

### **15A NCAC 07M .0703 MITIGATION CANDIDACY**

(a) The CRC may approve a development project for mitigation candidacy if the applicant can demonstrate that all of the following criteria can be met:

- (1) there is no reasonable or prudent alternate design or location for the project that would avoid the losses to be mitigated;
- (2) the entire project for which the permit is requested is dependent upon being located within or in close proximity to public trust waters and coastal wetlands;
- (3) benefits to the public interest will clearly outweigh the long range adverse effects to the environment. A benefit to the public interest may be established by a project which has been clearly shown to be the least damaging alternative and which:
  - (A) if publicly funded creates benefits of national or state importance. This category may include but is not limited to public roadways, navigation projects, state ports, and projects designed to provide public access to the water;
  - (B) if privately funded provides increased access opportunities available to the general public for free or for a nominal fee, or provides significant economic benefits to the state or community in accord with the local land use plan;
- (4) all reasonable means and measures to lessen the impacts of the project have been incorporated into the project design.

(b) Mitigation may also be the basis for CRC approval for projects which cannot meet all the criteria of 15A NCAC 7M .0703(a) if the CRC determines that public benefits of the project and enhancement and protection of the environment overwhelmingly outweigh environmental losses.

(c) Mitigation candidacy may be considered by the CRC during the permit processing time prescribed in 15A NCAC 7J .0204, in accordance with the procedures set out in 15A NCAC 7J .0600 concerning declaratory rulings. The applicant may request a declaratory ruling on the applicability of the mitigation policy as set forth in 15A NCAC 7M .0703(a) provided that the applicant agrees that the permit processing time period will not run during the pendency of the declaratory ruling consideration. If a declaratory ruling is to be issued pursuant to the applicant's request, a public meeting will be held to discuss the proposed project and to assist the Commission in obtaining the information necessary to make the declaratory ruling, and to receive comments from the public prior to presenting the ruling request to the Commission. Information concerning the proposed mitigation may also be introduced at the meeting. CRC approval of the mitigation candidacy is binding on the Commission and the person requesting it, in accordance with 15A NCAC 7J .0603(e).

*History Note: Authority G.S. 113A-102(b); 113A-107; 113A-113; 113A-120(a); 113A-124; 113-229; Eff. January 1, 1984; Amended Eff. September 1, 1985; RRC objection September 17, 2022 and rule returned to agency on October 5, 2023; Codifier determined that agency's findings of need did not meet criteria for emergency rule on December 20, 2023; Emergency Adoption Eff. January 3, 2024; Emergency Rule Exp. Eff. May 13, 2024; Returned to Code pursuant to order of Wake County Superior Court, currently under appeal, Eff. March 3, 2025.*