CHAPTER 25 - NORTH CAROLINA ENVIRONMENTAL POLICY ACT

SECTION .0100 - GENERAL PROVISIONS

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History Note: Authority G.S. 113A-1 through 113A-10;
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1986.

01 NCAC 25 .0107 STATEMENT OF PURPOSE

This Chapter establishes procedures for compliance with the North Carolina Environmental Policy Act, Article I Chapter 113A of the General Statutes, (NCEPA). NCEPA establishes policy and contains action-forcing provisions for carrying out that policy. Therefore, to the fullest extent possible, all agencies' policies, rules, and regulations shall be interpreted and administered in accordance with the purposes and policy set out in G.S. 113A-2 and 3 and this Chapter. Agencies shall adopt procedures to supplement or to carry out the provisions of this Chapter in a consistent, timely, and expeditious manner including continuous monitoring of all agency actions to assure compatibility with the policies of NCEPA.

History Note: Authority G.S. 113A-1 through 113A-10;
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0108 SCOPE

(a) This Chapter is applicable to any situation where there is:
- (1) an expenditure of public monies or use of public land; and
- (2) an action by a state agency subject to this Chapter; and
- (3) a potential environmental effect upon either natural resources, public health and safety, natural beauty, or historical or cultural elements of the state's common inheritance.

(b) For the purpose of this Chapter:
- (1) "Action" includes but is not limited to licensing, certification, permitting, the lending of credit, expenditures of public monies, and other similar final agency decisions the absence of which would preclude the proposed activity. Action does not include the allocation of any public funds transferred in accordance with a statutory or regulatory formula, which leave no discretion to the allocating agency.

Note: This last exception is intended to exclude the following types of revenues: Powell bill, sales tax, intangibles tax, beer and wine taxes, utility franchise taxes, and General Revenue Sharing.

- (2) "Environmental effect" includes direct, indirect, and cumulative impacts for the project or program that may be significant, depending upon the manner in which the activity is carried out.
- (3) "Public monies" includes all expenditures in support of the proposed activity by federal, state or local or quasi-public entities from whatever source derived, but does not include resources used solely for processing a license, a certificate, or a permit; the lending of credit; or the resources used for the provision of technical services.
- (4) "State Project Agency" means the state department or council of state agency which has been designated pursuant to Rule .0210(a) of this Chapter for ensuring compliance with the N.C. Environmental Policy Act.
- (5) "State" includes all entities covered by the Executive Budget Act, Article One of the General Statutes, Chapter 143.
- (6) "State agencies subject to this Chapter" means:
  - (A) the Departments listed in G.S. 143B-11;

(B) boards, commissions, committees and councils organized within the Departments listed in G.S. 143B-2;

(C) other departments, boards, commissions, committees and councils which adopt the provisions of this Chapter directly or by reference; and

(D) all entities within the executive branch of state government when a final decision is required by G.S. 113A-5.

(7) The definitions contained in G.S. 113A-1 through G.S. 113A-13 are incorporated by reference.

History Note: *Authority G.S. 113A-11; S.L. Extra Session 1999-463;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Temporary Amendment Eff. April 12, 2000 to expire on January 1, 2003;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0200 - NCEPA ADMINISTRATION/ENVIRONMENTAL IMPACT

01 NCAC 25 .0201 CONTENT OF THE ENVIRONMENTAL IMPACT STATEMENT
01 NCAC 25 .0202 CONTENT OF THE NEGATIVE DECLARATION
01 NCAC 25 .0203 ENVIRONMENTAL QUESTIONNAIRE
01 NCAC 25 .0204 DELEGATION OF PREPARATION OF STATEMENTS
01 NCAC 25 .0205 FUNDING OF STATEMENTS
01 NCAC 25 .0206 SUBMISSION OF A DRAFT EIS OR A NEGATIVE DECLARATION
01 NCAC 25 .0207 SUBMISSION OF THE FINAL ENVIRONMENTAL IMPACT STATEMENT

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1976;
Readopted Eff. February 27, 1979;
Repealed Eff. February 1, 1986.

01 NCAC 25 .0208 ESTABLISHMENT OF MINIMUM CRITERIA BY AGENCIES

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 27, 1979;
Repealed Eff. February 1, 1986.

01 NCAC 25 .0209 ADMINISTRATION: OTHER AGENCIES' RESPONSIBILITIES

(a) The Department of Administration (department) shall assist state project agencies in ensuring compliance with the NCEPA.

(b) The Department shall set policy, establish rules and assist in obtaining compliance with the NCEPA. Nothing in these Rules shall be construed as giving the Department the authority, delegated or otherwise, to impinge on the statutory responsibilities that have been given to other cabinet agencies or boards and commissions within those agencies.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0210 COMPLIANCE WITH PROCEDURES

(a) State Project Agency. For each activity subject to this Chapter, one agency must serve as the State Project Agency, and take the responsibility for ensuring compliance with the NCEPA. If more than one state agency is involved, a meeting will be held and voluntary agreement on the State Project Agency responsibility will be sought. Where no agreement is reached

among the agencies, the Secretary of the Department, with the advice of the Environmental Policy Act Advisory Committee, shall designate the State Project Agency. The other involved agencies shall be cooperating agencies.
(b) Non-state projects. State agencies may ask federal and local agencies or special purpose units of government and private companies to submit information about the proposed activity where the government or company is involved in planning, construction, or otherwise conducting the proposed activity, and the only state involvement is permit granting or plan approval; however, the State Project Agency is ultimately responsible for compliance with the act.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0211 STATE CLEARINGHOUSE
(a) The Department of Administration shall maintain a clearinghouse to coordinate and administer the requirements of this Chapter.
(b) Among its responsibilities the Clearinghouse shall:
(1) receive and circulate environmental documents for review and comment as provided by these Rules;
(2) forward all comments generated by the review process to the State Project Agency and, where appropriate, prepare a single integrated letter of response;
(3) retain a complete record of environmental documents, review documents, and other substantive materials related to the operation of the Clearinghouse;
(4) train review coordinators from within all state agencies; and
(5) coordinate the establishment of minimum criteria and ensure that thresholds are consistent among all agencies.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0212 ENVIRONMENTAL BULLETIN
(a) The Environmental Bulletin shall be published twice a month by the Clearinghouse and shall contain notice of any filing with the Department of any environmental document, request for establishment of minimum criteria, or other documents and decisions as set out by this Chapter.
(b) The Environmental Bulletin shall be made available to all review agencies and shall be available to local governments, institutions, and individuals upon request.
(c) The Environmental Bulletin shall be available on the Internet at www.doa.state.nc.us /doa/clearing/ebnet.htm. Notices of Availability of documents received for review and comment shall be added daily to the Environmental Bulletin at this website.

History Note: *Authority G.S. 13A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0213 ENVIRONMENTAL POLICY ACT ADVISORY COMMITTEE
(a) The Secretary of the Department of Administration or a person so designated by the Secretary, shall serve as the Chair of the Environmental Policy Act Advisory Committee.
(b) The purpose of the Committee is to provide technical advice to the Secretary of the Department on environmental issues related to the NCEPA.
(c) The Secretary shall solicit nominations for the Committee from those state departments and other organizations most involved in environmental protection. These include but are not limited to, the Departments of Cultural Resources, Health and Human Services, Environment and Natural Resources, Justice, and Transportation. From the list of nominees, the Secretary shall select the Committee members. The Committee shall consist of no less than seven or more than 13 members.

History Note: *Authority G.S. 113A-11;*

Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0214 COMMENTING AGENCIES

Each state agency shall designate one or more staff members to coordinate the review of environmental documents prepared for compliance with this act.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0215 FUNDING OF ENVIRONMENTAL DOCUMENTS

Agencies should include the estimated costs of the environmental documentation process in project and program cost estimates and budget requests.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0300 - MINIMUM CRITERIA

01 NCAC 25 .0301 MINIMUM CRITERIA

(a) State agencies may choose to establish specific minimum criteria designating minimum levels of environmental impact. Once these criteria have been approved, no filing of environmental documents shall be required for projects whose impacts do not exceed the criteria thresholds.
(b) If an agency establishes minimum criteria, the agency shall review the criteria every five years and revise them as necessary.
(c) All proposed minimum criteria and revisions to minimum criteria shall be approved by the Secretary of Administration prior to an agency's publication of Notice of Text under G.S. 150B establishing or revising such minimum criteria.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0302 APPROVAL OF CRITERIA

The following procedures shall be used to gain approval of minimum criteria:

(1) The agency shall prepare a draft list of the minimum criteria, describing the ease of measuring the criteria, and how the criteria predict the environmental impact of projects. The agency shall submit these lists to the Clearinghouse for circulation and review.
(2) Upon receipt of these lists from the agency, the Clearinghouse shall:
    (a) solicit written comments on the criteria from interested parties or agencies having expertise or jurisdiction by law, and shall publish a notice of the criteria in the Environmental Bulletin. The period of review is 30 calendar days from the date of publication in the Environmental Bulletin; and
    (b) review the criteria to ensure they are consistent with Department of Administration rules and make any necessary recommendations to the agency as to consistency.
(3) If there are no written comments and the criteria are consistent with Department of Administration rules, the criteria shall be approved by the Secretary of Administration.
(4) If there are any written comments on the criteria, the Clearinghouse shall forward all those received to the submitting agency, along with any Clearinghouse recommendations as to consistency.
(5) The agency shall consider all written comments and decide whether to submit a revised list of minimum criteria to the Clearinghouse or whether to continue with its original list.

(a) If the agency submits a revised list, the new list of criteria shall follow the same procedure for solicitation of comments, publication of notice, and consistency review as did the original list. This process shall be continued until the agency decides it no longer wishes to make further amendments to its proposed criteria, or until no further written comment is received.

(b) If the agency decides to continue with its original list or no longer wishes to amend its list as provided for in Rule .0302(5)(a) of this Section, it shall notify the Clearinghouse of that decision.

(6) The Clearinghouse shall recommend to the Secretary of Administration approval or rejection of the final list of minimum criteria based on the consideration of all written comments and the criteria's consistency.

(7) The Clearinghouse shall notify the agency of the Secretary's approval or rejection of its proposed final list of minimum criteria.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0303 REVISION OF CRITERIA

The same process cited in Rule .0302 of this Section for initial adoption of minimum criteria shall be followed by agencies seeking to revise those minimum criteria.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0400 - COMPLIANCE

01 NCAC 25 .0401 METHOD OF COMPLIANCE

(a) Unless a project falls below the threshold established in an agency's approved minimum criteria, compliance with this Chapter will be achieved through the preparation of one or more of the following environmental documents:

(1) an environmental assessment (EA);

(2) a finding of no significant impact (FONSI); or

(3) an environmental impact statement (EIS); and

(4) a record of decision (ROD).

(b) The agency responsible for compliance may choose to immediately prepare an EIS.

(c) For all other projects, an EA shall be prepared.

(d) If the EA demonstrates that the project activity will not have a significantly adverse effect on the quality of the environment, the State Project Agency will file a FONSI.

(e) If the environmental assessment demonstrates that the project may result in a significant adverse affect on the quality of the environment, the State Project Agency will file an EIS in accordance with Section .0600 of this Chapter.

(f) Before an activity is commenced for which an EIS has been completed, the State Project Agency will file an ROD as required by Section .0600 of this Chapter.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0402 DOCUMENT UNDER NEPA DEEMED ADEQUATE

If an environmental document is prepared under the provisions of the National Environmental Policy Act (NEPA) for a specific activity, and if that document is reviewed through the Clearinghouse process, then this review shall constitute compliance with the requirements of this Chapter for that activity. If a specific activity has been designated as categorically excluded from the provisions of the National Environmental Policy Act, then the requirements of this Chapter shall have been met for that activity.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0500 - ENVIRONMENTAL ASSESSMENT

01 NCAC 25 .0501 PURPOSE

The purpose of the EA is to provide the State Project Agency with a decision making tool to determine if a planned project is of such significance or scope and impact on the environment as to require the preparation of an EIS.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0502 CONTENT

The EA shall include maps and a brief discussion of the following items:

(1) need for the proposed activity,
(2) reasonable alternatives to the recommended course of action,
(3) methods proposed to mitigate or avoid significant adverse environmental impacts, and
(4) environmental effects of the proposed activity and alternatives.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0503 FORMAT

An EA is to be a concise document not to exceed 25 pages, containing the following:

(1) A cover sheet including the name, address and telephone number of the person in the State Project Agency who can supply additional information. The cover sheet shall also contain:
    (a) designation of the statement as an EA;
    (b) title of the proposed activity that is the subject of the document; and
    (c) list of any involved cooperating agencies.
(2) A section for each item listed in Rule .0502 of this Section.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0504 INTERNAL REVIEW

(a) Once an EA is prepared, the State Project Agency must decide if it is satisfied as to the completeness of its assessment. If no significant environmental impacts are predicted, the agency may then submit both the EA and FONSI to the Clearinghouse for review.

(b) The agency may choose to submit only the EA and use the comments, if any, to determine how to proceed. If an agency chooses this procedure, the review process for the EA shall be the same as Rule .0506 of this Section for review of an EA or a FONSI. If an agency proceeds with an Environmental Impact Statement, then the review process shall be the same as that in Section .0600 of this Chapter.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0505 CONTENT OF FONSI

A FONSI shall contain the following information:

(1) a brief narrative description of the proposed activity including a description of the area affected by the proposed activity and a site location map, where appropriate;
(2) a list of probable environmental impacts of the proposed activity;
(3) a list of the reason(s) for concluding that the action will not have a significant adverse effect on the quality of the environment, with reference to any mitigation activities to be carried out, thereby negating the necessity of preparation of an EIS;
(4) a statement that no EIS is to be prepared and that the FONSI completes the environmental review record which is available for inspection at the Clearinghouse.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999, May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0506 REVIEW PROCESS

(a) The State Project Agency must submit 16 copies of the EA and FONSI to the Clearinghouse, and any additional copies as may be requested. The Clearinghouse shall circulate these documents to state and local officials to obtain comments and shall publish a Notice of Availability in the Environmental Bulletin. In order to have a Notice of Availability published in the Environmental Bulletin, the documents must be submitted to the Clearinghouse no later than noon on the Friday preceding the publication date of the Bulletin. Reading copies shall be made available at the Clearinghouse for any interested parties. The review period is 30 calendar days after publication in the Bulletin.
(b) Each reviewing agency and any interested party may make comments on the adequacy of the documents.
(c) Based on consideration of the comments submitted, the Clearinghouse shall advise the State Project Agency as follows:

(1) the document has been determined to lack sufficient information. Supplemental documentation which provides adequate information should be submitted to the Clearinghouse for review and comment;
(2) the document does not satisfy a finding of no significant impact and an EIS should be prepared;
(3) the document is adequate and the next appropriate level document should be prepared for review; or
(4) the document is adequate and completes the review process requirements for the act.

(d) The State Project Agency may adopt or reject the Clearinghouse's recommendation.
(e) No administrative or judicial review is permitted unless undertaken in connection with review of the agency action. No other review of an environmental document is permitted.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0600 - ENVIRONMENTAL IMPACT STATEMENTS

01 NCAC 25 .0601 PURPOSE

The primary purpose of an EIS is to serve as a decision-making tool to ensure that the purposes and policies defined in G.S. 113A, Article 1 are given full consideration in the ongoing programs and actions of state government. It should provide a full and fair discussion of significant environmental impacts and should inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the environment.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0602 SCOPING

If an agency determines that an EIS is required on a project, it may choose to request advice from the general public and other agencies on what alternatives and issues should be addressed in the EIS. The agency must submit a copy of a scoping notice to the Clearinghouse, which shall publish the scoping notice in the Environmental Bulletin. The comment period shall be 30 calendar days after publication in the Bulletin.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0603 FORMAT AND CONTENT

Agencies shall use a format for EIS's which will encourage good analysis and clear presentation of all alternatives, including the proposed activity while minimizing length and complexity. These documents shall not exceed 60 pages and shall include 8 1/2" x 11" site location maps. The document shall include the following:

(1) A single cover sheet including the following information:
- (a) designation of the document as a draft, supplementary or final statement;
- (b) title of the proposed activity that is the subject of the statement;
- (c) list of any involved cooperating agencies; and
- (d) name, address, and telephone number of the person in the State Project Agency who can supply further information.

(2) An accurate summary of the statement stressing the major conclusions, areas of controversy, and issues to be resolved. The summary shall also list all federal, state, and local permits, licenses, certifications, and other approvals which must be obtained in implementing the proposal. If there is any uncertainty about whether any one of these is necessary, it shall be so indicated.

(3) Purpose and Need. The underlying purpose and need being responded to by the proposed activity.

(4) Alternatives including proposed activity. Based upon information and analysis presented in Items (5) through (8) of this Rule on the affected environment and environmental consequences, the agency shall present the environmental impacts of the alternatives including the proposed activity in comparative form. To the extent possible the comparison of alternatives shall quantify how the purpose and need would be satisfied by each alternative and the proposed activity. This section of the document shall be the heart of the EIS, sharply defining the issues and providing a clear basis for choice among options by decision makers and the public. It shall also:
- (a) explore and evaluate all reasonable alternatives, including those not within the jurisdiction of the State Project Agency and the alternative of no action;
- (b) discuss the reasons for the elimination of alternatives from detailed study;
- (c) identify the agency's preferred alternative(s) in the draft statement and identify such alternatives in the final statement, unless another law prohibits the expression of such a preference;
- (d) include appropriate mitigation measures not already included in the alternatives; and
- (e) assess the social and economic impacts of each alternative. Impacts shall be quantified for each alternative, where feasible, but when quantification by standard economic tools is not feasible or intangibles are involved, a description of each impact is required.

(5) Affected Environment. The EIS must describe the environment of the area(s) to be affected and the environment to be created by the alternatives under consideration. The description shall be no longer than is necessary to understand the effects of the alternatives. Data and analysis in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced.

(6) Environmental Consequences. This section of the document shall form the scientific and analytic basis for the comparisons under Item (4) of this Rule. It shall include:
- (a) direct effects and significance;
- (b) indirect effects and significance;
- (c) cumulative effects and significance;
- (d) the relationship between the short-term uses of the environment involved in the proposed action and the maintenance and enhancement of long-term productivity;
- (e) any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented; and
- (f) possible conflicts between the proposed activities and the objectives of federal, state, and local plans, policies, and controls for the affected area.

(7) List of Preparers. The EIS shall list the names and qualifications of the persons who were primarily responsible for preparing the EIS.

(8) Appendix. If an appendix is included in an EIS, it shall meet the following requirements:
- (a) consist of materials substantiating any analysis fundamental to the principal document, as distinct from material of lesser significance that may accompany the document or be incorporated by reference;
- (b) be analytic and relevant to the decision to be made;
- (c) not be counted in the EIS 60 page limit; and
- (d) be circulated with the EIS or be readily available upon request.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0604 PUBLIC HEARING

The State Project Agency may hold a public hearing to complement the EIS process where significant public interest is expressed in the proposed activity and where such a hearing would be helpful in increasing public awareness, clarifying the issues, and gathering additional public comment. Notice of the public hearing shall be published in the Environmental Bulletin.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0605 REVIEW PROCESS

(a) Draft EIS. Sixteen copies and any additional copies as may be requested shall be submitted by the State Project Agency and circulated for comment by the Clearinghouse as set out in Rule .0506 of this Chapter. A Notice of Availability of the EIS shall be printed in the Environmental Bulletin, and a 45 calendar-day period of review after this notice is published shall be allowed.

(b) The Clearinghouse shall forward copies of all comments made by reviewers to the State Project Agency for incorporation in the final document.

(c) Final EIS. The State Project Agency shall submit 16 copies of the final EIS and any additional copies as may be requested to the Clearinghouse. These documents shall be circulated to the original reviewers for a final review. Notice shall also be given in the Environmental Bulletin. Thirty calendar days after publication of the Bulletin shall be allowed for final review.

(d) Based on consideration of the comments submitted, the Clearinghouse shall advise the State Project Agency as follows:
- (1) the document has been determined to lack sufficient information. Supplemental documentation which provides adequate information should be submitted to the Clearinghouse for review and comment;
- (2) a final EIS should be prepared for review addressing the comments submitted; or
- (3) the document is adequate and completes the review process requirements for the act.

(e) The State Project Agency may adopt or reject the Clearinghouse's recommendation.

(f) No administrative or judicial review is permitted unless undertaken in connection with review of the agency action. No other review of an environmental document is permitted.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. April 1, 1999; May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0606 RECORD OF DECISION

At the time of its decision to take an action for which an EIS was prepared as a decision-making tool, the responsible agency shall prepare a concise public record of decision not to exceed 4 pages in length. The record may be integrated into any other record prepared by the agency for the proposed activity, but shall include the following information:
- (1) a statement of what the decision was and the project or program it was for;
- (2) identification of all alternatives considered and specifying those considered environmentally preferable;

(3) a discussion of why the chosen alternative is most appropriate; based upon economic or technical considerations, or agency statutory mission, and how it balances environmental and other state policies;

(4) a certification that all means of avoiding or minimizing environmental impacts set out in the EIS will be incorporated into the project or program, and if not, why they are not. A copy of the record of decision shall be sent to the Clearinghouse to be sent to all review agencies, and a notice of its availability shall be published in the Environmental Bulletin.

History Note: *Authority G.S. 113A-1 through 113A-10;*
Eff. February 1, 1986;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0700 - PROCEDURE FOR RECONSIDERATION OF MINIMUM CRITERIA

01 NCAC 25 .0701 ACTIONS WHICH MAY BE RECONSIDERED

Any state or local agency or citizen may request a reconsideration of the rejection or acceptance of minimum criteria.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0702 PROCEDURE FOR RECONSIDERATION

All requests for reconsideration must be in written form, and shall be directed to the Secretary of the Department of Administration and the Director of the Clearinghouse. The request must be made within 30 days after the completion of the normal review cycle, or at any time if no notice has been published in the Environmental Bulletin. Review of requests for reconsideration will be limited to the written request and supporting documentation. No party will be allowed to present oral testimony, to depose or otherwise cross-examine witnesses, to argue the matter or otherwise convert the review into a contested case as that term is used in G.S. 150B-2(2).

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993; August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0703 DECISION OF THE SECRETARY FINAL

In reconsidering any matter pursuant to this Section, the Secretary of the Department of Administration may seek the advice of the Environmental Policy Act Advisory Committee. The Secretary of the Department of Administration shall affirm or reverse the determination, shall direct compliance with that decision, and shall notify the person or agency requesting reconsideration.

History Note: *Authority G.S. 113A-11;*
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0704 RECONSIDERATION NOT A CONTESTED CASE

A request for reconsideration under this Rule shall not be considered a contested case under G.S. 150B-2(2).

History Note: *Authority G.S. 113A-1 through 113A-10; 143B-10;*
Eff. February 1, 1986;
Amended Eff. August 1, 1988;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0800 - MAJOR DEVELOPMENT PROJECTS

01 NCAC 25 .0801 SCOPE

Local governing bodies, under the provisions of G.S. 113A-8 may require by ordinance environmental documentation from special-purpose units of government and private developers of major projects. This Section establishes the state's role when this option is exercised.

History Note: Authority G.S. 113A-8; 113A-11;
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

01 NCAC 25 .0802 PROCESS

(a) Upon the request of the local government, state agencies with jurisdiction by law or special expertise shall advise on matters related to the environmental documentation. This is not to relieve the local government of their responsibility under G.S. 113A-8 or to accept any responsibility on behalf of the state for the preparation of the document.

(b) An environmental document as defined in G.S. 113A-9(2) may be submitted to the Clearinghouse by the local government. The Clearinghouse shall circulate the document for review and comment in the same manner as provided in this Chapter.

(c) Upon notification from the local government that an environmental document is to be required, the Clearinghouse shall send notification to all affected state agencies and publish such notice in the Environmental Bulletin. In processing applications for state permits, state agencies may consider any information generated by the local government pursuant to this Section.

History Note: Authority G.S. 113A-8; 113A-11;
Eff. February 1, 1986;
Amended Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .0900 - GOVERNOR'S REVIEW

01 NCAC 25 .0901 REVIEW BY GOVERNOR

In those specific cases where the environmental document indicates a major adverse environmental impact for which alternatives are not available, the Governor shall be so advised by the responsible state official.

History Note: Authority G.S. 113A-11;
Eff. May 3, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. February 2, 2016.

SECTION .1000 - EMERGENCY PROVISIONS

01 NCAC 25 .1001 SCOPE
01 NCAC 25 .1002 PROCESSES

History Note: Authority G.S. 113A-11; S.L. Extra Session 1999-463;
Temporary Adoption Eff. April 12, 2000 to expire on January 1, 2003;
Temporary Adoption extended to expire January 1, 2005;
Temporary Adoption expired January 1, 2005.