

15A NCAC 07J .0603 PROCEDURES: CONSIDERING REQUESTS FOR DECLARATORY RULINGS

(a) The Commission hereby delegates to the Chairman the authority to grant or deny requests for declaratory rulings and to determine whether notice of the declaratory ruling request should be provided to anyone other than the adjacent property owners. The Division of Coastal Management shall review each request for a declaratory ruling and shall prepare a recommendation for the Chairman as to whether the Commission should consent to issue a ruling or whether for good cause the request for a declaratory ruling should be denied. The Chairman shall deny a request for declaratory ruling on finding that:

- (1) the requesting party and the Division of Coastal Management cannot agree on a set of stipulated facts to support a ruling;
- (2) the matter is the subject of a pending contested case hearing; or
- (3) no genuine controversy exists as to the application of a statute or rule to a proposed project or activity.

(b) After consenting to issue a ruling, the Commission shall place the declaratory ruling on the agenda for its next regularly scheduled meeting. The Commission shall provide notice of the declaratory ruling proceeding to the requesting party, the adjacent property owners, and other persons to whom the Commission decides to give notice no less than 10 days before the date for which the declaratory ruling is set. The requesting party and other persons to whom the Commission decides to give notice shall be allowed to submit written comments concerning the proposed declaratory ruling.

(c) If a ruling is to be issued, the Chairman shall decide whether notice should be given to persons other than the party requesting the ruling and the adjacent property owners. In making such a decision, the Commission shall consider such factors as: whether additional public participation would aid the Commission in reaching a decision; whether any persons have requested in writing to be notified of proposed declaratory rulings; whether the property or personal rights of other persons might be directly affected by the requested ruling; and whether the proposed ruling would affect the application and interpretation of a rule in which other persons might be interested. All persons receiving notice of the declaratory ruling, including all members of the public who respond to a published notice of the proposed ruling, may submit written comments to the Commission concerning the proposed declaratory ruling pursuant to Paragraph (b) of this Rule at least five days prior to the date of the proposed ruling; all such comments shall be provided to the Commission and shall be included in the record of the declaratory ruling.

(d) Unless the Department waives the opportunity to be heard, it shall be a party to any request for declaratory ruling. The requesting party and the Department shall each be allowed 30 minutes to present oral arguments to the Commission. Neither party may offer testimony or conduct cross-examination before the Commission. The declaratory ruling shall be determined on the basis of the statement of undisputed facts submitted by the parties.

(e) The Commission will keep a record of each declaratory ruling, which will include at a minimum the following items:

- (1) the request for a ruling;
- (2) any written comments by interested parties;
- (3) the statement of undisputed facts on which the ruling was based;
- (4) any transcripts of oral proceedings, or, in the absence of a transcript, a summary of all arguments;
- (5) any other matter considered by the Commission in making the decision; and
- (6) the declaratory ruling together with the reasons therefore.

(f) A declaratory ruling is binding on the Commission and the person requesting it unless it is altered or set aside by the court. The Commission may not retroactively change a declaratory ruling, but nothing in this Section prevents the Commission from prospectively changing a ruling.

(g) A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case. Unless the requesting party consents to the delay, failure of the Commission to issue a ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

*History Note: Authority G.S. 113A-124; 150B-4;
Eff. June 1, 1979;
Amended Eff. October 1, 1992; October 1, 1988;
Readopted Eff. October 1, 2022.*