; 143B-135.262;*

49 *Eff. January 1, 1986;*

50 *Readopted Eff. December 1, 2016.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Natural and Cultural Resources

RULE CITATION: 15A NCAC 12H .0403

DEADLINE FOR RECEIPT: Thursday, October 10, 2016

The Rules Review Commission staff has completed its review of this rule prior to the Commission's next meeting. The Commission has not yet reviewed this rule and therefore there has not been a determination as to whether the rule will be approved. You may call this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On line 4, you do not mean "rules" unless they have been promulgated pursuant to G.S. 150B, Article 2A. Do you mean "principles"?

On line 4, delete "all"

On lines 5 and 6, please either state "Articles of Dedication" or "articles of dedication"

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: October 27, 2016

1 15A NCAC 12H .0403 is readopted with changes as published in 31:03 NCR 149 as follows:

2

3 **15A NCAC 12H .0403 MANAGEMENT RULES FOR PRESERVES**

4 Additional management rules consistent ~~and compatible~~ with the general management principles for all dedicated
5 preserves, as set forth in Rule .0402 of this Section, may be adopted through an amendment to the Articles of
6 dedication by those divisions of the Department of Natural Resources and Community Development to which dedicated
7 preserves are allocated for management ~~the owner or managing agency, in accordance with Rule .0306 of this~~
8 Subchapter. ~~Such additional management rules shall be contained in the Division's administrative manual.~~

9

10 *History Note: Authority G.S. 143B-135.256; 143B-135.262;*

11 *Eff. January 1, 1986;*

12 *Readopted Eff. December 1, 2016.*