

## CHAPTER 11 - ROANOKE VOYAGES AND ELIZABETH II COMMISSION

### SECTION .0100 - GENERAL DEFINITIONS

#### **07 NCAC 11 .0101      ADVERTISING OR ADVERTISEMENT**

Means any writing, printing, picture, painting, emblem, drawing, sign, flag or similar device which is posted or displayed outdoors on real property and is intended to invite or to draw the attention or to solicit the patronage or support of the public to any goods, merchandise, property, real or personal, business, services, entertainment or amusement manufactured, produced, bought, sold, conducted, furnished or dealt in by any person or for any political party or for the candidacy of any individual for any nomination of office; the term(s) shall include any part of an advertisement recognizable as such.

*History Note:      Authority 1981 S.L., c. 1194, s. 1(1)(a);  
Eff. February 1, 1987.*

#### **07 NCAC 11 .0102      ADVERTISING STRUCTURE**

Means any rigid, semi-rigid or portable material with or without any advertising displayed thereon, situated upon or attached to real property outdoors, primarily or principally for the purpose of furnishing a background or base or support upon which an advertisement may be posted or displayed.

*History Note:      Authority 1981 S.L., c. 1194, s. 1(1)(a);  
Eff. February 1, 1987.*

#### **07 NCAC 11 .0103      COMMISSION**

Means the Roanoke Voyages and Elizabeth II Commission.

*History Note:      Authority 1984 S.L., c. 1115, s. 1;  
Eff. February 1, 1987.*

#### **07 NCAC 11 .0104      CORRIDOR**

Right of way of U.S. Highway 64-264 and all lands within 660 feet back from and parallel to the right of way. For the purpose of these Regulations, the Corridor shall apply to the right of way of U.S. Highway 64-264 and all lands within 660 feet back from and parallel to the right of way for signs; to the right of way and all lands within 50 feet back from and parallel to the right of way for cutting of trees and regulating utilities and to the right of way for landscaping.

*History Note:      Authority 1981 S.L., c. 1194, s. 1(1)(a)(c) & (d);  
Eff. February 1, 1987.*

#### **07 NCAC 11 .0105      HIGHWAY**

U.S. Highway 64 and 264 on Roanoke Island between the William B. Umstead Memorial Bridge over Croatan Sound and the Washington Baum Bridge over Roanoke Sound.

*History Note:      Authority 1981 S.L., c. 1194, s. 1(1)(a);  
Eff. February 1, 1987.*

#### **07 NCAC 11 .0106      OFF PREMISE**

Means away from the property or tract of land forming the subject of a conveyance or the house or building with the grounds and boundaries belonging to the tract.

*History Note:      Authority 1981 S.L., c. 1194, s. 1(1)(a);  
Eff. February 1, 1987.*

#### **07 NCAC 11 .0107      SIGN**

Means any outdoor display, device, figure, painting, drawing, message, placard, poster, billboard, flag or any other thing which is designed, intended or used to advertise or inform; any part of the advertising or informative contents.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(1)(a);  
Eff. February 1, 1987.

**07 NCAC 11 .0108 UTILITIES**

Utility facilities and/or utilities means and includes all privately, publicly or cooperatively owned lines, facilities and systems transmitting or distributing communications power, electricity, not connected with highway drainage, and other similar commodities directly or indirectly serving the public or any part thereof.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(1)(c);  
Eff. February 1, 1987.

**07 NCAC 11 .0109 WORKING DAY**

Means any one 24 hour period from midnight to midnight on Mondays through Fridays exclusive of recognized national and state holidays.

*History Note:* Authority 1984 S.L., c. 1115, s. 2(6);  
Eff. February 1, 1987.

**SECTION .0200 - REGULATIONS**

**07 NCAC 11 .0201 OUTDOOR ADVERTISING**

Regulations for off-premise location of billboard, outdoor advertising structures and displays which are located within 660 feet of the right of way of U.S. Highway 64-264 on Roanoke Island:

- (1) No off-premise advertisement, advertising, advertising structure or sign shall be erected, constructed, installed, maintained or operated in the Corridor without first obtaining a Certificate of Appropriateness.
- (2) Standards for Outdoor Advertising.
  - (a) In zoned and unzoned residential districts the minimum distance from the right of way shall be 660 feet unless otherwise specified or prohibited by local ordinance.
  - (b) In zoned and unzoned commercial districts the minimum distance from the right of way shall be 50 feet unless otherwise specified or prohibited by local ordinance.
  - (c) The sign display board shall measure no larger than local ordinances allow.
  - (d) The top of the sign shall be no higher than 14 feet above existing grade, except where other ordinances apply.
  - (e) No trees, shrubs or other vegetation within 50 feet of the right of way can be removed to accommodate outdoor advertising without a Certificate of Appropriateness.
- (3) Any outdoor advertising erected, altered or established after the effective date of these Regulations shall be unlawful and constitute a nuisance unless a Certificate of Appropriateness is obtained. The commission shall give 30 days notice by registered mail to the owner of the non-conforming advertising and/or structure if such owner by reasonable diligence can be ascertained, to move the advertising, structure or sign. The commission or its agent shall have the right to remove or to contract to have removed the non-conforming advertisement, structure or sign at the expense of the said owner if the said owner fails to act within 30 days after the signed receipt of such notice. The commission or its agent or contractor may enter upon private property for the purpose of removing the advertising, structures and/or signs prohibited by these Regulations without civil or criminal liability.
- (4) Highway signs located within the Corridor are exempt from these Regulations inasmuch as maintenance of standard colors, shapes, sizes and location are necessary for highway safety. The backs and structures on all highway signs will conform to the color described as Roanoke Island Brown.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(1)(a); 1985 S.L., c. 673, s. 2.1(b);  
Eff. February 1, 1987.

**07 NCAC 11 .0202 LANDSCAPING**

Regulations for the landscaping of the U.S. Highway 64-264 right of way within the Corridor:

- (1) Landscaping, seeding, earthmoving, planting, topsoiling and pruning within the right of way shall be prohibited without a plan approved by the commission and a Certificate of Appropriateness issued by the commission.
- (2) Maintenance and planting when approved by the commission shall be in accordance with Guidelines for Planting Within Highway Right of Ways published by the North Carolina Department of Transportation, prepared by the Landscape Unit, Division of Highways, P. O. Box 25201, Raleigh, North Carolina 27611, telephone (919) 733-2920.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(1)(b); 1985 S.L., c. 673, s. 2.1(b);  
Eff. February 1, 1987.

**07 NCAC 11 .0203 CUTTING OF TREES AND SHRUBS**

Regulations for cutting and/or removal of trees from the highway right of way and within 50 feet adjacent to the right of way of the Corridor:

- (1) No trees or shrubs shall be cut or removed from the Corridor right of way without a Certificate of Appropriateness issued to the land owner (on whose land the trees are located) by the commission.
- (2) Clear cutting of the Corridor right of way and the vegetation within 50 feet of the highway right of way is prohibited.
- (3) A Certificate of Appropriateness for the removal of trees shall be permitted when it is determined by the commission that such removal does not result in an adverse impact or detriment to the Corridor. Where minimum vegetation along the Corridor exists due to removal of trees and shrubs by natural causes, unauthorized clearing or accidental causes and the commission finds that the visual integrity of the Corridor is interrupted, planting..... within the 50 feet area adjacent to the right of way for the purpose of enhancing the appearance and aesthetic quality of the Corridor may be required by the commission.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(1)(d);  
Eff. February 1, 1987.

**07 NCAC 11 .0204 DRIVEWAYS AND CURB CUTS**

Regulations for the installation of driveways and curb cuts through the North Carolina Department of Transportation right of way of U.S. 64-264 on Roanoke Island:

- (1) No driveway permit shall be issued by the North Carolina Department of Transportation until a Certificate of Appropriateness has been issued by the commission.
- (2) Any individual, individuals or group wishing to cut through the Corridor for a driveway or curb must obtain a Certificate of Appropriateness as outlined in Section .0300.
  - (a) Driveway cuts made without obtaining a Certificate of Appropriateness shall be unlawful and constitute a nuisance. The commission shall give 30 days notice by registered mail to the owner of the property of a violation of these Regulations.
  - (b) Parcels of land adjacent to the Corridor right of way under one ownership shall be entitled to no more than two curb cuts and may be limited to one curb cut or driveway at the discretion of the commission, depending on the size and scope of the development to be served. If more than one use is to be located on said parcel, the number of curb cuts or driveways into the parcel shall still not exceed two and a feeder (frontage) road behind the Corridor may be permitted in order to limit the disturbance of the Corridor. The commission, by a majority vote, may waive this requirement if it is determined that better traffic operation and safety will result without compromising the visual integrity of the historic Corridor.
  - (c) Curb cuts and driveways shall be no wider than 36 feet at the apron adjacent to the highway pavement and 24 feet for the remainder of the driveway.
  - (d) Tracts subdivided after the effective date of these Regulations will be considered as one parcel.
  - (e) All driveways and curb cuts shall be designated to disturb the minimum number of plantings within the Corridor.

*History Note:* Authority 1981 S.L., c. 1194, s. 6;  
Eff. February 1, 1987.

**07 NCAC 11 .0205            UTILITY REGULATIONS**

(a) Location.

- (1) New utility installations on the Corridor shall be placed underground. New utility installations means initial installations and the replacement of existing facilities with those of a different type, capacity, size of wire or design or replacement at a new location on the Corridor. Any replacement of an existing facility or portion thereof with another of the same type, size of wire, capacity and design at the same location is considered to be maintenance.
- (2) Pedestals, transformers, manholes, vaults or other above ground or at grade utility appurtenances installed as part of buried plant shall be located at or near the outer extremity of Corridor jurisdiction. Justification for other locations may be approved by the commission and Department of Transportation.
- (3) Longitudinal installations shall be located on uniform alignment as determined satisfactory by the commission and Department of Transportation so as to provide a safe environment for traffic operation and to preserve adequate space for planned highway improvements or other utility installations. Longitudinal installations under the pavement, including paved shoulders, will not be permitted.
- (4) To the extent feasible and practicable, utility line crossings of the highway should cross on a line generally perpendicular to the highway alignment.

(b) Pavement Cuts.

- (1) Longitudinal pavement cuts along U.S. 64-264 will not be permitted without obtaining a Certificate of Appropriateness.
- (2) Generally, pavement cuts across U.S. 64-264 will not be permitted; however, there may be extreme cases where the commission and the Department of Transportation may allow open cuts where justified. A Certificate of Appropriateness must be obtained for open cuts.

(c) Cased and Uncased Construction.

- (1) Underground crossings of U.S. 64-264 may be installed without protective pipe, conduit or duct provided such installations are limited to open-cut construction or to small bores for wire or cable facilities where soil conditions permit installation by boring a hole about the same diameter as the cable and pulling the cable through. On crossing where open-cut is not allowed, installations that require bores in excess of six inches shall be encased unless the utility demonstrates to the satisfaction of the commission and Department of Transportation that the installation method for an uncased crossing is such that the bored hole is never left unsupported.

(d) Bury.

- (1) The minimum depth of bury for utility lines shall be as follows:

(A) Crossings under all roadways (including shoulders)	3'
(B) Crossings under ditches (paved and unpaved) and sidewalks	2'
(C) Longitudinal electric power primary	3'
(D) Longitudinal electric power secondary, and trenched communication lines	2'
(E) Plowed-in utility lines	18"

(e) Safety Warning Devices.

- (1) The utility owner shall provide during construction any subsequent maintenance, proper signs, signal lights, flagmen and other warning devices for the protection of traffic in conformance with the latest Manual of Uniform Traffic Control Devices for Streets and Highways, and the North Carolina Construction and Maintenance Operations Supplement. Information as to this Rule may be obtained from the Department of Transportation's Maintenance Office in Manteo, North Carolina. The Department of Transportation has the right to stop any work for non-compliance.

(f) Removal or Alteration of Vegetation.

- (1) The encroaching party or their agents shall exercise every required precaution during construction and/or maintenance to prevent eroding of soil; silting or pollution of water impoundments, ground surfaces or other property; or pollution of the air. There shall be compliance with applicable rules and regulations of the North Carolina Division of Environmental Management, North Carolina Sedimentation Control Commission and with ordinances and regulations of Dare County, the Town of Manteo, the State of North Carolina and other official regulating agencies relating to sedimentation and pollution prevention and control.
- (2) Where there is excavation for underground installations or when any other installation or maintenance operations disturb the ground surface and the existing ground cover, the encroaching party shall be required to perform erosion control measures as follows:

- (A) Erosion control shall be performed in accordance with the requirements contained in the current edition of the Department of Transportation's Standard Specifications for Roads and Structures.
  - (B) The use of temporary erosion control measures shall be included to prevent siltation of waterways and adjacent property. The use of silt basins, silt check dams, silt fence, temporary slope drains, brush barriers and temporary seeding and mulching shall be used as needed.
  - (C) Permanent erosion control shall be performed as follows:
    - (i) All disturbed areas shall be dressed to original typical sections and plowed to a depth of five inches. The top two inches shall be pulverized to provide a uniform seedbed. Lime shall be applied before plowing.
    - (ii) Kinds and rates of seed, fertilizer and limestone shall be specified by the commission or Department of Transportation.
    - (iii) Lime, seed and fertilizer shall be applied with necessary equipment to give uniform distribution of these materials. The hand-bucket method is not acceptable.
    - (iv) Seeded area shall be cultipacked to firm seedbed and seed shall be adequately covered.
    - (v) Grain straw shall be applied over seeded areas as a mulch. No bare ground shall be visible when riding by a mulched area if proper application is achieved. Thick clumps of straw are not permissible; a uniform coverage is required.
    - (vi) Mulched areas shall be tacked sufficient to hold straw in place.
  - (3) No trees may be cut or removed without prior approval, and in certain situations, the commission or Department of Transportation may require that trees or shrubs be carefully dug and replanted or replaced by new plants.
  - (4) When permission for cutting, trimming, digging or other removal or alteration of trees, shrubs or other vegetation on the Corridor for the purposes of construction and maintenance by an encroaching party is given it shall be subject to the following standard requirements:
    - (A) The permission applies only to the interest of the commission and Department of Transportation in the vegetation and is not to be construed as freeing the encroaching party from liability to the adjacent property owner. Special attention is called to this provision in cases of specimen trees that are also a part of private development such as home grounds, schools, churches, etc.
    - (B) All cutting shall be done as close to flush with the ground as is practicable with modern saw equipment. Under very exceptional conditions, such as very large diameter trees or swamp growth, flush cuts may not be practical. The burden of proof for the necessity of high stumps will rest with the encroaching party and express approval must be obtained from the commission prior to such cutting.
    - (C) Trimming of specimen trees on the Corridor shall be done in accordance with generally accepted tree surgery practice and any trimming necessary to leave the tree with a good, balanced appearance must be done in addition to the minimum trimming needed for line clearance, climbing irons or spurs must not be used on any tree.
    - (D) All cuttings shall be removed from the Corridor and out of view unless otherwise stated in the Certificate of Appropriateness. If woodchipping machines are used for brush disposal, the chips must be removed from the Corridor.
    - (E) Removal or alteration of vegetation for existing overhead utility facilities generally will be limited to 15 feet; that is, to seven and a half feet on either side of the utility wire or pole. Wider clearing areas will be considered only on the basis of;
      - (i) removing only danger trees,
      - (ii) retaining large, sound, strong-trunked trees, and
      - (iii) trimming such large sound trees for wire clearance only instead of complete side trimming.
- No flat-topping, bench-topping or clear-cutting will be allowed and all trimming will be accomplished by irregular hand pruning.
- (F) Under some circumstances the granting of permission related to existing overhead utility facilities will be conditioned upon the preservation of such shrubs and low-growing trees within the clearing area. The need and extent of such preservation will be determined for specific locations.
  - (G) When excavating for underground utility installation or maintenance is done near trees, the minimum, but necessary, cutting of tree roots shall be done in accordance with generally accepted tree surgery practice. The tunneling under and retention of principal support roots may be

required when considered necessary, according to the location, size and quality of the tree involved.

(H) The use of herbicides for control of vegetation is prohibited.

(g) Procedures of Processing Utility Encroachment Agreements.

- (1) All requests shall be submitted directly to the Commission, P.O. Box 155, Manteo, North Carolina 27954, for review, consideration and processing. Those requests affecting the North Carolina Department of Transportation right of way or the right of way and the 50 feet outside of the right of way require the approval of both the commission and the Department of Transportation Division Engineer. Those requests affecting only the 50 feet outside the right of way require the approval of the commission only.
- (2) General requirements for permit application are the same as found under Section .0300 of the general regulations for the commission.

*History Note: Authority 1981 S.L., c. 1194, s. 1(1)(c);  
Eff. February 1, 1987.*

## **SECTION .0300 - CERTIFICATION OF APPROPRIATENESS: PROCEDURAL REQUIREMENTS**

### **07 NCAC 11 .0301 APPLICATION**

Anyone seeking to take any action within the jurisdiction of the Corridor, including but not limited to removing or moving trees or shrubs, installing or maintaining utilities, or installing a driveway or curb cut or erecting outdoor advertising, will first obtain a Certificate of Appropriateness from the commission. The proposed action must comply with the regulations outlined herein. Any individual, individuals or group seeking such certificate will submit five copies of the proposed sketch plan or letter to the commission for review. The sketch plan and/or letter showing the proposed action within the Corridor must contain the following information:

- (1) A sketch map of the vicinity of the proposed action showing its location in relation to neighboring tracts, plantings within the Corridor, existing signs, roads and waterways.
- (2) The boundaries and total acreage of the tract where the proposed action is to take place.
- (3) The name, address and telephone number of the owner of the tract where the proposed action is to take place.
- (4) Existing vegetation on the right of way and on land within 50 feet of the right of way.
- (5) An inventory of the trees to be removed.
- (6) A narrative explaining the reasoning behind the proposed removal.
- (7) An inventory of plants, their sizes and quantities proposed to replace those removed and/or complement those remaining.
- (8) Designation of the person /persons who will be responsible for removal and/or installation of the trees.
- (9) An estimate of the cost of the removal and installation proposed.
- (10) A sketch plan showing the location of all existing and proposed driveway cuts and the vegetation affected thereby.
- (11) An erosion and sedimentation control plan as required by G.S. 113A-67 shall be filed where applicable with the application.

The commission, upon written request, may waive any of the above information determined to be extraneous to the review process for the specific request.

*History Note: Authority 1981 S.L., c. 1194, s. 6;  
Eff. February 1, 1987.*

### **07 NCAC 11 .0302 COMMISSION REVIEW OF APPLICATION**

Upon receipt of a complete application and plan, the commission or Executive Committee shall either approve or deny the request within 20 working days after submission. During the review period, the commission shall check the site for ownership, accuracy of submission and the compatibility of the proposed plan with the overall concept of the Corridor. Action by the Executive Committee can be delayed until the next scheduled commission meeting if in the Executive Committee's discretion an application should be considered by the commission.

*History Note: Authority 1981 S.L., c. 1194, s. 6;  
Eff. February 1, 1987.*

**07 NCAC 11 .0303 ISSUANCE OF CERTIFICATE**

Upon issuance of the Certificate of Appropriateness, the commission shall assure that the certificate is posted on the site at all times; that the proposed thinning, removal, pruning, planting and maintenance is performed in compliance with the approved plan; that the responsible party is informed immediately in writing should the plan or intent of the permit not be followed.

*History Note: Authority 1981 S.L., c. 1194, s. 6;  
Eff. February 1, 1987.*

**07 NCAC 11 .0304 BOND**

Should the projected cost of the proposed work within the Corridor jurisdiction be greater than four hundred and ninety nine dollars (\$499.00), the commission shall have the option of requiring an insurance or cash bond or bank certificate to insure that the proposed work will be performed as permitted. Said insurance, cash bond or bank certificate to be in an amount set by the commission and to be held until released by the commission.

*History Note: Authority 1981 S.L., c. 1194, s. 6; 1984 S.L., c. 1115, s. 2(6);  
Eff. February 1, 1987.*

**07 NCAC 11 .0305 REPLACEMENT OF DESTROYED TREES**

If the certificate holder destroys or damages vegetation for any reason that is not planned for removal, the certificate holder shall be liable for the replacement of said vegetation as close as possible to its original size and location.

*History Note: Authority 1981 S.L., c. 1194, s. 6; 1984 S.L., c. 1115, s. 2(6);  
Eff. February 1, 1987.*

**SECTION .0400 - ENFORCEMENT**

**07 NCAC 11 .0401 AUTHORITY**

The commission shall have all necessary authority to administer and enforce these Regulations including the ordering in writing of the remedying of any condition found in violation of these Regulations, and bringing legal action to ensure compliance, including the injunction, abatement or other appropriate action or proceeding.

*History Note: Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. February 1, 1987.*

**07 NCAC 11 .0402 NOTICE OF VIOLATION**

If any of the provisions of these Regulations are being violated, notification shall be made in writing to the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The commission shall order a discontinuance of illegal site work being done; or shall take any other action authorized by these Regulations to ensure compliance with or to prevent violation of its provisions.

*History Note: Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. February 1, 1987.*

**07 NCAC 11 .0403 LEGAL ACTION**

The commission may institute a civil action against the offender seeking enforcement by appropriate equitable remedy, injunction and order of abatement.

*History Note: Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. February 1, 1987.*

**SECTION .0500 - APPEALS**

**07 NCAC 11 .0501 APPEAL TO FULL COMMISSION**

Any individual, individuals or group may appeal a decision denying a Certificate of Appropriateness rendered by the Executive Committee to the full commission.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. March 1, 1987.

**07 NCAC 11 .0502 APPEAL PROCEDURE**

The appealing party shall submit 20 copies of the application to the commission chairman at least 15 days prior to the scheduled commission meeting.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. March 1, 1987.

**07 NCAC 11 .0503 COMMISSION ACTION**

The commission shall consider an appeal at its meeting and take the following action:

- (1) grant the Certificate of Appropriateness;
- (2) deny the Certificate of Appropriateness;
- (3) grant a variance; or
- (4) table the matter for one meeting in order to seek further information.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. March 1, 1987.

**07 NCAC 11 .0504 FINAL AGENCY DECISION**

Once the commission has considered an appeal and rendered a decision, said decision shall be considered a final agency decision.

*History Note:* Authority 1981 S.L., c. 1194, s. 1(7); 1985 S.L., c. 673, s. 2.1(b);  
Eff. March 1, 1987.