

JEFF JACKSON
ATTORNEY GENERAL



REPLY TO:
SARAH G. ZAMBON
(919) 716-6955
SZAMBON@NCDOJ.GOV

Memorandum

To: North Carolina Coastal Resources Commission
From: Sarah Zambon
Date: February 9, 2026
Re: Petition for Rulemaking Procedure (CRC-26-51)

Issue: At its February 2026 meeting, the Commission will decide whether or not to grant the petition for rulemaking to revise 15A NCAC 7H .0106, .0205, .0206, and .0207 regarding manmade ditches. The Commission is not adopting the text of the proposed rule which would only occur if the Commission proceeded with rulemaking.

Process: The N.C. Administrative Procedure Act (“Act”) provides that “[a] person may petition an agency to adopt a rule.” N.C. Gen. Stat. §150B-20(a). The Act requires that an agency, in this case the Coastal Resources Commission (“Commission”), establish rules setting forth the procedure it “follows in considering a rulemaking petition.” *Id.* The Commission did so in 15A N.C. Admin. Code 07J .0605. The Act and the Commission’s rules establish the process used to consider petitions for rulemaking. This memo outlines the process and takes no position on the merits of the petition for rulemaking.

The Commission is required to grant or deny a rulemaking petition within 120 days of the date the petition as submitted. N.C. Gen. Stat. §150B-20(b). In this case, the Commission received the petition requesting amendments to 15A N.C.A.C. 07H .0106, .0205, .0206 and .0207 regarding manmade ditches on November 12, 2025. The Commission Chair with DCM staff determined that the Petition was complete and scheduled it for hearing at your February meeting. The Commission must provide a written final agency decision granting or denying the petition by March 12, 2026.

At its February 2026 meeting, the Commission will consider whether to grant the request. The Commission’s reasons for its decision should not be arbitrary or capricious and should be based on the substantive merits of the proposed rule amendments. The Commission may choose to consider the following issues (or others) when it decides whether to grant the request:

1. Whether the Commission reviewed, revised, or readopted the rules recently;
2. Whether the Commission has authority to make the requested revisions.
3. Whether the Commission received public comments regarding the rules;

4. What impact the proposed rule revisions would have on the Commission's coastal management program;
5. Whether the proposed revisions would have unintended consequences;
6. Whether the requested revisions address Petitioner's concern;

Following the meeting, Commission Counsel will draft the final agency decision stating the Commission's decision and serve it on Petitioner. If the Commission denies the rulemaking petition, the written final agency decision provide the reasons for denying the petition. N.C. Gen. Stat. §150B-20(c). A petitioner may request judicial review in superior court if the Commission denies the request to initiate rulemaking. N.C. Gen. Stat. §150B-20(d).

If the Commission "grants a rulemaking petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rulemaking." N.C. Gen. Stat. §150B-20(c). When initiating rule making, the Commission may include in the published notice a statement "that the agency is initiating rule making as a result of a rulemaking petition" and "the name of the person who submitted the petition." *Id.* The Commission may also state whether it supports the proposed text amendments.

If the Commission decides to grant the petition, the Division of Coastal Management would begin the usual rulemaking activities required by N.C. Gen. Stat. § 150B-21.2 including publishing the proposed amendments, obtaining or preparing a fiscal note, and sending out the proposed amendments for public comment and/or hearing. The matter would eventually come back to the Commission for a final decision on whether to adopt the proposed amendments to 15A NCAC 07H .0106, .0205, .0206, and .0207. Only then, will the Commission decide whether to adopt the revised rules. Once the Commission either adopts or does not adopt the proposed amendments, the issue is finished. There is no right to appeal the Commission's decision about whether to adopt a rule. *See North Carolina Chiropractic Ass'n v. North Carolina State Board of Education*, 122 N.C. App. 122, 123, 468 S.E.2d 539, 541 (1996).